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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

3

4

In Re Application of)

5

WASTE MANAGEMENT OF)

) Docket No. TG-120033

6

d/b/a WM Healthcare Solutions)

7

of Washington)

8

EVIDENTIARY HEARING, VOLUME V

9

Pages 185 - 300

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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DECEMBER 3, 2012

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Washington Utilities and Transportation Commission

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

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1 OLYMPIA, WASHINGTON; DECEMBER 3, 2012

2 9:29 A.M.

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5 P R O C E E D I N G S

6

7 JUDGE KOPTA: Let's be on the record in
8 Docket TG-120033, captioned In the Matter of the
9 Application of Waste Management of Washington, Inc.,
10 d/b/a WM Healthcare Solutions of Washington. Today is
11 Monday, December 3rd, at approximately 9:30, and we
12 are here for the evidentiary hearings in this
13 proceeding. I am Administrative Law Judge Gregory J.
14 Kopta presiding.

15 The first thing we will do is take
16 appearances, beginning with the applicant.

17 MS. GOLDMAN: Good morning, Your Honor.
18 Jessica Goldman and Polly McNeill from the Summit Law
19 Group on behalf of Waste Management.

20 JUDGE KOPTA: Thank you.

21 And Stericycle?

22 MR. VAN KIRK: Good morning. Jared
23 Van Kirk and Steve Johnson of Garvey Schubert Barer on
24 behalf of protestant, Stericycle of Washington, Inc.

25 JUDGE KOPTA: And the other intervenors?

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1 MR. SELLS: Thank you. Actually, we are
2 protestants.

3 JUDGE KOPTA: Excuse me, the
4 protestants.

5 MR. SELLS: James Sells, attorney
6 appearing on behalf of Washington Refuse and Recycling
7 Association, and four companies which have commonly
8 been referred to as the WRRRA companies.

9 JUDGE KOPTA: Thank you.

10 And for Commission Staff?

11 MS. WOODS: Good morning, Your Honor. I
12 am Fronda Woods, Assistant Attorney General, for
13 Commission Staff.

14 JUDGE KOPTA: I believe that is everyone
15 that has participated to date. Is there anyone for
16 whatever reason who wants to make an appearance at
17 this time?

18 Hearing nothing, we will proceed.

19 The first order of business is exhibits. As I
20 had ruled at the prehearing conference last week, we
21 will consider the declarations and attached exhibits
22 that Waste Management has filed with respect to
23 fitness, without having the witnesses appear for
24 cross-examination. The parties have discussed this
25 and are not lodging any objection to the admission of

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1 those declarations and exhibits. And again
2 emphasizing that those will be considered, although
3 they are admitted into the record, only for the
4 purposes of which they were offered, which is to
5 demonstrate fitness. Those exhibits are the
6 declaration of Michael Weinstein, and that begins --
7 if you can help me, Ms. Goldman.

8 MS. GOLDMAN: 16-T, Your Honor.

9 JUDGE KOPTA: All right. Exhibit
10 MAW-16T through MAW-23 are admitted into the record.

11 The next declaration is of Jeff Daub.

12 MS. GOLDMAN: Jeff Norton, Your Honor.

13 JUDGE KOPTA: Jeff Norton is next one?
14 All right. And that is?

15 MS. GOLDMAN: 14.

16 JUDGE KOPTA: Exhibit JN-4T through J-6
17 are admitted.

18 And then I believe we come to Mr. Daub, and
19 his exhibits are JD-1T through JD-23, and those are
20 admitted into the record. And then finally we have
21 the declaration of Michael McInerney, and that's
22 Exhibit MM-1T, and that is also admitted into the
23 record.

24 And while there are stipulations from the
25 parties to the admission of other exhibits, given that

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1 it's not a complete list of all the exhibits, I think
2 we will deal with the admission of the remaining
3 exhibits when witnesses are presented for
4 cross-examination.

5 One other housekeeping matter, which is that
6 there were some changes to the exhibit numbering as a
7 result of the prehearing conference last week. Waste
8 Management will be filing one copy with the records
9 center of corrected exhibits and will be provided
10 errata to the parties so that we all have the correct
11 exhibit number.

12 Is my recollection accurate?

13 MS. GOLDMAN: That's correct, Your
14 Honor.

15 JUDGE KOPTA: Thank you. So Waste
16 Management will take care of that this week.

17 I believe, if there is nothing further, we are
18 ready for our first witness.

19 MS. GOLDMAN: And, Your Honor,
20 Ms. Sell's written testimony has been stipulated to by
21 Stericycle. I'm not aware of any objections by either
22 of the other parties.

23 JUDGE KOPTA: All right. Well, barring
24 no objections, which I am not hearing, then we will
25 admit Exhibit JS-1T into the record.

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1 And Ms. Sell is on the telephone.

2 THE WITNESS: Yes.

3 JUDGE KOPTA: And so I will ask you to
4 stand and raise your right hand.

5 THE WITNESS: Okay.

6

7 JULIE SELL, witness herein, having been
8 first duly sworn on oath,
9 was examined and testified
10 as follows:

11

12 JUDGE KOPTA: Thank you.

13 Your witness, Ms. Goldman.

14 MS. GOLDMAN: Your Honor, having
15 obtained the admission of her direct testimony, we
16 will turn it over to cross at this point.

17 JUDGE KOPTA: Very well.

18 I will ask simply, Ms. Sell, are you the
19 witness who prepared the testimony that has been
20 admitted into the record numbered JS-1T?

21 THE WITNESS: Yes.

22 JUDGE KOPTA: All right. Thank you.

23 Then I will turn to over to Mr. Van Kirk, I
24 believe, for cross-examination.

25

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

2 BY MR. VAN KIRK:

3 Q Good morning, Ms. Sell. Thank you for taking
4 the time to appear today. My name is Jared Van Kirk.
5 As you might have heard before, I am one of the
6 attorneys representing Stericycle in this matter. I
7 have a few questions on the testimony you put in
8 today.

9 A Okay.

10 Q First, can you tell me how long Stericycle --
11 or you have been a customer -- Olympic Medical Center
12 has been a customer of Stericycle?

13 A I've been in this capacity for three years.

14 Q Do you know how long Olympic Medical Center
15 has been a customer of Stericycle?

16 A I don't. That information is not -- I don't
17 have it at my hand, no.

18 Q Okay. Thank you.

19 Who is your account representative at
20 Stericycle?

21 A For biowaste, I'm not exactly sure. For
22 pharmaceutical waste, it's been Mr. Ryan.

23 Q And how long have you had this relationship
24 with Mr. Ryan?

25 A Well, as far as bio or pharmaceutical?

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1 There's two different programs here.

2 Q Both of them.

3 A Pharmaceutical waste, he's been a contact for
4 over a year and a half. I don't know exact date that
5 I met him. As far as the biowaste, I've not always
6 been 100 percent sure who my actual representative is
7 that contacts me. We have talked a couple times
8 because we've had some issues.

9 Q Okay. So just to clarify that last sentence,
10 it sounds like you have spoken to James Ryan on
11 biowaste issues?

12 A A couple times, yes.

13 Q Okay. And on what -- what approximate dates
14 did you confer with James Ryan about issues related to
15 Olympic Medical Center's biomedical waste collection?

16 A Back in July was one time that I still was
17 waiting on some information. So July probably would
18 have been the last time, that I have off the top of my
19 head here. And then he did contact us last week.

20 Q And that would be July of 2012?

21 A Yes.

22 Q And can you tell us what the nature of your
23 contact with James Ryan was last week?

24 A He called to see how things were going, and we
25 talked about pharmaceutical waste and the program, and

0201

1 the gentleman that is our -- I guess our
2 representative, that he would call him, that comes
3 periodically to do assessments and audits.

4 Q Okay. So you didn't have a specific question,
5 he just contacted you --

6 A No, he contacted us.

7 Q -- to see how things were going?

8 A Yes.

9 Q And you mentioned the gentleman who -- I think
10 something like the gentleman who performs audits for
11 you. Can you explain that more, who you were
12 referring to?

13 A That's Scott Catterson. That's for the
14 pharmaceutical side, not the bio side.

15 Q And that's a Stericycle employee?

16 A Yes, he is.

17 Q And he performs audits of your pharmaceutical
18 waste?

19 A Yes, he has done one this year. We had some
20 issues with some things before, that we asked him to
21 be removed from our account. We had someone that came
22 up, that they -- they did that, they switched out
23 their representative. And then she came up, but she's
24 been -- she has a different job now, so we're back
25 with him. He's been up once to do an audit and is

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1 scheduled to come back up in a month.

2 Q Okay. Now, isn't it the case that you
3 contacted Mr. Ryan at some point to change Olympic
4 Medical Center clinics from a scheduled pickup system
5 to an on-call pickup?

6 A Not all of our clinics, and that was when he
7 was here. I believe most of the time he deals with
8 our environmental services person, and then we have a
9 clinic up on Eighth Street, and that's who contacts
10 him for both bio and pharma. She has dealt with him
11 directly.

12 Q So it sounds like the contact I was referring
13 to was directly between your clinics and Mr. Ryan?

14 A There's one clinic that deals with him
15 directly.

16 Q Okay.

17 A At least that's what I've been told.

18 Q Okay. And it is the case that that clinic
19 contacted Mr. Ryan to change their service from a
20 scheduled pickup to an on-call pickup?

21 A No, they were included in all of the e-mails.
22 We've added a number of clinics, and so besides
23 Mr. Ryan, Jane Benton has been informed, which is
24 another Stericycle contact that we have, in order to
25 get it done.

0203

1 Q And by "get it done," do you mean add the new
2 clinics to the service?

3 A Yes.

4 Q Okay. And does that include setting up the
5 schedule of pickups at that clinic or those clinics?

6 A One of our clinics schedules their own because
7 they are a large clinic. The other ones will let me
8 know when they need it. Around the first of the
9 month, we make a check and I've contacted -- the way
10 we contact has changed. We had issues before with
11 getting the contact information to pick up, so things
12 would not get picked up. I now have a direct contact
13 with transportation in Kent, for about -- well, I got
14 that information on October 10th, and that's who we
15 have been scheduling pickups.

16 Q And who is that? Who is that contact?

17 A His name is Don, he's a transportation
18 specialist. I have -- Mike and Don were the two names
19 I was given.

20 Q And those are Stericycle employees?

21 A Yes, they are.

22 Q Okay. And do you contact them personally or
23 do the clinics contact them directly?

24 A I do.

25 Q Okay. You contact them personally, and that

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1 is to identify when you need an on-call pickup at one
2 or more clinics?

3 A Yes.

4 Q Are all of your clinics on on-call service?

5 A No, they are not.

6 Q So for the clinics that are scheduled, who do
7 you communicate with about those schedules, or do the
8 clinics communicate directly?

9 A There's only one clinic that communicates
10 directly with Stericycle.

11 Q I know you did already, but can you tell me
12 the name of that clinic again?

13 A That's our primary care clinic. I hadn't
14 given you that information.

15 Q Okay.

16 A That was our prime -- one of our primary care
17 clinics.

18 Q And do they communicate with Mr. Ryan?

19 A Yes, they send him an e-mail and cc me on
20 those.

21 Q And as far as you know, then, Mr. Ryan is
22 responsible for handling any scheduling changes or
23 scheduling concerns that that clinic has?

24 A If there's concerns and problems. They
25 contact me if there's a missed pickup.

0205

1 Q And then you contact Mr. Ryan?

2 A No, I have contacted Stericycle customer
3 service.

4 Q Do you know whether -- who is person at the
5 primary care clinic who is responsible for these
6 communications?

7 A That would be, at this point, Pam.

8 Q Pam. Can you tell me her last name, please?

9 A Castillo.

10 And there's not been concerns out there, I
11 mean as far as I know.

12 Q So the scheduling is running smoothly, as far
13 as you know?

14 A As far as I know. If one is missed, then they
15 have plenty of room to hold until the next time. And
16 Port Angeles is on a regular routine pickup with
17 Stericycle. It's the ones that are on-call that we
18 have problems with sometimes.

19 Q So at this point in time, you have a direct
20 contact with Stericycle in the Kent office, correct?

21 A Correct, for pickups.

22 Q For pickups.

23 And in the past you've communicated with
24 Mr. Ryan?

25 A No. What we were told originally, when we had

0206

1 the on-call, is to contact a Stericycle customer
2 service number, which we did a number of times.

3 Q And --

4 A And then one of their drivers gave me a number
5 to contact and said try this, which got me to Fresno,
6 California. And when I got with the lady in Fresno,
7 California, after talking to her, she gave me a direct
8 number to Kent for scheduling the transportation side
9 of it.

10 Q And what was --

11 A I've been doing that since October 10th.

12 Q So it is the case now, then, that you do have
13 a local contact in Washington for scheduling
14 arrangements, correct?

15 A We do.

16 Q Okay. And you have had -- at least for a
17 while you've at least known that you've had a
18 representative at Stericycle --

19 A For my pharmaceutical waste.

20 Q And you mentioned in -- at least in July 2012,
21 you also contacted James with respect to biomedical
22 waste as well, correct?

