

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

	.	Chapter 11
IN RE:	.	
	.	Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, LP,	.	
et al,	.	
	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	
.	Tuesday, August 22, 2023
WELDED CONSTRUCTION, LP,	.	
	.	Adv. Proc. No. 19-50194 (LSS)
vs.	.	
	.	
THE WILLIAMS COMPANIES,	.	
INC., WILLIAMS PARTNERS	.	
OPERATING, LLC, and	.	
TRANSCONTINENTAL GAS PIPE	.	
LINE COMPANY, LLC.	.	
.	

TRANSCRIPT OF TRIAL - DAY ONE
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 9:44 a.m.)

2 (Call to order of the Court)

3 THE COURT: Please be seated.

4 Okay. Counsel, we're ready to start.

5 MR. GUERKE: May it please the Court. Good
6 morning, Your Honor. Kevin Guerke on behalf of the Plaintiff
7 Welded Construction.

8 May we start with some introductions?

9 THE COURT: Yes.

10 MR. GUERKE: On the Welded Construction side, on
11 this side of the aisle -- on this side of the bar, we have
12 Mike Neiburg, Travis Buchanan, Lauren Fortunato, Chris Lambe,
13 Roxanne Eastes.

14 And behind, we have the Plan Administrator Cullen
15 Speckhardt, her counsel Joe Mintz, a Young Conaway partner of
16 ours Sean Beach, and the former President of Welded Steve
17 Hawkins.

18 THE COURT: Welcome.

19 MS. EWALD: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MS. EWALD: May it please the Court, I would also
22 like to start with some introductions --

23 THE COURT: Of course.

24 MS. EWALD: -- of the Transcontinental Gas Pipe
25 Line team. Here to my left is the corporate representative,

1 Mr. David Sztroin, he was the project manager for the ASR
2 project --

3 THE COURT: Welcome.

4 MS. EWALD: -- on behalf of Transco.

5 My partner Jonathan Burwood, my associate Jordan
6 Hutcheson, and Ms. Bair, my paralegal. My partner Jennifer
7 Kneeland is to my left and Luke Murley from Saul Ewing.

8 In the gallery, I would also introduce Ms. Karissa
9 Cottom, who is the Assistant General Counsel fo the Williams
10 Companies.

11 THE COURT: Welcome.

12 MS. EWALD: And Juliana Clifton from Saul Ewing is
13 also --

14 THE COURT: Welcome.

15 MS. EWALD: -- with us.

16 And then Mr. Joseph Slavis, Senior Managing
17 Director of FTI, and Mr. Brian Triche, Managing Director of
18 Secretariat, formerly Lighthouse Consulting, who is one of
19 the experts in this case.

20 THE COURT: Welcome.

21 MS. EWALD: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. GUERKE: Your Honor, plaintiff is prepared to
24 start with its opening statement. I had a question about the
25 timing.

1 THE COURT: Uh-huh.

2 MR. GUERKE: We agreed at our pretrial conference
3 to split the time for this trial 50/50, but we didn't
4 determine the amount of time in total that we'll have to
5 split for planning purposes. We were thinking something
6 along the lines of 60 hours over the 10 trial days. But I
7 understand Your Honor has a few events that may change that
8 planning.

9 So my question is: How much total time do you
10 expect the parties will have to split, Your Honor.

11 THE COURT: Well, I hadn't focused on the total
12 amount of time, so let me do that and I will let you know
13 today.

14 MR. GUERKE: Thank you, Your Honor.

15 THE COURT: Sixty hours, you were thinking sixty
16 hours over ten days?

17 MR. GUERKE: Yes.

18 THE COURT: Total or each?

19 MR. GUERKE: Total.

20 THE COURT: Total. Well, that sounds about right -

21 -

22 MR. GUERKE: Maybe --

23 THE COURT: -- but --

24 MR. GUERKE: Maybe a little less considering
25 today's end date and --

1 THE COURT: Yeah.

2 MR. GUERKE: -- and some other issues.

3 THE COURT: Possibly. But I think that's probably
4 a safe number.

5 (Pause in proceedings)

6 MR. GUERKE: Thank you, Your Honor.

7 THE COURT: Uh-huh.

8 MR. GUERKE: On October 4th, 2018, Transco received
9 FERC approval to put the ASR pipeline into service, pumping
10 natural gas through Pennsylvania and pumping profits to
11 Transco at a clip of \$350 million a year. The same day as
12 FERC approval, Transco withheld \$23.5 million based on an
13 audit. Transco had been planning the withholding for months,
14 but waited to spring it on Welded until Welded finished its
15 work on the pipeline.

16 The same day as the withholding, Transco
17 simultaneously filed a lawsuit in Oklahoma State Court, again
18 allegedly based on an audit. Welded was surprised and
19 scrambled to deal with the aftermath. But it never should
20 have happened.

21 Welded negotiated a unique cost-reimbursable,
22 fixed-fee contract that was low-risk. It wanted a safe
23 project with no risk of losing money. The contract was
24 designed to be cash-neutral and allow Welded to be paid in
25 advance, so it wouldn't have to come out of pocket for costs.

1 Transco accepted that structure and assumed the cost risk.
2 That's the deal Transco came.

3 But there were -- there was a change in the power
4 structure at Williams, Transco's parent company. The
5 Williams executives who signed and agreed to the contract
6 were out. There was a new sheriff in town and that sheriff
7 did not like this contract. In fact, Williams' Executive
8 Vice President and Chief Operating Officer Michael Dunn hated
9 this contract structure because it put the bulk of the cost
10 risk on Transco.

11 As Transco's risk of higher cost materialized, it
12 started to look for ways to claw back money. Transco pursued
13 that strategy with an outside outfit called "OGCS." OGCS is
14 a claims consultant that Transco later described as
15 "auditors."

16 After a couple of months of work, OGCS found an
17 angle. In their first report to Transco, OGCS targeted the
18 calculation of the equipment fee to attack, but at the same
19 time acknowledged that Welded had been billing correctly
20 under the contract. This is OGCS's May report to Transco.
21 In it, OGCS zeroes in on the calculation of the equipment fee
22 that has led to four-plus years of litigation.

23 In this report, the equipment fee and OGCS's
24 analysis to Transco is called out. In the first part, OGCS
25 tells Transco:

1 "Our initial analysis suggests that the equipment
2 fee may represent the biggest single risk area
3 contributing to the overspend on the project. And
4 although the invoice and charging mechanism appears
5 to be contractually correct, it results in a value
6 which is much higher than our expectations of
7 actual cost for this type of equipment on a project
8 of this nature."

9 Also, in the May 2018 report, OGCS suggested an
10 audit in the second callout:

11 "We believe a full contractual review of the
12 equipment fee provisions, including a
13 reconciliation of the actual costs of equipment on
14 site may give an opportunity of a significant
15 challenge to the contractor's costs."

16 The contract structure itself was the problem.
17 This was the turning point. From this point forward, Transco
18 and OGCS look for ways to attack the 50 percent equipment
19 fee. The audit was the tool they used.

20 OGCS then started pumping out what it called "audit
21 findings," attacking various aspects of labor costs used to
22 calculate the equipment fees.

23 After weeks of developing audit findings, Chris
24 Springer, the Williams Project Director, called a meeting
25 with Welded and informed Welded that Transco was auditing the

1 books with OGCS. In response, Welded invited OGCS into its
2 offices for meetings July 24th and July 25th, 2018, and then
3 Welded opened its books and explained its process to OGCS.

4 OGCS told Welded it was conducted an audit under
5 the contract. But behind the scenes, Transco was plotting
6 with its lawyers for litigation. That wasn't clear to us
7 until two years later, when Transco acknowledged that June
8 29th, 2018, that is the date that oversight and direction of
9 OGCS was taken over by defendants' in-house counsel in
10 anticipation of claims and litigation.

11 As of that date, the OGCS work product that -- no
12 longer simply an accounting exercise and constitutes work
13 product performed at the direction of counsel and in
14 anticipation of claims and litigation. No one told Welded.
15 Unbeknownst to Welded, OGCS's efforts were designed to find
16 litigation positions and billing challenges to assert at the
17 end of the job, after Welded built Transco's extremely
18 profitable pipeline. The trap was set. Transco sprang that
19 trap October 4th, 2018.

20 October 4th, 2018, Transco withholds \$23.5 million
21 from Welded, after mechanical completion, after FERC
22 approval. This is that letter from Chris Springer, the
23 Williams Project Director.

24 In the first sentence, Mr. Springer invokes the
25 contract audit provision, but at the same time violates the

1 audit provision by not giving Welded the audit findings
2 before this withholding.

3 Mr. Springer then accuses Welded of erroneous
4 billing. And then he goes on to inform Welded that the
5 withholding was based on the phrase, "actual work performed,"
6 stating:

7 "Based upon Transco's current review and ongoing
8 audit process, Welded has charged a 50 percent
9 equipment fee on costs that do not include actual
10 work performed, including show-up time and wait
11 time. Welded has also charged an equipment fee for
12 costs related entirely to the provision of
13 equipment, rather than actual work performed,
14 including vehicle rental and rig rental equipment
15 charges."

16 So back on -- in October 2018, Transco's argument
17 was that actual work performed had to be physical labor on
18 the right-of-way, making progress on the right-of-way, boots
19 on the ground, shoveling the dirt type of activities, and
20 that the equipment fee did not apply to labor costs, such as
21 travel pay and per diem and show-up time and wait time
22 because those labor costs were not for actual work performed.
23 That's what Welded was told October 4th, 2018.

24 But that position expressed in that October 4th
25 letter was in OGCS's first audit finding back on June 29th,

1 2018. This is the June 29th email from OGCS to Transco
2 attaching its Audit Finding Number 1. And Audit Finding
3 Number 1 is on your right.

4 In Audit Finding Number 1, OGCS advises Transco
5 that:

6 "In his calculation of the equipment fee, the
7 contractor uses the total cost billed in the labor
8 category, which includes other fringe benefits
9 attributable to certain personnel; e.g., vehicle
10 rental, cell phone costs, accommodation, per diems,
11 travel, et cetera. We believe the contractual
12 justification below demonstrates the intent of the
13 contract was that these additional fringe benefits
14 should not be used to calculate the equipment fee."

15 And then below, the contractual justification
16 mentioned above reads:

17 "It's our position that the use of the phrase
18 'actual work performed' is the key to this argument
19 and was specifically used in the contract drafting
20 to support the logic that only labor costs
21 associated with actually performing work would
22 attract the equipment fee calculation. Other labor
23 costs which are peripheral and not associated with
24 actually performing the work, such as fringe
25 benefits or ad hoc and inconsistent" -- "are ad hoc

1 and inconsistent across the workforce, and as such
2 should not come into the calculation."

3 Again, this is back on June 29th, 2018. So Transco
4 sat on this theory for nearly 14 weeks, as Welded took on
5 more and more liability, after Transco insisted that Welded
6 throw more and more workers, more and more resources into the
7 job, causing Welded to incur more and more costs.

8 On October 4th, Transco also withheld \$1.9 million
9 under the schedule incentive program for Welded not meeting
10 the June 14th, 2018 mechanical completion date. But Welded
11 was prevented from achieving mechanical completion on June
12 14th because Transco had failed to get several construction
13 permits needed to complete the work. It was literally
14 impossible to complete the pipeline by that date. Transco
15 knew it and they withheld nearly \$2 million anyway.

16 Transco used the audit and this actual work
17 performed argument to support the withholdings, to support
18 its October 4th Oklahoma lawsuit, and to support the proof of
19 claim filed in this case for \$94 million. The audit was the
20 foundation for all Transco's attacks and all Transco's
21 claims. That's what Transco told -- that's what Transco told
22 this Court and the Court in Oklahoma. But that's not what
23 OGCS was telling Transco behind the scenes.

24 OGCS's final audit report was submitted in June
25 2019. By June 2019, Transco had already withheld \$23.5

1 million. By June 2019, Transco had already refused to pay
2 Welded's final two invoices. By June 2019, Transco had
3 already filed it's ninety-four-million-dollar proof of claim.
4 At this point, OGCS had spent well over a year on the audit.
5 And at the conclusion of the audit, OGCS provided Transco
6 with a summary of the net result of its work.

7 This on the screen is an email dated June 9th, from
8 Adrian Green from OGCS explaining the summary of its work to
9 Transco's in-house counsel Jeffrey Goebel. And there's also
10 an Excel on the screen. He states:

11 "Please find attached, as promised, the full build
12 of the true-up invoices issued by Welded and used
13 by OGCS in the reconciliation assessments over the
14 last year or so versus the amounts actually
15 certified for payment using the cash call invoices.
16 In the Excel file, you will find the following
17 sheets. Net result, this sets out the final
18 picture of the amounts paid to Welded versus their
19 costs supported by labor reports and invoices."

20 This is the Excel OGCS sent back in June 2019. It
21 includes three main components:

22 The amount Transco paid at the top;

23 The amount Welded billed in the middle;

24 And then three scenarios where OGCS is describing
25 to Transco three scenarios which represent the amounts

1 potentially due to Welded.

2 The top number is \$698 million paid by Transco.
3 That number is consistent with our expert Scott Gray's
4 report.

5 The next number, \$764 million. That, too, is
6 consistent with our expert Scott Gray's expert report. And I
7 believe it's consistent with Transco's experts, also, for the
8 amount paid and the amount invoiced.

9 And the next part, the amount potentially due.
10 This is -- this lists the three scenarios describing how much
11 Transco owes Welded. It lists the worst-case scenario at the
12 top to the best-case scenario for Transco's liability.

13 Worst-case scenario, the first one, the amount
14 potentially due to Welded if current withholdings had to be
15 paid in full and no other deductions were applied, more than
16 \$66 million.

17 The middle scenario, the amount potentially due if
18 current withholdings are accepted, but no other holdings are
19 accepted, more than \$32 million.

20 The best-case scenario, the best-case scenario
21 according to OGCS, June 2019, amount potentially due if
22 current withholdings are accepted and all other withholdings
23 are accepted, \$8.1 million.

24 This represents a culmination of more than a year's
25 worth of work, a year's worth of analysis. The auditor is --

1 the auditor is telling Transco its best-case scenario is that
2 it owes \$8 million. The auditor is telling Transco its
3 worst-case scenario is that it owes Welded \$66 million. And
4 those scenarios, those numbers do not include Welded's final
5 fixed fee of \$5 million. When that is taken into account, it
6 adds \$5 million to each one of these scenarios. So OGCS is
7 advising Transco that it has liability in the ranges of 13
8 million to \$71 million for Welded's billing when that final
9 fixed fee is added.

10 With that knowledge, with this analysis, four
11 months later, Transco still files a counterclaim against
12 Welded, telling this Court Welded owed it \$94 million; \$45
13 million of that was allegedly due on an audit that, months
14 before, had concluded Transco owed Welded money. Transco
15 references the audit 12 times in its counterclaim.

16 The evidence will show the audit was a sham. It
17 was abandoned after this Court ruled Transco waived its
18 privilege related to an audit.

19 When the use of the audit failed, Transco came up
20 with a laundry list of claims to replace OGCS's audit
21 findings. So, three years after OGCS revealed the true
22 conclusions of the audit, Transco replaced OGCS with its
23 current expert, FTI, to express new theories and new
24 justifications in 2022, for Transco's actions from 2018.

25 But it's too late. The clock has long since

1 expired under the contract and under CASPA to dispute 2018
2 invoices in 2022.

3 That's what happened in this case. It's not about
4 unfinished restoration work after the bankruptcy was filed.
5 It's not about old, irrelevant cash flows. It's not about
6 animation or the number of tie-in welds performed on the job
7 or any other misdirection or distraction that Transco
8 conjures up.

9 This case is about greed. This case is about
10 power. This case is about bad faith, the type of conduct
11 CASPA was designed to prevent and ultimately punished. At
12 the end of the trial, Welded requests the Court award it
13 damages and interest, penalties, and attorneys' fees under
14 CASPA. Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. GUERKE: Your Honor, would you like a copy of
17 my slide deck?

18 THE COURT: Yes. Thank you.

19 (Pause in proceedings)

20 THE COURT: Yes.

21 (Pause in proceedings)

22 MS. EWALD: Good morning, Your Honor. May it
23 please the Court. My name is Shelly Ewald and I represent
24 Transcontinental Gas Pipe Line Company.

25 My opening statement, Your Honor, will be a bit

1 longer than the Welded opening statement and it will be a
2 little bit more, as I would say, descriptive of the evidence
3 that the Court will hear in this proceeding.

4 And the evidence that the Court will hear in this
5 proceeding is with regard to what actually happened on the
6 project; the evidence that has been developed through the
7 course of discovery, not simply what was in the mind of the
8 OGCS auditors in 2019, but information that has been revealed
9 and clarification with regard to the amounts actually charged
10 by Welded, what they were charged for, as well as the amounts
11 actually paid by Transco, which are entirely inconsistent
12 with the opening statement of Welded.

13 The evidence in this matter, Your Honor, will show
14 that Welded abused and ignored the safeguards within this
15 cost reimbursable contract. Yes, it was a different and
16 perhaps unusual contract, but it was not without safeguards
17 to protect Transco from over-billing by Welded; however,
18 Welded did not observe those safeguards. Instead, they
19 charged for costs that were not actually incurred to do the
20 work, they charged for unallowable costs under the contract,
21 and they mis-charged for included equipment and labor costs,
22 as well.

23 And in doing so, they significantly overran the
24 contract final construction cost of \$454 million as of August
25 of 2017 by over \$300 million, and that was even though they

1 did not complete the project. And there was a very important
2 piece of performance that was remaining in November of 2018
3 that constituted the cleanup and restoration portion of this
4 project. It wasn't just important to Transco; it was
5 important to both of these parties when they entered into
6 this contract.

7 And the contract reflects that the entire price,
8 the entire cost will not be paid at mechanical completion,
9 but is only due when final completion, final restoration, and
10 final cleanup of the right-of-way of the pipeline is
11 completed. That is the work that Welded did not do. That is
12 the work that Transco paid others to do for over \$50 million
13 and is why the fixed fee is not due and owing.

14 The evidence also will show, Your Honor, that
15 Welded's work was late and defective, that they failed to
16 meet the June 14th mechanical completion date, not due to any
17 permitting issues on behalf -- on the part of Transco. This
18 pipeline was entirely permitted the day that notice to
19 proceed was issued by FERC. It had to be under both
20 Pennsylvania law, as well as under the FERC requirement. All
21 of those permits were in place. All of the required methods
22 for crossing water bodies, for crossing roads were in place.

23 The reason why Welded did not achieve mechanical
24 completion on June 14th is that they did not abide by those
25 permit requirements. Instead, they requested variances or

1 proceeded with methods that were not allowed by the permit.
2 And that specifically relates to the I-81 crossing, which you
3 will hear much about in this proceeding.

4 And ultimately, Your Honor, Welded did not address
5 throughout the entirety of its contract performance its own
6 self-inflicted inefficiency, its own safety violations, and
7 its poor environmental performance, all of which they
8 recognized contributed to the overruns during the project.

9 I'm not going to go into great detail, Your Honor
10 is very aware of how this contract is set up as a -- -
11 percentage-of-cost and fixed-fee contract.

12 The one thing I will point out is the labor costs
13 are specifically reserved for NPLA or union personnel and
14 field personnel. Those are the two labor categories that are
15 cost-reimbursable under this contract.

16 What is not cost-reimbursable under the contract is
17 home office people and management teams of the home office of
18 -- in Perrysburg, Ohio of Welded's company. That was covered
19 by the fixed fee. And the equipment fee, of course, was to
20 cover all the cost of the included equipment, which was
21 expansively defined in the contract. It was not just
22 equipment; it was materials, it was supplies, it was tools,
23 it was consumables, all of which were to be covered by the
24 equipment fee cost.

25 And then there was a small category of specialty

1 equipment. Your Honor, in the original budget, Welded
2 included \$1.9 million for specialty equipment. That's what
3 they were saying this is what we're going to directly charge
4 and not cover ourselves. But ultimately, they charged
5 Transco over \$19 million of included -- of specialty
6 equipment, which we submit was inappropriately invoiced --
7 inappropriately charged to Transco.

8 And finally, with regard to subcontractors, Welded
9 was allowed to subcontract certain scopes of work, not
10 project management, not field supervision, not procurement
11 management, but they could issue subcontracts. If they were
12 going to be over \$3 million, they had to get competitive
13 bidding, another safeguard in the contract. The evidence
14 will show that Welded disregarded that safeguard, as well.

15 I'd like to just cover briefly the evolution of the
16 ASR contract price and how it evolved over time. Very little
17 has been spoken about this, but in September of 2015, Welded
18 submitted a fixed-price bid of \$340 million. Thereafter,
19 they approached Transco and said we're going to commit our
20 equipment elsewhere, you're going to need it for this job,
21 and we want to be signed up to a cost-reimbursable format.
22 And ultimately, that was done in August of 2016 for \$335
23 million, actually less than their fixed-price bid.

24 August of 2017, it evolves to \$454 million when
25 David Sztroin says put everything into your estimate, I don't

1 want any surprises, I want to see all of the costs.

2 The total invoiced amount is much different than
3 what I submit it will be -- the evidence will show is
4 different than what the plaintiffs advised. The total
5 invoiced amount was over \$800 million. But there were errors
6 in that -- in their invoicing. They had double-billing in
7 their invoice and errors that dated back to October of 2017.

8 Ultimately, the correct invoiced amount, in our
9 view, through 2018, is \$768 million.

10 And Transco paid significantly more than the
11 plaintiff mentioned. Transco has paid over \$716 million to
12 date, not the amount shown in their opening statement.

13 Just briefly, I'm going to cover what Welded -- how
14 Welded approached Transco in November of 2015. They said
15 we're about ready to head to a meeting and we're going to
16 sign up to another contract, if we do that, our 30 594
17 Caterpillar pipe-layers are not going to be available to you.
18 These pipe-layers are in extreme demand and so we need to
19 sign this deal up now. And in response, the deal was signed
20 up.

21 In January of 2016, Mr. Well, then current
22 President of Welded, said we are going to make it -- this --
23 the cost-reimbursable model will save you money, we're going
24 to decrease our price from or fixed-price bid; and, in fact,
25 they did. Ultimately, their -- the August 2016 contract was

1 less than their fixed-price bid.

2 But 11 months after this November 2015 letter was
3 sent, what do we know? What did we find out about the
4 Caterpillar 594 pipe-layers? In fact, there were 30 of them,
5 but they hadn't been -- they were -- I think the median age
6 of them was about 40 years, and they needed repairs and
7 upgrades in order to be operational.

8 As Welded wrote in its board meeting book, the 594
9 pipe-layers had not been utilized since 2008. They required
10 repairs and upgrades. And that work was going to be done in
11 2016, but because other projects had been delayed, those
12 upgrades and repairs had been delayed. They go on to say
13 these machines now are going to be ready by mid Summer 2017.
14 So the reason that the contract had to be signed up in 2015,
15 these pipe-layers are still unable and not ready for work.

16 And that's important, Your Honor, because, as we
17 will see, Welded charged Transco over \$6 million for standby
18 of these 594 pipe-lawyer, while they were -- at a time while
19 they were being repaired, made ready for work. And the
20 evidence will also show that, even after the contract began,
21 they were not ready for work.

22 The evidence will also show, Your Honor, that,
23 throughout this contract, cost-plus-percentage-of-cost
24 contract, Welded chose to maximize its ASR billings and then
25 use those funds to cover losses on other projects.

1 There are two very important presentations that
2 occurred during January of 2018, both prepared by a gentleman
3 named John McNabb. He was the project -- he was a project
4 controls manager at the home office, I believe, for Welded.

5 And in one presentation, he showed that we are
6 losing money on this equipment fee multiplier and we need to
7 do something about.

8 In the other presentation he said, on this project,
9 we are having trouble with our schedule, we're having trouble
10 with our headcount, we're having trouble with our labor
11 productivity and efficiency, and it's going to cause an
12 overrun of over \$117 million.

13 The evidence will show that Welded set out
14 immediately to rectify the equipment fee loss. But there is
15 not a single written mitigation plan that we can find that
16 was focused on addressing that second presentation, the
17 presentation that showed there was going to be a hundred-and-
18 seventeen-million-dollar loss due to Welded's own
19 inefficiency.

20 What we also know is that, by March of 2018, Welded
21 was in severe financial straights and they had taken the
22 money that ASR, that Transco had paid in cash advances to use
23 to keep its other projects afloat, to pay expenses on those
24 other projects, and that they had -- by July of 2018, the
25 evidence will also show that they had rectified the problem

1 with the equipment fee multiplier, and it had now turned a
2 profit, according to their internal job records of \$15
3 million, and that they had trans -- invoiced Transco for more
4 than \$127 million, more than their job costs to date. I
5 would submit to Your Honor that that is not keeping Welded
6 cash neutral. That is invoicing in advance, so that they
7 could use the funds to keep the entity afloat.

8 I'll briefly talk through those two presentations,
9 Your Honor, that Mr. McNabb presented in January of 2018. He
10 identified this equipment fee multiplier was losing Welded
11 money at a rate of about \$6.8 million. And he says the
12 reason is we're mobilizing equipment too early, we're not
13 utilizing equipment, and we're not billing things. Well, the
14 things that were not being billed were things that were not
15 billable. Home office costs were not billable, small tools
16 and consumables were not billable. And he testified -- or he
17 identified that this issue can be rectified.

