

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter Appeal of)	
Walden Structure, Inc.,)	
Appellant.)	OTA No. 18010223
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)	

In the Matter Appeal of)	
Charles Walden,)	
Appellant.)	OTA No. 18010222
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In the Matter Appeal of)	
Charles Walden and Deborah)	
Anderson,)	OTA No. 18010221
Appellant.)	
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TRANSCRIPT OF PROCEEDINGS

Van Nuys, California

Tuesday, August 21, 2018

Reported by:
Dorothy M. Simpson
Hearing Reporter

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Anderson,
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) OTA No. 108010221
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Transcript of proceedings, taken at 6150 Van Nuys
Boulevard, Auditorium, Van Nuys, California 91401,
commencing at 9:00 a.m. and concluding at 6:07 p.m. on
Tuesday, August 21, 2018, reported by Dorothy M.
Simpson, Hearing Reporter, in and for the State of
California.

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Panel Members: Hon. Linda Cheng
Hon. Douglas Bramhall

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Van Nuys, California; Tuesday, August 21, 2018
9:00 a.m.

JUDGE THOMPSON: All right. Let's go on the record.

Mr. Dies, are you ready?

MR. DIES: Yes, sir. I am.

JUDGE THOMPSON: We are now on the record in the Office of Tax Appeal Oral Hearing for the Appeals of Walden Structures, Inc., Charles Walden and Deborah Walden, Case Nos. 1801012123, 18010222, 1810221.

We're in Van Nuys, California. The date is Tuesday, August 21st, 2018. The time is approximately 9:02.

My name's Grant S. Thompson, and I am the administrative law judge for this hearing, and my fellow co-panelists today are Linda Cheng to my right and Doug Bramhall to my left.

Franchise Tax Board, could you please introduce yourselves for the record?

MS. KUDUK: My name is Carolyn Kuduk.

MR. RILEY: Jason Riley.

MR. ROUSE: Ray Rouse.

MS. WIGNAL: Teri Wignall.

JUDGE THOMPSON: I think I might have been

1 mispronouncing it -- is it Kuduk?

2 MS. KUDUK: Kuduk.

3 JUDGE THOMPSON: Kuduk. My apologies.

4 MS. KUDUK: No worries.

5 JUDGE THOMPSON: And for Appellants, could you

6 identify yourselves for the record, please?

7 MR. HODGES: Yes. My name is Clay Hodges with

8 Alliantgroup.

9 MR. DIES: John Dies, D-i-e-s.

10 MS. GONZALES: Edith Gonzales.

11 JUDGE THOMPSON: Your name again is Gonzales?

12 MS. GONZALES: Edith Gonzales.

13 JUDGE THOMPSON: Edith Gonzales.

14 And you are going to be leading the

15 presentation today?

16 MR. DIES: Yes, I am.

17 JUDGE THOMPSON: And the Franchise Tax Board,

18 Ms. Kuduk, are you going to be leading the presentation

19 today?

20 MS. KUDUK: I will be giving the opening and

21 closing.

22 JUDGE THOMPSON: Okay. And do you know who on your

23 team is going to question the witness? And it may vary.

24 That's fine.

25 MS. KUDUK: Jason Riley and Ray Rouse.

1 JUDGE THOMPSON: You want to spell Rouse?
2 MS. KUDUK: R-a-u-s-e.
3 MR. ROUSE: R-o-u-s-e.
4 MS. KUDUK: R-o-u-s-e.
5 JUDGE THOMPSON: Okay. Did you get all that?
6 THE REPORTER: (Nods head.)
7 JUDGE THOMPSON: This appeal involves Appellant's
8 claimed research and development credits.

9 The record is voluminous, but the parties have
10 agreed to resolve the appeal based on our determination
11 with respect to six sample projects.

12 The six sample projects are Bramasol, Welk
13 Resort, Mammoth Lakes Foundation Dorms, Mosque 1 and 2,
14 Geneentech, and Ynez Elementary.

15 As I will remind the parties throughout the
16 Appeal, we will need the parties to focus on the six
17 sample projects.

18 The issues on appeal are whether, with respect
19 to the six sample projects, the Appellants have
20 satisfied their burden of proving that:

21 A. Walden's activities constitute a qualified
22 research under Internal Revenue Code Section 41(d)(1),
23 such that Appellants are entitled to the claimed
24 California research credit.

25 B. Walden's activities are not excluded from

1 the Research Credit as an adaptation of an existing
2 business component under Internal Revenue I.R.C. Section
3 41(d)(4) cap B and cap C; and

4 C. Walden's activities are not excluded from
5 the research credit as duplication of an existing
6 business component under I.R.C. Section 41 (d)(4)(c).

7 Without objection, the following documents are
8 hereby admitted into evidence for Franchise Tax Board:

9 The documentation supplied by Appellants with
10 their May 17th, 2017, Reply Brief, No. WSI 13 through
11 WSI 572;

12 B. All documents attached to Appellant's
13 Appeal letters; and

14 C. All documents attached to FTB's briefs.

15 And for Appellants, all documents listed in
16 its exhibit list.

17 FTB is not calling any witnesses today.
18 Appellants have brought several witnesses, but my
19 understanding is we will primarily hear testimony from
20 Mr. Walden, Mr. Lord, and Mr. Woni sh.

21 We will begin with opening statements from
22 each party which should not exceed 10 to 15 minutes.

23 Then we will swear in Appellant's first
24 witness and begin hearing testimony. We anticipate that
25 we will hear several hours of testimony from Appellants'

1 witnesses.

2 Then each party will have an opportunity to
3 present a closing argument, which should not exceed
4 approximately 30 minutes, and Appellant will have up to
5 10 minutes to rebut FTB's closing argument.

6 I remind the parties that we are not a court.
7 Our proceedings are intended to be informal. I want
8 this to be efficient. I'm going to try to keep it
9 moving, and I may refocus the parties on issues as
10 necessary to make sure that we get all the facts we need
11 to make a good decision.

12 Myself and my fellow panelists may ask
13 questions from time to time. We will try to do it in a
14 way that doesn't break up the flow of the presentations,
15 but we just want to make sure we understand what you are
16 saying.

17 All right. That's all I have in terms of an
18 intro.

19 Do my co-panelists have anything to add to
20 that?

21 JUDGE BRAMHALL: No.

22 JUDGE CHENG: No.

23 JUDGE THOMPSON: All right. Appellant, are you
24 ready for your opening statement?

25 MR. DIES: Yes, I am.

1 JUDGE THOMPSON: Let's get started.

2 MR. DIES: If you can't hear, will you throw a shoe
3 or something and let me know? All right.

4

5 OPENING STATEMENT

6 MR. DIES: Charlie Walden and the taxpayers in this
7 matter have been waiting more than eight years to be
8 heard, and on behalf the folks in the room, I want to
9 thank you for your willingness to hear him in this
10 important matter.

11 Mr. Walden has come here to ask the State of
12 California to keep its promise. The promise was a
13 simple one, really. If you do research, thus spurring
14 innovation and the creation of technical jobs, the State
15 will support your efforts in the form of a tax credit.

16 The evidence will show that Walden
17 Enterprises, and the taxpayers in this case, kept their
18 part of that bargain. They engaged in substantial
19 research, and in some cases, doing things no one in the
20 country had ever done before. They hired the brightest
21 minds in the industry, and the efforts of those minds at
22 one time employed hundreds of Californians. Even so,
23 tax credits from the years 2003 to 2006 remain in limbo.

24 The truth is, Honored Panel, that if I
25 represented Ford, I wouldn't be here. These credits

1 would have been long paid with little contest. What is
2 striking is that this case is in many ways, what
3 the folks -- what is striking in this case that in many
4 ways what these folks do is vastly more complicated.

5 Ford makes a product, a car, sometimes
6 extraordinary cars that perform at a high level or can
7 tow incredibly large payloads. Walden makes a product,
8 buildings. Sometimes extraordinary buildings, like a
9 hospital for the town of Joplin, ravaged by tornadoes,
10 that was up and fully functioning in eight months,
11 something that had never been done before. Ford
12 cars have custom electrical systems that have to operate
13 lights and interior features such as radios. Walden's
14 buildings have custom electrical systems that have to
15 run entire facilities, from schools buried in icy
16 mountains to PET scan machines in an oncology center.
17 Some of Ford's vehicles can use the same chassis.

18 You may not know this, but Ford's Fox Chassis
19 can be found in a Mustang, sedans, coupes, and even the
20 Durango. If Walden made a custom building, it very
21 often had to design a trailer chassis that took into
22 consideration that particular building's dimensions and
23 weight distribution.

24 Do I draw this comparison to say that Walden
25 did more research than Ford? No. And that not

1 something I have to prove. But there is a certain
2 disconnect in this case, and Ford provides a convenient
3 comparison point.

4 The FTB has argued that Walden does not have a
5 business component. No one who knows anything about the
6 Research and Development Credit would doubt for a moment
7 that when Ford makes a new or improved product, that
8 product is their business component. Yet when Walden
9 makes a new building with new features, a product they
10 sell to customers, they do not have a business
11 component?

12 Our new and improved products are clearly
13 business components in the most basic sense of that
14 definition. The FTB argues that Walden did not have
15 uncertainty at the outset of its qualified projects. No
16 one would argue that when Ford undertook a new engine
17 design, it had uncertainty as to methods that it would
18 use to handle for systems competing for space, such as
19 electrical, cooling, or exhaust.

20 There is going to be uncertainty from an
21 engineering standpoint as to the best ultimate design of
22 that engine that can accommodate the competing need of
23 these systems.

24 Yet there is doubt that when Walden -- there
25 is doubt that Walden had uncertainty in the outset in

1 its methods or appropriate designs when they had to
2 create the electrical cooling and plumbing systems all
3 competing for the same space within a product they sold
4 in the form of a modular building.

5 By the way, your new Ford is complete and
6 ready for you drive off from the dealer conveniently,
7 when paid for. Walden had to figure out how to build
8 16,000-square-foot buildings that could be carried on a
9 street, under a bridge or set up in incredibly remote
10 locations, sometimes in as fast as a weekend.

11 By the way, you will hear from Walden
12 designers today about their uncertainties in these
13 custom projects. But you don't just have to take their
14 word for it.

15 Notice the number of iterations in these
16 designs. If there were no uncertainty, these designs
17 would only need to be drawn once. Notice the clouds we
18 will show you, which all reflect revisions because the
19 approach failed after being tested by engineering
20 calculations or created a conflict or for some other
21 reason wouldn't solve the design needs.

22 We will even show you change orders where the
23 process went back to the drawing board after clearing
24 these conflicts and the engineering calculations, only
25 to discover in production that the approach did not

1 work.

2 No one who is certain about the best method or
3 appropriate design would intentionally head in the wrong
4 direction. In fact, Esteemed Panel, one of our six
5 projects was so uncertain that Walden went through a
6 nearly complete design process only to discover that the
7 project was not feasible. It never got built. Their
8 engineering time and efforts lost.

9 The FTB argues that Walden did not have a
10 process of experimentation. This is a particularly
11 puzzling position, because the FTB clearly concedes that
12 Walden's work is technological in nature. In fact, the
13 FTB has taken the position that Walden applies
14 principles of engineering.

15 The process of experimentation in this context
16 is very simple, ladies and gentlemen. The use of
17 systematic trial and error modeling or simulation to
18 overcome the uncertainties we just discussed. This is
19 boiled down to its essence, the scientific method that
20 each of us learned in school.

21 You start with a hypothesis as to how to solve
22 a problem. You test that hypothesis. If it fails, you
23 revise it and repeat the process until it is completed.
24 That is precisely the systematic trial and error that
25 was used by Walden in its designs.

1 Returning to our analogy, Ford's engineers
2 would first sketch their basic design. Then using
3 computer-aided modeling such as CAD, their various
4 engineers would work through the options for placement
5 of the various parts of the engine, checking for
6 conflicts and other problems in this -- in the design,
7 which would otherwise make it unworkable.

8 Then engineering calculations would be done to
9 test the viability of the proposed designs to make sure
10 that, in fact, the loads could be handled, electrical
11 impulses could be met, dealt with, and so on. Only then
12 might an attempt be made to build a prototype.

13 Compare this with Walden who sketched basic
14 designs, refined them using computer-aided modeling and
15 an iterate process where they worked through conflicts
16 in the system including CAD. Engineering calculations
17 were used to test the loads and the visibility --
18 viability of a design, only then to build a prototype.

19 There are arguments in the form of
20 exclusion -- and I should mention this -- in some cases,
21 even the process of building the prototype, it was
22 discovered that the -- the design wouldn't work, and the
23 process had to be repeated.

24 There are arguments in the form of exclusions
25 that have also been offered by the FTB in this case,

1 which we will discuss in a moment, but if there is
2 anything that comes from the incredible delay caused by
3 this lengthy exam and the somewhat strange circumstances
4 of the disbanding of the BOE, it is that each of you get
5 the benefit of a, kind of, legal time machine. You see,
6 since adopting Section 41 of the Internal Revenue Code
7 with minor California changes in RTC 23609, the
8 arguments made by the FTB in this case had already been
9 made and lost. Each of you will get the benefit of an
10 organized body of law on the subject.

11 An example of arguments already lost is the
12 argument that Walden's engineering was routine. That
13 is, it was common for those in the modular building
14 industry to do such work in creating the product. This
15 argument is not a novel approach by the FTB. In fact,
16 for a period of time, it was all the rage with the IRS.

17 The argument went like this: If you build
18 bridges, and the only engineering you do is the kind of
19 engineering a bridge builder would use, it is routine
20 and therefore it's excluded. No one ever said Ford's
21 automotive engineering was routine because it was
22 similar to that of other automotive companies and
23 therefore excluded or that Ford suddenly had to make a
24 toaster to qualify for this credit.

25 But that standard was applied to small and

1 medium businesses all over the country for a time. It
2 was a kind of rebirth for something called the Discovery
3 Rule, an IRS standard that said you had to increase or
4 refine the very knowledge of an industry to qualify for
5 this credit.

6 Congress and the Treasury snubbed this idea
7 out in a matter of weeks, clearly stating that the work
8 only needed to be new to that taxpayer and that this
9 standard was an overreach, and they abolished it.

10 Notice the similarity, however, in this
11 position with the notion of routine engineering, i.e.,
12 others in your engineering -- others in your industry
13 doing this kind of stuff, so it does not qualify as
14 research.

15 This is where the time machine comes. The IRS
16 made this argument in a case called Suder that I tried
17 in Dallas, Texas some time ago. They argued that a
18 small phone company was using engineering that was
19 routine and thus not qualified. Judge Vasquez's --
20 Judge Vasquez's opinion simply stated that the taxpayer
21 need not reinvent a wheel to be engaged in R&D. Notice
22 the danger of a routine engineering argument. It is a
23 subjective sexiness test.

24 The actual four-part test that California
25 adopted is objective. You either have a business

1 component or you don't. You either have a business
2 component or you don't. You either have uncertainty at
3 the outset or you don't. You either have systematic
4 trial and error that you use to overcome that
5 uncertainty, or you don't. And you either use
6 principles of hard sciences or you don't.

7 It is dangerous to discredit to allow random
8 field agents to decide on their own if there is some
9 subjective increase in R&D to one taxpayer to its peer
10 -- its peers.

11 Examples of unsexy research that have been
12 recognized since the time the FTB took its position in
13 this case include gearshift knobs, steering wheels. In
14 a company called T G Missouri, these were found to be
15 R&D, the iterate process of creating molds for them.
16 Apparently, Ford doesn't even have to make the whole car
17 anymore. Hair dyes have been found to be qualified
18 research, small business telephones.

19 Even here in California before the BOE,
20 admittedly not precedential but still instructive, a
21 case where a taxpayer made boxes and shipping materials,
22 like Mr. Riley himself.

23 We expect that the FTB will continue to
24 maintain that because there is some commonality in some
25 of the products that Walden made, there is no research,

1 i.e., you have designed electrical systems or route
2 trusses before so doing that task for a different
3 building is not research.

4 And, again, this is an argument already
5 settled in the time that has passed since this claim was
6 made.

7 In the Trinity case, the IRS argued that
8 Trinity was not engaged in research because it had made
9 a number of hulls, engines, and cabins in prior boats
10 and asserted that the act of reconfiguring these parts
11 in new boats didn't count. The court in that case was
12 clear to say that this was not a fast food menu.

13 A change in the hull may require -- may impact
14 the need for a change in different engines, or the
15 weight distribution of a cabin may require an adjustment
16 to the hull.

17 The court even went so far as to use the
18 example of a change in the simple soda lines in the boat
19 to argue that all of these changes affect the dynamics
20 system, and the act of working through the impact of
21 these systems is, in fact, R&D.

22 That is precisely what Walden has done here.
23 The FTB has last argued exclusions, adaptation, and
24 duplication. Although through a quick scrutiny of the
25 record in appeals, you will see that duplication was

1 actually not in the FTB's final position. We'll deal
2 with it anyway, just to make sure we're on the same
3 page.

4 Ironically, for adaptation to apply, there
5 must be a prior business component that was adapted. It
6 is internally inconsistent for the FTB to say both that
7 Walden lacks a business component, and that its work is
8 a mere adaptation of an existing business components.

9 Secondly, despite asserting adaptation, if
10 this Esteemed Panel hears even a single example of a
11 prior product that the FTB contends is adapted, it will
12 be the first time.

13 In more than eight years to this day, not
14 once, has anyone on behalf of the FTB actually connected
15 any of the six projects we're here to discuss to a new
16 product or prior product that was made. In our
17 estimation, it would be patently unfair for them to come
18 now and try to do this for first time without any prior
19 warning to this taxpayer.

20 Instead, they have simply said you have
21 engaged in adaptation. The same issues would apply to
22 duplication, which, of course, requires a showing of
23 reproduction of the exact business component. This
24 Panel will simply not see that in this case.

25 Finally, if the Panel doesn't find these

1 arguments on adaptation and duplication persuasive, it
2 need only look to a provision called TD9104 --

3 THE REPORTER: Sir, could you slow it down a
4 little?

5 MR. DIES: I'm sorry. I'm trying to be mindful of
6 time. I appreciate that -- okay.

7 For context, there was confusion among tax
8 professionals. The credit clearly qualifies for those
9 developing a new or improved business component. Yet
10 there were exclusions for things like research after
11 commercial production, which occurs when there is
12 research after the product is already on the market.
13 Taxpayers and professionals reasonably pointed out this
14 inconsistency.

15 One part says you can improve a product and
16 qualify, and then certain exclusions seem to indicate
17 that if the improvements happened after you sold the
18 product, it doesn't qualify.

19 TD9104 came out to address this, holding that
20 if the four-part test is satisfied, these exclusions
21 don't apply. Simply put, ladies and gentlemen, if we
22 meet the four-part test improving our research, you
23 needn't consider adaptation and modification, because
24 the solution to adaptation and modification is proving
25 that you have met the four-part test in the first place.

1 I have at this point likely worn each of you
2 out with my pontifications from on high about the law,
3 but I did it for a reason.

4 We expect the facts in this case to be largely
5 undisputed.

6 There may be a statement here or there that
7 research incurred in Camp Lejeune, or that Walden's name
8 is not on an engineering document, and I look forward to
9 responding to those things. We look forward to dealing
10 with those issues as they arise.

11 Today you'll will hear from Charlie Walden,
12 the founder of Walden Structures, himself a pioneer in
13 the modular building business industry. He will
14 introduce you to the company, walk you through a bit of
15 its relevant history, and at a high level, introduce you
16 to you the six projects that we have come here to
17 discuss.

18 Among those projects, you will hear about
19 Mosque 1 and 2, an incredibly innovative modular design,
20 used to get American soldiers ready for real-world
21 situations they might encounter during military missions
22 in the Middle East.

23 You'll hear about Bramasol, which was an
24 office structure that won modular industry awards for
25 innovation after presenting a number of serious

1 challenges that Walden had never faced before.

2 You'll learn about Genentech, which was a
3 massive oddly-shaped building for a pharmaceutical
4 company that housed substantial amounts of technology.
5 It required literally miles of cabling and cable trays
6 that put incredibly high loads in the building itself to
7 be incorporated in a modular building that could be used
8 for five years, and when disconnected, be used in its
9 separate component parts for some other purpose.

10 You'll hear about Welk Resort, which was a new
11 home center that involved a number of changes that were
12 completely different from anything that Walden had done
13 in the past.

14 Ynez Elementary -- or Ynez (pronounces
15 differently) Elementary was the first multi-story
16 classroom environment Walden ever tried to build. It
17 had a fire-rated corridor to protect the children which
18 directly split the modlines, the places where the
19 building was connected in the structure, and also had
20 balconies on one side of the building that required
21 substantial engineering from a stability standpoint.

22 And finally, you'll hear about Mammoth Lakes
23 dormitory project deep in the mountains of one of the
24 most seismically active locations in the world. The
25 dorm was going to be subjected to nearly constant

1 movement of the earth, snow loads that were nearly three
2 times greater than anything Walden had ever dealt with,
3 and the requirement of a boiler and chiller system
4 because of the extreme temperatures that Walden had
5 never worked with.

6 Ultimately, in this most extreme example of
7 uncertainty, after months of design work, the project
8 had to be abandoned.

9 Then you will hear from Kevin Love, a modular
10 specialist with over three decades of experience in
11 designing and developing these structures. He'll cover
12 the design process for Walden from acorn to oak tree, so
13 that you can do a deeper dive into each of these six
14 projects and the challenges that they presented.

15 He will also cover the various methodologies
16 that they used to solve the problems. Mr. Love will
17 talk about his work with others at the organization and
18 how he worked with them to help calculate this credit.

19 Next, very briefly we think, you will hear
20 from Joel Minor. Mr. Minor was the CFO of Walden, and
21 we expect his testimony to be short. He will testify as
22 to how it came to pass that Walden claimed this benefit,
23 his role in facilitating the documentation of the
24 benefit, and evidence that was gathered to support this
25 credit.

1 Finally, and likely briefest of all, you will
2 hear from Mr. Bobby Wonish, a director at alliantgroup,
3 the tax consulting firm that assisted Walden in
4 calculating this credit. Mr. Wonish will cover the
5 process and methodology used, as well as the efforts
6 undertaken by the specialist who did the calculations.

7 Ladies and gentlemen, we don't have to be Ford
8 to get this credit. We don't have to reinvent the
9 wheel. And, frankly, we believe that you will see that
10 the work we did was not only admirable and an incredible
11 positive reflection of business in California, but
12 something that this credit was designed to incentivise.

13 Thank you for your time and attention, and we
14 look forward to speaking with you today.

15 JUDGE THOMPSON: Thank you very much for your
16 opening statement.

17 Franchise Tax Board, are you prepared for your
18 opening statement?

19 MS. KUDUK: Yes.

20 JUDGE THOMPSON: Please proceed.

21 MS. KUDUK: Good morning, Judge Thompson.

22 MR. DIES: I said Kevin Love. I meant Kevin Lord.

23 JUDGE THOMPSON: I wondered about that.

24 MR. DIES: There's not a different person here. We
25 brought a new stranger to you.

1 MR. HODGES: Kevin Love is a basketball player.

2 JUDGE THOMPSON: Are we doing okay without a
3 microphone?

4 THE REPORTER: On this side.

5 JUDGE THOMPSON: Okay.

6 THE REPORTER: She's going to be a problem.

7 JUDGE THOMPSON: Should we pause for a moment see
8 if we can get the microphone hooked up?

9 (Off the record).

10 JUDGE THOMPSON: Back on record. Were we actually
11 off the record? I'm not sure.

12 So Franchise Tax Board, you ready for your
13 opening statement?

14 MS. KUDUK: Yes.

15 JUDGE THOMPSON: All right.

16

17 OPENING STATEMENT

18 MS. KUDUK: First, I'd like to apologize for being
19 a problem. Sorry about that.

20 Good morning, Judge Thompson, Judge Bramhall,
21 and Judge Cheng. My name's Carolyn Kuduk.

22 Walden manufactures modular structures.

23 Appellants claimed California Research Credit on amended
24 returns for taxable years 2003, 2004, 2005, and 2006,
25 which are the taxable years at issue.

1 California conforms to Section 41 of the
2 Internal Revenue Code through California Revenue and
3 Taxation Code Section 23609.

4 At issue in this appeal is whether Appellants
5 have substantiated that Walden's activities in the
6 taxable years at issue are qualified research such that
7 Appellants are eligible to take the California Research
8 Credit. Specifically, did Appellants prove that
9 Walden's activities met the four-part test of Section
10 41(d)(1), and did Appellants prove that Walden's
11 activities were not excluded under Section 41(d)(4)?

12 To be qualified research, the activity must
13 pass the Section 174 test, the technological in nature
14 test, the business component test, and the process of
15 experimentation test.

16 Appellants bring up the Discovery Rule in
17 their opening statement. This rule is not at issue in
18 this appeal as it was replaced by the technological in
19 nature test, and the technological nature test, again,
20 is not at issue in this appeal.

21 So Respondent has conceded that issue and
22 Appellants just must prove three parts of the four-part
23 test of Section 41(d)(4).

24 To be qualified research, the activity must
25 not be an adaptation or duplication of an existing

1 business component.

2 To determine if Appellants are eligible for
3 the California Research Credit, Appellants and
4 Respondents have agreed to evaluate Appellants' claims
5 for the credit based on six sample projects: The Mosque
6 1 and 2 projects, Ynez Elementary School project,
7 Mammoth -- the Mammoth Lakes dorms, the Bramasol
8 projects, Welk Resort, and the Genentech projects.

9 Here the evidence will show that in every one
10 of these six projects, Appellants have failed to carry
11 their burden of proof to show Walden performed qualified
12 research in the taxable years at issue. The evidence
13 will show that Respondent properly claimed -- or
14 properly disallowed Appellants' claimed California
15 Research Credit.

16 Today Respondent will discuss how Appellants'
17 activities have failed three parts of the four-part test
18 found in Section 41(d)(1).

19 Evidence will show that Walden's activities
20 failed the Section 174 test because Walden did not
21 have -- Walden did not have the type of uncertainty
22 needed to pass the test.

23 The evidence will show that Appellants failed
24 to identify Walden's business components.

25 The evidence will show that Walden failed the

1 process of experimentation tests, because the documents
2 Appellants provided did not prove that experimentation
3 occurred.

4 Moreover, evidence will show that Walden's
5 claimed activity is excluded by Internal Revenue Code
6 Section 41(d)(4).

7 Evidence will show that Appellants failed to
8 qualify for the credit because of Walden's modular
9 structures are an adaptation and/or a duplication of an
10 existing business component.

11 Today the facts and law will clearly show that
12 Appellants did not demonstrate that their activity was
13 qualified research. As Appellants have failed to prove
14 that they engaged in qualified research, Appellants
15 failed to prove entitlement to the California Research
16 Credit.

17 Respondent's determination must be upheld.

18 Thank you.

19 JUDGE THOMPSON: Thank you.

20 Okay. Mr. Dies, are you ready for -- with
21 your first witness?

22 MR. DIES: I am.

23 Charlie, would a mic help you, or do you think
24 you can be easily heard?

25 THE WITNESS: I don't know.

1 MR. DIES: I think he needs a mic. Oh, you got one
2 right here. If she doesn't hear you it doesn't happen.

3 JUDGE THOMPSON: Before I swear you in, I want you
4 to note a few things about your testimony.

5 We budgeted approximately two hours for your
6 testimony, so I hope you will keep it focused to the
7 extent you can on Walden's activity with respect to the
8 six sample projects that the parties have agreed to.

9 If the testimony is repeating information we
10 have already received or is not on point, I may stop you
11 and try to direct it little bit. That's in your
12 interest because if we are not gaining something that we
13 don't already know, that's not good for you.

14 So if that happens, I don't want you to take
15 offense. I'd ask you to remember, you know, I'm going
16 to allow some leeway in your testimony, but we have a
17 section today dedicated to legal arguments, which is the
18 parties' closing arguments. So it's not fair to the
19 other side if testimony takes the form of making legal
20 arguments. So I want you to be sensitive to that.

21 What we need to hear from you and the other
22 witnesses, as well, is as much factual information as we
23 can get based on your experiences at Walden.

24 Do you have any questions?

25 MR. WALDEN: No, sir. No.

1 JUDGE THOMPSON: All right. Please raise your
2 right hand.

3

4 CHARLES WALDEN,
5 called as a witness on behalf of Appellant, after having
6 been duly sworn by the Lead Panelist, was examined and
7 testified as follows:

8 THE WITNESS: I do.

9 JUDGE THOMPSON: Thank you.

10 MR. DIES: And, your Honor, very briefly at the
11 time that we did the allocations for these times I
12 anticipated that Mr. Walden's testimony would be a
13 little longer than it probably is going to be.

14 JUDGE THOMPSON: Okay.

15 MR. DIES: Mr. Lord was the actual project manager
16 on a lot of these projects. His testimony may actually
17 be longer than we anticipated. If it's okay with
18 everyone, I might switch those times, just because he is
19 going to do the deeper dive into the specifics.

20 JUDGE THOMPSON: That sounds good.

21 MR. DIES: I just wanted to let you guys know that.

22 JUDGE THOMPSON: Just to put a little detail on
23 that. I'm actually glad to hear you say that, I
24 noticed -- you know, I'm looking forward to hearing from
25 Mr. Lord as well.

So let me just ask what was our initial time estimate for --

MR. DIES: I think it was hour and a half for Mr. Lord and two hours for Mr. Walden.

JUDGE THOMPSON: Right.

MR. DIES: My thought is maybe switch those.

JUDGE THOMPSON: All right. Approximately an hour and a half for you, Mr. Walden.

THE WITNESS: Okay.

JUDGE THOMPSON: Try to allow some leeway, not precise, and then approximately two hours for Mr. Lord.

All right.

MR. DIES: All right.

JUDGE THOMPSON: Franchise Tax Board, is that okay with you?

Okay. When you are ready, please proceed with Mr. Walden.

DIRECT EXAMINATION

BY MR. DIES:

Q Mr. Walden, can you please state your name for the record?

A Charles Walden, Jr.

Q Spell that name for us just one time, if you don't mind.

1 A Last name?

2 Q Spell your name.

3 A W-a-l-d-e-n.

4 Q Okay. And can you tell us a little bit about
5 yourself?

6 A In the industry, I assume?

7 Q Yes, sir.

8 A Basically, I got out of the Navy in 1979, and
9 I spent four years in the service as an air crewman, and
10 then while I was doing that, I also received two years
11 of education at the University of West Florida. I went
12 from there to Arizona University because that's where I
13 could get in-state tuition and took two years there. I
14 did not receive a degree.

15 I went immediately into the construction
16 business -- my father was a building contractor -- went
17 into the fixed construction business, ran that for a few
18 years, and then in 1977 made my first foray into the
19 modular business. We weren't a factory. We were doing
20 the site installation. We did site installations in
21 Arizona.

22 In 1981, we moved that business to California,
23 and we began doing all sorts of defense work and large,
24 large complexes for --

25 THE REPORTER: As what? I'm sorry.

1 THE WITNESS: And break and expanded military
2 presence.

3 It became a tremendous amount of work at
4 Vandenberg Air Force Base and Edwards Air Force Base.
5 All the military was going berserk, along with all the
6 suppliers, Martin Marietta, Boeing McDonnell Douglas,
7 all of -- everybody was going bananas. So this product
8 became very, very popular.

9 BY MR. DIES:

10 Q Mr. Walden, I'm going to ask you to do
11 something that's very hypocritical to me. Slow down if
12 you can.

13 A Sure. I was just getting going.

14 Q I know. It's going to be tough.

15 A Anyway, we were not manufacturing.

16 We approached the business from the field
17 side, from the installation and finish of the buildings.
18 We purchased the buildings and installed them.

19 In 1995, we -- and by the way, we did this
20 literally all over the world from the Virgin Islands to
21 Guam and Okinawa and Hawaii.

22 In 1995, we started a factory in Chino,
23 California. We subsequently moved that to a bigger
24 factory in -- in San Bernardino -- excuse me, in
25 Riverside, California, and then we added a second

1 factory in Mentone, California, which is adjacent to San
2 Bernardino.

3 So I have a long history. I'm in the Modular
4 Building Institute, the trade organization. I was a
5 board member for two years.

6 I have been certified by the Veterans
7 Administration as a subject-matter expert. I have
8 spoken broadly and many times on this subject to all --
9 everything from workmen's comp and liability companies
10 to insurance companies to trade organizations and
11 general contractor groups.

12 Basically, I've been running the company until
13 2014. We closed it in 2014. I now serve as a
14 consultant to another manufacturer located in Perris,
15 California.

16 Q Okay. If -- if we can, I'd like to dive in
17 very briefly to a little bit of the subject matter you
18 just discussed.

19 You mentioned that you had done some work for
20 the military, but for the relevant time period we're
21 talking about, which, unless I say different, is '03 to
22 '06.

23 What were -- what were, at a high level, the
24 kinds of modular projects that Walden was doing for
25 customers?

1 A Mostly office space, single and multi-story
2 office space at Edwards Air Force Base and at Vandenberg
3 Air Force Base.

4 Q Okay.

5 A We put in the launch facility. We put in the
6 offices that support the launch facilities that were
7 supposed to occur at Vandenberg. We put in all the
8 developmental buildings over at Palmdale and at Edwards
9 Air Force Base for the B-1 and B-2 bomber.

10 Q Okay. There were also other military projects
11 that you guys worked on?

12 A Sure.

13 Q And we're going to talk about the Mosque
14 project later on, but that's an example of one of those?

15 A No. Those projects came later -- quite a bit
16 later than what I am talking about.

17 Q Well, that's why I want to make sure we're
18 talking about '03 to '06 -- 2003 to 2006.

19 A I'm not sure of the date all those projects
20 were done.

21 Q Fair enough. Well, this isn't going to be pop
22 quiz.

23 Schools. Did you do any work with schools?

24 A Only on the installation side.

25 Q Okay. Let's do this. Let's talk briefly

1 about why somebody might want modular construction.
2 Why -- in other words, why not just do sticks and
3 stones? Why do I need a modular building if I am a
4 customer?

5 A Time and prices.

6 Q Okay.

7 A They think it's much cheaper, and they need it
8 quickly.

9 Q Okay. Can you give us an example of a project
10 that you had to design quickly for a customer?

11 A All of them.

12 Q Okay. Joplin, Missouri. Did you guys have a
13 challenge there?

14 A Yes.

15 Q Can you tell us very briefly about that?

16 A In May of 2008, a hurricane -- plus five
17 hurricane hit Joplin, Missouri, destroyed one of their
18 acute care hospitals. We were called in to see if we
19 can help them. The community was hugely underserved,
20 and patients were being delivered 100 miles just for
21 ordinary services.

22 And so, Mercy System -- the Mercy Medical
23 System stepped up and purchased a building from us,
24 150,000 square feet of acute care, four operating rooms,
25 full -- full C.T. scan, PET scan, everything --

1 dialysis, pre-op, post-op. And they were certified for
2 open heart surgery.

3 We were able to design it and get approved and
4 build it and ship it from California to Missouri and
5 opened in eight and a half months.

6 Q Had anyone ever done anything like that
7 before?

8 A No.

9 Q Has Walden over the years received awards for
10 its innovation in modular construction?

11 A Yes. In every year in almost every category,
12 we have received awards.

13 Q Who is the entity who provides recognition for
14 folks in the modular business industry?

15 A It's called MBI, Modular Building Institute,
16 located in Virginia.

17 Q And can you tell us a little bit about the
18 kinds of awards that they issue to companies they find
19 to be innovative?

20 A Different categories, but they have a whole
21 process of going through and examining different
22 projects all over the country and selecting the very
23 best.

24 Various projects are chosen by size and
25 complexity and all sorts of reasons why they were

1 chosen.

2 Q Did Walden have a body of, sort of, standard
3 buildings someone could buy? In other words, if I just
4 wanted to go buy a random office, you know, a small
5 office space and put it in a location, did you guys have
6 offerings for that?

7 A Yes. We had stock buildings which were used
8 for -- mostly for construction sites. You see them at
9 almost every construction site. That represented a
10 small -- 30, 35 percent of our business.

11 Q Okay. So 30 to 35 percent of your business
12 would be, for lack of a better term, order
13 off-the-shelf-type stuff. I want this building. We
14 will put it together and bring it out there?

15 A Right. And in some cases, dealers would order
16 multiple of the same.

17 Q Okay. The remaining part of your business,
18 was that stock as well, or would those have been custom
19 designs?

20 A Everything beyond that was all custom.

21 Q Okay. During your time at Walden, when you --
22 from the time you started the company, what was your
23 role and function? What did you do there?

24 A I was primarily -- I was the C.E.O. of the
25 company, and I also did all the contact -- 99 percent of

1 the contact with the clients and the different projects.

2 Q Okay. And did you work in design and problem
3 solving as well based on your experience?

4 A I rely on other people, but I was involved in
5 those conversations at a high level.

6 Q Okay. Did -- did Walden have a special niche
7 in a sense -- how did you distinguish yourself from
8 competitors who did module work?

9 A Well, it's a fairly -- it's a fairly close
10 industry, not that many people. Only about three or
11 four manufacturers in California at this point, but it
12 was a very close industry. We were highly, highly -- we
13 were highly regarded and highly checked by your
14 performance in the past. Your history and your
15 reputation means everything.

16 Q Tell us a little about Walden's capabilities
17 in terms of construction. How much could you build and
18 that kind of thing in your facilities during the time
19 period that we are talking about?

20 A We probably -- we probably averaged -- we
21 probably averaged about twenty -- 2,000 to 2500 square
22 feet per day through the facility. It could go as high
23 as 7,000 square feet. When we built the hospital, it
24 was more than 7,000 square feet a day.

25 Q Okay. Can you tell us a little bit about

1 how -- how we go from someone in Joplin saying, "I need
2 a hospital," through this process, actually manufacture
3 at a high level? We are going to dive into detail
4 level.

5 A Well, at a high level, they came to us with a
6 program design --

7 Q Okay.

8 A -- telling us what they wanted included in
9 this and what code was going to require. They provided
10 that through another architectural firm.

11 Q Okay.

12 A We figured out how to build it.

13 Q And when you say you figured out how to build
14 it, these things were going to be carried over the road?

15 A Yes.

16 Q So who figured how to break the building apart
17 and -- so that it could be reconstructed and all of
18 that?

19 A It was all done as a cooperative effort we
20 were all involved in.

21 Q Okay.

22 A Kevin Lord, who you are going to hear from,
23 the engine folks, everybody --

24 Q The approach that would have been used on
25 these six projects, we're going to talk about today?

1 A Yes.

2 Q So at a high level, they tell you what they
3 want?

4 A And sometimes on the back of a napkin.

5 Q And then, I guess, preliminary drawings start?

6 A There's conversation and some pricing. We
7 just look into where it's going and things like that to
8 see if we are able to do it.

9 Q Okay.

10 A Time line, and yes, the preliminary pricing.

11 Q And we are going to talk with the Panel in a
12 moment about some of the drawings and that kind of
13 thing. But once this thing was drawn, you guys were
14 also the manufacturer?

15 A Yes.

16 Q Okay. I'd like to draw your attention to
17 Exhibit 27, page 3.

18 JUDGE BRAMHALL: Just a second. That's Bates 2.

19 MR. DIES: Edith, that's the photos -- I'm not
20 sure. I may be off.

21 MS. GONZALES: Exhibit 20 -- and 20.

22 MR. DIES: No, no, no. Well, 23 is a presentation,
23 but there are photos in 23 of the manufacturer's
24 facilities.

25 Yes. If you can, can you zoom in on the

1 photos?

2 BY MR. DIES:

3 Q Mr. Walden, can you tell us what these
4 photographs are?

5 A I can't see the one on the left.

6 MR. DIES: Is it all right if he steps up?

7 JUDGE THOMPSON: Yeah.

8 MR. DIES: You can step up there, or you can look
9 at her computer, whatever is easiest.

10 JUDGE THOMPSON: Exhibit 27?

11 MR. DIES: Yes. And, Edith, what's the Bates
12 number on that for the record?

13 MS. GONZALES: WSI-0212.

14 THE WITNESS: I think those are -- I'm not sure.
15 They may be classrooms. They are all similar. They are
16 either classrooms, or they could be -- I'm not sure
17 which project it is. The one on the right looks like a
18 container.

19 BY MR. DIES:

20 Q My question was inartfully worded.

21 Are these your manufacturing facilities?

22 A Oh, yes.

23 Q So we're going to do something at a high
24 level.

25 These are the location where you would

1 actually build the different buildings that you were
2 going to later sell or ship to customers?

3 A Those are assembly lines for those two
4 locations.

5 Q And when you talk about an assembly line, do
6 we have different stations of people that are doing
7 different parts of the process?

