

May 24, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
JOHNS MANVILLE, a Delaware	)	
corporation,	)	
	)	
Complainant,	)	
	)	
vs	)	PCB 14-3
	)	
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

 ORIGINAL

TRANSCRIPT FROM THE PROCEEDINGS  
 taken before HEARING OFFICER BRADLEY HALLORAN  
 by LORI ANN ASAUSKAS, CSR, RPR, a notary public  
 within and for the County of Cook and State of  
 Illinois, in Room 9-034 at the James Thompson  
 Center, 100 West Randolph Street, Illinois,  
 on the 23rd day of May 2016, A.D., at 9:00  
 o'clock a.m.

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STATE OF ILLINOIS  
Pollution Control Board

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,  
3 100 West Randolph Street  
4 Suite 11-500  
5 Chicago, Illinois 60601  
6 (312) 814-6983  
7 BY: MR. BRADLEY HALLORAN,

8  
9 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:  
10 Ms. Jennifer A. Burke, Board Member  
11 Ms. Carrie Zalewski, Board Member

12  
13 BRYAN CAVE, LLP,  
14 161 North Clark Street  
15 Suite 4300  
16 Chicago, Illinois 60601-3315  
17 (312) 602-5079  
18 susan.brice@bryancave.com  
19 lauren.caisman@bryancave.com  
20 BY: MS. SUSAN BRICE and  
21 MS. LAUREN J. CAISMAN,

22  
23 Appeared on behalf of the Complainant;

24  
25 OFFICE OF THE ATTORNEY GENERAL,  
26 STATE OF ILLINOIS  
27 69 West Washington Street  
28 Suite 1800  
29 Chicago, Illinois 60602  
30 (312) 814-3153  
31 emcginley@atg.state.il.us  
32 eolaughlin@atg.state.il.us  
33 BY: MR. EVAN J. MCGINLEY and  
34 MS. ELLEN F. O'LAUGHLIN,

35  
36 Appeared on behalf of the Respondent.

1 A P P E A R A N C E S: (Continued)

2

ALSO PRESENT:

3

Mr. William Clinton, Johns Manville

4

Mr. Douglas G. Dorgan, Jr., Weaver Consultants Group

Mr. Matt Dougherty, IDOT

5

Mr. Tatsuji Ebihara, AECOM

Mr. Joseph R. Fortunato, Jr., Momkus, McCluskey, LLC

6

Mr. Steven Gobelman, P.E., Andrews Engineering, Inc.

Mr. Jonathan Huff, Extern

7

Mr. Duncan Lampfear, Extern

Mr. Daniel May, Illinois Pollution Control Board

8

Mr. Matt Powell, Illinois Pollution Control Board

Ms. Marie Tipsord, Illinois Pollution Control Board

9

Mr. Brent A. Tracy, Johns Manville

Ms. Susan Watkins, Bryan Cave

10

Ms. Amy Zayez, Extern

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23	(Complainant Exhibit 37 admitted into evidence and can be shown on Page 19 of the transcript.)	
24		

1 HEARING OFFICER HALLORAN: Good  
2 morning, everyone. My name is Brad Halloran.  
3 I'm the hearing officer with the Illinois  
4 Pollution Control Board. This case is entitled  
5 Johns Manville, complainant versus IDOT,  
6 respondent, Case No. PCB 14-3.

7 We are in day two of a full  
8 hearing. We started yesterday, May 23rd, in  
9 Room 9-31. Today we are in 9-34. It's been  
10 noticed up appropriately.

11 Today, again I'm pleased to  
12 announce we have Member Burke. We have Member  
13 Zaleski. We have Daniel Robertson, staff attorney.  
14 We have Senior Attorney Mark Powell and interns  
15 that are participating.

16 With that said, Johns Manville  
17 requested that they call a witness regarding --  
18 I think Ms. Giannelli. Ms. Brice, do you care to  
19 address that, please?

20 MS. BRICE: Yes. We would just  
21 like to call Ms. Giannelli to authenticate Exhibit  
22 No. 37.

23 HEARING OFFICER HALLORAN: Any  
24 objection?

1 MS. BRICE: And lay a foundation for  
2 admissibility.

3 HEARING OFFICER HALLORAN: What  
4 exhibit is that?

5 MS. BRICE: Exhibit 37.

6 HEARING OFFICER HALLORAN: Any  
7 objection, Mr. McGinley?

8 MR. MCGINLEY: No. That's fine.

9 HEARING OFFICER HALLORAN: You may  
10 proceed, Ms. Brice or Ms. Caisman.

11 MS. CAISMAN: Johns Manville calls  
12 Vincenza Jeanette Giannelli.

13 Ms. Giannelli --

14 HEARING OFFICER HALLORAN: The court  
15 reporter will swear her in. I'm sorry.

16 MS. CAISMAN: That's my fault. I'm  
17 getting ahead of myself here.

18 THE COURT REPORTER: Would you raise  
19 your right hand, please?

20 Do you swear the testimony  
21 you're about to give is the truth, the whole truth  
22 and nothing but the truth, so help you God?

23 MS. GIANNELLI: Yes.

24 (Witness sworn.)

1 WHEREUPON:

2 V I N C E N Z A G I N A G I A N N E L L I  
3 called as a witness herein, having been first duly  
4 sworn, deposeth and saith as follows:

5 D I R E C T E X A M I N A T I O N

6 by Ms. Caisman

7 Q. Ms. Giannelli, could you please  
8 introduce yourself to everyone in the room?

9 A. Sure. My name is Vincenza Gina  
10 Giannelli. I go by Gina Giannelli. Everyone  
11 in business knows me as Gina.

12 Q. Who do you currently work for?

13 A. I work for Chicago Title Insurance  
14 Company.

15 Q. And how long have you been with  
16 Chicago Title?

17 A. Thirty and a half years.

18 Q. What is your title?

19 A. I am state counsel and VP.

20 Q. What are your rules and  
21 responsibilities in connection with that title?

22 A. I work in the commercial operation  
23 for the -- our operation is basically the city  
24 of Chicago and the suburbs. As state counsel,

1 I can also do underwriting for the remainder of  
2 the state and basically I work with my coworkers  
3 and customers and my customers are various  
4 attorneys and principals involved in transactions  
5 looking at various title documents.

6 Q. What is the relationship of Chicago  
7 Title to a property called -- to a company called  
8 Property Insight?

9 A. Property Insight is a sister company.  
10 We report to the same parent company.

11 Q. Okay. In the title insurance  
12 industry, do you know what a tract search is?

13 A. A tract search is basically a  
14 searcher examining the public records. The  
15 Recorder's Office documents and compiles a  
16 list of documents that affect a certain  
17 tract of land.

18 Q. You have in front of you what  
19 has been marked as Exhibit 37. Do you recognize  
20 this document?

21 A. Yes.

22 Q. What is it?

23 A. It's a letter that I wrote -- I  
24 guess I didn't date it, but I wrote this letter

1 and attached to it is a tract book search.

2 Q. Is this a record that's made in  
3 the regular course of business?

4 A. The preparing of a tract book  
5 search is a regular part of Property Insight's  
6 work product, yes.

7 Q. Are searches like that kept and  
8 maintained in the regular course of business?

9 A. Yes.

10 Q. Okay. Are documents like this  
11 made at or near the time of the tract search is  
12 completed?

13 A. The search is completed once the  
14 searcher/examiner has completed their review of  
15 the public records, but we do -- there is a gap  
16 period. You can be searching title today, but  
17 depending on the county you are reviewing, the  
18 documents may only be posted through a certain  
19 date.

20 So, for example, in Cook  
21 County, if we were looking at public records  
22 today, it probably only reflects documents  
23 recorded through maybe May 9th or something  
24 like that. That's called a gap period.

1 Q. If you could, turn to the second  
2 page of Exhibit 37, which is Bates labeled  
3 JM 6017, do you see where it says, "date delivered"?

4 A. Date delivered. Actually, I see an  
5 effective date.

6 Q. Okay. There is an address for Johns  
7 Manville at the top of the page?

8 A. Oh, yes. Thank you. Date delivered,  
9 January 14, 2016.

10 Q. So you have sent the letter to Johns  
11 Manville on the first page of Exhibit 37 sometime  
12 shortly thereafter?

13 A. Yes.

14 Q. Is that your signature on the first  
15 page of Exhibit 37?

16 A. Yes.

17 Q. What, if you could, on the second  
18 page read the bolded paragraph under Section B,  
19 search results?

20 A. Sure. It reads, "We have searched  
21 our Lake County, Illinois tract indices for deed  
22 conveyances and dedications since the recording  
23 of 2288725 recorded June 8, 1984, through our  
24 current cover date December 30, 2015, and note the

1 following."

2 Q. Okay. And the following is -- is  
3 that a reference to a grant for a public highway?

4 A. The reference is a grant for public  
5 highway which has the recording date and the  
6 document number.

7 Q. And can you please read into the  
8 record the last sentence on JM 6017 of Exhibit 37?  
9 That's in capital letters.

10 A. Sure. "No other deed conveyances  
11 or dedications found in record between the  
12 aforementioned dates."

13 MS. CAISMAN: Mr. Halloran,  
14 Exhibit 37 was not a stipulated exhibit,  
15 but we believe we met the foundation  
16 for a business record under the Pollution  
17 Control Board rules.

18 HEARING OFFICER HALLORAN: Thank  
19 you, Ms. Caisman.

20 Ms. O'Laughlin or Mr. McGinley,  
21 do you have any cross?

22 MR. MCGINLEY: Sure. Thank you.

23

24

1 C R O S S - E X A M I N A T I O N

2 by Mr. McGinley

3 Q. Ms. Giannelli, you have been with  
4 the company for 30 years and you are an attorney,  
5 correct?

6 A. Yes.

7 Q. I assume that because you work for  
8 Chicago Title Insurance Company you are familiar  
9 with title commitments; is that correct?

10 A. Yes.

11 Q. Would that be a fair assumption?

12 A. Yes.

13 Q. Okay. I would like to turn your  
14 attention, please, to -- could I have 4 I, please?  
15 Let me get that for you.

16 MS. CAISMAN: Evan, what exhibit  
17 are you looking for?

18 MR. MCGINLEY: I was looking for  
19 4 I.

20 MS. CAISMAN: Mr. Halloran, we  
21 are going to object to any questions about  
22 other exhibits. That's outside the scope  
23 of direct examination. She was called for  
24 the very limited purpose of authenticating

1 one document. She is not being offered  
2 to give opinions or other testimony in  
3 this case.

4 HEARING OFFICER HALLORAN: And  
5 Mr. McGinley?

6 MR. MCGINLEY: I'd like to ask  
7 her about a title commitment that was done  
8 by Chicago Title. If she's worked for  
9 Chicago Title for 30 years, it seems like  
10 it's not an unreasonable subject for her  
11 to go into.

12 HEARING OFFICER HALLORAN: I agree.  
13 You can go outside the scope.

14 MR. MCGINLEY: Thank you.

15 BY MR. MCGINLEY:

16 Q. This is very cumbersome to work with  
17 here.

18 A. I can see that.

19 Q. If you would, please give me a second.

20 A. Okay.

21 Q. I'll put that back in a second.

22 This is Exhibit No. 41286  
23 through 299. This is -- was included as Exhibit G  
24 in the deposition of Joseph Fortunato. Ma'am,

1 I'm going to show you that document. If you  
2 could, take a moment and look it over, please,  
3 and after you have had a chance to familiarize  
4 yourself, if you could let me know.

5 A. Okay.

6 Q. I take it that you would agree  
7 that this looks like a title commitment that's  
8 issued by Chicago Title?

9 A. Yes.

10 Q. It looks pretty much the same, I  
11 would imagine, as every other title commitment that  
12 the company issues?

13 A. The format of this commitment is the  
14 same as a typical commitment format.

15 Q. Okay. I would gather that from your  
16 experience as vice-president and estate counsel  
17 with Chicago Title, you are familiar with reading  
18 the commitment -- Schedule A information, would  
19 that be a fair estimation?

20 A. Yes.

21 Q. Okay. Could you direct your  
22 attention, please, to Exhibit 4-I-289. This would  
23 be referencing No. 5, Parcel 1-A. It's at the top  
24 of that page.

1 A. Okay.

2 Q. I'd like you to begin reading with  
3 the start of that paragraph. I'll tell you if  
4 you could just make it -- can I approach the  
5 witness just so I can show her where to stop?

6 MS. CAISMAN: Sure. I'm going  
7 to object, though, that she lacks personal  
8 knowledge as to this title commitment and  
9 isn't being offered as an expert in this  
10 case.

11 MS. BRICE: She has not been called  
12 in their case either.

13 HEARING OFFICER HALLORAN: Well,  
14 they could. Either we could get her on  
15 direct, but --

16 MS. BRICE: She is not on their  
17 witness list.

18 HEARING OFFICER HALLORAN: I'm  
19 sorry?

20 MS. BRICE: She is not on their  
21 witness list.

22 HEARING OFFICER HALLORAN: Well,  
23 we could make her of record. Let's try to  
24 do this, Mr. McGinley.

1 MR. MCGINLEY: Just very quickly,  
2 I just want to have her read the one section  
3 and then ask her what she understands about  
4 this.

5 HEARING OFFICER HALLORAN: Sure.

6 BY MR. MCGINLEY:

7 Q. So more or less if you could just  
8 read down it that line that's underlined, please?

9 A. Sure. Parcel 1-A, (North part -  
10 west, one-half, northwest, one-quarter), that part  
11 of the west half of the northwest one-quarter of  
12 Section 15, Township 45 north, Range 12, East of  
13 the third principal meridian, lying south of the  
14 north 66 feet conveyed to city of Waukegan for  
15 street purposes by deed recorded April 18, 1895,  
16 as Document 61658 and lying east of the east line  
17 of Sand Street now known as Pershing Road as  
18 originally conveyed by deed to city of Waukegan  
19 for street purposes recorded January 19, 1915, as  
20 Document 15722 and lying south and east of said  
21 streets as widened by grant for public highway."

22 Q. Thank you. The portion that I've  
23 just asked you to read, Ms. Giannelli, does that  
24 have any meaning to you based on your experience

1 working for Chicago Title?

2 A. I'm reluctant in answering that  
3 question without having had a chance to read  
4 the documents. These words mean what they say,  
5 but I can't read anything more into it than  
6 that. I can't interpret them. I can't do  
7 anything.

8 Q. Is it possible that this document  
9 might convey an interest in -- to the city of  
10 Waukegan? Would that be a fair reading of this?

11 MS. CAISMAN: Objection, calls  
12 for speculation.

13 HEARING OFFICER HALLORAN: She  
14 can answer if she is able.

15 BY THE WITNESS:

16 A. I really don't know. I really don't.

17 BY MR. MCGINLEY:

18 Q. Okay. All right. That's fine. No  
19 further questions. Thank you.

20 A. Thank you.

21 Q. Appreciate your indulgence.

22 A. You're welcome.

23 HEARING OFFICER HALLORAN: Any  
24 redirect?

1 MS. CAISMAN: No, nothing based  
2 on that.

3 THE WITNESS: Am I dismissed?

4 MS. BRICE: You are dismissed.  
5 Thank you very much.

6 MS. CAISMAN: I really appreciate  
7 you taking your time.

8 HEARING OFFICER HALLORAN: Thank  
9 you.

10 (Witness excused.)

11 HEARING OFFICER HALLORAN: Okay.  
12 Mr. McGinley?

13 MR. MCGINLEY: One moment, please.

14 HEARING OFFICER HALLORAN: We can  
15 go off the record for a moment.

16 (Whereupon, a discussion  
17 was had off the record.)

18 HEARING OFFICER HALLORAN: We are  
19 back on the record.

20 Mr. McGinley, what about  
21 Exhibit 37?

22 MR. MCGINLEY: We have no  
23 objections. That's fine.

24 HEARING OFFICER HALLORAN: Okay.

1 Thank you. Exhibit 37 is admitted.

2 (JM Exhibit No. 37 was  
3 admitted into evidence.)

4 MS. CAISMAN: Mr. Halloran, I  
5 don't think we actually admitted any of  
6 the exhibits used yesterday.

7 HEARING OFFICER HALLORAN: Yes.  
8 Ms. Brice and I talked about that earlier,  
9 but this one is admitted since you moved  
10 for it. Thank you.

11 Exhibit 37 is admitted no  
12 objection. I think we have Mr. Dorgan up  
13 for Ms. Brice's redirect.

14 Lori, would you please swear  
15 him again? I know he was sworn in yesterday.

16 THE COURT REPORTER: Do you swear  
17 the testimony you are about to give is the  
18 truth, the whole truth and nothing but  
19 the truth, so help you God?

20 MR. DORGAN: I do.

21 (Witness sworn.)

22 HEARING OFFICER HALLORAN: You may  
23 proceed.

24 MS. BRICE: Thank you.

1 WHEREUPON:

2 DOUGLAS DORGAN

3 called as a witness herein, having been first duly  
4 sworn, deposeth and saith as follows:

5 REDIRECT EXAMINATION

6 by Ms. Brice

7 Q. Mr. Dorgan, good morning.

8 A. Good morning.

9 Q. Mr. McGinley, yesterday, asked you  
10 a number of questions regarding your qualifications.  
11 In order for you to offer opinions in this case,  
12 do you need to have experience designing roadway  
13 embankments?

14 A. It certainly helps, but I don't  
15 believe it's a prerequisite.

16 Q. And why is that?

17 A. I believe the understanding of  
18 how embankments are designed and some of the  
19 engineering concepts helps to provide knowledge  
20 in terms of how to interpret the information  
21 that's been presented in a number of design  
22 drawings.

23 Q. And you have designed roadway  
24 embankments, correct?

1 A. Yes, I have.

2 Q. But you haven't designed highway  
3 embankments?

4 A. That's correct.

5 Q. Does that make a difference in your  
6 mind?

7 A. I don't believe so.

8 Q. And is this case about the standard  
9 of care applicable to designing embankments?

10 A. I don't believe so.

11 Q. Do you have experience reviewing soil  
12 profiles?

13 A. Yes.

14 Q. Okay. And can you explain your  
15 experience? I believe you talked about it a  
16 little bit, but just to sort of reaffirm?

17 A. Sure. A lot of the work that I  
18 do involves earth, earth movement, large earth  
19 movement projects, evaluating subsurface both  
20 physical, geotechnical, structural and environmental  
21 conditions to evaluate options and alternatives  
22 for how to either design or implement some element  
23 of an earth and construction project. So looking  
24 at boring logs and cross-sections and profiles is

1 something I do regularly.

2 Q. And do you have experience dealing  
3 with cut and fill?

4 A. Yes.

5 Q. And can you explain that, please?

6 A. Cut and fill is when you're looking  
7 at site plans. You generally will have a grading  
8 plan. The grading plan will oftentimes result in  
9 the need to lower one part of your site and raise  
10 your other part of the site. Where you're lowering  
11 it, that's considered a cut. So it tells you how  
12 much of that has to be removed. Conversely, where  
13 that material needs to go is considered a fill and  
14 so oftentimes, to the extent possible, you're trying  
15 to balance a site. So you have as little need for  
16 bringing fill in or hauling cut off as possible.

17 Q. And what's your experience with cut  
18 and fill?

19 A. Well, we use cut and fill in both  
20 general site civil engineering projects, development  
21 projects, on a number of remediation projects that  
22 I have been involved in through the years.

23 Q. You said "we." What's your personal  
24 experience with that?

1           A.       Yes. My personal experience is  
2 both the design and the review and the oversight  
3 of the actual construction.

4           Q.       How about your experience in  
5 interpreting -- personal experience interpreting  
6 construction drawings?

7           A.       I have interpreted and reviewed many,  
8 many construction drawings.

9           Q.       Thank you. Mr. McGinley asked  
10 about whether you had seen any documents other  
11 than Exhibit 50, which is the license agreement  
12 regarding the configuration of the former parking  
13 lot. Do you recall that?

14          A.       I do.

15          Q.       Okay. I'd like to show you -- and  
16 I'm going to put it up on the screen -- Exhibit  
17 21A-23. What is this document, Mr. Dorgan?

18          A.       This appears to be one of the design  
19 drawings out of the specifications for the Amstutz  
20 project.

21          Q.       And who drafted this?

22          A.       This would have been an IDOT engineer  
23 or draftsman who would have drafted it.

24          Q.       Do you see the parking lot that we

1 have been talking about in this drawing?

2 A. Yes.

3 Q. Can you please point it out for us  
4 and describe it in words?

5 A. The parking lot appears on the  
6 eastern side of the plan view with the corresponding  
7 profile located below it and the parking lot is  
8 located here, which would be within the triangular  
9 area created by Detour Road A and Detour Road B  
10 and just immediately south of Greenwood Avenue.

11 Q. And does this depiction of the  
12 parking lot correspond of your understanding of  
13 all of the documents depicting the parking lot?

14 A. Yes.

15 Q. If the parking lot wasn't there on  
16 those plans, would there be any reason -- in 1970,  
17 would there be any reason to include it?

18 A. If the parking lot had not been there?

19 Q. Correct.

20 A. Certainly, if it had not been there,  
21 it would not have been included on the plans?

22 Q. In fact, it would be confusing of  
23 the people coming to implement the plans if there's  
24 a picture of the parking lot that doesn't exist

1 on the plans, correct?

2 A. That could be problematic.

3 MR. MCGINLEY: Mr. Halloran, I'm  
4 going to object to this. I mean, this is  
5 going beyond the scope of both the original  
6 testimony and my redirect yesterday. I  
7 wasn't -- we were never asking Mr. Dorgan  
8 about whether or not the parking lot was  
9 in existence or where it happened to be  
10 located. We were simply asking about the  
11 construction of the parking lot.

12 HEARING OFFICER HALLORAN: Okay.  
13 Ms. Brice?

14 MS. BRICE: He asked very  
15 specific questions about whether he had  
16 seen any documents with respect to the  
17 configuration of the parking other than  
18 the license agreement. This is the  
19 document showing the configuration of  
20 the parking lot that was drawn by IDOT  
21 and I think it's relevant to the question.

22 HEARING OFFICER HALLORAN: You  
23 know, at the risk of possibly being reversed  
24 either by the Board or Appellate Court to

1 bring it back here, we can either continue  
2 outside the scope or just reopen direct.

3 MR. MCGINLEY: Okay. That's fine.  
4 I just wanted to put that on the record.

5 HEARING OFFICER HALLORAN: Nobody  
6 wants to be back here again.

7 MR. MCGINLEY: I think we can  
8 agree with that.

9 HEARING OFFICER HALLORAN: Thank  
10 you. You may continue, Ms. Brice.

11 MS. BRICE: Thank you.

12 BY MS. BRICE:

13 Q. Mr. McGinley asked you a number of  
14 questions about the locations of the concrete  
15 Transite pipe on Site 3, correct?

16 A. Yes.

17 Q. I want to focus on Site 6. Isn't  
18 there concrete Transite pipe within the embankment  
19 on Site 6?

20 A. Yes, there is.

21 Q. And did that embankment exist in  
22 1970?

23 A. No.

24 Q. Who built that embankment?

1 A. IDOT.

2 Q. If you could use stereoscopic  
3 techniques to look at the pre-1970 aerial  
4 photographs, could they have told you anything  
5 about that embankment?

6 A. No.

7 Q. Why is that?

8 A. The embankment would not have been  
9 there.

10 Q. Because why?

11 A. It had not been constructed yet.

12 Q. Mr. McGinley asked you about Illinois  
13 State Beach Park. Do you recall that?

14 A. I do.

15 Q. Do you know whether Johns Manville  
16 has been involved -- sorry. Scratch that. I said  
17 that really poorly.

18 Do you know JM has been found to  
19 be responsible for the ACM washing up on the shore  
20 of Illinois State Beach Park?

21 A. I don't think they have.

22 Q. I'd like to talk about the ELM report,  
23 which is Exhibit 57. Mr. McGinley had you look at  
24 a couple of different portions of the ELM report,

1 Exhibit 57, and I'd like to turn to 57-L.

2 Please let me know when you are there.

3 A. Fifty-seven what?

4 Q. 57-L.

5 A. 57-L. I'm there.

6 Q. Okay. There is a sentence in that  
7 first full paragraph that starts with "Surface  
8 ACM that says according to JM, the parking lot  
9 was constructed with materials containing ACM  
10 over a period of years during the use of the lot  
11 and during and after its demolition. ACM was  
12 distributed throughout the surrounding area.  
13 Visible ACM was removed from the site during the  
14 surface characterization. However, ELM personnel  
15 have located small pieces of ACM on the site since  
16 the completion of the surface inspection. As  
17 previously mentioned, however, this ACM is in a  
18 non-particle form and is of little threat to human  
19 health or the environment."

20 Then it goes on. It then says,  
21 "ACM and the subsurface was mostly concentrated in  
22 the area of the former parking lot. This is to be  
23 expected since the material used to build the former  
24 parking lot contained ACM."

1 Do you remember discussing  
2 those with Mr. McGinley?

3 A. Yes, I do.

4 Q. And Mr. Gobelman talked about  
5 this in his rebuttal report to your expert  
6 report; isn't that true?

7 A. Yes, he did.

8 Q. And how did Mr. Gobelman interpret  
9 this sentence?

10 A. Which sentence?

11 Q. The whole -- the whole area or I  
12 know according to JM's sentence was specifically  
13 called out in its report, what's your understanding  
14 of how he interpreted that?

15 A. I understand that he had understood  
16 that the parking lot had materials other than just  
17 the concrete Transite pipe that had been used in  
18 its construction that would have contained asbestos  
19 and that the result of the asbestos was from not  
20 only the Transite pipe, but the other ACM used in  
21 the construction of the parking lot.

22 Q. Right. So was it in his view that  
23 Johns Manville had used fill material to construct  
24 the parking lot based upon this sentence?

1 A. Yes.

2 Q. What did you do to investigate his  
3 interpretation?

4 A. I looked at the actual cross-sections  
5 that are included in the design drawings relative  
6 to both the proposed construction of Detour Road A  
7 and proposed construction of Detour Road B.

8 Q. And what did you conclude?

9 A. I found that Detour Road A had not  
10 identified any bituminous pavement, that it would  
11 need to be constructed above. However, it was very  
12 clear that Detour Road B and in several of the  
13 sequence change orders that were issued identified  
14 the existing presence of bituminous pavement that  
15 could be built upon for purposes of the bypass road  
16 construction.

17 Q. Right. But right now, I'm not talking  
18 about the asphalt cover. I'm talking about the idea  
19 that JM used filling material to build -- construct  
20 the parking lot instead of putting concrete Transite  
21 pipes just on top. Are you with me?

22 A. Yes.

23 Q. Okay. So what did you do to  
24 investigate his interpretation of this sentence

1 in the ELM report?

2 A. Well, we again looked at the  
3 cross-sections that had been generated as part  
4 of the various investigations that had been  
5 completed at the site to evaluate whether --  
6 or in the record itself to see if there was  
7 any mention that JM had ever imported fill  
8 material into the site and there wasn't anything  
9 that we found that indicated that there had been  
10 any fill material imported by JM to the site.

11 Q. Okay. This says according to JM.  
12 Did you try to talk to anyone at JM about this?

13 A. I did. I spoke with Mr. Clinton.

14 Q. Let's turn to Exhibit 16, Page 9.  
15 Here on Page 16-9 of your expert rebuttal report,  
16 you're talking about this conversation with  
17 Mr. Clinton, correct?

18 A. Yes.

19 Q. And I'd like to direct your  
20 attention and I'd like you to read into the record  
21 the -- starting at the middle of the first  
22 paragraph, "it is my understanding," at the bottom  
23 of that paragraph.

24 A. "It is my understanding Mr. Gobelman

1 had no direct communications with anyone involved  
2 in the drafting of the report, either the original  
3 source at Johns Manville or with the author of the  
4 report. However, I spoke with the representative  
5 of Johns Manville, Mr. Denny Clinton, the primary  
6 technical contact for ELM at the time their 1999  
7 work was being performed. Mr. Clinton indicated  
8 that the sentence in ELM's 1999 report regarding  
9 the parking lot being constructed with materials  
10 containing asbestos-containing materials was  
11 referring only to the concrete Transite pipes  
12 used as parking bumpers on the surface parking lot.  
13 It is his understanding that the only ACM associated  
14 with the construction of a parking lot is the  
15 aforementioned concrete Transite pipe. He never  
16 told ELM that the parking lot was constructed with  
17 ACM other than the concrete Transite pipe on the  
18 surface of the parking lot. He said that he has no  
19 evidence that prior to IDOT's construction work  
20 ACM existed below the parking lot."

21 Q. Thank you. Mr. Clinton testified  
22 yesterday; did he not?

23 A. Yes, he did.

24 Q. Was his testimony yesterday consistent

1 with your conversation with him?

2 A. Yes.

3 Q. And in other places in your  
4 expert rebuttal report, you go through rebutting  
5 Mr. Gobelman's interpretation of that sentence  
6 as well as his opinion that JM had used  
7 asbestos-containing materials as fill material  
8 to build the parking lot, correct?

9 A. Correct.

10 Q. Let's turn in this very same document  
11 to 57-16.

12 A. I'm sorry. Which page?

13 Q. 57-16, the same document.

14 A. The ELM document.

15 Q. Sorry. Yes. I apologize. Are you  
16 on 57-16?

17 A. Yes.

18 Q. And I apologize for mixing up the  
19 record.

20 This is part of the ELM 1999  
21 report, correct?

22 A. That's correct.

23 Q. And this is the same report that  
24 contains the sentence we were just discussing,

1 "according to JM," correct?

2 A. That's correct.

3 Q. Okay. And this was written by ELM,  
4 correct?

5 A. Correct.

6 Q. Okay. I would like to direct your  
7 attention to the end of this paragraph. This  
8 says -- this starts with Site 3 description,  
9 correct?

10 A. That's correct.

11 Q. And they are talking about the  
12 Site 3 area that we have been discussing, right?

13 A. That's correct.

14 Q. Okay. Could you please read into  
15 the record -- it starts with "This property is  
16 currently."

17 A. "This property is currently owned  
18 by Commonwealth Edison and was formerly utilized  
19 as a parking area for the former JM administration  
20 building. Historical aerial photographs indicate  
21 that pipes were used in a parking area to aid in  
22 determining parking spaces. Additionally, various  
23 other potential ACM was identified on the site  
24 according to the photographs. Photographs of Site 3

1 were taken during the project and are located  
2 in Appendix C."

3 Q. Does this paragraph or the paragraph  
4 on the prior page that said "according to JM" say  
5 anything about fill material being used by JM to  
6 construct a parking lot?

7 A. No.

8 Q. Does this paragraph right here  
9 support what Mr. Clinton told you when you went  
10 back to him to ask him what he had intended by  
11 the sentence that is attributed to him in this  
12 document?

13 A. I believe so, yes.

14 Q. Also, this 1999 report, this was  
15 the first investigation document with respect  
16 to Site 3, right?

17 A. Yes.

18 Q. Okay. So at this point in time,  
19 LFR hadn't done any of its investigation work?

20 A. Correct.

21 Q. Or Arcadis?

22 A. Correct.

23 Q. Or AECOM?

24 A. Correct.

1 Q. In fact, Site 6 hadn't been identified  
2 at this point, had it?

3 A. That's correct.

4 Q. Mr. McGinley talked to you at length  
5 about Mr. Mapes, correct?

6 A. Yes.

7 Q. The resident engineer. And he tried  
8 to make a point that Mr. Mapes could have been  
9 talking about the entire Amstutz project and not  
10 just Site 3 when he said that he recalled burying  
11 concrete Transite pipe during the Amstutz project,  
12 do you recall that?

13 A. Yes, I do.

14 Q. Could you please take a look at  
15 Exhibit 58? What is this document?

16 A. This is EPA's 104(e) request from  
17 the US EPA to the Department of Transportation.

18 Q. And if you could, please take a  
19 look at 58-6 and Question No. 10. It refers to  
20 area of concern No. 3. Do you see that?

21 A. I do.

22 Q. Okay. And read the whole sentence.  
23 Is this sentence asking you a question of area  
24 concern No. 3?

1           A.       Yes. It says, "Describe all  
2 arrangements for the transportation movement  
3 or placement of ACM that was in situ at area  
4 of concern No. 3 that the Illinois Department  
5 of Transportation carried out in the construction  
6 of FA Route 42, Section 8-HV and 8-VB particularly  
7 Bypass A in the post-construction phase of this  
8 project."

9           Q.       Thank you. I'd like you to turn  
10 to Page 58-14. This is a map. It's hard to  
11 read on this screen, but it's easier when you  
12 look at the document. Is Site 3 identified on  
13 this map?

14          A.       Yes, it is.

15          Q.       Okay. And, in fact, in the bottom,  
16 there is sort of a key. What does it say?

17          A.       There's elements to key on the  
18 left. It recognizes Site No. 3 as being equal  
19 to the ComEd old parking lot. Underneath the key,  
20 there's a hatched area that represents the  
21 approximate location of Site No. 3.

22          Q.       Okay. And perhaps Susan would be so  
23 kind as to blow up -- I think can you -- on your  
24 version, can you see where Site 3 is in the hatched

1 area?

2 A. Yes.

3 Q. Thank you. And is it in the location  
4 of the former parking lot?

5 A. Yes.

6 Q. Can you please take a look at Exhibit  
7 60?

8 A. Sixty?

9 Q. Yes, please. And I'd like you to  
10 turn to the answer to No. 10, which is on 60-4.

11 HEARING OFFICER HALLORAN: 60-4?

12 MS. BRICE: Correct.

13 HEARING OFFICER HALLORAN: Thank  
14 you.

15 BY MS. BRICE:

16 Q. And in the first sentence here, the  
17 response -- it's a response from IDOT to Question  
18 No. 10 asking about area of concern No. 3, correct?

19 A. Yes.

20 Q. In the first sentence, it refers to  
21 area of concern No. 3; does it not?

22 A. Yes, it does.

23 Q. And then it goes on. It says, "The  
24 retired resident engineer, Duane Mapes, for this

1 construction project during a telephone call  
2 with Randall Schick, assistant chief counsel,  
3 in October of 2000 recalled dealing with asbestos  
4 pipe October 2000 and burying some of it." Do  
5 you see that?

6 A. I do.

7 Q. Do you believe that he was answering  
8 a question with respect to Site 3?

9 A. It would appear that that's what  
10 was being responded to in this particular response.

11 MR. MCGINLEY: Objection, calls  
12 for speculation.

13 HEARING OFFICER HALLORAN: Ms. Brice?

14 MS. BRICE: He's an expert. He  
15 asked him to speculate on a number of things.  
16 He can give his opinion on how he interprets  
17 the documents.

