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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DANNY AGUAYO, an individual, )  
et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BETZ LABORATORIES, INC., a )  
California corporation, et al., )  
 )  
Defendants. )  
\_\_\_\_\_)  
AND RELATED CASES. )  
\_\_\_\_\_)

No. BC 123749  
BC 158588  
BC 161669

DEPOSITION OF BRENT KERGER, Ph.D.  
Los Angeles, California  
Wednesday, December 4, 2002  
Volume 1

LAURIE HELD-BIEHL  
CSR NO. 6781  
JOB NO. 202794

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BC 158588  
BC 161669

Deposition of BRENT KERGER, Ph.D.,  
Volume 1, taken on behalf of the  
Plaintiffs, at 333 South Grand Avenue,  
Los Angeles, California, commencing at  
9:03 a.m. and ending at 6:01 p.m. on  
Wednesday, December 4, 2002, before  
LAURIE HELD-BIEHL, Certified  
Shorthand Reporter No. 6781.

## 1 APPEARANCES:

2

## 3 For Plaintiffs:

4 LAW OFFICES OF ENGSTROM, LIPSCOMB &amp; LACK

5 BY: GARY A. PRAGLIN

6 BY: JARED BEILKE

7 BY: LISA SORENSON

8 BY: JILL BORUT

9 10100 Santa Monica Boulevard

10 16th Floor

11 Los Angeles, California 90067-4107

12

13 GIRARDI &amp; KEESE

14 Attorneys at Law

15 1126 Wilshire Boulevard

16 Los Angeles, California 90017

17 (No appearance made.)

18

## 19 For Defendant Pacific Gas &amp; Electric:

20

21 LATHAM &amp; WATKINS

22 Attorneys at Law

23 BY: KIRK WILKINSON

24 633 West Fifth Street

25 Suite 4000

Los Angeles, California 90071-2007

26

27 JOHNSON &amp; TEKOSKY LLP

28 Attorneys at Law

29 444 South Flower

30 31st Floor

31 Los Angeles, California 90071

32 (No appearance made.)

33

## 34 For the Witness:

35

36 DEWEY BALLANTINE LLP

37 Attorneys at Law

38 BY: DAVID S. McLEOD

39 333 South Grand Avenue

40 Los Angeles, California 90071-1530

41

42 (213) 621-6515

43

## 44 Also Present:

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46 MARK DETRICK, Videographer

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1 Los Angeles, California, Wednesday, December 4, 2002

2 9:03 a.m. - 6:01 p.m.

3

4 THE VIDEOGRAPHER: Good morning. My name is  
5 Mark Detrick, I'm a videotape operator with Biehl &  
6 Bell, et al., located in Orange, California.

7 This begins videotape number one of Volume 1 in  
8 the deposition of Brent Kerger, M.D., in the matter of  
9 Aguayo, et al., versus Betz Laboratories, et al., in the  
10 Superior Court of the State of California, the lead case  
11 number of which is BC 123749.

12 Today's date is December 4, 2002. The time is  
13 9:03 a.m.

14 Would counsel please identify yourselves and  
15 state whom you represent.

16 MR. PRAGLIN: Gary Praglin of Engstrom, Lipscomb &  
17 Lack on behalf of the plaintiffs. Also present with me  
18 is a legal assistant, Jill Borut, B-o-r-u-t.

19 MR. McLEOD: David McLeod on behalf of the witness,  
20 Dr. Kerger.

21 MR. WILKINSON: Kirk Wilkinson for Defendant PG&E.

22 THE VIDEOGRAPHER: Would the court reporter please  
23 swear in the witness.

24 /

25 /

1                               BRENT KERGER, Ph.D.,  
2                               having been first duly sworn,  
3                               was examined and testified as follows:  
4

5   EXAMINATION

6 BY MR. PRAGLIN:

7           Q     Good morning, Dr. Kerger.

8           A     Good morning.

9           Q     Could you tell us your full name for the  
10 record, please.

11          A     Brent Daniel Kerger.

12          Q     And you are a Ph.D.; is that right?

13          A     That's correct.

14          Q     You're not a medical doctor, are you?

15          A     No, I'm not.

16          Q     Let me tell you a few of the ground rules for  
17 today's deposition, even though I know you've probably  
18 heard this before. First and most important is you're  
19 under oath so the testimony that you're about to give  
20 has the same force and effect as if you were sitting in  
21 court testifying before a judge and a jury.

22                       Do you understand that the penalty of perjury  
23 applies here today?

24          A     Yes.

25          Q     After today's deposition, the court reporter

1 will send you a transcript of your testimony and the  
2 transcript will have my questions, your answers,  
3 anything else that anyone else says here today, and  
4 you'll have a chance to read your testimony, to review  
5 it, and you'll also have a chance to make changes in  
6 your testimony.

7 I want to warn you now, though, that if you do  
8 make changes at a later date, either myself or any other  
9 attorney who takes this case to trial can comment on the  
10 fact that you made changes, and that comment could prove  
11 to be embarrassing to you or harmful to the position of  
12 PG&E in this case.

13 Do you understand?

14 A I do.

15 Q Do you have any questions before we begin?

16 A No.

17 Q You've been through this process before,  
18 haven't you?

19 A A few times.

20 Q If at any time today you want to take a break,  
21 just say so. If you don't hear me or if you don't  
22 understand me, ask me to repeat my question and I'll do  
23 that for you. But if you answer my question, I will  
24 assume that you heard me and that you understood me.

25 Is that fair enough?



1           A     It is.

2           Q     Now, there's a lawyer at the end of the table  
3     named Kirk Wilkinson representing PG&E in this case.  
4     You know him, don't you?

5           A     Yes.

6           Q     You know him from PG&E litigation involving  
7     chromium, don't you?

8           A     Well, I know him from before that, but yes, I  
9     know that he is -- he's -- he was involved in --  
10    Latham & Watkins came in at the very end of the  
11    PG&E/Anderson case.

12          Q     And he's not your lawyer here today, is he?

13          A     He is not.

14          Q     But you have a lawyer here today and that's  
15    Mr. McLeod; is that right?

16          A     Correct.

17          Q     Okay. You don't need Mr. McLeod to help you  
18    answer the questions, though, do you?

19           MR. McLEOD: Depends how you phrase the questions.

20           THE WITNESS: I don't -- I don't think so.

21           BY MR. PRAGLIN:

22          Q     Okay. Mr. McLeod and I have had some  
23    correspondence exchanged over the issue of the documents  
24    that you've produced.

25                   And maybe it's best if I just make the record

1 by attaching what he has produced and then,

2 Mr. McLeod --

3 MR. McLEOD: That's fine.

4 MR. PRAGLIN: -- you can make your statement, how's  
5 that?

6 MR. McLEOD: That's fine.

7 BY MR. PRAGLIN:

8 Q Dr. Kerger, to hopefully speed things up, what  
9 I'm going to do is I'm going to mark as exhibits some of  
10 the documents that have been produced in this case, the  
11 Aguayo case, regarding the issues that will be the  
12 subject of your deposition, and those issues relate both  
13 to this Aguayo case and also to the Anderson versus PG&E  
14 case. If I refer to the "Anderson case," you'll know  
15 the case that I'm talking about?

16 A Yes.

17 Q The case in the early to mid-'90s involving  
18 650 plaintiffs and PG&E?

19 A I'm familiar with that.

20 Q Some people call it the "Erin Brockovich case"  
21 now. You're aware of that?

22 A Yes.

23 Q Okay. So we served a request to produce or a  
24 subpoena on you, and we got in response a big thick  
25 document here, which is on the letterhead of Dewey

1 Ballantine, Mr. McLeod's firm, and it's Bates stamped in  
2 the lower right with a sequential number beginning with  
3 the prefix C-H-E-M-R, which I assume stands for  
4 ChemRisk, CHEMR 1 through CHEMR 325, and I'm going to  
5 put this document in front of you, mark it as Exhibit 1,  
6 and ask you if this is a copy of the first response that  
7 was served by you in response to the subpoena.

8 (Plaintiffs' Exhibit 1 was  
9 marked for identification, a copy of  
10 which is attached hereto.)

11 BY MR. PRAGLIN:

12 Q Do you have Exhibit 1 in front of you now?

13 A Yes, I do.

14 Q Can you confirm for me if that's the initial  
15 production on your behalf in response to our subpoena?

16 A This is the -- what I would consider the second  
17 production from my company. The first one was in  
18 response, I believe, to an earlier subpoena regarding the  
19 business records on the Blue Ribbon Panel that I  
20 received before I had counsel. But this is the one that  
21 relates to the Zhang study information, and this was my  
22 response to that.

23 Q The first response, what did you do with that?

24 A Well, there -- I was served with a subpoena at  
25 my company and basically responded to that and mailed it

1 back to the court reporter.

2 Q How many documents did you produce in response  
3 to that first subpoena?

4 A Well, I think I only found two or three  
5 documents when -- a couple E-mails that I had printed  
6 out and the Blue Ribbon Panel final document that I had  
7 in my file. And that was about a month before I  
8 received -- I believe it was about a month before I  
9 received this subpoena and before I -- I got counsel  
10 involved.

11 Q Did you bring a copy of the response to the  
12 first subpoena with you here today?

13 A No, I didn't.

14 Q In addition to Exhibit 1, there was a  
15 supplemental response on your behalf, also on  
16 Dewey Ballantine letterhead, and this picks up with  
17 Bates stamp ChemRisk 326 and runs through ChemRisk 628,  
18 it's another 300 pages.

19 Let's mark this as Exhibit 2.

20 (Plaintiffs' Exhibit 2 was  
21 marked for identification, a copy of  
22 which is attached hereto.)

23 BY MR. PRAGLIN:

24 Q Do you have Exhibit 2 in front of you?

25 A Yes, I do.

1 Q Is that a copy of your supplemental response?

2 A Yes, it is.

3 Q Now, as I read Exhibits 1 and 2, neither one of  
4 them have a signed verification by you saying that these  
5 documents are true and correct copies of documents that  
6 were in your possession in response to the subpoena. Can  
7 you do that for me now, can you testify that these  
8 628 pages are true and correct copies of documents that  
9 you had in your possession that are responsive to the  
10 subpoena?

11 A I think so.

12 Q They are?

13 A Yes.

14 Q Okay. And how did you get these documents?

15 From where did they come?

16 A Which ones? All of them?

17 Q Let's take them all, unless you need to

18 separate them.

19 A Well, most of the information that I -- that I  
20 found here that was responsive to your requests was from  
21 compilations of literature and summaries that I took  
22 with me when I left McLaren/Hart-ChemRisk about five and  
23 a half years ago.

24 MR. McLEOD: Gary, why don't you let me make the  
25 record right now.

1 MR. PRAGLIN: Sure.

2 MR. McLEOD: Thank you.

3 I advised Mr. Praglin before we started this  
4 morning of the following, and that we'd make the record  
5 so that there is no ambiguity regarding what has been  
6 produced. And if there is an issue regarding  
7 Dr. Kerger's production, it will be appropriately  
8 framed.

9 Dr. Kerger, in his professional capacity, has  
10 done a certain amount of work regarding chromium. Some  
11 of that work has occurred while retained by PG&E, some  
12 of the work has occurred when he has not been employed  
13 by PG&E. Similarly, he has had contacts with certain  
14 other authors regarding chromium while employed by PG&E,  
15 and certain contact with other authors when not employed  
16 by PG&E.

17 He has not produced and will not produce his  
18 work on chromium when he was not employed by PG&E. We  
19 view that as being nonresponsive, it's overbroad, it's  
20 his own library and reference materials and source  
21 materials, as well as work product from other cases.

22 (Whereupon Ms. Sorenson enters  
23 the deposition proceedings.)

24 MR. McLEOD: Regarding his work on chromium while  
25 employed by PG&E, I think there are several things to

1 note.

2           One, he was employed as a consultant in the  
3 Anderson case and it is our understanding that the  
4 Anderson case was settled during June of '96.

5           Secondly, since that time, he was employed in a  
6 rather limited role as a confidential litigation  
7 consultant in the currently pending Aguayo matter during  
8 the years 1998 and 1999.

9           MR. PRAGLIN: Was he employed by PG&E in that  
10 capacity?

11          MR. McLEOD: By PG&E.

12           What Dr. Kerger has produced is the documents  
13 that we believe are responsive to the requests regarding  
14 his work done in the Anderson matter.

15           We have not produced any work that he has done  
16 in the course of his retention as a confidential  
17 litigation consultant in Aguayo.

18           All of his files from the Anderson matter have  
19 been made available to PG&E. We understand that there  
20 is a disagreement between PG&E and the plaintiffs as to  
21 what constitutes work product and what doesn't. In  
22 order to minimize his involvement, Dr. Kerger has made  
23 his files available to PG&E, and it is our view that  
24 plaintiffs and PG&E can resolve what the work product  
25 issues are.

1           And he is fully prepared to answer questions  
2 regarding the Zhang work, and you have everything in his  
3 file regarding Zhang through the end of 1996. I think  
4 you'll find that he didn't have contact with Dr. Zhang  
5 after probably the late fall, early winter of '96. And  
6 you have that.

7           And he is also prepared to testify regarding  
8 any contacts he might have had with anyone on the  
9 Blue Ribbon Panel as well as any contacts he might have  
10 had with anyone regarding the so-called Mexican studies.

11 BY MR. PRAGLIN:

12       Q     Dr. Kerger, the statement by your lawyer just  
13 now, is everything that he said true and accurate?

14       A     I believe so.

15       Q     So that would be your testimony as well, you  
16 would adopt his statement as your testimony?

17       A     That -- I think so, yes.

18       Q     Mr. McLeod mentioned a Dr. Zhang and I think  
19 it's spelled Z-h-a-n-g. What's the correct  
20 pronunciation of that doctor's name?

21       A     You know, I've heard "Zhong" and I've heard  
22 "Zhang" and I don't really know which -- which one is  
23 technically correct, but I say Zhang.

24       Q     If you say Zhang, I'll say Zhang.

25       A     Agreed.



1 Q Is it true that you had no contact with  
2 Dr. Zhang after probably the late fall, early winter of  
3 1996?

4 A That's true.

5 Q What would be the last date on which you had  
6 any contact with Dr. Zhang, whether in writing, by  
7 phone, through a translator, through any means?

8 A I don't recall. It would have been sometime in  
9 1996, late 1996, during the last -- the last steps of --  
10 of the publication process.

11 Q Publication process of what?

12 A Of his 1997 publication in the Journal of  
13 Occupational and Environmental Medicine.

14 Q Can we call that the 1997 Zhang article?

15 A Sure.

16 Q He had a 1987 Zhang article as well, didn't he?

17 A That's correct.

18 Q Can we call that the 1987 Zhang article?

19 A Yes.

20 Q Are there more than two Zhang articles that you  
21 are aware of, published articles?

22 A Yes.

23 Q How many?

24 A I believe there are approximately seven  
25 manuscripts that he provided in Chinese that were either

1 published or presented at different scientific meetings  
2 or in certain Chinese-only journals that don't have wide  
3 distribution; so the 1987 article is probably the only  
4 one of his articles that's available in the general  
5 literature that I know of. But he provided us  
6 personally with copies of these other published but  
7 lesser -- published in lesser journals, so to speak,  
8 articles.

9 Q Were these lesser published articles published  
10 outside of China?

11 A I don't think so.

12 Q When you say "he provided us these materials,"  
13 who is "us"?

14 A My company, McLaren/Hart-ChemRisk.

15 Q You understood that McLaren/Hart-ChemRisk was a  
16 paid consultant to PG&E in the Anderson litigation,  
17 didn't you?

18 A Well, it had -- it had many roles. But yes,  
19 the -- I was confidential consultant, and there was  
20 expert witness capacity for certain members of the  
21 company as well.

22 Q What do you mean you were a "confidential  
23 consultant"?

24 A I never testified or was intended to be a  
25 testifying expert on behalf of PG&E.

1 Q How do you know that?

2 A That's what I was told was my role.

3 Q Are you aware that PG&E filed with the court a  
4 sworn document indicating that you were going to testify  
5 as a witness on behalf of PG&E?

6 A I -- yeah, I was aware that I was identified as  
7 a fact witness in regard to verifying a certain physical  
8 exhibit at trial in the second arbitration.

9 Q How did you become aware that you would be that  
10 kind of witness?

11 A We had certain bathtub exhibits that they had  
12 to make a foundational finding or showing for as far as  
13 what the chromium concentrations were, and I had been  
14 the one to actually mix the concentrations in the  
15 bathtubs that were the exhibits. And so I testified to  
16 what -- what the procedure was.

17 Q Did you actually testify to that?

18 A I believe I did, yes.

19 Q In the arbitration?

20 A In the second arbitration I testified about how  
21 the bathtub exhibits were prepared.

22 Q In what month and year?

23 A I don't recall exactly, but I think it was  
24 January of '96.

25 Q And you testified on behalf of PG&E; is that

1 right?

2 A As a fact witness, that's correct.

3 Q And you were paid for that testimony by PG&E,  
4 were you not?

5 A My company was paid for my time, yes.

6 Q Weren't you then in turn paid by your company?

7 A Well, yes, I was on salary with the company.

8 Q And that company was ChemRisk?

9 A McLaren/Hart-ChemRisk, yes.

10 Q And if I call it "ChemRisk" in this deposition  
11 you'll know what company I'm talking about, won't you?

12 A Yes.

13 Q So is it your testimony that you were not  
14 designated by PG&E as an expert witness for your  
15 January 1996 testimony?

16 MR. McLEOD: That isn't what he testified to.  
17 You're trying to put words in his mouth.

18 BY MR. PRAGLIN:

19 Q Is that your testimony?

20 A That's my belief, is that I was not an  
21 expert -- not identified as an expert witness, per se.

22 Q Do you know a gentleman by the name of  
23 Gary Ottoson?

24 A Yes.

25 Q Who is he?

1           A     He is an attorney with -- or was an attorney  
2 with Haight, Brown & Bonesteel.

3           Q     Wasn't he PG&E's lead attorney in the Anderson  
4 litigation?

5           A     He was one of the lead attorneys, yes.

6           Q     Let's mark as Exhibit 3 Gary Ottoson's sworn  
7 declaration listing you as an expert witness on behalf  
8 of PG&E in the Anderson case.

9                     (Plaintiffs' Exhibit 3 was  
10           marked for identification, a copy of  
11           which is attached hereto.)

12 BY MR. PRAGLIN:

13          Q     Do you have Exhibit 3 in front of you?

14          A     Yes.

15          Q     If you'll turn, please, to the first page, it  
16 says "Anderson versus PG&E" in the caption, right?

17          A     Yes.

18          Q     And the right-hand side of the caption says  
19 "Defense Exchange of Expert Witness Information for the  
20 Third Arbitration Pursuant to CCP Section 2034; Election  
21 of Experts; Expert Witness Declaration of Gary C.  
22 Ottoson," correct?

23          A     Yes.

24          Q     And if you turn, please, to page 17, line 19,  
25 this is the declaration of Mr. Ottoson, it says, "I

1 declare under penalty of perjury under the laws of the  
2 State of California that the foregoing is true and  
3 correct.

4 "Executed this 15th day of March, 1996, at  
5 Santa Monica, California," and then it says "Gary C.  
6 Ottoson, Declarant," correct?

7 A Yes.

8 Q And would you look, please, at page 12, lines 6  
9 through 10. Does that list you as an expert witness on  
10 behalf of PG&E in this document, Exhibit 3?

11 A I don't know how to -- how to interpret that  
12 for you. My understanding is that I was a fact witness  
13 regarding the exhibits, and that's what this seems to  
14 say to me.

15 It's in a document that's entitled "Expert  
16 Witness Information," but my understanding all along was  
17 that I was a fact witness.

18 Q But you also served as an expert consultant to  
19 PG&E in the Anderson case, didn't you?

20 A As a -- yes, I did.

21 Q And you were paid for that work by PG&E,  
22 weren't you?

23 A Yeah. Again, my company was paid.

24 Q And in turn, you were paid a salary by  
25 ChemRisk, right?

1 A Of course.

2 Q Have you ever seen Exhibit 3 before?

3 A I don't recall.

4 MR. McLEOD: Can I get a copy of Exhibit 2?

5 MR. PRAGLIN: I think we gave it to you.

6 MR. McLEOD: The witness has 1 and 2. I don't have  
7 2.

8 MR. PRAGLIN: I'll loan you mine. Here.

9 I put one over on that side of the table. I'm  
10 not sure if it's in this stack here.

11 MR. McLEOD: No. That's my stack.

12 BY MR. PRAGLIN:

13 Q From what years were you a paid consultant to  
14 PG&E on the Anderson case?

15 A I believe that the company was hired in fall of  
16 1994 initially to help on the project. And we stopped  
17 working after the settlement in spring -- in summer, I  
18 guess, of -- of '96.

19 Q What month?

20 A June is my guess.

21 Q Now, if you stopped work in roughly June of '96  
22 on behalf of PG&E, why is it that you were still having  
23 contact with Dr. Zhang as of fall or winter of '96?

24 A Well, we had done a series of -- of technical  
25 reports and analyses that we submitted on our own for

1 publication after doing the work and creating a report  
2 in each case for PG&E. And so on our own, and for our  
3 own professional development, we -- we continued to  
4 correspond and follow through with the process of  
5 publication --

6 Q When you say --

7 A -- without -- without being paid.

8 Q When you say "we," you're talking about  
9 ChemRisk?

10 A I'm talking about the authors, the individuals  
11 who contributed to actually submitting the journal  
12 articles and going through the peer-review process,  
13 responding to that, and then making sure that the final  
14 report was as accurate as possible in the -- in the  
15 literature.

16 Q And does that answer apply to the Zhang '97  
17 article as well?

18 A Yes. I mean, we -- we assisted Dr. Zhang. I  
19 didn't have so much involvement after the settlement,  
20 but Tony Ye, because he had developed a -- a personal  
21 relationship with Dr. Zhang, basically followed through  
22 on the process that had been initiated during the trial,  
23 during the PG&E/Anderson case, and followed through  
24 to -- to its final publication, assisting Dr. Zhang in  
25 getting the article finalized.



1 Q When Tony Ye did this was he an employee of  
2 ChemRisk?

3 A I believe towards the end of '96 Tony Ye and  
4 Bill Butler formed a separate company and they -- they  
5 actually did follow up on that project, you know, in  
6 the -- in the publication process on their own.

7 Q Let's just talk about you and ChemRisk, leaving  
8 Tony Ye and Bill Butler aside for the moment.

9 After roughly June of '96 when ChemRisk stopped  
10 work as expert consultants for PG&E in the Anderson  
11 litigation, what involvement did you or ChemRisk have  
12 with Dr. Zhang in connection with his follow-up '97  
13 article?

14 A There was very little, if any, interaction at  
15 that point. The article had already been submitted to  
16 the -- to the journal for peer review and it was in the  
17 stages of -- I believe in the stages of final galleys by  
18 late 1996; so the bulk of the work and the peer-review  
19 process I believe had already occurred by the time the  
20 arbitration, the second arbitration, ended.

21 Q So the bulk of the work by ChemRisk in  
22 connection with the Zhang '97 follow-up article occurred  
23 while ChemRisk was still a paid consultant to PG&E; is  
24 that right?

25 A Yes, that's correct.

1 Q And didn't ChemRisk bill PG&E for its work in  
2 connection with the Zhang follow-up '97 article?

3 A Yes.

4 Q And included within those billings were your  
5 time, right?

6 A Some.

7 Q And also the time of Tony Ye?

8 A Yes.

9 Q And also the time of Bill Butler?

10 A Yes.

11 Q And also the time of Gwen Corbett?

12 A I believe so.

13 Q And also the time of Deborah Proctor?

14 A A little bit.

15 Q And also the time of various consultants having  
16 to do with the actual publication process, people  
17 involved in graphics or tables or figures, correct?

18 A I believe that's true.

19 Q Technical people, we can call them?

20 A Support staff, yes.

21 Q And all of that was billed to PG&E during the  
22 time of the Anderson litigation; isn't that true?

23 A Yes.

24 Q And your file as a witness, or as an employee  
25 of ChemRisk, was turned over to PG&E's lawyers during

1 the Anderson case for production to the plaintiffs,  
2 wasn't it?

3 MR. McLEOD: Well, I'm going to object on the  
4 grounds that the witness can't testify as to what was  
5 produced to the plaintiffs and what wasn't produced to  
6 the plaintiffs.

7 MR. PRAGLIN: Yes, that's not the question.

8 Q The question is isn't it true that ChemRisk's  
9 file was turned over to PG&E's lawyers during the  
10 Anderson case for production to the plaintiffs?

11 MR. McLEOD: And I'm going to object.

12 You haven't established a foundation that the  
13 witness can testify as to whether the entire ChemRisk  
14 file was turned over or whether this witness has  
15 knowledge regarding what was turned over and what was  
16 not turned over.

17 BY MR. PRAGLIN:

18 Q Can you answer the question?

19 MR. McLEOD: The question is overbroad.

20 THE WITNESS: There were -- there were files turned  
21 over to the plaintiffs.

22 BY MR. PRAGLIN:

23 Q Did you review those files?

24 A I don't really recall the -- the whole  
25 process. We -- we basically met with the attorneys and

1 showed them all of the information that we had and let  
2 them make the decision.

3 Q Which attorneys did you meet with?

4 A I don't remember, but it would have been  
5 probably the individuals from Haight, Brown & Bonesteel.

6 Q Would that be basically Gary Ottoson,  
7 Steve Hoch and possibly Robert Wilson?

8 A Possibly.

9 Q Anybody else that you can think of?

10 A Caroline Dee.

11 Q Anybody else you can think of besides her as  
12 well?

13 A No.

14 Q Did you meet with Greg Read of Sedgwick Detert  
15 regarding production of the ChemRisk file in the  
16 Anderson lawsuit?

17 A I don't believe so.

18 Q Did you talk with any of those attorneys about  
19 production of the ChemRisk file in the Anderson lawsuit  
20 in addition to these face-to-face meetings?

21 A I may have, but I don't recall exactly.

22 Q Was anything from the ChemRisk file withheld  
23 from production to the PG&E lawyers in response to the  
24 plaintiffs' request for the ChemRisk file in the  
25 Anderson litigation?

1 MR. McLEOD: Well, I'm going to object.

2 The witness doesn't have a foundational  
3 knowledge as to what was or was not withheld by the  
4 lawyers.

5 MR. PRAGLIN: No, no. Mr. McLeod, listen to the  
6 question. I'll say it again.

7 MR. McLEOD: I've listened to the question.

8 BY MR. PRAGLIN:

9 Q Here's the question. Was anything from the  
10 ChemRisk file withheld from production to the PG&E  
11 lawyers in response to the plaintiffs' request for the  
12 ChemRisk file in the Anderson litigation?

13 MR. McLEOD: And only insofar as --

14 MR. WILKINSON: Objection. Calls for speculation.

15 MR. McLEOD: Absolutely. Join in that.

16 Objection. Calls for speculation.

17 The witness can only testify as to whether or  
18 not he knows any ChemRisk files or documents were  
19 withheld. That's all. He can only testify as to his  
20 personal knowledge.

21 THE WITNESS: I don't know of any files that were  
22 withheld from the PG&E attorneys, no.

23 BY MR. PRAGLIN:

24 Q So whatever documents existed regarding the  
25 contacts and involvement by ChemRisk with Dr. Zhang were

1 turned over to the PG&E lawyers; is that right?

2 A As far as I know.

3 Q As far as you know that's correct?

4 A Yes.

5 Q And do you have any knowledge about what  
6 documents PG&E's lawyers in turn produced as the  
7 ChemRisk file to the plaintiffs in the Anderson  
8 lawsuit?

9 MR. WILKINSON: Objection. Vague.

10 THE WITNESS: I don't --

11 MR. McLEOD: It's far beyond the witness's personal  
12 knowledge.

13 THE WITNESS: That wasn't part of my role in the  
14 case, so I don't know.

15 BY MR. PRAGLIN:

16 Q Have you reviewed any documents in preparation  
17 for this deposition here today, outside of what you've  
18 produced in response to our subpoena?

19 A Yes.

20 Q What have you reviewed?

21 A I was given some documents. Well, I was given  
22 a document by Kirk Wilkinson which was the  
23 PG&E production. I was also given a series of  
24 depositions to read; I believe it was  
25 Dennis Paustenbach's, Deb Proctor and Brent Finley.

1 MR. McLEOD: For the record, those were provided by  
2 me.

3 BY MR. PRAGLIN:

4 Q Did you read all of those?

5 A Yes.

6 Q That's a lot of reading, isn't it?

7 A That was a lot of reading.

8 Q Thousands of pages, right?

9 A Certainly hundreds and hundreds of pages, yes.

10 I think that's it, the depositions and the --  
11 what -- what Kirk had produced of -- that was responsive  
12 to the requests, and the -- oh, and another document  
13 that he provided -- that my attorney provided me was  
14 this George Alexeeff memo from OEHHA regarding the Zhang  
15 study.

16 Q May I see it, please?

17 Let's do this, try and keep things orderly.

18 You just referenced "Kirk," you mean  
19 Kirk Wilkinson, right?

20 A For this document?

21 Q No. For the PG&E production.

22 A Oh, yeah. Kirk Wilkinson gave me this pile of  
23 documents.

24 MR. McLEOD: And for the record, I asked that  
25 Mr. Wilkinson provide those to Dr. Kerger.

1 MR. PRAGLIN: Okay. So let's do this.

2 As Exhibit 4, I'd like to attach the  
3 PG&E production, which goes Bates stamp numbers 1  
4 through 285.

5 (Plaintiffs' Exhibit 4 was  
6 marked for identification, a copy of  
7 which is attached hereto.)

8 BY MR. PRAGLIN:

9 Q Is Exhibit 4 a true and correct copy of what  
10 Mr. Wilkinson provided you for review?

11 MR. McLEOD: And for the record, again, that was  
12 provided by Mr. Wilkinson to me, not to Dr. Kerger.

13 THE WITNESS: Yes, it does.

14 BY MR. PRAGLIN:

15 Q That's a true and correct copy?

16 A I believe so.

17 Q I received a supplemental production from PG&E  
18 which was one Chinese article by Dr. Zhang. Did you see  
19 that one as well? It began with Bates stamp 286.

20 A I'm not sure.

21 Q You don't have it with you?

22 MR. McLEOD: Gary, what Bates stamp would that be?  
23 Would it be ChemRisk or what would it be?

24 MR. PRAGLIN: It would be BRP.

25 MR. McLEOD: BRP?



1 MR. PRAGLIN: It's BRP 286 through something. I'm  
2 not sure what the end number is.

3 MR. McLEOD: I don't think you got that.

4 THE WITNESS: I'm not sure.

5 BY MR. PRAGLIN:

6 Q Okay. You don't recall seeing it?

7 A I may -- I saw a lot of documents so I'm -- I  
8 may have seen it, but I don't recall.

9 Q All right. These depositions that you reviewed  
10 of Paustenbach, Proctor and Finley, did you read them  
11 cover to cover?

12 A Yes.

13 Q Did you read the exhibits, too?

14 A No, I didn't have the exhibits.

15 Q So for Paustenbach you read Volumes 1 and 2?

16 A Yes.

17 Q For Proctor you read Volumes 1 and 2?

18 A Yes.

19 Q For Finley, the depo is not even a week old; so  
20 what did you review, a draft?

21 A Yes, I got that yesterday.

22 Q And so you know from reading Dr. Paustenbach's  
23 testimony that he testified that there were certain  
24 documents that were withheld from production to the  
25 plaintiffs in the Anderson case, correct?

1 MR. WILKINSON: Objection. Assumes facts not in  
2 evidence, misstates the testimony.

3 BY MR. PRAGLIN:

4 Q Do you recall reading that testimony?

5 A I don't recall that exactly.

6 Q Were you aware that documents were withheld  
7 from production to the plaintiffs?

8 MR. McLEOD: Objection. Asked and answered.

9 MR. WILKINSON: Objection. Assumes facts not in  
10 evidence, misstates the testimony.

11 THE WITNESS: I -- I was not involved in that  
12 process, so no.

13 BY MR. PRAGLIN:

14 Q Who was?

15 A Again, we produced -- we allowed the attorneys  
16 to review and produce whatever files they found to be  
17 relevant or productive for their purposes. It's not up  
18 to us to make a decision on that. And so whatever they  
19 produced, they produced.

20 Q Was there more than one ChemRisk file on the  
21 Anderson/PG&E litigation matter, or was there just one  
22 file?

23 A Well, the central -- the central collection  
24 point was my office, the Irvine office.

25 Q Are you aware of a second file being maintained

1 somewhere by ChemRisk on the Anderson matter besides the  
2 central file at your office?

3 MR. McLEOD: I'm going to object to the term "file"  
4 as being vague, ambiguous and overbroad.

5 Are you referring as to whether or not ChemRisk  
6 employees in other offices might have maintained their  
7 own records within the confines of those offices?

8 MR. PRAGLIN: No, I'm not talking about duplicate  
9 copies. I'm talking about a separate file.

10 MR. McLEOD: What do you define "file" as?

11 BY MR. PRAGLIN:

12 Q Did you have a file number designated for the  
13 PG&E matter at ChemRisk?

14 A A job number you mean?

15 Q Job number is fine.

16 Did you have a job number?

17 A Sure.

18 Q Was there more than one job number?

19 A There were many.

20 Q Who decided how to put a job number on a task  
21 for the PG&E case?

22 A I did, usually.

23 Q How many job numbers were there?

24 A I don't remember. There were probably -- if  
25 you -- if you break down -- there were -- there was a --

1 there were sometimes a general contract number and then  
2 many sub job numbers. That -- each -- each -- each sub  
3 job number would be a separate job number that would  
4 be -- be, you know, a number somebody might put on their  
5 time sheet and that would correspond to a specific  
6 task. And there may have been, over the process of the  
7 year and a half that we worked on it, a couple -- a  
8 couple hundred different job numbers.

9 Q Is "job number" and "task number" used  
10 interchangeably at ChemRisk?

11 A Well, I think different people use the term  
12 differently. But, you know, technically there was a  
13 contract number and then a task number; so there may  
14 have been, for example, three or four different contract  
15 numbers that we brought into the process because there  
16 was different nature of the work, or different nature of  
17 the contracts. And -- and then this -- the sub job  
18 number or the task number would -- would be attached to  
19 each of those.

20 MR. PRAGLIN: Let's attach as Exhibit 5 this  
21 supplemental production that I received from PG&E, which  
22 runs Bates stamp BRP 286 through 321.

23 (Plaintiffs' Exhibit 5 was  
24 marked for identification, a copy of  
25 which is attached hereto.)

1 BY MR. PRAGLIN:

2 Q Do you have Exhibit 5 in front of you?

3 A Yes.

4 Q It's all in Chinese, isn't it?

5 MR. McLEOD: Well, just a minute. You put it in  
6 front of him and there's a bunch of pages. Give him a  
7 chance to look through it.

8 THE WITNESS: Except for the front page, yes.

9 BY MR. PRAGLIN:

10 Q Do you read Chinese?

11 A No, I don't.

12 Q Do you understand Chinese?

13 A No, I don't.

14 Q Do you speak Chinese?

15 A No, I don't.

16 Q And you don't think you've ever seen Exhibit 5  
17 before; is that right?

18 A I probably have seen this before because  
19 there's a code on it that would be consistent with my  
20 file coding system in Irvine.

21 Q On page BRP 286 of Exhibit 5 there's a star in  
22 the upper right. Do you see that?

23 A I do.

24 Q What's the significance of that star?

25 A That was part of our filing system in Irvine.

1 We called it the red star. And it was a way to keep  
2 from losing original documents.

3 We had a -- whenever we received an original,  
4 we stamped it with a red star, and that would be the  
5 file copy so that when copies were generated, anybody  
6 who had a black star copy was fine. Anybody who had a  
7 red star copy would be punished.

8 Q So if a document has a star on it, the ChemRisk  
9 star, there's a good chance that that document was at  
10 the ChemRisk office on the PG&E case; is that right?

11 A That's a definite sign that it went through my  
12 office and the -- the filing system in my office.  
13 Irvine. They didn't have that system anywhere else that  
14 I know of.

15 Q I want to go back for a moment to your  
16 testimony about the work that was done with regard to  
17 Dr. Zhang after roughly June of '96.

18 I'm trying to understand why ChemRisk stayed in  
19 touch with Dr. Zhang after the PG&E case was over. Can  
20 you explain that for me?

21 A I -- I think I already did, that -- to follow  
22 through on the publication process.

23 Q The publication process of the '97 article?

24 A Yes.

25 Q But isn't it true that the article had already

1 been submitted for publication as of roughly the end of  
2 1995?

3       A     Well, that's -- the first step is submitting  
4 it. It was submitted at the end of '95. Then it goes  
5 through the journal peer-review process. The journal  
6 peer review for -- for the short communication, I  
7 believe, was only one -- one peer reviewer, that's the  
8 usual procedure is that -- either the lead editor or --  
9 or a person that he chooses reviews the document,  
10 provides comments back to the original authors, usually  
11 takes two to three months to -- to generate the review,  
12 in my experience.

13               So then they -- we -- we would -- we would have  
14 received back the comments from the author, still  
15 probably during the time that the Anderson case was  
16 active, and translated that from English into Chinese,  
17 Tony Ye would have done that, communicated that to --  
18 back to Dr. Zhang, and -- and then gone -- gone through  
19 making revisions that would be responsive to any  
20 peer-review comments that we received from the editor.

21               And we would submit that final review on behalf  
22 of -- you know, translating again after it was agreed  
23 with Dr. Zhang what all the final modifications would be  
24 to the -- to the initial manuscript, that would be  
25 turned back into English and then resubmitted to the --

1 to the journal. Then it takes usually another three to  
2 six months to -- for them to figure out how they're  
3 going to queue that paper into the journal, what month  
4 and so forth they're going to present that.

5           And that process usually, you know, you  
6 generate a galley proof, which is the final already  
7 paginated and formatted version, consistent with how  
8 it -- it's going to be presented in the journal. That  
9 comes out months after you've done your final changes  
10 and they've been accepted.

11           And we were in that phase. In other words,  
12 the -- the final galley print would have been generated  
13 probably sometime in the last quarter, let's say of  
14 1996, which was after -- after the PG&E case was -- was  
15 settled. And -- and then it would have ultimately  
16 appeared in print in early '97. That's my understanding  
17 of the timing.

18           So there really wasn't much work to do other  
19 than proofreading the final galley print probably after  
20 the -- the June '96 time period.

21           Q     The work that you just described in getting the  
22 article published, were you involved in that work?

23           A     Yes.

24           Q     Was Tony Ye involved in that work?

25           A     Yes.



1 Q Was Bill Butler involved in that work?

2 A Yes.

3 Q And is it your testimony that that work by you  
4 three gentlemen with regard to getting the Zhang article  
5 of '97 published was not done on behalf of PG&E?

