UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, L.P., *et al.*,	.	(Jointly Administered)
Debtors.	.	
WELDED CONSTRUCTION, L.P.,	.	Adversary Proceeding No. 19-50194 (LSS)
Plaintiff,	.	
v.	.	
THE WILLIAMS COMPANIES, INC., WILLIAMS PARTNERS OPERATING LLC, and TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,	.	Courtroom 2 824 Market Street Wilmington, Delaware 19801
Defendants.	.	Thursday, August 31, 2023
	.	9:33 a.m.

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

TRIAL (DAY 8)

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(Proceedings commenced at 9:32 a.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

Good morning.

MR. NEIBURG: Good morning, Your Honor.

I believe we were about to begin the cross-examination of Mr. Pew.

MR. GUERKE: One item, Your Honor.

I need to inform Defense counsel we're not going to cross Mr. Sztroin on the document from yesterday.

THE COURT: You're not going to?

MR. GUERKE: We're not going to.

THE COURT: Okay. Then -- yes?

MS. EWALD: Your Honor, I wanted to note for the record that we'll be filing our brief that we submitted to the Court on the docket --

THE COURT: Yes, please do that.

MS. EWALD: -- to have a record of that.

THE COURT: Please do that.

MS. EWALD: Thank you.

THE COURT: Yes, thank you.

And so Mr. Sztroin's testimony is now complete, with respect to direct and cross.

(Pause)

THE COURT: Good morning, Mr. Pew.

You may sit, and you are still under oath.

THE WITNESS: Okay.

COLBY PEW, DEFENDANTS' WITNESS, PREVIOUSLY AFFIRMED,

RESUMES STAND

MR. NEIBURG: Your Honor, I have a binder for cross-examine.

May I approach?

THE COURT: You may.

MR. NEIBURG: May I give this whole binder over?

THE COURT: Yes.

(Pause)

MR. NEIBURG: May I proceed, Your Honor?

THE COURT: You may.

MR. NEIBURG: Thank you.

CROSS-EXAMINATION

BY MR. NEIBURG:

Q Good morning, Mr. Pew.

A Good morning.

Q Now, just to confirm, during the time that Welded was submitting its reconciliation invoices to Transco at the time it was doing its work on the project, you weren't involved in the process in terms of reviewing and reconciling the invoices, correct?

A No, sir.

Q Transco engaged OGCS in the spring of 2018 to perform

an audit of Welded's billings, correct?
A I don't know OGS [sic].
Q Okay. So I take it, then, you were not personally involved in the audit, correct?
A No, sir.
Q And during your direct testimony, you talked about certain safety issues that you perceived during Welded's work on the project, right?
A Yes.
Q And Welded constructed Spreads 5 to 7 of the project, correct?
A 5, 6, and 7, yes.
Q And other contractors built Spreads 1 through 4 on the project, correct?
A Yes.
Q And Spreads 5 to 7 that Welded built accounted for approximately half of the distance of the project, right?
A Yes.
Q And during your direct testimony, you mentioned that Justin Lampard (phonetic) was the head of Transco's construction safety on the project, right?
A Yes.
Q If I could direct your attention to D-1876 in the binder.
MR. NEIBURG: Your Honor, this document is

admitted into the record. I just want to have Mr. Pew reference the chart that is on this document.

BY MR. NEIBURG:

Q And Mr. Pew, Welded only had 17 OSHA-recordable incidences, correct?

A That's what it states, yes.

Q And Mr. Lampard was the --

MR. BURWOOD: I'm sorry, Your Honor, we object to the extent that the witness hasn't -- potentially not testified that he's seen this document before, is familiar with it. He's not on this email.

MR. NEIBURG: Just referencing the chart.

THE COURT: Okay. But -- I guess you could reference it.

Yeah, overruled, because it's being referenced.

BY MR. NEIBURG:

Q And those recordables only accounted for 39 percent of the OSHA recordables on the project, correct?

A From what the table says, probably.

Q And this table also says that Welded only had two incidences of OSHA-recordable with lost-time incidents, correct?

A That's what the table says. It seems low.

Q And this table also reflects that the two OSHA-recordable, lost-time events accounted for only 29 percent of

such incidences on the project, correct?
A That's what the table says.
Q And this table also says that Welded only had four safety stand-downs while working on the project, correct?
A That's probably four Spread-wide safety stand-downs, not individual incident stand-downs.
Q And those accounted for only 40 percent of such incidences on the entire project, correct?
MR. BURWOOD: Your Honor, I object to the extent he's asking him to read the table versus the question suggests he's asking to confirm it.
THE COURT: I think it's clear he's reading the table.
MR. BURWOOD: Thank you, Your Honor.
MR. NEIBURG: I'll read the question again.
BY MR. NEIBURG:
Q Does this table reflect that Welded only had 40 percent of the total number of safety stand-downs on the entire project?
A From what the table says.
Q And this table was prepared in May of 2019, correct?
A It appears so.
Q And this table was prepared by Justin Lampard, correct?
A It appears so.
Q And, again, Welded built half the pipeline on the

project, right?
A 96 miles.
Q That's approximately half the distance of the project, correct?
A Approximately.
Q And Welded achieved mechanical completion on September 19, 2018, correct?
A I'm not exactly sure when it was completed.
Q You're the senior construction manager on Spreads 5 through 7?
A It's been five years.
Q Does September 2018 sound correct?
A Somewhere in there, yes.
Q And for approval, to put the pipeline into service, was received on October 4, 2018, correct?
A I can't confirm that exactly date, no.
Q And the pipeline that Welded built is safe, right?
A We do everything we can to make it safe.
Q The pipeline that Welded built and Transco put into service is safe, correct?
A Yes.
Q And the pipeline should be in service for decades, correct?
A Yes.
MR. NEIBURG: Your Honor, I just want to clean up

a question that I asked about whether he was involved.

I phrased the question, "He was not involved," and he said -- and I said, "Correct?"

And he said, "No, sir."

THE COURT: He said, "No, sir."

BY MR. NEIBURG:

Q Mr. Pew, were you involved in the reconciliation processing during the time the project was ongoing?

A No.

Q Were you involved in the audit that OGCS conducted?

A No.

MR. NEIBURG: No further questions, Your Honor.

MR. BURWOOD: No redirect, Your Honor.

THE COURT: Thank you.

Mr. Pew, you may step down. Your testimony is complete. Thank you.

THE WITNESS: Thank you.

(Witness excused)

MR. NEIBURG: Your Honor, at this time, I think we're going to the deposition -- reading in of deposition designations. I think what we've agreed to with counsel for Transco is Welded has identified five witnesses that are not appearing live at trial that we'd like to read portions of their transcript. What we've agreed to is Welded will first read in a subject area. To the extent that Transco believes

there should be certain portions that are related to that portion, they will then read that portion in before we move on to the next portion.

THE COURT: Okay.

MS. EWALD: And there may be a few objections to the testimony that will be raised before it's read.

THE COURT: Okay.

MR. NEIBURG: Okay. Yeah, Your Honor, as you instructed, we did confer and, I think it was Tuesday morning, we sent over the specific portions that we would like to read into the record. So that's why they've had the opportunity, in advance, to --

THE COURT: You said, "To them"?

MR. NEIBURG: Yes, exactly.

THE COURT: Okay.

MR. NEIBURG: And to be clear, Your Honor, this is not in any way superseding the full designations; these are just the portions that Welded would like to read into the record.

THE COURT: Okay.

MR. NEIBURG: And my colleague Mr. Buchanan will do the reading, and to the extent there's any evidentiary issues, I'll handle that with Transco's counsel.

THE COURT: Very good.

MR. BUCHANAN: Good morning, Your Honor. For the

record, Travis Buchanan, on behalf of Welded Construction. I believe Mr. Neiburg gave you the rundown about how we anticipate proceeding, so unless you have any comments, I'll just dive right in.

THE COURT: Let's dive in.

MR. BUCHANAN: All right. So the first, Your Honor, is Phil Burke's deposition testimony from December 17th, 2020. The first passage begins on page 11, line 20, and it goes through page 12, line 9:

"Question: Are you the owner" --

THE COURT: Hold on.

MS. EWALD: Excuse me, Mr. Buchanan.

I have a list you gave me that -- and maybe I just misheard this -- but it's page 11, 3 through 12, 9.

MR. BUCHANAN: Yeah, that might be the information we sent over. I thought some of that was unnecessary.

If you want me to start from there?

MS. EWALD: Oh, I see. I didn't hear -- could you --

MR. BUCHANAN: Sure. So, I was going to start at 11, 20.

MS. EWALD: So, a subset of this?

MR. BUCHANAN: Correct.

MS. EWALD: I apologize.

MR. BUCHANAN: Yes.

MS. EWALD: Thank you, I apologize.

MR. BUCHANAN: So beginning at 11, 20 to Mr. Burke:

"Question: Are you the owner and founder of the OGCS parent company or are you saying you're the owner and founder of one of the subsidiaries?

"Answer: No, I'm the owner. Well, I'm the majority shareholder and one of the founders and directors of OGCS Global Ltd., the parent company. But, obviously, I'm also a director of a number of the subsidiaries, as well.

"Question: Which entity was engaged by Williams for this case?

"Answer: That would be OGCS Americas, Inc. LLC."

MR. BUCHANAN: The next passage, Your Honor, is page 39, line 23.

MS. EWALD: And I'd object, Your Honor, with regard to parol evidence, foundation, and relevance.

THE COURT: Okay. Well, hard for me to know until I hear it.

MS. EWALD: Oh, I'm sorry. I apologize.

Go ahead and read it, Mr. Buchanan.

THE COURT: So, let me hear it first.

MR. BUCHANAN: Okay.

"Question: A little farther down this paragraph there's a sentence that starts 'The contract contains...'

Do you see that sentence?

"Answer: Yes.

"Question: That sentence -- in that sentence, Mr. Anderson writes, 'The contract contains a few of the protections for a company that you would usually expect. What happens when you go fully reimbursable without thinking it through.'

Did I read that correctly?

"Answer: Yes, you did.

"Question: Did you agree with Mr. Anderson's assessments there?

"Answer: Yes."

MR. NEIBURG: Your Honor, I guess, maybe she could restate the objection?

THE COURT: Yeah.

MR. NEIBURG: I'm sorry.

MS. EWALD: And, Your Honor, my objection is foundation, relevance, and parol evidence.

MR. NEIBURG: Your Honor, as to foundation, I think during the deposition, the foundation for this email, which this is an OGCS analysis of the audit, and that's what Mr. Burke was testifying about. So the foundation was laid.

The relevance is laid because it relates to the audit of Welded's invoicing under the contract. He's describing, you know, the entire audit was their interpretation of the contract of what should and should not be billable.

MS. EWALD: Your Honor, the document that was being read from, I don't think it was part of the auditor audit findings by Mr. Anderson. I don't think Mr. Anderson was involved in that -- the audit that Mr. Green prepared. I think he was doing different work and examining different work. So I don't think it was part of any of the audit findings we saw that was Mr. Burke and Mr. Green, so I object as to foundation with regard to whatever he was, you know, the document that is undefined here, and relevance and parol evidence.

THE COURT: Okay. Well, it's hard for me to know because I don't know if there were lead-up questions to that or not and I don't know what the document was, so --

Do I have -- I assume, in the designations that I received -- and I haven't looked at the deposition transcripts, and maybe I need them -- do I have that objection lined up with -- I assume these meant -- English, Laurie -- I was sent over designations and counter-designations. I assume these are part of them.

Is that correct?

MR. NEIBURG: Correct.

MR. BUCHANAN: Yes, Your Honor.

THE COURT: Okay. And with the designations and counter-designations, I was given the objections, correct?

MS. EWALD: Yes, Your Honor.

THE COURT: And this would have been one of the objections I was given, correct?

MS. EWALD: Yes, I believe so. It's part of a table.

THE COURT: Okay. I can't rule on this one in the abstract here of what I'm hearing, so I will rule on it when I go back and read that designation. So let's make a note that I need to rule on this one.

MR. NEIBURG: And, Your Honor, I think that's consistent with what you said at the final pretrial conference that at the end of the day when you're reviewing the designations and seeing the objections, you'll call a ball or a strike.

THE COURT: Yeah, I'll call a ball or a strike. It's hard to do it in this clip of things.

MS. EWALD: So, I apologize -- sorry.

THE COURT: But that objection is preserved.

MS. EWALD: Thank you, Your Honor.

And I would also note that in these transcripts, there were significant -- there were pages and pages of

designations. We're only looking at portions of them, and I understand why, but -- so the table is going to look a little different when the Court looks at it.

I do have a counter or a completeness portion of the transcript that I would now like to read in --

THE COURT: Okay.

MS. EWALD: -- with regard to this testimony.

And I think I can do it from hear as long as the reporter can hear me.

THE COURT: Right. Brandon, let me know if there's an issue.

THE CLERK: She needs to pull the mic a little closer.

THE COURT: Pull the mic a little closer, please.

MS. EWALD: Is that better?

THE CLERK: Yes.

MS. EWALD: Thank you.

And so now I will read in lines -- page 40, line 15 to page 41, line 7, which is immediately preceding the testimony that Mr. Buchanan just read and beginning with line 15:

"Did you and Mr. Anderson have an impression that Williams did not think through the contract before signing it?

"Answer: I can't say whether they thought through

before signing it at all. You know, I mean, I wasn't there at the time. I wasn't part of the contract preparation or drafting, so I'm not sure what their state of mind was when they -- or what the market conditions or what the circumstances that led them to sign the contract, so I can't really -- can't comment on that.

"Did, at any point, anyone from Williams express to you that the structure of the contract was not thought through?

"Answer: Not that I recall."

THE COURT: Thank you.

MR. BUCHANAN: Next, Your Honor, was Mr. Burke's deposition, page 75, line 6 through page 77, line 3:

"Question: In April of 2018, OGCS identified that Bechtel had a 50-percent multiplier built into their right, right?

"Answer: Well, that's what Neil is saying in this report, but I don't think that ever materialized in any of our audit findings.

"Question: Did you mean the Bechtel, 50-percent multiplier was not addressed in any of your audit findings?

"Answer: I just want to take a minute to think about that, if you don't mind. As far as I can recall, and I re-read the audit findings recently, I don't recall an issue

being raised about a 50-percent multiplier in our audit findings for Bechtel -- Bechtel multiplier.

So, from this, I'm gathering that Bechtel was providing certain personnel for the project. I'm not sure whether that is a 50 percent -- that 50-percent multiplier is referenced to the equipment uplift. If it is, then, obviously, it appears in principle in the audit findings, but I'm reading this as though somehow Bechtel uplifting the cost of their project manager and that uplifted cost is being charged to the project. That's how I read that.

"Question: Did OGCS determine that the 50-percent upcharge costs applied to Bechtel personnel was an issue under the contract?

"Answer: On the basis that this 50 percent isn't applicable, isn't referring to the included equipment uplift, and I don't recall us raising an issue about Bechtel personnel being uplifted, the cost basis for them being uplifted.

"Question: Did OGCS have an issue with the 50-percent equipment fee being applied to Bechtel's 50-percent multiplier.

"Answer: I don't actually recall any specific reference to Bechtel in our audit findings. That's where I'm struggling here."

MR. BUCHANAN: The next, Your Honor, was still of

Mr. Burke, page 122, line 12 to, I believe, page 124, line 4:

"Question: Mr. Burke, is this the document, the agenda document that was referenced in the email we just spoke about, which was marked as Exhibit 15?

"Answer: Yeah, it looks like it. It looks like, you know, just a quick glance in the narrative of rows 1 through 20, I recognized them as elements of that previous document.

"Question: And this agenda document has similar language to the PowerPoint we just discussed. The first item in column 2 says, 'Secure the meeting with Welded next week for two days to physically see the raw day they used' --

Raw data, they used, I think it's supposed to mean.

-- 'its origin, and then the principles applied in the compilation of the invoice, right?'

"Answer: Correct.

"Question: And then it says, 'The intention is to display a low level of contractual awareness at this meeting and give an impression that we are simply going through a process, as part of the company processes.'

That's what it says, right?

"Answer: So this is Adrian telling me of his intentions, when he attends the meeting, yeah.

"Question: And what he states here is, 'Our real and primary objective will be to completely understand their interpretations and applications of key elements attracted to the labor costs of the actual work performed, including how these are allocated within the invoiced labor sections.

That's what --

"Answer: Yeah.

"Question: That's what Mr. Green wrote in the -- this agenda attached to the email we just looked at?

"Answer: Yes."

MS. EWALD: Your Honor, I'd object on foundation and hearsay.

MR. NEIBURG: Your Honor, it's a document written by an agent of Transco. It's an admission by a party-opponent at their agency. OGCS --

THE COURT: This is a Transco --

MR. NEIBURG: This is an OGCS email about the audit that Transco engaged OGCS to perform. And this is about meetings that OGCS is about to attend with Welded and they're saying in advance, Don't tell them why we're here.

MS. EWALD: With Mr. Neiburg's interpretation of

the document, I would say that this was not OGCS acting within the scope of the agency that they had been given by Transco.

THE COURT: They're setting up a meeting within their agency?

MS. EWALD: Well, their determination as to what they're going to do at the meeting or talk about.

THE COURT: Oh, well, then, I'll overrule that.

They were hired to do an audit is my understanding based on the testimony we've had today.

MR. BUCHANAN: Next, Your Honor, still with Mr. Burke, is page 125, lines 11 through 15.

THE COURT: I'm sorry, 125?

MR. BUCHANAN: Yeah, sorry. Lines 11 to 15.

THE COURT: 11 to 15.

MR. BUCHANAN: "Question: On June 29th, 2018, the oversight and direction of OGCS' work was taken over by Defendants' in-house counsel; is that right?

"Answer: Yes."

MS. EWALD: And, Your Honor, I have a supplemental portion to read at this portion of the transcript from page 125, line 16 to 126, line 1. And I will begin:

"Question: From June 29, 2018, forward, OGCS' was influenced by Williams' in-house counsel, correct?

"MR. BURWOOD: Objection.

You can answer.

"Answer: Nobody influenced our work at all. We received no direction, no expectations from the client. We undertook the work, we managed the work, and we reported our findings."

MR. BUCHANAN: Okay. The next, Your Honor, still with Mr. Burke is page 152, line 14 through 154, line 8:

"Question: Was it Williams' plan in July 2018 to withhold payment from Welded Construction?

"MR. BURWOOD: Objection.

You can answer.

"Answer: I'm really -- you know, I would only be able to answer that anecdotally. I was not involved. We were not involved in that process.

Obviously, now, retrospectively, I've realized that they did withhold. We weren't consulted on either the timing or the content of any withholdings.

"Question: OGCS was not consulted on the withholdings --

"Answer: We were -- go ahead. Did I interrupt you there?

"Question: You did.

OGCS was not involved in Williams withholding

money from Welded Construction; is that your testimony?

"MR. BURWOOD: Object to form. You can answer.

"Answer: So just for clarity, we undertook this invoice-verification exercise. We provided reports to Williams, to their legal team. Those reports, obviously, we had discussions and clarifications on the reports, explanations, and so on, but ultimately, they did not consult us on what to withhold and they did not ask us to prepare anything, really, outside of our normal work product as part of those withholdings. We were basically told they were going to withhold at a certain point in time, but we had no involvement in the process or the decision.

"Question: When were you told Williams was going to withhold?

"Answer: Well, I'm not even sure as we sit here now whether we were told in advance or we were told retrospectively that they had done it, but, obviously, it's in that early-October period, I believe."

MR. BUCHANAN: The next, Your Honor, is page 156, line 20 to page 158, line 2:

"Question: Mr. Burke, this is a weekly progress report from OGCS. It's dated July 8th, 2018; is that right?

"Answer: Yeah.

"Question: It was

prepared by you?

"Answer: That's what the document says.

Obviously, I will have had a lot of input from the team and data in it, yeah.

"Question: Please flip to the second page. On the second page, this is your report and you're describing some issues that OGCS has identified as part of its work, right?

"Answer: Yeah, preliminary issues for investigation, yeah.

"Question: Do you see where it says, 'Schedule for the audit' at the bottom? The first sentence of that part states:

'In recent meetings with Williams, it was highlighted that as mechanical completion on the project was -- was within the next couple of months, the payment to be made to Welded in early August may be one of the last high-value payments.'

Do you see that sentence?

"Answer: Yeah.

"Question: The next says, 'As such, it was agreed that as many issues as possible should be raised by late July.'

Did I read that part correctly?

"Answer: Yeah."

MR. BUCHANAN: The next one -- Your Honor, I'm sorry, may I proceed?

THE COURT: You may.

MR. BUCHANAN: Page 178, line 8 to line 21:

"Question: But you did take part in the discussion about withholding that money, correct?

"MR. BURWOOD: Objection; asked and answered. You can answer.

"Answer: I don't specifically recall this meeting. You've not shown me an agenda or minutes of the meeting. The inference is, you know, it was around our audit findings, but, you know, subsequently, I've learned that the withholdings are much more than our audit findings, you know, and they're not all of our audit findings."

MS. EWALD: Your Honor, I think I have a portion to add, beginning at page 176, line 14:

"And during this meeting, you discussed with Williams, withholding money from Welded, correct?

"No, I discussed with Williams, the content of our audit findings. That means I explained what we had found. I explained the reasons we felt it was not contractually valid.

And I explained the value that we had assigned to that audit finding with the data that we had at that point in time, which I think was only the reconciliations up to May 2018.

So we were still way behind the process and information. We had identified some issues. This was an interim report; again, you know, it was a deliverable.

That's what we were engaged to do to find any areas we felt were not contractually valid and to obviously give an indication of the value to allow them to take that forward and make whatever decision they wanted to make around it."

Thank you.

MR. BUCHANAN: So, Your Honor, the next passage is still with Mr. Burke, page 208, line 20, to page 210, line 19:

"Question: At this point, October 10th, 2018, you considered your audit findings preliminary, right?

"Answer: Yeah.

"Question: The purpose of those audit findings were to identify contentious issues, correct?

"Answer: Yes.

"Question: And the purpose of the audit findings were to evaluate the respective impacts, correct?

"Answer: Yeah.

"Question: The plan with the audit findings was to submit the information to Welded and give Welded an opportunity to explain or mitigate the findings, correct?

"Answer: Yeah.

"Question: And then the intent was to have face-to-face negotiation meetings after Welded was presented with the audit findings, correct?

"Answer: Yes.

"Question: The withholding was October 4th, 2018, right?

"Answer: Yeah.

"Question: As of this report, dated October 10th, 2018, the audit findings had not been presented to Welded Construction, right?

"Answer: The detailed audit findings had not.

Obviously, they were summarized in that withholding letter we just reviewed, but --

"Question: But the audit findings themselves had not been provided to Welded Construction as of October 10th, 2018, correct?

"Answer: Correct.

"Question: And the next sentence or paragraph states, 'As previously reported, none of the findings have been discussed with the contractor at this stage.'

Did I read that right?

"Answer: You did.

"Question: So the findings in your audit report, had not, as of October 10th, 2018, been discussed with Welded, right?

"Answer: Correct."

MS. EWALD: Your Honor, I'll object on foundation grounds with regard to Mr. Burke's knowledge as to what had been discussed with Welded.

MR. NEIBURG: Your Honor, I'll just note that the transcript did not object to this designated portion of the transcript in the designations and counter-designations that we worked for weeks in advance of trial to finalize and submit to the Court.

THE COURT: Okay. Well, I will overrule the objection, then.

MR. BUCHANAN: Okay. Your Honor, the next one with Mr. Burke, I believe the last one with Mr. Burke is page 280.

THE COURT: Well, and let me know, also, he knows he didn't have any discussions with Welded -- Mr. Burke knows he didn't and that OGCS didn't provide any.

Go ahead.

MR. BUCHANAN: Page 280, line 22, to page 282, line 4:

"Question: Mr. Burke, this is a copy of your declaration. You discussed it earlier today, right?

"Answer: Yeah.

"Question: Could you go to the next page, paragraph 3. Paragraph 3, you're describing the Welded

Construction contract and you state:

'The reimbursable compensation model generally is inherently high risk for the client because, in effect, a contractor is reimbursed for all of its allowable costs under the contract, irrespective of progress or productivity achieved with limited incentive for the contractor to control costs.'

That's what it says in your declaration, right?

"Answer: That is my opinion, yeah. Through my years of experience working with this type of contract, yeah.

"Question: The Welded Construction contract with Williams was very high risk for Williams, right?

"Answer: Well, I'm not sure they knew that or would agree to that. But in my opinion, construction contracts are all about a balanced risk and for me, the risk is far too high in this contract. It's very highly weighted against the client in a reimbursable contract like this."

MS. EWALD: And, Your Honor, our objection is relevance and it was included in our objections.

THE COURT: I'll overrule that objection.

MR. BUCHANAN: Okay. Your Honor, with that, we would turn to the deposition transcript from Mr. Dunn, dated January 1st, 2021.

MR. NEIBURG: January 5, wasn't it?

MR. BUCHANAN: January 1st -- January 5th, 2021,

sorry. Thank you.

The first passage I would read is page 10, line 22, to page 11, line 3:

"Question: So what is your current employer?

"Answer: Williams.

"Question: And what is your title?

"Answer: I am the executive vice president and chief operating officer."

The next that I would turn to, Your Honor, is page 47, line 2, of Mr. Dunn's testimony, to page 49, line 15.

THE COURT: Line?

MR. BUCHANAN: Ending on line 15.

THE COURT: 15, thank you.

MR. BUCHANAN: The question starts:

"Question: Well, let's take a step back. Is it fair to say that the ASR contract with Welded is a cost-reimbursable, fixed-fee, plus contract?

"Answer: Yes, I believe that's the way it would be characterized.

"Question: And Welded has Spreads 5 through 7 on the ASR -- I'm sorry. Welded constructed Spreads 5 through 7 on the ASR pipeline, correct?

"Answer: Yes.

"Question: And Transco contracted with several

other contractors to construct Spreads 1 through 4, correct?

"Answer: Yes.

"Question: And are the other contracts cost-reimbursable, plus fixed-fee contracts?

"Answer: No.

"Question: Do you have an understanding as to -- or how would you describe those contracts?

"Answer: My understanding is that they were considered a hard-dollar-bid contract.

"Question: For a lump sum?

"Answer: Lump sum, yes.

"Question: From your perspective as COO of Williams and executive vice president of Transco, do you have a view as to whether or not Transco prefers a lump sum contract or a cost-reimbursable, plus fixed-fee contract?

"MR. BURWOOD: I would object to the form.

You can answer.

"Answer: I believe Transco would prefer a lump sum contract.

"Question: Why do you say that?

"Answer: It primarily requires the contractor to be efficient in the utilization of their resources and requires them to take more risk than putting that risk on the company. It gives the company more certainty in regard to the cost of a project.

"Question: Now, with respect to a cost-reimbursable, plus fixed-fee contract, the risk of increased costs is borne by the owner, such as Transco, correct?

"MR. BURWOOD: Objection.

You can answer.

"Answer: Yes.

"Question: From your perspective as COO of Williams and executive vice president of Transco, other than bearing the risk of increased costs, are there any other negative characteristics of a cost-reimbursable, plus fixed-fee contract from your perspective?

"Answer: I believe that's the biggest risk. I can't think of any other specific risks right now."

MS. EWALD: Your Honor, our objection was relevance.

THE COURT: Overruled.

MR. BUCHANAN: Okay. Your Honor, the next passage from Mr. Dunn was page 59, line 7, to page 64, line 3:

"Question: So, from your perspective as COO of Williams and executive vice president of Transco, you understand that the ASR contract was a cost-reimbursable, plus fixed-fee contract?

"Answer: Yes.

"Question: And because the ASR contract is a cost-reimbursable, plus fixed-fee contract, is it your

understanding that Transco, as owner, bore the risk that costs would be higher than expect?

"MR. BURWOOD: Objection.

You can answer.

"Answer: Yes, that is a risk.

"Question: And, again, the ASR contract concerning Spreads 5 through 7 was the only contract pertaining to the ASR pipeline project that was cost-reimbursable, fixed fee -- plus fixed-fee contract, correct?

"Answer: Yes, that is my understanding for the major pipeline construction, Spreads 1 through 7. If there were any others --

"Question: I'm sorry, go ahead.

"Answer: If there were any others, I do not know.

"Question: And you stated earlier that this ASR contract is the only cost-reimbursable, plus fixed-fee contract that Transco has entered into, of which you're aware.

Did you ever ask anyone why Transco agreed to a cost-reimbursable, plus fixed-fee contract with Welded?