18 HEARING OFFICER HALLORAN: I agree.  
19 Overruled. Mr. McGinley, you will have  
20 your recross. Thank you.

21 MR. MCGINLEY: Thank you.

22 HEARING OFFICER HALLORAN: You  
23 may proceed.

24

1 BY MS. BRICE:

2 Q. I would like to turn to Exhibit 66,  
3 which Mr. McGinley asked you about. I believe he  
4 asked you about 66, Page 766. Doug, I think to  
5 help you, we will just put it on the screen.

6 There was the third paragraph  
7 that I believe he asked you about; is that correct?

8 A. I recall that's the paragraph he  
9 was referring to.

10 Q. And you heard Mr. Ebihara testify  
11 yesterday, correct?

12 A. Yes.

13 Q. What does Mr. Ebihara now believe  
14 about this sentence, as well as other sentences,  
15 that he testified about in his remedial action --  
16 Removal Action Work Plan?

17 A. Oh, I believe, as he testified  
18 yesterday, he recognizes that there is ACM present  
19 in locations outside of the various corridors that  
20 have been looked at and ACM located at other  
21 locations on the property.

22 Q. And was Mr. Ebihara hired to compare  
23 the IDOT construction drawings with the soil boring  
24 analytical results as you were?

1 A. I don't believe so.

2 Q. And did he testify yesterday that  
3 that was not even his focus when he was putting  
4 together the Removal Action Work Plan?

5 A. That's correct.

6 Q. Mr. McGinley made a point that  
7 US EPA did not make IDOT a CERCLA PRP; is that  
8 correct?

9 A. I didn't.

10 Q. But once again, that was in -- so  
11 in 2007 was when the AOC was signed, correct?

12 A. Correct.

13 Q. And at that point, LFR had not  
14 done any of its investigation work; is that  
15 correct?

16 A. That's correct.

17 Q. Arcadis had not done any work; is  
18 that correct?

19 A. That's correct.

20 Q. AECOM had not done any work?

21 A. That's correct.

22 Q. And LFR had not found concrete  
23 Transite pipe inside the embankment as set forth  
24 in the July 8, 2008, line investigation document,

1 Exhibit 74; is that correct?

2 A. That's correct.

3 Q. So when EPA elected not to make  
4 IDOT a PRP, they didn't have all the information  
5 we have today, did they?

6 A. That's correct.

7 Q. And do you know if anyone at US EPA  
8 undertook the analysis you have and compared the  
9 ELM report to the 1970 construction plans?

10 A. I don't have any knowledge of that  
11 happening, but I would find it unlikely.

12 Q. Is there any evidence that they did?

13 A. No.

14 Q. Mr. McGinley pointed out some  
15 detections of ACM outside the construction limits  
16 of the easement areas, correct?

17 A. Yes.

18 Q. Okay. I think I have before you  
19 Exhibit 6, which was your expert report Figure 2  
20 that he asked you about, if you wouldn't mind  
21 pulling that out. It's 06-25. Do you see that?

22 A. I do.

23 Q. Okay. What is -- and I think this  
24 is confusing because there's lots of different

1 figures that represent different things. So  
2 what is Figure 2 focused on?

3 A. The occurrence of asbestos fibers  
4 detected in soil samples that would have been  
5 collected during investigations performed at the  
6 site.

7 Q. Okay. And let's turn to the next  
8 page, which is Figure 3. What is Figure 3  
9 focused on?

10 A. The occurrence of actual physical  
11 ACM that was viewed or observed in the soil profile  
12 or in the test pits that were performed as part  
13 of the various investigations performed at the  
14 site.

15 Q. Thank you. I'd like to go back  
16 to the 1972 aerial photograph that he testified  
17 about as 53 B. We will put it on the screen.  
18 We had a big -- well, let me see. We had a much  
19 better view with the actual blowup. Do you have  
20 it there? So the date on this is 1972, correct?

21 A. Yes.

22 Q. And you can see the detour roads,  
23 correct?

24 A. That's correct.

1 Q. And so it was taken during the  
2 Amstutz project, right?

3 A. Yes.

4 Q. Does it appear to you that IDOT  
5 is doing construction work outside of the limits  
6 of construction as depicted on your various  
7 figures?

8 A. It would appear so.

9 Q. Please explain.

10 A. You may recall from the earlier  
11 exhibit that showed the limits of construction  
12 there was a triangular area that technically  
13 would be considered outside of their limits  
14 of construction that would have been within this  
15 triangle here. But in this aerial photograph,  
16 you can see quite a bit of disturbance that's  
17 taking place of the soil conditions. You can  
18 see disturbance along the south side of the  
19 detour road. You may see disturbance taking  
20 place around the intersection of Detour Road A  
21 and Greenwood Avenue.

22 Q. And based upon that, is the  
23 work --the disturbance work that you are  
24 describing outside of the easement limits?

1 A. Yes, it would be.

2 Q. And it is outside of the  
3 right-of-way; is it not?

4 A. That's correct.

5 Q. I would like to mark JM Exhibit 33  
6 or I'd like to pull it up actually.

7 I'd like to direct your -- if  
8 we could -- what is this document?

9 A. It looks like a document that was  
10 produced as part of the construction project  
11 providing an explanation of certain work that  
12 was being done.

13 Q. And have you seen this before?

14 A. I have.

15 Q. And I'd like to direct your  
16 attention -- I think it's on the next page. It  
17 says -- it's talking about the greatest share of  
18 the increase. Do you see that? It might be on  
19 this page. I'm sorry. I'm trying to find the  
20 exhibit myself.

21 A. It's --

22 Q. Do you mind if I approach?

23 MS. BRICE: May I approach?

24 HEARING OFFICER HALLORAN: Yes.

1 BY MS. BRICE:

2 Q. Yes, it's here. So can you please --  
3 first of all, please explain what your -- what  
4 this document is telling you overall and then we  
5 will direct it to that situation.

6 A. So this document would be providing  
7 explanations for why certain things took place  
8 and in some cases why quantities would have changed  
9 from some of the original bid items.

10 Q. Okay. Thank you. And please read  
11 into the record that paragraph about the greatest  
12 share.

13 A. "The greatest share of the increase  
14 in plan quantity was used to seed the obliterated  
15 detour roadway. The plans did not provide for  
16 this. Smaller amounts were required to extend  
17 the seeding areas from the toll of fill slopes  
18 to the right-of-way lines. More of this area  
19 had been disturbed during construction than was  
20 anticipated in the plans."

21 Q. What does this tell you?

22 A. That the original bid document had  
23 not contemplated the amount of area that would  
24 be disturbed and that they needed to address

1 those areas by increasing quantities for the  
2 reseeding effort.

3 Q. Thank you. Let's turn to  
4 Exhibit 31, which I believe is probably in that  
5 same book and we talked about it on your direct.  
6 I'd like to direct your attention to Exhibit  
7 31-4.

8 MS. BRICE: For the record, we  
9 have supplied to everyone for the books  
10 a better copy of this document. It was  
11 hard to see and faint. We provided one  
12 to opposing counsel. It was from their  
13 production as well as a copy to the  
14 hearing officer.

15 HEARING OFFICER HALLORAN: You  
16 have. Thank you.

17 BY MS. BRICE:

18 Q. Mr. Dorgan, just to refresh  
19 everyone's recollection, what is this document  
20 about?

21 A. This document is the document that  
22 acknowledged the challenge that we were handling  
23 with standing water and the need to install  
24 certain structures in order to better manage

1 the water to dry up the site.

2 Q. And the parking lot is still on  
3 this picture; is it not?

4 A. Yes, it is.

5 Q. And when is this document dated?

6 A. It's not clear on my particular  
7 version, but I believe it would have been from  
8 the original plan set that would have been in  
9 1970.

10 Q. Okay. Thank you. There is --  
11 and it's very hard to see, but if you -- can  
12 you see where they installed this culvert along  
13 the Detour Road A into the parking lot area?

14 A. It is extremely faint. I don't  
15 know if that figure got changed in its particular  
16 binder.

17 Q. Oh, thank you. Probably not.

18 A. Yes. On this one, you can see it.

19 Q. Okay. Thank you. And what is  
20 significant about that -- that drawing on -- on  
21 these plans?

22 A. Well, one, it demonstrates an area  
23 that they were trying to manage was that triangular  
24 piece inside Greenwood Road, Detour Road A and

1 Detour Road B, and then they installed a culvert  
2 that would have been under Detour Road A that  
3 extends in a north/south orientation and ultimately  
4 extends from just passed the Detour  
5 Road A to just below it and in this particular  
6 rendition of the figures, they drew it here at  
7 the time the work was done, it shows the ends  
8 of the pipe extending beyond both the construction  
9 limits and the easement.

10 MR. MCGINLEY: Mr. Halloran,  
11 I'm sorry. Could we ask that -- I  
12 mean, perhaps the witness could go up  
13 and point out what exactly what he's  
14 talking about?

15 So far, this has been a  
16 conversation between counsel and  
17 Mr. Dorgan. It would just -- I think  
18 it would be beneficial to see.

19 HEARING OFFICER HALLORAN: I  
20 agree.

21 BY THE WITNESS:

22 A. I won't write on the board, but  
23 this will be easier.

24 On this particular version,

1 you can see -- and faintly on this version as  
2 well -- the culvert is shown right here  
3 (indicating). You can see the end of it right  
4 there (indicating) and the other end of it  
5 right here (indicating).

6 BY MS. BRICE:

7 Q. And Mr. Dorgan, there's handwriting  
8 down there, correct, over to the left and it has  
9 arrows pointing to that culvert?

10 A. Actually, there's no arrows pointing  
11 to this particular culvert, but there were two other  
12 culverts installed at the same time.

13 Q. And you can see those a little better,  
14 can't you?

15 A. Yes.

16 Q. Okay. Can you point out where those  
17 are as well?

18 A. There is one right here (indicating)  
19 and another right here (indicating) and these two  
20 are the arrows (indicating).

21 Q. I'd like you to turn to -- so that  
22 we can make this as part of the record, I'd like  
23 you to go to Exhibit 16, which was your rebuttal  
24 report and Figure 2. So Pages 16 and 17. I would

1 like you to draw in the culvert on that photo,  
2 if you would, in your exhibit binder.

3 A. On Exhibit 16-17?

4 Q. Yes, please.

5 A. (Witness complied.)

6 Q. Thank you very much. Would you  
7 please show that to opposing counsel?

8 MR. MCGINLEY: Thank you.

9 BY MS. BRICE:

10 Q. Mr. Dorgan, Mr. McGinley was  
11 suggesting that you were not depicting all of  
12 the asbestos-containing material detected in  
13 your figures. Do you believe that you have  
14 accurately represented all of the  
15 asbestos-containing material in your figures?

16 A. Yes.

17 Q. I'd like you to take a look at  
18 Exhibit 84 as an example, please. I will pull  
19 it up on the screen.

20 Mr. McGinley asked you  
21 specifically about this and he focused in on  
22 roofing materials. I'd like you to look at the  
23 key for roofing materials. What does it say for  
24 the key related to roofing materials? Is it just

1 roofing materials?

2 A. No. In the key, this particular  
3 key, this particular figure aggravated a number  
4 of different types of materials and are  
5 specifically referenced as ACM roofing material,  
6 hard fibrous material, raw material and insulation  
7 material.

8 Q. And have you compared the amount of  
9 roofing material found on Sites 3 and 6 to the  
10 amount of concrete Transite pipe?

11 A. Yes.

12 Q. And what's the difference?

13 A. There is some non-Transite pipe in  
14 the forms of other types of ACM material, but the  
15 vast majority of the physical ACM encountered at  
16 the site is Transite pipe.

17 Q. I believe in one of your reports  
18 you talk about the surface pickup and you had a  
19 percentage as to what was concrete Transite  
20 pipe and what was other material. What was that?

21 A. I believe it was between 85 and 90  
22 percent.

23 Q. Was concrete Transite pipe?

24 A. Yes.

1 Q. Let's stick with that exhibit,  
2 please. Mr. McGinley talked about utilities  
3 on this figure and suggested that the borings  
4 taken in here were a small area. Do you remember  
5 that?

6 A. Yes.

7 Q. What kind of borings were done in  
8 1S through AS?

9 A. They would have been small diameter  
10 borings less than two inches more than likely.

11 Q. Weren't those the test pits?

12 A. I don't -- those were borings.

13 Q. So where were the test pits in that  
14 area?

15 A. The test pits were slightly south.

16 Q. Are they in the B to B?

17 A. They would be -- yes, B to B.

18 Q. B to B. Okay. I apologize. So  
19 what do you do when you do a test pit? How big  
20 of an area are you disturbing?

21 A. Generally, you use an excavator  
22 that will have a varying size bucket usually  
23 something on the order of roughly three feet in  
24 width and then they'll excavate a trench that's

1 anywhere from four to six feet long, three to  
2 four feet wide and they'll extend it to whatever  
3 depth they're either targeting or the maximum  
4 depth that they can reach with the excavator  
5 arm.

6 Q. And Mr. Ebihara testified yesterday  
7 that they generally did not run into any utility  
8 lines except for the one telephone line that was  
9 out of place; isn't that correct?

10 A. I believe so.

11 Q. When utilities are installed,  
12 do utility companies generally import large amounts  
13 of fill material?

14 A. Generally not.

15 Q. Okay. What do they do?

16 A. Depending on the method of  
17 installation, if it's a more traditional trench  
18 and lay type of method, they'll trench their --  
19 create their trench, they'll lay their utility,  
20 they'll backfill the trench with the spoils from  
21 the excavation.

22 Q. Would it make sense to backfill a  
23 utility excavation with pieces of concrete Transite  
24 pipe?

1 A. That wouldn't normally be done.

2 Q. Why is that?

3 A. The potential that the fragment  
4 of concrete could in some way damage or injure  
5 the pipe and create future problems.

6 Q. So it wouldn't be a standard practice?

7 A. No.

8 Q. And it wouldn't be a good idea?

9 A. It would have its limitations.

10 Q. You testified that you did not  
11 have a change order that discussed the crushing  
12 of concrete Transite pipe; is that correct?

13 A. That's correct.

14 Q. Would you expect to see one if  
15 IDOT crushed and buried concrete Transite pipe  
16 as alleged?

17 A. No.

18 Q. And why is that?

19 A. Because the standard specifications  
20 that govern the project encourage the contractor  
21 to utilize any concrete pipe that would have been  
22 encountered on the project site in order to avoid  
23 having to remove it from the site and if they did  
24 have to remove it from the site, that would have

1 been an expense borne by the contractor.

2 Q. If you could, please pull up  
3 Exhibit 19. If you could, go to Section 207.04.  
4 I'm sorry. I don't have the number. It's  
5 probably four or five pages in.

6 A. 207.04?

7 Q. Correct.

8 A. That would be 19-12.

9 Q. 19-12. Thank you very much.  
10 What is 207.04 discussing?

11 A. How materials can be placed within  
12 embankments.

13 Q. Would you please read the portion  
14 that talked -- and these are the standard  
15 specifications that related to the Amstutz project,  
16 correct?

17 A. That's correct.

18 Q. Can you please read the sentence  
19 that starts with "Embankments shall be constructed"?

20 A. "Embankments shall be constructed  
21 of materials that will compact and develop a  
22 stability satisfactory to the engineer. No sod,  
23 frozen material or any material which, by decay  
24 or otherwise, might cause settlement shall be

1 placed or allowed to remain in embankments  
2 within the area of the roadbed. Embankments  
3 shall be constructed to the height and width  
4 deemed necessary to provide for shrinkage during  
5 compaction. Upon completion, they shall conform  
6 to the lines, grades and cross-sections shown on  
7 the plans with proper provision for shrinkage.  
8 When embankments are constructed of crushed  
9 material, broken concrete, stones, or rocks and  
10 earth, such materials shall be well distributed  
11 and sufficient earth or other fine materials  
12 shall be incorporated with them with when they  
13 are deposited to fill the interstices and provide  
14 solid embankment."

15 Q. Okay. That's fine. Thank you. Oh,  
16 actually, no. Keep going.

17 A. "No rocks, stones or broken concrete  
18 more than four inches in largest dimension shall  
19 be permitted within a vertical distance of 12 inches  
20 from the surface of the finished earth grade or  
21 finished earth shoulders. If the contract includes  
22 pavement, surface course or base course, the  
23 vertical distance may be three inches from the  
24 finished of the subgrade for such construction."

1 Q. Thank you. I believe Mr. Gobelman  
2 testified that it was his view that the contractor  
3 on this project would have viewed concrete Transite  
4 pipe as concrete. Do you recall that testimony?

5 A. Yes.

6 Q. And this provision discusses using  
7 concrete in the embankment, correct?

8 A. Yes.

9 Q. And it talks about crushed material  
10 and broken concrete; does it not?

11 A. Yes. And it goes on to discuss  
12 that in further detail in the following paragraph.

13 Q. And do you agree with Mr. Gobelman  
14 on that point?

15 A. No.

16 Q. No. The point about would they  
17 consider concrete Transite pipe to be concrete?

18 A. Yes, I do.

19 Q. Thank you. How would they have  
20 crushed the concrete Transite pipe in your opinion?

21 A. I can't be entirely certain, but  
22 the likelihood would be the earth-moving equipment  
23 that would have been on-site, more than likely  
24 something like a bulldozer would have simply

1 run the concrete pipe over, broken it up into  
2 pieces would have allowed them to meet this  
3 particular specification, and then it would  
4 have eventually been mixed in with the embankment  
5 material.

6 Q. Thank you. Mr. McGinley asked  
7 you questions about the source of fill material  
8 used by the contractor. Was the contractor  
9 incentivized to import in the fill material?

10 A. I don't believe so.

11 Q. Why not?

12 A. There would have been additional  
13 cost to have to bring material onto the site.

14 Q. Right. And these sections discuss  
15 that, correct?

16 A. Yes.

17 Q. How was he incentivized?

18 A. He was incentivized more by the  
19 fact that any material that was on-site that  
20 couldn't be reused as fill would have to be  
21 removed from the site at their expense. So  
22 there would have been an economic driver to  
23 reuse as much of the material encountered onsite  
24 as possible.

1 Q. Thank you. We discussed --  
2 briefly, we were talking about fill material  
3 and I believe you testified, as did Mr. Gobelman,  
4 in his deposition that cinders were detected in  
5 fill material deeper down, correct?

6 A. That's correct.

7 Q. Would it make sense to use  
8 asbestos-containing material as fill material  
9 in addition to cinders?

10 A. No.

11 Q. Thank you.

12 MS. BRICE: No further questions.

13 HEARING OFFICER HALLORAN: Thank  
14 you, Ms. Brice.

15 Mr. McGinley?

16 MR. MCGINLEY: Can we have a  
17 brief recess? Can we have five minutes?

18 HEARING OFFICER HALLORAN: We'll  
19 take five minutes. Off the record.

20 (Whereupon, after a short  
21 break was had, the following  
22 proceedings were held  
23 accordingly.)

24 HEARING OFFICER HALLORAN: All

1 right. We are back on the record. It's  
2 10:10.

3 Mr. McGinley, IDOT is up  
4 for recross of Mr. Dorgan who is on the  
5 stand. Thank you.

6 MR. MCGINLEY: We are going to  
7 rest, but we reserve the right to recall  
8 him later should it be necessary. Thank  
9 you.

10 HEARING OFFICER HALLORAN: You  
11 may step down. Do you have any questions?  
12 You may step down, sir. Thank you.

13 (Witness excused.)

14 MS. CAISMAN: Johns Manville  
15 calls Mr. John Blaczek.

16 I'm going to grab which  
17 binders we are going to use.

18 HEARING OFFICER HALLORAN: Raise  
19 your right hand so the court reporter can  
20 swear you in.

21 THE COURT REPORTER: Would you  
22 raise your right hand, please?

23 Do you swear the testimony  
24 you're about to give is the truth, the

1 whole truth and nothing but the truth, so  
2 help you God?

3 MR. BLACZEK: Yes.

4 (Witness sworn.)

5 WHEREUPON:

6 J O H N B L A C Z E K

7 called as an adverse witness herein, pursuant to  
8 Section (4), Rule 611(c): 735 ILCS 5/2-1102 of the  
9 Illinois Rules of Evidence, having been first duly  
10 sworn, deposeth and saith as follows:

11 C R O S S - E X A M I N A T I O N

12 by Ms. Caisman

13 Q. Good morning, Mr. Blaczek.

14 A. Good morning.

15 Q. Could you please state your name for  
16 the record?

17 A. John Blaczek.

18 Q. Mr. Blaczek, you are currently the  
19 project and environmental study section chief in  
20 IDOT's planning section; isn't that right?

21 A. Correct.

22 Q. And that's a managerial role for  
23 IDOT?

24 A. Correct.

1 MS. CAISMAN: Mr. Halloran,  
2 we move to treat the witness as an adverse  
3 witness under the Illinois Admin Code  
4 101.624.

5 HEARING OFFICER HALLORAN: You may  
6 do so.

7 BY MS. CAISMAN:

8 Q. Mr. Blaczek, in your oversight role  
9 for IDOT, you have knowledge of the environmental  
10 processes that IDOT undertakes in planning new  
11 projects; isn't that right?

12 A. Correct.

13 Q. One of those projects was a bridge  
14 conditioning project on Greenwood Avenue over the  
15 Amstutz expressway?

16 A. Correct.

17 Q. And that took place around 2010 to  
18 2012?

19 A. Correct.

20 Q. If you could, please turn to  
21 what's been marked as Exhibit 15. It should be  
22 in one of those binders in front of you. I  
23 think the other binder.

24 A. 15-1.

1 MS. CAISMAN: I'm not sure if  
2 we've used it, but this is a stipulated  
3 document.

4 HEARING OFFICER HALLORAN: Okay.  
5 Thank you.

6 BY MS. CAISMAN:

7 Q. Just for reference purposes, do  
8 you see Sand Street running mostly north/south  
9 on this document?

10 A. Yes.

11 Q. And then do you see where it  
12 intersects with Greenwood Avenue running  
13 east/west?

14 A. Yes.

15 Q. And below Greenwood Avenue, do  
16 you see where there is an 0393 marked in a  
17 rectangular box?

18 A. Yes.

19 Q. Okay. And then there's a black line  
20 outlining what Parcel 0393 is?

21 A. Yes.

22 Q. And that's -- just for clarity  
23 purposes, that's not the area that's shaded in  
24 yellow on this document. Okay?

1 A. Okay.

2 Q. So will you understand that today,  
3 when I refer to Parcel 0393, we're going to be  
4 referring to that area in which -- which is  
5 delineated by a black line in a rectangle with  
6 0393 inside?

7 A. Yes.

8 Q. Okay. If you could, turn to Exhibit  
9 77, which is stipulated.

10 HEARING OFFICER HALLORAN: Thank  
11 you.

12 BY MS. CAISMAN:

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. This is the project report for  
16 that bridge conditioning project that we just  
17 mentioned, isn't it?

18 A. Yes.

19 Q. Okay. This document is prepared by  
20 IDOT?

21 A. Yes.

22 Q. Was Steven Gobelman involved in  
23 this project in any capacity?

24 A. I'm not aware that he was.

1 Q. Would he have been involved in this  
2 project given his role for IDOT?

3 A. He could have been.

4 Q. You were deposed in this case,  
5 correct?

6 A. Correct.

7 Q. And you were designated by IDOT  
8 to speak as a Rule 206 witness regarding this  
9 particular project?

10 A. Yes.

11 Q. I'd like to talk a little bit more  
12 about that project today. As part of that project,  
13 IDOT anticipated one of its options for conditioning  
14 a bridge would have had structural changes to the  
15 portion of Greenwood Avenue abutting Parcel 0393,  
16 is that a correct understanding?

17 A. Could you expand on that a little  
18 bit?

19 Q. Sure. If you could, turn to what's  
20 been marked as IDOT 8338. It's 77-153.

21 A. Okay.

22 Q. Okay. So this starting on 8337  
23 and moving onto 8338 is an agenda item; isn't  
24 that right?

1 A. Correct.

2 Q. As part of a presentation for this  
3 project?

4 A. Correct.

5 Q. Okay. And on 8338, on the third  
6 paragraph about halfway through, this reads, "A  
7 profile changed to Greenwood Avenue east of the  
8 Amstutz expressway would impact the nearby  
9 Greenwood Avenue bridge over the Union Pacific  
10 Railroad, UP with potential impacts to the  
11 intersection with Pershing Road just east of  
12 the UP." Do you see that?

13 A. Yes.

14 Q. Is that generally referring to  
15 the area around the intersection of Sand Street,  
16 which is now known as Pershing Road and Greenwood  
17 Avenue that abuts Parcel 0393 that we just  
18 discussed?

19 A. It does seem to be indicating a  
20 similar area, yeah.

21 Q. So to investigate those structural  
22 changes, IDOT would have had to enter onto Parcel  
23 0393; isn't that right?

24 A. Potentially.

1 Q. As part of this project, IDOT  
2 needed to initiate environmental studies on  
3 Parcel 0393 to investigate potential impacts  
4 of this project; isn't that right?

5 A. Correct.

6 Q. And to do that IDOT submitted  
7 environmental survey requests for a Parcel 0393?

8 A. Correct.

9 Q. If you could, turn to IDOT 8227  
10 in Exhibit 77. Mr. Blaczek, we can skip that.

11 You testified that environmental  
12 survey requests for parcel were submitted by IDOT,  
13 correct?

14 A. Correct.

15 Q. And surveyors actually went to 0393  
16 to conduct field surveys; is that right?

17 A. Can you explain surveyors, what you  
18 mean by that?

19 Q. What's your understanding of a  
20 surveyor?

21 A. There's field surveyors that will  
22 actually conduct land surveys and then there's  
23 environmental staff that can conduct environmental  
24 surveys.

1 Q. Did environmental staff conducting  
2 surveys enter onto Parcel 0393 to conduct field  
3 surveys as part of this project?

4 A. I believe that is correct.

5 Q. So those environmental staff or  
6 IDOT would have walked along Parcel 0393?

7 A. Yes.

8 Q. And they would have accessed Parcel  
9 0393 for that work?

10 A. Correct.

11 Q. And they would field check Parcel  
12 0393 to access existing conditions around the  
13 roadways abutting Parcel 0393?

14 A. Yes.

15 Q. I'd also -- as part of this project,  
16 IDOT also had agents conduct biological wetland  
17 assessments on Parcel 0393, didn't they?

18 A. I believe that is correct.

19 Q. And they also conducted special waste  
20 assessments and analyses on Parcel 0393?

21 A. I believe that's correct as well.

22 Q. And IDOT actually took soil samples  
23 on Parcel 0393 as part of this project?

24 A. I believe that's correct as well.

1 Q. If you could, turn to IDOT 8301 and  
2 8302 in Exhibit 77. It's 77-116 and 77-116.

3 MR. MCGINLEY: Mr. Halloran?

4 HEARING OFFICER HALLORAN: Yes.

5 MR. MCGINLEY: I just want to  
6 use a consistent numbering scheme in  
7 referring to the exhibits.

8 HEARING OFFICER HALLORAN: I  
9 agree.

10 MS. CAISMAN: I know. I just  
11 didn't mark it well in my outline.

12 MS. O'LAUGHLIN: It's difficult.  
13 I mean, it's difficult to match all of the  
14 numbers. We've got it.

15 HEARING OFFICER HALLORAN: Right.  
16 And when you're writing your post-hearing  
17 briefs and the opinion, it can be --

18 MS. CAISMAN: I apologize.

19 HEARING OFFICER HALLORAN: Thank  
20 you.

21 BY MS. CAISMAN:

22 Q. Mr. Blaczek, on IDOT 77-116,  
23 Exhibit 77-116, this is a wetland determination  
24 data form reflecting some of the soil samples

1 that were taken as part of this project; isn't  
2 that right?

3 A. Yes.

4 Q. Okay. And do you see where it  
5 says sampling point in the top right-hand corner?

6 A. Yes.

7 Q. And it says sampling .6 B?

8 A. Correct.

9 Q. And on Exhibit 77-117, do you see  
10 where it says remarks in the middle of the page?

11 A. Yes.

12 Q. And it says sample taken on roadside  
13 embankment?

14 A. Yes.

15 Q. That roadside embankment was part of  
16 Parcel 0393, correct?

17 A. That, I'm not -- I'm not sure. I'd  
18 have to see an exhibit that correlated 6B to the --  
19 to the 0393 exhibit.

20 Q. Just real quick back to 77-116,  
21 you see that the sampling date says June 16,  
22 2011?

23 A. Yes.

24 Q. If I could have you turn to Exhibit

1 77-146. This is a wetland delineation map for this  
2 particular project done by IDOT.

3 A. Yep.

4 Q. And do you see toward the top  
5 right of this page there is a dot and it says  
6 6B?

7 A. Yes.

8 Q. Would that correspond -- that would  
9 correspond to sample 6B that we just looked at in  
10 the data form; isn't that right?

11 A. Presumably, yes.

12 Q. And that's inside the embankment  
13 abutting Greenwood Avenue on Parcel 0393, correct?

14 MR. MCGINLEY: Objection, calls  
15 for speculation.

16 HEARING OFFICER HALLORAN: Okay.  
17 Ms. Caisman?

18 MS. CAISMAN: I believe the  
19 witness has personal foundation to answer.  
20 He testified that he understood where  
21 0393 was in relation to the roadway  
22 and his understanding of the sampling  
23 of this project.

24 HEARING OFFICER HALLORAN: I

1 think Mr. Blaczek can answer if he is  
2 able.

3 BY THE WITNESS:

4 A. It's not clear whether this --  
5 well, based on this available information, it  
6 looks like it would be within 0393.

7 BY MS. CAISMAN:

8 Q. 0393?

9 A. 0393, yes.

10 Q. And there's also a dot for 6A?  
11 That's another sample that would be taken in that  
12 area on Parcel 0393?

13 A. Presumably, yes.

14 Q. And that's within the red line,  
15 which is delineating the project boundary for  
16 this IDOT project?

17 A. Correct.

18 Q. So, to take the soil borings,  
19 IDOT would have had to access Parcel 0393 to  
20 do that?

21 A. Correct.

22 Q. As part of this project, IDOT  
23 looked into whether it needed to acquire  
24 additional right-of-way to do this sampling

1 and these environmental surveys, didn't it?

2 A. Yes.

3 Q. And the existing rights-of-way  
4 that IDOT had an interest in were put into  
5 the existing conditions in this project report?

6 MR. MCGINLEY: Objection, lacks  
7 foundation.

8 HEARING OFFICER HALLORAN: So  
9 Ms. Caisman, do you want to rephrase it  
10 possibly?

11 MS. CAISMAN: Sure.

12 BY MS. CAISMAN:

13 Q. This project report depicts an area  
14 in which IDOT has existing rights-of-way, doesn't  
15 it?

16 MR. MCGINLEY: Objection, lacks  
17 foundation.

18 HEARING OFFICER HALLORAN: I  
19 think he can answer if he is able.

20 BY THE WITNESS:

21 A. The project report does try to define  
22 existing right-of-way for highway purposes on the  
23 plan of profile sheets.

24

1 BY MS. CAISMAN:

2 Q. You can turn to Exhibit 77-32. When  
3 this is in landscape orientation. I'm looking at  
4 the bottom right-hand corner.

5 Do you see where it says  
6 Pershing Road and then intersects Greenwood  
7 Avenue?

8 A. Yes.

9 Q. And just to the east of Pershing  
10 Road and to the south of Greenwood Avenue, there  
11 is a dotted red line. Do you see that?

12 A. Yes.

13 Q. And it also has -- it's also  
14 marked with an element XR OW indication. Do you  
15 see that?

16 A. Yes.

17 Q. And that stands for existing  
18 right-of-way?

19 A. Correct.

20 Q. And that's existing right-of-way  
21 held by IDOT?

22 MR. MCGINLEY: Objection, calls  
23 for speculation.

24 HEARING OFFICER HALLORAN: He

1           may answer if he is able. Overruled.

2       BY THE WITNESS:

3           A.       It would be an indication of the  
4       existing right-of-way for highway purposes, not  
5       necessarily IDOT.

6       BY MS. CAISMAN:

7           Q.       You determined, though, as part  
8       of this project that IDOT did not need to acquire  
9       any additional right-of-way to do any part of  
10      this project; isn't that right?

11                   MR. McGINLEY:  Objection,  
12                   mischaracterizes the witness's testimony.

13                   HEARING OFFICER HALLORAN:  Well,  
14                   Ms. Caisman?

15                   MS. CAISMAN:  I'm asking if that's  
16                   correct or not.  I'm not trying to characterize  
17                   any prior testimony in any way.  I'm trying  
18                   to elicit testimony.

19                   MR. McGINLEY:  Ms. Caisman is  
20                   asking the witness if he has done this.  I  
21                   think it needs foundation in this case.

22                   HEARING OFFICER HALLORAN:  Overruled.  
23                   You can answer if you're able.  You will  
24                   have your chance.

1 BY THE WITNESS:

2 A. Could you ask the question again?

3 BY MS. CAISMAN:

4 Q. As part of this project, IDOT  
5 determined that it did not need to acquire  
6 any additional right-of-way to complete any  
7 part of this project; isn't that correct?

8 A. That is correct.

9 Q. Okay. You testified as part of  
10 this project IDOT entered onto Parcel 0393?

11 A. Correct.

12 Q. All right. And they had an  
13 existing right-of-way so that they could do  
14 that on Parcel 0393?

15 MR. MCGINLEY: Objection,  
16 mischaracterizing the witness's  
17 testimony.

18 HEARING OFFICER HALLORAN: Could  
19 you read that back, Lori? Is that okay?

20 (Whereupon, the requested  
21 portion of the record was  
22 read accordingly.)

23 HEARING OFFICER HALLORAN: What's  
24 wrong with that, Mr. McGinley?

1 MR. MCGINLEY: Well, that's not  
2 consistent with the witness's testimony.  
3 He didn't testify that it was IDOT's  
4 right-of-way. He said it was a right-of-way  
5 for highway purposes.

6 HEARING OFFICER HALLORAN: Okay.  
7 Ms. Caisman?

8 MS. CAISMAN: I'm trying to  
9 establish whether it was IDOT's right-of-way.

10 HEARING OFFICER HALLORAN: You're  
11 kind of splitting hairs, Mr. McGinley. I'll  
12 allow it. You may answer. Overruled.

13 BY THE WITNESS:

14 A. Whether or not an embankment or  
15 roadside features are IDOT right-of-way or anybody's  
16 right-of-way does not preclude us from walking on  
17 the property. There are existing state statutes  
18 that allow us to enter onto private property for  
19 surveying environmental research and investigations  
20 as part of our projects.