8 A Yes.

9 Q And is that how you would -- you would move
10 parts of a hospital or a mosque, or whatever the case
11 may be, through your facility?

12 A Yes.

13 Q Okay. For demonstrative purposes -- now you
14 have got me spooked -- I want to look very quickly at a
15 couple of examples of your work on Exhibit 27. I
16 believe these are pages 6, 7, and 8. Here we go.

17 This is -- this is called Southwest Marine.
18 Is this a modular building?

19 A Yes, it is.

20 Q So you guys assembled this thing in cases and
21 brought it out there and put it up?

22 A Yes, we did.

23 Q Okay. That's two stories?

24 A Yes.

25 Q Okay. A building like this is going to have

1 elevators and everything you see in a building like
2 that?

3 A Yes.

4 MR. DIES: Okay. Can we see the next page?

5 Actually, skip one more, Edith.

6 BY MR. DIES:

7 Q This is a radiation oncology center?

8 A Yes.

9 Q Also modular?

10 A Yes.

11 Q This is something you guys built in pieces?

12 A Yes.

13 Q Okay. This was a cancer treatment facility?

14 A Yes, it is.

15 Q So something like this would have to have C.T.
16 scans and equipment and all that kind of stuff in it?

17 A Yes.

18 Q Okay. Very quickly, can we go to the next
19 one?

20 MR. ROUSE: Is Counsel going to -- I'm giving him
21 some leeway, but I'm not sure.

22 MR. DIES: I actually -- I will quickly move in
23 that direction.

24 MR. ROUSE: Thank you.

25 MR. DIES: That's fine. Then let's do this. Let's

1 go to Mosque 1 and 2, which we have photographs of on
2 page 20, I believe.

3 BY MR. DIES:

4 Q Can you tell us what this is?

5 A It's an emergency training facility located at
6 29 Palms. Walden assisted the government in developing
7 this technique for training -- training military
8 platoons before they went to Iraq.

9 Q And -- and we'll dive into greater detail in a
10 moment in the Mosque Project, but tell me what you mean
11 by "we used this to train soldiers." Physically, what
12 happens at this location?

13 A They actually try to design it and make it
14 like an Iraqi community.

15 There are four or five different communities
16 it represents: There's a soccer field. There was a
17 commercial area. There was a rental area. It
18 incorporates concrete buildings, modular buildings and
19 -- and contain repurposing, and they bring -- they
20 actually have actors that come out that speak Farsi, and
21 they dress that way.

22 They try to give real-time, real-life
23 experience in these areas. The idea is to show them
24 techniques for being safe, techniques for looking for
25 someone. It actually had tunnels between the buildings

1 where people -- the actors could go down and come up
2 some place else.

3 It was really to teach the soldiers that when
4 something is going wrong, they don't want to accelerate.
5 They don't want to make it worse. They want to find a
6 way to talk themselves out of situations instead of
7 shooting civilians.

8 Q Okay. And I think you said this was at 29
9 Palms, but you also did similar work at a place called
10 Camp Lejeune; is that right?

11 A Yes, we did.

12 MR. DIES: I think -- I think page 21, Edith that
13 exhibit.

14 BY MR. DIES:

15 Q Can you tell us what this is?

16 A It's an entry gate that you would see in --
17 that you would see in Iraq. It would be a gate onto a
18 military base with security.

19 The two legs of the big arch are both
20 containers turned on end with another container resting
21 on top of it.

22 Q Okay. And we left this out, but in many
23 cases, these buildings are made of what? What are they
24 constructed with?

25 A Containers.

1 Q Tell me what you mean by "containers."

2 A Well, we take 20 by 40 or 20 by 20 overseas
3 shipping containers, and we completely repurpose them.

4 Q Okay. And you turn them into, I guess,
5 buildings that look like something we would see in a
6 town?

7 A Yes.

8 Q And we'll talk about the Mosque, but this gate
9 is actually made of those shipping containers?

10 A Yes.

11 Q Okay. All right.

12 MR. DIES: Thank you, Edith, for that, and we'll
13 show some more photos in a second.

14 BY MR. DIES:

15 Q Mr. Walden, I would like to briefly talk about
16 the folks on your staff that you use to design these
17 projects.

18 At a high level, how do you use people to
19 design and build structures that are customized for a
20 client?

21 A Well, Kevin Lord is the director of
22 engineering, and he has specialty groups work under him.
23 He also coordinates all the engineers that we bring on
24 staff to help us with specific projects.

25 Q Okay.

1 A Structural , electrical , mechanical , they all
2 provide those services on a contract basis.

3 Q Okay. And so if one of your buildings has an
4 electrical system, Mr. Lord would work with the team
5 that handles that, for example?

6 A Yes. He was responsible for all departments,
7 all areas of design.

8 Q Okay.

9 A Code compliant and workable.

10 Q All right. I would like to very briefly
11 direct your attention to Exhibit 11, talk a little bit
12 about the projects themselves, if that's all right.

13 A Okay.

14 Q This is for you, sir. She's going to have it
15 up there. I'll tell you if you need to point something
16 out for these folks. We can either zoom in on it or you
17 can go point at it on the screen.

18 A All right.

19 Q Can you tell us what I'm looking at there in
20 Exhibit 11 on that first page?

21 A It's an office building in Fremont,
22 California, it appears.

23 Q Okay. Is this, in fact, the Bramasol project,
24 which is one of our six projects?

25 A Yes, it is.

1 Q Okay. And if I can direct your attention to
2 the upper right-hand corner of that drawing on that --
3 yeah, it's a drawing.

4 MR. DIES: Edith, can you zoom in on the upper
5 right-hand corner?

6 BY MR. DIES:

7 Q Upper right, sir.

8 A Yes.

9 Q Whose drawing is this?

10 A It's one of our Walden structures.

11 Q Okay. And this would have been something that
12 you folks put together?

13 A Yes.

14 MR. DIES: Okay. Edith, if you can, zoom and drop
15 down to the third box on the right-hand side. Highlight
16 that whole box.

17 BY MR. DIES:

18 Q So at this point in the process, we have our
19 time period; is that correct?

20 A Yes.

21 Q And what are these?

22 A These are revisions requested by the customer.

23 Q Okay. So these are changes to the design over
24 time?

25 A Yes.

1 MR. DIES: Okay. Edith, could you zoom out again
2 for me and zoom in on the actual main body of the
3 building itself?

4 BY MR. DIES:

5 Q We see little shapes in there that look like,
6 I call them "clouds," but they are little swirly lines
7 around various objects?

8 A Yes.

9 Q What are those?

10 A Those are revisions.

11 Q These are parts of the design that had to be
12 changed?

13 A Yes.

14 Q Okay. You mentioned earlier that -- and I'm
15 going to ask you to go to the wall for this because
16 these guys are going have to try to see what we are
17 talking about.

18 You mentioned earlier that these things are
19 built in pieces?

20 A Yes.

21 Q How do you do that in the modular construction
22 business? How do you physically do that?

23 A As I mentioned, we do this as a very
24 collaborative effort by all the people working in the
25 factory and people who are designing and making this

1 right from a Code standpoint and from an operational
2 standpoint.

3 In this particular case, this is a mateline
4 right here between two sections. This is a section --
5 see a dotted line there? That's the mateline. And this
6 one is also a mateline.

7 Q And, for the record, there's kind of a
8 Morse-code-looking series of dots and dashes that go
9 across this building. Is that what you are talking
10 about?

11 A This?

12 Q Is this the matelines?

13 A Yes.

14 Q Okay. And when we talk about these things
15 being built in pieces, I guess, you would build a
16 section -- three different sections, and then when you
17 get to the site, put them together? Is that physically
18 how it works?

19 A Yes, that's how it works.

20 Q Okay.

21 JUDGE THOMPSON: This would be three containers?

22 THE WITNESS: These aren't containers. These are
23 actually factory-built modular buildings.

24 JUDGE THOMPSON: Three separate components, the
25 dotted lines, what's being made there?

1 THE WITNESS: From here to here is a modular --
2 from here to here.

3 JUDGE THOMPSON: Okay.

4 THE WITNESS: And that would take up one work
5 station on the plant as it moved down the line in an
6 assembly process, this would be beside it, and this
7 would be beside that.

8 JUDGE THOMPSON: Okay. Three modules.

9 THE WITNESS: Yes, sir.

10 BY MR. DIES:

11 Q Then, I guess, the idea is this was a custom
12 project? Was this one of your stock projects?

13 A No, this was a custom project.

14 Q How do you know that?

15 A I just know that's not what we build. We
16 don't build multi-story buildings that look like this.

17 Q And each of those pieces you have just talked
18 about, how do get them where they are going?

19 A Ship them over the road with a wide load and
20 heavy hauler contractors.

21 Q Okay. Who makes the trailers for a custom
22 situation like this?

23 A We do.

24 Q And what factor -- I'm sorry. Tell me about
25 the trailer situation.

1 A These are hauled on carriers.

2 Q Okay.

3 A There's a trailer hitch on it. It sits on the
4 back of the truck and goes down the road.

5 Q What does -- what does the challenge of
6 carrying these things over the road do in terms of
7 design?

8 A Well, it has a lot factors. For instance,
9 where is it going? Over which roads is it going to use
10 to get there? How many bridges are there? You have to
11 special get transportation hours. There's lots of
12 factors there that are involved.

13 Q Why do we care if there are bridges?

14 A I'm sorry?

15 Q Sorry. I did it again.

16 Why do we care if there are bridges?

17 A Because these are over height. These are all
18 tall buildings, and depending on overall height, it
19 tells you how you can go.

20 Q Okay. So, I guess in some cases, that is a
21 design constraint you have to work with. If a customer
22 wants a certain height in the building, you have to
23 figure out how to do that in pieces that can go under a
24 bridge, for example?

25 A We have to determine the cost impact of that,

1 and then the customer gets to weigh -- we offer him
2 options to either lower the height of the building or
3 take a different route.

4 Q Was this Bramasol project that you have up
5 here on the screen one of the ones that you got a BMI
6 award for innovation on?

7 A I think so.

8 Q I said BMI. I meant MBI. Does that change
9 your answer?

10 A No.

11 MR. DIES: I'd like to skip ahead two pages,
12 please, Edith. I believe that is 0066; is that right?

13 MS. GONZALES: Correct.

14 BY MR. DIES:

15 Q Okay. Do you see the parapet in this drawing,
16 sir?

17 A Yes, I do.

18 Q For those of us who don't have engineering
19 backgrounds, I guess, first, what is a parapet?

20 A It's a straight wall that the customer wants
21 to have to make his building look taller or maybe to
22 hide mechanical equipment, those kinds of design
23 reasons.

24 Q Okay. And is there anything unique about this
25 particular parapet?

1 A It has a pretty significant structural impact.
2 Evidently it had a very heavy high wind loads, so it's
3 designed much more stiff and has a steel -- steel column
4 that keeps it in place once it's installed.

5 JUDGE THOMPSON: What page is this?

6 MR. DIES: This is page 0066. WSI on Exhibit -- is
7 it 11?

8 MS. GONZALES: 11.

9 MR. DIES: 11.

10 JUDGE THOMPSON: Okay. Thank you.

11 BY MR. DIES:

12 Q So how do you know -- tell me again where the
13 steel -- the steel structures are?

14 A Well, there's a column right there. It goes
15 up, and there's another one here at the end of the
16 building that goes up.

17 Q Okay.

18 A I can't see that -- I don't know what the
19 spacing of the columns was.

20 Q Okay. Is this something that Walden had ever
21 dealt with before in terms of a parapet this high with
22 all these structural components?

23 A I don't recall it, no.

24 Q Okay. You said that one -- one of the issues
25 was wind loads. How do we know that there are high wind

1 loads in this drawing that we are looking at?

2 A Because the way it's based.

3 Q Okay.

4 A It's could be a very simple process if it's
5 not a real high wind load area.

6 Q Okay. And from a design standpoint, what is
7 the -- what do you have to do to design for a high wind
8 load on a piece like this on a building?

9 A Well, you have to give a structural attachment
10 that can resist those loads, and that structural
11 attachment has to be tied to something, either the top
12 of the truss or the column or the additional column.

13 Q If we tie this thing to the truss, does it
14 change the properties of that truss from a structural
15 standpoint?

16 A Change the design, yes.

17 Q I'm sorry?

18 A Yes.

19 Q I missed the first part of the answer. You
20 say it changes the design?

21 A It does change the design.

22 Q Okay. And if I change the truss, will I
23 potentially change the way this structure works?

24 A Yes.

25 Q I want to shift to Exhibit 12. You can come

1 back here, Mr. Walden, if you want.

2 MR. DIES: Edith, if we can just look at that first
3 page of Exhibit 12.

4 BY MR. DIES:

5 Q Mr. Walden, at the bottom right-hand corner of
6 this, there -- on this exhibit, there is a statement
7 that says, "Production issued." Do you see that?

8 A Yes.

9 Q And what does -- what does that mean? What
10 does that tell us about these drawings? What kind of
11 drawings are these?

12 A These are production drawings.

13 Q And what are production drawings?

14 A The details have all been worked out, all the
15 Code compliances have been worked out, and we start to
16 build and order the materials.

17 Q So how are these drawings different than the
18 drawings we just saw in Exhibit 11?

19 A Those were probably schematic -- you mean the
20 ones we just --

21 Q Yes, sir. The ones we just talked about, yes,
22 sir.

23 A I didn't see. They would not be different
24 until they are marked for production.

25 Q Well, I mean, what is the difference in terms

1 of what's contained in the drawings in Exhibit 11, which
2 say "Preliminary, not for construction," and the ones in
3 12 that are for production? Just at a high level --

4 A It's the -- it's the same conclusions, but now
5 they are -- have been approved.

6 Q Okay.

7 A The changes have been incorporated.

8 Q Okay. If I can shift your attention to the
9 upper right-hand section here of this, do we also have a
10 box called "Revisions"?

11 A Yes, we do.

12 Q And at this point how many revisions have been
13 made?

14 A Six.

15 Q Six?

16 A Six.

17 Q And some of these revisions at the bottom say
18 WSI on them. Do you see that?

19 A Yes.

20 Q What does -- what does that mean?

21 A Well, it could mean two things. WSI may have
22 been a customer, William Scottsman.

23 Q Okay.

24 A In this case it may have been something we --
25 we did for our own purposes.

1 Q Okay.

2 A It's only telling production be sure and look
3 out for these changes. There are other places those
4 things are noted.

5 Q Okay. Meaning the revisions?

6 A More details of those revisions --

7 Q Oh, okay.

8 A -- on the plan, and, also, it came out of
9 Virginia.

10 Q So let's take a look at that. If we can look
11 at WSI-0130, which is first drawing in Exhibit 12.

12 Do you have that in front of you, sir?

13 A Yes.

14 Q We see more clouds. Do you see those?

15 A Yes.

16 Q And what do these represent?

17 A Revisions.

18 Q Okay. At the time you start a project like
19 the Bramasol project, are you certain as to which
20 methods you are going to use to meet their needs?

21 A No.

22 Q At the time you start a project like the
23 Bramasol project, are you certain what the appropriate
24 design of that is going to be?

25 A No.

1 Q I want to shift -- actually, I'll do this with
2 Mr. Lord. I'll try to keep moving here.

3 After you finished this production design, and
4 you get these drawings built, what happens to these
5 drawings? Who uses them?

6 A Well, we use them in the field to install.

7 Q Okay.

8 A Customer gets a copy of them to see what he
9 bought --

10 Q Okay.

11 A -- dealer, or William Scottsman in this case,
12 has to get a set.

13 Q Okay. The folks in your shop that are
14 building the actual building and all that --

15 A Yes.

16 Q -- would they use these as well?

17 A Yes, they would.

18 Q How do they use these drawings?

19 A To get the dimensions, to get openings, to get
20 everything built. That is their instruction book and
21 notes that -- the associated notes, instruction book.

22 Q Okay. All right. I want to shift your
23 attention to the Mosque Project, Mosque 1 and 2.

24 A Okay.

25 Q And I'll show you page 7 of Exhibit 21. Can

1 you tell us what this is?

2 A A dome for the Mosque.

3 Q At the time -- who made this Mosque?

4 A I'm not sure.

5 Q I mean, who actually built the Mosque that I
6 am talking about here?

7 A We did.

8 Q "We" meaning Wal den?

9 A "We" meaning Wal den.

10 Q That's one of the things we have to be careful
11 for on the record like this. Pronouns can get tricky.
12 So I'm going to ask you an obvious question. I'm trying
13 to protect --

14 At the time you guys did this Mosque, had you
15 ever built a dome like this before?

16 A No.

17 MR. DIES: Okay. I want to shift to WSI-0387 which
18 is in Exhibit 21 -- Edith -- I'm sorry Exhibit 20.

19 There we go.

20 BY MR. DIES:

21 Q What is depicted in this photograph?

22 A It's depicting the floor and the ceiling that
23 had to be cut out in circles to accommodate the Mosque
24 so that when we were done with it you could look up
25 through it all way to the top --

1 Q Okay.

2 A -- from the first floor to the third.

3 Q Okay.

4 A Or the second.

5 MR. DIES: And is this -- is it okay with you guys
6 if I approach these buildings -- these things to ask
7 questions?

8 JUDGE THOMPSON: Sure.

9 BY MR. DIES:

10 Q Is this structure that this gentleman is
11 standing in a shipping container you were talking about
12 earlier?

13 A Yes.

14 Q And -- and we're talking about, if you see a
15 barge that has hundreds of rectangular bricks on it that
16 carry all kinds of stuff, that's the shipping containers
17 we are talking about?

18 A Yes.

19 Q What are these things made out of?

20 A They are made -- they are built in Asia --
21 most of them are built in Asia, and they use a panel --
22 heavy metal panel, and they have some perimeter frame,
23 and they have columns and four corners.

24 Q Okay. And this hole that's in the shipping
25 container, what does that do to the structure of the

1 container itself?

2 A It loses all of its structure. It needs to be
3 completely redone in order to carry the loads.

4 Q Why?

5 A Because you've cut the mainframe out, it's
6 lost its diaphragm.

7 Q So --

8 A The -- diaphragm container uses all of its
9 diaphragms to maintain strength.

10 Q And when you talk about diaphragms, are we
11 saying -- are we talking about the size of the
12 container?

13 A No. We are talking about the area that the --
14 we are talking about the area of the container that
15 keeps it from moving around.

16 Q Okay. And the idea was that you were going to
17 put that dome we just showed you on top of a hole like
18 this?

19 A Yes.

20 Q To build a Mosque?

21 A Yes.

22 Q And then if a soldier were entering that
23 Mosque to search it and walked into this section of the
24 building, they could look up, I guess, three stories and
25 see the dome just like an real Mosque?

1 A Yes.

2 Q I'd like to show you WSI -0390. Can you tell
3 us what is depicted in this photograph?

4 A That's the unit. You can see the crane hooks
5 and tethers on the crane, and it's being craned into
6 place.

7 Q Okay. We have half a circle here. There
8 would be another unit that was opposite of that one? Is
9 that the idea?

10 A Yes.

11 Q Okay. You mentioned that the structure and
12 integrity of the shipping container is damaged when we
13 cut a big circle out of it like that?

14 A Yes.

15 Q What does Walden have to do to offset the
16 impact of that structural change?

17 A We had to reinforce it. We had to reinforce
18 it in order to go down the road. And once it was in
19 place, we cut that C channel that's closest to us out.

20 Q Okay. You had to -- so you had to do a
21 special design just to keep it together on the road?

22 A Yes, and lifting.

23 Q Oh. When you talk a C channel --

24 A Yes.

25 Q -- is that this beam in the middle across the

1 semi circle?

2 A Yes.

3 Q Okay. And then, I think, you said you would
4 put this in place and then take that out?

5 A Yes.

6 Q Okay. What are these red beams that are
7 connecting -- sort of connecting the triangles at the
8 base of the container?

9 A Braces. Braces that are installed to replace
10 the shear that was lost.

11 Q An that was a design that -- that Walden came
12 up with to fix the weakness caused by cutting those
13 holes?

14 A Yes.

15 Q And you would have had to test this with
16 engineering calculations and stuff?

17 A Yes.

18 Q And we'll talk about that in some detail in a
19 moment.

20 I want to shift to the Genentech project very
21 briefly.

22 By the way, while we are on the subject, at
23 the time you undertook to build the Mosque projects,
24 were you certain about which methods you were going to
25 use to build these things?

1 A No.

2 Q At the time Walden went to build these, were
3 you certain as to the appropriate design of a Mosque
4 made out of shipping containers?

5 A No.

6 Q Okay. We'll put in front of you Exhibit 22
7 very briefly.

8 This is Genentech. Sir, if you can take a
9 look at Exhibit 22 and get a sense of the building we
10 are talking about. Are you familiar with who Genentech
11 is?

12 A Yes, I am.

13 Q Just at a high level, who is Genentech?

14 A A pharmaceutical company that one of the
15 factories is in -- just west of Sacramento.

16 MR. DIES: Okay. And, Edith, can you go to the
17 next page for me?

18 BY MR. DIES:

19 Q At a high level, what did Genentech ask you
20 guys to do?

21 A Large space, high ceilings, long spans. They
22 wanted as much open space as they could possibly get.
23 They would fulfill those with cubicles.

24 This was a new product they were working on.
25 They had a lot of employees and no place to put them.

1 Q Okay. And did this project house a
2 substantial amount of equipment -- computer equipment
3 technology?

4 A Yes.

5 Q And were there unique cabling issues with this
6 particular building?

7 A They had very, very high requirements for
8 cable trays and cabling of all sorts that ran throughout
9 the building, and every location had to have connection
10 to all other locations.

11 Q Okay. Do you know when you built this
12 building what its intended useful life was for
13 Genentech?

14 A We knew it was a least fill.

15 Q What kind of difference does that make in this
16 process?

17 A We sold it to a leasing company who leased it
18 to Genentech.

19 Q Okay. What design constraints does a leasing
20 company put on you when you build a building that they
21 are going to lease?

22 A Secondary uses. They want to be sure it can
23 be used for something else once it comes back.

24 Q Okay. So you had to not only design this to
25 meet the Genentech needs, but it had to be able to be

1 taken apart and then used separately? Tell me what that
2 means.

3 A Well, this is -- I forget how many units, 23,
4 26 units, something like that.

5 Q 23.

6 A So there's 23 units. They may want to use
7 five units that are four wide, or they may want to make
8 ten -- two buildings that are ten wide, or they may want
9 to make eleven buildings that are double wide.

10 Two sections when I say double wide, that's
11 two sections could be separated, build a sidewalk, and
12 now you have a 24 by 72 as opposed -- so all these
13 buildings have to be self-supporting. They had to be --
14 as far as mechanical and structural, they had to be all
15 self-supporting.

16 Q Okay. And you mentioned that this building is
17 tall as well?

18 A Yes.

19 Q What difference does that make in the module
20 industry for your purposes?

21 A Again, transportation is a big part of it.
22 There's also wind loads and how you support it at that
23 height.

24 Q Okay. At the outset of this project, did you
25 have certainty as to what methods you were going to use

1 to design this particular space?

2 A No. We -- these are -- this all comes from a
3 schematic idea, what they think, and how they think they
4 might use it.

5 It's pretty common in most construction
6 projects. The owner comes and says we want to do this,
7 and these are our requirements. We need to have
8 nine-foot ceilings because the space is so large that if
9 you come down to something less than that, then it
10 appears -- it becomes very myopic, not good working
11 conditions.

12 Q Did Walden -- did Walden have certainty as to
13 the appropriate design of this at the outset before you
14 began to put your drawings together?

15 A No.

16 Q How many revisions do we see in this
17 particular --

18 A This one has three.

19 Q And this was just for this stage of the
20 drawing; is that correct?

21 A Yes.

22 Q Does that mean there were only three revisions
23 at all in the whole building?

24 A No.

25 Q Okay.

1 A Maybe -- I'm not sure if it would help. Maybe
2 I'm going to confuse things.

3 Walden could bid this same building to a
4 number of different dealers who asked for it in a
5 different way.

6 Q Okay. And each different way would require
7 different designs?

8 A Yes.

9 Q Okay. Let me ask you -- one of my colleagues
10 just pointed out I did not ask these questions on
11 Bramasol. I'll be quickly -- I'll be quick.

12 In the Bramasol project, which was the one
13 with the parapet, the steel pump columns, did Walden
14 have certainty as to the methods it was going to use to
15 build those parapets at the time it undertook the
16 project?

17 A No.

18 Q In the Bramasol project, did Walden have
19 certainty as to the appropriate design for the trusses
20 and the supports and all these things to handle that
21 wind load?

22 A No.

23 Q All right. Very briefly, I want to move to
24 Ynez Elementary School. And, again, we'll dive into
25 some of the specifics with Mr. Lord, but at a high

1 level, I'd like to talk about the school.

2 Is that 20? Ynez 25 and 26.

3 Do you know at the time you start -- you
4 undertook to design Ynez Elementary School if Walden had
5 ever done a project like this before?

6 A No.

7 Q No, you don't know?

8 A No. We had not done a project like this.

9 Q Okay. At the outset of the Ynez School
10 project, did Walden have certainty as to the methods it
11 was going to use to solve the problems that the project
12 presented?

13 A No.

14 Q At the outset, did Walden know which
15 appropriate design it was going to use?

16 A No.

17 Q Or what the appropriate design was?

18 A No.

19 Q If I am trying to fire rate a corridor in a
20 modular building, what am I doing?

21 A You are protecting access and egress, exit --
22 exit from the product in case the school catches on
23 fire, so you have to give children a way out.

24 Q Okay. Meaning, that a hallway -- the fire
25 can't penetrate the corner -- the square -- the four

1 dimensions of that hallway in enough time for the kids
2 to get out of the school?

3 A Yes. They have so much time to get out.

4 Q Okay. And if we are talking about modular
5 construction, and that corridor is over the matelines,
6 which is where the two parts of the building meet, does
7 that create any challenges?

8 A Yes, because every 12 feet there is a line
9 that goes through to the roof. So you have to come up
10 with a U.L. approved assembly which allows us to do
11 that.

12 Q Why does -- why does that line every 12 feet
13 matter?

14 A Because it's very difficult to keep fire from
15 going through an opening. There's a separation between
16 the framing. And all you have is the drywall. That
17 doesn't qualify as protection.

18 Q Okay. In the interest of time, I am -- well,
19 we will deal with Welk Resort with Mr. Lord.

20 I want to shift finally with you, sir, to
21 Mammoth Lakes. This is a project which is depicted in
22 Exhibit 17.

23 At a high level, sir, can you tell us what the
24 Mammoth Lakes Project was?

25 A It's -- it's a lodging in Mammoth Lakes, one

1 of the highest earthquake areas in the world, excessive
2 snow loads, high winds, bad weather, short building
3 season.

4 MR. DIES: Okay. And if we can shift to page 2 of
5 that exhibit, Edith?

6 BY MR. DIES:

7 Q This is a dormitory?

8 A Yes.

9 Q The document said "Dormitory Project." That's
10 not a scientific explanation for --

11 A It could be lodging or for housing.

12 Q Oh, I'm -- okay. Why would they need a
13 modular solution for a project like this in Mammoth
14 Lakes?

15 A Because building in Mammoth Lakes is so
16 difficult, and they are underserved. And they were
17 expecting on making it bigger --

18 THE REPORTER: I am sorry --

19 THE WITNESS: Sorry.

20 BY MR. DIES:

21 Q Why do I want to use a modular solution for
22 Mammoth Lakes dormitories?

23 A Well, it is very good solution for a short
24 building season, because so much square footage can be
25 completed and drive in in that short season.

1 Q Okay. Why -- but why can so much be completed
2 in a short time? What makes this different than a
3 sticks-and-stones approach?

4 A We are delivering the project about 95
5 percent -- 90 to 95 percent complete.

6 Q Okay.

7 A Each one of those sections on the interior is
8 95 percent complete.

9 Q Okay. So there are toilets and everything
10 already in the rooms, and you are basically just
11 stacking them on top of each other?

12 A Yes.

13 Q Two-story --

14 A Yes.

15 Q -- design.

16 You mentioned something about snow loads.
17 Tell me a little bit about that with this project in
18 this area.

19 A In this particular -- in this particular
20 project, they stack the roofs. They brought in trusses.
21 Their intention was to bring in trusses and stack them
22 inside our buildings. So we have to take those loads
23 from the end of our building down to the foundation and
24 assist in the design of the foundation to carry those
25 loads.

1 Q Okay. Did the building ever get built, sir?

2 A No.

3 Q Why not?

4 A I really don't have the exact answer, but it
5 was a very challenging building. Price just kept going
6 up. Architect did not cooperate to find reasons not to,
7 so it got canceled.

8 Q But ultimately, Walden went through much of
9 its design process for this just to discover that
10 ultimately it wasn't buildable?

11 A Yes.

12 Q At the time Walden undertook the Mammoth Lake
13 dormitories project, did it have certainties as to the
14 methods that were going to be used to solve these problems
15 with snow loads and building in the mountains and
16 seismic?

17 A Only at -- only at a concept level.

18 Q Okay. And did Walden have certainty as to the
19 appropriate design -- the best appropriate design for
20 this structure before it began the process?

21 A No.

22 Q To your knowledge, had Walden ever built
23 anything like the Mammoth Lake dormitories for the kinds
24 of constraints being called for at the time it undertook
25 this project?

1 A No.

2 Q Very quickly, sir, and we're actually making
3 okay time.

4 JUDGE BRAMHALL: Can I ask one question?

5 MR. DIES: Yes.

6 JUDGE BRAMHALL: I was unclear why it wasn't built.
7 Was it the feasibility of the project or the cost of the
8 project?

9 THE WITNESS: You know, we don't know. The owner
10 just decided to pull the plug and didn't build it.

11 We suspect a number of things, but they are
12 just pure speculation.

13 JUDGE BRAMHALL: All right. Thank you.

14 BY MR. DIES:

15 Q But to take into that, was -- was part of the
16 issue that every time you began to solve these problems,
17 cost went up?

18 A That was part of it, yes.

19 Q Okay.

20 JUDGE BRAMHALL: Good.

21 MR. DIES: You know what I mean? I just want to
22 make sure we're all on the --

23 BY MR. DIES:

24 Q Okay. Very quickly. I want to introduce -- I
25 want to you talk very briefly about a colleague named

1 Kip Anderson, if that's all right.

2 A Yes.

3 Q Can you tell us who Kip Anderson was?

4 A Kip Anderson was a very dear friend of mine.
5 He had been in the industry from about the same time,
6 1977. He came in to Walden Structures about 2003 or --
7 I'm not sure of the time.

8 Q Okay.

9 A And he helped develop a lot of these
10 processes. He had -- he brought some very unique skill
11 sets. He brought both structural skill sets and
12 mechanical and electrical, and a wealth of experience
13 with high-end modular products.

14 Q And -- go ahead.

15 A So he was -- he was really like having almost
16 an advisory team on staff. And so he was very, very
17 helpful to Kevin and myself, and we would work these
18 things out. But he had a lot of input in how how to
19 solve some of these issues that came up.

20 Q So -- so you mentioned Kevin being on the
21 engineering side. Which side of your process was Kip
22 on?

23 A He was over it all.

24 Q Okay.

25 A He ran it all. The plant -- he ran the plant

1 and the design and ran everything.

2 Q Okay. And -- and Mr. Anderson has passed; is
3 that correct?

4 A Yes, he did.

5 Q But at the time we are talking about, '03 to
6 '06, he would have been a person who was involved in all
7 these things?

8 A Every design meeting. Every design meeting
9 that occurred, he was probably involved in.

10 Q Okay.

11 MR. DIES: May I just have two seconds to confer
12 with my colleague?

13 JUDGE THOMPSON: Okay.

14 MR. DIES: I may have a few redirect questions or
15 something like that, your Honor, but at this point
16 that's all I have for Mr. Walden.

17 JUDGE THOMPSON: Thank you. I appreciate the
18 discussion of the specific projects. I appreciate you
19 keeping the -- the discussion focused.

20 Yeah. Just -- just a comment. I'm hoping,
21 Mr. Walden, you will be able to stay around today.

22 THE WITNESS: Yes.

23 JUDGE THOMPSON: After we hear from Mr. Lord and
24 the witnesses, if possible, we may have questions. It
25 might be helpful if you could have Mr. Walden back.

1 MR. DIES: I believe we are all here today.
2 Mr. Minor, are you going to be here?
3 That shouldn't be an issue.
4 JUDGE THOMPSON: Ms. Kuduk, would a five-minute
5 break be helpful?
6 MS. KUDUK: Yes.
7 JUDGE THOMPSON: Why don't we do that? It would be
8 helpful to me as well.
9 We will get started at 10:40.
10 We are in recess.
11 (Off the record.)
12 JUDGE THOMPSON: All right. We are back on the
13 record.
14 So now, Mr. Walden, Franchise Tax Board
15 attorneys are going to have a chance to ask you
16 questions.
17 THE WITNESS: Sure.
18 JUDGE THOMPSON: And you may get some questions
19 from some of the Panel members as well. We may have
20 some questions after we hear some of the other
21 questions.
22 THE WITNESS: Okay.
23 JUDGE THOMPSON: Franchise Tax Board, whenever you
24 are ready.
25 MR. ROUSE: I also have fast-talking problem. I'll

1 do my best.

2 MR. DIES: Trying to keep you on your toes this
3 mornin g.

4

5 CROSS-EXAMINATION

6 BY MR. ROUSE:

7 Q Mr. Wal den, good mornin g.

8 A Good mornin g.

9 Q I want to -- my questions are going to, kind
10 of, track what you just stated on direct examination,
11 and I'll have a few other ones, a few other outlining
12 questions.

13 Sir, when you were talking about your
14 background, you mentioned "fixed construction." What is
15 that?

16 A Site construction.

17 Q As opposed to the modular building?

18 A As opposed to modular, yes.

19 Q And you said the kinds of projects that you
20 did -- well, let me back up.

21 I'm going to use "you," but obviously I mean
22 the company. So I might say "you" or "your," but I am
23 referring to the company itself.

24 A Okay.

25 Q You said '03 to '06 you mostly did office

1 space at Air Force bases; is that correct?

2 A Yes.

3 Q Okay. And what did those building look like?

4 If you can just give a quick --

5 A They would be -- I'm sorry. I didn't mean to
6 do that. I'm trying not to do that.

7 Q All right.

8 A So they would be very, very similar to what we
9 built for -- for -- for Genentech, except more in line
10 with what's easily shipped, strictly practical space.
11 There's no design component to them for that particular
12 product.

13 Q Well, I assume -- and you have to forgive me.
14 I'm not an engineer. I assume there's four walls, a
15 roof, and a floor?

16 A Yes.

17 Q What shape is it in? Is it rectangle?
18 Square?

19 A Normally rectangle.

20 Q Okay. And do you know the standard dimensions
21 of something like that?

22 A Normally 12 feet wide and 60 feet long.

23 Q Okay. And you say "normally." Were there
24 office spaces that you did at these Air Force bases that
25 deviated from that?

1 A In some cases, there were special-use
2 buildings for communications or other things that had to
3 be modified or done differently. We designed
4 differently, separately from the normal product.

5 Q So would that use something other than your
6 standard 12 by 60?

7 A In some cases.

8 Q All right. Would you consider that one of
9 your standard projects or one of your more complex
10 projects?

11 A We would consider that a more custom product.

12 Q All right. And you mentioned, you had used
13 the term "stock building" used for your construction
14 business.

15 That office space that you just described that
16 the company would do at the Air Force bases, would that
17 be one of your stock buildings?

18 A More of a stock product, yes.

19 Q Not your 12 by 60?

20 A Yes.

21 Q Now, you already had those built in your
22 factory? Or was that something you had to put together
23 when the customer ordered it?

24 A No. We didn't build anything from stock. We
25 didn't build anything for inventory. We had no standing

1 inventory.

2 Q Okay. So if -- if I'm in the military, I come
3 to you, and I say, "Hey, I need office space. I want
4 one of your standard units." Can you describe the
5 process the company would go through to provide that to
6 me?

7 A It would be -- it would be very similar to
8 other projects.

9 It would have to be looked at in size and
10 quantity, and then what we use, how we get enough shear
11 to hold the building. Again, where it was going, what
12 type of foundation, how long they were going to use it.
13 Those sorts of things.

14 Q But it would still be the 12 by 60 dimensions?

15 A Yes.

16 Q Okay. So that is still -- you would actually
17 design that outright?

18 A Yes.

19 Q And send it to your -- as you call your
20 production team that would actually build the structure?

21 A Well, it's a lot more coordinated than that
22 conversation. There's a lot more going on during the
23 process. It's a very similar process each and every
24 time.

25 Q All right. Between standard and complex?

1 A Yes.

2 Q All right. And you said your use of the stock
3 buildings was about 30 to 35 percent of your business?

4 A Strictly a guess.

5 Q Right. But in that range?

6 A It's a long time ago.

7 Q Okay. I think Mr. Lord said 40, but the same
8 range.

9 You mentioned your role at the company. You
10 said you were the C.E.O., and I believe you said 99
11 percent of your -- 99 percent of the contact with the
12 client came from you; is that accurate?

13 A I opened up most of the negotiations.

14 Q Okay. What was your, for lack of a better
15 phrase, your technical involvement in the project?

16 A The staff had been with me long enough to know
17 when I needed to be involved. And I watched the
18 production schedule. I watched -- I saw the production
19 growing, those kinds of things. I could see where
20 something was coming in.

21 Normally, if it was more complex, then the
22 customers would come to me even first and talk about it
23 conceptually.

24 Q Are you an engineer?

25 A No.

1 Q Or an architect?

2 A No.

3 Q What is your --

4 A Contractor.

5 Q Contractor. Construction industry; right?

6 Would you draw the designs at all?

7 A I might. And I might dress up the napkin a

8 bit.

9 Q And -- but you wouldn't do any of the

10 calculations, anything like that?

11 A No, sir.

12 Q Now, you mentioned the napkin. On the six

13 projects we are dealing with here, I know the Mosque 1

14 and 2 project here, who was the client there? Do you

15 remember? I think -- was it Allied Container?

16 A Yes.

17 Q And what do they do?

18 A They -- they have a lot of military contacts.

19 In this particular case, they did a lot of site work and

20 prepared adjacent and ancillary things as part of the

21 contract. They would purchase the building from us and

22 sold them to the government.

23 Q Do they build their own modular structures?

24 A No.

25 Q What about William Scottsman?

1 A Same thing.

2 Q Okay. They are not the module builder?

3 A No.

4 Q And Performance Modular?

5 A Same thing.

6 Q So outside of maybe contracting with a company

7 like yours, do you know if they have any specific

8 activity that they do on their own? By "them," I mean

9 Allied Container and Performance Modular.

10 A Allied Container was a -- was only -- only was

11 a military provider of a number of different things, but

12 this -- these buildings are part of that.

13 Q When you say "provider," do they build

14 buildings for them?

15 A No, no. They don't build anything. They buy

16 from us. ACS buys those products from us, sells it to

17 the military. They do go and produce -- in some cases,

18 they go do on-site preparation. They -- in some cases,

19 they build the foundations.

20 They do other things, but it has nothing to

21 with moduls.

22 Q Okay. And Performance Modular, that is weird,

23 because they have modular. They don't build modular or

24 anything?

25 A No.

1 Q What do they do?

2 A The same exact thing. They are dealers. They
3 have stock product. They deliver construction trailers
4 and all those kinds of things. But because of that,
5 they get a lot of people who know them, who would come
6 to them wanting to do a custom building, or provide
7 custom buildings. They don't build them.

8 Q So essentially, these companies are general
9 contractors?

10 A They have a general contractor's license.

11 Q Okay. What percentage of your business -- if
12 you don't know, it's fine. What percent of your
13 business consists of a customer coming directly to you
14 to build complex projects?

15 A I don't know.

16 Q All right.

17 On -- staying with the napkin theme.

18 On all six of these projects, did the customer
19 provide you with some type of drawing when they
20 initiated the contact with you to let you know what they
21 wanted?

22 A I think it's appropriate to say some type of
23 drawing.

24 Q Okay. I assume they weren't napkins. Can you
25 describe what kind of drawings you would get?

1 A Every case is different. It could be -- could
2 be eight and a half by eleven. It could be on a yellow
3 pad. It could be on lot of things, especially with the
4 military. The base commanders just saw something they
5 wanted, and they had the budget to do it with these
6 particular product -- the container product --

7 Q Yeah.

8 A They said, "How could you do that?" That's
9 how the Mosque came along.

10 Q Okay.

11 A "We want to see this."

12 Q Do you know whether we have those initial
13 drawings that the customer would give you in our
14 exhibits here?

15 A I don't know. I don't think so. I don't
16 think we got them. Oh, we may have passed our hands,
17 but we certainly don't have them.