6 A You mean after June of '96?

7 Q Yes.

8 A Yes, it wasn't done -- it wasn't done as a paid  
9 consultant, as you'd call it, to PG&E. We did it on our  
10 own.

11 Q The work that ChemRisk did with regard to the  
12 Zhang article before June of '96 was done on behalf of  
13 PG&E, wasn't it?

14 A Yes. We billed our time that was spent doing  
15 the research and interacting with Dr. Zhang.

16 Q And so the decision to publish the Zhang '97  
17 paper and the submission to a journal was all done on  
18 behalf of PG&E, wasn't it?

19 MR. McLEOD: I'm going to object to the term "on  
20 behalf of PG&E" as being argumentative and overbroad.

21 It was Dr. Zhang's article.

22 There has been no foundation established that  
23 anything was done on behalf of PG&E. I suggest you get  
24 the underlying facts regarding what was done with  
25 Dr. Zhang and what wasn't done which Dr. Zhang wanted

1 done in terms of getting his work published.

2 The question is argumentative.

3 THE WITNESS: Doctor --

4 MR. PRAGLIN: Let me reframe the question for you.

5 Q Was all of the work done by ChemRisk with  
6 regard to the Zhang '97 paper done while ChemRisk was a  
7 paid consultant to PG&E?

8 MR. McLEOD: Well, I'm going to object. The  
9 question has been asked and answered.

10 He explained some work that was done after  
11 June of '96 that the witness recalls not being on PG&E's  
12 nickel.

13 MR. PRAGLIN: No. That's not the question.

14 I'll reask the question. The question talks  
15 about while ChemRisk was a paid consultant to PG&E.

16 I'll rephrase it for you.

17 Q Was all of the work done by ChemRisk with  
18 regard to the Zhang '97 paper done while ChemRisk was a  
19 paid consultant to PG&E?

20 MR. McLEOD: Other than what he's already testified  
21 to regarding work that was done after June of '96?

22 MR. PRAGLIN: Let's try it again.

23 Q Was all of the work done by ChemRisk in  
24 submitting the Zhang article of '97 for publication done  
25 while ChemRisk was a paid consultant to PG&E?

1 A In submitting it, yes.

2 Q And it's the follow-up or the follow-through on  
3 getting the final draft to the galley proof and then in  
4 final form that was done at a time after the PG&E case  
5 was settled; is that right?

6 A That's correct.

7 Q Did PG&E's counsel know that ChemRisk was  
8 involved in the publication of the Zhang '97 article?

9 MR. WILKINSON: Objection. Calls for speculation.

10 MR. MCLEOD: Absolutely.

11 You can ask him about any contacts he might  
12 have had with counsel regarding any work concerning  
13 Dr. Zhang, but the question as framed calls for  
14 speculation regarding counsel's knowledge.

15 MR. PRAGLIN: Let me rephrase it for you.

16 Q Did ChemRisk inform PG&E's counsel that  
17 ChemRisk was involved in getting the Zhang '97 article  
18 published?

19 A Yes, they knew.

20 Q It was in status reports, wasn't it?

21 A It was -- there was a specific task regarding  
22 it, yes.

23 Q What was the task number?

24 A I don't remember.

25 Q It would be a matter of record in the status

1 report or the bill, wouldn't it?

2 A That would be my expectation.

3 Q And in fact, ChemRisk billed PG&E's counsel for  
4 the work that ChemRisk was doing in getting the Zhang  
5 '97 article published, didn't it?

6 A Yes.

7 Q What percentage of time spent by ChemRisk on  
8 the Zhang '97 article was done while ChemRisk was a paid  
9 consultant to PG&E versus the follow-through that was  
10 done after roughly June of '96? And I'm only asking for  
11 an estimate.

12 A Well, in terms of what we -- we got paid for,  
13 100 percent of it was -- was billed of course before  
14 that because we didn't get paid for any work that we did  
15 to follow up after that.

16 We were following through on a commitment  
17 that -- that we had made, that Tony Ye had developed the  
18 relationship with Dr. Zhang, and it was our commitment  
19 to him to follow through with publication process; so we  
20 didn't bill or receive compensation for anything after  
21 the Anderson project ended.

22 Q And I'm asking for your estimate of the  
23 allocation of hours that were spent on the Zhang article  
24 project while a paid consultant to PG&E versus after  
25 roughly June of '96. Is it 90/10, is it 80/20, is it

1 70/30? What's the breakdown?

2 A I -- I have no quantitation of the number of  
3 hours that Tony and I and Bill Butler spent after  
4 June of 1996. I can tell you that the vast majority of  
5 time that was billed on that project was relating to the  
6 actual translations of the Chinese articles that Tony Ye  
7 had completed. That was probably 50 percent. And that  
8 was all of the -- that was all billed in 1995, to my  
9 best recollection.

10 I would say at least another 30 percent was  
11 time spent by us in analyzing and interacting with  
12 Dr. Zhang, again in 1995.

13 And then the other -- the other 20 percent that  
14 I would break down would be money that was paid to  
15 compensate Dr. Zhang for the time he was spending.

16 But again, most of the -- most of the work was  
17 completed, as far as the submission process, essentially  
18 all of the main analyses, translations and compilations  
19 of information that we did was completed before December  
20 of '95.

21 Q In other words, it was completed while ChemRisk  
22 was a paid consultant to PG&E, correct?

23 A Before, yes. Before June of '96.

24 Q I want to make sure I understood your breakdown  
25 of 50 percent for translation time by Tony Ye. Are you

1 saying that roughly 50 percent of all of the time billed  
2 by ChemRisk to PG&E was for translation by Tony Ye?

3 A Well, again, I was giving you an estimate. I  
4 was thinking in terms of dollars, so to speak, or  
5 percent of the budget.

6 Q Was there a budget for this Zhang article  
7 project?

8 A Yes.

9 Q What was the budget?

10 A Well, it was combined with -- it was a combined  
11 research topic involving finding more information on the  
12 Mexican and the Chinese epidemiology studies regarding  
13 groundwater chrome (VI).

14 From what I reviewed in -- in what  
15 Kirk Wilkinson produced, the files indicate about  
16 \$20,000 was the budget for the main task. It might have  
17 been when -- when we started an initial task, there  
18 might have been another 6- to 10,000; so I'd say  
19 probably \$30,000 for both the -- all the translations  
20 and work we did on the Mexican studies and all the  
21 translations and work we did on the Chinese studies,  
22 including Dr. Zhang's and others.

23 MR. McLEOD: That's just your estimate?

24 THE WITNESS: Again, I'm going on documents that  
25 were produced and my recollection.

1 BY MR. PRAGLIN:

2 Q Did PG&E ever refuse to pay for any of that  
3 roughly \$30,000 budget for the research on the Chinese  
4 and Mexican studies?

5 A No, I don't believe so.

6 Q So you believe that ChemRisk was paid roughly  
7 about \$30,000 for those two projects?

8 A Yes.

9 Q Of that \$30,000, how much was Dr. Zhang paid?

10 A I'm not sure.

11 Q Why do you say that?

12 A Well, I know the -- the initial agreement,  
13 based on reviewing these documents, was that Dr. Zhang  
14 was paid a -- a salary of \$250 a month for the first few  
15 months. But as I recall, there was a change in the --  
16 in the contract agreement after that point, and I'm  
17 not -- I don't know exactly what the -- I don't recall  
18 what the actual arrangement was.

19 But my suspicion or my estimate is that he  
20 probably was paid in the range of \$5,000 over the  
21 project for the work that he completed.

22 Q Have you ever seen a copy of that contract with  
23 Dr. Zhang?

24 A I probably did.

25 Q Where is it now?

1           A     It would be in the files of McLaren/Hart.

2           Q     Do you know where those files are?

3           A     The contract files?

4           Q     The files of McLaren/Hart that you just  
5 referred to. Do you know where they are?

6           A     Well, the contract files are kept separate from  
7 any project files at Mc- -- or they were at  
8 McLaren/Hart. McLaren/Hart is now bankrupt, as far as I  
9 know, and I don't know where any of their records for  
10 contracts would exist.

11          Q     Wouldn't a copy of the contract with Dr. Zhang  
12 have been signed off by PG&E or its counsel?

13          MR. WILKINSON: Objection. Calls for speculation.

14          THE WITNESS: No, not necessarily.

15          MR. McLEOD: Again, let's stick with what this  
16 witness knows. Don't ask him what PG&E's counsel did or  
17 didn't do.

18          THE WITNESS: There was a subcontract --

19          MR. McLEOD: You can ask him whether he knows a  
20 certain fact or not. Anything outside his personal  
21 knowledge --

22          THE WITNESS: My recall is that there was a  
23 subcontract between our company and Dr. Zhang. That  
24 would not have been signed by PG&E counsel. But that a  
25 task order, such as the one that was produced by



1 Kirk Wilkinson, would have been the -- the signed  
2 vehicle that was -- that was a contract between the  
3 PG&E attorneys and McLaren/Hart.

4 BY MR. PRAGLIN:

5 Q So there was a contract between PG&E and  
6 McLaren/Hart that authorized this task order of  
7 researching the Mexican and Chinese studies, right?

8 A Yes.

9 Q And then in turn, there was a subcontract  
10 between ChemRisk and Dr. Zhang, correct?

11 A That's correct.

12 Q And there was also a subcontract between  
13 ChemRisk and Dr. Hernandez for the Mexican study, right?

14 A Yes.

15 Q Where is the contract, subcontract, between  
16 ChemRisk and Dr. Zhang?

17 A I have no idea.

18 Q You didn't see it in all of these documents  
19 that have been marked as exhibits here and produced in  
20 response to our subpoena, did you?

21 A I didn't see any -- any contracts of  
22 McLaren/Hart, other than the ones between the attorneys  
23 and McLaren/Hart.

24 Q That would be the contract and not the  
25 subcontract, right?

1           A     Yeah.  And actually, that's not -- that's only  
2     the task order portion.  There's a larger portion of the  
3     contract that would be what would be kept by our  
4     contracts department and to my knowledge at  
5     McLaren/Hart.

6           MR. McLEOD:  When it existed?

7           THE WITNESS:  When it existed.

8     BY MR. PRAGLIN:

9           Q     And so as far as you know, nobody has produced  
10    to me a copy of the subcontract between ChemRisk and  
11    Dr. Zhang; is that true?

12          MR. McLEOD:  I'm going to object.

13                 The witness doesn't know what was or was not  
14    produced to you.  All the witness knows is what he's  
15    produced and what he reviewed in terms of the production  
16    for PG&E.

17          MR. PRAGLIN:  I'll rephrase it.  I'll rephrase it.

18          Q     Since the '95/'96 time frame, have you seen a  
19    copy of the subcontract between ChemRisk and Dr. Zhang?

20          A     I'm sorry, what time frame?

21          Q     Since the 1995/1996 time frame, have you seen a  
22    copy of the subcontract between ChemRisk and Dr. Zhang?

23          A     No.

24          Q     Since the 1995/1996 time frame, have you seen a  
25    copy of the subcontract between ChemRisk and

1 Dr. Hernandez?

2 A No.

3 Q And as you sit here now you don't know where  
4 those subcontracts are; is that true?

5 A That's correct.

6 Q Did ChemRisk inform PG&E's counsel that  
7 ChemRisk was entering into a subcontract with Dr. Zhang?

8 A I'd say they -- they knew that because the --  
9 the task order that I wrote specifically indicated that.

10 Q Did ChemRisk inform PG&E's counsel that  
11 ChemRisk was entering into a subcontract with  
12 Dr. Hernandez?

13 A I believe so. I believe they knew that.

14 Q Did you ever have conversations with PG&E's  
15 counsel about the status of the publication of the  
16 Zhang '97 article?

17 A I'm sure we kept them informed on our -- on the  
18 progress of our work, yes.

19 Q And did ChemRisk keep PG&E's counsel informed  
20 on the progress of ChemRisk's work with regard to the  
21 follow-up on Dr. Hernandez's Mexican article?

22 A Yes, we kept them informed.

23 Q Just as an example, you probably saw reference  
24 in Dr. Finley's deposition to his trip report to  
25 Mexico?

1 A Yes.

2 Q Was that trip report sent on to PG&E's  
3 counsel?

4 MR. WILKINSON: Objection. Calls for speculation.

5 MR. McLEOD: You can only ask the witness whether he  
6 knows from his own personal knowledge whether that was  
7 sent on.

8 BY MR. PRAGLIN:

9 Q So far as you know, was that trip report sent  
10 on to PG&E's counsel?

11 A As far as I know, they would have either been  
12 told about it or sent the document.

13 Q Did anyone go with Dr. Finley to Mexico on that  
14 trip?

15 A No, I believe he was alone. I mean, other than  
16 Dr. Armienta-Hernandez.

17 Q Was there a --

18 A He met her there.

19 Q Was there another trip to Mexico by a ChemRisk  
20 employee besides that one by Finley?

21 A No, not that I know of.

22 Q Was there another trip besides Finley's trip to  
23 Mexico in connection with ChemRisk's follow-up on the  
24 Mexican study?

25 MR. McLEOD: That he knows of.

1 MR. PRAGLIN: Yes.

2 THE WITNESS: Not that I know of.

3 BY MR. PRAGLIN:

4 Q Did Dr. Finley take photographs on his Mexican  
5 trip?

6 A I don't -- I don't recall that he did.

7 Q You've never seen a reference to photographs  
8 from the Mexican trip?

9 A I just don't recall.

10 Q Dr. Finley is a pretty smart guy, isn't he?

11 A I like to think so.

12 Q You read his testimony that he took a camera  
13 down to Mexico, didn't you?

14 A Yes.

15 Q Does it seem strange to you that he'd go all  
16 the way to Mexico, meet with Dr. Hernandez, see the  
17 yellow water, see the pig farmer and not take  
18 photographs?

19 MR. McLEOD: Hold on.

20 We're not going to answer that question.

21 The question is argumentative, it's  
22 speculative, it's completely improper.

23 You don't have to that answer that.

24 BY MR. PRAGLIN:

25 Q Did you ever ask Dr. Finley why he didn't take

1 photographs in Mexico?

2 A I -- I didn't even know he took a camera. That  
3 wasn't really his -- his task. It wasn't really in the  
4 task to do a photo history of the place.

5 His job in -- as far as I was concerned, as far  
6 as we had discussed, was to interview  
7 Dr. Armienta-Hernandez and interview others that might  
8 have had some additional background on the published  
9 articles that had been based on two different  
10 groundwater chromium plumes in different areas of  
11 Mexico. And he visited those sites and spoke with --  
12 with people who were knowledgeable or had some  
13 information about -- about those sites; so that was --  
14 that was a task.

15 Q Did anyone on behalf of ChemRisk or PG&E ever  
16 have contact with Dr. Hernandez after Dr. Finley left  
17 her in Mexico?

18 MR. McLEOD: As far as this witness knows?

19 MR. PRAGLIN: Right.

20 All of this is as far as you know.

21 MR. McLEOD: All right.

22 THE WITNESS: Probably.

23 BY MR. PRAGLIN:

24 Q What contact was there?

25 A I believe that myself and Gwen Corbett may have

1 had conversations with her afterwards, after Finley  
2 visited.

3 Q Tell me about those conversations. What was  
4 said to Dr. Hernandez and what was said by her in  
5 response?

6 A Well, I don't recall the specific  
7 conversations, but the topic of interest to us was urine  
8 data that was presented in her 1995 article and -- which  
9 had very different background concentrations in the  
10 unexposed group and concentrations reported in the -- in  
11 the exposed group that were very different from what we  
12 had seen in our -- using our methods.

13 So the inquiry was to request that she send us  
14 the original data and -- and information on the  
15 methodology she used to -- to make those urine chromium  
16 measurements.

17 Q How did she respond?

18 A I don't remember exactly. We -- we may or may  
19 not have received the actual data set and methodology  
20 information, but I -- I think she -- you know, we -- we  
21 didn't find anything very useful to be able to explain  
22 why her method came up with such different results from  
23 ours; so we -- we kind of gave up on trying to explain  
24 it.

25 Q So she did send something in response to your

1 request about these urine studies; is that right?

2 MR. McLEOD: Do you recall one way or the other?

3 THE WITNESS: I believe she did.

4 MR. McLEOD: Okay.

5 BY MR. PRAGLIN:

6 Q Where is that material?

7 A That would probably be in the files at  
8 McLaren/Hart.

9 Q You didn't see that material in the documents  
10 that have been attached as exhibits to your deposition,  
11 did you?

12 A No.

13 Q Were PG&E's attorneys in the Anderson case  
14 informed of the progress of your follow-up investigation  
15 with Dr. Hernandez about these urine studies, as you  
16 described it?

17 A I don't recall if it was ever specifically  
18 discussed or not because it was kind of a dead-end. We  
19 had looked into these -- these data that were already  
20 reported in the published account of the -- of  
21 Dr. Armienta-Hernandez and weren't able to really  
22 resolve our questions. And so there wasn't any work  
23 product or any document or useful information that was  
24 produced out of that interaction; so there wasn't really  
25 a file to be produced, so to speak.



1 Q How much was Dr. Hernandez paid for her work  
2 with ChemRisk?

3 A I believe initially we made a contract with an  
4 amount of \$8,000. And -- but after our -- our initial  
5 interactions, the -- the contract I think was curtailed  
6 at \$2,000 for the interactions that we had. And we --  
7 we -- you know, we stopped the contract because we  
8 didn't have any -- any further productive follow-up with  
9 her.

10 Q The \$2,000, was it paid to Dr. Hernandez by a  
11 check?

12 A I don't know. I -- I -- you know, my  
13 recollection is that she worked for a university and  
14 that she wanted the money to -- to promote her -- you  
15 know, to do her research, additional research in her  
16 university position. That's my recollection, that we  
17 paid the money -- McLaren/Hart paid the money to her  
18 university.

19 Q Was the payment by check?

20 A It's usually by check.

21 Q Who wrote the check? Was it someone at  
22 McLaren/Hart-ChemRisk or was it by PG&E or their  
23 lawyers?

24 A It would be somebody at central accounting --  
25 accounting in Sacramento of McLaren/Hart.

1 Q So the checks were written out of Sacramento  
2 for McLaren/Hart?

3 A Yes.

4 Q Do you know what bank McLaren/Hart used?

5 A No, I don't recall.

6 Q Have you ever seen a copy of that check?

7 A No.

8 Q You didn't see a copy in the materials that  
9 were produced in response to my subpoena, did you?

10 A No.

11 Q And who wrote the check or checks to Dr. Zhang,  
12 McLaren/Hart-ChemRisk or PG&E or their lawyers?

13 A That, again, would be the central accounting of  
14 McLaren/Hart-ChemRisk.

15 Q And the money that was paid to Dr. Zhang and  
16 Dr. Hernandez by ChemRisk central accounting was paid  
17 from the roughly \$30,000 that PG&E paid ChemRisk to do  
18 the follow-up on these Mexican and Chinese studies; is  
19 that right?

20 A Yes.

21 Q Why don't I mark a couple more documents and  
22 then we'll take a break.

23 I'm going to mark as Exhibit 6 an excerpt from  
24 the BRP production, which is, I believe, Exhibit 4, and  
25 this excerpt is just the bills of ChemRisk that we were

1 provided and the excerpts of the status reports of  
2 ChemRisk that we were provided. And I'm attaching it as  
3 Exhibit 6 so we have it all in one place. The Bates  
4 stamp numbers skip around but they're in sequential  
5 order of low on the top and high on bottom; so that's  
6 Exhibit 6.

7 (Plaintiffs' Exhibit 6 was  
8 marked for identification, a copy of  
9 which is attached hereto.)

10 BY MR. PRAGLIN:

11 Q Could you just take a look at Exhibit 6 for me,  
12 please, Dr. Kerger, and confirm for me that this is a  
13 collection of the bills and excerpts of the status  
14 reports that were sent to PG&E's counsel on the Anderson  
15 litigation?

16 A This looks like some of the billings -- billing  
17 records, yes.

18 Q It appears as though the status reports, for  
19 the most part, were addressed to Steve Hoch at Haight,  
20 Brown & Bonesteel; is that your recollection?

21 A Yes.

22 Q And why don't you just tell me, what was the  
23 procedure? When you send a status report, do you send a  
24 bill along with it?

25 A The -- there was -- there was a separate

1 invoice that contained all of the actual hours and  
2 totals, money totals, that were to be paid on the  
3 invoice that would be generated by central accounting at  
4 McLaren/Hart. And the PG&E attorneys wanted a very  
5 specific breakdown of all the costs by task and by  
6 person, and this represents the additional materials we  
7 created in -- at each monthly interval that would have  
8 fulfilled that -- that requirement.

9 Q Were you the person who signed off on most of  
10 these status reports to Steve Hoch on the Anderson  
11 versus PG&E matter?

12 A Yes.

13 Q And so you were informed about everything that  
14 ChemRisk was doing on behalf of PG&E during the Anderson  
15 matter; is that right?

16 A I believe that's true.

17 Q Would you be the person at ChemRisk who was  
18 most knowledgeable about what ChemRisk was doing with  
19 regard to the Anderson versus PG&E lawsuit on behalf of  
20 PG&E?

21 MR. McLEOD: All aspects?

22 BY MR. PRAGLIN:

23 Q All aspects at ChemRisk, yes.

24 A Probably.

25 Q And during the time that you were working for

1 PG&E on the Anderson matter, did you or anyone at  
2 McLaren/Hart-ChemRisk ever destroy any documents or  
3 evidence?

4 A Not to my knowledge.

5 Q Everything that was ever generated by ChemRisk  
6 on behalf of PG&E was turned over to PG&E's lawyers?

7 MR. McLEOD: Again, this is just what's within your  
8 personal knowledge.

9 And I'm going to also object to misstating the  
10 witness's prior testimony where you say "As far as you  
11 know, everything was turned over to PG&E's lawyers."  
12 The witness testified that files were made available to  
13 PG&E's lawyers. The witness has not testified that  
14 everything was turned over.

15 THE WITNESS: I'm sorry, I lost the question.

16 BY MR. PRAGLIN:

17 Q Sure.

18 Is there a difference in your mind between  
19 turning things over and making files available?

20 A Yes, probably.

21 Q What's the difference?

22 A Well, turning things over, I think, implies to  
23 me that I made a separate copy and handed it off to  
24 somebody. The -- the file that you -- you might  
25 refer -- that I might refer to as part of the PG&E work

1 that I did included thousands and thousands and  
2 thousands of pages, mainly of literature and other  
3 documents that we pulled together in our research  
4 process, perhaps 80 percent of which weren't  
5 particularly on point or important to any work product  
6 or anything that we actually developed, because that's  
7 our job was to research.

8           And it -- it's up -- it's not up to me to  
9 decide whether everything that I might have looked at  
10 would be relevant to production for a file. I can  
11 say -- I can tell the attorneys that and say look, I've  
12 got these ten file drawers full of literature, is that  
13 something that you want to produce as part of our file,  
14 because we looked at it, but these are the ones that we  
15 paid most attention to. And they would make a decision  
16 as to well, we'll make a copy of these that we paid most  
17 attention to, to think that that was responsive to any  
18 requests for production.

19           So again, the -- you know, we're talking about  
20 a very large volume of -- of research information, and  
21 it's not entirely up to me to decide what the legal  
22 requirements are, and I wouldn't be comfortable making  
23 that -- that choice; so that's what I did. I made -- I  
24 made the -- I described what the file -- what my file,  
25 quote-unquote, might involve, and then let the attorneys

1 make judgments on what -- what was the file for legal  
2 purposes.

3 Q Were you the person who handled most of the  
4 budgeting for ChemRisk with regard to the Anderson  
5 versus PG&E matter?

6 A I handled all of the budgeting.

7 Q So you were knowledgeable about the scope of  
8 work that ChemRisk was doing, weren't you?

9 A I was.

10 Q And how did you budget \$30,000 for this work on  
11 following up on the Hernandez and Zhang studies?

12 A Well, we did it in two stages. The first was  
13 to estimate about \$6,000, which is kind of an  
14 investigational budget, to find out the scope of  
15 information that's available through initial searches  
16 and contacts. And then from there we received  
17 documents, found out -- approximated how much it would  
18 cost to do the translations, pay for the translations or  
19 the amount of hours that it might take, got estimates  
20 from individuals who would do that work.

21 And then from there, you know, put -- put  
22 enough additional analysis time in there based on our --  
23 my experience that -- that would come up with a  
24 reasonable budget. And if we went over that budget, it  
25 was my job to watch to see what the spending was every

1 month. And once it got up to about 80 percent, if  
2 the -- if we were not going to be completed within the  
3 budget, then I would advise the attorneys and propose an  
4 additional amount that I thought would be appropriate  
5 for completing.

6 MR. McLEOD: In that respect you're talking about  
7 all your budgeting, not just for the Zhang --

8 THE WITNESS: Every single task would be treated  
9 that way.

10 BY MR. PRAGLIN:

11 Q So it's in your best interest to stay informed  
12 of what's happening on a project so you don't go over  
13 budget, right?

14 A It was my job.

15 MR. McLEOD: Can we take a break?

16 MR. PRAGLIN: Yes. One more question.

17 Q Have you seen in the materials that were  
18 produced in response to my subpoena a copy of the  
19 contract between PG&E and ChemRisk? Not the subcontract  
20 but the contract between PG&E and ChemRisk.

21 A Well, again, the -- the task orders that I  
22 wrote, which were specific -- specific scope of work,  
23 budget and schedule, those were what constituted our  
24 ongoing contracts on specific tasks. And so that --  
25 that is what -- while there may be -- may have been some



1 other master contract that involved communicating the  
2 terms and conditions and so forth, our day-to-day  
3 interactions, as far as continuing tasks or putting in  
4 new tasks, was based on that type of interaction, where  
5 we would put together a specific scope and a budget and  
6 have the PG&E attorneys sign off on those specific  
7 tasks.

8 MR. PRAGLIN: Okay. Let's take a break.

9 THE VIDEOGRAPHER: Going off the record. The time  
10 is 10:19.

11 (Off the record.)

12 THE VIDEOGRAPHER: Going back on the record. The  
13 time is 10:36.

14 BY MR. PRAGLIN:

15 Q All set to resume, Dr. Kerger?

16 A Yes, sir.

17 Q Earlier you had testified that Mr. McLeod gave  
18 you a copy of an E-mail from George Alexeeff regarding  
19 the Zhang '97 article. Do you recall that?

20 A Yes.

21 MR. PRAGLIN: Let's attach a copy of that as  
22 Exhibit 7.

23 (Plaintiffs' Exhibit 7 was  
24 marked for identification, a copy of  
25 which is attached hereto.)

1 BY MR. PRAGLIN:

2 Q When was the first time that you saw Exhibit 7?

3 A I believe it was about a month ago.

4 Q Do you know Dr. Alexeeff?

5 A Yes, I've met him before.

6 Q Pretty smart guy, isn't he?

7 A I think he is.

8 Q He's pretty high up at OEHHA, isn't he?

9 A That's my understanding.

10 Q OEHHA is the Office of Environmental Health  
11 Hazard Assessment, isn't it?

12 A Yes.

13 Q It's a division of Cal EPA, right?

14 A Yes.

15 Q And Exhibit 7 references a Jay, a person named  
16 Jay. Do you know this Jay?

17 A No.

18 Q Do you know Jay's last name?

19 A I think it's referenced somewhere in here at  
20 the end. I don't recall right now.

21 Jay B. I don't know -- I don't really know who  
22 Jay is.

23 Q And what was your reason for reviewing  
24 Exhibit 7?

25 A Because my attorney gave it to me.

1 Q Does Exhibit 7 change anything that you think  
2 about the Zhang '97 article?

3 A No.

4 Q You were kind enough to give us a copy of your  
5 CV. I'm going to attach that as Exhibit 8.

6 (Plaintiffs' Exhibit 8 was  
7 marked for identification, a copy of  
8 which is attached hereto.)

9 MR. McLEOD: Gary, the reason for the skipped pages  
10 that you wrote me about was just the way it printed out.

11 MR. PRAGLIN: Right. Thank you.

12 Q Is Exhibit 8 a true and correct copy of your  
13 CV?

14 A Yes. Unfortunately, I think it got printed out  
15 in a different format from the original Word 97 document  
16 and so it's -- the page numbers are jumbled and so  
17 forth. But I looked it over yesterday and it looks to  
18 be the contiguous text that constitutes my CV.

19 Q Is it current?

20 A October 2002. That's pretty current.

21 Q And everything in your CV is true, isn't it?

22 A To the best of my knowledge, yes.

23 Q You would never put anything untrue in your CV,  
24 would you?

25 A That wouldn't make sense for me, no.

1 Q And on page 2 of Exhibit 8, your CV, you  
2 reference your work with regard to the follow-up on the  
3 Chinese and Mexico studies, correct?

4 A Yes.

5 Q You say on page 2 of your CV, "Also  
6 investigated desert climate effects on exposure  
7 parameters, coordinated research with national and  
8 international experts on chromium toxicology, conducted  
9 collaborative research and interviews with  
10 epidemiologists examining chromium exposed populations  
11 in China and Mexico, and developed physiologically-based  
12 pharmacokinetics models examining the fate of hexavalent  
13 chromium in the human body."

14 Have I read that correctly?

15 A It's a hell of a sentence, isn't it?

16 Q It's a lot of letters. It's 14,000 points of  
17 Scrabble.

18 The physiologically-based pharmacokinetics  
19 models, that's the PBPK model?

20 A That's correct.

21 Q You didn't develop a PBPK model in connection  
22 with the Anderson litigation, did you?

23 A Actually, I worked with Ellen O'Flaherty to  
24 develop that model as part of the Anderson, yes.

25 Q Ellen O'Flaherty was another paid PG&E

1 consultant, right?

2 A Yes. She's a well-respected pharmacokinetic  
3 expert.

4 Q And didn't PG&E pay for the development of that  
5 PBPK model?

6 A Well, I wouldn't say that exactly. She -- she  
7 had already published a chromium pharmacokinetic model  
8 and she made some adaptations and further analyses using  
9 that -- that already existing -- what is essentially a  
10 set of algorithms, computer algorithms that model  
11 pharmacokinetics of chromium and looked -- looked at how  
12 that model would treat the -- the human pharmacokinetic  
13 data that we produced.

14 Q Didn't PG&E pay for the adaptations and further  
15 analyses for that PBPK model?

16 A Some of them they did, I believe.

17 Q Now, in this passage from your CV that I read  
18 where you refer to national and international experts on  
19 chromium toxicology --

20 Do you see that?

21 A Yes.

22 Q -- which experts were you referring to?

23 A Well, I was referring collectively to all the  
24 experts that I worked with, either -- who were either  
25 expert witnesses or consulting experts on this -- on

1 this particular project.

2 Q When you say "this particular project," which  
3 are you talking about?

4 A This is the -- the Anderson versus PG&E case.

5 Q So in addition to Dr. Zhang and Dr. Hernandez,  
6 which national and international experts are you  
7 referring to?

8 A Well, there were -- there were several of  
9 them. You want me to list them all?

10 Q Sure.

11 A Well, Dr. De Flora from Italy, Dr. Langard from  
12 Norway, Dr. Bidstrup from England, Dr. Patierno from  
13 George Washington University.

14 I'm trying to think if there were any other --  
15 oh, and of course Dr. O'Flaherty.

16 That -- you know, I think there were -- there  
17 were about a couple dozen experts that we either  
18 consulted with or that were listed as expert witnesses,  
19 and I'm not sure I'm going to give you a comprehensive  
20 list from my memory. But those are the -- those are the  
21 ones that I think would be representative of -- of what  
22 I would call the national and international experts on  
23 chromium toxicology.

24 Q So far as you know, aren't all of those  
25 experts, Silvio DeFlora, Sveere Langard,

1 Leslee Bidstrup, Steven Patierno and Ellen O'Flaherty,  
2 paid consultants to PG&E in either the Anderson or  
3 Aguayo litigation?

4 A I -- I don't know about Aguayo. I know that in  
5 the Anderson case each one of those individuals was an  
6 expert witness.

7 Q For PG&E, right?

8 A Yes.

9 Q They weren't the experts witnesses for the  
10 plaintiffs, were they?

11 A Not that I know of.

12 Q Now, you mentioned or you adopted your  
13 lawyer's statement at the outset of this deposition that  
14 during the '98/'99 time frame you were employed as a  
15 confidential litigation consultant for PG&E. Do I have  
16 that right?

17 A On the Aguayo case, yes.

18 Q So that involved chromium, right?

19 A Yes.

20 Q Were you paid for that work?

21 A Yes.

22 Q How many hours did you bill?

23 A I don't know. I didn't look that up, but my  
24 estimate would be that I billed around \$20,000 total  
25 over about a six-month period.

1 Q Did you have a file or a task order on that?

2 A I had a contract on that, yes.

3 Q Are you still fulfilling that contract or is it  
4 finished?

5 A The -- PG&E sends out annual contracts and I  
6 signed a contract in '98 when they first signed me on to  
7 the project, and in 1999. But in 2000 they didn't have  
8 any additional tasks for me and I didn't sign anything  
9 further after that.

10 Q Were you paid roughly the entire \$20,000?

11 A I believe I received all of -- all the payment  
12 for all of the invoices through my company.

13 Q What was the nature of the work that you did?

14 MR. McLEOD: Well, objection.

15 MR. WILKINSON: Objection.

16 MR. McLEOD: Work product.

17 MR. WILKINSON: Attorney work product.

18 MR. McLEOD: Instruct him not to answer.

19 BY MR. PRAGLIN:

20 Q Dr. Kerger, just so I understand the situation,  
21 as you sit here now as a witness in this Aguayo case,  
22 you're refusing to answer questions about the work that  
23 you did under contract that you were paid for by PG&E in  
24 the '98/'99 time frame?

25 MR. McLEOD: As a confidential litigation



1 consultant.

2 BY MR. PRAGLIN:

3 Q Is that true?

4 A I'm -- I'm following the advice of my attorney.

5 Q Did any of that work in '98/'99 relate at all  
6 to the Blue Ribbon Panel or the upcoming Blue Ribbon  
7 Panel?

8 A No.

9 Q Did any of that work relate to the Zhang  
10 article?

11 A No.

12 Q How about the Hernandez article, did any of  
13 that work relate to the Hernandez article?

14 A No.

15 Q Did any of that work relate to a follow-up of a  
16 chromium study?

17 MR. McLEOD: Well, I'm going to object in terms of  
18 "follow-up of a chromium study."

19 What study do you have in mind?

20 BY MR. PRAGLIN:

21 Q Well, for example, ChemRisk followed up on the  
22 Zhang and Hernandez chromium studies, right?

23 MR. McLEOD: I'm going to object to the term  
24 "follow-up" as being vague and ambiguous and overbroad.

25 What do you mean?

1 THE WITNESS: I'm not sure what you mean by  
2 "follow-up."

3 BY MR. PRAGLIN:

4 Q Didn't you use the term "follow-up" in your  
5 task order with PG&E in terms of following up on the  
6 chromium studies in Mexico and China?

7 A Oh, okay. Well, if you want to take what my --  
8 what I meant, we -- we evaluated that research by  
9 obtaining additional information from the authors at  
10 that time. And I did not do anything of that nature for  
11 the Aguayo case.

12 Q Do you have Exhibit 8, your CV, in front of  
13 you?

14 A Yes.

15 Q It says here on page 2 that you conducted  
16 collaborative research and interviews with  
17 epidemiologists, examining chromium exposed populations  
18 in China and Mexico.

19 Which epidemiologists are you referring to?

20 A Well, the -- there were a series of -- of  
21 individuals that I'm referring to there in the both  
22 Mexican and Chinese follow-up research that we did.

23 In Mexico we identified -- I think there were  
24 four authors that we attempted to contact or did  
25 contact. The one we initially spoke with was Dr. Neri,

1 N-e-r-i, and he was the lead author on several of the --  
2 the Mexican studies.

3           And -- and Dr. Armienta-Hernandez. While she's  
4 not an epidemiologist, she's somebody who published with  
5 Dr. Neri who is an epidemiologist, as I understand, and  
6 we followed up with her, as you know from Dr. Finley.

7           I think there was one other epidemiologist who  
8 was -- was too busy to talk to us and referred us to  
9 Dr. Neri that was in that same group of -- of the  
10 Mexican study authors; so my main contact in Mexico as  
11 far as interviews and follow-ups was Dr. Neri and  
12 Dr. Armienta-Hernandez.

13           In -- in China it was only Dr. -- Dr. Zhang,  
14 although we -- we did attempt to follow up with another  
15 study that was authored by Wang, et al., but were unable  
16 to find him or her.

17           And then the epidemiologist in -- in-house that  
18 we worked with was -- was Dr. Bill Butler.

19           Q     Did you ever contact either of the co-authors  
20 to Dr. Zhang on either of his two papers, the '87 or the  
21 '97 papers?

22           A     My understanding was that -- from conversations  
23 with Dr. Zhang was that the original author, co-author  
24 with him in the '9- -- the '87 publication is -- was  
25 dead at the time that we spoke with him in 1995.

1 Q That's Dr. Xilin, X-i-l-i-n?

2 A I don't remember which one it was, but it's the  
3 other author than Zhang on the '87 study.

4 Q So you didn't speak with that author.

5 Did you ever make contact with the other  
6 co-author on the '97 Zhang study?

7 A No, I didn't.

8 Q Did anyone at ChemRisk?

9 A Not to my knowledge.

10 My -- my understanding was that the -- the  
11 author that was listed on the '97 article was -- was  
12 deceased. But then -- I mean, afterwards, now, you know  
13 that there's a different first name, the ShuKun Li and  
14 the Xilin or whatever. I don't know.

15 What my understanding was is that he was  
16 listing Dr. Li posthumously on the 1997 article and  
17 that's the way he wanted to publish it.

18 Q So the Li that's listed on both articles is the  
19 same Li, the same person?

20 A I don't know now for sure, but that was -- my  
21 understanding was that it was at the time.

22 Q As of the time the '97 article was published,  
23 did anyone at ChemRisk ever determine whether  
24 Dr. ShuKun Li was dead or alive?

25 A No. We believed what Dr. Zhang told us.

1 Q Which is that he was dead as of the time of  
2 publication?

3 A Yes.

4 Q There's nowhere in the '97 article where it's  
5 indicated that Dr. Li is deceased, is there?

6 A I don't know. I don't -- I don't recall.

7 Q If you'd look at Exhibit 1 in front of you,  
8 which is the ChemRisk production, on page ChemRisk 188,  
9 you'll find the Zhang '97 article. I'm going to suggest  
10 that you put a Post-it on that, Dr. Kerger.

11 Would you agree that there's nothing on the  
12 face page or anywhere else in the '97 article that lists  
13 that Dr. Li is deceased?