21 BY MS. CAISMAN:

22 Q. But IDOT had access to Parcel 0393  
23 because it had an existing right-of-way; isn't  
24 that right?

1 MR. MCGINLEY: Objection,  
2 misstates the witness's testimony.

3 HEARING OFFICER HALLORAN: Overruled.  
4 You may answer.

5 BY THE WITNESS:

6 A. That is not a -- in direct connection  
7 and link this whether or not we survey a property,  
8 whether or not there is right-of-way. It's not  
9 necessarily relevant.

10 MS. CAISMAN: I'm going to  
11 move to strike as nonresponsive.

12 HEARING OFFICER HALLORAN: Denied.  
13 I'll let it stand.

14 BY MS. CAISMAN:

15 Q. Mr. Blaczek, you were deposed in  
16 this case, correct?

17 A. Correct.

18 Q. You took an oath in that deposition?

19 A. (Witness nodded.)

20 Q. Is that a yes?

21 A. Yes.

22 Q. You swore to tell the truth?

23 A. Yes.

24 Q. The whole truth?

1 A. Yes.

2 Q. And nothing but the truth?

3 A. Yes.

4 Q. It's the same oath that you took  
5 just a few minutes ago today?

6 A. Yes.

7 Q. If you could, turn to what's been  
8 marked as Exhibit 4E, which I believe is in one  
9 of the binders behind you on the floor.

10 HEARING OFFICER HALLORAN: What  
11 number is that, Ms. Caisman?

12 MS. CAISMAN: It's 4E.

13 HEARING OFFICER HALLORAN: Thank  
14 you.

15 BY MS. CAISMAN:

16 Q. You can turn to 4E-22. 4E is a  
17 transcript from your deposition. It's 4E-22.

18 A. Okay.

19 Q. Actually, turn to 4E-23. I'm sorry  
20 about that.

21 A. Okay.

22 Q. I'm starting on Line 10. Now, in  
23 your deposition when you were under oath, did I  
24 ask the following question and did you give the

1 following answer: "Question: So is it fair to  
2 say that since 2010, IDOT had access to Parcel  
3 0393?"

4 "Answer: We would have access to  
5 that, yes."

6 "Question: Why?"

7 "Answer: As existing right-of-  
8 way in that, the department would have been able  
9 to walk along within its existing right-of-way."

10 A. Correct. That -- well -- well, yeah.  
11 That is correctly stated here.

12 Q. To determine whether IDOT had existing  
13 right-of-way on Parcel 0393, IDOT would have looked  
14 to Sidwell information; isn't that right?

15 A. One potential source, yes.

16 Q. TAT's Parcel Maps would have been  
17 another potential source?

18 A. Yes.

19 Q. Both of those sources of information  
20 are easily accessible to IDOT employees, aren't  
21 they?

22 A. Yes.

23 Q. If you asked for them, you would be  
24 able to obtain copies of them?

1 A. Yes.

2 Q. If you turn to Exhibit 90, okay,  
3 I'm looking specifically at just Exhibit 90-4  
4 and 90-5, the last couple pages of Exhibit 90.

5 A. Okay.

6 Q. Are those examples of Tat's Maps  
7 that IDOT employees could have obtained to  
8 determine if IDOT has existing right-of-way in  
9 Parcel 0393?

10 A. Yes. It looks similar.

11 Q. Okay. If you could, turn to Exhibit  
12 89.

13 MS. CAISMAN: I'm sorry. Exhibit  
14 90 was stipulated and Exhibit 89 was  
15 stipulated.

16 HEARING OFFICER HALLORAN: Thank  
17 you.

18 BY MS. CAISMAN:

19 Q. Exhibit 89 is a notice of service  
20 of Rule 206(a)(1) notice of deposition followed  
21 by Rule 206(a)(1) deposition. If you could,  
22 turn to the second to the last page of this  
23 exhibit, which is 89-10.

24 You were designated as IDOT's

1 representative with respect to Topic 5, correct,  
2 other than for maintenance work when you were  
3 deposed?

4 A. Correct.

5 Q. Okay. And the topic is any work  
6 IDOT or an agent of IDOT has performed relating  
7 to Parcel 0393 since 1976 including surveys, soil  
8 borings, and/or maintenance work. Did I read  
9 that correctly?

10 A. Yes.

11 Q. You don't know what work IDOT did  
12 from 1976 to 2010 on Parcel No. 0393, do you?

13 A. No.

14 Q. And you didn't do anything to  
15 investigate what work IDOT did on Parcel 0393  
16 from 1976 to 2010, did you?

17 HEARING OFFICER HALLORAN: Yes,  
18 Mr. McGinley?

19 MR. MCGINLEY: Mr. Halloran,  
20 I'm going to object to this because -- in  
21 part, because of the nature of this request  
22 and because of the way IDOT is actually set  
23 up, we actually produced two individuals.

24 One of them will be testifying

1 tomorrow with respect to the maintenance  
2 issue. Mr. Blaczek wasn't presented for  
3 that because that's not within his area  
4 of responsibility. We did, however, produce  
5 somebody that is knowledgeable about  
6 maintenance.

7 MS. CAISMAN: I can rephrase  
8 my question. I'm not trying to get  
9 him -- I realize that he wasn't designated  
10 on maintenance. So I'm not trying to get  
11 into that. So I can rephrase as to exclude  
12 maintenance.

13 HEARING OFFICER HALLORAN: Please  
14 do so and your objection is noted, Mr. McGinley.

15 MR. MCGINLEY: Thank you.

16 BY MS. CAISMAN:

17 Q. Mr. Blaczek, you didn't do anything  
18 to investigate what work, other than maintenance  
19 work, IDOT did on Parcel 0393 from 1976 to 2010,  
20 did you?

21 A. No.

22 Q. Okay. And since 2010, you're only  
23 familiar with what work IDOT did on Parcel  
24 No. 0393 as part of the specific project that

1 we just discussed?

2 A. Correct.

3 Q. You don't know how many times  
4 IDOT took soil borings, for example, on Parcel  
5 0393?

6 A. Not off the top of my head.

7 Q. And you didn't investigate that?

8 A. No.

9 Q. You don't know how many times  
10 IDOT actually accessed and entered onto Parcel  
11 0393, do you, for things other than maintenance  
12 work?

13 A. No.

14 Q. You did not investigate that?

15 A. I did not.

16 Q. You don't know how many times IDOT  
17 did any type of surveying work on Parcel 0393?

18 A. Not off the top of my head, no.

19 Q. And you did not investigate that?

20 A. No.

21 MS. CAISMAN: No further questions.

22 HEARING OFFICER HALLORAN: Thank

23 you.

24 Mr. McGinley?

1 MR. McGINLEY: Yes, please. Thank  
2 you.

3 R E D I R E C T E X A M I N A T I O N  
4 by Mr. McGinley

5 Q. Mr. Blaczek, I'd like to -- you  
6 were asked about the environmental work that was  
7 done with respect to the project that counsel  
8 was asking about, this 2010 project, to replace  
9 the bridge over the Amstutz expressway with an  
10 embankment. Do you recall being asked about  
11 that?

12 A. Yes.

13 Q. I'd like to actually ask you a  
14 little bit more about the environmental review  
15 process that goes into any project that's  
16 contemplated by IDOT.

17 Are you familiar with the  
18 preliminary environmental site assessment  
19 process?

20 A. Yes.

21 Q. Okay. Could you please tell me  
22 sort of in a step-by-step fashion what's actually  
23 involved with that process from start to finish?

24 A. Soon after we've identified a

1 project to be started, we will identify and  
2 define a boundary, an environmental survey limit  
3 is what we will call it.

4 Typically, it is a very broad  
5 area both linearly along the project as well as  
6 the width of the corridor to ensure that we  
7 cover an environmental area and footprint that  
8 would helpfully be broad enough to be able to be  
9 flexible as our project was evolving and developed  
10 and finalized.

11 So once we have established  
12 that environmental survey limit, we would  
13 submit an environmental survey request to our  
14 environmental coordinators. There would be a  
15 special waste component of that and then there  
16 would be a biological wetland cultural resources  
17 component of that.

18 The special waste component  
19 would be a process by our special waste coordinator  
20 at the district who would coordinate with our  
21 central office special waste coordinators who  
22 then would task that work to be investigated  
23 a little in further detail.

24 Based on my understanding of

1 the process, the preliminary environmental site  
2 assessment process from that point involves a --  
3 what we'll call a desk top research of the -- of  
4 special waste materials looking for contaminants,  
5 recognized environmental conditions and historical  
6 research of databases to find out what existing --  
7 what properties had existed over time in the past  
8 and then as well as fieldwork to investigation  
9 visually what exists along the project corridor.

10 That information would result  
11 in the compilation of a preliminary site assessment  
12 report. Then that report would be provided to  
13 the project engineers who are working on the  
14 project so that would define a -- what the  
15 potential impact -- what the potential environmental  
16 constraints are and the environmental issues and  
17 would initiate a conversation internally about  
18 what it is that we are dealing with from the  
19 special waste side.

20 So that information from that  
21 point would then be documented and it would be  
22 then worked on again or that information would  
23 be more relevant as far as developing quantities  
24 of materials potentially to be disposed of in a

1 proper manner and costs in our next stage of  
2 process where I'm involved in the planning process.

3           Once it leaves our shop, once  
4 the project is approved, then it goes into a  
5 design process. The design process is where  
6 that information is more -- it's more critically  
7 previewed and analyzed and developed in quantities  
8 for removals and things like that.

9           Q.       Thank you. You mentioned earlier  
10 during your testimony that there are -- I guess  
11 we could call them natural history surveys. Is  
12 that the right term for a part of this information  
13 gathering process?

14           A.       Yes, it is.

15           Q.       Okay. And you recall earlier counsel  
16 was asking you about soil borings that would have  
17 been taken with respect to wetland determination  
18 and with respect in particular to this project to  
19 replace the bridge over the Amstutz expressway.  
20 Do you recall having testified about that?

21           A.       Yes.

22           Q.       Okay. Could you tell us, soil  
23 borings can mean possibly a number of different  
24 things. When we are talking about a soil boring

1 being taken for a project like this for wetland  
2 delineation purposes, what's actually involved  
3 with that?

4           A.       That involves a wetland expert going  
5 out in the field, walking on properties, visually  
6 reviewing the property for potential wetland  
7 resources just by the types of plant material  
8 that might be there. Maybe there's open water  
9 or other evidence as well as taking a soil  
10 sampling using soil probes, which would be inserted  
11 into the ground.

12                       Then that soil that would come  
13 up with that probe, it's got about a two-inch or  
14 a one-inch diameter end on it that would be able  
15 to provide a cylinder of soil about 30 inches or  
16 so deep. Then they would extract that and that --  
17 by reviewing that material, it might help them  
18 also define whether a soil type is hydric, which  
19 might be an invasion wetland -- the presence of  
20 an old wetland that perhaps is no longer able to  
21 grow or perhaps just a hydric soil is maybe  
22 there's a farmed area that does not allow  
23 wetland type vegetation to grow.

24                       So regardless, that that

1 probe would be used to do some testing of the  
2 soil to determine hydric soils.

3 Q. And you said that the soil boring  
4 that's used or the instrument that's used is --  
5 has a diameter of what again?

6 A. About an inch to two inches. It's  
7 probably closer to an inch diameter.

8 Q. Thank you. You had mentioned  
9 that there are state statutes that grant authority  
10 to -- IDOT to enter property for performing these  
11 kinds of survey; is that right?

12 A. That's correct.

13 Q. Is it -- how many -- generally  
14 speaking what's your understanding of what these  
15 statutes provide for?

16 A. The statute, I believe, is 605 ILCS  
17 5/45 and 503. It basically allows the state --  
18 the Department of Transportation as well as  
19 counties to go on any property, any body of water  
20 for the purpose of conducting surveys,  
21 conducting subsurface investigations as well as  
22 environmental studies and as long as written  
23 notice is provided to the property owners as  
24 available and without damaging the properties.

1 Q. That's fine. I just have to fumble  
2 with exhibits for a second.

3 HEARING OFFICER HALLORAN: We  
4 can go off the record for a second.

5 MR. MCGINLEY: Thank you.

6 (Whereupon, a discussion  
7 was had off the record.)

8 HEARING OFFICER HALLORAN: We  
9 are back on the record. You may proceed,  
10 Mr. McGinley.

11 BY MR. MCGINLEY:

12 Q. I'm going to ask you, sir, to  
13 look at Exhibit 167 in your binder.

14 MS. BRICE: Is this stipulated  
15 to, Evan?

16 MR. MCGINLEY: No. This is --  
17 you had objected to this previously. This  
18 is the notice letter that --

19 MS. BRICE: This is the document  
20 that was never included on the exhibit  
21 list or produced.

22 HEARING OFFICER HALLORAN: 167?

23 MS. BRICE: And was claimed to  
24 have been on assist list when it actually

1 was not.

2 MS. O'LAUGHLIN: It was on the  
3 exhibit list that we filed.

4 MS. CAISMAN: It was on the revised  
5 one filed on May 19th, but it references  
6 that it was former Exhibit 61, which there  
7 was no 61 on any prior list and we only  
8 received this document the day before --  
9 after IDOT's original list was filed on  
10 May 17th, we then received this document  
11 on May 18th after the close of discovery  
12 and revised exhibit list was filed on  
13 May 19th.

14 HEARING OFFICER HALLORAN: And  
15 Mr. McGinley?

16 MR. MCGINLEY: Well, Mr. Halloran,  
17 I would say that with respect to counsel's  
18 remarks, I mean, I think the precedent  
19 has been set as of yesterday. I mean,  
20 there's a certain amount of leeway.

21 It seemed it was going to  
22 be granted. I mean, given the press of  
23 how discovery in this case has worked  
24 and it's a one-page letter. I mean, they

1 could have asked Mr. Blaczek about it as  
2 part of their direct as well.

3 It really just is referring  
4 back to testimony he has given in response  
5 to counsel's direct testimony.

6 HEARING OFFICER HALLORAN: What  
7 was JM's exhibit that was in question  
8 yesterday that was late?

9 MS. BRICE: It was --

10 MR. MCGINLEY: It was the reviewed  
11 diagram that Mr. Dorgan produced.

12 MS. BRICE: He was just correcting  
13 the document.

14 MS. CAISMAN: To conform with other  
15 evidence that had already been produced in  
16 the record.

17 MS. BRICE: Which if we need  
18 to withdraw it, we'll withdraw it. I  
19 mean, it obviously -- it was all the  
20 prior evidence that supported that  
21 document was in the record. This is  
22 a completely new document that we've  
23 never seen. Our experts have never seen  
24 it. It was never produced nor told us

1 it was never produced when it was put  
2 on the exhibit list.

3 HEARING OFFICER HALLORAN: How  
4 is this going to prejudice you?

5 MS. BRICE: I don't know.

6 MS. CAISMAN: I think there are  
7 certain foundational issues that we have  
8 no idea -- I mean, this appears to be a  
9 computer generated document. We don't  
10 know how because it has certain fields  
11 that aren't actually filled out in this  
12 case.

13 So without kind of having  
14 the background about how this document  
15 was generated or whether it was actually  
16 sent with respect to this case or really  
17 has any relevance with these issues given  
18 that this particular letter doesn't look  
19 like it was actually sent to anyone --

20 HEARING OFFICER HALLORAN: Are  
21 you going to address JM's concerns,  
22 Mr. McGinley, on at least the foundation?

23 MR. MCGINLEY: Certainly. I'd  
24 be happy to.

1 HEARING OFFICER HALLORAN: Okay.

2 Well, let's proceed and I will reserve

3 ruling. Thank you.

4 BY MR. MCGINLEY:

5 Q. Mr. Blaczek, IDOT Exhibit 167, you

6 have that in front of you, don't you?

7 A. Yes.

8 Q. Sir, have you seen this document,

9 Exhibit 167 before?

10 A. Yes.

11 Q. And is it fair to say that you are

12 familiar with this document?

13 A. Yes.

14 Q. And how are you familiar with this

15 document, sir?

16 A. This is a typical document that we

17 would prepare for any one of our preliminary

18 engineering environmental studies. At the onset,

19 we would typically generate something like this

20 for -- to give to our surveyors in the field that

21 sometimes are consultants. Staff that go out

22 to investigate and go on private property looking

23 at environmental features might use this letter.

24 Our surveyors -- our actual IDOT inhouse surveyors

1 carry a similar version of it in case anybody asks  
2 while they in the area or in an area. It just  
3 provides property owners in an area a piece of  
4 information that indicate why a staff may be there  
5 doing some studies.

6 MS. CAISMAN: We renew our  
7 foundation objection. Like I said, this  
8 is computer generated and we don't have  
9 any evidence of that nor any foundation  
10 for this document actually being sent  
11 with respect to the relevant parcels or  
12 areas on this case.

13 HEARING OFFICER HALLORAN: Anything  
14 further, Mr. McGinley?

15 MR. MCGINLEY: We're not offering  
16 it to say specifically that this was  
17 provided relevant to this parcel.

18 We're offering it to describe  
19 and illustrate the process by which IDOT  
20 goes about conducting it's surveys, which  
21 are directly at issue now in the case  
22 because of the initial testimony by  
23 Ms. Caisman.

24 HEARING OFFICER HALLORAN: I

1 think, you know, there was sufficient  
2 foundation and I'm not sure it's really  
3 going to prejudice JM and you will have  
4 your chance.

5 I think I'm going to admit  
6 it just for the weight and not so much  
7 the admissibility and the Board will take  
8 note of Mr. Blaczek's testimony regarding  
9 Exhibit 167. So yes, I'm allowing it.

10 MR. MCGINLEY: Thank you.

11 BY MR. MCGINLEY:

12 Q. Mr. Blaczek, I'll just ask you a  
13 few questions about this. So your earlier testimony  
14 was that basically pursuant to statute --  
15 as a matter of fact, I believe you referenced the  
16 statutory citation that's included in this letter  
17 in your earlier testimony, that being 605 ILCS  
18 5/4-503. This is the same statutory authority  
19 that's referenced in this letter, correct?

20 A. Correct.

21 Q. And how frequently is something  
22 like this, Exhibit 167, used in the course of  
23 conducting survey work?

24 A. Very -- I mean, it's very regular

1 to use this, to have this, to give this to  
2 consultant teams especially on larger projects  
3 that they will be out in large areas for extended  
4 periods of time.

5 Q. Okay. And just to close out my  
6 questions, essentially what you're saying is  
7 that there are statutory -- IDOT has this statutory  
8 authority. Does it have any additional statutory  
9 authorities that it's allowed to rely on in the  
10 course of doing any of these kinds of surveys that  
11 are preconditions to doing actual construction  
12 projects?

13 A. There are -- University of  
14 Illinois is a partner in conducting a lot of our  
15 environmental surveys. There is a -- the University  
16 of Illinois -- if you don't mind, I wrote it down.  
17 I forget what it is. It's the University of  
18 Illinois Scientific Surveys Act. It's another --  
19 there are some statutes. I think it's 110 ILCS  
20 425/20. That basically gives the University of  
21 Illinois the ability to do research and  
22 environmental research and studies and in  
23 partnering with us, we are able to work with  
24 them on that information they provide and

1 gather.

2 Q. And who does the natural history  
3 surveys or the wetland surveys on behalf of IDOT  
4 that are part of this process?

5 A. It's the University of Illinois  
6 Natural History Survey Group that does that.

7 MR. MCGINLEY: Thank you. No  
8 further questions.

9 HEARING OFFICER HALLORAN: Thank  
10 you, Mr. McGinley.

11 Ms. Caisman?

12 R E C R O S S - E X A M I N A T I O N

13 By Ms. Caisman

14 Q. Mr. Blaczek, with respect to  
15 Exhibit 167, Exhibit 167 isn't actually addressed  
16 to a real person or entity, is it?

17 A. No, it is not.

18 Q. And there is no indication that  
19 this letter was actually sent to any person or  
20 entity regarding Parcel 0393?

21 A. There is no indication of that on  
22 this letter.

23 Q. Independent of Exhibit 167, you  
24 don't actually know whether a letter like this

1 was sent to any person or entity regarding Parcel  
2 No. 0393?

3 A. I don't know that for sure.

4 Q. If IDOT had an easement over a  
5 particular piece of property that easement  
6 would also enable IDOT to access that piece of  
7 property, wouldn't it?

8 A. Yes.

9 Q. If IDOT had an easement on a  
10 particular piece of property, that would also  
11 enable IDOT to do survey work on that property?

12 A. Yes.

13 Q. If IDOT had an easement on that  
14 particular parcel of property, that easement would  
15 enable IDOT to do subsurface investigations or  
16 soil borings on that property?

17 MR. MCGINLEY: Objection,  
18 compound, vague and ambiguous.

19 HEARING OFFICER HALLORAN: Rephrase,  
20 please.

21 BY MS. CAISMAN:

22 Q. If IDOT had an easement on a piece  
23 of property, that easement would enable IDOT to  
24 do subsurface investigation on that property?

1 A. Yes.

2 Q. An easement would enable IDOT to  
3 do soil borings on that property?

4 A. Yes.

5 Q. And that easement would otherwise  
6 enable IDOT to access that property?

7 A. Yes.

8 MS. CAISMAN: No further  
9 questions.

10 HEARING OFFICER HALLORAN: Thank  
11 you, Ms. Caisman.

12 Mr. McGinley?

13 MR. MCGINLEY: Nothing further.

14 HEARING OFFICER HALLORAN: Any  
15 questions?

16 You may step down, sir.

17 Thank you.

18 (Witness excused.)

19 MS. CAISMAN: Johns Manville  
20 calls Mr. Joe Fortunato.

21 HEARING OFFICER HALLORAN: I  
22 think we will take a break at about  
23 a quarter of, ten of, for our lunch break  
24 and what we're going to be doing this

1 afternoon. Okay. Thanks.

2 Lori, would you please swear  
3 in the witness?

4 THE COURT REPORTER: Do you swear  
5 the testimony you are about to give is the  
6 truth, the whole truth and nothing but  
7 the truth, so help you God?

8 MR. FORTUNATO: I do.

9 (Witness sworn.)

10 HEARING OFFICER HALLORAN: You may  
11 proceed.

12 MS. CAISMAN: Thank you.

13 WHEREUPON:

14 J O S E P H F O R T U N A T O  
15 called as a witness herein, having been first duly  
16 sworn, deposeth and saith as follows:

17 R E D I R E C T E X A M I N A T I O N  
18 by Ms. Caisman

19 Q. Mr. Fortunato, could you please  
20 introduce yourself to everyone?

21 A. My name is Joseph R. Fortunato, Jr.  
22 and I'm a lawyer in the state of Illinois.

23 Q. Were you asked to provide expert  
24 opinions in this case?

1 A. Yes.

2 Q. Did you reach all of your opinions --  
3 did you reach opinions in this case?

4 A. I reached opinions in this case.

5 Q. Did you reach them all to a reasonable  
6 degree of professional certainty?

7 A. Yes, I did.

8 Q. I would like to talk a bit about your  
9 background. Could you tell us your education level  
10 and history?

11 A. I received undergraduate degree from  
12 Northern Illinois University in 1970 and my JD from  
13 the John Marshall Law School in 1973. I was  
14 licensed to practice law in the state of Illinois  
15 November of 1973. I have practiced law continuously  
16 in Illinois since that time.

17 My Curriculum Vitae describes  
18 the locations of my various offices starting in  
19 1973 through 1983. I practiced law, general  
20 practitioner in Melrose Park in Cook County.  
21 In 1983, I moved my practice to Westmont in  
22 DuPage County and I've practiced in DuPage  
23 County ever since.

24 Q. Could you tell us a little bit more

1 about your legal career?

2 A. I have -- throughout the inception  
3 of my practice, I was a general practitioner for  
4 probably the first eight or nine years. I did  
5 real estate transactional work and a little bit  
6 of real estate litigation work during that time.

7 When I moved my practice to  
8 Westmont, I started concentrating my practice in  
9 real estate, work both real estate transactions,  
10 commercial and residential, and in real estate  
11 litigation work. I did that in the context of  
12 practicing in Westmont.

13 Also during that time, probably  
14 in the 1980s, I started teaching real estate  
15 licensing for a couple of real estate companies,  
16 Century 21 and Caldwell Banker.

17 Incident to that work, I have  
18 gained some knowledge and insight into real estate  
19 practice. I think a teacher learns as much or  
20 more than the students frankly when you do that.

21 Thereafter, I started doing  
22 work as a title agent for various title insurance  
23 companies. An attorney agent reviews title  
24 searches, tract searches and other title insurance

1 policies to help determine the state of title to  
2 real estate. I did that both in context of  
3 residential transactions and commercial  
4 transactions.

5 Also, during that time, I  
6 enlarged my real estate litigation practice  
7 and pretty much concentrated solely on real  
8 estate work.

9 In 1996, I was appointed by  
10 the then state's attorney in DuPage County to  
11 be a special assistant state's attorney charged  
12 with the responsibility of negotiating land  
13 acquisition rights-of-way both temporary and  
14 permanent easements for the DuPage County Division  
15 of Transportation. I did that for several years,  
16 probably over a six-year period, while there was  
17 still some available tax -- gas tax money available  
18 for the county to engage in their land acquisition  
19 projects.

20 In 2001, I was engaged by the  
21 predecessor to the Main Street Organization of  
22 Realtors as outside general counsel. I have  
23 had that position for 15 years. The Main Street  
24 Organization of Realtors is the largest regional

1 board of realtors in Illinois. It's larger by  
2 membership than the Chicago association and it's  
3 the fourth largest regional board in the United  
4 States.

5 That representation involves  
6 all sorts of duties with regard to real estate  
7 work, transactional and litigation work. It  
8 also involves the drafting of standardized forms,  
9 including standardized contracts.

10 I have also lectured extensively  
11 for various organizations, the Illinois State Bar  
12 Association, Illinois Institute of Continuing Legal  
13 Education, Chicago Bar Association, DuPage County  
14 Bar Association, Kane County Bar Association and  
15 for various title companies. I'm a member as  
16 attorney agent for four title companies; Greater  
17 Illinois Title, Chicago Title, First American Title  
18 and Attorneys Title Guarantee Fund.

19 I have been fortunate enough  
20 for the past ten to 15 years to serve as an  
21 expert witness in litigation. I have been  
22 qualified to testify in litigation on seven  
23 different occasions. I have given expert  
24 testimony at deposition in probably 15 or 20

1 different instances.

2 Q. Where do you currently practice?

3 A. I practice with the firm of Momkus  
4 McCluskey in Lisle, Illinois. I've been there since  
5 2009.

6 Q. Are you the head of the real estate  
7 practice group at Momkus McCluskey?

8 A. Yes, I am.

9 Q. As part of your teaching experience,  
10 can you elaborate how that has related to easements?

11 A. Well, teaching real estate licensing  
12 involves teaching people who have no prior  
13 background in the law how to understand legal  
14 concepts as they relate to real estate transactions,  
15 listing and selling real estate. So in describing  
16 property law, we have to find for students what  
17 ownership of property entails and the various  
18 interests in real estate, for instance, liens --  
19 consensual and non-consensual liens.

20 In the context of easements, we  
21 inform the students that easements appear  
22 regularly even if they are only going to be  
23 concerned with residential work, but also in  
24 commercial work they appear regularly on most

1 properties that are going to -- they are going  
2 to encounter.

3 For that reason, the students  
4 have to understand the nature of an easement,  
5 what it means for the grantee of the easements  
6 and what it means for the grantor of the easement.

7 We have to differentiate between  
8 easements that are temporary in nature and easements  
9 that are permanent in nature.

10 Q. What sort of expertise or experience  
11 do you have in land acquisition or acquisition of  
12 interests in property?

13 A. Regarding acquisitions of interest  
14 in property, like I said, I have experience as  
15 negotiator for the DuPage County Division of  
16 Transportation. For a period of five or six years,  
17 I was actually actively engaged in the negotiation  
18 with owners of property or acquisition of parcels  
19 whether for temporary construction purposes or  
20 permanent easements or actually ownership of right  
21 of fee title depending upon the goals of the  
22 DuPage County Division of Transportation with  
23 regard to their projects.

24 Also, I did learn quite a bit

1 about easement law as an examiner of title insurance  
2 because in title insurance questions, you run into  
3 easements all the time and you have to determine  
4 the nature of the easement and how it affects use  
5 and enjoyment of property and how it affects  
6 ownership.

7 Q. Do you have experience in the  
8 acquisition of land or property interest for  
9 private individuals or entities?

10 A. Oh, certainly, yes. I have been an  
11 active transactional practitioner for all of the  
12 years in which I have practiced law. So whether --  
13 initially, it was pretty much exclusively  
14 presidential work, but I have done commercial  
15 transactions as well. In that context, I have  
16 been able to gain knowledge and expertise with  
17 regard to the law of easements.

18 Frankly, I've owned real  
19 estate as well. I've owned commercial property  
20 and I've owned residential property. In those  
21 contexts, I had to become acquainted with and  
22 understand the nature of easements under those  
23 circumstances.

24 Q. In your experience in both private

1 and public sectors, is there any significant  
2 difference between the rights afforded to a public  
3 agency when it holds an easement interest versus  
4 a private individual or entity?

5 A. No.

6 Q. How does the negotiation and drafting  
7 of contracts for easements or right-of-ways impact  
8 your understanding of the rights and obligations  
9 given to an easement holder?

10 A. Well, in order to draft an agreement  
11 or a document by which title to property is  
12 acquired in this easement setting, you have to  
13 understand what terms you're going to need to  
14 apply to a contract. You have to be acquainted  
15 with the physical description of the property,  
16 the legal description. You have to be acquainted  
17 with the necessity of right-of-way.

18 I learned, for instance, that  
19 even though maybe the Division of Transportation  
20 had an existing right-of-way outside the borders  
21 of an existing road, that in order to engage  
22 in a remodeling project or an amplification of  
23 the project, additional right-of-way would be  
24 required and the reasons why and how much would

1 be necessary, and I learned that in my position  
2 as the negotiator for the DuPage County  
3 Division of Transportation.

4 Q. As a negotiator for the DuPage  
5 County Division of Transportation -- Department  
6 of Transportation, did you also gain experience  
7 with respect to highway grants and analyzing  
8 grant documents?

9 A. Yes. A grant for public highway  
10 and a right-of-way for roadway purposes are  
11 essentially the same thing and they are all --  
12 those documents are those interests -- are  
13 easements under my understanding of property  
14 law.

15 Q. What expertise do you have in  
16 title insurance?

17 A. Well, as far as title insurance  
18 is concerned, for over 25 years, I have been  
19 an active title insurance agent for the title  
20 companies that I have described. So I have,  
21 you know, daily exposure to issues regarding  
22 what title to property means, what exceptions  
23 to title are, what are permitted or non-permitted  
24 exceptions.

1                   In three different instances,  
2 I was qualified to testify on behalf of title  
3 insurance companies in their attorney/agent  
4 litigation as an expert witness for First American  
5 Title, for Ticor Title and for Chicago Title.

6           Q.       Did you rely on all of that expertise  
7 in forming your opinions in this case?

8           A.       I did.

9           Q.       How did you -- how -- other than  
10 your expertise, how else did you form your  
11 opinions in this case?

12           A.       Well, we had a lot of documents  
13 to review. I reviewed the complaint in this  
14 case. I reviewed the transcripts of depositions  
15 of various witnesses. I reviewed expert reports,  
16 both on behalf of JM and IDOT. I reviewed  
17 documents that affect the title to the property  
18 in question and I was asked specifically to  
19 opine with regard to the parcel we are describing  
20 as 0393. So I read documents that affected title  
21 to that property.

22                   There were quite a few reports  
23 that didn't constitute expert reports, but still  
24 were report documents that were in the record.

1 In fact, Mr. Blaczek just referred to one of them.  
2 I think you asked him questions about that report  
3 involving the environmental study of 2010 to 2012.  
4 Documents of that nature, I reviewed.

5 Q. Did you also review and rely upon  
6 IDOT's discovery responses in this case?

7 A. Yes, I did mention that -- I'm  
8 sorry if I didn't mention it, but the written  
9 discovery responses and especially the answers  
10 to interrogatories and production requests, I  
11 relied on those as well.

12 Q. There has been some talk about a  
13 title commitment obtained by JM. Did you rely  
14 on any title commitment obtained by Johns Manville?

15 A. No. And I understand that in the  
16 list of documents upon which I relied, I made a  
17 misnomer when I referred to a title commitment.  
18 What I meant to refer to was the Property Insight  
19 tract search that you discussed this morning with  
20 Ms. Giannelli. That was what I referred to and  
21 relied upon.

22 Q. Did you review any deeds associated  
23 with any title commitment for this case?

24 A. No deeds, no. Just the grants for

1 public highway.

2 Q. Are all of the documents that  
3 you reviewed and relied upon those that are  
4 typically relied upon by professionals in your  
5 field of expertise?

6 A. Yes.

7 Q. In general, what opinions have you  
8 reached in this case?

9 A. In general, the opinion that I  
10 have reached in this case is that the parcel  
11 known as 0393, called a grant for public highway,  
12 is an existing permanent easement in favor of  
13 the Illinois Department of Transportation, that  
14 0393 exists today, was granted by ComEd, it  
15 exists today as a permanent property right in  
16 IDOT.

17 It's still in use today as  
18 far as I'm concerned especially given the fact  
19 that there was an embankment that IDOT constructed  
20 that is still this place today, and that IDOT  
21 has all of the rights and all of the  
22 responsibilities attendant to an easement  
23 holder given the parameters of the grant.

24 Q. And do you have an opinion as

1 to whether IDOT has recently exercised those  
2 rights and duties as the permanent easement  
3 holder of Parcel 0393?

4 A. Yes. I believe they have.

5 MS. O'LAUGHLIN: Excuse me,  
6 Mr. Fortunato.

7 HEARING OFFICER HALLORAN: Yes,  
8 Ms. O'Laughlin?

9 MS. O'LAUGHLIN: I would like  
10 to object to this point. I do not believe  
11 they have established his expertise in  
12 response to this particular question.

13 HEARING OFFICER HALLORAN: In  
14 response to this particular question?

15 MS. O'LAUGHLIN: Yes, to  
16 Ms. Caisman's last question, I do not  
17 believe they've established his expertise  
18 in response to this question. So I would  
19 like to state an objection.

20 HEARING OFFICER HALLORAN: Thank  
21 you, Ms. O'Laughlin.

22 Lori, could you please  
23 read the question back?

24

1 (Whereupon, the requested  
2 portion of the record was  
3 read accordingly.)