18 Q Oh, okay. You would have -- what would you
19 have done with them?

20 A With the project at all, we would convert it
21 to something we could use to design.

22 Q But the initial document, you would have just
23 thrown that away?

24 A Probably threw it away, and they probably came
25 back later with a request for a quotation.

1 Q So you don't remember specifically with
2 respect to these six projects what you would have
3 received initially, whether it would have been something
4 more complicated like the drawing that we -- that
5 Mr. Dies has been putting up here or whether it was
6 something just on a yellow-sized legal pad?

7 A No.

8 Q Okay.

9 JUDGE THOMPSON: Mr. Walden, you might pull the
10 microphone a little closer to you.

11 MR. DIES: I was thinking the same thing.

12 BY MR. ROUSE:

13 Q I know the logistics are difficult. I'm
14 trying to look at you, and you are trying to look at me,
15 I'm trying to look at you.

16 You mentioned on the drawings that we looked
17 at the portions of the drawings that had what Mr. Dies
18 referred to as "clouds" represent revisions.

19 A Yes, sir.

20 Q And those are revisions. From what I assume,
21 you are revising something, so there's something before
22 that. What are you revising?

23 A Well, once we have -- we have done the
24 preliminary drawings, we send the revisions -- we send
25 the preliminary drawings out to be signed off by the

1 owner.

2 And so it could have been from the owner. The
3 owner could have changed something or doorways or lights
4 or all sorts of things.

5 It could also have been a result of getting
6 the additional engineering to find out it wasn't what we
7 thought it was.

8 Q Does the cloud tell us why the revisions were
9 made?

10 A No.

11 Q Is there anything on those drawings that we
12 saw -- forgive me. I'm trying to be mindful of the
13 time, so I'm referring to things in clumps. If there is
14 any particular project you want to point out, let me
15 know. I'm trying to lump as many things together so we
16 can get through this.

17 Is there anything about the clouds that we saw
18 on these diagrams that Mr. Dies put up on the wall that
19 would indicate to us why the revisions were requested or
20 why they were made?

21 A No.

22 Q So it's fair to say that the portions of the
23 diagram that did not have clouds around them, there were
24 no revisions to that portion; right?

25 A At that point, right.

1 Q All right. Can you explain to me again -- I
2 think you defined it on direct examination, but I was a
3 little confused. What is a parapet?

4 A A parapet in this case, as it is applied here,
5 is it's a screen wall that goes around the exterior of
6 building for some reason, either because they want to
7 make the building look taller, or because they want to
8 protect it so no one can see the mechanical equipment,
9 or they want to create a screen wall above the roof
10 line.

11 Q When you say a "screen wall," what -- what
12 would be the purpose of a screen wall? What is a screen
13 wall?

14 A Well, that's -- that's that wall that's on the
15 roof. It's a screen. It's a framed wall just like a
16 wall below. It's an extension of the wall below.

17 But it could be there for a technical reason.
18 That building could have been set close to another
19 building which requires fire separation 36 inches above
20 the roof line.

21 It could be lots of reasons.

22 Q All right. With respect to the Bramasol case,
23 I think that's the first project where you mentioned a
24 parapet. Do you know why they wanted a parapet?

25 A I think -- no. That one I don't know. I'm

1 sorry.

2 Q No, don't apologize. To the extent you don't
3 know, that's fine.

4 A And what is a truss?

5 A A truss. A truss that we use for most of
6 product is a -- is a specially designed open-web truss,
7 has a steel core on the bottom and steel core on the
8 top, and intermediate diagonals which were welded off to
9 give it strength.

10 Q Is that --

11 A And those wells and those angles are very,
12 very specific to that truss and for that load and for
13 that span.

14 Q Is a truss -- is the term "truss" always used
15 in terms of a -- developing a roof?

16 A There is a roof that goes on top of the truss,
17 yes.

18 Q Okay. So I guess I'm picturing it like the
19 truss that is the framing for the roof; is that fair or
20 too vague?

21 A It's the support. It's -- it's the support
22 for the roof.

23 Q Okay.

24 A Structural support.

25 Q Okay. Do you have any idea what percentage of

1 your projects that you did for these tax years '03 to
2 '06 had parapets?

3 A No, I don't.

4 Q Do you know whether -- prior to the Bramasol
5 project, whether the company had constructed a parapet
6 before?

7 A No, I don't.

8 Q In the audits -- FTB audits interview summary
9 with Mr. Lord, he mentioned a clear-span roof truss.
10 and I think you just mentioned a clear-span roof truss.

11 A Yes, sir.

12 Q What is that in terms of -- I just asked you
13 what a truss is, but what is a clear span roof truss?

14 A Well, let's use this office -- this building
15 we are sitting in right now.

16 Q Sure.

17 A Between that column right there and this
18 column right here, that's a clear span. It has no
19 additional support.

20 Q Okay. And do you use that on all of your
21 buildings?

22 A We like to use it when we can. It makes the
23 building much more flexible.

24 Q Do you know if it was used on these six
25 projects?

1 A No, I don't.

2 Q So the six projects that we're talking about

3 today, you would not consider your standardized

4 projects; is that accurate?

5 A Yes.

6 Q Okay. So the documents for Bramasol ,

7 Genentech, and the Welk project mentioned a -- I think

8 it said SPS-1000. Do you know what that is?

9 JUDGE THOMPSON: Mr. Rouse, can you repeat what you

10 just said?

11 MR. ROUSE: It was Bramasol , Genentech, and Welk.

12 BY MR. ROUSE:

13 Q And the quote on all those was -- it was,

14 those projects were based in part on SP -- which I

15 believe stands for "structural package" -- S-1000.

16 Do you know what that is?

17 A I know we had structural packages, yes.

18 Q Do you know what --

19 A I don't know specifically --

20 THE REPORTER: I'm sorry.

21 THE WITNESS: I don't know specifically what that

22 SP-1000 is for.

23 BY MR. ROUSE:

24 Q Does the stock project that you referenced

25 earlier have a structural package number?

1 A Yes.

2 Q What is that?

3 A I don't know. I don't know.

4 Q Okay. It could be S-1000?

5 A Could be.

6 Q Okay.

7 A I think SP stands for special.

8 Q Okay. So when a design says it's based on

9 either a special package or structural package, as you

10 referred to it earlier, what would that mean? Is that

11 something that was already created and incorporated in

12 this project?

13 A It would mean it's not the standard product

14 stock. We have a certain amount of buildings that are

15 all the same. That is SP in my mind. I believe that is

16 how we designated it's different than that.

17 Q I think I'm getting confused.

18 A Me too.

19 Q And some of these questions may be for

20 Mr. Lord. I'm trying to see what you know.

21 But Bramasol, Welk, and Genentech say they are

22 based in part on SPS-1000. Those -- I assume those

23 projects were not done at the same time, so to the

24 extent S-1000 was incorporated into the Bramasol

25 Project, and it was also incorporated into a later

1 project. Then what I guess I am asking you is that
2 design for that S-1000 package would have already been
3 created; right?

4 A I don't know the answer to that.

5 Q Okay. On the Bramasol project you mentioned
6 you said the company never had to deal with a parapet of
7 that type. You are not saying that they had never done
8 parapets before. You are saying you had never designed
9 that exact type of parapet before?

10 A I believe that's true.

11 Q All right. Also with respect to Bramasol ,
12 you -- in addition to the parapet, you also mentioned
13 that you had to account for the wind load. What is
14 "wind load"?

15 A Depending on what location you are in in this
16 country.

17 The entire country has wind load charts that
18 tell you how much load is going to go against the side
19 of the building.

20 Q Do you know if any projects before Bramasol
21 whether or not you had to account for wind load with any
22 part of the structure?

23 A Yes.

24 Q Okay. Is that a calculation that would need
25 to be done to determine how to design that structure to

1 account for the wind load?

2 A Yes.

3 Q With respect to all of the projects, you

4 said -- Mr. Dies asked you whether you were certain what

5 the appropriate design would be, and you said no, you

6 weren't certain; correct?

7 A Yes.

8 Q Why not?

9 A Because there's too many variables. I don't

10 have any answers.

11 Q All right.

12 A It's like asking me how much a house costs.

13 Are we are talking about one in Newport Beach? Are we

14 talking one in -- there's too many variables.

15 It starts out conceptually.

16 Q Were you --

17 A Broad numbers based on conception.

18 Q Or even houses next door to each other, you

19 may not know what they are worth.

20 A Exactly.

21 Q But you could probably find out; right?

22 A I'm sorry?

23 Q You could probably find out what a house is

24 worth?

25 A If you want to sell it, maybe, you can find

1 out, yes.

2 Q And at some point you can find out whether you
3 can design this project that a customer is coming and
4 asking you to design?

5 A Over a period of time, yes.

6 Q All right. In general -- this may be a
7 question for Mr. Lord, but, in general, what information
8 would you need to become certain about the appropriate
9 design of a complex project?

10 A We would have to go through the process.

11 Q And what would that process be?

12 A The process would be approaching all the
13 different disciplines and looking at the process along
14 with the owner to find out what they wanted.

15 Q So on all six of these projects, you received
16 some type of either schematic or drawing from the
17 customer; is that correct?

18 A Yes. Some concept of what he wanted.

19 Q Okay. So at that point you knew what they
20 needed, what they were requiring, and it was your job to
21 determine whether it could be done?

22 A We basically use square footage and
23 requirements.

24 Q And part of your job was to determine whether
25 or not this design could be done within regulatory

1 requirements; is that correct?

2 A Yes.

3 Q And you had staff on hand that knew those

4 requirements?

5 A Yes. We have code books.

6 Q Okay. So you could look in the books and

7 decide or determine what -- what the requirements were

8 based on what the customer has given you; right? because

9 you have to coincide with the regulatory requirements

10 with what the customer has given you for their

11 requirements; right?

12 A Yes.

13 Q You had experienced engineers on your staff?

14 A No. We had people experienced in building

15 buildings, and we used outside engineers to do designs

16 and calculations.

17 Q So what you are saying is you did not employ

18 engineers?

19 A No.

20 Q All right. So you used outside engineers?

21 A Yes.

22 Q And they were independent contractors?

23 A I'm sorry?

24 Q They were independent contractors?

25 A Yes.

1 Q And did you have to have software?

2 A No.

3 Q That came from the engineers?

4 A Not in that period of time.

5 We had some basic elementary -- at that period

6 of time, no, we just drew it.

7 I don't know which version we had, but we

8 didn't have -- what you are talking about, the versions

9 they have today, we weren't even close to that.

10 Q Was it called CAD?

11 A I'm not sure.

12 Q Okay. I think the documents refer to CAD

13 software.

14 A They are probably right.

15 Q Okay. But you don't know for sure?

16 A No.

17 Q So the engineer that you would, I guess,

18 hire -- well, let me back up.

19 Was Mr. Lord your employee, or was he an

20 independent contractor?

21 A He was an employee.

22 Q And he's an engineer?

23 A No.

24 Q He was not an engineer?

25 A No.

1 Q He was director of engineering?

2 A Yes.

3 Q And he had people that worked under him?

4 A Yes.

5 Q So when you hired engineers, they reported to

6 Mr. Lord?

7 A Mr. Lord oversaw their conversations, and

8 what -- what they were directed to do and their fee

9 schedule.

10 Q Okay. So you had no engineers on your staff

11 as employees?

12 A No, sir.

13 Q Did you have draftsmen that you employed?

14 A Yes.

15 Q Okay. What did the draftsmen do?

16 A I'm not sure. I don't know what you are

17 asking me.

18 Q What was their job?

19 A They drew the drawings.

20 Q Okay. But they didn't do any of the

21 calculations?

22 A No.

23 Q So based on what the engineers gave them, they

24 did the drawings?

25 A Yes.

1 Q So I'm -- I'm going to name off a couple -- a
2 few people here, and I'd like you to tell me whether
3 they were employees of your company or not.
4 Jeremy Ray Brown.
5 A Yes, employee.
6 Q Jeremy, J-e-r-e-m-y, Ray, R-a-y, and Brown?
7 Did the company have something that you
8 referred to as the Engineering Department?
9 A Yes.
10 Q Okay. Ms. Adrian Diaz, A-d-r-i-a-n, D-i-a-z.
11 A I don't remember her.
12 Q Frederico Boquin, F-e-d-e-r-i-c-o, last name
13 B-o-q-u-i-n?
14 A I'm sorry. That's a question for Mr. Lord. I
15 don't remember him.
16 Q Jerry Garcia?
17 A I remember him.
18 Q You do or don't?
19 A Yes. Employee.
20 Q Francisco Gaspar, G-a-s-p-a-r?
21 A I don't remember.
22 Q Douglas Hicks, H-i-c-k-s.
23 A I don't remember.
24 Q And a Kevin Collins?
25 A Yes, he was an employee.

1 Q So Jeremy Ray Brown, Jerry Garcia, and Kevin
2 Collins you do remember being employees but not
3 engineers?

4 A They are not engineers.

5 Q Okay. But you remember them being draftsmen?

6 A Yes.

7 JUDGE THOMPSON: It sounds like it would be
8 possible that Mr. Walden can come back up if there was
9 other questions after Mr. Lord's.

10 MR. DIES: Yes, sir.

11 MR. ROUSE: I think I only have a couple more
12 things.

13 BY MR. ROUSE:

14 Q What problems did you encounter with the Ynez
15 Elementary Project?

16 A Only one I remember specifically, was the --
17 there was some site constraints. It was a single-story
18 building. I just changed it to a multi-story building,
19 and there was a corridor -- was the biggest issue.

20 Q Okay. And with Mammoth -- Mammoth Lakes, you
21 mentioned the snow load problem. Were there any other
22 difficulties that you encountered at that project other
23 than the fact that it didn't get completed?

24 A They had a -- they wanted to use a very
25 sophisticated boiler system that we never had had

1 experience with.

2 There were other things like that they chose
3 that were appropriate for the area, but we never had any
4 experience doing that.

5 MR. ROUSE: Okay. Judge, that's all I have for
6 now.

7 JUDGE THOMPSON: Thank you. Any redirect?

8 MR. DIES: I think I'm going to take up most of the
9 redirect with Mr. Lord. We can always bring him back
10 and answer more questions.

11 JUDGE THOMPSON: Are there any questions from my
12 Co-panels?

13 JUDGE CHENG: No.

14 JUDGE BRAMHALL: No.

15 JUDGE THOMPSON: Thank you very much.

16 Please proceed.

17 MR. DIES: Do you need to swear him in?

18 JUDGE THOMPSON: Thank you.

19 Could you raise your right hand?

20

21 KEVIN LORD,

22 called as a witness on behalf of the Appellant, having
23 been first duly sworn by the Lead Panelist, was examined
24 and testified as follows:

25 THE WITNESS: I do.

1 JUDGE THOMPSON: Thank you.

2

3 DIRECT EXAMINATION

4 BY MR. DIES:

5 Q Sir, could you tell us your name?

6 A My name is Kevin Lord.

7 MR. ROUSE: Can you speak out? It's hard to hear.

8 They have some noise going on.

9 I think they left.

10 JUDGE THOMPSON: Okay. Thank you for speaking up.

11 Mr. Lord, you want to keep the mike pretty

12 close, please, when you speak.

13 THE WITNESS: Okay.

14 BY MR. DIES:

15 Q Mr. Lord, can you tell us a little bit about

16 yourself and your background?

17 A Sure. Well, pretty much my entire career,

18 about 38 years, has been been spent in one shape or

19 form, modular.

20 The first 12 years of my career, I spent in

21 manufactured housing, site and modular construction.

22 And I spent the last 26 years working for various

23 companies on the commercial side of modular building

24 construction.

25 Q And --

1 A Most -- most of my background is to do on the
2 drafting/engineering side, wide range understanding of
3 construction techniques and whatnot. Code --

4 Q And, Mr. Lord, at a high level, I think you
5 were present when Mr. Walden was asked some questions
6 about engineering. Are you a P.E. licensed engineer?

7 A No, I'm not.

8 Q Does that mean you don't do engineering?

9 A Well, that's a pretty wide term. Most
10 certainly I do not perform calculations that we had
11 structural engineers perform for us.

12 Q Okay. But do you -- you oversaw a team called
13 the engineering team. What physically did those folks
14 do?

15 A Well, at a couple of different levels, so
16 during this time period, I was actually an engineering
17 manager. We had -- at multiple times during the
18 company, we had to sometimes as high as four engineer
19 managers. Under each engineering manager would be a
20 draftsman.

21 So after sometime in late 2006, 2007, I took
22 on the director of engineering position.

23 Q Okay. Mr. Walden was asked some questions
24 about whether we did our own drawings or had the ability
25 to draw or do CAD during this time period.

1 What was your memory with respect to the
2 technology you were using? What was available to you?

3 A We used a program called AutoCAD. And there's
4 various -- during the years, there's new levels of it
5 that comes out, but we used AutoCAD which is the --
6 computer-assisted drafting.

7 Q And these drawings that have Walden's name on
8 them, who did these drawings?

9 A Our draftsmen.

10 Q At whose instructions?

11 A At the supervisors', so myself, Dan Lambert,
12 Kevin Juhnke.

13 Q Can you spell Kevin Juhnke?

14 A J-u-h-n-k-e.

15 Q And we're going to go into some detail in a
16 moment, but the physical -- the physical items that
17 exist on Walden drawings would have been drawn by
18 employees at Walden at y'all's instruction, meaning the
19 supervising engineers?

20 A Yes.

21 Q Okay. If I can, in the interest of time, I'd
22 like to direct your attention to the actual design
23 process that Walden went through for its projects.

24 Actually, before I do that, I want to revisit
25 one other thing.

1 You heard some discussion about stock
2 buildings?

3 A Yes.

4 Q These were the buildings going on construction
5 sites and such?

6 A So from a very high level, Walden Construction
7 was a wholesale manufacturer, so, in other words, we did
8 not sell directly to retail. We sold to what we call
9 dealers. So we had a lot of dealers. The dealers
10 offered varying products anywhere from eight-by-twenty
11 special-purpose commercial modular to double wides,
12 triple wides, five wides, six wides. And -- and that's
13 what we call stock product.

14 Q Okay. If you had already designed and drawn a
15 building, put it together, and then made that part of
16 your offering for those folks selling stock products,
17 and someone came in and ordered another one of those,
18 would we need new drawings or new things from you, your
19 engineering team, and so on, or would they just build
20 what they had already done?

21 A Well, it really -- there's a lot of --
22 there's -- there's a lot of variables to that, so
23 depending on the time line, plans could -- code year
24 could have expired, so we may have had to have updated
25 plan.

1 So first off, it was our dealers that had the
2 standard offering of floor plans, what their building
3 looked like, what it included.

4 And so we had just files and files and files
5 of all of our dealers' standard products. So when a
6 dealer come to us and they wanted to buy a certain
7 product, oftentimes, we had that already developed.

8 Q Okay.

9 A Not all the time.

10 Q Okay. You heard Bramasol, Genentech, and Welk
11 being compared to each other?

12 A Yes.

13 Q Are any of those three stock products?

14 A None whatsoever.

15 Q Are any of those three even similar?

16 A Only similarities that they most likely
17 transport on tires with a hitch.

18 Q So lumping them together under an SP-1000
19 label -- well -- let me back up.

20 Do you know what this SP-1000 label is that
21 was asked about?

22 A Yes, sir.

23 Q Tell us what that is.

24 A So in an overall scope, California Department
25 of Housing and Community Development, they allow us to

1 have a structural package on file. And the structural
2 package could be whatever the manufacturer wants it to
3 be, but we had designed it to, basically, enable us to
4 quickly respond to customers for stock application.

5 So in that structural package, we had various
6 types of construction for, say, a standard -- what we
7 called an outrigger chassis with a wood floor system.
8 We had a perimeter chassis system. We had clear-span
9 trusses. We had C channel clear-span C channel beams.
10 So this would enable to us quickly respond to a
11 customer's needs. We had those on file. They were
12 approved through the State of California through --
13 and -- and it was the basis of allowing us to build what
14 we call stock product.

15 Q Okay. You mentioned clear-span trusses.
16 There was also a bit of discussion about that.

17 If I take a 70-foot building and make it a
18 72-foot building, can I just add a foot on each end of
19 the truss?

20 A No.

21 Q Okay.

22 A We would have to have had an engineer justify
23 through calculations appropriate member sizes.

24 Q So you could come up with an idea at work.
25 They had to test it with calculations?

1 A Correct.

2 Q Okay. And we'll do a deeper dive, but the
3 idea here is next I want to go through the general
4 design process, acorn to oak tree at Walden, and,
5 hopefully, when we go to different projects, we can move
6 through them more quickly having first understood that
7 process. Okay.

8 In the very beginning of the process, you have
9 your quote. Can you tell us what is going on at this
10 stage?

11 A Well, typically within one of our dealer -- or
12 perhaps as Charlie had alluded to, we may get multiple
13 requests for the same project. So -- and oftentimes,
14 those dealers may take a different approach to that very
15 same building. They may choose to take some scope --
16 more scope on-site than another dealer would rather have
17 us carry through the factory.

18 So our sales department would -- would --
19 we had an administrator that she received all of RFQs.
20 The RFQs would be distributed out amongst our sales
21 staff. It may include a large set of specifications.
22 It may include a telephone conversation with those
23 specifications.

24 Sometimes we got a very legible set of plans
25 or basic plans. Other times it was literally an

1 eight-and-a-half-by-eleven scale notebook that enabled
2 them to just depict in a single line in a very schematic
3 means of what they were looking for that building to
4 include.

5 Q For the six projects we are talking about
6 today, Walden would have had to do their own custom
7 schematic design or design drawings?

8 A Yes.

9 Q Okay. So a customer may say, I need two
10 offices, some bathrooms, I need AC. It's going to be
11 located in Louisiana. There may be some wind issues or
12 something like that.

13 But the customer wasn't telling you here's how
14 to do the electric system, or here's how to create the
15 HVC or things of that nature?

16 A No.

17 Q Okay. So when they gave a drawing or a
18 concept, that is a starting point, for lack of a better
19 term?

20 A It is.

21 Q Okay. So we go through the request for a
22 quote, and let's say they gave you an idea of what you
23 want to do -- what they want to do. I want to build a
24 dormitory project in the mountains in Mammoth Lake?

25 A All right.

1 Q Okay. What happens in the estimate phase?
2 What are you guys doing at that point?

3 A Well, we are not participating much. However,
4 the salesperson may ask questions of us on what he
5 should or not include.

6 Q Okay.

7 A But really what they are doing is trying to
8 come up with an approximated cost.

9 Q Okay.

10 A So we had a standard format sales template
11 that they used, and, oftentimes, it was checking boxes
12 and filling in specific pieces of information. One of
13 those would be area which may help them to determine a
14 roof load.

15 Oftentimes, cities -- within -- just within a
16 city may have a non-snow load and a snow load area. So
17 that's where they may have to come to engineering to
18 find out, hey, does this building, you know, does this
19 area have a snow load?

20 So we would have participated only in trying
21 to have -- help them complete a -- a -- or provide a
22 complete quotation that would give a basis of an
23 approximated cost to our dealer.

24 Q Okay. And then if the client or customer of
25 that dealer is interested in buying the product, we

1 begin design?

2 A Right. Normally we would get a P.O. or some
3 form of acknowledgement, you know, to move -- move
4 forward.

5 Q But the thing that Walden Structure is selling
6 is a -- is a product. It's -- I'm buying a structure
7 from you I can use for some purpose?

8 A Yes.

9 Q Okay. I'm going to hand you this, and this is
10 Exhibit 11, and we've talked about this briefly with
11 Mr. Walden, and I would encourage you -- you've got the
12 documents in front of you. If there is something you
13 want to point out, if you let us know, either Edith can
14 zoom in or you can walk up to the -- to the -- to the
15 board and point it out if you want to.

16 Okay. There were some questions earlier about
17 the parapet.

18 A Um-hum.

19 Q Do you recall those questions?

20 A I do.

21 Q Can you find in Exhibit 11 --

22 JUDGE BRAMHALL: Which Exhibit is this?

23 MR. DIES: This is 11.

24 JUDGE THOMPSON: Is it the Bramasol?

25 MR. DIES: Yes, sir.

1 JUDGE BRAMHALL: Thank you.

2 BY MR. DIES:

3 Q Can you find in Exhibit 11 the actual
4 elevation of the parapet, show the folks what we are
5 talking about.

6 A Sure.

7 Q Do you know page number that is?

8 A It shows up on a couple of them. It starts,
9 first off, I mean, the first representation of it would
10 be on the roof section where it would just say we have a
11 parapet.

12 Q Okay. I'm talking about a physical picture I
13 can show people.

14 A Right. So we start to see images of it and
15 how are these may be depicted and various things.

16 But the parapets, I mean, from an overall
17 sense, we are going to look at the extra elevation.
18 That's going to -- that's going to show that -- at what
19 stage in time what the RFQ had told us to represent on
20 the plans.

21 MR. DIES: Okay. So, Edith, if you could pull up
22 WSI-0069 for me.

23 BY MR. DIES:

24 Q This is the Bramasol project; is that correct?

25 A It is.

1 Q And just from an outsider's view, if I were
2 looking at the building, is this maybe one of the sides
3 of the facade that I say might see?

4 A Yes. It's actually four. That's representing
5 all four sides of the building.

6 Q Okay. And are the heights of this thing is
7 the same throughout?

8 A Not at all.

9 Q Okay. And how will you know that?

10 A Well, you would have to reference from the top
11 of your roof slope to the top of the parapet on various
12 areas of the building.

13 Q Okay. What does the difference in these
14 heights all over the building do to the roof structure
15 and how you design a building like this?

16 A A lot.

17 Q Okay.

18 A Drastically affects the columns, how it bears
19 initially down on either the trestle and the launch to
20 the lines or down on the columns on the transverse lines
21 of -- of the structure.

22 Q Mr. Walden testified earlier about the fact
23 that because of the height of this proposed structure,
24 you couldn't carry it over the road as they wanted it to
25 look on this site; is that correct?

1 A That's correct.

2 Q Can you point out to us the part of this that
3 had to be added to the building?

4 A Yes.

5 Q I don't know if you want to step up here or
6 have her zoom in, but the part that had to be added to
7 the building, it couldn't go on trailer, for example?

8 A I think one important thing to point out, this
9 was a preliminary, not for construction set of plans,
10 and so this specific building changed throughout the
11 series of revisions.

12 So it's hard to see, but there's a dash line
13 here which is indicating our roof slope.

14 Q Okay.

15 A So this portion from here, so about here is
16 the center of the building. You see this dash line
17 disappears into this line. So what this is representing
18 is that this section above this dash line, some part of
19 it or all of it is going to be built on-site.

20 Q Okay. And how do you account for the fact
21 that you are going to be adding structural membranes
22 on-site when you are designing a building like this?

23 A Well, it would be represented in detail
24 sheets -- other sheets than this. So, like I said, we
25 may have chosen -- and again, it all depends on the

1 height of the building.

2 What we try to do is -- first off, the dealer
3 is so going to tell us do they want to ship the building
4 at its lowest. Or do they want to build the minimal
5 amount of construction on-site.

6 So with that information, we may choose to
7 build the entire parapet, all four sides of the building
8 on site, or we may decide build some of the parapet in
9 the factory and the addition of it, the completion of it
10 on-site.

11 Q You mentioned that this was a preliminary
12 drawing. I think you can tell that by looking at the --
13 that bottom corner there that says "Preliminary --

14 A Correct.

15 Q -- not for construction."

16 These are, for lack of a better term, initial
17 concept drawings. This is just, kind of, how you are
18 proposing to try to and solve some of these problems?

19 A Well, it may have been, and I'm not sure. If
20 you scroll down just a little bit here, we can go to
21 the revision box, and we see where we are at in the
22 process.

23 So this is two stages after. So we would have
24 been in a very preliminary nature right here. In other
25 words, we got a sales quote, and our engineering group

1 developed the plans to the point of where we had
2 completed the -- the preliminary drawings.

3 Q Okay.

4 A We were ready to go out for the customer to
5 get an initial feedback, initial view on did this -- did
6 we give them everything they wanted?

7 So then, oftentimes, we would get markups back
8 from our customer that may change a direction that we
9 were already given or add scopes.

10 Q Okay. And if a change is made, let's say they
11 add to the elevation of the parapet, what do you have to
12 do from an engineering and design standpoint?

13 A Well, it all depends on the height of it.

14 Q Okay.

15 A Its location.

16 Q But you got to go back and factor that in and
17 make another pass at designing this thing?

18 A Sure.

19 Q I see that there are five boxes in that little
20 section for revisions?

21 A Correct.

22 Q Do we always get it done in five?

23 A No.

24 Q What happens if you have a sixth or eighth or
25 tenth revision?

1 A We start over at the top. So we will zero --
2 we will start over with No. 6, 7, 8, 9, 10, and if we
3 went on beyond that, it would go to No. 11.

4 Q Okay. Is it common in your process in -- at
5 Walden to have multiple revisions for design and
6 engineering reasons?

7 A On custom buildings, yes. On stock product,
8 no.

9 Q Mr. Walden said this, but I want to make sure
10 you agree.

11 The six projects we are talking about, you do
12 not find to be stock buildings. These are custom
13 buildings?

14 A Very custom projects.

15 MR. DIES: Okay. If we can, Edith, I'd like to
16 shift to Exhibit 12 real quickly.

17 BY MR. DIES:

18 Q And if you could stay up there, that might
19 make it easier. I can point you to what I am asking
20 questions about.

21 On that first page -- I'm sorry. The next
22 page -- I need to be precise, first page of the
23 drawings.

24 Who would have done these drawings?

25 A Well, so -- Walden Structure in overall at its

1 highest level.

2 Q Okay.

3 A And then we could even determine which
4 draftsman drew it.

5 MR. DIES: Okay. And -- and Edith, if you will,
6 zoom in on the -- the revision section.

7 BY MR. DIES:

8 Q We see some dates there. Do you know what
9 is -- what the per WSI, EG or T, means?

10 A Yes, these are -- No. 1, in a very general
11 sense, we are trying to define what occurred during a
12 specific revision.

13 When you would zoom in on clouds, you would
14 see a delta here. A delta would have a number inside of
15 it that would correspond to this one. So we knew on
16 10/21/05 that these were customer -- customer red lines.

17 Q Okay.

18 A If you were to go clear down here to starting,
19 say, No. 3 we are still clarifying, and so months later,
20 we're into the next year, and now we're -- we're just
21 simply saying, "Oh, Eddie Garcia did this." He was EG.

22 Q Okay.

23 A Another one down here, again, we're in the
24 customer development stage. Carson King drew these.

25 So now as we continue on down, now we're

1 seeing per WSIs. It's obvious that we have gotten the
2 structural engineer heavily involved.

3 Q Okay.

4 A He's doing details, and so maybe -- we based
5 on if we could determine which cloud set here was No. 5.
6 We could see maybe it was structural elements. Maybe it
7 was a completion of the plans.

8 Q Okay.

9 A You know, further down again, it's Walden's,
10 and it's simply telling the draftsman who worked on
11 this.

12 I do want to point out at this stage, we are
13 at a completion on the plan. So now we have a
14 production issue. We only have that once we have two
15 things: State approval and customer approval.

16 Q Okay.

17 A So we have gone through all of their review.
18 We've gone through the State review. In the background,
19 our engineers have performed all the structural
20 calculations.

21 Q Okay. I'm going to dive into some of the
22 answers that you provided there.

23 You have heard some discussion that one of the
24 challenges with the Bramasol project was the height of
25 the roof, the loads on the roof, truss design, and so on

1 from Mr. Wal den?

2 A Correct.

3 Q All right. I don't want to reiterate all
4 that, but I did want to direct your attention to
5 WSI -0138.

6 MR. DIES: It's Exhibit 12. Sorry, Edith.

7 BY MR. DIES:

8 Q Okay. At the top there, do you see is -- that
9 bridge-looking structure?

10 A This is our clear-span So that's the the
11 clear-span truss

12 A Yes, sir.

13 Q Okay. And at a high level, why is it so
14 challenging? What about this particular building made
15 this truss challenging?

16 A Well, there's several things. So on a
17 previous page, in the information we would have seen
18 that this was at a 30-pound snow level.

19 So the standard structural package that I
20 alluded to before was only developed for a very basic
21 wind load and a non-snow load. So, actually, we did
22 have a 20 -- we had a 30 PSF snow load truss, and, again
23 it could only be placed in certain areas.

24 Q Okay.

25 A There's maps within the building codes that

1 tell us that here's your snow load areas. Here's high
2 wind and seismic load areas.

3 Q And you talked about the -- the parapet and
4 the wind loads on the parapets and all that kind of
5 stuff. How does -- how does this truss design address
6 those challenges caused by the wind-load parapet?

7 A Well, so the higher you go with the parapets,
8 the more horizontal lateral loads come against wind
9 loads.

10 Q Okay.

11 A And, again, like I alluded to, we may have
12 chosen to build some of the parapet on-site and the
13 finalization of it on -- on construction that occurred
14 on-site.

15 Q Okay.

16 A That oftentimes even has a -- a negative
17 effect on the structure. It creates what the engineers
18 call an inch.

19 Q Okay.

20 A I won't go into it, but all of these have an
21 effect on the truss.

22 The truss is, in the simplest form, only
23 supported at two points.

24 Q Okay.

25 A We call that a clear span because it is

1 spanning the length of the building.

2 Q Okay.

3 A The specific truss was a 14-foot-wide product.
4 Our standard structural package was 12 feet wide and
5 lower.

6 Q So what happens if we add two feet to the
7 truss?

8 A Well, an engineer would have to determine
9 that. I mean, in its simplest form, we would have to
10 redesign the truss because it's drawn in very specific
11 base sizes. Most of them are four foot. Oftentimes,
12 when -- we'll determine where we are going to put the
13 auditing.

14 And I can't see really clearly. I think this
15 is a four-foot bay at the end.

16 Q Okay. So you are talking about the little
17 rectangular section of the truss?

18 A That's correct. We have -- we have a vertical
19 support, and -- very basic, it breaks the truss
20 structure again into smaller segments.

21 Q Okay.

22 A This is the bottom port that Charlie alluded
23 to. We have a top port. It's two pieces.

24 Q Okay.

25 A With each one of these vertical supports,

1 there is a diagonal. And that's the support of that
2 area within that vertical.

3 Q Okay. And I think you said earlier your team
4 would put together your proposed approach to solve this
5 problem, and then an engineer would have to run calcs to
6 test this approach; is that correct?

7 A Absolutely. Come up with specific numbers.

8 Q All right. Let's look at Exhibit No. 13.

9 MR. DIES: And, Edith, if possible, go to the first
10 page with the first page of 13 up.

11 BY MR. DIES:

12 Q Can you tell me what this document is?

13 A So this would be an overall synopsis in
14 engineering terms of -- of what are the loads? what's
15 the size of the building? and -- and -- and what are
16 they -- what are the -- the focus of what they are going
17 to do?

18 So right off the bat, they are defining it's a
19 40-foot-wide, and it's 60-foot long. That's this 60 by
20 40, and generally there's three sections. There would
21 be two trusses along each one of those modlines, so we
22 are pointing out that the floor load was a 50 PSF, and
23 it's got a certain partition load on it.

24 Q Okay. I need you to go a higher level than
25 that. You dug a little deep in the woods for me. I'll

1 get you back there in a minute.

2 Who is Woods?

3 A Woods?

4 Q Wood Engineering.

5 A That's our Engineering Department.

6 Q Okay. So you would come up with a design, and
7 you would submit that to Wood and say, "Hey, is this
8 building going to fall if we make it like this? Would
9 you run some calcs to test our design?"

10 A Right.

11 Q Okay. If I can show WSI-0281 -- that's
12 Exhibit 13.

13 Is this an example of the calculations that
14 would apply to what we were just talking about?

15 A It is.

16 Q Can you tell us briefly what we're looking at
17 here?

18 A Well, this is the -- the truss profile. And
19 in our specific instance, we were on a dual-slope truss.
20 It could have been a single-slope truss that got very
21 large at one end.

22 But, again, it's defined and got a four-foot
23 base. It's coming up with some loads here, and it's
24 starting to do calculations.

25 Q Okay. So just real quick at this point, at

1 this time, Walden had a theory about what would work for
2 the truss system. They submit it to Woods, and Woods
3 tested.

4 If the calculations say it works, what happens
5 then?

6 A Well, then he would -- oftentimes, that made
7 us have to go back and make changes to the plans, first
8 off.

9 Q Okay.

10 A Inputting all of the specific number sizes
11 that he has just verified through calculations.

12 Q Okay.

13 A So then we would provide a final set of plans.
14 He would finalize his calculations. He would stamp his
15 plans -- or his calculations -- stamp and sign and stamp
16 and sign our plans.

17 Q Okay. And so, if -- if -- if the approach you
18 want to take will not work -- you just told us if the
19 calculations support your approach. What happens if the
20 calculations say your approach will not work? Then what
21 do you have to do?

22 A Well, probably have conversations with the
23 engineer who would come up with a couple of scenarios.

24 Q Okay.

25 A Oftentimes the engineering is being driven by

1 the customer, so -- it just all depends what didn't
2 work. If we were trying to stick with a -- say, a five
3 by three by three top cords, and he's saying, "Oh no.
4 That's got to be a six by four by half to support that
5 roof load." That's big cost consequences.

6 So we may take that choice. We may take
7 another choice. Through conversations, he would
8 determine what's his next step.

9 Q So the method you are going to use to solve
10 that particular problem with the roof could be to change
11 the composition of the -- bigger steel, heavier steel,
12 more expensive steel?

13 A Correct.

14 Q Completely different structural approach?

15 A Could have been.

16 Q At that point, you don't -- you are trying to
17 design this. You are testing your calculations, but you
18 don't know which method you are going to use to solve
19 this particular problem?

20 A Correct.

21 Q Okay.

22 A Nor the cost.

23 Q Okay. Let's throw a little monkey wrench into
24 the whole thing.

25 Suppose the client calls and says, "Hey, we

1 want to mount the AC unit on the roof." What does that
2 do to all this?

3 Q Well, that would be a big impact.

4 So this project did not have roof-mount HVCs,
5 but would have just further compounded all of the -- the
6 specialty to it.

7 Q Okay. I appreciate you diving into that
8 detail for us. We're going to talk about some trusses
9 in some other ways, but I think we will be able to go
10 faster because of that. I'm going shift. I'm going
11 back to Exhibit 12, which are the production issue
12 drawings in this case.

13 Everybody is following along on TV, and I want
14 to point you to 0133.

15 MR. DIES: And, Edith, can you zoom in as best you
16 can? Let's do this. Oh, would you -- that's pretty
17 cool. I can use touch-screen technology. This is
18 crazy.

19 BY MR. DIES:

20 Q Can you tell us what this document is?

21 A So we're looking at the floorplan, first off,
22 but we are looking at the electrical. This electrical
23 includes the electrical lighting, and it includes any
24 receptacles that were in the walls, maybe receptacles
25 that were in the floors or ceiling.

1 It's got an electrical panel schedule, so
2 we're seeing only one panel schedule. I'm not super
3 familiar with this project. I think we only have one
4 electric panel.

5 Q Okay.

6 A Typically, we would have an electrical panel
7 for each transportable section.

8 Q Okay. So if this building is like Mr. Walden
9 said before, you might have three independent panels?

10 A Right.

11 Q Okay. Let me ask you this: Did a customer
12 give you this information?

13 A No.

14 Q So this is something Walden would have come up
15 with?

16 A 100 percent.

17 Q Okay. And there was questions about Code
18 books. The Code books tell you what the limitations
19 are, but do the Code books tell you how to do this?

20 A No.

21 Q Now, what are the challenges of creating an
22 electrical system in a modular structure?

23 A Oh, many.

24 Q Give us a few.

25 A In its most simple form, what we're trying to

1 do is make it easy to build and easy to set up, so -- so
2 that we don't have problems going down the production
3 line, and so we don't have problems on the site.

4 So what we first off try to do is not have to
5 ship loose any of the products that would force the
6 dealer to have to site install them.

7 In this case, we had lights that occurred
8 right on the model. There's asterisks beside this. You
9 can't quite see that. It's losing insulation.

10 We try to keep from doing that. Oftentimes,
11 you can't because you have to light the corridors. So,
12 you know, what we are trying to do is keep -- keep the
13 electrical from crossing across a modline, if possible.

14 Q Why?

15 A Again, it's just simplification for -- for
16 construction and for its setup.

17 Q So you are creating in a typical modular
18 building, basically, separate electrical systems for
19 each of the component parts?

20 A Yes.

21 Q Okay. And then those -- those pieces have to
22 function together properly when everything is put
23 together?

24 A Correct.

25 Q Now I'm going to use a random scenario. Madam

1 CEO comes into the building every morning, and she
2 enters the front door, and she wants all the lights in
3 the building to come on when she turns on the lights.
4 If there are any unexpected visitors, she knows about
5 that. But we have three separate electrical systems.
6 How do you handle something like that?