18 The evidence will show that, after this
19 presentation was made, things that had been identified as not
20 billable to Transco became billable. In fact, that very
21 afternoon, Marcus Hood, the project manager for Welded, went
22 through the database, the expense database called SmartSearch
23 and said I identified \$600,000 that we're going to bill now
24 to Transco. And he told his project managers on the job you
25 need to do the same thing and I want you to do this weekly

1 because it directly impacts Welded's profitability on ASR.
2 And Your Honor, I will submit the evidence will show that, at
3 this point, items that had been non-billable that got moved
4 into the billable category, those are the issues that are
5 being addressed in this trial.

6 And by July of 2018, Welded had rectified the
7 problem. They were calculating in their internal job cost
8 reports that the equipment multiplier was generating a profit
9 of \$15.5 million. They had invoiced ASR \$127 million more
10 than its job costs to date, as reflected in the July 2018
11 internal cost reporting.

12 Now, in juxtaposition to how they rectified the
13 equipment fee problem, the failure, the inability, the lack
14 of response to the inefficiency, the delays is stark.

15 On January 17, Mr. McNabb's presentation with
16 regard to ASR productivity was presented to the Present, Mr.
17 Steve Hawkins, to the Project Manager Marcus Hood, and the
18 General Superintendent Scott Schoenherr. And what he showed
19 was that the adherence to schedule, productivity, and
20 headcount is not good, with the current productivity being
21 experienced, our forecast would have a 40 percent overrun or
22 approximately \$120 million. This is in -- this internal
23 analysis was not provided to Transco at the time and there's
24 no evidence that anything was done by Welded to address this
25 issue.

1 And Mr. McNabb asked what are going to do
2 different. I would submit, Your Honor, nothing was done
3 differently because, in part, by March of 2018, Welded was
4 already considering winding down its business due to the --
5 due to the overruns they were experiencing on their other
6 fixed-price jobs.

7 And they retained at that time Zolfo Cooper to come
8 in and do an analysis of the situation. Zolfo Cooper
9 reported that there was a positive net cash flow at that time
10 from the ASR project that was funding negative cash flows on
11 their other jobs.

12 Well, Your Honor, I would submit that this was
13 contrary to the contract, which required Welded to promptly
14 pay the ASR subcontractors. Instead of promptly paying the
15 ASR subcontractors, that money was being used to pay expenses
16 on other projects, primarily what you'll hear referred to as
17 the "ETP project."

18 And Mr. Steven Kuxhausen, who is the head of
19 internal audit at Bechtel, advised Mr. Wall and Mr. Hawkins
20 that, you know, you need to acknowledge somewhere that Welded
21 has been living off the advance funding from Williams ASR
22 that is now ending, and Williams could be withholding payment
23 soon if the issues are not resolved quickly, and goes on to
24 say Williams will likely get hurt if Welded goes Chapter 11.
25 That document was not a document presented to Transco at the

1 time. This circumstance was not revealed to Transco at the
2 time.

3 And Mr. Pometti from Zolfo Cooper, and now
4 AlixPartners, prepared this analysis to show what the
5 situation was like on October 21st. That's a key date
6 because it's the day before Welded filed for bankruptcy
7 protection. And as of October 21st, the -- Zolfo Cooper
8 concluded that Transco had contributed \$85.7 million to cover
9 Welded's losses on its fixed-price contracts.

10 So, at the time that bankruptcy was filed, the
11 reason that that occurred was not the story that we have --
12 was not the arguments made by the plaintiff for, I would say
13 the first two or three years of this case. For the first two
14 or three years of this case, the allegation was that the
15 withholding of \$23 million was the event that caused the
16 bankruptcy filing. But in fact, what is shown is that, at
17 that moment, ASR had contributed a positive \$85.4 million to
18 the Welded cash flow. Other projects before -- other
19 projects were the cause of Welded's bankruptcy filing.

20 Also in August of 2018, Welded and Zolfo Cooper
21 evaluated what were the reasons behind the massive ASR
22 overruns unaddressed by Welded. And one of the things they
23 found -- it was an issue that happened on many of their
24 projects -- was their failure to time -- to plan and
25 appropriately perform the tie-in welds on the project.

1 You'll hear a lot about tie-in welds over the course of the
2 next ten days, Your Honor. And it is one of the areas where
3 our expert Mr. Brian Triche has quantified damages related to
4 this particular problem that Welded and Zolfo Cooper also
5 identified.

6 Zolfo Cooper also identified that the -- this
7 project, which began in October of 2017, that Welded overran
8 its original bid cost estimate by January of 2018, basically
9 three months into the job.

10 And throughout 2018, Transco questioned the
11 reconciliation invoices and protested the overruns. And it
12 was a -- at many different levels of the project.

13 In June of 2018, the Transco field accountants who
14 had been evaluating the backup, evaluating the reconciliation
15 invoices, reached out again to Welded to say we need answers
16 to our questions. Reconciliation invoices, backup provided
17 late by Welded under the contract, not consistent with the
18 payment provisions. The field accountants asked questions
19 beginning in January of 2018 and got no answers. In June of
20 2018, they still had no answers.

21 In July, Mr. Poarch wrote to Mr. Hawkins and said
22 Welded is taking advantage of this contract, and it was in
23 many ways: The failure to meet expectations on productivity,
24 work quality, safe practices, as well as questions and
25 concerns about the accuracy of the billing.

1 Mr. Springer also wrote on July 3rd, advising Mr.
2 Hawkins that the payment would be made, that it was a
3 difficult one to make because of the same issues identified,
4 that Mr. Poarch had identified, as well, and also said that
5 Transco was not satisfied with either the management of the
6 project, and that Welded is taking advantage of it. It was
7 not something that was sprung on Welded only on October 4th.

8 On July 13th, Transco advised that any future
9 payments would be made under protest.

10 Again, on August 13th, the payment of the August
11 cash call was made with the same concerns being raised, and
12 again advised that it was being made under protest and not an
13 admission of liability.

14 And on October 4th, based on the OGCS audit,
15 Transco withheld \$23 million from the cash call, the advance
16 cash call that was made by Welded for -- that was due on
17 October 5th. The contract provisions under Appendix G
18 provided that, if you were going to dispute a billing, you
19 had to do it prior to the date it was due, which was the 5th
20 of every month.

21 So Transco submitted their -- submitted the
22 withholding of notice, identified the reasons for
23 withholding, identified the issues with regard to the delays
24 and the other -- that there were additional issues being
25 raised. And then they went on to request a meeting with

1 Welded to discuss the withholding and to discuss these
2 findings. That never meeting never happened, or at least it
3 never happened to discuss these withholdings because,
4 instead, Transco was advised that Welded was filing a Chapter
5 11 petition in the Bankruptcy Court.

6 A few days later, on October 9th, Transco field
7 accountants had finally received responses to the
8 discrepancies that they had been identifying in the Welded
9 invoices for months. And although Welded's counsel indicated
10 that this was a significant surprise to Welded at the time,
11 despite getting the letters from Transco, in fact, the
12 evidence will show that Welded was anticipated it.

13 Welded, in a board meeting held in October,
14 reviewed a Zolfo Cooper presentation specifically addressing
15 the ASR billing disputes and noting that the cash call that
16 was due on October 5th exceeded the seven-hundred-and-
17 sixteen-million-dollar approved contract value by
18 approximately \$20 million, so already acknowledging that
19 there was an issue -- going to be an issue with the October
20 payment.

21 Also at that board meeting, Welded itself
22 quantified some of the exact same things that OGCS looked at,
23 some of the exact same things that we're going to talk about
24 in -- over the course of the next ten days. They quantified
25 \$20 million of a potential deduct. Now \$10 million of that

1 was the cost incentive penalty that had been deducted in
2 August. But they also quantified an additional \$10 million
3 for rework, for weld repair, for issues with the equipment
4 multiplier with "non-re" -- which I would assume is non-
5 reimbursable -- costs that they were identifying, as well as
6 with the schedule.

7 So, as of October 2, two days before the
8 withholding, I would submit the evidence will show that
9 Welded was not surprised, that Welded was doing their own
10 quantification with regard to what they had improperly
11 charged Transco.

12 I'm going to try to orient the Court and the
13 parties with regard to the evolution of the contract cost
14 estimates over time and, ultimately, what Welded billed on
15 this job.

16 Going back to 2015, Transco had an estimate of
17 about \$296 million for these 97 miles of the ASR pipeline.
18 The fixed-price that Welded submitted was \$341 million, but
19 the contract, the cost-reimbursable contract, was less, it
20 was \$335 million, consistent with Mr. Wall's representation
21 that it was going to cost less to do it in a cost-
22 reimbursable manner.

23 That price went up, the contract cost estimate went
24 up in August of 2017, when Mr. Sztroin said I want to know
25 what the final cost is going to be, don't tell me there could

1 be some items out there that you know about but have not been
2 priced, price everything. And that price was four -- that
3 estimate, I would say, not a price, an estimate, was \$454
4 million.

5 Ultimately, Welded invoiced over \$800 million. And
6 that \$802 million included errors of over \$6 million from
7 October 2017 invoices. It included double-counting of
8 invoices in 2018. Those things only being acceded to by
9 Welded in the last -- in the discovery of -- in this case.
10 And ultimately, through November of 2018, the invoicing is --
11 the correct invoicing is \$768 million.

12 Now that's very similar to what Mr. Guerke was
13 showing in the discussion between Mr. Green and Mr. Goebel.
14 That entire discussion was related to the \$71 million in the
15 complaint that Welded had filed. And it was Transco trying
16 to figure out how it could possibly \$71 million.

17 The amount paid in that presentation is not
18 accurate. The amount that Transco had paid was \$716 million.
19 I don't think there's any dispute about that today. And so
20 the difference between the amount paid and the amount
21 invoiced is about \$51 million. That's where we're starting.

22 And for years, Welded has clung to its claim that,
23 in fact, it's over \$70 million. It is not over \$70 million.
24 The complaint said \$71 million. Mr. Pometti testified in
25 March of '21 that that was based on inadvertent double-

1 counting.

2 But after that admission, Welded no longer agreed
3 with the ten-million-dollar cost penalty until the Court's
4 ruling on the motion for summary judgment.

5 It wasn't until June of 2022 that Welded's expert
6 Mr. Gray finally acknowledged the 6.5-million-dollar mistake
7 in the October 2017 invoice in his second expert report. And
8 it wasn't until the MSG opposition brief that Welded finally
9 acknowledged the union dues that had been paid by Transco.

10 It is not a seventy-million-dollar claim, it's
11 simply -- the math simply does not support that. It's a
12 matter of adding up 15 invoices. And they cannot -- there is
13 no way they add up to anything close to \$70 million.

14 I will briefly describe the claims that we have --
15 the amounts that we have quantified and that Mr. Joe Slavis
16 will primary testify with regard to.

17 We have identified at least \$62.9 million of un-
18 incurred costs, unallowable costs, delayed performance, costs
19 for corrective work, and costs related to Welded's self-
20 inflicted wounds that Transco is not required to bear under
21 the contract and, instead, is entitled to repayment of at
22 least \$11.2 million.

23 This table, I believe you will see, Your Honor, in
24 Mr. Slavis' presentation. I won't spend time on it, but I
25 will cover a few of the highlights of it.

1 The -- one of the unallowable costs identified is
2 this issue of standby equipment. In 2017, Transco was
3 charged by Welded over \$6 million for standby equipment,
4 primarily those 594 Caterpillar pipe-layers. But it wasn't
5 an actual cost that was incurred by Welded because the
6 equipment was not on standby in a yard. It was being
7 repaired in order to be available for work. The equipment
8 was 40 years old, not used for 7 years. And there was no
9 support provided by Welded for the pipe-layers or for the
10 third-party rented equipment that it charged. And the
11 contract requires that. Article 26 of Section 1 requires
12 proof of substantiated actual cost.

13 The evidence will show that, according to their own
14 records, none of these pipe-layers were allocated to ASR
15 until September of 2017. And even after the notice to
16 proceed, even after work was underway, the 594 Caterpillar
17 pipe-layers are still being repaired and are not available.
18 And in fact, the pipe-layers for the job, for ASR, are not
19 coming from some standby yard. They're coming from another
20 project, where obviously they have been being put to work.

21 Welded also charged twice their rates for the 594
22 pipe-layers. Internally, Welded was identifying their rates
23 for this equipment. The rates for a Caterpillar 594 sideboom
24 were \$478 in 2017, but they charged Transco \$943 per day.

25 Moving on to the Bechtel charges, there are many

1 issues with regard to the charges submitted by Bechtel,
2 including that they were contrary to the contract rates, the
3 hours restrictions, and a 50 percent fee was added that
4 wasn't paid to the personnel. But more importantly, these
5 costs were not incurred by Welded. Instead, they were
6 written off by Bechtel and unpaid by Welded. And there was
7 no payment bond claim for these invoices.

8 We've -- I think we've presented the issue of
9 general liability insurance to the Court previously.

10 In addition, I would note, Your Honor, that Welded
11 did not view general liability insurance as a labor cost in
12 2017. And that is because they decided in 2017 that, while
13 they had historically included their liability insurance
14 buried somewhere in general equipment, leases, and repairs,
15 in 2017, this spend will be shown as a component of SG&A,
16 selling, general, and administrative costs. And so those are
17 costs that are covered by the fixed fee. Instead, Welded
18 charged them to Transco as a labor cost, contrary to the
19 contract, as well as contrary to their own internal
20 accounting.

21 There is a group of unallowable field personnel
22 that were -- labor costs that were charged. It includes
23 people that were at Welded's home office. They don't qualify
24 as field personnel, but they were charged to Transco.

25 Welded also charged for people who were working on

1 other projects. They're not field personnel if they're not
2 assigned to the job. Mr. Schoenherr, the general
3 superintendent, worked at several jobs, but he was charged to
4 Transco at 60 hours every week. Mr. Schoenherr testified
5 that as his -- in his role as general superintendent, he
6 oversees 5 or 6 different projects. He also testified his
7 office was not the field office, but his trailer.

8 Field personnel rates were also established in the
9 contract. And at Exhibit 1, there was a requirement to get
10 approval before they were increased in excess of seven and a
11 half percent. That approval was never requested, that
12 approval was never granted. Instead, Welded charge high-
13 priced agency personnel without prior notice or without an
14 approval request from Transco.

15 Part of that, the evidence will also show that
16 Welded, for the most part, did not proceed as a general
17 contractor on this job. A general contractor has a project
18 management team, that's its expertise. That's how it --
19 that's what it is selling. Instead, Welded assembled a group
20 of temporary hires, not just to perform the job, but to plan
21 the job. And that was an important part of this contract
22 structure.

23 Transco paid \$6 million for the planning of this
24 project to mitigate the risk of the cost-reimbursable
25 contract. That planning was done by temporary agency hires,

1 most of whom had left the project prior to notice to proceed.
2 And those agency personnel were charged in significant excess
3 of the rates in Exhibit 1.

4 This chart shows first the project management team.
5 This is the org chart, put together by Welded to do this job.
6 And these are, the overlay shows, the people who Welded
7 brought to this job from temporary agency hires, from project
8 hires, seconded employees, and part-time folks who were not
9 stationed on the job. And I would submit, Your Honor, that
10 one of the reasons for the lack of success in performance by
11 Welded on this project is due to this exact circumstance.
12 The PTAG temporary hires folks, some of them did some of the
13 planning work then left, some have started the construction
14 work then left. It was a revolving door at the Welded
15 project management team.

16 And Stephen Hawkins, Welded's President, questioned
17 this at the very outset of the project. He said we're a
18 general contractor, we're not a construction management team,
19 we didn't bring these people in to run this job, and they
20 cost a lot.

21 Mr. Grindinger, the first project controls manager,
22 if you look at his fully loaded salary per year, it's 319,000
23 per year. And then on top of that is the fee charged by the
24 PTAG agency. That's not allowable under the contract, but it
25 was charged to Transco. And it was charged to Transco with

1 an equipment multiplier.

2 Welded also abused the vehicle allowance provisions
3 of Exhibit 1, charging for people who were not entitled to a
4 vehicle allowance. And even though pickup trucks, which are
5 used on every construction -- every pipeline construction
6 project, were included equipment, they charged Transco over
7 \$3 million for pickup truck rental. And in fact, that was
8 one of the items that the internal cost reporting people
9 moved from the non-billable item in the internal cost records
10 to a billable item to subcontracts.

11 There's about four or five categories of included
12 equipment, Your Honor, that were separately charged to
13 Transco, even though they are on the list of included
14 equipment. Those are things that are used on every pipeline
15 project. They're dump trucks, they're Marookas -- which are
16 rubber-tired crawler vehicles, you'll see some photos.

17 It also included the mobilization and hauling of
18 included equipment. Again, something that Welded had put in
19 the cost report as non-billable got moved to billable when
20 they needed to rectify the equipment fee profit.

21 And then rig rental, welding, and mechanics
22 equipment is equipment that is used on every project.
23 Because it was rented from the craft labor employees, Welded
24 charged it to Transco. It is not a labor cost. The Welded
25 employees testified that it's equipment that is typically

1 provided by the contractor on these types of projects. And
2 simply because it's rented from a craft labor person does not
3 transform it to -- from included equipment to specialty
4 equipment.

5 Debt remediation is a -- will be a subject of I'd
6 say a small amount of testimony, primarily from Mr. Sztroin,
7 that identified, after the -- after Welded had left the
8 project. There was evaluations done of the pipeline that
9 showed that Welded had violated the backfill requirements,
10 which say you have to put it into the ditch with completely
11 rock-free dirt underneath it. And in fact, that was violated
12 by Welded during the job, and the cost to investigate and
13 remediate that are part of damages sought by Transco.

14 The evidence will also show that -- the evidence
15 will show that Welded charged every labor hour to Transco
16 during the project. There was not a labor hour that was not
17 charged. However, there were many self-inflicted wounds that
18 Welded encountered along the way that it charged Transco for,
19 including its significant safety problems, stand-downs that
20 it had to initiate before Transco did, work stoppages for
21 repeated and unaddressed safety problems.

22 And the safety infractions were so serious that, in
23 November of 2017, just one and a half months after the job
24 had started, Welded prepared a profit forecast to Bechtel
25 saying it might be zero because we could removed from this

1 project because of our safety record.

2 The post-petition costs, Your Honor, these largely
3 relate to the issue of included equipment, which I know we
4 have addressed with the Court. I will just briefly explain
5 those.

6 Our -- the evidence will show that Mr. Pometti of
7 Zolfo Cooper agreed that equipment costs would be the same as
8 included equipment in the contract; i.e., that the 50 percent
9 would cover the included equipment. In the third commitment
10 letter, that was actually incorporated, that concept.
11 Transco was going to pay directly all the subcontractors,
12 except for the included equipment, which Welded was going to
13 continue to pay.

14 Mr. Triche will ident -- will testify with regard
15 to the performance delays, the rework, largely quantified by
16 Welded itself, and the own -- Welded's own self-inflicted
17 wounds.

18 The schedule incentive deduction identified is one
19 and a half million dollars. It's based on looking at an as-
20 planned versus as-built schedule analysis, looking at the
21 critical path of the job, which was Spread 5. We gave Welded
22 the benefit of every day of time extension that they had
23 requested in EWRs and ultimately identified that they owed
24 \$1.5 million as a schedule penalty.

25 Welded's impacted as-planned analysis ignores the

1 critical path, the progress of the project, and Welded's own
2 delays.

3 The permit issues that Mr. Guerke was speaking of
4 did not affect Spread 5, they were only on Spread 6 and 7, so
5 ultimately not relevant to the issue of delay, the actual
6 delay to the project. But also, those permit issues were not
7 permit delays. The project was entirely permitted at the
8 outset of the job.

9 The I-81 crossing was delayed because Welded used a
10 guided bore or horizontal directional drill to do that
11 crossing, which was not allowed by the permit, and that
12 delayed the project for 76 days, when they had what's called
13 a "frack-out" or an inadvertent return of drilling fluids
14 that reached the service, an environmental violation that
15 resulted in a serious notice of violation from the depart --
16 Pennsylvania Department of Environmental Protection. So
17 mister -- Welded's expert paid no heed to the fact that these
18 delays cited were actually problems caused by Welded.

19 The defective, nonconforming work. Weld repairs
20 and cutouts are a provision of the contract. It's simply a
21 liquidated damage that Mr. Triche has quantified at \$2.5
22 million.

23 The nonconforming, defective work was tracked by
24 Welded in its project records and we have used the amount
25 that they have identified. Obviously -- maybe not so

1 obviously -- we submit that we were charged in excess of \$2
2 million for defective work, but we have taken the amount that
3 they have quantified.

4 With respect to performance issues, we have
5 identified the tie-in weld increases due to their failure to
6 plan and efficiently do this work. And we saw Zolfo Cooper
7 identified \$38 million due to this tie-in issue problem. We
8 have identified \$2.2 million.

9 Welded also identified that they brought in craft
10 labor early on the job due to early mobilization. And what
11 the evidence will show is that the craft labor that they
12 brought on the job had no work to do. They were inefficient,
13 they were -- had no work fronts available to them. There was
14 no reason to mobilize that craft labor. And only a portion
15 of it is being assessed to Welded.

16 One of the other things I want to point out is
17 that, with regard to the subcontracting requirements -- this
18 is the safeguard in the contract. Marcus Hood testified this
19 is the most important safeguard in the contract. And that
20 was the prohibition on issuing subcontracts to -- issuing a
21 subcontract over \$3 million without getting competitive bids
22 for the work.

23 So what the contract required was that
24 "subcontracts" broadly defined any third party that can be
25 providing services, equipment, materials, supplies, that they

1 must, before they're allowed to perform or invoice for work
2 which in the aggregate exceeds \$3 million, they had the
3 competitively bid the work. Violation of this provision was
4 cause for termination. And if it was violated, the
5 contractor assumed all liability for costs in connection with
6 these subcontracts. And mister -- as I said, Mr. Hood
7 testified this is the -- this is one way the contract
8 controlled costs.

9 But we have identified at least four subcontracts
10 for which we can find no competitive bids in the discovery
11 process, no advance approval that exceeded \$3 million that
12 were charged to Transco.

13 There are other -- and I would call this a "small
14 amount" of damages, Your Honor, that have been identified:

15 Transco paid an environmental penalty due to the
16 many infractions of Welded of the environmental requirements.

17 They paid road repairs due to the -- Welded's
18 failure to exercise care.

19 And in the bankruptcy, when the bankruptcy was
20 filed, Transco paid twice for subcontractors that said we're
21 not going to keep working unless you pay us.

22 And so we submit that the evidence will show that
23 Welded owes Transco a refund of at least 12 million -- or at
24 least \$11 million.

25 And I want to briefly address the weather issue. I

1 think we're going to hear a lot about weather in this case.
2 It wasn't the weather.

3 In their schedule -- in their cost estimate, they
4 included two and a half non-working days every day. There
5 were six working days for the project in the schedule. And
6 at the outset, they built into their schedule and their
7 estimate two and a half days of non-working due to weather.

8 But in January of 2018, once the -- I think we're
9 on the third project controls manager at this point. They
10 start changing the planned weather days from 2.5 to 1.2 in
11 their reporting to Transco, making it look like the weather.
12 But even they acknowledge, in April of 2018, it still wasn't
13 the weather, that the weather is overstated and not as much
14 of an impact, as we always say, even using the 1.2 days.

15 As I mentioned, Welded did not earn their final
16 fee. The contract is very clear. It states that the cost
17 includes compensation for work scopes performed up through
18 final completion, as opposed to compensation payable to
19 achieve mechanical completion only. And that's because
20 cleanup and restoration is extremely important. And the
21 cleanup and restoration was supposed to be done, according to
22 Welded, by October of 2018.

23 Ultimately, that work, it couldn't be finished by
24 Welded because the growing season opportunity had closed in
25 November of 2018. Ultimately, Transco spent over \$50 million

1 on cleanup and restoration work in 2019 and warranty work in
2 2020.

3 The CASPA statute, I know Your Honor has heard a
4 lot about this in our briefing. And it is inapplicable
5 because Oklahoma law is the law of the contract. The CASPA
6 statute, as it existed when the contract was signed, allowed
7 parties to waive or vary from the statute in their contract,
8 which was done.

9 Also, the statute provides that, in order to seek
10 relief under the statute, that the contractor must perform in
11 accordance with its terms. And we would submit the evidence
12 will show that Welded did not.

13 And ultimately, Your Honor, we believe that the
14 evidence will show that Welded breached the contract, abused
15 the contract structure, disregarded the limitations and
16 safeguards on its charging and that a refund is owed to
17 Transco. Thank you very much.

18 THE COURT: Thank you.

19 Okay. I think we are ready for evidence. But I
20 need this changed up, I will not be able to see the witness.
21 So let's take five minutes and let's see if I can get my
22 screens changed. Thank you.

23 (Recess taken at 10:56 a.m.)

24 (Proceedings resume at 11:04 a.m.)

