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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

DEPOSITION OF BRENT KERGER, Ph.D.
Los Angeles, California
Tuesday, February 18, 2003
Volume 2

Reported by:
SUZANNE STRINGFELLOW
CSR No. 5652
JOB No. 203078

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California corporation,)
et al.,)
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Defendants.)
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AND RELATED CASES.)
)

No. BC 123749
BC 158588
BC 161669

Deposition of BRENT KERGER, Ph.D.,
Volume 2, taken on behalf of Plaintiffs,
at 333 South Grand Avenue, 26th Floor,
Los Angeles, California, beginning at
9:14 a.m. and ending at 6:40 p.m., on
Tuesday, February 18, 2003, before SUZANNE
STRINGFELLOW, Certified Shorthand Reporter
No. 5652.

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1 Los Angeles, California, Tuesday, February 18, 2003

2 9:14 a.m. - 6:40 p.m.

3

4 THE VIDEOGRAPHER: Good morning. Here begins
5 videotape number one of Volume 2 in the deposition of
6 Brent Kerger in the matter of Aguayo versus Betz Labs,
7 the lead case number of which is BC 123749.

8 Today's date is February 18, 2003. The time is
9 9:14 a.m.

10 This deposition is being taken in Los Angeles,
11 California.

12 The videographer is Douglas Gormley employed by
13 Biehl & Bell, et al., of Orange, California.

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

16 MR. PRAGLIN: Gary Praglin of Engstrom, Lipscomb &
17 Lack representing the plaintiffs.

18 MR. BIELKE: Jared Bielke of Engstrom, Lipscomb &
19 Lack representing the plaintiffs.

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

22 MR. WILKINSON: Kirk Wilkinson for defendant PG&E.

23 THE VIDEOGRAPHER: Thank you. Would the reporter
24 please swear in the witness.

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 At the beginning of the first session of your
10 deposition on December 4, 2002, we ran through some of
11 the admonitions and I explained to you what the oath
12 meant. Is there any reason for us to go through those
13 formalities again?

14 A I don't think so.

15 Q Do you remember that you're under oath here?

16 A Yes.

17 Q And that the penalty of perjury applies?

18 A Yes.

19 Q Your attorney, Mr. McLeod, handed me a letter
20 this morning, and it has a list of three or four changes
21 that you made to your deposition testimony from December
22 4, 2002. Are these the only changes that you have to
23 that testimony?

24 A Yes.

25 MR. PRAGLIN: Let's attach this as the next exhibit

1 in line. I'm not sure where we left off.

2 MR. McLEOD: I think it's Exhibit 11.

3 (Discussion off the record.)

4 (Plaintiffs' Exhibit 11 was
5 marked for identification, a copy of
6 which is attached hereto.)

7 BY MR. PRAGLIN:

8 Q Since your first deposition in this case, have
9 you reviewed any additional documents to prepare
10 yourself for your testimony here today other than
11 reading Volume 1 of your deposition?

12 A Yes, I have.

13 Q What have you reviewed?

14 A I reviewed the deposition of Tony Ye and the
15 associated exhibits, and I believe a group of files that
16 were produced by Bill Butler at the same --
17 approximately the same time as Tony Ye's deposition, and
18 the deposition transcripts of Gwen Corbett and Tom
19 Flahive.

20 Q Where did you get these materials?

21 A From my attorney.

22 Q Whose idea was it that you review them?

23 MR. McLEOD: It's his attorney. I provided them to
24 him. Anything further invades the attorney-client
25 privilege.

1 BY MR. PRAGLIN:

2 Q Was it your idea to review all of these
3 documents, Dr. Kerger?

4 A I thought it was a good idea.

5 Q This is a considerable amount of material that
6 you've reviewed since your first deposition, isn't it?

7 A Yeah, they produced a lot of material.

8 Q For example, Tony Ye, did you review both
9 volumes of his deposition?

10 A Yes, I did.

11 Q So you reviewed some 5- to 600 pages of
12 deposition testimony; is that right?

13 A Yes.

14 Q And you reviewed the files that Dr. Butler
15 produced; is that right?

16 A Yes.

17 Q That was another 4- to 500 pages, correct?

18 A It was a whole box of information.

19 Q And you reviewed the Gwen Corbett deposition
20 that was taken just last week, correct?

21 A Correct.

22 Q So I take it you reviewed the draft form of
23 that deposition?

24 MR. McLEOD: That's correct.

25 THE WITNESS: I believe so.

1 BY MR. PRAGLIN:

2 Q And the Tom Flahive deposition that you
3 reviewed, that was also in draft?

4 A Yes, I think so.

5 Q And the Corbett and Flahive depositions that
6 you reviewed since last week, those were several hundred
7 pages combined as well; is that right?

8 A I think, you know, it's between 2- and 300
9 pages, I would guess.

10 Q So you've read more than 2,000 pages to prepare
11 for this deposition here today; is that right?

12 A I've at least skimmed through it, yes.

13 Q How much time did you spend reviewing those
14 materials?

15 A I would estimate about five or six days, all
16 together.

17 Q Full days?

18 A Probably.

19 Q So on the order of 40 to 50 hours?

20 A That's fair.

21 Q And do you intend to bill PG&E for that time?

22 A I've taken -- I've kept track of my time and I
23 intend to bill it, yes.

24 Q To PG&E?

25 A Yes.

1 Q Do you have an agreement that they will pay for
2 that?

3 A I have an understanding. I don't have any
4 written documents or anything.

5 Q What's your understanding?

6 A That they will reimburse me for the time I
7 spent.

8 Q At what rate?

9 A At my standard rate.

10 Q Which is?

11 A \$175 an hour for consulting time and \$350 an
12 hour for deposition.

13 Q And is it also your understanding that PG&E
14 will reimburse you for the estimated 40 hours that you
15 spent to prepare for your deposition on December 4, 2002
16 that you testified about last year?

17 A That's my understanding, that either your
18 office and/or PG&E will reimburse me for that time.

19 Q I think I told you last time that my office is
20 reimbursing you for your time here today and for half of
21 your travel expenses but not for preparation time. You
22 understand that, don't you?

23 A That's what I heard you say before, yes.

24 Q So you'll be billing PG&E on the order of 15-
25 to \$20,000 for preparing for this deposition; is that

1 right?

2 A I'm not sure what the numbers are.

3 Q Well, let's just say that it was 100 hours; 100
4 hours at \$175 an hour would be \$17,500, wouldn't it?

5 A Yep.

6 Q Other than your lawyer, have you spoken with
7 anyone about the subject covered in these 2000 or so
8 pages that you've reviewed since December of 2002?

9 A I don't think so.

10 Q Are you sure?

11 A Uh-huh.

12 Q Yes?

13 A Yes. I'm sorry.

14 Q So you didn't speak with Dr. Ye or Dr. Butler
15 or Dr. Paustenbach or Dr. Flahive or Dr. Corbett, any of
16 those individuals?

17 A I did speak with Dr. Paustenbach, but we didn't
18 discuss the deposition.

19 Q Did you discuss chromium?

20 A Yes, chromium was one of the topics we
21 discussed. We're working on a paper together that's --
22 that chromium is the chemical that we're focusing on.

23 Q And when you had this conversation with
24 Dr. Paustenbach, the subject of your deposition never
25 came up?

1 A Not in any substance.

2 Q How did it come up?

3 A I probably told him that I was deposed and
4 asked if he had been deposed or if he was done with his
5 depositions, that was about it, nothing regarding
6 content.

7 Q Why did you even talk to him about his
8 deposition?

9 A I told you what I talked to him about. It
10 wasn't any -- I just, you know, it's one of the things
11 that he and I both know is going on with each other's
12 professional careers and so it came up, but we didn't
13 discuss it beyond acknowledging that we had been deposed
14 or were being deposed.

15 Q You're friends with Dr. Paustenbach, aren't
16 you?

17 A I consider him a friend and a colleague, yes.

18 Q And so when you spoke with your friend
19 Dr. Paustenbach after your deposition and about the fact
20 that he'd had a deposition, you didn't talk about the
21 substance of the testimony?

22 A That's correct.

23 Q Why not?

24 A I didn't think it was appropriate.

25 Q Did the subject of the Blue Ribbon Panel come

1 up in this conversation with Dr. Paustenbach?

2 A No.

3 Q When was the conversation?

4 A I would estimate it was in January sometime.

5 Q Roughly how many weeks ago?

6 A Five.

7 Q And did the subject of Dr. Zhang or the Chinese
8 or the Mexican studies related to chromium come up with
9 Dr. Paustenbach in this conversation?

10 A No, not that I recall.

11 Q Did you exchange any e-mail with
12 Dr. Paustenbach since your last deposition?

13 A Probably did, yes.

14 Q Did any of it relate to chromium?

15 A Yes.

16 Q Did any of it relate to the PG&E issues that
17 we've been discussing in your deposition?

18 A No.

19 Q In your first deposition on December 4, 2002,
20 you had made an offer to separate out your time entries
21 from your Daytimer or your calendar to protect your
22 privacy. Have you done that now for me?

23 MR. McLEOD: I've got it through -- Counsel, I've
24 got it through December 5 and it's out for copying.
25 I'll produce it to you at our morning break.

1 MR. PRAGLIN: Okay. That's good.

2 Q What about the 50 or so hours spent since
3 December 4th, do you have the time entry for that for
4 me?

5 A I haven't compiled that, no.

6 Q How recently have you spent these five to six
7 days of reviewing materials? Have they been in the last
8 week?

9 A The two -- the Flahive and Corbett deposition
10 were last night. I believe I reviewed some of the
11 Butler and Ye materials within the last couple of weeks,
12 but most of it I think was in January.

13 Q Were you at all surprised at the extent of
14 ChemRisk's involvement in the Zhang article, the '97
15 Zhang article, after having reviewed the Tony Ye
16 deposition and the Bill Butler materials?

17 MR. McLEOD: I'll object that the question is vague
18 and ambiguous and overbroad as to the extent of the
19 ChemRisk involvement.

20 MR. WILKINSON: Same objection.

21 MR. PRAGLIN: Let me rephrase my question.

22 Q The Butler documents that you reviewed were
23 about 500 pages or so, right?

24 A I'll have to take your word on that. I
25 actually am not absolutely sure which was Butler's as

1 distinguished from Ye's materials.

2 Q Did you review Tony Ye's production which was
3 901 pages?

4 A Yeah. Like I said, I received from my attorney
5 an entire banker box of paper which included the
6 depositions and bound exhibits and then several bundles
7 like this of paper that were either what Tony had
8 produced or what Bill Butler had produced, is my
9 understanding of that material.

10 Q Well, Dr. Butler and Dr. Ye produced 1400 pages
11 of documents separate and apart from their deposition
12 testimony. Did you review all of that production?

13 A I believe so.

14 Q And on top of that, you reviewed the deposition
15 testimony which totaled 5- to 600 pages, right?

16 A Yes. I mean it was two volumes and the
17 exhibits.

18 Q So if we call that roughly 2,000 pages of
19 documents relating to ChemRisk's work in the '90s
20 involving Dr. Zhang and the Mexican studies, were you at
21 all surprised of the extent of ChemRisk's involvement in
22 those studies?

23 A I don't understand why I would be surprised. I
24 directed the work; so no, it doesn't surprise me at all.
25 It would surprise me that Bill and Tony kept all of

1 those files from McLaren/Hart, but it didn't surprise me
2 that there was that volume.

3 Q Why did it surprise you that they kept all of
4 those files?

5 A Just because it's been several years and, you
6 know, I, myself, brought a lot of materials with me that
7 were reference materials, but most of the stuff that
8 they had kept was probably not really -- it didn't
9 really need to be kept, per se, for any future use or
10 anything. I'm kind of glad they did because it shows
11 what the track of our progress was and what the work,
12 you know, the collaboration with Dr. Zhang.

13 Q Those documents show that ChemRisk wrote the
14 '97 article, don't they?

15 A No.

16 Q You don't think so?

17 A No.

18 Q Did you see the drafts by ChemRisk of the Zhang
19 '97 article in those documents produced by Butler and
20 Ye?

21 A There were several drafts that I saw, yes.

22 Q Five, right?

23 A I didn't count them. But yeah, there were
24 several.

25 Q And they were on ChemRisk's paper, weren't

1 they?

2 A Not that I know of. What do you mean by

3 "ChemRisk paper"?

4 Q Weren't they typed by ChemRisk and they said

5 "By ChemRisk"?

6 A You mean on the title page?

7 Q Yes.

8 MR. WILKINSON: Objection. Vague, misstates the

9 documents.

10 MR. McLEOD: If you've got a specific document you

11 want to refer him to, put it in front of him.

12 MR. PRAGLIN: Let's mark as Exhibit 12 a collection

13 of drafts of the Zhang '97 article, Dr. Kerger, that

14 were produced by Tony Ye and Bill Butler and attach

15 these collectively as Exhibit 12.

16 (Plaintiffs' Exhibit 12 was

17 marked for identification, a copy of

18 which is attached hereto.)

19 BY MR. PRAGLIN:

20 Q Do you have Exhibit 12 in front of you?

21 A Yes.

22 Q The first document in Exhibit 12 appears to be

23 a draft of the Zhang article, doesn't it?

24 MR. WILKINSON: Objection. Misstates the evidence.

25 THE WITNESS: No.

1 BY MR. PRAGLIN:

2 Q Are you looking at the document that's Bates
3 stamped TY 113 through 119?

4 A Yes.

5 Q And it says on the top upper right "Draft
6 Version - July 27, 1995," doesn't it?

7 A It does.

8 Q And it says "By ChemRisk, Alameda and Irvine,
9 California," doesn't it?

10 A Yes.

11 Q And this was prepared by ChemRisk, was it not?

12 A Yes, that's my presumption.

13 Q And the subject matter of this document is the
14 same subject matter that was written up as the Zhang '97
15 article, was it not?

16 MR. WILKINSON: Objection. Vague.

17 THE WITNESS: Not exactly.

18 BY MR. PRAGLIN:

19 Q Well, who prepared this first draft from
20 Exhibit 12, the one dated July 27, 1995?

21 MR. WILKINSON: Objection. Misstates the document.

22 MR. MCLEOD: He's asking who prepared Exhibit 113
23 through 119, I believe.

24 THE WITNESS: I did not prepare it, and my
25 recollection is that it would have been either Bill

1 Butler or Tony Ye who did prepare it.

2 BY MR. PRAGLIN:

3 Q And it talks about the chromium contamination
4 in JinZhou, China, doesn't it?

5 A It talks about Dr. Zhang's reports and is an
6 initial outline or summary of those reports that had
7 been given to us and translated by Tony up to that time.
8 There's a -- there's a -- kind of a lack of concordance
9 between what the draft version on the first page says in
10 terms of the date, July 27th, and then when the actual
11 date at the bottom of that same page, it says September
12 1995; so I'm not sure what time frame this represents,
13 but obviously the executive summaries is missing --
14 several sections have very little or no text, so this
15 would probably be a preliminary outline or draft of an
16 internal report critiquing Dr. Zhang's studies.

17 Q Was there anything confidential about
18 ChemRisk's work with Dr. Zhang?

19 MR. WILKINSON: Objection. Vague.

20 THE WITNESS: I considered all the work that we did
21 in terms of critiquing or evaluating literature on
22 chromium to be client confidential within the scope of
23 the work we were doing for the attorneys for PG&E, that
24 was what we agreed to on the contract.

25 BY MR. PRAGLIN:

1 Q So the client in that client confidential would
2 be PG&E, right?

3 A Well, the attorneys, but yeah, it would be
4 other client, true.

5 Q And didn't ChemRisk later type up drafts of the
6 Zhang '97 article and note them as being confidential?

7 A That would be a standard practice that I would
8 follow.

9 Q If you look at the second draft in this
10 collection marked as Exhibit 12 --

11 MR. McLEOD: What are the Bates Numbers on there,
12 Counsel?

13 MR. PRAGLIN: TY 454 through 458.

14 Q Do you have that, Dr. Kerger?

15 A Yes.

16 Q This bears a fax date at the top of September
17 6, 1995, correct?

18 A Yes.

19 Q And it was faxed from ChemRisk's Alameda office
20 to ChemRisk's Irvine office on that date, wasn't it?

21 A Yes.

22 Q And isn't this document, TY 454 through 458, a
23 draft of the Zhang '97 article?

24 A Yes, I'd say this was a preliminary draft of
25 the actual publication.

1 Q And ChemRisk typed this draft, didn't it?

2 A Well, again, it came from the Alameda office so
3 my presumption would be that Tony Ye had drafted the
4 English version from Chinese and his interactions with
5 Dr. Zhang and sent it to me; that would be my -- my
6 estimation and my recollection.

7 Q You read Tony Ye's testimony that there is no
8 Chinese version of this document, didn't you?

9 MR. WILKINSON: Objection. Misstates the testimony,
10 vague and compound, calls for speculation.

11 THE WITNESS: I don't recall that.

12 BY MR. PRAGLIN:

13 Q Are you aware of the existence of a Chinese
14 version of this September 6, 1995 draft of the Zhang
15 article by ChemRisk that's Bates stamped TY 454 through
16 458?

17 A I couldn't -- I couldn't identify one exactly,
18 but I know all of the text and basis for this material
19 came from the translations of Dr. Zhang's original five
20 -- five or seven manuscripts that he sent us. So
21 they're a composite of the materials that he sent us,
22 and I'm not certain who generated the very first draft.

23 Q There's some handwriting on at least the first
24 page of this September 6, 1995 draft of the Zhang
25 article by ChemRisk. Do you see that?

1 A Yes.

2 Q There's some handwritten annotations or
3 lineouts in the first paragraph, correct?

4 A Yes.

5 Q Whose writing is that?

6 A That looks like my writing.

7 Q So you made edits to this September 6, 1995
8 draft, correct?

9 A It looks like it, yes.

10 Q Did you speak with Dr. Zhang and get his
11 permission to make those edits?

12 A I didn't speak to Dr. Zhang, probably, because
13 I don't speak Chinese. But again, we were relying on
14 Tony Ye to be our translator and coordinator with
15 Dr. Zhang. And each and every change that was made in
16 regards to our edits or our further expansion of the
17 paper was translated to Dr. Zhang through Tony.

18 Q Did you read Tony Ye's sworn testimony to the
19 effect that he was not a trained Chinese translator?

20 A I did read that.

21 Q Did you know that at the time he was doing this
22 work in 1995, '96?

23 A Yes, I knew that.

24 Q Was there some reason why ChemRisk didn't go
25 and get a trained certified translator to work with

1 Dr. Zhang?

2 A Yes.

3 Q Why?

4 A Because Tony spoke the language and understood
5 the language well enough and our belief, really, at
6 least my recollection of our views, meaning me and the
7 other team members, like Dr. Butler, was that Tony,
8 being a biostatistician and having more of a technical
9 background, would probably offer better insights on
10 interpreting technical documents pertaining to, you
11 know, translating Chinese technical information into
12 English technical information than any translator
13 service might be able to provide. And that, in
14 combination with the fact that Tony was a well-trained
15 epidemiologist or biostatistician, outweighed the
16 significance of having a, quote/unquote, certified
17 translator.

18 Q So you considered using a certified Chinese
19 translator?

20 A We used a certified translator for, I believe,
21 the Wang article, and -- but we decided not to do that
22 for the Zhang article or any of the manuscripts he
23 provided because, as I recall, Tony came on board with
24 the company in the same time frame that we were
25 beginning to scope out this work and we began to contact

1 Dr. Zhang, and he was an obvious valuable resource to be
2 able to get that work done.

3 Q So you had access to a certified Chinese
4 translator but you chose to use Tony Ye instead; is that
5 right?

6 A That's fair.

7 Q And this certified translator was Allen Choi
8 from The Language Connection in Laguna Beach,
9 California, wasn't it?

10 A I really don't recall.

11 Q You didn't have any problem with the
12 translation done by the Chinese translator on the Wang
13 article, did you?

14 A I don't remember any problems.

15 Q And you don't speak Chinese, do you?

16 A No.

17 Q So you wouldn't have been in a position to know
18 if Tony Ye was doing a good job translating for
19 Dr. Zhang, would you?

20 A I have confidence in Tony and he was not one to
21 overstate what his capabilities were, and so I think we
22 were on a -- we were on the track of knowing that Tony
23 had the right insights, technically, to be able to
24 interpret the information and felt that it was the right
25 thing to go ahead and use Tony to do the translations

1 and the interactions.

2 See, the problem was that while we might be
3 able to use a translator, we couldn't -- it wasn't
4 feasible to use a translator to go back and forth with
5 Dr. Zhang, and Tony provided both of those capacities.

6 Q Plus Tony Ye was on ChemRisk's payroll, right?

7 A He did work for the company.

8 Q So you certainly had control over everything he
9 was doing, didn't you?

10 MR. McLEOD: Objection. The question is
11 argumentative. The term "control" is vague, ambiguous
12 and overbroad.

13 THE WITNESS: Can you restate that?

14 BY MR. PRAGLIN:

15 Q You were his boss, weren't you?

16 A No.

17 Q Who was his boss?

18 A Bill Butler was his direct supervisor.

19 Q And Bill Butler was a co-principal along with
20 you and Dr. Paustenbach at McLaren/Hart-ChemRisk, right?

21 A Co-principal, he was a principal, I believe, a
22 managing principal scientist at that time. I'm not sure
23 what my title was at that time.

24 Q And Bill Butler certainly had control over what
25 Tony Ye would do as his employee, didn't he?

1 MR. McLEOD: Objection. Calls for speculation. The
2 term "control" is vague, ambiguous and overbroad.

3 THE WITNESS: Can you restate that, please?

4 BY MR. PRAGLIN:

5 Q Butler was Tony Ye's boss, right?

6 A That's correct.

7 Q Butler told Tony Ye what to do, didn't he?

8 A I'd say that's fair.

9 Q And you and Butler were involved in writing
10 this '97 Zhang article, weren't you?

11 A We assisted, yes.

12 Q Why did ChemRisk want to get involved in
13 assisting in writing the Zhang '97 article in the first
14 place?

15 MR. McLEOD: Objection. Asked and answered
16 extensively in Volume 1, or the first session of the
17 deposition.

18 BY MR. PRAGLIN:

19 Q Go ahead, Dr. Kerger.

20 MR. McLEOD: You don't have to answer that.

21 MR. PRAGLIN: You can't instruct him not to answer,
22 it's a foundation question.

23 MR. McLEOD: Read Volume 1. You asked it
24 repeatedly.

25 MR. PRAGLIN: I did read it. I didn't get a clear

1 answer.

2 THE WITNESS: I would stay close to my previous
3 testimony on that.

4 BY MR. PRAGLIN:

5 Q What was your previous testimony?

6 A It's in Volume 1. The bottom line being
7 that -- I can't speak for ChemRisk, per se. I can tell
8 you that the attorneys identified us -- PG&E attorneys
9 identified to us that the judges in the first
10 arbitration found the information regarding the Chinese
11 and Mexican studies to be the most important or
12 compelling information, and in future arbitrations they
13 would have liked to have seen more information on those
14 studies. And so our scope of work was designed to
15 fulfill the mediation judges' or arbitration judges'
16 requests.

17 Q Was it your understanding from speaking with
18 PG&E's lawyers about what the judges said that PG&E had
19 lost some of those cases in the chromium arbitration?

20 MR. McLEOD: Objection as to scope and time.

21 Give us a month and a year.

22 THE WITNESS: I'm not sure how to answer that.

23 MR. McLEOD: You don't have to.

24 BY MR. PRAGLIN:

25 Q Why were you having a conversation with PG&E's

1 lawyers about the judges' reaction to the Chinese and
2 Mexican studies?

3 MR. McLEOD: Objection. This is asked and answered
4 in Volume 1 of the deposition.

5 BY MR. PRAGLIN:

6 Q Go ahead, Dr. Kerger.

7 A My recollection is we were called -- I mean we
8 met with the attorneys after they had had a meeting with
9 the judges; in other words, when the first arbitration
10 was completed, and that they had -- the judges had given
11 sealed verdicts on the first 10 test plaintiffs.

12 Q How did you learn they were sealed?

13 A That's what the attorneys told us.

14 Q Which attorneys said that?

15 A I don't recall which one, but it would have
16 been on the team of either Steve Hoch or Greg Read and
17 their associates.

18 Q And so are you saying that PG&E's lawyers
19 requested that ChemRisk make contact with the authors of
20 the Chinese and Mexican studies to aid PG&E's defense in
21 the chromium arbitrations in the Anderson case?

22 MR. WILKINSON: Objection. Misstates the testimony,
23 assumes facts not in evidence.

24 MR. McLEOD: Also asked and answered in Volume 1 of
25 the deposition.

1 THE WITNESS: No, I'm not saying that.

2 BY MR. PRAGLIN:

3 Q Wasn't it your understanding that the work
4 product of your efforts in contacting the Chinese and
5 Mexican authors was to be used by PG&E in its defense in
6 the Anderson chromium arbitration?

7 MR. McLEOD: Objection. Asked and answered in
8 Volume 1 of the deposition.

9 THE WITNESS: We were advisors to the attorneys and
10 to PG&E, scientific advisors, and they informed us of
11 this need for additional information requested by the
12 judges and we came up with a scope of work in order to
13 try to fill that request.

14 BY MR. PRAGLIN:

15 Q Well, Dr. Kerger, you didn't answer my
16 question. I'm going to reask it.

17 Wasn't it your understanding that the work
18 product of your efforts in contacting the Chinese and
19 Mexican authors was to be used by PG&E in its defense of
20 the Anderson chromium arbitration?

21 MR. WILKINSON: Objection. Calls for speculation,
22 vague as to time.

23 MR. McLEOD: I'll also join. This is, again, a
24 repetitive line of questioning from Volume 1 of the
25 deposition.

1 What month and what year are you talking about?

2 BY MR. PRAGLIN:

3 Q Talking about after your conversation with
4 PG&E's lawyers.

5 A It was my understanding that pretty much every
6 consultation we had with them would be considered in
7 their defense.

8 Q So you weren't contacting Dr. Zhang because
9 ChemRisk or you thought that there was a scientific need
10 for a follow-up in Dr. Zhang's '87 article in order to
11 benefit the people that were exposed to the chromium in
12 China, were you?

13 MR. WILKINSON: Objection. Vague, compound,
14 misstates the testimony.

15 MR. McLEOD: Completely unintelligible.

16 You can have that broken down.

17 THE WITNESS: Yeah, can you break that down? I'm
18 not sure how to answer it.

19 BY MR. PRAGLIN:

20 Q Sure.

21 You understood from reviewing Dr. Zhang's work
22 that he was studying people that were exposed to
23 chromium in China, right?

24 A Correct.

25 Q There were at least five villages, right?

1 A Yes.

2 Q And those villagers were exposed to high levels
3 of chromium over decades, were they not?

4 A No.

5 MR. WILKINSON: Objection. Vague, misstates the
6 document.

7 BY MR. PRAGLIN:

8 Q They were not?

9 A They were not.

10 Q How do you know?

11 A Well, as is revealed in the manuscripts that
12 Dr. Zhang had provided us, those villages were provided
13 with tap water at a certain period of time, they're not
14 certain exactly what the timing of chromium release and
15 exposure was to each village; so it's not generally true
16 that they were exposed for decades or that all of them
17 were exposed. I couldn't answer that positively.

18 Q But you do know from reviewing Dr. Zhang's work
19 that some people for some amount of time were exposed to
20 high levels of chromium, don't you?

21 A That's my understanding.

22 Q And was it one of ChemRisk's purposes in
23 contacting Dr. Zhang to see that a follow-up of
24 Dr. Zhang's work addressed the issue of whether the
25 people in China in those villages were still being

1 exposed to chromium in the '90s as of the time you got
2 involved?

3 A Well, I'm not sure what you mean by
4 "follow-up," but it was our task to find out as much
5 information as we could beyond what had already been
6 available to us just through the published literature;
7 so that was our purpose.

8 Q Well, wouldn't finding out the most information
9 as possible include finding out what the current water
10 quality results were in China?

11 A Not necessarily.

12 Q Well, just as an example, when PG&E was
13 involved in the Anderson arbitration, that related to
14 Hinkley, right?

15 A Yes.

16 Q And the people at Hinkley were at least
17 claiming that they were exposed from the '50s and on to
18 chromium, right?

19 A I think that's true.

20 Q And PG&E went out and took water quality
21 measurements in the '80s and the '90s and on up until
22 this day to monitor levels of chromium in the
23 groundwater; isn't that true?

24 A I believe that's true.

25 Q And you were aware of all that, right?

1 A Of course.

2 Q So did you ever consider checking the water
3 quality measurements in the '90s of those people in the
4 villages in China?

5 A I don't know if I did at the time or not.

6 Q Did it ever come up with Dr. Zhang about what
7 the current levels in the '90s in those villages were
8 for chromium (VI)?

9 A No.

10 Q So it wasn't one of your purposes to benefit
11 the villagers in China that had been exposed to the
12 chromium to see what the current levels were; isn't that
13 true?

14 MR. WILKINSON: Objection. Vague and compound.

15 MR. McLEOD: And argumentative.

16 Can you answer that or do you want a new
17 question?

18 THE WITNESS: You know, I don't think it had
19 anything particularly to do with the villagers, we just
20 wanted to find out all the scientific information and
21 basis for the original report.

22 BY MR. PRAGLIN:

23 Q Did it ever come up with Dr. Zhang that he was
24 concerned about the health of those villagers?

25 A It appeared to me that he was a conscientious,

1 or environmental conscious person, but I don't know that
2 we had any conversations or specific -- I don't have any
3 specific recollection to fill that request. I don't
4 know what exactly you mean.

5 Q Well, wasn't he the public health official for
6 the anti-epidemic station in that region of China?

7 MR. McLEOD: Objection. Misstates the testimony.

8 THE WITNESS: He worked at the anti-epidemic station
9 and published several -- or wrote several manuscripts
10 about the event that indicated that he thought it was
11 worthy of study and so, yeah, that was his role.

12 BY MR. PRAGLIN:

13 Q So in this collaboration between ChemRisk and
14 Dr. Zhang, is there some reason why you never offered to
15 assist him in checking up on the health of the villagers
16 that had been exposed to the chromium?

17 A Wasn't within the scope of work that we were
18 assigned.

19 Q Did you even suggest it to PG&E?

20 A I don't recall that I did.

21 Q Who was looking out for the health of those
22 villagers that had been exposed to the chromium as of
23 the time you got involved?

24 MR. McLEOD: Objection. Calls for speculation,
25 lacks foundation.

1 You don't have to answer that question.

2 BY MR. PRAGLIN:

3 Q Do you know?

4 A No.

5 Q The court reporter was kind enough to get the
6 exhibits from your first deposition and bring them, I
7 think you have Exhibit 1 in front of you, if you could
8 set aside Exhibit 12 for the moment and go to Exhibit 1,
9 please. And I'm going to direct your attention to a
10 particular document there. If you'd go to page CHEMRISK
11 116, please.

12 If I understood your testimony from December of
13 2002, this document, starting at CHEMRISK 116 and
14 running through CHEMRISK 137 is the full translation of
15 Dr. Zhang's 1987 article; is that right?

16 MR. WILKINSON: Objection. Asked and answered,
17 vague.

18 MR. McLEOD: Join in that.

19 THE WITNESS: I know this was one of the more
20 detailed papers but I'm not exactly sure what I said
21 before.

22 BY MR. PRAGLIN:

23 Q So as you sit here now you can't -- sorry, were
24 you finished?

25 A I hadn't reviewed it lately; so --

1 Q So you can't now confirm whether this is the
2 full translation of the 1987 Zhang article?

3 A If that's what I said before, that's -- that is
4 still my opinion.

5 MR. WILKINSON: Objection. Vague.

6 BY MR. PRAGLIN:

7 Q There's some handwriting on this document,
8 start at page CHEMRISK 118, there's some underlining and
9 then something in the right margin. Do you see that?

10 A Yes.

11 Q That's your writing?

12 A It looks like my writing.

13 Q And then if you turn the page to CHEMRISK 119
14 there's some more writing. Is that your writing?

15 A That looks like it.

16 Q So you annotated this document, correct?

17 A Yes.

18 Q And didn't you understand that this was Tony
19 Ye's translation of Dr. Zhang's 1987 article?

20 MR. WILKINSON: Objection. Vague.

21 Gary, I don't know if you're doing it
22 intentionally, but this is not -- you're misstating the
23 '87 article. Do you mean the '87 article or do you mean
24 the manuscript?

25 BY MR. PRAGLIN:

1 Q Go ahead, Dr. Kerger.

2 A I'm sorry. Could you repeat the question?

3 Q Sure.

4 MR. WILKINSON: Objection. Vague, misstates the
5 evidence.

6 BY MR. PRAGLIN:

7 Q Didn't you understand that this document was
8 Tony Ye's translation of Dr. Zhang's 1987 article?

9 MR. WILKINSON: Objection. Vague. Objection.
10 Misstates the evidence, misstates the prior testimony.

11 MR. McLEOD: I'll ask what's the definition of "the
12 1987 article"?

13 BY MR. PRAGLIN:

14 Q Why don't you tell me what this document is
15 starting at CHEMRISK 116, Dr. Kerger.

16 A I believe this to be a translation by Tony Ye
17 of one of the manuscripts that Dr. Zhang had sent to us.

18 Q Which one?

19 A The one entitled, "Chromium contamination in
20 the city of JinZhou."

21 Q Is that the same as what ATSDR translated from
22 or different?

23 A This is a much longer version, but I don't
24 recall, as I sit here right now, whether or not I told
25 you this was the one that -- the 1987 paper was a

1 cutdown version of, but it certainly came -- much of the
2 material that appears in this corresponds to or is
3 contained in the 1987 article, to my recall.

4 MR. McLEOD: You're sitting here speculating. Would
5 it help you to have various drafts and everything right
6 in front of you?

7 THE WITNESS: Probably.

8 MR. McLEOD: Counsel, if you have questions on
9 various manuscripts, I request that you place them in
10 front of the witness so we don't get the speculation of
11 wandering around.

12 MR. PRAGLIN: Well, I'm questioning him about
13 Exhibit 1 to his deposition, pages CHEMRISK 116 through
14 137, and it's in front of him.

