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ILLINOIS POLLUTION CONTROL BOARD

DECEMBER 12, 2006

IN THE MATTER OF:)
)
THE PEOPLE)No. PCB 96-98
)
vs.)
)
SKOKIE VALLEY ASPHALT)

TRANSCRIPT OF PROCEEDINGS held in the
above-entitled cause before Hearing Officer
CAROL WEBB, called by the Illinois Pollution Control
Board, pursuant to notice, taken before Denise A.
Andras, CSR, a notary public within and for the
County of Cook and State of Illinois, at
the James R. Thompson Center, 100 West Randolph,
Chicago, Illinois, on the 12th day of December,
A.D., 2006, commencing at 1:00 p.m.

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

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ILLINOIS POLLUTION CONTROL BOARD:

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Ms. Carol Webb, Hearing Officer

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5 OFFICE OF THE ATTORNEY GENERAL

STATE OF ILLINOIS

6

ASSISTANT ATTORNEY GENERAL

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Appearing on behalf of the complainant;

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11 BY MR. MICHAEL B. JAWGIEL and

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1 HEARING OFFICER WEBB: Good afternoon.
2 My name is Carol Webb. I'm a
3 hearing officer with the Pollution Control
4 Board. This is PCB 96-98, People vs. Skokie
5 Valley Asphalt. It is December 12, 2006, and
6 we are beginning a little before 1:00 p.m.
7 thanks to Amtrak. I will note that there are
8 no members of the public present, although
9 members of the public are allowed to provide
10 public comment if they so chose. Today's
11 hearing is limited to issues of the
12 reasonableness of the People's attorneys'
13 fees and cost. You should know that it is
14 the Pollution Control Board and not me that
15 will make the final decision in this case.
16 My purpose is to conduct the hearing in a
17 neutral and orderly manner so that we have a
18 clear record of the proceedings. I will also
19 set the credibility of any witnesses on the
20 record at the end of the hearing. This
21 hearing was noticed pursuant to the Act and
22 the Board's rules and will be conducted
23 pursuant to sections 101.600 through 101.632
24 of the Board's procedural rules.

1 At this time I'd ask the parties
2 to please make their appearances on the
3 record.

4 MR. PARTEE: Michael Partee on behalf
5 of the People.

6 MR. COHEN: Mitchell Cohen on behalf
7 of the People.

8 MR. O'NEILL: Michael Jawgiel on
9 behalf of the respondents Skokie Valley
10 Asphalt Company, Edwin L. Frederick, and
11 Richard J. Frederick.

12 MR. O'NEILL: David S. O'Neill on
13 behalf of the same respondents.

14 HEARING OFFICER WEBB: Thank you. Are
15 there any preliminary matters to discuss on
16 the record?

17 MR. JAWGIEL: First I'd like to make a
18 motion in limine renewing our motion for
19 sanctions against Mr. Partee for his failure
20 to attend his discovery deposition. He did
21 identify himself in the answers to
22 interrogatories filed on May 24, 2005 as a
23 witness at this hearing. We did notice his
24 deposition, and he refused to attend his

1 deposition. We ask sanctions pursuant to
2 Supreme Court Rule 219C on the petition of
3 the complainant be dismissed in its entirety
4 as a sanction for Mr. Partee's refusal to
5 attend his discovery deposition.

6 HEARING OFFICER WEBB: Is this the
7 same motion that was filed with the Board as
8 the second motion for sanctions?

9 MR. JAWGIEL: I believe so.

10 HEARING OFFICER WEBB: Have you
11 received an order from the Board dated
12 December 7, 2006?

13 MR. JAWGIEL: No, we haven't.

14 HEARING OFFICER WEBB: The Board did
15 rule on your motion, and they denied the
16 motion.

17 MR. JAWGIEL: That is fine. I still
18 renew my motion for sanctions against him for
19 the appeal in case this matter goes to the
20 Appellate court.

21 HEARING OFFICER WEBB: All right. Is
22 there anything further?

23 MR. JAWGIEL: Yes, I move to exclude
24 witnesses, including Mr. Partee, Mr. Cohen

1 and Mr. Murphy from these proceedings. These
2 are witnesses that have been identified by
3 the State as witnesses who will testify at
4 the hearing pursuant to their
5 interrogatories.

6 MR. PARTEE: Obviously I object to
7 excluding trial counsel for the People, but
8 we have no objection to excluding other
9 witnesses. I'm not going to be called. I
10 will not examine myself. The fees aren't
11 included in the fee petition either.

12 HEARING OFFICER WEBB: So the motion
13 to --

14 MR. JAWGIEL: I'm sorry, that's
15 Ms. Stonich by the way, she just poked her
16 head in.

17 HEARING OFFICER WEBB: Okay.

18 MR. JAWGIEL: If you'd like to invite
19 her in.

20 MR. PARTEE: Well, are we going to
21 exclude witnesses?

22 HEARING OFFICER WEBB: No, that motion
23 is denied.

24 MR. PARTEE: We actually would prefer

1 to exclude witnesses.

2 HEARING OFFICER WEBB: I thought we
3 were just talking about --

4 MR. PARTEE: Me? I object to
5 excluding myself, but I have no objection to
6 excluding other witnesses.

7 HEARING OFFICER WEBB: Well, you
8 weren't going to call yourself, so yes.

9 MR. PARTEE: So it's granted as to the
10 other witnesses?

11 HEARING OFFICER WEBB: Yes.

12 MR. PARTEE: I mean, she would be one
13 of the witnesses.

14 MR. JAWGIEL: Well, we want Mr. Cohen
15 excluded as well, because he is going to be a
16 witness as well. Certainly they can sit in
17 on the preliminary matters. There's no
18 difference for them sitting in on the
19 preliminary matters as well --

20 MR. COHEN: If I might, the motion to
21 exclude Mr. Partee is denied, however there
22 is a motion to exclude in force once the
23 hearing gets started; is that correct?

24 HEARING OFFICER WEBB: Well, my

1 understanding is that the testimony of you,
2 Mitch Cohen, Bernard Murphy and Ms. Stonich
3 will be allowed, and Mr. Partee will not be
4 allowed. So I can't remember the language
5 that's denying the motion or excluding,
6 granting the exclusion since I don't have it
7 in front of me, but that's my understanding
8 of what's happening. Is that correct?

9 MR. JAWGIEL: My motion was to exclude
10 witnesses from the hearing until they
11 testify.

12 HEARING OFFICER WEBB: Oh, until they
13 testify.

14 MR. JAWGIEL: So the record is clear,
15 so Mr. Cohen can sit in. Mr. Cohen is going
16 to be called first. If Mr. Murphy comes in,
17 he has to wait, sit out somewhere else. The
18 second witness and Ms. Stonich would have to
19 be out of the room as well until she
20 testified.

21 HEARING OFFICER WEBB: Well, I
22 apologize for misunderstanding your motion
23 initially, but I'm still going to deny it.
24 We just normally don't do that before the

1 Board. We allow, since our hearings are open
2 to the public.

3 MR. JAWGIEL: Then Ms. Stonich can
4 stay.

5 HEARING OFFICER WEBB: Yes.

6 MR. PARTEE: Let me clarify then, I
7 think by agreement we can exclude witnesses.

8 MR. JAWGIEL: No, we won't agree to
9 it.

10 HEARING OFFICER WEBB: Well, by
11 agreement.

12 MR. PARTEE: He moved to exclude
13 witnesses.

14 MR. JAWGIEL: I'll move to withdraw my
15 motion.

16 MR. PARTEE: We have no objection
17 except with respect to me because I am not a
18 witness. He included me as a witness he
19 sought to exclude. He moved and we have no
20 objection to the witnesses being excluded.

21 MR. JAWGIEL: First of all, it's been
22 ruled upon. If it gets seconded, I'll
23 withdraw it.

24 MR. PARTEE: So you are withdrawing

1 the motion?

2 MR. JAWGIEL: No, there's been a
3 ruling on it. I'm not going to -- the
4 hearing officer ruled on it.

5 HEARING OFFICER WEBB: I'm going to
6 rule either everyone stays or everyone goes,
7 so --

8 MR. PARTEE: We would like everyone to
9 go. The state agrees with Mr. Jawgiel's
10 request that every one goes.

11 MR. JAWGIEL: I'll withdraw the
12 motion. We want Deb Stonich in the room.

13 We'll have another motion. This
14 is a written motion. I have copies for
15 everyone. Two for the state. One for the
16 hearing officer.

17 MR. PARTEE: For the record this is
18 the first time that it's being served on me.

19 MR. JAWGIEL: Yes. It's a motion in
20 limine. It's a motion in limine to bar the
21 petition because the request for attorneys'
22 fees was not in the closing argument of the
23 state in the hearing, and we ask that the
24 request for attorney's fees be barred in its

1 entirety for failure to timely bring that
2 issue before the Board.

3 HEARING OFFICER WEBB: And I'm going
4 to deny this motion.

5 MR. JAWGIEL: Thank you. And we have
6 one more motion.

7 MR. PARTEE: I'd like to point out
8 with respect to the first motion that there's
9 no indication that it's even been filed.

10 MR. JAWGIEL: This is another motion
11 in limine. This is a motion in limine from
12 barring a state from presenting any witness
13 to, who expresses an opinion in their answers
14 to interrogatories, specifically paragraph
15 No. 4, interrogatory No. 4. The state does
16 not identify any opinions of this witness
17 pursuant to Supreme Court Rule 213.
18 Therefore any witness provided by the State
19 should be limited to fact testimony only, and
20 no opinions should be proffered.

21 MR. PARTEE: Unless you are going to
22 deny it without hearing a response, I would
23 like to make a response.

24 HEARING OFFICER WEBB: Please, I was

1 just reading it. Go ahead.

2 MR. PARTEE: Well, real briefly, for
3 the record, again, this is the first time
4 we've been served with this motion. There's
5 no indication that it's even been filed with
6 the Board, and while respondents didn't
7 differentiate between fact and expert opinion
8 witnesses as rule 213 does, we would object
9 to this motion as it pertains to any lay
10 opinion witness. I think a witness could
11 provide a lay opinion without having been
12 disclosed as an expert. The problem is that
13 respondent's witness interrogatories didn't
14 differentiate between fact and expert
15 witnesses, although the rule does?

16 MR. JAWGIEL: Hearing Officer, may I
17 respond?

18 HEARING OFFICER WEBB: Yes.

19 MR. JAWGIEL: Mr. Partee is absolutely
20 incorrect. Supreme Court rule 213(f) has
21 been amended. The categories are fact
22 witnesses, opinion witnesses and retained
23 opinion witnesses. Not opinion witnesses and
24 expert witnesses. That's antiquated. It's

1 outdated. It is not in accordance with the
2 most recent Supreme Court rule, which has
3 been in effect for approximately six years.
4 Therefore, they have not disclosed anybody
5 who will be offering an opinion, whether it
6 is one of their fact witnesses or anyone
7 else, and therefore they should not be
8 allowed to express an opinion here today.

9 HEARING OFFICER WEBB: Well, I don't
10 need to hear anymore. I'm going to deny this
11 for now.

12 MR. JAWGIEL: Deny for now; is it
13 reserved?

14 HEARING OFFICER WEBB: Deny -- well, I
15 assume that you'll -- you preserved your
16 right to appeal my decision, but I'm denying
17 it.

18 MR. JAWGIEL: Okay, fair enough.
19 Thank you.

20 HEARING OFFICER WEBB: Is there
21 anything else?

22 MR. JAWGIEL: Not from us. Thank you.

23 MR. PARTEE: We would like to make a
24 very brief opening statement before we call

1 Mr. Cohen, if that's all right.

2 HEARING OFFICER WEBB: Please go
3 ahead.

4 MR. PARTEE: And that is simply that
5 despite having litigated the State's fee
6 petition for almost two years now, this
7 really is an uncomplicated matter involving
8 the reasonableness of two attorneys' time and
9 costs that are requested in that fee
10 petition. The only relevant questions on the
11 reasonableness of the fee petition are those
12 that were specifically set forth by the Board
13 at the outside in its April 7, 2005 order in
14 this case. And according to the Board,
15 quote, "In determining this reasonableness,
16 the Board will be guided by the factors set
17 out in long withstanding precedent. The
18 Board will consider among other factors,
19 number one, the nature of the cause and the
20 novelty and difficulty of the questions at
21 issue; number two, the amount of importance
22 of the subject matter; number three --

23 HEARING OFFICER WEBB: Do you want to
24 hold on a second?

1 MR. PARTEE: -- Number three, the
2 degree of responsibility involved in the
3 management of the cause; number four, the
4 time and labor required; number five, usual
5 and customary charge in the community; and
6 number six, the benefits resulting to the
7 client."

8 So there are only six questions at
9 issue today and generally with respect to the
10 People's fee petition. And the People will
11 show today that not only are the hours and
12 costs requested in this case reasonable, but
13 that the two attorneys actually under billed
14 their time in this case.

15 MR. JAWGIEL: I'm going to object to
16 any references to under billing their time.
17 What they are supposed to present are
18 accurate representations of the time spent
19 and not estimates. So therefore, I object to
20 this ongoing theme that they under billed
21 their time. There's no proof of that
22 whatsoever that they under billed their time
23 and certainly they don't even know when we
24 get into the testimony what they did on any

1 particular day, other than the generalized
2 categories. So I will continue to object to
3 this theme that they somehow under billed or
4 under estimated their time during the course
5 of this.

6 HEARING OFFICER WEBB: I'll allow you
7 to make a standing objection so you don't
8 have to object every time it comes up, but
9 I'm going to allow them to testify to
10 whatever they need to do to prove their case.

11 MR. PARTEE: Thank you. And just to
12 finish, despite an inordinate amount of time
13 on discovery and discovery motion practice on
14 the People's fee petition, which has included
15 hours and hours in discovery deposition on
16 the People's fee petition, the respondents
17 have after all this time no fact witnesses
18 that will be called to testify against the
19 People today. And simply put, the People
20 will show that each of the factors that the
21 Board is going to consider on the
22 reasonableness of its fee petition supports
23 granting the People's fee petition.

24 HEARING OFFICER WEBB: Mr. Jawgiel,

1 would you like to make an opening statement?

2 MR. JAWGIEL: Just an extraordinarily
3 brief opening statement. We will see at the
4 conclusion of this matter that there is no
5 way any person can determine whether or not
6 the State did in this case was reasonable in
7 the manner in which they defended this case,
8 brought their case. There is no way that
9 anybody looking at the time entries that have
10 been submitted by Mr. Cohen and Mr. Murphy to
11 determine whether or not what they did was
12 reasonable any given day, and we will
13 highlight that to the enth degree. Thank
14 you.

15 HEARING OFFICER WEBB: Thank you.
16 Mr. Partee, you may call your first witness.

17 MR. PARTEE: I would call Mr. Cohen as
18 the People's first witness.

19 HEARING OFFICER WEBB: Mr. Cohen, if
20 you please have a seat up here, the court
21 reporter will swear you in, please.

22 MITCHELL L. COHEN
23 having been first duly sworn, was examined and
24 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. PARTEE:

3 Q. Mitch, for the record would you state
4 your full name and spell it?

5 A. Mitchell Lee Cohen, M-I-T-H-C-H-E-L-L,
6 Lee, L-E-E, Cohen, C-O-H-E-N.

7 Q. Are you familiar with a matter of
8 People versus Skokie Valley, et al?

9 A. Yes.

10 Q. How are you familiar with that matter?

11 A. It was a case that was assigned to me
12 and that I handled and tried before the Pollution
13 Control Board.

14 Q. And what was the nature of that case?

15 A. It was a case that involved two main
16 areas, one was NPDES violations, repeated
17 violations, failing to turn in discharge monitoring
18 reports or DMR's, filing false DMR's with the
19 Illinois EPA, failing to renew the NPDES permit on
20 time, though Skokie Valley Asphalt continued to
21 discharge, and then there was also a count related
22 to water pollution at the Skokie Valley site.

23 Q. Only very generally, what type of
24 facility was involved in this case?

1 A. Skokie Valley Asphalt was an
2 industrial facility, kept road surfacing product at
3 their site, had some buildings there, had some
4 retention ponds that they were supposed to use
5 before discharging any waters to waters of the
6 state.

7 Q. What difficulty, if any, did you have
8 in conducting discovery in the case?

9 MR. JAWGIEL: I'm going to object to
10 the form of the question and the leading
11 nature of the question.

12 HEARING OFFICER WEBB: I will allow
13 it. You can answer.

14 A. The difficulty relating to
15 discovery -- well, there was a lot of discovery just
16 because it was a case that appeared to be heading
17 for trial, and there were also some motions to
18 compel that had to be filed in the case. And given
19 the age of the case and the time constraints with
20 the scheduling order, we had to take some
21 depositions before we had all the documents needed
22 in order to take the deposition completely.

23 Q. Did you get all the documents needed
24 in order to take the depositions?

1 MR. JAWGIEL: I am going to object to
2 the relevance to this issue before the Board
3 on the attorneys' fees. Whether he received
4 the documents or not, there's no relevance at
5 this point from time.

6 MR. PARTEE: Well, the relevance is to
7 the first question the Board is going to ask
8 in determining reasonableness which is what
9 the nature of the underlying case is and the
10 difficulty of the questions and questions at
11 issue.

12 HEARING OFFICER WEBB: I'll allow the
13 question. You can answer.

14 A. We did not get the documents before
15 the deposition. We did get documents after the
16 deposition.

17 BY MR. PARTEE:

18 Q. And were there any issues of misplaced
19 documents or document destruction in the underlying
20 case?

21 MR. JAWGIEL: I'm going to object
22 again to the relevance and also lack of
23 foundation, as well as form of the question.
24 There's no time frame involved. He hasn't

1 flushed out the issue where it was in
2 accordance with the case.

3 HEARING OFFICER WEBB: Would you like
4 to establish some foundation.

5 MR. PARTEE: Sure.

6 BY MR. PARTEE:

7 Q. You handled discovery in the
8 underlying case, correct?

9 A. Yes.

10 Q. And do you understand there to be a
11 relatively discreet time frame in terms of discovery
12 in the underlying case?

13 A. Yes.

14 Q. And were there any issues of document
15 destruction or misplacement in the underlying case?

16 A. Yes.

17 MR. JAWGIEL: Objection. He still
18 hasn't laid a time frame. I'm objecting to
19 the form of the question. The lack of
20 foundation. Particularly the lack of time
21 frame and the relevance.

22 MR. PARTEE: Well, the relevance goes
23 to, again, the first question that the Board
24 is going to ask is the reasonableness, and

1 I'm happy to ask him during what time frame
2 he conducted discovery.

3 HEARING OFFICER WEBB: Okay.

4 BY MR. PARTEE:

5 Q. When did you conduct discovery?

6 A. Discovery was conducted -- probably
7 started long before I got involved in the case, but
8 it continued heavily the six months before the
9 trial. I think the trial was in 2003.

10 Q. During your involvement with discovery
11 in 2003, were there, again, any issues of
12 destruction of documents being lost in this case?

13 A. Yes.

14 MR. JAWGIEL: Same objection.

15 BY MR. PARTEE:

16 Q. What were those issues?

17 HEARING OFFICER WEBB: The ultimate
18 issue that we are trying to get at is how
19 much work was done, so I do have to allow him
20 some leeway to get that, and my opinion is
21 this is background information so.

22 MR. JAWGIEL: But there's no way I can
23 take his affidavit with respect to his
24 billing statements and translate it into his

1 testimony regarding the problems that he
2 claims he had in discovery, unless he
3 establishes a time frame when he had these
4 problems. Because if you look at his
5 affidavit, they are nondescript.

6 HEARING OFFICER WEBB: Well, I don't
7 have a problem.

8 MR. JAWGIEL: Therefore I need a time
9 frame in order to cross-examine him with
10 respect to, okay, Mr. Cohen, you said it was
11 in October 2003 that you experienced these
12 problems. According to your affidavit,
13 there's no entry regarding that. Unless he
14 lays the foundation and the time frame of
15 when these alleged problems occurred, they
16 are meaningless.

17 MR. PARTEE: Well, counsel is not
18 flying blind here. He took a three hour
19 deposition of Cohen on this affidavit, but
20 I'm happy to ask Mr. Cohen specifically what
21 time frame we are talking about.

22 HEARING OFFICER WEBB: Thank you.

23 BY MR. PARTEE:

24 Q. Could you tell us exactly what time

1 frame in terms of approximate months and years that
2 we are talking about discovery and your involvement
3 in discovery in this case.

4 A. My heaviest involvement in discovery
5 was the six months leading up to trial, which the
6 trial was in October 2003.

7 Q. So from October 2003 and backwards
8 about six months?

9 A. Correct.

10 Q. That's the time frame we are dealing
11 with, correct?

12 A. Yes.

13 Q. And again, with respect to that
14 specific time frame, what discovery issues arose, if
15 any, while the destruction of documents was being
16 phased?

17 A. We tried to do requests for production
18 of documents on Skokie Valley and the other
19 respondents, and they indicated that their records
20 had been, I believe it was represented they were
21 destroyed, and they did not have any records to
22 provide for us.

23 Q. And when were these records destroyed
24 relative to the filing of this case?

1 MR. JAWGIEL: I'm going to object.
2 That's fair hearsay. He is not somebody who
3 was involved directly in the destruction or
4 management of these documents. The only way
5 he would know is if someone told him.

6 MR. PARTEE:

7 Q. Did someone tell you when the records
8 were destroyed?

9 A. I believe it's in the record on the
10 trial.

11 MR. JAWGIEL: That's hearsay.

12 MR. PARTEE: I will withdraw the
13 question.

14 Q. Did the State produce documents in
15 discovery in the underlying case?

16 A. Yes.

17 MR. JAWGIEL: Again, I am going to
18 object to the time frame.

19 MR. PARTEE: Same time frame.

20 BY MR. PARTEE:

21 Q. Were you involved in discovery any
22 other time frame other than the one you've already
23 described for us?

24 A. I don't remember the full extent of

1 the discovery, but whatever discovery happened,
2 happened after I was involved with the case, I was
3 involved with it, but there was many years of this
4 case before I got involved, and I don't know what
5 discovery happened then.

6 Q. I'm only interested in the time frame
7 you spent personally on discovery?

8 A. Yes.

9 Q. Did you produce any documents in
10 discovery in the underlying case?

11 A. Yes.

12 MR. JAWGIEL: Again, I will object to
13 the time frame. Is it the six months prior
14 to trying the hearing we are referring to or
15 is this since Mr. Cohen was involved in the
16 case. The question is vague and unclear.

17 HEARING OFFICER WEBB: This entire
18 line of questioning is the six month period
19 before hearing?

20 MR. PARTEE: Exactly. It's the one
21 and only time frame.

22 A. Yes.

23 BY MR. PARTEE:

24 Q. How many boxes of documents did you

1 produce to respondents during the underlying case
2 during this discovery time frame that we are talking
3 about?

4 A. I don't really remember in terms of
5 boxes. What I remember is that --

6 MR. JAWGIEL: I'm going to object. He
7 answered the question. If he goes beyond it,
8 he goes beyond the scope of the question.
9 The scope of the question was how many boxes
10 did you produce in the course of discovery.
11 His answer was I don't remember in terms of
12 boxes, so he doesn't know the answer to the
13 question. Anything beyond that is going
14 beyond the scope of the question.

15 MR. PARTEE: I think you are
16 mischaracterizing his testimony. He wouldn't
17 characterize the production in terms of
18 boxes.

19 HEARING OFFICER WEBB: I'll allow you
20 to finish the question because I don't --
21 yes, perhaps, okay, that would be more
22 responsive.

23 A. Once Mr. O'Neil and I communicated
24 that they did not have records, we made our entire

1 file available to Mr. O'Neill to review. I know it
2 was boxes in the conference room, and I believe he
3 copied everything we made available to him, but I
4 don't remember exactly how much that was or the
5 number of boxes put in the conference room.

6 BY MR. PARTEE:

7 Q. You can't estimate the number of
8 documents that were produced by the State?

9 MR. JAWGIEL: I'm going to object to
10 the form of the question as asked and
11 answered.

12 A. I can't estimate.

13 HEARING OFFICER WEBB: Overruled.

14 BY MR. PARTEE:

15 Q. What was your next step in this case
16 after discovery?

17 A. As I recall discovery ended pretty
18 much right before the trial so we were getting ready
19 for trial.

20 Q. And did you experience any
21 difficulties preparing for trial?

22 A. Many.

23 Q. Can you identify some of them for us.

24 A. Well, one major difficulty we had was

1 my trial partner was excluded from the case. There
2 were lots of issues I think still outstanding
3 related to the documents from discovery that had to
4 be addressed. We were not allowed to go back and
5 depose the witnesses after we received the
6 documents, and we received many motions within days
7 before the trial part.

8 Q. You said that your trial partner had
9 been excluded before the trial. How did that
10 present difficulty in terms of your trial
11 preparation?

12 MR. JAWGIEL: I'm going to object the
13 exclusion of Mr. Sternstein in this case has
14 nothing to do with the respondents. It
15 merely has something to do with the fact that
16 he shouldn't have been on the case in the
17 first place and anything related to the
18 difficulty experienced by the Attorney
19 General's office is inappropriate, for
20 putting Mr. Sternstein on this case should be
21 beared by the Attorney General's office and
22 certainly not by my client.

23 HEARING OFFICER WEBB: Well, and the
24 Board has already agreed with you on that,

1 but I don't know where this line of
2 questioning is going. You are just asking
3 how much extra work he had to do once he was
4 the only other than attorney.

5 MR. JAWGIEL: And it certainly has no
6 relevance. If he had to do extra work
7 because Mr. Sternstein was removed from this
8 case, that's the AG's office problem. That's
9 the Attorney General's office problem and not
10 my client's problem. It has no relevance to
11 the reasonableness of Mr. Cohen's work.

12 HEARING OFFICER WEBB: We could
13 rephrase the question to how much work he did
14 during that time frame.

15 MR. JAWGIEL: To be frank --

16 MR. PARTEE: It's going to be long --

17 MR. JAWGIEL: He can certainly
18 rephrase his own questions. What I'm saying
19 very simply is that Mr. Sternstein was
20 removed by the Board in this case because
21 Mr. Sternstein should not have been on this
22 case from its inception. That was a decision
23 made by the Attorney General's office that
24 was inappropriate and improper, and anything

1 related to extra work that had to be done
2 because of his removal should be borne by the
3 Attorney General's office and not my client.

4 HEARING OFFICER WEBB: Well,
5 Mr. Jawgiel, you are making argument right
6 now, and I don't want to do that here.
7 Please save that for your post-hearing brief.
8 I don't even remember what the question was
9 at this point.

10 MR. PARTEE: I'm certain I didn't even
11 say the word "Sternstein."

12 HEARING OFFICER WEBB: I know you
13 didn't. I think the question was fine. So
14 you are overruled for now. Please continue.

15 BY MR. PARTEE:

16 Q. I think the question was, how was your
17 trial prep made difficult as a result of the
18 exclusion of your trial partner?

19 MR. JAWGIEL: Same objection.

20 MR. PARTEE: I think that objection
21 has been overruled.

22 HEARING OFFICER WEBB: Overruled. It
23 does go to fees. So overruled. Go ahead.

24 A. The difficulty, I guess, was getting

1 another attorney in place and up to speed to help
2 with the trial as well as doing everything in our
3 power not to seek a continuance because of that
4 ruling made, I think, essentially weeks before the
5 trial.

6 Q. You mentioned another difficulty was
7 that you received documents shortly before trial.
8 Who provided you with those documents?

9 A. Respondents.

10 Q. How many documents did they provide
11 you with before trial?

12 A. I don't remember how many. I remember
13 two --

14 MR. JAWGIEL: I am going object to the
15 rest being nonresponsive. That's the
16 response to the question. Anything beyond
17 that goes beyond the scope of the question.

18 HEARING OFFICER WEBB: Overruled.

19 A. I recall that two of the big documents
20 that were important was the engineering report from
21 their expert witness James Huff, as well as the
22 financial documents related to Skokie Valley
23 Asphalt, the Frederick brothers and especially the
24 asset purchase agreement from when the business was

1 sold.

2 Q. Were you looking at these documents
3 for the first time after depositions had been
4 completed in the case?

5 MR. JAWGIEL: I'm going to object to
6 the relevance.

7 A. Yes.

8 MR. JAWGIEL: What's the relevance if
9 it was after deposition.

10 HEARING OFFICER WEBB: Overruled.
11 Please continue.

12 MR. PARTEE: I think his answer was
13 yes.

14 HEARING OFFICER WEBB: Okay, sorry.

15 BY MR. PARTEE:

16 Q. Is that correct?

17 A. Yes.

18 Q. You also mentioned that you perceived
19 pretrial motions and that that was one of the
20 difficulties that you had faced in the underlying
21 case?

22 A. Yes.

23 Q. Who filed these pretrial motions?

24 A. Respondents.

1 Q. And do you recall how many pretrial
2 motions the respondents filed?

3 A. Well, there were lots of pretrial
4 motions filed throughout the course of the case, but
5 the week -- I think it was the week before or the
6 week of trial, I believe, 12 motions were filed.

7 Q. All by respondents?

8 A. Yes.

9 Q. What type of motions were these?

10 A. Motions to exclude witnesses and
11 motions in limine.

12 Q. Did the State respond to all of these
13 motions?

14 A. As best we could.

15 Q. Did you take depositions in the
16 underlying case?

17 A. Yes.

18 Q. Do you recall how many depositions you
19 took in the underlying case?

20 A. I recall three depositions on behalf
21 of the People.

22 Q. Did you defend any depositions in the
23 underlying case?

24 A. Yes.

- 1 Q. How many?
- 2 A. I recall one.
- 3 Q. Although there was a hearing on the
4 underlying case, how long was the hearing?
- 5 A. Two days.
- 6 Q. How long each day?
- 7 A. They were pretty full days. I think
8 we might have ended a little early on the second
9 day.
- 10 Q. And where was the hearing held?
- 11 A. Grayslake.
- 12 Q. Where do you live relative to
13 Grayslake?
- 14 A. Chicago.
- 15 Q. And how many exhibits were used at the
16 hearing?
- 17 A. Approximately 50.
- 18 Q. And whose exhibits were they?
- 19 A. Most of the exhibits were the
20 People's. I think we had 40 or more, and the
21 respondents also had a handful of exhibits.
- 22 Q. And do you recall how many witnesses
23 the People called at the hearing?
- 24 A. I think we called all the witnesses.

1 I think six.

2 Q. And what types of legal issues were
3 involved in the hearing on the underlying case?

4 A. Well, legal issues really went to the
5 nature of the case related to the NPDES permits,
6 violations of those permits by failing to file
7 DMR's, filing false DMR's, excessive discharge in
8 relation to some of the DMR's that were filed,
9 failure to renew the NPDES permit on time, water
10 pollution. We were also dealing with individual
11 versus corporate liability in the case. Those are
12 the main ones I remember.

13 Q. Was there any expert testimony in the
14 underlying case?

15 A. Yes.

16 Q. And after the hearing was over, did
17 any work remain for you in this case?

18 A. Yes.

19 Q. What was that?

20 A. Well, there were additional motions
21 filed after the hearing as I recall, and there was
22 also the written closing argument and written
23 closing rebuttal argument, which ultimately led to
24 additional litigation that's ongoing to the State.

1 Q. You said that additional motions were
2 filed after the hearing. Who filed the motions?

3 A. I think both parties did.

4 Q. Do you recall what types of motions
5 were filed after the hearing?

6 A. No. I know one was contesting the
7 fees. I don't remember what it was called.

8 Q. You said that there was a written
9 closing argument?

10 A. Yes.

11 Q. And did you experience any difficulty
12 in preparing the written closing argument?

13 A. Yes, written closing arguments were
14 very difficult for me to prepare, especially in this
15 case. The written closing argument itself -- what I
16 have done is I try to use the trial transcript and
17 cite from the trial transcript as much as I can,
18 especially related to facts, and I also try to cite
19 to specific exhibits in this case. I think there
20 were around 50. Some of them quite voluminous, and
21 I also typically have research related to the
22 written closing argument.

23 Q. How long was the trial transcript in
24 this case?

1 A. It was two volumes. I'm estimating
2 500 pages.

3 Q. Let me ask you about the amount and
4 importance of the subject matter. How many
5 violations were involved in the underlying case?

6 A. There were numerous violations. It's
7 hard to quantify that. There were, I think, five or
8 six counts, but there were repeated violations of
9 failing to provide or submit DMR's to the Illinois
10 EPA. There were repeated violations to the excess
11 total suspended solids, or TSS, so I can't remember
12 exactly how many months those violations went on.
13 Then there was the water pollution, the failing to
14 apply for the permit on time. I think there were
15 two times of filing false DMR's.

16 Q. I'm sorry?

17 A. Those were all included in the
18 violations.

19 Q. What was the approximate time frame of
20 these violations?

21 A. I think they started in the late 80's,
22 through the oil discharge which was the end of '94
23 through about April of '95.

24 Q. And was this an important case to the

1 office?

2 MR. JAWGIEL: I'm going to object. It
3 asks for an opinion, and as I stated before,
4 they did not close him as an opinion witness.
5 His opinion to the case has no relevance and
6 to the reasonableness of fees being
7 requested.

8 HEARING OFFICER WEBB: Overruled.

9 BY MR. PARTEE:

10 Q. Was this an important case to the
11 office?

12 MR. JAWGIEL: Objection to what office
13 is he is referring to.

14 BY MR. PARTEE:

15 Q. Was this an important case to the
16 complainant, however you phrase it?

17 MR. JAWGIEL: Again, objection, asks
18 for hearsay.

19 HEARING OFFICER WEBB: Overruled.

20 A. Yes, it was an important case.

21 BY MR. PARTEE:

22 Q. What was the importance of the case?

23 A. Well, you're dealing with issues
24 related to water pollution --

1 MR. JAWGIEL: Just so I can -- I'll
2 object. Asks for an opinion. I assume it's
3 going to be overruled. Is that correct?

4 HEARING OFFICER WEBB: Correct.

5 MR. PARTEE: I would just like to real
6 quickly point out that the point I'd like to
7 make is that what I am asking him is verbatim
8 one of the factors that the Board has set out
9 where it describes what it's going to
10 consider in terms of reasonableness. And the
11 element is the amount and importance of the
12 subject matter, that the element that the
13 Board spelled out as one of the elements that
14 has been applied to the fee petition in
15 determining its reasonableness. So I think
16 it's relevant for that matter.

17 MR. JAWGIEL: And I don't think the
18 Board's ruling with respect to the importance
19 of matter has to go to the Illinois EPA's
20 determination interpreted by the Attorney
21 General's office. If they wanted to bring
22 somebody in to testify for them from the
23 Illinois EPA regarding the importance of this
24 case, they certainly should have brought a

1 witness from the Illinois EPA, and it should
2 be not be interpreted through hearsay of
3 Mr. Cohen, and it's an appropriate failure to
4 lay the proper foundation, and it is pure
5 hearsay with respect to Mr. Cohen's
6 interpretation of what the Illinois EPA's
7 position is on this case.

8 HEARING OFFICER WEBB: I am going to
9 allow you to answer, Mr. Cohen.

10 A. Okay. I believe the question related
11 to why was it important at this point to the
12 complainant?

13 HEARING OFFICER WEBB: Yes.

14 MR. PARTEE: I believe that was the
15 last version of the question posed to you.

16 A. This case when you are dealing with
17 NPDES permits, it's a national program, with all the
18 regulations related. It's part of the Clean Water
19 Act and the Illinois EPA is a delegated agency to
20 enforce the NPDES program on behalf of the federal
21 government. Water pollution, of course, is serious
22 in terms of health and safety of the public, the
23 People of the state of Illinois and in Illinois.
24 It's a constitutional right of the People to have a

1 healthy and safe environment.

2 Q. With respect to the degree of your
3 responsibility in this case, can you generally
4 describe for us what you did in the underlying case?

5 MR. JAWGIEL: I'm going to object to
6 the failure to lay a foundation.

7 HEARING OFFICER WEBB: What
8 foundation?

9 MR. PARTEE: If he's questioning
10 whether he was involved in the underlying
11 case, well we have. I think we are well past
12 it. It's preliminary, and we are well past
13 it.

14 MR. JAWGIEL: You never qualified this
15 witness. I object to the foundation.

16 MR. PARTEE: I don't understand the
17 objection.

18 HEARING OFFICER WEBB: I don't either.

19 MR. JAWGIEL: You didn't want a
20 speaking objection, so now I am not going to
21 speak. I object to the laying of the
22 foundation. He never qualified the witness.

23 HEARING OFFICER WEBB: I honestly
24 don't remember if I did or didn't.

1 MR. PARTEE: Well, I can tell you if
2 you'll give me a little leeway.

3 HEARING OFFICER WEBB: Please.

4 MR. PARTEE: We had expected that
5 Mr. Cohen's experience and qualification was
6 relevant to the factors involved in the usual
7 and customary charge in the legal community,
8 and we had to get Mr. Cohen's background
9 under qualifications in the context of that
10 factor.

11 MR. JAWGIEL: If he is going to be
12 asking him questions regarding his
13 involvement in this case and interpretation
14 of this case, he has to lay the foundation of
15 his qualifications to give those opinions.
16 He hasn't laid the foundation. He hasn't
17 qualified this witness at all in this case.
18 And I'm sorry to take Mr. Partee off of his
19 recipe, but the bottom line is that Mr. Cohen
20 has not been qualified.

21 HEARING OFFICER WEBB: I'm just not
22 sure what you want to know. We all know he
23 worked on the case. The question is what did
24 he work on, right?

1 MR. PARTEE: What did he generally do.

2 MR. JAWGIEL: It's an evidentiary
3 issue.

4 HEARING OFFICER WEBB: Overruled.

5 BY MR. PARTEE:

6 Q. The question, if I can repeat it is,
7 can you just generally describe for us what you did
8 in the underlying case?

9 A. Yes.

10 MR. JAWGIEL: Same objection.

11 HEARING OFFICER WEBB: You may have a
12 standing objection, Mr. Jawgiel.

13 A. I was working as an assistant Attorney
14 General in the environmental bureau in Chicago when
15 the case was assigned to me. It was assigned to me
16 because the person who had the case before we me was
17 leaving the office. That was Kelly Cartwright. At
18 that point, from that point on the case was my
19 responsibility in terms of bringing it forward,
20 amending the complaint and conducting discovery,
21 addressing motions, preparing the case for trial.
22 It was at a particularly busy time for me because I
23 was in the middle of a big trial, so an additional
24 assistant Attorney General was assigned to the case

1 as well.

2 BY MR. PARTEE:

3 Q. How old was the case when it was
4 assigned to you?

5 A. I think it was about seven years old.

6 Q. And about how many assistant Attorney
7 Generals had been on the case before yourself?

8 A. I don't remember exactly but probably
9 half a dozen.

10 Q. When it was assigned to you and were
11 you primarily responsible for looking it up and
12 trying it?

13 A. Yes.

14 Q. Let me ask you about your time and
15 labor in bringing this, the underlying case, to a
16 close? When you were assigned to this case, how
17 much work had been done on the case before it was
18 assigned to you?

