

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master-in-Equity

SC Court of Appeals

Appellate Case No. 2020-000669
Case No. 2016-CP-23-5905

Renewable Water Resources,..... Respondent,

v.

Insurance Reserve Fund, a Division of the
State Fiscal Accountability Authority of South Carolina,..... Appellant.

RECORD ON APPEAL - VOLUME 2 OF 5
(pp. 464-912)

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Index

Volume I

Order of Reference to Master-in-Equity, September 14, 2018	1
Findings of Fact and Conclusions of Law, filed March 18, 2020	3
Order, filed April 6, 2020	19
Order, filed April 9, 2020	22
Consent Order Depositing Funds into Court, April 17, 2020	25
Order Granting in Part Motion for Costs, filed May 21, 2020	29
Complaint, filed October 17, 2016	36
Amended Complaint, filed June 15, 2018	55
Answer to Amended Complaint, filed July 2, 2018	73
Consent Motion for Reference to Master-in-Equity, filed September 12, 2018	89
Plaintiff's Pre-Trial Brief, filed February 3, 2020	91
Defendant's Pre-Trial Brief, filed February 3, 2020	128
Notice of Motion and Motion for Judgment as a Matter of Law and/or Involuntary Nonsuit, Motion to Alter or Amend Judgment and/or Motion for Reconsideration, and Motion for New Trial, filed March 30, 2020 (with attachments)	147
Plaintiff's Responses to Defendant's First Set of Interrogatories	178
Emails, filed March 30, 2020	193
February 27, 2020 Andrew F. Lindemann Email to Judge Simmons	193

February 27, 2020 Judge Simmons Email to Andrew F. Lindemann	193
Plaintiff’s Motion for Costs, filed April 16, 2020	195
Defendant’s Return and Objections to Motion for Costs, filed April 23, 2020	198
Plaintiff’s Reply to Defendant’s Objections to Motion for Costs, April 24, 2020.....	203
Trial Transcript, January 28-30, 2020, ...	212
George William Fletcher	
Direct Examination by Mr. Stilwell	225
Cross-Examination by Mr. Devlin	286
Re-Direct Examination by Mr. Stilwell	309
Re-Cross Examination by Mr. Devlin.....	313
Examination by the Court.....	314
Joel Henry Jones	
Direct Examination by Mr. Stilwell	319
Cross-Examination by Mr. Lindemann.....	381
Ted Clark Vincent	
Direct Examination by Mr. Brown.....	409
Voir-Dire Examination by Mr. Lindemann	414
Continued Direct Examination by Mr. Brown.....	421

Cross-Examination by Mr. Lindemann.....	439

Volume II

Re-Direct Examination by Mr. Brown.....	464

Robert Glen McManus

Direct Examination by Mr. Stilwell	467

Cross-Examination by Mr. Lindemann.....	543

Re-Direct Examination by Mr. Stilwell	667

Patricia Dennis

Direct Examination by Ms. Towery.....	671

Cross-Examination by Mr. Devlin	718

Re-Direct Examination by Ms. Towery	764

Re-Cross Examination by Mr. Devlin.....	766

Kevin Finneran

Direct Examination by Mr. Devlin.....	778

Voir Dire Examination by Mr. Brown	782

Continued Direct Examination by Mr. Devlin.....	784

Cross-Examination by Mr. Brown	808

Examination by the Court.....	814

Re-Cross Examination by Mr. Brown.....	819

Re-Direct Examination by Mr. Devlin.....	823

Christopher Michael Lombard

Direct Examination by Mr. Lindemann 829

Cross-Examination by Mr. Brown 885

Volume III

Re-Direct Examination by Mr. Lindemann 913

Court's Exhibit #1 951

Plaintiff's Trial Exhibit #1: General Tort Liability Policy
Declaration Page..... 956

Plaintiff's Trial Exhibit #2: Building and Personal Property
Policy Declaration Page 964

Plaintiff's Trial Exhibit #4: Building and Personal Property
Policy Declaration Page 973

Plaintiff's Trial Exhibit #6: Building and Personal Property
Declaration Page..... 981

Plaintiff's Trial Exhibit #8: Building and Personal Property
Coverage Form..... 991

Plaintiff's Trial Exhibit #9: Causes of Loss - Special Form 998

Plaintiff's Trial Exhibit #10: Tort Liability Insurance Policy 1004

Plaintiff's Trial Exhibit #14: Notice of DHEC NDPES Permit
No. SC 0048381 1010

Plaintiff's Trial Exhibit #15: Notice of DHEC NDPES Permit
No. SC0033804 1061

Plaintiff's Trial Exhibit #18: SLED Bulletin..... 1102

Plaintiff's Trial Exhibit #29: DHEC Press Release with Regulation.....	1103
Plaintiff's Trial Exhibit #30: PCB Emergency Regulation.....	1109
Plaintiff's Trial Exhibit #32: ReWa Letter to EPA and DHEC re: Notification of PCB Plan	1113
Plaintiff's Trial Exhibit #33: DHEC Letter to ReWa re: Beltpress Filtrate Operation pursuant to Emergency PCB Regulation	1138
Plaintiff's Trial Exhibit #38: Charles Logue Email to DHEC re: Mauldin and Lower Reedy PCB clean-up.....	1139
Plaintiff's Trial Exhibit #42: DHEC Email re: PCB Regulation	1144
Plaintiff's Trial Exhibit #47: IRF Email to Patricia Dennis re: Claim	1152
Plaintiff's Trial Exhibit #48: Nelson Chandler Email to Patricia Dennis re: Coverage	1154
Plaintiff's Trial Exhibit #49: IRF Letter to ReWa re: Claim.....	1156
Plaintiff's Trial Exhibit #50: Young Report to IRF re: PCB Contamination	1160
Plaintiff's Trial Exhibit #51: Young Report to IRF re: PCB Contamination	1186
Plaintiff's Trial Exhibit #52: ReWa Email to Fred Young re: PCB Expenses.....	1187
Plaintiff's Trial Exhibit #53: ReWa Email to Fred Young re: PCB Expenses.....	1188
Plaintiff's Trial Exhibit #54: Patricia Dennis Email to IRF re: Coverage.....	1189

Plaintiff's Trial Exhibit #55: Fred Young Email to Jerry Anderson re: PCB Expenses	1191
Plaintiff's Trial Exhibit #60: Patricia Dennis Email re: PCB Expenses	1193
Plaintiff's Trial Exhibit #62: ReWa Email to Fred Young re: PCB Expenses	1199
Plaintiff's Trial Exhibit #63: ReWa Email to Fred Young re: PCB Expenses	1200
Plaintiff's Trial Exhibit #65: Patricia Dennis Email to Fred Young re: Coverage	1201
Plaintiff's Trial Exhibit #67: ReWa Email to Fred Young re: PCB Expenses	1203
Plaintiff's Trial Exhibit #68: Fred Young Email to Jerry Anderson re: PCB Expenses	1204
Plaintiff's Trial Exhibit #69: ReWa Email to Fred Young re: PCB Expenses	1205
Plaintiff's Trial Exhibit #71: Fred Young Email to Jerry Anderson re: PCB Expenses	1206
Plaintiff's Trial Exhibit #72: Fred Young Email to Jerry Anderson re: PCB Expenses	1207
Plaintiff's Trial Exhibit #73: Fred Young Email to Patricia Dennis re: PCB Expenses	1208
Plaintiff's Trial Exhibit #77: IRF Letter to ReWa re: Coverage Determination	1209
Plaintiff's Trial Exhibit #78: ReWa Email to Fred Young re: PCB Expenses	1218

Plaintiff’s Trial Exhibit #83: ReWa Email to Fred Young re: PCB Expenses	1219
Plaintiff’s Trial Exhibit #85: IRF Claim Notes	1220
Plaintiff’s Trial Exhibit #89: FAQ on PCBs.....	1234
Plaintiff’s Trial Exhibit #91: ReWa PCB Sampling Results.....	1236
Plaintiff’s Trial Exhibit #94: AECOM Final Summary Report.....	1282
Plaintiff’s Trial Exhibit #99: Summary of PCB Expenses.....	1338
Plaintiff’s Trial Exhibit #100: PCB Expenses Spreadsheet	1344

Volume IV

Plaintiff’s Trial Exhibit #101: Regular Cost of Processing Solids for Land Application	1388
Plaintiff’s Trial Exhibit #106: Photographs.....	1389
Defendant’s Trial Exhibit #8: Letter from W. Thomas Lavender, Jr. to Rob Byers, dated February 11, 2015.....	1398
Defendant’s Trial Exhibit #9: Letter from W. Thomas Lavender, Jr. To John R. Devlin, Jr., dated July 28, 2016	1404
Defendant’s Trial Exhibit #10: Letter from W. Thomas Lavender, Jr. To John R. Devlin, Jr., dated July 28, 2016	1406
Defendant’s Trial Exhibit #12: Letter from Marcus Manos to John R. Devlin, Jr., dated October 7, 2016	1409
Defendant’s Trial Exhibit #13: Letter from John R. Devlin, Jr. To Marcus Manos dated October 13, 2016	1418
Defendant’s Trial Exhibit #16: Regular Cost of Processing Solids for Land Application	1422

Defendant’s Trial Exhibit #19: John B. Russell & Son Construction Invoices for Mauldin Road Facility Invoice Numbers 33312, 33274, 33326, 33407, 33406, 33437, 33340, 33341, 33481, 33501, 33511, 33502	1423
Defendant’s Trial Exhibit #20: HEPACO Invoice, Proposal and Emails for Lower Reedy Facility.....	1447
Defendant’s Trial Exhibit #23: Brenntag Vendor Documents.....	1455
Defendant’s Trial Exhibit #27: Invoice from A&B Environmental.....	1464
Transcript of Motion Hearing, May 13, 2020.....	1469
Deposition Designations for Frederick Young, July 23, 2018.....	1482
Deposition Designations for Robert Byers, July 24, 2018.....	1496
All designated and submitted pages and exhibits from Rule 30(b)(6) Deposition of Renewable Water Resources	1515

Volume V

All designated and submitted pages and exhibits from Rule 30(b)(6) Deposition of Renewable Water Resources-Continued	1714
Plaintiff’s Proposed Findings of Fact and Conclusions of Law.....	1923
Defendant’s Proposed Findings of Fact and Conclusions of Law	1933
February 17, 2020 Devlin Email to Hermann	1945
February 21, 2020 Hermann Email to All Counsel.....	1948
February 26, 2020 Hanks Email to All Counsel	1953
February 27, 2020 Andrew F. Lindemann Email to Judge Simmons	1956
Notice of Appeal, filed April 23, 2020.....	1958

Amended Notice of Appeal, filed June 22, 2020 1980

Certificate of Counsel

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1 assembled at Pelham?

2 A. I believe there was.

3 Q. And was that done with AECOM's recommendation?

4 A. No.

5 Q. Was the lake tank ever used as part of the
6 remediation process?

7 A. We did not use it. I don't know if it ever got used.

8 Q. There wasn't any remediation done at Pelham other
9 than what AECOM planned and supervised; was there?

10 A. Not to my knowledge.

11 Q. All right. And nothing that AECOM planned or
12 supervised included using the lake tank? Is that correct?

13 A. Yes. No, it was not part of the remediation effort.

14 Q. All right. And the lake tank was actually a one
15 million gallon tank; was it not?

16 A. I don't -- I don't know that for sure.

17 MR. LINDEMAN: With the Court's indulgence. No
18 further questions. Thank you, Your Honor.

19 THE COURT: Any other questions?

20 MR. BROWN: Yes, just briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. BROWN:**

23 Q. Exhibit 32 that we discussed, that's the plan that
24 was submitted to and approved by DHEC; correct?

25 A. Correct.

1 Q. And the decontamination of digester 1 is included
2 within that plan; correct?

3 A. Yes.

4 Q. And is digester 1 on the table 1 of the structures to
5 be addressed?

6 A. Yes.

7 Q. And if once DHEC has approved the plan to be used for
8 decontamination, would DHEC have to approve a material
9 change to it?

10 A. If we were to move a tank; yes.

11 Q. You were asked some questions about testing. Again,
12 did the plan identify a testing procedure that was to be
13 used?

14 A. Yes. It's described in ---

15 Q. And did the testing plan that was approved by DHEC
16 require there to be testing of the tank before you did the
17 cleaning of it?

18 A. No.

19 Q. The plan also has a detailed description on page 9 of
20 the swipe testing to be done to ensure that the tanks were
21 properly decontaminated; is that fair?

22 A. Yes.

23 Q. If, in fact, there was any deviation from the plan,
24 was that included within the report? To the best of your
25 knowledge?

1 A. To the best of my knowledge; yes.

2 Q. And then on the report, which is 94, near the back,
3 are there photographs that AECOM took and submitted which
4 start with bates number 9569 that are after the cleaning
5 procedures?

6 A. Yes.

7 MR. BROWN: Your Honor, that's all I have.

8 THE COURT: All right.

9 MR. LINDEMAN: Nothing further, Your Honor.

10 THE COURT: All right. Thank you. Can this
11 gentleman be excused?

12 MR. BROWN: Yes. We would ask that he be
13 allowed to leave.

14 THE COURT: All right. Appreciate you coming
15 in.

16 MR. CLARK: My pleasure.

17 THE COURT: You're glad to be heading back to
18 retirement right about now.

19 Do y'all want to take a short break or move on to the
20 next witness?

21 MR. STILWELL: If we could have at least a
22 health and comfort break, Your Honor.

23 THE COURT: All right. We'll take a ten-minute
24 break.

25 (WHEREUPON, Court stood at recess for a short break.)

1 THE COURT: All right. You can call your next
2 witness.

3 MR. STILWELL: Your Honor, Plaintiff calls Glen
4 McManus.

5 THE COURT: If you could place your left hand on
6 the bible and raise your right hand. Do you swear to tell
7 the truth, whole truth and nothing but the truth?

8 MR. MCMANUS: I do.

9 THE COURT: Thank you. Come around and have a
10 seat, please. And if you would state your full name,
11 please.

12 MR. MCMANUS: Robert Glen McManus.

13 THE COURT: All right.

14 **ROBERT GLEN MCMANUS,**

15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION**

17 **BY MR. STILWELL:**

18 Q. Glen, I want to start on a piece of housekeeping.
19 When Ted was up there testifying on Exhibit 91, I stuck one
20 in your notebook. Can you look in Exhibit 91?

21 MR. STILWELL: It's in Joel's notebook for you,
22 Your Honor. I don't know if you need to look at it, but
23 it's the one that came in with Joel, number 91, the testing
24 summary.

25 A. Yes.

1 Q. Mr. Lindeman was asking him questions about page 1,
2 which is the collection system. But if you turn to page 2,
3 is that the Pelham holding tanks and all that other stuff
4 that he was asking about?

5 A. Yes.

6 Q. Okay. And if you turn over a little bit in the back,
7 I noticed while they were talking about it, the filtrate
8 testing schedules are in there, too. If you'll look, for
9 instance, at 12775, can you tell us -- that's a summary for
10 the Pelham filtrate monitoring and release? I'm sorry.
11 It's a lot of bates numbers.

12 A. Yes. Okay. I'm sorry. Your question is?

13 Q. 12775, that's the filtrate testing that they were
14 discussing?

15 A. That is correct.

16 Q. Okay. And some of that testing was done by Waste
17 Management as part of their contract?

18 A. Yes, I believe so.

19 Q. Okay. And then there's another one there for Mauldin
20 Road and Lower Reedy, if you'll flip over to 12783, just a
21 few pages back.

22 A. Okay.

23 Q. That's the filtrate testing for Mauldin Road?

24 A. It is.

25 Q. Okay. And it runs all the way into June of '15. Is

1 that about when y'all finished remediating Mauldin Road?

2 A. Yes.

3 Q. Okay. And the very next page, and you don't have to
4 look at number, is the same kind of summary for Lower
5 Reedy?

6 A. Yes.

7 Q. Lower Reedy, the last entry is November of 2014. Is
8 that about when y'all finished remediating Lower Reedy?

9 A. That is correct.

10 Q. Okay. So I'm going to go back now and start at the
11 beginning. Is that okay?

12 A. Certainly.

13 Q. You can get rid of 91. I won't ask any more
14 questions about that. Can you just tell us a little bit
15 about your educational and professional background? How
16 you got from -- where you came from to here?

17 A. Sure. I received my B.S. in Engineering Technology
18 from Clemson University. Then went to work for private
19 industry for Milliken actually, and the plant I went to
20 work for had its own water and wastewater treatment
21 facility. As an electrical instrumentation engineer, I got
22 involved in a process upgrade at that plant there.

23 Eventually I got an opportunity to go to work for, but
24 still in the textile industry for Inman Mills, but they
25 contract operated a public water and sewer system. And as

1 the engineer -- Engineering Manager I was also responsible
2 as General Manager of the public water and sewer system.
3 Eventually decided to go exclusively into the public
4 sector. Had an offer to ---

5 Q. Hang on. You haven't got to squeeze it all in. I'll
6 put a question in here.

7 A. Okay.

8 Q. So you started at Clemson and you worked in
9 Spartanburg in the textile industry?

10 A. Milliken headquarters was in Spartanburg, but I
11 worked in Pendleton at the plant there.

12 Q. When did you get into the wastewater business? Back
13 there in Spartanburg?

14 A. Well, in Pendleton at that plant I got involved with
15 the wastewater treatment there.

16 Q. In the eighties?

17 A. Yes. This was in the early eighties.

18 Q. Okay. So you got in the sewer -- you're still in the
19 sewer business right now?

20 A. Correct.

21 Q. You've got how many years in the sewer business?

22 A. Over thirty.

23 Q. Okay. And then you -- I know you had some other jobs
24 on the coast. If you could just go through those. Those
25 were running other sewer plants? Or what were you doing

1 down there?

2 A. At the city of Georgetown, I was the Director of
3 Utilities which included electric, water, wastewater and
4 storm water utilities, as well as public works.

5 Q. And then another sewer job after that?

6 A. Hilton Head Public Service District. I was General
7 Manager of the district, which was a water and sewer
8 district.

9 Q. So you were the number one at Hilton Head?

10 A. Correct.

11 Q. Okay. What was your first job at ReWa and when did
12 you come up here?

13 A. December 2002, I came on board with ReWa as the
14 Operations Manager of Treatment Facilities.

15 Q. Okay. So we talked about how many plants there were.
16 I know there have been different ones at different times.
17 But you basically, when you got here in 2002, the plants
18 belonged to you as the Operations Chief?

19 A. Yes; fifteen facilities.

20 Q. Fifteen then? It's whittled down?

21 A. Yes.

22 Q. And I know you've got a different job now. So when
23 did -- during the time of this remediation work, you owned
24 all the plants in question, Lower Reedy, Mauldin Road and
25 Pelham?

1 A. Correct. I was Director of Operations.

2 Q. Okay. And what's the job now that you're doing?

3 You've switched since; right?

4 A. Director of Business Continuity.

5 Q. Okay. I want to go over and ask you some questions
6 that we've been talking about, a whole bunch of terms, but
7 I want to use the photographs.

8 A. Sure.

9 Q. Can I put some photographs in your book which are
10 individual photographs out of Exhibit 106, and I want to
11 ask you about these photographs.

12 A. Okay.

13 Q. They've got numbers at the bottom of the page. The
14 only reason number 1 is on there is because it's got the
15 sticker on it; okay?

16 A. Okay.

17 Q. The first photograph I want to ask you about is
18 number 93, which is in the back.

19 A. You said 93?

20 Q. 93.

21 A. Okay.

22 Q. What is this a photograph of?

23 A. This is a photograph of a holding tank at the Pelham
24 treatment plant.

25 Q. How can you tell this is Pelham?

1 A. I'm familiar with the purulents there, the
2 surroundings and the dike there in the background where the
3 fence is that keeps the river from coming into the plant
4 during flood situations.

5 Q. Okay. And who is that guy in the tank?

6 A. It's someone with the remediation contractor.

7 Q. That would be like a Waste Management guy, you're
8 saying?

9 A. I would say so. They were their contractor --
10 subcontractor.

11 Q. Okay. And what is he doing?

12 A. He is cleaning the tank walls.

13 Q. He's doing one of the pressure washes that Ted just
14 talked about?

15 A. That is correct.

16 Q. Okay. And what is that on the wall of the tank?

17 A. That's residuals of the solids, liquid solids that
18 were in the tank that have essentially somewhat dried and
19 embedded themselves into -- onto the concrete.

20 Q. This is a biosolids tank; right?

21 A. It is; yes.

22 Q. That stuff on the wall is biosolids?

23 A. It is; yes.

24 Q. What's that stuff down in the bottom of the tank?

25 A. That's biosolids, as well, where it's been drained

1 down and washed off the walls. You can see part of the
2 walls have been cleaned, so that's been washed down.
3 That's part of the residue from the initial wash down.

4 Q. Now, I know as you told me, but it's hard to tell,
5 but this is not a flat bottom tank?

6 A. That's correct. It is slightly cone shaped so that
7 all the material, the solid material, will flow out into
8 the middle of the tank where you can see in this picture
9 kind of the area where it's conglomerated.

10 Q. This tank has been pumped out?

11 A. It has.

12 Q. Okay. It's already been pumped out, and it still
13 looks like that?

14 A. Yes. That's from the initial wash down.

15 Q. Okay. How do you get that stuff out of the holding
16 tank?

17 A. There are a couple of options. One, it can be
18 diluted somewhat with wash down water and either pumped or
19 vacuumed out. Or another method is that they put a hand
20 operated lift in there that they use to scoop up the
21 material, shovel the material into -- put into another
22 container and pull it out by crane.

23 Q. Mr. Lindeman was asking questions about putting water
24 back in there. Is that part of the technique in order to
25 get this tank empty?

1 A. It is necessary in order to dilute the material that
2 gets too thick to be able to pump or vacuum or if it's not
3 conducive to put another piece of equipment in there to
4 shovel it out, so to speak.

5 Q. Just to physically get it out?

6 A. Correct.

7 Q. Okay. I've heard talk about like having to get
8 diapers to get it out. What is that all about?

9 A. Well, some of the tanks, particularly at Mauldin Road
10 where the material and the, we might say, foreign debris,
11 rags and so on that they get through the process that have
12 accumulated in the bottom of the tank and it is just
13 absolutely too thick to try to pump out or get out by any
14 other method. And in order to mechanically shovel it out
15 with heavy equipment or otherwise get it out, you've got to
16 thicken it up into something that can be handled with the
17 mechanical equipment; something such as the recycled -- not
18 recycled but All-Spec diapers that they get in bales, or
19 saw dust or some other material that will soak up and help
20 thicken up the liquid or thick solids.

21 Q. So I'm just a caveman lawyer, but why can't you just
22 open the drain and drain that tank out?

23 A. Well, when you're putting in contaminated material
24 back into the head of the plant, which means you are
25 knowingly introducing the material into your process,

1 that's not allowed by permit, and you would also be risking
2 that the plant might not be able to handle that
3 concentration of PCBs and keep from contaminating the
4 river.

5 Q. We talked about two different pressure washes on the
6 side of the tank. Is there anything from this picture that
7 tells you like whether that guy is putting in the water or
8 the -- what was the other thing you washed it with?

9 A. So the other material was basically a citric or
10 citric acid based detergent that would dilute the material,
11 especially with PCB itself being an oily type material, the
12 citric detergent helps to fully break it up. You really
13 can't tell in this picture whether he's using that, but
14 some of the pictures we looked at of the tanks at Lower
15 Reedy, and from firsthand observation when they were doing
16 the second washes and using the citric detergent you could
17 actually see the surfactant or foaming of the detergent
18 itself when they were doing that final washing to get the
19 PCB out of the pores of the concrete.

20 Q. I'm glad you mentioned that. This is a Pelham tank,
21 a biosolids tank. Is there any material difference in what
22 it takes to physically clean this tank at Mauldin Road than
23 at Pelham?

24 A. Not per se for the cleaning itself. The only
25 material difference would be the configuration of the tank

1 and its surroundings and how high the tank extended above
2 or below the ground, how deep it was. Basically the tank's
3 physical configuration would be the only difference, which
4 might require a different amount of material or labor.

5 Q. It's hard to tell, was this an aboveground tank?

6 A. This tank is actually below ground. It does have a
7 portion aboveground, but most of this tank is actually
8 belowground.

9 Q. And I had asked George about how big the tanks were
10 at Pelham generally. I don't know this particular one, if
11 you know for sure, but like how generally big are these
12 tanks?

13 A. These tanks, if I recall correctly, were in the six
14 hundred thousand gallon range, to the best of my
15 recollection.

16 Q. Okay. And when you got these contamination hits in
17 the early part of 2013, about how full were the holding
18 tanks at Pelham?

19 A. They were almost absolutely full. We were concerned
20 that if we continued to get heavy rain like we had gotten
21 in the period before that, that we may very well end up
22 with some overflow or splashing out of the material.

23 Q. Are you talking about the rain coming in the top or
24 coming in through the plant and creating that much more?

25 A. No. We were talking the rain coming in from the top.

1 For every inch of rain you would get an inch elevation in
2 the tank level.

3 Q. When this tank or the other holding tanks were filled
4 with material contaminated with PCBs were they usable in
5 ReWa's sewer operation?

6 A. Of course not.

7 Q. Okay. Why not?

8 A. We were contaminated with PCBs. We can't put more
9 material in there because they're full, but by them being
10 contaminated with PCBs, we don't want to mix other material
11 with them because then you run the risk of contaminating
12 material that perhaps was not already contaminated or run
13 the risk of further raising the contamination level of
14 what's already in those tanks.

15 Q. All right. This photograph itself was taken by you
16 or some of your people at the Pelham plant at the time of?

17 A. It would have been; yes.

18 Q. And is it a reasonable representation of what the
19 work looked like when it was being done?

20 A. It is.

21 MR. STILWELL: Your Honor, I'd move Exhibit 93
22 into evidence.

23 THE COURT: All right.

24 MR. LINDEMAN: 106.93?

25 MR. STILWELL: Yes. 106.93.

1 (WHEREUPON, Plaintiff Exhibit Number 106.93 was
2 admitted into evidence.)

3 Q. Glen, I'm going to go through some of these other
4 pictures just to highlight a few of them. I'm not going to
5 spend the same amount of time.

6 A. Sure.

7 Q. But I just want to go through some of this equipment.
8 So you can skip page 1 through page 5. How about page 6
9 there, what is that piece of gear?

10 MR. LINDEMAN: Your Honor, for the record, I
11 have no objection, and I don't know that you moved it into
12 evidence or am I just ---

13 THE COURT: He did.

14 MR. LINDEMAN: Okay.

15 MR. STILWELL: I just moved that one picture in,
16 but I was going to go through all ---

17 MR. LINDEMAN: I don't know if you granted it
18 into evidence, but I have no ---

19 THE COURT: Yes, sir.

20 MR. LINDEMAN: --- but I have no objection.

21 THE COURT: In fact, I looked and saw no eyes
22 looking back and so I assumed there was no objection.

23 MR. LINDEMAN: Thank you, Your Honor.

24 THE COURT: And everybody is happy for right now
25 and we'll keep on moving.

1 MR. LINDEMAN: Okay.

2 Q. Glen, what is page 6 there? What is that piece of
3 equipment?

4 A. Page 6 are conveyors that are used to load the
5 pressed solids that we call cake from the presses onto the
6 truck or dumpsters.

7 Q. So that's a dump truck right behind it?

8 A. That is correct.

9 Q. The cake goes ---

10 A. Or a roll-off container on it, but a roll-off truck;
11 yes.

12 Q. So this green equipment, do you know if that's ReWa's
13 equipment or is that something y'all had to rent to do this
14 process?

15 A. No. That equipment is Waste Management or their
16 rented equipment.

17 Q. Okay. That's a Pelham picture; right?

18 A. Yes.

19 Q. And 7 is the same thing?

20 A. That is correct.

21 Q. What is page 8? Are these frac tanks?

22 A. Yes. Page 8 are frac tanks.

23 Q. What are these frac tanks doing? Can you tell from
24 this picture?

25 A. These tanks are taking in the filtrate off of the

1 belt press.

2 Q. Okay. And I see Rain For Rent up there. That's the
3 firm that they were rented from?

4 A. That is correct.

5 Q. Okay. What about all these hoses coming off of that
6 filtrate. Is that going in or coming out or both?

7 A. The -- while it's difficult to identify for sure from
8 these pictures, but some of them are going in and some of
9 them are coming out. So both would be the correct answer.

10 Q. Okay. And all that stuff had to be brought in to the
11 Pelham plant to do this work?

12 A. That is correct.

13 Q. How about there to the right, I just noticed, that's
14 one of the presses; isn't it?

15 A. That's one of the plate and frame presses.

16 Q. A plate and frame press. So the one you just talked
17 about, a belt press, ReWa owns those regularly; right?

18 A. ReWa does own belt presses that are affixed in our --
19 each facility.

20 Q. These frame presses are presses that you had to bring
21 in at -- this is at Pelham; right?

22 A. Yes. These are mobile presses; not fixed units.

23 Q. And we ended up using one or two frame presses at
24 Mauldin, also?

25 A. We ended up using three frame presses at Mauldin Road

1 in addition to a rotary press.

2 Q. And we rented those?

3 A. We rented the frame presses.

4 Q. Okay. Page 11, that's just a picture of a holding
5 tank before it's drained?

6 A. It is.

7 Q. Okay. I don't know if this has been pumped out or
8 not, like the stuff on the sides of that, is that part of
9 biosolids that have already been taken down?

10 A. Yes, it is.

11 Q. Okay. What's the tank on the top? Is that another
12 holding tank? I mean there's one down here and there's one
13 up there?

14 A. Yeah, that's another holding tank if it's not a
15 clarifier. I'm looking at an angle. It's difficult to
16 tell.

17 Q. The next page after that is page 14.

18 A. Okay.

19 Q. What is this at the bottom of this holding tank?
20 This is a holding tank; isn't it, a biosolids holding
21 tank?

22 A. This is a biosolids holding tank. And this is where
23 the tank has been pumped out and it would appear that it's
24 gone through some degree of washing. And you have the
25 heavy solids material accumulated out in the middle of the

1 tank with some debris remaining on the sides.

2 Q. And are you saying that people actually went and
3 shoveled that out? How did you get that out of the bottom
4 of the tank?

5 A. Well, again, there are a couple of methods that were
6 used to get that out. If it could be diluted and pumped
7 out as it was being diluted without pump clogging or had
8 problems, then it could be done that way. The other method
9 was to rent what's referred to as a Dingo, which is
10 basically a small hand operated skid steel loader that is
11 put into the tank with a crane and it scoops it up and puts
12 it into another container for lifting out.

13 Q. Now, the tanks that were cleaned and all the
14 equipment that was cleaned at Pelham was done by the Waste
15 Management folks?

16 A. Yes. Or their sub; yes.

17 Q. So why didn't ReWa do that itself?

18 A. Well because those tanks were in excess of the fifty
19 parts per million threshold and that's considered
20 hazardous. Our people are not certified to be able to
21 handle hazardous material.

22 Q. Okay. That certification is like some OSHA
23 certification?

24 A. Correct.

25 Q. Now, I know down at Mauldin Road and Lower Reedy --

1 was that work also done by subcontractors?

2 A. Which work specifically?

3 Q. Cleaning out the tanks?

4 A. Cleaning the tanks was primarily done by contractors;
5 yes.

6 Q. Okay. And why didn't ReWa people do that work down
7 there?

8 A. That was more a matter of just not having the
9 resources to do it, because at the same time we were trying
10 to operate presses with our in-house staff and some
11 additional contracted staff to press out Lower Reedy as
12 well as at Mauldin Road, so we just didn't have the
13 manpower or the resources needed to do those final clean-
14 outs of those tanks. It was rather labor and equipment
15 intensive, and we just didn't have the resources to do that
16 ---

17 Q. Okay.

18 A. --- economically.

19 Q. That's what I was going to ask you. When you say
20 resources you're talking about people and equipment?

21 A. People, specific equipment that's needed for that.
22 So for us to do that economically it was just not feasible.

23 Q. Tell me what's on the next page 20, what is that? I
24 might have skipped one, but I think we're okay. Is that a
25 gravel lot?

1 A. That's at the Pelham facility. That is where Waste
2 Management is preparing the base area to put their
3 containment mat down and then bring their dewatering and
4 filtrate equipment in and set up within that containment
5 area.

6 Q. And then the next page, page 21, is that that same
7 thing after it's actually built and set up?

8 A. Yes, it is.

9 Q. Okay. That was part of the plan that Ted just talked
10 about?

11 A. It was.

12 Q. Okay. Twenty-three, page 23, what do these tanks
13 here do, these chemicals?

14 A. So these are tanks of either ferric chloride or
15 sodium hydroxide that were used in the thickening
16 dewatering process. And this is at Pelham also.

17 Q. Is that one of the polymers or -- I'm not a very good
18 chemist, so I don't ---

19 A. No, that's not polymers. Those would have been more
20 of the other two chemicals that were used in the dewatering
21 process, in addition to polymers.

22 Q. Okay. You had to use chemicals to thicken the
23 material in order to get it onto the trucks; is that what
24 the deal was?

25 A. That's correct, in order to make it into what we call

1 the cake form that can go to the landfill.

2 Q. And that was the chemicals part of what you had to
3 add was polymers?

4 A. Yes.

5 Q. Okay. Those polymers were different than what ReWa
6 had used in the regular course of its business? I mean did
7 you have to use different stuff?

8 A. This material was already thickened with a polymer
9 specific to that need. And once you thicken it to go back
10 and re -- or try to dewater it -- they were thickened for
11 land applications, but to dewater it into cake form, that
12 polymer that's already in there presents a problem, so it's
13 necessary to find a different polymer that will work for
14 that process.

15 Q. So the stuff that was in those holding tanks, it had
16 already been prepared to be land applied?

17 A. Yes.

18 Q. Okay. And then did that somehow affect the process
19 of turning it into cake instead?

20 A. It did; yes.

21 Q. That's what you just said?

22 A. Yes.

23 Q. Is it easier just to take it before it's been
24 prepared for land application and turn it into cake?

25 A. Absolutely.

1 Q. Okay. And is that what you did for the daily flows
2 at all three of these plants during the period of
3 contamination?

4 A. We did.

5 Q. Okay. And we're going to talk about that later, but
6 just generally you had generally how many million gallons
7 in the tanks?

8 A. At which ---

9 Q. The three of them combined? Like on your hands when
10 it started, before you started doing the remediation work?

11 A. Fifteen million.

12 Q. Fifteen million? I don't know if you can do this,
13 but like these plants are multi-million gallons a day of
14 daily flow? Like how much was still coming down the
15 pipes?

16 A. Somewhere in the range of -- and you're speaking of
17 all three plants ---

18 Q. Right.

19 A. --- combined? Somewhere in the range of over thirty
20 thousand -- excuse me -- thirty million gallons per day.

21 Q. Okay. And it was your job to figure out what to do
22 with both those sources of contamination?

23 A. Yes.

24 Q. Let's look quickly at photograph 27 where I left off.
25 That's a pump? What is that?

1 A. That is a pump.

2 Q. Okay. And so this was gear that was also -- it looks
3 like it's got a steel mat set up underneath it?

4 A. It does.

5 Q. Okay. And this is Pelham I guess? I see it's got
6 AECOM on it; so this is another Pelham picture?

7 A. Yes. That's -- as best I can tell there, that looks
8 like Pelham and would be a pump that was used in the
9 operation that Waste Management was doing.

10 Q. Now these pumps and hoses and pipes taking stuff from
11 one area of the plant or another, did you have a system
12 like that at all three plants at different times?

13 A. Yes.

14 Q. Okay. And this is a blue pump. Does that tell me
15 it's rented?

16 A. It does not.

17 Q. Okay. You ---

18 A. It could be; it may not be.

19 Q. Okay. Did you just have a mix of owned and rented
20 equipment?

21 A. We did.

22 Q. Okay. Number 30, that's the lake tanks standing back
23 there?

24 A. The olive green tank in the background is the lake
25 tank.

1 Q. And that's a metal tank?

2 A. It is.

3 Q. Okay. Now, there was a question asked of like what
4 does it have to do with the PCB remediation? Why did you
5 guys have to -- did you buy that thing or rent it?

6 A. No. We rented that.

7 Q. Why?

8 A. Well, again, going back to what he had said earlier,
9 the biosolids holding tanks at Pelham were full and we had
10 a couple of needs for the lake tank. One was that if we
11 had additional storms coming of the magnitude that we had
12 previously seen, we would need to transfer some material
13 out of those full tanks over into that lake tank to reduce
14 the risk of any overflowing or splashing from those tanks
15 in a heavy prolonged rain. The other issue was that if
16 something happened to our belt press process at Pelham and
17 it went down and we had to go back to thickening because
18 you've got to keep processing solids. You can't just stop.
19 Flows continue to come into the plant.

20 Q. Right.

21 A. But if the presses went down we needed a place then
22 to be able to put more liquid material.

23 Q. So you basically didn't have to use it because you
24 were able to keep up with the daily flow?

25 A. We were very fortunate in not having to use it. And

1 the rain events held off from that point on.

2 Q. And then I guess at the time you rented the lake tank
3 did you know yet what you were going to do with the
4 contaminated material in the Pelham tanks or had you not
5 figured that out yet?

6 A. No. That was still under discussion and analysis.

7 Q. Okay. The next page, thirty-five, what is that?

8 A. That's the back end of the plate and frame press.

9 Q. Okay. And what's coming off that? Is that cake?

10 A. Yes. That's the conveyor that's bringing cake off of
11 it and into that chute there and it loads onto the green
12 conveyor that you see in the bottom left-hand corner.

13 Q. It's hard to tell, and I haven't seen it up close,
14 but is this -- it's kind of a wet consistency?

15 A. It is somewhat a wet consistency. It's more like
16 maybe a thick pudding or gooey brownies.

17 Q. All right. I'm going to leave that because it's
18 nasty. Thirty-seven, that's the cake going into what?
19 Into a dumpster instead of -- what's going on with that?
20 It's not going into a truck. The truck is not available?

21 A. That's going into a roll-off container that the truck
22 will come in and pick up and take to the landfill and put
23 another container in that place.

24 Q. This is stuff going to the -- this is probably going
25 to Alabama or ---

1 A. This is part of Pelham, so it's definitely going to
2 Emelle.

3 Q. Okay. The next page, 46?

4 A. Yes.

5 Q. That's a tank after it's been cleaned; right?

6 A. That is correct.

7 Q. Okay. The stuff at the bottom is, what, rain water?

8 A. It looks fairly clear. It most likely would be rain
9 water.

10 Q. Okay. Over on page 59, the next photo. This is an
11 overhead of Lower Reedy?

12 A. It is.

13 Q. Okay. Some of these colored boxes here, is that
14 where you set up these other temporary wastewater systems
15 inside of the plant?

16 A. It is.

17 Q. Okay. The rotary press down there, the pink mark,
18 what was the rotary press?

19 A. The rotary press is another type of press. In this
20 case a trailer-mounted or mobile press that we purchased, a
21 used demonstrator unit as a cost effective method of
22 remediating at least a certain amount of the solids in the
23 plants. So it's just a different type of press from a
24 plate and frame press.

25 Q. So just to be clear, this Lower Reedy part happened

1 after AECOM finished Pelham?

2 A. It did.

3 Q. Okay. And the method you used at Lower Reedy, was it
4 essentially the same method you used at Pelham?

5 A. Essentially so.

6 Q. Okay. And after you finished Pelham, you went to
7 Mauldin Road next?

8 A. That is correct.

9 Q. I was looking in here to see if I had a similar thing
10 at Mauldin Road. Well, if you just look at number 63, the
11 photograph on 63, this says Mauldin Road phase two and
12 three on the top. What is phase one? I don't want to
13 stump you, but it just occurred to me I had never heard the
14 phases.

15 A. So we're looking at all of the holding tanks in
16 there. Rivers, I don't recall what we indicated as phase
17 one, although there was quite a bit of analysis and
18 measurements that were going on in advance to plan the
19 project.

20 Q. Well, let's see, I was just wondering if in this
21 photograph you could tell like where exactly did you set up
22 all of this temporary wastewater piping and stuff? Is it
23 off of this photo?

24 A. Some of it is on the photo.

25 Q. Okay.

1 A. So where it says holding tank 7 and 8, those two
2 white tanks that the arrows are pointing toward on the left
3 side in between those two tanks is the area where we had
4 set up the press. But then right under the -- where it
5 says number 8 up there in the black box, right under that
6 number sign for the 8, there's a gray looking area. That's
7 a gravel site there that we set up the filtrate processing
8 and filtration and frac tanks down there, and for that
9 particular operation with the rotary press. Then we moved
10 the rotary press over to a holding tank to do holding tanks
11 1 through 6. If you look on the left hand side of the
12 picture about mid way down there's a light colored
13 rectangle that's a concrete pad. That's where we set up
14 the rotary press and the frac tanks to bring the material
15 down from the tanks that are shown up above that. Then
16 there's a ---

17 Q. Hang on. Hang on. I just want to ask you. You
18 moved the frame press from Lower Reedy up to Mauldin Road?

19 A. We didn't have a frame press at Lower Reedy. We ---

20 Q. Rotary?

21 A. --- had a rotary press. We moved it up to Mauldin
22 Road, started on tanks 7 and 8 with it. Ran into some
23 grease in the tanks which is not conducive to a rotary
24 press operation, so we moved the rotary press over to
25 finish up tanks 1 through 6. Brought in frame presses to

1 finish off tanks 7 and 8. And we started with 2. We
2 eventually had to have a third one. And we ---

3 Q. Let me get you over -- there's a picture here that
4 kind of shows that process if you look at page 67. I don't
5 know if you can recognize from that whether it's Mauldin
6 Road or Lower Reedy?

7 A. This is Lower Reedy.

8 Q. Lower Reedy?

9 A. Yes.

10 Q. Okay. So this is a pretty good picture -- set of
11 pictures, really. The sludge solids, that's coming out of
12 the holding tanks at Lower Reedy?

13 A. That's the holding tanks at Lower Reedy; yes.

14 Q. Okay. And then you run it into the rotary press,
15 right? That's actually the rotary press that y'all bought;
16 right?

17 A. It is.

18 Q. Okay. And then coming out of the rotary press,
19 you're able to turn it in to cake to stick in the truck;
20 right?

21 A. That is correct.

22 Q. Okay. The part at the bottom is like when you do it
23 in the rotary press it loses liquid out of it; right?

24 A. As in any pressing dewatering operation; yes.

25 Q. This other stuff at the bottom, the weir tank and the

1 filtration treatment release, that's what you're doing to
2 it before you can put it back into the headworks?

3 A. That's correct.

4 Q. Okay. And then these individual tanks are getting
5 tested before they go back in the headworks?

6 A. That is correct.

7 Q. Okay. Now, if you take biosolids and you're
8 thickening the biosolids to take to land app, you still get
9 filtrate; don't you?

10 A. You do.

11 Q. Okay. It's still subject to the same EPA limit we
12 just looked at, or the DHEC limit?

13 A. Yes.

14 Q. Page 68, this is another picture of the same ---

15 A. It is, for Lower Reedy.

16 Q. This is another picture of the same --- okay. Same
17 one. Sixty-nine, is that -- that's back at Pelham; isn't
18 it? It's another shot of the lake tank?

19 A. Hold on. My pages are not cooperating. Yes, that is
20 at Pelham and the green structure is the lake tank.

21 Q. What is that on page 70? Is that -- I don't want to
22 mess it up; I'm not going to say. What is that? Is that
23 the gravity belt thickener?

24 A. That's either a thickener or a press.

25 Q. Okay. That's some ---

1 A. Similar configuration.

2 Q. Can you tell what plant that is?

3 A. That is either Pelham or Lower Reedy.

4 Q. Okay. These presses are what you use to do your
5 ongoing flow, like what's still coming down the pike?

6 A. That is correct.

7 Q. And those are presses ReWa always had all the time?

8 A. Yes, it is.

9 Q. Okay. How about page 71, what is that a picture of?

10 A. It's rather limited to tell, but it looks like a
11 thickener, as well.

12 Q. Okay. And that's the solids coming into the process
13 before they're thickened or dewatered at all?

14 A. Yes. And when we say solids, I think it's important
15 to know that this is in liquid form. So there's solids
16 suspended in water, but they're still called solids.

17 Q. We talked about the percentage of solids and stuff.
18 But I mean if there's something like in the term of three
19 percent solid, it's ---

20 A. It's a liquid similar to chocolate milk.

21 Q. That's also nasty, but helpful. Page 72, that's just
22 the -- what is that, the back end of a belt press?

23 A. That's the back end of a conveyor coming out of the
24 belt press building and there's a hopper below that it
25 falls -- the cake falls through down onto the truck for

1 loading.

2 Q. Okay. So this is still cake not coming off of the
3 rotary press but coming off our regular press?

4 A. This is off the plant fixed installed presses.

5 Q. Also taken where, to local landfills?

6 A. It is; yes.

7 Q. Okay. Seventy-four, that's just -- looks like that
8 same holding tank before it was pumped out?

9 A. Yes. That's at -- or after it had been pumped down
10 some. That is at Pelham.

11 Q. I see measurements of how full the tanks are where
12 they talk about feet from the top and stuff like that. Is
13 that literally like somebody stuck a stick in there and
14 measured how full it was?

15 A. It is.

16 Q. Okay. What is page 77? What is that plastic
17 membrane?

18 A. So that's at Lower Reedy rotary pressure site where
19 we've done a similar site prep like was done like at
20 Pelham. We're putting the gravel down to get a level
21 surface and then putting the membrane over that in order to
22 contain any spills. And actually we were -- looking at the
23 right hand side of the picture there is the containment
24 basin which is -- that's either after a rainfall or is for
25 leak testing after they initially set up. But that's to

1 contain any spills that might happen inside there from the
2 press so that it can be pumped back into the tank.

3 Q. So on the left side is the press and then coming out
4 of it, that's some of the filtrate getting pumped somewhere
5 else? Is that what's going on there?

6 A. That hose that you see that's encased in the PVC pipe
7 there is the -- is what's being pumped from the holding
8 tanks to the rotary press.

9 Q. Okay. Page 78, it looks like Lower Reedy again?

10 A. It is.

11 Q. Is that -- I don't know what that is. Is that just
12 the filtrate pictures we saw before?

13 A. It's the same pictures, the pumping and filter
14 operations in there behind the pumps and the tanks.

15 Q. What are those little teeny tanks in the middle of
16 it? There's like little metal tanks ---

17 A. Those are the filters themselves.

18 Q. And the filters are sand filters or ---

19 A. Like sand filter or diatomaceous earth. And then
20 there are some cartridge filters just beyond those, if you
21 were looking with a magnifying glass you could see.

22 Q. So after -- if y'all tested a tank and it was
23 positive that the filtrate was too high, what did you do
24 with it?

25 A. So if the filtrate was too high, we had to recycle it

1 back through the process.

2 Q. Through this process?

3 A. Yeah. So it went back -- actually because of limited
4 holding space for filtrate then it went back into the
5 solids tanks for reprocessing.

6 Q. I was talking before I was looking at page 79, that's
7 those sand filters you're talking about?

8 A. Those there on the right are either sand or
9 diatomaceous earth filters. I believe sand in this case.
10 And then the final cartridge filters to the left there.

11 Q. Okay. And that's all filtering -- that's filtering
12 filtrate out?

13 A. Filtering residual solids out of the filtrate, which
14 is where the PCBs are, is in the residual solids.

15 Q. Okay. I'm going to skip over to page 81. Is that a
16 frame press picture?

17 A. It is.

18 Q. And that is -- we didn't have -- did ReWa have any
19 frame presses or are those all we had to get from somebody
20 else?

21 A. We had to rent the ones that we used.

22 Q. Okay. Why didn't you just buy them?

23 A. Well, first of all, we couldn't find any used ones
24 that were for sale that were of an anywhere comparable
25 price to the rotary press and in as comparable condition.

1 Q. Page 82 is more stuff coming off the back of a frac
2 tank. Can you -- are those chemicals there some of the
3 polymer, or do you know what that is in the black barrels?

4 A. That's not polymer. I would say that that is
5 probably sodium hydroxide. That is at the Pelham site.
6 Those are Waste Management chemicals, so I can't say for
7 sure.

8 Q. Okay. I'm just going to see. I think we went over
9 most of these generally. Okay. Hang on.

10 MR. STILWELL: Your Honor, I would ask to move
11 these photographs into evidence as a group.

12 THE COURT: Mr. Lindeman?

13 MR. LINDEMAN: Are you wanting to include also
14 ones that were not discussed?

15 MR. STILWELL: I can go back and discuss them.
16 I don't know which ones I left off, but if we want ---

17 MR. LINDEMAN: I don't know either, but
18 certainly ones that he provided a foundation for and
19 explanation for ---

20 THE COURT: Only the ones that he specifically
21 identified by exhibit and page number are coming in at this
22 point.

23 MR. LINDEMAN: Right. I have no problems with
24 that.

25 THE COURT: All right. Thank you.

1 (WHEREUPON, Plaintiff Exhibit Numbers 106.93, 106.6,
2 106.7, 106.8, 106.11, 106.14, 106.20, 106.21, 106.23,
3 106.27, 106.30, 106.35, 106.37, 106.46, 106.59,
4 106.63, 106.67, 106.68, 106.69, 106.70, 106.71,
5 106.72, 106.74, 106.77, 106.78, 106.79, 106.81,
6 106.82 were marked and admitted into evidence.)

7 Q. Let's keep going then, Glen.

8 A. Okay.

9 Q. Page 91, what is that a picture of?

10 A. Page 91 is the Pelham anoxic zone where we took --
11 hit an oily substance in May of 2013.

12 Q. Okay.

13 A. And so that's a picture of what we're actually seeing
14 on the surface of the water at that point.

15 Q. And that's the very high hit we had that Joel talked
16 about?

17 A. It turned out to be; yes.

18 Q. How about page 92, is this the same oily sheen, but
19 in a different part of the Pelham plant?

20 A. It's just in a different basin and it's in one of the
21 equalization -- or in the equalization basins, so, yes,
22 that's from the same time frame.

23 Q. Page 96, that's the Mauldin Road belt press in
24 operation?

25 A. It is.

1 Q. Okay. Page 97 is just a labeled picture of all the
2 filtration systems we looked at before?

3 A. At Lower Reedy; yes.

4 Q. Okay. Now the last picture I want to go back and ask
5 you about is -- to change the topic with, but page 90,
6 those pictures there of the war room, are those also your
7 pictures?

8 A. They are our pictures. If they were not made by me,
9 they were made by staff.

10 Q. Okay. And this is all inside a room you had set up?

11 A. Essentially our emergency operations center,
12 communications center.

13 MR. STILWELL: Your Honor, with that amendment,
14 I would offer all the ones that I discussed into evidence.
15 And we'll go back and housekeep the ones I didn't.

16 THE COURT: All right.

17 MR. LINDEMAN: Your Honor, that last group,
18 since he last moved them in, I'm not sure what the
19 relevance of their war room would be, which was number 90
20 that he just mentioned. And then 92, the equalization
21 basin, I would object on relevance to that. That is not
22 one of the ---

23 THE COURT: What's the relevancy of these last
24 few pictures, Mr. Stilwell?

25 MR. STILWELL: This last one here right, Your

1 Honor, the number 90, the war room, I'm about to ask him,
2 tell me what y'all did to plan how to do this and then
3 execute it.

4 THE COURT: How about on the 91 and ---

5 MR. LINDEMAN: I don't have a problem with 91.
6 It's 92 because that one is described as the Pelham
7 equalization basin, and to my understanding that is not a
8 structure that was remediated.

9 MR. STILWELL: Your Honor, this is a color
10 version of the same one that was included in the report
11 that Joel sent to ---

12 THE COURT: All right.

13 MR. STILWELL: It's the same picture; it's just
14 color.

15 THE COURT: All right. I'll allow introduction
16 of them then.

17 (WHEREUPON, Plaintiff Exhibit Numbers 106.90, 106.91,
18 106.92, 106.96 and 106.97 were marked and admitted
19 into evidence.)

20 Q. Glen, I want to ask you, the next exhibit that we can
21 use if you need it is Exhibit 88. I think it's in your
22 book.

23 A. Yes.

24 Q. Okay. The questions we've basically been going over,
25 I don't know if you need this, but if you need it for a

1 reference I'm just going to let you have it here.

2 A. Okay.

3 Q. This only goes down to -- this time line goes down to
4 August of 2013?

5 A. That is correct.

6 Q. When generally did ---

7 THE COURT: I'm sorry. Are you talking photo 88
8 or ---

9 MR. STILWELL: No, sir, Your Honor, I was back
10 on this time line, Exhibit 88.

11 THE COURT: All right. I thought we were
12 getting ready to talk about the war room.

13 MR. STILWELL: I was about to get to that. It's
14 like ---

15 THE COURT: All right. So is 88 in which of the
16 ---

17 MR. STILWELL: In Glen's book, Your Honor.

18 THE COURT: --- growing library materials?

19 MR. STILWELL: Glen's book. I think it's the
20 first exhibit in Glen's book. It might be ---

21 MR. MCMANUS: It is.

22 MR. STILWELL: --- the second.

23 THE COURT: All right.

24 Q. Glen, the -- this outline only goes to like 2013.

25 Was that before AECOM had started doing the actual

1 remediation work that we talked about?

2 A. That's correct.

3 Q. Okay. And the war room pictures we just set up, when
4 was that set up and who worked in it?

5 A. That was set up after we started discovering PCBs and
6 it grew as we discovered more. It began around summer,
7 mid-year of 2013, as we recognized that this is going to
8 potentially become a larger and larger project. And as far
9 as who worked in there, it was any of our directors or
10 managers whose input or collaboration was needed at any
11 given point in time. That would have included some of my
12 staff, particularly my Process Control Officer, as well as
13 our Treatment Facility Managers and/or Supervisors or
14 Laboratory Manager, Pretreatment Manager, Engineering
15 Manager or staff. So there were periodic ongoing
16 collaborations and planning and use of visual aids to
17 identify the extent and spread of the PCBs and try to
18 identify not only the plants but also in the collection
19 system.

20 Q. So I know AECOM -- Ted just testified they put
21 together the plan for Pelham. Did you assist in preparing
22 that plan, as well?

23 A. I was involved in some of the discussions when we
24 talked with AECOM and several vendors about their options
25 and proposals that were put together by the vendors. So

1 essentially -- but AECOM was charged with the
2 responsibility of recommending the process for Pelham to
3 us.

4 Q. Okay. And then that's the process that was submitted
5 and approved by DHEC?

6 A. That's correct.

7 Q. Okay. How did you go about figuring out what you
8 were going to do with Lower Reedy and Mauldin Road? First
9 of all, that was your job?

10 A. That was assigned to me; yes.

11 Q. Okay. How did you go about figuring out what to do
12 there?

13 A. So I consulted with our Director of Technical
14 Services and ---

15 Q. Charlie?

16 A. Yes, that is correct. And we took into account the
17 information that we had gotten from our engineers. And so
18 ---

19 Q. Engineers, you're talking about AECOM?

20 A. AECOM, as well as input from the engineers that
21 designed our other two treatment facilities?

22 Q. That's Black and Veatch?

23 A. Yes.

24 Q. Okay. How about your own engineers, ReWa's
25 engineers, were they involved, as well?

1 A. Charlie's staff was involved.

2 Q. Charlie's staff is the ReWa in-house engineering
3 staff?

4 A. That is correct; yes.

5 Q. All right.

6 A. So we collaborated on best methods, took into account
7 what AECOM had proposed, took into account our prior
8 discussions and ongoing discussions with DHEC and EPA. We
9 of course determined that it did not require personnel that
10 were certified in hazardous materials, handling. And so
11 our Executive Director or CEO at the time ---

12 Q. Ray?

13 A. Yes, Ray. --- stipulated that we needed to evaluate
14 the cost. We thought it would be more cost effective to
15 use a contractor or to do the work in-house. So we set out
16 to do that. Got pricing from ---

17 Q. Hang on. So you're saying you had to first make a
18 decision about who was going to do it?

19 A. That's correct.

20 Q. Okay. And then ultimately y'all decided to do it?

21 A. Well, we also had to first look at what would be the
22 best method for doing that in terms of the press options.
23 We could not use the plant presses for reasons that we've
24 already talked about. So we knew that if we did not use a
25 contractor we either had to rent or buy some form of mobile

1 press. So we had to look and see what was available out
2 there, what those costs were. Then we had to talk to
3 people who had used that type press equipment on biosolids,
4 determine the drawbacks, limitations, if they had
5 particularly good or bad experiences with certain types of
6 presses.

7 Q. Let me get in a question.

8 A. Sure.

9 Q. And that was when you ended up buying the frame
10 press?

11 A. We did. The results of that ---

12 Q. Or the rotary press?

13 A. Rotary, I'm sorry, yes, the rotary press. Based on
14 that analysis and assessment.

15 Q. During the time that Pelham was being remediated what
16 were you doing at Lower Reedy and Mauldin Road with what
17 you had in the tanks? Anything?

18 A. So that part we were not able to do anything in
19 particular with what we had in the tanks because of the
20 questions that were still up in the air in terms of what
21 DHEC was going to do with or beyond the emergency
22 regulation and whether we could continue to take that to
23 local landfills or what we were going to have to do
24 otherwise. We really couldn't do anything with it at the
25 point that Waste Management was beginning the Pelham

1 process.

2 Q. Will you turn to Exhibit 38 for me?

3 A. Okay.

4 Q. Thirty-eight is a stipulated document, Glen. I just
5 want to ask you if you'll look to the back of it.

6 A. Okay.

7 Q. This is a summary remediation plan for low level PCBs
8 at Lower Reedy and Mauldin. Is this the plan you came up
9 with?

10 A. It is. This is what we collectively between Charlie
11 and myself and the input from others that we came up with.

12 Q. Let me see. The plan says you've got approximately
13 11.3 million gallons of biosolids at those two plants;
14 right?

15 A. None of those were based on estimates.

16 Q. Okay. I'm not going to hold you to it.

17 A. Okay.

18 Q. It says that you're going to -- let's see, in the
19 plan part itself, you're going to take it to the local
20 landfills. Is that part of the plan?

21 A. Yes.

22 Q. And you've got to prepare it to take it to
23 the landfill?

24 A. Correct.

25 Q. Okay. Then it says in the middle of that plan,

1 filtrate water will be treated using the same technology
2 used at the Pelham plant?

3 A. Yes.

4 Q. Those were the two processes we just looked at?

5 A. Yes.

6 Q. You did it basically just like you did it at Pelham?

7 A. Correct.

8 Q. The next sentence says treated filtrate will be held
9 in day tanks. That was the blue tanks we looked at?

10 A. The frac tanks.

11 Q. Okay. Pending test results, so you tested the
12 filtrate?

13 A. Yes.

14 Q. And then if you got no quantifiable PCB levels, then
15 you stuck it back in the plant to finish it; right?

16 A. That is correct.

17 Q. And the alternative to being able to stick it back in
18 the plant would have worse; right? Like incineration or
19 something?