15 (Interruption in proceedings.)

16 THE VIDEOGRAPHER: We're back on the record. The
17 time is 10:00 a.m.

18 BY MR. PRAGLIN:

19 Q Dr. Kerger, we just had a little power failure.
20 Are you all set to go?

21 A Yes.

22 Q So I'm questioning you about Exhibit 1 to your
23 deposition, the pages Bates stamped CHEMRISK 116 through
24 137. Do you have that?

25 A Yes.

1 Q And this is a translation that was done by
2 ChemRisk employee Tony Ye, right?

3 A I believe that's true.

4 Q And you understood this to be a translation of
5 Dr. Zhang's work prior to 1987, right?

6 A Translation of one of the manuscripts he sent
7 to us, yes.

8 Q For that time frame, right?

9 A I'm not sure when it was dated exactly, but it
10 was one of the manuscripts. And I think it speaks for
11 itself for whatever the reference is or content are.

12 Q And you'd agree that this manuscript contains
13 Dr. Zhang's beliefs before a time that he ever met or
14 heard about ChemRisk or PG&E, right?

15 A I would say --

16 MR. WILKINSON: Objection. Vague and calls for
17 speculation, the state of mind of another person.

18 THE WITNESS: Yeah, I would have to -- I would have
19 to speculate and I wouldn't want to do that.

20 BY MR. PRAGLIN:

21 Q You'd never contacted Dr. Zhang before 1995,
22 had you?

23 A No.

24 Q And PG&E didn't give you any reason to believe
25 that it knew about Dr. Zhang's work before 1995, did

1 they?

2 A Who do you mean by PG&E?

3 Q Did PG&E give you any information to indicate
4 that PG&E had ever contacted Dr. Zhang before 1995?

5 A You mean PG&E's attorneys or what are you --

6 Q PG&E or its attorneys or any of its officers.

7 A No, they didn't give us any advice or
8 information that I recall that was scientific.

9 Q So wouldn't this manuscript of Dr. Zhang, Bates
10 stamped at CHEMRISK 116, be a reflection of his beliefs
11 before he ever met or heard of ChemRisk?

12 MR. WILKINSON: Objection. Still calls for
13 speculation.

14 THE WITNESS: I don't know. You could represent it
15 that way, but I wouldn't.

16 BY MR. PRAGLIN:

17 Q If you turn to the page that's Bates stamped
18 CHEMRISK 129. Do you see Section 3 that's
19 titled, "Effect of hexavalent chromium contamination on
20 human health"?

21 A Yes.

22 Q There's some handwriting in the right margin;
23 is that yours?

24 A Yes.

25 Q What did you write?

1 A It says "not plausible."

2 Q So you didn't think that Dr. Zhang's opinions
3 there were plausible; is that right?

4 A That was my thought at that time, yes.

5 Q So you disagreed with what he had written as of
6 the 1987 time frame; is that right?

7 A I don't know that I disagreed with the
8 statements. He has statements in here that note -- for
9 example, where it says "not plausible," he talks about,
10 it says, "In early 1965 some residents in Nuer Village
11 and JinChangBao Village developed oral ulcers, diarrhea,
12 abdominal pain, dyspepsia and vomiting. After that
13 other villages in the contamination areas had similar
14 symptoms even in the most remote villages, WenJiaTun in
15 1974."

16 After having reviewed the other materials and
17 this paper, I found that not plausible because there was
18 no contamination -- no significant contamination with
19 chromium in those further villages; so I found it not
20 plausible that there would be an adverse health effect,
21 at least relating to chromium in those -- in the
22 later -- the further villages.

23 Q Dr. Zhang had been to those further villages,
24 right?

25 A Yes.

1 Q And you hadn't, had you?

2 A No.

3 Q Did anyone from ChemRisk or PG&E ever set foot
4 in those villages?

5 A No.

6 Q But do you think that you know more about those
7 villages and what went on than Dr. Zhang?

8 MR. WILKINSON: Objection. Argumentative, calls for
9 speculation.

10 MR. MCLEOD: I'll join in that objection.

11 THE WITNESS: No, we depended on Dr. Zhang for
12 interpretation of all his studies.

13 BY MR. PRAGLIN:

14 Q And in fact, he interviewed 155 people in those
15 villages, didn't he?

16 A I believe there are descriptions of
17 questionnaires, yes.

18 Q And he personally did the interviews, didn't
19 he?

20 A I'm not sure.

21 Q You don't remember that?

22 A It sounds reasonable.

23 Q And if you look at the bottom of page CHEMRISK
24 129, he says, "In a cross-sectional study conducted in
25 1965 in Nuer village, sampling 155 residents," and then

1 he goes on to list the number of people that had either
2 oral ulcers or diarrhea or abdominal pain or dyspepsia
3 or pain in the pit of their stomachs or vomiting,
4 correct?

5 A Yes.

6 Q And he's got exact percentages for all of the
7 people that were interviewed, doesn't he?

8 A Yes, there are percentages there.

9 Q And ChemRisk didn't include that data in the
10 '97 Zhang article, did it?

11 MR. McLEOD: Objection to the term ChemRisk
12 including the data is misstating the witness's testimony
13 regarding authorship of the article. Misstating the
14 record. Misstating his testimony.

15 THE WITNESS: Well, we didn't include it, but it was
16 outside of the scope of the cancer analysis that we were
17 focused on in that short communication. But I think if
18 we had included it, it would have made our conclusions
19 stronger because Nuer River village is where this
20 occurred, these -- this incidence of apparent acute
21 toxicity, and that's where the lowest cancer rate was.
22 So it would have strengthened our analysis if we had
23 included it, but it would have been very peripheral. I
24 don't think -- I think peer reviewers, if we had
25 included that, probably would have criticized inclusion

1 of that.

2 BY MR. PRAGLIN:

3 Q If you turn the page to CHEMRISK 130, the
4 second full paragraph, the seventh line down --
5 actually, let's go with the sixth line down, Dr. Zhang
6 writes, "Lung cancer death rate in the contamination
7 area was 13.17 to 21.39 per 70,000. The district
8 average was 11.21 and stomach cancer death rate in that
9 area was 27.68 to 55.17 per 70,000. This number was
10 higher than national average."

11 And then he goes on, correct?

12 A I think you read it correctly.

13 Q Now, that was Dr. Zhang's opinion as of roughly
14 1987 as to what the cancer rate was in those villages
15 for stomach and lung, correct?

16 A That was what he wrote so I assume it was his
17 opinion.

18 Q And he says right there the number was higher
19 than the national average, doesn't he?

20 A That particular number, yes.

21 Q And that statement wasn't included in the '97
22 Zhang article, was it?

23 A Well, that exact statement wasn't included, but
24 all of the relevant cancer rate information and the
25 relative range of cancer rates for the population that

1 we considered collectively to be relevant to the
2 analysis, all that was included in the 1997 publication.

3 Q Well, didn't Dr. Zhang have trouble locating
4 all of the cancer data?

5 A I'm not sure what you mean by "cancer data."
6 You mean the adjusted cancer death rates?

7 Q Yes.

8 A Yes, it took some searching to be able to find
9 those numbers in associated reports that he was familiar
10 with.

11 Q And when Table 1 of the '97 Zhang article was
12 complete, it was missing some adjusted cancer death
13 rates, wasn't it?

14 A I'm not sure what you mean, but I know that we
15 expanded on what the initial information was as much as
16 we possibly could find scientific basis to do.

17 Q Well, even after expanding the information,
18 wasn't there still a gap in the data so that there was a
19 blank in Table 1 of the '97 article?

20 A Yeah, as I recall, there was -- I don't have
21 the article in front of me, but the stomach cancer death
22 rates, they didn't have a comparison population that was
23 meaningful for that number; so there was probably a
24 blank corresponding to that.

25 Q Continuing on in this same '87 translation or

1 translation of the '87 document on CHEMRISK 130 from
2 Exhibit 1, in that second full paragraph Dr. Zhang
3 wrote, "The death rates as a result of malignant tumors
4 were highly correlated with the distance of the village
5 location to the plant; namely the closer the village to
6 the plant, the higher the death rate. This fact
7 revealed that the hexavalent chromium contamination of
8 water, soil and crops might be the key factor of high
9 tumor rate."

10 Correct?

11 A That's what it says.

12 Q He wrote that, right?

13 A Well, this is Tony's translation of what he
14 wrote in Chinese. But, yeah, he wrote approximately
15 that.

16 Q And then after you got done assisting Dr. Zhang
17 in the '97 article, he had reversed that opinion; is
18 that right?

19 MR. WILKINSON: Objection. Asked and answered.

20 THE WITNESS: Well, again, this is an unpublished
21 manuscript that he provided us, and the important
22 element that we were looking at was clarification of
23 what the published version, the 1987 published version
24 was. I'm not certain whether or not this statement was
25 in the '87 published version or if it was softened or

1 different wording.

2 But the bottom line is we wanted to clarify
3 whether or not there was a dose-response relationship,
4 and our initial review indicated that there was not,
5 there was an artifactual relationship that he was
6 describing here and our collaboration was all about
7 clarifying that and other elements of his research.

8 Q Does "dose response" mean that when you
9 increase the dose you get an increase of symptoms?

10 A That's one way, yes.

11 Q Is another way that if you take away the
12 exposure, the symptoms go away?

13 A That's temporal relationship, but the dose is
14 how much -- basically the amount absorbed into the body
15 versus the adverse response.

16 Q And one way of demonstrating that is that if
17 you take away the exposure, then the symptom goes away,
18 right?

19 A That's one piece of information you can
20 consider.

21 Q Didn't Dr. Zhang write, as of 1987, that "The
22 symptoms in the study were acute. They disappeared
23 after the water quality was improved or after the
24 individual's body got used to the highly-contaminated
25 water"?

1 A Are you quoting from --

2 Q I'm quoting from page CHEMRISK 130 that you're
3 looking at --

4 A The first paragraph.

5 Q -- fourth line down.

6 A That's approximately what he wrote, that's what
7 our translation says.

8 Q Well, it's exactly what your translation says,
9 isn't it?

10 A I believe so.

11 Q So before Dr. Zhang ever met ChemRisk he
12 thought there was a dose-response relationship, right?

13 MR. WILKINSON: Objection. Misstates the evidence,
14 the testimony, calls for speculation.

15 THE WITNESS: On face value, I think he did believe
16 that there was a -- there was evidence for at least the
17 acute response being related to chromium.

18 BY MR. PRAGLIN:

19 Q And by the time you got done with him, he
20 changed his mind, right?

21 MR. McLEOD: Objection to the term "by the time you
22 got done with him" as being argumentative.

23 BY MR. PRAGLIN:

24 Q By the time you finished your collaboration
25 with Dr. Zhang, he changed his mind on that, right?

1 A No. He didn't change his mind on the acute
2 responses. He believed that the evidence that he had
3 indicated high levels of chromium that were associated
4 with some of these acute responses. Of course, he
5 hadn't had the experience of literature review and human
6 pharmacokinetic studies that we did and we knew that
7 that was not plausible, that 1 to 20 milligrams per
8 liter would be associated with those symptoms.

9 And so we took -- I mean we didn't try to force
10 his -- him to change his opinion about the acute
11 toxicity, that's just what his belief was.

12 My belief, in interpreting this and as
13 reflected in my notes here, is that the sulfate
14 contamination played the primary role in the acute
15 responses because, as I described in the first
16 deposition, there were three incidences of this
17 outbreak, so to speak, of individuals complaining of
18 abdominal pain and dyspepsia and oral ulcers, and two of
19 the three were associated with high levels of ferrous
20 sulfate. And in the first one, which Dr. Zhang believed
21 was due to chromium because there was yellow water
22 there, he didn't have any measurements of sulfate at
23 that time.

24 And my belief is that based on the weight of
25 evidence, two of three studies showing that it was

1 related to sulfate, and my information, just from having
2 done a lot more research on the literature than he had
3 access to when he wrote this article in 1987, was that
4 he was probably incorrect on that acute -- the acute
5 effect level that he was -- he was writing about.

6 Q Wouldn't you think that Dr. Zhang knew a little
7 bit more about the acute symptoms of the villagers in
8 China than you did?

9 MR. WILKINSON: Objection. Argumentative.

10 MR. McLEOD: And calls for speculation.

11 THE WITNESS: He was the one that did the study, so
12 of course he would know what their responses were.

13 BY MR. PRAGLIN:

14 Q But you think he was wrong and you were right
15 on the cause of the acute symptoms; is that right?

16 MR. McLEOD: Objection. Misstates the witness's
17 testimony and it's argumentative and it calls for
18 speculation.

19 MR. WILKINSON: I'll join. Misstates the documents
20 and the testimony.

21 THE WITNESS: I don't believe that his thoughts were
22 unreasonable. In other words, it's reasonable that if
23 you've got a high level of chromium and yellow water,
24 something that's as obvious as chromium is in water, and
25 you've got a lot of people complaining of these types of

1 acute complaints, it's reasonable, on face value, to
2 conclude that it's related to the contamination, to the
3 yellow water.

4 Now, he didn't go to the next step of having
5 the water analyzed for all the contaminants, I didn't
6 see any data in here that he did, and he later admits
7 that sulfate was probably a major -- had probably a
8 major role in the other two events.

9 So I don't think that he was technically
10 incorrect or wrong to make that presumption initially, I
11 just think that there's the weight of evidence. And my
12 knowledge of chromium, having drank levels up to 10
13 milligrams per liter of chromium myself, that that's
14 unlikely.

15 BY MR. PRAGLIN:

16 Q Show me a document where Dr. Zhang says that
17 sulfate probably played a major role in the other two
18 events. He doesn't say that anywhere, does he?

19 MR. McLEOD: I'm also going to object. The question
20 has been asked and answered in the first deposition.

21 THE WITNESS: Yeah, I think I went over that
22 already. It's in other documents, but it would take me
23 time to find it.

24 BY MR. PRAGLIN:

25 Q You just testified that Dr. Zhang later admits

1 that sulfate was probably a major role in the other two
2 events. Can you locate a document that shows that?

3 A Would you like me to look?

4 Q If you can locate it, great. Find me that
5 language.

6 Mr. McLeod, you're not going to show him where
7 it is, are you?

8 MR. McLEOD: Do you have a question for me?

9 MR. PRAGLIN: I see you leaning over with the
10 document. I want --

11 MR. McLEOD: One, I'm not leaning over; two, I'm
12 leaning back in the chair, so cut the attitude with me,
13 okay? I'm reading the document while the witness is
14 going through it, so don't intimate anything.

15 If you have a document you want him to
16 consider, just put it in front of him.

17 MR. PRAGLIN: No, no, he said he could locate it.
18 I'm asking him to locate it.

19 MR. McLEOD: You're asking him to go through over
20 300 pages of documents right now.

21 THE WITNESS: Oh, here's one instance, CHEMRISK
22 000063.

23 MR. PRAGLIN: Let me just find it, please.

24 MR. McLEOD: You aren't going to play Trivial
25 Pursuits the rest of the day. This thing is going to

1 finish today, by the way.

2 BY MR. PRAGLIN:

3 Q Go ahead, Dr. Kerger.

4 A Immediately below the figure that shows the
5 sulfate concentration and chromium concentration over
6 time in these villages is a paragraph that
7 states, "Sulfate level was increasing after 1967 in
8 these villages, while Chrome (VI) concentration was
9 decreasing. In 1973, 55.7 percent of 43 water wells
10 have sulfate levels higher than 300 milligrams per
11 liter. It is possible that the cause of the symptoms in
12 these villages is sulfate."

13 Q You don't rest scientific opinions on
14 possibility, do you, Dr. Kerger?

15 A We state the science for what it is. If there
16 are uncertainties, we -- it is our habit to acknowledge
17 them.

18 Q Well, Dr. Zhang here doesn't quantitate any
19 uncertainties, he just says it's possible, right?

20 A Right, just like it was possible that it was
21 related to chromium.

22 Q As a scientist, you would never rest your
23 opinion on a possibility, would you?

24 MR. WILKINSON: Objection. Vague, argumentative.

25 MR. McLEOD: Calls for speculation, also.

1 You don't have to answer that.

2 BY MR. PRAGLIN:

3 Q Go ahead, Dr. Kerger.

4 MR. McLEOD: No, he doesn't have to answer it.

5 MR. PRAGLIN: Of course he does.

6 MR. McLEOD: It's argumentative.

7 BY MR. PRAGLIN:

8 Q Isn't possibility just speculation?

9 A Possibility is something that -- you want to
10 always consider all the alternatives, and you can make
11 statements in science that, adequately couched in what
12 the possibilities are, that are perfectly reasonable.
13 But it doesn't mean that I would say -- I would base an
14 important conclusion on it or that I would overstate
15 what any particular possibility was without their being
16 scientific backing.

17 Q Well, Dr. Zhang doesn't quantitate these
18 possibilities, does he?

19 A I think he gives a pretty good presentation of
20 the data here on sulfate and chromium.

21 Q Tell me what the quantitation is here, he just
22 says it's possible, doesn't he?

23 A No, he says that there's -- that over half the
24 wells that he sampled contained greater than 300
25 milligrams per liter. That's an astronomical level of

1 sulfate. That sulfate level will make you sick.

2 Q Didn't some of those wells also contain
3 chromium (VI)?

4 A Tiny levels, yeah, but that's -- again, that's
5 -- again, you look at the weight of evidence. As a
6 toxicologist, I can tell you that the levels in these
7 villages that were below 50 parts per billion of
8 chromium (VI) had no plausible relationship to these
9 acute health effects. And in conjunction with that,
10 it's impossible for the sulfate -- or unlikely for the
11 sulfate and the chrome (VI) to be existing in the same
12 place because the ferrous sulfate was added to reduce
13 the chrome (VI). So in all likelihood, when you found a
14 very high sulfate level in conjunction with a chromium
15 level, it was probably trivalent chromium, in all
16 likelihood.

17 But again, Dr. Zhang -- Dr. Zhang has a level
18 of sophistication in terms of the technical measurements
19 that a lot of medical doctors or epidemiologists might
20 have. He doesn't necessarily -- in my opinion, he
21 doesn't necessarily have all of the facts that the most
22 rigorous chrome expert would have, but he made
23 reasonable decisions based on face value on what
24 appeared to be the data, and we discussed all this
25 information with him and he agreed with what our -- what

1 our general conclusions were.

2 This sulfate issue is kind of peripheral and
3 the whole acute exposure issue wasn't even addressed in
4 the '97 paper. But the bottom line is I think he was in
5 -- he was in agreement with us.

6 Q Would you, as a scientist, ever rest your
7 opinion on possibility?

8 MR. WILKINSON: Objection. Vague, argumentative,
9 asked and answered, misstates the testimony.

10 THE WITNESS: I think I already answered that.

11 BY MR. PRAGLIN:

12 Q No, Dr. Kerger, I'm looking at it, you didn't
13 answer it.

14 MR. McLEOD: He's answered it.

15 BY MR. PRAGLIN:

16 Q You didn't answer it. I'm looking at it, it's
17 at page 49, line 2 of the transcript, the question
18 was -- line 6: "As a scientist, you would never rest
19 your opinion on possibility, would you?"

20 There's a series of objections. There's no
21 answer, sir. I'd like an answer. I'm going to reframe
22 the question.

23 As a scientist, would you ever rest your
24 opinion on possibility?

25 MR. McLEOD: I'm going to object to the question as

1 vague and ambiguous and overbroad. To the extent it's a
2 hypothetical, it's an incomplete hypothetical.

3 MR. WILKINSON: Assumes facts not in evidence.
4 Possibility was Dr. Zhang's work, not this witness's.

5 MR. PRAGLIN: That's called coaching.

6 Q Could you answer the question, please.

7 A I don't know how to answer that question. I
8 think I answered it as best I could; that possibility is
9 a reflection of uncertainty and science. Possibilities
10 are things we consider. Confounding is another element
11 that's a possibility that we don't have data on but is a
12 possible reason for not believing data that doesn't seem
13 to make sense. So possibility is always part of a
14 scientific opinion, but it wouldn't be the sole reason
15 for or rationale for a scientific opinion.

16 Q If you'd go back to Exhibit 1, please, the page
17 that we were on before, CHEMRISK 130, the translation of
18 Dr. Zhang's 1987 work. In that second full paragraph,
19 picking up where we left off, Dr. Zhang writes, "In a
20 rat experiment in 1980 it was confirmed that hexavalent
21 chromium costs a high deformity rate of bone marrow cell
22 chromosomes," correct?

23 A That's what it says.

24 Q Seems like there's a typo in there, right?

25 Should probably read "hexavalent chromium causes a high

1 deformity rate"?

2 A I don't know that that's a typo, that's
3 probably again one of Tony's more literal translations.
4 I understand it.

5 Q What's the significance of hexavalent chromium
6 and a high deformity rate of bone marrow cell
7 chromosomes?

8 A Well, we reviewed his manuscript that
9 corresponded to this experiment. And, frankly, I
10 haven't looked at it again in seven years so I don't
11 really remember, but it was an animal study at high
12 concentrations, and I just don't recall what we made of
13 it.

14 Q But Dr. Zhang thought that it caused a high
15 deformity rate of bone marrow cell chromosomes, right?

16 A Well, that's what it says here.

17 Q And then Dr. Zhang writes in his 1987 work,
18 "This result proved the causation relationship between
19 high hexavalent chromium concentration and human
20 health," correct?

21 A That's what it says.

22 Q And that sentence about proving a causation
23 relationship between high hexavalent chromium
24 concentration and human health, you left that out of the
25 '97 Zhang article, didn't you?

1 MR. WILKINSON: Objection. Argumentative.

2 THE WITNESS: I don't think -- I don't think that
3 this was an appropriate conclusion for what the further
4 analysis reflected; so of course we wouldn't put an
5 incorrect conclusion in the paper.

6 BY MR. PRAGLIN:

7 Q So you left it out, didn't you?

8 MR. WILKINSON: Objection. Misstates the testimony.
9 Argumentative.

10 THE WITNESS: It wouldn't be relevant.

11 MR. McLEOD: Of course he left it out.

12 BY MR. PRAGLIN:

13 Q Isn't the bottom line whether hexavalent
14 chromium causes adverse human health outcomes?

15 MR. McLEOD: Objection to the term "bottom line" as
16 being vague and ambiguous and overbroad.

17 BY MR. PRAGLIN:

18 Q You understand the term "bottom line," don't
19 you, Dr. Kerger?

20 A I think so.

21 MR. McLEOD: What kind of exposure are you talking
22 about, Counsel?

23 BY MR. PRAGLIN:

24 Q Isn't the bottom line whether hexavalent
25 chromium when people ingest it causes adverse human

1 health outcomes, whether they be acute symptoms or
2 cancer?

3 MR. McLEOD: How ingested, Counsel?

4 BY MR. PRAGLIN:

5 Q Go ahead, Dr. Kerger?

6 A No, that's not the bottom line or the whole
7 story, of course.

8 Q Isn't it one part of the whole story?

9 A It's one part. Dose response is what matters.

10 Q And if Dr. Zhang in 1987 had the belief that
11 this result proved the causation relationship between
12 high hexavalent chromium concentration in human health,
13 don't you think that would have been important to
14 include as his views in the '97 article?

15 MR. WILKINSON: Objection. Asked and answered,
16 argumentative, misstates the testimony and the
17 documents.

18 THE WITNESS: It would not have corresponded with
19 his further analysis, and so while, again, Dr. Zhang was
20 an investigator, an epidemiologic investigator, I can
21 tell you that probably 80 percent of the epidemiology
22 studies that I review, there's no or very little
23 toxicology considerations taken into account and people
24 interpret things on face value that make no sense from a
25 toxicology perspective.

1 So our further collaborations with him
2 certainly brought that to light and allowed him to
3 consider what the data actually said beyond the kind of
4 gross observations that were reflected in this
5 manuscript he wrote 10 or 12 years prior. So new
6 scientific insights often lead to different conclusions,
7 and that's -- that's what we concluded, that's what he
8 agreed to.

9 BY MR. PRAGLIN:

10 Q These new scientific insights, you'd agree that
11 they never would have occurred if you hadn't contacted
12 Dr. Zhang and helped him write this article, wouldn't
13 you?

14 MR. McLEOD: Objection. Argumentative, misstates
15 his testimony.

16 THE WITNESS: I have no idea what Dr. Zhang's
17 further studies or research interests would have been
18 without our interaction.

19 BY MR. PRAGLIN:

20 Q Well, what did Dr. Zhang do after this 1987
21 ATSDR translation of his work before you contacted him?

22 MR. McLEOD: Objection. Calls for speculation.

23 THE WITNESS: I don't recall ever going over his
24 history between then and when we contacted him.

25 BY MR. PRAGLIN:

1 Q When ChemRisk contacted Dr. Zhang, he wasn't
2 currently researching the chromium contamination in
3 JinZhou, was he?

4 MR. McLEOD: Objection. Asked and answered in
5 Volume 1 of the deposition.

6 THE WITNESS: It was my understanding that
7 Dr. Zhang, at the time we contacted him, was retired
8 from his position at the anti-epidemic station.

9 BY MR. PRAGLIN:

10 Q And he hadn't done any work in connection with
11 the chromium contamination in JinZhou for many, many
12 years, had he?

13 MR. McLEOD: Objection. The witness can't testify
14 to that, he can only testify as to his personal
15 knowledge. He can't testify as to what Dr. Zhang did or
16 didn't do, other than what Dr. Zhang might have told
17 him.

18 THE WITNESS: My review of these documents seems to
19 show that he was heavily involved in these studies in
20 the 1960s and 1970s and up through the early 1980s at
21 least. He wouldn't have been writing these manuscripts
22 in mid -- mid to late 1980s if he wasn't still involved
23 in that capacity. So that's my understanding of what he
24 did up through approximately 1987. I have no idea
25 exactly what he did, other than retiring at some point,

1 before 1995 when we contacted him.

2 BY MR. PRAGLIN:

3 Q Once ChemRisk contacted Dr. Zhang, were there
4 any other water quality measurements taken in China?

5 A I don't know.

6 Q You aren't aware of any, are you?

7 A Well, it wasn't -- again, we wanted to
8 understand what the basis of the 1987 study was. Going
9 forward and proposing possible studies that wouldn't
10 give us answers until years down the road and in all
11 likelihood wasn't a reasonable goal of our research, we
12 wanted to look at what the basis was for the 1987 study
13 and understand whether or not it made toxicological
14 sense and epidemiological sense; and so that's what the
15 focus of our research was and that's what we did.

16 Q So the '87 and the '97 Zhang articles were
17 based upon the same water quality data, correct?

18 A Yes.

19 Q And the '87 and the '97 Zhang articles were
20 based upon the same cancer death rates, right?

21 A Not exactly.

22 Q Well, what new cancer death rates were there in
23 '97 that Dr. Zhang didn't have in 1987?

24 A Well, the '87 study reflected more crude or
25 unadjusted rates and did not try to assess what the

1 population size was, what the cancer death rates were in
2 the local populations, did not do a person-years
3 calculation and did not attempt to do any dose-response
4 analysis.

5 So all of those elements that we worked with
6 Dr. Zhang to try to probe and find additional
7 information to fill those data gaps was the result of
8 our collaborations with him.

9 Q Didn't Dr. Zhang actually have more cancer
10 death rate data in '87 than he did in '97, or in '95
11 when the '97 article was written?

12 MR. MCLEOD: Objection. The question is compound.

13 THE WITNESS: I'm not sure what you mean by that.

14 Can we take a break?

15 MR. PRAGLIN: Sure.

16 THE VIDEOGRAPHER: Off the record. The time is
17 10:34 a.m.

18 (Recess.)

19 THE VIDEOGRAPHER: We are back on the record. The
20 time is 10:44 a.m.

21 BY MR. PRAGLIN:

22 Q Dr. Kerger, before we took the break, I had
23 asked you the question about whether Dr. Zhang actually
24 had more cancer death rate data in 1987 than he did at
25 the time the '97 article was written, and you haven't

1 answered the question yet. Can you answer it now,
2 please?

3 A I'm not sure what you mean by that.

4 Q Okay. Didn't Dr. Zhang report to ChemRisk that
5 there was data that had been lost as of the time of your
6 collaboration with him?

7 A That was -- I read something to that nature.
8 It doesn't surprise me because it was many years prior
9 that he had done the work and it was already documented
10 in these manuscripts.

11 MR. PRAGLIN: Let's mark as Exhibit 13 a document
12 from Tony Ye's file Bates stamped TY 23 through 26.

13 (Plaintiffs' Exhibit 13 was
14 marked for identification, a copy of
15 which is attached hereto.)

16 THE WITNESS: Are we done with Exhibit 1 for now?

17 BY MR. PRAGLIN:

18 Q For now, yes.

19 Is Exhibit 13 a memo that was sent to you, Bill
20 Butler and Gwen Corbett from Tony Ye on or about August
21 4, 1995?

22 A Yes, it appears to be.

23 Q And this is at a time when ChemRisk was
24 starting to write the '97 Zhang article; isn't that
25 true?

1 MR. McLEOD: Objection. Misstates the record in
2 terms of ChemRisk writing the '97 Zhang article.

3 THE WITNESS: I think we were collaborating as
4 evidenced by these conversations being documented. We
5 were working with Dr. Zhang on the analysis.

6 BY MR. PRAGLIN:

7 Q And then at the bottom of the first page of
8 this memo, Bates stamped TY 24, Mr. Ye writes,
9 "Dr. Zhang said he had no records on the number of
10 cancer deaths or on the number of subjects used to
11 calculate the cancer mortality rates presented in the
12 manuscript that he provided to us," correct?

13 A That's what it says.

14 Q And then Mr. Ye goes on to write, "Thus,
15 ChemRisk does not have the number of cancer deaths
16 (numerator) or the number of people (denominator) for
17 each suburb or for each village," correct?

18 A That's what it says.

19 Q And then Mr. Ye writes, "Note from Butler,"
20 that's Bill Butler, right?

21 A Yeah, that would be my presumption.

22 Q And then Mr. Ye writes, "Not having at least
23 one of these quantities prevents us from performing
24 statistical analyses on the cancer death rates,"
25 correct?

1 A That's what it says.

2 Q And then if you skip down -- well, I'll just
3 read the whole thing. He says, "Without such analyses,
4 ChemRisk can only present descriptive materials on the
5 rates (as presented in Dr. Zhang's manuscript). Without
6 some 'raw' data and statistical analyses (even if it is
7 only approximate), I do not see a journal accepting our
8 examination of Zhang's results," correct?

9 A That's what it says.

10 Q And you received that memo, right?

11 A Yes.

12 Q And then he says, "However, even without the
13 raw data, these results are still very useful for the
14 ADR," correct?

15 A Right.

16 Q What does ADR stand for?

17 A I would have to guess, but it looks -- in the
18 context, it looks like the Alternative Dispute
19 Resolution would fit there.

20 Q That would be the PG&E Anderson chromium
21 mediation or arbitration, correct?

22 A That's probably reasonable to assume.

23 Q So was it your understanding that PG&E was
24 intending to use this work with Dr. Zhang and the data
25 in the settlement discussions of the Anderson case?

1 A You mean at the time this was written?

2 Q Yes.

3 A We weren't really interacting with PG&E at this
4 stage of the research, to my recollection, but we
5 certainly envisioned that getting this information
6 clarified would be useful, whether or not there were
7 strong statistics.

8 MR. PRAGLIN: Let's mark as Exhibit 14 another memo.
9 This one is from Bill Butler's file Bates-stamped WB 101
10 through 106.

11 (Plaintiffs' Exhibit 14 was marked
12 for identification, a copy of which is
13 attached hereto.)

14 BY MR. PRAGLIN:

15 Q Is Exhibit 14 a copy of a different August 4,
16 1995 memo to you, Bill Butler and Gwen Corbett from Tony
17 Ye on the same subject?

18 MR. McLEOD: Take your time.

19 THE WITNESS: It's a different subject, but, yeah,
20 it's the same day and it's a memo to us from Tony.

21 BY MR. PRAGLIN:

22 Q Well, the subject is communications with
23 Dr. Zhang, but the first memo, Exhibit 13, is about a
24 telephone conversation, and the second memo, Exhibit 14,
25 is about a fax, correct?

1 A I believe that's true.

2 Q And so in the beginning of Exhibit 14, Mr. Ye
3 writes, "In the telephone conversation on Wednesday,
4 (August 2, 1995), Dr. Zhang said that the number of
5 cancer deaths and the number of population for each
6 region/village, which were used to calculate the cancer
7 death rate in the paper of mortality, have been lost,"
8 correct?

9 A Correct, he didn't have the originals, the
10 original forms or statistics, was my understanding.

11 Q He had them at one time, he just didn't have
12 them in 1995; isn't that true?

13 A That's my understanding.

14 Q May I see Exhibit 14 for a moment, please.

15 There's a page at the back of Exhibit 14, it's
16 Bates stamped WB 106 and it seems like it's out of
17 sequence, it goes 101, 102 and then 106. Do you see
18 that?

19 A Yes.

20 Q Is that part of that same memo from Tony Ye, or
21 is that a different document?

22 MR. WILKINSON: Objection. Calls for speculation.

23 THE WITNESS: I have no idea.

24 BY MR. PRAGLIN:

25 Q Do you see in the lower left there's some

1 handwriting on page WB 101 it says "MEM02.804"?

2 A On which page are we talking?

3 Q First page.

4 A Okay.

5 Q Do you see that?

6 A Yes.

7 Q And then if you look at the third page there it
8 says "Zhang.806"?

9 A Right, it says an earlier date, 8-6-95.

10 Q Whose writing is that in the lower left?

11 A I don't know. Probably Tony.

12 Q And so does this third page go with the first
13 two pages of the memo or not?

14 MR. McLEOD: Objection. Asked and answered.

15 THE WITNESS: I don't know.

16 BY MR. PRAGLIN:

17 Q I'll get the rest of that memo and come back to
18 it.

19 Do you have with you the materials that you
20 reviewed since your December deposition?

21 A Right here?

22 Q In the building.

23 A Yes.

24 Q I'm going to show you my copy of Dr. Butler's
25 production, and these are pages WB 103, 104 and 105, and

1 it appears that WB 106 is a continuation of that memo.