19 A. I don't know how to answer that one.

20 Q. Was any work done on the case before
21 it was assigned to you?

22 A. I'm sure there was work done in terms
23 of discovery. Very little work.

24 Q. Did you keep track of your time on

1 this case?

2 A. Yes.

3 Q. Why?

4 A. When the case was assigned to me, I
5 met with Kelly Cartwright. She told me that --

6 MR. JAWGIEL: I'm going to object to
7 what Ms. Cartwright says is hearsay.

8 MR. PARTEE: It's not being offered
9 for the truth of the matter asserted, just
10 for the fact that he had a meeting.

11 HEARING OFFICER WEBB: You may answer.

12 A. She explained to me about the case,
13 about the file, about the types of violations, the
14 number of violations. Based on what she told me, I
15 realized that this would fall under Section 42F of
16 the Illinois Environmental Protection Act which says
17 that if you have a --

18 MR. JAWGIEL: I'm going to object to
19 his interpretation of the Act, failure to lay
20 foundation, failure to qualify.

21 HEARING OFFICER WEBB: Overruled. You
22 may continue.

23 A. Which says something to the effect
24 that if the person committing the violation does it

1 repeatedly, willfully or knowingly, then the
2 Attorney General's office or the State's attorney
3 prosecuting the case may be entitled to attorney
4 fees in the case.

5 BY MR. PARTEE:

6 Q. And did you submit the time that you
7 kept in this case to the Board?

8 A. Yes.

9 Q. How did you submit it to the Board?

10 A. I submitted it two ways. During the
11 closing argument phase, I put in a summary. I want
12 to say a summary affidavit I guess of our time, of
13 my time. After the respondents objected to awarding
14 attorney fees at that point in litigation, the Board
15 then allowed us to submit another file, a fee
16 petition, and I submitted my time in that manner.

17 MR. PARTEE: Okay. May I approach the
18 witness?

19 HEARING OFFICER WEBB: Yes.

20 MR. JAWGIEL: Just for the record, he
21 does not have to ask if it's okay. It's okay
22 that he walks up to witnesses. I have no
23 problem with him approaching the witness
24 without him having to ask each time.

1 (People's Exhibit
2 No. 100 marked.)

3 BY MR. PARTEE:

4 Q. Mitch, I think before we took a break,
5 you said that you presented your fees to the Board
6 through a fee petition. You've now been handed what
7 was marked as People's Exhibit No. 100. And take
8 the time you need to review the exhibit, but my
9 question is, can you tell me what has been marked as
10 People's 100?

11 A. Yes, this is a copy of the People of
12 the state of Illinois attorney fees and cost
13 position, notice of filing, service list, and the
14 actual document itself.

15 Q. Is this the fee petition you had
16 referenced in answer to the earlier question?

17 A. Yes.

18 Q. Is this a true and accurate copy of
19 the fee petition that you filed?

20 A. Yes.

21 Q. Is that your signature on page 4 of
22 the fee petition?

23 A. Yes.

24 MR. PARTEE: I ask the Board to take

1 judicial notice of this and I think I'd like
2 to move this in evidence.

3 MR. JAWGIEL: It is premature to move
4 anything into evidence prior to the close of
5 his case. I object.

6 HEARING OFFICER WEBB: We don't --
7 sometimes we do it before the close of the
8 case. I don't see any -- this doesn't --
9 this seems be a document, you're right, of
10 which the Board could take judicial notice.

11 MR. JAWGIEL: Has it been filed?

12 HEARING OFFICER WEBB: It has been
13 filed. It's got the date stamped on it.
14 Really it's being moved for convenience sake
15 I am assuming more than anything else.

16 MR. PARTEE: That's right.

17 HEARING OFFICER WEBB: So I'll allow
18 it.

19 BY MR. PARTEE:

20 Q. Mitch, how did you keep track of your
21 time in this case?

22 A. I kept track of my time on an office
23 program we had at the time called Groupwise, and I
24 used the calendar feature of Groupwise and noted the

1 time I worked on this case on the calendar.

2 Q. And when did you keep track of your
3 time in this case?

4 A. I kept it along the way as I was
5 working on the case.

6 Q. Did you keep your time contemporaneous
7 with your work on the case?

8 A. Yes, I either would put the time in
9 the day I worked on it or possibly a day or two
10 later when I returned to the office or something
11 like at hat.

12 Q. And did Groupwise allow you to go back
13 in time and determine how much time you spent on a
14 specific date?

15 A. Groupwise does not allow me to
16 determine how much time I worked on the matter.
17 It's just a calendar feature.

18 Q. Well, how did you -- strike that.

19 What specifically did you record
20 in Groupwise in terms of your time?

21 A. I would keep track of the time on a
22 particular day that I worked on this case, and I
23 would go into Groupwise, note that I worked on the
24 Skokie Valley Asphalt case, and then within the

1 entry I would make a short notation as to what I
2 worked on that day and the number of hours I worked
3 on that day in relation to the Skokie Valley Asphalt
4 case.

5 Q. Did Groupwise allow you to go back and
6 make an entry to some specific entry in the past?

7 MR. JAWGIEL: I am going to object as
8 asked and answered.

9 HEARING OFFICER WEBB: I don't know
10 that it was. Go ahead and answer.

11 A. Yes, Groupwise allows you to go back
12 in time. You can make the entry after that date.

13 BY MR. PARTEE:

14 Q. Does Groupwise allow you to print out
15 your time entries?

16 A. Yes, it does.

17 (People's Exhibit

18 No. 101 marked.)

19 BY MR. PARTEE:

20 Q. Did you at some point use Groupwise to
21 print out your time entries in this case?

22 MR. JAWGIEL: I'm going to object to
23 the time frame and lack of foundation.

24 HEARING OFFICER WEBB: The time frame

1 for printing?

2 MR. JAWGIEL: Yes, because you will
3 find out during the course of the testimony
4 that Mr. Cohen didn't print it out until way
5 after we produced these. He went back in his
6 calendar and went through his entire calendar
7 four or five years and going by hand and
8 handwriting down what was on the computer
9 screen and then billing for that time, and
10 then these documents, 101, was actually
11 printed out for the very first time according
12 to Mr. Cohen in his deposition after we had
13 requested it during the course of the fee
14 petition, and he first learned that he could
15 print it out then. So the time frame becomes
16 very important.

17 HEARING OFFICER WEBB: Mr. Partee,
18 I've forgotten your question.

19 MR. PARTEE: So have I.

20 MR. JAWGIEL: Have the reporter read
21 it back because that's one of the reasons why
22 she's here.

23 MR. PARTEE: Before you do that,
24 Ms. Court Reporter, I think what counsel has

1 done is essentially offered testimony on
2 behalf of respondents as far as what they
3 intend to show, and frankly, if I had asked
4 when Mr. Cohen printed out his Groupwise
5 entries, I think I would have gotten the
6 foundation objection because I didn't
7 establish that he did in fact print out his
8 Groupwise entries. So what I am simply
9 trying to establish is whether he went back
10 and in fact print out his Groupwise entries,
11 which he's already said could be done.

12 HEARING OFFICER WEBB: Mr. Jawgiel,
13 again, I prefer you save your argument for
14 your post-hearing brief. I don't think it
15 matters when he printed it out. So please
16 continue.

17 BY MR. PARTEE:

18 Q. Did you print out your Groupwise
19 calendar entries?

20 A. Yes.

21 Q. When did you print out your Groupwise
22 calendar entries?

23 A. I believe it was after, it was after
24 the case was tried and the fee petition became an

1 issue. I believe there was a discovery request
2 related to the fee petition, and that's when these
3 were printed out.

4 Q. Could you take a look at what's been
5 marked as People's Exhibit No. 101.

6 A. Yes.

7 Q. And what has been marked as People's
8 101?

9 A. This is the sheets that were printed
10 out from Groupwise related to the time and in the
11 fee petition beginning May 29, 2002 through the day
12 before I believe the fee petition was filed,
13 September 16, 2004.

14 MR. JAWGIEL: Mr. Murphy is here.

15 MR. PARTEE: Could we go off the
16 record for a second.

17 HEARING OFFICER WEBB: We'll go off
18 for a moment.

19 (Short recess taken.)

20 BY MR. PARTEE:

21 Q. Are these, are what's marked People's
22 101, your Groupwise time entries, between May 29,
23 2002 and September 15, 2004?

24 A. Yes, September 15, 2004.

1 Q. Is this a true and correct copy of
2 those time entries?

3 A. Yes, this is how it would be printed
4 out.

5 Q. Is this how you printed it out?

6 A. Yes.

7 MR. PARTEE: Ms. Webb, I can move to
8 admit these all at the end or we can do it as
9 we go. Whatever your preference.

10 HEARING OFFICER WEBB: I don't have a
11 preference. Either way is fine for me.

12 MR. PARTEE: I'd like to move to admit
13 this into evidence at this point.

14 MR. JAWGIEL: No objection.

15 HEARING OFFICER WEBB: No objection?
16 Well, Exhibit 101 is admitted into evidence.

17 BY MR. PARTEE:

18 Q. And, Mr. Cohen, in what increments did
19 you record your time?

20 A. Typically hour or half hour
21 increments.

22 MR. JAWGIEL: I'm going to object to
23 anything beyond that as nonresponsive.

24 HEARING OFFICER WEBB: I'll allow you

1 to finish answering.

2 A. What I would do is, the amount of time
3 I would work on the Skokie Valley case in a given
4 day, I would keep track of that to the best of my
5 ability, and then I would round it down to the
6 nearest half hour.

7 MR. JAWGIEL: I'm going to object to
8 that as nonresponsive to the question and ask
9 that it be stricken.

10 HEARING OFFICER WEBB: Overruled.

11 BY MR. PARTEE:

12 Q. Did you bill for time spent on the
13 case that amounted to less than an hour?

14 A. If there was a day that I worked less
15 than an hour on the Skokie Valley case, really any
16 case that I have worked on with the Attorney
17 General's office, I did not put it into my time
18 records.

19 Q. So such time wouldn't be reflected in
20 your time records?

21 A. Correct.

22 Q. Did you actually work all of the time
23 that you recorded in this case?

24 A. Yes.

1 Q. While you were working on or traveling
2 in this case, were you able to work on any other
3 cases?

4 A. No.

5 Q. Mitch, at what rate did you bill your
6 time in this case?

7 MR. JAWGIEL: I'm going to object to
8 the foundation.

9 MR. PARTEE: I think that a lot of
10 this fact, the foundational question as far
11 as whether he billed and that there was a
12 rate at which he billed, is all preliminary
13 testimony and uncontested in a fee petition.

14 MR. JAWGIEL: It is not preliminary
15 and uncontested. First of all, he has to
16 establish based on his Exhibits 101, which
17 has no rate on it whatsoever and his
18 affidavit Exhibit A, which has no rate
19 whatsoever, Exhibit A to the fee petition I
20 should say, how he determined what rate he
21 should ask for. And there has to be a
22 foundation. He has to qualify him, and he
23 hasn't done so.

24 MR. PARTEE: I think that's wrong. I

1 think that we need to establish what the rate
2 was before we can get into how he established
3 that rate, otherwise we are questioning him
4 in the abstract.

5 HEARING OFFICER WEBB: I agree. Just
6 continue your line of questioning. I think
7 we'll get there.

8 BY MR. PARTEE:

9 Q. Mitch, at what rate did you bill your
10 time in this case?

11 A. \$150 an hour.

12 MR. JAWGIEL: Just note the objection
13 for the record, please.

14 HEARING OFFICER WEBB: You have a
15 standing objection.

16 BY MR. PARTEE:

17 Q. How did you arrive at that rate?

18 A. I did some research related to the
19 Pollution Control Board's award of attorneys' fees
20 and found at least one case, one of the most more
21 recent cases that indicated the Pollution Control
22 Board felt that \$150 an hour was a reasonable rate
23 to charge.

24 BY MR. PARTEE:

1 Q. And in terms of costs, did the People
2 incur costs in trying the underlying case?

3 A. Yes.

4 Q. What types of costs did the People
5 incur?

6 A. Well, we incurred lots of types of
7 costs, personnel, postage, telephone, travel,
8 depositions, photocopying that I can think of off
9 the top of my head.

10 Q. Are all of those costs included in the
11 fee petition?

12 A. No.

13 Q. What sorts of costs did the People
14 incur that are not included in the fee petition?

15 MR. JAWGIEL: Do you need to refer to
16 the document?

17 THE WITNESS: Yes. I'm referring to
18 People's Exhibit 100.

19 MR. JAWGIEL: Can you refer to a page
20 so I can read along, please.

21 THE WITNESS: Yes.

22 The second to the last page of
23 People's Exhibit 100 lists the costs incurred
24 by the State of Illinois. This list does not

1 include postage, long distance telephone
2 calls or in-house photocopying that I can
3 see.

4 BY MR. PARTEE:

5 Q. Any other costs that the People
6 incurred not included in this fee petition?

7 MR. JAWGIEL: I'm going to object to
8 the relevance of this line of questioning.
9 This is a hearing on the reasonableness of
10 the actual fees requested, not on what was
11 not requested.

12 MR. PARTEE: I think the
13 reasonableness inquiry is -- I think the
14 needle there is moved if we had incurred
15 direct costs that were not even included. I
16 think it's relevant as to what we are
17 requesting, and its relevance and its
18 reasonableness.

19 HEARING OFFICER WEBB: I'll allow it.

20 A. I can't think of any right now.

21 (People's Exhibit
22 No. 102 marked.)

23 BY MR. PARTEE:

24 Q. Would you take a look at what's been

1 marked as People's Exhibit 102?

2 A. Yes.

3 Q. What has been marked as People's 102?

4 A. This looks like the -- most of this is
5 bills and receipts that People of the state of
6 Illinois, the Attorney General's office paid in
7 relation to the Skokie Valley Asphalt case.

8 Q. Are these the costs that you included
9 in the fee petition?

10 A. Yes.

11 Q. Is it true and accurate copy of the
12 costs on which you base the cost portion of the fee
13 petition?

14 A. The bills and invoices that are in
15 this package are true and correct copies. There are
16 some receipts that are also true and correct copies.
17 There are some other documents that really are not
18 bills or invoices but they too are related to how
19 bills get paid in the Attorney General's office and
20 those also are true and correct copies.

21 Q. Okay. Do you want to clarify any of
22 the receipts?

23 A. Sure. The first page of this exhibit
24 is a receipt. The second page is a receipt. The

1 third page is a receipt for depositions. The fourth
2 page is an invoice from Kinko's. The fifth page is
3 another type of invoice from Kinko's. The next page
4 is another type of invoice from Kinko's, and those
5 were the costs incurred and paid by the State of
6 Illinois for this case. The next sheet is a travel
7 voucher. It is, as far as I know, it's an internal
8 document used by the Attorney General's office to
9 reimburse employees for expenses incurred. This
10 particular one that I signed, January 26, 2004,
11 shows expenses related to the trip to Grayslake,
12 Libertyville, for the Skokie Valley Asphalt case and
13 it also includes additional trips that I took as an
14 Assistant Attorney General working for the office in
15 relation to another case.

16 MR. JAWGIEL: I'd ask that the portion
17 unrelated to this case be redacted from the
18 record as irrelevant.

19 HEARING OFFICER WEBB: What portion is
20 that?

21 MR. JAWGIEL: Well, on page 7 of
22 Exhibit 102, he has travel all subsequent to
23 October 31, 2003, which are all traveling
24 expenses for unrelated cases, and therefore I

1 ask that that be redacted and removed from
2 the record as irrelevant.

3 HEARING OFFICER WEBB: Well, you are
4 absolutely right, the Board is not going to
5 consider information not related to this
6 case. Do you want it -- you mean physically?

7 MR. JAWGIEL: Physically redacted,
8 yes. I'm not that concerned about the Board.

9 HEARING OFFICER WEBB: Is it just this
10 one page, the travel voucher?

11 MR. JAWGIEL: I have no idea. This is
12 the first time I've seen the exhibit. This
13 is not the first time I have seen the travel
14 voucher, but when this was presented to me in
15 this matter, certain things were identified
16 as unrelated to this case. Everything
17 subsequent to October 31, 2003 is unrelated
18 to the case at hand.

19 MR. PARTEE: My suggestion is this, we
20 are not seeking any costs on this travel
21 voucher unrelated to this case, and to the
22 extent that there's any follow-up or
23 clarification needed on that, counsel is
24 going to have his turn with the witness, but

1 there are no costs on other cases on this
2 travel voucher that we're claiming in this
3 case.

4 HEARING OFFICER WEBB: Okay, I'm just
5 going to allow it as it is and we can clarify
6 it on cost or in your post-hearing brief, but
7 I'm not concerned that it's going to be
8 considered by the Board.

9 A. The next page is a true and correct
10 copy of a receipt. The next page is the Holiday Inn
11 receipt for me. The next page is not titled. It
12 has my name at the top, Mitch Cohen. It has a date
13 at the top, and then it says dates of travel October
14 29th through October 31st, 2003, and then travel
15 expenses underneath. This is an internal form that
16 I use at the Attorney General's office to indicate
17 expenses, and this is probably the form that the
18 person who prepared the travel voucher discussed
19 earlier used to prepare the travel voucher. So that
20 is not a receipt.

21 The next page is called a travel
22 request form. It is also an internal document.
23 Within the office we try to get office permission
24 and approval for travel if we know in advance that

1 we have to travel. It is an approximate accounting
2 of what we expect the costs will be for the trip.
3 For example, there's a miscellaneous noted
4 two-thirds of the page down on the travel request
5 form, and that is just an accounting feature in case
6 for some reason the trip costs more than
7 anticipated. So this is not a receipt.

8 The next sheet is a travel voucher
9 for Bernard Murphy, and it looks like this only
10 relates to the Skokie Valley Asphalt case.

11 The next sheet is a Holiday Inn
12 receipt for Mr. Murphy. The next sheet is
13 Mr. Murphy's travel expense form. The internal form
14 I mentioned before, which he provides to the office
15 so that the travel voucher can be prepared. The
16 next two sheets are faxed cover sheets.

17 MR. PARTEE: If I could rudely
18 interrupt. As far as I'm concerned, you
19 don't need to -- in the interest of moving
20 this along, you don't need to go through each
21 sheet, only those you want to clarify or if
22 there's any additional information that needs
23 to go along with them.

24 A. I might as well finish these last few

1 pages. Central management services, that's how you
2 request a cool car to be used. Travel request form
3 for Mr. Murphy. Another fax cover sheet. This is a
4 Kinko's receipt. The next two pages are an
5 attachment "A," for Toomey Reporting, which I
6 believe just shows how they bill the office for
7 court reporting services. The next page is a
8 Kinko's receipt. The next two pages at least in my
9 copies are again Toomey Reporting services, how they
10 bill. It is not a receipt. And the last two pages
11 of the exhibit are Kinko receipts.

12 MR. PARTEE: Thank you. I'd like to
13 move at this time to admit People's 102 into
14 evidence.

15 MR. JAWGIEL: I'll object to the
16 foundation.

17 MR. PARTEE: On what grounds?

18 HEARING OFFICER WEBB: Well, this is
19 obviously pretty critical information that I
20 do believe the Board needs so I'm going to
21 admit it.

22

23 BY MR. PARTEE:

24 Q. Let me move on to the issue of usual

1 and customary charge in the legal community, and in
2 the interest of moving this along.

3 (People's Exhibit
4 No. 103 marked.)

5 BY MR. PARTEE:

6 Q. Did you prepare a resume in support of
7 the State's fee petition in this case?

8 MR. JAWGIEL: I'm going to object to
9 the form of the question as leading.

10 HEARING OFFICER WEBB: I'll allow it.

11 A. I don't recall preparing a resume in
12 support of the fee petition.

13 BY MR. PARTEE:

14 Q. Did you disclose your resume in
15 support of the State's fee petition?

16 A. Yes.

17 Q. Is what's been marked as People's 103
18 a true and correct copy of the resume that you
19 submitted in support of the fee petition?

20 A. Yes.

21 MR. JAWGIEL: I'm going to object to
22 the form of the question. He indicated he
23 did not prepare or submit a resume.

24 MR. PARTEE: He said that he didn't

1 prepare one but that he submitted one.

2 HEARING OFFICER WEBB: Yes.

3 MR. JAWGIEL: Not in support of or in
4 the course of discovery did you submit one is
5 my correct recollection of what was said.

6 MR. PARTEE: I'll rephrase.

7 BY MR. PARTEE:

8 Q. Is what's been marked as People's
9 Exhibit 103 the resume that you submitted in the
10 course of discovery on the People's fee petition?

11 A. Yes.

12 Q. Is it a true and accurate copy of
13 resume that you submitted?

14 A. Yes.

15 MR. PARTEE: In the interest of time
16 I'm not going to go through his entire
17 resume. I have some follow-up questions
18 about experience, outside experience and work
19 experience since the resume was prepared, but
20 in the interest of time I'd like to just move
21 to admit People's 103 and not go over it.

22 MR. JAWGIEL: I'm objecting to the
23 foundation and the form of the question.
24 This is a hearsay document. If he is not

1 going to qualify his own witness, that's his
2 own decision, and I object to any questioning
3 regarding what Mr. Cohen's been doing since
4 his involvement in this case as irrelevant,
5 that the only relevance with respect to
6 Mr. Cohen's testimony today is what his
7 qualifications were during the relevant
8 period of time which is the time he is
9 working on the case and asking for a fee.

10 HEARING OFFICER WEBB: I'm going to
11 sustain your objection regarding anything
12 that Mr. Cohen has done after the time period
13 that we are dealing with here, but I will
14 allow you to go back and review, I believe,
15 his information before everything leading up
16 to this fee petition that's relevant.

17 BY MR. PARTEE:

18 Q. Mitch, did you prepare the resume that
19 appears as Exhibit 103?

20 A. Yes.

21 Q. When did you prepare it?

22 A. I don't remember.

23 Q. Was it before or after the fee
24 petition was --

1 A. I don't remember.

2 Q. Does it include all of your work
3 experience up to the point that the fee petition was
4 submitted?

5 A. Yes.

6 MR. PARTEE: Again, in the interest of
7 time, we'd like to move to admit the resume
8 without going through the document, but if
9 counsel insists on that, we can go through
10 the document.

11 HEARING OFFICER WEBB: Do you want
12 them to go through the document?

13 MR. JAWGIEL: If he can go through the
14 document and pick out the relevant experience
15 with respect to his involvement in this case,
16 certainly that's important. I think that his
17 involvement at Knox College is irrelevant.
18 I'm sure he had a wonderful time there and
19 did quite well, but it has no relevance. But
20 certainly if he wants to pick out what is
21 actually pertinent in this document, that's
22 what I'm asking him to do. Beyond that, the
23 document is irrelevant.

24 HEARING OFFICER WEBB: Well, if you'll

1 withdraw your objection, if he does that, we
2 can go ahead and do that. Otherwise --

3 MR. JAWGIEL: Certainly I am not
4 asking you to go through, hey, did you go to
5 college and did you have a good time? Who
6 cares? But get to the heart of what's
7 important in this CV with respect to what
8 we're dealing with here today. That, I
9 think, he has to do.

10 MR. PARTEE: Or you can do it on
11 cross.

12 MR. JAWGIEL: No, I don't think so.
13 We have to qualify your witness.

14 MR. PARTEE: As what? Qualify the
15 witness as what, an expert? Because you've
16 moved to exclude any opinions. So if we're
17 qualifying on expert what are we qualifying
18 him for?

19 MR. JAWGIEL: I am not going to engage
20 with counsel across the table. If he wants
21 to try to coax me into some sort of argument,
22 that's not going to occur.

23 HEARING OFFICER WEBB: Yes, I am going
24 to admit this and let the Board pick out the

1 relevant information. I think it stands on
2 its own, and I don't see a problem with it.

3 BY MR. PARTEE:

4 Q. Mitch, did you have any trial
5 experience prior to trying the underlying case here?

6 A. Yes.

7 Q. Let me ask you about jury trials.
8 About how many jury trials had you done before the
9 trial in this case?

10 A. Half a dozen, maybe a few more than
11 that.

12 Q. Had you done any bench trials before
13 this case?

14 A. Yes.

15 Q. Approximately how many?

16 A. Quite a few. Maybe over a hundred.

17 Q. And had you done any administrative
18 hearings before the trial in the underlying case
19 here?

20 A. Yes.

21 Q. Approximately how many?

22 A. Two or three.

23 Q. Let me ask you about the benefits
24 resulting to the People. Was there any benefit

1 resulting to the People as a result of underlying
2 case?

3 MR. JAWGIEL: I am going to object to
4 the opinion as being expressed pursuant to my
5 motion in limine, and that the qualification
6 from this gentleman to speak on behalf of the
7 People.

8 HEARING OFFICER WEBB: Overruled. You
9 may answer.

10 A. Well, there is a benefit to
11 environment enforcement. This case was an
12 environmental enforcement case related to water
13 pollution, violations of the Clean Water Act.
14 Violations of the NPDES permit and the People of
15 Illinois have a constitutional right to a healthy
16 and safe environment, and the environmental
17 enforcement is part of the benefit of that.

18 Q. Who was the prevailing party after the
19 underlying case?

20 A. The People of the State of Illinois.

21 Q. And the underlying case resulted in a
22 Board order?

23 A. Yes.

24 Q. For purposes of the Act, sir, to the

1 underlying case --

2 MR. JAWGIEL: I am going to object to
3 the opinion pursuant to the motion in limine.

4 HEARING OFFICER WEBB: I'll allow it.
5 You can answer.

6 A. I think so.

7 BY MR. PARTEE:

8 Q. How so?

9 A. Well, again the same thing I just
10 said. Environmental enforcement is important for
11 everybody in the State of Illinois. This was an
12 environmental enforcement case. To all People's
13 benefit.

14 MR. PARTEE: I have nothing further.

15 CROSS-EXAMINATION

16 BY MR. JAWGIEL:

17 Q. Mr. Cohen, isn't it true that you only
18 had one administrative hearing before the Skokie
19 Valley case?

20 A. No.

21 Q. Page 85 --

22 MR. PARTEE: Excuse me, do you have
23 copies of the transcript for us?

24 MR. JAWGIEL: No, I don't.

1 MR. PARTEE: How are we supposed to
2 move along with you?

3 MR. JAWGIEL: You knew -- you had the
4 opportunity at the deposition to have the --
5 I am not here to provide you with a
6 transcript.

7 MR. PARTEE: Do you have a copy for
8 the hearing officer?

9 MR. JAWGIEL: No, I don't.

10 MR. PARTEE: Okay.

11 MR. JAWGIEL: Page 8, line 1:

12 "Q "Fair enough. How many
13 hearings similar to the type of hearing
14 that we had with Skokie Valley were you
15 involved in? It doesn't have to be an EPA
16 case. Any sort of case in that similar
17 type of format with a hearing officer?

18 A When I practiced in Oklahoma, I
19 had one hearing before corporation counsel
20 which is a regulatory agency in Oklahoma."

21 BY MR. JAWGIEL:

22 Q. Did you give that answer to that
23 question?

24 A. Yes.

1 Q. Did you give any other references to
2 any other administrative hearing in your deposition?

3 A. In my deposition, the question wasn't
4 asked about administrative hearings. It was asked
5 about similar to the Pollution Control Board
6 hearing, so I did not include other administrative
7 hearings that I have done.

8 Q. Well, before this one, Mr. Cohen, did
9 you have any administrative hearings before the
10 Pollution Control Board?

11 A. No.

12 Q. So this was your first time presenting
13 a hearing before the Pollution Control Board; is
14 that correct?

15 A. Yes.

16 MR. PARTEE: Asked and answered.

17 BY MR. JAWGIEL:

18 Q. You have no experience with any
19 billing guidelines; do you sir?

20 A. Attorneys' legal fee billing
21 guidelines?

22 Q. That's correct.

23 A. No, I have no experience with that.

24 Q. You have no experience with the

1 American Bar Association guidelines; is that
2 correct?

3 A. Correct.

4 MR. PARTEE: I would object on
5 relevance grounds to the American Bar
6 Association billing guidelines.

7 BY MR. JAWGIEL:

8 Q. You are not familiar with any other --

9 HEARING OFFICER WEBB: I will allow it.

10 I will see where the line of questioning is
11 going.

12 BY MR. JAWGIEL:

13 Q. You are not familiar with any other
14 organizations' billing guidelines or time keeping
15 guidelines; is that correct?

16 A. Correct.

17 MR. PARTEE: Objection in terms of
18 vagueness in terms of what organization
19 means.

20 MR. JAWGIEL: I think he's already
21 given the answer.

22 HEARING OFFICER WEBB: I'll allow it.

23 BY MR. JAWGIEL:

24 Q. Now, the Attorney General's office

1 doesn't have any policies or procedures with respect
2 to how the attorneys are supposed to bill their
3 time; is that correct?

4 A. Not that I know of.

5 Q. You indicated that you kept time on
6 Groupwise, which was a calendar program, I believe,
7 you had your attachments here as Exhibit 101 of the
8 People's case?

9 A. Correct.

10 Q. In Exhibit 101 of the People's case,
11 do you have that in front of you?

12 A. Yes, I do.

13 Q. That's your best description of what
14 the work you performed on any given day that's
15 listed there is; is that correct?

16 A. I don't want to use the word best
17 description, but it is a description of the work
18 performed.

19 Q. So you don't believe that to be your
20 best description; is that fair enough?

21 MR. PARTEE: I would object that that
22 mischaracterizes his testimony.

23 HEARING OFFICER WEBB: Could you
24 repeat the question.

1 MR. JAWGIEL: Sure, I can repeat it.

2 BY MR. JAWGIEL:

3 Q. What we see in Exhibit 101 is not
4 necessarily the best description you could give any
5 task you perform on any given day or that did you
6 perform on any given day; is that correct?

7 A. It sounded like your question was this
8 is not the best description I could give.

9 Q. That's correct.

10 A. No, this is not the best description I
11 could give related to work I did on a given day.

12 Q. With respect to this program, it is
13 not a time slip or time keeping program; isn't that
14 correct?

15 A. Correct.

16 Q. This is a calendar program that you
17 were typing on; is that correct?

18 A. Correct.

19 Q. And you were limited with respect to
20 the space you were given with respect to your
21 description; isn't that correct?

22 A. I don't know that.

23 Q. Okay. So you don't know whether or
24 not as we look at Exhibit 101 whether you had more

1 space to fill in a clearer description of what you
2 did on any given day? Is that fair enough?

3 A. From looking at the exhibit?

4 Q. Your familiarity with the program,
5 your drafting of these documents in Exhibit 101 and
6 looking at what's before you.

7

8 MR. PARTEE: I would object that
9 that's a compound question.

10 MR. JAWGIEL: No, it isn't. It's just
11 allowing the basis.

12 HEARING OFFICER WEBB: I will allow
13 it.

14 A. I don't know that you could tell from
15 looking at these sheets, but I believe you can type
16 more information into the area in Groupwise.

17 BY MR. JAWGIEL:

18 Q. So what you did here, you thought this
19 was sufficient with respect to your time; is that
20 correct?

21 A. Yes.

22 Q. Isn't it true that you didn't give a
23 detailed description because it allowed to you save
24 time with respect to the entries that are in Exhibit

1 101?

2 A. Yes.

3 Q. Now, you've also submitted an
4 affidavit before the Board that was false; isn't
5 that true with respect to costs?

6 A. I submitted an affidavit before the
7 Board which had a mistake in it or something I could
8 not figure out.

9 Q. And it was false; is that right?

10 A. It appears to have had a mistake in
11 it. I cannot say it was false.

12 MR. JAWGIEL: This will be
13 Respondent's Exhibit 100.

14 MR. PARTEE: This is my copy?

15 MR. JAWGIEL: No.

16 MR. PARTEE: You didn't bring copies
17 for anyone?

18 MR. JAWGIEL: No, I didn't bring
19 copies for anyone.

20 MR. PARTEE: We gave you 55 boxes or
21 something. I think it's inappropriate to use
22 exhibits without copies. You have already
23 read from the transcript without even giving
24 the witness a transcript.

1 MR. JAWGIEL: I don't need to give a
2 copy of the transcript.

3 MR. PARTEE: If you are impeaching the
4 witness with a transcript.

5 HEARING OFFICER WEBB: Generally when
6 you move something as an exhibit, you would
7 make copies for the other party, but let me
8 see what it is.

9 MR. JAWGIEL: Well, you could see all
10 the exhibit stickers. It's an attachment to
11 all of their petitions, Exhibit D. It's also
12 another exhibit to a deposition, and it was
13 produced by the State. It's actually
14 something that's in the record on this
15 proceeding so you can actually take judicial
16 notice of it.

17 HEARING OFFICER WEBB: Okay, go ahead.

18 BY MR. JAWGIEL:

19 Q. Mr. Cohen, can you tell me what
20 Exhibit 100 for the respondent is?

21 A. This is a copy of an affidavit that I
22 believe was attached to the closing rebuttal
23 argument filed with the Board.

24 Q. And the amount that's claimed in that

1 affidavit is false; isn't that correct?

2 MR. PARTEE: I believe that you asked
3 and he answered that question. I also think
4 you are misstating his answer to that
5 question when you asked him the first time.

6 HEARING OFFICER WEBB: Well, you have
7 asked. It has been asked and answered. I'll
8 give you some leeway.

9 MR. JAWGIEL: I asked him if the
10 amount was false. I didn't ask him if the
11 affidavit was false.

12 A. I can't say that the amount was false
13 or that the affidavit was false, but I was unable to
14 substantiate these numbers later.

15 BY MR. JAWGIEL:

16 Q. And you signed what is respondent's
17 Exhibit 100?

18 A. Yes.

19 Q. You stated in that affidavit that the
20 response to the affidavit or attachments are true
21 and accurate under oath; isn't that correct?

22 A. Yes.

23 Q. Now, let me show you, and I believe
24 this might actually be attached to your -- I'm going

1 to show you what I am going to mark as Respondent's
2 101, which I believe to be a portion of People's
3 Exhibit 100, which is the fee petition. This is the
4 affidavit regarding the costs. I'm looking at
5 Respondent's 101. Okay, 101 is one that you
6 submitted in your fee petition; isn't that correct?

7 A. Yes.

8 Q. And that has a different amount of
9 money that you claim as costs?

10 A. Yes.

11 Q. You never moved to withdraw
12 Respondent's Exhibit 100 from the record, did you?

13 A. No, I did not.

14 Q. You never moved to correct
15 Respondent's 100 from the record, did you?

16 A. No, I did not.

17 Q. And if the respondent didn't contest
18 your submission of Respondent's 100 in your rebuttal
19 argument, you would have received these expenses?

20 MR. PARTEE: Objection, argumentative.
21 Calls for a hypothetical, and I object on
22 foundation grounds as well.

23 MR. JAWGIEL: It establishes why we
24 contested this along with other reasons. It

1 is certainly one of the reasons the
2 respondent has a right to contest this and
3 led into more litigation following this
4 matter.

5 HEARING OFFICER WEBB: I will allow
6 you to answer it.

7 A. It is possible if the Board awarded
8 our full costs based on the closing rebuttal
9 argument, that we could have received the amount
10 indicated in the closing rebuttal argument affidavit
11 as opposed to the amount in the fee petition
12 affidavit.

13 BY MR. JAWGIEL:

14 Q. And the amount of that in the closing
15 rebuttal argument was an inflated number; isn't that
16 correct?

17 A. No.

18 Q. Do you have any technical background
19 in the area of environmental science or any science
20 whatsoever before coming to the Attorney General's
21 office?

22 A. Yes.

23 Q. You had a geology background; is that
24 correct?

1 A. Yes.

2 Q. Had you ever been involved in any
3 environmental sciences other than geology?

4 A. No.

5 Q. Had you been involved in any case
6 where you presented to the hearing regarding water
7 pollution?

8 MR. PARTEE: Object to the form of the
9 question.

10 BY MR. JAWGIEL:

11 Q. Prior to the Skokie Valley case.

12 HEARING OFFICER WEBB: I'll allow it.

13 A. Can you repeat that question? I'm
14 sorry.

15 BY MR. JAWGIEL:

16 Q. Certainly. Were you involved in any
17 cases prior to the Skokie Valley case that involved
18 the issue of water pollution that you brought to the
19 hearing?

20 A. Not that I brought to hearing.

21 Q. Were you involved in any cases before
22 the Skokie Valley case that involved the issue of
23 renewal of permit that was brought to hearing?

24 A. I think so.

1 Q. Now, with respect to the renewal of
2 permit, that's basically just determining whether
3 the respondent has filed and received the requested
4 permit and on a timely basis; isn't that correct?

5 MR. PARTEE: Objection, argumentative.

6 HEARING OFFICER WEBB: I will allow
7 it.

8 A. It's not that simple to me, no.

9 BY MR. JAWGIEL:

10 Q. Oh, okay. So finding out whether or
11 not the existing permit expired and whether or not
12 the respondent renewed the permit within the time of
13 the expiration or allotted time to renew the permit,
14 that's not the issue that was involved in this case?

15 A. That's one of the issues that was
16 involved, yes.

17 Q. And I am referring to the renewal of
18 the permit issue?

19 A. Correct.

20 Q. You consider that to be a difficult
21 issue to bring to hearing?

22 MR. PARTEE: Objection, argumentative.

23 MR. JAWGIEL: He gave that opinion.

24 He was asked specifically what difficulties

1 do you have?

2 HEARING OFFICER WEBB: That's true.

3 MR. JAWGIEL: He opened the door wide
4 open.

5 HEARING OFFICER WEBB: You may answer.

6 A. Do I consider the issue of a permit
7 renewal a difficult issue?

8

9 MR. JAWGIEL: I'm going to object to
10 him asking me a question. If he doesn't
11 understand the question, he certainly should
12 ask me. I am not here to answer his
13 questions.

14 HEARING OFFICER WEBB: Would you like
15 the question repeated? Would you like to
16 have the reporter repeat it?

17 MR. JAWGIEL: Sure, we can do that.
18 No problem.

19 (Record read as
20 requested.)

21 A. Yes, I consider that to be a difficult
22 issue to bring to hearing.

23 BY MR. JAWGIEL:

24 Q. With respect to the NPDES violations,

1 particularly regarding the reporting violations
2 against Skokie Valley and the other respondent
3 that's basically determining whether they filed
4 their NPDS report on a timely basis; isn't that
5 correct?

6 A. There were several factors regarding
7 the MM and discharge monitoring report. One of the
8 issues had to do with not filing DMR's at all.

9 Q. Not filing DMR's. In going through
10 and finding whether there's gaps in the filing,
11 correct?

12 A. Yes.

13 Q. That could be done by a paralegal;
14 isn't that correct?

15 MR. PARTEE: Objection, badgering the
16 witness.

17 HEARING OFFICER WEBB: You are getting
18 argumentative, Mr. Jawgiel. Do you want to
19 give some leeway, but if you could, I'm not
20 sure where you are going.

21 MR. JAWGIEL: Very simple.

22 BY MR. JAWGIEL:

23 Q. Does it take an attorney's expertise
24 to go through the document with respect to the NPDS

1 reports and put them in a chronological order and
2 determine whether or not there's any gaps in the
3 reporting in your experience?

4 A. In my experience, no, other people
5 could determine the violation, but they could not
6 bring it to hearing.

7 Q. Fair enough. So it's simply figuring
8 out whether there was any gaps in the reporting and
9 saying that they didn't report it or didn't report
10 it in any timely manner; isn't that correct?