20 MR. LINDEMAN: Object to the form.

21 A. Yes.

22 Q. Okay. And then this plan was sent to Jeff DeBessonnet
23 at DHEC. Who is he?

24 A. Jeff DeBessonnet was over the Bureau of Water
25 Quality.

1 Q. Okay.

2 A. Bureau of Water. Excuse me.

3 Q. And is this the plan that y'all executed?

4 A. It is.

5 Q. Okay. I want to talk to you about the cost of doing
6 the work. How did y'all collect the costs in a single
7 place to figure out what you were spending on this effort?

8 A. We essentially used our existing accounting system,
9 except that our accounting department gave us separate cost
10 codes to charge the PCB related work to so that we could
11 keep that separate from the ongoing plant operations.

12 Q. Was it tracked like a capital project, y'all tracked
13 costs?

14 A. Similar to that, but it was tracked through purchase
15 orders and the regular invoice payment methodology and
16 controls.

17 Q. Okay. And how did you decide what costs to allocate
18 to the PCB remediation effort?

19 A. So anything that was directly related to that was
20 allocated to it.

21 Q. And who made the decisions about what to put into
22 that cost code? You made some of them yourself?

23 A. Well, some of them were obvious. And the ones that
24 required some further input were -- either required the
25 input of the managers or from myself as director.

1 Sometimes it was a collaborative discussion to just verify
2 that those things were actually entirely PCB related.

3 Q. So the -- like for instance, the Pretreatment
4 Department, that was Joel's decision on the charges on that
5 side?

6 A. It would have been.

7 Q. Okay. How about the lab? Who made the lab
8 decisions?

9 A. That would have been the Lab Manager.

10 Q. Okay. And the individual plants were you and who?
11 Your plant managers? Or who made those decisions? I know
12 that ---

13 A. Yes, sir. And ---

14 Q. -- I can't remember the name. Patti who works with
15 y'all on the ---

16 A. She's our Office Supervisor so she pretty much
17 handles or either oversees all of the office work in terms
18 of purchase orders, cost accounting and so on. But those
19 decisions about where to charge were kept up with primarily
20 by the Plant Supervisor or Foreman, as their title was at
21 the time, or our Project Coordinator for our in-house
22 remediation, which was Randy Boyette who worked directly
23 from -- he's the Process Control Officer.

24 Q. Okay. And then when they were sent to accounting
25 were they coded or how did they get over there to say put

1 this in the tally?

2 A. Yes. They were coded with input from the respective
3 manager, supervisor, coordinator, project leader, input to
4 Patti who was the link to get that to accounting.

5 Q. And then it was sent over with codes on like what,
6 the purchase order or the invoices. What was the original
7 documentation that went with the stuff?

8 A. So the original documentation would have been a
9 requisition for services. And so that would have the cost
10 code on it. When the invoices come through that would be
11 matched up with the purchase order to make sure that the
12 cost code is, in fact, still correct or corrected if it
13 initially was in error.

14 Q. So you're talking about a system on the back end
15 matching payment to the invoice that's coded in there?

16 A. Yes.

17 Q. Okay. And these things were kept in -- I don't know
18 if you know the name of the database, the financial
19 database, do you know what it -- I can't remember what it's
20 ---

21 A. Great Plains.

22 Q. Great Plains is the financial database?

23 A. Yes.

24 Q. And this data went into Great Plains and then was it
25 rolled up into what, Excel?

1 A. Well, it was pulled into a pivot table for the cost
2 accounting reports.

3 Q. Okay. A pivot table is a spreadsheet?

4 A. Essentially; yes.

5 Q. Okay. If I look at Exhibit Number 99 ---

6 A. Okay.

7 Q. --- is Exhibit Number 99 the type of pivot table
8 you're talking about?

9 A. That's correct.

10 Q. What is Exhibit 100?

11 A. You want me to read that?

12 Q. No, no, no. Well, I just want to ask you at the top
13 of it it says what, PCB expenses?

14 A. PCB expenses, that's correct; yes.

15 Q. Okay. You've seen this in Excel form before; haven't
16 you?

17 A. Yes.

18 Q. Okay. And I know y'all call it pivot tables, but I
19 call them tabs. Are these separate tabs on the same
20 table?

21 A. They are; yes.

22 Q. Is 99 basically the roll-up of the detail in number
23 100?

24 A. Yes, it is.

25 Q. Okay. And were these records -- these financial

1 records kept in the regular course of ReWa's business?

2 A. Yes, they are.

3 MR. STILWELL: Your Honor, I would offer these
4 into evidence as business records for ReWa. And I'm going
5 to keep asking him questions about what's in them after
6 that.

7 MR. LINDEMAN: Your Honor, I would object. He
8 called them business records. I'm not sure -- at least
9 they were presented to us as summaries under 1006 in the
10 exhibit list. I don't know if they're being presented as
11 summaries or not based on -- I don't know what he means by
12 being presented as a business record.

13 MR. STILWELL: They have to be both, Your Honor.
14 It's a summary of business records. The underlying stuff
15 has to be admissible, too. So that's what I'm saying, all
16 the ---

17 THE COURT: I have no problem subject to tying
18 it together and obviously certainly subject to cross-
19 examination of accepting this at this point as 99 and 100
20 as a summary of costs.

21 MR. STILWELL: Okay.

22 MR. LINDEMAN: Your Honor, if I could -- you are
23 admitting it? I didn't quite follow ---

24 THE COURT: Yes, sir. Subject to ---

25 MR. LINDEMAN: Cross-examination?

1 THE COURT: Subject to this witness tying it all
2 together and subject to cross examination.

3 MR. LINDEMAN: All right. One of my objections
4 that I hadn't gotten out yet was that he hasn't established
5 a sufficient foundation under 1006.

6 THE COURT: Yes, sir. That's why I gave that
7 little caveat in my ruling.

8 MR. LINDEMAN: Thank you, Your Honor. I
9 appreciate it.

10 THE COURT: Yes, sir.

11 (WHEREUPON, Plaintiff Exhibit Numbers 99 and 100 were
12 admitted into evidence.)

13 Q. Glen, I want to ask you some questions about first of
14 all what's in number 99. The Fournier rotary press number
15 there, seventy-two thousand dollars, was that the full cost
16 of that press?

17 A. No.

18 Q. Okay. Why is it less than the full cost?

19 A. We took the depreciable life of the press and
20 factored in how much of that time was used -- or that it
21 was actually used for the PCB dewatering operation. And so
22 rather than charging the full amount of the press, we only
23 charged the actual life of the press that was used for this
24 project based on the depreciation schedule.

25 Q. So ReWa bought the press and still has the press, but

1 you're allocating less to it?

2 A. Correct.

3 Q. Is it basically just how long you used it versus its
4 useful life?

5 A. Yes, according to the depreciation schedule.

6 Q. Okay. The legal bills here, that's Tommy Lavender's
7 charges, Nexsen Pruet?

8 A. Yes.

9 Q. Okay. How about -- let me just go down to something
10 like right here, the Solids Management Department. That's
11 your department; isn't it?

12 A. It is one of the departments that was under me at
13 that time.

14 Q. Okay. If I see for instance Bio-Nomic Services, Inc.
15 there, what would that work have been done for?

16 A. Bio-Nomics did several things for us. In this case
17 that could have been attributable to hauling services,
18 could have been ---

19 MR. LINDEMAN: Your Honor, I object to the
20 speculation. He's saying it could ---

21 THE COURT: Sustain the objection.

22 MR. LINDEMAN: Thank you.

23 Q. Glen, I want to go back up to where it says like for
24 instance J.L. Rogers & Callcott and Pretreatment and
25 Shealy. Do you see those two?

1 A. Yes.

2 Q. Okay. Those are testing labs?

3 A. They are.

4 Q. Okay. And that was testing for this work that we
5 did?

6 A. Yes.

7 Q. Okay. And that would have been coming out of Joel's
8 department?

9 A. Somebody would have been -- yes, for admin -- also
10 technical, yes, that would have been coming out of Joel's
11 department.

12 Q. If I go back down to testing J.L. Rogers in the
13 Solids Management Division ---

14 A. Yes.

15 Q. And there's Shealy in there, too.

16 A. Yes.

17 Q. What testing would that have been for?

18 A. That would have been on the biosolids themselves
19 prior to transport to landfill or to confirm the level of
20 PCBs.

21 Q. And again, the number, the thirty-eight thousand and
22 the ten thousand, the individual dates on all that and the
23 matter name and all the detail on the Denar System is on --
24 is in number 100, Exhibit number 100?

25 A. Yes, it would be.

1 Q. Okay. And then the underlying data on that, the
2 invoices and the bills and the purchase orders, that would
3 have been all information that was also kept to create
4 number 100?

5 MR. LINDEMAN: Your Honor, object to the
6 leading, please.

7 MR. STILWELL: You're allowed to lead on laying
8 a foundation, Your Honor. Yeah, you are.

9 MR. LINDEMAN: Hold on, hold on.

10 THE COURT: It's my ruling, I'm pretty sure.
11 There's a difference between leading and pulling, so ...

12 MR. STILWELL: That's fair enough.

13 THE COURT: All right. Thank you.

14 Q. Let me just go through some more of the specific
15 ones. The Greenville County solid waste charges and solids
16 management, what is that for?

17 A. That's for landfill disposal.

18 Q. Okay. And landfill disposal at the Greenville County
19 Waste would have been from which plants?

20 A. That would have been from -- primarily from Lower
21 Reedy, with some costs in there for Pelham and potentially
22 some costs for Mauldin. Primarily Lower Reedy, though.

23 Q. Okay. How about ---

24 MR. LINDEMAN: Your Honor, again, objection to
25 speculation. He clearly didn't ---

1 THE COURT: Yeah, we need some basis other than
2 it could have been.

3 MR. STILWELL: Okay.

4 Q. Glen, how do you know that that charge in the
5 biosolids for Greenville County Solid Waste is for Lower
6 Reedy, Mauldin Road and Pelham?

7 A. Because during this process we took our pressed cake
8 from specific plants primarily to specific landfills. For
9 example Mauldin was taken -- a large part of that was taken
10 to the Republic Union Enoree Landfill. Pelham, for
11 example, anything that we did not have to take to Emelle
12 then went to the Palmetto Landfill which is operated by
13 Waste Management. And Lower Reedy primarily was
14 transported to either the Greenville County Landfill, which
15 is Twin Chimneys, or to the Anderson County Landfill.
16 Although some from other plants went to various landfills.

17 Q. Let me ask you about the Republic Services of
18 Kentucky charges, for instances, down there under solids
19 disposable. What plant does that go with?

20 A. That would be Mauldin Road only because that is the
21 Union Enoree Landfill operated by Republic Services. And
22 we contracted with them to haul from Mauldin but not from
23 the other facilities.

24 Q. Okay. How about the next one, Sparks Industrial
25 Services under solids disposable, what would that work be

1 for?

2 A. That was actually hauling services, trucking
3 services, to carry the solids or the cake from Mauldin Road
4 to the Union Enoree Landfill.

5 Q. How about Waste Connections of South Carolina, Inc.,
6 what -- that's another landfill?

7 A. That the company that operates the Anderson County
8 Landfill.

9 Q. Okay. So that's Lower Reedy entirely?

10 A. There's going to be some Mauldin Road in there, as
11 well. There's possibly some Pelham.

12 Q. Okay. Waste Management of South Carolina Landfill,
13 that's the same waste management guys who did Pelham?

14 A. No. Waste Management of South Carolina is the more
15 -- it's a local company that operates the Palmetto Landfill
16 in Wellford. The Waste Management National Services is the
17 company or the arm of their company that did the
18 remediation at Pelham.

19 Q. So -- so that's Pelham related charges. All of that
20 in Waste Management of South Carolina is Pelham?

21 A. Yes, it would be.

22 Q. Okay. On that same page if we flip to the specific
23 plants, and if I look at this, the plants are broken out
24 separately other than the departments we just went over.
25 Each one has its own cost code?

1 A. That's correct.

2 Q. Okay. These cost codes go for different projects
3 other than just the PCB remediation? Are they set up
4 specifically for this?

5 A. They're set up -- well, to be sure what you're
6 asking, there are -- in other departments or other projects
7 there might be an electricity or a repair or maintenance of
8 equipment cost code, but in this case these also had coding
9 that charged them specific to the PCB project.

10 Q. Okay. If I look at Lower Reedy Chemicals, Polydyne
11 Chemicals, what are those chemicals that were purchased in
12 connection with this work?

13 A. So that would have been polymer for the dewatering
14 process at Lower Reedy.

15 Q. Okay. That's what chemicals you have to put in to be
16 able to turn it into cake?

17 A. It is.

18 Q. Okay. And let's look over at operating outside
19 technical on the next page of Exhibit 99.

20 A. After Lower Reedy?

21 Q. It's still Lower Reedy, I think. You can correct me
22 if I'm wrong, but I think it's still in Lower Reedy.

23 A. I'm sorry; yes.

24 Q. A&D Environmental Services, what did they do at Lower
25 Reedy?

1 A. They cleaned out or at least tank 5 and transported
2 the material to Mauldin Road for processing so that we
3 could expedite Lower Reedy and get the rotary press moved
4 up there and the material. It had gotten too thick to be
5 able to run through the press at that point. So they were
6 involved in primarily the clean-out of tank 5 and the
7 transporting some ---

8 Q. Okay.

9 A. --- of that material up to Maudlin Road.

10 Q. How about HEPACO, what did they do at Lower Reedy?

11 A. HEPACO did the pressure washing of tank number 4 --
12 or because of the configuration of the tank and the
13 walkways our plant staff were able to generally dilute
14 material getting pumped over into tank 5 and use the hoses
15 to initially wash down that tank. Then Lower Reedy was
16 brought in to do the full pressure washing operation on
17 that. At least tank 4, I don't recall whether they also
18 did tank 5 or whether A&D did tank 5.

19 Q. There's more testing there for J.L. Rogers at Lower
20 Reedy. What testing would the plant be doing?

21 A. So the plant would be testing their ongoing cake
22 coming off of belt presses and coming out of the digester
23 to determine -- or to verify the PCB levels there and
24 confirm that it can go to the landfill.

25 Q. To make sure it's not contaminated?

1 A. Right.

2 Q. Okay. How about these guys People 2.0 Global, what
3 did those guys do at Lower Reedy?

4 A. So that's temporary staffing, so to assist with the
5 overall operations there, the operation of the presses, we
6 brought in contract labor on that.

7 Q. And then if I -- wait a minute, I lost my place right
8 there. Western Oilfield Supply, seventy-eight thousand
9 dollars. What was that for at Lower Reedy?

10 A. You referenced earlier Rain for Rent on the frac
11 tanks. That's the parent company, so that's Western
12 Oilfield and the business Rain for Rent and so it depends
13 on how the invoice came in from them as to which way it
14 would show. So that was for the frac tanks and some of the
15 filtration equipment, some of the pumps, hoses, other
16 materials that we rented for that process.

17 Q. The next category says R&M Equipment, and it has a
18 bunch of different ones. What is R&M equipment?

19 A. R&M does repair and maintenance of equipment.

20 Q. Okay. Is this rental equipment or purchased
21 equipment?

22 A. Some of this is services, some of it is equipment.
23 However, it's all related to the globalization and set-up
24 and operation for the PCB remediation.

25 Q. Okay. If I can move over to the Mauldin Road

1 charges.

2 A. Okay.

3 Q. The very first one, Brenntag Mid-South, a chemical
4 charge, what is that? That's a lot of chemicals.

5 A. So Brenntag was the company that we got the chloride
6 from that we used there.

7 Q. And if I look below there's another big one in that
8 same category, Polydyne, is that the same polymer you were
9 using at Lower Reedy?

10 A. It is or a very similar polymer. But it was coming
11 from Polydyne.

12 Q. Okay. And if I flip over to -- I looked over to
13 Pelham, you also used the Polydyne polymer at Pelham?

14 A. Under chemicals?

15 Q. Right?

16 A. Yes, that's correct.

17 Q. All right. Let go back to Mauldin Road for a couple
18 more. A&D Environmental Services for MR. Were they also
19 cleaning tanks at MR?

20 A. They were.

21 Q. Okay. What was the Bio-Nomic Services, ninety
22 thousand dollar Mauldin Road charge?

23 A. We rented a frame press from Bio-Nomic. We had
24 rented a couple of them from A&D, and needed another one
25 and Bio-Nomic had one available at that point and actually

1 with a little bit better pricing. So we rented that from
2 them. We also used Bio-Nomics for other services such as
3 cleaning out the Mauldin Road line at the plant.

4 Q. HEPACO down there, eighty-seven nine, are they tank
5 cleaning at Mauldin Road, as well?

6 A. They are; yes.

7 Q. How about J.B. Russell, what were they doing at MR?

8 A. They're tank cleaning also. We used a conglomerate
9 of the contractors for cleaning Mauldin Road because of the
10 sheer size of the volume of number of tanks.

11 Q. I think you and I talked about this the other day,
12 LiftOne LLC. What was what, some ---

13 A. LiftOne is a company that we rented what we call a
14 yard dog or yard tractor from because of the belt pressing
15 going on at the plants. We have to have a road tractor,
16 which is the truck part of the tractor trailer, to move the
17 trailers around. We're not normally staffed up on
18 resources, as in equipment, to have that many trucks
19 available for moving trailers, so we rented essentially a
20 yard truck. It's not something you would normally use on
21 the road, but we rented a yard tractor from them.

22 Q. A yard dog is a truck?

23 A. Yes.

24 Q. I promised I would get yard dog into this trial.

25 People 2.0, that's more temporary labor?

1 A. It is.

2 Q. Okay. Did your people work any overtime in the
3 course of doing all this work?

4 A. They did.

5 Q. Are any of those charges in these damages?

6 A. They are not.

7 Q. Ryder Truck Rental, I assume that the truck rental
8 there on MR?

9 A. Yes. That's a truck rental for a road tractor or to
10 pull dump trailers to the landfill.

11 Q. Okay. Western Oilfield supply, I moved over to the
12 next page, it's a big number, four and thirty. That's all
13 equipment at MR? Is that what that is? Western Oilfield,
14 I'm on ---

15 A. You're on MR?

16 Q. Yeah, it's 41054. I went to the next page. At the
17 bottom.

18 A. Okay. I've got it. Okay. I see it at the top of my
19 page.

20 Q. Yeah.

21 A. Okay. So Western Oilfield, Rain for Rent, that's for
22 frac tanks, pumps, hoses, ground yard piping, filtration
23 equipment, filter cartridges.

24 Q. Okay. What's the Holder Electric Supply? Do you
25 know what that is underneath the R&M Electrical?

1 A. That would be for various pieces of electrical
2 equipment that we needed in order to do the mobilization
3 and be able to set up temporary operations on the site.

4 Q. Can you turn to the next page?

5 MR. LINDEMAN: Can you cite where you're talking
6 about Holder Electric?

7 MR. STILWELL: I was in the middle of page 14054
8 under R&M Electrical.

9 Q. All right. Will you turn to the next page with me,
10 Glen?

11 A. Sure.

12 Q. The Vulcan Materials sixteen thousand charge there, I
13 know what Vulcan Materials does. That's actually gravel
14 and stuff?

15 A. Yes.

16 Q. Okay. Is that for the temporary pads y'all were
17 talking about building?

18 A. That's for the site preparation, building the ground,
19 the base to put all the heavy equipment on.

20 Q. You're just generally looking at it, like each charge
21 we looked at at Mauldin Road seems more expensive than the
22 others. I mean is there a reason why Mauldin Road is more
23 expensive than the others?

24 A. Mauldin Road had the bulk of the material, plus
25 Mauldin Road had sites located on each side of the river.

1 Plus we used more pressing equipment there in order to
2 process that volume in a relatively short time frame.

3 Q. It's the biggest plant?

4 A. Yes, matter of scale.

5 Q. Is that like capacity and daily flow?

6 A. It is.

7 Q. Did you say matter of scale?

8 A. I said it's a matter of scale. It's a much larger
9 facility. And had a larger impact.

10 Q. Okay. Let's go over to Pelham, which is a little bit
11 easier. The operating and outside technical, Waste
12 Management National Services. Is that the waste management
13 who actually did the remediation work?

14 A. It is.

15 Q. Okay. So all of their bills for testing and
16 equipment and everything are all rolled into that?

17 A. I don't know if they're all rolled into that line
18 item, but they all deal with Waste Management National
19 Association.

20 Q. Okay. How about Waste Management of South Carolina
21 below it, the two eighteen. Is that a landfill charge?

22 A. That is; yes.

23 Q. Okay. And so that was all stuff that was taken to
24 local landfills for Pelham?

25 A. Yes.

1 Q. Okay. Was that some of the ---

2 A. Some of that was belt pressing, not the -- well, as
3 we talked earlier or as someone talked earlier, the
4 material of the digester, as well as the cake off the belt
5 presses, anything that was less than fifty parts.

6 Q. I skipped over AECOM, seventy-nine thousand, above,
7 that's the charge for AECOM building the plan for Pelham?

8 A. Yes.

9 Q. Okay. And where do I find the Alabama Landfill in
10 this? How would I figure that out? Is that inside the
11 Waste Management number?

12 A. To the best of my recollection that's inside of the
13 Waste Management National Services charges.

14 Q. Okay. The last one I'm going to ask you about is the
15 Carolina Belting Company on the next page under Pelham. Do
16 you know what that is?

17 A. I'd have to look back specifically at the invoices to
18 determine ---

19 Q. Okay.

20 A. --- what that was for.

21 Q. How would you get to the invoices if you had to get
22 to them? Would you use number 100 to take you there?

23 A. I would; yes.

24 Q. Okay. How do you find underneath the individual
25 entries in 100 where the backup is? Is that in ReWa's

1 databases?

2 A. I'm not sure how that's done other than to have our
3 office support staff to pull that information and provide
4 it for us, which we did a number of times.

5 Q. Okay. Done in the course of this litigation to
6 produce it?

7 A. Yes. As well as in the course of the operation
8 itself.

9 Q. Okay. And if I look at all the total of the costs
10 allocated by ReWa to this work, it comes up to the total
11 there -- I should be able to do this -- eight million seven
12 hundred thousand dollars?

13 A. Yes.

14 Q. Okay. But that needs to be discounted; doesn't it?
15 Can you tell me what the setoff is from this for what ReWa
16 would have spent in normal operations?

17 A. It does because the material that we processed that
18 had PCBs or what we took off and ran through the belt
19 presses because we didn't have storage tanks available to
20 do land application, that material would have had to have
21 been processed by normal processing which in this case
22 would be for land application. So there's a cost involved
23 with that. So we wouldn't expect that to remain in the
24 total cost as PCB related costs. That cost would need to
25 be backed out of what we spent on the PCB project.

1 Q. So land applications are less expensive than what we
2 did?

3 A. It is; yes.

4 Q. Right? And so can you identify for me Exhibit Number
5 101 and tell me what that is?

6 A. Yeah. So Exhibit 101 summarizes each of the three
7 plants, first of all for precessing the stored materials
8 and getting them into cake form to go to the landfill, so
9 we're listing the gallons -- it says gallons stored, but
10 that should actually be gallons processed, and then the dry
11 tons based on percent solids of the liquid, so the dry tons
12 of cake that we took to the landfill, the middle section
13 there is -- identifies for each plant the amount of
14 material that we processed through the belt presses, which
15 is the ongoing flows. In other words, what's continuing to
16 come into the plant each day from the sewer system has to
17 be processed and that's got to be kept separate from what's
18 in the storage tanks that's already contaminated.

19 Q. Okay. Let me simplify this. The top box -- this is
20 a calculation you did?

21 A. They come from numbers that I calculated; yes.

22 Q. Okay. The top box A is the cost of what you had in
23 the holding tanks, what it would have cost to land apply
24 those?

25 A. Well, there's no costs there in that top box.

1 Q. Okay. It's not calculated yet. You're just trying
2 to find out how much was there?

3 A. Yes.

4 Q. Okay. The second box in the middle there, that flow
5 that came down during this period was turned into cake?

6 A. Yes. The regular ongoing daily plant flows have to
7 be run through the belt press system to make cake to go to
8 the landfill. Q. Okay.

9 A. So you have the total dry tons processed at each of
10 the three plants.

11 Q. And when you took that as amounts that y'all ended up
12 dealing with and try to figure out what it would have cost
13 you to apply them like regular course, how did you get
14 those dollars per ton in that?

15 A. So we totaled the dry tonnage from the ongoing daily
16 flows as well as the dry tons from the stored material
17 processing ---

18 Q. So you just figured out how much was involved?

19 A. Yes.

20 Q. Okay.

21 A. And so that's in the bottom table, the total dry tons
22 column for each plant. Each plant has a cost per dry ton
23 that we use in determining best method for dealing with our
24 biosolids and for a long time that method has been liquid
25 land application. It's considerable less costly. But that

1 equates to a cost per dry ton. That's the dollars per dry
2 ton is what it cost us to do liquid land applications. So
3 if we had not gotten hit by the PCBs, that reflects our
4 costs at each plant to do the liquid land application.
5 Those were post digester costs. And so we multiplied that
6 out and come up with a cost in that column over to the
7 right.

8 Q. What did you figure out it would have cost you to
9 take all this contaminated material and land apply it
10 instead of taking it to the landfills?

11 A. If it had not been contaminated?

12 Q. Yes?

13 A. That's on the bottom column there or bottom row, last
14 column.

15 Q. If you'll tell me what that number is?

16 A. Two million five hundred sixteen thousand fifty-four
17 dollars.

18 Q. Okay. Will you turn to number 90.

19 A. I'm sorry, what exhibit?

20 Q. Number 90. Is that in your book?

21 A. It is. I just missed it somehow. Okay.

22 Q. Is this record -- what are these -- tell me what this
23 is?

24 A. Okay. So this is a summary table of how much
25 material -- how much of our biosolids that we took out to

1 land application on the left-hand side for 2010 for each of
2 the plants. Then on the right-hand side it's how much
3 material that we took to the landfill during 2010 for each
4 of the plants. And because liquid land app involves
5 gallons and landfilling involves wet tons that we're
6 charged for, the common denominator in there or the common
7 language is dry tons, so it's all converted into dry tons.

8 Q. Okay. This -- just in general -- and this data came
9 out of WIMS?

10 A. It came out of -- some of the WIMS data was used to
11 put the numbers in the access database that our Solids
12 Department keeps up with, and that's where this came from.

13 Q. Okay. The WIMS database is where you track like your
14 volumes of biosolids?

15 A. Tank levels, how much is processed at each plant;
16 yes, percent solids, so on.

17 Q. And Access Database is just something the WIMS
18 reports into? I mean it's like Great Prairie go into ---

19 A. That information is taken from WIMS and keyed into
20 the Access Database with additional information like
21 landfill ticket weights and that sort of thing.

22 Q. Okay. And does this -- do these records accurately
23 show what y'all landfilled during the period before and
24 after this remediation event? And some of it actually
25 during?

1 A. It does. So we show 2010 and the next page 2011 and
2 then 2012 and then we go into the first six months of 2013.
3 Some of that is actually during the PCB operations.

4 Q. Okay.

5 MR. STILWELL: Your Honor, I'd offer Number 90
6 into evidence.

7 THE COURT: Any objection?

8 MR. LINDEMAN: Your Honor, I question and maybe
9 this is for cross-examination, why it comes from 2013 to
10 2016? That seems like the relevant periods of time are
11 between 2013 and present -- I mean 2017.

12 Q. Glen, the gap that he just referenced, is that the
13 part where we didn't do any land application from these
14 plants?

15 A. That is the general gap in there, although it does
16 not specifically exclude land application for the entire
17 amount of that time.

18 Q. Okay.

19 MR. LINDEMAN: My understanding, Your Honor, is
20 land application in some of these facilities were started
21 during that interval.

22 THE COURT: And you ---

23 MR. LINDEMAN: Plus they would be landfilled.

24 THE COURT: I'm going to allow it conditioned
25 upon your cross-examination.

1 MR. LINDEMAN: Thank you, Your Honor.

2 (WHEREUPON, Plaintiff Exhibit Number 90 was admitted
3 into evidence.)

4 Q. Glen, if you turn to 107 in your book.

5 MR. STILWELL: This is just a demonstrative,
6 Your Honor.

7 Q. What's the net between the damages on Exhibit 99 and
8 the two million five you just testified to?

9 A. Six point two million, roughly.

10 Q. Well, give me the details. Don't give me the
11 roughly.

12 A. Okay. Six million two hundred thirty-five thousand
13 eight hundred and ninety-five dollars and thirty-three
14 cents.

15 Q. And that's the net cost of remediating the PCB
16 contamination?

17 A. That's attributed to the PCB contamination; yes, sir.

18 MR. LINDEMAN: Object to the leading, Your
19 Honor.

20 MR. STILWELL: And I would ask to introduce the
21 setoff itself, too, Your Honor. And I've lost the document
22 number.

23 Q. What document is the setoff calculation, Glen?

24 A. I think it's 101.

25 Q. 101?

1 MR. STILWELL: I'd like to move 101 into
2 evidence.

3 MR. LINDEMAN: And Your Honor, again, for the
4 record, nothing can be simple, unfortunately, in this case,
5 we were given an absolutely different calculation by Mr.
6 McManus as a Rule 30(b)6 witness. That is our Exhibit
7 Number 16. So subject to Your Honor's consideration of the
8 differences, and we'll go into that in cross examination
9 tomorrow, but I don't have a problem with that ---

10 THE COURT: It's certainly fair game for cross.

11 MR. LINDEMAN: But I'm not stipulating that the
12 numbers are correct.

13 THE COURT: They are what they are and you make
14 no attestation beyond that.

15 MR. LINDEMAN: Thank you, Your Honor.

16 MR. STILWELL: I was intentionally like not
17 beating that one to death, Your Honor. I mean we can talk
18 about it in cross, and it's kind of late in the day, and so
19 I think I would end Mr. McManus's direct on that.

20 THE COURT: Okay. I'm assuming you've got a few
21 questions.

22 MR. LINDEMAN: I would imagine probably a couple
23 of hours, Your Honor.

24 THE COURT: And Mr. Stilwell, how many other
25 witnesses do you anticipate in Plaintiff's case-in-chief?

1 MR. STILWELL: One or two, Your Honor.

2 THE COURT: Okay. And how long do you
3 anticipate their direct exam on it? And I want real time;
4 not lawyer time.

5 MR. STILWELL: Your Honor, I'm thinking -- no,
6 I'm thinking we're ahead of schedule from the other week, I
7 told you a day and a quarter, and I'm thinking we're ahead
8 of schedule. I didn't think -- I didn't think we were
9 going to get to him and we're halfway through.

10 THE COURT: Let me get back to my question. How
11 long do you think?

12 MR. STILWELL: Two hours direct.

13 THE COURT: All right. And from defense, at
14 this point are you anticipating two witnesses?

15 MR. LINDEMAN: Probably two. Still possibly
16 three, but likely two. And I would think it would take us
17 about a half a day to put our case up. We would also have
18 probably a fairly lengthy motion for involuntary non-suit,
19 Your Honor.

20 THE COURT: All right. Well, you better start
21 preparing that now. You can protect yourself on the
22 record, but I'm not ---

23 MR. LINDEMAN: Again, that depends on how much
24 you want to hear argument on. We can probably rely ---

25 THE COURT: Not much. I can answer that one up

1 front.

2 MR. LINDEMAN: We can rely on our written
3 submission. In fact, I have a housekeeping matter.

4 THE COURT: Mr. McManus, you can go ahead and
5 have a seat. I think we're done for the day.

6 MR. LINDEMAN: Your Honor, I know our
7 instructions from your office were when we submitted our
8 pretrial briefs were to not file those. At some point I
9 think they probably need to be part of the record. I
10 didn't know if ---

11 THE COURT: I have no problem with you doing
12 that. I've looked over them and they're very well drafted
13 and written on both sides.

14 MR. BROWN: Do you want them actually filed or
15 would you rather have them as Court exhibits or -- I'm not
16 sure that it matters in terms of just making sure that
17 they're ---

18 MR. LINDEMAN: I think for an Appellant record
19 they should be filed.

20 THE COURT: I'm fine if y'all e-file them at
21 some point. That's probably the cleanest way to do it as
22 opposed to putting an exhibit sticker on it because
23 technically I'm not real sure that they would be considered
24 as evidence.

25 MR. LINDEMAN: Right. I just wanted -- didn't

1 want to disobey what we were told previously.

2 THE COURT: And I appreciate you checking on
3 that.

4 MR. LINDEMAN: All right. Thank you, Your
5 Honor.

6 THE COURT: All right. So let's plan -- I've
7 got something in Court at 8:45, and I'll use one of the
8 other courtrooms. Shouldn't take, hopefully, no more than
9 about twenty minutes. So if y'all can be geared up and
10 ready to go at about nine in the morning. We'll do the
11 same thing, push as hard as we can, take a relatively short
12 lunch and then probably go until 5:30, 5:45 tomorrow.

13 Here's one thing I want, since the money people are
14 present, first, y'all have got good lawyers. And I really
15 do, I appreciate that. Good lawyers know how to try cases.
16 And I'm telling you, this is just a mess of a case to try.
17 And to put it together when you've got fourteen thousand
18 moving pieces is no small task, but certainly the lawyers
19 are up to that, as has been shown. I've been on the bench
20 a lot of years, tried a lot of cases like this, I'm not
21 sure how much of a baby there is to split. There may be a
22 little bit to be shaved here and there, but y'all are
23 business people. Y'all have sat through the first day of
24 trial. You'll sit through the trial tomorrow. Once I
25 issue a ruling, it's going down to Columbia, and that's

1 just part of the process. And I understand that. But
2 you're looking at if one side prevails, the Plaintiff
3 prevails, they think, boy, that Simmons is the smartest
4 judge to ever hit Greenville County, and he awarded us that
5 6.2 million dollars, as he should have done. If it's a
6 ruling on behalf of the IRF they'll think just the same
7 thing. So at least half of y'all are going to think I'm
8 relatively smart and I'm okay with that. Business people
9 like to have control of dollars. And I'm just telling
10 y'all that I want everybody to go home, get a good night's
11 sleep, maybe try to show up a little bit early. There
12 needs to be some movement in settlement discussions. I'm
13 just telling you, both of y'all, I'm familiar with the
14 case. I've talked with the lawyers a lot. I've only heard
15 not even all of Plaintiff's case. Each side has some
16 strengths. Each side has some weaknesses. Once I issue
17 the Order, folks in Columbia, they will give great
18 deference to the Trial Judge's Order. So I'm just telling
19 y'all, y'all need to come back in the morning refreshed
20 with some new dollar signs. There are a whole lot of
21 zeroes tacked onto the end of this thing right now. So I
22 appreciate y'all indulging me for that editorial comment.
23 And based on my experience y'all need to get it settled.
24 If y'all want to get it settled. If you can get it
25 settled, it needs to happen soon.

1 The courtroom is to be locked once y'all leave. Ms.
2 Fryer, my very fine bailiff will lock it down. Y'all are
3 welcome to -- Ms. Fryer, you will be here by?

4 THE BAILIFF: Eight o'clock.

5 THE COURT: I like that about you.

6 All right. See y'all in the morning.

7 MR. LINDEMAN: Thank you, Your Honor.

8 MR. STILWELL: Thank you, Your Honor.

9 (WHEREUPON, Court adjourned for the day at
10 approximately 6:00 p.m.)

11 **JANUARY 29, 2020**

12 THE COURT: All right. If we can get the
13 witness back on the stand for what I'm sure everybody is
14 envious and desire to sit here and be poked and prodded for
15 a couple of hours by very fine lawyers.

16 Just remind you that you're still under oath, sir.

17 Just for the edification of everybody that's in here,
18 if you hear some bangs every now and then, they're doing a
19 roof replacement. I think it's on track to probably be the
20 slowest one ever in the state of South Carolina.
21 Nonetheless that may explain some of the noises.

22 MR. LINDEMAN: May it please the Court?

23 THE COURT: Yes, sir.

24 MR. LINDEMAN: Thank you, Your Honor.

25 **TESTIMONY OF ROBERT GLEN MCMANUS RESUMED:**

1 **CROSS EXAMINATION**

2 **BY MR. LINDEMAN:**

3 Q. Good morning, Mr. McManus. How are you?

4 A. Good morning. I'm fine. Thank you.

5 Q. Good. Let me start with some background information.

6 Your position at the time of the remediations from 2013 to
7 2015 was what?

8 A. Director of Operations.

9 Q. Your new position that you're currently holding, the
10 remediation process was over at the time you took the new
11 position?

12 A. It was.

13 Q. And so specifically what was your involvement with
14 the remediation itself?

15 A. I was -- from the operations perspective, all the
16 plants and the collection system, as well as the biosolids
17 program, were ultimately under my control with me reporting
18 to our Executive Director or CEO, if you will. And so in
19 that role I was responsible for heading up the remediation
20 at the Mauldin and Lower Reedy plants, and for ensuring
21 that there was coordination with our engineering department
22 and others in terms of the Pelham plant remediation.

23 Q. Now, in that role did you have any involvement
24 whatsoever in making the insurance claims with the
25 Insurance Reserve Fund?

1 A. Only in providing information to our Accounting
2 Department or Finance Director and staff in order to make
3 that claim.

4 Q. Did you have any direct interaction with any
5 employees at the Insurance Reserve Fund?

6 A. Only in presenting when they came up for the meeting
7 with us to talk about the details of the impact.

8 Q. You attended one meeting?

9 A. To the best of my recollection it was the one
10 meeting.

11 Q. Did you ever field any telephone calls -- have any
12 telephone conversations with any adjustor with the
13 Insurance Reserve Fund?

14 A. Not that I can recall at this point.

15 Q. There was an independent adjustor named Fred Young
16 who was also working on the claim. Did you ever have any
17 communications with Mr. Young involving the claim until
18 late 2014?

19 A. And I believe he was in the meeting that we were in.
20 I can't recall any specific conversations, telephone
21 conversations, with him, though I can't say for sure. But
22 I just don't recall any.

23 Q. Do you recall who with the Insurance Reserve Fund
24 attended this meeting you're referring to?

25 A. I don't. I'd have to look back at the minutes of the

1 meeting.

2 Q. And you said you assembled some information, but that
3 you provided to somebody in-house with ReWa rather than
4 sending it directly to the Insurance Reserve Fund; is that
5 right?

6 A. Yes.

7 Q. And who would you have provided information to in-
8 house?

9 A. That would have been provided either to our
10 controller or her staff.

11 Q. That's Patricia?

12 A. Patricia; yes.

13 Q. Was she the point person for ReWa as far as dealing
14 with the insurance claim?

15 A. To the best of my knowledge that would have been the
16 case, or her Senior Director, or one of her staff. But to
17 us she was the point of contact.

18 Q. As far as communications with regulatory authorities,
19 was that handled by Mr. Logue or were you involved in that?

20 A. It was primarily handled by Mr. Logue. I was
21 involved in some of the telephone conversations. But to
22 the largest extent it was handled by Mr. Logue.

23 Q. Has either DHEC or the EPA -- tried to combine them
24 there -- ever brought any type of enforcement action
25 against ReWa related to the PCB contamination?

1 A. Not that I'm aware of.

2 Q. Was one ever threatened that you're aware of?

3 A. Not that I'm aware of.

4 Q. Did ReWa, based upon your knowledge of the PCB
5 contamination at the three facilities, did ReWa have
6 anything to do with causing the contamination?

7 A. No.

8 Q. Did ReWa do anything to cause the PCB contamination
9 at any of those three facilities to be worse?

10 A. No.

11 Q. Let's talk about the three facilities. As I
12 understand it, the remediation was limited to Pelham, Lower
13 Reedy and Mauldin Road; is that correct?

14 A. That is correct.

15 Q. So there wasn't any type of PCB contamination at any
16 of ReWa's other facilities; is that right?

17 A. We did not detect any in our tests at the other
18 facilities.

19 Q. So the remainder of those facilities operated under
20 normal conditions?

21 A. They did.

22 Q. Now, the remediations at those three facilities took
23 place at different times; didn't they?

24 A. They did; yes.

25 Q. What went into determining the scheduling of the

1 remediation process?

2 A. With Pelham having the material that was in excess of
3 the fifty parts threshold, the immediate focus was on
4 Pelham. And so that pretty much determined why Pelham was
5 handled more immediately. And we, of course, brought in
6 the contractor that was qualified and certified to handle
7 hazardous materials. For the other two plants, there
8 seemed to be some question among DHEC and EPA as to how
9 that material of less than fifty parts per million would
10 need to be handled, so there was some ongoing discussion in
11 that regard. There was -- once we got a good feel for what
12 we needed to do on that, our charge from our Executive
13 Director/CEO was to assess whether it would be more cost
14 effective to have a contractor to handle this or whether it
15 would be more economical for us to do the work in-house.
16 So at that point we ran some numbers and got some numbers
17 from the contractor that was doing Pelham. And as we
18 looked at the resources that would be required in-house and
19 what we would have to either purchase or rent and how much
20 labor we would have to put into it, and looked at our
21 overall costs and determined which type of equipment would
22 be best for that application, we ran some numbers and our
23 in-house costs were -- would be considerably less than
24 using a contractor. So once we got that determined then we
25 had to pilot test the piece of equipment that we felt like

1 would be best suited for this and most economical. Then
2 once we did that and were able to procure that equipment,
3 the next step was deciding whether Mauldin or Lower Reedy
4 would be done first. The thing that you have to consider
5 in making that decision is that the material at Lower Reedy
6 was older. In other words, it had been produced prior to
7 the material at Mauldin Road in general. And the issue
8 there is that once that material is thickened for land
9 application, that polymer is put in there, the polymer
10 continues to age, and the longer it ages, the more
11 difficult it is to dewater that material to cake. So we
12 felt like it made sense to do Lower Reedy first. It's got
13 a lesser volume. We can get out of it quicker and then
14 move on to Mauldin Road. So that was essentially the
15 rationale for the scheduling decisions.

16 Q. And the actual remediation plan for Lower Reedy and
17 Mauldin Road actually consisted of one document; did it
18 not?

19 A. It did; yes.

20 Q. Did you play any role in preparing that plan?

21 A. I did.

22 Q. I believe if you've got it in front of you, it's
23 Exhibit Number -- Plaintiff's Exhibit 38; is that correct?

24 A. I don't have a 38 in this book. At least I don't see
25 a tab to that effect.

1 Q. I only have Exhibits 1 through 13 right here. I
2 think 38 will be in ---

3 A. This book?

4 Q. That book; yes.

5 A. Yes, sir, it is included in Exhibit 38.

6 Q. All right. And it's actually a one-page document
7 about two-thirds of a page?

8 A. That is correct.

9 Q. And you said you participated in preparing that plan?

10 A. I did.

11 Q. Who else participated?

12 A. Mr. Logue and, of course, his input from whatever
13 sources he had it from. But primarily Mr. Logue and myself
14 participated in that.

15 Q. You did not use AECOM to assist with preparing
16 this remediation plan; correct?

17 A. Other than using information that we had gotten from
18 them in the Pelham case; correct.

19 Q. But actually having their direct assistance in
20 preparing this document ---

21 A. We did not use them for that; no.

22 Q. Did you use any type of outside engineering firm?

23 A. I can't say for sure whether Mr. Logue consulted
24 other firms in the information that was provided to put
25 this together.

1 Q. Is Mr. Logue an environmental engineer?

2 A. He -- I don't recall what his degree is in.

3 Q. Is he an engineer?

4 A. He is an engineer. PE; yes.

5 Q. You are not an engineer; correct?

6 A. Not a PE; no.

7 Q. Are you an engineer?

8 A. By degree; yes.

9 Q. What was the degree in?

10 A. Engineering Technology, which is more of a practical
11 field type engineering as opposed to design.

12 Q. Now, you mentioned a moment ago that Pelham received
13 priority because that was the only facility that had PCB
14 contamination over fifty milligrams per kilogram; is that
15 correct?

16 A. That is correct.

17 Q. All right. And then ultimately Lower Reedy and
18 Mauldin Road were lesser priority because the PCB
19 contamination at those facilities were less than the fifty
20 milligrams per kilogram threshold; correct?

21 A. That and the decision -- or the question from DHEC
22 and EPA as to how that material would ultimately need to be
23 handled.

24 Q. And you mentioned EPA. EPA didn't have anything to
25 with Lower Richland (verbatim) or Mauldin Road because it

1 didn't trigger the fifty milligrams per kilogram threshold;
2 correct?

3 A. Once the EPA folks figured out the difference between
4 the TSCA and the 503 reg and resolved that between
5 themselves, then correct; yes.

6 Q. So you were just dealing with DHEC as far as those
7 two facilities?

8 A. After the EPA decision was cleared up; yes, that's
9 correct.

10 Q. Exhibit 38, was that even sent to the EPA?

11 A. I can't say whether it was sent to EPA or not.

12 Q. I think the exhibit has the email that actually
13 transmitted it; doesn't it? If you don't mind me looking
14 over your shoulder.

15 A. I don't mind. Charles Logue and Jeff DeBessonnet, who
16 is at DHEC. I only see Jeff DeBossonet, which would be
17 DHEC.

18 Q. All right. You don't see anybody copied on that with
19 EPA?

20 A. No, I don't.

21 Q. And what's the date of the email to Mr. DeBessonnet?

22 A. It is April 14th and April 15th.

23 Q. The actual email that transmits it is April 15th,
24 2014; correct?

25 A. Correct; yes.

1 Q. Read the email to me, please.

2 A. It says, Jeff, here is a brief description of what we
3 intend to do at Mauldin Road and Lower Reedy -- MR and LR,
4 which is Mauldin Road and Lower Reedy. Please let us know
5 if you need any other information.

6 Q. Do you know if any other information was requested by
7 DHEC related to this remediation plan?

8 A. Not to me. And this email is from Mr. Logue, so any
9 further requests would likely have been through him. But I
10 don't recall receiving any further requests for information
11 directly from DHEC.

12 Q. Do you recall receiving any type of response from
13 DHEC with respect to this plan?

14 A. I don't recall anything specifically at this time.

15 Q. Again, you mentioned that Pelham was above the TSCA
16 threshold and that the other two institutions were not.
17 What was the highest PCB contamination reading that you all
18 had at Mauldin Road?

19 A. Without looking at the information or the documents,
20 I would have to go by recollection, and I'm thinking it was
21 in the ---

22 Q. Rather than going by -- so you don't know off the top
23 of your head, you were just giving me an estimate?

24 A. An estimate of eight parts per million.

25 Q. Okay. Let me actually get you to look at the plan.

1 I think that information is contained in the plan, if that
2 refreshes your recollection, rather than giving an
3 approximation. Do you see in the background information of
4 the plan, does it state what that is?

5 A. Yes. It's actually 5.8.

6 Q. It actually refers to the PCB concentrations as low
7 level; correct?

8 A. It does.

9 Q. That's the lingo you all use, low level?

10 A. Yes, which to us is below fifty parts.

11 Q. Okay. And those terms were actually also used in the
12 title of the document, too; correct?

13 A. Yes.

14 Q. And it shows that the concentrations ranged at
15 Mauldin Road from .66, and uses parts per million, but in
16 reality it should have used milligrams per kilograms;
17 correct?

18 A. Those are numbers that I was provided by Charlie, Mr.
19 Logue.

20 Q. Okay. Do you understand that scientifically there is
21 a distinction between milligrams per kilogram and parts per
22 million?

23 A. Yes.

24 Q. Okay. But in essence what you're trying to
25 communicate here is milligrams per kilogram; correct?

1 A. Yes.

2 Q. That's what TSCA uses; correct?

3 A. Well, no, it -- whatever is the appropriate
4 applicable units.

5 Q. All right. So the range was .66. So less than one,
6 with a high of 5.8; correct?

7 A. Yes.

8 THE COURT: I'm sorry. To a high of what?

9 MR. LINDEMAN: 5.8.

10 THE COURT: All right. Thank you.

11 Q. So you never had a reading over 5.8 is what this is
12 communicating; correct?

13 A. At that time we did not.

14 Q. At any time have you had a reading higher than 5.8 at
15 Mauldin Road?

16 A. Whether we had one higher than that or not I would
17 have to look at the sample records to verify.

18 Q. So you're saying as of the time of the remediation
19 plan there was not -- it never exceeded 5.8?

20 A. Correct.

21 Q. And as you sit here today you can't tell the Court of
22 a specific time that there was a reading higher than 5.8;
23 can you?

24 A. Not without looking at the sample records.

25 Q. Well, you put the sample -- summary of all the

1 samples into evidence. Did you not review those in
2 preparation for the deposition?

3 A. I did, but there's a lot in there to try to remember
4 and I won't try to venture a guess at that.

5 Q. But nothing jumped out at you at a high number at
6 Pelham -- at Mauldin Road; correct?

7 A. At least not substantially higher than that.

8 Q. Well, was there a number higher than that that jumped
9 out at you that you do recollect?

10 A. As I've already said, I do not.

11 Q. Okay. All right. Let's turn to Lower Reedy. What
12 was the highest reading at Lower Reedy?

13 A. 4.2.

14 Q. That's also communicated there in Exhibit 38?

15 A. It is.

16 Q. So as far as -- going back to where I was until I
17 digressed a little bit, I want to give the Court the idea
18 of the time frames when the remediations were done at each
19 of the facilities. Can you give the start date and end
20 date at Pelham?

21 A. I can give you approximate times, but I can't give
22 you the specific dates without looking at additional
23 details.

24 Q. All right. What would you need to look at? For
25 instance the summary report, would that provide you that

1 information?

2 A. I believe it would.

3 Q. All right. Feel free to look at the summary report.

4 I believe that is Exhibit 94. I'm happy to help point you

5 in the right direction. If you'll look at the last

6 paragraph on page 9. I just want to get these dates

7 established for the record.

8 A. My page 9 doesn't have any dates on it.

9 Q. Maybe I did that wrong. Is that not the summary ---

10 A. That is the summary report; yes.

11 Q. I don't know. Maybe there's more than one page 9.

12 MR. LINDEMAN: I'm a little stumped, Your Honor.

13 It looks like these documents are differently numbered.

14 Q. Anyway, let's -- let me direct you differently then.

15 It looks like it's in section 4.0. Do you have that?

16 A. I do.

17 Q. Yours is page 10?

18 A. Yes, for section 4.0.

19 Q. Okay. Is there a paragraph, I guess it's going to be

20 over on the next page, starting, processing of sludge?

21 A. Yes.

22 Q. All right. Does that contain dates?

23 A. Yes. It start -- it started on November 14th of

24 2013. Completed on January 30th of 2014.

25 Q. Okay. That was the processing of storage tanks 3, 4,

1 5, wet well 1202 and the two wet wells for effluent pump
2 station; correct?

3 A. That is correct.

4 THE COURT: I'm sorry. And this is Pelham?

5 MR. LINDEMAN: This is Pelham.

6 Q. And it excludes the digester. The digester was done
7 subsequently; correct?

8 A. It was.

9 Q. All right. I'm not going to tell you what page
10 number, since our pages differ and we'll have to figure
11 that out. But a couple of pages later is there dates for
12 removal of the sludge in the digester?

13 A. The removal of the sludge in the digester started on
14 January 31st, 2014 and completed approximately February
15 19th of 2014.

16 Q. So do you agree with me, then, that the remediation
17 at Pelham ended February 19, 2014?

18 A. According to the AECOM summary; yes.

19 Q. Do you have any reason to question the accuracy of
20 the AECOM summary report?

21 A. Not at this time.

22 Q. And at Pelham, as we've indicated, you used AECOM to
23 do the engineering; correct?

24 A. Yes.

25 Q. And AECOM prepared a remediation plan, as well as a

1 summary report?

2 A. They did.

3 Q. And then we talked about at Mauldin Road and Lower
4 Reedy you did that in-house and you prepared the
5 remediation plan which was this one-page document which is
6 part of Exhibit 38; correct?

7 A. That is correct.

8 Q. Did you all do summary reports similar to Exhibit 94
9 when you completed the remediations at Mauldin Road and
10 Lower Reedy?

11 A. We did regular reports to our board that summarized
12 the work that had been done each month or the period that
13 the report covered. I don't recall that we did a final
14 summary report that would be similar to the AECOM report.

15 Q. That's what I'm looking for. I'm looking for is
16 there a summary report similar to what we have for Pelham?

17 A. I don't believe so.

18 Q. Is there a document that shows the start date and the
19 end date of the operation at Lower Reedy?

20 A. Other than the reports that were provided to the
21 board to summarize the ongoing progress, as well as the
22 plant log books and the log book that went with the press
23 unit that was doing that work, I don't know that there is a
24 separate summary report that would show dates other than
25 the dates that would be shown in those logs.

1 Q. Are you able to provide the Court with the start date
2 and ending date for Lower Reedy?

3 A. Within a rough time frame. Would you like me to
4 provide that?

5 Q. Please.

6 A. Okay. So the Lower Reedy project started in July,
7 early July of 2014 and ran through mid-November of 2014.

8 Q. By mid-November, then the remediation at Lower Reedy
9 was complete?

10 A. The dewatering portion of it was done. There was
11 still some tank cleaning that remained to be done and was
12 completed shortly thereafter perhaps into early December,
13 but roughly in that time frame.

14 Q. Okay. Certainly by the end of 2014 Pelham was
15 completed? I'm sorry, Lower Reedy was completed?

16 A. Lower Reedy; yes.

17 Q. And how about the dates for the work at Mauldin Road,
18 when did it begin?

19 A. So that began in December of 2014 and was completed
20 in June of 2014.

21 Q. June of 2015?

22 A. '15, I'm sorry; yes.

23 Q. So all three plants would have been completed by June
24 of 2015?

25 A. Correct.

1 Q. So as far as the -- just so I'm clear. So as far as
2 the remediation work for all three facilities, there should
3 be no additional expenses for remediation after June of
4 2015; is that correct?

5 A. There could have been some final tank cleaning that
6 went into July. But roughly around -- certainly not after
7 July of 2015.

8 Q. I assume you reviewed all these invoices in order to
9 prepare and be able to testify about this summary, which is
10 Exhibit 99; is that correct?

11 A. Yes.

12 Q. And did you actually review all those invoices in
13 preparation for this trial?

14 A. I did review them. Now, being able to recall
15 something off the top of my head, there's a lot of
16 information there.

17 Q. How much time did you spend actually reviewing all
18 those invoices?

19 A. Probably in total half a day.

20 Q. Okay. Can you give us an estimate of how many pages
21 of invoices that would consist of?

22 A. I cannot.

23 Q. It looked to me like it was in excess of twenty
24 thousand pages.

25 A. Uh-huh (affirmative).

1 Q. And that's something you were able to review in half
2 a day?

3 A. Not all of the details, just the invoices in general.

4 Q. Did you go through all of the invoices that are
5 included in Exhibit 99?

6 A. In preparation for the -- I don't know what's in
7 Exhibit 99.

8 Q. Exhibit 99 is the pivot sheet you testified to
9 yesterday.

10 A. I did not go in detail in reviewing those invoices.

11 Q. Did you actually review each invoice, though? I mean
12 you said you didn't go into detail. Did you go through all
13 the invoices?

14 A. So each invoice that is on -- that would be related
15 to this pivot table?

16 Q. Right?

17 A. No.

18 Q. Did you review any of the invoices that are part of
19 that pivot table?

20 A. Yes.

21 Q. How did you select what you reviewed and what you
22 didn't?

23 A. Basically with the questions that our legal staff had
24 in reviewing, those would be the invoices that I looked at.
25 Primarily with the pressing operations, the tank cleaning,

1 to the extent of determining what did this company provide.
2 And so looking at invoices, okay, we know this is what
3 service or what equipment that this company provided. So
4 you know, with -- in terms of looking at every invoice in
5 detail, again, no.

6 Q. So in providing testimony to this Court about the
7 summary document, Exhibit Number 99, ---

8 A. Yes.

9 Q. --- I take it you didn't prepare that document;
10 correct?

11 A. I did not.

12 Q. Did you do anything to verify that those numbers are
13 correct?

14 A. At the time that this document was prepared?

15 Q. At the time that it's been prepared as a summary
16 document to present to the Court as evidence in this case?

17 A. Our staff looked at these numbers over a period of
18 time and looked at whether we could identify what the
19 charges were, whether they would be, in fact, correct to
20 the PCB case and trying to make sure that they were in as
21 appropriate a category as we could put them based on the
22 information on the invoices. So that it was a
23 collaborative effort to make sure that we were providing
24 the most correct information that we could.

25 Q. Are you talking about at the time that the invoices

1 or purchase orders were processed, staff made
2 determinations as to whether or not they were related to
3 remediations at the various facilities?

4 A. That would be correct.

5 Q. My question is more specific than that. My question
6 is related to that particular exhibit which was submitted
7 to the Court and the Court hasn't ruled yet, as I
8 understand the record, as to whether or not that's an
9 appropriate summary under Rule 1006. So what I'm asking
10 you is specifically, you're the person who's been
11 designated here to present that summary document; correct?

12 A. Apparently so.

13 Q. The other staff that you referred to, they aren't
14 here to testify; are they?

15 MR. STILWELL: Objection, Your Honor. He's
16 sitting right behind me.

17 A. I don't know who's designated to testify.

18 Q. In preparing or submitting that document to this
19 Court, did you do anything to verify the accuracy of those
20 numbers? And by you, I don't mean ReWa. I mean you, Mr.
21 McManus?

22 A. My verification of the accuracy of it was to ask the
23 -- well, and I don't know that this is the specific
24 document that our Office Supervisor prepared. I know that
25 she prepared a document that would be similar. Whether it

1 is actually this version or not, I don't know.

2 Q. But you didn't prepare that document?

3 A. That is correct.

4 Q. How about flip over to exhibit -- Plaintiff's Exhibit
5 100. Did you review any of those transactions that are
6 listed in that particular exhibit in offering your
7 testimony here today and yesterday?

8 A. In terms of offering my testimony here today or
9 yesterday, I don't know that I reviewed any of these
10 particular documents specifically.

11 Q. Now, supposedly there's written documentation that
12 ReWa has for each of the transactions that's described in
13 Exhibit 100; is that correct?

14 A. There should be.

15 Q. Have you ever looked at any of those documents?

16 A. Over time; yes.

17 Q. How about as part of this litigation in preparing to
18 testify here today?

19 A. Some; yes.

20 Q. As I understood your testimony from yesterday, the
21 purchase orders or invoices received a particular code that
22 would link it to the remediation claim to be submitted to
23 the Insurance Reserve Fund; is that correct?

24 A. Yes.

25 Q. And the coding was actually done by many different

1 people; correct?

2 A. It was done by several people.

3 Q. Was there a particular person who went back and
4 verified and ensured that it was coded properly?

5 A. There were several people who collaboratively did
6 that throughout the process and then afterwards when we
7 were preparing the documents.

8 Q. Did you, Glen McManus, verify that each of those
9 invoices and transactions were properly coded?

10 A. Well, that would probably be physically not
11 practical.

12 Q. So the answer to my question is no?

13 A. Not personally without getting input from staff,
14 although I was involved in some of the review.

15 Q. But you have not gone back and made sure that each of
16 those documents were properly coded to be part of this
17 insurance claim; is that correct?

18 A. Not subsequent to the actual PCB remediation event;
19 no.

20 Q. And you would agree with me, wouldn't you, that if an
21 expenditure was improperly coded, it would be included in
22 Exhibit 100 in error; correct?