2 I just want you to confirm that for me.

3 A I don't know. It's confusing to me because
4 there's two different cover pages. It looks like the --
5 and it ends on a different spot. Page 101 ends
6 differently than page 103, which appears to have the
7 same title. These are different documents. So it
8 appears to me that there's two faxes here; one that was
9 just two pages and another one that had the same title,
10 except that it was August 6th, and different content.

11 Q What I'm trying to find out is whether WB 101
12 and 102 are one memo and then the second memo is WB 103
13 through 106, and it looks as though WB 106 got attached
14 to Exhibit 14 by mistake.

15 A I don't know. I guess, you know, asking Ye or
16 Butler would be the better idea because I'm not sure.
17 The last page, 106, is dated 8-6, and the beginning that
18 you're referring to of the second memo has a written
19 8-7-95 on the bottom, so it looks like a composite.

20 Q Okay.

21 Let's mark as Exhibit 15 another document Bates
22 stamped WB 117 through 122.

23 (Plaintiffs' Exhibit 15 was marked
24 for identification, a copy of which is
25 attached hereto.)

1 BY MR. PRAGLIN:

2 Q What is Exhibit 15?

3 A It's a memo to me from Bill Butler dated August
4 7, 1995 regarding budgets.

5 Q On the second page, which is Bates stamped WB
6 118, there's a section that's entitled "Approximate
7 Budget." Do you see that?

8 A Yes.

9 Q And Dr. Butler writes, "I request authorization
10 for an additional \$25,000 for services to be executed
11 between now and September 1," that would be September 1,
12 1995; is that right?

13 A That would be my assumption.

14 Q Why would Dr. Butler be asking you for
15 authorization for an additional \$25,000 of services?

16 A Probably because I asked him to put together a
17 budget estimate because I'm the project manager for the
18 project.

19 Q Was this a budget increase for the Zhang
20 project?

21 A I think we discussed it in my first deposition,
22 I forget what the task number was, but it was a
23 continuation of the research on the Chinese and Mexicans
24 epidemiology studies, to my recall.

25 Q As I look at this approximate budget on page WB

1 118, it looks like it just relates to the Zhang project,
2 is that true, or does it also relate to Mexican studies?

3 A I'd say this focuses on the Zhang work.

4 Q And then if you look at the page that's Bates
5 stamped WB 120 on Exhibit 15, under the section "Work to
6 Date" Dr. Butler writes, "We are continuing to work with
7 Zhang to obtain (at least approximate) background data
8 for these rates so that we can present a quantitative
9 examination" --

10 A Where are we? I'm sorry.

11 Q Okay. I'll start over, WB 120.

12 A Oh, the second paragraph there. Okay.

13 Q So do you have page WB 120 of Exhibit 15 under
14 the section "Work to Date"?

15 A I found it. "We are continuing to work."

16 Q Dr. Butler writes, "We are continuing to work
17 with Zhang to obtain (at least approximate) background
18 data for these rates so that we can present a
19 quantitative examination of the absence of a positive
20 dose-response relationship between cancer and Cr6+ in
21 drinking water," correct?

22 A Correct.

23 Q And then he says, "This work is taking
24 additional time because of the need to use indirect
25 methods to reconstruct the number of cancer deaths in

1 each village. Dr. Zhang no longer has records of the
2 number of cancer deaths for these populations," correct?

3 A That's what it says.

4 Q Now, why was ChemRisk trying to do a
5 quantitative examination of the absence of a positive
6 dose-response relationship between cancer and chrome
7 (VI) in drinking water?

8 A Because that's what our analysis indicated was
9 shown by the data.

10 Q Isn't that exactly what PG&E was trying to
11 prove in the Anderson case?

12 A I'm not sure what you mean.

13 Q Well, what you were trying to do was to show
14 that there was no dose-response relationship between
15 cancer and chrome (VI) in drinking water, right?

16 MR. McLEOD: I'm going to object to the
17 characterization of "what you were trying to do." The
18 witness has testified it's what the data showed them.
19 The term "what you were trying to do" is argumentative.

20 MR. WILKINSON: Misstates the document, also, by
21 quoting selectively.

22 THE WITNESS: You make it sound like we were
23 advocating a particular position, but the bottom line is
24 that the data showed what the data showed. It was in
25 the manuscripts that Dr. Zhang wrote, in all of the

1 tables, and we just basically did a more thorough
2 analysis that focused on dose response in the
3 contamination area and illustrated that.

4 BY MR. PRAGLIN:

5 Q You didn't have the water quality data to base
6 a dose response analysis on, did you?

7 MR. WILKINSON: Objection. Misstates the documents
8 and the testimony.

9 THE WITNESS: Yes, we did.

10 BY MR. PRAGLIN:

11 Q You had water quality data for all of the wells
12 for all the villages for all of the time in question in
13 China?

14 MR. McLEOD: Argumentative.

15 THE WITNESS: I don't know what that means, "all of
16 the, all of the, all of the," but we got everything from
17 the manuscripts that was documented in the manuscripts
18 and we used the study director, the person who
19 implemented the study and took the samples, as our
20 source of information on interpreting that data. So I'd
21 say it was inclusive and I'd say all the conclusions and
22 statements in the paper were reasonable and appropriate,
23 scientifically.

24 BY MR. PRAGLIN:

25 Q When one takes a water quality test there's a

1 lab result that's generated, right?

2 A Depends on what situation you're talking about,
3 but yeah, that can be.

4 So if you mean by "result," do they have
5 contract labs in China that will put out a specific lab
6 page for each result, the answer is probably not.
7 Probably they have water quality people in the
8 anti-epidemic station who are chemists and they may just
9 write down a number straight from the machine as far as
10 any measurements that they made and then Dr. Zhang would
11 collate that information.

12 So certainly if they made measurements, there
13 would be results. What form or documentation or
14 retention of that documentation over time would be
15 whatever their practice was, which I really don't know
16 exactly.

17 Q Whatever the form of documentation of the water
18 quality results from China was, ChemRisk never saw it,
19 did it?

20 A I really don't know what you mean. We relied
21 on what Dr. Zhang provided us and what he told us; so it
22 wouldn't be relevant, necessarily, beyond that. I mean
23 there's no reason we would suspect that the study author
24 was telling us incorrect information; so I just don't
25 know where you're going.

1 Q Did Dr. Zhang ever provide you with written
2 water quality test results for the wells in China?

3 A Sure.

4 Q You had that in your file?

5 A It was in the manuscripts, yes.

6 Q The results were reported in the manuscripts,
7 but the data was not provided to you; is that true?

8 A The data was reported in the manuscripts.

9 Am I missing something?

10 Q Yes.

11 MR. McLEOD: No, I think counsel's missing
12 something. You're just fine. You don't have to
13 speculate.

14 BY MR. PRAGLIN:

15 Q In order to report data in a manuscript, there
16 must be data in the first place, right?

17 MR. WILKINSON: Objection. Vague.

18 THE WITNESS: Sure.

19 BY MR. PRAGLIN:

20 Q Can we call that the original data?

21 A Okay.

22 Q You never saw the original data on water
23 quality measurements from China, did you?

24 A No. We relied on Dr. Zhang for the integrity
25 and the summarization of all that data.

1 Q And you never got the full original data on the
2 cancer death rates from Dr. Zhang, did you?

3 MR. WILKINSON: Objection. Vague.

4 THE WITNESS: I think this information that we've
5 been going over now for two days is the path that we
6 took in working with Dr. Zhang to fill in some blanks in
7 the original 1987 study. He did not summarize in that
8 study that got published or in the manuscripts that were
9 unpublished that he sent us every piece of information
10 that we would have liked to have in order to do a more
11 thorough analysis that was -- scientifically and
12 epidemiologically had the best integrity that we could
13 muster. But, of course, we're looking at this
14 retroactively, so we're trying to find the best
15 information and collect it all together and do the
16 scientific analysis that has the most integrity to be
17 able to draw conclusions.

18 So the data, again, doesn't need to exist in
19 its original form in order for us to analyze it if it's
20 been summarized in another form and is still useful.
21 And we relied on Dr. Zhang for interpretation and
22 summary of that information.

23 BY MR. PRAGLIN:

24 Q Wouldn't you agree, though, that there were
25 water quality results showing high levels of chromium in

1 some of the villages of China that you omitted from the
2 '97 Zhang article?

3 A There was more data available than what we
4 reported in that short communication, that's true.

5 Q And one of the data points that you left out of
6 the '97 article was a report of 70.5 parts per million
7 chromium; isn't that true?

8 MR. WILKINSON: Objection. Misstates the testimony
9 and the documents.

10 MR. MCLEOD: I'll join in that.

11 THE WITNESS: I recall there being a single
12 measurement of that value, but I don't recall -- I know
13 it wasn't in 1965 and it was -- it was likely an
14 isolated finding.

15 BY MR. PRAGLIN:

16 Q An outlier?

17 A You could call it that.

18 Q ChemRisk came up with the theory that the high
19 measurements in Hinkley were outliers too, didn't they?

20 A I don't really know what you mean.

21 Q You're not aware of ChemRisk scientists
22 testifying that the high levels in Hinkley were
23 outliers?

24 A I'm just not -- I don't know the context you're
25 talking about.

1 Q Okay. We can --

2 MR. McLEOD: I'm going to object on the grounds that
3 we're beyond the scope of this deposition. We've been
4 going for -- it was originally scheduled for a day.
5 We're now into a day and a half.

6 The scope of the deposition was this witness's
7 contacts with the Blue Ribbon Panel and contacts with
8 third-party authors. We're beyond the scope of the
9 deposition that was approved by the Court. The
10 questions are argumentative, repetitive.

11 You don't have to answer that.

12 BY MR. PRAGLIN:

13 Q Aren't you aware that ChemRisk took the
14 position in the Anderson arbitration that the high water
15 quality measurements for chromium in Hinkley were
16 outliers?

17 MR. WILKINSON: Objection. Vague.

18 MR. McLEOD: You don't have to answer that. We're
19 not here to answer that.

20 BY MR. PRAGLIN:

21 Q Go ahead, Dr. Kerger.

22 MR. McLEOD: No, we're going to stay within the
23 scope of the deposition and we're going to finish today.

24 By the way, is it your intent to finish today?

25 MR. PRAGLIN: I'm sure trying.

1 Are you instructing him not to answer?

2 MR. McLEOD: Yeah.

3 MR. PRAGLIN: Okay. Well, we're coming back for
4 that question unless you let him answer it.

5 THE WITNESS: I don't recall. I don't know what the
6 context is that you're talking about. We might have
7 mentioned one or more individual measurements as being
8 outliers or didn't make sense for one reason or another,
9 but I just don't recall and don't know what context
10 you're talking about.

11 BY MR. PRAGLIN:

12 Q On Exhibit 15, the second page Bates-stamped WB
13 118 in the budget, did you approve that budget?

14 A It wasn't up to me to approve budgets. It was
15 the client's role.

16 Q The client is PG&E or its counsel?

17 A Right.

18 Q Did the client approve this budget?

19 A It wouldn't have been in this actual paper, but
20 I most likely -- I think in the materials that we went
21 over that were from my office on budget approvals or
22 task descriptions, that's the form that I would have
23 interacted with the client on.

24 It wasn't this document. In other words, this
25 was a document internally provided to me to kind of

1 summarize where he was and what he estimated the level
2 of effort was, and I would have translated that into a
3 different document to get the client to sign on budgets.

4 Q So did you get PG&E to sign off on a budget
5 increase for the work with Dr. Zhang?

6 A My recollection is yes.

7 Q On this estimated budget by Dr. Butler, he has
8 an entry here for 3 percent comm, c-o-m-m, fee. Do you
9 see that?

10 A Yes.

11 Q What is that?

12 A It's a communication charge that we at
13 McLaren/Hart would take a percentage of the actual
14 technical hours and charge that for miscellaneous
15 expenses like telephone, copy charges, faxes, et cetera,
16 instead of individually billing those items.

17 Q Is it 3 percent that's added on for overhead?

18 A That's another way to put it, you could call it
19 that.

20 Q And then two entries down below that, there's
21 an entry by Dr. Butler that says, "20% markup."

22 Do you see that?

23 A Right.

24 Q What's that?

25 A Well, again, our standard practice, and I'm not

1 sure if I did this with -- we probably didn't do it with
2 PG&E because they had, as I recall, specific
3 requirements of not marking up subcontractors, but the
4 standard practice was if we hired a subcontractor like
5 Dr. Zhang, his fee -- in order to administrate the fee,
6 there would be an administrative markup of 20 percent,
7 and that's what Bill's reflecting there.

8 Q I didn't understand what you meant by "in order
9 to administrate the fee."

10 A In order to establish and maintain the
11 contracts with the subcontractor, there's a separate fee
12 that we call -- an administrative markup or 20 percent
13 markup on subcontracts; so Bill, in this summary, is
14 reflecting \$1600 as the fee that would be charged by or
15 paid to Zhang based on this estimate, \$350 a month for
16 four months, and then adding 20 percent of that amount.

17 Q I see.

18 And Dr. Butler is budgeting for his time,
19 \$13,500, to write reports, right?

20 A Right, it's about 60 hours of his time.

21 Actually it doesn't say to write the report,
22 but it would be for interpreting, analyzing and
23 collaborating with Dr. Zhang and with Tony and with me.

24 Q Well, do you see the second line of his entry,
25 it says "Write reports"?

1 A Right, but we're not -- again, we've gone down
2 this trail of who wrote what. I know for a fact that
3 Tony and Dr. Butler wrote internal memos and reports and
4 analyses that either summarized or critiqued what the
5 Zhang work said in our interpretation. And then
6 separate from that was this manuscript that -- that was
7 a collaboration pretty much solely orchestrated by
8 Dr. Zhang in his interactions and approvals.

9 Q Where are these reports, these internal memos
10 that you say that Dr. Butler and Tony Ye wrote?

11 A I think we went over one of the first
12 exhibits -- or No. 12 here was probably a draft version
13 of our internal analysis that Butler and Ye probably
14 wrote.

15 Q Give me the Bates-stamped range on that,
16 please.

17 A TY 00113 through 119. This was an early
18 version, so I think in the other materials that I
19 skimmed through in Butler's file there was more
20 extensive -- a more extensive analysis.

21 Q How much of the contract between ChemRisk and
22 PG&E was devoted to ChemRisk work with Dr. Zhang?

23 MR. McLEOD: Objection. Asked and answered in
24 Volume 1 of the deposition, repeatedly.

25 THE WITNESS: I would stick with my original answer

1 on that.

2 BY MR. PRAGLIN:

3 Q And PG&E paid for all that work, right?

4 A I'm sorry, I lost track. All of what work?

5 Q All of the work that ChemRisk did with
6 Dr. Zhang.

7 MR. McLEOD: Objection. That misstates his
8 testimony.

9 THE WITNESS: I think I explained before that they
10 paid for the research work that we did, and up to a
11 certain point where the case was over and we continued
12 to work with Dr. Zhang without charging anybody to help
13 him follow through and help him get this information out
14 in the literature.

15 BY MR. PRAGLIN:

16 Q The 1987 Zhang article was published in the
17 Journal of Chinese Preventive Medicine, correct?

18 A I believe that's true.

19 Q Is that a journal that is printed in Chinese?

20 A I'm sure it's largely printed in Chinese, there
21 might be an English abstract that's common, but what we
22 interpreted and read from was a translation that was
23 generated by ATSDR of that paper.

24 Q Did you or anyone at ChemRisk have the Zhang
25 '97 article published in this Journal of Chinese

1 Preventative Medicine?

2 MR. McLEOD: Objection. Asked and answered.

3 THE WITNESS: No.

4 BY MR. PRAGLIN:

5 Q Did anyone attempt to have the '97 Zhang
6 article published anywhere in China?

7 MR. McLEOD: Objection. Asked and answered.

8 THE WITNESS: I don't believe so.

9 BY MR. PRAGLIN:

10 Q So far as you know, has the Zhang '97 article
11 ever been published in Chinese?

12 MR. McLEOD: Objection. Asked and answered.

13 THE WITNESS: I don't know.

14 BY MR. PRAGLIN:

15 Q You've never heard that it has, have you?

16 A In Chinese, no.

17 Q Did you give any consideration, since this was
18 a clarification and follow-up of the '87 article that
19 was published in the Journal of Chinese Preventative
20 Medicine, to having the '97 recall published in the
21 Journal of Chinese Preventative Medicine?

22 MR. McLEOD: Again, objection. Asked and answered.

23 THE WITNESS: I think that would have been silly.

24 BY MR. PRAGLIN:

25 Q Why is that?

1 A Well, our initial conversation with Dr. Zhang
2 was that he was upset with that journal for having kind
3 of sliced up and massacred what was his original full
4 analysis.

5 And it was at that time, and I'm sure it still
6 is, a Communist regime journal that, while they are
7 scientists and they have their views on what to publish
8 and what not to publish, it wasn't the standard type of
9 scientific interaction or peer-review process that's
10 involved with other journals, other international
11 journals and other journals in the United States. He
12 told us that he never actually received the final
13 version of the article from the Chinese preventative
14 medicine journal, that they just basically took his
15 work, reworked it the way they wanted and published it.

16 And so it wouldn't make any sense to -- for him
17 to go back there and try to publish a clarification when
18 he's been treated that way.

19 Q Did you think it was wrong of the Chinese
20 Journal of Preventative Medicine to have taken
21 Dr. Zhang's work, reworked it the way they wanted it
22 and publish it?

23 MR. WILKINSON: Objection. Vague, relevance.

24 MR. McLEOD: Objection. Also calls for speculation
25 and opinion.

1 THE WITNESS: Yeah, I think it was wrong.

2 BY MR. PRAGLIN:

3 Q You're familiar with the practice of publishing
4 a clarification in the same journal in which the
5 original work being clarified was published, aren't you?

6 A Sometimes it happens that way, sometimes it
7 doesn't.

8 Q Don't you frequently see in scientific journals
9 articles that are updates or follow-ups that clarify
10 something previously published?

11 A Right. But like I said, it's not -- it's not
12 against the rules or inappropriate or uncommon to
13 publish it in a different spot or different paper -- I
14 mean a different journal.

15 Q Did you check any rules to see where you could
16 publish this article?

17 A I just know, as a scientist, that we're not
18 restricted to going to the same journal when we're
19 publishing subsequent studies on the same topic, just
20 it's not reasonable.

21 Q ChemRisk didn't check any publication rules
22 before going forward with the Zhang '97 article, did it?

23 MR. McLEOD: Objection to the term "publication
24 rules" as being vague and ambiguous and overbroad.

25 What do you mean by "publication rules"?

1 BY MR. PRAGLIN:

2 Q I'm using your term, Dr. Kerger.

3 A I'm not sure what you mean.

4 Q You said, "It's not against the rules or
5 inappropriate or uncommon to publish it in a different
6 spot or different paper."

7 A And what I meant was a different journal,
8 correct.

9 Q So what rules did you consult, if any?

10 A Well, I think it was -- my general experience
11 and understanding and collaboration with other people in
12 scientific arenas, that those are my observations.

13 Q Was Dr. Zhang an expert in chromium?

14 MR. McLEOD: Objection. Asked and answered in
15 Volume 1 of the deposition.

16 THE WITNESS: Dr. Zhang was an epidemiologist who
17 did a chromium study. I don't think that he was an
18 expert, per se, in chromium. He was a researcher who
19 knew several elements of chromium and did an
20 investigation.

21 MR. PRAGLIN: We need to change the tapes, so we'll
22 take a short break here.

23 THE VIDEOGRAPHER: Off the record. The time is
24 11:21 a.m. This is the end of videotape number one in
25 the continuing Volume 2 examination of Brent Kerger.

1 (Recess.)

2 THE VIDEOGRAPHER: We are back on the record. The
3 time is 11:25 a.m. This is the beginning of videotape
4 number two in the continuing Volume 2 examination of
5 Brent Kerger.

6 BY MR. PRAGLIN:

7 Q Earlier today I had asked you about the drafts
8 leading up to publication of the '97 Zhang article, and
9 I think it's Exhibit 12. Can you get that out, please.

10 I think we covered the first two documents in
11 that stack, and Dr. Kerger, I'd like to direct your
12 attention, now, to the draft that is Bates stamped TY
13 469 through 476. Do you have that handy?

14 A Yes.

15 Q Is that the next one in the sequence?

16 A Yeah, the sequence that you put together?

17 Q Yes.

18 A Uh-huh. Yes.

19 Q This particular draft appears to be dated
20 November 14, 1995, correct?

21 A Correct.

22 Q And it says "Confidential Draft," doesn't it?

23 A Yes.

24 Q And it was faxed to the ChemRisk Alameda office
25 on November 14, 1995, correct?

1 A It looks like that, yes.

2 Q And is some of your handwriting on this
3 November 14, 1995 draft?

4 A On one page there is.

5 Q Which page?

6 A 475.

7 Q That handwriting around the histograms is
8 yours?

9 A Just on the histograms. These percents --
10 percents over .05 ppm --

11 Q Yes.

12 A -- that's my writing. The rest of it in the
13 margins is not, or in the title, that's somebody else.

14 Q Were the histograms actually prepared from
15 water quality data?

16 A Yes, that's my recollection.

17 Q From the water quality data from the
18 laboratories themselves?

19 A Well, again, all the data must have originated
20 from a laboratory, so --

21 Q What document was someone at ChemRisk looking
22 at when these histograms were prepared?

23 A Probably would have been one of the tables that
24 was in the manuscripts that Dr. Zhang sent us.

25 Q So the histograms are the rectangular bar

1 graphs, right?

2 A Correct.

3 Q Those were prepared by ChemRisk, right?

4 A I believe we prepared -- we actually entered in
5 the data from Dr. Zhang's previous summaries or articles
6 into an Excel spreadsheet and generated the histograms,
7 yes.

8 Q So if ChemRisk incorrectly entered the data
9 from Dr. Zhang's manuscript, then that would generate an
10 incorrect histogram, correct?

11 A That's a possibility.

12 Q Did anybody at ChemRisk check all of the data
13 in Dr. Zhang's manuscripts against the final numbers
14 presented in the histograms in the '97 Zhang article?

15 A Well, we did the best -- the best we could at
16 the time, and I think one of the ways that we made sure
17 of that was by expanding this table, which in earlier
18 versions was much more simplified, but we included all
19 of the data that is actually illustrated in Figure 1.
20 All of that data is numerically described in Table 1 in
21 terms of concentration, number of wells tested, et
22 cetera.

23 Q You said Figure 1, did you mean Figure 2?

24 A I'm sorry, you're right, Figure 2 is the
25 histograms.

1 Q So you're saying that all of the data that is
2 in Figure 2, the histograms, is also included in Table
3 1, the chart?

4 A That's what we tried to do.

5 Q Did anyone at ChemRisk quality control those
6 two pages to see that all of the data from the table was
7 accurately represented in Figure 2, the histograms?

8 A I think in my analyses in the last month,
9 because you had questioned me so closely on this before,
10 I went back and did some double-checking, and I think
11 that there is an error in one of the histogram charts,
12 the Nuer River village chart of Figure 2 that -- that
13 did not get caught.

14 In other words, information on frequency of
15 well contamination, where I'd written on 475 that 95
16 percent of the wells were over 0.05 PPM, that is not
17 adequately reflected in this figure, now that I look
18 back at it, and probably was a spreadsheet hookup
19 problem, in other words, a translation -- when you take
20 the data set and plot it into a histogram, if you click
21 on the wrong data set, you can generate two of the same,
22 which appears to be the case in this case; both the Nuer
23 River village panel and the YangXing panel actually
24 reflect the same data in the histogram just on a
25 different scale, and that looks like an error.

1 I'm kind of angry about it because it
2 understates the significance of our conclusion by not
3 being able to illustrate how much contamination there
4 was in Nuer River village where the cancer rate was
5 actually the lowest; so I did detect that error.

6 Q When did you detect that error?

7 A Last month.

8 Q January of 2003?

9 A Right.

10 Q What steps have you taken to correct that error
11 with the journal?

12 A I -- I haven't done anything, and it wouldn't
13 be my place to do that because I wasn't the author.

14 Q You don't have the ability to write a letter to
15 the journal to point out the mistake?

16 A I don't think it's an important mistake.

17 As I said, the data is presented in numerical
18 form, and the conclusions, whether or not that
19 illustration is actually completely accurate, the
20 illustration and the point being made is exactly the
21 same; so it wouldn't change the conclusions, you know.

22 I get upset whenever there's a typo or some
23 other problem like this that goes out in a final
24 manuscript, but you have to make the call as to whether
25 or not it's important enough to call attention to, and

1 in my view, this wouldn't be.

2 Q And that's the only error that you found?

3 A Well, other than Dr. Zhang's name missing the
4 A, in terms of J-i-a-n Dong, that's the only two things.

5 MR. McLEOD: Referencing the document in front of
6 you, the draft?

7 THE WITNESS: Correct.

8 And in the final version I think his first name
9 was missing the A as well, which I can probably -- I can
10 speculate as to what the cause of that was, but it was
11 inadvertent.

12 BY MR. PRAGLIN:

13 Q But it was ChemRisk's mistake, right?

14 A I wouldn't say it was only ChemRisk's mistake.
15 It was a collaborative effort to write the article and
16 QC the article, and so while -- while somebody made an
17 error, everybody had a role in allowing it to get out in
18 the final version.

19 Q It's the only publication of Dr. Zhang where
20 his name is ever misspelled, isn't it?

21 A I don't know.

22 Q Did you ever see that same misspelling on any
23 of Dr. Zhang's own publications?

24 A I don't read Chinese.

25 Q And have you made any efforts to correct with

1 the journal the typo on Dr. Zhang's name?

2 A I don't think it would be important since he's
3 dead, and since in the reference section there are
4 correct references, his name is spelled correctly on the
5 reference to the 1987 publication; so it was obviously
6 an inadvertent typo.

7 Q Pretty big mistake to spell the author's name
8 wrong, isn't it?

9 MR. McLEOD: Objection. It's argumentative.

10 THE WITNESS: I think we went over it. You went
11 over it with Tony and you went over it with me before,
12 is that when you translate Chinese into English words
13 and letters, there are different ways to be able to
14 translate it, and Tony said that J-i-a-n was the most
15 appropriate or common way to do it. But if Dr. Zhang
16 saw his name spelled that way and didn't have any
17 problem with it -- I'm sure he knew how to spell his
18 name in English letters because he signed it, as I
19 recall, before in English, like J.D. Zhang in English
20 letters, so --

21 I'm sorry that it happened. It was a mistake.

22 BY MR. PRAGLIN:

23 Q The question is, it's a pretty big mistake,
24 isn't it, to misspell the author's name in a scientific
25 article?

1 MR. McLEOD: The question has been asked and
2 answered.

3 MR. PRAGLIN: He didn't answer it.

4 MR. McLEOD: Yes, he did.

5 MR. PRAGLIN: He said he was sorry, but I'm asking
6 is it a pretty big mistake.

7 MR. McLEOD: The term "pretty big mistake" is vague,
8 ambiguous, overboard and argumentative.

9 THE WITNESS: I don't take it as a pretty big
10 mistake. I take it as a typographical error.

11 BY MR. PRAGLIN:

12 Q Did anybody at ChemRisk check the histograms in
13 the '97 Zhang article and the data contained in them
14 against Dr. Zhang's actual manuscripts to make sure that
15 all of Dr. Zhang's data was correctly reported in the
16 '97 article?

17 A I don't recall specifically. It's always our
18 intent to do it perfectly and accurately, but in this
19 case it looks like our QC process failed on that one
20 panel.

21 Q QC is quality control?

22 A Correct.

23 Q ChemRisk factored in quality control into the
24 budget to PG&E, didn't it?

25 A I'm not sure what you mean.

1 Q You charged PG&E for the time spent to proof
2 the Zhang article, didn't you?

3 A Well, I never really specifically characterized
4 it that way that I recall, but certainly quality control
5 would be an element, and you always try to do the best
6 you can and I still -- I don't feel badly that we --
7 that we didn't put in the effort, but I do feel badly
8 that the error was made.

9 Q On this confidential draft dated November 14,
10 1995 of the Zhang article, there's some handwriting on
11 the page Bates stamped TY 471. Do you see that?

12 A At the bottom, you mean?

13 Q Yes.

14 A Yes, I see that.

15 Q Is that your writing?

16 A No.

17 Q Whose writing is that, do you know?

18 MR. WILKINSON: Objection. Calls for speculation.

19 THE WITNESS: I don't know.

20 BY MR. PRAGLIN:

21 Q It's not Dr. Zhang, is it?

22 A I don't think Dr. Zhang could write like that,
23 no.

24 Q It's in English, right?

25 A That's correct.

1 Q And you don't recognize that handwriting?

2 A I could speculate.

3 MR. McLEOD: Don't speculate. The question has been
4 asked and answered.

5 THE WITNESS: But I don't know for sure.

6 BY MR. PRAGLIN:

7 Q You know it's not you, correct?

8 A Correct.

9 Q And you know it's not Gwen Corbett's
10 handwriting, don't you?

11 A I don't really know that for sure, but, again,
12 my guess -- my guess would be that it's either Tony or
13 Bill Butler, Tony Ye or Bill Butler, but I don't know
14 for sure.

15 This may even reflect Dr. Zhang's changes as
16 translated by Tony, so I have no definite word on that.

17 Q Well, that wasn't Tony Ye's testimony, was it?

18 A I'm not sure what you mean.

19 Q Tony Ye didn't testify that those handwritten
20 changes on the bottom of TY 471 were made in response to
21 something Dr. Zhang told him to write, did he?

22 A I'm not really sure.

23 Q Whose idea was it to include the references
24 that got included in the Zhang '97 article?

25 A Well, some of the references were references

1 from the original manuscripts or to the original
2 publication that Dr. Zhang had from 1987.

3 Q So that would be references 1 and 2, right?

4 A Right.

5 And certain other ones were methodology
6 references that either I contributed or Bill Butler
7 contributed that, again, added some additional depth to
8 the discussion.

9 Q If you go to the next draft in the sequence on
10 Exhibit 12, is it the one that's dated November 16,
11 1995, "Confidential Draft"?

12 A TY 89?

13 Q Yes.

14 A Yes.

15 Q Would you look at that document alongside the
16 previous draft that was dated November 14, 1995, please.
17 Do you have them side by side?

18 A I do.

19 Q On the face page of the November 14, 1995
20 draft, it says, "Please address correspondence to
21 Dr. Zhang, care of Brent Kerger" at McLaren/Hart's
22 Irvine address, right?

23 A Yep.

24 Q And on the draft two days later November 16,
25 1995, it's been changed, isn't it?

1 A Well, they're both dated the same date, but
2 yeah, I agree there's a change between what we're
3 calling TY 469 and TY 89.

4 Q Well, look at TY 89 in the lower right, don't
5 you see the date November 16, 1995?

6 A Yes.

7 Q So it is a later draft, isn't it?

8 A That's correct.

9 Q And if you look at the fax number on the
10 bottom, you can see it was faxed to ChemRisk's Alameda
11 office on November 16, 1995, correct?

12 A Yes.

13 Q So comparing the two drafts, November 14, '95
14 and November 16, '95, the contact information on the
15 November 16, '95 draft has been changed, hasn't it?

16 A Yes.

17 Q It's been changed to Dr. Zhang, care of Tony Ye
18 at Tony Ye's home address and phone number, right?

19 A Correct.

20 Q What happened that the contact information got
21 changed from you at ChemRisk's office address in Irvine
22 to Tony Ye's address at home?

23 A I think we went over this in the last
24 deposition, but what was decided was because Tony was
25 the main interactor and translator for us with

1 Dr. Zhang, that it would be more appropriate for Tony to
2 be the contact that submitted the paper.

3 So it was decided obviously within that time
4 frame to shift it from me, who was -- again, I was the
5 project lead and the interactor with Dr. Zhang, you
6 know, without having the ability to directly speak with
7 him because I don't speak Chinese, it just made more
8 sense to make it Tony.

9 And I think we also discussed that within this
10 same time frame, Bill Butler and Tony made plans and had
11 basically formed a separate company, which, I don't
12 recall the exact time frame, but right around
13 November/December of 1995 was when Environmental Risk
14 Analysis, Bill Butler's company, was formed, and so we
15 had that additional issue that I couldn't -- it wouldn't
16 be appropriate, knowing that, to have Tony receive mail
17 from a journal at McLaren/Hart in Alameda, which is
18 where he was working at this moment, in November, in the
19 future when it was submitted. So we decided to use his
20 home address on that basis.

21 Q That decision was made by who?

22 A I don't recall anybody specifically being -- or
23 solely being the decider of that, but it was
24 collectively decided between -- I believe it was Bill
25 Butler and I.

1 Q You're aware that Tony Ye was still working at
2 ChemRisk in Alameda through the end of 1995, aren't you?

3 A Again, I don't recall.

4 Q You aren't aware that he received
5 correspondence at the McLaren/Hart-ChemRisk Alameda
6 office through the end of 95?

7 A I'm not sure.

8 Q Why not just use Tony Ye's contact information
9 at work instead of his home address and his home phone
10 number?

11 MR. McLEOD: Objection. Asked and answered.

12 THE WITNESS: Again, I don't even know -- you know,
13 this is seven years ago, so all of the details of our
14 decision making are not fresh in my mind at this moment.

15 But the bottom line is Tony Ye was submitting
16 it essentially as a friend of Dr. Zhang in the United
17 States. Dr. Zhang identified that he did not want
18 anybody else to be a co-author with him, so there was no
19 reason for us to be advertising or identifying ourselves
20 to the journal as to -- you know, that we were the
21 interacting company. It was Tony and Dr. Zhang
22 publishing this information.

23 From there on, you know, there was no real
24 contact that went through McLaren/Hart, per se, to get
25 the publication done.

1 BY MR. PRAGLIN:

2 Q Well, that's not really true, is it?

3 A I'm not sure what you mean.

4 Q Didn't the correspondence from JOEM go to
5 McLaren/Hart?

6 A No.

7 Q Are you sure?

8 A Yeah.

9 Q How do you know?

10 A Because Tony was the contact person, he would
11 have been the one who received the information. And if
12 anything was mailed to him, it would have gone through
13 that mailing address.

