

EXHIBIT 2

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

 AMERICAN SOCIETY FOR TESTING AND) Case No.
 MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS
)
 NATIONAL FIRE PROTECTION)
 ASSOCIATION, INC.; and)
)
 AMERICAN SOCIETY OF HEATING,)
 REFRIGERATING, AND)
 AIR-CONDITIONING ENGINEERS, INC.,)
)
 Plaintiffs,)
 vs.)
)
 PUBLIC.RESOURCE.ORG, INC.,)
)
 Defendant.)
 -----)
 AND RELATED COUNTERCLAIMS.)
 -----)

RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN
STANDARDS SOCIETY FOR TESTING AND MATERIALS, BY AND
THROUGH ITS DESIGNEE,
JEFFREY GROVE
WASHINGTON, D.C.
WEDNESDAY, MARCH 4, 2015

Reported by:
NANCY J. MARTIN, CSR No. 9504, RMR
Job No. 2010158
PAGES 1 - 284

<p>1 Q. Does he still work for ASTM? 11:54:10</p> <p>2 A. He does. 11:54:12</p> <p>3 (Deposition Exhibit 1037 was marked for 11:54:56</p> <p>4 identification.) 11:54:56</p> <p>5 BY MR. BRIDGES: 11:54:57</p> <p>6 Q. Mr. Grove, Exhibit 1037 is an exchange of 11:54:57</p> <p>7 correspondence between you and John Pace; correct? 11:55:01</p> <p>8 A. Yes. 11:55:11</p> <p>9 Q. And the post that you're referring to is 11:55:12</p> <p>10 indicated at the URL down below at the bottom of that 11:55:17</p> <p>11 document; is that correct? 11:55:20</p> <p>12 A. That's correct. 11:55:22</p> <p>13 Q. What interactions did you have with Emily 11:55:24</p> <p>14 Bremer? 11:55:26</p> <p>15 A. I forget the time line. It was probably in 11:55:28</p> <p>16 2011 but Emily Bremer was the lead investigator or 11:55:31</p> <p>17 counsel that was working on the administrative counsel 11:55:36</p> <p>18 of the United States review and potential 11:55:39</p> <p>19 recommendations on incorporation by reference, and we 11:55:44</p> <p>20 met on one occasion at my office at her request. 11:55:49</p> <p>21 Q. Did you meet with her only once? 11:55:55</p> <p>22 A. Only once professionally. I see her at 11:55:56</p> <p>23 various standards community events in Washington quite 11:55:59</p> <p>24 a bit. 11:56:04</p> <p>25 Q. Are those nonprofessional events? I don't 11:56:06</p> <p style="text-align: right;">Page 86</p>	<p>1 Q. How many times have you seen her at standards 11:57:24</p> <p>2 community events? 11:57:25</p> <p>3 A. I'd say at least a dozen. At least 10 to 12 11:57:31</p> <p>4 times. 11:57:34</p> <p>5 Q. And what standards community events do you 11:57:35</p> <p>6 have in mind? Strike that. 11:57:40</p> <p>7 What standards community events do you 11:57:44</p> <p>8 recall? 11:57:46</p> <p>9 A. I recall there were some subsequent ACUS 11:57:47</p> <p>10 public stakeholder opportunities for stakeholders to 11:57:50</p> <p>11 come to ACUS events. I recall that Emily was at the 11:57:56</p> <p>12 NIST standards workshop in May of 2012. I know I've 11:58:03</p> <p>13 seen her on other occasions at ANSI related events, 11:58:11</p> <p>14 ANSI sponsors world standards week where there's a 11:58:17</p> <p>15 number of different opportunities for meetings and 11:58:22</p> <p>16 topical discussions. So those would be the -- some of 11:58:27</p> <p>17 the instances where I may have seen her. 11:58:34</p> <p>18 Q. What other occasions have you seen her apart 11:58:36</p> <p>19 from ACUS public stakeholders events, the NIST 11:58:39</p> <p>20 standards workshop, and ANSI sponsored events? 11:58:42</p> <p>21 A. I think that represents most of my 11:58:51</p> <p>22 interactions or times I've seen her in Washington. 11:58:55</p> <p>23 Q. I understand maybe most. I want to try to 11:58:58</p> <p>24 understand every single one that you recall. 11:59:01</p> <p>25 A. Right. That's all I recall. 11:59:03</p> <p style="text-align: right;">Page 88</p>
<p>1 quite understand the -- 11:56:09</p> <p>2 MR. FEE: Objection. 11:56:14</p> <p>3 BY MR. BRIDGES: 11:56:15</p> <p>4 Q. You said you met with her only once 11:56:15</p> <p>5 professionally, and then you see her at various 11:56:17</p> <p>6 standards community events in Washington quite a bit. 11:56:19</p> <p>7 A. Yeah. Thanks for the opportunity to clarify. 11:56:25</p> <p>8 MR. FEE: Objection. Vague. 11:56:25</p> <p>9 THE WITNESS: So I only met in an official 11:56:29</p> <p>10 capacity to be interviewed to represent ASTM's views 11:56:32</p> <p>11 once with Emily, but from time to time since then I 11:56:37</p> <p>12 see her at standards related events and quite possibly 11:56:40</p> <p>13 would say, "Hi" or "Hello," or "What are you working 11:56:45</p> <p>14 on" type of networking discussions. 11:56:48</p> <p>15 BY MR. BRIDGES: 11:56:53</p> <p>16 Q. What networking would be going on in those 11:56:53</p> <p>17 networking discussions? 11:56:56</p> <p>18 A. Just in the course of normal relationship, 11:56:57</p> <p>19 discussions that one might have with a colleague from 11:57:04</p> <p>20 another organization. 11:57:07</p> <p>21 Q. Have you ever met with her alone on any 11:57:11</p> <p>22 occasion other than the one time you said you were 11:57:14</p> <p>23 interviewed? 11:57:17</p> <p>24 A. I don't recall, no. I don't believe I have 11:57:20</p> <p>25 ever met with her besides the one time. 11:57:21</p> <p style="text-align: right;">Page 87</p>	<p>1 Q. What were the ANSI sponsored events to which 11:59:07</p> <p>2 you referred? 11:59:09</p> <p>3 A. I recall there was one at the national -- I'm 11:59:10</p> <p>4 sorry. It's at the consumer electronics association 11:59:15</p> <p>5 in Arlington, Virginia. A panel where Peter Strauss, 11:59:20</p> <p>6 Emily spoke, and now that you've refreshed my memory, 11:59:24</p> <p>7 I believe I spoke also on a panel there. Oh, and the 11:59:28</p> <p>8 ANSI events, the question. During world standards 11:59:38</p> <p>9 week every year there's four or five days in October 11:59:41</p> <p>10 where each day there's a -- one or more events, such 11:59:45</p> <p>11 as the organizational member form of ANSI, where 11:59:53</p> <p>12 organizations that are members of ANSI can come and -- 11:59:57</p> <p>13 for a program. There's the consumer interest forum or 12:00:02</p> <p>14 consumer groups that are members of ANSI speak. 12:00:07</p> <p>15 There's a legal issues forum where members 12:00:13</p> <p>16 from the standards community might go to discuss legal 12:00:20</p> <p>17 issues. And, occasionally, there's official committee 12:00:24</p> <p>18 meetings, such as the national policy committee, which 12:00:29</p> <p>19 I belong to, during that week. 12:00:31</p> <p>20 Q. And did she attend all of those? 12:00:34</p> <p>21 A. I recall I've seen her at some ANSI events 12:00:36</p> <p>22 before, but I wouldn't be able to tell you which ones 12:00:38</p> <p>23 with any certainty. 12:00:41</p> <p>24 Q. Are there any other instances that you recall 12:00:43</p> <p>25 being with her at an event? 12:00:46</p> <p style="text-align: right;">Page 89</p>