25 (Call to order of the Court)

1 THE COURT: Please be seated.

2 Mr. Guerke.

3 MR. GUERKE: Thank you, Your Honor. Again, Kevin
4 Guerke for the record.

5 Our first witness is Steve Hawkins, former
6 President of Welded Construction.

7 I have some binders to hand up to the Court.

8 I have highlighted designated transcripts.

9 I have the full exhibit lists and the charts and
10 keys for the designations.

11 THE COURT: Okay.

12 (Participants confer)

13 THE COURT: Okay. So these are deposition
14 designations and counter-designations for all of the
15 depositions.

16 MR. GUERKE: Correct, Your Honor.

17 And may I supply the witness stand and the Court
18 with witness binders?

19 THE COURT: Yes, please. Thank you.

20 (Pause in proceedings)

21 (Participants confer)

22 MR. GUERKE: May I call Mr. Hawkins to the stand,
23 please?

24 THE COURT: Mr. Hawkins.

25 THE ECRO: Sir, will you stand.

1 THE WITNESS: Sorry.

2 THE ECRO: Raise your right hand.

3 STEPHEN HAWKINS, WITNESS FOR THE DEBTOR/PLAINTIFF, AFFIRMED

4 THE ECRO: Please state your full name and spell
5 your last name for the record.

6 THE WITNESS: Stephen Douglas Hawkins, H-a-w-k-i-n-
7 s.

8 THE ECRO: Thank you.

9 MR. GUERKE: Your Honor, there's one other item
10 before I start with this witness. It's JX-1, which is the
11 compiled contract. It was sent over to chambers. I believe
12 you have a full copy of it, counsel has one, and I suggest we
13 provide one to the witness and it just stays up there the
14 whole time.

15 THE COURT: That's fine.

16 (Participants confer)

17 DIRECT EXAMINATION

18 BY MR. GUERKE:

19 Q Good morning, Mr. Hawkins.

20 A Good morning.

21 Q What was your title when you worked at Welded?

22 A I was the President and Chief Executive Officer of
23 Welded.

24 Q What was your tenure there?

25 A From September of 2016 until April of 2020.

1 Q And what were your duties and responsibilities as the
2 President of Welded?

3 A Overall operational oversight, profit and loss
4 responsibility, making sure that the team was properly
5 resourced; customer interface and customer client-facing was
6 a big part of my responsibility, as well, and exhibit the
7 right safety leadership and the right field leadership.

8 On the chief executive side, it was interfacing with the
9 board, keeping the board informed, carrying out the direction
10 that the board had given us through resolutions and operating
11 plans.

12 Q Where did you go to college of Hawkins?

13 A University of Maryland, College Park.

14 Q Did you serve in the military?

15 A I did.

16 Q What branch of service?

17 A I was in the Marine Corps.

18 Q Did you retire from the Marine Corps?

19 A Yes, I retired in 2003, after 23 years.

20 Q What did you do between your military service and being
21 the President of Welded?

22 A Yeah. I was with Bechtel Oil, Gas & Chemical. I
23 started out, when I retired, in Kazakhstan as the general
24 director of joint venture company that Bechtel has with our
25 Turkish partner Enka.

1 And I was also the senior manager for a refinery
2 expansion project for Tengizchevroil, which is Chevron and
3 Exxon and the Kazak national gas company.

4 After that -- I did that for two years, 2003 to '5 -- I
5 went to Egypt to be a senior project manager for an Egyptian
6 liquified natural gas project for about 18 months.

7 After that, I went to Motiva.

8 I'm sorry, after that, I became a deputy operations
9 manager for Bechtel in Houston.

10 And then I did a six-month special assignment in San
11 Francisco, a leadership development type initiative, talent
12 management.

13 After that, I went to a Motiva project to be a site
14 manager, the project manager for the early works construction
15 in Port Arthur, Texas; Motiva, which is Shell and Saudi
16 Aramco as the customer.

17 At the end of that, I went to Iraq for a special
18 assignment, just doing a security assessment, as well as a
19 infrastructure assessment of the existing oil and gas fields
20 there for the -- for the expansion of the Iraq oil industry.

21 From there, I went to become Keystone -- in the Keystone
22 expansion line, senior project manager based out of Houston
23 for TransCanada as the customer.

24 2011, I became the general manager of the pipeline
25 business line for Bechtel, a general management position.

1 And I had that until 2016, five and a half years, and
2 that led me into the Welded role, at Welded Construction as
3 the President.

4 Q What kind of -- what type of work, generally, does
5 Bechtel do?

6 A Oil -- I'm sorry.

7 Engineering, procurement, construction, major projects
8 in various industries, energy industry, oil and gas, mining
9 and metals, infrastructure, nuclear, security, most of those
10 major business markets, government work.

11 Q Of the jobs on the list of jobs that you just went
12 through, titles and roles, which of those related to pipeline
13 construction, pipeline work?

14 A Yeah. The -- the Keystone and the Keystone XL were both
15 pipeline construction projects.

16 And then my role as a general manager in the pipeline
17 industry, we had worked -- we won work in the Chilean, South
18 America, Escondida water supply, a forty-inch-line;

19 The Trans Anatolian Pipeline project, we did the early
20 feed engineering, the feed design, and the environmental
21 permit for that work. That was a seventeen-hundred-mile
22 pipeline across Turkey;

23 The Republic of Georgia, we did a south caucas pipeline
24 expansion work for BP, which ran across Georgia and
25 Azerbaijan;

1 In Thailand, we had two -- two pipeline projects for
2 PTT.

3 So a pretty extensive portfolio in that five years I ran
4 the pipeline business.

5 Q When you were with Welded and you were working on the
6 ASR project, who were the main players on your ASR project
7 team?

8 A Marcus Hood, who was a senior project manager, was --
9 was running the job.

10 Then you had, you know, on the staff, Scott Schoenherr
11 was the general superintendent, who was also supporting that
12 work.

13 And then we had the three field superintendents: Sonny
14 Weems, Landon Duncan, and Mr. Walker who was down on Spread
15 7.

16 Then we had the project management team that was in
17 Mount Joy, which consisted of Sean Singleton -- who had
18 replaced Jim Grindinger -- was the primary.

19 And of course, we had done contracts with others who
20 were supporting the work, as well.

21 Q Please describe for us the ASR project.

22 A The ASR project was 97 miles of forty-two-inch pipeline
23 for transmission of natural gas in Pennsylvania. It was to
24 get natural gas from the Marcellus region -- which was the
25 big boom that was going on during this time frame -- of

1 course, down into the -- down into the grid, the electrical
2 grid. I forget which energy company it was supplying. But
3 ultimately, that was the purpose of it, was transmission of
4 natural gas.

5 Q Was the ASR project broken down into spreads?

6 A Yes, it was three spreads:

7 Spread 5 in the north, was the shortest spread, about
8 95,000 feet.

9 And then we had Spread 6, which was about a hundred and
10 ninety-nine or 200,000 square -- linear -- linear feet.

11 And then Spread 7 was down to the south, I believe that
12 was the longest spread.

13 Overall, it's 97 miles.

14 Q What's a "spread"?

15 A A spread is a -- it's -- it's what we use to define both
16 a length of a pipeline, scope of work, as well as the crews
17 and the resources that are on that length of pipeline spread
18 to conduct the work. Typically, it's geographically defined.
19 And then the teams were built in purpose to perform the work
20 according to terrain and the -- and the other scope that they
21 have to perform.

22 Q So you mentioned terrain. What was the terrain like,
23 generally, on ASR?

24 A It varied. Spread 5, in the north, which was a shorter
25 spread, was -- was the hilly part of the -- of the project,

1 which is why it was shorter because it was technically more
2 challenging and -- and had -- had greater risk to the
3 construction of it.

4 Spread 6, which was just to the south of 5, was rolling
5 terrain, you know, some hills, but nowhere near what it was
6 on Spread 5. And then, as it moved south, it -- it flattened
7 out.

8 And then Spread 7 was -- was characterized by more flat
9 terrain, but had some river crossings, some of the major
10 crossings with it.

11 Q Describe generally what Welded did on the ASR to build
12 the pipeline.

13 A Welded is -- Welded was the pipeline contractor,
14 construction contractor. That was for all phases of the
15 project, from the clearing and the grading, of course, and
16 then to the trenching and the preparation, and then the
17 laying in, the stringing of the pipe, the welding of the
18 pipe, the laying in of the pipe, preparing of the trench for
19 the pipe, the coating of the pipe, the backfilling, the
20 hydro-testing, and getting it in service.

21 After that, it was the restoration work of the pipeline,
22 as well, which involves restoring the right-of-way,
23 compaction, getting it winterized, ready for winter, planting
24 grass, things like that.

25 Q Looking back, what was your overall assessment of

1 Welded's performance on ASR?

2 A Well, the project certainly was a challenge, that's why
3 we're here. But you know, I think -- I still say, you know,
4 we did well because we performed the work and we were able to
5 get Welded in -- sorry -- Williams in service and we were
6 proud of that. We were proud of having a relationship with
7 Williams/Transco. We wanted to have this project, an
8 important customer in the industry, and that's the way we
9 approached it. We wanted to be their partner and we wanted
10 to have more work going forward.

11 I think that everybody knows the challenges. If they
12 don't, I'm sure they will get discussed in the next few days.
13 But you know, it was an extremely challenging project with
14 the weather conditions that were out there, the harsh winter
15 that was there, two major storm events, protests, delays, you
16 know, lots -- lots of barriers to performing the work that
17 were, you know, what I call kind of "unknown" or "unforeseen
18 risks" that just compounded throughout the -- throughout the
19 project. They didn't just happen once, they happened several
20 times.

21 So overcoming that as a team, I was proud that the team
22 worked through that. You know, we're not perfect, no one
23 said we were. But we worked closely with our customer to get
24 their project in service and we did. So, you know, we're
25 proud of that fact. We're proud that -- in spite of all of

1 these challenges, that we were able to accomplish that.

2 Q Did it turn out to be a good job for Welded?

3 A No, not to Welded.

4 Q Let's talk about the contract itself.

5 A Okay.

6 Q Could you describe the overall structure of the
7 contract, how it worked mechanically?

8 A Yes. It was an overall cost-reimbursable project with a
9 fixed fee, meaning that the fee was set at an agreed-upon
10 amount. And it had -- the fee itself had both incentives and
11 penalties, to make sure that we had skin in the game, both
12 for costs and schedule. So there was -- there was an upside
13 put in there that we could realize it and make more money, be
14 more profitable, as well as downside from the schedule or --
15 or cost overruns, so that we -- we were mindful of that. You
16 know, so to have that skin the game, both was risk and
17 reward.

18 It was an equipment multiplier on top of the labor
19 costs, rather than straight labor, paying the straight
20 equipment fees as a pass-through on an invoice cost-
21 reimbursable. That was also viewed as an incentive to use
22 the right amount of equipment, rather than just bringing
23 equipment in.

24 You know, the purpose of an equipment fee was to do --
25 do the same thing, create incentives for -- for good

1 management of the equipment.

2 Q Was that type of contract attractive to Welded?

3 A Yes. In the market that -- in all of the projects that
4 were going on, for multiple, not only for Welded, but for
5 other contractors, as well. And -- and we needed to have a
6 balanced -- in our portfolio, we needed to have a cost-
7 reimbursable job in our portfolio, so that we didn't overload
8 with risk.

9 Q How does the ASR contract structure compare to other
10 types of standard construction contracts?

11 A Yeah. Most are what's called, you know, "lump-sum base
12 lay rate," which is you bid -- you bid on the cost per mile,
13 dollar per mile, with some unit price additional things for
14 things like rock creek crossings or other -- other unknown
15 rock removal, things like that. But by and large, it's lump-
16 sum work, the industry is lump-sum work.

17 Q Who bears the risk of construction costs -- or for
18 construction costs in a lump-sum contract?

19 A The contractor.

20 Q And how about in the cost-reimbursable type of structure
21 that ASR was, who bears the risk?

22 A The company or the owner.

23 Q How long was Welded on the job?

24 A Notice to proceed, I think it was a restricted notice to
25 proceed, the original one, in September of 2017. And then we

1 got mechanical completion September, in service in October of
2 2018. I believe the end of November is when the -- is when
3 we were de-mobilized.

4 Q Was that longer than originally expected?

5 A Yes.

6 Q Is longer better for a contractor with a fixed-fee
7 contract?

8 A No, longer is not better for anybody.

9 Q Did Welded set up field offices and contractor yards for
10 the ASR work?

11 A Yes.

12 Q Where were they located?

13 A In Pennsylvania. There was a combination of, you know,
14 lay-down yards, field offices that we had set up, Spread 5 --
15 I forget the name of the cities. But Spread 5 had an office
16 up in the northern section in Pennsylvania.

17 Spread 6 also had a field office where their management
18 was set up.

19 And Spread 7, to the south, we had Mount Joy, which is
20 where the project management team was.

21 We also had some lay-down yards for equipment and other
22 materials in Red Lion and in a couple other locations all
23 along the right-of-way, all in Pennsylvania.

24 Q Where was Transco headquartered during the ASR?

25 A Likewise, they had -- I think their main office was near

1 Mount Joy. I don't recall exactly the city, but it was in
2 the same vicinity as Mount Joy, where Welded's was.

3 And then, on Spread 5, 6, and 7, I recall they actually
4 had a field office set up in those locations, as well.

5 Q When you and the Welded team met with Transco, where was
6 the Transco team home based?

7 A In Houston.

8 Q What was the pipeline market in -- like in 2016, the
9 year the contract was signed?

10 A Yeah. 2015 and '16, all of this Marcellus work,
11 particularly up in the northeast area there, was -- was very
12 competitive, a lot of work. It was a very exciting time for
13 pipeline contractors, as well as, I believe, for the owners,
14 being able to -- to, you know, capitalize on the Marcellus,
15 both the liquids, which is what ETP was focused on, and
16 natural gas, which was Williams and Transco was focused on.
17 So there was a lot of work, very competitive.

18 There was a concern -- not a concern, but a real
19 limitation on resources, both on -- on construction
20 equipment, pipe-layers and other large equipment that you
21 needed, as well as competent craft and -- and labor. You
22 know, we got -- we got swamped, a lot happened all at once.

23 And large-diameter pipeline work had been fairly dormant
24 in the period up to that, for about the ten years prior.

25 So -- so resources, you know, were scarce and everybody

1 was pulling from the same labor pools, highly competitive,
2 and just a -- just a very competitive market.

3 Again, it was exciting. I mean, I think, as a
4 pipeliner, you live for that time when you can have a big
5 market and go out do -- you know, build pipelines and support
6 our customers and the infrastructure.

7 Q How was Welded, as a company, positioned in that market
8 you just described?

9 A I -- I think we were positioned well. One, we had been
10 close to 50 years in the business at that point.

11 We were centrally located in Perrysburg, Ohio, so that
12 we could get from -- you know, from Michigan, all the way
13 over to Pennsylvania, to the site near Philadelphia.

14 We had yards in the vicinities for all that, we had
15 equipment, and we had some experienced, you know,
16 superintendents.

17 So it was a -- it was a -- it was a good time for Welded
18 to -- to be positioned to be competitive.

19 Q Was Welded's equipment fleet in demand?

20 A Yes.

21 Q And could you describe generally what that equipment
22 fleet consisted of?

23 A Yeah. It was primarily -- I think the main thing that
24 people measure your -- your competency as a pipeliner by is
25 your -- is your owned equipment, first of all, not just your

1 rented equipment. And that goes with, you know, pipe-layers,
2 excavators, bulldozers, the primary big equipment that's
3 difficult to get in the market. Like I said, there hadn't
4 been a lot of big -- a lot of big -- large-diameter pipeline
5 construction going on in the U.S. Most of it had been going
6 on over in Europe, so there were lots of large pipe-layers
7 over in the European market, but not available readily in the
8 U.S.

9 So, you know, I think there was some analysis that was
10 put out by, it might have even been the PLCA, that the number
11 of spreads and pipe-layers required to do all of the work was
12 not available, was far less than -- than what was required.
13 So that was kind of the -- the -- that -- those were the
14 market conditions that were setting the -- setting the, you
15 know, say the pricing and the availability and the
16 competitiveness for the market.

17 Q Who signed the contract for Welded?

18 A Rich Wall.

19 Q Who is Rich Wall?

20 A Rich Wall was the President of Welded at the time. And
21 he's currently the general manager of the downstream chemical
22 business line for Bechtel in Houston, Texas.

23 Q When did you come on board on Welded in relation to the
24 August 2016 signing of that contract?

25 A I came on board -- I think my official day was the 1st

1 of September or somewhere around the first week of September.
2 So I came in about two or three weeks after that contract was
3 signed.

4 Q Do you know who signed the contract for Transco?

5 A I -- I don't. I -- I've seen the name. I don't -- I
6 don't recall the name or know the individual.

7 Q Does the name John Seldenrust ring a bell?

8 A Yes, that's -- I recall that.

9 Q Is that your understanding of who signed the contract?

10 A That's my understanding, yeah. I can look at it and
11 confirm, but I think that's -- that's correct.

12 Q Do you know who that is?

13 A I do not.

14 Q Was Mr. Seldenrust involved in the contract -- I mean
15 involved in the project, as far as you know?

16 A I didn't interact with Mr. Seldenrust.

17 Q Mr. Hawkins, I'd like you to take a look at the
18 contract, the invoicing and payment of invoicing part of
19 Appendix G. It's JX-1. I believe it starts on Page 41.

20 A So the big one?

21 Q The big one, yes, sir.

22 A There we go.

23 Q It should also be on your screen, so you can feel free
24 to use whatever --

25 A Okay.

1 Q -- is --

2 A I've got it here.

3 Q -- more convenient for you.

4 (Pause in proceedings)

5 A Okay.

6 (Pause in proceedings)

7 MR. GUERKE: Your Honor, I just realized I left my
8 copy back at the office, so I'm in the same boat.

9 THE COURT: Mine is my chambers.

10 MR. GUERKE: Would you like to take five?

11 THE COURT: I would and get it. I'm sorry. In
12 fact, it won't even take five. Just give me one minute. I
13 know exactly where it is.

14 (Pause in proceedings)

15 THE COURT: Do you need time? I should have asked.

16 MR. GUERKE: I will -- I think I can muddle through
17 until lunch.

18 THE COURT: Okay.

19 MR. GUERKE: It's the worst feeling, when you open
20 your bag and your entire contract is not there.

21 THE WITNESS: I have this big one there.

22 MR. GUERKE: Yeah, I should have known.

23 BY MR. GUERKE:

24 Q Okay, Mr. Hawkins. Let's -- I was asking you about the
25 invoicing process under the contract.

1 Does Appendix G -- which is JX-1, Page 41 -- does that
2 describe, generally, the invoicing process under the
3 contract?

4 A Yes.

5 Q And if you could scroll down to the next page, please.

6 Do you see the process 1.2.2 and 1.2.3, 1.2.4 and 5.
7 Does those sections describe how the invoicing works on this
8 job?

9 A Yes.

10 Q Could you explain generally the concept behind the
11 invoicing process?

12 A Yeah. The concept was, one -- one of the elements of
13 the cost-reimbursable contract also was -- was a cash-neutral
14 element of it, which involved prepayment of invoices.

15 So the very first payment invoice we would have
16 submitted on the very first month of the work would have been
17 an estimate of the costs for that month. And then the
18 subsequent month would be the actual invoice for the cost
19 incurred, followed by a true-up of the prepayment invoice
20 that we had received a month prior. And that was -- and then
21 that just followed itself, a process of -- of estimate,
22 actual, reconciliation on the estimate, and then truing-up
23 those invoices and those costs as the project went along.

24 Q So were those initial invoices called "cash calls" --

25 A Yes.

1 Q -- "cash-call invoices"?

2 A Yes.

3 Q And were --

4 A For --

5 Q -- the followup true-up or reconciliation invoices, were
6 they referred to internally as either "true-up invoices" or
7 "reconciliation invoices"?

8 A "True-up" is probably easier to say. I would imagine
9 pipeliners would say that more -- more often, but yeah.

10 Q Was Welded paid before it incurred costs?

11 A Yes.

12 Q Mr. Hawkins, I'd like to focus your attention on the
13 last part of Exhibit JX-1 on the screen, Page 42, 1.2.5.

14 Do you see that provision?

15 A Yes.

16 Q How are invoice disputes handled under the contract?

17 A The disputes were -- when -- if there was a dispute
18 between what was forecast and what was funded or what was
19 invoiced and what was owed, then that was supposed to be
20 reconciled with when -- within one pay period, so that they -
21 - they didn't become lingering issues.

22 But those differences weren't supposed to hold up the
23 undisputed invoices; in other words, don't hold up an
24 undisputed invoice for a disputed invoice.

25 Q And try --

1 A And trying --

2 Q -- long would --

3 A -- to get --

4 Q Oh, excuse me. Good afternoon.

5 A No, just try to get the dispute -- you know, the intent
6 is to get the dispute cleared up as quickly as possible, so
7 we're not, you know, building a backlog and a back pressure
8 on that, you know, identify it, work it, get it cleared up,
9 but don't -- don't interrupt the undisputed invoices.

10 Q So the time period -- the limitation on disputes, what's
11 the time? What is "one pay period"?

12 A One pay period would be thirty days; that's a pay
13 period.

14 Q Is there a dispute resolution process under the
15 contract?

16 A Yes, there is.

17 MR. GUERKE: Could you pull up JX-1, I believe it
18 is Page 32, and pull up Article 37, please.

19 BY MR. GUERKE:

20 Q Mr. Hawkins, is Article 37 the alternative dispute
21 resolution clause in the contract?

22 A Yes.

23 Q Did Transco ever attempt the ADR discussions that are
24 described in this contract?

25 A No.

1 MR. GUERKE: Could you go to Page 9, please, of JX-
2 1? And the first part of Article 1.

3 BY MR. GUERKE:

4 Q Mr. Hawkins, I'm focusing your attention on Article 1 of
5 the contract. Is the capitalized word "WORK" used throughout
6 the contract?

7 A Yes.

8 Q Is the word "work" specifically defined in the contract?

9 A Yes.

10 Q What is that definition?

11 A Well, it's all work that we would conduct and -- and all
12 services in the construction of the pipeline. It didn't --
13 it didn't segregate a subset of damages. All the -- all the
14 work contemplated to put the pipeline -- construct it and put
15 it in service.

16 Q Why was "work" defined so expansively in the contract?

17 A It's a -- we wanted -- we wanted a clear definition, so
18 that it was clear what -- what it was that we were
19 performing, and then also what it was that we were being paid
20 for.

21 Q Mr. Hawkins, did Welded have a -- you mentioned "skin in
22 the game." Did Welded have some skin in the game as far as
23 the cost and schedule risk?

24 A Yes.

25 Q Could you des -- was that through the cost and schedule

1 incentive program?

2 A Yes.

3 Q Could you describe, first, the cost incentive program?

4 A Yeah. The cost -- the cost incentive had a -- had a --
5 I don't remember specifically what the structure was, but it
6 had a maximum upside of, basically, twenty-two and a half
7 million dollars if we under-ran the cost by a certain amount,
8 which was, at the time, you know, 50 percent of the fee, the
9 original fee of the contract. But it had a maximum downside
10 of \$10 million for -- for going over the cost. It was capped
11 at 10 million.

12 Q Is that capped 10 million cost penalty the exclusive
13 remedy for costs under the contract?

14 A Yes.

15 Q Could you please describe the schedule incentive
16 program?

17 A Same. I can refer to it if you need specifics, but the
18 -- the same concept, is that there was a general grace
19 period, we could be late on the mechanical completion before
20 there was any penalty. But then, after that date, there was
21 a sliding scale of maximum downside of penalty. And it also
22 have upside if we came in -- came in early.

23 Q Is the schedule penalty the exclusive remedy for
24 schedule under the contract?

25 A Yes.

1 Q What was the source -- the primary source of Welded's
2 labor on ASR?

3 A Union labor.

4 Q Was Welded a union contractor?

5 A Yes.

6 Q What controls the wages and benefits for union members
7 who work for Welded on ASR?

8 A The National Pipeline Labor Agreement.

9 Q Are -- how many are there that --

10 A Well, it was --

11 Q -- that related to the Welded --

12 A I forget the numbers.

13 Q -- ASR?

14 A There was -- there was a few. You've got laborers,
15 you've got -- you know, you've got welders, you've got
16 equipment operators, you have Teamsters.

17 Q That's four. That sounds like the right number. Is
18 that --

19 A Could be.

20 Q -- what you're --

21 A Yeah.

22 Q -- describing?

23 A Yeah.

24 Q Are those four union agreements that were in place
25 during the job, were they different than the ones that were

1 in place in 2016, when the contract was signed?

2 A Yes.

3 Q Briefly, what's a "union pre-job agreement"?

4 A A pre-job agreement is where the -- the management,
5 which would be Welded, and the superintendents get together
6 with the local union halls and talk about the specifics of
7 what -- what benefits and what work rules that the people on
8 that project, the laborers or whomever, would both live by
9 with the comp, what extra compensation there would be, what
10 work hours would be, show-up time would be, things of that
11 nature. So that's where that was agreed, prior to the
12 project.