23 A Right.

24 Q Okay. Did James Ryan tell you that -- tell
25 you not to call him about any scheduling issues you

0207

1 might have had?

2 A No one has told me not to call; they have
3 always told me this is who I call.

4 Q Okay. And am I correct that you never did
5 contact James Ryan when you had scheduling concerns
6 with your clinics?

7 A For bio?

8 Q Yes.

9 A Not -- not within the last six or eight
10 months, seven months, a year or so. I've had some
11 pharmaceutical contact.

12 Q Okay. So when you -- you offer in your
13 testimony, concerns about having to make arrangements
14 for scheduling through the customer service line. And
15 it sounds like to me, to the extent you had issues
16 with that, you never brought those issues to
17 Mr. Ryan's attention?

18 A Well, to be quite honest with you, I didn't
19 realize that James Ryan was also our biowaste. I
20 believe, after talking to our environmental services,
21 that's who he had contacted. There may have been a
22 couple questions along the way, but my primary
23 dealings with him are for pharmaceutical waste.

24 Q Okay. So you are -- it sounds like you have
25 not contacted James Ryan, but you have learned from

0208

1 your environmental services representative that he had
2 been in contact with James Ryan?

3 A That she has?

4 Q I'm sorry, that she had.

5 A And I did meet him once or twice up here in
6 her office.

7 Q Okay.

8 A Within the last three years.

9 Q And what was the name of your environmental --
10 of the environmental services representative?

11 A Nanette Noyes.

12 Q Nanette Noyes, okay.

13 Are you aware of whether Nanette ever
14 communicated with James Ryan about the scheduling
15 concerns you address in your testimony?

16 A No, she usually deals with the driver.

17 Q But have you ever asked her whether she
18 communicated any concerns directly to James Ryan?

19 A Not point-blank like that, I have not.

20 Q Okay. So you are aware that Mr. Ryan is a
21 local Stericycle representative, I take it, since
22 you've had him in your office?

23 A Well, I didn't meet with him in my office.

24 Q Okay. In an office.

25 You met with him in person, correct?

0209

1 A Yes.

2 Q Okay. And what was the purpose of your
3 in-person meeting with Mr. Ryan?

4 A He was coming back as a regional whatever, and
5 was introduced to me by Nanette.

6 Q And do you recall what you discussed in that
7 meeting?

8 A New boxes, new black biohazard boxes with
9 hinged tops.

10 Q Okay. Do you have any reason to believe that
11 if you had contacted Mr. Ryan about scheduling
12 concerns, he would not have been responsive to your
13 concerns?

14 MS. GOLDMAN: Objection. Calls for
15 speculation.

16 JUDGE KOPTA: Do you want to rephrase
17 that question?

18 MR. VAN KIRK: It doesn't call for
19 speculation, it just asks if she has any reason.
20 Either she does or she doesn't.

21 JUDGE KOPTA: I'll allow the question.

22 Ms. Sell, do you have that question in mind or
23 do you want it repeated?

24 THE WITNESS: Can it please be repeated?

25 Q Yes, absolutely. The question was: Do you

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1 have any reason to believe that if you had raised your
2 scheduling concerns with Mr. Ryan, he would not have
3 been responsive to your communication?

4 A I probably don't have any opinion on that one
5 way or another, to be quite frank.

6 Q Do you know for how long Nanette Noyes has
7 been communicating with the Stericycle driver and
8 Mr. Ryan?

9 A No, I do not.

10 Q Do you know how long Nanette Noyes has been
11 working in that capacity for Olympic Medical Center?

12 A I don't, it's a different department.

13 Q And so the customer service number that you
14 called and were put in -- when you were put in
15 communication with the Kent office, that was -- I
16 believe you testified that was a customer service
17 center in Fresno, California?

18 A Yes, I was given the number, which is a -- I
19 assume a Seattle number, it's the area code 425, which
20 goes to Kent -- or it goes to Fresno, California, and
21 that's the lady that gave me the number in Kent.

22 Q So at this point in time, now that you have --
23 now that you communicated with the Fresno call center,
24 you no longer have your concern about having to call
25 the other customer service number, which I think you

0211

1 mentioned you thought was on the East Coast?

2 A I did. It's Chicago. I apologize, my
3 geography is not great.

4 Q That's fine. That's --

5 A No, I do not call the 800 hundred number or
6 the 866 number any longer.

7 Q That's fine. I wasn't going to grill you
8 about mistaking Chicago for the East Coast.

9 Ms. Sell, until recently, when you began
10 communicating directly with the Kent office to
11 schedule on-call pickups, my understanding then is
12 that you have no responsibility for scheduling the
13 on-call pickups at those clinics that had on-call
14 service?

15 A No, that's not true.

16 Q Okay, then correct me. For which clinics were
17 you responsible for setting up the on-call pickups?

18 A All of our sites except the primary care
19 clinic.

20 Q Okay.

21 A And we have some that aren't on-call, they
22 just go by every month.

23 Q Meaning they don't have a pickup in any given
24 month?

25 A No, it means that every time they are in the

0212

1 area they stop, whether or not they have a pickup.

2 Q Right, you mentioned that there was -- I
3 believe you mentioned there's one clinic that had a
4 scheduled pickup?

5 A No.

6 Q Which clinics have scheduled pickups and which
7 clinics are on-call, do you have that information?

8 A I do. Site No. 4 is on-call, Site No. 6 is
9 on-call, Site 7, Site 9 and Site 11.

10 Q What's the name of your department, Ms. Sell?

11 A Disaster preparedness.

12 Q Disaster preparedness.

13 And I believe you mentioned Nanette Noyes was
14 environmental services?

15 A Yes.

16 Q Has your department always been responsible
17 for handling the regulated medical waste?

18 A For three years.

19 Q Okay.

20 A I can't tell you what they did prior to that.
21 Not that I can't, I don't know.

22 Q And I assume, but correct me if I'm wrong,
23 that the Olympic Medical Center's main facility has a
24 regular scheduled pickup, correct?

25 A Yes.

0213

1 Q And that facility isn't a part of your -- of
2 the concerns you raised in your testimony about making
3 arrangements for scheduling, correct?

4 A No, because they come here, what, I think
5 every four weeks.

6 Q Okay.

7 A We also have a facility in Sequim that they
8 regularly stop at.

9 Q For those clinics that have on-call service,
10 can you estimate how frequently the clinics have
11 pickups?

12 A Each one is different. I might have one that
13 has pickup every time; I may have one that goes three
14 or four months.

15 Q Now, you testified that on a couple of
16 occasions, Stericycle did not make the requested
17 collection. I'm assuming you mean at one of these
18 on-call clinics?

19 A Yes.

20 Q How many times did that happen?

21 A Well, just off the top of my head, looking and
22 confirming dates, I have three for May, June and July,
23 at different facilities.

24 Q So four missed pickups?

25 A No, three for May, June and July.

0214

1 Q Three for May, June and July.

2 A And I can go back further maybe, but...

3 Q And who did you call when these -- when
4 these --

5 A I was still calling the 800 Stericycle
6 customer service number at that point.

7 Q And were these missed pickups resolved?

8 A Yeah, the next month.

9 Q And when we talked about -- when I just asked
10 you about the missed pickups, were you referring
11 exclusively to medical waste or also to pharmaceutical
12 waste?

13 A Medical.

14 Q Okay.

15 (Pause in the proceedings.)

16 Q And I know you're on the phone. Just for your
17 benefit, if we ever go a little quiet here, it's
18 probably because we are looking at notes. It's a
19 little awkward when we're on the phone, but I will
20 keep it as short as I can.

21 A Okay.

22 (Pause in the proceedings.)

23 Q In your testimony, you state that Olympic
24 Medical Center wants to have another option for its
25 regulated medical waste service.

0215

1 A Yes.

2 Q At this point in time, you don't have an
3 intention to change to Waste Management's service if
4 they get authority, correct?

5 A At this moment, no, we do not.

6 Q So when you say you want a potential
7 alternative, that alternative doesn't have to be Waste
8 Management, right?

9 A Correct.

10 Q It can be any company that's able to provide
11 service to your facilities?

12 A Correct.

13 Q And it is also true, isn't it, that Stericycle
14 is currently giving you a service that treats and
15 disposes of your medical waste safely and to the
16 medical center's satisfaction?

17 A Well, pharmaceutical waste is a whole
18 different story.

19 Q Okay. I was referring to medical waste.

20 A Oh, okay. At this point I can assume that
21 they dispose of it properly. As of October, we
22 haven't had any issues going through the
23 transportation guy in Kent.

24 Q Okay. So there's no concern about the -- no
25 concern about the waste processing at this point and

0216

1 from October, no concern -- the scheduling concerns
2 haven't continued?

3 A I haven't had an issue. Do I have concerns
4 that they will? Yes, but time will only tell.

5 Q Now, you've also mentioned that Olympic
6 Medical Center wants another option for -- to -- let
7 me use your words -- to ensure that it gets the most
8 competitive price. Do you remember that part of your
9 testimony?

10 (Pause in the proceedings.)

11 A Oh, best possible service at the most
12 competitive price, yes.

13 Q Okay.

14 A Sorry.

15 Q That's fine. It sounds like that wasn't
16 immediately obvious to you. Is that a significant
17 concern, or is it just something you added to the
18 testimony?

19 A Cost is always a significant concern when it
20 comes to looking at trying to be as, you know, as cost
21 effective as possible.

22 Q Now, do you have any reason to believe at this
23 point that Stericycle's rates are not appropriate
24 based on their cost of service and some reasonable
25 profit?

0217

1 A No, but there's also no one else in the area
2 that is around to kind of compare with, I guess.

3 Q So your concern isn't specifically with any of
4 the Stericycle's rates, you want the comfort of
5 knowing there's competition out there to -- that's
6 affecting prices, correct?

7 A Yeah. And in a perfect world, I wouldn't be
8 charged \$10 for each clinic for -- you know, just in
9 case, but that's a perfect world.

10 Q Has Stericycle ever raised its rates for
11 Olympic Medical Center?

12 A I'm trying to think the last time.

13 Q For --

14 A As far as I can just recall off the top of my
15 head, the rate change has been the -- what do they
16 call it, energy charge, which is directly based on gas
17 prices, so...

18 Q So your testimony is that Stericycle has
19 introduced an energy surcharge?

20 A Well, there's always been that on there. I
21 think they call it a tariff. I would have to
22 double-check here. It's not introduced as a new, it's
23 their per-stop fuel surcharge.

24 Q So it wasn't -- so it wasn't a change to
25 rates, it's just a --

0218

1 A No.

2 Q -- part of the --

3 A It's based on, you know, the price per gallon
4 of gas. Yeah, it went up. And I think in any
5 organization, you are always looking to make sure you
6 have the most cost effective service.

7 Q Have you performed any analysis in your area
8 of what a competitive price would be?

9 A We don't have one in our area to be
10 competitive with.

11 Q So my question was have you --

12 A No.

13 Q Okay. So at this point, you don't know what a
14 competitive price would or wouldn't be?

15 A Not for bio, no.

16 Q So your only testimony here with respect to
17 price, then, is that you want another provider just to
18 introduce those competitive forces to the market,
19 correct?

20 A The competitive price and stuff was not the
21 primary focus. I mean yes, I would love to be able to
22 save money. Could I? I don't know that. The
23 customer service is the issue for us.

24 Q Okay. Let me pick up a couple of follow-ups
25 on customer service and then I'll try and wrap it up

0219

1 here.

2 What is Olympic Medical Center's definition of
3 a missed pickup?

4 A They don't go there to pick up the waste.

5 Q When waste is picked up, what kind of -- when
6 waste isn't picked up, what kind of inquiry do you do
7 to understand the situation?

8 A Usually we start with the driver. If it's not
9 on the paper he doesn't do it. So then we would call
10 the customer service line. This is when we called, it
11 didn't get picked up. Oh, we'll catch it next time.

12 Q Okay. Thank you. Let me ask a slightly
13 different question.

14 What inquiries do you do among your own
15 employees when waste is -- when waste isn't picked up?

16 A Of my own employees at the clinics?

17 Q Yes.

18 A Well, what happens is they have called me, I
19 need a pickup at the next available time. I call for
20 a pickup. If it doesn't happen, they call and tell me
21 it didn't happen.

22 Q Do you ever --

23 A That would --

24 Q Do you make any inquiries to ensure that the
25 waste was ready and available for pickup?

0220

1 A Yeah, usually we do, when I'm out doing audits
2 for my pharmaceutical waste. However, when a driver
3 doesn't go there, they don't know that it's ready or
4 not.

5 Does that make sense?

6 Q I guess what I'm saying is how is it that you
7 can know that the driver didn't come versus the waste
8 wasn't available for pickup?

9 A How can I be certain of that?

10 Q Yes.

11 A Because I'm not charged \$20 for a stop and
12 nothing picked up. Because if they stop at a clinic,
13 even if they are on-call and they stop, there's, I
14 believe, a \$20 charge.