4 HEARING OFFICER HALLORAN: And  
5 Ms. Caisman?

6 MS. CAISMAN: He has testified  
7 that he has expertise in knowing what  
8 rights and duties are granted to a  
9 permanent easement holder and that he  
10 has reviewed certain documents in the  
11 record, which would reflect IDOT's  
12 activities and that those documents  
13 are those reasonably relied upon by  
14 experts in his field.

15 HEARING OFFICER HALLORAN: You  
16 know, I'm going to sustain Ms. O'Laughlin's  
17 objection.

18 BY MS. CAISMAN:

19 Q. Mr. Fortunato, as part of your  
20 experience as the special state's attorney for  
21 DuPage County, did you have any experience or  
22 encounter instances in which the Department of  
23 Transportation was exercising its rights and  
24 duties as an easement holder?

1           A.       Yes.  And I can amplify that  
2     answer because the DuPage County Division of  
3     Transportation, incident to its acquisition  
4     of right-of-way, exercised quite a few of its  
5     rights and its duties incident to the expansion  
6     of the roadway projects.

7                     For instance, it had access  
8     to property and it utilized that access.  It  
9     constructed improvements on property as one of  
10    its rights.  It controlled the areas encompassed  
11    by the right-of-way.  It undertook maintenance  
12    responsibilities.  It operated, if you will, the  
13    roadways that were encompassed by the right-of-way.

14                    It was able to prevent others  
15    from entering onto the easement area, the  
16    right-of-way area, and remove or somehow modify  
17    some of the improvements that were made.  It  
18    undertook its own repair responsibilities and  
19    maintenance responsibilities.

20                    Those were all duties --  
21    excuse me -- rights afforded to the right of  
22    an easement holder in the right-of-way situation.

23            Q.       Those were rights and duties that  
24    you had firsthand experience witnessing the

1 Department of Transportation exercise?

2 A. Well, yes. I didn't physically  
3 do them myself, but what I did was when I worked  
4 in concert with the Division of Transportation,  
5 I negotiated for the acquisition of the  
6 right-of-ways and I had to explain to owners  
7 of property the purpose for the easement and  
8 what the job was going to entail.

9 I had to learn from the  
10 people at the Division of Transportation what  
11 the particular project entailed and what rights  
12 they were going to try to exercise incident to  
13 those jobs.

14 Q. Have you reviewed documents in  
15 this case about whether IDOT has recently  
16 exercised its rights and duties as a permanent  
17 easement holder on Parcel 0393?

18 A. Yes, I have.

19 Q. And do you have an opinion as to  
20 whether IDOT has recently exercised its rights  
21 and duties as a permanent easement holder on  
22 Parcel 0393?

23 MS. O'LAUGHLIN: Objection.

24 Same objection. Mr. Fortunato certainly

1 has experience and expertise in certain  
2 areas. He does not have expertise to  
3 give his opinions about IDOT activities  
4 with regard to Parcel 0393.

5 HEARING OFFICER HALLORAN: I  
6 think based on his additional testimony,  
7 I would disagree with that and I think  
8 he can give -- after reading, I guess,  
9 the record and exhibits, he can give his  
10 thoughts on the matter. So overruled.  
11 You may continue, sir.

12 BY THE WITNESS:

13 A. Okay. To answer your question,  
14 yes, I have an opinion regarding the recent  
15 activities of IDOT. I believe the recent  
16 activities of IDOT indicate an exercise of  
17 rights that IDOT has afforded to the grant for  
18 highway purposes.

19 The recent activities would  
20 entail the environmental studies that you went  
21 over in detail during Mr. Blaczek's testimony,  
22 if I could summarize it in that fashion.

23 BY MS. CAISMAN:

24 Q. Did you prepare a report regarding

1 your opinions?

2 A. I did.

3 Q. If you could, turn to Exhibit 18.

4 A. This is going to take a while.

5 MS. BRICE: May I approach to

6 assist?

7 HEARING OFFICER HALLORAN: You

8 may.

9 BY THE WITNESS:

10 A. I have it.

11 MS. CAISMAN: This is also

12 stipulated.

13 HEARING OFFICER HALLORAN: Thank

14 you.

15 BY MS. CAISMAN:

16 Q. This is the report that you prepared  
17 regarding your opinions?

18 A. I believe it is, yes.

19 Q. You said all of your opinions  
20 pertain to a parcel of land that's been referred  
21 to as Parcel 0393. Now, what do you mean by Parcel  
22 0393?

23 A. By Parcel 0393, I refer to a parcel  
24 of real estate that has been contained among other

1 parcels of real estate in a grant for public highway  
2 provided by Commonwealth Edison to IDOT's  
3 predecessor, I should say, in 1971. That  
4 document was recorded in 1974 and then again  
5 re-recorded in 1984.

6 Q. We could, go to Exhibit 15. I  
7 know you were in the room when we went through  
8 this document with Mr. Blaczek, but could you  
9 describe where Parcel 0393 is on this plat?

10 A. Parcel 0393 would be located  
11 abutting Greenwood Avenue to the south and it's  
12 depicted by -- excuse me -- it's boundaries are  
13 primarily depicted by a heavy line with the legend  
14 proposed ROW indicated immediately above the line  
15 to a point near the street called Pershing Road,  
16 but not quite to it. If I could get up and  
17 indicate, I would like to do that.

18 Q. Yes. That would be great.

19 A. Okay. My understanding is that  
20 the Greenwood Avenue is here (indicating). We  
21 have that depicted on the line here (indicating)  
22 and then the words proposed ROW here (indicating).  
23 So I'm heading in a westerly direction to a point  
24 not quite to Pershing Road and then heading due

1 south along this line (indicating) and then back up  
2 again. So I think it's encompassed, if you will,  
3 in a little southerly strip here and then primarily  
4 in the area south of Greenwood and then as depicted  
5 by the heavy line in the proposed ROW.

6 Q. The yellow highlighted area, that's  
7 not part of Parcel 0393, is it?

8 A. I don't believe it is.

9 Q. Okay. So is it correct that it  
10 doesn't go quite directly south? I believe it  
11 goes south on --

12 A. Well, it goes -- it goes south  
13 on this direction outside of the shaded area  
14 here (indicating) and if you can see the words  
15 referenced to ROW here (indicating) all the  
16 way as well. So it goes down in this direction  
17 and up again (indicating).

18 Q. All right. Thanks. Now, you had  
19 mentioned some grant documents. What was the  
20 first grant document that you reviewed that  
21 identified Parcel 0393?

22 A. I know it or refer to it by the 1971  
23 grant of public highway.

24 Q. And if you could, turn to Exhibit 41,

1 which is stipulated.

2 A. Yes. I'm there.

3 Q. Is that Exhibit No. 41 that 1971  
4 grant for public highway that you were referring  
5 to?

6 A. Yes.

7 Q. What does this grant show?

8 A. The grant shows that Commonwealth  
9 Edison conveyed to the state of Illinois acting  
10 through the Department of Public Works and Buildings  
11 certain properties for highway purposes only and  
12 they are characterized by parcel numbers and  
13 Subsets A and B and then by some references to  
14 parcel numbers with the indicator E, the letter E,  
15 prior to the number.

16 Q. Where is Parcel 0393 on this document?

17 A. It's on the second page. The exhibit  
18 number is 41-2. It is the second full paragraph  
19 and the caption parcel number 0393 appears  
20 prominently.

21 Q. Are there any limitations on IDOT's  
22 right to use Parcel 0393 other than it has to be  
23 for highway purposes?

24 A. Well, the limitations would only

1 be the geographical location defined by the legal  
2 description.

3 Q. Are there any limitations on how  
4 long IDOT could use Parcel 0393 for highway  
5 purposes under this grant document?

6 A. None.

7 Q. What was the next grant document  
8 that you reviewed and relied upon that identified  
9 Parcel 0393?

10 A. Well, there was a re-recording of  
11 that same document in 1974, but I cannot tell you  
12 the purpose for the re-recording. Since it's  
13 essentially the same document, I didn't rely very  
14 much upon it, but there was another grant recording  
15 in 1984.

16 Q. For the record, if you could, turn to  
17 Exhibit 42. Let me know, but is that the 1974 grant  
18 that you just referred to?

19 A. Yes, I believe it is.

20 Q. And if you could, turn to Exhibit  
21 No. 43.

22 MS. CAISMAN: Exhibits 42 and 43  
23 are stipulated.

24 HEARING OFFICER HALLORAN: Thank

1           you.

2       BY MS. CAISMAN:

3           Q.       Is this the 1984 grant for public  
4       highway that you referred to?

5           A.       Yes, it is.

6           Q.       Did you rely upon this document in  
7       forming your opinions in this case?

8           A.       Yes, I did.

9           Q.       What does this grant show?

10          A.       This grant shows the fact that  
11       Commonwealth Edison granted to the state of  
12       Illinois certain property rights, but the  
13       difference between this document and the 1971  
14       document is that at least the stated purpose  
15       in the record is that there was -- it was  
16       intended to correct a legal description and  
17       it shows different parcels located in different  
18       places in the document.

19                        So that the first legal  
20       descriptions, if you will, are parcel numbers  
21       0392 and 0393 and continuing to 0399, I believe,  
22       and then 400, I should say. I apologize. Then  
23       there's a description on the fourth page after  
24       the caption, furthermore, that some of the parcels

1 in question that were listed in the 1971 document  
2 are now distinguished as temporary construction  
3 easements. Those are defined by parcel numbers  
4 that would be indicated with the letter E and  
5 on Page 5, you will see parcel number E392, E393  
6 and they continue on to Page 6 and Page 7 through  
7 parcel E999.

8 Q. Was Parcel 0393 delineated as a  
9 temporary construction easement in this 1984 grant?

10 A. No, it was not.

11 Q. How was it treated in this -- how was  
12 Parcel 0393 treated in the 1984 grant?

13 A. Parcel 0393 was a permanent easement.  
14 It's a grant of a specific described property, but  
15 there are no time limitations or other conditions  
16 associated with it.

17 Q. So in your opinion, what type of  
18 parcel is 0393?

19 A. It's a permanent easement. The  
20 caption grant for highway purposes in my mind  
21 means permanent easement unless there's some  
22 determination -- specific determination as there  
23 is in the 1984 document that some land in question  
24 is subject to only a temporary construction

1 easement. 0393 is not temporary. It's permanent.

2 Q. If you could, turn to what's been  
3 marked as Exhibit 3I.

4 A. Pardon me. Off the record. This  
5 starts with five.

6 Q. It's probably on the floor.

7 MS. BRICE: May I approach?

8 HEARING OFFICER HALLORAN: You  
9 may.

10 BY THE WITNESS:

11 A. Thank you.

12 BY MS. CAISMAN:

13 Q. Okay.

14 A. Thank you. I have it.

15 Q. These are respondent's responses  
16 to complainant's first set of request for admission.  
17 Did you review this document in confirming your  
18 opinions in this case?

19 A. Yes, I did.

20 Q. If you could, turn to Page 3. That's  
21 Exhibit 3I-3.

22 A. I have it.

23 Q. Could you read request for admission  
24 No. 1?

1           A.       Number one, "Admit that the  
2 right-of-way encompasses portions of Site 6."

3           Q.       And could you please read the  
4 response?

5           A.       "Response: IDOT herewith incorporates  
6 by reference each and every objection set forth  
7 above under its general objections. Johns Manville  
8 denies that a right-of-way encompasses portions of  
9 Site 6, but admits that a grant for highway  
10 encompasses portions of Site 6."

11          Q.       Could you read request for admission  
12 number two?

13          A.       "Admit that a right-of-way encompasses  
14 portions of Site 3."

15          Q.       Please read the response.

16          A.       "IDOT herewith incorporates by  
17 reference each and every objection set forth  
18 under its general obstructions. Johns Manville  
19 denies that a right-of-way encompasses portions  
20 of Site 3, but admits that a grant for a public  
21 highway encompasses portions of Site 3."

22          Q.       Initially, what was your understanding  
23 of what you would be opining on as an expert witness  
24 in this case?

1           A.       Initially, I thought I would be  
2     opining on whether or not Parcel 0393 was a  
3     temporary construction easement or a permanent  
4     easement.

5           Q.       What gave you that impression?

6           A.       There were expert reports and  
7     transcripts of depositions, I believe, at least --  
8     I'm sorry. Answers to interrogatories. Not the  
9     transcripts. Answers to interrogatories that  
10    indicated to me that witnesses on behalf of IDOT  
11    were under the impression that once construction  
12    was completed in the 1970s regarding Parcel 0393  
13    that it was no longer any kind of property right  
14    available to IDOT.

15          Q.       If you could, turn to what's been  
16    marked as Exhibit 3F?

17          A.       F, as in Frank?

18          Q.       Yes.

19          A.       I have it.

20          Q.       Are these responses to complainant's  
21    third set of interrogatories discovery responses  
22    that you reviewed in forming your opinions in this  
23    case?

24          A.       Yes, they are.

1           Q.       Are these the response part of the  
2       discovery responses that you mentioned that led  
3       to your impression that you would be opining on  
4       whether Parcel 0393 was a temporary easement or  
5       permanent easement?

6           A.       Yes.

7           Q.       Specifically, which of these  
8       responses led you to believe that IDOT was  
9       contending it had only a temporary easement  
10      in Parcel 0393?

11          A.       Well, the response to interrogatory  
12      No. 1 contains language that led me to believe  
13      that IDOT believed that it had no further use or  
14      right in the property.

15          Q.       Okay.

16          A.       Also, number two and others.

17          Q.       All right. So interrogatory number  
18      one starts on Exhibit 3F-3 and then the responses  
19      on 3F-4; is that right?

20          A.       That's correct.

21          Q.       So which of that language led you  
22      to believe that IDOT contended it only thought it  
23      had a temporary easement in Parcel 0393?

24          A.       In the second full paragraph of the

1 response, starting about the fourth line down,  
2 there is a sentence that reads as follows: "The  
3 grant for public highway in question was used  
4 only in conjunction why the construction of an  
5 overpass across railroad tracks, part of the  
6 construction of the Amstutz expressway. Once  
7 construction of the expressway and the Greenwood  
8 Avenue overpass was completed, IDOT had no further  
9 use for the grant for public highway as adjacent  
10 to the land in which grant for public highway was  
11 located (i.e., Greenwood Avenue and Sand Street)  
12 were and always have been roads under the exclusive  
13 control of the City of Waukegan were never state  
14 highways."

15 Q. What about that response led you to  
16 believe IDOT was saying it only had a temporary  
17 easement?

18 A. Well, the sentence that begins "Once  
19 construction, the expressway and Greenwood Avenue  
20 overpass was completed, IDOT had no further use  
21 for the grant," that led me to believe that IDOT  
22 under the impression that if they didn't need to  
23 use it any longer, that somehow the grant  
24 disappeared.

1 Q. I believe you mentioned interrogatory  
2 number two was also -- the response to  
3 interrogatory number two was also something that  
4 lead you to believe IDOT no longer had an easement  
5 interest in Parcel 0393. What about the language  
6 in this response or which of this language led  
7 you to believe that?

8 A. Well, the response to number two,  
9 which is located on Page 5 of the exhibit in  
10 question, the same sentence appears that I just  
11 read, but the preceding sentence said -- starts  
12 as follows: "Further, responding IDOT staff  
13 have reviewed the various documents related to  
14 the right-of-way and concluded that there would  
15 have been no need for maintaining the right-of-way  
16 following the construction of an overpass on  
17 Greenwood Avenue across the railroad tracks as  
18 part of the construction of the Amstutz expressway."

19 Q. So what about that led you to  
20 believe that IDOT thought or was contending  
21 it only had a temporary easement in Parcel 0393?

22 A. Well, the characterization of the  
23 right-of-way in quotation marks somehow, in my  
24 mind, led me to believe that IDOT thought that

1 the right-of-way wasn't in place, that it was  
2 somehow limited in time or in affect and also  
3 the language stating that there would have been  
4 no need for maintaining the right-of-way led me  
5 to believe that they thought that the rights  
6 afforded to IDOT were temporal in nature and had  
7 expired.

8 Q. If you could, turn to interrogatory  
9 number four and the response to that interrogatory  
10 on Exhibit 3F-6.

11 A. I see it.

12 Q. Is there anything about the response  
13 to interrogatory number four that led you to believe  
14 IDOT contended it only had a temporary easement in  
15 Parcel 0393?

16 A. Yes, there is.

17 Q. What is that?

18 A. The last sentence of the response  
19 reads as follows: "Further responding, IDOT states  
20 that the cited term typically refers to a form of  
21 temporary easement through which IDOT is allowed to  
22 enter onto the property of a third party in order to  
23 conduct work related to an IDOT construction project  
24 solely for highway purposes." The

1 operative language here is temporary easement, which  
2 I disagree. Parcel  
3 0393 was part of a grant of permanent easement,  
4 not temporary.

5 Q. If you could, turn back to Exhibit  
6 3I, respondent's responses to complainant's first  
7 set of request for admission.

8 A. I see it.

9 Q. Did these responses also contribute  
10 in any way to your understanding that you would  
11 be opining about whether Parcel 0393 was a temporary  
12 or permanent easement?

13 A. Well, yes, it did because IDOT, in  
14 its response -- for one thing, I think that  
15 confused the parties. I mean, this is IDOT's  
16 response, but, for instance, in response number  
17 one, the second sentence begins, "Johns Manville  
18 denies that a right-of-way encompasses portions  
19 of Site 6, but admits that a grant for a public  
20 highway encompasses a portion of Site 6."

21 I think they did that in the  
22 second response as well and I think they meant  
23 IDOT instead, but what this indicated to me  
24 certainly was that IDOT was trying to distinguish

1 a grant from public highway from a right-of-way,  
2 which in now mine are the same.

3 Q. What about the responses to  
4 request for admissions three, four and six?  
5 Did any of those lead you to believe that IDOT  
6 contended they had a temporary easement in  
7 Parcel 0393 versus a permanent easement?

8 A. Well, in the response to number  
9 three, IDOT seems to believe that the term  
10 right isn't adequately defined and even though  
11 I think the term was utilized in other portions  
12 of the record. They are not going to speculate  
13 as to the intended meaning of the term right and,  
14 therefore, they deny the request for admission.

15 And number four, the request  
16 was to admit that IDOT had a right to use the  
17 right-of-way since 1971. Again, IDOT denies  
18 because they don't speculate as to the intended  
19 meaning of right when the grant for public highway  
20 clearly gave a right to a permanent easement to  
21 IDOT.

22 In number five, again they are  
23 questioning the language used as to the intention  
24 of transferred, conveyed, divested or an interest

1 and once again, it lead me to believe that  
2 there is no need, I guess, on there my transfer,  
3 convey or divest themselves because the  
4 implication was once construction was done,  
5 all rights somehow disappeared and that's not  
6 true.

7 HEARING OFFICER HALLORAN: Excuse  
8 me. Ms. Caisman, how long do we have on  
9 direct? I need to take a break in about  
10 five minutes.

11 MS. CAISMAN: Yes. I think this  
12 would be a good breaking point in five minutes.  
13 I was going to suggest that anyway. I just  
14 have one more document to present really  
15 quickly on his background and then we can  
16 wrap it up.

17 HEARING OFFICER HALLORAN: Thank  
18 you.

19 BY MS. CAISMAN:

20 Q. All right. And what about request  
21 number six and the response for request for  
22 admission number six?

23 A. Number six asked IDOT to admit has  
24 never vacated or abandoned the right-of-way and

1 they state again that the terms vacated or  
2 abandoned weren't defined and, therefore, they  
3 are vague and ambiguous and then they won't  
4 speculate as to their intended meaning, but  
5 in my mind those are important terms because  
6 if you intent to try to convey your ownership  
7 interest in an easement, you could use a document  
8 that would convey or somehow give up your ownership  
9 interest, but there has been no attempt on the part  
10 of IDOT as far as I'm concerned anything the record  
11 that indicates that.

12 Q. So do you disagree with all of  
13 IDOT's responses to request for admission three,  
14 four, five and six as contained in Exhibit 3I?

15 A. Yes, I do.

16 Q. If you could quickly turn to Exhibit  
17 17.

18 A. All right. I have Exhibit 17.

19 Q. This is the disclosure statement of  
20 Keith Stoddard; is that correct?

21 A. Yes, it is.

22 Q. And this, you mentioned, was one of  
23 the duties you reviewed and relied upon in forming  
24 your opinions in this case?

1 A. I did.

2 Q. Is there anything in this disclosure  
3 statement that led you to believe that IDOT was  
4 representing it had only a temporary easement in  
5 Parcel 0393?

6 A. Yes.

7 Q. Okay. What in this document led you  
8 to that understanding?

9 A. In the opinions and conclusions  
10 reached by Mr. Stoddard as indicated in Romanette  
11 ii. Answered B is a little confusing because it  
12 states that Mr. Stoddard is expected to testify  
13 that the fee simple interest in titles vested in  
14 Commonwealth Edison or the real property located  
15 on south Greenwood Avenue, east of Sand Street, I  
16 would agree with that. But it also goes on to say,  
17 "The grant for public highway only provides IDOT  
18 with the right to use third party's real property  
19 for the purpose specified with additional  
20 limitations on temporary construction easements."

21 Part of that is true and part of  
22 that is a little bit deceiving because --

23 MR. MCGINLEY: Objection to the  
24 characterization deceiving.

1 HEARING OFFICER HALLORAN: Sustained.

2 BY THE WITNESS:

3 A. I found part of this to be confusing  
4 because I -- I can specify -- I can agree that  
5 part of -- for instance, a temporary construction  
6 easement does exist in the land located that had  
7 previously owned Commonwealth Edison and conveyed  
8 to IDOT, but specifically Parcel 0393 has no  
9 additional limitations as a temporary construction  
10 easement and that's what I found confusing in my  
11 mind and, therefore, disagreed with that on the  
12 part of Mr. Stoddard's statement.

13 Going on to Item D, it says,  
14 "Mr. Stoddard's expected to testify that once  
15 IDOT's construction work on the Amstutz project  
16 concluded, the state was not responsible for  
17 maintaining the grant for public highway as the  
18 adjacent roads were to be maintained by the City  
19 of Waukegan." I specifically disagree with that  
20 conclusion.

21 BY MS. CAISMAN:

22 Q. Did your understanding of what you  
23 would be opining on as an expert witness change  
24 in this case?

1 A. Yes.

2 Q. When?

3 A. When I read the transcript of the  
4 deposition of Mr. Stoddard as well as other  
5 witnesses, it was made clear that the witnesses  
6 believed, especially Mr. Stoddard, they understood  
7 that Parcel 0393 was a permanent easement and  
8 that any reference to the temporary nature or  
9 construction easements didn't refer specifically  
10 to Parcel 0393, it referred to other properties.  
11 So the question of whether or not 0393 was a  
12 temporary easement was no longer in issue.

13 Q. Was it your understanding, based  
14 on Mr. Stoddard's deposition testimony, that  
15 his opinion was that IDOT was granted a permanent  
16 easement in Parcel 0393?

17 A. Yes. That's my understanding.

18 MS. CAISMAN: This is a good  
19 stopping point.

20 HEARING OFFICER HALLORAN: Thank  
21 you, Ms. Caisman. Are you finished with  
22 your direct or do you want to continue  
23 after lunch?

24 MS. CAISMAN: No. I think there

1 is a little bit more about his opinions,  
2 but we will try and streamline it.

3 HEARING OFFICER HALLORAN: Okay.  
4 I will see everybody back here at 12:50,  
5 please. Thank you.

6 (Whereupon, after a short  
7 break was had, the following  
8 proceedings were held  
9 accordingly.)

10 HEARING OFFICER HALLORAN: All  
11 right. Good afternoon. We are back on  
12 the record. Again, this is Case No. PCB  
13 14-3.

14 I believe direct is still  
15 ongoing for Mr. Fortunato. You are still  
16 under oath. You know that.

17 You may proceed, Ms. Caisman.

18 BY MS. CAISMAN:

19 Q. Mr. Fortunato, under Illinois law  
20 what type of interest in property is a permanent  
21 easement; is it direct or indirect?

22 A. It's direct property rights.

23 Q. What does that mean?

24 A. Indirect property rights arise by

1 operation of law. For instance, the right of  
2 adverse possession or something in the nature  
3 that doesn't involve a grant or a conveyance.  
4 A permanent easement arises by reason of a grant  
5 document as in this case.

6 Q. As a permanent easement holder of  
7 Parcel 0393, what rights are afforded with respect  
8 to IDOT and Parcel 0393 in the embankment on Parcel  
9 0393?

10 A. Well, in my opinion, the rights  
11 afforded to IDOT in the permanent easement known  
12 as 0393 include right of access to the property,  
13 the right of construct improvements on the property,  
14 the right to control the property, the right to  
15 maintain the property, the right to operate roadways  
16 on the property, the right to prevent third parties  
17 from interfering with any improvements made by the  
18 holder of the easement right and the right to make  
19 repairs on the property.

20 Q. And does that include surface and  
21 subsurface rights on that property?

22 A. Yes. It includes both.

23 Q. Okay. And in this case, IDOT was  
24 afforded those rights with respect to highway

1 purposes, is that the correct understanding?

2 A. Yes, for highway purposes. Yes, that  
3 was the limitation of the grant.

4 Q. What is your understanding of a  
5 highway purpose?

6 A. Well, a highway purpose, according  
7 to Mr. Stoddard's deposition, which is as good  
8 of a definition as I can come up with, is just  
9 about any reason afforded to the department to  
10 operate a highway to provide for the free flow  
11 of traffic, to provide for the maintenance of  
12 the proper grade, the right to -- another highway  
13 purpose would be to regulate vehicular traffic,  
14 to put in speed controls. There are various  
15 purposes all encompassed within the idea of a  
16 highway purpose.

17 Q. Would that include maintaining public  
18 safety?

19 A. Especially maintaining public safety  
20 especially when I refer to traffic controls or speed  
21 controls. That's one of the necessary elements  
22 along with the proper grading.

23 Q. If you could, please flip to Exhibit  
24 15-1, which we looked at this morning.

1 A. I have it.

2 Q. I want to just ask you quickly about  
3 Parcel E393.

4 A. Yes.

5 Q. Is that your understanding that  
6 E393 is the parcel highlighted in yellow on  
7 Exhibit 15-1?

8 A. Yes. And that's bolstered by the  
9 fact that in the little red square that you can  
10 see on the screen, I read E393.

11 Q. And there is also what appears to  
12 be a red underline. Are you able to read the  
13 words above that red line on Parcel E393?

14 A. Yes. It says easement for  
15 construction of detour road.

16 Q. Would that be a highway purpose?

17 A. Most certainly.

18 Q. You were in the room when  
19 Mr. Dorgan gave his testimony. Do you have  
20 an understanding of what IDOT used its temporary  
21 easement in E393 for?

22 A. My understanding is that E393 was  
23 used for the construction of a detour road incident  
24 to the entire project for the Amstutz expressway.

1 Q. You talked about some rights that  
2 IDOT has as a permanent easement holder in Parcel  
3 0393. How do those rights relate to the embankment  
4 on Parcel 0393 abutting Greenwood Avenue?

5 A. Well, the right of access includes  
6 the right to enter onto the area encompassed by  
7 the embankment. The right to construct is pretty  
8 obvious. IDOT constructed the embankment incident  
9 to the creation of the ramp for the highway, I  
10 believe. The right to control, in my opinion,  
11 has been an ongoing right. They have maintained  
12 the -- IDOT, that is -- maintained the embankment  
13 to this day and has undertaken some further sampling  
14 and testing. The right of maintenance is one that  
15 it's pretty clear that the embankment has been  
16 maintained in whatever capacity is necessary in  
17 order to have an effective ramp used for the  
18 highway.

19 The right of operation is  
20 very similar to right of control in that it  
21 had the right to operate the embankment in its  
22 current fashion and not modify the right to  
23 prevent third parties from interfering with  
24 it is pretty evident even from the testimony

1 of IDOT's witnesses at deposition that they  
2 clearly stated that nobody would have a right to  
3 remove that embankment, including ComEd.

4 The right to repair is also  
5 fairly straightforward right because any time  
6 the embankment would need to be repaired if it  
7 was somehow damaged, IDOT would have that right.

8 Q. As a permanent easement -- as a  
9 holder of a permanent easement interest in  
10 Parcel 0393, what legal duties or obligations  
11 does IDOT have with respect to Parcel 0393?

12 A. Well, primarily IDOT has the  
13 obligation to maintain the improvements for the  
14 safety of the public, but they also have the  
15 obligation to repair and to maintain the  
16 improvements in an appropriate fashion. They  
17 have an obligation to refrain from committing  
18 waste. They have an obligation to refrain from  
19 allowing the diminution of value of any portion  
20 of the easement that would be to the detriment  
21 of the holder of the fee title and that would be  
22 Commonwealth Edison. Those are primary duties.

23 Q. And would all of those duties apply  
24 to the embankment that's located on Parcel 0393?

1 A. Yes, it would. They would.

2 Q. Under Illinois law, can IDOT avoid  
3 liability on Parcel 0393?

4 MS. O'LAUGHLIN: Objection,  
5 calls for legal conclusion and vagueness  
6 of the term avoid.

7 HEARING OFFICER HALLORAN: Do  
8 you want to rephrase and see what happens,  
9 please?

10 MS. CAISMAN: Sure.

11 BY MS. CAISMAN:

12 Q. Under Illinois law, can IDOT somehow  
13 escape liability for either torts or injuries that  
14 occur on Parcel 0393?

15 A. I don't think so unless --

16 MS. O'LAUGHLIN: Excuse me. I'm  
17 sorry. Same objection.

18 HEARING OFFICER HALLORAN: Okay.  
19 Overruled. You may proceed.

20 BY THE WITNESS:

21 A. I believe not. Only if IDOT had  
22 conveyed the easement rights to a third party,  
23 that third party assumed specifically all the  
24 rights and responsibilities attendant to the

1 holder of the easement and the fee title holder,  
2 Commonwealth Edison had consent to do such a  
3 conveyance.

4 BY MS. CAISMAN:

5 Q. Is there any indication, based on  
6 your review of the record, that that happened in  
7 this case?

8 A. There was no indication that that  
9 happened.

10 Q. Are there ways in which IDOT could  
11 lose or divest its interest in Parcel 0393 and  
12 the rights and responsibilities that come with  
13 its permanent easement in Parcel 0393?

14 A. Well, a permanent easement is  
15 subject to abandonment, but only within the  
16 context that some other third party would attempt  
17 to attain control or rights to the property by  
18 way of prescription -- a prescriptive easement.  
19 There's been no indication in the record that  
20 I'm aware of that anybody has attempted to  
21 undertake any kind of control over the property  
22 and there certainly hasn't been any indication  
23 in the record of any abandonment.

24 Q. Could IDOT also abandon an interest

1 in Parcel 0393 if it didn't use Parcel 0393?

2 A. Not simply by lack of use. For one  
3 thing the embankment is still in place which leads  
4 me to believe there is no relinquishment of use.  
5 I suppose if the embankment had been removed  
6 with the consent of Commonwealth Edison and its  
7 specific set of circumstances arose by way of  
8 IDOT no longer entering onto the property, that  
9 might give rise to someone else's effort to take  
10 over the property by prescription, but again  
11 nothing like that has happened.

12 Q. Could IDOT grant its permanent  
13 easement interest back to ComEd or to another  
14 third party?

15 A. IDOT is free to grant -- to convey  
16 its permanent easement rights back to Commonwealth  
17 Edison if it had chosen to do, but again, there is  
18 nothing in the record that indicates that.

19 Q. Did you review anything in the  
20 record that informed your opinion about whether  
21 or not IDOT convey its permanent easement interest  
22 in Parcel 0393 back to ComEd or anyone else?

23 A. Yes. Specifically, I would make  
24 reference to the Property Insight tract search

1 because the Property Insight tract search makes  
2 reference to the 1984 grant, as we've talked  
3 about this morning, but it specifies that there  
4 are no other documents in the record that  
5 indicate any kind of conveyance or any other  
6 rights attendant to the property that are in  
7 the public record.

8 Q. Okay. If you could, just turn  
9 to Exhibit 37, which is that tract search, and  
10 point us to the language you're referring to.  
11 I would appreciate it.

12 A. Exhibit 37-2 is a report entitled,  
13 "Miscellaneous search by Property Insight." Under  
14 Subparagraph B, search results, there's one document  
15 listed, "The grant for public highway in 1984,  
16 Document 2288725, grantor, Commonwealth Edison  
17 Company, grantee, state of Illinois, signed  
18 8/3/1971." Then the next line says, "No other  
19 deed conveyances or dedications found of report  
20 between the aforementioned dates."

21 Q. What does that indicate to you?

22 A. Well, effective as of December 30,  
23 2015, there is nothing recorded against the title  
24 to the property in question whatsoever after the

1 1984 grant document was recorded.

2 Q. If you could, turn to Exhibit 46,  
3 which is stipulated.

4 A. Okay.

5 Q. Did you rely upon this document in  
6 forming your opinions in this case?

7 A. I did rely upon this document in  
8 order to formulate my opinion because my opinion  
9 was formulated upon review of the Property Insight  
10 search. I can see that there are certain grants  
11 listed here on Schedule B and the last grant is  
12 listed August 3, 1971, and recorded June 8, 1984,  
13 as document 2288725. That's the one we just  
14 referred to as the 1984 grant.

15 Q. On your expert report on Exhibit 3,  
16 materials relied upon, you listed a title  
17 commitment obtained by IDOT. Does that refresh  
18 your recollection as to whether you reviewed  
19 and relied upon this document in forming your  
20 opinions?

21 A. Well, yes. I did mention that in  
22 the -- in the list of documents. So it would  
23 refresh my recollection.

24 Q. And what does this title commitment

1 show?

2 A. Well, the title commitment shows  
3 in Schedule A the interest of the owner of the  
4 property, which is Commonwealth Edison.  
5 Schedule A also contains legal descriptions.  
6 There are four parcels listed. The fourth  
7 parcel apparently contains three descriptions  
8 connected by the word and all within a tax  
9 number.

10 Q. What about Schedule B?

11 A. Schedule B includes general  
12 exceptions and special exceptions. The general  
13 exceptions are quite commonplace and if title  
14 insurance is going to issue, general exceptions  
15 are always listed. They can generally be  
16 satisfied by the production of certain  
17 documentation to convince the title company  
18 or induce the title company to waive the  
19 exceptions.

20 For instance, statements  
21 regarding claims of parties in possession. The  
22 special exceptions always refer to property  
23 taxes, rights of interest of parties in possession  
24 and specifically recorded documents.