14 Q And don't you think it gives the journal a
15 misleading impression that the contact is actually Tony
16 Ye, an individual at home, rather than ChemRisk, this
17 team of scientists, Dr. Kerger, Dr. Butler and Dr. Ye?

18 MR. McLEOD: Objection. It's argumentative, calls
19 for speculation. It's also asked and answered in the
20 first volume of the deposition.

21 THE WITNESS: I don't think it was misleading or
22 inappropriate.

23 BY MR. PRAGLIN:

24 Q Remember your testimony last year that
25 Dr. Zhang said that he wanted to publish posthumously in

1 the name of Dr. Li, Dr. ShuKun Li?

2 A Yes.

3 Q Have you since learned, since your December
4 deposition, that Dr. Li is alive?

5 A Again, through reviewing those additional notes
6 from Tony, that appears to be the case, that there was
7 another Dr. Li that assisted Dr. Zhang in collecting the
8 information that we were asking for.

9 Q So your testimony was false, wasn't it?

10 MR. MCLEOD: Object to the mischaracterization as to
11 the term "false," that's argumentative.

12 THE WITNESS: No, it was my understanding at the
13 time. And I think I documented it in my initial
14 conversation notes that Dr. Li had -- was deceased, the
15 original author of the 1987 paper that was published in
16 the Chinese Preventative Medicine Journal; so while it
17 might have been a misimpression, I didn't intend to
18 mislead anyone.

19 BY MR. PRAGLIN:

20 Q But you were wrong when you said that Dr. Zhang
21 said Dr. ShuKun Li was deceased, weren't you?

22 A No, I didn't say that. I said that it was my
23 understanding that Dr. Li, that he wanted to be the
24 co-author, was the original person that he had published
25 with in 1987. That was my understanding and belief up

1 until 2002.

2 Q But why were you even talking to Dr. Zhang
3 about the first Dr. Li that he published with if you
4 weren't doing that article, you were doing the 1997
5 article?

6 MR. WILKINSON: Objection. Argumentative, misstates
7 the testimony.

8 MR. McLEOD: Join in that.

9 THE WITNESS: I never spoke with Dr. -- or ShuKun
10 Li. Tony had indirect interactions with her -- not with
11 her, but heard of her with respect to his data request
12 to Dr. Zhang and Dr. Zhang getting assistance from her,
13 but we never had a direct interaction with ShuKun Li.

14 And I really, frankly, either didn't recall it
15 or wasn't aware of it at the time.

16 BY MR. PRAGLIN:

17 Q How do you know Dr. ShuKun Li is a woman?

18 A That's what the notes seem to reflect.

19 Q Is that your only source of information?

20 A Yes.

21 Q You haven't made any attempts to contact Dr. Li
22 since your deposition in December of 2002?

23 A No.

24 Q Are you sure that Dr. Zhang is dead?

25 A No.

1 Q Why do these two drafts dated November 14 and
2 November 16, 1995 say "Confidential Draft"?

3 MR. WILKINSON: Objection. Asked and answered.

4 THE WITNESS: It was my standard practice to mark
5 things "Confidential Draft" that were work products that
6 were in process.

7 BY MR. PRAGLIN:

8 Q Let me ask you this: On the face page of the
9 November 15, '95 and the November 16, '95 drafts there
10 are two journals listed, one is Science of the Total
11 Environment and the other one is Environmental Research,
12 correct?

13 A That's what it says.

14 Q Those are two different journals, are they not?

15 A That's correct.

16 Q Who made the decision to submit the Zhang
17 article to those two journals?

18 A We didn't submit them to those two journals.

19 Q Are you sure?

20 A Yes.

21 Q How do you know?

22 A Because I directed the project.

23 Q Which journals was the Zhang article submitted
24 to?

25 MR. McLEOD: Objection. Asked and answered.

1 THE WITNESS: Journal of Occupational and
2 Environmental Medicine and Archive of Environmental
3 Health.

4 BY MR. PRAGLIN:

5 Q So if it was submitted to those two journals,
6 why is the name Environmental Research, a different
7 journal, listed on these two drafts, November 14 and
8 November 16, 1995?

9 A Well, these were two journals that we had -- we
10 were considering, and it's a draft version so it just
11 didn't turn out to be what we decided on; so --

12 Q The question is why. Why did you decide not to
13 submit it to the Environmental Research journal?

14 A We decided that the two journals that we
15 ultimately selected were more appropriate venues and
16 higher quality journals that would be consistent with
17 what the import of this paper was.

18 Q Where is this journal, Environmental Research,
19 located?

20 A I don't -- I don't recall.

21 Q Have you ever published there before?

22 A I don't think so.

23 Q Was the Zhang '97 article sent to the journal
24 Environmental Research?

25 A No.

1 Q Not even in a draft version?

2 A No.

3 Q Did anybody at ChemRisk have authorization to
4 submit the Zhang '97 article without your permission?

5 A No, not that I know of.

6 Q And the Zhang '97 article was rejected by
7 Archives of Environmental Health, wasn't it?

8 MR. WILKINSON: Objection. Misstates the testimony
9 and the documents, asked and answered.

10 THE WITNESS: Not to my knowledge, no.

11 MR. PRAGLIN: Exhibit 16 will be document WB 231
12 through 234.

13 (Plaintiffs' Exhibit 16 was
14 marked for identification, a copy of
15 which is attached hereto.)

16 THE WITNESS: Thank you.

17 BY MR. PRAGLIN:

18 Q Have you ever seen Exhibit 16 before?

19 A I believe I have, yes.

20 Q The fax cover page is addressed to you from
21 Tony Ye, right?

22 A Yes.

23 Q It's dated May 24, 1996?

24 A Correct.

25 Q And he says, "Dear Brent: Enclosed please find

1 the comments received from Archives of Environmental
2 Health. I will call to discuss," correct?

3 A That's what it says.

4 Q And attached is a cover letter from Archives of
5 Environmental Health and then two pages of comments from
6 two different reviewers, apparently, correct?

7 A Yes.

8 Q Wouldn't you agree that Exhibit 16 is a
9 rejection of the Zhang article by Archives of
10 Environmental Health?

11 A Absolutely not.

12 Q It's not an acceptance for publication, is it?

13 A Actually, it is, in my view.

14 Q Where does it say this is accepted for
15 publication?

16 A Well, again, I've published many articles and
17 the statement in here on page WB 232, middle paragraph
18 of the body of the letter says, "Any revision should be
19 submitted in triplicate; and should also be accompanied
20 by three copies of the original" manuscript.

21 What that's implying to me is it would be
22 accepted with revisions, although they don't -- they
23 don't state that exactly. So this is certainly not a
24 rejection. I've gotten -- I've gotten rejection letters
25 on manuscripts before and they state we're sorry, but

1 this is not -- this journal -- you know, this article is
2 not appropriate for our journal, or the reviewers
3 thought it wasn't appropriate, or whatever. They would
4 give an outright statement that said it won't be
5 accepted or it's not accepted. This did not give that.

6 Q In Exhibit 16, didn't the managing editor of
7 Archives in Environmental Health actually write that the
8 Zhang '97 article has been returned by the reviewers who
9 have requested that your study be revised prior to
10 making a final decision?

11 A Right.

12 Q And so a final decision hadn't been made at
13 all, right?

14 A That's right.

15 Q And revisions were required in order for the
16 journal to make a final decision, right?

17 A That's fair.

18 But the important thing, again, in publishing
19 papers is whether or not they would even consider
20 receiving a revised version, and so in the process,
21 that's actually a positive response, that they want to
22 -- they want to see what further revisions, based on the
23 peer review comments, which were reasonably favorable,
24 what further revisions we could come up with and then
25 make a decision after we made those responses, so to

1 speak, or improvements that the peer reviewers would ask
2 for.

3 Q Do you remember when Tony Ye wrote in Exhibit
4 13 that Bill Butler thought it could be a problem that
5 Dr. Zhang didn't have all of the cancer death rates,
6 that it might be an impediment to publication?

7 A I don't remember what exhibit number it is, but
8 it sounds familiar.

9 Q Okay. And if you look at Exhibit 16 on page WB
10 233, do you note that this reviewer said, "Many details
11 are lacking, including a breakdown of cancer rates per
12 year"?

13 A That's what it says.

14 Q When you saw that comment from the reviewer,
15 did it cause you to recall this memo from Butler and Ye
16 where they said that we might not be able to get this
17 published because of the missing cancer rates?

18 MR. McLEOD: Objection. You're mischaracterizing
19 the testimony.

20 THE WITNESS: I don't recall what I thought when I
21 first saw it, but I'm sure that was -- I mean it was one
22 of the acknowledgments that we had in the whole
23 collaboration process, so I was aware of it and that
24 data just did not exist; so, you know, there's certain
25 things you just can't improve on a study, and that was

1 one of them.

2 BY MR. PRAGLIN:

3 Q And in fact this reviewer, on page WB 233,
4 says, "The information gaps make this paper difficult to
5 interpret," right?

6 A Yes.

7 Q You didn't take that as a positive comment, did
8 you?

9 A I took it as a criticism that was reasonable.

10 Q And do you see where this same reviewer says at
11 the beginning of this review on page WB 233, "The
12 overall conclusions are based on an unspecified, or
13 possibly a single measurement made in drinking water
14 wells in 1965"?

15 A I see that.

16 Q That would not be a positive comment from a
17 reviewer, would it?

18 A Well, it's ridiculous. That tells me, you
19 know -- you know, I think my overall impression of both
20 these reviews was that they were shallow and not
21 scientifically rigorous. I mean Table 1 shows that
22 hundreds of well water samples were included in the
23 study and included in the analysis of the dose-response
24 relationship.

25 So this statement is just -- I kind of threw my

1 hands up, it was like what kind of crap comes out of
2 Environmental Health -- Archives of Environmental Health
3 if they've got reviewers who come up with comments that
4 miss the entire data set that the study is about. And
5 frankly, when I saw this, I didn't care to resubmit the
6 paper. I said, you know, we discussed it, Bill Butler
7 and I, and I said, you know, these comments just
8 indicate to me that, you know, the peer review in this
9 journal is shoddy.

10 So it supported -- I mean it made my decision
11 easy, that the Journal of Occupational Environmental
12 Medicine was a more appropriate venue and journal for
13 this.

14 Q The draft of the Zhang article was submitted to
15 Archives of Environmental Health on December 5, 1995,
16 correct?

17 A I don't remember the date, but I knew it was in
18 early December.

19 Q And apparently these review comments didn't
20 come back until May of '96, right?

21 A Yeah, it took a long time.

22 Q And was somebody at ChemRisk calling Archives
23 of Environmental Health to find out what was going on
24 with acceptance of the Zhang '97 article for
25 publication?

1 A Not somebody at ChemRisk, but Tony Ye was.

2 Q And that's because he had moved on to
3 Environmental Risk Analysis by 1996?

4 A That's correct.

5 And by the time we received these comments,
6 actually, the arbitration was over and the settlement
7 had already taken place; so any decisions from this
8 point on were pretty much not funded by PG&E. Any work
9 or further interactions was pretty much -- I think
10 after -- pretty much after December of 1995, anything
11 further that we did to assist Dr. Zhang in getting this
12 publication through the process was on our own nickel.

13 Q So why, then, did ChemRisk go and forward a
14 copy of the accepted Zhang '97 article to all of the
15 PG&E lawyers in the Anderson arbitration?

16 A Because it was accepted in the Journal of
17 Occupational and Environmental Medicine and that was
18 a -- I think an important finding.

19 Q But my question is if the Anderson arbitration
20 was over, why was ChemRisk still sending the Zhang '97
21 article to PG&E?

22 A Well, it was as a courtesy to all the people
23 that were on the CC list of the memo that you're talking
24 about, as I recall, that anybody that we had done
25 chromium work with in the past may be interested in

1 knowing that information. And so it was a courtesy to
2 our former clients and other colleagues that would want
3 to be abreast of kind of late-breaking news or
4 information on chromium.

5 Q So you didn't intend that to be a confidential
6 transmittal to the PG&E lawyers of the Zhang '97
7 article, did you?

8 MR. McLEOD: Objection. The term "confidential" is
9 vague, ambiguous and overbroad. It's argumentative.

10 THE WITNESS: Whenever I mark things confidential, I
11 tend to error on the side of marking it rather than not
12 marking it, just based on my own practice. And so it
13 may have been marked that way.

14 BY MR. PRAGLIN:

15 Q Why did you send the '97 Zhang article to Mark
16 Harris, he's not a PG&E attorney or employee, is he?

17 MR. McLEOD: Would you like to see the memo,
18 Dr. Kerger?

19 THE WITNESS: I recall the memo.

20 Like I said, Mark Harris was a client of
21 ChemRisk that was -- we had done a lot of chromium work
22 with in the past and he was actually a former employee
23 of ChemRisk. So it was reasonable to include him on the
24 CC list for late-breaking information.

25 BY MR. PRAGLIN:

1 Q So he used to work with Dr. Paustenbach?

2 A Yes.

3 Q And what client was he with when you sent him
4 the Zhang '97 article?

5 A I don't know at that time what his affiliation
6 was.

7 Q Did it arise out of the New Jersey chromium
8 contamination?

9 A I know that that was one of the main topics.
10 He joined the company that I think was called Maxus
11 Energy at the time, the environmental -- the
12 environmental affairs group of that company when he left
13 ChemRisk; so it's a possibility that that company, which
14 is one of the clients that has chromium contamination
15 problems in New Jersey and I think elsewhere, that he
16 was working with them.

17 Q Have you stayed in touch with him over the
18 years?

19 A I've seen him a couple of times. Not really
20 friends with him.

21 Q Have you ever talked to him about the Zhang
22 article?

23 A I don't think so. Not that I recall.

24 Q Have you ever talked to him about the Blue
25 Ribbon Panel?

1 A No.

2 Q Did you know he was following the outcome of
3 the Blue Ribbon Panel in California?

4 A That would make sense to me.

5 Q Why is that?

6 A Because he's got a -- the company that he works
7 for has a lot of chromium liability from hazardous waste
8 sites, and so it would make sense for him to track any
9 kind of regulatory activity regarding chromium.

10 Q Would it then make sense to you that Latham &
11 Watkins was tracking the outcome of the Blue Ribbon
12 Panel in California?

13 MR. McLEOD: Objection. Calls for speculation and
14 it's beyond the scope of the deposition allowed for this
15 witness. He's not here to opine on what Latham &
16 Watkins may be thinking.

17 THE WITNESS: I don't know.

18 BY MR. PRAGLIN:

19 Q You know Latham & Watkins is PG&E's current
20 counsel in this lawsuit, the Aguayo lawsuit, don't you?

21 A I do know that.

22 Q You know Mr. Wilkinson seated two doors down to
23 your right, don't you?

24 A Yes.

25 Q And you've never spoken with a lawyer from

1 Latham & Watkins about the Blue Ribbon Panel?

2 A In what time frame do you mean?

3 Q Any time frame.

4 A Well, yeah. I think I spoke with them when I
5 received the subpoena.

6 Q Leaving that aside, have you spoken with
7 counsel for PG&E with regard to the Blue Ribbon Panel,
8 other than logistics about this deposition?

9 A Not that I recall.

10 Q Have you been copied or carbon-copied or blind
11 carbon-copied on any e-mails from anyone regarding the
12 Blue Ribbon Panel?

13 MR. McLEOD: Objection. Asked and answered in
14 Volume 1 of the deposition.

15 THE WITNESS: I think I produced everything that I
16 had in my files based on the subpoena originally back in
17 the fall of last year. And that reflected some e-mails
18 that -- or one e-mail, I think, that I had actually
19 still on my system, that sent the final document.

20 So those are the interactions that I had. I
21 peer-reviewed the chapters that Dennis Paustenbach had
22 written and provided him with some additional references
23 or comments on those, but I didn't retain those.

24 BY MR. PRAGLIN:

25 Q Did you charge anyone for your time in peer

1 reviewing Dr. Paustenbach's chapters of the Blue Ribbon
2 Panel report?

3 A No.

4 Q How much time did you spend in that peer
5 review?

6 A Probably a few hours.

7 Q Did it make sense to you that you should be one
8 of the peer reviewers of his draft of the chapter of the
9 Blue Ribbon Panel report?

10 A It was a common courtesy we would extend to
11 each other as needed to review work that was of a topic
12 that we had researched together in the past.

13 So, yeah, I didn't have any problem with doing
14 that for free.

15 Q And it worked both ways, that you've asked
16 Dr. Paustenbach to peer review matters on chromium for
17 you in the past?

18 A Not so much peer review, but, you know, answer
19 questions or get information that was more accessible to
20 him than to me; so, yeah, we've interacted on, like I
21 said, on manuscripts and on different specific issues in
22 the past.

23 Q You understood that this Blue Ribbon Panel was
24 a state-appointed panel and not a matter in private
25 litigation, didn't you?

1 A I'm not sure what you mean by "a matter in
2 private litigation," but I did understand that it was a
3 regulatory mandated panel.

4 Q Did it ever occur to you that you or
5 Dr. Paustenbach had a conflict of interest in working on
6 the Blue Ribbon Panel report or peer reviewing the Blue
7 Ribbon Panel report, considering all of the work that
8 you've done for industry on chromium in the past?

9 MR. McLEOD: The witness can testify as to what his
10 opinion is regarding his role. He's not going to
11 testify as to anything else.

12 BY MR. PRAGLIN:

13 Q Go ahead, Dr. Kerger.

14 MR. McLEOD: The question is do you feel you had a
15 conflict of interest of peer reviewing Paustenbach's
16 work.

17 THE WITNESS: No, I don't think I had a conflict of
18 interest.

19 BY MR. PRAGLIN:

20 Q Did the subject of conflict of interest even
21 come up between you and Dr. Paustenbach when he asked
22 you to peer review his draft chapters of the Blue Ribbon
23 Panel report?

24 A No.

25 MR. PRAGLIN: Why don't we take our lunch break.

1 THE VIDEOGRAPHER: Off the record. The time is
2 12:09 p.m.

3 (Lunch recess.)

4 THE VIDEOGRAPHER: We are back on the record. The
5 time is 1:11 p.m.

6 BY MR. PRAGLIN:

7 Q All set, Dr. Kerger?

8 A Yes, sir.

9 Q Do you have Exhibit 1 in front of you?

10 A Yes.

11 Q This morning you testified about the
12 histograms, the charts, in the '97 Zhang article, and I
13 think you said that they accurately represented the
14 water quality data of Dr. Zhang, with one exception that
15 you found since your December 2002 deposition; is that
16 accurate?

17 A That's my belief, yes.

18 Q Would you look at those histograms, please, on
19 the '97 Zhang article. CHEMRISK 193 is a fairly clear
20 copy.

21 Do you have that in front of you?

22 A Okay. 193 is the article, yes.

23 Q And at least on my copy, the axis that has the
24 range of chromium concentrations is a little bit
25 blurred. Are you able to read it or are you familiar

1 enough that you know what those ranges are?

2 A No, I can read it.

3 Q Okay. So let me make sure that I'm reading it
4 correctly. On the left, the farthest bar to the left,
5 that's wells that had a concentration of nondetect or
6 approximately .001; is that right?

7 A Correct.

8 Q And then reading to the right, it would be
9 wells that had concentrations from .001 to less than
10 .05?

11 A Yes.

12 Q And .05 would at least be the maximum
13 contaminant limit in California, right?

14 A Right.

15 Q And then the next column to the right would be
16 .051 to .1; is that right?

17 A Yes.

18 Q And then the next one to the right would be .01
19 to .5; is that right?

20 A Yes.

21 Q And then the next one would be .501 to 1?

22 A Yes.

23 Q And the next would be 1.01 to 5, correct?

24 A Yes.

25 Q And then the furthest column on the right would

1 be 5 parts per million or higher; is that correct?

2 A Yes.

3 Q And at least on the histograms that were
4 published with the '97 Zhang article, there are no wells
5 listed for 5 parts per million or higher, correct?

6 A Again, it doesn't appear to be any significant
7 number, but I'm not sure whether or not the data for
8 YangXing, which is repeated for Nuer River village here
9 in the second and third panels on page 195, I'm not sure
10 that that reflects zero wells at 5 or greater or only a
11 few.

12 Q All right. And then the axis on the left has
13 the number of wells with various levels of
14 contamination, correct?

15 A Yes.

16 Q And for the Nuer River village for wells 5
17 parts per million or higher, how many wells do you show
18 in that '97 Zhang article?

19 A Again, I can't see that it reads anything. It
20 looks exactly the same profile as the YangXing panel
21 below; so that's where I detected that was a likely
22 error.

23 Q There were wells that Dr. Zhang tested for the
24 Nuer River village that had more than 5 parts per
25 million chromium, weren't there?

1 A Yeah. As shown in the table, Table 1, it shows
2 that the frequency of detection over the European limit
3 of 50 parts per billion at that time was -- so in Table
4 1, if we're looking at page 190 which has Table 1 on it,
5 it lists -- for Nuer River it lists an average
6 concentration of 2.6 parts per million over 170 wells
7 and 95 percent frequency of exceedance of the 50 part
8 per billion level. So that's pretty high frequency.

9 Q And that's an average, it's not the actual
10 values, correct?

11 A The frequency is not an average, no.

12 Q Well, the 2.6 is an average, isn't it?

13 A Yes, this 2.6 is an average, average
14 concentration.

15 Q That means that some of the wells were
16 considerably higher than 2.6, doesn't it?

17 A Some were higher, some were lower.

18 Q So by showing the average, don't you
19 underrepresent the data in Table 1?

20 MR. WILKINSON: Objection. Vague, compound.

21 THE WITNESS: I think the average is the average,
22 it's a central tendency of the data. And given that
23 95 -- given that we're also showing that 95 percent of
24 the values were over the .05 level, I think that's a
25 reasonable way to represent the data and it's not skewed

1 in any way.

2 BY MR. PRAGLIN:

3 Q But didn't Dr. Zhang actually represent the
4 data in a different table where he didn't average it and
5 you chose not to use that table?

6 A I'm not sure what you mean, but there are many
7 ways in which Dr. Zhang had summarized or expressed the
8 data. And in our collaboration with him, we decided
9 that this was the most appropriate data set to present,
10 the most complete data set and the most relevant to the
11 dose-response analysis that we were trying to show our
12 clarification on.

13 Q Why don't you look at Dr. Zhang's Table 1 on
14 Exhibit 1, CHEMRISK 53 and 54.

15 A Okay.

16 Q Dr. Zhang's Table 1 says, "Report on the
17 Concentration of Cr+6 in 473 water wells" as of
18 "(1965)," correct?

19 A Yes.

20 Q And he has the table and it's split on two
21 pages on CHEMRISK 53 and 56, correct?

22 A Yes.

23 Q And he has the same ranges of concentration of
24 chromium that you ended up including in the '97 Zhang
25 article, doesn't he?

1 A I'm sorry, the range of what? He gives a
2 frequency of wells at certain concentrations.

3 Q Right. So look at what Dr. Zhang said in his
4 earlier work for Table 1 on CHEMRISK 54 of Exhibit 1 for
5 the Nuer River village for 5 parts per million chrome
6 (VI) and above, how many wells does Dr. Zhang say there
7 were?

8 A On page 54 you're talking about?

9 Q Yes.

10 A Well, the text says, "The total contaminated
11 area of 20 Li, covering five villages. 515 water wells
12 were contaminated."

13 Q Maybe you didn't understand my question, so
14 I'll try it again.

15 On Exhibit 1, page CHEMRISK 54, Dr. Zhang's
16 Table 1, the continuation has an entry for Nuer River
17 village, it's the second entry from the top, correct?

18 A I see that.

19 Q And as you read across the line for Nuer River
20 village, he lists the number of wells at different
21 concentrations of chromium (VI), doesn't he?

22 A He does.

23 Q And the extreme right column is for a
24 concentration of chromium (VI) of 5.0 parts per million
25 or higher, correct?

1 A Yes.

2 Q And how many wells does Dr. Zhang list at 5
3 parts per million or higher for the Nuer River village?

4 A 37.

5 Q You don't include those 37 in your Table 1 of
6 the '97 Zhang article, do you?

7 A It's included in the average, but you're right,
8 the frequency -- we had intended to present this data
9 correctly, and I think it would have made a much more
10 dramatic case for our conclusions if we had not made
11 that mistake, that basically the Nuer River village data
12 showing 100 wells that were over 1 part per million --
13 113 wells, actually, out of the 170 total, were over 1
14 part per million, and that that area corresponded to the
15 lowest cancer rate, I mean that's unbelievable.

16 The exposure is extremely high, and, you know,
17 relative to the other villages, there was a transition
18 from that village to YangXing that actually would have
19 been a huge step down in both frequency and in
20 concentration, and then a complete dropoff to zero wells
21 over the 50 part per billion limit in the other two
22 villages.

23 Now, that conclusion, the transition from high
24 to low didn't change and the data, as far as
25 concentration, while it would have been a better

1 illustration to include the correct data, it still
2 supports the conclusions even with that error in it.

3 Q Well, you had errors in the histograms on the
4 '97 Zhang article for numerous entries for the Nuer
5 River village graph, didn't you?

6 MR. WILKINSON: Objection. Asked and answered,
7 covered this morning.

8 THE WITNESS: I'm not sure what you mean.

9 BY MR. PRAGLIN:

10 Q You talked about the mistake on the 5.0 parts
11 per million and higher entry for Nuer River village.
12 There were actually 37 wells that were at that
13 concentration and that wasn't reported in the '97
14 article, correct?

15 A I think I explained --

16 MR. WILKINSON: Objection. Misstates the documents
17 and the testimony.

18 You can answer it again.

19 THE WITNESS: I think I explained to you that
20 inadvertently the error was that the YangXing frequency
21 range had been inadvertently repeated for the Nuer River
22 village. So while the well count and the average and
23 the frequency are correct in the table, Table 1, in
24 Figure 2 that entire panel of data is incorrect.
25 It's -- inadvertently it was the YangXing data repeated

1 for Nuer River village.

2 BY MR. PRAGLIN:

3 Q I understand that mistake. I'm talking about a
4 different one now.

5 Let's focus on Dr. Zhang's Table 1 on CHEMRISK
6 54 for the Nuer River village where he shows 37 wells
7 that were 5 parts per million chrome (VI) and higher;
8 your '97 article doesn't represent that, does it?

9 MR. WILKINSON: Objection. Asked and answered,
10 argumentative, misstates the testimony and the document.

11 MR. McLEOD: I'll join in that objection.

12 You don't have to answer that, you already
13 have.

14 BY MR. PRAGLIN:

15 Q Go ahead, Dr. Kerger.

16 MR. McLEOD: No, he already has.

17 MR. PRAGLIN: He hasn't answered it.

18 MR. McLEOD: Sure he has.

19 THE WITNESS: I think it does, it does represent
20 that it's us -- it's us stating that 95 percent
21 frequency of greater than the 50 part per billion level.

22 So there's three or four actually different
23 measures that we're using to be able to make our point;
24 one is the distribution of concentrations, in other
25 words, how many are higher versus lower concentrations.

1 The second is the frequency of detection over
2 the 50 part per billion limit.

3 The third is the strength of the data in terms
4 of the number of wells that were sampled.

5 And the fourth is the actual average
6 concentration.

7 All of those -- all of those independent
8 markers are indicators of relative exposure lined up
9 exactly the way they are in the table and were
10 consistent with what the trends were in the -- you know,
11 four of the five panels. And so the bottom line is the
12 data is only incorrectly reflected in one figure that,
13 again, understates what the significance -- or
14 underillustrates what the significance or the gap in
15 exposure versus cancer response is, which is the subject
16 of the paper. So it wasn't our intention to
17 misrepresent anything. But I think the data speaks for
18 itself, whether you're looking at Table 1 or the
19 figures.

20 BY MR. PRAGLIN:

21 Q Let's look at Dr. Zhang's Table 1 on CHEMRISK
22 54. On the extreme right column for 5 parts per million
23 and higher, chromium (VI), wouldn't you agree that the
24 '97 Zhang article doesn't reference 37 wells at 5 parts
25 per million or higher?

1 MR. WILKINSON: Objection. Asked and answered,
2 misstates the testimony, argumentative at this point.

3 MR. McLEOD: I'll join in that objection.

4 The witness has testified at length regarding
5 the data being incorporated in Table 1. It just -- this
6 is repetitive.

7 BY MR. PRAGLIN:

8 Q Go ahead, Dr. Kerger.

9 A That data is not reflected in the paper by
10 mistake.

11 Q And then as you move to the left, the next
12 column on CHEMRISK 54 for 1.01 to 5 parts per million,
13 Dr. Zhang, in his table, lists 76 wells in that range
14 for the Nuer River village, correct?

15 A All of those numbers in that line are not
16 represented in the paper, just to short-cut your process
17 here. We made a mistake and repeated the YangXing data;
18 so you can feel safe in that my answer is going to be
19 the same for all of these in the same row.

20 Q So you made a mistake for the 1.01 to 5 parts
21 per million range?

22 A No. This YangXing data was repeated by --
23 inadvertently for the Nuer River village data, and so
24 none of the actual Nuer River village data are reflected
25 in panel B of Figure 2 in the paper. All the other data

1 are correctly stated and represented in Figure 2 and all
2 of the data based on interactions with Dr. Zhang, all of
3 the data in Table 1 are accurate and correct to the best
4 of my knowledge.

5 Q On Dr. Zhang's Table 1 on CHEMRISK 54 for the
6 entries for Nuer River village for those 170 wells, is
7 all of that data absent from the text of the '97 Zhang
8 article, separate and apart from Table 1?

9 MR. WILKINSON: Objection. Document speaks for
10 itself.

11 MR. McLEOD: Absolutely. I'll join in that
12 objection.

13 THE WITNESS: I don't know, I'd have to look back.

14 BY MR. PRAGLIN:

15 Q You can't site me to a place in the '97 Zhang
16 article where you list Dr. Zhang's water quality data
17 for the Nuer River village for those 170 wells, can you?

18 MR. WILKINSON: Objection. Misstates the testimony.
19 It's in the document, Table 1, as he's testified a dozen
20 times now.

21 MR. PRAGLIN: Mr. Wilkinson, don't coach the
22 witness. He's not even your witness here today. He was
23 before, but he's not now. You can't coach him.

24 MR. McLEOD: He's not being coached.

25 MR. WILKINSON: Objection. Asked and answered,

1 argumentative, misstates the testimony.

2 MR. PRAGLIN: When the objection --

3 MR. McLEOD: I'll join.

4 MR. PRAGLIN: -- suggests the answer that PG&E's
5 lawyer wants, it's coaching.

6 Q Let's start over, Dr. Kerger.

7 MR. McLEOD: Let's not.

8 BY MR. PRAGLIN:

9 Q Isn't it true --

10 MR. McLEOD: Hold on, let me finish.

11 The questioning is repetitive, it's
12 argumentative, it misstates his testimony, it misstates
13 the document.

14 Just move on.

15 BY MR. PRAGLIN:

16 Q Isn't it true --

17 MR. McLEOD: This is nonsense.

18 BY MR. PRAGLIN:

19 Q I'll start over.

20 Isn't it true that in the '97 Zhang article
21 text, separate from Table 1, that Dr. Zhang's data that
22 he has on his Table 1 from CHEMRISK 54 for the Nuer
23 River village chromium (VI) concentrations for those 170
24 wells is not mentioned?

25 MR. McLEOD: Same objection.

1 MR. WILKINSON: Same objection. Asked and answered,
2 misstates the document, the document speaks for itself,
3 argumentative, misstates the testimony.

4 THE WITNESS: I don't know just from memory what we
5 did or did not include in the text, but I think my
6 previous answer as to our attempts to as accurately as
7 possible reflect it in the table and in the figure, that
8 was our intent and it was an oversight that this data
9 didn't get reflected properly in the second figure,
10 so -- but, again, I don't think that it was a
11 significant error and it didn't change any of the
12 outcome or conclusions because the data was simply one
13 of four different indexes that we were using to prove
14 that there was a gradient of exposure to chromium that
15 went countercurrent with what the cancer risks were.

16 And we actually didn't even use the
17 concentration in our statistical analysis, we used a
18 surrogate, which was the distance from the facility of
19 the center of town for each of these measures.

20 And so it's kind of a -- it's a tangential
21 issue whether or not we reflected it perfectly, and I
22 think we reflected it fairly and reasonably.

23 BY MR. PRAGLIN:

24 Q Would you turn to page CHEMRISK 193 of Exhibit
25 1, please.

1 A Number again.

2 Q 193. It's the Zhang '97 article.

3 On the first page of that article, on the right
4 column, four lines from the bottom, it says, "Residents
5 living in the villages located along the Old Nuer River
6 were exposed to Cr+6 by drinking well water. The
7 distribution of Cr+6 in the groundwater plume studied in
8 1965 is shown for each of the five villages in Fig. 2."

9 Have I read that correctly?

10 A I think so.

11 Q Isn't it true that that's the only discussion
12 in the '97 Zhang article about what the actual chromium
13 concentrations in the wells of the Nuer River village
14 were in the text of the Zhang article as opposed to
15 Table 1?

16 MR. WILKINSON: Objection. Misstates the document,
17 argumentative, asked and answered.

18 MR. McLEOD: Join in that.

19 THE WITNESS: I haven't analyzed it to be able to
20 verify whether or not that's true, so I don't know.

21 BY MR. PRAGLIN:

22 Q Well, it's a four-page article. Could you take
23 a moment and look and see if it appears somewhere else
24 in the text as opposed to Table 1?

25 A Well, I mean having something in the text --

1 starting at ShiLiTai, basically we've got no detects
2 that are above the 50 part per billion level; so it
3 reflects the data for what it is, and that's all I can
4 say.

5 Q For ShiLiTai, isn't it true that there's
6 actually 19 wells that were .51 to .1 parts per million
7 chromium (VI)?

8 A No. The ShiLiTai measurement, the third column
9 over is 0 to 0.05, and 19 wells were in the 0 to 0.05.

10 Q If you turn the page to CHEMRISK 55 in
11 Dr. Zhang's Table 2 he has chrome (VI) concentration in
12 the monitoring wells of the different villages, correct?