11 A. I don't understand that question.

12 Q. With respect to the NPDS (sic)
13 reports --

14 MR. PARTEE: NPDES report.

15 BY MR. JAWGIEL:

16 Q. The issue boils down to putting the
17 reports filed by the respondent in a chronological
18 order and figuring out if there are gaps, right?

19 MR. PARTEE: Objection, asked and
20 answered. Argumentative.

21 HEARING OFFICER WEBB: I'm going to
22 allow it.

23 A. That is the issue in determining the
24 violation, yes.

1 BY MR. JAWGIEL:

2 Q. Now, you said that there were a couple
3 of reports that were false, that were allegedly
4 filed by the respondents; is that correct?

5 A. Correct.

6 Q. And the basis of the allegations that
7 they were false boils down to that the reports were
8 identical in the amounts of the discharge; isn't
9 that correct?

10 A. That is correct.

11 Q. Now, you consider that to be a
12 difficult issue to determine by going through the
13 report to figure out whether the numbers written on
14 the reports are the same numbers as the prior month
15 or two months prior? Is that a difficult issue for
16 you?

17 A. It's not a difficult issue in terms of
18 a violation. It is a difficult issue in terms of
19 bringing it to hearing.

20 Q. The difficulty of bringing it to
21 hearing is that you have to lay a foundation of the
22 reports you receive and determine whether or not
23 some of those reports have the same numbers on it;
24 is that the difficulty in bringing it to hearing?

1 A. There's a lot more than bringing
2 something to hearing before the Pollution Control
3 Board than simply presenting the evidence at the
4 hearing.

5 Q. Now, with respect to the pollution in
6 the water, Skokie Valley cleaned up the water; did
7 they not?

8 MR. PARTEE: Objection, relevance,
9 grounds. We are not here to relitigate the
10 underlying case.

11 MR. JAWGIEL: We got into the idea of
12 complexity and violations and everything.
13 I'm just saying Skokie Valley cleaned the
14 water on its own.

15 HEARING OFFICER WEBB: Are you going
16 to relate this back to work that he did?

17 MR. JAWGIEL: Yes.

18 HEARING OFFICER WEBB: Okay. Then
19 I'll allow it.

20 A. What time frame are you talking about?

21 BY MR. JAWGIEL:

22 Q. The whole time before this case came
23 to hearing Skokie Valley had cleaned the water
24 system up on its own; did it not?

1 A. Again, that's difficult to answer with
2 a yes or no.

3 Q. Why is it difficult for you to answer
4 that yes or no?

5 A. The oil that was coming through the
6 drain tile that went through the Skokie Valley
7 property had been noticed on the Avon Fremont
8 drainage ditch, and I may have the name wrong for
9 months before the shareholders of Skokie Valley
10 Asphalt found the leak and then took responsibility
11 for it.

12 Q. That's not my question though. My
13 question to you has to do with Skokie Valley
14 actually cleaned up the water situation on its own;
15 isn't that correct?

16 A. After they took responsibility for the
17 leak, they did put booms up to control further
18 spillage, but the amount of oil that had gone down
19 that creek and into Third Lake or Grayslake before
20 that was not addressed.

21 Q. You don't know what that is, though?

22 MR. PARTEE: Objection, now we are
23 getting --

24 HEARING OFFICER WEBB: This is getting

1 way off track. We are running way late. We
2 need to get back on track to any questions
3 you have regarding work that was done. I
4 don't want to talk about the results of the
5 enforcement case.

6 MR. JAWGIEL: Well you certainly
7 allowed them to go into the results and
8 whether or not there was an award entered and
9 what the benefit was to the State and things
10 of that nature. I certainly think that I
11 should be able to do the same in establishing
12 that the respondent was the one who flipped
13 the bill to clean up this water system on its
14 own.

15 MR. PARTEE: The respondent's bill is
16 not at issue. It's the complainant's bill.

17 HEARING OFFICER WEBB: Well, that's
18 true. I'll give you a little leeway, but I
19 want to move on quickly this line of
20 questioning.

21 MR. JAWGIEL: I'm not rushing my line
22 of questioning because we are running late.
23 The People took a methodical almost two and a
24 half hours presenting this witness, and we

1 started this hearing an hour late.

2 HEARING OFFICER WEBB: Well, then I'm
3 going to sustain his objection then.

4 MR. JAWGIEL: Fair enough. If you are
5 going to sustain his objection because we
6 don't have enough time, that's fine.

7 MR. PARTEE: I think you are
8 misstating her ruling now.

9 HEARING OFFICER WEBB: My ruling is as
10 to relevance, but please continue.

11 BY MR. JAWGIEL:

12 Q. Now, when you prepared your fee
13 petition, cost fee petition in this case, and you
14 charged, I believe, September 9, 4 hours cost/fee
15 petition; September 15, 2004, cost/fee petition 2.5
16 hours --

17 MR. PARTEE: For the record, are we on
18 People's 100?

19 MR. JAWGIEL: Yes.

20 BY MR. JAWGIEL:

21 Q. As a matter of fact all of the entries
22 that we have in Respondent's Exhibit 100 in the
23 affidavit attached to the fee petition which I
24 believe is Exhibit A; is that correct?

1 A. Yes.

2 Q. You determined these entries by going
3 through your entire calendar from May 29, 2002,
4 through and including September of 2004; is that
5 right?

6 A. Yes.

7 Q. At that point you didn't realize that
8 you could actually print out from the calendar
9 program; isn't that correct?

10 A. I think I realized I could print out
11 single sheets, but I did not realize I could print
12 them out in bulk.

13 Q. Okay. So what you actually did then,
14 when you determined your time of about 6-1/2 hours
15 cumulatively to come up with this fee petition is
16 that you actually took the time to write out by hand
17 by going from day-to-day in your calendar program
18 for about four years; is that right -- two years.

19 A. I wouldn't say day-to-day, but I did
20 go through for through each entry for Skokie Valley
21 Asphalt to tabulate this.

22 Q. Now, what we see in your affidavit
23 attached to the fee petition and what is in People's
24 Exhibit 101, the text is not the same. You made

1 some changes; isn't that correct?

2 A. It's very possible, yes.

3 Q. So, for example, on the first entry
4 you have here, from May 29, 2002, if we look at
5 People's 101, you have "Brief meeting with Kelly.
6 Call to David O'Neill." You see that?

7 A. Yes.

8 Q. But if we look at your fee petition on
9 Exhibit A of the fee petition, the first entry for
10 May 29, 2002, you had, "Meeting Re: File transfer.
11 Call to David O'Neill."

12 A. Correct.

13 Q. And you had said, "Made some changes
14 and modifications."

15 A. Correct.

16 Q. Which one of these two is the best
17 representative of the time that you actually spent?

18 A. They are both equally representative
19 of the time I actually spent.

20 Q. Okay. Then why did you make the
21 change and took Kelly's name out of the meeting
22 part?

23 MR. PARTEE: I think that's objection
24 asked and answered.

1 HEARING OFFICER WEBB: You can answer
2 it.

3 A. I don't know.

4 BY MR. JAWGIEL:

5 Q. Now, you took over and you met with
6 Kelly because Kelly was leaving the Attorney
7 General's office; is that correct?

8 A. Yes.

9 Q. And you needed to get familiar with
10 this case because you hadn't been on the case
11 before; is that right?

12 A. Yes.

13 Q. So these entries with respect to
14 meeting with Kelly, substitution of attorneys, all
15 these charges that we see, review motion to compel,
16 case status hearing, file review, file review,
17 that's because you needed to get up to speed in the
18 case and get familiar with the case?

19 MR. PARTEE: Objection. Which time
20 are you specifically referring to?

21 MR. JAWGIEL: May 29, 2002; June 11,
22 2002; June 18, 2002; June 19, 2002; July 18,
23 2002.

24 BY MR. JAWGIEL:

1 Q. Isn't that right?

2 A. Yes.

3 Q. So what you are saying is that the
4 respondent should be responsible because the
5 Attorney General's office has a change in personnel
6 in order for the Attorney General, in order to get
7 its attorney familiar with the case; is that
8 correct?

9 A. I'm not saying that. You said that
10 for me. That's not what I said.

11 Q. Now, how long did the meeting with
12 Kelly take as opposed to the phone call with David
13 O'Neill?

14 A. I don't -- well, Kelly was, I believe
15 Kelly was present for the meeting, and the call to
16 David O'Neill, I had never -- I don't believe I've
17 talked to David before this call. I think we called
18 together.

19 Q. Okay. So was the meeting an hour?

20 A. The meeting was at least an hour, yes.

21 Q. And what was discussed?

22 A. I would assume the transfer memo.

23 Q. I'm going to object to any assumption.
24 I want to know what specifically was discussed, not

1 assumption, not speculation. What was discussed?

2 HEARING OFFICER WEBB: Would you like
3 to rephrase your answer, Mr. Cohen.

4 A. I don't remember specifically.

5 BY MR. JAWGIEL:

6 Q. Now, we go down to the next entry,
7 June 11, 2002. It says, "substitution," I assume
8 SUP -- I'm sorry, "SUBST" is substitution; is that
9 correct? I'm talking about June 11, 2002, the entry
10 there; do you see it?

11 A. Yes.

12 Q. What does SUBST period abbreviate?

13 A. Probably substitution of attorney.

14 Q. "Agreed motion to cancel and
15 reschedule." How long did it take you to do the
16 substitution of attorney?

17 A. I don't recall.

18 Q. And how long did it take you to do the
19 motion or agreed motion and cancel to reschedule?

20 A. I don't recall.

21 Q. Was there any research done for the
22 substitution of attorney?

23 A. Probably.

24 Q. Do you know?

1 A. I believe this was my first
2 substitution attorney before the Pollution Control
3 Board, so I believe I probably looked up the rules
4 related to that.

5 Q. Okay. So because of your inexperience
6 with the Pollution Control Board, you had to do some
7 research on a substitution of attorney; is that
8 correct?

9 A. Probably.

10 Q. And you billed your time for the
11 substitution of attorney and the research?

12 A. Yes.

13 Q. Now, did you type your own
14 substitution of attorney?

15 A. Yes.

16 Q. Did you break that time out of the
17 time that you spent preparing the substitution for
18 attorney or is it incorporated in what you claim is
19 your time on that?

20 A. It's incorporated in here.

21 Q. So you didn't break out the clerical
22 experience of typing a document from the attorneys'
23 time and actually drafting a document; is that
24 correct?

1 A. I don't know of a difference between
2 clerical versus attorney. I do almost all of my own
3 typing.

4 Q. Okay. So all the documents where it
5 requires typing, you didn't break out clerical from
6 attorneys' work in the entire affidavit that we have
7 here; is that correct?

8 MR. PARTEE: I would object on
9 foundation grounds because it assumes facts
10 not in evidence, because he is assuming that
11 there would have otherwise have been a
12 clerical expense.

13 MR. JAWGIEL: Clerical expense is an
14 overhead and not reasonable fees in a
15 petition. It's well established in the
16 Appellate Court.

17 MR. PARTEE: Don't know what's so
18 funny. I guess it's unclear for me.

19 MR. JAWGIEL: Fair enough. We can go
20 through each and every entry. I'd be happy
21 to.

22 MR. PARTEE: I am not going for that.

23 HEARING OFFICER WEBB: Okay, regarding
24 what we are assuming clerical expense is.

1 MR. PARTEE: There's been no testimony
2 that he used a secretary such that he could
3 break out a clerical expense. I assume you
4 have to have a secretary is what he means by
5 clerical expense, but that's not explained
6 either.

7 HEARING OFFICER WEBB: Would you like
8 to lay a foundation?

9 MR. JAWGIEL: Certainly.

10 BY MR. JAWGIEL:

11 Q. Did the Attorney General's office have
12 secretaries who were, from the time you were
13 involved in this case on May 29, 2002 until the
14 completion of this affidavit on September 15, 2004?

15 A. Yes.

16 Q. Did those secretaries type documents?

17 A. Some do.

18 Q. Did you have paralegals that would
19 prepare motions or do research?

20 A. No.

21 Q. I thought there was some testimony
22 from you that you drafted the affidavit, which is
23 now Respondent's Exhibit 100, that there was an
24 assistant to the paralegal that put the numbers

1 together?

2 A. I don't believe that was at this
3 hearing, but we did discuss that at the deposition.

4 Q. I see. So there were assistants to
5 the paralegals, but you didn't have paralegals?

6 A. No, the office has paralegals.

7 Q. And what's their function?

8 A. Mostly administrative, not related to
9 individual cases.

10 Q. Well, other than mostly
11 administrative, what else do they do?

12 A. Monthly reports, ordering files, help
13 make up exhibit books for trial.

14 Q. So they help with your trial prep?

15 A. They helped prepare exhibit books when
16 it's time for trial. I'm sure they have lots of
17 other functions, but those are the ones I know of.

18 Q. Okay. So did you ask anybody at the
19 Attorney General's office whether they had a motion
20 for substitution of attorney that had been presented
21 before the Illinois Pollution Control Board?

22 A. Probably.

23 Q. And did you use that prior motion as a
24 format for you to prepare your motion?

1 A. Probably.

2 Q. So you actually had a motion for
3 substitution of attorneys most likely in front of
4 you when you drafted your motion; is that correct?

5 A. It's very likely that I did.

6 Q. I see. How much time did it take for
7 you to do the agreed motion to cancel and
8 reschedule?

9 A. I don't know.

10 Q. With respect to the entry on
11 June 11, 2002, which is an agreed motion to cancel
12 and reschedule, you typed that motion yourself?

13 A. Yes.

14 Q. Did you reduce the time that you
15 recorded for the time that it took you to type the
16 document?

17 A. No.

18 Q. You characterized yourself as being an
19 extremely poor typist; is that correct?

20 A. No.

21 Q. How would you characterize yourself as
22 a typist?

23 A. Not the fastest in the world but okay.

24 Q. Sir, isn't it true that you believe

1 you can write faster than you can type?

2 A. When you asked me that in deposition I
3 thought so, but since then I've been comparing my
4 handwriting to my typing, and I don't know that I
5 would say that any more.

6 Q. So at your deposition you told us that
7 you could write faster than you typed, but since
8 then you have decided that is not true?

9 MR. PARTEE: Objection. That's not an
10 improper impeachment at all.

11 MR. JAWGIEL: I'm just characterizing
12 what he said.

13 HEARING OFFICER WEBB: I'll allow it.

14 A. Yes, I think now that I've watched
15 myself handwrite, write some things, compared to my
16 typing speed, I don't think my handwriting is faster
17 than my typing speed.

18 Q. And that's today, not necessarily back
19 in on May 29, 2002; is that correct?

20 A. Correct.

21 Q. Is it true that back in, let's say
22 June 11, 2002, your handwriting was faster than your
23 typing?

24 A. I don't know.

1 Q. On June 18, 2002, can you read that
2 entry to us and what it means?

3 A. It looks like "reviewed
4 motion/complaint and case status hearing."

5 Q. How long did the case status hearing
6 take?

7 A. They usually don't take long. I don't
8 know exactly how long.

9 Q. Fifteen minutes?

10 A. Could be.

11 Q. Isn't your entry for that an hour; is
12 that right?

13 A. Yes.

14 Q. It says review motion. What motion
15 did you review?

16 A. I don't remember.

17 Q. How long did it take you to review it?

18 A. I don't remember.

19 Q. And in your review of the motion, did
20 you just basically read it; is that correct?

21 A. Probably. It was probably review the
22 motion to cancel and reschedule, but I'm not sure.

23 Q. That's a motion you drafted seven days
24 earlier?

1 A. Yes.

2 Q. You reviewed it?

3 A. I reviewed a motion, yes.

4 Q. But you don't know which one?

5 A. I'm not sure.

6 Q. Is there any way for us to figure it
7 out?

8 A. Not that I know of.

9 Q. Now, would you be of the opinion that,
10 you know, if you worked less than an hour on the
11 file, you didn't put it in your billing statement,
12 that's not necessarily true because if you did
13 multiple tasks, you just lumped them all together in
14 a block bill and then you would record your time; is
15 that correct?

16 MR. PARTEE: I would object that you
17 are misstating his earlier testimony. That
18 was not an opinion. That was his factual
19 testimony.

20 HEARING OFFICER WEBB: Would you
21 repeat the question?

22 MR. JAWGIEL: I can. I could rephrase
23 it if it would help.

24 HEARING OFFICER WEBB: Would you

1 rephrase it.

2 BY MR. JAWGIEL:

3 Q. You had given your statement earlier
4 in your testimony that you would not bill for
5 anything less than an hour on the Skokie Valley
6 case, is that right, on any given day?

7 A. Yes.

8 Q. But if something took 15 minutes, like
9 a case status hearing a review of a motion, you
10 would bill an hour; is that right?

11 A. If all the work that I did that day
12 all equaled more than an hour, it would be billed.

13 Q. Do you know how many pages you
14 reviewed when you reviewed the motion on June 18,
15 2002?

16 A. No.

17 Q. On June 19, 2002 and July 18, 2002 you
18 have "filed review"?

19 A. Yes.

20 Q. Can you specifically tell me what you
21 reviewed on June 19, 2002?

22 A. No.

23 Q. The purpose of your file review at
24 that time was for you to get acquainted with the

1 file because Kelly was leaving?

2 A. Yes.

3 Q. The same is true, isn't it, with
4 respect to July 18, 2002, you don't know what you
5 reviewed specifically on that day; is that correct?

6 A. Correct.

7 Q. And the purpose for that review was
8 because Kelly was leaving as well and you needed to
9 become acquainted with the file?

10 A. At this point the file was assigned to
11 me so that's why I was reviewing it.

12 Q. Because you needed to become
13 acquainted with it?

14 A. Yes.

15 Q. Now, on July 19, 2002, it says, "PCB
16 status hearing." What does that mean?

17 A. Pollution Control Board status
18 hearing.

19 Q. How long did that take?

20 A. I don't know.

21 Q. And then it says, "draft amended
22 complaint." Did you use the prior complaint to
23 draft the amended complaint?

24 A. Yes.

1 Q. And what changes did you make from the
2 prior complaint to this draft amended complaint?

3 A. I believe this is when the complaint
4 was changed to add the Frederick brothers
5 individually.

6 Q. So what you did was you took the
7 complaint that was existing and you added two
8 respondents to it; is that correct?

9 MR. PARTEE: Objection, asked and
10 answered.

11 HEARING OFFICER WEBB: You can answer.

12 A. Yes.

13 BY MR. JAWGIEL:

14 Q. And how long did it take you to do
15 that?

16 A. I don't recall specifically.

17 Q. Did you type that yourself?

18 A. I don't remember.

19 Q. Did you have to draft the entire
20 complaint over or was that already in the system for
21 the Attorney General so that you could modify the
22 existing complaint?

23 MR. PARTEE: Object to the form.

24 A. I don't recall the original complaint

1 being on the word processor because the case was so
2 old. It could have been, but I don't recall.

3 Q. Well, I'm not necessarily referring to
4 the original complaint. I'm referring to the
5 complaint before you drafted the amended complaint.
6 Was that the original complaint?

7 MR. PARTEE: Object to the form.

8 HEARING OFFICER WEBB: Overruled.

9 A. There might have been an amended
10 complaint before this one. I think the water
11 pollution might have been added at some point, but
12 again, I think that was quite a while before so I
13 just don't remember whether this was, whether the
14 current complaint at the time was accessible to me
15 on word processor.

16 BY MR. JAWGIEL:

17 Q. Now, drafting the amended complaint,
18 was there anything with respect to your expertise as
19 an attorney that was required in order to draft the
20 amended complaint?

21 A. Yes.

22 Q. And what expertise did you have in
23 order to actually draft the amended complaint? Not
24 deciding to change the complaint but actually

1 drafting it?

2 A. The individual liability issue is
3 somewhat complicated and tricky, and I recall seeing
4 documents with the Fredericks names on them that I
5 might have used to formulate the decision to add
6 them individually.

7 Q. Apparently. And I'm asking that your
8 answer be struck as nonresponsive.

9 My question is not the decision to
10 add the Fredericks. My question to you is, in the
11 actual drafting of the amended complaint, the actual
12 physical drafting of the document, what expertise as
13 an attorney did you need?

14 MR. PARTEE: Object to the form of the
15 question.

16 HEARING OFFICER WEBB: I, myself,
17 don't really understand what you are getting
18 at either.

19 BY MR. JAWGIEL:

20 Q. We will take a step back. At some
21 point in time you reviewed the file, you then make a
22 decision as an attorney to amend the complaint to
23 add the Frederick brothers; is that a fair
24 characterization of your decision process at this

1 point?

2 A. Yes.

3 MR. PARTEE: I would object on
4 relevance grounds and where we're going with
5 all this.

6 MR. JAWGIEL: This is right on point
7 with respect to the entries that they are
8 submitting for payment of bills that they
9 want us to reimburse them for. So I'm trying
10 to flush out what he did on any given day
11 that he is claiming that we owe him four
12 hours of attorney work for.

13 HEARING OFFICER WEBB: How many are we
14 going through?

15 MR. JAWGIEL: Pretty much all of them.

16 HEARING OFFICER WEBB: On this page?

17 MR. JAWGIEL: I think we can lump some
18 of them when we get to the closing argument.
19 Trial prep, those I could put them together
20 certainly.

21 HEARING OFFICER WEBB: I would
22 encourage you to summarize.

23 MR. JAWGIEL: As we get through some
24 of these other ones and we get into these

1 blocks, yes, I certainly can.

2 HEARING OFFICER WEBB: Let's go off
3 the record a moment.

4 (Short recess taken.)

5 HEARING OFFICER WEBB: We have just
6 had a discussion off the record regarding
7 this hearing. It is 3:00 o'clock. The
8 hearing was scheduled as a half a day
9 hearing. We still have quite a bit of
10 testimony with respect to Mr. Cohen if
11 Mr. Jawgiel plans to go through all of these
12 expenditures, and then we still have two
13 other witnesses. We have discussed possibly
14 stipulating to some testimony. We'll try to
15 get through as much as we can. I don't know
16 if this hearing will be continued or not. I
17 have not decided that at this point, but our
18 court reporter only has two hours worth of
19 supplies left with us, and I would like to
20 note for the record that I did set this
21 hearing, both parties were present when I set
22 this hearing, and I was advised that this
23 could be done in one afternoon and honestly
24 should be done. There's no reason that it

1 shouldn't be done in one half afternoon, but
2 having that said that, Mr. Jawgiel, please
3 continue your cross-examination of Mr. Cohen.
4 Please summarize where you can.

5 MR. JAWGIEL: We will stipulate that
6 we will not use the reporter's supplies as
7 any sort of issue.

8 HEARING OFFICER WEBB: I apologize for
9 referencing the reporter. Our decision to
10 continue or not with this hearing is in no
11 relation to her. Please continue.

12 BY MR. JAWGIEL:

13 Q. Getting back to the July 19, 2002
14 entry, does drafting the amended complaint include
15 your decision making process to actually add the
16 Fredericks as a respondent or was that done during
17 the file review in the prior entries?

18 A. It was probably both.

19 Q. Both. Why did it take you two times
20 to determine to do that?

21 A. Adding individual liability in an
22 environmental case is a fairly complicated issue,
23 and it requires a lot of thought, at least for me.

24 Q. How much time did it take in the

1 section for draft amended complaint for you to
2 determine to add the Fredericks individually?

3 A. Well, if at the point I started
4 drafting, I probably made the decision, otherwise I
5 wouldn't have started drafting the complaint.

6 Q. Okay. And how much time did it take
7 you to type the draft amended complaint?

8 A. I don't know specifically.

9 Q. It says prep on July 26, 2002, it says
10 "prep amended complaint for filing"?

11 A. Correct.

12 Q. And you charged two hours for that?

13 A. Yes.

14 Q. What sort of attorneys' expertise is
15 needed in order to prepare or prep an amended
16 complaint for filing?

17 A. Notices, certificates of service,
18 arranging for the document to be filed.

19 Q. Is that a clerical task?

20 A. What?

21 Q. Prepping a complaint for filing.

22 MR. PARTEE: Objection, asked and
23 answered.

24 HEARING OFFICER WEBB: I think it was,

1 but go ahead.

2 A. Not for the Attorney General's office.

3 A lot of that work is done by the attorneys.

4 BY MR. JAWGIEL:

5 Q. But you didn't go to law school to
6 learn how to prepare an amended complaint for
7 filing?

8 MR. PARTEE: Objection, argumentative.

9 HEARING OFFICER WEBB: Sustained.

10 BY MR. JAWGIEL:

11 Q. Now, the notice of filing, that's a
12 form that the Attorney General's office has in their
13 computer system, word processing system?

14 A. Some assistant Attorney General's have
15 that form in their word processing system.

16 Q. Did you?

17 A. At that point, I don't think so.

18 Q. So you had to actually draft it, type
19 it out long hand, so to speak, the entire document?

20 A. Probably.

21 Q. And that's why you charged two hours
22 for it; is that correct?

23 A. No.

24 Q. Because you had to type it?

1 A. No. I charged two hours on July 26,
2 because I spent two hours or more working on the
3 Skokie Valley Asphalt case.

4 Q. What else did you do other than
5 prepare the amended complaint for filing on July 26,
6 2002?

7 A. It looks like that's all I did.

8 Q. All right. "Correct notice of filing
9 on July 29, 2002, for one hour." What did you do in
10 order to correct the notice of filing?

11 A. There was a -- I don't know if it was
12 new or not, but there was a Board rule or regulation
13 that said you had to have specific language in
14 either in the notice of filing or in the document
15 that was sent to the respondent's. I don't remember
16 the exact language right now, but it was not in the
17 original notice of filing that was probably filed on
18 July 26th either. We caught the mistake or the
19 Board caught the mistake and told us that and I
20 corrected it.

21 Q. Okay. So basically you, when you
22 prepared the amended complaint for filing on July
23 26, 2002, you made a mistake in the notice of
24 filing?

1 A. Correct.

2 Q. And then you took another hour to
3 correct the notice of filing?

4 A. Correct.

5 Q. And you believe that that's a charge
6 that should be paid for by Skokie Valley because you
7 submitted it in your affidavit; is that correct?

8 A. I believe it indicates work that I did
9 on July 29th related to Skokie Valley Asphalt case.

10 Q. Now, with respect to what we have here
11 in your exhibit, Exhibit A to the petition for fees,
12 this is an estimate of your time; isn't that
13 correct?

14 A. What do you mean by estimate?

15 Q. Well, you say in your petition on
16 numerous occasions that particularly when you are
17 referencing the exhibits, that these are estimates
18 of the time spent by the attorneys. For example --

19 MR. PARTEE: Are we on People's 100?

20 MR. JAWGIEL: People's 100, page two.
21 "Reasonable attorneys' fee and conservative
22 estimate of AAG Cohen spent prosecuting this
23 case is five."

24 MR. PARTEE: I'd like to point out

1 that for the record that he misread the
2 sentence.

3 A. I see the sentence, yes.

4 BY MR. JAWGIEL:

5 Q. They are estimates, is that right?

6 A. Yes.

7 Q. Mr. Murphy's bill, those are estimates
8 as well?

9 A. I don't want to answer for him.

10 Q. Well, you wrote it down here, did you
11 not. Further down in that paragraph "a conservative
12 estimate of time AAG Murphy spent," didn't you write
13 that?

14 MR. PARTEE: Would you point out that
15 it's footnoted with reference to Mr. Murphy's
16 affidavit?

17 MR. JAWGIEL: It doesn't matter. This
18 is an estimate. Mr. Cohen drafted this
19 document saying this is an estimate of
20 Mr. Murphy's time.

21 BY MR. JAWGIEL:

22 Q. Isn't that correct?

23 A. I drafted the document, yes.

24 Q. And you said it was an estimate of

1 Mr. Murphy's time?

2 A. Yes.

3 MR. PARTEE: Objection, asked and
4 answered.

5 A. Yes.

6 BY MR. JAWGIEL:

7 Q. You signed this document as we have
8 previously established?

9 A. Yes.

10 Q. So these aren't actual times spent,
11 these are estimates?

12 MR. PARTEE: Objection, asked and
13 answered.

14 MR. JAWGIEL: Isn't that correct?

15 HEARING OFFICER WEBB: Sustained.

16 THE WITNESS: I'm not hearing the
17 rulings, so.

18 HEARING OFFICER WEBB: Yes, it has
19 been asked and answered. In fact, I did just
20 think about a solution. I think we can do
21 this by representative example. I know you
22 don't want to do it by representative
23 example, but I think we can pull out, you
24 know, maybe ten more of the ones that you

1 deem most egregious to move things.

2 MR. JAWGIEL: I am going to make an
3 offer of proof if I am limited in my ability
4 for cross-examination of the witness. For
5 527 hours of attorney's times that he is
6 claiming at \$150 an hour because this Board
7 thinks it's expeditious for me to pull out
8 examples. I don't believe the Appellate
9 Court will allow me to get this into evidence
10 this way by saying anything beyond the ten
11 examples that you've given, because the board
12 has not allowed you to do more than that is
13 what we are going to make our decision on.
14 So I will have to make an offer of proof if
15 I'm limited in that capacity, and my offer of
16 proof will basically indicate that you are
17 not allowing us to present evidence that
18 Mr. Cohen who said in his deposition very
19 clearly, he can't tell us what he
20 specifically did on any given day, he can't
21 tell us how to divide the clerical aspects,
22 the typing of his documents from his attorney
23 time, he can't tell us any of that. But if
24 you want to cut me off at the knees, that's

1 fine.

2 HEARING OFFICER WEBB: I think I'm
3 going to have to. I will allow you to make
4 your offer of proof.

5 MR. JAWGIEL: I'll make an offer of
6 proof at this time, and I'll have to ask
7 Mr. Cohen --

8 THE WITNESS: Could we go off the
9 record for a moment.

10 MR. JAWGIEL: Certainly if the People
11 want to make stipulation as to the facts.

12 MR. PARTEE: All right. Okay.

13 MR. JAWGIEL: Or allow his discovery
14 deposition to come into evidence.

15 (Discussion had off the
16 record.)

17 HEARING OFFICER WEBB: We have just
18 had a discussion off the record regarding
19 again the time constraints that we're under
20 today, and Mr. Jawgiel is going to make an
21 offer of proof for the line items that we're
22 just not going to have time to go through
23 piece by piece. The People are offering to
24 stipulate as to --

1 MR. PARTEE: We will stipulate that
2 Mr. Cohen did all of his typing, but we want
3 to make it clear that it's not as if
4 Mr. Cohen handwrote his pleadings and then
5 typed them afterwards. The initial draft of
6 Mr. Cohen's pleadings was done while he was
7 sitting at his computer. But to the extent
8 that constitutes his own typing, we would
9 stipulate to that with respect to all of his
10 time entries with the hope that that moves
11 this forward.

12 HEARING OFFICER WEBB: Mr. Jawgiel, do
13 you have any further cross not related to
14 this particular line of questioning?

15 MR. JAWGIEL: Yes, but I don't know
16 how we are going to determine in which of
17 these entries he actually performed typing
18 until we go through them. I don't know how
19 the Board is going to say, hey, look I see
20 this attachment, Exhibit A, to his petition
21 for attorneys' fees, and I'm going to have to
22 guess which one of these he actually did
23 typing because I don't know what he did on
24 any given day.

1 MR. PARTEE: For the record, there has
2 been two years of discovery on this case,
3 including a three hour discovery deposition
4 of Mr. Cohen.

5 MR. JAWGIEL: Mr. Cohen keeps
6 mentioning a discovery deposition. I don't
7 know what relevance a discovery deposition
8 has to a hearing, other than to impeach him.

9 MR. PARTEE: The point is you are not
10 guessing here. You have had the opportunity.

11 MR. JAWGIEL: We are not guessing.
12 This is evidence that comes into a hearing.
13 The discovery deposition is not necessarily
14 evidence.

15 MR. PARTEE: You said guessing. Those
16 aren't my words. You said guessing.

17 MR. JAWGIEL: I said the Board will
18 have to guess whether they get the evidence
19 if you listen to what I say, I will
20 appreciate.

21 HEARING OFFICER WEBB: Obviously, I
22 don't think the whole typing issue is as
23 relevant as you do.

24 MR. JAWGIEL: Well, the Appellate

1 Court says very clear that the attorney can't
2 charge at all for clerical tasks.

3 MR. PARTEE: As a matter of civility,
4 would you not interrupt the hearing officer
5 and me now?

6 HEARING OFFICER WEBB: Gentlemen, it's
7 okay. Please resume your cross-examination.

8 BY MR. JAWGIEL:

9 Q. Mr. Cohen, on August 20, 2002, you
10 wrote down "file review." What did you specifically
11 review that day?

12 A. I don't recall.

13 Q. How is it different than what you
14 reviewed on June 19, 2002 or July 18, 2002?

15 A. How is the entry on my --

16 Q. So your actual review that day?

17 A. I don't recall how it was different.

18 Q. Did you type any documents on August
19 20, 2002?

20 A. I doubt it.

21 Q. By the way, in May of 2002, let's say
22 in the year of 2002, what was your typing speed?

23 A. I have no idea.

24 Q. Can you give us an estimate?

1 A. No.

2 Q. On September 25, 2002 it says "Rev mo
3 to strike complaint." Is that right?

4 A. Yes.

5 Q. What does that mean?

6 A. Reviewed motion to strike complaint.

7 Q. And in the review of the motion to
8 strike the complaint, you basically read the motion;
9 is that correct?

10 A. Yes.

11 Q. Did you do anything else?

12 A. I don't recall.

13 Q. And how long of a motion was this?

14 A. I don't recall.

15 Q. And it took you an hour to review, to
16 read this motion?

17 A. I don't recall.

18 MR. PARTEE: Objection, asked and
19 answered.

20 HEARING OFFICER WEBB: Sustained.

21 BY MR. JAWGIEL:

22 Q. Your affidavit which is attached as
23 Exhibit A does not have a fee amount on any of the
24 entries; is that correct? You don't have the amount

1 that you are charging in your affidavit which is
2 Exhibit A? You have the amount of time, you have
3 the date, and you have a description, but you don't
4 have the actual fee?

5 A. Correct.

6 Q. All right. Now, on October 1, 2002,
7 what did you do?

8 MR. PARTEE: I would object that the
9 hearing officer has already decided we are
10 not going to go through every one of these
11 entries.

12 HEARING OFFICER WEBB: Are you still
13 going through them line by line because if
14 so, I mean, that sort of defeats the offer of
15 proof.

16 MR. JAWGIEL: I didn't accept their
17 offer of proof.

18 MR. PARTEE: I didn't make an offer of
19 proof.

20 MR. JAWGIEL: I didn't make an offer
21 of proof. I am doing the offer of proof. In
22 order for me to establish the offer of proof,
23 I have to go through line by line what he
24 would testify to if allowed to testify at the

1 hearing.

2 HEARING OFFICER WEBB: The whole point
3 of doing the offer of proof was to save time.
4 I mean, if you are going to go through it
5 line by line, I might as well allow the
6 testimony. It's not that the testimony was
7 inadmissible per se, the whole point is I
8 want you to pick some examples that you feel
9 are egregious.

10 MR. JAWGIEL: They are all egregious.
11 That's the whole point. There's not a single
12 entry in here that I can't say is not
13 egregious for one reason or another.

14 MR. PARTEE: Then let's move on.

15 MR. JAWGIEL: That's not the
16 testimony. I have got to bring it out in
17 testimony.

18 MR. PARTEE: Because you are not a
19 witness.

20 MR. JAWGIEL: That's right. I'm not a
21 witness. Very good, Mike.

22 HEARING OFFICER WEBB: Then I might as
23 well allow it. Then none of this testimony
24 regarding line items has been an offer of

1 proof. This is admissible testimony. But it
2 may be time that comes off Ms. Stonich's
3 time.

4 MR. PARTEE: I think counsel is trying
5 to make a run through your around your
6 earlier ruling that he is not going to do it,
7 but now he says he is going to do it in the
8 context of an offer of proof, which I think
9 is contrary to your ruling, and it's
10 certainly not productive.

11 HEARING OFFICER WEBB: Well, it is
12 contrary to the ruling, but I asked you if
13 you had any cross-examination that was not
14 related to these line items.

15 MR. JAWGIEL: Yes, I do. Certainly.
16 I am adamant that I am not going to be cut
17 off at the knees with respect to this. This
18 is the cornerstone witness of the State for a
19 fee position of a six figure amount that they
20 are claiming attorneys' fees for.

21 HEARING OFFICER WEBB: Then I will
22 allow you to go through it, but this may
23 affect your time at the end of the hearing.

24 MR. JAWGIEL: This amount is almost as

1 as much as a penalty, and this is not a whole
2 day. We started at 1:00 o'clock today. This
3 is not a full day hearing like we did last
4 time which lasted two days.

5 HEARING OFFICER WEBB: That's right
6 because you didn't ask for a whole day
7 hearing.

8 MR. JAWGIEL: The bottom line is this
9 hearing started an hour late, and I am being
10 penalized because we started late.

11 HEARING OFFICER WEBB: You may be
12 penalized. Go ahead and continue.

13 MR. JAWGIEL: I would like the record
14 to reflect that we are, instead of letting me
15 go through my testimony, we are wasting a lot
16 of time with trying to figure out what we are
17 going to do.

18 MR. PARTEE: The record should reflect
19 that Mr. Jawgiel is raising his voice every
20 time he speaks.

21 HEARING OFFICER WEBB: Mr. Jawgiel, I
22 am going to give you a warning. You need to
23 tone it down a notch, please.

24 MR. JAWGIEL: I will.

1 HEARING OFFICER WEBB: You may
2 continue.

3 THE WITNESS: Before you continue, may
4 I borrow a plain piece of paper. I'm having
5 trouble lining up these lines on this
6 exhibit.

7 BY MR. JAWGIEL:

8 Q. Mr. Cohen, with respect to your
9 entries regarding any work you did on discovery in
10 Exhibit A, isn't it true that you specifically can't
11 tell us what you reviewed on any given day?

12 A. Yes.

13 Q. And isn't it true with respect to your
14 entries on trial preparation where you put trial
15 prep, and I take that to mean trial preparation; is
16 that correct?

17 A. Correct.

18 Q. That you cannot tell us with any
19 specificity what you actually did specifically on
20 those days?

21 A. Correct.

22 Q. Same thing holds true with respect to
23 your entries regarding closing arguments. We see
24 entries, numerous entries regarding closing

1 arguments. You cannot state specifically what you
2 did on the dates that you took closing arguments; is
3 that correct?

4 A. At this time I cannot tell you what I
5 did approximately three years ago in relation to the
6 closing argument, so yes.

7 Q. And you can't tell us what you did
8 after reviewing your affidavit which you
9 specifically did on that day; isn't that correct?

10 A. Yes, the affidavit does not help in
11 defining what I did specifically on a day.

12 Q. Okay. And that would hold true to all
13 the entries, the affidavit does not specifically
14 tell you what you did on any given day?

15 A. The affidavit?

16 Q. Yes, the attachment.

17 A. The spreadsheet?

18 Q. You are calling the attachment to
19 Exhibit A the spreadsheet to the affidavit? I just
20 have it as Exhibit A, and there is an attachment of
21 entries, dates, description and time?