23 A. If it were improperly coded, it would certainly be an
24 error; yes.

25 Q. And what was the coding system that was implemented?

1 A. Can you be more specific?

2 Q. What kind of codes -- I mean, explain what the codes
3 were?

4 A. They were the codes that are used by our Accounting
5 Department to identify the cost centers and the type of
6 expenditure.

7 Q. And how many different codes were there?

8 A. In total I don't know how many different codes there
9 are, but in general there were codes that would identify
10 whether the operation was to remove the stored solids from
11 the tank or whether the operation was to -- centered around
12 the running of the belt presses and the ongoing flows that
13 were coming through the plants not related to the stored
14 solids in the tank. And then the codes would further break
15 it down to the specific facility. And then the codes would
16 further break it down to specific type of service or
17 expense.

18 Q. You're making it sound like there are many different
19 codes that were used; is that correct?

20 A. Of course there were a number of different codes.

21 Q. Okay. Is there like a key -- I use that term from
22 maps -- is there a key that lists out all the different
23 codes that were used for this process?

24 A. That would, I think, probably would be a question for
25 our financial folks.

1 Q. Did you ever personally code any of the expenditures?

2 A. I did not.

3 Q. Okay. Was there any type of written policy or
4 procedure put in place regarding how these expenses would
5 be coded for the insurance claim?

6 A. We were actually coding expenses before there was a
7 recognition that there was going to be an insurance claim
8 on it. So that was put in place before there was anything,
9 at least from our perspective, with ---

10 Q. Let me rephrase then. Was there ever a written
11 policy, procedure or protocol that was put in place as to
12 how to code and what to code as far as expenditures go that
13 are being now claimed as part of this insurance claim?

14 A. That actually tied into our standing procedure of
15 coding. It was no different from our normal process, other
16 than the specific numbers that were used in the coding.

17 Q. So there was no special protocol or procedure that
18 was adopted in writing? Is that what I'm hearing you say?

19 A. Not beyond our standing protocol.

20 Q. As far as being able to tell me how those various
21 items in Exhibit Number 100 were coded, you're not able to
22 do that?

23 A. I'm sorry. I don't understand what you're
24 referencing.

25 Q. I think you testified there are many, many different

1 codes, but you can't even tell me what any of those are; is
2 that correct?

3 A. I can tell you how they were coded, which I believe
4 I've already covered. As far as specific expense, I can
5 tell you what it would have been coded to verbally, but I
6 can't tell you the specific numbers without going back and
7 referencing those.

8 Q. Do you know what the initials MPCU mean?

9 A. I don't know specifically what they mean. I know
10 that they were applicable to one of the two projects,
11 either the ongoing dewatering of the plant flows of solids
12 or the processing of material out of the storage tanks.
13 And MPCS was the other category.

14 Q. Were there additional codes other than that?

15 A. There were numerical codes that applied to the
16 specific facilities and then to the specific types of
17 expenses or category of expenses that we use in our
18 standing budgeting protocol.

19 Q. Did you devise this coding system or somebody else
20 did?

21 A. Someone else devised that.

22 Q. So then just to summarize and make sure I'm clear and
23 make sure it's clear for the Court, as part of preparing
24 and presenting -- let me strike that. Exhibit Number 99
25 and Exhibit 100, you didn't have any part in actually

1 preparing either of those documents; correct?

2 A. Not in the actual preparation; you're correct.

3 Q. And you didn't review the underlying data to make
4 sure it's accurately reflected in either of those exhibits;
5 correct?

6 A. Only during the actual process of the PCB
7 remediation.

8 Q. Tell me what you mean by that. So you reviewed every
9 single invoice during the process?

10 A. No.

11 Q. What are you referring to?

12 A. So I did review invoices selectively and also in a
13 collaborative fashion with others when there was a question
14 about how the invoices should be charged. And then
15 anything that I had to sign off on because of the amount of
16 the expense, I would review those invoices.

17 Q. So at no time did you review all of the underlying
18 data; that's a correct statement?

19 A. I think that would be a correct statement.

20 Q. Okay. Without the -- by underlying data, my
21 understanding the underlying data is essentially invoices,
22 contracts, some email correspondence between vendors and
23 ReWa, POs, that sort of thing; correct?

24 A. (Affirmative nod.)

25 Q. You need to answer out loud.

1 A. Okay.

2 Q. Is that correct?

3 A. I'm sorry. I didn't understand what you were asking.

4 Q. My question is, the underlying data for those two
5 summaries consists of purchase orders, invoices, emails,
6 contracts, bids, procurement in major ---

7 A. That would be correct.

8 Q. And major purchases had to be handled through
9 procurement; correct?

10 A. Yes.

11 Q. Okay.

12 A. Or through the procurement code and regulations in
13 compliance with that.

14 Q. Does ReWa have a specific Procurement Manager?

15 A. We do; yes.

16 Q. Who is that?

17 A. Julie Dacus.

18 Q. Was she in that position back in 2013 and '14?

19 A. I can't remember when she went into the position.

20 Q. Okay. The information provided in Exhibit --
21 Plaintiff's Exhibits 99 and 100 doesn't provide any detail
22 as to the work that was performed for those particular
23 expenditures or those particular vendors; is that correct?

24 A. I believe that to be correct.

25 Q. Okay. Or if a purchase was made of a part or some

1 sort of technical function, there's no -- nothing in those
2 exhibits that provide any of that type of detail; correct?

3 A. I would agree that you're correct.

4 Q. So, Mr. McManus, assume for me for a moment that in
5 the course of the Court evaluating this case, a
6 determination is made that one particular type of service
7 is covered by one of the insurance policies at issue, but
8 another type of service is not. Or a particular expenditure
9 for one type of hose is covered and another type of product
10 is not covered. How, based on Exhibit 99 and 100, will the
11 Court be able to differentiate and determine ---

12 MR. STILWELL: Your Honor, I'm going ---

13 Q. --- the expenditure that would be covered versus what
14 wouldn't be covered? Do you follow my question?

15 MR. STILWELL: It's hard enough to know what
16 we're talking about in the sewer world. I object to asking
17 the witness to speculate how the Court is going to do its
18 job.

19 MR. LINDEMAN: That's not what I'm asking him.

20 MR. STILWELL: I think that's exactly what you
21 said.

22 THE COURT: If you'll rephrase the question. I
23 think I know where you're heading, but if you'll rephrase
24 it.

25 Q. Given that you've admitted to me that neither of

1 those documents provide any detail as to the service or
2 product or scope of work that matches up with each
3 expenditure; correct?

4 A. Correct.

5 Q. All right. So ultimately if -- I'll leave the Court
6 out of it -- if I wanted to determine, if I wanted to
7 determine whether or not a particular line item in Exhibit
8 100 should be included as part of the insurance claim and
9 is covered under the insurance policy and another item is
10 not, how do I make that determination without the
11 underlying -- without referring to the underlying data?

12 THE COURT: Yes, sir, Mr. Stilwell.

13 MR. STILWELL: Your Honor, my objection to this
14 is that he's asking this witness to basically testify how
15 does Rule 106 work as -- so far as the Court's discretion
16 to ask for the original data to be brought into Court if
17 the Court so wishes. And also the part preface to that
18 says that it needs to be made available to the other side,
19 which this case was in discovery for four years and they've
20 had the opportunity to ask for or review this stuff and
21 it's just not fair to this witness to ask him how are we
22 going to do the larger part of the job.

23 THE COURT: All right. Noted on the record.
24 You can answer the question.

25 MR. LINDEMAN: Thank you.

1 A. So you would have to look at additional backup
2 information of the type that you've already mentioned. And
3 whether that was provided to you or whether you've asked
4 for it previously, I can't say.

5 Q. But to make that determination you would need the
6 underlying data for each of those expenditures; correct?

7 A. You would.

8 Q. Okay. Let me move on to talking a little bit more
9 about the remediations at the different facilities. I want
10 to go through each facility separately ---

11 A. Okay.

12 Q. --- so the record's clear and the Court has that
13 information. Let's start with Pelham.

14 A. Okay.

15 Q. And I understand you have the knowledge to be able to
16 testify as to the remediation that was done at all three
17 facilities; is that correct?

18 A. Generally so; yes.

19 Q. And that would have fallen under operations at the
20 time?

21 A. Operations/Engineering specifically or particularly
22 for Pelham.

23 Q. Okay. And Pelham, of course, is where AECOM did the
24 remediation plan?

25 A. It is.

1 Q. Okay. What structures at Pelham contained biosolids
2 that had PCB contamination?

3 A. The holding tanks 3, 4, 5, 6 at one point, digester
4 number 2, eventually digester number 1, what we call the
5 digester overflow tanks 1 and 2 and then influent pump
6 stations 1 and 2, then some of the process vessels that
7 eventually tested out to zero or non-detect.

8 Q. I'm asking for the actual structures that did contain
9 PCB contamination; not ones that tested out to non-detect.

10 A. Well, that did contain PCB at any point in the
11 process or regarding the remediation efforts?

12 Q. Well, let me ask you this. The structures that
13 ultimately were cleaned or pressure washed?

14 A. Okay. All right. So ---

15 Q. So let me rephrase that question. I have it as
16 digester 1. Do you agree with that?

17 A. I agree.

18 Q. I don't show digester 2 required any type of
19 cleaning?

20 A. You're correct.

21 Q. Digester 2, I don't even believe was in operation;
22 was it?

23 A. It was not in operations initially, but in order to
24 clean number 1, we had to transfer the material over to
25 number 2.

1 Q. So you all, as part of the remediation, contaminated
2 a different structure?

3 A. That structure or that process had the capability of
4 the -- I guess what you need to understand first to
5 understand the answer to that question is that for digester
6 number 1, of course, with the PCBs being adhered to --
7 primarily to the solids and organic material, that that
8 material was settled out in the bottom of digester number
9 1. And then the liquid, the active part of the process was
10 transferred over into digester number 2 which gave it some
11 very low levels of PCBs, but low enough that that process
12 that you eventually get the solids out of that digester
13 through the cake dewatering and production of cake in the
14 plant, which is what happened. So there was never any need
15 to do anything, just like some of the other processes in
16 the plant that had PCBs coming through them, they were
17 capable of eventually getting rid of the solids out of
18 those processes and getting to a non-detect point. So the
19 only thing that needed to be cleaned that still had the
20 high concentration or concentrations below fifty but
21 relatively high, was digester number 1, of those two
22 vessels.

23 Q. All right. How many digesters are there at Pelham?

24 A. There are two. And you can't stop the process. So
25 if you're going to take one down for cleaning, you have to

1 start the other one. No choice.

2 Q. So I guess I didn't follow that. What was the reason
3 for removing the aqueous portion that was in digester
4 number 1 and moving it to digester number 2?

5 A. Okay. When we say the aqueous portion, recognize
6 that that really includes the biological process that's
7 actually doing the digestion. So for digester number 2,
8 you can't just magically start up a digester and have it
9 functioning. It takes a period of time to build that
10 material in there. If you're going to continue your
11 process of the plant doing its job and preventing
12 environmental contamination, you have to have what we call
13 seed, which is the biological material that is already
14 digesting from another digester put in that new, if you
15 will, digester that you're starting up. So we either had
16 to bring in that seed from another plant or we had to
17 transfer over from the Pelham plant. If we didn't transfer
18 over it, we would have all of that liquid or aqueous
19 material, as you say, to run through the process of
20 dewatering that would have been much more costly. So the
21 most economical method was to put that aqueous material
22 with the very low concentration of PCB into digester 2 so
23 that essentially you're not missing a step; you're keeping
24 the plant process running so it can do its job.

25 Q. And when was that done?

1 A. I don't recall the exact timing of that.

2 Q. Was the seed material where you described it, which
3 essentially is the aqueous or the liquid?

4 A. The biological part of the process; yes.

5 Q. All right. Was it tested before it was placed into
6 digester 2?

7 A. I don't recall without looking at details.

8 Q. Do you know whether it tested positive for PCBs?

9 A. It did test positive; yes, in both digesters.

10 Q. Was that seeding process to get digester number 2
11 operating, was that done before AECOM prepared its plan?

12 A. I don't know. I'd have to look back at the timing on
13 it.

14 Q. Okay. But you agree with me digester number 2 never
15 required any type of cleaning or remediation; is that
16 right?

17 A. It did not; that's correct.

18 Q. All right. So let's talk about the different
19 structures, take them one at a time. Digester number 1,
20 that's constructed of concrete; correct?

21 A. It is.

22 Q. Are all of these structures, just to save a lot of
23 question, are all of these structures constructed of
24 concrete?

25 A. They are.

1 Q. Did any of those structures that we just talked about
2 require demolition and replacement?

3 A. They did not require demotion and replacement; no.

4 Q. Okay. Did any of those structures actually have
5 equipment that was affixed? Not placed in but affixed to
6 those structures?

7 A. You're asking did those structures have fixed
8 equipment inside of them?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. And which ones?

12 A. There are fixed equipment in most of -- all of those,
13 the digesters have mixing equipment, the biosolids tanks
14 have mixing equipment and pumps and other appurtenances
15 attached to them.

16 Q. Did any of that equipment require removal and
17 replacement as a result of the PCB contamination?

18 A. Not to my recollection.

19 Q. And as far as the structures at Pelham, the cleaning
20 or pressure washing of those structures was done by Waste
21 Management as part of their contract; correct?

22 A. I believe that's correct.

23 Q. All right. Were any of those structures cleaned by
24 anyone other than Waste Management?

25 A. I recall a -- some information from -- maybe a few

1 weeks ago when we were looking at this, that there was some
2 work that another contractor did out there, HEPACO, but I
3 don't recall whether that was as a part of the Waste
4 Management contract or if that was done separately.

5 Q. What I need to know is whether ReWa paid anyone other
6 than Waste Management to do the cleaning and pressure
7 washing of those structures that we just talked about?

8 A. To confirm that one way or the other would require
9 looking at the information in Exhibits 99, 100 and the
10 additional supporting information for that.

11 Q. And you have not done that work?

12 A. Not to the point that I can recall.

13 Q. So you can't tell this Court today whether anyone
14 other than Waste Management did the work cleaning or
15 pressure washing those structures?

16 A. I cannot.

17 Q. You cannot?

18 A. No.

19 Q. Can you break out of Waste Management's bills or
20 invoices what was paid to clean or pressure wash the
21 structures at Pelham?

22 A. Whether we can differentiate pressure washing from
23 the remainder of the cleaning process, I'd have to go back
24 and look at the invoices to tell you that.

25 Q. Have you done it?

1 A. I have looked at those and whether the pressure
2 washing is broken out, I don't remember.

3 Q. And Insurance Reserve Fund has asked for that
4 information. You would agree with that; correct?

5 A. I don't know what you've asked for.

6 Q. You don't know what was asked for?

7 A. I do not.

8 Q. And I'm referring to prior to the lawsuit being
9 brought? Were you never requested to provide a breakdown
10 of what was expended to clean the structures at Pelham?

11 A. I'm sure we were requested to provide that. Whether
12 we were requested -- we, our group, being requested
13 specifically by the IRF, I don't recall that.

14 Q. Were you ever asked in-house by Patricia Dennis or
15 anyone who was involved in responding to requests for
16 information from the Insurance Reserve Fund to do that
17 breakout?

18 A. I believe we were; yes.

19 Q. All right. And did you do that work?

20 A. Did I specifically do that work personally?

21 Q. Or did your operations group? Was that allocation
22 made? Was there a determination made what the expense
23 would be or was for the cleaning and pressure washing of
24 the structures at Pelham?

25 A. I don't know. I don't recall.

1 Q. All right. Let's move to Lower Reedy. What were the
2 structures at Lower Reedy that contained biosolids that
3 tested positive for PCBs?

4 A. Biosolids storage tanks number 4 and 5.

5 Q. All right. And those biosolids had -- would have
6 been processed through digester number 1; correct?

7 A. That would be the only digester at Lower Reedy; yes.

8 Q. There's only one digester at Lower Reedy?

9 A. There is.

10 Q. What happens if that digester goes down?

11 A. That's why we're building another digester. I don't
12 know why -- what the rationale was for only building one
13 digester there because the plant preceded my time. But
14 that's something we're budgeted for, is to put a second
15 digester in.

16 Q. I got you. That's actually not relevant, but I was
17 just curious. When you said that it surprised me. The
18 digester number 1 at Lower Reedy was tested for PCBs; was
19 it not?

20 A. It was.

21 Q. And it came back non-detect?

22 A. As I recall; yes.

23 Q. And I believe the two holding tanks did test for very
24 minimal amounts of PCBs; is that right?

25 A. Yes; that's correct.

1 Q. Holding tank number 4 actually tested at 1.4
2 milligrams per kilogram on July 31st, 2013; is that right?

3 A. I'd have to have those documents in front of me to
4 verify that.

5 Q. I'm happy to direct you to the time line. I'm trying
6 to figure out -- let me see what exhibit number that is. I
7 think it's 88.

8 MR. LINDEMAN: Your Honor, this is Plaintiff's
9 88.

10 Q. If you'll refer to page 4 of that exhibit. If my
11 copy is right it's page number 4.

12 A. Okay.

13 Q. Look at July 31.

14 A. Okay.

15 Q. The second July 31 notation, can you read that into
16 the record?

17 A. Yes. Biosolids Department collected samples from
18 Lower Reedy holding tanks 4 and 5.

19 Q. All right. And then later on the time line does it
20 reflect when the results came back?

21 A. Yes, on August 2nd.

22 Q. So the results were back within two days?

23 A. They were.

24 Q. Okay. And what did the results show?

25 A. Holding tank 4 at 1.4; holding tank 5 at 0.78.

1 Q. Okay. Were those the only two structures at Lower
2 Reedy that were impacted?

3 A. They were.

4 Q. Are they both constructed of concrete?

5 A. They are.

6 Q. Did either of those structures require demolition and
7 replacement as a result of the PCB contamination?

8 A. They did not.

9 Q. Was there any equipment affixed in either of those
10 structures that required removal or replacement?

11 A. And when you say removal or replacement, not
12 necessarily removal for cleaning but actual replacement,
13 full replacement?

14 Q. Right?

15 A. No, there was not.

16 Q. Okay. Did -- were both of those holding tanks 4 and
17 5, were they both cleaned and pressure washed?

18 A. They were.

19 Q. Let's talk about holding tank number 4 first of all.

20 A. Okay.

21 Q. Was a contractor used for holding tank 4 to do that
22 work?

23 A. To do which part of the cleaning?

24 Q. The cleaning and pressure washing of the structure
25 itself? I'm not talking about removing biosolids.

1 A. Okay. So once the biosolids were removed, yes, a
2 contractor was utilized.

3 Q. And who was utilized?

4 A. To the best of my recollection it was HEPACO.

5 Q. Okay. And do you know the date that work was done?

6 A. Would have been roughly in November of 2014.

7 Q. Do you know what the expense was for the cleaning and
8 pressure washing of holding tank 4?

9 A. I recall an invoice for roughly, best of my
10 recollection, thirty-eight hundred dollars.

11 Q. How much did you say? Thirty-eight hundred?

12 A. I'm going by recollection, so I can't tell you for
13 sure, but that's what I recall.

14 Q. Let me show you what's been marked for identification
15 as Defendant's Exhibit Number 20. Do you recognize that
16 document?

17 A. Yes.

18 Q. Do you recognize that document?

19 A. Yes, sir.

20 Q. Is that a document and invoice that is maintained by
21 ReWa? A. It is.

22 Q. Okay. And that document is made up of several
23 different items; is that correct?

24 A. Yes, that is correct.

25 Q. Okay. And does it involve the work done by HEPACO at

1 Lower Reedy?

2 A. It does.

3 MR. LINDEMAN: Your Honor, I would admit
4 Plaintiff's Exhibit Number 20 into evidence.

5 MR. STILWELL: I don't have any objection, Your
6 Honor, as long as he lets us break sooner than later.

7 MR. LINDEMAN: I don't control that, Your Honor.
8 I'm happy to take a break. Let me finish with this exhibit
9 or whenever your honor wishes, obviously.

10 THE COURT: How much long do you anticipate your
11 cross going?

12 MR. LINDEMAN: Probably another hour, probably.
13 Maybe a little longer.

14 THE COURT: All right. Let's finish up with
15 this exhibit then.

16 MR. LINDEMAN: All right.

17 (WHEREUPON, Defendant Exhibit Number 20 was admitted
18 into evidence.)

19 Q. Take me through this exhibit, the various parts.
20 Would you explain what those are?

21 A. So the first page would be the invoice that we have
22 from HEPACO showing their total charges and the taxes, of
23 course. Showing PO number. We have the quotation from
24 HEPACO to do the work at thirty-eight forty-five. We have
25 the -- next page we have the record of the requisition that

1 was made for the purchase order, and that's inserted,
2 actually between pages 1 and 2 of the HEPACO proposal and
3 their terms and conditions. Then there are some emails
4 here with the directives to -- I'm sorry -- that actually
5 includes the email communication of the proposal from
6 HEPACO to Randy Boyette who was our project coordinator and
7 have his instructions to move forward with this and prepare
8 the order. And then the office staff communication to
9 prepare that requisition and order. And then you have our
10 summary of the report, I suppose, of the -- looks like the
11 PO or -- the requisition, rather, that was submitted.

12 Q. And what did you say the expense that -- is this
13 document being claimed as part of this -- this expense
14 being claimed as a part of the claim to the Insurance
15 Reserve Fund?

16 A. To the best of my recollection.

17 Q. And what's the amount that's being claimed for doing
18 this work?

19 A. So the subtotal of thirty-eight forty-five plus tax,
20 comes four thousand seventy-five dollars and seventy cents.

21 Q. And do you know whether the taxes are also being
22 claimed to the Insurance Reserve Fund?

23 A. I can't answer that question.

24 Q. If we could find that invoice in Exhibit 100 that
25 would answer the question? I'm not asking you to do that.

1 A. I would think so.

2 Q. All right.

3 MR. LINDEMAN: Your Honor, if you want to break
4 at this point.

5 THE COURT: All right. Take a ten-minute break.

6 MR. LINDEMAN: All right. Thank you.

7 (WHEREUPON, Court stood at recess for a short break.)

8 Q. I think when we left off, Mr. McManus, we had just
9 talked about the cleaning and pressure washing of holding
10 tank number 4 at Lower Reedy?

11 A. That's correct.

12 Q. And you indicated that HEPACO did that work and we
13 just found and put the invoice into evidence; right?

14 A. Yes.

15 Q. All right. How about holding tank number 5, did that
16 require cleaning?

17 A. It did.

18 Q. And who did that work?

19 A. To the best of my recollection, A&D did the removal
20 of the solids in there. Whether they specifically did the
21 pressure washing or something else, I don't recall.

22 Q. Was there any other contractors you used at Lower
23 Reedy to do the pressure washing?

24 A. I don't recall that any others were used.

25 Q. Okay. So your testimony is A&D removed the biosolids

1 that were in holding tank number 5?

2 A. Let me clarify that. Our staff and contracted staff
3 did the processing, dewatering of the material to cake
4 until it got to the point that the material was too thick
5 and there was too much debris in the bottom of the tank.
6 And then A&D processed the remainder of the material. And
7 you know, again, whether A&D did the actual pressure
8 washing or had someone else do it or if we had someone else
9 do it, I don't recall.

10 Q. Okay. My understanding of your testimony yesterday
11 is that A&D, I think you used the words on record or
12 reflected, cleaned the tanks at Lower Reedy. So my
13 understanding is today you can't tell us definitively that
14 A&D is the contractor that did the pressure washing and
15 cleaning of holding tank 5; is that correct?

16 A. I'm going by recollection. That was a long time ago.
17 But I would be hesitant to verify that without looking at
18 their invoices.

19 Q. I will represent to you that I've looked for an A&D
20 invoice and was not able to find one for holding tank 5.

21 MR. STILWELL: Your Honor, this part about what
22 he could find or not in the discovery documents is not for
23 Mr. McManus because we don't have all those discovery
24 documents in front of us, so ...

25 THE COURT: All right.

1 MR. STILWELL: I don't know where he's going
2 with this. But he's like I couldn't find it; therefore it
3 doesn't exist, is ---

4 THE COURT: All right. Let's move on.

5 MR. LINDEMAN: I don't believe I finished the
6 question.

7 THE COURT: All right.

8 Q. Anyway, I was unable to find an invoice for holding
9 tank number 5 for A&D. Are you certain that A&D required
10 cleaning?

11 A. Required cleaning?

12 Q. Right?

13 A. That A&D required cleaning?

14 Q. I'm sorry. That holding tank 5 required cleaning?

15 A. I'm absolutely positive that holding tank 5 required
16 cleaning from the dewatering of the material that was in
17 there down through the pressure washing of the tank. Now,
18 if you ---

19 Q. Bear with me. Holding tank number 5 had a PCB level
20 of less than one per part per million; correct?

21 A. I agree that that's what the analysis that you
22 referred me to showed; yes.

23 Q. All right. And that's your testing, ReWa's testing;
24 correct?

25 A. I would agree that on that date when that testing was

1 done; yes, that's what it showed.

2 Q. Are you aware of any higher reading in holding tank
3 number 5?

4 A. Not that I can recall. I won't say there's not
5 without looking at the documents. Long time ago. Again,
6 lot to remember.

7 Q. Are there documents that you can look at?

8 A. The time line should show that information if there's
9 additional information. And then the sample results.

10 Q. All right. You have Exhibit 91 in front of you?

11 A. Yes.

12 Q. Turn to bates number 12768.

13 A. Okay.

14 Q. The page I referenced, is that the sampling history
15 for Lower Reedy PCBs?

16 A. It appears to be.

17 Q. All right. Is there a column for holding tank number
18 5?

19 A. There is.

20 Q. Do you see the reading on July 31, 2013, .78?

21 A. Yes.

22 Q. All right. Do you see a subsequent sample that was
23 done on September 4, 2013 that was a non-detect?

24 A. I do.

25 Q. And then there was another sample on 11/4/2013 of

1 thirteen hundred, which would be 1.3?

2 A. 1.3; yes.

3 Q. Were there any other tests then subsequent to
4 November 4, 2013 of holding tank number 5 biosolids?

5 A. I'm sorry, subsequent to what date?

6 Q. The last entry we just talked about, November 4,
7 2013?

8 A. There is a composite sample of tanks 4 and 5 on May
9 8th of 2014.

10 Q. And there's an asterisk there; correct?

11 A. There is.

12 Q. And what does it say?

13 A. Composite sample taken to satisfy landfill planning
14 requirements.

15 Q. All right. I believe -- I can't recall if it was you
16 and Mr. Jones testified what a composite sample was. Why
17 don't I just ask you, what is a composite sample?

18 A. So that's a sample that includes material from both
19 tanks in the same sample.

20 Q. Okay. So we can't determine from the composite
21 sample what the PCB concentration is in holding tank 5 on
22 that date?

23 A. Correct.

24 Q. All right. Now, prior to the biosolids being removed
25 from holding tank number 5 for processing, was there a test

1 -- was there a sampling done of the PCBs at that point in
2 time?

3 A. Not that's recorded on this sheet.

4 Q. All right. Was there ever a test of holding tank
5 number 5, just holding tank number 5, done subsequent to
6 November 4, 2013?

7 A. Again, not that's recorded on this sheet.

8 Q. Do you have any reason to believe that this
9 information that you all have put into evidence is not
10 accurate?

11 A. I do not with this being the Lower Reedy sampling
12 history.

13 Q. So if there was a sample done it would be reflected
14 on this document; would it not?

15 A. It should be reflected on this document which goes
16 through September 22nd of 2014, unless there was a sample
17 afterwards.

18 Q. All right. Is there a subsequent page that shows
19 additional sampling after September 22nd, 2014?

20 A. Not after this page in the book.

21 Q. And that page, the data only fills up about two-
22 thirds of the page, so there would be subsequent dates you
23 would think that would be on this page; wouldn't it?

24 A. Well, depending on how the document is printed.

25 Q. All right. But we don't know of any subsequent

1 tests; right?

2 A. I don't recall any.

3 Q. All right. So there wasn't a test done immediately
4 before the biosolids being processed; correct?

5 A. When you say immediately before, what ---

6 Q. Within a week, two weeks?

7 A. It does not appear that there was.

8 Q. Okay. And clearly the last known amount was 1.3 way
9 back in September -- excuse me -- November of 2013;
10 correct?

11 A. Correct.

12 Q. So doesn't it make sense that holding tank number 5
13 didn't require cleaning?

14 A. No.

15 Q. The -- would you agree with me that based upon
16 AECOM's plan at Pelham, and you guys adopted that or
17 followed that as closely as you could for Mauldin Road and
18 Lower Reedy; correct?

19 A. We did.

20 Q. The plan at Pelham was to attempt to clean the
21 structures to below one part per million; correct, at one
22 part per million or below?

23 A. Below one part per million, that's my recollection.

24 Q. That was the threshold, one part per million. So if
25 the biosolids are 1.3 a year before this cleaning, a

1 decision was likely made that holding tank number 5 didn't
2 require cleaning; did it?

3 A. No such decision was made.

4 Q. All right. But you don't have an invoice that shows
5 that holding tank 5 was cleaned; do you?

6 A. I'm sure there's an invoice somewhere that shows that
7 it was cleaned.

8 Q. But you don't have it?

9 A. I don't have it here; no.

10 Q. And that cleaning would have been done around
11 November of 2014; wouldn't it?

12 A. For tank 5 possibly after that.

13 Q. Well, we know tank 4 was ---

14 A. For sure after that date.

15 Q. We know tank 4 was done on November 14, 2014;
16 correct?

17 A. Yes.

18 Q. But if I understand your testimony, you can't tell
19 the Court specifically dollars and cents what was the
20 expense for cleaning holding tank number 5?

21 A. Not the full amount of the cleaning; no, I can't.
22 Although I recall seeing invoices for processing that
23 material, but I can't recall the details of it.

24 Q. Now, you also used contractors at Lower Reedy to
25 clean frac tanks; correct?

1 A. That is correct.

2 Q. So yesterday when you were talking about in reference
3 to Exhibit 99 that certain contractors that Mr. Stilwell
4 went through with you were involved in cleaning tanks,
5 which is the way I think you said it, you didn't
6 distinguish between digesters, holding tanks and frac
7 tanks; correct?

8 A. I don't know that we did.

9 Q. In your testimony you didn't draw that distinction;
10 did you?

11 A. If you say I didn't and that's what's on the record,
12 then we didn't draw that distinction.

13 Q. Okay. Were there contractors that were used at Lower
14 Reedy to clean frac tanks?

15 A. To the best of my recollection there would have been.

16 Q. Okay. And frac tanks are not property that's affixed
17 to the ground; correct? They're removable?

18 A. They're removable and as part of the treatment
19 process have to be cleaned before they go back to the
20 owner.

21 Q. Right. And they were rented from Rain for Rent?

22 A. That's correct.

23 Q. Okay. Did A&D do cleaning of frac tanks?

24 A. I don't recall specifically who did those.

25 Q. All right. Let's turn to Mauldin Road. Oh, I do

1 have one thing I wanted to jump back on. When we were
2 talking about the coding for purposes of putting together
3 the accounting documents and the summary, you had mentioned
4 that the coding was implemented before there was any
5 consideration of an insurance claim. Do you recall
6 testifying to that?

7 A. From my perspective, that's what I recollect.

8 Q. So why was there special codes being put in place for
9 remediation costs prior to any consideration of an
10 insurance claim?

11 A. Because that's best accounting practices, best
12 management practices to keep accounts of processes that are
13 outside of the norm or that type of impact, especially
14 where there's potentially a criminal case that's going to
15 be involved.

16 Q. All right. Let's turn to Mauldin Road. Mauldin Road
17 had a number of different structures that had PCBs that
18 were contamination; is that right?

19 A. That is correct.

20 Q. I show them as digesters 2 and 3; is that correct?

21 A. Yes. I believe that is correct. There were three
22 digesters. Two operated at any given time. And to the
23 best of my recollection digesters 2 and 3 were the ones
24 that were in operation at that time.

25 Q. And digester 1 was out of operation?

1 A. To the best of my recollection that's the one that
2 was out of operation.

3 Q. Okay. And then I also show biosolid holding tanks 3,
4 4, 5, 6, 7 and 8; is that correct?

5 A. That is correct.

6 Q. And then biosolid tanks 1 and 2, which are the ones
7 across the river; correct?

8 A. Correct, along with tanks 3, 4, 5 and 6.

9 Q. I think I just said 3, 4, 5 and 6, 7 and 8? Let's
10 back up ---

11 A. You did. But since you specified across the river, I
12 wanted to be clear about that.

13 Q. Okay. Let's be clear. We've got two digesters?

14 A. Yes.

15 Q. Six biosolid holding tanks?

16 A. Eight.

17 Q. There's 3 through 8?

18 A. Three through 8; yes.

19 Q. And then two biosolid tanks 1 and 2?

20 A. Which are biosolids holding tanks, as well.

21 Q. Okay. But they're actually old digesters is the way
22 I understand it?

23 A. And tanks 3 through 6 are former treatment structures
24 that were not initially biosolids holding tanks.

25 Q. Okay. So we're talking about a total of ten

1 structures; is that right?

2 A. Including the two active digesters; yes.

3 Q. Okay. And all of them are constructed of concrete?

4 A. They are.

5 Q. Did any of those ten structures at Mauldin Road
6 require demolition and replacement?

7 A. They did not.

8 Q. Was there any equipment affixed to any of those ten
9 structures that required removal and replacement?

10 A. No.

11 Q. Now, as I understand it, digesters 2 and 3 were never
12 cleaned; is that correct? And I'm not talking biosolids
13 removed. The structures themselves were never cleaned?

14 A. The biosolids were removed and those structures, the
15 walls, were washed.

16 Q. Was there any type of repairs done to digester number
17 2 as far as the roof goes?

18 A. There was -- there were repairs and ongoing
19 maintenance that was done inside there after the PCB
20 remediation.

21 Q. All right. And that is when digester 2 was cleaned;
22 was it not?

23 A. That's correct.

24 Q. All right. So it was cleaned as part of the roof
25 repair?

1 A. It was. And there was PCB material in the bottom of
2 that digester at the time of cleaning that had to be
3 processed accordingly.

4 Q. The roof repair had nothing to do with PCB
5 contamination; did it?

6 A. That's correct.

7 Q. And your contention is digester number 3 was actually
8 cleaned?

9 A. It was.

10 Q. Would it surprise you that that's inconsistent with
11 what Kevin James testified to in his 30(b)6 deposition?

12 A. I don't know what he testified to or what he was
13 recalling, but I do recall that one being cleaned. Whether
14 Kevin was at that facility at that time, I don't know. I
15 don't recall.

16 Q. All right. Well, let's talk about those. Were each
17 of the biosolid holding tanks 3 through 8, were they
18 cleaned and pressure washed?

19 A. Yes, they were.

20 Q. And how about the biosolid tanks 1 and 2?

21 A. They were.

22 Q. All right. Let's go through each one of those.
23 Digester number -- well, let me ask you this. As a group
24 was the same contractor used for cleaning all ten of those
25 structures?

1 A. I don't believe so.

2 Q. Which -- how many contractors were used?

3 A. There were at least three contractors that were used
4 in total.

5 Q. And who were they?

6 A. A&D Environmental, HEPACO and J.B. Russell.

7 Q. All right. Let's go through them then so we can get
8 this narrowed down. Digester number 2 which you contend
9 was cleaned as part of the roof repair, who did that work?

10 A. I don't recall who cleaned it.

11 Q. When was it done?

12 A. It was done at some point after the PCB remediation
13 was completed in mid-2015.

14 Q. So it was done after the remediation of Mauldin Road
15 facilities was complete?

16 A. To the best of my recollection; yes.

17 Q. Has that been included as part of the claim made to
18 the Insurance Reserve Fund?

19 A. I don't know.

20 Q. Why don't you know?

21 A. Let me rephrase that. I don't recall.

22 Q. Okay. That's not something you reviewed to be able
23 to testify as to whether it's included in Exhibit 99?

24 A. Not specifically to come to Court and testify; no.

25 Q. All right. So I'm clear, so you don't know who the

1 contractor is, you don't know when it was done and you
2 don't know whether it's part of this claim?

3 A. I recall roughly when it was done. I don't recall
4 who the contractor was. And I don't recall whether it has
5 been included as a part of this claim.

6 Q. Okay. I understood you to say you just knew it was
7 after the remediation. Can you give me a ballpark of a
8 month and a year?

9 A. Only by recollection. So I can't specifically pin
10 that down for you, as I've already said.

11 Q. Okay. Can you tell the Court what the expense was
12 for cleaning or pressure washing digester tank number 2?

13 A. I cannot.

14 Q. All right. Let's move on to digester tank number 3.
15 Which contractor did the work for that?

16 A. I don't recall.

17 Q. Do you know when that work was done?

18 A. It was done at some point after digester number 2,
19 but I don't recall specifically how long. Because digester
20 2, the work had to be completed on the roof of the digester
21 which took some period of time, perhaps several months.

22 Q. Can you tell the Court what the expense was for
23 cleaning and pressure washing digester number 3?

24 A. I cannot.

25 Q. All right. How about biosolid tank number 3, which

1 contractor did the pressure washing and cleaning of that?

2 A. I would be speculating to say A&D -- or I'm sorry,
3 J.B. Russell.

4 Q. How about 4? Biosolid holding tank 4, what
5 contractor?

6 A. Again, I believe that would have been J.B. Russell or
7 A&D. So I can't tell you for sure without looking at the
8 invoices which contractor cleaned which tank.

9 Q. Okay. How about for all those biosolid holding
10 tanks, you're not certain who did it?

11 A. I'd have to look at invoices to tell you who did it.

12 Q. All right. Let me -- the notebook of the Defendant's
13 exhibits, would you turn to Exhibit 19?

14 A. Okay.

15 Q. And look through those documents under that -- as
16 part of that exhibit and let me know when you're ready for
17 me to ask you questions.

18 MR. LINDEMAN: Have y'all got any objection to
19 this?

20 MR. STILWELL: I don't think so. No.

21 MR. LINDEMAN: To move things along, I would
22 move to admit this exhibit. I don't think there's an
23 objection to it.

24 THE COURT: Defendant's 19?

25 MR. LINDEMAN: Yes, Your Honor.

1 THE COURT: Thank you.

2 (WHEREUPON, Defendant Exhibit Number 19 was admitted
3 into evidence.)

4 Q. All right. Mr. McManus, have you had an opportunity
5 to review that exhibit?

6 A. I'm still reviewing it.

7 Q. Okay.

8 A. Okay.

9 Q. Where were those documents -- what are those
10 documents?

11 A. Those are invoices from J.B. Russell.

12 Q. And based upon those documents does it appear that
13 J.B. Russell did the pressure washing of several of the
14 biosolid holding tanks at Mauldin Road?

15 A. That would be correct.

16 Q. Which tanks did J.B. Russell do?

17 A. It appears that they did tanks 1 through 6, as well
18 as I saw tank 8 in there, and to my recollection they also
19 cleaned tank 7. I may have missed that as I was going
20 through, unless that's a separate invoice.

21 Q. Did you see a reference to tank 7?

22 A. Well, I did not. I'd be glad to look through in more
23 detail if you'd like me to.

24 Q. That may be necessary. Let me ask this question
25 first, though. Now, these invoices also include some

1 expenditures for removing solids from the tanks prior to
2 pressure washing; correct?

3 A. That's correct.

4 Q. But as far as the pressure washing expenses for the
5 various tanks that J.B. Russell did, those are reflected in
6 these invoices; correct?

7 A. I believe they are; yes.

8 Q. Okay. And let's just pick one day -- each day
9 actually has a little statement before it that indicates a
10 summary of what was done that day; correct?

11 A. Generally; yes.

12 Q. In fact, let's turn to bates number 10737. I'll use
13 that as an example.

14 A. Okay. I'm there.

15 Q. Are you there?

16 A. Yes.

17 Q. For instance, April 24, 2015, it reflects on that day
18 they removed sludge and pressure washed tank number 5;
19 correct?

20 A. Yes.

21 Q. At least it looks like they began pressure washing
22 number 5 ---

23 A. Correct.

24 Q. --- because the following day it says simply,
25 pressure washed tank number 5; correct?

1 A. Yes.

2 Q. And then the next day after that, April 28th, which
3 is the next page, it says removed sludge from tank number
4 4. So that would at least suggest that they had finished
5 with tank number 5?

6 A. That would suggest that to me.

7 Q. Okay. So just looking at April 27, 2015 we know that
8 is purely a pressure washing day; correct?

9 THE COURT: Can I ask you a question because
10 what I'm looking at with bate stamp 10737 has a job date of
11 4/22. So I don't ---

12 MR. LINDEMAN: And it has four of them on that
13 description, Your Honor, and I'm jumping to ---

14 THE COURT: Okay. Thank you.

15 MR. LINDEMAN: The first one, you're correct, is
16 4/22 and there's 4/23, 4/24 and 4/25.

17 THE COURT: I'm with you now.

18 MR. LINDEMAN: Okay.

19 Q. So looking at 4/27, that's an example of a day that
20 at least it appears only pressure washing was done;
21 correct?

22 A. For that particular tank; yes.

23 Q. Okay. And so it's broken out -- this invoice is
24 broken out for supervisor hours, technician hours, use of a
25 vacuum truck, a support truck and TYVEKs; correct?

1 A. Correct.

2 Q. Okay. And then the following page also has
3 expenditures for gloves, degreaser, a roll-off box liner
4 and a pressure washer charged per -- a per day charge;
5 correct?

6 A. Correct.

7 Q. All right. Everything but the box liner would have
8 been used, actually, for the pressure washing; correct?
9 Would you agree with me the roll-off box liner would have
10 been used as part of disposal of the biosolids?

11 A. I would tend to think so.

12 Q. Okay.

13 A. Yes.

14 Q. So I think yesterday you were asked some questions by
15 Mr. Stilwell as to how the -- well, the pressure washing is
16 done, how the water is -- or the material is removed from
17 the tank. And I think we saw a picture where it gathers in
18 the middle of the tank; is that right?

19 A. Yes.

20 Q. And I think you said there are several different
21 options, but one of which is using a vacuum -- some sort of
22 vacuum equipment; is that correct?

23 A. Depending on the -- how thick or what the nature of
24 that material is; yes.

25 Q. Would you conclude from this that here at Mauldin

1 Road, it would appear that they were using a vacuum method
2 for removing that?

3 A. We're looking at, I'm sorry, tank 4 or 5?

4 Q. I'm looking at tank 5, still just using April 27,
5 2015 as an example?

6 A. That would appear that they vacuumed all that
7 material out.

8 Q. All right. Do you see a different technique in any
9 of these just reviewing them, other than using the vacuum
10 method?

11 A. On that particular one, I don't. I'd have to look at
12 the others to see if there's a different -- yes, there is a
13 different method identified.

14 Q. And where is that, please?

15 A. So the first place that I see that is at the bottom
16 of page 010738, date of 4/30, solidify and load sludge on
17 trucks with long reach trackhoe.

18 Q. But again that has to do with removing sludge from
19 the tank. I'm talking about simply the pressure washing
20 activities. Vacuum trucks were used for the pressure
21 washing; correct?

22 A. It appears to be that that was the case for removal
23 of the washed down material.

24 Q. Okay. You understand I'm drawing a distinction
25 between removing the biosolids versus purely the cleaning

1 of the tanks after the biosolids have been removed?

2 A. Purely the pressure washing of the tank.

3 Q. Right. And it included a per-day charge for the
4 pressure washer of a hundred sixty-five dollars; correct?

5 A. Yes, it did.

6 Q. Each day that there was pressure washing done, there
7 was a separate line item charge, not just for labor, but
8 use of the vacuum truck, use of a support truck and use of
9 pressure washers; correct?

10 A. It appears to be that way.

11 Q. All right. Let me get you to look at bates page
12 10776.

13 A. Okay.

14 Q. It looks to me like there is -- what is that
15 document? It looks to me like charges purely for
16 equipment?

17 A. That appears to be the case.

18 Q. Okay. And it was for the same job that we were just
19 looking at; right? The job numbers match up?

20 A. The job numbers match; yes.

21 Q. Okay. The dates match, too. It was from April 22nd
22 through May 8th of 2015? Is that correct?

23 A. Yes, that's correct.

24 Q. All right. Do you see there on that list of
25 equipment that there were quantity eight pressure washer

1 days at a hundred sixty-five dollars a day?

2 A. I do.

3 Q. Were there controls in place at ReWa to prevent your
4 vendors from double charging ReWa?

5 A. There were.

6 Q. Would you agree with me that that appears to be a
7 double charge?

8 A. I can't agree until I go back and look at the
9 individual days and determine whether this is a summary
10 sheet that is or is not included in the total for the
11 invoice.

12 Q. Well, it's definitely given a separate invoice
13 number; does it not?

14 A. You are correct.

15 Q. And just so we're clear, the -- starting at the
16 second page of that exhibit for the next four pages, we're
17 looking at one invoice that is invoice 33274; correct?

18 A. That is correct.

19 Q. And that runs from April 22nd to May 8th? Is that
20 correct?

21 A. Hold on. Yes, that's correct.

22 Q. And on each of the days on that four-page invoice
23 that shows pressure washing, I believe it shows that there
24 was charge for a pressure washer; correct?

25 A. It looks like there was charges for two pressure

1 washers for each of those days. Or each of the days that
2 there was pressure washing in progress.

3 Q. Right. And there were four of them, so there were
4 eight pressure washer days charged on invoice 33274?

5 A. Yes.

6 Q. And then on invoice 33326, ReWa is again charged for
7 eight pressure washer days at a total of thirteen hundred
8 and twenty dollars; correct?

9 A. Yes.

10 Q. And it references the exact same job; correct?

11 A. Yes.

12 Q. Would you agree with me that's a double charge?

13 A. It would appear to be a double charge.

14 Q. Would you agree with me that ReWa paid that?

15 A. I would not agree until I go back and research it
16 further.

17 Q. Would it surprise you that ReWa is actually asking
18 the Insurance Reserve Fund to reimburse them for that
19 double charge?

20 A. Again, I don't know for sure that it is a double
21 charge or that it was paid.

22 Q. Well, why when you are submitting as part of Exhibit
23 99 and 100 that kind of information that you did not, or at
24 least someone at ReWa go through this information and makes
25 sure it was accurate?

1 A. With all the information we submitted, we made every
2 reasonable attempt to make sure it was accurate. I can't
3 tell you that we didn't miss something.

4 Q. With all due respect, sir, you're asking the state to
5 pay 6.2 million dollars; are you not? Are you saying ---

6 A. We both recognize that the state ---

7 Q. --- you did not try to go through it and make sure
8 it's accurate?

9 A. We both recognize that the state is not going to pay
10 that, so are there some inaccuracies here, this may very
11 well be an inaccuracy. And if it is then we need to pull
12 it out.

13 Q. Okay. And so what was done to make certain that we
14 caught all -- or ReWa caught all the inaccuracies before
15 coming to Judge Simmons here during this week and asking
16 the Court to award money for what is clearly a double
17 charge?

18 A. Again, we reviewed what we could to the best of our
19 abilities, and with everything that was necessary to
20 review, I can't say that we didn't miss something. It
21 looks like we may have here. But even that I can't confirm
22 without looking further.

23 Q. All right. Let me ask you a couple of other
24 questions about these invoices. There's references to tank
25 D-1 and tank D-2.

1 A. Yes.

2 Q. That's not a reference to the digesters; that's a
3 reference to the old digesters?

4 A. The old digester holding tanks 1 and 2; yes.

5 Q. Okay. So you indicated that it looks like these
6 invoices encompass all of the holding tanks except
7 potentially holding tank number 7; is that right?

8 A. That's correct. And again, I haven't reviewed in
9 detail to see if tank 7 was in there.

10 Q. Okay.

11 MR. LINDEMAN: Court's indulgence.

12 Q. Do you know who did the work for tank number 7?

13 A. Not without reviewing invoices, I can't tell you for
14 sure that J.B. Russell did that tank or if it was someone
15 else.

16 Q. Let me ask you this, Mr. McManus. It certainly was
17 possible for ReWa to go through its invoices and determine
18 what the costs of cleaning and pressure washing each of the
19 tanks was; wasn't it?

20 A. It was -- yes. To determine the total cost of the
21 cleaning, absolutely.

22 Q. I mean we're doing it right now; aren't we?

23 A. We are for this particular invoice, of the twenty
24 thousand or so that you say there were.

25 Q. Well, I'm talking about cleaning -- the cost of

1 cleaning and pressure washing the various structures at
2 those three institutions? I mean those three facilities?
3 You had the ability, and by you I mean ReWa, had the
4 ability to do exactly what we're doing right now and going
5 through these invoices and making a determination on what
6 that expense was; didn't you?

7 A. We generally do that at the time of the processing.
8 And in putting all of this together, we reviewed to the
9 best of our ability with all else that's necessary to focus
10 on. We reviewed as best we could and looked for errors,
11 looked for misclassifications, pulled some things out,
12 found some things to add in.

13 Q. That's not ---

14 A. And again ---

15 Q. --- my question. My question is, to actually
16 determine what was the cost for each structure to clean it
17 and pressure wash it, your records allowed that to be done;
18 correct?

19 A. The records were there to allow that.

20 Q. Okay. And those records were available prior to this
21 lawsuit being filed; correct?

22 A. Yes.

23 Q. So when the Insurance Reserve Fund asked for that
24 information, it could have been provided; correct?

25 A. If the information was there it could have been

1 provided; yes.

2 Q. Well, you're agreeing with me the information was
3 there?

4 A. Yes. Obviously the information was there.

5 (DISCUSSION AMONG ATTORNEYS)

6 (WHEREUPON, Defendant Exhibit Number 27 was marked and
7 admitted into evidence.)

8 THE COURT: Let's move on, gentlemen.

9 MR. LINDEMAN: Thank you, Your Honor. I'm sorry
10 this is taking a while, Your Honor. It's important ---

11 THE COURT: Let's move along. Don't apologize.
12 Just get on with your job.

13 MR. LINDEMAN: All right. Thank you, Your Honor.

14 Q. Let me show you what's been marked as Exhibit Number

15 27. MR. LINDEMAN: And I understand he has no
16 objection, Your Honor.

17 THE COURT: Is this what was just handed up?

18 MR. LINDEMAN: Yes.

19 THE COURT: Defendant's 27?

20 MR. LINDEMAN: Yes, Your Honor.

21 THE COURT: Thank you.

22 Q. Do you recognize that document, sir?

23 A. That's an invoice from A&D Environmental.

24 Q. All right. Can you tell what it was an invoice for?

25 A. For washing out tank number 7.

1 Q. Was that at Mauldin Road?

2 A. Yes.

3 Q. So is this the work that JBR didn't do; the one tank
4 JBR didn't do?

5 A. From the amount of the invoices, I would say that A&D
6 Environmental did the final pressure washing -- or the
7 pressure washing in that tank. They certainly didn't clean
8 material out of that tank other than the washing.

9 Q. I'm interested in the washing -- the pressure washing
10 and cleaning of the physical structure, tank number 7?

11 A. Yeah. So that would be A&D that did that, according
12 to this invoice.

13 Q. All right. And how much is that invoice for?

14 A. Five thousand two hundred and seventy-two dollars.

15 Q. Okay. Now, I'll represent to you I found this last
16 night, based upon your testimony. ReWa could have found
17 this just as easily; correct?

18 A. If it's there any of us could have found it.

19 Q. All right. And these are documents that were in
20 ReWa's possession; correct?

21 A. Yes.

22 Q. All right. So between Exhibit Number 19 and Exhibit
23 Number 27, the Court will be able to figure out what the
24 cost of pressure washing and cleaning the eight biosolid
25 holding tank were; correct?

1 A. I believe you would.

2 Q. All right. But as far as digester 2 and digester 3,
3 we're still -- we still don't have that information, or at
4 least you can't provide that information to the Court
5 sitting here today?

6 A. Correct. I recall that that was done by engineering
7 as part of that project.

8 Q. But you don't remember who the contractor was, when
9 it was done, anything that could cause us to be able to
10 find those documents?

11 A. Again, I remember roughly when it was done, but
12 sometime after June of 2015. Most likely in that same
13 year.

14 Q. Okay. All right. Now, part of Exhibit Number 99
15 includes attorneys' fees; correct?

16 A. Exhibit 99 does have attorneys' fees on it.

17 Q. The amount is a hundred and fifty-five thousand eight
18 hundred thirty-two dollars and fifty-nine cents; correct?

19 A. Correct.

20 Q. And all of that was paid to the Nexsen Pruet Law
21 Firm; is that right?

22 A. Yes, that's correct.

23 Q. Is that where Tommy Lavender practices?

24 A. Yes.

25 Q. Or did at that time?

1 A. Yes.

2 Q. So this was attorneys' fees for work that Mr.
3 Lavender did as an environmental attorney; is that correct?

4 A. Yes.

5 Q. Are you familiar with Mr. Lavender?

6 A. I am.

7 Q. Had you worked with him even prior to this PCB
8 mediation?

9 A. No.

10 Q. Was he an existing environmental attorney for ReWa
11 prior to this PCB remediation?

12 A. To the best of my knowledge.

13 Q. Best of your knowledge yes?

14 A. To the best of my knowledge; yes.

15 Q. Okay. Did ReWa ever make a request to the Insurance
16 Reserve Fund to provide legal counsel during the initial
17 regulatory process that was involved?

18 A. I don't know.

19 MR. LINDEMAN: Court's indulgence.

20 Q. You were not involved in that?

21 A. Correct.

22 Q. And part of Exhibit Number 99 also includes costs as
23 far as engineering services that were provided by AECOM; is
24 that correct?

25 A. Can you point me to where that is shown on here? I

1 thought I remembered seeing it, but I don't at the moment.

2 Q. Be happy to. Bates number 41055. Do you see it
3 under ---

4 A. Yes, I do.

5 Q. And it's under operating outside technical?

6 A. Yes, I do.

7 Q. Seventy-nine thousand five -- eight hundred fifty-
8 four dollars and forty-four cents? Is that correct?

9 A. I don't see that.

10 Q. What's the number you have?

11 A. Twenty-five thousand zero twenty and sixty cents.

12 Q. It looks like you're reading A&D Environmental.

13 A. I'm sorry. AECOM. Yes, seventy-nine thousand eight
14 fifty-four forty-four.

15 Q. Okay. Do you see under R&M Equipment there's another
16 AECOM charge?

17 A. I do.

18 Q. Why is there an AECOM charge under R&M Equipment?

19 A. I don't know without going back and looking at the
20 details of that charge.

21 Q. Is that an overcharge or a duplicative charge?

22 A. Again, I don't know without going back and looking at
23 the details of that charge.

24 Q. Why would AECOM be providing repair and maintenance
25 equipment?

1 A. I don't know what was in that particular charge, so I
2 cannot answer your question.

3 Q. All right. But you're -- you can't answer the
4 question but you're making a claim asking the Insurance
5 Reserve Fund to pay four thousand two hundred and forty-six
6 dollars and twenty-five cents; correct?

7 A. Again, we'd have to go back and look at the details
8 of why we put that charge in there.

9 Q. But you didn't do that in preparing for your
10 testimony for this Court?

11 A. No, sir.

12 Q. All right. Let's look at the first page of that
13 exhibit. Under the subheading solids management, explain
14 to me if you would why solids management is broken out as a
15 separate category?

16 A. Because that's the way that our budgeting and
17 financial tracking accounting protocol is set up. So that
18 includes all steps from the point that the plant produces
19 the cake or the liquid from that point on until the
20 material is either land applied or taken to the landfill.

21 Q. So that would include then transportation and
22 disposal of the processed biosolids?

23 A. It would.

24 Q. Okay. So if I'm understanding that correctly, it is
25 simply after the biosolids have been processed and loaded

1 on vehicles for transportation, it's the cost from that
2 point forward?

3 A. It is.

4 Q. Transportation and the cost at the landfills?

5 A. Yes. Landfill or land application; yes, sir.

6 Q. Tell me why there's almost fifty thousand dollars --
7 I guess about forty-nine thousand dollars worth of charges
8 by J.L. Rogers & Callcott Engineers and Shealy
9 Environmental Services listed under solids management?

10 A. Because we have to verify to the landfill on some
11 periodic or representative sampling that we are not
12 bringing them material that exceeds their allowable limit
13 for PCBs.

14 Q. All right. Do you have to do that just for normal
15 land applying -- I mean landfill disposition of biosolids?

16 A. We have to do it on some periodic basis, but was not
17 required in this case.

18 Q. And so ---

19 A. We also -- I will also add to that that the Biosolids
20 Department will sample for the thickness or concentration
21 of the material percent solids because the -- what they
22 take to the landfill gets weighed as wet tons and we have
23 to calculate dry tons from that, so we need to know percent
24 solids.

25 Q. So who made the determination as -- because you would

1 agree with me that there are testing expenditures, it
2 appears to me, in every single one of these categories
3 except for legal. Would you agree with me?

4 A. I would agree with you; yes, that testing
5 expenditures are in the various categories according to
6 what's being tested.

7 Q. And Rogers & Callcott is clearly testing; is that
8 correct?

9 A. Rogers & Callcott is doing some of the testing; yes.

10 Q. They're not taking the samples, they're doing the
11 analytics; right?

12 A. There may be times that they took samples, but yes,
13 they are definitely doing the analytics.

14 Q. Did they do any service other than either taking
15 testing, doing sampling or doing results of sampling?

16 A. Not to my recollection.

17 Q. How about Shealy Environmental Services; is that what
18 they did, as well?

19 A. Yes.

20 Q. So every time the Court sees those entries, the Court
21 can feel certain that that was done as part of testing?

22 A. That is what we used those laboratories for, was
23 testing.

24 Q. Okay. Looking back at the solids management section,
25 as well. It shows under solids disposal, Greenville County

1 Solid Waste for three hundred eleven thousand dollars?

2 A. Yes.

3 Q. It also shows Greenville Solid Waste for providing
4 operating outside technical.

5 A. Yes.

6 Q. Do you see that?

7 A. Yes.

8 Q. That's a quarter of a million dollars?

9 A. Yes.

10 Q. What kind of outside technical services did
11 Greenville County Solid Waste provide?

12 A. They provided the landfill for us to dispose of the
13 material.

14 Q. Isn't that what's listed under solids disposal?

15 A. It is. And why some of the charges were classified
16 under outside technical, I don't know the answer to without
17 going back and looking at the specific invoices.

18 Q. Would you agree with me that there's no technical
19 expertise or services that's provided by Greenville County
20 Solid Waste?

21 A. I don't believe there are.

22 Q. So you agree with me?

23 A. Yes.

24 Q. So that looks to be at least some sort of error was
25 made either in coding or in charging; is that correct?

1 A. I would say so, unless there's something specific on
2 the invoice that says that those charges should have been
3 in outside technical services.

4 Q. And as part of reviewing Exhibit Number 99 in order
5 to be able to testify to this Court today, obviously that's
6 not something that you caught?

7 A. It is something I've asked the question for, but I
8 don't have the answers from reviewing that information yet.

9 Q. So you caught that discrepancy before you came to
10 Court?

11 A. I don't know that it's a discrepancy. It's just
12 something that caused me to question why some of this was
13 charged to outside technical and why some to solids
14 disposal.