1 Q. Okay. If you could look at number  
2 18 on the special exceptions to Schedule B,  
3 Exhibit 46.

4 A. I see it.

5 Q. Is that referring to the 1984  
6 grant for public highway that we have been  
7 talking about today?

8 A. Yes, it does.

9 Q. Is there anything listed on the  
10 special exceptions to this title commitment  
11 after that 1984 grant?

12 MS. O'LAUGHLIN: Excuse me.

13 What exhibit are you on? You said 46?

14 MS. CAISMAN: Forty-six what?

15 THE WITNESS: Well, the page  
16 in question is 46-9.

17 MS. O'LAUGHLIN: Thank you.

18 BY THE WITNESS:

19 A. Maybe a little bit of background.  
20 It is customary for a title insurance company to  
21 list duties recorded against title of property  
22 in chronological order from the oldest to the  
23 newest. So when I read this commitment and I  
24 see that documents recorded -- specifically

1 documents recorded against the property, when it  
2 talks about the grants, they do them in  
3 chronological order.

4 The terms listed No. 11, for  
5 instance, refers to a document of 2011, but the  
6 grants for public highway, grant for sanitary  
7 sewer line, grant for public highway, et cetera,  
8 are all typically in chronological order the  
9 last one listed is the grant for public highway  
10 recorded June 8, 1984.

11 BY MS. CAISMAN:

12 Q. What does that indicate to you?

13 A. That there weren't any other  
14 conveyances after -- recorded after June 8, 1984,  
15 that were grants for public highway or any other  
16 grants regarding the right-of-way.

17 Q. Is that consistent with the tract  
18 search from Property Insight that we just looked  
19 at?

20 A. Yes, it is.

21 Q. Is the embankment on Parcel 0393  
22 still in use?

23 A. To my knowledge, it is.

24 Q. Does this impact whether -- your

1 opinion as to whether or not IDOT has the ability  
2 to operate and control areas including the  
3 embankment on Parcel 0393?

4 A. Yes. It substantiates my opinion  
5 that IDOT is still in control of the easement known  
6 as 0393.

7 Q. Including the embankment obviously?

8 A. Including the embankment. Yes, the  
9 embankment is still in place.

10 Q. And is that embankment a highway  
11 purpose?

12 A. I believe it is.

13 Q. Why?

14 A. Because it was utilized to provide  
15 a separation of the grade from grade level to an  
16 area above the grade as much as 20 feet high for  
17 purposes of establishing a ramp to be used for  
18 the expressway.

19 Q. Based on your review of the record,  
20 has any third party operated or controlled  
21 Parcel 0393 or the embankment on Parcel 0393?

22 A. No other third party. Only IDOT.

23 Q. Based on your review of the record,  
24 is there any evidence that any third party has

1 attempted to operate or control Parcel 0393?

2 A. I found nothing in the record that  
3 would indicate any third party has attempted to  
4 control the area encompassed by 0393 including  
5 the embankment.

6 MS. CAISMAN: No further  
7 questions.

8 HEARING OFFICER HALLORAN: Thank  
9 you, Ms. Caisman.

10 Ms. O'Laughlin?

11 MS. O'LAUGHLIN: Yes.

12 C R O S S - E X A M I N A T I O N

13 by Ms. O'Laughlin

14 Q. Good afternoon, Mr. Fortunato.

15 A. Good afternoon.

16 Q. I have some background questions,  
17 but I'm just going to start with a follow-up  
18 question to Ms. Caisman's -- Johns Manville's  
19 question.

20 You had just testified that  
21 no -- based on the record, a third party has not  
22 attempted to establish control over the property;  
23 is that right?

24 A. If you're talking about the property

1 as --

2 Q. 0393, yes.

3 A. 0393, then the answer is yes, no  
4 third party has attempted to do so.

5 Q. Okay. Have you made inquiry  
6 into whether any other third party has attempted  
7 to exercise control over the Parcel 0393?

8 A. The only inquiry I made was a review  
9 of the record.

10 Q. And a little bit out of order, but  
11 we'll go with -- if you could, turn to Exhibit 49.

12 MS. CAISMAN: Forty-nine?

13 MS. O'LAUGHLIN: Correct, I  
14 believe. Parcel 0393.

15 BY THE WITNESS:

16 A. I see Exhibit 49.

17 BY MS. O'LAUGHLIN:

18 Q. And do you recognize this document,  
19 Mr. Fortunato?

20 A. I do not.

21 Q. So you have not reviewed this or read  
22 this?

23 A. I have not reviewed it.

24 Q. And your opinion does not include

1 any information one might obtain from reading and  
2 understanding said document?

3 A. I'm sorry. Please repeat your  
4 question.

5 Q. Your opinion does not take into  
6 account any of the information contained within  
7 said document because you haven't read it; is  
8 that correct?

9 A. Yes, that's correct.

10 Q. Do you understand that this is  
11 an access agreement entered into between Johns  
12 Manville and the city of Waukegan?

13 A. Well, my only understanding is  
14 derived from reading the introductory paragraph.  
15 It's called access agreement. It's dated the  
16 12th day of February of 2008 and it's between  
17 Johns Manville and city of Waukegan.

18 Q. And if you could, turn your attention  
19 to the third paragraph beginning "Whereas the  
20 settlement agreement."

21 A. Yes. I see it.

22 Q. Where it says, "Whereas the  
23 settlement agreement defines Site 6 as the area  
24 on the shoulders of Greenwood Avenue and within

1 the city's right-of-way of Greenwood Avenue between  
2 the Johns Manville site to shooting range on the  
3 east and eastern end of Greenwood Avenue's elevated  
4 approach to Pershing Road on the west as generally  
5 depicted on Site 6 on Attachment 1 hereto." Do  
6 you see that?

7 A. I see it.

8 Q. And would that be the area that  
9 you had been discussing with Ms. Caisman today  
10 regarding Parcel 0393?

11 A. I can't tell from reading the  
12 third paragraph exactly where the Site 6 is  
13 located.

14 Q. Do you understand what Site 6 is?

15 A. I believe Site 6 is -- I wasn't  
16 asked to opine about it. I believe it's in  
17 the general vicinity of the easement that is  
18 encompassed by 0393, but I don't see any kind  
19 of description on the exhibit that would give  
20 me an opportunity to compare the legal description  
21 with Site 6 and the legal description of 0393.

22 Q. Fair enough. If you could turn  
23 your attention to the bottom paragraph.

24 A. On 49-1.

1 Q. Correct. Where it states, "one,  
2 right of access, the city hereby grants JM and  
3 its consultants, contractors and subcontractors  
4 the right during the term of this agreement to  
5 enter onto, upon and have ingress to and egress  
6 from the access area." Do you see that paragraph?

7 A. I see it.

8 Q. And your opinion does not take into  
9 account apparently the city granting access to  
10 Johns Manville regarding Site 6; is that correct?

11 A. My opinion does -- this doesn't  
12 affect my opinion at all because it involves  
13 two separate parties. The parties to 0393  
14 are Commonwealth Edison and the state of Illinois.  
15 This is a document where the city of Waukegan -- I  
16 guess -- yes, the city of Waukegan is granting  
17 access rights to Johns Manville. So I don't see  
18 how this affects the right of easement afforded  
19 to IDOT under 0393.

20 Q. Okay. So you have no knowledge  
21 or information as to the city of Waukegan's use  
22 of 0393; is that correct?

23 A. According to my review of the record,  
24 the city of Waukegan didn't utilize 0393, didn't

1 have any property rights in it. The only property  
2 rights were afforded were Commonwealth Edison's  
3 grant to the state of Illinois, Department of  
4 Public Works.

5 Q. And this agreement was not provided  
6 to you as part of the record; isn't that correct?

7 A. I haven't seen it.

8 Q. Okay. Johns Manville's attorneys  
9 or Johns Manville did not provide this agreement  
10 to you to the best of your knowledge here today;  
11 is that correct?

12 A. To the best of my knowledge, it has  
13 nothing to do with 0393. So there would be no  
14 reason for me to review it.

15 Q. Okay. Mr. Fortunato, how many hours  
16 did you -- approximately how many hours did it  
17 take for you to prepare the report that you have  
18 prepared for this matter?

19 A. Well, I would have to guess because  
20 I don't have my billing records in front of me.  
21 I know that the session where I drafted my report  
22 took place over a nine-hour period, but that  
23 postdated the review of documents that were  
24 provided for me initially, the complaint and

1 the answers to discovery requests. So I can't  
2 tell you how many hours I spent at that point.

3 Q. I'm sorry. You had reviewed the  
4 discovery request before or after you prepared  
5 your report?

6 A. I reviewed discovery responses  
7 and a complaint prior to the day that I started  
8 preparing the report and then on the day of the  
9 report -- that I prepared the report, I was  
10 provided transcripts of depositions that I used  
11 in formulating my report. That day, which was  
12 May 2nd, the day after I returned from Europe,  
13 and I'm not going to forget that day any time  
14 soon, it took me a while to formulate the opinion,  
15 but the session took about nine hours in total.

16 Q. Thank you. And can you estimate  
17 approximately how many hours you have spent to  
18 date serving as a witness for Johns Manville in  
19 this matter?

20 A. Through this moment?

21 Q. Yes.

22 A. Somewhere between 20 and 25 hours.

23 Q. And does that include or exclude the  
24 nine hours?

1 A. That includes the nine hours.

2 Q. Okay. And that includes sitting  
3 through the hearing yesterday as well?

4 A. Yes, it does.

5 Q. Now, you had mentioned that you --  
6 I wanted to ask you about what your current  
7 activity is. You have served as an expert  
8 witness in many matters over the past few years  
9 and as I understand, you also do work in connection  
10 with the real estate organization that you are a  
11 part of with DuPage County; is that correct?

12 A. Well, the answer to your first  
13 question is yes, I have testified at various times  
14 as an expert witness and those times and those  
15 cases are listed in my report as an exhibit.

16 Right now, I'm a member of  
17 the DuPage County Bar Association as well as  
18 other bar associations and I participate with  
19 the DuPage County Bar's Real Estate Law Committee  
20 but also with the Illinois State Bar Association  
21 Real Estate Section Counsel, the Illinois Real  
22 Estate Lawyers Association and I lecture for the  
23 Illinois Institute of Continuing Legal Education  
24 and various bar associations and title companies.

1 Q. Okay. And those are your current  
2 activities?

3 A. Well, that's not all of them. In  
4 addition to practicing law, I have about --  
5 I've submitted a manuscript to the American Bar  
6 Association that is not on my list because it  
7 hasn't been published yet, but I hope to have  
8 a book out in about a month.

9 Q. So is it fair to say that serving  
10 as an expert witness, teaching, doing presentations  
11 on some of these organizations that you had just  
12 stated, drafting a book, that that makes up the  
13 bulk of your current work?

14 A. No.

15 Q. What else?

16 A. No, I practice law full time.

17 Q. Okay.

18 A. I average 45 to 50 hours a week  
19 practicing law.

20 Q. In addition to all of this?

21 A. In addition to all of this.

22 Q. How much would you estimate that  
23 you have earned from serving as an expert witness  
24 in this matter?

1 A. How much have I earned?

2 Q. Uh-huh.

3 A. I possibly miscalculated a number of  
4 hours because I think it's even more hours than  
5 that. To date, I've probably earned somewhere  
6 between \$15,000 to \$20,000.

7 Q. Okay. Mr. Fortunato, have you  
8 ever done an environmental survey of a property?

9 A. No.

10 Q. Have you ever, through your work,  
11 made sure that someone that was conducting an  
12 environmental survey had access to the property  
13 for which they were conducting their survey upon?

14 A. Have I made sure that someone  
15 conducting an environmental survey had access  
16 to the property?

17 Q. Yes.

18 A. I have to think about that. I  
19 can't -- as I sit here right now, I can't say that  
20 I have.

21 Q. When you were in your work involved  
22 with the DuPage County of Transportation, were you  
23 ever required to make sure that the DuPage County  
24 of Transportation or anybody working in their stead

1 as a contractor or otherwise was able to get onto  
2 an easement for public highway purposes only?

3 A. I believe incident to the duties  
4 with the of DuPage County Division of  
5 Transportation, I did arrange for access by  
6 the division employees. So in that regard,  
7 yes, I arranged to have access to the areas  
8 encompassed by the roadway.

9 Q. What did you do to allow them to  
10 gain access?

11 A. I negotiated with the owner of the  
12 fee title.

13 Q. Okay. So they didn't have an  
14 existing -- DuPage County of Transportation didn't  
15 have a quote, unquote existing right-of-way?

16 A. That's not true. On quite a few  
17 instances, we did have existing right-of-way and  
18 I was charged with the responsibility of negotiating  
19 for additional right-of-way because the project  
20 required the division to obtain additional  
21 right-of-way in order to complete the improvements  
22 they wanted to do.

23 Q. Okay. So your role was in gaining  
24 additional right-of-way; is that correct?

1           A.       That was part of my responsibilities.  
2       Again, I negotiated. I wasn't -- I didn't undertake  
3       eminent domain in any way, but I was a negotiator.  
4       So as a negotiator, I visited owners and I  
5       tried to negotiate or induce them to enter  
6       into agreements.

7           Q.       How did DuPage County Department  
8       of Transportation exercise their rights to keep  
9       off their right-of-way?

10          A.       The DuPage County of Division of  
11       Transportation would typically, once they obtained  
12       right-of-way or negotiated for additional  
13       right-of-way, would put up roadway signs and  
14       temporary barriers, not unlike any other entity  
15       that wanted to do roadway improvements. That  
16       was the primary way of doing it. Of course, we  
17       have done so with the agreement of the owner of  
18       the property typically.

19          Q.       Mr. Fortunato, if you could turn  
20       to Exhibit 4I-289, I believe.

21          A.       4I?

22          Q.       Yes, I believe that's it. Oh,  
23       it's attached as an exhibit to your deposition.

24          A.       Off the record. Excuse me.

1 Q. It's an exhibit. It's 289. I'm  
2 sorry.

3 A. May I have the page number again?

4 Q. Sure. It's exhibit -- it begins  
5 with 4I-286.

6 A. I have it.

7 Q. Okay. And you stated that this  
8 is the identifying mark marked as Exhibit G in  
9 the middle of the page, 286.

10 A. Yes.

11 Q. And do you see that it's marked as  
12 5916?

13 A. I see it.

14 Q. Was this marked as an exhibit to  
15 your deposition taken on that date?

16 A. I believe it was.

17 Q. Okay. So you've seen this document  
18 at least during your deposition; is that correct?

19 A. That's correct.

20 Q. Have you had a chance to look at it  
21 since then?

22 A. I have not taken an opportunity to  
23 review it since then.

24 Q. Were you here during Ms. Giannelli's

1 testimony this morning?

2 A. Yes, I was.

3 Q. Okay. And are you now aware that  
4 this was a title commitment obtained from Johns  
5 Manville for the property and that includes the  
6 property in question here, Parcel 0393?

7 MS. CAISMAN: Objection,  
8 mischaracterizes the prior testimony.

9 HEARING OFFICER HALLORAN: And  
10 Ms. O'Laughlin?

11 MS. O'LAUGHLIN: How?

12 HEARING OFFICER HALLORAN: Go  
13 ahead.

14 MS. O'LAUGHLIN: I'll ask it  
15 again and you can tell me.

16 BY MS. O'LAUGHLIN:

17 Q. Okay. So you are now aware that  
18 this title commitment pertains to Parcel 0393?

19 A. No. I'm not aware of that.

20 MS. CAISMAN: Objection,  
21 mischaracterizes the prior testimony.

22 HEARING OFFICER HALLORAN: Overruled.  
23 You can answer, if you are able.

24

1 BY THE WITNESS:

2 A. I'm not able to determine whether  
3 it refers to Parcel 0393 or not. I think when I  
4 was presented with this at my deposition, I gave  
5 the same answer.

6 BY MS. O'LAUGHLIN:

7 Q. If you were to learn that this  
8 title commitment pertained to Parcel 0393, would  
9 that be pertinent to your opinion given in this  
10 matter?

11 A. Well, I'm not sure because when I  
12 look at the Paragraph 5 starting on Page 289  
13 referring to the land described in the commitment,  
14 I do not see the legal description that's  
15 consistent with the legal description of Parcel  
16 0393 in the 1971 or '84 grant.

17 Q. And you took no further steps to  
18 verify whether it did or not; is that correct?

19 A. I took -- no. Once it -- I mean,  
20 the legal description isn't going to change  
21 between the time I first saw it and today. It's  
22 the same as it was at the time that I took my  
23 deposition.

24 Q. Right, correct. And did you take

1 any other steps since your deposition to verify  
2 whether this legal description matched Parcel  
3 0393 or Parcel 0393 was included within this  
4 legal description? Have you taken any further  
5 steps since your deposition?

6 A. Well, as I testified before, the  
7 legal descriptions are different. So I don't  
8 know why I would take any further steps. The  
9 legal descriptions aren't going to change.

10 Q. So --

11 A. These legal descriptions differ  
12 from the legal description in the 1971 and 1984  
13 grant that describes Parcel 0393.

14 Q. Okay. So you -- you -- okay.  
15 That's fine. If I could turn your attention to  
16 4I-289.

17 A. Yes.

18 Q. And to draw your attention to the  
19 first paragraph below Paragraph 5 or is that --  
20 the first -- it was read into the record previously,  
21 but the portion of this language that says that a  
22 certain parcel was conveyed to the city of Waukegan  
23 for street purposes by deed recorded April 18, 1895,  
24 as document 61658. Do you see that?

1 A. Yes.

2 Q. And have you looked for document  
3 61658?

4 A. No.

5 Q. And you've made no further inquiry  
6 about whether 61658 pertains to the parcel  
7 that you've testified about today; is that correct?

8 A. May I explain why I didn't?

9 Q. Not right now, but thank you.

10 A. Okay. Go ahead. I think implicit  
11 in my answer is that I didn't, but I can explain  
12 why. So go ahead.

13 Q. Go ahead.

14 HEARING OFFICER HALLORAN: Well,  
15 Ms. Caisman can follow-up on that.

16 BY MS. O'LAUGHLIN:

17 Q. That's okay. If you want to explain,  
18 go ahead.

19 A. If you will read the description of  
20 the property on the second line, we talk about part  
21 of this particular section, township lying south  
22 of the north 66 feet conveyed to the city of  
23 Waukegan for street purposes by deed. That's fine.

24 If you look at the legal

1 description of 0393, it refers to property located  
2 south of the south border of the particular roadway  
3 of Greenwood.

4 Q. Okay.

5 A. So they talk about different parcels  
6 of property.

7 Q. Okay.

8 A. This parcel doesn't include any part  
9 of 0393.

10 Q. So does this parcel include Greenwood  
11 Avenue then?

12 A. It might.

13 Q. And does this suggest that Waukegan  
14 owns Greenwood Avenue?

15 A. Only if there was an affective  
16 conveyance and I haven't seen the deeds or what  
17 interests were passed.

18 Q. And you haven't -- okay. And you  
19 already -- strike that. Strike that.

20 If I may, I would like to show  
21 you another document that is marked as Exhibit 162.

22 MS. CAISMAN: We are going to  
23 renew our objection and --

24 HEARING OFFICER HALLORAN: Is this

1 the quitclaim deed?

2 MS. BRICE: These are the two  
3 deeds that were not provided and our  
4 expert witness has not had an opportunity  
5 to review them. They were never produced.  
6 It's never been part of his opinion. He's  
7 never had a chance to review them or look  
8 at them or see if there were any subsequent  
9 conveyances or anything that might relate  
10 to them.

11 MS. O'LAUGHLIN: May I?

12 HEARING OFFICER HALLORAN: You  
13 may.

14 MS. O'LAUGHLIN: Mr. Fortunato  
15 was deposed two weeks from yesterday and  
16 in his expert report, there is a document  
17 entitled "Title Commitment" that was listed  
18 as one of the documents that he relied  
19 upon.

20 To the best of our  
21 understanding, we understood that document  
22 to be the one that I just asked him  
23 questions about, an exhibit that begins  
24 with -- the exhibit to his deposition,

1 and since then, we have looked up these --  
2 the documents referenced in that title  
3 commitment and that's what we're looking  
4 to now.

5 Given the compressed nature  
6 of this matter, I mean, Mr. Fortunato was  
7 deposed two weeks from yesterday. We  
8 listed this document on our exhibit list  
9 shortly thereafter.

10 HEARING OFFICER HALLORAN: When  
11 you say shortly thereafter --

12 MS. O'LAUGHLIN: Within the next  
13 week, within the next week.

14 MS. CAISMAN: No, no.

15 MS. O'LAUGHLIN: The next week.  
16 The deposition was May 9th, the exhibit  
17 lists were exchanged the next week, I think  
18 that they have had ample opportunity to  
19 look at this document. It's a one-page  
20 document. It's not that complex.

21 One other thing --

22 HEARING OFFICER HALLORAN: Is it  
23 162 and 163?

24 MS. O'LAUGHLIN: Probably.

1 MS. CAISMAN: Mr. Halloran, if I  
2 may.

3 MS. O'LAUGHLIN: Excuse me. I  
4 have one more point.

5 HEARING OFFICER HALLORAN: I  
6 don't think Ms. O'Laughlin is finished  
7 yet.

8 MS. O'LAUGHLIN: And the fact  
9 that we had to take Mr. Fortunato's  
10 deposition three days after we got his  
11 report, I mean, the amount of activity  
12 required in such a short period of time  
13 and we were scrambling to do this and  
14 then for them to now argue that they  
15 are deprived of the ability to look at  
16 documents because we had to scramble  
17 within three days to depose Mr. Fortunato,  
18 to look up documents that he cited within  
19 his report upon which we had to then go  
20 look for ourselves and then put them on  
21 our exhibit list, but they claim we did  
22 not label them with discovery, they are  
23 on our exhibit list. They have notice  
24 and anything else would be fundamentally

1 under unfair.

2 MS. CAISMAN: Mr. Halloran, if  
3 I may briefly clarify a few things.

4 HEARING OFFICER HALLORAN: You  
5 know, I don't have -- what's the ones --  
6 never mind. Go ahead. I'm sorry.

7 MS. CAISMAN: Mr. Fortunato  
8 actually did clarify in his deposition  
9 that this was not the title commitment  
10 that he relied upon. Rather, it was the  
11 Property Insight tract search, which he  
12 also clarified today on direct examination.

13 That title commitment was  
14 actually released by JM on April 12th,  
15 which was almost a month before Mr. Fortunato's  
16 deposition and then this document was still  
17 not produced until two weeks after his  
18 deposition and he has not relied upon it.  
19 IDOT's expert did not testify that he  
20 relied upon it.

21 So we don't believe it should  
22 be admissible for those reasons. That's  
23 in addition to the reasons we reiterated  
24 yesterday.

1 HEARING OFFICER HALLORAN: Anything  
2 further, Ms. O'Laughlin?

3 MS. O'LAUGHLIN: I have not heard  
4 any prejudice. I have not heard any ability  
5 to have their person, who -- Mr. Fortunato  
6 who knows about these types of documents --  
7 they have acknowledged the error that they  
8 meant the Property Insight report and not  
9 the title commitment. They stated it again  
10 today. They corrected the deposition.

11 The fact is they cited a  
12 title report, which we examined and now  
13 pulled the deeds for. You know, it's  
14 pertinent to the issues here. It shows  
15 ownership. It shows conveyance. It shows  
16 the issues that they have spent a lot of  
17 time today going over and I think it would  
18 be worth it to the Board and worth it to  
19 the finder of fact to see what these  
20 documents have to say.

21 HEARING OFFICER HALLORAN: But  
22 you were privy of this by April 12th, correct?

23 MS. O'LAUGHLIN: To the title  
24 report?

1 HEARING OFFICER HALLORAN: Uh-huh.

2 MS. O'LAUGHLIN: I don't know.

3 I mean, April 12th, we were also in the  
4 middle of several depositions as well.

5 HEARING OFFICER HALLORAN: I  
6 understand. Everybody has been --

7 MS. O'LAUGHLIN: I mean, it's  
8 been crazy.

9 HEARING OFFICER HALLORAN: I  
10 understand that.

11 MS. O'LAUGHLIN: Yeah.

12 HEARING OFFICER HALLORAN: Here's  
13 what I'm going to do. I'm going to grant  
14 JM's objection. I will take both exhibit  
15 Nos. 162 and 163 as an offer of proof and  
16 I will see what the Board has to say  
17 regarding that.

18 MS. O'LAUGHLIN: Okay. Very  
19 well. Thank you.

20 HEARING OFFICER HALLORAN: Thanks.

21 BY MS. O'LAUGHLIN:

22 Q. In an offer of proof, Mr. Fortunato,  
23 can you please turn to Exhibit 162.

24 A. I'm sorry. Do I have that?

1 Q. It's a white binder.

2 A. Okay.

3 MS. CAISMAN: Actually, before

4

5 you begin, I realize we are making an  
6 offer of proof. I want to make just  
7 the additional objection to the record  
8 as to the foundation and authenticity  
9 on this document.

10 It appears there's a  
11 certain comment on this actual page  
12 that -- I guess we're not sure if that  
13 was part of the original grant document  
14 or not. I just wanted to state that for  
15 the record.

16 HEARING OFFICER HALLORAN: All  
17 right. The record is noted. Thank you.

18 BY MS. O'LAUGHLIN:

19 Q. Have you seen this document before,  
20 Mr. Fortunato?

21 A. No.

22 Q. Are you familiar with these type of  
23 documents?

24 A. I'm familiar with the deeds.

1 Q. And is this a deed?

2 A. This is a quitclaim deed.

3 Q. And who is the grantor here?

4 A. I'm having difficulty reading the  
5 handwriting. The first name is Charles. The  
6 last name may be Simmons, Charles Simmons and  
7 Lucy Simmons.

8 Q. And who is the receiver of the  
9 quitclaim deed and who is the grantee?

10 A. The grantee is the city of Waukegan.

11 Q. And can you then look at the legal  
12 description set out below the portion after "All  
13 interest in the following described real estate,  
14 to wit."

15 A. Yes, I see it. The penmanship is  
16 good, but it's in handwriting. So it's going to  
17 take me a moment.

18 Q. My question relates to whether you  
19 can identify whether this legal description --  
20 whether this legal description matches the  
21 property that we are referring to here as  
22 Greenwood Avenue in the city of Waukegan?

23 A. Well, it's difficult to say  
24 because obviously Greenwood Avenue, by name,

1 is not referenced.

2 Q. Yes.

3 A. But the legal description talks  
4 about, as it rests along a section line to the  
5 Chicago Northwestern Railroad right-of-way,  
6 and I can't tell you where that is, but it  
7 says it's in a southerly direction along  
8 said right-of-way 66 feet, then it's east and  
9 parallel with the section line for 300 feet.  
10 So it encompasses an area 66 feet wide is the  
11 best I can tell you.

12 Q. Thank you. Mr. Fortunato, is  
13 there anything significant about the width 16  
14 feet?

15 A. Sixteen or 66?

16 Q. I'm sorry. Sixty-six. Yes. I'm  
17 sorry.

18 A. Sixty-six feet is a common width for  
19 a roadway.

20 Q. Thank you.

21 MS. O'LAUGHLIN: I believe  
22 that's all I have, but I would like  
23 to reiterate a previous objection that  
24 we've had regarding our motion for a

1 protective order and the request to  
2 admit that had been issued by Johns  
3 Manville to IDOT in this matter.

4 We would again like to  
5 state our objection to them being  
6 issued as they go well beyond the  
7 scope of discovery issued in this  
8 matter especially pertinent hereto  
9 because they spent a long time  
10 asking Mr. Fortunato questions about  
11 them and we believe they were properly  
12 issued and, for the record, we wanted  
13 to state our objection.

14 HEARING OFFICER HALLORAN: Okay.  
15 Great. The transcript so notes.

16 Ms. Caisman?

17 C R O S S - E X A M I N A T I O N

18 by Ms. Caisman

19 Q. Mr. Fortunato, in your understanding  
20 does Parcel 0393 contain any actual roadway?

21 A. Well, it's not a street. So it  
22 doesn't encompass the description of the property,  
23 for instance, that's attempted to be defined in  
24 this last exhibit that I read. It's not a

1 road. It's an abutment.

2 MS. CAISMAN: No further  
3 questions.

4 HEARING OFFICER HALLORAN: Thank  
5 you.

6 Do you have anything else,  
7 Ms. O'Laughlin?

8 MS. O'LAUGHLIN: Nothing further.

9 HEARING OFFICER HALLORAN: Thank  
10 you.

11 You may step down, Mr. Fortunato.  
12 Thank you.

13 THE WITNESS: You're welcome.

14 (Witness excused.)

15 HEARING OFFICER HALLORAN: You may  
16 call your next witness.

17 MS. BRICE: Johns Manville calls  
18 Brent Tracy to the stand, please. This is  
19 our final witness hopefully and it should  
20 be short.

21 HEARING OFFICER HALLORAN: Thank  
22 you.

23 Lori, would you please swear  
24 the witness?

1 THE COURT REPORTER: Do you swear  
2 the testimony you are about to give is the  
3 truth, the whole truth and nothing but  
4 the truth, so help you God?

5 MR. TRACY: Yes.

6 (Witness sworn.)

7 HEARING OFFICER HALLORAN: You may  
8 proceed.

9 MS. BRICE: Thank you.

10 WHEREUPON:

11 B R E N T T R A C Y  
12 called as a witness herein, having been first duly  
13 sworn, deposeth and saith as follows:

14 R E D I R E C T E X A M I N A T I O N  
15 by Ms. Brice

16 Q. What is your name, please?

17 A. Brent Tracy.

18 Q. And who is your employer?

19 A. Johns Manville.

20 Q. When did you begin working for Johns  
21 Manville?

22 A. In December of 2006.

23 Q. What is your current title?

24 A. Associate general counsel.

1 Q. Are you familiar with what is known  
2 as the southwest sites we have been discussing this  
3 morning?

4 A. Yes.

5 Q. What is your involvement with those  
6 sites?

7 A. I generally have handled the legal  
8 issues for Johns Manville related to the southwest  
9 sites.

10 HEARING OFFICER HALLORAN: Could  
11 you please keep your voice up, sir?

12 THE WITNESS: Yes.

13 HEARING OFFICER HALLORAN: Thank  
14 you.

15 BY MS. BRICE:

16 Q. Before we get into a couple of  
17 questions about the legal issues, I would just  
18 like to get a little bit of history here. Could  
19 you please turn to Exhibit No. 5, please?

20 MR. MCGINLEY: We're going to  
21 object to this exhibit. This was an  
22 exhibit that was sent by counsel to  
23 counsel at IDOT and we -- it's our  
24 position that this is a settlement

1 communication and it should, therefore,  
2 not be admissible.

3 HEARING OFFICER HALLORAN: I'm  
4 going to take a look at it. Did you guys  
5 file any motions in limine regarding  
6 that in pretrial?

7 MS. BRICE: No.

8 MR. MCGINLEY: Well, it wasn't  
9 part of the original briefings for the  
10 motions in limine. This was added after  
11 the fact in the remanded list.

12 MS. BRICE: I'm not sure that  
13 that's accurate, but I can't -- I can't  
14 really tell you one way or another. This  
15 was not a settlement communication. We  
16 didn't name it as such. It was a copy  
17 of a letter along with the complaint  
18 saying we would like to talk to you and  
19 Mr. Brent Tracy is cc'd and he is currently  
20 on the stand. We would like to enter  
21 this -- we would like to lay the foundation  
22 for this document.

23 HEARING OFFICER HALLORAN: I don't  
24 see anything that's going to be privileged

1 in here, Mr. McGinley. So I'm going to  
2 allow it.

3 MR. MCGINLEY: I think it's not  
4 so much that it's privileged. I think that  
5 it's an invitation to engage in an offer  
6 to settle or to discuss the possibility  
7 of settlement. I think on that basis it's  
8 not proper to allow this.

9 HEARING OFFICER HALLORAN: Well --

10 MS. BRICE: I think if we -- I  
11 mean, if we want to label it as a privileged  
12 settlement communication, we certainly can,  
13 but that's not how we --

14 HEARING OFFICER HALLORAN: I'm  
15 going to allow it. Objection overruled.  
16 Exhibit 5 is admitted.

17 BY MS. BRICE:

18 Q. Mr. Tracy, were you involved in the  
19 drafting of this letter?

20 A. I was.

21 Q. Do you have a copy of the letter in  
22 your files?

23 A. Yes.

24 Q. Why was it prepared?

1           A.       It was prepared contemporaneously  
2 or shortly after we filed our complaint in this  
3 matter and as -- it was referenced D in the  
4 discussion and was trying to see if this date  
5 would be amenable to settlement discussions in  
6 the matter.

7           Q.       And what is the --

8                   MR. MCGINLEY: I'll renew my  
9 objection. He just testified that this  
10 was for the purposes of settlement.

11 BY THE WITNESS:

12           A.       I will add in my testimony, sir,  
13 that we did not make any offer of compromise in  
14 this letter. We just offered to discuss it.

15                   HEARING OFFICER HALLORAN: Objection  
16 is noted and overruled.

17 BY MS. BRICE:

18           Q.       What is the date on the document?

19           A.       July 11, 2013.

20           Q.       Was this document made in the regular  
21 course of business?

22           A.       Yes.

23           Q.       Was it kept in the regular course of  
24 business?

1 A. Yes.

2 Q. Was it the regular course of your  
3 business to prepare this document to be sent to  
4 IDOT or to ask your counsel to --

5 A. Yes, or to ask for counsel to prepare  
6 it.

7 Q. Okay. Can you please take a look at  
8 Page 1. Who is this addressed to?

9 A. Mr. Michael Forti, F-O-R-T-I.

10 Q. What is this title as shown on this  
11 document?

12 A. It's shown on this document as  
13 chief counsel of the Illinois Department of  
14 Transportation.

15 Q. On the second page, 05-2, as we've  
16 just been referring to, could you please read into  
17 the record the top paragraph?

18 A. "As a result, JM felt compelled to  
19 file this action quickly. JM would like to meet  
20 with IDOT to discuss this matter and would be  
21 willing to stay the action before the Board in  
22 interim assuming IDOT would agree that any delay  
23 caused by the stay would not be used by IDOT as  
24 a defense to JM's claims."

1 Q. And then can you read the next  
2 paragraph as well?

3 A. It says, "We proposed a meeting  
4 sometime the week of August 5th. Please let us  
5 know if this approach makes sense to IDOT. Please  
6 do not hesitate to have someone give me a call at  
7 (312) 602-5124 to discuss IDOT's thoughts." It's  
8 signed by Susan Brice.