"Answer: Yes.

"Question: Who did you ask?

"Answer: I believe I asked Chris Springer.

"Question: And what was his response?

"Answer: If I recall correctly, his response was,

there was concern because of the magnitude of work going on in the industry that there would not be available contractors to perform all of the work on the ASR project. They wanted to lock up, so to speak, a contractor to do a portion of the work, and that was my understanding as to why they did that."

MS. EWALD: Your Honor, the objection was relevance.

THE COURT: Overruled.

MR. BUCHANAN: "Question: Did they provide -- did you provide your views to Chris Springer as to whether or not you would have agreed with that approach?

"Answer: Yes, I believe I did.

"Question: And what did you say?

"Answer: I believe, at the time, I had a conversation about the significant risk that that puts on the organization, Transco, to be subjected to higher costs.

"Question: So, is it fair to say that if you had been, is it your view that if you had been executive vice president of Transco and COO of Williams at the time the ASR contract was executed, you would not have agreed to a cost-reimbursable, plus fixed-fee structure?

"Answer: Not being at Williams at the time the decision was made, I don't believe I can answer that.

With regard to the decision at the time that was made, I do not know what was taken into consideration.

"Question: Is it fair to say, though, that under normal circumstances, as Williams' COO and Transco's executive vice president, you would not agree to a cost-reimbursable, plus fixed-fee contract for purposes of a project of similar scope and cost, correct?

"MR. BURWOOD: I object to the form.

You can answer.

"Answer: My bias would be not -- to not enter into a contract of this nature.

"Question: And why is that?

"Answer: Because it puts significantly more risk on the company and it does not require the contractors to be as efficient as they might be if they were more at risk -- they were at more risk.

"Question: And, again, that's because under the traditional lump sum contract, the risk of increased costs is borne by the contractor, correct.

"Answer: Yes.

"Question: And from the owner's perspective, such as Transco and Williams, that's preferred, correct?

"Answer: Typically, yes.

"Question: And during the time you had this conversation with Chris Springer about the cost-reimbursable, plus fixed-fee structure, did you express your view to him that the ASR contract was not a good contract for Transco?

"MR. BURWOOD: Objection.

You can answer him.

"Answer: I believe what I indicated earlier is my concern is that it puts more risk on a company than it puts on a contractor from a financial performance standpoint.

That was the gist of my concern.

"Question: And that's not a good thing from a company perspective, correct?

"Answer: Yes."

MS. EWALD: Your Honor, our objection was relevance with regard to the terms of the contract provide what the risks are and Mr. Dunn, who was not present at the time, his view of the risks or the nature of the contract is not relevant.

MR. NEIBURG: Mr. Dunn, as COO of Williams, is -- has been there since this lawsuit was filed, so his views and, perhaps, the approach Transco was taking here in terms of why they're seeking to claw back money under this cost-reimbursable, plus fixed fee is relevant.

THE COURT: Overruled.

MR. BUCHANAN: Okay. Your Honor, the next one from Mr. Dunn is page 77, line 13, to page 81, line 16.

And Ms. Ewald, I would just note that there were, I guess, two passages and I'm just going to take them both together.

Do you see what I'm saying here?

(No verbal response)

MR. BUCHANAN: "Question: Mr. Dunn, do you recall having a conversation with your teammates at Williams regarding the fact that the cost of the Spreads 5 through 7 exceeded original estimates?

"Answer: Yes, we had those conversations.

"Question: Did you ever have those conversations with Welded?

"Answer: I do not recall specifically having that conversation with Welded.

"Question: Do you recall conversations with your team at Williams regarding whether or not Welded was building properly under the ASR contract?

"MR. BURWOOD: I object to form.

You can answer.

"Answer: Yes.

"Question: Do you recall whether or not those concerns were ever expressed to Welded during your meetings in Houston?

"Answer: I do not recall.

"Question: Generally speaking, how would you characterize Welded's willingness to address an attempt to correct concerns that were raised by Transco during work on Spreads 5 through 7?

"Answer: Generally, I would say they made efforts to remedy the concerns that we brought to their attention.

"Question: To your understanding, was Steve Hawkins receptive and willing to engage when Transco or Williams raised concerns to Welded?

"MR. BURWOOD: I object to form.

You can answer.

"Answer: As I indicated earlier, specifically, when I spoke with Steve in regard to the safety performance, he seemed receptive and willing to commit to find ways to improve their safety performance on the project.

"Question: As you sit here today, you don't know whether or not improper billing concerns were ever raised to Welded prior to the October 4, 2018, letter, are you?

"Answer: I'm aware that those concerns were raised to Welded prior to the October 4th, 2018, letter.

"Question: What concerns were raised to Welded?

"Answer: My understanding was that the concerns of improper billing were raised to Welded.

"Question: By whom?

"A: Specifically, I believe, by Chris Springer, based on documents counsel showed me yesterday.

"Question: Did the documents that you reviewed prior to October 4, 2018, indicate specific billing concerns?

"MR. BURWOOD: I object to form.

You can answer.

"Answer: I believe it indicated concerns in regard to billing discrepancies.

"Question: But did they identify specific billing discrepancies?

"Answer: Sorry, can you be more specific in regard to what I saw yesterday or what I know the team was doing?

"Question: Sure.

In terms of what was actually communicated to Welded prior to the October 4, 2018, letter, were you aware of any communications to Welded that identified specific billing concerns that Transco and Williams had?

"MR. BURWOOD: I object to form.

You can answer.

"Answer: I'm not aware of specific communications that were provided to Welded.

"Question: So, as you sit here, you don't know whether or not specific billing concerns were communicated to Welded prior to the October 4th, 2018, withholding letter?

"Answer: Prior to the October 4th, 2018, letter, there was an audit that was commenced by our team and Welded was made aware of that audit. It was underway and they participated, is my understanding, in providing documentation for the execution of that audit."

MR. BUCHANAN: The next passage, Your Honor, is page 125, line 13, to page 126, line 20.

MS. EWALD: I apologize, Mr. Buchanan.

Did you read 80, 16 through 81, 16?

MR. BUCHANAN: Sorry.

MS. EWALD: It was on the list.

MR. BUCHANAN: I did not -- wait, 80, 16 through 81, I did, yes.

MS. EWALD: To 81, 16?

MR. BUCHANAN: Yes.

MS. EWALD: And we had a counter-designation --

MR. BUCHANAN: Okay.

MS. EWALD: -- to that, Your Honor, but I'm not going to read it into the record right now. I don't think it's necessary.

THE COURT: Okay.

MS. EWALD: And just to explain, I believe that the original designation was longer, so our counter-designation was probably to a different part of it.

THE COURT: That's fine.

MR. BUCHANAN: Okay. Again, Your Honor, this is page 125, line 13, to page 126, line 20:

"Question: All of the work that was performed on Spreads 1 through 7 of the Atlantic Sunrise project occurred in the Commonwealth of Pennsylvania, correct?

"Answer: Yes.

"Question: And is it your understanding that in connection with obtaining the necessary permits, Transco had to work with the Pennsylvania Department of Environmental Protection, correct?

"Answer: Yes.

"Question: Is it your understanding that Transco had to work with municipalities within the Commonwealth of Pennsylvania for easements and other regulations through which the pipeline would run?

"Answer: Yes.

"Question: To your knowledge, did Transco have to work with any Texas regulatory authorities with respect to the construction that would take place on Spreads 1 through 7 of the ASR pipeline in Pennsylvania?

"Answer: No, I don't believe so.

"Question: To your knowledge, did Transco have to work with any Oklahoma regulatory authorities, with respect to the construction that would occur on Spreads 1 through 7 on the ASR pipeline in the Commonwealth of Pennsylvania.

"Answer: No, I don't think so."

MR. BUCHANAN: Next, Your Honor, is page 129, line 8, to page 130, line 11:

"MR. NEIBURG: Let's take a look at Tab 14, which would be Dunn 9, Dunn Deposition 9, which was marked for

identification.

The videography -- the videographer says I have to share. Hold on."

MR. BUCHANAN: And then the question is:

"Are you aware that the Williams website has a link to all its press releases?

"Answer: Yes.

"Question: So, I'll represent to you that on June 9 of 2020, one of my colleagues obtained this press release from the Williams website.

Have you ever seen this specific press release?

"It looks familiar to me, so I like I have seen it, yes.

"Question: And the second paragraph indicates that economic impacts of the Atlantic Sunrise Pipeline project, lead author, Seth Blumsack at Penn State finds that the proposed project would have a major, positive impact -- economic impact on the Pennsylvania and Virginia economies, where the new pipeline facilities would be built and operated."

And it goes on to say, "Do you see that?"

Mr. Burwood objects, "Mike, I'm sorry, I have to object. You can't see that on the document. It's not on the screen."

Mr. Neiburg says, "I'm sorry about that. I didn't

even know.

It's the second paragraph down. If you don't mind scooting down. Great."

And so, then, picking up on page 130, line 23 or line 22, the answer is:

"Yes, I can see that now.

"Question: Is it your understanding that the Atlantic Sunrise project had a significant economic impact on Pennsylvania and Virginia?

"Answer: Yes, I believe it did.

"Question: And I think you've mentioned before that Williams often commissions, or at least Williams sometimes commissions economic impacts of planned projects; is that correct?

"Answer: The project teams do; yes, that's correct."

MS. EWALD: Our objection was relevance, Your Honor.

MR. NEIBURG: Your Honor, this goes to Welded's entire (indiscernible), or part of it.

THE COURT: Yeah, I think so. Overruled.

MR. BUCHANAN: Okay. Your Honor, and I believe the last passage from Mr. Dunn is page 147, line 3, to page 148, line 2:

"Question: Do you recall that Transco filed a

complaint in Oklahoma against Welded?

"A: I recall that Transco filed a complaint against Welded, yes.

"Question: Putting aside any conversations you may have had with counsel in terms of the timing of the complaint and issuing the withholding letter, were there any discussions at Williams concerning waiting until FERC approval had been obtained before suing Welded?

"Answer: I do not recall any of those discussions occurring outside of discussions with counsel.

"Question: As you sit here today, do you have an understanding as to the annual revenues obtained in connection with the operations of the Atlantic Sunrise Pipeline?

"Answer: Yes.

"Question: And what are they, the annual revenues?

"Answer: I believe it's approximately $170 million per year."

MS. EWALD: And our objection was relevance, Your Honor.

THE COURT: Mr. Neiburg, why is that relevant?

MR. NEIBURG: I think you've heard testimony during trial that FERC approval was obtained earlier on the same day that Transco then sent their withholding letter and

withheld nearly $24 million from Welded.

THE COURT: Yes, but what does the -- I'm assuming it goes to the annual revenues?

MS. EWALD: Yes, Your Honor. It's with regard to the annual revenues.

MR. NEIBURG: Well, they -- Welded built the pipeline. We built appropriately under the contract.

Notwithstanding that Transco is making hundreds of millions of dollars per year, they're seeking to claw back money that was, from Welded's perspective, properly billed under the contract.

THE COURT: It might be marginally relevant. I'll permit it, but I'm not sure I'll give it much weight.

MR. NEIBURG: Thank you, Your Honor.

MR. BUCHANAN: Okay. Your Honor, sorry, may I proceed?

THE COURT: Yes.

MR. BUCHANAN: Next up would be Adrian Green in his first deposition, dated December 18th, 2020. The first passage --

Sorry. Are you okay?

MS. EWALD: I am. Please go ahead.

MR. BUCHANAN: Okay. The first passage is page 13, line 2, to line 13:

"Question: In connection with the Welded

Construction project, what were your roles and responsibilities as a senior auditor?

"MR. BURWOOD: Object" --

THE COURT: As a senior, I'm sorry, what?

MR. BUCHANAN: Auditor.

THE COURT: Auditor.

MR. BUCHANAN: "MR. BURWOOD: Object to form.

You can answer.

"Answer: Thank you.

My role was to -- well, it is recorded in our reports, but just to emphasize, my role was to first meet with field accountants for Williams and thereafter, perform the audit of the billing from Welded."

MS. EWALD: Your Honor, I have a counter, which is testimony that preceded that at page 12. The question was:

"And how long have you been employed by OGCS?

"Answer: I'm going to say, more or less, 5 years. I don't know the exact period. More or less 5 years.

"Question: And what is your current title?

"Answer: I'm a senior consultant.

"Question: Have you held any other title during your tenure with OGCS?

"No.

"Question: What are the role -- what is the role and what are the responsibilities of a senior consultant?

"Answer: Well, the role is very much dependent upon the client we're working for. So if we have a scope of work, then my role revolves around the scope of work."

MS. EWALD: Oh, I apologize, Your Honor. I didn't give the page and line number. It's page 12, line 9, through page 13, line 1.

THE COURT: Thank you.

MR. BUCHANAN: Your Honor, our next passage from Mr. Green is page 48, line 4, to line 15:

"Question: Are you referring to a meeting on October 16th, 2018?

"Answer: Yes.

"Question: Who was at that meeting?

"Answer: I was at that meeting. Phil Burke was at that meeting. Sean and Marcus Hood. And for Williams, I don't have all the names, but Chris Springer would be one.

"Question: What was the purpose of that October 16th meeting?

"Answer: The purpose was to present our auditor findings to Welded."

MS. EWALD: And, Your Honor, I have a counter-designation beginning with page 48, line 16 to 20, which immediately follows that:

"Question: And did you presently your audit findings to Welded at the October 16th meeting?

"Answer: We did. We discussed our audit findings in that meeting."

And then there was some additional counter at page 48, line 21, to page 49:

"Question: But you provided the database after that meeting; is that right?

"Answer: Correct. Following on from that meeting, we sent the information associated with the audit findings."

MR. BUCHANAN: Next, Your Honor, was page 49, lines 2 through 8:

"Question: So, on October 16th, you met with the Welded team to discuss the audit findings and this occurred after the withholding; is that right?

"Answer: My understanding is the withholding happened before the meeting. I was not party or privileged to the withholding."

The next, Your Honor, would be page 97, lines 6 through 21:

"Question: You're aware that the work that OGCS did in connection with the audit was used by Williams in determining whether or how much to pay Welded; is that right?

"Answer: After the event -- after the withholding, we were informed there had been a withholding and from the figures, you can establish from our reports what

they withheld. So they used the information in our audit finding. You could calculate or work out -- work that out after the withholding took place.

"Question: But you didn't present any information about your audit findings to Welded prior to the withholding, right?

"Answer: Correct."

MS. EWALD: Your Honor, I have a counter-designation. It was part of the original designations that were previously included and this is at page 49 at line 15 through line 24:

"Did you ask the Welded team whether they had different understandings of the contract provisions that you relied on for your audit findings?

"Answer: We presented them. There was general discussion in the meeting. The meeting that we had with Welded in July, they identified, they, themselves, had gray areas and they had taken a particular interpretation."

MR. BUCHANAN: Next, Your Honor, was page 98, lines 3 through 6:

"Question: Were you aware that Williams was going to withhold funds before it withheld funds from Welded?

"Answer: No."

MS. EWALD: Our objection was relevance, Your Honor.

THE COURT: I think it's pretty clear that -- probably not -- sustained -- it's probably not relevant.

MR. BUCHANAN: Next, Your Honor, would be Mr. Green's second deposition, dated March 10th, 2022.

THE COURT: Mr. Green?

MR. BUCHANAN: Yes, still Mr. Green, yes.

THE COURT: The second deposition?

MR. BUCHANAN: The second deposition, exactly.

On page 105, lines 2 through 13:

"Question: What is this tab?

"Answer: Okay. That's the audit findings table up to the last information received in May of 2019, together with some list of items below that.

"Question: Is this the final version of your audit findings table?

"Answer: I'm going to say it appears to be the right timing, because it completes the period of September -- sorry, through 21st of October with the information."

MS. EWALD: Our objection was relevance, Your Honor.

THE COURT: About his audit-findings table?

I'll overrule that.

MR. BUCHANAN: All right. Next is page 107, line 16, to page 109, line 9:

"Question: Do you see your note at the bottom?

"Answer: I do.

"Question: The note at the bottom says that OGCS have not had the opportunity to discuss the audit findings with Welded, therefore, where OGCS had determined an item of equipment is included, Welded have not had the opportunity to clarify, demonstrate why the item is not included equipment.

Did I read that note correctly?

"Answer: You did. Even with the spelling mistake, I see.

"Question: That was true as of June 2019, correct?

"Answer: Correct.

"Question: So that reflects that OGCS had not had a discussion with Welded where Welded could clarify it would demonstrate the included-equipment issue, correct?

"Answer: We covered it earlier. We had our meetings with Welded which are recorded in our reports presented and include what we found, why we allocated it to a particular account. That statement is true. We didn't because we didn't have agreement to discuss with Welded.

"Question: Does that mean that some of the items that OGCS identified as included equipment were still up for debate?

"Answer: In our mind, our position is that we identified and we set out our reasons in the audit findings.

Whether Welded were able to come back and give us a good reason, I wouldn't say it was up for debate, but if there was good reason as to why it should be a different categorization, then for sure, we would listen."

MS. EWALD: And, Your Honor, we had a, I'd say a counter to that, which is the testimony below it in the transcript. And I'll refer to page 109, line 10, through line 21, first:

"Question: At this time, June 2019, is it fair to say that you thought the equipment on the equipment summary we discussed earlier fell into a gray area under the contract?

"MR. BURWOOD: Object to form.

You can answer.

"THE WITNESS: Yeah, it's fair to say that Welded described their allocation of equipment in that way insofar as they identified or described what they considered to be gray areas."

And continuing on at page -- the next page, 110, line 21 to page 111, line 15:

"Question: In your experience in construction projects, didn't you think Welded should have been given an opportunity to clarify the items you identified as needing follow-up discussions with Welded before withholdings, before money was withheld?"

Then, "Objection."

"THE WITNESS: My experience" --

The answer:

"My experience, Welded didn't come to the table with any issues that they found, that they identified as gray areas in the first place, so they should have actually presented to Williams that there were items of equipment they were unsure of in terms of its allocation. That would have been the first expectation."

MR. BUCHANAN: Okay. Your Honor, next is page 118, line 21, to page 120, line 14:

"Question: The last part of this email from Mr. Goble, July 12th, says or asks you:

'Does this -- does this mean that after verifying all third-party invoices, time cards, and true-ups, and such, if out of the right'" --

It says, "Out of the right."

"If the right to withhold the $5.7 million in updated audit findings and the 10 million in LDs, et cetera, are all upheld, then we still owe Welded $8.16 million.

Did I read that statement correctly?

"Answer: You did.

"Question: You respond at the top --

If you could scroll up, Dean, to the top. I'm sorry. Next. Yeah, there we go.

You respond to Mr. Goble's question on July 14th, 2019, right?

"Answer: Correct.

"Question: In response to that question, you said, 'That is correct, Jeff, based on the information that we have seen.'

Did I read that right?

"Answer: You did.

"Question: Then, in this email, you describe the calculation and how you arrived at some of the numbers in the spreadsheet; is that fair?

"Answer: I do.

"Question: The last section of this particular email has a heading of 'Summary/final position' and you state in this email, 'Therefore, if on paper, Welded are owed $66,351,717.72, less, one, the audit findings, assuming a full audit finding amount of 50 million -- $57 million, and, two, the 600,000 for the apparent errors, then Williams would still owe Welded one point -- 8.1 million.'

With my paraphrasing, did I read that correctly?

"Answer: You did."

MS. EWALD: And, Your Honor, our objection was relevance. In the proceeding, as we know today, Welded is not seeking $66 million. And then I have counters.

THE COURT: I'm going to overrule that.

And I think it's already in. I've heard it many times. I'm going to overrule that.

Go ahead on your counters.

MS. EWALD: My counter is, the next question was:

"Question: Is that still your conclusion today?

"Answer: While my conclusion is not on paper, based on information that we had seen, I can say two things: one, I don't think the calculation works correctly, looking at it. I think 66, round numbers, less the 57, less the 600 is probably a lower number than eight, so I think there's been a negative, which is being added there and a formula.

Secondly, based on what we'd seen on paper, the 764 doesn't reflect, as we talked previously, Kevin, the 10 million. So if there was a schedule disincentive applied to the cost, the amount paid wouldn't change, or at least the amount of certified wouldn't change so that eight would adjust.

"Anything else you would adjust?

"Well, it's at a point in time and it was information we had seen, so it's reflected in the spreadsheet."

And I believe I have -- oh, I apologize, Your Honor. The line -- the page is 120 at line 15 and I read through page 121, line 13.

And I think I have an additional counter before

and after this at page 118, line 11:

"Question: Do you agree with his statement here that the scenarios are rangers -- ranges or exposures to liability based on whether withholdings are rejected, upheld or not?

"Answer: I do, with the additional clarification, right now, that it's based on only these -- those pieces of information; namely, the cash call and the true-up figures."

And then at page 123, line 21, through page 123, line 17:

"So the other adjustments, let's talk about that for a minute. The 8.1 million, what other adjustments apply to that figure?

"Answer: Well, we discussed two, I believe, before the break. We discussed the schedule disincentive against the 764 and we discussed the fixed fee against the 764.

"But the schedule of rates is already taking into account at arriving at the 8.1 million, isn't it?

"Answer: Only on one side of the equation.

"Question: Answer --

Question, what does that mean?

"Answer: It's only taken into account on the amount that's being put through. It doesn't reflect the amount that's been claimed by Welded. It's not reflected in

the amount that's being claimed by Welded."

MR. BUCHANAN: Thank you, Your Honor.

Our next passage is 121, page 121, line 19, through 123, line 120. I think it was actually in the middle of what Ms. Ewald just read.

"Question: In the paragraph numbered one, Mr. Goble asked:

'How is your conclusion below; i.e., that in the best-case scenario, Welded is owed 8.1 million affected by a retainage? In other words, I think that we might still be withholding -- might still -- might be'" --

Excuse me.

"I think we might still be holding on to approximately $5 million in Welded retainage. If we were to release that $5 million in retainage, would the exposure to Welded, under the best-case scenario, go from 8.1 million to 3.1 million?

Did I read those questions correctly?

"Answer: You did.

"Question: So, based on this exchange, is it your understanding that at the time, Williams was still holding on to approximately $5 million in Welded retainage?

"Answer: Well, my understanding is Jeff communicates that he thinks they may be still holding on to $5 million.

"Question: Do you know if that is, in fact, correct?

"Answer: I don't. I don't have access to that information.

"Question: You respond to his email later that day on July 16th, 2019, correct?

"Answer: Correct.

"Question: And what you're saying in that paragraph 1 is your $698 million figure includes retainage of $5 million, correct?

"Answer: Correct.

"Question: So therefore, as reflected in this email, if that withheld retainage was ultimately paid, the $8.1 million figure would not change, correct?

"Correct."

Sorry. And "Question: And if that $5 million retainage was not paid, the 8 million -- $8.1 million would change, correct?

"Correct.

"And it would change by increasing that amount by $5 million to roughly $13 million, right?

"Answer: Correct. But then subject to any other adjustments that may be applied."

MS. EWALD: And, Your Honor, Mr. Buchanan is correct. I did read the transcript already following that

exchange, with regard to the adjustments.

THE COURT: Okay.

MR. BUCHANAN: So our next passage, Your Honor, is Mr. Green, page 132, line 13, to page 133, line 9:

"Question: According to your calculations and analysis reflected in your net results spreadsheet, your worst scenario for Williams would be that it owed $66 million based on the information you've reviewed; is that right?

"Answer: It's the information I've received. It was used, correct.

"Question: And on the flipside, the best-case scenario, based on your calculations reflected in the net results spreadsheet, was Williams would only owe Welded $8.1.

Is that also correct?

"Answer: It's correct, with a clarification that the figures of 6 -- 764 are subject to change. That is the round number of 764 is subject to change and if there were any other claims, obviously, that would impact the 8 million."

MS. EWALD: Your Honor, our objection was relevance and we had a counter. Relevance is with regard to the amount that was raised in the question that we would owe $66 million. We know that in this proceeding, the amount that Welded is claiming is $56 million.

THE COURT: Overruled.

MS. EWALD: And I'll read the counter.

"Question: Based on" -- and this is at page 133, the lines immediately following at 10 to 21.

"Question: Based on the information you've had and the analysis you performed as of June 2019, you believe Williams owed Welded some amount of money on this project, correct?

"Answer: Looking at that information in isolation, without any adjustments to any of those sheets, then it was an amount due. But there was adjustments to be made, at least I recognized there was adjustments to be made to the 764."

MR. BUCHANAN: With that, Your Honor, we'd turn to the deposition of Fred Pace, dated December 10th, 2020.

Our first passage is page 17, lines 7 to 12:

"Question: So you were the senior vice president, engineering and construction for Williams from January 2013 through September 2016; is that right?

"That's correct."

Oh, then the next passage from Mr. Pace is page 131, line 9, to 132, line 1:

"Question: Was Mr. Springer a strong advocate for Williams entering into the Welded Construction contract?

"Answer: Yes, I would say so.

"Question: Was he the strongest advocate for

entering into the contract?

"Answer: I don't know how you would describe that. I don't know that there was a singular champion. I mean, everybody had lots of concerns and we tried to address those as we went along. I've got to say, people grew comfortable with it over time, but it is just everybody working in unison to try to address this resource shortage to get this project done. I don't remember anybody who was a very strong advocate. It's just that we had -- it's just that what we had to deal with in the industry and in the market at the time."

MS. EWALD: Your Honor, I'll object as to relevance.

THE COURT: Overruled.

MR. BUCHANAN: Okay. Your Honor -- I'm sorry.

MS. EWALD: And I'm just reviewing. There were portions that you did not read. Is that -- that were not on the list?

MR. BUCHANAN: That's right. There was a little more background about who Fred Pace was that didn't seem necessary.

MS. EWALD: And, Your Honor, in order to put that testimony into perspective, I will read from page 39 at line 8:

"Question: You retired from Williams in 2016, in

September of 2016. Did you -- do you know anything about how the ASR project played out in the end of '16, '17, and '18?

"Answer: Nothing beyond anecdotal information, hearing from my peers around the industry, and other contractors you know that there was just stress on the project. And, of course, when I heard word of the bankruptcy threat at Welded, that was the first I heard of it being that serious a matter. But these things I heard were just kind of thirdhand anecdotal, I mean, no specificity. I don't have any compound evidence of anything.

"Question: Do you have any personal knowledge of Welded Construction's performance of the contract in 2017?"

And now I'm going over to page 40, lines 1 through 18:

"No, I do not.

"Question: Do you have any personal knowledge of Welded Construction's performance of the contract in 2018?

"No, I do not.

"Do you have any personal knowledge of Welded Construction's performance of the contract in 2019?

"No, I do not -- answer.

"And, question, other than what you've just described to me, do you have any personal knowledge of details of the ASR project?

"Answer: No, I do not.

"Question: How about on the flipside, related to Transco's performance? Do you have any personal knowledge of Transco's performance of the Welded Construction contract in 2017, '18, or '19?

"Answer: I do not."

I'm concluding at line 18.

MR. BUCHANAN: Okay. Your Honor, with that, we would turn to Mr. Springer and his deposition testimony from December 3rd, 2020.

The first passage begins on page 6, line 22, to page 7, line 3:

"Question: Okay. How long have you -- are you still working for Williams?

"Answer: Yes, I am.

"Question: How long have you worked for Williams?

"Answer: A little over 30 years."

Next is page 19, lines 7 through 10:

"Question: So as you sit here today, what is your job?

"Answer: I am the project director or my title is project director."

Next page, 28, line 19, to page 29, line 19:

"Question: Are you aware that prior to the time the ASR contract with Welded was executed, that there was a letter of intent signed by the parties?

"Answer: Yes.

"Question: Were you involved in negotiating the letter of intent?

"Answer: Yes.

"Question: Could you generally describe your involvement in that process.

"Answer: As the project director, I believe the proposal of such a letter of intent, the proposal was submitted to our construction department, I believe, to Victor Elazanda (phonetic). Victor brought it to me as the project director, as the potential method of securing contractor assets for the project during the frame we intended to construct the project.

There was a sense of urgency to enter into such a letter of intent to lock in contractors, specifically, Welded's spreads, to be able to construct during our time frame; otherwise, Welded indicated that their crews would be awarded other work and they wouldn't be available to construct our project."

MS. EWALD: And, Your Honor, I have a counter.

Mr. Springer goes on to, in that same answer, at page 29, line 20 to 22. In response to the prior question, he continued answering saying:

"We had probably less than a week from the time we received that proposal to negotiate/approve the letter of

intent."