7 A Through multiple crossovers.

8 Q Okay.

9 A Electrical connections would have to have been
10 made, and again, I can't tell from this level, but we
11 may have had lighting that was clear to the back door or
12 three-way switching, but -- but all it is, is just more
13 and more crossovers, more electrical connections that
14 have to be made on-site.

15 Q Okay. When we're talking about electrical
16 systems in a modular building, do we have
17 space-constraint issues?

18 A Sure.

19 Q Can you tell me a little bit about that?

20 A Well, I mean, sometimes a smaller room has
21 less electric, a larger room has more.

22 Q Let me try a different way.

23 If you are wiring things through the roof and
24 all that kind of stuff, you have a limited span of space
25 to work in with a modular building; correct?

1 A Correct.

2 Q And that's because you can't make them too
3 tall because you can't carry them over the road?

4 A Correct.

5 Q Okay. And there are other systems that are
6 competing for the same space?

7 A Exactly.

8 MR. DIES: Let's shift to the next page,
9 Miss Edith.

10 MR. DIES:

11 Q What is this drawing?

12 A So this is a mechanical page. What it is is
13 representing the heating and air conditioning in the
14 building.

15 This building, I'm sure, was a dealer request
16 in an attempt to lower the cost of the building, wanted
17 two larger tonnage units, rather than a unit -- HVACU
18 unit on each half.

19 Q And from a design and engineering standpoint,
20 what challenge does that pose for you at Walden?

21 A Well, we have to -- we have to condition all
22 those rooms. And what's going to have to occur is
23 crossovers through the truss, so we have -- have
24 always -- we are always, you know, cognizant of -- of
25 how much air we need to take across to condition it

1 based on occupant load. That -- that -- sometimes we
2 have to square it off instead being one large round.

3 But -- but like you said, it's how to they
4 come through the structural member.

5 Q Okay. Meaning, how do you run air ducts or
6 whatever?

7 A Exactly.

8 Q Carry the air in whatever direction?

9 A Right. Right.

10 Q And if this is a modline, it's got to happen
11 over the place where these two things join?

12 A Correct.

13 Q So we have two different parts competing for
14 the same space?

15 A Correct.

16 Q And if I changed the truss, what does that do
17 to your HVACU system?

18 A Well, it may not have an effect on it --

19 Q Okay.

20 A -- the truss.

21 Q Okay. If I change the placement of the truss
22 or the use of the truss from a clear span to a different
23 kind of truss, what impact might that have?

24 A This could have a big impact. So if we --
25 we -- first off, wouldn't in a building this long, but

1 we have another roof that we call channel.

2 Q Okay.

3 A It's a solid member.

4 Q Okay.

5 A It's going to limit what crossovers you can
6 have that occur above the ceiling or -- yeah. Above the
7 ceiling below the roof deck.

8 Q If I change the electrical system, does that
9 impact AC?

10 A Yes.

11 Q If I change the AC system, does that impact
12 electrical?

13 A Yes.

14 Q So if the client hypothetically were to say,
15 take this from two AC units to three AC units because
16 the cost of working through that structural membrane was
17 too high, we have got to change the electrical system
18 and go back and redraw it?

19 A Correct.

20 Q Okay. Is your dynamic systems working or not
21 with each other?

22 Okay. I want to shift to the next page very
23 briefly.

24 JUDGE THOMPSON: What page is that again?

25 MR. DIES: I'm sorry. This was 0134.

1 JUDGE THOMPSON: Thank you.

2 BY MR. DIES:

3 Q And by the way, that HVC system has to go
4 above the ceiling, and your modular building can't be
5 very tall as well?

6 A Correct.

7 MR. DIES: Next page. Edith, if you could, zoom on
8 that bottom left corner.

9 BY MR. DIES:

10 Q First off, what are we looking at here on this
11 page? What are these drawings?

12 A This is our plumbing page where we are going
13 to represent our waste vent system and our supply water
14 system.

15 Q Okay. And what have we highlighted here with
16 this box?

17 A This is the hot and cold water system.

18 Q Is that -- is that supposed to be something
19 that is on the ground?

20 A No. But it definitely has a connection to the
21 water inlet on-site.

22 Q Okay. That's sort of what I am getting at
23 here. Is this the bottom of the building where the
24 plumbing comes in and out?

25 A This would have been within the floor cavity.

1 Q Okay.

2 A This horizontal -- all of these pop through
3 that horizontal decking up into the walls --

4 Q Okay.

5 A -- come up to the various fixtures where the
6 sinks and lavatories.

7 Q So when you designed this thing, it's got to
8 be pretty precise because they are going to set this
9 building on top of plumbing and other things; is that --

10 A Correct. Oftentimes, the dealer will already
11 know where the water inlet is going to be.

12 Q Okay.

13 A So -- I mean, there's times when we have to
14 take a water inlet clear to the opposite side of the
15 building just because that's where the water inlet was
16 on-site in relationship to the building.

17 Q What would that do to the design?

18 A Well, it -- larger cost, more pipe, more work,
19 more crossovers.

20 Q And -- I didn't ask this before, but if I make
21 a change -- we have multiple systems in the building
22 that you have talked about today. Does one or more
23 professional -- one or more professionals have to get
24 together with CAD and check for conflicts in these
25 systems?

1 A Not -- not professionals, but we had four very
2 unique caliber of draftsmen that had basic knowledge to
3 dual design all these systems.

4 Q I guess what I am saying is we have to
5 systematically go through and say, "Okay. I have to
6 move this AC." What does that do to the electrical
7 system?

8 A We're looking at that, you know, in 3-D.

9 Q Okay. And if there is a conflict in 3-D in
10 this CAD modeling that you are using, what do you do?

11 A Start moving things.

12 Q Okay. I don't want to jump off of this too
13 quick, but in the Ynez School, we had 8,000, so we would
14 also have sprinkler systems?

15 A Yes.

16 Q Yes?

17 A My answer was yes.

18 Most classrooms nowadays require fire
19 sprinklers, yes.

20 Q And we will talk about that in a moment, but
21 that would be yet another thing we might have to fit in
22 this space that's competing with plumbing and electrical
23 and --

24 A And be supported by it.

25 Q Okay.

1 A Additional loads on the truss.

2 Q Okay. The truss. You're right. The truss
3 has to carry that weight.

4 Okay. All right. And we went through the
5 calculations on the truss as an example earlier, but
6 each time you would come up with a design, before you
7 finalize that design, you would have to test that design
8 with someone like Woods to make sure the calculations
9 are going to work?

10 A Structurally, yes.

11 Q Structurally. So the different parts of it.

12 Okay. Thank you very much. Let's see.

13 Let me ask you this: Did you grab a design
14 from somewhere else and just slap it on here --

15 A No.

16 Q -- to this building?

17 A No.

18 Q So, okay.

19 A Very rarely would two floor plans be alike.
20 We would have to redraw everything.

21 Q For the -- for the six projects we are talking
22 about today, would that be true?

23 A Oh, sure. Nothing was used across the board.

24 Q So if I were to say, "Did you build something
25 in 2001 that you cut and pasted into one of these," you

1 know right now that didn't happen?

2 A Well, for systems, I would say that's --
3 that's accurate.

4 Q Now, I'm not saying you might not use some of
5 the things you learned along the process, but we're
6 talking about the ultimate design here. You are not
7 taking a design from a prior building and just slapping
8 it on there and -- okay.

9 Okay. Yes, sir?

10 MR. ROUSE: Can we get a verbal answer to that last
11 question?

12 JUDGE THOMPSON: No.

13 BY MR. DIES:

14 Q When we talk about seismic, there are a couple
15 of projects that have seismic issues?

16 Is that a "yes"? If you nod at me, it didn't
17 happen.

18 A Yes. I'm sorry.

19 Q It's okay. And I'll try to pay attention to
20 it.

21 Thank you, Counsel.

22 I want to direct your attention to WSI-0258,
23 which is Exhibit 13. And while Edith is pulling that
24 up, can you tell me from a structural standpoint the
25 challenges that seismic puts into there when you are

1 building a modular building as opposed to
2 sticks-and-stone construction?

3 A Well, modular building is probably going to
4 have much more forces put upon it than a conventionally
5 static building construction. It has to go down the
6 road and still stay, you know, a box, a 3-D structure.

7 Q Okay. So it's actually going through many
8 earthquakes all the way to the site?

9 A That is correct.

10 Q So, in some ways the seismic, what you are
11 dealing with, is not just the constraints, i.e., Mammoth
12 Lake where they have earthquakes almost daily or
13 whatever -- it's any building you make has to be able to
14 meet seismic constraints?

15 A Yes. By the Code. On maps, it tells us the
16 seismic activity for all of California.

17 Q And this is another way that your design would
18 have to be tested by getting calcs from an engineer such
19 as Louis?

20 A That's correct.

21 Q And we have 02 -- 0258 here. Are these
22 seismic calculations, this page that you have?

23 A I'm not sure which page this is. This looks
24 like page 4 of the calculations. We're definitely
25 looking at wind on the parapets, seismic, so, yes, I

1 would say it's -- it's taking it all into account right
2 now.

3 Q Okay. And if -- if the building is otherwise
4 stable but doesn't meet the seismic calcs, what do we
5 do?

6 A Going to have to make it stronger --

7 Q So that we don't have to deal with this later
8 on, Mammoth Lakes, which also had seismic issues, what
9 happens -- what happens when I pair a seismic problem
10 with a snow-load problem?

11 A It gets amplified.

12 Q Tell me what you mean.

13 A In a specific instance, that was 161-pound
14 snow load. Mammoth is very high altitude and could
15 potentially have, you know, ten foot of snow sitting on
16 top of that roof. So the weight of that snow is
17 amplified in a seismic event where the building is
18 literally shaking sideways -- could have been shaking in
19 both directions at one time.

20 So as you bring that weight up, it's just
21 amplifying the effect on the building.

22 Q Okay. That is a design constraint that y'all
23 had never dealt with before?

24 A Definitely not 161 PSF snow load, yes.

25 Q All right.

1 JUDGE THOMPSON: The snow was how much again?

2 THE WITNESS: 161, I believe it was.

3 BY MR. DIES:

4 Q I think in the -- in the meetings with the
5 FTB, you mentioned that this was three times the size of
6 any snow load you guys had ever dealt with?

7 A Correct.

8 Q All right. I want to shift now to our Mosque
9 projects, and because we've gone through their design
10 process in great detail.

11 I'm going to try to do this at a high level,
12 but would your Mosque projects follow the same design
13 process we just talked about?

14 A Yes.

15 Q Maybe, meaning -- meaning, initial preliminary
16 drawings been drawn. Somebody is good with them. We
17 start to formalize them. We test calculations with
18 engineers. We do production drawings and so on. Would
19 you have followed that process?

20 A Yes.

21 Q Okay. And for purposes of the record, when I
22 say "did you follow your design process," that's going
23 to be what I am meaning when we go through these
24 projects. I'm trying to keep us rolling here.

25 I want to show you the drawings in Exhibit --

1 Let's -- Let's look at Exhibit 21, if I can find it.

2 MR. DIES: Edith, 21 -- those are the pictures?

3 Oh, those are the pictures. Okay. Actually,
4 we've already covered that. I'm going to go to Exhibit
5 18, page 1. I'm sorry. Sorry. That's going to be in
6 the drawings.

7 JUDGE BRAMHALL: Yeah, just getting this out of the
8 way.

9 BY MR. DIES:

10 Q All right. I'm sorry. Go to the actual cover
11 page, if you don't mind. These are structural drawings
12 that relate to the Mosque projects that we are calling
13 Mosque 1 and 2.

14 A Yes.

15 Q Okay. Now, this says, "Prepared by Allied
16 Container Systems." Do you see that?

17 A I do.

18 Q Have you had a chance to review these drawings
19 in connection with your interviews with the FTB and your
20 work to get ready for today?

21 A Yes.

22 Q Whose drawings are these drawings?

23 A Basically, Walden structures.

24 Okay. And how -- Let me ask you this: I want to
25 show you page 18 -- I'm sorry -- Exhibit 18, page 43.

1 A VOICE: Say that again? It's not Bates?

2 BY MR. DIES:

3 Q So the Bates range we're going to be talking
4 about right now is WSI-0450 and 0452 and those of you
5 who are following along at home

6 But let's go back to -- I guess, first off,
7 you just said these -- these are drawings that were
8 created by Walden. How do you know that?

9 A Well, there's -- there's -- I mean, this is
10 our standard legend that we that put on almost every set
11 of plans.

12 Q And I'm going to -- just for the record, I'm
13 going to narrate some of this so it makes sense.

14 But you pointed to a small section with a
15 series of rectangles that have different patterns in
16 them?

17 A Yes.

18 Q This is a Walden legend?

19 A Well, it is in general. And so --

20 Q Okay.

21 A -- it could be used for many things. In this
22 instance, it's -- what it's representing is different
23 types of wall construction.

24 Q Okay. Let's go the next page.

25 JUDGE THOMPSON: Which exhibit?

1 MR. DIES: It is Exhibit 18.

2 JUDGE THOMPSON: 18 and WSI-451?

3 JUDGE CHENG: 0450?

4 MR. DIES: Through 0452. Wait that's not 18, is

5 it? Oh, it's going to be challenge for you guys.

6 These are not -- these are -- it's going to be

7 343 pages into the document if you are looking at this

8 in yours. These -- these didn't come out sequentially

9 because the way they were produced in the underlying

10 audit.

11 THE WITNESS: There is a point worth pointing out

12 here.

13 MR. DIES: Okay.

14 THE WITNESS: Jeremy Brown --

15 MR. DIES: That was what I was getting ready to

16 show you.

17 JUDGE THOMPSON: You guys are talking over each

18 other.

19 BY MR. DIES:

20 Q I'm sorry. You jumped the gun. I was going

21 to make that very dramatic.

22 A I'm sorry.

23 Q Who is Jeremy Brown?

24 A Jeremy Brown was one of our draftsmen at one

25 point and became an engineering manager at another point

1 on a military product.

2 Q Okay. So why would -- go to the upper right
3 corner of this drawing.

4 Why would Allied Container put its name on a
5 drawing that was drafted by Jeremy Brown?

6 A Probably to represent that they built it to
7 the government.

8 Q Okay. Now, what if the Marines find out that
9 they could go directly to you instead of going to Allied
10 Product? What are they going to do?

11 A Going to get it cheaper.

12 Q So if anyone tries to assert that Allied
13 Container did the fundamental design of this Mosque and
14 so on, would that be true?

15 A It's inaccurate.

16 Q Okay. Let's talk a little bit about the
17 features of this, and I covered some of them with
18 Mr. Walden, but I want to direct your attention to
19 Exhibit 18, 0469. It should say TYP door elevation.

20 MR. DIES: This is what it looks like, Edith.

21 JUDGE THOMPSON: Can you repeat that for me?

22 MR. DIES: Yes, sir. It is WSI-0469.

23 BY MR. DIES:

24 Q Okay. And -- I'll just do this. I'm not
25 fancy. All right.

1 Can you tell us what that is?

2 A So this is it an elevation of a breachable
3 door. In -- in urban warfare training, the soldiers
4 would -- so it's representing, like, perhaps a locked
5 door, so they are going breach that door.

6 So there were sacrificial elements to this. I
7 mean, it was the plywood that made the door surface. It
8 had a very strong structural frame around it, and so, I
9 mean, in a sense, it's store elevation of that
10 sacrificial door.

11 Q I'm going to an even higher level than that.
12 I -- I got to break in a door with a battering ram maybe
13 30, 40 times in a short period of time. Yes?

14 A Yes.

15 Q Okay. And if I keep buying doors every time I
16 do that and I'm your customer, I'm going to be
17 frustrated by that.

18 A That would probably be accurate.

19 Q So the -- was this project for the Marines?

20 A It was.

21 Q Okay. So the Marines said, "Make us a door we
22 can kick in multiple times --

23 A Yes.

24 Q -- in training."

25 And you guys had to create a prototype for

1 that?

2 A Yes.

3 Q Did you actually mockup this door and all that
4 stuff?

5 A Yes. Most likely.

6 Q Okay. So what I mean by that is independent
7 of plugging and playing this in various places in the
8 Mosque, you might have to build a mini structure, see if
9 the thing works before you propose it in a building like
10 this?

11 A And I'm not sure exactly what occurred.
12 Jeremy would have been in charge of that. I can't
13 answer that.

14 Q That's okay. I appreciate that.

15 Let me ask you this: What kinds of things are
16 those soldiers going to be doing in this Mosque at a
17 high level?

18 A Well, so they -- we had -- I'm not sure which
19 one this is for -- okay. Okay. Camp Lejeune. So, it's
20 a very large base, first off, and for urban warfare
21 training, like Charlie said, so they are doing daytime,
22 nighttime, real-life experiences, tanks going down the
23 road, shooting off ammunition, helicopters above,
24 Nationals in Iraqi cars, and what not.

25 They are representing different scenario for

1 the troops to train in.

2 Q Okay. And if troops go and train in this
3 building one time, they know the flow of the building;
4 right? They know how it flows?

5 A They could, yes.

6 Q So the Marines made you have interchangeable
7 walls?

8 A Yes.

9 Q Okay. Tell me what that meant from a design
10 standpoint?

11 A Well, first off, it had to be strong enough
12 because you've got armed Marines running through these
13 with full packs on and all kinds of things going on in
14 their body.

15 So they had to be strong enough, number one,
16 to, you know -- and none of them were straight line --
17 so, for instance, many of them were multi-stories, so
18 you could never see a set of stairs from the entry door.
19 You had to go to around a corner, lean down around
20 another corner, so oftentimes those interior partitions
21 could have been hit by a soldier --

22 Q Okay.

23 A -- and they had to be strong enough to resist
24 that.

25 Q Sure. And the walls have to be moveable.

1 They can't be load bearing; right?

2 A Correct.

3 Q So you would have had to design structurally
4 for that phenomenon --

5 A Yes.

6 Q -- occurring?

7 A Yes.

8 Q Camp Lejeune is not in California last time I
9 checked?

10 A That is correct.

11 Q Where did the design and engineering and
12 problem solving that gave rise to this project come
13 from?

14 A From Walden Structures.

15 Q And where -- where, specifically, in the
16 universe?

17 A It depends on -- well, Southern California,
18 first off. And it could have occurred in Riverside, or
19 it could have occurred at Mentone.

20 Q But you are confident that the design and
21 development that happened here happened inside the
22 borders of the State of California?

23 A Absolutely -- of Walden structures.

24 Q Okay. I want to show you page 6 of Exhibit
25 18, which is WSI-0459.

1 Actually, let's skip two pages ahead of that,
2 0461.

3 Can you tell us what is depicted in this
4 drawing?

5 A Well, it's one section of a container --
6 shipping container. Typical shipping container we use
7 was an eight foot wide -- basically, eight foot tall and
8 40 foot long.

9 Q Okay. And we have Mosque 1 and Mosque 2, kind
10 of, lumped together here, but are they the same
11 building?

12 A No, they are not.

13 Q Okay. How are they different?

14 A Um --

15 Q At a high level.

16 A I may -- I'm pretty sure Mosque 1 was for Camp
17 Lejeune, and that was a two-story structure. And then
18 we did one, if not two, at Range 215 which is 29 Palms,
19 which is a three-story.

20 Q Okay.

21 A But I do know we had three stories on Camp
22 Lejeune as well.

23 Q Okay. I think we covered the challenges of
24 cutting holes in the floor. I don't want to go through
25 that again.

1 MR. DIES: Edith, can you pull up WSI -0420?

2 BY MR. DIES:

3 Q I don't have beautiful photographs of the
4 Mosque, but is this a depiction of one of the Mosques?

5 A It is. And this is actually a larger -- so,
6 if you were to look at this in plan view, there's
7 actually multiple buildings here.

8 So, this is a courtyard, so there is a large
9 square. This is one side of that courtyard. This is
10 the other side of that courtyard. Inside that courtyard
11 was a two-story structure. These were eight foot wide,
12 eight foot tall, and 40 foot long.

13 So we are looking at -- all I'm trying to say
14 is there's a couple of structures we are looking here.
15 The Mosque was a two-story structure set in a courtyard
16 with a dome on top of it.

17 Q Can you -- can you pretty quickly break down,
18 like, rail cars? I can see lots of squares, but, I
19 mean, we have lots of rail cars that are standing up end
20 to end. Help me, kind of, paint a picture.

21 A So this is an eight-foot-by-twenty-foot
22 container. It's turned on its end.

23 So this is eight foot. This is 20 feet long,
24 and it's standing upright. This is most likely two --
25 and I'm not certain -- it's most likely a 40-foot

1 container and another 40-foot container, and then
2 another eight foot -- it could be 20 -- let's see. This
3 is a 20. So this would be an eight foot by 20 standing
4 on its end.

5 Q Okay. At the time you undertook to build
6 Mosques 1 and 2, did you guys have certainty as to which
7 methodology you were going to use to configure these
8 rail cars and create this structure?

9 A No, other than perhaps a concept.

10 Q Okay. So they may say, "I want four columns
11 of courtyard and a three-story dome in the center," but
12 as far as figuring out how to do that with the materials
13 that were supplied, that was Walden?

14 A Walden.

15 Q Okay. Let's move to Genentech.

16 MR. DIES: You guys, it's 12:20. Do y'all -- this
17 is a -- before -- I don't think I'm going to do a ton of
18 time on Genentech. I am going to now start focusing on
19 the key challenges, but if y'all want to eat?

20 JUDGE THOMPSON: That sounds good.

21 MR. DIES: Okay.

22 JUDGE THOMPSON: Why don't we come back at 1:30?
23 Does that work for Appellant? Does it work for -- let's
24 do that.

25 MR. DIES: All right. Is it okay if we leave

1 materials in here? You are going stay here?

2 JUDGE BRAMHALL: I'll grab something and come back.

3 MR. DIES: No, no, no. I'm not going to pack this
4 stuff up.

5 JUDGE BRAMHALL: I have my stuff too.

6 MR. DIES: Okay. All right.

7

8 (Recess at 12:22 p.m.)

9

10 MR. DIES: Before we left off, we were going to
11 begin with the Genentech project, which I understand
12 we'll probably be pulling up -- for those of you who
13 have got stuff in front of you -- these are going to
14 generally be Exhibits 22, 23, 24.

15 And, Ms. Gonzales, can you pull up the first,
16 I guess, page WSI-0234 from Exhibit 22?

17 BY MR. DIES:

18 Q All right. And, Mr. Lord, we talked a little
19 bit about the Genentech project earlier when Mr. Walden
20 was here, but can you very briefly, sort of, remind us
21 what we were doing with this particular project?

22 A So a very irregular-shaped building. First
23 off, so -- matter of fact, I am going to go over there
24 in --

25 Q Sure.

1 A This is only half of the building. So since
2 it's so long, I think this is 96 feet long. We broke
3 the building. This is one-half of the building. These
4 are reg module, and this is another half of the
5 building, longer modules. Then you have 70-foot modules
6 that ran down that way.

7 It's a very irregular shape, which brings in
8 all kinds of drag ties in the reiterate corners, just
9 all kinds of special structural engineering.

10 Q Okay. Can you give us some examples of -- of
11 that special structural engineering, maybe by pointing
12 to the module, either on this page or on the next page,
13 which is, I think, the other part --

14 A So this is called a reiterate corner, and what
15 we are having to do is drag the diaphragm from this unit
16 across into this unit, all pull together. So there was
17 these series of double rafters with some real heavy-duty
18 ties and all the modlines across here. Just one example
19 of special engineering.

20 Q Okay. And we have talked some about clouds
21 and some revisions before, and I don't want to just blow
22 up that section, but that particular drawing that you
23 have got here is a production drawing; is that correct,
24 sir? Can you tell?

25 A Yes. It looks like it. Yes.

1 Q Okay. And there are four revisions in this
2 particular drawing?

3 A Yes.

4 Q Okay. And when we look at this layout, which
5 I think you said is one section of the floorplan, there
6 are a number of double diagrams that appear to be
7 electrical in nature?

8 A Well, no.

9 Q Okay. Tell me -- I'm going to stop being
10 the expert. What are the bumps in the A-frame?

11 A I'm sorry?

12 Q What are the clouds?

13 A The clouds are indicating added information at
14 a given time, so I can't see where the delta is at on
15 that, but somewhere there is --

16 Q Let me -- let me -- go ahead.

17 A That --

18 Q Is this --

19 A That would key into wind.

20 Q Okay.

21 A But I can't see what that reads.

22 Q Let me show you WSI-0236.

23 MR. DIES: It is on same exhibit. And, Edith, if
24 you could, just highlight a couple of clouded sections.
25 Let's do this. We have a section on the right-hand side

1 that says "roof system ridge beam."

2 Right there.

3 JUDGE THOMPSON: Can you repeat that page number
4 again for me, please?

5 MR. DIES: Yes, sir, WSI -0236.

6 BY MR. DIES:

7 Q So we have a cloud section around this part of
8 the drawing. Can you tell us what it appears to be
9 addressing?

10 A Well, so this is all structural information,
11 first off. And so with a delta No. 3, we key back to
12 the revision box, which gives you the time.

13 But this is where -- so, evidently the
14 structural engineer has finished his calculations. So
15 now we are starting to bring the drawings up from
16 preliminary construction up to production stage.

17 Q Okay.

18 A Adding all the very specific information, we
19 are specifying the trusses, the C channel beams, and
20 certain modlines, channels of the back-to-back
21 connection, specifying the post. It just says "Post on
22 the modlines," and we have given out post dimensions
23 here for production so they know how high to cut them.

24 We've given out framing specifics for all the
25 rafters, the spacing of the rafters, specifying -- so

1 over to the left-hand side of that floorplan page, there
2 was a cloud where we added double rafters to support
3 fire sprinklers and cable trace support locations.

4 Q Okay.

5 A So much of this is well above our standard.
6 This is not a standard product.

7 And then we have a graded roof. So, pretty
8 much, all specialty structural information.

9 Q And I'm not going to switch it on the screen,
10 but Exhibit 23 is a series of the Wood engineering calcs
11 similar to those we talked about before. Do you see
12 that?

13 A Yes.

14 Q These would have been the calculations that
15 would have been done in the Genentech case to test the
16 design, and, if necessary, to make provisions?

17 A Exactly.

18 Q So you would have followed that same process?

19 A Yes.

20 Q Okay. There was some discussion earlier about
21 cabling and cable trays. Can you walk us through from
22 an engineering and design standpoint why that was a
23 challenge for you in the Genentech building?

24 A Well, what it's doing is adding additional
25 loads to the roof system. It -- it's going to support

1 off of the rafter that's going to run between the
2 trusses, but it's all going to come out and bear on the
3 trusses.

4 So there's where the trusses may have to have
5 been increased in depth as well as cord sizes, top to
6 bottom cord sizes, and potentially even for left and
7 diagonal material sizes.

8 Q Cable really that heavy?

9 A It can be when you have got hundreds of cables
10 together.

11 A cable tray typically is about 12 inches --
12 it looks, kind of, like a ladder, and it supports off of
13 all-thread rods, off of double rafters in the roof
14 system.

15 There may be bundles of cable, you know, three
16 inches in diameter across a twelve-inch ladder, so it
17 could, you know, cumulatively add up to a lot of weight.

18 Q Okay. And had you dealt with cable tray
19 design and oddly-shaped building before in your work
20 before Walden?

21 A No, not specifically. We may have had cable
22 tray runs, but each one is going to be a specific
23 engineering review for the amount of cable expected in
24 it.

25 Q Okay. So you can't take a design from a prior

1 cable run and just drag it along the length of one of
2 these buildings?

3 A No, sir. Nor would it apply to trusses
4 specifically.

5 Q Okay. I want you to show you Floorplan B,
6 Section Floorplan -- Floorplan B, which I think is
7 02345.

8 Do you see that, sir?

9 A I do. It's not very clear, but I can see it.

10 Q Is this the -- part of the electrical system
11 for the building?

12 A No. That is the floorplan. And, again, this
13 is representing structural changes.

14 Q Okay.

15 A So you would have this plan in several pages
16 back. It would be in the E Series plans.

17 Q Okay.

18 A The E-1 or E-2, maybe 3, 4.

19 Q Okay. I want to go back to W -- go forward or
20 WSI-0237 very quickly.

21 And at the very bottom there, there's a couple
22 of clouds drawn around some metal backing detail.

23 Can you tell us what's going on here?

24 A Here?

25 Q Yes, sir.

1 A Obviously -- or apparently, the customers had
2 some very special something -- furniture, cabinets --
3 I'm not quite certain of it but had some very specific
4 requirements for backing.

5 So what we are representing here, we are
6 putting some, it looks like 30 gauge -- it's hard to
7 read but I think it says 12 inch by 30 gauge material
8 running across the top of the studs in very specific
9 areas.

10 Q At a high level, the customer wants to hang
11 something heavy from a wall?

12 A Yeah.

13 Q You are literally having to engineer that part
14 of the wall to be able to handle the load of what they
15 are trying to hang on it?

16 A Correct. Obviously, studs weren't sufficient
17 or -- or spacing wasn't appropriate, so we ordered solid
18 blocking.

19 Q Okay. I want to go to section -- or to page
20 0245. I'm not going to ask you to read each one of
21 those numbers.

22 Is this electrical?

23 A So what this is is the panel schedules --

24 Q Okay.

25 A -- of the building.

1 Q Okay.

2 A Apparently -- so there was 18 electrical
3 panels on this building, maybe every other floor had
4 one, something like that.

5 And you can tell here that there was a series
6 of revisions which would correspond to these. So it was
7 revised multiple times once it was revised on Delta 1,
8 2, 3, 4, and 5.

9 Q Okay. And for the uninitiated, when you say
10 it was revised Delta 1, 2, 3, 4 and 5, there are some
11 triangles at the bottom of that?

12 A Yes.

13 Q These are what you are referring to as deltas?

14 A It's called a delta, yes.

15 Q And that would correspond to the revision
16 section up at the top?

17 A Yes.

18 Q Okay. So if -- if our Esteemed Panel wanted
19 to have some night reading and dive through these
20 drawings, they could actually track a particular
21 revision to a particular change in the engineering and
22 design by matching up the triangles with the numbers?

23 A Yes.

24 Q Okay. And I won't go through what we went
25 through earlier, but the engineering system design here

1 had to follow the same process as we have in other
2 cases?

3 A Yes.

4 Q There were HVAC challenges --

5 THE REPORTER: What?

6 MR. DIES: I'm sorry.

7 BY MR. DIES:

8 Q We would have had plumbing issues and other
9 things as well?

10 A Yes.

11 Q And so all of those systems had to work
12 together?

13 A Yes.

14 Q And you had to systematically using CAD resolve
15 conflicts and things like with the computer modeling?

16 A Yes.

17 Q Come up with your preliminary design?

18 Engineers sign off on the parts that the
19 engineers sign off on or test with calcs?

20 A Yes.

21 Q Make changes if necessary?

22 A Correct.

23 Q And then finalize the design?

24 A Yes.

25 Q Now, we haven't talked about what happened

1 when you finalize a design. Does everything go as
2 planned?

3 A Not always.

4 Q Are there times when a design is approved,
5 Charlie's folks are in the shop building it, and you get
6 a call saying, "Cool drawing but this won't work"?

7 A Yes.

8 Q Okay. And what do you have to do in those
9 situations?

10 A Well, it just all depends on the situation.

11 Q Okay.

12 A And it -- it doesn't just come from
13 fabrication. It could come from the customer. It could
14 come from a supplier issue. It could be a myriad of
15 issues. Whatever the specifics are, we would address
16 it.

17 Q And -- and the way you have to address that is
18 through a change order?

19 A Yes.

20 Q And we'll talk about those in a moment, but, I
21 guess, my point is, if a change order comes out and
22 says, "Make this 22 electrical boxes instead of 18," or
23 whatever, we've got to go back and reconfigure the
24 stuff, revisit it?

25 A Design it all and provide backup information

1 attached to that change order.

2 Q We have got to go back and systematically check
3 the conflicts the same way we did before and so on?

4 A Yes.

5 Q At the time that you undertook to design the
6 Genentech project, did you already know that you were
7 going to need 18 boxes with these specific
8 configurations?

9 A No.

10 Q Is that why it changed five times?

11 A I don't remember why, but it could have -- I
12 mean, again, a myriad of situations.

13 Q Okay. Okay. Let's shift to the Ynez
14 Elementary School. And that's going to be -- that one
15 is going to Exhibit 25 and 26.

16 Very quickly, you were present for
17 Mr. Walden's testimony about the fireproofing of the
18 corridor?

19 A Yes.

20 Q The challenges that were presented by that?

21 A Yes.

22 Q To your knowledge, had Walden ever dealt with
23 that situation in this context before the Ynez School?

24 A Not to the best of my knowledge, no.

25 Q Without asking you a bunch of repeat

1 questions, do you agree with Mr. Walden's testimony how
2 you had to work through this process?

3 A Yes.

4 Q Okay. There were also some discussions about
5 challenges in the school related to balconies.

6 A Yes.

7 Q There was a balcony, I believe, on the right
8 side of the school.

9 Can you walk us through, in a modular context,
10 what a balcony does and how that can present a design
11 challenge?

12 A So you might be able to go to that last page.
13 I could, at least, graphically show where the balcony
14 occurred.

15 Q The last page of 26?

16 A I think it was.

17 Q It is going to be -- that's impressive. It's
18 going to be WSI-0182?

19 A Right.

20 Q Is that -- do you have it in front of you
21 there?

22 A Yeah, it is.

23 Q Okay.

24 A So what this is representing is the balcony
25 system, which is a cantilever situation on the second

1 story. The first story and the second story were likely
2 the same configuration --

3 Q Okay.

4 A -- the balcony actually cantilevered out off
5 of the structural members along these grid lines and
6 supported this balcony.

7 So if you were to look at it as a
8 cross-section, there was a walkway below this, so the
9 balcony is going to allow exiting and egress out of the
10 classrooms that are on the second story. It would
11 support all those live loads.

12 Q Okay. And so what physically do you have to
13 do to allow that to happen from a modular standpoint?

14 A Well, it's all structural engineering, but
15 it's likely increased work sizes that cantilevered out,
16 because it's not -- it's not supporting roof loads -- or
17 it is supporting more loads because it's cantilevering
18 off of this. It's not supported at the outer edge and
19 likely these were concrete filled so, heavy dead inline
20 loads.

21 Q Okay. Is this something that would have had
22 to have happened in parts in manufacturing and in parts
23 at the sites? Meaning, would some of this construction
24 have had to have been built physically when they were
25 there present?

1 A It -- it could have. I don't know the ins and
2 outs on this project. It wasn't one of my projects.

3 Q Okay.

4 A If -- if this were a concrete floor system, it
5 could have been poured on-site, more than likely.

6 Q Do trusses have any impact on something like a
7 balcony system?

8 A Um --

9 Q Like, would the addition of the balcony
10 require you to change a truss?

11 A It could. This is Ynez school.

12 MR. ROUSE: It says "L.A. Unified School District."

13 MR. DIES: Yes, we can talk about that. We will
14 talk about that. Okay.

15 BY MR. DIES:

16 Q It does say L.A. Unified School District on
17 here. Can you walk us through that? What is L.A.
18 Unified School District?

19 A A great big school district, first. And so
20 there would be many, many schools within it.

21 Q Okay. Are there -- are there certain
22 protocols that Walden has to beat if they are going to
23 design a school in California?

24 A Yes.

25 Q Okay. And can you give some examples of

1 those?

2 A Yes. I briefly explained in our other product
3 line we call HCV Product, this is what we refer to as
4 DSA. So it's all approved through the Department of
5 School, I think, DSA -- I'm not quite sure what the
6 acronym stands for, but it's another agency.

7 Q Does that sound like Department of State
8 Architecture?

9 A Yes. Yes. That's right.

10 MR. DIES: For the record, Charlie whispered the
11 answer in my ear.

12 THE WITNESS: Correct.

13 BY MR. DIES:

14 Q Okay.

15 A So it's a different system. It's approved
16 through a very centralized approval, the DSA Department.
17 And it's different than CD approvals.

18 Q Okay. So when you design a school for them, I
19 see that, you know, sometimes we use these DSA terms and
20 that kind of thing. What you are denoting to the folks
21 who have to look at these drawings is we have to meet
22 the certain requirements they have given us?

23 A Yes.

24 Q So, for example, Charlie mentioned earlier,
25 sprinklers may be required in all schools?

1 A Yes.

2 Q There was discussion about the fireproofing.
3 That's probably a requirement. The kids have at least
4 an hour to get out of the school if a fire were -- were
5 to attack it, that kind of thing?

6 A Yes. Especially in that -- that specific.

7 Q Okay.

8 MR. ROUSE: I'm still a little confused. This is
9 for the Ynez project?

10 THE WITNESS: Right. John?

11 BY MR. DIES:

12 Q Yes, go ahead.

13 A So I kind of stopped short of completing that
14 thought process.

15 So one of the big differences is, is they
16 approved plans in what they call P.C. That's an
17 acronym. I believe it stands for precheck.

18 So we will have schools. They could be built
19 for up to a 96 by 40. We have two-story buildings of
20 varying lengths and sizes. So that's why you may see a
21 page with L.A.U.S.D. because this comes out of a P.C.

22 But then you'll get a very specific plan on
23 Ynez School.

24 Q Okay.

25 A So that's why you can see different drawings.

1 One comes out of a P.C. set, which is more of -- it was
2 not a specialized design or -- or may not have been.
3 Whereas, maybe the information in the Ynez set was more
4 specific.

5 JUDGE THOMPSON: Mr. Rouse, you'll have an
6 opportunity to cross --

7 MR. ROUSE: All right.

8 BY MR. DIES:

9 Q The discussion of the corridor split over
10 modlines, is that an example of something that would
11 have been unusual as well? Yes?

12 A Not necessarily that but the back to front.

13 Q Okay.

14 A So my understanding of this --

15 Q Okay.

16 A -- was in -- for some reason, I don't see that
17 set of plans, but I believe it was a two-story building,
18 and that's where that fire-grid corridor is in that
19 front -- back to front connection.

20 Q Okay. I want to direct your attention to
21 Exhibit 24. And can you tell us -- it's labeled at the
22 top "Internal Change Order"?

23 A Yes.

24 Q We talked a moment ago when we were dealing
25 with Genentech about change orders?

1 A Yes.

2 Q Can you tell us physically what's happening
3 with a change order like this?

4 A This so our mechanism to make changes to a set
5 of production plans that went on the floor to introduce
6 new information, changes that have occurred for whatever
7 reasons.

8 Q Okay.

9 A So this was -- it was the standard form that
10 we did verbiage with. This maybe would have been,
11 again, accompanied -- normally would have been
12 represented here if it had attachments.

13 Q And would -- if necessary -- would new
14 drawings and calculations sometimes need to be done with
15 the change order?

16 A Yes, if necessary, if it involves structural.

17 Q One of the things I think was covered in the
18 site visit when we were there in 2011 is the notion that
19 sometimes fire sprinklers, and things like that, you
20 won't get specs back on those until we're way far down
21 the process on something like this?

22 A Possible.

23 Q And so let's say the fire sprinklers in a
24 school like this, you are down the design process, and
25 then you get the detail as to what they are going to

1 demand for fire sprinklers.

2 Would we have to go back through to figure out
3 what to do from a design standpoint to allow for that?

4 A Yes. It would, at the very least, have to be
5 verified.

6 Q Okay.

7 A If the P.C. already had that capability, and
8 if not, we would have to do special calculations
9 additional.

10 Q Okay. And I'll just do a couple hypotheticals
11 here.

12 If, for example, the sprinklers added a load
13 to the roof, would you have to revisit structural calcs
14 to the roof?

15 A Yes.

16 Q Okay. And then if you run the calcs and it's
17 okay, you don't have to change the drawings and design;
18 is that a possible outcome?

19 A It's a possible outcome.

20 Q But if it does change the loads in a way that
21 makes a difference, we've got to go and revisit trusses
22 and things like that?

23 A Correct.

24 Q Okay.

25 JUDGE THOMPSON: When is P.C. --

1 THE WITNESS: So P.C. in the DSA use is precheck or
2 prechecked.

3 So it was, kind of, like standard plan
4 approval for different building configurations.

5 BY MR. DIES:

6 Q Would it be fair to say that that acts as a
7 starting point for you when you are going to do
8 something custom like Ynez School?

9 A Yes.

10 Q Okay. When you guys were putting together the
11 design for the Ynez School, did you have uncertainties
12 as to which methods you were going to use to deal with
13 some of these issues?

14 A Yes.

15 Q Was the appropriate -- final appropriate
16 design obvious to you at the outset?

17 A No.

18 Q I want to shift gears next and talk about the
19 Welk Resort, and that is going to be found in Exhibits
20 14 and 15.