1 A. I had previously mentioned an office in 12:18:34
 2 Brussels, Belgium where we have a contractor. 12:18:35
 3 Q. Who else? 12:18:39
 4 A. We operated for many years an office in 12:18:40
 5 Mexico City. That office, our representative, 12:18:44
 6 unfortunately, recently passed away. So we are 12:18:47
 7 re-evaluating what we're going to be doing in Mexico 12:18:51
 8 City. But I believe we will still have an office 12:18:54
 9 there for the time being. 12:18:58
 10 Q. Any other offices? 12:18:59
 11 A. We do. So we worked in collaboration with an 12:19:01
 12 organization called the American Association of State 12:19:04
 13 Highway Transportation Officials. It's known as 12:19:09
 14 AASHTO, and AASHTO and ASTM work together in a 12:19:12
 15 facility in Buckeystown, Maryland, which is -- we do 12:19:16
 16 cement and concrete reference, related laboratory 12:19:22
 17 inspections. To my knowledge, that's the scope of 12:19:30
 18 ASTM's offices. 12:19:35
 19 Q. How often do you visit the corporate 12:19:44
 20 headquarters in the course of a year? 12:19:47
 21 A. In 2013 I made approximately 24 trips to 12:19:50
 22 ASTM's headquarters. 12:19:55
 23 Q. How often do you speak to Emily Bremer on the 12:20:38
 24 telephone? 12:20:41
 25 A. I honestly don't recall speaking with Emily 12:20:46
 Page 102