15 Q Were each of the incidents that you have
16 mentioned here incidents in which you received a \$20
17 charge?

18 A No, there's a \$10 on-call.

19 Q So you were not charged \$20?

20 A No.

21 Q Okay.

22 A Because it -- well...

23 (Pause in the proceedings.)

24 MR. VAN KIRK: One minute, Ms. Sell. I
25 think we are pretty close to wrapping up here.

0221

1 (Pause in the proceedings.)

2 Q Ms. Sell, when you in the past called for
3 on-call pickups, what lead time do you give for when
4 you want the pickup to occur?

5 A I try and do the first of the month for the
6 next available, so that could be anywhere from one to
7 two weeks.

8 Q Okay. And when you call, do you request a
9 specific day for the pickup?

10 A The next available, and if my calendar is
11 right, that's the date that I usually give them.

12 Q And I'm sorry, what do you mean by the next
13 available day?

14 A Well, for instance, in -- for the July pickup,
15 I contacted on the, I think it was like the 12th or
16 13th, I would have to double-check, which in all
17 honesty we had just missed the pickup. Fine. The
18 next available will be, can you pick up on the 25th
19 when you are in Port Angeles again.

20 Q You mentioned -- just a little cleanup. You
21 mentioned Jane Benton. That's a Stericycle employee?

22 A Uh-huh.

23 Q Okay. And who was -- it was you who were in
24 communication with Jane Benton?

25 A We have been a couple of times. They also

0222

1 have a Stericycle employee here, at our facility, the
2 hospital, that we also communicate with.

3 Q And what is the -- what's the nature of the
4 work that employee does?

5 A He goes around and picks up all of the sharps
6 and changes them out and stuff, gets them ready for
7 Stericycle to pick up.

8 Q Okay. So this is part of the sharps service
9 that you have?

10 A Uh-huh.

11 Q And is the -- is the in-service sharps
12 employee something that Olympic Medical Center values
13 in its sharps service?

14 A Like does he do a good job? Yeah, he's great.

15 Q Is that one of the reasons why you use the
16 Stericycle sharps service?

17 A No, he's not the reason.

18 Q I guess I meant are in-facility services part
19 of the reason why you have signed up for the
20 Stericycle sharps service?

21 A To be quite honest, I don't know why they
22 initially did that. I've only been here for three
23 years.

24 Q And you use the sharps service that uses
25 reusable sharps containers?

0223

1 A Some of them are. Not all of our sharps
2 containers are reusable.

3 Q But some of them are?

4 A Uh-huh.

5 Q And they are provided by Stericycle?

6 A Uh-huh.

7 Q Okay. And are you aware that Stericycle
8 introduced its reusable sharps service when it was --
9 in a period of time when it didn't have a statewide
10 competitor?

11 A Yes.

12 Q Do you have any reason to believe that
13 Stericycle would not continue to introduce new
14 services if it did not have a statewide competitor?

15 MS. GOLDMAN: Objection. Calls for
16 speculation. Lack of foundation.

17 JUDGE KOPTA: And it goes beyond the
18 scope of her testimony. I will sustain the objection.

19 MR. VAN KIRK: Ms. Sell, I want to
20 thank you for taking your time again. I think I am
21 done with my cross-examination. I will turn you back
22 over for redirect examination.

23 JUDGE KOPTA: I believe Mr. Sells --

24 MR. VAN KIRK: That's right.

25 JUDGE KOPTA: -- name confusion aside,

0224

1 may have a few questions.

2 MR. SELLS: As far as I know, we may be
3 related, but I don't think so.

4

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

6 BY MR. SELLS:

7 Q Ms. Sell, my name is Jim Sells, I'm
8 representing several companies across the state, as
9 well as a statewide organization of garbage haulers.

10 If I'm correct, your normal solid waste hauler
11 would be Olympic Disposal in Port Angeles; is that
12 correct?

13 A I don't do that part of it.

14 Q Okay.

15 A I mean, I couldn't answer that 100 percent,
16 I'm sorry.

17 Q If there were a local hauler who was willing
18 to make a proposal to you regarding medical waste,
19 what I call medical waste, I guess pharma and sharps
20 and all of that, would you be at least willing to talk
21 to them about that?

22 A Yeah, I mean, I would be willing to explain to
23 them what we do, get a proposal and take it to my
24 leadership. It's not a decision that I make on my
25 own.

0225

1 MR. SELLS: Thank you. That's all I
2 have.

3 JUDGE KOPTA: Anything from Staff?

4 MS. WOODS: Nothing from Staff, Your
5 Honor. Thank you.

6 JUDGE KOPTA: Ms. Goldman, do you have
7 redirect?

8 MS. GOLDMAN: Yes, I do. Thank you,
9 Your Honor.

10

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

12 BY MS. GOLDMAN:

13 Q Good morning, Ms. Sell.

14 A Hello there.

15 Q Prior to last week, has Mr. Ryan ever called
16 you to confirm that Olympic Medical Center is
17 receiving satisfactory and appropriate biomedical
18 waste service from Stericycle?

19 A No. There has been e-mails a long time ago.
20 Primarily pharmaceutical waste.

21 Q And can you describe what you've done or what
22 has occurred when you have called the Fresno or
23 Chicago Stericycle phone numbers to deal with service
24 issues?

25 A Well, the Fresno number that I had got me the

0226

1 gentleman in Kent, so that's what I got out of them.
2 What I got from calling customer service over the last
3 few years is, We'll do --

4 THE WITNESS: Hello?

5 JUDGE KOPTA: Unfortunately, that beep
6 is when somebody either joins or drops the bridge
7 line. I apologize. If you hear that, just please
8 pause and then resume your answer as soon as the beep
9 ends.

10 THE WITNESS: Oh, okay.

11 A So using their customer service number, what
12 we would get is, We'll get it on, meaning it will be
13 on the next scheduled pickup. And then if it didn't,
14 that's who we called. Well, we'll get it on next
15 time. I mean, there was -- it's just an 800 number of
16 customer service that you call.

17 Q To your knowledge, has Stericycle ever taken
18 responsibility for one of these missed pickups?

19 A No, from my understanding it's usually my
20 fault, because if it doesn't show on the paper, it
21 doesn't exist. The paper being what the driver has.

22 Q What issues arise for your facilities when
23 Stericycle fails to timely collect biomedical waste?

24 A At some of my clinics there is very, very
25 limited space, so it could pose a safety problem.

0227

1 Q You testified that recently Mr. Ryan spoke
2 with you about new boxes with hinged tops. When did
3 that conversation take place?

4 A It wasn't recent, I'm sorry, it was -- it's
5 more than a year ago.

6 Q And --

7 A I don't know the date exactly.

8 Q And do you recall the context of how that
9 conversation or communication took place?

10 A Yes, I was walking by the environmental
11 services director office, and she said, Here, meet
12 James Ryan, he's with Stericycle. They were talking
13 about these new hinged-top, whatchamacallit, the
14 boxes. We then talked to him about the pharmaceutical
15 waste, which at that point is what I was having some
16 major issues with.

17 Q And other than what you have just described,
18 was there any other further discussion regarding the
19 new boxes with the hinged tops?

20 A I think we asked, Is it something we have to
21 do? No, it's not something we have to do. That's
22 kind of as far as I can remember back.

23 Q You testified that in a perfect world, you
24 would prefer not to have the \$10 "just in case"
25 charge, as you referred to it.

0228

1 A Uh-huh.

2 Q What is the \$10 charge to which you were
3 testifying?

4 A That's for being on-call.

5 Q And so that's a charge that you are receiving
6 whether there's a pickup or not?

7 A Well, I would have to look back. I think
8 that's every month. And then when I have the actual
9 clinic that I've call to be picked up, it's just the
10 fee for picking up.

11 Q So that \$10 fee is being charged in a month or
12 in a time frame when there is no collection from
13 Stericycle?

14 A Yes. And there have been times where if they
15 stop and there's nothing to pick up, that's like a --
16 I don't remember what it's called, a \$20, which is
17 understandable, if they are stopping and we don't have
18 anything for them to pick up.

19 I'm trying to look real quick, what it's
20 called. It's a \$10 on-call or less than monthly fee,
21 and 20...

22 (Pause in the proceedings.)

23 A I can't find that real quick. The 20 is the
24 base stop -- minimum stop fee, so if they stopped and
25 there's nothing there to pick up.

0229

1 Q And if they do not stop, then there's a \$10
2 fee, correct?

3 A Yeah. For being on-call, yes.

4 Q Has any entity other than Stericycle made an
5 offer or a proposal to your facility to perform
6 biomedical waste in the time frame that you have been
7 responsible for managing that relationship?

8 A No.

9 MS. GOLDMAN: Nothing further.
10 Thank you for your testimony.

11 JUDGE KOPTA: All right. Anything
12 further for this witness?

13 MR. VAN KIRK: Very briefly, Your Honor.

14

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

16 BY MR. VAN KIRK:

17 Q You mentioned that when you met James Ryan at
18 your facility, he was meeting with environmental
19 services, correct?

20 A Yes.

21 Q Okay. And environmental services has
22 responsibility for biomedical waste collection, right?

23 A No, they do not.

24 Q Environmental services has no responsibility
25 for --

0230

1 A They don't have -- not that they have no
2 responsibility. We work together on it.

3 Q You testified that most of your communication
4 had to do with the pharmaceutical.

5 A Correct.

6 Q Isn't it true that your primary responsibility
7 for Olympic Medical Center is managing the
8 pharmaceutical waste collection?

9 A No, that is not true. No.

10 Q What is the -- what is the responsibility that
11 is -- what is the services provided by environmental
12 services with respect to medical waste?

13 A That's where -- they happen to be in the
14 basement near the loading dock, and that's where they
15 come and go. Environmental services gets them into
16 the location where we keep all the carts that they
17 need, or the shed.

18 Q So your testimony is it is just sort of
19 logistics in terms of pickup?

20 A Primarily.

21 Q Do you understand why they were meeting
22 directly with Stericycle's main account representative
23 then?

24 A Well, Nanette has quite a few vendors that
25 stop and talk to her.

0231

1 Q But your testimony is she doesn't have any
2 responsibility for coordinating or contracting for
3 this service?

4 MS. GOLDMAN: Objection. Asked and
5 answered.

6 JUDGE KOPTA: Sustained.

7 Q Hinged lid containers, I'm moving to that
8 subject. I believe you testified you weren't required
9 to have it. Stericycle offers you a choice of several
10 different kinds of containers, correct?

11 A Yeah, there's their catalog.

12 Q And do you value being able to choose between
13 different kinds of containers?

14 MS. GOLDMAN: Objection. Beyond the
15 scope.

16 JUDGE KOPTA: Sustained.

17 MR. VAN KIRK: I have no further
18 questions.

19 JUDGE KOPTA: All right. Thank you. I
20 believe that's all for this witness. Ms. Sell, you
21 are excused. Thank you for your testimony.

22 THE WITNESS: Thank you very much.

23 JUDGE KOPTA: Before you get off the
24 line, though -- let's be off the record.

25 (Discussion off the record.)

0232

1 JUDGE KOPTA: I believe that's it.

2 Thank you, Ms. Sell.

3 THE WITNESS: Thank you very much.

4 (A brief recess.)

5 JUDGE KOPTA: Let's be back on the
6 record after our brief morning break.

7 Ms. Goldman, do you want to call your next
8 witness?

9 MS. GOLDMAN: Waste Management calls
10 Terry Johnson.

11 JUDGE KOPTA: Mr. Johnson is on the
12 telephone, but would you stand and raise your right
13 hand?

14

15 TERRY JOHNSON, witness herein, having been
16 first duly sworn on oath,
17 was examined and testified
18 as follows:

19

20 JUDGE KOPTA: Thank you.

21 Ms. Goldman.

22

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

24 BY MS. GOLDMAN:

25 Q Can you please state your name and spell it

0233

1 for the record?

2 A Terry L. Johnson, T-E-R-R-Y, space, L.,
3 J-O-H-N-S-O-N.

4 Q By whom are you employed, Mr. Johnson?

5 A Lake Chelan Community Hospital, legally known
6 as Chelan County Public Hospital District No. 2.

7 Q Did you submit prefiled testimony in this
8 matter on October 1st, 2012?

9 A Yes, I did.

10 Q And is this testimony true to the best of your
11 knowledge?

12 A To the best of my knowledge, the testimony
13 that I gave and was read back to me on Friday is
14 correct.

15 MS. GOLDMAN: We offer the prefiled
16 direct testimony of Mr. Johnson for admission.

17 JUDGE KOPTA: Any objection?

18 Hearing none, it will be admitted.

19 Anything further?

20 MS. GOLDMAN: Nothing at this time, Your
21 Honor.

22 JUDGE KOPTA: Then he is available for
23 cross-examination. We will start with Mr. Van Kirk.

24

25

0234

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

2 BY MR. VAN KIRK:

3 Q Good morning, Mr. Johnson. Thank you for
4 taking the time to appear today. My name is Jared
5 Van Kirk, and I'm one of the attorneys for Stericycle.
6 I will be asking you a few questions this morning.