13 A Yes, there's a table that describes data.

14 Q Now, that data was completely omitted from the
15 '97 Zhang article, wasn't it?

16 MR. WILKINSON: Objection. Argumentative, misstates
17 the documents and the testimony.

18 THE WITNESS: Omission would -- would assume that it
19 was relevant and needed to be included. We did not
20 include it because it was not relevant.

21 The monitoring wells are not wells that would
22 be providing measures of actual exposures to people, and
23 so it certainly would not be data that we would rely on
24 to show -- or to evaluate the dose-response
25 relationships.

1 So while there was additional data, just like
2 in the previous table we've just discussed, there was
3 control group and Nanshan and some certain other data
4 points that he went and sampled around the periphery and
5 found no contamination, yes, that data is included in
6 the wells that he sampled. Was it relevant or important
7 to what the focus of our analysis or discussion was, the
8 answer is no. And, you know, would it be important or
9 scientifically relevant to include those additional
10 wells or that data, the decision among the scientists
11 that looked at this was that it wasn't, and so we
12 didn't. We didn't include data that wasn't particularly
13 relevant or on point to what the data told us.

14 BY MR. PRAGLIN:

15 Q The monitoring wells are an indication of the
16 levels of chromium in the groundwater, aren't they?

17 A They are a measurement of well -- of water
18 concentrations of chromium, but they are in areas that
19 would not -- a monitoring well implies, in general, that
20 you know where the contamination is emanating from and
21 you are digging wells or sampling the water in areas
22 where people would not be drawing from that well for
23 drinking water purposes. It's explicitly for the
24 purpose of monitoring.

25 So that was our understanding of this data. We

1 confirmed that with Dr. Zhang, and I -- I mean we had
2 several discussions on what was the most appropriate
3 data summary and data to include in the analysis.

4 And Dr. Zhang agreed that basically that data,
5 the 1965 actual well water data from residential wells,
6 residential use wells, was the appropriate data set to
7 present.

8 Q Can you show me a document where Dr. Zhang says
9 that the data from the 1965 actual well water data from
10 residential wells was the appropriate data to present?

11 A Well, I think it illustrates it in his
12 manuscripts since he included in Table 1 that we just
13 discussed that data set -- largely that data set in this
14 table we just discussed, and then separated out the
15 monitoring well data and, you know -- I mean as a
16 scientist, he found it appropriate to separate out
17 monitoring wells from the residential wells and that
18 makes perfect sense to me.

19 So if we're talking about the scope of this
20 paper, which, again, was Dr. Zhang's analysis of kind of
21 the contamination pathway and overall events leading to
22 contamination and something that was more in the arena
23 of geology and hydrogeology of the contamination
24 incident, you would include this data and it would be
25 appropriate. But if you're looking at analyzing cancer

1 rates in the plume path, which is the focus analysis
2 that we included in the '97 paper, you certainly
3 wouldn't include all that data.

4 Q But Dr. Zhang discussed the hydrogeology and
5 the number of wells that were contaminated in his '87
6 paper that was translated by ATSDR, didn't he?

7 A I don't recall, but that sounds reasonable.

8 Q And that was the article that you were trying
9 to clarify, isn't it?

10 A That was the one that was butchered up by the
11 Chinese Preventative Medicine Journal in Dr. Zhang's
12 view. And so, yeah, we were trying to clarify that.

13 Q When you were first hired by PG&E to work on
14 the Anderson case, was ChemRisk required to sign a
15 contract?

16 A Probably. I mean when you say "ChemRisk," I
17 pause because it's really the contracts people at
18 McLaren/Hart that would be responsible for signing off
19 on anything that was official like that. So they're
20 likely -- I mean in many cases we get specific contracts
21 about confidentiality and work product privileges, and
22 so forth, that are laid out by the client or by the
23 attorneys. And I don't really recall what those were.
24 I don't have any copies of that information in my file,
25 so I just don't recall what it was, if there was any.

1 MR. PRAGLIN: Let's mark as Exhibit 17 the contract.

2 (Plaintiffs' Exhibit 17 was marked
3 for identification, a copy of which is
4 attached hereto.)

5 BY MR. PRAGLIN:

6 Q Do you recognize Exhibit 17?

7 A Yes, I do.

8 Q What is it?

9 A It looks like the contract that was on file
10 with McLaren/Hart, one of the initial contract terms and
11 conditions statements that Rich Caton, our contracts
12 manager, would have reviewed and signed off on as the
13 contracts administrator.

14 Q The contract was originally drafted for your
15 signature, wasn't it, page 10?

16 MR. McLEOD: What is this relevance to the scope of
17 this deposition, the Blue Ribbon Panel and third-party
18 authors?

19 BY MR. PRAGLIN:

20 Q Go ahead, Dr. Kerger.

21 MR. McLEOD: No. What's the relevance?

22 MR. PRAGLIN: You know I gave you my offer of proof
23 last time, this is so relevant to the Zhang article.

24 MR. McLEOD: How?

25 MR. PRAGLIN: These people were contracted to

1 ghostwrite the Zhang article. This is a total cover-up.
2 It's related to the Blue Ribbon Panel. The whole thing
3 is offensive, and you keep asking the question playing
4 dumb like you don't get it. I can't believe you don't
5 get it. It's completely relevant. That's the last time
6 I'm going to give you my offer of proof.

7 Q The question, Dr. Kerger, is on page 10, wasn't
8 this contract originally drafted for your signature?

9 A Yes.

10 MR. McLEOD: For the record --

11 THE WITNESS: It looks like my name is on page 10
12 originally as the expected signator.

13 BY MR. PRAGLIN:

14 Q And then it was crossed out and Mr. Caton's
15 name was put in; is that right?

16 MR. McLEOD: For the record, we're going to stick to
17 the scope of this deposition as was allowed by Judge
18 Kuhl.

19 BY MR. PRAGLIN:

20 Q Go ahead, Dr. Kerger.

21 A I lost your question, I'm sorry.

22 Q The question was, isn't it true that it was
23 eventually signed by Mr. Caton and not by you?

24 A That appears to be correct.

25 Q And Exhibit 16 was from your files because it

1 has the ChemRisk star in the upper right, correct?

2 A You mean Exhibit 17?

3 Q Oh, sorry. 17, yes.

4 A We had a copy of it in our file.

5 Q If you'd go to page 2, please, there are a
6 number of different tasks that are listed here, correct?

7 A Yes.

8 Q Were these the tasks that ChemRisk was charged
9 with by PG&E in connection with the Anderson litigation?

10 A These were some of them.

11 Q If you look at Task 103, it says, "Detailed
12 analysis of validity and findings of Mexican chromium
13 epidemiology study," and it lists two purposes, correct?

14 A Uh-huh. Yes.

15 Q And it says, for No. 2, "Depending on findings,
16 possible use as basis of comparison to plaintiffs'
17 claims in Hinkley," correct?

18 A That's what it says.

19 Q So was that one of the reasons why you were
20 contacting the Mexican chromium study authors?

21 A What?

22 Q To assist PG&E as a possible basis of
23 comparison to the plaintiffs' claims at Hinkley.

24 A We were looking for any possible scientific
25 basis for comparing what we knew about the plaintiff

1 population or the health effects in Hinkley to other
2 populations. And this Mexican -- the Mexican studies,
3 as we called them, seemed to be a source of information
4 that might provide that information.

5 So as scientific advisors to PG&E, we advised
6 them that that was something that might be of scientific
7 value and we attempted to do that.

8 Q And would the same be true for the Zhang study?

9 MR. WILKINSON: Objection. Vague.

10 MR. MCLEOD: Also, asked and answered.

11 THE WITNESS: Yeah, we did the Zhang work at a later
12 point in time, so I don't think that's in the scope of
13 this document. This document is really not relevant to
14 us contacting any of the Mexican or Chinese authors.
15 This was our -- as I recall, this is our initial
16 contract in assisting PG&E and their attorneys and
17 pulling together relevant information and starting to do
18 certain studies that would fill in data gaps that we
19 advised them were present, or that would be advisable to
20 fill to have a -- the strongest scientific integrity to
21 any defense that they might attempt to put on.

22 And so as scientific advisors, again, it's our
23 role to show them or tell them where the weaknesses are,
24 come up with tasks that will help to avert problems or
25 weaknesses in the data and/or fill in data gaps that

1 give it scientific strength and integrity that any
2 expert would want to rely on to go into a litigation
3 matter.

4 BY MR. PRAGLIN:

5 Q So if Exhibit 17 is the initial contract with
6 PG&E, then this would be the scope of work that
7 Dr. Paustenbach was involved in as well; is that right?

8 MR. McLEOD: Objection. Vague and ambiguous, calls
9 for speculation.

10 THE WITNESS: I think Dr. Paustenbach was involved
11 in several of these tasks, both in terms of thinking of
12 the scope of work and generating ideas on how to get the
13 work done, how to most effectively find the information
14 or get the information collected, and then in peer
15 reviewing some of the products.

16 So it doesn't specify a role in this contract
17 for Dr. Paustenbach, but he was an integral part of much
18 of this work.

19 BY MR. PRAGLIN:

20 Q And as the so-called top dog at ChemRisk, he
21 was kept informed of what you were doing for PG&E,
22 wasn't he?

23 A I would say that on many of the tasks that were
24 relevant to anything we needed advice from him on, he
25 would be kept in the loop regularly.

1 Q Before the break we talked about this
2 transmittal memo that was sent to all the PG&E lawyers
3 with the Zhang '97 article.

4 I want to attach that memo as Exhibit 18. It's
5 Bates stamped BRP 329. It was produced by PG&E in this
6 case.

7 (Plaintiffs' Exhibit 18 was,
8 marked for identification, a copy of
9 which is attached hereto.)

10 BY MR. PRAGLIN:

11 Q What is Exhibit 18?

12 A This is a memo from ChemRisk that was generated
13 by Gwen Corbett, dated June 5, 1996.

14 Q Did you receive a CC of it?

15 A I'm not on the CC list, I don't think, but I
16 certainly -- okay.

17 Q You have Mr. McLeod pointing it out for you.

18 A Okay, okay, I was looking at the top list.

19 Yes, I would have read and approved this memo.

20 Q And it's on ChemRisk letterhead, right?

21 A It is.

22 Q And it was received by PG&E's lawyers Haight,
23 Brown & Bonesteel on June 6, 1996, right?

24 A I'm not sure when -- that's what the received
25 stamp is, so that seems reasonable.

1 Q And the subject is "Acceptance of China Paper,"
2 right?

3 A That's what it says.

4 Q "China paper" would be the Zhang '97 article,
5 right?

6 A That's correct.

7 Q And this memo is dated June 5, 1996, right?

8 A That's correct.

9 Q How is it that your office was able to announce
10 acceptance of the Zhang '97 article on June 5, 1996?

11 A Because we heard from the editors that it was
12 accepted.

13 Q How did you hear that?

14 A Tony Ye was in regular contact with Dr. Popper,
15 I think was her name. And there should have been --
16 there probably was a letter of initial acceptance that
17 came from the journal. And there's always a lag time,
18 that we call the in-press time, between when an article
19 is initially accepted by the journal and when it
20 actually gets generated into a galley proof and gets
21 integrated into the actual printed journal. And in this
22 case it took from June, when it was formally accepted by
23 the journal, until more than six months later for them
24 to fit that short communication into their -- what they
25 had planned for the journal as far as publications going

1 forward. And that's kind of a long time, but it's not
2 unusual to me.

3 Q And Tony Ye told you all this?

4 A Well, again, I mean I knew of the process that
5 he was going through and I read some documents that
6 refreshed my recollection, but it's obvious that if we
7 were putting on a statement that it was accepted, that
8 we had gotten that news. And the article has a date of
9 publication on it and that -- that obviously puts
10 forward what the publication date was; so that's --
11 that's what I reasonably surmised from that information.

12 Q This memo, Exhibit 18, is sent to five PG&E
13 lawyers, including PG&E's head lawyer, Bob Borden,
14 right?

15 A Yeah, I guess you could call it that.

16 Q So you would think that before your office sent
17 a memo to five PG&E lawyers, that you'd have reliable
18 information that the Zhang article was in fact accepted,
19 wouldn't you?

20 A Of course.

21 Q You wouldn't jump the gun and let them know it
22 was accepted for publication before you heard that it
23 was, would you?

24 A That would be kind of silly.

25 Q It would be embarrassing, wouldn't it?

1 A I would suppose. But that wouldn't have
2 happened.

3 Q So this was a fairly important memo, was it
4 not?

5 A I think we were pleased that the Journal of
6 Occupational and Environmental Medicine accepted it
7 without any revisions. That tells us that the peer
8 reviewers thought that the study, as written, made good
9 sense, didn't have any significant problems, and had the
10 kind of scientific integrity that you hope people think
11 your work represents.

12 Q How do you know that the Zhang article, the '97
13 Zhang article, was peer reviewed at all by JOEM?

14 A Because Tony was in contact with them. We
15 submitted it -- I mean Tony submitted it on behalf of
16 Dr. Zhang to the journal and there were correspondence
17 back and forth.

18 Q Did you see that correspondence?

19 A All I have is what you have. I reviewed the
20 file that Tony and Bill Butler submitted, and I've given
21 you all the documents that I have; so that's my
22 impression.

23 Q So you don't know any more than what's in Tony
24 Ye and Bill Butler's documents that they produced; is
25 that right?

1 A It's kind of a ridiculous question if something
2 is in print already in a journal whether or not it was
3 submitted, okay? So the bottom line is that's what I
4 got -- what I told you is what I got from my review of
5 the documents and my recall of my involvement in the
6 process.

7 Q Well, did you ever hear that there was a
8 problem in getting the Zhang '97 article published?

9 MR. McLEOD: In what journal? Any journal?

10 MR. PRAGLIN: Any journal.

11 THE WITNESS: "A problem" meaning what?

12 BY MR. PRAGLIN:

13 Q Meaning it got successively rejected by
14 journals.

15 A No.

16 Q Is there a reason why there are five different
17 journals' names on the drafts as the Zhang article being
18 submitted to them?

19 A I think we already went over this, that the
20 draft versions -- we went through several different
21 draft versions where we were thinking about which
22 journal to submit it to. There's no law that says you
23 can't consider five or 50 or 100 different journals and
24 put them on a draft manuscript and then decide before
25 you submit them, submit it, which one you're going to

1 submit it to, or which ones. And that's exactly what we
2 did. We didn't submit them anywhere else and they
3 didn't get rejected by any journals, to my knowledge.

4 Can we take a short break? I need to call
5 home. Just like ten minutes?

6 MR. PRAGLIN: Sure.

7 THE VIDEOGRAPHER: Off the record. The time is
8 1:56 p.m.

9 (Recess.)

10 THE VIDEOGRAPHER: We are back on the record. The
11 time is 2:13 p.m.

12 BY MR. PRAGLIN:

13 Q I want to make sure I understand your
14 testimony, Dr. Kerger, about the information that you
15 had about the publication of the '97 Zhang article in
16 JOEM. Did you personally have any contact with JOEM
17 about getting the Zhang '97 article published?

18 A Not that I recall.

19 Q Did anyone besides Tony Ye, on behalf of
20 ChemRisk or Environmental Risk Analysis, the company
21 that he had gone to, have any contact with JOEM about
22 getting the '97 Zhang article published?

23 A Well, the only thing that I can recall is
24 perhaps at the final galley proof stage, myself or
25 people from graphics might have made certain changes

1 that we generated electronically or forwarded
2 electronically back to them, but I don't recall there
3 being much, if any.

4 Q So were there e-mail transmissions between
5 McLaren/Hart-ChemRisk and JOEM in preparation for
6 getting the Zhang '97 article published?

7 A There are some documents that I saw in Tony's
8 file that made me think that that might be the case, but
9 I'm not sure.

10 Q Let me see if these are the galley proofs that
11 you're talking about.

12 Let's attach these as Exhibit 19.

13 (Plaintiffs' Exhibit 19 was
14 marked for identification, a copy of
15 which is attached hereto.)

16 BY MR. PRAGLIN:

17 Q What is Exhibit 19?

18 A This is a galley proof of the 1997 Zhang and Li
19 article.

20 Q Are these the only galley proofs that there
21 were?

22 A Yes, as far as I know.

23 Q Is your writing anywhere on Exhibit 19?

24 A No, I don't think there's any of my writing on
25 here.

1 Q So as far as you know, were these galley proofs
2 ever translated into Chinese for Dr. Zhang?

3 A I don't think that would be necessary since it
4 was accepted without revisions from the original one
5 that we submitted; so probably not.

6 Q Do you know who the peer reviewers of the Zhang
7 '97 article were at JOEM?

8 A No, I do not.

9 Q Do you know if Dr. Paustenbach had friends as
10 editors of that journal?

11 A I'm not aware of anything like that.

12 Q You know Pat Buffler, don't you?

13 A I know who she is.

14 Q She's a friend of Dr. Paustenbach's, isn't she?

15 A I don't know.

16 Q Did you know she was an associate editor of
17 JOEM at the time that the Zhang '97 article got
18 published?

19 A No, I didn't.

20 Q Was she involved in approving publication of
21 the Zhang '97 article?

22 A I have no idea.

23 Q And you don't know who approved publication of
24 the Zhang '97 article at JOEM; is that your testimony?

25 A Well, I don't recall anything specific other

1 than what was reflected -- I mean when I reviewed the
2 memos that Tony Ye generated and the other
3 correspondence that was in her file -- what was in his
4 file regarding the interaction with JOEM, all that
5 seemed to make sense to me and seemed consistent with my
6 recall, you know, but that's pretty much all I remember.
7 I don't remember any further interaction than what was
8 already out -- laid out by Tony.

9 Q And the galley proofs were transmitted between
10 your office and JOEM on February 11th and February 13th
11 of 1997; isn't that true?

12 A That's what it seems to reflect, based on the
13 notes at the top of 573 and 574 on Exhibit 19.

14 Q Now, on Exhibit 18, which is the memo that
15 Dr. Corbett sent regarding the acceptance of the Zhang
16 '97 article, there are a number of different
17 McLaren/Hart-ChemRisk employees on the recipient list as
18 well, aren't there?

19 A Four, to be exact, yes.

20 Q Dennis Paustenbach, Brent Finley, Deb Proctor
21 and Mike Gargas; is that right?

22 A Yes.

23 Q Did all of those people have some involvement
24 in the Zhang '97 article?

25 A No.

1 Q Why would they be recipients on this memo?

2 A Because they were chromium experts within our
3 company and we wanted them to have that information for
4 their files.

5 Q Because you intended to rely upon it in the
6 future?

7 A We always intend to rely on good science and
8 that's what this was, so we forwarded it to everybody
9 who we thought it would be useful to in their further --
10 either analytical purposes or if they wanted to be able
11 to cite it for legal reasons; science is what the
12 science is.

13 Q So you sent it to those four
14 McLaren/Hart-ChemRisk employees in case they wanted to
15 rely upon the Zhang '97 article in the future?

16 A Correct.

17 Q Have you ever cited to that recall in a
18 publication of yours?

19 A Yeah, probably.

20 Q And are you aware that the Blue Ribbon Panel
21 relied upon the '97 Zhang article?

22 A That would make sense to me.

23 Q And Dr. Paustenbach knew about the Zhang '97
24 article project, didn't he?

25 MR. McLEOD: Objection as to time.

1 When are you talking?

2 MR. WILKINSON: Asked and answered in the prior
3 deposition as well.

4 MR. PRAGLIN: Let me clarify my question.

5 Q This memo, Exhibit 18, was sent on June 5,
6 1996. Did you ever discuss anything about the Zhang
7 project with Dr. Paustenbach before this memo was sent
8 to him on this date?

9 MR. WILKINSON: Objection. Asked and answered at
10 the prior deposition.

11 MR. McLEOD: Join in that objection.

12 THE WITNESS: Yes, probably.

13 BY MR. PRAGLIN:

14 Q When this memo was sent out, was there any
15 response from any of the recipients?

16 A I don't recall.

17 Q You approved the memo before it went out,
18 didn't you?

19 MR. McLEOD: Objection. Asked and answered.

20 THE WITNESS: Yes, I looked at it.

21 BY MR. PRAGLIN:

22 Q There's a quote that Dr. Corbett has here in
23 the first paragraph that says, "neither stomach nor lung
24 cancer indicated a positive association with Cr+6
25 concentration in well water."

1 Do you see that?

2 A Uh-huh.

3 Q Yes?

4 A I see that, yes.

5 Q Is it your understanding that that's a quote
6 from the '97 Zhang article, as published?

7 A I don't know. I'd have to compare it. I
8 haven't actually compared this to the article, but that
9 was -- based on what this memo says, that was our
10 intent.

11 Q Did it ever come to your attention that
12 Dr. Zhang objected to that sentence and asked that it be
13 taken out?

14 MR. WILKINSON: Objection. Assumes facts not in
15 evidence.

16 THE WITNESS: I don't know about that specific
17 sentence, but we worked out -- worked through many
18 different wording choices with Dr. Zhang through
19 conversations with him; and so it wouldn't surprise me
20 if something similar to that might have been modified or
21 worded differently in a previous draft.

22 BY MR. PRAGLIN:

23 Q Would you agree that if Dr. Zhang objected to
24 something in the article that you were having published
25 in his name and ChemRisk didn't take it out, that that

1 would be wrong?

2 MR. McLEOD: Objection. It's a hypothetical
3 question. It's an incomplete hypothetical.

4 Give him specifics.

5 MR. WILKINSON: Assumes facts not in evidence.

6 BY MR. PRAGLIN:

7 Q You understand the question, don't you,
8 Dr. Kerger?

9 MR. McLEOD: The term "wrong" is vague, ambiguous
10 and overbroad.

11 BY MR. PRAGLIN:

12 Q Wouldn't it be scientifically unethical?

13 MR. McLEOD: For what?

14 MR. PRAGLIN: I'll ask my question again.

15 Q Would you agree that if Dr. Zhang objected to
16 something in the article that you were having published
17 in his name and ChemRisk didn't take it out, that that
18 would be scientifically unethical?

19 MR. WILKINSON: Objection. Assumes facts not in
20 evidence, misstates the documents and the testimony.

21 MR. McLEOD: I'll join in that. It's also an
22 incomplete hypothetical.

23 THE WITNESS: First of all, we didn't have it
24 published, Dr. Zhang and us collaborated on the article
25 and he submitted the article through Tony Ye.

1 Second, of course if Dr. Zhang disagreed with
2 the conclusions, it would not be appropriate to publish
3 that, but the truth is that he did agree with all our
4 conclusions and we collaborated with him at every step
5 of the process, and I have no doubt in my mind that he
6 agreed with the conclusions of the paper.

7 BY MR. PRAGLIN:

8 Q But you don't have a document that he authored
9 that says that he agrees, do you?

10 MR. MCLEOD: Objection. Asked and answered.

11 THE WITNESS: You know, people with scientific
12 integrity don't need paper proof to make -- you know, to
13 make it have integrity. The data speaks to exactly what
14 these conclusions are. The data was present in his
15 reports previously, that -- 20 years before we even
16 contacted him he was doing this research and outlined
17 exactly what it is that was the basis for this
18 conclusion.

19 So you can come up with a lot of different
20 hypotheticals about what might or might not have been
21 appropriate, but what we did was completely appropriate,
22 complete- -- and he was completely on board with what
23 our conclusions were, what our analyses were. It wasn't
24 even just our conclusions and analysis, it was his
25 conclusions and analysis that we were putting out.

1 BY MR. PRAGLIN:

2 Q Do you have a document that Dr. Zhang authored
3 that says that he agreed with ChemRisk's conclusions in
4 the Zhang '97 article?

5 A The way you state it is not the way that it
6 would be put forward because they're not ChemRisk's
7 conclusions, they are his conclusions. And there was an
8 accompanying letter in Chinese with English translation
9 that Tony Ye submitted to both journals with the
10 manuscript that said I agree with everything in the
11 manuscript -- I'm paraphrasing -- and I agree to submit
12 it for publication through Tony Ye.

13 Q You're talking about a letter and not a
14 translation of the '97 Zhang article into Chinese,
15 correct?

16 A Okay.

17 Q Where have you ever seen a Chinese translation
18 of the Zhang '97 article? One doesn't exist, does it?

19 MR. McLEOD: Objection. Asked and answered.

20 MR. WILKINSON: Asked and answered, argumentative.

21 THE WITNESS: I don't know.

22 BY MR. PRAGLIN:

23 Q You've never seen one, have you?

24 A I've seen lots of translations that document
25 the path and the interaction between Dr. Zhang and us.

1 I am completely comfortable with the scientific
2 integrity of our interactions, and there's no basis that
3 I can point to or that I can recall that would cast any
4 doubt on the integrity of that paper or it's
5 conclusions.

6 Q You don't think the '97 Zhang article is
7 inconsistent with his life's work?

8 A Absolutely not. You might like to think so
9 because it goes against what you'd like to be able to
10 prove, but the bottom line is the data was present in
11 the papers he wrote from the early '80s onward as to
12 what the cancer death rates were versus what the
13 chromium concentrations were in those villages; so the
14 data speaks for itself.

15 Q But that's the data that you didn't include in
16 the '97 article, right?

17 A No, it's the data that we included in all of
18 our analyses. Whether it was an internal analysis or
19 not, we reviewed what Dr. Zhang had produced, data,
20 okay? Interpretations can be separated from data and be
21 misinterpreted based on, you know, the range of
22 information available at the time or the quality of the
23 information, or based on lack of information that might
24 be available to that particular author, as far as making
25 correct scientific conclusions.

1 We, in our collaboration, filled in some of the
2 gaps of Dr. Zhang's understanding on how this data could
3 be analyzed. He fully agreed with analyzing -- doing
4 the further analysis that we did, and I've got no
5 reservations, scientifically or ethically, in publishing
6 -- having -- helping him publish that work.

7 Q Did you ever see a document from Tony Ye where
8 he indicated that Dr. Zhang did not agree with
9 ChemRisk's conclusions in the '97 article?

10 MR. WILKINSON: Objection. Vague as to time,
11 misstates the evidence and the testimony. Assumes facts
12 not in evidence.

13 THE WITNESS: I think I saw a memo that might be
14 construed to say something like that on an earlier draft
15 version, but my recollection, and this is confirmed by
16 Tony Ye, is that we worked through any wording issues
17 that he was uncomfortable with and at the end of the
18 process, which is what counts, he was in complete
19 agreement with all the wording and all the contents
20 presented in the manuscript; so, again, I have no qualms
21 about the -- Dr. Zhang's endorsement or agreement with
22 the contents of the paper.

23 BY MR. PRAGLIN:

24 Q Is there a document that exists authored by
25 Dr. Zhang that says that he was in complete agreement

1 with all of the wording and contents in the manuscript?

2 MR. WILKINSON: Objection. Asked and answered.

3 MR. McLEOD: Repeatedly.

4 THE WITNESS: I think, you know, the closest thing,
5 that apparently is not satisfactory to you, is the
6 letter that accompanied Tony Ye's submission of the
7 article that was in Chinese and English that said that
8 he agreed with all of the contents of the paper and that
9 it was -- he agreed to let Tony submit it to the
10 journals.

11 BY MR. PRAGLIN:

12 Q But if Dr. Zhang didn't see a Chinese version
13 of the article, how could he say that he agreed with
14 everything in the article? Tell me that.

15 MR. WILKINSON: Objection. Assumes facts not in
16 evidence, misstates the documents and the testimony,
17 argumentative.

18 MR. McLEOD: Calls for speculation.

19 THE WITNESS: You know, in my interactions with
20 other scientists, I don't demand everything be put in
21 writing. If I'm working with other competent
22 individuals and we're thinking along the same track and
23 we're generating a manuscript -- there's no requirement
24 whatsoever of collaboration involving some written
25 documentation that, for your legal purposes is what

1 you'd like to see.

2 You know, the paper that was generated is the
3 paper that was generated. I can tell you that Tony was
4 in complete communication with Dr. Zhang, he's testified
5 to that. I have no reason to believe that that's not
6 true and it's my belief that that's true.

7 MR. PRAGLIN: Let's mark as Exhibit 20 a document
8 produced by PG&E, Bates stamped BRP 331 through 335.

9 (Plaintiffs' Exhibit 20 was
10 marked for identification, a copy of
11 which is attached hereto.)

12 MR. WILKINSON: You want me to clarify?

13 MR. PRAGLIN: Yeah, just a second.

14 Q Dr. Kerger, before you testify about Exhibit
15 20, I had sent a letter to your lawyer and to PG&E's
16 lawyer asking about the Post-it that's apparently been
17 whited out on page BRP 331, you can see there's a white
18 square on the face page. Do you see what I'm talking
19 about?

20 A Yes.

21 Q Okay. Mr. Wilkinson is going to clarify that
22 for us.

23 MR. WILKINSON: What happened here is this is a
24 document that was on a privilege log originally.
25 Somebody from our office inadvertently put a note, an

1 attorney note on the top of this that was not on the
2 original document as we received it; so after your writ
3 was granted and we went to produce it to you, the only
4 thing this Post-it covers up is a note that was
5 inadvertently made on this document by someone else in
6 my office. So there was no content on the square on BRP
7 331 in the document as we received it or as produced to
8 you.

9 BY MR. PRAGLIN:

10 Q Okay. On Exhibit 20, Dr. Kerger, the first
11 page is a fax cover page, correct?

12 A Yes.

13 Q And it's dated May 20, 1996 and it's addressed
14 to Mike Whelan at PG&E, right?

15 A Whelan, yes.

16 Q Who is Mike Whelan?

17 A Mike Whelan was another person in the legal
18 department, I believe he was an attorney in the legal
19 department of PG&E.

20 Q So he's another PG&E lawyer, right?

21 A He's in the legal department of PG&E, yes.

22 Q Have you met him?

23 A Yes, I've met him.

24 Q You know him to be the person who sat in at the
25 Anderson arbitration on behalf of PG&E, listening to the

1 testimony?

2 A I'm not sure about that.

3 Q You didn't meet him at the arbitration?

4 A I just don't remember.

5 Q On the page that's Bates stamped BRP 332 of
6 Exhibit 20, dated May 20, 1996, what is that document?

7 A This is a letter to Steve Hoch from me
8 communicating a reference list of papers that we had
9 published on our own as a result of the research we had
10 done on chromium.

11 Q And again, you've carbon-copied that letter to
12 five PG&E lawyers, right?

13 A Yeah, you could say that.

14 Q And is this letter enclosing a list of eight
15 peer-reviewed manuscripts that have been accepted so far
16 that ChemRisk published at the request of PG&E regarding
17 chromium?

18 A That's what the memo says on 332.

19 Q And the eight manuscripts are listed on BRP 334
20 of Exhibit 20; is that right?

21 A Actually, no, there's a No. 9 on this list, on
22 334, that seems to have gotten either omitted from -- so
23 there's 1 through 8 on 334 and then there's part of a
24 reference on 335 and then a No. 10. The No. 9 appears
25 to have been an abstract in The Toxicologist, and so

1 there were 10 manuscripts on this particular list.

2 Q Let me see if I can understand this. On page
3 BRP 333 and 335, is that a list of 10 manuscripts of
4 ChemRisk chromium research that were presented at
5 scientific meetings?

6 A Okay. I see what -- these pages are out of
7 order.

8 333 is a list of the scientific meeting
9 presentations, which 335, which is one page out of
10 order, is a continuation of that list. So there were
11 ten chromium research papers presented at scientific
12 meetings that were on this list; so it might have just
13 gotten misfaxed and misfed in the fax.

14 But, yeah, the list on page 334 are eight of
15 the manuscripts that we either published or published
16 with authors or assisted in -- or collaborated in
17 publishing.

18 Q On 334, which is the list of the ChemRisk
19 chromium manuscripts, there are eight manuscripts
20 listed, right?

21 A Yes.

22 Q And No. 8 is the '97 Zhang article, right?

23 A That's true.

24 Q And on --

25 A Actually, it's '95 is what it says on there,

1 but that -- it is what ultimately -- this is dated May
2 20, 1996; so the 1995 is referencing, essentially, when
3 it was submitted and it's noted to be in press. So we
4 don't know when the actual publication date would be,
5 but I think we understood at that point that it was
6 accepted.

7 Q And I'm just describing it with the same name
8 that we've been using in this deposition, "the '97 Zhang
9 article."

10 Do you understand that?

11 A Yes.

12 Q So page BRP 334 has eight ChemRisk chromium
13 manuscripts and No. 8 is the Zhang '97 article but it's
14 dated 1995 there because it was an earlier memo,
15 correct?

16 A Correct.

17 Q And isn't it true that the only manuscript on
18 page BRP 334 that doesn't have a ChemRisk scientist's
19 name in it is the Zhang '97 article?

20 A That's true.

21 Q And in all of the other manuscripts on page BRP
22 334, whether a ChemRisk scientist was the lead author or
23 secondary or a tertiary author, the author was at least
24 identified, correct?

25 A Yes, because that was our original -- our

1 original research that we had either defined the scope
2 of the research and had it carried out or actually did
3 all the research in and of ourselves.

4 I think, you know, we've been over this a
5 number of times. Dr. Zhang -- I would have loved to
6 have been an author, a co-author, and I'm sure Dennis
7 Paustenbach would have loved to be a co-author on this
8 paper, the Zhang and Li paper. But Dr. Zhang -- and I
9 agree with him completely -- was of the opinion that the
10 original research and study was done 20 years ago, that
11 was the bulk of work that was done on that particular
12 paper or, you know, what was his publication on it, and
13 our collaboration was relatively minor in that big
14 picture.

15 And so this is an acknowledgment by me and to
16 our client who supported that further research that
17 basically the Zhang and Li article was part of our
18 research, part of our collaboration on the issue of
19 chromium.

20 Q When you said that client who supported that
21 further research, you're talking about PG&E, right?

22 A That's correct.

23 Q And by "supported," you mean paid for, don't
24 you?

25 A Yeah, they paid for the research.

1 They didn't -- you know, I mean I should
2 clarify. They paid for the small piece of additional or
3 more detailed analysis with the kind of expertise that
4 Bill Butler could offer to be applied to a study that,
5 in terms of man-hours and support and what had been
6 already documented, was 99 percent complete but did not
7 have that last more sophisticated collaborative effort
8 that ended up in the clarification. And it stood, as
9 itself, as the 1987 paper, as a conundrum, as a paper
10 that nobody knew what to make out of in the literature.