14 MR. WILKINSON: Objection. The document speaks for  
15 itself.

16 MR. McLEOD: Yes.

17 THE WITNESS: I don't see anything that would  
18 indicate that, no.

19 BY MR. PRAGLIN:

20 Q Was anything ever published as a result of the  
21 contacts with the Mexican authors?

22 A You mean the ChemRisk work?

23 Q Yes.

24 A No.

25 Q Were publications ever begun in connection with

1 the ChemRisk follow-up with the Mexican authors?

2 A No.

3 Q During the time that ChemRisk was PG&E's paid  
4 consultant in Anderson, was ChemRisk ever involved in  
5 collaborating or organizing any scientific or laboratory  
6 research at the request of PG&E that was not produced to  
7 the plaintiffs?

8 MR. McLEOD: Well, I'm going to object again.

9 The witness has no personal knowledge as to  
10 what was or was not produced to the plaintiffs. The  
11 witness has repeatedly testified regarding what he made  
12 available to counsel, and the witness has repeatedly  
13 testified he does not know what was produced to the  
14 plaintiffs. You're asking him to testify to things way  
15 beyond his personal knowledge.

16 MR. PRAGLIN: I don't think so.

17 Q You know what I'm talking about, Dr. Kerger?

18 A I don't know.

19 Q You know Greg Read?

20 A I do know Greg Read.

21 Q Didn't Greg Read request that ChemRisk do some  
22 laboratory testing by SRI?

23 A Well, yeah. There was -- there was a contract  
24 with SRI that was part of our published research.

25 Q What's SRI?

1 A Stanford Research Institute.

2 Q And wasn't there a laboratory project that was  
3 requested by Mr. Read where a confidential report was  
4 sent by ChemRisk to Mr. Read involving chromium?

5 A I'm not sure what you're -- what you're  
6 referring to but the -- SRI did a study that we had --  
7 that we had suggested be done regarding the genotoxicity  
8 of hexavalent chromium in drinking water.

9 Q Was that study ever published?

10 A Yes.

11 Q Where?

12 A It was the journal of Environmental and  
13 Molecular Mutagenesis, Volume 28, pages 60 to 63.

14 Q What page of your CV?

15 A Well, it's not the real pages but it's -- it  
16 says page 21 at the --

17 MR. McLEOD: Go with the Bates number.

18 THE WITNESS: Okay. The Bates number is 209.

19 BY MR. PRAGLIN:

20 Q And which publication is it? How far down the  
21 page?

22 A The very last one, Mirsalis. Jon Mirsalis was  
23 the director of that study at SRI.

24 Q Was that paper funded by PG&E?

25 A A report version of that paper was, yes.

1 Q Let's attach as Exhibit 9 a private client SRI  
2 International report to Greg Read by SRI International,  
3 Bates stamped ChemRisk 610 through 628.

4 (Plaintiffs' Exhibit 9 was  
5 marked for identification, a copy of  
6 which is attached hereto.)

7 MR. PRAGLIN: Exhibit 9.

8 Q Is Exhibit 9 that report version of the  
9 Mirsalis publication that you just referenced?

10 A This is the report from SRI which -- in other  
11 words, it is the report documenting the results of their  
12 contract study that Greg Read, because he was in the Bay  
13 Area, he established the contract between his firm  
14 and -- and SRI.

15 Q So the contract was actually between Sedgwick,  
16 Detert and SRI?

17 A That's my understanding.

18 Q How is it that ChemRisk had this report in its  
19 files?

20 A Because they sent it to us.

21 Q Who did?

22 A SRI. I'm not sure, actually. SRI sent the  
23 report to Greg Read and Greg Read probably sent it to  
24 us.

25 Q Were there other studies involving chromium



1 that SRI did for PG&E or its counsel besides this one,  
2 Exhibit 9?

3 A Not to my knowledge.

4 Q And does the publication listed on the last  
5 item of page 21 of your CV reference this report,  
6 Exhibit 9, or is this a different research project?

7 MR. WILKINSON: Objection. Asked and answered.

8 THE WITNESS: Actually, I -- I'd like to correct the  
9 prior answer that I just gave.

10 This is -- this is the SRI International report  
11 which documents the results of the in vivo-in vitro  
12 hepatocyte DNA repair assay, which is actually one of  
13 two studies that SRI did, to my knowledge, regarding the  
14 genotoxicity of chromium (VI) in -- in water.

15 The second test, which I didn't have a copy of  
16 the SRI documents in my files, would have been the mouse  
17 micronucleus test results. Both this -- the results of  
18 this report, the data and outcome of this report, and of  
19 the other mouse micronucleus test results were both  
20 integrated into a -- the Mirsalis, et al., publication  
21 we just talked about and peer reviewed and published in  
22 the literature.

23 BY MR. PRAGLIN:

24 Q So this report, Exhibit 9, the research that's  
25 mentioned in this report was funded by PG&E; is that

1 right?

2 A Yes.

3 MR. McLEOD: If you know.

4 THE WITNESS: Yes, that's true.

5 BY MR. PRAGLIN:

6 Q Now, your current company is called HSRI,  
7 right?

8 A That's the short -- that's the abbreviation,  
9 it's Health Science Resource Integration.

10 Q So it bears no connection to this company  
11 SRI International?

12 A None whatsoever.

13 Q Were there other tests that were done by SRI  
14 besides the two that you've mentioned on behalf of  
15 PG&E?

16 A Not to my knowledge.

17 Q Where is the underlying data that is referenced  
18 in Exhibit 9?

19 A Well, a summary of the data I believe is -- is  
20 contained in this document, as far as the key results,  
21 but there would have been additional study documents  
22 that would be in the file of McLaren/Hart.

23 Q So you had them at one time?

24 A Yes.

25 Q You didn't see them among the items that were

1 produced to me in response to the subpoena for this  
2 deposition, did you?

3 A I did not.

4 Q And they weren't in the materials produced by  
5 PG&E in this case that you saw, were they?

6 A I did not see them.

7 Q Did McLaren/Hart-ChemRisk have any involvement  
8 in this work that was done by SRI International?

9 A Yes.

10 Q What involvement did McLaren/Hart-ChemRisk  
11 have?

12 A We collaborated with Dr. Mirsalis on the  
13 protocol, the design of the study.

14 Q When you say "we," who at ChemRisk did that?

15 A I believe Dr. Paustenbach and I both had a  
16 role. That's what I recall.

17 Q Were there ever discussions that you were a  
18 party to about whether this SRI work should be turned  
19 over to the plaintiffs in the Anderson litigation?

20 A I don't recall anything like that.

21 Q As far as you know, this SRI International  
22 documentation was provided to PG&E's counsel by  
23 McLaren/Hart-ChemRisk or by SRI International directly?

24 MR. McLEOD: Object. It's beyond the witness's  
25 personal knowledge.

1           He can't testify as to what SRI did or did not  
2 do with PG&E counsel. All he can testify is what he  
3 knows based on his situation at McLaren/Hart-ChemRisk.

4 BY MR. PRAGLIN:

5       Q     Well, I thought you told us, Dr. Kerger, that  
6 you knew that SRI sent Exhibit 9 directly to Greg Read?

7       A     Well, I know that would be the protocol because  
8 if the contract is with a certain individual, the -- the  
9 contract lab always sends it to them first.

10      Q     Was this report, Exhibit 9, among the materials  
11 that ChemRisk provided to PG&E's counsel for production  
12 in the Anderson case?

13      MR. McLEOD: Again, misstating the witness's  
14 testimony in that he has testified repeatedly they made  
15 their files available. He does not know one way or  
16 another what they took or did not take and what they  
17 produced or did not produce.

18      MR. PRAGLIN: That wasn't the question.

19      MR. McLEOD: Yes, it was.

20           Come on, Gary, you're just being way  
21 overbroad. Cut to the chase.

22 BY MR. PRAGLIN:

23      Q     Was Exhibit 9 among the materials that ChemRisk  
24 made available to PG&E's counsel for production to the  
25 plaintiffs?

1           A     Probably.  It was -- it has a code on it,  
2     again, that's consistent with the Irvine office.  It's  
3     got the star at the top, which means that it was part of  
4     our file.

5           Q     Are you aware of any discussions between PG&E's  
6     counsel and anyone at ChemRisk about withholding any  
7     documents from production to the plaintiffs in the  
8     Anderson litigation?

9           A     Am I aware -- I'm sorry, I'm trying to make  
10    sense of the question.  Can you restate it for me?

11          Q     Sure.

12                Are you aware of any discussions between PG&E's  
13    counsel and anyone at ChemRisk about withholding any  
14    documents from production to the plaintiffs in the  
15    Anderson litigation?

16          A     No.

17          Q     Were you ever a party to any discussion with  
18    PG&E's counsel about what of the ChemRisk file should be  
19    produced to the plaintiffs in the Anderson litigation?

20          A     It wasn't my decision.  I described the file to  
21    them and then they decided what to -- what would be  
22    copied and so forth.

23          Q     Exhibit 9 is labeled "Final Report."  Were  
24    there interim reports on this project?

25          A     Not that I recall.

1 Q Before you worked on the PG&E matter, were you  
2 involved with McLaren/Hart-ChemRisk on the New Jersey  
3 chromium contamination?

4 A No.

5 Q Not at all?

6 A Not at all.

7 Q Was the Anderson case the first chromium case  
8 that you ever worked on?

9 A No.

10 Q What year did you come to  
11 McLaren/Hart-ChemRisk?

12 A I started in January of '92.

13 Q While you were with McLaren/Hart-ChemRisk, was  
14 Dr. Paustenbach your boss, for lack of a better term?

15 A He was the -- he was in another office but he  
16 was the leader of the ChemRisk group at all times.

17 Q And did you keep him informed of what you were  
18 doing on the PG&E matter?

19 A On some matters I did and on others I didn't.

20 Q What matters did you not keep him informed on?

21 A Well, I was tasked from the attorneys with  
22 providing certain training materials that were for the  
23 attorney briefings, and certain other tasks that were  
24 training-oriented tasks that Dr. Paustenbach wouldn't  
25 need to be involved in because he was the most expensive

1 expert on the project and he had limited time to be able  
2 to spend because of course he's like the -- the main dog  
3 in the company.

4           So many of the -- much of the work that was  
5 done was coordinated by me. And the final products were  
6 generated without him ever seeing them but were peer  
7 reviewed by me or others in my group and then given to  
8 the attorneys, or presented to the attorneys, for  
9 example.

10       Q     Other than training the PG&E lawyers about  
11 chromium, were there any tasks that you didn't keep  
12 Dr. Paustenbach informed about on the PG&E case?

13       MR. WILKINSON:  Objection.  Vague.

14       THE WITNESS:  Well, I'd say most -- most of what I  
15 can recall falls under the training attorneys or  
16 training other non-toxicology experts about the  
17 literature on -- on hexavalent chromium or about the  
18 site information, the site conditions.

19       BY MR. PRAGLIN:

20       Q     Does ChemRisk's work with Dr. Zhang fall under  
21 the category of training attorneys or other toxicology  
22 experts about the hexavalent chromium literature?

23       A     Well, I'd say it falls under further research  
24 of the literature, which didn't necessarily involve  
25 any -- any direction from principals beyond me; so I

1 don't -- I don't know where -- if that answers your  
2 question.

3 Q What do you mean by "principals"?

4 A Well, for example, Dr. Paustenbach was the -- I  
5 think at the time he was the chief operating officer of  
6 McLaren/Hart and was a managing principal toxicologist  
7 at the company. I was a principal scientist as well.  
8 And Dr. Finley, I think, was a managing principal. Both  
9 of them were in the Alameda office. I was in the Irvine  
10 office. And if I needed to get them involved on a  
11 particular task in order to complete it, I would involve  
12 them. If I didn't particularly need their time, then I  
13 wouldn't.

14 So with -- with respect, for example, to the --  
15 the Zhang study, it doesn't surprise me that -- that  
16 Dr. Finley doesn't remember much, if anything, about the  
17 Zhang study because he was busy on other things and I  
18 never involved him in any of the research that we did or  
19 anything. Never apprised him of what the contacts were,  
20 what information was gathered. He probably did hear of  
21 it at one point or another, but he wasn't integrally  
22 involved in that process.

23 And neither was -- neither was  
24 Dennis Paustenbach.

25 Q Didn't you keep Dr. Paustenbach informed of the



1 contacts that McLaren/Hart-ChemRisk was making with  
2 Dr. Zhang and Dr. Hernandez?

3 MR. McLEOD: Are you talking about each and every  
4 contact or just generally?

5 MR. PRAGLIN: No. The status of the project.

6 MR. WILKINSON: Objection. Asked and answered.

7 THE WITNESS: I don't recall exactly. I'm sure that  
8 he knew -- he knew that we were following up on the --  
9 on the Mexican and the Chinese studies because that was  
10 in a meeting that I had had with the attorneys and  
11 Dr. Paustenbach after the first arbitration, they  
12 informed us that the judges found that information or  
13 the lack of information on those two topics to be of  
14 interest to them, and so he knew that that was an  
15 interest of the judges and something that I was going to  
16 follow up with.

17 BY MR. PRAGLIN:

18 Q Who was at this meeting?

19 A Again, I recall Dr. Paustenbach and I being  
20 there, and it would have been at least the Haight,  
21 Brown & Bonesteel attorneys, probably Steve Hoch and  
22 Caroline Dee.

23 Q Was it as a result of this meeting that the  
24 decision was made to contact Dr. Zhang and the Mexican  
25 authors?

1 MR. WILKINSON: Objection. Vague.

2 THE WITNESS: Not specifically Dr. Zhang but the --  
3 to try to follow up on that research and get further  
4 clarifications through whatever -- whatever channels we  
5 could -- we could find.

6 BY MR. PRAGLIN:

7 Q And PG&E's lawyers authorized that work at the  
8 meeting or thereafter?

9 A After the meeting, yes.

10 Q Was there just one meeting between PG&E's  
11 counsel and people at ChemRisk about the status of the  
12 contacts with the Chinese authors and the Mexican  
13 authors on the chromium studies?

14 MR. WILKINSON: Objection. Misstates the prior  
15 testimony, assumes facts not in evidence.

16 MR. McLEOD: What he really wants to know is how  
17 many meetings did you have with PG&E lawyers regarding  
18 doing this work or the status of the work, if you can  
19 recall.

20 THE WITNESS: In-person meetings?

21 BY MR. PRAGLIN:

22 Q Let's start with that.

23 A I -- I have no idea. A few, maybe, is my  
24 estimate. But if we met, that was only one topic that  
25 was the reason for us to meet.

1 Q And how many conversations did you have with  
2 the attorneys on that subject?

3 MR. WILKINSON: Objection. Vague.

4 THE WITNESS: I really don't recall.

5 BY MR. PRAGLIN:

6 Q More than a few, right?

7 A At least a few.

8 Q After ChemRisk stopped working for PG&E on the  
9 Anderson matter, I think you said in roughly June of  
10 '96, did you and Dr. Paustenbach discuss how ChemRisk  
11 should handle the still unfinished business of the  
12 publication of the '97 Zhang article?

13 A I don't -- I don't think that really came up as  
14 an issue because it -- as I explained, the -- the work  
15 had really already been completed before the -- before  
16 the case was settled and there was only the galley --  
17 the galley proof stage, which really doesn't involve a  
18 lot of work. It's one proofreading session and  
19 sometimes gathering a couple of references; so it  
20 wouldn't be something -- it wouldn't be an amount of  
21 work that would be on the screen of -- of significance  
22 to us.

23 Q Who was the peer reviewer of the Zhang '97  
24 article?

25 MR. WILKINSON: Objection. Vague.

1 THE WITNESS: I wouldn't know that. You're not  
2 allowed to identify the peer reviewer in most journals.

3 BY MR. PRAGLIN:

4 Q Who was the editor of the journal where the  
5 Zhang article was published?

6 A I don't remember.

7 Q How many journals was the '97 Zhang article  
8 submitted to?

9 A As I recall, it was submitted to two journals.

10 Q We know it was published in JOEM, right?

11 A Right.

12 Q That's Journal of Occupational and  
13 Environmental Medicine; is that right?

14 A I believe so.

15 Q Does Dr. Paustenbach have an affiliation with  
16 that journal, so far as you know?

17 A No, I don't think so.

18 Q Do you?

19 A No.

20 Q Does Dr. Finley?

21 A No.

22 Q Do you know who the editor was?

23 A No.

24 Q Do you know who the contact person for ChemRisk  
25 was at that journal?

1           A     Well, I know Tony Ye sent the letter and  
2 submitted the -- the article.

3           Q     Was anyone at ChemRisk other than Tony Ye  
4 involved in submitting the '97 Zhang article to JOEM?

5           A     Well, again, he physically wrote the letter and  
6 submitted the document.  If you're talking about the  
7 submission being creating the final document, he wasn't  
8 the only one, but he's the one who -- who took the lead  
9 on being the liaison for Dr. Zhang.

10          Q     So did anybody at ChemRisk speak with anyone at  
11 JOEM other than Tony Ye?

12          A     Not to my knowledge.

13          Q     Among the documents that were produced to me  
14 either by you or by PG&E there was no cover letter from  
15 ChemRisk or Tony Ye to JOEM.  Did you see that document  
16 in the materials produced to me?

17          A     No, I didn't have that in my file.

18          Q     Do you know where that letter is now?

19          A     I -- I know that it would have been part of the  
20 McLaren/Hart file, but I didn't have a copy of it.

21          Q     Was that letter in English or Chinese?

22          A     I believe it would have been both.

23          Q     So you saw a Chinese version of the letter of  
24 submission to JOEM for the '97 Zhang article?

25          A     I -- I believe I did but it's been seven years;

1 so I know that the format and the -- the content of the  
2 letter to both journals was the same. I have the -- I  
3 have the letter in my file that I produced to you that  
4 was addressed to Kaye Kilburn for the second journal,  
5 and it -- it referenced that there was an attachment in  
6 Chinese from Dr. Zhang authorizing the -- Tony to be the  
7 liaison for him in the United States. And I recall that  
8 that was -- that was transmitted the same way to the  
9 other journal.

10 Q We'll get to the Kilburn journal but before we  
11 do, I want to make sure I understand your testimony.

12 Was there a Chinese version of the submission  
13 letter to JOEM?

14 MR. McLEOD: I think, Brent, he's referring to your  
15 referring to the authorization from Dr. Zhang; is that  
16 right?

17 THE WITNESS: Yes.

18 BY MR. PRAGLIN:

19 Q And I'm talking about the cover letter that  
20 went to the journal along with the draft or the galley,  
21 whatever you want to call it, the earlier version of the  
22 published article. Was there a Chinese cover letter?

23 A I don't recall.

24 Q You don't recall seeing one, do you?

25 A No.

1 MR. PRAGLIN: Let's take a break for changing the  
2 tape and then we'll resume.

3 THE VIDEOGRAPHER: Going off the record. This is  
4 the end of videotape number one. The time is 11:18.

5 (Off the record.)

6 THE VIDEOGRAPHER: Going back on the record. This  
7 is the beginning of videotape number two. The time is  
8 11:21.

9 BY MR. PRAGLIN:

10 Q Dr. Kerger, have you ever been involved in  
11 publishing anything in JOEM?

12 A Not directly.

13 Q Indirectly you have?

14 A Well, I mean we talked about this article,  
15 which I assisted in the research on.

16 Q When you say "this article," you're talking  
17 about the Zhang '97 article?

18 A Yes.

19 Q Did you assist in the writing of that article?

20 A I would say I -- I contributed to some editing  
21 that went on.

22 Q In order to contribute to that editing, did you  
23 review hard copies of earlier versions of the '97 Zhang  
24 article?

25 A I'm sure I did.

1 Q You reviewed them in English, didn't you?

2 A Yes.

3 Q Where are they?

4 A They would be part of the McLaren/Hart file  
5 most likely if they -- again, we didn't -- it's not our  
6 policy to keep drafts of -- of documents because they  
7 will get -- inherently they will get taken as the  
8 current document if we retain earlier drafts; so we  
9 usually save over the file copy and always have the  
10 current working draft only in the -- in the -- on the  
11 computer.

12 So all drafts that would have been previous  
13 hard copy drafts would have been disposed of.

14 Q Thrown away?

15 A Thrown away.

16 Q Would you agree that among the materials that  
17 were produced to me for this deposition, either by you  
18 or by PG&E, there are no drafts with anyone at  
19 ChemRisk's handwriting on earlier versions of the Zhang  
20 '97 article?

21 A I believe that's correct.

22 Q But there were at one time, weren't there?

23 A Yeah, of course there were drafts.

24 Q You don't write an article like this Zhang '97  
25 article all in one sitting without revising it as it



1 goes along, do you?

2 A No.

3 Q How many drafts would there have been that have  
4 now been thrown away?

5 A I have no idea.

6 MR. WILKINSON: Objection. Assumes facts not in  
7 evidence.

8 BY MR. PRAGLIN:

9 Q Do you have any estimate?

10 A No.

11 Q It's at least one, right?

12 A At least one.

13 Q Could it have been a few?

14 A Possibly.

15 Q Could it have been five?

16 A Could have been.

17 Q Could it have been more than five?

18 A Maybe.

19 Q Could it have been more than ten?

20 A I don't know.

21 Q Who at ChemRisk was involved in editing these  
22 drafts?

23 A Well, as I recall, Dr. Butler, myself and  
24 Tony Ye were the primary peer reviewers of -- of the  
25 collaboration with Dr. Zhang.

1 Q Did ChemRisk collaborate with Dr. Zhang on the  
2 '97 Zhang article?

3 A Yes.

4 Q You would agree that ChemRisk is not given  
5 attribution in the Zhang '97 article as a collaborator,  
6 wouldn't you?

7 A That's true.

8 Q The name "ChemRisk" doesn't even appear on the  
9 Zhang '97 article, does it?

10 A No. Dr. Zhang chose to list himself, and what  
11 I understood to be a posthumous reference to Dr. Li only  
12 as authors on the paper and I respected that request.

13 Q Did Dr. Zhang ever write anything to that  
14 effect, that he wanted to be listed along with Dr. Li as  
15 the sole authors of the '97 article?

16 A I believe that he told us that and we didn't  
17 require written documentation.

18 Q When you say "he told us that," who did he say  
19 that to?

20 A Well, he said it understandably in Chinese  
21 to -- to Tony, and Tony communicated that to the rest of  
22 us.

23 Q So the only person you ever heard that from was  
24 Tony Ye; is that right?

25 A He would be our translator, yes.

1 Q Have you ever seen Dr. Zhang face to face?

2 A No, I have not.

3 Q Have you ever spoken with him over the phone,  
4 where you talked to him and he talked to you?

5 A Yes.

6 Q Did you understand what he said?

7 A He knew a few words of English, but Tony Ye was  
8 always on the line with us to translate my -- my  
9 language to him and vice versa.

10 Q Do you know if Tony Ye has ever met Dr. Zhang?

11 A Well, I think he knows him pretty well over the  
12 telephone but I don't think they ever met personally.

13 Q Do you know if Dr. Zhang ever visited the  
14 United States?

15 A I don't know.

16 Q Is Dr. Zhang dead or alive?

17 A My information, based on this latest subpoena  
18 request, is that he's dead.

19 Q Did that come as news to you?

20 A Yes.

21 Q Did ChemRisk want to be listed as an author or  
22 a contributor to the '97 Zhang article?

23 A I did.

24 Q Did you express that desire to anyone?

25 A Well, again, you know, when we're dealing with

1 an -- another researcher from another country, they have  
2 certain customs that -- that we approach cautiously and  
3 we ask them what they want, and in this case Dr. Li did  
4 not find it -- I mean Dr. Zhang didn't find it  
5 appropriate to include us as authors, and we didn't have  
6 any problem with that.

7 Q Did Dr. Zhang give a reason for not finding it  
8 appropriate to include anyone at ChemRisk as authors on  
9 the Zhang '97 article?

10 A As far as I know, that was just his choice.  
11 But you can ask Tony Ye, who would have had the  
12 conversation with him in his own language.

13 Q But was any reason given to you as to why  
14 Dr. Zhang didn't want you as an author or a  
15 contributor?

16 A Well, I can speculate.

17 Q I don't want you to speculate.

18 MR. McLEOD: Don't speculate.

19 BY MR. PRAGLIN:

20 Q Nobody wants you to speculate.

21 Did anybody say anything to you by way of  
22 explanation from Dr. Zhang about why he didn't want  
23 anyone else listed besides he and Dr. Li?

24 A No.

25 Q Were you proud of your contribution to the

1 Zhang '97 article?

2 A I think it was a -- it was a good scientific  
3 contribution, yes.

4 Q Did you tell PG&E's lawyers of this issue of  
5 whether you or someone at ChemRisk should be listed as  
6 an author or contributor to the Zhang '97 article?

7 MR. WILKINSON: Objection. Vague, assumes facts not  
8 in evidence.

9 THE WITNESS: I don't know if I ever discussed that  
10 with the attorneys.

11 BY MR. PRAGLIN:

12 Q Is it your understanding that JOEM is a  
13 publication of the American College of Occupational and  
14 Environmental Medicine?

15 A Yes.

16 Q Can we call that ACOEM as short for the  
17 American College of Occupational and Environmental  
18 Medicine?

19 A I think so.

20 Q Do you have any involvement with ACOEM?

21 A I know who they are. I know that some of my  
22 colleagues belong to that board or to that society, but  
23 I don't have any direct involvement with them.

24 Q Which of your colleagues have involvement with  
25 that society?

1           A     Joe Fedoruk.

2           Q     You've published with Joe Fedoruk since the end  
3 of the PG&E case about chromium, haven't you?

4           A     About chromium? I don't think so.

5           Q     What about benzene?

6           A     Benzene, yes. I've published with him about  
7 benzene and PCBs and a few other chemicals.

8           Q     Isn't Joe Fedoruk a partner of  
9 Dennis Paustenbach?

10          A     A partner? I don't know how you -- how do you  
11 characterize "partner," that he belongs to the same  
12 firm?

13          Q     Well, Paustenbach is a principal at Exponent,  
14 right?

15          A     At -- at Exponent in Menlo Park, yes.

16          Q     And what's Dr. Fedoruk's position?

17          A     Well, as of January 15th or so -- or I think it  
18 was February of this year, he joined Exponent in the  
19 Irvine office.

20          Q     Isn't that where Deborah Proctor works?

21          A     Yes.

22          Q     And did Dr. Fedoruk have anything to do with  
23 the publication or peer review or editing of the Zhang  
24 '97 article?

25          A     Not to my knowledge.

1 Q You never discussed it with him?

2 A I had no discussions with him about it.

3 Q Does Dr. Paustenbach have any involvement or  
4 affiliation with ACOEM?

5 A I don't believe so.

6 Q After the galley proofs came back from JOEM,  
7 what changes, if any, were made by Zhang or ChemRisk to  
8 them?

9 A I don't recall. I don't have a copy of that  
10 information; so -- as I recall, the changes were very  
11 minimal, but I don't recall what they were.

12 Q So would the majority of the Zhang '97 article  
13 have been written while ChemRisk was a paid consultant  
14 to PG&E?

15 A I think we already went over that, but yes, I  
16 believe that's -- that's real -- reasonable.

17 Q And other than possibly minor editing or  
18 formatting, was anything else done by ChemRisk on the  
19 Zhang '97 article after ChemRisk ceased being a paid  
20 consultant to PG&E in the Anderson litigation?

21 A I don't think there was anything substantial  
22 that we did after that, no.

23 Q Now, did you know whether any of your coworkers  
24 at ChemRisk continued to serve as paid consultants to  
25 PG&E after the Anderson arbitration?

1 A You mean within the company?

2 Q Yes.

3 A I don't think so.

4 Q So far as you know Dr. Paustenbach didn't  
5 remain a paid consultant to PG&E after the Anderson  
6 arbitration?

7 A In relation to Anderson?

8 Q Yes.

9 A I don't -- I don't believe we had any further  
10 contracts with PG&E after June of '96 regarding  
11 Anderson.

12 Q And would your answer be the same about  
13 Dr. Finley?

14 A Yes. I don't believe anybody in the company  
15 had any contracts regarding that case after June.

16 Q When did either Paustenbach or Finley begin  
17 working for PG&E on the Aguayo case, so far as you  
18 know?

19 A I don't know.

20 Q How many conversations did you have with  
21 Dr. Zhang, understanding that Tony Ye translated them  
22 all?

23 A Maybe a dozen.

24 Q How many of them took place after you were no  
25 longer a paid consultant to PG&E?



1 A I don't recall.

2 Q Were the majority of those conversations with  
3 Dr. Zhang while you were a paid consultant to PG&E?

4 A The majority of conversations that we had were  
5 prior to the end of 1995; so I was -- we were on  
6 contract -- McLaren/Hart was on contract with them, with  
7 PG&E at that time.

8 Q When you had these conversations with  
9 Dr. Zhang, were you always in your office or were you  
10 sometimes at another locale?

11 A I was sometimes at the Alameda office.

12 Q Were those the only two places, the Alameda and  
13 Irvine offices of ChemRisk?

14 A As far as I recall.

15 Q Were you ever on a conference call where  
16 Tony Ye was in another location in a conversation with  
17 Dr. Zhang and yourself?

18 A Yes.

19 Q Have you seen the phone bills that Tony Ye  
20 produced or that you produced from Tony Ye's phone?

21 A I don't think I produced any phone bills.

22 Q Maybe PG&E produced them.

23 MR. McLEOD: That's correct.

24 BY MR. PRAGLIN:

25 Q Why don't you look at Exhibit 4, page 165 and

1 166, please.

2 A 155?

3 Q 165 and 166.

4 A Sorry.

5 Q Do you see that that's a phone bill for  
6 Tony Ye?

7 A Yes.

8 Q The telephone number at the top, 510-527-9730,  
9 do you know whose number that is?

10 A I would guess it's Tony's.

11 Q It's not a McLaren/Hart-ChemRisk number, is  
12 it?

13 A No. With the time change to check -- to catch  
14 Dr. Zhang during the day, Tony would have to call at  
15 10 or 11 o'clock at night, usually; so he did make  
16 those -- many of the follow-up calls if he needed  
17 further information or clarifications, my understanding  
18 is he made them from home.

19 Q Where are the phone records for the telephone  
20 calls from McLaren/Hart-ChemRisk to Dr. Zhang?

21 A They would -- if we documented them, in other  
22 words, if we had a separate conference call set up  
23 through AT&T or some other provider, that would have  
24 been billed as a -- as a specific cost by -- by  
25 McLaren/Hart accounting, or in this case if it was a

1 home provider. But if it was -- if it wasn't a specific  
2 separately setup conference call, then it would --  
3 wouldn't be billed, it would be part of our -- the  
4 3 percent administrative charge I think they called it  
5 for overhead expenses, like telephone.

6 Q And would you agree that in the materials that  
7 were produced to me, either by you or by PG&E, there  
8 were no phone records from McLaren/Hart-ChemRisk?

9 A Yeah. Generally, we -- we wouldn't include  
10 phone records unless there was a specific conference  
11 call expense.

12 Q Were faxes sent to Dr. Zhang of the edits or  
13 rewrites of his article?

14 A My -- my expectation is to some extent that's  
15 probably -- probably the case, but you would have to --  
16 you would have to talk with Tony Ye about that. He --

17 Q You --

18 A He really did -- I think he did most of his  
19 interactions with Dr. Zhang by -- in conversations.

20 Q Were you on the line on any of these calls that  
21 are documented on Exhibit 4, BRP 165 and 166, from  
22 Tony Ye's telephone?

23 MR. McLEOD: Can you recall one way or the other?

24 THE WITNESS: I don't recall.

25 BY MR. PRAGLIN:

1 Q Did anyone from ChemRisk ever meet with  
2 Dr. Zhang?

3 A Not to my knowledge.

4 Q McLaren/Hart-ChemRisk had an office in China,  
5 didn't it?

6 A They had two offices in China.

7 Q Did anyone from the Chinese offices ever meet  
8 with Dr. Zhang?

9 A The -- my understanding is that someone from  
10 the Shanghai office did find Dr. Zhang and contacted him  
11 and asked him if he was interested in consulting with  
12 us. I forget what the name of that individual was. But  
13 I think there were one or two people at the Shanghai  
14 office that may have participated in that process.

15 Q Who made the request of the Shanghai office to  
16 find Dr. Zhang?

17 A I did.

18 Q And you don't remember who you spoke with?

19 A Well, I think it was in -- there was some  
20 reference to it in -- in the records that I produced.  
21 I'm recalling a name Zhu Guang or something like that,  
22 and Shaw Lin. Actually, Shaw Lin was in our Alameda  
23 office; so I think Zhu Guang was the name of the  
24 individual in Shanghai that we -- we interacted with  
25 initially.

1 Q Would you look at Exhibit 1, page ChemRisk 28,  
2 please. Is that a document that references those two  
3 individuals who were involved in contacting Dr. Zhang?

4 A Yeah. That's Yolanda Hsu and Zhu Guang.

5 Q And it says, "Brent Kerger and Shaw Lin will be  
6 calling for your assistance regarding the attached  
7 questions for Mr. Zhang, at 8:30 AM your time. Thank  
8 you," and then you signed off on it; is that right?

9 A Yes.

10 Q And that's on ChemRisk letterhead, right?

11 A This is my fax -- my fax page, yes.

12 Q And the questions that were posed to Dr. Zhang  
13 are attached as ChemRisk 29 and 30 to Exhibit 1; is that  
14 right?

15 A Yes. We faxed these -- this outline of  
16 questions to -- to our office there and they -- I'm not  
17 sure if they translated, they spoke -- spoke in Chinese  
18 what this said to him in their initial interactions or  
19 not. But we didn't have it translated at this stage.

20 Q Was there a face-to-face meeting with Dr. Zhang  
21 and someone from McLaren/Hart-ChemRisk International, or  
22 was all of that contact in China by phone as well?

23 A I believe that he came to the Shanghai office  
24 in our initial conversation and sat with one or both of  
25 the individuals that were listed on the fax in our

1 conversation.

2 Q Dr. Zhang sat with one or both of Yolanda Hsu  
3 and Zhu Guang?

4 A I believe that's true.

5 Q I understand that Yolanda Hsu is spelled H-s-u  
6 as the last name; is that right? That's the last name,  
7 H-s-u?

8 A That's what I have.

9 Q And the other person, would you spell it for  
10 me, please, because I can't quite make it out.

11 A Z-h-u is the first name, and then G-u-a-n-g.

12 Q How do you pronounce that?

13 A Guang is the best I can make.

14 Q Is that a man or a woman?

15 A Don't -- I don't recall.

16 Q And where does that person work?

17 A Well, I'm not sure where they work now, but  
18 McLaren -- McLaren/Hart International is where -- where  
19 they worked at this time.

20 Q And wasn't Dr. Paustenbach the director of  
21 McLaren/Hart's international operations in China?

22 A Not -- not to my knowledge.

23 Q You never heard that?

24 A No.

25 Q You've never seen that on his CV?

1           A     I may have seen something but I don't -- I  
2     don't recall that to be true.

3           Q     How long was this meeting between Yolanda Hsu  
4     and Zhu Guang and Dr. Zhang, so far as you know?

5           MR. McLEOD:   You mean the phone call or the --

6           MR. PRAGLIN:   No, I mean the face-to-face meeting.

7           MR. WILKINSON:  Objection.  Calls for speculation.

8           MR. McLEOD:   If you know.  If someone told you.

9           THE WITNESS:   I don't know.

10          BY MR. PRAGLIN:

11           Q     Did you have a conversation with Dr. Zhang  
12     while he was in ChemRisk's Chinese office?

13           A     Yes.

14           Q     How long was that conversation?

15           A     I would estimate probably 45 minutes to an  
16     hour.

17           Q     Was anybody else on your end?

18           A     I believe that Gwen Corbett was with me and at  
19     that time Shaw Lin was -- was translating.

20           Q     So Tony Ye was not there?

21           A     You know, I don't really know for sure but  
22     this -- this seems to indicate that Shaw Lin was the  
23     person acting as our -- as our translator; so that's  
24     what I'm going by.

25           MR. McLEOD:   Do you have any recollection one way or

1 the other who acted as your translator on that call?

2 THE WITNESS: No.

3 MR. McLEOD: Okay.

4 BY MR. PRAGLIN:

5 Q And this conversation occurred close in time to  
6 May 31, 1995?

7 A Yes.

8 Q Did you take notes of that conversation?

9 A Yes.

10 Q Did you produce them for us?

11 A Yes.

12 Q All of them?

13 A All of them that I had in my possession.

14 Q We have one page of handwritten notes that are  
15 Bates stamped ChemRisk 33 to Exhibit 1. Would you look  
16 at that, please? Do you have it there?

17 A Yes.

18 Q Are those your notes?

19 A This is one page of -- of my notes.

20 Q Was there more?

21 A Well, I would call ChemRisk 31 and 32, which  
22 has annotations on the questions that we had posed, also  
23 my notes.

24 Q So is all of the handwriting on ChemRisk 31, 32  
25 and 33 yours?



1 A Yes.

2 Q I'm not sure if I asked you this before. Did  
3 you draft these questions on ChemRisk 31 and 32?

4 A Yes, I believe I did.

5 Q Did anybody else help you draft these?

6 A Gwen Corbett and others at the company may  
7 have -- may have peer reviewed it or assisted.

8 Q I've been trying to locate Gwen Corbett and I  
9 haven't heard back from PG&E's lawyer. Do you know  
10 where she is now?

11 A I haven't heard from her in a couple of years,  
12 but I understand she's an elementary school teacher  
13 somewhere in the state.

14 Q In the Irvine area?

15 A I don't know.

16 Q Is her last name Corbett still?

17 A I don't know that either.

18 Q Did she have a maiden name?

19 A I think that is her maiden name.

20 Q Was the first telephonic conversation with  
21 Dr. Zhang where you had him in ChemRisk's China office a  
22 fairly important event?

23 MR. McLEOD: Well, I'm going to object to the term  
24 "important" as being vague and ambiguous and overbroad.

25 MR. WILKINSON: Objection. Vague.

1 MR. McLEOD: I mean, it is what it is.

2 BY MR. PRAGLIN:

3 Q It wasn't just a routine phone call to you, was  
4 it?

5 A No, it was an intriguing interaction with an  
6 international expert, somebody that -- it's not  
7 something that we would do every day and I thought it  
8 was -- it was -- I guess it was important to me.

9 Q And so after this 45- to 60-minute conversation  
10 with this important international expert, did you report  
11 your findings to PG&E's counsel?

12 A I probably -- I probably spoke to somebody at  
13 PG&E about it.

14 MR. McLEOD: Do you recall one way or the other  
15 whether you did?

16 THE WITNESS: Yes, I did.

17 BY MR. PRAGLIN:

18 Q Who did you talk to?

19 A I don't recall exactly who.

20 Q Was it a lawyer or was it somebody else?

21 A I don't recall. It probably -- probably was a  
22 lawyer.

23 Q And what did you tell them?

24 A Well, I told them that we had contacted  
25 Dr. Zhang and found out that he was upset about the 1987

1 article being chopped up and only a -- what he said was  
2 about one-fifth of the original work that he had put  
3 into the submission process had been actually published  
4 in the article. He was upset with that.