9 Q. Do you know what happened in response  
10 to this letter?

11 A. To my knowledge, there was no  
12 response.

13 Q. As far as you know, was IDOT ever  
14 offered to assist with the investigations on Sites 3  
15 or 6?

16 A. No.

17 Q. Has IDOT ever offered to assist with  
18 the clean-up on Sites 3 or 6?

19 A. Not to my knowledge, no.

20 Q. To the extent that you know, what  
21 has IDOT's response been to JM's filing of this  
22 lawsuit?

23 A. To litigate it and to not engage  
24 in our offer to discuss any sort of resolution.

1 Q. At the time you filed the lawsuit,  
2 were you aware that IDOT held a permanent easement  
3 that encompassed portions of Sites 3 and 6?

4 A. No.

5 MS. O'LAUGHLIN: Objection,  
6 assumes a conclusion of law. That is  
7 merely their argument and is not a finding  
8 in this matter.

9 He can answer the question,  
10 but it's based upon his own knowledge and  
11 not as a conclusion of law.

12 HEARING OFFICER HALLORAN: Sustained.

13 BY MS. BRICE:

14 Q. At this time of the filing of this  
15 lawsuit, were you aware that IDOT held any interest  
16 in portions of Sites 3 or 6?

17 A. No.

18 Q. If you can, take a look at Exhibit 40  
19 please. I will draw your attention to 40-3.

20 MS. O'LAUGHLIN: Hold on.

21 BY MS. BRICE:

22 Q. At the top of 40-3, and this is a --  
23 this has been stipulated to and this is a resolution  
24 from 1966 and that is at issue in this matter.

1 Mr. Tracy, have you seen this  
2 document before?

3 A. Yes.

4 Q. And I'd like to direct your attention  
5 to the -- a section that says "at Greenwood Avenue."  
6 Can you read that into the record, please?

7 A. It says, "The city will negotiate,  
8 pay for and acquire and the name of the city all  
9 rights-of-way east of the Chicago and Northwestern  
10 Railway necessary to reconstruct the at grade  
11 intersection of Greenwood Avenue and Sand Street."

12 Q. And based upon the record, did that  
13 occur as far as you know?

14 A. I'm not aware that it ever occurred.

15 Q. And would that area encompass  
16 Greenwood and Sand as far as you know, the  
17 intersection of Greenwood and Sand?

18 A. It appears to.

19 Q. I would like to direct your attention  
20 to 60, please, Exhibit 60, which is IDOT's 104(e)  
21 response. It has been stipulated. Not stipulated.  
22 It's been entered into the record.

23 I would just like to direct your  
24 attention to Paragraphs 8 and 9 and if you could

1 read those to yourself, please, for a moment. I  
2 would appreciate it.

3 A. Okay.

4 Q. Have you seen this document before?

5 HEARING OFFICER HALLORAN: Go  
6 ahead, Mr. McGinley.

7 MR. MCGINLEY: I'm going to  
8 object inasmuch as this is a document  
9 that the witness is not a party to. This  
10 is -- it's one thing to have Mr. Dorgan  
11 talk about it and rely upon it as you've  
12 ruled because it's part of his expert  
13 opinion, but inasmuch as this is a 104(e)  
14 response from IDOT to US EPA, I mean,  
15 unless Mr. Tracy can tell us that he was  
16 working for US EPA at the time or something  
17 to that affect, or worked for Johns Manville  
18 and saw this at the time that it was done,  
19 I don't think there is any foundation.

20 HEARING OFFICER HALLORAN: Ms. Brice?

21 MS. BRICE: Sure. Mr. Tracy was  
22 involved in the site and this was -- this  
23 document was a part and was very important  
24 in the negotiations involving the -- that

1           went forward and I think I can lay the  
2           foundation for it. Obviously, it's --

3                           HEARING OFFICER HALLORAN: I  
4           think it's too far afield. You can  
5           possibly bring in an offer of proof, but  
6           I don't think it's -- I don't think he's  
7           the witness to be asking this question.  
8           So Mr. McGinley's objection is sustained.

9                           MS. BRICE: Okay. Can I bring  
10          it in as an offer of proof, please?

11                          HEARING OFFICER HALLORAN: Sure.  
12          Let me know when you are finished.

13          BY MS. BRICE:

14                        Q.       Mr. Tracy, have you seen this document  
15          before?

16                        A.       Yes, I have.

17                        Q.       And when did you first see this  
18          document?

19                        A.       2007.

20                        Q.       And in what capacity?

21                        A.       It was between the time that we  
22          received the special notice letter from EPA  
23          regarding the southwest sites and the time that  
24          we executed the settlement agreement with EPA.

1 Q. And reading this letter, what was  
2 your impression as to IDOT's interests in Site 3  
3 or Site 6?

4 A. I believe that they were no longer  
5 existing as of that time.

6 Q. And it talks about temporary  
7 easements; does it not?

8 A. Yes.

9 Q. There is no discussion in here  
10 about a right-of-way, is there?

11 A. No, there is not.

12 Q. Nor is there any indication of a  
13 permanent easement as such, is there?

14 A. No.

15 Q. And this is the document sent to  
16 US EPA; isn't that true?

17 A. That's what it says, yes, and that's  
18 where we got it.

19 Q. I would like to turn to --

20 HEARING OFFICER HALLORAN: Are  
21 you finished with his offer of proof?

22 MS. BRICE: Oh, yes. I'm sorry.

23 HEARING OFFICER HALLORAN: Do you  
24 want to cross with any offer of proof,

1 Mr. McGinley?

2 MR. MCGINLEY: Yes. Could I have  
3 one second, please?

4 HEARING OFFICER HALLORAN: Yes.

5 MR. MCGINLEY: Thank you.

6 C R O S S - E X A M I N A T I O N

7 by Mr. McGinley

8 Q. Mr. Tracy, you said you are  
9 familiar with this as a result of your work with  
10 Johns Manville, is that your testimony?

11 A. Yes.

12 Q. Prior to -- at the time that this  
13 104(e) letter was written, you weren't in the  
14 position that you are in now with Johns Manville,  
15 correct? There was a gentlemen by the name of  
16 Louis Ray who I believe had a similar position to  
17 yours at the time?

18 A. It was a similar position, yes.

19 Q. Okay. The fact that -- do you see  
20 any mention in here about Site 6? I think you  
21 might have just testified to that with respect  
22 to this letter?

23 A. I don't think I used the term Site 6  
24 in my testimony.

1 MR. MCGINLEY: I'm going to  
2 stand by the objection inasmuch as --  
3 I mean, I don't think the fact that the  
4 offer of proof establishes the proper  
5 evidentiary predicate as a foundation  
6 for this. I mean, again, you know, it's  
7 one thing to have Mr. Dorgan testify  
8 about this. He wants to rely upon it.  
9 That's fine, but this is somebody who  
10 wasn't even working for Johns Manville  
11 at the time that this was written. It  
12 just seems too far afield.

13 HEARING OFFICER HALLORAN: I  
14 have sustained your objection.

15 MR. MCGINLEY: Thank you. We  
16 are outside the offer of proof now.

17 MS. BRICE: Thank you.

18 R E D I R E C T E X A M I N A T I O N

19 by Ms. Brice

20 Q. Can you please turn to Exhibit 2B?

21 A. I'm there.

22 Q. Okay. If you could, turn -- what is  
23 this document?

24 A. It is the respondent IDOT's answer

1 to our amended complaint in this matter.

2 Q. Could you please turn to 2-B6? Do  
3 you see that?

4 A. Yes.

5 Q. Could you please read the allegation  
6 and answer into the record, 12?

7 A. Yes. Paragraph 12, the allegation  
8 says, "Site 6 is currently owned by the city of  
9 Waukegan, which is not a party to the AOC and  
10 the answer is IDOT lacks sufficient information  
11 to either admit or deny the allegations in  
12 Paragraph 12.

13 Q. Thank you. And if you could go  
14 to Exhibit 2B-6. I'm sorry. We just did that  
15 one Exhibit 3A, 3A-3 actually. What is Exhibit  
16 3A?

17 A. 3A is IDOT's responses to Johns  
18 Manville's first set of document requests in this  
19 matter.

20 Q. If we could go to 3A-3, please.

21 A. Okay.

22 Q. Are you there?

23 A. Yes.

24 Q. Okay. Great. I would like to go to

1 document request No. 3. Can you please read that  
2 into the record and the response?

3 A. The request is any and all documents  
4 related to Sites 3 and 6. The response is "IDOT is  
5 producing in conjunction with these responses. All  
6 documents which are presently known to IDOT and are  
7 in IDOT's possession, custody or control that are  
8 responsive to this request.

9 Q. Other than the grant documents  
10 produced in this case, are you aware of any other  
11 documents that IDOT produced indicating that it  
12 had a permanent easement or any sort easement on  
13 Sites 3 or 6?

14 MR. MCGINLEY: Objection, lack  
15 of foundation. I mean, I think there  
16 needs to be a predicate that the witness  
17 has been involved in the case, what his  
18 involvement has been, what role he has  
19 had. I mean, he has seemingly jumped  
20 right to the ultimate conclusion.

21 HEARING OFFICER HALLORAN: Response,  
22 Ms. Brice?

23 MS. BRICE: Sure.

24

1 BY MS. BRICE:

2 Q. Mr. Tracy, have you been the JM  
3 contact for the legal team on this case?

4 A. Yes, I have.

5 Q. And have you been involved in the  
6 legal proceedings in this case including issues  
7 with respect to discovery and lack of information  
8 being produced by IDOT in discovery?

9 MR. MCGINLEY: Objection.

10 MS. O'LAUGHLIN: Objection.

11 MR. MCGINLEY: I think that  
12 that mischaracterizes. It think that's  
13 prejudicial.

14 BY MS. BRICE:

15 Q. Have you been involved in the  
16 discovery process with respect to this matter?

17 A. Yes. I have been involved in all  
18 of Johns Manville'S aspects of this litigation  
19 since its inception.

20 MS. BRICE: Can I move forward  
21 with this?

22 HEARING OFFICER HALLORAN: Yes,  
23 you may.

24 MS. BRICE: Thank you.

1 Can you please read the  
2 question back? I apologize.

3 (Whereupon, the requested  
4 portion of the record was  
5 read accordingly.)

6 BY MS. BRICE:

7 Q. Could you please read into the record  
8 Questions No. 3 and the response?

9 A. Question No. 3 was any all documents  
10 related to Sites 3 and 6 and the response was that  
11 "IDOT is producing in conjunction with these  
12 responses all documents which are presently known  
13 to IDOT and which are in IDOT's possession,  
14 custody or control that are responsive to this  
15 request."

16 Q. And I believe my question was  
17 other than the deed -- the grants documents  
18 that Mr. Fortunato was talking about, are you  
19 aware of any other documents IDOT has produced  
20 up until recently with respect to the easement  
21 rights that IDOT holds on Parcel 0393?

22 MR. MCGINLEY: Objection. She's  
23 asking a different question than what's  
24 referred to under No. 3 in the document

1           that she is using as an exhibit.

2       BY MS. BRICE:

3           Q.       What documents are you aware of  
4       that IDOT has produced in this matter with  
5       respect to the rights that it holds in the Parcel  
6       0393?

7           A.       I'm not aware of until recently of  
8       any documents of current right holdings that were  
9       produced.

10          Q.       Thank you. Are you familiar with  
11       Mr. Gobelman's testimony in this case?

12          A.       I am.

13          Q.       And he testified in a deposition in  
14       this case regarding, quote, the ownership of the  
15       intersection agreement of Sand, are you aware of  
16       that?

17          A.       Yes.

18          Q.       And what did he say?

19          A.       He indicated that to his knowledge,  
20       the city of Waukegan, I believe, owned all of that  
21       interest.

22          Q.       If you could, turn to Exhibit 37,  
23       please, the property in that Property Insight  
24       report.

1 A. Yes.

2 Q. Did you ask that this document be  
3 prepared?

4 A. I did.

5 Q. Why is that?

6 A. After Mr. Gobelman's deposition, we  
7 kind of had some questions about the ownership and  
8 we wanted to follow-up on what it might have -- what  
9 ultimately the records showed on that.

10 Q. And what did you learn from this  
11 Property Insight report?

12 A. It shows that subsequent to the  
13 grant of easement in 1984 to what was the  
14 predecessor to the Illinois Department of  
15 Transportation, there has been no sequence  
16 conveyances of that grant.

17 Q. And was that your previous  
18 understanding?

19 A. No.

20 Q. And what did you do in response  
21 to attaining that document, this Exhibit 37?

22 A. Once we evaluated it and understood  
23 it, we -- I asked that you file a motion for leave  
24 to amend the complaint.

1 Q. I'd like to direct your attention  
2 to Exhibit 2C-7. What is 2-C?

3 A. 2-C is IDOT's answer in affirmative  
4 defenses to Johns Manville's second amended  
5 complaint in this matter.

6 Q. Okay. And the second amended  
7 complaint is the one that was just recently  
8 filed; is that correct?

9 A. That's correct.

10 Q. And have you seen this document  
11 before?

12 A. I have.

13 Q. Okay. I'd like to direct your  
14 attention to allegation No. 12 and I'd like you  
15 to read into the record, please, the allegation  
16 and the response.

17 A. The allegation in Paragraph 12 is  
18 "On information and belief since at least 1971,  
19 the state of Illinois acting by and through IDOT  
20 (or its predecessor agency) has owned, held an  
21 interest in and/or controlled portions of Site 6  
22 including a right-of-way on the southern side of  
23 Greenwood Avenue. This area shall be referred to  
24 hereafter at right-of-way, ROW. Other parts of

1 Site 6 appear to be owned by the city of Waukegan,  
2 which is not a party to the AOC."

3 Q. And what is the response?

4 A. The answer says, "IDOT denies that it  
5 has 'owned, held any interest in and/or controlled  
6 portions of Site 6 including right-of-way on the  
7 southern side of Greenwood Avenue.' Further  
8 responding, due to the vague and ambiguous nature  
9 of the balance of the allegations in this paragraph,  
10 IDOT is unable to either admit or deny those  
11 allegations."

12 Q. Thank you. I have a couple other  
13 questions to ask. Could you turn to Exhibit 91?

14 MS. BRICE: This has been  
15 stipulated to.

16 HEARING OFFICER HALLORAN: Thank  
17 you.

18 BY MS. BRICE:

19 Q. There is a series of documents that  
20 are part of this exhibit; is that correct?

21 A. Yes.

22 Q. And generally what is this? What  
23 is this group exhibit?

24 A. This is an email that was --

1 MR. MCGINLEY: Objection. This  
2 is an email between Ms. Brice, myself and  
3 Kathrine Hanna. Mr. Tracy is not listed  
4 on this. I mean, I don't understand how  
5 he can tell us what it is.

6 HEARING OFFICER HALLORAN: I  
7 thought this was stipulated to?

8 MS. BRICE: It was.

9 MS. O'LAUGHLIN: Take it back.

10 MR. MCGINLEY: All right. Never  
11 mind. That's fine.

12 HEARING OFFICER HALLORAN: You  
13 may proceed.

14 MS. BRICE: Thank you.

15 BY MS. BRICE:

16 Q. Can you please describe what these  
17 documents are?

18 A. It is an email dated November 11,  
19 2014, from yourselves, Susan Brice, to Mr. McGinley  
20 copying Ms. Katherine Hanna. It talks about  
21 documents relating to Site 3 and Site 6.

22 Q. What kind of documents?

23 A. These are documents related to  
24 utility issues in the area of what is now Sites 3

1 and 6.

2 Q. And you turn to the next document  
3 and I believe this document references, does it  
4 not, an attached document, the very first -- the  
5 email?

6 A. Yes, it does. It talks about  
7 attachments.

8 Q. And have you seen this attached  
9 document before?

10 A. I have.

11 Q. Okay. What is this document?

12 A. It is a memo of the Department of  
13 Public Works and Buildings, state of Illinois,  
14 regarding if various utility issues and the  
15 project -- in the area what's now known as Sites  
16 3 and 6.

17 Q. Okay. Thank you. This document  
18 discusses relocation of the utility lines as part  
19 of the Amstutz, correct?

20 A. Yes.

21 Q. And are you aware --

22 MR. MCGINLEY: The document speaks  
23 for itself. It's been stipulated to.

24

1 BY MS. BRICE:

2 Q. -- of locations --

3 HEARING OFFICE HALLORAN: Hold on,  
4 Ms. Brice.

5 BY MS. BRICE:

6 Q. Are you aware of the locations --

7 HEARING OFFICE HALLORAN: Excuse me,  
8 Ms. Brice.

9 MS. BRICE: Oh, I'm sorry.

10 HEARING OFFICE HALLORAN: We have  
11 an objection.

12 MR. MCGINLEY: The document speaks  
13 for itself. I mean, it's been stipulated  
14 to. He doesn't know anything about it. I  
15 mean, I'm not sure that I see the point of  
16 this.

17 HEARING OFFICER HALLORAN: Ms. Brice?

18 MS. BRICE: Sure. I'm trying to  
19 tie -- he knows things about the utilities  
20 and I'm trying to tie it together in a moment.  
21 I think you'll see where I'm going.

22 HEARING OFFICER HALLORAN: All right.  
23 Proceed.

24

1 BY MS. BRICE:

2 Q. Does the document discuss relocations  
3 of the utilities that were to be relocated in the  
4 1970s?

5 A. Yes, it does.

6 Q. Are you aware of any utilities  
7 mentioned in this letter that were relocated in  
8 the 1970s pursuant to various documents?

9 MR. MCGINLEY: Objection,  
10 foundation.

11 BY MS. BRICE:

12 Q. Are you aware of utilities on  
13 Sites 3 and 6?

14 A. Yes.

15 Q. Are you aware of the water line that  
16 runs through Sites 3 and 6?

17 A. Yes, I am.

18 Q. Are you being required to do a  
19 remediation with respect to the water line on  
20 Sites 3 and 6?

21 A. Yes.

22 Q. And is it your understanding that  
23 the water line was relocated in the 1970s pursuant  
24 to the Amstutz project?

1           A.       Yes.  According to the city of  
2   Waukegan and what they've told us, yes.

3           Q.       And how do you know that?

4           A.       In discussions with the city of  
5   Waukegan and the fact that the city of Waukegan  
6   had a revised easement for a new easement from  
7   Commonwealth Edison and that was in 1971 or 1972,  
8   I believe, and the fact that they've told us  
9   that the old line that paralleled Sand Street  
10  at the time, which is now Pershing Road, was  
11  of a different construction that the line is  
12  after the relocation.

13          Q.       And does that document confirm that  
14  understanding?

15          A.       It mentions that there will be  
16  relocation to the city water line on the top of  
17  Page 2.

18          Q.       Thank you.  I believe I had been  
19  requesting -- do you know why there are no documents  
20  with respect to that water line, actual relocation?  
21  Do you know why they weren't available in this  
22  matter?

23          A.       No.

24          Q.       Okay.  Is there -- there's a document

1 at the very end here. The very last document, there  
2 is a letter from Mr. McGinley to me indicating that  
3 these documents are no longer available.

4 A. Okay. Yes.

5 Q. It is 91-9. So it's your  
6 understanding that JM requested information about  
7 the relocation of these utilities?

8 A. Yes.

9 Q. And those documents are no longer  
10 available because they were -- there was a --

11 A. I have seen this letter.

12 Q. They were housed in a facility  
13 that had a leak or something along those lines;  
14 is that correct?

15 A. Yes.

16 Q. Thank you. I have one last question.  
17 You are involved in the CERLA matter for JM,  
18 correct?

19 A. Yes.

20 Q. Do you ever have experience with other  
21 CERCLA matters as counsel for JM?

22 A. Both as counsel for JM and my previous  
23 work as an attorney.

24 Q. Okay. And based upon your situation

1 and your previous experience, is it typical for US  
2 EPA not to name all persons with liability as CERCLA  
3 interest in an action?

4 MR. MCGINLEY: Objection, calls  
5 for speculation.

6 HEARING OFFICER HALLORAN: If you  
7 can answer, sir, you may.

8 BY THE WITNESS:

9 A. It's my personal experience that  
10 the EPA does not always include everybody in an  
11 agreement as a PRP because CERCLA has joint and  
12 several liability, which means that one party  
13 can be held liability for any portion or all of  
14 the response cost under the law, under the CERCLA  
15 law, that EPA is not obligated to include all  
16 parties and does not always do so especially in  
17 instances where it's an additional operable unit  
18 where there's already parties involved.

19 MS. BRICE: Thank you. No  
20 further questions.

21 HEARING OFFICER HALLORAN: IDOT?

22 MR. MCGINLEY: Sure. Thank  
23 you.

24

1 R E C R O S S - E X A M I N A T I O N

2 by Mr. McGinley

3 Q. Mr. Tracy, you worked for a law  
4 firm called Holmes, Robert & Owen (sic.) prior  
5 to joining Johns Manville; is that correct?

6 A. It was Holme, Roberts & Owen, and  
7 yes.

8 Q. Sorry. While you were at that firm,  
9 that firm became Bryan Cave; is that correct?

10 A. After I left.

11 Q. Okay. While you were with the  
12 prior firm, did you work on this site at all  
13 with the Johns Manville site in Waukegan?

14 A. No, I didn't.

15 Q. In looking at the history of this  
16 site and Johns Manville's involvement, would you  
17 agree with the characterization that from at least  
18 the period of 2000/2001 up to the present day,  
19 Johns Manville has vigorously -- or however one  
20 might want to characterize it -- has been very  
21 interested in trying to get IDOT made a PRP at  
22 the Johns Manville site?

23 A. We have raised the issue with the  
24 EPA on different occasions that we believed

1 that IDOT had operator status under CERCLA.

2 Q. And that's been the position of  
3 Johns Manville since approximately 2001 up to  
4 the present day, correct?

5 A. Probably, yes.

6 Q. Okay. Prior to the entry or the  
7 signing of the administrative order on consent  
8 back in 2007, is it fair to say that there was  
9 again renewed conversations with US EPA about  
10 adding IDOT as a PRP as a signatory and an  
11 obligated party onto the -- under the AOC; would  
12 that by a fair characterization?

13 A. Could you repeat your question?

14 Q. Sure. Prior to the entry of the  
15 administrative order on consent back in 2007,  
16 would you agree that it's a fair characterization  
17 that Johns Manville was actively trying to get  
18 IDOT made a party to the AOC?

19 A. We asked EPA to include IDOT, yes.

20 Q. And would it also be fair to say  
21 that more than simply asking you were -- that  
22 Johns Manville was probably making presentations  
23 to US EPA about why US EPA should add IDOT into  
24 the AOC and make it appear and pay for the Johns

1 Manville site?

2 MS. BRICE: Objection to the  
3 word presentation as vague.

4 BY MR. MCGINLEY:

5 Q. Do you have a general understanding  
6 of the word -- presentation, I think, seems kind of  
7 a common understanding.

8 HEARING OFFICER HALLORAN: Yes,  
9 I agree. Overruled. You can answer if  
10 you are able, Mr. Tracy.

11 BY THE WITNESS:

12 A. I'm not aware of anything specific  
13 where the sole purpose of any discussion was  
14 strictly a presentation on our part to include  
15 IDOT. It was part of ongoing negotiations as  
16 part of resolving the AOC in general.

17 BY MR. MCGINLEY:

18 Q. Okay. So during communications  
19 with US EPA, Johns Manville was asking for IDOT  
20 to be named as a PRP?

21 A. And Commonwealth Edison as well,  
22 yes.

23 Q. Okay. I want to turn back to  
24 something that you spoke about a short while ago

1 and this was with respect to the reasons why  
2 Johns Manville ended up alternately obtaining  
3 the Property Insight report.

4 You said, I believe, in  
5 response to Ms. Brice's question that after Steve  
6 Gobelman's deposition that we had some questions  
7 about ownership. Do you recall having said that?

8 A. Yes.

9 Q. Okay. What was the nature of those  
10 questions, sir?

11 A. Well, the nature of his testimony  
12 made it a little unclear to us what -- how sure  
13 he was and the way the transcript read at least,  
14 it appeared to be somewhat vague about that and  
15 so we went back and just decided to double-check  
16 that ownership in the public record.

17 Q. And when you say "we," who are you  
18 referring to?

19 A. It was Johns Manville and our legal  
20 counsel.

21 Q. Okay. So in the course of those  
22 questions that you had about ownership, what  
23 other sorts of issues did you discuss regarding --  
24 and this was -- this would have been with respect

1 to what particular piece of land that's relevant  
2 to Site 3 or Site 6?

3 MS. BRICE: Objection to the  
4 extent that it invades privilege beyond  
5 what's been opened.

6 HEARING OFFICER HALLORAN: Is it  
7 outside the scope or...

8 MS. BRICE: I think the question  
9 could be interpreted as outside the scope  
10 of the direct.

11 HEARING OFFICER HALLORAN: Overruled.  
12 You may proceed, Mr. McGinley.

13 MR. MCGINLEY: Thank you.

14 BY MR. TRACY:

15 Q. Mr. Tracy, what sorts of -- what  
16 pieces of property relative to Site 3 and Site 6  
17 were you asking questions about with respect  
18 to ownership after you read the testimony of  
19 Mr. Gobelman?

20 A. The parcel list designated as 0393.

21 Q. Okay. And you had questions about  
22 that with Ms. Brice?

23 A. I don't understand what you mean by  
24 questions with Ms. Brice.

1 Q. About --

2 A. We had discussions about the  
3 questions, yes.

4 Q. Okay. And what exactly what were  
5 the nature of those questions that you had with  
6 Ms. Brice?

7 A. Trying to confirm -- well, like I  
8 said, trying to understand who really owned  
9 the property, was it the city of Waukegan or  
10 was it someone else or who had interest in the  
11 property.

12 Q. Okay. And besides the city of  
13 Waukegan and IDOT, did you look at anybody else  
14 as possibly having potential ownership for  
15 Site 3 or Site 6?

16 A. Commonwealth Edison.

17 Q. Okay.

18 A. And, you know, we knew that further  
19 down Greenwood Avenue, the city owned it.

20 Q. . With respect to -- and when were  
21 these conversations with Ms. Brice taking place?

22 A. It would have been shortly after  
23 the deposition of Mr. Gobelman. I don't recall  
24 the exact dates.

1 Q. Okay. Would it be fair to say  
2 last summer -- sometime last summer is when these  
3 questions first arose in your mind?

4 A. Probably fall, I would guess.

5 Q. Fall. Okay. Besides Ms. Brice,  
6 did you share these concerns about the ownership  
7 of possible ownership interest in the property  
8 that constitutes Site 3 or Site 6 with anybody  
9 else?

10 A. Well, after we had decided to  
11 obtain a title search, a tract search. We had  
12 a property lawyer that was working on other  
13 issues related to the southwest sites with us  
14 and we asked him to coordinate that title search --  
15 tract search.

16 Q. Okay. And who was this other attorney  
17 that you spoke with?

18 A. Don Manikas.

19 Q. Okay. So you shared with him the  
20 questions about ownership that you also discussing  
21 with Ms. Brice; is that right?

22 A. Not directly no. We asked him to  
23 conduct a search.

24 Q. You asked him to conduct a search.

1                   What were the parameters of  
2 the search that you asked him to use on this  
3 assignment?

4                   A.       We were looking for the property  
5 that was immediately south of Greenwood Avenue  
6 close to the intersection.

7                   Q.       Tell us if you could -- strike that.

8                               It's my understanding that it  
9 took a period of several months for -- from the  
10 start of that process to when the Property Insight  
11 report was ultimately acquired; is that correct?

12                   A.       It took -- yeah. I think it took  
13 a while because initially, I believe we got back  
14 the wrong parcel and then -- searched the wrong  
15 parcel. Then there was some initial -- I think  
16 the initial request, as I recall, was for a title  
17 commitment and then the title company wouldn't  
18 issue a commitment because of there being a  
19 right-of-way involved. So then they went to just  
20 getting the tract search.

21                   Q.       Okay.

22                   A.       And the holidays were also in there,  
23 as I recall.

24                   Q.       As they are every year unfortunately.

1                   Can I ask you about what kind  
2 of involvement -- from your prior testimony with  
3 Ms. Brice, it sounds as if you are seeing everything  
4 that gets generated during the course of the case.  
5 Would that be a fair characterization of your  
6 efforts in this matter?

7                   A.       I would say most of it. I wouldn't  
8 say I saw every single thing.

9                   Q.       Fair enough. With respect to the  
10 title commitment issue, did you ever happen to  
11 see the title commitment that was initially  
12 acquired from Chicago Title?

13                  A.       I may have. I don't recall. I  
14 was not the -- I may have copied on it, but I  
15 don't know. I didn't scrutinize it closely.

16                  Q.       So you actually reviewed it though?

17                  A.       I don't recall whether I did or not.

18                  Q.       Okay. Do you recall having any  
19 follow-up questions with anybody after getting  
20 the Chicago Title commitment concerning any of  
21 the information that might have been in this  
22 document?

23                  A.       Well, as I said earlier, we  
24 ultimately realized that it was the wrong parcel

1 and not what we were looking for. We researched.

2 Q. Okay. And you researched.

3 And that was research that was  
4 done through Ms. Brice or Mr. Manikas? I'm sorry.

5 I might be mispronouncing his name. I'm sorry.

6 But is that one of those two individuals?

7 A. Mr. Manikas, is how it's pronounced,  
8 he coordinated the searches.

9 MR. McGINLEY: Can we have  
10 five minutes?

11 HEARING OFFICER HALLORAN: Sure.  
12 Let's take five minutes. Off the record.

13 (Whereupon, after a short  
14 break was had, the following  
15 proceedings were held  
16 accordingly.)

17 HEARING OFFICER HALLORAN: All  
18 right. We are back on the record at  
19 approximately 2:45. Mr. McGinley is in  
20 his cross-examination of Mr. Tracy.

21 MR. McGINLEY: Yes.

22 BY MR. McGINLEY:

23 Q. Mr. Tracy, I just have a few more  
24 questions for you. You testified earlier that

1 prior to the entry of the 2007 AOC with Johns  
2 Manville/ComEd on the one hand and the US EPA  
3 on the other that if I recall your testimony  
4 properly, you said that Johns Manville had lobbied  
5 apparently for both ComEd as well as IDOT to be  
6 included on the AOC; is that correct?

7 A. No.

8 MS. BRICE: Objection,  
9 mischaracterized his testimony. Well,  
10 go ahead.

11 BY MR. MCGINLEY:

12 Q. So Commonwealth Edison and Johns  
13 Manville were negotiating simultaneous with US EPA?

14 A. That's correct.

15 Q. Okay. Was Johns Manville also asking  
16 for the city of Waukegan to be included as a party  
17 onto the AOC?

18 A. No, not at the time.

19 Q. Not at the time. Has Johns Manville's  
20 position changed since then?

21 A. No.

22 Q. So why did you say not at the time  
23 then?

24 A. I thought that's what your question

1 related to.

2 Q. Okay. So you haven't sought to get  
3 Commonwealth Edison -- I'm sorry -- the city of  
4 Waukegan involved in the AOC at any point in time,  
5 is that what you're saying? Johns Manville has not  
6 sought to do that?

7 A. Not since 2007.

8 Q. Not since 2007.

9 Prior to 2007, Johns Manville  
10 was looking for --

11 A. Prior to 2007, I can't answer for.

12 Q. Okay. And that's because?

13 A. I was not employed by Johns Manville.

14 Q. But you were able to -- I mean, have  
15 you seen any documents that pertain --

16 A. No.

17 Q. -- to the city of Waukegan --

18 A. No.

19 Q. -- having been looked at Johns  
20 Manville?

21 A. I have not seen anything -- any  
22 documents, correct.

23 Q. Have you heard anything about Johns  
24 Manville having sought to bring in the city of

1 Waukegan as the PRP?

2 MS. BRICE: Objection, calls  
3 for hearsay, outside the scope of the  
4 testimony.

5 HEARING OFFICER HALLORAN: Lori,  
6 could you please read the question back?

7 (Whereupon, the requested  
8 portion of the record was  
9 read accordingly.)

10 HEARING OFFICER HALLORAN: Sustained.

11 BY MR. MCGINLEY:

12 Q. The issues that Johns Manville  
13 had with trying to obtain the title commitment,  
14 it seems as if, if I understand the record  
15 correctly, there are at least a couple of attempts  
16 that were made on behalf of Johns Manville to get  
17 a title commitment issued before the Property  
18 Insight report was finally obtained; is that  
19 correct?

20 A. There was -- yeah. We did searches  
21 before, yes.

22 Q. And when you say searches, you are  
23 talking about title -- you were seeking title  
24 searches through Chicago Title; is that correct?

1 A. Yes.

2 Q. Okay. So how many different searches  
3 were done?

4 A. My understanding is that Mr. Manikas  
5 had initially gotten the wrong parcel and then  
6 was -- again had sought a title commitment that  
7 the title company would not give and then we got  
8 the tract report.

9 Q. Okay. So just one title commitment  
10 and then the Property Insight report; is that  
11 correct?

12 A. On that parcel, yes.

13 Q. On that parcel.

14 Were you looking for other parcels  
15 at the same time?

16 A. No. Like I said, we got -- so  
17 there was a request on the parcel -- there was the  
18 wrong parcel and then we sought a title commitment  
19 on the 0393 parcel. The title company declined  
20 to issue a commitment and then we got the tract  
21 search.

22 Q. And the reason -- okay.

23 MR. MCGINLEY: Okay. No  
24 further questions. Thank you, sir.

1 HEARING OFFICER HALLORAN: Thank  
2 you, Mr. McGinley.

3 Ms. Brice?

4 MS. BRICE: Yes. Thank you.

5 R E - R E D I R E C T E X A M I N A T I O N

6 by Ms. Brice

7 Q. Mr. Tracy, Mr. McGinley was asking  
8 you some questions about the AOC?

9 A. Yes.

10 Q. Do you recall that?

11 A. Yes.

12 Q. And about a CERCLA operator and  
13 you said JM had wanted -- I don't want to put  
14 words in your mouth, but had suggested to US  
15 EPA had IDOT would qualify as an operator; is  
16 that correct?

17 A. Yes.

18 Q. CERCLA is a different statute from  
19 the Illinois Environmental Protection Act, correct?

20 A. That's correct.

21 Q. And how is one and operator under  
22 CERCLA?

23 A. You become an operator under CERCLA  
24 if you own or operate the site at the time the

1 disposal occurs.

2 Q. Do you have to cause contamination to  
3 be on or under CERCLA?

4 A. No.

5 Q. Did JM have to be injured in any  
6 way nor IDOT to name -- for the US EPA to name  
7 IDOT as a PRP?

8 MR. MCGINLEY: Objection, calls  
9 for legal speculation. It's also outside  
10 the scope of what's at issue in this case.  
11 I mean, this is -- I mean, they are alleging  
12 violations of the Environmental Protection  
13 Act. We're not here to adjudicate potential  
14 claims under CERCLA.