11 So I think PG&E did a good thing by supporting
12 the research phase of that and allowing Dr. Zhang to get
13 that clarified.

14 Q When you say that nobody knew what to do with
15 the 1987 Zhang paper, who besides ChemRisk thought it
16 was a conundrum?

17 A ATSDR.

18 Q Where does ATSDR ever say that they thought the
19 1987 paper was a conundrum?

20 A I didn't mean to say that they described it as
21 that, but in the earlier toxicological profiles, which
22 are documents created for each chemical that EPA
23 regulates by the Agency for Toxic Substances and
24 Disease Registry, they review all the literature on a
25 particular chemical and do a summary called this

1 toxicological profile. In the previous versions of the
2 toxicological profile, they included a discussion of the
3 Zhang and Li 1987 article and indicated that basically
4 there was missing information, that we couldn't really
5 draw any strong conclusions from it because it didn't
6 have the proper controls and further documentation that
7 we were attempting to clarify and get, if that
8 information was available, from Dr. Zhang, get him to
9 put it out there as something with scientific integrity.

10 MR. PRAGLIN: We have to change tapes. I don't mean
11 to cut you off.

12 THE VIDEOGRAPHER: Off the record. The time is
13 2:43 p.m. This is the end of videotape number two in
14 the continuing Volume 2 examination of Brent Kerger.

15 (Recess.)

16 THE VIDEOGRAPHER: We are back on the record. The
17 time is 2:51 p.m. This is the beginning of videotape
18 number three in the continuing Volume 2 examination of
19 Brent Kerger.

20 BY MR. PRAGLIN:

21 Q Dr. Kerger, before we took the break you were
22 testifying about the ATSDR write-up about the Zhang 1987
23 article. And I want to make sure I understand your
24 testimony, and I'm reading it off the computer here.

25 You said, "In the previous versions of the

1 toxicological profile, they," meaning ATSDR, "included a
2 discussion of the Zhang and Li 1987 article and
3 indicated that basically there was missing information
4 and that we couldn't really draw any strong conclusions
5 from it because it didn't have the proper controls and
6 further documentation that we were attempting to clarify
7 and get, if that information was available, from
8 Dr. Zhang, get him to put it out there as something with
9 scientific integrity."

10 I just read your testimony.

11 When you were talking about "we," where you say
12 "We couldn't really draw any strong conclusions," you
13 were talking about ChemRisk and not ATSDR, weren't you?

14 A Actually, in that context I was talking about
15 both, "we" meaning scientists.

16 Q Have you ever seen a write-up by ATSDR where
17 ATSDR says it couldn't really draw any strong
18 conclusions from the 1987 Zhang article?

19 A I don't have it with me, but that was -- that's
20 my recollection. I'm sure it doesn't use that exact
21 wording, but that was my interpretation of what their
22 summary of the outcome of that study and the importance
23 of that study was.

24 Q Aren't you aware that the ATSDR relied upon the
25 1987 Zhang article?

1 A What do you mean "relied upon"? They review
2 all the literature that's available to them, so --

3 Q They cited it in their review, didn't they?

4 A Sure.

5 Q And aren't you aware that the State of
6 California cited the 1987 Zhang article in its public
7 health goal for chromium?

8 A I don't recall.

9 Q And you said that the Zhang 1987 article didn't
10 have the proper controls and further documentation that
11 we were attempting to clarify and get.

12 You're not saying that ATSDR said that the
13 Zhang '87 article didn't have the proper controls and
14 further documentation, are you?

15 A I'm saying that nobody had it outside of
16 Dr. Zhang, apparently, since the Chinese Preventative
17 Medicine Journal decided to only publish snippets of his
18 paper and to basically modify what was his original
19 submission. And so the world -- meaning ATSDR, me, any
20 other scientist -- was left with a very incomplete and
21 relatively crude epidemiology study that we didn't know
22 whether or not we could trust because the statistical
23 methods and information provided on it was too sketchy.

24 Q ATSDR never requested that ChemRisk contact
25 Dr. Zhang and write a follow-up, did it?

1 A Not that I know of.

2 Q The only party that ever asked for that is
3 PG&E, right?

4 MR. McLEOD: Objection. Mischaracterizing the
5 testimony.

6 THE WITNESS: Actually, it was the judges on the
7 arbitration panel that had recommended it, to my
8 knowledge.

9 BY MR. PRAGLIN:

10 Q Is it really your testimony that the judges in
11 the Anderson arbitration recommended that PG&E pay
12 ChemRisk to write the Zhang '87 follow-up?

13 MR. McLEOD: Objection. Argumentative, misstates
14 the previous testimony. It's compound.

15 THE WITNESS: I think your question is a little --
16 it reads a little bit more into it than what I inferred,
17 which is that the judges found that information very
18 important and interesting from a lay scientific
19 perspective on what the overall evidence was, and
20 advised that further information on that would help to
21 clarify what the lay scientific or legal scientific
22 views were -- or what the issues were in the case. So
23 that's what we did, we followed the directions of the
24 judge.

25 BY MR. PRAGLIN:

1 Q But the judges didn't direct PG&E or ChemRisk
2 to contact Dr. Zhang, the judges just asked for more
3 information, right?

4 A I guess so.

5 Q Which judges are you talking about?

6 A Trotter and Weinstein.

7 Q Were you a party to those discussions or did
8 you get it secondhand from PG&E's lawyers?

9 A I believe that was from Steve Hoch and Greg
10 Read.

11 Q Those would be PG&E's lawyers at the time,
12 right?

13 A That's correct.

14 Q And did Steve Hoch and Greg Read tell you or
15 other scientists at ChemRisk that it would be a good
16 idea to track down Dr. Zhang and write a follow-up to
17 his '87 article?

18 MR. McLEOD: Objection. Asked and answered.

19 MR. WILKINSON: Misstates the testimony.

20 THE WITNESS: No, they didn't tell us that.

21 BY MR. PRAGLIN:

22 Q Did Hoch and Read know what you were going to
23 do?

24 MR. McLEOD: Objection. Asked and answered
25 repeatedly in the first deposition.

1 THE WITNESS: I think they asked us what our advice
2 was, given what the judges said, and we told them that
3 we could try to contact the authors and investigate it
4 further, and that's what we did.

5 BY MR. PRAGLIN:

6 Q And did Steve Hoch or Greg Read give you their
7 impression of the judges' reaction to the evidence
8 presented at the arbitration on the first ten cases in
9 the Anderson case?

10 THE WITNESS: Is this within the scope of what's
11 supposed to be --

12 MR. MCLEOD: No.

13 MR. PRAGLIN: It absolutely is. Judge Kuhl ruled
14 that PG&E waived the work product privilege and it's
15 gone to the Court of Appeal and her ruling has been
16 upheld. It's absolutely appropriate.

17 MR. MCLEOD: Okay. And he's here to testify as to
18 involvement, if any, in the Blue Ribbon Panel and
19 contact with third-party authors. He's not here to
20 testify as to conversations with PG&E's counsel eight
21 years ago.

22 BY MR. PRAGLIN:

23 Q Here's the question, Dr. Kerger: Did Steve
24 Hoch or Greg Read give you their impression of the
25 judges' reaction to the evidence presented at the

1 arbitration of the first ten cases in the Anderson case?

2 MR. McLEOD: I'm going to object to the question as
3 being hopelessly overbroad.

4 THE WITNESS: You know, "reaction" can have many
5 different meanings, so I'll try to answer it the best I
6 can.

7 They came back from that discussion with the
8 judges about the sealed verdicts. My impression or what
9 I took from conversations with them was that the
10 verdicts were relatively favorable to PG&E but that
11 further information would help to identify and more
12 clearly delineate the damages issues; and so that was my
13 impression of their reaction.

14 I don't know if that answers your question, but
15 they took just plain what the judges said they needed in
16 terms of further scientific information and asked our
17 advice on what further we might be able to do.

18 BY MR. PRAGLIN:

19 Q Before Mr. Hoch and Mr. Read came to you and
20 asked what further you might do, you had no plans to
21 contact Dr. Zhang; is that right?

22 A That's probably correct.

23 Q And what was it that Mr. Hoch or Mr. Read said
24 to you that gave you the impression that the verdicts
25 were relatively favorable to PG&E? I'm using your

1 words.

2 MR. McLEOD: Objection. Again, this is beyond the
3 scope of the allowed discovery.

4 You don't have to answer that.

5 BY MR. PRAGLIN:

6 Q Dr. Kerger, I'm going to ask you to answer it
7 so that you don't have to come back here from Florida
8 again to answer that question, because I will file a
9 motion with the Court.

10 The objection is PG&E's to hold. The Court has
11 ruled that PG&E has waived that privilege.

12 Mr. Wilkinson is appropriately sitting here quietly
13 because he knows about the Court of Appeal's ruling.

14 MR. WILKINSON: It's not a privileged objection and
15 you've pointed out that it's not my witness. Mr. McLeod
16 is correct that it's well outside the scope of the
17 Court-permitted discovery.

18 BY MR. PRAGLIN:

19 Q Go ahead.

20 A The answer is I don't recall specifically.
21 Again, that was my impression that I got and that's why
22 I was uncomfortable trying to answer your question about
23 what was his reaction, because his reaction he could
24 only really know, or their reaction, but what I took
25 from it is what I just told you; was that they thought

1 that the sealed verdicts were favorable to PG&E and that
2 whatever they could do to further provide or fill in the
3 blanks that the judges were asking to be filled, that
4 they were going to try to make -- they took that as
5 cogent advice, I assumed.

6 Q I take it this was a fairly important
7 conversation that you had with Mr. Hoch and Mr. Read
8 when they're coming back on the heels of a conversation
9 with the judges about sealed verdicts; would that be
10 right?

11 MR. WILKINSON: Objection. Vague, argumentative,
12 compound, asked and answered.

13 MR. McLEOD: Also calls for speculation.

14 BY MR. PRAGLIN:

15 Q Was it an important conversation to you?

16 MR. WILKINSON: Same objection.

17 THE WITNESS: To me?

18 BY MR. PRAGLIN:

19 Q Yes.

20 A I thought it was interesting. It certainly
21 seemed to be a turning point in the litigation at the
22 end of the first arbitration; so I'd say that was an
23 important piece of input from the judges.

24 Q And when you were provided with that
25 information from Mr. Hoch and Mr. Read, is it your

1 testimony that you can't recall anything that they told
2 you about that conversation that they had with the
3 judges?

4 MR. McLEOD: Other than what he's already testified
5 to.

6 THE WITNESS: Yeah, I've told you pretty much
7 everything that I recall, specifically.

8 MR. McLEOD: Eight years ago.

9 BY MR. PRAGLIN:

10 Q And why do you say it seemed to be a turning
11 point in the litigation?

12 MR. WILKINSON: Objection. Outside the scope, calls
13 for speculation, relevance.

14 MR. McLEOD: You don't have to answer that.

15 MR. PRAGLIN: Are you instructing him not to answer?

16 MR. McLEOD: Yes.

17 BY MR. PRAGLIN:

18 Q Are you going to follow that instruction,
19 Dr. Kerger?

20 A I just -- I don't feel comfortable giving you
21 my thoughts or opinions about what somebody else
22 thought. It's just not -- I don't think it's reasonable
23 and I think it's speculation; so -- you know, I'm not a
24 lawyer.

25 It was my impression that that was an important

1 decision in the overall -- how the case went afterwards,
2 what directions they took. And I didn't try to act as a
3 lawyer and further interpret it in a legal sense, that's
4 all I did.

5 MR. McLEOD: You've answered the question.

6 BY MR. PRAGLIN:

7 Q If you wouldn't be comfortable giving me your
8 thoughts or opinions about what Mr. Hoch or Mr. Read
9 thought, then you wouldn't be comfortable giving me your
10 impressions of what Dr. Zhang thought either, would you?

11 MR. McLEOD: Objection. That's argumentative.

12 What Dr. Zhang thought about what?

13 BY MR. PRAGLIN:

14 Q Would you, Dr. Kerger?

15 MR. McLEOD: You don't have to answer that.

16 That is hopelessly vague, ambiguous, overbroad
17 and argumentative.

18 THE WITNESS: Zhang is a scientist and I feel more
19 comfortable in the scientific arena being able to
20 surmise what people mean and what the import of their
21 research would be, so it would be a different situation
22 with Dr. Zhang for sure.

23 BY MR. PRAGLIN:

24 Q And that would be your testimony even though
25 you never met him face to face or spoke with him because

1 he doesn't speak your language; is that right?

2 A That's right.

3 Q Getting back to Exhibit 20, BRP 334, which is
4 the list of eight ChemRisk chromium manuscripts that
5 PG&E paid you to write.

6 MR. McLEOD: Objection. You're mischaracterizing
7 the testimony.

8 BY MR. PRAGLIN:

9 Q Did I get that wrong, Dr. Kerger, didn't PG&E
10 pay for those eight manuscripts?

11 MR. McLEOD: You said paid him to write the eight
12 manuscripts.

13 MR. PRAGLIN: Let me start over.

14 Q On BRP 334 of Exhibit 20 there are eight
15 manuscripts there that ChemRisk wrote that relate to
16 chromium and PG&E paid for the research on those papers;
17 isn't that true?

18 MR. McLEOD: Again, objection. You're
19 mischaracterizing the testimony insofar as ChemRisk
20 wrote.

21 BY MR. PRAGLIN:

22 Q Isn't that true, Dr. Kerger?

23 A I think I'm going to go with what I've already
24 said about these articles in my previous testimony.

25 Q Okay. BRP 334 is a list of eight chromium

1 manuscripts, right?

2 A There's eight manuscripts, yes.

3 Q And they're all authored by ChemRisk, aren't
4 they?

5 MR. McLEOD: Objection. You're mischaracterizing
6 the witness's testimony. It's argumentative.

7 THE WITNESS: They're not all authored by ChemRisk,
8 no.

9 BY MR. PRAGLIN:

10 Q Which one is not authored by ChemRisk?

11 A The paper by Zhang and Li, 1995. No. 8 on 334.

12 Q Well, if that's the case, then why do you have
13 it on the list of eight ChemRisk chromium manuscripts?

14 MR. McLEOD: Objection. Asked and answered.

15 THE WITNESS: I think I already explained that this
16 was a communication to the attorneys for PG&E that
17 included manuscripts that we had either published
18 ourselves or assisted in or collaborated with other
19 authors on, as far as manuscripts.

20 It's definitely shown here and it's definitely
21 shown in the other list that's on 333 and 335 that we
22 collaborated with several other authors that were
23 outside of ChemRisk itself and published research that
24 we thought filled the gaps of information that were
25 important on some of the more explicit issues of

1 chromium toxicology and chromium exposure that were --
2 that were brought up in the lawsuit.

3 So it certainly made perfect sense for me to
4 include the Zhang and Li article since that was
5 something -- it falls into the category of published
6 manuscript and it was a collaborative effort that we
7 assisted on, and Mr. Whelan and/or Mr. Hoch would
8 understand that. Just like on 335 I list a poster
9 presentation by Anderson and colleagues, which contains
10 none of the ChemRisk people as authors but which we
11 found as important research and supported other authors
12 in being able to present that research, even though it
13 wasn't our original work.

14 BY MR. PRAGLIN:

15 Q You're saying that on BRP 335 the poster
16 presentation by Anderson, item No. 10, that ChemRisk had
17 nothing to do with that?

18 MR. WILKINSON: Objection. Argumentative, misstates
19 his testimony.

20 THE WITNESS: Actually, what I'm saying is the
21 Anderson paper, which is -- was presented at the Society
22 of Toxicology meeting in 1996, was sponsored by, I think
23 it was me, in terms of presenting this information,
24 which was important research information, wasn't
25 generated by ChemRisk. And we were never an author on

1 either the poster or on the publication that
2 Dr. Anderson ultimately did. But it was important
3 research that we were keeping track of and we were
4 supporting and that we thought was an important piece of
5 the scientific puzzle, so to speak, that was relevant to
6 health effects of ingested hexavalent chromium.

7 BY MR. PRAGLIN:

8 Q Wasn't that Anderson poster presentation, item
9 No. 10 on BRP 335 of Exhibit 20, actually paid for by
10 Dennis Paustenbach?

11 A No.

12 Q Do you sometimes confuse what work you did with
13 what work Dr. Paustenbach did in connection with
14 chromium?

15 A I don't think so.

16 Q Have you ever seen the abstract for that poster
17 presentation, item No. 10 on BRP 335, authored by
18 Anderson, Bryden and Polanski?

19 A I'm sorry, what's the question again?

20 Q Have you ever seen the abstract for the poster
21 presentation listed as item No. 10 on BRP 335 of Exhibit
22 20 that was authored by Anderson, Bryden and Polanski?

23 A I have a copy of that in my files, yes.

24 Q You didn't produce it for me, did you?

25 A I didn't produce any published information.

1 Q Isn't it a fact that that abstract lists that
2 Dennis Paustenbach of McLaren/Hart-ChemRisk was the
3 sponsor of Drs. Anderson, Bryden and Polansky's 1996
4 poster presentation that's item No. 10 on BRP 335?

5 A I don't know, it might be it.

6 Q Let me show it to you.

7 Let's mark it as Exhibit 21.

8 (Plaintiffs' Exhibit 21 was
9 marked for identification, a copy of
10 which is attached hereto.)

11 MR. PRAGLIN: Mr. McLeod, I only have two copies of
12 this.

13 MR. McLEOD: Oh, I'll share with the witness.

14 MR. PRAGLIN: Thanks. Sorry about that.

15 Q Do you have Exhibit 21 in front of you,
16 Dr. Kerger?

17 A Yep.

18 Q Do you see item No. 1532 on the left column?

19 A I do.

20 Q The title is, "Lack of Toxicity of Chromium
21 Chloride and Chromium Picolinate," right?

22 A Yes.

23 Q And it's by Anderson, Bryden and Polanski,
24 right?

25 A Yes.

1 Q That's the same reference as item No. 10 on
2 page BRP 335, isn't it?

3 A Yeah, it probably is.

4 I was mistaken. It was Dennis that was listed
5 as the sponsor, but we -- we collaborated with
6 Dr. Anderson on a lot of different chromium issues
7 because we considered him to be one of the world's
8 experts on chromium health effects. And so when we
9 identified this research based on our collaborations
10 with him, we supported it also being put out there in
11 the scientific literature so that it would be seen by
12 the people who would be trying to make decisions about
13 health effects of chromium.

14 Q So you'd agree that Dennis Paustenbach paid for
15 that poster presentation by Anderson, Bryden and
16 Polanski that's listed on BRP 335, wouldn't you?

17 MR. WILKINSON: Objection. Calls for speculation.

18 THE WITNESS: Absolutely not.

19 BY MR. PRAGLIN:

20 Q Well, doesn't Exhibit 1 list Dennis
21 Paustenbach, McLaren/Hart-ChemRisk, as the sponsor for
22 that poster presentation?

23 A I think you misconstrue what "sponsor" means in
24 a scientific setting. "Sponsor" simply means in a -- at
25 this type of scientific meeting that a member of the

1 Society of Toxicology is bringing in somebody who's not
2 a member to be able to present their research; so the
3 sponsor is the member person who is inviting others who
4 are not members to present their research. It has
5 nothing to do with financial support at all.

6 Q And when the term "sponsor" is used in a
7 scientific article that says, for example, "This
8 research was sponsored by Pacific Gas & Electric
9 Company," that doesn't mean in the scientific community
10 that the research was paid for by PG&E?

11 MR. McLEOD: Objection. Calls for speculation.
12 It's argumentative. It's vague and ambiguous and it's
13 overbroad.

14 You don't have to answer that.

15 THE WITNESS: I'm just telling you, I mean
16 "sponsor," you can make it mean whatever you'd like it
17 to mean, but in this setting, having been a member of
18 the Society of Toxicology for close to 20 years, I'd say
19 that I have a better position in authority for saying
20 what "sponsor" means. And since I've been a sponsor to
21 several poster presentations of other people who are
22 nonmembers, I can tell you that that's the case.

23 BY MR. PRAGLIN:

24 Q But doesn't the term "sponsor" also mean
25 financed by, in the scientific community, in the context

1 of a party sponsoring scientific research?

2 A I would say that "sponsor" is rarely used in my
3 experience. "Sponsor" is something like what you hear
4 on TV commercials and something that you might say in
5 the courtroom to try to infer that something is being
6 paid for.

7 In a scientific sense, we use different terms,
8 like a grant was provided by or this work was funded
9 through a grant from -- something like that. But
10 "sponsor," you know, it's kind of -- I mean it can mean
11 anything you want it to mean and it might appear in
12 other settings, but in this setting, that's what I'm
13 telling you it means.

14 Q So why in the Zhang '97 article didn't you use
15 those terms of "grant" or other different synonyms for
16 PG&E funding the Zhang '97 article?

17 MR. McLEOD: Objection. Asked and answered and
18 mischaracterizes his testimony.

19 He's never testified it was funded by PG&E.

20 BY MR. PRAGLIN:

21 Q Why not?

22 A I think I'll go with my previous answers on
23 that.

24 MR. McLEOD: Any of the ten.

25 BY MR. PRAGLIN:

1 Q If PG&E paid for the research that led to the
2 publication of the Zhang '97 article, then why didn't
3 ChemRisk identify PG&E as the party providing the
4 funding for that '97 article?

5 MR. McLEOD: Objection. Mischaracterizes the
6 witness's testimony.

7 He never testified that PG&E paid for the
8 research.

9 This is argumentative. We've been down this
10 road ten times, at least.

11 MR. WILKINSON: Objection. Asked and answered.

12 BY MR. PRAGLIN:

13 Q Dr. Kerger, PG&E paid for ChemRisk's research
14 in doing the Zhang '97 article; isn't that a fact?

15 MR. McLEOD: Objection. Asked and answered and
16 mischaracterizing his testimony.

17 THE WITNESS: PG&E paid for us to participate in
18 that collaboration. We were not authors on the
19 published paper. The work that we did in terms of the
20 big picture, as I've explained to you now about five
21 times, is a tiny sliver with respect to what efforts
22 Dr. Zhang and the deceased Dr. Li, and/or the living
23 Dr. Li, those people who were in contact with, designed
24 and implemented the study had conducted.

25 So it's not scientifically inappropriate to not

1 be co-authors. It's also not scientific- -- it's not
2 inappropriate, ethically or scientifically, to not say
3 that PG&E was the grantor or the funder of the research,
4 because it would be a lie, it would be untrue. In the
5 big picture and our interpretation, and clearly in
6 Dr. Zhang's interpretation that he expressed to us and
7 that I respected, he said this work was done by me and
8 by the anti-epidemic station and by Dr. Li, his former
9 colleague, you know, 15 years ago, and took a long
10 course and a clarification doesn't require people who
11 collaborate with that -- every one of those people to be
12 included as an author; so we respected that -- those
13 wishes. I don't see any problem with that.

14 BY MR. PRAGLIN:

15 Q On Exhibit 20, the page that's Bates stamped
16 BRP 332, you would agree that nowhere in that letter
17 that you sent to PG&E's lawyers Steve Hoch do you
18 qualify that the Zhang '97 article was not written by
19 ChemRisk, wouldn't you?

20 MR. WILKINSON: Objection. The document speaks for
21 itself, argumentative.

22 THE WITNESS: I didn't see any reason to document it
23 in the letter. It identifies who are the authors of
24 each study and he knew that -- that we had -- we had
25 collaborated with those authors; so Mr. Hoch certainly

1 was in a point to know -- was in a position to have
2 known what -- what research on those lists we were
3 authors on and which ones we were not authors on and
4 which ones we assisted other authors in being able to
5 get the scientific information out there in the
6 literature.

7 BY MR. PRAGLIN:

8 Q In the past when you have published scientific
9 articles and written them with other foreign scientists,
10 scientists outside the United States, you have been
11 listed as a sixth author in the string of authors, for
12 example, haven't you?

13 A Probably. It's probably happened before.

14 Q You published a paper in 1997 that you
15 participated in writing with Dr. Silvio De Flora
16 entitled, "Estimates of the Chromium (VI) Reducing
17 Capacity in Human Body Compartments as a Mechanism for
18 Attenuating Its Potential Toxicity and Carcinogenicity
19 in Carcinogenesis," didn't you?

20 A I don't know what you're reading from, but I
21 recall -- I don't recall if the timing and the title are
22 exactly correct, but it's in my CV; so if that's what --
23 if you're reading from my CV, that would be correct.

24 Q And so why in this paper with Dr. De Flora,
25 who's from Italy, would he be the lead author and you

1 would be the sixth author listed?

2 A Because he would have been the lead researcher
3 on the project and the lead writer, and that's standard
4 practice for the lead author, the person who takes the
5 largest responsibility in writing the paper and pulling
6 the research together, that that would be the lead
7 author; and then the order after that just kind of
8 dependent on convention and level of contribution and
9 just agreement among the authors.

10 Q But if this paper by Dr. De Flora with you as
11 the sixth named author was published in the same time
12 frame as the '97 Zhang article, in fact in the same year
13 just in a different journal, why would you be listed on
14 De Flora's paper as an author but not on Zhang's?

15 MR. WILKINSON: Objection. Asked and answered.

16 MR. McLEOD: I'll join in that.

17 THE WITNESS: Am I the last author on that paper?

18 BY MR. PRAGLIN:

19 Q You are. It's De Flora, Cam Oirano, Bagnasco,
20 Bennicelli, Corbett and number six is Kerger.

21 A Dr. De Flora honored me by being the last
22 author, which is usually reserved for the senior author
23 on a paper in that particular publication because he and
24 I had collaborated on several of these issues regarding
25 the pharmacokinetics and threshold issues of oral

1 exposure to chromium.

2 And so I'm honored by being the sixth author.
3 And Dr. De Flora and I, as opposed to Dr. Zhang --
4 Dr. De Flora spoke a different language but also spoke
5 English. He and I had, you know, hundreds of
6 conversations collaborating on different issues, and
7 that research was the result of pretty much research
8 that he had started and then we expanded upon. And the
9 studies -- the human studies that we did, that ChemRisk
10 did, were right in line with what the discussions were
11 in that paper, and so he saw it fit to include Gwen and
12 myself as authors because we were the two people that he
13 had collaborated on most closely with that. And it was
14 in a leading journal, Carcinogenesis, and I was honored
15 and pleased to have been part of that.

16 Q And did you ask to be listed or did it just
17 happen?

18 A I don't remember, but I'm not that shy about
19 asking, so it wouldn't surprise me if I requested that
20 he consider it if it came up.

21 Q Now, you know that Dr. De Flora is PG&E's paid
22 consultant in this Aguayo case, don't you?

23 A Dr. De Flora is one of the most respected
24 chromium toxicology experts in the world. Whether or
25 not he was a consultant on any litigation matter has no

1 reflection on his integrity or on the value of any input
2 he might provide scientifically. And so -- and I
3 respect him deeply and he's been -- he's probably one of
4 the most knowledgeable living researchers in the area of
5 chromium toxicology that exists in the world today.

6 Q The question is do you know that Dr. De Flora
7 is PG&E's paid consultant in this Aguayo litigation?

8 A I don't know for sure.

9 Q You knew that he was PG&E's paid consultant in
10 the Anderson litigation, didn't you?

11 A I knew that just like PG&E came to ChemRisk for
12 their expertise in chromium that we, ChemRisk, came to
13 him for his specific expertise and advised PG&E to do
14 so.

15 Q On pages BRP 333 and 335 of Exhibit 20, was
16 ChemRisk involved in the writing of every one of those
17 ten manuscripts that are listed as research presented at
18 scientific meetings?

19 A These are not manuscripts.

20 Q I'm sorry, I should have said abstracts, right?

21 A Right.

22 Q Okay. I'll reask my question for you.

23 On Exhibit 20, pages BRP 333 and 335, was
24 ChemRisk involved in the writing of every one of those
25 ten manuscripts listed as research -- I'm sorry, I did

1 it again. That's the problem with these computers.

2 On pages BRP 333 and 335 of Exhibit 20, was
3 ChemRisk involved in the writing of these abstracts that
4 are listed as research presented at scientific meetings?

5 MR. WILKINSON: Objection. Asked and answered.

6 THE WITNESS: I think the authors who are named were
7 the principle people involved in the writing of the
8 abstract and of the poster presentation, and it kind of
9 speaks for itself.

10 BY MR. PRAGLIN:

11 Q Well, what was ChemRisk's involvement in item
12 No. 10 on BRP 335 other than, as you say, sponsoring
13 Drs. Anderson, et al., at that meeting?

14 A Well, again, Dr. Anderson is someone that we
15 went to for intellectual information and peer review on
16 many different issues, and he's somebody who kept us
17 informed as we kept him informed on the status of
18 chromium research that was going on that we were
19 conducting or that others were conducting. So it was
20 simply a collaboration.

21 I'm not sure -- I think we would have certainly
22 been involved in submitting the abstract, but I don't
23 recall whether or not we had any -- any particular role
24 in drafting the abstract or the presentation. We simply
25 discussed the research with him and managed the process

1 of submitting it and presenting it to the scientific
2 community for him.

3 Q Were either Dr. Anderson, Bryden or Polanski
4 paid PG&E consultants?

5 A I don't think Dr. Anderson ever took any money
6 for any of the consultations that he did, it was mainly
7 just collegial advice.

8 Q Did he consult with PG&E or just with ChemRisk?

9 A I don't think he was ever named as an expert or
10 consulted with attorneys for PG&E, to my recall.

11 MR. PRAGLIN: Let's mark as Exhibit 22 a document
12 Bates stamped TY 546 through 552. This is from Tony
13 Ye's production.

14 (Plaintiffs' Exhibit 22 was
15 marked for identification, a copy of
16 which is attached hereto.)

17 BY MR. PRAGLIN:

18 Q On page TY 547 of Exhibit 22, this is a letter
19 dated January 22, 1997 from JOEM to Tony Ye, correct?

20 A Yes.

21 Q And it's signed by Elizabeth Popper, the
22 managing editor of JOEM, right?

23 A Yes.

24 Q And did you see this letter at some point in
25 time?

1 A I saw it in Tony's file, but I don't recall
2 whether I saw it at the time that it was submitted. I
3 probably did.

4 Q If you look at the previous page, page 546,
5 this is the fax cover sheet from Tony Ye to Tom Flahive
6 in your office, correct?

7 A Yes.

8 Q And it's dated January 28, 1997 and it
9 indicates that this is the January 27, 1997 letter that
10 Tony Ye received from JOEM, correct?

11 A It does.

12 Q And this letter, Bates stamped TY 547 dated
13 January 22, 1997, is the acceptance letter from JOEM,
14 isn't it?

15 A No.

16 Q Doesn't it say, "Dear Dr. Zhang: At last I
17 have the answer for which you've been waiting such a
18 long time. The manuscript is probably going to be
19 printed in the April '97 issue."

20 Doesn't it say that?

21 A Yeah, it does say that.

22 Q And you don't think that that is the acceptance
23 letter for publication?

24 A Well, your interpretation is different from
25 mine, apparently, on this issue. Let me explain that.

1 As I told you before, probably around May of
2 1996 was when the journal advised us that the paper had
3 been accepted, essentially, without revision. This is
4 in the process, after acceptance, as I tried to explain
5 now three or four times, it takes a period of time for
6 the journal to be able to cue the paper into what's
7 already been accepted and planned in the printed
8 versions of the journal.

9 We had not heard when it was going to be cued
10 in or exactly when the galley proofs were going to be
11 sent to us until this letter, but we knew, as of May,
12 almost -- well, eight months, seven, eight months prior
13 to this, that the manuscript was accepted.

14 So this is not an acceptance. This is
15 a when-will-it-be-printed, in all likelihood,
16 advisement.

17 Q But you've never seen a letter dated
18 approximately May of 1996 from JOEM saying that the
19 Zhang article has been accepted for publication, have
20 you?

21 A I don't think I saw the -- either the peer
22 reviewer comments or the, quote/unquote, acceptance
23 letter in the file that Tony had. I didn't see that.

24 Q And is it your impression that there were
25 written peer reviewer comments that were sent from JOEM

1 to Tony Ye in the May '96 time frame?

2 A It's my impression that there were or there
3 would have been comments and that we illustrated that
4 there were -- they were very favorable and showed no
5 need for revisions in the memos that we gave at the same
6 time, but I don't have the documentation that actually
7 shows the correspondence from JOEM. I only have what I
8 found in that file, and then, of course, the published
9 paper, which is almost identical to what we submitted
10 originally.

11 Q Could it be that there was no written
12 notification from JOEM in the May '96 time frame
13 announcing acceptance of the Zhang paper?

14 A I doubt it.

15 Q Could it be that it was just verbal acceptance?

16 A I doubt it.

17 Q That doesn't usually happen, does it?

18 A That's correct, it doesn't happen that way.

19 Q And does it seem a little bit odd to you that
20 nobody can come up with a copy of the May '96 time frame
21 acceptance letter from JOEM?

22 A Well, maybe not something that would satisfy
23 you, but the -- there's a track of memos from Tony Ye
24 that identifies his follow-up telephone conversations
25 with Elizabeth Popper that I think clearly documents

1 that it was peer reviewed and that a favorable response
2 was gotten on or about May of 1996, and I have no reason
3 to question Tony's interaction.

4 Q You would agree, though, that if there is no
5 letter from JOEM in the May '96 time frame advising of
6 acceptance of the Zhang article for publication in JOEM,
7 that that would be highly unusual, wouldn't you?

8 A I wouldn't think that would happen, that's
9 correct.

10 Q Do you know this woman, Elizabeth Popper, who
11 signed this letter dated January 22, 1997 advising that
12 the Zhang manuscript will be published?