22 A. Well, with the time sheets attached to
23 the affidavit, as Exhibit A to People's Exhibit 100,
24 I can tell you how much time I spent working on the

1 Skokie Valley Asphalt case that day and generally
2 the type of work I did that day.

3 Q. Now, when you say generally with
4 respect to the closing rebuttal argument entries,
5 you can't tell us what you specifically did on those
6 days?

7 MR. PARTEE: Objection, asked and
8 answered.

9 BY MR. JAWGIEL:

10 Q. Is that correct?

11 MR. JAWGIEL: That is not asked and
12 answered. I never asked him about closing
13 rebuttal argument.

14 HEARING OFFICER WEBB: I'll allow it.

15 A. I cannot tell you with specificity
16 what part of the closing rebuttal argument I worked
17 on any given day.

18 BY MR. JAWGIEL:

19 Q. And wherever we see draft of motion or
20 prepare a motion or prepare discovery or prepare a
21 document, we can assume that you did the typing; is
22 that correct?

23 A. Yes.

24 Q. And the time entries that are on the

1 side include the time it took you to type; is that
2 correct?

3 A. Yes.

4 Q. Now, with respect to the \$150 an hour,
5 you indicated that you found a case that indicated
6 that \$150 an hour would be acceptable, is that
7 correct, or something along those lines, you said it
8 more eloquently than I asked the question.

9 A. Yes, I found a Pollution Control Board
10 case that indicated the \$150 an hourly rate was a
11 reasonable rate.

12 Q. What was the issue in that case?

13 MR. PARTEE: Objection, relevance.

14 HEARING OFFICER WEBB: I'll allow it.

15 A. I don't remember at this time.

16 BY MR. JAWGIEL:

17 Q. What was the experience of the
18 attorney for the Attorney General who was bringing
19 that case?

20 A. I believe I know who it is, but I
21 don't know what his experience was at the time, and
22 I am not sure it was ever made part of the record in
23 that case.

24 Q. I see. Do you know what the

1 complexities of the case were?

2 A. No.

3 Q. Do you know how long the case had been
4 going on for?

5 A. Well, let me just suggest there's two
6 cases cited, one is People vs. J&F Hauling, Inc.
7 That case I don't know how long it went or anything
8 like that.

9 Q. Your experience, you have submitted a
10 request for attorneys fees which has been denied,
11 isn't that correct, prior to the Skokie Valley case?

12 A. I did present in a written closing
13 argument a request for attorneys' fees and costs,
14 yes.

15 Q. And that was refused; is that correct?

16 A. I don't know that refused is the right
17 word. The Judge ruled that each party would be
18 responsible for their own costs and fees.

19 Q. So your petition was denied?

20 MR. PARTEE: No, he said there was no
21 petition. You are misstating his testimony.

22 BY MR. JAWGIEL:

23 Q. Well, your request for attorneys' fees
24 was denied?

1 A. You can say that, yes.

2 Q. Now, you indicated that Mr. Murphy was
3 put on this case a little bit before Mr. Sternstein
4 was removed; is that correct?

5 A. Yes.

6 Q. Now, Mr. Sternstein was the attorney
7 that you were referring to before, that was your
8 trial partner that was removed from this case?

9 A. Yes.

10 Q. Now, when we look at your affidavit,
11 what if anything did the removal of Mr. Sternstein
12 require you to do specifically in order to make up
13 for his removal from the case?

14 A. In terms of trial preparation?

15 Q. What do you associate that you had to
16 do specifically because Mr. Sternstein was removed
17 from the case that you otherwise wouldn't have had
18 to do if anything that's in your attachment to
19 Exhibit A to exhibit for the fee petition?

20 A. Well, I know part of what I had to do
21 was work with Mr. Murphy bringing him up to speed
22 for the trial of the case.

23 Q. So you're working with Mr. Murphy was
24 brought about because Mr. Sternstein was removed

1 from the case because the Board found his
2 involvement in the case to be inappropriate; is that
3 a correct characterization?

4 MR. PARTEE: I would object to the
5 characterization, and I would object that
6 that was just asked and answered.

7 HEARING OFFICER WEBB: Would you
8 rephrase the question?

9 BY MR. JAWGIEL:

10 Q. Sure. You had to work with Mr. Murphy
11 on this case because Mr. Sternstein was removed from
12 the case on account of the Board finding his
13 involvement, Mr. Sternstein's involvement in this
14 case to be inappropriate; is that correct?

15 A. No.

16 Q. Was Mr. Murphy put on this case before
17 Mr. Sternstein was removed from the case?

18 A. Yes.

19 Q. So Mr. Murphy was going to be put on
20 the case regardless of whether Mr. Sternstein was
21 going to be removed?

22 A. I think so. I don't remember exactly,
23 but I think so.

24 Q. So Mr. Murphy was put on the case

1 because of a decision by whom?

2 A. I'm not a hundred percent.

3 MR. PARTEE: Objection, relevance.

4 HEARING OFFICER WEBB: I'll allow it.

5 A. I'm not sure whose decision it was.

6 BY MR. JAWGIEL:

7 Q. Was it your understanding Mr. Murphy
8 was put on the case because you did not have enough
9 experience in this area of the law?

10 A. I don't remember why that decision was
11 made when it was made.

12 Q. Okay. But Mr. Murphy was put on, and
13 I believe it was October 3, 2003; is that correct?

14 A. I don't know the exact date. I do
15 know it was before Mr. Sternstein was ruled in
16 eligible.

17 Q. Okay. When you worked from home,
18 Mr. Cohen, did you write a notation in your
19 billing "Home"?

20 A. Sometimes.

21 Q. Why wouldn't you do it all the time?

22 A. I don't know.

23 Q. Is it because you didn't accurately
24 keep your bills?

1 MR. PARTEE: Objection, argumentative.

2 HEARING OFFICER WEBB: I'll allow it.

3 A. I don't know about bills, but I really
4 don't know. I don't know that I didn't do it all
5 the time, but I'm not a hundred percent sure that I
6 noted that I worked at home all the time.

7 BY MR. JAWGIEL:

8 Q. When you worked on a Saturday or
9 Sunday, would you put the date that would land on
10 the Saturday or Sunday for the time entry?

11 A. Yes.

12 Q. And you did that all the time as well?

13 A. Well, I would put it on the calendar,
14 the date I did the work, even if I, for example, the
15 days of the hearing I did not go back to the office
16 and put the time in that day, but when I did get
17 back to the office, I put the hours worked on that
18 date on the calendar.

19 Q. Now, we have People's Exhibit 102, do
20 you have that in front of you?

21 A. Yes.

22 Q. I want to refer you to what I've
23 marked as page 7, which is the travel voucher.
24 Mr. Partee went through it, page 1, page 2, page 3.

1 I don't know if you took the opportunity to mark
2 your pages, but page 5 is the travel voucher.

3 A. I have it.

4 Q. Now, you left your home on October 29,
5 at 6:00 a.m. according to the travel voucher; is
6 that right?

7 A. Yes.

8 Q. And you wrote down here it took you
9 approximately two hours and 15 minutes to get to
10 your destination on that day; is that right?

11 A. Yes.

12 Q. Do you know what route you took?

13 A. I do not recall.

14 Q. And your residence at that time was on
15 the north side of Chicago; is that right?

16 A. It was in the area of Irving Park and
17 Lake Shore Drive. I am not sure I'd say that's the
18 north side.

19 Q. You don't remember what the traffic
20 was like that day; is that correct?

21 A. I don't remember specifically, no.

22 Q. And you signed this document, it's
23 your signature that's down here?

24 A. Yes.

1 Q. Now, part of what you billed for the
2 day before on the 28th was a parking expense; is
3 that right?

4 A. Yes.

5 Q. And that attachment is Exhibit No. 8,
6 is that right, page 8 I'm sorry. Not Exhibit No. 8.

7 A. Page 8 of People's Exhibit 102.

8 Q. Of People's Exhibit 102.

9 A. Yes.

10 Q. Now, this is a copy of the actual
11 receipt you received from the parking garage; is
12 that right?

13 A. Yes.

14 Q. And it indicates that the time that
15 you came into the parking garage was 7:29?

16 A. Yes.

17 Q. Is that right? And that would have
18 been in the morning?

19 A. Yes.

20 Q. And on October 28, 2003, the time that
21 you left would have been 18:26 hours, which would
22 have been about 6:28; is that right?

23 A. Yes.

24 Q. And it also indicates that the amount

1 of time parking was 10 hours and 59 minutes?

2 A. Yes.

3 Q. Now, if we look at your affidavit for
4 that day, which would be October 28, 2003, we'll see
5 that you have "Pretrial prep, pretrial prep, trial
6 prep, 12 hours"?

7 A. Yes.

8 Q. How much time does it take you to get
9 from the Lake and Wells garage to the office
10 literally walking, going up to the elevator to the
11 office?

12 A. Five minutes.

13 Q. And how long would it take you to come
14 back down from the office and go to the parking
15 garage?

16 A. Five minutes approximately.

17 Q. Did you eat lunch that day?

18 A. I probably ate lunch that day, yes.

19 Q. Did you go get food or did you bring
20 it with you?

21 A. I don't remember.

22 Q. Typically would you go get food or
23 you'd go downstairs and get something and bring it
24 up, is that typically what you did?

- 1 A. If I didn't bring lunch, yes.
- 2 Q. How long would that take you?
- 3 A. Ten, fifteen minutes.
- 4 Q. Did you go to the bathroom that day?
- 5 A. Possibly.
- 6 Q. And so when we look at the time entry,
7 we see that you actually billed more hours than your
8 car was present?
- 9 A. Yes.
- 10 Q. And you drove down for your
11 convenience because you wanted to take the file to
12 Libertyville; is that right?
- 13 A. I drove that day so I could bring the
14 files to the hearing, yes.
- 15 Q. So at some point in time you had to
16 actually take the time to put the file together.
17 How many times did you have to go to the car to put
18 the file in the car?
- 19 A. I don't remember if I did it or
20 someone in our office did it.
- 21 Q. Okay. The hearing in this matter
22 concluded on October 31st at about 3:30; is that
23 right?
- 24 A. I think that's right.

1 Q. There was also a lunch break that day?

2 A. Yes.

3 Q. And we started about 9:00 o'clock; is
4 that right?

5 A. Yes.

6 Q. And you drove home from the hearing?

7 A. Yes.

8 Q. Now, when you drove home, did you
9 deduct the amount of time it would take you to get
10 from the office home from the time that you took to
11 get from Liberty to home?

12 A. No.

13 Q. You billed the full time it would take
14 you to get home; is that right?

15 A. I billed the full time that I worked
16 on the Skokie Valley Asphalt case that day and the
17 travel time.

18 Q. And that would include the amount of
19 time it took you to go from the hearing to drive
20 home?

21 A. Yes.

22 Q. You had difficulty preparing the
23 closing argument in this case because you had
24 difficulty comprehending the technical aspects of

1 this case; is that correct?

2 A. I don't think I can necessarily say
3 that.

4 Q. So you didn't have any difficulty with
5 the actual technical elements of this case; you had
6 difficulty because of why? Difficulty in preparing
7 the closing argument?

8 Q. Yes.

9 A. Well, in preparing the closing
10 argument I had to review two days worth of
11 transcript. I try to cite the transcript accurately
12 when I'm writing facts on the case. There was also
13 approximately 50 exhibits. Some of those exhibits
14 were very large. One of those exhibits was very
15 technical. The engineers's report by Mr. Huff, that
16 Exhibit I did have difficulty with. I footnoted a
17 lot of information in the closing argument. So all
18 those things combined make putting together a
19 written closing argument very difficult for me.

20 Q. And you typed this closing argument as
21 well?

22 A. Yes.

23 Q. You also would keep your time for
24 redrafting the closing argument; is that right?

1 A. I'm not sure what you mean by
2 redrafting. If I was editing as I did throughout, I
3 would include that time.

4 Q. So if you drafted a paragraph that you
5 thought needed to be edited, it either made more
6 sense or because you wanted to maybe change the text
7 or you didn't like the structure of a sentence, you
8 would add that to your time in preparing the closing
9 argument; is that correct?

10 A. Yes, yes.

11 Q. And that would also include redrafting
12 the closing argument; is that right?

13 MR. PARTEE: Objection, asked and
14 answered.

15 HEARING OFFICER WEBB: Sustained.

16 MR. JAWGIEL: Well, on page 95, your
17 answer to the question on page 95, on line
18 13.

19 MR. PARTEE: Objection, this is not --

20 MR. JAWGIEL: Page 15 does not.

21 MR. PARTEE: Objection, this is not a
22 proper impeachment.

23 BY MR. JAWGIEL:

24 Q. (Reading:) "Did you bill for your time

1 you spent redrafting and editing your closing
2 argument? Answer, yes."

3 MR. PARTEE: I would instruct the
4 witness not to answer that because it's not a
5 proper impeachment at all.

6 MR. JAWGIEL: I think it is proper
7 impeachment. He gives an answer in his
8 deposition saying that he spent time and kept
9 his time for the amount of time he spent
10 redrafting, and he edited his closing
11 argument and now he is saying I don't know
12 what you mean by redrafting. I think that's
13 impeachable. Clearly he understood in this
14 question what we asked him about drafting.

15 MR. PARTEE: That is argument, not
16 impeachment. If we are going to read
17 deposition transcripts --

18 HEARING OFFICER WEBB: I agree. Move
19 on, please.

20 BY MR. JAWGIEL:

21 Q. Did you give that statement in your
22 deposition?

23 MR. PARTEE: Objection, don't answer
24 it.

1 HEARING OFFICER WEBB: I sustain his
2 objection.

3 BY MR. JAWGIEL:

4 Q. You would admit that there's no way we
5 can figure out from your time entries how much time
6 you spent editing as opposed to drafting the closing
7 argument or rebuttal; is that correct?

8 A. Correct.

9 Q. You also kept your time for the amount
10 of time you spent discussing this matter with
11 Mr. Partee, is that right, or is that inaccurate?

12 MR. PARTEE: Where are you?

13 MR. JAWGIEL: What do you mean. Where
14 am I?

15 MR. PARTEE: What exhibit are you on?

16 MR. JAWGIEL: I'm not on any Exhibit.

17 MR. PARTEE: What's the relevance to
18 the time he spent talking to me about these
19 proceedings. I object on relevance grounds.

20 MR. JAWGIEL: All I asked him was did
21 you keep your time and record your time for
22 the amount of time.

23 MR. PARTEE: Ask.

24 HEARING OFFICER WEBB: Did he ask his

1 time?

2 MR. JAWGIEL: I did. He put it in his
3 affidavit.

4 HEARING OFFICER WEBB: Well, I'll
5 allow that.

6 A. Well, I'm reviewing the time sheets
7 attached to the affidavit. This time sheet only
8 goes through September 15, 2004. There is no
9 reference in here that I see about any discussions I
10 had with Mr. Partee about the Skokie Valley Asphalt
11 case.

12 BY MR. JAWGIEL:

13 Q. On April 20, 2005. But I did for
14 discussion with Mr. Partee, although I don't see it
15 on here.

16 MR. PARTEE: It's not on the fee
17 petition.

18 MR. JAWGIEL: I'll withdraw that
19 question.

20 HEARING OFFICER WEBB: Thank you.
21 Question withdrawn.

22 BY MR. JAWGIEL:

23 Q. Let me ask you a question. On October
24 16, 2003, if you could look at your entry there?

1 A. I see it.

2 Q. It says trial prep. I take it review
3 Board order, met with RMC, who I'm sorry I don't
4 know who that is. Murphy and Sternstein. Do you
5 see that entry?

6 A. Yes.

7 Q. In the meeting that you had was RMC
8 Murphy and Mr. Murphy Sternstein present throughout
9 the meeting?

10 A. I don't recall if they were all
11 present throughout the meeting.

12 Q. Do you know how long that meeting
13 went?

14 A. No, I don't.

15 Q. Do you know how long it took you to
16 review the Board's order?

17 A. No, I don't.

18 Q. And do you know how much time you
19 spent on trial prep?

20 A. No, I don't.

21 Q. With respect to any of the bills where
22 you had multiple things that you did time entries,
23 where you have multiple tasks that you performed,
24 there's no way you can tell us specifically how much

1 time you spent on any given task that's listed
2 there; is that correct?

3 A. Not at this time, no.

4 Q. And that holds true throughout the
5 entire attachment to the affidavit?

6 A. Correct.

7 Q. Now, on October 17, 2004, you have
8 that entry in front of you?

9 A. No, I don't.

10 MR. PARTEE: I would object on
11 relevance grounds. There is no entry. This
12 only goes through September 15, 2004. This
13 is what was filed with the Board, and this is
14 what the Board granted the hearing on through
15 September 15, 2004.

16 HEARING OFFICER WEBB: If it's not
17 part of the fee petition --

18 MR. JAWGIEL: Fair enough. I'll
19 withdraw the question.

20 BY MR. JAWGIEL:

21 Q. Did you keep your time for reviewing
22 documents that Mr. Murphy might have drafted?

23 A. If it was -- well, I certainly
24 reviewed what Mr. Murphy did in relation to the

1 closing argument and the closing rebuttal argument
2 and that time would be included in my time sheets.

3 Q. You didn't break that out?

4 A. I did not break that out.

5 Q. And did you sign documents that
6 Mr. Murphy might have drafted?

7 A. I cannot think of any, but it's
8 possible.

9 Q. And did Mr. Murphy sign documents that
10 you prepared in the context of this case? I don't
11 care about anything else.

12 A. It's possible. I don't recall.

13 Q. Did you sign any documents that
14 Mr. Sternstein --

15 A. It is possible.

16 Q. So if we look back at the document
17 that you signed, it doesn't necessarily mean that
18 you were the one who drafted it?

19 A. It's possible.

20 MR. PARTEE: Do you have, if you have
21 in specific documents you are concerned
22 about, I would --

23 MR. JAWGIEL: Is this an objection?

24 MR. PARTEE: It's a suggestion.

1 MR. JAWGIEL: I didn't know we were
2 having suggestions.

3 HEARING OFFICER WEBB: No, it didn't
4 sound like an objection.

5 MR. PARTEE: No, it's not.

6 MR. JAWGIEL: I ask that the hearing
7 officer admonish the Attorney General to
8 refrain from making commentary suggestions or
9 anything other than legal objection during
10 the course of the hearing.

11 HEARING OFFICER WEBB: Let's just
12 proceed.

13 BY MR. JAWGIEL:

14 Q. Do you have any recollection of what
15 section of the rebuttal Mr. Murphy worked on as
16 opposed to what you worked on?

17 A. No.

18 Q. Do you have any recollection of what
19 part of the closing argument Mr. Murphy worked on as
20 opposed to what you worked on?

21 A. Not a specific recollection, no.

22 Q. Now, you indicated that the Attorney
23 General's office didn't charge for postage. Is it
24 your understanding that that's something that could

1 be charged in a fee petition, postage?

2 A. Not in a fee petition, but in a cost
3 petition, yes.

4 Q. In a cost petition, postage?

5 A. Yes.

6 Q. That's not considered overhead from
7 your understanding?

8 A. I guess I'm drawing on my experience
9 when I was in private practice, and we billed
10 clients for postage related to their matters.

11 Q. Did you ever get attorneys' fees from
12 an opposing party in your private practice?

13 MR. PARTEE: Objection, relevance. If
14 we are going to open this up to --

15 MR. JAWGIEL: He brought it up. He
16 opened the door.

17 HEARING OFFICER WEBB: I'd like --
18 what was the exact question?

19 BY MR. JAWGIEL:

20 Q. Did you ever receive attorneys' fees
21 from the postage in private practice?

22 HEARING OFFICER WEBB: The opposing --

23 MR. PARTEE: I don't understand that
24 question.

1 HEARING OFFICER WEBB: I think we are
2 getting -- I'm going to sustain the
3 objection. I'd like to get back to relevant
4 testimony.

5 BY MR. JAWGIEL:

6 Q. What was your salary that you earned
7 in 2003?

8 MR. PARTEE: Objection, relevance and
9 privilege grounds, and I instruct the witness
10 not to the answer that.

11 MR. JAWGIEL: That's public record.

12 MR. PARTEE: No, it's not. No, it's
13 not.

14 HEARING OFFICER WEBB: I'm going to
15 sustain the objection.

16 MR. JAWGIEL: Well, we have an opinion
17 from our expert that he should be paid by the
18 amount of monthly salary that he has. It is
19 part of the report. They did not move to
20 strike it, and it is part of the report, and
21 they should not get a windfall with respect
22 to attorneys' fees in this case, that they
23 should only be paid, if anything, for
24 reimbursement of time that they actually put

1 out to their attorneys, which would be the
2 salaries of the people involved in this case.

3 MR. PARTEE: Well, first of all, that
4 misstates her opinion, and second of all,
5 that doesn't respond to my objection, which
6 it is privileged material. It is not a
7 matter of public record. The Attorney
8 General's salary is a matter of record. Her
9 assistants' salaries are not.

10 MR. JAWGIEL: How is it privileged?
11 Under what theory of law?

12 MR. PARTEE: It is not a law.

13 MR. JAWGIEL: My birthday is a
14 private, personal issue. It's not something
15 that I can refrain from in cross-examination.

16 MR. PARTEE: Respectfully, I think
17 there is a difference in birth dates and
18 salaries.

19 HEARING OFFICER WEBB: Now that I
20 think about it, I think a citizen can request
21 that through a Freedom of Information Act.

22 MR. PARTEE: I don't think that's
23 correct.

24 MR. JAWGIEL: Well, this hearing

1 transcript is going to the Pollution Control
2 Board. There's no reason why in the confines
3 of this hearing he cannot tell us his salary
4 during the relevant period of time. I'm not
5 asking his current salary. I don't really
6 care about the current salary.

7 MR. PARTEE: I think if counsel wants
8 to argue that the Attorney General should be
9 only awarded an assistant's take home pay, he
10 can make that argument. But he doesn't need
11 to know actually what that pay is. We
12 strenuously object to that, and I'm fairly
13 confident, although we obviously haven't
14 researched it, but that information would not
15 be subject to an FOIA request.

16 HEARING OFFICER WEBB: I'm pretty sure
17 it is. So I am going to allow you to, as of
18 the relevant time period, I'll allow you to
19 state what your salary was.

20 A. Well, before I do that, I'll have to
21 make my own objection that it is irrelevant to the
22 issues before this hearing Board on the
23 reasonableness of the fees, because if you look
24 through the whole line of cases before the Pollution

1 Control Board, it has nothing to do with anyone's
2 take home pay. Nevertheless, if you instruct me to
3 answer, I'll do the best that I can.

4 MR. JAWGIEL: The bottom line, he is a
5 witness in this case. He doesn't have
6 standing to bring an objection. Certainly he
7 had a motion to limine if they thought this
8 was going to be an issue, by which they did
9 not. They sat on their hands. They were
10 well aware of my expert which is in her
11 report regarding this issue. So they knew it
12 was something that would be presented or at
13 least buttressed at the hearing. And it's
14 relevant to my expert's opinion, and you can
15 get it from an FOIA request, which means it's
16 available to the public.

17 MR. PARTEE: I don't know that we are
18 going to be able to determine definitively
19 that it's subject to an FOIA. I am not
20 comfortable representing that it is subject
21 to FOIA. I have the utmost respect for your
22 ruling, but my suggestion to the witness is
23 that if you are uncomfortable making this a
24 matter of record, that you not answer the

1 question and we simply will take the risk
2 that he not answer that question.

3 HEARING OFFICER WEBB: I clearly don't
4 have the authority to do that.

5 MR. JAWGIEL: Well, I ask that there
6 should be sanctions for his refusal to answer
7 the question on the stand. That's relevant
8 to the issues in the case which they had
9 notice of and this petition should then be
10 struck and dismissed.

11 MR. PARTEE: I would also point out
12 that they requested this information during
13 discovery. We objected and the Board
14 sustained our objection on this information
15 which was specifically requested during
16 discovery. I have the requests with me. We
17 objected timely, and the Board sustained our
18 objection, and they didn't obtain it during
19 discovery. Now he is asking the witness on
20 the stand for the same information, and I
21 think for the same reason that we object.

22 HEARING OFFICER WEBB: Well, I wasn't
23 aware the Board had already sustained this.

24 MR. JAWGIEL: Go ahead, provide us

1 with the order. I mean, if there's an order.

2 HEARING OFFICER WEBB: Well, I would
3 propose that we have a five minute break.
4 I'd like to call upstairs and see about the
5 possibility of continuing this hearing since
6 it's 4 o'clock, and we're obviously not going
7 to be done in an hour.

8 MR. PARTEE: Let's go off the record.

9 MR. JAWGIEL: Why don't you go ahead
10 do that, let Mr. Partee look for his order.
11 We can come back in five minutes and decide
12 what we are going to do. Let's at least go
13 off the record now.

14 (Short recess taken.)

15 HEARING OFFICER WEBB: I think we have
16 made arrangements to stay later this evening.

17 MR. JAWGIEL: We can nip this in the
18 bud if the State will stipulate to her
19 report. I think that's about the extent I'm
20 going to ask her.

21 MR. PARTEE: Just the admission of the
22 report?

23 HEARING OFFICER WEBB: I don't know
24 what are you --

1 MR. JAWGIEL: Unless there is an
2 objection to her qualifications, the
3 stipulation of her qualifications and her
4 report into evidence.

5 HEARING OFFICER WEBB: Just a minute.
6 Can we go off the record for a moment?

7 (Discussion had off the
8 record.)

9 HEARING OFFICER WEBB: All right. We
10 can go back on the record.

11 MR. JAWGIEL: Mr. Partee just informed
12 me that he does challenge Ms. Stonich's
13 expertise in this case. But what I'm trying
14 to offer, which I think was discussed earlier
15 in the break, is having an opportunity to
16 review my examination of her and my
17 examination of her basically is confined to
18 the context of her report, which I think is
19 very thorough in this matter, and I can
20 stipulate instead of calling Ms. Stonich, the
21 submission of her report into evidence.

22 MR. PARTEE: We would stipulate to the
23 admission of the report if we could see it.
24 I am not sure which version. Providing I am

1 not waiving my objection and argument as to
2 her qualifications, just we can admit this
3 into evidence.

4 HEARING OFFICER WEBB: Sure, you can
5 make a standing objection.

6 MR. JAWGIEL: He can make a standing
7 objection. He is certainly given the
8 opportunity to from closing argument
9 regarding qualifications or anything else in
10 the report that he wants to bring up. I have
11 no problem with him doing that. In an
12 attempt to move this along, this would just
13 leave us very little for me with Mr. Cohen
14 left and then Mr. Murphy.

15 HEARING OFFICER WEBB: Thank you. I
16 would like to thank you for not going through
17 every single line item of Mr. Cohen's report,
18 and I appreciate that stipulation as to our
19 third witness. Thank you for your efforts to
20 move thing along, and I certainly would like
21 to thank our court reporter for making
22 accommodations to help us out.

23 MR. JAWGIEL: Excuse me. On the
24 stipulation, would that be waiving his

1 ability to cross-examine the witness?

2 MR. PARTEE: That's not an
3 expectation, otherwise we wouldn't be able to
4 challenge her report.

5 HEARING OFFICER WEBB: I thought you
6 were going to do that in your --

7 MR. PARTEE: We have an issue with the
8 Excel spreadsheet and I can explain it to you
9 if you'd like. Not with the report, no, but
10 with respect to the table that's attached to
11 it.

12 MR. JAWGIEL: That is part of her
13 report.

14 MR. PARTEE: For the record, what was
15 handed to me was a copy of a document that's
16 entitled "Review and Analysis of Illinois
17 Office of Attorney General Bills" and the
18 case caption is underneath that. Basically
19 what it is ten pages worth of text and then
20 there's an eight-page table attached to that
21 called Mitchell L. Cohen billing and we can
22 stipulate to admission of the report, but we
23 would object to admission of this table and
24 I'll explain why. Mr. Cohen's deposition in

1 this case was taken on November 14, which was
2 the day before Ms. Stonich's deposition and
3 during Mr. Cohen's deposition Mr. Jawgiel had
4 this table that's attached to the expert's
5 report in front of him, and I asked for a
6 copy of it and he said -- he refused to
7 disclose it saying this is our own, this is
8 my own internal spreadsheet, which of course
9 is attorney-client privilege.

10 MR. JAWGIEL: First of all,
11 attorney-client privilege wouldn't be
12 attached to an expert.

13 HEARING OFFICER WEBB: The question
14 is, did he have a copy of the table?

15 MR. JAWGIEL: He got the report. We
16 gave him the report at the deposition of
17 Mr. Cohen. He got everything that we had at
18 that time.

19 MR. PARTEE: No, that's not correct.

20 MR. JAWGIEL: That is correct.

21 MR. PARTEE: We specifically asked for
22 this table which was Mr. Jawgiel, which he
23 was literally holding. He refused to give it
24 to us, to me.

1 MR. JAWGIEL: That's not correct. If
2 you have the transcript, go ahead and point
3 where I refused to give you that.

4 MR. PARTEE: Sure. First of all --

5 MR. JAWGIEL: I didn't have that
6 particular table at the time of his
7 deposition.

8 MR. PARTEE: You had some other table.

9 MR. JAWGIEL: That was my work
10 product. I am not giving it to you.

11 MR. PARTEE: Could you give it to the
12 hearing officer?

13 MR. JAWGIEL: No, I am not giving it
14 to the hearing officer.

15 MR. PARTEE: This is the very same
16 table that he was holding that he refused to
17 give to us earlier.

18 MR. JAWGIEL: Obviously, we can't
19 reach a stipulation. Fine.

20 HEARING OFFICER WEBB: Well, can you
21 stipulate as to the report and make the table
22 an offer of proof?

23 MR. JAWGIEL: No. If we are going to
24 submit her report, I want it in its entirety.

1 I am sorry I am not going to bifurcate it.
2 I'll lay the foundation and get the entire
3 report in. That's fine.

4 MR. PARTEE: I'm just looking for the
5 record of that exchange of this table.

6 HEARING OFFICER WEBB: Should we
7 continue? Finish up with Mr. Cohen?

8 MR. PARTEE: Sure, we can do that.

9 MR. JAWGIEL: If I want to jump
10 through hoops, I'll be more than happy to lay
11 the foundation of Ms. Stonich and admit that.

12 HEARING OFFICER WEBB: Let's get to
13 Mr. Cohen and Mr. Murphy and see where we
14 are.

15 MR. JAWGIEL: I'll take as much time
16 as it takes.

17 We need a ruling on my request for
18 the salary.

19 HEARING OFFICER WEBB: For the salary
20 I am ruling that that is public information
21 and you are allowed to answer that.

22 MR. PARTEE: Your ruling
23 notwithstanding, could I get my full
24 objection on the record?

1 HEARING OFFICER WEBB: Yes, please.

2 MR. PARTEE: We object on relevance
3 grounds to Mr. Cohen's personal compensation
4 going on the record, and I also located
5 information on our prior objection to the
6 respondent's prior request for that same
7 information and how it was handled by the
8 Board and yourself, Ms. Webb, and I can go
9 through that if you'd like. There was a
10 question about whether or not they had
11 already asked for this, and the request had
12 been denied, and I have located that request
13 and how it was handled.

14 HEARING OFFICER WEBB: May I see it?

15 MR. PARTEE: Sure. The request was
16 actually made -- the issue was, the issue was
17 brought to the Board in the context of
18 respondent's first motion for sanctions
19 against the complainant, and I've got block
20 quotes in citations to a response to that
21 which --

22 MR. JAWGIEL: Is there an order?

23 MR. PARTEE: There is an order on
24 this.

1 MR. JAWGIEL: Why don't you nip this
2 in the bud and show the order because this is
3 controlling -- I appreciate the fact that we
4 want to go through this in a methodical
5 manner, but we are trying to save some time
6 here, so why don't we just get to the order.

7 HEARING OFFICER WEBB: Good idea.

8 MR. PARTEE: They are orders plural,
9 and the first order is the Board's November
10 17, 2005 order, which is -- Do you have it
11 there?

12 MR. PARTEE: Well, I'm sorry.

13 HEARING OFFICER WEBB: I was looking.
14 No, I'm sorry, I don't have it.

15 MR. PARTEE: Here is a copy. At
16 page 8 of the Board's November 17, 2005
17 order, the Board took up the Respondent's
18 motion to strike the People's objections to
19 discovery, and our objections to discovery in
20 that context were with respect to attorney's
21 take home pay as well as other issues, but
22 the attorney's take home pay was at issue
23 there, and the Board held that the
24 Respondent's motion to strike the People's

1 discovery is denied. The People are entitled
2 to file discovery objections under sections
3 101618H and 101620C of the Board's procedural
4 rules and raise proper objections thereunder.

5 And then page 9 of the same order,
6 the respondents had also moved to compel the
7 same information regarding attorneys' take
8 home pay, and the Board ruled that: "As to
9 the Respondent's motion to compel, the Board
10 agrees with the assertions of the People that
11 the respondents did not adequately respond to
12 the People's objection or attempt to
13 informally resolve the dispute before seeking
14 Board intervention."

15 HEARING OFFICER WEBB: Is the take
16 home pay issue referenced earlier before the
17 Board discussion?

18 MR. PARTEE: It is.

19 MR. JAWGIEL: Where is that reference?

20 MR. PARTEE: Well, she has my copy of
21 the order.

22 HEARING OFFICER WEBB: I'm sorry.

23 MR. PARTEE: The reference in the
24 Board's order is actually at page 2 of the

1 November 17, 2005 order, but on page 2 the
2 Board refers to the discovery requests
3 involving the Respondent's request for take
4 home pay among other issues. So you have to
5 then in turn refer to the discovery requests
6 which I have with me as well.

7 HEARING OFFICER WEBB: But it's not --

8 MR. PARTEE: It's not referred to
9 expressly.

10 MR. JAWGIEL: It's not expressly
11 referred to?

12 MR. PARTEE: But there were no other
13 issues.

14 MR. JAWGIEL: Why there were certainly
15 numerous objections, you brought a global
16 objection to all of our discovery if you
17 remember correctly. So it's unclear from
18 this order.

19 HEARING OFFICER WEBB: You are right,
20 it's unclear from the order so I'm going
21 to -- and you are right, we don't have time
22 to go back through and look at all the
23 discovery motions. I'm going to reconsider
24 my ruling and allow the salary contention

1 then or any statements regarding salary as an
2 offer of proof because we don't have time to
3 go back through the discovery.

4 MR. JAWGIEL: I'm sorry. I missed
5 that. What is the ruling of the Board at
6 this point?

7 HEARING OFFICER WEBB: That the salary
8 disclosure may be made as an offer of proof
9 but I'm not requiring Mr. Cohen to answer,
10 but if you do answer --

11 MR. JAWGIEL: Let me get this
12 straight. You initially said that he had to
13 answer. Now you are saying that he does not
14 have to answer?

15 HEARING OFFICER WEBB: Right. On the
16 basis of that Board order because I'm trying
17 to save time by going through -- by not going
18 through the discovery documents if the Board
19 has already ruled that it wasn't admissible.

20 MR. JAWGIEL: But the Board didn't say
21 that in the order.

22 MR. PARTEE: Well it did, but it said
23 so by incorporating the discovery requests
24 themselves.

1 MR. JAWGIEL: The Board did not say it
2 is not admissible evidence at the time of the
3 hearing or that it's not relevant with
4 respect to that particular issue. I mean, am
5 I reading that correctly or did I miss
6 something?

7 MR. PARTEE: Perhaps we are splitting
8 hairs here. The Board didn't rule that it
9 wasn't admissible or that it was admissible.
10 The Board sustained the People's objection to
11 disclosing it in the first place, but there
12 was no admissibility determined by the Board.

13 THE WITNESS: If I might, I think
14 everyone has preserved their objections.

15 MR. JAWGIEL: I can appreciate that
16 Mr. Cohen is a practicing attorney and it's
17 very difficult for a practicing attorney to
18 be involved in the case as he is, but he is a
19 witness in this matter and as a witness he
20 should not be giving commentary or bringing
21 objections or anything along those lines
22 while he is on the witness stand as he is
23 right now and I ask the Board -- I ask the
24 hearing officer to take the appropriate steps

1 to admonish him as a witness because he is
2 not an attorney who is presenting this.
3 Mr. Partee is the attorney who is presenting
4 this for the AG's office.

5 HEARING OFFICER WEBB: Here is my
6 dilemma. I do feel that normally the
7 information is discoverable under the FOIA
8 Act, however if the Board already ruled that
9 it's not discoverable in this case, therein
10 lies my dilemma.

11 MR. JAWGIEL: But the Board hasn't.

12 MR. PARTEE: I disagree.

13 MR. JAWGIEL: The order does not
14 specifically state that. It's a matter of
15 interpretation, and what we're doing is that
16 if the Board believes that it's not relevant,
17 they certainly can make that determination at
18 the time that they review this transcript and
19 ignore that portion of it if they believe
20 that Mr. Cohen's salary is not relevant. The
21 objection has been brought. Certainly the
22 initial ruling of this hearing officer was
23 that issue be submitted, and I don't see why
24 it shouldn't. They certainly can redact it

1 later on if they want, if they think it's of
2 a privileged nature, and I don't understand
3 why we are not allowing Mr. Cohen to just go
4 ahead and tell us what it is and move on.

5 MR. PARTEE: Well, getting back to the
6 inquiry on the reasonableness of the fee
7 petition in the six factors that the Board
8 set out, the fifth factor is the usual and
9 customary charge in the community, and I
10 can't think to any stretch of the imagination
11 that someone's take home pay would be the
12 usual and customary hourly rate for an
13 attorney in the community.

14 MR. JAWGIEL: I asked him for his
15 salary, not his take home pay.

16 MR. PARTEE: That's what you are
17 asking.

18 MR. JAWGIEL: I'm asking what the
19 Attorney General pays him as salary, take
20 home pay is a deduction of the various taxes
21 and the other, the net. I didn't ask him for
22 his net.

23 HEARING OFFICER WEBB: I understand
24 that. Well, why didn't you FOIA request the

1 information?

2 MR. JAWGIEL: Why didn't I what?

3 HEARING OFFICER WEBB: Why didn't
4 you -- if you want to know his salary, did
5 you try to --

6 MR. JAWGIEL: Why didn't I just ask
7 him at the hearing? I don't know where I get
8 this. You are asking this witness any
9 relevant question that's out there, and it
10 doesn't have to be something I asked him in
11 discovery. Mr. Partee believes that because
12 I didn't ask him a question in his discovery
13 deposition, I'm somehow precluded from asking
14 that question here in the hearing and nothing
15 could be further from the truth.

16 MR. PARTEE: That's not any assertion.
17 I think the question was more aimed at if
18 this is in fact subject to an FOIA request,
19 did you try to use FOIA to get it.