MR. BUCHANAN: Okay. Your Honor, next is page 34, lines 16 to 24:

"Question: And just for the record, where is the ASR pipeline project located?

"Answer: It's located in multiple states; primarily, in Pennsylvania, but in a number of states along the eastern seaboard.

"Question: So, Spreads 1 through 8 that we've identified that you've talked about, where are those spreads located?

"Answer: In Pennsylvania."

Next passage, Your Honor, is page 35, lines 6 through 24:

"Question: Now, in connection with the permit process for the ASR pipeline project, could you generally describe from which agencies or governmental entities Williams required permits?

"Answer: They're both federal and state permits. Federal would be, well, the FERC, the Federal Energy Regulatory Commission, the Army Corps of Engineers. The state permits would be from the Department of Environmental Protection, some local permits, and county permits. I couldn't describe the name of them, but they could be a county road crossing, a subpart of DOT or something.

"Question: So Spreads 1 through 8 of the ASR pipeline project, do you recall the counties in which they were located?

"Answer: I don't believe I could name all of them off the top of my head, but I believe there were a total of 10 counties."

MS. EWALD: And, Your Honor, this objection was not made in connection with the designation, but I would say it is cumulative and duplicative of testimony that has been entered in this proceeding.

THE COURT: It is, but I'll permit it. Overruled.

MR. NEIBURG: Next, Your Honor, is page 28, lines 6 through 9:

"Question: And the surveys that you performed, they were performed in the Commonwealth of Pennsylvania?

"Answer: Yes."

Page 38, lines 13 through 24:

"Question: Now, David Sztroin, where was he located, to your knowledge, during construction of the ASR pipeline project?

"Answer: David's primary office location was in Houston, Texas, and as a project manager for certain spreads, he made frequent trips to the field locations.

"Question: Now, to your understanding, what do you mean by 'frequent trips'? How often would he have

traveled to Pennsylvania?

"Answer: Monthly. Maybe more often than that."

MS. EWALD: And our objection was speculation, with regard to Mr. Springer's knowledge of Mr. Sztroin's travel to the site, which I believe Mr. Sztroin testified about.

THE COURT: Yeah, I'll overrule that.

MR. BUCHANAN: Next passage, Your Honor, is page 49, line 19, to page 50, line 11:

"Question: So, generally speaking, the contracts with other contractors were unit costs and with Welded, it was cost plus a fixed fee, correct?

"Answer: That's correct.

"Question: From Williams' perspective, were unit-cost contracts more preferable?

"Answer: Yes.

"Question: Why?

"Answer: It's the standard type of contract that I've been familiar with and Williams has preferred for all of my career. I think it just provides the opportunity to, as opposed to a lump sum, it provides for the variations in the project during construction at a fixed amount for a particular activity to allow for the variances in the links that we generally see."

MR. BUCHANAN: Page --

MS. EWALD: And I believe we had a relevance objection to this, Your Honor.

THE COURT: Overruled.

MR. BUCHANAN: Page 50, line 17, through page 51, line 8:

"Question: Well, let's say it's -- let's say -- here's a hypothetical. Let's say the projected cost per foot on a unit-cost contract is a dollar, but due to circumstances after the contract was entered into, it actually cost the contractor a dollar and a half per foot.

Under a unit-cost contract, who bears the risk?

"Answer: The contractor would bear the risk if his actual cost exceeded his bid pricing for that.

"Question: Is that one of the reasons why, from Williams' perspective, a unit-cost contract is preferable?

"Answer: From my perspective, that is correct."

Next is page 51, line 22, to page 52, line 12:

"Question: Now, you mentioned that the ASR contract with Welded was a cost, plus fixed fee. Can you generally describe how Transco and Welded entered into that type of contract as compared to a unit-cost contract?

"Answer: It was driven primarily by a sense of urgency. There seemed to be an extraordinary amount of work in the industry and contractors were being courted by other operating companies and being made contingent awards. There

was a concern that there would be a limited supply of material -- not material, but work -- workers, equipment to do this type of work and we felt the need to lock in a contractor to do our work."

MS. EWALD: Our objection was relevance, Your Honor.

THE COURT: Overruled.

MR. BUCHANAN: Page 59, line 8, to page 61, line 14:

"Question: As you sit here, from your perspective as project director, were there any things that Welded did well?

"Answer: Yes.

"Question: And what were those?

"Answer: Well, they ultimately completed the project and we have an asset that we believe is safe to operate for the life of the asset. They provided the necessary labor, materials, and equipment to ultimately complete the project.

"Question: And you mentioned 'life of the project.'

From a Williams' perspective, what is the anticipated life of the project?

"Answer: I said, 'life of the asset.'

"Question: Oh, sorry.

"Answer: That's all right.

Fifty years. I don't know if there's a timeline, but at least as long as (distorted) actually exists. And, you know, just as a comparison, other pipeline assets have been operating for 70 years and that could be the life of the asset.

"Question: As you sit here today as the project director of the ASR pipeline project, are you aware of any issues on any of the spreads that would lead you to believe the life of the asset won't be at least approximately 50 years?

"Answer: No.

"Question: And as you are aware as project director of Williams" --

Excuse me.

"Question: And are you aware as project director of Williams, as to the amount of revenue that Williams achieves each year from the Atlantic Sunrise Pipeline?

"Answer: Generally, yes.

"Question: And what is your general understanding?

"Answer: Approximately $350 million a year. I don't know the exact figure."

MS. EWALD: And our objection was relevance, with regard to revenues, as well as foundation, since he testified

he did not know the exact figure.

THE COURT: Overruled on foundation and, again, I think it's marginally relevant on the revenue, but I'll permit it to come in.

MR. BUCHANAN: Continuing on, Your Honor:

"Question: And I think you mentioned that Welded did complete the project, safe to operate for about 50 years, and they supplied the necessary workers to get that done.

Anything else they did well during that time? Did Welded's leadership communicate with you regularly when you needed them to?

"Answer: Yes, they did.

"Question: Were they responsive to concerns as they were raised during the course of construction?

"Answer: They seemed to be. It didn't necessarily always result in the desired outcome, but in my conversations with Welded's management, they were always available to listen and discuss."

Next is page 64, lines 5 through 11.

MS. EWALD: Your Honor, I just have a continuation of that line of testimony from Mr. Springer and it's at line -- or page 61, line 15 to 19.

Mr. Springer was asked the question:

"And can you -- when you use the phrase 'Welded management,' are there specific individuals to which you're

referring?

"Answer: Primarily a gentleman by the name of Steve Hawkins."

MR. BUCHANAN: Okay. Next, Your Honor, is page 64, lines 5 through 11:

"Question: Okay. Now, generally speaking, from a perspective of communicating with Steve Hawkins, what is your view as to his level of competency at Welded?

"Answer: I found Steve to be competent. I found him to be genuine, concerning, willing to work out issues."

MS. EWALD: And, Your Honor, I'll just read the following testimony from Mr. Springer:

"Question: And what about Marcus Hood, what is your understanding of the role and responsibilities he had from Welded's perspective on Spreads 5 through 7?

"Answer: I believe he was Welded's project manager. I believe that was his title. I did not have any direct interaction with Marcus throughout the course of the project."

MR. BUCHANAN: Page 68, Your Honor, line 22, to page 69, line 20:

"Question: Now, you may have answered this before, but -- and correct me if I'm wrong -- you know, from your perspective, Welded listened to the concerns being raised and you believe they attempted to correct them, but

they just weren't always successful; is that fair to say?

"Answer: That's correct.

"Question: Now, during these executive monthly meetings, did Williams ever raise any issues with respect to Welded's billing practices under the contract?

"Answer: Possibly very late in the project. I don't recall specifically in one of these meetings where it was raised.

"Question: So you believe -- let me see if I've got you right.

Do you think that -- do you think late in the process, concerns about billing practices were raised? You just don't know if it happened in the context of these monthly executive meetings; is that correct?

"Answer: That's correct."

Next, Your Honor, is page 99, lines 22, to page 100, line 11:

"Question: Now, do you have a recollection that at the time Williams and Welded were negotiating the proposal, that Welded potentially had work on a project with a different owner?

"Answer: I'm aware of that.

"Question: What is your recollection of those circumstances?

"Answer: Well, it certainly caused a sense of

urgency. I think, as I've mentioned previously, that with the amount of work in the industry, our concern was that we would find ourselves without contractors available at the time that we intend to construct the project, to be able to construct the ASR project."

MS. EWALD: And, Your Honor, I'll continue with the testimony that immediately followed that at page 100, line 12:

"Question: Do you see the second bullet point where Alex indicates to Victor that Welded's fleet of owned equipment includes 30 Caterpillar 594 Pipelayers, all of which would be required for three spreads of ASR. These tractors are in extremely high demand.

Do you see that?

"Answer: Yes, I do."

And that would be ending at line 19, Your Honor.

THE COURT: Thank you.

MR. BUCHANAN: And, Your Honor, I would pick back up at line 20, to page 102, line 3:

"Question: Now, what is your recollection as to, at that point in time in late 2015, what is your understanding of kind of the industry economics going on as to why equipment such as that would be in high demand?

"Answer: There were many, many miles of pipeline proposed to be installed in the United States during that

time -- during the time frame. We also intended, initially, to install the Atlantic Sunrise, thereby, creating, you know, a lot of pressure within the industry to utilize the capacity that was available in the United States to construct pipelines.

"Question: So a contractor such as Welded, if it were to contract to do Spreads 5 through 7, it would have dedicate that equipment to your pipeline, correct?

"Answer: Correct.

"Question: Now, the top email from you to Evan, Fred, and John, do you recall having a conversation with any of those folks about the draft proposal that you attached to your email?

"Answer: Yes, I do.

"Question: And could you generally describe those conversations?

"Answer: Generally, the conversations were that there's a lot of pressure within the industry. Contractors may be getting locked up and if we want to have contractors to build our project, we may need to follow suit and lock in contractors early before there's none available."

Next, Your Honor, is page 102, line 7, to page 103, line 7. So the question begins:

"So if you could, Mr. Springer, look at the third bullet. The contractor -- the contract will be executed on a

cost-reimbursable, fixed-fee basis, generally, in accordance with Attachment 1 to this letter.

Do you see that?

"Answer: Yes, I do.

"Question: So, to your recollection, is this the first time that you were aware that Welded was requesting a cost-reimbursable, fixed-fee contract?

"Answer: Yes.

"Question: And do you recall, as you sit here, what was your initial reaction to Welded's request that the contract be cost-reimbursable, fixed-fee?

"Answer: I found it intriguing.

"Question: What do you mean by 'intriguing'?

"Answer: That it would provide us what we were concerned about, where it would alleviate some of the concerns about contractor availability. That if we were able to lock up Welded, or any other contractors for that matter, we want to -- we want some assurance that we're going to be able to construct our project."

MS. EWALD: And, Your Honor, we had a counter.

That is the testimony that continues immediately thereafter at page 103, line 8 to 17:

"Question: Do you recall, as you sit here, whether or not Williams ever attempted to require Welded to agree it a unit-cost contract, like the other contractors did

on Spreads 1 through 4?

"Answer: That was how the project was bid.

Welded submitted proposals based on a unit-cost basis. After the -- after the bids were received, I believe that's what we received, this unlisted proposal from Welded, to lock in their equipment and their crews for our time frame."

MR. BUCHANAN: All right. Your Honor, just as a counter to that, page 104, line 6:

"Are you -- is that your -- like, you know for a fact that Williams did not ask for a contract proposal or just, you were not aware as to whether or not anyone else at Williams asked Welded to submit a proposal?

"Answer: I'm not aware of anybody else's knowledge or activities, but I am not aware that we asked them to do this.

"Question: Is it possible that Victor or Tina Malone, without your knowledge, may have asked Welded to submit a proposal?

"Answer: Is it possible? Yes."

MS. EWALD: And, Your Honor, I would object on speculation.

THE COURT: Overruled.

MR. BUCHANAN: Okay. Your Honor, I would turn to -- I would say we're on the homestretch here -- I would

turn to page 140, lines 9 through 20. The question begins:

"So, since the time that the ASR contract with Welded was executed, have you had any conversations with people above you at the Welded -- Williams companies, during which they expressed their views to you that the contract was a bad contract from Williams' perspective?

"Answer: Yes.

"Question: And who are those people that expressed that view?

"Answer: Probably the various individuals who occupied the senior vice president slot and most likely Evan, as well."

MS. EWALD: And, Your Honor, our objection was relevance.

THE COURT: Overruled.

MR. BUCHANAN: Moving on. 141, lines 13, to page 142, line 11. The question goes:

"Who were the people that expressed to you that, from their views, the ASR contract with Welded was a bad contract from Williams' perspective?

"Answer: I don't recall, specifically, discussions. But, generally, there was a theme that I recall having discussions about with Evan, John Poarch, and it might be a reach to say that it included Michael Dunn, where they all expressed dissatisfaction with the -- or expressed

dissatisfaction with how things have turned out.

"Question: Now, with respect to their dissatisfaction with the contract, what did they tell you?

"Answer: Generally, the costs were out of control.

"Question: Anything else?

"Answer: Well, certainly earlier, Evan and I had more detailed conversations being in the monthly meetings and speaking multiple times per week. We were both dissatisfied with, you know, safety, performance, environmental compliance, and things of that nature."

176, line 5, to 177, line 3:

"Question: Now, you testified earlier today that, generally speaking, when concerns were raised to Welded, that it was your understanding that, although not always successful, they made best efforts to correct the problem, correct?

"Answer: Correct.

"Question: And it was also your testimony that Steve Hawkins was a competent guy that seemed truly concerned when you raised any concerns; isn't that right?

"Answer: That's correct.

"Question: Now, as of this time, did you have any reason to believe that Steve Hawkins and Welded would not work cooperatively with Williams to correct any billing

mistakes that you identified?

"Answer: I did not.

"Question: So, as project director, you didn't think it was appropriate to convey to your contractor on three spreads that they were -- that there were concerns with billing under the contract while work was ongoing?

"Answer: No."

MS. EWALD: Are you going to finish --

MR. BUCHANAN: Sorry.

MS. EWALD: -- the designation?

MR. BUCHANAN: That's where my notes stopped.

MS. EWALD: Your Honor, I would just complete the designation. The testimony goes on at page 177, line 4 to line 7:

"Question: Did anyone tell you at Williams not to convey the preliminarily findings of OGCS to Welded?

"Answer: No."

MR. BUCHANAN: 177, lines 15 through 23:

"Question: So based upon your experience with Steve Hawkins in connection with the ASR pipeline project and his perceived responsiveness to concerns raised in the past, do you have any reason to believe that if OGCS' preliminary findings were conveyed to Steve that he would not have taken steps on behalf of Welded to correct any perceived errors?

"Answer: I don't."

Page 180, lines 17 through 24 --

MS. EWALD: Your Honor, I have a counter to that previous testimony, which ended before the prior designation.

May I read it?

THE COURT: Yes.

MS. EWALD: At page 178, at line 12 to line 16, the question:

"Was the decision to not bring any alleged billing errors to Welded's attention in any way impacted by the desire to simply have the pipeline -- the pipeline finished?

"Answer: No."

MR. BUCHANAN: Page 180, Your Honor, lines 11 through 24:

"Question: Now, generally speaking, did you ever get feedback from the OGCS folks in terms of the level of cooperation they received from Welded during the course of the audit process?

"Answer: Yes.

"Question: And what was that feedback you received?

"Answer: That they were very cooperative.

"Question: They provided information as requested?

"Answer: That's my understanding.

"Question: They made themselves available for in-

person meetings?

"Answer: That's my understanding."

Then, on page -- scooting out a bit -- 181, lines 5 through 9:

"Question: So, as far as you sit here today, you can't recall that OGCS told you that Welded folks were not responding to emails, correct?

"Answer: I don't recall them ever reporting that."

Next is page 224, lines 11 through 18. The question begins:

"Generally speaking, during your involvement with the ASR pipeline project, when Transco or Williams actually raised concerns with Welded regarding various issues, was it your understanding that Welded attempted to implement action items to address those concerns?

"Answer: Yes."

Then, Your Honor, page 265, line 8, to page 266, line 6:

"Question: Okay. Did anyone at Transco convey to Welded that paying down the $10 million over time would be acceptable?

"Answer: I believe that our cost accountant, I don't know if he said it was okay or just agreed that that's how they would process it, but I believe there was some

conveyance of a general acceptance that they could bill us that way.

"Question: And your cost accountant at issue, is that Hector Falcon (phonetic)?

"Answer: No, Scott Carr (phonetic), our cost analyst.

"Question: Okay. And did you have a conversation with Scott Carr, prior to you sending this letter to Welded?

"Answer: Yes.

"Question: And what did you convey to him in terms of how the $10 million cost incentive penalty would be dealt with?

"Answer: That we will take it all at one time, not $10 million spread out over five invoices."

MS. EWALD: And, Your Honor, our objection was relevance and we had a counter to this testimony.

THE COURT: Okay. I'll hear the counter.

MS. EWALD: And at page 264, line 22, to page 265, line 7:

"What is your understanding of why Welded included a $2 million cost incentive penalty deduction in their cash call for August 2018?

"Answer: At this point, Welded had recognized they were subject to the $10 million penalty (distorted) might want to have that paid all at one time and suggested

they do it $2 million at a time over the course of five invoices."

MR. BUCHANAN: Your Honor, that's all we have on these.

THE COURT: Okay. So does that complete Welded's direct or where am I?

MR. NEIBURG: That completes --

MR. BUCHANAN: Only depositions today.

MR. NEIBURG: Yeah, aside from the fact that, you know, both parties are submitting deposition designations --

THE COURT: Yes.

MR. NEIBURG: -- in writing, that does complete Welded's direct and subject to potential rebuttal witnesses.

THE COURT: Okay. Why don't we take 10 minutes and then we'll start.

(Recess taken at 11:20 a.m.)

(Proceedings resumed at 11:34 a.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

MR. BURWOOD: Your Honor, Jonathan Burwood for the record.

Transco calls Joseph Slavis as its next witness.

THE COURT: Mr. Slavis?

JOSEPH CHARLES SLAVIS, DEFENDANTS' WITNESS, SWORN

THE WITNESS: I swear.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Joseph Charles Slavis, S-l-a-v-i-s.

THE CLERK: Thank you. You may be seated.

MR. BURWOOD: Your Honor, we have a demonstrative for Mr. Slavis.

May I approach?

THE COURT: You may.

(Pause)

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. BURWOOD:

Q Good morning, Mr. Slavis.

A Good morning.

Q Did you prepare a demonstrative PowerPoint to assist with your testimony today?

A I did.

Q Okay. And do you see that first slide of that demonstrative up on the screen?

A I do.

Q Mr. Slavis, could you please describe your educational background.

A So, educationally, I have a BS in accounting from Fairfield University and I have an MBA from Columbia University. I'm a -- that's pure education (indiscernible).

Q When did you graduate from Fairfield?
A In '92.
Q And when did you get your MBA?
A '99.
Q Where are you currently employed, Mr. Slavis?
A I work for FTI Consulting out of our Atlanta office.
Q And what is your title?
A I'm a senior managing director there and I'm the North America regional lead for our construction projects and assets practice.
Q What do you do for FTI?
A Primarily, at least on the client-facing side, I do construction cost audits, damages analysis, sometimes lost profits. But, basically, my whole career has been in litigation consulting services, save for a couple of early years and the last 20-plus years, that's all been related to construction cases.
Q Approximately how long have you been providing litigation consulting services?
A Since day one in July 27th, 1992 --
Q Okay.
A -- 31 years.
Q And your focus on construction started when?
A Sometime around '01, '02.
Q And Mr. Slavis, have you provided consulting services

relative to pipeline construction before?
A I have, approximately five separate matters.
Q And just generally, what type of work have you performed concerning those pipeline construction projects?
A Similar to this. My work is always related to cost analysis, whether it's a cost audit or a delay claim or a cost claim.

My tasks generally run along the lines of verifying cost incurred, comparing those to contract provisions to identify allowable or unallowable costs, and either helping the client build the claim or defend the claim.
Q So, is it the case that in connection with your construction consulting, that you've reviewed construction contracts in the past?
A Absolutely.
Q And on a regular basis?
A Every single time.
Q Mr. Slavis, have you provided expert or opinion testimony before?
A Yes.
Q Okay. On what subjects, for example?
A Same subjects: cost analysis, lost profits, daily rate calculations, delay -- you know, somebody else will do the delay analysis and then I'll apply the costs to that delay analysis based on a look at cost reports and contract

provisions, et cetera.
Q Okay. Have you testified before?
A Yes.
Q Okay. Independent of depositions, just focusing on trials or hearings, approximately how many times?
A About a half dozen, I'd say.
Q Okay. And Mr. Slavis, has your -- have your opinions been accepted by courts in connection as an expert?
A Yes.
Q And approximately how many times have your opinions been accepted as expert opinions?
A All six of those.
Q Okay. Mr. Slavis, has your expert -- have your expert opinions ever been excluded by a court?
A No.
Q Do you hold any professional certifications?
A I am a CPA, a certified public accountant, licensed out of New York. I'm also a certified construction auditor.
Q How long have you been a CPA?
A 26, 27 years.
Q And how long have you been a certified construction auditor?
A Probably about 4.
Q Okay. And how many -- have you performed construction cost audits in the past?

I believe you just testified you have, correct?
A Yes.
Q Okay. Do you know how many of those audits you performed?
A Straight audit engagements, probably around 10. But as I said in your earlier question, a lot of times the functions I perform, even when it's a litigation case, is a similar audit function; it's reviewing the costs, whether it's the costs of the opposing party or often times, too, I'm auditing the costs of my client to support their claim. So while it might not be a pure audit engagement, it's the same process. It's the same functionality.
Q So, with respect to sort of the litigation audit process you just described, approximately how many times have you performed that function?
A Twenty or so.
Q Okay. And have you ever had the opportunity to provide litigation consulting services in a construction matter involving a cost-plus contract structure?
A Yes.
Q Okay. Approximately how many times?
A Litigation? Does that -- is that just expert report writing, because I'm trying to think of --
Q Well, let me rephrase.
So, you were drawing a distinction between an audit --

A Uh-huh.
Q -- right, and then, you know, a sort of litigation-type audit, right. Not a formal audit, right?
A Uh-huh.
Q And I'm just saying in the broader scope of audit, that has involved cost-plus contract structures?
A Almost always.
Q Okay. And so, ballpark, how many times?
A Forty, fifty.
Q Mr. Slavis, did you prepare any reports in connection with this preparing?
A Yes, two reports.
Q Okay. And do you recall approximately when those reports were issued?
A '22, May and June, I believe the rebuttal was due.
Q Okay. And rebuttal to what, if you recall?
A To Mr. Gray's Ankura report.
Q Okay. And in connection with those reports -- well, let me ask you this.

In connection with your original report, did you -- are there any support schedules that you prepared to back up that report?
A Yeah, almost all of my reports tend to be shorter in words and longer in schedules and exhibits. So I believe there was, it always starts with a Schedule 1, which is the

summary schedule, and then all the supporting schedules flow through that.

In the initial report, I don't remember, 16, 18 support schedules.

Q Generally speaking, what type of information is contained in those schedules?

A So that's going to be the underlying analysis that supports the calculations or quantifications that I made in the body of the report. So usually for each number we're talking about, there's a supporting schedule that discusses the source documentation and each one builds on the -- or it builds up from the top schedule down.

If a number is supported on another schedule, it references the next-level schedule and then all the way down to a source document.

Q Schedules are where you show your work, right?

A Correct.

Q If we go on to the next slide, Mr. Slavis, what was your assignment with respect to this proceeding?

A So there were a couple of things I was asked to do:

Initially, review the project documentation, analyze the amounts invoiced by Welded, ultimately, to quantify any unallowable charges, if there were any, that were invoiced to Transco. In addition, as we'll get to in a little bit, there's a few numbers that were quantifications that I was

asked to do, based on discussions with counsel and just to quantify a number. And then, finally, I was asked to analyze Welded's use of contract funds.

Q Okay. As you just described your scope of work, did you perform those tasks?

A Yes.

Q What information did you consider in performing that assignment?

A So, initially, the legal pleadings, and then, obviously, it always starts with the contract. And in this case, the majority of the work was done with the cash call invoices and the reconciliation invoices and the supporting documentation that was provided therein.

In addition, in this case, particularly, we had some work that had previously been done by OGCS. They had gathered some information from Welded during the course of their audit, so we got that documentation. We -- particularly, their -- what I'll refer to as their "database of non-labor costs" and it was just a compilation of all the costs that had been provided by Welded.

So, we tested those to the invoices. We tested those to the underlying, supporting documentation and then, basically, used that database to do our calculations. And the whole purpose there was, basically, just to not recreate the wheel and have to rebuild the database.

For some of the other tasks, I've got the Welded financial statements, project correspondence. We did talk with people from Transco. I did talk to folks at OGCS in the very beginning to understand what they had done, you know, so I could build my reliance on their underlying databases, and then, of course, I've been here for the last week and a half, two weeks listening to the trial.

Q Did you rely on any deposition testimony that happened before the trial?

A Yes.

Q Okay. And in connection with your report, did you rely on or did you consult with other members of your team at FTI?

A Yeah. So I have a couple of key people that helped me on this project. One is Dave Potak, who's also a CPA.

Another is Steve Gilhooly, who is a construction -- he's a field guy. He's done pipeline work. He helped me particularly with some of the functionality and positions, as well as some of the equipment analyses that we did.

Q Did you speak to any other of Transco's experts in connection with this case?

A Oh, sorry, I forgot, because Brian Triche used to be with FTI when this started, so, yeah, when this whole case started we were all together and even after Brian left, I continued to consult with him. You'll see that I rely on some of his information. I provide some of his numbers, but

I also talked to him about some of the equipment questions and some of the other pipeline-specific issues that came up.

Q Okay. Now you mentioned that you talked to some Transco personnel, right?

A Yeah.

Q Who, specifically?

A We talked to Mr. Sztroin a fair amount. I've talked to Mr. Pew. Mr. Goble, back -- back early in the project. Tina Malone, we spoke to in the beginning. I think there was another accounting person, I don't recall who, that we, you know, just again -- particularly early in the project, we tend to do these interviews to understand how the process went, where the information is coming from, and who the key people are we need to go back to for follow-up.

MR. BURWOOD: Could we go to the next slide, please.

BY MR. BURWOOD:

Q Any other tasks that you performed that we didn't cover in your testimony just now?

A Well, I didn't talk about the verification of the payroll information that was part of -- so, we wound up building that database ourselves. And, you know, once you build it, then you test it against the invoices and the underlying support. And then that database becomes the source of the calculations.

I talked about the non-payroll database.

And then, obviously, as we'll get into, the main analysis, as comparing the contract language, testimony, and other supporting documentations to quantify an allowable cost.

Q So, Mr. Slavis, thinking about your scope of work, which you defined, and the tasks you performed, did you form any opinions as a result of that work?

A Yes.

Q One of the tasks that you performed, you just said, is you reviewed Welded's invoicing, correct?

A Correct.

MR. BURWOOD: Okay. If we could go to Slide 6.

There you go.

BY MR. BURWOOD:

Q Can you describe what it is that you did -- can you describe to the Court what it is that you did in that regard.

A Yeah, so what this is, is just a compilation of all of the invoices that we identified as being provided by Welded. It's on three separate slides just because it wouldn't really be legible the other way.

So I've broken it up into three periods. This is what we call the "Pre-NTP period" and, you know, so you'll see in that period, the first bill, I think, came in April for December through March and it was $12.4 million total that

was billed and paid.

And then the prepetition period, which is prior to bankruptcy, is where the bulk of the work happened, as well as the bulk of our analysis. So, as the Court has heard earlier, you have, initially, your cash call amount, which was the early bill for expected expenses and then that followed. You'll see here, the first reconciliation amount came on December 8th. That's what's been referred to as the "true-up," so you get the net invoice amount.

The only thing I'm pointing out here is that as you see when you get closer to the bottom there, there's an FTI-adjusted net amount and those numbers start to differ towards Invoice 124, 125. That was some of the things that I think have also been explained here where there was a cash call that was billed and then it was re-billed.

But, ultimately, you get 761, cash call; 25 in reconciliations for $777,228,065 billed in this period. And I'll note the math doesn't go left to right, because of the $10,000, or $10 million -- excuse me -- cost penalty that we've included in the net invoice amount there.

So, of that $777 million, our adjusted net invoice amount is $748,022,363, which was offset by payments of $693,120,596.