15 Q. So you raised that question before coming here to
16 Court?

17 A. I did.

18 Q. And before admitting this document to the Court as
19 being accurate?

20 A. I don't know when this document was admitted.

21 Q. It was admitted yesterday, sir. It was admitted with
22 your testimony.

23 A. Okay.

24 Q. Well, technically it hasn't been admitted yet. The
25 Court still has that under advisement. But it was IDed and

1 marked with your testimony yesterday. I'm also curious,
2 sir, why solids management wasn't allocated to each of the
3 different institutions, and by institutions I mean
4 facilities. I'm used to doing Department of Corrections
5 work. Excuse me. I'll ask it -- you're looking at me
6 puzzled. Under solids disposal those five figures are the
7 cost of actually disposing the processed biosolids at
8 various landfills; correct?

9 A. Correct.

10 Q. Okay. And those processed biosolids came from either
11 Pelham, Lower Reedy or Mauldin Road; correct?

12 A. That is correct.

13 Q. Okay. And each shipment to these different landfills
14 would have come from one of those institutions; right?

15 A. Yes.

16 Q. I mean, you don't run a truck and pick up some at
17 Lower Reedy and on the way ---

18 A. No.

19 Q. --- go to Mauldin and fill the rest of the truck?

20 A. No.

21 Q. Okay. So you would have a specific -- and how is
22 that document -- what kind of document do you get from the
23 landfill?

24 A. So we get weight tickets from the landfill on each
25 trip and our Solids Department records which facility that

1 that's coming from. So we do have records that break it
2 out by facility, although it's not our standard accounting
3 protocol to break that out by facilities in the report.

4 Q. In this particular case, though, you knew in making
5 an insurance claim that you were making claims specific to
6 the three different facilities; correct?

7 MR. STILWELL: Your Honor, I would object
8 because he didn't make the claim.

9 MR. LINDEMAN: Well, Your Honor, I object to Mr.
10 Stilwell answering for him.

11 THE COURT: Rephrase the question, please, sir.

12 Q. Mr. McManus, you understood that the insurance claim
13 was made for three specific facilities; correct?

14 A. Yes.

15 Q. Okay. You understood that there was a request to
16 allocate the expenses between the three facilities;
17 correct?

18 A. That was my understanding.

19 Q. And do you know the rationale as to why?

20 A. No, I really don't.

21 Q. Do you know that there's a separate company ---

22 A. That's an IRS rationale, so I don't know what -- or
23 IRF.

24 Q. Are you aware that each facility has a separate limit
25 of insurance?

1 A. I'm not.

2 Q. Okay. But anyway, the bottom line is by lumping all
3 of these under solids management we can't tell from this
4 document, can we, how much of the solids disposal amounts
5 are attributable to biosolids that were processed at each
6 of those three institutions?

7 A. It's my understanding that that was provided
8 separately.

9 Q. And who is that understanding from?

10 A. From our legal counsel. So I could be wrong. It's
11 just my understanding.

12 Q. I don't want to ask you what your legal counsel has
13 ---

14 A. From this document, no, you cannot determine
15 separately which plan.

16 Q. Let me ask you, has any document that you -- you're
17 the damages guy. Does any document that you put into
18 evidence yesterday or today break out the location and the
19 amount of biosolids that are attributable to each of those
20 three institutions?

21 A. I'm sorry, that I put into evidence?

22 Q. That were put into evidence while you were
23 testifying?

24 A. Okay. So ---

25 Q. Is there such a document that was put into evidence?

1 A. I don't recall.

2 Q. In fact, I recall that on direct examination you were
3 asked by Mr. Stilwell which institutions these various
4 things came from and a couple of them you weren't certain
5 about and others it was multiple facilities; correct? For
6 instance I have Waste Connections of South Carolina, two
7 hundred forty-one thousand four hundred and thirteen
8 thousand dollars. I understand that to be the Anderson
9 landfill; correct?

10 A. Correct. That's correct.

11 Q. And I think you indicated in your testimony that
12 Anderson landfill was used for waste received from all
13 three of those facilities?

14 A. I believe I said that it could have been used for
15 waste from all three facilities.

16 Q. But we don't know how much of that two hundred forty-
17 one thousand four hundred and thirteen dollars came from
18 Pelham, came from Mauldin Road or came from Lower Reedy; do
19 we?

20 A. We do know. This document, no, that doesn't tell
21 you.

22 Q. Okay. Can you tell me?

23 A. I'd have to look at the documentation that shows how
24 much was attributed to each facility.

25 Q. So there is documentation that allows you to make

1 that breakdown?

2 A. Yes.

3 Q. Okay. Has that allocation been performed?

4 A. You mean -- explain to me what you mean has that
5 allocation been performed?

6 Q. Have you or anyone from ReWa taken these amounts of
7 the solid disposal and broken it out using the documents
8 you say are available to you which I assume are weight
9 tickets; right?

10 A. Yes.

11 Q. Okay. And broken those out so we can determine of
12 the almost two million dollars being claimed for solids
13 disposal how much that is attributed to each of those
14 facilities?

15 A. I don't know that we've put it in specific terms of
16 this is how much dollars is attributed to each facility.
17 We do have the records of how much by weight and percent
18 solids of dry tons and wet tons that were attributed to
19 each facility and each landfill.

20 Q. I'm looking for how this 1.996 million dollars is
21 broken out between the three facilities?

22 A. No, we do not have that at this time.

23 Q. Okay. But that's something you could have done?

24 A. If we had understood that was needed; yes.

25 Q. Well, the attempt here with this document was to

1 provide the expenses for the three different plants;
2 correct?

3 MR. STILWELL: Objection, Your Honor. That's
4 contrary to what he testified ---

5 MR. LINDEMAN: Your Honor, I object to Mr.
6 Stilwell testifying for the witness, Your Honor. That's
7 called a speaking of Judge.

8 THE COURT: Rephrase the question, please, sir.

9 MR. LINDEMAN: Your Honor, there was another one
10 -- yeah, I'll be happy to.

11 THE COURT: Ask the question again, please, sir.
12 Let's move on.

13 MR. LINDEMAN: I will. Thank you, Your Honor.

14 Q. You agree with me that 1.996 million dollars is being
15 claimed for solids -- disposal of biosolids; correct?

16 A. Yes.

17 Q. Transportation or disposal?

18 A. Under the solids disposal category; yes.

19 Q. Okay. And you agree with me that that could have
20 been broken out among the three different facilities?

21 A. It can.

22 Q. All right. And each of the three facilities, other
23 than solids management, pretreatment and laboratory, have
24 their own category; correct, in this document, Plaintiff's
25 Exhibit 99?

1 A. Yes. In addition to the legal and the FA equipment;
2 yes, sir, fixed asset equipment.

3 Q. So when we look at the Lower Reedy category, it
4 doesn't include the costs of disposal and transportation of
5 biosolids that were processed at Lower Reedy; correct?

6 A. It should not; that's correct.

7 Q. All right. And we don't know what that number is?

8 A. Not at this moment; no.

9 Q. All right. You sitting here don't know what that
10 number is; correct?

11 A. That's correct.

12 Q. So the Court has no way of knowing what the total
13 expense being claimed for the Lower Reedy remediation is;
14 do they -- does it?

15 A. Not at this moment.

16 Q. All right. Look at the first page of Exhibit 99
17 under pretreatment. There's a charge for porta potties; is
18 there not?

19 A. No, sir, I don't believe so.

20 Q. Do you see B.B. Steele, Inc.?

21 A. Yes.

22 Q. Little John Portable Toilets?

23 A. I see the beginning of the parenthetical addition
24 there, Little John Portable Toilets, I'm assuming, and I
25 believe what that represents, and you would have to ask Mr.

1 Jones, him being over Pretreatment at that time, but I
2 believe what that represents is that the company, B.B.
3 Steele, Inc., is a purchase, sell-off acquisition,
4 whatever, of Little John Portable Toilets. So I think
5 that's just a combination of the two vendors or a
6 clarification, that that's the Little John Company billing
7 as B.B. Steele, perhaps as a BBA. I don't know. I'm
8 speculating.

9 Q. All right. Well, it's listed under outside technical
10 services; correct?

11 A. Yes.

12 Q. What technical services did Little John Portable
13 Toilets provide at the tune of two hundred fifty-three
14 dollars?

15 A. I don't know because that was not my department at
16 that time. It's not under my purview.

17 Q. But again, this is an exhibit that you have put into
18 evidence -- or are submitting to the Court?

19 A. It was put into evidence, yes, and I -- I don't know,
20 maybe it could have been for portable toilets for all I
21 know, but that's -- Little John is the name of a company,
22 septic company.

23 Q. All right. Hundred and thirty-six dollars for
24 Greenville News. Do you have any idea what that is?

25 A. I would think that that was -- and again, I'm

1 speculating because that was not under my purview, but it's
2 probably a public ---

3 Q. I don't want you to speculate. I'm asking you what
4 you know?

5 A. I don't know.

6 Q. Okay. There was an expense, I don't have it listed,
7 I can find it, for a carport at Lower Reedy. Do you
8 recall that?

9 A. I do.

10 Q. It was a purchase of a carport; correct?

11 A. By name; yes.

12 Q. Well, that was the physical structure. You actually
13 bought a carport?

14 A. We bought a large physical structure that was large
15 enough to cover a tractor trailer dump truck so that while
16 loading the cake that contained PCBs onto the dump truck
17 and staging the trailers until it could go to the landfill,
18 that those trailers could be kept under there so that we
19 did not get rain onto the PCB contaminated material and
20 leaking out and causing a spill.

21 Q. Who was that purchased from?

22 A. I would have to look and find the name or see the
23 invoice to tell you for sure who that was purchased from.

24 Q. There was an entry under Lower Reedy for Greer
25 Roofing LLC?

1 A. Yes.

2 Q. Why would there be a roofing expense?

3 A. So the membrane that was shown in the pictures
4 yesterday that we put down on the ground to cover the
5 containment area and the walls to contain any potential
6 spills or hose ruptures was a roofing membrane. And so we
7 had one or more roofing companies to come in and put down
8 membranes at the site and seal those together to form the
9 spill containment area.

10 Q. About three spots above Greer Roofing you see Econo
11 Enterprises?

12 A. I do.

13 Q. Was that the carport we just talked about?

14 A. That sounds familiar, but again I'd have to see the
15 invoice or more documentation to state for certain.

16 Q. Let me show you Defendant's Exhibit Number 14 to your
17 30(b)6 deposition and ask you if that refreshes your
18 memory?

19 A. Yes, it does.

20 Q. Okay. And how much was the cost of the carport?

21 A. Five thousand six hundred seven dollars and forty
22 cents.

23 Q. All right. Does ReWa still have that carport?

24 A. We do.

25 Q. But you included that as part of your claim to the

1 Insurance Reserve Fund?

2 A. For the Lower Reedy site. That carport had to be
3 removed from there and re-erected at the Mauldin Road site
4 for the work there. And removed and re-erected at the
5 second site at Mauldin Road for the work there.

6 Q. Mr. McManus, let me turn back to the remediation
7 process with a few questions for you. As far as the
8 remediation that was followed at Mauldin Road and Lower
9 Reedy, were the structures themselves tested after the
10 biosolids were removed and before any type cleaning or
11 power washing was done to those structures?

12 A. Of course not.

13 Q. And why do you say of course not?

14 A. It's very obvious, and I think can be seen from the
15 pictures, as well, that the -- once the solids were removed
16 from the tank there were solids, obvious solids, adhered to
17 the concrete and into the concrete pores. So testing at
18 that point would produce an obvious presence because you
19 still had the solids there attached to the wall.

20 Q. There was nothing preventing such pretreatment
21 testing from being done; was there?

22 A. Not to my knowledge.

23 Q. Okay. The PCB concentrations in the biosolids at
24 both Mauldin Road and Lower Reedy were low levels; correct?

25 A. Yes.

1 Q. In fact, we've agreed that the highest that Mauldin
2 Road ever tested was 5.8 and the highest at Lower Reedy was
3 4.2; correct?

4 A. Correct.

5 Q. And most of their readings were substantially less
6 than that; correct?

7 A. Yes.

8 Q. All right. So those structures could have been
9 tested, could they not, to have determined what the extent
10 of the cleaning was? The extent of the cleaning that was
11 needed? Do you agree with me?

12 A. It could have been; yes.

13 Q. Okay. Did all of the pressure washing at those two
14 facilities, was it simply water that was used for the
15 pressure washing or was there also some type of additive?

16 A. There was an additive used for the second washing.
17 It was a citric acid type detergent.

18 Q. Was that the case at both Mauldin Road and Lower
19 Reedy?

20 A. Yes.

21 Q. Was there any testing done of the physical
22 structures, the digesters and holding tanks, at Mauldin
23 Road after the cleaning and pressure washing took place?

24 A. No.

25 Q. How about at Lower Reedy?

1 A. No.

2 Q. So we don't even have after-wash numbers?

3 A. That was not part of the plan that DHEC acquiesced
4 to.

5 Q. And why do you say DHEC acquiesced to the plan?

6 A. Well, if they didn't respond back when they were
7 given that option to, then it was understood that they had
8 no problem with the plan.

9 Q. All right. So it was never the intent to do any type
10 of post cleaning testing to make certain that there was no
11 PCB levels in the concrete?

12 A. Correct.

13 Q. I wanted to ask you one more question, going back to
14 Exhibit 99. There's a separate category for each of the
15 three facilities for chemicals; isn't that correct?

16 A. Yes, there is.

17 Q. Okay. And I think the total for chemicals at Lower
18 Reedy is a hundred forty-six thousand six hundred and
19 thirty-six dollars; is that right?

20 A. Yes.

21 Q. And the total chemicals at Mauldin Road is almost 1.5
22 million; is that correct? I'll give you the exact number,
23 1.4 -- one million four hundred eighty-five thousand nine
24 hundred and thirty dollars and eighty-one cents; is that
25 right?

1 A. Yes.

2 Q. And at Pelham it's a hundred nine thousand five
3 hundred eighty-eight; correct?

4 A. Yes.

5 Q. So Mauldin Road was ten times the amount at Lower
6 Reedy and almost fifteen times the amount at Pelham? Is
7 that what that shows?

8 A. That's what that shows.

9 Q. What was so unique about Mauldin Road that the
10 chemical expenditure would dwarf the other two facilities
11 combined?

12 A. Primarily the sheer amount of volume difference.

13 Q. And tell me -- tell the Court what that volume
14 difference was?

15 A. Can you point me to the location where those volumes
16 are identified? Otherwise I'll give you rough numbers.

17 Q. I don't have those numbers. I don't know if they're
18 in evidence.

19 A. Okay. Well, before I say, I would rather look at
20 numbers to tell you that.

21 Q. Looking at Mauldin Road there looks like there are
22 three significant vendors, Polydyne, Brenntag Mid-South and
23 Burnett Lime; is that correct?

24 A. Yes, that is correct.

25 Q. Are all of those vendors that provided chemicals as

1 part of Mauldin Road's normal operations prior to the PCB
2 contamination?

3 A. Some do from time to time, depending on the needs.
4 Polydyne typically would provide material on a regular
5 basis.

6 Q. How about Brenntag?

7 A. So Brenntag provided the -- would have provided
8 ferric chloride for this process which is not a normally
9 used chemical within the plant except under certain
10 conditions. So they're not regularly providing it like
11 they did in this process.

12 Q. Any of the chemicals that were purchased at Mauldin
13 Road used in the normal operations of the plant?

14 A. I'm sorry. Are you asking are any of these chemicals
15 used in the normal ---

16 Q. Any of the chemicals that were purchased as part of
17 that 1.485 million dollars also used in the normal
18 operations of the plant?

19 A. They can be from time to time depending on specific
20 circumstances of the plant operation.

21 Q. Was there any protocol put in place or any special
22 consideration given to make certain that the chemical
23 charges that were coded for the remediation project were
24 not invoices for normal operations?

25 A. Yes. That responsibility was placed on the Plant

1 Supervisor and the Plant Managers and the Process Control
2 group, so all part of the chain of command, that
3 responsibility was upon them to differentiate between
4 whether an expense, when they issued purchase orders over
5 to an invoice, whether that expense was for the plant or
6 whether it was for the out-processing of PCB material.

7 Q. Have you double checked those invoices?

8 A. We checked them as best as we could, spot checking,
9 so ---

10 Q. No. I'm asking you, sir.

11 A. --- to say that I double checked every single
12 invoice; no, absolutely not.

13 Q. All right. Prior to your testimony here in Court
14 have you made certain -- and by you I don't mean ReWa, I
15 mean you, Glen McManus -- taken any steps to make certain
16 that the chemical charges being claimed as part of this
17 insurance claim were all used for the remediation process?

18 A. Other than asking the staff, which are no longer
19 under my purview, to go back and review this information
20 and make sure it's correct; no.

21 Q. Now, I notice BrennTag is only involved in Mauldin
22 Road. Why is that?

23 A. That's because the material they provided was for
24 operating the frame press at Mauldin Road. And in order to
25 do that we needed that material for chloride. And so we

1 would need that at Lower Reedy because they're only
2 operating the rotary press. And then at Pelham, I can only
3 assume that those charges were elsewhere in the waste
4 management invoice.

5 Q. And the remediation, you said, started at Mauldin
6 Road in December 2014; is that right?

7 A. That is correct.

8 Q. Okay. Would you take a look at, in the Defense
9 exhibit notebook, the black notebook, Exhibit 23?

10 A. Okay.

11 Q. And just take a look at the pages that make up that
12 exhibit.

13 (INAUDIBLE DISCUSSIONS AMONG ATTORNEYS)

14 A. Okay.

15 MR. STILWELL: No objection, Your Honor.

16 MR. LINDEMAN: And for the record, Your Honor,
17 the first two pages are redacted. That's how they were
18 produced. I didn't want to suggest to the Court that I
19 redacted anything.

20 THE COURT: All right.

21 MR. LINDEMAN: I would certainly give the Court
22 the explanation if I did, but it wasn't -- this is the way
23 it came to us.

24 (WHEREUPON, Defendant Exhibit Number 23 was admitted
25 into evidence.)

1 Q. Real quickly, do you recognize those documents; sir?

2 A. Well, they appear to be summaries of checks that were
3 paid to BrennTag.

4 Q. Okay. And do you know whether these particular
5 checks are part of the claim being made to the Insurance
6 Reserve Fund?

7 A. I don't. Because this is -- the checks are not under
8 my purview, so I don't know. There's not enough
9 information here to tell for sure.

10 Q. If these were checks that are being claimed, they
11 would be listed in the spreadsheet that's Exhibit 100;
12 would it not?

13 A. They should be.

14 Q. Okay. These checks cover multiple invoices
15 typically? I know there are some that just cover one. But
16 it shows the different invoice numbers from BrennTag; does
17 it not?

18 A. It does.

19 Q. And the date of that invoice?

20 A. It does.

21 Q. And then there's a purchase order that's assigned to
22 it by ReWa?

23 A. There is.

24 Q. It shows the amount, the discount and then the paid
25 amount; correct?

1 A. Yes.

2 Q. And in the top right corner it shows the check number
3 and the date the check was issued to BrennTag; correct?

4 A. Yes.

5 Q. All right. I'm looking at the series of documents.
6 They range from April -- I think I put them in
7 chronological order -- to December of 2014; do they not?

8 A. I'm sorry, looking at these documents?

9 Q. Right. Exhibit Number 23, they have -- they
10 reference invoices ---

11 A. Oh, invoice to date. Yes. So April 22nd until
12 November 30, 2014, is the last date.

13 Q. I see that it as October 30th?

14 A. I'm sorry, October. I'm sorry. You're correct.

15 Q. Okay. The remediation didn't even begin at Mauldin
16 Road until December of 2014; correct?

17 A. That's correct. Well, I stand corrected. When you
18 say remediation didn't begin, with the removal of the
19 solids; yes, you're correct. But the belt pressing of
20 solids started before that time.

21 Q. The remediation process at Mauldin Road consisted of
22 removing the biosolids that were in ten different holding
23 tanks; correct?

24 A. That is correct; yes.

25 Q. I'm sorry, I guess eight different holding tanks and

1 two digesters?

2 A. Yes.

3 Q. And that process didn't begin until December 2014;
4 correct?

5 A. That is correct.

6 Q. So what solids are you talking about are being belt
7 pressed prior to December 2014?

8 A. So once we recognized that the plants were PCB
9 positive, then we started up the belt press. We could no
10 longer put material into the storage tanks either because
11 they're full of PCB material and can't take any out or
12 because we don't want to put any more material in there
13 that might be clean. We don't want to put that into a tank
14 that's contaminated with PCB already. So we started up the
15 belt presses at Mauldin Road in the fall or late fall of
16 2013 in order to process that material that's coming
17 through the plant and being processed to solids to take
18 that and make cake to take it to the landfill because we
19 couldn't make thickened liquid biosolids to put in the
20 tanks because either they were full or they had PCB
21 material in them. So to us that was part of the process of
22 handling the -- or responding to the biosolids incident. I
23 can tell you don't understand.

24 Q. No. Let me make sure I'm clear. So you are
25 including as part of your expenses asking the Insurance

1 Reserve Fund to pay the incoming flows to Mauldin Road
2 prior to any remediation being done and processing those
3 flows to be taken to a landfill?

4 A. We're pointing out that our costs, our true, true
5 cost accounting, that we had more expense operating the
6 belt presses in order to produce cake to take to the
7 landfill than we would have had had we been able to process
8 that by normal channels if our tanks were not damaged, if
9 you will, whatever term you prefer to use, because they
10 were then out of service so we could no longer do --
11 because of that impact we could no longer follow our normal
12 procedure of thickening liquids for biosolids land
13 application. We had to, at that point, start making cake
14 to go to the landfill. So that was part of the impact on
15 us.

16 Q. So what is incorrect about the way I phrased it?

17 A. How did you phrase it?

18 Q. Let me phrase it again. So my understanding is that
19 you are charging the Insurance Reserve Fund as part of this
20 claim for the expense of processing your normal flows of
21 waste, wastewater, through the process to be then processed
22 into cakes and disposed of at landfills?

23 A. I believe your statement does not tell the whole
24 truth.

25 Q. But that's not part of the remediation; is it? You

1 would agree with me that's not remediating the PCBs?

2 A. It's a necessary step because of the impact of the
3 PCBs and the fact that they have disabled our tanks so that
4 we can no longer use them. So that's part of the process.
5 It's a cost because of the PCBs being in the plant. So it
6 is definitely a true cost. And we did back out what our
7 normal costs would have been. So we're not charging for
8 that. I don't know about the word charging. We're not
9 filing for that total amount but rather the delta.

10 Q. There's nothing that stopped Mauldin Road from
11 cleaning out your bio tank solids sooner than June of 2015;
12 was there?

13 A. I'm not sure that I follow you on that.

14 Q. The biosolid tanks at Mauldin Road were not finally
15 cleaned out until June of 2015? You would agree with me on
16 that; correct?

17 A. I would agree with you on that; yes.

18 Q. Okay. And the first exposure of PCBs was January of
19 2013?

20 A. I would agree with you on that.

21 Q. The first exposure at Mauldin Road, I believe, was
22 April of 2013?

23 A. I would agree with you on that.

24 Q. So it took, by that calculation, twenty-six months
25 for you all to clean out the biosolid tanks; correct?

1 A. And we've discussed reasons for that previously.

2 Q. And you're saying during those twenty-six months you
3 all are precessing incoming flows and expecting the
4 Insurance Reserve Fund to pay for those operations?

5 A. Because of the impact of PCBs that prevented us from
6 following our normal operating procedure. Belt press
7 operations are not normal.

8 Q. Sir, were you doing the same thing at Lower Reedy?
9 Were you also charging the Insurance Reserve Fund as part
10 of this claim for the ongoing flows at Lower Reedy?

11 A. For the delta between our normal costs and having to
12 operate presses because of the PCBs in the plant; yes.

13 Q. Were you also doing it for Pelham?

14 A. That is correct.

15 Q. All that is built into this 8.7 million?

16 A. It is.

17 Q. And you say the whole reason for that is because you
18 couldn't go and land apply it?

19 A. That's correct.

20 Q. When did you start land applying again at Mauldin
21 Road?

22 A. I'd have to look at the records of the date. I can
23 tell you that roughly it was sometime after the tanks
24 became available.

25 Q. When did the tanks become available at Mauldin Road?

1 A. They became available effectively June of 2015.

2 Q. How about at Lower Reedy, when did you start resuming
3 land application?

4 A. On a full scale it would have been in early 2015. We
5 were able to resume partially during the fall of 2014 when
6 we managed to work out arrangements for a tank to be
7 available for biosolid storage and we were able to make the
8 thickened liquids to put into that third tank. But once it
9 was full we couldn't make any more until that tank had been
10 cleared for non-detect on PCBs and transported out for land
11 application. Then we could resume the process of filling
12 that tank. Meanwhile we were back to belt pressing.

13 Q. When did you start land applying again at Pelham?

14 A. Again, I'd have to look at the documents to tell you,
15 but sometime around the time frame, to the best of my
16 recollection, May of 2016 that the plant was deemed PCB
17 free and we were able to land apply again.

18 Q. I show it as being March 2016?

19 A. Okay. I'll stipulate to that.

20 Q. All right. Pelham was cleaned in February of 2014;
21 correct?

22 A. The biosolids holding tanks in the digester were
23 cleaned. That doesn't mean that the process itself, the
24 treatment processes in the plant, were entirely cleaned.
25 And so as we continued to have detection of PCB in the --

1 particularly in the influent, whether it was present in
2 other processes or not, we continued to detect it in the
3 influent coming into the plant. And so it just did not
4 make sense to process liquid for land application and risk
5 having PCBs in it and then incurring the costs of having to
6 go through the same process with that. It just was more of
7 protective of the environment and seemed to make more
8 economical sense to not start back land applying prior to
9 that point.

10 Q. Did you ever have any readings at Pelham between
11 February 2014 and March 2016 when you started land applying
12 in excess of five milligrams per kilogram?

13 A. I don't recall without looking at the results of the
14 sampling.

15 Q. How about over ten? Can you say that without having
16 to look?

17 A. I don't recall us having over ten, but I'm not going
18 to say that's definitely the case.

19 Q. Do you ever recall reporting to DHEC under their new
20 regulations that were adopted in April 2014 -- you're aware
21 there were new regulations adopted?

22 A. Yes.

23 Q. And there were reporting regulations; right?

24 A. Yes.

25 Q. There was nothing that prohibited land application in

1 those regulations; were there?

2 A. Within the specific confines of the permit ---

3 Q. Less than fifty milligrams per kilogram?

4 A. Yes.

5 Q. But there were reporting requirements that were
6 added; correct?

7 A. There were. And that was for biosolids. That was
8 not for what was detected in the plant. That was in the
9 biosolids itself.

10 Q. Do you recall ever making a -- or giving DHEC notice,
11 once those regs went into effect in April 2014 through
12 March 2016 when you started land applying, of any type of
13 PCB contamination at Pelham?

14 A. I don't -- well, yes, I do recall that we continued
15 to keep in touch with them about the PCBs that were coming
16 into the plant. Absolutely.

17 Q. Did you make a note and did you provide notice
18 pursuant to that regulation?

19 A. I had nothing to do with that regulation. Again,
20 that regulation is for biosolids that are land applied. We
21 weren't land applying; therefore it's not applicable.

22 Q. Now, you would agree with me, would you not, that
23 starting in March of 2014 regulations, South Carolina DHEC
24 regulations, allowed land application once again up to
25 fifty milligrams per kilogram?

1 A. With some specific stipulations that created some
2 unknowns because anything ten or above was a matter of you
3 had to soil sample afterwards, report the results to DHEC
4 and then wait on them to give further instructions. So
5 that was a risk that we didn't feel like was worth taking.

6 Q. But you would agree with me that once the emergency
7 regulations expired, you were able to land apply again;
8 correct?

9 A. That's correct.

10 Q. And the emergency regulation expired March 23rd,
11 2013; correct?

12 MR. DEVLIN: '14.

13 Q. '14, I'm sorry; 2014.

14 A. I know there was a subsequent regulation that was put
15 into effect following that.

16 Q. Right. And that new regulation allowed land
17 application up to fifty milligrams per kilogram; correct?

18 A. Still with the stipulations about -- if I recall
19 correctly the stipulations about the up to one part and
20 then up to ten parts and then more than ten parts.

21 Q. Right. There were some notice requirements; correct?

22 A. That is correct.

23 Q. And that was probably the result of ReWa not
24 reporting until July the 2013 PCB contamination; wasn't it?

25 MR. STILWELL: I object, Your Honor.

1 A. I don't believe that to be the case.

2 THE COURT: Hold on, please.

3 MR. STILWELL: I object, Your Honor. He's
4 asking about DHEC's motivation for writing these
5 regulations.

6 THE COURT: Sustain the objection.

7 MR. LINDEMAN: Thank you, Your Honor. I
8 apologize.

9 Q. Let me get you to look at Plaintiff's Exhibit Number
10 38.

11 THE COURT: Mr. Lindeman, you're moving into your
12 third hour of what you said would be about a two-hour
13 cross.

14 MR. LINDEMAN: I apologize, Your Honor.

15 THE COURT: Again, no need to apologize. But do
16 you think we're anywhere near a third kind of heading
17 towards home yet?

18 MR. LINDEMAN: I think we are, Your Honor.

19 THE COURT: All right. Thank you.

20 Q. Have you got Exhibit 38 in front of you?

21 A. I do.

22 Q. All right. And this is the remediation plan that was
23 prepared by ReWa for Mauldin Road and Lower Reedy?

24 A. Yes.

25 Q. In the paragraph that reads background, could you

1 read the last sentence of that paragraph?

2 THE COURT: I'm sorry. Where on 38 are you?

3 MR. LINDEMAN: First paragraph under background.

4 I'm asking him to read the last sentence.

5 A. I'm sorry. You said read the last sentence of the
6 background paragraph?

7 Q. Yes, please.

8 A. ReWa does not currently intend to land apply this
9 material, even though current regulations would allow land
10 application.

11 Q. All right. And so this was prepared and submitted to
12 DHEC on April 15, 2014; correct?

13 A. Yes, that's correct.

14 Q. So this is a recognition by ReWa that current
15 regulations allowed land application at that point in time?

16 A. Current regulations allowed it.

17 Q. So the law didn't prohibit ReWa from land applying.
18 You acknowledge that?

19 A. I suppose that depends on whether you consider the
20 permit to be part of the law.

21 Q. The permit allows land application up to fifty
22 milligrams per kilogram?

23 A. The permit also requires us to be cognizant of any
24 impact to the environment and to take actions to prevent
25 any negative impact.

1 Q. The actual threshold amount in the permit is fifty
2 milligrams per kilogram; correct?

3 A. It is.

4 Q. All right. The regulations allow land application up
5 to fifty milligrams per kilogram; correct?

6 A. They did.

7 Q. The emergency regulation expired; did it not?

8 A. It did.

9 Q. And the permit regulation didn't include a
10 prohibition on land application; did it?

11 A. That's correct.

12 Q. Okay. So you're acknowledging you could land apply,
13 right there in that document?

14 A. According to the current regulations; yes. Then
15 current regulations.

16 Q. Was this remediation plan ever provided to the IRF
17 during the claims process?

18 A. I do not know.

19 Q. Did you ever have any discussions with the Insurance
20 Reserve Fund that land application was allowed as of March
21 23rd, 2014?

22 A. No.

23 Q. Do you know ---

24 A. Not that I recall.

25 Q. --- anyone with ReWa who communicated to the

1 Insurance Reserve Fund that the regulations have changed
2 and land application was ---

3 A. It was not my ---

4 Q. --- was permitted?

5 A. --- place to communicate with the Insurance Reserve
6 Fund.

7 Q. Do you know anybody with ReWa who communicated that
8 document and that statement to the Insurance Reserve Fund?

9 A. I couldn't tell you whether somebody did. I don't
10 know of anybody doing it.

11 Q. All right. So based upon the regulations and based
12 upon the fact that the highest reading you had at Mauldin
13 Road was 5.8 milligrams per kilogram, all of the biosolids
14 that were generated at that facility could have been land
15 applied starting on March 23rd, 2013?

16 MR. DEVLIN: '14.

17 Q. '14?

18 A. '14. Based on that particular information or
19 documentation; yes.

20 Q. And based upon a concentration at Lower Reedy of 4.2
21 -- and of course, those were the test results from 2013.
22 We didn't even have test even approaching those levels in
23 2014; did we?

24 A. Correct. I'm sorry. Ask me again. I want to make
25 sure I understood the question.

1 Q. The 4.2 that's listed here is the highest reading at
2 Lower Reedy; is that correct?

3 A. Yes. Right.

4 Q. Okay. Starting on March 23rd, 2014, the biosolids
5 generated at Lower Reedy, including those that were in
6 storage tanks, could have been land applied?

7 A. Yes.

8 Q. By law?

9 A. By law; yes.

10 Q. ReWa made a business decision not to do so?

11 A. I don't know that I would call it a business
12 decision, because considering the requirements of the
13 permit, our concern became that we didn't know nor were we
14 able to find any specific information attesting to the
15 efficacy of PCBs once you land apply them, how much and
16 what extent do they accumulate. So it was our concern that
17 by land applying PCB contaminated material that as that
18 level begins to accumulate that you no longer have your
19 field available and you have damaged the farmer's field.

20 Q. Mr. McManus, that's an ad hoc rationalization; isn't
21 it? You're just rationalizing after-the-fact ---

22 A. No, sir.

23 Q. --- to try to justify this claim?

24 A. No, sir.

25 Q. So what changed in your thinking then when you

1 decided to start land applying again in January of 2015?

2 A. Because we were able to -- or we had no reason to
3 think that we would have PCB contamination in our
4 biosolids. We were testing every batch that would go out
5 -- before it went out to the field to confirm that it was
6 PCB free. And we recognized that it was not a wise
7 financial decision to risk producing biosolids with PCBs in
8 them and have to go back through the extensive costs of
9 remediating that again.

10 Q. But you would agree with me, you started land
11 applying again in January 2015?

12 A. Yes.

13 Q. Okay. So you reached some sort of comfort level in
14 January 2015?

15 A. At Lower Reedy.

16 Q. And how did Lower Reedy differ from Mauldin Road?

17 A. So Lower Reedy at that time was not producing any PCB
18 level, any detectable level in its biosolids nor anywhere
19 in the plant. So that gave us comfort that we could
20 produce biosolids with no PCBs in them.

21 Q. And neither was Mauldin Road; was it? In 2015? You
22 had the stuff in the tanks that you hadn't cleaned out.

23 A. Right. So we didn't have anywhere to put -- we
24 couldn't produce the biosolids because there was nowhere to
25 put them.

1 Q. Only because you waited twenty-six months to get
2 around to cleaning out Mauldin Road; right?

3 A. No. We started before that time and there was -- as
4 we've already talked about, there were a number of things
5 that had to be addressed before we could go that route of
6 cleaning. And some of that was DHEC and EPA discussions.
7 Some of it was determining the best -- least cost route to
8 go. And so we had spent some time doing that and getting
9 the correct equipment in there. And so I think it would be
10 hard pressed to argue if we finished up in twenty-six weeks
11 -- or months, that we waited twenty-six months to get
12 started. That to me doesn't add up. Maybe I'm missing
13 something.

14 Q. But anyway, going back to my point, you developed
15 this comfort level with your permit certainly by January
16 2015?

17 A. At Lower Reedy.

18 Q. And there was nothing different about Mauldin road?
19 You had a comfort level at Mauldin Road, too, because you
20 didn't have any PCBs coming into that institution -- that
21 facility?

22 A. Other than the fact that we couldn't make liquid and
23 put it out on the ground because we had nowhere to store
24 it.

25 Q. Right. But as far as the comfort level with land

1 application, you were fine ---

2 A. Sure.

3 Q. --- by the beginning of 2015. Is that a fair
4 statement?

5 A. Or thereabouts.

6 Q. Okay. Let me get you to look at ...

7 MR. LINDEMAN: And it's the last subject area, I
8 think, Your Honor, so I know you're looking for me to
9 finish up.

10 Q. Look at Plaintiff's Exhibit 101, please. Don't put
11 the black notebook away. I'm going to need it.

12 A. All right. I've got it here. Okay. So we have 101.

13 Q. Right. 101 is the summary of the setoff amount that
14 you calculated and discussed with Mr. Stilwell yesterday;
15 correct?

16 A. Yes.

17 Q. And look at Defendant's Exhibit Number 16, which is
18 in the black notebook.

19 MR. STILWELL: No objection, Your Honor.

20 THE COURT: All right.

21 MR. LINDEMAN: Your Honor, that's Defendant's
22 Exhibit 16.

23 (WHEREUPON, Defendant Exhibit Number 16 was admitted
24 into evidence.)

25 Q. Do you see Defendant's Exhibit 16, sir?

1 A. Yes, I do.

2 Q. And what is that entitled?

3 A. Regular costs of processing solids for land
4 application.

5 Q. And what is Plaintiff's Exhibit 101 called?

6 A. Regular costs of processing solids for land
7 application.

8 Q. So they have the same name?

9 A. They do.

10 Q. Did you perform both calculations?

11 A. I performed calculations that were used in putting
12 these together.

13 Q. Okay. Of both of the exhibits?

14 A. Yes.

15 Q. And there's significant differences in the numbers
16 used in both exhibits; are there not?

17 A. It looks like to me the total bottom line is less
18 than a hundred thousand difference, out of 2. -- two and a
19 half million.

20 Q. So the bottom line is about eighty-seven thousand
21 dollars difference?

22 A. It is.

23 Q. Okay. But the data to get to the bottom line -- and
24 it's eighty-seven thousand dollars in ReWa's favor in
25 Exhibit 101; correct?

1 A. It is.

2 Q. All right. So you would agree with me if the Court
3 used the first setoff number that you calculated, that
4 would give a larger setoff to the Insurance Reserve Fund;
5 correct?

6 A. It would.

7 Q. What caused you to recalculate?

8 A. Because the first calculation sheet didn't -- did
9 not, or I was told that the sheet did not break it down as
10 needed, so we went through and recalculated and ---

11 THE COURT: I'm sorry for interrupting. You said
12 the first sheet. Can you use the exhibit number?

13 MR. MCMANUS: I'm sorry. Exhibit Number 16.

14 THE COURT: All right. Thank you.

15 MR. MCMANUS: Okay.

16 Q. Let me ask you this, sir. Go ahead.

17 A. I was going to say, give me just a moment to compare
18 the two sheets, if you don't mind, before I speak on them.

19 Q. I was going to take you through that.

20 THE COURT: If he can look at and get there
21 quicker, let's do that.

22 A. So I recall that the breakdown in Exhibit 16 for the
23 stored and cleaned-out material was not broken down with
24 the difference for Lower Reedy and Mauldin Road, and we
25 were asked to go back and do that breakdown. And so in

1 doing so, we asked for some -- or we performed some
2 additional QC on the numbers and we were asked specifically
3 for some documentation. With this Exhibit 16, that was
4 done sometime ago, so I don't recall exactly how that was
5 put together or what the backup documentation was. So when
6 we asked for kind of a QC and some additional backup
7 documentation, that's where the numbers on Exhibit 101 come
8 from. So I feel more confident with the numbers in Exhibit
9 101 than I do in Exhibit 16. And they also break out the
10 solids processing of the stored material between Mauldin
11 Road and Lower Reedy and also break it out by the use of
12 the rotary press and the frame press.

13 Q. All right. So in Exhibit -- Defendant's Exhibit 16,
14 that was the first calculation you did?

15 A. Those numbers are reflective of that. Yes, that's
16 correct.

17 Q. And you now contend that those numbers are
18 unreliable?

19 A. I think the Exhibit 101 has numbers that have been
20 more extensively QC'ed and defined; yes, I think so.

21 Q. Tell me what QC means?

22 A. Quality Control reviewed.

23 Q. And why didn't you QC the numbers when you did the
24 first calculation and provided as evidence in this case?

25 A. I can only suppose that with all that was going on we

1 did the best that we could to get correct numbers in there
2 and perhaps missed some things.

3 Q. But you would agree that the original numbers were
4 unreliable?

5 A. Well, I think that that little of a difference, and
6 that's a lot of money to me, but that little of a
7 comparable difference, relative difference between the two
8 bottom line numbers, I would hardly call that unreliable.
9 But I would say that Exhibit 101 is more accurate.

10 Q. Well, there's certain data that these calculations
11 are based off of?

12 A. That is correct.

13 Q. And there are significant differences in the data
14 regardless of what the bottom line turns out to be;
15 correct? Well, let me ask -- give an example. At Pelham
16 Exhibit 16 was operating under the belief that there were
17 two hundred and eighty-five normalized dry tons; correct?

18 A. That's correct.

19 Q. And that number jumps more than a hundred in Exhibit
20 101 to

21 389.9 dry tons?

22 A. It does.

23 Q. Sir, you would agree with me that that's about
24 thirty-five percent, and I'm just roughing it, more than a
25 third added?

1 A. I would.

2 Q. I mean that's not just a little difference; is it?

3 A. That's correct.

4 Q. And then ultimately when you look at the total dry
5 tons for Pelham, that number jumped from forty-four eleven
6 to fifty-six eighty-six; did it not?

7 A. When you said forty-four eleven, where are you
8 referring to forty-four eleven?

9 Q. Well, there are two numbers that make that number; is
10 there not? There's the percentage of dry tons from the
11 biosolids that have been stored and need to be cleaned out?

12 A. Well, I see where you are.

13 Q. And then there's ---

14 A. Yes, you are correct.

15 Q. And then there are dry tons for the ongoing plant
16 flows that you all are claiming in this case?

17 A. Yes.

18 Q. In this insurance claim?

19 A. Yes. You're correct. You're correct.

20 Q. So those total forty-four eleven; do they not?

21 A. Yes.

22 Q. But now in Exhibit 101, you're claiming almost
23 thirteen hundred -- no, I -- yeah, almost thirteen hundred,
24 just to be more precise, one thousand two hundred and
25 seventy-five more dry tons for Pelham? Isn't that right?

1 A. That's correct.

2 Q. And you think that's an insignificant number change?

3 A. Not if you're looking at line items. Again, if
4 you're looking at the total, it didn't make that much
5 difference. But I suppose if we had taken a settlement
6 based on this, we would have come out to the bad end.

7 Q. And these are -- this is data that ReWa has -- it's
8 part of your records; right?

9 A. Yes.

10 Q. Why should we believe that 101 is correct and 16 is
11 not?

12 A. I can't tell you why you should believe that anything
13 here is correct other than going back and looking at the
14 data from which this was compiled, and the data are there
15 to say that 101 is correct.

16 Q. Mr. McManus, if this data is so inconsistent and
17 unreliable, how do we know the data that's used in
18 Plaintiff's Exhibit 99 is reliable? We don't; do we?

19 A. Again, you'd have to go back and look at the
20 underlying documentation that supports those numbers.

21 Q. And that underlying documentation has not been put
22 into evidence, and you haven't even reviewed it in
23 providing ---

24 A. I don't know ---

25 Q. --- Exhibit 99?

1 A. --- what's been offered. There's a lot here that's
2 offered and put into evidence. I can't say what has been
3 or what has not been.

4 Q. But you didn't even review the underlying data to
5 make sure Exhibit 99 was accurate; did you?

6 A. I reviewed what I could.

7 Q. Which was very little?

8 A. In comparison to the whole twenty thousand; yes.

9 Q. You said you spent half a day?

10 A. Probably so.

11 Q. For an 8.7 million dollar claim? Half a day?

12 A. Well, the question you asked was going back and
13 reviewing the invoices. So that would not come anywhere
14 close to the amount of time that I spent reviewing in total
15 and calculating numbers, but digging down in depth because
16 it's physically impossible to spend enough time to review
17 even a reasonable sample of those twenty thousand invoices.

18 Q. You don't think 8.7 million dollars justifies putting
19 some time in?

20 A. There was a lot of time put in.

21 Q. By you to make sure those numbers are accurate? I
22 understood you to say half a day?

23 A. Specifically digging down into specific invoices that
24 we had questions about or were asked questions about; yes.

25 And that does not include the time that was put in when

1 MR. LINDEMAN: Your Honor, object to leading.

2 Q. And are those the records we talked about today?

3 MR. LINDEMAN: Your Honor, I object to leading.

4 THE COURT: I heard you. He's trying to expedite
5 things, so I'm going to let him -- I'm going to let him
6 lead a little bit more than usual. By your facial
7 expression I can understand you think my ruling is
8 improper, but nonetheless it is my ruling.

9 MR. LINDEMAN: Thank you, Your Honor.

10 THE COURT: Thank you, sir.

11 MR. LINDEMAN: I didn't mean to make a face.

12 THE COURT: Even good lawyers like you make faces
13 at times and even judges do sometimes, but they do maybe a
14 little better job of hiding them.

15 So go ahead, Mr. Stilwell.

16 Q. Those steps were also necessary to protect the
17 environment?

18 A. Yes.

19 Q. Okay. And do you believe those steps were reasonable
20 steps to protect from further damage?

21 A. Yes, I do.

22 MR. STILWELL: That's it, Your Honor, as
23 promised.

24 THE COURT: You were jumping up, Mr. Lindeman.

25 MR. LINDEMAN: I'm fine. No further questions,

1 Your Honor.

2 THE COURT: All right. I felt that would be the
3 case.

4 I think you're done.

5 MR. MCMANUS: Thank you, sir.

6 THE COURT: How long of a lunch break?

7 Well, before we do that.

8 Mr. Stilwell and Mr. Brown, how many witnesses do
9 y'all have left?

10 MR. STILWELL: One, Your Honor.

11 THE COURT: All right. Realistically how long on
12 direct?

13 MR. BROWN: Best guess is an hourish, maybe a
14 few minutes longer than that.

15 THE COURT: Who's going to do the cross? What's
16 your best guess of how long the cross is going to go?

17 MR. DEVLIN: Less than an hour.

18 THE COURT: Like real time?

19 MR. STILWELL: Devlin time.

20 MR. DEVLIN: Devlin time. I think an hour is
21 safe, Your Honor.

22 THE COURT: And y'all have how many witnesses,
23 Mr. Devlin?

24 MR. DEVLIN: We have two witnesses available. I
25 told Mr. Stilwell and Mr. Brown that if we could get to

1 him, we intend to put our expert up this afternoon.

2 THE COURT: Okay. How long do you expert your
3 expert -- and here's kind of what I'm getting to.
4 Realistically using the time frame y'all just gave me, we
5 should be finished up with Plaintiff's last witness by
6 three fifteen to three thirty.

7 MR. DEVLIN: Yes, sir.

8 THE COURT: So what witness would you like to
9 call at that point? We're going to go until about five
10 thirty today.

11 MR. DEVLIN: I'm sorry?

12 THE COURT: We're going to go until about five
13 thirty today.

14 MR. DEVLIN: I don't know how much time we are
15 going to need for motions.

16 THE COURT: Not long.

17 MR. DEVLIN: We need to protect the record. I'm
18 concerned, Your Honor, that we might not be finished with
19 the witness until closer to three thirty to four o'clock.
20 And that that ---

21 THE COURT: You're already fudging some time on
22 me, Mr. Devlin.

23 MR. DEVLIN: Well, if we take an hour that makes
24 it ten till two. If William and I take an hour that makes
25 it ten till three. And ten till four without any break.

1 That's my math.

2 THE COURT: All right. I just want to make sure
3 you have a witness we can go ahead and call.

4 MR. DEVLIN: We have a witness, Your Honor. We
5 can certainly get started and maybe finish the direct on
6 our expert this afternoon.

7 THE COURT: Okay. We'll start back at two
8 o'clock. Again, the courtroom will be locked.

9 (WHEREUPON, Court stood at recess for a lunch break.)

10 THE COURT: You can call your next witness.

11 MS. TOWERY: We call Patricia Dennis.

12 THE COURT: Place your left hand on the bible and
13 raise your right hand for me. Do you swear to tell the
14 truth, whole truth and nothing but the truth?

15 MS. DENNIS: I do.

16 THE COURT: Thank you. Come around and have a
17 seat, please. And if you'll state your full name, please.

18 MS. DENNIS: Patricia Ryan Dennis.

19 THE COURT: Spell the last name, please.

20 MS. DENNIS: D-E-N-N-I-S.

21 **PATRICIA RYAN DENNIS,**

22 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MS. TOWERY:**

25 MS. TOWERY: I think actually if one of those

1 can be handed to Patricia. I'm sorry. Yeah.

2 THE COURT: I'm guessing the local office supply
3 stores love seeing you lawyers coming in.

4 MS. TOWERY: Yes.

5 Q. All right, Ms. Dennis, what is your position at ReWa?

6 A. I'm the controller.

7 Q. And how long have you been the controller at ReWa?

8 A. Since February 2009.

9 Q. Are you a licensed CPA?

10 A. I am.

11 Q. And is that in South Carolina?

12 A. Yes.

13 Q. Tell me about just your general job duties as
14 controller? What does that entail?

15 A. I'm responsible for all the accounting functions, so
16 everything from investments and debt management to accounts
17 payable, accounts receivable, financial reporting,
18 budgeting.

19 Q. Do you also have responsibility over insurance
20 matters?

21 A. I do.

22 Q. Do your job responsibilities include ensuring that
23 ReWa has adequate coverage under its policies?

24 MR. DEVLIN: Objection, Your Honor. Leading.

25 A. It does.

1 Q. Can you please describe what your job duties over
2 insurance matters entail?

3 A. Really just ensuring that our policies are sufficient
4 enough to cover any damage, that we have the appropriate
5 type of coverage.

6 Q. Okay.

7 A. Within my department, you know, filing claims and
8 processing claims, updating insured values, premium
9 renewals; that all falls under the accounting group.

10 Q. Okay. How many people report to you in your
11 accounting group?

12 A. Five.

13 Q. Does anyone else other than you have involvement with
14 insurance claim matters?

15 A. My senior accountant, Erica Grant, does.

16 Q. Who held that position before Erica Grant?

17 A. Brenda Page.

18 Q. Is she still with ReWa?

19 A. She's not. She actually retired in 2018.

20 Q. What specifically was Brenda Page's role in dealing
21 with the Insurance Reserve Fund during the PCB
22 contamination?

23 A. Brenda would provide the fund with the monthly PCB
24 expenses, so it's a cumulative tracking of all PCB related
25 costs.

1 Q. Okay. And who did ReWa use for substantially all of
2 its coverage in 2013?

3 A. The Insurance Reserve Fund.

4 Q. When did you as controller first learn about the PCB
5 contamination?

6 A. I actually learned same date as the press release,
7 unfortunately, and filed the claim I think the same day or
8 at least within the same week.

9 Q. Do you remember what month that was?

10 A. I believe it was September 2013.

11 Q. How did you notify the IRF of your claim?

12 A. I called to see what type of coverage -- you know,
13 because of the unique situation with the PCBs -- to see
14 what type of coverage might exist. I spoke with a Terry
15 Camp at the Insurance Reserve Fund who was very helpful.
16 She said just to follow up the phone call with an email and
17 that she would get it to the right spot. Because I wasn't
18 sure which policy even PCBs would fall under.

19 Q. Okay. If you'll turn in your exhibit notebook there
20 to Exhibit 48. And this is one that has been stipulated
21 to.

22 THE COURT: Can I ask just one point of
23 clarification. You mentioned you found out the same day as
24 the press release.

25 MS. DENNIS: Uh-huh (affirmative).

1 THE COURT: Which press release are you talking
2 about?

3 MS. DENNIS: There was a press release put out
4 by Renewable Water Resources stating that we had been
5 impacted by PCBs.

6 THE COURT: Because I'm thinking there are also
7 some press releases from DHEC that have been involved.

8 MS. DENNIS: I'm sorry.

9 THE COURT: No, no. I just want to make sure --
10 this is just a little bit complicated.

11 MS. DENNIS: A little bit.

12 THE COURT: I just want to make sure when it
13 gets down to Columbia that the Judges and Justices down
14 there are able to know exactly what documents everybody is
15 referring to.

16 MS. DENNIS: Yes, yes, absolutely.

17 THE COURT: All right. Thank you.

18 Q. And just to follow up on that point. How soon after
19 did you notify the IRF of the claim, after you saw the
20 press release?

21 A. Like I said I think it was the same day or at least
22 within the week.

23 Q. Okay. So looking at Exhibit 48, if you'll turn to
24 the second page, what's the date of your email to Teresa
25 Camp?

1 A. It's September 24th, 2013.

2 Q. And what's the subject line of that email?

3 A. Per our conversation.

4 Q. After your telephone conversation with Terry Camp, is
5 this the email that you sent her?

6 A. Yes, it is.

7 Q. Did you mention any specific policy in this email to
8 Terry Camp?

9 A. No. I really -- I even said that at this point I
10 don't know -- well, I said I don't know the costs, but I
11 wanted to see if it would be covered under one of our
12 policies. So I was looking to the Insurance Reserve Fund
13 to help guide me.

14 Q. Okay. And when did Ms. Camp reply to your email?

15 A. On September 25th, 2013.

16 Q. And she said I've copied my supervisor Dennis Elledge
17 and Dave Abromaitis so that the claim can be set up. Did I
18 read that correctly?

19 A. Yes.

20 Q. If you'll turn back to the first page of this email
21 chain. The next email is actually dated October 10th,
22 2013. Do you see that?

23 A. I do.

24 Q. Did you have to follow up with the IRF to see if a
25 claim had been set up?

1 A. Yes. That looks like the first time I would have
2 followed up.

3 Q. Had you heard anything from the IRF since Ms. Camp's
4 email on September 25th, 2013?

5 A. No.

6 Q. So if you'll look at the top of this page there's an
7 email that Nelson Chandler sent you on October 10th, 2013.
8 Do you see that?

9 A. I do.

10 Q. And what did he say in that email?

11 A. That Mr. Jerry Anderson of our office will be
12 assigned your claim file and will call you tomorrow morning
13 concerning this loss.

14 Q. Right below that email there is an email from Dave
15 Abromaitis to Nelson Chandler. Do you see that?

16 A. I do.

17 Q. Are you shown as being copied on that portion of this
18 email chain?

19 A. I'm not.

20 Q. Can you read what Dave says to Nelson in that email?

21 A. He says I believe that you, Jerry and I had a brief
22 discussion about this case when it first came in and that
23 there was likely no coverage based on a similar case that
24 Jerry was handling (no direct physical damage). My
25 recollection was that we were going to assign this to

1 Jerry.

2 Q. Okay.

3 A. I do not see that a file was ever set up. Please
4 follow up and advise.

5 Q. What other wastewater facility had experienced PCB
6 contamination around the same time that ReWa did?

7 A. Spartanburg did.

8 Q. Did anyone at the IRF notify you or anyone on your
9 team at ReWa that they were denying the claim based on that
10 no direct physical damage?

11 A. No.

12 Q. When did the IRF actually notify you of any claim
13 determination?

14 A. Not for at least a year from this point in time. So
15 I want to say it was October 2014.

16 Q. If you'll turn to Exhibit 49, and this one again has
17 been stipulated to. Who is this letter from at the IRF?

18 A. It is from Jerry Anderson.

19 Q. And what is the date of this letter?

20 THE COURT: I'm so sorry. What exhibit number?

21 MS. TOWERY: 49.

22 THE COURT: Okay. Thank you.

23 Q. And what is the date of this letter?

24 A. October 11, 2013.

25 Q. And if you'll see it says, Dear Brenda, receipt of

1 the above loss is acknowledged. Do you see that?

2 A. Yes, I do.

3 Q. Which firm does Jerry Anderson indicate will be
4 handling the case?

5 A. Quality Claim Services.

6 Q. Do you recall who specifically at Quality Claim
7 Services was assigned to the claim?

8 A. Fred Young.

9 Q. Did you have much communication with Mr. Young during
10 the PCB remediation process?

11 A. We had an initial meeting with Fred, I think I
12 coordinated it, between Fred Young, Glen McManus and
13 Charlie Logue. Really I just handled the introductions and
14 provided Fred a summary of the expenses that we were then
15 tracking. And then I believe he went with Glen and Charlie
16 to tour some facilities. After that we provided him the
17 PCB expense report on a monthly basis.

18 Q. Okay. Let's talk about that initial meeting that
19 ---

20 A. Okay.

21 Q. --- you just mentioned. Do you remember the date of
22 that meeting?

23 A. I think it was on October 11th or like the next day.

24 Q. Okay. So right around the time that this receipt of
25 loss was -- okay. And again, who were the participants in

1 that meeting?

2 A. It was Fred Young, Charlie Logue and Glen McManus.

3 Q. Okay. If you'll look at the second page of this
4 Exhibit 49, ---

5 A. Okay.

6 Q. --- that says claim data sheet?

7 A. Yes.

8 Q. At the bottom it lists ReWa plant locations. Do you
9 see that?

10 A. I do.

11 Q. Which locations were impacted by the PCB
12 contamination?

13 A. Mauldin Road, Pelham and Lower Reedy.

14 Q. And do you see right beside the property description
15 where it says SGMT or segment number?

16 A. Okay.

17 Q. What were the segment numbers for those three plant
18 locations?

19 A. 90, 130 and 140.

20 Q. In that meeting that you had with Fred Young did he
21 ask for you, meaning the Accounting Department, to send him
22 any information following that meeting?

23 A. I think he just asked us to track our expenses and to
24 provide them to him monthly.

25 Q. Now, you heard Mr. Lindeman earlier ask Glen McManus

1 many questions about the coding of ReWa's PCB expenses.

2 Can you explain for me generally how ReWa codes expenses
3 and how they particularly coded expenses for the PCB
4 contamination?

5 A. Sure. So the way our accounting system is set up, we
6 have an account string. It has four segments. The first
7 segment is the company code. The second segment is the
8 department. Third segment is the natural account. And the
9 fourth segment is the sub account. So it's not unusual for
10 us to track emergency type charges with the sub account.
11 So we created a sub account; in this case it was NPCU, in
12 order to track the PCB expenses.

13 Q. Did you hear earlier how Mr. McManus said there were
14 many different account numbers?

15 A. Right. He's talking about the combination of
16 accounts. So I think he was saying, you know, this -- the
17 entire string is what makes the -- is what drives the
18 coding of the expense. So the way the pivot data works,
19 you can segregate it by department. You can segregate it
20 by natural account. But basically that report just
21 extracts everything with MPCU as well as MPSS, I think it
22 is, which was for stored solids, that was generated during
23 that time period.

24 Q. So based on the sub accounts, how many sub accounts
25 were there specifically for the PCB remediation?

1 A. Two.

2 Q. Explain to me how these sub accounts were used
3 actually in the field?

4 A. Okay. So Glen and Kevin James gave direction to
5 their employees that anything related to PCBs should be
6 coded with this sub account so that we could track
7 expenses. So the way it works is the folks in operations,
8 whatever is needed generally, they put in a requisition.
9 That requisition via cost category is tied to a specific
10 accounting string. And then that routes to their manager
11 or supervisor for approval. Once that item is actually
12 received within the accounting system that generates the
13 charge for expense and it is ultimately paid through
14 accounting.

15 Q. So you mentioned it would go from the base level
16 operations and then for approval to a manager level; is
17 that correct?

18 A. Correct.

19 Q. Okay. So it's a two-step process there for approval
20 to get it sub-accounted?

21 A. Yes. Well, to -- in order to make a purchase.

22 Q. Okay. Would you say that this process is the normal,
23 typical process that ReWa follows?

24 A. Absolutely.

25 Q. For what other type projects, for example?

1 A. For all -- for most of our expenditures ---

2 Q. So this was not an usual tracking ---

3 A. The vast majority go through a purchase order type
4 process.

5 Q. Okay. So this was not an unusual type of tracking
6 expenses for ReWa for the operations people or for the
7 accounting department?