7 Can you briefly start out by describing your
8 facility?

9 A We are a 25-bed critical access hospital.

10 Q And am I correct that Lake Chelan Community
11 Hospital is part of the Peacehealth system?

12 A As far as I know, we are a public hospital
13 with -- not part of the Peacehealth system.

14 Q Are you part of the Peacehealth purchasing
15 group?

16 A As far as I know. That's not really my
17 department.

18 Q Do you make the decisions about contracting
19 for biomedical waste service?

20 A Yes, sir.

21 Q And you negotiate those contracts?

22 A As far as I know, it's a regulated utility,
23 and there's not much negotiating that can be done. I
24 found that out when I started here.

25 Q Fair enough. But you have whatever

0235

1 discussions are necessary in order to enter into these
2 arrangements?

3 A Yes, sir.

4 Q And what services does Stericycle provide for
5 you currently?

6 A Primarily biomedical waste disposal.

7 Q Did you say --

8 A As well as sharps.

9 Q And what kind of sharps collection and
10 disposal do they provide? What are the features of
11 that service?

12 A It's not separate from the biomedical waste.
13 We just include the sharps containers, which are
14 primarily needles and hypos and so forth, in the field
15 boxes that are removed from the different rooms when
16 they are three-quarters full.

17 Q So biomedical waste service, including sharps.
18 Does Stericycle provide any other services at this
19 point?

20 A Not to the best of my knowledge. There is a
21 small pharmacy disposal, and I do not have any control
22 over that, that's done by the pharmacist, and I don't
23 know who she uses.

24 Q Okay, thank you.

25 Do you know how long Lake Chelan Community

0236

1 Hospital has received its biomedical waste service
2 from Stericycle?

3 A At least as long as I've been here, which was
4 13 years in September 2012.

5 Q And who do you communicate with at Stericycle
6 about your service?

7 A I don't have a specific name for a contract.
8 I have discussed with the driver when he arrives and
9 also sent e-mails when we had to request additional
10 red bags or labels.

11 Q Do you know who you e-mailed?

12 A No.

13 Q All right.

14 A It would be years ago since the last time I
15 e-mailed him.

16 Q And when you sent that e-mail, did you get the
17 bags you were hoping to get?

18 A Yes, sir.

19 Q And when you communicate with the drivers,
20 what do you -- is it common to communicate with the
21 drivers about your service?

22 A Yes.

23 Q And does this have to do with things like
24 number of containers or service frequency, issues of
25 that nature?

0237

1 A No, it's more whether my guys had everything
2 ready for him when he showed up or if he had to, you
3 know, kind of finish off the boxes.

4 Q Okay. Do you know whether there is a
5 designated -- strike that.

6 Do you know whether Stericycle has identified
7 to you any account representative that you can call?

8 A Not before like last week or so, when I
9 received a copy of an e-mail from Steve somebody
10 saying that he was the service representative.

11 Q Now, your testimony -- let's -- moving on to
12 your testimony here. Your testimony is that
13 competition will ensure the highest quality -- that
14 the highest quality services are available, correct?

15 A Yes, sir.

16 Q So it is true, then, that you are not
17 testifying that any aspect of Stericycle's current
18 services are not satisfactory, right?

19 A That's correct, sir.

20 Q So it seems like you -- your testimony is that
21 even though Stericycle currently provides satisfactory
22 services, you still want a competitive alternative?

23 A I don't want to digress because I want to give
24 testimony, as opposed to having it. Just about every
25 system I have in this facility is redundant. We have

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1 to have a backup for a backup or a battery or
2 something like that. When I have only one provider
3 for a certain service, it's a weakness.

4 Q Okay. So your concern, then, isn't so much
5 with promoting better service, you just want a backup
6 available?

7 A I would like to have an alternative source,
8 yes.

9 Q And that adequately describes what you are
10 trying to communicate with your testimony?

11 A I hope so.

12 Q And this backup, am I correct that, from your
13 perspective, it could be any company out there that's
14 able to collect and treat your waste, correct?

15 A Correct.

16 Q It doesn't have to be Waste Management?

17 A No.

18 Q And there's no particular -- strike that.

19 What we are talking about right now in your
20 testimony, I believe you described it as having a
21 single source increases the risk assessment in the
22 event of a major catastrophe, for example. Is that
23 the same thing that we've been talking about?

24 A Yes, sir.

25 Q Okay. And what risk are you talking about?

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1 A I don't have any specific risks in mind, other
2 than the two I mentioned in the testimony. We were in
3 the midst of forest fires that were closing some of
4 the major corridors here in Washington when I was
5 giving that testimony. It came to mind that there was
6 a possibility we weren't going to be able to get the
7 trucks through. The other possibility we plan for
8 here is earthquake.

9 Q Okay. So --

10 A Some of the other ones, like hurricanes and so
11 forth, we don't concern ourselves too much, as far as
12 risk or flooding --

13 Q Okay.

14 A -- whereas other facilities have to provide
15 for that.

16 Q So if I understand you correctly, the concern
17 you have is that a forest fire or earthquake might
18 basically close some access to your facility?

19 A Another item that comes to mind would be a
20 strike, actually.

21 Q Okay. Let's take the forest fire as an
22 example. Wouldn't it be the case if a forest fire
23 closed a road to your facility, that any provider
24 would be cut off from accessing you?

25 A Not necessarily. There are more than one

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1 route that they could use. Often when we have
2 something coming from Seattle and they can't get
3 through, whether it's because of snow or the pass or
4 anything, we can request it from Spokane instead.

5 Q And you would request that from Stericycle,
6 correct?

7 A If they have a facility over there, yeah.

8 Q Are you aware that Stericycle has a facility
9 in Eastern Washington?

10 A I -- I'm aware of one in Kent and one down in
11 Southern Washington. I didn't know they had one over
12 in Spokane. I thought it was Yakima or the
13 Tri Cities.

14 Q If you were -- would it change your testimony
15 to know that Stericycle does have a facility in
16 Eastern Washington?

17 A I don't believe so, no.

18 Q Do you think there's any reason why Stericycle
19 couldn't access your facility from another location,
20 such as Eastern Washington?

21 MS. GOLDMAN: Objection. Calls for
22 speculation. Lack of foundation.

23 JUDGE KOPTA: Mr. Van Kirk, response?

24 MR. VAN KIRK: Again, I don't think it
25 calls for speculation. It asks whether -- I'm asking

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1 whether he has any reason to believe that Stericycle
2 couldn't provide service from the other location,
3 which he said is something that would -- that is at
4 least related to his concerns.

5 MS. GOLDMAN: May I respond, Your Honor?

6 JUDGE KOPTA: Yes.

7 MS. GOLDMAN: He has also testified that
8 he is not aware of any Eastern Washington facility, so
9 he lacks any personal knowledge or foundation to
10 answer a question regarding Stericycle's capabilities.

11 JUDGE KOPTA: I think we are straying a
12 little further afield, so I will sustain the
13 objection.

14 Q So we will leave it at this: At this point in
15 time, you are not aware that Stericycle has a facility
16 in the Spokane area?

17 A No, sir.

18 Q Okay. Have you ever done any analysis or
19 study of the risk posed to your facility by having a
20 single provider?

21 A Not specifically on waste, biomedical waste.
22 We have for all or most all of our utility systems.
23 That's actually required by the CMMS and the
24 Department of Health.

25 Q So you haven't studied your current biomedical

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1 waste services to make any determination about risk?

2 A Not yet.

3 Q Have you ever raised any concern with
4 Stericycle about disaster preparedness?

5 A No.

6 Q Do you know whether Stericycle has any
7 plans related to disaster response?

8 MS. GOLDMAN: Objection. Calls for
9 speculation. Lack of foundation.

10 JUDGE KOPTA: There's no basis in his
11 testimony to answer that question. Sustained.

12 Q Mr. Johnson, I believe you have -- well,
13 strike that.

14 Before I move on, you mentioned that a strike
15 is one of your -- one potential event that could raise
16 the risk of service to your facility, correct?

17 A I did today, yes.

18 Q Okay. Are you aware of whether -- do you know
19 whether Stericycle has unionized drivers or not?

20 MS. GOLDMAN: Objection. Calls for
21 speculation, lack of foundation and beyond the scope.

22 JUDGE KOPTA: Sustained.

23 MR. VAN KIRK: I'm just trying to find
24 out what the scope of knowledge for his testimony is.

25 JUDGE KOPTA: You may ask him a more

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1 general question just to lay foundation, but you can't
2 go directly to that question.

3 Q You've also mentioned in your testimony that
4 you believe -- I want to use your actual words here so
5 I don't mischaracterize it -- that Lake Chelan
6 Community Hospital supports competition to ensure that
7 they are able to obtain what you call a true market
8 price. Do you remember that testimony?

9 A Hopefully you're not reading back something
10 that isn't in there.

11 Q I'm not, and somebody would have spoken up if
12 I was.

13 JUDGE KOPTA: It might be helpful,
14 Mr. Van Kirk, if you are going to quote from his
15 testimony, to let him know where that is in his
16 testimony so that he can cross-reference it.

17 MR. VAN KIRK: Yes, that's a good
18 suggestion.

19 Q I am look at Page 3, beginning I believe on
20 Line 11 to 13.

21 Do you have your testimony in front of you
22 right now?

23 A No, I have it on a computer and I'm looking
24 for it right now.

25 Q Okay, that's fine. I was mostly just trying

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1 to orient you to the new subject we are going to
2 cover. I am going to go ahead and ask questions. If
3 you think you need to look at it, just stop, and we
4 will take the time for you to pull it up.

5 A Thank you, I appreciate that.

6 Q Have you performed any analysis of what a true
7 market price would be?

8 A Not lately. When I originally started here I
9 did some alternatives, including if we were to do our
10 own incineration here, and it wasn't feasible.

11 Q It wasn't economically feasible to perform
12 your own incineration?

13 A It's a combination of problems, not just --
14 the economics, as well as the scrubbers and stuff like
15 that that the city was going to require.

16 Q So at this point, you don't know what a true
17 market price for biomedical waste services would be?

18 A No, sir.

19 Q What I understand is, is you just think it
20 would be a good idea to introduce competition into the
21 market because it may promote a market price, correct?

22 A Yes, sir.

23 Q And again, it doesn't matter which company
24 is -- which alternative company is out there, correct?

25 A No, sir, I do not have a preference.

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1 Q Would you support having three carriers out
2 there to introduce you to more market pressure?

3 A In the first place, I hadn't considered that,
4 and I don't -- I don't recall testifying to that. I
5 don't know where we are going.

6 Q You didn't -- I was just asking you a question
7 related to the concept that you put forth,
8 competition.

9 A Then no, I haven't thought of a third party.

10 MR. VAN KIRK: I have no more questions
11 at this time. Thank you, Mr. Johnson.

12 JUDGE KOPTA: Mr. Sells, do you have any
13 questions for Mr. Johnson?

14 MR. SELLS: Very briefly. Thank you,
15 Your Honor.

16

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

18 BY MR. SELLS:

19 Q Mr. Johnson, my name is Jim Sells and I
20 represent, amongst others here, a statewide
21 association of garbage haulers.

22 Do you know who picks up your regular
23 municipal solid waste from the hospital?

24 A The City of Chelan.

25 Q All right. Thank you.

0246

1 MR. SELLS: That's all I have, Your
2 Honor.

3 JUDGE KOPTA: All right. Thank you.
4 Anything from Staff?

5 MS. WOODS: No, Your Honor.

6 JUDGE KOPTA: Any redirect?

7 MS. GOLDMAN: No, Your Honor.

8 Thank you for your testimony.

9 JUDGE KOPTA: All right. Thank you,
10 Mr. Johnson. We appreciate you testifying today and
11 you are excused.

12 THE WITNESS: Thank you, sir.

13 JUDGE KOPTA: Your next witness.

14 MS. GOLDMAN: Waste Management calls
15 Michael Weinstein to the stand.

16 Can we go off the record for a second?

17 JUDGE KOPTA: Let's be off the record
18 while Mr. Weinstein gets settled.

19 (Pause in the proceedings.)

20 JUDGE KOPTA: Let's be back on the
21 record.

22 Mr. Weinstein, if you would stand and raise
23 your right hand.

24

25

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1

2 MICHAEL WEINSTEIN, witness herein, having been
3 first duly sworn on oath,
4 was examined and testified
5 as follows:

6

7 JUDGE KOPTA: You may be seated.

8 Ms. Goldman.

9 MS. GOLDMAN: Actually, Your Honor,
10 could we identify the -- sorry, could we identify the
11 exhibits that I believe are stipulated to admission at
12 this point?

13 JUDGE KOPTA: Since not all of his
14 exhibits are stipulated into admission, why don't we
15 go ahead and establish the basis for those that have
16 not been admitted and then we will address all of them
17 at one time.

18 MS. GOLDMAN: Okay.

19

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

21 BY MS. GOLDMAN:

22 Q Could you please state your name and spell it
23 for the record?

24 A Yes, Michael Weinstein, W-E-I-N-S-T-E-I-N.

25 Q By whom are you employed, Mr. Weinstein?

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1 A Waste Management of Washington, Inc.