13 And it's in addition to the NPLA agreement, which is the
14 overarching -- you know, sets the overarching wage structure,
15 fringe structures, and then the others. But then the pre-job
16 had additional -- additional benefits.

17 Q So the pre-job agreement, the union pre-job agreements
18 that controlled the ASR work, were they in place in 2016 when
19 the contract was signed?

20 A The pre-jobs? No.

21 Q Did those come into existence closer to the kickoff of
22 the job or the notice to proceed?

23 A Yes. I think, if I'm correct, the timing is, you know,
24 after the notice to proceed, you hold a pre-job before
25 anybody can show up for work on the right-of-way.

1 Q The contract was signed in August 2016.

2 Did Welded jump right into construction of the pipeline
3 in August 2016?

4 A No.

5 Q Why is that?

6 A The permitting, primarily. Most of the jobs during that
7 time that were contemplated were -- were awaiting permits,
8 not only -- not only Williams, but others, as well. And
9 that's the FERC, I'm talking about the FERC permit, the
10 approval.

11 Q What is "FERC," just generally?

12 A Well, it's the -- it's the regulatory agency that --
13 that regulates the -- the energy industry and the -- and the
14 transmission, specifically the gas transmission pipelines.
15 And PHMSA does the oil and gas -- does the oil, I think,
16 because that's different. And FERC is the energy regulator
17 for -- for gas transmission pipelines.

18 Q Was there -- there was -- was there a period of time
19 when Welded was working for Transco on the ASR before the
20 notice to proceed was issued?

21 A Yes. Not construction services, but --

22 Q Generally, what are the -- what are the services that
23 Welded performed in that pre notice to proceed time period?

24 A Planning, primarily planning services. Transco/Williams
25 had asked us to, you know, start to get ahead on some

1 deliverables, planning deliverables, project controls
2 deliverables, safety deliverables, you know, prior to the
3 work, so wanted to make use of the time before the notice to
4 proceed, not knowing when the notice to proceed would happen,
5 but that was the purpose of that.

6 Q Did -- well, for that pre notice to proceed time period
7 and for the work that Welded performed for Transco, did
8 Welded invoice Transco?

9 A Yes.

10 Q How about for equipment? Did Welded invoice for
11 equipment to Transco before the notice to proceed was issued?

12 A Yes.

13 MR. GUERKE: And could you pull up PX-171, please?
14 And please go to the second page of PX-171.

15 BY MR. GUERKE:

16 Q Mr. Hawkins, is this the invoice that Welded submitted
17 to Transco for its pre notice to proceed equipment?

18 A Yes.

19 Q And what information is included on this exhibit?

20 A It's got the -- the description of the type of equipment
21 it is, plus the quantity, how many there -- what the units
22 were. What you have there is the day rate for those and then
23 the -- and then the months that they were charged and the
24 total duration, days of the month that they were charged and
25 the total duration applied against the amount and then

1 totaled on the righthand side.

2 MR. GUERKE: Could you pull up JX-1, Page 27,
3 please?

4 BY MR. GUERKE:

5 Q Mr. Hawkins, was there a specific provision in the
6 contract that addressed Welded's billing of equipment prior
7 to the notice to proceed?

8 A Yes.

9 Q And is Article 26 on Page 27 of JX-1 that provision?

10 (Pause in proceedings)

11 A Okay.

12 Q Is that the provision that addresses pre notice to
13 proceed equipment?

14 A Yes.

15 Q After Welded submitted invoices for its work on the ASR
16 pre notice to proceed and Welded invoiced for equipment on
17 the ASR pre notice to proceed, did Transco raise any disputes
18 about Welded's pre notice to proceed work or invoices before
19 this lawsuit?

20 A No.

21 Q Was there any push back at all on the pre notice to
22 proceed invoices?

23 A No.

24 Q Did Transco pay the pre notice to proceed invoices?

25 A Yes.

1 MR. GUERKE: Your Honor, I move into evidence PX-
2 171. That is the invoice that we were just discussing, the
3 equipment invoice.

4 MR. BURWOOD: (No microphone) No objection.

5 THE COURT: It's admitted.

6 (PX-171 received in evidence)

7 MR. GUERKE: And Your Honor, I should have asked
8 this before I started. But I'm assuming that JX-1, the
9 contract, is admitted into evidence. If it's not already
10 admitted into evidence, I'd like to move it into evidence
11 now.

12 THE COURT: Any objections?

13 MR. BURWOOD: No objection.

14 THE COURT: Thank you.

15 It's admitted.

16 (JX-1 received in evidence)

17 BY MR. GUERKE:

18 Q We just talked a little bit about the pre notice to
19 proceed period. Let's talk about notice to proceed and
20 forward.

21 When did construction actually start?

22 A October 2018.

23 Q Was the official notice to proceed issued --

24 A I'm sorry.

25 Q -- sometime --

1 A October --

2 Q -- in September.

3 A -- of 2017. I'm sorry.

4 Q Was the official notice to proceed issued sometime in
5 mid September?

6 A Yes. I think it was a restricted notice to proceed was
7 the first that we received, not a full notice to proceed.
8 But that was in September.

9 Q Mr. Hawkins, could you take a look at -- it's Exhibit
10 135 in your binder?

11 A The big binder or the little binder?

12 Q The little binder.

13 A Okay. Okay. It's here.

14 Q Is JX-135 -- I'm sorry -- PX-135 the notice to proceed
15 that was issued to Welded?

16 A Restricted notice to proceed, yes.

17 Q And what's the date?

18 A 25 September, 2017.

19 Q Who sent it and who was it addressed to?

20 A It was addressed to Marcus Hood, and if you can -- it
21 was sent by Tina Wynne, Tina Malone.

22 Q And in the upper, righthand corner, what office was it
23 sent from?

24 A The Post Oak office, Transco -- Transco tower.

25 Q In what city and state?

1 A Houston.

2 MR. GUERKE: Your Honor, I move PX-135 into
3 evidence.

4 MR. BURWOOD: No objection.

5 THE COURT: It's admitted.

6 (PX-135 received in evidence)

7 BY MR. GUERKE:

8 Q I want to talk a little bit about notice to proceed.
9 What does that actually mean when you get to the notice to
10 proceed issued?

11 A That means that FERC has provided the clearance and the
12 permit for the project to commence.

13 Q The notice to proceed was issued September 25th.

14 How long, roughly, did it take before Welded was on the
15 right-of-way doing work?

16 A Two -- two to three weeks, as I recall.

17 Q That puts us into October. Is that a good time to start
18 building a pipeline in Pennsylvania?

19 A No, it's typically not, but that was -- that was when
20 the permit came in. And everybody recognized that winter
21 construction was going to be a challenge and that that's not
22 typically when construction is conducted in that part of the
23 country.

24 I think, originally, it was February start for tree-
25 felling and then -- hand-felling of trees in February of '17,

1 and then you start your clearance and in March, which is the
2 typical -- typical construction season for pipeline in the
3 northeast.

4 Q And is that to take advantage of the warmer spring and
5 summer months?

6 A Yeah, the weather up there. It's -- things need to dry
7 out, you need to get some leaves on the tress to dry out the
8 soil.

9 Q Toward the -- in the fall and early winter of 2017,
10 after Welded started construction on the right-of-way, how is
11 the construction going at that point?

12 A After what period? Say that again, please.

13 Q In the fall and early winter of --

14 A Fall and --

15 Q -- 2017.

16 A -- early winter. Yeah, it was -- it was starting to --
17 I mean, you know, production -- once we started getting
18 clearing and the grading done, and then the weather started
19 to set in and then it started to get cold and then it started
20 to get wet, that's when we first started to see, you know,
21 production impacts due to the -- due to the weather.

22 Q And how did the production go as the end of the year
23 approached?

24 A As the end of the year approached, into December, it got
25 works. We had actually recommended that we stop construction

1 during the December time frame because of the -- of the
2 productivity issues that we were having out there and the
3 weather impacts, and so we were starting to see it already.

4 And then, in January, it got worse. And then the
5 winter, you know, extended into February with severe rain --
6 rain events, freeze/thaw events.

7 That's icing up there in Spread 5. Equipment was
8 slipping around the -- around the right-of-way, slipping on
9 the hill.

10 Q You mentioned that the weather turned in January 208.

11 What does that do -- or what does that mean for
12 production of the pipeline, for the performance of the work?

13 A Well, it impacts it in a couple of ways:

14 One, you've got the actual inclemental [sic] weather,
15 where you're not able to work on that day for whatever
16 reason, whether it be a rain out or whatever, what the case
17 maybe.

18 But then you've got the knock-on effects from that, as
19 well, so -- any damage or any restoration that would need to
20 be done, depending on the severity of the rain event or the
21 weather event, you know, things like that.

22 So it's not one-for-one. For every -- for every day of
23 impacted weather that you get, for actual inclemental
24 weather, there's knock-on effects to productivity for
25 subsequent days.

1 Q I'm not going to ask you the details on the weather.
2 But how long, if that weather -- if the weather turned in
3 January, how long did that bad weather last?

4 A I -- I think -- I don't think we got out of it until the
5 April time frame and -- is what I recall so -- I don't have
6 the actual weather tables in front of me. But it went -- it
7 went into the -- it was wetter, colder, longer than it had
8 been for quite awhile.

9 Q Once you get to May 2018, you've been on the job six,
10 seven months. How is the -- how's the weather, how is the
11 job going by the time May hits?

12 A About -- you know, weather is turning around, it -- you
13 know, things are drying out and production is starting to --
14 starting to catch up --

15 Q At that --

16 A -- improve.

17 Q At that point, in May 2018, had Transco paid all of
18 Welded's bills?

19 A Yes.

20 Q Did Welded have regular communications and reporting to
21 Transco about the job?

22 A Yes.

23 Q Could you describe the reporting process that Welded
24 went through on the job for Transco?

25 A Yeah. It was several -- several modes and methods of

1 communication and reporting:

2 First was weekly reports, which was progress reporting,
3 which was handled with the project management team, both the
4 customer's project management team and our project management
5 team, being Welded, talking about the production of the week,
6 you know, win/loss on the targets, you know, how did we do
7 against the plan, and then what some of the -- what the
8 barriers or what the risks were. So that was regular.

9 Regular cost reporting, as well, not only the reporting
10 of the actual costs, but regular forecasting.

11 You know, we gave our first forecast in January against
12 the four fifty-four budgeted, the base contract, and then in
13 subsequent months after that, so not only the actual cost,
14 the cost incurred that we were reporting to the customer, but
15 then also regular forecasts on the -- on the costs and the
16 reasons --

17 Q Were those --

18 A -- and the reasons why in the categories.

19 And then we had monthly executive meetings in -- in
20 Houston, as well, in Transco's office, to go over similar
21 things: Progress, barriers, risks.

22 Q Did your project team also meet weekly with the Transco
23 project team?

24 A I believe so, yes. I didn't participate in those, but
25 yes.

1 Q Would that be Marcus Hood and his group?

2 A Yes.

3 Q Who from Transco worked in their Houston office?

4 A Located in their, for sure, I know Chris Springer was,
5 the project director. Evan Kirchen was located there, as
6 well. I believe David Sztroin was back and forth from
7 Houston to the field quite a bit. I don't know his actual
8 schedule. But I -- I know Evan and Chris were located there.

9 Q In your monthly executive-level meetings -- those you
10 attended. Is that fair?

11 A Yes, yes.

12 Q What typically was discussed in those monthly executive
13 meetings?

14 A There was an agenda. We'd always start out talking
15 about safety, and then we'd get into quality, and then we'd
16 get into, you know, schedule and production and -- and you
17 know, resources, manpower, equipment resources.

18 And then we would have a discussion on cost or we'd be
19 available to discuss costs. We'd make cost forecasts
20 available, as well, reasons for the cost increases, cost
21 overruns.

22 Q So were forecasts and cost estimates provided to Transco
23 on a monthly basis?

24 A Yeah. Yeah, costs -- actual cost reports were provided
25 on a monthly basis and cost forecasts or the cost to complete

1 the work, the estimate of completion were also provided. But
2 you -- they're separate things. One is the actual cost; the
3 other is a forecast.

4 Q Was the cost -- the overall cost emphasized by Transco
5 in these meetings?

6 A Not so much. We -- we -- mostly the discussion was --
7 was around, appropriately so, you know, safety and quality.
8 And then -- and then, of course, the schedule was the -- was
9 the primary. We didn't do detailed cost discussions during
10 those meetings.

11 Q How about resources and manpower, did you discuss
12 increasing manpower and resources in those monthly executive
13 meetings?

14 A We dis -- at a point in time, we discussed increasing
15 manpower and resources, yes, around the July time frame.

16 Q And did Welded follow that instruction?

17 A Yeah. The request -- the request specifically during
18 the executive meeting was for us to go out and get as many
19 sidebooms as we possibly could and also get as much labor as
20 we could onto the right-of-way, in the July time frame.

21 Q You mentioned this before. But by May, had the weather
22 and the production on the ASR improved?

23 A Yeah, it did, until the two tropical storms came through
24 in the summertime. I think it was June/July, the first one,
25 and then the second one around September. I forget the names

1 of them.

2 Q Did --

3 A But that's what I mean, the whole -- you know, the whole
4 cycle of -- of risk just kept repeating itself in the
5 wintertime, and then we'd start making some -- some recovery
6 and getting some production, then we had those two -- two
7 named storms that came through, which -- which set us back
8 again.

9 Q So moving into the June 2018 period.

10 Did Transco pay Welded's June 2018 invoice on time and
11 in full?

12 A No.

13 Q What happened there?

14 A Well, they short-paid the -- the June invoice, A, I
15 guess, si what the -- you know, I don't know what we're
16 referring to as. But they -- Transco went out of governance,
17 so they short-paid it -- I forget by how much the amount was.
18 But it was underpaid because they ran out of governance.

19 Q So did Transco explain why it failed to pay the June
20 2018 invoice in full?

21 A I don't -- I don't -- I mean, I -- they made it clear
22 that they had to get more governance in my conversations with
23 Chris Springer and -- and Michael Dunn.

24 Q What does that mean, "running out of governance" or
25 getting "more governance"?

1 A They'd have a limit. I mean, again, I don't know what
2 their governance was, I don't know what the limit was on it.
3 That's not my -- you know, I'm not a party to that.

4 But the way it was explained is that they had -- they
5 had received a limit or an amount that they were authorized
6 to spend, you know, from whomever provides their governance,
7 whether it's the board or other executives inside the
8 company. But they had come up against that limit, and that
9 they could only pay to that limit. So that invoice was
10 short-paid for that reason.

11 And then, throughout the rest of the month was then
12 attempting to seek or get increased governance limit, as well
13 as communicating with me back and forth on the timing of
14 that.

15 Q Did Transco ultimately make up that short-pay from June
16 later?

17 A Yes.

18 Q And when was that?

19 A I think -- you know, I don't -- end of June, early part
20 of July. They -- they had got the governance increase and
21 paid -- paid the second half of the -- or the second part of
22 the June invoice and then also the advance pay on the July.

23 Q Putting aside the Transco running out of governance.

24 At that point, in June 2018, had Transco disputed any of
25 Welded's bills?

1 A No.

2 Q Did the relationship with Transco start to change after
3 Transco hit its governance limit and short-paid Welded in
4 June?

5 A Yes. It started to change with the communication around
6 that payment.

7 Q Could you describe, briefly, how it changed?

8 A Well, there was a pro -- the protest -- you know, the
9 payment under protest was the main thing. I don't know if
10 you -- if you can call that up. But the -- you know, John
11 Poarch reached out to me and say, hey, you know, our -- this
12 is hard for us to pay, we're going to pay it, but we're
13 paying it under protest and made some assertions around that.

14 I thought that the -- you know, we went from -- from --
15 you know, it just became very contractual and very legal in a
16 very short period of time, in terms of both the tone, the
17 content, and -- and the claims.

18 Q All right, Mr. Hawkins. Let's take a look at that email
19 you just referenced.

20 MR. GUERKE: Could you pull up DX-1296, please.

21 THE WITNESS: Is it going to come on the screen or
22 do you just want me to open the book?

23 MR. GUERKE: It is going to come on the screen.

24 You're welcome to use the books or the screen, whichever --

25 THE WITNESS: I've got both, yeah.

1 BY MR. GUERKE:

2 Q Mr. Hawkins, could you identify what's been marked as
3 DX-1296, please.

4 A Can I identify it? It's an email from Mr. Poarch to
5 myself regarding the -- the balance pay -- the June balance
6 payment and then also the July payment.

7 Q Is the top email dated July 3rd, 2018?

8 A Yes, July 3rd, 2018, from John Poarch to myself.

9 Q Who is John Poarch was -- is -- is, I guess -- I mean, I
10 have not -- I don't know his current status -- but at the
11 time was the Executive Vice President for Engineering for
12 Williams.

13 Q Had you been dealing with Mr. Poarch before this, you
14 know, July time period?

15 A I had -- I had not been dealing with Mr. Poarch up until
16 then. I had been dealing with -- primarily with Mr. Springer
17 and Michael Dunn.

18 Q Let's start at the bottom of this email chain.

19 Is the first part of the email an email from you to Mr.
20 Poarch dated July 2nd, 2018?

21 A Yes.

22 Q Do you remember this exchange with Mr. Poarch?

23 A Yes.

24 Q So what is happening here that you're emailing him about
25 on the bottom part?

1 A Mr. Poarch had called me and left a voicemail. I was
2 over in Europe at the time, in London. And I had -- this --
3 this is a subsequent engagement, based on my calling and
4 first talking to Chris Springer on the 28th of June, and then
5 a following phone call in that same time to Mr. Dunn, all
6 about the payment, you know, on the short-pay and then the
7 advance pay and what the timing of it was going to be and
8 when we were going to get and why -- you know, why we weren't
9 getting it. So this is a subsequent call from Mr. Poarch to
10 me about that topic, and he called and left me a voicemail, I
11 had missed his call.

12 So I was emailing him back saying, hey, I'm available,
13 you know, ready to talk, and these are the times I'm
14 available.

15 Q And did you then receive the email that is the top part
16 of this exhibit?

17 A Yes.

18 Q And walk us through the first part. What is -- did you
19 ultimately talk to Mr. Poarch or just exchange calls?

20 A Yeah. You know, I thought that -- yeah, I don't have a
21 good recollection, but I thought we talked prior to this
22 email, you know, I thought I had spoken with Mr. Poarch at
23 some point. But this suggests that we missed calls and that
24 we just connected on email, is what this represents.

25 Q The second paragraph starts with a statement:

1 "Our payment to you is being processed."

2 Did I read that part correctly?

3 A Yes.

4 Q Is that referencing the June short-pay that you were
5 just testifying about it?

6 A That's what I understood it to be was the -- was the
7 short-pay.

8 Q The second sentence of that second paragraph states:

9 "This payment is not easy for" -- "not an easy one
10 for Transco to release due to, one, Welded's
11 failure to meet expectations on productivity, work
12 quality, and safe work practices; two, questions
13 and concerns about the accuracy of billing and
14 Welded's compliance with contract obligations; and,
15 three, uncontrolled growth in Welded's estimated
16 cost of completion."

17 Did I read that part correctly?

18 A Yes.

19 Q I want to zero in on part two, on the accuracy of
20 billing.

21 Were you aware at this time, July 3, 2018, about any
22 questions or concern about the accuracy of Welded's billing?

23 A I -- I was not.

24 Q What was your reaction when a high-level Williams
25 executive is emailing you as the President of Welded, saying

1 this?

2 A I was concerned. I mean, you don't want to be
3 misaligned with your -- with your customer ever. You know?
4 And especially around, you know, questions about accuracy of
5 billing. That's a serious matter.

6 Q In the second paragraph, the third sentence, do you see
7 where it starts "my requests are"?

8 A Yes.

9 Q It states:

10 "My requests are, one, Welded lower manpower on
11 this project as much as possible without
12 sacrificing schedule; and, two, Welded bring ideas
13 to our meeting in Houston next Wednesday for
14 modifying our construction agreement."

15 Did I read that part correctly?

16 A Yes.

17 Q Do you -- what was your understanding of that request by
18 Mr. Poarch?

19 A Well, request one, it was -- you know, that's pretty
20 straightforward. Just we were going to have our monthly
21 meeting in July and he wanted to talk about manpower levels
22 and whether we should reduce or not reduce without
23 sacrificing the schedule. So that -- that would be on the
24 agenda and we would talk with them about that.

25 On the second one, ideas to our meeting next Wednesday

1 for modifying our construction agreement, you know, I didn't
2 exactly, you know, what he had in mind. You know, we wanted
3 -- we had an agreement, we had a deal, we had a signed
4 contract, we had an amendment. We were -- we were executing
5 against that. I didn't know if he was suggesting that --
6 that I come in and -- and offer and agree to shift to a lump-
7 sum deal, you know, take on all of the costs and risks. I
8 just -- I wasn't -- I didn't know what he wanted, what --
9 what he was contemplating.

10 But it did signal that he didn't like the -- he didn't
11 like the agreement. That's -- that's not funny, but I'm --
12 that's what he indicated to me, was that they weren't happy
13 with the contract agreement and they attributed the contract
14 to the costs and the cost growth and the performance.

15 MR. GUERKE: Your Honor, I'll move into evidence
16 DX-1296.

17 MR. BURWOOD: No objection.

18 THE COURT: Thank you.

19 It's admitted.

20 (DX-1296 received in evidence)

21 BY MR. GUERKE:

22 Q Mr. Hawkins, shortly after this email, did you also
23 receive a letter from Chris Springer?

24 A Yes.

25 MR. GUERKE: Could you pull up PX-282, please?

1 (Pause in proceedings)

2 BY MR. GUERKE:

3 Q Mr. Hawkins, PX-282 is a cover email and then an
4 attached letter. Is that accurate?

5 A Yes.

6 Q And if you're working your way from the bottom up, is
7 the first part of that cover email an email from Mr. Hood to
8 Mr. Sztroin dated July 2nd?

9 A Yes.

10 Q And what's the subject of that email?

11 A The balance of the 2018 June cash call.

12 Q And is the middle email response from someone named
13 Scott Card, July 3rd, back to Marcus Hood?

14 A Yes.

15 Q Do you know who Scott Card is?

16 A I don't remember Scott, no. No, I don't.

17 Q Is he a Transco guy?

18 A I think so, yeah. That would -- that would be my guess.

19 Q And what does Mr. Card explain to Mr. Hood there?

20 A That the -- that the second part of the June invoice,
21 designated as "B," for the twenty-eight seven million would
22 be paid, as well as the July advance cash call would be paid,
23 as well.

24 Q And the top email. Is that an email from Chris Springer
25 to you dated July 3rd, 2018?

1 A From somebody on his behalf. It's -- I don't know who
2 sent it, but it's sent on Chris' behalf.

3 Q And what's attached?

4 A The letter.

5 Q You may have mentioned this before. Who is Chris
6 Springer and what's his role in the ASR work?

7 A Chris is the -- was the Project Director for the
8 Atlantic Sunrise project, not just our spreads, but I assume
9 the entire -- the entire project.

10 Q Is this a followup letter from Mr. Poarch's July 3rd
11 email?

12 A Yes.

13 Q Does it essentially express the same sentiments?

14 A Yeah, to a agree. In closing, it takes a legal tone, so
15 it's much more -- it's much more legal in its -- in its
16 assertions of its rights in the email.

17 Q The last sentence of the first paragraph says:

18 "As such, Transco will be releasing" --

19 I'll just round it down.

20 "-- \$28 million in connection with the invoice
21 that's identified here and roughly \$49 million in
22 connection with Invoice 20170121."

23 Did I read that correctly?

24 A Yes.

25 Q Do you know what those two payments are -- represent in

1 that sentence?

2 A They represent the balance of the June payment, the
3 short-pay, and also the July advance cash call.

4 Q What was your reaction when you received the July 3rd
5 email from Mr. Poarch and then followed up with this July 3rd
6 letter from Mr. Springer?

7 A Well, a couple of things:

8 One, I was trying to, you know, think ahead and prepare
9 for the meeting because he had asked me to be prepared to
10 discuss some things, so that was the first. And one, I was
11 thankful that they were paying the money because we -- we
12 needed the cash.

13 The second is I was thinking ahead of -- of, you know,
14 getting oriented on the manpower asked that he was --
15 proposed and also on the contract. You know, I was trying to
16 -- trying to be responsive, if I could, to what -- what he
17 was asking.

18 I understood his frustration. I was also frustrated
19 with the cost overruns. I didn't agree and still don't agree
20 with some of the things, as far as, you know, performance
21 issues that are cited in there. But it's feedback. You
22 know? That's my customer's feedback. It's my -- my job to --
23 - to figure out how to -- how to respond to the feedback and
24 be responsive.

25 So that -- that was -- that's how I was orienting around

1 it. You know, but I was concerned. I mean, I was concerned
2 that, one, it was elevated up to Mr. Poarch, who I hadn't
3 dealt with before, and so that -- that told me that this
4 issue was escalating inside the -- inside the organization.

5 And then, of course, the -- the -- the language at the
6 end of the letter was -- was also troubling and got my
7 attention.