1 Bremer since 2012 on the telephone. 12:20:48
 2 Q. What about your staff? Do you know how often 12:20:50
 3 they speak to Emily Bremer on the telephone? 12:20:53
 4 MR. FEE: Objection. Calls for speculation. 12:20:56
 5 Beyond the scope of his designation. 12:20:57
 6 THE WITNESS: I believe my staff would inform 12:21:00
 7 me if they spoke with Emily, and I don't recall them 12:21:01
 8 speaking with her by phone. 12:21:08
 9 MR. BRIDGES: I'll hand you Exhibit 1039. 12:21:14
 10 (Deposition Exhibit 1039 was marked for 12:21:25
 11 identification.) 12:21:25
 12 BY MR. BRIDGES: 12:21:25
 13 Q. Do you recognize this as an E-mail to you 12:21:25
 14 from Cicely Enright? And who is Cicely Enright? 12:21:26
 15 MR. FEE: Objection. Compound. 12:21:46
 16 THE WITNESS: Yes. I recognize this is an 12:21:50
 17 E-mail from Cicely Enright. Cicely works as an 12:21:51
 18 associate editor of our ASTM magazine known as 12:21:54
 19 Standardization News. 12:21:58
 20 BY MR. BRIDGES: 12:22:00
 21 Q. Does this E-mail concern an article to be 12:22:00
 22 published in that newsletter? 12:22:03
 23 MR. FEE: Objection. Beyond the scope of his 12:22:05
 24 designation. 12:22:07
 25 THE WITNESS: It appears as if it does. It's 12:22:08
 Page 103

1 an interview with Emily that appeared in our magazine. 12:22:11
 2 (Deposition Exhibit 1040 was marked for 12:23:27
 3 identification.) 12:23:27
 4 BY MR. BRIDGES: 12:23:27
 5 Q. Mr. Grove, have you seen Exhibit 1040 before? 12:23:27
 6 MR. FEE: Read it first. 12:23:34
 7 MR. BRIDGES: It's pretty short. It's pretty 12:23:35
 8 obvious. 12:23:37
 9 (The witness reviewed Exhibit 1040.) 12:24:02
 10 THE WITNESS: Yes, I'm familiar -- I am on 12:24:07
 11 this E-mail, yes. 12:24:09
 12 BY MR. BRIDGES: 12:24:12
 13 Q. All right. And did you get -- did you see at 12:24:12
 14 any point the segment from John Pace to James Thomas 12:24:18
 15 up top? 12:24:22
 16 A. Yes. 12:24:27
 17 Q. Is the "Jeff" in the middle of the large 12:24:30
 18 paragraph at the top, do you understand that to be a 12:24:34
 19 reference to you? 12:24:37
 20 A. I believe it is as I'm responsible for the 12:24:39
 21 ASTM's reading room. 12:24:41
 22 Q. Why are you responsible for the reading room? 12:24:54
 23 MR. FEE: Objection. Vague. Calls for 12:24:57
 24 speculation. 12:24:59
 25 THE WITNESS: For many years I've been 12:25:01
 Page 104

1 working with senior staff because of an interest that 12:25:01
 2 I have in striking the right balance between providing 12:25:05
 3 the public with access to ASTM standards that become 12:25:09
 4 incorporated by reference in various laws and 12:25:12
 5 regulations while maintaining our ability to sustain 12:25:17
 6 our organization through the distribution of our 12:25:25
 7 standards under the model that served us so well for 12:25:27
 8 118 years. 12:25:30
 9 BY MR. BRIDGES: 12:25:42
 10 Q. How did you come by such an interest? 12:25:42
 11 A. Well, working in Washington for ASTM for as 12:25:45
 12 long as I have, I've begun to hear and see the 12:25:48
 13 emerging interest in striking this delicate balance, 12:25:56
 14 began to see efforts that other organizations were 12:26:04
 15 taking, such as the NFPA, which, going back all the 12:26:06
 16 way to 2004, started to provide some of their key code 12:26:10
 17 documents on their website. And I've heard some 12:26:15
 18 interesting testimony and ideas expressed by people 12:26:21
 19 like Peter Strauss, who is a law professor, I believe, 12:26:23
 20 and other people associated with ACUS who served on 12:26:31
 21 ACUS committees. So those are some of the factors and 12:26:35
 22 things that have influenced my thinking on this 12:26:42
 23 reading room. 12:26:44
 24 Q. I understand the factors that influenced your 12:26:47
 25 thinking, but how did you come to have such an 12:26:50
 Page 105

