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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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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 VII

9

Pages 526 - 717

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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9:01 A.M.

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DECEMBER 5, 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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9	EXHIBIT	A	R	DESCRIPTION
10	EN-1T	537		Direct Testimony of Emily Newcomer
11	MAW-24		X	Records of Waste Management violations, 2001 - present from Commission files (produced by Commission in response to Request for Public Records No. 1850)
12	MP-1T	566		Prefiled Testimony of Mike Philpott
13	MP-2	566		Stericycle's Waste Acceptance Protocol
14	MP-3	566		List of Stericycle's containers in use at end of 2011
15	MP-4	566		List of employee trainings and certifications required by Stericycle
16	MP-5	566		Example of customer-specific code labels used in Stericycle's waste racking system
17	MP-6	566		Example of a report from Stericycle's waste tracking system
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3	MP-8	566		Example of a Stericycle medical waste collection report
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14	MP-14	566		Example of a Stericycle sharps waste diversion report
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16	MP-15	566		Prefiled Rebuttal Testimony of Mike Philpott
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19	MP-17	566		Waste Management's supplemental response to data requests regarding ecoFinity sharps waste
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21	MP-18	566		Stericycle's current tariff
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24	MP-20	566		Complaints filed with the WUTC regarding Stericycle of Washington, Inc.
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	EXHIBIT	A	R	DESCRIPTION
3	MP-21	566		Complaints filed with the WUTC regarding Waste Management of Washington, Inc. since 2001
6	MP-22	566		Invoice to St. Joseph Medical Center showing delivery of new Rehrig containers
8	MP-23	(Not Offered)		Waste Management's current biomedical waste tariff
10	MP-24		X	Report of miles driven by Stericycle and on-roadway collisions
12	MP-25	610		Excerpts of the Deposition Transcript of Mike Philpott referenced in the evidentiary hearings
14	MP-26	(Not Offered)		Stericycle's Tariff No. 1
15	MP-27	607		WM calculations on Stericycle tariff pages 5-6
17	JR-1T		617	Prefiled Testimony of James Ryan
18	JR-2		617	Copy of Integrated Contract and Services Agreement between Waste Management affiliate and Skagit Valley dated October 15, 2011
21	JR-3		617	Copy of Waste Management's contracts with Northwest Hospital for recycling and biomedical waste collection services both dated February 15, 2012

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2	EXHIBIT	A	R	DESCRIPTION
3	JR-4		617	Copy of e-mail from Jeff
4				Norton of Waste Management to
5				Valley Medical Center dated
				May 11, 2012 with offer of
				discount
6	JR-5		617	Copy of Waste Management's
7				agreement to provide
8				biomedical waste collection
9				services to PeaceHealth
				St. Joseph Medical Center
				dated August 4, 2011
10	JR-6		617	Excerpts from Waste
11				Management's responses and
12				supplemental responses to
13				Stericycle's Data Request
				No. 18 describing ecoFinity
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				St. Joseph Medical Center
14	JR-7T	622		Prefiled Rebuttal Testimony
				of James Ryan
15	JR-8	617		E-mail correspondence between
16				Ms. Arnesen of the University
17				of Washington, Ms. Merriman
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DF-1T	707		Prefiled Testimony of Devon Felsted
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DF-2	707		Certificate G-42
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DF-3	707		Depreciation Schedule
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DF-4	707		Summary of medical waste information
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1 OLYMPIA, WASHINGTON; DECEMBER 5, 2012

2 9:01 A.M.

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

6 JUDGE KOPTA: Let's be back on the
7 record in Docket TG-120033. We are resuming the
8 evidentiary hearings, and we will take up Waste
9 Management's next witness.

10 Before we do that, I want to revisit an issue
11 from last night, specifically Exhibit MAW-24, which
12 was a cross-examination exhibit designated by
13 Stericycle for Mr. Weinstein. I took a look at that
14 exhibit last night and our rule on taking official
15 notice. I am reversing myself, because I don't think
16 that this is something that the Commission ordinarily
17 takes official notice of. It's not something that
18 speaks for itself. These are logs of complaints that
19 the Commission has received. I think that Waste
20 Management should have the opportunity to have a
21 witness respond to that, therefore, it's not something
22 we will take initial notice of.

23 It was not something that was presented to
24 Mr. Weinstein during his cross, and therefore I will
25 sustain Waste Management's objection to that exhibit

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1 and it will not be admitted, nor will it be taken
2 official notice of.

3 So with that, Ms. Goldman.

4 MS. GOLDMAN: Thank you, Your Honor.
5 Waste Management calls Emily Newcomer on behalf of the
6 applicant.

7 JUDGE KOPTA: Ms. Newcomer, would you
8 stand and raise your right hand, please?

9

10 EMILY NEWCOMER, witness herein, having been
11 first duly sworn on oath,
12 was examined and testified
13 as follows:

14

15 JUDGE KOPTA: Thank you.

16 Ms. Goldman.

17

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

19 BY MS. GOLDMAN:

20 Q Good morning, Ms. Newcomer. Could you please
21 state your name and spell it for the record?

22 A My name is Emily Newcomer. That's spelled
23 E-M-I-L-Y, N-E-W-C-O-M-E-R.

24 Q By whom are you employed?

25 A The University of Washington, Seattle campus.

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1 Q Did you submit prefiled testimony in this
2 matter in support of Waste Management's application on
3 or about October 1st of this year?

4 A I did.

5 MS. GOLDMAN: We move for admission of
6 Exhibit EN-1T.

7 JUDGE KOPTA: Any objection?

8 MR. VAN KIRK: I don't object.

9 JUDGE KOPTA: Then EN-1T is admitted.

10 MS. GOLDMAN: Thank you.

11 I will turn the mike back over to Your Honor.

12 JUDGE KOPTA: Thank you, Ms. Goldman.

13 Ms. Newcomer is available for
14 cross-examination. We will begin with counsel for
15 Stericycle.

16

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

18 BY MR. VAN KIRK:

19 Q Good morning, Ms. Newcomer. My name is Jared
20 Van Kirk and I am an attorney for Stericycle in this
21 proceeding. I have a few questions for you.

22 A Good morning.

23 Q First of all, just some preliminaries. Can
24 you tell me how long you have worked for the
25 University of Washington?

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1 A Since October 3rd, I believe. It's since
2 October of last year, 2011.

3 Q And were you hired in at the same position you
4 have right now?

5 A No, I was not.

6 Q What were you originally hired as at the
7 University of Washington?

8 A I was originally hired as a program
9 coordinator for UW recycling and solid waste and was
10 promoted to the manager in February of this year.

11 Q Okay. Well, let's go through those, then. As
12 a program coordinator, your first position, what were
13 your responsibilities?

14 A Handling all customer service for the campus
15 and serving as the liaison between campus clients and
16 our contractors, our contracted vendors, I should say.

17 Q And that would include for medical waste?

18 A Yes.

19 Q Were you the only person at that time who had
20 responsibility for, as you put it, being the liaison
21 between the campus customers and the contractors?

22 A No, there are two program coordinators on
23 staff. At that, time myself and Kristin Elko, who has
24 been with the department for eight years.

25 Q Can you spell Kristin's name, please?

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1 A K-R-I-S-T-I-N, Elko, E-L-K-O.

2 Q Thank you.

3 I think you said there were two others. You
4 mentioned Kristin Elko. Was there yet one more?

5 A Oh, no, no. I'm sorry, no. Myself and --

6 Q Oh, you meant two total?

7 A Yes, at all times that is what we are budgeted
8 to have.

9 Q Okay. So what responsibilities did Ms. Elko
10 have? Was she senior -- strike that. Was she --
11 first of all, was she senior to you in this role?

12 A Yes.

13 Q Okay.

14 A Primarily due to her historical sort of
15 experience and years in the position.

16 Q Was she officially your manager or supervisor,
17 or were you -- did you have co-equal positions?

18 A We were co-equal, but at that time there was
19 actually no manager, so we were co-equals. But by
20 virtue of her experience, she was training me and
21 getting me up to speed. I did rely on her for that
22 historical knowledge and sort of process.

23 Q And what were Ms. Elko's responsibilities, or
24 what did she do with respect to biomedical waste
25 services?

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1 A The same thing as all program coordinators.
2 We have sort of two lines of business, if you will,
3 for UW recycling: One, an e-mail box for all
4 nonregulated, and then an e-mail box for all regulated
5 medical waste. We manage both those. That means
6 service requests come in, new account setups come in,
7 and we handle those and work with the contracted
8 vendors who handle both of those.

9 Q Is there any sort of division of
10 responsibility or -- between you and Kristin or do
11 you -- or was there any division of responsibility,
12 like she had these customers, these internal clients,
13 and you had these internal clients, or some other way
14 that your responsibility was divided up between the
15 two of you?

16 A No. We specifically cross-trained and
17 everybody is responsible. If anything, if you respond
18 to one request, you sort of see that particular
19 request through. But it is not -- it is not divided
20 up by account lists, more just by how it's been
21 received. Primarily, because if one program
22 coordinator is out, we want the other to be equally
23 informed about issues, because we are a small team.

24 Q So requests for either -- for service from an
25 internal client can come in and whoever gets it, gets

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1 it, and sees that one through to the end, right?

2 A Exactly.

3 Q Just real quick, tell me how your
4 responsibilities changed when you became the program
5 manager.

6 A I was removed from the day-to-day and now sort
7 of oversee just the contract management, as well as
8 more of the operational end of things, and sort of
9 just the long-term strategic planning of the
10 department.

11 Q What did you mean by the operational part?

12 A Just more involved with routing and how our
13 crew -- because we do pick up recycling and garbage on
14 the campus for certain locations, so just managing
15 them and their work flow and creating positions.

16 Q Right. Okay, got it.

17 Do you still have any sort of direct
18 responsibility for biomedical waste services?

19 A No, only if there was to be an issue with
20 billing, or just something that Kristin couldn't
21 handle, I think at that time she would bring me in.

22 Q And is Kristin still a program coordinator?

23 A Yes.

24 Q So she still handles day-to-day requests and
25 interfaces with the contractors?

0542

1 A Yes.

2 Q Is there yet a -- is there a new program
3 coordinator to take your -- who took your place?

4 A Yes.

5 Q And what is that person's name?

6 A Jessica.

7 Q Do you know her last name?

8 A Yes, Lisiewski. I'll spell it.

9 Q Thank you.

10 A L-I-S-I-E-W-S-K-I.

11 Q Ms. Newcomer, when we've been talking about
12 your responsibilities here, coordinating with internal
13 clients and now in your more -- now in your new role
14 as well, we're talking about doing that work with
15 respect to waste generated on the Seattle campus,
16 right?

17 A Yes. That is the only campus I have purview
18 over.

19 Q All right. You have not -- okay. That was my
20 next question. So you have no responsibility for any
21 waste services at the Tacoma campus?

22 A No.

23 Q Do they have someone else down there who
24 determines what the Tacoma campus needs?

25 A Yes.

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1 Q And who is that, do you know?

2 A I have no idea.

3 Q Okay. You've never spoken to this person
4 before?

5 A No, I have not. Not only is the Seattle
6 campus very decentralized, but I believe other
7 units -- and given my newness role, I think I have not
8 yet met that person.

9 Q So you have no idea whether the Tacoma campus
10 manager feels there's any need for any different kind
11 of biomedical waste service?

12 A That is correct.

13 Q Do you have a contact -- strike that. First
14 let me ask another question.

15 What services does Stericycle currently
16 provide to the Seattle campus, where you work?

17 A They provide, you know, regulated medical
18 waste pickup for all accounts that have been set up,
19 and there's probably about 50 outside of the hospital.
20 The hospital is what we deem a self-sustaining unit,
21 and they have -- they actually contract with Waste
22 Management. So for Stericycle, it's sharps and all
23 that other fun stuff, for labs and other off-site
24 locations.

25 Q I understand that the labs would be sort of

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1 research facilities on campus?

2 A Uh-huh, yes.

3 Q You said other outside locations. What are
4 some of the other kind of clients who receive service
5 from Stericycle?

6 A Other labs.

7 Q Okay. Still labs, just somewhere else?

8 A Yes, exactly.

9 Q Got it.

10 You said Waste Management provides service to
11 the hospital. My understanding was that in general,
12 the hospital there treats its own waste; is that
13 correct?

14 A Yes, they -- for the regulated medical waste,
15 they have that on contract. That is not something my
16 department is responsible for. We do -- UWMC has
17 bought into, if you will, for lack of a better term,
18 our sort of solid waste recycling contract.

19 Q Okay. And I understood from your written
20 testimony, and correct me if I'm wrong, that Waste
21 Management will collect the already treated waste from
22 the hospital; is that right?

23 A Yes.

24 Q And then I believe you also mentioned that on
25 some occasions, when the treatment facility is being

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1 maintained, Waste Management may be asked to pick up
2 untreated waste; is that right?

3 A Yes.

4 Q Is there any other service besides that that
5 Waste Management is providing to the Seattle campus?

6 A In the rare event that something ends up in
7 one of our garbage compactors that was not treated,
8 because they are our contracted solid waste provider,
9 they will -- we are able to haul that container to
10 their site at Seattle and basically have the whole
11 thing autoclaved and treated as treated waste, because
12 otherwise we would not be able to dispose of it at the
13 transfer station.

14 Q Okay. So this seems to be the backup, in case
15 something doesn't quite go right, the way it's
16 supposed to when you dispose of biomedical waste?

17 A Yes.

18 Q Now, I am correct, am I not, that right now
19 you have the option of having Waste Management provide
20 all services to the University of Washington Seattle
21 campus if you want to, correct?

22 A Yes. That would apply to any of our
23 contractors.

24 Q Just to be clear, I meant for medical waste.
25 You understand that at this time you could contract

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1 with Waste Management to provide all biomedical waste
2 services?

3 A Yes.

4 Q Now, in your testimony, you are not testifying
5 that Stericycle does not safely treat and dispose of
6 the university's medical waste, are you?

7 A No.

8 Q Okay. The biomedical waste service that's
9 provided by Stericycle, you don't -- you're not
10 offering any complaints with that service, correct?

11 A No, not at all.

12 Q We're going to turn now to some more specific
13 things you have in your written testimony. Do you
14 have your testimony in front of you right now?

15 A I do.

16 Q Okay. I just like to know so I know when I
17 have to read and when I can just point you to
18 something.

19 A Okay.

20 Q In your testimony you have said,
21 Local processing --

22 MS. GOLDMAN: Could we have a page,
23 please?

24 MR. VAN KIRK: Oh, yes, thanks. Page 3.

25 A Okay.

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1 Q Page 3, the final paragraph.

2 So you have testified, Local processing -- and
3 by that you mean Waste Management's processing
4 location in Seattle?

5 A Yes.

6 Q So you've said, Local processing reduces the
7 time that untreated regulated medical waste is in
8 transport, thus reducing the University's liability
9 associated with untreated RMW. And you have also
10 testified that the same local processing offers
11 environmental and emission reduction benefits.

12 A Yes.

13 Q That's what we're going to talk about now.

14 A Okay.

15 Q So on the environmental emission issue, if I
16 understand your testimony correct, it's that less
17 emissions would be required to drive waste collected
18 at the university to a Seattle processing facility
19 than to Stericycle's facility in Morton, Washington,
20 correct?

21 A Yes.

22 Q You are not testifying that overall if Waste
23 Management has the authority it's looking for in this
24 application, that there will be less emissions
25 produced, are you?

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1 A No, I was speaking in generality, of just
2 the -- as far as I'm concerned, the common sense
3 belief that the less you are on the road the less
4 emissions are generated.

5 Q Isn't it true, Ms. Newcomer, that if you have
6 two different companies who had to serve the same area
7 in Washington, that would end up actually creating
8 more emissions rather than less?

9 A I'm not sure I agree with that statement or
10 understand that statement.

11 Q Fair enough.

12 A Within the -- are you talking -- well, never
13 mind.

14 Q So you understand that right now, Waste
15 Management has authority to serve only a portion of
16 the state, correct?

17 A Yes.

18 Q And you understand that in this proceeding,
19 they are seeking authority to serve the entire state,
20 correct?

21 A Yes.

22 Q Okay. So --

23 A In -- in --

24 Q Go ahead.

25 A You know, with Stericycle also. So I mean --

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1 so there was going to be two providers, as opposed to
2 one.

3 Q So if Waste Management is successful here, you
4 understand that portions of the state will go from one
5 service provider to two service providers, right?

6 A Yes.

7 Q And so my question is, wouldn't that overall
8 end up causing more emissions rather than fewer?

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

11 JUDGE KOPTA: Overruled.

12 A I guess, no, I don't see that. I guess it
13 would just depend on -- yes, more trucks would be on
14 the road. I sort of look at it where facilities are
15 in proximity to where the material is generated.
16 Again, I can speak -- my situation is very different
17 than other situations across the state. But I can
18 only speak to my personal experience. In the case of,
19 you know, UW's campus in Seattle, having Waste
20 Management -- I mean, I know this area is not in
21 question, but having this area available for Waste
22 Management's services serves us better because they
23 are located in close proximity, thus reducing the
24 environmental impact of our campus.

25 So -- so I could speculate potentially that

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1 other places or other entities, other locations in the
2 state could evaluate according to that, and I think
3 should be given the right to be able to evaluate
4 according to that.

5 Q Let me ask you, then, a little more about your
6 experience. Right now the University of Washington is
7 having both companies come and provide some service at
8 this campus, correct?

9 A Yes --

10 Q So I guess --

11 A -- there are more emissions being generated.

12 Q I guess my -- my point was to -- well, I think
13 we understand each other now.

14 A Thank you for working with me on that.

15 Q It's a process, Ms. Newcomer.

16 Okay. Let me move to the other half of this
17 portion of your testimony. Still about local
18 processing, but now, in this part you are saying that
19 local processing, by virtue of reducing transport
20 time, is also reducing the university's liability
21 associated with untreated waste.

22 Now, tell me, Ms. Newcomer, what is the risk
23 that you are talking about when you say this will
24 reduce the university's risk of liability, or I guess
25 you say liability. So what liability are you talking

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1 about?

2 A I'm just talking about the less trucks that
3 are on the road hauling material the better. I guess
4 I kind of look at it from the perspective of even my
5 crew. I mean, sometimes they have to go to South
6 Seattle. That increases our liability when they are
7 hauling material that they cannot drop off at the
8 north transfer station, which is a half a mile away.
9 Having something -- having a location closer where
10 materials could be dropped or disposed of reduces the
11 liability.

12 Q Yes. No, I understand that that's the thrust
13 of your testimony. What I want to drill down on is --
14 well, what kind of liability are you talking about?
15 What's the risk there that you are concerned with?

16 A Just, you know, accidents. Just if that
17 material -- you know, potentially being exposed,
18 liability of drivers, liability of other people on the
19 road.

20 Q Okay. So the risk or the liability you are
21 worried about is that the waste will somehow escape
22 the confines of the truck and somebody might be
23 exposed to that waste?

24 A Well, liability is accidents.

25 Q Okay.

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1 A I don't think the waste is going to
2 miraculously just disappear or escape the truck. I
3 think, you know, liability of accidents that would
4 cause problems.

5 Q No, I didn't mean to imply that the waste
6 would miraculously escape the truck. I'm trying to
7 get all the way to the end point. What's going to
8 happen that's actually going to cause liability for
9 the University of Washington? I'm trying to see if
10 you agree that the real liability, the real risk is
11 that someone in the public might come in contact with
12 waste; is that right?

13 A Potentially, yes.

14 Q Okay. And is it the case that you are
15 testifying that you think that might happen during
16 transportation?

17 A Yes.

18 Q Okay. And so the risk of liability you are
19 talking about in your testimony is that through some
20 mechanism, an accident, something like that, something
21 that happens while a truck is driving, waste will be
22 released from the truck and then it will come in
23 contact with somebody?

24 MS. GOLDMAN: Objection. Asked and
25 answered.

0553

1 Q That is right?

2 JUDGE KOPTA: Overruled.

3 Q If you answered, Ms. Newcomer, I didn't hear
4 it.

5 A Yes.

6 JUDGE KOPTA: "Yes," she said.

7 Q The answer was yes. Got it, thank you.

8 Ms. Newcomer, have you ever experienced a
9 situation where waste being transported by road has in
10 fact been released in an accident or through some
11 other mechanism?

12 A No.

13 Q Have you looked into at all about whether
14 this -- whether -- how often this happens or whether
15 it happens?

16 A No.

17 Q Have you performed any kind of study of this
18 risk of liability that we have been talking about?

19 A No.

20 Q Have you read any study related to the risk of
21 release of waste?

22 A No.

23 Q Have you performed or read any study about the
24 risk of accident during transportation?

25 A No.

0554

1 Q Where is it, Ms. Newcomer, that you learned
2 about what you have testified here, in terms of the
3 increased risk of liability?

4 A It's my own just sort of -- just common sense
5 of -- I keep referencing that, but common sense, that
6 the less trucks that are on the road, the less chance
7 there is of an accident. Now, it's not rooted in
8 science or research, it's just I think common sense.

9 Q If you learned that in let's say the last ten
10 years Stericycle had never had an incident where waste
11 had been released from their trucks, would that affect
12 your testimony?

13 A Yes.

14 Q And in what way would that affect your
15 testimony?

16 A It would -- it would provide data that
17 liability -- you know, my perceived liability might
18 not be as big an issue.

19 Q Okay. Ms. Newcomer, new subject. In your --
20 and now we are turning to Page 4 of your testimony,
21 under I think the final question.

22 You've mentioned here an issue related to
23 customer service. I believe the issue was that you --
24 well, let me -- I'm trying in your words because I
25 don't want to put words in your mouth. You testified

0555

1 that in one instance, that the University was required
2 to take the additional step of including the
3 Stericycle salespeople in the processes. I think you
4 were referring to a question coming from the
5 infectious waste committee. Do you recall that
6 testimony?

7 A Yes, I can see it right here.

8 Q Okay. First of all, who is the salesperson or
9 salespeople that are you talking about?

10 A Well, so when I came on board, you know, I was
11 sort of somebody who handles waste on campus and part
12 of the infectious waste committee. In one of my first
13 meetings, there has just been a lot of conversation --
14 or there had been a lot of conversation within that
15 committee on how certain entities would handle certain
16 waste. This particular statement was referring to
17 the -- a meeting where I think they were waiting on
18 confirmation from Stericycle on how to handle waste.
19 I believe probably the contact they went through was
20 James Ryan.

21 Q Okay. So you weren't communicating about this
22 issue with Stericycle?

23 A No.

24 Q Okay. And then somebody else on the committee
25 or related to the committee was asking questions

0556

1 through James Ryan, correct?