5 And I told him that -- he was -- he had  
6 indicated that he was interested in collaborating with  
7 us to clarify that article and -- and to possibly  
8 publish such a clarification.

9 Q The other four-fifths or so of Dr. Zhang's work  
10 were the seven manuscripts that you referred to earlier  
11 in your testimony, right?

12 A No.

13 Q What was the other work, then, that was not a  
14 part of the '87 publication?

15 A My understanding, based on the conversation,  
16 was that he had one particular report that he was  
17 referring to that he submitted to the Chinese Journal of  
18 Preventive Medicine and that they took selected portions  
19 and wrote some of their own text to complete the article  
20 and he had never seen it back after he submitted it, it  
21 just got published as they wanted it to be published,  
22 which is -- as I understand it, is not -- is -- is what  
23 typically goes on in the -- in a Communist publishing  
24 regime.

25 Q Did you ever see a copy of the document that

1 was submitted by Dr. Zhang to the Chinese journal?

2 MR. WILKINSON: Objection. Calls for speculation,  
3 vague.

4 BY MR. PRAGLIN:

5 Q In other words, the full document.

6 A He sent us what I understand to be that  
7 document, yes.

8 Q Did you ever see a translation of it?

9 A Yes.

10 Q Are you able to identify it in the materials  
11 that were produced, either by you or PG&E?

12 A Yes.

13 Q Is it the one that's in the supplemental  
14 production from PG&E?

15 Well, I'll tell you what. Why don't you just  
16 pull it out and identify it by Bates stamp for me,  
17 please.

18 MR. McLEOD: Do you want him to look at Exhibit 4?

19 BY MR. PRAGLIN:

20 Q Either 4 or 1 and 4, whichever it requires,  
21 Dr. Kerger.

22 MR. McLEOD: Take your time, just look at 1 and 4.

23 BY MR. PRAGLIN:

24 Q I assume you're looking for the English  
25 translation, right?

1 A Right.

2 MR. McLEOD: Start with 1 and then go to 4.

3 THE WITNESS: I believe it was in Number 1, the  
4 document that's -- the translation of which starts on  
5 116.

6 BY MR. PRAGLIN:

7 Q ChemRisk 116?

8 A Yes.

9 MR. McLEOD: Of your first production; is that  
10 correct, Brent?

11 THE WITNESS: Yes.

12 BY MR. PRAGLIN:

13 Q There's some writing in the margin and also  
14 some underlining on the document that begins on  
15 ChemRisk 116. Is that your writing?

16 A Some of it is.

17 Q And the actual translation runs from  
18 ChemRisk 118 through 137; is that right?

19 A I believe so.

20 Q When the '97 Zhang article was published the  
21 material in this early Zhang publication, Bates stamped  
22 ChemRisk 118 through 137, that was omitted from the '87  
23 article, was not included in the '97 article either, was  
24 it?

25 MR. WILKINSON: Objection. Vague and compound --

1 MR. McLEOD: Argumentative --

2 MR. WILKINSON: -- assumes facts not in evidence.

3 MR. McLEOD: -- assumes facts not in evidence.

4 Sorry.

5 THE WITNESS: I'm not sure. I never did a -- a  
6 point-by-point comparison to figure -- figure out that.  
7 I wouldn't be able to answer that for you.

8 BY MR. PRAGLIN:

9 Q Was an effort made by anyone to include from  
10 this early version of Dr. Zhang's work pre-1987 article  
11 in the 1997 Zhang article?

12 MR. McLEOD: Are you talking about the text? Are  
13 you talking about the data?

14 MR. PRAGLIN: I'm talking about anything right now.  
15 And if something was included, then we'll talk about it.

16 I'll rephrase my question for you.

17 Q This translation of Zhang's complete 1987  
18 article that's Bates stamped ChemRisk 118 through 137,  
19 did anyone make an effort to include anything from this  
20 document in the '97 Zhang article?

21 MR. WILKINSON: Objection. It's still vague.

22 MR. McLEOD: Still vague and ambiguous.

23 But you're talking about including any of the  
24 data, any of the text, any of the findings and  
25 conclusions?

1 MR. PRAGLIN: Yes.

2 THE WITNESS: Yes.

3 BY MR. PRAGLIN:

4 Q Who made that effort?

5 A Dr. Zhang and all -- the -- Dr. Zhang and --  
6 and each of us who contributed to the clarification  
7 of -- of the scientific issues in the '97 short  
8 communication.

9 Q When you say "the '97 short communication,"  
10 isn't that the '97 Zhang article, or is that something  
11 different?

12 A It is the same article, but I guess what I'm  
13 inferring here is that because it is a short  
14 communication format that we chose to submit, we didn't  
15 have the -- it wasn't possible for us to include another  
16 15 pages of information that might have been excluded  
17 from the 1987 paper. It was meant as a brief recap and  
18 focused analysis that clarified a partial reporting of  
19 this evidence that was in an international -- you know,  
20 in a Chinese journal; so it wasn't our -- it wasn't our  
21 goal to try to republish everything. It was our goal to  
22 clarify what the implications of the groundwater  
23 hexavalent chromium contamination was from an  
24 epidemiologic standpoint.

25 Q Just as an example, on ChemRisk 124 of this

1 Zhang early version, there is a table, Table 1,  
2 correct?

3 A Correct.

4 Q And this is the table of the data on the  
5 concentration of chromium in the underground water of  
6 the contaminated area for at least five of the villages  
7 over time, correct?

8 A It's for combinations of the villages, yes.

9 Q For the village that was 1.5 kilometers away  
10 from the chromium plant, it looks like it's two  
11 villages, one is called JinChangBao and the other is  
12 Nuer River, it's the first column. Do you see that?

13 A Right.

14 Q For the year 1965, the chromium concentration  
15 in the groundwater is listed as .6 to 10 parts per  
16 million, right?

17 A Yes.

18 Q That data isn't included in the '97 Zhang  
19 article, is it?

20 A Actually, it is.

21 Q Where?

22 A Actually, this -- this information in  
23 particular is only a subset of the data that's included  
24 in other reports that Dr. Zhang sent us, and so that's  
25 an example of where we took information that was



1 available elsewhere than in this article and integrated  
2 as much data as we could identify from -- from what  
3 Dr. Zhang had in his files.

4 Q Well, if we look at this page, ChemRisk 124 of  
5 Exhibit 1, and compare it to the Table 1 that's in the  
6 '97 Zhang article, which appears at ChemRisk 190, can  
7 you show me anywhere that this concentration for the  
8 JinChangBao and Nuer River Villages of .6 to 10 parts  
9 per million chromium is included in the '97 Zhang  
10 article?

11 MR. WILKINSON: Objection. Vague, argumentative,  
12 asked and answered.

13 MR. McLEOD: And the documents speak for  
14 themselves.

15 THE WITNESS: The -- the data that's presented in  
16 Table 1 indicates a frequency of detection of chromium  
17 exceeding the -- what was the European standard of  
18 50 parts per billion for each of the specific villages.  
19 That's in Table 1.

20 And then on the subsequent page, 191, is  
21 Figure 2, which provides concentration versus frequency  
22 of detection for all of the villages that were in the  
23 line of downstream contamination from the alloy plant.

24 This information in my view provides a much  
25 more comprehensive data set than what's represented in

1 124.

2 BY MR. PRAGLIN:

3 Q So isn't it true that the entry for the closest  
4 villages of .6 to 10 parts per million on page 124 of  
5 Dr. Zhang's earlier work was not included in his '97  
6 article?

7 MR. McLEOD: I'm going to object. That  
8 mischaracterizes the witness's testimony.

9 BY MR. PRAGLIN:

10 Q Go ahead, Dr. Kerger.

11 A No, that's not true.

12 MR. WILKINSON: Asked and answered twice.

13 BY MR. PRAGLIN:

14 Q Show me where in the '97 article it's included,  
15 those numbers, .6 to 10 parts per million.

16 A Okay. As you see on page 190, there are  
17 actually separate accounts of what the data were for  
18 JinChangBao, Nuer River Village and the other three.  
19 Okay. If you want to just use that as a point of  
20 comparison, the 1965 data.

21 Q Yes.

22 A Okay. Now, this data on page 124 combines both  
23 of those villages, as far as the data.

24 Q Okay. I understand what you're saying.  
25 It actually combines it and averages it,

1 doesn't it?

2 A On -- on 124?

3 Q No. On 190.

4 A We do provide an average there, yes.

5 Q So the entry in the first column on page 124 of  
6 0.6 to 10.0 parts per million does not appear as those  
7 numbers in the '97 article; isn't that true?

8 MR. WILKINSON: Objection. Asked and answered  
9 three times, argumentative.

10 MR. MCLEOD: And the documents speak for  
11 themselves.

12 THE WITNESS: No, I think that's wrong. It's --  
13 it's represented in Figure 2 and in Table 1, a more  
14 complete accounting than is presented in -- in -- on  
15 page 124.

16 BY MR. PRAGLIN:

17 Q So let's take those two items one by one.

18 On Table 1 of the '97 article, this is  
19 ChemRisk 190, isn't it true that the numbers 0.6 to  
20 10.0 parts per million do not appear?

21 A There's -- there's not a -- we don't -- we  
22 don't list the range in that -- in that table. We  
23 provide the range information on a frequency chart,  
24 which is Figure 2.

25 Q And Table 1 on the Zhang '97 article was

1 prepared by ChemRisk and not by Dr. Zhang; isn't that  
2 true?

3 A No.

4 Q Who prepared it?

5 A It was prepared as a collaboration between us.

6 Q Where is the Chinese version of Table 1 that  
7 made its way into the '97 Zhang article?

8 A I don't -- I don't have it. But again, most of  
9 the interactions that we had with Dr. Zhang were by  
10 telephone, and Tony Ye would probably be able to tell  
11 you more specifically.

12 Q Who physically prepared Table 1 as it appears  
13 in the Zhang '97 article?

14 A Probably Tony Ye.

15 Q It wasn't Dr. Zhang, was it?

16 A I think that all of the English manuscript and  
17 the figures were -- were kept by us because we were the  
18 ones who were compiling the English version.

19 Q When the document that went to JOEM for  
20 publication was sent, it was typed on a computer,  
21 right?

22 A Probably.

23 Q It was typed on a ChemRisk computer, wasn't  
24 it?

25 A Probably.

1 Q Not a Zhang computer, was it?

2 A I don't know that Zhang had a computer.

3 Q And going back to Figure 2 on Exhibit 1,  
4 ChemRisk 191, isn't it true that those histograms don't  
5 represent the range of concentration 0.6 to 10.0 parts  
6 per million for 1965 for the JinChangBao and Nuer River  
7 Villages?

8 A No, that's not true.

9 Q Let me ask you this. Those boxes on ChemRisk  
10 191, those are called histograms, aren't they?

11 A Yes.

12 Q That's the correct scientific term, isn't it?

13 A Yes.

14 Q Those histograms don't even go up to 10 parts  
15 per million, do they?

16 A Actually the last category is a greater than 5;  
17 so yes, they do include -- they would include anything  
18 greater than 5.

19 Q Doesn't the last category show less than 5?

20 A Well, it says 5 and then a -- a less-than karat  
21 which, based on the previous categorizations, we gave  
22 ranges; so this is meant to reflect 5 -- 5 or higher.

23 Q Okay. So if the range for those two villages,  
24 JinChangBao to Nuer River, was 0.6 to 10 parts per  
25 million, that means that there was at least one reading

1 that was 10 parts per million, right?

2 A Right.

3 Q Where is that 10-part-per-million reading  
4 reflected in the histograms on ChemRisk 191? It's not,  
5 is it?

6 MR. McLEOD: Again, the question has been asked and  
7 answered. This is getting argumentative.

8 THE WITNESS: Yeah. I -- I -- you would have to ask  
9 Tony Ye if, in their final compilation of the data, they  
10 were able to resolve the problem that's indicated on  
11 ChemRisk 124 that's the Nuer River reference was  
12 Nuer River Village and whether or not all of the data  
13 that was included was actually within the community or  
14 not.

15 It wouldn't surprise me if there were data in  
16 these initial reports that might have been included to  
17 be complete that really didn't focus on the same  
18 community-specific analysis that we were attempting to  
19 clarify the data with.

20 So, for example, if a monitoring well piece of  
21 data might have showed up with 10 parts per million at  
22 the edge of the community, Dr. Zhang may have included  
23 that in this original compilation of data, but that may  
24 not have been a production well or any kind of  
25 irrigation well, and at that point we may have made the

1 decision not to present that as a -- as an exposure  
2 concentration for the epidemiology study. It wouldn't  
3 be -- it wouldn't be appropriate.

4           So those kind of -- those kind of decisions are  
5 exactly what our collaboration was about, which was to  
6 make the analysis, which, in 124 and in the associated  
7 pages, was really kind of a -- a compiled description of  
8 an environmental contamination process, combined with a  
9 mortality analysis that was a little more global of the  
10 entire area.

11           And then in 191 and 190 we were bringing that  
12 and focusing it down to who were the population exposed,  
13 what are the mortality data corresponding to those  
14 people who we know had some level of exposure above a  
15 benchmark standard which, in this case, was the  
16 European 50 part per billion standard, and again,  
17 bringing -- bringing the epidemiology more in focus with  
18 what the contamination evidence was.

19           So that's -- that's my interpretation of why  
20 the data might vary. You know, you can ask Tony Ye  
21 to -- to verify that, but that's my understanding.

22 BY MR. PRAGLIN:

23           Q     Were you involved in the preparation of the  
24 histograms on ChemRisk 191?

25           A     I don't recall. I may have been.

1 Q There's a sketch of those histograms in the  
2 documents that were produced. Is that your sketch?

3 MR. McLEOD: Do you have a document number?

4 MR. PRAGLIN: Not handy.

5 Q Do you recall making a sketch of those  
6 histograms?

7 A Yeah, I recall there being a document that had  
8 some histogram sketches. That was one of the  
9 discussions that Tony and Bill Butler and I had on how  
10 to present the data that we -- that we were aware of.

11 Q Who made those histogram sketches?

12 A I don't recall if it was me or Tony. Probably  
13 one -- one or either of us.

14 Q So isn't it true that on ChemRisk 191 there's  
15 no entry as high as 10 parts per million?

16 A Frankly, I don't -- I don't know if -- if it's  
17 just not visible on -- on this, you know, if one is such  
18 a -- a slight sliver on this scale that you can't see it  
19 or if it's not there. I think Tony probably would have  
20 the -- may -- may have the underlying data to -- to  
21 answer that question, but I don't.

22 Q You don't see an entry for 10 parts per million  
23 on ChemRisk 191, do you?

24 MR. McLEOD: Hold on.

25 That mischaracterizes and misassumes his



1 testimony.

2 He's pointed to the histogram on the far right  
3 of the Nuer River Village chart.

4 THE WITNESS: Yeah, I don't -- it doesn't -- it  
5 doesn't appear visible to me.

6 BY MR. PRAGLIN:

7 Q How many wells tested as high as 10 parts per  
8 million for one of those two villages that were closest  
9 to the plant?

10 A Well, in 1965, again, this is the 1965 data  
11 presented, but the -- the data is indicated as -- as the  
12 frequency of wells over the benchmark of 50 parts --  
13 50 parts per billion and reflected as a frequency; so in  
14 Table 1 we don't indicate that. And in Figure 1  
15 there's -- there doesn't appear to be any substantial  
16 number of wells in 1965 that were above -- above 5.

17 Q Well, how many were above 5?

18 A I don't know.

19 Q On Exhibit 1, ChemRisk 124, for the year 1974  
20 for those same two villages that are closest to the  
21 plant, JinChangBao and Nuer River, there's an entry for  
22 parts per million of chromium. What is it?

23 A It says 70.5.

24 Q 70.5 parts per million, right?

25 A Uh-huh. Yes.

1 Q How high is that in terms of the MCL in  
2 California for .05?

3 A That's very high. That's about -- if you use  
4 50 parts per billion, it would be I think, what, 14,000,  
5 something like that.

6 Q About 14,000 times the safe drinking water  
7 level in California, right?

8 A Something like that.

9 Q Pretty high, right?

10 A Well, I mean, yeah, it's -- it's -- it's that  
11 much higher.

12 Q Isn't it true that this entry of 70.5 parts per  
13 million chromium for those two villages closest to the  
14 plant never made its way into the '97 Zhang article?

15 A It wasn't important to our analysis, no. I  
16 think we represented that the data were the 1965  
17 information when the initial intervention was taken.

18 Dr. Zhang did the most comprehensive analysis  
19 of all the wells in the region, is my understanding, in  
20 1965. And while spot testing of already closed and  
21 contaminated wells may have occurred in the -- in later  
22 years, that would not reflect on the -- the  
23 epidemiological issue of who was exposed and at what  
24 relative concentrations.

25 Q Was it important to your analysis to find out

1 if people ever drank that water that was 70.5 parts per  
2 million chromium?

3 A I'm pretty sure nobody drank that water.

4 Q How do you know?

5 A Because Dr. Zhang had described to us that in  
6 1965 the reason that -- that he identified this -- this  
7 problem was that people reported to the -- what was the  
8 public health station that he managed the appearance of  
9 yellow water in certain wells. And -- and that, you  
10 know, this is a developing country. When people see  
11 yellow water they think sewage is in my water, urine,  
12 and so they don't drink it.

13 Q What was the socioeconomic status of those  
14 people in those two villages, JinChangBao and Nuer  
15 River, that were one and a half kilometers from the  
16 plant in China?

17 A Well, as I understand it, this was a farming  
18 village, all -- in fact, all of them along this path of  
19 the Old Nuer -- Nuer River were small farming villages  
20 of, say, 1,000 to 3,000 people in population each. And  
21 those were -- that's all I can say.

22 Tony Ye may have some more information on  
23 demographics more specific than that, but they were  
24 agricultural communities for the most part, is my  
25 understanding.

1 Q Weren't they poor people?

2 A Well, if --

3 MR. McLEOD: That's argumentative.

4 THE WITNESS: -- farmers are poor, I guess you could  
5 call that.

6 I don't know. I -- you know, farmers --  
7 agricultural community in Communist China? I guess, you  
8 know, as far as capitalist society, rich or poor,  
9 everybody in Communist China is pretty much poor in  
10 comparison; so that's what I'd say.

11 BY MR. PRAGLIN:

12 Q Did you do any research into the socioeconomic  
13 status of the people in these villages that Dr. Zhang  
14 studied?

15 MR. McLEOD: Other than his conversations with  
16 Dr. Zhang?

17 BY MR. PRAGLIN:

18 Q Yes. Other than your conversations.

19 A I -- I personally did not, other than reading  
20 his reports. Now, Dr. Butler and Tony Ye may have had  
21 further conversations, but I'm not specifically  
22 recalling any.

23 Q Do you know if anyone at ChemRisk did any  
24 research into the socioeconomic status of the people in  
25 these villages that Dr. Zhang studied, other than your

1 conversations with Dr. Zhang?

2 A Again, Bill Butler was the chief epidemiologist  
3 on the project who was in charge of daily conversations  
4 with Tony Ye when he was working on the project. He has  
5 the expertise and I trust that he had those  
6 conversations -- he may have had such conversations, but  
7 I wasn't -- I don't recall having a specific discussion  
8 with him about that.

9 Q Was it your understanding from Dr. Zhang that  
10 he was upset that more of this early version of his 1987  
11 publication that's Bates stamped ChemRisk 118 through  
12 137 was not included by the Chinese journal?

13 A I think that was in part it, but my general  
14 understanding is that it was both not complete and also  
15 not clearly presented, and therefore wasn't the type of  
16 contribution to the literature that he had hoped it  
17 would be.

18 And based on all the questions that we posed to  
19 him, he recognized -- again, I don't think he ever  
20 received a final copy of that article from the  
21 government, to my knowledge; and so I guess he was  
22 operating -- thinking that that information was out  
23 there in the literature mistakenly.

24 Q What was your impression of Dr. Zhang from  
25 speaking with him?

1           A     He seemed like an intelligent scientist.

2           Q     What was his background?

3           A     He had the equivalent of a medical degree from  
4     China.  And had some training in public health,  
5     epidemiology.

6           Q     Did you ever tell him that you disagreed with  
7     anything in this early publication that he made,  
8     ChemRisk 118 through 137?

9           A     Well, I don't -- I don't recall if I ever put  
10    it that way.  I think I would have probably -- you know,  
11    being that I was working in a -- as a -- a collaboration  
12    with him and trying to be respectful, I would have -- if  
13    I had a disagreement, I would have asked him the  
14    questions to be able to understand where he was coming  
15    from, and, you know, if I disagreed, then I disagreed.  
16    But I wouldn't say you're -- you know, you're wrong.  I  
17    would just present him with other information if I  
18    thought it was relevant for him to consider, based on  
19    what my understanding was.

20          Q     How was the price set for how much he would be  
21    paid for his work?

22          A     Well, initially it was set at \$250 a month just  
23    to be able to provide the Chinese copies of the -- of  
24    the papers for the first three months, is my  
25    understanding.  And then I don't have a specific -- I

1 don't have a real specific recollection but I -- I  
2 believe the further interactions were probably somewhere  
3 in the range of like \$75 an hour as an individual  
4 consulting rate.

5 Q Who set that rate?

6 A That was set directly with Dr. Zhang between  
7 McLaren/Hart and Dr. Zhang.

8 Q Who set it with him? Who at McLaren/Hart?

9 A I think that we advised with what the -- our  
10 international office had said would be a -- a  
11 professional rate for a scientist -- you know, a  
12 scientific consulting in the Shanghai office, and had a  
13 range from them. And then Tony I think spoke with --  
14 with Dr. Zhang and agreed on whatever that rate was.

15 Again, I don't recall exactly what it was but  
16 as to -- my estimate would be around \$75 an hour.

17 Q Just by comparison, how much are you charging  
18 me today for this deposition for your testimony as an  
19 expert?

20 A Well, my -- my standard rate for depositions is  
21 \$350 an hour.

22 MR. MCLEOD: First-year associate.

23 BY MR. PRAGLIN:

24 Q So you didn't set the rate of \$75 an hour with  
25 Dr. Zhang?

1           A     Again, I participated in the process and -- but  
2     it was a negotiation or an agreement between probably  
3     myself, contracts and Dr. Zhang.

4           Q     So did he initially ask for more than \$75 an  
5     hour and ChemRisk negotiated him down to that?

6           A     No. I don't think he had ever encountered  
7     consulting before, at least not outside of his country,  
8     and so he didn't know what would be a fair rate. And  
9     that's why we advised with others in the McLaren/Hart  
10    International offices to find out what would be a  
11    reasonable range.

12          Q     Did ChemRisk require that Dr. Zhang submit  
13    bills for his work?

14          A     Yes.

15          Q     So did you get bills?

16          A     They -- we would have received bills, probably.

17          Q     Where are they?

18          A     They would probably be at the  
19    McLaren/Hart-ChemRisk accounting division. Wherever  
20    their -- wherever those records now lie would be where  
21    they are.

22          Q     Did you read Dr. Paustenbach's testimony, that  
23    he said that McLaren/Hart-ChemRisk's documents would be  
24    somewhere in a dumpster somewhere?

25          A     I did read that.



1 Q Is that your understanding, that all of those  
2 records have been destroyed?

3 A I have no idea.

4 Q And did you require that Dr. Zhang account for  
5 any expenses in connection with his subcontract with  
6 ChemRisk?

7 A That was a requirement of the contract.

8 Q Was time and expenses listed on his bills to  
9 you?

10 A I don't recall specifically but I -- I believe  
11 they were.

12 Q Did his bills cross your desk?

13 A Yes, probably.

14 Q Did you approve them all?

15 A Yes.

16 Q How many bills did he send?

17 A I don't recall specifically, but probably three  
18 or four.

19 Q Were they in English or Chinese?

20 A I don't remember.

21 Q Did you involve Tony Ye in translating the  
22 bills?

23 A If they were in Chinese, I probably did.

24 Q As you sit here now, do you have a recollection  
25 of seeing a Chinese bill?

1           A     Well, as I think about it further, the first  
2 three months that I told you about when he was initially  
3 under contract, the billing occurred through the  
4 McLaren/Hart Shanghai office, and so we did receive  
5 invoices in English through the system, you know,  
6 through the computer system of the company where they  
7 invoiced -- he invoiced -- Dr. Zhang invoiced  
8 McLaren/Hart Shanghai. And subsequently after we  
9 determined an hourly rate and signed him up individually  
10 as a consultant directly with the McLaren/Hart office --  
11 offices in the United States, he submitted bills to us  
12 in Irvine, I believe.

13          Q     Did you ever talk to Dr. Paustenbach about the  
14 fact that McLaren/Hart-ChemRisk signed a contract with  
15 Dr. Zhang from China?

16          A     I doubt it.

17          Q     Did you know that Dr. Zhang listed McLaren/Hart  
18 International Environmental Protection Engineering  
19 Company of the United States as a company with whom he  
20 was a consultant?

21          A     I didn't know that prior to reviewing these  
22 documents.

23          Q     Have you ever seen a copy of his Web site  
24 listing himself as a consultant of the McLaren/Hart  
25 International Environmental Protection Engineering

1 Company of the United States?

2 A I never have.

3 Q Is that a different company than  
4 McLaren/Hart-ChemRisk International, or did he just get  
5 the name wrong?

6 A Well, I don't think ChemRisk was part of the  
7 international, it was McLaren/Hart Environmental  
8 Protection Engineering Corporation, or something like  
9 that, was the official name in China, as I understand  
10 it. And they were -- there were different corporate --  
11 specific corporate names in China, Australia, Mexico and  
12 I think in Europe at that time as well, there were some  
13 other international attempts at establishing offices.

14 But ChemRisk -- when we call it ChemRisk, which  
15 was a division of McLaren/Hart, didn't have -- as far as  
16 I know had no offices or no -- no presence in China or  
17 in Mexico, only in Australia, and I'm not sure if there  
18 were -- if there was a ChemRisk presence anywhere else.

19 Q Let's attach as our next exhibit, Exhibit 10, a  
20 copy of Dr. Zhang's Web site.

21 MR. McLEOD: What time you want to break for lunch?

22 MR. PRAGLIN: Right after this exhibit, how's  
23 that?

24 MR. McLEOD: Fine by me.

25 (Plaintiffs' Exhibit 10 was

1           marked for identification, a copy of  
2           which is attached hereto.)

3   BY MR. PRAGLIN:

4           Q     Have you ever seen Exhibit 10 before?

5           A     No.

6           Q     Dr. Kerger, I'm going to help you out a little  
7           bit because it's a little bit faint in a couple of  
8           places.

9                     On the upper portion of the document it says  
10          Professor Zhang Jian Dong. Do you see that?

11          A     Yes.

12          Q     Is his last name Zhang?

13          A     My understanding is -- is that's -- that's the  
14          last name but they list it first.

15          Q     When you spoke with him over the phone, how did  
16          you address him?

17          A     Dr. Zhang.

18          Q     What's his first name?

19          A     I -- I don't -- I don't know.

20          Q     How did he address you?

21          A     Well, it was in Chinese, so I don't -- I don't  
22          recall.

23          Q     You said he knew a few words in English. What  
24          words did he know?

25          A     Like simple things like "Thank you," and -- I

1 don't -- I don't really remember. I just remember him  
2 knowing a few words after -- at -- as we went on down  
3 the line of having conversations with him, he -- he  
4 attempted to -- to insert some English here and there.

5 Q Did he have a lawyer involved in negotiating  
6 the subcontract with ChemRisk?

7 A I don't know.

8 Q You never heard that he did?

9 A I don't think so.

10 Q Was any effort made to explain to him whether  
11 \$75 an hour was a fair rate?

12 A I think that we -- in agreeing on a rate for  
13 him, we had the conversation as to where that -- where  
14 that suggested rate came from, and he didn't have any  
15 problem with that. I think he thought it was generous.

16 Q Why do you say that?

17 A Because he agreed to it readily.

18 Q What did he say?

19 A I don't remember.

20 Q And do you see at the bottom portion of  
21 Exhibit 10 where the last bullet item, Dr. Zhang says  
22 that he's a consultant of the McLaren/Hart International  
23 Environmental Protection Engineering Company of the  
24 United States?

25 A Yes.

1 Q The picture on the upper third of the Web site,  
2 Exhibit 10, is a picture of a book. Did you know  
3 Dr. Zhang had a book?

4 A I did not.

5 Q This is the first you've heard about it?

6 A Yes.

7 Q Did he have other scientific fields of interest  
8 of which you were aware?

9 A I -- I didn't inquire, so I don't know.

10 MR. PRAGLIN: Why don't we take a lunch break.

11 THE WITNESS: Okay.

12 THE VIDEOGRAPHER: Going off the record. The time  
13 is 12:28.

14 (Lunch recess.)

15 THE VIDEOGRAPHER: Going back on the record. The  
16 time is 1:35.

17 BY MR. PRAGLIN:

18 Q All set, Dr. Kerger?

19 A Yes.

20 Q Do you recall that you're under oath?

21 A I do recall that.

22 Q Since the time that you stopped being an expert  
23 for PG&E in '98 or '99, have you spoken with  
24 Kirk Wilkinson or any other PG&E lawyer for any reason?

25 A Yes.

1 Q How many times?

2 A Well, in connection with this, probably two or  
3 three.

4 Q Who did you speak with?

5 A Kirk Wilkinson.

6 Q Anybody else?

7 A I believe we came across Rene Tatro on the  
8 street and said hello once while we were going to lunch.

9 MR. McLEOD: That was with me, Gary, just to save  
10 you the --

11 THE WITNESS: Those are the only three incidents  
12 that I'm recalling right now.

13 BY MR. PRAGLIN:

14 Q Separating conversations when your lawyer was  
15 present, Mr. McLeod, did you have conversations with  
16 Mr. Wilkinson?

17 A Yes.

18 Q How many? Was it those two to three?

19 A Yes.

20 Q What was discussed?

21 A Well, I -- when I got the first subpoena  
22 regarding the Blue Ribbon Panel and it said Aguayo on  
23 it, I immediately was -- was -- was going to -- thought  
24 to call Kirk Wilkinson because he was the project  
25 leader, the contact that I had worked with previously on

1 that case. And I assumed that that was something that  
2 related to, you know, the Aguayo case, and so I called  
3 him and asked him how to respond to it.

4 Q What did he say?

5 A He said read it and produce the documents that  
6 are responsive to it.

7 Q When you found the documents that you thought  
8 were responsive, did you send them to Kirk Wilkinson?

9 A I sent a copy to him.

10 Q Before you produced them to me?

11 A No. I produced them to the attorney -- I mean  
12 to the -- I guess they call it the court reporter  
13 service in Florida, and then I called Kirk and told him  
14 that I had done so and he said well, could you provide  
15 me a copy, and I said -- I did so.

16 Q Did you send a cover letter with them?

17 A To Kirk?

18 Q Yes.

19 A I don't think I did. I think I just copied the  
20 cover letter I had put on -- to the court reporter along  
21 with the -- what was attached and stuck it in the mail.

22 Q And that was the first contact that you've had  
23 with him since roughly the '98/'99 time frame --

24 A Yes.

25 Q -- on this chromium case?



1           A     Yes.

2           Q     What was the next contact that you had with  
3 him?

4           A     Again, it was in relation to the second -- the  
5 second request for documents. I think this was  
6 regarding Dr. Zhang's -- you know, the Dr. Zhang  
7 requests. And at that time we discussed -- you know, I  
8 said well, I don't know, I'm not comfortable just  
9 producing all of these documents, and he said that he --  
10 he could not advise me on it because he was not my  
11 attorney, and he advised that I get counsel. And so I  
12 called Mr. McLeod here.

13          Q     Who's paying for your lawyer here today?

14          A     I don't know.

15          Q     Have you asked PG&E to pay for it?

16          A     I haven't asked PG&E.

17          Q     Have you asked Exponent to pay for it?

18          A     I don't work for Exponent, so I wouldn't ask  
19 them to pay for my attorney.

20          Q     Have you asked anyone other than considering  
21 paying for it yourself?

22          A     It was not my intention to pay for counsel. I  
23 made that clear to -- to Mr. Wilkinson. And -- and so  
24 he -- he recommended that I contact Mr. McLeod.

25          Q     So who do you understand is paying for

1 Mr. McLeod's time in representing you on this deposition  
2 issue?

3 MR. McLEOD: I'll state it.

4 We have no understanding at this time, other  
5 than that you're paying for half the expenses of coming  
6 out and he's paying for half the expenses.

7 BY MR. PRAGLIN:

8 Q Mr. McLeod works for a pretty big law firm here  
9 in downtown L.A., right?

10 A I believe that's true.

11 Q Is it your understanding you are being  
12 represented for free?

13 A I haven't been asked to sign any contract that  
14 I would be paying for it; so I'm not -- I don't feel  
15 like I'm bound to pay for his fees, but he is  
16 representing me.

17 Q And it's Mr. Wilkinson that arranged your  
18 representation by Mr. McLeod?

19 A No.

20 Q Who arranged your representation by Mr. McLeod?

21 A I did.

22 Q Well, how did you know to call him?

23 A He had recommended Mr. McLeod.

24 Q So PG&E's lawyer recommended Mr. McLeod?

25 A Yes.

1 Q And before today, how many hours have you spent  
2 in consultation and meetings with Mr. McLeod?

3 MR. McLEOD: I'm going to object. That's  
4 attorney/client privileged information.

5 MR. PRAGLIN: Are you instructing him not to  
6 answer?

7 MR. McLEOD: Yep.

8 BY MR. PRAGLIN:

9 Q As best you recall, what did you tell  
10 Mr. Wilkinson when you said that you had no intention of  
11 paying for counsel?

12 A Well, what I said is that I haven't -- I  
13 haven't been on contract with PG&E regarding the Aguayo  
14 case or the Anderson case for over three years and  
15 that -- after discussing it with him it was clear that  
16 this wasn't -- that I was what -- what they -- what they  
17 would call a third party in this lawsuit and I had no  
18 actual involvement, and, therefore, it wasn't as  
19 though I was protecting my own interests to have an  
20 independent counsel.

21 And so there was no -- no reason for me to go  
22 to the expense, my -- for my company to go to the  
23 expense of -- of hiring counsel for myself, but Kirk  
24 thought that that -- that having my own counsel would be  
25 a good idea, and so I followed his suggestion.

1 Q "Kirk" is PG&E's lawyer?

2 A Mr. Wilkinson, yes.

3 Q Did Mr. Wilkinson tell you that he would look  
4 into having PG&E or his law firm, Latham & Watkins, pay  
5 for your lawyer for this deposition?

6 A I don't think I had any discussions with Kirk  
7 about that.

8 Q And have you discussed with anyone submitting a  
9 bill for your time in reading all of these depositions,  
10 Paustenbach 1 and 2, Proctor 1 and 2, Finley, the  
11 thousands of pages that you read in preparation for this  
12 deposition? Who's paying for that time?

13 MR. McLEOD: It's been asked and answered.

14 MR. PRAGLIN: I don't think so.

15 MR. McLEOD: Yes. He said that he has no intention  
16 to pay my bill and he doesn't know what the arrangements  
17 are, if there are any.

18 MR. PRAGLIN: No, no. That's not the question at  
19 all. I'll rephrase it for you.

20 MR. McLEOD: Sure.

21 MR. PRAGLIN: Maybe it's not clear.

22 Q Let's set aside the expense of your lawyer  
23 Mr. McLeod. You've incurred a fair amount of time just  
24 in reading background materials to prepare yourself for  
25 this deposition, haven't you?

1           A     Yes.

2           Q     Several days, at least, to read those five  
3 volumes of deposition, right?

4           A     Yes.

5           Q     Who's paying for that time?

6           A     Nobody right now.

7           Q     Have you asked that someone pay for it?

8           A     I expect that PG&E -- PG&E and/or your firm  
9 will be compensating me for my time.

10          Q     You understand that the agreement was that my  
11 firm would compensate you for your time in this  
12 deposition because we're required by law to pay you  
13 while you give testimony, correct?

14          A     I don't have any idea what your -- your  
15 agreements were.

16          Q     Are you under some belief that my firm is going  
17 to be paying for your time to prepare for this  
18 deposition?

19          A     I -- I didn't say that. What I said was my  
20 expenses, as I understand it, will -- I've been -- I  
21 understand and expect that PG&E and/or your firm will be  
22 responsible for those expenses and/or time spent.

23          Q     And you expect that PG&E would be compensating  
24 you for the time to review the five depositions that you  
25 reviewed in preparation for this deposition?

1 A Yes.

2 Q How much time did you spend reading those  
3 depos? Just ballpark. 20 hours, 40 hours, 60 hours?  
4 More?

5 A I'd say about 40 hours. I'm sorry. That  
6 wasn't really just the depositions but reviewing my file  
7 in part and, you know, all -- all of the reading that I  
8 did probably comprised about that.

9 Q At what hourly rate do you expect to bill PG&E  
10 for that time?

11 A My hourly rate is 175 per hour for standard  
12 consulting work and 350 per hour for deposition or court  
13 appearances.

14 Q So roughly about \$7,000 worth of time that you  
15 expect to bill PG&E to prepare for this deposition; is  
16 that right?

17 A I don't know exactly what the time is. I'd  
18 have to go back to my -- my records and compile that.

19 Q Are you keeping a time record of the time spent  
20 to prepare for this deposition?

21 A I keep a Day-Timer that -- where I record what  
22 time -- number of hours I spend on different projects.  
23 And that's how I keep track of my -- my billable time.

24 Q Do you have that Day-Timer with you?

25 A Yes, I do.

1 Q Do you have any problem copying the time entry  
2 pages and redacting any personal information --

3 MR. McLEOD: I want to take a look at it.

4 Why don't we go on with the deposition and  
5 during one of the breaks we'll take a look at it.

6 THE WITNESS: I would have a problem with that  
7 because I consider that to be my confidential billing  
8 information on -- on all projects, and so that's not  
9 something that I would consider to be public  
10 information.

11 BY MR. PRAGLIN:

12 Q You understand, Dr. Kerger, I'm not interested  
13 in any information on your Day-Timer other than the  
14 number of hours spent preparing for this deposition; so  
15 as far as I'm concerned, you can white out everything  
16 but the tally and protect any other information. But  
17 talk to your lawyer about it at a break. How's that?

18 MR. McLEOD: We'll talk about it at a break.

19 THE WITNESS: I would rather -- I'd feel more  
20 comfortable, if you want a compilation I can do such a  
21 compilation and provide it as a separate document, but I  
22 don't feel comfortable copying and redacting my --  
23 that -- that record.