<p>1 BY MR. BRIDGES: 12:48:17 2 Q. How many ASTM standards do you understand are 12:48:17 3 listed at that location? 12:48:21 4 MR. FEE: Objection. Vague as to time. 12:48:23 5 THE WITNESS: So there's -- if I'm answering 12:48:34 6 your question exactly as you phrased it to me, how 12:48:35 7 many standards, I believe there's 885 or so ASTM 12:48:38 8 standards that are incorporated in the NIST database. 12:48:41 9 BY MR. BRIDGES: 12:48:50 10 Q. How many of those standards are currently 12:48:50 11 available at ASTM's reading room? 12:48:52 12 A. Well, if it's in the NIST database, we built 12:48:55 13 the ASTM reading room using the NIST database as a 12:49:02 14 baseline, and we added in other versions of those same 12:49:06 15 885 ASTM standards that have been also incorporated by 12:49:10 16 reference, just an agency, for instance, might 12:49:17 17 reference the same ASTM standard but reference two 12:49:21 18 different versions of the standard. 12:49:25 19 So we counted them in the reading room as 12:49:27 20 well, and I believe our reading room has a volume of 12:49:30 21 13- to 1,400 ASTM standards that are available to the 12:49:32 22 public at no cost on our website for their review. 12:49:36 23 Q. Are every one of the 885 standards from the 12:49:41 24 NIST database available in the reading room? 12:49:45 25 A. I wouldn't be able to answer that 12:49:51</p> <p style="text-align: right;">Page 122</p>	<p>1 of working with agencies during the notice of proposed 12:51:41 2 rule-making process. 12:51:45 3 Any agency that comes to us and asks us to 12:51:46 4 put a standard up for public review during the public 12:51:50 5 review period of a rule, we work with them to make 12:51:53 6 that possible. So at times we know that a certain 12:51:57 7 number of ASTM standards have been in a notice to 12:52:01 8 proposed rulemaking and that the new rule's expected 12:52:04 9 to come out, so we can look for it. 12:52:08 10 Q. Does ASTM provide assistance to the 12:52:16 11 government in any way when the government is 12:52:18 12 considering whether to incorporate an ASTM standard by 12:52:20 13 reference? 12:52:23 14 MR. FEE: Objection. Vague. 12:52:24 15 THE WITNESS: So we do -- I'm familiar with a 12:52:29 16 couple things that either I do or a member of my staff 12:52:31 17 does. We look to see -- when we're aware that an ASTM 12:52:34 18 standard is going to be used and incorporated by 12:52:39 19 reference in some type of an action, we look to see 12:52:43 20 what version of the standard and what designation of 12:52:46 21 the standard is being used, and I believe on occasion 12:52:50 22 if they're using -- proposing to use an outdated 12:52:54 23 version of a standard, or, quite frankly, we've seen 12:52:59 24 errors where they've attempted to use an ASTM biofuel 12:53:02 25 standard, and rather than referencing D6751 they've 12:53:06</p> <p style="text-align: right;">Page 124</p>
<p>1 specifically. Using the NIST database as a guideline, 12:49:53 2 we've incorporated, you know, as much of that as 12:50:02 3 possible in the reading room. At times I believe we 12:50:04 4 also tried to add a little bit more intelligence to it 12:50:06 5 to determine if an agency was undertaking a subsequent 12:50:09 6 rule-making, and we became aware that the agency had 12:50:18 7 published a new final rule which either changed the 12:50:24 8 reference to an ASTM standard that we had placed in 12:50:27 9 the reading room or added a new ASTM standard to the 12:50:31 10 reading room. 12:50:38 11 Then we took steps to add that to the reading 12:50:39 12 room. It's not an exact science. We don't pay a 12:50:42 13 vendor to perform the service for us. We rely either 12:50:48 14 exclusively on the NIST database or we -- it's based 12:50:55 15 on intelligence that we've gathered about new 12:50:58 16 rulemakings. 12:51:01 17 Q. How do you gather intelligence about 12:51:03 18 incorporations of ASTM standards by reference? 12:51:08 19 A. Well, as much as possible we read the federal 12:51:14 20 register. I'd like to think we read it on a regular 12:51:17 21 basis, but sometimes it's more infrequent than that. 12:51:20 22 So we will search key terms in the federal register to 12:51:24 23 see if it's mentioning ASTM and if there's a rule that 12:51:30 24 has resulted in the publication of standards. And 12:51:34 25 sometimes we're ahead of it because ASTM has a policy 12:51:38</p> <p style="text-align: right;">Page 123</p>	<p>1 referenced D56571, gotten the numbers wrong, we will 12:53:09 2 engage with an agency and either make them aware 12:53:14 3 there's a more recent version or make them aware that 12:53:16 4 what they are trying to reference doesn't make a lot 12:53:20 5 of sense. 12:53:22 6 BY MR. BRIDGES: 12:53:23 7 Q. Does ASTM bring standards to the attention of 12:53:26 8 the federal government with some sort of 12:53:36 9 recommendation that the federal government incorporate 12:53:38 10 the standard by reference? 12:53:41 11 MR. FEE: Objection. Vague. 12:53:43 12 THE WITNESS: That's not part of what we call 12:53:45 13 engaging federal agencies in Congress. What we will 12:53:49 14 do is work with agencies and work with Congress to 12:53:53 15 make them aware of the voluntary consensus standards 12:53:56 16 that we're developing in any given area that they 12:53:59 17 might have an interest. But the ultimate decision of 12:54:02 18 whether or not to utilize and reference those 12:54:07 19 standards we rarely take positions on, and I can't 12:54:08 20 give you a specific example of a time that we have 12:54:14 21 taken an example on -- taken a position on. 12:54:17 22 BY MR. BRIDGES: 12:54:23 23 Q. Do any state governments or municipal 12:54:23 24 governments incorporate ASTM standards by reference? 12:54:26 25 MR. FEE: Objection to form. 12:54:30</p> <p style="text-align: right;">Page 125</p>