2 A Yes.

3 Q Okay. And do you know whether James Ryan
4 answered the questions?

5 A Yes.

6 Q Yes, you -- okay. So I know now yes, you
7 know. Is your answer also yes, he did answer the
8 questions?

9 A To the best of my knowledge, yes.

10 Q Okay. Now, since you weren't involved in
11 this, I'm trying to understand what the problem is
12 from your perspective about asking these questions of
13 James Ryan.

14 A There's no problem. I think, you know, in
15 hindsight, you know, I think the process is probably
16 the same. You know, they were also talking to Waste
17 Management. I think that the process was the same,
18 where you had to get certain people involved. But
19 based on conversations, I think the turnaround, the
20 response time from Stericycle was a lot slower than it
21 was from Waste Management.

22 Q Was the same issue being put to both
23 companies, then, is that what you -- I understand
24 correctly?

25 A Yes, yes.

0557

1 Q Okay. Have you seen any of the correspondence
2 between the committee or the person working with the
3 committee and Mr. Ryan?

4 A No.

5 Q Have you reviewed with anybody the dates or
6 times when questions were asked and when they were
7 answered?

8 A No.

9 Q If there's an e-mail showing a response on the
10 same day a question was asked, would that change your
11 testimony?

12 A Oh, I've seen that for that particular
13 question -- I mean I -- for that particular question.
14 It's hard for me to -- it's hard for me to -- I guess
15 for that particular question it doesn't apply, but I
16 think the premise is the same. I just sort of -- I'm
17 struggling with responding to this particular
18 testimony, as well as just overall just impression.

19 Q But I do understand --

20 A If that e-mail is -- if that e-mail is related
21 to -- was the only question asked, the only answer
22 provided in this daily fashion, then yes, that -- that
23 would show that they are responsive. But there might
24 be other e-mail correspondence where that isn't the
25 case. Admittedly, my testimony is vague in terms of

0558

1 what specific question, so I, you know...

2 Q But again --

3 A So I guess I wouldn't change my testimony just
4 because -- my testimony is kind of vague and could
5 be -- you know, just overall customer service.

6 Q Again, you weren't involved in the questions
7 coming out of the infectious waste committee, right?

8 A No, I was not.

9 Q So you don't really know one way or the other
10 whether there were or were not any other questions or
11 communications?

12 A Yes, that's correct.

13 Q All right. Ms. Newcomer, I think the last
14 thing I want to ask you about today is you have
15 testified that -- that with statewide authority, the
16 University of Washington will be assured of the best
17 service and that's why you favor competition; is that
18 correct?

19 A I think competition would get better market
20 prices as a state institution. Obviously we don't
21 want service impacted, but we also need to have
22 competitive pricing, so...

23 Q So for you the competition is a price issue?

24 A As well as service. As long as one is not
25 impacted by the other. We're not going to just go for

0559

1 low cost if the service isn't good. I think low cost
2 is something that needs to be considered given
3 budgetary constraints.

4 Q Isn't it possible, Ms. Newcomer, that if there
5 was price competition out there, the companies would
6 be cutting their costs and that would lead to reduced
7 quality services rather than increased quality
8 services?

9 MS. GOLDMAN: Objection. Calls for
10 speculation.

11 JUDGE KOPTA: Overruled.

12 A No, I don't think so.

13 Q Have you studied that possibility?

14 A No.

15 Q Have you made any study at all about the
16 effects of competition in a regulated medical service?

17 A No.

18 Q Is it part of your job to evaluate competition
19 in markets?

20 A When we are going out to bid for contracted
21 service, yes.

22 Q Yes, you are supposed to shop around. Is a
23 part of your job to evaluate the effects of
24 competition on a market?

25 A Yes.

0560

1 Q It is? What do you --

2 A Well, not the effects of the market, but just
3 the effects of what -- how it impacts service to
4 our -- to the university.

5 Q Now, of course at your job you have
6 competition between these two carriers, correct?

7 A For my job, no.

8 Q I thought we agreed that both Waste Management
9 and Stericycle can serve the Seattle campus. Is
10 that --

11 A They can, but the only contract that I have
12 oversight on is Stericycle.

13 Q So --

14 A I have nothing to do with the hospital's
15 contract with Waste Management.

16 Q So you don't personally have the ability to
17 make these contracts, but there is competition out
18 there in the market, whether or not you get to act on
19 it or not, correct?

20 A Yes, yes.

21 MR. VAN KIRK: Ms. Newcomer, I'm done
22 asking my questions. I will pass you on to the next
23 attorney. Thank you for being with us this morning.

24 THE WITNESS: Thank you.

25 JUDGE KOPTA: Thank you, Mr. Van Kirk.

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1 Mr. Sells?

2 MR. SELLS: No questions, Your Honor.

3 JUDGE KOPTA: Ms. Woods?

4 MS. WOODS: No questions, Your Honor.

5 JUDGE KOPTA: Redirect?

6 MS. GOLDMAN: Yes, Your Honor.

7

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

9 BY MS. GOLDMAN:

10 Q Good morning again, Ms. Newcomer. Jessica
11 Goldman on behalf of Waste Management.

12 Is the infectious waste committee presently
13 considering which company to contract with for medical
14 waste services?

15 MR. VAN KIRK: Objection. Beyond the
16 scope.

17 JUDGE KOPTA: Overruled.

18 Q Do you have the question in mind?

19 A Yes.

20 Q And the answer is, I'm sorry?

21 A Yes.

22 Q Which companies are under consideration?

23 A Stericycle and Waste Management.

24 Q And the infectious waste committee is looking
25 for service to these labs that you described both on

0562

1 site and off site, correct?

2 A That is correct.

3 MS. GOLDMAN: Nothing further.

4 Thank you.

5 MR. VAN KIRK: I don't have anything

6 further.

7 JUDGE KOPTA: All right. Thank you,

8 Ms. Newcomer. We appreciate your testimony this

9 morning and you are excused.

10 THE WITNESS: Thank you.

11 JUDGE KOPTA: And I believe that

12 concludes Waste Management's witnesses?

13 MS. GOLDMAN: Your Honor, we rest and
14 respectfully request that our application be granted.

15 JUDGE KOPTA: Well, we will consider

16 that question after all of the evidence has been

17 submitted.

18 We now turn to Stericycle. Do you want to

19 call your first witness?

20 MR. VAN KIRK: Our first witness took a

21 quick -- he'll be right back.

22 JUDGE KOPTA: Let's be off the record

23 for a moment.

24 (A brief recess.)

25 JUDGE KOPTA: Let's go back on the

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1 record stand.

2 Raise your right hand.

3

4 MICHAEL S. PHILPOTT, witness herein, having been
5 first duly sworn on oath,
6 was examined and testified
7 as follows:

8

9 JUDGE KOPTA: You may be seated.

10 Mr. Van Kirk.

11

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

13 BY MR. VAN KIRK:

14 Q Good morning, Mr. Philpott. Can you state and
15 spell your name for the record, please?

16 A Michael S. Philpott. That's M-I-C-H-A-E-L,
17 middle initial S., and last name is P-H-I-L-P-O-T-T.

18 Q Mr. Philpott, did you submit testimony in this
19 proceeding?

20 A I did.

21 Q And you submitted two separate sets of
22 testimony, correct?

23 A Correct.

24 Q And in your responsive testimony, a portion of
25 that was responding to testimony submitted by

0564

1 Mr. Norton of Waste Management, correct?

2 A Correct.

3 Q Is there any part of that testimony that you
4 feel is no longer responsive to Mr. Norton's
5 testimony?

6 A Yes.

7 Q Okay. And what part is that?

8 A Well, based on yesterday, the removal of the
9 portion of the testimony where he had done some
10 calculations based on some rates, that portion that I
11 responded to of that would no longer apply.

12 Q Okay. And would you like to eliminate that
13 portion from your testimony as a result?

14 A Yes, I would.

15 MR. VAN KIRK: With that, Your Honor, we
16 submitted first the prefiled testimony, which is MP-1T
17 through MP-14 with exhibits. With respect to MP-15,
18 according to what Mr. Philpott testified, we would
19 strike Paragraphs 34 and 35 of his testimony and offer
20 the remainder.

21 JUDGE KOPTA: So that would be Exhibits
22 MP-1T through MP-14, Exhibit MP-15T, as revised this
23 morning, through Exhibit MP-24; is that correct?

24 MR. VAN KIRK: With one exception.
25 Exhibit MP-23 was referred to and related to the

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1 paragraphs that have been struck, and so we would not
2 offer MP-23. Otherwise, correct.

3 JUDGE KOPTA: All right. I have a
4 couple of housekeeping issues to address before ruling
5 on this. First is Exhibit MP-17 is incorrectly marked
6 as MP-27, at least the copy that I have is. We need
7 to have that refiled with the correct exhibit number
8 on it.

9 MR. VAN KIRK: I believe we submitted an
10 errata on that. I will check. My copy has the right
11 things. Point taken. If it's wrong, we will fix it.

12 JUDGE KOPTA: If you have, then that's
13 great. I just am looking at my copy and note that
14 that's an issue.

15 MR. VAN KIRK: Yes.

16 JUDGE KOPTA: The second issue is that
17 Exhibit MP-21 is a CD. One of the joys of having
18 records for the State of Washington is that we have to
19 have everything in hard copy. So if you have not
20 provided a hard copy of this exhibit for our records
21 center, you will need to do that. I hope that it is
22 not terribly voluminous, but that's the cross we have
23 to bear.

24 MR. VAN KIRK: It is voluminous, which
25 is why I attempted to short-circuit it. I will do the

0566

1 necessary.

2 JUDGE KOPTA: I appreciate that effort.

3 If we don't get it from you, then we have to do it
4 ourselves. Since it can be expensive, then we would
5 ask that you to provide one hard copy to the records
6 center.

7 MR. VAN KIRK: That's absolutely fine.

8 Thank you.

9 JUDGE KOPTA: With those caveats, are
10 there any objections to the admission of Exhibits
11 MP-1T through MP-14, MP-15T as revised through MP-22,
12 and MP-24?

13 MS. GOLDMAN: Yes, your Honor. We have
14 an objection to MP-24.

15 JUDGE KOPTA: All right. Then I will
16 admit all of the exhibits except MP-24, and that you
17 identify the basis on which you are objecting to MP-24
18 and address that as the first part of your cross so
19 that we can dispose of the admission or nonadmission
20 of that exhibit into the record up front.

21 MS. GOLDMAN: We will do that, Your
22 Honor.

23 JUDGE KOPTA: So the other exhibits are
24 admitted, with the exception of MP-24.

25 The witness, I assume, is available for cross,

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1 Mr. Van Kirk?

2 MR. VAN KIRK: Yes, he is. Thank you.

3 JUDGE KOPTA: We will begin with Waste
4 Management.

5 MS. GOLDMAN: Just a second to keep
6 track of what's been admitted, Your Honor.

7 (Pause in the proceedings.)

8

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

10 BY MS. GOLDMAN:

11 Q Good morning, Mr. Philpott.

12 A Good morning.

13 Q We have met before. As you know, my name is
14 Jessica Goldman, and I am one of the attorneys
15 representing Waste Management.

16 Could you please take a look at the exhibit
17 that's been marked MP-24, as Exhibit I to your
18 rebuttal testimony? Do you have that in front of you?

19 A I do.

20 Q What is Exhibit I?

21 A Exhibit I is an overview of the miles, over
22 the road miles, driven by our vehicles in the state of
23 Washington from 2006 until this report was pulled,
24 when it was submitted, in 2012.

25 Q Who prepared the information that's in Exhibit

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1 MP-24?

2 A This was provided to me by Kelly Merriman.

3 Q And I'm sorry, is Kelly a man or a woman?

4 A Woman.

5 Q Where did Ms. Merriman get this information?

6 A This is -- she's our safety manager for
7 Stericycle. This is part of her job, to track this.
8 I would imagine these came out of some of the driver
9 logs and things she keeps.

10 Q But you don't know; is that correct?

11 A That's correct.

12 Q Where are the driver logs stored?

13 A That's something that is taken care of by
14 Kelly. I don't know.

15 Q What kind of information is available in the
16 driver logs?

17 A Once again, this is a -- Kelly Merriman put
18 this information together. I don't track the driver
19 logs, so I don't know anything about where the mileage
20 goes into and where it comes from.

21 Q I see on here a reference repeatedly to IV.
22 Do you know what that means? So for example, the very
23 first line under Detail, it says "Hit IV's right
24 mirror."

25 A No, I don't know what that means. I don't

0569

1 know that acronym.

2 Q What about OV?

3 A No.

4 MS. GOLDMAN: Your Honor, we object to
5 admission of this exhibit. He lacks foundation, he
6 lacks personal knowledge. The witness with knowledge
7 of this information, who would have been available for
8 cross-examination, has not been presented. This is
9 not the best evidence.

10 JUDGE KOPTA: Mr. Van Kirk?

11 MR. VAN KIRK: I think Mr. Philpott was
12 clear where the information came from. He said it
13 came from driver logs. He said those logs were
14 maintained in the ordinary course of business by a
15 person whose job title makes it her responsibility to
16 do so. He relied on employees that he manages to
17 produce this report. It's no more reliance, in fact
18 far less of a reliance than, for example,
19 Mr. Weinstein relying on what Mr. Norton and Mr. Daub
20 told him about how the market will expand in the
21 future.

22 JUDGE KOPTA: Well, I'm concerned about
23 the completeness of this information, as well as
24 Mr. Philpott's inability to really answer questions
25 about the depth of this information. I don't find

0570

1 this to be particularly probative, and therefore I
2 will sustain the objection and it will not be admitted
3 into the record.

4 MR. VAN KIRK: Can I ask, Your Honor,
5 whether there's a difference between records of miles
6 driven versus accidents? Driver logs that maintain --
7 maintain miles driven is two separate sources of
8 information. They are both addressed in his
9 testimony.

10 JUDGE KOPTA: As far as I can tell from
11 this exhibit, I don't know whether this is a complete
12 recitation of the driver logs. This witness just said
13 that he doesn't know about the driver logs or about
14 the rest of that information. I just don't know what
15 value this has. It's got some information on it that
16 may be in the records, it may not have all of that
17 information. I don't know how accurate this
18 information is. There's nothing that I can tell from
19 the face of this, based on this witness's availability
20 to provide any information, that will give me any
21 confidence that this is complete or accurate. On that
22 basis, I don't see any reason to admit it into the
23 record.

24 You may proceed, Ms. Goldman.

25 MS. GOLDMAN: Thank you, Your Honor.

0571

1 Q Mr. Philpott, you have no contact with
2 Stericycle customers; isn't that right?

3 A No.

4 Q That's wrong?

5 A That is wrong.

6 Q Several weeks ago I took your deposition;
7 isn't that right?

8 A Correct.

9 Q And there was a court reporter present,
10 correct?

11 A Correct.

12 Q And what I asked you and what you answered was
13 transcribed by that court reporter, correct?

14 A Correct.

15 Q And you had an opportunity to review that
16 transcript, didn't you?

17 A I did.

18 Q And on that day, you were sworn to tell the
19 truth, just as you were here this morning?

20 A Correct.

21 Q And on that day, you did tell truth, correct?

22 A I did.

23 Q Isn't it true that when I took your deposition
24 on October 22nd, I asked you these questions and you
25 provided me these answers, reading at the bottom of

0572

1 Page 4?

2 MR. VAN KIRK: Page 4 of the deposition
3 transcript?

4 A What are you looking at here?

5 Q I'm just pointing that out to your lawyer.

6 "Q. In your job, do you have any direct role
7 dealing with or working with or addressing
8 Stericycle's clients or prospective clients or
9 customers?"

10 "A. Not the customers directly, no."

11 And I asked you that question and you gave me
12 that answer, correct?

13 A I gave you that, and I also told you that at
14 times I do speak to them on the phone, so you could be
15 more specific with what you are asking. I do talk to
16 customers on the phone.

17 MS. GOLDMAN: Motion to strike as
18 unresponsive.

19 JUDGE KOPTA: I don't have the
20 deposition in front of me, so I'm allowing him to
21 characterize it however he chooses to.

22 MS. GOLDMAN: I would be happy to hand
23 up the deposition transcript because --

24 JUDGE KOPTA: I don't need it. I'm just
25 telling you what I am relying on is his testimony, as

0573

1 he is sitting here today.

2 MS. GOLDMAN: Okay.

3 Q Now, Mr. Philpott, some Stericycle customers
4 have not liked the Steri-Tubs because sometimes the
5 lids crack and because the lids can be hard to snap
6 on; isn't that correct?

7 A Yes.

8 Q While Mr. Norton was still a Stericycle
9 employee, prior to 2011, he spoke to you about
10 customer concerns with the Steri-Tubs; isn't that
11 right?

12 A He may have, yes.

13 Q And you don't know what your response was to
14 Mr. Norton when he raised these customer concerns with
15 you, right?

16 A I don't recall any specific conversations.

17 Q Prior to 2011, Stericycle did not offer any
18 containers with hinged lids in Washington, did it?

19 A No.

20 Q Now, you have responsibility for Washington,
21 Oregon, Idaho, Montana, Northern California, part of
22 Nevada, part of Wyoming, Alaska and Hawaii; is that
23 right?

24 A Correct.

25 Q Stericycle does not use Rehrig containers

0574

1 anywhere in your region outside of Washington; isn't
2 that right?

3 A Correct.

4 Q You learned from your salespeople in 2011 that
5 Waste Management was offering Rehrig containers to
6 Stericycle customers, didn't you?

7 A Correct.

8 Q When your sales staff reported to you that
9 Waste Management was offering Rehrig containers to
10 customers, Stericycle had not yet offered Rehrig
11 containers in Washington; isn't that right?

12 A Correct.

13 Q So Stericycle decided in -- to offer Rehrigs
14 in 2011 because Stericycle was hearing from its
15 customers that Waste Management was offering the
16 Rehrigs; isn't that true?

17 A No. Basically, the reason we decided to offer
18 the Rehrig containers in the state of Washington is we
19 had never been asked for a hinged lid container before
20 in this state. When this came up, through the sales
21 team, we investigated it at that point.

22 MS. GOLDMAN: And I'm citing here,
23 Mr. Van Kirk, to Page 34 of the deposition transcript.

24 Q Isn't it correct that I asked you this
25 question at your deposition a couple weeks ago, and

0575

1 you gave me the following answer?

2 "Q. And was there any other reason that you
3 were led to understand was driving Stericycle's
4 testing or piloting of this Rehrig tub?

5 "A. Well, obviously at that point in time
6 Waste Management was -- I believe the reason the
7 question was coming up is they were going around
8 speaking to existing customers about a hinged lid
9 container. I'm sure that had something to do with it
10 as well."

11 And that's what you said to me on that day in
12 response to my question, correct?

13 A Correct.

14 Q When Stericycle decided to offer its new
15 Biosystems service several years ago, you checked the
16 proposed tariff rates for the new service to confirm
17 that they were comparable to Stericycle's existing
18 tariff rates, correct?

19 MR. VAN KIRK: Objection. This is
20 beyond the scope of Mr. Philpott's testimony. He has
21 put in no testimony about the pricing or tariff
22 related to Biosystems.

23 JUDGE KOPTA: Do you have a reference to
24 his testimony?

25 MS. GOLDMAN: Your Honor, he has offered

0576

1 testimony regarding his review of tariff rates to
2 confirm that they are appropriate.

3 MR. VAN KIRK: I -- not in his testimony
4 to --

5 JUDGE KOPTA: Do you want to cite me to
6 a particular provision in his testimony?

7 MS. GOLDMAN: Yes, thank you, Your
8 Honor. If you could give me a minute, please.

9 (Pause in the proceedings.)

10 MS. GOLDMAN: I'll strike my question,
11 Your Honor.

12 JUDGE KOPTA: Thank you.

13 Q When Stericycle decided to offer the Rehrig
14 containers in 2011, you did not check the proposed
15 tariff rates to confirm that they were comparable to
16 Stericycle's existing tariff rates, did you?

17 MR. VAN KIRK: Objection. Beyond the
18 scope. Again, Mr. Philpott has given no testimony
19 about the tariffing or the prices of any service,
20 really, including Rehrig containers.

21 JUDGE KOPTA: Do you have a reference?

22 MS. GOLDMAN: Sorry, Your Honor. I
23 shouldn't have closed the book.

24 (Pause in the proceedings.)

25 MS. GOLDMAN: Your Honor, at

0577

1 Paragraph 34 of his rebuttal testimony, which is at
2 Page 14.

3 JUDGE KOPTA: This is Exhibit MP-15T?

4 MS. GOLDMAN: I'm sorry, that was
5 stricken.

6 JUDGE KOPTA: That is Exhibit MP-15T.

7 MS. GOLDMAN: I'm sorry, Your Honor,
8 that was stricken.

9 JUDGE KOPTA: So it was.

10 (Pause in the proceedings.)

11 MS. GOLDMAN: Your Honor, that has been
12 stricken, so I will strike that question as well.

13 JUDGE KOPTA: Fair enough. Thank you.

14 MS. GOLDMAN: Your Honor, given the
15 stricken testimony, I would ask for five minutes to
16 review my notes, because a lot of this has to do with
17 the Rehrigs, and I don't want to take the rest of the
18 folks' time.

19 JUDGE KOPTA: I appreciate that. We
20 will give you the same disposition that we gave to
21 counsel for Stericycle. I will give you five minutes.

22 MS. GOLDMAN: Thank you.

23 JUDGE KOPTA: Let's be off the record.

24 (A brief recess.)

25 JUDGE KOPTA: Let's be back on the

0578

1 record. Ms. Goldman, you may proceed.

2 MS. GOLDMAN: Your Honor, I previously
3 asked a question and withdrew it. I would like to ask
4 the question again, and then I will point you to the
5 testimony that it is directed to, which I was unable
6 to do the first time.

7 JUDGE KOPTA: Why don't you refer the
8 witness to the testimony --

9 MS. GOLDMAN: Okay.

10 JUDGE KOPTA: -- since he's the one who
11 has to make a response.

12 MS. GOLDMAN: Well, the objection was
13 that it was beyond the scope. In Paragraph 30 of
14 Mr. Philpott's rebuttal testimony, he testifies
15 regarding the filing of the June 6, 2011 Stericycle
16 tariff and the amendments in that. My question had to
17 do with the rates in that tariff.

18 JUDGE KOPTA: And this is Exhibit
19 MP-15T? Again, if we can use exhibit numbers that
20 will help.

21 MS. GOLDMAN: I will do that. I'm
22 sorry, Your Honor.

23 MP-15T Paragraph, 30 Page 12.

24 MR. VAN KIRK: And, Your Honor,
25 Paragraph 30 refers to the addition of the containers

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1 themselves, the container sizes, the locations they
2 are offered. It has no testimony whatsoever having to
3 do with the rates or the prices or anything about the
4 rates or prices.