Q Okay. And that's --

A And that is just the prepetition period.

Q That's what I was going to ask. Thank you.

Okay. What else did you look at, in connection with sort of re-reviewing Welded's invoicing?

A So then we have the post-petition period, which was quote, unquote, billed through those commitment letters, which totaled $8,050,000. And against that in that same period, we've shown the payments, which include the three payments for the commitment letters, as well as the two payments made by Welded for union dues that occurred in that same period.

So you have $8 million invoiced versus $10.8 million paid and that was then followed up by a reconciliation invoice. So that's the seven million five hundred thirty-nine you see on Slide 9 here. And then, finally, the final fixed-fee invoice was sent on October 28th, 2019. So, all total, you've got $12.7 million.

Q So you've walked us through sort of the invoicing, some adjustments that needed to be made.

Basically, we're building up to -- what's the takeaway here at the end of the day in terms of numbers, Mr. Slavis?

A Yeah. So bringing those subtotals forward on Slide 10 here, you have the pre-NTP period, the prepetition period, the post-petition period. All, total, on the surface of the invoices provided, Welded billed $802,453,091.

We adjusted that down to $768,197 -- $768,197,389

against payments of $716 million.
Q And we'll get into the detail, but just broadly speaking, your FTI-adjusted, what's the nature of those adjustments?
A Those are the improper -- those are the billing mistakes, basically, that were in the pre-NTP period: the cash call getting double-billed, and then an actual -- there's actually one that we moved up because the way they did it, they failed to account for $4 million.
Q Okay. And we're building to, getting to a point, I hope, where you're going to show that the positions of Transco and Welded, we can sort of boil that down for the Court, right?
A Yeah.
Q So, again, we're building towards that.
If we turn to the -- are we ready to go to the next slide?
A Right. So outstanding invoiced amount --
Q Thank you.
A -- is $51,798,000.
And so what I'm calling a "review of relative claims" is really my comparison of Ankura's calculations to FTI's calculations.
Q So let me just stop you there.
So, you're familiar with the opinions expressed by Mr.

Gray?
A Yes.
Q Okay. And what is it that this slide represents in that regard?
A So what I'm trying to show with this slide is that basically at the end of the day, with the adjustments that -- some that were part of summary judgment motions, some that were audit adjustments made by Mr. Gray -- Mr. Gray focused just on the prepetition period, which is why the totals are a little different than the slide you just saw.

But in the end, and I believe this is the number that he had on the slide earlier last week, they say the outstanding invoiced amount is $56,191,325. We say it's $51,141,325. And that difference is that final fixed-fee invoice; otherwise, I believe we are in agreement with what's been billed and what's been paid.
Q Mr. Slavis, you mentioned that part of your scope of assignment included quantifying unallowable Welded charges; is that right?
A Correct.
Q Okay. Have you performed that sort of analysis before?
A Yes.
Q Okay. What's the -- sort of describe, sort of, big picture, why that's done.
A Well, I mean -- and it's -- you know, yes, I've done it

on other types of contracts, but it's most common on cost-plus contracts because, obviously, in a cost-plus contract, the costs are typically defined, like, for instance, in this contract, it's a fairly lengthy compensation section.

So, often times what I'm called in to do is to compare the costs -- either costs incurred by a side and look at, you know, whether or not they're in compliance with the contract or the contract terms for compensation, or the costs billed by another party to the party I'm representing to identify whether or not those are in accordance with those compensation sections.

Q So, Mr. Slavis, in your experience, is it typical for there to be an audit of a cost-plus contract structure?

A Yeah. In fact, if you're going to do an audit, it's almost exclusively on cost-plus contract structures, because with a fixed-price contract or a "not to exceed," maybe there's a shared savings clause that you might, you know, want to try to calculate, but, you know, quite frankly the audit clause is there for, you know, what protection it offers to a cost-plus contract.

Q Okay. So you talked about audit clauses, in general.

You reviewed the contract that's at issue in this case, right?

A Yes.

Q Is there an audit clause in that contract?

A Yes.
Q We described what's set forth here in your demonstrative page 14.
What are these numbers representative of, please?
A Yeah, so this is just a summary of all the findings. So the first number, as it's identified there, "unallowable costs quantified by FTI: $45,306,384." Those are -- and we'll get into it item by item -- but those are the items that I identify through contract review, through invoicing, and all the supporting detail, and quantified the amounts that I felt were not in compliance with the contract structure.
The investigation and remediation costs, $2,420,774; those are costs that I believe Mr. Sztroin talked about. I worked with him to identify the applicable invoices and the apportionment of those invoices. And that, quite honestly, is really more of just a calculation on my part based on my discussions with him.
And then, finally, the amounts identified in the Brian Triche report. Those, I literally pulled right out of his report, $14,082,010, and that's really just to give, you know, the total picture of Transco's position here.
Q Mr. Slavis, that first line that you mentioned, you're framing it as unallowable costs quantified by FTI, right?
A Correct.

Q Okay. And using the term "unallowable," was it your intention to interpret the terms of the contract for the Court?

A Not from a legal sense, for sure. Obviously, you know, the final decision of whether it is or isn't allowable is a legal conclusion and a contract conclusion.

This is just based on my reading of those clauses and what I've identified as inconsistent.

Q Was it necessary to read those clauses in order to quantify the different areas of costs in connection with your opinion?

A Yes.

Q And Mr. Slavis, did you reach any opinions concerning the quantification of unallowable costs that Welded invoiced Transco?

A Yes.

MR. BURWOOD: Okay. So if we could go to Slide 15, please?

BY MR. BURWOOD:

Q And if you could explain --

MR. GUERKE: Your Honor, we have an objection; objection on the grounds that these -- this is a legal opinion, legal conclusion. We filed a *motion in limine* prior to trial on this subject and the witness just acknowledged that his process was to review the contract and determine

what was not in compliance with the contract structure.

And then, also, to identify inconsistencies with the contract, that is determining breach of contract. That is interpreting the contract. That's a legal conclusion.

That's a legal process. He's not qualified to do it and it's not helpful to the Court under 702 and should be struck.

MR. BURWOOD: Your Honor, a few things in that regard.

Obviously, you know, we had a *motion in limine* on this. Sort of, this issue was raised in that motion.

Federal Rule of Evidence 704 does allow the witness to testify as to ultimate issues. The issue is the expert just can't offer a legal conclusion. Okay?

This came up with Mr. Gray during his direct testimony in similar fashion. He testified, for example:

"The most important documents were, well, we used the contract to understand what the provisions were in the contract with respect to what costs were allowable and recoverable." That's Mr. Gray's testimony.

But that issue was raised. There was an objection by us and Your Honor essentially resolved that, as set forth in the transcript that, you know, you would not accept Mr. Gray's interpretation, legal interpretation of the contract, but with respect to the calculation he's made, with

respect to certain categories of items, you said you'd hear the testimony and that you would later decide, as a legal matter, whether or not they should be included or excluded.

But, Your Honor, you said you'd take the math and the calculation from the witness in his opinion. So what I'd say is that Welded has already done this with their expert.

This sort of issue has been worked out with Mr. Gray and the standard was that no legal interpretation is being offered. The calculation and quantification will be offered and on that basis, Your Honor, we oppose the objection.

THE COURT: How is this different than Mr. Gray?

MR. GUERKE: Yeah, there's two steps here.

There's a determination of liability, step one. That's what you're about to see. And then there's a quantification of damages or a quantification of what's been determined to be unallowable. So he goes through the breach of contract process and then he quantifies damages. Mr. Gray quantified damages, so he ran calculations. It's a different scenario.

MR. BURWOOD: I guess I'd just say Mr. Gray's own words (indiscernible) that. He said he looked at the contract and determined what was allowable.

THE COURT: Yeah. I'm going to make the same ruling, which is that I'm not accepting Mr. Slavis' testimony

as a legal opinion. He may be right or he may be wrong with respect to these various categories, but he's quantified these various categories, as Mr. Slavis did -- as Mr. Gray did, as I recall, and that's what I'm accepting it for and that's the only thing I'm accepting it for.

I will make the ultimate conclusions on the reading of the contract.

MR. GUERKE: Thank you, Your Honor.

MR. BURWOOD: Thank you, Your Honor.

BY MR. BURWOOD:

Q Mr. Slavis, refocusing your attention on Slide 15 here, we were talking about, well, the title sets it up.

Can you describe here sort of what opinions you formed relative to what you deem unallowable costs quantified by FTI.

A Yeah, so this enumerates all of the various categories of quantifications that I did and, obviously, we'll follow up with the basis and sort of what I did for each of those.

Q We're going to hear about each of these categories in more detail?

A Correct.

Q And this is a summary slide?

A Correct.

Q Okay. And so can you just generally walk us through, sort of briefly, the 14 categories we're going to hear about.

A Yeah. So the first one is unallowable rig rental costs. That's -- if I start talking, I'll probably start explaining all the next slides. Unallowable field personnel costs; those are non-union folks. General liability insurance costs. Vehicle allowance costs, which are individual to -- were not subject to a vehicle allowance.

Then there's a rate calculation based on Exhibit 1 for field personnel, labor rates in excess of 7 and a half percent. Similarly, as we've heard, there have been discussion on PTAG fees, so I have a calculation on what PTAG fees were billed, as well as the same analysis of rates in excess of 7 and a half percent. Unallowable Bechtel costs, we've heard a fair amount about the costs that have been written off. The standby equipment costs, we've heard a fair amount of testimony over the last two weeks.

And then when we get to included equipment improperly charged, that's got a bunch of subsections to it that I'll get into when we get there. Hauling of included equipment and hauling permits are related to the included equipment analysis.

Unallowable prepetition costs; it's just a few miscellaneous billing errors that we found. And then unallowable post-petition costs are basically applying those same analyses that we've just discussed to the post-petition invoices in support.

And then, finally, safety stand-down costs, which is -- you know, there, I'm kind of driving a calculation, but relying on Mr. Triche for some of the inputs.

Q Okay. Thank you.

With respect to the sort of aggregate of these 14 categories, what's the total quantification in your opinion?

A It's $45,306,384.

Q And you performed -- you have an opinion with respect to each of these categories?

A Correct.

Q Okay. So, feel free to move to the first one.

Mr. Slavis, the first category that was on the previous slide was unallowable rig rental costs. Can you please describe for the Court the basis of your opinion with respect to this category.

A Yeah. So the basis for my quantification is the included equipment definition, which includes equipment that is typically owned, leased and/or provided by contractors performing similar work. Within that included equipment definition is vehicles, trucks, and machinery.

And as you'll see on the next couple of slides, it's my understanding that rig rentals are typically owned, leased, and/or provided by a contractor constructing a project, such as this. And since the rig, I believe, Mr. Pew, you know, sort of described it as good as anybody, it's both, the

machine on the back, as well as the vehicle itself. So, to me, those fall under the definition of included equipment in Section 8, Article 2(a).

Further, as support for the basis of my opinion, you know, as the contract, the NPLA agreement says, it's employers who rent rigs from Welded journeymen, so they're renting them from those employees. And that this rig rental needs to be separate from the check or other payment for regular payroll. So, they are not -- they are effectively renting them from the welders.

Q And when you say, "renting them," renting equipment?

A The rigs, yes.

THE COURT: Okay. As I'm hearing this, okay, as I'm hearing this, I don't want anyone to think there's some confusion here. I'm not accepting any of this, of what he's saying here.

As I'm hearing of this, this sounds like a legal opinion as I'm hearing this testimony. I'm not accepting it as that. I don't know that I need to understand his basis for how he reads this contract. That's sounding very legal opinion to me.

MR. BURWOOD: Your Honor, we were offering it just to make sure that the Court understood what the basis for his opinion was. And so I think perhaps going forward, we'll just identify the basis in the record, but not have him

necessarily explain it if Your Honor is not open to that.

THE COURT: Well, why isn't what he just said legal opinion? Let me ask it that way.

MR. BURWOOD: Well, because, Your Honor, he's reading the -- he's making the opinion and then he's saying, I based that opinion on certain provisions, including provisions in the contract, right. His understanding of that provision allowed him, then, to quantify certain dollars and that's how he gets to that amount, right.

THE COURT: Well, I heard him say something about what he thought rented -- it had to be separately billed and rented. I mean, this is all legal opinion. I can't read it back, but that's exactly how I heard it, as legal opinion.

And I don't recall -- and I could be wrong -- but I don't recall Mr. Gray testifying in that manner.

MS. EWALD: Mr. Gray did testify, Your Honor, that certain items within, and it may have been exactly rig rentals, he testified that they were labor costs, I believe. I'm not sure if it was rig rentals.

That was my objection, that he was defining --

THE COURT: This goes beyond that.

MS. EWALD: -- as labor costs.

THE COURT: This goes beyond that. What I've just heard goes beyond.

I looked at this provision and the word is in

there, so this is how I put it in it. That's goes way beyond that.

I understand reading vehicles and saying, I read vehicles. That's different than the whole explanation I just heard.

MR. BURWOOD: Your Honor, with that instruction, may I move forward?

THE COURT: I think so. I just want everyone to be clear and I want the record to be clear that I'm not accepting the type of interpretation I just heard.

MR. GUERKE: May I?

THE COURT: Mr. Guerke?

MR. GUERKE: To follow up on my original objection, the type of work that Mr. Gray did is similar to the work that's described in his first 10 slides that Mr. Slavis did and he said, you know, they agree.

Mr. Gray went through the process of determining the unpaid invoice amounts. This is going through the process of determining and analyzing the contracts and the facts and doing the analysis. And this is just the very first one. You have 15 more of these.

MR. BURWOOD: Your Honor, my response to that is that Mr. Gray's testimony, to my recollection, anything's to adding invoices together, is he had to identify what, in his view, was labor -- what was labor that, you know, was

invoiceable; in other words, he had to actually make calls about certain of the labor costs and Mr. Slavis, here, had to make calls about certain labor and equipment costs. And so, it's really the other side of that coin.

I hear what you're saying about in terms of him interpreting the contract and we will move forward here consistent with that instruction.

THE COURT: Okay. Let's see how it goes.

MR. BURWOOD: Okay.

BY MR. BURWOOD:

Q Mr. Slavis, in connection with this rental opinion, what else did you rely upon beyond the contract?

A As I have up here, a deposition transcript of Mr. Schoenherr, where he's saying these are typical that welders provide their own welding rigs on these pipeline projects. He says, most definitely.

And if they're not, are they typically rented by the contractor?

And he says, Yes.

Q Okay. Any other deposition testimony?

A Yeah, there's Mr. McDowell, Mr. Singleton saying they're typically provided by a contractor.

And then anything's --

Q Okay. And just so I'm clear, Mr. Schoenherr is a former Welded employee?

A Yeah, I'll be perfectly honest with whether he's Welded or Bechtel, but he was -- he was Welded's general superintendent.

Q Please proceed.

A Also, Mary Lynn Murphy, who said they originally classified this equipment in the included equipment section in their internal reporting documents. It says here there were examples -- those are examples. The company owned equipment, Cat lease truck rentals.

These are examples of included equipment?

Yes.

And your spreadsheet also included the craft-owned equipment; is that right?

Yes.

And that craft-owned equipment is the rig rentals and the mechanics' rigs.

Q So having explained the basis for that opinion, what, ultimately, did you quantify with respect to this item?

A So, ultimately, we looked at all the supporting documentation that was provided with the invoices and summed all the amounts that were included in welding rig rentals and mechanics' rig rentals. And then because those also carried an equipment fee, to the extent the Court deems the rig rental unallowable, I would proffer that the equipment fee would also get added to that. So, all total, $10,535,530 is

the quantification of the amount of welding rigs and mechanic rigs that were billed.

Q Just -- can you just give us a little more information about just sort of the actual -- the quantification process, you reviewing the invoices.

What was your process in terms of looking at the invoicing itself?

A Yeah. So, as has been discussed, each invoice, there's the cash call, then a couple of months later comes the reconciliation. And with the reconciliation came all of the invoice support for that -- those amounts charged.

So, as you'll see when we get into some of the other topics, sometimes we're handling the actual invoice for things like this, which were included under the labor section. We built a database out of all of the labor information that was provided, and then once we tested that database to assure its accuracy and reliability, we would just run off that database, subtotals or totals based on categories of costs that were indicated in there. And that's what -- that's why I have, unfortunately, like 4,000 pages of support documents, because it's all that data in that calculation.

Q Okay. So your opinion with respect to rig rental costs, the total value of that quantified is what?

A $10,535,530.

Q What's the next category of costs that you reviewed and have an opinion on?
A So, this is about non-NPLA costs, or non-union costs.
Q And Mr. Slavis, what's the basis for your opinion in connection with this category?
A This is a comparison of individuals that were billed on the project to Exhibit 1.
Q And what's Exhibit 1?
A Exhibit 1 to Section 8 of the contract, the labor definition says that people are to be billed in accordance with Exhibit 1.
Q Okay. And that's why you relied on that?
A Yes.
Q Okay. So, can you describe just sort of step-by-step here, what work you did to reach your conclusion?
A Yeah. So for the non-NPLA folks, there's a list of people here. We went through all of the individuals billed, compared them to the labor classification here, and if the labor classification is not identified here, we considered them not in correspondence with Exhibit 1.
Q Okay. And the labor classification is that column on the left?
A Correct.
And for some of those, yes, some of them, like IT specialists and office manager, things like that, are easier

to identify. We did consult with Mr. Triche and Mr. Sztroin on some of the titles, where the functionality was a little more project-based.

Q Okay. Other than Section 8, Exhibit 1, in connection with this category, did you rely on any other documents?

A Just the payroll data.

And we have further dock -- doctoring -- Mr. Grindinger had said that they made the determination that anybody back in the Welded office could not charge to the project. There were some people identified on this list that said, "Perrysburg-use only," which we took to mean that they were in the home office of Perrysburg.

And also, initially, there was a -- this was a basis for --

Q Let me interrupt you here, then I'll just ask you a question.

So, in the past category, you had indicated that pursuant to the testimony of Mary Lynn Murphy, that the rig rental costs was being not invoiced to specialty equipment, and then at some point, that changed, right?

A Correct.

Q Okay. Did a similar situation transpire here, with respect to the non-NPLA labor costs?

A Yeah, that's what I'm getting to here.

So you see here on the December 8th invoice, I mean,

it's a snip, but it's a listing of the crews in alphabetical order and then you -- it ends with Y-803. There are no Z crews -- what we've commonly come to call "Z crews" -- but a crew with a "Z" in their number.

And then later in February, those Z crews started showing up in bills.

Q All right. So, there's two different invoices excerpted here, right. One is from December of 2017?

A Yes.

Q The other is from February?

A Yes.

Q Okay. And the observation, the difference between the two is what?

A That there's the red box of the Z crew. They hadn't been billing for those individuals earlier, which again, was more -- the analysis was really in comparison to Exhibit 1, but this was sort of more support for how we were doing it.

Q Mr. Slavis, did you rely on any of the definitions in the contract in this regard?

A The field personnel definitions.

Q Where's that contained?

A I believe it's Article 2(a), Section 8.

Q And what's your ultimate quantification opinion, with respect to this item, Mr. Slavis?

A So similar to rig rentals, since this was billed as

labor, any identified amounts would then also carry the equipment fee. So we identified $3,430,380 of labor costs and then you add the equipment fee of 1.7 million. You get a total of $5,145,570.

Q And all the data leading up to the $4.9 million number, up there in the upper-right hand corner, that came from the labor database that you used?

A Correct.

Q Mr. Slavis, turning your attention to the next category.

What is that?

A These are general liability insurance costs.

Q Okay. Can you describe your opinion in that regard and its basis.

A So it's my opinion that they are not recoverable costs.

Q So, why don't you describe the nature of the cost itself?

A So, general liability cost is sort of -- I don't know if "umbrella policy" is the right way to describe it -- but it's a policy that protects the site and, you know, sort of visitors to the site. It's not Workers' Comp, like, you can't pay an individual employee off of a Workers' Comp policy from an event perspective.

Like, if someone gets hurt, that's a Workers' Comp. If I'm visiting a job site and I'm not part of the contractor's

site and I get hurt, then that gets covered by the general liability policy.

Q So let's go to just --

MR. BURWOOD: Can you jump to Slide 34.

BY MR. BURWOOD:

Q And that's an excerpt from Article 8 of the contract?

A Correct.

Q Okay. And so --

A So it starts --

Q -- what's covered by a GL policy, per the contract?

And I'm just asking you to look at the provision itself and tell us.

A Well, Article 8 says, "All costs and deductible amounts will be for the sole account of contractor."

And then, (B), it specifically identifies general liability insurance as one of those insurance costs to be covered by the contractor.

Q And GL -- the GL incurrence, as set forth here, covers bodily injury and property damage, right?

A Yeah, broad form, property damage, personal injury liability, independent contractors.

So, like I said, if I visit the site and I'm not an employee of the contractor, then I would be covered by that general liability policy, but not the employees that are there.

Q Okay. So with that background, why is this one of your categories of costs? How were those general liability costs actually invoiced by Welded to Transco?

A They were included in the payroll data as an adder [sic] to each hour of employee time.

You know, I -- in my experience, and in other projects that I've worked on, I mean, it's generally a home office cost that you might allocate to the job based on your, you know, how much labor one job is using versus another, just to have a cost metric to use to allocate it to the different projects. But to me, it's not a benefit paid directly to the employee; it's paid by the main company.

And as far as my --

Q So --

A -- plain reading of the contract, it's supposed to be borne by the contractor.

Q So, when you say, "to me, it's not a benefit paid directly to employee," right, in your review of the payroll information here, the underlying data, were you able to confirm whether or not that was money that was paid to these employees?

A I don't know that it is directly paid to the employee, but it's listed in their payroll build-out. But I don't have checks to see, but I would imagine it wasn't because it's not --

Q Okay. So then I'll ask you.

In your experience, having audited cost-reimbursable contracts, have you ever run across where general liability, the cost of general liability, money for general liability was paid to an employee?

A No.

Q Were you able to quantify the amount of general liability costs that were invoiced by Welded to Transco?

A Yes. The amount of costs invoiced were $844,656.

And then because it was treated as a labor cost, they added the equipment fee, so the total is $1,266,984.

Q Okay. And your opinion is that was not allowable, per the terms of the contract?

A That's my opinion.

Q Would you move on to the next category for us, Mr. Slavis.

A Unallowable vehicle allowance cost is another quantification we did with reliance on Exhibit 1.

So Exhibit 1 identified the union classifications that were entitled to a vehicle allowance, judging by the "yes" in the far-right column. So, again, we went -- now that we have our built-up and verified payroll database, we looked at that database, identified any positions that didn't have a "yes" and quantified the vehicle allowance costs that were billed for those individuals.

Q Okay. And Exhibit 1 is Section 8 to the contract's Exhibit 1, right?
A Correct.
Q Okay. And what's here on the screen is -- that is a snippet from Exhibit 1, right?
A Correct.
Q And were you able to quantify these vehicle allowance costs that, in your opinion, aren't consistent with Section 8, Exhibit 1?
A Yes. The total amount invoiced was $578,298.
Again, because it was considered a labor cost, equipment fee was added to that for a total of $867,447.
Q Mr. Slavis, what's the next category of costs that you quantified?
A We quantified the rates in excess of 7 and a half percent for field personnel.
Q What process -- what was the basis -- what's the basis for your opinion in terms of what process did you engage in, to make that quantification?
A Similar in looking at Exhibit 1, it identifies that contractor must seek approval from company before implementing any changes to wages and benefits for any field personnel in excess of 7 and a half percent.
So what we did was we built -- we took all of those rates, we built in the 7 and a half percent, what I'll refer

to as sort of "allowed increase" before they request approval, and then quantified any amounts that exceeded that on a per-person basis.

Q So you reviewed the payroll database, correct? That's where that data came from?

A Yes.

Q Okay. And how did -- did you arrive at a quantification of costs in excess of 7.5 percent?

A Yes.

Q Okay. And what is that?

A So all total, it was $943,607. And then with the applicable equipment fee, it's $1,415,410.

Q Mr. Slavis, what's the next category of costs that you quantified?

A So, it's a two-part cost that talks about the charges billed for PTAG labor, which was an agency labor. So here, I'm just citing the contract language that identifies agency personnel is included in the field personnel definition, which then applies to Exhibit 1, which is how field personnel are to be paid.

And then this was --

Q And then how are -- how does the contract provide field personnel are to be paid?

A In accordance with Exhibit 1.

And I know we've heard testimony about this throughout

the week and a half about there's an agency fee in those rates, and I think as I heard, and at least my recollection of the testimony, nobody's been able to establish exactly what that agency fee was, just that it was there.

What we have here is an email exchange that had with it a supporting schedule of by individual, a fee to be charged for that individual. So what we did is we took -- again, they had a different percent for each person -- we took the percent that was allocated to that individual and used that as a proxy for the fee that was billed for these people.

Q You've heard testimony in this proceeding that there was an agency fee component to what was paid by Welded to PTAG; is that your testimony?

A Correct.

Q And what you're describing now is -- and is it the case that have you heard any testimony or seen any documents that quantify that fee that Welded paid to PTAG?

A I haven't hearing any testify [sic] -- any testimony that specifically quantifies that. The closest thing to documentation --

Q Did you look for it --

A Yes.

Q -- as part of your report?

A Yes.

Q I apologize. Please continue.

A The closest thing we could get is this excerpt and supporting spreadsheet that followed this email.

Q And so if you could walk us through how you quantified that component of agency fee that wasn't actually paid to the field personnel?

A Right. So this is from an email exchange between Mr. Hawkins and John McNabb and Jackie -- I'm sorry -- Krzysztofik. And attached to this email was a separate of each PTAG employee, their salary, their rates, and their percentage fee.

So we used that percentage fee and then we went to our payroll database and quantified all the charges, by person, and applied the fee to those charges. So we have a by-person amount charged by Welded of PTAG employees.

MR. BURWOOD: Okay. Can you go to Slide 46.

BY MR. BURWOOD:

Q In addition to quantifying the fee component of the PTAG charges, did you perform any additional -- the second piece of your analysis with respect to this issue?

A Right. So then after removing the fee -- and that's important. So now we have a reduced wage rate, per person, because we took the fee out as an unallowable cost, we then compared that reduced number to the amounts in Exhibit 1, again, allowing for a 7-and-a-half-percent increase and then quantified all the amounts that were still over 7 and a half

percent and, therefore, not in accordance with Exhibit 1.
Q Okay. So after netting out what you calculated as the fee, you then identified any amounts paid to PTAG individuals that exceeded that 7.5 percent --
A Over the rate, yeah.
Q And had you not backed out the fee quantification, let's say you did it differently and you didn't do that, and you just took a look at the 7.5 percent, sort of overage, how would that impact that analysis?
A Well, in the starting point of the comparison of the rates charged to Exhibit 1, plus 7 and a half percent, it would have been a higher starting point. So all of the costs that we took out as fee would have still be -- would have still been in as just rate. And it's literally, like, 95 percent of those costs would have been over the 7-and-a-half-percent threshold.
Q Two parts of your analysis. Backing out the fee actually reduced the amount of unallowable costs relative to the 7.5 percent?
A Correct.
Q Okay. If we could go back to Slide 43, I just want to make sure that -- you talked about the fact that you relied on Exhibit 1.

And the definition of labor costs in the contract, where is that found? That's in Section 8?

A Section 8.
Q Okay. And in addition to relying on Exhibit 1, was there particular language in the definition of labor costs that was significant here?
I mean, it's not just Exhibit 1; it's also the actual work performed has to be?
A Well, it's also the wages and benefits paid to field personnel. So as the testimony, I believe, my impression of the testimony that's come through is that, that PTAG fee was not paid to the personnel. It was paid to PTAG.
Q Thank you.
Were you able to quantify, sort of, both halves of that analysis: the fee and the exceedance of the 7.5 percent?
A Yeah. So as I stated earlier, the first quantification was the fee portion and that was $510,056. Again, that carried the equipment fee, so the total is $765,084.
Now, with that fee removed, we run our analysis against the 7-and-a-half-percent increase and that totals $541,290. With the equipment fee, it's $811,935.
Q So relative to your analysis of the PTAG, the fee issue and the labor rate issue, what's the total quantification of unallowable costs in your opinion?
A Total quantification is a $1,051,346 of the actual rate and then when you add the 50-percent equipment lift, it's $1,577,019.

Q Mr. Slavis, we're on the seventh category of the 14 of your findings. Can you explain what that was.