13 A No, I don't know her.

14 Q Do you know anything about her?

15 A No.

16 Q You've never spoken with her?

17 A Nope.

18 Q You've never written to her?

19 A I don't think so.

20 Q Was Dr. Zhang doing some work for ChemRisk
21 other than the collaboration on the '97 article?

22 A Not that I was involved with.

23 Q Who at ChemRisk would have been more
24 knowledgeable about what Dr. Zhang was doing for
25 ChemRisk than you?

1 A Perhaps -- perhaps Tony. But if Dr. Zhang did
2 any further work for McLaren/Hart, it would have been
3 for the -- for the Shanghai or Beijing offices and for
4 individuals in that office. It would not have
5 necessarily been something that I was advised of or kept
6 apprised of if they found a need to use his services for
7 anything else. But I can tell you beyond this
8 collaboration, I've had no involvement with him
9 otherwise.

10 Q Did Tony Ye have authority to authorize about
11 500 hours of work for Dr. Zhang on projects other than
12 the '97 article?

13 A No, that's impossible. He would have never
14 been able to do that nor did he do that because he was
15 already gone from McLaren/Hart by the time that the
16 final contract was signed with Dr. Zhang for the U.S.
17 offices. So, again, while -- I have an advantage
18 because I know Rich Caton and he was in our office and
19 was the national contracts manager for all of the U.S.
20 work for ChemRisk, and I know for certain that Tony
21 didn't authorize any other work with -- and Tony
22 couldn't authorize any work because he wasn't a
23 principal. And second of all, I'm not aware of any such
24 work that was orchestrated through the U.S. operations.

25 Q Was Dr. Zhang used by McLaren/Hart

1 International for business promotion in China?

2 MR. McLEOD: If you know.

3 THE WITNESS: I don't know. Not that I know of.

4 MR. PRAGLIN: Let's mark as Exhibit 23 two pages,
5 it's TY 60 from Tony Ye's production, which is in
6 Chinese, and a translation that we've had done by a
7 certified Chinese translator named Allen Choi.

8 I'll attach them together as Exhibit 23.

9 (Plaintiffs' Exhibit 23 was
10 marked for identification, a copy of
11 which is attached hereto.)

12 BY MR. PRAGLIN:

13 Q I'm giving you the translation since you don't
14 read Chinese, Dr. Kerger.

15 A And I should trust that it's an accurate
16 translation?

17 Q We've had a request we use only certified
18 translators, so we used the one that PG&E used.

19 A Okay.

20 MR. PRAGLIN: Mr. McLeod, for some reason I don't
21 have another copy of this one, I'm sorry.

22 MR. McLEOD: Doesn't matter, don't worry about it.

23 BY MR. PRAGLIN:

24 Q Do you recognize the letterhead that TY 60 is
25 written on?

1 A The letterhead?

2 Q Yes, it says "NICE" and it's got a grid.

3 A No, I don't recognize it.

4 Q And the fax message at the top that says
5 "McLaren/Hart BJ," does that stand for Beijing?

6 A I don't know.

7 Q I take it you've never seen Exhibit 23 before?

8 A Nope.

9 Q You see Dr. Zhang's signature at the bottom
10 right of page TY 60?

11 A Yes, I see the typewritten -- oh, you mean on
12 60? Where's the reference to this? I'm just looking
13 for the Bates stamp, there's not a TY --

14 Q It's the lower right.

15 A Oh, okay.

16 Yeah, I see J.D. Zhang.

17 Q And if you look at these two pages side by side
18 you see that it's addressed to Tony Ye, correct?

19 A Yes, I see that.

20 Q And it's sent by Dr. Zhang, right?

21 A Apparently.

22 Q And then it appears as though it's a listing of
23 hours worked and a description of services for the
24 months of April, May, June, July, August and September
25 of 1995, correct?

1 A I'm not sure if it's 1995 or not, but it lists
2 the months and the dates it appears.

3 Q And if you look at the entries for June of
4 1995, you'll see that Dr. Zhang is billing for work
5 going back and forth to Jinzhou from Shanghai via
6 Beijing for 38 hours and then he talks about a meeting
7 where he went to Shanghai from Jiangxi Province to meet
8 with Guang Zhu, do you see that, for 18 hours?

9 A Okay.

10 Q And Guang Zhu was an employee of McLaren/Hart
11 Engineering in China, right?

12 A That's my understanding.

13 Q Did you ever go to McLaren/Hart's China office?

14 MR. McLEOD: Objection. Asked and answered.

15 THE WITNESS: No.

16 BY MR. PRAGLIN:

17 Q And then Dr. Zhang is listing for June 18th
18 through 25th going to a Liaohe Oil Field to make
19 connection regarding sewage processing project. Do you
20 see that?

21 A I see that.

22 Q And he lists that he went to Changchun to build
23 businesses connection and propagate McLaren/Hart
24 Company's businesses. Do you see that?

25 A I'm sorry, where are you referring to now? Oh,

1 above there? Yes, I see that.

2 Q And do you see that he lists that he went to
3 Shenyang to build businesses connection and propagate
4 McLaren/Hart Company's businesses?

5 A That's what it says.

6 Q And he says that he went to Anshan and Benxi to
7 build businesses connection and propagate McLaren/Hart
8 Company's businesses, researched and studied Benxi Trash
9 disposing, correct?

10 A Yes.

11 Q And he lists 80 hours, 8 days at 10 hours a day
12 for that work, correct?

13 A That's what it says.

14 Q And then he says that on June 30th he went
15 again to the Liaohe Oil Field to make a connection
16 regarding the sewage processing project, and he bills
17 another 20 hours. Do you see that?

18 A Yes.

19 Q Who paid Dr. Zhang for all that work?

20 A I don't know. I wasn't aware of any of that
21 stuff so --

22 It seems on face value, it would be that
23 Mr. Zhu Guang, who is our initial contact when he found
24 Dr. Zhang and we collaborated with him that he found
25 Dr. Zhang qualified enough to, in his retirement, be a

1 scientific expert that helped them to evaluate sites and
2 look for additional consulting business.

3 Q And Zhu Guang was a McLaren/Hart International
4 employee, right?

5 A That's my understanding, yes.

6 Q And then, for July, Dr. Zhang is billing
7 "Accompanying Mr. Guang Zhu, went to Jiangsu Province
8 Zhenjiang to negotiate about Sewage Processing Project,"
9 and he lists another 72 hours. Do you see that?

10 A Yes.

11 Q And you had no idea that Dr. Zhang was doing
12 all of this work for McLaren/Hart International?

13 A Nope.

14 Q And this is in the same time frame that you
15 were actually contacting Dr. Zhang to work on the '97
16 article, isn't it?

17 A I'm guessing it is. Again, I don't -- I don't
18 have the information that tells me what year this is,
19 okay? So while there's a reference under June that
20 says, "Received Brent's call from U.S. and answered
21 questions," I don't see any other reference to work that
22 I did with him at this point.

23 Q Look in July. "Collected and processed
24 materials regarding Cr+6 pollution."

25 Do you see that?

1 A But that doesn't mean it's relating to me. I'm
2 not sure what the timing is because it's not explicit on
3 this document; so it could be -- see, we had a
4 contract -- my understanding was we had a contract with
5 Dr. Zhang that was based on \$250, or whatever it was,
6 \$350 a month, for a certain number of months, okay?
7 Now -- and that that work was in conjunction with --
8 with collaborating on getting this information together.
9 And we received separate billings from him that outlined
10 his time in this same time frame on our project.

11 So this confuses me. I'm not sure whether it's
12 accurate or if, you know, it was -- I just don't know
13 what the source is or how to validate it. I hadn't seen
14 it before today.

15 Q Did it ever come to your attention that there
16 were allegations that some of the McLaren/Hart
17 International employees were skimming Dr. Zhang's money?

18 A That issue came up and we investigated it and
19 Tony Wong, as I recall, or somebody who was involved in
20 the international operation that spoke English well,
21 resolved that controversy that it wasn't -- it wasn't a
22 -- wasn't a problem.

23 Q You talked to Tony Wong about that?

24 A I don't recall if I talked to Tony Wong about
25 it, he was certainly one of the people involved in the

1 International group in -- that regularly went to China.
2 But my recall is that it was a false alarm, that
3 Dr. Zhang -- I think he might have been delayed in
4 receiving what the agreed salary was, but it wasn't that
5 he was not paid or being skimmed, so to speak.

6 Q Tony Wong was a VP at the Rancho Cordova
7 McLaren/Hart office, correct?

8 A For McLaren/Hart -- again, the company went
9 through several transitions. I know that Tony at one
10 time was a principal that ran the laboratory operations
11 that were part of McLaren/Hart. That at some time got
12 spun off and Tony went into these -- his primary role
13 was for McLaren/Hart International, which was also
14 not -- I mean there was only a presence, per se, of
15 coordinators in the Rancho Cordova office, but the
16 actual -- the actual operative offices were in Beijing
17 and Shanghai. So I'm not sure what the timing was, he
18 was certainly at least a principal or a managing
19 principal in one of those operations during this time
20 frame, is my recollection.

21 Q Do you have Exhibit 1 in front of you?

22 A Yes.

23 Q If you'll go to page CHEMRISK 196, please, this
24 is the last page of the Zhang '97 article.

25 In the middle column there's a sentence that

1 says, "Nonetheless, these results suggest that lifestyle
2 or environmental factors not related to the Chrome (VI)
3 contamination are the likely source of the variation in
4 these cancer rates."

5 Do you see that?

6 A Yes.

7 Q Dr. Zhang didn't write that sentence, did he?

8 A I don't recall. Again, as I told you, there
9 were changes in wording and clarifications in wording
10 that we felt would make the English more cohesive and
11 make more sense, and Tony, in each case, whenever we had
12 a wording change or suggestion, explained what the
13 reason was and what the suggested change was and got
14 approval from Dr. Zhang to make that change. So the
15 answer is whether or not he specifically wrote it, he
16 agreed to it in our collaboration and it represents our
17 understanding of his opinion.

18 Q But that sentence was actually inserted in word
19 processing by ChemRisk, wasn't it?

20 A Well, again, it doesn't matter when it was
21 inserted or who actually wrote it, as long as Dr. Zhang
22 agreed to it.

23 Q But you don't have anything in writing from
24 Dr. Zhang saying that he agreed to it, do you?

25 MR. McLEOD: Objection. Asked and answered.

1 THE WITNESS: I don't have anything in writing that
2 would satisfy you and it doesn't matter because I don't
3 require it. This is a scientific collaboration. It
4 doesn't require SEC documentation to be followed. And,
5 you know, if our conversations with Dr. Zhang on a
6 scientific level met his approval, then that was fine
7 with me.

8 BY MR. PRAGLIN:

9 Q Where is the written proof that it met with his
10 approval?

11 MR. McLEOD: Objection. Asked and answered.

12 THE WITNESS: All I have is the paper.

13 BY MR. PRAGLIN:

14 Q The '97 paper, right?

15 A The '97 paper and the letter that was submitted
16 along with it that Dr. Zhang identified that he had
17 read, understood and agreed with the publication of the
18 manuscript as written. That's the best I can do.

19 MR. McLEOD: You've answered the question,
20 innumerable times.

21 BY MR. PRAGLIN:

22 Q Were there times when ChemRisk made changes to
23 a draft of the Zhang '97 article in one of its
24 California offices and used a word processing program to
25 do it, as opposed to handwritten interlineations or

1 cross-outs?

2 A I'm sure there were.

3 Q If you look at -- I think we marked it as
4 Exhibit 12, the collection of drafts, and go to the
5 draft dated November 25, 1995, beginning with Bates
6 stamped TY 102. Do you see that?

7 A I see it.

8 Q Do you see that some of the words are shaded
9 and others are crossed out in this draft?

10 A Yes.

11 Q Is that as a result of a word processing
12 program that was used at ChemRisk?

13 A Probably.

14 Q It wasn't a word processing program that was
15 used by Dr. Zhang, was it?

16 A I don't -- not to my knowledge, Dr. Zhang did
17 not have a word processing computer.

18 Q And so what does the shaded portion mean, is
19 that an addition to the document?

20 A It could represent a change, yes.

21 Q And the cross-outs represent a deletion?

22 A Correct.

23 Q And does this document, Bates stamped TY 102
24 through TY 112, reflect modifications that ChemRisk made
25 in the language of the Zhang '97 article?

1 A I'm not sure what it represents. It's
2 certainly one of the documents that was in Tony's file.
3 It may have been things that in Tony's collaboration he
4 was reflecting edits from Dr. Zhang. I'm not sure. I
5 think Tony would probably be a more appropriate person
6 to answer that question because he was the one who spoke
7 to Dr. Zhang directly on any changes.

8 Q So is it your testimony that the modifications
9 made to the words on this page, Bates stamped TY 102
10 through 112, were made by Tony Ye?

11 MR. McLEOD: Objection. Mischaracterizes his
12 testimony.

13 THE WITNESS: My testimony is I don't know, I'm not
14 sure.

15 BY MR. PRAGLIN:

16 Q But they weren't your changes?

17 A Not to my knowledge. There's no -- there's no
18 markings -- I can tell you that I generally did not word
19 process when I was creating manuscripts. I would take a
20 printed version and write changes on it. So if this was
21 created by somebody at my office, it was not me.

22 Q And who else could it have been besides Tony Ye
23 or Bill Butler?

24 A It could have been Tom Flahive at somebody
25 else's -- you know, again, reflecting in a word

1 processing program what somebody else has written or
2 what the hand-edited changes were. I see on page T105
3 [sic] some written letters that doesn't appear to be in
4 my handwriting, so I'm just not sure.

5 Q Look at page TY 106, please, and the first full
6 paragraph, the last sentence, this is a shaded sentence
7 so apparently it's been added, and it says, "Thus, it is
8 apparent that the increased mortality rate was not due
9 to the contaminated water."

10 Do you see that?

11 A Yes.

12 Q Who added that sentence?

13 A Again, I'm not sure.

14 Q There's no document that indicates that
15 Dr. Zhang ever agreed with that statement, is there?

16 A I don't know. I didn't see anything that
17 satisfied you previously, so I'm assuming that I'm not
18 going to be able to point you to anything that would
19 satisfy you now.

20 Q Well, you're not aware of any document such as
21 that, are you?

22 A Again, I think I've explained now ten times or
23 more that the interactions with Dr. Zhang, because of
24 the language difference, were primarily done in oral
25 form, just to save time and for convenience among the

1 collaborators. There's no reason for us to document in
2 Chinese and English everything that we did as long as
3 the final modifications, the final version that we
4 intended to have -- that Dr. Zhang intended to publish
5 were what his final opinions were.

6 So whatever version you might point me to,
7 unless it's the final version and wording that appeared
8 in the article, my answer is whatever documentation in
9 Chinese there is what's in Tony's file or in the
10 McLaren/Hart file, I don't have access to all of that
11 information, and we wouldn't have been concerned about
12 generating proof to your satisfaction that every step of
13 the way was blessed by Dr. Zhang. We only have Tony
14 Ye's recall and his integrity to rely on for that, and I
15 completely trust his -- his integrity.

16 Q When you were working for PG&E while you were
17 with ChemRisk, you wanted PG&E to win that case, didn't
18 you?

19 MR. McLEOD: Objection. Argumentative and it's
20 outside the scope of the noticed deposition. It's Blue
21 Ribbon Panel and third-party authors.

22 BY MR. PRAGLIN:

23 Q You wanted them to win the case, didn't you?

24 MR. McLEOD: You don't have to answer that question.

25 BY MR. PRAGLIN:

1 Q Dr. Kerger, I'm entitled to probe your bias,
2 your credibility, your relationships with the company
3 that hired you to do all this work for a couple hundred
4 thousand dollars --

5 MR. McLEOD: Asked and answered in the first volume
6 of this deposition.

7 MR. PRAGLIN: No, I don't think that question has
8 been asked.

9 MR. McLEOD: Sure it was.

10 THE WITNESS: My job was to be on the team of
11 scientific advisors on chromium and other scientific
12 issues for the client, and no way would I ever try to
13 bend or change science to fit somebody else's means or
14 conclusions. It's not -- it wouldn't be scientifically
15 ethical and I wouldn't -- I wouldn't do that.

16 BY MR. PRAGLIN:

17 Q Well, wasn't one of your jobs for PG&E to
18 identify plausible versus unreasonable claims by the
19 plaintiffs in the Anderson lawsuit?

20 A That's -- that was part of my task.

21 Q Did you ever find one plausible claim of a
22 plaintiff in the Anderson lawsuit?

23 A Well, my opinion really wasn't so much the work
24 product, per se. But yeah, we advised PG&E on which
25 cases -- which specific health effects there was some

1 scientifically plausible evidence for. And I can tell
2 you that there were several.

3 Q I want to make sure I understood your answer.

4 Did you advise PG&E that some of the claims by
5 the plaintiffs in the Anderson lawsuit were plausible?

6 MR. WILKINSON: Objection. Misstates the testimony,
7 outside the scope of the permitted discovery.

8 MR. McLEOD: You don't have to answer that. It's
9 outside the scope of the discovery.

10 THE WITNESS: I was referring to advice we gave them
11 on which types of health effects were in the literature
12 and proven to be plausible end results of sufficient
13 exposure to the hexavalent chromium. And we offered
14 them our best scientific and most -- greatest integrity
15 of viewpoints on those issues in each case.

16 BY MR. PRAGLIN:

17 Q And didn't the contract that PG&E executed with
18 ChemRisk call for you to do work that understated the
19 amount of exposure that the plaintiffs in the Anderson
20 case received?

21 A No, that's ridiculous.

22 Q Have you read that contract?

23 A I don't know what you're referring to, but
24 that's -- that's ridiculous.

25 Q That wouldn't be objective science, would it?

1 A I don't know what you're describing so I can't
2 comment on whether it's objective or not.

3 MR. McLEOD: Would you like to have the document in
4 front of you that he's referring to?

5 THE WITNESS: If he would like me to comment on it,
6 I can do that.

7 BY MR. PRAGLIN:

8 Q Why don't you get Exhibit 17 out of the stack,
9 please.

10 Is that the contract that you have there?

11 A It's one of the contracts, yes.

12 Q If you look at page 3, Task 202, it says,
13 "Measure airborne Cr (VI) in a pilot study with swamp
14 cooler operation in an on-plume residence."

15 Did ChemRisk do that?

16 A We worked on that task, yes.

17 Q ChemRisk rigged up a swamp cooler out in
18 Hinkley and tested its operation, right?

19 A In collaboration with some other -- with
20 another firm, yes, we did.

21 Q **and it says right here in the contract that
22 the purpose of that experiment was to "Determine,
23 before" -- and "before" is underscored -- "the house
24 study, that Cr (VI) levels associated with swamp cooler
25 operation (the 'suspected' primary source in some

1 houses) are negligible."

2 Right?

3 A That's what it says.

4 Q That's not objective science, is it?

5 A Well, if you take it out of context, it might
6 have some connotation like that, but I -- I wouldn't
7 take it out of context.

8 Q You don't think that that particular task, Task
9 No. 202, was conditioned on finding that the levels
10 wouldn't be high enough to cause an adverse health
11 effect?

12 A Absolutely not.

13 Q How about Task 204 on that same page, it says,
14 "Develop quantitative estimates of historical Cr (VI)
15 emissions from the cooling towers and ponds. Purpose:
16 Attempt to eliminate these sources as potential
17 contributors to Cr (VI) exposure and isolate groundwater
18 as the only important source to consider."

19 Do you think that was objective science?

20 MR. WILKINSON: Outside the scope of this deposition
21 permitted discovery.

22 MR. McLEOD: Absolutely.

23 THE WITNESS: Taken out of context, you could
24 construe that, but all -- all of these tasks are based
25 on research that we had already done that identified

1 that these were -- these were things that were already
2 scientifically known facts that could be further
3 illustrated or supported with additional research so
4 that it was explicit to the situation in Hinkley, and
5 that's -- that was how we explained it to the client to
6 get authorization.

7 And that's -- again, that doesn't mean that we
8 didn't do proper science to prove what our conclusion
9 was, our advanced hypothesis on what the outcome was. I
10 mean an example is the swamp cooler study. It's
11 impossible for a swamp cooler to operate and to generate
12 aerosols because it would make the entire house wet and
13 it would cause flood damage rather than cooling in the
14 desert.

15 So it's stupid, preposterous to think that
16 chromium, which is a soluble chemical and has to be
17 aerosolized in order to be -- to get into the air from
18 such a cooling system, it's preposterous,
19 scientifically, to pose that swamp coolers were the bane
20 of existence of everybody in Hinkley. It's ridiculous.

21 And while this wasn't carefully worded to try
22 to avoid criticism from people like you, they
23 understood, the client, understood that it was our
24 intent to provide the type of scientific study and
25 evidence that would support what our initial hypothesis

1 and what the initial research we did had already led us
2 to believe.

3 BY MR. PRAGLIN:

4 Q I'm not sure what you meant by people like me.

5 A People with an agenda to prove that health
6 effects might have been generated from an exposure.

7 Now, you have that agenda. I have an agenda,
8 being a scientific advisor to any client, to keep the
9 integrity of what my advice is and what my planned
10 research is to be able to do future work for people.

11 And if there wasn't scientific integrity behind the work
12 that I did, I wouldn't be still working in my field.

13 So it's a huge risk for me to speculate and lie
14 about what might have happened or what did happen to
15 people with respect to causation of health effects, but
16 it's your job. And I understand that. And that's what
17 I work with every day is giving people, lawyers, judges,
18 juries, teaching them the scientific information on what
19 is real versus what speculated might be.

20 Q Do you allow for the possibility that you might
21 be wrong?

22 A I think you said before that, you know, it's
23 not a good idea to rely on possibilities for scientific
24 opinions and I certainly agree with that. I always
25 consider possibilities. I do research thoroughly, as

1 thoroughly as I can, to rule in or rule out what are the
2 serious considerations, and then I try to gather
3 evidence or I demonstrate through already collected
4 information what I believe is a scientifically credible
5 set of facts and opinions. So that's my job. I'm a
6 teacher of science and that's what I do.

7 Q Getting back to Exhibit 12, the drafts of the
8 Zhang '97 article and that last one that we were on,
9 which was TY 102 through 112, do you have that handy?

10 A I do.

11 Q If you just flip through the pages of the draft
12 of the Zhang '97 article you'll see that there are some
13 pretty heavy revisions on those pages, correct?

14 MR. McLEOD: Take your time and read the whole
15 thing, if we're going to get into the term "heavy" and
16 other such things.

17 THE WITNESS: It doesn't -- I mean I wouldn't call
18 it heavy. I'd say it was one round of editing from
19 somebody, and I'm not sure whose comments these are.
20 But now that I look back at them, I'm pretty certain
21 that it wasn't mine because on page 105 I've got a
22 handwritten comment on the side that says "no," that
23 does look like my handwriting. It's in conjunction with
24 some handwriting that's not mine on the middle paragraph
25 of that page, but I can only guess whose edits these

1 are, and I don't think you want me to guess.

2 BY MR. PRAGLIN:

3 Q So you're saying that the word "no" in the left
4 margin of the first paragraph on page TY 105, that
5 that's your writing?

6 A That looks like my writing.

7 Q And so is it your testimony that every one of
8 these changes on this November 25, 1995 draft, TY 102
9 through 112, was translated by Tony Ye for Dr. Zhang
10 over the phone without giving him a written copy in
11 Chinese of these changes?

12 A No, that's not my testimony.

13 Q That wouldn't be very believable as a process,
14 would it?

15 A You don't think so?

16 Q No.

17 MR. McLEOD: Objection. It's argumentative. You
18 don't have to answer that.

19 MR. PRAGLIN: No, I answered his question.

20 THE WITNESS: I don't know what you would believe is
21 the right process. We followed what we thought was a
22 reasonable collaboration with Dr. Zhang and saved a lot
23 of time by not having to go back and forth in written
24 Chinese characters to further interpretations in
25 English, and we thought it was reasonable and

1 appropriate and that's the way we did it.

2 BY MR. PRAGLIN:

3 Q But what I'm asking you is wouldn't it have
4 taken quite a long time to translate all of these
5 changes from this particular draft, TY 102 through TY
6 112, into Chinese from English over the phone long
7 distance between Tony Ye and Dr. Zhang?

8 A I don't know. It seems to me like Chinese
9 people can talk pretty fast, you know. Tony can
10 translate English sentences, you know, carefully or
11 through kind of repeatedly saying the right Chinese
12 words that he thinks he gets the right impression. I
13 don't think it's an inefficient or unbelievably long
14 process, that would not be my understanding.

15 Q And if I told you that there's over 100 changes
16 to this particular draft, dated November 25, 1995, your
17 testimony about that would be the same?

18 A About what?

19 Q About that being a reasonable method for making
20 the changes, having Tony Ye verbally describe each and
21 every change from English to Chinese for Dr. Zhang long
22 distance?

23 A I don't see how it matters, the number of
24 changes. Again, one word at a time or a few words at a
25 time doesn't seem like a laborious process to me.

1 I think the real issue would have been making
2 sure -- Tony making sure that they both understood each
3 other completely, and that's -- that really is the main
4 reason why we used Tony as both a technical expert on
5 the biostatistics on this exact topic that the paper was
6 written on instead of a, quote, certified translator who
7 wouldn't have that background, might have -- might know
8 seven languages and be able to write every single
9 character in Mandarin Chinese perfectly, but for him to
10 be able to interpret biostatistical or epidemiological
11 or toxicological issues back and forth in conversations
12 to Dr. Zhang, that's just not something you can
13 reasonably expect of a translator service.

14 Q On this November 25, 1995 draft, the second
15 listed author, Dr. Li, do you see that in the bold it's
16 been added as "recently deceased"?

17 A In the highlight, you mean?

18 Q Yes. The highlighted part indicates that
19 Dr. Li has been recently deceased.

20 A Right.

21 Q Was that the mistake that you were talking
22 about earlier where you were misinformed about whether
23 Dr. Li was dead or alive?

24 A Well, that shows that still at this point, that
25 was -- that was the understanding. Again, I can only

1 speculate as to who made the highlights, you know. It
2 seems consistent with the theory or the hypothesis that
3 Tony highlighted things that either needed to be further
4 discussed or needed to be corrected, and then we
5 ultimately made those corrections in later versions than
6 this, but I don't recall.

7 Q If you go down in Exhibit 12 to the draft
8 that's dated August 24, 1995 and it's Bates stamped
9 starting with WB 164, I have some questions for you.

10 A Okay.

11 Q There's actually two different modifications of
12 this particular version of the draft. One is WB 164
13 through 167, and then the next one is WB 175 through
14 179. Do you see that?

15 A Yes.

16 Q Would you look at those two drafts, please, and
17 tell me if any of the handwritten changes on that
18 version of the draft are yours.

19 A I recognize the writing on 164 through 167 to
20 be mine. And the other one is not mine, the 175 through
21 179. The few edits that are -- that appear on the first
22 page in 175 are not my writing.

23 Q So looking at this draft that's Bates stamped
24 WB 164 through 167, are you saying that all of those
25 handwritten changes on that draft are yours?

1 A To the best of my knowledge and recollection,
2 yeah, this is my -- my initial critique of the paper
3 that was sent by Tony to me at that time.

4 Q On page WB 166, in the "Discussion" section,
5 the fourth line from the bottom, there's a sentence that
6 says, "These results suggest that the high cancer death
7 rates in this area may be partially attributed to
8 lifestyle or environmental factors not related to the
9 chromium (VI) contamination."

10 Correct?

11 A Right.

12 Q And you crossed out the word "partially,"
13 didn't you?

14 A Yes.

15 Q Did you clear that change with Dr. Zhang?

16 A Well, I'm not sure that that change was
17 actually made. Again, these were my suggested edits,
18 and whatever the final version of the manuscript was is
19 what was adopted, but that was my suggestion at the
20 time.

21 Q Why did you do that?

22 A Because I thought it was scientifically true
23 and accurate.

24 Q Well, didn't you do that so that you could make
25 it a stronger statement for PG&E's position?

1 A No.

2 Q Look at the language that ended up in the '97
3 Zhang article on CHEMRISK 196 of Exhibit 1 for that
4 sentence.

5 A Which sentence are we talking about?

6 Q It's the middle column on page 319, the last
7 page of the article.

8 So what you're looking at now is the Zhang '97
9 article, the last page, alongside this page WB 166, and
10 would you agree that the statement that existed as of
11 August 24, 1995, before you made your change, was made
12 more definitive in terms of the conclusion that the
13 results suggesting that the high cancer death rates in
14 the area were attributed to lifestyle or environmental
15 factors not related to chrome (VI) contamination?

16 MR. McLEOD: Do you understand that question?

17 THE WITNESS: I think what you're saying is -- in
18 other words, was the waffle word "partially" in the
19 final manuscript and the answer is no, because I don't
20 know exactly who inserted that word or if it was Tony or
21 Dr. Zhang or Bill Butler in the collaborative process of
22 getting this manuscript together, but we agreed at the
23 end that, you know, these words that are in the final
24 manuscript were the appropriate ones.

25 So whatever it says in drafts is, again, a

1 collaborative process that we decide based on the
2 evidence that we have and the strength of information
3 that we have, what's going to be a supportable
4 conclusion and we make word changes. We make them
5 softer, we make them stronger, we have other people
6 review them and say is this too soft, is this too
7 strong, and the final conclusion is what it is in the
8 final paper.

9 And since the peer reviewers didn't have any
10 negative comments that I recall with respect to the
11 wording in the manuscript, it was accepted pretty much
12 as written, I have no reason to believe that that wasn't
13 reasonable and consistent with the science as presented
14 as -- as I originally thought.

15 BY MR. PRAGLIN:

16 Q The peer reviewers would have no reason to
17 expect that PG&E or ChemRisk were in any way involved in
18 this '97 Zhang paper, would they?

19 MR. McLEOD: Objection. Asked and answered.

20 THE WITNESS: That doesn't matter.

21 BY MR. PRAGLIN:

22 Q Isn't that a true statement, though, they'd
23 have no reason to expect that, would they?

24 A I have no way of knowing, but as a scientist,
25 generally when I do peer reviews of other peoples'

1 manuscripts, the authors and any affiliations of the
2 authors are taken off for the peer review process so
3 there's no bias one way or the other based on who they
4 are. So I would hope that the peer review process would
5 not try to insert such bias, hope and pray that that
6 kind of bias could be avoided in the scientific inquiry.

7 Q That's a bad practice, isn't it?

8 A What's that?

9 MR. McLEOD: Objection as to the term "bad
10 practice."

11 What are you referring to?

12 BY MR. PRAGLIN:

13 Q Identifying to the peer reviewers who the
14 authors were or whether, for example, the paper was
15 funded by a party with chromium problems in litigation?

16 A I don't think it's a bad process, per se. It's
17 something that, again, in the peer review process,
18 you -- it's unethical to insert bias in the peer review
19 process based on what your thoughts are about the
20 individual or what biases you think they might have. It
21 is your job -- it's my job when I do peer review, to
22 evaluate the science on face value and what other
23 insights it offers to me as a scientist and whether or
24 not all the conclusions that are stated are supported by
25 the information that's provided.

1 That would be totally unethical to consider
2 that because the author worked for PG&E, that their
3 statements were suspect. Totally inappropriate.

4 Q The title of the Zhang article appears to have
5 changed on the August 24, 1995 draft on page WB 164.
6 Why did you make that change?

7 A I think I just wanted to shorten it. Again,
8 some of these choices were kind of arbitrary or, you
9 know, not particularly based on any great scientific
10 reasons but more based on my interpretation of the
11 clarity and appropriate wording that would get the
12 messages across that I thought were supported by the
13 research, and that included all of the relevant facts
14 that the peer reviewers would need to know in order to
15 objectively agree with the conclusions that we made.
16 And so that's what this process was.

17 This was one of the first drafts over a period
18 of August, September, October, November, and then it was
19 submitted in December, so this is in month one
20 generation of the collaboration. There were three
21 additional months of further discussions, further word
22 changes, further expansion, that it -- that it generated
23 into a completely different manuscript in reality from
24 the original one based on the collaborative effort.

25 Q But you made the change to the title in this

1 version on WB 164 dated August 24, 1995, didn't you?

2 A Yeah, it looks like it. It wasn't the final --
3 it wasn't the final title to the paper, but it was my
4 suggestion at that time.

5 Q And this version dated August 24, 1995, it had
6 no map included in it, did it?

7 A No, it was only a table on page 166. And the
8 table, in my view, needed to include additional
9 information and expansion to, again, give peer reviewers
10 a more comprehensive set of information to be able to
11 judge whether or not the conclusions that we make were
12 scientifically valid; so we went from what I consider to
13 be a relatively skeletal version of the analysis in
14 August to the final submitted version in December that
15 was pretty much published as is.

16 Q And it was your idea to include the map in the
17 Zhang article, wasn't it?

18 A It probably was either -- yeah, it was probably
19 my idea or based on a collaboration with Gwen or with
20 Tony and Bill.

21 Q And it was your idea to expand Table 1 that's
22 shown on the August 24, '95 draft, right?

23 A That was my opinion, yes.

24 Q And you wrote, "Can we add a row to indicate
25 population size based on 1980 census," right?

1 A That's what it says, yes.

2 Q What did the 1980 census have to do with this
3 if you were examining exposures in 1965?

4 A I don't recall specifically, but it was
5 probably based on my conversations with Bill Butler at
6 that time as to what population data we did have access
7 to. It got -- I think illustrated very clearly what our
8 process was of going back and forth in the period of
9 August and September in our interactions with Dr. Zhang
10 to try to get those additional pieces of information,
11 like the estimates of the population size. And so since
12 that was an important part of our research track in
13 strengthening what -- in an epidemiology method sense,
14 strengthening what the basis was for those crude
15 estimates that were provided in the 1987 study, that
16 comment was in line with our research.

17 Q On page WB 166 of this August 24, 1995 draft of
18 the Zhang article, under the "Discussion" section,
19 there's a sentence five lines in that says, "The level
20 of the underground water contamination is positively
21 correlated with the distance from the alloy plant," and
22 it cites to Table 1, correct?

23 A Correct.

24 Q And then you crossed out the word "positively"
25 and you substituted in the word "negatively," didn't

1 you?

2 A Yes.

3 Q Now, that's 180-degree change from the meaning
4 of the sentence as written, isn't it?

5 A That was a -- a word interpretation issue that
6 we clarified in the later issues, or the later versions.
7 What it refers to is whether or not there was a
8 correlation that was expected; in other words, when you
9 say positive correlation, you can -- you can mean many
10 different things depending on what the axis is, okay,
11 the axis of variables that you're comparing.