2 Q Did you submit prefiled testimony in this
3 matter on October 1st, 2012, accompanied by exhibits?

4 A Yes.

5 Q Did you also submit prefiled response
6 testimony in this matter, accompanied by exhibits, on
7 November 6th, 2012?

8 A Yes.

9 Q And could you take a look, please, at the
10 binder in front of you. The prefiled testimony has
11 been -- there's no objection to that, so actually if
12 you could take a look at the prefiled rebuttal
13 testimony, which is Exhibit 15T.

14 Once you find that, could you please confirm
15 that that is your testimony and it is true to the best
16 of your knowledge?

17 MR. JOHNSON: Ms. Goldman, I have it at
18 4T.

19 THE WITNESS: 15T is --

20 JUDGE KOPTA: That's right, 4T is the
21 response testimony. And in addition, I don't have a
22 stipulation for his direct testimony, which is 1T.

23 MS. GOLDMAN: My apologies, I'm looking
24 at the wrong list.

25 Q Let's start, then, with 1T. Could you please

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1 take a look at your direct testimony that was filed on
2 October 1st, 2012, and confirm that that is indeed a
3 true and correct copy of your testimony and true to
4 the best of your knowledge?

5 A Yes, it is.

6 Q Could you take a look, please, at Exhibit 2,
7 MAW-2, which are excerpts of Stericycle's responses to
8 Waste Management's Second Data Requests.

9 A (Complies.)

10 Q To the best of your knowledge, are those
11 indeed the excerpts of Stericycle's responses to Waste
12 Management's second data requests?

13 A Yes, they are.

14 Q Could you look, please, at MAW-4T, which is
15 your response testimony of November 6th, 2012?

16 A (Complies.)

17 Q Do you recognize that to be the true and
18 correct testimony that you offered on that date?

19 A Yes, it is.

20 Q Could you look, please, at Exhibit MAW-10.

21 A (Reviews documents.)

22 Q Does that reflect the Medical Waste Revenue
23 Growth Projection in Washington Analysis that you
24 performed?

25 A Could you tell me which tab that is?

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1 Q It's MAW-10.

2 A MAW-10 is Exhibit 8. Yes, that is.

3 Q And Exhibit 8 is the Medical Waste Revenue
4 Growth Projection in Washington Analysis that you
5 performed?

6 A Yes, it is.

7 Q Could you look, please, at MAW-13, and confirm
8 that that is the Medical Waste Collection Break-Even
9 Analysis which you have performed?

10 A Yes, it is.

11 Q Could you look, please, at MAW-14, and confirm
12 that that is the application of the New
13 Lurito/Gallagher Formula to Murrey's data which you
14 performed?

15 A Yes, it is.

16 Q Could you take a look, please, at MAW-15 and
17 confirm that that is an article entitled "Stericycle
18 CEO expects profits on 'Obamacare'," which was
19 published November 15th, 2012, in the Waste Recycling
20 News?

21 A Yes, it is.

22 MS. GOLDMAN: We move for the admission
23 of all of the testimony and the exhibits that were
24 offered by Mr. Weinstein in his direct and response
25 testimony. The ones that I have not mentioned, I

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1 believe to have been stipulated to admissibility by
2 Stericycle and the other parties.

3 JUDGE KOPTA: Any objection to the
4 admission of those exhibits?

5 MR. JOHNSON: Your Honor, we objected
6 to the admission -- this is Steve Johnson on behalf of
7 Stericycle. We objected to the admission of MAW-2,
8 excerpts of Stericycle's Response to Waste
9 Management's Second Data Requests, because those
10 responses were subsequently supplemented and
11 corrected, and Mr. Weinstein's testimony refers to the
12 uncorrected version.

13 I think with that clarification, however, I
14 think that's the only issue that we had.

15 I guess, is there another one, Jared, that is
16 similar?

17 MR. VAN KIRK: Not similar. There was
18 one other I planned to raise, that's with MAW-15,
19 which is the Waste Recycling News article.
20 Mr. Weinstein's testimony refers to -- basically to
21 the headline of that article. We don't know who wrote
22 that or why it was written. The article itself is
23 hearsay on multiple levels, without any indication of
24 its reliability. I did object to both how it was used
25 in the testimony and to the exhibit itself.

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1 JUDGE KOPTA: All right. Well, both of
2 those issues can be explored on cross-examination, so
3 I don't see that as a basis for keeping them out of
4 the record. So to the extent you are objecting on
5 those grounds, those objections are overruled.
6 Exhibits MAW-1T through MAW-15 are admitted.

7 Anything further, Ms. Goldman?

8 MS. GOLDMAN: Nothing further at this
9 time, Your Honor.

10 JUDGE KOPTA: Mr. Weinstein is available
11 for cross-examination. We will begin with
12 Mr. Johnson.

13 MR. JOHNSON: Yes. Thank you, Your
14 Honor. I am going to handle this cross-examination.

15

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

17 BY MR. JOHNSON:

18 Q Hello, Mr. Weinstein.

19 A Hello.

20 Q I am Steve Johnson, I represent Stericycle, as
21 you know. For starters, I can't get my colleague,
22 Jared Van Kirk, to pronounce your name correctly. I
23 believe you have pronounced it "Weinstein," and I am
24 going to follow that invention, if that's the case.

25 A Weinstein is the way my family pronounces it.

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1 Q Right, I assumed so.

2 Mr. Weinstein, just to clarify, Waste
3 Management of Washington, Inc. is the corporate entity
4 that is providing -- currently providing biomedical
5 waste collection services in the state of Washington,
6 and is the applicant in this process, correct?

7 A Yes, it is.

8 Q But WM Healthcare Solutions of Washington is
9 what? Could you characterize for us what WM
10 Healthcare Solutions of Washington is?

11 A It's an operating entity of Waste Management
12 of Washington, Inc. It is under the corporate
13 umbrella of Waste Management of Washington, Inc.,
14 which is the company that is -- that has the
15 G certificate within the state of Washington.

16 Q Okay. And so WM Healthcare Solutions is a --
17 sort of like a profit center, operating division,
18 something along those lines; is that correct?

19 A Yes, it is.

20 Q Okay. And so --

21 (Interruption in the proceedings.)

22 JUDGE KOPTA: Excuse me, whoever is on
23 the bridge line, would you mute your line, please.
24 You are interfering with the hearings.

25 My apologies, Mr. Johnson.

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1 MR. JOHNSON: Thank you, Your Honor.

2 Q As far as WM Healthcare Solutions is
3 concerned, you do keep financial records, cost data,
4 revenue data, all of the data that is necessary, for
5 example, to generate the income statements that are
6 presented in your testimony; is that right?

7 A Yes.

8 Q And those are maintained in the ordinary
9 course of business by WM Healthcare Solutions?

10 A Yes.

11 Q And as far as your own particular
12 responsibilities, are you responsible for -- I think
13 your title is senior pricing manager. Am I correct on
14 that?

15 A Yes, it is.

16 Q Is that for Waste Management of Washington,
17 Inc., the corporation as a whole?

18 A What my responsibility is primarily, is that I
19 handle most of the rate filings with the state of
20 Washington that are regulated by the Utilities and
21 Transportation Commission. Also, I am involved in
22 other financial and analyst functions related to many
23 of the municipal contracts that we competitively bid.

24 Q Okay. And so your responsibility is much
25 broader than WM Healthcare Solutions?

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1 A Yes, it is.

2 Q Okay. I'm going to try to distinguish between
3 those two from time to time, and I just wanted to sort
4 of get that out on the table.

5 Someplace in your testimony you mentioned that
6 there are 35 separate general ledgers maintained. Is
7 that for like different municipalities for services
8 rendered, as well as WM Healthcare Solutions?

9 A We have separate general ledgers in the state
10 of Washington for all of the operating entities that
11 we have within the state of Washington. We have
12 multiple locations throughout Washington state. Each
13 of these operating entities maintain a separate
14 general ledger.

15 Q Excuse me, by "operating entities" do you mean
16 separate legal entities or do you mean operating
17 divisions?

18 A Operating divisions of Waste Management of
19 Washington, Inc.

20 Q Okay. And so WM Healthcare Solutions is one
21 of these operating divisions for which a separate
22 general ledger is maintained and so forth?

23 A That is correct.

24 Q Okay. Approximately what percentage of your
25 time is devoted to WM Healthcare Solutions in the

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1 ordinary circumstance?

2 A It's a very small percentage.

3 Q But is --

4 A Well, I would say it's been historically a
5 very small percentage, but over the last several
6 months, it's been a much greater percentage.

7 Q More recently, I suppose.

8 And, Mr. Weinstein, I believe you were around
9 back in the old days, when Waste Management was in the
10 medical waste business; is that right, were you
11 employed by Waste Management at that time?

12 A Yes, I was.

13 Q Okay. Mr. Weinstein, you have made some study
14 of Stericycle's revenue and expense data as presented
15 in its annual reports to the UTC, I believe; is that
16 correct?

17 A Yes.

18 Q You have, I believe, used the -- that data as
19 the basis for some of your projections with respect to
20 the market growth, and even your own -- I should say
21 WM Healthcare Solutions' potential profitability in
22 future years; is that correct?

23 A Yes.

24 Q And so do you think that's an appropriate
25 source of data for that purpose?

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1 A It's the best information that we have to go
2 on at this time.

3 Q Did you do any studies with respect to what I
4 might call the new territory, if you will let me do
5 that, the territory that is not included currently
6 within Waste Management's G certificate 237? Did you
7 do any studies concerning the customer base in that
8 territory before making application for the extension
9 of your certificate?

10 A Personally, no, but I relied upon the
11 expertise of Mr. Daub and Mr. Norton with regards to
12 making these projections.

13 Q Okay. I was referring not so much to your
14 immediate projection, but just as you entered that
15 marketplace, or proposed to enter the marketplace.
16 Did you do any studies of the sort of cost profile of
17 service in the new territory?

18 A Not personally, no.

19 MS. GOLDMAN: Objection. Beyond the
20 scope.

21 JUDGE KOPTA: I'll allow the question.

22 Q I'm sorry, what was your answer,
23 Mr. Weinstein?

24 A No, I did not.

25 Q Okay. So, for example, you are not aware and

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1 have not been able -- your projections do not take
2 into account the particular characteristics in terms
3 of cost profile or revenue profile of customers in the
4 new territory; is that right?

5 A No, they do not specifically.

6 Q Mr. Weinstein, in your projection of Waste
7 Management's move to profitability, as you project, I
8 believe you used a particular assumption, I might say,
9 for growth of the marketplace in future years; is that
10 correct?

11 A Yes, I did.

12 Q And was that -- I believe you indicated in
13 your testimony that you project -- your market
14 projections were based on a 7.54 percent annual growth
15 rate?

16 A That growth rate, yes, was based on a growth
17 rate that Stericycle has achieved over the last ten
18 years, which I believe is going to be that -- which I
19 believe is very conservative.

20 Q So that's the average growth rate for
21 Stericycle over the last ten years; is that correct?

22 A On an annual basis, yes.

23 Q Growth rate of revenue, I believe?

24 A Yes.

25 Q Did you -- in projecting Waste Management's

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1 sort of future move to profitability, did you use a
2 particular target sort of for rate of return for what
3 you think is appropriate in the biomedical waste
4 collection business?

5 A With regards to the collection side, the rate
6 of return that I projected would be the allowable rate
7 of return that's allowed in Washington state.

8 Q What is that, sir?

9 A Well, depending on -- well, it would probably
10 be in the neighborhood of about -- an operating ratio
11 of 93, 94 percent.

12 Q So that would be 6 to 7 percent return?

13 A From the standpoint of a margin, yes.

14 Q So operating income of 6 to 7 percent of
15 revenues?

16 A Right.

17 Q And so, for example, when you project
18 profitability of Waste Management in 2015, you
19 estimated, I believe it was something like a
20 6.4 percent return. Is that roughly right?

21 A Yes.

22 Q Did you happen to, in your study of
23 Stericycle's average rate of return, come to any
24 conclusions about what Stericycle's average rate of
25 return has been?

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1 A Well, based on their annual reports, which is
2 the only information that we have, their return was
3 somewhat similar to that. Some years they were
4 greater; some years it was worse.

5 Q Didn't you in fact calculate a cumulative rate
6 of return for Stericycle in the last ten years in
7 your -- as an exhibit to your testimony?

8 A Yes, I believe I summed up the annual reports
9 for the last ten years.

10 Q And do you recall what the rate of return was
11 for Stericycle during that period?

12 A Point me to what exhibit it is.

13 Q Yes, I will do my best here. I believe it is
14 MAW-3. Summary of Stericycle annual reports is the
15 way it's described in the exhibit list.

16 Since you probably can't read that little type
17 I --

18 A Oh, I can. If I take my glasses off I can.

19 Q I went to the trouble to blow it up so I could
20 read it. I might hand you a copy of what at least
21 I --

22 MR. JOHNSON: I would request that --
23 Your Honor, that you allow me to show a -- what I will
24 advise Mr. Weinstein is a larger version of MAW-3,
25 that perhaps is easier to read.

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1 JUDGE KOPTA: It's up to the witness.