5 JUDGE KOPTA: Ms. Goldman, I will allow
6 you to lay a foundation for how your question relates
7 to this testimony, but you will need to do more than
8 simply go directly to your question.

9 MS. GOLDMAN: Will do.

10 Q Mr. Philpott, on June 6, 2011, Stericycle
11 filed a tariff with the Utilities and Transportation
12 Commission adding pricing for the 31-gallon and
13 43-gallon Rehrig containers; isn't that correct?

14 MR. VAN KIRK: Objection. Beyond the
15 scope. It goes to pricing and there's no testimony
16 about that.

17 JUDGE KOPTA: She is following up on a
18 specific statement in his testimony. I believe it is
19 appropriate. Overruled.

20 A Correct.

21 Q And that tariff was filed in your name; isn't
22 that correct?

23 A Correct.

24 Q When Stericycle decided to offer the
25 containers that are referenced in the June 6, 2011

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1 tariff filing that you made, you did not check the
2 proposed tariff rates to confirm that they were
3 comparable to Stericycle's existing tariff rates, did
4 you?

5 MR. VAN KIRK: Objection. Beyond the
6 scope. This goes to how he evaluated the rates, which
7 he has offered no testimony about.

8 JUDGE KOPTA: He has offered testimony
9 about this tariff. She is entitled to inquire into
10 the nature of the tariff. Overruled.

11 A Could you please repeat the question?

12 MS. GOLDMAN: Can I have it read back,
13 please?

14 (The requested portion of the
15 transcript was read by the reporter.)

16 A I don't understand what you are asking.

17 Q When you were shown the proposed rates for --
18 anticipated to be filed on June 6, 2011, that you were
19 going to be filing in your name, you did not first
20 compare those proposed rates to Stericycle's existing
21 tariff rate structure; isn't that correct?

22 A What I do when I'm given a change to the
23 tariff, since my name is on it, is I make sure that
24 the rate isn't higher than existing rates than we are
25 currently charging. And so I look over it in that

0581

1 fashion, but I had nothing to do with the matrix or
2 the rate that's put together whatsoever.

3 Q And referring you to --

4 MS. GOLDMAN: -- Your Honor and
5 Counsel --

6 Q -- to MP-25, the testimony that you offered,
7 Mr. Philpott, at your deposition, Page 64, bottom
8 answer, Line 21. You stated under oath:

9 "I was involved in placing it on the tariff,
10 the discussions. I would be the person that
11 would be interfacing with Steve Johnson in
12 regards to this, because he prepares the
13 tariff filings that go to the UTC. Who did
14 the rates or the comparable price per gallon
15 breakdown on that, I'm not exactly positive.

16 "But it wasn't you, correct?

17 "Correct.

18 "And who were the options of who could have
19 done that rates per gallon comparison to the
20 existing tariff?

21 "I have no -- I couldn't answer that. I don't
22 know.

23 "You don't even have a guess as to who at
24 Stericycle would be responsible for that task
25 if it weren't you in 2011?

0582

1 "A. I don't know who did it, no."

2 And you offered those --

3 MR. VAN KIRK: I object to that
4 question. That really has nothing to do with the
5 witness's answer to the question.

6 JUDGE KOPTA: He can clarify it if he
7 likes. There's no objection to pointing him to this
8 particular provision.

9 In the future, if you could just point to the
10 transcript and not read the whole thing, I think that
11 would save some hearing time.

12 THE WITNESS: There's no MP-25.

13 MR. VAN KIRK: It's in the white binder.
14 There's an index in the front.

15 A What page are we looking at here?

16 Q There's no question pending, sir.

17 JUDGE KOPTA: He has a right to look at
18 the provision you just read. It's on Page 64,
19 Mr. Philpott. She began reading on Line 21, carrying
20 over onto the next page, through Line 12.

21 THE WITNESS: This is a new one for me.
22 If there's no question, what am I --

23 JUDGE KOPTA: There is no question. She
24 simply read this. I am allowing you the opportunity
25 to look at this in anticipation that she will ask you

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1 a question related to this.

2 THE WITNESS: Starting on Line 21, going
3 to where?

4 JUDGE KOPTA: Going through the next
5 page, through Line 12.

6 (Pause in the proceedings.)

7 Q Mr. Philpott, that testimony that I read was
8 truthful when you gave it, is it not the case?

9 A Correct.

10 Q You don't know how Stericycle came up with the
11 pricing for the Rehrig containers which was added to
12 Stericycle's tariff, which you filed in 2011; isn't
13 that right?

14 A Correct.

15 Q When Stericycle amended its tariff in 2011 to
16 add the Rehrig containers, it stated in its tariff
17 that the Rehrigs would only be available to customers
18 in some of Washington's counties; isn't that correct?

19 A That is correct.

20 Q Other than the Rehrigs, Stericycle has never
21 offered a container to only some counties in the
22 state; isn't that right?

23 A I'm not sure.

24 Q Well, could you take a look at MP-19, which
25 is, according to your counsel, the expired tariffs.

0584

1 Let me know if you see anything in there that would
2 indicate that on any prior occasion Stericycle has
3 offered a container to only some counties in the
4 state?

5 A Well, I'm referring to -- I started at
6 Stericycle in '99. I'm not sure what they did prior
7 to that, but there has been nothing since I have been
8 there.

9 Q So since you have been there, since 1999, you
10 are not aware of any container offered by Stericycle
11 in only some counties; isn't that correct?

12 A Correct.

13 Q MP-18, which you should have in front of you,
14 that shows Stericycle's tariff rates which are
15 presently in effect, correct? And that's the June 6,
16 2011 filing referenced at Paragraph 30 of MP-15T,
17 correct?

18 A I believe you just gave me two exhibits. So
19 you are talking MP-18?

20 Q That's correct. So if you could take a look,
21 please, at MP-18. That shows the June 2011 tariff
22 that you filed with the UTC, and that's previously
23 been referenced in your testimony, correct?

24 A Correct.

25 Q Other than the Rehrigs -- excuse me, the only

0585

1 change that's reflected in MP-18 from the prior
2 Stericycle tariff is the addition of the 31 and
3 43-gallon Rehrig containers; isn't that right?

4 A I'm not exactly positive. That could be the
5 case.

6 Q Well, it was filed by you, correct?

7 A It was filed under my name, yes.

8 Q Are you aware of any changes in that tariff
9 other than those changes?

10 A Not off the top of my head, no.

11 Q Pages 5 and 6 of MP-18 show the addition of
12 the Rehrig containers in two columns, don't they?

13 A Correct.

14 Q And those columns would be the ones where it
15 says 31-gallon and 43-gallon container, and it's
16 marked with an N, which I assume means new?

17 A Correct.

18 Q Other than the addition of the prices for the
19 two new Rehrig containers added in June 2011, the
20 rates on Pages 5 and 6 remain unchanged from the
21 previous tariff filing, don't they?

22 A I believe so, yes.

23 Q To compute the total gallons at each price in
24 this tariff, you would simply multiply the gallon
25 container size, which is in the left column, by the

0586

1 number of containers, correct?

2 A Could you please repeat that?

3 Q Sure. To compute the total gallons being sold
4 at each price, you simply multiply the gallon
5 container size by the number of containers referenced
6 in the left-hand column. So for example, if you go to
7 Container Quantity, do you see that column in your
8 tariff, on the left side?

9 A I do.

10 Q And you see the second line, it says 2, right?
11 That means that that line was pricing for two
12 containers, correct?

13 A That would be correct.

14 Q And so if we go to the first column, which is
15 the 21-gallon container, it indicates that the price
16 for that -- at that number of containers is \$33.66,
17 correct?

18 A Correct.

19 Q To compute the gallons that are being sold in
20 that transaction, we would simply multiply 2, the
21 container quantity, times 21, which is the size of the
22 container, correct?

23 A That is a way to do it, yes.

24 Q Any other way you can think of to compute the
25 total gallons being sold at the \$33.66 rate?

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1 A No.

2 Q Okay. And to compute the price per gallon at
3 each price, you would simply divide the stated price
4 by the total number of gallons at that price, correct?

5 A Correct.

6 Q So in my example there, two containers, we
7 would multiply two times -- I'm sorry, we would take
8 \$33.66, multiply it times two, because it's two
9 containers, and divide it by the total number of
10 gallons, 42, and come up with a price per gallon;
11 isn't that right?

12 A Sure.

13 MS. GOLDMAN: Your Honor, I would
14 request to mark for identification an exhibit, subject
15 to check, which has the computations of the gallons
16 for each of these prices and the price per gallon that
17 we've just been discussing.

18 MR. VAN KIRK: I don't know whether to
19 object or not. I haven't seen it.

20 JUDGE KOPTA: That was my first
21 question, is whether you have previously disclosed
22 this to other counsel?

23 MS. GOLDMAN: The beginning part, the
24 first three lines I have, Your Honor, but I computed
25 it last night, since they were unwilling to do so. I

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1 have it to show them, and I have it on a board, so
2 that you can follow along, because it's pretty small
3 writing.

4 JUDGE KOPTA: Cross-examination exhibits
5 were supposed to have been designated before this. If
6 it will shorten your cross-examination, I will
7 consider it at this point, but reluctantly.

8 MS. GOLDMAN: Yes, your Honor, it will
9 substantially shorten it. I will also note on the
10 record, as we discussed off the record at the hearing,
11 at the end of the day yesterday, that pursuant to the
12 WACs, we are permitted two days prior to
13 cross-examination to submit and request that
14 calculations be performed by a witness, which we did
15 within that time frame. That request was rejected by
16 Stericycle's counsel. I then offered a much more
17 limited alternative, which also was rejected. So
18 based on the apparent failure of that statutory or
19 regulatory process to work, we request this, subject
20 to check.

21 JUDGE KOPTA: Well, I revisited that
22 rule myself yesterday, after our discussion, and it is
23 in the disjunctive. There are three different ways
24 that you can present calculations, one of which is to
25 ask the witness two days in advance to do it, another

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1 is to ask subject to check.

2 It is not incumbent on counsel to agree to
3 having a witness do the calculations. If you want to
4 do the calculations yourself and ask the witness, then
5 that's appropriate, which it sounds like that's the
6 alternative that you are doing here. I just want to
7 defuse any suggestion that that counsel for Stericycle
8 is not complying with Commission rules. As I review
9 them, they are in compliance with that particular
10 rule.

11 If you want to share that exhibit with me as
12 part of a visual aid, if you will, through your
13 cross-examination, I will view it in that light. To
14 the extent that you want to ask that it be admitted as
15 an exhibit, I will deal with that at the time you
16 offer it.

17 MS. GOLDMAN: Thank you, Your Honor.

18 May I approach, and may I also post a board on
19 an easel?

20 Ms. Woods, would it be possible for you to sit
21 there so I can put the boards here --

22 MS. WOODS: Sure.

23 MS. GOLDMAN: -- so that you can
24 actually see them?

25 JUDGE KOPTA: That will be fine.

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1 MS. GOLDMAN: Thank you.

2 I will let you take a look at this.

3 MR. VAN KIRK: Your Honor, I hate to be
4 a bother, but I think it would really be helpful for
5 us to have our own copy, rather than just look at this
6 and give it back, and be able to take a look at it
7 when questions are asked. It will be a lot to take in
8 as questions are flying by.

9 JUDGE KOPTA: I don't know how we are
10 going to have another copy if we don't have another
11 copy.

12 MR. VAN KIRK: I was hoping I would get
13 a copy from counsel. I just don't know if --

14 JUDGE KOPTA: I understand, which is why
15 I --

16 MR. VAN KIRK: -- effective under this
17 method.

18 JUDGE KOPTA: Which is why I am
19 appreciating this as a visual aid. If you had
20 cooperated with counsel before, we wouldn't be in this
21 position, so don't ask for sympathy from me at this
22 point.

23 MR. VAN KIRK: I mean, we had an
24 objection to doing that, that we never got to. I
25 didn't want to --

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1 JUDGE KOPTA: Well, I expect counsel to
2 cooperate. Whether or not you have an objection, if
3 you are not willing to cooperate, then you have to
4 deal with the consequences, and this is one of those
5 consequences. We will have to do it this long way,
6 which is not my preference, but it is largely your
7 doing.

8 MR. VAN KIRK: Okay. Well...

9 MS. GOLDMAN: Can you see?

10 JUDGE KOPTA: Yes.

11 MS. GOLDMAN: Do you want me to tilt it
12 more?

13 JUDGE KOPTA: No, I think I can see it.

14 MS. GOLDMAN: Can I tilt it more so
15 that --

16 JUDGE KOPTA: You will have to ask
17 counsel if --

18 MS. GOLDMAN: Well, I want to make sure
19 you can still see it. If I tilt it a little more --
20 are we off the record?

21 JUDGE KOPTA: No, we are on the record.

22 Let's be off the record for a moment.

23 (Discussion off the record.)

24 JUDGE KOPTA: Let's be back on the
25 record. We're going to take our morning recess. It

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1 is now not quite 10:30, according to the clock in
2 hearing room. Please be back here at 20 until 11:00.
3 Thanks. We are off the record.

4 (A brief recess.)

5 JUDGE KOPTA: Let's be back on the
6 record after our morning break. During that time,
7 counsel for Waste Management has distributed copies of
8 an exhibit which she intends to use on
9 cross-examination of Mr. Philpott. We will mark that
10 exhibit as MP-27, as a two-page exhibit, with some
11 color shading on the front side of it. I will allow
12 Waste Management's counsel to further describe it as
13 necessary, as part of her cross-examination, which she
14 may resume at this point.

15 Ms. Goldman.

16 MS. GOLDMAN: Thank you, Your Honor.

17 Q Mr. Philpott, you have been handed what has
18 been marked for identification as MP-27. Do you have
19 that in front of you?

20 A Yes.

21 Q And do you recognize the preprinted
22 information on this to be the same as Page 5 and
23 Page 6 of MP-18, which is a tariff you filed in June
24 2011, correct?

25 A The "preprinted"? Do you mean that's not

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1 handwritten or highlighted? Yes.

2 MS. GOLDMAN: Your Honor, I'm sorry. I
3 know I said that we could do away with the boards, but
4 I forgot that I need this, which is the previously
5 admitted exhibit of Waste Management's tariff, which
6 is not before anybody. There have been no changes
7 made to it other than coloring.

8 MR. VAN KIRK: As far as I know, that
9 exhibit has not been offered or admitted.

10 MS. POLY: Waste Management's Tariff
11 No. 2, is MAW-23.

12 MR. VAN KIRK: Okay.

13 MS. GOLDMAN: Can everybody see?

14 JUDGE KOPTA: More or less.

15 MR. JOHNSON: I have two MAW-23s.

16 MR. VAN KIRK: I withdraw that
17 objection, Your Honor. I do have a significant
18 objection. I will leave it up to you whether I spurt
19 it out at the appropriate question time or whether we
20 deal with it in advance.

21 JUDGE KOPTA: Well, let's take care of
22 two things. Mr. Johnson correctly observes that there
23 are two MAW-23s, both of which have been admitted of
24 course. So we will leave MAW-23 as Waste Management's
25 10-Q quarterly report for the period 6/30/2012, and

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1 redesignate MAW-23, that's Waste Management's Tariff
2 No. 2, as MAW-25.

3 MS. GOLDMAN: Thank you, Your Honor.

4 JUDGE KOPTA: The second issue, before
5 we proceed, Ms. Goldman, is objection from counsel for
6 Stericycle. If you want to make that at this point,
7 or whether you want to reserve it for later, I will
8 leave to you. I will give you the opportunity now, if
9 you have an objection to proceeding at this point.

10 MR. VAN KIRK: I think it would be an
11 efficient use of everybody's time to be able to do
12 this right now.

13 JUDGE KOPTA: Proceed.

14 MR. VAN KIRK: My objection is they are
15 putting in copies of Waste Management's tariff. The
16 highlighting indicates clearly -- and I know that they
17 are going to ask Mr. Philpott to comment on the
18 comparison between the Stericycle tariffs and the
19 Waste Management tariffs. That is well beyond the
20 scope of his testimony.

21 There's no testimony in which he has commented
22 on the Waste Management tariff, made any comparison
23 between Waste Management tariff and the Stericycle
24 tariff, rebutted or criticized any Waste Management
25 witness for making some -- any relationship between

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1 the tariffs of the two companies. It's just a subject
2 that's completely unaddressed by Mr. Philpott in any
3 of his testimony.

4 JUDGE KOPTA: Ms. Goldman?

5 MS. GOLDMAN: Yes, Your Honor, a couple
6 points. Mr. Philpott is the person who filed and
7 determined the rates on behalf of Stericycle, which
8 have been referenced, both as an exhibit to his
9 testimony and in his rebuttal testimony. He has also
10 taken pains in his written testimony to oppose or
11 respond to or rebut the testimony of Mr. Norton
12 regarding the timing of when these Rehrig rates were
13 set and by whom, and how they were -- when they were
14 presented to the marketplace in the state of
15 Washington. This goes directly to that issue, the
16 timing of these tariff rates and which was presented
17 first to the market.

18 JUDGE KOPTA: Mr. Van Kirk, one of the
19 exhibits to Mr. Philpott's testimony is this tariff
20 and as far as --

21 MR. VAN KIRK: We actually didn't offer
22 that exhibit. That's the one we didn't offer. It was
23 related to the testimony that was struck this morning.

24 JUDGE KOPTA: Which exhibit? It was
25 MP-18 you did not offer?

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1 MR. VAN KIRK: Let me make sure I'm
2 giving you the correct number here.

3 JUDGE KOPTA: I have that as being
4 admitted.

5 MR. VAN KIRK: MP-23 we didn't offer,
6 which is Waste Management's tariff. MP-18 is
7 Stericycle's tariff. The objection -- and I
8 understand you have already made a ruling on whether
9 questioning about Stericycle's tariff is admissible.
10 I am not revisiting that. The question is whether
11 they can go further and entertain questioning about a
12 comparison between the rates of the two companies,
13 which they are presenting in support of some testimony
14 of Jeff Norton.

15 What this really is, is a way to ask
16 Mr. Philpott direct examination, that they were unable
17 to do because they didn't call him. You ruled that he
18 couldn't be called as a direct witness. Some of this
19 questioning was in the prefiled testimony, deposition
20 testimony, that they originally wanted to submit as
21 testimony, rather than an exhibit, and that was
22 denied. Their opportunity to call Mr. Philpott as
23 their own witness was denied.

24 The reason for that was to ask the very kind
25 of questions that are coming up here, about the

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1 comparison between the rates of the two companies. To
2 the extent they can make those arguments based on the
3 tariffs in the record, that's fine, but it's not
4 something that Mr. Philpott has offered testimony on.

5 JUDGE KOPTA: I take your objection, as
6 long as you are not renewing your objection about the
7 examination of Stericycle's testimony, because I agree
8 that having that in the record, Waste Management is
9 entitled to examine that. As far as any comparison
10 between the Stericycle tariff and the Waste Management
11 tariff, I don't see anything in his testimony having
12 to do with that. Certainly if on examination of
13 Stericycle's own tariff it comes out that Mr. Philpott
14 has examined Waste Management's tariff and has done
15 some kind of comparison, then I can consider whether
16 or not to allow the comparison.

17 I agree with you. At this point, I don't see
18 the connection. I don't see the connection with his
19 testimony. Unless counsel for Waste Management is
20 able to make that connection to his testimony, I will
21 sustain your objection. At this point, I will hold it
22 in abeyance until that time, and you may renew it at
23 the point when counsel for Waste Management is asking
24 those questions that you believe are subject to that
25 objection.

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1 MR. VAN KIRK: Thank you.

2 MS. GOLDMAN: Your Honor, it's probably
3 more efficient for me to address the issue globally at
4 this point.

5 I would draw to your attention, Your Honor, to
6 Paragraph 32 of MP-15T, which is Mr. Philpott's
7 rebuttal testimony, in which he disputes the notion of
8 Waste Management's having brought -- marketed these
9 tubs before Stericycle. This goes directly to that
10 issue, as to the timing of that, based on the tariff
11 rates, and as the testimony will show, which were
12 copied right off of Waste Management's tariff at the
13 precise price points that were offered in Waste
14 Management's prior tariff.

15 JUDGE KOPTA: Well, as I explained to
16 Mr. Van Kirk, if you are able to tie whatever your
17 cross-examination is to the direct testimony or the
18 response testimony that Mr. Philpott has given, or any
19 of his exhibits, then I will allow it. But at this
20 point, I don't see that connection being made, and I
21 wouldn't at this point because you haven't asked those
22 questions. I am reserving any ruling until the time
23 when you ask those questions and Mr. Van Kirk renews
24 his objection, if that time comes.

25 Please proceed.

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1 MS. GOLDMAN: Thank you, Your Honor.

2 Q So again, Mr. Philpott, you have been handed
3 what has been marked for identification as MP-27. You
4 do recognize the preprinted information on here as
5 compared with the handwritten or highlighted
6 information to be the same as Stericycle's Pages 5 and
7 6 of its tariff; is that correct?

8 And for reference, MP-18 is your tariff.

9 A It appears to be, yes.

10 Q And these computations, which are offered on
11 MP-27 pursuant to the Washington Administrative Code
12 subject to check, have been performed to show the
13 total gallons at each price point to the left of the
14 price and the price per gallon to the right of each
15 rate. Do you see that?

16 A Which column are you referring to?

17 Q Each column has two sets of handwritten
18 numbers. To the left of the preprinted tariff rate,
19 the total gallons for that price. So for example,
20 Line 1, one container. First price point, 21 gallons,
21 because it's only one 21-gallon container. And then
22 next to the \$35.16 rate it is handwritten \$1.67, which
23 indicates the computation of the rate per gallon.

24 Do you see that?

25 A I do.

0600

1 Q And subject to check, does this information
2 appear accurate to you?

3 A I couldn't comment to its accuracy, but I
4 understand what you are trying to do.

5 Q Do you have any reason to believe this
6 information is not accurate, subject to check?

7 A I don't have a reason to believe one way or
8 another, no.

9 JUDGE KOPTA: And just to explain to
10 you, Mr. Philpott. Under our rules, counsel can ask
11 you to accept a calculation subject to check, which
12 means that after you are off the stand, you have five
13 days to ensure that it is accurate, if you accept it
14 subject to check, and either to report to the
15 Commission that it is not accurate or simply to say
16 nothing, and our assumption is that it is accurate.

17 Just letting you know what that means, because
18 unless you are familiar with our process, it is a
19 little bit bewildering.

20 THE WITNESS: Okay.

21 Q So, Mr. Philpott, for the first container line
22 where only one -- the quantity is one, going all the
23 way across, the price per gallon is highest at the
24 smallest size container, 21-gallon container, correct?