A So these are charges that have been discussed a fair amount in this hearing. In total, Welded invoiced $3,381,736 of Bechtel costs.

This spreadsheet, I think we've seen before, and 2.9 -- $2,894,909 of that has been written off. And that goes all the way back to November of '17, so fairly early in the actual execution process. And all of those receivables have been written off.

Q Okay. And how do we know they've been written off?

A There's indication in this spreadsheet and then, I believe -- was it Mr. Wall who testified that there was -- that Mr. Wall said they wrote them off --

Q During the trial, he testified that?

A Correct.

Q Yeah. Any deposition testimony that supports this?

A And then I have here, I've quoted Mr. Polunin where the question is:

"So this 2.9 million was not collected from Welded, correct?

"Correct.

"And, instead, the general business unit wrote off the 2.9 million receivable as of December 30, 2020?

"Correct. "

Q Okay. And you reviewed Mr. Polunin's transcript?
A Yeah.
Q Do you know who -- is he a Bechtel person?
A Yeah. He's -- as I said here in the slide, he's the global operations manager at Bechtel.
Q You know that from the deposition?
A Yeah. I don't know him personally.
Q Okay. Any other deposition testimony that supports this, in your opinion?
A Well, there's a second part to this opinion, which we've also heard in this trial across the last two weeks about the Bechtel markup; that they were marked up 50 percent. And I know there's been some discussion about whether or not that 50 percent is benefits or a Bechtel markup, but the testimony that I heard clarified for me that it was a markup that went directly to Bechtel.
Q Do you recall which witness?
You said, "The testimony that I heard..."
A I think it was Mr. Hood, actually.
But here, too, Mr. Hawkins says:
"I don't believe the multipliers are paid directly to the employee, other than through benefits and other costs."
But the documents that we looked at appear to have benefits in it and then markup after that.

Q Mr. Slavis, were you able to quantify the two components of the Bechtel cost that Welded invoiced to Transco that you believe are not allowable?

A Right. And so the first one is just the $2.8 million that wasn't paid.

So in my mind, if -- you know, you can't reimburse a cost that isn't incurred or that isn't paid.

The second piece is the 50-percent markup, but I think it's important to know that that is only on the 400,000 -- or if I could go back for a second -- that's only on, yeah, the 486,000 that was paid.

So that's not the 50-percent fee that would have been built into the $2.9 million that was written off. So, we start again, similar --

THE COURT: I'm sorry. I'm sorry, I lost you there.

Could you say that again.

THE WITNESS: So similar to the PTAG analysis, we first quantified the $2,894,910 as unallowable. For the remaining $400,000 of Bechtel-invoiced costs, we looked at the 50-percent fee that was identified within those invoices.

THE COURT: Okay. In your mind, those are the ones that were paid?

THE WITNESS: Correct.

THE COURT: Got it.

THE WITNESS: So to the extent, obviously, there's a 50-percent markup in the unpaid invoices, that's not quantified separately here because I've already taken out the entirety of that amount.

BY MR. BURWOOD:

Q And what's the ultimate quantification?

A So, in total, it's $2,966,666 and then the equipment fee brings that total to $4,449,999.

Q Mr. Slavis, what's the eighth category of your unallowable cost to (indiscernible)?

A So now we're into the standby equipment costs, which is another topic of much discussion over the past two weeks.

And, you know, so, sort of, there's a two-part opinion here; one that's relying on evidence and deposition and other documents that I've read in this proceeding, as well as the requirement to support the costs from more of a pure audit standpoint.

Q Can you walk us through that.

A So let me just see. Okay. Sorry, I might have got out of order here.

So the only support that I've seen for this $6 million is this one-page spreadsheet that has been on the screen several times this past week and a half.

Q So we're talking about approximately $6.1 million in the pre-NTP standby costs that Welded invoiced to Transco,

right?
A Correct.
Q Okay. And that number is -- it's tough to see -- but it's there down in the lower right-hand corner of the spreadsheet.
A Yeah, it's -- the total is $6,095,894.44.
Q Okay. And before I interrupted you, you were saying what substantiation for those charges have you seen?
A So this is the only thing I've seen is this spreadsheet. Some of the equipment is identified as owned. Some of it is identified as leased. But I've not seen any further documentation that supports the numbers in this spreadsheet.
Q And were you here for the testimony of Welded's witnesses in this regard?
A Yes.
Q And did you hear them testify that additional substantiation exists to their knowledge?
A Not that I'm aware of, no.
Q Please continue.
A And so Article 26, which talks about costs associated with the NTP delay, which I believe that's what these costs fall under, says:

"Demonstrable costs means contractor substantiated direct, actual costs incurred due to the NPA delay, such as

contract rate for personnel and equipment, who are placed on standby as a result of NTP delay."

Q So did you rely on Article 26 in forming your opinion?

A Yes.

Q Okay. Go ahead.

A And so, I don't see any demonstrable costs for these. I don't see invoices. I don't see rate build-outs. I don't see whether that rate is a standby rate, an operating rate, an ownership rate; it's just the one spreadsheet. And, you know, based on my experience doing contract cost audits, that's not supportive of those costs.

Q Can you go back to the Excel.

And I don't know if you can see some of those columns, but, you know, in your experience -- are you able to identify any of those charges there where you could give us an example of the type of substantiation that, in your mind, should be available or could be available?

A (No verbal response.)

Q So, for example, the eight Cat PL87 Pipelayers, do you see there that it says -- actually, strike that one.

I want to focus on -- there's some Welded-owned equipment on this, right?

A Right. Like the for instance, the first item.

Q Okay. And so, with respect to Welded-owned equipment, in your experience, what type of substantiation was

required -- was Welded required to provide?
A Well, you know, owned equipment is always a difficult challenge on construction projects, right. Because if I recall, these are actually pretty old, so they're probably fully depreciated. So what you typically get into is contract rates, and I think that's what Article 26 asks for is contract rates that support the cost of that, the ownership of that equipment.

In the alternative, you would see, either, operating costs, but they're on standby, so you wouldn't have operating costs, or you would see depreciation rates or, you know, sort of the true, accounting ownership costs of the equipment.
Q Okay. And here, we've just got a rate in that third column, correct?
A Correct.
Q Nine hundred and forty-three fifty a day?
A Correct.
Q Okay. Is there equipment here -- is it your understanding that some of the equipment here listed in the first column, that it was rented from others?
A Yeah. Like, I believe if you look down at one, two, three, four, five, six, seven, probably sex and seven, like, the Vacworks, 9002 a month, Leslie Equipment Co. is --
Q What about all the references to CB Cat (phonetic), what does that mean to you?

A Probably the place they're renting it from or leasing it from.
Q Okay. And is that the case in the third item, the eight PL87s, it says, "Welded/Cat Finance"?
A Yeah, although, Cat Finance could -- again, that could be that they're buying that equipment from them --
Q Okay.
A -- and that's the finance arm that's lending them the money.
Q So, understanding that this is all we have to go on, right, let's just assume that some of this equipment was actually rented -- it wasn't owned -- okay.
What would you, in your experience as a cost-reimbursable construction cost auditor, what would you expect to see to substantiate the costs that are identified here in this spreadsheet?
A An invoice.
Q From whom?
A From the company they're renting it from.
Q Okay. And did you see that in connection with this spreadsheet?
A I did not.
Q Thank you.
A And then, like I said, this is also sort of a two-part basis, because standby equipment needs to be available for

use. And what I'm citing here is some of the -- well, it was a Trial Exhibit, but it was a Welded Board meeting or a note to the Welded Board talking about the maintenance and upgrades or repairs and upgrades on these machines.

So it says:

"The 594 fleet -- continued focus on equipment readiness and modernization. The 594 fleet, along with the eight newly leased PL87s would be made ready for work. The 594s have not been utilized since 2008 and require repairs and upgrades.

Much of this work was scheduled to be completed in 2016; however, with the slide to the right in the Sunoco projects, this has been delayed. The machines will be ready by mid-summer of 2017."

And the 594s just -- and I know everybody has probably heard this more than once -- but it's $4.7 million of the $6 million number.

Q And at least based on the board minutes that you read, in October of '16, Welded was reporting internally that that equipment would be ready mid-summer of '17, right?

A Correct.

Q Okay. But they started charging pre-NTP when?

A In February, I believe. Yes.

Q Okay. Is there an additional set of board meeting minutes you looked at --

A Yeah. And then in February of 2017, it's further reported that the work necessary to upgrade the Cat 594s was awaiting completion of upgrades on the 583s, and that now the 594 work was expected to be complete by August 31st, in support of the ASR start in September.

Q Okay. But as you just said, the -- Welded invoiced pre-NTP charges going back February through, I think, September; is that right?

A Yes, I believe that to be the case.

MR. GUERKE: Your Honor, we object to this portion of his testimony; specifically, his opinion that standby equipment needs to be available for use.

THE COURT: I noted that.

MR. GUERKE: There's no foundation for that and there's no -- there's nothing that qualifies Mr. Slavis to testify in that regard.

THE COURT: Your response?

MR. BURWOOD: Your Honor, the intent of the testimony was that it would identify that the equipment was being billed from February to September. He, then, is relying on the fact that their internal documents show that that equipment was being repaired during that time. It wasn't available for use. And that's one of the bases of his opinion is that it's not chargeable. It's not substantiated.

THE COURT: No, that's different. That's --

substantiation was the first part.

This is his opinion that he thinks standby equipment has to be available for use. I'm not accepting his opinion on that. I'll decide what the contract provides and whether that's correct or not.

MR. BURWOOD: Understood, Your Honor.

May I have him, nonetheless, quantify it, at least?

THE COURT: Yes, he can certainly quantify it.

MR. BURWOOD: Thank you.

THE COURT: That's helpful.

BY MR. BURWOOD:

Q All right. Mr. Slavis, did you reach any quantification, relative to the -- and I guess this is an easy one, right --

A Yeah.

Q -- but the quantification of what you believe is an unallowable cost?

A The quantification is the entirety of the standby equipment invoice of $6,095,894. And because this was not billed as labor, there's no equipment fee added to that; it's just the flat number.

Q Okay. Mr. Slavis, the ninth category of your unallowable cost categories is "Included equipment and properly charged to Transco," right?

A Correct.
Q Okay. Can you explain the basis of that opinion.
A So this gets to the definition of included equipment.
And as we've discussed a little with rig rentals, and also, more specifically, the list of included equipment in Section 8, Exhibit 2.
Q Okay. So one of the things you relied on in connection with this is the Section 8, Exhibit 2, the definition of included equipment or, I'm sorry, the Section 8, Article 2(a) definition of included equipment, right?
A Yes.
Q Okay. And then you also relied, in connection with this opinion, on Section 8, Exhibit 2, correct?
A Correct.
Q Okay. Please continue.
A So the first one I'm going to talk about is pickup trucks, which are expressly listed on Exhibit 2 as included equipment.
Q Is there any exclusion there?
A There's an exclusion for those that appear under labor costs.
Q Okay. And did you opinion account for that exclusion?
A Yes.
Q Okay. Please continue.
A So here, you know, again, we have the deposition

transcript excerpt from Mary Lynn Murphy where it was originally being billed as non-billable or originally being recorded by Welded internally as non-billable, and then they moved it to billable subcontracts.

Here, she's saying she doesn't know why. But, yes, we saw this picture yesterday. You know, a pickup truck is exactly what you think it is.

What we did is we went through every invoice, and I mean every invoice, and identified every time a pickup truck was billed through, in this case, I think it was billed mostly under the subcontractor section. Later in the job, it was actually billed under included equipment, but that's just a section of, you know, the 10 items in their reconciliations of where bills came through.

Q An order of magnitude on how many invoices for pickup trucks did you see?

A I don't know, a thousand.

Q Okay.

A So what we did was we quantified all of the pickup trucks that were billed through -- it was primarily Express 4X4 or Barco, and that totals $3,107,699.

Q How did you distinguish that from the exclusionary language in Exhibit 2 excludes those that appear under labor costs?

A Yeah, so there was another $7.6 million invoiced to

Transco for pickup truck allowance through the labor through payroll.

Q Okay.

A And so we did not -- there's no -- I mean, I quantified that's how much was billed, but it's not an unallowable cost; it's an allowable cost.

Q The significance being made that you made the distinction between the two, right?

A The distinction is I'm using Exhibit 2, which says pickup trucks are included equipment and, therefore, covered by the equipment fee, unless they're put in through labor.

Q And so your ultimate quantification, three point -- $3,107,699, those are the non-labor pickup trucks invoiced by Welded to Transco, correct?

A Correct.

Q Okay. What other equipment did you look at in connection with this ninth category of costs?

A Similarly listed on Exhibit 2 is on-road dump trucks and Mr. Hood acknowledged that on-road dump trucks are in the included list, so therefore, covered by the equipment fee.

You know, these are the on-roads or the tri-axles that were discussed by Mr. Pew.

Again, as we discussed on the exclusion to pickup trucks included in labor, the articulated dump trucks, we did not -- that we considered part of the specialty equipment

and, therefore, allowable. So this is just to sort of show the difference between a regular on-road dump truck, which is on Exhibit 2 and then an articulated dump truck, which is not on Exhibit 2.

But then, similarly, what we did is we went through all the invoices and identified all the on-road or tri-axle trucks that were billed. And for -- that's -- they were billed either through materials or subcontractor costs.

One thing I do want to note, as it relates to the on-road dump trucks, is as I understand the materials clause, they are allowed to deliver the materials to the site; that is an allowable cost. So I think Mr. Pew testified you would see, like, a hundred of these trucks on the road.

We did not quantify those. We looked at the tickets that were behind the invoice to say when it was hauling intrasite, so a dump truck moving stuff around once it's on the spread. But to get stuff to the site, that's not in my quantification.

Q Okay. So your quantification here, your opinion it being an unallowable cost is limited to on-road dump trucks, right?

A Correct.

Q And only used for intrasite hauling, right?

A Correct.

Q Okay. So what's your quantification Mr. Slavis?

A So, then, further, we have 2.4 or $2,424,866 of amounts we quantified through those invoices. But recognizing that because it's coming from a subcontractor, that they're also driving those trucks and that that labor portion is an allowable cost, we made an adjustment.

And so what we did was we did an analysis of what the cost of an operator was, compared it to the hourly charge that was being made in the invoices, and that analysis came out to right about 50 percent. So we deduct 50 percent from the total amounts charged to account for the driver costs that are allowable.

Q Okay. So we've got dump trucks, right, and then we've got on-road and off-road, correct?

A Uh-huh.

Q And you've got site, intrasite, and not intrasite, right? And then in addition to that, you have ones -- there's a labor component that you've carved out.

And the only quantification, in your opinion, is sort of what's left. You've got on-road dump trucks --

A Intrasite.

Q -- intrasite travel, no driver, right?

A Correct.

Q Okay. What's that value?

A That value is $1,212,433.

Q What other pieces of equipment did you look at in

connection with this ninth category of your opinions?

A So Morookas or similarly tracked carriers --

MR. GUERKE: Objection.

THE COURT: Excuse me a moment, here.

MR. GUERKE: Objection, Your Honor.

THE COURT: Yes?

MR. GUERKE: We object to the testimony that's, I think, about to happen, where Mr. Slavis describes different pieces of equipment on a project and determines whether they are specialty equipment under the contract or should have been included as included equipment. He is not qualified to make those determinations or offer those opinions.

MR. BURWOOD: Your Honor, this was addressed in our *motion in limine* response. I'll summarize.

Federal Rule of Evidence 703 allows an expert to base his opinions on either firsthand observations, facts, or data. Okay?

They can also base their opinions on facts, data that happens during testimony of others.

And the third category under FRE 703 is that the expert can rely on facts, data, or opinions presented to the expert outside of the court. Other than his own direct perception, the only qualifier being it needs to be a type of fact reasonably relied upon by experts in the field.

So the fact that Mr. Slavis relied upon, as he

said, the expertise -- people that have expertise on his team, okay. Mr. Sztroin and Mr. Pew, who had specific field knowledge of this equipment, and particularly, Mr. Pew. Mr. Triche, who is another expert he's entitled to rely on. He is relying -- those types of facts are captured by Federal Rule of Evidence 703.

MR. GUERKE: He's taking other people's opinion on what is a specialty equipment or included equipment and he's regurgitating it here as his own opinion. He has zero qualifications to do that.

And, Your Honor, you may remember yesterday the objection that Mr. Neiburg made; it was related to Mr. Pew's testimony. And their attempt with Mr. Pew was to bootstrap this qualification onto Mr. Slavis.

MR. BURWOOD: And, Your Honor, may I respond to that?

I guess that's the point of Rule 703, is that Mr. Slavis is allowed to rely on facts that aren't westbound the ambit of his personal knowledge. And the facts are, simply, for example: Is this a Morooka? Okay?

And, you know, Mr. Pew identified certain pieces of equipment that he saw in the field on that project and similar projects and Mr. Slavis, then, goes and looks at the plain, unambiguous terms of Exhibit 2 and says, Morookas are in Exhibit 2. That piece of equipment is a Morooka. And

then he performs his quantification.

He's not making calls about what a particular piece of equipment is. Those -- that information was given to him.

THE COURT: Why can't he quantify the amount that was billed for Morookas and I can decide whether it's permitted or not?

MR. BURWOOD: That's what we intend to do, Your Honor.

THE COURT: Well, I'm asking --

MR. GUERKE: If that's what they were doing, I probably wouldn't have an objection. But that's not what they're doing.

He's calling balls and strikes on what's a piece of included equipment or specialty equipment. He can't -- I mean, this opinion was given May 2022 and now he's relying on testimony from yesterday.

THE COURT: Yeah, he can't be relying on the testimony from yesterday.

MR. BURWOOD: Well, Your Honor, I mean, his opinion is being offered today. There's been record evidence in this case by their witnesses and ours that forms that opinion.

And I guess what I'd ask is, I think the concern is that his opinion might be X, but I'd ask him some

questions and we're going to stick within the lanes that I just identified.

THE COURT: I will hear his quantification of the number of Morookas that were billed, and that's based on the invoice. I mean, I could look at that, except I'm not going to. That's what he's doing.

MR. BURWOOD: Exactly.

THE COURT: So, I'll accept it for that.

And whether the Morookas were properly billed or not is a different issue.

BY MR. BURWOOD:

Q Mr. Slavis, with respect to Morookas, did you look at Exhibit 2 of the contract?

A Yes.

Q Okay. Does it say Morookas?

A It says Morookas or similar rubber-tracked carriers.

Q Okay. And then what analysis did you perform, relative to Morookas?

A What we did is similar to the other pieces of equipment, is we went invoice by invoice through all of the supporting documentation and identified where Morookas were being billed through specialty equipment. And that's included -- and just to be clear, that included Morookas with small vacuum excavation units, which is also on Exhibit 2, as well as Morookas with cranes and straw blowers, which Mr. Pew

talked about, but again, at least going back to my initial analysis, it was myself, working with Mr. Gilhooly, who identified all this equipment and then we were share those thoughts with Mr. Sztroin and Mr. Triche to clarify that those were all part of this included equipment definition.

At that point, then, yes, I would just quantify, based on the review of the invoices, how much was billed for each different type of machine.

Q All right. So to just drill down on, before you get to the quantification on the Morookas, okay, Morooka appears on Exhibit 2, right?

A Correct.

Q Okay. And then there's some Morookas that have equipment attached to the back, right?

A Correct.

Q Okay. And so one of those attachments is, for example, it was, I think Mr. Pew called it a dust draw mulcher blower?

A Correct.

Q Okay. And so in addition to Morooka being in Exhibit 2, is -- is there anything about the piece of attached equipment that's identified on Exhibit 2, as well?

A I believe mulching machines are also on Exhibit 2.

Q So --

A It's right there, to the left of the word "farm tractor."

Q Yeah, it's -- the call-out is a little bit obscured, but halfway down, do you see where it says, "mulching machines"?
A Yes.
Q Okay. And then focusing on the small excavation, the small excavation vacuuming units --
A Yes.
Q -- those were also identified on Exhibit 2 as a call-out, in addition to Morooka?
A Those are expressly called out on Exhibit 2.
Q You mentioned cranes, lifting cranes, right.
Do you know, is that called out on Exhibit 2, for example?
A I don't believe that's on Exhibit 2.
Q Do you know --
A I think that's back to the definition in the contract where it lists a whole bunch of things below the included equipment definition.
Q Yeah. So, do you recall the definition of included equipment in the contract in Section 8?
A Yeah.
Q Okay. And is it your testimony that the cranes are covered by that definition, independent of Exhibit 2?
MR. GUERKE: Objection. Similar to my other objections, Your Honor, now he's reviewing the contract and

comparing it to pieces of equipment and determining whether it's included equipment.

THE COURT: I think you need to cross him on this. If there's stuff that's not on Exhibit 2 that's express, I think you should cross him on it.

MR. BURWOOD: And all I'm asking him is beyond Exhibit 2, is there language in the actual definition of included equipment that may go to these cranes?

And so I'd just ask can he be allowed to answer that question?

THE COURT: He can answer that question.

BY MR. BURWOOD:

Q Mr. Slavis?

A Yes, I believe there is.

Q Okay. So getting, then, to -- your work was what?

A So, then, the -- so, this is an invoice for a Morooka with a vacuum unit. And you see here you've got the $7,000 charge for the Morooka and then the $3,000 charge for the vacuum unit.

So we went, again, invoice by invoice, and identified all of the charges for Morookas and the attachments.

Q Mr. Slavis, I just want to clear one thing up for the record.

Do you have the contract there beside you; it's JX-1.

And can you turn to Section 8, page 487.

A Yes.
Q Okay. And that's just -- is that the definition of included equipment?
A Yes.
Q Okay. And does that go on to the next page, 488?
A Yes.
Q Okay. And can you read -- so, in addition to Exhibit 2, the romanettes below the definition of included equipment, they inform that definition.
Is that your under -- is that your reading of this?
A Yes.
Q And what is -- can you read romanette vii for us in terms of what's included equipment.
A "Fasteners, cable, lifting accessories, and lifting aids."
Q Okay. Thank you, Mr. Slavis.
So I interrupted you. You explained the process through which you went through and identified Morookas in the invoices, right?
A Correct.
Q And, ultimately, do you have an individual quantification for this item?
A I mean, I do. It's more broken out in the original report --
Q If we're going to get to it later in your opinion,

let's do that.
A Yeah.
Q Okay. So, any other pieces of equipment that you analyzed in connection with this ninth category of your unallowable costs opinion?
A Yeah. It says you've got the Morookas. You've got the Morookas with straw blowers.
You know, the other thing, and this is, again, sort of supplemental information, but obviously, the main definition of included equipment is that which is typically owned, leased, and/or provided by contractors performing work similar to this work.
So we just went into some asset list and noted that they do own some straw blowers, but that's sort of anecdotal to the other evidence that we used to base on opinion on.
Q All right. So you looked at listings, schedules of Welded's own equipment?
A Yeah --
Q And --
A -- yes, sorry.
Q And as reflected here in the screen, at least here, it indicates that Welded owned at least one FINN B260 --
A Yeah, there were a couple more, but we just excerpted one here.
Q Okay. And that's one of the things, an additional

component you relied on?
A Yeah. It's not the main reason, but it's just, like I said, anecdotal.
MR. BURWOOD: Your Honor, I realize I've gone past 1 o'clock.
Is this a good time for a lunch break?
THE COURT: Sure. We can take a lunch.
We will come back at 2:15.
And Mr. Slavis, please do not speak with anyone --
THE WITNESS: Understood.
THE COURT: -- in the break. Thank you.
MR. BURWOOD: Thank you, Your Honor.
THE COURT: We're in recess.
(Recess taken at 1:04 p.m.)
(Proceedings resumed at 2:18 p.m.)
THE CLERK: Please rise.
THE COURT: Please be seated.
Mr. Burwood?
MR. BURWOOD: Thank you, Your Honor.
JOSEPH CHARLES SLAVIS, DEFENDANTS' WITNESS, PREVIOUSLY SWORN, RESUMES STAND
DIRECT EXAMINATION (Cont'd)
BY MR. BURWOOD:
Q Mr. Slavis, before we took the break, do you recall we were talking about your identification of particular

equipment that was billed by Welded to Transco?
A Yes.
Q Okay. And I'll remind you that we were at, I believe, your demonstrative Slide 82, we're starting on now.
In addition to the equipment you described in your prior testimony, what other equipment did you analyze in the context of Welded's invoicing to Transco?
A The next item we're going to talk about is conventional trench boxes.
Q And so, did you look at Exhibit 2 to Section 8 of the contract in that regard?
A Yes.
Q And what did you see?
A Conventional trench boxes are listed on Exhibit 2.
Q Okay. Is there an exclusion?
A Yes. It says, "Excludes modular slide rail systems."
Q And can you explain your analysis, with respect to conventional trench boxes.
A So, the analysis was similar to all the other ones where we went through every invoice and identified, primarily, by model number. We would go to the model number, look them up, confirm whether they were modular or slide rail systems versus conventional systems, and then we quantified the amounts associated with conventional trench boxes.
Q All right. So let me just ask you some follow-up

there.

So do you recognize -- there's an invoice in the demonstrative on the screen, right?

A Correct.

Q Okay. Do you recognize that from Mr. Pew's testimony yesterday?

A I believe that's the same one, yes.

Q Okay. So just walk us through -- for example, with this invoice, what would your process have been?

A The process would have been to look up the make, which says, "GME Model UR6M102." We went to the GME website, looked up the model numbers.

Again, I was doing this in conjunction with, primarily, Steve Gilhooly, in identifying -- you know, he went through and identified ones were or weren't conventional, and then he and I sat down and discussed them and we talked about them.

We talked about them with Mr. Triche and Mr. Sztroin. And then, ultimately, went through every invoice and separated out the conventional from the modular.

MR. GUERKE: Objection, Your Honor.

Same lines as with the equipment. This is technically equipment, also, but the witness doesn't have any expertise in trench boxes or identifying the difference in trench boxes. And I noticed on the slide there's some commentary on the left side that seems to be providing an

opinion that's not necessarily coming from the stand, for example, on page 83.

So we have an objection to the qualifications of this witness offering an opinion on this subject.

THE COURT: Mr. Burwood?

MR. BURWOOD: Yeah. So, Your Honor, as we previously discussed, this is the type of facts that can reasonably be relied upon by this expert, pursuant to FRE 403.

The other thing I'll say is that in his testimony today, he's not making any distinction between included equipment and specialty equipment. Your Honor's instruction on that is clear.

You know, Exhibit 2 says "conventional trench boxes." The definition of specialty equipment in the (indiscernible), Your Honor. Exhibit 2 talks about modular trench shoring systems.

Mr. Hood, for example, during Welded's case, testified that there's a distinction between the two.

He described the difference between a conventional trench box and a modular slide rail box.

Mr. Pew got on the stand yesterday. He described his observations in the field, how those two pieces of equipment are different, okay. Just distinguishing between the two pieces of equipment.

Mr. Slavis' team, in preparing his opinions, back in time, they went through -- they looked at the invoices. They went to the manufacturer's websites. They plugged in model numbers. They identified what was a conventional trench box and what was modular, okay.

All of Mr. Slavis' analysis in that regard is consistent with Mr. Hood's testimony and Mr. Pew's testimony to try to identify one type of trench shoring system versus another. That's all he's doing here.

And we'd offer, Your Honor, that it's appropriate for him to rely on that information. It's proper expert testimony. And the point of it is to quantify, did Welded bill for both types, okay, and if they did, how much were billed for conventional and how much was billed for modular.

THE COURT: I'm going to overrule the objection.

I think this is -- this particular issue is factual information.

BY MR. BURWOOD:

Q So, Mr. Slavis, were you able to finish explaining, sort of the process that you engaged in, in terms of how you identified a conventional trench box versus a modular trench box?

A Yeah, we went invoice by invoice and performed the analysis I just described.

Q Okay. And then how did you come to a quantification,

just using the data on the invoice?

A Yeah, so each invoice.

And, again, all the invoices were built into a database, so it's not like I have to sit there with a nine-key and punch in every number. So the invoices are in the database. We would look at the database, reference it back to the invoice, but then the numbers, by line item.

So if you see behind the red boxes there, you see all the individual things on this United Rentals invoice; that would have been in our database, each one of those line items so then we could go in and quantify just the things that matched these descriptions.

Q Okay. And was it the case that, based on your analysis, that the Welded invoicing for specialty equipment to Transco contained invoicing for conventional trench boxes?

A Yes.

Q Okay. And it also included invoicing for modular slide rail systems?