8 A. Not at all.

9 Q. When did ReWa begin sending the IRF these expense
10 spreadsheets?

11 A. I would think after meeting with Fred Young. So I
12 would think that, you know, once we met with Fred, I either
13 would have provided him that spreadsheet immediately in the
14 meeting or immediately following the meeting. I know you
15 have -- there's an email starting in 2014 where I would
16 have turned that over to Brenda Page who is my senior
17 accountant to provide that on a monthly basis.

18 Q. And Brenda Page would have sent those expense reports
19 at your direction?

20 A. Correct.

21 Q. Okay.

22 A. And then it, you know, just ultimately became part of
23 her job, you know, responsibilities that she would always
24 provide this report on a monthly basis.

25 Q. Okay. If you'll turn to Exhibit 52. And this has

1 been stipulated to, as well. What is the date of this
2 email from Brenda Page to Fred Young?

3 A. January 10th, 2014.

4 Q. Are you copied on this email?

5 A. I am.

6 Q. And who else is copied there?

7 A. Charlie Logue, Glen McManus and Cathy Caldwell.

8 Q. Okay. Brenda Page says, attached is an updated
9 summary of expense through 12/31/13 related to the PCB
10 incident. Do you see that?

11 A. I do.

12 Q. And there's a spreadsheet attached that's titled
13 what?

14 A. Summary MPCU expenses.

15 Q. And that's the spreadsheet that you were just
16 referring to?

17 A. Yes.

18 Q. Describe to me what information this spreadsheet
19 contained?

20 A. It would represent just a -- well, it would have both
21 a summary as well as the detailed transactions from our
22 accounting system that had been coded to the MPCU sub
23 account. So there was an export from our accounting
24 software, which lists out all the transactions with the
25 account string and then we just did a pivot table in order

1 to be able to filter -- not filter but summarize the
2 information by location -- or by department ultimately and
3 then by natural account.

4 Q. So explain that to me a little bit further. You said
5 an export from your accounting system?

6 A. Uh-huh (affirmative).

7 Q. So this spreadsheet was a direct report from ReWa's
8 accounting system?

9 A. Correct.

10 Q. Is that correct?

11 A. Correct.

12 Q. For anything that was sub accounted for the PCB
13 remediation?

14 A. Yes.

15 Q. Okay.

16 THE COURT: Is there supposed to be a
17 spreadsheet attached to 52?

18 MS. TOWERY: Your Honor, it's not attached, but
19 it's the same thing that is Exhibit 99 and 100. We just
20 did not attach those to these.

21 THE COURT: Okay. That's fine. I just wanted
22 to make sure I had a complete record.

23 MS. TOWERY: Yes, Your Honor. It wouldn't be
24 the same exact thing, but it was the expenses as of that
25 date ---

1 THE COURT: All right.

2 MS. TOWERY: --- that just kept building.

3 THE COURT: Thank you.

4 Q. So ReWa notified the IRF in January 2014 that the
5 remediation process had begun?

6 A. At least by then. I would think probably even
7 earlier if we met with Fred Young around October 11th,
8 2013.

9 Q. Okay.

10 A. After that I would have thought that Fred and Charlie
11 and Glen would have discussed the remediation process.

12 Q. Do you know when Brenda Page stopped sending these
13 expense reports?

14 A. I would guess June 30, 2016, honestly.

15 Q. Okay. Did Fred Young, Mr. Young, ever request any
16 additional information from ReWa other than what was in
17 these expense reports?

18 A. Occasionally Fred would ask for something to be --
19 maybe some additional information or segregated slightly
20 differently. I know he asked for the segment numbers at
21 some point in time. And we would do that and send it back
22 to him.

23 Q. Okay. Let's look at an example of that. If you'll
24 turn to Exhibit 56. And at the bottom of this first page
25 there's an email from Brenda Young -- I mean Brenda Page to

1 Fred Young. Do you see that?

2 A. Yes.

3 Q. And what's the date of that email?

4 A. February 4th, 2014.

5 Q. Are you cc'd on that email?

6 A. I am. As is Charlie, Glen and Cathy.

7 Q. Well, I think I only see that you are. Are you on
8 the first page? Fred Young, 007?

9 A. I'm sorry. I'm on Fred Young 008.

10 Q. If you'll look at that first page, the 007?

11 A. Sure.

12 Q. Do you see where I'm at now?

13 A. I think so.

14 Q. So the February 5th, 2014 email from Brenda Page to
15 Fred Young. Do you see that?

16 A. Yes.

17 Q. And it's just you that's cc'd on that email;
18 correct?

19 A. Correct.

20 Q. Okay. What information was Ms. Page providing to
21 Fred Young here?

22 A. The Waste Management contract.

23 Q. And why did she provide that information?

24 A. Because he asked for it on February 4th -- or
25 February 5th.

1 Q. Is that reflected on the next page here, the 008?

2 A. It is. So Brenda sent the January 31st, 2014
3 expenses to Fred, copied her normal people. Fred responded
4 just back to Brenda requesting the Waste Management
5 contract. Brenda then provided Fred with the Waste
6 Management contract and let him know that it had been
7 approved at the last ReWa board meeting. Then I followed
8 up, same day, February 5th, and asked if a decision had
9 been made regarding coverage.

10 Q. So as of February 2014 had the IRF notified you of
11 any claim determination?

12 A. No.

13 Q. How did Fred Young respond to your email?

14 A. He said he was just -- he was writing a report to the
15 Insurance Reserve Fund on my claim or on our claim, and
16 that he would like to have a copy of the report from SC
17 DHEC allowing you to clean up the tanks, probably dated
18 sometime around the date you entered into the contract with
19 Waste Management. When received he would forward to the
20 IRF for coverage determination.

21 Q. Did you provide Mr. Young with that DHEC report that
22 he requested?

23 A. Yes.

24 Q. Was there anything that Mr. Young requested that you
25 did not provide him with?

1 A. I can't imagine.

2 Q. If you'll turn to Exhibit 59, and this one is
3 stipulated to, as well. Is this your response to Mr.
4 Young's request for the DHEC approval?

5 A. Yes, it is.

6 Q. And what is the date of the email where you sent that
7 to him?

8 A. February 11th, 2014.

9 Q. Who did you have to contact in order to get this
10 document to send Mr. Young?

11 A. I'm assuming I contacted Charlie Logue because he's
12 copied on the email.

13 Q. Would this be a document that accounting would have
14 had?

15 A. No. I mean we wouldn't have dealt with anything
16 related to DHEC.

17 Q. So you asked operations for that document and then
18 provided it to Mr. Young?

19 A. Engineering; yes.

20 Q. Okay.

21 A. And Charlie was the one working with AECOM primarily
22 at this point in time, so ...

23 Q. Okay. And again, was there anything that Mr. Young
24 requested that you did not provide him?

25 A. No.

1 Q. Did Fred Young ever notify you or anyone in your
2 department that the expense reports you were sending him
3 each month were in any way inadequate?

4 A. No.

5 Q. Did he ever notify you that the expense reports
6 needed to be in some different type of format?

7 A. Never.

8 Q. How about anyone from the IRF? Did anyone from the
9 IRF ever notify you that the reports were inadequate?

10 A. No.

11 Q. Did anyone from the IRF ever request that they be put
12 in a type of different format?

13 A. No. And in fact there was very little conversations
14 with the IRF for a number of years that this claim was
15 going on. Primarily everything was through Fred Young and
16 Fred Young never responded.

17 Q. Okay.

18 A. Or rarely responded.

19 Q. Did ReWa keep sending the IRF its monthly expense
20 reports?

21 A. We did.

22 Q. If you'll turn to Exhibit 65 now. And if you'll turn
23 to the second page of this email string.

24 MR. DEVLIN: Which exhibit are you referring to?

25 MS. TOWERY: 65.

1 MR. DEVLIN: Thank you.

2 MS. TOWERLY: And this is stipulated, as well.

3 Q. So on the second page of this email string there's an
4 email from Brenda Page to Fred Young. Do you see that?

5 A. I do.

6 Q. What's the date of that email?

7 A. April 2nd, 2014.

8 Q. And what was she sending to Mr. Young?

9 A. The March 31st, 2014 PCB expenses.

10 Q. Did you respond to that email?

11 A. I did. A couple of days later, on April 9th, I asked
12 Fred again if a coverage determination had been made. This
13 claim has been outstanding for a number of months and an
14 update would be greatly appreciated.

15 Q. So as of April 2014 had the IRF notified you of any
16 claim determination?

17 A. None.

18 Q. If you'll turn back to the first page of this Exhibit
19 65, how did Mr. Young respond to your request?

20 A. He says, Ms. Dennis, I have been sending your
21 information every month to my client and he is aware of
22 your expenses. I have also made him aware of your request
23 for a coverage decision. As soon as I hear something I will
24 get in touch with you.

25 Q. So after April 2014 did ReWa still keep sending the

1 monthly expense reports?

2 A. We did.

3 Q. And even though ReWa continued doing what Fred Young
4 had asked you to do, had the IRF provided you a coverage
5 determination?

6 A. They had not.

7 Q. Had the IRF explained to you why they had not
8 provided a coverage determination yet?

9 A. No.

10 Q. Had they explained why it was taking so long to
11 provide a coverage determination?

12 A. They did not.

13 Q. By this time in April 2014 had you asked for a
14 coverage determination from the IRF?

15 A. Multiple times.

16 Q. If you'll turn now to Exhibit 73. What is the date
17 of Brenda Page's email to Fred Young?

18 A. September 10th, 2014.

19 Q. And again, what is Brenda sending to Mr. Young?

20 A. The PCB expenses through August 31st, 2014.

21 Q. This email was sent approximately how long after ReWa
22 first notified the IRF of its claim?

23 A. Approximately a year.

24 Q. What did you respond to this email note for Fred
25 Young?

1 A. Brenda added the segment to the department name.

2 Please let us know if you need anything else. Or please
3 let us know if anything else is needed.

4 Q. And when we say segment, is that the same segments we
5 looked at earlier in the notice of claim?

6 A. Correct.

7 Q. So the segments that were attached to each location
8 where the PCB contamination occurred?

9 A. Exactly.

10 Q. So in this email you're letting Fred Young know that
11 you had added that to the expense spreadsheet; is that
12 correct?

13 A. Correct.

14 Q. And you said, please let us know if anything else is
15 needed. And how did Mr. Young respond to your email?

16 A. He said, Patricia, no. Thank you. Fred.

17 Q. Besides your communications with Fred Young, did you
18 contact anyone directly at the IRF?

19 A. I believe I did as time went on. The lack of
20 response was frustrating from the Insurance Reserve Fund.

21 Q. Okay. If you'll turn to Exhibit 76. And if you'll
22 actually look at the last page of this exhibit.

23 A. Okay.

24 Q. At the email that you sent to Jerry Anderson. Do you
25 see that?

1 A. I do.

2 Q. What's the date of that email?

3 A. October 23rd, 2014.

4 Q. Why were you sending this email to Mr. Anderson?

5 A. I wanted to put the Insurance Reserve Fund on notice
6 that there had been another incident with several manholes
7 near the Pelham facility, so it was likely that we would
8 have another PCB impact.

9 Q. Okay. If you'll look at the page right before this
10 one in the same email string, who was it at the IRF that
11 responded to your email?

12 A. Sara Stewart, who is our Insurance Reserve Fund
13 representative.

14 Q. And if you'll look at the top of that same page, at
15 the email from Rob Byers to you dated October 24th, 2014.
16 Do you see that?

17 A. I do.

18 Q. Had you ever dealt with Mr. Byers before this time?

19 A. No.

20 Q. Could you ---

21 A. I think what happened was Jerry Anderson, who was
22 originally assigned to the claim, actually retired. And I
23 didn't even get a notification on that.

24 Q. So the IRF did not notify you when Mr. Anderson
25 retired?

1 A. No.

2 Q. What did Mr. Byers say in his email to you on October
3 24th?

4 A. He said, hello. Please forward any future
5 information direct to this email. Thank you and have a
6 great weekend.

7 Q. If you'll turn back another page in this email string
8 that's bates numbered at the bottom SCBCB 1365. Do you see
9 that?

10 A. I do.

11 Q. And if you'll look at the email that you sent Mr.
12 Byers on October 24th, 2014, and it's actually the one
13 that's at three twenty p.m. Do you see that?

14 A. Yes.

15 Q. You say, we have a separate PCB claim that we filed
16 with the IRF over a year ago but haven't received a
17 determination. We sent a report to Fred Young monthly.
18 Did I read that correctly?

19 A. You did.

20 Q. So as of October 24th, 2014 had ReWa received a
21 coverage determination from the IRF?

22 A. No.

23 Q. How did Mr. Byers respond to your email?

24 A. He said he would review and report back.

25 Q. When Mr. Byers reported back, if you'll look in some

1 of these earlier emails, what three plant locations did he
2 mention?

3 A. Durbin Creek, Gilder Creek and Pelham.

4 Q. Was that information correct?

5 A. No.

6 Q. What were the correct plant locations, again?

7 A. It's Mauldin Road, Lower Reedy, and Pelham.

8 Q. So Pelham was correct, but then the other two were
9 incorrect?

10 A. Yes. You're right.

11 Q. Had ReWa provided the IRF or Mr. Young with the
12 correct information previously?

13 A. Multiple times.

14 Q. And you then responded to Mr. Byers on October 27th,
15 2014 and what did you say in your response?

16 A. I corrected the locations. And I suggested that we
17 had a call to make sure we're on the same page.

18 Q. Do you remember if that call actually took place?

19 A. I do believe that we had a call. I can't remember
20 exactly what was discussed, but I do believe we had a call.

21 Q. If you'll turn to Exhibit 77. When did ReWa receive
22 the claim determination from the IRF?

23 A. On October 30th, 2014.

24 Q. In this letter from the IRF, what policy is
25 discussed?

1 A. The property policy.

2 Q. Does it discuss your tort policy?

3 A. It does not.

4 Q. Did ReWa ever receive a claim determination under the
5 tort policy?

6 A. No.

7 Q. Let's look at the second paragraph in this letter.

8 It says Renewable Water Resources has presented
9 documentation to date that shows ReWa has incurred

10 approximately 5.7 million in expenses. Do you see that?

11 A. Yes.

12 Q. What documentation is referred to there?

13 A. Well, it would come from the monthly report that
14 Brenda provided.

15 Q. And again, as of the date of this letter of October
16 30th, 2014, what was that total amount?

17 A. Five million seven hundred eleven thousand twenty-
18 eight dollars and seventeen cents.

19 Q. How much did the IRF offer to pay ReWa in this
20 letter?

21 A. Ten thousand dollars per segment per twelve month
22 period.

23 Q. And that was under the Pollutant Cleanup and Removal
24 Provision; is that correct?

25 A. That's what it says.

1 Q. So that would be thirty thousand dollars total;
2 correct?

3 A. Correct.

4 Q. Was the Pollutant Cleanup and Removal Provision an
5 additional coverage provision under the policy?

6 A. Yes.

7 Q. Did the IRF explain in this letter why it was not
8 providing coverage for ReWa's other expenses?

9 A. No.

10 Q. Did the IRF explain in this letter that any
11 exclusions applied under the building policy?

12 A. No.

13 Q. What did you do after you received this letter?

14 A. I would have sent it to Tommy Lavender.

15 Q. And who is Tommy Lavender, again?

16 A. Tommy Lavender was our counsel at the time.

17 Originally he started as an environmental counsel, you
18 know, when we were first impacted by the PCBs and he later
19 evolved into a coverage counsel since the Insurance Reserve
20 Fund had not replied.

21 Q. And he's left Nexsen Pruet Law Firm?

22 A. Yes.

23 Q. Did you ever receive a proof of loss from the IRF?

24 A. We did.

25 Q. If you'll turn to Exhibit 81. Is this the proof of

1 loss that you received?

2 A. It is.

3 Q. Are you there yet?

4 A. Yeah, it is.

5 Q. Okay. And what's the date of this document?

6 A. December 4th, 2014.

7 Q. If you'll turn to the second page. What's the total
8 amount that the IRF is offering there?

9 A. Thirty thousand dollars.

10 Q. Did ReWa sign this proof of loss?

11 A. No.

12 Q. And again, what would you have done after you
13 received this letter?

14 A. Sent it to Tommy. And it's odd that most of the
15 correspondence is actually between -- is addressed to me,
16 but this proof of loss is actually addressed to Brenda.

17 Q. But you would have received that ---

18 A. I would have received it from Brenda; yeah.

19 Q. Okay. You testified earlier that ReWa had most of
20 its policies through the Insurance Reserve Fund in 2013;
21 correct?

22 A. Correct.

23 Q. What were some of those different types of policies
24 you had with them at the time?

25 A. And that we still have. Auto, liability, comp and

1 collision, and one marine property, and of course, tort.

2 Q. When you first notified the IRF of the PCB
3 contamination which of those policies did you make a claim
4 under?

5 A. I didn't know which one to make a claim under.

6 Q. So when you contacted Terry Camp what did you ask of
7 her?

8 A. I asked her to help me determine -- or asked the
9 Insurance Reserve Fund to help me determine if there was
10 coverage under one of the policies for this situation.

11 Q. Under one of the multiple policies that ReWa had with
12 the IRF; correct?

13 A. Correct.

14 Q. Let's turn now to Exhibit 2. And this one is
15 stipulated, as well. Patricia, can you describe what this
16 document is for me?

17 A. Sure. It is the renewal declaration document related
18 to our property insurance.

19 Q. You're referring to the building and personal
20 property policy?

21 A. I am.

22 Q. What is the policy period listed here?

23 A. April 2nd, 2014 through April 2nd, 2015.

24 Q. And I think you mentioned this already, but this is a
25 renewal; correct?

1 A. Correct.

2 Q. If you'll look at the bottom of this page. What is
3 the limit of insurance for the Pelham facility?

4 A. Eighty-seven million three hundred and ninety-two
5 thousand a hundred and forty-five dollars.

6 Q. What about Lower Reedy right under that?

7 A. Forty-three million eight hundred fifty-three
8 thousand thirty-two.

9 Q. And if you'll turn to the next page, I think Mauldin
10 Road is the first one there. What's that limit of
11 insurance?

12 A. A hundred and twenty million twenty-nine thousand
13 eight hundred and eighty-five. And that was in 2014.

14 Q. Okay. If you'll turn now to Exhibit 4. Do you
15 recognize this document?

16 A. Yes.

17 Q. And what is this document?

18 A. The renewal declaration page for the building and
19 property.

20 MR. DEVLIN: Your Honor, I don't believe this
21 has been admitted and -- stipulated to or admitted into
22 evidence.

23 MS. TOWERY: I'm laying the foundation right
24 now.

25 MR. DEVLIN: Okay.

1 Q. And what is the policy period listed here?

2 A. April 2nd, 2015 to July 1st, 2015.

3 Q. Is this a true and accurate copy of the declarations
4 page?

5 A. Yes.

6 Q. Did ReWa keep this document in accordance with its
7 regularly conducted business activities?

8 A. Yes.

9 MS. TOWERY: Your Honor, I would move
10 Plaintiff's Exhibit 4 into evidence.

11 MR. DEVLIN: No objection.

12 THE COURT: All right.

13 (WHEREUPON, Plaintiff Exhibit Number 4 was admitted
14 into evidence.)

15 Q. All right. If you will turn to Exhibit 6. Patricia,
16 do you recognize this document?

17 A. I do.

18 Q. And what is this document?

19 A. Again, it's the renewal declaration for our building
20 and personal property policy.

21 Q. And that's July 1st, 2015 through July 1st, 2016; is
22 that correct?

23 A. Correct.

24 Q. Is this a true and accurate copy of this declarations
25 page?

1 A. It is.

2 Q. And did ReWa keep this document in accordance with
3 its regularly conducted business activities?

4 A. We did.

5 MS. TOWERY: Your Honor, I would move
6 Plaintiff's Exhibit 6 into evidence.

7 THE COURT: Any objection?

8 MR. DEVLIN: No, objection, Your Honor.

9 THE COURT: All right.

10 (WHEREUPON, Plaintiff Exhibit Number 6 was admitted
11 into evidence.)

12 A. And just in case you're wondering on the policy
13 periods, it didn't make sense to me that the policy would
14 renew on the 2nd of April, so there was a slightly longer
15 year in that middle years to get it in line with what was
16 our fiscal year at the time. It since has been changed,
17 but ...

18 Q. Thank you for the clarification. All right. If you
19 will turn to Exhibit 8 now. This has been stipulated to.
20 What is this document, Patricia?

21 A. This is the building and personal property coverage
22 form.

23 Q. Was the policy that was in effect for the periods we
24 just looked at in Exhibits 2, 4 and 6?

25 A. Yes.

1 Q. All right. I'm turning now to Exhibit 9. This one
2 has been stipulated to, as well. What is this document?

3 A. It's the causes of loss special form.

4 Q. And again, was this form in effect for the policy
5 periods that we looked at in Exhibits 2, 4 and 6?

6 A. Correct.

7 Q. All right. Turning now to the tort policy, if you'll
8 look at Exhibit 1. This exhibit has been stipulated to.

9 THE COURT: I'm sorry. And that's Defendant's
10 10?

11 MS. TOWERY: 1. Plaintiff's Exhibit 1.

12 Q. Can you explain what this document is?

13 A. The renewal declaration for the general tort
14 liability policy.

15 Q. And what is the policy period listed here?

16 A. April 2nd, 2013 to April 2nd, 2014.

17 Q. Okay. If you'll turn to Exhibit 3. Do you recognize
18 this document?

19 A. I do.

20 Q. Can you tell me what this document is?

21 A. It's the renewal declaration for the general tort
22 liability policy.

23 Q. And what is the policy period listed here?

24 A. April 2nd, 2014 to April 2nd, 2015.

25 Q. Is this a true and accurate copy of this declarations

1 page?

2 A. It is.

3 Q. And did ReWa keep this document in accordance with
4 its regularly conducted business activities?

5 A. Yes.

6 MS. TOWERY: Your Honor, I move Plaintiff's
7 Exhibit 3 into evidence.

8 MR. DEVLIN: We object on the grounds of
9 relevance. We stipulated to the first policy here. We
10 think that applies to this matter to the extent that tort
11 coverage does at all. I'd ask that the remaining policy
12 years, Your Honor -- I understand there are several that
13 are going to be offered up. We don't think they're
14 relevant to this case one way or the other.

15 THE COURT: Relevant from an evidentiary
16 standpoint or relevant from a no-coverage standpoint?

17 MR. DEVLIN: Well, they're relevant from a no-
18 coverage standpoint because the claim arose in the first
19 policy and was reported that year and subsequent policy
20 years don't change the amount of coverage available to
21 them. The language in the policies didn't change from one
22 year to the next, so that's not an issue. But we think
23 that there's one policy that if it applies, it's one that
24 applies, not multiple years of policies.

25 THE COURT: And that would be what policy, Mr.

1 Devlin, the one -- the date of occurrence?

2 MR. DEVLIN: The one that we stipulated to, Your
3 Honor.

4 THE COURT: All right. Help me out. I don't
5 know which one that is.

6 MS. TOWERY: Exhibit -- Plaintiff's Exhibit 1,
7 Your Honor.

8 MR. DEVLIN: Plaintiff's Exhibit 1.

9 THE COURT: Okay.

10 MS. TOWERY: And Your Honor, just from our
11 perspective, because costs were incurred in the years
12 following that first policy period, we're preserving our
13 rights and just offering those into evidence just in case
14 the IRF were to then make an argument that those costs are
15 not covered that were incurred after the first policy
16 period.

17 MR. DEVLIN: Which, Your Honor, we have not
18 done.

19 THE COURT: Are y'all waiving that?

20 MR. DEVLIN: Pardon?

21 THE COURT: Are y'all waiving that?

22 MR. DEVLIN: Yes, sir, we believe whatever their
23 limits are, they're entitled to them under the first
24 policy.

25 THE COURT: In light of that waiver, I sustain

1 the objection.

2 MS. TOWERY: Okay.

3 Q. Patricia, if you will turn to Plaintiff's Exhibit 10.
4 And this has been stipulated to. What is this document,
5 Patricia?

6 A. This is the tort liability insurance policy, policy
7 provisions.

8 Q. And was this the policy in effect when the PCB
9 contamination occurred?

10 A. Yes.

11 Q. All right. If you will now turn to Plaintiff's
12 Exhibit 99. Are you familiar with this document?

13 A. I am.

14 Q. Can you explain to me what this document is, please?

15 A. This is the spreadsheet that Brenda would provide
16 monthly to Fred Young. So this is -- this basically
17 represents the summary of every transaction that had been
18 charged to one of the PCB sub accounts. So either MPCU or
19 MPSS, I believe it was.

20 Q. So this spread sheet contains the sub accounted items
21 for the PCB remediation; is that correct?

22 A. Correct.

23 Q. I think you testified earlier that this is the pivot
24 table?

25 A. Correct.

1 Q. Is that right? So explain that to me?

2 A. So there would have been another tab within the
3 document that would have a detail level of all the
4 transactions and then we would just within Excel have a
5 pivot table that sorts the information and summarizes the
6 information by whatever columns exist within the detail
7 Excel file.

8 Q. Do you run those type of reports a lot out of your
9 accounting system?

10 A. Yes.

11 Q. That's a fairly regular business operation for you to
12 do?

13 A. Yes.

14 Q. Who created this pivot table and this spreadsheet?

15 A. Either Brenda or myself. I mean so to get an export
16 of information from GP and put a pivot table on top for it
17 to slice and dice the information is not anything special.

18 Q. So it would have been you or someone in -- that works
19 with you?

20 A. Yes, one of my staff. Yes.

21 Q. Okay. And again, I think you said this is the type
22 of information that ReWa sent to Fred Young each month; is
23 that correct?

24 A. Correct. Because it was over a period of years, we
25 did have to start -- and these are all expense accounts

1 which would close out to retained earnings, we did have to
2 start adding them in over time.

3 THE COURT: All right. And these are the same
4 number 99 and 100 of Mr. McManus's testimony?

5 MS. TOWERY: Yes, Your Honor.

6 THE COURT: Okay.

7 Q. After ReWa filed this lawsuit did you make any
8 adjustments to the expenses spread sheet?

9 A. So over time, yes, operations has gone through this
10 spreadsheet to scrub it and make sure that all of the --
11 (a) try to answer that there weren't any charges included
12 that didn't belong, and then (b) to see if there's any
13 charges missing, you know, that we were trying to have an
14 accurate accounting and reporting of everything that
15 happened during this that related to the PCB remediation
16 and repair.

17 Q. Okay. So let's go back to -- I think Glen used this
18 term QC.

19 A. Okay.

20 Q. Let's go back to the QC of this document.

21 A. Yes.

22 Q. So let's start from step one. Who was the first
23 person that would enter an expense that would go to this
24 spreadsheet? At the base level?

25 A. At the base level, you know, from a requisition

1 perspective it would probably be Patti Buchanan. She would
2 enter the requisition. It would then be routed likely to
3 Kevin James or Glen McManus for approval.

4 Q. And that's the manager level ---

5 A. Yes.

6 Q. --- approval that you talked about, then?

7 A. Yes.

8 Q. Okay. So then you or Brenda Page, someone in your
9 department, ran this report directly out of your ---

10 A. Correct.

11 Q. Okay. And then you said again once this lawsuit was
12 filed there were additional efforts to ensure that
13 everything in this spreadsheet is accurate; correct?

14 A. Absolutely. That was handled by Operations primarily
15 because they're the closest to the actual work that was
16 being done at the facilities.

17 Q. So you mean with respect to the vendors, they were
18 the most ---

19 A. Yes.

20 Q. --- knowledgeable about the vendors?

21 A. Exactly.

22 Q. What is the total amount of ReWa's expenses listed on
23 this spreadsheet?

24 A. Eight million seven hundred fifty-one thousand nine
25 hundred forty-nine dollars and sixty cents.

1 Q. Okay. If you'll turn to Exhibit 100 now.

2 A. Okay. And this -- in GP, we have -- they're like
3 queries that just pre-exist, you know. So this is --
4 they're called smart lists and this is definitely a dump
5 from a smart list within GP.

6 Q. So let's backtrack. When you say GP, what does that
7 mean?

8 A. That's our accounting software.

9 Q. What is it called?

10 A. Microsoft Dynamics GP.

11 Q. Okay.

12 A. Or Great Plains.

13 Q. Great Plains, okay. I think I heard Mr. Stilwell
14 talk about GP yesterday. So again explain to me step by
15 step what you said these columns are in this spreadsheet?

16 A. This would just be a smart list which is, again, a
17 query. And each row in this report represents a different
18 transaction within our accounting software.

19 Q. Did these entries make up the data that's compiled in
20 the summary spreadsheet, the Exhibit 99 that we just looked
21 at?

22 A. Yes.

23 Q. And is this the most up-to-date version of ReWa's
24 expenses spreadsheet?

25 A. Yes.

1 Q. Does the total amount on Exhibit 100 equal the total
2 amount on Exhibit 99 we just looked at?

3 A. I was just checking it. I believe so. It does.

4 Q. So the pivot table in Exhibit 99 was made from this
5 full spreadsheet, Exhibit 100?

6 A. Correct.

7 Q. Where is the information in this spreadsheet, Exhibit
8 100, pulled from?

9 A. GP Microsoft.

10 Q. And for each line item that's on Exhibit 100 would
11 there have been some type of invoice or PO to back it up in
12 your system?

13 A. Absolutely.

14 Q. And what system at ReWa is that information kept in?
15 Is it GP, as well, or is it a different system?

16 A. For copies of documents it would be DocStar, which is
17 an electronic filing cabinet, essentially.

18 Q. Okay. Are you aware that ReWa has a claim against
19 the IRF for bad faith?

20 A. I am.

21 Q. Tell me about your experience with the IRF during
22 this claims process?

23 A. Well, you know, as we've gone through, I don't know
24 that a claim really could have been handled worse from a
25 customer service perspective. Initially filed in 2013 and

1 not receiving any kind of notification of determination
2 until a full year later, and having to follow up multiple
3 times.

4 Q. Once the IRF did provide you with a claim
5 determination that October ---

6 A. Yeah, and then following up after thirteen months
7 with thirty thousand dollars when we've expended, you know,
8 nearly six million at that point, very frustrating.

9 Q. And did they offer any explanation in that letter as
10 to why that thirty thousand dollars was the only coverage
11 that applied?

12 A. No.

13 Q. Did they talk about any exclusions in that letter?

14 A. They only talked about the pollution limit of ten
15 thousand dollars.

16 Q. What monetary damages is ReWa seeking for its bad
17 faith claim?

18 A. I believe just the -- like fifty to sixty thousand
19 that was related to Tommy Lavender's legal fees after his
20 role had been converted to coverage counsel.

21 Q. So you mentioned earlier that Mr. Lavender served as
22 environmental regulatory counsel for ReWa; is that
23 correct?

24 A. Correct.

25 Q. And then at some point did you contact him and ask

1 him about coverage issues?

2 A. I can't remember exactly, you know, how that
3 occurred.

4 Q. But he then became ReWa's ---

5 A. He did.

6 Q. --- coverage counsel, as well?

7 A. He did.

8 Q. Do you know approximately how much ReWa had spent in
9 legal fees just related to the coverage issues? And we're
10 talking about before the lawsuit was filed here?

11 A. Right. So around fifty to sixty thousand.

12 Q. Okay. If you'll turn to Exhibit 102, Plaintiff's
13 Exhibit 102.

14 A. Okay.

15 Q. Do you recognize this set of documents?

16 A. I do.

17 Q. And what are these invoices?

18 A. These are the invoices from Nexsen Pruet with time
19 charges, you know, from Tommy Lavender, as well as Joan
20 Hartley.

21 Q. And these are Tommy's bills mainly related to
22 coverage counsel; is that correct?

23 A. It's really a mix. You can see like on October 6th
24 there's a DHEC related charge. And then on October 7th
25 there's a PCB coverage -- insurance coverage charge. So I

1 think ---

2 Q. He was serving in both roles at the time; correct?

3 A. Correct. Correct.

4 Q. Are these true and accurate copies of Nexsen Pruet's
5 bills related to their coverage counsel?

6 A. Yes.

7 Q. And did ReWa keep these invoices in accordance with
8 its regularly conducted business activities?

9 A. Yes.

10 Q. And what accounting system would these have been kept
11 in?

12 A. So the transactions or the charges would have been
13 within GP and then from a repository perspective within
14 DocStar.

15 Q. So this backup information is pulled from DocStar; is
16 that correct?

17 A. Correct.

18 MS. TOWERY: Your Honor, I would move
19 Plaintiff's Exhibit 102 into evidence.

20 MR. DEVLIN: Your Honor, I believe there's a
21 quantity in here that's unrelated to the coverage issue.
22 We would agree they're business records, but we're not
23 agreeing that they are all coverage.

24 THE COURT: Yeah, I understand. And I
25 understand from her testimony at this point fifty to sixty

1 thousand dollars of these were related to the bad faith
2 issues?

3 MS. TOWERY: Yes, Your Honor, and I'll go
4 through -- we actually produced these in an unredacted
5 format so that you would be able to see each separate time
6 issue and determine which ones are related to environmental
7 and which ones are coverage.

8 (WHEREUPON, Plaintiff Exhibit Number 102 was admitted
9 into evidence.)

10 Q. So, Patricia, again, let's just look at a quick
11 example. If you'll turn to the page that's bates numbered
12 ReWa versus IRF, 041239.

13 A. Okay.

14 Q. Let's look at a quick example here. So you'll see on
15 September 24th, 2014 the timekeeper initials JWH.

16 A. I do.

17 Q. And the description there says telephone call with M.
18 Tempel and J. Martin on status of DHEC investigation of
19 advanced pumping; telephone call regarding same. So would
20 you consider that to be environmental or counsel coverage?

21 A. Environmental.

22 Q. And then if you'll look at the next three entries
23 underneath that, September 25th, confer with T. Lavender on
24 insurance coverage issues; and then travel to and attend
25 meeting with client regarding IRF claim; review insurance

1 policies. Would those be environmental or the coverage
2 counsel related?

3 A. Coverage counsel.

4 Q. So it's easy to distinguish from these invoices which
5 charges are environmental versus coverage; is that
6 correct?

7 A. Yes. It's just at that detailed level.

8 Q. Okay. And again, have we gone through these and
9 estimated how much is related to Nexsen Pruet's coverage
10 counsel responsibilities?

11 A. Yes.

12 Q. And what was that amount?

13 A. Between fifty and sixty thousand. There are certain
14 like overhead costs that are just logged at the bottom, so
15 they're difficult to allocate.

16 Q. And is ReWa claiming that amount as their damages for
17 bad faith against the IRF?

18 A. Yes.

19 Q. If you'll look now at Exhibit 107. This is a
20 demonstrative exhibit. Pursuant to Exhibits 99 and 100
21 that we looked at earlier, what were ReWa's total expenses
22 related to the remediation and repair for the PCB
23 contamination?

24 A. Eight million seven hundred fifty-one thousand nine
25 hundred forty-nine dollars and sixty cents.

1 Q. I think you were here earlier when Glen McManus
2 testified that the regular costs of processing is that two
3 million five hundred sixteen thousand fifty-four dollars
4 and twenty-seven cent figure there; correct?

5 A. That's my understanding.

6 Q. So when you subtract that out, what are ReWa's total
7 damages that they're seeking in this lawsuit?

8 A. Six million two hundred thirty-five thousand eight
9 hundred ninety-five dollars and thirty-three cents.

10 MS. TOWERY: That's all I have.

11 Patricia, if you'll answer Mr. Devlin's questions.

12 THE COURT: You've got three minutes to spare,
13 so good job.

14 MS. TOWERY: Mr. Brown warned me that I could
15 not go over.

16 THE COURT: All right, Mr. Devlin.

17 MR. DEVLIN: May it please the Court?

18 **CROSS EXAMINATION**

19 **BY MR. DEVLIN:**

20 Q. Ms. Dennis, you have a CPA; correct?

21 A. Correct.

22 Q. And you're in charge of the Accounting Department at
23 ReWa?

24 A. That's correct.

25 Q. And you used to work at Kemet, I think, and you were

1 a senior accountant there?

2 A. That's correct.

3 Q. You've never taken any courses in insurance or hold
4 yourself out as an expert in insurance?

5 A. Absolutely not.

6 Q. Your primary function is to manage financial accounts
7 for the company; right?

8 A. Correct.

9 Q. And a part of the work that goes on in your
10 Accounting Department is to handle insurance claims; isn't
11 it?

12 A. That's correct.

13 Q. And it's a little piece of your job; isn't it?

14 A. Yes, it is.

15 Q. You describe it as that in your deposition. You
16 don't have anybody on your staff who is a dedicated
17 insurance employee; right?

18 A. You're correct.

19 Q. You mentioned just a moment ago that your job
20 included making sure that you have -- that ReWa had
21 policies sufficient to cover any type of damage; right?

22 A. You're right.

23 Q. Do y'all have a pollution liability insurance policy
24 now?

25 A. We do now.

1 Q. Did you have one in 2013?

2 A. We did not.

3 Q. Why not?

4 A. Well, honestly, prior to the PCBs, I don't think we
5 were aware of what could happen to us. And so after we had
6 that contamination, the commission especially felt exposed
7 as to what else could be dumped into our manholes and
8 potentially impact our rivers.

9 Q. That coverage was available in 2013; correct?

10 A. It was. But again, you live and learn. So after the
11 PCBs, I would say we became much more fearful as far as
12 what could happen to us. And not just on the PCB front,
13 but on -- there's a lot of different chemicals that we do
14 not test for that could potentially pass through our
15 operations.

16 Q. What about business interruption insurance, did you
17 have that in 2013?

18 A. No.

19 Q. You understand that covers economic loss in case for
20 some reason your business is interrupted; right?

21 A. Right. But we didn't have a loss of revenue.

22 Q. You mentioned that your claims -- these claims
23 couldn't possibly have been handled worse from a customer
24 service perspective?

25 A. Would you argue with that?

1 Q. So who did you move your insurance to after this?

2 A. Well, actually we've been waiting for this claim to
3 conclude so that we can move our insurance.

4 Q. So for the last five years, y'all have been happy
5 with the Insurance Reserve Fund?

6 A. I wouldn't say happy.

7 Q. You haven't moved your coverage at all?

8 A. No. Felt like it was best to maintain a
9 relationship. I'm happy with Sara Stewart, who is our
10 sales representative.

11 Q. And it's your job to file claims on behalf of ReWa;
12 right?

13 A. It's my area's job.

14 Q. Oh, I'm sorry. I didn't mean you personally.

15 A. Yes.

16 Q. Your department is in charge of the processing of
17 claims?

18 A. Yes.

19 Q. And of course you can't process a claim if you don't
20 know about it; can you?

21 A. That's right.

22 Q. And you learned about this when you read it in the
23 newspapers; didn't you?

24 A. When the press release went out.

25 Q. And that was how many months after the claim arose?

1 A. I don't know.

2 Q. Okay. Have you seen the time line in this case that
3 indicates in January of 2013 there were unusual PCB
4 readings detected?

5 A. No. Would you like to show me the time line?

6 Q. It's Exhibit 88, if you'll look in the Plaintiff's
7 Exhibit book.

8 A. The black one?

9 Q. I believe it's the big white one.

10 A. Okay. 88?

11 Q. Plaintiff's Exhibit 88.

12 A. Okay. So is there a ---

13 Q. I'm looking. About six lines, eight lines down.

14 A. Okay.

15 Q. January 28, 2013. Routine annual sampling shows PCBs
16 and biosolids at Pelham, holding tank 5. Do you see that?

17 A. Yes.

18 Q. Okay. And go on down a couple more to February 11,
19 2013, down at the bottom of the page.

20 A. I see that.

21 Q. Test results confirm presence of PCBs, eight parts
22 per million. Eleven, seventy-two, eighty-one, and forty-
23 five parts per million, depending on which holding tank or
24 digester you're talking about. Did anybody from Operations
25 or Administration notify you in February about this

1 problem?

2 A. They did not.

3 Q. Do you think that waiting seven months to provide
4 notice to your insurance company is reasonable?

5 A. No, I don't. I don't, but I would have to know about
6 it since I'm the one -- right.

7 Q. ReWa knew about it. ReWa just didn't tell its
8 Accounting Department about it; did it?

9 A. Right. I think ---

10 Q. ReWa kept it under its cap?

11 A. I think they were trying to figure out what was going
12 on. But yes, you're right. I did not know about it.

13 Q. And if you had known about it, you could have
14 reported it earlier and the fund could have begun to deal
15 with it earlier; right?

16 A. If they dealt with it.

17 Q. Okay. And how many months did it take the Insurance
18 Reserve Fund to get an insurance adjustor out after you put
19 them on notice?

20 A. Oh, so what, September I reported it and he came out
21 I think October 11, so ...

22 Q. Two weeks?

23 A. Sounds fair.

24 Q. Is that unreasonable?

25 A. No, I don't think so.

1 Q. Do you know what else is happening in the middle of
2 October of 2013 with regard to this claim?

3 A. I don't.

4 Q. Do you know that AECOM Engineering Company developed
5 a plan -- had a plan that Mr. Orvin submitted to DHEC to
6 see if it would approve it for remediation?

7 A. Okay.

8 Q. Does that sound familiar?

9 A. It sounds familiar, but I was not involved in any of
10 those.

11 Q. Do you know -- I understand.

12 A. Okay.

13 Q. Do you know when that information was provided to the
14 Insurance Reserve Fund?

15 A. Based on what we just went through, it looks like
16 Fred asked for it in February of 2014, and I provided it in
17 February of 2014.

18 Q. Do you know if he asked for in February '14 or do
19 know if he asked for it again in February of '14?

20 A. I know we provided him with the Waste Management
21 contract when he asked for it and then he asked for -- he
22 asked me for the DHEC report in that same email string.

23 Q. And DHEC -- and that was also in January and February
24 of 2014; correct?

25 A. I believe that was all February.

1 Q. Okay. Four months after he first went out there? It
2 was when he first saw y'all's plan for dealing with
3 remediation?

4 A. As soon as he asked for it.

5 Q. Do you know what he might have asked folks in
6 meetings you did not attend?

7 A. No, I don't.

8 Q. Okay. And he went to meetings you did not attend;
9 right?

10 A. I think there was just that one meeting with Fred.
11 But there was -- you know, I know he toured after that.

12 Q. And you weren't a part of that?

13 A. That's correct.

14 Q. Do you know when ReWa provided Mr. Young with the
15 response from DHEC approving that plan on certain
16 conditions?

17 A. I mean is that not just the February 11th email that
18 I was talking about?

19 Q. I think there were two documents. There's the plan
20 and the approval of the plan. Did either of them get
21 provided to Mr. Young before February of 2014?

22 A. No. Did Fred ask for them before February 2014?

23 Q. The wonderful thing here is I'll be asking you
24 questions ---

25 A. Okay.

1 Q. And not you of me.

2 A. All right.

3 Q. One day it may change. Did you provide the approval,
4 the October 22nd letter from DHEC?

5 A. I believe that was what was on the February 11th,
6 2014 email to Fred Young. I'm trying to find it. So on
7 February 5th, 2014 he says that he would like to have a
8 copy of the report from SC DHEC allowing me to clean up the
9 tanks.

10 Q. That would be the October 22nd letter from Mr.
11 DeBessonnet at DHEC?

12 A. The what dated? I'm sorry.

13 Q. The approval letter was dated October 22nd.

14 A. Okay. But the first time I was asked for it was in
15 February 2014.

16 Q. Do you know if the AECOM plan included any plans for
17 the demolition of any concrete structures?

18 A. I have no idea.

19 Q. Do you know if before DHEC approved the plan, ReWa
20 knew what its scope of work was going to have be to clean
21 up this property?

22 A. I have no idea. I wasn't involved in any of those
23 discussions.

24 Q. Okay. Well, did you ever hear from anyone at the IRF
25 -- or did ReWa ever hear from anyone at the IRF about the

1 need to break out their costs so that they were specific as
2 to cleaning the structures?

3 A. I don't recall.

4 Q. Do you know if ReWa ever got that request?

5 A. I don't know.

6 Q. Do you think it's reasonable for an insurance company
7 to ask for costs to be broken down so that they could
8 determine what parts might be covered and what parts might
9 not?

10 A. Absolutely. I just don't think it's reasonable to
11 ask for it several years after it happened.

12 Q. Did y'all want a coverage determination while the
13 claim was still ongoing?

14 A. Yes. We requested it multiple times. I mean as
15 early as, you know, a couple of weeks after I originally
16 reported it, I had to follow up with the Insurance Reserve
17 Fund on October 10th prior to Fred Young ever contacting
18 us.

19 Q. And as you just said, this is a net six million
20 something dollar claim. Would you want that claim decision
21 to be made in a hurry without all the information
22 necessary?

23 A. Absolutely not. But if the fund needed any
24 additional information or information to be broken out
25 separately, then the time to do that was while it was

1 happening. They provided very little guidance as we went
2 through this.

3 Q. And your opinion that the time to do it was a
4 particular time is based on what experience?

5 A. That it's always better to do things in the present
6 than try to have -- than try to go back and format
7 something in a way that somebody wants it when they don't
8 specify how they want it up front.

9 Q. But your knowledge is not based on any experience
10 with claims handling?

11 A. No, just practical.

12 Q. Okay. Just like it would have been a lot better if
13 ReWa had not hidden this from the Fund for seven months;
14 right? It would have been better if that didn't happen?

15 A. If I had known about it, I would have reported it
16 immediately.

17 Q. It would be better in all situations if everybody
18 acted more rather than less promptly; right?

19 A. Absolutely.

20 Q. Do you recall that after the correspondence stopped
21 being between your office and Mr. Young that y'all's
22 attorney, Mr. Lavender, began communicating about the
23 coverage issues?

24 A. Yes. Well -- and I wouldn't say that we stopped
25 communicating with Mr. Young. We continued to provide ---

1 Q. Yes. I did not mean to imply that. Y'all were
2 continuing to provide those monthly ---

3 A. Reports.

4 Q. --- expense sheets.

5 A. Yes.

6 Q. I'm sorry. I did not mean to imply that you weren't
7 doing that. But as far as the coverage issues were going,
8 there was an ongoing dialog that did not include your
9 office at that point?

10 A. Absolutely.

11 Q. It included Mr. Lavender?

12 A. Yes.

13 Q. It included myself.

14 A. Okay.

15 Q. And you've seen those letters at your deposition.

16 A. Okay.

17 Q. And have you seen six or seven month delays in
18 response by Mr. Lavender responding to my questions?

19 A. I believe you.

20 Q. Do you believe that's reasonable?

21 A. I don't.

22 Q. Do you believe that -- do you believe that the length
23 of time that it took to make a determination as to the
24 coverage caused damage to ReWa?

25 A. I do.

1 Q. In the amount of those attorney fee bills?

2 A. And in the amount of the burden on staff. This has
3 been going on a very long time. And having to -- I know
4 this sounds petty, but having to re-familiarize yourself
5 with an email that you might have sent seven years ago.

6 Q. Yes. I think we can all agree that this case is a
7 little bit burdensome.

8 A. Yes.

9 Q. But that's part of your job; isn't it, to testify
10 when called upon by your employer?

11 A. Absolutely.

12 Q. And you're getting paid, just as you should be, for
13 that; right?

14 A. Oh, yes, but ---

15 Q. It's just a part of the job?

16 A. I'm not a lawyer. So I still have a big part of my
17 job waiting for me.

18 Q. You were speaking about, with Ms. Towerly, sub-
19 accounts that were created. There are only two; right?

20 A. That's correct.

21 Q. MPCU ---

22 A. Yes.

23 Q. --- and MPCS. And I understand, just to make sure
24 it's clear, that any other testimony about there being a
25 lot of different accounts is not precisely correct. There

1 are a lot of different codes for Lower Reedy ---

2 A. Yes.

3 Q. --- or for internal overhead, things of that nature,

4 ---

5 A. That's correct.

6 Q. --- but there are two sub-accounts related to PCBs?

7 A. You're right.

8 Q. And both of those are reflected completely within
9 that pivot table Exhibit 99; correct?

10 A. Now what do you mean by completely?

11 Q. All of the damages that y'all are claiming related to
12 the PCB remediation are within 99?

13 A. Yes.

14 Q. Okay. And how difficult was it to create those sub-
15 accounts?

16 A. Not difficult.

17 Q. And I would assume there had to be some communication
18 outward to the staff about making sure to designate things
19 that might be covered by an MPCU -- by a PCB remediation
20 category?

21 A. Yes.

22 Q. And you weren't part of that communication out to the
23 field; were you?

24 A. That's correct.

25 Q. So whatever they were told about what is or is not a

1 PCB covered expense is not something you would be able to
2 opine or talk about; would you?

3 A. You're right.

4 Q. And that description could be made broader or
5 narrower and you wouldn't know one way or the other how
6 broad or narrow it was; right?

7 A. You're correct.

8 Q. If it came into your office and it bore the MPCU
9 designation, unless there's something irregular or unless
10 you had actual firsthand knowledge of the expenditure,
11 you're going to put it into the PCB remediation category;
12 weren't you?

13 A. You're correct.

14 Q. It wasn't your job to make any decisions about what
15 was covered. It was your job to input into your accounting
16 system the things that somebody else said were covered?

17 A. And it flows automatically. So really all we were
18 doing was reporting off of it, if that makes sense. The
19 coding happens at the front line and ---

20 Q. Yes.

21 A. --- and then flows through the accounting software.
22 So we're not entering anything specifically. It's
23 generally all electronically routed.

24 Q. And when you say -- I believe you testified that you
25 were one of the persons who may have helped create Exhibit

1 99 -- you would have known how to make your accounting
2 system -- I was going to say puke out, but we're in Court -
3 - provide that information; right?

4 A. I could have queried the accounting system; yes.

5 Q. Query the accounting system for MPCU costs and
6 ultimately it's going to come up ---

7 A. Yes.

8 Q. --- with that 8.7 number?

9 A. Yes.

10 Q. But other than hitting the correct button, you would
11 not have had any input into the creation of what was or was
12 not in the line items?

13 A. Absolutely.

14 Q. That was actually decisions made by other people?

15 A. That's correct.

16 Q. Let's look at this. Look at Exhibit 99, please.
17 Exhibit 99 is the summary sheet that you are using in this
18 case as the basis for your eight point seven something
19 million dollar claim?

20 A. Correct.

21 Q. And that's dated June 30, 2016. And that hasn't
22 always been the number y'all have been claiming as due as
23 of June 30, 2016; right?

24 A. You're right.

25 Q. And didn't y'all supply the IRF with a claim for 9.4

1 million dollars?

2 A. That sounds right.

3 Q. And that's Exhibit 10 -- I'm sorry -- Exhibit 15 in
4 the notebook that was going to be for the Plaintiff's
5 Exhibits.

6 A. Okay.

7 Q. I'm sorry. Defendant's trial exhibits, the small
8 black notebook, Exhibit 15.

9 A. Okay.

10 Q. Do you recognize that document?

11 A. I do.

12 Q. Did your office send it to the Insurance Reserve
13 Fund?

14 A. You're correct.

15 MR. DEVLIN: We'd offer that, Your Honor, as
16 Defendant's Exhibit -- I'm not sure what the next number
17 is.

18 MR. STILWELL: Isn't it 15 already?

19 MR. DEVLIN: Pardon?

20 MR. STILWELL: Isn't it 15?

21 MR. DEVLIN: It's on the list, but I don't
22 believe -- I'm sorry. It would be Exhibit 15, assuming
23 there's no objection.

24 THE COURT: Yeah, Defendant's 15 then, unless
25 there's any ---

1 MS. TOWERY: No objection, Your Honor.

2 (WHEREUPON, Defendant Exhibit Number 15 was admitted
3 into evidence.)

4 Q. There's about a seven hundred, seven hundred fifty
5 thousand dollar -- I haven't done the math -- spread
6 between this number and the number you were asking for with
7 this pivot table; right?

8 A. That's correct.

9 Q. And part of that, I know, has to deal with the
10 Fournier rotary press, the first line?

11 A. Yes.

12 Q. Where there's a three hundred and sixty-one thousand
13 dollar charge to the state of South Carolina for a machine
14 that y'all were buying and somebody later decided to maybe
15 amortize that so that you only used some years of it
16 instead of a whole lifetime of it; right?

17 A. Correct.

18 Q. And there are other changes too; right?

19 A. Correct.

20 Q. Were there mistakes in this one?

21 A. I'm sure, you know, there was -- I'm sure there were
22 mistakes. You know, that's why Operations went through and
23 tried to check, you know, in a detailed manner.

24 Q. And when did the second one come out, the one that
25 you now say is correct?

1 A. I don't know the specific date.

2 Q. And are you now able to swear that the 8.7 million
3 dollar one, the one that y'all put into evidence as Exhibit
4 99 is in fact true and correct?

5 A. I believe that these are all the charges that came
6 through that were coded to MPCU.

7 Q. Okay.

8 A. Or MPCS.

9 Q. When you created what is now Defendant's Exhibit 15,
10 did you believe that about that document then?

11 A. I did.

12 Q. And it was off about three-quarters of a million
13 dollars? And if we kept looking at Exhibit -- Plaintiff's
14 Exhibit 99, the current pivot table, it's just as likely we
15 could find more mistakes; right?

16 A. You're talking about the processes that went over
17 multiple years. I think, yeah, you're always potentially
18 going to find a mistake.

19 Q. Okay. Well ---

20 A. I don't think it's going to be to the tune of
21 millions of dollars, but I'm not going to swear that it's a
22 hundred percent accurate. I think it's materially correct.

23 Q. Turn, if you would, ---

24 A. Also, at this point in time, we're providing
25 everything to the Insurance Reserve Fund that we received,

1 and again, still looking just for some feedback from them.
2 So you'll see there's, you know, there's legal expenses,
3 there's insurance, you know, that was the full price of the
4 rotary press and that was what Operations was supposed to
5 do, is go back and scrub and make sure that everything --
6 all the expenses included were legitimate. And rightfully
7 charged to the PCB remediation.

8 Q. In June of 2016 when you first provided this pivot
9 table, the one with the 9.4 million dollars on it, you were
10 asking for a hundred and fifty-six thousand dollars in
11 attorneys' fees; right?

12 A. Yes.

13 Q. And you knew in June of 2016 that there was work that
14 Tommy Lavender had done that was environmental. And you
15 knew there was some that was not environmental; right?

16 A. You're right.

17 Q. But you asked for the whole thing; right?

18 A. I reported our expenses. I never expected it to get
19 to this point. I expected to be able to have a
20 conversation with the Insurance Reserve Fund, which didn't
21 really happen. But we were reporting everything that was
22 related to PCBs or that we tied to PCBs at that time. It
23 wasn't a Court case or even a claim at this point. It was
24 a starting point for a conversation to be had with the
25 fund.

1 Q. And you base that on your knowledge of the onset of
2 litigation and the way that Mr. Lavender was discussing
3 this case with the fund?

4 A. No. I base that on the initial meeting with Fred
5 Young in October of 2013.

6 Q. And do you know what conversations happened after
7 that as to whether or not the state of South Carolina
8 thought that 9.4 million dollar claim ought to be paid?

9 A. I have no idea.

10 Q. So ---

11 A. The Insurance Reserve Fund didn't ---

12 Q. But if the Insurance Reserve Fund had taken ReWa at
13 its word when it submitted this June 30th, 2016 pivot
14 table, it would have paid three-quarters of a million
15 dollars too much; wouldn't it?

16 A. I wouldn't expect the Insurance Reserve Fund not to
17 do their due diligence. That's never been my experience
18 with them.

19 Q. So y'all were going to ask for every nickle and make
20 the fund carve off whatever it could prove; is that right?

21 A. No. We weren't making a claim at this point. We
22 were providing all the expenses that -- we were providing
23 all the expenses that were related to the PCBs, which is
24 what Fred had asked of us. So everything that got coded to
25 the PCB remediation is what we provided. Never, ever

1 expected it to end up in a lawsuit.

2 Q. Well, when did your claim start? You said you
3 weren't filing a claim. You ---

4 A. I'm sorry. When I said claim I really meant that I
5 never expected this to turn into a lawsuit.

6 Q. Okay. Are you the -- I take that back. Are you
7 speaking for yourself or for ReWa?

8 A. I'm speaking for myself.

9 Q. Look at Exhibit 100 in the big notebook, the
10 Plaintiff's Exhibit 100.

11 A. Okay.

12 Q. It's the breakout ---

13 A. The detail?

14 Q. --- with the details; yes, ma'am.

15 A. Okay.

16 Q. And did you testify earlier, I'm just not sure, that
17 a document of this nature was sent to Mr. Young?

18 A. Yes. It would have been the -- it would have been
19 another tab within the Excel file.

20 Q. Okay. Turn over about five or six pages to a page
21 that's bates stamped at the bottom 41062. Tell me when
22 you're there.

23 A. Okay.

24 Q. There are about eight lines, give or take, at the
25 bottom of that showing credits on various charges?

1 A. Yep.

2 Q. Why is that?

3 A. It appears that they represent credit memos.

4 Q. Well, I believe that. But why are there credit memos
5 in your accounting?

6 A. Well, there must have been an error with the initial
7 PO.

8 Q. Okay. And further up that page there are probably
9 eight or ten more credit memos; correct?

10 A. Yes.

11 Q. And those were all where there were errors in a PO
12 that got submitted to y'all?

13 A. Correct.

14 Q. That got caught?

15 A. Yes. It's not uncommon, but yes.

16 Q. And on the next page, 41063, a whole bunch of credits
17 at the very top from Rain for Rent, Western Oilfield Supply
18 outfit?

19 A. Yes.

20 Q. And credits throughout that page for Vulcan Materials
21 and Rain for Rent, Waste Management. Most of them for not
22 real large dollars. But if you get to the next page
23 there's a twenty-four thousand dollar credit memo; isn't
24 there?

25 A. Yes. That actually -- I believe what happened in

1 that situation was there's multiple Waste Managements and
2 there was actually an accounting issue where the wrong
3 Waste Management company was used for the initial expense
4 charge. And so that was to unwind that charge and then
5 push through to the correct Waste Management company.

6 Q. If you would move to the next page under page 41067.

7 A. Okay.

8 Q. These are for charges from Rogers & Callcott for
9 ninety-three hundred dollars that got reversed?

10 A. I believe ---

11 Q. I'm sorry. One for ninety-three hundred dollars for
12 Rogers & Callcott and ---

13 A. And we ---

14 Q. I'm sorry. I'm not good at three point print. A&D
15 Environmental had a ninety-three hundred dollar credit
16 memo; right?

17 A. Okay. Yes.

18 Q. Rogers & Callcott had a fourteen hundred dollar
19 credit memo?

20 A. Yes.

21 Q. Then down on the same page, ninety-three hundred
22 dollar credit memo for A&D Environmental?

23 A. Yes.

24 Q. One line down, eighteen hundred dollar credit memo?

25 A. Yes.

1 Q. A lot of mistakes were going on in the purchase
2 orders; weren't there?

3 A. You know, I can't tell exactly without looking at the
4 detail. But credit memos are not uncommon in accounting.

5 Q. Is it common, if you look at page 41068, where you
6 had a page of transactions with about six or eight debits
7 and fifty credit memos?