8 Q The language at the end of the letter, the last full
9 paragraph on that first page, states:

10 "As such, for the reasons mentioned above, this
11 payment and any payment made by Transco from this
12 point forward in time are made under protest and
13 shall not be construed as concurrence that Welded
14 has earned invoiced amounts, nor that true-ups
15 accurately reflect amounts owed and/or are payable
16 by Transco."

17 Did I read that correctly?

18 A Yes. Yeah. I mean, the -- I was trying to process, you
19 know, what does "protest" mean. You know? I didn't know
20 what was being disputed. You know, there are some -- there
21 are some things in here that were -- that were troubling, in
22 terms of, you know, taking advantage, I mean, just
23 relationship things. You know, we're trying to build a
24 relationship with -- with Williams for the long haul and --
25 and our customer is telling us that, you know, they feel like

1 we're taking advantage of them and -- and now paying under
2 protest, without having -- there's nothing -- there's just
3 nothing for me to respond to, other than the fact that
4 they're not happy.

5 Q Is there a provision in the contract about making a
6 payment under protest?

7 A No. There's disputed invoices and disputes and a
8 process for that, but not for protests.

9 Q Regarding the accusations about the billing, did Transco
10 provide any details about those questions and concerns that
11 are identified in the email and this letter?

12 A No. Again, there's just, you know, they're paying under
13 -- they're paying -- that they're paying under protest and
14 then saying that they have some questions about our billing
15 without giving us specifics.

16 And the whole point of the invoice and dispute is to get
17 those things documented and cleared up right way, so they
18 don't create a back pressure and -- and continue on. You
19 know, it's to get them resolved immediately, not -- not --
20 you know, not not disclose them and then solve them.

21 MR. GUERKE: Could you pull up JX-72, please?

22 (Pause in proceedings)

23 MR. GUERKE: Before I move into JX-72, Your Honor,
24 I'd like to move into evidence PX-282.

25 MR. BURWOOD: No objection.

1 THE COURT: It's admitted.

2 (PX-282 received in evidence)

3 BY MR. GUERKE:

4 Q Back to JX-72, Mr. Hawkins.

5 Did you formally respond in writing to Mr. Springer's
6 July 3rd letter?

7 A Yes.

8 Q And is this that response?

9 A That's the cover email for it, yeah.

10 Q Yeah.

11 Is the first page an email an email forwarding your
12 attached July 16th, 2018 letter and sending it to Transco?

13 A Yes.

14 MR. GUERKE: Could we turn to the second page,
15 please, of this, which is the letter?

16 BY MR. GUERKE:

17 Q Let's start with the first paragraph, Mr. Hawkins.

18 Could you take a look at that and explain what you're
19 conveying to Mr. Springer after receiving the July 3rd
20 letter?

21 A Well, one, thank you for the payment, you know,
22 obviously, and then trying to reinforce the importance of
23 Williams to us as a customer and the -- and the relationship
24 that we have and want to maintain. But some of the
25 statements are -- said a moment ago were troubling to me and

1 -- and surprised.

2 Q The next paragraph, the work -- it has the -- the first
3 word is the word "first." Do you respond to the schedule
4 allegations from Mr. July -- Mr. Springer's July 3rd letter
5 in that paragraph?

6 A That's what that first paragraph is, yes.

7 Q And what are you expressing there?

8 A One, that -- that it was contemplated that the project
9 could be late. We had a target date of June 15th, but then
10 the schedule incentive and the penalty sliding scale, you
11 know, contemplated lateness, not desired for either of us. I
12 would rather be early and earn the incentive, but that it was
13 contemplated and it's also in line with our current forecast.
14 So, you know, we weren't not telling them, we weren't hiding
15 behind it, and it had been contemplated in the contract.

16 And also, that the -- you know, everybody knew the
17 reasons for the erosion, and we had been communicating it and
18 they knew it, too. They were in the field with us. They --
19 they knew what was happening. They knew the impacts and the
20 reasons why, their management did, as well.

21 Q In the fourth paragraph, starting with the word "third,"
22 it states:

23 "Third, concerning the statement in the letter
24 regarding the accuracy of Welded's billing, this is
25 the first we have heard about this issue."

1 Did I read that correctly?

2 A Yes.

3 Q Is that accurate?

4 A Yes.

5 Q And in the last part of that paragraph, are you offering
6 to have discussions on the billing issue that's been raised?

7 A Yeah. I wanted to get together right away. I didn't
8 want to get -- I didn't want this stuff, like I said, to be
9 sitting -- sitting around creating a back pressure. I wanted
10 to understand what the issues were, get them on the table,
11 have our teams work together, get them resolved, so that we
12 get it cleared up; and that, also, if there's any correction
13 that needed to be made, we could make it going forward.
14 That's not the kind of thing you wait on.

15 MR. GUERKE: Your Honor, I move into evidence JX-
16 72.

17 MR. BURWOOD: No objection.

18 THE COURT: It's admitted.

19 (JX-72 received in evidence)

20 MR. GUERKE: Could you pull up DX-1296, please?
21 That's the email we already looked at once. Could you focus
22 in on the sentence that has the number two in front of it
23 that says "Welded bring ideas"? Yes, that part of the
24 sentence.

25 BY MR. GUERKE:

1 Q Mr. Hawkins, I'm back on DX-1296 and I'm focusing your
2 attention -- or please focus your attention on that third
3 sentence of the third paragraph, where it starts "my requests
4 are," and then I'm jumping to Number 2, it says:

5 "-- Welded bring ideas to our meeting in Houston
6 next Wednesday for modifying our construction
7 contract."

8 My question is: Did that meeting take place the
9 following week?

10 A Yes.

11 Q Who attended that meeting?

12 A On the Welded side, it was myself, Marcus Hood, I
13 believe Sean Singleton, perhaps Scott Schoenherr -- I don't
14 have the -- the meeting notes in front of me.

15 And then, on the Williams/Transco side, Michael Dunn,
16 who was the principal, Mr. Poarch was in there, Chris
17 Springer, Mr. Sztroin, their manager of construction -- I
18 forget his last name -- but safety contracts, some other
19 representatives from -- from their management team in -- in
20 Houston.

21 Q And was that your scheduled monthly executive meeting or
22 was this a special meeting?

23 A It was a scheduled meeting.

24 Q You mentioned Michael Dunn. Who is Michael Dunn?

25 A At the time, he was the COO of Williams.

1 Q Had you been dealing with Mr. Dunn before the July 3rd
2 letter and your July 16th response?

3 A Yes. Mr. Dunn would -- would call me on occasion to
4 talk about progress issues or other concerns he may have or
5 just do a regular check-in. He would call from -- from Tulsa
6 and ...

7 Q Did -- was Mr. Dunn, as far as you understood, the head
8 executive for the Williams/Transco side in that meeting?

9 A Yeah, I think -- I don't think anybody was senior to him
10 in the meeting. I think, as the COO, he was the senior --
11 the senior person in the room.

12 Q In the meeting, did you discuss Mr. Poarch's suggestion
13 in his July 3rd email to discuss modifying the agreement?

14 A Yes. We got to that point of the meeting, and I said I
15 didn't have any -- any ideas. I said we had our construction
16 agreement, you know, that we had signed, that we had been
17 operating under, you know, since 2016. I didn't have any --
18 any ideas to bring, as far as modifying the agreement. I
19 didn't understand exactly what it was that they were looking
20 for or wanted. They didn't proffer anything themselves. And
21 so that's basically what I articulated --

22 Q Okay.

23 A -- at that point. Yeah.

24 Q And what was the response you received when you
25 articulated that?

1 A One, you know, Mr. Dunn was clearly frustrated with this
2 contract, was -- was the main thing. And he -- he just
3 responded, as I was laying this out, that -- that I wasn't
4 going to proffer anything new or a different contract, he
5 just says, look, I hate this contract, I didn't sign this
6 contract, I don't want this contract, it's not my contract, I
7 hate this contract. And he was -- he was not -- he was not
8 happy with -- with the deal.

9 And to me, he was clearly contributing cost to the
10 contract. I mean, cost is cost. You know, it -- the cost is
11 the cost. In this contract, it was the liability for the
12 cost goes to the company, as opposed to the contractor, that
13 cost. So there was just -- it was just frustration. You
14 know? He did not -- he did not like that contract.

15 Although I didn't offer anything else. I mean, I didn't
16 -- I didn't come in and negotiate with him, so ...

17 Q Another item from Mr. Poarch's email was about lowering
18 manpower.

19 So we're in the mid-to-late July time period. Is
20 lowering manpower consistent with what Transco's project team
21 told Welded and would tell Welded in the future on manpower
22 levels?

23 A Well, first, de-mobilization and reducing manpower is
24 always a goal, right? As the project progresses, that's --
25 that's a given, right? You don't -- as it comes down, you

1 want to do a measured de-mobilization that doesn't sacrifice
2 your schedule, so that's not an unusual request. And -- and
3 you know, we were going to de-mobilize everybody at some
4 point as it came down.

5 You also don't want to de-mobilize too fast because you
6 need to have people to perform the work. And you know, so
7 it's an important -- an important balance, but -- so that --
8 you know, that was not an unusual discussion or request to
9 have.

10 However, you know, as we got into -- you know, further
11 into July and August, the request was the -- the opposite.
12 It was, you know, go get as much equipment as you possibly
13 can, get as many sidebooms as you can. You know, Mr.
14 Springer asked to get as many people as possible. He asked
15 me if I could even go to the local malls and get non-union
16 people and laborers just to get out on the right-of-way so
17 that we could advance the work, you know, people from -- from
18 Walmart or wherever. And I said, of course, we can't -- we
19 can't go get non-union people and bring them onto a union
20 job, that's just not going to work.

21 So, you know, there was a lot of pressure from -- from
22 everywhere, both to cut costs and recover schedule. And --
23 and those things aren't always possible at the same time to
24 do. You know, we were being transparent with what the costs
25 were, communicating them. You know, we weren't happy with

1 the costs either, you know, and especially not happy with
2 what impact this was having on the relationship. I mean,
3 this was difficult, difficult, you know, customer management
4 time, for sure.

5 Q How did that meeting end, Mr. Hawkins?

6 A Well, I mean, you know, it wasn't -- it wasn't a great
7 meeting. It was -- you know, I just think it ended and we
8 went out and continued to try to work on the -- on mitigating
9 the -- the issues, continuing to built out tie-out crews,
10 which were necessary for the increased tie-ins, which
11 happened for a lot of reasons, and productivity isn't the
12 only one.

13 But you know, we needed to finish the work. To finish
14 the work, we needed more equipment and we needed more people.
15 That's all there was to it. Less doesn't mean we get the job
16 done. And that was their ask, their ask was to get more.
17 "They" being the customer.

18 Q Did Welded agree to modify the structure of the
19 contract?

20 A Didn't agree to modify it, and I didn't bring any -- any
21 -- any offer to modify it.

22 Q Mr. Poarch's email is dated July 3rd and Mr. Springer's
23 email is dated July -- letter is dated July 3rd.

24 At that point, did Welded know that Transco had hired
25 OGCS?

1 A I didn't know.

2 Q Were you aware that OGCS was already putting out audit
3 findings by July 3rd?

4 A I was not aware of that, no.

5 MR. GUERKE: Could you go to PX-294, please?

6 Q And Mr. Hawkins, is this -- and we'll -- I'll start at
7 the top, and then I want to go back to the beginning of this
8 email string.

9 But is this top part of this email an email from Sean
10 Singleton to Phil Burke and some other people, July 17th,
11 2018?

12 A Yes.

13 MR. GUERKE: Okay. Let's start from the other
14 side. The very first -- which is at the bottom of this
15 exhibit. The very first email dated the day before.

16 BY MR. GUERKE:

17 Q Is the first email in this string from Chris Springer to
18 you and Mr. Hood and some other people?

19 A Yes.

20 Q Is it dated July 16th, 2018?

21 A Yes.

22 Q How is that you found out that Transco had hired OGCS?

23 A I don't know if I heard about it from Sean and Marcus,
24 whether I heard about it from the project team itself or if
25 this email is -- was the -- where I found out about it, but -

1 -

2 Q Was it in this --

3 A -- but one of the two or both.

4 Q Was it in this time frame?

5 A Yes, it was in this time frame.

6 Q What were you told about OGCS?

7 A I was just told by the customer, I think it was either
8 Mr. Springer or Mr. Kirchen -- I don't remember exactly --
9 but they were going to do an audit. And I said, yes, please,
10 you know, it's your right and please do so. And that was
11 generally it.

12 Q Is this first email from Mr. Springer a request to
13 attend a meeting before -- or a phone or video meeting before
14 there were in-person meetings?

15 A Yeah. It seemed like a kickoff call, just for
16 coordinating, awareness kickoff coordination for the audit
17 itself.

18 Q One of the recipients of Mr. Springer's July 16th, 2000
19 email -- 2018 email is Jeffrey Goebel. Do you know who
20 Jeffrey Goebel is?

21 A I do now; I didn't know then. I didn't recognize the
22 name or focus on it even.

23 Q Who is that?

24 A I believe he was counsel for Williams.

25 Q And did you attend this call or did you put your people

1 in contact with the -- that group?

2 A Yeah, I asked Sean to participate in it, and he's the
3 one that would lead it. And it was important that he get all
4 the details and understand, you know, what the requests were.
5 And I told him to listen and get them whatever they needed.

6 Q So that team, who spearheaded for Welded that interface
7 or interaction with OGCS following this July 16th, 2018
8 email?

9 A At the site? I mean, it would have been -- I would have
10 had Sean be the primary interface with that, as well as
11 Marcus. But then all of the people underneath them that --
12 that run the costs and invoicing would be the ones that would
13 do the actual -- you know, preparing the backup and getting
14 all the data.

15 Q When you refer to "Marcus," are you referring to Marcus
16 Hood?

17 A Marcus Hood. Sorry. Yeah, the project manager.

18 But Marcus and Sean, for me, were the ones accountable
19 for -- for cooperating and making sure this audit -- we
20 complied and got all the documentation that they needed and
21 quickly.

22 MR. GUERKE: Your Honor, I move PX-294 into
23 evidence.

24 MR. BURWOOD: Your Honor, we object to the extent
25 that the final email in this exhibit, that they haven't

1 established any foundation for it. Mr. Hawkins isn't on it
2 and it's hearsay, so ...

3 THE COURT: Mr. Hawkins is CC'ed on it. What am I
4 missing? The final --

5 MR. BURWOOD: Your Honor, I apologize. I withdraw
6 that.

7 THE COURT: Okay. Thank you. And it's admitted.

8 MR. GUERKE: Thank you, Your Honor.

9 (PX-294 received in evidence)

10 (Pause in proceedings)

11 BY MR. GUERKE:

12 Q Did OGCS ultimately visit Welded's offices July 24th and
13 July 25th?

14 A I don't know the dates for sure, but I understood that
15 they -- I know that they visited the offices in July.

16 Q Did you give your team instructions about that meeting,
17 how to go into that meeting, how to deal with this process?

18 A Yeah. Transparently, fully, fulsomely, all of the
19 above. We needed to get this behind us.

20 Q What was your reaction when you learned that they --
21 there was going to be an audit?

22 A Well, again, I -- you know, I welcomed it. I didn't --
23 it's their right to Welded -- it's the customer's right to
24 audit. And I saw the audit as the only way to -- to
25 understand what the complaints were and what the complaints -

1 - what their concerns were and as far as their -- us taking
2 advantage and over-billing. You know, the only way to know
3 what that is, is to get -- to get into the details, so we
4 could get them resolved.

5 Q So this is -- we're at the end of July time period,
6 2018. What's the status of the project at that point?

7 A I don't know the actual percent complete, but I know
8 that we were -- you know, we were -- we were within six weeks
9 or six or seven weeks of finishing up and it was down to the
10 critical path, which was the tie-ins, you know, getting the -
11 - getting the -- getting the equipment in there, getting it
12 tied in, and then getting as much restoration done in
13 addition to the -- the tie-ins, get the compaction and the
14 seed planted, so they could get some grass coverage, so they
15 could get their -- their permit to open, their leave to open
16 permit; "they," being the customer, get their authority to
17 run the project. So, you know, it was -- it was in sight,
18 but there was a lot to do.

19 Q You mentioned earlier that there were a couple
20 significant weather events on ASR in 2018. Was the first
21 weather event around this mid-to-late July period?

22 A Yeah, there were two -- there were two significant
23 weather events, and I don't remember the dates that we sent
24 the force majeure on them. But yes, there were, you know,
25 torrential rains, there were tropical depressions, you know,

1 hurricanes, storms to depressions that came through the area
2 and -- and -- and just flooded the rights-of-way, flooded the
3 creeks, washed away bridges, mats, I mean, did considerable,
4 considerable -- "damage" isn't the word, but you know -- you
5 know, structural impact to trenches, things like that. I
6 mean, there's a lot of lead work came out of it to try to --
7 to try to get that going, as well as any -- any compaction
8 and seeding that had been done to that point just basically
9 got -- you know, got washed away with it, as well. So it was
10 -- and then there was another one, right?

11 So there was just -- there was one, then there was
12 another one, as well as protests. I mean, there were lots of
13 -- like I said before about being proud of the work, there
14 were lots of challenges long that, protests, protesters on
15 the creeks, protesters, you know, chaining themselves to our
16 equipment, protesters, you know, holding up the -- the
17 crossings. These were -- these were all the stuff that we
18 were having to overcome to get the job in service.

19 Q So, going back to the weather event in July, you touched
20 on it earlier, about the instructions that you were getting
21 Transco to add manpower resources.

22 After that weather event, did you get similar
23 instructions to add resources and manpower?

24 A Yes. Yeah. And it was just obvious, we needed to
25 increase our tie-in crews in order to -- well, we had to

1 repair whatever -- whatever damage there was, recover
2 whatever there was that needed to be recovered as a result of
3 the weather impacts. And it's not just one day. You know?
4 It's all the knock-on effects of that one day of weather. So
5 you can have one day of weather in your schedule, but if it
6 rains anywhere from -- from several days to even longer, the
7 impacts of that day and the impacts to production, it's not
8 one-to-one.

9 Q When you increase, you know, manpower, you increase
10 resources as Transco requested, what does that mean to
11 Welded's costs incurred on the project?

12 A Well, you know, any time you increase people and you're
13 bringing in more equipment, the actual -- it increases your
14 cash requirement is -- is the main thing, is the -- is the
15 requirement for cash. You got to pay the bills the more
16 stuff you bring in. So, you know, there's incurred costs,
17 there's forecasting, there's profit. There's all kinds of
18 stuff. But at the end of the day, you bring in more people,
19 you need more money for payroll. You bring in more
20 equipment, you need to pay more invoices. You need more
21 fuel. You know, you need more transportation. You need more
22 trailers to haul the equipment to the right-of-way. It's
23 just more of everything. And all of that costs money and all
24 of that takes cash.

25 Q I want to shift gears a little bit, Mr. Hawkins. We're

1 in the end of July, going into the August time period. I
2 want to talk about the cost penalty, the cost incentive
3 program, generally.

4 What was the target project cost under Amendment 1 to
5 the contract?

6 A Four fifty-four, four hundred and fifty-four million.

7 Q Throughout the life of the job, did Welded provide
8 updates and forecasts compared to that four fifty-four
9 number?

10 A Yes.

11 Q And how --

12 A We --

13 Q -- was that --

14 A We --

15 Q How was that cost picture looking in the Summer of 2018,
16 compared to the four fifty-four target number in Amendment 1?

17 A It was -- it -- let alone the summer, I mean, at the end
18 of January, our forecast exceeded six hundred against the
19 four fifty-four as we were coming out of that winter time and
20 we reported that and the reasons why. So, you know, we -- we
21 were -- we were forecasting the cost increase, we were
22 communicating the cost increase and that was out there.
23 That's not something that you don't share with your -- with
24 your customer. We were getting that out there every single
25 month.

1 So, by the time we got to June, again, it -- it had --
2 it had never come down, right? So -- so, from the four
3 fifty-four from January, February, March, April, June, and
4 then I think June was the last forecast, to July, you know,
5 we were -- we were -- the number was -- was growing for the
6 reasons I said.

7 Q And had that number grown or at least was it forecast to
8 grow beyond the four hundred and fifty-four -- well beyond
9 the \$454 million?

10 A Yes. It -- it already -- it already -- like I said, it
11 already had by -- by January time frame and into -- into
12 June.

13 Q Did Welded and Transco discuss the application of the
14 cost penalty?

15 A Yes.

16 Q Was an agreement made on the cost penalty?

17 A Yes.

18 Q Could you describe that, please?

19 A Yes. I mean, the project team recommended -- and I
20 agreed -- that, you know, clearly we would be -- had gone
21 over the contemplated four fifty-four and that the structure
22 of the cost penalty was kind of -- doesn't really matter why
23 you go over the four fifty-four, that that was our -- that
24 that was our skin in the game. So we wanted to make good on
25 it.

1 And Sean -- either Sean Singleton or Marcus -- I don't
2 remember exactly who -- but they had -- they had approached
3 Williams, agreed in a repayment of it, of our invoices,
4 instead of all at once. Again, we didn't want to impact our
5 cost -- I'm sorry -- for cash flow because we were adding
6 people, adding equipment in order to try to get the project
7 mechanically complete in service. We didn't want to take a
8 ten-million-dollar cost -- or cash chunk at all once. You
9 know, we wanted to maintain cash flow.

10 And so they came up with a payment schedule -- "they"
11 being Sean and his counterpart -- and it involved 2 million
12 for the first month, and I don't remember the subsequent
13 months. But -- but you know, the balance of it would be paid
14 or most of it would be paid after in service.

15 Q So did that agreement contemplate payments over time
16 instead of --

17 A Yes.

18 Q -- all at once?

19 A Payments over time, yeah.

20 Q Mr. Hood -- I'm sorry.

21 Mr. Hawkins, let's take a look at JX-71.

22 A Okay.

23 Q Please identify what JX-71 is, the email and the
24 attachment.

25 A The email is from Sue Hallowell, who was doing our

1 invoicing, preparing our invoicing, to Mr. Sztroin with the
2 cash call and April reconciliation invoice. So it was both a
3 July cash call and then a true-up for the April invoice.

4 Q And if you flip to the next page, is that the July 2018
5 cash call with a due date of August 5th?

6 A Yes.

7 Q Okay. I may have confused something here.

8 The email references the July 2018 cash call. But does
9 the attached invoice actually show that it's the August 2018
10 cash call?

11 A Yeah. Invoice is for August cash call.

12 Q And then --

13 A Yes.

14 Q -- at the bottom right is the due date, August 5th,
15 2018.

16 A Yes.

17 Q Focusing your attention, Mr. Hawkins, to the Item Number
18 10, fixed fee and profit, where there is a cost incentive
19 part. Do you see where -- the part that I'm referencing?

20 A Yes.

21 Q And do you see the two-million-dollar deduction line
22 item?

23 A Yes.

24 Q What does that two-million-dollar number represent?

25 A That represented the first payment of the ten-million-

1 dollar penalty for cost overrun that was agreed by the
2 project team.

3 MR. GUERKE: Your Honor, I move JX-71 into
4 evidence.

5 MR. BURWOOD: No objection.

6 THE COURT: It's admitted.

7 (JX-71 received in evidence)

8 BY MR. GUERKE:

9 Q Mr. Hawkins, will you take a look at PX-319, please?

10 Mr. Hawkins, what is the cover letter or the cover email
11 of PX-319?

12 A That's an email from Tina to -- Tina Malone to myself
13 with a letter from Chris Springer attached regarding ASR
14 August payment and modification to it.

15 Q Did Transco live up to the agreement of paying the cost
16 penalty over time that you just described?

17 A No.

18 MR. GUERKE: Could you turn to the attached letter
19 to this email, please?

20 BY MR. GUERKE:

21 Q How did Transco handle that agreement in this exchange?

22 A Well, the letter says basically that the contract says
23 10 million, so it's not 2 million deduct. That's in -- they
24 said was that incorrect and they were going to take the
25 entire 10 million at once on this invoice. So they deducted

1 the penalty amount on the cash call.

2 MR. GUERKE: Would you turn to the next page,
3 please? Could you focus in on the part that's handwritten,
4 where it says "\$10 million" under "cost penalty incentive" at
5 the bottom?

6 BY MR. GUERKE:

7 Q Describe the handwritten deductions on this invoice
8 attached to Mr. Springer's August 13 letter, please.

9 A Yeah. Originally, it was in red ink. And it just
10 strikes out the 2 million, which is what we invoiced for,
11 which is what the project team had agreed on, and it makes it
12 10 million. The note there, looks like "by RSC," who I
13 assume is Chris Springer, "RSC per Evan Kirchen." My
14 understanding is, is that Evan said that he would only pay
15 this if the entire 10 million was short-paid, so that's the
16 instruction carried out on this invoice.

17 So you got 10 million, added 8 million to the penalty
18 and deducted 8 million from the total invoice, so reduced it
19 from twenty-five to seventeen. And it also reduced the cost
20 -- the total paid to date from six eighty-four to six
21 seventy-six.

22 MR. GUERKE: Could you turn to the next page,
23 please?

24 BY MR. GUERKE:

25 Q And is there more of the same on this last page of PX-

1 319?