20 HEARING OFFICER WEBB: You are right,
21 Mr. Jawgiel, you are not on trial here.

22 MR. JAWGIEL: I don't have to.

23 HEARING OFFICER WEBB: You are not on
24 trial here. Well, I'd like to just get past

1 this issue. I'd like to put it to rest, and
2 I hate to flip flop and reverse myself, but
3 since we don't have a lot of time here and we
4 don't have a lot of time to see what the
5 Board did, I am going to go back and say I am
6 fairly certain that this is public, that any
7 state employees' salary is public information
8 if you request it. So I am going to -- and
9 if it turns out that the Board has already
10 made that determination and we don't have
11 time to look back at the discovery document
12 and compare them to the Board's order, then
13 you can raise that in your post-hearing
14 brief, and I am sure the Board will strike my
15 ruling, overrule me. So having said that,
16 let's just put this issue to bed, and I am
17 going to go back to my original ruling and
18 say that you are directed to answer that
19 question.

20 A. I don't remember exactly, and this
21 covers a long period of time. We do get some
22 incremental pay raises. I would estimate my take
23 home pay between this time was between \$52,000 per
24 year and \$60,000 per year.

1 BY MR. JAWGIEL:

2 Q. And when you use that phrase take home
3 pay, you are talking about your gross salary; is
4 that correct?

5 A. If I said take home pay, I misstated.
6 My salary is probably between \$52,000 and \$60,000
7 during this time period.

8 MR. JAWGIEL: Okay. Thank you, sir.

9 That's all I have of Mr. Cohen.

10 HEARING OFFICER WEBB: Any redirect?

11 MR. PARTEE: Just a little bit.

12 REDIRECT EXAMINATION

13 BY MR. PARTEE:

14 Q. On cross-examination Mr. Jawgiel
15 compared your affidavits as between an initial
16 affidavit that you submitted for fees and costs in
17 this case with the affidavit that accompanied your
18 fee petition.

19 MR. JAWGIEL: Are you referring to
20 Respondents Exhibits 100 and 101?

21 MR. PARTEE: Correct.

22 BY MR. PARTEE:

23 Q. When you filed the -- I don't have a
24 copy of your Respondent's exhibits in front of me.

1 I don't think extra were brought.

2 MR. JAWGIEL: You certainly have the
3 document. You filed it.

4 MR. PARTEE: Ms. Webb, is it okay if I
5 go look?

6 HEARING OFFICER WEBB: For the sake of
7 time, please let's just go ahead and look at
8 his.

9 BY MR. PARTEE:

10 Q. In what was marked as Respondent's
11 Exhibit 100 you initially submitted the State's fees
12 and costs in this case, correct?

13 A. Yes.

14 Q. And when you filed that first
15 affidavit, Respondent's Exhibit 100, did you believe
16 that it was true and correct?

17 A. Yes.

18 Q. And who assembled the costs that were
19 included in the initial affidavit?

20 A. I don't remember the person's name.

21 Q. Can you describe her function within
22 the office, her title?

23 A. It was a paralegal intern who was
24 working at the office.

1 Q. And how did she assemble those costs,
2 if you know?

3 A. I don't know all the details. I do
4 know that she spent a lot of time communicating with
5 the accounting department in Springfield mostly by
6 telephone, and I do remember her reporting her
7 difficulties and progress during the time she was
8 trying to collect that information.

9 Q. And at some point after that, did you
10 discover an error in the amount of costs?

11 A. I don't know that I discovered an
12 error. I was not able to find receipts for all of
13 the costs that were reflected in the costs incurred
14 by the State of Illinois.

15 Q. Do you know where specifically the
16 missing receipts, so to speak, what type of receipt
17 we are talking about?

18 A. I don't know exactly how the mistake
19 was made or where the mistake was made or if it was
20 a mistake. However, the amount of money reported
21 for depositions in Respondent's Exhibit 100, which
22 was filed with the closing rebuttal argument was
23 higher than the amount of receipts I could find when
24 I went back to add more detail to the costs incurred

1 by the State based on respondent's objection.

2 Q. Okay. Did you bring the error or the
3 missing receipt to the Board's attention?

4 A. Yes.

5 Q. How did you do that?

6 A. When I went back and tried to detail
7 the invoices, after respondents objected to the fees
8 and costs petition, the petitions that were
9 questioned in the rebuttal closing argument, I
10 filled out a new affidavit which is contained in
11 People's Exhibit 100 and in Respondent's Exhibit
12 101. I added or I put in a paragraph, paragraph
13 three, that said, "During the review of invoices I
14 discovered an error made regarding costs of
15 deposition transcripts. That error was corrected
16 and is reflected in the People of the State of
17 Illinois attorneys' fees and costs petition. This
18 affidavit in the attached list of costs and that I
19 reduced the number by the amount that I did not have
20 receipts for."

21 Q. Did you resolve the error in
22 respondent's favor?

23 A. Yes.

24 Q. Counsel asked you a number of

1 questions about -- counsel for Skokie Valley asked a
2 you a number of questions about the difficulty of
3 some of the legal issues in the underlying case, and
4 I believe he asked you about, for example, the
5 chronology of some of the violations. Did
6 respondents admit to any of the violations alleged
7 in the complaint?

8 MR. JAWGIEL: I'm going to object to
9 the relevance. First of all, we are not
10 obligated to admit to anything. It is the
11 burden of the State to prove their case.
12 There is no burden on to us admit to any
13 allegations.

14 HEARING OFFICER WEBB: I'm not sure I
15 see the relevance myself. Where are you
16 going?

17 MR. PARTEE: Well, the relevance and
18 where I'm going with this is simply that it
19 wasn't that any respondent admitted to any
20 violations, these were contested.

21 HEARING OFFICER WEBB: I will allow
22 it.

23 BY MR. PARTEE:

24 Q. Did the respondents admit to any of

1 the alleged violations in the complaint?

2 MR. JAWGIEL: Again, I am going to
3 renew my objection because he restated the
4 question.

5 A. It's difficult to answer that question
6 with a yes or no because I would characterize some
7 of the evidence that was introduced at the hearing
8 as admissions.

9 Q. My question is only with respect to
10 their own answer to the latest version of the
11 complaint.

12 MR. JAWGIEL: I'm going to object. He
13 answered the question the way we did, he
14 would characterize some of our statements at
15 the hearing as an admission.

16 MR. PARTEE: I will move on.

17 HEARING OFFICER WEBB: He agreed to
18 move on.

19 BY MR. PARTEE:

20 Q. Mitch, you were asked some questions
21 about did you type pleadings or did you draft them
22 while sitting at your computer?

23 MR. JAWGIEL: I'm going to object the
24 question has been asked and answered.

1 MR. PARTEE: Not by the State.

2 MR. JAWGIEL: And the form of the
3 question. It doesn't matter who asked the
4 question.

5 MR. PARTEE: The objection for asked
6 and answered is when the same side asks
7 essentially the same question.

8 HEARING OFFICER WEBB: I will allow
9 the question.

10 THE WITNESS: Could you repeat the
11 question?

12 BY MR. PARTEE:

13 Q. Sure. Let me back up. You were asked
14 questions about whether you typed documents in this
15 case and then charged typing time. Were you a
16 typist in this case or did you draft documents while
17 sitting at your computer?

18 MR. JAWGIEL: I'm going to object to
19 the characterization of what was asked of him
20 in his cross-examination as being inaccurate.

21 HEARING OFFICER WEBB: Overruled.

22 A. I did not ever just type. I did my
23 drafting, my thinking, my editing, my revising, all
24 at the same time at my computer at my desk.

1

2 BY MR. PARTEE:

3 Q. Counsel asked you about a number of
4 time entries that are the subject of the State's fee
5 petition, and as an example in referring to
6 People's 100, counsel asked you about your July
7 19 -- I'm sorry -- your June 19 -- yes, your June
8 19, 2002 entry which is "file review".

9 A. Yes.

10 Q. And correct me if I'm wrong, but I
11 believe you said you don't recall what you did in
12 terms of file review at this point but that you
13 reviewed the file?

14 A. Correct.

15 Q. Would it have been practical for you
16 to write down every document that you reviewed
17 during file review on June 19th?

18 MR. JAWGIEL: I'm going to object to
19 the form of the question, if it's practical.
20 I don't know if that's the standard of what's
21 reasonable in a description, if it's
22 practical or not.

23 HEARING OFFICER WEBB: I'll allow it.

24 A. No.

1

2 BY MR. PARTEE:

3 Q. If you had been asked what you did on
4 June 19, 2002, at some point in 2003, would your
5 memory have been fresher as to what you did?

6 MR. JAWGIEL: I'm going to object to
7 the relevance and the form of the question.
8 What's the relevance with respect to what his
9 memory is in 2003? It has to do what with
10 what we are here today. Today is the
11 hearing.

12 HEARING OFFICER WEBB: I am going to
13 allow it. You can open the door.

14 A. Certainly my memory would have been
15 better in 2003, but I doubt I would have been able
16 to specifically say which documents in the file I
17 reviewed that day anyway.

18 BY MR. PARTEE:

19 Q. Counsel asked you questions about your
20 October 28, 2003 time entries?

21 A. Yes.

22 Q. And counsel asked you some questions
23 about the parking receipt?

24 A. Yes.

1 Q. Related to that time entry?

2 A. Yes.

3 Q. Can you clarify the discrepancy
4 between your time entry and the hours on the parking
5 receipt?

6 MR. JAWGIEL: I'm going to object to
7 the form of the question.

8 HEARING OFFICER WEBB: The form?

9 MR. JAWGIEL: Yes.

10 HEARING OFFICER WEBB: Overruled.

11 A. The parking receipt indicates the
12 length of time that my car was parked in the lot.
13 It does not indicate the amount of time that I
14 worked on the case that day. I worked on the case
15 that day, according to my time records, 12 hours. I
16 don't know exactly what else I counted to -- I
17 forget what the difference was -- but I don't
18 remember exactly what else I did. Though it was the
19 night before or two days before trial started, so
20 reviewing documents, direct examination, exhibits,
21 anything like that at home either earlier in the
22 morning or later in the evening probably accounts
23 for that time difference.

24 MR. PARTEE: Thank you. I have

1 nothing further.

2 MR. JAWGIEL: Could I get recross?

3 HEARING OFFICER WEBB: Yes.

4 RE-CROSS-EXAMINATION

5 BY MR. JAWGIEL:

6 Q. Mr. Cohen, did you note in your
7 October 28, 2003 entry that you worked from home?

8 A. I did not.

9 Q. I see. And you don't have any
10 recollection that you actually did work from home on
11 that day; isn't that true?

12 A. I do not have a specific recollection
13 of that.

14 Q. The only time that you allegedly
15 brought the error of your first affidavit submitted
16 for cost was in response to the respondent's
17 objections, you actually looked back at the
18 receipts; is that correct?

19 MR. PARTEE: Objection, argumentative.

20 BY MR. JAWGIEL:

21 Q. And redrafted the fee petition?

22 HEARING OFFICER WEBB: I'll allow it.

23 A. I actually don't understand the
24 question. It sounded like two different --

1 MR. JAWGIEL:

2 Q. Fair enough. You signed the first
3 affidavit for cost which had the incorrect amount of
4 five thousand-some hundreds without looking at the
5 receipts; is that correct?

6 A. I can't say that, no.

7 Q. Well, if you look at the receipts,
8 which would have been the same receipts that you
9 would have had when you redrafted it, you would have
10 found the error; isn't that correct?

11 A. If there were no other receipts, yes.

12 Q. I see. So you never looked at the
13 receipts at the time that you submitted an affidavit
14 that you signed attesting to an amount of costs?

15 A. I don't recall whether I looked at the
16 receipts or not. The paralegal intern who had
17 essentially done the research to gather all this
18 information had compiled a table, and when I went
19 back for the fee petition and looked at the number
20 on that table, I could not find receipts that
21 matched the number that she had in the table.

22 Q. Which means you didn't review the
23 receipts when you initially signed the affidavit?

24 A. I don't remember whether I reviewed

1 those receipts or not, and I don't remember whether
2 I took the time to individually add them up or not.

3 Q. Did you bill time or keep time for the
4 first drafting of the affidavit?

5 A. For the first drafting?

6 Q. For the first affidavit, did you keep
7 time for that? Is that part of your closing
8 rebuttal work that you did?

9 A. Yes, this affidavit was part of the
10 closing rebuttal argument.

11 Q. So the erroneous affidavit was part of
12 the closing rebuttal argument that you put time in;
13 is that right?

14 A. Yes.

15 Q. You submitted time for?

16 A. Yes.

17 MR. JAWGIEL: That's all I have.

18 HEARING OFFICER WEBB: Anything

19 further for you?

20 MR. PARTEE: No, thank you.

21 HEARING OFFICER WEBB:

22 Congratulations, Mr. Cohen, you are finished.

23 (Short recess taken.)

24 HEARING OFFICER WEBB: The People may

1 call their second witness.

2 MR. PARTEE: The People call Bernard
3 Murphy.

4 BERNARD MURPHY

5 Having been first duly sworn, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PARTEE:

9 Q. For the record, would you please state
10 your full name and spell your last name for us.

11 A. Bernard, B-E-R-N-A-R-D, Murphy,
12 M-U-R-P-H-Y.

13 Q. Are you familiar with a case of People
14 versus Skokie Valley, et al?

15 A. Yes.

16 Q. How are you familiar with it?

17 A. I was one of the attorneys that worked
18 on that case for the Attorney General's office at
19 the time that the final hearing happened and
20 immediately prior to the final hearing.

21 Q. Let me ask you about any difficulties
22 that you may have experienced in the underlying
23 case, and start by generally asking you whether you
24 faced any difficulty in preparing the case for

1 trial?

2 A. Well, there were a few difficulties as
3 I'll call them. Number one, at some point the
4 office, the Attorney General's office, the
5 environmental, specifically where I worked, became
6 aware that one of the attorneys assigned to the
7 trial team at that time might be disqualified by the
8 Board. There was a motion pending to disqualify
9 that particular individual. Another difficulty had
10 to do with how soon the hearing was in relation to
11 when I became involved in the effort. Another
12 difficulty had to do with the way the case was
13 litigated right up to the date of the hearing.
14 There may have been more difficulties the office
15 experienced after I left the office, but I wouldn't
16 know of those.

17 Q. You said that one of the difficulties
18 was the way in which the case was litigated right up
19 to the hearing. What did you mean by that?

20 A. Well, there were significant records
21 given to us, by us, I mean at that time it would
22 have been Mitch Cohen and myself, by the respondents
23 relating to significant issues within the case very
24 shortly before the hearing. Those needed to be

1 reviewed and accounted for in order to put the
2 State's case on. So that's one of the things I'm
3 referring to.

4 Q. Any other things?

5 A. There probably were some things if you
6 had anything to refresh my recollection, but that's
7 what I recall right now.

8 Q. Let me ask you about the degree of
9 your responsibility in the case. Can you generally
10 describe for us what you did in the underlying case?

11 A. I can. I was at the time the
12 Assistant Bureau Chief, so one of my functions would
13 have been to assist the trial team to prepare for
14 that hearing. I remember that -- I believe it would
15 have been Mr. Sternstein's first contested hearing
16 as an attorney, and I remember working with him on
17 developing questions and answers for his witnesses
18 and questions, other questions he may have had about
19 how to go forward with the hearing. So there was
20 that aspect of it, and then there was also at some
21 point I became a member of the trial team. I
22 believe doing part, I believe, due to
23 Mr. Sternstein's disqualification by the Board.

24 Q. Did you take any steps to avoid

1 duplicating Mr. Cohen's efforts in preparing the
2 case for trial?

3 A. Oh, absolutely. It was critical.
4 There was so little time to get ready for the
5 hearing. It was imperative that he and I not do
6 double work and still cover all the bases that need
7 to be covered.

8 Q. Could you tell us what steps you took
9 to avoid duplicating efforts?

10 MR. JAWGIEL: I am going to object to
11 the form generally. It's vague.

12 HEARING OFFICER WEBB: Would you
13 rephrase your questions?

14 BY MR. PARTEE:

15 Q. What steps did you avoid duplicating
16 efforts?

17 A. There would have been several steps.
18 I would have had meetings with Mr. Cohen and
19 Mr. Sternstein, Joel Sternstein to become familiar
20 with the case where they saw things headed with it,
21 what the salient issues would have been in the case
22 to kind of jump start my involvement in it and
23 shorten whatever time was required to get ready by
24 reviewing things. That would have been done.

1 There would have been another
2 thing that Mitch and I did on this case and would
3 have done on other cases if we did final hearings.
4 I don't recall. That we might have -- we would have
5 come up with a witness list, and we would have
6 talked about which person was going to handle what
7 witness at the hearing, and then that discussion
8 would move to what exhibits we wanted those
9 particular witnesses to get into the record, use
10 those particular witnesses to get certain exhibits
11 into the record at the hearing. There would also
12 have been discussions about cross-examination
13 assignments for the respondent's witnesses.

14 Q. Okay. Thank you. Let me ask you
15 about your time in bringing the underlying case to a
16 close and when did you first get involved in this
17 case approximately?

18 A. My recollection is from the deposition
19 you did in this case that my affidavit said October
20 3.

21 Q. And did you keep track of the time
22 that you spent on this case?

23 A. I did, but I did it in this fashion.
24 I did not do it immediately upon being assigned to

1 the case. At some point Mr. Cohen and I had to
2 travel to prepare witnesses for hearing, and just
3 because of what we had to do to comply with office
4 procedures to account for our time when we were out
5 of the office traveling, I would have been tracking
6 my time for those functions, I guess, you'd call
7 them. And then at some point when it became clear
8 that we were going to be -- at some point around
9 that time I started keeping track contemporaneously
10 as they spent time on the case. I think I just said
11 that, I'm sorry, but right about the same time I
12 would have also tried to calculate the time I spent
13 historically before those travel times to prepare
14 those witnesses.

15 Q. Approximately how much time passed
16 between your initially spending time on this case
17 and your historically trying to recreate that time?

18 A. Well, I believe it would have been a
19 matter of a few weeks, I think. That's my
20 recollection of what my affidavits show. My
21 affidavits would be the one, if you joined my -- if
22 you showed me my affidavits, I can tell you
23 precisely what these days were.

24 Q. Do you have the exhibits in front of

1 you? Let me direct your attention to what was
2 previously marked as People's Exhibit No. 100?

3 A. I have that in front of me.

4 Q. Would you take a look at this and tell
5 me whether this contains the affidavit that you just
6 mentioned?

7 A. It does contain an affidavit I signed
8 as Exhibit C to that Exhibit.

9 Q. Okay. Just so we're clear, Exhibit C
10 to the People's fee petition at People's Exhibit 100
11 is your affidavit?

12 A. Yes, it appears to be.

13 Q. Does that appear to be your signature?

14 A. Yes, it does.

15 Q. Do you see anything to indicate
16 otherwise?

17 A. No.

18 Q. And if you want to take a moment and
19 look at this and then set it aside, so you can
20 us --

21 MR. JAWGIEL: I have no objection to
22 having them in front of him. There's no
23 objection to Mr. Murphy having them in front
24 of him as long as he just references what he

1 is referring to so we can keep track.

2 A. It does refresh my recollection about
3 when I started contemporaneously tracking time and
4 also calculating the historical time I spent on it.

5 BY MR. JAWGIEL:

6 Q. And what was that time frame?

7 A. It would have been right around
8 October 29th that I began tracking my time
9 contemporaneously with spending the time on the case
10 and also trying to calculate what I did historically
11 or how much time I spent historically on the case.

12 Q. Did you have any other case at the
13 same time you were working on Skokie Valley?

14 A. I had a caseload in addition to Skokie
15 Valley at the time I was working on that case, yes.

16 Q. Do you recall roughly how many cases
17 you had on your caseload?

18 A. I do recall it would have been in the
19 neighborhood of 30 to 40 cases.

20 Q. And did you have any management
21 responsibilities in addition to your caseload at the
22 time you were working on Skokie Valley?

23 A. I did.

24 Q. What sort of management

1 responsibilities?

2 A. Well, those management
3 responsibilities consisted of specific tasks given
4 to me by the bureau chief to assist other assistants
5 in the bureau. They would have included, those
6 management responsibilities would have included
7 filling in for the bureau chief in her absence,
8 doing the things she needed to do for the division
9 chief.

10 Q. Is it fair to say you were busy?

11 A. Yes, I was very busy at the time.
12 Yes, we had -- in fact, we had just finished a
13 trial, a different trial in September of that year I
14 believe, so I was just coming off one and then not
15 too long after that gearing up for another.

16 Q. And as far as your billing, in what
17 increments did you record your time -- I'm sorry to
18 use the words billing -- but as far as time keeping,
19 as far as time keeping, what increments did you keep
20 your time?

21 A. I kept my time or calculated my time
22 in either hour or half hour increments.

23 Q. And did you spend any time on this
24 case that you did not record?

1 A. Oh, absolutely. This is only a
2 very --

3 MR. JAWGIEL: I am going to object to
4 that. It's irrelevant. What he spent on the
5 case that he did not record is not part of
6 the petition for reasonable attorneys' fees,
7 but what is part of the petition is the time
8 that he did record and that's the only
9 germane issue.

10 MR. PARTEE: Well, it goes to
11 reasonableness.

12 HEARING OFFICER WEBB: I'll allow it.

13 A. This calculation of my time, let me
14 find it in Exhibit C to People's Exhibit 100, is a
15 very modest representation of the time I spent on
16 Skokie Valley. Anywhere from a half to a third of
17 the time I actually spent on this case ended up in
18 this calculation.

19 BY MR. PARTEE:

20 Q. As far as the time that you recorded,
21 did you work all the time that you record in this
22 case? Do you understand my question?

23 A. I don't. Can you rephrase it?

24 Q. I'll rephrase it. Did you record any

1 time that you didn't actually work on the case?

2 A. No, all of the hours that are
3 reflected in this affidavit are hours I spent
4 working on this case. Some of the hours I spent
5 working on the case never made it to the affidavit.

6 Q. Thank you. And while you were working
7 or traveling on the Skokie Valley case, were you
8 prevented from working or traveling on other cases?

9 A. During those hours I was working on
10 the Skokie Valley case, yes, and while I was
11 traveling, yes.

12 Q. What rate did you bill your time in
13 the Skokie Valley case?

14 MR. JAWGIEL: I'm going to object to
15 the foundation.

16 MR. PARTEE: I'll rephrase because I
17 hate to use the word bill.

18 BY MR. JAWGIEL:

19 Q. But at what rate are you seeking for
20 your time in the fee petition?

21 MR. JAWGIEL: I am going to object.

22 Mr. Murphy does not have any rate on his
23 affidavit and he is not seeking anything in
24 the petition. The petition is signed by

1 Mr. Cohen, and that's the only thing that has
2 a rate in it. The affidavits do not have a
3 rate, so therefore he is not seeking any rate
4 at this point. Mr. Cohen is seeking a rate
5 based on the petition that he filed. If you
6 look at this affidavit, this affidavit does
7 not have a rate on it, his affidavit has a
8 date.

9 MR. PARTEE: We'll move on. It's in
10 the fee petition.

11 HEARING OFFICER WEBB: Thank you.

12 MR. PARTEE: Would you mark this as
13 People's Exhibit 104, please.

14 (People's Exhibit
15 No. 104 marked.)

16 BY MR. PARTEE:

17 Q. You can take as much time as long as
18 you want to review it, but just look up when you are
19 ready. What is the document that's been marked as
20 People's 104?

21 A. It appears to be a copy of a CV I used
22 or put together or used at or around the time of the
23 Skokie Valley hearing.

24 Q. Is the information in there true and

1 accurate as of the time it was submitted in this
2 Skokie Valley case?

3 A. It appears to be, yes.

4 Q. Let me ask you, and in the interest of
5 time I'm not going to go through your entire CV, but
6 let me ask you, for example, about your experience
7 of the law office of J. Patrick Donovan, how long
8 were you with the law office of J. Patrick Donovan?

9 A. Almost five years. Well, actually,
10 yes, almost five years.

11 Q. And what sort of law practice did
12 Donovan have?

13 A. Well, the name of the firm changed a
14 number of times over the course of my association
15 with it, and that was the most recent name it had.
16 During the times that the name changed, partners
17 were leaving and different portions of work would go
18 with them, but generally speaking, I worked on tort
19 liability cases with an aviation theme to them.
20 Mr. Donovan was also at the time a hearing officer
21 with the Pollution Control Board during the time
22 when the Board contracted that work out to private
23 attorneys. Mr. Donovan --

24 MR. JAWGIEL: I'm going to object to

1 what Mr. Donovan did. That's not relevant to
2 the question. The question is what did
3 Mr. Murphy do while he was at Donovan's
4 office.

5 MR. PARTEE: No, my question is what
6 sort of practice the Donovan firm had,.

7 MR. JAWGIEL: Then I'll object to the
8 relevance.

9 HEARING OFFICER WEBB: I'll allow it,
10 if we could summarize a little bit.

11 A. I will try. I did some mechanic lien
12 work at that firm. I did some real estate work.
13 There was some environmental work there. Most of
14 the work had to do with aviation tort liability
15 cases on the defense side. There was one personal
16 injury plaintiff's case we had at the time.

17 BY MR. PARTEE:

18 Q. Is it fair to say you gained some
19 environmental experience at the Donovan law firm?

20 MR. JAWGIEL: I'm going to object to
21 the leading nature of the question.

22 HEARING OFFICER WEBB: I'm allow the
23 question.

24 A. Yes, it is fair to say that, not just

1 general experience, but Pollution Control Board
2 specifically.

3 BY MR. PARTEE:

4 Q. Did you bill your time while at the
5 Donovan firm?

6 A. I did, but not on the Pollution
7 Control Board work.

8 Q. You did, but you recorded some of the
9 matters that you worked on at the Donovan firm?

10 A. All of them.

11 Q. Except for the PCB case?

12 A. Yes.

13 Q. Did you receive any billing training
14 at the Donovan firm?

15 A. I did, yes. They trained us on how
16 the billing procedure worked in that particular
17 firm, what they expected out of the associates as
18 far as time sheets went, how to make the notations
19 that the clerk processing those time sheets would
20 recognize and so, yes, I did.

21 Q. Did you have any trial experience
22 before the Skokie Valley case?

23 A. I did.

24 Q. About how much trial experience did

1 you have?

2 A. I think it would have been four or
3 five either trials or final hearings -- well trials.

4 Q. Were those bench trials or jury
5 trials?

6 A. One jury trial. The others would be
7 bench trials.

8 Q. And where was that trial experience
9 gained?

10 A. The jury trial was with the law office
11 of J. Patrick Donovan on a wrongful death case in
12 the Cook County Circuit Court. The bench trials
13 were with the Attorney General's office before I
14 worked on the Skokie Valley case.

15 Q. And were the bench trials that did you
16 with the Illinois Attorney General's office, did all
17 of those involve the Environmental Protection Act?

18 A. Yes, they did.

19 MR. JAWGIEL: I'm going to object to
20 the form of the question.

21 HEARING OFFICER WEBB: I will allow
22 the question.

23 A. Yes, they did, every one.

24 MR. PARTEE: I have no further

1 questions. Thank you.

2 HEARING OFFICER WEBB: Mr. Jawgiel?

3 CROSS-EXAMINATION

4 BY MR. JAWGIEL:

5 Q. Mr. Murphy, the trial that you did,
6 did you second chair that trial?

7 A. I did.

8 Q. You weren't lead counsel then, is that
9 correct?

10 A. Sorry, I didn't hear you.

11 Q. You were not the lead counsel?

12 A. I was not the first chair on that
13 case, correct.

14 Q. You had time sheets that you wrote
15 notes, that you wrote when you kept your time
16 contemporaneous and historically with respect to
17 this case; is that correct?

18 A. I would have written them down when I
19 was calculating my time, yes, that's correct.

20 Q. And those sheets have since been
21 devoid; is that right?

22 A. I have no idea. I have not seen the
23 file since I have left the office, but I would not
24 be surprised if they were.

1 MR. JAWGIEL: Mr. Partee, do you have
2 those notes in your file?

3 MR. PARTEE: No, I don't.

4 BY MR. JAWGIEL:

5 Q. And I take it that your affidavit, the
6 statements you made in the affidavit which is
7 attached to People's Exhibit 100 and it's Exhibit C,
8 were those verbatim from your handwritten notes
9 which you did?

10 A. What do you mean by verbatim?

11 Q. Well, did you take verbatim what you
12 wrote in your handwritten notes and put it in this
13 statement that's attached to your affidavit or did
14 you change the language?

15 A. I may have itemized different things I
16 spent time on certain days and then summarized those
17 in these references.

18 Q. So when you are pointing to these
19 references, just so the record is clear, you are
20 talking about the itemization that's attached to
21 your affidavit are summaries of what might be in
22 your notes?

23 A. They could be. They could be. I'd
24 have to see the notes again to be sure.

1 Q. Now, you also indicated that the time
2 that's in this compilation attached to your
3 affidavit is somewhere between maybe a half or
4 one-third of what you billed in this case; is that
5 correct?

6 A. Yes, yes.

7 Q. So if I look at the entry for October
8 22, 2003, you would have billed five hours that day?

9 A. No, that's not true, that's not
10 accurate.

11 Q. So what we have to say is that
12 actually the time that, the extra time that you
13 spent in this case was time you spent with
14 Mr. Sternstein in preparing him for the case?

15 A. No.

16 Q. That isn't true?

17 A. That's not accurate.

18 Q. So what we are looking at here is that
19 you would have billed somewhere between 429 hours
20 and 672 hours if we take 143 hours and multiply it
21 by either two or three in a month; is that correct?

22 A. No, I mean, what I am saying is, I am
23 estimating the time that I left off the affidavit.
24 The time that's on the affidavit is not an estimate.

1 Q. What I am telling you is that you said
2 that this is one-third or one-half of the time you
3 actually spent on this file?

4 MR. PARTEE: I object. That's not a
5 question.

6 MR. JAWGIEL: Isn't that correct?

7 HEARING OFFICER WEBB: Could you
8 rephrase that? Could you make that question
9 clear?

10 BY MR. JAWGIEL:

11 Q. The time we see here from October 3,
12 2003 to September 16, 2004, represents approximately
13 one-half to one-third of the time you actually spent
14 on this file?

15 A. That's what I am saying, yes.

16 Q. So if we multiply 143.5 hours by let's
17 say three, I get 429 hours that you would have spent
18 in a month on this case?

19 MR. PARTEE: Objection, that's
20 argumentative.

21 BY MR. JAWGIEL:

22 Q. Is that correct?

23 HEARING OFFICER WEBB: I'll allow you
24 to clarify your earlier response.

1 A. First of all, the time I left off
2 could predate October 3, 2003.

3 BY MR. JAWGIEL:

4 Q. How much?

5 A. It's an estimate. I didn't keep track
6 of that time.

7 Q. How much of it then?

8 MR. PARTEE: Objection, asked and
9 answered.

10 A. Why is it --

11 HEARING OFFICER WEBB: He did answer
12 it.

13 BY MR. JAWGIEL:

14 Q. You have no idea how much time you
15 spent before October 3, 2003 on this case?

16 MR. PARTEE: Objection, asked and
17 answered.

18 A. I didn't see how the time I left off
19 the --

20 HEARING OFFICER WEBB: I'll just let
21 you answer it one final time, but I think we
22 have addressed this, but go ahead and just
23 give your final answer.

24 A. I didn't see how it was important for

1 me to calculate precisely the amount of time I was
2 leaving off the affidavit.

3 BY MR. JAWGIEL:

4 Q. So it has no relevance in your mind?

5 A. That's a little --

6 MR. PARTEE: I would object. That's
7 argumentative.

8 HEARING OFFICER WEBB: Sustained.

9 BY MR. JAWGIEL:

10 Q. So there's no way that we could tell
11 whether or not the time that you have recorded here
12 is actually more than the time you actually spent
13 from October 3, 2003 to September 16, 2004?

14 A. I didn't understand that question.

15 Q. Sure. Let me ask you this question.
16 On October 3, 2003, did you spend more than 2.5
17 hours on the Skokie Valley case?

18 A. I think her ruling -- did I -- it
19 doesn't, in my mind, it doesn't matter because I
20 didn't put it on the affidavit.

21 Q. Did you though?

22 A. Did I what?

23 Q. Did you actually spend more than 2.5
24 hours on October 2003 on the Skokie Valley case?

1 Simple question.

2 MR. PARTEE: Objection, asked and
3 answered.

4 HEARING OFFICER WEBB: He has answered
5 he didn't keep track of the time that wasn't
6 recorded on the affidavit.

7 BY MR. JAWGIEL:

8 Q. So there's no way we can tell if you
9 spent any more time on this sheet than what you have
10 written here; isn't that correct?

11 A. I'm not sure why you want to if you
12 are contesting --

13 MR. PARTEE: Let the hearing officer
14 rule on the objections.

15 HEARING OFFICER WEBB: Are you asking
16 a new question?

17 MR. JAWGIEL: Yes.

18 BY MR. JAWGIEL:

19 Q. My question is, there's no way any
20 reasonable person looking at what you've submitted
21 in this case can determine based on what you've
22 submitted whether or not you spent more time than
23 what is recorded in your affidavit?

24 HEARING OFFICER WEBB: Well, I'll

1 allow you to answer.

2 A. Yes, I could because I told you that
3 this is a modest representation of the time that I
4 spent on this case.

5 BY MR. JAWGIEL:

6 Q. How are they going to determine how
7 much time you spent on this case from October 3,
8 2003 to September 16, 2004?

9 MR. PARTEE: Objection, asked and
10 answered.

11 HEARING OFFICER WEBB: You can go
12 ahead and answer.

13 A. Number one, because I told you it's a
14 modest representation, and that's my sworn
15 testimony. And, number two, I'm not sure why it
16 would be important since you are contesting the
17 modest representation that I have got on this
18 affidavit.

19 BY MR. JAWGIEL:

20 Q. It goes to your credibility, sir, if
21 you want to know why. You are telling me you spent
22 429 hours in a month on this case?

23 A. No, I'm saying that was an estimate.

24 Q. That was an estimate, and this is an

1 estimate which is Exhibit 3; is that correct?

2 MR. PARTEE: Objection, this is
3 argumentative.

4 HEARING OFFICER WEBB: This is
5 argumentative. You are not asking any new
6 questions.

7 MR. JAWGIEL: This goes to
8 credibility.

9 MR. PARTEE: It's theatrics too.

10 BY MR. JAWGIEL:

11 Q. This is an attachment, Exhibit C, is
12 an estimate for time that you have recorded here?

13 A. I have already said it is not.

14 Q. It is not?

15 A. Correct.

16 Q. Did you type your own documents, sir?

17 A. During the time I was with the office
18 I typed most of my own documents, yes.

19 Q. Any of the documents that are recorded
20 in your affidavit from October 3, 2006 to September
21 16, 2004 documents that you did not type?

22 MR. PARTEE: Object to the form of the
23 question.

24 HEARING OFFICER WEBB: I will allow

1 it.

2 A. I'm not sure what specific documents
3 you are referring to.

4 BY MR. JAWGIEL:

5 Q. Well, you tell me what's in your
6 affidavit. You drafted it. It says "prepared draft
7 of closing statement on November 17, 2003." Any of
8 the things that indicate that you drafted anything?

9 A. Well --

10 Q. Did you type those documents?

11 A. I can take each one at its turn.

12 Q. Sure, let's do that then. October 3,
13 2003, did you draft any documents on that day?

14 MR. PARTEE: I would object that we
15 are going to go through every single document
16 here.

17 MR. JAWGIEL: He said that we have to
18 go through each entry. I am going to follow
19 his lead, if that's what he wants to do,
20 that's what we'll do.

21 HEARING OFFICER WEBB: Well, we did it
22 for Mr. Cohen so --

23 A. Well, what I said was I'd be happy to
24 talk about each specific document referenced in my

1 affidavit. There are some references here, but he
2 is referring to other entries that don't represent
3 other documents.

4 HEARING OFFICER WEBB: Can we limit
5 the answer to entries that refer to
6 documents?

7 BY MR. JAWGIEL:

8 Q. Let me do it this way. Let me suggest
9 this, if I may, Mr. Murphy what's the entry on the
10 list that you drafted a document? First entry which
11 you drafted a document?

12 A. On the affidavit, the affidavit lists
13 the prepared draft of closing statement.

14 Q. And that's November 17, 2003; is that
15 correct?

16 A. That's the date next to that entry,
17 yes.

18 Q. Is that an accurate date?

19 A. Yes, I believe it's an accurate date.

20 Q. Did you type that document?

21 A. I would have typed my portion of the
22 draft closing statement, yes, I would have.

23 Q. What portion did you do?

24 A. You would have to show me the closing

1 statement.

2 Q. So as you sit here you don't know?

3 A. It's been three years.

4 Q. So as you sit here, you don't know?

5 MR. PARTEE: Objection, asked and
6 answered.

7 HEARING OFFICER WEBB: Sustained.

8 BY MR. JAWGIEL:

9 Q. On November 18, 2003, do you know what
10 portion of the draft of the closing you drafted out
11 on that day?

12 A. Well, I remember that when Mitch,
13 Mr. Donovan and I spoke about assignments for the
14 closing statement, I had specific areas that I took
15 as my responsibility to develop. Mr. Cohen had
16 specific areas that he took the responsibility to
17 develop. So it could be that, and I believe it is,
18 that prepared draft of closing statement. Those two
19 references on those two days refers to the same
20 portion of the draft closing statement I was
21 assigned to draft.

22 Q. And what portion was that?

23 A. I've already answered that question.
24 You'd have to show me the closing statement for me

1 to be able to tell you that might refresh my
2 recollection.

3 Q. What's the next document after
4 November 18, 2003 that you drafted?

5 MR. PARTEE: Objection on relevance
6 grounds, and that we don't need to go each
7 and every one of these.

8 HEARING OFFICER WEBB: I'll allow it.
9 There aren't many here.

10 A. Well, the affidavit says that on
11 4/12/2004 I reviewed and revised the report for
12 closing argument?

13 BY MR. JAWGIEL:

14 Q. And why was the revision necessary?

15 A. As I sit here today, I don't know.

16 Q. Okay. And did you type that
17 rescission yourself?

18 A. My practice was to do that.

19 Q. Now, with respect to the time that you
20 spent actually typing a document, did you reduce the
21 time that you spent on your entry by the amount of
22 time it took you to type?

23 A. Well, I would have typed directly onto
24 the screen as I was drafting the document so I mean,

1 it was a function of a couple of things, and over
2 the course of time and having to respond to these
3 things, my typing actually got fairly good. My
4 handwriting is atrocious. None of the secretaries
5 can read it without a lot of effort and a lot of
6 back and forth to see what I wrote. So it was
7 faster for me and in the end saved your clients more
8 money by me drafting it myself on the computer.

9 Q. Did the Attorney General's office have
10 dictation for its attorneys?

11 A. It had it for its supervisors.

12 Q. And you were a supervisor?

13 A. It did. I was.

14 Q. So you had availability for you to
15 dictate your documents and give it to your
16 secretary; is that correct?

17 A. Only for significant projects beyond
18 the scope of this.

19 Q. This is not considered a significant
20 project for the Attorney General's office?

21 A. It is, but when I say that beyond the
22 scope of this. I mean something that would have
23 been many more pages than what my portion of the
24 review and revised report would have been.

1 Q. I see. And do you talk faster than
2 you type at this time?

3 A. I've never timed it. I don't know.

4 Q. How fast did you type back in October
5 through September 2004, October 2003, April 2004?

6 MR. PARTEE: Objection, the relevance
7 grounds. He can testify that he can draft it
8 on the computer faster than you can write.