21 Can you tell us -- let's go to the first page
22 of the actual drawings, and I'll let you guys catch up.
23 Let me know when you've got it in front of you. Aren't
24 you glad I bound these separately? Heavy. They looked
25 at me like I was crazy at the airport.

1 Okay. We've got in front of us the Welk
2 Resort.

3 Was this a new home center, sir?

4 A I believe it is, yes.

5 MR. DIES: Edith, can you zoom in on the actual
6 drawing itself, the layout?

7 BY MR. DIES:

8 Q And was this a custom project that you guys
9 undertook?

10 A Yes.

11 Q Can you tell us a little bit about the -- the
12 building and challenges that it presented?

13 A Yes. So, I mean, there's all kinds of
14 information that's represented here that would be
15 clearly obvious, but -- so we have -- normally, we would
16 have a roof slope that would bear from end wall to end
17 wall, and it would peak normally in the center. So this
18 we call a gable roof. It actually peaks in the center
19 of the building.

20 So there's all kinds of specialties that are
21 occurring in this building. First off, it's a 45-foot
22 building. That's a special design. We had 40 footers.
23 We may have had a 44 footer. We had a 60 footer, but we
24 certainly didn't have a 45 footer.

25 Q Okay. Let me show you page 5 of this exhibit.

1 You were talking about the gabled roof. Does this help
2 you, sort of, better articulate what we are dealing
3 with?

4 A Yes. We are representing that we have a
5 different roof system.

6 Q Okay.

7 A To only bring to attention because it's
8 different than normal.

9 Q Okay. Separate engineering.

10 Would you have used a truss for this building?

11 A I'm not certain. I doubt it. We probably
12 used a C channel, just because it's a 45 foot.

13 Q Okay.

14 A So in our standard structural package, we
15 would have beams that would have spanned 40 easily,
16 maybe a 42-foot span -- nothing at a 45-foot span.

17 Q How would you normally support a beam like
18 that in a gabled roof like this?

19 A Well, it could be supported with intermediate
20 posts, but in this application, the customer wanted
21 clear-span So these were supported at the very outside
22 ends of the building.

23 Q Does this building have a double door at the
24 entrance?

25 A It does.

1 Q And can you tell me from a design standpoint,
2 what is the significance of a double door going into
3 this resort center?

4 A So, your support posts are right here on
5 either side of this center, this modeling.

6 Q So you draw a center -- you've drawn a post
7 basically where the door is supposed to go?

8 A Right where it should have been, yes.

9 Q Okay. What did you do to address that
10 situation?

11 A So very special engineering to do what we call
12 a cantilever header design. So we have a series of
13 posts that occur in the wall, and a large structural
14 steel beam comes across here. So cantilevers support
15 goes here. This beams is cantilevering out, bolted
16 together at the midline, and the same thing occurring on
17 the other half, being supported by post to post.

18 Q Can I ask you a favor? Can you switch sides
19 on this drawing? I think --

20 A I don't know which is best.

21 Q I am scared if you point to those things, our
22 Judges may not be able to see what you are pointing to.

23 So you pointed to this canti -- what did you
24 call it? -- cantilevered --

25 A Cantilevered. Cantilevered header design.

1 Q Okay. Would that have been something you
2 could use with a different building, or was this custom
3 to this situation?

4 A Well, it's custom in this situation because
5 it's like twice the span of what we perhaps have used
6 before.

7 Q Okay. And to do this a little more quickly,
8 you would have to do a preliminary design like this?

9 A Yes.

10 Q And is this the production line we are looking
11 at right now? Can you tell?

12 A I think it says production. I'm not sure.
13 It's hard to read.

14 JUDGE BRAMHALL: Yes.

15 BY MR. DIES:

16 Q There you go. The print is kind of tough.
17 There would have been a preliminary drawing.
18 We have gone through the same thought process, and
19 everything we just showed these folks a few times by
20 now?

21 A Yes.

22 Q Okay. And this also had what's called a
23 coffered ceiling?

24 A Yes.

25 Q Can I show you Exhibit 14, WSI-01508? Can you

1 see that?

2 Can you tell us what a coffered ceiling is?

3 A So this is a reflective ceiling plan. What we
4 are doing here is showing anything that's in the
5 building above four-foot height, specifically roof
6 framing and ceiling framing.

7 So what we are indicating here is that we have
8 got some odd shapes. So if we could read this, we would
9 see that this height ceiling here and these two here are
10 different heights.

11 Furthermore, you would see that the height of
12 this ceiling, there's a border occurring here, so the
13 coffer is, it is a term that, in very simple forms, is a
14 step-in ceiling heights.

15 So I think we may have had three different
16 ceiling heights in this building.

17 There's -- I think there's a cross-section
18 that actually shows that.

19 Q Is that common in modular design?

20 A No.

21 Q Okay. And what are the -- help us understand
22 at a high level what the engineering challenges are when
23 you are dealing with multiple ceiling heights in the
24 same structure in a modular context?

25 A Well, so, you would have different planes of

1 support for your ceiling. So we would have had a higher
2 ceiling support system at this outer border and then
3 another support system that occurred above it in this
4 inner -- especially here.

5 I'm not certain what's going on here, but
6 these are definitely the coffer ceiling.

7 Q Okay.

8 A So two different support systems and it's all
9 hanging from the rafters.

10 Q Okay. Sort of in the interest of time, all
11 this stuff we've talked about with regards to electrical
12 systems plumbing, HVAC, would that apply to something
13 like this?

14 A Yes.

15 Q Would a coffered ceiling in a modular building
16 impact things like running HVAC?

17 A Yes.

18 Q Why?

19 A Less room to run -- to have -- less
20 interstitial space between the bottom of the rafter and
21 the top of the ceiling to run your ducts, flex ducts and
22 branch ducts and your registers.

23 Q Okay. So you would have systematically had to
24 walk through the configuration of all this stuff for
25 conflicts the same way we have been talking about

1 today --

2 A Yes.

3 Q -- to try to solve that problem?

4 If I asked this, I apologize.

5 The calcs you did for changing the door
6 structure, the roofing, these other things, would have
7 gone to an engineer in the same way we have discussed?

8 A Yes.

9 Q And systematically if the engineer comes back
10 and says this won't work, you are going to go back and
11 revisit the drawings and keep doing that until we get to
12 a place where we're production ready?

13 A Yes.

14 Q I want to shift gears now to Mammoth Lakes.

15 JUDGE THOMPSON: Before we leave the coffer
16 ceiling, why was the coffered ceiling needed?

17 THE WITNESS: It's -- and here's the cross-section
18 I was referring to.

19 BY MR. DIES:

20 Q Okay.

21 A So if you were to just look straight across
22 this and look at that cross-section, so this is that
23 lower ceiling. This is that higher ceiling. So, again,
24 a structural plane of support for this ceiling and a
25 second structural plane of support for this ceiling.

1 It was -- it's a new home sales center, and it
2 was just an architectural feature that the customer
3 wanted to, you know, a little bit of pizzazz.

4 Q Okay. So they may think it looks good, but
5 from an engineering standpoint, whether you like how it
6 looks or not, you have got to design around this?

7 A Yes.

8 Q Okay. At the time you undertook to build the
9 Welk Center, did you have certainty as to the methods
10 you were going to use to handle these coffered ceilings,
11 this different roof, and --

12 A No.

13 Q Okay. Was it the most appropriate design
14 known to you at the time you undertook this project?

15 A No.

16 Q And did you systematically try to resolve
17 these things you didn't know by working through this
18 process we have discussed?

19 A Yes.

20 Q And the same way you would have on all six of
21 these projects?

22 A Yes.

23 Q Are we ready to move on to the Mammoth
24 Schools? I keep calling it Mammoth Schools. It's a
25 dormitory project. Mammoth Lake which is Exhibit 17.

1 And I want to be mindful and not repeat a bunch of stuff
2 that Charlie talked about or you have discussed.

3 We have already dealt with seismic. We've
4 already dealt with snow loads and how those two work
5 together. We have already dealt with the fact this is
6 being installed in a remote area with a short season, so
7 it had to happen quickly and the design implications of
8 all that.

9 A Yes.

10 Q I want to talk to you about weather.
11 Obviously -- is this a ski area in California?

12 A Yes.

13 Q From a weather standpoint, what are we looking
14 at in terms of the temperatures that this building has
15 got to be able to handle?

16 A Oh, probably well below zero.

17 Q Okay. In modular construction, does that
18 present a challenge?

19 A Not necessarily. But --

20 Q Okay.

21 A But the time in the year that you work and can
22 get foundations and whatnot has a great effect on it.

23 Q Okay. Let me ask you this: There's been some
24 discussion about a heater boiler system?

25 A Yes.

1 Q That was different here. Can you tell us a
2 little about that situation and why it presented a
3 challenge for Walden?

4 A Well, just very different, first off. It
5 would have been a first time.

6 And this is a very large project. I don't
7 know what the total square footage was, but it was a
8 total of 72 units. Each one of these represents a unit.
9 This was one-half -- this is the first-story floor plan,
10 second-story floor plan, and the roof.

11 So chiller system, it does two things. It's
12 heating, and it's cooling. So it could be used for
13 heating and cooling. It's also the best water supply.

14 In this case, they were also going to use it
15 to heat the roof structure. This roof structure was a
16 truss system that was going to be site constructed and
17 set on top of the buildings that were fabricated in the
18 factory.

19 Again, extreme temperatures. There could be
20 ten foot of snow sitting up on top there, and the fire
21 sprinkler system running in those -- those trusses.

22 Q Okay.

23 A And they were actually going to have some
24 ambient heating going with some radiation heat up there
25 with the -- with the boiler heating.

1 Q So that's to keep the sprinkler from freezing
2 over?

3 A Exactly.

4 Q And what kind of heating and AC systems would
5 you typically use in modular construction or -- at least
6 for Walden?

7 A Well, typically, an air conditioner or a heat
8 pump. And it would be an in-wall mount or roof-top
9 mount package unit.

10 Q Okay. How does something like that function
11 differently from the system you were going to have to be
12 working with here for the first time?

13 A That uses a refrigerant of whatever type to
14 produce heat and/or cold in an AC. It would have a heat
15 strip, so electrically charged heating element that a
16 fan blows air across.

17 So in this, it would be hot water that is
18 running through a series of pipes going to radiation
19 units. So they are -- I don't know whether they were
20 fan driven as well, but there are small heaters like you
21 would see on the East Coast. We don't see it too much
22 here on the West Coast, but it's a radiation heat
23 system.

24 Q Okay.

25 A Rather than a fan-blown cooling system like we

1 have here.

2 Q Going back to this notion of the temperature
3 extremes that you have been dealing with in that area,
4 are there thermal properties of a modular structure that
5 had to be taken into consideration for something like
6 this?

7 A Not unusual to static construction, maybe
8 thicker walls?

9 We -- we have to abide to the same Codes that
10 Charlie, I think, called it static or conventional
11 construction. We're -- we're building to the same
12 Building Code.

13 Q Okay.

14 A And to the Model Energy Code.

15 So the fact that it's modular doesn't
16 necessarily mean it's worse or better.

17 Q Well, I guess what I am getting at, though, is
18 what limitations do you have from a modular standpoint
19 that they don't have from a, sort of, sticks-and-stones
20 traditional construction perspective?

21 A Lots of crossovers what we call pre-modlines.

22 Q Okay.

23 A So you would not only have horizontal
24 crossovers between a level of construction, but then you
25 would also have to go vertical to get into the second

1 story and into the third story.

2 Q So keeping frigid air out of the connection
3 points, all of these different places where these 72
4 units are being put together, is something you guys are
5 going to have to design around?

6 A Yes.

7 Q And this had to meet certain energy efficiency
8 requirements as well; is that correct?

9 A Yes.

10 Q And did this project follow the same process
11 that we have discussed so far?

12 A Yes.

13 Q Okay. At the time you undertook to build the
14 Mammoth Lakes School, did you have certainties as to the
15 methods you were to use to solve some of these problems?

16 A No.

17 Q And did you systematically try to -- using
18 computer modeling, engineering calcs, and so on, test
19 your design to see if it would work?

20 A Yes.

21 Q And ultimately -- and, I think, Charlie
22 mentioned this -- the customer decided not to go through
23 with the project.

24 Do you have any extra information on the why
25 there?

1 A You know, I -- I remember a couple of
2 speci f i c s. I t' s b e e n s o l o n g n o w --

3 Q Okay.

4 A -- memory seems to fade a l i t t l e b i t.

5 I know cost was one of them. S o t h e a r c h i t e c t
6 c o n t i n u e d t o a d d f e a t u r e s w h i c h t h e s a l e s g r o u p h a d t o
7 r e p r i c e , s o i t k e p t d r i v i n g t h e p r i c e u p.

8 There were even things l i k e -- s o t h i s w a s
9 v e r y -- I t h i n k t h i s w a s -- I d o n ' t k n o w f o r s u r e t h e
10 t i m e l i n e , b u t -- s o t h i s a r c h i t e c t w a s u n f a m i l i a r w i t h
11 A D A r e q u i r e m e n t s , a n d w h a t i t w a s g o i n g t o d o w a s
12 f o r c e -- w e w e r e g o i n g t o h a v e t o h a v e a d e s i g n c h a n g e
13 t o t h e f i r s t s t o r y.

14 Five percent of the dorms were going to be a
15 d i f f e r e n t d e s i g n f r o m t h e r e m a i n i n g 9 5 p e r c e n t o f i t.

16 Q And real quick, I think we all know what
17 y o u ' r e t a l k i n g a b o u t w h e n y o u s a y t h e a r c h i t e c t w a s n o t
18 f a m i l i a r w i t h t h e A D A r e q u i r e m e n t s.

19 A Larger bathrooms, special s h o w e r f i x t u r e s ,
20 l a r g e r r o o m s b e c a u s e o f t h e t u r n i n g r a d i u s f o r a p e r s o n
21 t h a t i s w h e e l c h a i r - b o u n d t o b e a b l e t o a c c e s s , y o u k n o w ,
22 t u r n a n d u s e t h e f e a t u r e s o f i t.

23 Q From a -- from a modular standpoint, does it
24 c r e a t e a p r o b l e m i f y o u h a v e o n e u n i t s t a c k e d o n a
25 d i f f e r e n t s h a p e o r d i f f e r e n t l y c o n f i g u r e d u n i t b e l o w i t?

1 A Very much so.

2 Q Okay. I think you said all these things
3 continued to add costs and suddenly became prohibitive?

4 A Yes.

5 Q That's part of the issues. All right, sir. I
6 think we have covered the six projects. You can
7 probably take a seat now. I think we'll be pointing to
8 a whole lot more that folks can't see.

9 I do want to talk to you very briefly about
10 some of the work that was done to gather this
11 information that went into the claiming of the credit,
12 if we can.

13 A Okay.

14 Q Your team is the engineering team?

15 A Yes.

16 Q And tell us the kinds of professionals you
17 have on that team?

18 A Very unique staff.

19 So our draftsmen, first off, unlike many
20 architects may employ, they -- they have some talents
21 that are -- are -- that make them very valuable.

22 So in a typical project, we would give one
23 draftsman a projects, and he would work directly with a
24 supervisor. Depending on the size, it may be two
25 draftsmen, too much detail to do for one person.

1 But what I am trying to get at, is that person
2 would not just do the floor plan, architectural-type
3 detail. They would also do mechanical design,
4 electrical design, and plumbing designs.

5 So in those, we were using the Code books, and
6 there's given tables for flow values and pipe sizes and
7 slopes, and all of this stuff. And so what I am trying
8 to get at, our draftsmen were very much engineering,
9 if you will, but they weren't providing P.D. services.

10 We did engineering -- we did engineering on
11 every single project we did. We made our panel
12 schedules, we -- we, you know, did all the proper
13 calculations, all within Code allowances.

14 Q Okay. And then did you also know Mr. Kip
15 Anderson?

16 A Yes, sir.

17 Q Okay. What side of the house was he primarily
18 focused on at the time we are talking about -- the '03
19 to '06 period?

20 A When you say "the house"?

21 Q Walden -- I mean Walden's business. What was
22 he -- what was he overseeing Walden's business during
23 this period we are talking about?

24 A Kip oversaw everything.

25 Q Okay. In terms of construction, you have

1 manufacturing supervisors at Walden. Yes?

2 A Yes.

3 Q Could you give me a sense of what those folks
4 might be doing?

5 A Well, of course, they are taking our drawings
6 in 2-D and building to them. They also are a very
7 unique staff for the fact that we build on a -- what we
8 call a chassis. It has tires underneath it, and a hitch
9 on the front of it, so it's elevated above the ground.
10 It's not fixed construction like this where you are
11 working at ground level.

12 And the production line is constantly moving
13 so we are working at a very rapid pace.

14 Q Okay. And when problems arose with designs or
15 construction issues, who would -- who, with Walden,
16 worked together to walk through those problems and
17 issues?

18 A Engineers and production.

19 Q Okay. So physically what happens? Do you get
20 in a room with these guys? I mean, help us understand,
21 you know, how you solve these problems.

22 A They would bring an issue to our attention,
23 whatever that issue is, and, you know, it may take
24 multiple individuals to determine the change or maybe as
25 simple as just writing a change order specifying some

1 small change, but -- but that's, you know, in the
2 simplest form. That's how we do -- would go about it.

3 Q Would your engineers also discuss
4 constructability issues with this team, kind of, when
5 they are in the process of putting together designs for
6 this stuff?

7 A From a structural standpoint, probably not.

8 Q Okay. How about -- we saw some production
9 drawings earlier when people are explaining things like
10 how to attach that parapet on the Bramasol project or
11 whatever.

12 Who at Walden would work on those things?

13 A Well, the engineering manager and the
14 draftsman and the structural engineer.

15 Q Okay. If I can, I'd like to shift your
16 attention to the time when Walden was gathering the
17 information to claim the credit we are talking about
18 here today.

19 A Okay.

20 Q Okay. Did you play a role in the gathering of
21 that information?

22 A Yes. I gathered it.

23 Q Okay. You gathered it for the folks you were
24 working with; is that fair to say?

25 A Yes. At Kip's direction. Normally, it was on

1 a yearly basis.

2 Q Okay. I want to show you Exhibit 10 very
3 briefly.

4 MR. DIES: And, guys, this is going to be in the
5 binder.

6 Edith, if you can zoom in. Let's go to the
7 next page. Zoom next on one of the calculations that
8 has a percentage.

9 BY MR. DIES:

10 Q So we have a large number of employees at
11 Walden; is that right?

12 A Yes.

13 Q But we only took a very small percentage of
14 the wages at Walden for the R & D credit; is that right?

15 A Yes.

16 Q And Mr. Minor is going to be talking just a
17 little bit about that in a moment.

18 Physically, how did it come to pass that you
19 identified -- well, we've got a 25 percent here next to
20 someone's wage. What were you doing to gather the
21 information as to that percentage?

22 A Well, on the labor side, I really didn't
23 participate much.

24 Q Okay.

25 A It really would have been Kip that was

1 compiling that information for the production staff.

2 Q Right. And when we talk about the labor side
3 and the production staff, that's manufacturing
4 supervisors -- that's an example of that?

5 A That's one of them, yes.

6 Q Now, if we look through this document, there
7 are folks that have the title engineering next to them?

8 A Yes, absolutely.

9 MR. DIES: Edith, can you pull up an example?

10 BY MR. DIES:

11 Q The next page, let's go through --

12 A VOICE: Robert Garcia should have it.

13 MR. DIES: What?

14 A VOICE: Garcia. Last name.

15 BY MR. DIES:

16 Q This is just an example so everybody knows
17 what we're talking about. We have -- this is Jeremy Ray
18 Brown --

19 A Yes.

20 Q This is the same Jeremy Ray Brown that was on
21 the Allied Container drones?

22 A Yes.

23 Q But he worked for us?

24 A Yes.

25 Q You would have gathered information as to how

1 much of his time he spent designing projects?

2 A Yes.

3 Q Okay. And how would you know how much time
4 Jeremy spent doing this?

5 A Well, Jeremy was the only engineering manager
6 that we had for the military effort.

7 Q Okay.

8 A So 100 percent of his time was spent on
9 military.

10 Q Okay. And you went through all of the folks
11 on what we have been calling the engineering team and
12 figured out what percentages of their time they were
13 spending?

14 A Between Kip and I, yes.

15 Q Okay. Well -- and I'll get to Kip in a
16 moment. But I am focusing on the engineering team for
17 right now.

18 A Yes. Kip aided me in there. You know, I
19 would give an overall view of it, and we would have a
20 discussion.

21 Q Okay. So you guys collaborated to find out
22 what percentages you thought were reasonable based on
23 how you felt these folks spend their time?

24 A Yes.

25 Q And Kip then, also, did this very same

1 function for the folks that were manufacturing
2 supervisors?

3 A Yes.

4 Q So he would focus on the amount of time they
5 were spending with design and fixing problems with
6 custom building, et cetera, and he put percentages next
7 to that?

8 A Yes.

9 Q And then y'all submitted that information to
10 alliantgroup to run some calculations?

11 A Yes.

12 Q I'll talk with Mr. Minor briefly in a moment.

13 But before these calculations actually went on
14 a tax return or anything else, did y'all have a chance
15 to see what the numbers were and what the percentages
16 were and so on?

17 A Definitely Joel would have. I don't know
18 whether that was my concern at that point --

19 Q Sure.

20 A I was just doing as directed.

21 Q Fair enough. The R&D credit was not first and
22 foremost on your mind, I can imagine.

23 A Yes.

24 Q But at some point, you were provided with some
25 descriptions of how folks were spending their time with

1 percentages?

2 A Yes.

3 Q And you signed off on those descriptions for
4 those different folks?

5 A Yes.

6 Q Okay. Now, Mr. Minor signed off on some of
7 the ones for the manufacturing supervisors?

8 A Yes.

9 Q Do you know why that happened?

10 A You know, I'm not certain of it.

11 Q Okay. Then don't guess. We will ask
12 Mr. Minor.

13 About you -- but you played a role in
14 gathering this information that was brought forward in
15 the credit?

16 A Yes. From the engineering site especially.

17 Q And for the folks that you put these
18 percentages next to, were you comfortable that these
19 numbers were reasonable?

20 A Yes.

21 Q Okay. Did anybody ask you to raise a number
22 or make a number higher in a way that you thought didn't
23 represent how they were spending their time?

24 A Not that I can remember. And I was in the
25 same room with all of these individuals as well.

1 Q Okay. This is physically a collaborative
2 effort?

3 A Yes.

4 Q And then you also spent time actually on the
5 phone talking with the consulting firm as how to know
6 which time to focus on for purposes of these
7 percentages?

8 A Yes.

9 Q Okay. And we will talk to Mr. Wonish about
10 that in a moment.

11 Mr. Lord, I may have a few clean-up questions.
12 And I think that's all I have for you right now.

13 Did you guys want to look at cars? Or do you
14 think you are good still?

15 JUDGE THOMPSON: Mr. Rouse, you are going to be
16 doing the questioning. Do you have an estimate?

17 MR. ROUSE: Mr. Riley.

18 JUDGE THOMPSON: Mr. Riley?

19 MR. RILEY: 2:30. I would say, probably, take an
20 hour. We'll take -- we'll take our full amount of time
21 if you want to move cars now.

22 JUDGE THOMPSON: Okay. We'll recess, honestly,
23 until -- 20 minutes, hoping 15. It will probably be 20.

24 (Recess taken.)

25 ///

1 JUDGE THOMPSON: Back on the record.
2 I think we are on the FTB's questioning.
3
4 CROSS-EXAMINATION
5 BY MR. RILEY:
6 Q I'm Jason Riley, just for the record, again,
7 and to introduce myself to you, Mr. Lord.
8 I'm going to try and use Appellant's exhibits
9 to the extent I can. And I'm going to start with -- I'm
10 going to ask you to you flip to certain pages so you can
11 exam them, and hopefully the type is big enough, I mean,
12 these are nice, clear examples of the documents.
13 So if you could flip to Exhibit 16.
14 A Okay.
15 Q So there were two separate projects, two
16 separate buildings in this project, a 24 by 48 building
17 and a separate 24 by 60 building; correct?
18 A That is correct.
19 Q Yeah. Sorry. We're talking about the Welk
20 Project.
21 A Right. Right.
22 MR. DIES: Since this witness has my copy, do y'all
23 mind if I stand over him? I promise not to make any
24 gestures or do anything weird.
25 MR. RILEY: Okay.

1 JUDGE THOMPSON: Thank you for checking.

2 BY MR. RILEY:

3 Q So is that correct?

4 A It is correct.

5 Q So let's look at Exhibit 16, and let's start
6 with the document related to the 12 by 60 building.

7 And is this your standard design unit, 12 by
8 60; correct?

9 A Well, this is a 24 by 60.

10 Q I'm sorry. So it's a 24 by 60. Does that
11 mean two 12 by 60 units?

12 A Yes.

13 Q And 12 by 60 is your basic standard design?

14 A Yes, it could be.

15 Q Okay. So when it says "Drawn by King," is
16 that Carson King?

17 A Yes.

18 Q And it's dated 12/21/2016.

19 A Yes.

20 Q And it appears at the top here -- it's kind of
21 obscured by binding -- it says there are seven sheets,
22 which are T-1, A-1 through 3, E-1, M-1 and WS-1?

23 A Okay.

24 Q And on Sheet T-1 it states that the codes --
25 states the code cited, for example, the 1991 universal,

1 the UBC -- is that the 1991 Uni form Bui lding Code?

2 A Yes.

3 Q I think I read somewhere that you have
4 exhaustive knowledge of the UBC; is that correct?

5 A Generally, yes.

6 Q Okay. So what about the next line? It says
7 structural system per specs and structural package
8 S-1000. So the specs, are those the sheets listed
9 above, T-1, A-1 through 3, E-1, M-1, and WS-1?

10 A Generally, yes.

11 Q Okay. So you've --

12 A Based on those seven sheets, yes.

13 Q Okay. Is it also based on something called
14 Structural Package S-1000?

15 A Yes.

16 Q And is Structural Package S-1000 among the
17 documents here?

18 A No.

19 Q Is it among the documents -- you've reviewed
20 the documents for this hearing today; correct?

21 A Yes.

22 Q Is structural Package S-1000 among the
23 documents produced for this hearing, WSI -001 through
24 572?

25 A Not to the best of my knowl edge.

1 Q Okay. Can you describe Structural Package
2 S-1000?

3 A I did briefly when I was talking up there. So
4 in the commercial modular, under HCD, we are allowed to
5 have a structural package on file. And that structural
6 package that I described earlier was, basically, to
7 provide to build standard product with, not specialized
8 product.

9 Q Okay. And does Structural Package S-1000
10 describe information relative to the construction of
11 this particular building?

12 A Perhaps, yes. Perhaps some sheets of it.

13 Q Okay. And this --

14 JUDGE THOMPSON: Mr. Riley, are we on a specific
15 Bates number page?

16 MR. RILEY: Sorry. That's Exhibit 16, WSI-0164.

17 And I apologize. I think I skipped the 0164.

18 JUDGE THOMPSON: You may have said it, and I just
19 missed it.

20 JUDGE BRAMHALL: This box right here.

21 JUDGE THOMPSON: Okay.

22 MR. RILEY: It's very tiny in the corner.

23 JUDGE THOMPSON: Top right corner?

24 MR. RILEY: The Bates, yes. If you orient it, you
25 know, like this, landscape, it's the bottom right

1 corner.

2 JUDGE THOMPSON: Bottom right.

3 MR. RILEY: Is where the Bates number is.

4 JUDGE THOMPSON: So the S-1000?

5 MR. RILEY: I'm sorry. That was mid page. It's

6 under the building data on WSI-0164.

7 JUDGE THOMPSON: Okay.

8 MR. RILEY: It says "Code cited," and then it says,

9 "Structural System per specs and Structural Package

10 S-1000."

11 JUDGE THOMPSON: I'm with you.

12 MR. RILEY: Okay. So --

13 JUDGE THOMPSON: Thank you.

14 BY MR. RILEY:

15 Q And according to this document, it says that

16 production was issued, and there were no revisions;

17 correct?

18 A It appears so, yes.

19 Q Do you know when Structural Package S-1000 was

20 created?

21 A No, not specifically -- generally, yes.

22 But -- but, I don't know which. See, they expire every

23 14 months. Not certain. It would be this general time

24 period.

25 Q Okay. Do you know when Structural Package

1 S-1000 -- I mean, was it -- did you say you joined in
2 2003 or was that Mr. Anderson?

3 A I'm not certain. I didn't say that. I
4 actually started much earlier.

5 Q Okay. Let's go to Exhibit 16, Sheet A within
6 WSI-016, 0165 here.

7 Can you look at Detail 1, the floor plan. Do
8 you see the little circle? It looks like a one over a
9 S-6.3.

10 A Yes.

11 Q Does that stand for Detail 1 on Sheet No. 6.3?

12 A 6.3, yes.

13 Q Okay. The same question for Detail 8 with
14 respect to the shear wall legend.

15 Does Detail 5 over S-6.3, does that mean
16 detail 5 on Sheet 6.3?

17 A Yes.

18 Q Can you point out Detail 5 on Sheet S-6.3 in
19 Exhibit 16 document here?

20 A No.

21 Q Is that because that detail is in another
22 document?

23 A Yes, inside the structural package.

24 Q It's Structural Package S-1000?

25 A S-1000.

1 JUDGE THOMPSON: I apologize. Can you back up and
2 tell me where you are looking?

3 MR. RILEY: Oh, 165 is -- sorry. 163 is here.
4 There's a little circle at the bottom in the floor
5 plan -- I'm sorry -- the word "floor plan" is cut off by
6 the binding.

7 JUDGE THOMPSON: I see. I think. So SW --

8 MR. RILEY: Right. So down here, there's a little
9 circle. The one underneath it says 6.S. 6.3.

10 JUDGE THOMPSON: Okay.

11 MR. RILEY: And, then again, with respect to the
12 shear wall legend I am referring to is Detail 8, which
13 is down here.

14 JUDGE THOMPSON: Okay.

15 MR. RILEY: And it's got these little circles with
16 the --

17 JUDGE THOMPSON: Got you.

18 BY MR. RILEY:

19 Q Where was I? Okay.
20 So Sheet A-1, it also states that this modular
21 building was designed and built according to the
22 Structural Package S-1000. In -- up here in Detail A
23 where it says, "State of California," again, obscured a
24 little bit by the binding; correct?

25 A Yes.

1 Q So why aren't details such as the -- the one
2 over the S-6.3, why aren't they laid out in these specs?

3 A Because our production personnel had those
4 plans on file out on the floor.

5 Q Okay.

6 A As does the approval agency.

7 Q Okay. So this reference -- each of these
8 references would send somebody to a different document,
9 the Structural Package S-1000?

10 A Potentially, yes.

11 Q Okay. Thank you.

12 Was Structural Package S-1000, was that
13 available to the structural engineer, Mr. Wood?

14 A Yes.

15 Q Still on Exhibit 16 on WSI-0164, Detail 2, it
16 lists the finish schedule. This appears to include the
17 siding and sheetrock and ceiling grid and shingles;
18 correct?

19 A Yes.

20 Q And Detail 3 is the paint color?

21 A Yes.

22 Q And Detail 4 is the doors?

23 A Yes.

24 Q And 5 is the windows?

25 A Yes.

1 Q Are these items things that are selected by
2 the client?

3 A Yes.

4 Q Okay. The No. 8, again, we are going to go
5 back to Detail No. 8, which is the shear wall and this
6 letter of requirements table. This table also has a
7 reference to S-6.3 and a Detail -- Detail 1 on sheet
8 S-7.1, Detail 3 Sheet on S-7.1 and Supplement No. 39.

9 Are these all references to Structural
10 Engineering Package -- I'm sorry -- to the S-1000?

11 A Yes.

12 Q Okay. And Supplement 39, is that referring to
13 Structural Engineering Supplement No. 39?

14 A I'm not certain. I'm not certain.

15 Q Okay. So the shear wall references, they are
16 not completely laid out in this document. Would you say
17 that these references are common in many of your modular
18 buildings?

19 A If it's a standard building, yes.

20 Q Okay. Is -- that's that.

21 Is there a Structural Engineering Supplement
22 specific to the 24 by 60 Welk building?

23 A I'm not certain.

24 Q But there's none listed in the -- where it
25 says that it's constructed according to Structural

1 Package S-1000?

2 A Not apparent.

3 Q Okay. Okay. Let's move on to Exhibit 13.

4 Sorry. Exhibit -- Exhibit 14. Let's go to Exhibit 14,
5 which is the Welk Resort Group 24 by 45.

6 Again, on -- I'm looking at WSI-0156. The
7 title page here states that the structural system is per
8 specs and Structural Package S-1000 and Supplement No.
9 258; correct?

10 A Yes.

11 Q Under building data.

12 A Correct.

13 Q Okay. And the specs were drawn by E.G. Is
14 that Eduardo Garcia?

15 A Yes.

16 Q Okay. Please flip to Sheet A-1, which is
17 listed as WSI-157.

18 And, again, it's way up here in the binding,
19 but it says, "This modular building is designed and
20 built according to the Structural Package S-1000 and
21 Supplement No. 258?

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q And does this refer to the same S-1000 as used

1 in the Welk Resort Group 24 by 60 foot building?

2 A Yes.

3 Q Okay. If we look at Detail 1 on Sheet A-1,
4 the floor plan, there are five references to details on
5 other sheets. And again, it's the floor is -- it lists
6 that up in the binding here.

7 There are -- there are four references to
8 Structural Package S-1000, one to the structural details
9 of Sheet SS-1 of these specs; correct?

10 A I'm not sure where you are referring to.

11 Q So I'm referring to -- so we have got one,
12 two, three, four references --

13 A Okay.

14 Q -- to S-1000?

15 A Yes.

16 Q And one -- and I'm -- it's unclear on this
17 particular document. And I have -- I have a copy of
18 this document, a clearer copy if you need to use it.

19 JUDGE THOMPSON: We're on Bates 157?

20 MR. RILEY: Right. Okay.

21 THE WITNESS: Okay.

22 MR. RILEY: And one for Mr. Dies as well.

23 MR. DIES: Thank you.

24 JUDGE BRAMHALL: Thank you.

25 JUDGE THOMPSON: Thank you.

1 JUDGE CHENG: Thank you.

2 BY MR. RILEY:

3 Q Okay. And so Structural Details of Sheet SS-1

4 on these specs, that's the reference, so that's a

5 reference to WSI-0162 within Exhibit 14?

6 A Sorry. I didn't follow that whole thing.

7 Q I'm sorry. Is the detail that says one over

8 SS-1, is that an internal reference to WSI-0162, which

9 is Sheet No. SS-1 within Exhibit 14?

10 A Yes, I would say so.

11 Q Okay.

12 JUDGE THOMPSON: Mr. Riley, I'm sorry. Can you

13 show me where you are at exactly?

14 MR. RILEY: I apologize. You've got those -- it's

15 this detail up here, this top detail.

16 JUDGE THOMPSON: That's on 157.

17 MR. RILEY: It's on 157. I think it's on 113 that

18 I printed out.

19 JUDGE THOMPSON: All right. And you're -- can you

20 point to it again, please?

21 MR. RILEY: It's right here.

22 JUDGE THOMPSON: Okay. On the left -- the upper

23 left.

24 MR. RILEY: And then that is a reference, as

25 Mr. Lord said, to this page right here, SS-1.

1 BY MR. RILEY:

2 Q And we also have in -- within -- on page 0157,
3 we have Detail 8 which is the shear wall.

4 And are these the same references to 3 slash S
5 6.3, and 1 slash 6 -- S-6.3 as in the 24 by 60 building?

6 A You said 158?

7 Q I'm sorry. 1 S-6.3 -- oh. Oh, the page? I'm
8 sorry. WSI-157.

9 A Okay.

10 Q With respect to the shear wall legend?

11 A Okay. Yes.

12 Q These are the same references to S-1000 to 3
13 S-6.3 and 1 S-6.3 as in the 24 by 60 building?

14 A I'm not certain, because it doesn't have the
15 table there.

16 If I'm not certain, I'll state that.

17 Q Okay. So within the Detail 7 -- still on 157
18 here -- Detail 7 it says "general notes" regarding the
19 roof system. It states the ridge beam clear-span is a C
20 15 by 33.9 pound -- is this the -- the 48-foot ridge
21 beam used in the -- in this -- in this building?

22 A No. It's not a 48 foot. It's 45 foot.

23 Q So it's 45 foot, but is the entire building --
24 I mean, it's labeled as a -- is there a 1.5-foot
25 overhang on each end to make a 48-foot beam?

1 I guess you might be able to see that in --

2 A It does look like 18-inch overhangs, yes.

3 Q Okay.

4 So it's a 45-foot box with a 48-foot roof?

5 Okay. Had Walden ever designed a C-15 times

6 33.9 pound beam in a 48-foot long roof before?

7 A No.

8 Q No.

9 Okay. Please turn to 158, WSI-158, the

10 reflected ceiling plan. Are Details 2 -- just please

11 note Details 2, 3, 5, and would you please turn to back

12 to -- sorry. I guess it's 16 -- so page WSI-0166.

13 A Is that in Supplement -- is that in 14?

14 Q No. It is in Supplement -- it appears to be

15 in Supplement 16 at 0166.

16 A Okay.

17 Q Are those reflected ceiling plan details the

18 same as in -- as Detail 2, Detail 3, and Detail 5 here?

19 A No. Not -- probably not Detail 2. It may be

20 similar. Detail 3 appears to be similar. Detail 4 is

21 different.

22 Q Okay.

23 A Did you say -- I'm sorry.

24 Q No, I didn't.

25 A -- Detail 5. Detail 5 is different.

1 Q Detail 4 and Detail 6 are the same?

2 A No. 6 -- No. 6 and 4 are not the same.

3 Q Okay. So let's go to Exhibit 15. Oops.

4 So Exhibit 15, is this Structural Engineering
5 Supplement No. 258?

6 A I don't see Exhibit 15. I'm sorry. I was
7 looking for a tab. Excuse me. Okay. I'm sorry. I'm
8 on 15.

9 Q So page 0555?

10 A Okay.

11 Q Is this Structural Engineering Supplement No.
12 258?

13 A Yes. It looks like it is.

14 Q Okay. And we've already addressed the
15 1.6-foot overhang. That's why -- that's the difference
16 between 48-foot references and 45-foot references.

17 Does -- could you please flip to WSI-0561,
18 which is Sheet Supplement, Sheet Supplement 258.

19 A Okay.

20 Q Does this relate to the roof beam?

21 A Yes.

22 Q Is this Sheet 7, is this meant to calculate
23 the total load upon the C-15 by 33.9-pound beam?

24 A Probably, but I'm not an engineer. Generally,
25 yes, I would say.

1 Q Are you required by Code to make dead load and
2 live load calculations?

3 A I don't know.

4 Q But you have exhaustive knowledge.

5 A I'm not an engineer.

6 Q Okay. Under -- would you agree that under
7 Section 1.1603.1 of the Uniform Building Code, building
8 shall be designed and constructed to sustain all dead
9 loads and all other loads specified within this chapter
10 and elsewhere in this code?

11 A That would be up to the engineer to determine.
12 That's why we have engineers.

13 Q Okay. And are these -- so are these
14 calculations meant to confirm the total load?

15 A I would imagine we did several things in this
16 supplement.

17 Q Do you know where you would find the values
18 for a C-15 by 33.9 pound beam for the variable -- the
19 values here for area depth, flange width, moment of
20 inertia? You received those from the manufacturer of
21 the beam?

22 A I would say it would come out of the steel
23 manual.

24 Q From, say, something from the ASTM Standards
25 and that the American Society for Testing Materials?

1 A Yes, I believe so.

2 Q Okay. The beam deflection equation which is

3 listed mid page on Sheet 7.

4 JUDGE THOMPSON: Bates 561?

5 MR. RILEY: Yes, we are still on 561.

6 BY MR. RILEY:

7 Q Did Walden develop this equation?

8 A No.

9 Q Did Mr. Wood, the structural engineer, develop

10 this equation?

11 A Yes.

12 Q He did develop this equation?

13 A Well, these are his calculations.

14 Q Okay. Was the beam -- so, do you know if the

15 beam deflection equation is a common equation known to

16 other engineers besides Mr. Wood?

17 A No.

18 Q You don't know?

19 A No. I mean, that's -- that's a wild question.

20 I'm not sure how to even answer that.

21 Q Is this --

22 A Say it again.

23 Q I'm sorry.

24 MR. DIES: Just to be honest, I don't really know

25 the protocol for objecting.