2 If he's fine with it as it is, then that's --

3 A I think I can manage.

4 Q All right, good. So if you can, then I will
5 simply use this myself.

6 Net operating income for Stericycle shown on
7 your cumulative 2001 to 2011 is 5.9 percent; is that
8 correct?

9 A Yes, that's what's calculated.

10 Q Yeah. And then the actual net income is
11 significantly less, that's 4.7 percent; is that
12 correct?

13 A That's cumulative. However, I will note that
14 it was only in the earlier parts, the earlier years,
15 in 2001, that there was any real deviation between net
16 operating income and net income. So it -- for all
17 intents and purposes, it's probably closer to that
18 5.9 percent, if you exclude the first year.

19 Q I'm not quite sure what you just said.

20 A Well, I guess what I'm saying here is that all
21 ten years is adding up, but it's including the first
22 year that had a significant other income in expense
23 number of \$925,000. So after taking that into
24 account, it has a bearing of lowering the overall
25 income by about 1 percent, but that was only what

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1 happened -- that was only what was reported in 2001.
2 Subsequently, there was nothing reported in other
3 income and expense on the Stericycle annual reports.

4 Q Right. And if I might direct you also to 2011
5 in your -- in MAW-3, the net income in that year is
6 shown as 4 percent with operating income of 6.3; is
7 that correct?

8 A Right, but the 4 percent is taking into
9 account federal income tax that was reported in that
10 annual report, that previously was not reported in any
11 other annual reports.

12 Q So you are saying federal income taxes was not
13 previously reported so it affects the result here?

14 A It reflects the cumulative result.

15 Q Yeah, I see.

16 Now, in 2010, without the reporting of federal
17 income tax, you have a net operating income of
18 .4 percent --

19 A Yes.

20 Q -- for Stericycle, right?

21 A That's what was reported.

22 Q Right. And the same result after tax,
23 0.4 percent, correct?

24 A Yes.

25 Q So the average for 2010 and 2011 net operating

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1 income for Stericycle would be the sum of .4 percent,
2 plus 6.3 percent, divided by 2, which is something
3 like 3.8, 3.9 percent; is that right?

4 A Probably relatively close, yes.

5 Q Right. So Stericycle, by your testimony, is
6 not making what would be an appropriate rate of
7 return, at least in recent years?

8 A With regards -- well, it would be coming close
9 to the appropriate rate of return. Quite honestly,
10 I'm not too familiar with Class C operating entities
11 in waste -- with -- and what the regulatory
12 requirements are for Class C companies, because they
13 do not report similarly to Class A and B companies.

14 Q So I think, then, that you've said that you
15 are not able to testify with respect to Class C
16 companies; is that correct?

17 A With regards to annual report in Class C
18 companies. This is what has been reported. You know,
19 whether or not this is the appropriate level of return
20 would be something that someone within the -- with the
21 WUTC would be able to determine. However, I do
22 believe that historically most companies that have not
23 been under the Lurito/Gallagher curve have been
24 allowed to earn a return in the neighborhood of 6 or
25 7 percent. As you can see, there are other years that

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1 the operating ratio was considerably greater than 6 or
2 7 percent that's on this report.

3 Q I understand that we have all the data, at
4 least as you have summarized it in MAW-3 for years
5 back to 2001. The exhibit speaks for itself, I agree.
6 Nonetheless, in recent years, it is significantly
7 below the 6 to 7 percent range that you described
8 earlier as being a target or an appropriate rate of
9 return for a company of this type, correct?

10 A Well, there was a significant improvement in
11 2011 from 2010.

12 Q It seems to have been.

13 Now, when you estimated Waste Management's
14 results going forward, you used certain expense sort
15 of assumptions there. Did you take them from the
16 Stericycle expense data as well as the revenue data
17 that you used for projection of revenue?

18 A No.

19 Q Why did you not use the historical expense
20 data from the Stericycle annual reports for that
21 purpose?

22 A Well, we used our own historical information.
23 I looked at the information in 2011 -- in 2010 and
24 2011. Based on growth rates that we've been able to
25 achieve for most of 2011, I projected out to a point

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1 in time at that average growth rate until we would
2 hopefully receive statewide authority. Upon receiving
3 statewide authority, we projected a growth rate that
4 would exceed the previous growth rate that we had
5 achieved when we didn't have statewide authority.

6 Q Mr. Weinstein, what I asked you about was the
7 expense side of things, not growth in revenue.

8 A Well, the expense -- there are expenses.
9 Similar to the revenues, the expenses are based on our
10 historical expenses that we have incurred since -- in
11 2010 and 2011, with a projection of those expenses
12 increasing as our revenues increase.

13 Q Mr. Weinstein, do I forget -- my recollection
14 is that Waste Management started serving the medical
15 waste marketplace, or restarted in 2011? Am I off a
16 year?

17 A I'm sorry, I misspoke. I meant 2011 and 2012.

18 Q Okay. So you used the sort of expense history
19 of starting up in 2011 and continuing through 2012 to
20 project what you anticipated for expenses going
21 forward?

22 A Right, in consultation with Mr. Daub and
23 Mr. Norton, who are actively involved in the business.

24 Q Okay. And so did you evaluate what
25 Stericycle's expense increase rate was for the period

0266

1 of the 10, 12 years that you present in your exhibit
2 MAW-3?

3 A Yes, I did.

4 Q And would you describe that? I guess you are
5 looking at the cumulative column on the far right on
6 that exhibit?

7 A Well, I looked at the growth in their
8 processing fees over the period of time and the growth
9 in their other expenses that have gone up.

10 Q What's the average increase in expense for
11 Stericycle during this ten-year period?

12 A I didn't -- I don't think I actually reflect
13 that calculation on here.

14 Q Would 7 percent seem about right?

15 MS. GOLDMAN: Objection. Beyond the
16 scope.

17 JUDGE KOPTA: At this point I don't want
18 him to have to calculate on the fly.

19 MR. JOHNSON: I'm not asking him to
20 calculate it. I did run the numbers and you can --
21 I'm just asking him if that seems about right.

22 MS. GOLDMAN: Same objection.

23 MR. JOHNSON: But the data speaks for
24 itself on MAW-3.

25 JUDGE KOPTA: If the calculations are

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1 based on the exhibit itself, then I think that we can
2 have individuals do the math without having
3 necessarily Mr. Weinstein have to do it.

4 MR. JOHNSON: Well, my question was
5 whether he had done it and if that seems -- you know,
6 was consistent with his understanding of that exhibit.

7 JUDGE KOPTA: I understand. He said he
8 had not done it, so I think that's the end of that
9 particular inquiry.

10 MR. JOHNSON: All right. Thank you,
11 Your Honor.

12 Q Mr. Weinstein, I believe you testified that
13 you didn't personally evaluate sort of the cost
14 profile of service in the new territory, the territory
15 that would be covered by your pending application; is
16 that right?

17 A No, I did not.

18 Q You didn't personally do any study or
19 evaluation of the revenue profile of that -- customers
20 within that territory?

21 A Not personally myself, but again, in
22 consultation with Mr. Daub and Mr. Norton, they
23 provided me information along those lines.

24 Q So if the information was provided to you
25 concerning those -- both those costs and revenue

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1 points, I guess I would ask you, do you anticipate
2 that the cost of service in the new territory will be
3 any different than the cost of service in your
4 existing territory, as percentage of revenue, for
5 example?

6 MS. GOLDMAN: Your Honor, I object to
7 this line of questioning as being beyond the scope.
8 There was no response or opposition whatsoever filed
9 to his direct testimony. This is an issue that is not
10 addressed in his response testimony.

11 MR. JOHNSON: Your Honor, I don't think
12 that's correct. What Mr. Weinstein's testimony --
13 particularly response testimony goes to the impact of
14 allowing a second medical waste company in the new
15 territory on Stericycle. What we have presented in
16 our testimony, and what I think Mr. Weinstein was
17 responding to, is the notion that because of costs and
18 revenue characteristics of new territory, and
19 customers in that territory, and service to customers
20 in that territory, addition of a new -- a second
21 competitor will -- put substantial pressure on service
22 levels or rates. I am simply trying to address those
23 issues with Mr. Weinstein.

24 JUDGE KOPTA: Well, I think that
25 exploring what Mr. Weinstein did or did not consider

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1 in making his analysis is an appropriate line of
2 inquiry, so I will overrule the objection.

3 Proceed, Mr. Johnson.

4 MR. JOHNSON: Thank you, Your Honor.

5 Q So I believe I asked you whether the cost of
6 service -- you anticipate that the cost of service,
7 based on the information that was provided to you by
8 others, or your own analysis, whether the cost of
9 service in the new territory would be significantly
10 different from the cost of service as a percentage of
11 revenue in the existing Waste Management territory?

12 A I would say that the -- that it would be
13 similar to what we have provided and similar to the
14 way -- the cost that Stericycle has incurred over
15 the -- by virtue of the fact that they have statewide
16 authority.

17 Q That doesn't answer my question, though,
18 Mr. Weinstein, which is, is the cost of service
19 different in the new territory compared to the old
20 territory under your -- as you understand it?

21 A There are parts of the -- well, I would say
22 that there are parts of the new territory where the
23 costs would be very similar and there would be parts
24 of the new territory that could be quite different,
25 higher or lower.

0270

1 Q I understand.

2 A I don't have any specific information or
3 knowledge with regards to that.

4 Q Okay. I guess what I was not asking you about
5 is specifics, but I'm trying to understand what you do
6 have knowledge about.

7 Would it be fair to say that the cost of
8 service to the more rural counties, the more -- the
9 counties further away from major transportation
10 corridors, would be higher than service, say, in the
11 I-5 corridor?

12 MS. GOLDMAN: Objection. Beyond the
13 scope.

14 JUDGE KOPTA: That's getting a little
15 bit farther. I don't have a problem with you asking
16 what he knows or what he doesn't know, but I don't
17 think that asking him for his conjecture, when I think
18 it is clear that he said he doesn't have that specific
19 information, is appropriate. I will sustain that
20 objection.

21 MR. JOHNSON: Okay. Thank you, Your
22 Honor.

23 Q Did Mr. Daub or Mr. Norton provide you
24 information that would allow you to evaluate the cost
25 of service differences between service to rural

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1 counties versus service to urban counties, or was
2 there a discussion of that?

3 MS. GOLDMAN: Objection. Asked and
4 answered.

5 JUDGE KOPTA: That's just another
6 version of the same question, Mr. Johnson.

7 MR. JOHNSON: I thought I specifically
8 asked him whether he received information from
9 Mr. Daub or Mr. Norton.

10 JUDGE KOPTA: He has already testified
11 that he doesn't know that information. I think that's
12 the end of that particular inquiry.

13 Q So then, Mr. Weinstein, you have no idea
14 whether the cost of service to rural counties or
15 locations off of major transportation corridors would
16 be higher or lower than service along the I-5 corridor
17 or more urban counties?

18 MS. GOLDMAN: Objection.

19 JUDGE KOPTA: Mr. Johnson, again, it's
20 another question on --

21 MR. JOHNSON: I'm just trying to
22 confirm, Your Honor, that he really doesn't know
23 anything about this subject.

24 JUDGE KOPTA: He said he doesn't know.
25 It's asked and answered. Let's move on, please.

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1 MR. JOHNSON: Your Honor, it's your
2 understanding of his testimony that he doesn't know
3 anything about this?

4 JUDGE KOPTA: He said he did not have
5 specific information on the cost factors.

6 MR. JOHNSON: Right.

7 JUDGE KOPTA: Trying to get specific
8 about whether it's rural versus urban is irrelevant.
9 If you want to ask Mr. Norton when he gets on the
10 stand about that, if he's got that in his testimony,
11 that's fine. I believe we've exhausted
12 Mr. Weinstein's knowledge on the subject.

13 MR. JOHNSON: Well, that was what I was
14 trying to determine, Your Honor.

15 Q Mr. Weinstein, you remember the testimony of
16 Christopher Dunn and your response testimony to that I
17 believe; is that correct?

18 A Yes.

19 Q I believe Mr. Dunn, if I might just sort of
20 generally characterize his testimony, indicated that
21 there were characteristics of the new territory that
22 were different from what Stericycle's data was for the
23 old territory; is that correct?

24 MS. GOLDMAN: Your Honor, I object to
25 that as misstating the testimony, a lack of

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1 foundation, and lack of basis of any knowledge in the
2 testimony being cited. And we have previously moved
3 to strike that testimony.

4 JUDGE KOPTA: At this juncture,
5 Mr. Weinstein does address that testimony in his
6 testimony, and so I think it is an appropriate thing
7 to ask him about. It is overruled.

8 Q So addressing your response testimony to
9 Mr. Dunn, and I believe that -- let's see if we can
10 put that -- it's MAW-4T, which is your response
11 testimony.

12 A Yes.

13 Q In that testimony, I believe you confirm that
14 what we might call stem miles, or what Mr. Dunn called
15 stem miles, and I believe you did in your testimony,
16 is a fixed, relatively fixed, cost for service to
17 customers in general; is that right?