9 HEARING OFFICER WEBB: I will allow
10 you to answer, if you know.

11 A. My only sense of how fast I typed had
12 to do with typing class I took in high school and by
13 the time of my work on this Skokie Valley trial, I
14 mean, I worked at the office, the Attorney General's
15 office for almost 7 years at that point. I was a
16 much faster typer at that point than I was in my
17 typing class in high school.

18 Q. That's wonderful. How fast were you
19 at that period in time?

20 A. In high school?

21 Q. No, the period of time of October,
22 let's say October of 2003 through May of 2004, how
23 fast could you type?

24 A. I never had it measured.

1 Q. So you don't know?

2 MR. PARTEE: Objection asked and
3 answered.

4 A. I told you what my sense was based on.

5 HEARING OFFICER WEBB: I'll sustain
6 that. I think he answered that.

7 BY MR. JAWGIEL:

8 Q. You told me what your sense was based
9 on what you typed in high school, but you didn't
10 tell us what you typed in high school.

11 MR. PARTEE: That's not a question.

12 BY MR. JAWGIEL:

13 Q. So what was your typing speed in high
14 school?

15 MR. PARTEE: Objection asked and
16 answered.

17 HEARING OFFICER WEBB: I'll allow you
18 to answer. I don't recall what you said.

19 MR. PARTEE: Objection, relevance.

20 A. It was very long ago. I don't
21 remember. It was somewhere in the neighborhood of
22 20 words a minute to 30 words a minute. I think I
23 got a C in that class.

24 BY MR. JAWGIEL:

1 Q. Your preparation on April 12, 2004 you
2 have preparation of fees affidavit and statement of
3 hours, did you type that as well?

4 A. I don't remember.

5 Q. What's next document after April 12,
6 2004, if any, that you actually typed?

7 A. Well, the reference on the next
8 reference on the affidavit to any document being
9 drafted is on September 16, 2004.

10 Q. And did you type the People's fees
11 worksheet affidavit?

12 A. I could have typed it. I don't
13 remember.

14 Q. Now, you also had travel expenses that
15 you submitted; is that correct?

16 A. Yes.

17 Q. I believe we have it, if I may
18 approach the witness.

19 HEARING OFFICER WEBB: Please.

20 BY MR. JAWGIEL:

21 Q. People's Exhibit 102, and I'm going to
22 see if I could find it for you. It will be easier
23 for to you find it for you than for you to dig
24 through it?

1 A. By all means.

2 Q. I have a general sense where it pops
3 in. I'm going to show you what the travel voucher
4 is, and I believe this to be your travel voucher and
5 I'll have you identify it, this is the travel
6 voucher you submitted in the Skokie Valley case?

7 A. It appears to be.

8 Q. When you say it appears to be, is that
9 a yes or is that a no?

10 A. It appears to be.

11 THE WITNESS: Can we go off the record
12 for a second?

13 HEARING OFFICER WEBB: Okay.

14 (Short recess taken.)

15 HEARING OFFICER WEBB: We are looking
16 at Mr. Murphy's travel voucher, and the
17 parties agree that the social security number
18 shall be redacted.

19 MR. JAWGIEL: Any other document that
20 has a social security number of the AG's can
21 also be redacted out without us going into
22 specific stipulations.

23 THE WITNESS: Thank you very much. I
24 appreciate that.

1 MR. JAWGIEL: That has no relevance to
2 that whatsoever. Okay.

3 BY MR. JAWGIEL:

4 Q. Now, Mr. Murphy, it took you
5 approximately 40 minutes to travel from the office,
6 45 minutes from the office, which I believe is in
7 downtown Chicago, is that correct, to Libertyville
8 on the 29th; is that right?

9 A. Are you asking me if that's the
10 correct location of the office or the amount of time
11 I spent traveling?

12 Q. Oh, I apologize. Where is the office
13 located?

14 A. The office at the time was located at
15 188 West Randolph street in the downtown area of
16 Chicago.

17 Q. And on October 29, 2003, you left from
18 that office to go to Libertyville?

19 A. Yes.

20 Q. And it took you 45 minutes from the
21 office to get to Libertyville on that day?

22 A. Yes, it did.

23 Q. How many hearings did you have before
24 the Illinois Pollution Control Board before the

1 Skokie Valley case actually went to hearing?

2 A. When you say hearing, you mean a final
3 hearing?

4 Q. Yes, a final hearing.

5 A. None, this was my first.

6 Q. And how many Pollution Control Board
7 cases prior to Skokie Valley were you involved in
8 drafting of the closing argument?

9 A. Pollution Control Board cases?

10 Q. Yes.

11 A. Those are cases that went to final
12 hearing?

13 Q. Yes, went to final hearing, yes.

14 A. Just one.

15 Q. Prior to Skokie Valley?

16 A. Prior to Skokie Valley, none.

17 Q. And Skokie Valley is your only
18 experience in this matter?

19 A. I believe so.

20 Q. Just so we're clear, on October 29,
21 2003, that's when you started keeping
22 contemporaneous records with respect to the Skokie
23 Valley case?

24 A. That's when it started, yes.

1 Q. Now, what did you review in order to
2 historically reconstruct the entries from October 3,
3 2003 to October 29, 2003?

4 A. Well, it would have been the file that
5 the office had on the case. It would have been
6 documents that I drafted during that time. It would
7 have been the pleadings that your clients filed in
8 the case, anything associated with the case that was
9 either filed or part of the Attorney General's
10 office file on it.

11 Q. And was it your understanding that you
12 were assigned to this file on October 3, 2003
13 because Mr. Sternstein had been removed from the
14 case?

15 MR. PARTEE: Objection, that's been
16 asked and answered. We are backtracking.

17 MR. JAWGIEL: I never asked that
18 question, and since I never asked that
19 question, it can't be asked and answered.

20 HEARING OFFICER WEBB: I don't think
21 it was asked of this witness, I am sorry,
22 that I recall.

23 MR. JAWGIEL: No.

24 HEARING OFFICER WEBB: Go ahead.

1 A. As I sit here today, I remember now
2 that it was not, that October 3, 2003 date predated
3 Mr. Sternstein's disqualification, and at the time
4 of my deposition, I wondered if it was. I was not
5 sure. By that I mean, I wondered if that was the
6 date that Joel was disqualified.

7 BY MR. JAWGIEL:

8 Q. And what have you reviewed since that
9 date that let you determine when Mr. Sternstein was
10 disqualified?

11 A. Well, after I received a copy of my
12 deposition transcript, I had a number of questions
13 about my testimony and the accuracy of the
14 stenographer's transcript of it so I went on to the
15 PCB website and I looked at several orders and, you
16 know, the captions of things that are posted there
17 and I found an order that disclosed the date, the
18 actual date of the Board ordered that disqualified,
19 whereby the Board disqualified Mr. Sternstein.

20 Q. And what was the date?

21 A. I believe it was October 16, 2003, but
22 again, I would only be sure if you showed me a copy
23 of that order again.

24 Q. Let's look at your entry October 16,

1 2003, it references, "Review Board order.
2 Conference with Sternstein and Cohen." I know the
3 end is chopped off?

4 A. Yes, you are right.

5 Q. Was that the Board order that
6 disqualified Mr. Sternstein?

7 A. I believe it would have been, yes.

8 Q. And how long did it take you to review
9 that order?

10 A. It was not a very long order the way I
11 remember it. It was only maybe five or six pages,
12 so not very long.

13 Q. How long would that have been not very
14 long?

15 MR. PARTEE: Objection, asked and
16 answered.

17 HEARING OFFICER WEBB: Well --

18 MR. JAWGIEL: Not very long doesn't
19 give a specific amount.

20 HEARING OFFICER WEBB: If you know any
21 more specifically.

22 A. I can't remember specifically.

23 BY MR. JAWGIEL:

24 Q. Can you tell me in conference with

1 Mr. Sternstein and Mr. Cohen, were they present
2 throughout that conference with you?

3 A. I don't recall whether -- I don't
4 recall specifically, but I do remember Joel was very
5 concerned about making sure he complied with that
6 order.

7 Q. All right. Did you meet with
8 Mr. Sternstein and Mr. Cohen together on that day?

9 A. I don't remember.

10 Q. And so the work that you did prior to
11 October 16, 2003, was work that you did because you
12 were assigned to this case on account of the
13 inexperience of Mr. Cohen and Mr. Sternstein?

14 A. No.

15 Q. Then why were you assigned to their
16 case as a third attorney?

17 A. Because there was a motion pending to
18 disqualify Joel, Mr. Sternstein, sorry.

19 Q. So the work that you did between
20 October 3, 2003 and October 16, 2003, was that done
21 because there was anticipation that Mr. Sternstein
22 might be disqualified?

23 A. That was one of the reasons. The
24 other reason, as I mentioned, it was

1 Mr. Sternstein's first contested hearing.

2 Q. So you were doing all of this work in
3 anticipation Mr. Sternstein might be removed as an
4 attorney or if he was allowed to go forward and he
5 had inexperience and needed some help; is that a
6 fair characterization?

7 A. No, it's both.

8 Q. It's both, right?

9 A. Right.

10 Q. Okay, both. But none of that had to
11 do with the fact that the attorneys that were on the
12 case -- strike that.

13 So your involvement in the case
14 was basically because of inexperience of the
15 attorney, Mr. Sternstein, or disqualification from
16 October 3, 2003 to October 16, 2003?

17 MR. PARTEE: Objection, asked and
18 answered. I know we have covered this
19 already.

20 HEARING OFFICER WEBB: We have. This
21 has been asked and answered.

22 MR. JAWGIEL: Are you sustaining the
23 objection?

24 HEARING OFFICER WEBB: Yes.

1 MR. JAWGIEL: Just want to be clear.

2 HEARING OFFICER WEBB: Sorry.

3 BY MR. JAWGIEL:

4 Q. Is it your understanding that it's
5 reasonable to charge for your time because of the
6 inexperience of an attorney in the office assigned
7 to the case?

8 MR. PARTEE: Objection. I mean
9 objection relevance, and I would object to
10 the counsel himself moved to exclude any
11 opinions from this proceeding and now he,
12 himself, is trying to --

13 MR. JAWGIEL: I will withdraw the
14 question.

15 HEARING OFFICER WEBB: Thank you.

16 BY MR. JAWGIEL:

17 Q. Now, you have entries for trial
18 preparation October 22, 2003, going through October
19 27, 2003. Can you tell us with any specificity what
20 you reviewed on any of those days for the amount of
21 time listed?

22 A. What do you mean by specificity?

23 Q. Tell me specifically what you reviewed
24 on October 22, 2003, was it specifically the

1 pleadings? Was it specifically the transcript?
2 What was it that you actually reviewed for the
3 amount of time that you charged?

4 A. I can tell you what I reviewed to get
5 ready for the trial.

6 Q. That's not what I am asking. I want
7 to know specifically what you reviewed at any of the
8 given days from October 22, 2003 through October 27,
9 2003?

10 MR. PARTEE: I would object that you
11 are interrupting the witness.

12 MR. JAWGIEL: I am not asking him
13 generally what he reviewed. We will go at it
14 this way, then we will go the right way.

15 BY MR. JAWGIEL:

16 Q. On October 22, 2003, what did you
17 specifically review for trial preparation on that
18 day?

19 A. Well, at that point looking at what my
20 earlier entries are on this affidavit, I think from
21 October 22nd through October 27th what I would be
22 doing was preparing question and answers for the
23 witnesses. So I would be reviewing --

24 MR. JAWGIEL: I'm going to object to

1 this as being nonresponsive to my questions.
2 My question was specifically on
3 October 22, 2003 trial preparation, what did
4 you specifically do on that day?

5 HEARING OFFICER WEBB: Not during the
6 period?

7 MR. JAWGIEL: I changed it because he
8 refused to answer it in a sort of coherent
9 manner.

10 MR. PARTEE: I would object to that.

11 HEARING OFFICER WEBB: I will sustain
12 your objection as to characterization, but --

13 MR. JAWGIEL: Why? I am asking him
14 specifically.

15 HEARING OFFICER WEBB: Do you
16 understand he wants to know the day, not the
17 period.

18 BY MR. JAWGIEL:

19 Q. On October 22, 2003 what specifically
20 did you review to justify your trial preparation of
21 7.5 hours?

22 A. It would have been anything having to
23 do with the first witness I would have been
24 responsible for at hearing. The way that we

1 anticipated the hearing going forward.

2 Q. And who was it?

3 A. You would have to show me the
4 transcript. I could tell you then.

5 Q. As you sit here today, you don't know
6 other than if you look at the transcript you think?

7 A. If I look at the transcript, I know
8 who that witness will be.

9 Q. And what did you do in that
10 preparation specifically?

11 A. For that first witness?

12 Q. Yes.

13 A. It depended on who that witness was,
14 but I would have looked at -- if the witness was a
15 government witness, which I'm guessing it was since
16 we went first -- it would have been any document
17 that witness generated, anything having to do with
18 the interviews that witness conducted.

19 Q. And that happened October 22, 2003?

20 MR. PARTEE: Objection, you are
21 interrupting the witness.

22 HEARING OFFICER WEBB: I'll allow it.
23 Go ahead.

24 A. Can you repeat the question, again?

1 BY MR. JAWGIEL:

2 Q. And that would have happened
3 October 22, 2003?

4 A. And any other documents that was
5 submitted by your client that supported the witness
6 documenting his report.

7 Q. What did you do on trial preparation
8 on October 8, 2003?

9 A. Specifically, I can't tell you, but
10 that early in my preparation it would have been
11 more --

12 MR. JAWGIEL: I am going to ask and
13 object that the rest of the answer be
14 stricken. I asked him specifically what he
15 did on October 8, 2003. He said I can't tell
16 you. Anything else beyond that is beyond the
17 scope.

18 HEARING OFFICER WEBB: Okay. I'll
19 sustain it.

20 BY MR. JAWGIEL:

21 Q. On October 14, 2003, what did you
22 specifically do for trial preparing?

23 A. Judging from what the entries are
24 before and after it, would had to have been

1 familiarizing myself with the discovery issues that
2 existed in the case at that time.

3 Q. And that's because you weren't
4 familiar with the case at that time?

5 MR. PARTEE: Objection, argumentative
6 and you are mischaracterizing his earlier
7 testimony.

8 MR. JAWGIEL: I am just merely asking
9 him is that because you weren't familiar with
10 the case at that time.

11 HEARING OFFICER WEBB: I'll allow it.

12 A. Did you say unfamiliar or familiar?

13 BY MR. JAWGIEL:

14 Q. You were not familiar with the case at
15 that time?

16 A. A true statement would be I was
17 becoming familiar with the case.

18 Q. Okay. What did you do for trial
19 preparation on October 23, 2003?

20 A. Well, judging from the entries before
21 and after that particular one, I think I would have
22 been still finishing up my preparation for what we
23 believed my first witness would be and then
24 transitioning to the second.

1 Q. Do you have a specific recollection of
2 doing that or are you just guessing or surmising at
3 this point?

4 A. It's not a guess or surmise. I am
5 basing that on what I have in my affidavit and my
6 sense, you know, recollection of how I got ready for
7 these trials, which was fairly consistent over the
8 time I did them.

9 Q. So what you are telling us is what you
10 did as a matter of practice, not necessarily what
11 you did on those specific days; is that a correct
12 characterization?

13 A. It's both.

14 Q. When did the documents that you
15 testified earlier come in from Skokie Valley's
16 counsel?

17 A. Which ones?

18 MR. PARTEE: I would object to the
19 vagueness, Counsel.

20 HEARING OFFICER WEBB: Sustained.

21 BY MR. JAWGIEL:

22 Q. You stated earlier that there was a
23 bunch of documents that were submitted in the course
24 of discovery, close to the hearing that were

1 submitted by Skokie Valley's attorneys?

2 A. Yes.

3 Q. When was that?

4 A. It was very close to the hearing.

5 You'd have to show me the documents or some pleading
6 in relation to that, and I knew there were many
7 pleadings in relation -- there were many pretrial
8 motions right before the hearing. So one of those
9 motions could disclose when those documents were
10 delivered to our office. Those documents themselves
11 might be stamped by our office.

12 Q. Does your affidavit submitted here
13 refresh your recollection?

14 A. In what sense?

15 Q. When the documents came in.

16 A. This affidavit by itself?

17 Q. Yes.

18 A. No.

19 Q. Does the affidavit refresh your
20 recollection of what work you did on the documents
21 that came in?

22 MR. PARTEE: Objection, asked and
23 answered.

24 HEARING OFFICER WEBB: I'll allow it.

1 A. The affidavit by itself, no.

2 BY MR. JAWGIEL:

3 Q. Does the affidavit in here indicate
4 anywhere that you had to do extra work regarding the
5 documents that were submitted by Skokie for work --

6 A. Extra work?

7 Q. Extra work?

8 A. Extra, what do you mean by extra work?

9 Q. Extra work that --

10 A. Nothing I did was extra work on this
11 trial.

12 Q. Okay. Fair enough. Have you ever
13 asked for legal fees and they were denied prior to
14 the Skokie Valley case?

15 MR. PARTEE: If we are going to open
16 this up for questions for legal fees in other
17 cases, then I think we are going to open
18 this.

19 HEARING OFFICER WEBB: I agree. I
20 don't see the relevance in this line.

21 BY MR. JAWGIEL:

22 Q. On the entries where you have more
23 than one task noted, can you tell me with respect to
24 any of those tasks the specific amount of time it

1 took as opposed to other tasks listed in the entry?

2 MR. PARTEE: Objection, asked and
3 answered. You have gone through almost every
4 single task, and now you are just going back
5 to the general.

6 HEARING OFFICER WEBB: Sustained. He
7 said we have gone through all of these tasks.

8 MR. JAWGIEL: We haven't gone through
9 all the tasks.

10 HEARING OFFICER WEBB: You asked
11 specifically what he did on specific days.

12 MR. JAWGIEL: On a few days.
13 Literally on a few days I asked him what he
14 did.

15 MR. JAWGIEL: All I am asking is a
16 general statement to move this along quickly
17 on any entries where there's more than one
18 task listed, for example on October 28, 2003,
19 pretrial prep, conduct pretrial preparation,
20 can you tell me specifically how much time is
21 attributable to any one of those tasks as
22 opposed to other tasks in the line?

23 HEARING OFFICER WEBB: All right.
24 I'll allow it.

1 MR. PARTEE: If I could make an
2 objection for the record. It's simply that
3 we have gone through more than a couple as
4 counsel says in these time entries. As I
5 recall, we have gone through each one and
6 Mr. Murphy has explained whether or not he
7 can recall and what his recollection is as to
8 what he did on each day, and now counsel is
9 getting him to generalize all of his earlier
10 answers to which I think is unfair and that's
11 why I object on asked and answered grounds.

12 HEARING OFFICER WEBB: I will allow it
13 with a little leeway. I do feel that it's
14 mostly been asked and answered in terms of
15 specific recollections, but if we could, if
16 we can move through it quickly, I will allow
17 it.

18 A. Well, yes, actually there's some that
19 I can't. The ones where I've got on October 29,
20 2003, October 30, 2003, and October 31, 2003, it
21 might be a simple matter to just look at my travel
22 statements to see how long I was traveling and then
23 the rest of the time would be allocated to the other
24 entries.

1 BY MR. JAWGIEL:

2 Q. And then with respect to any entry
3 other than travel time, could you tell us in cites
4 where there's more than one task on days where
5 there's more than one task listed?

6 A. Well, see --

7 MR. PARTEE: And I would object on
8 asked and answered grounds again to that.

9 MR. JAWGIEL: I'm trying to clarify
10 now. He says, yes, I can with respect to
11 travel, that's fine. What I want to know
12 other than with respect to travel, can you
13 tell us on days where there's more than one
14 task, how much time is --

15 HEARING OFFICER WEBB: Okay, I'll
16 allow it.

17 BY MR. JAWGIEL:

18 Q. -- is spent for any one of those taxes
19 listed?

20 A. It's somewhat of an unartful question
21 because there's multiple tasks on any one of these
22 days that aren't represented. Taking your question
23 to mean where there were multiple tasks reflected on
24 the affidavit?

1 Q. No, where there are multiple tasks for
2 a specific day. For example, on 9/16/2004 compile
3 fees, worksheet affidavit, are those two separate
4 tasks?

5 A. You are drawing a distinction between
6 10/23/04 where I've got trial preparation, which is
7 a referenced to perhaps many different tasks on that
8 day?

9 Q. That's not what I am talking about.
10 Sir, maybe we are not communicating on the same
11 level, but what I am trying to say here is very
12 simply, if I look at any given day where there are
13 multiple tasks listed, not just a general trial
14 preparation or anything, you know, draft closing
15 argument, you know, prepare and draft closing
16 argument, okay, what I'm talking about is where
17 there are multiple tasks listed, for example, you
18 have entries review Board order, conference with
19 Joel Sternstein and Mr. Cohen, there's multiple
20 tasks listed there. Would you agree with that?

21 A. Yes.

22 Q. And on any of the entries for any
23 given day where there are multiple tasks, can you
24 tell me how much time is spent for one task on that

1 day as opposed to another task on that day?

2 A. And what I am trying to confirm is
3 when you say multiple tasks on any given day, are
4 you talking about multiple tasks on any given day
5 listed on the affidavit as opposed to any multiple
6 tasks on any given day where there's only one entry
7 for that day?

8 Q. I would agree with you, yes, I would
9 agree with you. I am trying to say on the affidavit
10 where you've listed multiple tasks, specifically
11 listed multiple tasks for any given day, can you
12 tell me how much time is allotted for each of those
13 tasks?

14 A. No, I cannot, not from the face of
15 this affidavit.

16 Q. Fair enough. Now, certainly when we
17 talk about more of a general category, for example,
18 prepare draft of closing statement, there were
19 multiple tasks involved in that that are not
20 reflected in the affidavit; is that a fair
21 statement?

22 A. I would agree with that.

23 Q. And the same holds true with trial
24 preparation, when we see that entry, there's

1 multiple tasks associated with trial preparation
2 that's not listed on the affidavit?

3 A. Absolutely.

4 Q. How did you and Mr. Cohen ensure that
5 you did not duplicate your work and Mr. Sternstein?

6 A. Which one do you want me to do first?

7 Q. Let's start with Mr. Cohen. How did
8 you and Mr. Cohen ensure that you did not duplicate
9 your work?

10 A. What we did was when it became clear
11 Mr. Sternstein was not going to be participating in
12 the trial team, that I would be doing it in his
13 place, we broke out our -- what I remember, what I
14 remember we did was broke out the list of the
15 witnesses that would testify at the hearing and then
16 assigned each person either Mitch or myself to one
17 of those witnesses, be it cross examination or
18 direct examination, and then we would have talked
19 about who was going to do the opening statement, who
20 was going to do the closing argument, how closing
21 argument would be handled, whether it be written or
22 oral. We would have talked about who was going to
23 handle which of the many pretrial motions that we
24 had to respond to immediately before the hearing.

1 We would have talked about who was going to be the
2 person, who was going to be the person, the lead
3 person --

4 MR. PARTEE: Can I interject which
5 question are we dealing with, Mr. Cohen and
6 Mr. Murphy right now or Mr. Sternstein?

7 MR. JAWGIEL: Are you asking me a
8 question?

9 MR. PARTEE: Got lost in the earlier
10 question. Whose time are we talking about
11 right now?

12 MR. JAWGIEL: I thought it was quite
13 clear because --

14 HEARING OFFICER WEBB: I think we are
15 talking about Murphy's.

16 MR. PARTEE: Mr. Murphy's and whose?

17 BY MR. JAWGIEL:

18 Q. Now, Mr. Murphy --

19 A. I wasn't finished.

20 Q. Oh, I thought you were.

21 A. And, please correct, me if I was
22 wrong. What I thought I did was, maybe I did not,
23 clarified that we were talking about how Mr. Cohen
24 and I kept from duplicating each other's times and

1 effort and set aside for the moment depending upon
2 whether he asked me a follow-up question whether
3 Mr. Sternstein, how Mr. Sternstein did that. So
4 that question I don't understand to be asked. The
5 question I do understand to be asked is how
6 Mr. Cohen and I did that.

7 HEARING OFFICER WEBB: Okay, I'm
8 sorry, then we all misunderstood.

9 THE WITNESS: Perhaps it was me not
10 being clear.

11 HEARING OFFICER WEBB: All right. Go
12 ahead.

13 A. The other thing we would have done was
14 talked about pretrial motions, who was going to
15 handle the responses to those there when a number of
16 those filed before trial, who would have been the
17 lead person on behalf of the State on the telephonic
18 conference calls that we were doing with the hearing
19 officer and you, Mr. Jawgiel, and I believe, you,
20 Mr. O'Neill. Those were immediately prior to the
21 trial. I am calling it a trial. It was a final
22 hearing. So we would have been actively talking to
23 each other and breaking out those assignments that
24 way.

1 BY MR. JAWGIEL:

2 Q. Now, your affidavit indicates that
3 there was one conference with Mr. Cohen on October
4 16, 2003. Is that accurate with respect to the
5 conferences you had with Mr. Cohen in this case?

6 MR. PARTEE: Object to the form of the
7 question.

8 A. Is it accurate in what sense?

9 HEARING OFFICER WEBB: Overruled.

10 A. Is it accurate in what sense?

11 BY MR. JAWGIEL:

12 Q. Do you understand the question?

13 A. Is it the accurate day it happened?
14 Is it accurate that we had a conference? Is it
15 accurate --

16 MR. JAWGIEL: I've asked the hearing
17 officer to admonish the witness to refrain
18 from asking me the questions. I am not here
19 to answer my questions. It's not a
20 conversation.

21 HEARING OFFICER WEBB: I think it's a
22 simple question for clarification.

23 MR. JAWGIEL: If he can simply say I
24 don't understand the question, that's fine.

1 To start to ask me questions on the record
2 from the stand, I find to be ridiculous.
3 Again, I ask the hearing officer --

4 HEARING OFFICER WEBB: Well, my
5 interpretation is that --

6 MR. JAWGIEL: -- to admonish the
7 witness.

8 HEARING OFFICER WEBB: My
9 interpretation is that he didn't understand
10 the question. I am not going to admonish him
11 for that.

12 MR. JAWGIEL: Fair enough. He can
13 fairly state that.

14 BY MR. JAWGIEL:

15 Q. Now, Mr. Murphy, other than the
16 conference that you had with Mr. Cohen on October
17 16, 2003, which was in your affidavit, did you have
18 any other conferences with him?

19 MR. PARTEE: Objection, are we talking
20 about Cohen?

21 MR. JAWGIEL: Mr. Cohen. Did I just
22 say Mr. Cohen or am I speaking another
23 language?

24 HEARING OFFICER WEBB: I think we all

1 are.

2 A. Mr. Cohen and I would have spoken many
3 times during the time period on my affidavit.

4 BY MR. JAWGIEL:

5 Q. I see. Now, Mr. Murphy, you know from
6 the time that you got involved in this case on
7 October 3, 2003, that there was going be a request
8 for attorneys' fees in at least in the pleadings; is
9 that correct?

10 A. I knew that it was standard practice
11 for us to request it I think in every case we filed
12 under the Act. So without having a specific
13 recollection at that time of reviewing the pleading
14 to confirm it, I would have expected it would be
15 part of the case.

16 Q. You have no recollection even though
17 on pleading review you have no recollection that you
18 reviewed the pleadings?

19 A. No, no, I do have a recollection that
20 I did that.

21 Q. Okay. And at that time you knew that
22 there was a request for attorneys' fees; is that
23 right?

24 A. What I probably did was confirm that

1 it was in this case the same way it was in every
2 other.

3 Q. And then deciding about three weeks
4 without, almost four weeks without recording your
5 time; is that right?

6 A. There are good reasons for that, yes.

7 Q. And you also charged if you had to
8 review a document more than once; is that correct?

9 MR. PARTEE: I would object to use of
10 the term "charge." We didn't charge
11 anything. We recorded time.

12 MR. JAWGIEL: I could rephrase it.

13 HEARING OFFICER WEBB: Please.

14 BY MR. JAWGIEL:

15 Q. You would record your time even if
16 that time included reviewing a document, the same
17 document more than once; is that right?

18 A. I would have if it had to do with
19 dealing with different issues.

20 Q. Well, did you review documents more
21 than once between October 3, 2003 and October 31,
22 2003 in preparation for this hearing?

23 A. I am sure I did.

24 Q. And did you record your time for the

1 multiple reviews?

2 A. Not in that fashion, no.

3 Q. I see. So you didn't add that into
4 the time that you recorded?

5 A. I don't think multiple revisions
6 appear anywhere in my affidavit.

7 Q. Okay. So you can't tell me what
8 document you reviewed more than once during this
9 period of time; is that correct?

10 MR. PARTEE: Objection, asked and
11 answered.

12 A. You didn't show me anything at the
13 discovery deposition and you are not showing me
14 anything now, so there's no way I can tell.

15 BY MR. JAWGIEL:

16 Q. And your affidavit certainly wouldn't
17 refresh your recollection; is that correct?

18 MR. PARTEE: Objection, asked and
19 answered.

20 A. Of which?

21 BY MR. JAWGIEL:

22 Q. Of reviewing documents more than once.

23 HEARING OFFICER WEBB: Sustained.

24 It's been answered.

1 BY MR. JAWGIEL:

2 Q. Did it take you about 45 minutes to
3 review a Board order?

4 A. It depends on the order. Some of them
5 are quite lengthy.

6 Q. Did it take you 45 minutes to review
7 any of the Board orders that are noted in your
8 affidavit?

9 MR. PARTEE: Objection. We are now
10 going through this entire list for the second
11 time. This has been asked and answered, and
12 I would ask that hearing officer --

13 HEARING OFFICER WEBB: Mr. Jawgiel, we
14 have had a lot of discussion about specific
15 times for multiple tasks, dates that have
16 multiple tasks. In fact, I think we even
17 already talked about October 16th. I would
18 like to move on if we could.

19 BY MR. JAWGIEL:

20 Q. Well, Mr. Murphy, is it your practice
21 that you have to look at matters two or three times
22 before it starts to line up in your mind, how it
23 fits in, for example, reviewing the pleadings on
24 October 3rd and then again on October 7th?

1 A. Yes.

2 MR. PARTEE: I was just going to
3 object on asked and answered grounds again.

4 HEARING OFFICER WEBB: I will allow
5 it.

6 A. Yes, I did. And for many reasons, one
7 of the most important being so that we didn't have
8 to unnecessarily involve more than the attorneys
9 that were actively participating in the case. For
10 example -- and I say that Mr. Cohen was a
11 functioning attorney on the case throughout. I was
12 a functioning attorney on the case throughout -- we
13 did not have an attorney sitting with us at the
14 hearing that never asked a question or advised us on
15 what to do throughout the hearing. So Mr. Cohen and
16 I were self-sufficient in doing this hearing, and if
17 we, if I had to review a pleading more than once to
18 stay that way, I would do it. I would consider it a
19 waste to have an attorney sitting at a table not
20 doing anything at the hearing other than whispering
21 in my ear.

22 Q. Your ability to comprehend what you
23 read the first time would require you to review it
24 more than once, and you feel that's reasonable time

1 for to you record in a request for a fee petition?

2 MR. PARTEE: Objection, asked and
3 answered.

4 HEARING OFFICER WEBB: Sustained.

5 BY MR. JAWGIEL:

6 Q. You indicated that you had some sort
7 of training at Mr. Donovan's office regarding
8 billing. Were you provided with the ABA guidelines
9 at Mr. Donovan's office?

10 A. I don't recall. I could have been. I
11 don't recall.

12 Q. But you don't know one way or the
13 other?

14 MR. PARTEE: Objection, asked and
15 answered.

16 A. I don't remember.

17 HEARING OFFICER WEBB: Sustained.

18 BY MR. JAWGIEL:

19 Q. Are you familiar with the ABA billing
20 codes as you sit here today?

21 A. I am not.

22 Q. Are you familiar with the ABA codes
23 when you were drafting your entries on 2003 through
24 September 16, 2004?

1 A. I would not have been.

2 Q. Were you familiar with any billing
3 codes or guidelines when you were drafting your
4 entries from October 3, 2003 through September 16,
5 2004?

6 A. Just generally the requirements and I
7 think it's in the rules of ethics that the time, the
8 entries that you put on a billing statement be
9 factual.

10 Q. Based on your understanding of billing
11 practices, does your affidavit conform with that
12 understanding?

13 A. It does in the sense that I worked
14 every hour and minute reflected on the affidavit on
15 this case, yes.

16 Q. Now, was your time leading up to the
17 hearing on October 31st inflated because of the
18 short period of time you had from the time you were
19 assigned this case to the time that the hearing
20 occurred?

21 MR. PARTEE: Object to the use of the
22 word "inflated." I also object asked and
23 answered because it seems like now for a
24 third time we are going to time records.

1 HEARING OFFICER WEBB: Sustained.

2 THE WITNESS: I'll be happy to answer.

3 MR. JAWGIEL: Okay. That's all I
4 have, Mr. Murphy. Thank you, sir.

5 MR. PARTEE: I have nothing further.

6 HEARING OFFICER WEBB: Thank you.

7 MR. PARTEE: Ms. Webb, before the
8 State rests, at this point I'd like to move
9 to admit Mr. Murphy's resume.

10 HEARING OFFICER WEBB: I'm going to
11 admit it.

12 MR. PARTEE: With that, the State
13 rests.

14 MR. JAWGIEL: I move for a directed
15 finding in favor of the respondent for the
16 failure of the State to establish its case.

17 HEARING OFFICER WEBB: I do not have
18 the authority to rule on that, Mr. Jawgiel,
19 so I would ask you to present your case.

20 MR. JAWGIEL: I just want to make my
21 record.

22 At this point I would call Deborah
23 Stonich.

24

1 DEBORAH STONICH
2 having been first duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. JAWGIEL:

6 Q. Ma'am, could you please state your
7 full name for the record and please spell your last
8 name.

9 A. Deborah Stonich, D-E-B-O-R-A-H,
10 Stonich, S-T-O-N-I-C-H.

11 Q. Are you currently a licensed attorney
12 in the State of Illinois?

13 A. Yes.

14 Q. And how long have you been a licensed
15 attorney?

16 A. Since 1987.

17 Q. Are you currently employed?

18 A. Yes.

19 Q. And where?

20 A. I am a claim analyst for CNA Insurance
21 Company.

22 Q. And what are your duties relevant to
23 this matter of which you perform at CNA?

24 A. Could you please rephrase the

1 question?

2 Q. Certainly. Relevant to the Skokie
3 Valley case, what are the duties that you perform at
4 CNA Insurance Company?

5 MR. PARTEE: Objection, foundation.
6 He hasn't established that what she does is
7 relevant.

8 HEARING OFFICER WEBB: Well, I think
9 this is the question to answer that. I'm
10 hoping. So I'll allow the question.

11 A. I was asked to be a witness in this
12 case because part of my duties with CNA Insurance
13 Company as a claim analyst I'm responsible for
14 litigation management. A subset of the litigation
15 management duties that I have is to review bills
16 that are submitted to us for payment.

17 BY MR. JAWGIEL:

18 Q. And are those attorney's bills?

19 A. Yes, those are attorney bills.

20 Q. And in preparation for providing
21 opinions in this case, what if anything did you
22 review?

23 A. I reviewed several guidelines
24 generated by other insurance companies, as well as

1 other corporate entities that are not insurance
2 companies.

3 Q. Did you review any documents that were
4 provided by the petitioner.

5 MR. PARTE: I'll object.

6 HEARING OFFICER WEBB: We normally
7 refer to the AG as the complainant.

8 MR. JAWGIEL: Well, in this case they
9 are filing a petition so I just referred to
10 them as the petitioner.

11 BY MR. JAWGIEL:

12 Q. The complainant, the People?

13 A. Yes, I did review documents.

14 Q. I see you have a document next to you.
15 Is that your report that you generated in this case?

16 A. Yes, it is.

17 MR. JAWGIEL: We'll mark that
18 Respondent's 102.

19 (Respondent's Exhibit
20 No. 102 marked.)

21

22 BY MR. JAWGIEL:

23 Q. Now, prior to working for CNA
24 Insurance Company what sort of work did you, if any,

1 as an attorney?

2 A. I worked for the Illinois EPA in
3 Springfield, Illinois, and I also worked for the
4 Illinois Pollution Control Board.

5 Q. How long did you work the Illinois
6 EPA?

7 A. I worked for the Illinois EPA for two
8 years from 1987 to 1989, somewhere in there.

9 Q. And how long did you work for the
10 Illinois Pollution Control Board?

11 A. From 1990 to 1993.

12 Q. And in your career as an attorney
13 approximately how many bills for attorney's fees
14 have you reviewed?

15 A. Thousands.

16 Q. And are some of those bills for law
17 firms in the Chicagoland area?

18 A. Yes.

19 MR. PARTEE: I would object.

20 HEARING OFFICER WEBB: Well, I think
21 it's establishing background right now.

22 MR. JAWGIEL: Well, it establishes
23 background and the custom and practice in the
24 area in which this AG office was located and

1 it also establishes knowledge with respect to
2 fees in this geographic area.

3 BY MR. JAWGIEL:

4 Q. Do you know the name of any of the
5 firms that you have reviewed bills for in the
6 Chicagoland area?

7 A. Yes.

8 Q. Who are they.

9 A. Ross Dixen & Bell, Swanson Martin &
10 Bell, Vetter Price, Haskell Perrin, Seyfarth Shaw
11 are just a few examples.

12 Q. Now, in your report you list American
13 Bar Associate codes and other references. Is this a
14 complete set of the references which you reviewed in
15 preparation for your opinions in this case?

16 A. Yes.

17 Q. And what are those -- well, I'll break
18 that down.

19 Are these billing procedures and
20 guidelines?

21 A. Yes.

22 Q. Did you form any opinions regarding
23 the People's petition for fees?

24 A. Yes.

1 Q. And you based your opinion on those
2 guidelines, your experience, as well as the
3 documents you reviewed submitted by the People?

4 A. Yes.

5 Q. Did you form any opinions regarding
6 Mr. Cohen's formatting of his bills?

7 A. Yes.

8 Q. And what was that opinion?

9 A. My opinion is that the formatting for
10 Mr. Cohen's entries does not typically conform to
11 what I would generally see when reviewing bills.

12 Q. How so?

13 A. Well, generally when bills are
14 submitted, you should have a time entry, the time
15 keeper's initials, a very succinct and exact
16 description of the tasks that were covered in that
17 time frame and the time associated with that task.

18 Q. With respect to the accuracy of Mr.
19 Cohen's bills, did you formulate an opinion?

20 A. Yes.

21 Q. What was that opinion?

22 A. My opinion is that they were not as
23 accurate as they could have been when compared to
24 what I see from other attorneys when they account

1 for their time.

2 Q. Did you find any fees to be suspect
3 with the recording of time as 1 hour, 2 hours, 14
4 hours as opposed to any other type of records?

5 A. Yes, I did.

6 Q. What did you find suspect?

7 A. Normally when I review bills,
8 attorneys account for their time in tenths of an
9 hour increments. Therefore when I review bills, I
10 will see time entries in various fractions of an
11 hour. Mr. Cohen's entries, however, with the
12 exception of seven time entries out of, I believe
13 126, were in whole hours. The remaining seven time
14 entries were for .5 hours. I find that highly
15 unusual. I have never seen bills that were that
16 consistent in terms of accounting for hours.