1 that they must be -- they have to be referred to as 17:24:32
 2 "musts," and this would have the voluntary consensus 17:24:35
 3 standards process. This isn't the intention when 17:24:39
 4 people come together to work in a voluntary consensus 17:24:43
 5 standard environment. They want the words to mean 17:24:47
 6 what they carefully craft them to mean in the process, 17:24:49
 7 and when -- so I believe that's what I was referring 17:24:52
 8 to in this. 17:24:55
 9 BY MR. BRIDGES: 17:25:00
 10 Q. Well, Mr. Miller was not saying that the 17:25:00
 11 government was changing the standard. The government 17:25:02
 12 was proposing to change the law; correct? 17:25:07
 13 MR. FEE: Objection. The document speaks for 17:25:11
 14 itself. Calls for speculation. 17:25:13
 15 THE WITNESS: I guess I would be speculating, 17:25:22
 16 but that was my interpretation of what this means. 17:25:24
 17 BY MR. BRIDGES: 17:25:29
 18 Q. That the government would be changing the law 17:25:29
 19 as the law interprets the standard? 17:25:31
 20 MR. FEE: Same objections. And vague. 17:25:36
 21 THE WITNESS: Yeah. That the government was 17:25:41
 22 interpreting a standard in a way that the voluntary 17:25:43
 23 consensus standard group didn't necessarily intend it 17:25:46
 24 to without coming back to the organization and working 17:25:50
 25 with them. 17:25:57

Page 234

1 BY MR. BRIDGES: 17:27:38
 2 Q. Mr. Grove, does ASTM encourage any 17:27:38
 3 governments to incorporate its standards by reference? 17:27:46
 4 MR. FEE: Objection. Vague. 17:27:49
 5 THE WITNESS: As a matter of policy, we make 17:27:54
 6 organizations -- sorry -- governments aware of our 17:27:58
 7 standards and point out and connect with agency 17:28:04
 8 missions. But in the end, we respect that agencies 17:28:07
 9 should be the ones that determine whether or not our 17:28:09
 10 standards are incorporated or not. 17:28:12
 11 BY MR. BRIDGES: 17:28:13
 12 Q. Is ASTM generally pleased when governments 17:28:13
 13 incorporate its standards by reference? 17:28:20
 14 MR. FEE: Objection. Vague. 17:28:22
 15 THE WITNESS: So I think it speaks to the 17:28:28
 16 significance of ASTM and to the breadth of ASTM when 17:28:29
 17 you see ASTM standards become incorporated by 17:28:34
 18 reference because it does signify that they are widely 17:28:37
 19 respected for their technical excellence. I believe 17:28:42
 20 that it signifies that the government -- it couldn't 17:28:46
 21 do what we've done with the same effectiveness. So 17:28:52
 22 they're looking to a voluntary consensus standards 17:28:54
 23 group in utilizing those standards. 17:28:57
 24 So in some ways I might take pride in the 17:29:00
 25 fact that ASTM standards are relied upon by all of our 17:29:04

Page 235

1 stakeholders because the government is a very 17:29:07
 2 important member. 17:29:09
 3 BY MR. BRIDGES: 17:29:11
 4 Q. So is the answer to my question "yes"? 17:29:11
 5 MR. FEE: Objection. 17:29:13
 6 You can answer it however you'd like. 17:29:14
 7 MR. BRIDGES: He already has. 17:29:17
 8 Q. I'm now asking him is the answer to my 17:29:18
 9 question "yes." 17:29:20
 10 MR. FEE: Same objection. Asked and 17:29:21
 11 answered. 17:29:22
 12 THE WITNESS: Speaking for Jeff Grove, yes. 17:29:23
 13 BY MR. BRIDGES: 17:29:26
 14 Q. What about speaking for ASTM? 17:29:26
 15 MR. FEE: Objection. Asked and answered. 17:29:28
 16 THE WITNESS: I don't believe ASTM would have 17:29:29
 17 an official position. 17:29:31
 18 BY MR. BRIDGES: 17:29:35
 19 Q. You don't think that ASTM has a view as to 17:29:35
 20 whether it is pleased when governments incorporate its 17:29:39
 21 standards by reference? 17:29:43
 22 MR. FEE: Objection. Vague and asked and 17:29:44
 23 answered. 17:29:46
 24 THE WITNESS: It's never been a performance 17:29:49
 25 metric for me. So no. 17:29:50