15 HEARING OFFICER HALLORAN: Well --

16 MS. BRICE: Obviously, they're --  
17 they've made this entire argument about  
18 whether or not they could be a PRP and  
19 that has somehow some sort of a bearing  
20 on their status and whether or not they  
21 are reliable in this case and they have  
22 made that argument. So I think it's  
23 highly relevant as to whether or not  
24 what Mr. Tracy views as to what they

1 were advocates for.

2 HEARING OFFICER HALLORAN: Yes.

3 Objection overruled. I'll give you a  
4 couple of questions, but I don't think we  
5 have --

6 MS. BRICE: Yes. I've got two  
7 questions left.

8 HEARING OFFICER HALLORAN: All  
9 right.

10 BY MS. BRICE:

11 Q. Let me rephrase. Did JM have to be  
12 injured in anyway in order for US EPA to name IDOT  
13 as a PRP under CERCLA?

14 A. That's not the standards under CERCLA,  
15 no.

16 Q. Okay. And why was JM asking for US  
17 EPA -- why was JM asking for IDOT to be named as a  
18 PRP under CERCLA?

19 A. Because we thought they met the  
20 definition of an operator and if you feel there  
21 are parties that meet the definition, you generally  
22 try to include those parties.

23 Q. And did US EPA include them?

24 A. No.

1 MS. BRICE: No further questions.

2 HEARING OFFICER HALLORAN: Thank  
3 you.

4 Mr. McGinley?

5 MR. MCGINLEY: No. Thank you.

6 HEARING OFFICER HALLORAN: You  
7 may step down, Mr. Tracy. Thank you.

8 (Witness excused.)

9 HEARING OFFICER HALLORAN: Ms. Brice  
10 and Ms. Caisman, was that your last witness?

11 MS. BRICE: Yes.

12 HEARING OFFICER HALLORAN: Okay.  
13 Before you rest your case-in-chief, I think  
14 we should go off the record to talk about  
15 these exhibits that you have offered. So  
16 we will go off the record for a few minutes.

17 (Whereupon, a discussion  
18 was had off the record.)

19 HEARING OFFICER HALLORAN: All  
20 right. We are back on the record. We  
21 were talking a little bit about exhibits  
22 and our plan right now is JM is going to  
23 move the exhibits they offered in their  
24 case-in-chief.

1                   Most of them -- there's a  
2                   few of them -- all of them were admitted --  
3                   some -- a few over objection. So sometime  
4                   tomorrow on May 25th, we're going to have  
5                   a list of exhibits specifying each one  
6                   that was admitted and then we are going  
7                   to enter that into the transcript.

8                   But right now, Ms. Brice,  
9                   you have offered quite a few exhibits  
10                  in your case-in-chief. What do you  
11                  intend to do with those?

12                  MS. BRICE: We would like to  
13                  move those exhibits into evidence and  
14                  specifically in certain instances where  
15                  the witnesses have marked on the exhibit,  
16                  we will work with you to identify the  
17                  correct exhibit that was marked on to  
18                  make sure that one is the one that is  
19                  part of the official record.

20                  HEARING OFFICER HALLORAN: Okay.  
21                  And also the demonstrative?

22                  MS. BRICE: Yes. And the  
23                  demonstratives as well.

24                  HEARING OFFICER HALLORAN: And

1 I understand that IDOT did object to a few  
2 and that will be so noted in my hearing  
3 report, but any comment, Mr. McGinley and  
4 Ms. O'Laughlin?

5 MS. O'LAUGHLIN: Just for the  
6 record, any objections we had made during  
7 the course of the hearing will be reflected  
8 in the hearing. We will not reiterate  
9 those at this time as those have been made  
10 during the course of the hearing.

11 HEARING OFFICER HALLORAN: Exactly.  
12 I have about six or seven of those so noted.

13 All right. The exhibits  
14 are admitted. I believe, Ms. Brice, you  
15 will rest your case-in-chief?

16 MS. BRICE: Case-in-chief, yes.

17 HEARING OFFICER HALLORAN: Okay.  
18 Terrific.

19 (Whereupon, the complainant  
20 rests its case-in-chief.)

21 HEARING OFFICER HALLORAN: IDOT,  
22 your turn.

23 MS. O'LAUGHLIN: So no need for  
24 Mr. Stoddard?

1 MS. BRICE: We're not going to  
2 call him in our case.

3 MS. O'LAUGHLIN: Okay. We are on  
4 the record we would like to call Steven  
5 Gobelman to the stand.

6 HEARING OFFICER HALLORAN: Okay.  
7 Mr. Gobelman, step up and Lori will swear  
8 you in.

9 THE COURT REPORTER: Do you swear  
10 the testimony you are about to give is the  
11 truth, the whole truth and nothing but  
12 the truth, so help you God?

13 MR. GOBELMAN: Yes.

14 (Witness sworn.)

15 HEARING OFFICER HALLORAN: You may  
16 proceed.

17 MS. O'LAUGHLIN: Thank you.  
18  
19  
20  
21  
22

23 WHEREUPON:

24 S T E V E N G O B E L M A N

1 called as a witness herein, having been first duly  
2 sworn, deposeth and saith as follows:

3 R E D I R E C T E X A M I N A T I O N

4 by Ms. O'Laughlin

5 Q. Good afternoon. Mr. Gobelman, will  
6 you state your name and current title?

7 A. My name is Steven Gobelman and  
8 my current title is project director with Andrews  
9 Engineering.

10 Q. And I would like to turn you to  
11 Exhibit 8, which, I believe, is the report and  
12 Appendix B. Could you turn to Appendix B to  
13 your report?

14 HEARING OFFICER HALLORAN: What  
15 exhibit is that, please?

16 MS. O'LAUGHLIN: Exhibit 8.

17 HEARING OFFICER HALLORAN: Thank  
18 you.

19 BY THE WITNESS:

20 A. Yes.

21 BY MS. O'LAUGHLIN:

22 Q. What is contained within Appendix B?

23 A. It's my resume.

24 Q. Can you give us the page reference at

1 the bottom right of that?

2 A. Page Exhibit 08-21.

3 Q. All right.

4 A. Through 23.

5 Q. How long have you held your current  
6 position?

7 A. Since August of 2015. So seven months  
8 or whatever.

9 Q. Prior to your current position, what  
10 did you do?

11 A. Prior to my current position I was  
12 employed with the Illinois Department of  
13 Transportation.

14 Q. And what time period were you  
15 employed with the Illinois Department of  
16 Transportation or IDOT, for short?

17 A. I was employed there from September  
18 of '93 through July of 2015.

19 Q. So approximately 22 years?

20 A. Approximately 22 years.

21 Q. Okay. And I'm going to ask you  
22 questions about your positions with IDOT and some  
23 of your job duties and roles.

24 A. Uh-huh.

1 Q. What was your most recent position  
2 and job duties with IDOT?

3 A. The last duties with IDOT, I was  
4 somewhat involved with environmental compliance,  
5 audits and reviews and other sort of technical  
6 expertise in regards to reviewing legislative  
7 issues that came up.

8 Q. Okay. And how long had you -- did  
9 you hold that position?

10 A. I was doing those duties for about a  
11 year.

12 Q. A year. Okay. What was your title?

13 A. That was the same title I was when  
14 I started at IDOT. I was a technical manager 4.

15 Q. Okay. And prior to that year long  
16 activity, what was your position with IDOT?

17 A. Prior to that I spent a year in  
18 operations being temporarily assigned there and  
19 I was the sort of a land use coordinator for  
20 Bureau of Operations -- I mean, the bureau of --  
21 I lost my train of thought -- yeah, the Bureau  
22 of Operations. Yeah, never mind.

23 Q. What time period was that?

24 A. Probably the summer of -- let's see --

1 the summer of '13 to the summer of '14.

2 Q. Okay. And so prior to your time with  
3 the Bureau of Operations, what did you do for IDOT?

4 A. Prior to that from the beginning  
5 when I started with IDOT, I was the -- sort of the  
6 technical expertise for IDOT in regards to all soil  
7 and groundwater investigations throughout the state  
8 of Illinois along highway projects.

9 Q. And for how long did you do that?

10 A. Twenty years, I guess. Take two  
11 years off the top.

12 Q. And before, working -- I'll ask  
13 you more about your work with IDOT later on,  
14 but just briefly, before you worked for IDOT,  
15 what did you do?

16 A. Prior to working with IDOT, I  
17 was employed with the Illinois Environmental  
18 Protection Agency.

19 Q. What did you do for the Illinois  
20 Environmental Protection Agency?

21 A. My last five years at the Illinois  
22 EPA, I was a project manager involved with the  
23 voluntary clean-ups regarding industries and I  
24 was also doing state funded clean-ups for CERCLA

1 sites that weren't scored high enough to make the  
2 Superfund.

3 Q. And what time period were you with  
4 IEPA?

5 A. I was with IEPA from, I think,  
6 November of '85 to September of 1993. So roughly  
7 eight years.

8 Q. And what is your education since  
9 high school?

10 A. I have a Bachelor's of Science  
11 degree with -- in geological engineering from  
12 the University of Missouri-Rolla. I also have  
13 a master's degree in geological engineering  
14 from the University of Alaska-Fairbanks.

15 Q. And when did you obtain each of  
16 those degrees?

17 A. I graduated with my undergrad in  
18 '83 and my master's in '85.

19 Q. Have you done any educational  
20 courses since you obtained your master's?

21 A. Not in a college setting, but I've  
22 had sort of a program development type classes  
23 that I've taken throughout and with IDOT and  
24 some earlier with the EPA on different subject

1 matters.

2 Q. Okay. Have you ever testified  
3 and have you ever testified as a witness before?

4 A. Yes.

5 Q. When?

6 A. Once.

7 Q. When?

8 A. Probably it was when I was with the  
9 EPA. So it had to be somewhere in the early '90s  
10 or late '80s.

11 Q. What was the matter?

12 A. It was a chemical manufacturing  
13 plant that I was involved with regarding compliance  
14 issues and stuff. So we were -- I was called to  
15 testify for the Attorney General's Office on the  
16 conditions of the site.

17 Q. Have you testified in any other  
18 matters?

19 A. Not in the court setting. I  
20 testified before the Board in regulatory matters.

21 Q. Okay. What was your testimony before  
22 the Board in regulatory matters?

23 A. In regards to proposed legislation  
24 or regulations, I've testified on behalf of IDOT

1 on changes that we wanted to make to regulations  
2 regarding the clean construction demolition crew  
3 regulations and then I think there was also some  
4 early work that was done in the TACO -- Tiered  
5 Approach to Corrective Action Objectives back in  
6 '95 or something like that.

7 Q. Okay. So in your CV, you talk  
8 about doing assessments and investigations of  
9 special waste. Can you tell us what is involved  
10 in assessments and investigations of special  
11 waste?

12 A. Well, for IDOT, they have -- we  
13 have our own little process. Initially, the  
14 process. Initially, the -- the process is that  
15 there's a -- the proposed project that meets.  
16 A project needs to be evaluated. So that  
17 information comes down to the central office  
18 in Springfield with a large quarter like it was  
19 discussed by John Blaczek who discussed it earlier  
20 and the initial will be called Phase one, process  
21 is done regarding all environmental issues.

22 I was overseeing more of the  
23 special waste, land and water quality issues. So  
24 in that aspect, it would be sent over to the

1 Illinois State Geological Survey for a Phase 1 or  
2 what we call a preliminary environmental site  
3 assessment.

4 Q. What were the type of sites that  
5 you were looking at?

6 A. Any sites -- well, we provided the  
7 entire corridor to ISGS, geological survey. They  
8 provided a report and told us what sites were  
9 potentially -- were a wreck site, I guess.

10 Q. So I'm trying to understand like  
11 what was the -- like, what would cause you to  
12 analyze the special waste -- to assess and  
13 investigate special waste?

14 A. Well, the next step, once a  
15 property has been identified to have a potential  
16 environmental problem, those sites have been  
17 provided back to the districts. We were proposing  
18 the project to determine whether or not the  
19 construction project is going to impact those  
20 particular properties.

21 Q. And that construction project would  
22 be the building of a road or...

23 A. Building of -- yeah, anything for  
24 highway purposes or roads, storm sewers, you know,

1 embankments, anything.

2 Q. Okay. Within the Illinois State  
3 highway system?

4 A. My role was with regards to anything  
5 that was a part of the state highway system. I  
6 mean, that would include local agencies who were  
7 also building or doing something on state highways.

8 Q. Did you conduct risk -- did you  
9 conduct risk assessments for the Illinois Department  
10 of Transportation?

11 A. Not necessarily any types of risk.  
12 I mean, if they were involved in evaluating risk  
13 as opposed to when we evaluated for contamination  
14 and what the risks are as far as how we apply it  
15 and whether or not the material stays on-site or  
16 whether or not the site material leaves, we would  
17 evaluate on that type of a risk of IDOT's  
18 liabilities.

19 Q. What about overseeing soil and  
20 groundwater remediation, did your duties at IDOT  
21 involve those activities?

22 A. Once the -- we provide the phase  
23 one back to the district office, like I said,  
24 and they provide what properties are going to

1 impact it, whether it's impacted for excavation  
2 purposes or impacted for acquisition purposes,  
3 those properties then would be investigated in  
4 what we call phrase two process and that would  
5 involve sending that information to one of our  
6 statewide consultants.

7           They would put together a  
8 work plan. I would review the work plan and  
9 change -- identify what borings I wanted or  
10 didn't want. They would perform the test and  
11 then I would evaluate the results of that and  
12 then take those results and put it in some --  
13 in a special provision, if necessary, that  
14 would be incorporated into the contract plans.

15           Q.       How about with the IEPA, were  
16 you ever involved with any CERCLA cites with  
17 the IEPA?

18           A.       Yes. I was involved in a \$10 million  
19 mobile incineration of South Chicago for the --  
20 what was called the Paxton lagoons near the  
21 cluster sites. I was involved with the -- a lot  
22 of properties that were, you know, in the CERCLA  
23 system.

24           Q.       Okay. Do you have experience with

1 historical contamination?

2 A. Well, in a lot of those old  
3 facilities that we were doing state funded  
4 clean-ups on, they were, from historical records,  
5 contaminated. They weren't necessarily current  
6 operating facilities. They were usually abandoned  
7 and had been there for a long period of time and  
8 we were coming in because no one else was viable  
9 to remediate those types of facilities that  
10 then the state would come in with funding to  
11 sort of take on that remediation.

12 Q. And was that with the Illinois EPA  
13 or IDOT?

14 A. With the Illinois EPA.

15 Q. I'm going to ask you about your  
16 background regarding construction projects.

17 A. Okay.

18 Q. So in your position with the  
19 Illinois Department of Transportation, have  
20 you ever reviewed Illinois highway construction  
21 projects?

22 A. Yes. As part of the phase two  
23 process that I've put together, the special  
24 revisions and construction pay items and

1 quantities, I typically also then looked --  
2 once that information is provided back to the  
3 district, the plans prior to letting are sent  
4 back to the Springfield office to like a final  
5 peer review before it gets let.

6 I would typically look at  
7 those existing plans to determine whether or  
8 not the special provisions that I had installed  
9 and put in place and the pay items were in  
10 place, but also I was also the technical reviewer  
11 of all highway authority agreements that IDOT  
12 was receiving from third parties wanting IDOT  
13 to agree to the contamination within their  
14 right-of-way.

15 So that involved -- as part  
16 of that highway authority agreement process  
17 was that they needed us to sign off on the  
18 contamination on their right-of-way so that  
19 they can get --

20 Q. Who is "they"?

21 A. They would be any party who had  
22 a release for contamination on their property  
23 that had migrated onto a state highway.

24 Q. So this is a private party, not

1 on --

2 A. Third party, private party.

3 Q. Okay. So a private party has a  
4 release and they got to IDOT for what reason?

5 A. Well, in order for them to get a  
6 no further release letter from EPA and whatever  
7 program they're in, whether it's the LUST program  
8 or they're doing a voluntary program through  
9 the site remediation program, the SRP program,  
10 they need to identify all the properties owners  
11 who are impacted by their problem that's appearing  
12 on their site.

13 So one of the environmental  
14 land use issues there are done is that for highway  
15 purposes they get IDOT or the locals to give  
16 them authority to leave it there. One of the  
17 caveats of the TACO regulations is that IDOT has  
18 put in place the means in which they have to  
19 receive cost recovery for damages onto our --  
20 onto highway property. Those damages would be  
21 for investigations that we have entailed as a  
22 part of our construction project.

23 So we then --

24 Q. Okay. So let me stop you so I

1 understand. So a private party seeks IDOT's  
2 release or approval regarding contamination  
3 and you looked at that for IDOT?

4 A. Yes.

5 Q. Okay. And so what would you look  
6 at to evaluate whether a release is appropriate  
7 or not?

8 A. Well, the property owner, as part  
9 of its agreement, is going to provide IDOT  
10 of a base map that identifies the plume in  
11 the area that is going to be impacted on  
12 on our right-of-way, on IDOT's right away.

13 Q. Okay. And how -- and why do  
14 you review construction projects in that  
15 context?

16 A. Well, what happens is is then  
17 since IDOT can recover not only for future  
18 costs, it can recover their costs for all past  
19 costs. So one of the exercises that has to  
20 go -- that I'd have to go through is to identify  
21 one, whether or not we have ever done an  
22 investigation on those properties and then two,  
23 whether or not those investigations would put  
24 into previous contract plans and then three,

1 whether or not those contract plans actually  
2 did what they were supposed to do and we have  
3 costs associated with the management of  
4 contaminated soil or groundwater.

5 Q. Okay. And did you investigate  
6 the roadway -- contamination involved with  
7 roadways?

8 A. In regards to highway authority  
9 agreements --

10 Q. Yes.

11 A. -- we didn't investigate the  
12 roadway itself. We used the information that  
13 was provided to us by the consultants who were  
14 preparing the highway authority agreements.

15 Q. Okay. Did some of these construction  
16 plans that you were viewing, were some of them  
17 from the 1970's?

18 A. I wouldn't say there was any from  
19 the 1970s, but there may be some from the '80s,  
20 maybe late '70s. It just depends. We look at  
21 what all constructions -- just because a project  
22 didn't do through our phrase two process, if we  
23 can identify a construction project that occurred  
24 there, we can go back through the historical

1 archives and payment process to see one, is there  
2 is any historical change order that occur because  
3 a lot of times even if soil contamination wasn't  
4 identified up front and they had to manage  
5 contamination in the construction plan, that  
6 would indicate a change in conditions and,  
7 therefore, there would be a change order identifying  
8 the special management of that material.

9 Q. Okay. So how many construction  
10 plans have you reviewed in your position at  
11 IDOT?

12 A. I would say thousands through the  
13 phase two process and the highway authority  
14 agreement process.

15 Q. Turning your attention to the  
16 project that's tangentially involved in this  
17 lawsuit, are you familiar with the Amstutz  
18 Project?

19 A. Yes.

20 Q. And what is the Amstutz?

21 A. It's an expressway that travels  
22 north and basically ends at Greenwood Avenue.

23 Q. Where does it begin?

24 A. I'm not quite sure. It's kind of

1 part of Illinois Interstate 41. I'm not sure  
2 how long it goes south. I wasn't involved with  
3 the construction of that expressway itself.

4 Q. Okay. Are you familiar with the  
5 project that's involved in this lawsuit, the  
6 building of the Amstutz highway to Greenwood  
7 Avenue?

8 A. Yes, in regards to work that I have  
9 done on this case, yes.

10 Q. Okay. I would like to turn you  
11 to Exhibit 21, Exhibit 21?

12 A. Oh, sorry.

13 Q. Have you seen this document before?

14 A. Yes, 21A and 21B.

15 Q. What is 21B?

16 A. 21B is basically the set of plans  
17 that I sort of acquired, which were, I think, is  
18 best represented is the actual construction plans at  
19 bid.

20 Q. Okay.

21 A. And 21A are as previously identified  
22 were -- is called the as-built construction plans.

23 Q. Okay. Turning your attention to  
24 Exhibit 21B-1 --

1 A. Uh-huh.

2 Q. -- which is sort of a foldout in the  
3 binder books --

4 A. Yes.

5 Q. -- do you know what this document is?

6 A. It's the construction plans for the --  
7 along Greenwood Avenue that includes two bridges  
8 and an embankment over those -- over the Amstutz  
9 expressway, the railroad and an elevated embankment  
10 along Sand Street.

11 Q. Okay. Is this a -- is this IDOT 3355  
12 Exhibit 21B-1, is this the same document as a cover  
13 page to Exhibit 21A-1?

14 A. Yes in essence other than 21A is a  
15 document of what's called the as-built. So it has  
16 some notes in it that were provided by the resident  
17 engineer during construction. It was part of the  
18 record at the end.

19 Q. Okay. So is that -- is that Exhibit  
20 21B-1, is this generally a brief outline of the  
21 Amstutz bridge project that's been discussed in  
22 this lawsuit?

23 A. Well, I wouldn't call that an outline.  
24 It's the construction plans for how it's going to be

1 built.

2 Q. Just the cover page, 21B-1?

3 A. The cover page is just an  
4 identification that provides the contractors the  
5 beginnings and ends of all of the streets that  
6 are going to be involved, the highway that's  
7 going to be involved, and it identifies the  
8 special issues that maybe need to be flagged  
9 out. In this case, they identified the stationing,  
10 the beginning and end of the two structures that  
11 are going to be built.

12 Q. Okay. So what I want to do now  
13 is basically walk through what was involved in --  
14 not the details, but just generally what's involved  
15 in building these bridges.

16 So turning your attention to  
17 this diagram, can you tell me or tell us what --  
18 what was the purpose of this Amstutz bridge  
19 project?

20 A. Well, the purpose was to provide an  
21 overpass for the Amstutz expressway and in having  
22 the -- and the way this plan is designed, it created  
23 a -- it made Greenwood an overpass onto -- going  
24 over Amstutz and then because they created that

1 overpass for Amstutz, they had to then bridge over  
2 the railroad and then create an embankment for  
3 Sand so that they could then touch down at an  
4 ideal slope coming down off the bridge into --  
5 along Greenwood Avenue and that required Sand be  
6 elevated to accommodate the bridge elevations that  
7 they had to have.

8 Q. And what's the length of the  
9 roadway -- of Greenwood Avenue that's involved?

10 A. I think it's a couple thousand feet.  
11 This one starts -- it says that Greenwood starts  
12 at seven, but it --

13 Q. Where do you see that?

14 A. At the figure -- the landscape  
15 figure to the north, there is an arrow pointing  
16 to improvement begins at Greenwood Avenue station,  
17 seven plus 00.00. And then if you --

18 Q. Wait, stop. I'm going to use -- if  
19 you could -- I think these are yours but...

20 MS. BRICE: It's okay. No  
21 problem.

22 BY MS. O'LAUGHLIN:

23 Q. If you could maybe take that out  
24 of the binder and then highlight where the project

1 begins on Greenwood Avenue.

2 A. Well, the line that it flags to  
3 is kind of like an area that was cut off. The  
4 ink was cut off in the reproduction of the marker  
5 that this came from and this is the box that it  
6 identifies to.

7 Q. And which way is north on this?

8 A. North, in essence, is to the left  
9 of the figure in landscape. So actually you  
10 have to turn it up, turn it 90 degrees.

11 Q. Greenwood runs east/west; is that  
12 correct?

13 A. Yes.

14 MS. BRICE: Can I approach to  
15 see what he is doing?

16 MS. O'LAUGHLIN: Sure.

17 MS. BRICE: Thanks. Okay.

18 BY MS. O'LAUGHLIN:

19 Q. Where does the project end on  
20 Greenwood Avenue?

21 A. It ends in the figure to the south  
22 of Greenwood and also depicted by a line drawn to  
23 it, but as I said earlier, it doesn't show because  
24 of the blur out. You could find it in a previous

1 page where the improvement ends on Greenwood, to  
2 that stationing.

3 Q. You don't see it on this map?

4 A. It's covered by a black smear.

5 Q. Okay. Can you estimate how far down  
6 the black smear it goes?

7 A. Well, I mean, the black smear just  
8 conveniently covers up Greenwood station something.

9 Q. Okay.

10 A. Because all I see is Green.

11 Q. Okay. So can you show Johns Manville  
12 and the hearing officer what you highlighted. We  
13 don't have electronics to show --

14 MS. BRICE: Do you want to use  
15 21A?

16 MS. O'LAUGHLIN: I -- that is --

17 THE WITNESS: That's B.

18 MS. O'LAUGHLIN: Yeah. But no --

19 THE WITNESS: This is clearer.

20 MS. BRICE: 21A is the one he used.

21 MS. O'LAUGHLIN: We'll just -- I  
22 don't know your exhibits. Thank you, but --

23 MS. BRICE: 21A was the one that  
24 we used.

1 MS. O'LAUGHLIN: Yeah, yeah. I  
2 mean, we will use it, but for this, we'll  
3 just use the blowup.

4 BY MS. O'LAUGHLIN:

5 Q. And if you could, turn it around  
6 so that we can see what you've highlighted. So  
7 what's the portion of Greenwood Avenue?

8 A. Greenwood is running this way. So  
9 it's north. I'll keep it this way.

10 Q. Okay.

11 A. So the project technically begins  
12 here at this dot (indicating), which is station  
13 seven and it runs to that dot there (indicating),  
14 which is --

15 Q. You can highlight -- highlight  
16 Greenwood Avenue. Then if you could tell us,  
17 how many miles of Greenwood Avenue is involved?

18 A. Well, I think it's just a quarter  
19 mile or something like that. It's 2,000 feet,  
20 not exactly, but, I mean, without having the  
21 stationing at the bottom, I think it's stationed  
22 20 plus something, 29, stationed 29 or something  
23 like that.

24 Q. Okay. What are the bridges that

1 are involved in this project?

2 A. Well, the bridges are identified on  
3 this figure as well as the limits of the structures.  
4 The first bridge that's for the Amstutz limit has  
5 a stationing of 20 plus 57 plus -- let me say this  
6 again. It's 20 plus 57.58 and then the other limit  
7 of the structure is a -- part of the number is gone,  
8 but I believe it states that it's stationed 18 plus  
9 41.42 -- 18 plus 42.42.

10 Then the second bridge is  
11 at station 16, plus 17.22 and is limited by  
12 a station along Greenwood of 14 plus 53.59.

13 MS. O'LAUGHLIN: If we could  
14 just go off the record for just a second  
15 so we could do the display.

16 HEARING OFFICER HALLORAN: Yes.  
17 Lori, off the record.

18 (Whereupon, after a short  
19 break was had, the following  
20 proceedings were held  
21 accordingly.)

22 BY MS. O'LAUGHLIN:

23 Q. We can go back on the record.

24 Mr. Dorgan (sic.), if you wouldn't

1 mind sort of explaining what you --

2 A. Me?

3 Q. Yes. Mr. Gobelman, if you wouldn't  
4 know explaining -- showing up there what you --  
5 use the map and just sort of stand up and show  
6 the areas that you are highlighting.

7 A. Yes. So, in essence, Greenwood  
8 starts at approximately down here to the south  
9 or to the west, I should say. I think it's  
10 around station 29. It identifies two structures  
11 in the middle. It also identifies Sand Street  
12 beginning at the end of the project associated  
13 with Sand.

14 Q. Can you -- where is the Amstutz  
15 bridge?

16 A. The Amstutz bridge is the first  
17 bridge coming in from the -- going from the west  
18 along -- to the east along Greenwood. It's marked  
19 as a stationing. I think it's 18 plus 42.42 and  
20 ends at 20 plus 57.58.

21 Q. What about the bridge over the  
22 railroad?

23 A. The railroad is directly to the  
24 east of that bridge -- of the first bridge and

1 it is from station 14 plus 53.59 to 16 plus 17.22.

2 Q. Okay. And are you able to discern  
3 the detour roads that are needed for this project  
4 on that?

5 A. The detour roads are marked on  
6 this map. They do not provide stationing of  
7 the beginning and ending of the detour road.

8 Q. If you could take that map again  
9 and put it up -- use it as a display and show  
10 how the detour roads -- what are the detour roads  
11 involved in this project?

12 A. Well, detour roads have to be  
13 created because you are going to close Greenwood  
14 Avenue to create two structures. In order to  
15 allow free traffic to flow along Greenwood Avenue  
16 you have to created detour roads so traffic moving  
17 north and south on Sand has a way to get out along  
18 Greenwood Avenue and conversely traffic going  
19 east/west on Greenwood has a means of getting to the  
20 other side of the railroad tracks and into Johns  
21 Manville's facility and then being able to connect  
22 to Sand Street north/south.

23 Q. Okay. So can you just show us where  
24 the detour roads are on that map?

1           A.       Detour A is roughly connecting  
2 diagonally on Greenwood Avenue to the -- from the  
3 northeast to the southeast connecting Sand to  
4 Greenwood an then detour road --

5           Q.       What is the purpose of Detour Road A?

6           A.       Detour A is to allow traffic from  
7 Sand Street going north to be able to get onto  
8 Greenwood going east and vice versa.

9           Q.       Okay. All right. And now Detour  
10 Road B?

11          A.       Detour Road B keys Detour Road A  
12 and loops up and, in essence, stops at the  
13 railroad track. Then Detour Road C is from  
14 the railroad track connecting to Detour Road B  
15 and loops diagonally down from the north from  
16 going to northeast to southwest connecting back  
17 down to Greenwood Avenue.

18          Q.       What's the purpose of Detour Roads  
19 B and C?

20          A.       B and C is to allow traffic to  
21 flow -- traffic from the west going east along  
22 Greenwood to be able to loop over and get onto  
23 Sand Street and then eventually get back onto  
24 Greenwood Avenue and then also being able to

1 connect up from B connecting back to A to get back  
2 to south Sand.

3 Q. I would like you to look at Exhibit  
4 20.

5 A. Okay.

6 Q. What is this document?

7 A. The construction bid documents.

8 Q. What's the process for this document  
9 to be created?

10 A. The construction bid documents  
11 hold the pay items and quantities that the  
12 contractor is going to bid on. It's going to  
13 provide legal documentation on what bonding  
14 and what the contract is going to have. It  
15 provides special provisions that will supersede  
16 the specification book.

17 It needs to be provided along with  
18 the contract plans that we were just looking  
19 at in Section 21. Those two documents provide  
20 what is provided to a contractor to put together  
21 a bid.

22 Q. And do these provide the -- what  
23 do these provide to the contractor?

24 A. Well, like I said, they provide

1 pay items, quantities, bonding requirements,  
2 contractual requirements, change -- special  
3 provisions. They may provide, as part of the  
4 special details, they provide what standards  
5 are going to be applicable for this particular  
6 job. They provide the information regarding  
7 scheduling and/or sequencing of how IDOT wants  
8 to do the project.

9 Q. And what did this project consist  
10 of?

11 A. It consisted of building two  
12 bridges, elevating the road over those two  
13 bridges, creating three detours, creating  
14 an embankment for Greenwood and Sand Street.

15 Q. What about drainage structures?

16 A. It provided -- as part of their  
17 details in the plans, it provided some of the  
18 drainages and ditches and those details off the  
19 cross-sections where the ditches were supposed  
20 to be built.

21 Q. So in looking at what is Exhibits  
22 20 and 21, I wanted to ask you about the sequence  
23 of events for this project.

24 A. Uh-huh.

1 Q. So what -- is there a specific  
2 sequence that this project is to be built?

3 A. Yeah. The -- the bid documents  
4 provide a sequence that the department wants  
5 the operator to follow in order to create the  
6 design plans in the system. In essence, they --  
7 as I stated earlier, the process of the detour  
8 roads is to take traffic off of Greenwood and  
9 Sand so that they can build those structures.

10 So the sequencing of events  
11 dictates how IDOT wants the contractor to  
12 sequence the closures of those roads and, in  
13 essence, the building of those detour roads.

14 Q. And why is the sequence important?

15 A. Well, you can't stop the traffic.  
16 So you have to -- all detour roads have to be  
17 in place for this project to -- for them to  
18 start building a bridge or, in essence, you have  
19 a road closure and no means of egress in and out  
20 of Johns Manville's facilities.

21 Q. Okay. Using that same map, Exhibit  
22 21B, I believe, the one that you highlighted --

23 A. Okay.

24 Q. -- can you -- what is the first thing

1 to be done in this sequence of events?

2 A. Well, it doesn't state in this  
3 particular sequencing which detour has to be done  
4 at first. It just states that the contractor has  
5 to construct Detour Roads A, B and C. As I stated  
6 earlier, A is the connection between Sand and  
7 Greenwood to the south. Then B and C is the loop  
8 around for Greenwood Avenue.

9 Q. Okay. So first, the detour roads  
10 are all built?

11 A. Correct.

12 Q. And then what?

13 A. Well, at that point they can start  
14 to close traffic for those roadways and detour  
15 all the traffic onto the detour roads.

16 Q. What roadway are they closing?

17 A. They are closing Sand Street and  
18 Greenwood Avenue.

19 Q. Okay. And then what happens?

20 A. Then at that point, according to  
21 this, then they will build the -- start the building  
22 process of the bridges going over the expressway  
23 and the railroad.

24 Q. Okay.

1 A. The two bridges.

2 Q. Got it. And after that job is  
3 completed -- after the bridges are completed --  
4 more questions about the bridges. So they build --  
5 does it matter if it's the bridges over the Amstutz  
6 expressway or the bridge over the railroad?

7 A. In this sequencing of events, it  
8 doesn't matter. Greenwood is closed. So they  
9 can do either bridge if they want.

10 Q. Okay. Do they have to complete all  
11 the construction work over Greenwood Avenue before  
12 they move either detour roads?

13 A. No, because they're -- the problem  
14 in the detour roads is that the Detour Road B  
15 crosses Greenwood Avenue at the existing grade.  
16 So they have to complete Greenwood Avenue, build  
17 the bridges, the embankments, crossing over the  
18 railroad, build the embankment for Sand, and  
19 then come back and touch down before they get to  
20 Detour Road B.

21 At that point that that is all  
22 in place, they can close Detour Roads B and C,  
23 allow traffic to flow along Greenwood Avenue  
24 until it gets to Sand and then if you needed to

1 go into -- further down Greenwood Road, they would  
2 then go south on Sand Street and then bring Detour  
3 Road A back up to Greenwood Avenue.

4 Q. Okay.

5 A. So now that that traffic is flowing  
6 there, then you can continue building the embankment  
7 associated from the point that you stopped that  
8 when you opened up the road to the touchdown at  
9 station 7.

10 Q. Station 7 on Greenwood Avenue?

11 A. Greenwood Avenue.

12 Q. Okay. So the bridges can be built  
13 and you're traveling east on Greenwood Avenue  
14 and then you can take the detour -- you can  
15 go south on Sand?