24 BY MR. PRAGLIN:

25 Q Well, let's do one or the other and we'll

1 address that at a break. How's that?

2 A Okay.

3 Q Before the lunch break we were talking about  
4 this pre-1987 Zhang article that was translated and you  
5 identified it as Bates stamp ChemRisk 118 through 136  
6 from Exhibit 1. Could you get that out again, please?

7 A 118? Is that what you said?

8 Q Yes.

9 And referring you to page 124 of that document,  
10 which is that Table 1, and again the entry for the two  
11 closest villages, which are known as JinChangBao and  
12 Nuer River, for 1965 it shows a range of chromium  
13 concentrations of 0.6 to 10.0 ppm chromium (VI), right?

14 A It does.

15 Q Comparing that to the information on Table 1 of  
16 the '97 Zhang article, which is ChemRisk 190, the  
17 average chromium (VI) concentration for the JinChangBao  
18 Village for 1965 is 0.031, correct?

19 A Correct.

20 Q And the average chromium (VI) concentration in  
21 water wells in 1965 for the Nuer River Village is  
22 2.6 parts per million, correct?

23 A Correct.

24 Q If the range for those two villages is from  
25 0.6 to 10, how is it mathematically even possible to get



1 to that number of 0.031 per 123 wells?

2 A Well, I mean, it's not mathematically possible  
3 if you think that this is -- this -- this page 124  
4 represents all of the data that ever was collected.  
5 This, in my understanding, is what the yearly change is  
6 for a subset of the data that was collected in each of  
7 these villages and compiled together in some data  
8 subset.

9 This is a different data set than what was --  
10 what I understand to be the more comprehensive set of  
11 123 wells of data from JinChangBao and 170 wells data  
12 from Nuer River that we included in this -- in this  
13 compilation; so the bottom line is they don't correspond  
14 and it's because it -- they're based on different data  
15 sets.

16 Q Where is the data that is the more  
17 comprehensive data set that got included in Table 1 of  
18 the '97 article?

19 A Well, I would guess it would be present in the  
20 McLaren/Hart database -- you know, the McLaren/Hart  
21 file, and possibly Tony Ye may have additional documents  
22 on that, but I don't -- I don't have the actual database  
23 or any computer files representing the database. It was  
24 generated and analyzed specifically to create this paper  
25 and I don't have it.

1           Q     You'd agree that the more comprehensive set of  
2 123 wells of data that's referenced in the '97 Zhang  
3 article was not produced to me in either Exhibit 1 or 4,  
4 wouldn't you?

5           A     Well --

6           MR. WILKINSON:  Objection.  Calls for speculation,  
7 misstates his prior testimony.

8           MR. McLEOD:  Also assumes facts not in evidence.

9           THE WITNESS:  Well, these are articles that  
10 summarize the findings of an author, and the fact that  
11 you don't have a data set doesn't really much matter.  
12 If you have a -- a scientific author that's representing  
13 that this is the data, that -- you have to take it on  
14 face value that there's a database behind it.

15                   I think this 190 representation is much more  
16 clear and explicit in terms of what data we're relying  
17 on, how many, what the frequency of -- of detection over  
18 the 50 parts per billion is, and also is only part of  
19 the data, which is also augmented in Figure 2, that  
20 shows the frequency and ranges for the actual data set  
21 that we're relying upon to examine the population at  
22 risk and the relative risk data as far as the -- the  
23 mortality results presented here.

24                   So this is a different data set, it -- it may  
25 not include all of the data that was initially

1 referenced in this paper. It may include additional  
2 data that Dr. Zhang collected or compiled since he  
3 produced this initial version, and so that's -- that's  
4 my only explanation is that we tried to be as  
5 comprehensive as possible in pulling together all the  
6 data. We relied on Dr. Zhang to do that and then we --  
7 we compiled that as -- in as clear and comprehensive a  
8 manner as we could to present it to the -- to the  
9 scientific literature as a -- as a more specific set of  
10 findings.

11 BY MR. PRAGLIN:

12 Q You didn't really answer my question, though.

13 Isn't it true that the more comprehensive set  
14 of 123 wells of data that's referenced in the '97 Zhang  
15 article was not produced to the plaintiffs in either  
16 Exhibit 1 or Exhibit 4 to your deposition?

17 MR. WILKINSON: Objection. Assumes facts not in  
18 evidence, argumentative, misstates his prior testimony.

19 MR. MCLEOD: I'll join in that.

20 THE WITNESS: I don't know.

21 BY MR. PRAGLIN:

22 Q Have you seen it in reviewing all of the  
23 materials that have been produced as Exhibits 1 and 4 to  
24 your deposition?

25 A Frankly, I don't even know if I would recognize

1 it because it probably would be in Chinese and Tony Ye  
2 would be the person to ask.

3 Q So the data that was sent that became the basis  
4 for Table 1 in the '97 Zhang article was sent in  
5 Chinese?

6 A Since -- since Dr. Zhang does not write or  
7 speak Chinese -- speak other than Chinese, that would be  
8 my expectation. But I think you'd be better off asking  
9 Tony Ye because he was the one that interacted with him.

10 It may be that we never received any data set,  
11 but that Dr. Li always had done the summary level  
12 analysis and we asked him to do the frequency and the  
13 averages, and I just don't know the specifics from seven  
14 years ago. I just don't recall.

15 Q You just said Dr. Li. Did you mean Dr. Zhang?

16 A Zhang. I'm sorry.

17 Q So you really don't know what the basis for  
18 the data in Table 1 of the '97 Zhang article was, do  
19 you?

20 A Yes.

21 Q Well, show me where the documents are that  
22 support the data in Table 1.

23 A I don't have to show you the documents. I can  
24 tell you what I -- what I understand to be the basis,  
25 and that is all of the data that Dr. Zhang collected in

1 1965.

2 Now, if you would like me to verify that for  
3 you or -- or put a stamp of approval on it, I can't do  
4 that. I don't have the original documents that  
5 Dr. Zhang relied on to generate these numbers. But I  
6 can tell you that he was an integral part of creating  
7 this table and all the data in it.

8 Q Did you have those original documents from  
9 Dr. Zhang that were used to generate Table 1 of the '97  
10 Zhang article at some point in time?

11 A I'm sure we had at least his -- his summary  
12 level information -- of the -- of that information, or  
13 all of the information.

14 Q How do you know that?

15 A Either one.

16 Because in order to do these statistics and the  
17 frequency information, either he would have to have done  
18 it and had access to that information, or we would.

19 Q Wouldn't that --

20 A And so --

21 Q -- information have been produced to you  
22 electronically by Dr. Zhang, 123 wells of water quality  
23 data?

24 A No.

25 Q Was it in hard copy or electronic or both?

1           A     I don't know.

2           Q     Did you ever see it in electronic form?

3           A     As far as I know, there was no electronic  
4 transfer whatsoever on that project. It was -- in fact,  
5 everything that I saw from Dr. Zhang was -- was --  
6 looked to me to be almost handwritten Chinese or a  
7 published article in Chinese and nothing that looked to  
8 me like a spreadsheet.

9           Q     The 123 wells that are referenced in Table 1 of  
10 the '97 Zhang article, were they designated by name or  
11 number?

12          A     I don't recall.

13          Q     Were they domestic or agricultural?

14          A     My recollection is that the wells that were  
15 included in the -- in this table would exclude  
16 monitoring wells that were used only for the purpose of  
17 identifying, for example, directly downstream of the  
18 chromite ore pile what the contamination levels were  
19 before they reached the community, but they would  
20 include any irrigation or domestic wells that were  
21 within the confines of the areas being studied and  
22 within the confines of what -- what these cancer death  
23 rate data represent.

24          Q     Didn't Dr. Zhang take the water quality tests  
25 himself?

1 A He collected the samples is my understanding.

2 Q So he personally collected the sample that  
3 tested at 70.5 parts per million, 14,000 times the safe  
4 drinking water level in California in 1974; is that  
5 right?

6 A That would be my understanding.

7 Q As long as we're on this page 190 of the  
8 Zhang '97 article, let me ask you a few questions about  
9 it.

10 Let me go back. Let's take the whole Zhang '97  
11 article, starting at ChemRisk 188 through 192 of  
12 Exhibit 1. The words on the page are in English, are  
13 they not?

14 A Yes.

15 Q Dr. Zhang didn't write those words in English,  
16 did he?

17 A No. We would have translated those.

18 Q So who wrote those words?

19 A Well, Dr. Zhang and -- as a collaboration with  
20 us would have come up with an initial outline or set of  
21 information that we, meaning myself, Bill Butler and  
22 Tony Ye, developed into the final manuscript. And we  
23 would of course always work in English. And when  
24 Tony Ye had his conversations with -- with Dr. Zhang, he  
25 would either translate them verbally or otherwise

1 transmit copies of the information that -- that was  
2 developing as we continued our work on it.

3 Q Was the Zhang '97 article written with you,  
4 Tony Ye and Bill Butler together in the same room or did  
5 you all have separate contributions?

6 A I would say that all of the numerical analyses  
7 that were done with respect to the rate ratios or the  
8 cancer -- the cancer death rates and the -- the  
9 dose-response relationship relating to distance from the  
10 facility versus cancer death rate, all of that numerical  
11 epidemiological data was -- was the responsibility of  
12 Bill Butler as a principal.

13 Q What portion of the writing of the '97 Zhang  
14 article was your responsibility?

15 A Well, the whole thing was really my  
16 responsibility in a sense because I wrote the task as to  
17 what the focus of our analysis or our concerns were  
18 going to be, and that centers around the set of  
19 questions that we initially forwarded to Dr. Zhang and  
20 then focuses in specifically on evaluating the data that  
21 most -- that is most relevant to and that clarifies what  
22 the cancer death rate information means with respect to  
23 the actual exposed population at risk.

24 And so that -- that is actually a scope that  
25 Bill Butler and I had talked about and that he agreed



1 with, and that is what we had consulted with Dr. Zhang  
2 about and that's what the focus of this article is.

3 Q But my question was what portion of the writing  
4 of the '97 Zhang article was your responsibility?

5 MR. McLEOD: Well, the witness has already testified  
6 that it was done together with different people.

7 MR. PRAGLIN: Sure.

8 MR. McLEOD: I mean, are you talking about actual  
9 wordsmithing, consultation? I mean --

10 MR. PRAGLIN: Anyway you can explain it.

11 MR. McLEOD: -- they worked on it together.

12 BY MR. PRAGLIN:

13 Q Any way you can explain it, Dr. Kerger.

14 A I don't know how to assign percentages because  
15 there was hundreds of hours put in by Tony Ye. There  
16 were at least dozens of hours put in by both Dr. Butler  
17 and myself. And I'm sure there were hundreds and  
18 hundreds of hours put in over time by Dr. Zhang; so I've  
19 never tried to compile or attribute a percentage of how  
20 much went in.

21 You can -- you can say that certainly the scope  
22 of the analysis, per se, was tailored to be specific to  
23 answering unanswered questions from the 1987 analysis  
24 and was focused, as I've just explained, on the  
25 population at risk and looking at dose-response

1 relationships.

2           But I can't -- like I said, the versions that  
3 we worked on were mainly in English and then were --  
4 were translated on occasion, either verbally or in  
5 writing, to Dr. Zhang, and Tony would be the one to tell  
6 you how much of it came in Chinese, as far as the  
7 language, how much of it came originally in Chinese from  
8 Dr. Zhang. But the bottom line is the end result was  
9 always approved by Dr. Zhang in terms of the exact  
10 writing.

11       Q     Did anyone translate in writing the '97 Zhang  
12 article that was submitted to JOEM and send it to  
13 Dr. Zhang in Chinese?

14       A     I'm not sure. I think Tony -- Tony Ye would  
15 probably know -- know a specific answer to that but I  
16 don't.

17       Q     You've never seen such a document, have you?

18       A     Well, I wouldn't require it because I can't  
19 read Chinese; so if he did -- if he did create one or if  
20 Dr. Zhang asked him for one, I'm sure he -- he would  
21 have created it.

22           But I think the most expedient way to interact  
23 with Dr. Zhang was to physically read it over the phone  
24 lines because couriers were -- took -- took about a  
25 two-week period to go back and forth and -- and were

1 expensive, and so the most expedient way to collaborate  
2 on this research was verbally.

3 Q Was there some time pressure to publish this  
4 paper?

5 A Well, I don't know if you'd call it "time  
6 pressure" but we started in, say, April and finished it  
7 in December; so it took several months at least to get  
8 to a brief communication manuscript. I'd say that's a  
9 pretty long development time for -- for most of the work  
10 that I've done.

11 Q That's April to December of 1995?

12 A Right.

13 Q Was there any discussion with PG&E's counsel  
14 about the fact that you needed to get this published so  
15 that they could rely upon it in future chromium  
16 litigation?

17 A I don't recall that.

18 Q That subject never came up?

19 A No. I think that what we advised as far as  
20 publication was that whether -- you know, that  
21 peer-reviewed publications were the best way to be able  
22 to rely on information, objective information, but that  
23 the process generally took anywhere from six months to  
24 two years, and that the arbitrations were scheduled to  
25 move forward within a matter of months; so I -- I don't

1 think there was an expectation and we never advised  
2 PG&E's attorneys that there was an expectation that the  
3 publication would precede any testimony in the -- in the  
4 arbitrations.

5 Q You read the Blue Ribbon Panel report, didn't  
6 you?

7 A Actually, I didn't. I read -- I read just  
8 portions that -- draft chapters that Dr. Paustenbach  
9 sent me. And he did E-mail me the final report but I  
10 didn't read it.

11 Q Did you know that the Blue Ribbon Panel report  
12 cites as a reference to the Zhang '97 article?

13 A That wouldn't surprise me but I didn't --  
14 again, what -- I know that that's probably true based on  
15 what I've read in the other people's depositions, but I  
16 didn't read that myself.

17 Q Why wouldn't it surprise you that the  
18 Blue Ribbon Panel report would cite to the Zhang '97  
19 article?

20 A Because it's an important piece of literature  
21 with respect to ingestion carcinogenicity of chromium.

22 Q Is it any more important than any other piece  
23 of scientific literature out there in the published  
24 literature about ingestion of carcinogenicity of  
25 chromium?

1 A In a way it is, yes.

2 Q Why?

3 A Because it's really the only epidemiology  
4 treatment that's out there in the literature of a  
5 groundwater contamination plume and its potential cancer  
6 effects in a population.

7 Q Was there some discussion with PG&E's counsel  
8 about the fact that this was a very important piece of  
9 scientific literature about ingestion of chromium and  
10 carcinogenicity?

11 A I think I told you earlier that the judges from  
12 the first arbitration actually mentioned that to the  
13 PG&E attorneys, and they relayed -- related that to us.

14 Q So did the PG&E attorneys emphasize the fact  
15 that they thought it was important because the judges  
16 found it important?

17 A I think they took the judges' advice.

18 Q And that was communicated to you at ChemRisk?

19 A Yes.

20 Q Are you familiar with the concept of  
21 transparency of authorship in scientific literature?

22 A I'm not sure exactly how you're using it but  
23 I'm -- I'm familiar with the term "transparency."

24 Q What does it mean?

25 A Well, it means putting all -- all of the

1 information regarding the sources of either information  
2 or -- or -- or funding for a particular article in an  
3 acknowledgment section or in some way annotated in the  
4 article.

5 Q Doesn't the Zhang the '97 article fail  
6 miserably on the issue of transparency?

7 MR. McLEOD: I'm going to object to the question.  
8 It's argumentative.

9 He's already testified as to  
10 Dr. Zhang's request that Dr. Zhang and Dr. Li be  
11 mentioned and gives the reasons for that.

12 BY MR. PRAGLIN:

13 Q Go ahead.

14 MR. McLEOD: The question itself is argumentative.

15 BY MR. PRAGLIN:

16 Q Go ahead, Dr. Kerger. Wouldn't you say it  
17 fails miserably?

18 A No, I wouldn't say that.

19 Q Wouldn't you agree that the '97 Zhang article  
20 fails to acknowledge that PG&E funded the article?

21 A Well --

22 MR. McLEOD: I'm going to object to the  
23 characterization of "funded the article," too. That's  
24 argumentative, also.

25 Yes, it doesn't mention PG&E.

1 BY MR. PRAGLIN:

2 Q Go ahead, Dr. Kerger.

3 MR. McLEOD: You're being argumentative.

4 THE WITNESS: I don't -- I don't think it mentions  
5 PG&E or any funding -- funding source.

6 BY MR. PRAGLIN:

7 Q In your publications, separate from the  
8 Zhang '97 publication, you mention who funds your  
9 research, don't you?

10 A In more recent articles we do because the --  
11 the standards as far as providing funding support have  
12 gotten a little more articulate over the last few years,  
13 and that now is expected, whereas in previous years --  
14 for example, this Zhang article being a clarification on  
15 an already-existing data set and analysis, a  
16 clarification doesn't necessarily require grant funding  
17 to be put into the literature.

18 So I -- I don't think that in 1995/1996, a --  
19 an editor from a journal would see a brief communication  
20 like this and worry about who funded it. It just  
21 wouldn't -- wouldn't be a concern.

22 Q Well, as a scientist publishing in the  
23 scientific literature, you don't wait for a journal to  
24 tell you to list who your sponsor is, you do that on  
25 your own, don't you?

1           A     It depends.

2           Q     Sometimes you wait for the journal to tell  
3 you?

4           A     No. Like I'm saying, the -- the -- the  
5 standards are -- as far as requirements for  
6 acknowledging funding were not really clarified or  
7 crystallized for most journals until the late 1990s.  
8 Prior to that, the funding sources were really only a  
9 means for academicians to acknowledge grant support for  
10 a particular project in their publications. And  
11 there -- there wasn't, for example, any requirement  
12 about well, if you ever worked in a consulting capacity  
13 for a company and that might have crossed over with some  
14 of the work that got done for -- for a particular  
15 journal article, that you need to put them in there.  
16 There wasn't any such requirement.

17          Q     What were the requirements of JOEM for  
18 disclosing funding of the article?

19          A     I don't know.

20          Q     You didn't look into it?

21          A     No.

22          Q     Was there any discussion at ChemRisk or with  
23 PG&E or its counsel about whether PG&E should be  
24 identified in terms of funding the '97 Zhang article?

25          A     I don't recall any discussion to that effect.



1 We -- we identified at the very beginning of the project  
2 that Dr. Zhang felt that the -- the report from 1987  
3 needed to be clarified, even before we saw any of his  
4 further data, and that he -- and we queried him at the  
5 very beginning as to whether or not he would be  
6 interested in collaborating to publish a clarification,  
7 and he acknowledged positively to both of those before  
8 we even knew what the outcome of any further analysis  
9 would be. And so we were I think up front with him.

10 And his -- his view, as I understand it, was  
11 that this original research was done by him and his --  
12 his colleague at the anti-epidemic station in JinZhou  
13 and that he didn't care to put any -- any other authors  
14 on there, and that -- and I respected that.

15 Q Did you or anyone at ChemRisk ever disclose to  
16 Dr. Zhang that you were working as paid consultants to  
17 PG&E who had just been hit for a third of a billion  
18 dollars in chromium litigation?

19 A That wouldn't have been part of our  
20 conversation, because when we initially hired Dr. Zhang  
21 to be a consultant to us, it was mid- -- well, it was --  
22 it was spring of 1995. And of course you didn't win the  
23 third of a billion dollars until 1996, summer. And at  
24 that time there was -- this publication was already in  
25 press.

1 Q Did you ever disclose to Dr. Zhang that  
2 ChemRisk was a paid consultant to PG&E who was involved  
3 in chromium litigation?

4 A I'm sure we did.

5 Q Do you have anything in writing to prove that?

6 A No. I guess you're just going to have to rely  
7 on what I can say and what -- what either Tony Ye or  
8 Bill Butler would say about it, because I'm not aware of  
9 any -- of any written record of that.

10 Q By the way, have you called Tony Ye or  
11 Bill Butler since this issue about the Zhang article  
12 came up this year?

13 A No.

14 Q You haven't spoken to them at all?

15 A No.

16 Q You haven't spoken to their lawyer?

17 A No.

18 Q Are you on good terms with Bill Butler?

19 A I consider him a friend.

20 Q Have you stayed in touch with him over the  
21 years?

22 A I -- I don't -- I can't say that I've -- I've  
23 made a -- a big effort to -- to stay in touch with Bill,  
24 but I still consider him a friend.

25 Q What about Tony Ye, have you stayed in touch

1 with him?

2 A Tony Ye I never really knew on a -- on a  
3 personal level. He was really Bill's chief, you know,  
4 biostats staff member. I was, you know, friendly with  
5 him and -- but he's not somebody that I -- I know  
6 personally.

7 Q Have you seen Bill Butler since he left  
8 ChemRisk?

9 A I think I saw him in -- in the late '90s  
10 somewhere when I was in the Bay Area. I just don't  
11 recall. But I -- I haven't seen him very often.

12 Q You testified a little while ago that you  
13 assume that Dr. Zhang spent hundreds of hours on this  
14 '97 article. Do you recall that?

15 A Yes.

16 Q He didn't bill you for hundreds of hours, did  
17 he?

18 A Well, I think that -- no, my impression of that  
19 is probably based on recall of -- of interactions with  
20 Tony Ye in regard to compiling all of these original  
21 reports and making sure, in the first three-month period  
22 where we had him on contract but he wasn't on an hourly  
23 rate, to make sure that we had all of the original  
24 compilations of -- of his -- of his data. And so that's  
25 where, you know, I think him studying and following up

1 on it and being prepared to respond to further questions  
2 on each of those papers was where he spent I think quite  
3 a bit of time.

4 Q How would you know how many hours Dr. Zhang  
5 spent on this project?

6 A I don't know specifically. I can only tell you  
7 what I -- what I generally recall from conversations  
8 with Tony and in general from my -- my information on  
9 the contracts.

10 Q Now, if Tony Ye had spent hundreds of hours on  
11 the '97 Zhang article, and I think you said Bill Butler  
12 and you spent dozens of hours on the Zhang article, why  
13 wouldn't the three of you push for some recognition or  
14 attribution of your contribution to the Zhang '97  
15 article in the actual publication?

16 MR. WILKINSON: Objection. Asked and answered.

17 MR. McLEOD: Absolutely. Join in that.

18 You can answer it again, if you want to.

19 THE WITNESS: I -- I thought it would be rude.

20 There are some people that you would  
21 collaborate with on their own research that are  
22 comfortable with becoming co-authors with you and others  
23 who are a little more solitary, they want to -- they  
24 don't want to share any of the recognition for that work  
25 with people who weren't originally involved in the

1 research. And I perceived that Dr. Zhang was one of  
2 those, one of those people that -- and he's not the only  
3 one of -- of the experts, the international and national  
4 experts that we worked with that felt that way.

5           And in my view, you have to respect that --  
6 that there are people that don't care to share  
7 authorship, even though you might make try contribution  
8 in the work that you're collaborating with them on. And  
9 that's -- that's okay.

10 BY MR. PRAGLIN:

11           Q     So who did you think it would be rude to?

12           A     Well, again, if somebody tells you -- if you  
13 ask somebody who to -- who should be an author on this  
14 paper in your view and he says well, my dead colleague  
15 and myself, I didn't feel it was appropriate to say  
16 well, what about me.

17           And I agree that -- I agreed that the analysis  
18 that we did was really just a subset of -- of a much  
19 larger set of studies that he had originally at least  
20 attempted to represent in the literature through the  
21 Chinese Preventive Medicine Journal and that this is --  
22 our actual contribution to his work was relatively  
23 smaller focused in that picture.

24           Q     But the '97 Zhang article doesn't even make  
25 reference to Dr. Zhang's body of work before his

1 '87 publication, does it?

2 A I think it's listed as a follow-up to that  
3 1987 study.

4 Q Right.

5 So isn't it true that the '97 Zhang article  
6 doesn't even make reference to Dr. Zhang's body of work  
7 before his 1987 publication?

8 A I don't think any of that other work was  
9 particularly -- was in journals that -- that -- that  
10 would be recognized as -- as national or international  
11 journals that would be cited in the Journal of  
12 Occupational and Environmental Medicine.

13 It's not -- it's not appropriate to list  
14 references of unpublished documents or documents that  
15 are not generally available through the -- through the  
16 public sources in an article like this. And so he  
17 didn't and -- and we didn't advise that he -- that he  
18 should.

19 Q But you had in your possession Dr. Zhang's  
20 pre-1987 publications, didn't you?

21 A Well, again, I think that some of these were  
22 presentations and some of them were kind of local  
23 publications, I guess you'd call them. But that in  
24 terms of the focus of -- of our analysis on looking at  
25 the population at risk versus the actual cancer death

1 rate information, those other reports were peripheral  
2 compared to the 1987 submission that he made.

3 Q Isn't it true that you had in your possession  
4 Dr. Zhang's pre-1987 publications?

5 MR. WILKINSON: Objection. Asked and answered a  
6 couple times.

7 MR. PRAGLIN: He didn't answer it.

8 MR. McLEOD: Absolutely. Sure he did.

9 MR. WILKINSON: He answered it earlier today.

10 MR. PRAGLIN: He told me they were peripheral. He  
11 didn't answer it.

12 MR. McLEOD: He answered it this morning.

13 MR. WILKINSON: He answered it.

14 BY MR. PRAGLIN:

15 Q Go ahead, Dr. Kerger.

16 MR. McLEOD: He answered it this morning.

17 BY MR. PRAGLIN:

18 Q Isn't it true that you had Dr. Zhang's pre-1987  
19 publication in your possession at the time the  
20 '97 article was published?

21 A That's true.

22 Q And isn't it true that Dr. Zhang's pre-1987  
23 publications identify chromium (VI) as a cause of cancer  
24 in this region of China?

25 A There are statements to that effect in certain

1 of those documents, yes.

2 Q In Exhibit 1, would you turn to Bates stamp  
3 111, please.

4 Bates stamp 111 is a page from one of  
5 Dr. Zhang's pre-1987 publications that's been translated  
6 into English, correct?

7 A Correct.

8 Q And on page 8 of that publication, which is  
9 Bates stamped ChemRisk 111, Dr. Zhang makes a statement,  
10 the second line, "Nearly 80 percent of malignant  
11 neoplasm is attributable to environmental pollution,"  
12 correct?

13 A That's what it says.

14 Q Malignant neoplasm is cancer, isn't it?

15 A Yes.

16 Q So he's saying in his opinion, nearly  
17 80 percent of cancer is attributable to environmental  
18 pollution, right?

19 A I don't know if that's -- if that translation  
20 is a literal opinion that he's expressing or if it's a  
21 word translation issue, but I know what he means.

22 Q Well, that's what your paid translator,  
23 Tony Ye, wrote on this page, isn't it? "Nearly  
24 80 percent of malignant neoplasm is attributable to  
25 environmental pollution"; isn't that true?



1 A That's -- that's what he translated it to say.

2 Q And there's a handwritten notation to the right  
3 of that in the margin, isn't there?

4 A Yep.

5 Q Is that your handwriting?

6 A That is.

7 Q What did you write in the margin next to  
8 Dr. Zhang's statement "Nearly 80 percent of malignant  
9 neoplasm is attributable to environmental pollution"?

10 A It says "BS."

11 Q What does that mean?

12 A It means bullshit.

13 Q Wouldn't that be rude to Dr. Zhang, to call his  
14 beliefs bullshit?

15 MR. McLEOD: Okay. Now we're getting argumentative.

16 You can ask him his interpretation of it, you  
17 can ask him about his conversations with Dr. Zhang, but  
18 I'm going to put a stop to this harassing and bullying  
19 the witness.

20 BY MR. PRAGLIN:

21 Q Well, don't you consider it to be rude to call  
22 Dr. Zhang's beliefs bullshit?

23 A This is an annotation that I made to myself,  
24 first of all. I would never say that to Dr. Zhang or to  
25 anybody about their research.

1           But this is a statement that -- that is  
2 certainly not true. And if -- if -- if it's the  
3 translation that is the problem or if it's Dr. Zhang's  
4 belief, I don't really know. But, you know, a lot of --  
5 a lot of kind of meaningless or less artful statements  
6 are put into publications and -- and some of those are  
7 ones that I would characterize as BS, and this is one.

8           Q     Tony Ye is a good translator, isn't he?

9           A     As far as I know he's good.

10          Q     Can you identify for me any other item that you  
11 think he incorrectly translated from Dr. Zhang's work?

12          MR. WILKINSON: Objection. Misstates the  
13 testimony.

14          MR. McLEOD: Absolutely. Join in that.

15                 There's been no testimony that this was any  
16 type of poor translation. It is what it is.

17          THE WITNESS: Yeah.

18                 Tony Ye explained to me, and I think in some of  
19 these translator's notes at the beginning of these  
20 translations he explains that translation from the  
21 Chinese figures which represent a series of -- of  
22 possible word choices in -- in English is partly up  
23 to -- to interpretation. And I think Tony made his best  
24 efforts to translate what he thought it would mean from  
25 Chinese to English. And then in those instances where

1 he thought there might be an important distinction to be  
2 made in what the Chinese words or word was compared to  
3 the English word, he tried to clarify that with  
4 Dr. Zhang. That's my understanding.

5 Now, in this case, I know where statements like  
6 this come from, and the -- the point that I was making  
7 that -- what is BS is that "Nearly 80 percent of  
8 malignant neoplasm is attributable to environmental  
9 pollution" is incorrect. The statement that's made --  
10 been made since the 19- -- the late 1960s and early  
11 1970s, and probably at this World Health Organization  
12 conference from about 1973 of epidemiologists, was that  
13 possibly 80 or even 90 percent of cancers may have an  
14 environmental cause. That doesn't mean that nearly  
15 80 percent of cancers are attributable to environmental  
16 pollution.

17 And a lot of people mistook that environmental  
18 cause, which might mean an infectious disease, smoking,  
19 alcohol, you know, having sex with a lot of prostitutes,  
20 any number of chemical exposures, all of those are,  
21 quote-unquote, environmental causes. Many of those have  
22 nothing to do with environmental pollution as we  
23 understand those two terms, but they are, quote-unquote,  
24 environment -- or environmental causes external to the  
25 body. And they distinguish the cancers that are not due

1 to -- to the environmental causes as those that are  
2 known to be purely genetic.

3 In other words, we have no reason to suspect  
4 and no -- no belief that other than, say, for example, a  
5 particular Li-Fraumeni Syndrome is associated with  
6 certain cancers. Other than the person having that  
7 syndrome, there's no other exposure that would explain  
8 the occurrence of cancer at a high rate in those --  
9 those particular individuals.

10 Those are the limited cases where we know there  
11 is a sole genetic cause or we suspect there's a sole  
12 genetic cause. And what he's -- what they acknowledge  
13 in this -- in this type of a statement is that we don't  
14 know a whole lot about what the most important causes  
15 are, but the -- a lot of them are likely to be external  
16 to the body.

17 BY MR. PRAGLIN:

18 Q What question did you think you were just  
19 answering?

20 A I was clarifying why I said BS when it says  
21 "environmental pollution" here.

22 MR. PRAGLIN: Okay. Let's take a break.

23 THE VIDEOGRAPHER: Going off the record. This is  
24 the end of videotape number two. The time is 2:28.

25 (Off the record.)

1 THE VIDEOGRAPHER: Going back on the record. This  
2 is the beginning of videotape number three. The time is  
3 2:41.

4 BY MR. PRAGLIN:

5 Q Dr. Kerger, would you get out Exhibit 8, which  
6 is your CV. In your CV you list numerous publications,  
7 do you not?

8 A Yes.

9 Q During the break I just quickly went down  
10 through them and it appears to me that at least two  
11 dozen or more of your publications you are the second or  
12 third or lower author on the publication. Would you  
13 agree with that?

14 A In what --

15 Did you assign a proportion, did you say?

16 Q No. Just a couple dozen of them you're not the  
17 lead author.

18 A Right. That's probably true.

19 Q And is it considered rude to ask to be the  
20 secondary or the tertiary or the fourth author on a  
21 paper?

22 MR. McLEOD: I'm going to object to, one, the  
23 question being argumentative and, two, it's been asked  
24 and answered.

25 He's testified that it varies by custom, by who

1 you're dealing with and what the particular  
2 circumstances are. And we're just coming back to this  
3 for the umpteenth time.

4 BY MR. PRAGLIN:

5 Q Go head, Dr. Kerger.

6 A I don't think it's rude to ask, and I often do  
7 ask. If I'm contributing to a paper I ask if -- if --  
8 if it's not my primary research, I ask if they'd be  
9 comfortable with having me as an author -- as an author  
10 on the paper if I'm interested in -- in putting in the  
11 time to complete that paper.

12 Q So in at least a couple of dozen instances,  
13 according to your CV, you had an agreement with the lead  
14 author that you'd also be listed as an author, correct?

15 A That's true.

16 Q And did you even ask Dr. Zhang if you could be  
17 listed as a second author?

18 A You know, I don't recall the specific  
19 conversation, but my understanding was that when we --  
20 when we asked him who he would -- who Dr. Zhang would  
21 feel comfortable putting as -- as authors on the  
22 clarification, he responded that it would be him and  
23 Dr. Li. And that's -- we didn't argue with him about  
24 that and we didn't further press the idea with him.

25 Q Can you show me a document that proves that you

1 asked Dr. Zhang for permission to be a second author on  
2 the '97 Zhang article?

3 A I don't think there is such a document.

4 Q In Exhibit 1, if you look at ChemRisk 166, what  
5 is page 166 of Exhibit 1?

6 A This is a letter to Kaye Kilburn from Tony Ye  
7 dated December 5, 1995.

8 Q Was this the transmittal letter for the '97  
9 Zhang article to be submitted to the publication known  
10 as Archives of Environmental Health?

11 A Yes.

12 Q This is a true and correct copy of the letter  
13 that Tony Ye sent to Archives of Environmental Health?

14 A As far as I know. I -- this is what was in my  
15 file, so I produced it.

16 Q Is this the exact way that it appeared in your  
17 file, it wasn't redacted at all?

18 A This letter?

19 Q Yes.

20 A I don't -- I don't believe so.

21 Q So it wasn't sent on letterhead of any sort to  
22 identify for whom Tony Ye was working; is that true?

23 A No. This is from Tony Ye as an individual.

24 Q At the time Tony Ye wrote page 166 of  
25 Exhibit 1, he was still employed by ChemRisk, wasn't

1 he?

2 A Yes.

3 Q And he was submitting --

4 MR. WILKINSON: Objection. Assumes facts not in  
5 evidence.

6 BY MR. PRAGLIN:

7 Q And he was submitting the finished Zhang  
8 article for publication to Archives of Environmental  
9 Health, wasn't he?

10 A Yes.

11 Q That's a peer-reviewed journal, isn't it?

12 A Yes.

13 Q You knew he was submitting it, didn't you?

14 A Yes.

15 Q Why, then, doesn't the cover letter to the  
16 journal identify that Tony Ye was a scientist at  
17 ChemRisk who was a paid expert to PG&E and that ChemRisk  
18 was involved in writing the Zhang '97 article?

19 MR. McLEOD: I object on lack of foundation.

20 MR. WILKINSON: Objection.

21 MR. McLEOD: The witness did not author this.  
22 There's been no foundation laid that the witness knew  
23 this letter went out. As such, he doesn't have personal  
24 knowledge. And asking him to answer your question calls  
25 for speculation.



1 BY MR. PRAGLIN:

2 Q Go ahead, Dr. Kerger.

3 MR. WILKINSON: Assumes facts not in evidence.

4 BY MR. PRAGLIN:

5 Q If you don't know, you can tell us.

6 A I would have to speculate. I think that would  
7 be a -- a -- a question for Tony.

8 Q Did Tony Ye have your permission to submit the  
9 Zhang '97 article for publication?

10 A Yes.

11 Q That was part of his job, wasn't it?

12 A Well, to submit the publication itself, not  
13 necessarily, but the -- to do the collaboration with  
14 Dr. Zhang, that was what we tasked him to do.

15 Q Well, why not use that ChemRisk letterhead to  
16 send the transmittal letter of the Zhang '97 article to  
17 a peer-reviewed journal?

18 MR. McLEOD: Same objection. It lacks foundation.

19 The witness did not author this letter, he did  
20 not draft this letter. There's been no foundation laid  
21 that he knew it went out before it went out and that he  
22 did not know whether or not it was going out on whatever  
23 letterhead it went out on.

24 You're asking him to speculate.

25 BY MR. PRAGLIN:

1 Q Go ahead, Dr. Kerger.

2 MR. McLEOD: You want the question read back again?

3 THE WITNESS: No.

4 Because it's not -- it's not a -- a -- company  
5 document. This is -- this is research that was done to  
6 further clarify work that was not originally done by  
7 ChemRisk and was not a work product, per se, of  
8 ChemRisk. It was a collaborative effort and Dr. Zhang  
9 chose to be the sole living author and we felt that it  
10 would be most appropriate for Tony to just offer it as  
11 an individual, being the liaison for -- for Dr. Zhang.

12 That's just what we -- what we thought was most  
13 appropriate.

14 BY MR. PRAGLIN:

15 Q So you knew that Tony Ye was going to be the  
16 liaison for Dr. Zhang?

17 A He had been from the start, yes.

18 Q And how did you get a copy of this letter if it  
19 wasn't given to you by Tony Ye?

20 A I'm sure it was given to me by Tony Ye.

21 Q So when he gave you a copy of this letter, did  
22 you object to the manner in which he sent it out?

23 A I would have no reason to do that.

24 Q So it was okay with you that he sent it to  
25 Archives of Environmental Health without identifying

1 ChemRisk's involvement or his employment by ChemRisk; is  
2 that right?

3 MR. WILKINSON: Objection. Assumes facts not in  
4 evidence.

5 THE WITNESS: I had no problem with this.

6 BY MR. PRAGLIN:

7 Q You would agree that the word "ChemRisk" does  
8 not appear on this letter that Tony Ye sent to Archives  
9 of Environmental Health, wouldn't you?

10 A Other than your Bates stamp, no.

11 Q Other than the Bates stamp that was put on this  
12 document, the word "ChemRisk" didn't appear in this  
13 letter as Tony Ye sent it to Archives of Environmental  
14 Health; isn't that true?

15 A Yes.

16 Q And you'd agree that the name "PG&E" nowhere  
17 appears on Tony Ye's December 5, 1995 transmittal letter  
18 to Archives of Environmental Health, wouldn't you?

19 A I don't think that would be relevant for  
20 submitting a cover letter.

21 Q You don't think that Archives of Environmental  
22 Health wants to know who's sponsoring the research that  
23 it publishes?

24 A Again, in 1995, there was no expectation,  
25 requirement or otherwise any need in the scientific

1 sense to provide that information, other than in the  
2 actual article itself. If there was an appropriate need  
3 for that to be done, which I explained to you if there  
4 were federal or public grant funds that were used as --  
5 in supporting or putting together the research, the  
6 "Acknowledgment" section was a place to list that  
7 information, to thank people who wanted to be  
8 acknowledged for -- for their contribution to the work.