Page 236

1 BY MR. BRIDGES: 17:29:58
 2 Q. Does ASTM have views about things that are 17:29:58
 3 not performance metrics? 17:30:01
 4 MR. FEE: Objection. Beyond the scope of his 17:30:05
 5 designation. Vague. 17:30:06
 6 THE WITNESS: It could. 17:30:11
 7 BY MR. BRIDGES: 17:30:14
 8 Q. What performance metrics do you have? 17:30:14
 9 MR. FEE: Objection. Beyond the scope of his 17:30:16
 10 designation. 17:30:20
 11 THE WITNESS: Generally, my performance is 17:30:23
 12 based on the job I've done in removing worldwide 17:30:24
 13 barriers to the acceptance and use of ASTM standards. 17:30:27
 14 BY MR. BRIDGES: 17:30:36
 15 Q. Is your -- do your performance reviews ever 17:30:36
 16 mention the degree of adoption of ASTM standards by 17:30:39
 17 reference -- strike that. 17:30:44
 18 Do your performance reviews ever mention the 17:30:46
 19 degree of incorporation of ASTM standards by 17:30:48
 20 reference? 17:30:50
 21 MR. FEE: Objection. Beyond the scope of his 17:30:51
 22 designation. 17:30:55
 23 THE WITNESS: I believe over the years I 17:30:56
 24 might have pointed out to my superiors that a standard 17:30:57
 25 has become incorporated as something significant. 17:31:00

Page 237

<p>1 A. Kathe Hooper is responsible for permissions 18:16:38 2 at ASTM. 18:16:47 3 Q. Who is Joe Koury? 18:16:49 4 A. Joe Koury is a staff manager that works with 18:16:51 5 technical committees. 18:16:53 6 (Deposition Exhibit 1070 was marked for 18:17:06 7 identification.) 18:17:06 8 MR. BRIDGES: I'm showing you Exhibit 1070. 18:17:06 9 Q. This is an E-mail from Ms. Hooper responding 18:17:12 10 to a permission request; is that correct? 18:17:17 11 (The witness reviewed Exhibit 1070.) 18:17:58 12 THE WITNESS: Yes. 18:17:59 13 (Deposition Exhibit 1071 was marked for 18:18:11 14 identification.) 18:18:11 15 BY MR. BRIDGES: 18:18:12 16 Q. Exhibit 1071 is an E-mail from Sarah Petre to 18:18:12 17 you and others; is that correct? 18:18:16 18 (The witness reviewed Exhibit 1071.) 18:18:26 19 MR. FEE: Objection. Lack of foundation -- 18:18:26 20 strike that. No objection. 18:18:27 21 THE WITNESS: So it's an E-mail between ASTM 18:18:42 22 and Congressional staff and then ASTM staff, correct. 18:18:44 23 BY MR. BRIDGES: 18:18:48 24 Q. And within the ASTM -- 18:18:48 25 A. Correct. 18:18:51</p> <p style="text-align: right;">Page 258</p>	<p>1 legislation that causes an incorporation by reference? 18:20:11 2 MR. FEE: Can you read that back to me, 18:20:19 3 please. 18:20:20 4 (Record read.) 18:20:38 5 MR. FEE: Objection to form. Beyond the 18:20:39 6 scope of his designation. Calls for speculation. 18:20:40 7 BY MR. BRIDGES: 18:20:48 8 Q. You may answer. 18:20:48 9 MR. FEE: Hold on. 18:20:49 10 Lack of foundation. 18:20:53 11 Go ahead. 18:20:55 12 THE WITNESS: Yeah. So I think we think -- 18:20:55 13 we want to make sure that Congress is aware of the 18:20:59 14 fact there may be a more recent version because 18:21:02 15 oftentimes it may be unintended that they're not using 18:21:05 16 the most recent version. 18:21:08 17 BY MR. BRIDGES: 18:21:12 18 Q. Ms. Petre asked you whether ASTM should 18:21:12 19 request that Congress use the language. Does ASTM 18:21:17 20 ever request Congress to use particular language 18:21:21 21 regarding ASTM standards? 18:21:25 22 MR. FEE: Objection. Beyond the scope of his 18:21:32 23 designation. 18:21:36 24 You can answer. 18:21:36 25 THE WITNESS: Okay. I can think of instances 18:21:38</p> <p style="text-align: right;">Page 260</p>
<p>1 Q. And it's discussing Congressional 18:18:51 2 legislation; is that correct? 18:18:54 3 MR. FEE: Objection. The document speaks for 18:18:56 4 itself. 18:18:57 5 THE WITNESS: Legislation passed the House 18:19:10 6 and now it's being referred to the Senate, and Sarah 18:19:11 7 Petre recognized that there's references to ASTM 18:19:16 8 standards which are out of date, and she wanted to 18:19:18 9 contact the staffer to make him aware of that fact. 18:19:22 10 BY MR. BRIDGES: 18:19:26 11 Q. Was this a discussion about incorporation by 18:19:26 12 reference? 18:19:28 13 MR. FEE: Same objection. 18:19:29 14 THE WITNESS: It's a discussion about 18:19:35 15 Congressional intent to use the most recent standard, 18:19:37 16 I believe. 18:19:40 17 BY MR. BRIDGES: 18:19:41 18 Q. Is that for Congress's use in making an 18:19:41 19 incorporation by reference into a federal law of an 18:19:48 20 ASTM standard? 18:19:52 21 MR. FEE: Same objection. 18:19:54 22 THE WITNESS: It appears, yes. 18:19:55 23 BY MR. BRIDGES: 18:20:01 24 Q. Does ASTM have a view as to which versions of 18:20:01 25 its standard Congress should include in its 18:20:07</p> <p style="text-align: right;">Page 259</p>	<p>1 like this where Congress -- what's happening here is 18:21:40 2 this is incorporation by reference by Congress and not 18:21:45 3 by an agency, and the concern that's expressed at 18:21:48 4 times by our committee members is if Congress acts to 18:21:52 5 designate a specific standard in legislation that 18:21:57 6 freezes that piece of -- that reference in statute for 18:22:02 7 years to come and agencies -- since it's something 18:22:06 8 that Congress said, agencies will simply say, "Hey, 18:22:12 9 talk to Congress, not to agencies about it." 18:22:16 10 So that's a concern that I'm familiar with, 18:22:19 11 and I can't tell if that -- I don't recall the 18:22:21 12 circumstances of this here, but that's the most 18:22:26 13 current version language. That's why we're interested 18:22:29 14 in making sure Congress is aware as a more current 18:22:32 15 version. 18:22:36 16 BY MR. BRIDGES: 18:22:38 17 Q. Mr. Grove, again, you didn't answer my 18:22:38 18 question. My question is does ASTM ever request 18:22:40 19 Congress to use particular language regarding ASTM 18:22:43 20 standards? 18:22:46 21 MR. FEE: Same objections. Plus asked and 18:22:47 22 answered. 18:22:50 23 THE WITNESS: Yes. 18:22:52 24 BY MR. BRIDGES: 18:22:55 25 Q. To your knowledge, has ASTM ever asked 18:22:55</p> <p style="text-align: right;">Page 261</p>