2 A Yes.

3 MR. GUERKE: Your Honor, I move PX-319 into
4 evidence.

5 MR. BURWOOD: No objection.

6 THE COURT: It's admitted.

7 (PX-319 received in evidence)

8 (Pause in proceedings)

9 MR. GUERKE: Could we -- could you pull up PX-312,
10 please?

11 BY MR. GUERKE:

12 Q This is an email, Mr. Hawkins. The top is dated August
13 6th, 2018. And I want to focus your attention on the first
14 part of the -- of this email. It's dated August 5th, it's
15 from Mary Edmonds to several people. And the first statement
16 -- the first sentence says:

17 "Audit should be sufficiently advanced to make
18 decisions about withholding from current and future
19 invoices."

20 Did I read that sentence correctly?

21 A Yes.

22 MR. BURWOOD: I'm sorry. We object to using this
23 exhibit with this witness, lack of foundation. He's not
24 copied on this email, so ...

25 THE COURT: Well, I don't know what the question is

1 yet.

2 MR. GUERKE: I haven't --

3 THE COURT: It hasn't --

4 MR. GUERKE: -- asked the --

5 THE COURT: -- been moved --

6 MR. GUERKE: -- question yet.

7 THE COURT: He hasn't moved it into admission or
8 anything. Go ahead.

9 MR. GUERKE: It's --

10 THE COURT: Overruled.

11 BY MR. GUERKE:

12 Q Did you know, at this point, that Transco and Williams
13 were planning additional future withholdings?

14 A No.

15 Q What was your reaction to Transco deducting the \$10
16 million all at once?

17 A You know, I was -- I was concerned. It was a big -- it
18 was a hit, right? So we had a deal for two, they struck at
19 ten, and decided to manage it.

20 MR. GUERKE: Your Honor, I move PX-312 into
21 evidence.

22 MR. BURWOOD: Your Honor, I renew our objection
23 (indiscernible)

24 MR. GUERKE: It's not hearsay, Your Honor. It's a
25 statement by a party.

1 MR. BURWOOD: Your Honor, I apologize. There's no
2 foundation that's been laid that this witness has any
3 personal knowledge regarding this exhibit at all; and,
4 therefore (indiscernible)

5 MR. GUERKE: Foundation, authentication has been
6 laid in the depositions. It's a deposition exhibit. It was
7 discussed throughout the case.

8 MR. BURWOOD: Your Honor, to the extent that --
9 while this counsel intends to move this in as a deposition
10 exhibit, we would reassert that we haven't looked at the
11 deposition designation that it's associated with. And the
12 objection is that (indiscernible) this witness at this time.

13 MR. GUERKE: That doesn't matter, Your Honor. It's
14 a -- and it's not necessarily hearsay. It's not offered for
15 the truth of the matter asserted. It's offered --

16 THE COURT: What's it offered for?

17 MR. GUERKE: It's offered for the timing, it's
18 offered for the sequence of events and whether or not Mr.
19 Hawkins was aware of what was happening with the audit at
20 that point.

21 THE COURT: So you're just offering the email or
22 are you offering the attachment to it?

23 MR. GUERKE: There is no attachment.

24 THE COURT: Am I looking at the right exhibit?

25 MR. GUERKE: Oh, I'm sorry, I ...

1 (Participants confer)

2 MR. GUERKE: Your Honor, I was offering the email,
3 not the attachment. Forgive me, I did not realize that the
4 attachment was there. But I'm offering the email.

5 THE COURT: I'm going to overrule the objection and
6 I'll admit just the email.

7 MR. GUERKE: Thank you, Your Honor.

8 THE COURT: Not for the truth of what's asserted,
9 but for the timing.

10 (PX-312 received in evidence)

11 MR. GUERKE: Would you pull up, please --

12 BY MR. GUERKE:

13 Q And Mr. Hawkins, I'd like to direct your attention to
14 PX-324.

15 (Pause in proceedings)

16 Q Would you tell us, please, what is the email and the
17 attachment that is PX-234 -- I'm sorry -- 324?

18 A It's an email from Kenny Branning on August 17th to Mr.
19 Springer and Tina Malone, CC'ing myself, and our letter
20 response to Mr. Springer's letter.

21 Q And let's turn to your letter attached.

22 Is the second page of this exhibit, PX-324, your August
23 16th, 2018 letter response to Mr. Springer?

24 A Yes.

25 Q And what's the address you sent this letter, in the

1 upper, lefthand corner?

2 A To Houston, Texas, the Post Oak -- Transcontinental
3 Tower and Post Oak Boulevard in Houston.

4 Q Let's focus on the first paragraph of this letter. It
5 states:

6 "Welded has received your letter dated August 13th,
7 2019 (the 'Letter'). Welded is disappointed that
8 the previously agreed payment stream for the ten-
9 million-dollar cost incentive penalty was not
10 honored by Transco when Transco elected to
11 unilaterally impose the full recovery in one
12 invoice."

13 Did I read that correctly?

14 A Yes.

15 Q And not to ask you to say it again. But what are you
16 expressing here that you haven't already told us about?

17 A Just -- just surprise, unilateral action, agreed on two,
18 handwritten with red ink that made it ten at the direction of
19 Evan, you know, pretty -- pretty strident, so ...

20 Q The next paragraph states:

21 "Additionally, Welded is confused bu the continued
22 tone of mistrust put forward by Transco on the
23 issue of invoicing, accuracy, and compliance to the
24 contract."

25 The next sentence says:

1 "Welded has been transparent with all audit
2 requests, be they from Transco or the third party
3 Transco has engaged."

4 Did I read those two sentences correctly?

5 A Yes.

6 Q The next sentence is:

7 "If Transco has found any errors as part of the
8 process, Welded requests that they be identified,
9 so that they can be corrected and an end can be
10 reached on this position of mistrust Transco
11 continually asserts."

12 Did I read that correctly?

13 A Yes.

14 Q So what is it that you're expressing here related to the
15 allegations about billing inaccuracies?

16 A Well, the same. It's -- you know, it's -- it's
17 concerning to get that kind of feedback and that -- that, not
18 only feedback, but those allegations from your customer, that
19 they don't trust you, your -- your customer doesn't trust
20 you, your -- your -- you know, we're improperly billing and -
21 - and without telling us how or why, you know, what specific
22 thing.

23 Again, the point of -- the point of the invoice
24 reconciliation process and also the -- the invoice dispute is
25 to identify it right away, agree to it, provide whatever they

1 need to get it done, and then get it behind us, you know, not
2 to let this kind of stuff just perpetually, you know, grow,
3 without -- without us trying to fix it. You know? It's not
4 a good relationship at that point, at this point, so I'm
5 concerned about that.

6 And our reputation. I mean, they're basically telling
7 us we're taking advantage.

8 Q Okay.

9 A It's not where you want to be.

10 Q As of August 16th, 2018, the date of this letter, had
11 Transco provided any errors or issues found in the audit
12 process that's referenced in your letter?

13 A No, we hadn't received any audit findings, per se, that
14 we had to go -- that we could correct and that we could act
15 on. Again, we're asking for things that we can act on and
16 remedy and make sure that -- that we get aligned on what's
17 going on with the invoice process, so that we're -- we're not
18 in a position of mistrust getting this close to the end of
19 the job. And this is when you're supposed to be aligned with
20 your customer as you're trying to get the most difficult
21 point of the work over the line.

22 Q Please take a look at the next two paragraphs, the one
23 starting with "your letter" and the one starting with:

24 "We are committed to safety and efficiently
25 completing the project."

1 And I have a question about those two together when you
2 are ready.

3 (Pause in proceedings)

4 A Okay.

5 Q These two paragraphs reference impacts that Transco had
6 on the work and also the fuel experience of Transco's onsite
7 construction management team.

8 Could you tell us what you're expressing in those two
9 paragraphs?

10 A Well, the first is, live I said, we've been -- we've
11 been very, you know, transparent and forthcoming with
12 forecasting, you know, where we thought the cost was going to
13 go. Early on, we started that. We continued to communicate
14 those cost impacts and also the reasons for the cost impacts.
15 The buildup for the cost growth we had been providing, as
16 well. So, you know, we felt -- I felt we had been
17 transparent with all of that and -- and we wanted to continue
18 to do that. And we engaged with our company reps every step
19 of the way. There wasn't an absence of communication or
20 reporting.

21 The next is, you know, we -- of course, we want to
22 safely and efficiently get this project done. We don't want
23 to hurt anybody and we want to get our customer in service,
24 full stop. You know, but the delays, you know, this
25 unilateral assignment of -- of impact and attributing it, you

1 know, solely to Welded at this point was -- was incredible,
2 in my mind.

3 You know, there's lots of reasons why there were delays
4 that were going on and the challenges that we were
5 overcoming. And you know, our team also felt like it had
6 this -- had Williams and Transco had some more experienced
7 managers out there, construction management, environmental
8 management, they could help remove barriers or resolve issues
9 around specification or dealing, you know, with whatever it
10 was. They were all things that impacted the project.

11 And at this stage of the job, the team should be high-
12 performing, aligned, finding barriers, removing barriers,
13 managing risk, getting this thing in service. That's where
14 this job should be at this point. And that takes two. You
15 know? They were the construction management. It's --
16 they're the owners, it's their project, their specifications,
17 their permit. You know, they have -- they have obligations,
18 as well, for the -- you know, the timely construction of the
19 job, as do we. But it's not just Welded. It's the team, and
20 they're part of that effort, as well.

21 So that -- that's what this was about. And it was just
22 -- it wasn't an exhaustive list and it wasn't a specific
23 list. You know, but -- you know, the -- the alignment with
24 the customer and the alignment with the team was going the
25 wrong way.

1 MR. GUERKE: Your Honor, I move to admit PX-324.

2 MR. BURWOOD: No objection.

3 THE COURT: PX-324 is admitted.

4 (PX-324 received in evidence)

5 MR. GUERKE: Thank you, Your Honor.

6 Your Honor, would now be a good time to take our
7 lunch?

8 THE COURT: Yes, it would.

9 MR. GUERKE: Could we have an hour, Your Honor?

10 THE COURT: You may have an hour. We are going to
11 end today at 3:30 because we've been having some technical
12 issues and I've got something that I have to do and have to
13 have all the technical issues worked out, so we're going to
14 end at 3:30.

15 We'll start again tomorrow at 9:30.

16 MR. GUERKE: Yes, Your Honor.

17 THE COURT: Okay?

18 MR. GUERKE: Thank you.

19 THE COURT: Thank you. We're adjourned until 2.

20 (Luncheon recess taken at 1:02 p.m.)

21 AFTERNOON SESSION

22 (Proceedings resume at 2:01 p.m.)

23 (Call to order of the Court)

24 THE COURT: Please be seated.

25

1 THE COURT: Mr. Hawkins?

2 MR. GUERKE: Yes, I ...

3 THE COURT: We've got everyone but Mr. Hawkins?

4 MR. GUERKE: I thought he was right behind me, Your
5 Honor.

6 THE COURT: Okay.

7 MR. GUERKE: I'm sorry. I thought he was here.

8 THE COURT: That's okay.

9 MR. BURWOOD: Your Honor, may I raise a -- just a
10 housekeeping issue while we're waiting for the witness?

11 THE COURT: Yes.

12 MR. BURWOOD: In at least one instance, Your Honor,
13 counsel was asking the witness to testify regarding a
14 document that had not yet been sought to move into evidence.

15 THE COURT: Uh-huh.

16 MR. BURWOOD: In terms of process, we'd ask that
17 counsel move for the exhibit to be admitted before asking a
18 witness to testify about its contents. That would give us
19 the opportunity to lodge a timely and appropriate objection.

20 THE COURT: No, I'm not going to make any such
21 instruction. I've seen it all different kinds of ways, and
22 sometimes the exhibit, the marked exhibit is never moved into
23 evidence. So I'm not going to preclude parties from doing
24 it. It may make it a little more difficult at some times,
25 but I'm not going to create an instruction for this case.

1 MR. BURWOOD: Thank you, Your Honor.

2 THE COURT: But thank you. Uh-huh.

3 Mr. Hawkins, please retake the stand.

4 THE WITNESS: Yep.

5 MR. GUERKE: Thank you.

6 STEPHEN HAWKINS, WITNESS FOR THE DEBTOR/PLAINTIFF, PREVIOUSLY

7 AFFIRMED, RESUMES STAND

8 MR. GUERKE: May I proceed --

9 THE COURT: Mr. Guerke.

10 MR. GUERKE: -- Your Honor?

11 THE COURT: Yes.

12 (Pause in proceedings)

13 CONTINUED DIRECT EXAMINATION

14 BY MR. GUERKE:

15 Q Mr. Hawkins, when we broke for lunch -- excuse me.

16 When we broke for lunch, we were talking about the
17 project in the mid-August -- mid-to-late August time period.

18 What was happening on the job at that point, mid-August
19 2018?

20 A Yeah. In mid-August, we were doing concurrent things:

21 One, we were finishing tie-ins.

22 We were starting restoration with compaction and
23 seeding.

24 Hydro testing activities would have been ongoing all for
25 the final thirty-day push to get to the mechanical completion

1 in September --

2 Q On that thirty-day --

3 A -- as well as de-mobile -- as well as de-mobilization of
4 -- of crews and we would have been building the tie-in crews,
5 as well.

6 Q You said that "thirty-day push."

7 Is Welded still being pushed by Transco to -- on the
8 job?

9 A Yes. Yeah.

10 Q And --

11 A We needed to get to the mechanical completion, you know,
12 target as soon as possible.

13 Q De-mobilization. Is that what you were just talking
14 about or -- tell us about that process? Why don't you --

15 A Yeah. Well, you're doing two things:

16 One, as you get down towards the end, we were building
17 crews for tie-ins, which is, you know, specific equipment and
18 specific skill sets to build out the tie-in crews and, at the
19 same time, de-mobilizing what labor we could on the right-of-
20 way for some skills that weren't -- weren't necessary.

21 But we hadn't gotten into the major de-mobilization yet,
22 by August, though.

23 Q We talked about the thirty-day push.

24 When did Welded ultimately reach mechanical completion?

25 A During September, middle of September seems right.

1 Q So Welded reached mechanical completion September 2018.

2 Looking back, what's your feeling on -- what were you
3 feeling about the job Welded did at that point, after
4 reaching mechanical completion?

5 A Well, again, we -- we felt good about the fact that we
6 were able to complete our mechanical completion scope, given
7 all the challenges that we had for that 12 months, you know,
8 prior to that, from the weather in the -- in the wintertime
9 to the two named stores to the protests to the other
10 challenges that we had. So, to overcome that and -- and get
11 the project completed, mechanically completed, was a big
12 deal. It was something that we should have been celebrating
13 together as a team, which we normally would.

14 But we were still -- we still had to push to get as much
15 restoration done as we could, you know, so that they could
16 get their FERC approval to -- to open a go in service. So
17 the work wasn't done.

18 Q What is "FERC approval"?

19 A It's when the regulatory agency, the one that permits
20 the project, they also allow it to go in service. So certain
21 requirements are met. That's not my expertise. The owner
22 has a better handle on that. But they need regulatory
23 approval to go in service, and that requires mechanical
24 completion, certain records to be available and -- before it
25 goes in service, as well as a certain amount of -- of grass

1 has to be back on the right-of-way to go in service, a
2 certain percentage of the right-of-way has to be growing into
3 grass again.

4 Q When did FERC approve the ASR pipeline to go into
5 service?

6 A October 4th, I believe.

7 Q What happened October 4th, the date Transco received
8 FERC approval?

9 A Also, well -- on the project wise? Commercially?

10 Q Commercially?

11 A Contractually with the customer? Yeah, we received a
12 letter from Mr. Springer about another deduct and a withhold
13 based on audit findings on that day, as well as a -- it's
14 called a "courtesy copy" of a -- of a lawsuit that had been
15 filed against Welded in Oklahoma.

16 MR. GUERKE: Excuse me.

17 Could we pull up JX-94, please?

18 BY MR. GUERKE:

19 Q Mr. Hawkins, I've put in front of you an exhibit that's
20 been marked as JX-94. Could you tell us what the cover email
21 is and the attached letter just for identification purposes?

22 A Well, the bottom part is an email from Dean McDowell
23 that was sending the letter that we had received. I think
24 the "RNP," I think that was received it through our document
25 control, probably.

1 And Dean forwarded that to myself, Marcus Hood, and Sean
2 Singleton. Dean was the CFO of the company, also the sponsor
3 of the ASR project. And I forwarded that to Rich Wall in
4 Bechtel.

5 Q Is the -- is Mr. Springer's October 4th, 2018
6 withholding letter attached?

7 A Yes.

8 Q At this point, October 4th, 2018, you testified that
9 FERC approved -- FERC had approved the pipeline. Does that
10 mean that Transco can start using it and selling the gas?

11 A Correct. It can go in service and they can start the
12 transmission of natural gas in the pipeline.

13 Q Turning to the October 4th letter, the first sentence
14 reads:

15 "In accordance with the contract audit provisions,
16 Section 8 and Appendix G of the Transco/Welded
17 contract, Transco hereby provides notice of
18 withholding in connection with Welded's advance
19 payment invoice submitted in September 2018."

20 Did I read that correctly?

21 A Yes.

22 Q Excuse me.

23 Did Mr. Springer invoke the audit provision in the
24 contract for making this withholding?

25 A Yes.

1 Q Does the contract --

2 MR. GUERKE: Could you pull up JX-1, please? Page
3 30. And could you highlight Article 30, please? I'm sorry.
4 Highlight Article 31.

5 BY MR. GUERKE:

6 Q And what is Article 31, Mr. Hawkins, as it relates to
7 the audit rights in the contract?

8 A It specifies the rights that Williams/Transco has to
9 audit contractor's books and records, which is us.

10 Q Does the last part of this Article 31 require Transco to
11 present audit findings to Welded before Transco withholds
12 money, make an adjustment to payments due to Welded?

13 A Yes.

14 MR. GUERKE: Let's go back to JX-94, please.

15 Q The second sentence of the first paragraph says:

16 "Based on the ongoing review of Welded's advance
17 payment requests, Welded has erroneously billed
18 Transco for fees and costs in excess of those
19 allowed under the contract and has failed to
20 properly reconcile the over-billings as
21 contemplated by the contract."

22 Did I read that part correctly?

23 A Yes.

24 Q As of the date of this letter, October 4th, 2018, had
25 Transco presented audit findings to Welded?

1 A No.

2 Q Taking you back to the second paragraph of this October
3 4th, 2018 letter. It starts with the word "based."

4 "Based upon Transco's review" -- "current review
5 and the ongoing audit process, Welded has charged a
6 50 percent equipment fee on costs that do not
7 include actual work performed, including show-up
8 time and wait time."

9 Did I read that correctly?

10 A Yes.

11 Q Is that the first time that you heard that position from
12 Transco?

13 A Yes.

14 Q Now the next part of that same paragraph, the next
15 sentence says:

16 "Welded has also charged an equipment fee for costs
17 related entirely to the provision of equipment,
18 rather than actual work performed, including
19 vehicle rental and rig rental equipment charges."

20 Did I read that correctly?

21 A Yes.

22 Q Is that the first time that Transco expressed that
23 position to Welded?

24 A Yes.

25 Q What's your understanding of the argument or the

1 position that Transco is taking here in this October 4th,
2 2018 letter, as expressed in this -- the second paragraph?

3 A Well, the way I read it, in the parenthesis there, is
4 that -- or the -- well, parenthesis, is that, if they're not
5 working, it's not actual work performed. So, if they show up
6 for half a day, for whatever reason, or there's any show-up
7 or wait time or standby time, that that's not work being
8 performed, so it's not a legitimate charge for the equipment
9 fee under that interpretation.

10 Q Did you agree with that interpretation of the contract?

11 A No.

12 Q Is that how Welded had been billing the contract to
13 date?

14 A No.

15 Q What's the total amount, roughly, that Transco withheld
16 in this October 4th, 2018 letter?

17 A Can you scroll down a little bit, so I don't have to --

18 Q Yeah.

19 MR. GUERKE: It's the second-to-last paragraph, if
20 you wouldn't mind going down, on the second page; first
21 paragraph, second page.

22 THE WITNESS: A total of \$23,563,538.

23 BY MR. GUERKE:

24 Q What's your understanding about how far back the
25 invoices go that are covered by this twenty-three-and-a-half-

1 million-dollar withholding?

2 A Well, it appears that they go all the way -- all the way
3 back to the beginning of the first invoice. Just by going
4 through the letter, I've never seen the -- the audit
5 findings, so --

6 MR. GUERKE: Could you go back to the first page,
7 please, to the line items at the second half, starting with
8 the line:

9 "The erroneous charges currently identified are set
10 forth below."

11 That section.

12 BY MR. GUERKE:

13 Q Mr. Hawkins, could I focus your attention on the second
14 half of the first page of this October 4th letter, starting
15 with the phrase:

16 "The erroneous charges currently identified are set
17 forth below."

18 Do you see that?

19 A Yes.

20 Q What do you understand are the line items that follow
21 that statement?

22 A Well, one of the equipment fee under their -- under
23 Williams' interpretation of the actual work performed, so
24 that suggests that they had calculated wait and show-up time
25 and then backed out any percentage of equipment fee against

1 that, and also for equipment fee on travel pay and per diem.

2 Q So how much did Transco withhold for the equipment fee
3 associated with wait/show-up time?

4 A Two million, three hundred and seventeen thousand, four
5 hundred and forty-seven dollars.

6 Q What is "wait/show-up time"?

7 A Wait time or show-up time is when they'll come in the
8 morning and either on hold because of weather conditions,
9 they showed up to the job site and they're waiting, or
10 they're paid to show up, even if they don't work. So it's --
11 it's either one. You have to -- I forget the time -- time
12 cutoff, but you have to give them -- give the workers, under
13 the agreement, advance notice for them not to come in the
14 next day. If they do, then they get show-up time if you
15 didn't -- if you don't let them know ahead of that, they get
16 show-up time; or, if they come in that morning and get rained
17 out in the afternoon, they get wait time.

18 Q Is wait time/show-up time part of the union contracts?

19 A Yes.

20 Q The next line. How much did Transco withhold for the
21 equipment fee related to travel pay per diem?

22 A Eight million, thirty-seven thousand, two hundred and
23 eighty-seven dollars.

24 Q Are -- is that also a benefit or pay due union personnel
25 under the union contracts?

1 A Yes.

2 Q The next line -- or the next section is a line for
3 vehicle rental equipment fee. How much did Transco withhold
4 on that line item?

5 A Three million, three hundred and thirty thousand, eight
6 hundred and fifty-two dollars.

7 Q Do you know what's being references there, "vehicle
8 rental equipment fee"?

9 A Broadly. I don't know the specific -- the specifics
10 behind it. I don't see the audit report. I just see a broad
11 -- a broad claim.

12 Q The next one is rig rental equipment fee. How much did
13 Transco withhold related to rig rental equipment fee?

14 A Three million, one hundred and four thousand, four
15 hundred and eighty-seven dollars.

16 Q Is the -- is it your understanding that rig rental and
17 equipment fee relates to welding rigs that the union members
18 have?

19 A Yes, for the -- for the -- for the welder crews.

20 Q And is that rig rental for the welding rigs -- who owns
21 that?

22 A Who owns the rental rigs?

23 Q The rigs --

24 A Who owns -- who owns the rigs?

25 Q Yeah.

1 A Typically, the welders own their own rigs.

2 Q At this point, October 4th, 2018, did Welded know that
3 Transco had sued Welded in Oklahoma State Court?

4 A No.

5 Q This letter is dated October 4th, 2018.

6 When was the October payment due from Transco?

7 A October 5th.

8 Q Earlier today, do you remember we talked about Appendix
9 G, Part 1.2.5, regarding disputes?

10 A Yes.

11 Q Had -- by -- before October 4th, 2018, had Transco
12 raised any of these issues as a dispute specifically?

13 A As a dispute? No.

14 MR. GUERKE: Let's -- could we move on to the last
15 page of the letter, first paragraph?

16 BY MR. GUERKE:

17 Q And my question is, Mr. Hawkins, related to the second
18 sentence.

19 Did Transco also withhold about \$1.9 million for the
20 schedule program?

21 A Yes.

22 Q Had you had any prior discussions with Transco on that
23 issue?

24 A No.

25 Q Was it possible for Welded to complete its work by the

1 June 14th mechanical completion date in the contract?

2 A No.

3 Q Can you explain that, please?

4 A We were still waiting on -- on some deliverables at that
5 time from the customer, some permits that came in after June
6 14th. So, just on that -- on that basis alone, completion of
7 the work wouldn't be possible.

8 Q I know you responded in writing and we're going to get
9 to your written response in a moment.

10 But what was your initial reaction when you received
11 this letter and you reviewed it?

12 A Well, is the last paragraph there, too, about the --
13 about the lawsuit? Is that also in this? Because it's --

14 Q We'll get to that in the next letter.

15 A Okay. Well, again, it's -- this is more concrete.

16 One, it was another deduct, which was painful for us.
17 It was in addition to the late pay in June, plus the -- what
18 was ultimately paid, plus the 10 million unilateral
19 withholding and now this. You know, it's 35 million bucks
20 that we're -- that we're -- within 30 days time, that we're -
21 - or 60 days time that we're feeling the crunch on, so that.