25 A It appears to be, yes.

0601

1 Q And the price per gallon goes down slightly
2 for one container of the next largest size container,
3 that would be 31 gallons, correct?

4 A You are moving now from the 21-gallon to the
5 31-gallon container, correct?

6 Q Correct, still at the one container quantity.
7 So it's now moved from \$1.67 per gallon to \$1.62 per
8 gallon; isn't that right?

9 A That's what it states here.

10 Q Now, the price per gallon goes down slightly
11 more for one container at the next largest size
12 container, that would be the 43-gallon size container,
13 correct? The price per gallon goes to \$1.58, going
14 down several cents.

15 A Correct.

16 Q And the price per gallon remains the same for
17 still this one container quantity at the largest size
18 container, 48 gallons, correct? So there's no change
19 in the price per gallon --

20 A You lost me on that there. Now you are going
21 over to the other column, the far right. So you're
22 saying that the price is the same for a 48 versus a
23 43?

24 Q Right. So the price per gallon, when you
25 moved from a 43-gallon container to a 48-gallon

0602

1 container, but still one quantity, quantity of one,
2 the price remains the same per gallon, correct?

3 A It appears so.

4 Q So the price changes from 21-gallon to
5 31-gallon, it goes down, correct?

6 A From what you've got here, yes.

7 Q And then it goes down again in that first
8 quantity, from the 31-gallon amount to the 43-gallon
9 amount. The price per gallon goes down again,
10 correct?

11 A Correct.

12 Q And then stays the same as it moves from the
13 43-gallon to the 48-gallon container size, correct?

14 A Correct.

15 Q Okay. So --

16 MS. GOLDMAN: Your Honor, just a couple
17 more rows. I don't intend to go through this entire
18 exhibit, but need to go through a couple of these.

19 Q So for two containers, now moving to the
20 second row, the same is true, right? The price per
21 gallon is highest at the smallest size container, the
22 21-gallon container size; isn't that right?

23 A It appears so.

24 Q And then the price per gallon goes down
25 slightly at the two container quantity at the next

0603

1 larger size container, the 31-gallon container,
2 correct?

3 A Correct.

4 On the 31-gallon container?

5 Q Correct. So when you move from the 21 gallons
6 to the 31 gallons, the price per gallon for two
7 containers goes down, from \$1.60 to \$1.49, correct?

8 A Correct.

9 Q And the price per gallon goes down slightly
10 more for two containers of the next larger size, the
11 43-gallon container size, correct? It goes down to
12 \$1.22 per gallon.

13 A Correct.

14 Q And then the price per gallon stays the same
15 for that last largest-sized container. It too is
16 \$1.22 per gallon, when you are talking about two
17 containers, right?

18 A Correct.

19 Q Now, isn't it true that this pricing pattern
20 of decreasing from 21-gallon to 31-gallon to
21 43-gallon, and then remaining the same at the
22 48-gallon level, also continues for the three
23 container quantity?

24 A It appears so.

25 Q And then the same is also true for the four --

0604

1 when you have four -- quantity of four containers,
2 correct?

3 A It appears so.

4 Q Now, at the five container quantity,
5 Stericycle's price per gallon for the 43-gallon Rehrig
6 container drops to 60 cents per gallon, doesn't it?

7 A On the five?

8 Q Correct.

9 A It shows 97 cents on mine.

10 Q 43-gallon is the large Rehrig. Let me ask the
11 question again.

12 At the five container quantity, Stericycle's
13 price per gallon for the 43-gallon Rehrig container
14 drops to 60 cents per gallon, doesn't it?

15 A It's what you have written there. It appears
16 so.

17 Q And unlike the prior four lines, when you move
18 to the 48-gallon container price per gallon for five
19 containers, the price goes up, correct?

20 A It appears higher, yes.

21 Q And that higher price is from your preexisting
22 tariff rate, correct?

23 A Correct.

24 Q Now, under -- I'm sorry, and five -- if we go
25 back to the 43-gallon Rehrig price for five

0605

1 containers, five of those 43-gallon Rehrig containers
2 yield total gallons of 215, correct?

3 A Correct.

4 JUDGE KOPTA: Ms. Goldman, I'm going to
5 interject at this point. I am not getting a whole lot
6 out of asking him to look at these numbers and verify
7 that they are what you say they are. I would like you
8 to get to the point of whatever you are making at this
9 juncture, because I don't think this is the best use
10 of our hearing time.

11 MS. GOLDMAN: Your Honor, we would then
12 ask the witness to look at Waste Management's tariff
13 to compare the gallons, the total gallons, that he has
14 just testified about, 215 gallons at the five quantity
15 amount.

16 Q Could you please tell me, at the five
17 container quantity -- I'm sorry, at 215 gallons, what
18 is the price that is offered by Waste Management per
19 gallon?

20 MR. VAN KIRK: Your Honor, I renew my
21 objection.

22 JUDGE KOPTA: Unless you can demonstrate
23 that this witness has done that comparison at some
24 point, I would rather see you do this in briefing,
25 rather than through the witness, because I don't see

0606

1 that this has a whole lot of value.

2 MS. GOLDMAN: Thank you, Your Honor.

3 With permission to address it in briefing, we will
4 certainly do that.

5 JUDGE KOPTA: You certainly may. They
6 are all exhibits that are in the record. We can all
7 do the math. I don't think that we need Mr. Philpott
8 to confirm that arithmetic is what it is.

9 MR. VAN KIRK: Your Honor, just to be
10 clear, I'm not clear, has MP-27 been offered yet or is
11 it just marked?

12 JUDGE KOPTA: It has only been marked at
13 this juncture.

14 MR. VAN KIRK: Okay. Thank you.

15 MS. GOLDMAN: We offer MP-27 for
16 admission.

17 MR. VAN KIRK: I object to the exhibit
18 to the extent of the highlights and the bracketing on
19 the right-hand side, which are related to the Waste
20 Management tariff. The handwritten numbering is fine.

21 JUDGE KOPTA: Ms. Goldman?

22 MS. GOLDMAN: Well, Your Honor, it
23 simply reflects the range of gallons that are a
24 reference in each of those preexisting rates. It's
25 simply putting the numbers there on the right column.

0607

1 It's not changing anything. It is indicating where
2 the 201 to 400 gallon range falls for the preexisting
3 tariff rates, where 401 to 600 total gallons,
4 et cetera. It's not adding additional information.

5 MR. VAN KIRK: It is creating a
6 comparison with Waste Management's tariff, which
7 they -- again, they can do in briefing, but it is not
8 something that has been done today in testimony.

9 JUDGE KOPTA: Well, I will admit this
10 exhibit with the caveat that it is primarily because
11 we spent a substantial amount of hearing time
12 discussing this exhibit and therefore it should be
13 part of the record. Waste Management can make of the
14 numbers what it will. I will not view this as
15 anything other than math.

16 And certainly in terms of the briefing, if
17 Ms. Goldman and Waste Management do what they say they
18 are going to do, then it will be for illustrative
19 purposes. I don't take this as any evidence one way
20 or the other on that comparison from Mr. Philpott.

21 With that caveat, we will -- I will -- Exhibit
22 MP-27 is admitted.

23 MS. GOLDMAN: Thank you, Your Honor.

24 Q Mr. Philpott, Stericycle has customers who
25 like the Rehrig containers; isn't that correct?

0608

1 A I haven't spoken to them personally. They are
2 using them, so I assume that they do like them, yes.

3 Q And you don't know how many Stericycle
4 customers presently are using Rehrigs; isn't that
5 right?

6 A I do not.

7 Q And you are not aware of the name of a single
8 Stericycle customer who has tried the Rehrig tub and
9 then decided not to use it; isn't that right?

10 A I have no personal knowledge of that, no.

11 Q You don't know what Stericycle's profit margin
12 for its Washington services is, correct?

13 A I do not prepare those financials for the UTC,
14 so I do not know.

15 Q And you also don't know what Stericycle's
16 Washington profits and losses are, correct?

17 A No.

18 Q That's incorrect or that's correct?

19 A That's correct.

20 Q Thank you.

21 A I think my microphone went out there.

22 I see the year-end reports that have been
23 circulated, I see what they submit, but other than
24 that, no.

25 Q Now, isn't it true that you have never

0609

1 conducted an analysis to determine whether the
2 majority of Washington's biomedical waste is closer to
3 Waste Management's facility in Seattle or to
4 Stericycle's facility in Lewis County?

5 A Could you restate that question?

6 Q Sure, sure. You have never conducted an
7 analysis to determine whether the majority of
8 Washington's biomedical waste is closer to Waste
9 Management's facility in Seattle or to Stericycle's
10 facility in Lewis County; isn't that right?

11 A I have not.

12 MS. GOLDMAN: At this time, Your Honor,
13 we move to the admission of MP-25, which has been
14 referenced, are the excerpts of the deposition
15 transcript of Mr. Philpott.

16 JUDGE KOPTA: Any objection?

17 MR. VAN KIRK: I would agree to the
18 admission of the -- any portions that have been
19 discussed. As I did yesterday, I would object to the
20 admission of any portions that have not been made a
21 part of his testimony.

22 MS. GOLDMAN: Your Honor, much of that
23 testimony has also been referenced in other testimony,
24 and so we would seek admission of all of it. All of
25 it was taken under oath. All of it is, to the degree

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1 objected to, subject to any objections made that are
2 on the record, and we request its complete admission.

3 JUDGE KOPTA: Well, I think as
4 Mr. Van Kirk agreed to do yesterday, I would ask you
5 to only include those provisions that you have asked
6 the witness about in this testimony. I know that
7 depositions generally are not ones in which there's
8 the opportunity to ask clarifying questions from
9 counsel representing the witness, and therefore it is
10 incomplete by its very nature. The witness needs to
11 have an opportunity to address whatever it is that you
12 want to put into the record from the deposition.

13 If you want to ask him questions, I am
14 certainly not encouraging that. But I'm not willing,
15 over counsel's objection, to admit prior testimony in
16 its entirety, unless it has been related to testimony
17 that's been provided here at the hearings.

18 MS. GOLDMAN: Okay.

19 JUDGE KOPTA: All right. Then --

20 MS. GOLDMAN: That's all -- well, let me
21 check.

22 JUDGE KOPTA: Then at this point I will
23 admit Exhibit MP-25. Waste Management will revise it
24 to include only those provisions that have been
25 referenced during the evidentiary hearings, and will

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1 trust to counsel, if that's not an accurate document
2 that's filed when cross-examination exhibits are
3 officially filed.

4 MR. VAN KIRK: I think I should ask one
5 clarifying question. When I offered testimony in my
6 objection, I -- I said the testimony in my view should
7 be limited to what was discussed with Michael
8 Philpott. I think that -- I just wanted to -- you
9 said in the evidentiary hearings. Maybe I was wrong,
10 but I gleaned some idea from Ms. Goldman, that they
11 might try and attach other bits of deposition
12 testimony, something that maybe some other witness has
13 said at some other time. Again, if I'm wrong about
14 this I apologize, but I don't think that's
15 appropriate.

16 JUDGE KOPTA: My reference is any
17 portion of the document that's been marked as Exhibit
18 MP-25 that has been discussed during these hearings,
19 either with Mr. Philpott or any other witness, that
20 that document is used for, I am leaving open.

21 MR. VAN KIRK: So specific reference.

22 JUDGE KOPTA: Yes. I am leaving open
23 the possibility that they may bring this up with
24 another witness for some other reason. I don't know
25 what that is. My limitation is that it has to have

0612

1 been discussed with a witness during the evidentiary
2 hearings.

3 MR. VAN KIRK: Okay.

4 JUDGE KOPTA: I'm going to leave that to
5 counsel to make sure that the appropriate portions are
6 included in that document.

7 MR. VAN KIRK: Okay. I understand
8 better. Thank you.

9 JUDGE KOPTA: Is that clear to --

10 MS. GOLDMAN: Yes, your Honor.

11 JUDGE KOPTA: All right.

12 MS. GOLDMAN: That's all we have. Thank
13 you, Your Honor.

14 JUDGE KOPTA: For this witness?

15 MS. GOLDMAN: Yes.

16 JUDGE KOPTA: Thank you.

17 Ms. Woods, do you have any questions for
18 Mr. Philpott?

19 MS. WOODS: No questions, Your Honor.

20 JUDGE KOPTA: Redirect? It's not an
21 adverse witness and we will allow --

22 MR. VAN KIRK: I think I have three
23 questions.

24

25

0613

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

2 BY MR. VAN KIRK:

3 Q Good afternoon again, Mr. Philpott.

4 In your testimony just now, you responded that
5 you don't remember specifically your conversations
6 with Mr. Norton about what customers think of the
7 Steri-Tubs. Based on your practice, how do you
8 think -- how is it most likely that you would have
9 responded to any customer concerns that were brought
10 to your attention?

11 MS. GOLDMAN: Objection. Calls for
12 speculation. Lack of foundation. He has testified he
13 doesn't recall what he said.

14 MR. VAN KIRK: I'm just asking about his
15 practice. I understand he doesn't recall what he
16 said.

17 JUDGE KOPTA: Well, if you would
18 rephrase the question to remove the "what you would
19 have said," but instead refer to what is your standard
20 practice, then I will allow the question.

21 Q Mr. Philpott, if you can, can you elucidate us
22 on what your standard practice is when responding to
23 any concerns that are brought to you about a customer
24 not liking the container they are using?

25 A I would imagine that my response then would be

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1 the same that it is today. As I have stated in my
2 testimony, no container is a perfect container for any
3 customer. That's why we offer a multitude of
4 different varieties and sizes. Any customer is open
5 to use any container that we offer on our tariff, and
6 the tariff is made available to them and they
7 understand what is available. If the person is not
8 satisfied with that particular container, they can
9 choose a different one to use.

10 Q In another portion of your testimony, you
11 testified that Stericycle does not use Rehrig
12 containers in any of the other territory that you are
13 responsible for. Do you remember that testimony?

14 A I do.

15 Q Is it true, however, that in some of that
16 territory, it's -- strike that.

17 Isn't it true that -- or is it -- in some of
18 that territory, does Stericycle use a different hinged
19 lid container outside of Washington?

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

22 JUDGE KOPTA: Yes, outside of
23 Washington. It is not pertinent to this proceeding
24 either. I will sustain the objection.

25 MR. VAN KIRK: Okay.

0615

1 Q Finally, Mr. Philpott, you testified that you
2 don't remember the name of any customers who have
3 returned a Rehrig container. Do you recall that
4 testimony?

5 A Yes.

6 Q Even though you can't remember them by name,
7 are you aware that some customers have returned or
8 decided to stop using Rehrig containers after they
9 started using them?

10 A Yes.

11 Q And how are you aware of that?

12 A It's been relayed on to me by the sales team.
13 I am aware of it because we have a lot of them in our
14 warehouse at the current time, because they are not as
15 in wide a circulation as they were originally, when
16 they were brought on.

17 MR. VAN KIRK: That is all that I have.

18 JUDGE KOPTA: Thank you.

19 Anything further?

20 MS. GOLDMAN: Nothing further.

21 JUDGE KOPTA: Thank you, Mr. Philpott.

22 We appreciate your testimony this morning. You are
23 excused.

24 Would you like to call your next witness,
25 Mr. Van Kirk?

0616

1 MR. VAN KIRK: Stericycle would call
2 Mr. James Ryan.

3 JUDGE KOPTA: Remain standing.

4 THE WITNESS: (Complies.)

5

6 JAMES RYAN, witness herein, having been
7 first duly sworn on oath,
8 was examined and testified
9 as follows:

10

11 JUDGE KOPTA: Mr. Van Kirk.

12

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

14 BY MR. VAN KIRK:

15 Q Good morning, Mr. Ryan.

16 A Good morning.

17 Q Would you please state your name and spell it
18 for the record, please?

19 A Yeah, James Ryan, J-A-M-E-S, R-Y-A-N.

20 Q And you have submitted prefiled response
21 testimony in this proceeding, correct?

22 A Correct.

23 MR. VAN KIRK: I would offer JR-7T,
24 which is Mr. Ryan's response testimony, having already
25 ruled on the remainder of Mr. Ryan's testimony.

0617

1 JUDGE KOPTA: And JR-8, the exhibit to
2 that testimony?

3 MR. VAN KIRK: Yes, and JR-8, the
4 exhibit to that testimony. Thank you.

5 JUDGE KOPTA: Any objection to that
6 testimony and that exhibit?

7 MS. GOLDMAN: No objection to JR-8, but
8 we do object to portions of JR-7T.

9 JUDGE KOPTA: All right. Again, I will
10 allow you to explore the basis of that objection in
11 the initial part of your cross-examination and then
12 withhold ruling on the admission of that exhibit. And
13 will admit Exhibit JR-8. As referenced by
14 Mr. Van Kirk, Exhibit JR-1T through JR-6 was discussed
15 at the prehearing conference, and at that time
16 indicated that I would not admit that into the record.
17 And so as of today, those exhibits I assume would have
18 been offered, and are rejected.

19 Is there anything further, Mr. Van Kirk?

20 MR. VAN KIRK: No.

21 JUDGE KOPTA: Cross-examination,
22 Ms. Goldman.

23 MS. GOLDMAN: Thank you.

24

25

0618

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

2 BY MS. GOLDMAN:

3 Q Good morning, Mr. Ryan.

4 A Good morning.

5 Q We have not had an opportunity to meet. As
6 you know, my name is Jessica Goldman, and I am one of
7 the lawyers for Waste Management.

8 I want to ask you a couple of questions about
9 your Exhibit JR-7T, which is your prefiled rebuttal
10 testimony.

11 A Okay.

12 Q Do you have that in front of you?

13 A I do.

14 Q I want to ask you first about Paragraph 9.
15 And my question has to do with the last sentence of
16 Paragraph 9. Isn't it true that you did not review
17 customer service information records to determine if
18 there were any communications with Providence Medical
19 Group facilities?

20 A I contacted our customer service rep who would
21 handle that.

22 Q So it's correct that you personally did not
23 review any of the customer service call center
24 information, correct?

25 A I contacted the person who would have reviewed

0619

1 those, yes.

2 MS. GOLDMAN: Motion to strike as
3 nonresponsive, and I would request that the witness be
4 directed to answer my question.

5 JUDGE KOPTA: Why don't you rephrase it.

6 Q Mr. Ryan, did you review, did you look at the
7 customer service call center information referenced in
8 Paragraph 9?

9 A I did not.

10 Q Who is the representative that you are
11 referring to in the last sentence of Paragraph 9?

12 A Brian Anderson.

13 Q Is Mr. Anderson an employee of Stericycle?

14 A He is.

15 Q What records did Mr. Anderson review?

16 A He did not show any correspondence in regards
17 to issues brought up by Ms. Patshkowski.

18 Q What did he look at?

19 A I don't know.

20 Q What time frame was he looking for?

21 A I'm not sure.

22 MS. GOLDMAN: We move to strike the last
23 sentence of Paragraph 9 for lack of personal knowledge
24 and not the best evidence. Mr. Anderson is not here
25 to testify regarding the documents that he reviewed or

0620

1 the analysis that he conducted.

2 JUDGE KOPTA: Mr. Van Kirk?

3 MR. VAN KIRK: I think I'm not going to
4 argue with that one based on our previous
5 conversation.

6 JUDGE KOPTA: All right. Well, if
7 you're not going to oppose the objection, it will be
8 granted. We will strike the last sentence of
9 Paragraph 9, which is Lines 11 through 14.

10 Q Mr. Ryan, if you could turn next to Paragraph
11 18 of that same JR-7T, please.

12 A Okay.

13 Q And at Line 17, you describe information that
14 was provided to you by a representative of your call
15 center. Was that the same representative that you
16 mentioned previously, Brian Anderson?

17 A Yes.

18 Q And did you look at any of the call center
19 records that are referenced or discussed in Paragraph
20 18?

21 A No.

22 Q What did -- what documents did Mr. Anderson
23 review?

24 A I believe just any correspondence, any phone
25 calls that may have been made.

0621

1 Q What documents was he looking to to answer
2 that question?

3 A I'm not sure I understand your question.

4 Q Did he look at any documents to -- well, you
5 say here that he looked at records. What records was
6 he looking at?

7 A Well, if something is -- a case is typically
8 created if somebody calls our customer service
9 department, so that's what I mean.

10 Q And who created the records that Mr. Anderson
11 reviewed?

12 A Well, it's created by the customer service
13 person who speaks to the customer.

14 Q And what time was he looking for records for?

15 A I don't know.

16 MS. GOLDMAN: For the same reasons we
17 move to strike Lines 17 and 18, up to the period in
18 Paragraph 18, for lack of personal knowledge, not the
19 best evidence, and we have not been given an
20 opportunity to cross-examine an available witness with
21 personal knowledge.

22 MR. VAN KIRK: This time I will argue
23 that the witness testified as to reviewing
24 correspondence. Those are in fact records. He
25 explained how the records are kept by the customer

0622

1 service center. There's -- and with respect to time,
2 the testimony is neither time limited, nor is the
3 testimony about which records were reviewed.

4 JUDGE KOPTA: Well, I don't see a basis
5 for treating this any differently than the other. I
6 will grant that motion and strike everything on
7 Line 17 and Line 18, through the end of the sentence.

8 MS. GOLDMAN: Thank you, Your Honor.

9 Q Mr. Ryan, I would like to ask you a question
10 about JR-8, which is --

11 JUDGE KOPTA: Before we move on,
12 Ms. Goldman, are those the only provisions in that
13 exhibit to which you object?

14 MS. GOLDMAN: Yes, I'm sorry, Your
15 Honor. We have no further objections to the admission
16 of JR-7T.

17 JUDGE KOPTA: Then with those provisions
18 excised, Exhibit JR-7T is admitted.

19 Now you can proceed.

20 MS. GOLDMAN: Thank you, Your Honor.

21 Q Mr. Ryan, you have before you what is
22 Exhibit A to your rebuttal testimony and has been
23 marked as JR-8. Now, you offered JR-8 as an example
24 of how your participation in communicating with
25 customers, with Stericycle's customers, helps to

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1 address customers' concerns, correct?

2 A Correct.

3 Q So I would like to turn your attention to
4 Page 3 of JR-8, in which your customer presents two
5 questions.

6 A Uh-huh.

7 Q The first question, University of Washington
8 is asking you whether Stericycle is covering treated
9 (autoclaved) sharps waste with at least 6 inches of
10 compacted waste material within 24 hours of disposal.

11 Do you see that question?

12 A No, not yet. Hold on.

13 No. 1 there?

14 Q Yes, on the top of Page 3.

15 A Okay.

16 Q Do you see that?

17 A Yes.

18 Q And then at the bottom of Page 1 is an e-mail
19 from your colleague, Kelly Merriman, in which she
20 purports to answer the question posed. In her answer
21 to Paragraph 1, she still doesn't address the question
22 of how many inches of compacted waste material -- how
23 many inches the waste material is being covered with;
24 isn't that correct?