17 Q. Is it your opinion that the practice
18 in the Chicagoland area is to bill at one-tenth of
19 an hour?

20 A. That is correct.

21 Q. Did you come to any opinions regarding
22 the lack of a time keeping system by the Attorney
23 General's office?

24 MR. PARTEE: Objection, leading.

1 HEARING OFFICER WEBB: I'm going to
2 allow it.

3 A. I thought that it was highly unusual.

4 BY MR. JAWGIEL:

5 Q. How so?

6 A. I have never seen a calendar system
7 used and submitted to account for time.

8 Q. Are you familiar with the billing
9 types of programs?

10 A. Yes, I am.

11 Q. Which ones are you familiar with?

12 A. There are several types of accounting
13 products, and I list a few on page three of my
14 report, Abacus Law, Law Time, Perfect Practice.
15 Those are only three examples of the myriad of
16 programs that are out there that law firms use to
17 account for their time.

18 Q. Has it been your experience that when
19 bills are submitted, they actually have the charge
20 associated with the task and time that is being
21 used?

22 A. That's correct.

23 Q. Is there a break down in any of the
24 bills that you see when you review the bills in the

1 Chicagoland area that have separate categories for
2 paralegals used?

3 A. Not a separate category, per se.
4 However, if a paralegal is billing time, her
5 initials will be shown, her tasks will be described,
6 the time she spent on the task and her billing rate
7 will be shown.

8 Q. Has it been your experience that the
9 rate charged for paralegal services is the same as
10 the attorneys' services?

11 A. No.

12 Q. Now, Respondent's Exhibit 102 that's
13 before you, is that a true and accurate copy of your
14 report?

15 A. Yes.

16 Q. And that's a report that you have
17 compiled during the course of this case; is that
18 correct?

19 A. Yes.

20 Q. And that document expresses your
21 opinions that you've come to in this case; is that
22 correct?

23 A. Yes.

24 Q. And this was, this document was

1 generated during the course of this case in your
2 employment in this case?

3 A. Yes.

4 MR. JAWGIEL: At this point, I'd move
5 to have Exhibit 102 admitted into evidence.

6 HEARING OFFICER WEBB: Mr. Partee?

7 MR. PARTEE: I would object on the
8 grounds that I raised earlier which was that
9 it was not properly disclosed to the State,
10 and I can provide a reference to a deposition
11 transcript wherein we specifically requested
12 the table attached to this report and
13 Mr. Jawgiel refused to give it to us on
14 privileged grounds, and now he is trying to
15 admit it into evidence.

16 MR. JAWGIEL: He has long had an
17 opportunity to bring a motion before the
18 Board. He sat on his hands with respect to
19 that. I disagree strongly with the fact that
20 I did not provide him with the document. We
21 did provide him with the document at the
22 conclusion of Mr. Cohen's deposition, but
23 bottom line is that they sat on their hands
24 with respect to this issue and they certainly

1 have had this document before Ms. Stonich's
2 discovery deposition. They did not object to
3 going forward with her deposition. They
4 didn't bring any motion to extend the time or
5 anything along those lines.

6 HEARING OFFICER WEBB: But did you
7 give them a copy or did you show them a copy?

8 MR. JAWGIEL: I gave them a copy at
9 Mr. Cohen's deposition.

10 MR. PARTEE: No, that's incorrect. We
11 specifically asked for it. You refused to
12 give it to us. When we left Mr. Cohen's
13 deposition, when we were leaving, he handed
14 us a copy of her expert report and that's the
15 table.

16 MR. JAWGIEL: That table is not the
17 same table I had at the deposition.

18 MR. PARTEE: That doesn't answer my
19 question then. You did not --

20 HEARING OFFICER WEBB: I understand
21 both of your arguments, and my ruling is that
22 I am going to admit the report without the
23 table. I can't admit it if it appears to be
24 a very substantial piece of evidence and if

1 the People haven't seen it.

2 MR. JAWGIEL: They have seen it.
3 They've had it before her deposition. It's
4 referenced in her deposition.

5 MR. PARTEE: Let me substantiate it
6 with the record.

7 HEARING OFFICER WEBB: It's my
8 understanding that they are contending that
9 that was something different or that --

10 MR. JAWGIEL: No, that's not correct.
11 They are saying at the end of Mr. Cohen's
12 deposition I didn't give him the table
13 because he asked me for the table I had at
14 that deposition, which is not true, but the
15 bottom line is that at the deposition of
16 Ms. Stonich they had the table.

17 MR. PARTEE: That is correct, but we
18 were handed her table -- we were handed this
19 table during the deposition. We asked
20 Mr. Jawgiel --

21 MR. JAWGIEL: I wasn't at her
22 deposition.

23 MR. PARTEE: Please let me finish. I
24 didn't interrupt you.

1 Mr. Jawgiel was holding this table
2 during Mr. Cohen's deposition -- and bear
3 with me for a second.

4 MR. JAWGIEL: Just so the record is
5 clear, we had requested a copy of
6 Ms. Stonich's deposition which apparently
7 HEARING OFFICER WEBB reporter retained by the
8 State did not provide us, but Mr. Partee has
9 a copy of that transcript, which I find very
10 suspect.

11 MR. PARTEE: That's kind a separate
12 issue.

13 MR. JAWGIEL: Well, it puts us at a
14 great disadvantage. If HEARING OFFICER WEBB
15 reporter hired by you failed to provide us a
16 document, we requested it.

17 MR. PARTEE: This is a copy of the
18 cover letter to Mr. O'Neill dated November
19 22nd conveying a copy of Ms. Stonich's
20 deposition transcript.

21 MR. JAWGIEL: That deposition
22 transcript was never delivered to our office.

23 MR. PARTEE: Is your address 5847
24 North Milwaukee in Chicago, Illinois?

1 MR. JAWGIEL: Yes, it is.

2 HEARING OFFICER WEBB: Well, right
3 now, I mean, we're not trying to introduce
4 the deposition as evidence. We are trying to
5 admit this report.

6 MR. JAWGIEL: He had the report with
7 the attachments at Ms. Stonich's deposition.
8 They didn't bring any motion prior to today
9 saying that they were prejudiced. I didn't
10 know if they reserved their rights or not to
11 be honest with you. I wasn't there. Did you
12 reserve your right to redepose her because
13 you believed you were prejudiced at the time?

14 MR. PARTEE: We are not asking to
15 redepose her. We are asking to have this not
16 be admitted into evidence because I believe
17 it was not properly disclosed.

18 MR. JAWGIEL: I believe it was
19 properly disclosed. It's was at her
20 deposition. Supreme Court rule 213(i) allows
21 for an opinion of the witness to be amended
22 at the deposition. It was very clear about
23 that. So if you want to go ahead and not
24 submit that, you are violating Supreme Court

1 Rule 213(i).

2 MR. PARTEE: Let me read from
3 Mr. Cohen's transcript on this issue and
4 question -- and I can provide a copy. I can
5 actually give everyone a copy to read along
6 with me if you want. Question from
7 Mr. Jawgiel --

8 MR. JAWGIEL: What page are you
9 referring to, please?

10 MR. PARTEE: I'm on page 106 of
11 Mr. Cohen's deposition transcript:

12 I'm going to state the basis for
13 my objection. I want to make sure I get it
14 all out, and then we'll move on because I
15 don't want to spend all night on this issue.
16 But on page 106 the question was -- that you
17 asked, Mr. Jawgiel:

18 "Q. Is there anywhere in your
19 notation indicating that you actually drafted
20 any motion or petition in this case where you
21 actually note "draft"?

22 Answer: The best document for me
23 to look at, for me to look for that would be
24 the Excel Spread sheet.

1 MR. PARTEE: Mike" --in reference
2 to Mr. Jawgiel -- "isn't that what you are
3 looking at?

4 MR. JAWGIEL: This is our own --
5 this is my own internal spreadsheet which of
6 course is attorney-client privilege. I don't
7 know that we have Excel spreadsheets. Mike
8 says that we have them" -- and refers to
9 Mr. O'Neill."

10 So Mr. Jawgiel did not produce those
11 to us.

12 MR. O'NEILL: That's not the
13 spreadsheet that they were referring to.
14 That's the spreadsheet that was part of
15 Mr. Cohen's deposition. That's what he
16 referred to as the Excel spreadsheet at his
17 deposition.

18 MR. PARTEE: No, Mr. Jawgiel was not
19 referring to a document the State produced.

20 MR. JAWGIEL: I stay consistent with
21 what I say, unless you are going to swear
22 Mr. Partee in, this bottom line is this was
23 my own internal spread sheet, which is
24 attorney work product. That's not what is

1 attached to her report. That's a different
2 spreadsheet. So bottom line is that he is
3 making representation without any basis
4 without any foundation. He is sitting across
5 from me at a table and looking over on to my
6 document, which tells you a little bit about
7 the character of Mr. Partee --

8 MR. COHEN: Objection.

9 MR. PARTEE: Objection.

10 HEARING OFFICER WEBB: Sustained.

11 MR. JAWGIEL: He is going to sit here
12 and make representations at this point in
13 time regarding what's going on.

14 MR. PARTEE: We have sustained a lot
15 abuse and snide comments, and it's really
16 getting to be enough.

17 MR. JAWGIEL: So the bottom line is,
18 unless he can establish that that was mine,
19 and that's my own spread sheet, and I'm not
20 producing that document, that's attorney work
21 product.

22 MR. O'NEILL: That is not the Excel
23 spreadsheet that was being referred to.

24 HEARING OFFICER WEBB: I hear you.

1 You said the same thing ten times.

2 MR. O'NEILL: I said that once.

3 HEARING OFFICER WEBB: I apologize. I
4 mean collectively. It is your opinion that
5 you have given them that; you've disclosed
6 this information?

7 MR. JAWGIEL: At minimum it was
8 disclosed at Ms. Stonich's deposition. At a
9 minimum it was disclosed there.

10 HEARING OFFICER WEBB: The
11 information.

12 MR. JAWGIEL: That's there. All of
13 it. And they have agreed to that. They
14 said, yes, they did receive it at her
15 deposition.

16 MR. PARTEE: It was disclosed in an
17 eight-page, very small font table was
18 disclosed to us for the first time during her
19 deposition.

20 HEARING OFFICER WEBB: Okay. Here is
21 what I am going to do in the interest of
22 time, I'm going to admit it, and I'd like
23 you -- obviously, your objections are
24 preserved for appeal, but I'm doing what I

1 feel I have to do to move things along, and
2 so I'm going to admit it.

3 MR. JAWGIEL: Great. Thank you.

4 BY MR. JAWGIEL:

5 Q. Ms. Stonich, did you come to an
6 opinion regarding block billing in this case?

7 A. Yes.

8 Q. And what is that opinion?

9 A. Block billing should not be used, and
10 it is not typically used when bills are submitted to
11 clients.

12 Q. Why is that?

13 A. Because one cannot review a time entry
14 that's block billed and determine if each entry is
15 reasonable because there is no time associated with
16 each individual entry.

17 Q. And just for the purposes of this
18 record, what is block billing; how is that defined?

19 A. Block billing --

20 MR. PARTEE: Excuse me. I'm sorry. I
21 have an objection on relevance grounds to
22 questions regarding bills submitted by
23 attorneys to clients because that's not what
24 we're dealing with here.

1 HEARING OFFICER WEBB: Well --

2 MR. JAWGIEL: That is ridiculous. It
3 has to do with what the industry standard in
4 the Chicagoland are which includes bills
5 submitted by attorneys.

6 HEARING OFFICER WEBB: I am going to
7 give respondent some leeway and see where it
8 goes.

9 BY MR. JAWGIEL:

10 Q. What is block billing?

11 A. Block billing is when you aggregate
12 multiple tasks and only provide one time entry for
13 all of these tasks.

14 Q. Now, with respect to the fee petition
15 that has been submitted by the People in this case,
16 is that analogous in your opinion to a billing
17 statement issued to a client?

18 MR. PARTEE: If I could object that
19 they have not adequately qualified her as an
20 expert yet and they are asking for her expert
21 opinion.

22 MR. JAWGIEL: I went through her
23 qualifications earlier.

24 HEARING OFFICER WEBB: I feel they've

1 adequately qualified her.

2 MR. PARTEE: Well, we do object to
3 that and intend to address it on cross, but I
4 understand the ruling.

5 A. Sorry, could you please repeat the
6 question?

7 BY MR. JAWGIEL:

8 Q. Certainly. When you reviewed the
9 petition for fees submitted by the People in this
10 case, did you find them -- strike that.

11 Did you have any criticisms of
12 Mr. Cohen's use of block billing?

13 MR. PARTEE: Objection to the form of
14 the question.

15 MR. JAWGIEL: In his affidavit --

16 HEARING OFFICER WEBB: Overruled.

17 A. Yes.

18 BY MR. JAWGIEL:

19 Q. And what were those opinions?

20 A. My opinion is that he used it quite
21 often and that as a result I could not associate
22 time for each individual task, and therefore I am
23 not able to determine whether the time he spent on
24 each individual task is reasonable or not, and I

1 don't think the Board will be able to determine
2 that.

3 Q. Are you aware of anybody who can
4 determine that?

5 A. No.

6 MR. PARTEE: I would object that that
7 calls for speculation as to what the Board
8 could and couldn't determine.

9 HEARING OFFICER WEBB: Sustained.

10 MR. PARTEE: He is testifying on
11 behalf of the Board.

12 MR. JAWGIEL: It's an opinion. She
13 has a right to express an opinion that she
14 could with respect to the review of documents
15 or anybody can do with respect to the review
16 of documents.

17 MR. PARTEE: My objection was
18 sustained.

19 MR. JAWGIEL: If I put a number on
20 this pad and I don't show it to anybody, do
21 you think it's possible for anybody, whether
22 it's the Board or Ms. Stonich to tell you
23 what number it is, and she's also somebody
24 who has worked at the Board, so I certainly

1 think she has a foundation with respect to
2 what the Board will do.

3 MR. PARTEE: I objected to
4 speculation, not for her opinion.

5 HEARING OFFICER WEBB: Can you ask the
6 question again, Mr. Jawgiel, please.

7 MR. JAWGIEL: Certainly. I don't even
8 remember what the question was to be quite
9 frank, which at this point in time we're at a
10 quarter to 7:00 in the evening.

11 BY MR. JAWGIEL:

12 Q. In your opinion will anybody be able
13 to determine whether or not the block billing
14 entries of Mr. Cohen were reasonable?

15 MR. PARTEE: Objection, whether
16 anybody could determine. She can offer her
17 opinion, but not an opinion on behalf of
18 anyone else.

19 HEARING OFFICER WEBB: Can you ask her
20 opinion?

21 MR. JAWGIEL: I said in her opinion.

22 A. In my opinion no one could be able to
23 make that determination based upon those entries.

24 BY MR. JAWGIEL:

1 Q. In your opinion in what format should
2 Mr. Cohen have used in his affidavit attached to the
3 fee position?

4 A. Well, Mr. Cohen should have listed the
5 dates, a description for the date of services to
6 what the service was, and by that I mean no block
7 billing. He should associate a time with each
8 individual task, and also the total time then for
9 the group of tasks, if indeed there is a group of
10 tasks for an entry, and typically if this were
11 mirroring a bill, there would be a dollar figure
12 associated for that task.

13 Q. Now, with respect to Mr. Cohen's
14 descriptions -- which he does give descriptions; is
15 that correct?

16 A. Yes.

17 Q. And in your opinion are those adequate
18 descriptions for somebody to determine what he did
19 on any given day?

20 A. No.

21 Q. Why not?

22 A. Well, in general they are quite vague.
23 There are a lot of general descriptors meaning that
24 I see entries such as prepare for trial or

1 preparation of, and it doesn't get to the heart of
2 what the task is. If a Board order is referred to,
3 for example, the Board order is not identified by
4 date or subject matter. So I'm unable to tell what
5 Board order was reviewed. If there was a meeting,
6 the participants often weren't identified or the
7 subject matter wasn't identified. Therefore, I had
8 difficulty determining was the meeting or the
9 interoffice, intraoffice conference of a substantive
10 nature, of an administrative nature. If
11 correspondence was referred to, again, it was not
12 identified. So, again, I had a hard time
13 determining what the subject matter of the
14 correspondence was. If there was a telephone call,
15 again, the subject matter of the telephone call
16 would not have been identified. So all of those
17 concerns go to the issue of vagueness.

18 Q. Were there any suspicions regarding
19 the requests for costs submitted by Mr. Cohen for
20 expenses?

21 MR. PARTEE: I would object to the
22 form of the question, and I think you used
23 the word any "suspicions."

24 MR. JAWGIEL: I apologize. I'll

1 rephrase.

2 BY MR. JAWGIEL:

3 Q. Did you formulate any opinions with
4 regard to the costs Mr. Cohen submitted?

5 A. Yes.

6 Q. And what are those opinions?

7 A. Well, the costs and expenses that I
8 reviewed, first off, were not formatted in a manner
9 that I would, that I normally see when I review
10 bills. As a result, it was quite difficult to track
11 and to verify the costs. Also, there were two
12 affidavits regarding costs that did differ, and that
13 caused me some concern as to the accuracy of the
14 tallying of the costs. My last concern with regard
15 to the costs would be the nature of the costs
16 themselves, what would typically be allowed and what
17 would not be allowed.

18 Q. Did you formulate any opinions
19 regarding the hourly rate requested by the People
20 for the attorneys then?

21 A. Yes.

22 Q. And what are those opinions?

23 A. Well, in my review of the cost and fee
24 petition, as well as my knowledge of the Attorney

1 General's office, I did not see any specific statute
2 or regulation that addresses the hourly rate. I
3 know of no Attorney General position or
4 documentation that sets forth what their rate would
5 be in a fee and cost petition.

6 Q. In the fee petition there was a
7 footnote regarding a case cited by the petitioner or
8 complainant. Do you remember seeing that?

9 A. Yes.

10 Q. In your opinion, did the Attorney
11 General's office adequately relate that case to
12 their claim for a rate and attorneys' fees?

13 A. No, it was simply a case citation.

14 Q. And what in your opinion was lacking
15 in their footnoting these cases?

16 A. Well, I would have liked to have known
17 what the case was about. I would like to have known
18 the expertise of the attorneys that were involved.
19 Basically I would have liked to have information
20 that may have explained why the rate in those cases
21 was set at the amount it was.

22 Q. Did you have any opinion of what, if
23 anything, the Attorney General's fees should be
24 based upon?

1 A. In light of the fact that there's no
2 statute or regulation or Attorney General's opinion
3 or publication regarding it, regarding fees, my
4 thought is that the Attorney General should be
5 entitled to what it costs them to prosecute the case
6 and my thought on that would be if there is no set
7 rate, the next best thing would be to reimburse the
8 Attorney General for what it has to pay its
9 attorneys.

10 Q. And that would be the salaries of the
11 attorneys?

12 A. Yes.

13 Q. In your opinion, did you find any
14 excessiveness in the billing or the time entries of
15 Mr. Cohen?

16 A. Yes.

17 Q. And what is your opinion in that
18 regard?

19 A. Well, there were several time entries
20 that I totaled together when they had the same task
21 descriptions, and on page six of my report I list
22 some of my concerns with regard to those entries.
23 My understanding is this was a two-day trial. For
24 example, 104.5 hours was spent on trial preparation.

1 In my experience for a two-day trial, that appears
2 to be excessive.

3 Q. That would be listed in the section
4 "Excessive Billing," those would be your opinions
5 where you found excessive billing?

6 A. Yes, that's correct.

7 Q. And that would include 19 hours for
8 deposition preparation, Fredericks, 23 hours for
9 deposition preparation Huff and/or Kallis,
10 K-A-L-L-I-S, 104.5 hours for trial preparation, 91
11 hours for closing arguments, 6 hours for closing and
12 rebuttal; is that correct?

13 A. That's correct.

14 Q. And that's for Mr. Cohen's hours?

15 A. That's for Mr. Cohen's hours.

16 Q. Were there also hours from Mr. Murphy
17 related to some of those tasks?

18 A. Yes, there were.

19 Q. And what did you find with respect to
20 Mr. Murphy's hours and the excessive billing issue?

21 A. I just simply noted in my Excel
22 spreadsheet that's attached to this report, and it's
23 incorporated as part of the report when Mr. Murphy
24 also billed for those times.

1 Q. And the total amount of hours based on
2 your opinion that was spent with respect to trial
3 preparation would have been a compilation of what
4 hours -- strike that question.

5 In light of the fact that
6 Mr. Murphy spent some time on the trial preparation
7 in this case, you would take the hours Mr. Murphy
8 would have spent and add those to the hours
9 Mr. Cohen would have spent and found it to be even
10 higher than 91 hours?

11 MR. PARTEE: Objection, it's leading.

12 I object to the form of the question.

13 MR. JAWGIEL: I was just trying to
14 figure out how would you calculate the total
15 amount of hours spent for trial preparation
16 by the Attorney General's office in this case
17 in your opinion.

18 HEARING OFFICER WEBB: I'm going to
19 allow that to speed things up a lit bit.

20 A. With regard to the time entries on
21 page 6 that I discussed, that only deals with
22 Mr. Cohen's entries. Therefore, if you look at the
23 Excel spreadsheet, and if you note in the comments
24 section where I noted that Mr. Murphy spent hours

1 with similar task descriptions, that would only
2 increase the number of hours that I mentioned on
3 page 6.

4

5 BY MR. JAWGIEL:

6 Q. Okay. Did you also find Mr. Murphy's
7 time entries to be vague as well?

8 A. Yes.

9 Q. Similar to the same opinions that you
10 had with respect to Mr. Cohen's?

11 A. Yes.

12 Q. And that would be also with respect to
13 the increments Mr. Murphy billed in either hours or
14 half hours?

15 A. Yes.

16 Q. So your opinions that you have
17 expressed today with respect to Mr. Cohen's entries
18 would apply to Mr. Murphy's entries as well?

19 A. That's correct.

20 Q. Do you have an opinion regarding
21 whether the attorneys' time being used to type a
22 document is within the standard practice in the
23 Chicagoland area and reasonable in this case?

24 A. Yes, I do have an opinion regarding

1 that.

2 Q. And what's your opinion?

3 A. My opinion is that attorneys should
4 not be charging for clerical tasks such as typing
5 documents.

6 Q. Has it been your experience that
7 attorneys also should not be charging an attorney's
8 fee when they are conducting paralegal work or
9 taking on paralegal tasks?

10 A. That is correct.

11 Q. And in your opinion what would those
12 tasks include, paralegal tasks include, just for
13 clarification?

14 A. Some examples would be legal research,
15 drafting of form documents, such as notices of
16 filing, simple discovery requests, such as
17 interrogatories, request for production of
18 documents.

19 Q. Now, in this case, at one point in
20 time there's testimony that there would have been
21 three attorneys on this trial, but certainly we know
22 that there were two attorneys at the hearing from
23 the Attorney General's office. Do you have an
24 opinion regarding the use of two attorneys for this

1 type of a trial?

2 A. Yes.

3 Q. And what is that opinion?

4 A. Generally that's atypical. In the
5 reviews of the guidelines that I reviewed and from
6 my practice and personal knowledge, generally it's
7 expected that only one attorney works on a case and
8 attend trials, depositions, hearings. There are
9 cases where more than one attorney can attend, but
10 those are in rare circumstances. Generally, a team
11 approach on a case is not permitted or allowed or
12 accepted.

13 Q. Do you have any opinions regarding
14 whether or not it's reasonable for an attorney to
15 request time in a fee petition in order to learn a
16 file because he was substituted in or because
17 another attorney left the office or anything along
18 those lines?

19 A. Yes, I do have an opinion regarding
20 that.

21 Q. What is your opinion?

22 A. Generally a client should not be
23 penalized for the substitution of the attorney.
24 Meaning, if there is a personnel change at a firm

1 and a new attorney is assigned to a file and must
2 get up to speed on the file, the client should not
3 be billed for the time associated for that attorney
4 to get up to speed for the prior attorney.

5 Q. Would that hold in this case with the
6 AG charging, for example, Kelly Cartwright leaving
7 the firm and Mr. Cohen having to spend time learning
8 the file?

9 A. I don't see why it should be held to
10 any different standard to any different attorney
11 practicing.

12 Q. Did you find that there was an
13 indication or duplication of effort in this
14 particular case?

15 A. Yes.

16 Q. And what is your opinion in that
17 regard?

18 A. Just that there was a duplication of
19 effort, and that the representatives of Skokie
20 Valley Asphalt should not be charged with those
21 duplications of effort.

22 Q. And where would you find those? Give
23 me an example of a duplication of effort in this
24 particular case that you filed?

1 A. If I can just take a moment to review
2 my spreadsheet.

3 Q. Sure.

4 A. Okay. For example, on page 5 of my
5 Excel spreadsheet that's attached to the report, on
6 10/17/03 to 10/18/03 you have a task description by
7 Mr. Cohen, and I note in the comments section that
8 Mr. Murphy spent 3.5 hours on file review on that
9 same date. So that would be a duplication of effort
10 because Mr. Cohen also has stated that he has spent
11 8 hours. And one of the tasks associated with that
12 time entry is review file, and that's just one
13 example.

14 Q. Did you find anything suspicious
15 regarding -- I apologize.

16 In your opinion did you find
17 anything unusual about the parking receipt that has
18 been submitted in this case?

19 A. Yes.

20 Q. And what's your opinion in that
21 regard?

22 A. Well, the parking receipt I believe
23 was for approximately one hour less in time versus
24 the time that Mr. Cohen billed on that particular

1 date.

2 Q. And would you find that to be suspect
3 because of the daily course of getting to the
4 office, getting back to the office, having to eat
5 lunch, going to the bathroom, would reduce each
6 amount of time that would be on the parking receipt?

7 A. What I assumed in that situation or
8 what I think can be assumed is that if someone
9 drives his or her car down to the office in the City
10 of Chicago, they are going to park it there, leave
11 it for the time that they are in the office and then
12 pick it up. Now, if Mr. Murphy is --

13 Q. Mr. Cohen?

14 A. If Mr. Cohen is saying he spent an
15 additional hour on tasks during that day, it does
16 not jive at least, it does not agree with the amount
17 of time that he was in the parking garage, and
18 therefore it leads me to question the accuracy of
19 that billing.

20 Q. Okay. In your opinion do attorneys
21 bill for the time that they go to lunch to the
22 client unless the task is actually related to a
23 client meeting?

24 MR. PARTEE: Objection, relevance.

1 HEARING OFFICER WEBB: I'll allow it.

2 A. No, they would not bill for lunch,
3 bathroom breaks, time taking phone calls on other
4 cases, for example, talking with other attorneys in
5 the office, that type of things.

6 BY MR. JAWGIEL:

7 Q. Do you find the entries, do you have
8 any opinions regarding the entries for Mr. Cohen or
9 large amounts of time, per se, for example, 14 hours
10 or 12 hours to be suspicious in any manner?

11 A. Yes.

12 Q. What is your opinion in that regard?

13 MR. PARTEE: I would object to the
14 suspicious word again because I think - I
15 don't think she used the word suspicious in
16 her expert report. It's an unfair
17 mischaracterization.

18 HEARING OFFICER WEBB: We use unusual.

19 MR. JAWGIEL: I will rephrase the
20 question.

21 BY MR. JAWGIEL:

22 Q. Do you find in your opinion the large
23 block of time billed by Mr. Cohen, for example, 14
24 hours or 12 hours to be unusual?

1 A. Yes.

2 Q. And what is your opinion in that
3 regard?

4 A. Well, I find it highly unusual that an
5 attorney is able to bill that amount of time for a
6 task during a day or for a series of tasks during a
7 day. I do know that there are billing guidelines
8 that I reviewed wherein corporations earmark those
9 entries because they find them to be questionable,
10 and I also know from colleagues that I have in the
11 legal community that those are, that are in private
12 practice, that they have told me that it is very
13 difficult to bill 12 to 14 hours in a day simply
14 because you have to be an extremely efficient biller
15 because you take time out during the day to take
16 lunch, work on other cases, take phone calls, take
17 breaks. So in essence you'd almost have to be
18 working, when I take into account all of the down
19 time or time away from the actual task billed, you
20 would then be in the office even a longer period of
21 time than 14 or 12 hours.

22 Q. Do you have any opinions regarding the
23 amount of travel that was reported by Mr. Cohen in
24 this case?

1 A. Yes.

2 Q. And what is that opinion?

3 A. Well, travel time is generally not
4 reimbursable on bills. In some cases it can be
5 reimbursed at a lower rate. That's provided if an
6 attorney is working while they are traveling.
7 Typically that would be airline travel, for example,
8 where an attorney can work on a case while
9 traveling. But for driving, for example, and in
10 many cases, that's just not reimbursable.

11 Q. Do you have any opinions regarding
12 copying expenses requested in this case?

13 A. Yes. I did note that there was no
14 in-house copying done in this case; that all of the
15 copying or photocopying was contracted out to
16 Kinko's. Generally, when firms bill for their
17 photocopying costs, it's for internal photocopying
18 costs, and it is at a set rate, whether that rate
19 would be seven cents or ten cents. Sometimes I have
20 seen it up to 15 cents a page, but generally it's
21 expected that the photocopies will be made in the
22 office. Of course, there are exceptions made when
23 the office does not have capabilities to make
24 photocopies of a specialized nature, such as

1 enlarged photocopying for exhibit purposes.

2 Q. And all the opinions you have
3 expressed here today are based upon your
4 understanding of the custom and practice of the
5 legal community in the Chicagoland area?

6 A. Yes.

7 Q. And all your opinions that you've
8 expressed today apply to the petition submitted by
9 the People in this case?

10 A. Yes.

11 MR. JAWGIEL: Thank you.

12 CROSS-EXAMINATION

13 BY MR. PARTEE:

14 Q. For the record, my name is Mike
15 Partee, and I have some questions for you,
16 Ms. Stonich.

17 Let me start by asking you a
18 little bit about your education. You have not
19 prepared any resume or CV for this case, correct?

20 A. No, I have not. No, I have not.

21 Q. And when did you graduate from
22 college?

23 A. I graduated in 1983.

24 Q. And when did you go to law school?

1 A. I went to law school from 1984 to
2 1987.

3 Q. And there wasn't any relevant work
4 experience relevant to your opinion today between
5 undergrad and law school?

6 A. No.

7 Q. And you are not a member of any bar
8 association, correct?

9 A. No.

10 Q. You are a member of one insurance
11 trade association; is that correct?

12 A. Yes.

13 Q. Let me ask you about your experience.
14 You have never taken a deposition before; is that
15 correct?

16 A. Correct.

17 Q. You've been deposed before, but you've
18 never been deposed as an expert witness; is that
19 correct?

20 A. That's correct.

21 Q. And all of your deposition experiences
22 have been as a defense witness, correct?

23 A. That's correct.

24 Q. Is it fair to say there's only one

1 Illinois case that you've been deposed in?

2 A. I don't believe that's correct.

3 Q. How many cases have you been deposed
4 in that were Illinois cases?

5 A. Possibly three to five.

6 Q. Could it have been less than that?

7 MR. JAWGIEL: I am going to object.

8 In Illinois cases they haven't established
9 what capacity she was being deposed, so it
10 doesn't have any relevance in this case.

11 HEARING OFFICER WEBB: I'll allow it.

12 It was mentioned in background.

13 A. It's possible.

14 BY MR. PARTEE:

15 Q. Have you testified in a trial or a
16 hearing before?

17 A. Yes.

18 Q. And did you testify as an expert?

19 A. No, I don't believe I have.

20 Q. So this is your first for into expert
21 testimony in this case?

22 MR. JAWGIEL: I'm going to object to
23 the term expert. The 213(f) rule clearly
24 states opinion witness. Nowhere does it use

1 expert. It's either retained opinion
2 witness, independent opinion witness or
3 nonretained and fact witness. So the phrase
4 expert has no bearing or relevance in this
5 case whatsoever. Expert is not the
6 definition of what is in Supreme Court Rule
7 213.

8 MR. COHEN: Is that an opinion?

9 MR. JAWGIEL: That is the objection.
10 Is he a witness now or is he now an attorney?

11 HEARING OFFICER WEBB: Well, I think
12 we were just clarifying your objection to his
13 use of the term "expert."

14 MR. JAWGIEL: Correct. It is not the
15 standard in the State of Illinois under
16 Supreme Court Rule 213(f).

17 HEARING OFFICER WEBB: I don't even
18 remember what the question was.

19 MR. PARTEE: My question was if and
20 when you have testified as an expert before.

21 MR. JAWGIEL: Same objection.

22 HEARING OFFICER WEBB: You can answer.
23 I'll allow it.

24 A. No.

1 BY MR. PARTEE:

2 Q. And none of the cases in which you
3 have testified involve violations of the
4 Environmental Protection Act, correct?

5 A. I believe that's correct.

6 Q. What type of cases have you testified
7 to in the past?

8 A. I've testified in cases involving CNA
9 Insurance Companies.

10 Q. And do you have any private practice
11 experience?

12 A. Yes.

13 Q. About six months to a year's worth of
14 private practice experience; is that correct?

15 A. That is correct.

16 Q. And that was at the Jeffrey Leving Law
17 Firm?

18 A. That is correct.

19 Q. In 1987?

20 A. That is correct.

21 Q. And then I believe you testified that
22 you went to work for the Illinois EPA in 1988 after
23 you left the Leving Law Firm?

24 A. In 1987.

1 Q. And you worked at the Illinois EPA for
2 only about two years?

3 A. Approximately.

4 Q. And what was your title at the
5 Illinois EPA?

6 A. I was an air regulatory attorney.

7 Q. And you only occasionally worked on
8 enforcement cases as a regulator with the EPA?

9 A. That's correct.

10 Q. You did not keep track of your time at
11 IEPA?

12 A. No, I did not.

13 Q. Do you recall working on any case
14 involving a fee petition at IEPA?

15 A. No, I do not.

16 Q. And then from the IEPA you went to
17 work for the Pollution Control Board in about 1990,
18 correct?

19 A. That's correct.

20 Q. And you worked there until about 1993?

21 A. Correct.

22 Q. And what did you do at the Pollution
23 Control Board?

24 A. I was a board assistant to Joan

1 Anderson.

2 Q. Do you recall ever working on a case
3 at the Board in which the Attorney General's fees or
4 costs were awarded?

5 A. I can't recall.

6 Q. Do you recall any Board orders dealing
7 with the Attorney General's fees or costs while you
8 worked at the Board?

9 A. I can't recall.

10 Q. You are not even aware of the
11 circumstances in which the Board would order a
12 respondent to pay the Attorney General's fees or
13 costs; isn't that correct?

14 A. No, I would not say that's correct.

15 Q. Have you done some additional research
16 on that issue since your deposition in this case?

17 A. No, I haven't.

18 Q. You were deposed in this case on
19 November 15, 2006, right?

20 A. Yes.

21 MR. JAWGIEL: I'm going to object to
22 the use of this transcript. We have not
23 received a copy of this transcript from
24 HEARING OFFICER WEBB reporter, and therefore

1 we're at a disadvantage in this case, of this
2 court reporter hired by the State, and she
3 did not provide us with the transcript.

4 MR. PARTEE: Well, three things. I
5 have copies of the transcript for everyone.
6 Number two, we have a copy of a cover letter
7 conveying the transcript to Mr. O'Neill at
8 the correct address. And three, the
9 deposition was taken on November 15th, and if
10 they wanted a copy of this transcript, they
11 had plenty of time to get it before today.
12 It was almost a month ago.

13 HEARING OFFICER WEBB: I'm going to
14 allow you to read from it.

15 MR. O'NEILL: Could we also have a
16 copy of the cover letter that allegedly sent
17 the transcript to us admitted into evidence?

18 HEARING OFFICER WEBB: Pardon me?

19 MR. O'NEILL: Could we get a copy of
20 the cover letter referenced in the last
21 statement from HEARING OFFICER WEBB reporter
22 allegedly stating that and put that into
23 evidence?

24 MR. PARTEE: I'm objecting to it going

1 in as evidence.

2 HEARING OFFICER WEBB: We are not
3 moving this into evidence.

4 MR. PARTEE: No, this is for
5 impeachment.

6 MR. JAWGIEL: We will deal with that,
7 with the reporter. If we have to bring other
8 actions, we will.

9 Can you tell me what page you are
10 referencing?

11 MR. PARTEE: I'm not there yet.

12 BY MR. PARTEE:

13 Q. But when you had your deposition
14 taken, you had an attorney with you, Mr. O'Neill,
15 correct?

16 A. That's correct.

17 Q. There was a court reporter present who
18 took down what you said, correct?

19 A. That's correct.

20 Q. And she administered an oath before
21 you testified, correct?

22 A. Correct.

23 Q. And I instructed you before you
24 testified that if you didn't understand any of the

1 questions, that you were to ask me to rephrase it or
2 for clarification, otherwise we would assume that
3 you understood the question, correct?

4 A. Uh-hum.

5 Q. Let me direct your attention to page
6 22 of the deposition transcript.

7 MR. JAWGIEL: Line please or lines I
8 should say line?

9 MR. PARTEE: 14.

10 (READING:)

11 "Q. Are you aware of the
12 circumstances in which the Board would order
13 respondents to pay Attorney General's fees
14 and costs?

15 A. No."

16 MR. JAWGIEL: I am going to object.
17 It was not impeachment with respect to the
18 question that was asked. He asked her if she
19 was familiar with any cases. You could read
20 back the last question before he went into
21 lay the foundation. He didn't ask about an
22 order, respondent's order.

23 MR. PARTEE: Let her read the question
24 back.

1 (Record read as
2 requested.)

3 MR. PARTEE: If I could pick up where
4 I left off reading the deposition transcript.
5 Page 22, line 14:

6 (READING:)

7 "Q. Are you aware of any
8 circumstances in which the Board would order
9 respondents to pay the Attorney General's
10 fees and costs?

11 A. No."

12 Did I read that right?

13 A. Yes, you did.

14 MR. JAWGIEL: I am just going to
15 object. It's not impeachment. It says
16 circumstances in which the Board would order,
17 that's different than the question asked.

18 HEARING OFFICER WEBB: The question
19 asked was phrased as a negative instead of
20 are you aware or it was phrased you are not
21 aware, but it was pretty much the same.

22 BY MR. PARTEE:

23 Q. In 1993 then you left the Board and
24 went to work as a claim analyst at CNA; is that

1 right?

2 A. That's correct.

3 Q. And I suppose before we move on to
4 your CNA experience, when you were with the IEPA and
5 then the Board, other than interacting with the AG's
6 office more than a decade ago, you have no work
7 experience with the AG's office since, correct?

8 A. No, direct experience, that's correct.

9 Q. And you have no work experience in the
10 AG's office in the sense that you've never worked
11 for the Attorney General's office, right?

12 A. That's correct.

13 Q. Do you recall ever asking an Assistant
14 Attorney General about billing practices in the
15 Attorney General's office?

16 A. No.

17 Q. Okay. So fast forwarding to your move
18 to CNA in about 1993, what was your first position
19 at CNA?

20 A. I was a claim analyst.

21 Q. And how long were you a claim analyst?

22 A. I believe for approximately two to
23 three years.

24 Q. And can you describe what you did as a

1 claim analyst?