9           At that time frame, if somebody didn't care to  
10 be acknowledged for work that they had supported,  
11 then -- but the authors still felt that it was important  
12 work to re- -- to -- to present, then they would honor  
13 the wishes of the people who don't want to be mentioned  
14 and they would publish that research anyway.

15           Q     Did you or anyone at ChemRisk ask anyone at  
16 PG&E or PG&E's counsel if they wanted to be listed on  
17 the '97 Zhang article as a sponsor of that work?

18           A     I don't think that came up. Again, given  
19 Dr. Zhang's response that only he and his dead colleague  
20 were going to be the -- the authors on -- on the study,  
21 we I think took that to mean he wanted it to be solely a  
22 clarification represented by him.

23           Q     This page 166 of Exhibit 1, Tony Ye's  
24 transmittal letter, the last paragraph says, "Also,  
25 enclosed with the submittal is Dr. Zhang's signed

1 authorization to publish this communication. We have  
2 included both a Chinese version and a translated English  
3 version of the authorization."

4 Do you see that?

5 A I do.

6 Q Where are those documents?

7 A They would be probably part of Tony's file, but  
8 the copy that he made for me of the cover letter and  
9 the -- the submitted manuscript didn't include those --  
10 those items.

11 Q So you've actually laid eyes on those  
12 documents?

13 A I don't recall but I -- I know they're not in  
14 my file.

15 Q Could it be that they don't actually exist?

16 A I doubt it.

17 Q Why do you say that?

18 A Because Tony wouldn't lie about that and it  
19 would be pretty obvious to the journal editor if it  
20 wasn't attached.

21 Q Well, why didn't Archives of Environmental  
22 Health publish the '97 Zhang article?

23 A Because we withdrew it.

24 Q That's not really true, is it? Wasn't it  
25 rejected for publication?

1 A No.

2 Q Have you ever talked to Kaye Kilburn about the  
3 Zhang '97 article?

4 A I have not.

5 Q Is Kaye Kilburn a man or a woman?

6 A A man.

7 Q Do you know him?

8 A I know who he is.

9 Q Well-respected scientist, isn't he?

10 A I -- I wouldn't go that far.

11 Q So why would you submit for publication a  
12 scientific article that ChemRisk had hundreds of hours  
13 invested in to a publication that was edited by someone  
14 who you don't think is a well-respected scientist?

15 A He is -- he's the editor of the journal, and  
16 the fact that -- you know, the fact that I -- I have  
17 some doubts about his scientific expertise doesn't  
18 detract from the fact that he represents as an editor of  
19 a scientific journal that seems like an appropriate  
20 place to put a short communication that would clarify  
21 Dr. Zhang's research.

22 So when selecting which journals might be  
23 appropriate to -- to -- to submit the work, Journal of  
24 Occupational and Environmental Medicine was actually a  
25 higher rated journal and they expressed interest in it

1 right away. And to my understanding and my recall,  
2 the -- the version that was submitted to Kaye Kilburn  
3 for the journal of -- I forget which -- oh, Archives of  
4 Environmental Health, that was withdrawn.

5 Q Was it withdrawn in writing?

6 A I don't know. You can ask Tony Ye that. He  
7 would probably know.

8 Q So how do you know it was withdrawn?

9 A That's my understanding.

10 Q From who?

11 A Tony Ye.

12 Q So Tony Ye told you that he withdrew the Zhang  
13 article from publication by Archives of Environmental  
14 Health; is that your testimony?

15 A Yes.

16 Q When did he tell you that?

17 A It probably would have been sometime in early  
18 '96.

19 Q And how did he withdraw it? Verbally, in  
20 writing?

21 A I don't know.

22 Q When did he withdraw it?

23 A I don't recall.

24 Q Did anyone receive a response from Archives of  
25 Environmental Health in response to their receipt of the

1 Zhang article, the '97 Zhang article?

2 A I don't recall. I think Tony might be able to  
3 shed some light on that. And then of course the address  
4 was back to his home address, so I wouldn't have  
5 received any original correspondence on that.

6 Q The fourth line down in Tony Ye's letter to  
7 Dr. Kilburn, ChemRisk 166, I'll read the whole sentence.

8 "Since Dr. JinDong Zhang lives in China and  
9 does not speak English, I have been assisting Dr. Zhang  
10 with the preparation and submittal of this English  
11 manuscript."

12 That's not exactly true, is it?

13 MR. McLEOD: Object. Just absolutely  
14 argumentative. It says what it says.

15 BY MR. PRAGLIN:

16 Q Isn't it inaccurate to say that Tony Ye has  
17 been assisting Dr. Zhang with preparation and submittal  
18 of the English manuscript?

19 A It is true.

20 Q Isn't it also true that you assisted in the  
21 writing of that '97 Zhang article?

22 A Yes.

23 Q Isn't it also true that Bill Butler assisted in  
24 the writing of that 1997 Zhang article?

25 A Yes.



1 Q Isn't it also true that ChemRisk prepared the  
2 figures and tables for that 1997 Zhang article?

3 A Yes. That doesn't make that statement untrue.

4 Q Why weren't you and Butler and the others at  
5 ChemRisk identified in this cover letter by Tony Ye to  
6 Archives of Environmental Health as being involved in  
7 the '97 Zhang article?

8 MR. McLEOD: Again, you're asking the witness for  
9 what was in Tony Ye's mind.

10 You can ask him did he discuss it with Tony Ye  
11 but you can't ask him to speculate as to what was in  
12 Tony Ye's mind.

13 BY MR. PRAGLIN:

14 Q Do you know?

15 A It wasn't appropriate in our view.

16 Q So you did discuss it with Tony Ye?

17 A We discussed whether he would submit it as an  
18 individual or from the company. And given Dr. Zhang's  
19 wishes to submit it as a -- as an article solely from  
20 himself and posthumously from Dr. Li, we found it most  
21 appropriate to identify Tony, who was indeed the main  
22 contact with him, the main translator, the main  
23 interactor with respect to the data and the analysis and  
24 the translations back and forth.

25 There's nothing untrue about this letter in my

1 view, and I think it was perfectly appropriate.

2 Q But if Dr. Zhang wanted the article submitted  
3 solely from himself and posthumously, then why did  
4 Tony Ye identify in this transmittal letter that he was  
5 involved as well in the preparation of the manuscript?

6 MR. WILKINSON: Objection. Calls for speculation.

7 MR. McLEOD: I'm going to object. This is  
8 absolutely speculative, it's argumentative.

9 BY MR. PRAGLIN:

10 Q Do you know?

11 MR. McLEOD: Move on. This is just getting  
12 ridiculous.

13 THE WITNESS: I think it made sense for him to  
14 mention himself as being the liaison or the helper, just  
15 to introduce, to say, you know, I mean -- I don't know  
16 how else you can approach an editor and say hi, I've got  
17 something that's from somebody who doesn't speak any  
18 English and it's entirely in English. I think it  
19 deserved a proper introduction, he gave it. There's  
20 nothing incorrect, inaccurate or inappropriate in my  
21 view about this.

22 BY MR. PRAGLIN:

23 Q And why would Tony Ye be using his home address  
24 rather than ChemRisk's address to send correspondence to  
25 in his correspondence with Archives of Environmental

1 Health? Was that also discussed?

2 A Yes.

3 Q In advance of sending this transmittal letter?

4 A Yes.

5 Q So you approved of that as well?

6 A That's what we decided.

7 Q Would you agree that someone reading page 166  
8 of Exhibit 1 would have the impression that neither PG&E  
9 nor ChemRisk were in any way involved in writing the  
10 Zhang '97 article?

11 MR. McLEOD: I'm going to object. That calls for  
12 speculation.

13 He can't testify to what other people might  
14 think.

15 THE WITNESS: It doesn't mention PG&E or ChemRisk;  
16 so I -- I would guess not.

17 BY MR. PRAGLIN:

18 Q Is there anything in writing that proves your  
19 claim that Dr. Zhang didn't want PG&E to be listed as a  
20 sponsor of this research?

21 A Not that I know of.

22 Q Is there anything in writing that proves your  
23 claim that Dr. Zhang didn't want anyone at ChemRisk  
24 listed as an author?

25 MR. McLEOD: Objection. Asked and answered.

1           There's a reason you're taking so long today.  
2 We're getting the same question ten times.

3 BY MR. PRAGLIN:

4           Q     Go ahead, Dr. Kerger.

5           A     Not that I know of.

6           Q     Who typed page 166 of Exhibit 1?

7           A     My -- I would presume that Tony Ye did, based  
8 on the footer.

9           Q     Is that footer a footer of the program that was  
10 used at ChemRisk or at Tony Ye's home?

11          A     Well, I don't recognize it to be one from my  
12 office or from the Alameda office; so my expectation is  
13 that since it is authored by Tony Ye and it's not a  
14 typical footer from either of the offices -- either the  
15 office he worked at or my office, that it probably was  
16 produced by his -- on his home computer.

17          Q     Was this transmittal letter to Archives of  
18 Environmental Health translated in Chinese so Dr. Zhang  
19 could see what Tony Ye was doing?

20          A     Again, you'd have to ask Tony exactly what --  
21 what he transmitted and what he didn't.

22          Q     You've never seen such a document, have you?

23          A     I wouldn't have any need to review a Chinese  
24 document. I wouldn't know what to do with it.

25          Q     Did you ask that Dr. Zhang have everything that

1 ChemRisk was doing translated for him so that he'd know?

2 A I think Tony and Bill and I agreed at the start  
3 of this project that we would communicate fully and in  
4 every way with Dr. Zhang about our thoughts and any --  
5 anything datawise or wordingwise or technical  
6 contentwise that went into this manuscript, and I  
7 believe we followed through on that.

8 Q Was a copy of this version of the manuscript  
9 that was submitted for publication to either Archives of  
10 Environmental Health or to JOEM sent to PG&E's counsel?

11 A I don't -- I don't -- I don't recall.

12 Q Is that the correct term to use, "manuscript,"  
13 before it's been published?

14 A Yes.

15 Q Was the manuscript changed at all before  
16 submitted to JOEM?

17 A I'm not sure.

18 Q Which submission came first, JOEM or Archives  
19 of Environmental Health?

20 A I'm also not sure of that. Tony Ye would be  
21 the better person. He may have more files than I do  
22 that document the -- the -- the submittal and  
23 interaction that went on, but I don't -- I don't have  
24 those in my file and I don't recall.

25 Q Have you ever seen a transmittal letter for the

1 Zhang article to JOEM?

2 A I don't recall seeing one.

3 Q So I assume you've never seen a Chinese version  
4 of it either?

5 A No.

6 Q Have you ever seen a Chinese version of the  
7 manuscript that was submitted to JOEM or Archives of  
8 Environmental Health?

9 (Whereupon Mr. Beilke enters the  
10 deposition proceedings.)

11 THE WITNESS: Again, not that I recall.

12 BY MR. PRAGLIN:

13 Q Was the manuscript changed at all as it was  
14 submitted to the two journals? In other words, was the  
15 same version submitted to both?

16 A I think when -- when I compare this version  
17 which was sent to Archives of Environmental Health with  
18 the final version, there's very little, if any,  
19 difference in wording or content between the two; so my  
20 expectation is that it didn't -- it didn't change  
21 substantially.

22 Q The document that's attached to page 166 of  
23 Exhibit 1 is the manuscript that was sent to Archives of  
24 Environmental Health, correct?

25 A Well, this is again what I have in my file. I

1 believe there were two versions of this document,  
2 one -- one dated November 30th and another dated  
3 December -- early -- first half of December.

4 I'm not absolutely sure if this was the one  
5 that got finally mailed out or the -- the later one. My  
6 expectation is the later one was the one that went --  
7 went to the journal.

8 Q The manuscript that was submitted to Archives  
9 of Environmental Health has Bates stamps 167  
10 through 175. Who typed that document?

11 A Well, it was a computer file that probably went  
12 back and forth between the Alameda office and -- and my  
13 office. I don't recall exactly who, quote-unquote,  
14 typed it but there were contributions from -- from me as  
15 well as from Tony Ye and Bill Butler and translated  
16 through Tony Ye from -- from Dr. Zhang.

17 Q Are you able to identify any word or sentence  
18 or paragraph on the manuscript, pages 167 through 175,  
19 that were the words from Dr. Zhang as translated into  
20 English?

21 A I -- I don't know how to answer that. I don't  
22 translate Chinese, so you would have to ask Tony Ye.

23 Q Do you have a recollection of there being any  
24 section or sentence or paragraph that Dr. Zhang  
25 absolutely insisted had to remain intact as he wrote it

1 in Chinese?

2 A I think all of this was -- was approved by  
3 Dr. Zhang. I don't recall any -- anything that he  
4 wanted in that we didn't agree with.

5 Q Can you show me a document that proves that  
6 Dr. Zhang approved of the content of this manuscript,  
7 Bates stamped 167 through 175 from Exhibit 1?

8 A Again, I don't even know that this is the  
9 version of the document that got submitted, but Tony Ye  
10 and his attachments to the letter and the actual  
11 attached manuscript would probably be a better  
12 reflection of that than I -- than I would be able to  
13 tell you. I don't know for sure.

14 (Whereupon Ms. Sorenson exits the  
15 deposition proceedings.)

16 BY MR. PRAGLIN:

17 Q On page ChemRisk 175 there's a footer in the  
18 lower right. It says CHINA-CR.SLX.

19 A I see that.

20 Q Is that a footer that was created by someone in  
21 ChemRisk's office?

22 A It's not familiar to me.

23 Q Did you ever hear from anyone that Dr. Zhang  
24 had read the final manuscript that was submitted for  
25 publication and that he approved of it?



1           A     Yes.

2           Q     Did he make any changes in it?

3           A     Again, Tony Ye would be the person to ask since  
4 he can translate Chinese. But my understanding from  
5 talking with Tony is that all the wording was approved  
6 and consistent with Dr. Zhang's conclusions.

7           Q     If you go to the '97 Zhang article again, which  
8 is at ChemRisk 188 through 192, I'd like to ask you some  
9 questions about some of the statements in that article.

10                    On page 192, which is the last page, there are  
11 three columns. In the middle column, the second line,  
12 it says, "Nonetheless, these results suggest that  
13 lifestyle or environmental factors not related to the  
14 Chromium (VI) contamination are the likely source of the  
15 variation in these cancer rates. Additional studies to  
16 identify these factors are recommended."

17                    Have I read that correctly?

18           A     Yes.

19           Q     Dr. Zhang didn't write that, did he?

20           A     I believe he did. I mean, I -- again, whether  
21 he wrote those exact words or simply agreed that that  
22 was an appropriate conclusion that -- that followed from  
23 all of the research that -- that was compiled in this  
24 article, I don't know. I can't say that he wrote those  
25 words, per se, but I can say that he agreed with and

1 agreed to that being in this manuscript.

2 Q Is there a document that proves that Dr. Zhang  
3 wrote those words?

4 A Not that I know of, but you can ask Tony Ye,  
5 who would be the translator and could tell you more.

6 Q Did you understand that statement that I just  
7 read --

8 A Yes.

9 Q I wasn't finished.

10 A Oh, sorry.

11 Q Did you understand that statement that I just  
12 read, "that lifestyle or environmental factors not  
13 related to Chromium (VI) contamination are the likely  
14 source of the variation in these cancer rates" to be a  
15 reversal of the statements in Dr. Zhang's 1987  
16 publication?

17 A Well, I don't consider it a reversal. But on  
18 face value, some people might think that was true.

19 Q You've seen in Dr. Zhang's pre-1987 writings  
20 that he believes that chromium (VI) is the cause of the  
21 Chinese population that he studied their illnesses,  
22 haven't you?

23 A He -- he postulated that, yes.

24 Q And this statement in the last page of the '97  
25 Zhang article seems to back off that, doesn't it?

1           A     Yes.  It -- it clar- -- I think at the end  
2     of -- of the research that we had conducted which  
3     brought into focus what the exposure area and population  
4     at risk was, and did a very specific analysis of the  
5     dose-response relationship, that Dr. Zhang had -- had --  
6     had basically changed his mind as to the general  
7     conclusion that chromium was the cause of the excess  
8     cancer in the suburb in general.

9                     You have to understand, though, that the '87  
10    article, which was just a chopped -- chopped bits of  
11    the -- his original article, looked at larger areas, as  
12    far as the cancer incidence, and tried to understand  
13    things not by looking at specifically the chrome (VI)  
14    exposure and the population at risk but by looking at  
15    larger population numbers, and didn't go to the extent  
16    of trying to specifically link up the chromium exposure  
17    data and the mortality data the way that we did in  
18    collaborating with him.

19                    And so this is a much more specific and I think  
20    much more relevant scientific analysis of that data and  
21    he agreed with it.

22           Q     The statement that you just made that Dr. Zhang  
23    had basically changed his mind as to the general  
24    conclusion that chromium was the cause of the excess  
25    cancer in the suburb in general, can you show me a

1 document in Chinese where Dr. Zhang acknowledges that  
2 he's changed his mind?

3 A I can't show you documents to that effect. I  
4 can just tell you that my interaction with -- with  
5 Tony Ye and him reflected that he still believed there  
6 was an excess of cancers in the suburb of JinZhou and in  
7 that specific area, but that the results of this  
8 analysis were clear that chromium was not a reasonable  
9 explanation for that excess.

10 So that I -- I guess to be clear, we show in  
11 here that there is a significant excess of total cancers  
12 across all five of the villages, and that is exactly  
13 what his 1987 report was based on. And we also show  
14 that when you break it down according to where the  
15 exposures likely occurred, that the most exposed  
16 individuals showed the least cancer risk.

17 And when we temper that with respect to what  
18 the person-years of observation was, all the findings in  
19 here are consistent with the -- the -- the conclusion  
20 that excess cancer occurred in areas where there was no  
21 excess chromium in significant quantities beyond the --  
22 the European standard of 50 parts per billion, and he  
23 didn't -- he didn't attempt to find the reason for -- or  
24 the other reason for the higher cancer rates in those  
25 last two villages, so he kind of missed that in -- in

1 his first report.

2           It's still true that across all five villages  
3 there's a significant excess of cancer; so he wasn't  
4 wrong that there was an excess of cancer. He was just  
5 incorrect after further reflecting on it as to that  
6 chromium was the likely cause.

7       Q     And you're saying Table 1 proves all of that?

8       A     I think the whole paper supports -- provides  
9 the scientific basis for that conclusion.

10       Q     And if it turned out that there was an  
11 explanation for why the average chromium (VI)  
12 concentration that you show in Table 1 for the  
13 JinChangBao Village was lower than the villages further  
14 away, wouldn't that undermine your hypothesis?

15       A     I don't -- I don't see how that's possible.

16       Q     You don't see how it's possible that the  
17 average chromium concentration in water for the  
18 JinChangBao region, the closest one to the plant, could  
19 be shown mathematically to be lower than the  
20 concentration for villages further away?

21       A     You could show me what you mean but I -- I just  
22 don't understand what you're trying to get to.

23            Anybody can do an outside analysis, for  
24 example, the OEHHA analysis, and try to speculate about  
25 what somebody's data means. But unless they have in

1 front of them all of the background and all of the data  
2 and all of the understanding of the original authors,  
3 any numerical manipulation that's not agreed to by the  
4 authors stands alone as its own interpretation. It  
5 doesn't have any scientific weight unless it's put out  
6 in the scientific literature and peer reviewed and  
7 agreed to as being a contrary view that makes sense.

8           There's nothing that controverts what this  
9 analysis says, which -- which Dr. Zhang supports and  
10 which his data, I think, reasonably demonstrates.

11       Q     When you're talking about the OEHHA analysis,  
12 you're talking about Exhibit 7 to your deposition, the  
13 George Alexeeff E-mail?

14       A     Yes.

15       Q     If you were to take Dr. Zhang's reported range  
16 of concentration of .6 to 10.0 ppm for the JinChangBao  
17 Village, that would then undermine your hypothesis that  
18 the concentration of chromium closest to the plant was  
19 actually lower than farther away, wouldn't it?

20       MR. WILKINSON:  Objection.  Vague, compound, assumes  
21 facts not in evidence.

22       MR. McLEOD:  Incomplete hypothetical.

23       THE WITNESS:  That --

24       MR. McLEOD:  Calls for speculation, too.

25       THE WITNESS:  That --

1 MR. McLEOD: If you know what that means, if you  
2 want to take a stab at it, go ahead. Otherwise, he can  
3 rephrase it.

4 THE WITNESS: The average concentration that's  
5 presented in Table 1 on ChemRisk 190 had nothing to do  
6 with our analysis of the dose-response relationship  
7 across the villages. That was simply provided for  
8 informational purposes as to what the average  
9 concentration would be.

10 What we relied on was how close the -- the  
11 village was to the suspected sources of contamination,  
12 and we did a linear regression analysis relating to that  
13 distance. And then we also provided additional  
14 information looking at the frequency and concentration  
15 across all the wells in each of the towns to support our  
16 analysis and conclusions, in addition to the  
17 person-years compilation, all of which were not really  
18 clear in the 1987 report but which provided, I think,  
19 using your term, additional transparency to what the  
20 data were that were being relied on for the analysis.

21 BY MR. PRAGLIN:

22 Q You just mentioned dose response. Isn't it  
23 true that in writing the '97 Zhang article,  
24 dose-response relationships were examined using the  
25 distance of each village from the source as a surrogate

1 for exposure or dose?

2 A That's true.

3 Q That's not a good way to analyze dose response,  
4 is it?

5 A You don't think so?

6 Q No.

7 A I disagree.

8 Q You think it is?

9 A I think it is in this case.

10 Q Have you read Dr. Paustenbach's testimony on  
11 that issue?

12 A I don't recall that.

13 Q So you think that using the distance of the  
14 village from the source as a surrogate for exposure or  
15 dose is a good way to evaluate dose-response  
16 relationships?

17 A In this case it -- it's a perfectly good  
18 surrogate.

19 Q But didn't Dr. Zhang, before you met up with  
20 him for this '97 article, publish that there was a  
21 dose-response relationship between the exposure and the  
22 illness in these areas of China?

23 A He made some statements or conclusions that  
24 talked about in a more global sense that the communities  
25 closer -- closest to the facility had excess total



1 cancers. And that is still true. It's just that the  
2 data representing that excess now are clarified to show  
3 that most of the excess cancer risk occurred in areas  
4 where there was no appreciable contamination with  
5 chrome (VI); so it was an anomaly to conclude that it  
6 was related to chrome (VI) based on combining all the  
7 data for those regions without regard to analyzing the  
8 specific exposure information.

9 Q What is the level that you're describing as  
10 being no appreciable contamination with chromium (VI)?

11 A I think what we use as a benchmark would be the  
12 50 part per billion European standard for hexavalent  
13 chromium in water.

14 Q Well, which of the villages in your Table 1  
15 for the '97 article show that the contamination from  
16 chromium (VI) was below .05 for all time?

17 A I don't think it was below that necessarily for  
18 all time.

19 What we represent this to -- to say is that the  
20 1965 data, which was -- which represented when the  
21 original broad-based investigation of wells was  
22 completed and before any steps were taken to remediate  
23 the problems, either by closing wells or by chemical  
24 neutralization techniques, that this was the baseline  
25 condition. And while things may have changed over a

1 period of time, there were many factors that influenced  
2 what the actual measurements might have been at any  
3 given location in years after 1965, but those are  
4 tainted by remediation efforts and the fact that when --  
5 when wells became more contaminated, they were taken out  
6 of use because there was knowledge, public knowledge  
7 already regarding the source and the nature of the  
8 contamination.

9           So in my view, this -- these data from 1965, I  
10 think Dr. Zhang certainly agreed, and Bill Butler and  
11 Tony Ye also agreed, that this was the most  
12 comprehensive data set and the most representative with  
13 respect to what we can expect as the frequency of  
14 exposure for the population of -- at risk as a -- as a  
15 general indicator.

16           Q     If you look at Exhibit 4, which is PG&E's  
17 production in response to our subpoena, it's in your big  
18 stack to your right.

19           A     4?

20           Q     Yes.

21                     And specifically page 213, doesn't Dr. Zhang on  
22 that page --

23                     Let me back up.

24                     This is one of his pre-1987 publications now  
25 translated into English, isn't it?

1           A     Yes.

2           Q     Doesn't he talk there about the fact that the  
3 people living closest to the plant had more illness than  
4 the areas with less intense contamination?

5           A     I wouldn't say that.

6           Q     Go to the previous page, page 212. Under  
7 Section II toward the middle, Dr. Zhang writes, "At the  
8 time of this study, the chrome (VI) concentration in  
9 water wells in Nuer river (sic) Village was 0.1 to  
10 20.0 milligrams per liter. No such symptoms were found  
11 among the residents whose water wells were not  
12 contaminated. The study also indicated that the  
13 symptoms were acute. They disappeared when the human  
14 body accommodated to the condition of or improvement of  
15 drinking water."

16                     Isn't that dose response?

17           MR. WILKINSON: Objection. Vague.

18                     You can answer.

19           MR. McLEOD: Also lacks foundation.

20           THE WITNESS: No, that's an observation.

21           BY MR. PRAGLIN:

22           Q     That's not an observation of a dose-response  
23 phenomenon, that when the source of contamination was  
24 removed, the symptoms disappeared?

25           MR. WILKINSON: Objection. Misstates the document.

1           THE WITNESS: I think there's a -- there's a bigger  
2 picture that's not revealed in this particular section  
3 of the document that needs to be considered in judging  
4 whether there is a real dose-response relationship or  
5 not in that set of facts, or reported facts. And  
6 that -- that relates to ferrous sulfate that was used  
7 starting in the early '60s to try to neutralize the  
8 hexavalent chromium that was being leaked to the -- to  
9 the groundwater.

10          BY MR. PRAGLIN:

11           Q       So you think the sulfate did it and not the  
12 chromium?

13           A       Based on the occurrence of these symptoms,  
14 exact symptoms in three other populations anywhere from  
15 three to eight years after the -- this initial  
16 Nuer River Village finding, in the presence of elevated  
17 sulfate concentrations and in the absence of  
18 hexavalent -- of elevated hexavalent chromium  
19 concentrations, I would say there's about a 3-to-1  
20 weight of evidence that sulfate was more likely the  
21 cause of these initial symptoms, although Dr. Zhang was  
22 not queued into, at the point of this initial evaluation  
23 that sulfate, ferrous sulfate was an agent to  
24 investigate.

25                   He was led by the obvious yellow color of the

1 water, which was reasonably and appropriately thought to  
2 be chrome (VI), but he did not know that there were --  
3 there were additional steps being taken at the alloy  
4 plant early on to try to neutralize that chrome (VI)  
5 with ferrous sulfate. And my expectation is that if he  
6 had -- if he had obtained data during this same  
7 investigation on the sulfate content of that same water,  
8 he could have made that same conclusion as to sulfate  
9 being the cause.

10 Q In Dr. Zhang's pre-'87 writings didn't he, in  
11 fact, acknowledge that all of the above studies suggest  
12 that the pollution of sulfate along with hexavalent  
13 chromium pollution has a noticeable effect on human  
14 health?

15 A I think he noted that they were both present.  
16 And again, my discussions and interpretation --  
17 my own interpretations, my discussions with him, led me  
18 to conclude that his later analyses attributed these  
19 symptoms as being explained primarily by sulfate.

20 Q Can you show me a publication or a writing by  
21 Dr. Zhang in Chinese where he says that?

22 A This is a translation of his actual articles.  
23 I -- I can probably, if you want me to take the time,  
24 look -- point you to the conclusion that says that.

25 Q You're saying that Dr. Zhang's pre-'87 Chinese

1 articles support the view that the problems in this area  
2 of China were explained primarily by sulfate?

3 MR. McLEOD: That's misstating what the document  
4 says.

5 MR. PRAGLIN: Reading it right off the transcript,  
6 right off my computer.

7 THE WITNESS: No. What I'm referring to is these  
8 particular symptoms that you pointed me to regarding  
9 nausea, oral ulcer, diarrhea, abdominal pain, vomiting,  
10 these symptoms were looked at on, as I recall, four  
11 different occasions, three of which had no elevation of  
12 chromium with respect to the -- the concentration in --  
13 in the well being investigated where these people  
14 complained of these problems as -- as relating to  
15 chrome (VI) that was in excess of the European  
16 standard.

17 And it's just not plausible in my experience or  
18 in any other reports that chrome (VI) at or below  
19 50 parts per billion could -- could be capable of  
20 causing these symptoms.

21 BY MR. PRAGLIN:

22 Q But higher concentrations of chromium (VI) are  
23 capable of causing oral ulcer, nausea, diarrhea,  
24 abdominal pain and vomiting, aren't they?

25 A Much higher than what -- what we're talking

1 about for -- for what was detected in these villages.

2 Q Yes.

3 A Right.

4 Q And isn't that what Dr. Zhang concluded in his  
5 1987 article?

6 A Again, Dr. Zhang concluded, based on the  
7 initial findings, where he only investigated chromium  
8 and found that people complained of these symptoms, that  
9 they related to the yellow water, which was at or around  
10 10 to 20 parts per million.

11 I can tell you, then, that these same exact  
12 symptoms with high frequency were found in other areas  
13 where there was no chromium but there was sulfate and  
14 they -- where he investigated and measured both; so  
15 again, based on a weight-of-evidence approach, if you  
16 find three incidents in the same area where there was no  
17 chrome -- no significant chromium and higher sulfate,  
18 and sulfate is definitely known to cause these effects  
19 at the concentrations we're talking about, then it would  
20 be a reasonable scientific presumption or conclusion to  
21 say that sulfate was the likely cause.

22 In this case, he didn't have sulfate data when  
23 he originally investigated the Nuer River Village; so  
24 he's got no reason to say that it wasn't chromium, but  
25 based on that further data, I -- I would conclude that.

1 Q Dr. Zhang didn't seek out ChemRisk to do a  
2 follow-up, did he?

3 A No.

4 Q You sought him out, didn't you?

5 A I did.

6 Q Did he express some surprise when he was  
7 notified by you at the outset?

8 A I don't know.

9 Q He'd been investigating this Chinese population  
10 and the chromium problem there for about 20 years,  
11 right?

12 A Well, in the past he had done it. He was  
13 retired, as far as I understand.

14 Q But didn't he follow that population for about  
15 20 years?

16 A Probably somewhere in that range. It  
17 stopped -- stopped probably in the mid-'80s.

18 Q And when you had these conversations with him,  
19 did you ever tell him hey, by the way, we at ChemRisk  
20 are consultants to PG&E who's involved in litigation  
21 arising out of a contamination at Hinkley with chromium  
22 contamination up to 20 parts per million?

23 A I don't recall if we did or not. Tony, again  
24 being the translator, would probably have a better  
25 recollection of what he -- what he said that was



1 understandable to Dr. Zhang. But if I did say that on  
2 the -- on a telephone conversation, Tony, I'm sure,  
3 would have translated it, but I just don't recall.

4 Q So you don't recall whether you asked Tony Ye  
5 to translate that for Dr. Zhang; is that right?

6 A No. My recollection is that we -- we indicated  
7 we had an interest in understanding the health effects  
8 of hexavalent chromium in groundwater and I don't -- I'm  
9 not -- I don't think that it would be of particular  
10 interest to him to know the name of the company that  
11 was -- that was in litigation about it or that it was  
12 particularly in litigation. He just -- we were asking  
13 for his scientific advice and he -- he offered to -- to  
14 permit us to -- permit us access to that advice.

15 Q So are you saying that you didn't inform  
16 Dr. Zhang that ChemRisk was a consultant to PG&E, which  
17 was a party involved in chromium contamination  
18 litigation?

19 MR. McLEOD: Asked and answered.

20 MR. WILKINSON: Objection. Asked and answered.

21 THE WITNESS: No, I'm not saying that.

22 BY MR. PRAGLIN:

23 Q You just don't remember one way or another; is  
24 that right?

25 A My expectation is that we told him we were

1 interested in understanding chromium (VI) in groundwater  
2 and its health effects. And I don't recall if I said  
3 "PG&E" or "litigation" with regard to our interests.

4 Q And you didn't think that ChemRisk's  
5 relationship to PG&E or the fact that PG&E was involved  
6 in chromium litigation involving a similar contamination  
7 to that which Dr. Zhang had been studying for 25 years  
8 was something that Dr. Zhang would have liked to have  
9 known?

10 MR. WILKINSON: Objection. Calls support  
11 speculation.

12 MR. MCLEOD: Absolutely.

13 THE WITNESS: I don't know.

14 BY MR. PRAGLIN:

15 Q It didn't seem important to you to disclose to  
16 Dr. Zhang?

17 A Well, I can tell you from my history and I  
18 think a document refreshed my memory from what I  
19 reviewed in this -- in this production, that when we had  
20 an interaction with either the Chinese or the Mexican  
21 authors and there was a query about well, why do you  
22 care or why are you interested, that we did fully  
23 disclose what it was that -- that we were doing and --  
24 doing and why it was that we were after this  
25 information.

1           An example of that was the letter that was  
2 translated to Dr. Neri in regard to the -- the Mexican  
3 chromium studies.

4           I don't recall -- because I didn't translate or  
5 have translated in my office any such similar letter or  
6 request for information in regard to Dr. Zhang, I  
7 don't -- I don't know if Tony discussed that with him or  
8 not, and I don't recall if Tony -- if it came up in the  
9 conversation. If it did, I would have told him because  
10 there's nothing to hide with respect to this being  
11 involved in litigation.

12           If somebody is searching for scientific answers  
13 and a scientist is willing to participate in the  
14 research process, I don't see how that has anything to  
15 do with whether it's litigation or whether it's a  
16 particular company.

17       Q     If there's nothing to hide about it then why  
18 wasn't it disclosed in the Anderson arbitration?

19       A     Why wasn't what disclosed?

20       Q     The fact that ChemRisk was involved in getting  
21 Dr. Zhang to reverse his '87 article.

22       A     I don't think that we got him to reverse his  
23 article.

24       Q     You don't think so?

25       A     No.

1 Q Isn't the '97 article a reversal of his  
2 '87 findings?

3 MR. McLEOD: This has been asked and answered  
4 several times.

5 You're just getting argumentative.

6 Ask a straight-up question and then move on.

7 BY MR. PRAGLIN:

8 Q Go ahead, Dr. Kerger. Don't you think the  
9 '97 article is a reversal of his '87 findings?

10 A No. I think it's a clarification of the fact  
11 that he had -- he found excess cancer in five villages  
12 and that chromium didn't correlate as he generally  
13 thought it did when he looked at the data more  
14 specifically.

15 Q Whose decision was it to use the word  
16 "clarification" in the '97 article, ChemRisk's or  
17 Dr. Zhang?

18 A I don't -- I don't know. It probably -- I'm  
19 sure it was a combination of -- of Dr. Zhang and us.

20 Q Do you have any of the hard copies of the  
21 revisions to the '97 Zhang article?

22 A No. I provided you everything that was in my  
23 file.

24 Q Do you have a recollection of writing changes  
25 on the draft manuscripts of the '97 Zhang article?

1           A     Vaguely.

2           Q     Would that have been your custom and practice,  
3 to hand write changes on a scientific document as you  
4 were editing it?

5           A     It depends on -- on what setting I was in.  If  
6 I had the documents on the computer, I wouldn't  
7 necessarily hand edit it, I would just go ahead and make  
8 a redline version and create it within the document;  
9 otherwise, if I was, you know, somewhere else and had a  
10 paper copy of it to read on the plane, I might -- I  
11 might edit it right there on the plane.

12          Q     Was the Zhang '97 article manuscript on your  
13 computer at some point in time?

14          A     I think probably it was.

15          Q     And would the same be true for others at  
16 ChemRisk, Mr. Butler and Mr. Ye?

17          A     Probably at least -- yes, at least -- at least  
18 those three people.

19          Q     Did you use E-mail back in those days?

20          A     Not as frequently as we do today.

21          Q     Were versions E-mailed back and forth between  
22 Alameda and Irvine at ChemRisk?

23          A     Probably.

24          Q     I take it you didn't retain any of those  
25 electronic versions?

1 A That's correct.

2 Q Was E-mail sent to Dr. Zhang in China?

3 MR. McLEOD: Asked and answered.

4 MR. PRAGLIN: No, we talked about faxes.

5 MR. McLEOD: You talked about electronic  
6 transmissions, electronic communications. He's already  
7 said none took place and he testified around 10:15 this  
8 morning that he didn't believe Dr. Zhang even had a  
9 computer.

10 BY MR. PRAGLIN:

11 Q On Exhibit 1, the Zhang article, again,  
12 referring your attention to page ChemRisk 189 --

13 MR. McLEOD: I don't have a computer.

14 BY MR. PRAGLIN:

15 Q -- that's the second page of the article,  
16 right?

17 A Yes.

18 Q Who prepared Figure 1?

19 A Well, Dr. Zhang sent us the map, which is in  
20 one of these articles itself, and then we, meaning the  
21 McLaren/Hart office of Irvine, and I believe it was  
22 Steve Donohue, our graphics coordinator, had it  
23 digitized in a CAD map and created this figure from --  
24 from the actual original that Dr. Zhang had provided us.

25 Q When you say "digitized in a CAD map,"

1 you mean electronically they did something so that it  
2 could be printed out and published?

3 A Yes, they created a CAD figure that was in the  
4 computer.

5 Q On this page 189 of the Zhang '97 article,  
6 under the right column where it says "Results," in the  
7 first paragraph, the last sentence says, "The rates for  
8 three of the above-mentioned regions are comparable to  
9 the 1973 to 1975 rate of 66.1 per 100,000 for Liao-Ning  
10 province," correct?

11 A Yes.

12 Q How do you pronounce that province?

13 A I think we called it Liao-Ning.

14 Q Where did you get this rate of  
15 66.1 per 100,000?

16 A I think you'd have to ask Bill Butler to get  
17 the actual reference but it was, to my recollection,  
18 something like the Chinese -- Chinese yearbook of -- or  
19 atlas or something like that, which again presented  
20 population data and cancer rate data for certain years  
21 and for certain cancer types and for certain provinces  
22 in China, and so this is the data from a general source.

23 Q Did ChemRisk obtain that Chinese Cancer Atlas  
24 publication?

25 A I believe Bill Butler had it already, yes.

1 Q Did you ever see any of those rates?

2 A I saw -- I saw the atlas and I saw -- I think  
3 Bill and I -- Bill and I looked at that information  
4 together.

5 Q And did you see an entry in that Chinese Cancer  
6 Atlas of 66.1 per 100,000 for that Liao-Ning province?

7 A I don't recall specifically.

8 Q Could it be that that's a wrong number and  
9 that it's not really 66.1?

10 A I don't know.

11 Q So ask Bill Butler?

12 A He would probably be a good one to ask.

13 MR. McLEOD: You have to call your family?

14 THE WITNESS: Yes.

15 MR. PRAGLIN: You need to take a break?

16 THE WITNESS: Yes, please.

17 MR. McLEOD: He needs to call his family.

18 MR. PRAGLIN: Sure.

19 THE VIDEOGRAPHER: Going off the record. The time  
20 is 3:46.

21 (Off the record.)