25 A It appears that way, yes.

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1 Q And then the University of Washington has to
2 e-mail back again to you, at the most latest in time
3 e-mail, up at the top of Page 1, and again asks you,
4 "Can you please confirm that your answer to my
5 question #1 is a 'yes'."

6 Do you see that?

7 A I do.

8 Q As far as we know from Exhibit JR-8, that
9 question was never answered, correct?

10 A That is not correct. That was answered via
11 the phone.

12 Q But as far as the information that was
13 provided in JR-8, we see no answer to that; is that
14 correct?

15 A That's correct.

16 Q And who provided the answer?

17 A Kelly Merriman.

18 Q How do you know that?

19 A Because I spoke with her.

20 Q You spoke with who?

21 A Kelly.

22 Q Did you participate in the telephone
23 conversation?

24 A Between Kelly and the University of
25 Washington?

0625

1 Q Yes.

2 A Of course not.

3 Q Okay. Thank you.

4 JUDGE KOPTA: While we are on, excuse me
5 for interrupting, I notice at the end that it seems to
6 have a standard disclaimer about the confidentiality
7 of this e-mail transmission. I am assuming that you
8 are not making any claims of confidentiality with
9 respect to this exhibit.

10 MR. VAN KIRK: No. I'm not sure which
11 party that got tagged on for, but no.

12 JUDGE KOPTA: All right. I just wanted
13 to confirm.

14 Q Now, Mr. Ryan, I want to turn your attention
15 to what's been marked as JR-9 in the other binder.

16 A I don't see JR-9.

17 MR. JOHNSON: (Indicating.)

18 Q And you have before you JR-9, Mr. Ryan?

19 A Yes.

20 Q Could you turn to Page 6 of JR-9, please, and
21 confirm that that is your signature?

22 A It is.

23 Q And JR-9 is a marketing agreement that you
24 executed on behalf of Stericycle with Washington
25 Hospital Services effective January 1st, 2010,

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1 correct?

2 A Correct.

3 MS. GOLDMAN: We move for admission of
4 JR-9.

5 JUDGE KOPTA: Any objection?

6 MR. VAN KIRK: No objection.

7 JUDGE KOPTA: JR-9 is admitted.

8 MS. GOLDMAN: And that's all I have,
9 Your Honor. Thank you.

10 Thank you, Mr. Ryan.

11 JUDGE KOPTA: All right. Anything from
12 you, Ms. Woods?

13 MS. WOODS: No, Your Honor.

14 JUDGE KOPTA: Redirect?

15 MR. VAN KIRK: No, I don't believe so.

16 JUDGE KOPTA: All right. Thank you,
17 Mr. Ryan, for your testimony. We appreciate it. You
18 are excused.

19 Your next witness.

20 (Pause in the proceedings.)

21 JUDGE KOPTA: You know the drill.

22 RON ADAMS, witness herein, having been
23 first duly sworn on oath,
24 was examined and testified
25 as follows:

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1

2

JUDGE KOPTA: Thank you.

3

Mr. Van Kirk.

4

5

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

6

BY MR. VAN KIRK:

7

Q Good afternoon, Mr. Adams.

8

A Good afternoon.

9

Q Although it is fairly straightforward, can you please state and spell your name for the record?

10

11

A Ron Adams, R-O-N, A-D-A-M-S.

12

13

Q Mr. Adams, you have submitted prefiled response and rebuttal testimony in this proceeding, correct?

14

15

A Correct.

16

MR. VAN KIRK: I would then offer into admission RA-1T, and it has no exhibits.

17

18

JUDGE KOPTA: Any objection?

19

20

MS. GOLDMAN: Yes, your Honor, we have several.

21

22

JUDGE KOPTA: All right. Once again, I will allow you to explore the foundation for that objection in the initial part of your cross, and then we will reserve ruling on the admission of this exhibit until you have completed that.

23

24

25

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1 MS. GOLDMAN: Thank you, Your Honor.

2 JUDGE KOPTA: Anything further,

3 Mr. Van Kirk, for this witness?

4 MR. VAN KIRK: No, I -- oh, there is one
5 thing.

6 Q Mr. Adams, is there anything in your testimony
7 that you discovered to be incorrect after you filed
8 it?

9 A Yes, I had learned previously, about a week or
10 so ago, that Lori Creighton is still employed with
11 Pathology Associate Medical Labs. We had a discussion
12 otherwise, but she apparently is still working, so
13 that should be changed.

14 MR. VAN KIRK: So --

15 A She is not retired.

16 MR. VAN KIRK: -- I believe that would
17 require a strike on Page 2, striking beginning on
18 Line 10, with the word "until," the final word on that
19 line, to the end of the sentence on Line 11.

20 JUDGE KOPTA: All right. We have made
21 that change to this exhibit.

22 MR. VAN KIRK: And with that
23 clarification, then I turn it over.

24 JUDGE KOPTA: All right.

25 Ms. Goldman.

0629

1 MS. GOLDMAN: Thank you, Your Honor.

2

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

4 BY MS. GOLDMAN:

5 Q Good morning, Mr. Adams.

6 A Good morning.

7 Q I think we have met prior at someone's
8 deposition. My name again is Jessica Goldman, I'm one
9 of the attorneys for Waste Management.

10 A Uh-huh.

11 Q If you could take a look at that same
12 Paragraph 5 we were just discussing.

13 A Uh-huh.

14 Q Again, this is Paragraph 5 of RA-1T.
15 Immediately following the language that was stricken
16 at the request of your counsel, you state that you are
17 not aware that Mr. Lycan has been the principal
18 contact for either Ms. Padberg or Mr. Ryan. Do you
19 see that testimony?

20 A Yes, I do.

21 Q Now, you have not participated in any
22 communications of Ms. Padberg or Mr. Ryan with the
23 customer; is that correct?

24 A No, that's not correct. With the customer
25 itself, but I have not participated with Mr. Lycan.

0630

1 Q Are you -- have you asked Ms. Padberg if she's
2 ever communicated with Mr. Lycan?

3 A No, I have not asked that.

4 Q Did you ask Mr. Ryan that question?

5 A No, there wouldn't have been any reason to ask
6 him.

7 MS. GOLDMAN: We move to strike for lack
8 of personal knowledge, lack of foundation, and lack of
9 best evidence, that sentence.

10 MR. VAN KIRK: I don't agree. If he had
11 said Mr. Lycan has not been the principal contact for
12 those people, then I could understand, but that's not
13 what he says. He just says he's not aware. I think
14 we have established that.

15 JUDGE KOPTA: I will overrule the
16 motion, because I agree that if he says I am not
17 aware, then it just means he's not aware. You have
18 already demonstrated what his awareness means or
19 doesn't mean, and we can take that into consideration
20 and give it whatever weight is accorded or necessary
21 to this particular passage.

22 MS. GOLDMAN: Similar objection to
23 Paragraph 7.

24 Q Mr. Adams, if you could look at Paragraph 7,
25 Line 15.

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1 A Uh-huh.

2 Q Again, you state what you are not aware of
3 regarding communications involving Ms. Padberg or
4 Mr. Ryan.

5 MS. GOLDMAN: We move to strike those
6 for lack of personal knowledge one way or the other,
7 lack of foundation, and lack of personal knowledge.

8 JUDGE KOPTA: I assume your response is
9 the same, and my ruling is the same. Again, his lack
10 of awareness can be given whatever weight is
11 appropriate under the testimony that he has given here
12 today.

13 Q Mr. Adams, I would like to ask you next about
14 Paragraph 11. In the second line there, you reference
15 Stericycle's staff. Who are you referring to there?

16 A Are we talking Line 11, cancelling facilities
17 with Stericycle's staff, contacted each?

18 Q Yes.

19 A Okay. Staff can be various people. It can be
20 people in the Kent office, they can also be drivers
21 that are working with the people directly, as well as
22 sales representatives.

23 Q Who was it?

24 A It could be -- with many sites that were being
25 cancelled at the time, it could be office staff, it

0632

1 could have been Tonya or Emily. It could also have
2 been drivers that are on those routes.

3 Q Do you know which Stericycle staff contacted
4 each of the cancelling facilities to ask whether they
5 wanted their final pickup to be before or after
6 October 28th?

7 A I personally don't know that. I know that it
8 was being overseen at that time by Don Wilson, as well
9 as Shawna Padberg.

10 Q Mr. Adams, do you have personal knowledge
11 about anything that's stated in Paragraph 11? And by
12 "personal knowledge," I mean something that you
13 participated in directly.

14 A Can you define "personal knowledge"?

15 Q Sure. Did you have any communications with
16 any customer representatives that are referenced in
17 Paragraph 11?

18 A Personally, the customer representatives of
19 the customer themselves, no.

20 Q Did you participate in performing or attending
21 any of the pickups that are referenced in
22 Paragraph 11?

23 A Physically on site?

24 Q Yes.

25 A No, I did not.

0633

1 MS. GOLDMAN: We move to strike
2 Paragraph 11 for lack of personal knowledge, for lack
3 of foundation, for hearsay, and for not being the best
4 evidence.

5 MR. VAN KIRK: I would like to ask a
6 couple redirect questions on just this issue.

7 JUDGE KOPTA: Sure, go ahead.

8

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

10 BY MR. VAN KIRK:

11 Q Mr. Adams, can you please just tell us how you
12 came -- how you found the information that you have
13 written in Paragraph 11?

14 A The information from Paragraph 11 came from
15 conversations with staff of Stericycle who were
16 involved with these cancellations, these final
17 pickups, the transition of the customer leaving
18 Stericycle. It was in having communication with them.
19 Also, the dates that are provided in Chapter 11 are
20 from records of final pickups, which are part of
21 record and part of the manifest.

22 Q I'm sorry, what records were those? I didn't
23 hear.

24 A There are records. We use different
25 databases, one is Salesforce. Within Salesforce, if

0634

1 there's -- you know, cases that are made, or if a
2 customer calls in for final pickups, they put those
3 dates in. They put those in as final record of that
4 account going inactive.

5 Q Last question. Which staff at Stericycle did
6 you talk to when you were creating this information in
7 Paragraph 11?

8 A Most extensively I spoke with Don Wilson and
9 Shawna Padberg.

10 Q Tell us who they are, would you?

11 A I'm sorry. Don Wilson works as, for lack of a
12 better term, dispatch, or correlating transportation
13 routes and customer routes. Shawna Padberg is the
14 account manager over those accounts in Spokane at the
15 time.

16 Q And what was their relationship to the subject
17 matter addressed in Paragraph 11? How were they
18 involved?

19 A Don Wilson would have been involved in helping
20 corollate the final effort or pickup with the drivers
21 that were responsible for that, and would have been
22 helping to reach out to those people with Shawna
23 Padberg. Shawna Padberg's direct relationship would
24 have been, you know, the account manager, and so she
25 was helping with the customers for final pickup and

0635

1 final closing of that account.

2 MR. VAN KIRK: Thank you.

3 JUDGE KOPTA: Do you want to take the
4 opportunity for any further examination on this issue,
5 Ms. Goldman?

6

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

8 BY MS. GOLDMAN:

9 Q Did you review the manifest records?

10 A The manifest records, as in final actual
11 manifest itself?

12 Q I don't know. You said something about
13 manifest records. Whatever manifest records you were
14 mentioning, did you review those?

15 A No, I reviewed the date of final service.

16 Q And the document you showed wouldn't indicate
17 what a customer had requested, it would simply
18 indicate the date that Stericycle showed up to collect
19 the waste, correct?

20 A Correct, that was what the record would show
21 as a date.

22 Q And did you review a manifest record for each
23 of these listed?

24 A Not a manifest record. I went with final date
25 of service. There was a difference between the two.

0636

1 Q And where did you find the final date of
2 service information?

3 A In Salesforce.

4 Q Did you review that information in Salesforce?

5 A Yes, I did.

6 MS. GOLDMAN: So we renew our motion,
7 Your Honor. Apparently there are documents that show
8 this information, which would be the best evidence.
9 They are not created by this witness. This witness
10 lacks any personal knowledge of either the creation of
11 the documents or any of the communications that are
12 relayed here. There's been no indication that either
13 Mr. Williams [sic] or Ms. Padberg are not available
14 for cross-examination regarding these allegations. We
15 move to strike Paragraph 11 and the list that follows
16 it.

17 MR. VAN KIRK: I oppose. As far as
18 the info -- the specific information that is in here.
19 Mr. Adams has explained where it has come from,
20 whether it is from documents or from people who have
21 had direct knowledge of the situation. He has
22 communicated with them personally and directly to
23 assemble the information. There has been no question
24 that the information is not accurate.

25 And as far as the level and scope of the

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1 objection about documents and best evidence, it's not
2 been the practice so far in this hearing to require
3 that level of detail and adherence, as if you were in
4 federal court. And to date at least, hearsay that has
5 some indication of reliability and a reliance on
6 documents that have been described, when they have
7 been described, has been appropriate, and I think is
8 appropriate.

9 JUDGE KOPTA: I'm going to deny the
10 motion, overrule the objection, whichever it is. I
11 think you have elucidated the basis of his knowledge.
12 He is entitled to rely on company records and on
13 company personnel who are responsible for these types
14 of activities. This testimony, based on that, will be
15 considered. The weight will be accorded to it based
16 on the explanation that he has given, in terms of what
17 the source of his knowledge is.

18 You are certainly welcome to ask for any
19 records that he relied on, if that is what you believe
20 would be appropriate. But at this juncture, I don't
21 see a basis to not consider this information. As
22 Mr. Van Kirk acknowledged, our proceedings are not
23 quite as formal as in superior court or federal court.
24 We allow hearsay, we allow witnesses to testify on the
25 basis of company records, and on consultation with

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1 other personnel within the company, and accord that
2 testimony the weight that it deserves.

3 At this point, I will allow that to remain in
4 the testimony.

5 MS. GOLDMAN: I will come back to
6 Paragraph 11, but I do have one other objection to our
7 RA-1T, and that is the next paragraph, Paragraph 12 of
8 your rebuttal testimony.

9 Q And can you tell us, please, what the
10 investigation is that you conducted that led you to
11 the statements that you made in Paragraph 12?

12 MR. VAN KIRK: Objection. Asked and
13 answered. Same investigation.

14 JUDGE KOPTA: We will allow him to
15 answer that question. Overruled.

16 A As it -- in stating investigation, it's in
17 dealing with, again, Shawna Padberg and Don Wilson,
18 who were in contact with the drivers that were doing
19 final service.

20 Q Which drivers?

21 A I'm not sure which exactly by name would be
22 the drivers that were on the routes those days. I
23 don't keep track of all of that.

24 Q And which PAML facilities are you referencing
25 here?

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1 A The facilities that are referenced in
2 Paragraph 11. Do I need to read them?

3 Q No, you don't. Thank you.

4 On Line 8 and a half you state that
5 "Stericycle discontinued its services when the
6 facilities said they were ready and not before."

7 Which facilities said which date?

8 A I have not -- I haven't marked as to who said
9 what when. The date that was there, to my knowledge,
10 was the date that they are able to accept it.

11 Q How do you know that?

12 A In speaking with Don Wilson, who spoke with
13 the drivers. Speaking with Shawna Padberg, who spoke
14 with the drivers.

15 Q And so this is Stericycle's driver, reporting
16 to Mr. Padberg or Mr. Williams -- Ms. Padberg or
17 Mr. Williams, who then reported to you what the driver
18 said; is that correct?

19 A To the best of my knowledge.

20 And it is Mr. Wilson, Don Wilson.

21 Q I'm sorry.

22 A That's okay.

23 Q Wilson.

24 A There's a lot of names flying around.

25 Q Did you have any direct contact with any of

0640

1 the PAML facilities regarding this entire termination
2 process?

3 A No, as I have answered, I did not.

4 Q Now, you were present when the PAML witness
5 testified regarding the complaints that were made
6 regarding their service, weren't you, the termination?

7 A Of this week, do you mean?

8 Q Yes.

9 A Yes.

10 MS. GOLDMAN: We move to strike
11 Paragraph 12. Again, this witness lacks any personal
12 knowledge. It's at least triple hearsay. We are not
13 being allowed the opportunity to cross-examine any of
14 the witnesses who actually contend they communicated
15 with PAML and did anything other than what PAML was
16 directing from its headquarters. He doesn't know what
17 any specific facility requested. He has no basis to
18 know whether the date was correct, based on what the
19 facility requested. And he also doesn't apparently
20 have any knowledge regarding complaints that actually
21 were raised. We move to strike Paragraph 12.

22 MR. VAN KIRK: My response to that
23 objection is mostly the same as the first one. It's
24 clear that -- and we could probably take this bit by
25 bit. He is referring to the same investigation as

0641

1 before.

2 The first sentence is essentially a summing
3 up. You know, it's an opinion, and he's allow to give
4 testimony of opinions. The second sentence is also a
5 summing up. It's not any different than what was
6 established in Paragraph 11, and -- and likewise, with
7 12. I think that applies to all of them.

8 Finally, Mr. Adams testified that he looked at
9 records of -- or that part of his investigation was
10 the records of customer communications. That was
11 again part of -- a part of the investigation that was
12 done.

13 JUDGE KOPTA: Well, I agree that his
14 knowledge is tangential. I don't think that is
15 sufficient grounds to strike this from his testimony,
16 but it will certainly go into the weight that the
17 Commission gives to this particular testimony. I will
18 deny that motion, overrule the objection, whichever it
19 is, and allow that to remain in the testimony, subject
20 to any further examination that you want to make, as
21 far as the basis of his statements in that paragraph.

22 MS. GOLDMAN: Thank you, Your Honor.

23 Q Mr. Adams, which PAML facilities had scheduled
24 pickup dates which did not correspond with the date
25 that PAML wished to have its services terminated?

0642

1 JUDGE KOPTA: I hate to interrupt you,
2 but are those the only provisions of the testimony
3 that you are objecting to?

4 MS. GOLDMAN: Yes, your Honor. I'm
5 sorry, I'm now going back to Paragraph 11.

6 JUDGE KOPTA: And before we do that, I
7 believe I have ruled on all of your objections to this
8 point, and thereafter exhibit RA-1T is admitted.

9 You may proceed with your examination.

10 MS. GOLDMAN: Thank you, Your Honor.

11 Q Mr. Adams, which PAML facilities had scheduled
12 pickup dates that did not correspond with the final
13 pickup date that was directed by PAML's headquarters?

14 A Can you rephrase? I mean, I'm kind of
15 confused as to -- are you saying when they were --
16 when they are expecting their final service or are we
17 talking about November 1st?

18 MS. GOLDMAN: Could I have the question
19 read back, please.

20 (The requested portion of the
21 transcript was read by the reporter.)

22 A Again, in Chapter 11, I could --

23 MR. JOHNSON: Paragraph.

24 THE WITNESS: I'm sorry, thank you.

25 A Paragraph 11, the final scheduled pickups

0643

1 would be -- the dates that are shown as final service
2 was their normal final scheduled pickup. If it went
3 past 11/01, which is what the letter had indicated, I
4 believe, then it might have been 11/02 or 11/03. I
5 can read the facilities and dates, but it's the same.
6 This was their final day of scheduled pickup.

7 Q When you say "final day of scheduled pickup,"
8 are you contemplating what is referenced in your
9 testimony, that there were changes made to the
10 regular -- is this the regular pickup or is this the
11 changed date?

12 So let's start with No. 1, Pathology
13 Associates - Main PAML in Spokane. It says 10/31/11.
14 Is that the date that was the normally scheduled date
15 for pickup prior to PAML informing Stericycle of the
16 cancellation?

17 A To the best of my knowledge, it would have
18 been.

19 Q And what's the basis of your knowledge, that
20 that was the -- that that was their standard pickup
21 date?

22 A There again, by company record.

23 Q What company record?

24 A Within the databases where the customers'
25 records or accounts are --

0644

1 Q And what --

2 A -- that --

3 Q I'm sorry. What document are you referring to
4 that would indicate --

5 A It's not a document.

6 Q It's an electronic document?

7 A It's not an electronic document.

8 Q What is it? What are you looking at?

9 A I'm trying to get there.

10 There is a possibility, again referencing Don
11 Wilson, dispatch, or someone like that, as well as me,
12 to be able to look up a customer record and see what
13 their normal scheduled pickups are.

14 Q Your testimony, then, is that this list that
15 follows Paragraph 11, each of these dates was the
16 preexisting normal scheduled pickup date prior to PAML
17 terminating Stericycle; is that correct?

18 A To the best of my knowledge.

19 Q Okay. Now, which of these facilities were
20 contacted by Stericycle to confirm the day of final
21 pickup?

22 A To the best of my knowledge -- again, I can't
23 say which exactly, every one, how they were called, or
24 who had called them, or how that happened. I just
25 know it was a combination of Don Wilson, Shawna

0645

1 Padberg and the drivers on those routes.

2 Q And so one of those individuals called which
3 facilities?

4 A I don't have knowledge of who called which
5 facilities. It was a joint effort.

6 Q And which facilities in total were contacted
7 by one of those people?

8 A Please rephrase.

9 Q Yes. There are some 60 PAML sites, correct?
10 Do you know that?

11 A Well --

12 Q You heard the testimony earlier this week from
13 the PAML representative, that there are about 60?

14 A Well, to that, Mr. Lycan couldn't even tell
15 you which ones were in Spokane or Colorado or where
16 they were, so I don't know which 60 you are talking
17 about.

18 Q Are you aware how many PAML facilities there
19 are in the state of Washington?

20 A No, I can't say that it's -- the number is 60.
21 They pick up people, they close down offices. I don't
22 know at any given time how many there are.

23 Q Do you have any sense of the range?

24 A I'd say anywhere from 50 to 60, is probably an
25 average.

0646

1 Q And what's the basis of that knowledge?

2 A Based on what I know, a certain amount that
3 are in Spokane in a certain range, and then outside of
4 Spokane. It's probably in the 50 to 60 range.

5 Q And did Stericycle staff, the drivers,
6 Mr. Wilson, Ms. Padberg, one of them contact each of
7 these PAML facilities?

8 A They contacted the PAML facilities that were
9 being asked for calculation.

10 Q And how many of those were being cancelled?

11 A To my knowledge, I couldn't give you a number.

12 Q So do you know which facilities were contacted
13 by Stericycle?

14 A Only that the list -- they contacted what was
15 on the list. They had to, to pick up final service.

16 Q But you don't know what that list is, correct?

17 A I know the list. This is a partial of it. I
18 just don't have a number to give you.

19 Q Okay. So what's missing from your list here?

20 A You know, another set, another set of sites
21 that were being cancelled.

22 Q And --

23 A This list was not meant as all-inclusive. It
24 was a sampling of, you know -- what was in Mr. Lycan's
25 testimony were dates and missing -- and I -- here's a

0647

1 sampling of what the dates are like in these areas in
2 Spokane.