1 I would be uncomfortable with anybody asking
2 this witness what other engineers might know.

3 Do I object?

4 JUDGE THOMPSON: Sure. You can object. Were you
5 objecting based on lack of knowledge? Or what's your --

6 MR. DIES: Well, I think the question as posed is
7 "Do other engineers know how to use a beam deflection
8 equation?" I don't know how this witness would have
9 knowledge what other engineers know.

10 MR. RILEY: This witness is the head of their
11 Engineering Department and has interactions with
12 Mr. Wood, who Appellants have stated is their structural
13 engineer.

14 JUDGE BRAMHALL: He has answered he doesn't know.

15 MR. RILEY: Okay.

16 BY MR. RILEY:

17 Q So do you know, with the exception of the
18 length of 45 feet and the "W" here, which is the
19 combination of service loads for -- the manufacturer
20 would have provided or the ASTM standards would have
21 provided.

22 So those are the only two values that
23 Mr. Lord -- I'm sorry -- Mr. Wood would need to have
24 provided in order to complete this calculation?

25 A No, I don't know.

1 Q You don't know. Okay. Is calculating the
2 deflection of a service -- is calculating this
3 deflection, is that a service requirement under the UBC?
4 A I don't know.
5 Q Was Walden uncertain as to whether calculating
6 the load was a requirement under the Building Code?
7 A Well, that's why we have an engineer.
8 Q Okay. So I just want to confirm here. It
9 sounds like the structural engineer, Mr. Wood, would get
10 these values from -- the length from you, and the other
11 values from ASTM in order to make this calculation?
12 A I would agree.
13 Q Okay. Can you point to the other iterations
14 of this calculation within this Structural Engineering
15 Supplement No. 258?
16 A No.
17 Q Are iterations of this calculation within
18 Structural Engineering Supplement No. 258?
19 A Not here, no. These are the stamped version,
20 the final version.
21 Q Okay. Within Exhibit 15, can we turn to
22 WSI-0565 --
23 A Okay.
24 Q -- which is the lateral summary. It states
25 "Ref S-1000 Plans"?

1 A Yes.

2 Q Do items 1, 2, 4, 5, 6 -- and 6 all refer back
3 to the S-1000 as in Detail 3 S-711 is Detail 3 of Sheet
4 1 -- of Sheet 7 one of S-1000?

5 A Details 1, 2 -- did you say -- what was the
6 next ones?

7 Q I'm sorry. 1, 2, 4, 5, and 6.

8 A Okay. What do they do?

9 Q They all refer back to S-1000?

10 A Yes. So those are shear walls and roof
11 diagram.

12 Q Okay. Were you aware -- was Walden uncertain
13 as to whether you could make a 48-foot ridge beam?

14 A With that material?

15 Q You are uncertain about making a beam from
16 C-15 33 -- by 33.9-pound steel beam?

17 A Yes. Because it was not included in our
18 S-1000 package.

19 Q Okay. And nothing -- nothing existed in terms
20 of guidance with respect to that beam?

21 A Well, we had existing in the S-1000 packages
22 what it would support in a clear-span configuration.

23 Q Okay. But Walden had used a 48-foot beam
24 before the Welk Project; correct?

25 A I don't know. Doubtful, because we had

1 special calculations.

2 Q Okay. Could you -- I gave you that -- the
3 four sheets there.

4 A Um-hum.

5 Q Could you turn to the second page of those
6 sheets, which is -- sorry. Which should be --

7 A This is for different projects.

8 Q Right. So this says WSI -0079.

9 A Okay.

10 Q It says the Shell Vacations office?

11 A Okay.

12 Q And under "Roof System" under Detail 8
13 California, it says, "Ridge Beam 2." It says, "C-15 by
14 33.9 C channel and 48-foot length."

15 A Okay.

16 Q Is that -- is that a C-15 by 33.9-pound beam,
17 another 48-foot length?

18 A It is.

19 Q Okay.

20 JUDGE THOMPSON: Just slow down a little bit for --
21 like I said, said the hearing reporter --

22 MR. RILEY: Okay. Sure.

23 JUDGE THOMPSON: I'm looking at this, WSI -79.
24 Where exactly are we?

25 MR. RILEY: Right here.

1 JUDGE THOMPSON: Okay.

2 MR. RILEY: Column A under California, halfway down
3 it says, "Roof System."

4 JUDGE THOMPSON: Got you.

5 BY MR. RILEY:

6 Q Can you turn to the next page which is
7 WSI -0111.

8 I'm sorry. Back -- back one page.

9 And this document is dated February 1st, 2006.
10 That is WSI -0079, it's dated February 1st, 2006.

11 A Okay.

12 Q And WSI -0111 the next page. This is a
13 document dated 1/18/2016.

14 Does Detail 8 state that the ridge beam is
15 C-15 by 33.9-pound beam in 44-foot length?

16 A Yes. That's what it states.

17 Q Okay. And the next page, that is WSI -0082.
18 It's a document dated August 12th, 2005. Again, Detail
19 A in California, the ridge system, does it say
20 clear-span C Channel C-15 by 33.9-pound --

21 THE REPORTER: Could you say that again? I'm
22 sorry.

23 BY MR. RILEY:

24 Q Under the ridge beam, clear-span C channel
25 C-15 by 33.9 pound?

1 A You are restating that for her? I thought I
2 already answered the question.

3 Q If you did --

4 A Yes, it does.

5 Q And is the building length 48 feet, according
6 to the floor plan?

7 A Yes. It looks like it. Yeah.

8 Q Okay. And could you tell me who drew
9 WSI-0082?

10 A E.G., so Eddie Garcia.

11 Q Is that the Eddie Garcia that drew the 24 by
12 45-foot building?

13 A Yes.

14 Q So I'm now going to turn to the -- to Exhibit
15 29, which is not the drawings, so you can have a little
16 break from the drawings for a moment.

17 But on page WSI-0052, I think we've
18 established that this is your signature and that you
19 filled out the project questionnaire.

20 A I definitely signed it, yes.

21 Q Okay. You signed the document. Did you sign
22 it on 10/31/2008 as with the signatures on the previous
23 page?

24 A I'm not certain of the date. I don't see a
25 date.

1 Q So the date would be on WSI -0051?

2 A Okay.

3 Q And you stated that you had no engineers in

4 the Engineering Department?

5 A P.E. stamp engineers? That's correct.

6 Q They are draftsmen, but they are not

7 engineers?

8 A Correct.

9 Q And do they have engineers' degrees?

10 A Some of them.

11 Q Okay.

12 A To whatever degree, drafting technician.

13 Q Do you know if that is a bachelor of science

14 in engineering?

15 A No, I don't know.

16 Q And it's your opinion, according to WSI -0052,

17 that the activity at that Walden's Engineering

18 Department performed was drafting designs, developing

19 design schematics, and developing CAD drawings; correct?

20 A Yes.

21 Q Is a drafted design, is that another name for

22 a blueprint?

23 A A blueprint is a type of a print.

24 Q So a colloquial blueprint, rather than an

25 actual old school French blueprint?

1 A A plan. I'll agree to that.

2 Q Okay. And is the design that a -- a

3 reproduction of technical drawing, an architectural

4 plan, an engineering design?

5 A It could be.

6 Q Okay. Are the layout drawings of, for

7 example, the Welk 45 by -- sorry -- 24 by 45 building

8 are those -- we have been calling them specifications,

9 but are those CAD drawings?

10 A They were developed on CAD, yes.

11 Q And would you agree that a CAD drawing is

12 using a computer to draw or design anything?

13 A Sure. Yes.

14 Q Okay. How does a CAD drawing differ from a

15 hand-drawn design?

16 A You're using a computer with a mouse and

17 keypunch, and a hand drawing, you are drawing with paper

18 and straight edges and pencil.

19 Q It's simply using a computer to do the same

20 sort of a drawing?

21 A Okay. I guess.

22 Q How does a design differ from a design

23 schematic?

24 A I don't know.

25 Q How does a design schematic differ from a CAD

1 drawing?

2 A A schematic, I would think, would be, like, a
3 isometric or something. A schematic is normally not as
4 detailed as architectural plans are.

5 Q Okay. How is CAD drawing different from the
6 computer modeling that you stated that you performed?

7 A I don't remember stating CAD modeling, but, as
8 far as it being drawn in the computer in autoCAD
9 software, that's what we do -- or did.

10 Q So you don't consider the CAD drawing -- I
11 mean, it may have been Mr. Dies' words that it was --
12 that CAD was computer modeling?

13 A Okay.

14 Q Do you agree with that, that a CAD drawing is
15 a computer modeling?

16 A In a general term, I guess, yes.

17 Q So with respect to the Welk 45 by 24
18 building -- 24 by 45 building, which came first the
19 draw -- the CAD drawing or the -- or Engineering
20 Supplement -- Structural Engineering Supplement 258?

21 A The CAD drafting would come first.

22 Q Okay. So I'm going to move on to the
23 Genentech project.

24 So I'm going ask you to look at Exhibit 22,
25 and I'd like you to look at page -- first, let's start

1 at page 237, the reflected ceiling plans Details 1
2 through 4.

3 Are those the same details as in the Welk 24
4 by 60 project?

5 So these are the details, Detail 1, Detail 2,
6 Detail 3, and 4?

7 A Which Welk, 24 or 45 or --

8 Q 24 by 60.

9 A Which one is that? Is that 14? Which
10 supplement is that?

11 MR. HODGES: 24 by 60. 16.

12 THE WITNESS: Okay. So details 1, 2, 3, and 4 --

13 BY MR. RILEY:

14 Q Yes.

15 A -- is your question?

16 Q Yes.

17 A Looks like similar, if not exact.

18 JUDGE THOMPSON: Exhibit 22; correct?

19 MR. RILEY: Exhibit 22, page WSI-0237.

20 JUDGE THOMPSON: Thank you.

21 BY MR. RILEY:

22 Q Okay. Please turn to the previous page,
23 WSI-0236.

24 And, again, it states way up in the binding it
25 says, "This modular building designed and constructed

1 according to the structural package S-1000 and
2 supplement. " Period.

3 The specs don't identify the supplement on
4 Sheet A-3 which is this WSI -0236.

5 A I'm not seeing -- where are you?

6 Q I'm sorry. It's way up here, within the
7 binding of the exhibit.

8 MR. DIES: You can rip it open if you need to. We
9 don't need it after this.

10 THE WITNESS: So what is your point?

11 BY MR. RILEY:

12 Q I'm asking if it says Supplement -- it says
13 there's a supplement, but there's not -- not one listed.

14 I'm just asking if that is a reference to
15 Supplement 178, which is Exhibit 23?

16 A It should have been.

17 Q Should have been?

18 A When I look at 03 -- 0232, it says 178. So if
19 it's missing, I can't see it myself.

20 Q Okay. So let's, please -- please turn to
21 Exhibit 23, which is Supplement 178 at page 0321.

22 A 231.

23 Q 0231.

24 A Within --

25 Q Within the exhibit. It's Sheet 11.

1 A Supplement 23?

2 Q Yeah. I'm sorry. It's Exhibit 23.

3 JUDGE THOMPSON: It's 0231.

4 BY MR. RILEY:

5 Q 0231 is the page.

6 A Okay.

7 Q Here it says, "Sidewall bracing. See
8 supplement No. 13 for calculations."

9 Is this a reference to Structural Engineering
10 Supplement No. 13?

11 A I would assume so.

12 Q Is the reason that the -- there's simply a
13 reference to Supplement No. 13 for the calculations is
14 the reason that's it's not -- those calculations are not
15 listed here? Is that because they were previously done
16 in Supplement No. 13?

17 A Likely. I don't know for certain.

18 Q Okay. Do you know why -- okay. Let's see
19 here.

20 So this project involved miles of cabling in
21 the ceiling that created an additional load that needed
22 to be supported; correct?

23 A Yes. That's what John wrote.

24 Q Okay. So can you look back to Exhibit 23. So
25 the same exhibit and 0312. This page refers to the

1 roof, and there are two trusses referred to, a 55-foot
2 truss and 70-foot truss; correct?

3 A Yes.

4 Q With respect to the 55-foot truss, Supplement
5 178 states per S-8.0 plans.

6 Are the S-0.8 plans in this Supplement Sheet
7 8?

8 A No.

9 Q Where are they located?

10 A In S-1000.

11 Q Okay. Were they available to Walden and to
12 the structural engineer?

13 A Yes.

14 Q Okay. And Walden is claiming that there was
15 experimentation with respect to the 55-foot truss;
16 correct?

17 A The engineer would have verified it, yes.

18 Q So is verification, is that your -- is that
19 a -- that an experiment?

20 MR. DIES: I'm uncomfortable with questions about
21 the law, because experimentation means something under
22 Section 41 here --

23 MR. RILEY: Okay. Withdrawn.

24 MR. ROUSE: They have been talking about certainty
25 all day, and that is also a technical legal term, and we

1 haven't objected.

2 So I'd -- I'd like just a little bit of leeway
3 on our side as well.

4 JUDGE THOMPSON: We can take it for what it's
5 worth, legal conclusions and factual testimony.

6 BY MR. RILEY:

7 Q So Walden is claiming that there was
8 experimentation with respect to the 55-foot truss?

9 A Within calculations, I would agree.

10 Q But those calculations are listed in -- they
11 are located in S-1000; correct?

12 A He is saying for the two middle days. That's
13 all he's talking about there. The middle days of the
14 truss. He's not saying the entire truss.

15 Q Okay. Can you point out the calculations with
16 respect to the 55-foot truss? The load on that within
17 this sheet here?

18 A No.

19 Q Okay. What about the 70-foot truss, says per
20 Supplement 115, 72-foot truss except off-foot -- offsets
21 peak.

22 That's a reference to look at the calculation
23 in the Structural Engineering Supplement 117; correct?

24 A 115.

25 Q Sorry. 115.

1 A Yes.

2 Q Did Walden supply Mr. Wood with Supplement No.

3 115?

4 A Mr. Wood developed all of the supplements.

5 Q So that supplement was available to Mr. Wood

6 during this project?

7 A Yes.

8 Q And Structural Engineering Package S-1000 was

9 also available to Mr. Wood?

10 A Yes.

11 Q And you are required by Code to make dead load

12 and live load calculations?

13 A Again, that's in engineering.

14 Q Is it --

15 A I don't do.

16 Q Is it -- do you know -- is it sufficient that

17 Walden previously did the calculations and Structural

18 Supplement No. 115?

19 A Not Walden Engineering. Wood Engineering

20 would have.

21 Q But he had previously had done that in

22 Structural Engineering Supplement 115?

23 A He designed a truss, and what I read this to

24 say is he is checking for cable trays.

25 Q Okay. On that note, so, check cable trays.

1 This is a reference to the computer wiring and the
2 equipment that, quote, increased the load of the
3 trusses -- that is, that the trusses had to support, so
4 a new truss had been to be designed?

5 A It has been verified.

6 Q Okay. In Exhibit 23, is the extent of
7 Mr. Wood's calculation with respect to the support beam
8 load of the cable trays is at the following line on page
9 WSI-0312, the -- I guess that omega or W equals 12 per
10 linear foot and P equals 12 times 11.67 over 2?

11 A What page?

12 Q I'm sorry. It's the same page, 0312.

13 A Okay. I'm just not following where.

14 Q Apologies. So it's right under the words
15 "check cable trays."

16 A Okay.

17 Q Is that the extent of Mr. Wood's calculation
18 with respect to the support beam load of cable trays?

19 A I assume so. Again, I'm not an engineer.

20 Q Okay. And there's another note here it says,
21 "Not critical. 72-foot truss used for 70-foot span"?

22 A That's what it states, yes.

23 Q What does that mean, "not critical"? That the
24 total load was not critical?

25 A Apparently to him as long as we used a 72-foot

1 truss for a 70-foot span we were okay. 72-foot truss
2 would have had a larger core of materials.

3 Q And so the calculation done in Supplement No.
4 115 is sufficient here even with the inclusion of the
5 cable load tray?

6 A I -- I don't know. I would assume that's what
7 he is stating here.

8 Q Okay. Thank you.

9 What about the -- so this sheet indicates that
10 the 70-foot truss is the same design as in Supplement
11 No. 117?

12 A 70-foot design --

13 Q Sorry. I'm in Supplement 115.

14 A No.

15 Q No?

16 Q Supplement 115 is for a 72-foot truss.

17 Q But it's not critical that you use a shorter
18 truss than the 72-foot truss?

19 A We're using the materials for a 72-foot long
20 truss, larger materials in a 70 foot to support the
21 loads.

22 Q Okay. Is the load from a cable tray, is that
23 a unique-type load within the ceiling?

24 A It was for this, yes. For this building, yes.

25 Q I mean, it -- so, for example, is a load from

1 a cable tray, is that different than, say, any other
2 load -- load for roof pebbles or any other load that you
3 would include in a roof?

4 A It's an additional load.

5 Q It's an additional load, but it's -- any
6 additional load?

7 A Any additional load would have to be checked.

8 Q Okay. Can you look at Exhibit 23, the summary
9 legend on sheet -- WSI-0326?

10 JUDGE THOMPSON: 0326?

11 MR. RILEY: 0326.

12 THE WITNESS: Okay.

13 BY MR. RILEY:

14 Q Is the line Ref S-1000 plan -- again, that's a
15 to have reference to Structural Package S-1000?

16 A Yes.

17 Q And it's the same structural package
18 referenced in the Welk Project? Same --

19 A Yes.

20 Q -- S-1000.

21 Okay. Are details 4, 5, 7 -- 4, 5, 6, 7, 8,
22 and 9 all references to Structural Package --
23 Structural, to the Structural Package S-1000?

24 A No.

25 Q No?

1 A These are specific requirements on those grid
2 lines but they reference, well --

3 Q They reference?

4 A -- the S-1000.

5 Q Okay. And does Detail 10 refer back to Sheet
6 2 of the supplement, which in turn refers the -- refers
7 the reader to S-08, which we -- we established was
8 S-1000?

9 A Of what page now? Page 2?

10 Q Page 2 of this -- of this Structural
11 Engineering Supplement, which is 0321.

12 A That was -- that was Box 10, did you say?
13 Meaning --

14 Q Detail 10.

15 A Okay.

16 Q Box 10.

17 A Okay. Yes.

18 Q And Detail 13 also references back to Sheet 2
19 and refers the reader to Supplement No. 117 -- sorry,
20 115.

21 A To Supplement 115. I'm not certain of that.
22 It's saying a meeting with the truss grid line
23 7318 per Sheet 2 of the supplement.

24 MR. DIES: You're getting away from your mic.
25 That's okay.

1 THE WITNESS: Sorry.

2 So again -- ask the question again, please.

3 I'm sorry.

4 BY MR. RILEY:

5 Q Does Box 13 refer the reader back to Sheet 2
6 of this supplement, which in turn refers the reader to
7 Supplement No. 115?

8 A Yes.

9 Q Okay. Does Detail 14 refer -- refer to
10 Structural Engineering Supplement No. 37?

11 A Yes.

12 Q And does Detail 15 refer back to Sheet 11 of
13 this supplement, which in turns refers the reader back
14 to Structural Engineering Supplement No. 13?

15 A Yes.

16 Q Okay.

17 A Sheet 10, I'm not certain of that. Yeah.
18 Okay. 13, yes.

19 Q Okay. Is it time? So, let's move on to the
20 Bramasol Project.

21 MR. DIES: Your Honor, I do have some concerns that
22 we have been at this for about an hour. We have only
23 covered two projects. I'm not -- y'all haven't kept me
24 on a clock, although I tried to be quick.

25 JUDGE THOMPSON: I would like to get to these

1 questions with respect to these projects, so, Mr. Riley,
2 if you can try to wrap it up.

3 MR. RILEY: I think that now that we have
4 established what the nomenclature and what the symbols
5 mean, I think the things will move quicker.

6 JUDGE THOMPSON: Okay. Go ahead.

7 BY MR. RILEY:

8 Q Okay. Exhibit 11. So on WSI-0064, which
9 appears on the first sheet in this, within Exhibit 11,
10 there appear to be many of the same references to
11 Structural Package S-1000 as in the Welk Project and
12 the --

13 THE REPORTER: Can you slow down?

14 BY MR. RILEY:

15 Q On Sheet A-1, which is WSI 0064, there appears
16 to be many of the same references to Structural Package
17 S-1000 as in the Welk Project and the Genentech Project
18 especially with respect to Detail 8 of the shear wall,
19 and the -- and in the general notes here, it says this
20 modular building is designed and built according to the
21 Structural Package S-1000 Supplement No. 243; correct?

22 A Correct.

23 Q Okay. Can we look at 0068? Does Sheet A-3.0,
24 does this show a parapet?

25 A Yes. It appears to show a parapet.

1 Q Can you determine the function of this parapet
2 from looking at Sheet A-3.0?

3 A Function? It -- I guess, in the simplest
4 form, squares off the roof.

5 Q Okay. Do you remember telling the auditor at
6 the June site visit, June 2011, that this project
7 involved a huge parapet?

8 A No.

9 Q Okay. Do you recall telling the auditor
10 during the site visit that the Bramasol Project had a
11 marquee look on the front side of the building?

12 A It does. You are referencing a preliminary
13 set of plans. Perhaps if you look at the production
14 issue, you will see the difference.

15 Q I think we will get there.

16 A Okay.

17 Q Was the function of the parapet to enhance the
18 roof line?

19 A I don't know what was in the customer's mind.
20 It had a very specific look that they were trying to
21 achieve.

22 Q Okay. Can you look at -- we're going compare
23 A-3, this -- of this sheet to A-3.1 and A-3.2 which are
24 WSI-0068 and 0070?

25 Can you tell me which among these three

1 drawings depicts the marquee look?

2 A Well, 0070.

3 Q Okay. But these are three different parapet
4 options depicted on these three sheets.

5 A Apparently.

6 Q Did Walden require the parapet?

7 A No. They are customer requests.

8 Q Okay. Do you recall the customer requesting
9 parapets of different heights?

10 A First off, this wasn't my project, so I don't
11 recall that.

12 Q Okay.

13 A Obviously, we presented some information.

14 Q So was the customer uncertain as to which
15 parapet they wanted?

16 A I would agree that that's an accurate
17 assumption. I don't know. This is a surprise to me,
18 honestly.

19 Q So it does -- A-3, does this depict a typical
20 Walden parapet?

21 A It's a squared-off roof.

22 Q Okay.

23 A I'll agree to that.

24 Q Does this parapet increase the apparent height
25 of the building?

1 A Yes, I would agree to that.

2 Q Does it improve the building's proportions?

3 A I don't know.

4 Q Does --

5 A Aesthetically in one person's eye, perhaps.

6 Q Does it does hide the actual roof line?

7 A Yes.

8 Q Does it hide rooftop equipment?

9 A No. There was no rooftop equipment on this.

10 Q So can you flip back to 83.2, which is 0070.

11 A Okay.

12 Q Does the marquee depicted in 83.2 perform an

13 aesthetic function?

14 A I would agree to that, yeah.

15 Q In general, are parapets common architectural

16 features on commercial building?

17 A Commercial buildings? Sure.

18 Q Are parapets common on Walden's modular

19 structures?

20 A No.

21 Q Walden claimed the research credit for 67

22 non-military structures during the 2004 to 2006 taxable

23 years at issue. Do you know how many of those 67

24 non-military projects included parapets?

25 A No, I don't.

1 Q Would it surprise you to learn --

2 A It's definitely not under S-1000.

3 Q Would it surprise you to learn that 33 of the
4 67 non-military projects included, quote, special
5 parapets?

6 A No.

7 Q No. Can you please look at Exhibit 12, which
8 depicts the ultimate design for which production was
9 issued in Bramasol?

10 A Okay. Which page?

11 Q At page -- I'm sorry. I have it listed as
12 299, but I believe it is -- in this Exhibit 0132.

13 A Okay.

14 Q The ultimate design of the parapets included
15 parapets of two, three, and five feet; correct?

16 A Not -- not in those whole numbers, but there
17 were certainly at least three different heights of
18 parapet here.

19 Q Because the parapets varied in size, they also
20 varied in weight. Would you agree with that?

21 A Yeah. Weight, yes.

22 Q Did the customer change its mind regarding the
23 height of the parapets?

24 A I would assume so.

25 Q Because of this difference in size and weight,

1 each parapet's contribution to the roof load needed to
2 be calculated separately; is that correct?

3 A Each one had to be analyzed, correct.

4 Q Is that a requirement of the Building Code?

5 A It didn't -- I would assume so, but it most
6 simply did not exist in S-1000.

7 Q You couldn't simply make one calculation for
8 the entire parapet because it varied in height; correct?

9 A I'm not an engineer, so I don't know if you
10 could simply make one calculation. I don't know.

11 Q Okay. But you would agree you are required by
12 Code to make dead load and live load calculations?

13 MR. DIES: We've, kind of, had this question a few
14 times.

15 THE WITNESS: I'm not an engineer, so --

16 BY MR. RILEY:

17 Q Okay. Do you remember stating that Bramasol
18 required a volume of calculations --

19 A No.

20 Q -- during the site visit?

21 A No.

22 Q Okay. Do you remember telling the auditor at
23 the June 22nd, 2011, site visit that Bramasol required
24 a, quote, a volume of calculations?

25 A No, I don't recall that.

1 Q Okay.

2 A Doesn't mean I didn't say it. I don't recall
3 it.

4 Q If you were to say it, a volume of
5 calculations, do you mean that there were a great many
6 calculations to make?

7 A Yeah.

8 Q That the calculations required a great deal of
9 effort to complete?

10 A In my estimation, yeah.

11 Q Would you describe the calculations as
12 complex?

13 A Certainly above my ability.

14 Q But is Mr. Wood a reasonably skilled
15 structural engineer?

16 A Yes. Very.

17 Q And Mr. Wood would know how to make these
18 complex calculations?

19 A Yes.

20 Q But it might take him a lot of effort?

21 A I would agree.

22 Q Okay. So let's move to the truss.

23 Had Walden ever made a 62-foot truss before?

24 A I don't know honestly. I would have to look
25 at the supplement to see what we -- what we looked at in

1 that engineering.

2 Q Okay. Let's turn to the supplement, which is
3 Exhibit 13. And if you could turn to page 0 -- okay.
4 So it's 0281 here.

5 A I'd say that's a bunch of pages. Okay.

6 Q It states the following: 62-foot truss Ref
7 Supplement 144 Sheets 13 to 24.

8 A Yes.

9 Q Correct?

10 A Yes.

11 Q And there are five other references here to
12 Structural Engineering Supplement 144?

13 A I don't see them all, but if you can point
14 them out to me.

15 JUDGE THOMPSON: Mr. Riley, some of the material
16 you're pulling is evidence that's in the entry record.
17 Is that that something you can flesh out in your closing
18 arguments?

19 THE WITNESS: So I do see five references.

20 MR. RILEY: Okay. So I will -- I will attempt to
21 speed it up, but I just want you to know what's in the
22 documents.

23 JUDGE THOMPSON: Right. To the extent you are
24 asking about his understanding of the projects, I
25 understand, and, you know, I do want to allow leeway,

1 and I understand where you are going with this.

2 But to the extent you are just wanting to walk
3 through the documents and indicate what's in the
4 documents and then make a legal argument with respect to
5 what's in the documents, that might be something that
6 could be accomplished during the closing.

7 So I hope -- I really don't want to shut you
8 down. I would like to speed it up a little bit --

9 MR. RILEY: Okay.

10 JUDGE THOMPSON: -- with the focus on what he might
11 personally recollect as opposed to his reciting what we
12 can see in the documents.

13 BY MR. RILEY:

14 Q Okay. So real quick, let's turn to page 296,
15 which is the final sheet of this, and this -- this
16 summary legend of the 40 by 62 Bramasol Project, it also
17 references S-1000.

18 A Yes.

19 Q And much like the other two projects that
20 were -- that the summary legend referenced the S-1000,
21 there are many details within it that reference
22 Structural Package S-1000?

23 A Yes.

24 Q Okay. Let's move on to the Mosque.

25 Do you recall -- and I'm going to actually

1 hand out a couple of photos that I want to look at.

2 JUDGE THOMPSON: Thank you.

3 JUDGE BRAMHALL: Thank you.

4 BY MR. RILEY:

5 Q So, Mr. Lord, this is the Mosque 1 and 2
6 Project.

7 During the January 25th, 2011, site visit, do
8 you recall telling the auditor that the prototype for
9 the shipping container Mosque was developed in the year
10 2000?

11 A No, I don't recall that.

12 Q Okay. Do you remember telling the auditor the
13 Mosque Project was basically ocean containers modified?

14 A Basically. I don't recall that, but,
15 obviously, I said it.

16 Q Can you turn to Exhibit 20 at page WSI-412?
17 It might be listed -- the page might be listed at the
18 bottom of that.

19 A Okay.

20 Q Does this photo depict -- sorry. It's stuck
21 together here. 412.

22 Does this photo depict stacks of trim prior to
23 installation from the Camp Lejeune Mosque?

24 A Yeah. Those are probably exterior trims.

25 Q Okay. Are those the same trim pieces that are

1 depicted in --

2 And I apologize for this. I am going to ask
3 you to look at Exhibit 18, which is some of the
4 drawings. So Exhibit 18 at -- let's see here. So I
5 guess it's actually -- Exhibit 18 is a little bit out of
6 order here, but -- so page 0447. It's Mosque trim
7 details, and it's towards -- it's actually towards the
8 end of -- of Exhibit 18.

9 So Exhibit 18 is not in order, but it's
10 probably ten or so pages in.

11 A 0447.

12 Q 0447, the Mosque trim details.

13 A This is 0447?

14 Q Yes.

15 A That what you are referring to?

16 Q That's the first page of Mosque trim.

17 A Okay.

18 Q Okay. Are these the same trim pieces that are
19 depicted on WSI-0452?

20 A I don't know.

21 Q But these -- these are generally Mosque trim
22 pieces that were designed for the Camp Lejeune project?

23 A Yes. These are generally trim pieces, and I
24 would agree these are probably modline and roof trim
25 pieces.

1 Q Okay. Can you look back at WSI -0527, which is
2 this depiction of the Mosque stacked up.

3 A Okay.

4 Q Does this photo show construction of the 29
5 Palms Mosque prior to the installation of trim pieces?

6 A Potentially, yeah. I think this is 29 Palms.

7 Q Okay. Let's see here. 5 and 27, okay.
8 Exhibit 21 -- where did that go? At 05 -- 0527. I'm
9 sorry. I just asked that question.

10 Same exhibit. At 0542.

11 MR. DIES: Are these the pictures?

12 MR. RILEY: Yes. Sorry. It caught on my -- this
13 picture right here.

14 BY MR. RILEY:

15 Q This is WSI -0542. Does this photo show the
16 construction of the 29 Palms Mosque following the
17 installation of the trim pieces?

18 A We haven't gotten the picture yet. I don't
19 have the pictures yet.

20 Q The stack of photos I gave you, it's the last
21 page.

22 A Looks to be 29 Palms and looks like the trim
23 pieces were installed.

24 Q Okay. What is the function of these trim
25 pieces?

1 A To close the gaps between between the
2 horizontal modlines and the vertical corners.

3 Q Is it something other than cosmetic?

4 A Cosmetic and semi keeping water out of the
5 interior.

6 Q Okay. Do you recall stating that the Mosque
7 needed to have a weathered look?

8 A No, but, obviously, we did that.

9 Q Okay. And if you look at WSI-0373 and 0375,
10 is this the weathered look?

11 A Yeah. It's texture going on.

12 Q And that's an application of the weathered
13 look?

14 A It looks like it, yes.

15 Q Okay. So we have got a couple of stipulations
16 in this case that John Miller was not a Walden employee,
17 and Matt Smith was not a Walden employee.

18 So if you could look at Exhibit 18 which is
19 the Mosque Structural Revision D.

20 A Yes.

21 Q And says it was drawn by Matt Smith?

22 A Okay.

23 Q So I guess I'm confused. Matt Smith is not a
24 Walden employee?

25 A Correct.

1 Q But he drew the documents?

2 A Definitely has their title on it.

3 Q It also says, "Drawn by Matt Smith."

4 A That's what it says.

5 Q Okay. And prepared by Allied Container.

6 A That's what it says.

7 Q Structural engineering by J E S Engineering,

8 Inc.

9 A Yes.

10 Q So Mr. Wood did not do the --

11 A So do you notice that says "Civil engineering

12 and land surveying"? Mr. Wood -- no, Mr. Wood did not

13 do these calculations.

14 Q Okay. Can you look to -- there's a lot of

15 them in here, my apologies.

16 Can you look to page 0434? I'm sorry, 0446.

17 0446 this document is titled "Window Design and

18 Framing."

19 A Okay.

20 Q And No. 1, typical door it says "typical door

21 elevation," but I think it means typical window

22 elevation.

23 A Okay.

24 Q And it says that it was drawn by Matt Smith.

25 A Okay.

1 Q And it was dated 11/7/2016.

2 A All right.

3 Q According to this document, what -- do you
4 know what experiments Mr. Smith did -- performed with
5 respect to the half-moon window?

6 A No.

7 Q Can you turn please turn WSI-0472, which is a
8 document entitled "Allied Containers half-moon window
9 detail." So this document bears Walden Structures and
10 Construction's mark; correct?

11 A I'm still trying to find it.

12 Q Sorry. It's the last -- second to the last
13 page.

14 A Okay.

15 Q So again, it's -- for lack of a better term,
16 it's on Walden Structure and Construction's stationery?

17 A Yes.

18 Q And it states, "Drawn by JB"?

19 A Yes.

20 Q Is that Walden engineer -- draftsman Jeremy
21 Brown?

22 A I believe so, yes.

23 Q Do you know when this document was dated? It
24 says 11/16/16. Do you think it was actually drawn on
25 11/16/2016?

1 A No. Yes. Potentially. It certainly was not
2 drawn on 11/16/16, that's all I do know.

3 Q Does this sheet depict the same window as
4 depicted in 0446?

5 A I'm not certain of that. Which page was that
6 again?

7 Q Sorry. Page 0446. The one -- the typical
8 window elevation.

9 A No. It's not the same.

10 Q It's not the same?

11 A No.

12 Q Is it --

13 A The dimensions are all different.

14 Q Is it off by half an inch?

15 A Some of them are. Nine and a half,
16 one-half --

17 Q Three foot -- by two inches --

18 (Simultaneous dialogue)

19 A -- the width is off by one-half inch. So no,
20 not the same detail.

21 Q Generally, it's virtually the same window?

22 A Generally, yes.

23 Q Off by an inch or so?

24 A Two inches in height.

25 JUDGE THOMPSON: Mr. Riley, how much farther do you

1 have?

2 MR. RILEY: So -- I'm trying -- I mean, I will --
3 do you know how much time we actually have? Is anyone
4 keeping time?

5 JUDGE THOMPSON: You are about ten minutes over
6 your estimate.

7 MR. RILEY: Ten minutes over?

8 JUDGE THOMPSON: That is an estimate, so -- I mean,
9 you are on the Mosque project now, and forgive me, but
10 what projects do you have left?

11 MR. RILEY: We have Ynez and Mammoth.

12 JUDGE THOMPSON: So --

13 MR. RILEY: I'll finish -- if you give me five
14 minutes, I'll try to finish. I have one -- you know --

15 JUDGE THOMPSON: To the extent that there's things
16 in the exhibits that they are pointing to, you know,
17 that's something you might be able to point out in your
18 closing and, you know, reserve your questions as best
19 you can to questions about his personal knowledge.

20 MR. RILEY: Okay.

21 JUDGE BRAMHALL: I would like it if you wouldn't
22 rephrase his answers differently than he stated them.

23 Mr. RILEY: Okay. Apologies if I am doing that.

24 JUDGE THOMPSON: I do want you to wrap it. I'm
25 glad the parties are deep in the project.

1 Be careful what I ask for because that's a
2 good thing.

3 And for Appellants, you will have an
4 opportunity to redirect, and --

5 MR. DIES: I don't expect to take any time with
6 that. I think I can handle this in closing.

7 JUDGE THOMPSON: Okay.

8 MR. DIES: I just want to make sure I don't get
9 shut off on a couple of the other things and we find
10 ourselves not finishing today.

11 JUDGE THOMPSON: That's like money in the bank.

12 BY MR. RILEY:

13 Q All right. Okay. With respect to Ynez
14 Elementary, you state that you didn't work on that
15 project?

16 A That's correct. Not much -- I didn't have
17 much to do in anything to do with DSA. That was Robert.
18 He was our specialist.

19 Q Okay. And did you happen to notice with
20 respect to the Ynez project that they had different --
21 that the drawings that you were referring to earlier,
22 that they had different P.C. numbers?

23 A No, I didn't notice.

24 Q If --

25 A That's not uncommon at all.

1 Q If it's the same project, it's -- it would
2 have a different P.C. number?

3 A Certainly. It could very easily. That
4 project had three different buildings which would have
5 had three different P.C.s.

6 JUDGE THOMPSON: I'm sorry. Could --

7 MR. DIES: P.C. numbers.

8 JUDGE THOMPSON: Meaning what?

9 THE WITNESS: Precheck. I'm not extremely versed
10 on a very high level. DSA is a whole different approval
11 than HCDs. It varies.

12 I'm very familiar with -- the DSA was Rob's,
13 if you will. But -- so DSA has -- allows prechecks,
14 P.C.s.

15 BY MR. RILEY:

16 Q With respect to the Mammoth Mountain Project,
17 is there any indication within the documents that this
18 project made it to your structural engineer, Mr. Wood?

19 A I'm not certain of that. What -- what exhibit
20 would that be?

21 Q Mammoth is Exhibit 17.

22 A Well, he certainly wouldn't have finalized it.
23 I'll say that.

24 These are a combination of the architect's
25 plans and our plans. See, it doesn't have a cover

1 sheet. I don't see the reference. It certainly would
2 have referenced S-1000.

3 MR. RILEY: Okay. Thanks. With that, I'll
4 end.

5 JUDGE THOMPSON: Thank you, Mr. Riley.

6 Appellant, do you have any redirect?

7 MR. DIES: No, your Honor.

8 JUDGE THOMPSON: Okay.

9 MR. DIES: I'll take it up in close.

10 You guys need a comfort break?

11 JUDGE THOMPSON: I think we can march on. Who do
12 we have up next?

13 MR. DIES: Mr. Minor, but it's going to be very
14 fast, given the instructions you guys just kind of gave
15 us.

16 JUDGE THOMPSON: Maybe I should reiterate.

17 I think, just for the record, we all know that
18 we are focused on the requirements under the 41(d)(1),
19 and not cost nexus.

20 MR. DIES: Sure.

21 JUDGE THOMPSON: And I think we are in agreement on
22 that, just for the record, as it comes up.

23 MR. DIES: Mr. Minor, will you take a seat in the
24 hot spot?

25 THE WITNESS: All right.

1 JUDGE THOMPSON: I'm sorry. Please raise your
2 right hand.

3
4 JOEL MINOR,
5 called as a witness on behalf of the Appellant, having
6 been sworn in by the Lead Panelist, was examined and
7 testified as follows:

8 THE WITNESS: Yes.

9 JUDGE THOMPSON: Thank you.

10
11 DIRECT EXAMINATION

12 BY MR. DIES:

13 Q Mr. Minor, I just want to ask you a couple of
14 questions about Mr. Anderson, Kip Anderson.

15 Did you work closely with him?

16 A Very closely, yes.

17 Q Did you have personal knowledge as to
18 Mr. Anderson's familiarity with what the folks that were
19 manufacturing supervisors were doing?

20 A Yes.

21 Q Okay. And how -- how aware was he of their
22 jobs and their specific roles and what they were doing?

23 A He met with them each individually for, you
24 know, several minutes a day at least --

25 Q Okay.

1 A -- and to direct them on what the day had
2 ahead of them.

3 Q And that would have been true during the '03
4 to '06 period?

5 A Yes.

6 Q You were a part of the process of information
7 to claim his benefit; is that correct, sir?

8 A Yes, sir.

9 Q Did you observe Mr. Anderson and Mr. Love
10 working together -- Lord -- I keep doing that. I'm
11 sorry -- Mr. Anderson and Mr. Lord working together as
12 far as the amount of time folks were spending doing
13 design and all these other things, putting those numbers
14 down?

15 A Yes.

16 Q And was it clear to you that Mr. Anderson, in
17 your interaction with him, was comfortable with the
18 numbers that were being used?

19 A Yes.

20 Q Okay. Mr. Anderson's name is not on Exhibit
21 1 -- Exhibit 29.

22 A Is that the payroll?

23 Q That is the signed descriptions of what folks
24 were doing.

25 Do you know why that is?

1 A Between the time that alliantgroup came out
2 and interviewed us all, we went through the
3 determination of percentages, and the time we finally
4 got to the point of documentation of the calculations,
5 Mr. Anderson passed away.