A Yes.

Q Okay. And of those two pieces of equipment, which quantification matters in your opinion?

A The quantification of the conventional trench boxes.

MR. BURWOOD: Okay. And if you want to go to your next slide.

//

BY MR. BURWOOD:

Q So before we get into that specific quantification, you had mentioned that this whole category of equipment, your opinion, and the specific quantifications, they were going to come sort of towards the end of this category, right?

A Correct.

Q Okay. That's this slide and that's going to be your testimony that follows, right?

A Yes.

Q Okay. Before we do that, though, we've talked about -- you've testified about trench boxes and Morookas, right?

A Yes.

Q You talked about pickup trucks and dump trucks, correct?

A Yes.

Q Okay. I see line items on there for deckhand, tac rig, excavator.

Did you also perform analysis on the invoices relative to those pieces of equipment, and can you walk us through them if you did.

A Yes. I mean it's the same analysis. I just, for purposes of this demonstrative, I did not, you know, continue to walk through each one. But it's identification off of every invoice from what was billed, comparing the item to Exhibit 2, and quantifying the amounts that were billed for

whether, as it's described here, the deckhand, the tac rig, the excavator, or the motor grader.

Q Okay. So, for example, is it your testimony that motor graders appear on Exhibit 2?

A Yes.

Q Okay. And so was your process the same in terms of you went through and reviewed all those invoices and tried to identify whether there were charges for motor graders?

A Yes.

Q Okay. And then, do you recall, with respect to motor graders, for example, perhaps there was a range of the size of equipment?

A I believe that's the case, right.

And so, we only included the ones up into the size indicated on Exhibit 2.

Q Okay. So just for the benefit of the record, as reflected here, why don't you walk us through each of the line items in this category and state the quantification for each of those items, consistent with your opinions.

A So we started with unallowable pickup truck charges. That's $3,170,699.

I discussed the process on unallowable dump truck charges; going through the invoices, taking just the on-roads, taking just the intrasite, and then taking half of that to account for drivers. And that is $1,212,433.

Trench boxes is just the quantification of the conventional trench boxes off the invoices and that is $1,336,176.

Morookas, or similar rubber-track carriers, same process we described of going through the invoices. And that total is $1,424,152.

The deckhands were $239,643.

Tac rigs, $137,039.

The excavators, and as I sit here, I don't recall if there was a size restriction on the excavators, but if there was, we would have considered it. $35,351.

Motor graders, we discussed. Has a size restriction. The total invoiced for motor graders was $29,998, or to be more specific, the total invoice for motor graders that are on Exhibit 2 is $29,998.

Q Is there another category?

A There is another category, which totals $173,669. And there are lots of pieces of equipment, all based on our review of Exhibit 2 and the definition of included equipment, they would -- there was -- the one that I remember was pumps smaller than 12 inches or pumps up to 12 inches were included equipment. That's in that number. I think generators is in that number. And then there's just a lot of one-item, you know, nothing that adds up to any of these other numbers.

Q Okay. Yeah.

So give me a sense as to how many items of equipment are covered in the other category. Just an order of magnitude, is it 5 or is it 50?

A Like 50.

Q Okay. And those 50 items combined, it's your opinion that they were billed as specialty equipment and, inconsistent with your, at least reading of Exhibit 2, and the total would be $173,669?

A The only clarification I would make -- yeah, no, actually, no, I'm sorry. They would have been billed as specialty equipment.

Q Right.

A But yes, they total $173,669.

Q So, Mr. Slavis, with respect to those, what I'll call sort of "smaller items," but also the larger ones, the detail regarding that quantification, where can that be found?

A In the exhibits to my report or the schedules to my report.

Q In your support schedules, right?

A Yes.

Q Okay. And is there any particular schedule that would contain that information?

A At least the numbering system has I know it, Schedule 13 was the summary schedule and then 13.1 starts all the detail.

MR. BURWOOD: Okay. And, Your Honor, I'm going to move to admit those at the close of his testimony, but if you're making notes, Schedule 13.1 is D-2047AA.

BY MR. BURWOOD:

Q All right. Mr. Slavis, I think we can move on to the tenth category of your cost analysis.

A All right. And this hauling of included equipment is sort of part and parcel to the analysis of included equipment. And the contract says that in connection with provision and supply of included equipment.

So, we went through all of the hauling invoices to identify when a piece of included equipment was being hauled or moved. And so here's an example of an invoice. Same process: look at every invoice.

There are times when specialty equipment is being hauled and we did not include that, so it was a subset of these hauling invoices.

Q You just looked at hauling of what we considered the, elsewhere in your opinion, included equipment?

A Correct.

Q What's the quantification of those hauling costs?

A The quantification of those hauling costs is $2,390,558.

Q Did you look at another aspect of hauling in connection with these charges -- the eleventh category of your opinion,

Mr. Slavis?

A Yeah, and that's for permits under the basis that the contractor shall obtain all other permits and licenses.

So we looked at all of the times that permits were used for hauling equipment or hauling included equipment. And here, I will say we identified a total of $865,602 of permit fees.

Our analysis of the individual invoices, without billing to every single dollar, looked like it was about 90 percent of that was for included equipment; however, what I've quantified as 50 percent of the total cost as an adjustment just to be conservative so that I didn't have to literally go through every thousand invoice and calculate to the penny.

Q Before we get to the quantification -- I may have missed it -- you mentioned in the previous slide that there was language in the contract.

I just want to be clear, that's from Article 19 of the contract --

A Yes.

Q -- or is that -- which -- is that Section 8, Article 19?

A I believe so, yes.

Q Okay. I apologize.

You just explained how you reached the quantification

and I cut you off before you told us what it was. Will you please do that.

A Yeah. So the total quantification was $865,602 and then we took a 50-percent adjustment to that to quantify it $432,801.

Q How about the twelfth category of your opinion, Mr. Slavis?

A So, these are now getting into some smaller items, but still items that are identified on Exhibit 2: office trailers, warehouse trailers. You see here in romanette (i), trailers and site offices.

Q Romanette (i) of the definition of included equipment, which is in Section 8, Article 2, right?

A Correct.

Q Okay.

A And so, similar process, looked at the bills, looked at the invoices, pulled out the invoices related to these items.

And so there was --

Q Again, describe what are we talking about here? We're talking about office and warehouse --

A Site offices, warehouse trailers, things of that nature.

Q Okay.

A And the total quantified under this section is $142,940.

Q The thirteenth category of costs you looked at, Mr. Slavis, what was that?

A So this was, you know -- and you'll see it's a relatively minor number -- but there were duplicate invoices, some small accounting errors. Again, they're enumerated in my support schedules to my original report. But it was just a couple of -- I think there were two invoices that were double-billed and a couple of typo errors totaling $49,323.

Q And Mr. Slavis, I apologize. That's actually the end of your twelfth category.

Your thirteenth category is unallowable post-petition costs, right?

A Correct.

Q Okay. Can you describe that for us and the basis for your opinion and in your opinion.

A So, as I was describing when I was talking about the invoicing process, there was ultimately a true-up invoice provided with all the support -- supporting documentation for that invoice.

So what we did is we looked at all that support for the same types of items I've just been describing for, you know, Morookas, for conventional trench boxes, for people on -- not on Exhibit 1 -- and, basically, re-ran the same analyses, but in the post-petition period of costs. And the total for all the similar adjustments related to labor costs was $354,032.

Similarly, we looked at the equipment and identified items that were billed as specialty equipment that were on the included equipment list and that totaled $161,127.

The largest adjustment in this category is based on the equipment fee markup. So if you look at the invoicing for the post-petition amounts, included equipment was billed at cost, and so I compared the 50-percent markup, so, in other words, keeping the compensation structure of the contract consistent in the post-petition period would have been the labor cost plus 50 percent for included equipment.

So you see here where it's an in and an out. The $2.9 million of included equipment that was billed comes out as a negative, but then it's offset by $1,367,000, which is 50 percent of the labor billed. And so that's probably -- as you see on this slide -- excuse me -- that's $1,581,928 of the $2 million that I have for this item, is that included equipment versus the equipment fee markup analysis.

But in total, do you see the 354,000 at the top there for labor and then the two pieces of equipment adjustments, but in total, it's $2,097,087.

Q Mr. Slavis, so the exercise up to this point, your opinion is you looked at the contract, then you looked at invoices, and then you quantified certain pieces of equipment as unallowable --

A Uh-huh.

Q -- based on your opinion, right.

This analysis here is just taking that same analysis and applying it to the post-petition invoices, right?

A Correct.

Q Okay. The fourteenth and final category in this (indiscernible) Mr. Slavis, relative to your opinions, deals with safety stand-down costs; is that correct?

A Yes.

Q Okay. And can -- is this solely your opinion, Mr. Slavis?

A No. So this is an opinion sort of in conjunction with Mr. Triche.

Q Why don't you explain, you know, what -- the division of labor, okay, what Mr. Triche did, what you were provided, and then what you did --

A Okay.

Q -- or what you were provided from Mr. Triche, at least, if you can't speak to what he did.

A I was about to, yes.

Q Well --

A Okay. So Mr. Triche identified safety stand-down days and he identified the areas that -- he did an analysis on safety and identified 12 days that he considered compensable safety stand-down days.

What we did is we took those days, looked at the crews

that were affected by the stand-down, and quantified the crew cost for that day. And so this is really more, you know, that we use the daily reports to identify the people and then we went to the labor database to identify the dollars.

And then, basically, my role is more of just a math exercise of calculating those crew days and the average costs, that were the costs, the actual costs there.

And then, so similar to some of the earlier analyses that involve labor costs, you have the actual cost, in this case, $762,441, plus the 50-percent equipment fee of $381,000, for a total of $1,143,662.

And we also, you know, because in some places, it was not always possible to identify whether it was a full day or not, we counted a half-day for each of the 12 days. So this represents 50 percent of those crews' costs for that day.

Q The cost of 12 half-days?

A Yeah. But it's crew-specific and day-specific.

Q So Mr. Slavis, just to sort of roadmap this a little bit, for quite some time, we've been talking about -- can you jump back to the slide that has the three elements of your quantification.

We've really been talking about the first, right?

A Yeah.

I mean, I can. It's a hundred slides. I don't know how it's going to --

Q I'll help you.
A I mean, I can turn to it if that's easier?
Q Yeah. I just want to sum up for the Court that relative to all that equipment and all that analysis that we talked about, those 14 categories, if you could tell me what the -- just remind us what the total quantification is there.
A The total quantification of those categories is $45,306,384.
Q And taking us back, I think you're on Slide 107 of your demonstrative.
Is that the case?
A Yes.
Q Okay. So, in addition to quantifying the categories we've already talked about, what other work did you perform?
What other opinions did you reach?
A So this was another quantification exercise.
As I said earlier in my testimony, I believe Mr. Sztroin testified about the work done by Hillis and Mears and Rosen in investigating pipe anomalies and some remediation work that they did. So, I worked with Mr. Sztroin to identify the proper subcontractors that were included.
And then, within those invoices, if you look at the detail that's in the supporting schedule, it's not every dollar in all those invoices, because there are certain

things that were not included in this analysis, because they weren't related to the work that Mr. Sztroin was discussing.

So --

Q And how did you parse out those costs?

A Well, so the first exercise was to parse it out with his assistance in terms of, no, that's not part of this, and so, literally, looking at each invoice with him.

And then the second part of that analysis was some of the work was done across a bigger part of the spread, than just 5 to 7. I don't believe it was the entire spread, but it was a part, a bigger part of the spread.

So you see, like, for the Mears invoices, we take 76 percent of that, because that was the length of Spreads 5 through 7 versus maybe the whole run that was done by them.

But in total, it was $2,742,108 of invoices, and then after adjustments, the total that we've quantified associated with these invoices is $2,420,774.

Q Okay. And those are -- the quantification of the dent investigation and remediation costs claimed by Transco?

A Yes.

Q Okay. The detail with respect to that analysis, is that -- can that be found in your supporting schedules?

A Yes.

Q Okay. Do you recall which schedule?

A Can I look? Am I allowed to look?

MR. BURWOOD: Your Honor, may he reference his report to refresh his recollection?

THE COURT: Yes.

(Pause)

THE WITNESS: I want to say it's like 15 or 16, but that'll tell you more precisely.

(Pause)

THE WITNESS: Schedule 18 in my original report.

MR. BURWOOD: And, Your Honor, for the benefit of the record, Schedule 18 is Transco Exhibit 2047 and the individual tabs are AM, as in "Michael"; AN, as in "Nancy"; AO; AP; and AQ.

BY MR. BURWOOD:

Q Mr. Slavis, did you quantify any other elements of, or at least include -- do you have a quantification opinion relative to any other elements of Mr. Triche's analysis?

A I don't know that I would call them "quantification," because at this point, I'm literally just taking the numbers out of his report and adding it to my total, so that, at least when the initial report went in, you would have the full value of Transco's arguments.

Q Okay. So we see here, you know, you've got a schedule and (indiscernible) penalty line item for $1.5 million.

Excess welds repair -- you're talking about the things that are on the screen right now?

A Correct.
Q And did you perform any analysis regarding these claims?
A No.
Q And you're not offering any opinions about the claims themselves, are you?
A No.
Q Okay. So they're really raised here just because the total quantity of Transco's position that you're stating includes these numbers for a full picture?
A Correct.
Q Okay. And in that regard, actually, if we turn to Slide 111, we saw this slide earlier, right?
A Correct.
Q Okay. And just remind us, again, these three things that you've now described.
A So you've got the unallowable costs quantified by FTI of $45,306,384.
Q Okay.
A Those are all the individual 14 line items that we went through.
Then the debt investigation and remediation costs of $2,420,774, that was the analysis of certain third-party invoices that were identified by Mr. Sztroin. And then, again, for inclusion, the amounts identified in Brian

Triche's expert report of $14,082,010, all totaling $61,809,168.

Q Thank you.

Mr. Slavis, are you aware that the Court issued some rulings on summary judgment motions prior the trial starting?

A Yes.

Q And did you review those rulings?

A Yes.

Q And did you factor the impact, the quantification impact of those rulings into the opinions that you've expressed today?

A Yes.

Q Okay. Generally speaking, what was the order of magnitude impact of those and what was the type of charges that may have been influenced?

A Not included in these numbers, but what was in my original report is about $11 million of equipment fee markup that was on per diem, per diem tax, and vehicles. So that's been removed, based on our analysis of the rulings.

And the later (indiscernible) the mechanics, I believe, was another ruling that removed about $8 million worth of costs from my original report to the numbers you see here.

Q Okay. Thank you.

Mr. Slavis, we've talked a little bit about your support schedules.

Do you recall that?
A I do.
Q And you relied on those in forming your opinions, correct?
A Yes.
Q Okay. And you prepared those schedules?
A Yeah, my -- me and my team together, yes.

MR. BURWOOD: Your Honor, I'm going to move to admit 47 support schedules from -- prepared by Mr. Slavis in connection with his opinions. They're identified as Defendants' Exhibit 2047A to 2047AU.

We'd ask that they be admitted as Rule 1006 summaries to Mr. Slavis' work. And I have a copy for the Court, because they're contained in our exhibit set, but it's a big box.

MR. GUERKE: I don't think we have an objection, Your Honor. If they're calculations that he performed, similar to what he did with Mr. Gray, but I haven't put eyeballs on all of them and I think I need to do that.

THE COURT: Okay.

MR. BURWOOD: I'm happy to provide him with a copy to do that. It is very similar to what Mr. Gray did. That's the intent of this.

THE COURT: Okay. Yes, I'll give you an opportunity to take a look at it. But assuming there are no

issues, they'll be admitted.

MR. BURWOOD: Thank you.

(Exhibit D-2047A through D-2047AU received into evidence)

THE WITNESS: Okay. Can I make one clarification on those?

MR. BURWOOD: Please.

THE WITNESS: Just because as you brought up Mr. Gray's name, it reminds me, similar to Mr. Gray, these are the exhibits that were attached to my original report.

So some of the numbers are different, like we just talked about, the ones that I removed.

I don't know, did we remove those?

Because otherwise, you'll see a summary total that has that number that is not in this demonstrative.

MR. BURWOOD: Thank you, Mr. Slavis.

I have no further questions.

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

THE COURT: You may.

(Pause)

THE COURT: Why don't we take 5 minutes so Mr. Guerke can re-orient here.

MR. GUERKE: Thank you, Your Honor.

THE COURT: Thank you.

(Recess taken at 2:48 p.m.)

(Proceedings resumed at 2:53 p.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

MR. GUERKE: Thank you, Your Honor.

THE COURT: Uh-huh.

MS. EWALD: Your Honor, I just wanted to let you know that Mr. Sztroin is not feeling well. He has a headache and so he wasn't running from the -- leaving the bar for any particular reason, but ...

THE COURT: No, this is Bankruptcy Court. People walk in and out all the time and I barely notice it. Okay?

MR. GUERKE: Thank you, Your Honor.

Kevin Guerke for the record.

CROSS-EXAMINATION

BY MR. GUERKE:

Q Good afternoon, Mr. Slavis.

A Good afternoon.

Q You are a CPA, correct?

A I am.

Q Your pipeline construction experience includes doing work on three or four pipeline projects, right?

A I think it's closer to five, but yeah.

Q One of those was Western Canada, one was Latex, Kiewit, and then there was one other project, right?

A And this one, yes.

Q One of those was a project for Williams on Spread 4 of the ASR, right?
A Correct.
Q The opinions in your expert report are calculations of amounts, in your opinion, that were unallowable, per the contract, correct?
A In accordance with other supporting documentation and evidence, yes.
Q Before this case, you had never been involved in a case with a contract structure like this one; that is, a reimbursable cost-plus, set fixed-fee of 50 percent for equipment, plus a fixed-fee for profit, right?
A Right. Not specific to the 50-percent equipment fee markup.
Q You've reviewed a lot of contracts and you've never read one quite like this, correct?
A Well, there are others with similar markups or similar fixed-fees, similar cost-plus, but not specific to the 50-percent equipment fee markup on labor.
Q The contract here is unique, right?
A Well, in some degree, they're all unique, but yes.
Q And you were not involved in the negotiations leading up to the contract, right?
A I was not.
Q You said you were involved in the Latex case.

You provided an expert report and gave a deposition in that case, right?
A Correct.
Q And Watt Tieder was the attorneys that engaged you in Latex, right?
A Yes.
Q In preparation of your report, you reviewed depositions of Frank Pometti, Steve Hawkins, Dean McDowell, and Scott Schoenherr, correct?
A That sounds correct, yes.
Q You also reviewed the deposition of David Sztroin on the Transco side, right?
A I believe so. That would have been a long time ago, but yes.
Q You did not review the depositions of the OGCS personnel, Phil Burke or Adrian Green, correct?
A I did not.
Q But you adopted the OGCS database for your work in this case, correct?
A I adopted the non-payroll database after testing it and validating it, yes.
Q You were engaged for this case in July of 2020, right?
A That sounds about right, yes.
Q You know that Welded withheld -- I'm sorry.
You knew that Transco withheld $23.5 million in October

2018, correct?

A I believe that to be the case.

Q You were engaged after that decision to withhold was made, right?

A Correct.

Q As part of your work that led to your opinions, you interviewed David Sztroin, correct?

A Correct.

Q You interviewed Adrian Green from OGCS, right?

A Correct.

Q And you interviewed and met with Jeffrey Goble, in-house counsel for Williams, right?

A Yes.

Q You interviewed the OGCS auditor Adrian Green, but you didn't rely on what he said, correct?

A I interviewed him to understand the work they had done, how they had constructed their databases so that I could start building from there.

Q And you received all of OGCS' audit reports, correct?

A I recall one or two.

As I sit here, I don't know if that's all of them.

Q You had, when you were preparing your expert report, you had two or three direct discussions with Mr. Sztroin, correct?

A Yes.

Q And Mr. Sztroin was on many calls, including calls with you, Adrian Green, and persons from, or people from OGCS, right?
A I believe -- and counsel, but yes.
Q You did not interview Mr. Pew, prior to your May 2022 report, correct?
A Correct.
Q You did not rely on Mr. Pew in forming the opinions in the two reports you submitted in this case, right?
A Correct.
Q And you never disclosed that you relied on Mr. Pew, right?
A No.
Q So if you were --
A Sorry. I think there was a double negative.
Could you please just ask that one again.
Q You never disclosed that you relied on Mr. Pew, correct?
A Correct.
Q You are now relying on Mr. Pew as part of the basis for your opinion, right?
A I think Mr. Pew corroborated what we had done as a team and in discussions with Mr. Triche and Mr. Sztroin. So, yeah, to the extent that, here in trial, he has identified some of the equipment that, you know, as I said, corroborates

our analysis, then I guess I'm relying on what I did and now his testimony.

Q And that's information that you received in the last two weeks, correct, the testimony you're referring to?

A Oh, the testimony? Yes.

Q The information from OGCS was an Excel labor file that OGCS received from Welded supporting its invoices, right?

A I believe it was a compilation of numerous files on the labor side and a compilation of numerous files on the non-labor side.

Q That's what OGCS used to compile its labor database, right?

A Correct.

Q You relied on OGCS' non-labor database for the purposes of quantifying the non-labor billings, correct?

A Correct.

Q You reviewed OGCS' 2019 audit report, right?

A I read it, yes.

Q You reviewed OGCS' June 2019 audit report, correct?

A I believe so, yes.

Q And you used the OGCS non-labor database for the opinions you're expressing in this case, correct?

A Correct.

Q And what you did, as it relates to the OGCS audit findings, is you reviewed them, you considered them, and then

you made the decision not to rely on them as part of your work, right?

A Right.

And I was asked to sort of, other than the reliance on the buildup of the database, kinda start from scratch.

Q A fresh start, right?

A Yes.

Q You know your findings in your two reports differ from OGCS' audit findings, right?

A I would imagine so.

Q You know that some of your opinions are consistent with OGCS' audit findings, right?

A Yes.

Q And you know that some are not consistent with OGCS' audit findings, correct?

A Correct.

Q To the extent your findings are different, your opinions are different, you don't agree with OGCS' findings, right?

A That's either I don't agree or I've had new or different information or they had new or different, you know, information that I never saw. But there could be lots of reasons why we don't agree.

Q But to the extent your findings are different, you don't agree with OGCS' findings, right?

A I mean, again, their findings, I might have agreed with them based on what they were looking at, but with new information or different information, I'd have a different number or category --

I don't know whether you're talking about quantification issues or actual categories.

Q Where your opinions differ from OGCS', you considered your opinions correct, right?

A Well, I consider them my opinions.

Q And you considered your opinions correct, right?

A I try to always consider my opinions correct.

Q On standby equipment, it's one of your opinions that based on emails that are contained in your report, it doesn't appear that the equipment was actually on standby, but was, rather, undergoing alterations, correct?

A Correct.

Q So, in your mind, that doesn't fit the definition of standby equipment, right?

A Correct.

Q You have no specialized expertise in standby equipment, correct?

A I have 20 years of analyzing construction cost contracts where I've had to estimate or calculate the cost of standby equipment. And standby equipment in the construction industry is a relatively general definition.

Q The definition of standby equipment you used in your opinion is not in the contract, right?
A I don't recall specifically what's in the contract on the standby definition, but if you're telling me it's not the same, then I'll accept that.
Q Are you familiar with the email that is referenced in your report from Andy Mack, August 7th, 2017, referencing 30 pieces of equipment?
A From my report?
Q Yes.
A Yes.
Q You know now that you've listened to the testimony over the last two weeks, that the equipment mentioned in that email is different than the equipment on the standby invoice, right?
A Yes.
Q A second part of your standby equipment opinion is that you haven't seen other support to support the costs for the standby equipment, other than the one-page invoice spreadsheet, correct?
A Correct.
Q You know that Welded invoiced Transco for that pre-notice to proceed standby equipment, right?
A Invoiced them for it? Yes.
Q And you know that there are provisions in the contract

that allow Welded to invoice for that equipment, right? Article 26?

A Article 26, pre-NTP delay, yes.

Q Transco never requested the type of documentation that you've identified in your opinion at the time it paid the invoice, right?

A I don't know that. I wasn't involved when they paid the invoice.

Q You've never seen such a request for additional documentation from Transco before they paid the invoice, right?

A I've certainly not seen the documentation, so I assume if they asked for it, they would have got it. But maybe they did. I can't say one way or the other.

Q You have no reason to believe that Transco requested that type of documentation you described, but Welded refused to provide it, right?

A Again, I don't know if they asked for it. I just know that I haven't seen anything.

Q The first time the standby equipment claim was raised was in your May 2022 report, right?

A I know it was in my May report. I don't know if it was ever discussed prior to that.

Q You have no knowledge or recollection of it being raised prior to your report?

A Personal knowledge, no.
Q And that May 2022 report was four years after Transco paid the invoice, right?
A I don't remember the exact date, but it sounds close.
Q You don't have any explanation for why Transco paid the invoice if it's not claiming the documentation was insufficient, right?
A Like I said, I was not involved in the payment. I was not around back then.
Q Did you bring a copy of your report with you up to the stand?
A Yeah.
Q Could you take a look --
MR. GUERKE: And could you pull up his first report, page 60, please. Actually, we don't have to pull it up. If he has it in front of him, I can just ask him the question.
BY MR. GUERKE:
Q Would you look at page 60, please, in your report.
A And 60 as I enumerate it or 60 as in the deposition exhibit number?
Q 60, as in your --
A Oh, I'm sorry, I didn't (indiscernible).
Q -- and I'll give the exact -- it's page 60 -- Exhibit D-2047, page 64.

MR. GUERKE: Actually, why don't we pull it up.

BY MR. GUERKE:

Q This is page 60 of your report; it's page 64 of the exhibit.

And the first part of this part of your report describes that email with the 30 pieces of equipment you just described. I want to focus your attention on the paragraph that follows where you state:

"Based on interviews with Transco personnel, FTI understands that Welded misrepresented the pre-notice to proceed equipment costs as costs incurred by Welded for the lease of third-party equipment when, in fact, Welded owned the equipment in question."

Did I read that part of your report correctly?

A You read it correctly.

Q The person you interviewed to support that misrepresentation statement was David Sztroin, correct?

A I don't reference exactly who, there, but that would likely have been my thought at the time.

Q He told you he thought Transco was getting billed for rented or leased equipment, not owned equipment, correct?

A Again, that's my recollection.

MR. GUERKE: Could you pull up Exhibit PX-171, please.

Your Honor, I may reference some exhibits from

Mr. Sztroin's binder since there's some overlap and I didn't want to make up an entirely new binder.

THE COURT: That's fine.

BY MR. GUERKE:

Q Mr. Slavis, there are two binders next to you that should have David Sztroin exhibits. But I'm also going to pull them up on the screen. It's up to you which one --

A Oh these over here? Sorry.

Q Yes.

A Yeah, I'll do both, if that's all right?

Q Yes, thank you.

MR. BURWOOD: Your Honor, may we have one minute, please, just to get oriented?

THE COURT: Yes, of course.

(Pause)

THE WITNESS: And Mr. Guerke, just to be clear, I have a David Sztroin witness and a David Sztroin cross.

Is that the two you're referring to?

MR. GUERKE: Yes, it's cross that I'm referring to now.

THE WITNESS: Okay.

MR. GUERKE: Your Honor, I have an extra copy if you would like me to hand it up?

THE COURT: No, I've got it. Thank you.

And we're looking for 171?

MR. GUERKE: Yes, Your Honor.

THE WITNESS: And you say that's in the -- I'm sorry -- that's in the cross binder or in the original one?

MR. GUERKE: It's in the cross binder and I should have given you a heads-up on where it is.

BY MR. GUERKE:

Q Mr. Slavis, it's on the screen. It's only a one-page document.

A Okay. It's the one-pager that I already had up, so if that's all it is, I'll -- I guess it says 002, so I'm assuming it's probably something in front of that.

Q Okay. Do you see -- yeah, there's a cover page that just says "exhibit" -- do you see in front of you, PX-171, page 2?

A Yes, sir.

Q This is the invoice you're challenging, right?

A Correct.

Q And to go back to the question I asked, Mr. Sztroin is the one who told you he thought Transco was getting billed for rented or leased equipment, not owned equipment, right?

A I believe that was the case at the time, yes.

Q But this invoice says that, or identifies the equipment, whether it's owned by Welded or not, correct?

A I believe that's the case, yes.

Certainly, Welded-owned. Welded-owned. Cat Finance.

And then as I went through a little in my direct, it's assumed, then, where it says, "Leslie Equipment Co." or "CB Cat," that those are probably leased or rented.