1 Congress or a federal agency not to incorporate any of 18:23:00
 2 its standards by reference? 18:23:04
 3 MR. FEE: Objection. Beyond the scope of his 18:23:07
 4 designation. 18:23:09
 5 THE WITNESS: To my knowledge, no. I believe 18:23:15
 6 it's possible that there's been reasons why committees 18:23:21
 7 haven't wanted to see standards incorporated by 18:23:24
 8 reference, but I can't recall an instance. 18:23:26
 9 BY MR. BRIDGES: 18:23:31
 10 Q. Has ASTM ever imposed conditions on whether 18:23:31
 11 the federal government may incorporate its standards 18:23:37
 12 by reference? 18:23:42
 13 MR. FEE: Same objection. Vague as well. 18:23:44
 14 THE WITNESS: I don't have direct knowledge. 18:23:52
 15 It was before my time at ASTM, but I understand at one 18:23:54
 16 point in time there was a concern that Congress was 18:23:58
 17 perhaps taking ASTM -- taking key content from an ASTM 18:24:03
 18 standard and placing it in a piece of legislation and 18:24:09
 19 that ASTM would be concerned about that. 18:24:13
 20 BY MR. BRIDGES: 18:24:16
 21 Q. Why would ASTM be concerned about that? 18:24:16
 22 MR. FEE: Objection. Beyond the scope of his 18:24:20
 23 designation. Calls for speculation. Lack of 18:24:22
 24 foundation. 18:24:24
 25 THE WITNESS: It would be taking the standard 18:24:26
 Page 262

1 don't think it happens very often, but I believe it 18:25:33
 2 has happened in the last 10 years since I've been at 18:25:35
 3 ASTM. 18:25:38
 4 BY MR. BRIDGES: 18:25:40
 5 Q. Are you saying that there has to be a 18:25:40
 6 consensus process in order to cooperate with a federal 18:25:42
 7 government in incorporating standards by reference? 18:25:46
 8 MR. FEE: Objection. Mischaracterizes his 18:25:52
 9 testimony. Vague. 18:25:54
 10 You can answer. 18:25:58
 11 THE WITNESS: No, that's not what I'm saying. 18:26:00
 12 BY MR. BRIDGES: 18:26:14
 13 Q. Do you know whether any federal official has 18:26:14
 14 taken advantage of the reading room that ASTM provides 18:26:17
 15 the public? 18:26:22
 16 MR. FEE: Objection. Vague. 18:26:23
 17 THE WITNESS: I don't know specifically 18:26:30
 18 whether they have. I do know I've received accolades 18:26:31
 19 from federal agencies, the fact that it exists. So I 18:26:34
 20 would presume that they have. 18:26:40
 21 BY MR. BRIDGES: 18:26:44
 22 Q. How much money has ASTM received from the 18:26:44
 23 federal government in each of the last five years? 18:26:49
 24 MR. FEE: Objection. Vague. 18:26:58
 25 THE WITNESS: Well, I believe we've received 18:27:00
 Page 264