6 MR. DIES: Okay. That's all I have, your Honor.

7 JUDGE THOMPSON: Okay. Thank you.

8 FTB?

9 MR. ROUSE: No questions from FTB.

10 MR DIES: All right. Mr. Wonish.

11 JUDGE THOMPSON: Okay. Mr. Wonish.

12

13 ROBERT WONISH,
14 called as a witness on behalf of the Appellant, having
15 been sworn in by the Lead Panelist, was examined and
16 testified as follows:

17 THE WITNESS: I do.

18 JUDGE THOMPSON: Thank you.

19 Would you spell your last name?

20 THE WITNESS: W-o-n-i-s-h.

21

22 DIRECT EXAMINATION

23 BY MR. DIES:

24 Q Mr. Wonish, very briefly introduce yourself
25 and tell us your role.

1 A Sure. My name is Robert Wonish. I am a
2 senior director. I work at alliantgroup. My role is
3 varied. I am an attorney. I represent taxpayers. I
4 also oversee quality control during different studies
5 and serve a lot of different roles.

6 I also represent taxpayers in administrative
7 processes like this, represented taxpayers in litigation
8 as well for Tax Court and Federal District courts across
9 the country.

10 Q For purposes of our discussion today, I want
11 to focus on alliantgroup's methodology during the
12 relevant time period very quickly.

13 Were you aware of alliant -- first of all, are
14 you aware of alliantgroup's methodology in general that
15 they have used over the years?

16 A Yes, I am.

17 Q How how long have you worked for them?

18 A Over 11 years.

19 Q Okay. So you were working at alliantgroup at
20 the time the work at issue would have been done here?

21 A Yes, I was.

22 Q Okay. You were familiar with the processes
23 that were used?

24 A Yes, sir.

25 Q And have you had an opportunity to review this

1 file, go over the information, and observe how this was
2 put together?

3 A I have.

4 Q Okay. And I guess from our standpoint, what I
5 would like the Panel to hear is, there is this test that
6 we have deal with called the "substantially-all test"
7 under the process of experimentation, and there is also
8 a rule called the "shrink-back rule."

9 Are you familiar with those two concepts?

10 A Yes.

11 Q Have you, in fact, taught people those two
12 concepts?

13 JUDGE THOMPSON: I do want to caution here, I mean,
14 in terms legal arguments an briefing --

15 MR. DIES: I promise not to ask him what the law
16 says.

17 JUDGE THOMPSON: I understand too late. Go
18 forward.

19 MR. DIES: Literally we are nearly at the end of
20 this thing.

21 BY MR. DIES:

22 Q The question I want ask to you, sir, is what
23 adjustments were made for purposes of addressing --
24 well, let me -- let me ask it this way: In the creation
25 of the calculation of this credit, what adjustments were

1 made to the wages, contractor costs, were relevant
2 taking into consideration the substantially all rule
3 and/or shrink back?

4 A The specific approach to shrinking back or
5 identifying only the qualified activities to this
6 taxpayer that made it to their return was to focus just
7 on the qualified designed development phase of the
8 project.

9 And to that end, from start to finish, apple
10 -- or acorn to tree, you could look at the project from
11 the -- the inception all way through construction.

12 And we haven't done that. We have focused
13 just on the design development aspect of the
14 architectural plans, schematics, design, the actual time
15 that the engineering activity, drafting activities were
16 taken.

17 To do that, we specifically looked at the
18 people that were included in those phases and only
19 identified those for calculation of the credit.

20 So we haven't taken or included any of the
21 trades professionals that work for the company that did
22 the welding, that did the actual construction, or did
23 the aesthetic building of the project. We have only
24 looked the engineering time up front with the design and
25 development of the -- of the projects.

1 Q If -- if a person has -- we've shown some
2 percentages, and I'm not going to pull all this up. But
3 if a person has 45 percent next to their name, what
4 would that tell you from an alliantgroup methodology
5 standpoint in terms of what adjustments were made from
6 the shrink back?

7 A So that would have looked at that person's
8 activities and tried to identify for that person whether
9 or not they had any nonqualified activities that needed
10 to be excluded and withdrawn those those percentages and
11 percent of their time. So we would have looked and said
12 how much of their time was associated with the original
13 design development phase of the project.

14 Q In the course of viewing these materials in
15 terms of your familiarity with the case, were there
16 projects that were excluded from alliantgroup's
17 analysis?

18 A Sure. We excluded a vast number of the
19 company's projects, the modular buildings, the types of
20 activities that did not have custom one-off unique
21 aspects.

22 The specific project lists were only
23 identified when the company identify the specific unique
24 aspects of that project, and focus in on the design time
25 that would have been necessary to make those changes to

1 a typical or standard or modular building.

2 Q Hypothetically, if a project was something
3 that had been done before that didn't require
4 engineering time, would there have been any piece of
5 that that would have ended up in this calculation?

6 A No, there would not have.

7 MR. DIES: Okay. That is all I have, your Honors.

8 JUDGE THOMPSON: Franchise Tax Board.

9

10 CROSS-EXAMINATION

11 BY MR. RILEY:

12 Q I'll just -- just -- just a few quick
13 questions about the Exhibit 29 Project Cluster
14 Questionnaire.

15 Did alliant -- sorry. Did alliantgroup draft
16 the project cluster questionnaire for Mr. Lord's
17 signature?

18 A We would have drafted the questionnaires as
19 part of the study process. So as we are gathering
20 evidence process and information from our client, we
21 would have drafted up a study or report or summary of
22 the information provided to us.

23 As part of our study process, we then provide
24 that to our client, allow them to review it, confirm the
25 facts and evidence contained within it, and verify.

1 Once they have done that, they would sign off
2 on it to verify the facts.

3 Q But you didn't draft it?

4 A I did not personally draft it.

5 Q Okay.

6 A I don't know who did.

7 Q So with respect to Exhibit 29, the
8 Project Cluster Questionnaire on page WSI-0052 --

9 MR. DIES: If we could just give him a second to
10 have the exhibit in front of him.

11 THE WITNESS: Could you repeat that?

12 BY MR. RILEY:

13 Q Sure. Exhibit 29, WSI-0052.

14 A I have it in front of me.

15 Q It states non R&D activities, and then it
16 states all of the Engineering Department's time was
17 spent performing R&D activity; correct?

18 A Yes, it states that.

19 Q Okay. And your -- you stated that you were
20 familiar with the shrinking back rule?

21 A Yes.

22 Q If you applied the shrinking back rule to each
23 of the six projects at issue in this appeal, how is it
24 then that the Engineering Department's activities are
25 claimed at 100 percent in the cluster project

1 questi onnai re?

2 MR. DIES: I will object to that, your Honors,
3 because the agreement to limit this to six projects
4 happened at the exam level .

5 These folks' time when it was claimed in these
6 documents was claimed in connection with their global
7 work. We're not saying 100 percent of their time fits
8 these six projects. That's never been the position.

9 MR. RILEY: I'm sorry, but the -- the -- the
10 document here it says all of the Engineering
11 Department's time was spent performing R&D activities.

12 To the extent that we have shown through the
13 evidence that some of that activity is not qualified
14 research activities, I think we are entitled to point
15 out that 100 percent of the Engineering Department's
16 time was claimed as R&D activities.

17 JUDGE THOMPSON: We'll allow him to answer the
18 question. You know, the substantially all with respect
19 to all the activities is at issue --

20 MR. DIES: Sure.

21 JUDGE THOMPSON: -- and so, you know, he can
22 respond, and we'll take a look at it and consider its
23 submi ssi on.

24 THE WITNESS: Speci fi cally, when you were looking
25 at these projects, even if they bank off of an existing

1 or prior project or the standard SP-1000, what you are
2 looking at is did the company have to undertake a
3 process of experimentation or process of evaluating one
4 or more alternative -- and I don't want to lecture on
5 the law so I will keep my answer narrow -- but you are
6 looking at whether or not the time that they have to
7 spend collectively -- not on an individual calculation,
8 but collectively on a project -- had uncertainties that
9 they were having to solve.

10 And from what I understand from the
11 regulations, the experimentation, there's a specific
12 example of a car manufacturer who has made cars before,
13 but because of the environmental regulations, they had
14 to change their exhaust system. And that caused them to
15 change something else like their hood dimensions because
16 the engine got bigger, and that caused them to do all
17 these other activities.

18 And so they constantly kept having to do
19 changes. Now, the bulk of the car stayed the same but
20 the regulations the example specifically offered that
21 that example was substantially all research, and they
22 allowed it.

23 In context here, the testimony that our
24 clients gave to us during the study process was the time
25 that they were spending on a project was to make the

1 special collective changes that they needed to, and if
2 they changed the size of the building, if they changed
3 the shape of the roof, that has consequences on the
4 design. And so they go through an overall process for
5 the entire project -- not on an individual
6 calculation -- collectively on that project. Was that
7 time part of the experimentation?

8 And that is what we understood it to be, and
9 that's why we worked with them to verify that 100
10 percent of the engineer's time was qualified.

11 MR. RILEY: Okay. We're -- I think we're done.
12 Thanks.

13 JUDGE THOMPSON: So I have a question in terms of
14 methodology.

15 THE WITNESS: Yes, sir.

16 JUDGE THOMPSON: When Appellant is evaluating
17 whether qualified research occurred, my understanding,
18 based on the briefing, is that the universal activities
19 we would look at of Walden's activities with respect to
20 each project. Is that correct? Is it all the
21 activities? Is that -- that -- that, you know, with
22 respect to the project?

23 Or is it in the methodology, you only looked
24 at engineering and development activities?

25 THE WITNESS: We looked at all of the time

1 necessary and appropriate to complete the design, and
2 get to that design so it could go off to construction
3 and be built.

4 But we specifically tried to eliminate the
5 actual welders and the plumbers and the actual people
6 doing the cabling and actual construction of the
7 project.

8 Since the time that this was filed under the
9 T.G. Missouri or Trinity case, those activities of
10 actually building a prototype, a one-off project can
11 actually all be included.

12 And so, at this time because this case has
13 taken a long time to proceed through the process, the
14 taxpayer could be entitled to research credits for all
15 the activities until the prototype is built,
16 constructed, and you actually prove out the entire
17 design.

18 In this context, the taxpayer shrunk back.
19 They didn't want to claim all the different construction
20 activities. They just wanted to claim the specific
21 engineering activities at the core of designing the
22 changes to the structure.

23 JUDGE THOMPSON: In terms of the methodology, it
24 sounds to me -- please correct me if I'm wrong -- you
25 are saying that the remainder of activities, the

1 construction activities, would be a part of the
2 activities of Walden in terms of producing the approved
3 business component?

4 THE WITNESS: You could look at the entire finished
5 business component as a finished product. What we
6 looked at was just through the completed design phase of
7 that. And that's why you have the cutoff at the end of
8 the engineering group.

9 So if we just look at how much of the
10 activities or how much of the experimentation was going
11 on with the engineers, the draftsmen, the outside third
12 party contractors, and the manufacturing supervisors
13 that are doing the review work, all of that activity is
14 part of the experimentation process.

15 And so we were entitled to claim 100 percent
16 of those activities in that space. And so that's why
17 you have the engineering group entirely qualified. You
18 have allocations for the manufacturing supervisors who
19 lent their experience to say, "Okay. You designed a
20 great building, but it can't be built this way." or
21 "You are going to have conflicts with the design here,
22 here, and here, so you need to change your design."

23 So we shrunk back to that initial design phase
24 until they completed their ultimate design of the
25 project.

1 JUDGE THOMPSON: Thank you. You know, it's hard to
2 draw these boundaries in the testimony, so this may be
3 an area that's, presumably, without me saying anything,
4 you would go into it in closing.

5 MR. DIES: Absolutely.

6 JUDGE THOMPSON: It might be worth exploring.

7 MR. DIES: Absolutely.

8 JUDGE THOMPSON: That's all I have.

9 Do either of my co-panelists have any
10 questions?

11 JUDGE BRAMHALL: No.

12 JUDGE CHENG: No.

13 MR. DIES: You had mentioned needing potentially
14 Mr. -- Mr. Lord, and --

15 JUDGE THOMPSON: Mr. Welk.

16 I don't think, so. My co-panelists, anything?

17 JUDGE BRAMHALL: No.

18 JUDGE THOMPSON: And you are entitled, if you have
19 any further questions, I think, if you have any
20 questions of Mr. Wonish. If you have any redirect, or
21 the -- give you that opportunity.

22

23 REDI RECT EXAMI NATION

24 BY MR. DIES:

25 Q Well, let me ask you this, Mr. Wonish. From

1 the time that this transpired, since this credit was put
2 together, has the methodology used on this credit been
3 evaluated by courts?

4 A It has. So the methodology approach has been
5 looked at by the courts in the Shami versus the
6 Commissioner Case, Audio Technica versus the
7 Commissioner. There's been several times that this has
8 gone to trial and reviewed. I don't know how much the
9 Panel would like to hear about that.

10 Q I'm not -- I'm not looking for a legal
11 argument except to say has any court said that that
12 methodology, that is, interviewing folks, gathering that
13 data, shrinking back for that time is improper or not
14 the best way to handle a situation like the
15 substantial all --

16 MR. ROUSE: I'm going to object.

17 (Simultaneous dialogue)

18 MR. DIES: I can still say it too. I'm happy to
19 kind of let your know where we are coming from.

20 JUDGE THOMPSON: I asked it.

21 MR. DIES: Fair enough.

22 Okay. Your Honors, do you want to break or
23 muscle through this?

24 JUDGE THOMPSON: You know, we have nothing left
25 except for closing; right?

1 MR. DIES: Yes, your Honor.

2 JUDGE THOMPSON: On closing, I don't know.
3 Everybody in the room may not want to. I'm -- so I
4 thought maybe take a little break.

5 Maybe we would plan on a little longer for
6 closing? I'm looking at my Co-panel.

7 MR. BRAMHALL: My flight is at 9:25. I just have
8 to get to Burbank.

9 JUDGE THOMPSON: So, I just -- let's say -- we say
10 up to 30, up to 40, and, hopefully, you guys won't push
11 the boundary too much.

12 I really want to hear -- we a lot of new
13 information and testimony, and so I'm really looking
14 forward to hearing closing arguments.

15 And then in the same vein, you know, what if
16 we break until about ten to 5:00? Is that going to
17 put us too late?

18 MR. DIES: I don't have a flight. I'll tell you,
19 I've been living this case. I don't need a lot of time
20 to put this together, so the five or ten-minute comfort
21 break, we can --

22 JUDGE THOMPSON: Okay. How about we break until
23 4:40, and we get started?

24 MR. DIES: Yeah. Quarter of.

25 JUDGE THOMPSON: Okay. Let's recess until 4:45,

1 and we will look forward to it.

2 (Recess taken.)

3 JUDGE THOMPSON: So we are back on record then.

4 CLOSING ARGUMENT

5 MR. DIES: Your Honors, I want to say thanks for
6 the time you gave us to you today to listen to us and
7 for giving Mr. Charlie Walden a chance to be heard.

8 This is important stuff. He claimed this
9 credit eight years ago. And this is really the first
10 time he's had a chance to get a full understanding of
11 what the Government's position is. It strikes me as
12 crazy, ladies and gentlemen.

13 I will tell you I learned today what the FTB's
14 position was on adaptation. If you look in the writing,
15 if you look in the history, if you look in any of the
16 material that has been provided by the State of
17 California, I think you are going to have a hard time
18 finding S-1000, PS-1000.

19 So what happens? We come here today. We hear
20 this argument, we point to documents that were never
21 requested by the FTB. We ask witnesses to refer to
22 things that aren't part of the connection, and the
23 inference is just, sort of made, some of this stuff is
24 the same.

25 I can save you a bit of that inquiry, ladies

1 and gentlemen. A lot of stuff in our products may be
2 the same, but that's not the test. That's not what
3 adaptation is about.

4 I don't have to use a different length of beam
5 in every one of my buildings, and Ford doesn't have to
6 change the number of tires or wheels they put on a car.
7 That is not the test. I don't have to show that every
8 facet in every one of these projects is different.

9 It just strikes me as a little bit unfair that
10 only now have we heard anything other than we have
11 engaged in adaptation.

12 The argument was made -- you will find
13 adaptation in the write-ups, and you've seen it. But I
14 told you this morning, you won't see a single project
15 that they have compared us to that says you stole this
16 idea from that product; therefore, it was adaptation.
17 That analysis has never been provided until today.

18 I think it would be patently unfair to this
19 taxpayer to rule against them by virtue of adaptation of
20 something they only learned about in the final day of
21 hearing eight years after they claimed this benefit.

22 That's said, I think we win it anyway. I'm
23 going to try to make it real easy for you guys. No one
24 has disputed the fact that if we beat the four-part test
25 under T.D. 9104, the adaptation exclusion doesn't apply.

1 So, the real question that you guys have to
2 focus on today is did I get across the finish line on
3 the four-part test? Because if the answer to that is
4 yes, adaptation and duplication go away.

5 I just wanted to point that out because this
6 is -- these arguments, you know, we didn't have an
7 opportunity to bring some of these documents. This is
8 literally the first we have heard about that position.

9 Ladies and gentlemen, I think you also have
10 another benefit working for you in this case, and that
11 is the circumstantial evidence. There is this notion
12 that we are just saying we were uncertain. Right? I
13 did ask them some direct questions.

14 In fairness to everybody in the room, they did
15 track the language of the law. I did ask "Were you
16 uncertain at the outset about the methods you were going
17 to use to solve these problems?" And for every project,
18 the witnesses said "yes."

19 I leave their credibility to you. I also ask
20 if, as to each of these projects, there was uncertainty
21 as to the appropriate design, and in each case, the
22 witnesses that knew about the projects said "yes."

23 But I submit to you that you don't have to
24 take their word for it. If they were certain about how
25 to do these projects, if they were certain about how

1 make these projects work, we wouldn't have 85 pages of
2 paper that we were lugging around, or they had to draw
3 this stuff out and work through the process, wouldn't
4 see multiple revisions, wouldn't see the testing in the
5 form of the calculations from an engineer.

6 And we'll drive into the four-part test on
7 each project in a moment.

8 But just to be clear, at a very high level, no
9 one calls an engineer because they want to give their
10 friend some money, and says, "Will you put some
11 calculations together so I can pay you for absolutely no
12 reason?"

13 If we didn't need these calculations, if we
14 didn't need to prove up our design concepts, if we
15 didn't need to test our hypotheses about whether the
16 designs we were putting together for our clients would
17 work, we wouldn't have had to do that work.

18 The circumstantial evidence is compelling with
19 respect to certainty. It's compelling with respect to
20 the process of experimentation. Right? That is -- I
21 get this question a lot in R&D. But wait a minute. I
22 don't have bunsen burners. I don't have white lab
23 coats. And thank God -- thank goodness, the law doesn't
24 require me to.

25 You know I have to do? I have to look at

1 alternatives. I have to have uncertainty about which
2 alternative is the best. Using systematic trial and
3 error, I have to weigh those alternatives until I come
4 to a place where I had resolved that uncertainty. And
5 then I have to do it in a way that creates a product,
6 process, technique, software, and so on.

7 So the process of experimentation in this case
8 occurs at many levels, ladies and gentlemen.

9 Again, out of mindfulness, I want to talk
10 about this at a high level so I can move more quickly
11 through the projects.

12 But when we first get that sketch from a
13 client, get that idea from a client, Charlie mentioned
14 yellow paper, and in some cases, we get something a
15 little more precise. We are beginning our journey in
16 the process of experimentation, because we had been
17 asked to create a thing that we have never made before.

18 In every instance, you heard from the
19 witnesses that there were aspects of these projects that
20 they -- that Walden had never done before. Frankly,
21 that's the reason we have drawings. If we had done it
22 before, we wouldn't have needed to make new drawings.
23 All the drawings are dated. Every single one of the
24 documents that you are looking at here have some
25 reference to time.

1 So we had been asked to solve a problem that
2 we had never solved before, hence the creation of these
3 drawings. So in the very beginning, they recreated the
4 preliminary drawings. These were our ideas about how we
5 are going to attack a building for this client.

6 Now, this -- it's a hypothesis at best. We
7 haven't proved a concept. We haven't solved a problem.
8 We have a theory that this particular approach will
9 work. And we do this at many levels. We do this with
10 electrical. We do this with HVAC and heating. We do
11 this with plumbing. We do this with the structural.

12 On top of that, we have to take into
13 consideration what's going to happen to this product
14 that we are making when we put it on the road.

15 Some of these products had to go many, many,
16 many, many miles away from here and still be safely and
17 completely assembled. They couldn't torque. They
18 couldn't come off square. They couldn't change shape on
19 the road. And we had to engineer and design them so
20 that they wouldn't do that. Right?

21 So systematically, we are working through
22 competing systems.

23 There was also a series of questions very near
24 the end of the proceedings today where Counsel asked a
25 question about, you know -- I just lost my train of

1 thought. Forgive me. I'll come back to it.

2 Let's go back to the systems. Each of these
3 systems -- oh, I know -- just took me a little while.
4 Forgive me.

5 Counsel asked a question about CAD. Is that
6 really modeling? Right? So the guys are using those
7 words. You think it's modeling. We had that exchange.
8 You may remember it. It wasn't that long ago.

9 Let me submit to you why I think it is and why
10 it I think it constitutes the process of
11 experimentation. Because we are drawing something in
12 virtual space, we were in a computer. We are trying to
13 place objects in a particular location. I may have air
14 handler, I may have a truss. I may have a sprinkler
15 system.

16 And I put those objects in the location, and
17 then I have to design other systems. And I may be
18 designing five or six different systems, and I'm using
19 CAD to put these things in approximate place and time.
20 And you'll notice, there's dimensions all over the place
21 on this stuff.

22 Well, when I go and check for conflicts, I
23 have to systematically look at that drawing. I have to
24 say, well, the air handler and this structural beam
25 cannot occupy the same space. Einstein proved that a

1 long time ago. So one of them has to move. Which will
2 it be? And what are the consequences of moving each?

3 Okay. We'll move the air handler because this
4 roof truss has to keep the building from caving in.

5 Well, what happens when we move that air handler? Are
6 we putting a kink in it that's going to require more air
7 flow?

8 Do we have to make a change in the design?
9 Where is that air handler relative to the other parts of
10 the building? Am I hanging it on a modline as we saw
11 with Bramasol? And what is the consequence of doing
12 that? How am I going to cool two different units with
13 this air handler?

14 What CAD does -- what the modeling does is it
15 allows us to systematically manipulate all of these
16 different systems to a point at which we can get all of
17 them to work.

18 That, ladies and gentlemen, is the definition
19 of trial and error. Right? This is not penicillin that
20 accidentally found its way into a Petri dish on
21 someone's sandwich. This is systematic trial and error,
22 because when I make one change to my system, I have to
23 evaluate the consequences of that change on every other
24 aspect of the system.

25 Now, keep in mind, I'm still in virtual space.

1 Frankly, I'm probably still in a preliminary form of the
2 drawings.

3 Now I go to my engineering folks. I think my
4 structure works. But I don't know. If I knew, I don't
5 have to go to my engineering folks. As Mr. Riley
6 pointed out, if I already have a calculation for my
7 engineer for very particular approach, I have no need to
8 ask him to give me the same thing. I have uncertainty.
9 I don't know if this structure is stable. I don't know
10 if this parapet, which is undisputedly higher than any
11 we had done before it, can handle the wind loads that
12 are being called for. I don't know if I attach it to
13 the building this way that there will be some other
14 unexpected outcome.

15 And so we want calculations to test the
16 approach that I put together. The engineer says one of
17 two things: Yes, it works. In which case my hypothesis
18 has been confirmed and my process of experimentation is
19 nearly complete. It's not totally complete, but it's
20 pretty close.

21 Or, no. In which I have to go back and start
22 over again and come up with another approach. Doesn't
23 mean the engineer isn't going to give me some ideas.
24 Doesn't mean the engineer won't say, "It fails, and it
25 fails because of this reason," which I can then use to

1 try and solve the problem.

2 But it does mean that if the engineer says no,
3 I have to revisit systematically what I did to try to
4 fix the problem that the calculations have shown us
5 exist.

6 That is the process of experimentation. That
7 is systematic trial and error.

8 Now, we get to the place of building this.
9 And you guys saw an example on the Mosque project where
10 we had to create a special beam. We had cut so much out
11 of these train -- shipping containers that they
12 weren't -- they wouldn't hold themselves together
13 internally.

14 And, by the way, that's not just on the road.
15 That's not just this thing going to crimp and torque on
16 the road and in on itself, but when we pick this up with
17 cranes, if it is not structurally protected, it's going
18 to fold in half.

19 Now, all of a sudden, I have got a product
20 that has changed shape in a foreign state where the
21 military has offered me a lot of money to build it
22 because I didn't engineer around a problem that I didn't
23 anticipate. Right?

24 And so even in construction, even in
25 completing these prototypes, I am still evaluating

1 whether my design works. And the testimony was that are
2 instances where we discover that our design won't work
3 for any litany of reasons that caused us to revisit it.

4 Notice the Code is very clear on the life
5 cycle of research and development. It starts at that
6 dinner napkin prototype, and it doesn't stop until a
7 very particular time, that is, when the product meets
8 the client's functional and economic requirements.
9 Right? That is -- it's just not a subjective thing.
10 When do I have a product that does everything it was set
11 out to do functionally and economically?

12 Now, notice in Mammoth Lake, we never got to
13 that place. The product -- project died because we
14 couldn't meet economic requirements, among other things.
15 But that is the -- the -- the life cycle of research and
16 development. And as Mr. Wonish alluded to, and there
17 are plenty of cases that have talked about this, the
18 creation of a prototype is, in fact, research and
19 development.

20 Each of these buildings was unique. It
21 doesn't mean they didn't have some of the same shear
22 walls. It doesn't mean that they may not have had
23 common C-beams.

24 But the specific systems employed in each of
25 these buildings were unique to Walden, and the process

1 of testing their viability was not completed until I can
2 turn a light switch on and the lights come on, and the
3 AC comes on, and the building works and functions --
4 until my Marine could kick that door in 60 times and us
5 not have to keep replacing the door mechanics. Right?

6 All of that stuff had to work and then when it
7 worked -- and only then when it worked is our true
8 process completed.

9 And so I submit to you, ladies and gentlemen,
10 that you have heard a lot today, and particularly in
11 cross-examination about isn't this supplement the same
12 as that supplement? And isn't this beam the same as
13 that beam?

14 But what you have not heard is that the
15 challenges that we specifically referred to on each of
16 the projects weren't unusual. No one has said that. No
17 one has said you faced these precise challenges before.
18 No one has said that we had already solved these
19 problems. No has said that we -- or no one has
20 countered our position that we were uncertain about the
21 approach that we were taking.

22 And so, very quickly, I kind of want to go
23 through these projects at a very high level, to walk you
24 through the FTB's arguments, and, kind of, how we feel
25 that we have addressed those arguments, if that works

1 for you.

2 Bramasol Project. We built a parapet. I will
3 concede. It is stipulated by the parties that parapets
4 exist. They are not uncommon in commercial buildings.
5 But we had not a parapet like this. This one was
6 different, and that is undisputed. Right? This one
7 created a unique load which required us to solve
8 problems. Did we use systematic trial and error?
9 Absolutely.

10 You also heard testimony that the dimensions
11 of this building were different. It's an interesting
12 argument to say, "Don't you often work with 12 by 60
13 buildings?" And then to say, "A 24 by 60 building is
14 just two 12 by 60 buildings stuck together." Really,
15 it's not.

16 The testimony has shown you that if anything
17 is true when we combine these things in unexpected ways,
18 we change the system. We change the roof. We may
19 change the HVAC. We may change a number of issues. So
20 you don't just get to measure the outside of a rectangle
21 as if we are in 7th grade geometry class and say the
22 inquiry stops.

23 Here I have seen these numbers before. You've
24 got to look at that system. Right? And so we design
25 the interior of this thing, and the process of

1 experimentation that I have shown you is all of the
2 systems being tested systematically, calculations that
3 were presented to you guys making sure that they work.

4 And by the way, the testimony was that that
5 process was followed on all six of these projects.

6 Admittedly, in Mammoth, the testimony was we're not sure
7 if we got so far as the engineer. That one may have
8 died before we were able to finish it.

9 And, by the way, you don't have to succeed in
10 R&D to qualify for the credit. In fact, the credit was
11 created to encourage innovation, which is, by
12 definition, risky.

13 So, in Bramasol, the key issues were the
14 parapets, the high wind loads, the construction methods;
15 right? We mentioned to you that we had not done
16 anything like this. It couldn't be shipped at its
17 height which changed everything. We had three different
18 heights.

19 There was a discussion of the calculations and
20 the question was, "Was this a complex calculation?" The
21 answer was, "I don't know." Right? But we had to test
22 our approach for these three different heights of
23 parapets, and an engineer's calculations said if you put
24 this on a building, it won't cave in, or it won't hurt
25 somebody, or it won't have a problem. And we finished

1 that project.

2 On the Mosque Project, the examples we use --
3 and there are a number of innovations in these --
4 there's a reference to -- there was a reference to some
5 notes that were taken by the FTB examiner that said the
6 first prototype for this was built in 2000.

7 I will tell you, I just believe that to be a
8 typo. We have seen no evidence that any of these
9 Mosques existed back then. If you look at our Mosque
10 drawings, they are all dated the 2006 period. The
11 design we are talking about, the design we claim, the
12 design that we put together for you is dated during this
13 period.

14 I'm not sure what a prototype is, but if we
15 had already had a design, we wouldn't have needed to
16 create these documents in 2006.

17 I am not suggesting that the agent was
18 dishonest. I don't believe that -- that the evidence
19 shows that there was a Mosque that existed in 2006.

20 Notice, also, if you go to these documents, if
21 you choose to look at them, that each of the two Mosques
22 are different. There are differences in configurations.
23 There are differences in things like stairwells,
24 relative differences between the parts of these things.
25 And all of that affects structural integrity of the

1 building.

2 A number of limitations placed upon us by the
3 fact that we had to use rail cars.

4 There's been some notion that some of the work
5 that was done on the Mosque was aesthetic to try to make
6 it look weathered. Aesthetic is not -- aesthetic
7 developments are not a permitted purpose under the
8 four-part test, but I would also submit to you that
9 that's not been an exclusion that's has been argued as
10 of yet. It would be brand new today, if they said that
11 you should discount some of these because -- for
12 aesthetic reasons. I'm unaware of any reference to that
13 in the past.

14 Although I would tell you by purpose of our
15 methodology, none of the time we took, none of the wages
16 we claimed, none of the qualified research expenses we
17 generated, had anything to do with making anything
18 pretty. Right?

19 My folks don't care if it looks weathered.
20 Mr. Walden didn't say, "I like a red Mosque better than
21 a blue Mosque," and spend a bunch of time arguing for
22 that. Right? But the client said, "Make it look
23 weathered." We made it look weathered. But that's not
24 where the R&D is. The technician spraying whatever that
25 is on that panel is not what we claimed.

1 Al though, i roni cally, i n T.G. Mi ssouri , the
2 new regs, and i n the Trini ty case, the new regs on
3 supply costs basi cally codi fied Trini ty and T.G.
4 Mi ssouri . Crea ti on of a pro to type all way through would
5 count. Thi s number would be much higher i f we di d thi s
6 work now.

7 Just an a side, we also took no supply costs,
8 and Trini ty supply costs were awarded. That i s the
9 steel i n the hull s.

10 Imagine what thi s credi t would have i f we had
11 cl ai med supply costs. I f Charli e had been able to jump
12 i n hi s ti me ma chi ne and seen the case load that you wi ll
13 have at your di sposal , hi s credi t would have actual ly
14 been vast ly higher.

15 And fol ks who do what he does now that are
16 i nnovating and are doing new products, I thi nk
17 rightfully can cl ai m those qual i fied research expenses.
18 So that was the Mosque.

19 I n Genentech, aga i n, you may have some
20 assertions that we had hung cable trays before, and I am
21 not suggesting that we hadn't. But you heard no di spute
22 that thi s was an odd ly confi gured bui l di ng, that the
23 l ong shape of thi s was di ffi cul t.

24 Charli e mentioned that the cli ent also wanted
25 thi s bui l di ng to be able to be taken apart and used

1 independently. You heard no dispute about whether there
2 were challenges associated with that. There were no --
3 there were no questions on cross-examination about that
4 topic.

5 But we had to build a building that could be
6 purposed for Genentech and also repurposed at some later
7 date and still have all of these independent systems
8 that worked. So if I chopped off pieces of an
9 electrical system, what was left still had to function
10 independently.

11 And I think that's very important as we go
12 through the engineering and design that's required here,
13 because it's not good enough for me to just connect Unit
14 2 to Unit 3 and have a power supply on Unit 2. If Unit
15 3 is expected to stand alone at some other point, I've
16 got to engineer for that.

17 So all of these limitations, all of these
18 requirements that are put on us, require us to go
19 through that process.

20 There has been some reference to the use of
21 Codes, but they were engineering codes. Yes. There
22 are. And they tell us what the rules are, but they
23 don't tell us how to meet them.

24 There have been some notion of calculations.
25 Calculations are not new. They have been around since

1 4,000 B.C. in some form or another. But we don't have
2 to reinvent math to qualify for this credit. The fact
3 that we use known principles of science and engineering
4 is a given. Why? Because if they were unknown, we
5 couldn't use them.

6 In Genentech, the odd configurations, the
7 cable trays, the demand on the roof, all of these things
8 played a role, and none of that was disputed.

9 In Ynez Elementary, we focused on two specific
10 challenges, the corridor, which was fireproofed or had
11 to be fireproofed. You heard the problem of attaching
12 modular buildings together. If there's any space at
13 all, fire likes open space. It gets in these corridors,
14 and our kids have a real problem.

15 With the balcony, you heard the challenges
16 that that puts in terms of torque load on the walls.

17 And in all of these cases, you saw that we
18 systematically attacked these things by drawing
19 preliminary designs, evaluating them, putting all the
20 systems in place that needed to be put in place, having
21 an engineer bless those calculations by testing them
22 from a physics standpoint, and then we would proceed to
23 build. And that happened in Ynez Elementary as well.

24 In Welk -- this was a very interesting part of
25 the discussion, particularly in the cross-examination.

1 All of it centered around the fact that we'd used this
2 beam or that beam at some point in the past.

3 But you didn't hear anybody talk about the
4 challenges with a high-gabled roof in this
5 configuration. Right? That matters.

6 The system was different. You didn't hear
7 anybody say these coffered ceilings weren't a challenge
8 because we're flipping things at various levels and
9 supporting them at various distances. You didn't hear
10 any of that.

11 Again, the FTB didn't dispute that the things
12 we said were challenging, were, in fact, challenging.
13 They just chose to point to some things that were
14 common. I wouldn't be surprised if the shear wall
15 existed, the same kind of shear wall in another
16 building. Right?

17 And I wouldn't be surprised if Ford used the
18 same metal in its F-150 as it does in its F-250. But I
19 tell you, they are different vehicles. I would tell you
20 that there's different engineering in those vehicles. I
21 would tell you that the drawings are going to be different.
22 Right? And everything that's different about an F-250
23 versus an F-150 is something that has to be
24 specifically engineered.

25 For reference, while on the subject,

1 Mr. Wonish stole my thunder with an example from the
2 regs about a car company. I want to give that to you so
3 that you can find it if you would like to read it. It
4 is 1.41-4(a)(8) example 4. It's good reading if you are
5 looking for an exciting time. Right?

6 But essentially what it says is, changing the
7 shape of a car hood, if that's necessary to take into
8 consideration the difference in an exhaust design is, in
9 fact, qualified activity. When we apply that to
10 something like this case, when we applied it to Trinity,
11 the boat case that I told you about, where the court
12 said this is not a fast food menu, notice we found
13 ourselves coming full circle. Right?

14 Instead of saying we have hulls, they are
15 saying we have beams. Instead of saying we have cabins,
16 they are saying we have shear walls. Instead of saying
17 we have a motor that's going to drive this hull, they
18 are saying we have used a calculation before in some
19 other context. Right?

20 It is not at fast food menu. All of these
21 things work together, and in these unique situations, we
22 had to re-evaluate every single time.

23 So that example, I think, is very helpful.

24 We have not heard a ton about routine
25 engineering, as that phrase is being used, and I think

1 it's a phrase that no one uses any more, and I'm very
2 proud of my role in getting rid of that phrase, because
3 I thought it undermined fundamentally the purpose of
4 this credit.

5 But I do think you will hear things like,
6 "Engineers do this all the time." You may hear things
7 like, "Well, if you're in the modular business, you can
8 put pieces of buildings together." Right? You may hear
9 arguments that we had made roofs before. We had made
10 parapets before.

11 But none of this -- we just put wool on the
12 sheep -- on the -- on the, sheep -- on the wolf. Right?
13 You just changed the name. Instead of calling it
14 routine engineering, we are just calling it something
15 else. Right?

16 We don't have to suddenly make toasters after
17 having made modular buildings for 30 years to suddenly
18 qualify for this credit.

19 But if they say that there is some subjective
20 level of uncertainty we have to achieve or some sexiness
21 -- our parapet has to be "X" feet higher or we don't get
22 to count that, they have reintroduced an element which
23 has long been excluded under our case law.

24 Finally, we've got Mammoth Lake. And Mammoth
25 Lake was a project that's, frankly, incredibly complex

1 for us in a number of ways. There wasn't a lot of
2 discussion on Mammoth Lake. I think everyone agrees we
3 never got to the final stages.

4 But you heard about the torque. It's caused
5 by these seismic activities.

6 You heard about the snow loads, which were
7 three times higher than anything we have ever done.

8 You heard about the combination of seismic and
9 snow loads when together, basically, when you put a
10 bunch of rocks on top, you know, on top of the building,
11 when we shake it, the rocks are bouncing up and down
12 trying to tear the building apart.

13 You heard about all that's included there.

14 There was some discussion about a heating and
15 cooling system that we had never worked with that we
16 were going to have to design modular buildings around.

17 When you think about a boiler system, when you
18 think about a chiller system, you are thinking about
19 major office buildings, schools, and other things that
20 are permanent, fixed structures.

21 We were going to have to stack these units two
22 deep and have a system that can feed them that way using
23 heat and cool -- cooling that we had never dealt with
24 before. Right? That's completely innovative for us.

25 And, in fact, again, we get to uncertainty.

1 The best evidence of uncertainty? It was a failure. We
2 couldn't do this economically for what the client was
3 willing to pay despite all of our efforts.

4 Now, you guys, if you look at the Code, you
5 will see that there are actually three kinds of
6 uncertainty. There's one called capability. Right?
7 There's one called methodology. And then there's one
8 called appropriate -- uncertainty as to appropriate
9 design.

10 I believe that every single one of our
11 projects had uncertainty as to methodology, and you have
12 seen that uncertainty in the version of all of our
13 various changes, revisions, the things we have done.
14 Right? -- going back to the drawing board, computer
15 modeling, to calculations.

16 Uncertainty as to ultimate design -- or
17 appropriate design, you've seen the same thing. Right?
18 -- the same kinds of evidence.

19 And notice, the time here is critical. The
20 time here is at the outset. These guys said we learned.
21 Hopefully, we learn, or we don't get paid. Kevin said
22 eventually we overcome these uncertainties.

23 We don't have to have them throughout the
24 process. It's just at the outset. It is when we
25 undertake to solve this problem for the client, do we

1 know which methods will solve all of these problems? Do
2 we know what the appropriate design is going to be?

3 And I would submit to you that I only have to
4 have one. If I have any one of these three
5 uncertainties, I have met that test.

6 In the Mammoth Lake case, we also actually had
7 uncertainties as to capability. If we had known when we
8 started this work that we weren't capable of designing a
9 building that could meet the economic requirements of
10 our client, we would not have spent months and months
11 and months trying to solve these problems.

12 So, again, you don't have to take our word for
13 it. There's circumstantial evidence that, in fact,
14 we had uncertainty in that case as to capability.

15 Now, we walked through the law. We've talked
16 about the law. I do want to have a quick discussion on
17 a few of the relevant cases, and I want to talk about
18 the substantially all discussion, because I do think
19 it's important for the analysis that you guys are going
20 to be doing.

21 T.G. Missouri made molds. They made molds,
22 and I mentioned this earlier, for car parts, you know,
23 gearshift knobs, steering wheels. And the IRS didn't
24 even argue that you had made a steering wheel before.

25 It was very clear that we when make a new

1 mold, we have go through that same process, shaping the
2 thing, using the epoxy. If the epoxy doesn't work or
3 the shape is not right, go back and revisit it. And it
4 was pass after pass after pass after pass to create
5 these molds.

6 It's interesting to me because it seems
7 fundamentally pretty simple. I am pouring some sort of
8 plastic or rubber or whatever I have working with into a
9 shape, and I am making a gearshift knob.