Q So Transco told you that this was all leased equipment and was based on interviews with David Sztroin, right?

A I mean, again, this is quite honestly, the clearest version of this piece of paper I've ever seen. But I now know that that is not the case, based on this document.

Q Yeah, it conflicts directly with what contained in the document, right?

A Right.

To the extent it's Welded-owned, I suppose without anything behind that, it's just the surface of the document, but I'm taking that at its word.

Q But it says "Welded-owned," right?

A It does.

Q So, Mr. Sztroin told you something that is demonstrative demonstratively wrong about this?

A Again, this was a long time ago and that's what I put in my report, but it's not a basis of my opinions today.

Q And you've accused Welded of misrepresentation in your report, right?

A That word you just read was in my report, but again, it's not a word I used today.

Q It's Mr. Sztroin who misrepresented the information to

you, right?

A Or I misheard Mr. Sztroin, but yes.

The statement in my report is incorrect.

Q Transco should have known that some of this equipment was owned, right, because it says it on the invoice?

A To the extent they had a legible copy, yes.

That's what it says.

Q The person you relied on in support of your opinion, David Sztroin, testified this week that he approved the invoice that you're now disputing, right?

A I believe he testified to that.

Q And Mr. Sztroin also testified that the charges for Welded's standby included equipment was incorporated into Amendment 1 to the contract, right?

A I believe that to be true, as well.

Q And you know, because you've been here for the last two weeks, that the contract Amendment 1, was signed by Transco's CEO and approved by David Sztroin, right?

A Correct.

Q For your opinions about specialty equipment versus included equipment, to reach that opinion, you had members of your team review Exhibit 2 and look at excerpts of the Scott Schoenherr deposition, correct?

A Exhibit 2, as well as the included equipment definition in Section 8, as well as all the invoices and other

supporting documentation provided. And, again, individual research on equipment models and numbers and things of that nature.

Q And you reviewed the definition of included equipment in the contract and identified equipment that you thought would fit in the definition of included equipment, but was billed as specialty equipment, correct?

A Correct.

Q It's obvious in some of the reconciliation invoices what's being charged for specialty equipment, right?

A I'm sorry.

In what sense?

Q Do you have -- it's your report -- page 81 of Defense Exhibit 2047, page 81, which is your report, Mr. Slavis?

A Yes.

Q The descriptions, I've directed your attention to page 81 of Exhibit 2047. Your Table 18 lists categories of specialty equipment, correct?

A Right.

Q And those are pulled directly out of the reconciliation invoices, those descriptions?

A Correct.

Sorry, I didn't understand the question before.

Q So it would be clear to anyone who reviewed the reconciliation invoices that a Morooka with FINN straw blower

was being charged, correct?
A If they're looking at it for that detail, yes.
Q Similarly, if a Morooka with FINN hydro seater was being charged, that was also clearly shown on these reconciliation invoices, correct?
A I believe so.
Q And you can see that deckhand is clearly described as specialty equipment on Welded's reconciliation invoices, correct?
A I believe so that to be the case, yes.
Q When you did this exercise with specialty equipment versus included equipment, you discussed it with your team, with Mr. Triche and Mr. Sztroin to get a better understanding of what some of these pieces of equipment were, correct?
A Correct.
Q You talked to Mr. Triche about whether Morookas and crawlers were similar or the same, right?
A Correct.
Q You talked to someone from your office -- forgive me for this pronunciation -- Mr. Gilhooly, and discussed the trench boxes and types of boxes with him, right?
A Correct.
Q Did I pronounce that correctly?
A Gilhooly, yep.
Q You talked to those two to get more industry knowledge

behind what these types of equipment were, right?
A To get a better understanding, particularly, when we talked about things like motor graders and similar models or, in the specific instance you gave about conventional trench boxes versus modular trench boxes.
Yes, I relied on them for that type of information.
Q You talked to Mr. Sztroin to get a better understanding of what different types of equipment, what they are, and how they're used, right?
A Yes, I would say that's accurate.
Q And you discussed with Mr. Sztroin -- you had discussions with Mr. Sztroin, also, to determine if these are typically something you would expect a contractor to provide, right?
A Correct.
Q Mr. Sztroin testified extensively this week, right?
A Yes.
Q And you were present, correct?
A For most of it, yes.
Q And he didn't testify about whether certain pieces of equipment on your list were expected to be provided by a contractor, correct?
A I don't recall all of that.
Q You don't know, independently, what type of equipment a contractor should provide on a construction job, correct?

A Some of it was reliance on depositions and the overwhelming majority of this is all expressly listed on Exhibit 2.

Q You were relying on assistance from others to help make that determination, correct?

A At times, yes.

Q As we discussed, you were getting assistance from Mr. Triche, Mr. Sztroin, and Mr. Gilhooly, because they have industry experience, right?

A Correct.

Q You don't have personal qualifications to offer expert opinions on pipeline construction equipment, correct?

A No, but some of it is fairly apparent in the description and the Exhibit 2, and then looking up the invoices and looking up the models.

But no, I've not worked on a pipeline in the field.

Q Just to clean that up, it is correct that you do not have personal qualifications to offer expert opinions on pipeline construction equipment?

A Expert opinions, I would say probably not.

Q Your only qualification through education or experience, is having to work through documentation and model numbers, but that's about the extent of it, right?

A Well, and in experience, I've been dealing with construction contracts for 20 years, which a lot of this

equipment, while some of it is more specific to pipelines, it's also included on other construction projects.

Q You're relying on Mr. Triche, Mr. Gilhooly, Mr. Sztroin, and others to determine whether a particular piece of equipment should have been billed separately as specialty equipment or should have been included as included equipment, correct?

A In some instances, but in, as I said earlier, the overwhelming majority of these, they are expressly identified on Exhibit 2.

MR. GUERKE: May I approach, Your Honor?

THE COURT: You may.

MR. GUERKE: Your Honor, I'm handing the witness and the Court a copy of Mr. Slavis' deposition transcript.

THE COURT: Thank you.

(Pause)

BY MR. GUERKE:

Q Mr. Slavis, I'm handing you a copy of your deposition transcript.

Do you remember having your deposition taken in this case?

A I do.

Q It's dated November 4th, 2022.

And I'd direct your attention to page 194, line 23, Question -- this transcript states:

"Question: You were relying on Mr. Triche, Mr. Gilhooly, Mr. Sztroin, and others to determine whether particular pieces of equipment should have been billed separate as specialty equipment or should have been included as included equipment, correct?

"Answer: Yes."

Did I read your testimony correctly?

A I'm sorry, what page?

Q Page 194 -- I'm sorry, 193, bleeding over to 194. The bottom of 193. I'll start over --

A Okay.

Q -- if I said the wrong page.

Starting over. Page 193, line 23:

"Question: You're relying on Mr. Triche, Mr. Gilhooly, Mr. Sztroin, and others to determine whether particular pieces of equipment should have been billed separately as specialty equipment or should have been included as included equipment, correct?

"Answer: Yes."

Did I read your testimony correctly?

A You did.

Q As far as education and experience, you don't have any direct pipeline construction experience in the field, right?

A Correct.

Q You have no specialized industry knowledge specific to

equipment, right?

A Other than the equipment I've encountered over the last 20 years, no specialty knowledge, I guess, as you put it.

Q Mr. Slavis, could you take a look at your transcript, page 195.

A Sorry.

Q Actually, strike that, Mr. Slavis. I'll move on.

You've never worked with a contract before where the distinction of specialty versus included equipment was relevant, right?

A I don't believe so, no.

Q You've never classified equipment like this before, right?

A I don't believe so.

Q You've never done the exercise before that you did in your reports, right?

A I've done similar, but not precisely the same.

Q You didn't look at any of the actual equipment in the field, right?

A No.

Q That's correct?

A Sorry.

Could you ask the question again? I apologize.

Q You didn't look at any of the actual equipment in the field, correct?

A Correct.
Q You looked at pictures online, right?
A Correct.
Q In the first cut to determine the included equipment versus specialty equipment was performed by Mr. Gilhooly, right?
A Correct.
Q He went through the equipment and made the determination of what was or wasn't included equipment, correct?
A The identification, yes.
Q Mr. Gilhooly would then talk to you about what it was and whether or not it met the definition of included equipment, correct?
A Correct.
Q After that process, you talked to Mr. Triche with your list and asked him what he thought, correct?
A Correct.
Q Because you don't know, right?
A But at that point, I am more informed than before in having looked at Exhibit 2 and working with my team to identify the different pieces of equipment, but yes, then I went to Mr. Triche and Mr. Sztroin for further verification.
Q So after that process, you had a list of what you had identified as included equipment, right?

A Correct.
Q And you're talking -- you're taking Mr. Gilhooly's opinion, Mr. Sztroin's opinion, Mr. Triche's opinions and you're regurgitating those for your report, correct?
A After doing the analysis and working with them to identify it, yes.
Q It was their opinion that you've adopted, right?
A Right. But as I've said, most of it is on Exhibit 2.
Q But the actual determination of included versus specialty equipment was made by others, right?
A Right.
But Mr. Gilhooly can look at Exhibit 2 and see small vacuum listing units and talk to me about it and say, See, it's right here.
And I go, Okay.
Q But you're the one testifying?
A Correct.
Q There are different types of Morookas.
You know that, right?
A Different types of Morookas?
Q Yes.
A In what sense?
Q Well, you had some Morookas that were basic and then others had specialty attachments, right?
A Okay. So there are Morookas and sometimes they have

attachments on them, yes.
Q Morooka is a manufacturer name, correct?
A Correct.
Q Some Morookas were billed as specialty equipment on this project and some were paid as a part of included equipment, correct?
A I know that some were billed as specialty equipment. I don't think I have any insight as to what was part of included equipment.
Q But you heard Mr. Hood testify when you were here last week and you listened to his testimony, that that is how Welded billed those types of vehicles, right?
A That what was how they billed it?
Q Some of them were billed as specialty equipment and some were paid through included equipment?
A I don't recall that, specifically, but ...
Q Mr. Sztroin told you that Morookas with straw blowers, reclaimers, and vac units were not specialty equipment, correct?
A I believe so, yes.
Q And you discussed with Mr. Sztroin, Table 18, which is page 81 of the exhibit, which is your report.

And he agreed that those should have been included equipment and not billed as specialty equipment, correct?
A Yes, I believe we would have reviewed that with him.

Q And you know that Mr. Sztroin approved the payments of those specialty equipment -- of that specialty equipment, correct?
A I believe he approved the payments of the invoices, yes.
Q So Mr. Sztroin was one of the sources you relied on for your opinion and he's the one who approved the payments you're now challenging?
A Yes.
Q Could you turn to PX-648 in your binder, please.
A Is that the -- is that the David Sztroin --
Q The David Sztroin cross.
You were here for this part of Mr. Sztroin's testimony, where he discussed the contract amendment that he submitted to Williams' executive management, correct?
A Yes.
Q And to re-orient you to this Exhibit PX-648, this is an email from David Sztroin to Rob Krenz. The attachment is "Contract amendment final, dated 6/20/18," and Mr. Sztroin states, "FYI on causes to the increase in costs."
You're familiar with this document, right?
A Yes.
MR. GUERKE: If you could turn to page, I believe it's 11 of the exhibit.
Could you highlight the part with specialty

equipment listed, the second row of that chart.
BY MR. GUERKE:
Q As you saw this week, this document was prepared for executive management for an increase in the budget for ASR, right?
A Yes.
Q And you know Mr. Sztroin was one of the drafters and helped prepare this document, correct?
A I believe that's true, yes.
Q Table 7 on this page 11 is a chart that includes a row titled "Specialty equipment," right?
A Yes.
Q And the far right, under the heading "Spread Number 7" identifies equipment added to the forecast and identifies Morookas with straw blower, reclaimer, and vac units, right?
A I see that.
Q So, I am right?
A That's what that contains, yes.
Q So Mr. Sztroin prepared this document and sent it to executive management, right?
A The whole document? I believe so, yes.
Q And some of the additional costs being requested from executive management relate to specialty equipment, right?
A At least as identified in this table, yes.
Q And those additional costs for specialty equipment were

for Morookas with straw blowers, reclaimers, and vac units, right?

A That's what it says there.

Q Mr. Slavis, referring back to your report, this is Table 18, page 81 of Exhibit 2047, that's the list of included equipment that it's your opinion was billed improperly as specialty equipment.

Are you there?

A I'm sorry, I thought you were putting it up. I was going to use that.

Q It's up.

A Okay. Yes.

Q You identified over a million dollars in trench boxes as included equipment, per Exhibit 2, right, billed as specialty equipment?

A Correct.

Q So conventional trench boxes are included equipment under the contract, right?

A Correct.

Q Non-conventional trench boxes are not included equipment, right?

A Modular shoring systems, yes.

Q Well, only the conventional trench boxes are listed as included equipment, right?

A Correct.

Q So the only thing listed for trench boxes in included equipment are conventional trench boxes, right?
A Correct.
Q So trench boxes that are not conventional are not identified as included equipment, correct?
A Well, the exclusion, I recall, is for modular systems.
Q You determined that trench boxes identified in your Table 18 here are not the slide rail systems, correct?
A Correct.
Q You made that determination by discussing it with Mr. Gilhooly, right?
A And looking up the model numbers, as we've discussed.
Q But your opinion is based on your consultation with Mr. Gilhooly, right?
A Right. Which included all the other work I've described.

MR. GUERKE: Could you go to page 98 of the report, which is on the screen, Exhibit 2047, and Section 6.19.

And the title is "Additional amounts claimed by Transco."

THE WITNESS: Okay.

BY MR. GUERKE:
Q In your report, Section 6.19, titled "Additional amounts claimed by Transco," it is stated in your report:

"In addition to the overbillings identified above, Transco has also incurred legal fees. It is our understanding that Transco is entitled to recovery of attorney's fees under the Pennsylvania Contractor and Subcontractor Payment Act in the event it is determined to be the substantially prevailing party.

It's our understanding that those amounts will be quantified at a later date."

Did I read that part of your report correctly?

A You did.

Q You know that that Act is referred to as "CASPA," correct?

A I believe so, yes.

Q So it's your opinion contained in your expert report that Transco is entitled to attorney's fees under CASPA, correct?

A Well, it's listed in my expert report, but it's not really my opinion.

When I use terms like "it's my understanding," it's being sourced from elsewhere.

Q And "elsewhere" is the Act itself, right, CASPA?

A Can -- I mean, I am not familiar enough with CASPA to know whether or not that entitles you to attorney's fees.

Q Transco told you that, right?

A I don't recall precisely, but someone, probably.

Q Probably?

Someone from Transco, right?

A I don't think so.

Q You don't think someone from Transco -- okay. Let me --

Did an attorney tell you that?

MR. BURWOOD: Your Honor, he's asking him to reveal communications with counsel --

THE COURT: I'm sorry?

MR. BURWOOD: He's asking him to reveal communications with counsel.

THE COURT: Well, I don't know if he is or not.

He can ask that question.

MR. BURWOOD: He just did.

THE COURT: He just did. He asked.

MR. BURWOOD: So, I object.

THE COURT: Well, he -- no.

MR. BURWOOD: Well, I don't object to this question.

It might be another question.

THE COURT: Yeah.

THE WITNESS: I'm sorry, could you read it back or repeat the question?

BY MR. GUERKE:

Q Was your understanding expressed in Section 6.19 from

counsel?
A I believe so.
Q You know that, as we discussed earlier, that Transco withheld over $23 million from Welded, based on OGCS' audit findings, right?
A I don't know the exact connection, but I know that OGCS was performing their audit around that time and that's when they withheld that payment, yes.
Q And you reviewed that October 4th withholding letter, right?
A Yes.
Q You were instructed to develop opinions independent of OGCS' work, right?
A Correct.
Q That's the fresh start that you described earlier?
A Correct.
Q So as far as OGCS' audit findings go, they were sufficient for Transco to withhold money from Welded, but not sufficient to use in your process, right?
A Well, if I'm going to provide an expert report and expert opinions, that needs to be my own work.
Q And you didn't rely on OGCS' audit findings for your work, right?
A Just the compilation of the data.
Q As far as your methodology goes, you reviewed the

contract, right?
A Correct.
Q You reviewed the payment applications or the invoices, correct?
A Correct.
Q You looked at various clauses of contract, correct?
A Correct.
Q You determined what costs you thought might be unallowable, right?
A Correct.
Q Then you would quantify those costs, correct?
A Correct.
Q In that process, you are interpreting the contract, correct?
A Well, I'm using the contract to identify costs that I feel are not consistent with the compensation sections.
Q The compensation section of the contract, right?
A Correct.
Q So through that process, you are determining whether Welded violated the contract with its invoices, correct?
A I'm just identifying the amounts that I find inconsistent with the language. I'm not making an assessment of contract violation.
Q You were provided with contract interpretations before you reached your ultimate conclusion in your opinion, right?

A I'm sure I would have discussed various clauses with my team and the attorneys, as well.

Q Well, at that point, you knew how Transco was interpreting the contract, right?

A Well, I mean, if I'm talking to somebody from Transco and that's what they're telling me, then I know how they're interpreting the contract.

Q You also reviewed the pleadings, the complaint, the counterclaim in this case, right?

A Yes.

Q And before you came up with your views on what was allowable or unallowable, you already had reviewed OGCS' interpretation, correct?

A I reviewed their audit reports, yes.

Q It's your opinion that Welded never achieved final acceptance and did not earn the retained portion of the fixed fee, correct?

A I believe that's one of those paragraphs that probably starts with "It's my understanding..."

Q You are correct.

Your report states:

"However, it is FTI's understanding that Welded has never achieved final acceptance and, accordingly, did not earn that retained portion of the fixed fee that's on page 29 of Exhibit 2047."

Do you see that part in the first sentence of the last paragraph?

A I do.

Q That understanding about "final acceptance" that determination was based on discussions you had with counsel and the client, correct?

A Correct.

Q Not achieving final acceptance is the sole basis for your opinion that Welded did not earn the final installment of the fixed fee, correct?

A I mean, I would say that's the only thing I've included in this report, but since it's not really one of my opinions, I wouldn't have gone further than that.

Q And you heard Mr. Sztroin, yesterday, testify about the final acceptance of Welded's work, right?

A I'm trying to recall if I was in here for that.

Maybe if I heard a little more?

Q Mr. Sztroin testified yesterday that acceptance of the work was when Welded conducted the final tie-in weld on the pipeline in preparation for placing the pipeline into service.

You recall that testimony, right?

A I mean, I recall it being a longer discussion than that. I thought he had said more than just that about that issue.

Q And when I asked him when that was, when the last tie-in weld was, he said:

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

You recall that testimony, right?

A The last tie-in weld being September 19th; I believe I do, yes.

Q You know that Transco received FERC approval in October of 2018, also, right?

A Correct.

Q And the understanding that's provided here -- strike that question.

Mr. Slavis, it's your opinion that labor costs for actual work performed are paid in accordance with the contract Section 8, Article 2(d), right?

A Correct.

Q In your opinion, actual work performed is the work performed, per the contract, what's defined as "actual work performed" in Section 2(d), correct?

A Yes, that was in my report.

Q And that contract interpretation position is different than the reasons Transco gave Welded in the October 4th withholding letter, right?

A I don't know, as I sit here.

Q You know that, since you've read the reports, that that

position is different than OGCS' audit findings, right?
A I honestly don't recall.
Q You know that Transco didn't withhold money from Welded based on your interpretation, correct?
A I don't know.
I wasn't there, then.
MR. GUERKE: Could you pull up JX-0486 [sic], please.
THE WITNESS: Is this in a binder, sir?
MR. GUERKE: I'm sorry, I should have told you this.
There's a JX-1 --
THE WITNESS: Oh, it's a contract --
MR. GUERKE: It's been a long week.
JX-1, page 486. There's a large binder in front of you --
THE WITNESS: Yeah.
MR. GUERKE: -- of the contract, about a thousand pages. It should be paginated.
THE WITNESS: I didn't hear you say "JX-1," otherwise, I would have known.
MR. GUERKE: I may not have said it.
And ask you zoom in on labor costs, please.
BY MR. GUERKE:
Q Per diem is a labor cost under the contract, right?

A I see it there in that paragraph, yes.
Q Travel pay is part of labor costs under the contract, correct?
A Correct.
Q It's your opinion that living and travel expenses are not eligible for the equipment fee markup, because they are not part of actual work performed, correct?
A That was my opinion at the time of my initial report, yes.
Q Those items may be part of the definition of labor costs, but they're not part of the definition of labor costs for actual work performed in your opinion?
A That's how I based my opinion at the time, yes.
Q And the definition you're using for "actual work performed" is Subsection (d), right?
A Believe it says, "Per Subsection (d)," yes.
Q So in your opinion, you were parsing out the phrase "actual work performed" to determine that certain of these living and travel expenses are not eligible for the equipment fee markup, right?
A That was in my initial report, yes.
Q As you know, and you're looking at it now, that labor costs are or is a defined term in the contract, right?
A Correct.
Q And whatever's outlined in the definition of labor

costs gets the 50-percent equipment fee added to it, correct?
A I believe if you went to the equipment fee definition, it's going to say, "labor costs for actual work performed."
Q And as defined, in your opinion, "actual work performed" is defined in Section 2(d), right?
A Yeah, that's on 489.
Q You know the word "work," as used in the contract definition of labor costs is a defined term in the contract, right?
A Correct.
Q And you know that the definition of the term "work" in this contract is different than the dictionary definition of the word "work," right?
A Yes.
Q Under your interpretation of the contract, the equipment fee is not applied to everything that falls under the definition of labor costs, correct?
A That was in my initial report, yes.
Q You interpret the contract to mean that the definition of "labor costs" includes fringe benefits, but the definition of "labor costs for actual work performed" is just the wages and base benefits, correct?
A I believe that was from Subsection (d), versus (f) and (g), if my recollection is accurate.
Q Well, labor costs include wages and benefits paid to

union personnel under union agreements, correct?
A Yes.
Q Labor costs include wages and benefits paid to field personnel, correct?
A In accordance with Exhibit 1, yes.
MR. GUERKE: Could you, on the same page, Exhibit JX-1, page 486, could you pull up the definition of "field personnel" at the bottom.
BY MR. GUERKE:
Q This is the definition of "field personnel" in the contract, correct?
A Yes. I thought there was another section where it's defined, though.
Q This definition of "field personnel" in the contract means any contractor, direct employees, and/or agency personnel, excluding home office personnel who perform work in the field, correct?
A Correct.
Q There's no reference to Exhibit 1 in the definition of "field personnel," right?
A In that definition, no, but I think it is on Exhibit 1.
Q That wasn't my question.
Exhibit 1 is not referenced in the definition of "field personnel," correct?
A It's not referenced in that definition on page 486, no.

Q Labor costs include fringe benefits, right?

MR. GUERKE: Could you pull up labor costs, again, please?

THE WITNESS: I'm sorry, I forgot.

What's your question?

BY MR. GUERKE:

Q For labor costs, it includes fringe benefits, correct?

A Fringe benefits and, you know, it lists all the other things in accordance with Exhibit 1, actually paid to NPLA and field personnel for actual work.

Q Employee vehicle pay -- strike that.

Employee vehicle rental/pay is a labor cost under the definition of "labor costs," right?

A It's included in that list, yes.

Q Fuel pay is a labor cost under the definition of "labor costs," right?

A Correct. It's listed there.

Q Payroll taxes and insurance, in accordance with Exhibit 1, actually paid to NPLA and field personnel, in connection with payment for actual work is a labor cost, as defined in the contract, right?

A That's what that says.

Q Part II, or 3, in the definition of "labor costs" does not include the phrase "actual work performed," right?

A Well, it does at the end there, yes.

Q It just says, "actual work."
A Okay.
Q So it doesn't have the phrase "actual work performed," right?
A The word "performed" is not there, but you've got to perform work.
Q It's your interpretation of the contract that rig rental costs are part of included equipment and are, thus, compensated to Welded by the equipment fee, right?
A That's the basis for my calculation, yes.
Q The contract provides that the definition of "labor costs" include wages and benefits provided under the NPLA Union agreements, correct?
A Yes.
Q And what you're challenging here in your opinion are the welding rigs that welders bring to the job, right?
A Correct.
Q Welded Construction, the company, pays the union welder for rig pay under the union contract, correct?
A It rents those rigs from them, yes.
Q Well, it pays them, as a benefit, under the union contract, correct?
A My read of the contract, if you're asking, is that it's a rig rental pay. That they're renting from them, separate from payroll.

Q But you know that the rig is not owned by Welded Construction, correct?
A Correct.
Q So it's your interpretation of the contract that an individual welder's rig that he or she brings to the job is part of the definition of "included equipment" as vehicle trucks and machinery, correct?
A Because the definition of "included equipment" says "owned, leased, or provided by."
Q So it's your interpretation of the contract that an individual welder's rig that he or she brings to the job is part of the definition of "included equipment" as vehicle, trucks, and machinery, correct?
A Correct.
Q And the rig rentals, as you describe it here that you're challenging, are the laborers' own rigs, right?
A Correct.
Q And the rigs are being provided by the welders themselves, right?
A You used "laborers"; I assume you meant "welders," but yes, we're talking about the same thing.
Q The definition of "included equipment" says "provided by contractors," correct?
A Correct.
Q But what you're --

A I believe it's a capital C, contractor, isn't it?
Q Capital C, contractors?
A Is it -- I don't recall. I don't remember if it was capital C, like the contractor in this contract or -- can I look?
Q You may.
A Okay. Yeah, contractors.
Q Lowercase, right?
A Yes.
Q Okay. I don't know if you answered my question, so I'll ask it again.
A Okay.
Q What you're challenging in your opinion is not owned, leased, or provided by contractors; it's provided by individual welders, right?
A And I'm saying it's provided by the contractor, in the sense that it's rented from the welder, the same way it would be rented from a third party, or owned, or leased.
Q The definition of "included equipment" doesn't specifically include the laborers, the welders, the individual welders, right?
A The people or you mean their machines?
Q The definition of "included equipment" does not specifically include individual welder's equipment, correct?
A It just says, "Materials, equipment, tools, vehicles,

machines," and then romanette (ii), "vehicles, trucks, and machinery," romanette (v), "tools."

Q It doesn't say "provided by individual union welders"?

A It does not say that, no.

Q Additional support for your opinion is the deposition of Scott Schoenherr, right?

A Correct.

Q And that can be found, at least the page you're relying on, on page 36 of Exhibit D-2047.

That's your report that we were referencing before.

A I'm sorry, what page?

Q Page 36, the paginated page 36. It's at the of the exhibit.

A Oh, that's probably -- it's Exhibit 36.

Q Oh, no, I'm sorry.

It's your report. The exhibit number for your report is 2047 and the page that's stamped on your report --

A Right. 30 -- I meant exhibit number, page 36, not my page 36.

I'm where you are.

Q Okay. Yes, it's your page 32. I'm sorry.

And the quote from Mr. Schoenherr is on that page, right --

A Yes.

Q -- lines 13 through 24?

A Yep.
Q It looks like page 68 of his deposition.
And what you quote here is:
"Question: And was the purpose of the payment to the welders to cover the expense of the equipment they were providing, i.e., the welding rigs?
"Answer: Yes.
"Question: And is that -- is it typical that the welders provide their own welding rigs on these types of pipeline projects?
"Answer: Most definitely.
"Question: And in instances where the welding rigs aren't provided by the craft labor, are they typically rented by the contractor?
"Answer: Yes."
BY MR. GUERKE:
Q That's the part of Mr. Schoenherr's deposition you're relying on to support your opinion, correct?
A Correct.
Q And in that testimony, Mr. Schoenherr testifies that welders, the craft labor, are the ones providing the welding rig, correct?
A Right. The ones that the contractor is renting them from.
Q Mr. Schoenherr then testifies that it is typical that

welders provide their own welding rigs on these type of pipeline projects, correct?

A That's what that says, yes.

Q So what he's saying is that it is most definitely typical that individual craft welders provide their own welding rigs on those type of pipeline projects, correct?

A Right.

And, again, as I cited in my direct, although, to be fair, this was -- we were getting into a bit of a pause at this point -- but that it's rented by the contractor through the welder.

Q The next question he's asked are:

"For instances where the welding rigs are not provided by the craft labor, are they typically rented by the contractor?"

Right?

A Yes.

Q So he's describing two different instances where welding rigs could be provided on a typical project, correct?

A Well, in the basis for my opinion is that "provided by contractor" is leased, owned, or provided by, whether rented from a third party, or in this particular case, the welders themselves.