3 Q Okay. So back to your list. Which Stericycle
4 employee contacted the Fifth and Browne facility in
5 Spokane?

6 MR. VAN KIRK: Objection. Asked and
7 answered.

8 A I do not know.

9 JUDGE KOPTA: Overruled.

10 Q Which Stericycle customer contacted the
11 Medicus Branch Lab in Spokane?

12 A I do not know.

13 Q And who did they speak with when they
14 contacted the Medicus Branch?

15 JUDGE KOPTA: Ms. Goldman, I think you
16 have made your point.

17 MS. GOLDMAN: Thank you, Your Honor.

18 Nothing further.

19 JUDGE KOPTA: Ms. Woods?

20 MS. WOODS: No questions, Your Honor.

21 JUDGE KOPTA: Redirect?

22 MR. VAN KIRK: One moment, please.

23 (Pause in the proceedings.)

24 MR. VAN KIRK: I have just a couple
25 questions.

0648

1 JUDGE KOPTA: Okay.

2

3 FURTHER REDIRECT EXAMINATION

4 BY MR. VAN KIRK:

5 Q First of all, can you just read Paragraph 11
6 to yourself and tell me when you are done. Not out
7 loud.

8 JUDGE KOPTA: Thank you.

9 (Pause in the proceedings.)

10 A Okay.

11 Q Having read Paragraph 11, can you explain to
12 me, because I got confused, what the dates -- what
13 these dates in the chart following Paragraph 11 refer
14 to?

15 A The dates are referring to final day of pickup
16 or service.

17 Q Ms. Goldman asked you were those -- I believe
18 she asked you were those the prescheduled, regularly
19 scheduled dates or were those the dates as they had
20 been changed. That's the question I'm asking you
21 right now.

22 A To the best of my knowledge, these were
23 following the schedule. That's why some are before
24 November 1st and some were after.

25 Q Again, we are talking about this PAML

0649

1 investigation. I am just using the word
2 "investigation" to encompass everything that you did.

3 To your knowledge, did any Stericycle
4 employee, you or anybody else, review the Salesforce
5 records as part of looking into this event?

6 MS. GOLDMAN: Objection. Beyond the
7 scope.

8 JUDGE KOPTA: I believe you asked him
9 what he referred to. I will allow the question.

10 A Can you rephrase the question or repeat it,
11 please?

12 Q First of all, what is Salesforce, just so we
13 know what we are talking about?

14 A Salesforce.com is a database that you can
15 subscribe to. It's a Cloud-based software package
16 that several sales force companies use as a CRM, or
17 what's considered a customer -- you know, basically
18 your customer database.

19 Q And so my question was, as part of your
20 investigation, did you or did anybody you spoke to
21 review Salesforce records related to the closure of
22 these PAML facilities?

23 A Yes.

24 Q Okay. And what kind of information is
25 contained in Salesforce records?

0650

1 A Salesforce is -- gives us records of basically
2 interacting with customers or with different
3 facilities or physical sites. So if there's -- you
4 know, if a -- they call in and have something they
5 need, if they call in for anything, it's logged in
6 Salesforce as part of a record, as well as service
7 dates, end of service dates, beginning dates, those
8 types of things.

9 Q So would a request to change a service date
10 for any reason be something that would be recorded in
11 Salesforce?

12 A It should be, yes.

13 Q If a --

14 A It could be.

15 Q They could --

16 A Request how? I mean my understanding, I mean
17 if the -- and if I'm out of line, someone tell me. My
18 understanding, then, especially listening to this
19 proceeding, if somebody from Chapter 11 -- if one of
20 these people, you know, moved and contacted Roger
21 Lycan, or contacted Lori Creighton, and they didn't
22 call it in, we wouldn't have a record. If a customer
23 calls in to us, then it would be in Salesforce.

24 Q And who reviewed the Salesforce records
25 related to PAML?

0651

1 A It had started with Don Wilson and Shawna
2 Padberg, and I reviewed it as well.

3 Q Okay. And did you consider the Salesforce
4 records when you added in your -- when you stated in
5 your testimony that no PAML facility raised any
6 complaint about service being discontinued too soon?

7 A It did not reach their customer accounts in
8 Salesforce. I didn't see anything.

9 MR. VAN KIRK: That's all I have for
10 redirect.

11 JUDGE KOPTA: Anything further?

12 MS. GOLDMAN: Well, gosh, Your Honor, I
13 just heard him say something different, so I'm sorry,
14 but I do.

15 JUDGE KOPTA: Go ahead.

16

17 FURTHER RECROSS - EXAMINATION

18 BY MS. GOLDMAN:

19 Q I just heard you say now that you have
20 reviewed -- that you, in addition to Mr. Wilson and
21 Ms. Padberg, also reviewed Salesforce. What did you
22 review in Salesforce? Tell me the information you
23 reviewed, please.

24 A I don't think I changed. That's where I
25 looked up the dates for final service.

0652

1 Q Okay.

2 A And while looking at the dates, I didn't see
3 any complaints about anything.

4 I wasn't directly asked that earlier.

5 Q Okay. So can you please just describe in your
6 own words for me what it is that you looked at on
7 Salesforce? Describe that, please.

8 A I looked at the account. I looked for -- I
9 would look at an account, as we have gone through this
10 list extensively, Fifth and Browne. You know, I
11 looked to see what was the final date of service, and
12 with that, if there was any current notes with that
13 final date of service, that it had been changed or
14 that a request had been made to change the date.

15 Q And with the Fifth and Browne, was there any
16 note that it had been changed?

17 A That the date had been changed?

18 Q Yes.

19 A No.

20 Q Was there any note in Fifth and Browne that a
21 request had been made to change the date?

22 A No.

23 Q What about the Cytogenetics in Spokane, the
24 PAML lab there, did you review the Salesforce for that
25 facility?

0653

1 A I reviewed the Salesforce for these facilities
2 prior to filing this testimony.

3 Q Okay.

4 A To the best of my knowledge, I did not see
5 changes in dates that were requested by customer.

6 Q So did you see dates requested for changes in
7 any of these, for any of these facilities that you
8 have listed?

9 A As I have said, I didn't see changes of date
10 requested by customer.

11 MS. GOLDMAN: Thank you. Nothing
12 further.

13 JUDGE KOPTA: Anything else?

14 MR. VAN KIRK: No.

15 JUDGE KOPTA: All right. Thank you,
16 Mr. Adams. We appreciate your testimony this morning.
17 You are excused.

18 It is now noon, coincidentally, so we will
19 take our lunch break until 1:15. Is that agreeable to
20 counsel? We want to give you enough time to be able
21 to --

22 MR. JOHNSON: 1:30 is a little better,
23 Your Honor.

24 JUDGE KOPTA: All right, then we will
25 make it 1:30. We seem to be making reasonable

0654

1 progress and so I will not begrudge you the extra 15
2 minutes. We will be back at 1:30. We are off the
3 record. Thank you.

4 (Lunch recess.)

5 JUDGE KOPTA: Let's be back on the
6 record after our lunch recess.

7 Mr. Van Kirk, do you want to call your next
8 witness?

9 MR. VAN KIRK: Stericycle calls
10 Christopher Dunn.

11 JUDGE KOPTA: Raise your right hand.

12 THE WITNESS: (Complies.)

13

14 CHRISTOPHER DUNN, witness herein, having been
15 first duly sworn on oath,
16 was examined and testified
17 as follows:

18

19 JUDGE KOPTA: You may proceed.

20

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

22 BY MR. VAN KIRK:

23 Q Good morning, Chris, or good afternoon, I
24 guess where we are at.

25 Can you state and spell your name for the

0655

1 record, please?

2 A Christopher Dunn, C-H-R-I-S-T-O-P-H-E-R,
3 D-U-N-N.

4 Q And, Mr. Dunn, you submitted testimony in this
5 application proceeding; is that correct?

6 A Yes.

7 MR. VAN KIRK: And at this point I would
8 move for the admission of CD-1T, and the exhibit CD-2,
9 and after that's done, pass the witness for
10 cross-examination.

11 JUDGE KOPTA: Any objections to the
12 admission of those exhibits, he said laughing?

13 MS. GOLDMAN: Good afternoon, Your
14 Honor. Yes, we object to the entirety of his
15 testimony and the exhibit.

16 JUDGE KOPTA: I will reserve ruling on
17 admitting those exhibits until after your
18 cross-examination, since it goes to the entirety of
19 the exhibit. I don't think we need to worry about
20 trying to interrupt or disorganize your cross, since I
21 understand that it goes to all of the testimony.

22 So with that, you may begin your
23 cross-examination, Ms. Goldman.

24 MS. GOLDMAN: Thank you, Your Honor.

25

0656

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

2 BY MS. GOLDMAN:

3 Q Good afternoon, Mr. Dunn. We have met
4 previously, at your deposition. As you know, my name
5 is Jessica Goldman. I am one of the lawyers
6 representing Waste Management.

7 A Good afternoon.

8 Q You did not graduate from college; isn't that
9 correct?

10 A That is correct.

11 Q And while you were in college you did not take
12 any accounting courses; isn't that right?

13 A That is correct.

14 Q Since you have been at Stericycle, and before
15 that at BFI, your primary responsibilities have been
16 to drive trucks, unload trucks, schedule collection
17 routes, order vehicles, manage the plant operations
18 and supervise office staff; isn't that correct?

19 A That's correct.

20 Q And you have never had any accounting
21 responsibilities for Stericycle, correct?

22 A Correct.

23 Q Mr. Dunn, you have never created a budget for
24 Stericycle; is that right?

25 A That is right.

0657

1 Q You have also never been involved in preparing
2 any of Stericycle's rate filings with the Utilities
3 and Transportation Commission, have you?

4 A I have not.

5 Q You have never reviewed Stericycle's annual
6 reports which have been filed with the UTC; isn't that
7 correct?

8 A Correct.

9 Q Prior to submitting your direct testimony in
10 this case, you never analyzed Stericycle's tariff
11 rates; isn't that correct?

12 A Can you repeat the question, please?

13 Q Sure. Prior to submitting your direct
14 testimony in this case, you never analyzed
15 Stericycle's tariff rates, correct?

16 A I believe I did look at the tariff rates.

17 Q And my question was, isn't it true that you
18 never analyzed them; is that correct?

19 A I guess can you use a different word than
20 "analyze," maybe?

21 Q Did you conduct any analysis regarding the
22 rates that are in Stericycle's tariffs?

23 MR. VAN KIRK: Objection. Vague.

24 Q Have you analyzed the revenue projections or
25 costs that went into Stericycle's determination of its

0658

1 tariff rates?

2 A No, I have not.

3 Q You don't know who handles the accounting
4 function for Stericycle of Washington; isn't that
5 correct?

6 MR. VAN KIRK: Objection. Vague.

7 A I wouldn't say -- I would say to --

8 JUDGE KOPTA: Overruled.

9 THE WITNESS: Sorry.

10 A I would say I'm not sure to what capacity your
11 question actually is, as far as what type of
12 accounting function.

13 Q Isn't it true that you don't know who handles
14 any accounting function for Stericycle of Washington?

15 A No, that's not true.

16 Q And several weeks ago, on November 2nd, 2012,
17 I took your deposition; isn't that correct?

18 A Correct.

19 Q And on that date you were sworn to tell the
20 truth; isn't that right?

21 A Correct.

22 Q And you did tell the truth on that day in your
23 testimony, correct?

24 A Yes.

25 Q And your lawyers were present, along with me,

0659

1 at that deposition, correct?

2 A Yes.

3 Q Referring to MAW-5, Page 24, I asked you this
4 question and you gave me the following answer.

5 "Q. Who handles the accounting functions for
6 Stericycle? And I will remind you here that when I
7 say Stericycle, I mean Stericycle of Washington, Inc.
8 Do you know?"

9 And you answered, "I don't know."

10 Isn't that what you testified to?

11 A It seemed like that was a little bit different
12 question than what you just asked.

13 Q Isn't it true that you do not know who handles
14 the accounting functions for Stericycle?

15 MR. VAN KIRK: Objection. Asked and
16 answered.

17 JUDGE KOPTA: I'm not clear on the
18 answer. Can you clarify what your answer was to the
19 question Ms. Goldman just asked you, in terms of who
20 do you know that has accounting functions with
21 Stericycle of Washington?

22 THE WITNESS: I do know someone that has
23 accounting functions for Stericycle.

24 JUDGE KOPTA: Let's just cut to the
25 chase. Can you identify who that person or persons is

0660

1 or are and what their functions are?

2 THE WITNESS: John Suchla.

3 Q And for whom is Mr. Suchla employed?

4 A Stericycle.

5 Q He's employed by Stericycle, Incorporated,

6 correct?

7 A Correct.

8 Q He is not an employee of Stericycle of

9 Washington; isn't that right?

10 A Correct.

11 Q And he is based in Illinois, correct?

12 A Yes.

13 Q And other than that, do you know anyone else

14 who performs accounting functions for Stericycle?

15 A No.

16 Q What does Mr. Suchla do?

17 A As a title?

18 Q What accounting functions does he performed

19 for Stericycle of Washington, Inc.?

20 A I'm not sure of his actual duties there, other

21 than he's an accountant for us, that he's been helpful

22 with some of the items in this exhibit.

23 Q And you had never had any interactions with

24 him prior to preparing your direct testimony, CD-1T,

25 and your Exhibit A, which has been marked as Exhibit

0661

1 CD-2, correct?

2 A Correct.

3 Q At the time you submitted your direct
4 testimony, Mr. Dunn, you didn't know what Stericycle's
5 profit margin is in Washington; isn't that correct?

6 A Correct.

7 Q And you didn't even have a ballpark number,
8 correct?

9 A Correct.

10 Q It's your understanding that the permissible
11 range of profit that's allowed by the UTC to solid
12 waste companies is 6 to 8 percent; isn't that right?

13 A Yes.

14 Q But at the time that you submitted your direct
15 testimony, you didn't know if Stericycle's profit
16 margin falls within the 6 to 8 percent range, did you?

17 A I did not.

18 Q Mr. Suchla, the employee of Stericycle, Inc.,
19 in Illinois, prepared Exhibit CD-2, didn't he?

20 A He did prepare this.

21 Q Mr. Suchla, not you, concluded what percentage
22 of Stericycle's revenues come from the new territory,
23 correct?

24 A Correct.

25 Q At the time you submitted your direct

0662

1 testimony, you did not know what data Mr. Suchla
2 looked at to derive the conclusion that more than
3 50 percent of Stericycle's revenue originates in the
4 new territory; isn't that right?

5 A At the time, that's correct.

6 Q You did not develop the model Mr. Suchla used
7 in CD-2; isn't that right?

8 A I instructed John Suchla to actually come up
9 with this type of an example, but I did not actually
10 instruct it.

11 Q I'm sorry, I missed the last piece of your
12 answer. Could you restate your answer, please?

13 A I instructed John to come up with this
14 exhibit, but I did not instruct it. I did not build
15 it, he did.

16 Q So you did not determine the model that
17 Mr. Suchla was to use, correct?

18 A Well, no, that's what I'm saying, is I told
19 him if these are the scenarios we use, can you build
20 something to come up with as an example.

21 Q You provided Mr. Suchla with the three
22 percentage points, losses of revenues to use for
23 Exhibit A, correct?

24 A Correct.

25 Q And other than you providing him those three

0663

1 percentage points, you didn't do anything else to
2 develop the model that is reflected in CD-2, correct?

3 A Correct.

4 Q And your rationale for collecting 10, 25 and
5 50 percent values for the hypothetical loss of revenue
6 to Stericycle was because you had to choose some
7 number, correct?

8 A Yes.

9 Q In Paragraph 5 of your direct testimony, which
10 is CD-1T, it states that Stericycle's revenue per stop
11 in the new territory is almost 19 percent lower than
12 our revenue per stop in Waste Management's existing
13 territory.

14 Do you see that?

15 A Yes.

16 Q Mr. Suchla, not you, concluded that the
17 percentage of biomedical waste generated in the new
18 territory is less than the percentage of biomedical
19 waste generated in Waste Management's current
20 territory; isn't that right?

21 A Yes.

22 Q At the time that you submitted your direct
23 testimony, you didn't know what Mr. Suchla did to
24 reach that conclusion; isn't that right?

25 A Can you repeat the question?

0664

1 MS. GOLDMAN: Could I have it read back,
2 please.

3 (The requested portion of the
4 transcript was read by the reporter.)

5 A I guess what conclusion? The 19 percent, is
6 that what you are asking?

7 Q That's correct.

8 A Well, I knew what he did. I think the tool
9 that he used I was a little vague with, as far as that
10 was concerned.

11 Q And I'm referring you to Page 62 of MAW-5,
12 which is your testimony under oath on November 2nd.
13 At the bottom of the page, Line 22, I asked you the
14 following question, and you provided me the following
15 answers.

16 "Did you make the determination that there was
17 19 percent less medical waste generated in the new
18 territory or did someone else?"

19 And you answered, "Someone else."

20 And I asked, "Who was the one that made that
21 determination?"

22 And you answered, "I believe that was John
23 Suchla."

24 And I asked, "And do you know what he did to
25 reach that conclusion?"

0665

1 And you answered, "No."

2 And that testimony was true and correct when
3 you offered it on November 2nd, wasn't it?

4 A Is it okay if I'm able to see this?

5 JUDGE KOPTA: Yes.

6 MR. JOHNSON: Ms. Goldman, could you
7 give us the exact reference again?

8 MS. GOLDMAN: MAW-5.

9 MR. JOHNSON: Got it.

10 MS. GOLDMAN: Page 62, at the bottom,
11 Line 22.

12 MR. JOHNSON: (Indicating.)

13 (Pause in the proceedings.)

14 A Okay, I see it. Can you repeat your question,
15 please?

16 Q That testimony was truthful when you gave it,
17 wasn't it?

18 A What was your question?

19 Q My question is, is the testimony beginning
20 at -- the answers that begin in response to the
21 question at the bottom of Page 62, Line 22, through
22 the top of Page 63, Line 4, those were correct at the
23 time that you gave that testimony, correct?

24 A Correct.

25 Q In Paragraph 5 of your direct testimony, which

0666

1 is CD-1T, it states, "I have reviewed the revenue we
2 earned per customer pick-up or 'stop' within the new
3 territory." Do you see that?

4 A Yes.

5 Q Someone else, not you, determined the amount
6 of revenue per stop earned in the new territory; isn't
7 that right?

8 A Yes.

9 Q And at the time you submitted your direct
10 testimony, you didn't know who determined the amount
11 of revenue per stop; isn't that right?

12 A Correct.

13 Q Prior to submitting your direct testimony, you
14 did not review any information regarding revenues per
15 stop; isn't that right?

16 A Correct.

17 Q At Paragraph 6 of your direct testimony, which
18 is CD-1T, it says, This means that our costs per stop
19 are higher on routes within the new territory than
20 within Waste Management's existing territory. Do you
21 see that?

22 A Yes.

23 Q At the time you submitted your testimony, you
24 had not determined what those two sets of costs are,
25 correct?

0667

1 A Not to the effect that I think that -- other
2 than the outlying areas are higher amount of travel to
3 get to. I did study the state maps and our current
4 routes to see where we actually travel to.

5 Q Referring you to your deposition testimony,
6 MAW-5, Page 81, Line 5. Isn't it true that I asked
7 you this question and you gave me this answer on
8 November 2nd, under oath?

9 "So at the end of paragraph 6 you write, 'This
10 means that our costs per stop are higher on routes
11 within the new territory than within Waste
12 Management's existing territory.'

13 "How did you determine -- did you determine
14 what those two rates are or costs are between the new
15 and the existing territory?"

16 And you answered, "The actual costs, no."

17 That testimony was correct when you offered
18 it?

19 A Correct.

20 Q At Paragraph 9 of your direct testimony, which
21 is CD-1T, it states, "This model is based on stop,
22 cost, and revenue data for Stericycle in 2011."

23 Do you see that?

24 A Yes.

25 Q At the time that you submitted your direct

0668

1 testimony and the attached Exhibit A, CD-2, you didn't
2 know what data Mr. Suchla used to come up with these
3 numbers; isn't that right?

4 A Correct.

5 Q Mr. Suchla, not you, determined which costs
6 were fixed and which costs were variable for Exhibit
7 CD-2, correct?

8 A Yes.

9 Q And at the time that you submitted your direct
10 testimony, you didn't know which costs Mr. Suchla had
11 concluded were fixed and which were variable; isn't
12 that right?

13 A Correct.

14 Q Do you know the percentage or amount of growth
15 that the Washington regulated medical waste market has
16 experienced since 2001?

17 A No.

18 Q You didn't consider that growth in preparing
19 CD-1T, which is your direct testimony, or in regard to
20 CD-2, which is Exhibit A, correct?

21 A Right. This was a step in just the 2011 time
22 frame, that was it.

23 Q Isn't it true that Stericycle can increase its
24 revenues if the overall biomedical waste market grows
25 in Washington?

0669

1 A It's possible.

2 Q And you didn't consider the possibility of
3 Washington's biomedical waste market growing in
4 relation to your direct testimony, CD-1T, or CD-2,
5 correct?

6 A Correct.

7 Q Stericycle's revenues increased from 2010 to
8 2011, the first year it competed with Waste
9 Management; isn't that right?

10 A I believe so.

11 Q This year, 2012, while Stericycle has been
12 competing with Waste Management in much of the state,
13 Stericycle has added new customers; isn't that right?

14 A Yes.

15 Q Exhibit CD-2, that's Exhibit A to your direct
16 testimony, does not include all of Stericycle's costs
17 for 2011; isn't that right?

18 A Correct.

19 Q Disposal costs are variable costs, because if
20 there's more waste, there are more disposal costs;
21 isn't that right?

22 A Yes.

23 Q It's your understanding that direct labor
24 costs are fixed; isn't that right?

25 A Yes.

0670

1 Q But you understand that when Stericycle loses
2 customers, it also decreases the need for some
3 employee time; isn't that right?

4 A It could be possible.

5 Q When you submitted CD-1T, your direct
6 testimony, and CD-2, Exhibit A to it, it was your
7 opinion that office expenses are variable, correct?

8 A Correct.

9 Q And at that time you didn't know if
10 Stericycle's fringe allocation expenses are fixed or
11 variable, correct?

12 A Correct.

13 Q At the time you submitted CD-1T and CD-2, you
14 didn't know if Stericycle's telephone expenses are
15 fixed or variable; isn't that right?

16 A That's true.

17 Q And at that time you weren't sure if
18 Stericycle's depreciation of equipment expenses are
19 fixed or variable; isn't that right?