18 A If you are referring to, you know, the cost
19 associated with -- from getting from Point A to
20 Point B, for the most part, yes.

21 Q Right. So for example, travel time from a
22 base of operations to a customer location would be
23 considered stem miles, and the cost of getting from
24 Point A to Point B, namely, the base of operations to
25 the customer, would be a fixed cost?

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1 A Generally speaking, but not entirely, I
2 wouldn't say.

3 Q Right, but it depends on a configuration of
4 routes and many different factors that affect route
5 decisions. But in general, the cost of driving to a
6 customer's location doesn't vary with the amount of --
7 the number of containers picked up at that location;
8 is that right?

9 A Yes.

10 Q So in general, if you are serving customers
11 that have -- where the stem miles are greater, you
12 would expect those costs, those stem mile costs to be
13 greater for service to that customer; is that right?

14 A You are talking about the cost with -- from
15 going a further distance?

16 Q Yes.

17 A Obviously, that would take some -- a little
18 more time, yes.

19 Q Not only time, but it takes fuel and truck
20 maintenance costs and all of those things, right?

21 A Yeah, it would -- of course, you know, it --
22 the gas mileage would be better, in terms of going
23 stem miles, as opposed to going from start and stop.
24 It wouldn't be -- I would consider to be a one-to-one
25 ratio, but yes, there would be some additional -- it

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1 would be for the most part fixed, but I think there
2 would be some variability to it.

3 Q Now, the variability I think you described has
4 to do with transportation among customers or with
5 adding a particular location; is that right, not so
6 much the sort of A to B travel?

7 A Yes, for the most part.

8 Q Okay.

9 A Like I said, I think that there would be some
10 variability to the A to B travel because the amount of
11 wear and tear on the truck from going from A to B. If
12 it's a stem mile, they would be a little bit different
13 than the wear and tear on a truck that's going from
14 one stop to another stop to another stop.

15 Q Right, but if you are just comparing the
16 transit from A to B, and not comparing that to any
17 other cost variable, that would be the same, whether
18 you are picking up 10 customers or 20 customers at
19 that location, or 10 containers or 20 containers at
20 that location?

21 A Well, are you talking about the stem miles?

22 Q Yes.

23 A Yes.

24 Q So in general, would it be fair to say that if
25 the stem miles are greater, that that cost element

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1 would be greater for serving customers for which the
2 stem miles are greater?

3 MS. GOLDMAN: Objection. Vague.

4 JUDGE KOPTA: Do you understand the
5 question, Mr. Weinstein?

6 THE WITNESS: Well, yes. I mean I think
7 I understand the question.

8 A Why don't you repeat it one more time.

9 Q Okay. Mr. Weinstein, what I was trying to say
10 was, if you've got a customer base that has -- the
11 characteristics of which are that there are greater
12 stem miles involved in serving that customer base,
13 then as far as that factor of cost of service is
14 concerned, service to those customers would be higher,
15 the costs would be higher?

16 A I would say yes.

17 Q So for example, in Mr. Dunn's prefiled
18 testimony, he mentioned a route to Port Angeles, for
19 example.

20 A Uh-huh.

21 Q He described the transit from base of
22 operations in, wherever it was, Kent let's say, to
23 Port Angeles and basically said that's a fixed cost.

24 MS. GOLDMAN: Objection. Misstates
25 Mr. Dunn's testimony.

0277

1 Q Is that your understanding of Mr. Dunn's
2 testimony, Mr. Weinstein?

3 MS. GOLDMAN: It was not Kent.

4 MR. JOHNSON: I'll rephrase it.

5 Q From whatever base that truck originated from
6 to Port Angeles, that was characterized as a fixed
7 cost; is that correct?

8 A I believe so.

9 Q And you would agree with that, then?

10 A Again, like I said, I think that it would be
11 more fixed than variable, but there could be some
12 variability to it.

13 Q Well, it would be variable depending on the
14 heavy foot of the driver, among other things, I
15 suppose.

16 A That's true.

17 Q Okay. You know, as a general concept, it
18 would be a fixed cost to get from A to B, and in that
19 case we're talking about Port Angeles.

20 So the cost to serve Port Angeles, then, in
21 terms of the stem miles, would not vary with the
22 number of containers picked up in Port Angeles; is
23 that correct?

24 A Yes.

25 Q So if you are spreading that cost -- that

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1 particular cost item stem miles over -- and
2 calculating that as a percentage of revenue earned,
3 the cost to serve Port Angeles would increase as a
4 percentage of revenue as the revenue decreased; is
5 that correct?

6 A Could you restate that one more time?

7 Q Sure. The basic notion is the cost, as a
8 percentage of revenue, to serve Port Angeles would
9 increase as business in Port Angeles decreased; is
10 that correct?

11 A Yes.

12 Q So if a carrier is -- and do you know whether
13 driver wages and truck costs -- do you know roughly
14 what the percentage of, say, WM Healthcare Solutions'
15 expenses consist of driver wages and truck costs?

16 A Yes.

17 Q And --

18 A It's in the neighborhood of 20, between 20 and
19 25 percent of total costs.

20 Q For total driver and truck?

21 A No, just for driver wages.

22 Q I see. And for truck costs?

23 A I would have to take a look at that, but it's
24 probably, you know, between 5 and 10 percent more.

25 Q So you're getting 30 to -- 25 to 30 percent of

0279

1 the cost.

2 Do you know how much the stem miles for Waste
3 Management's service are of that total?

4 MS. GOLDMAN: Objection. Beyond the
5 scope.

6 MR. JOHNSON: Your Honor, all of these
7 questions go to Mr. Weinstein's response to Mr. Dunn's
8 testimony about the effect of loss of business on cost
9 of service and the potential implications that it has
10 for rates or service levels.

11 JUDGE KOPTA: I don't have a problem
12 with you inquiring on that, but getting into what
13 Waste Management's specific experiences are I think is
14 a little beyond the scope. If you can modify your
15 questions to be more directly related to his analysis
16 of Mr. Dunn's testimony, then I think that would be
17 more appropriate.

18 MR. JOHNSON: Okay. I will try to do
19 that.

20 Q So, Mr. Weinstein, I guess what I'm getting at
21 is, Mr. Dunn's testimony was particularly focused on
22 the cost of getting to Port Angeles and the effect
23 that a loss of business in Port Angeles in that
24 example might have on Stericycle's margins, meaning
25 the percentage of the gross revenues that would be

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1 made up of the transportation costs. And so my
2 question basically goes to the issue of whether -- you
3 know, how much of the total transportation cost, total
4 driver cost, total truck cost is involved in stem
5 miles, as a way to evaluate the significance of that
6 factor in evaluating the effect of the loss of
7 business in Port Angeles in this example.

8 MS. GOLDMAN: Objection, Your Honor. I
9 didn't hear a question.

10 JUDGE KOPTA: He hasn't asked one yet.

11 Q My question is: Do you know the percentage of
12 driver and truck cost that is attributable to stem
13 miles?

14 MS. GOLDMAN: What entity are you
15 speaking of?

16 MR. JOHNSON: For either Waste
17 Management or Stericycle.

18 Q You've done a spreadsheet on Stericycle's
19 costs. If you know that, that will be fine.

20 MS. GOLDMAN: And I would object to the
21 degree it is asking for information regarding Waste
22 Management, which is not the subject of any testimony
23 that's been offered.

24 JUDGE KOPTA: I believe we've already
25 had that discussion. The cat is out of that

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1 particular bag. The basis of Mr. Weinstein's
2 knowledge is an appropriate question to ask. I think
3 the question itself is appropriate.

4 Mr. Weinstein, do you have that in mind or do
5 you need to have it repeated?

6 THE WITNESS: Repeat it one more time.

7 MR. JOHNSON: Maybe I should have it
8 read back.

9 JUDGE KOPTA: Well, we can do that.

10 Q My question has to do with the -- if you know,
11 based on either Stericycle's data that you have
12 analyzed or your knowledge of Waste Management's
13 expenses, what percentage of driver wages and benefits
14 and truck costs are made up of stem miles?

15 A Generally speaking, I know what the
16 percentages are with regards to how much our overall
17 driver wages and benefits are. With regards to
18 parsing it between stem miles and other -- and going
19 from one point to another point, no, I do not have
20 that information.

21 Q Okay. Thank you, Mr. Weinstein.

22 Now, I asked you a little bit, Mr. Weinstein,
23 about your evaluation of Stericycle's sort of expense
24 history based on your -- the exhibit MAW-3. I'm going
25 to return to that subject.

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1 So I guess as you projected forward, in terms
2 of -- in your response testimony, you suggested that
3 Stericycle's revenues might stay approximately the
4 same as they are now, in 2015, even if Waste
5 Management took a third of the market.

6 A It's a -- obviously, it's a projection. And,
7 you know, I do believe that the industry as a whole is
8 going to grow substantially in the next several years.
9 Conservatively speaking, yeah, it would be probably,
10 but it could be greater or it could be less.

11 Q Okay. But did your analysis take into account
12 the growth of Stericycle's expenses over that same
13 period?

14 Are we talking about -- you know, gross
15 revenue is only sort of one indicator of a financial
16 success. For sure it's not the most important one,
17 which is net income, right?

18 Did you evaluate or project Stericycle's
19 likely expense of growth going forward?

20 A No, not specifically, but I would expect that
21 their expenses would go up consistent with their
22 revenues.

23 Q So -- but to the extent that the revenues
24 don't go up -- do you think their expenses are not
25 going to go up in the next three years?

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1 A It's possible they may go down. It could go
2 up; it could go down. There could be new
3 technologies, new efficiencies that could be entered
4 into the marketplace that could have a favorable
5 bearing on their expenses.

6 Q Right. We could all travel by transponder,
7 also.

8 I guess what I'm asking, do you think fuel
9 costs are going to go down? Do you have any reason to
10 think so?

11 A They may go up and they may go down.

12 Q But you didn't look back to the history of
13 Stericycle's actual expense history and you didn't
14 make any judgment, make any projection with respect to
15 Stericycle's expenses in your response testimony, did
16 you?

17 A No, I didn't. But I would point out that over
18 the last ten years, you know, their margins have been
19 relatively consistent, you know, with regards to what
20 was reported on their annual reports. There is
21 fluctuations from one year to the next, but overall
22 there were many years that they were earning 5, 6, 7,
23 8 percent, and there are other years that they didn't.

24 I would say that their expenses have gone up
25 or gone down. You know, periodically, they can --

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1 they could change, they could go up or go down,
2 depending on what's happening within the industry.

3 Q So I'm not clear on that. You are suggesting,
4 Mr. Weinstein, that their expenses have gone down in
5 some years, I mean as a total? I guess I'm not --

6 A I would say that their margins have either
7 gone up or gone down. If the revenues have -- have --
8 I need to refer to the exhibit again.

9 Q Right, that would be -- the exhibit we looked
10 at is MAW-3, I think.

11 A (Reviews document.)

12 Q I guess what I'm unclear on is why you think
13 that revenue history is an appropriate basis on which
14 to project revenue, but expense history is not an
15 appropriate basis to project expenses, or do you?

16 A I believe that both the expenses and the
17 revenues are -- you know, that it's appropriate to
18 project both.

19 Q Okay. So -- but you didn't do so in your
20 testimony, did you? You didn't project expenses for
21 Stericycle?

22 A I didn't refer to them directly, no.

23 Q Well, I think what you said was that you made
24 a projection for Stericycle's gross revenue in 2015,
25 and you said roughly it would be about the same as it

0285

1 is currently.

2 A That would be assuming that we -- that Waste
3 Management receives a certain market share based on
4 having statewide authority.

5 Q Right. But you didn't make any projection
6 concerning Stericycle's expenses over that same
7 three-year period?

8 A No, I did not.

9 Q Well, would you expect them to increase?

10 MS. GOLDMAN: Objection. Asked and
11 answered.

12 JUDGE KOPTA: We are going down the same
13 road again. I will sustain that objection.

14 MR. JOHNSON: I guess we did, didn't we?

15 JUDGE KOPTA: Yes, we did.

16 Q Mr. Weinstein, you have indicated that you
17 thought there would be substantial grow in the medical
18 waste market over the next few years; is that correct?

19 A That's my -- yes. I did state that, yes.

20 Q And the basis for that is what, population
21 growth and the Affordable Care Act?

22 A It is based on my discussions again with
23 Mr. Daub and Mr. Norton, in combination with the
24 Affordable Care Act, in combination with the fact that
25 this month I'm turning 60 years old, and I believe

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1 that I will probably be utilizing some of these
2 benefits within the next -- in the near future, as I
3 get older.

4 Q Well, we certainly hope that's not true.

5 A But I do believe that the population in its
6 entirety is getting older. You know, most of the baby
7 boomers, such as myself, are becoming close to
8 retirement. I think it stands to reason that the
9 medical waste industry is going to grow considerably
10 over the next several years, especially in light of
11 the Obamacare Act.

12 Q All those healthy young people that are going
13 to now be insured will be turning out medical waste;
14 is that your assumption there on the Obamacare notion?