1 out of context from what the voluntary consensus 18:24:27
 2 process encompassed in ASTM standards development 18:24:31
 3 enterprises wanted to see represented in the standard. 18:24:35
 4 BY MR. BRIDGES: 18:24:43
 5 Q. Has ASTM ever asked an agency to use specific 18:24:43
 6 language in a regulation? 18:24:47
 7 MR. FEE: Objection. Beyond the scope of his 18:24:50
 8 designation. 18:24:52
 9 THE WITNESS: It's possible that we have. 18:24:54
 10 BY MR. BRIDGES: 18:24:55
 11 Q. Do you recall a particular -- any instance? 18:24:55
 12 MR. FEE: Same objection. 18:24:57
 13 THE WITNESS: I don't recall a particular 18:24:59
 14 time. 18:24:59
 15 BY MR. BRIDGES: 18:25:01
 16 Q. Do you have an estimate as to the number of 18:25:01
 17 times it's occurred? 18:25:06
 18 MR. FEE: Objection. Lack of foundation. 18:25:08
 19 Beyond the scope of his designation. Calls for 18:25:09
 20 speculation. 18:25:11
 21 THE WITNESS: It's -- there's a process that 18:25:13
 22 our committees would have to follow. They would have 18:25:17
 23 to -- the executive committee of a committee would 18:25:19
 24 have to reach a consensus that they want to see an 18:25:24
 25 ASTM standard included in a regulation. And so I 18:25:28
 Page 263


1 anywhere from \$650,000 to \$900,000 per year over the 18:27:04
 2 last five years from the federal government. 18:27:11
 3 BY MR. BRIDGES: 18:27:17
 4 Q. Were some of that money provided by the 18:27:17
 5 federal government in order to facilitate the 18:27:22
 6 standards development process? 18:27:25
 7 MR. FEE: Objection. Calls for speculation. 18:27:27
 8 Vague. 18:27:29
 9 THE WITNESS: To my knowledge, none of it 18:27:31
 10 was. 18:27:32
 11 BY MR. BRIDGES: 18:27:37
 12 Q. What were the main categories of payments by 18:27:37
 13 the federal government to ASTM over the last five 18:27:41
 14 years? 18:27:46
 15 MR. FEE: Objection. Vague. 18:27:47
 16 BY MR. BRIDGES: 18:27:48
 17 Q. In other words, what were the payments for 18:27:48
 18 ASTM to do? 18:27:50
 19 MR. FEE: Same objection, plus form. 18:27:52
 20 THE WITNESS: I can think of -- that we would 18:27:53
 21 sell standards to federal agencies. That would be one 18:27:56
 22 source of revenue. 18:28:00
 23 BY MR. BRIDGES: 18:28:01
 24 Q. What other sources of revenue? 18:28:01
 25 A. I believe that we have a number of federal 18:28:03
 Page 265

1 THE VIDEOGRAPHER: This is the end of the 18:53:06
 2 deposition of Mr. Jeffrey Grove. We are off the 18:53:08
 3 record at 18:52. 18:53:13
 4 (Witness excused.) 18:53:16
 5 (Deposition concluded at 6:52 p.m.) 18:53:16
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Page 282

1 ACKNOWLEDGMENT OF DEPONENT
 2
 3 I, JEFFREY GROVE, do hereby certify that I
 4 have read the foregoing pages, _____ to _____,
 5 and that the same is a correct transcription of the
 6 answers given by me to the questions therein
 7 propounded, except for the corrections or changes in
 8 form or substance, if any, noted in the attached
 9 Errata Sheet.
 10
 11 _____
 12 DATE SIGNATURE
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Page 284

1 CERTIFICATE
 2 I do hereby certify that the aforesaid
 3 testimony was taken before me, pursuant to
 4 notice, at the time and place indicated; that
 5 said deponent was by me duly sworn to tell
 6 the truth, the whole truth, and nothing but
 7 the truth; that the testimony of said
 8 deponent was correctly recorded in machine
 9 shorthand by me and thereafter transcribed
 10 under my supervision with computer-aided
 11 transcription; that the deposition is a true
 12 and correct record of the testimony given by
 13 the witness; and that I am neither of counsel
 14 nor kin to any party in said action, nor
 15 interested in the outcome thereof.
 16
 17
 18
 19 
 Nancy J. Martin, RMR, CSR
 20
 21
 22 Dated: March 18, 2015
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Page 283

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