8 A. I'd have to look at the details. I mean so -- oh,
9 okay. So this is actually -- if I look at the transaction
10 dates, so it's June 30th and July 1st, so our year-end was
11 actually June 30th at that time. And we have -- as part of
12 our year-end process, we have to jump through some hoops
13 with closing of POs and then re-entering POs. So I bet
14 it's -- I'm assuming it's related to that.

15 Q. Would you agree that would be detail that Fred Young
16 would not be privy to?

17 A. Right. Unless he asked.

18 Q. And Fred Young would not be able -- a hired rep would
19 not be able to look at a page of credit memos and
20 understand what kind of charges these were; would they?

21 A. No. That's where, as I stated earlier, this was used
22 -- or intended to be a conversation starter; not the end-
23 all.

24 Q. Okay. So y'all's eight million dollar number was a
25 conversation started, not an actual we believe all of this

1 is chargeable; right?

2 A. The 9.4 million?

3 Q. Right.

4 A. Yes.

5 Q. Well, it started at 9.4, then went to 8.7 ---

6 A. I think it started at probably, you know, ten
7 thousand dollars as a conversation started. We supplied
8 the information for years and it ended up at 9.4 million
9 and without any conversation.

10 Q. Well, that you are personally aware of?

11 A. That I am personally aware of.

12 Q. And you would agree that you were not at a level
13 within ReWa that you would be privy to all of that
14 information; right?

15 A. Apparently.

16 Q. They didn't tell you about the PCB contamination for
17 six months, ma'am?

18 A. That's fair enough.

19 Q. Okay. You mentioned problems that you had with Mr.
20 Young, that he rarely responded to you.

21 A. Yes.

22 Q. I want you to take a minute and find me whatever you
23 can to show any request that you made to Mr. Young to which
24 he did not respond? I'll be happy to wait.

25 A. I'd love to if I could have my laptop.

1 Q. Well, today is -- today is the day that ReWa is
2 proving its case. And you have alleged to this Court, this
3 is part of a bad faith claim, that Fred Young rarely
4 responded to you. Can you prove that?

5 A. Not without my emails.

6 Q. Not without evidence. And you don't have any
7 evidence before you to prove that; do you?

8 A. Well, I'm saying that we didn't receive a claim
9 determination for at least thirteen months even though ---

10 Q. Fred Young didn't respond to you about that?

11 A. Even though I requested it multiple times. And maybe
12 it's not fair for me to direct that at Fred Young. It's
13 fair for me to direct that at the Insurance Reserve Fund.

14 Q. Well, you said, you swore Fred Young rarely
15 responded. Is that a mistake?

16 A. Well, I said that we provided the information on a
17 monthly basis and we rarely received a response from Fred.
18 And I think that's a fair statement. We can go back and
19 look at emails, you know, where Brenda sent it and see
20 whether or not Fred responded. Do you have emails of Fred
21 responding or confirming receipt?

22 Q. Like I said, ma'am, the questioning here is
23 unfortunately for you a one-way street.

24 A. I understand.

25 Q. Okay. You mentioned that there were adjustments to

1 the spreadsheet that Operations went through it. You
2 didn't do that, though, did you?

3 A. I did not. I would have adjusted the fixed assets.
4 I will say that.

5 Q. Okay. Look in the -- are you okay?

6 A. Yeah.

7 Q. Look at Exhibit 10 in your notebook, the tort
8 liability policy.

9 A. Okay.

10 Q. Would you agree that a lot of the work that was done
11 on the digesters was work that was done on property that
12 was owned by ReWa?

13 A. Yes.

14 Q. And would you agree that there is an exclusion in the
15 tort liability policy for property damage to property owned
16 or occupied by or rented to the insured, with the insured
17 being ReWa?

18 A. I believe you. I don't -- is there a certain page?

19 Q. I'm sorry. Let me give you a little more information
20 about that. On page 4 of 6 of that document ---

21 A. Okay.

22 Q. --- or bates stamp SCBCB 290.

23 A. Could you repeat that?

24 THE COURT: And what paragraph or subparagraph?

25 Q. I'm sorry. At the bottom of page 4 of 6 of Exhibit

1 10 on the lefthand column under VI, Exclusions, there's
2 language that says, this insurance does not apply to
3 property damage to property owned or occupied by or rented
4 to the insured.

5 A. So under (j)? Yes, I see that.

6 Q. Yes, ma'am, under (j).

7 A. Okay.

8 Q. And the digesters were owned by ReWa?

9 A. You're correct.

10 Q. The holding tanks were owned by ReWa?

11 A. Or rented.

12 Q. The holding tanks weren't owned -- weren't rented by
13 -- frac tanks were rented.

14 A. Okay.

15 Q. But the big concrete hundred and twenty thousand
16 gallon -- hundred and twenty foot diameter tanks ---

17 A. Okay.

18 Q. --- those weren't rented. They were owned?

19 A. Correct.

20 Q. Right?

21 A. Correct.

22 Q. And all of those had to have cleaning done to them?

23 A. Okay.

24 Q. And that is all property owned by ReWa; right?

25 A. Correct.

1 Q. Look at Exhibit 14, please, ---

2 A. Okay.

3 Q. --- in the notebook we gave you, not the one that
4 your counsel gave you.

5 A. Okay.

6 Q. Now, take a look at that and see if you can identify
7 it as an email sent by Mr. Young to you?

8 A. Okay. It appears so.

9 Q. Okay.

10 A. Oh, he says thank you for the information. However,
11 I was not aware ReWa had been approved to do cleanup and
12 thought that I was to be kept in the loop as to no -- as to
13 reports and findings with SC DHEC and US EPA. Please send
14 me any and all reports pertaining to SC DHEC and EPA in
15 relation to the approval to do cleanup and any follow-up
16 after cleanup was completed.

17 Q. And you recall getting that email?

18 A. Yes.

19 Q. Okay. And you understand that this in February '14
20 was applied just to the AECOM plan and the approval by DHEC
21 as to the Pelham plant?

22 A. I would believe so.

23 Q. And that the Mauldin and Lower Reedy plants did not
24 have a plan submitted at that point?

25 A. I believe. Yeah, I wasn't ---

1 Q. Do you know when, in response to Mr. Young's request
2 that he be kept in the loop as to reports and findings from
3 DHEC, that the plan that was submitted to DHEC as to Lower
4 Reedy and Mauldin was provided to him?

5 A. I do not know.

6 Q. Do you know when it was provided to the IRF?

7 A. I do not know.

8 Q. Did you know that that was about six weeks ago or
9 less?

10 A. I did not know that.

11 Q. Do you think it would be hard to make a decision
12 about whether or not a cleanup plan was covered under an
13 insurance policy if you don't get the plan until five years
14 after the cleanup takes place? Would that be difficult?

15 A. I'm sure. But again, to have asked for it would have
16 been -- we would have provided it.

17 MR. DEVLIN: We would offer -- I'm sorry.

18 Q. Look back at Exhibit 14.

19 A. Okay.

20 Q. Please send me any and all reports pertaining to SC
21 DHEC and EPA in relation to approval to do cleaning.

22 A. Right.

23 Q. And you're the person who's supposed to be asking
24 that; right?

25 A. Right. So ---

1 Q. You're the insurance contact?

2 A. Correct.

3 Q. And he asked for any follow-up after cleanup? Did
4 you send him anything else?

5 A. I would have sent him the SC DHEC that related to
6 Pelham.

7 Q. From October, four months earlier?

8 A. Uh-huh (affirmative).

9 Q. And when ReWa communicated with DHEC again as to how
10 they intended to clean up the two other plants, did you
11 send that to them?

12 A. I wasn't involved in that.

13 Q. Well, but you are the contact with the insurance
14 company that he has with ReWa. How was he to get a cleanup
15 plan for ReWa if you don't know that it exists?

16 A. If he were to ask.

17 Q. He did. On February 11th, 2014, he asked for ---

18 A. Had he asked me ---

19 Q. Hold on. He asked for any follow-up after cleanup
20 was completed. Have you done that?

21 A. And he was asking specifically to -- as to the Pelham
22 remediation because he responded to the Pelham remediation
23 email and we provided him the contract.

24 Q. So y'all weren't going to give him anything that he
25 didn't ask for?

1 A. You know, hindsight is twenty/twenty, but I didn't
2 realize what was going on maybe on the other side.

3 Q. How much of this claim is Lower Reedy and Mauldin?
4 Isn't it about four of the six million dollars debt? I'm
5 basing that on very rough math from your Exhibit 99. And I
6 know your accountant might want to use that number, but
7 does that sound about right?

8 A. I don't know without looking.

9 Q. Look at Exhibit 99. There's a specific ---

10 A. Okay.

11 Q. --- category for Lower Reedy and a specific category
12 for Mauldin.

13 A. Right. But there's ---

14 Q. One of them is three and a half million dollars ---

15 A. --- 2.3 million for solids disposal. So Mauldin is
16 3.6 million.

17 Q. And Lower Reedy is maybe five hundred thousand, four
18 hundred and something thousand?

19 A. Oh, there it is. Five hundred thousand.

20 Q. Good. So even if you don't include costs of solids
21 management that came out of those two facilities, that's
22 4.1 million dollars related to two facilities that y'all
23 never provided to the cleanup damages until 2000 -- in late
24 '19; correct?

25 A. Correct.

1 Q. Okay.

2 A. It appears so. You know, I haven't actually seen the
3 remediation plan as it pertains to Mauldin and Lower Reedy.

4 Q. Okay.

5 MR. DEVLIN: Just a minute, Your Honor.

6 THE COURT: Yes, sir.

7 Q. There was some conversation about the providing of a
8 proof of loss in this case.

9 A. Okay.

10 Q. Do you understand what that is?

11 A. I'll take a definition if you'll give me one.

12 Q. That would be a no, you don't understand?

13 A. Sure.

14 Q. That's okay. You've been provided a proof of loss by
15 Mr. Byers, I believe, with regard to the pollution
16 coverage, the ten thousand dollars per facility work?

17 A. Oh, that we would say, yes, this is -- that we would
18 sign an order to receive.

19 Q. Did you submit a proof of loss as to your claim now,
20 the six million dollar debt claim?

21 A. I'm not sure, honestly.

22 Q. Well, who else would know better than the person in
23 charge of insurance at ReWa whether or not a proof of claim
24 was submitted to -- a proof of loss was submitted to IRF?

25 A. So are you referring to our claim number? Is that

1 the same thing?

2 Q. No, ma'am. There's a document entitled proof of
3 loss.

4 A. Okay.

5 Q. Did y'all ever submit a proof of loss as to the claim
6 that you're arguing about today to the South Carolina
7 Insurance Reserve Fund?

8 A. I'm not sure. I know generally -- and it could be
9 that we're using terminology differently. But we would
10 provide our expenses. They would provide proof of loss
11 that we would then sign. Is that what you're referring to?

12 Q. I'm not sure. I was looking for something else.

13 A. Okay.

14 Q. Look back at Exhibit 100, please.

15 A. Uh-huh (affirmative). Okay.

16 Q. What's the last entry on -- last date entry on
17 Exhibit 100?

18 A. The 5/10/2016?

19 Q. Well, I'm looking at one line above that that seems
20 to have somewhat of a later date?

21 A. Okay. The 12/8/2016?

22 Q. December of 2016, do you see any later dates than
23 December 2016?

24 A. It would be a lot easier if it was sorted by date.

25 Q. I've done a very rough scan of this three point

1 print, and I don't see any 2017 or later than December 10,
2 2016 dates.

3 A. Okay. I believe you.

4 Q. And the pivot table that y'all have provided says as
5 of June 30, 2016, and that says 8.79 million dollars, as
6 does this table that says -- I'm sorry -- not 8.79, 8.751.

7 A. Okay.

8 Q. Your Exhibit 100 matches up to the pivot table dated
9 June 30th, 2016?

10 A. You're correct.

11 Q. And the Exhibit 100 has an entry on it from six
12 months past June 30th, 2016.

13 A. Correct.

14 Q. And how can a table with a June 30, 2016 date on it
15 have a December 8 date, 2016, in the backup?

16 A. I'd have to go back and look at the detail.

17 Q. The answer is I don't know?

18 A. The answer is I'd have to go back and look at the
19 detail. It could be, from an accounting perspective, the
20 date of service doesn't necessarily match the invoice date.
21 But again, without having GP in front of me and having the
22 detailed information, I can't say for certain.

23 Q. And the November dates from Rogers & Callcott
24 Engineering ---

25 A. So you're talking ---

1 Q. --- in 2016, those were post the date of your
2 summary; correct?

3 A. Okay. So we're talking -- there's three charges -- I
4 guess three charges after June 30, 2016; right? And so
5 you're saying the seven ninety for Rogers & Callcott and
6 then the six thirty-two for -- six hundred and thirty-two
7 dollars and then another seven hundred and ninety dollars,
8 so I'd have to go back and look. But my guess would be
9 that the actual service related to June 30, 2016. Just a
10 guess. But look at the details.

11 Q. I appreciate that you're not a professional witness.
12 I don't want you to guess. I want you to tell me what
13 you're willing to swear to as being the truth?

14 A. Okay.

15 Q. Can you explain why those November and December
16 charges are part of the backup for a June 30, 2016
17 summary?

18 A. Not without looking into the details.

19 Q. Okay. And so if those were charges for November and
20 December of 2016, would you agree your claim wasn't even
21 finished when this suit was filed in October of 2016?

22 A. Say that one more time. I'm sorry.

23 Q. Not sure I could. If you have charges from November
24 and December of 2016 in your claim for damages, wouldn't
25 you agree that when your suit was filed in October of 2016,

1 your claim wasn't even complete?

2 A. Yeah. It depends on what the detail of those three
3 transactions represent and how they got included, honestly.

4 Q. Well, at the distinct risk of helping a witness, I
5 will tell you that there's been some testimony about
6 testing charges that had to be done to satisfy landfills
7 about matter that's being supplied to landfills and that
8 would have happened up until a certain point in time. That
9 might be it, but ---

10 A. I have no idea.

11 Q. Thank you. That's fine. Do you know what contents
12 coverage is?

13 A. I do.

14 Q. An example of it would be a building policy would
15 cover in case your building got knocked down.

16 THE COURT: She just said she does, so I'm not
17 sure you need to define it.

18 MR. DEVLIN: All right.

19 Q. It would cover computers in your building or desks,
20 chairs, or things ---

21 A. Furniture and fixtures, yeah.

22 Q. Non-fixed materials. You agree that sludge is not
23 part of your property. Would you agree?

24 A. I consider it more like our inventory.

25 Q. And your insurance, building insurance, covers

1 specific covered property; right?

2 A. Correct.

3 Q. And as a matter of fact, if you will look at Exhibit
4 8 in your book ---

5 A. My book, okay.

6 Q. --- which is the building and personal property
7 coverage form.

8 A. Okay.

9 Q. We will pay for direct -- I'm looking at coverage A.
10 in the lefthand column.

11 A. Okay. So it's A. 1.a.

12 Q. We will pay for direct physical loss of or damage to
13 covered property, and it goes on from there, covered
14 property is capitalized which means it is a defined term.

15 THE COURT: I'm sorry, Mr. Devlin. Which page
16 are you on -- which exhibit?

17 MR. DEVLIN: I'm on Exhibit 8 of the package
18 that she has, the most recent notebook. You have a copy.

19 THE COURT: Okay. Thank you.

20 MR. DEVLIN: You got it.

21 THE COURT: And which paragraph?

22 MR. DEVLIN: You got it?

23 THE COURT: Yes, sir. I have the exhibit. Now
24 which page?

25 MR. DEVLIN: Okay. I'm on the first page,

1 letter A. Coverage.

2 THE COURT: Okay.

3 MR. DEVLIN: First two lines.

4 THE COURT: All right.

5 Q. You understand that is what your insurance company
6 agreed to do, to pay for direct physical loss of or damage
7 to covered property?

8 A. Correct.

9 Q. In your understanding as the person in charge of
10 insurance at ReWa is cleaning sludge a physical loss of or
11 damage to covered property?

12 A. I'm sorry. Say that again.

13 Q. In your opinion as the person in charge of insurance
14 at ReWa, is cleaning sludge, remediating sludge, direct
15 physical loss of or damage to covered property?

16 MS. TOWERY: Your Honor, I'm going to object to
17 this line of questioning. This is opinion testimony from
18 someone that he's clearly established is not an insurance
19 expert here.

20 THE COURT: Why is that not a pretty good
21 objection?

22 MR. DEVLIN: Andrew doesn't know, Your Honor.

23 THE COURT: I'm going to sustain the objection
24 because it does seem like ultimately that's what I'm here
25 with y'all for the next day or so to decide.

1 Q. Okay. You have gone over Mr. Lavender's billings,
2 Exhibit 102, I think, in your notebook.

3 A. Okay.

4 Q. And it struck me for a case of which y'all are asking
5 for a gross of eight million seven hundred fifty-one
6 thousand nine hundred forty-nine dollars and sixty cents,
7 that saying that the coverage fees were somewhere around
8 fifty or sixty thousand dollars is a little bit indefinite.
9 Did you make that decision by yourself as to what was
10 covered -- what was coverage, attorneys' fees and what was
11 not?

12 A. No, I did not.

13 Q. And who assisted you with that?

14 A. Our legal team.

15 Q. And were you the primary person making the decisions
16 about that?

17 A. No, I was not.

18 Q. Did you listen to what they told you and agree with
19 them?

20 A. I did.

21 Q. And are you familiar with what the normal hourly
22 rates are for insurance coverage work in South Carolina?

23 A. No, I'm not.

24 Q. Do you know whether or not four hundred and sixty
25 dollars an hour is a normal rate for insurance coverage

1 litigation in South Carolina?

2 A. I do not.

3 Q. Are you saying that these are reasonable charges that
4 the state of South Carolina should pay?

5 A. I know that they were charges that ReWa paid.

6 Q. Did ReWa ever ask the Insurance Reserve Fund to
7 provide it with a lawyer so that they didn't have to pay
8 Tommy Lavender four ---

9 A. No.

10 Q. --- hundred and sixty dollars an hour?

11 A. That seemed like it would be a little bit like the
12 ---

13 Q. Well, in October of 2013 when y'all first got started
14 did you ask Sara Stewart or Fred Young or Jerry Anderson,
15 where's the lawyer we're supposed to get before filing a
16 claim?

17 A. It's usually just to represent us. And since we were
18 actually entering into this with good faith in the
19 Insurance Reserve Fund that we wouldn't need to hire a
20 lawyer.

21 Q. Do you understand that if there's a claim against a
22 tort liability policy that one of the things that an
23 insurance company will do is provide you with a lawyer to
24 defend that claim?

25 A. Yes. And we've utilized that before.

1 Q. Okay. And when you have submitted other tort claims
2 to the Insurance Reserve Fund, they have provided a lawyer
3 from the Insurance Reserve Fund's stable of counsel who
4 would defend it; right?

5 A. Correct.

6 Q. Okay.

7 A. But since it wasn't an actual lawsuit at this point
8 in time ---

9 Q. That's correct. There certainly was not. Nobody
10 ever sued ReWa about this matter; did they?

11 A. You're right.

12 Q. ReWa never was held subject to a judgment by any
13 person or entity that they're obligated to pay as a result
14 of this PCB contamination; correct?

15 A. You're right.

16 Q. So there's no judgment or claim for the Insurance
17 Reserve Fund to identify under any tort policy; is there?

18 A. I'm sorry. Again, what -- had we been sued by a
19 third party then I think we would have utilized the legal
20 coverage provided under tort.

21 Q. But you never were?

22 A. We never were.

23 Q. And in the past y'all would get a Summons and
24 Complaint filed and served on you; right?

25 A. I'm not sure. Sorry.

1 Q. All right. As a matter of fact, is your
2 understanding of tort liability policies, is it something
3 like a blanket insurance policy?

4 A. In general.

5 Q. That it covers anything that your other insurance
6 does not?

7 A. That's my general understanding; that it protects us,
8 yes.

9 Q. Did you not -- and you testified to that in your
10 deposition, I believe, that it protects you when nothing
11 else would?

12 A. Right.

13 Q. Isn't that more properly called an umbrella policy?

14 A. The Insurance Reserve Fund doesn't offer an umbrella
15 policy.

16 Q. But they offer a tort policy?

17 A. Correct.

18 Q. And it provides very specific coverages, but not
19 umbrella coverages; right?

20 A. (Affirmative nod.)

21 THE COURT: If you could answer yes or no.

22 A. I'm sorry. Yes.

23 Q. And the whole time that you were dealing with
24 Insurance Reserve Fund on this matter did you think they
25 should be providing you coverage because maybe you didn't

1 have any other coverage?

2 A. Not necessarily. I wanted -- I really wanted help
3 from the Insurance Reserve Fund navigating which policy to
4 file under.

5 Q. And I know that in your first communication with
6 Terry Camp or maybe Sara Stewart that you said I don't know
7 what policies might be in play.

8 A. Right.

9 Q. Is there a second communication by you at any time
10 while you were involved in this where you said, I don't
11 know which policy is at play here?

12 A. Probably.

13 Q. Do you have that?

14 A. No.

15 Q. Can you remember writing it?

16 A. I can't remember.

17 Q. Can you remember calling somebody and saying, what
18 insurance policy is at work here?

19 A. I can't say for certain.

20 Q. Ms. Dennis, I understand that the first time you
21 called you said, I've got to turn this in. I've got a PCB
22 claim. Don't know what it applies to ---

23 A. Right.

24 Q. --- or don't know what coverage applies to it?

25 A. Correct.

1 Q. And that was the last conversation you had with the
2 Insurance Reserve Fund about what coverage applies; wasn't
3 it?

4 A. Yes. And then we met with Fred Young and we got in
5 the cycle of providing the expense reports and there wasn't
6 anything that came back until October 30th, 2014.

7 Q. I promise I'm almost through.

8 A. Okay.

9 Q. You mentioned that y'all set up this sub-account in
10 2013, I believe, when these expenses first started
11 occurring; is that right?

12 A. Yes.

13 Q. Did you ever consider setting up a sub-account for
14 costs that might be specifically covered by the building
15 policy?

16 A. No. At that point in time we were just tracking all
17 of the expenses related. It was really more in line with
18 what we would do anyway to track all expenses related to an
19 emergency and the claim was just happening, I guess,
20 concurrently. We expected to go through and work with the
21 Insurance Reserve Fund to figure out what the coverage was.

22 Q. Thank you. That's all I have.

23 THE COURT: Any other brief questions?

24 MS. TOWERY: Yes, just a few, Your Honor.

25 **REDIRECT EXAMINATION**

1 **BY MS. TOWERY:**

2 MR. DEVLIN: Your Honor, I have five more
3 minutes. I'm not sure I want to use them. Can I use them
4 some other time?

5 THE COURT: You're already overdrawn. That's
6 ---

7 MR. DEVLIN: I might have been overdrawn years
8 ago, Judge.

9 Q. All right. Patricia, if you'll turn to Plaintiff's
10 Exhibit 60 in your notebook.

11 A. Okay.

12 Q. And I believe this is stipulated. If you'll look at
13 the email that's on the bottom of that page there.

14 A. Yes.

15 Q. I believe that's the same email that Mr. Devlin asked
16 you about in Defendant's Exhibit 14; is that correct?

17 A. Yes.

18 Q. Where Fred Young says, thank you for this
19 information. However, I was not aware ReWa had been
20 approved to do cleanup and thought I was to be kept in the
21 loop. Is that correct?

22 A. That's correct.

23 Q. Okay. You responded and said, Fred, I'm not sure I
24 understand. Did you receive the attached earlier today?
25 What were you referring to in your email response to him?

1 A. Where I had sent him the SC DHEC approved plan.

2 Q. So when he sent you that email that Mr. Devlin
3 pointed out saying I was not aware ReWa had been approved,
4 you had actually already sent that approval to him; is that
5 correct?

6 A. That's correct.

7 Q. So he then says in the second email from the top
8 there, Patricia, I am sorry. I sent you the email prior to
9 seeing your other email?

10 A. That's correct.

11 Q. Is that correct? And how did you respond to him?

12 A. I said, no problem. Just let me know if you need
13 anything else.

14 Q. And did he let you know if he needed anything else?

15 A. I don't believe so.

16 Q. In later months when ReWa was sending the updated
17 expense spreadsheets to Mr. Young, did it indicate on those
18 spreadsheets that cleanup had started at Lower Reedy and
19 Mauldin Road?

20 A. Yes.

21 Q. Did Mr. Young or anyone at the IRF ever tell you
22 specifically that any expenses listed on that spreadsheet
23 were improper?

24 A. No.

25 Q. That they should not be included on the spreadsheet

1 because they didn't relate to your claim?

2 A. No.

3 MS. TOWERY: That's all I have, Your Honor.

4 THE COURT: All right.

5 MS. TOWERY: And I would also like to confirm,
6 Your Honor, that Plaintiff's Exhibit ---

7 THE COURT: 99 and 100 are in evidence.

8 MS. TOWERY: Thank you.

9 MR. DEVLIN: Your Honor, I have one, one ---

10 THE COURT: You just can't let those three
11 minutes go; can you?

12 MR. DEVLIN: Can I do it in one minute?

13 THE COURT: Yes, sir.

14 **RECROSS EXAMINATION**

15 **BY MR. DEVLIN:**

16 Q. If we could look very briefly at the exhibit that you
17 were just shown, Exhibit 60, in Plaintiff's notebook.

18 A. Okay.

19 Q. Mr. Young said, sorry I sent you the email prior to
20 seeing your other email. How long before your February
21 11th, 2014 at three fifteen p.m. email from him had you
22 sent to him that Waste Management change order? Would it
23 be eight minutes?

24 A. Two fifty-seven.

25 Q. So any inference that he had had whatever information

1 you sought for some time is incorrect; right?

2 A. Right. No, it was the same day. I think the emails
3 just got crossed.

4 Q. Okay.

5 MR. DEVLIN: And we have referred to that same
6 email as Exhibit 14 for the Defendant.

7 THE COURT: Yes, sir.

8 MR. DEVLIN: We would offer that into evidence
9 just so that we have a clean record.

10 THE COURT: Thank you.

11 (WHEREUPON, Defendant Exhibit Number 14 was admitted
12 into evidence.)

13 THE COURT: All right. May this witness be
14 excused?

15 MS. TOWERY: Yes, Your Honor.

16 THE COURT: All right. Mr. Devlin?

17 MR. DEVLIN: No objection.

18 THE COURT: All right. Thank you, ma'am.

19 Anything else from Plaintiff?

20 MR. STILWELL: Your Honor, the only thing we had
21 was there were some tolling agreements that they offered on
22 the exhibit list. And we talked earlier today -- we talked
23 about doing them as Court exhibits because they don't
24 really belong to their lawyer things. Plaintiff's Exhibits
25 -- Defendant's Exhibits 1 through 7?

1 MR. LINDEMAN: 1 through 7.

2 MR. STILWELL: Does that get them all?

3 MR. LINDEMAN: Yes, Your Honor. They're
4 basically tolling agreements and then it was amended six
5 different times and it goes to the statute of limitations
6 issue. I don't have a problem with them coming in as a
7 Court exhibit. I just want to make sure it's part of the
8 Court's records so when Your Honor rules on that particular
9 issue and ultimately if that issue goes down to Columbia, I
10 mean, it's important -- certainly important to ReWa that
11 there's a -- that the tolling agreements are in the record.

12 (WHEREUPON, Defendant Exhibit Numbers 1 through 7 are
13 now Court Exhibit Numbers 3 through 9.)

14 THE COURT: All right. And then I understand
15 from earlier discussions, there are also deposition
16 excerpts that may or may not come in at this point?

17 MR. BROWN: Yes, Your Honor. We have provided
18 them deposition excerpts of both Fred Young and of Mr.
19 Byers. We note that if they were to call them, we wouldn't
20 need them, but we want to offer them just in the case that
21 they're not offered. They did note some deposition
22 designations, as well. I don't think either party has had
23 the opportunity to review them to decide whether any
24 counter designations would need to apply to any of those.
25 But just for the purposes of protecting the record, we

1 would offer the deposition designations of Fred Young and
2 of Mr. Byers.

3 THE COURT: And do you have a document that
4 shows the particular requested excerpts?

5 MR. BROWN: Yes, Your Honor. We supplied them
6 -- the other side with those. We do have a document that
7 lists the ---

8 THE COURT: If you could just hand it up to my
9 court reporter.

10 MR. BROWN: --- page and line numbers for each
11 of those witnesses.

12 THE COURT: Mr. Lindeman, let me hear from you,
13 first, any objection on the deposition excerpts?

14 MR. LINDEMAN: Not necessarily. Just depending
15 on how Your Honor wants to handle that. We did submit some
16 designations, as well, today, from our Rule 30(b)6
17 deposition.

18 Here's the situation we're presented with. Rule 32
19 technically requires that the designations be given a day
20 before they're submitted to the Court. And we provided
21 those -- ours to them today with the understanding that our
22 case was going to go into Thursday. They gave us the
23 Plaintiff's designations this morning. And of course, part
24 of the reason why the Rule requires that is because the
25 Rule also allows the non-designating party to state

1 objections and to provide counter-designations. Because
2 these were provided to us for Mr. Young ---

3 THE COURT: I have no problem leaving the record
4 open for three or four days to do that.

5 MR. LINDEMAN: Okay. And I guess the only
6 problem that presents, Your Honor, is that these are coming
7 into the record, and I know Your Honor has already told me
8 -- signaled what you think of a motion for non-suit at this
9 point, but the problem is these would be considered as part
10 of the Plaintiff's case-in-chief ---

11 THE COURT: I understand.

12 MR. LINDEMAN: --- for the Court's consideration
13 of a non-suit motion. So procedurally I don't know how to
14 handle that.

15 THE COURT: It's somewhat of a quagmire. I agree
16 with you. I'm certainly fine, you can go ahead and make
17 your motion for an involuntary non-suit. I'm going to take
18 it under advisement after you make it until I have a chance
19 to look at the deposition excerpts that both sides agree
20 to.

21 MR. LINDEMAN: Okay. And Your Honor, and I
22 totally appreciate that ruling.

23 THE COURT: And it was the right ruling. I'm
24 sure you feel comfortable about that.

25 MR. LINDEMAN: With that ruling ---

1 MR. DEVLIN: I appreciate it even more, Your
2 Honor.

3 MR. LINDEMAN: With that ruling, Your Honor, I
4 would ask the courtesy, and I'm guessing that these five
5 folks to my right will join us, that if we can potentially
6 provide you our counter-designations and objections not by
7 tomorrow, but by some date maybe next week.

8 THE COURT: I have no problem ---

9 MR. LINDEMAN: So we don't have to do it in a
10 rush job time.

11 THE COURT: How about by next Wednesday at
12 twelve noon. That would be ---

13 MR. BROWN: That's perfectly appropriate --
14 perfectly acceptable to ReWa.

15 THE COURT: February 4th, 2020.

16 MR. LINDEMAN: I figured they would be joining
17 me in this.

18 THE COURT: The old goose and gander theory.

19 All right. So you want to briefly make your motions
20 now and then we'll ---

21 MR. LINDEMAN: I do, Your Honor. Do you want to
22 take a quick break before we start that?

23 THE COURT: No, let's go ahead and do it now
24 because I'm sure they're not going to be very long.

25 MR. LINDEMAN: All right. Maybe we can get a

1 stipulation that'll make it a little quicker. We have
2 submitted to Your Honor, of course, a very detailed
3 nineteen-page pretrial brief on the Defendant's side that
4 lays out dozens of defenses and arguments, Your Honor.
5 Those are obviously the arguments that I will be making ---

6 THE COURT: Yes, sir.

7 MR. LINDEMAN: --- in the non-suit motion. If I
8 can get a stipulation that -- and I did want to argue a
9 couple of points beyond what's here in writing. But if I
10 can get an agreement that that is our non-suit motion and
11 we're covered by our pretrial brief for anything that
12 hasn't been specifically argued, Your Honor, I'll be -- I
13 can certainly ---

14 THE COURT: Mr. Brown, do you have any problem
15 with the kitchen sink approach?

16 MR. BROWN: No, Your Honor. And we would
17 likewise say that we have submitted a pretrial brief which
18 addresses those issues, as well, and would likewise contend
19 that every -- that our responses to his positions would be
20 deemed as in -- stated in the pretrial brief.

21 THE COURT: All right. That's fine.

22 MR. LINDEMAN: Thank you. I believe my
23 stipulation will be covered on the record.

24 There are a couple of points, though, Your Honor, I
25 did want to make because I think there's absolutely a very

1 easy way, with all due respect, for the Court to at least
2 dispose of this bad faith claim. And that will, of course,
3 eliminate some of our testimony tomorrow. And potentially
4 an entire witness tomorrow.

5 The record is clear from what was just testified to,
6 and the designations that have been submitted are
7 designations of Mr. Young and Mr. Byers who are not damages
8 witnesses on the bad faith claim. The only damages witness
9 on the bad faith claim you just heard, and that was Ms.
10 Dennis. And Ms. Dennis testified, quite clearly, that the
11 only damages that ReWa is claiming on the bad faith claim
12 is the attorneys' fees, and she estimated -- she didn't
13 even give you a definite answer, but I won't use that as
14 the argument -- fifty to sixty thousand dollars of Mr.
15 Lavender's attorney's fees, a portion of his fees where he
16 was handling coverage-related matters. And we have cited
17 to the Court in our memorandum and the case law is very
18 clear -- and there's a Fourth Circuit case right on point
19 that we've cited, *Liberty Mutual Fire Insurance versus J.T.*
20 *Walker Industries*, where the Fourth Circuit was applying
21 South Carolina law, and they found that attorneys' fees are
22 not an appropriate form of damages in a bad faith case.
23 That attorneys' fees incurred are not consequential damages
24 in a bad faith case, Your Honor. And that is the only
25 damages that have been presented to Your Honor. Based upon

1 that *Liberty Mutual* case, and I don't think there's any
2 case law that's going to refute that, that they cannot
3 claim they have no damages whatsoever that are recoverable
4 from the alleged bad faith.

5 THE COURT: All right. Which one of you three
6 fine lawyers are going to argue. All right. And the
7 argument he's making is on page 13 of his brief, paragraph
8 (e).

9 MR. BROWN: Your Honor, the argument he's making
10 is based on the *Liberty Mutual* case. The *Liberty Mutual*
11 case expressly says the Plaintiff cannot recover attorneys'
12 fees incurred in the prosecution of a bad faith insurance
13 claim as a damage. And in fact, we have not presented any
14 attorneys' fees that are related to the prosecution of that
15 bad faith claim. We've only presented the costs incurred
16 in evaluating coverage and the coverage issues prior to any
17 prosecution, which is a separate and distinct element of
18 damage than what is addressed in *Liberty Mutual*. *Liberty*
19 *Mutual* is not applicable whatsoever.

20 We would also contend, Your Honor, that even if that
21 element of damage is inappropriate, we would be entitled to
22 nominal damages and a finding of bad faith and that that
23 finding, in and of itself, would have a deterrent effect,
24 which is the purpose of the bad faith laws to begin with.

25 THE COURT: All right. Let me hear from you,

1 Mr. Lindeman, on the attorney's fee issues. Is Mr. Brown's
2 argument, is that a distinction with or without a
3 difference?

4 MR. LINDEMAN: It's a distinction without a
5 difference, Your Honor. The point being -- I mean Mr.
6 Lavender was hired to pursue a claim against the Insurance
7 Reserve Fund. It's not limited to simply a point in time
8 when you file a lawsuit. The point in time when there's a
9 dispute and you're pursuing a claim against your insurance
10 company. That's what the Liberty Mutual case stands for.
11 There's no case that I'm aware of that draws the
12 distinction that Mr. Brown just offered to Your Honor.

13 The point being is that attorneys' fees for expenses
14 occurred in insurance litigation is not an element of
15 damages for bad faith. It may be recoverable under a
16 statute that applies. Of course, in this particular case
17 it's not because in South Carolina bad faith against the
18 Insurance Reserve Fund -- well, bad faith in South
19 Carolina, like a lot of states, has been recognized to be a
20 tort. So therefore it falls under the South Carolina Tort
21 Claims Act. And we've cited a number of cases that deal
22 with that in our pretrial ---

23 THE COURT: Here's what I'm going to do. I'm
24 going to deny the motion at this point. Because I hear Mr.
25 Brown's argument, and at minimal it is a novel issue. And

1 I think novel issues are better developed on a full
2 record.

3 So you can move on to your next motion.

4 MR. LINDEMAN: All right. And certainly, Your
5 Honor, we would dispute, just for the record, this whole
6 idea that you can return a nominal damage award against a
7 governmental entity.

8 THE COURT: I understand.

9 MR. LINDEMAN: There's absolutely no basis for
10 that.

11 Your Honor, for the rest of it, to be able to simplify
12 things for you, I'm going to rely on our stipulation that
13 all of the arguments, and there are a number of arguments,
14 ---

15 THE COURT: I understand.

16 MR. LINDEMAN: --- at some point we would
17 appreciate the ability to make the full legal arguments to
18 you, whether that's at the end of the trial or ---

19 THE COURT: Mr. Lindeman, if I don't understand
20 the issues by this point, none of us have a chance. So I
21 appreciate the offer. And I really do say that with all
22 sincerity. Y'all have done such a good job of narrowing
23 the issues and providing good law. So I'm not sure we need
24 a whole lot more even when we wrap this thing up tomorrow
25 other than what y'all have already done.

1 So we'll take about a ten-minute break.

2 MR. LINDEMAN: Thank you, Your Honor.

3 THE COURT: With the last witness who is going
4 to be doing the examination?

5 MR. DEVLIN: I'm going to be examining our
6 expert, Dr. Finneran.

7 THE COURT: Okay. And again, we'll go until
8 about five thirty, but I want to make sure that's not going
9 to interrupt ---

10 MR. DEVLIN: I think that will take care of us,
11 Your Honor. That'll take care of my examination.

12 THE COURT: All right. Start back in ten
13 minutes then.

14 MR. DEVLIN: They may not want to ask any
15 questions after I get through with him.

16 (WHEREUPON, Court stood at recess for a short break.)

17 THE COURT: Call your witness, Mr. Devlin.

18 MR. DEVLIN: Your Honor, Defendant calls Kevin
19 Finneran to the stand.

20 THE COURT: I believe you know the way by now.

21 MR. FINNERAN: I do. Your Honor, if it's okay,
22 may I swear with just my right hand, please?

23 THE COURT: Absolutely. Do you swear or affirm
24 to tell the truth, whole truth and nothing but the truth?

25 MR. FINNERAN: I do.

1 THE COURT: All right. Thank you, sir. And if
2 you would state your full name.

3 MR. FINNERAN: Kevin Thomas Finneran.

4 THE COURT: And feel free to bend that mic a
5 little bit. Last name?

6 MR. FINNERAN: Finneran, F as in Frank, I-N-N-E-
7 R-A-N.

8 THE COURT: All right. Thank you, sir.

9 MR. FINNERAN: You are welcome.

10 THE COURT: All right, Mr. Devlin.

11 **KEVIN THOMAS FINNERAN,**

12 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

13 **DIRECT EXAMINATION**

14 **BY MR. DEVLIN:**

15 Q. Dr. Finneran, give us a little bit of your personal
16 and educational background.

17 A. Sure. Education background, I have a Ph.D. in
18 microbiology. I received that at the University of
19 Massachusetts at Amherst. And my bachelor's degree is a
20 Bachelor of Science and Environmental Sciences which I got
21 at Rutgers University.

22 Q. And where are you currently employed?

23 A. I am a professor at Clemson University, Environmental
24 Engineering and Earth Sciences; jointly appointed to the
25 Department of Microbiology.

1 Q. And do you, in addition to being a professor at
2 Clemson, have a consulting business?

3 A. I do. It is called Finneran Environmental LLC.

4 Q. Do you have throughout the course of your academic or
5 consulting career any experience in the study of PCBs?

6 A. I do.

7 Q. Tell the Judge in thirty seconds or less what PCB is
8 and why we don't want it around us.

9 A. PCB is a compound referred to as a polychlorinated
10 biphenyl. Essentially it's actually-- PCBs are a large
11 class of compounds made up of what are called a variety of
12 congeners. The one we're specifically discussing in this
13 case, arochor 1260 is a big hydrophobic compound that
14 essentially partitions very well -- we'll get to that --
15 into solid phases. Does not dissolve well. And there are
16 data suggesting that it is a potentially even a carcinogen,
17 which is why we do not want it in environmental systems and
18 why there are regulations to cover that.

19 Q. And it was banned from use; am I correct, in the
20 seventies?

21 A. Late 1970s. '79, I believe is the date most people
22 agree on.

23 Q. And have you been involved in any PCB handling or
24 issues prior to hearing?

25 A. PCB handling?

1 Q. Not handling. In any matters involving the
2 remediation of PCBs?

3 A. I have; yes.

4 Q. Explain that to the Court, please.

5 A. Sure. Most recently another case related to PCBs in
6 wastewater treatment plants akin to this, of which the
7 Court, I imagine is aware, where I provided technical
8 expertise on PCB chemistry fate and transport. I, in my
9 research capacity, have done a number of studies with PCBs
10 in marine sediment. Most particularly, I led a Master's
11 thesis by Ms. Caitlin Bell, who is now an environmental
12 consultant, and we looked at PCBs from New Bedford Harbor,
13 Massachusetts, fate and transport of PCBs between the
14 sediment layer and the aqueous phase and ways to accelerate
15 biological and chemical degradation.

16 Q. Are you knowledgeable of a federal law called TSCA?
17 Tell the Judge what that is?

18 A. The Toxic Substance Control Act actually covers a
19 variety of things. For example, when a new chemical is
20 generated in the United States, TSCA is the law that
21 governs testing associated with its use. Germaine to this
22 particular case, TSCA would be the law that would -- the
23 federal regulation by the EPA that would cover a wastewater
24 treatment plant unit process with respect to PCB
25 contamination.

1 Q. Have you worked with the EPA in environmental
2 cleanups before?

3 A. I actually have; yeah.

4 Q. Tell the Court about that?

5 A. Well, when I was an undergraduate at Rutgers
6 University, I was an EPA cooperative education intern with
7 the environmental response team. I worked for two years
8 there. I saw a variety of different biological, physical
9 and chemical cleanup remedial alternatives. Actually
10 that's what got my interest sparked in bioremediation and
11 microbiology, which led to my going to graduate school for
12 microbiology.

13 Q. You briefly mentioned the phrase transport and fate.
14 Do you believe yourself to be an expert in the transport
15 and fate of PCBs? And what does that mean?

16 A. Okay. Yes, I believe myself an expert. And
17 transport and fate are essentially all of the chemical,
18 physical and biological processes that influence where a
19 PCB may be in a natural or engineered system, say solid
20 phase, aqueous phase, or air.

21 Q. Okay.

22 A. And ultimately where they're disposed would be the
23 fate, where they end up.

24 MR. DEVLIN: Your Honor, we would offer Dr.
25 Finneran as an expert in remediation of PCBs and in the

1 chemical nature of PCBs.

2 THE COURT: Any voir dire?

3 MR. BROWN: Yes, Your Honor.

4 THE COURT: All right.

5 **VOIR DIRE EXAMINATION**

6 **BY MR. BROWN:**

7 Q. Just making sure I understand your background. You
8 haven't actually personally been involved in any way in the
9 actual operation of a wastewater treatment facility; have
10 you?

11 A. I've never operated a wastewater treatment facility.

12 Q. And you haven't actually designed a wastewater
13 treatment system?

14 A. No, I have not.

15 Q. And other than being hired as a consultant in this
16 litigation and the Spartanburg litigation, you haven't done
17 consulting work regarding wastewater treatment plants?

18 A. No, I have not.

19 Q. And you have never personally prepared a remediation
20 plan for contamination or damage to a wastewater treatment
21 plant?

22 A. That is not true. In my consulting capacity, no; in
23 my research capacity I have.

24 Q. Have you personally been -- personally prepared a
25 plan for remediation of a public wastewater treatment

1 plant?

2 A. Public wastewater, not as a consultant. I guess I'm
3 differentiating my research from my consulting.

4 Q. Have you made any type of site visit to the ReWa
5 facilities impacted by the illicit dumping of PCBs?

6 A. Personally, no.

7 Q. Have you visited or inspected any wastewater
8 treatment facility impacted by the dumping of PCBs?

9 A. No, I have not.

10 Q. Have you ever personally supervised the performance
11 of sampling in a PCB remediation?

12 A. No. Not remedial activity.

13 MR. BROWN: Your Honor, we have no objection to
14 his designation as an expert in the chemistry of PCBs, but
15 in terms of remediation in a wastewater treatment plant, we
16 don't believe he's qualified to talk about the remediation.
17 He personally hasn't done that, and don't believe he's
18 qualified.

19 THE COURT: Mr. Devlin, what's the qualification
20 for PCB on a wastewater plant?

21 MR. DEVLIN: Your Honor, he's got a great deal
22 of experience and a great deal of knowledge as to what the
23 proper scientific method is to determine whether or not
24 something is contaminated or not. And I believe if you
25 hear his opinion, you will realize that there were failures

1 in the processes made, processes he has provided to the
2 Plaintiff in how they cleaned their digesters, he would be
3 able to address, that are not as precisely chemistry in
4 nature as they are just good science -- good scientific
5 observation.

6 THE COURT: All right. Mr. Brown.

7 MR. BROWN: Again, he's never done it. He's
8 just making things up out of whole cloth as to what I think
9 is the best science. And that's not what an appropriate
10 expert opinion is. He needs to be able to show that his
11 experience is such that ---

12 THE COURT: At this point, I'm going to limit it
13 to being an expert on PCB on remediation. I'll certainly
14 give you leeway and we'll see where we go with that.
15 Because I do think Mr. Brown has certainly raised an
16 interesting issue.

17 MR. DEVLIN: All right. Thank you, Your Honor.

18 **DIRECT EXAMINATION CONTINUED**

19 **BY MR. BROWN:**

20 Q. Before we dive into timing -- dive might not be the
21 phrase we want to use in this case. Before we go deeply
22 into the technical aspects of your opinion ---

23 A. Yes.

24 Q. --- can you give me a chapter -- can you give me a
25 summary of this is your opinion and why?

1 A. Sure. I developed a couple of opinions related to
2 the information that was provided to me by the IRF via
3 ReWa. A major overarching opinion does in fact relate to
4 the remediation out of the gate, so ...

5 MR. BROWN: And Your Honor, again, in essence
6 he's asking him to give the expert opinion that we just
7 objected to right out of the gate.

8 THE COURT: If you'll lay some foundation, Mr.
9 Devlin, as far as any opinions he has and ---

10 MR. DEVLIN: All right. We'll just walk through
11 the background and save the summary for later.

12 THE COURT: All right.

13 Q. Do you know what type of PCB was discovered in the
14 sludge at ReWa?

15 A. Aroclor 1260.

16 Q. Okay. Is that a heavier type of PCB?

17 A. That is considered one of the heavy congeners; yes.

18 Q. And what's the significance to it being a heavier as
19 opposed to a less heavy type?

20 A. A heavier congener is going to be hydrophobic, very
21 hydrophobic, meaning it preferentially partitions into the
22 solid phase, particularly a lipid base solid phase as you
23 would find in a wastewater treatment plant digester or any
24 unit process. And there is very limited, if any,
25 solubility in the aqueous phase, water.

1 Q. When you say a lipid based solid, in this ---

2 A. Biosolids.

3 Q. Biosolids. Fats?

4 A. Fats are a part of that.

5 Q. Oil?

6 A. Oils are part of that.

7 Q. Grease?

8 A. Grease is part of that.

9 Q. And if I understand you correctly, the aroclor 1260
10 likes it there?

11 A. Yes.

12 Q. And is hydrophobic and does not want to be in the
13 aqueous solution; is that right?

14 A. That's correct.

15 Q. I believe we're probably straight on this by this
16 point in the case, but there are different units of
17 measurements that get tossed around in this case. Is there
18 a difference between a parts per million unit of
19 measurement and milligrams per kilogram?

20 A. Technically, yes.

21 Q. Tell me?

22 A. Milligram per kilogram is a solid per unit solid.
23 Parts per million is actually a designation that is
24 milligrams per liter. It is an aqueous designation. But
25 colloquially, environmental engineers in practice and

1 sometimes even in academics, will use the ppm, parts per
2 million, colloquially for either of them.

3 Q. It's not on a layman's level incorrect to interchange
4 parts per million and milligrams per kilograms; right?

5 A. On a layman's level, no, it is not.

6 Q. And do you know what the TSCA standard is --
7 threshold is for determining whether or not a solid
8 material is contaminated with PCBs?

9 A. Yes, I do.

10 Q. What is that?

11 A. Fifty milligrams per kilogram.

12 Q. Fifty parts per million?

13 A. Correct.

14 Q. Either way?

15 A. However you want to call it.

16 Q. Do you know what the threshold is at TSCA for
17 determining whether or not an aqueous material is
18 contaminated?

19 A. TSCA; yes.

20 Q. What is that?

21 A. Three micrograms per liter.

22 Q. And is there a difference between micrograms per
23 kilogram and micrograms per liter?

24 A. Yes. Micrograms per kilogram would be a unit of
25 mass, per unit mass, solid. Micrograms per liter is mass

1 per liter of water.

2 Q. It's just the difference between a solid measurement
3 and a liquid measurement; right?

4 A. Correct.

5 Q. You've already dropped the word partition on us?

6 A. Yes.

7 Q. From an environmental engineer's point of view, what
8 does it mean when a PCB partitions?

9 A. Sure. Partitioning is the movement amongst phases.
10 So relevant to this case would be the partitioning of
11 aroclor 1260 from the solid to the aqueous phase or the
12 aqueous phase to the solid phase. The air phase is not
13 relevant to our aroclor 1260.

14 Q. Can a PCB -- can aroclor 1260 if it's in a solid in
15 the ReWa plant partition directly into the concrete walls
16 that it might be surrounded by?

17 A. No, it cannot.

18 Q. Can it partition into any aqueous phase that it is in
19 contact with?

20 A. It can partition into the aqueous phase.

21 Q. And can any aroclor 1260 that is in -- that is
22 partitioned into an aqueous phase thereafter partition into
23 a concrete wall?

24 A. That is possible.

25 Q. So it's a two-step process for that PCB to get from

1 the sludge that it comes in, into the actual concrete
2 itself; is that correct?

3 MR. BROWN: Your Honor, I object to leading.

4 THE COURT: Try not to lead him so bad.

5 MR. DEVLIN: I'll try not to quote him the law,
6 Your Honor.

7 Q. What is it about the aroclor 1260 that makes it
8 prefer to be in the sludge rather than water?

9 A. That's a chemical property of the molecule. Its
10 hydrophobicity indicates that -- or you can quantify
11 directly that it will preferentially stay in solid phases
12 and not move into the aqueous phase. It's just an inherent
13 property of the molecule itself.

14 Q. And I have done a drawing, which since I have done
15 it, bears no chance of being scientifically accurate. I
16 want to show you something and see if you can explain ---

17 MR. BROWN: Your Honor, just for the record, Mr.
18 Devlin ---

19 MR. DEVLIN: If I get ready to offer it into
20 evidence, I'll let you know.

21 MR. BROWN: Well, Mr. Devlin has shown me that
22 before. We object to it. We don't think it is
23 representative of anything. And so we do have an objection
24 to ---

25 THE COURT: All right. Let me see what it is

1 before I rule on it.

2 MR. DEVLIN: Anything?

3 MR. STILWELL: Anything representative of the
4 musings of Mr. Devlin.

5 MR. DEVLIN: We'll stipulate that it is
6 representative of my artistic talent.

7 Q. Now, what I've just put up here for identification at
8 this point is a drawing of a holding tank or digester with
9 concrete walls on the side and three different layers
10 within.

11 A. Okay.

12 Q. In practice in a digester or a holding tank at ReWa,
13 is the -- are there lines of definition between the sludge
14 and the aqueous and the scum; is that clear?

15 A. No.

16 Q. Is there a blending of -- is it more graded than
17 that?

18 A. Yes. If I may explain, there's flow coming ---

19 MR. BROWN: Your Honor, he's already testified
20 he hasn't been to ReWa. He doesn't have personal knowledge
21 of it.

22 THE COURT: I'll allow it. And I don't know if
23 there's such a thing as a standard holding tank in this
24 trade and industry, but ...

25 MR. BROWN: If they wanted to establish that

1 kind of foundation as to how the holding tanks would layer
2 ---

3 THE COURT: Lay some additional foundation.

4 MR. BROWN: --- they could have asked that of
5 people who knew. But to presume it and ask the witness ---

6 THE COURT: I understand.

7 MR. BROWN: We would object to that.

8 THE COURT: Mr. Devlin.

9 Q. Do you understand, Dr. Finneran, how solids within a
10 holding tank at ReWa would, if they did, settle out?

11 A. Yes. I do understand how a holding tank at ReWa
12 would work.

13 Q. Do you know if all solids would be at the bottom?

14 A. No, they would not.

15 Q. Would solids floating in a mixture of various
16 percentage levels of the solidity change the chemical
17 nature of the movement of aroclor 1260 from solid to
18 aqueous to concrete?

19 A. No. The chemistry would remain the same irrespective
20 of the level of mixing.

21 Q. So if I were to redo that drawing so that all those
22 solids at the bottom are instead all mixed around into that
23 aqueous solution so that you've got a combination of
24 aqueous and solid material, would that be your
25 understanding to be a more representative illustration of

1 what a holding tank at ReWa would look like?

2 A. In my experience with wastewater treatment plants
3 that is exactly what a digester or holding tank would look
4 like under flow with sludge and biosolids entering it.

5 Q. Okay. And you've read the depositions in this case
6 and learned from some of the others who have testified
7 about how the PCBs got into the system; is that correct?

8 A. I have.

9 Q. Okay. What is your understanding?

10 A. My understanding of this was there was originally an
11 illegal dumping event into which the aroclor 1260 was
12 introduced into a grease trap. It partitioned into the
13 fats, oils, greases. It made its way through the
14 distribution system and influent of the wastewater
15 treatment plants, three of them, in fact. It made its way
16 through all the unit processes, primary clarifier,
17 secondary treatment, digester. Made its way into a
18 digester used to treat nitrate and reduce its nitrogen gas,
19 into all of the holding tanks and distributed at different
20 concentrations, milligram per kilogram, throughout those
21 unit processes at either Pelham, Mauldin Road or Lower
22 Reedy.

23 Q. Before any partitioning might occur, in what part --
24 in what substance within a holding tank would you expect to
25 find the aroclor 1260?

1 A. It's only going to be associated with what they're
2 referring to as the biosolids. I might refer to it as the
3 sludge. Those might be used as interchangeable terms.
4 It'll be in the solid phase, not the aqueous phase.

5 Q. And given a sufficient amount of time will aroclor
6 1260, will some part of aroclor 1260 partition out of the
7 solid and into the aqueous solution?

8 A. Yes. It can.

9 Q. Does that partitioning depend on whether or not the
10 sludge is at the bottom or mixed throughout the tank?

11 A. It does not. It's referred to as an equilibrium
12 partitioning value. Mixing does not affect the equilibrium
13 partitioning of the aroclor 1260.

14 Q. So if there are little lumps of solid floating
15 throughout this tank ---

16 A. Yes.

17 Q. --- before any partitioning begins, that would be
18 where the 1260 -- aroclor 1260 is?

19 A. Partitioned into the solids; yes.

20 Q. And over a period of time it has the ability to move
21 out of the solid and into the aqueous solution?

22 A. And back.

23 Q. And back?

24 A. Yes.

25 Q. Now, how do you determine how much of the PCB can go

1 from the sludge solid into the aqueous solution and from
2 the aqueous solution into the concrete wall? What's the
3 scientific method that you use to figure out how much PCB
4 can move from one place to another? How does it
5 transform?

6 A. Sure. Well, first and foremost, the most direct
7 method would be to measure that directly and correctly,
8 which was not done in this case. So what we're left with
9 are estimates based on what's called a partitioning
10 coefficient. This is a very standard practice for
11 environmental engineers, particularly those of us who are,
12 in fact, experts in remediation. And we use this quite
13 frequently. What it states is at equilibrium you're going
14 to have a rate of movement from the solid to the aqueous
15 phase and a rate of movement from the aqueous to the solid
16 phase. And when those rates are equal you reach
17 equilibrium. That equilibrium partition and coefficient
18 can be used if you have a solid value to estimate what
19 could be present in the aqueous phase or vice versa. And
20 again, you don't just pull these values out of thin air.
21 You get equilibrium partitioning values experimentally. In
22 my case, the ones I used were from the peer reviewed
23 literature associated with aroclor 1260 and very
24 hydrophobic solids such that we had a real value for
25 aroclor 1260 partitioning onto and off of hydrophobic

1 solids.

2 Q. So the partitioning coefficient?

3 A. That is correct.

4 Q. That is a number?

5 A. That is a number; yes. That is a value that is
6 essentially the concentration of the solids over the
7 concentration of the aqueous and the equilibrium, you come
8 up with this value called a partitioning coefficient. It
9 can be used to estimate ---

10 Q. And you use that by finding out how much aroclor you
11 have in what?

12 A. So in this case the aroclor is milligram per
13 kilograms, so it's in with the solids phase, partitioning
14 into the solid phase, so we can use this equilibrium value
15 to estimate what would be present in the aqueous phase.

16 Q. And did you review the literature, the literature
17 being the deposition testimony, the documents in this case,
18 to see what the highest reported aroclor 1260 concentration
19 was in a digester or holding tank at the Pelham plant?

20 A. I did.

21 Q. And what did you find?

22 A. Well, in the depositions I found a value of eighty-
23 five milligrams per kilograms amongst one of the
24 depositions. But on the time line it was a different value
25 that was in the hundreds. I'm sure I could pull it out here

1 and give an exact value.

2 Q. And did you perform the calculation using that
3 partition coefficient and the -- numbered in the one
4 hundreds to come up with an amount of aroclor 1260 that
5 would have partitioned into the aqueous solution?

6 A. I did.

7 Q. And very roughly can you express in a percentage,
8 what percent of the aroclor 1260 in the solids would move
9 into the aqueous solution?

10 A. A fraction of a percent.

11 Q. Okay. And if there's a hundred and ten parts per
12 million of aroclor 1260 in some of the sludge in one of
13 those holding tanks at Pelham, you would expect then that
14 the amount to be found in the aqueous solution would be
15 one, 1, 1.1, 1.2 or less than that?

16 A. It would be a very low microgram per liter, between
17 one to five max.

18 Q. Okay. And did you say -- I'm sorry. How many
19 micrograms per liter?

20 A. Anywhere from -- I mean depending on the partition
21 coefficient that we used from the literature because there
22 are different partitioning coefficients, I used the median.
23 If you use one value, it would come out to a low -- a low
24 one microgram per liter. If you use a different
25 partitioning coefficient it could come out to a high of

1 about five micrograms per liter.

2 Q. And so after that process has occurred, after the
3 partitioning out of these solids and into the aqueous
4 solutions occurs, then is it your testimony that there's
5 going to be -- what did you say the number was again? You
6 said micrograms per liter?