20 A Yes.

21 Q And at the time, you didn't know if
22 Stericycle's insurance expenses are fixed or variable,
23 correct?

24 A Correct.

25 Q At that time, you also weren't sure whether

0671

1 Stericycle's sharps containers expenses are fixed or
2 variable, right?

3 A Correct.

4 Q When CD-1T, your direct testimony, and CD-2,
5 Exhibit A to your testimony, were filed, you didn't
6 know if Stericycle's professional fees are fixed or
7 variable costs; isn't that right?

8 A Correct.

9 Q And at that time, you didn't know whether
10 Stericycle's intracompany corporate expenses are fixed
11 or variable costs, right?

12 A Right.

13 Q Stericycle's route to Port Angeles is one of
14 the only two -- is one of only two Stericycle routes
15 exclusively in what you have termed the new territory;
16 isn't that right?

17 A I believe so.

18 Q And at the time that CD-1T, your direct
19 testimony, and CD-2 were filed, you were not aware of
20 any Stericycle route in the new territory which
21 receives less frequent service than Port Angeles;
22 isn't that right?

23 A Correct.

24 Q Due to the need to take a ferry to
25 Port Angeles, the Port Angeles route has a

0672

1 disproportionately high number of fixed costs
2 included; isn't that right?

3 A Yes.

4 Q Port Angeles was previously served by both BFI
5 and Stericycle; isn't that right?

6 A I believe so.

7 Q At the time that CD-1T and CD-2 were filed,
8 you did not consider what costs Stericycle would save
9 if Stericycle lost 50 percent of its Port Angeles
10 business to Waste Management; isn't that right?

11 A Repeat that, please.

12 Q Sure.

13 MS. GOLDMAN: Can I have it read back,
14 please.

15 (The requested portion of the
16 transcript was read by the reporter.)

17 A Was it save -- on a revenue break of
18 50 percent, how much would it save in costs, was that
19 the question?

20 Q I will ask it again.

21 A Okay.

22 Q At the time that CD-1T, your direct testimony,
23 and CD-2 were filed, you did not consider what costs
24 Stericycle would save if Stericycle lost 50 percent of
25 its Port Angeles business to Waste Management; isn't

0673

1 that right?

2 A As examining Exhibit A, I found that that's
3 not correct, actually. It was a reduction of only, I
4 think, 14 percent of costs.

5 Q And that's a conclusion that you reached after
6 your deposition?

7 A I'm sorry?

8 Q And the analysis you just referenced, that was
9 something that you reached a conclusion about after
10 your deposition?

11 A I think I actually said it in my deposition.

12 Q Okay. So referring you to MAW-5, which are
13 the excerpts of your testimony given under oath on
14 November 2nd, 2012, Page 88, Line 17.

15 A Page, I'm sorry?

16 Q 88, Line 17. I asked you this question and
17 you gave me these answers.

18 "And I would like to know if Stericycle loses
19 50 percent of the business in Port Angeles, what the
20 associated savings and costs will be."

21 And you asked, "The actual amount?"

22 And I questioned you, "Yes. Did you compute
23 that?"

24 And you answered, "No."

25 That testimony was truthful, wasn't it?

0674

1 A Yes.

2 Q At the time that you submitted CD-1T and CD-2,
3 you didn't know how much business Stericycle would
4 need to lose to Waste Management to become
5 unprofitable; isn't that correct?

6 A Correct.

7 Q And at the time that you filed CD-1T and CD-2,
8 you did not consider, and would have had no way of
9 knowing, as you have testified, what
10 rates Stericycle's -- at what rate Stericycle's
11 revenues would decline in the new territory if
12 Stericycle had to compete with Waste Management there,
13 like it does everywhere else in Washington; isn't that
14 right?

15 A Yes.

16 Q And isn't it true that at the time that you
17 filed CD-1T and CD-2, you understood that it was
18 possible that Stericycle could compete with Waste
19 Management statewide and still have a sufficient
20 profit margin without requiring Stericycle to raise
21 its rates or decrease its service levels; isn't that
22 right?

23 A It's possible, based on growth, yes.

24 MS. GOLDMAN: Your Honor, we object to
25 the admission of any of this testimony. Mr. Dunn did

0675

1 not perform any of the analysis underlying it. He
2 didn't have anything to do with determining the model.
3 He didn't look at the underlying data. He does not
4 know the basis for the analysis. Mr. Suchla, who
5 conducted this analysis, was not presented as a
6 witness and offered up for cross-examination. We
7 would object to any of its inclusion in the record.

8 JUDGE KOPTA: Mr. Van Kirk?

9 MR. VAN KIRK: I think it might make
10 sense for me to do redirect and then argue about that,
11 but I'm happy to do it either way.

12 JUDGE KOPTA: If you would like to ask
13 some more questions.

14 Let me ask Ms. Goldman, does this complete
15 your cross of this witness?

16 MS. GOLDMAN: Yes, it does.

17 JUDGE KOPTA: Ms. Woods, did you have
18 anything for this witness?

19 MS. WOODS: No, I do not.

20 JUDGE KOPTA: Why don't you do redirect,
21 and I will address the motion either after that, or
22 after any additional examination Ms. Goldman wants to
23 do as a result of your redirect.

24 MR. VAN KIRK: Okay, thank you.

25

0676

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

2 BY MR. VAN KIRK:

3 Q Good afternoon again, Chris.

4 Let's take a look at your testimony, and
5 that's CD-1T. I would like to just go through it with
6 you and have you explain it to me and to us.

7 I think we can skip Paragraph 1 and 2, where
8 you talk about who you are. But let's start with
9 Paragraph 3. Take a moment to read it to yourself and
10 let me know when you are done.

11 (Pause in the proceedings.)

12 A Okay.

13 Q Now, in this paragraph we talk about -- you
14 discuss selecting the percentages of loss of business,
15 right?

16 A Yes.

17 Q And that testimony came up with Ms. Goldman.
18 What was your goal in selecting these percentages?

19 A Just to show what kind of an impact a loss of
20 revenue would do to our costs and see what kind of
21 effect that might have on our business.

22 Q And did you testify that these were
23 predictions as to the actual loss of business that
24 will occur in the future?

25 A It would be as of 2011 numbers, as far as if

0677

1 it was happening at that point in time, in those
2 different percentages of loss.

3 Q So as I understand, you were not trying to
4 predict the future with these numbers, correct?

5 MS. GOLDMAN: Objection. Leading.

6 JUDGE KOPTA: I'll allow it.

7 Go ahead.

8 A I was not trying to project the future, no.

9 Q Let's get to Paragraph 4, please. How did you
10 come to the conclusions that you have -- or how did
11 you come to the conclusions or to the testimony that
12 you put in Paragraph 4?

13 MS. GOLDMAN: Objection. Beyond the
14 scope. There was no questions regarding Paragraph 4
15 or the subject matter there.

16 MR. VAN KIRK: Well, the whole testimony
17 is trying to be excluded.

18 JUDGE KOPTA: If your motion goes to the
19 whole testimony, I am giving him latitude to establish
20 foundation for each paragraph. If you are not
21 objecting to this paragraph, then we can move on.

22 MS. GOLDMAN: I'm objecting to it.

23 JUDGE KOPTA: That's what I thought.

24 You may proceed, Mr. Van Kirk.

25 MR. VAN KIRK: Okay.

0678

1 Q So I guess to put my question more bluntly,
2 Mr. Dunn, can you explain to us how you know what you
3 have written in Paragraph 4 is true and accurate?

4 A Just being familiar with the state of
5 Washington and the routes that we run, and, you know
6 looking -- Waste Management didn't have currently --
7 currently have authority, just to know that those are
8 much more outlying areas.

9 Q And where does your familiarity with the
10 routes and -- service routes in Washington come from?

11 A I've been in the transportation business ever
12 since I have actually started with BFI and Stericycle.
13 I'm familiar with where we go and -- as of today and
14 what we have done in the past.

15 Q And are you familiar with -- in your
16 experience, have you become familiar with the general
17 geography of where customers are in Washington state?

18 A Yes.

19 Q Is it part of your day-to-day responsibility
20 to analyze where customers are relevant with respect
21 to where Stericycle's routes are?

22 A Not as a day-to-day.

23 Q Okay.

24 A Moreover, is it something that -- we actually
25 would get together as a group and study and make sure

0679

1 if there are any adjustments that are needed to the
2 routes, which do happen daily, that those are taken
3 care of.

4 Q And more specifically on this paragraph, how
5 are you -- what is the basis for your testimony that
6 the customers in the new territory are smaller and
7 more dispersed than within Waste Management's current
8 territory?

9 A Sorry, say that again.

10 Q I'm asking, so what is the basis for the
11 testimony in here, where you say our customers in the
12 new territory are smaller and more dispersed than the
13 territory Waste Management is currently authorized to
14 serve? How do you know that?

15 A The routes that we actually run to these areas
16 are often much more distance than we have in our
17 larger populated areas, so it would make them more
18 dispersed with less population.

19 Q We are going to skip Paragraph 5. We'll come
20 back to it.

21 Paragraph 6, you can again take a quick moment
22 to look at that yourself and familiarize yourself with
23 what's in it.

24 (Pause in the proceedings.)

25 A Okay.

0680

1 Q What did you rely on to make the testimony
2 that you've made in Paragraph 6?

3 A I did have a chance to look a little bit
4 briefly at the map that I think Don prepared, with
5 your help, Jared, and looked at Waste Management's
6 current territory, and then had a look at what our
7 routes do. And some routes that we do have, a couple
8 of them are purely -- not any part of Waste
9 Management's territory, and some are intermixed as
10 well.

11 But again, to go back to the point I just made
12 about -- I think it was Paragraph 4, it's -- most of
13 the area that we are looking at are higher mileage
14 areas that are more a dispersed group of customers.

15 Q And did you rely on your own expertise to
16 reach those conclusions?

17 A I just -- yeah, I just studied the routes that
18 we currently do, looked up, you know, the hours that
19 it takes to run some of the routes. Yeah, the
20 information is available to us in the SteriWorks.
21 That's where I found a lot of the data.

22 Q Ms. Goldman asked you about the final sentence
23 here of Paragraph 6, where you stated, "This means
24 that our costs per stop are higher on routes" -- she
25 showed you your testimony from your deposition, where

0681

1 you said I did not look at the actual costs. Were you
2 intending this testimony to state what the actual
3 costs were, the difference between the actual costs
4 between these two territories?

5 MS. GOLDMAN: Objection. Vague.

6 MR. VAN KIRK: I'll restate. I could
7 probably do that one better.

8 JUDGE KOPTA: Please.

9 Q Is it your intention in this sentence to say
10 that you studied or know what the exact costs -- the
11 exact difference in costs are between routes within
12 the new territory and routes within Waste Management's
13 existing territory?

14 A I'm sorry, can you ask that one more time?

15 Q I can. Was this sentence intended to indicate
16 that you had studied the exact difference in costs
17 between routes in the new territory and in Waste
18 Management's existing territory?

19 A It was not intended to be exact costs.

20 Q What are you relying on? What information
21 or -- are you relying on when you say what is in this
22 sentence?

23 A Again, going back and studying our own routes
24 that we do and looking at some of the areas that Waste
25 Management's new territory would be in, it would be

0682

1 just based on that information.

2 Q And how -- how have you reached the conclusion
3 that the costs would be higher in one area versus the
4 other?

5 A Stem miles. I think we brought that up
6 elsewhere. Stem miles basically are the amount of
7 miles from the transportation hub out to the beginning
8 of the route. Those are things that don't change with
9 the route structure that we have. Those are always
10 going to be those costs going to an actual location to
11 start routes, and return. Return from routes, too.

12 Q How would that affect the relative costs in
13 the new territory versus Waste Management's existing
14 territory?

15 A The further travel to start those routes would
16 be higher stem miles, which would be higher costs.

17 Q Let's move to Paragraph 7, please.

18 (Pause in the proceedings.)

19 A Okay.

20 Q Now, what do you consider your basis for the
21 testimony that you put forward in Paragraph 7?

22 A This is actually kind of what I just said, as
23 far as looking at the outlying areas in the new
24 territory. That our stem miles will remain mostly the
25 same on the routes that we actually travel to those

0683

1 areas, so the cost won't come down as substantially as
2 the loss in revenue.

3 Q And you schedule Stericycle's routes into
4 these areas? Or I don't know if "schedule" is the
5 right word. You help determine the routes in these
6 areas?

7 A Yes, I've built these routes with, you know,
8 the help of our supervisors and our dispatch and using
9 drivers' input. I'm very familiar with these, yes.

10 Q And when you are building these routes, I'll
11 use that term, do you personally review any kind of
12 cost information when you are building routes?

13 A Not necessarily. Not really, no.

14 Q Do you consider at all the cost of routes when
15 you are building them?

16 MS. GOLDMAN: Objection. Asked and
17 answered.

18 JUDGE KOPTA: I will allow it.

19 A Yeah. You know, going to some of the areas
20 and looking at frequency of service to the locations.
21 And especially the outlying areas, to try to maximize
22 the amount of waste that goes onto a truck, and keep
23 the customers happy. All of those things are -- are
24 what we take into consideration. We understand that
25 as much as we try to minimize our costs, there's still

0684

1 going to be costs involved with it. I don't know that
2 we are in complete control of that, given that we have
3 to go out and actually service the customers as well.

4 Q Let's move to Paragraph 8, which is the Port
5 Angeles example. Let's talk about that for a minute.

6 Actually, sorry, one more question before we
7 leave Paragraph 7. To come up with the testimony in
8 Paragraph 7, did you look at or rely on the financial
9 model built by Mr. Suchla?

10 A Well, I did look at it. At the time, though,
11 I had an assumption that this is what I would have
12 seen as well, is that the cost would not drop as
13 quickly as what the revenue drop would be.

14 Q I'm sorry, can you elaborate on what you mean
15 by the "assumption"?

16 A Can you repeat your question?

17 Q My question was did you rely on the model that
18 John Suchla made when you -- to give the testimony
19 that you have given in Paragraph 7?

20 A It actually confirmed my thoughts there, yes.

21 MS. GOLDMAN: Move to strike as
22 nonresponsive.

23 JUDGE KOPTA: Denied.

24 Q Now let's talk about the Port Angeles example,
25 which I believe is Paragraph 8.

0685

1 (Pause in the proceedings.)

2 A Okay.

3 Q Again, what information did you use -- strike
4 that. Let me just ask a more general question.

5 How did you come up with this testimony? How
6 did you come up with this example?

7 A 50 percent was one of the thresholds that we
8 used in -- I guess it's Exhibit A, but I'm not
9 sure what it is in CD-2. And just viewed that as --
10 that was a point that it dropped. But still knowing
11 that we had to drive to Port Angeles, and the stem
12 miles involved with that, realizing that there are
13 other, you know, variables on the route, as far as
14 en route costs that would drop. It still wouldn't be
15 at the 50 percent reduction in costs, as it would be
16 in the 50 percent reduction in revenue.

17 Q What's your basis personally for believing
18 that to be true?

19 A Well, again, the stem miles are from the
20 transportation hub to the first stop of the route. As
21 you lose stops on the route, those would be variables
22 that would be dropped off. Since you are en route,
23 it's actually a much smaller mileage rate. You're
24 within Port Angeles versus the miles that it would
25 take to get back, to and from Port Angeles, where the

0686

1 stem miles would be more of a fixed cost.

2 Q In your testimony with Ms. Goldman, I believe
3 you said that Port Angeles -- the Port Angeles route
4 was one of two routes that were solely in the
5 application territory, correct?

6 A Yes.

7 Q Why did you pick one of -- why did you pick
8 one of those two routes to be the example you provided
9 in your testimony?

10 A Just as an example. You know, the routes that
11 we run, we have a lot of intertwined routes into the
12 actual current territory of Waste Management, and just
13 to make it a clean break and say this is what the
14 example would be at, a route that's purely new
15 territory.

16 Q Okay. Mr. Dunn, let's talk a little bit now
17 about the other part of your testimony, the model you
18 said was created by Mr. Suchla, and some of the
19 testimony you have given about that.

20 First of all, I recognize in your last
21 testimony you said you would -- you agreed with your
22 previous deposition testimony, that you didn't know
23 Mr. Suchla's title. I'm going to ask you now anyway.
24 Who is John Suchla?

25 A His title is VP of finance.

0687

1 Q Does Stericycle of Washington do its own
2 accounting, if you know, or does the parent company,
3 Stericycle, Inc., do the accounting?

4 A Stericycle, Inc.

5 Q So if you can flip back to Paragraph 5. I
6 skipped that one earlier because I knew it was related
7 to Mr. Suchla. Go back to Paragraph 5 of your
8 testimony, please.

9 A Got it.

10 Q Now, I understand in your previous testimony,
11 you agreed with yourself in your previous deposition,
12 that you didn't know the source of data Mr. Suchla
13 used. Can you tell us now, do you know what data
14 Mr. Suchla looked at in preparing these calculations
15 in Paragraph 5?

16 MS. GOLDMAN: Move to strike as beyond
17 the scope -- or object, sorry. Object. Beyond the
18 scope.

19 JUDGE KOPTA: I will sustain that
20 objection.

21 Q Let me step back one second here, since we've
22 talked about Mr. Suchla. Can you tell me, in your own
23 words, let's just put it out there, what Mr. Suchla's
24 involvement was in preparing the model that you
25 presented in part of your testimony?

0688

1 A I just simply asked him if he could give me an
2 example off of our -- you know, our FRX numbers, which
3 is our budget that we use in the field for operations,
4 to say, you know, here is what is 10, 25 and
5 50 percent loss of revenue would do to our costs. And
6 we discussed, you know, what that would look like, and
7 I just asked him if he could put that together for us.

8 Q Why did you ask him to do it? Why didn't you
9 do it yourself?

10 A I'm not an accountant.

11 Q And how did you know that Mr. Suchla could
12 prepare this?

13 A He has that type of function within our
14 company.

15 Q You said something that FRX. What's that?

16 A That's our -- I'm not sure exactly what FRX
17 stands for. It's our field operational budgets. He
18 has access to those, as well as we do in our Kent --
19 or actually our computers systems in our Kent office.

20 Q Do you use that system in your normal course
21 of employment?

22 A Yes.

23 Q What do you use it for in your normal
24 day-to-day job?

25 A That's where actuals versus budget amounts for

0689

1 the year are stored, just monitoring what our actual
2 spends are and where our budget needs to be.

3 Q I want to ask you one question about fixed
4 costs versus variable costs. I know in your testimony
5 you said -- Ms. Goldman asked you a question about, I
6 believe it was labor costs or driver labor costs, I'll
7 let her question speak for itself, and you agreed that
8 those would be considered fixed. Were you talking --
9 do you know in general accounting terms whether that
10 kind of a cost is fixed or variable?

11 A No.

12 Q In -- for the -- why is it that you answered
13 that that was a fixed cost?

14 A I do remember talking to John about what he
15 classified some of the categories, I just do not
16 remember all of them.

17 MR. VAN KIRK: I'm sorry, can you read
18 me back the answer?

19 (The requested portion of the
20 transcript was read by the reporter.)

21 Q Okay. Let me go back just to -- I was just --
22 I was just asking you about your testimony previously.
23 You had said that these labor costs or the driver
24 costs were fixed. I just wanted to know why you gave
25 that -- why you said that you considered them fixed?

0690

1 A I -- you know, John was the one that told me
2 that. I do remember that that was how he classified
3 them. You know, I kind of understood that we have
4 never laid off a single person, and that's probably
5 been my -- my opinion is to say it's been a consistent
6 job for us as well.

7 Q All right. A few more questions.

8 Can you turn to Paragraph 14, please?

9 A (Complies.)

10 Q Refresh your memory on what's in there and let
11 me know when you are done.

12 (Pause in the proceedings.)

13 A Okay.

14 Q Tell me the reasons why, in this paragraph,
15 you are saying "There is simply no doubt that a
16 significant loss of business in the new territory
17 would require Stericycle to take action and reduce its
18 costs or increase its revenues." Explain the basis
19 for that testimony for me, please.

20 A Well, as I stated before, you know, we get
21 together and look at route structures. If it got to a
22 point where -- significant loss is a bit vague, as far
23 as actual numbers. But if you took Port Angeles as an
24 example, and said we have two customers left in Port
25 Angeles, would it make sense to drive a truck up to

0691

1 Port Angeles on the current schedule, knowing that the
2 revenue we are going to gain from that isn't going to
3 cover the cost. That was what that intent was.

4 Q Paragraph 15, the final paragraph. Let me
5 know when you've had a chance to review that.

6 (Pause in the proceedings.)

7 A Okay.

8 Q And again, the same question. I would like
9 you to tell us what the basis is for the testimony you
10 have given in Paragraph 15.

11 A It would be the same assumption for Waste
12 Management. If they had a service scenario where they
13 were only picking up a very small amount of customers,
14 they would either have to go to them less frequently
15 than the customers that we currently pick up are
16 actually being serviced, or increase rates.

17 Q And again, how do you know that to be the
18 case?

19 A That's what we would do. I would imagine they
20 do the same thing.

21 MR. VAN KIRK: I'm done asking redirect
22 questions.

23 JUDGE KOPTA: Do you want to respond to
24 Ms. Goldman's objection to the admission of these
25 exhibits?

1 MR. VAN KIRK: I'm happy to. I just
2 didn't know if there was going to be more questions
3 from her, or what order that should happen in.

4 JUDGE KOPTA: I'm allowing you to have a
5 full response. I think tentatively my ruling may cut
6 down on the amount of additional recross that she will
7 have.

8 MR. VAN KIRK: And I understand that. I
9 appreciate the heads-up. So let me make my -- tailor
10 my response accordingly.

11 The response I will give is, what is clear
12 from Mr. Dunn's testimony, among other things, is that
13 the -- the exhibit prepared by Mr. Suchla, which has
14 been sort of the focus of the controversy here, is not
15 the basis for all parts of his testimony. There is a
16 fair amount of testimony. The majority is based on
17 his experience as transportation manager, and his
18 familiarity with route building, and the geography of
19 the customers in Washington, and things that are
20 squarely in Mr. Dunn's wheelhouse.

21 I oppose the complete striking of his
22 testimony. I think it -- I think that the parts that
23 are not based entirely upon Exhibit A and the work
24 done by Mr. Suchla should remain admissible, and they
25 are adequately supported by foundation and Mr. Dunn's

0693

1 experience. That's my response on that testimony.

2 With respect to Exhibit A and the portions of
3 his testimony that do go directly to the model and his
4 interpretation of the model, I do believe that it is
5 still supported. I think Mr. Suchla is in
6 Stericycle's accounting, he's Stericycle's VP of
7 finance, he has adequate experience. It is based on
8 data in a system that Mr. Dunn described, that he used
9 even for his own purposes. It's a regularly kept
10 system.