Q But he's describing two instances, two different instances where welding rigs could be provided on a typical

project.

You agree with that?

A I see it as two different ways to provide a welding rig: through a welder or through a contractor or rented by someone else through a third party.

Q The part you're challenging, the, I think it's over $8 million, relates to "welding rigs provided by craft and labor welders," right?

A Correct.

Q The relevant union contracts require Welded Construction to compensate welders for those welders bringing their own welding rigs to the job, correct?

A To provide rig rental, yes.

Q The definition of "labor costs" includes employee fringe benefits, vehicle rental/pay, right?

A Yes.

Q You're familiar with pre-job agreements that are a part of NPLA Union contracts, correct?

A I have seen them, yes.

MR. GUERKE: Could you pull up JX-18, please.

It's also in the binder if you want to take a look. It's maybe 10 exhibits in.

THE WITNESS: This is?

MR. GUERKE: JX-18.

THE WITNESS: So what binder is this?

This isn't in the contract binder, right?

MR. GUERKE: It's -- I'm sorry, it's not in the contract binder. It is in the David Sztroin cross binder, the other big binder you were looking at earlier. It's also on the screen.

THE WITNESS: Okay. I'm caught up.

BY MR. GUERKE:

Q JX-18, it is an email, dated October 10th, 2017, and it includes the UA pre jobs for ASR Spreads 5, 6, and 7.

You're familiar with the attached pre jobs for United Association Pipeline Union members, correct?

A Yes.

MR. GUERKE: If you could go to page 3 of that exhibit.

BY MR. GUERKE:

Q Page 3 of that exhibit is the welders union's pre-job conference report that becomes part of the NPLA Union agreement, correct?

A It's certainly part of this document, yes.

Q You've listened to testimony over the last two weeks.

You know that these pre-job agreements become part of the NPLA Union agreement, right?

A I mean, I know they've been talked about in that vein. I don't know that that is a -- I don't know that these are part of the contract.

That's just a personal knowledge thing.

Q But you've listened to the testimony this week, right, and we had multiple witnesses, including Transco witnesses testify to that fact?

A I mean, I don't recall that specifically, but if that's what's in the record, then I don't have a reason to argue against it.

Q You know that this pre-job agreement includes wages and benefits owed to union welders, right?

A It's got fringe rates at the top. It's got wages on the right. And then the section on "remarks," yes.

Q So do you disagree that these reports are part of the union contract?

A I believe they get amended to the union contract.

I don't -- I mean, that's more of a legal thing than an accounting thing.

Q I'm sorry, could you repeat that? I was getting a --

A I said I believe they're amended to the union contracts, but that's more of a legal thing than an accounting thing.

Q So you believe that they become amendments to the union contract; is that what you're saying?

A I guess.

And even that, I'm using the word "amendment"; I don't even know if that's the correct term or not.

Q Well, you've read the contract and you know that the definition of NPLA includes pre-job agreements, correct?
A I believe that's what the contract says, yes.
Q If you could focus your attention on the bottom part where it says "remarks"; it's in a box.
A Yes.
Q Do you see on the first line, the remarks that:
"Under this agreement, journeymen are entitled to $50.50-a-day per diem."
Correct?
A Correct.
Q And you know from reading the Court's decision, that that's part of the per diem in the Court's summary judgment motion, right?
A I think so, yes.
Q And if you slide down one, two, three, four -- the fourth line, about 75 percent to the right, do you see the part that says, "rig pay"?
A Yes.
Q It states:
"Rig pay shall be $17 an hour WEP."
Correct?
A Correct.
Q And then two lines below, it says:
"Welders need driver's license and proof of

insurance for welding rig."

Correct?

A Correct.

Q So union members, under this union agreement, are entitled to rig pay of $17 an hour WEP, correct?

A Under this pre-job conference, yes.

Q That's part of the benefits that they're entitled to receive, correct?

A That's part of the pay, yes.

Q Under your interpretation of the contract, these payments that are due to union members under this pre-job agreement are not part of labor costs, right?

A Under my interpretation, they're compensated to Welded, through the equipment fee multiplier.

Q Well, isn't it your interpretation of the contract that they're not included because you believe it's not for actual work performed?

A That was an equipment fee markup argument, I believe, or that was on the other vehicles.

The primary basis for my opinion is that it's included equipment.

Q Have you changed your view or do you have multiple views on the definition for how this contract is interpreted?

A I might have had additional information in my original report, if that's what you're referring to.

Q Let's take a look at your deposition.

Do you still have that in front of you?

A Okay.

Q And I'd like you to go to page 91 -- and I'm going to read a few of the questions before here so this has some context -- 91, line 13:

"Question: This specifically says rig pay shall be $17 an hour WEP, right?

"Answer: That's what it says, yes.

"Question: And that's a benefit to union personnel under the union contract, right?

"MR. BURWOOD: Objection to form.

You can answer.

"Answer: It's part of what they're entitled to receive, yes.

"Question: That's part of their benefit package under the union contract, correct?

"MR. BURWOOD: Objection to form.

You can answer.

"Answer: I mean, benefit of third-party expense, yes. It's something they're entitled to receive.

"Question: Therefore, it's part of labor costs, as defined in the ASR-Welded contract, right?

"Answer: To me, it's not, because it's not for actual work performed; it falls under the vehicle rentals,

which is covered by (f) and (g)."
BY MR. GUERKE:
Q Did I read your testimony correctly?
A You did.
Q But you know a welding rig is not a vehicle, right?
A It's on the vehicle.
Whether it's part and parcel, I suppose, is a term of art, at that point.
Q But it's not the vehicle, correct?
A I mean, I thought Mr. Pew described it as all one unit; the rig on the back of the vehicle as the welding rig.
Q It's something -- the welding rig is on the vehicle, but it's not the vehicle, right?
A I mean, again, it sounds like a parsing that -- they don't get paid separately for one or the other. They get paid for their rig, which is a compilation of the two.
Q Could you go back to your deposition, please, page 92.
A Yes.
Q Page 92 of your deposition, line 9:
"Question: But this is not for a vehicle. This is a welding rig, right?
"Answer: Which is on the vehicle. It's similar to me."
BY MR. GUERKE:
Q Did I read your testimony correctly?

A Yes.
Q Mr. Slavis, are you still challenging the truck pay that are paid to union members?
A I believe that is part of the eight-hundred-and-sixty-some-odd-thousand vehicle pay.
Q So you are still challenging it?
A Yes.
If that's where that number is, I believe so, yes.
Q I know some came out of your calculation. I didn't know if that was one of them.
MR. GUERKE: Could we go to PX-126. It's in the binder --
THE WITNESS: I got it.
MR. GUERKE: -- the Sztroin binder.
BY MR. GUERKE:
Q Mr. Slavis, I'll direct your attention to PX-126. The first page, like the last one, is an email dated 9/08/2017, and attached to this email are pre-job agreements for operators and laborers for Spreads 5, 6, and 7.
Do you see what I'm referencing?
A I do.
Q Could you turn to page 4, please.
And you agree, like the last one, this pre-job agreement is part of the union contract, correct?
A Again, with the same caveats of legal conclusions I

said before, I believe this gets assumed as part of it.
Q And it looks like an amendment or an addendum, right?
A I think so, yes.
Q And according to this pre-job agreement, pipeline stewards get truck pay of a hundred dollars a day, right?
A Or, at least in this case, it appears that Mike Sanopoli (phonetic) gets it.
Q And also, plus gas, as a fuel allowance, and a cell phone, correct?
A Correct.
Q And this is one of the items you are challenging as unallowable, correct?
A I would have to look to see if it's this person or this steward specifically, but conceptually, I used Exhibit 1 for the basis of my analysis.
Q But what you excluded as unallowable in your analysis are -- is truck pay, paid to union members, right?
A What I excluded from my analysis is the pre-job conference reports.
Q So any truck pay associated with a pre-job conference report, you excluded from your -- you determined was unallowable, right?
A Unless it's consistent with Exhibit 1.
Q So in the case of Sonny Weems, which is on the screen here, you determined that Welded Construction does not get --

it's not a labor cost under the contract for Welded Construction to pay Sonny Weems a hundred dollars a day for truck pay, right?

A I'm sorry, could you repeat that?

Q Under your interpretation of the contract, labor costs do not include the payments that Welded Construction made to Sonny Weems, a hundred dollars a day for truck pay, right?

A Well, again, as I sit here, I don't know that. One, I think Sonny is the representative, not the person. Two, I don't know if I specifically exclude or unallow any costs to Mr. Sanopoli or whether or not they're consistent with Exhibit 1.

But if steward is not on Exhibit 1 to receive truck pay, then it is not in my calculation.

MR. GUERKE: Could you go to Exhibit PX-138, please.

BY MR. GUERKE:

Q PX-138 is the next set of pre-job agreements. This one is for the Teamsters. The cover email is dated 9/28/2017.

And I'd like to direct your attention to page 14. This is another pre-job agreement, like the other ones, that is an amendment or an addendum to the union contract, correct?

A I mean, it says "Pipeline pre-job" at the top, so I assume it's -- assuming that's the same thing as the other ones, yes.

Q So under this pre-job agreement, page 14, this union member is entitled to steward truck pay of $75 a day, plus fuel, correct?

A That's what it says there.

Q In your analysis, you've determined that Welded's billing for that $75 a day was unallowable, correct?

A If that steward truck pay is not identified on Exhibit 1, I did not include it on my analysis.

Q Mr. Slavis, I noticed that on your chart in your slide deck today, it has a different number for the total amount of rig rental that you determined was unallowable than the one in your report.

Are you familiar with that difference?

A I think I know what the difference is, but I don't think it's a rig rental difference.

Q I want to understand what it is.

So let's go to your demonstrative exhibits, and in your demonstrative exhibit, it's Slide 15.

A Okay.

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

THE COURT: Sure.

MR. GUERKE: I need to find my page.

(Pause)

MR. GUERKE: Okay. I figured it out.

Thank you, Your Honor.

BY MR. GUERKE:

Q Mr. Slavis, in your expert report, which is Exhibit 2047, page 8, there's a summary of unallowable costs.

And the unallowable costs for rig rental costs is $8,828,188.

On your Slide 15 of your presentation today, the number for unallowable rig rental costs is $10,535,530.

A Yes.

Q I know that you've changed some of your calculations to take into account that summary judgment motion.

A Correct.

Q Could you complain or just tell us how you got the extra almost $2 million?

A Yes.

So if you go to Slide 23 from today's demonstrative and if you look at page 35 of the original report -- and that's my page 35, so exhibit page 39 -- so the rig rental number hasn't changed. It has changed -- or the Welded rig rental number hasn't changed.

The mechanic rig rental number has gone up and the adjustment there accounts for -- originally, in my first report, we were excluding all of the mechanic costs as provision and supply of included equipment. And based on one of the summary judgment motions, that was deemed to be allowable by the judge.

But when we disallowed all of those costs, it was their wages, plus their rig rental. So the rig rental was the same as, to me, as the welding rig rental. So when we put the labor back in, we pulled the rig rental out -- I'm sorry -- the mechanic rental out -- let me be clear -- mechanic rig rental.

So mechanics were having -- getting rig pay the same way welders were. We were originally excluding it all and then when it was determined that the mechanics' wages were an allowable cost, then it's just the mechanics' rigs that are included in this number now.

Q So the rig pay the mechanics get is now included in your $10.5 million number?

A Correct.

Q Well, you determined that rig pay that welders gets -- get is unallowable?

A No, because both of those are in the $10 million number as unallowable.

MR. NEIBURG: Did you understand that?

(Laughter)

MR. NEIBURG: Well, there's a difference between an understanding and an agreement.

(Laughter)

MR. GUERKE: Would now be a good time to take 5, Your Honor?

THE COURT: Sure. Why don't we take 10.

(Recess taken at 4:32 p.m.)

(Proceedings resumed at 4:49 p.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

MR. GUERKE: Thank you, Your Honor.

CROSS-EXAMINATION (Cont'd)

BY MR. GUERKE:

Q Mr. Slavis, I have some follow-up questions for the increase in the mechanics' rig rental. I need some more clarification.

MR. GUERKE: So could we pull up Exhibit 2047, page 46, and then in your slide deck from today, page 23.

BY MR. GUERKE:

Q Mr. Slavis, on the left is page 46 of the exhibit and on the right is your slide deck from today.

Putting aside the numbers, is the mechanical labor described on the left side, does it correspond with the mechanical rig rental on the right?

A A portion of the amount under "amount invoiced" under Table 7, is for mechanic rig rentals.

So in the initial report, I was considering an unallowable of the entirety of both, the wages and the rig rental. And then as I understand the order, you know, the argument on the wages was that it was provisions, supply, and

equipment.

So now that that ruling was made and the mechanic labor is allowable, the portion of that amount invoiced that was rig rentals, I'm considering included equipment, the same way I'm including welding rig rentals. So all the same discussion we had on welding rig rentals.

Q Okay. Let's start your original opinion for the mechanics' labor, that totals $9.3 million, that you determined was unallowable.

Are you with me?

A Yes.

Q What was your reason, at the time of your report, May 2022, to determine that that $9.3 million was unallowable?

A That it was part of, under the equipment fee definition for provision and supply of included equipment.

Q And what is your reason today for excluding part of that number?

A If you -- and maybe this will make it clearer -- if you look at page 35 of my original report, so exhibit page 39, there was a portion of mechanic rig rentals in our original unallowable rig rental cost. So, just looking at the variance in the numbers, it looks like there's about a million, one-hundred-thousand dollars' worth of rig rentals in that $6.2 million invoiced amount.

Back to Table 7. So the wages are out and the rig rental portion of that is back in the unallowable rig rental course.

Q I'm sorry, I didn't follow.

Where are you in your expert report?

A So if you look at the original report, 2047.0039 --

Q Yes. Table 6?

A Table 6.

Q Okay. I'm with you.

A The unallowable rig rental cost has two pieces. It's identical to the table that you see on the right from today's exhibit. So you'll note that the welding rig rental number has not changed. The mechanic rig rental number has gone up by slightly more than a million one. That million one came from the other table you just had up -- I believe it was Table 7 -- and was included in that mechanic labor amount.

So when we put the wage -- when we took the wages -- I don't know how to say, whether to put them in or take them out -- we removed from our calculation, the mechanics' wages that were in Table 7, but some of that was also rig rentals.

So now that we're not excluding it in Table 7, the rig rental portion of that, I'm counting as unallowable under the included equipment section here, along with the welding rig rentals.

Q So for different reasons, right?

A Well, because I didn't need to do it twice in the initial report.

There's a lot of -- I mean, there is a lot of places where a number could be removed in multiple places. Like general liability insurance, for instance, we, for lack of a better term, we take that off the top and say, Based on all the things I discussed earlier, general liability expense, because it's a third-party (indiscernible) because of Article 8, is not an allowable cost. So then every other time you see a labor amount, it's already got that general liability expense removed; I don't count it twice.

So this, I wouldn't have put it here in Table 6 in the original report, because it was already in Table 7; otherwise, I would have been double-counting.

Q Thank you, Mr. Slavis.

And part of your opinion relates to unallowable, non-NPLA labor costs, right?

A Correct.

Q There's a little more than $5 million, correct?

A Inclusive of the equipment fee, yes.

Q And you determined that under the contract, there are 27 non-NPLA employee titles that do not appear to perform the functions of field personnel described in Exhibit 1, and then you determined that those are all unallowable, right?

A That was what was in my initial report, yes.

Q I mean, are you suggesting that that reason has changed?
A No.
Q That's still your opinion today?
A Yes.
Q To determine that those 27 non-NPLA employees that do not appear to perform functions of field personnel described in Exhibit 1, you compared the title of the person and your understanding of what might -- what they might be doing to the labor classifications listed on Exhibit 1, correct?
A Correct.
Q To gain that understanding, you talked to David Sztroin, you used your experience, and you discussed it with Mr. Triche, right?
A Right. Because different -- as I think I testified in my direct, some titles are obvious, some titles are more specific, and so I sought the industry help where there was overlap or where there wasn't overlap, I guess.
Q You have no knowledge of what the 27 non-NPLA employees actually did for Welded on the project, correct?
A Other than the basis of based on their title.
Q The only information you referenced to describe what these non-NPLA employees actually did was the Z crew classification, correct?
A That was one of the analyses in my initial report, yes.

Q Z crews, by your definition, are the labor people that were assigned to a crew, right?
A Well, almost all the labor people are assigned to a crew.
These are individuals, as we used the term, that were assigned to a Z crew.
Q And you got that knowledge from looking at payroll data, correct?
A Correct.
Q And the payroll data was whether these people received per diem to determine if the employee was actually located in the field, correct?
A That was a separate analysis after the first analysis.
Q The first analysis being your assessment of their function?
A The assessment of their function against the titles in Exhibit 1.
Q And that was with your consultation with Mr. Sztroin and Mr. Triche, right?
A Where it necessary.
Some of the titles were more generic business titles.
Q So the other part of that opinion, you looked at payroll data and determined whether the worker received per diem to determine if the employee was actually located in the field, correct?

A Right. And the assumption was if they're not getting per diem, they're not in the field.

I think that's about $176,000 of that number.

Q Whether someone receives per diem is not part of the definition of "field personnel."

Correct?

A It's just indicative of whether or not they're in the field, to me.

Q Whether someone receives per diem is not part of the definition of "field personnel."

Correct?

A I don't believe that's in the definition, no.

Q So under your interpretation, Transco gets the work for free for any of the non-home office personnel that you've identified, correct?

A No. They get compensated in the fixed-fee portion of the contract.

Q And that would result in a $5.3 million reduction of their fixed-fee, right?

A I wouldn't consider it a reduction; I would consider it as one of the things they're compensated for in that $50 million fee.

Q You've identified the people that are not in accordance with Exhibit 1, which makes the 27 non-union labor classifications as non-reimbursable in your opinion, correct?

A Correct.
Q And if you look at your report, Exhibit 2047, page 51, this is your Table 8, right?
A Yes.
Q So it's your opinion that Table 8 employees were not in the field because they don't get per diem, correct?
A No. This list is based on a comparison of those titles to the titles in Exhibit 1, which are on page 50.
Q So if the titles on Exhibit 1 do not match exactly the titles that Welded used in its payroll database, you exclude them, correct?
A No. That's why I say we looked at the functionality of the title.
Q So based on that functionality analysis, you determined that these titles do not have field functions, right?
A I determined that these titles are not consistent with Exhibit 1.
Q You don't know where any of these people with these titles work, correct?
A Other than some of them were identified with Perrysburg-use only, no, I don't. I was not there to observe any of that in the field or in the home office for that matter.
Q One of the titles here is field subcontracts administrator, right?

A I see that.
Q You don't know, one way or the other, where the field subcontracts administrator works, right?
A I do not.
Q Another one here is general superintendent.
You don't know, one way or the other, where the general superintendent worked, correct?
A Again, it's a comparison of these titles to Exhibit 1, which, in that case, had superintendent and assistant superintendent, but not general superintendent.
Q So you don't know where the general superintendent works, right?
A Other than reading Mr. Schoenherr's deposition.
Q Another one at the bottom there is the site equipment manager, right?
A Correct.
Q You don't know, one way or the other, where the site equipment manager worked, correct?
A I do not.
Q Those are three titles that are associated with work in the field, correct?
A I mean with the word "field" in the "field subcontracts administrator" and the word "site" in "site equipment manager," again, a general tends to go to all different places, but, I mean, just looking at the English...

Q So I'm correct?
A I guess I'm just agreeing with you to the extent of the words in the titles.
Q And a vast majority of your $5.3 million that your determined was unallowable, relate to those classifications, right: Field subcontracts administrator, general superintendent, site equipment manager.

Right?
A I mean, I could look at the exhibit.

I don't remember what the total is.
Q You don't have any reason to disagree, though, do you?
A I do.

I have a recollection that general superintendent was a big number and site equipment manager was a big number. As I sit here, I honestly don't know what the field subcontracts administrator number was.
Q It's one of your opinions that Welded invoiced for vehicle allowances for certain employees that are ineligible for the allowance under Exhibit 1, correct?
A Correct.
Q If a union member gets a vehicle allowance under one of the union contracts, it's a labor cost, as defined in the contract, correct?
A I believe so.
Q The pickup trucks that appear under labor costs are

excluded from the definition of "included equipment," which is Exhibit 2 to the contract, correct?

A Correct.

Q You identified eight classifications of union personnel for whom a vehicle allowance was billed, but not permitted under Exhibit 1, correct?

A Correct.

THE COURT: I'm sorry, can you repeat that?

Eight classifications of?

MR. GUERKE: You identified eight classifications of union personnel for whom a vehicle allowance was billed, but not permitted under Exhibit 1.

THE COURT: Okay. Thank you.

BY MR. GUERKE:

Q The pre-job conference agreements that are part of the union contract, include fringe benefits like truck pay, correct?

A They often times include truck pay, yes.

Q But truck pay isn't necessarily on Exhibit 1, correct?

A Well, vehicle rental is on Exhibit 1.

Q But not all the union members, who are entitled to truck pay under the union agreements, correct?

A Well, again, I used Exhibit 1 for this analysis.

Q So people who are entitled to a vehicle allowance are not restricted to only Exhibit 1, correct?

A For the purposes of my analysis, I used Exhibit 1 as the -- if you recall in the definition, it says, "payable in accordance with Exhibit 1," and that was the basis for my calculation.

Q I'm sorry if I'm not following you, Mr. Slavis, so I'll give you another chance -- another try.

People who are entitled to a vehicle allowance are not restricted under Exhibit 1, right?

A I suppose that ultimately becomes a legal decision, right?

Q But there are other people, according to the pre-job conference agreements, that are entitled to vehicle pay that are not on Exhibit 1, correct?

A I believe we walked through that in my deposition, if I recall.

Q So that's correct?

A I believe so, yes.

Q And you did not take that into account in your report, right?

A I did not use the pre-job conferences in my report.

Q The 7.5 percent part of field personnel, I'm going to ask you about that part of your opinion, Mr. Slavis.

In this opinion is a comparison of the people whose titles match Exhibit 1 and then you compare their pay to the wages identified on Exhibit 1, right?

A The wages, plus 7 and a half percent, yes.
Q You used base rate -- the base rates for Exhibit 1 spreadsheet, correct?
A I believe it was a buildup of the entire rate, but starting with base rates, for sure.
Q So you developed an all-in, hourly rate from Exhibit 1 and then compared it to all, an all-in, hourly rate for the employees, correct?
A Correct.
Q It wasn't just gross wages or base rate, correct?
A If I -- can I refer to the report to --
Q Yes.
A -- refresh my recollection on that?
So it says here -- all right. So I need to start with Schedule 8, which I don't think I have.
Q Schedule 8?
A It's in that --
MR. GUERKE: May I have a moment, Your Honor?
THE COURT: Uh-huh. Yes.
(Pause)
THE WITNESS: And if you come across Exhibit 1 to my report, not the Exhibit 1 we've been talking about -- but I have an Exhibit 1 -- I think I need that, as well.
And I'm happy to look, if you want me to look.
(Pause)

MR. GUERKE: Mr. Slavis, could you give me the number that corresponded to your attachment so I can track it down.

THE WITNESS: I didn't --

MR. GUERKE: What was the number?

THE WITNESS: The Schedule 8 or you mean the exhibit number?

MR. BURWOOD: Your Honor, may I approach?

THE COURT: Please.

MR. BURWOOD: I'm just going to give Mr. Slavis the schedules so he can answer his question.

THE COURT: Sure.

MR. GUERKE: Thank you.

(Counsel confers)

MR. GUERKE: Great, thank you.

THE WITNESS: Thank you.

So Schedule 8 says it's D-2047O, as in Oscar.

And then, since that references 8.1, D-2047P.

MR. GUERKE: Your Honor, may I?

THE COURT: Yes, thank you.

(Pause)

THE WITNESS: So Exhibit 8.1 is the buildup by person. Where it says:

"Total gross hours, total wages, and burden, and the all-in, hourly rate to compare it to the escalated all-

in, hourly rate to compare it to the escalated all-in, hourly rate to get to the differential."

And that all-in, hourly rate calculation, which I believe is Footnote 2, or escalated all-in, hourly rate, so, you see this is Footnote 2. It gets to one of my points from before. This is all done without GL because we've already taken that out someplace else.

And then Footnote 3 says, "See Exhibit 2, the report for rate conversion."

And I don't know that we have -- oh, yeah. So that would be D-2047AW, if all this works the way it's supposed to. And that's where we do the buildup for each of those rates.

So it's going to say:

"Base rate, field, uplift, per diem, hourly rate per hour. And so we get to a converted hourly rate, including uplift, converted hourly per diem, converted hourly (indiscernible) allowance, and then compare all of those converted numbers to the escalated number."

Did that help?

MR. GUERKE: Yes, thank you.

BY MR. GUERKE:

Q Okay. If what was exactly paid on the job exceeded 7.5 percent of the baseline that you established in Exhibit 1, it's your opinion that the difference is not allowable,

right?
A Correct.
Q The wages and benefits on Exhibit 1 are from 2016, correct?
A Correct.
Q Welded would have to absorb $1.4 million for these costs following your contract interpretation, right?
A Right.

Because I believe Exhibit 1 says, In order to charge more than 7 and a half perpetrate of these rates, they needed to request and obtain approval.

And I'm -- sorry -- binders -- and I'm not aware of any approval that was requested or obtained. So that's the basis for that calculation.
Q But you heard testimony on that subject the last week and a half, right?
A I heard testimony -- if it's the testimony I think you're referring to, that, to me, doesn't qualify as asking an approval.
Q But that $1.5 million, Welded actually paid that amount to its employees, correct?
A Correct, or I believe so.

I didn't track cash payments, but they recorded it as an expense, for sure.
Q And sought reimbursement as a labor cost in its

invoices to Transco, right?
A Correct.
Q And Transco, for the most part, paid it?
A Until a certain time, yes.
Q So if the prevailing wage was 8 percent higher in 2017 than in 2016, it's your interpretation of the contract that Transco had to approve that, right?
A That Welded had to request it and Transco had to approve it.
Q Transco had Exhibit 1 before Welded sent any invoices to Transco, correct?
A I believe the contract was signed before any invoices were transmitted, yes.
Q And Transco had Exhibit 1 when it received every invoice that Welded submitted for payment, correct?
A Certainly.
Q Transco reviewed the invoices before payment, right?
A I wasn't there to know what review they did, but I'm sure they reviewed it for support and documentation.

Whether they did a review to contract terms or the audit work that either OGCS did or I did after the fact, I don't know whether they did anything like that.
Q Transco approved and paid 10 months' of invoices that Welded submitted, right?
A I believe that's the number.

MR. GUERKE: Your Honor, I'm not very close to finishing, so since that's the case, may I suggest we break for the day? This is a natural breaking point for me.

THE COURT: Okay. Mr. Burwood?

MR. BURWOOD: Can we get a little more insight into "not very close" if you're able to?

MR. GUERKE: An hour and a half.

MR. BURWOOD: Thank you.

THE COURT: Okay. Then we're going to break for the day.

We're back Tuesday --

MR. NEIBURG: Wednesday, Your Honor.

THE COURT: We're back Wednesday.

So, please don't speak to anyone about your testimony during this longish break.

You can step down. Thank you.

MR. BURWOOD: Your Honor?

MR. NEIBURG: Your Honor --

MR. BURWOOD: Oh, go ahead. You go.

MR. NEIBURG: Just a little housekeeping.

How much do you need us to clean up this front area, since we're not back until Wednesday?

THE COURT: That's a good question.

(Court and Clerk confer)

MR. BURWOOD: While we're waiting, could I ask if

the Court has any scheduling issues Wednesday and Thursday that we need to take into account?

THE COURT: You know, let me get my calendar. It'll just take a second.

(Pause)

THE COURT: Okay. Well, I'm wrong. I don't know where my calendar is and my assistant probably has it and she's gone.

So, I don't think I do, but I will double-check, and if I do, we will let you know tomorrow.

MR. BURWOOD: Thank you, Your Honor.

THE COURT: Okay. Brandon, nothing on Tuesday?

THE CLERK: No.

THE COURT: Okay. So you can just clean it up, but it doesn't have to be off your tables, okay.

COUNSEL: Thank you, Your Honor.

THE COURT: Thank you.

Okay. So we're adjourned.

(Proceedings concluded at 5:24 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling September 9, 2023

William J. Garling, CET-543

Certified Court Transcriptionist

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