7 A. Between one and five micrograms per liter. I mean,
8 we could use real values from their data, which are less
9 than that.

10 Q. Okay. So you go from a hundred and ten down to one
11 or five micrograms per liter?

12 A. Remember, it's a different unit. But yes, you go
13 from a hundred and ten milligrams per kilogram ---

14 Q. Right. I know you changed the unit ---

15 A. But that equilibrium value in the aqueous phase
16 becomes between one and five micrograms per liter.

17 Q. Now, the reason I'm asking you all this is I'm
18 interested in your opinion as to how much of this aroclor
19 1260, this pollutant, got into the concrete wall? Is it
20 your testimony that from the aqueous solution it can move
21 into the concrete wall?

22 A. That is possible; yes.

23 Q. Tell the Court about that?

24 A. So just like in the aroclor 1260 in the aqueous phase
25 can partition back into the solid phase of the biosolids,

1 it's possible to partition into another solid like
2 concrete. But concrete has a much lower affinity for
3 aroclor 1260 than do the biosolids. And so any little bit
4 of aqueous phase is unlikely to partition into the concrete
5 phase readily. It would be a negligible amount.

6 Q. Would it be -- would the aroclor 1260 that has, I
7 would call it dissolved into the aqueous solution, be more
8 likely to go back into the fats in the solid or into the
9 hard concrete?

10 A. It's more likely to partition back into the
11 biosolids.

12 Q. But it is theoretically possible that some could have
13 been in the concrete wall?

14 A. Absolutely.

15 Q. And are there partition coefficients for aroclor
16 1260's ability to partition from water into concrete?

17 A. I did a pretty exhaustive literature search and I did
18 not find one. I only found air -- building materials and
19 air with concrete, suggesting that that's an unlikely
20 pathway that has been tackled by at least the scientific
21 community that I would normally scan for our literature
22 searches.

23 Q. And if it could migrate from the aqueous solution to
24 the concrete, is there an upper limit on how much,
25 expressed in parts per million or milligrams per kilogram,

1 could be in the concrete wall?

2 A. There is an upper limit if you have the right
3 partitioning value; yes.

4 Q. Well, if you know that there's one to five micrograms
5 per liter in the aqueous solution that you're concerned
6 with, what would the upper limit be for how much in
7 milligrams per kilogram can be in the concrete wall?

8 A. It's a negligible number. Certainly less than one
9 milligram per kilogram. Probably less than a half a
10 milligram per kilogram.

11 Q. And again, what is the TSCA limit for determining
12 whether or not a substance is contaminated for substance
13 contamination with aroclor 1260?

14 A. Fifty milligram per kilogram.

15 Q. So one one-hundredth of the allowable limit?

16 A. Give or take; yes.

17 Q. Are you aware of any EPA requirements that digester
18 walls or holding tanks be cleaned to the point that they
19 show non-detectable amounts of aroclor 1260?

20 A. No.

21 Q. Are you aware of any DHEC requirement that digester
22 walls or holding tanks be cleaned to the point that they
23 show non-detectable amounts of aroclor 1260?

24 A. No. Not digester walls.

25 Q. Do you know if ReWa did anything to determine before

1 cleaning these structures whether or not the structures
2 themselves had been contaminated by aroclor 1260?

3 MR. BROWN: Again, Your Honor, I'm going to
4 object. He's asking for this witness to give fact
5 testimony about what ReWa did. I think that's improper.

6 MR. DEVLIN: Your Honor, I'm asking if he knows
7 something about---

8 THE COURT: Go ahead. I think based on his
9 qualifications, if he's reviewed the documents in the
10 record to where he can form an opinion as an expert, then
11 that's appropriate.

12 Q. Do you know whether or not ReWa did any pretesting of
13 that concrete before they cleaned it to see how much
14 aroclor 1260 might be in it?

15 A. They did not.

16 Q. What impact does that have on one's ability to
17 determine whether or not cleaning is effective?

18 MR. BROWN: And again, Your Honor, just to
19 reiterate ---

20 THE COURT: I understand. You're protected on
21 the record.

22 MR. BROWN: --- we object to his qualification
23 on remediation and we would object to anything on that
24 basis?

25 THE COURT: Thank you.

1 Q. So we've been talking about the Pelham facility where
2 you said there was a reading of aroclor 1260 in the one-
3 hundredths parts per million, one hundred ten, I think, in
4 one instance?

5 A. Yes.

6 Q. Do you know what the highest level of contamination
7 was in any of the sludge solids in either of the Mauldin
8 Road or Lower Reedy facilities?

9 A. I heard those values earlier. Off the top of my head
10 I believe they were between four and six milligrams per
11 kilogram in that plan that was put forward.

12 Q. And you're referencing a summary plan that ReWa
13 provided as to how they intended to clean those
14 structures?

15 A. That is correct.

16 Q. And if you wanted to determine how much aroclor 1260
17 could migrate from the solids in those two plants to
18 ultimately in the concrete, would the same set of
19 partitioning coefficients apply?

20 A. Yes.

21 Q. Would the same analysis part and parcel apply to
22 figuring out how much aroclor 1260 might be in the
23 concrete?

24 A. Yes.

25 Q. And if the highest amount found at Mauldin Road is

1 say five or six percent of what's found at Pelham, would it
2 be correct that the maximum amount you would find in the
3 concrete walls in the other Mauldin Road or Lower Reedy
4 facilities would be at five or six percent of the levels
5 found in the Pelham facility?

6 A. I don't want to cite a percentage. It would be
7 substantially lower, if present in all.

8 Q. If you would, look at the Plaintiff's Exhibit book,
9 Exhibit 32.

10 A. Okay. I'm looking at it.

11 Q. Page 6.

12 A. Page 6.

13 Q. I'm hope I directed you to the right place. Does
14 that begin Renewable Water Resources summary remediation
15 plan for low level PCB solids?

16 A. So we're back at page 1 or ...

17 Q. It's a couple of pages into Exhibit 32. I think
18 there's some emails in front of it.

19 A. Right. So I'm looking at something with -- yeah,
20 page 6, at the bottom it reads, ReWa024281?

21 Q. Let's make sure.

22 A. I believe you guys follow the bates number. Did I
23 get that right?

24 Q. 041321; is that what you have?

25 A. No. I have 024281.

1 THE COURT: There are two different bates
2 numbers on each page in this section.

3 MR. DEVLIN: Yeah, that's what I want you to be
4 looking at. This is all my fault. I pointed him at the
5 wrong exhibit. 38, Your Honor.

6 Q. If you'll look at Exhibit 38, please, Dr. Finneran.

7 A. 38.

8 Q. 38.

9 A. Page ...

10 Q. I believe it will be the sixth page of that, and it
11 should have a bates designation of 401321.

12 A. Yes. I'm looking at that.

13 Q. Okay. Have you seen that document before?

14 A. I have.

15 Q. Have you read the deposition testimony to understand
16 what that is?

17 A. I have.

18 Q. What do you think that it is?

19 A. It's referred to as a plan for remediation.

20 Q. Okay. And is there anything in that plan that, in
21 your opinion, supports your contention as to the low volume
22 of PCBs to what are transported into the concrete?

23 A. The two values they list, that's high values here,
24 certainly.

25 Q. Anything else about that?

1 A. On this particular plan, I mean the values of the
2 milligram per kilogram concentrations they referred to as
3 ppm here. That's all I would need to know to determine
4 using partitioning coefficients what may or may not
5 partition into the aqueous phase.

6 Q. Let's go back to Exhibit 32 where I should have been
7 all along.

8 A. Awesome.

9 Q. And there is a page 6 of Exhibit 32 with a 24281
10 number on it that I believe you were at previously;
11 correct?

12 A. That's correct; yes. We're on the same.

13 Q. Have you seen that document before?

14 A. I have seen this document before, several times.

15 Q. And what is it?

16 A. Pardon me?

17 Q. What is it?

18 A. Just to get the exact title right, sludge removal and
19 disposal plan, Pelham Water Resources Recovery Facility. I
20 believe this is the plan that was submitted by AECOM as
21 attested to by their expert Ted Clark yesterday.

22 Q. Are there any statements in this plan, particularly
23 any on page 6, that support your opinion in your view?

24 A. Yes. And specifically -- may I read it?

25 Q. Tell the Court about it. Refer the Court to what

1 part of that matter that supports your opinion and explain
2 to him why?

3 A. So let's see, we're at one, two, three, four -- fifth
4 actual paragraph down just below 4 c) starts with in bench
5 scale testing. And essentially in bench scale testing,
6 they found that anywhere where there was a concentration at
7 a maximum of fifty milligrams per kilogram, the aqueous
8 phase concentration associated with that was .5 micrograms
9 per liter or lower. So this very much supports the idea
10 that irrespective of the concentration being high in the
11 solid phase, it's going to be exceptionally low in the
12 aqueous phase. And in this case when they're below the
13 TSCA threshold, fifty milligram per kilogram in any case,
14 they're already below that .5 microgram per liter DHEC
15 threshold, which is lower than the TSCA threshold.

16 Q. Okay. Now, let's go back through that slow enough
17 for a liberal arts major to understand it. First of all,
18 ---

19 MR. FINNERAN: You said five thirty; right?
20 Sorry. I'm making fun of John.

21 MR. DEVLIN: It's easy to do.

22 MR. FINNERAN: We do that.

23 Q. --- there is an unit of measurement here that looks
24 like ug/l. Is that the same thing as micrograms per liter?

25

1 A. Yes. That's the Greek letter mu, micrograms per
2 liter.

3 Q. Greek letter mu?

4 A. Mu.

5 Q. And does it say where the PCB is fifty milligrams
6 per kilogram, the water is less than five micrograms per
7 liter?

8 A. Less than .5.

9 Q. Less than .5; I'm sorry. .5.

10 A. 0.5 microgram per liter.

11 Q. And the significance of that to you is what?

12 A. Well, the significance to me is this bears out that
13 my partitioning calculations are good estimates, but
14 they're, in fact, conservative over-estimates. In fact, at
15 equilibrium, the concentration in the aqueous phase of
16 aroclor 1260 is exceedingly low irrespective of the solid
17 phase concentration. And there are other statements here
18 that bear that out, as well. I mean their last statement
19 is PCBs remain associated with any solids removed by the
20 sludge dewatering process. The aroclor 1260 stays with the
21 solids. And their experts and other witnesses that have
22 been put up here have said the exact same thing.

23 Q. As opposed to, for instance, going into the concrete
24 by way of the aqueous ---

25 A. Exactly. As opposed to partitioning anywhere else,

1 including the concrete.

2 Q. Thank you. Mr. Brown may have a question or two for
3 you.

4 A. Absolutely.

5 THE COURT: How long do you anticipate your
6 cross going? And I'm fine -- it's five o'clock. If you
7 can wrap up in thirty minutes we'll do that. Or if you
8 want a fresh start in the morning, we'll do that, as well.

9 MR. BROWN: I mean I could be more than thirty
10 minutes. I could be in the forty-five minutes range. If I
11 can look at it tonight based on what he said, I may be
12 faster tomorrow morning. But I'll be happy to do it
13 whichever way the Court would prefer.

14 MR. DEVLIN: Your Honor, I think ---

15 THE COURT: That's always a good answer for a
16 lawyer. I appreciate that.

17 MR. DEVLIN: Your Honor, I'd like to offer Dr.
18 Finneran's CV into evidence. I've provided it to counsel.

19 MR. BROWN: And we've stipulated to that.

20 MR. DEVLIN: Okay. So our Exhibit 21, Your
21 Honor.

22 THE COURT: Well, let me ask you from a
23 practical standpoint, if we go ahead and proceed with the
24 Cross now, if you're comfortable doing that, does that free
25 Dr. Finneran from having to have another day here in the

1 great city of Greenville tomorrow?

2 MR. DEVLIN: Yes, sir. Excuse me.

3 THE COURT: The Court really is concerned about
4 the dollars that are getting spent in this thing. So Mr.
5 Brown?

6 MR. BROWN: Your Honor, I'm fine with going
7 forward if that's what the Court would like to do, Your
8 Honor.

9 THE COURT: All right.

10 **CROSS EXAMINATION**

11 **BY MR. BROWN:**

12 Q. Mr. Finneran, you started off talking about fate and
13 transport. I just want to make sure that we're all talking
14 on the same ---

15 A. Sure.

16 Q. --- basis. And we talked about this some in your
17 deposition. When we're talking about fate and transport of
18 substances, isn't it fair to simplify that fate to its end
19 point and transport to how it gets there and what it goes
20 through to get there?

21 A. I recall in my deposition saying that I was okay with
22 you phrasing it like that. But it is a simplification.

23 Q. And in terms of your calculations that you just
24 testified to, you were initially hired in this case in
25 January or February of 2019; correct?

1 A. Yes.

2 Q. And you didn't do the partitioning calculation at all
3 until August of 2019; isn't that correct?

4 A. For this case; yes.

5 Q. And when you did it in August, you did it at eighty-
6 five parts per million as a -- or milligram per kilogram --
7 as a level; correct?

8 A. Yes. Per the depositions.

9 Q. And now you've redone that calculation at some time
10 between your deposition and now to change it to a hundred
11 and ten?

12 A. Because I recognized that in the time line there was
13 a higher value than one of the witnesses referred to in
14 their deposition.

15 Q. And you said that applying that calculation you would
16 expect a level of one to five micrograms per liter in the
17 aqueous phase?

18 A. That would be based on the calculation; yes.

19 Q. When we took your deposition I asked you whether you
20 had read the DHEC emergency regulation and you said no at
21 that time; right?

22 A. I said that. I was mistaken.

23 Q. So you had read it, but you didn't remember reading
24 it in your deposition?

25 A. It was an appendix in the summary report. I knew the

1 substance of it. When you said the title of it, that did
2 not trigger the memory of the DHEC emergency regulation,
3 but I knew the .5 microgram per liter limit and I knew
4 about the differential land application basis of sludge
5 versus what was in the unit processes. So, no, I didn't
6 know what the document was, but I had seen it in the
7 summary report.

8 Q. And one of the things you talked about just a few
9 minutes ago was partitioning?

10 A. Yes.

11 Q. And with partitioning, partitioning in a layman's
12 term, is how the PCBs will bind or adhere to something
13 else?

14 A. We use the term absorb.

15 Q. Absorb.

16 A. But partitioning is the most appropriate word.

17 Q. But partitioning actually involves adherence in the
18 adsorb phase; correct?

19 A. Adsorb; a-d ---

20 Q. A-d, with a 'd'. And that's a chemical binding?

21 A. That is a chemical.

22 Q. But there's also absorption, which is a 'b' which is
23 a physical binding?

24 A. Movement of volume into another volume.

25 Q. And in fact, in a PCB remediation process, the

1 parties doing the remediation have to deal with both of
2 those?

3 A. Are you saying I'm a remediation expert?

4 Q. I'm not, but that's what a remediation person would
5 have to do; wouldn't they?

6 A. Yes. My experience with remediation is a solid would
7 have to be adsorb treated and absorb treated.

8 Q. And in terms of physical adherence of materials to
9 the walls of the digesters' tanks, you would expect some
10 physical adherence?

11 A. Yeah. You showed us pictures of that yesterday.

12 Q. And you don't have any reason to dispute that there,
13 in fact, was physical adherence of contaminated material on
14 the walls of these digesters?

15 A. Other than never having been to the facility, in your
16 words.

17 Q. But you've seen pictures that show it?

18 A. I have.

19 Q. And so you have no reason to dispute that?

20 A. I don't.

21 Q. And you would agree that if a wastewater treatment
22 plant is contaminated to a level which regulatory prohibits
23 or inhibits its operation, then remediation is necessary
24 before the facility can operate again?

25 A. Yes.

1 Q. You don't know of any governmental regulation which
2 would require testing be done before cleaning of the tanks;
3 do you?

4 A. I don't.

5 Q. And you don't know of any published industry standard
6 which would require that type of pretreatment testing of
7 wastewater treatment plants?

8 A. I don't.

9 Q. And you would agree that before you could test the
10 tanks or digesters or structures at the ReWa facilities,
11 you would need to remove the sludge out of them?

12 A. I would agree.

13 Q. And you don't have any criticism of the methodologies
14 used for removal of the PCB contaminated sludge; do you?

15 A. I don't.

16 Q. And you don't have any criticism of the methodology
17 used for disposal of that PCB contaminated sludge; do you?

18 A. Are we talking of sludge above fifty milligram per
19 kilogram or the sludge below fifty milligram per kilogram?

20 Q. Well, do you have any criticism about the methodology
21 used -- I'll be happy to show you your deposition where we
22 asked that question.

23 A. You have to acknowledge I've learned some things
24 since my deposition.

25 MR. DEVLIN: Your Honor, Mr. Brown has objected

1 to him testifying as an expert on remediation. I would
2 think that his questioning about how remediation is
3 performed are ---

4 MR. BROWN: I'll withdraw that question.

5 MR. DEVLIN: --- inappropriate.

6 Q. Based on your review of the records, you don't know
7 of any criticism that DHEC or EPA had regarding the
8 methodologies used by ReWa in its remediation of the sludge
9 in the structures; do you?

10 A. Based on what I've read ---

11 MR. DEVLIN: Same objection, Your Honor. Mr.
12 Brown has objected to him testifying as an expert on
13 remediation.

14 MR. BROWN: They've allowed -- they asked him to
15 discuss what he understood by review ---

16 THE COURT: I will rule that he is qualified. I
17 think the objection, Mr. Brown, that you're making goes
18 more to the weight as opposed to the admissibility. I
19 think by training and education, I have no hesitation to
20 find him qualified. So now you may continue on your ---

21 MR. FINNERAN: Qualified for what -- I'm sorry
22 to interrupt, Your Honor. What am I now qualified because
23 I was qualified as ---

24 THE COURT: They're very fine lawyers and
25 they'll parse that out.

1 MR. FINNERAN: All right.

2 Q. My question is based on your review of the
3 information in this case, you don't know of any criticism
4 that DHEC or EPA had as to the methodologies used by ReWa
5 in its remediation to get the facilities and structures
6 operational again; do you?

7 A. I was not privy to that; no. So, no, I do not have
8 any based on my review. Or know of any.

9 Q. You would agree that sludge in a wastewater treatment
10 plant is not water; correct?

11 A. I would agree with that.

12 Q. And you would agree that you can't identify any
13 evidence that you saw regarding any land at the facilities
14 that have been contaminated by PCBs?

15 A. Like land outside of the unit processes?

16 Q. Land?

17 A. Yes. I cannot find any. There was nothing in the
18 paperwork associated with land.

19 MR. BROWN: Give me one minute, Your Honor.

20 Your Honor, that's all I have.

21 THE COURT: I've got a couple of questions for
22 the good doctor.

23 **EXAMINATION**

24 **BY THE COURT:**

25 Q. First, I appreciate you coming over here.

1 A. Any time.

2 Q. What is the objection or disagreement with the
3 actions taken by ReWa in remediation?

4 A. So there are several, if I may.

5 Q. Sure.

6 A. Okay. So the first major objection I have with
7 respect to the overall remediation is that they're making a
8 case that pre-cleaning testing was not required. And
9 they're correct. Under TSCA regulations that is not
10 required. But that is not good science. If you're going
11 to -- and it's not good engineering. If you're going to
12 clean something up using any remediation process, if you do
13 not have a baseline sample, then when you do your cleanup,
14 you would have absolutely no idea if your cleanup was
15 actually effective. You would have no starting point. The
16 analogy I used for my lawyers, John being a liberal arts
17 major as he said, and I'm sure there are many here, if you
18 went to the doctor and the doctor said to you, I'm going to
19 put you on a cholesterol lowering medication. I'm not
20 going to take any blood samples. I'm not going to get any
21 baseline data. But a year from now I want you to come in
22 and I'll tell you whether it's working. You'd be like,
23 I'll have no idea if it's working; you're not doing
24 anything right now.

25 Q. So are you saying that after they take all the sludge

1 out ---

2 A. Yes.

3 Q. --- and the container is empty ---

4 A. Yes.

5 Q. --- they should have done -- in your professional
6 opinion they should have done testing?

7 A. They should have done testing then; yes.

8 Q. All right. Even though there's no professional
9 writing or governmental regulation that would have required
10 that?

11 A. Yes.

12 Q. Okay. What's your second beef?

13 A. So I actually have learned a new second beef that is
14 not in my deposition, but I now know for a number of the
15 facilities they didn't even do followup testing. After
16 doing cleaning you have to do followup testing to determine
17 if the contaminant aroclor 1260 still remains in the unit
18 you were cleaning in the first place. That's an absolute
19 minimum. And they didn't do that at Lower Reedy or
20 Mauldin. So that's a beef.

21 Q. All right. Now is that the good doctor's opinion or
22 is that based on some publication or some governmental
23 regulation?

24 A. That's based on my opinion as a good scientist, but I
25 think -- I can't attest to what other researchers would

1 think. That's based on my opinion as a scientist and
2 engineer.

3 Q. All right. And what's your third one?

4 A. So my third is that there have been a lot of
5 discussions going on about these unit processes had to be
6 shut down. There was absolutely no way to operate them
7 because there was any PCB in there whatsoever. My
8 overarching is that these were not scientific and technical
9 decisions. Their witness said yesterday, they were making
10 decisions out of panic. And panic decisions don't lead to
11 the right science and technical decisions. These unit
12 processes that were below fifty milligram per kilogram,
13 there were no federal or state regulations indicating that
14 they needed to be taken out of service, cleaned, or
15 otherwise. The secondary treatment, activated sludge would
16 continue removing BOD as it's supposed to. The anaerobic
17 digester would continue reducing nitrate and stabilizing
18 carbon as it's supposed to. The primary and secondary
19 clarifiers would continue to do their job as they're
20 supposed to, irrespective of the PCBs being present. So
21 below fifty milligram per kilogram, which is quite relevant
22 to Lower Reedy and Mauldin Road and the one anaerobic
23 digester at Pelham, functionally there was nothing they had
24 to do in terms of shutting those unit processes off and
25 taking them out of operation. And one person, a witness

1 today, even testified that they moved PCB contaminated
2 sludge from digester one to two and kept it in operation.
3 The only change that it made was during this emergency
4 regulation they could no longer land apply that sludge and
5 they had to make sure that their filtrate press was below
6 .5 microgram per liter. But one of the witnesses, I
7 believe it was Mr. McManus, said several times, we just
8 couldn't operate those. They could absolutely operate
9 those. Within every federal and state regulation, Lower
10 Reedy and Mauldin Road did not need to be shut down for any
11 reason whatsoever or cleaned for any reason whatsoever.
12 All they needed to do is during the emergency regulation,
13 not land apply the sludge and make sure the filtrate press
14 was below .5 microgram per liter. And then once the
15 emergency declaration passed, they could begin land
16 applying that sludge. So there are a number of things they
17 said they had to do, which they chose to do. And there's a
18 difference between having to do it legally by regulation
19 and choosing to do it for whatever reason they chose to do
20 it. And their word was panic.

21 THE COURT: All right. Mr. Devlin.

22 MR. DEVLIN: Nothing further, Your Honor.

23 THE COURT: Mr. Brown.

24 MR. BROWN: Yes, Your Honor, just briefly.

25 **RECROSS EXAMINATION**

1 **BY MR. BROWN:**

2 Q. Do you have Exhibit 29 in front of you?

3 A. This is Plaintiff's or Defendant's?

4 Q. Plaintiff's.

5 A. Plaintiff's Exhibit 29. I do now.

6 Q. That's the emergency regulation; correct?

7 A. That's what it says on the top; yes.

8 Q. And in fact -- well, actually in your deposition when
9 I went through, you said you weren't familiar with it.
10 You've now said, well I read it but I just didn't realize
11 what it was. Is that fair?

12 A. That's what was said; yes. So we're reiterating.

13 Q. In terms of this document number 29, it starts off
14 with a press release. The press release notes that DHEC
15 has been notified of specific PCB contamination into
16 wastewater treatment plants; correct?

17 A. I would agree with that.

18 Q. And in fact, the wastewater treatment plants that
19 triggered this emergency reg and this press release are the
20 Spartanburg one and the ReWa one that you served as a
21 consultant on?

22 A. Correct.

23 Q. And that required -- or that led to DHEC issuing the
24 emergency reg which, if you roll back in starting on the, I
25 guess fourth page, DHEC gives an introduction preface to

1 the actual reg language; right?

2 A. I see that here.

3 Q. And that preface, again, talks about the specific
4 dumping into the ReWa -- or the upstate facilities that we
5 know were ReWa and Spartanburg; right?

6 A. The first sentence; yes.

7 Q. And so in direct response to the situation here, ReWa
8 -- I mean, excuse me -- DHEC issued this regulation which
9 included section 3; right?

10 MR. DEVLIN: Objection to one of the questions
11 he's asking of why DHEC did something through this witness.

12 THE COURT: Rephrase the question. I didn't
13 necessarily take that from the question, but rephrase the
14 question.

15 Q. We just looked at DHEC's statement as to why they
16 issued this; didn't we?

17 A. We did.

18 Q. That's stated in the document?

19 A. We did. It is.

20 Q. And it was in direct reaction to the PCB dumping
21 which is at issue in this case and was at issue in the
22 Spartanburg case; correct?

23 A. Apparently so.

24 Q. And to address this situation, they issued this
25 regulation which includes section 3; right?

1 A. It does.

2 Q. And section 3 relates generally to the operation of a
3 plant dealing with this elicited dumping?

4 A. Not as I read it. Section 3 relates to the filtrate
5 that is generated as part of the sludge treatment that
6 comes from this facility. And a number of witnesses have
7 borne out that's exactly what it means.

8 Q. Section a) -- read section a); this section applies
9 ...

10 A. This section applies when a wastewater system is
11 managing PCB contaminated sludge following elicited
12 discharges of PCB waste to the system.

13 Q. Okay. And that's what we're dealing with here;
14 right?

15 A. That is.

16 Q. We're dealing with ReWa having to manage PCB
17 contaminated sludge following elicited discharge?

18 A. We are.

19 Q. And that's exactly what brought about this claim?
20 The sludge that we were holding was what brought this up?

21 A. Yes.

22 Q. And then it talks about in b) how you have to deal
23 with the water coming out of that system and how -- what
24 level it can have before it goes back into the plant;
25 right?

1 A. That is the sludge filtrate we've discussed; yes.

2 Q. The sludge filtrate we've discussed?

3 A. Yes.

4 Q. And that -- the sludge filtrate must be at a -- below
5 a level of quantification?

6 A. The practical quantitation limit, PQL, which
7 ultimately was .5 micrograms per liter.

8 Q. So in terms of how ReWa operated its facility, it had
9 to take into account that regulation; correct?

10 A. With respect to the sludge, once it was past all the
11 unit processes and being pressed, treated, filtered and
12 then the water returned.

13 Q. And your testimony just a few minutes ago was that
14 the regulations would expire and then ReWa could just take
15 that and do whatever they wanted with that sludge?

16 A. That is not what I said.

17 Q. So ReWa -- if ReWa is holding this sludge that is in
18 -- directly in response to this, they need to comply with
19 this; don't they?

20 A. The sludge that they collected during the period of
21 the emergency regulation -- I don't know. You're asking me
22 to interpret a law. I'm not a lawyer. I don't know that.

23 Q. Thank you.

24 MR. DEVLIN: Couple of things real quick on
25 that.

1 stipulated as the 27th of October.

2 THE COURT: All right. Thank you.

3 A. John, may I expand -- am I allowed to expand on the

4 ---

5 Q. Hold on. On the 22nd of October, if you'll look at
6 Plaintiff's Exhibit 33.

7 A. One page.

8 Q. Are there six conditions to the approval that DHEC
9 granted as to the AECOM remediation plan?

10 A. Yes, six conditions.

11 Q. What does the first one say?

12 A. Sampling for PCBs should be at the practical
13 quantitation limit of .05 microgram per liter. Sampling
14 ---

15 Q. Hold on. Let's translate that into layman's
16 language. Does that mean that sampling for PCBs should
17 only be a non-detect level?

18 A. No.

19 Q. If it comes in at over .5 micrograms per liter, what
20 is your understanding of what happens then?

21 A. So if I may have a chance to explain, because other
22 people have had their chance to explain. This refers very
23 specifically to a filtrate from sludge removed from unit
24 processes. Once pressed you generate a filtrate. If above
25 .5 microgram per liter, additional treatment is necessary.

1 Filtration or remove the fines and solids. Once below .5
2 microgram per liter to be returned to the headworks of the
3 facility. This does not in any way refer to any of the
4 unit processes during actual operation of the wastewater
5 treatment plant as I read it.

6 Q. Okay.

7 A. They're conflating two issues to justify work that
8 didn't need to be done.

9 Q. Thank you.

10 THE COURT: All right. Thank you, sir.

11 MR. FINNERAN: I can go?

12 THE COURT: Yes, sir.

13 And Mr. Devlin, I certainly won't hold y'all to this,
14 but how many witnesses do you anticipate tomorrow?

15 MR. DEVLIN: Most likely just one.

16 THE COURT: Okay. And in the realm of
17 possibilities, how long do you anticipate the direct going?

18 MR. DEVLIN: Your Honor, not my witness.

19 THE COURT: Mr. Lindeman.

20 MR. LINDEMAN: I may need to scale down my
21 estimate. I'd better go high and just wow you when I bring
22 it in under.

23 THE COURT: That would be okay.

24 MR. LINDEMAN: I would think, Your Honor, the
25 direct would be probably no less than an hour; probably no

1 more than an hour and a half.

2 THE COURT: Okay. And at this point, Mr. Brown,
3 Mr. Stilwell, do y'all anticipate any reply?

4 MR. STILWELL: I don't, Your Honor.

5 MR. BROWN: No, Your Honor.

6 MR. STILWELL: I try not to think about it
7 either so I don't think of anything overnight.

8 THE COURT: All right. Let's start -- we'll
9 start at 9:00 in the morning.

10 Again, let me talk with counsel, all five of you back
11 in chambers just for a moment.

12 (WHEREUPON, Court stood at recess for the day at
13 approximately 5:45 p.m.)

14 **JANUARY 30, 2020**

15 (WHEREUPON, Court resumed at approximately 9:00 a.m.)

16 MR. BROWN: Your Honor, before we get started,
17 Mr. Devlin and I were talking just logistics in terms of
18 submission of the deposition designations and we wanted to
19 make sure that we did it in a manner that was most
20 conducive to your review or most -- would assist you most
21 in that review.

22 The parties have each put forward the designations as
23 Court exhibits, but in terms of actually delivering to you
24 the testimony, we can either deliver to you a paper copy of
25 it or email you an electronic copy of it, of an entire

1 deposition, or we can just send you a compilation of the
2 pages on which the designations exist, whichever is most
3 efficient to you, we would like to make sure we do that.

4 THE COURT: I appreciate the accommodation to the
5 Court. I really don't care. As far as -- I do want to
6 make sure that whatever manner is agreed upon that it's
7 filed with the Clerk of Court's office just, you know, for
8 appeal purposes because obviously nobody wants to go down
9 to Columbia then one of the fellow judges says we'll have
10 to remand this because the deposition excerpts aren't here.
11 If that happens y'all just take me out and shoot me. So
12 whichever way y'all feel most comfortable.

13 MR. BROWN: I will tell you, the exhibit -- the
14 page line identification is already in the record. We
15 agree with that. We would agree that any of that can be
16 made part of an appellate record.

17 MR. DEVLIN: We have both provided the Court
18 with a two page, three page summary of the excerpts.

19 THE COURT: Y'all give me an idea of how many
20 actual pages we're talking about on the excerpts.

21 MR. BROWN: To be honest with you, I haven't
22 counted that up. But I would suspect that, you know, in
23 terms of page numbering, many of the excerpts are only a
24 couple of lines on a particular page, but the total pages
25 that we have designated in the two depositions is probably

1 in the thirty to fifty page range, something in that ---

2 THE COURT: Probably what would be easiest for
3 the record is an electronic version of the excerpts
4 themselves. And you can email that directly to my court
5 reporter. And then with y'all's agreement, she would e-
6 file it with the Clerk of Court's office just to have the
7 record complete.

8 MR. BROWN: And we're fine with that process.

9 MR. DEVLIN: Happy to do that, Your Honor. Do
10 we need to e-file these 30(b)6 designations or do we just
11 hand them up to ---

12 THE COURT: I think just hand those up. They've
13 already been marked by my court reporter?

14 MR. BROWN: Yeah, they've been marked as a Court
15 Exhibit already.

16 MR. DEVLIN: Has the Defendant's been marked as
17 a Court Exhibit? Okay. Thank you.

18 THE COURT: All right. Any other housekeeping
19 matters?

20 MR. DEVLIN: Not that I'm aware of.

21 THE COURT: All right. Call your next witness.

22 MR. LINDEMAN: Your Honor, the Defendant would
23 call Chris Lombard, please.

24 THE COURT: Appreciate the fact you've been
25 patiently sitting here with us the last couple of days.

1 Place your left hand on the bible and raise your right
2 hand. Do you swear to tell the truth, whole truth and
3 nothing but the truth?

4 MR. LOMBARD: I do.

5 THE COURT: Come around and have a seat, please,
6 sir. And if you would state your full name.

7 MR. LOMBARD: Christopher Michael Lombard.

8 **CHRISTOPHER MICHAEL LOMBARD**

9 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **DIRECT EXAMINATION**

11 **BY MR. LINDEMAN:**

12 Q. Good morning, Mr. Lombard. Would you please give the
13 Court the benefit of some background information about you,
14 where you're from, what you've done for a living up until
15 now; that sort of thing?

16 A. Okay. Originally from New Jersey. I was a graduate
17 of Rutgers University. I've been in the insurance claims
18 business for over thirty years. Currently -- I've worked
19 in the private sector for most of that time. For the last
20 approximately eight years, I've been the Assistant Director
21 of Claims for the South Carolina Insurance Reserve Fund.

22 Q. All right. Do you hold any type of certifications?

23 A. Yes, I do. I held a CPCU, which is a charter
24 property and casualty underwriter designation, associate in
25 risk management designation and associate in claims.

1 Q. And you indicated that since, what, 2012, you've been
2 with the Insurance Reserve Fund?

3 A. June of 2012; correct.

4 Q. Okay. So during the entirety of the claim that we're
5 here for today, you were with the Insurance Reserve Fund?

6 A. That is correct.

7 Q. All right. Can you give the Court the background on
8 the Insurance Reserve Fund? What kind of an entity is it?
9 What does it do?

10 A. The Insurance Reserve Fund is a state agency. We are
11 part of the state fiscal accountability authority. We have
12 an Executive Director of the Authority, Grant Gillespie.
13 We have a board of five members headed by Governor
14 McMaster, that includes the state Treasurer, state
15 Controller General, head of Ways and Means, and head of
16 Senate Finance.

17 Q. And that's what was formerly known as the Budget &
18 Control Board?

19 A. Correct. We were sliced out of that and that was
20 split up partly to the Department of Administration.

21 Q. How is the Insurance Reserve Fund different from a
22 traditional insurer? Now you said you worked in the
23 private sector; right?

24 A. That is correct.

25 Q. And how does the Insurance Reserve Fund work

1 differently than what we typically know as an insurance
2 company?

3 A. The first thing to note is that by statute we are
4 required to insure all state entities. That means we
5 insure Clemson. We insure the Department of
6 Transportation. And we insure the Department of
7 Corrections. We are also allowed, if people want --
8 governmental entities want to insure with us, insure other
9 government entities. We insure Greenville County, so we
10 insure this building here. That sort of thing. What is
11 also different is we don't have a profit and loss, loss
12 ratio, anything like that. We simply insure, we collect
13 premiums and if that's at a loss, it's at a loss. If at
14 some point we have to increase rates just so that we
15 maintain a certain balance within the Fund, we do so. But
16 there's no profit and loss motive, which is different than
17 the private sector.

18 Q. Is the Insurance Reserve Fund regulated by the
19 Department of Insurance?

20 A. No, it's not.

21 Q. Private sector insurance, are they regulated by the
22 Department of Insurance?

23 A. Yes, they are.

24 Q. You mentioned that the Insurance Reserve Fund is
25 required by statute to insure state entities; is that

1 correct?

2 A. That is correct.

3 Q. And you said non-state entitles meaning local
4 government; schools, school districts, public service
5 districts, the like, they can seek coverage from the
6 Insurance Reserve Fund?

7 A. Right. That is their option. They're not required.

8 Q. All right. Can you actually turn away any
9 governmental -- non-state governmental entity that wants to
10 insure with the Insurance Reserve Fund?

11 A. No, we can't.

12 Q. What types of insurance coverages does the Insurance
13 Reserve Fund provide to governmental entities?

14 A. We provide several. We provide a building and
15 personal property policy, which covers physical buildings
16 and the contents within them. We provide a tort policy
17 which is somewhat of an equivalent of a general liability
18 policy so that if our insureds -- people bring third-party
19 claims against them for everything from a slip and fall
20 loss to an interaction with a law enforcement officer, that
21 provides coverage for that. We also provide some other
22 coverages. We have a business income and extra expense
23 policy. We provide flood coverage to all our insureds
24 under a flood policy. We also provide a medical
25 malpractice policy for our state entities and for the

1 charitable entities that also choose to insure with us, as
2 well.

3 Q. Does the Insurance Reserve Fund write an
4 environmental liability policy?

5 A. No, we don't.

6 Q. Now, you mentioned the business income and extra
7 expense coverage. Can you elaborate on that? What does
8 that cover?

9 A. Subject to the provisions of that policy, the idea is
10 if somebody is either shut down or forced to expend extra
11 dollars due to some sort of loss to maintain operations, we
12 provide some coverage for that sort of thing.

13 Q. Okay. Are you familiar with the coverage that's been
14 provided by ReWa? Or provided to ReWa?

15 A. Yes, I am.

16 Q. Did ReWa have the business income and extra expense
17 coverage you just described?

18 A. No, they did not.

19 Q. What kind of policies did ReWa have?

20 A. ReWa had a building and personal property policy.
21 They had a general tort policy. As I said, even with a
22 building policy you automatically get the flood coverage.
23 We don't charge extra for that.

24 Q. Let me get you to look at a couple of exhibits that
25 were entered yesterday. I believe Plaintiff's Exhibit --

1 are the Plaintiff's books there?

2 A. Yes, they are.

3 Q. Plaintiff's Exhibit 1, I believe?

4 A. What is 1 supposed to be?

5 Q. I think it's supposed to be a declaration page for a
6 tort policy. Do you have Plaintiff's Exhibit Number 1?

7 A. Yes, I do.

8 Q. And what is that?

9 A. It is a declaration page for a general tort liability
10 policy.

11 Q. And is this the declaration page for coverage for
12 ReWa?

13 A. Yes, it is.

14 Q. All right. And for what specific policy period?

15 A. The policy period here is April 2nd, 2013 to April
16 2nd, 2014.

17 Q. Okay. Does the declaration page list the policy
18 number?

19 A. Yes, it does.

20 Q. And what is the policy number for the tort policy?

21 A. It is T, as in Tom, 130230114.

22 Q. Okay. Let me get you to flip over to -- let me get
23 you to flip over to, I guess, Exhibit Number 2. Tell me
24 what that is, please?

25 A. That is a declaration page for a building and

1 personal property policy.

2 Q. And is that also for a policy written by the
3 Insurance Reserve Fund to ReWa?

4 A. Yes, it is.

5 Q. What's the policy period that's listed on that
6 declaration?

7 A. That declaration is April 2nd, 2014 to April 2nd,
8 2015.

9 Q. And what's the policy number?

10 A. Policy number is F, as in Frank, 130230115.

11 Q. And the policy numbers, I notice one starts with T
12 and the other starts with F. Is there any significance to
13 that?

14 A. T means it's a tort policy. F means it's the
15 building and personal property.

16 Q. Okay. So any policies that we see that start with a
17 T would be a reference to a tort policy and any ones that
18 start with an F would be a building policy?

19 A. That is correct.

20 MR. LINDEMAN: Just for the record, I'm not going
21 to ask him to interpret these Tolling Agreements. I'm just
22 asking him to point out one point in them.

23 Q. This is Court's Exhibit Number 3, which is a Tolling
24 Agreement. Do you see a reference in the recitals to a
25 policy number?

1 A. Yes.

2 Q. And what policy number is that?

3 A. The F policy.

4 Q. So that would be the building policy?

5 A. Correct.

6 Q. All right. Is there a reference to the tort policy
7 in that recital?

8 A. No, there is not.

9 Q. Let me show you what's been marked as Court's Exhibit
10 Number 9, which is a Sixth Amendment Tolling Agreement.
11 I'm going to ask you the same questions. In the recitals,
12 is there a reference to a policy number?

13 A. Yes, there is.

14 Q. And what policy does that refer to?

15 A. It is the F policy.

16 Q. Which is the building policy?

17 A. Yes, it is.

18 Q. Do you see any reference to a tort policy?

19 A. No, I do not.

20 Q. All right. Thank you. Mr. Lombard, did you have any
21 personal involvement as far as the ReWa claim that's being
22 litigated ---

23 A. Yes.

24 Q. --- this week?

25 A. Yes, I did.

1 Q. And tell me -- or tell the Court what your personal
2 involvement was?

3 A. At some point I became aware that there was a claim
4 from ReWa involving some sort of PCB contamination. The
5 person handling it reported to somebody who reported to me.

6 Q. All right.

7 A. And at some point I became aware.

8 Q. Ultimately who was the decision-maker as far as any
9 type of coverage issues or concerns?

10 A. I am. I was.

11 Q. Okay. People below you, were they involved in
12 actually making coverage decisions?

13 A. Discussing it. Not making the final decision.

14 Q. You mentioned that there were people under you that
15 were involved with this claim. Can you take us through who
16 the various players were? Who was the adjustor who was
17 initially assigned the case?

18 A. The inside examiner was Jerry Anderson. And he
19 reported to Nelson Chandler. Nelson Chandler reported to
20 me.

21 Q. All right. And at some point during the process of
22 this claim did Mr. Anderson retire?

23 A. Yes, he did.

24 Q. Can you give me an approximation on when that was?

25 A. I think it was between -- probably between September

1 and October 2014.

2 Q. Okay. I know there's correspondence in the record
3 with Mr. Byers in October of 2014. So it would be some
4 time prior to that?

5 A. Yes.

6 Q. And I just mentioned his name. Who is Rob Byers,
7 please?

8 A. Rob Byers is a senior consultant for us. And he took
9 over all of Jerry's files.

10 Q. When Jerry retired?

11 A. Yes, he did.

12 Q. And did the supervisor on this particular file, did
13 that change after Mr. Anderson retired?

14 A. At some point it did. Well, the supervisor remained
15 Nelson Chandler to Rob Byers. At a later date Nelson
16 Chandler then retired.

17 Q. All right. Am I correct that Mr. Chandler retired
18 after this lawsuit was filed? It was since ---

19 A. Yeah, it was only a year ago, so yes.

20 Q. I'm asking since October 2016?

21 A. Correct.

22 Q. All right. So during the claims handling process of
23 this case pre-litigation, Mr. Chandler was the supervisor?

24 A. Correct.

25 Q. And you were Mr. Chandler's supervisor?

1 A. Correct.

2 Q. Mr. Lombard, how was the claim reported by ReWa?

3 A. It came through a somewhat different method than most
4 of them come through. Most of our claims come through new
5 claims email box. Our insureds have access to our website.
6 They're able to submit claims in that manner and tell us,
7 here's the claim I've got, here's the piece of property
8 involved, etcetera and so forth. For whatever reason the
9 contact was made to a representative in the Tort
10 Department. It wasn't even made to a supervisor in the
11 Tort Department.

12 Q. And that would be who?

13 A. Terry Camp.

14 Q. All right. And what did Ms. Camp do with -- and how
15 was it reported? Was it reported orally, by writing, by
16 email; how was it?

17 A. I believe it was reported orally first. There may
18 have been an email that followed. I'd like to look at the
19 file to be sure of that.

20 Q. All right. And how did it progress from there? What
21 did Ms. Camp do with the claim?

22 A. My recollection is Ms. Camp brought the issue at some
23 point close to the day she was called to Dave Abromaltis.
24 Dave Abromaltis oversaw the entire Tort Department. So she
25 would have reported up the line. She reported up the line

1 to him and notified him of it.

2 Q. And ultimately what happened with the claim? How was
3 it set up?

4 A. A claim was eventually set up. It took like ten days
5 or something afterwards, so there's -- according to the
6 emails there was some sort of mix-up. They talked about
7 it. They didn't set it up immediately or something like
8 that. But they set it up a claim within our system.

9 Q. And it was set up as what kind of claim?

10 A. A building personal property claim; the F policy.

11 Q. And why was it set up as a building policy claim?

12 A. If I remember correctly, they asked us -- I believe
13 the request of us was this event had taken place. We're
14 not sure what's covered regarding our location here. And
15 because the location, buildings and structures are covered
16 under the building policy, we set it up under the building
17 policy.

18 Q. All right. Was there a date of loss that was
19 provided?

20 A. Yes, there was.

21 Q. And what was the date of loss that was provided?

22 A. It was an August date of loss. I'm not sure of the
23 date, the exact date.

24 Q. Okay. Have you since learned that the loss occurred
25 at a different time than what was provided?

1 A. Yes.

2 Q. And what is your understanding of when this loss was
3 discovered by ReWa?

4 A. Late January of that year.

5 Q. Okay. And the first notice to the Insurance Reserve
6 Fund was when?

7 A. I believe it was the end of September.

8 Q. Is that a normal length of time, in your experience,
9 for reporting a loss by an insured?

10 A. It's not normal, but I've seen, you know, delayed
11 handling in getting something to us.

12 Q. Is there a preference to the Insurance Reserve Fund
13 to be notified earlier than eight months?

14 A. It's actually in the conditions of the policy to
15 report it to us as soon as possible.

16 Q. Generally can you give the Court some idea of how
17 property claims are processed, how they're managed within
18 the Insurance Reserve Fund?

19 A. Sure. So in normal circumstances, a property claim
20 is reported to us and it usually specifies a specific
21 segment, a segment equates to a building or structure,
22 something like that. We set up the claim and then we
23 assign an outside independent adjustor to go do the
24 inspection of whatever the loss is supposed to be; fire
25 loss, water loss, whatever it may be.

1 Q. And why does the Insurance Reserve Fund use
2 independent adjusters?

3 A. All our people are inside examiners. They don't go
4 out onsite to do the inspections and conduct the estimates
5 of the damages. We actually have a procurement that we do
6 to -- for qualified independent adjustors in the state to
7 do our work.

8 Q. And in this particular case with the ReWa claim was
9 there an independent adjustor assigned?

10 A. We assigned it to Quality Claim Service, I believe.

11 Q. And that is an independent adjusting service?

12 A. Yes, it is.

13 Q. Okay. Is that one that has done work for the
14 Insurance Reserve Fund previously?

15 A. Yes, it has.

16 Q. Was there a particular adjustor who was assigned that
17 particular work?

18 A. Fred Young.

19 Q. And had you -- were you familiar with Mr. Young? Had
20 you used him previously?

21 A. Yes.

22 Q. Was this particular claim different in any respect
23 from the property claim -- the typical property claim?

24 A. Yes, it was different.

25 Q. Okay. Can you explain how?

1 A. The normal property claim that would come in would
2 say there had been a wind loss and we lost the roof. So we
3 would have a damaged roof on this piece of property. A
4 fire loss, we had a fire in the basement. Our basement at
5 this location is damaged. Flood loss, six feet of water in
6 our bottom floor of our insured segment number whatever.
7 That's covered. This was different. This was there's some
8 sort of PCB contamination to their sludge, which is
9 something we don't cover, but it's at the location. So it
10 was a very unusual claim.

11 Q. All right. Now, we talked about the various players
12 that were involved in processing the claim or handling the
13 claim. At some point did the Insurance Reserve Fund get
14 counsel, a lawyer involved?

15 A. Yes, we did.

16 Q. And when was that?

17 A. I believe it was maybe the 2nd of February, 2015.

18 Q. Okay. And who did the Insurance Reserve Fund use for
19 that purpose?

20 A. Mr. John Devlin of Devlin Parkinson.

21 Q. Okay. And at that point in time had ReWa also been
22 communicating through counsel?

23 A. Yes. They were communicating through, I believe it
24 was Tommy Lavender.

25 Q. And that would have been in early 2015?

1 A. Yes.

2 Q. All right. From the point in time that both
3 Insurance Reserve Fund and ReWa had attorneys involved, did
4 the communications, interaction between ReWa and the IRF go
5 through counsel at that point?

6 A. Yes.

7 Q. Let me get you to look at the black notebook, and
8 specifically Exhibit Number 8.

9 MR. BROWN: Your Honor, we have an objection to
10 the series of exhibits which I believe he's going to go
11 into. Eight through 13, are all communications between
12 counsel. And counsel here for IRF was not subject to
13 discovery or cross examination and we believe that it's
14 inappropriate to submit as evidence counsel's arguments and
15 letters, some of which are specifically designated under
16 Rule 408 as settlement communications. But otherwise, even
17 separately, Mr. Devlin was never listed as a witness, was
18 never available for a deposition, and we can't challenge
19 what he puts into his communications and have no way to
20 cross examine that. We believe that introduction of it
21 through any witness is inappropriate.

22 THE COURT: All right. Let me hear from you.

23 MR. LINDEMAN: Well, Your Honor, the first
24 letter is a letter from Mr. Lavender to the Insurance
25 Reserve Fund, so that's a little premature I think what

1 he's arguing ---

2 THE COURT: Any objection to Defendant's Exhibit
3 8, which is a February 11th, 2015 letter from Mr. Lavender
4 to Mr. Byers?

5 MR. BROWN: If he can establish a foundation for
6 that one, we think the argument I just raised doesn't apply
7 to it, but the others we think it does.

8 THE COURT: All right. We'll address those then
9 as we come to them.

10 MR. LINDEMAN: All right. Thank you, Your
11 Honor.

12 Q. Looking at Plaintiff's Exhibit -- I'm sorry --
13 Defendant's Exhibit Number 8, are you familiar with that
14 letter, sir?

15 A. Yes, I am.

16 Q. All right. Is that a letter that was sent to the
17 Insurance Reserve Fund?

18 A. Yes.

19 Q. Is that a letter that's contained in the Insurance
20 Reserve Fund's claims file?

21 A. Yes, it is.

22 MR. LINDEMAN: Your Honor, I would move this
23 letter into evidence.

24 THE COURT: All right. Mr. Brown, anything else
25 on this letter?

1 MR. BROWN: No, Your Honor.

2 THE COURT: All right. Defense Number 8.

3 (WHEREUPON, Defendant Exhibit Number 8 was admitted
4 into evidence.)

5 Q. Flipping over to Exhibit Number 9, please. Without
6 going into the substance of the letter, who is the letter
7 from and to?

8 A. The letter is from Mr. Devlin to Mr. Lavender.

9 Q. And what's the date of it?

10 A. The date is December 29th, 2015.

11 Q. All right. Was this a letter that -- and Mr. Devlin
12 was representing the interest of the Insurance Reserve Fund
13 at that time?

14 A. That is correct.

15 Q. Okay. And he was communicating with counsel for
16 ReWa?

17 A. Yes, he was.

18 MR. BROWN: And again, Your Honor, this
19 communication is the type of communication we would object
20 to ---

21 THE COURT: All right.

22 MR. BROWN: --- as hearsay?

23 MR. LINDEMAN: And Your Honor, I'm not
24 submitting it for any type of legal discussion of the
25 issues. That's for the lawyers, and we've certainly

1 submitted pretrials and we've talked about that in chambers
2 about what we're going to do after the trial.

3 The purpose of this correspondence is because unlike
4 most claims, as Mr. Lombard has just testified to, both
5 sides hired lawyers during the claims process. And the
6 claims process continued through the attorneys. In this
7 particular case, they have sued the Insurance Reserve Fund
8 for bad faith. Bad faith, their allegations ---

9 THE COURT: What's the relevancy under bad faith
10 of this letter?

11 MR. LINDEMAN: The relevancy, Your Honor, is to
12 show that -- how the claim was processed. It was processed
13 instead of through a claims adjustor and contact with the
14 insured starting in February of 2015, the communications
15 were between counsel, and this shows what the claims
16 activity was. And it's very relevant as obviously since
17 they've asserted bad faith, evidence of bad faith -- of
18 claims handling is relevant in a bad faith case, as Your
19 Honor knows, all the way up to the date of suit. Anything
20 after suit, of course, South Carolina Supreme Court has
21 indicated in several cases is not relevant.

22 THE COURT: Subject to tying it all together,
23 I'll allow Defendant's Number 9.

24 MR. LINDEMAN: All right. Thank you, Your
25 Honor.

1 THE COURT: But again, I understand, with the
2 caveat that the substance of the letter is not being
3 introduced, but merely the fact that a letter was sent
4 between counsel for the respective parties.

5 MR. LINDEMAN: And I don't want to mislead the
6 Court or anything. What is relevant, I would submit, is
7 they are exchanges of requests for information. They're
8 requests back and forth, as opposed to the legal discussion
9 that you will see in some -- more so in some of the
10 subsequent letters. I'm not submitting it for that purpose
11 because obviously we're not trying to persuade you by what
12 Mr. Devlin or Mr. Lavender argued was the -- about the
13 policy provisions back then.

14 THE COURT: Mr. Brown, anything else for the
15 record?

16 MR. BROWN: Yes, Your Honor. In essence what
17 he's saying is I want to put in Mr. Devlin's activity and
18 Mr. Devlin's statements as to what happened in the claims
19 process. In order for that to be permissible, Mr. Devlin
20 would have had to have been listed as a witness and we
21 would have had to have the opportunity to depose Mr.
22 Devlin. On our exhibit -- in our witness list and
23 discovery, Mr. Lavender was available for their deposition.
24 They could have deposed him. They could have gathered
25 information from him. We didn't have that opportunity.

1 But now they're wanting to use his words against us when we
2 didn't have that opportunity to investigate what they were.
3 We think that's inappropriate.

4 MR. LINDEMAN: And, Your Honor, obviously there
5 was no request to take Mr. Devlin's deposition so we didn't
6 take Mr. Lavender's deposition.

7 THE COURT: What Mr. Brown is saying is that Mr.
8 Devlin was never disclosed as a fact witness, so as a
9 result of that he should be excluded -- or any
10 communications from him should be excluded. So what's your
11 response to that?

12 MR. LINDEMAN: My response to that, Your Honor,
13 is clearly through this process, I mean, obviously it's
14 written words. I'm not trying to put into evidence what
15 Mr. Devlin said or later what was said between him and Mr.
16 Lavender. We're not going there, which would -- these are
17 actually documents that were exchanged by the parties.
18 There's been no challenge that these letters are not
19 authentic or that they weren't received. So anything that
20 is relevant to the claims handling is obviously in written
21 form here and cannot be -- it's certainly reliable.

22 THE COURT: All right. But I understand Mr.
23 Brown's argument is, even if it's relevant, you don't get
24 there because Mr. Devlin was not disclosed to them as a
25 fact witness, so under the case law and under the rules,

1 you can't spring it on him, being the Plaintiff, at this
2 point.

3 MR. LINDEMAN: We're definitely not springing
4 this correspondence. They were exhibits to Ms. Dennis's
5 deposition that were produced throughout the litigation.
6 Nothing is being sprung on them. They're documents that
7 were produced.

8 THE COURT: Subject to Mr. Brown's objection,
9 I'm going to allow Defendant's 9 for the limited purpose
10 under the bad faith issues.

11 MR. LINDEMAN: Thank you, Your Honor. And that
12 is -- obviously it doesn't go to the other causes of
13 action, Your Honor.

14 (WHEREUPON, Defendant Exhibit Number 9 was admitted
15 into evidence.)

16 Q. Looking at Exhibit Number 9, Mr. Lombard, and you
17 indicated this was a letter from Mr. Devlin to Mr.
18 Lavender?

19 A. Correct.

20 Q. All right. Look at the last paragraph on that first
21 page.

22 A. Yes.

23 Q. Well, let me back up. There is a reference to a
24 meeting in the first paragraph.

25 A. Yes.

1 Q. Were you involved in a meeting -- in the meeting
2 that's referenced there?

3 A. I wasn't; no.

4 Q. You were not?

5 A. No.

6 Q. All right. Who with the Insurance Reserve Fund was?

7 A. I believe it was Rob Byers.

8 Q. Okay. And looking then at the third paragraph, is
9 that a request for information?

10 A. Yes.

11 Q. Okay. And what is specifically being requested
12 there?

13 A. Specific request is -- should I read it to be ---

14 Q. Well, actually, I probably need to back you up to the
15 second paragraph because it should be read in relation to
16 that. Why don't you read the second paragraph through the
17 word more specifically. I don't need to go into that much
18 detail.

19 MR. BROWN: Your Honor, again, we would note our
20 objection. In essence he's asking for Mr. Devlin's words
21 to be ---

22 THE COURT: Mr. Lindeman, like I said, I can
23 read this. We can move on.

24 MR. LINDEMAN: All right. Thank you, Your
25 Honor.

1 Q. So there was a request for specific information
2 there?

3 A. Yes.

4 Q. And is that information that the Insurance Reserve
5 Fund needed?

6 A. Yes.

7 Q. Is that information that had been requested in the
8 past?

9 A. Yes.

10 Q. And the request for that information in the past, as
11 you understand it, was from whom?

12 A. I believe that was from Fred Young.

13 Q. Okay. And at this particular point, December 29,
14 2015, had the Insurance Reserve Fund received specific
15 information regarding the cost of decontaminating or
16 cleaning the actual structures?

17 A. No.

18 Q. Let me get you to take a look at Exhibit Number 10,
19 please.

20 THE COURT: Same objection, Mr. Brown, on this
21 one also?

22 MR. BROWN: If as previously noted, it is for
23 settlement purposes only. Rule 408 on the -- in all bold
24 and all caps and underlined at the top of it, we think that
25 inherently it shouldn't come into evidence on that basis

1 alone. But that's in addition to the other objections
2 we've made.

3 THE COURT: All right.

4 MR. LINDEMAN: And Your Honor, I'm fine with not
5 admitting this exhibit if they want to object to that for
6 the Rule 408 purposes. I would ask the Court can I ask the
7 date of the response to Mr. Devlin's letter? I think that
8 is fair game without implicating Rule 408.

9 MR. BROWN: And again, this is not information
10 that this witness has personal knowledge. He's just
11 reading a document that he wasn't copied on. We think that
12 would be inappropriate.

13 THE COURT: All right. So what date again?

14 MR. LINDEMAN: The date of the letter. I mean,
15 obviously, Your Honor, the relevance of this is Mr. Devlin
16 sent a letter dated December 29, 2015, as is obvious from
17 the opening sentence of Mr. Lavender's ---

18 THE COURT: I'll allow it.

19 MR. LINDEMAN: He is responding to a December
20 29th, 2015 letter on July 28, 2016. I think that's
21 relevant to the claims handling and ---

22 THE COURT: That's fine.

23 MR. LINDEMAN: --- bad faith issues.

24 THE COURT: For that purpose.

25 MR. LINDEMAN: All right. Then let me just ask

1 that, since that was me testifying.

2 Q. Mr. Lombard, looking at Defendant's Exhibit Number
3 10, could you please identify who wrote that letter and to
4 whom?