22 Two, we're still not aligned with our customer, we're
23 still not aligned with the audit. We're still not finding
24 out, you know, why -- you know, what are the specifics around
25 these. I mean, these are categories, but you know, what's --

1 what's the specific invoice that's being disputed, what's the
2 category, what's the invoice number, what's the backup,
3 what's the detail, what's the contract say. You know, we're
4 not doing any of that, that's going on. There's just these
5 unilateral withholdings and these broad categories of us
6 erroneously charging and -- and purposely over-billing and
7 taking advantage and all of that.

8 So, you know, from a customer relationship point of view
9 and -- and an alignment point of view, it's -- it's getting
10 worse, not better, and we're not resolving any of the
11 conflict issues that are -- that are -- that are in front of
12 us. They're just -- they're just -- they're compounding.

13 MR. GUERKE: Your Honor, I move JX-94 into
14 evidence.

15 MR. BURWOOD: No objection.

16 THE COURT: Thank you. It's admitted.

17 (JX-94 received in evidence)

18 MR. GUERKE: Would you pull up JX-100, please?

19 BY MR. GUERKE:

20 Q Mr. Hawkins, will you take a look at this cover email
21 and the attachment and identify what the email is and what's
22 attached?

23 A It's an email from Marcus Hood to Chris Springer on
24 October 7th, 2018, CC myself, and it's a copy of my letter
25 response to Mr. Springer attached.

1 Q I'd like to focus your attention on the first paragraph,
2 which states:

3 "We are in receipt of your letter dated October
4 4th, 2018 and are extremely disappointed by the
5 content, especially as we've been communicating
6 frequently with your audit team over the past
7 several months and this is the first notice of this
8 disputed charges" -- "of these disputed charges or
9 contract interpretation."

10 Did I read that part correctly?

11 A Yes.

12 Q What is it that you're expressing here to Mr. Springer?

13 A That we were -- you know, we were in the audit process,
14 we've done what they've requested and what I've directed the
15 team to do, which is to be transparent, open the books,
16 cooperate, get aligned on what the -- what the -- what the
17 charging issues are, if any, resolve them, and -- and get it
18 behind us.

19 And you know, we met that obligation, we were
20 cooperating and being transparent, but not getting the
21 feedback on the disputed charges or what they were, you know,
22 not -- we're not getting any audit results. I don't consider
23 categories of -- of -- in a letter an audit result. You
24 know, that's nothing concrete that we can go sit down and --
25 and resolve.

1 So, yeah, it's been going on for three months, that
2 being the audit, you know, and we don't have the benefit of -
3 - of the audit; yet, we're getting -- we're getting the --
4 you know, we're getting the -- the money withheld based on
5 the audit. So that's kind of the point.

6 Q Could you take a look at the second paragraph, please?

7 I have some questions about the content of that one.

8 (Pause in proceedings)

9 Q In this second paragraph of your October 7th, 2018
10 letter, did you address Mr. Springer's position on the
11 calculation of the equipment fee?

12 A Yes.

13 Q And did you explain how Welded invoices for labor costs
14 and equipment fees on this con -- under this contract on this
15 job?

16 A Yes.

17 Q And could you explain that, please?

18 A Yeah. You know, first of all, the -- you know, the work
19 is the work and the work that's being performed, including
20 standby time, wait time, show-up time, any of that time is --
21 is a cost. It's part of the work that's being performed,
22 it's a compensation, it's under the labor agreement, they're
23 paid. It's a cost to the project and it's a cost to the
24 customer and that is the basis of the cost and the basis of
25 the 50 percent multiplier, full stop. That was our

1 interpretation of it, that's how we had been invoicing, and
2 we felt that it was appropriate. We didn't define the
3 benefits, we didn't define the pay. It was defined for us in
4 a labor agreement that we signed and we had to pay it.

5 Q Mr. Hawkins, will you please take a look at your third
6 paragraph? And I have some questions about that.

7 (Pause in proceedings)

8 A Okay.

9 Q In this paragraph, are you requesting details of the
10 audit findings?

11 A Yes --

12 Q Did you --

13 A -- specific --

14 Q Did you --

15 A -- details around the charges that were being disputed
16 on the invoice that became the basis of the withholding. And
17 we still haven't seen that.

18 Q Let's talk about the fourth paragraph next. This one
19 addresses the ability -- Welded's ability to achieve
20 mechanical completion on June 14th. Will you take a peek at
21 that? And I have some questions for you.

22 (Pause in proceedings)

23 A Okay.

24 Q Is the gist of this part of your letter responding to
25 the 1.9-million-dollar scheduling penalty that Transco

1 withheld in the October 4th letter?

2 A Yes, it's the -- you know, the 1.9 against the June 14th
3 MC date that was unilaterally withheld, it -- with
4 attributing all delays to us, therefore they were entitled to
5 withhold that money from us as a penalty, as if they had no
6 play in it whatsoever.

7 Q And what is it -- what are the details here that you're
8 expressing to Mr. Springer?

9 A Well, it -- you know, June -- June 14th wasn't possible
10 for the reasons that were stated there, in and of itself. We
11 got some permits for these major crossings after June 14th.
12 We did not have permission to conduct those drills for
13 whatever reason until after June 14th. We could not proceed
14 with the work. Had we been able to proceed with the work, we
15 would have. So that, in and of itself, means June 14th, just
16 on this value, wasn't achievable.

17 Q The middle of the paragraph, there's a sentence that
18 starts with the word "further." It says:

19 "Further, the project was delayed by three-plus
20 weeks due to the transverse indications welds on
21 Spreads 5 and 6."

22 Did I read that correctly?

23 A Yes.

24 Q What are you referring to here in your fourth paragraph
25 about "transverse indications"?

1 A There was -- on Spread 5, in particular, and which was
2 part of the biggest impact on 6 -- and I'm not a welding
3 expert. Okay? So -- by -- by any means. But the net result
4 was, is that there were quite a few wells that had to be cut
5 out due to some NDT findings what -- on what's called a
6 "transverse indication" that turned out to be unreliable or
7 not properly interpreted, but it was work that needed to be
8 done that set us behind, that otherwise would not have needed
9 to be done. So it was unnecessary -- unnecessary rework. It
10 wasn't deficient work on our part, it was unnecessary rework.

11 So that -- you know, that was a big hit. That's a
12 forty-two-inch pipeline, dozens of wells that needed to be
13 cut out, put the project back three weeks just for that.

14 Q And --

15 A And that's not on us.

16 Q And was that based on reports from Transco's NDE
17 subcontractor?

18 A That's my understanding, yes. I didn't read the
19 reports, but it was their report that -- it was the NDT
20 subcontractor report that identified these transverse
21 indicators that led to the rework and the cutouts and then
22 the re-welds that, ultimately, didn't need to be performed.

23 Q Let's take a look at the second-to-last paragraph on
24 this page, it starts with the word "Transcontinental's
25 arbitrary and wrongful withholding." Would you take a look

1 at that one? I have some followup questions for you.

2 (Pause in proceedings)

3 A Okay.

4 Q In this paragraph, you point out Appendix G, Clause
5 1.2.5. That's the provision we talked about earlier. What
6 are you -- what are you saying here?

7 A Well, as far as this -- you know, disputed invoices and
8 disputed amounts, you know, based on audit. So, you know, we
9 -- they have the right to audit. We -- we participated in
10 the audit fully, made available everything that we're
11 required to do. That happened for two, three months.

12 And withholdings based on audit findings aren't supposed
13 to happen until the disputed invoices are resolved, which
14 means the ability to sit down and look at each disputed
15 charge, respond to the disputed charge, try to resolve the
16 disputed charge, clear up any misunderstandings. You know,
17 that -- that was the requirement and that's what was not
18 happening at that point.

19 Rather, what was happening was, was just the withholding
20 of the money based on audit findings that we hadn't seen or
21 shared and had an opportunity to respond to or -- or to
22 resolve as -- in the dispute process. That's what -- that's
23 what that means.

24 Q And is that one pay period or thirty-day dispute process
25 what you're referencing as Appendix G, Clause 1.2.5 that we

1 discussed earlier today?

2 A Yes, it's -- and there's a time limit to that. That
3 needs to happen in a timely manner, so that that can get
4 resolved in a timely manner.

5 (Pause in proceedings)

6 Q Mr. Hawkins, did this withholding put Welded in a tight
7 spot?

8 A Yes. In an acute sense, yes. We needed the cash to
9 make payroll. That's the most important thing is to make
10 payroll every week.

11 MR. GUERKE: Your Honor, I move Exhibit JX-100 into
12 evidence.

13 MR. BURWOOD: No objection.

14 THE COURT: It's admitted.

15 (JX-100 received in evidence)

16 BY MR. GUERKE:

17 Q Mr. Hawkins, let's take a look at JX -- I'm sorry.

18 Let's take a look at PX-400. Please identify generally
19 what PX-400 is.

20 (Pause in proceedings)

21 A You want me to identify it? I'm sorry.

22 Q Yeah.

23 A Yes. It's Mr. Springer's response to my letter.

24 Q Okay. Is it dated October 9th?

25 A October 9th, yes. Dated October 9th. Sent from the

1 Post Oak office address in Houston.

2 Q And is this Mr. Springer respond -- trying to respond in
3 kind to your letter?

4 A Yes.

5 MR. GUERKE: Can -- let's flip to the second page,
6 please, the -- I think it's the third paragraph, second page.

7 BY MR. GUERKE:

8 Q The first sentence says:

9 "Please understand that Transco's audit is not yet
10 completed and that by identifying specific
11 categories of improper charges to date, Transco
12 does not waive any right with respect to any
13 additional charges identified as the audit
14 continues."

15 Was it your understanding at this point that the audit
16 was not complete?

17 A Yes. According to this, it's not complete.

18 Q And what was your takeaway from what's being expressed
19 here by Mr. Springer in this first sentence?

20 A Well, it's -- I mean, it seemed un -- a little bit one-
21 sided. It's the same -- same narrative. We have this audit
22 going on, we're finding things, we're not going to show you
23 what those things are, we're going to withhold the money in
24 these broad categories, we're not going to follow the dispute
25 process and the disputed invoices process. So it's just --

1 it's more of the same. You know? And more money is going to
2 come, we're holding money, and the audit is still coming, and
3 we'll probably find some more, that's what it is.

4 But we don't even know what it is. Broad categories is
5 not -- not the details of the audit. I doubt their audit
6 report was a broad category of a number.

7 MR. GUERKE: I would like you to roll down a little
8 bit on that second page and let's focus on the last two
9 paragraphs, please.

10 BY MR. GUERKE:

11 Q Mr. Hawkins, would you take a look at that middle
12 paragraph on the screen, starting with the word "attached"?

13 My question is: How did Welded learn that Transco had
14 filed a lawsuit against it in Oklahoma?

15 A This letter.

16 Q What's the date of the letter?

17 A 9 October.

18 Q What was your reaction when you learned, 9 October, that
19 there wasn't only a withholding, but there's also a lawsuit
20 that was filed in Oklahoma?

21 A Oh, no, this was highly -- highly concerned. You know,
22 it's -- didn't see that coming. We had been -- there had
23 been no dispute, no alternative dispute resolution, we
24 haven't been seeing any audit results. You know, none of --
25 none of that -- none of that dispute process is ongoing at

1 all. The next thing we get is a -- you know, another
2 withhold on the pay and -- and a lawsuit. It was
3 devastating.

4 MR. GUERKE: Your Honor, I'd move PX-400 into
5 evidence.

6 MR. BURWOOD: No objection.

7 THE COURT: It's admitted.

8 (PX-400 received in evidence)

9 BY MR. GUERKE:

10 Q Mr. Hawkins, after the October 4th, 2018 withholding and
11 the exchange of these October letters, was there a meeting
12 between Welded and Transco at the executive -- at the
13 executive level in October?

14 A Yes.

15 Q Where did that meeting take place?

16 A In Houston, in the Transco office building, I believe.

17 MR. GUERKE: Could you open PX-405, please, or take
18 a look at PX-405?

19 BY MR. GUERKE:

20 Q The first question, Mr. Hawkins, is: Could you identify
21 what is PX-405, please?

22 A PX-405 is an email from myself on October 11th, 2018, to
23 Evan Kirchen and Chris Springer, CC'ing Ron Gratton, who was
24 a board member, and Rich Wall of Bechtel.

25 Q This October 11th, 2018 invoice, did the meeting you

1 just described in Houston take place before this email?

2 A The meeting took place before this email, same day.

3 Q Could you please describe that meeting?

4 A Yeah. We reached out and wanted to meet, the
5 shareholders did. I mean, obviously, we had received the
6 letter, it was concerning. I had forwarded that letter along
7 to the board and other executives that -- that, A, the short-
8 pay happened, another short-pay happened that we were short
9 of funds for payroll; that, also, they filed a lawsuit in
10 Tulsa, in Oklahoma, against us. And I thought it was
11 important to escalate this thing and elevate this thing
12 immediately to the owner and shareholders' level and meet
13 with Williams senior execs who were in Houston. It was
14 critical to meet to discuss the issues, see if there was a
15 way to work through, resolve any conflicts, just get it --
16 get it started.

17 Q Based on this email date and the first sentence of the -
18 - the email, is it your recollection that the meeting took
19 place October 11th?

20 A This meeting was October 11th, the same day as -- the
21 same day as the email. We sent this shortly after the
22 meeting.

23 Q Who attended the October 11th meeting on the
24 Transco/Williams side?

25 A Evan Kirchen for sure, Chris. And I don't recall others

1 who were in there, but Evan -- Evan Kirchen was the principal
2 executive that we were addressing.

3 Q Was John Poarch, who you testified about earlier this
4 morning, was he at the meeting?

5 A I don't -- I don't recall, but I don't think so. I
6 think it was Evan who was the -- who was the principal
7 executive that we were meeting with.

8 Q And is that why you're addressing this email to Mr.
9 Kirchen?

10 A Yes, that's who we met with and it was addressed to him.

11 Q How about Michael Dunn? We heard about him earlier
12 today. Was Michael Dunn at this meeting?

13 A No.

14 Q Who on -- on the Welded side, who was there with you?

15 A It was myself, Rich Wall, Ron Gratton, and Marcus Hood
16 may have attended, but it was a small group.

17 Q Turning back to your email, second paragraph, second
18 sentence states:

19 "Given Williams' position that it will continue to
20 look for ways to claw back costs incurred by Welded
21 on the ASR, leaving this as an open-ended
22 liability, our shareholders are unwilling to put
23 additional funds into the company to allow it to
24 operate in the normal course."

25 Did I read that correctly?

1 A Yes.

2 Q Did someone on the Transco and Williams side tell you
3 specifically that Transco was going to continue to claw back
4 money?

5 A They were going to continue, yes, continue with the
6 audit and -- and claw back money as a result of audit
7 findings that was continuing and ongoing, plus it said that
8 in the letters, as well.

9 Q What is it that you told Mr. Kirchen and Mr. Springer
10 about Welded's payroll situation?

11 A Well, I was just, you know, up front. Like I said, you
12 need to have enough phones to commit a payroll to put people
13 on the right-of-way, if you don't have the funds to do it,
14 you can't legally put people on the right-of-way to go to
15 work. It wasn't -- it was a threat to stop work, it was just
16 a statement of fact that we needed the -- we needed the money
17 to make payroll in order to -- to mobilize the people out to
18 do the work. That's it.

19 Q Did you also request an immediate payment in this -- in
20 the meeting and followed up in this email?

21 A Yes.

22 Q And what are the specifics on that request?

23 A Well, we -- first the 24 million that was withheld for
24 the same reason, that we didn't understand -- that we
25 understood the way it was represented in the letter, but we

1 still didn't know what the disputes were, we still hadn't
2 followed the dispute process, so we wanted the 24 million.

3 And we also had a true-up, which was 17 million of costs
4 that had been incurred and agreed that were incurred that was
5 in a true-up payment that was due the 5th. And we needed
6 both of those payments in order to -- to continue.

7 Q In that meeting, did Transco explain why it waited until
8 after mechanical completion and after FERC approval to make
9 these withholdings?

10 A No.

11 Q Did Transco make that payment that you requested in this
12 email?

13 A No.

14 MR. GUERKE: Your Honor, I move PX-405 into
15 evidence.

16 MR. BURWOOD: No objection.

17 THE COURT: Admitted.

18 (PX-405 received in evidence)

19 BY MR. GUERKE:

20 Q Mr. Hawkins, I'd like to turn your attention to PX-406.

21 Read together with PX-405, do you understand that this
22 email, this PX-406, is the next email in the chain that
23 started with the one we just went over?

24 A Yes.

25 Q What's the date and who's the sender and the recipients?

1 A The date is the 12th of October. I am the sender and I
2 sent it to Evan Kirchen and CC'ed Chris Springer, Ron
3 Gratton, and Rich Wall.

4 Q And what are you telling Mr. Kirchen and Mr. Springer
5 int his email?

6 A Just asking for followup on our request for the -- for
7 the payment that I made in the meeting and in the email below
8 on the 11th.

9 Q Did Transco pay?

10 A No.

11 Q Did Transco commit to making any payments that you
12 requested in that October 11th email and in your meetings?

13 A No, Evan did not.

14 MR. GUERKE: Your Honor, I move PX-406 into
15 evidence.

16 MR. BURWOOD: No objection.

17 THE COURT: It's admitted.

18 (PX-406 received in evidence)

19 BY MR. GUERKE:

20 Q Mr. Hawkins, when was Welded's bankruptcy filed?

21 A October 22nd, ten days after this.

22 Q Did you inform Transco of the filing that was about to
23 occur just before it was -- you filed bankruptcy?

24 A Yes, we called the day prior.

25 Q Did Welded have a bond for this project?

1 A Yes.

2 Q Who was the surety, if you remember?

3 A Chubb.

4 Q Did the surety get involved after the withholding, but
5 before the bankruptcy was filed?

6 A Yes. Chubb participated in that phone call. We
7 notified Chubb about the -- the situation and the pending
8 bankruptcy, and then we also involved them in the phone call
9 with Evan, with Williams.

10 Q And is the phone call you're referring to the phone call
11 where you informed Transco of the bankruptcy?

12 A Yes, the day prior.

13 Q And what -- pre-bankruptcy, what was the surety's
14 involvement at that point?

15 A Just -- you know, just the surety. You know, we kept
16 them informed of the status, that was about it. They -- they
17 weren't paying any bonds or they weren't involved in any of
18 the -- there were no claims against them at that point.

19 Q Did the surety stay involved after the bankruptcy was
20 filed?

21 A Yes.

22 Q What did the surety do after the bankruptcy was filed?

23 A Well, the surety took over on -- on the ASR side, they
24 took over all of the claims.

25 Q What does that mean, taking "over all of the claims"?

1 A Well, as far as the bond. They became the agent to the
2 claims, the proofs of claim that were filed for all the
3 suppliers and vendors on that job that filed claims with
4 Chubb as the surety. They notified all of them and then
5 Chubb -- Chubb satisfied those claims.

6 Q Were there any unpaid contractors that you're aware of?

7 A Not that I'm aware of, no.

8 Q Were there any paid --

9 A Through the Chubb -- through the -- through the survey
10 process you're referring to, yes

11 Q Yes.

12 A Correct.

13 Q Yeah, let me clarify that.

14 After the surety process, were there any unpaid
15 contractors?

16 A As far as I know, no. All were satisfied.

17 Q After the surety stepped in and that process happened,
18 were there any unpaid subcontractors or suppliers?

19 A Not that I'm aware of.

20 Q Were -- as far as you're -- as far as you know, were all
21 claims paid?

22 A Yes.

23 Q Were any liens filed against the property?

24 A No.

25 Q Did Welded -- did you consider that Welded substantially

1 completed its work by that October 4th, 2018 date?

2 A Yes.

3 Q Can you --

4 A We --

5 Q -- explain please?

6 A Yeah, because they -- we were able to get Williams in
7 service, so they got the permit, which means the project was
8 not only mechanically complete, but that they -- a
9 significant portion of the right-of-way had been restored
10 with, like I said, grass growing and re-vegetation to the --
11 to the degree that it was allowed to get their leave to open
12 the permit and put the -- put the system in commercial
13 operation. So -- so at least, as far as that's concerned,
14 yeah, we were proud of the fact that we were able to do that
15 for our customer. They went into commercial operation on the
16 4th of October. That's a big deal.

17 Q Did Welded continue to work on the project after the
18 bankruptcy?

19 A Yes.

20 Q Did Welded reach agreements with Transco to complete the
21 work after the bankruptcy --

22 A Yes.

23 Q -- to completion?

24 A The completion agreements, yes.

25 Q Could you describe that process generally?

1 A Yeah. It was -- it involved some de-scoping of some
2 work for restoration that would take place the following
3 spring that couldn't be done in the wintertime that was
4 there, so that was de-scoped.

5 And then we worked with the -- to finish the restoration
6 that we could to get out of the yards, to de-mobilize all the
7 equipment, de-mobilize the people that were -- that were out
8 there, and to be paid, you know, a payment in advance,
9 agreement for that, as well. So they were paying costs as we
10 incurred them, basically, a cost-reimbursable, cost-neutral
11 deal. And we finished the work that was the scope of the
12 completion agreement. It was around the end of November of
13 that year.

14 Q Why did Welded complete the final like cleanup and
15 restoration work at that time, end of October, early
16 November?

17 A You're -- you're getting into the winter season and it
18 won't grow. So most of the jobs in that region during that
19 time; in fact, probably all of them, have to winterize --
20 winterize the right-of-way, put in all the erosion-control
21 measures, winter side, ride hay bales, things like that.

22 And then, when the spring comes around and the growing
23 season comes in, then you do the final restoration the
24 following spring. It couldn't be done that winter.

25 Q Did Welded complete its work under the commitment

1 letters?

2 A Yes.

3 Q At that point, was Welded's work complete?

4 A Yes.

5 (Pause in proceedings)

6 MR. GUERKE: Could you pull up PX-637, please?

7 BY MR. GUERKE:

8 Q What is 637, Mr. Hawkins?

9 A It's a letter from Watt Tieder, attorney to -- of June
10 8th, 2020, to Mr. Neiburg, yourself, about amended scheduling
11 order, document production, privilege logs, and OGCS
12 subpoena.

13 MR. GUERKE: Could you turn to the next page,
14 please? And could you highlight the part about subpoena to
15 OGCS?

16 BY MR. GUERKE:

17 Q Could you take a look at that paragraph? I have a
18 question for you, Mr. Hawkins.

19 A Okay.

20 Q Were you aware that, on June 29th, 2018, the oversight
21 and direction of OGCS was taken over by defendants' in-house
22 counsel in anticipation of claims and litigation?

23 A No.

24 MR. GUERKE: Could you pull up and take a look at
25 PX-277?

1 BY MR. GUERKE:

2 Q Could you identify the email that is marked PX-277, who
3 the sender was and who the recipient was?

4 A The date is June 29th, 20018, from Phil Burke of OGCS
5 Global to Jeffrey Goebel, who I understand is the attorney,
6 counsel for Williams, CC Chris Springer and David Sztroin,
7 Adrian Green.

8 Q Take a look at that first paragraph. I have a question
9 for your.

10 MR. BURWOOD: Your Honor, I'm just going to log our
11 objection to this exhibit. Foundation and hearsay.

12 THE COURT: What are you using this for?

13 MR. GUERKE: Timing and sequence and knowledge and
14 intent.

15 THE COURT: So that you just want the witness to
16 have this as a reference point, is that what you're using it
17 for?

18 MR. GUERKE: Yes, Your Honor. I'm going to ask him
19 about some of this content.

20 (Pause in proceedings)

21 THE COURT: Well, what's the -- why can he be
22 questioned with respect to this content?

23 MR. GUERKE: Because the questions are about his
24 awareness of the audit process that Transco and Welded was
25 involved in.

1 MR. BURWOOD: Your Honor, he's previously testified
2 that, as of this date, he was not aware that there was an
3 audit ongoing.

4 THE COURT: Right.

5 (Participants confer)

6 MR. GUERKE: Your Honor, my question is about audit
7 findings, number one, which is attached.

8 THE COURT: Well, let me hear the question and then
9 I'll decide.

10 MR. GUERKE: Could you turn to the next page,
11 please?

12 BY MR. GUERKE:

13 Q Were you aware, Mr. Hawkins, that, on June 29th, 2018,
14 OGCS was already producing audit findings to Transco?

15 A No.

16 THE COURT: I'm going to permit that question.
17 Go ahead.

18 MR. GUERKE: Did you say permit, Your Honor?

19 THE COURT: Yeah, I'll permit that --

20 MR. GUERKE: Okay.

21 THE COURT: -- question. I don't know that he
22 needs to see this document for that, but sure.

23 MR. GUERKE: Your Honor, I'll move into evidence
24 PX-637 and PX-277.

25 THE COURT: Okay. PX -- let's take them one at a

1 time. PX-637.

2 MR. BURWOOD: That's this exhibit, Your Honor, and
3 we do object based on the fact that it shouldn't be evidence
4 in this trial, to the extent that he asked him one question
5 about was he aware of an audit finding. The content of this
6 exhibit, whether the email or the audit finding itself,
7 doesn't go to his testimony at all.