10 And the IRS didn't even argue that the
11 creation of that mold met the four-part test. Got a
12 product? Gearshift knob. Uncertainty? Takes many
13 passes to make these molds because I have to shave them
14 and change the shape and keep working until it meets --
15 meets my specs. And then the process of experimentation
16 was literally going through and changing these molds.

17 Finally, I use principles of engineering;
18 obviously, I am using certain metals or certain epoxies
19 or whatever I am using to make this stuff.

20 The IRS didn't even argue that. That's a
21 fundamentally simpler kind of R&D than we are talking
22 about in this case. And it provides, I think, clarity,
23 as to how seriously you should take the position that we
24 are not engaged in R&D.

25 In the Trinity case, we have talked a lot

1 about the detail, but a couple of small points, those
2 folks were wiped out by Katrina. I mean, literally
3 wiped out. The company was out of business. The case
4 was actually brought by a bankruptcy trustee, who was
5 trying to get credits to satisfy some of the debtors of
6 Trinity.

7 Now, why does that matter? They had hardly no
8 documents. They had -- literally had almost no
9 documents. They had boats, and they had testimony of
10 the folks who made those boats. Right?

11 I expect that you are going to hear some
12 argument from the FTB that we have some incredible
13 documentation requirement. I submit to you that we have
14 actually provided documents on every one of these. We
15 have shown the iteration. It's well beyond anything
16 Trinity had, because they were wiped out. And the Court
17 didn't have the benefit of shrinking back.

18 You will notice, if you read the Trinity case,
19 that some of these boats were so wildly different, and
20 the testimony was that these systems were so different
21 that the Court said certainly more than 80 percent of
22 this boat was different. R&D, off you go, and Trinity
23 got 100 percent of those projects.

24 In some of the cases, the court said, "I can't
25 get to 80 percent." Even then the Court didn't say

1 there wasn't R&D, but they said, "Unfortunately you have
2 no documents. You have no evidence, so I don't have any
3 means of quantifying the percentage that I should give
4 you." And therefore, they disallowed certain -- certain
5 of the projects.

6 In this case, we do have the documents. We do
7 track this process. In fact, these documents are custom
8 tailored to the specific changes that we were making on
9 these particular buildings.

10 All of this reference to S-1000 and SP-1000
11 and all of these other things, those aren't part of
12 this, because that was not part of the research. It's
13 also not part of the credit. I didn't claim Kevin
14 Lord's time for engineering the S-1000 or the SP-1000.
15 Nobody took credit for that.

16 No one is asking to be paid for that in these
17 tax years. We took credits. We took dollars. We took
18 qualified research expenses for only those changes that
19 were made in these systems that required them to do
20 these designs, that required them to get engineers
21 involved to test their calculations.

22 And that is the shrink back that the Court
23 could not do in Trinity. So when you ask yourself if
24 substantially all of the activities that were claimed in
25 this case are, in fact, research and development

1 activities, you have your answer.

2 I don't have drywallers up here, even though
3 some later cases would call these things prototypes, and
4 they may qualify. I don't have electricians and
5 plumbers and all these folks. The guy who was spraying
6 the stuff to make the Mosque looked weathered is not
7 part of this credit.

8 We trailed all of that stuff back.

9 Mr. Anderson is not with us anymore, but you heard the
10 testimony of three witnesses that these folks got
11 together. They looked at the time that was spent doing
12 new designs, solving the problems with these projects,
13 and they estimated the percentage of time of these
14 folks' time that was doing it.

15 You'll notice that the percentage is very high
16 for the engineers. These guys are doing the drafting.
17 They are draftsmen. That's literally what they do all
18 day every day is try to solve these problems, literally
19 by designing these systems.

20 If you look at the manufacturing folks, you
21 are going to notice that they have smaller percentages.
22 Some are at 45. Some are at 75. And there are
23 different numbers there. And that's because not all of
24 their time was spent solving the types of problems,
25 working on these unique issues, doing the kinds of

1 things that we're talking about here.

2 You heard Mr. Woni sh say that we speci fi cally
3 removed all of the stock projects from the project list.
4 So we would have asked the folks at Walden, "Which of
5 these things had you made before? Give us a list of the
6 projects that only had, either brand-new construction,
7 you'd not done this before, or material, new,
8 improvement, or features."

9 And that's where our project list came from.
10 So we scaled all of that stuff out of there. There were
11 no repeats or rewrites in any of that stuff.

12 And then we asked those folks, "Okay. How
13 much of the time was spent here?" Now, you heard from
14 Mr. Love. You heard from Mr. Minor. And you heard
15 about Mr. Kip's -- Mr. Anderson's involvement in that.
16 And they estimated that time to the best of their
17 ability. That is already factored in, the parts of the
18 time which wouldn't qualify.

19 If you look at the wage allocation
20 questionnaires, which are Exhibits 9 and 10, you will
21 see that very few -- very few of the folks who work for
22 this company had any allocation at all.

23 I do believe the numbers are around ten
24 percent, meaning 90 percent of the folks who worked for
25 this company don't -- in terms of wages -- don't have

1 any allocation whatsoever. We have not claimed their
2 activities. And the same for the contractors cost.

3 So -- so that's physically what we do. We
4 shrunk back. We focused on that part of the activity
5 which was R&D at its core, and that's all that we have
6 claimed today.

7 So substantially all of the activities that
8 show up in the form of qualified research expenses were,
9 in fact, the drafting and the design, the things that we
10 are talking about here.

11 I'm imagining there's some other important
12 pieces of case law and other facts that I have
13 neglected. I've done my best to present this evidence
14 to you.

15 Thank you so much for paying attention to us.

16 I understand I get just a few minutes to
17 remit.

18 JUDGE THOMPSON: Approximately ten minutes. Thank
19 you for that.

20 MR. DIES: Thank you.

21 JUDGE THOMPSON: Ms. Kuduk.

22

23 CLOSING ARGUMENT

24 MS. KUDUK: So before I begin my closing argument
25 here, I would like us to take a second and pause and

1 think about what is at issue in this case. The question
2 that is at issue in the case is: Were Walden's
3 activities qualified research?

4 You have heard a lot of testimony today --
5 extensive testimony -- about Walden's work in
6 constructing these six projects. The taxpayers do not
7 qualify for the California Research Credit for simply
8 any activity no matter how rigorous that activity was.
9 Taxpayers only qualify for the California Research
10 Credit for performing qualifying research.

11 Now, qualifying research is a defined term in
12 Section 41 of the Internal Revenue Code. To be
13 qualified research, the activity must meet the four-part
14 test of Section 41(d)(a) and must not be excluded under
15 Section 41(d)(4).

16 And I'm going to go ahead and read Section 41
17 of the Internal Revenue Code right now, because I
18 believe we're getting a little confused on the language.

19 So Section 41(d)(1) -- yes. 41(d)(1) states:

20 "Qualified research defined: In general, the
21 term qualified research means research with respect to
22 which expenditures may be treated as expenses under
23 Section 174, which is undertaken for the purpose of
24 discovering information which is technological in nature
25 and application of which is intended to be useful in the

1 development of a new or improved business component of
2 the taxpayer. And substantially all the activities
3 which constitute elements of a process of
4 experimentation for a purpose described in paragraph 3."

5 Which paragraph 3 is not relevant here.

6 So the issues in this appeal, as I said, is
7 whether Appellants have substantiated that the
8 activities Walden performed in the taxable years at
9 issue are qualified research and whether those
10 activities are excluded from the California Research
11 Credit.

12 It's undisputed in the Internal Revenue Code
13 that a taxpayer who claims a tax credit must
14 substantiate entitlement to that credit.

15 It's also undisputed that the Appellant has
16 the burden of proving entitlement to the California
17 Research Credit, and that case law and Treasury
18 Regulations require the taxpayers to retain the records
19 necessary to substantiate that entitlement.

20 So Appellants have the burden to prove their
21 entitlement to the California Research Credit.

22 Appellants have not substantiated the activities Walden
23 performed in the taxable years at issue are qualified
24 research as defined by the four-part test of Section
25 41(d)(1).

1 Moreover, the documents provided show Walden's
2 activities are activities for which the California
3 Research Credit is not allowed as defined by Internal
4 Revenue Code Section 41(d)(4).

5 Now I'd like to take a moment to address
6 Appellants' statement that Appellants did not have the
7 information about S-1000. The documents that were
8 submitted today -- or submitted for this hearing today,
9 were Appellants' documents. These documents were
10 submitted to Respondent in a reply brief and were
11 previously submitted at audit.

12 In my reply brief, I stated the submitted
13 documents were not reliable. And I also stated that
14 there was 874 pages of documentation that were
15 submitted, but Appellants didn't explain the purpose of
16 the submitted documents.

17 I still don't have that kind of analysis of
18 why Appellants are eligible for a qualified -- a
19 qualified -- why Appellants' activities are qualified
20 research and why they are eligible for the California
21 Research Credit.

22 The Treasury Regulation Section 41.41(4)(d)
23 states that the taxpayer claiming credit under Internal
24 Revenue Code must retain records in a sufficiently
25 usable form and detail to substantiate that expenditures

1 claimed are eligible for the credit. Again, Appellants
2 have not done that.

3 Literally, we had had to go through these
4 documents, sort out which documents were for which
5 project, go through the documents with a magnifying
6 glass, and try to figure out what Appellants were trying
7 to prove. That is not our burden. That is Appellants'
8 burden, and they have not met it.

9 And specifically, in my stipulations sent to
10 Appellants before this hearing, I asked them to
11 stipulate what three projects were constructed according
12 to Structural Package S-1000. Those were their
13 documents. They should have known what Structural
14 Package S-1000 was. And we asked them to stipulate what
15 it was, or at least explain it.

16 So I am confused as why they would be
17 surprised by this at this late in the game.

18 Further, in this appeal, Appellants failed
19 three parts of the four-part test, and are not eligible
20 to claim the California Research Credit.

21 They failed the process of experimentation
22 test. The process of experimentation test is a
23 three-part test. Substantially, all of the research
24 activities must constitute elements of a process of
25 experimentation for a permitted purpose relating to new

1 or improved function, performance, reliability, or
2 quality.

3 I want to -- I want to go back to the actual
4 Code, so -- okay. So substantially all the activities
5 which constitute elements of process of experimentation
6 for a permitted purpose.

7 We heard today that three of the projects that
8 Appellants claim in this sample were based on structural
9 package S-1000. Taxpayers claim that 100 percent of all
10 the activities in each project is qualified research,
11 and that no percent of the activities was not qualified.

12 Well, Bramasol and Genentech were based again
13 on structural package S-1000, which is an existing
14 business component. So we know part of those projects
15 are not qualified which puts the taxpayer at less than
16 100 percent.

17 And we don't know if they met the
18 substantially all percent requirement in the process of
19 experimentation test. And it's their burden to prove
20 it, and they have not proven that.

21 Further, Appellants have not provided
22 documentation to show that a process of experimentation
23 occurred. Appellants' activities were not as stated in
24 Union Carbide, ordinary engineering activities that
25 would have occurred, even if the taxpayer was not

1 conducting an experiment.

2 Shami tells us that Appellants must provide
3 documentation that demonstrates qualified research to
4 claim the California Research Credit. The documentation
5 that Appellants provided did not demonstrate qualified
6 research. Again, I have yet to have the Appellants
7 state, "This was our business component, and this is
8 how -- how we tested these business components."

9 In Foodum, taxpayers provide scientific
10 letters, journals, publications, and U.S. patents, all
11 proving that qualified research occurred.

12 In Union Carbide, the taxpayers' research
13 documentation included presentations, email
14 communications, lab data notes, and monthly reports in
15 which the taxpayers actually recorded and listed
16 problems to be solved.

17 Walden supplied blueprints and photos of the
18 six projects and calculations that engineers performed
19 to ensure that Walden's modular structures met standards
20 outlined in the Uniform Building Code. They had CAD
21 drawings which, in and of themselves, are not
22 experimentation.

23 The documentations Appellants provided did not
24 prove research as the taxpayers did in Foodum and Union
25 Carbide but were merely blueprints, photos, and

1 calculations performed to ensure that Walden's modular
2 structures met the standards of building codes. This
3 does not document qualified research, but is merely
4 routine engineering.

5 The blueprints, photos, and calculations did
6 not evidence a process of experimentation. Appellant's
7 documents do not show systematic tests of alternatives
8 nor an evaluative process as required by Union Carbide.

9 Today Mr. Walden said the revisions in the
10 plans could have come from owners' changes or could have
11 come from Walden's own preferences or from additional
12 engineering. However, Walden never determined which
13 activities were customer driven or which activities were
14 Walden driven or which activities were experimentation.

15 At best, the documents Walden provided did not
16 show Walden tested a hypothesis, analyzed data, refined
17 a hypothesis, and retested the hypothesis as required by
18 Union Carbide.

19 Appellant's documentation did not show a
20 systematic test of alternatives nor an evaluative
21 process.

22 At best, Appellants' manufactured modular
23 structures promote a set of available options followed
24 by calculations required by applicable building codes.
25 And if the engineering calculations failed, there was no

1 testing. Walden then just employed other construction
2 changes. There was no testing.

3 As Mr. -- as stated by Mr. Lord, if the
4 engineering calculations failed, there was no testing.
5 They just employed other constructional changes. This
6 is routine engineering and not experimentation.

7 Appellants, in their opening statements, state
8 their activities were the type of activities that
9 Congress created this tax credit for. This is
10 incorrect. Federal research credit was created to give
11 taxpayers a credit for research connected with high
12 technology, which Congress defined as chemists or
13 physicians developing and testing a new drug or
14 engineers who design a new computer system.

15 Congress enacted Section 41 because Congress
16 was concerned that taxpayers were claiming the Federal
17 Research Credit for virtually any expense related to
18 product development.

19 The blueprints, the photos, and the
20 engineering calculations shows activities which Walden
21 claim California Research Credit are no different than
22 any other construction project in which calculations are
23 needed to complete the project.

24 It's Appellants' burdens to prove that Walden
25 performed a process of experimentation. And Appellants

1 have not met that burden.

2 In regards to the Section 174 test, the -- to
3 claim research credit, the activity must -- the term
4 "qualified research" means research with respect to
5 which expenditures may be treated as expenses under
6 Section 174. To qualify, there must be uncertainty.

7 An engineer has certain information readily
8 available to him, including his own experience,
9 institutional knowledge, and, as we have seen, Walden
10 created similar-type projects in -- previously,
11 especially in regard to the the Welk project.

12 The engineer -- specifically, Mr. Lord said an
13 engineer blessed it, because he checked his notes and
14 realized that he had done it before. Mr. Dies said
15 that. Sorry.

16 An engineer, again, has certain knowledge
17 available to him. He has institutional knowledge. He
18 has the Uniform Business Code, and any project-specific
19 plans and specifications provided by a third party, such
20 as Walden's clients.

21 Walden's activities did not pass the
22 Section 174 test because Walden had this type
23 of information available at the beginning of
24 the six projects. Treasury Regulation Section
25 1.41-4(a)(3) states:

1 "Uncertainty only exists if the
2 information available to the taxpayer does not
3 establish the capability or method for
4 developing or improving the business component
5 or the appropriate design of the business
6 component. And a taxpayer must develop some
7 information beyond the experience and
8 knowledge. This is called statutory
9 uncertainty."

10 Walden has stated its uncertainty at the
11 beginning of each project was uncertainty over the
12 optimal design, the capacity to balance the building
13 components while maintaining project specifications, and
14 the design methodology.

15 But, also, in regards to the Mammoth project,
16 it was a question whether they could make a project that
17 was price competitive. Mr. Walden has stated they could
18 relieve themselves of that uncertainty through the
19 process.

20 This colloquial uncertainty is not the type of
21 statutory uncertainty that is needed by law to be
22 eligible for the California Research Credit. To
23 understand the difference, I'm going to give you a
24 little scenario.

25 Imagine a cancer -- a scientist who goes to

1 work every day, who is testing to try to see if he can
2 cure cancer. At the end of every day, he will have no
3 idea if he cured cancer. He will have no idea if his
4 process worked.

5 As opposed to Walden, which at the outset may
6 not have definitively known how to build this building,
7 but throughout a process, they would be able to -- they
8 would know that it could be done.

9 So there was -- these are the two types of
10 uncertainty and it's only the uncertainty of the cancer
11 scientist that you can get the California Research
12 Credit for.

13 Walden had the information available to
14 manufacture the six sample projects. Walden could rely
15 on the Uniform Business Code, engineering norms, client
16 specifications, government codes, internal engineering
17 packages such as S-1000, and other engineering packages
18 to complete the project.

19 For the Welk Resort, Appellant stated Walden
20 needed to develop a 48-foot beam which was shorter than
21 the standard 60-foot beam. Walden had no need to
22 conduct an experiment, but rather could resolve any
23 issue by processing known and available information.

24 In fact, Walden used Structural Package S-1000
25 to complete projects similar to the Welk Project right

1 before the Welk Project was begun.

2 On August 12th, 2005, at the Phoenix Ranch
3 School, Walden completed a project using a beam which
4 was shorter than Walden's standard 60-foot beam.

5 On February 1st, 2006, two weeks before the
6 Welk Project was begun, Walden began the Shell Vacation
7 Project which used a 48-foot beam, the same size beam as
8 the Welk Project.

9 Walden stated it needed to -- needed to
10 experiment to determine how to make a structure with a
11 48-foot beam. Yet Walden made these same types of
12 structures with the same size beam only two weeks
13 before.

14 The type of uncertainty Appellants present is
15 not statutory uncertainty, because Walden's own
16 experience and other available information, such as
17 projects with the same parameters, or almost the same
18 parameters, provided the methodology for determining the
19 appropriate building. it was not the type of
20 uncertainty that is necessary to claim the California
21 Research Credit.

22 So the third test that's at issue here is the
23 Business Component Test. And again, I want to read the
24 Business Component Test.

25 So Business Component Test, .

1 "The" -- "The activity means research which
2 the application which is intended to be useful in the
3 development of a new or improved business component of
4 the taxpayer."

5 There tells us that Appellants need to
6 identify their business component. However, I -- I
7 still don't know what the business component is. The
8 Appellants have failed to identify any specific process
9 or product in the Mosque 1 or 2 project, the Ynez
10 Elementary School Project, and the Mammoth Lakes
11 Project.

12 I have yet to hear the Appellants say that
13 is -- this was my business component in this project,
14 and this is the experimentation I did to make a new
15 business component or to improve a business component.

16 In testimony today, Appellants have stated
17 that -- that this is our business component and the --
18 and -- yeah -- I have yet to hear what the business
19 component is or what experiments they have done.

20 In documents given to FTB, Appellants stated
21 that the business component is the process or technique
22 of integrating all the project parameters into a
23 fully-functional deliverable project. If that is the
24 case, they wouldn't have met the substantially all
25 requirement of the process of experimentation, because

1 we can't define what they did experimentation on.

2 Walden's vague and evasive description of
3 their business components aren't sufficient to meet the
4 business component test. In fact, the Mosque 1 and 2
5 Project -- in the Mosque 1 and 2 Project, there's a
6 question whether Walden's employees produced the
7 project.

8 Additionally, Appellants have submitted no
9 documentation of what testing was done on the Mosque 1
10 and 2 Project. I am not sure if they tested the door.
11 I'm not sure if they tested the building.

12 In fact, Walden never said what was the
13 business component in any of their six projects.

14 Walden's activities in the Bramasol Project,
15 the Welk Resort, and the Genentech Project did not pass
16 the business component test, because Walden was not
17 developing a new or improved business component, but
18 merely recycling structures built on the S-1000
19 engineering packages and other previous structural
20 supplements as Mr. Walden said.

21 Additionally, Walden had previously
22 constructed the same type of structures as the 33
23 special parapets, like the parapet in Bramasol, and, as
24 I mentioned before, the Shell Vacation Project. That
25 came right before the Welk Project that had the same

1 48-foot beam.

2 Where a taxpayer fails a single part of the
3 four-part test, the inquiry ends. Appellants don't
4 qualify for the California Research Credit.

5 Appellants have also cited Suder, but we can
6 distinguish case Suder, because the Suder court
7 determined the taxpayer had -- had met the requirements
8 of 41(d)(1); however, we've demonstrated a lack of the
9 process of experimentation, a lack of identifiable
10 business component, and a lack of uncertainty.

11 They have failed to meet Section 41(d)(1).
12 Also they have also done many of these projects before,
13 meaning they had adapted many existing business
14 component. This is a specific exclusion.

15 Further -- furthermore, Walden adapted an
16 existing business component, and, therefore, its
17 activities are activities for which the California
18 Research Credit is not allowed.

19 Walden adapted current projects to customer
20 specifications as demonstrated by their bidding process.

21 Walden priced projects on an initial plan, and
22 then changed the price based on customer request and
23 regulatory requirements. In fact, the blueprints
24 provided, Walden asked its clients to review the
25 dimensions to the consistency with your needs and

1 wishes.

2 Walden's activities were like Example 6 in
3 Treasury Regulation Section 1.41(4)(c)(10) where the
4 rail car manufacturer sold a rail car with fewer seats
5 than other models. Walden swapped a 60-foot long beam
6 and replaced it with a 48-foot long beam, as in the Welk
7 Project or designed the building where each unit was 72
8 feet long, rather than 60 feet long, as in the Genentech
9 Project. Or designed a truss which was 14 feet by 62
10 feet, rather than the usual 12 feet by 60 feet, as the
11 Bramhall Project.

12 Walden also adapted their structures from the
13 existing business component engineering package S-1000
14 shown by Respondent, as in -- which was in their
15 documents and which referenced -- which was referenced
16 multiple times in previous projects.

17 In fact, Eduardo Garcia drew the Shell
18 Vacation Project using a 48-foot truss just two weeks
19 before Eduardo Garcia drew the Welk Project, also using
20 a 48-foot truss. Adaptation of an existing business
21 component is specifically excluded from the Research
22 Credit under Section 41(d)(4).

23 Walden also duplicated existing business
24 components which is specifically excluded by statute.
25 Again, in the Bramasol and the Welk Resort and the

1 Genentech Projects, they duplicated the specifications
2 and engineering package S-1000.

3 The Board of Equalization held in Appeal of
4 Aaron and Alysse Mandego that unsupported assertions
5 cannot satisfy a taxpayers' burden of proof.

6 Appellants have not proven that they met the
7 statutory requirements to claim the California Research
8 Credit. Despite the voluminous amount of documentation
9 provided and the extensive testimony, Appellants showed
10 the six projects were complicated, but they didn't show
11 that they were qualified research.

12 As a result, Respondent properly proposed tax
13 adjustment to disallow the California Research Credit
14 for the taxable years at issue.

15 Respondent urges you to uphold the Notice of
16 Action.

17 MR. RILEY: Real quick.

18 And as to the TD 9104 --

19 THE REPORTER: As to the what?

20 MR. RILEY: Sorry. As to Mr. Dies' allegation
21 regarding Treasury Decision 9104, the taxpayer didn't
22 get across the finish line with respect to Section
23 41(d)(1). They didn't prove their -- their business
24 components. They didn't prove their process of
25 experimentation, and they didn't prove their

1 uncertainty.

2 And on top of all that, it's adaptation, as we
3 showed through the cross-examination of their documents.

4 So, thank you.

5 JUDGE THOMPSON: Thank you. Okay. Thank you, Tax
6 Board.

7 Appellant, are you ready with rebuttal of
8 approximately ten minutes?

9 MR. DIES: I am.

10 JUDGE THOMPSON: Thought you might be.

11

12 REBUTTAL

13 MR. DIES: I have a little bit to say, but I will
14 try to keep the pace in the same spot.

15 Business component. If you look at your
16 Stipulations in Stipulation P, the FTB has stipulated
17 that each discreet business component is a product. The
18 same folks that just told you they have no idea what our
19 business component is.

20 They have told you that S-1000 is a business
21 component, while at the same time telling you they have
22 no idea what our business component is.

23 They have told you that, well, in Bramasol and
24 Mammoth --

25 A VOICE: Mammoth.

1 MR. DIES: It's not Mammoth. It's Genentech -- all
2 adapt prior business components while still telling you
3 they don't know what our business component is.

4 Both of those things can't be true. If I
5 don't know what a business component is, I can't
6 possibly know if someone has copied it.

7 Now, the -- it is true that the num -- that
8 the letter S in the number 1000 do appear on our
9 documents. But never once before today has anyone
10 asserted that in any respect they support, prove, or
11 support adaptation. There is no connection there.

12 And, frankly, these guys are arguing from a
13 set of ghost documents that are not available to any of
14 us right now in this proceeding.

15 I never told you that we don't know what
16 S-1000 is. These guys made it. They know exactly what
17 it is. All I told you is that this is the first time
18 hearing that that is our adaptation. The argument has
19 never been made before today, and I think you would be
20 wrong to consider it.

21 I do think Mr. Riley and I agree on something,
22 which is, if I prove the four-part test, you don't have
23 to waste your time here.

24 Now, he says TD 9104 doesn't apply because I
25 don't show business component, uncertainty, and process

1 experimentation. Right? But he seems to imply that if
2 I do show those three, you won't have to worry about
3 this. All I'm suggesting to you is, there are a number
4 of internal inconsistencies in the position that is
5 taken -- that has been taken by the Franchise Tax Board
6 today.

7 A couple of quick points that were made for
8 you guys. Bayer. The Bayer case tells us you have to
9 identify the business component. Yes, it does. If you
10 know anything about the fact -- background in that case,
11 Bayer is a massive company with a massive number of new
12 products.

13 When the IRS said, "Tell us what your business
14 components are." They said, "We can't possibly do
15 that." There are tens of thousands of them. We're not
16 even going to try." The court said, "You don't get to
17 do that. And very reasonably so, by the way.

18 If a taxpayer could get away with saying, "I
19 don't have to tell you what my business component is,
20 but you have to pay me," we would all have a problem.

21 Now, how are we different than Bayer? We have
22 said from the beginning we make a product. Now, the
23 reason I didn't bring my product here is because some of
24 them are 16,000 square feet. I can't set it on this
25 table. You can go out and touch it. It's a real thing.

1 It's an actual device. These Mosques exist in this
2 world.

3 The only thing that was never functionally
4 completed was the Mammoth Lake Project, and our idea was
5 to complete it. We wanted to complete it. We just
6 weren't capable of completing it.

7 So our business component is and always was
8 the product that is represented by these documents.
9 It's a school. It's a resort center. It's a dormitory
10 building. Right? That is our business component. It
11 is a thing.

12 They say all we have brought is blueprints and
13 photos, and I admit that that is true, because that is
14 all we could bring to show our business component.

15 Let's talk about uncertainty for a moment.
16 Now I have to cure cancer. Apparently, if I am sitting
17 in my lab and I think I have done something that might
18 cure cancer, and I leave that lab that day not knowing
19 it, by God, then I'm going research. You guys, I don't
20 have to cure cancer.

21 There's an example in the Regs that's a cheese
22 blade. I'm not making this up. It is 1.41-4(a)(8)
23 Example 3.

24 In that example, client makes -- they call it
25 a food process blade, but I think I'm going to go with

1 cheese because it sounds disgusting if we talk about it
2 any other way. And they want to make a finer shredding
3 blade. The challenge is, if I thin the materials or
4 change the metals, the blade may break. How do I
5 achieve that finer shred by changing out my blade? I've
6 already got a cheese shredder. I just need to fix this
7 blade.

8 That act of trying different blade
9 configurations qualifies for this credit. And nobody
10 had cancer cured by doing any of that. Right?

11 My uncertainty does not have to rise to that
12 level.

13 The thing they say is, "Wait a minute. You
14 are using things that are known." Yes, I am. Because
15 if they are unknown, I can't use them. Right? Boeing
16 can't get us to the moon right now, because they don't
17 know how to do that in a passenger vehicle. They know
18 about planes.

19 The laws of physics haven't changed. They
20 they know how lift works. They know how to run calcs.
21 But understand if the test was to do R&D you couldn't
22 use institutional knowledge, and the things that are
23 known by engineers, no one in the world would qualify.
24 How could you possibly engage in R&D on something you
25 have no idea about? It's -- it's -- it's a silly

1 argument.

2 It's true, Mr. Walden said, "If I go through
3 this process, I can overcome this uncertainty." Well,
4 that's the whole point. I had uncertainty in the
5 beginning, and this iterate trial-and-error process,
6 this stepping back and forth and going through the
7 different changes, manipulating these objects in virtual
8 space to see if they are occupying the same area,
9 changing out the systems saying, "Well, wait a minute.
10 I've got to get cooling for three units out of two
11 devices, so on."

12 All of that stuff is the process. And when I
13 go through the process, I come out with an answer.

14 By the way, that's true for everybody else in
15 the world.

16 We -- we also have this notion of uncertainty
17 that -- that you don't have uncertainty if you use
18 pieces of this. I told you you were going to hear about
19 those 33 parapets. I guessed it. Right? I told you
20 you were going to hear about that 48-foot beam.

21 You know what? My '78 Ford Granada was a
22 beautiful vehicle, had exactly the same spark plugs as
23 my 1980 Ford Pinto. The reason I know that is because
24 when I wrecked the Pinto, I had to take the spark plugs
25 out of it because I couldn't afford the spark plugs to

1 change in my own vehicle. Right? Now, we would never
2 say, "Hey, wait a minute, Ford. You got the same spark
3 plug here."

4 The fact that I have a beam in more than one
5 building doesn't mean I'm not doing R & D. Right? The
6 fact that other parapets exist does not mean I'm not
7 doing R&D. That is not the test, because if that were
8 the test, Boeing would have to find a way to make a
9 plane without wings, because their last plane had wings.

10 They would have to find a way to make a, you
11 know, a weapon system that launched missiles, but it
12 didn't launch missiles because their last system launched
13 missiles.

14 There's going to be common interactions
15 between the products. You're going to see these things.
16 The fact there are things that exist in more of our
17 buildings that we have made in the past does not mean
18 that we are not engaged in research and development.

19 In terms of uncertainty, I have laid out what
20 those were. They were process and design.

21 There is really cool example that was
22 referenced about the rail car. And I want you guys to
23 look that up, and we'll give you a citation, but it goes
24 like this: I have space in my rail car, a bench for
25 three people. And then I go, hey, in the next rail car

1 I want a bench to fit two people. Not R&D and they are
2 right about that. That is not R&D. I didn't have to
3 re-engineer the rail car. I didn't have to see what the
4 physical structural dimensions of the two-seater bench
5 from the loads they put on the rail car. I didn't have
6 to do any of the iterate process that these documents
7 prove that we did, which is why the rail car example
8 doesn't apply here. Right?

9 If this were just a function, Kevin or
10 somebody calling somebody saying, "Hey, move that light
11 switch over two feet." That's not R&D. But that's not
12 what we've claimed. That's not the dollars that we have
13 asked for.

14 Now, the substantially all test on the process
15 of experimentation is one of the last things I, kind of,
16 want to cover with you guys.

17 They have said that substantially all of our
18 activities must constitute a process of experimentation.
19 Substantially all of the activities we claimed were
20 involved in the new drafting, the new designing, the new
21 creation of a product, process, or technique that was
22 going to be used in our business.

23 We have followed the process of
24 experimentation requirement with regard to the
25 substantially-all rule because we have focused on those

1 activities which are, in fact, systematic trial and
2 error.

3 There was a quotation read about Congress
4 saying that -- that -- that R&D credit should apply to
5 high engineering?

6 A VOICE: High technology.

7 MR. DIES: High technology. I'm sorry. I didn't
8 mean to misquote.

9 See that high technology? That's a sexiness
10 test. This is not a sexiness test. We already have
11 established that. High technology, apparently, if I
12 engineer a computer, by God, I get R&D. But if I
13 engineer a building that I have never made before, I
14 don't?

15 Who gets to tell us what high technology is?
16 Are we going to trust a bunch of random FBI agents? If
17 so, when Farouk Shami claimed his hair dyes, they would
18 have said, "Wait a minute. My wife can get her hair
19 brown from something else. That's not high technology."
20 Right?

21 Mr. Suder was a -- was a math -- a math
22 degree -- a math degree and he was a salesman. He
23 started making phones because he thought he could do a
24 better job than somebody else. If the test was high
25 technology, a small business telephone is never going to

1 meet that test. You know why this was created? To
2 encourage innovation and create jobs.

3 California didn't adopt the R&D credit because
4 it loves its people. California adopted the R&D credit
5 because it's good for business. If I encourage
6 California businesses to hire people, I improve
7 California's economy. Right? If I do that, I am
8 encouraging them to be innovative. I accomplish the
9 goal of advancing technology in my own state.

10 By the way, many states in our country had
11 this very same credit, and most of them adopt Section 41
12 exactly for the same reason -- and most of them have the
13 rule, you just have to do it here. Right?

14 Only now, eight years later, we come here and
15 find out it's got to be high technology to qualify.

16 Ladies and gentlemen, that is not the test.
17 That has never been the test. Do not allow sexiness to
18 somehow be plugged into this.

19 And, Mr. Walden, I apologize. I am not saying
20 your products are not sexy. That's not my argument.

21 But my point here is, I don't have to meet
22 some subjective standard to get across the finish line.

23 So that's our position, guys.

24 I just want to look at my notes here a moment.

25 JUDGE THOMPSON: Okay.

1 MR. DIES: That's another thing. I appreciate --
2 this is why I carry all these guys with me -- my own
3 entourage.

4 He has reminded me of a case I was sitting in
5 the courtroom for -- Suder -- where the Court said you
6 couldn't use institutional knowledge. In fact, he
7 specifically said, "You can't use institutional
8 knowledge to solve these problems." The quote we're
9 looking for, if you want to Google the Suder reference,
10 is Judge Vasquez and the phrase reinvent the wheel in
11 the context of Suder. He will say a taxpayer need not
12 do that stuff.

13 So you are going to find that -- that the fact
14 that we had done a parapet before, doesn't exclude us
15 from claiming research on another parapet. We don't
16 have to reinvent the wheel.

17 Anything else?

18 Folks, thank you so much for your time. I
19 know you wanted to knock this out in an afternoon. I
20 know you have solved multi-million dollar tax disputes
21 in a matter of fact of a few hours. This was just a
22 hai ry provision of the Code.

23 So thank you.

24 And thank you guys for your efforts as well.

25 JUDGE THOMPSON: I want to thank the parties --

1 both parties have done an excellent job on this, really
2 helped us understand the facts and legal issues, and I'm
3 glad we had the whole day, or it -- I think we needed
4 it -- it was well used.

5 Before I conclude the hearing, I want to check
6 with my panelists and see if they have any questions.

7 Mr. Bramhall, anything you want to ask?

8 MR. BRAMHALL: I would like both parties to address
9 one question.

10 If you satisfy the four-part test, does the
11 duplication issue go away? Or is that a fifth test?
12 That's my question.

13 MR. DIES: I'll let you go first, Mr. Riley.

14 MR. RILEY: So the adaptation and duplication and
15 exemptions or exceptions are both -- they are part of
16 the Code, and to date, I don't know that any Court has
17 ruled exclusively on an adaptation or duplication stand
18 alone.

19 But again, it's not, I mean, the Franchise Tax
20 Board's position is that in addition to not meeting
21 41(d)(1), they don't meet 41(d)(4). It's most clearly
22 expressed through an adaptation.

23 MS. KUDUK: They haven't met their burden to show
24 that they have passed the test. They have the burden.

25 MR. DIES: TD 9104 specifically says three

1 exclusions go away if the four-part test is met.

2 The first one is research after commercial
3 production. Right? That one's gone.

4 The second one is adaptation.

5 The third one is duplication.

6 It specifically says it in there.

7 Now, Counsel is correct. No court has said we
8 hereby find the facts that give rise to this situation
9 in this TD 9104 apply, therefore, A, B, C. But the
10 reason they haven't had to do that is because people
11 don't argue that. As soon as TD 9104 came out and said
12 these three don't apply if you meet the four-part test,
13 we all had clarity, and no one made that argument
14 anymore.

15 MR. BRAMHALL: Okay.

16 MR. RILEY: If I may -- and yet the Treasury
17 Department, the Treasury Regulations have been updated
18 many times since TD 9104 came out, and those exemptions
19 are still in the Treasury regulations.

20 JUDGE THOMPSON: Okay. Ms. Cheng, any questions you
21 might have?

22 JUDGE CHENG: I do have one.

23 Now, Mr. Dies has mentioned that the business
24 component that Appellant is claiming is the -- their
25 product, basically the school, the resort, the mosques,

1 would that satisfy the business component part of the
2 test?

3 MR. RILEY: I'll let co-counsel handle that.

4 MR. ROUSE: Okay. When you say whether it would
5 satisfactory the test, I think the problem we're having
6 is the business component test? That's the match that
7 lights the fire, because all four elements of the
8 qualified activity test has to be met with each business
9 component.

10 So whether they tell us in their brief, as
11 explained in our responses and at the site visit, the
12 business component is, quote, "the process or technique
13 of integrating all the project parameters into a fully
14 functional, deliverable product."

15 That's not consistent with bringing Mr. Woni sh
16 in to sit there and say, Well, we're using the
17 shrink-back rule, and we only went up to the design
18 process.

19 And the reason it's important is because if
20 you have all the parameters of a fully-functional
21 deliverable product -- which is what they said in their
22 brief -- well, that affects the analysis of the
23 substantially all requirement.

24 Because now, with respect to substantially
25 all, we're talking about this whole room, the whole

1 product. But if they want to say, now it's just a
2 chair, so now we need to change our analysis. Did
3 substantially all of their activity relate to qualified
4 research to the chair as opposed to this whole room?

5 So when you you say did they satisfy the
6 business component, I think what Ms. Kuduk was saying
7 is, we don't know what they are claiming as their
8 business product, because what they came in here and
9 said is different from what they said in their brief,
10 and in their stipulation when they say, "Oh, it's a
11 product," I don't know what that means. Is it the
12 design product?

13 Is it the structural product? Because now
14 they are saying it's not a product because they said
15 their business quote only goes up to the design.

16 So I can't say whether it meets the test. I'm
17 just saying we're not sure what it is or if this is
18 consistent with what they say.

19 JUDGE CHENG: Mr. Dies, you want to respond to
20 that?

21 MR. DIES: Sure. The definition of business
22 component is very broad. It just is.

23 When you have product, process, and technique,
24 you very often are going to have business components
25 that have overlaps.

1 Inventions also qualify. So consider, if I
2 invented this cup, it's an invention that could be a
3 business component, but it's also a product.

4 But in the course of inventing that, I would
5 have had to have come about with process or technique
6 for manufacturing that. Right? Any one of which would
7 meet -- and what I would submit to you is, you know, I
8 don't have to -- if I can give you a business component
9 that is one of those things, I have given you a business
10 component.

11 Now, I do think we have mixed burdens to some
12 degree in the answer that you just heard. And -- in --
13 in the sense that now we're saying it's only the design.

14 The design is the only part of the creation of
15 this business component that we are taking credits for.
16 It does not -- we're not saying that the entire building
17 is not the business component. We are saying if I go
18 try to take credits for somebody who is nailing
19 sheetrock on a wall, the FTB will properly come
20 screaming. Those folks are not doing research.

21 So we have got to look at the business
22 component, which is the school, and then we have got to
23 look at the qualified research expenses within that
24 business component that are actually qualified, that are
25 substantially involved in the process of

1 experimentation. And that's what we have done here.

2 So even that description you read says we're
3 talking about a product.

4 If you look at the definition in the Code, it
5 says, undertaking a systematic approach of
6 trial-and-error to overcome uncertainty for the creation
7 of a business component to be used in your work. Right?

8 So I think that's what we've done, undertaken
9 to solve problems for a building -- a product -- that --
10 and -- and we've done iterations and all these things to
11 try and get something to a client that will meet their
12 needs that we can sell and make money on it.

13 So that's why I think we think we need it, and
14 it's why I don't think we're being inconsistent.

15 JUDGE THOMPSON: Anything else?

16 MR. BRAMHALL: No.

17 JUDGE THOMPSON: All right. Thank you very much.

18 So at this point I'm closing the record, and
19 concluding the hearing.

20 And again, I want to thank everybody for
21 coming in, especially those who came from Texas.

22 And Mr. Bramhall and Ms. Cheng and I, we are
23 going to discuss the evidence and argument, and we'll
24 issue a written opinion, I anticipate within 100 days.
25 It will take us some time. We've got to try to come to

1 an agreement, and, you know, we're going to want to
2 review the transcript, and I'm happy we have an
3 extensive transcript, but it's just going to take us
4 some time to get through it.

5 MR. DIES: I understand.

6 JUDGE THOMPSON: So thank you very much.

7 This hearing is concluded.

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9 (Proceedings concluded at 6:07 p.m.)

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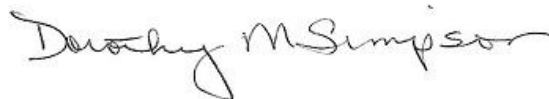
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