5 A. That is from Mr. Thomas Lavender to Mr. John Devlin.

6 Q. And what is the date of that letter?

7 A. July 28, 2016.

8 Q. And without referencing the contents of that letter,
9 is there a reference in the first sentence of the letter
10 that it is responding to a particular piece of
11 correspondence?

12 MR. BROWN: Again, just ---

13 THE COURT: I sustain the objection on that.

14 MR. LINDEMAN: I'm sorry, Your Honor. I'm not
15 clear on what the basis of that is? I must have ---

16 THE COURT: I think we're now going into the
17 substance of the discussion. So I would sustain the
18 objection.

19 MR. LINDEMAN: Well, I was simply wanting to
20 reference that this was in response to the December 29th
21 letter. I'm not going into the substance.

22 THE COURT: And that opens up any number of
23 possibilities. I don't know what happened after that
24 letter. Other discussion they may have had that I think
25 opens up the whole letter. So I'm going to sustain the

1 objection.

2 MR. LINDEMAN: All right. Thank you, Your
3 Honor.

4 May I make a proffer of Exhibit Number 10, Your Honor?

5 THE COURT: Certainly.

6 (WHEREUPON, Defendant Exhibit Number 10 was
7 proffered.)

8 Q. Mr. Lombard, please refer to the next letter of
9 Defendant's Exhibit Number 11, please.

10 MR. BROWN: Just to protect myself on the
11 record, we have the same objections that this record --
12 this letter specifically says it's responding to the
13 settlement position that was just discussed in Exhibit 10.
14 We think the same principals apply to it.

15 THE COURT: All right.

16 MR. LINDEMAN: Your Honor, there's no reference
17 whatsoever to any type of settlement demand or providing a
18 settlement offer in this particular letter.

19 THE COURT: All right. Subject to Mr. Brown's
20 objection, I'm going to allow Defendant's 11.

21 MR. LINDEMAN: Thank you, Your Honor.

22 (WHEREUPON, Defendant Exhibit Number 11 was admitted
23 into evidence.)

24 Q. Mr. Lombard, looking at Defendant's 11, could you
25 please state for the record who was the author of the

1 letter and to whom it was sent?

2 A. Mr. John Devlin sent the letter and it was to Mr.
3 Thomas Lavender.

4 Q. What's the date of that letter, please?

5 A. August 19, 2016.

6 Q. Okay. Does it reference being in response to a
7 particular letter from Mr. Lavender?

8 A. Yes, it does.

9 Q. And what letter is that?

10 A. A letter of July 28, 2016.

11 Q. Okay. Does this letter also reference a request for
12 information?

13 A. Yes, it did.

14 Q. Okay. And what kind of information is being
15 requested? And was this a request made on behalf of the
16 Insurance Reserve Fund?

17 A. Yes, it was.

18 Q. Okay. And what was the request ---

19 MR. BROWN: I don't mean to be difficult, but I
20 just want to make sure my objections are preserved, that
21 he's now trying to elicit testimony of Mr. Devlin from this
22 witness ---

23 THE COURT: I understand.

24 MR. BROWN: --- and that's inappropriate.

25 THE COURT: You're protected on the record.

1 MR. BROWN: Thank you, Your Honor.

2 Q. And specifically what information was being requested
3 by the Insurance Reserve Fund?

4 A. Specifically it was identify specific costs
5 associated with the actual decontaminating and/or cleaning
6 of the equipment at each of the facilities.

7 Q. And had that request been made in the December 2015
8 letter?

9 A. Yes.

10 Q. And had the Insurance Reserve Fund by August 19, 2016
11 received the requested information?

12 A. No.

13 Q. So this was another request for that same
14 information?

15 A. Yes, it was.

16 Q. All right. Did the Insurance Reserve Fund receive
17 the specific costs that they were asking for, the specific
18 breakdown, in response to this letter?

19 A. No.

20 Q. Prior to this lawsuit being filed did the Insurance
21 Reserve Fund ever receive that specific breakdown of
22 information?

23 A. No, we didn't.

24 Q. Okay. Let me get you to look at Exhibit Number 12,
25 please. Identify for me, please, who is the author of that

1 letter and to whom it was sent?

2 A. The author of the letter was -- bear with me -- Marc
3 Manos.

4 Q. All right. And Mr. Manos, can you tell from the
5 letter, he's an attorney with what firm?

6 MR. BROWN: Your Honor, again, he's just asking
7 him can he read the exhibit. This isn't his personal
8 knowledge. We would object to that, as well as the
9 additional bases we've stated before as to all these
10 exhibits.

11 THE COURT: Okay. You're protected on the
12 record.

13 MR. LINDEMAN: Thank you, sir.

14 A. It's from the Nexsen Pruet firm.

15 Q. All right. Is that the same firm of Mr. Lavender?

16 A. Yes.

17 Q. All right. And Mr. Manos's letter was sent to whom?

18 A. Mr. John Devlin.

19 Q. And it was dated -- what did you say?

20 A. October 7, 2016.

21 Q. Okay. And does this letter provide the information
22 that was requested by Mr. Devlin in his August 19th
23 letter?

24 A. I don't see that breakdown; no.

25 Q. All right. Does the letter show that there were any

1 enclosures with that letter, looking at the end?

2 A. I don't see anything additional.

3 Q. All right. Let me get you ---

4 MR. LINDEMAN: And Your Honor, is 12 admitted?

5 THE COURT: Yes, sir.

6 MR. LINDEMAN: Thank you.

7 THE COURT: Subject to Mr. Brown's ongoing
8 objection.

9 MR. LINDEMAN: Thank you, Your Honor.

10 (WHEREUPON, Defendant Exhibit Number 12 was admitted
11 into evidence.)

12 Q. And this is the last one. Exhibit Number 13.

13 THE COURT: And just for the record, Mr. Brown,
14 same objection?

15 MR. BROWN: Yes, Your Honor. We would object on
16 all the same bases. And depending on what his testimony is
17 if he attempts to testify ---

18 THE COURT: Yes, sir.

19 MR. BROWN: --- as to Mr. Devlin's knowledge, we
20 would object to that, as well.

21 THE COURT: All right. You're protected on the
22 record.

23 Q. And Mr. Devlin, can you -- you indicated -- who is
24 the author of that letter, Exhibit Number 13?

25 A. I think you meant Mr. Lombard?

1 MR. BROWN: This is not Mr. Devlin's testimony.

2 THE COURT: That may be defamation, per se.

3 MR. LINDEMAN: What did I call him? I'm sorry.

4 I was so oblivious here. What did I say?

5 THE COURT: I believe you called him Mr. Devlin.

6 MR. LINDEMAN: Oh.

7 MR. DEVLIN: We can't stipulate to that, Your
8 Honor.

9 MR. LINDEMAN: Luckily I have absolute privilege
10 for anything I say in Court.

11 Q. Mr. Lombard, I apologize. Who is the author of
12 Defendant's Exhibit Number 13?

13 A. Mr. John Devlin.

14 Q. And to whom is that letter directed?

15 A. Mark Manos of Nexsen Pruet.

16 Q. And what is the date of that letter?

17 A. Date of letter is October 13th, 2016.

18 Q. All right. And does it refer that it's in response
19 to a particular piece of correspondence?

20 A. It's in response to the October 7th, 2016 letter.

21 Q. All right. I want to refer you back to the previous
22 ...

23 MR. LINDEMAN: Your Honor, I would move in
24 Plaintiff's (verbatim) Exhibit Number 13.

25 THE COURT: And again, I want to make clear for

1 the record, these are not being allowed for the substance
2 or the truth of anything asserted, but simply as a defense
3 to the bad faith claim to show that there were discussions
4 between the respective attorneys in this regard relative to
5 the issues.

6 MR. LINDEMAN: That's correct, Your Honor, the
7 discussion of the legal issues in those letters, we're not
8 submitting them for that purpose at all.

9 THE COURT: All right. Thank you.

10 (WHEREUPON, Defendant Exhibit Number 13 was admitted
11 into evidence.)

12 Q. Looking at Exhibit Number 12 ---

13 MR. LINDEMAN: And I do want to reference this
14 letter for purposes of notice of a point. I think that'll
15 be clear here in a second.

16 Q. Looking at Exhibit Number 12, Mr. Lombard, is there a
17 reference to the tort liability policy in this particular
18 letter?

19 A. It's referred to as the general tort liability
20 policy.

21 Q. Okay. And are you aware of any previous circumstance
22 or instance where either ReWa or its legal counsel during
23 the claims process raised an issue or raised a potential
24 claim under the tort liability policy?

25 A. No.

1 Q. And this is dated when?

2 A. October 7, 2016.

3 Q. And does Mr. Manos, again, just for the purpose of
4 notice, does he go through a discussion of the various
5 portions, the insuring agreement, exclusions, etcetera, of
6 the general tort policy in this letter?

7 A. Yes, he does.

8 Q. Had either of ReWa's legal counsel presented those
9 type of arguments or that position previous to this
10 letter?

11 A. No, they hadn't.

12 Q. Do you know the date, sir, that this lawsuit was
13 filed?

14 A. Not off the top of my head.

15 Q. All right. Let me show you a copy of the Summons and
16 Complaint and ask you if you could put into the record the
17 date that it was filed? And it would be up on the right
18 side.

19 A. October 17th, 2016.

20 Q. All right. So that would have been seven days after
21 Mr. Manos's letter that we just talked about?

22 A. Yes.

23 Q. And that would have been four days after Mr. Devlin's
24 letter and the response; is that correct?

25 A. Yes.

1 Q. And Mr. Devlin's letter and response, and Plaintiff's
2 Exhibit Number 13 -- and again I'm not offering it for the
3 substance but rather the notice -- is there a discussion of
4 the tort liability policy?

5 A. Which exhibit are you on now?

6 Q. Defendant's Exhibit 13.

7 A. Yes.

8 Q. All right. We were just touching on this and going
9 through the letters, Mr. Lombard, but let me ask you
10 generally did the Insurance Reserve Fund encounter issues
11 with obtaining information that was needed in order to
12 properly evaluate ReWa's claim?

13 A. Yes.

14 Q. And what kinds of information was sought that you
15 were having difficulties obtaining?

16 A. Specific information as to the cleaning of the
17 buildings and structures that are insured with the
18 Insurance Reserve Fund.

19 Q. And specifically, one of the things we saw in those
20 letters is needing a breakdown regarding the costs of
21 actually cleaning the structures. Can you explain to the
22 Court why that information was critical?

23 A. You need to have direct physical damage to the
24 covered property. The covered property in this case are
25 the buildings and the structures that are insured under the

1 policy. We didn't have any notice about things being --
2 any demolition or anything broken. But we did understand
3 that there may have been some cleaning involved which may
4 have coverage under the policy.

5 Q. And that's the information you were seeking?

6 A. Yes.

7 Q. Was there also a need to get a breakdown of the
8 expenses claimed, broken down by facility?

9 A. Yes, because I think it was mentioned yesterday,
10 facilities had different segment numbers and that's how you
11 -- when you actually process the claim, that's part of it.

12 Q. And by segment numbers, just -- and again, I don't
13 know whether the Court has this experience or not, so I'm
14 going to assume not -- if you would look at Plaintiff's
15 Exhibit Number 2, can you point out for the record what the
16 reference to segment numbers means?

17 A. Segment numbers refer to a specific property at a
18 specific location. An example similar to this would be
19 Greenville County owns this courthouse, they own the place
20 where the sheriff's offices are, and those are two
21 different buildings under the policy; each one getting a
22 segment number. Segment equates to a building or location.

23 Q. All right. And looking at Plaintiff's Exhibit Number
24 2, specifically referencing it, it looks like there are --
25 I haven't counted them, but it looks like several dozen

1 different segment numbers ---

2 A. Correct.

3 Q. --- under the ReWa policy; is that right?

4 A. Correct.

5 Q. All right. And those would each be individual
6 facilities or properties that are owned?

7 A. Yes.

8 Q. There's not a separate segment number for each
9 building, for instance, within a wastewater treatment
10 plant; is there?

11 A. Not at this time. At this time the way they
12 calculated it was -- and I think Ms. Dennis actually made
13 reference to this, each structure had an insured value to
14 it. They added it up at that location, and came up with a
15 total number. I think currently they do it the opposite
16 way, which is they list each individual one under that
17 location.

18 Q. But for purposes of this claim, each facility would
19 have its own segment?

20 A. Correct.

21 Q. All right. Let's go through those. We know that
22 Pelham is one of the facilities that issued. Do you see
23 that segment number?

24 A. Yeah, segment 90.

25 Q. All right. And it shows a limit of insurance and

1 it's next to the words -- or the letters b-l-d-g. What
2 does b-l-d-g stand for?

3 A. Building.

4 Q. All right. And then it gives a limit of insurance;
5 is that right?

6 A. Correct.

7 Q. And then underneath that it says c-o-n-t; what does
8 that stand for?

9 A. Contents.

10 Q. And it says zero. What does that indicate, sir?

11 A. They don't insure any contents, personal property,
12 under the policy.

13 Q. All right. If you go farther to the right, the last
14 column is what?

15 A. Premium paid.

16 Q. All right. Does it show the premium that was paid
17 for the coverage for the buildings for that?

18 A. Yes, it does.

19 Q. Does it show a premium for contents?

20 A. No.

21 Q. It shows zero, does it not?

22 A. Correct.

23 Q. That's also an indication that there was no contents
24 coverage?

25 A. Correct.

1 Q. And the Insurance Reserve Fund didn't receive a
2 premium for contents coverage?

3 A. Correct.

4 Q. Another facility at issue is Lower Reedy. Do you see
5 that segment number? I think it's right below Pelham, just
6 to help you out.

7 A. Yes.

8 Q. All right. And what segment number is that?

9 A. Segment 130.

10 Q. All right. And does that show that there was
11 contents coverage for Lower Reedy?

12 A. It shows zero.

13 Q. And zero means there was no coverage?

14 A. Correct.

15 Q. All right. Was coverage available for contents if
16 they wanted to purchase it?

17 A. Oh, yes.

18 Q. Okay. Do a lot of your insureds purchase contents
19 coverage?

20 A. Yes, depending on location.

21 Q. How about special purpose districts that run
22 wastewater treatment plants, do they purchase contents
23 coverage?

24 A. On some locations; yes.

25 Q. And some don't?

1 A. Correct.

2 Q. Okay. So that's a choice?

3 A. Yes.

4 Q. Let me get you to turn to the next page. The third
5 facility that we're dealing with in this case is Mauldin
6 Road. Does that -- do you see there a segment number?

7 A. Segment number 140.

8 Q. All right. And was there contents coverage on
9 Mauldin Road facility?

10 A. It shows zero.

11 Q. All right. Does the -- is there a segment as part of
12 this declaration page for collection lines?

13 A. No.

14 Q. Does the Insurance Reserve Fund insure collection
15 lines?

16 A. No. No, we do not.

17 Q. Specific to lift stations, are those covered?

18 A. They can be; yes.

19 Q. All right. And do you see, flipping through here,
20 that there are actually lift stations that are covered?

21 A. Yeah, I believe they're noted as LS in some of these.

22 Q. But the collection lines that run between lift
23 stations; that's not covered?

24 A. We don't cover that.

25 Q. Okay. Oh, before I leave this exhibit, turn back to

1 the first page of Plaintiff's Exhibit 2.

2 A. Yes.

3 Q. Is there -- there's a law ordinance -- the
4 declaration page shows that there's an ordinance in law
5 coverage; is that correct?

6 A. Correct.

7 Q. And is there a limit of insurance for that?

8 A. One hundred thousand dollars.

9 Q. Okay. Is there a deductible on this insurance?

10 A. Yes.

11 Q. What's the deductible?

12 A. Five thousand.

13 Q. Okay. And is there -- go ahead.

14 A. Let me just correct that. The deductible is three
15 thousand.

16 Q. Yeah, I'm sorry, I should have caught that. It's
17 three thousand; correct?

18 A. Yes.

19 Q. All right. And is there a co-insurance for this
20 coverage?

21 A. Eighty percent.

22 Q. The tort liability policy, does that include a
23 deductible?

24 A. There can be a deductible for third-party property
25 losses. Five hundred dollars.

1 Q. Is there in this particular -- on the particular
2 policy written to ReWa?

3 A. What page are you looking at?

4 Q. First page of Plaintiff's Exhibit Number 1.

5 A. Okay. There's a deductible, this is regarding sewer
6 backup coverage, of two hundred and fifty dollars.

7 Q. Okay. That coverage isn't applicable here; is it?

8 A. No.

9 Q. All right. To the extent the Court finds the tort
10 liability policy applies in this case -- I know that's
11 disputed -- is there any type of deductible?

12 A. No.

13 Q. Okay. Going back to the issue about obtaining
14 information from ReWa. Was there a request for ReWa to
15 provide information regarding regulatory actions, meaning
16 information provided to the EPA or DHEC in their -- and
17 information provided back?

18 A. Yes.

19 Q. Can you sort of elaborate on what was requested?

20 A. I believe Fred Young had asked ---

21 MR. BROWN: Your Honor, I object to hearsay.
22 He's being asked a question of what Fred Young did.

23 THE COURT: Sustain the objection.

24 Q. From the -- have you reviewed the entire claims file
25 in preparation for your testimony in this case?

1 A. Yes.

2 Q. Okay. And from the claims file are you able to
3 determine what kinds of requests have been made?

4 A. Yes.

5 Q. All right.

6 MR. LINDEMAN: I also believe, Your Honor, the
7 emails are in evidence. And they were put into evidence by
8 the Plaintiff.

9 THE COURT: Yes, sir.

10 MR. LINDEMAN: Without objection.

11 Q. What requests for information were made as far as
12 regulatory information?

13 A. I believe the request from Fred Young was for any and
14 all remediation plans, correspondence and the like, between
15 DHEC, EPA and the insured, in this case ReWa.

16 Q. And as far as the Pelham plant is concerned, did the
17 Insurance Reserve Fund ever get any type -- I mean we
18 obviously heard testimony about a remediation plan that was
19 planned by AECOM for Pelham. Did the Insurance Reserve
20 Fund ever receive that?

21 A. Yes, we did.

22 Q. All right. And that plan was submitted to the EPA,
23 the evidence shows, in October of 2013. Do you know when
24 the Insurance Reserve Fund received that information?

25 A. I believe we got it in February of the following

1 year. I'm not quite sure.

2 Q. Okay. Did you ever determine why there was a three,
3 four month delay in providing that information?

4 A. No.

5 Q. The response or approval by DHEC of that particular
6 plan, did the Insurance Reserve Fund obtain that
7 information?

8 A. I'm not sure we have the approval part of it. I'm
9 not sure about that.

10 Q. Okay. There's also been put into evidence
11 Plaintiff's Exhibit 38. Let me actually get you to look at
12 that.

13 A. Okay.

14 Q. Are you familiar with that document? And
15 particularly I guess not necessarily the emails that
16 preface it, but the actual last document of that exhibit?
17 I'm referring to that. Have you seen that before today?

18 A. I don't believe so. I don't believe I've seen it
19 before today.

20 Q. Okay. I'll represent to you that testimony you've
21 heard during trial is that was a remediation plan that was
22 submitted to the EPA -- or to DHEC -- may have also been
23 the EPA, I can't recall from the email -- for Mauldin Road
24 and Lower Reedy facilities. In fact, look at the first
25 part of that exhibit and tell me the date that it was

1 emailed?

2 A. April 15th, 2014.

3 Q. Okay. And does it show it going to ---

4 MR. BROWN: Your Honor, the document is in
5 evidence. We believe that's before the Court. Asking a
6 witness that says he's never seen the document questions
7 about it, we think, is inappropriate.

8 THE COURT: How is he going to be able to answer
9 questions if he's never seen the document?

10 MR. LINDEMAN: It's in evidence. I'm just
11 asking him to publish the date that's in evidence, Your
12 Honor.

13 THE COURT: All right. If it's already in
14 evidence, we already know it. You're already a little bit
15 beyond the hour you told me yesterday it was going to take,
16 so let's move on.

17 MR. LINDEMAN: Okay. I thought I said an hour
18 and half, Your Honor, but ...

19 THE COURT: I heard an hour. I think I heard
20 thirty minutes, but I ...

21 MR. LINDEMAN: I'm going to end up in jail;
22 aren't I?

23 THE COURT: Keep going.

24 Q. All right. Mr. Lombard, apparently that document was
25 generated at some point around mid-April of 2014. Did the

1 Insurance Reserve Fund get that document at or around that
2 same time?

3 A. Not that I know of.

4 Q. To your knowledge was that document ever received by
5 the Insurance Reserve Fund prior to this suit being filed?

6 A. No.

7 Q. Is that document significant in any way to you in
8 evaluating this claim?

9 A. It would have been helpful. Yes, it would have been
10 helpful.

11 Q. All right. The information -- the last line of that
12 first paragraph of that exhibit, could you read that into
13 the record, please?

14 A. Last line of the first paragraph?

15 Q. Yes.

16 MR. BROWN: Again, Your Honor, it's in evidence
17 already. He just asked him to read something he doesn't
18 know about.

19 MR. LINDEMAN: I have a question to him ---

20 THE COURT: Go ahead.

21 MR. LINDEMAN: --- about the content of that
22 information.

23 A. ReWa, is that -- does it starts off ReWa does not
24 currently ...

25 Q. Yeah, the last sentence of this background

1 paragraph.

2 A. It states, ReWa does not currently intend to land
3 apply this material, even though current regulations would
4 allow land application.

5 Q. So the representation that ReWa is making in that
6 document, that the current regulations allow land
7 application, was that information, separate and apart from
8 this document being provided to the IRF, was that
9 information ever communicated by any ReWa personnel to the
10 Insurance Reserve Fund?

11 A. Not that I know of.

12 Q. Mr. Lombard, can the IRF as part of the claims
13 process control how and when and by whom repairs are made?

14 A. No.

15 Q. And why is that?

16 A. We insure only government entities. And all
17 government entities have some form of procurement process.
18 So we do not interfere in the procurement process of who
19 they're going to use and that sort of thing.

20 Q. Let me get you to look at the general liability
21 policy real quickly. Let me figure out which exhibit that
22 is. I'm sorry. I meant the building policy. It is ---

23 MR. BROWN: Number 8.

24 MR. LINDEMAN: What is it?

25 MR. BROWN: Plaintiff's 8.

1 MR. LINDEMAN: Plaintiff's 8. Thank you.

2 A. Yes.

3 Q. And if you would turn to page 4 of 7, the loss
4 payment provision.

5 A. Yes.

6 Q. Paragraph 4 a., what is the loss payment provision?

7 A. The loss payment provision simply spells out what --
8 how we would handle payment for the loss.

9 Q. And that's done, it says, at our option.

10 A. Right.

11 Q. So the Insurance Reserve Fund has the option?

12 A. Yes.

13 Q. And it gives four different options?

14 A. Yes.

15 Q. And which of those options would be applicable in
16 this particular case to ReWa's claim?

17 A. It appears that it would be number (2) pay the cost
18 of repairing or replacing lost or damaged property.

19 Q. And then it has an exception subject to (b) below; is
20 that correct?

21 A. Right.

22 Q. Could you read what (b) below says?

23 A. The cost to repair, rebuild or replace does not
24 include the increased cost attributed to the enforcement of
25 any ordinance or law regulating the construction, use or

1 repair of the property.

2 Q. Okay. Is that the loss payment provision that the
3 Insurance Reserve Fund was using to evaluate this claim?

4 A. Yes. It's the applicable one.

5 Q. We talked briefly about the fact that the three
6 segments at issue here didn't have contents coverage.
7 Could you point out in Exhibit Number 8 where there's a
8 discussion of contents coverage?

9 A. Exhibit 8? Okay. I'm sorry.

10 Q. Plaintiff's Exhibit 8 where we were just on, the
11 building and personal policy?

12 A. Okay. Got it. It talks about as b., your business
13 personal property.

14 Q. So contents is a reference to the personal property
15 coverage?

16 A. Correct.

17 Q. All right. Mr. Lombard, does the Insurance Reserve
18 Fund insure sludge or biosolids?

19 A. No.

20 Q. Does the Insurance Reserve Fund -- yesterday Ms.
21 Dennis equated the sludge to inventory. Is inventory
22 something that falls under contents coverage or business
23 personal policy?

24 A. We don't have anything for inventory. There's
25 something called stock and that is part of business

1 personal property.

2 Q. Okay. But none of those facilities had that
3 coverage?

4 A. Right. There's no -- they didn't pay any premium for
5 contents coverage.

6 Q. All right. I'll get you to flip over one page.
7 There's under additional coverages, do you see under d.
8 where it talks pollutant cleanup and removal?

9 A. Yes.

10 Q. What are the requirements as far as -- explain what
11 additional coverages are?

12 A. Additional coverages, the policy itself covers the
13 property in certain types of property. It covers the
14 covered property of certain sort of things. Additional
15 coverages adds a few things back in, usually subject to
16 some sort of limit.

17 Q. All right. With pollutant cleanup and removal, what
18 are the requirements in order to recover under that
19 particular additional coverage?

20 A. Well, it's got to be a covered property. It has to
21 be -- the loss has to be due to a covered cause of loss.
22 It relates to the extraction of pollutants. It talks about
23 that. And then it goes into how much is allowed at each
24 premises.

25 Q. All right. And PCBs are the pollutant?

1 A. Yes.

2 Q. And what is the limits of that coverage?

3 A. Ten thousand per premises.

4 Q. Per segment?

5 A. Yes.

6 Q. Per year?

7 A. Yes.

8 Q. Okay. Was there a reporting requirement, a certain
9 time for reporting?

10 A. As soon as ---

11 Q. No, that's actually contained in this?

12 A. Okay. Within a hundred and eighty days.

13 Q. A hundred and eighty days of what?

14 A. Of the date on which the covered cause of loss
15 occurs.

16 Q. Okay. At some point did the Insurance Reserve Fund
17 offer this pollutant cleanup -- or payment under this
18 additional coverage for pollutant cleanup to ReWa?

19 A. Yes.

20 Q. And how much was offered?

21 A. Ten thousand for three segments for a total of thirty
22 thousand dollars.

23 Q. And at the time that was -- well, was that accepted
24 by ReWa?

25 A. No.

1 Q. Were proofs of loss submitted to ReWa?

2 A. Yes.

3 Q. And were they returned?

4 A. Signed, no.

5 Q. So the payment actually was never made?

6 A. Correct.

7 Q. At the time you offered to make that payment was the
8 Insurance Reserve Fund aware that the first detections of
9 PCBs at Pelham occurred in January of 2013?

10 A. No.

11 Q. January of 2013, would that have been more than a
12 hundred and eighty days prior to the reporting of that
13 loss?

14 A. It would have been an eight-month difference; so yes,
15 it would have been longer.

16 Q. Okay. Speaking of proofs of loss, has ReWa ever
17 submitted a proof of loss for -- I mean we know now that
18 they're claiming 6.2 million dollars. Have they ever
19 submitted a proof of loss for that amount?

20 A. No.

21 Q. Okay. And a proof of loss is something that's sworn;
22 is that correct?

23 A. Correct.

24 Q. Is that standard operating procedure in the property
25 industry?

1 A. Yes.

2 Q. That's not something the Insurance Reserve Fund
3 created; is it?

4 A. No.

5 Q. Private insurers use proofs of loss, as well?

6 A. All the time.

7 Q. There's been a discussion about that the Insurance
8 Reserve Fund would be entitled to a setoff -- we've got
9 conflicting numbers -- but somewhere between 2.5 and 2.6
10 million dollars. Are you aware of that testimony during
11 this trial?

12 A. Yes.

13 Q. Okay. Was there ever a discussion prior to suit
14 being filed during the claims process where ReWa advised
15 the Insurance Reserve Fund that they would be entitled to
16 any type of setoff from the amount of expenses that were
17 submitted?

18 A. No.

19 Q. Did ReWa ever advise the Insurance Reserve Fund prior
20 to the lawsuit being filed that the expenses that they were
21 accumulating to remediate the three facilities had ended,
22 were over?

23 A. My recollection is the numbers seem to keep going up,
24 so I guess no.

25 Q. So you received updates and those numbers kept going

1 up?

2 A. Yes.

3 Q. All right. And from -- did those expenses continue
4 into 2016?

5 A. To the best of my recollect; yes.

6 Q. Okay. Let me get you to look real quick at
7 Plaintiff's Exhibit 100.

8 MR. LINDEMAN: Very close, Your Honor.

9 THE COURT: Oh, I'm watching, you know.

10 MR. LINDEMAN: I feel like a golfer that's going
11 to be put on the clock or something. I apologize, Judge.

12 Q. I'd ask you to turn to -- what is that exhibit? I'll
13 just represent, is that the spreadsheet that was submitted
14 into evidence by ReWa? Spreadsheet of expenses?

15 A. It's a spreadsheet of expenses; yes.

16 Q. All right. Can you turn to the very last page of
17 it?

18 MR. BROWN: Again, Your Honor, he's asking him
19 to read a document that he's not familiar with to establish
20 something that's already in the record.

21 THE COURT: Well, let's see where he's heading
22 with it.

23 MR. LINDEMAN: Just publishing to make my
24 questions make sense, Your Honor. I do it all the time. I
25 know we're not in front of a jury, but if it's in evidence

1 anybody can publish it.

2 THE COURT: Ask the question. That might ---

3 Q. The question is, do you see the last few expenses
4 there on that list? Do you see the date of the expenses?

5 A. Yes.

6 Q. All right. And you know the lawsuit was filed on
7 October 17th, 2016; correct?

8 A. Yes.

9 Q. Any of those expenses after the date the lawsuit was
10 filed?

11 A. I show three.

12 Q. Okay. And those are part of -- what's the total of
13 that document, total amount of money?

14 A. Eight million seven hundred fifty-one thousand eight
15 hundred forty-nine dollars and sixty cents.

16 Q. So those expenses that are listed as after the date
17 the lawsuit was brought is part of that 8.7 million?

18 A. Yes.

19 Q. We talked briefly about the tort policy. I think you
20 indicated that the letter from Mr. Manos raised the tort
21 policy for the first time; is that correct?

22 MR. BROWN: Your Honor, I'm going to object to
23 the leading. I've been trying to be lenient.

24 THE COURT: Rephrase the question, please, sir.

25 Q. Mr. Lombard, when was -- in your review of the file

1 when was the first time that ReWa raised the tort policy?

2 A. It was in a letter from Mr. Manos.

3 Q. Okay. Is there a reason why the Insurance Reserve
4 Fund didn't process this under the tort policy during the
5 claims process?

6 A. Two obvious reasons, the first being there was no
7 third party making any sort of claim or lawsuit or anything
8 else against ReWa; and the second is the tort policy has an
9 own property exclusion, which means you can't make a claim
10 for your own property under a tort policy.

11 Q. Did ReWa ever make the Insurance Reserve Fund aware
12 of any type of lawsuit that was brought as far as --
13 involving PCB contamination?

14 A. No.

15 Q. Did ReWa ever make the Insurance Reserve Fund aware
16 of any enforcement action that was brought by either the
17 EPA or DHEC?

18 A. No.

19 Q. Did ReWa ever inform the IRF that either DHEC or EPA
20 had threatened an enforcement action?

21 A. No.

22 Q. Did ReWa ever request the assistance of defense
23 counsel during the claims process?

24 A. No.

25 MR. LINDEMAN: Court's indulgence. No further

1 questions. Thank you, Mr. Lombard.

2 THE COURT: Mr. Brown, how long do you
3 anticipate your cross?

4 MR. DEVLIN: Ten minutes?

5 MR. BROWN: I would expect it to be in the
6 forty-five minutes to an hour range.

7 THE COURT: All right. I'm fine if y'all want
8 to take a ten minute break now.

9 MR. BROWN: I would prefer a break, Your Honor.

10 MR. LOMBARD: That would be helpful. Thank you.

11 MR. LINDEMAN: Thank you.

12 THE COURT: Okay. We'll take a ten minute
13 break.

14 (WHEREUPON, Court stood at recess for a short break.)

15 THE COURT: All right. Your witness.

16 MR. BROWN: Thank you, Judge. I'm going to hand
17 up a notebook of exhibits that we'll use with Mr. Lombard.

18 THE COURT: All right. Thank you.

19 **CROSS EXAMINATION**

20 **BY MR. BROWN:**

21 Q. Mr. Lombard, I think you addressed it, but you
22 understand that the claims here involve damage to three
23 separate ReWa facilities; correct?

24 A. Correct.

25 Q. The Pelham facility, the Lower Reedy facility and

1 Mauldin facility?

2 A. Correct.

3 Q. And you personally haven't visited any of those
4 facilities?

5 A. Correct.

6 Q. In terms of the reporting of this particular claim,
7 turn with me to Exhibit 48. And I think you were asked to
8 look at this in your direct. But you would agree that on
9 September 24th this damage was reported to ReWa (verbatim)
10 through an email?

11 A. Was reported from ReWa.

12 Q. Excuse me. It was reported to IRF from ReWa?

13 A. Yes.

14 Q. In an email?

15 A. Correct. I agree.

16 Q. And at that time the IRF didn't say, hey, an email is
17 an incorrect format to submit this; did they?

18 A. No.

19 Q. And in fact, it was sent to Ms. Camp who you said is
20 in the tort department?

21 A. Correct.

22 Q. And Ms. Camp said, I'll send it on to the people to
23 get this set up?

24 A. Correct.

25 Q. Essentially. And then on -- and that was -- Ms.

1 Camp's response was September 25th; correct?

2 A. Correct.

3 Q. And then two weeks later Ms. Dennis at ReWa responds
4 back saying, just checked on this. I haven't heard
5 anything. Is that right?

6 A. Correct.

7 Q. And then ultimately at the top, Nelson Chandler notes
8 that the -- Mr. Anderson will be assigned the claim and
9 we'll be getting in touch with you?

10 A. That is correct.

11 Q. The email between there from Mr. Abromaltis on
12 October 10th; do you see that one?

13 A. Yes.

14 Q. And Patricia Dennis is not copied on that
15 communication; is she?

16 A. Correct.

17 Q. That's an internal communication within the IRF;
18 correct?

19 A. That is correct.

20 Q. And Mr. Chandler is, you said, Mr. Anderson's boss?

21 A. Right. He was the District Claims Manager and Jerry
22 reported to him.

23 Q. And Mr. Abromaltis you said was -- is he essentially
24 Mr. Chandler's equivalent in the Tort Department?

25 A. Yeah. He oversaw Mr. Chandler, too.

1 Q. Okay. So he was Mr. Chandler's boss?

2 A. Correct.

3 Q. And then you have Mr. Elledge and Ms. Camp, both of
4 whom are IRF personnel?

5 A. Correct.

6 Q. And in that email from Mr. Abromaltis to Mr.
7 Chandler, it states, I believe that you -- meaning Mr.
8 Chandler? That's directed to Mr. Chandler?

9 A. Say that again.

10 Q. I believe that you -- that you would be ---

11 A. Oh, you're reading from -- I'm sorry. That's good.

12 Q. That you would be Mr. Chandler?

13 A. Yes.

14 Q. So I believe that you, Mr. Chandler, Jerry and I -- I
15 being Mr. Abromaltis -- had a brief discussion? Is that
16 correct?

17 A. Correct.

18 Q. About this case when it first came in, so that would
19 have been in roughly the end of September they had this
20 discussion; correct?

21 A. Correct.

22 Q. And that discussion stated there was likely no
23 coverage; is that right?

24 A. Correct.

25 Q. Based upon a similar case that Jerry was handling.

1 That would be the Spartanburg PCB contamination case?

2 A. I would assume that's what he's referring to.

3 Q. And then there's a parenthetical that says, no direct
4 physical damage?

5 A. Correct.

6 Q. And so the basis upon which the internal IRF
7 communications was in, at least by October 10th, was that
8 there was no coverage because of no direct physical
9 damage?

10 A. Likely no coverage.

11 Q. And this was before the claim file had ever been set
12 up; correct?

13 A. Correct.

14 Q. All right. If you'll turn over to Exhibit 49. This
15 would have actually been the letter that the IRF created to
16 acknowledge that a claim had been established, claim file
17 had been established; correct?

18 A. Correct. The claim acknowledgment letter.

19 Q. Okay. And this would have been -- this would have
20 provided the claim number there in the re line. That would
21 have been the first that IRF would have provided a claim
22 number to ReWa to note in communications; correct?

23 A. Correct.

24 Q. And in fact, although we have established that the
25 IRF knew there are three separate locations at issue, only

1 one claim number was created; right?

2 A. Correct.

3 Q. In terms of administering a claim, the IRF doesn't
4 have any policies or procedures to ensure that
5 determinations of coverage are being made consistently; do
6 they?

7 A. No written policy or procedure.

8 Q. And the IRF doesn't have any training program or
9 anything to ensure that coverage determinations are being
10 made consistently with or according to interpretation or
11 authority?

12 A. Correct. No training program.

13 Q. In terms of damage, which is covered -- the term
14 damage is not a defined term within the building policy; is
15 it?

16 A. Correct.

17 Q. Let me have you turn to Exhibit 50. Exhibit 50 is
18 already in evidence. That is a report from Fred Young, who
19 you identified as the outside adjustor that was hired by
20 the IRF?

21 A. Correct.

22 Q. And as we noted from Exhibit 49, Exhibit 49, the
23 claim was acknowledged by a letter dated October 11th.
24 This is October 15th, 2013. So just a couple of days
25 later; correct?

1 A. Correct.

2 Q. And if you look on the second page of this, there is
3 a section entitled property damage. Do you see that
4 section?

5 A. Yes.

6 Q. And in that statement or in that section, Mr. Young
7 makes the statement, at the present time, it is not -- and
8 he uses all capitals for not -- clear if there is any
9 property damage or not. Do you see that statement?

10 A. Yes.

11 Q. And then Fred Young's evaluation of this claim, you
12 would agree the IRF did not provide Mr. Young with a
13 definition of property damage to use?

14 A. No.

15 Q. And if, in fact, Fred Young testified in his
16 deposition that the way he defined that was that he was
17 looking for PCBs to cause some specific physical damage to
18 where it either caused the machine to fail or if there's
19 some kind of physical damage that they had to stop and
20 repair? Is that a proper definition?

21 A. Yeah.

22 THE COURT: Hold on.

23 MR. LINDEMAN: Objection. Pitting witnesses
24 against each other, Your Honor. Plus Mr. Young is not an
25 employee of the Insurance Reserve Fund. He was hired as an

1 independent adjustor for this ---

2 THE COURT: Why is that not pitting one against
3 the other?

4 MR. LINDEMAN: I'm not sure what the relevance
5 of Mr. Young's thoughts would be anyway. But it is pitting
6 witnesses.

7 MR. BROWN: He's asked -- he said that they
8 don't have a definition of damages; it's not defined in the
9 policy. I'm just asking you if the definition that Mr.
10 Young used is appropriate under the way the IRF would use
11 it?

12 THE COURT: Go ahead.

13 A. Could you say that again? I'm sorry, Mr. Brown.

14 Q. The definition that Mr. Young used was he was looking
15 for PCBs to cause some specific physical damage to where it
16 either caused the machine to fail or if there's some kind
17 of physical damage that had to stop and be repaired. Is
18 that a correct definition for IRF purposes?

19 A. I think on his part that's a fairly accurate
20 description.

21 Q. And similarly, you testified that Mr. Byers was a
22 representative or claims adjustor internally at the IRF who
23 was involved in this claim; correct?

24 A. Correct.

25 Q. And with Mr. Byers, we asked him the same question

1 about what damage was in terms of his activity. If he used
2 the definition that damages is something where they're not
3 able to use it anymore, do you think that's an appropriate
4 definition of damages?

5 MR. LINDEMAN: Same objection, Your Honor.

6 THE COURT: All right. Same ruling.

7 A. Partially.

8 Q. And since the term damage is not a defined term in
9 the policy, you would just tend to use its plain and
10 ordinary meaning; correct?

11 A. We would use the meaning that would -- we would
12 normally use; that's correct. We would.

13 Q. Do you think that's different than the plain and
14 ordinary meaning of the word?

15 A. The part about direct physical loss or damage.

16 Q. All right. And in that ---

17 A. Since it's not simply damage. It's direct physical
18 loss or damage.

19 Q. And in that statement, direct and physical are
20 adjectives that modify loss or damage; correct?

21 A. They modify both of them; yes.

22 Q. And so you would have to know what a loss was and a
23 damage was in order to apply those modifiers to them;
24 wouldn't you?

25 A. Say that again, please.

1 Q. In the statement or in the phrase, direct physical
2 loss of or damage to, direct and physical are adjectives
3 that modify loss and damage; correct?

4 A. Correct.

5 Q. And so in order to apply that phrase, you have to
6 know a definition of damage and loss to apply the
7 adjectives to them; don't you?

8 A. I think it's a common term.

9 Q. I'm going to ask you to look with me at Exhibit 86.
10 That's a dictionary definition from dictionary.com of
11 damage. Do you see that?

12 A. Yes.

13 Q. And the dictionary definition would be injury or harm
14 that reduces value or usefulness? Is that the definition
15 of usefulness for the damage that the IRF used?

16 A. We don't use this as a definition of damage.

17 Q. All right. That's the plain and ordinary meaning of
18 damage per a dictionary. Why don't you use the dictionary
19 definition of damage?

20 A. Because as you pointed out, it's direct physical.
21 It's direct physical damage. It's not damage.

22 Q. You have to first have an understanding of what
23 damage is before you can add adjectives to it, though. And
24 I thought we just agreed to that.

25 A. No. I think you have -- damage can have an ordinary

1 meaning, but with direct physical on top of it, injury that
2 reduces value or usefulness does not appear to fall into
3 direct physical.

4 Q. So you believe that the adjectives direct and
5 physical mean that if something is -- let me stop there.
6 So if something reduces the value or usefulness of it, it
7 is damage? Is that fair?

8 A. You could have damage; yes.

9 Q. And let me just ask you quickly, number 87 is another
10 dictionary definition of damage just to make sure we're
11 still on the same page.

12 MR. LINDEMAN: Your Honor, before he goes there,
13 I've been kind of sitting back being lenient about this,
14 but as we've discussed through the case, the interpretation
15 of the policy is going to be an issue of law for the Court,
16 so I'm not real clear on why we're spending so much time
17 ---

18 THE COURT: I'm assuming he's talking about
19 under the case law where it says you give words that aren't
20 defined a plain and ordinary meaning.

21 MR. LINDEMAN: And obviously, again, that's a
22 determination for the Court, not for a witness to
23 interpret.

24 MR. BROWN: But ---

25 THE COURT: All right. Let's move on, Mr.

1 Brown.

2 MR. BROWN: Your Honor, the point that we make
3 is if they're applying a tortured reading of the policy in
4 order to avoid coverage, that goes to bad faith as well as
5 ---

6 THE COURT: Go ahead.

7 MR. BROWN: Thank you, Your Honor.

8 Q. Looking at Exhibit 87, that's another from the Oxford
9 English Dictionary. It says that damage is physical harm
10 that impairs the value, usefulness or normal function of
11 something.

12 MR. LINDEMAN: I thought Your Honor just
13 indicated he needed to move on from this line of
14 questioning.

15 THE COURT: I meant move on to get his question
16 over with so we could move on to something more relevant.

17 MR. LINDEMAN: Obviously, I misunderstood you.

18 THE COURT: All right. I didn't do a good job
19 of making a clear ruling.

20 A. What's the question? I mean I see it right here in
21 the Exhibit 87.

22 Q. Okay. Is that consistent with the definition of
23 damage that the IRF used in its efforts to ---

24 A. We don't use this as our definition of damage.
25 Direct physical loss or damage. Direct physical damage is

1 what we're using here. And you're taking part of that and
2 trying to use part of it; not the whole term. I understand
3 why. But not the whole term. That's fine.

4 Q. But going back to the point I think we've made twice
5 now. Physical and direct are adjectives that modify
6 damage; correct?

7 A. It tells you the type of damage, direct physical
8 damage.

9 Q. So you have to have a definition of damage to start
10 with before you can apply those adjectives to it; don't
11 you?

12 A. I'm not sure I agree with that or not, the way you're
13 saying it. It's a single phrase. You don't break up the
14 phrase into three different parts. I know this may be an
15 English class type thing. Maybe that's what you're talking
16 about. But direct physical damage is what we're talking
17 about; not a damage from a dictionary taken off the
18 internet or something like that.

19 Q. So you don't believe that you can use a dictionary
20 definition of damage in your claims adjudication, is what
21 you're saying?

22 A. Because it's direct physical damage; not damage.

23 MR. BROWN: Your Honor, just for the record 86
24 and 87 are dictionary definitions. We believe ---

25 THE COURT: I understand.

1 MR. BROWN: --- under Rule 201 that they may not
2 necessarily come in as evidence, but that the Court can
3 take judicial notice of them ---

4 THE COURT: I've noticed them. I've looked at
5 them both, so we can move on.

6 MR. BROWN: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 Q. Let me ask you to turn with me to Exhibit 85.

9 MR. BROWN: And that's stipulated in evidence
10 already.

11 Q. You would agree these are the notes from the IRF
12 file?

13 A. Right.

14 Q. And the adjustors are supposed to document any
15 activity in the file so there's a record that IRF can look
16 back at as to what's happened in the claim process?

17 A. Correct.

18 Q. And if you look at the second entry in this as I read
19 it -- maybe it's the third. I guess it's the third. I
20 apologize -- it shows date 10/17/2013?

21 A. Correct.

22 Q. And entered by Anderson; that would be Jerry
23 Anderson?

24 A. That would be correct.

25 Q. Below that it says, update October 15th, 2013?

1 A. Correct.

2 Q. So that would be information he obtained in that
3 fifteen to seventeen range?

4 A. Yeah. I think it's referring to Fred's report. It
5 says Fred's report. That would be Mr. Young's.

6 Q. All right. And in it he says, in the second line, if
7 no permanent damages occur as a result of cleaning, then no
8 claim will ensue. Do you see that?

9 A. I see that.

10 Q. And that was a statement of determination made by Mr.
11 Anderson at least by October 17th, 2013 when he entered
12 this into the notes?

13 A. Correct.

14 Q. Is permanent damage a term within the policy?

15 A. No.

16 Q. If you look over on page three here, after we sort of
17 go through -- chronologically this goes through till an
18 entry about three-quarters of the way down the page dated
19 10/6/2014 ---

20 A. Correct.

21 Q. --- by Mr. Byers. Do you see that?

22 A. Yes.

23 Q. Actually there are a couple of those by that date,
24 but I'm looking at the first one, so I apologize for any
25 confusion there.

1 A. No, that's fine.

2 Q. And it's a file note entered by Mr. Byers who says,
3 it's my understanding that we will only be offering limited
4 coverage under the vandalism cap for this loss.

5 A. Yes.

6 Q. Do you see that?

7 A. Yes.

8 Q. The policy doesn't contain a vandalism cap; does it?

9 A. No.

10 Q. Let me back up about -- while we're walking through -
11 - when the determinations were made by ReWa about what
12 would be provided and make sure that's clear. Turn with me
13 to Exhibit 54. Exhibit 54, the top email is an email to
14 the IRF outside adjustor from Ms. Dennis asking if there
15 had been any decision regarding coverage?

16 A. Correct.

17 Q. And this is in February of 2014; correct?

18 A. Yes.

19 Q. And as of that time, no coverage determination had
20 been stated ---

21 A. Correct.

22 Q. --- to ReWa?

23 A. Correct.

24 Q. And then if you look over at number 70, this is an
25 internal communication between Mr. Young and Mr. Anderson

1 or a communication between the outside adjustor and the
2 inside adjustor for the IRF; correct?

3 A. That's correct.

4 Q. And again, this is talking about the amount of the
5 damage information that had been provided by ReWa and says
6 that an evaluation of those would have to be decided upon
7 coverage determination. So as of June of 2014, coverage
8 determination hadn't been reported to ReWa?

9 A. That is correct.

10 Q. And if the IRF determines that there's not coverage
11 for a particular thing, isn't the IRF's policy to issue a
12 written determination of coverage?

13 A. If there's no coverage?

14 Q. Yes?

15 A. We would send a denial letter if there was no
16 coverage.

17 Q. You were asked some questions about proof of loss.
18 Let me ask you to turn to 74 and ask you a couple of
19 questions about proof of loss. Number 74 is in evidence,
20 and it is a communication between Fred Young and Rob Byers,
21 the outside adjustor and at that time inside adjustor for
22 the IRF; correct?

23 A. That is correct.

24 Q. And in that Fred Young says that Jerry said he sent
25 them -- them being ReWa?

1 A. I assume that's what he means.

2 Q. Proofs for ten thousand for each unit involved. Do
3 you see that?

4 A. Yes.

5 Q. And this is dated October 6th, 2014?

6 A. Correct.

7 Q. And that wasn't true; was it? Jerry hadn't done
8 that; had he?

9 A. No. I think what this refers to is -- I can't speak
10 for Jerry. I just think he's thinking the Spartanburg case
11 at that time.

12 Q. And in fact, if you turn to Exhibit 81, 81 is dated
13 December 4th, 2014; correct?

14 A. Correct.

15 Q. Several months after that email we just looked at?

16 A. Correct.

17 Q. And in it Mr. Byers is noting that he has prepared
18 proofs of loss and is forwarding the proofs of loss to
19 ReWa?

20 A. Correct.

21 Q. Let me ask you to turn with me to Exhibit 77. This
22 is a letter dated October 30th, 2014. It's a letter that
23 was sent by Rob Byers. Do you see that?

24 A. Correct.

25 Q. And the subject says coverage position letter. Do

1 you see that?

2 A. Correct.

3 Q. And that coverage position letter from the IRF's
4 claims adjustor relates to the claim for the PCB
5 contamination at the three ReWa facilities; doesn't it?

6 A. Yes. The claim number matches with that.

7 Q. Just as a matter of clarification, in the second
8 sentence it says, we received notice of your claim on
9 October 11th, 2014. That's not correct; is it?

10 A. No. It's got the wrong year. It's '13.

11 Q. And in fact, you received notice in September of
12 2013. The claim was actually opened October 11th of 2013?

13 A. Correct.

14 Q. And if you will look down into the fourth paragraph
15 here, there is a sentence that ends that the damages were
16 due to vandalism. Do you see that?

17 A. Correct.

18 Q. And vandalism is part of the definition of a covered
19 cause of loss under this policy; isn't it?

20 A. I think it's under special causes of loss. But it's
21 under that ...

22 Q. And the special cause of loss form is what applies to
23 this policy; isn't it?

24 A. Correct.

25 Q. And the letter specifically offers ten thousand

1 dollars per segment under the additional coverage for
2 pollution cleanup?

3 A. That's correct.

4 Q. The letter does not address anything about whether
5 the buildings, tanks, digesters, equipment, materials, of
6 ReWa are not damaged? It doesn't say that; does it?

7 A. In other words you -- say that again. I mean the --
8 I think I understand the ---

9 Q. This letter does not tell ReWa that there's no
10 physical damage, there's no direct physical damage, there's
11 no loss ---

12 A. Oh, yeah, you're correct. There's no denial of other
13 things. This is saying we know there is coverage for
14 something and this is what it is.

15 Q. And this doesn't give any reason why other damages
16 submitted by ReWa aren't being paid?

17 A. It doesn't talk about other damages.

18 Q. And it does not address any exclusions of coverage
19 which ---

20 A. Correct. This is not a denial letter. Correct.

21 Q. And in the claim process in terms of letters from IRF
22 employees to ReWa, this is the only one that provides a
23 coverage position; isn't it?

24 A. I believe so.

25 Q. Let's talk about some of the coverage terms of the

1 policy. So let's turn to Exhibit 8. And I think you've
2 already said this is the building policy at issue; correct?

3 A. It's the form; correct.

4 Q. This is the language you have to look at to determine
5 coverage; correct?

6 A. Correct.

7 Q. And the primary coverage is identified in the
8 coverage A paragraph; correct?

9 A. Right.

10 Q. And you would agree that if PCBs caused direct
11 physical loss of or damage to covered property, which is at
12 a proper location, then this policy provides coverage for
13 that damage or loss?

14 A. Subject to the other parts of the policy.

15 Q. And sort of breaking down the coverage, you've
16 already talked about it requires direct physical loss of or
17 damage to property; correct?

18 A. To covered property; not to property.

19 Q. It requires direct physical loss or damage; correct?

20 A. Loss of or damage to the covered property.

21 Q. And then the property must be covered property?

22 A. Correct.

23 Q. And the covered property must be at a location that's
24 identified on the declaration pages?

25 A. Right.

1 Q. And then the loss has to be a covered cause of loss?

2 A. Correct.

3 Q. And I think we've already addressed that the IRF
4 acknowledges that vandalism is a covered cause of loss?

5 A. We agree with that.

6 Q. And so that requirement is established?

7 A. That's correct.

8 Q. And just to make sure the record is clear on that.
9 If you look at Exhibit 9 that's the cause of loss special
10 form?

11 A. Correct.

12 Q. And if you look on the last page of Exhibit 9, the
13 definition of what are specified causes of loss includes
14 vandalism; correct?

15 A. Correct.

16 Q. And in terms of what is covered property, you would
17 agree that the tanks, the digesters, the pumps, the
18 structures at the wastewater treatment plants are covered
19 property?

20 A. Correct.

21 Q. And I think we looked at this briefly or you looked
22 at this briefly. Or you looked at this briefly in your
23 direct. But if you look at Exhibit 2, which is an example
24 of the declaration page, the Pelham Road facility is
25 identified as a location on the declaration page as segment

1 90; correct?

2 A. Correct.

3 Q. And Lower Reedy plant is identified as segment 130 on
4 the declaration page?

5 A. Right.

6 Q. And Mauldin Road is identified as segment 140 on the
7 declaration page?

8 A. That is correct.

9 Q. So that requirement of coverage A is also met, that
10 they be at the location identified ---

11 A. That's correct.

12 Q. And while we're looking at the dec page real quick,
13 the dec page identifies the amount of coverage limit of
14 insurance; right?

15 A. Correct.

16 Q. And here, just for example, the Pelham facility is
17 insured for over eighty-seven million dollars?

18 A. Correct.

19 Q. And the Lower Reedy facility is insured for over
20 forty-three million dollars?

21 A. Correct.

22 Q. And the Mauldin Road facility is insured for over a
23 hundred and twenty million dollars?

24 A. With one note to that. The policy period submitted
25 here is not the correct one. Whether that is the same

1 amount as the correct one, I don't know, looking at this.

2 Q. But any one of these facilities has far more
3 insurance coverage than what this claim is?

4 A. The covered property; yes.

5 Q. Yes. If a vandal spray paints on a wall of a covered
6 building, you would agree that that is damage to the
7 building under the policy?

8 A. Speculatively, yes, it would sound like it.

9 Q. Because that building has been altered in some way?

10 A. It's been defaced.

11 Q. And you would have to remove that paint that's
12 adhered to the wall?

13 A. Would be one method of doing it.

14 Q. Specifically you pointed to the additional coverage
15 in your direct or pollutant cleanup and removal.

16 A. What page are you referring to? What exhibit?

17 Q. Just in your direct you were asked questions about
18 the additional coverage for pollutant cleanup and removal;
19 correct?

20 A. Yes.

21 Q. And in fact, that is a coverage that the October
22 30th, 2014 letter identifies as being applicable?

23 A. Correct.

24 Q. And if you'll look at the second page of Exhibit 8,
25 the pollutant cleanup is on the right hand column under

1 paragraph d. Do you see that?

2 A. Yes.

3 Q. And it begins saying, we will pay for expense to
4 extract pollutants from the land or water. Do you see
5 that?

6 A. Correct.

7 Q. Is land a defined term?

8 A. They talk about it up here, including land on the
9 property; yes. It's not defined, but they have a further
10 description of it under age, if you look at it.

11 Q. But the term land is not a defined term?

12 A. Correct.

13 Q. And in fact, based upon all your knowledge, none of
14 the PCBs got out of the tanks and onto the land of the
15 facilities; did it?

16 A. As far as we know; no.

17 Q. In terms of water, no body of water got PCBs in it
18 either; did it?

19 A. I think this refers to water on your property. But
20 no, I don't know of any.

21 Q. And I think you were here when Mr. Finneran, your
22 expert, testified. He said that sludge is not water.

23 A. If he said that, he said that.

24 Q. You were asked some questions on page 4 about the
25 loss payment provision?

1 A. Yes.

2 Q. And specifically subpart b. ---

3 A. Yes.

4 Q. --- in there, and saying that the cost does not
5 include increased costs attributable to enforcement of any
6 ordinance or law. And then it applies a qualifier to what
7 types of ordinance and laws; doesn't it?

8 A. When you say qualifier, what do you mean?

9 Q. It says -- it doesn't stop an ordinance or law; does
10 it?

11 A. No. It says -- no.

12 Q. It says, those ordinance and law which regulate the
13 construction, use or repair of any property?

14 A. Correct.

15 Q. And the ordinance and laws regarding environmental
16 requirements are not related to construction or repair of
17 property; are they?

18 MR. LINDEMAN: Your Honor, again, I think that's
19 a construction issue for the Court. That's a legal
20 question.

21 THE COURT: I understand. Let's move on.

22 Q. With regard to the tort policy, you would agree that
23 October letter doesn't address the tort policy at all;
24 October 2014 letter?

25 A. Which is -- what exhibit is that?

1 Q. That is Exhibit 77.

2 A. Correct. Wait a minute. 77?

3 Q. 77. October 30th, 2014 letter from Rob Byers.

4 A. Oh, I've got it. Thank you.

5 Q. Let me back up. Actually there's one other issue I'd
6 like to go back to you with Exhibit 8. And if you look at
7 the beginning -- or the top headers of Exhibit 8, it says
8 throughout the policy the words you and your means the
9 named insured. So you would be ReWa?

10 A. Yes.

11 Q. And if you look over to page number 4, at the bottom,
12 in the left hand column, there's a category that starts
13 number 3, duties in the event of loss or damage.

14 A. Page 4?

15 Q. 4.

16 A. Yes, I got it.

17 Q. Page 4 of the policy. Duties in the event of loss or
18 damage. Do you see that?

19 A. Yes.

20 Q. And again, here loss and damage are not modified by
21 direct or physical; are they?

22 A. No.

23 Q. Number subpart (4) there at the bottom, it says -- or
24 part a. says you must, and then there's a list of thing.

25 So part (4) says take all reasonable steps to protect the

1 covered property from further damage. Do you see that?

2 A. Yes.

3 Q. And then it says, and keep a record of your expenses
4 necessary to protect the covered property. Do you see
5 that?

6 A. Correct.

7 Q. And ReWa's efforts to do that are consistent -- would
8 be consistent with this policy language; correct?

9 A. I can't speak to why they collected all the
10 information they did.

11 Q. But the policy directs them to take all reasonable
12 steps to protect the covered property; correct?

13 A. Right. The covered property being the building
14 structures; not the sludge.

15 Q. From further damage?

16 A. Not the sludge; correct?

17 Q. The covered property?

18 A. As I understand it; correct. The covered property;
19 correct.

20 Q. And as far as you're aware, before the coverage
21 position letter was issued, neither Mr. Anderson nor Mr.
22 Byers contacted ReWa to state that the IRF contended that
23 there were items within their categorizations that were
24 improper; did they?

25 A. Define improper.