15 A I think Obamacare is going to have a bearing
16 on the young and the old.

17 Q So did Mr. Daub or Mr. Norton tell you that
18 the market was going to grow, or is this based on your
19 own judgment?

20 A It is a combination of my discussions with
21 him, plus based on my knowledge and judgment and from
22 what I understand is happening in the world today.

23 Q Well, given the factors that you have cited as
24 driving that growth that you anticipate in the medical
25 waste market, do you think that the growth will be

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1 even across the state, or would it tend to be in
2 population centers?

3 A I really can't say. You know, I would say
4 that it will be proportionate to wherever there is
5 population.

6 Q Right, so it would grow larger where the
7 population is larger?

8 A It would grow -- it would be -- it would
9 grow --

10 Q In proportion to population?

11 A But who knows where the population is going to
12 be in the future. There may be people moving out to
13 different areas.

14 Q Right, we will all be working remotely from
15 Omak soon.

16 A Right.

17 Q In any event, I guess you would agree, though,
18 that this growth is probably going to be in the
19 urban -- primarily in the urban centers; isn't that
20 right?

21 MS. GOLDMAN: Objection. Asked and
22 answered.

23 JUDGE KOPTA: Yes, I am going to sustain
24 that.

25 Q So, Mr. Weinstein, I'm going to ask you to

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1 look at your response testimony, which is MAW-4T, and
2 then I'm going to ask you some questions about it.

3 Now, on Page 5 -- have you got that in front
4 of you?

5 A Yes, I do.

6 Q Page 5 there's a Q and A at the bottom of the
7 page. You can see the first sentence there. It says,
8 "In his Direct Testimony and Exhibit A, Mr. Dunn has
9 assumed that Washington's RMW market will remain
10 static based on the amount of Stericycle's gross
11 revenues in 2011."

12 Do you see that statement?

13 A Yes, I do.

14 Q Was it your understanding that Mr. Dunn was
15 projecting something about the future in his
16 testimony?

17 A His testimony was trying to identify what the
18 impact would be if they lost a certain percentage of
19 customers. It seems to me that that analysis in a
20 static environment is really not relevant.

21 Q Well, wasn't he in fact just evaluating what
22 would have happened in 2011? He was looking at 2011
23 and trying to allocate costs between fixed and
24 variable expenses.

25 MS. GOLDMAN: Objection. Misstates the

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1 testimony.

2 JUDGE KOPTA: He's asking for witness's
3 understanding. I think it is an appropriate question.

4 A Well, that's not the way I understood it.

5 Q Okay. And then on the bottom of Page 7
6 there's a Q and A, where the second sentence is,
7 "He" -- meaning Mr. Dunn -- "wrongly assumes that
8 Stericycle's revenues will decrease from 2011 to
9 2012."

10 Was there some -- something about Mr. Dunn's
11 testimony that suggested 2012, that he was projecting,
12 or are we still talking about 2011?

13 A It seems to be that the whole basis of his
14 testimony was to show how much revenue would be
15 reduced in the future.

16 Q Well, I think there was certainly an
17 implication with respect to that. I guess what I was
18 suggesting is that actually, he was just evaluating
19 2011 on certain assumptions, to see what difference
20 those assumptions would make in terms of revenue. And
21 in fact, as you know, the 10 percent, 25 percent and
22 50 percent reduction in revenue was just -- were just
23 plugged numbers, right?

24 A That's the way I understood it, yes.

25 Q Okay. Looking at Page 8 of your testimony,

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1 there is a lengthy presentation of references to
2 different counties within the state, beginning with
3 Pierce County at Line 6. It refers to Stericycle
4 reports. In that particular instance it says,
5 "Stericycle reports that it lost 51 customers in
6 Pierce County from 2011 to May 2012, yet increased the
7 number of containers collected there by 2,900." And
8 then it goes through a series of similar statements
9 with respect to other counties.

10 The references there appear to be to a summary
11 that was attached to your response testimony, based on
12 data that Stericycle provided in response to data
13 requests. It's Exhibit 6 to your response testimony.
14 Let me see if I can find it on the exhibit list. It
15 appears to be MAW 8.

16 A Yes, I found it.

17 Q So I went through your data and tried to
18 figure it out. I could not come up with those
19 calculations, so I thought I would just ask you.

20 I do understand this. There's a reference to
21 a loss of customers. I think what -- if you look at
22 MAW-8 there's two tables, one is for 2011 and one is
23 for 2012 through May 31. And then for the so-called
24 lost customers, I think you subtracted the number of
25 customers by counties shown in the 2011 table, from

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1 the numbers shown in 2012, or vice versa, to get the
2 difference.

3 Did you do these calculations yourself,
4 because I could not duplicate your numbers, and -- in
5 terms of the number of containers collected. It
6 says -- in the Pierce County statement it says that
7 Stericycle lost 51 customers. By that I think it
8 means that through May 31, it had served 51 fewer
9 customers than it served in all of 2011, but increased
10 number of containers there to 2900.

11 How did you calculate the number of containers
12 increased, because the difference in the Pierce County
13 column, you know, for containers in 2011 and 2012
14 is -- it shows 21,407 in 2012 through May 31 --

15 A Well --

16 Q -- and 44,065 in 2011.

17 A Well, to use that as an example, would be that
18 21,407 is essentially -- this information is through
19 May --

20 Q Right.

21 A -- which is essentially 5 months out of 12.

22 Q Yeah.

23 A So the 21,407, if you take 5 and divide it by
24 12, that's 42 percent. So if you were to apply
25 42 percent to the 44,000 from the prior year, you

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1 would achieve that calculation. But there are other
2 ways to calculate it, too.

3 Q Okay. So I guess you interpolate it, perhaps.
4 I mean I'm using terms I don't understand.

5 My point is, you went back to the Pierce
6 County numbers from 2011 and took 42 percent of that,
7 and then decided that that is an increase in
8 containers through May of 2011, roughly?

9 A Proportionately, yes.

10 Q I see. Well, that's not the way I tried to do
11 it, so that explains the difference.

12 You actually don't have any reason to believe
13 that through May 2011, they would have produced
14 42 percent of their containers, other than the fact
15 that they did so in May 2012?

16 A Again, it's just a projection based on what --
17 we have a complete year in 2011 and we have a partial
18 year in 2012.

19 Q Right. But you say, Stericycle reports that
20 it lost 51 customers. I don't think it says that they
21 lost them, but there was a difference. That appears
22 right on the face of those tables.

23 A Right.

24 Q Yet increased the number. Apparently, you are
25 suggesting that Stericycle reported that they

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1 increased the number of containers collected there by
2 2900. That's not factually true, is it? Stericycle
3 did not report that and we don't know that the number
4 of containers collected in Pierce County increased by
5 2900 in 2012, do we?

6 MS. GOLDMAN: Objection. Argumentative
7 and asked and answered.

8 JUDGE KOPTA: I'm going to allow the
9 question. Overruled.

10 A Again, it's a proportional analysis, since the
11 information in 2012 is a partial year and is trying to
12 project out what would occur in a calendar year, 2012,
13 to compare directly with 2011.

14 Q I get the concept. It's the statement that I
15 am having trouble with. It seems to be false.
16 Stericycle did not report that, and there is no basis
17 in the data presented for the calculation that you
18 made, other than it's sort of a seat of the pants
19 estimate.

20 MS. GOLDMAN: Objection.

21 JUDGE KOPTA: I will sustain that
22 objection. I think you've gotten the information that
23 you are going to get from that line of questioning.

24 Q So would you agree that the testimony is
25 incorrect on Page 8?

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1 MS. GOLDMAN: Objection.

2 JUDGE KOPTA: Sustained.

3 (Pause in the proceedings.)

4 JUDGE KOPTA: Mr. Johnson, we are at
5 noon. How much more do you have for Mr. Weinstein?

6 MR. JOHNSON: Your Honor, I was just
7 trying to determine that. I don't think it's
8 extensive.

9 JUDGE KOPTA: If you can finish up in
10 the next 15 minutes or so, then we can continue. I
11 would just as soon at least finish your cross of
12 Mr. Weinstein, if you can do that today, and keep
13 things moving. Is that a possibility?

14 MR. JOHNSON: I will certainly try. I
15 think it's close to that, Your Honor.

16 JUDGE KOPTA: Let's keep going, if
17 that's all right with everyone.

18 MS. WOODS: Your Honor, I apologize. I
19 need to get to a meeting that I foolishly scheduled on
20 top of this hearing. I will excuse myself, if that's
21 all right.

22 JUDGE KOPTA: That's fine. Thank you
23 for letting us know.

24 Q I guess one question I have, Mr. Weinstein,
25 goes to again your response testimony. It deals with

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1 your effort to characterize the impact on Stericycle
2 of allowing a second statewide competitor to the
3 medical waste industry. You in that testimony refer
4 to the growth in the market and you describe your
5 anticipation for what Stericycle's revenue would be in
6 that period. It's -- you estimate that its revenue
7 would be roughly equivalent to what it has now,
8 assuming that Waste Management takes -- is it 30
9 percent or a third?

10 A It was roughly a third.

11 Q A third of the market, okay.

12 So my question is, without evaluating the cost
13 impact on Stericycle of the next three years, does
14 your -- is your analysis flawed in that way? I mean,
15 it seems to me that without analyzing the effect of
16 cost increases, that saying that the revenues will
17 remain the same as they are now doesn't speak to the
18 potential squeeze on their margins.

19 MS. GOLDMAN: Objection. Asked and
20 answered.

21 JUDGE KOPTA: I think it's slightly
22 different. I will allow the question.

23 A Well, what I would say is that, you know,
24 Stericycle has had, you know, increases in costs over
25 the last many years and they have yet to file for a

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1 change in their tariff rates. I could only assume
2 that with -- with the growth that's expected within
3 the next five or six years, or three or four years,
4 and with the revenues going up, that Stericycle would
5 make a concerted effort to manage its costs better,
6 so -- so their costs will not go necessarily up --

7 Q But --

8 A -- up more than proportionate to their
9 revenues.

10 Q Right. But in terms of the history of -- that
11 we've looked at in MAW-3, Stericycle's expenses have
12 gone up with its revenues?

13 A Yes.

14 Q And so as -- if revenues remain static and
15 expenses increase, which seems to me to be -- I would
16 say that the assumption is usually that expenses
17 increase with time. Don't you think that that's a
18 factor? If their revenues -- Stericycle's revenues
19 remain static and expenses go -- don't we -- don't we
20 nonetheless expect its expenses to go up?

21 MS. GOLDMAN: Objection. Asked and
22 answered.

23 JUDGE KOPTA: Yes, it's the same
24 question. Sustained.

25 MR. JOHNSON: Did he answer it?

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1 JUDGE KOPTA: As far as I can tell he
2 did, yes.

3 MR. JOHNSON: All right.

4 Your Honor, I have no more questions.
5 Thank you.

6 JUDGE KOPTA: Thank you, Mr. Johnson.

7 Mr. Sells, are you going to have questions for
8 Mr. Weinstein?

9 MR. SELLS: Well, Your Honor, I will
10 have to confess, I didn't think we would get this far
11 today. I have my three-ring binders sitting in my
12 office. I have a very small --

13 MR. ECKARDT: Excuse me, Your Honor,
14 Gene Eckardt. Mr. Sells' microphone must not be on.

15 MR. SELLS: Oh, I'm sorry. Can you hear
16 me now, Gene?

17 MR. ECKARDT: Thank you very much.

18 MR. SELLS: So I have very brief -- but
19 I would love to do it first thing in the morning, if I
20 could.

21 JUDGE KOPTA: That would be fine. We
22 are farther along than we had anticipated, so I think
23 that's a reasonable thing to have done. I would ask
24 everyone to -- let's hope that we can keep this pace
25 up and then be prepared to move ahead. Given that we

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1 are shortly after noon and we were going to break at
2 around noon, then I don't have a problem with waiting
3 until Mr. Weinstein is once again on the stand.

4 I understand that you have another witness
5 that has a date and time certain tomorrow morning, at
6 nine o'clock.

7 MS. GOLDMAN: Yes, your Honor. This is
8 a witness who just informed me she got diagnosed with
9 cancer. She is squeezing us in between her doctors'
10 appointments and her surgery. I would very much
11 prefer not to have to ask her again to make herself
12 available.

13 JUDGE KOPTA: I think that's a
14 reasonable request. We will anticipate having her
15 testify tomorrow morning, and then I believe we will
16 take up the schedule after that.

17 MR. SELLS: I was assuming Mr. Weinstein
18 was going to be here anyway.

19 JUDGE KOPTA: He will be. We will
20 resume his testimony. I mean we have to interrupt it,
21 unfortunately, but we are doing that in the interest
22 of accommodating witness's schedules. I appreciate
23 everyone's flexibility in getting this all in and
24 inconveniencing witnesses as little as possible.

25 So is there anything else that we need to do

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1 before we adjourn for the day?

2 MS. GOLDMAN: I have one issue, but I
3 think we can address it off the record.

4 JUDGE KOPTA: All right. Then we will
5 be off the record until 9:00 a.m. tomorrow morning.

6 (Hearing adjourned 12:07 p.m.)

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