22 THE VIDEOGRAPHER: Back on the record. The time is  
23 4:05.

24 BY MR. PRAGLIN:

25 Q I'm going to skip around a little bit here,



1 Dr. Kerger. If you would go to Exhibit 4, please, which  
2 is the PG&E production, page 159, what is that  
3 document?

4 A 159 is a continuation of a table that  
5 summarizes some expenses that were billed under task  
6 919.

7 Q Is task 919 the Zhang task?

8 A Yes, I believe so.

9 Q Is it Zhang or is it Zhang and the Mexican  
10 follow-up?

11 A This is -- this is both.

12 Q So 919 is the task number for both the Chinese  
13 and the Mexican studies evaluation?

14 A Yes.

15 Q This page 159 has a logo in the lower left. Is  
16 that the ChemRisk logo?

17 A Yes, it is.

18 Q Was that the logo that appeared on your  
19 letterhead?

20 A On the second page, yeah.

21 Q Was there a different logo on the first page?

22 A It was just a different size. I think it was  
23 the same logo and there was the address of the office  
24 below it that -- at the top of the page.

25 Q On a number of these bills and the status

1 reports that precede them is a stamp that says  
2 "Redacted" and then there's a big ol' white space. Do  
3 you see that?

4 A I do.

5 Q And on some of these pages all that there is is  
6 a "Redacted" stamp and the whole page has been taken  
7 out. And on some of these status reports you are the  
8 author and on some you are the author with  
9 Gwen Corbett. Is that your recollection?

10 A That's true. I think Sue Overman was also  
11 on -- on a few, a couple.

12 Q Were things other than the PG&E litigation  
13 discussed in these status reports?

14 MR. McLEOD: Do you mean things other than what they  
15 were retained for in connection with the Anderson case?

16 MR. PRAGLIN: Yes.

17 Q I mean, for example, another matter involving  
18 PG&E perhaps or other issues not related to the Anderson  
19 litigation, or was the sole subject of these status  
20 reports the Anderson litigation?

21 A Well, the sole subject of these attachments was  
22 to explain what the billed expenses and time was for.  
23 And -- and that would be only for materials that were  
24 under contract, under one of the contract numbers for  
25 the Anderson case.

1 Q When you left ChemRisk did you take copies of  
2 these status reports on task 919?

3 A No.

4 Q Before coming here today, have you reviewed  
5 these status reports on task 919?

6 A I have -- I looked them over, yes.

7 Q You looked at them in their unredacted form?

8 A I'm not sure. I seem to recall there being a  
9 few pages that said unredacted, but maybe you can show  
10 me what you mean.

11 Q Well, just take --

12 MR. McLEOD: Did you look at the same document that  
13 he placed in front of you? Is that what you looked at?

14 BY MR. PRAGLIN:

15 Q Right. Or was it another copy that didn't have  
16 the redactions on it?

17 MR. McLEOD: In other words, this is what you looked  
18 at.

19 MR. PRAGLIN: Well, that's coaching your witness --

20 MR. McLEOD: Well, I'm not coaching.

21 MR. PRAGLIN: -- pretty blatantly.

22 MR. McLEOD: You can ask him.

23 MR. PRAGLIN: You're leading him and coaching him.

24 MR. McLEOD: I think he's confused.

25 THE WITNESS: I don't recall if there was anything

1 other than this.

2 BY MR. PRAGLIN:

3 Q When did you do this review of the status  
4 reports?

5 A Probably on the plane over.

6 Q From reviewing --

7 A Today. Not today.

8 Q Sorry.

9 A On the plane over Monday.

10 Q From reviewing the status reports, did it  
11 refresh your recollection as to what you were doing on  
12 this task 919?

13 A Yes, in part.

14 Q Did it refresh your recollection as to what you  
15 were doing back in 1995 and 1996 on the PG&E Hinkley  
16 project?

17 A To some extent, yes.

18 Q Where did you get the copies that you reviewed  
19 on the plane on the flight out here?

20 MR. WILKINSON: I think you're creating an ambiguity  
21 that doesn't exist.

22 I'll say it, Gary. We haven't given him the  
23 unredacted documents. The only thing that I know that's  
24 been provided to counsel is what we've produced to you;  
25 so if you're trying to shade it over to suggest that he

1 had the unredacted status reports, it didn't happen.

2 MR. PRAGLIN: Now you've got two lawyers coaching  
3 you, Dr. Kerger.

4 MR. WILKINSON: Yes. Well, but only because you're  
5 trying to put words in his mouth.

6 THE WITNESS: I'm sorry, what was the question?

7 BY MR. PRAGLIN:

8 Q Did your review of these status reports on the  
9 flight out here refresh your recollection as to what you  
10 were doing on the PG&E Hinkley project?

11 A To some extent, yes.

12 Q Let's just take this status report of  
13 October 5, 1995, which is Bates stamped on Exhibit 4,  
14 pages 154, 155, 156 and 157.

15 How did reading these pages refresh your  
16 recollection if almost everything that was said in the  
17 status report was redacted out?

18 MR. WILKINSON: Argumentative.

19 I mean, come on, Gary, that is just an absurd  
20 question and an attempt to twist his words in response.

21 BY MR. PRAGLIN:

22 Q How did it do that, Dr. Kerger?

23 A Well, I think these documents -- the unredacted  
24 portion of these documents, in my estimation, responded  
25 specifically to the request for billing records in

1 regard to the Zhang research work that we were tasked to  
2 do. That was task 919 and 920, according to my job  
3 number system.

4           And I have no idea why they redacted portions  
5 of certain descriptions or not, but what helped me  
6 particularly was these spreadsheets that identify the  
7 name of the person and a short phrase of what tasks and  
8 the number of hours and so forth that were billed, and  
9 that the -- the brief explanations that summarize  
10 those -- what's -- what's also represented in the table  
11 form.

12           For example, on page 156 it describes, in  
13 essence, what is also more specifically described with  
14 respect to hours and individuals and rates and total  
15 costs, what was done on that task in the summary format.

16       Q     Just taking this example of October 5, 1995,  
17 this four-page status report, do you remember what you  
18 wrote at that time to Mr. Steve Hoch at Haight, Brown &  
19 Bonesteel?

20       MR. WILKINSON: The redacted portion?

21       MR. PRAGLIN: Yes.

22       MR. WILKINSON: Objection. Work product.

23       MR. McLEOD: That's a "yes" or --

24       MR. WILKINSON: Nonresponsive on the Zhang and Li  
25 issues. It's been redacted as work product and those

1 redactions have been reviewed by the court.

2 MR. McLEOD: And I'll instruct him not to answer.

3 MR. PRAGLIN: I'm just trying to find out if he  
4 remembers what he wrote.

5 THE WITNESS: I don't remember.

6 BY MR. PRAGLIN:

7 Q And you haven't seen unredacted portions of  
8 these status reports since the '95/'96 time frame?

9 A I don't believe so.

10 Q Page 159 of Exhibit 4 that references charges  
11 for color copies and splicing, what color copies were  
12 made for the Zhang article?

13 A I believe the map that was created initially  
14 was in a color -- in a -- in a more graphic presentation  
15 that was created by our graphics group, and that  
16 probably corresponded to that.

17 Q So you have a recollection of seeing a color  
18 version of the map in the '97 Zhang article?

19 A In my file, yeah.

20 Q And the map that we're talking about is  
21 Figure 1?

22 A Where -- where are we?

23 Q We're in the Zhang article, which is in  
24 Exhibit 1, page 189, Figure 1.

25 A Yeah.

1 Q I had you put it Post-it on it, remember that?

2 A Yeah, it's the map.

3 Q Okay. Dr. Zhang didn't furnish a color version  
4 of that map, did he?

5 A No. As I told you, we took the version that he  
6 had given to us and digitally transcribed it into a  
7 computer file and then colorized it graphically with the  
8 computer.

9 Q Did you get some colored photos from  
10 Dr. Zhang?

11 A I don't -- I don't recall any photos.

12 Q You don't recall receiving photos of any sort  
13 from Dr. Zhang?

14 A No.

15 Q On Exhibit 4, which is the PG&E production,  
16 page 153, there's a reference to production of slides at  
17 a cost of \$300. Do you see that?

18 A Yes.

19 Q Is that an expense that ChemRisk incurred and  
20 then passed on to PG&E?

21 A Yes. That was probably in regard to overheads  
22 for -- for a summary presentation.

23 Q For what? A summary presentation for what?

24 A Well, on -- on the outcome of -- of this  
25 research that's also represented on page 152. And



1 probably earlier -- earlier billings.

2 Expenses are often delayed by 30 to 60 days,  
3 depending on when we receive the invoice and when it  
4 gets processed through the central accounting; so it's  
5 hard to link expenses that occur on a particular invoice  
6 to that actual time frame.

7 Q Was there some presentation made by ChemRisk to  
8 PG&E or its lawyers about the Zhang article, a  
9 PowerPoint presentation or something on that order?

10 A Probably.

11 Q Do you recall that?

12 A I would say that's likely.

13 Q Would you look at Exhibit 4, BRP 126 through  
14 127, please. Would that be excerpts from a PowerPoint  
15 presentation of some sort?

16 A It's a WordPerfect file, but it's a  
17 presentation, it looks like to me.

18 Q Who is the presentation to?

19 A I don't recall exactly. It may have been to  
20 the attorneys, it may have been to a set of other  
21 experts.

22 MR. MCLEOD: You just have no recollection?

23 THE WITNESS: I just -- that -- that's my estimation  
24 is that it was probably one of those two.

25 BY MR. PRAGLIN:

1           Q     What other experts did you talk to the Zhang  
2 article about?

3           A     Well, in general, we -- if there were experts  
4 in other medical fields, specialties, let's say, for  
5 example, brain -- stomach cancer expert that didn't  
6 really have a special knowledge or a particular good  
7 knowledge of hexavalent chromium, the attorneys would  
8 ask us to put together training materials to be able to  
9 summarize what the literature said and provide that  
10 information to them. And we gave that in seminars at --  
11 on occasion.

12          Q     To which experts?

13          A     I don't recall who the guest list was but it  
14 was in general the ones that were not already trained  
15 in -- in chromium toxicology. It was the non-toxicology  
16 experts, the medical experts.

17          Q     How many of them were there that you gave these  
18 training sessions to?

19          A     Again, I -- it's hard for me to remember, it's  
20 been so long ago, but I recall at least one seminar that  
21 we gave that was solely to the attorneys that were on  
22 the team, and another seminar where medical experts that  
23 didn't have toxicology expertise in chromium were  
24 invited to attend. And Steve Targan, who is the -- I  
25 think the gastroenterology expert, was one that I seem

1 to recall.

2 Q Were presentations made by way of a slide  
3 presentation of some sort?

4 A Generally an overhead presentation is what I  
5 recall.

6 Q Is Exhibit 4, pages 126 and 127, one of the  
7 exhibits from such an overhead presentation?

8 MR. WILKINSON: Objection. Vague.

9 THE WITNESS: It might be.

10 MR. MCLEOD: If you know one way or the other.  
11 Don't speculate.

12 THE WITNESS: I expect that it is or it was intended  
13 for -- for -- for that purpose.

14 BY MR. PRAGLIN:

15 Q Who prepared these two pages, BRP 126 and 127?

16 A Probably myself or my staff.

17 Q On page 127, item 4, this is your evaluation of  
18 the Zhang '87 study, right?

19 A This is one -- one summary, yes.

20 Q In item number 4 you say, "A retrospective  
21 mortality study found excess," and then you have three  
22 bullet items, correct?

23 A Yes.

24 Q Excess mortality, excess lung cancer and excess  
25 stomach cancer, correct?

1           A     That's what it says.

2           Q     Wasn't that your understanding of Dr. Zhang's  
3 conclusions in 1987?

4           A     That's what the findings were in my view.

5           Q     And you informed PG&E's counsel of that,  
6 right?

7           A     Most definitely.

8           Q     And you informed PG&E's other paid consultants  
9 of that, at least the ones you met with, right?

10          A     Of course.

11          Q     And then item number 3 under the section  
12 entitled "Problems" on Exhibit 4, page 127, says,  
13 "ChemRisk currently communicating with author to get  
14 more information," correct?

15          A     Yes.

16          Q     So that means that this document was prepared  
17 at least as of the time of roughly the spring of 1995,  
18 correct?

19          MR. McLEOD: Well, I'm going to object in terms of  
20 there's two things here; there's the printed information  
21 and then there's the handwriting.

22          MR. PRAGLIN: Right, we're talking about the  
23 handwriting.

24          MR. McLEOD: So you're talking about when was the  
25 handwriting added?

1 MR. PRAGLIN: Right.

2 MR. WILKINSON: Objection. Calls for speculation,  
3 vague as to time.

4 THE WITNESS: Based on the content of that number 3,  
5 which is handwritten not by me, I would expect that it  
6 would be at least spring of -- of 1995.

7 BY MR. PRAGLIN:

8 Q Whose writing is that on item number 3 on  
9 page 127 of Exhibit 4?

10 A It looks like Gwen, Gwen Corbett.

11 Q Was there some discussion with PG&E's counsel  
12 about the fact that the '87 Zhang article was a  
13 problem?

14 A I always saw it as a -- as something that was  
15 an unclear point in the literature, and so I'm sure  
16 we -- we've had discussions that that was something that  
17 we didn't know how to interpret one way or the other,  
18 but that looked -- looked adverse.

19 Q Was there ever any discussion with anyone at  
20 ChemRisk or PG&E about the fact that the '97 Zhang  
21 article eliminated that problem?

22 MR. WILKINSON: Objection. Vague.

23 THE WITNESS: Was there any discussion at ChemRisk?

24 BY MR. PRAGLIN:

25 Q Either at ChemRisk or amongst you and your

1 colleagues or between you and PG&E or its counsel, any  
2 discussion.

3 MR. WILKINSON: Objection. Vague and compound.

4 THE WITNESS: I'm sure there were after we -- we  
5 identified what the -- what the analysis that was most  
6 appropriate and scientific would be. In our  
7 collaborations with Dr. Zhang, I'm sure we did have  
8 discussions that that helps to clarify the meaning of  
9 the initial Zhang -- Zhang and Li 1987 report.

10 BY MR. PRAGLIN:

11 Q Did these discussions also include the fact  
12 that the Zhang '97 article would eliminate this problem  
13 of his 1987 findings?

14 A I don't know if --

15 MR. WILKINSON: Objection. Vague and compound.

16 THE WITNESS: I don't know if we ever used the word  
17 "eliminate," but we certainly knew that it would help to  
18 clarify the meaning of an otherwise  
19 difficult-to-interpret finding in the literature.

20 BY MR. PRAGLIN:

21 Q Was it also discussed that the Zhang '97  
22 article would help PG&E's position in chromium  
23 litigation?

24 A It was surmised that it -- that it would, but I  
25 don't know to what extent that -- you know, I don't

1 recall any specific conversations to that effect.

2 Q What's your basis for saying that it was  
3 surmised that the Zhang '97 article would help PG&E's  
4 position in chromium litigation?

5 A Well, it's pretty obvious that if there wasn't  
6 an association between the chromium and the excess  
7 cancers that he was finding, that that would tend to  
8 clarify that while there might be an excess of cancers,  
9 that it couldn't be clearly connected to hexavalent  
10 chromium; so that was a -- that was a significant and  
11 different finding than what was out there in a partial  
12 Chinese -- partial article of -- in a Chinese  
13 interpretation that was really only available in the  
14 general literature through ATSDR, and -- and was itself  
15 only an interpretation or a translation that -- that  
16 nobody made any -- any particular sense of. I think  
17 that's reflected on page 127 in the first two problems  
18 that we identify.

19 Q Did anyone at ChemRisk attempt to contact the  
20 person at ATSDR that made the translation of the '87  
21 study?

22 A We did contact ATSDR, I believe it was Char- --  
23 a woman named Charlene in our office that contacted  
24 ATSDR and asked for that translation. I don't recall  
25 whether or not ATSDR had an outside person do that

1 translation or if we even knew or cared at the time.

2 We just wanted to know more specifically what  
3 the information that was reported in the 1993 chromium  
4 toxicant profile for -- that was published by ATSDR,  
5 what their account of it was based on. And when we  
6 queried ATSDR to that effect, they said that this  
7 translation that they had done was -- was their basis  
8 and they -- they were gracious enough to forward that to  
9 us.

10 Q Did anyone at ChemRisk meet with anyone at  
11 ATSDR about ATSDR's translation of the '87 Zhang  
12 article?

13 A Not to my knowledge.

14 Q You mentioned earlier that Tony Ye established  
15 a relationship with Dr. Zhang. Do you recall that  
16 testimony?

17 A Yes.

18 Q What's the nature of that relationship?

19 A I would say it was a academic and collegial  
20 relationship to further analyze the data and bring it  
21 into more specific focus, as I discussed before.

22 Q And the two of them never met so far as you  
23 know, right?

24 A I believe that's true.

25 Q On Exhibit 4, BRP 153, this bill, you bill for



1 travel to San Francisco. Do you see that?

2 A Yes.

3 Q Why did you go to San Francisco in connection  
4 with the Zhang project?

5 A I probably went to San Francisco because it was  
6 one of the two places I would fly to go to see  
7 Bill Butler in the Alameda office. I would either fly  
8 into Oakland or San Francisco, and I expect that I had a  
9 parking expense in San Francisco. It's also possible  
10 that I -- I visited Greg Read in San Francisco.

11 Q On Exhibit 4, BRP 146, this is another billing  
12 document, correct?

13 A Yes.

14 Q This is an itemization for a bill that was  
15 submitted to PG&E on the Zhang project, right?

16 A Yes.

17 Q For Gwen Corbett, the bottom entry, for the  
18 period weekending July 2, 1995, she bills an hour for  
19 coordinating a letter requesting Dr. Zhang's description  
20 of photos. Do you see that?

21 A Yes.

22 Q What photos were those?

23 A I don't recall.

24 Q Did you ever see photos?

25 A I don't recall any photos.

1 Q Why would Dr. Corbett bill PG&E for  
2 coordinating a letter requesting Zhang's description of  
3 photos if there were no photos?

4 MR. WILKINSON: Objection. Assumes facts not in  
5 evidence, argumentative.

6 MR. McLEOD: He just said he doesn't know.

7 THE WITNESS: I don't know.

8 BY MR. PRAGLIN:

9 Q The next page, which is BRP 147 in Exhibit 4,  
10 is another billing document that you submitted to PG&E  
11 for task 919, the Zhang project, right?

12 A Right.

13 Q The second box, it says "Expenses" and then it  
14 lists Dr. Zhang as a subcontractor, right?

15 A Yes.

16 Q And it shows \$750 as a credit to the project,  
17 right?

18 A Yes.

19 Q What does that mean, credit to the project?

20 A My expectation is that the initial three months  
21 of contract at \$250 per -- per month got double billed  
22 somehow and that this was crediting for that amount.  
23 Sometimes that happens, a mixup at central accounting.

24 Q When you say "double billed," do you mean  
25 double billed to central accounting at

1 McLaren/Hart-ChemRisk or do you mean to PG&E?

2 A Well, if it occurs in this accounting, that  
3 means that it -- the expense had already been billed to  
4 the client.

5 Q So the \$750 that was paid to Dr. Zhang on the  
6 subcontract was then in turn billed to PG&E; is that  
7 right?

8 A In a previous invoice, yes.

9 Q Where is that invoice?

10 A I -- I don't know. I don't have any invoices.

11 Q You don't see it in Exhibit 1 or 4, the  
12 documents that we've attached to your deposition, do  
13 you?

14 A I -- I didn't really look for it.

15 Q You haven't seen it in your review and  
16 preparation for this deposition, have you?

17 A I -- I didn't memorize all of these exhibits.  
18 I -- I just don't know. I can look through it for you  
19 if you like.

20 Q Well, I know I've looked and I haven't found  
21 it; so --

22 A Well, I trust you.

23 Q On Exhibit 4, BRP 152, this is another billing  
24 document?

25 A Yes.

1 Q For Bill Butler, for the week ending July 23,  
2 1995 he bills six hours for preparation of a study plan  
3 and a conference call to Dr. Zhang, correct?

4 A Yes.

5 Q Were you present at all the conference calls to  
6 Dr. Zhang, or did some take place in your absence?

7 A I'm sure many took place in my absence.

8 Q Do you know the dates of the ones that you  
9 attended?

10 A No, I don't -- I mean, some of these documents  
11 I think might have indicated my billing to that  
12 particular task, but I don't -- I don't recall them  
13 offhand.

14 Q You wouldn't ever bill PG&E for something that  
15 you didn't do on the Anderson litigation, would you?

16 A I don't think so. Not intentionally.

17 Q What was the study plan that Dr. Butler was  
18 preparing in connection with Dr. Zhang?

19 A I don't recall. You could probably ask him.

20 Q What is a study plan?

21 A Well, a study plan is what we would create as  
22 a -- after an initial data review to say that our most  
23 appropriate scientific analysis would include these  
24 particular steps which are in the plan, which might  
25 involve research, compilation of data, statistical

1 analysis of data and then evaluation of the results; so  
2 that's a study plan.

3 Q Is it an outline for writing a scientific  
4 article, for lack of a better term?

5 MR. WILKINSON: Objection. Misstates the testimony,  
6 vague and ambiguous.

7 THE WITNESS: I wouldn't go that far, no.

8 A study plan really -- I think what -- what  
9 Bill is referring to in this -- in this sense is what  
10 the statistical analysis or epidemiological quantitative  
11 analysis game plan would be.

12 BY MR. PRAGLIN:

13 Q Did you ever see that study plan?

14 A No.

15 Actually, I probably did. I just don't have it  
16 in my files.

17 Q Was it translated into Chinese for Dr. Zhang?

18 A I'm sure it was, either verbally or in writing.

19 Q Why do you say that?

20 A Because that was our policy with -- on this  
21 project with Dr. Zhang.

22 Q What was your policy?

23 A To openly share our thoughts and intentions  
24 with respect to how we were interpreting the data and  
25 what we thought were appropriate steps to take to

1 further analyze the information that he sent to us.

2 Q Are you saying that at the outset of this  
3 project with Dr. Zhang, this collaboration, that you and  
4 Dr. Butler and Dr. Ye discussed that you should openly  
5 share your thoughts and intentions with Dr. Zhang with  
6 regard to the '97 follow-up article?

7 MR. McLEOD: Well, I'm going to object. It assumes  
8 facts not in evidence and actually misstates his  
9 testimony, because he earlier testified that when they  
10 first contacted Dr. Zhang, they didn't know where it was  
11 going to go and whether or not it was going to lead to  
12 an article.

13 MR. PRAGLIN: You're coaching.

14 MR. McLEOD: It's a different topic.

15 No, I'm not. I'm correcting the record.

16 Come on. You're mischaracterizing the  
17 testimony. You're getting argumentative. We've gone  
18 over this many, many times. This is historic.

19 MR. PRAGLIN: We haven't gone over this issue.

20 MR. McLEOD: Sure we have.

21 MR. PRAGLIN: The issue of an open sharing of  
22 thoughts and intentions, we have not been over.

23 MR. McLEOD: We have been over this collaboration  
24 probably 20 to 25 times.

25 THE WITNESS: I think I can clarify it with you,

1 that as in the original conversation we had between  
2 myself and Dr. Zhang when he showed up at this -- at the  
3 Shanghai office, my intent, and that intent that I  
4 communicated with the group that I was coordinating on  
5 this task, was to deal with these international experts  
6 in a straightforward manner and expect that they would  
7 do the same.

8           And Dr. Zhang and Bill Butler had a -- a -- an  
9 appropriate interaction from every -- every step that I  
10 could anticipate, and that was fostered by the fact that  
11 Tony Ye could speak the specific dialect that Dr. Zhang  
12 spoke and that Bill Butler was his supervisor and was an  
13 experienced epidemiologist. And so that interaction I  
14 think was -- was appropriate and we always tried to stay  
15 above board in terms of disclosing any information that  
16 was requested with respect to the science or the  
17 scientific basis for our thoughts.

18 BY MR. PRAGLIN:

19           Q     Was Tony Ye already a ChemRisk scientist at the  
20 time the Zhang issue came up or was he hired for this  
21 project?

22           A     I -- I don't believe he was hired for this  
23 project. I think Bill Butler had a series of other  
24 projects ongoing at the time. And I don't recall the  
25 exact time that Tony was hired on, but I -- I know that

1 it wasn't specifically for -- for this project.

2 Q Had you ever worked with Tony Ye before,  
3 before this Zhang project?

4 A I don't recall.

5 Q On Exhibit 4, page BRP 156, this is a portion  
6 of your status report to Steve Hoch on October 5, 1995,  
7 and you say, "During this period, Tony Ye and  
8 Bill Butler corresponded with Dr. Zhang and participated  
9 in conference calls."

10 Do you see that?

11 A Yes.

12 Q Was that correspondence translated into  
13 Chinese?

14 A I don't know how you're interpreting  
15 "corresponded with," but in my estimation, that means  
16 that Zhang sent us additional data or articles, which  
17 did happen over a period of months, and that's what I  
18 mean. That doesn't mean specifically that we wrote  
19 things to him.

20 Q Were there letters going back and forth between  
21 ChemRisk and Dr. Zhang?

22 A Again, my understanding is that most of the  
23 information flow, as far as data and underlying  
24 information, came from Dr. Zhang to us, and that any of  
25 the further analysis of that data was communicated in --



1 in -- verbally.

2 Q Did any letters go from ChemRisk to Dr. Zhang?

3 A I'm sure some did but I don't know which --  
4 which ones exactly, and you'd probably find Tony Ye as a  
5 better source of that information.

6 Q You'd agree that there weren't any letters from  
7 ChemRisk to Dr. Zhang that were produced in either  
8 Exhibits 1 or 4 to your deposition, wouldn't you?

9 A I'm sorry, could you repeat that?

10 Q Would you agree that there's no written  
11 correspondence from ChemRisk to Dr. Zhang in Exhibits 1  
12 or 4 to your deposition?

13 MR. McLEOD: Are you excluding the original fax  
14 that we went over dated May 31, 1995?

15 MR. PRAGLIN: Yes, because that didn't go to  
16 Dr. Zhang, I don't think.

17 THE WITNESS: Again --

18 MR. WILKINSON: I'm going to object. The documents  
19 speak for themselves.

20 I don't have an absolute recollection of what  
21 was in there, but --

22 MR. PRAGLIN: We're excluding it.

23 Q Any letters went back and forth?

24 A I -- I don't -- I don't know if -- if any of  
25 the documents that are in here would be construed as

1 letters from Dr. Zhang to us. Some of them may be but  
2 I -- it would be a guess on my part because I don't read  
3 Chinese.

4 Q The question was is there any written  
5 correspondence from ChemRisk to Dr. Zhang in Exhibits 1  
6 or 4 to your deposition?

7 A I don't know. I think Tony Ye would be an  
8 appropriate person to ask because if he wrote something  
9 in Chinese it might look exactly the same as something  
10 that Dr. Zhang wrote, and I can't -- I can't give you a  
11 clear and correct answer on that that I would feel  
12 comfortable with.

13 Q Would you agree there are no English  
14 translations of Chinese letters from ChemRisk to  
15 Dr. Zhang and Exhibits 1 and 4 to your deposition?

16 MR. WILKINSON: Same objections.

17 THE WITNESS: There were none in my file that I know  
18 of so I don't -- I don't believe so.

19 MR. WILKINSON: The documents speak for themselves.

20 BY MR. PRAGLIN:

21 Q Still in Exhibit 4, going down to BRP 176, this  
22 is a letter that was written I guess by you on  
23 August 20, 1996 to Deborah Wordham at Haight, Brown &  
24 Bonesteel; is that right?

25 A Yes.

1 Q Is that your signature there?

2 A It is.

3 Q And this letter encloses a bill to PG&E from  
4 Environmental Risk Analysis for \$347.03, correct?

5 A Yes, it does.

6 Q And it looks like it's got your stamp on there  
7 and you approved it on the PG&E case; is that right?

8 A That's right. That's the central accounting  
9 stamp and then my signature on BRP 177.

10 Q And it's for two and a half hours of follow-up  
11 by Tony Ye and Bill Butler and their staff to get the  
12 Zhang paper accepted for publication, correct?

13 A It says on 176 that it was for final  
14 correspondence and communication with Dr. Zhang, and it  
15 was work performed in June of 1996.

16 Q So where is that final correspondence?

17 A Again, you interpret "correspondence" to be  
18 written material and I don't. Correspondence can  
19 include actually just sending copies of documents that  
20 aren't necessarily written by us or communicating  
21 verbally.

22 So I don't know if there was any written  
23 documents. Tony Ye would be the right person to ask  
24 because he's the one who would write it in Chinese to  
25 Dr. Zhang.

1 Q As long as we're on Exhibit 4, why don't we  
2 skip ahead to BRP 181 and 182. What is this document?

3 A This is a memo to -- that -- a person that we  
4 had identified to translate a letter in -- into Spanish,  
5 a letter to Dr. Neri who was a -- one of the authors of  
6 a series of Mexican studies pertaining to chromium  
7 groundwater contamination.

8 Q Did this letter go out in Spanish?

9 A Yes.

10 Q Did you sign it?

11 A Probably.

12 Q Did you ever meet with any of the Mexican  
13 scientists?

14 A I had phone conversations with them but I did  
15 not meet -- meet them personally, no.

16 Q This English draft of the letter to Dr. Neri  
17 talks about executing a contract for having him consult  
18 with you. Was such a contract ever entered into?

19 A I -- I don't believe so.

20 Q Now, in this letter to Dr. Neri you identify  
21 the fact that ChemRisk is conducting research on behalf  
22 of Haight, Brown & Bonesteel, a United States law firm,  
23 and their client, Pacific Gas & Electric Company. Do  
24 you see that?

25 A Yes.

1 Q Why do you disclose who you're working for with  
2 Dr. Neri but not with Dr. Zhang?

3 MR. WILKINSON: Objection.

4 MR. McLEOD: I'm going to object. You're  
5 mischaracterizing his testimony.

6 MR. WILKINSON: Assumes facts not in evidence, asked  
7 and answered.

8 BY MR. PRAGLIN:

9 Q Go ahead, Dr. Kerger.

10 A This is -- this just happens to be written  
11 information that indicates that we disclosed that to  
12 Dr. Neri. The fact that there isn't such written  
13 information doesn't mean I didn't communicate that to --  
14 to Dr. Zhang or -- or anybody that I spoke to.

15 As I said, whenever I interacted with people on  
16 this task, it was not in the vein of hiding who I worked  
17 for. I wasn't embarrassed about who I worked for. And  
18 if that topic came up beyond what -- what would be the  
19 intellectual information I was looking for and they  
20 queried, I gave them a straight answer.

21 So I did not hide that fact from Dr. Zhang, and  
22 he certainly knew that we were working for a law firm  
23 and that we were working through contracts for our  
24 company on behalf of a client; so I don't -- I don't  
25 know what -- what you think the big secret is.

1 Q Is there any written proof that you disclosed  
2 to Dr. Zhang that you were working for a law firm and  
3 working through contracts on behalf of a client?

4 MR. McLEOD: Objection. Asked and answered.

5 THE WITNESS: I know you're looking for written  
6 proof but I -- it wasn't required by me or by anybody I  
7 was working with. And if somebody asked me, I would  
8 tell them.

9 So as far as I know, I don't have any  
10 documentation in my file that would satisfy your  
11 request.

12 BY MR. PRAGLIN:

13 Q Did you ever get a CV from Dr. Zhang to find  
14 out about his background?

15 A I don't recall requesting that, but we may  
16 have. We may have received one.

17 Q You'd agree there isn't one in either  
18 Exhibits 1 or 4 attached to your deposition, wouldn't  
19 you?

20 A It wasn't in my file, that's for sure.

21 Q Did you offer Dr. Zhang your CV?

22 A I don't recall. I don't recall him asking for  
23 it or me sending it to him.

24 Q I'm going to switch over to Exhibit 1 now, the  
25 ChemRisk production that you produced in this case. We

1 can probably put Exhibit 4 away for a while.

2 On ChemRisk 33, which are your handwritten  
3 notes, were these notes taken in the initial conference  
4 call with Dr. Zhang?

5 A Yes.

6 Q You have an entry that says, and if I don't  
7 read it correctly tell me, "He conducted study from  
8 start to finish"?

9 A That's correct.

10 Q And then you say underneath that, the first  
11 bullet item, why don't you read it to me and tell me  
12 what that means. It starts with the word "Saw," I  
13 think?

14 A Well, it says Li was his boss, and then under  
15 the first bullet item, "Saw correlation of contamination  
16 to mortality from cancer to magnitude and distribution  
17 of contamination."

18 Q Does that mean that he saw a relationship  
19 between the magnitude of the contamination and the  
20 increased mortality from cancer?

21 A That's what I understood him to say in that --  
22 that conversation, yes.

23 Q And that was translated to you by Tony Ye?

24 I'm sorry, that was translated to you by the  
25 people in Shanghai, China; is that right?

1           A     Yeah, I believe it was a combination of  
2     Shaw Lin, who was our Chinese person in the Alameda  
3     office that we initially asked to be on the -- on the  
4     call, and then of course there were -- there were  
5     English-speaking people in the Shanghai office as well.

6           Q     And then at the bottom of this page of notes it  
7     says, "Collaboration to publish further results," and  
8     then it says "interested" and it's underscored several  
9     times, correct?

10          A     Yes.

11          Q     Were you emphasizing the fact that he was  
12     interested in a collaboration?

13          A     It was kind of -- I would guess it's doodling,  
14     but I would say that that was something that I was happy  
15     about; so I probably underlined it because that was --  
16     that was the goal of the project was to try to  
17     collaborate with him and to clarify it, and that's my  
18     interpretation.

19          Q     And he agreed to this collaboration after this  
20     45- to 60-minute conversation?

21          A     Well, again --

22          MR. WILKINSON:  Objection.  Misstates the document,  
23     misstates the testimony.

24          THE WITNESS:  -- I think the prelude to this was  
25     that we forwarded this list of questions to our staff at



1 Shanghai and they explained -- they went over and  
2 explained what the questions were regarding his study;  
3 so before we had our conversation he had been primed by  
4 them, to my understanding, as to what we were looking  
5 for, what information we were looking for.

6           And months before we actually even spoke at  
7 that time, months before that, people from our Shanghai  
8 office had located him and asked him if he was  
9 interested in doing scientific consulting in regards to  
10 his former study. And so those were the two preceding  
11 contacts.

12 BY MR. PRAGLIN:

13           Q     He had just retired at the time you located  
14 him, right?

15           A     That was my information, yes.

16           Q     And what was he doing in life at the time you  
17 proposed this collaboration to him?

18           A     I just said he was retired, so I -- I didn't  
19 inquire beyond that.

20           Q     What was he retired from?

21           A     He was retired from the -- it was my  
22 understanding that he was retired from being the station  
23 manager of the Anti-Epidemic Station, which was a public  
24 health station in -- in JinZhou province.

25           Q     What did he do there?

1           A       My understanding was he was the -- the  
2       director, kind of like the local public health director,  
3       for lack of a better word.

4                        Again, this was -- I didn't -- I didn't try to  
5       probe into what his duties were.  But from my  
6       interaction with him in understanding the scope of  
7       the -- the reports that he gave us and that we had  
8       translated, that was my understanding as to his role.  
9       He was the -- what I would call the public health  
10      officer in a government agency of Communist China.

11           MR. PRAGLIN:  We have to change the tape so let's  
12      take a short break.

13           THE VIDEOGRAPHER:  Going off the record.  This is  
14      the end of videotape number three.  The time is 4:56.

15                        (Off the record.)

16           THE VIDEOGRAPHER:  Going back on the record.  This  
17      is the beginning of videotape number four.  The time is  
18      5:09.

19      BY MR. PRAGLIN:

20           Q       Did someone at ChemRisk proof the manuscript of  
21      the Zhang '97 article that went to Archives of  
22      Environmental Health and JOEM?

23           MR. WILKINSON:  Vague as to time.

24           THE WITNESS:  Proof?  You mean when we made our  
25      initial submission?

1 BY MR. PRAGLIN:

2 Q Yes.

3 A Yes.

4 Q And then each time you would make a submission  
5 to a journal in response to their comments or requests  
6 for changes, would you proof the new submission of the  
7 manuscript?

8 MR. McLEOD: By "you" you mean someone at ChemRisk?

9 MR. PRAGLIN: I do.

10 MR. McLEOD: Okay.

11 THE WITNESS: That would probably occur, yes.

12 BY MR. PRAGLIN:

13 Q Who was the person at ChemRisk that had the  
14 responsibility for that proofing before the then final  
15 manuscript went off to the journal?

16 A Myself and Bill Butler would be the senior  
17 people in -- in charge of that.

18 Q Were there junior people in charge of that,  
19 too, or did you have the final responsibility for  
20 proofing along with Mr. Butler?

21 A Well, I -- I -- yeah, I'd say that given that  
22 we were the senior scientists who had the best  
23 familiarity with what would be appropriate published  
24 language, that we would make that decision. And the  
25 final text, then, would be communicated -- or any

1 changes would be communicated via Tony Ye to -- to  
2 that -- to Dr. Zhang.

3 Q And the communications to Dr. Zhang would be  
4 verbally and not in writing, correct?

5 A I don't know for sure, but my -- that's my  
6 expectation.

7 Q How many rounds of revisions were there on the  
8 '97 article before it was finally accepted for  
9 publication?

10 MR. MCLEOD: During what period of time?

11 Are you talking about from the time they  
12 started drafting it until the time it got published or  
13 after it was submitted or --

14 MR. PRAGLIN: Yes, I'll clarify it for you.

15 Q I understand that the first submission was late  
16 in 1995 and that there were revisions ongoing through  
17 sometime in '96; is that accurate?

18 A Minor revisions, yeah.

19 Q How many rounds of minor revisions were there?

20 A I don't think there were any significant  
21 revisions.

22 Again, based on my review of the draft document  
23 that was in my file that was dated November 30th or  
24 31st, 1995, and then looking at the actual published  
25 article from 1997, I think there was very little

1 difference between the actual wording and -- and content  
2 of -- of those two -- the draft manuscript, so to speak,  
3 or the submitted manuscript and the final printed  
4 version.

5 Q The question was how many rounds of minor  
6 revisions were there? One, two, five, ten, how many?

7 A There would have been at least -- there was at  
8 least one round of revisions after it was submitted to  
9 the journal, and -- and upon receiving comments from the  
10 editor regarding any technical or wording or reference  
11 issues that they wanted to have clarified. My  
12 recollection is that there were -- there was very little  
13 change to the document, and that's reflected in my --  
14 what I just said about the -- there being very little  
15 difference between the November '95 and final '97  
16 publication.