16 A. If you needed to go further east  
17 on Greenwood, you have to go south on Sand and  
18 catch Detour Road A back north or northeast to  
19 come back up to Greenwood Avenue.

20 Q. Okay. And after that, then what  
21 needed to occur?

22 A. Well, then once embankment is  
23 placed for Greenwood Avenue to its completion,  
24 then, in essence, the roadway projects are

1 done and then you have no need for Detour Road  
2 A. So Detour Road A is closed off and then  
3 traffic just flows along Sand and Greenwood  
4 as it was intended.

5 Q. Could Detour Road A be removed  
6 prior to the building of the embankment on  
7 Greenwood Avenue?

8 A. Not prior to any of the embankments  
9 that were built. It has to be the last thing  
10 to be removed.

11 Q. What is the last thing that is  
12 removed?

13 A. The last thing that closes and they  
14 take out of commission is Detour Road A.

15 Q. So did the sequence actually occur  
16 as set out in the construction plans and the notice  
17 of bid?

18 A. No. There was a -- there's  
19 technically a fourth detour road that was  
20 created and it was identified in the change order  
21 called a shoe fly.

22 Q. Okay. Can you turn your attention  
23 to what I believe is Exhibit 94?

24 A. Okay.

1 Q. Have you seen this document before?

2 A. Yes.

3 Q. And what is the numbering on the  
4 bottom of the document?

5 A. Exhibit 94-1.

6 Q. And --

7 A. And it runs -- 94 runs to 94-4.

8 Q. What is this document?

9 A. It is sort of the proposal to  
10 create the shoe fly and what it's going to  
11 cost to do the shoe fly.

12 Q. What is a shoe fly here?

13 A. Well, one of the problems with  
14 putting together the detour road is it was left  
15 up to the railroad to build the railroad crossing  
16 for Detour Road C and B to connect because it was  
17 just raw track there. So the railroad had to  
18 build that section of crossing. The railroad was  
19 being delayed and their ability to build the  
20 crossing so the contractor and IDOT, in an effort  
21 to get the project started, created a detour  
22 around the Amstutz expressway on Greenwood Avenue  
23 so that traffic could flow to the north and loop  
24 back around onto Greenwood, which then allow them

1 to shut down Greenwood and start building the  
2 bridge and its embankments and walls.

3 MS. O'LAUGHLIN: I'm going to --  
4 this is just another picture of the same  
5 project. I'm just trying to get a bigger  
6 reproduction of the same picture of that.

7 MS. BRICE: Okay.

8 BY MS. O'LAUGHLIN:

9 Q. I'm going to give you -- and  
10 I'm going to mark that as Exhibit 200. Well,  
11 strike that. Can I -- you know, let's just  
12 go with that.

13 Is that a picture of the  
14 same document that you were discussing earlier?

15 A. Except there's a minor change to  
16 this document than the previous document.

17 Q. And what is that minor change?

18 A. As I stated earlier, the improvement  
19 ending on Greenwood Avenue was blackened out. So  
20 I had looked at the contract plans of the length  
21 of Greenwood Avenue where it was supposed to end  
22 and I added the stationing to it and I put my  
23 initials by it.

24 MS. BRICE: Can I just -- as

1 a point of clarification, was this -- has  
2 this been produced?

3 MR. MCGINLEY: Mr. Gobelman  
4 created it actually.

5 MS. O'LAUGHLIN: I think he  
6 added something onto it.

7 MS. BRICE: Okay. Well, then  
8 I'm not stipulating to it.

9 MS. O'LAUGHLIN: Okay. Well,  
10 I think similarly Mr. Dorgan updating  
11 one of his figures. I think Mr. Gobelman,  
12 he just described what he added onto it.

13 THE WITNESS: What I did is  
14 the stationing end points of Greenwood  
15 Avenue is blackened out. So all I did  
16 was go inside the plans and find where  
17 the stationing of the end point was and  
18 just added station that isn't there.

19 MR. MCGINLEY: Does that merely  
20 clarify the same picture?

21 THE WITNESS: Yes.

22 MS. BRICE: Okay. But other than  
23 that --

24 THE WITNESS: Other than that,

1 everything is the same.

2 MS. BRICE: -- this is a reproduction  
3 of that same document?

4 THE WITNESS: Yes.

5 MS. BRICE: And can you just  
6 clarify for me where you added your own --  
7 is it this one that says "Construction  
8 Sand Street station 1.98"? Oh, no. It's  
9 down here. Station 29.21 --

10 THE WITNESS: Yes.

11 MS. BRICE: Okay. Thanks.

12 BY MS. O'LAUGHLIN:

13 Q. And what was the purpose of that?

14 A. It doesn't show the end point on  
15 the cover. So I just added stationing according  
16 to the plans.

17 Q. Okay. So before we got on this  
18 detour, obviously not detour, but before we talked  
19 about the shoe fly project, can you show us on  
20 this map and display for everyone here where the  
21 shoe fly project was? Can you stand up and explain  
22 that to us?

23 A. Yeah, yeah. In essence, the bridge  
24 for Amstutz expressway is right here (indicating)

1 and it created a shoe fly that came around and  
2 touched back down.

3 MS. BRICE: Do you mind if I  
4 approach just to see what he is referring  
5 to?

6 HEARING OFFICER HALLORAN: You  
7 may.

8 MS. BRICE: Thank you.

9 THE WITNESS: It's in blue.

10 MS. O'LAUGHLIN: You can clarify  
11 on the record too.

12 THE WITNESS: That's the bridge.

13 HEARING OFFICER HALLORAN: If you  
14 could keep your voice up, Mr. Gobelman.

15 THE WITNESS: Sure. I was just  
16 re-explaining to counsel that the shoe fly  
17 went up and around on Greenwood Avenue.

18 BY MS. O'LAUGHLIN:

19 Q. Can you show everyone else the shoe  
20 fly there?

21 A. Well, I don't know if everybody else  
22 can see it. It's basically the bridge for Amstutz  
23 expressway, which was right there. It created a  
24 detour that went north and came back -- it kind

1 of looped around and came back down. That allowed  
2 them to close Greenwood Avenue at that location and  
3 build the bridge.

4 MS. O'LAUGHLIN: Hearing  
5 officer, would you like to examine this  
6 exhibit?

7 HEARING OFFICER HALLORAN: I  
8 think I have it.

9 MS. O'LAUGHLIN: Okay. Do you  
10 want to see the shoe fly.

11 HEARING OFFICER HALLORAN: Oh,  
12 sure. Thank you. Are you going to move  
13 that as well sometime down the road?

14 MS. O'LAUGHLIN: Yes, yes.

15 HEARING OFFICER HALLORAN: And  
16 obviously it's a little different than  
17 Exhibit 200.

18 MS. O'LAUGHLIN: Correct. We  
19 would like to move that into evidence  
20 at some point. Oh, we'd like to move  
21 that into evidence right now.

22 HEARING OFFICER HALLORAN: Any  
23 objection, Ms. Brice?

24 MS. BRICE: You know what, I

1 haven't really had time to review it.

2 HEARING OFFICER HALLORAN: Okay.

3 I'll reserve ruling.

4 MS. BRICE: Probably not, but I  
5 just I haven't seen it before.

6 HEARING OFFICER HALLORAN: Okay.

7 Fair enough.

8 BY MS. O'LAUGHLIN:

9 Q. Would Detour Road A have been  
10 built -- strike that.

11 What would Detour Road A's  
12 building status's have been in regards to the  
13 shoe fly detour?

14 A. Well, the record isn't very clear  
15 on it other than those detour roads need to be  
16 constructed and then once they're building the  
17 bridge, there was nothing to prevent the contractor  
18 to also start building the other three detour roads.  
19 The only thing he just can't open those detour  
20 roads up until the railroad finished theirs.

21 So, in essence, for him, he  
22 needs to put the detour roads in so that as soon  
23 as the railroad builds the crossing, he can connect  
24 that -- those two roads together and then start

1 the whole project.

2 Q. Okay. Mr. Gobelman, are you familiar  
3 with the -- you testified about Detour Road A; is  
4 that right?

5 A. Yes.

6 Q. And have looked at the construction  
7 plans for Detour Road A?

8 A. Yes.

9 Q. And where are those contained?

10 A. I believe they are on Page 24 of  
11 81 of the construction plans. So you could use  
12 Exhibit 21B-27 or you could use 21A-23. Both  
13 are the same picture.

14 Q. What are the numbers again?

15 A. The as-built show it on 21A-23.

16 Q. The as-built, what is that?

17 A. As-built plans that are in this.

18 Q. What number?

19 A. Exhibit 21A-23.

20 Q. Okay.

21 A. And they are also shown on  
22 Exhibit 21B-27, which are also the construction  
23 plans.

24 Q. Is that also the as-built?

1 A. No.

2 Q. What's the difference between  
3 construction plans and as-built?

4 A. These construction plans, I believe,  
5 were the plans that were a part of the letting  
6 process. The as-builts are, in essence, these  
7 plans plus some notes that the resident engineer  
8 may have marked on the plans to denote changes  
9 to the -- changes in the things that were built  
10 if there were different pipes, different drainage  
11 issues, that kind of stuff. He would mark it in  
12 there so the next guy coming in doing the contract  
13 would know that there was a culvert there that  
14 wasn't in the original plan.

15 Q. Okay. Mr. Gobelman, I just handed  
16 you a diagram. What is that a diagram of?

17 A. It's a diagram of Bates 24 of 81  
18 of the contract plan, which is identical what's  
19 identified in Exhibit 21B-27.

20 Q. And is that the same as the second  
21 plan you identified?

22 A. Well, it's a better picture of  
23 the as-builts that are identified on Exhibit  
24 21A-23.

1 Q. And how was this document created?

2 A. This is part of the construction  
3 plans that were let.

4 Q. And what document is that in the  
5 exhibit book?

6 A. This one is Exhibit 21B-27.

7 Q. Is there -- have you made any changes  
8 to this?

9 A. No.

10 Q. So this is just a larger picture  
11 of 21B-27?

12 A. Yes.

13 Q. And what does this show?

14 A. This shows the stationing of Detour  
15 Road A and the cross-section profiles associated  
16 with Detour Road A.

17 Q. Can you -- well, Mr. Dorgan sort  
18 of did the same thing, but can you put the piece  
19 of paper, the exhibit that I just handed to you --

20 A. Uh-huh.

21 Q. -- and can you bring that up on the  
22 easel?

23 A. Uh-huh.

24 Q. And can you show where Detour Road A

1 is?

2 A. Detour Road A starts down here on  
3 Sand Street and it runs, like I said, from the  
4 southwest to the northeast and it runs up and  
5 connects to Greenwood Avenue.

6 Q. Okay. And the -- which is now on the  
7 right -- the line that begins with existing ground  
8 line and proposed grade line?

9 A. Oh, the profile.

10 Q. What is that?

11 A. It's the profile.

12 Q. And what is the profile?

13 A. It provides the contractor with  
14 what the proposed grade is going to be for Detour  
15 Road A and what the existing ground elevations  
16 were identified as.

17 Q. And how is that created?

18 A. Well, the plans provide that we're  
19 going to have a level surface from Sand to  
20 Greenwood and Greenwood -- the existing Greenwood  
21 was basically at elevation 590. So, in essence,  
22 the Detour A is going to be elevation 590 connecting  
23 the two roads. Then most likely, survey work that  
24 was done prior to that identified what the existing

1 ground conditions were at that time so that they  
2 can calculate cuts and fill associated with this  
3 detour road.

4 Q. And does that ground line match up  
5 with the detour road that you just highlighted?

6 A. Yes. Unfortunately, you can't see  
7 at the bottom where it's blackened out. There  
8 would be stationings and they would be tied to  
9 the stationings directly to the north -- map  
10 north of this.

11 Q. Okay. So this -- okay. So what  
12 is significant about this ground line?

13 A. Well, one of the significant things  
14 is that --

15 MS. BRICE: I'd like to interpose  
16 an objection, please.

17 HEARING OFFICER HALLORAN: Okay.

18 MS. BRICE: I'm not sure that --  
19 I'm not sure if he is being offered to  
20 opine on anything at this point in time.  
21 I mean, if he wants to talk about reviewing  
22 the construction drawings, that's fine,  
23 but we have no opinion on the table.

24 I'm not sure he's -- I'm

1 not sure what he's being offered as an  
2 expert in at this point. We certainly  
3 haven't established that he is an expert  
4 road and bridge construction practices  
5 in the 1970s and I don't know what he is  
6 relying on to base any type of opinion  
7 at this point in time. So that's now  
8 objection.

9 HEARING OFFICER HALLORAN: Well,  
10 part of the objection, if not all, is  
11 regarding the April 26th order, correct,  
12 regarding --

13 MS. BRICE: Portions of it, yes.  
14 At this point, I'm not sure that they  
15 have here on the record established --  
16 he said -- I think he's never seen  
17 construction drawings from the 1970's --  
18 construction plans from the 1970's. He  
19 is purporting to be an expert on road  
20 and bridge construction practices in  
21 the 1970s, which is what I brought up  
22 in my motion.

23 HEARING OFFICER HALLORAN: Right,  
24 he has looked at other projects in the '80s

1 and '90s. I think he testified in the late  
2 '70s possibly.

3 MS. BRICE: If he's talking about  
4 the documents themselves, that's one thing.  
5 But if he's talking about practices that  
6 happened in the 1970s, I don't think he has  
7 any expertise. It's not like he's being  
8 offered as a standard of care expert on  
9 how -- he's not talked to anyone from the  
10 1970s. He's not talked to anybody on this  
11 project. I don't know how he can be an expert  
12 in that.

13 HEARING OFFICER HALLORAN: Well,  
14 I think he's, I guess, more than an ordinary  
15 person. He definitely knows more than the  
16 layperson. So your objection is noted and  
17 overruled.

18 MS. BRICE: Okay. I'm not sure  
19 what the bases are for his opinion, if there  
20 is one, on the table.

21 HEARING OFFICER HALLORAN: Okay.  
22 You may proceed.

23

24 BY MS. O'LAUGHLIN:

1 Q. We will take this opportunity to  
2 explain some of your expertise. Have you reviewed  
3 construction plans like that at issue in this  
4 lawsuit?

5 A. Yes.

6 Q. And how many construction plans like  
7 this have you reviewed?

8 A. Wait a minute. You said in this  
9 lawsuit?

10 Q. Like those in this lawsuit.

11 A. Oh.

12 Q. Thank you. Like, have you -- the  
13 construction plans that is an exhibit in this  
14 lawsuit --

15 A. Uh-huh.

16 Q. -- have you reviewed other  
17 construction plans like this?

18 A. Yes. I have reviewed other  
19 construction plans that were archived in microfilm  
20 to identify sole management practices and then  
21 looked at the bid documents and pay items that were  
22 identified in cost to identify how things were done  
23 previously to determine how soil management was --  
24 and groundwater management was done associated with

1 those types of projects.

2 Q. Okay. Continue. I think I was  
3 asking you about the proposed grade line. What is  
4 the significance of the proposed grade line?

5 A. Well, then in the --

6 Q. On Exhibit 21B-27.

7 A. In this, it provides the earth work  
8 totals for the city and county participation. It  
9 says from station two plus 00215 plus 00, which  
10 is the beginning and the end of Detour Road A is  
11 that --

12 Q. Okay. Where are you?

13 A. At this spot right there (indicating).

14 Q. Okay. So --

15 A. It states between those two  
16 stationings that there is going to be a cut of 5,148  
17 cubic yards and there will be a fill required of  
18 1,102 cubic yards.

19 Q. And where do you see those figures?

20 A. In that same location that it talked  
21 about county and city participation and it provides  
22 a C, which stands for cut and the F, which stands  
23 for fill.

24 Q. What does that information tell you?

1           A.       It provides the quantity because  
2       when looking at the profile, you can -- it  
3       identifies the existing profile that is below the  
4       proposed grade line is areas that are going to be  
5       required to have fill. The existing grade line  
6       that is above the proposed grade line is the areas  
7       that are going to have to be cut away. This  
8       provides the contractor with the quantities  
9       associated with this particular detour road,  
10      how much cut and how much fill is anticipated.

11                    So, in essence, the contractor,  
12      in regards to this can see that he has more than  
13      enough cut material that he can utilize in as  
14      fill in building this road while trying to balance  
15      the cut and fill equation.

16           Q.       And how can you tell that?

17           A.       Because it says that cut is going  
18      to be -- is over 5,000 cubic yards and the fill  
19      requirement is only a little over 1,000 cubic  
20      yards.

21           Q.       Does the existing ground line support  
22      that information?

23           A.       Yes.

24           Q.       And how so?

1           A.       Well, it shows that there was a  
2 large mound somewhere around station four, four  
3 and a half, four plus 50 to station seven.

4           Q.       And where are the stations?

5           A.       Stations are located along Detour  
6 Road A. They are marked. There is a tick, a  
7 dash that's marked every 100 -- 100 feet.

8           Q.       Can you --

9           A.       And then they put a number every  
10 so often. So there's a station here that's marked  
11 as five and then they put little ticks every 100  
12 until they reached ten -- you get five more and then  
13 you get ten. You reach five more and then 15 is  
14 over here (indicating). It starts at two. So  
15 there's another couple ticks here (indicating).  
16 Some of them are faint in the system.

17          Q.       Okay. Does that match up with the  
18 existing ground lines?

19          A.       That's supposed to match up as you  
20 go straight down to the proposed profile planned  
21 profile line.

22          Q.       And so looking at this exhibit, what  
23 is the proposed grade line?

24          A.       The proposed grade line is 590 feet.

1 Q. And how is that shown here on this  
2 exhibit?

3 A. At each end of the profile that  
4 provides the elevation that is there, so there  
5 was a straight line that was just a tad under 590  
6 beginning from the beginning of Detour Road A off  
7 of Sand to the end of Detour Road A where it  
8 connects to Greenwood.

9 Q. And is this proposed grade line,  
10 is that to be the grade line of Detour Road A?

11 A. Correct.

12 Q. Okay. And existing ground line  
13 is obviously what existed there prior to building a  
14 Detour Road A?

15 A. Correct. And it's always shown as a  
16 dash line.

17 Q. Okay. So continuing on, what is  
18 the significance of the existing ground line  
19 versus proposed grade line and the fill issues?

20 A. Well, in here, it provides that  
21 there was excess material that has to be managed  
22 off of Detour Road A because they have more cut  
23 material that is suitable than fill.

24 Q. How do you know that?

1           A.       Because of the balancing of the cut  
2           and fill volumes.

3           Q.       Is there an existing ground line?  
4           Can you show me and everyone where the excess  
5           material would be here?

6           A.       Well, the only cut that's going to  
7           be required is this cut right here (indicating).

8           Q.       Okay.

9           A.       And it shows that that cut is 5,100 --  
10          5,148. Then the fill areas are going to be these  
11          areas under this line (indicating). This is a  
12          little bit of cut and then it drops down. Then  
13          when it ties back to Greenwood, it's back up to  
14          grade again.

15          Q.       What is the height of Detour Road A?

16          A.       Do you mean the elevation? I'm not  
17          sure what you mean by height.

18          Q.       What is the elevation of Detour Road  
19          A?

20          A.       The elevation of Detour Road A is  
21          roughly 590 feet, which is the existing elevation  
22          of Sand and Greenwood Avenue.

23          Q.       And how much material has to be added  
24          to bring the area involved with Detour Road A to

1 the proposed grade?

2 A. They need to fill in roughly 1,100  
3 cubic yards.

4 Q. Where would -- where would this be  
5 obtained from?

6 A. In my opinion, it would come from  
7 the cut that existing on this Detour Road A.

8 Q. And why is that?

9 A. Because there was more cut required  
10 than fill.

11 Q. Okay. Can you explain that?

12 A. Well, I think as I said, there is  
13 5,248 yards of cut. So there is roughly 1,100  
14 yards of fill. So there is going to be roughly  
15 4,000 yards of excess cut material that the  
16 contractor is going to have to move off-site and  
17 utilize it someplace else.

18 Q. Okay. And that just makes economic  
19 sense to use?

20 A. It's a viable product. The more  
21 they can utilize the cuts that are occurring on  
22 the project, it's less material that they need  
23 to bring in as borrow.

24 Q. Please turn to Page 5 of your report.

1           A.       Do you want to remind me again where  
2 my Page 5 was of my report.

3           Q.       Right. Eight. Pages 4 to 5, and  
4 if you could, read the number in the lower  
5 right-hand corner?

6           A.       Page 4, you're talking about?

7           Q.       Page 4.

8           A.       Page 4 is Exhibit 08-6.

9           Q.       Okay. And Page 5?

10          A.       08-7.

11          Q.       Okay. In this portion of your  
12 report, you talk about cut and fill. Do you  
13 see that in the -- let me see the one, two,  
14 three -- fourth paragraph?

15          A.       Yes.

16          Q.       The process that you just described,  
17 is that what you're referring to in this report?

18          A.       Yes.

19          Q.       Turning to page -- the following page,  
20 the third paragraph --

21          A.       Yes.

22          Q.       -- do you see that, it starts with  
23 the construction plans?

24          A.       Yes.

1           Q.       The figures that are contained here,  
2 is that -- where did you contain the figures in  
3 your report from?

4           A.       The volumes were obtained from the  
5 various plan sheets regarding Detour Roads A, B  
6 and C. What I was attempting to show in my report  
7 was that, in essence, a balancing of the material  
8 since Detour Roads A, B and C had to be built at  
9 the same time in the initial process, that  
10 there was -- that this was actually more fill  
11 required to build those three detour roads  
12 than they had in cut.

13          Q.       Okay. Do you know what detour  
14 road was built first?

15          A.       I do not know which detour road.  
16 The plans do not specify which road -- detour  
17 roads were built first or whether or not all  
18 three of them or all four of them were built  
19 at the same time.

20          Q.       Okay. But the fill that you  
21 described on Exhibit 21B-27, that excess fill,  
22 is that the fill that you were referring to in  
23 your report?

24          A.       Yes.

1 Q. Okay. Turning to Exhibit 21B-27  
2 again, the diagram.

3 HEARING OFFICER HALLORAN: Did  
4 you say Exhibit 21?

5 MS. O'LAUGHLIN: 21B-27.

6 HEARING OFFICER HALLORAN: Thank  
7 you.

8 BY THE WITNESS:

9 A. Yes.

10 BY MS. O'LAUGHLIN:

11 Q. Do you see -- are right-of-way  
12 limits shown on this construction plan diagram?

13 A. There is a -- what appears to be  
14 a proposed right-of-way -- what looks like a  
15 proposed right-of-way line. The pro part is  
16 sort of greyed out, but there is a posed  
17 right-of-way line. Along Sand Street, there  
18 is an another -- the first one that I was talking  
19 about was along Greenwood -- South Greenwood and  
20 then there was a proposed right-of-way line along  
21 Sand.

22 Q. Okay. Where is the proposed  
23 right-of-way on this exhibit? Do you want a  
24 different color?

1           A.       I have red here. There appears to  
2 be a proposed right-of-way line that starts along  
3 Sand here goes up and it sort of ends there  
4 (indicating) according to the map. The other  
5 proposed line along Greenwood looks like it's  
6 coming off this (indicating), which means that  
7 it's going to be identified and probably Detour Road  
8 B.

9           Q.       What are the construction limits  
10 here?

11          A.       The construction limits are identified  
12 by a sort of a dash line that sort of runs along  
13 like this (indicating) and comes up on the map south  
14 of the Detour Road A, ties back in and then on the  
15 north side of Detour Road A, it will go up and  
16 around and it will follow Detour Road B up. In  
17 essence, this line is north of that and then up  
18 Detour Road B (indicating).

19          Q.       What is the significance of  
20 construction limits?

21          A.       Construction limits are the limits  
22 in which the contractor is suppose to do his work.

23          Q.       And is that a bigger area or smaller  
24 area than the proposed right-of-way?

1           A.       It is typically the smaller area of  
2 the right-of-way.

3           Q.       Okay. Mr. Gobelman, I'm going to ask  
4 you about the building of the embankment south of  
5 Greenwood Avenue. If you can, look at Exhibit 21B,  
6 Pages 71 and 72. Once you get those, I will have  
7 you give us a specific reference for the record.

8                   HEARING OFFICER HALLORAN: Just  
9 for the record, I think we will wrap this  
10 up at a quarter to 5:00 again like we did  
11 yesterday. We've been at this for about  
12 two and a half hours.

13                  MS. O'LAUGHLIN: Maybe I could  
14 just ask him a couple of questions about  
15 this and then it's sort of a good breaking  
16 point.

17                  HEARING OFFICER HALLORAN: Yes.  
18 You've got 20 minutes. Is that going to be  
19 enough?

20                  MS. O'LAUGHLIN: Oh, it's plenty  
21 of time. It's just I -- after we talk about  
22 these next thing, then it's sort of a good  
23 breaking point.

24                  HEARING OFFICER HALLORAN: Okay.

1 MS. O'LAUGHLIN: So it's perfect  
2 is what I was going to stay.

3 HEARING OFFICER HALLORAN: You  
4 may proceed.

5 BY THE WITNESS:

6 Q. What pages again? Was it 71 and 72,  
7 you said?

8 BY MS. O'LAUGHLIN:

9 Q. Yes.

10 A. Okay. Bid plan sheet 71 of 81 is  
11 on Exhibit 21B-83 and bid plan 72 of 81 is on  
12 21B-84.

13 BY MS. O'LAUGHLIN:

14 Q. Okay. Hold on a second. Okay.  
15 Got it. So 21B-83, what is this a picture of?

16 A. It is a cross-section of Greenwood  
17 Avenue looking up stationing.

18 Q. I'm sorry. Say that again.

19 A. It's a cross-section of the proposed  
20 work for Greenwood Avenue looking up stationing.

21 Q. And up stationing, what does that  
22 mean?

23 A. Meaning that when you are looking at  
24 this, you are looking at the bottom of the page

1 and the lower stationings, where it says 70 plus 60,  
2 and the next one is eight plus zero/zero. The next  
3 one is missing, but it's nine plus zero/zero and  
4 I'm looking at this -- if I'm standing on the road,  
5 I'm looking up that road, up stationing. So this  
6 would be looking west. So to the right of this,  
7 which shows the building, would be the Johns  
8 Manville facility and to the left would be the  
9 vacant property.

10 Q. Can you use that -- I'm having a  
11 hard time visualizing. Can you use that same  
12 exhibit, 21-B3, to just demonstrate where you're  
13 looking from? That's the -- this one.

14 A. The way the cross-sections work is  
15 so that you know left from right. You start --  
16 wherever the cross-section is, you're look up  
17 stationing. So here, (indicating) the lowest  
18 stationing on along Greenwood Avenue is station  
19 seven. So this one gives the cross-section that  
20 is going to occur at seven plus 60.

21 Q. Can you park station seven on  
22 Greenwood Avenue?

23 A. (Witness complied.)

24 Q. And is that the --

1           A.       It doesn't show stationing on this  
2 map.

3           Q.       Okay. Then don't do it. But where  
4 would it be on that map?

5           A.       I mean, it would be on this map where  
6 the beginning point of -- which is where I marked it  
7 previously so I can mark it that. So seven is  
8 roughly at that dot point.

9           Q.       Okay. So you were saying you're  
10 looking up. So which way are you looking?

11          A.       So if I spin this thing down so  
12 that we look at the map up, I'm, in essence,  
13 standing here (indicating) and I'm looking west  
14 along Greenwood Avenue. So this cross-section  
15 is showing what the excavation is. At the bottom,  
16 it provides distances. So it provides the center  
17 line, which is going to be at zero, which is kind  
18 of where that black smear is and then it goes  
19 outward left and to the right a number of distance.  
20 So you see numbers of 20, 40, 60 and 80. That's  
21 the distance to the left or to the right of center  
22 line.

23          Q.       Okay. And what about the following  
24 page, what does this show?

1           A.       This is just the continuation of  
2 Greenwood Avenue as you're moving west along  
3 Greenwood Avenue. So what you're seeing is that  
4 at the beginning of Greenwood Avenue, there as  
5 very -- no embankment. They were basically  
6 excavating down the existing pavement. As you  
7 move up stationing, you will then continue to  
8 see the growth of the embankment as it moves  
9 along at different stationing cross-sections.

10           Q.       And is this first picture on  
11 21B-83 to the left, does that represent the  
12 first part of the embankment?

13           A.       I would -- in my opinion, the first  
14 part of the embankment will occur at somewhere  
15 around station nine. At station seven plus 60,  
16 even though IDOT is doing work there, they are  
17 only excavating at the existing -- replacing at  
18 existing grade. At station eight, it's roughly  
19 still at the existing grade. It isn't until you  
20 get somewhere around nine that you start seeing  
21 an elevation in grade.

22           Q.       And is station eight and station nine  
23 east or west of station seven?

24           A.       They were waste of station seven.

1 Q. So as you are going up towards the  
2 bridge?

3 A. Correct.

4 Q. Okay. What about station six?

5 A. There is no cross-section at station  
6 six because IDOT's work along Greenwood Avenue ends  
7 at station seven.

8 Q. Okay. And how do you know that?

9 A. Because that's what the plans state.

10 Q. Do you -- strike that.

11 Are you able to tell how much  
12 embankment is needed from 21B-83 and 21B-84? And  
13 that's not a very good question.

14 How much material is needed to  
15 build an embankment? Is that better? I don't know.

16 A. Well, what these cross-sections  
17 provide you is the -- at those particular stations,  
18 what the anticipated cut, what anticipated fill is  
19 going to be, it provides you a volume of unsuitable  
20 material that needs to be removed, if there is any,  
21 and the amount of porous, granular embankment  
22 material that needs to be put back in place.

23 Q. What do you mean by porous, granular  
24 material?

1           A.       It's a construction term, but, in  
2       essence, it's an aggregate material. In this  
3       case, we're putting roughly a foot of it at the  
4       base of the excavation for -- to allow drainage  
5       of water underneath of pavement to occur.

6           Q.       Do you know what material IDOT  
7       or IDOT's contractor used to build the embankment?

8           A.       I don't know all the materials  
9       that were used in building the embankment, but  
10      I know that the change orders and that specified  
11      that there were -- that certain types of materials  
12      were used as part of the borrow being brought in.

13          Q.       And do you recall what that material  
14      was?

15          A.       There was a part that was talking  
16      about building the bridge and the supervising  
17      field engineer stated that upon his inspection,  
18      he noticed that the contractor was putting fly  
19      ash down and it was compacted as part of the  
20      embankment and that they were doing a good doing  
21      it.

22          Q.       If you could turn, to Exhibit 29-1.

23          A.       Yes.

24          Q.       Is this the document you are referring

1 to?

2 A. Yes.

3 Q. And what is this document?

4 A. This is a memo created by the  
5 supervising engineering report for Bureau of  
6 Construction. It was by T.E. Hagerman and it  
7 was regarding Eric Bolander Construction Company  
8 and it expressed in the document -- the report  
9 was that the contractor was placing fly-ash in  
10 embankments.

11 Q. And fly-ash a suitable material for  
12 embankments?

13 A. Yes. It was actually defined in  
14 the construction bid documents as a suitable  
15 embankment material.

16 Q. What --

17 A. And we currently use fly-ash in our  
18 embankments today.

19 Q. And was there a readily source of  
20 fly-ash material available?

21 A. I would assume there was a very  
22 large source of fly-ash next door to the Midwest  
23 Gen Power Plant.

24 Q. And where was that? How far was

1 that located from here?

2 A. I would assume that it's within 500  
3 feet of the beginning of the project on Greenwood.

4 Q. Okay. You said that it was also  
5 allowed, I believe, in the notice to bidders.  
6 If you could turn to Exhibit 20. Do you know in  
7 this document where --

8 A. Regarding fly-ash?

9 Q. Yes.

10 A. It's on Exhibit 20-31.

11 Q. Okay.

12 A. And it continues onto Exhibit 20-32.

13 Q. What is the significance of this?

14 A. This was just providing the  
15 contractor with information regarding possible  
16 sources of borrow that they could use if they  
17 wanted to in regards to building any fill  
18 material -- the access fill material that they  
19 needed, which is outside of the spec book.

20 MS. O'LAUGHLIN: Would this be  
21 a good time to break?

22 HEARING OFFICER HALLORAN: Yes.  
23 Certainly, it would be.

24 MS. O'LAUGHLIN: I will be moving

1 onto another demonstrative and maybe we can  
2 start with that tomorrow.

3 HEARING OFFICER HALLORAN: All  
4 right. You know, before we go off the  
5 record, I'm going to hand these back to  
6 Ms. O'Laughlin. I'm not sure what the  
7 documents are with Exhibit 200. We may  
8 be substituting with something.

9 The other one was not  
10 marked. I requested homework for the  
11 parties tonight so we can try to come  
12 up with some kind of exhibit list. What  
13 I have in my cryptic notes is I had  
14 Exhibits 50, 57, 60 and 5, they were  
15 admitted over objection. These are  
16 regarding the JM exhibits. Then I think  
17 Exhibit 68 is reserved for ruling.

18 MS. BRICE: I'm sorry, Mr. Halloran,  
19 I didn't get it. I didn't have my pen.

20 MS. O'LAUGHLIN: Yes. Can  
21 you repeat those numbers.

22 HEARING OFFICER HALLORAN: I'm  
23 sorry?

24 MS. BRICE: I didn't have my pen

1 in my hand. Could you please repeat that?

2 HEARING OFFICER HALLORAN: Exhibits  
3 50, 57, 60 and 5, they were admitted over  
4 objection. Then I have Exhibit 68 -- I  
5 reserved ruling. I'm not sure what that  
6 entails. If you could, take a look at  
7 that. Anyway you can do that tonight or  
8 tomorrow morning.

9 We are going to close and  
10 continue on record tomorrow at 9:00 a.m.  
11 in Room 9-31. So we are going to have  
12 to move all of this stuff. Another fire  
13 drill. Thank you so much everyone.

14 MS. BRICE: Thank you.

15 (Whereupon, the proceedings were  
16 adjourned in the above-entitled  
17 cause until 9:00 o'clock a.m. on  
18 May 25, 2016.)

19

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24

1 STATE OF ILLINOIS )  
 2 ) SS.  
 3 COUNTY OF C O O K )  
 4  
 5

6 I, LORI ANN ASAUSKAS, CSR, RPR,  
 7 do hereby state that I am a court reporter doing  
 8 business in the City of Chicago, County of Cook,  
 9 and State of Illinois; that I reported by means  
 10 of machine shorthand the proceedings held in the  
 11 foregoing cause, and that the foregoing is a true  
 12 and correct transcript of my shorthand notes so  
 13 taken as aforesaid.

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Lori Ann Asauskas



Lori Ann Asauskas, CSR, RPR.

Notary Public, Cook County, Illinois

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