2 A. Yes.

3 Q. Please do.

4 A. I was responsible for the handling of
5 claim files, that would be everything from
6 establishing a file, conducting policy searches,
7 conducting environmental site investigation,
8 reviewing the policies in conjunction with the facts
9 gleaned from site investigations in order to make
10 coverage determination, issuing that coverage
11 determination, whether it would be a determination
12 of no coverage or a determination if indeed there
13 was coverage, and by that I mean whether or not I
14 had to defend the insured in litigation or indemnify
15 the insured in litigation. I also handled what are
16 known as declaratory judgment actions wherein an
17 insured would sue CNA if it did not agree with the
18 coverage position that the company took.

19 Q. You've reviewed CNA's defense
20 attorneys' fees in that role?

21 A. That is correct.

22 Q. You've never reviewed opposing
23 counsel's fees as a claim analyst at CNA; is that
24 correct?

1 A. That's correct.

2 Q. And do you recall whether any of these
3 cases that you reviewed or claims that you reviewed
4 as a claim analyst were filed with the Pollution
5 Control Board?

6 A. I can't remember.

7 Q. Is it fair it to say that none of
8 these cases that you worked on as a claim analyst
9 were enforcement cases?

10 A. I can't recall.

11 Q. Is it fair to say that your opinion
12 wouldn't be based on any experience with enforcement
13 cases as a claim analyst then?

14 A. Can you reread the question?

15 (Record read as
16 requested.)

17 A. Yes, I believe that would be correct.

18 BY MR. PARTEE:

19 Q. And you were ultimately promoted to
20 claim consultant from claim analyst in about 1983;
21 that's correct?

22 A. That's correct.

23 Q. And basically you did the same thing
24 as a claim consultant as a claim analyst?

1 A. That's correct.

2 Q. And you've been a claim consultant now
3 for the last ten years?

4 A. That's correct.

5 Q. Do you recall the last case in which
6 you worked on as a claim consultant that involved
7 violations of the Environmental Protection Act?

8 MR. JAWGIEL: I am going to object to
9 the relevance. What is the relevance of the
10 violations of the Environmental Protection
11 Act with respect to her opinions.

12 HEARING OFFICER WEBB: This all goes
13 to qualifications. I will allow it.

14 MR. JAWGIEL: I can repeat the
15 question if you'd like.

16 THE WITNESS: Please.

17 BY MR. PARTEE:

18 Q. Do you recall the last case on which
19 you worked as a claim consultant that involved
20 violations of the Environmental Protection Act?

21 A. Yes.

22 Q. Which case is that?

23 A. There is a case entitled People of the
24 State of Illinois vs. Precision Brand Products.

1 Q. And when did you work on that case?

2 A. I worked on that case from
3 approximately 2003 up until I would say July of this
4 year.

5 Q. Was it the underlying case that
6 involved violations of the act?

7 A. I believe so.

8 Q. And you didn't work on the underlying
9 case, you worked on the insurance case, correct?

10 A. No -- not -- strike that. I worked on
11 the insurance case. However, I had to make a
12 coverage determination as to whether or not to
13 provide a defense on the underlying case. So in
14 that respect I would have been involved in the
15 underlying case.

16 Q. Okay. Fair enough. Have you ever
17 been involved in a fee dispute with CNA disputes
18 involving a fee petition?

19 MR. JAWGIEL: I am going to object to
20 the form of the question as vague.

21 MR. PARTEE: I can rephrase.

22 HEARING OFFICER WEBB: Please.

23 BY MR. PARTEE:

24 Q. Have you been involved in a dispute at

1 CNA involving an opposing party's fee petition?

2 A. No.

3 Q. You never negotiated opposing
4 counsel's fees and costs as a claim consultant, have
5 you, either?

6 MR. JAWGIEL: I am going to object to
7 the phrase "opposing counsel." I don't know
8 who opposing counsel are. It's vague.

9 BY MR. PARTEE:

10 Q. Do you understand what opposing
11 counsel is?

12 A. Yes.

13 HEARING OFFICER WEBB: I'll allow the
14 question.

15 BY MR. PARTEE:

16 Q. My question is, have you ever
17 negotiated an opposing counsel's fees and costs as a
18 claims consultant at CNA?

19 A. No.

20 Q. Do you know if CNA knows whether you
21 are testifying in this case?

22 MR. JAWGIEL: I'm going to object to
23 the relevance. What is the relevance of CNA
24 knowing she's here testifying?

1 HEARING OFFICER WEBB: Sustained.

2 BY MR. PARTEE:

3 Q. Do you know Joel Sternstein is
4 currently employed by CNA?

5 A. Yes.

6 Q. Do you know Joel Sternstein?

7 A. Yes.

8 Q. And you are aware that his fees were
9 initially included in your fee petition, correct?

10 A. Yes.

11 Q. Do you see any problem or conflict of
12 interest about your testifying in this case?

13 MR. JAWGIEL: I am going to object to
14 the relevance. First of all,
15 Mr. Sternstein's fees have been redacted from
16 the fee petition because he had been
17 disqualified.

18 HEARING OFFICER WEBB: Well, isn't the
19 question whether she feels she has any
20 conflict of interest; isn't that the
21 question?

22 MR. PARTEE: Correct.

23 HEARING OFFICER WEBB: I will allow
24 her to answer the question.

1 A. No.

2

3 BY MR. PARTEE:

4 Q. Let me ask some questions about the
5 underlying case on which the People's fee petition
6 is actually based. You've never met the Fredericks
7 before, the respondents before, the Fredericks?

8 A. That's correct.

9 Q. You in never visited the site that was
10 the subject of the underlying case?

11 A. No, I have not.

12 Q. Other than generally knowing that this
13 case involves contamination or pollution problems,
14 you are not familiar with the issues in the
15 underlying case?

16 A. That's correct.

17 Q. You can't recall with any specificity
18 any of the violations alleged in the complaint in
19 the underlying case, correct?

20 A. That's correct.

21 Q. In preparing your report in this case,
22 you only glanced at one box of documents in this
23 case; is that correct?

24 A. I reviewed one box, that's correct.

1 Q. Which documents did you review?

2 A. I reviewed numerous Board orders. I
3 reviewed the fee petition and cost petition. I
4 reviewed, I believe, the closing arguments and
5 closing rebuttal. Those were just some examples of
6 some of the documents that I reviewed.

7 Q. Is there a difference between glanced
8 and reviewed?

9 A. No.

10 Q. So you had used the word glanced and
11 reviewed interchangeably?

12 A. Yes.

13 Q. You don't know how many trial exhibits
14 were used at the trial in the underlying case,
15 correct, other than what you've learned sitting in
16 the room today?

17 A. That's correct.

18 Q. And, again, other than what you heard
19 sitting in the room today, you don't know how many
20 witnesses were called in the underlying case?

21 A. That's correct.

22 Q. Is it fair to say your opinion in this
23 case wouldn't be based on the number of trial
24 exhibits or witnesses involved in the underlying

1 case?

2 A. That's correct, because that wasn't
3 put into the task descriptions, so I would have no
4 basis of knowing.

5 Q. And you didn't otherwise review those
6 documents in order to prepare your report?

7 A. I may have seen those documents. I
8 just cannot recall at this time.

9 Q. You don't recall what section 42(f) of
10 the Act provides, do you?

11 A. Not with any specificity, no.

12 Q. You haven't dealt with section 42(f),
13 and when I say Act, I am talking about the
14 Environmental Protection Act, you haven't dealt with
15 section 42(f) of the Act at CNA; is that correct?

16 A. That's correct.

17 Q. Let me ask you about your compensation
18 in this case. You didn't reach any agreement as to
19 your compensation with the respondents before
20 starting working on this case, did you?

21 A. That's correct.

22 Q. Is it fair to say that it's your
23 typical business practice to provide free work for
24 colleagues?

1 A. It's not unusual.

2 Q. When you started working on this case,
3 you in fact were not going to charge for your
4 services; is that correct?

5 A. That's correct.

6 Q. But ultimately or later I should say
7 you reached a verbal understanding with Mr. O'Neill
8 that you would be compensated somehow?

9 A. There's not, per se, a verbal
10 understanding, other than I had stated to
11 Mr. O'Neill that based upon the time that I spent in
12 this case, I may want to charge for my services.

13 Q. Do you intend to charge for your
14 services?

15 A. I expect to be compensated.

16 Q. You don't know how you are going to be
17 compensated yet, correct?

18 A. That's correct.

19 Q. Is it fair to say you are just going
20 to leave your compensation up to Mr. O'Neill?

21 A. Yes.

22 Q. You were critical of Mitch Cohen
23 spending 104.5 hours preparing for a trial in this
24 case; is that a fair statement?

1 A. I did state that I thought the time
2 was excessive.

3 Q. Okay. Before you were deposed in this
4 case, you had already spent about 63 hours preparing
5 your expert report in this case; isn't that correct?

6 A. No, that's not correct.

7 Q. Well, what's not correct about it?

8 A. As I stated during my deposition at
9 the time, I had spent that amount of time associated
10 with the case. I could not give you an estimate as
11 to how much time I spent drafting my report.

12 Q. How do you distinguish between time
13 spent on this case and drafting your report?

14 A. Drafting my report is drafting my
15 report. I may have had other conversations with
16 Mr. O'Neill during that time frame that would
17 constitute that, that would add to this or be a part
18 of the total hours that I spent.

19 Q. Well, fair enough. You were only
20 involved in this case in order to create an opinion
21 report and expert report and to testify, correct?

22 A. That's correct.

23 Q. And you have spent additional time
24 since, about 63 hours as of your deposition?

1 A. Yes.

2 Q. You spent how many hours at the
3 deposition?

4 A. Three hours.

5 Q. Are you going to bill for your travel
6 time?

7 A. I recorded my travel time.

8 Mr. O'Neill can decide what he wants to pay me.

9 Q. Okay. And how many hours have you
10 spent on this case thus far today?

11 A. Possibly 67 to 68 hours.

12 Q. How much time have you spent on this
13 case today?

14 MR. JAWGIEL: Excluding her attendance
15 at the hearing?

16 MR. PARTEE: Including your
17 attendance.

18 BY MR. PARTEE:

19 Q. How much time have you spent on this
20 case today so far?

21 A. Well, from 1:00 o'clock until the
22 present, and I met with Mr. O'Neill from
23 11:00 o'clock till 12:00 o'clock.

24 Q. So can you do the math for me and tell

1 me how many hours that represents?

2 A. I don't have a watch right now.

3 HEARING OFFICER WEBB: It is 7:30.

4 A. So 7-1/2 hours plus one hour, 8-1/2
5 hours.

6 BY MR. PARTEE:

7 Q. 8-1/2 hours so far, and that doesn't
8 include the morning, correct? You spent the morning
9 working on something else, at least prior to
10 11:00 a.m.?

11 A. That's correct.

12 Q. So is it fair to say 8-1/2 hours so
13 far, not including the morning?

14 A. That's correct.

15 Q. Let me ask you about the timing of you
16 being disclosed as an expert in this case or an
17 opinion witness in this case, as Mr. Jawgiel would
18 prefer, relative to your expert report being
19 disclosed, when were you retained in this case?

20 A. I believe I was retained approximately
21 six months ago.

22 Q. When were you first asked to testify
23 in this case?

24 A. I believe it would have been about the

1 same time.

2 Q. Was there any discussion at about that
3 same time, about six months ago, about preparing an
4 expert report?

5 A. No.

6 Q. Did you even think that you would need
7 to prepare an expert report in this case six months
8 ago?

9 A. No.

10 Q. At what point were you asked to
11 prepare an expert report in this case?

12 A. I can't recall with any specificity,
13 and I can't recall what I stated during my
14 deposition, but possibly two months prior to the
15 date that I was to be deposed.

16 Q. Close enough. And you were not given
17 documentation at any point prior to that to review
18 in order to prepare your expert report, correct?

19 A. If you could clarify, prior to what
20 time?

21 Q. Sure. You said that you first had,
22 you were first asked to prepare an expert report
23 about two months prior to your deposition, correct?

24 A. That's correct.

1 Q. And you were not given documents on
2 the underlying case by respondent's attorneys until
3 that point as well, correct?

4 A. That is correct.

5 Q. And even then you didn't ask for the
6 documentation, it was given to you, correct?

7 A. That is correct.

8 (People's Exhibit
9 No. 105 marked.)

10 BY MR. PARTEE:

11 Q. Take a moment and just review People's
12 105, just so you understand what it is and look up
13 when you are comfortable. And actually for the
14 record, I'll call this People's Group Exhibit 105?

15 A. Okay.

16 Q. Take as much time you as want to get
17 comfortable with this representation, but People's
18 Group Exhibit 105 are the responses of the three
19 respondents to the People's interrogatories on the
20 fee petition, and I'd like to draw your attention to
21 the first answer, which is the answer of respondent
22 Edwin Frederick to the -- F-R-E-D-R-E-R-I-C-K -- and
23 I'd like to specifically direct your attention to
24 his answer to interrogatory No. 3, which in pages--

1 and the pages aren't numbered -- but it's on the
2 third page beginning on the second page and
3 continuing on to the third page. Did you have any
4 input into this response to People's interrogatory
5 No. 3?

6 MR. JAWGIEL: I'm going to object to
7 the relevance. What's the relevance? Isn't
8 the interrogatory signed by Dave O'Neill; and
9 there's an attached signature by Edwin
10 Fredrick. What's the relevance?

11 MR. PARTEE: I can tell you where I'm
12 going.

13 HEARING OFFICER WEBB: Okay, please.

14 MR. PARTEE: Ms. Stonich was disclosed
15 as an expert or an opinion witness, excuse
16 me, in December, on December 5, 2005. More
17 than a year ago. The record will show that
18 there were a number of letters from me to
19 opposing counsel asking for her report, and
20 respondents waited until the actual day of
21 her deposition to hand her report over to us.

22 MR. JAWGIEL: What's the relevance of
23 this. Is this a motion to compel?

24 MR. PARTEE: The relevance is that we

1 were materially prejudiced in our ability.

2 MR. JAWGIEL: Then he should have
3 brought a motion.

4 MR. PARTEE: Let me finish.

5 I've been interrupted all day long, so
6 just let me finish. And we were materially
7 prejudiced in our ability to properly prepare
8 for her deposition, and in turn for today's
9 hearing, and I just want the record to
10 reflect, that there's been a lot of
11 gamesmanship going on here.

12 HEARING OFFICER WEBB: I'm going to
13 allow him to ask it.

14 MR. JAWGIEL: I understand. I don't
15 understand the relevance.

16 HEARING OFFICER WEBB: Overruled.

17 BY MR. PARTEE:

18 Q. Did you have any input into answering
19 No. 3 on behalf of Mr. Frederick? Do you understand
20 the question?

21 A. Yes, I do. No, I did not.

22 Q. Do you have any idea what the
23 reference to the opinion witness having not
24 completed her review of materials; is that in

1 reference to you?

2 MR. JAWGIEL: I'm going to object.

3 She is not the author of the document. I
4 don't know how she is going to know what that
5 is in reference to. It's asking an opinion
6 beyond the scope of her direct examination
7 and not an opinion that's been disclosed.

8 MR. PARTEE: I'll withdraw the
9 question. I can move on.

10 BY MR. PARTEE:

11 Q. But I do want to know, it's correct
12 you had not been given materials to review in this
13 case as December 5, 2005, correct?

14 MR. JAWGIEL: The question has been
15 asked and answered.

16 HEARING OFFICER WEBB: I am going to
17 allow you to answer the question.

18 A. I believe based upon my testimony that
19 I would not have had the materials at the time this
20 was drafted.

21 BY MR. PARTEE:

22 Q. And you asked Mr. O'Neill at some
23 point more recently when your expert report was due,
24 and he told you October 31, correct?

1 A. That is the time that he gave me, yes.

2 Q. And you had completed the majority of
3 your report by October 31st?

4 A. I believe I did, yes.

5 Q. And you gave your draft report to
6 Mr. O'Neill around October 31st?

7 A. Yes.

8 Q. Mr. O'Neill made corrections to your
9 draft report, correct?

10 A. Not substantive corrections.

11 Q. But corrections nonetheless?

12 A. Yes.

13 Q. And did Mr. O'Neill give you these
14 corrections?

15 A. Yes.

16 Q. And when did he give you those
17 corrections?

18 A. I can't remember the specific date,
19 but it would have been on or around October 31st.

20 Q. And then you revised your draft report
21 and provided a final report to Mr. O'Neill within a
22 day or two of October 31st, correct?

23 A. I can't state if it was a final
24 report. I did provide another version of the

1 report.

2 Q. How did you send your revised report
3 to Mr. O'Neill?

4 A. Typically I was sending versions of my
5 report via e-mail.

6 Q. So he would have gotten a revised
7 report the same day?

8 MR. JAWGIEL: I'm going to object.
9 That's pure speculation. She has no idea
10 when he would have received the report.

11 HEARING OFFICER WEBB: Sustained.

12 BY MR. PARTEE:

13 Q. You sent your final report in this
14 case by e-mail on October 31st, correct?

15 MR. JAWGIEL: I am going to object,
16 asked and answered. We have been down this
17 road.

18 HEARING OFFICER WEBB: I will allow
19 it.

20 A. I sent a version of the report to him
21 on October 31st.

22 BY MR. PARTEE:

23 Q. The final version of your report?

24 MR. JAWGIEL: Again, objection, asked

1 and answered.

2 HEARING OFFICER WEBB: Well, I'm going
3 to allow it.

4 A. I don't believe it was the final
5 version.

6 BY MR. PARTEE:

7 Q. Let me direct your attention to page
8 47 of your deposition transcript. Page 47 line 21:

9 (READING:) --

10 And, again, this is my question to
11 you.

12 "Q When did he give you his edits?

13 A On or about October 31st.

14 Q On about the same day that you
15 gave the draft report to him" --

16 MR. JAWGIEL: I am going to object.
17 That's not impeachment.

18 MR. PARTEE: I am not done yet.

19 MR. JAWGIEL: Well, get to the point.
20 Where is the impeachment?

21 MR. PARTEE: (READING:)

22 "A Yes.

23 Q Then what did you do with his
24 edits?

1 A I corrected the typographical
2 errors.

3 Q When?

4 A Within a day or two of having
5 received them.

6 Q Then did you -- when you said his
7 edits, did you have a final report?

8 A Yes.

9 Q That would have been a day or two
10 after October 31st which is fair to say the
11 first few days in November?

12 A Sometime in November."

13 MR. JAWGIEL: Again, this is not
14 impeachment. It's not impeaching.

15 MR. PARTEE: We are not there yet.

16 MR. JAWGIEL: Get to the point where
17 it's impeaching.

18 MR. PARTEE: Well, I think all of this
19 is relevant.

20 HEARING OFFICER WEBB: Yes, if we can.

21 MR. JAWGIEL: If we can like nip it in
22 the bud.

23 MR. PARTEE: It's the next question.

24 "Q What did you do with the next

1 final report?

2 A I sent it Mr. O'Neill via e-mail."

3 BY MR. PARTEE:

4 Q. Did I read that right?

5 A. Yes.

6 MR. JAWGIEL: Can you go on:

7 (READING:)

8 "Q On what date?

9 A Within the last week I would say."

10 You know, this is ridiculous.

11 MR. PARTEE: You can do that on your

12 redirect.

13 MR. JAWGIEL: At the time you let him

14 go on and on and get to the point where it

15 clearly shows that she sent him a report a

16 week or so before her deposition and you

17 allow this to stand. That's sanctionable.

18 That's flat out sanctionable.

19 MR. O'NEILL: That's the third time he

20 is doing that.

21 MR. JAWGIEL: For the record to say I

22 am going to make an offer of proof --

23 MR. O'NEILL: To mischaracterize a

24 letter the from HEARING OFFICER WEBB reporter

1 sending the draft of the transcript to our
2 office.

3 MR. JAWGIEL: This goes on to read,
4 page 48, where Mr. Partee left off:

5 "Q On what date?"

6 MR. PARTEE: Excuse me. Let the
7 record reflect --

8 MR. O'NEILL: I'd like to make a
9 motion for sanctions.

10 MR. JAWGIEL: What you did was
11 sanctionable, Counsel. You are
12 misrepresenting testimony in this Court.

13 MR. PARTEE: I object to that.

14 HEARING OFFICER WEBB: Well,
15 everybody --

16 MR. O'NEILL: We will make a motion
17 for sanctions at this point.

18 MR. JAWGIEL: Yes, I would make a
19 motion for sanctions. This is ridiculous.
20 It is clear from this transcript that this
21 whole line of questioning for the past 20
22 minutes is without basis, without foundation.

23 HEARING OFFICER WEBB: Okay.

24 Mr. Jawgiel, please make your motion for

1 sanctions in your post-hearing brief, and,
2 Mr. Partee, please finish making your point.

3 MR. PARTEE: Sure.

4 MR. JAWGIEL: If you have one.

5 BY MR. PARTEE:

6 Q. You completed your report around
7 October 31st?

8 A. That's a fair statement.

9 Q. And then your final report, including
10 your signature was not handed to us until the day of
11 your deposition, correct?

12 MR. JAWGIEL: I am going to object to
13 foundation. I don't know whether she knew it
14 was handed to him. I have no idea if she
15 knows that. That's speculation.

16 MR. PARTEE: It doesn't matter what
17 counsel knows. It obviously matters what the
18 witness knows.

19 HEARING OFFICER WEBB: Could you
20 repeat your question, Mr. Partee.

21

22 BY MR. PARTEE:

23 Q. My question was, Ms. Stonich, we did
24 not receive a signed copy of your opinion or your

1 report in this case until the day of your
2 deposition, correct?

3 MR. JAWGIEL: I am going to object to
4 foundation and speculation on the part of the
5 witness.

6 HEARING OFFICER WEBB: You may answer,
7 if you know.

8 A. I believe that's correct, you did not
9 receive a signed, and I emphasize the word signed,
10 copy until that date.

11 BY MR. PARTEE:

12 Q. And do you recall when we were given
13 any copy of your expert report?

14 MR. JAWGIEL: Objection, asks for
15 speculation.

16 A. That, I would not know.

17 HEARING OFFICER WEBB: I am going to
18 allow it.

19 BY MR. PARTEE:

20 Q. You don't know?

21 A. I don't know.

22 Q. Let me ask you about the substance of
23 your report.

24 (Short recess taken.)

1 HEARING OFFICER WEBB: We are back on
2 the record. Mr. Partee, please continue.

3 MR. PARTEE: Thank you.

4 BY MR. PARTEE:

5 Q. Let me move on and let me ask you
6 about your report itself. Incidentally, who typed
7 up your report?

8 A. I typed it.

9 Q. Your opinion in this case is not based
10 on any Board precedent, correct?

11 A. No.

12 Q. And your opinion in this case is not
13 based on any correspondence either, correct?

14 A. That's correct.

15 Q. Let me ask you about whether you made
16 any assumptions in your report. For example, you
17 took issue with a certain parking receipt that
18 Mr. Cohen submitted and the fact that the amount of
19 time he recorded for that day didn't equal the
20 amount of time his car was in a parking garage. Do
21 you recall?

22 A. Yes.

23 Q. Is it fair to say that you made an
24 assumption that all of the work that Mr. Cohen

1 recorded on that day would have been done in the
2 office?

3 A. That's correct.

4 Q. You didn't consider that he could have
5 worked from home?

6 A. No, I did not. No, I did not.

7 Q. You testified at one point I do
8 believe that the State's fee petition says that no
9 photocopying was done in-house; is that correct?

10 A. I don't know if I stated that. The
11 fee petition stated that. I believe I stated that
12 my review of the documents indicated that no
13 photocopying had been done in-house.

14 Q. And which documents supported your
15 opinion on that point?

16 A. My review of Kinko's bills in
17 conjunction with the tables that summarize the costs
18 that the Attorney General was seeking in this case.

19 Q. Well, how does the Kinko's bill or the
20 summary of cost tables indicate that we didn't do
21 any in-house copying?

22 A. You didn't bill for any of it. Maybe
23 you did do some in-house copying, but I didn't see
24 any bills for that or any charges for in-house

1 copying.

2 Q. And in-house copying in your opinion
3 shouldn't have been billed, correct?

4 A. No, I never stated that.

5 Q. Can in-house copying be billed?

6 A. Yes, it can.

7 Q. You made some assumptions in your
8 report regarding Mr. Cohen's time keeping, correct?

9 A. Yes.

10 Q. And you also questioned Mr. Cohen's
11 time keeping in this case; is that fair to say?

12 A. Yes.

13 Q. But don't have any basis to question
14 Mr. Cohen's credibility or honest, do you?

15 MR. JAWGIEL: I am going to object to
16 questioning his credibility or honesty. Are
17 you trying to say that Mr. Cohen lied on the
18 stand today, is that what she is trying to
19 say, is that what she's trying to ask her?

20 HEARING OFFICER WEBB: Are you just
21 asking her for her opinion?

22 MR. PARTEE: Right.

23 HEARING OFFICER WEBB: You can give
24 your opinion.

1 THE WITNESS: Can you repeat the
2 question?

3 MR. JAWGIEL: Other than what she's
4 testified to, other than excess billing and
5 parking receipts and all the rest of these
6 things, is that what you are saying?

7 HEARING OFFICER WEBB: Could you
8 define the scope of the question as a person
9 or are you -- why don't you define the scope
10 of the question.

11 BY MR. PARTEE:

12 Q. You never met Mr. Cohen before today,
13 correct?

14 A. No, that's correct, I have not.

15 MR. PARTEE: I'll move on.

16 BY MR. PARTEE:

17 Q. You questioned Mr. Cohen's billing his
18 travel time in this case, correct or --I hate to use
19 the word billing so let me rephrase.

20 You questioned Mr. Cohen recording
21 time in this case, recording travel; is that
22 correct?

23 A. I questioned him recording his travel
24 time or the travel entries I should say, yes.

1 Q. When Mr. Cohen was traveling in
2 connection with this case, he couldn't have been
3 working on any other case, correct?

4 A. My understanding is Mr. Cohen was
5 driving, therefore he couldn't be working on any
6 substantive matter while driving a car.

7 Q. And a law firm would be billed for travel
8 time too, correct?

9 MR. JAWGIEL: I'm going to object to
10 the form of the question. Under what
11 circumstances, driving a car locally on an
12 airplane? She already made that
13 differentiation in her direct examination so
14 the form of the question is improper.

15 MR. PARTEE: It's not a proper
16 objection.

17 HEARING OFFICER WEBB: I will allow
18 it.

19 A. A firm may or may not bill for travel
20 time. The question is, is it reimbursable or not.
21 In some cases, clients will not reimburse attorneys
22 for travel time. In other cases, they will
23 reimburse for it at a reduced rate, provided that
24 the attorney is working during that travel time.

1 Q. In cases where a law firm, a travel
2 time is reimbursed, that travel time can be billed
3 as high as \$150 an hour, correct?

4 MR. JAWGIEL: I am going to object to
5 the form of the question and relevance and
6 foundation.

7 HEARING OFFICER WEBB: I'll allow the
8 question.

9 MR. JAWGIEL: Why it could be billed
10 that high, what does that mean?

11 MR. PARTEE: Your objection has been
12 overruled.

13 HEARING OFFICER WEBB: Well, are you
14 asking -- you are asking for her opinion?

15 MR. PARTEE: Yes.

16 HEARING OFFICER WEBB: I'll allow you
17 to give your opinion.

18 A. It's possible.

19 BY MR. PARTEE:

20 Q. And you considered various guidelines
21 on time keeping in reading your report?

22 A. That's correct.

23 Q. And the guidelines that you considered
24 do not address the situation where a prevailing

1 party's fees and costs are assessed against an
2 opposing party, correct?

3 A. I don't know I ever saw a reference to
4 that in any of the guidelines. Therefore, maybe the
5 guidelines would cover that situation. I simply
6 don't know.

7 Q. So it's fair to say that your opinion
8 wouldn't be based on any guidelines -- well, strike
9 that.

10 The guidelines on which you relied
11 are requirements for company's attorneys, but they
12 aren't requirements on the Attorney General's
13 office, correct?

14 MR. JAWGIEL: I'm going to object to
15 that question. First of all, what company,
16 company attorneys? I don't understand what
17 that phrase means. I think it's vague and
18 baseless and without foundation.

19 HEARING OFFICER WEBB: Mr. Partee,
20 would you rephrase.

21 MR. PARTEE: Sure. We can ask about a
22 specific guideline so that there's no
23 question as to what I'm asking.

24 BY MR. PARTEE:

1 Q. And let's look at, for example, and
2 again I'm referring to Respondent's Exhibit No. 102,
3 one of the guidelines that you considered was
4 Motorola's law department outside counsel
5 guidelines, correct?

6 A. That's correct.

7 Q. And that guideline is not a
8 requirement of the Attorney General's office,
9 correct?

10 A. No.

11 HEARING OFFICER WEBB: Mr. Partee,
12 what page were you looking at?

13 MR. PARTEE: I am on page 2, and it's
14 somewhere in the middle of the bullet point
15 list of guidelines.

16 HEARING OFFICER WEBB: Thank you.

17 BY MR. PARTEE:

18 Q. Motorola does not use government
19 attorneys as outside counsel, correct?

20 A. I would assume they don't.

21 Q. And Motorola's guidelines at least on
22 their face don't apply to government attorneys,
23 correct?

24 A. On their face, no.

1 Q. And you don't have any information
2 that Motorola has in fact ever applied its
3 guidelines to government attorneys, correct?

4 A. That's correct. I don't have any such
5 information.

6 Q. And you are not aware of any case in
7 which the Board has applied any of these guidelines
8 on which you base your report?

9 A. That's correct, I am not aware of it
10 in any case.

11 Q. Is it your opinion that the Board's
12 own precedent on fee petitions is trumped by these
13 guidelines in your report?

14 MR. JAWGIEL: I'm going to object to
15 the form and foundation of the question and
16 the term "trumped." I don't know what that
17 means. It's vague.

18 HEARING OFFICER WEBB: Could you
19 rephrase the question.

20 MR. PARTEE: Sure.

21

22 BY MR. PARTEE:

23 Q. Is it your opinion that the Board's
24 own precedent on the Attorney General's fees and

1 costs is superceded by any of these guidelines?

2 A. That's not my opinion.

3 Q. Let me ask you about your opinion on
4 the rate at which the Attorney General's office
5 should be compensated in this case. Is it fair to
6 say that it is your opinion that unless there's some
7 statute or regulation or guideline or policy that
8 allows an assistant Attorney General to bill a
9 certain amount and that gives notice of that amount,
10 that the Attorney General should only be able to
11 bill what they actually pay their attorneys?

12 MR. JAWGIEL: I am going to object to
13 the compound nature of the question. There
14 were multiple tasks, multiple --

15 HEARING OFFICER WEBB: That was a
16 pretty long question, Mr. Partee. Is there
17 any way we can simplify that?

18 BY MR. PARTEE:

19 Q. Well, what is your opinion with
20 respect to the amount that the Attorney General
21 should be able to bill for attorney time in this
22 case?

23 A. Assuming that there's no guidance, the
24 Attorney General in my opinion when it prevails on a

1 case should be able to recoup its costs in
2 prosecuting that case. So if there's no statute,
3 regulation, policy guideline, et cetera, the next
4 best thing would be to base the fees on what it pays
5 its attorneys, because if you based it on anything
6 else, an arbitrary number, \$400 an hour or whatever
7 figure you want to choose, and you are paying the
8 attorney less, that would in effect a windfall for
9 the Attorney General's office.

10 Q. Okay. And what the Attorney General's
11 office actually pays its assistants doesn't include
12 overhead costs, correct?

13 A. That is correct.

14 Q. And what sort of overhead costs would
15 the Attorney General's office incur?

16 A. Utilities, legal liability,
17 maintenance, clerical staff, paralegal staff
18 possibly, items of that nature.

19 Q. Electronic research costs?

20 A. Correct.

21 Q. In-house copying costs?

22 A. Correct.

23 Q. Any other types of overhead that the
24 Attorney General would have to pay above and beyond

1 what it pays directly to its attorneys?

2 A. Perhaps, but I can't recall anything.
3 I can't recall anything specifically, other than
4 those line items that you just mentioned and those
5 that I just mentioned.

6 Q. And none of those overhead costs that
7 we have just listed would be included in an
8 Assistant Attorney General's compensation in this
9 case, correct?

10 A. I don't believe it would be.

11 Q. So what is your opinion with respect
12 to billing that overhead?

13 A. Well, my opinion is it probably
14 shouldn't be charged unless there's some type of a
15 policy statement when law firms charge an hourly
16 attorney rate that those types of costs are figured
17 into the rates they charge. You as a client have a
18 choice as to which firm you use. If you don't like
19 what a firm is charging per hour, you can go to
20 another firm. Unfortunately with the Attorney
21 General's office, you have no choice in that.

22 Q. And a firm would build its overhead
23 into its billing rate, correct?

24 A. Yes, I would assume they would.

1 Q. But you are not aware of any firm that
2 doesn't build its overhead costs into its attorneys'
3 billing rate?

4 A. No, I am not.

5 MR. PARTEE: I have no further
6 questions.

7 MR. JAWGIEL: I have some questions.

8 REDIRECT EXAMINATION

9 BY MR. JAWGIEL:

10 Q. Ms. Stonich, I want to refer to
11 page -- you have your deposition transcript in front
12 of you -- page 48 of your deposition transcript
13 where Mr. Partee left off. Which was he left off on
14 line 17. I want to go on to line 18 and 19.

15 Did you give the statement after where
16 Mr. Partee left off: (READING:)

17 "Q On what date?

18 A Within the last week I would say."

19 Was that your answer?

20 A. Yes.

21 Q. And was that referring to within the
22 last week of your deposition?

23 A. That is correct.

24 Q. And your deposition was on November

1 15, 2006; is that correct?

2 A. Correct.

3 Q. And also Mr. Partee asked you a
4 question regarding page 22 of your deposition, I
5 believe it was line 17?

6 MR. PARTEE: Well, I would just like
7 to point out for the record that I think that
8 now you have asked her questions out of
9 context and you ought to read further on page
10 49. I just want to point that out. I am not
11 suggesting that you do it. I want to move
12 on.

13 MR. JAWGIEL: Hey, you have a right to
14 recross. Apparently, you left off there for
15 my redirect. I mean touché so to speak,
16 correct?

17 MR. PARTEE: I am really getting tired
18 of your snide comments today.

19 By MR. JAWGIEL:

20 Q. On page 22, you gave an answer of, no,
21 to the question. Are you aware of the circumstances
22 in which the Board would order respondents to pay
23 the Attorney General fees and costs and why did you
24 give that answer in your deposition?

1 A. I simply did not think of a case, the
2 circumstance where they would be awarded fees and
3 costs and that would be when they prevail on a case.

4 Q. So it's been your understanding since
5 your inception in this case that if the Attorney
6 General prevails in a case, that allows them to get
7 fees, they have a right to petition for the fees?

8 MR. PARTEE: That's leading.

9 HEARING OFFICER WEBB: I will allow
10 it.

11 A. That's correct.

12 BY MR. JAWGIEL:

13 Q. Also, are you aware of any Board order
14 that required your report to be given to the
15 Attorney General's office by a certain date?

16 A. I am not aware of any.

17 Q. You reviewed some of the Board orders
18 in this case and were you aware of a Board order
19 that set out the discovery schedule with respect to
20 the fee petition?

21 A. That's correct.

22 Q. And did that Board order set out the
23 time that the Attorney General's office was to
24 receive your report, a deadline?

1 A. It did not.

2 MR. JAWGIEL: That's all I have.

3 HEARING OFFICER WEBB: Anything
4 further, Mr. Partee?

5 MR. PARTEE: Can I consult with
6 counsel for a second.

7 HEARING OFFICER WEBB: Yes.

8 MR. PARTEE: We have nothing further.

9 HEARING OFFICER WEBB: Thank you.

10 MR. JAWGIEL: Just for a point of
11 clarification, I want to make sure Exhibit
12 102 was admitted into evidence.

13 HEARING OFFICER WEBB: Yes, it was.

14 MR. JAWGIEL: At this point, we would
15 incorporate into our case the testimony
16 provided by Mr. Cohen and Mr. Murphy in the
17 State's case in chief and then rest.

18 HEARING OFFICER WEBB: All right.

19 MR. PARTEE: I'm sorry. What is it
20 that you are asking?

21 MR. JAWGIEL: I just incorporated the
22 testimony of Mr. Cohen.

23 HEARING OFFICER WEBB: As part of the
24 record of this case?

1 MR. JAWGIEL: As part of the record in
2 this case admitted into my case in chief and
3 then we rest.

4 HEARING OFFICER WEBB: Okay, yes. Is
5 anyone making a closing argument or are you
6 both reserving your closing argument?

7 MR. JAWGIEL: We are going to reserve
8 because right now it's just shy of 20 after
9 8:00 o'clock in the evening, and I think
10 we've had enough for today.

11 HEARING OFFICER WEBB: Mr. Partee?

12 MR. PARTEE: I'm tempted to make a
13 joke about keeping you here for two hours
14 but, no.

15 HEARING OFFICER WEBB: Pursuant to the
16 Board's order, concurrent briefs are due by
17 January 19, 2007, or no response or reply
18 briefs are allowed.

19 MR. JAWGIEL: I don't mean to
20 interrupt, what order are you referring to?

21 HEARING OFFICER WEBB: September 7,
22 2006.

23 MR. JAWGIEL: Thank you.

24 HEARING OFFICER WEBB: The transcript

1 of these proceedings will be available from
2 HEARING OFFICER WEBB reporter by December
3 22nd, will be posted on the Board's website.
4 I will set a public comment deadline for
5 January 5, 2007, although we are not
6 expecting any. If we do get any public
7 comment, must be filed in accordance with
8 101.628. There are no members of the public
9 present to make statements in the record, so
10 I will proceed to make a statement as to the
11 credibility of witnesses testifying during
12 this hearing.

13 Based on my legal judgment and
14 experience, I find all of the witnesses who
15 testified to be credible. Anything anyone
16 else has prior to being adjourned?

17 MR. JAWGIEL: I want to thank
18 everybody for their patience, particularly
19 HEARING OFFICER WEBB reporter.

20 MR. PARTEE: Likewise.

21 HEARING OFFICER WEBB: Thank you,
22 court reporter. At this time, I will
23 conclude the proceedings and we stand
24 adjourned, and I thank everyone for their

1 participation.

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3 DENISE A. ANDRAS, being first duly sworn,
4 on oath says that she is a Certified Shorthand
5 Reporter doing business in the City of Chicago,
6 County of Cook, and State of Illinois.

7 That she reported in shorthand the
8 proceedings had at the foregoing trial of the above-
9 entitled cause.

10 And that the foregoing is a true and
11 correct transcript of her shorthand notes so taken
12 as aforesaid and contains all the proceedings had at
13 the said trial.

14 _____
15 DENISE A. ANDRAS, CSR
16 CSR NO. 084-0347

17 SUBSCRIBED AND SWORN TO
18 before me this ____ day
19 of _____, A.D., 1996.

20
21 _____
22 Notary Public

23
24