8 THE COURT: Why should it be admitted?

9 MR. GUERKE: PX-637, Your Honor, is the other --
10 it's the letters, the June 8th, 2020 letter, where the --

11 THE COURT: I'm on 277.

12 MR. GUERKE: Okay. I'll take 277.

13 So I moved into evidence -- I requested be moved
14 into evidence PX-637 and also PX-277.

15 PX-277 is the email and the attached audit
16 findings, move it into evidence based on the reasons I gave
17 for the eliciting of Mr. Hawkins' testimony.

18 THE COURT: No, I'm going to -- I'm going to
19 sustain that objection.

20 MR. GUERKE: Same application, Your Honor, for PX-
21 637, which is the prior letter dated October -- I'm sorry --
22 June 8th, 2020.

23 MR. BURWOOD: Your Honor, just objection to the
24 extent that this witness has no knowledge of this
25 correspondence, Your Honor, no -- improper foundation. And

1 we also object just to the relevance of it, generally, to
2 this testimony.

3 MR. GUERKE: Well, it's a statement by an agent and
4 representative of Transco identifying the date that OGCS's
5 audit was taken over by lawyers.

6 MR. BURWOOD: Your Honor, the objection wasn't as
7 to hearsay. It really was as to whether or not this witness
8 has any knowledge sufficient to testify about this exhibit,
9 so that it can be admitted at this time.

10 THE COURT: It's a foundation -- are you suggesting
11 this isn't a true and correct copy of this letter?

12 MR. BURWOOD: Your Honor, in terms of the relevance
13 of this exhibit, 637, to the testimony that Mr. Hawkins
14 offered, we just don't see that there's a connection
15 (indiscernible) sufficient to admit it at this time.

16 THE COURT: Well, I'm going to overrule it on
17 relevance. And based on my review of this, I find that it's
18 authentic, so I'm going to admit.

19 MR. GUERKE: Thank you, Your Honor.

20 MR. BURWOOD: Thank you, Your Honor.

21 (PX-637 received in evidence)

22 (Pause in proceedings)

23 BY MR. GUERKE:

24 Q Mr. Hawkins, were you involved in the bankruptcy
25 process?

1 A Yes.

2 Q When did you leave the company?

3 A April of 2020.

4 Q So it's been a few years since all this happened.

5 What's your view now on how this project and how the
6 relationship with Transco played out?

7 A Well, you know, I mean, it's not -- it's not -- it's
8 professionally, you know, disappointing. It's not the way
9 that you want to have -- one wants to be in this business and
10 have the relationship with your -- with your customers and
11 your clients.

12 You know, a company lost a company as a result of -- of
13 the bankruptcy. You know, I felt like we had a good future
14 in the business. We took on a lot of work. We helped a lot
15 of customers get in service that year, not just Williams, but
16 certainly Williams got in service. We want our customers to
17 be successful. We don't want to fight with our customers.

18 Again, as a team, you know, overcoming the adversity
19 that we overcame throughout that year, we were proud. We
20 were proud that we were able to help Williams achieve its
21 goals and bring that gas to market. We felt a lot of
22 strategic weight to it, gravitas, providing energy, providing
23 infrastructure for our nation to certain regions and helping
24 Williams achieve their goals. We were -- we were proud of
25 that.

1 Nobody was -- nobody was satisfied with the cost
2 performance. But you know, we were transparent about the
3 cost performance. We -- we provided the forecasts regularly.
4 We didn't hide it. As soon as we knew a cost was going up,
5 we communicated the cost was going up. So we felt we were
6 zippered with our customer in that way.

7 But just commercially and from a contract perspective
8 and pure customer relations perspective, which is also a
9 primary responsibility, accountability of mine, the customer
10 relationship, it, you know, did not go well at all. And we
11 were continuing to diverge. The closer we got to mechanical
12 completion, to completing the work, we were actually
13 diverging rapidly, you know, commercially, until we got to
14 the end game.

15 You know, the end game was the final payment withhold,
16 the end game was the lawsuit, and both of those things
17 combined. Our shareholders essentially said, look, this is
18 undefined, you know, we can't -- we're not in a position to
19 defend this, we're done. So that's where it ended -- that's
20 where it ended up.

21 So, again, operationally, proud that we build it, proud
22 that we got it in, proud of our contribution. Not at all
23 satisfied professional in -- on any level of the ultimate
24 outcome, both as to our relationship with Williams and also -
25 - also losing Welded as a -- as a viable concern.

1 MR. GUERKE: Thank you, Your Honor. Those are all
2 my questions.

3 THE COURT: Thank you.

4 MR. GUERKE: Thank you, Mr. Hawkins.

5 MR. BURWOOD: Your Honor, we also have a witness
6 binder for Mr. Hawkins' cross-examination. May I hand this
7 up?

8 THE COURT: You may.

9 MR. BURWOOD: May I approach, Your Honor?

10 THE COURT: You may. Thank you.

11 (Participants confer)

12 MR. BURWOOD: Your Honor (indiscernible) five-
13 minute break.

14 THE WITNESS: Yeah, just to use the restroom.

15 THE COURT: Yes.

16 THE WITNESS: Thank you.

17 THE COURT: We're in recess.

18 (Recess taken at 3:06 p.m.)

19 (Proceedings resume at 3:11 p.m.)

20 (Call to order of the Court)

21 (Witness resumes stand)

22 THE COURT: Please be seated.

23 MR. BURWOOD: Thank you, Your Honor. May it please
24 the Court.

25 CROSS-EXAMINATION

1 BY MR. BURWOOD:

2 Q Mr. Hawkins, my name is Jonathan Burwood. I'm one of
3 the attorneys for Transco. It's nice to meet you.

4 A Nice to meet you.

5 Q Mr. Hawkins, during your direct examination with
6 Attorney Guerke, do you recall testifying regarding what was
7 described as some work done during the pre-NTP time?

8 A Yes.

9 Q Okay. And I think your testimony was that that work
10 consisted of planning services, correct?

11 A Correct.

12 Q Some controls?

13 A Yes, planning services, some -- what we call
14 "deliverables," you know, project plans, project control
15 procedures, plan safety, environmental, some other -- other
16 pre-project deliverables.

17 Q And Mr. Hawkins, was that work done pursuant to any
18 written agreement other than the contract that's the subject
19 matter of this case?

20 A Other agreement. I don't -- I'm not -- I don't -- I
21 don't know if it was or not. I don't know what the form of
22 contract was we were performing that under.

23 Q Would you please -- and I've put a witness notebook in
24 front of you.

25 A Uh-huh.

1 Q Would you please turn to the first tab? It's Exhibit D-
2 25.

3 A Uh-huh.

4 MR. BURWOOD: And for the benefit of the record, D-
5 25 is a request for services, and it has an effective date of
6 September 15, 2016.

7 BY MR. BURWOOD:

8 Q Do you see that --

9 A September 15.

10 Q -- Mr. Hawkins?

11 A Yes, I do.

12 Q Okay. And do you recognize that date being subsequent
13 to the contract being executed, the contract itself?

14 A Yes. This -- I'm sorry. This date is 15 September,
15 2016. And I think the contract date was August of 2016. So
16 "subsequent" meaning after, yes.

17 Q Okay. And it's approximately a year before the NTP was
18 issued, correct?

19 A Correct.

20 Q Okay. And just to further orient you. On Page 2 at the
21 bottom-left, do you see your signature?

22 A Yes.

23 Q Okay. Do you recall this document?

24 A Seeing it now, yes --

25 Q Okay.

1 A -- I do. Thank you.

2 Q And this is an agreement between Transcontinental and
3 Welded, correct?

4 A Yes.

5 Q Okay. And the scope of work for this is generally what
6 you described earlier, it's pre-NTP planning, safety, those
7 activities you talked about?

8 A Yes.

9 Q Okay. And actually, if you look at Attachment 1, which
10 is the third page, it talks about the scope of work there.
11 Mr. Hawkins, let me know when you see that.

12 A Thanks for making it bigger.

13 Q And I'll direct your attention, actually, to about a
14 third of the way down the page. It talks about the scope of
15 work being:

16 "Conduct pre-mobilization work for the Atlantic
17 Sunrise pipeline project, including construction
18 planning, community outreach, design, and material
19 procurement assistance."

20 Right?

21 A Yes.

22 Q Okay. And were there -- do you recall if there were
23 specific deliverables that were associated with this work
24 from Welded?

25 A My under -- I recall that there were. There would have

1 been documents that we produced, project controls, plans, and
2 other planning documents, yes.

3 Q Was the project execution plan part of that?

4 A It -- it would have been. I don't know for sure that we
5 provided that or that it was, but that would be a deliverable
6 that we would have been doing.

7 Q Okay.

8 A Yeah.

9 Q And --

10 A I can't tell you for sure that we gave it to them and --
11 and produced it.

12 Q Okay. And during this time period -- so, just for your
13 benefit, Mr. Hawkins, we're going to refer to this as the
14 "RFS," the "request for service." Is that okay with you?

15 A Yes.

16 Q Okay.

17 A Uh-huh.

18 Q Great.

19 During the time that you were performing, Welded was
20 performing work for the RFS, was it also the case that cost
21 estimates were being prepared by Welded?

22 A I don't know when we did the cost estimate for this
23 amount. I know that -- I don't know if it was during this
24 period or if it was after we commenced and switched. But it
25 -- I wouldn't be surprised if it were.

1 Q Okay. And also, scheduling was being done, scheduling
2 for the project at large?

3 A Yes.

4 Q Okay. And you would consider cost and schedule to be
5 sort of two project critical issues?

6 A Oh, yeah, definitely.

7 Q Okay. Focusing on Exhibit 25 again.

8 There is -- Number 2 in Attachment 1 talks about
9 compensation. Do you see that?

10 A 2, Attachment 1. I see attachment -- yes. Yes.

11 Q Okay.

12 A Number 2, yes.

13 Q And it's not stated here. But do you have any
14 recollection, Mr. Hawkins, was Welded in -- compensated for
15 this work independent from the actual contract work itself?

16 A I don't remember re -- I assume it was with this RFS
17 that you're presenting, but I don't know that for a fact, how
18 they were compensated for it.

19 Q Okay. And if I offer to you, Mr. Hawkins, that Transco
20 paid approximately \$6.3 million for the RFS work to Welded,
21 do you have reason to disagree with that?

22 A I don't. I don't, no.

23 Q Okay.

24 A I don't know the number, but I don't have a reason to
25 disagree with it.

1 Q Okay. And I apologize for jumping around. But if you'd
2 go back to the first page of the RFS, there's a Section 4
3 there for invoices and notices. Do you see that?

4 A Section 4, come -- here -- yes.

5 Q Okay. And where was Welded required to invoice Transco
6 for this RFS work?

7 A I guess you're talking about the -- the mailing address?

8 Q Yes.

9 A Yeah, the --

10 Q Just what city/state?

11 A Tulsa, Oklahoma.

12 Q Okay. And if you turn to Page 2, the second page, and
13 you look at Numeral 6, "applicable law and jurisdiction." Do
14 you see that?

15 (Pause in proceedings)

16 A Yes.

17 Q Okay. And Mr. Hawkins, would you agree that Numeral 6
18 provides that the RFS and the agreement shall be governed by
19 and construed in accordance with the laws of the State of
20 Oklahoma?

21 A For this request for service, yes.

22 Q Okay. Sitting here today, do you have an understanding?
23 Was a similar provision also included in -- ultimately in the
24 contract?

25 A I -- we'd have to take a look at it and confirm if it

1 was or wasn't.

2 Q Okay. We'll get to that later.

3 A Okay.

4 Q Thank you.

5 A Uh-huh.

6 Q Mr. Hawkins, how do -- you were involved at the time
7 that the RFS work was being performed, correct? You had just
8 joined Welded. Is that right?

9 A Yes. September of 2016, I had just joined.

10 Q And you took over as President and CEO for Mr. Wall,
11 correct?

12 A Correct.

13 Q Okay. And having just joined the company, were you in -
14 - directly involved in the RFS work that was the subject of
15 this agreement?

16 A No.

17 Q Okay. Who at Welded was sort of primarily responsible
18 for that work?

19 A John McNabb. I don't think we brought Marcus Hood in
20 yet. But John McNabb was driving -- or managing that RFS
21 work out of the Perrysburg office for the deliverables when
22 it first started --

23 Q Okay.

24 A -- around the February, March time frame.

25 Q Mr. McNabb was a welded employee?

1 A Mr. McNabb was a PTAG consultant.

2 Q Okay. He was hired as an outside contractor from PTAG,
3 Project --

4 A Correct.

5 Q -- Talent --

6 A Yes.

7 Q -- Acquisition Group?

8 A Yes.

9 Q Okay. And so let me ask it this way:

10 At the time that the RFS work started in the Fall of
11 '16, were there Welded employees performing those functions?

12 A Yeah. Some of the functions, yes. We had some Welded
13 superintendents that were -- in the Perrysburg office that
14 were working on construction planning.

15 Q And in addition to the Welded superintendents, there
16 were also contracted employees that were performing this
17 work, right?

18 A Yeah, a combination -- a combination of the two.

19 Q Okay. And some of those employees came from PTAG,
20 correct?

21 A Correct.

22 Q Okay. And some of those employees also came from
23 Bechtel. Is that the case?

24 A I don't know if we had Bechtel in on the RFS stage.
25 You're -- you're talking the March time frame when we signed

1 this. I don't know when -- when Bechtel came in. But at
2 some point, yes, we had both Bechtel, PTAG -- not both -- but
3 Bechtel, PTAG, and Welded employees that were working on the
4 -- on the pre-planning work.

5 Q Were the majority of employees working on the pre-
6 planning work employed by Welded?

7 A I don't know. I'd have to see the roster.

8 Q Okay.

9 A I don't know.

10 Q Okay. Mr. Hawkins, was it the case that Welded needed
11 to go to PTAG and potentially Bechtel for employees to work
12 on the RFS work driven by the fact that Welded didn't have
13 sufficient employees to handle that work that were available?

14 A Well, think the aggregate, all of the work that we had,
15 we needed to get other talent in to -- to help manage it,
16 yes. That's a -- that's a fair statement.

17 Q It was a -- it was a function of the resources Welded
18 had available and the work that they had going on --

19 A The backlog --

20 Q -- at that time.

21 A -- that we had, in addition to -- remember, we were
22 doing -- full-on construction during this period on the other
23 jobs had started in 2017, when we were doing the RFS work for
24 -- for Williams on this. So the answer is yes. We needed to
25 supplement resources.

1 Q And the other jobs being what?

2 A We had OPP, the -- the ATP work. OPP was the primary
3 one, Ohio Pipeline project.

4 Q Where was the OPP project?

5 A In Ohio.

6 Q Okay.

7 A It went from -- it went over to the Pennsylvania border.
8 I don't remember the -- the beginning date.

9 Q That was a Sunoco project?

10 A Yes.

11 Q Okay. And --

12 A A twenty-inch pipeline, Mariner East.

13 Q And where was the ATP project located?

14 A ATP ran from -- from the beginning of the OPP one all
15 the way over to Philadelphia.

16 Q Okay.

17 A The Mariner project.

18 MR. BURWOOD: Your Honor, I'd move Exhibit D-25
19 into evidence.

20 MR. GUERKE: No objection, Your Honor.

21 THE COURT: Thank you. It's admitted.

22 (DX-25 received in evidence)

23 BY MR. BURWOOD:

24 Q Mr. Hawkins, if I could direct your attention to the
25 next exhibit in your witness binder.

1 A Uh-huh.

2 Q It's D-39. And just to orient to you, it says at the
3 top "Agreement for Consulting Services."

4 A Uh-huh.

5 Q Can you let me know when you see that?

6 A I see it on the screen and -- and in here -- and in the
7 --

8 Q Okay.

9 A -- and in the binder.

10 Q And the date of this agreement is reflected in the first
11 paragraph, it's December 14 of 2016. Is that correct?

12 A Yes, correct.

13 Q And so this is approximately three months after the
14 execution of the RFS between Welded and Transco. Is that
15 right?

16 A Yes.

17 Q Okay. And it's about nine months before the notice to
18 proceed was ultimately issued, correct?

19 A Yes.

20 Q Okay. And on Page 4 of Exhibit 39, do you see the
21 signature block bearing your name?

22 A Yes.

23 Q Okay. It appears that someone signed it on your behalf,
24 correct?

25 A Yes.

1 Q Okay. But sitting here today, do you recall this
2 agreement for consulting services?

3 A Yes, I recall this agreement. And Matt Lutz signed it,
4 he was the CFO of the company at the time.

5 Q Okay. And the agreement is between Welded on the one
6 hand and PTAG, Project Talent Acquisition Group, on the
7 other, correct?

8 A yes.

9 Q Okay. And we're not going to go through the whole thing
10 sort of line by line here.

11 But I'll just note for you and for the record that
12 Paragraph 1 talks about the services that were going to be
13 offered. Do you see that?

14 A Yes.

15 Q Okay. And there's also talk in the exhibit about the
16 terms in the agreement about compensation for -- from Welded
17 to PTAG, right?

18 A Paragraph 2, yes.

19 Q Okay. On the third page, Mr. Hawkins, Number 9, it says
20 "consultant staff commitment," and that says the consultant
21 is named John McNabb to perform the obligations set forth
22 under this agreement. Do you see that?

23 A Yes.

24 Q Okay. And you testified earlier just now that Mr.
25 McNabb was a PTAG employee, correct?

1 A Yes.

2 Q Okay. Had Mr. McNabb worked with Welded prior to this
3 project?

4 A No.

5 Q Okay. So, on its terms, this particular agreement
6 between Welded and PTAG, it strictly governs the contracting
7 of Mr. McNabb. Is that right?

8 A I don't know if this is limited to Mr. McNabb or not.

9 Q Do you recall if there were separate agreements between
10 Welded and PTAG with respect to each contracted employee?

11 A I don't know.

12 Q Okay. I've seen the term used in Welded documents that
13 these individuals were called "PTAG associates." Does that
14 sound right to you?

15 A I've not seen that term.

16 Q Okay. Mr. McNabb ultimately became the project controls
17 manager for Welded with respect to the ASR job, right?

18 A Yes.

19 Q Okay. And although you testified Mr. McNabb had not
20 worked with Welded before, to your knowledge, do you know if
21 Mr. McNabb had worked with the ultimate contract structure
22 that the parties entered into here? So the cost-plus-a-
23 percentage-of-cost with a fixed fee.

24 A Yes.

25 Q You do know he had done that before?

1 A Yes, because he had done it with -- with me. He was --
2 TransCanada, and our contract was cost-plus, and he was the
3 business manager for TransCanada when I was the contractor
4 for --

5 Q Okay.

6 A -- TransCanada.

7 Q So I want to -- I want to be really specific, right?

8 A Okay.

9 Q So I understand that there is a contract structure that
10 is cost-plus, right? But this particular contract structure
11 is cost-plus, providing for a percentage of cost relative to
12 the labor, which is the equipment fee, right?

13 A So -- yeah, so --

14 Q Let me ask it this way:

15 Had you personally had experience up to this point with
16 a contract structure that had this equipment fee multiplier
17 component?

18 A No. No, I have not.

19 Q Okay.

20 A I had not. This -- so that entire contract structure
21 with a fixed-fee multiplier, no.

22 Q Okay. And --

23 A I'm sorry. With a -- the equipment multiplier. No.

24 Q And the same question:

25 Though you and Mr. McNabb had worked on a cost-plus

1 contract, do you know if Mr. McNabb had any experience with
2 this type of contract with --

3 A I don't --

4 Q -- an equipment --

5 A I don't know. To the specifics that you just outlined
6 for myself, I do not know if he did or not.

7 Q Okay. Mr. Hawkins, do you know if anyone at Welded, in
8 the Fall of 2016, had experience with the contract structure
9 that provided for this equipment fee multiplier?

10 A In our company? I don't believe so. Most of our work
11 had been lump-sum work.

12 (Pause in proceedings)

13 Q Mr. Hawkins, the fifth page of Exhibit 39, Item B, says
14 "period of performance." And it calls for services
15 commencing on January 9 of 2017 and continuing for one year.
16 Do you see that?

17 A Yes.

18 Q Okay. So is it correct that , given the timing of this
19 agreement, this agreement between PTAG and Welded, that
20 Welded had contemplated that PTAG employees would be involved
21 with both the pre-NTP planning work, the RFS work --

22 A Uh-huh.

23 Q And also the contract at large?

24 A Yes.

25 Q And so, at this point, Welded had contemplated that PTAG

1 employees would play a role in project execution, correct?

2 A Yes.

3 Q And again, the reason that the PTAG employees were
4 contemplated to being involved in project execution was that
5 Welded didn't have sufficient available resources to fill
6 those roles, correct?

7 A And PTAG had highly competent pipeline people from the
8 industry available, so that was the reason we went to PTAG.
9 It was not necessarily a gaffe for us, but they had good --
10 they had good people that we could put on the job that we
11 needed.

12 Q Highly competent and highly compensated, correct?

13 A It's fair.

14 Q Yes?

15 A Yeah.

16 Q Okay.

17 A Yes, that's a fair comment. Yeah.

18 Q So, on compensation, that's actually (c) on Page 5. Do
19 you see where it says "compensation"?

20 A (No verbal response)

21 Q And at least as to this agreement that, on its face,
22 deals with Mr. McNabb, it talks about the sum of \$1,300 for
23 each day worked. Do you see that?

24 A Yes.

25 Q Okay. Mr. Hawkins, do you know if that's comparable to

1 what Welded was paying its own employees in similar roles on
2 other projects at this time?

3 A Similar employees. I mean, there's a lot of different
4 cost categories. I don't have anybody that I can compare it
5 to. If you -- if you have a comparison, I'm glad to make it,
6 but ...

7 Q Do you have any sense as to \$1,300 a day, what that
8 translates to yearly? If I offer you it's -- it could be in
9 the range of \$300,000 does that sound right?

10 A Yeah, if it's 200 work days a year, which is a standard
11 work day, it would be \$260,000. If there was more, it would
12 be more.

13 Q Six days a week on this project, right?

14 A Yeah, 6 days, it could be up to 300,000 a year.

15 Q Okay. And --

16 A Not to exceed.

17 Q There's also some language in Section (c) here about
18 compensation that, additionally, there were some allowable
19 additional expenses that could be paid.

20 A Where are we here? Where? Where? Just --

21 Q Under Romanette Numeral (ii):

22 "The following are allowable additional expenses
23 for the performance of the services."

24 Do you see that?

25 A Yes.

1 Q Okay. And isn't it also the case that Welded paid a fee
2 to PTAG for each of the contracted employees?

3 A I don't know. If you can direct me to that, I'll
4 confirm it.

5 Q We may get to that tomorrow.

6 A Okay.

7 Q And then, as you pointed out a moment ago, there's at
8 least a stated cap here, a shall not exceed of \$300,000
9 relative to at least this agreement, correct?

10 A Yes.

11 Q Okay. Do you recall if that cap was ever exceed with
12 respect to a PTAG employee in --

13 A I don't know.

14 Q You're just not sure one way or the other?

15 A I'm -- I'm not saying it didn't, I just don't know. I
16 can't confirm it.

17 MR. BURWOOD: Okay. Your Honor, I understand
18 you've got a hard stop at 3:30. I'm happy to break here if
19 it is convenient for the Court.

20 THE COURT: It's fine with me.

21 Okay. So, Mr. Hawkins.

22 THE WITNESS: Yes.

23 THE COURT: Unfortunately, you're back here
24 tomorrow --

25 THE WITNESS: It's okay.

1 THE COURT: -- morning, 9:30.

2 THE WITNESS: That's fine.

3 THE COURT: You are -- I should have probably done
4 this at lunch, I didn't think about it. You're not to talk
5 to anybody about your testimony overnight --

6 THE WITNESS: Understood.

7 THE COURT: -- before you get back on the stand.
8 Okay.

9 I do have an 8:30 hearing tomorrow morning. So you
10 may leave your stuff here, but I would appreciate it if you
11 would clear it off counsel table, but otherwise, you can
12 leave it anywhere you want to leave it. Okay? Thank you --

13 THE WITNESS: Thank you.

14 THE COURT: -- very much.

15 MR. BURWOOD: Thank you, Your Honor.

16 THE COURT: We're --

17 MR. GUERKE: Your Honor, is our start at 9:30
18 tomorrow?

19 THE COURT: Well, our start would be after that.
20 I'm being promised by one of your ...

21 (Laughter)

22 THE COURT: I don't know if she's a partner or -- I
23 think Kara is -- a partner, that it would be uncontested and
24 it will be smooth. So my hope is that we start at 9:30.

25 MR. GUERKE: Thank you, Your Honor.

1 THE COURT: Okay? We're adjourned for the day.

2 MR. BURWOOD: Thank you, Your Honor.

3 (Proceedings adjourned to 8/23/23 at 9:30 a.m.)

4 (Concluded at 3:30 p.m.)

5 *****

6 CERTIFICATION

7 I certify that the foregoing is a correct
8 transcript from the electronic sound recording of the
9 proceedings in the above-entitled matter to the best of my
10 knowledge and ability.

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August 29, 2023

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Coleen Rand, AAERT Cert. No. 341

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Certified Court Transcriptionist

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For Reliable

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