17 Q The revisions that you just referenced were  
18 requested by JOEM and not by Archives of Environmental  
19 Health, correct?

20 A Again, I don't have a copy of the revisions --  
21 I mean of the -- the comments from JOEM. And I  
22 understand that the -- the paper was withdrawn from  
23 Archives of Environmental Health.

24 Q Why was the paper withdrawn from Archives of  
25 Environmental Health?

1           A     Because there was a more prompt and responsive  
2 interest in us -- in us following up with the editor  
3 after originally submitting the journal to JOEM. That's  
4 my recollection. And so upon identifying that, and,  
5 frankly, JOEM is a more highly-rated journal, when we  
6 got a positive response from them, we made the decision  
7 to -- to withdraw it from the other journal.

8           Q     How long was it before you got a response from  
9 JOEM?

10          A     I don't recall. But Tony Ye would know because  
11 he was the corresponding author.

12          Q     How did you determine that JOEM is a more  
13 highly-rated journal than Archives of Environmental  
14 Health?

15          A     It's just my general knowledge of the ranking  
16 of journals.

17          Q     Where is this ranking published?

18          A     I don't recall the actual document that  
19 gives -- gives out the rating points, but it has to do  
20 with the distribution, in other words, the number of  
21 people that it's circulated to in the scientific  
22 community and a quality score that's given out. I'm not  
23 sure exactly who -- who puts that out. But that's --  
24 that rating scale exists.

25                   And my understanding or my recall is that JOEM

1 is a more widely-distributed and more highly-rated  
2 journal than Archives of Environmental Health, not by a  
3 large margin but somewhat.

4 Q Did you review this actual document that rates  
5 the journals?

6 A I -- I've seen it in the past, yes.

7 Q Who publishes it?

8 A I don't recall.

9 Q When you say that you don't have a copy of the  
10 revisions that were made, did you ever have a copy of  
11 the revisions that were made?

12 A I'm sure I had a copy of both the comments that  
13 were submitted by the journal and the -- the -- whatever  
14 was the revised or resubmitted version in my file at  
15 McLaren/Hart.

16 Q These comments from the journal, they would  
17 have been in writing, right?

18 A Yes.

19 Tony Ye may have them if he retained that  
20 information from his files, from the McLaren/Hart files.

21 Q Well, the comments back from the journal would  
22 have come to Tony Ye at his home address and not to  
23 ChemRisk, right?

24 MR. WILKINSON: Objection. Assumes facts not in  
25 evidence, vague and compound.

1 THE WITNESS: That's probably true, but he would  
2 have shared them with me and Bill Butler.

3 BY MR. PRAGLIN:

4 Q Was this an unusual procedure, for ChemRisk to  
5 have an employee sending out correspondence on work done  
6 by ChemRisk from the employee's home rather than from  
7 the office?

8 MR. McLEOD: Objection.

9 MR. WILKINSON: Objection. Assumes facts not in  
10 evidence, misstates the prior testimony.

11 MR. McLEOD: The term "unusual" is vague, ambiguous  
12 and overbroad.

13 THE WITNESS: I guess it wasn't standard practice.

14 BY MR. PRAGLIN:

15 Q Does the term "ghostwriting" mean anything to  
16 you in the context of scientific publications?

17 A I've heard that before.

18 Q What's the general view in the scientific  
19 community about ghostwriting of scientific articles?

20 MR. WILKINSON: Objection. Calls for expert  
21 testimony.

22 MR. McLEOD: Also speculation, lacks foundation.

23 MR. PRAGLIN: You keep looking down --

24 MR. McLEOD: Lacks foundation.

25 BY MR. PRAGLIN:



1 Q You keep looking down at Mr. Wilkinson,  
2 Dr. Kerger. Why is that?

3 MR. McLEOD: He's not, he's looking at McLeod.

4 THE WITNESS: I was looking at McLeod, but I was  
5 expecting an objection.

6 I'm not sure what the, quote, scientific  
7 community means to you. I have an interpretation of  
8 what ghostwriting means to you. It's not an adverse  
9 connotation, it just means simply that an individual who  
10 did the research that is behind the scenes in the  
11 research group of -- let's say a person like  
12 Dennis Paustenbach did the initial version of the  
13 document, the research that was pulled together, but  
14 that, for example, for a presentation Dr. Paustenbach  
15 might list himself as the -- as the presenter.

16 MR. McLEOD: Don't get distracted by all their  
17 activity over there, just --

18 THE WITNESS: That's what I understand  
19 "ghostwriting" to -- that to be referring to, generally.

20 BY MR. PRAGLIN:

21 Q And you don't think that ghostwriting has a  
22 negative connotation in the context of scientific  
23 publications?

24 MR. McLEOD: In the context of his definition as he  
25 just explained it to you?

1           He is not qualified to speak to the industry as  
2 a whole, he's just given you his understanding of it and  
3 that's all he's qualified to do.

4           THE WITNESS: I -- I don't know how to quantify the  
5 industry's view of ghostwriting.

6 BY MR. PRAGLIN:

7           Q     Have you ever ghostwritten a scientific article  
8 for another scientist?

9           MR. McLEOD: Well, hold on a second.

10           The term "ghostwriting" is vague, ambiguous and  
11 overbroad, it's argumentative.

12           MR. PRAGLIN: I think he just defined it.

13           MR. McLEOD: Well, if you're adopting his definition  
14 of it.

15           MR. PRAGLIN: Yes.

16           Q     Have you ever ghostwritten a scientific article  
17 for another scientist?

18           A     I don't -- in terms of a peer-reviewed  
19 publication?

20           Q     Yes.

21           A     I can say that I've -- I've contributed to  
22 earlier versions of an analysis that subsequently got  
23 published, changed very slightly, and that -- that I  
24 didn't get acknowledged before. It happens sometimes.  
25 Sometimes it's intentional, sometimes it's accidental.

1 But almost -- most of the time there would be an  
2 acknowledgment at least of -- of the person's  
3 contribution if they were a substantial contributor,  
4 unless there were extenuating circumstances.

5 Q Wasn't ChemRisk a substantial contributor to  
6 the '97 Zhang article?

7 A I don't think so. I think we collaborated with  
8 Dr. Zhang to look at his data in a different way than he  
9 had before and we respected his wishes to -- to only  
10 have authorship of himself and his -- his dead  
11 colleague.

12 Q If ChemRisk's contribution to the '97 Zhang  
13 article wasn't substantial, how would you describe it?

14 A Again, ghostwriting would be, in my  
15 interpretation, somebody wholly creating from data or  
16 from scratch an article that the other person who would  
17 be taking credit for it had no role in. And that's not  
18 what happened in this case.

19 Dr. Zhang supplied the underlying data, all the  
20 facts, all the analyses, all the background information,  
21 and we formed a study plan. We followed through with  
22 the study plan every step of the way getting his input,  
23 taking into consideration what his views and his  
24 thoughts were, and then drafting a manuscript.

25 Again, since he does not speak English or does

1 not know how to write English to my knowledge, we  
2 certainly assisted him in that respect in translating it  
3 into an English article, but we worked with him every  
4 step of the way and I wouldn't -- wouldn't consider it  
5 at all to be a ghostwritten article.

6           It was a collaboration that he took credit for  
7 solely and we had no problem with that.

8           Q     Isn't it true that the '97 Zhang article  
9 doesn't even disclose that Dr. Zhang doesn't speak or  
10 write English?

11          MR. McLEOD: Object. It says what it says. The  
12 document speaks for itself.

13          THE WITNESS: I don't see how that would be  
14 relevant, but that's -- that -- it doesn't say that.

15 BY MR. PRAGLIN:

16          Q     In terms of the hours spent on the '97 Zhang  
17 article, how many hours would ChemRisk have needed to  
18 spend before you would believe its contribution would be  
19 substantial?

20          MR. McLEOD: I'm going to object. That  
21 mischaracterizes the witness's testimony.

22                 He's not testified that hours are the sole  
23 determinant factor of that.

24 BY MR. PRAGLIN:

25          Q     Go ahead, Dr. Kerger.

1           Is there any number of hours that ChemRisk  
2 could have spent before you believe that the  
3 contribution was substantial?

4           A     It wasn't solely based on how substantial our  
5 contribution was. It was, I would say, largely, in my  
6 view, based on Dr. Zhang's wishes and -- and we  
7 respected those wishes; so even if we had spent  
8 1,000 hours on it, we got our attribution from being  
9 paid to -- to do that work on behalf of PG&E and  
10 contributing to the literature indirectly but not  
11 necessarily getting credit for it.

12           I don't -- I don't get any kind of published  
13 credit for 99 percent of the work that I do, but much of  
14 it is -- is important information that needs to -- needs  
15 to get identified and clarified, and that's what I do  
16 for a living.

17           Q     Do you have Exhibit 6 in front of you?

18           I know it's been a long day so let me just  
19 refresh your memory.

20           Exhibit 6 is the collection of bills and  
21 excerpts from the status reports that you authored and  
22 it's pulled from Exhibit 1 which was the larger stack  
23 that you produced in this case. I'm sorry, it's pulled  
24 from Exhibit 4 which was the larger stack that was  
25 produced by PG&E in this case.

1           A     Yes.

2           Q     And we did a tabulation of the hours of the  
3 different ChemRisk employees for their work on the Zhang  
4 and Mexican studies, and I want to see if you'd have any  
5 reason to disagree with these ballpark estimates of the  
6 time spent.

7           MR. McLEOD:  Are you talking tabulations from these  
8 documents?

9           MR. PRAGLIN:  Absolutely.

10          MR. McLEOD:  Okay.

11          MR. PRAGLIN:  Tabulations from Exhibit 6.

12          Q     Would you have any reason to disagree with an  
13 estimate that on the Zhang study, Tony Ye billed PG&E  
14 133 hours?

15          A     No.

16          Q     That sounds like at least the amount that he  
17 spent?

18          A     That sounds reasonable for the amount of  
19 translation work and -- and other interactions that Tony  
20 was tasked with.

21          Q     Would you have any reason to disagree with an  
22 estimate that on the Zhang study, Bill Butler billed  
23 PG&E 53.9 hours?

24          A     No.

25          Q     Would you have any basis to disagree with an

1 estimate that on the Zhang study, Gwen Corbett billed  
2 PG&E 19.5 hours?

3 A No.

4 Q Would you have any reason to disagree with the  
5 estimate that on the Zhang study, you billed PG&E  
6 20 hours?

7 A No.

8 Q Would you have any reason to disagree with an  
9 estimate that on the Zhang project, Deborah Proctor  
10 billed eight hours?

11 A No.

12 Q Did there ever come a time when PG&E refused to  
13 pay for these hours, these 200-plus hours by ChemRisk  
14 employees --

15 MR. McLEOD: Objection. Asked and answered this  
16 morning.

17 BY MR. PRAGLIN:

18 Q -- on the Zhang project?

19 A No.

20 Q You're aware that PG&E contested other ChemRisk  
21 bills on the PG&E project, aren't you?

22 A I remember one particular project that -- or  
23 task that they objected to.

24 Q Which was that?

25 A A study that Dr. Paustenbach felt strongly

1 about going forward with.

2 Q Which study was that?

3 A I forget what the -- what the task was but it  
4 was in regard to the steady state pharmacokinetics  
5 ingestion study for chrome (VI) where he ingested for  
6 17 days straight 2 parts per million chrome (VI) in I  
7 believe it was two liters per day for 17 consecutive  
8 days and looked at the pharmacokinetics of -- of  
9 chromium in the blood and the urine.

10 Q When you say he "looked at the  
11 pharmacokinetics," he tested his own blood and urine  
12 over the course of those 17 days to see what, if  
13 anything, the chromium was doing to him, right?

14 A Doing to him?

15 Q Yes.

16 A No. The -- the focus of the study -- actually,  
17 it wasn't just 17 days but it was two weeks before,  
18 17 days of actual dosing and then I believe it was about  
19 three or four weeks of continued sampling afterwards,  
20 and the object of the study was to examine how the  
21 concentrations changed in the blood and in the urine  
22 over that entire time period so we could know for  
23 continuous exposures for a lengthy period of time how  
24 those concentrations changed.

25 It has to do with what's called achieving



1 steady state in the body, which means that the amount of  
2 the chemical being absorbed is equal to the amount being  
3 excreted, and this happens with certain chemicals and is  
4 dependent on the half-life of -- of that chemical in the  
5 body, and that's what Dr. Paustenbach felt strongly  
6 was -- was an important element of the pharmacokinetics  
7 studies that we had done. And it was a little -- it was  
8 at the very end of the studies we did and the client  
9 disagreed with the need to do it.

10 Q This particular study, though, was done while  
11 you were a paid consultant to PG&E in the Anderson  
12 litigation, correct?

13 A It was done, as I recall, in 1995, but it  
14 wasn't paid for by PG&E.

15 Q And it was done in 1995 while ChemRisk was  
16 retained as a paid consultant to PG&E, even though PG&E  
17 declined paying for this particular study; isn't that  
18 true?

19 A That is true.

20 Q Were you involved in trying to get PG&E to pay  
21 this bill?

22 MR. WILKINSON: Objection. That's as far afield  
23 from Zhang and Li and back into the Anderson stuff that  
24 you said you weren't going to go at this hour of the  
25 day, and I'm not sure what it has to do with this

1 deposition.

2 BY MR. PRAGLIN:

3 Q Go ahead, Dr. Kerger.

4 A Yes.

5 Q How much was in dispute?

6 A My belief, it was a- -- around \$40,000.

7 Q And did you take some steps to get PG&E to pay  
8 that bill?

9 A Yes.

10 Q What did you do?

11 A I documented all the expenses.

12 Q Where did you send them?

13 A I sent them in a separate -- separate invoice,  
14 because I knew it wasn't authorized work, with a request  
15 for payment.

16 Q Who did you send it to?

17 A Probably Haight, Brown & Bonesteel.

18 Q Now, that wasn't the only --

19 MR. McLEOD: You're covering up your microphone.

20 Move it up there.

21 BY MR. PRAGLIN:

22 Q Now, that wasn't the only human experiment that  
23 ChemRisk did while a paid consultant to PG&E, was it?

24 MR. McLEOD: I'm going to object. This is  
25 irrelevant. We're beyond the subject matter of the

1 deposition.

2           You know, you committed that we were not going  
3 to revisit all the Anderson facts or testimony and  
4 whatever occurred back then, and here we go. I mean,  
5 where is this really going?

6           MR. PRAGLIN: This goes to his bias, his  
7 credibility.

8           These are not questions that I've asked yet  
9 today. These are questions that I told the Court I  
10 would be asking by way of background. I just didn't ask  
11 them first today.

12          MR. McLEOD: Okay.

13          MR. PRAGLIN: This is all foundational.

14          MR. McLEOD: I don't call this background. I don't  
15 call this foundational. This is irrelevant.

16          MR. PRAGLIN: But you don't get to be the determiner  
17 of what's background and what's relevant.

18          MR. McLEOD: But at a certain point I am drawing a  
19 line as to what you're going to ask him; so you can try  
20 to draw out bias or whatever, but we're not going to go  
21 into great detail on all of these things.

22 BY MR. PRAGLIN:

23          Q        Would you describe for me how many human  
24 experiments ChemRisk did during the Anderson litigation  
25 that PG&E was billed for? Just a brief list and

1 description.

2 MR. WILKINSON: Again, outside the scope of this  
3 deposition, directly contrary to the promises made to  
4 the Court.

5 MR. McLEOD: And completely irrelevant.

6 THE WITNESS: I would estimate five.

7 BY MR. PRAGLIN:

8 Q Tell me what they were, please, just by  
9 description. I know there was a hot tub study.

10 MR. WILKINSON: Same objections. This information  
11 was produced in the previous case.

12 MR. PRAGLIN: No, it wasn't, actually.

13 Q Go ahead, Dr. Kerger. Was there a hot tub  
14 study?

15 A There was a dermal exposure study.

16 Q Is that the hot tub study or is that  
17 different?

18 A These are all pharmacokinetic studies. I don't  
19 call it "the hot tub study."

20 Q Wasn't there one where you and your colleagues  
21 sat in a hot tub filled with chromium and water?

22 MR. WILKINSON: Same observations.

23 MR. McLEOD: This is getting far, far afield.

24 MR. PRAGLIN: I'm only asking for the list.

25 MR. McLEOD: You can --

1 MR. WILKINSON: You've got the list from the  
2 previous case.

3 MR. McLEOD: I --

4 MR. PRAGLIN: I don't.

5 MR. McLEOD: This is seven years ago. You can give  
6 him a list and then we're moving on. I mean, it's  
7 8:35 his time, and you're clearly out of questions if  
8 you're going into this stuff.

9 MR. PRAGLIN: No, I'm not out of questions at all.  
10 I just decided to ask this right now.

11 THE WITNESS: I think to just clarify it for you,  
12 it's easy enough to just go to page 21 of my CV.

13 BY MR. PRAGLIN:

14 Q Okay. Go ahead.

15 This is under the section "Chromium"?

16 A Correct.

17 All of the human ingestion pharmacokinetic  
18 studies that we did are listed under this section of my  
19 CV as peer-reviewed published articles.

20 Q Which of those that are listed starting on  
21 page 21 of your CV were done for PG&E during the  
22 Anderson chromium litigation?

23 MR. WILKINSON: Same objections.

24 THE WITNESS: Well, each of these manuscripts was  
25 based on work that was done for PG&E, based on a report

1 generated, but we -- each of us worked on making them --  
2 making those reports appropriate for presentation as a  
3 peer-reviewed journal article.

4           With that explanation, the first article by  
5 Finley, et al., 1997, was an ingestion study regarding  
6 repeated exposure over a three-day period to a series of  
7 different chromium (VI) water concentrations. That was  
8 published in the Toxicology and Applied Pharmacology  
9 journal in 1997.

10           The second study that would be regarding human  
11 volunteers and pharmacokinetic analysis or -- or related  
12 analyses was by Kuykendall, et al., in 1996. That's  
13 K-u-y-k-e-n-d-a-l-l. It's published in the journal  
14 Carcinogenesis. And that was a subtopic of one of our  
15 ingestion studies regarding measurement of DNA protein  
16 crosslinks in human leukocytes following acute ingestion  
17 of chromium in drinking water.

18           Going to the next page, 23, which is ChemRisk  
19 210, the article listed at the top of the page, Kerger,  
20 et al., 1996, "Absorption and elimination of trivalent  
21 and hexavalent chromium in humans following ingestion of  
22 a bolus dose in drinking water," published in Toxicology  
23 and Applied Pharmacology. That was another study that  
24 was done as part of our work to answer scientific  
25 questions pertaining to the Anderson case.

1           The next one, Paustenbach, et al., 1996,  
2 published in the Journal of Toxicology and Environmental  
3 Health, "Observation of Steady State in Blood and Urine  
4 Following Human Ingestion of Hexavalent Chromium in  
5 Drinking Water," that's the study of -- that PG&E didn't  
6 pay for.

7           The De Flora, et al., 1996 paper is not  
8 really -- well, it in part involves collection of data  
9 regarding blood studies from humans but does not involve  
10 human volunteers, per se.

11           The next one, Kerger, et al., 1997, "Ingestion  
12 of chromium (VI) in drinking water by human volunteers:  
13 absorption, distribution, and excretion of single and  
14 repeated doses," Journal of Toxicology and Environmental  
15 Health. That was another presentation of the data  
16 generated during our scientific inquiries, paid for by  
17 PG&E.

18           Corbett, et al., 1997, "Systemic uptake of  
19 chromium in human volunteers following dermal contact  
20 with hexavalent chromium (22 milligrams per liter):  
21 implications for risk assessment" in the Journal of  
22 Exposure Analysis and Environmental Epidemiology.  
23 That's the dermal exposure study that you called "the  
24 hot tub study."

25           Q     Is that the one that was done in the hot tub?

1 A It is.

2 Q And were you in the hot tub?

3 A Yes.

4 Q Who else was in the hot tub?

5 MR. WILKINSON: Same objections.

6 MR. McLEOD: Yes, this is just irrelevant.

7 THE WITNESS: I -- I don't think that's appropriate  
8 information to share.

9 BY MR. PRAGLIN:

10 Q Why?

11 MR. McLEOD: I instruct him not to answer.

12 MR. PRAGLIN: I don't understand what the legal  
13 basis is. Why would you instruct him not to answer?

14 MR. McLEOD: It's irrelevant. It's completely  
15 irrelevant.

16 BY MR. PRAGLIN:

17 Q Didn't you bill PG&E for the work that was done  
18 in that hot tub?

19 A Yes.

20 MR. PRAGLIN: So why wouldn't it be relevant?

21 MR. McLEOD: Because that's his lawyer's decision.

22 It's irrelevant, it's a legal objection.

23 BY MR. PRAGLIN:

24 Q Are there any others that were paid for by PG&E  
25 during the Anderson litigation, Dr. Kerger, other than



1 what you've listed?

2 A No, there were no other volunteer studies.

3 Q And all of those studies, with the exception of  
4 the one that PG&E declined paying for, the so-called  
5 17-day study with Dr. Paustenbach, were paid for by PG&E  
6 during the Anderson litigation; is that right?

7 A None of the actual papers were paid for by  
8 PG&E, but the underlying data and the underlying report  
9 were funded by PG&E.

10 Q And do you or ChemRisk disclose that PG&E  
11 funded the underlying data or report that resulted in  
12 the publications in the actual publication?

13 A I don't think that PG&E wanted to be  
14 specifically identified as a grantor for the -- for  
15 these studies. We didn't see it as necessary or  
16 appropriate, and we were never asked to fill in that  
17 information; so we didn't.

18 Q When you submitted these publications to the  
19 various journals that you just identified, is there some  
20 form that is filled out that requires certain  
21 information?

22 A There is usually a copyright form.

23 Q Would there have been a copyright form for  
24 submitting the Zhang '97 article?

25 A Yes.

1 Q Have you ever seen a copy of it?

2 A No.

3 Q Who filled it out?

4 A Dr. Zhang would have had to fill it out.

5 Q So it would have had to have been translated  
6 into Chinese, right?

7 A I'm guessing that's probably true.

8 Q Do you know that it was ever translated into  
9 Chinese?

10 A You would have to ask Tony Ye. I don't know.

11 Q Did you ask that it be translated into  
12 Chinese?

13 A Whether or not it was physically translated in  
14 a document or if it was sent to Dr. Zhang and read to  
15 him over the phone, I don't know, but I expect that Tony  
16 would.

17 Q Is this a copyright form that you as a  
18 scientist are familiar with from your other publications  
19 throughout your career?

20 A It's different for every journal.

21 Q Does it generally ask for the same type of  
22 information?

23 A Yes.

24 Q What type of information is requested?

25 A The signatures of all authors releasing that

1 information as -- or the rights for that public- -- the  
2 publication of that information to the publisher.

3 Q Anything else that is required by this  
4 copyright form?

5 A That's the main purpose is my understanding.

6 Q Does the copyright form have a request for  
7 information about parties or companies that were funding  
8 or sponsoring the research about which the article  
9 writes?

10 MR. WILKINSON: Objection. Vague and compound.

11 MR. McLEOD: Do you know?

12 THE WITNESS: I -- I don't recall there being any  
13 such information. It wouldn't be relevant to copyright,  
14 and it certainly wasn't part of any of the -- the  
15 manuscripts that I published in my CV.

16 BY MR. PRAGLIN:

17 Q Did ChemRisk sign off at all on this copyright  
18 form for the '97 Zhang article?

19 A No.

20 Q The only signature on it would have been the  
21 signature of Dr. Zhang?

22 A That's correct. We -- we were not authors.

23 MR. McLEOD: You okay?

24 THE WITNESS: Yeah.

25 BY MR. PRAGLIN:

1 Q Did you ever have a conversation with Tony Ye  
2 about whether Dr. Zhang, in fact, signed the copyright  
3 form?

4 A I don't recall.

5 Q Isn't that something that you would have  
6 required as a supervisor of this project?

7 A I'm certain that it happened, I just don't  
8 recall having that conversation. It's been seven -- you  
9 know, six -- six, seven years.

10 Q I have a whole series of questions about  
11 Dr. Zhang's prior work and the '97 article, and given  
12 that it's quarter of 6:00 and I can't finish tonight,  
13 I'll leave it up to you as to whether you want to go a  
14 while longer or should we defer it until our next  
15 session.

16 Or I'll leave it up to you, Mr. McLeod.

17 MR. McLEOD: How much longer do you have?

18 MR. PRAGLIN: I've got a few hours, I think, based  
19 on the pace that we've been going.

20 MR. McLEOD: Well --

21 MR. PRAGLIN: Probably a half a day or so, and so I  
22 don't see the point in continuing but --

23 MR. McLEOD: Our position is Dr. Kerger has made  
24 himself available for probably seven hours of testimony  
25 if you were to go through the record today. He is

1 unavailable until after the holidays, as am I. And we  
2 think that a great deal of the questioning which should  
3 have been regarding Zhang was not done regarding Zhang  
4 by your choice, and that this deposition could have been  
5 completed in one day. And our position is this  
6 deposition will be completed at 6 o'clock today.

7 MR. PRAGLIN: Okay. We'll, I'll go until 6 o'clock  
8 and then I'll suggest some dates for a second day with  
9 you. If you refuse to produce him, we'll go back to our  
10 judge.

11 MR. McLEOD: That's fine.

12 MR. PRAGLIN: Okay?

13 MR. McLEOD: Yep.

14 BY MR. PRAGLIN:

15 Q So do you want to do ten more minutes; is that  
16 fair, Dr. Kerger?

17 A Okay.

18 Q I guess it's 12 minutes, if you're  
19 saying 6 o'clock.

20 THE REPORTER: 14 on the video.

21 BY MR. PRAGLIN:

22 Q When an article like the Zhang '97 article is  
23 published and then the journal comes out and  
24 subscriptions are sold, does the author make any money?

25 A No.

1           Q     No money whatsoever, not even a nominal  
2 amount?

3           A     No. The copyright form that -- that I told you  
4 about basically signs away the rights and profits of  
5 any -- of any sale of that article to the publisher.

6           Q     Was a fee required to submit the '97 Zhang  
7 article to these two journals?

8           A     I don't -- I don't think so.

9           Q     Had Dr. Zhang ever before published in the  
10 United States, that you are aware of, before the '97  
11 article?

12          A     Not that I'm aware of.

13          Q     Did you ask Dr. Zhang where he would like to  
14 have his '97 article published?

15          A     We discussed -- we discussed the options for  
16 publication and what our suggestions were. I don't  
17 recall the specific conversation but I don't -- I don't  
18 believe he was familiar with the American journals and  
19 what was particularly a well-rated journal or not; so  
20 I -- I think he took -- took our advice.

21          Q     Did he ask you any questions about where this  
22 would be published?

23          A     Again, you'd have to ask Tony Ye because he  
24 would have had any -- any -- any specific queries  
25 regarding that issue would have been him speaking in

1 Chinese, and more -- more likely in the latter stages of  
2 interaction right before it was submitted to the  
3 journal, and -- and so I didn't -- I don't recall.

4 Q Were there any video presentations made by  
5 Dr. Zhang to ChemRisk or by ChemRisk to Zhang?

6 A Not to my knowledge.

7 Q Did ChemRisk or anyone on behalf of ChemRisk  
8 dispatch anybody to the actual villages that were  
9 written about in either the '87 or '97 Zhang articles to  
10 do any sort of research or investigation?

11 MR. McLEOD: Excluding Dr. Zhang, who was under  
12 subcontract to ChemRisk?

13 MR. PRAGLIN: Yes. I'm excluding Dr. Zhang.

14 THE WITNESS: No, we did not assign any research  
15 tasks to anybody that was our agent in China. We only,  
16 I guess you could say, dispatched somebody to find  
17 Dr. Zhang initially.

18 BY MR. PRAGLIN:

19 Q Did you ever see a picture of Dr. Zhang?

20 A No.

21 Q So if you bumped into him on the street you  
22 wouldn't know what he looked like; is that right?

23 A I understand he's dead but --

24 MR. McLEOD: Kind of tough now.

25 THE WITNESS: No, I wouldn't know what he looks

1 like.

2 BY MR. PRAGLIN:

3 Q Do you know how he died?

4 A No.

5 Q Did you hear anything about that?

6 A No. I really heard it through this process.

7 Q After the final manuscript for the Zhang '97  
8 article was accepted by JOEM, was there some final  
9 letter, congratulatory letter, closing letter that was  
10 sent by ChemRisk to Dr. Zhang?

11 A I didn't send one. Tony Ye may have -- may  
12 have authored one himself because I know he and -- he  
13 and Dr. Zhang had developed a -- a good relationship at  
14 that point, but I -- it wasn't my role to prevent him  
15 from doing that and I didn't author one myself.

16 Q After the Zhang article was accepted for  
17 publication, the '97 Zhang article, did you send a copy  
18 to PG&E's counsel?

19 A In 1997?

20 Q Well, whenever it was.

21 A Maybe. I don't know. I don't recall.

22 Q Does that sound like something you would have  
23 done?

24 A It sounds like a reasonable thing to do. I  
25 might -- may have done that.



1 MR. McLEOD: Do you have any recollection one way or  
2 the other?

3 THE WITNESS: No. I expect that I did do it,  
4 because whenever any of the publications came out I made  
5 sure that the people who had authorized that work  
6 initially received a copy because I thought that was the  
7 responsible thing to do.

8 BY MR. PRAGLIN:

9 Q Also because they paid for it, right?

10 A They didn't pay for the publication but they  
11 did pay for the study, yes.

12 Q Who made the revisions when the manuscript came  
13 back from JOEM?

14 A Again, I -- I believe it was a combination of  
15 myself and Bill Butler making any editorial or -- or  
16 substantive clarifications that were requested. And --  
17 and then that would be communicated to -- to Dr. Zhang  
18 for his final input.

19 Q Through Tony Ye?

20 A Correct.

21 Q What changes were requested?

22 MR. McLEOD: Again, objection. Asked and answered.

23 THE WITNESS: I don't --

24 MR. McLEOD: This deposition could have been done in  
25 one day if we didn't have all of these repetitive

1 questions and many irrelevant questions.

2 THE WITNESS: I don't think there were any  
3 substantive changes, as I told you before. Any wording,  
4 you know, typo, corrections or clarifications, I don't  
5 think took more than a couple of hours of anybody's  
6 time. And I -- I know I didn't bill any time to it  
7 because there was no project at the stage of -- you  
8 know, after June of '90 -- '96.

9 BY MR. PRAGLIN:

10 Q I understand that you say they weren't major  
11 changes, but I'd like you to identify for me what the  
12 changes were. Just describe them.

13 Did they want you to change the way that things  
14 were named, did they want the graphics changed, did they  
15 want language changed? What were the nature of the  
16 changes requested by the journal?

17 MR. WILKINSON: Objection. Assumes facts not in  
18 evidence, vague and compound, asked and answered.

19 MR. McLEOD: I'll join.

20 THE WITNESS: I don't -- I don't remember  
21 specifically, I just remember they were very minor, they  
22 were not -- not of a scientific nature.

23 MR. McLEOD: Do you have anything to add to your  
24 prior answers regarding that?

25 THE WITNESS: No.

1 BY MR. PRAGLIN:

2 Q The draft that was submitted, I think you said  
3 it was the November '95 draft, had in the title "brief  
4 communication," correct?

5 A Yes.

6 Q And the published article didn't have that, did  
7 it?

8 A Well, it was still a brief communication, or  
9 they call it a short communication in other journals,  
10 and it's in a section that's referred in the table of  
11 contents generally as that, but it might not be listed  
12 on the page of the article that you copied. But that's  
13 how generally they refer to it, a short communication or  
14 a brief communication.

15 Q But in the published version of the '97 Zhang  
16 article the words "brief communication" don't appear, do  
17 they?

18 A Would you like me to look at it or do you want  
19 me to --

20 MR. WILKINSON: Objection. The document speaks for  
21 itself, asked and answered.

22 BY MR. PRAGLIN:

23 Q Yes, I'd like you to look at it.

24 If you look at Exhibit 1, ChemRisk 188, I don't  
25 see that title, "brief communication" in the article.

1 Maybe I'm missing something.

2 MR. WILKINSON: Same objections.

3 MR. McLEOD: Absolutely.

4 THE WITNESS: It doesn't look like it's -- it's in  
5 the titling of the article. But as I explained,  
6 depending on the format of the journal, they will  
7 usually have a section of -- that's referred to as  
8 either "short communication" or "brief communication,"  
9 and this would have probably been included in that  
10 section. In other words, the pagination would reflect  
11 that it was in that section if you looked at the table  
12 of contents of the actual journal article or the  
13 journal -- not article, the journal volume that this was  
14 contained in.

15 I don't -- that's my expectation. I don't have  
16 anything that verifies that for you.

17 BY MR. PRAGLIN:

18 Q The '97 Zhang article uses P values, doesn't  
19 it?

20 A Yes.

21 Q Who decided to use P values?

22 A That would be Bill Butler.

23 Q It wasn't Dr. Zhang, was it?

24 A Well, I'm sure that Dr. Butler discussed his  
25 entire statistical analysis plan with Dr. Zhang, and

1 that in the collaboration they agreed that that was an  
2 appropriate way to look at it.

3 Q How do you know they discussed that?

4 A Because it's in the final article.

5 Q You're assuming that because it's in the final  
6 article, aren't you?

7 A No.

8 Q Did Bill Butler tell you that he discussed  
9 P values with Dr. Zhang?

10 A I know he discussed every element of this paper  
11 with Dr. Zhang.

12 Q Including P values?

13 A Including P values.

14 Q Page 317 of the Zhang '97 article, this is the  
15 page that has Table 1 on it. On the left column there  
16 is a sentence that reads, "Thus, it is apparent that the  
17 increased mortality rate was not a result of the  
18 contaminated water.

19 "No statistical comparisons with province  
20 mortality rates could be made for site-specific cancer  
21 rates because of the lack of appropriate rate  
22 information."

23 Do you see that?

24 A Yes.

25 Q Wasn't there published province mortality rates

1 available for that comparison?

2 A I think the --

3 MR. WILKINSON: Objection. Vague and ambiguous,  
4 assumes facts not in evidence.

5 THE WITNESS: I think you should talk to Bill Butler  
6 about this specifically. I can tell you what my recall  
7 or my understanding is of that issue.

8 BY MR. PRAGLIN:

9 Q What's that?

10 A The -- there were -- there was not an age -- a  
11 specific age and sex distribution reported for the years  
12 relevant to this analysis in that atlas or yearbook.  
13 Dr. Butler discussed that issue with Dr. Zhang and he  
14 had acknowledged that such data did not exist, such  
15 appropriate comparison data did not exist for stomach  
16 cancer in his original report, and the collaboration  
17 between the two epidemiologists came to this -- this  
18 conclusion. And I -- I -- I have no reason to doubt  
19 that that's the appropriate conclusion.

20 Q When you say "the two epidemiologists," are you  
21 talking about Drs. Butler and Zhang?

22 A Yes.

23 Q Is it your impression that Dr. Zhang was an  
24 epidemiologist?

25 A He -- well, he was a public health official who

1 published what -- what was a study that had  
2 epidemiologic aspects and a mortality analysis; so while  
3 he might not have been a epidemiologist per se, he was  
4 an M.D., as I understand it, equivalent of that, and was  
5 a public health officer who undertook such studies.

6 Q But he wasn't an epidemiologist, was he?

7 MR. MCLEOD: The witness has testified to what he's  
8 testified to under the Chinese system.

9 Are you asking was he an epidemiologist under  
10 the U.S. system?

11 MR. PRAGLIN: No, I thought he said he was an M.D.

12 Q That's not an epidemiologist, is it,  
13 Dr. Kerger?

14 A I don't really know what his specific  
15 background or training was. As I told you, I never  
16 received his -- his CV, and I never doubted that his  
17 credentials were reasonable to support what he did, and  
18 he seemed like a very intelligent and knowledgeable  
19 person with regard to the studies that he had done; so  
20 there was no reason that he -- he wouldn't be considered  
21 to have epidemiology expertise, and that's what I  
22 considered.

23 MR. PRAGLIN: It's 6 o'clock; so we'll knock off for  
24 the day and I'll take up the issue of a second day with  
25 your lawyer.

1 Thank you, Dr. Kerger.

2 THE VIDEOGRAPHER: Going off the record. This is  
3 the end of videotape number four. The time is 6:01.

4 (Off the record.)

5 MR. PRAGLIN: Let's stay on the transcript record  
6 for second.

7 We have a standard stip in this case.

8 MR. McLEOD: What is it?

9 MR. PRAGLIN: Laurie can better tell you what it is,  
10 but basically 30 days from when you get the transcript.

11 MR. McLEOD: Okay. That's fine.

12 MR. PRAGLIN: The witness has time, and I forget who  
13 gets the original, but it's the same for all of these  
14 witnesses.

15 MR. McLEOD: And that's in the transcript at the  
16 end?

17 THE REPORTER: Yes.

18 MR. PRAGLIN: It's in all the other ones, too.

19 So that's agreeable?

20 MR. McLEOD: Yes.

21 MR. WILKINSON: So stipulated.

22 (Whereupon the stipulation from  
23 the deposition of Valerie Nera regarding  
24 Blue Ribbon Panel depositions taken  
25 by plaintiffs was incorporated into



1 the record as follows:

2 "MS. ROBERTSON: Okay. I would  
3 propose a stipulation. I think we  
4 should use the one that we've been  
5 using in these depositions. Essentially  
6 what it is, we used it in Jerold Last's  
7 deposition.

8 "So the original transcript will be  
9 sent to our office. I'll then forward it to  
10 you, Mr. Davidian. You can pass it on to  
11 Ms. Nera to review and sign under the  
12 penalty of perjury and notify us of any  
13 changes within 30 days, and then you can  
14 forward the original back to our office."

15 "MR. DAVIDIAN: That's fine."

16 "MS. ROBERTSON: I'll go ahead and  
17 keep the original.

18 "If we're not notified of any changes,  
19 then a copy can be used for all purposes."

20 "MR. WILKINSON: So stipulated.")

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1 STATE OF \_\_\_\_\_ )  
2 COUNTY OF \_\_\_\_\_ ) ss.

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9 I, the undersigned, say that I have read the  
10 foregoing deposition, and I declare, under penalty of  
11 perjury under the laws of the State of California, that  
12 the foregoing is a true and correct transcript of my  
13 testimony contained therein.

14 EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2002,  
15 at \_\_\_\_\_.

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24 BRENT KERGER, Ph.D.  
25 Volume 1

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: \_\_\_\_\_

---

LAURIE HELD-BIEHL, CSR, RPR, CRR  
CSR No. 6781