11 The model -- the model as it's been described,
12 or certainly implied in the questions by Waste
13 Management, has been made to become much bigger and
14 speak to a lot more issues than it actually does. So
15 when properly construed as a model being a financial
16 example of Mr. Dunn's testimony, I think it is well
17 supported by the evidence, because it does not -- it
18 is not trying to reach the heights that Waste
19 Management is intended to say it reaches, such as
20 predicting precise results in the future and exact
21 changes in costs. So it's called a model for a
22 reason, and I think as put forward, it is adequately
23 supported.

24 Those are two responses on the two portions of
25 the testimony and the exhibit.

0694

1 JUDGE KOPTA: All right. Well, I'm
2 inclined to agree with your first argument but not
3 your second.

4 With respect to Exhibit CD-2, this was
5 prepared by someone other than the witness. The
6 witness has no training or experience or job
7 responsibilities related to accounting. I do not
8 think that he has the qualifications to support this
9 testimony. If Mr. Suchla were here, that might be a
10 different story, but he's not. I will deny admission
11 of Exhibit CD-2, and correspondingly will also strike
12 from Mr. Dunn's testimony, Exhibit CD-1T, those
13 paragraphs that rely on that exhibit, which include
14 Paragraphs 5, 9, 10, 11, 12 and 13.

15 The remainder of his testimony I believe is
16 sufficiently supported by his experience as an
17 operations manager and his experience with the
18 company. They are sufficiently general and not
19 related solely to accounting. The weight accorded to
20 that testimony will certainly be determined in large
21 part by his expertise and his experience. I don't
22 think that that is insufficient to provide at least
23 enough foundation for this testimony to be part of the
24 record.

25 So with that ruling, Ms. Goldman, do you have

0695

1 any further recross on the portions of the testimony
2 that I am going to admit into the record?

3 MS. GOLDMAN: Yes, your Honor. Could I
4 just have a chance to read what is left?

5 JUDGE KOPTA: You may.

6 MR. SELLS: Should I make my five-minute
7 call at this point?

8 JUDGE KOPTA: I am assuming that we will
9 take our break. Why don't you have your witness
10 available at three o'clock.

11 (Pause in the proceedings.)

12 MS. GOLDMAN: I'm ready, Your Honor.

13 JUDGE KOPTA: Proceed.

14

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

16 BY MS. GOLDMAN:

17 Q Hello again, Mr. Dunn.

18 You testified on redirect that stem miles in
19 the new territory are largely fixed. Have you
20 computed what those stem miles are in the new
21 territory?

22 A No.

23 Q Have you computed what the corresponding costs
24 are?

25 A No.

0696

1 Q You are aware that Stericycle has lost a
2 significant amount of business to Waste Management in
3 Spokane in the last year and a half; isn't that right?

4 A We have lost some business in Spokane, yes.

5 Q And Stericycle has also lost a lot of business
6 in Kennewick, for example; isn't that right?

7 A We've lost some business in Kennewick as well.

8 Q And during that year and a half that
9 Stericycle has been competing directly with Waste
10 Management in those markets, Stericycle has not laid
11 off a single employee as a result of that loss of
12 business; isn't that correct?

13 A That's correct.

14 Q How many Stericycle customers are there in the
15 new territory?

16 A Am I able to reference the -- am I able to
17 reference this?

18 Q I believe, if you are looking at Exhibit A to
19 your testimony -- is that what you are asking?

20 A Yes.

21 Q That's been stricken. If I am asking the
22 question, you may not, because that's not your --
23 that's neither your testimony, nor based on your
24 experience. So the question is posed to you, not to
25 Mr. Suchla.

0697

1 Again, the question is, to your knowledge, how
2 many customers of Stericycle's are there in the new
3 territory?

4 A I don't have the actual amount.

5 Q Do you have any idea?

6 A No.

7 Q How many customers does Stericycle have in
8 Port Angeles?

9 A I don't know that.

10 Q You would agree with me that Bellevue, which
11 is in the new territory, is neither smaller nor more
12 dispersed of an area than those areas that currently
13 exist within the Waste Management territory; isn't
14 that right?

15 MR. VAN KIRK: Objection. Vague, at
16 least to me.

17 JUDGE KOPTA: You might rephrase that.
18 I'm not sure I understood it.

19 Q Let me try again. You would agree with me,
20 would you not, Mr. Dunn, that Bellevue, which is in
21 the new territory, is not smaller or more dispersed
22 than the current Waste Management territory; isn't
23 that right?

24 A There are some larger populated areas that are
25 within the new territory of Waste Management, correct.

0698

1 Q And you would agree with me that Bellevue is
2 neither small nor dispersed, wouldn't you?

3 A Yes.

4 Q And you would also agree with me, wouldn't
5 you, that Tacoma, which is in the new territory, is
6 also neither smaller nor more dispersed than Waste
7 Management's present territory, correct?

8 A Correct.

9 Q And you would also agree with me that Olympia,
10 which is in the new territory, is neither smaller nor
11 more dispersed than Waste Management's current
12 territory; isn't that right?

13 A Yes.

14 Q You would agree with me that Granite Falls,
15 which is part of Waste Management's existing
16 territories, is rural and is dispersed, isn't it?

17 A Yes.

18 Q And you would also agree with me that, for
19 example, Ellensburg, which is within Waste
20 Management's current territory, is rural and
21 dispersed, correct?

22 A Yes.

23 Q And you would also agree with me that
24 Bremerton, which is in Waste Management's current
25 territory, is both rural and dispersed?

0699

1 A I wouldn't think that Bremerton would be the
2 same.

3 Q What about Kitsap County?

4 A Parts of Kitsap county.

5 Q So parts of Kitsap County, which are in Waste
6 Management's current territory, you would agree are
7 both dispersed and rural, correct?

8 A Parts of it, yes.

9 Q Paragraph 6 of CD-1T, the last sentence you
10 state, This means that our costs per stop are higher
11 on routes within the new territory than within Waste
12 Management's existing territory. Did you compute what
13 the costs are between the two territories?

14 MR. VAN KIRK: Objection. Asked and
15 answered.

16 JUDGE KOPTA: Sustained. You did ask
17 that question and he did answer it.

18 Q What is the cost per stop in the new
19 territory?

20 MR. VAN KIRK: Objection. The model has
21 been taken out.

22 JUDGE KOPTA: I agree. Sustained.

23 MS. GOLDMAN: Your Honor, if this is
24 based on a model, then we would ask that it too be
25 stricken. It has not been.

0700

1 JUDGE KOPTA: You may ask that question.

2 MS. GOLDMAN: Your Honor, we would move
3 to strike Paragraph 6 --

4 JUDGE KOPTA: You may ask him the
5 question of whether that statement is based on the
6 model.

7 Q Mr. Dunn, is that statement based on the
8 model?

9 A Can you direct me to the paragraph again,
10 please?

11 Q Sure. It's Paragraph 6, last line.

12 A I don't believe this is part of the actual
13 model.

14 MS. GOLDMAN: May I follow up, Your
15 Honor?

16 JUDGE KOPTA: You may.

17 Q What is it based on?

18 A It talks about drive time per stop on
19 collection rounds.

20 Q It talks about costs per stop. What is the
21 basis of your conclusion that cost stops -- costs per
22 stop are higher on routes within the new territory
23 than within Waste Management's existing territory?

24 MR. VAN KIRK: Objection. Asked and
25 answered. This time by me.

0701

1 JUDGE KOPTA: I think she is entitled to
2 an answer. This is the last sentence of that
3 paragraph. We are on Page 3 of Exhibit CD-1T,
4 beginning on Line 3. The sentence reads, This means
5 that our costs per stop are higher on routes within
6 the new territory than within Waste Management's
7 existing territory. The question is, is that
8 conclusion based on the model that has been stricken?

9 THE WITNESS: No.

10 Q What is it based on?

11 A The stem miles for the more rural areas that
12 involve more of a fixed cost.

13 Q And what is that amount? What are those
14 costs?

15 A I don't have the actual costs.

16 MS. GOLDMAN: We move to strike.

17 JUDGE KOPTA: I will deny that. I will
18 leave it in. Again, I will give it the weight based
19 on his experience and your examination.

20 MS. GOLDMAN: That's all we have.

21 Thank you, Your Honor. Thank you, Mr. Dunn.

22 JUDGE KOPTA: Thank you.

23 Anything further, Mr. Van Kirk?

24 MR. VAN KIRK: Very briefly.

25

0702

1 FURTHER REDIRECT EXAMINATION

2 BY MR. VAN KIRK:

3 Q There was testimony just now, Mr. Dunn, about
4 a business loss. And I forget, there were two cities,
5 and I forget which ones they were. The question to
6 you was whether you laid off any employees, and you
7 said no. My question is: Was the business loss
8 significant enough to justify laying off employees?

9 A No.

10 Q Okay. Is there any other reason why you
11 didn't lay off any employees, that you know of?

12 A No.

13 Q Now, you went through sort of a colloquy with
14 Ms. Goldman about different locations in the state
15 being smaller and more dispersed. Let me direct you
16 to Paragraph 4 of your testimony. It's on Page 2.

17 On the first sentence of that testimony, were
18 you testifying that locations in Washington were
19 smaller and more dispersed or that customers in those
20 locations were smaller and more dispersed?

21 A The customers were smaller and more dispersed.

22 Q And after going through that series of
23 questions with Ms. Goldman, do you still believe it to
24 be true that as a general matter, Stericycle's
25 customers in the new territory are smaller and more

0703

1 dispersed?

2 A As a general matter, yes.

3 MR. VAN KIRK: That's all I have.

4 JUDGE KOPTA: All right. I think that
5 concludes Mr. Dunn's examination. Thank you for your
6 testimony this afternoon. You are excused.

7 It is now 10 til 3:00. We will take our
8 afternoon break until three o'clock, when I believe we
9 have a witness.

10 MR. SELLS: Mr. Felsted.

11 JUDGE KOPTA: Mr. Felsted will be
12 available by telephone at that time.

13 We will be off the record.

14 (A brief recess.)

15 JUDGE KOPTA: Let's be back on the
16 record after our afternoon break.

17 One thing I wanted to address before moving on
18 to Mr. Sells' witness, is Exhibit CD-3, it is a
19 cross-examination exhibit that Waste Management
20 designated. Is that an exhibit you want to offer or
21 withdraw or not offer?

22 MS. GOLDMAN: You know, Your Honor, I
23 believe it may -- actually, yes -- no, it's not. This
24 is one that you -- that we had submitted as direct
25 testimony, you will recall, and you said that we

0704

1 shouldn't.

2 Yes, we move for admission of CD-3.

3 MR. VAN KIRK: I do not agree, because
4 CD-3, if memory serves --

5 JUDGE KOPTA: Is your microphone on?

6 MR. VAN KIRK: If memory serves, CD-3 is
7 some excerpts of Mr. Dunn's deposition in which they
8 asked him questions relating to Rehrig containers.
9 Something that was appropriate in a deposition, but it
10 really has nothing to do with the testimony here. I
11 am pretty firm, that's my memory. If there's
12 something else in there, I'm sure it will be pointed
13 out to me. That's the testimony that we are talking
14 about. I object because it is not relevant to his
15 testimony.

16 JUDGE KOPTA: Well, the exhibit was not
17 used during cross-examination, instead you relied on
18 references to Exhibit MAW-5, which has already been
19 admitted into the record. I see no basis to admit
20 this over the objection of counsel. I will not admit
21 Exhibit CD-3.

22 And with that, I will turn to Mr. Sells.

23 Would you like to call your first witness?

24 MR. SELLS: We will call Devon Felsted,
25 if Your Honor please.

0705

1 JUDGE KOPTA: Mr. Felsted, would you
2 rise and raise your right hand?

3

4 DEVON L. FELSTED, witness herein, having been
5 first duly sworn on oath,
6 was examined and testified
7 as follows:

8

9 JUDGE KOPTA: Thank you.

10 Mr. Sells, you may proceed.

11

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

13 BY MR. SELLS:

14 Q Devon, please state your full name. I have
15 already spelled it for the court reporter, so you
16 won't have to do that.

17 A Devon Lee Felsted.

18 Q And you are the president of Pullman Disposal;
19 is that correct?

20 A Yes, that's correct.

21 Q Do you have in front of you the materials that
22 are marked in order, up in the right-hand corner,
23 Exhibit No. DF-1T? Do you have that?

24 A Yes, I do.

25 Q And is that your testimony in this matter,

0706

1 your direct testimony?

2 A It is.

3 Q And attached to that, do you have DF-2?

4 A That would be the attachment?

5 Q Correct.

6 A I don't see them marked as DF-2.

7 Q Let me help you. DF-2 is a copy of the G
8 certificate, G-42. Do you have that?

9 A That I do.

10 Q And then there's a DF-3, which is a
11 depreciation schedule. Do you have that?

12 A Yes, I do.

13 Q Which shows the equipment.

14 And then there's -- finally, there's a DF-4,
15 which is entitled a Summary of Medical Waste
16 Information 2011. Do you have that?

17 A Yes, I do.

18 Q All right, good.

19 MR. SELLS: With that, if Your Honor
20 please, I will tender him for cross.

21 JUDGE KOPTA: And I assume you are
22 moving for admission of those exhibits?

23 MR. SELLS: I'm sorry, and we will move
24 for, let me make sure the record is straight, DF-1T,
25 DF-2, DF-3 and DF-4. Thank you.

0707

1 JUDGE KOPTA: Any objection to admission
2 of those exhibits?

3 MS. GOLDMAN: No, Your Honor.

4 JUDGE KOPTA: Those exhibits are
5 admitted.

6 Anything further from you, Mr. Sells?

7 MR. SELLS: No.

8 Devon, you will now be examined by counsel for
9 the other participants here.

10 JUDGE KOPTA: And we will begin with
11 counsel for Waste Management.

12

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

14 BY MS. GOLDMAN:

15 Q Good afternoon, Mr. Felsted. We have not had
16 the pleasure of meeting. My name is Jessica Goldman,
17 I am one of the attorneys for Waste Management.

18 A Okay.

19 Q I have some questions for you.

20 A Okay.

21 Q When did Pullman Disposal Service commence
22 biomed collection services in Washington?

23 A To the best of my memory, it seems like it was
24 the early '90s, maybe early to mid-'90s. I do not
25 know offhand the date.

0708

1 Q And you have been providing biomed services
2 since that point?

3 A Yes, we have.

4 Q How many customers did you have in
5 approximately 1995?

6 A Oh, well, that's a good question. I know that
7 that would be in our UTC annual report. It seems like
8 it's been fairly consistent from the beginning. When
9 we first started, we went up and visited a number of
10 doctors' offices and told them about the service.
11 Currently we have -- I guess at the end of last year
12 we had 14. It really hasn't varied. It might go up
13 or down one or two over the years, but it seems to be
14 very consistent.

15 Q And so to the best of your recollection,
16 you've had approximately 14 customers since you first
17 began offering biomedical waste?

18 A Yeah. Like I say, more or less. It hasn't --
19 it's just varied very little over the years. One
20 doctor's office might start, another might stop, kind
21 of a thing.

22 Q And Washington State University is one of your
23 customers?

24 A I don't think so. I think they handle their
25 own biohazard.

0709

1 Q Do you service any hospitals?

2 A We do not.

3 Q How would you describe your customers, the
4 nature of their businesses?

5 A Well, we have a number of doctors and
6 dentists. We also have a -- I guess the convalescent
7 center. And then the occasional diabetic will -- like
8 a resident would want us to collect their sharps.
9 Also, some veterinarians as well.

10 Q I'm sorry, I missed the last couple of
11 sentences. Could you repeat those?

12 A I think it's a mix of doctors, dentists,
13 veterinarians, and we do have a convalescent center.
14 Also, some residents will bring their sharps to us, or
15 we can go get them, get sharps from the diabetic.
16 Just a resident, as opposed to a business.

17 Q To your knowledge, are your customers
18 satisfied with your services?

19 A Yes, to my knowledge they are.

20 Q Have you lost any customers to Stericycle?

21 A You know, not that I'm aware of. As far as I
22 know, they are servicing the hospital in Pullman, but
23 I don't believe they service anyone else, unless they
24 have something going with WSU.

25 Q Do you have any basis for believing that your

0710

1 customers would move their service to Waste Management
2 if Waste Management were granted statewide authority?

3 A No, I have a -- I really don't know. I guess
4 I don't have anything to go on. I haven't discussed
5 that with any of the customers.

6 Q Now, according to the exhibit -- I recognize
7 you don't have these numbers on them. It is DF-4,
8 which is the final exhibit to your testimony. It's
9 got a list of data provided by your accountant.

10 A Uh-huh.

11 Q Do you see that?

12 A Yeah.

13 Q Now, you have reported --

14 A The summary of medical waste information,
15 2011?

16 Q That's right. And you have reported there, or
17 your accountant has reported there, annual medical
18 waste revenue of \$9,465. Do you see that?

19 A I do.

20 Q Is that a typical amount of revenue for you in
21 a year from your biomedical waste?

22 A Yes. Yeah, absolutely. You know, I actually
23 could look up what previous years have been in just a
24 matter of seconds, but that's very typical.

25 Q And you would say that your revenues have been

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1 steady since you began?

2 A I would, yes.

3 Q Sorry, I realize it's difficult because you
4 can't see me and I'm speaking a little more slowly
5 right now. Let me try that question one more time.

6 You would say that your revenues have been
7 steady since you began offering biomedical waste
8 services, and I'm talking about your biomedical waste
9 revenue; isn't that right?

10 A Right. Yeah, I think it's been pretty steady.
11 I'm at my computer, I could look it up. Let's see, it
12 may have grown. I would imagine that it has grown
13 over the years. I doubt it's grown significantly,
14 since we haven't had much change in the number of
15 customers.

16 Q But you may have seen some growth in revenue
17 from your existing customer base?

18 A Uh-huh.

19 Q Was that a "yes"?

20 A Yes.

21 Q Thank you.

22 What was the total revenue for your company
23 for regulated and nonregulated operations in 2011?
24 Ballpark will do.

25 A It was about 3.7 million.

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1 Did you hear that?

2 Q Yes. I'm so sorry, I'm conferring with
3 cocounsel. If you will just give me a minute, I will
4 have another question.

5 A Sure.

6 (Pause in the proceedings.)

7 Q Is your biomedical waste operation profitable
8 today?

9 A I think so. You know, I don't -- obviously
10 it's not a significant portion of our revenue by
11 comparison to the trash and recycling, but I do
12 believe it's profitable.

13 Q Thank you.

14 You testified that your assets consist of one
15 medical waste trailer and one medical waste canopy
16 that were both acquired in 1996; isn't that right?

17 A Yeah, that's in the depreciation schedule I
18 saw.

19 Q So by this point, they should be fully
20 depreciated, right?

21 A They should be. I -- that's correct.

22 Q Do you use those two assets solely for
23 biomedical waste?

24 A Actually, I don't think we've had a rate case
25 on our biohazard for quite a long time. Those items

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1 aren't even being used anymore.

2 Q They are --

3 A We're using different equipment at this point.
4 Because we haven't had a rate case on our biohazards,
5 it's not showing up.

6 MS. GOLDMAN: Thank you very much for
7 your testimony. That's all we have from Waste
8 Management.

9 JUDGE KOPTA: Thank you, Ms. Goldman.
10 Ms. Woods, any questions?

11 MS. WOODS: I have no questions, Your
12 Honor.

13 JUDGE KOPTA: Any redirect, Mr. Sells?

14 MR. SELLS: If I may, just to clarify
15 that last comment.

16

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

18 BY MR. SELLS:

19 Q Do you have equipment now, Devon, that you do
20 use presently in your medical waste business?

21 MS. GOLDMAN: We --

22 A We do.

23 MS. GOLDMAN: And we object as beyond
24 the scope.

25 JUDGE KOPTA: I believe it's within the

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1 scope, so it's overruled.

2 Q And is that equipment fully in compliance with
3 the applicable laws and rules regarding the transport
4 of medical waste?

5 A I believe so.

6 Q And do you have -- does your company have the
7 ability to serve more customers if the need arises
8 within your area?

9 A Absolutely.

10 MR. SELLS: Thank you. That's all I
11 have.

12 Thank you, Your Honor.

13 JUDGE KOPTA: Anything further for this
14 witness?

15 (Pause in the proceedings.)

16 JUDGE KOPTA: Apparently not.

17 MS. MCNEILL: Wait, wait, wait. Sorry,
18 sorry.

19

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

21 BY MS. GOLDMAN:

22 Q When did you buy the new equipment?

23 A You know, I -- I don't have that information
24 offhand. We -- that trailer that was listed on the
25 depreciation schedule was being used to store the

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1 medical waste at one time, in a locked trailer. Now
2 we are using a storage unit. That is just a rental,
3 as far as that goes.

4 I couldn't tell you when we purchased new
5 equipment.

6 Q What other --

7 A The vehicle that's being used now is a 2001
8 Chevy 4x4 pickup. I couldn't tell you when we
9 purchased that exactly offhand, but that's -- that is
10 what the main equipment is.

11 Q Did you purchase the 2001 Chevy new?

12 A I don't recall.

13 Q Is it fully depreciated at this point?

14 A I would think so.

15 MS. GOLDMAN: Thank you.

16 A We've had it for at least -- we've had it
17 several years.

18 MS. GOLDMAN: Thank you. That's all,
19 Mr. Felsted.

20 JUDGE KOPTA: Anything else?

21 MR. SELLS: No, Your Honor.

22 JUDGE KOPTA: Thank you, Mr. Felsted.

23 We appreciate your testimony this afternoon. You are
24 excused.

25 MR. SELLS: Thanks, Devon. You can hang

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1 up now.

2 THE WITNESS: All right.

3 MR. SELLS: Thanks.

4 JUDGE KOPTA: I believe that takes us to
5 the end of the witnesses we were able to have
6 presented today. We will reconvene tomorrow morning
7 at 9:30, I believe, another witness from Stericycle,
8 who will also be on the phone, and hopefully remaining
9 witnesses for Mr. Sells' clients and for Stericycle.
10 Let's keep our fingers crossed that we will get done
11 by the end of the day tomorrow.

12 MR. SELLS: Excuse me, Your Honor. If I
13 may, we were crossing our fingers to finish by noon.
14 Apparently --

15 MS. MCNEILL: Tomorrow?

16 MR. SELLS: Yes.

17 Ms. MCNEILL: Thursday?

18 JUDGE KOPTA: Well, let's not have this
19 conversation on the record.

20 MR. SELLS: Oh, I'm sorry.

21 JUDGE KOPTA: We will reconvene tomorrow
22 morning at 9:30. We are off the record.

23 (Hearing adjourned 3:18 p.m.)

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4 COUNTY OF KING

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