12 So if the variable you're comparing is cancer
13 rate going up on the Y axis versus distance from the
14 facility going from zero to the furthest from the
15 facility. In this case, the closest -- closest villages
16 to the facility had the lowest cancer rate, so there was
17 a -- what we call a direct relationship, a positive,
18 quote/unquote, positive relationship between those two
19 variables. But it misconstrues what the real outcome
20 was, which is if you -- if it was due to the
21 contamination, you would have expected an inverse
22 correlation or a negative correlation. So I found that
23 confusing, and I think in later versions we went with
24 different nomenclature.

25 But basically what it came out to be is that

1 the correlation was a negative correlation. In other
2 words, the further you got from the facility in
3 distance, the greater the cancer risk and the closer you
4 got to the facility, which is, you know, if there was a
5 positive relationship with the contamination, you would
6 expect that to be higher. It was the exact opposite of
7 what you would expect.

8 Q But changing the word "positively" to the
9 word "negatively" is 180-degree change, isn't it, it's
10 the opposite?

11 MR. McLEOD: Objection. Asked and answered. The
12 witness has explained what he meant by that.

13 You don't have to answer that again.

14 BY MR. PRAGLIN:

15 Q Isn't it changing the word to mean the
16 opposite?

17 MR. McLEOD: Objection. Asked and answered.

18 The witness has already explained what he
19 meant.

20 THE WITNESS: Yeah, I think I explained it already.
21 It was a choice of wording that wasn't clear to me, and
22 that's why I suggested the change.

23 BY MR. PRAGLIN:

24 Q Now, if you weren't an author of the Zhang '97
25 article, what gave you the right to change "positive" to

1 "negative"?

2 MR. McLEOD: Objection. The question is
3 argumentative and he's already talked about how these
4 are drafts internally.

5 BY MR. PRAGLIN:

6 Q Go ahead, Dr. Kerger.

7 A I don't know how you would figure that I could
8 decide what was -- what would be the answer to that
9 question. It's a completely subjective question.

10 Q Well, just answer it your way.

11 MR. McLEOD: I believe he already has.

12 It's been asked and answered.

13 MR. PRAGLIN: No, he hasn't answered it.

14 Q What gave you the right to change "positive" to
15 "negative" if you weren't the author of the article?

16 MR. WILKINSON: Objection. Asked and answered,
17 misstates the document, assumes facts not in evidence.

18 MR. McLEOD: Also mischaracterizes his testimony.

19 THE WITNESS: We collaborated with Dr. Zhang on the
20 scientific issues, the epidemiological and
21 methodological issues that were presented in his initial
22 manuscript, he agreed to do that, and, therefore, I took
23 it as my right and as my role in working on the project
24 to provide whatever scientific input I found to be
25 accurate and appropriate.

1 So whether or not in your view I had the right
2 to do that doesn't matter because it wasn't you
3 interacting with another scientist and it wasn't you
4 making the decision based on your knowledge base and
5 training.

6 So that's -- my basis for making that change
7 was that we were collaborating on a paper, and when we
8 go through and try to refine science on draft versions
9 of manuscripts, I make changes that I think are
10 scientifically accurate and appropriate and that best
11 illustrate what I think the science represents.

12 BY MR. PRAGLIN:

13 Q On this page WB 166, the same page that you
14 were just looking at of this August 24, '95 draft, to
15 the right of Table 1 it appears as though you've written
16 something, "can we add"?

17 Do you see that?

18 A Yes.

19 Q Can you read that, please?

20 A "Can we add columns for the province average
21 rates and range of all provinces based on those maps."

22 Q What maps were you talking about?

23 A My recollection is that Bill was able to
24 identify cancer rates from the Chinese Atlas for at
25 least for general overall cancer death rate information,

1 and it was plotted on a map; so that was the basis for
2 that comment that -- again, I was trying to expand --
3 lead the group, the collaborative effort that we were
4 beginning at this point, down a path that laid out as
5 much of the science and scientific considerations that I
6 considered to be appropriate and that I thought would
7 pass the peer review process. And that was, again,
8 adding that information about cancer rates in the
9 province and in the -- all of China I thought was an
10 appropriate suggestion.

11 Q Were all of your changes on this August 24,
12 1995 draft approved by Dr. Zhang?

13 MR. WILKINSON: Objection. Asked and answered,
14 vague.

15 THE WITNESS: I don't know. It's -- again, it was a
16 collaborative process. Tony went back and forth with
17 any suggested changes that we had and discussed any
18 scientific issues that Dr. Zhang had and it was a
19 synthesis and a collaboration over a period of months.

20 So whether or not explicitly any or all of
21 these changes were adopted was an end result of that
22 collaboration and, frankly, it doesn't matter to me if
23 all of these changes were -- or suggestions were made,
24 because we were very early on in the process at this
25 point.

1 BY MR. PRAGLIN:

2 Q There's a draft in here dated September 6,
3 1995, it starts with WB 175, and I think you said that
4 you might be able to identify whose handwriting it was
5 making those changes. Whose handwriting do you think it
6 is?

7 MR. WILKINSON: Objection. Calls for speculation.

8 MR. McLEOD: Either you know or you don't know.

9 Don't speculate.

10 THE WITNESS: Well, since these came from Butler's
11 file, I would presume they are Butler but I have no way
12 to confirm that because I don't know his writing style
13 that well.

14 BY MR. PRAGLIN:

15 Q This morning I asked you about the documents
16 you reviewed since your December 2002 deposition and you
17 listed a whole bunch for me. Among those documents, did
18 you review Dr. Paustenbach's December 17, 2002
19 deposition transcript?

20 THE WITNESS: Did you send me that?

21 MR. McLEOD: I have no recollection. I have no
22 idea.

23 THE WITNESS: I don't recall.

24 BY MR. PRAGLIN:

25 Q In that same exhibit, Exhibit 12, there's a

1 draft dated -- well, maybe it's not dated but it's the
2 one that begins with WB 200. Do you see that?

3 A Yes.

4 Q I don't see a date on it, but it's got some
5 handwriting on the first page. Do you see that?

6 A I do.

7 Q Whose handwriting is that, do you know?

8 MR. WILKINSON: Objection. Calls for speculation.

9 THE WITNESS: No, I don't know.

10 BY MR. PRAGLIN:

11 Q It's not you?

12 A It's not me.

13 Q It's not Gwen Corbett, is it?

14 MR. WILKINSON: Objection. Calls for speculation.

15 THE WITNESS: I don't know.

16 BY MR. PRAGLIN:

17 Q And then on Table 1 of that same draft, this is
18 now on page WB 202, there's some numbers that are
19 inserted into Table 1. Do you see that?

20 A Yes.

21 Q Somebody's interlineated handwriting on top of
22 the printed numbers in Table 1, correct?

23 A Yes.

24 Q Is that your writing?

25 A No.

1 Q And if you'll move forward to the draft that's
2 Bates stamped WB 215 in that stack, please. I think
3 it's the last one. Do you have that?

4 A Yes.

5 Q There's some handwriting on that draft, on the
6 various pages of that draft. Is that your handwriting?

7 A Nope.

8 Can we take a break?

9 MR. PRAGLIN: Sure.

10 THE VIDEOGRAPHER: Off the record. The time is
11 4:39 p.m. This is the end of videotape number three in
12 the continuing Volume 2 examination of Brent Kerger.

13 (Recess.)

14 THE VIDEOGRAPHER: We are back on the record.
15 The time is 4:50 p.m. This is the beginning of tape
16 number four in the continuing Volume 2 examination of
17 Brent Kerger.

18 BY MR. PRAGLIN:

19 Q Dr. Kerger, your lawyer was good enough to give
20 me a copy of your invoice dated February 28, 2003 for
21 the time that you've spent in preparing for this
22 deposition, at least in preparing for your first
23 deposition, I'm going to attach this as Exhibit 24.

24 (Plaintiffs' Exhibit 24 was
25 marked for identification, a copy of

1 which is attached hereto.)

2 BY MR. PRAGLIN:

3 Q Do you have the equivalent document from
4 December of 2002 until today?

5 MR. McLEOD: Objection. Asked and answered.

6 THE WITNESS: This is the compilation through the
7 5th. I've done partial compilation of other time, I
8 don't recall exactly how far, probably through the end
9 of December at this point.

10 BY MR. PRAGLIN:

11 Q Would you have any problem in sending me
12 through your lawyer a compilation through today, just
13 forwarding it in the mail?

14 A If that's what my lawyer wants me to do, I will
15 probably comply.

16 MR. PRAGLIN: Mr. McLeod, is that okay?

17 MR. McLEOD: I'll consider it.

18 MR. PRAGLIN: That would be in lieu of me coming
19 back to ask you about the time that you spent.

20 Let's mark as Exhibit 25 a document that is two
21 pages in Chinese, TY 53 and 54 along with, again, our
22 Chinese translator's translation in English.

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

1 MR. PRAGLIN: I'm looking for copies for counsel.

2 One second. Maybe they're just not clipped.

3 Here we go. Here's a copy for you, Mr. McLeod.

4 Q On Exhibit 25, Dr. Kerger, I'm directing your
5 attention to the English translation, the first page of
6 it, item No. 4, I'd like you to take a moment and read
7 that, please.

8 A Okay.

9 Q Do you see the underlined sentence that the
10 translator has written, "This fact reveals that
11 lifestyle of residents and environmental factors may be
12 the cause of variation in mortality"?

13 A I see that.

14 Q The translator is telling us that that sentence
15 in Chinese has been underlined and is marked by
16 Dr. Zhang to be deleted and replaced with the following
17 sentence that says, "The cause of this variation in
18 cancer mortality has yet to be further studied," and the
19 sentence that they're talking about is on page TY 53,
20 the first paragraph, the last sentence. And Dr. Zhang,
21 you can see, has handwritten in something at the end of
22 the paragraph. Do you see that?

23 A I don't know if he's written that or not, but
24 yeah, I would assume that you're representing it
25 correctly.

1 Q Was it ever brought to your attention that
2 Dr. Zhang had asked that that sentence that was
3 underscored that says "This fact reveals that lifestyle
4 of residents and environmental factors may be the cause
5 of variation in mortality," that Dr. Zhang asked that
6 that sentence be deleted?

7 A Yes, I'm sure it was.

8 Q Now, if you look at Exhibit 1, which is the
9 ChemRisk production, and if you look at the Zhang '97
10 article, page CHEMRISK 196, which is the last page of
11 the Zhang article, in the center column, the sentence
12 that we read before that says, "Nonetheless, these
13 results suggest that lifestyle or environmental factors
14 not related to the Cr+6 contamination are the likely
15 source of the variation in these cancer rates."

16 Do you see that?

17 A Yes.

18 Q That sentence was not deleted from the final
19 article, was it?

20 A Obviously not. It wasn't the same sentence
21 that we're talking about. The sentence that Zhang
22 added, based on this translation, if it's correct, in my
23 view, corresponds to the very last sentence of the paper
24 which says, "Additional studies to identify these
25 factors are recommended."

1 So we completely included what his suggestion
2 was. And I'm sure that his suggestion to delete these
3 was kind of a further clarification of his view that we
4 didn't really know what environmental factors were
5 responsible but that chromium wasn't it.

6 So the statements -- the statement in the final
7 paper is completely consistent with what he agreed to.
8 It says there is no positive correlation between cancer
9 mortality and distance of the village to the pollution.

10 Q Here's what I don't understand, if Dr. Zhang
11 asked that this sentence about lifestyle of residents
12 and environmental factors may be the cause of variation
13 of mortality, be deleted, why didn't you delete it?

14 MR. WILKINSON: Objection. Asked and answered,
15 argumentative.

16 Every time you get an answer you don't like
17 today, you ask the same question again.

18 MR. McLEOD: This is dated September 6, 1995.

19 MR. PRAGLIN: Please don't coach the witness.

20 MR. McLEOD: I'm not coaching the witness. This is
21 repetitive, it's harassing. The guy sat here and had
22 you assault his integrity for two days, enough of it.

23 BY MR. PRAGLIN:

24 Q If he asked that it be deleted, why didn't you
25 delete it?

1 MR. WILKINSON: Objection. Asked and answered,
2 misstates the testimony, argumentative.

3 THE WITNESS: We considered all of his comments and
4 worked through them individually.

5 BY MR. PRAGLIN:

6 Q Where is there a document that says that he
7 ever changed his mind and didn't want that sentence
8 deleted?

9 MR. WILKINSON: Objection. Asked and answered,
10 misstates the testimony.

11 MR. McLEOD: Join in that.

12 THE WITNESS: I've been through this so many times
13 that it's getting ridiculous.

14 BY MR. PRAGLIN:

15 Q There is no document, is there, Dr. Kerger?

16 A There wouldn't be -- there wouldn't be any need
17 for such a document, nor have I seen such a document,
18 nor would I direct somebody to create such a document.
19 It's silly.

20 MR. PRAGLIN: Let's mark as Exhibit 26 a November
21 14, 1994 letter to you, Dr. Kerger, from Caroline Dee of
22 Haight, Brown & Bonesteel.

23 (Plaintiffs' Exhibit 26 was
24 marked for identification, a copy of
25 which is attached hereto.)

1 BY MR. PRAGLIN:

2 Q Did you receive Exhibit 26?

3 A I would assume I did. I don't really have a
4 specific recollection of it, but it's consistent with
5 what we would send to the attorneys as far as scope of
6 work and schedule and cost estimates and what they would
7 turn around into a contract that would be signed by the
8 client and by the company contract's representative,
9 Rich Caton.

10 Q So Exhibit 26 would be an update to the
11 contract between ChemRisk and PG&E's lawyers Haight,
12 Brown & Bonesteel?

13 A Looks like it. I don't know if it's an update,
14 it's November of 1994, so it was probably, again, one of
15 the initial contracts.

16 Q Well, it reflects in the second paragraph an
17 increase in the amount of money that ChemRisk was
18 earning by \$80,500 to increase it to \$325,500 on the
19 Anderson case, right?

20 A Well, that's what it seems to say.

21 Q And on the second page on Task 105, part of
22 what PG&E was paying you for was to translate the Wang
23 study, right?

24 A I'm sorry, where are you referring?

25 Q Page 2 of Exhibit 26, Task 105, says,

1 "Translation and analysis of Chinese study," and it
2 references the Wang study, correct?

3 A Yes.

4 Q And then if you turn the page to page 3, Task
5 302, PG&E is paying ChemRisk to do "Preliminary
6 Pharmacokinetics Study of Chromium VI in Tap Water,"
7 right?

8 A Yes.

9 Q And it says under "Schedule," "The study is
10 already in progress and is our highest priority. All
11 analyses will be conducted on a rush basis," correct?

12 A That's what it says.

13 Q And was this one of the those human
14 experimentation studies where Dr. Paustenbach and his
15 colleagues were drinking chromium for PG&E?

16 A We weren't drinking for PG&E, but, yes, it was
17 one of the studies that we had ultimately done and
18 published as part of our research on chromium.

19 Q PG&E was paying you to drink the chromium,
20 right?

21 MR. McLEOD: Objection. Argumentative, misstates
22 his testimony. It's also beyond the scope of the
23 deposition, which has to do with the Blue Ribbon Panel
24 and contact with third-party authors.

25 THE WITNESS: They did not pay us to drink chromium,

1 no.

2 BY MR. PRAGLIN:

3 Q Did they pay you for the research on your
4 drinking the chromium?

5 A They -- yeah, they paid us for what tasks we
6 completed, and the costs here don't correspond to time
7 that we billed for drinking chromium. It was time and
8 laboratory costs that we estimated to complete the
9 study, compilation of the information and the
10 interactions with the human use committee and so forth.

11 Q Why was this human chromium experiment the
12 highest priority at this time?

13 MR. McLEOD: Objection. This is beyond the scope of
14 the deposition.

15 You don't have to answer that.

16 BY MR. PRAGLIN:

17 Q Do you know, Dr. Kerger?

18 MR. McLEOD: Wait.

19 This has nothing to do with the Blue Ribbon
20 Panel or contact with third-party authors.

21 You don't have to answer that.

22 BY MR. PRAGLIN:

23 Q I'm trying to avoid bringing you back here,
24 Dr. Kerger. Can you answer the question, please?

25 A Well, oral -- the thresholds for oral uptake of

1 hexavalent chromium was a central scientific issue in
2 our judgment regarding whether or not the claims -- some
3 or all of the claims were valid pertaining to the health
4 effects from ingestion exposures, and that's what we
5 advised the client and we designed studies to fill data
6 gaps in that arena.

7 Q Nobody had ever previously experimented on
8 humans in drinking chromium, had they?

9 A No, that's not true.

10 Q Who previously had experimented on themselves
11 in drinking chromium?

12 A Well, there were two -- two primary studies
13 that we relied on as the basis to kind of evaluate what
14 the premise was in humans of doing these further
15 studies. One was the De Flora, et al., 1987 paper which
16 -- in which humans were used in studies to evaluate
17 reduction of hexavalent chromium to trivalent chromium
18 in stomach juices from humans. And the other was a
19 study by Donaldson and Barreras, which was a human
20 volunteer study as well. That was done, I think, in
21 1966.

22 MR. PRAGLIN: Let's mark as Exhibit 27 a page from
23 Tony Ye's file Bates stamped TY 100.

24 (Plaintiffs' Exhibit 27 was
25 marked for identification, a copy of

1 which is attached hereto.)

2 BY MR. PRAGLIN:

3 Q Now, this appears to be a letter dated November
4 21, 1995 sent from the McLaren/Hart International
5 Shanghai office. Do you see that?

6 A Yes.

7 Q And it's sent to a Chris Daniels, correct?

8 A Yes.

9 Q And you are cc'd on that, the second cc,
10 correct?

11 A That appears to be the case.

12 Q Did you get a copy of this letter in the
13 November '95 time frame?

14 A I really don't remember if I received it or
15 not, it was just too long ago. My only recollection is
16 that this issue about whether or not Dr. Zhang got the
17 pay that he was promised under the contract, that we
18 followed up with it and resolved it to his satisfaction.

19 Q Let's mark as Exhibit 28 an e-mail from your
20 file dated June 11, 2001.

21 (Plaintiffs' Exhibit 28 was marked
22 for identification, a copy of which is
23 attached hereto.)

24 BY MR. PRAGLIN:

25 Q On the top portion of the e-mail it appears to

1 be an e-mail from Dennis Paustenbach to you dated June
2 11, 2001, correct?

3 A Yes.

4 Q And Dr. Paustenbach is writing to you saying
5 forward analysis of chrome (VI), right?

6 A Yes.

7 Q And is this one of the e-mails that
8 Dr. Paustenbach sent you regarding his work on the Blue
9 Ribbon Panel on chromium (VI) in the year 2001?

10 A It looks familiar, but I don't recall. I don't
11 recall it specifically. But again, it seems to document
12 that, yes.

13 Q Did you know about the Blue Ribbon Panel before
14 receiving Exhibit 28?

15 A I'm not sure when I -- when Dennis told me
16 about it. It was probably before this.

17 Q How did it come up?

18 A I don't remember.

19 Q What did he tell you?

20 A Well, I did understand that he was a -- he was
21 a member of an expert panel that was, along with other
22 academicians and individuals who had chromium expertise,
23 a review panel for the State of California in regard to
24 the oral carcinogenicity of chrome (VI).

25 Q In that time frame, were you still working with

1 Dr. Paustenbach on some chrome-related matters?

2 A You mean getting paid to work for him?

3 Q No, I mean collaborating on articles or working
4 for clients or doing some sort of scientific
5 consultation that he was also involved in regarding
6 chromium.

7 A I wasn't doing any work with him, what I would
8 consider work, in other words, billing clients for my
9 time or doing anything that I -- that I represented or
10 got paid for, but we were working on manuscripts that
11 concerned chromium for the last few years. So I'm not
12 sure at this particular time point whether we were
13 actively collaborating on anything, but it's possible.

14 Q During the year 2001, Dr. Paustenbach was
15 writing an article called, "Is Chromium 6 carcinogenic
16 by ingestion? A weight-of-the-evidence review article."

17 Are you aware of that article?

18 A Yes.

19 Q He wrote it with Dr. Proctor and Dr. Otani and
20 others, Dr. Finley. Do you know which one I'm talking
21 about?

22 A Deb Proctor is the lead author, I think, yes.

23 Q Yes.

24 A Yes, I know that one.

25 Q Did you have any involvement in that paper?

1 A No.

2 Q Did you know that that -- sorry?

3 A I didn't have any role in writing that, nor did
4 I peer review it.

5 Q Did you know that that paper was sponsored by
6 Merck?

7 A I didn't know it at the time that it was
8 initially generated, but I found out through this
9 process, through reading Deb Proctor's deposition.

10 Q And you understood the term "sponsored" meant,
11 Merck paid for that work, right?

12 MR. McLEOD: Objection. Way beyond the scope of the
13 noticed deposition, which is the Blue Ribbon Panel and
14 third-party authors.

15 THE WITNESS: I understand what you're meaning by
16 "sponsor," yes.

17 BY MR. PRAGLIN:

18 Q Let's attach as Exhibit 29 --

19 Is that the right number?

20 COURT REPORTER: Yes.

21 BY MR. PRAGLIN:

22 Q -- your response to Exhibit 28 and then
23 Dr. Paustenbach's response to you.

24 (Plaintiffs' Exhibit 29 was
25 marked for identification, a copy of

1 which is attached hereto.)

2 BY MR. PRAGLIN:

3 Q And if we could, Dr. Kerger, let's read this
4 e-mail from the bottom up. Do you see in the middle of
5 this page --

6 A The first page?

7 Q Yes. Do you see in the middle of this first
8 page that you respond to Dr. Paustenbach's e-mail, and
9 on June 14, 2001, you sent him an e-mail discussing a
10 concern that you had regarding the ion chromatography
11 method?

12 A Yes.

13 Q And then he sent you a response on June 17,
14 2001, right?

15 A Yes.

16 Q And Dr. Paustenbach wrote to you on June 17,
17 2001, "I have brought your concerns to the panel and
18 will keep you posted."

19 Do you see that?

20 A Yes.

21 Q Did he ever keep you posted on his work on the
22 Blue Ribbon Panel?

23 A I don't think he was talking about the Blue
24 Ribbon Panel in general when he said, "I will keep you
25 posted," he was talking about my thoughts that I -- I

1 had a short paragraph on what I thought was potential
2 problems with trying to detect chrome (VI) at very low
3 concentrations in water. So I didn't infer that from
4 that statement, nor did I -- I don't recall ever hearing
5 back from him on that particular issue either; so he
6 didn't -- he didn't keep me posted on that particular
7 issue.

8 Q Did there ever come a time where
9 Dr. Paustenbach told you that he had withdrawn from the
10 Blue Ribbon Panel?

11 A I learned that -- I don't remember when I
12 learned that because it kind of all blends together, but
13 it was about the same time that the subpoenas came
14 around.

15 MR. McLEOD: By that, you meant the subpoena for
16 your deposition?

17 THE WITNESS: Right, the subpoena for my deposition
18 related to this set --

19 MR. PRAGLIN: Let's mark as Exhibit --

20 THE WITNESS: -- of depositions.

21 MR. PRAGLIN: I'm sorry. I didn't mean to cut you
22 off. Were you finished?

23 THE WITNESS: Yes.

24 BY MR. PRAGLIN:

25 Q Let's mark as Exhibit 30 another e-mail from

1 your file.

2 (Plaintiffs' Exhibit 30 was
3 marked for identification, a copy of
4 which is attached hereto.)

5 BY MR. PRAGLIN:

6 Q Is Exhibit 30 a string of e-mails between you
7 and Dr. Paustenbach?

8 A Yes, appears to be.

9 Q And he was asking that you peer review two of
10 his chapters from the Blue Ribbon Panel report, right?

11 MR. WILKINSON: Objection. Vague as to "peer
12 review."

13 THE WITNESS: He asked me to review them, yes.

14 BY MR. PRAGLIN:

15 Q On July 3, 2001 in the middle of the page on
16 Exhibit 30, he says, "Subject, Re: Request for peer
17 review," right?

18 A That's what it says.

19 Q And he says at the bottom of the page, "I would
20 appreciate it if you would read my two mini-chapters
21 (they are only two pages in length without references),"
22 and then he goes on, correct?

23 A Yes.

24 Q And on the second page of this e-mail, Exhibit
25 30, he says, "Since each of you has been intimately

1 involved in the Chromium research that we have conducted
2 over the past five years, I wanted to solicit your
3 input."

4 He's writing to you and Dr. Finley, right?

5 A Among others, yes.

6 Q The "others" would be Deborah Proctor and Sean
7 Hayes, right?

8 A Yes.

9 Q And all of those people, Proctor, Hayes and
10 Finley, they're all at Exponent, right?

11 A Yes.

12 Q Dr. Paustenbach's company, right?

13 A Yes. I mean it's not his company, but they all
14 belong to it.

15 Q And so he says on the second page of Exhibit
16 30, "As an aside, I am amazed at what we were able to
17 accomplish over such a VERY short period of time during
18 our evaluation of the 'New Jersey Department of Health'
19 urine study and the PGE work. Really a remarkable
20 achievement...and not quite all of it was even
21 published."

22 Do you see that?

23 A I do.

24 Q Was there a joke in there?

25 A No.

1 Q What does that reference to, "not quite all of
2 it was even published" mean?

3 MR. McLEOD: Objection. Calls for speculation.
4 This was Dennis Paustenbach. You have to ask
5 Paustenbach.

6 THE WITNESS: Its face value. Not quite all of it
7 is published, that's just what it is.

8 BY MR. PRAGLIN:

9 Q And so he asked you to get back to him the next
10 day, 4th of July, so that he could respond to the Blue
11 Ribbon Panel, right?

12 A That was his request. I think the 4th of July
13 fell on a Wednesday or something that year, so it was
14 kind of a middle-of-the-week thing; but yeah, that was
15 his request.

16 Q But you faxed him back on the 5th of July and
17 you say, "I faxed my edits and suggestions to your
18 office," right?

19 A Right.

20 Q Now, we didn't get those edits or suggestions.
21 Do you have them somewhere?

22 A No. I looked through my files. I didn't keep
23 them.

24 Q Well, what did you suggest, or what did you
25 edit?

1 A I edited whatever the first attachment was, the
2 first mini chapter that he called, that he sent with
3 this e-mail. And as I customarily do, I probably made
4 hand edits and faxed them to whatever -- whatever I
5 thought would be corrections or questions or suggestions
6 on what he wrote. I don't have any recollection of
7 specifics.

8 Q And you didn't keep a hard copy; is that right?

9 A That's correct.

10 Q And I take it you deleted your electronic copy?

11 A That's correct.

12 Q I'm going to shift gears for a second and get
13 another document out.

14 Let's mark as Exhibit 31 a document that's been
15 Bates stamped CHEMRISK 228 through 229.

16 I think it's from your file.

17 (Plaintiffs' Exhibit 31 was
18 marked for identification, a copy of
19 which is attached hereto.)

20 BY MR. PRAGLIN:

21 Q What is Exhibit 31, please?

22 A It looks like a table of contents.

23 Q To what?

24 A I assume it's for a notebook that contains
25 these -- these items, these papers.

1 Q Is the handwriting on Exhibit 31 yours?

2 A Looks like mine. It looks like my handwriting,
3 yes.

4 Q So you wrote at the top of Exhibit 31 that
5 these are PG&E-related manuscripts, correct?

6 A Yes.

7 Q And does that apply to all of the documents on
8 Exhibit 31?

9 A Well, it loosely applies with the other
10 explanations I've given earlier, that some of this --
11 some of this research is after -- after the PG&E work
12 was already completed and was a further collaborative
13 effort that didn't have to do with PG&E, but much of
14 this was -- the original research was funded by PG&E.

15 MR. PRAGLIN: Let's mark as Exhibit 32 a page that's
16 been Bates stamped CHEMRISK 230, and there's an addition
17 to this, Dr. Kerger, that is on CHEMRISK 231 so I'm
18 going to ask you to look at that, I think it's in
19 Exhibit 4 to your deposition. It's two lines. You can
20 actually see my copy if you like, but it looks like we
21 actually left this off.

22 (Plaintiffs' Exhibit 32 was
23 marked for identification, a copy of
24 which is attached hereto.)

25 BY MR. PRAGLIN:

1 Q What I've just put in front of you is a
2 document Bates stamped CHEMRISK 230. There was a second
3 page to this that was held up for a time pending a
4 ruling from our judge, and after the ruling by the
5 judge, PG&E produced the second page, and it's CHEMRISK
6 231, and I'm going to put that second page in front of
7 you just so you can see it, it's two lines.

8 A I'm sorry, what was your question?

9 Q I want you to look at the document right now.

10 A Okay.

11 Q But when you finish reading that, I'm telling
12 you it continues on page CHEMRISK 231, which I'm putting
13 in front of you now in the exhibit book, it's part of
14 Exhibit 1.

15 A Okay.

16 Q Do you see that it actually continues on to
17 that page, CHEMRISK 231?

18 A Yes.

19 Q Who prepared Exhibit 32?

20 MR. McLEOD: I've got an issue here we need to work
21 through. I have the exhibits in front of me and
22 CHEMRISK 00230 is reproduced and Bates stamped is not
23 this.

24 MR. PRAGLIN: That's interesting.

25 MR. BIELKE: That's because half of the judge's

1 ruling you were ordered to produce something more and
2 PG&E actually produced it for you.

3 MR. McLEOD: Okay. It's a different page. All
4 right.

5 MR. BIELKE: Do you remember that?

6 MR. McLEOD: No, but, you know -- okay, go ahead. I
7 see now that the title's the same, just different font
8 and format.

9 MR. BIELKE: Because of the redaction, we had the
10 Court ruling and she ordered it; so we reproduced it for
11 you.

12 MR. McLEOD: Okay. Go ahead.

13 BY MR. PRAGLIN:

14 Q Who prepared Exhibit 32?

15 A This was a critique prepared by my office in
16 Irvine.

17 Q Was it prepared for PG&E in the Anderson
18 litigation?

19 A Yes, probably.

20 Q So this was part of the work that PG&E paid you
21 to do in the Anderson litigation?

22 A This was part of the briefing notebooks that
23 were for the attorneys, yes.

24 Q The authors listed on Exhibit 32 are H. Gibb
25 and C. Chen, correct?

1 A Yes.

2 Q Did you consult with either of those two
3 scientists in your work on the Anderson case?

4 A No.

5 Q Do you know who they are?

6 A I don't know them personally, but I think
7 they're associated with Cal EPA.

8 Q And the authors apparently wrote, and you
9 summarize in item No. 3 that the Zhang and Li '87 study
10 concludes, quote, it would seem prudent for public
11 health purposes to believe that a potential for
12 carcinogenic risk from hexavalent chromium by ingestion
13 may exist but that the risk cannot be quantitated at
14 this time. Further research is necessary in this area,
15 end quote; is that correct?

16 A That's what it says.

17 Q And it references a highlight No. 2, correct?

18 A Yes.

19 Q Is that a reference to another
20 ChemRisk-authored document?

21 A No, the highlights refer to -- we would attach
22 the paper behind this critique and then highlight and
23 number sections that were text like that that we found
24 important for the attorneys to read or be able to refer
25 to if they wanted to use that statement. So "highlight"

1 just refers to physically highlighting that on the
2 article.

3 Q So is this document, Exhibit 32, something that
4 was prepared for PG&E's lawyers to use in the Anderson
5 litigation?

6 A It was a work product for the attorneys, yes.

7 Q That's why it's labeled "Work Product"?

8 A That makes sense, yeah.

9 Q On the bottom of the first page, it says,
10 "ChemRisk Critique," and there are two items, correct?

11 A Yes.

12 Q Does that mean that was your opinion about that
13 particular study?

14 A These were our -- yes, our insights -- further
15 insights that we thought were appropriate for the --
16 what the science meant in this -- or to these clients.

17 Q And so at least as of December 5, 1994 when
18 this document was prepared, you believed that the only
19 human ingestion study that indicated a potential risk
20 for hexavalent chromium referenced in this review was
21 the Zhang and Li 1987 study, correct?

22 A Well, the statement that I believe you're
23 referring to, which is the first sentence under No. 2 of
24 the ChemRisk critique, that's a correct statement at
25 that time.

1 Q And the last sentence of that paragraph where
2 ChemRisk writes, "Based on these limitations and the
3 fact that this is the only study of chromium ingestion
4 in humans, there is not sufficient evidence to classify
5 hexavalent chromium as an oral carcinogen."

6 That was also written by ChemRisk for PG&E's
7 lawyers to use in the Anderson litigation?

8 MR. WILKINSON: Objection. Misstates the testimony.

9 THE WITNESS: That was our conclusion, our
10 scientific evaluation of the literature at that point,
11 yes.

12 BY MR. PRAGLIN:

13 Q Now, the middle of that second paragraph where
14 ChemRisk writes, "The authors admit that further
15 research is required in this area and that the study was
16 not 'a rigorous examination of epidemiologic data.'"
17 Whose statement are you putting in quotes? Is that a
18 statement attributed to Zhang and Li or to Gibb and
19 Chen?

20 A I don't have the paper in front of me, but my
21 -- based on the way it's quoted, it would likely be a
22 quote from the Gibb and Chen paper.

23 Q Is that Gibb and Chen paper something that's in
24 the open literature?

25 A Yes, it's in -- the source is identified on

1 230, Science of the Total Environment, 1989.

2 Q And you never consulted with Gibb and Chen in
3 doing your work on the '97 Zhang article?

4 A I didn't find any need to do that. There was
5 no -- Gibb and Chen are regulatory scientists that
6 really didn't have any original research in chromium and
7 were reviewers commenting on regulatory approaches that
8 Cal EPA -- or they might have recommended to Cal EPA for
9 policy purposes.

10 As far as I know, and based on all the review
11 I've done, they've never really put together any
12 original research on chromium that I would be consulting
13 them for.

14 MR. PRAGLIN: Let's attach as Exhibit 33 a page
15 Bates stamped CHEMRISK 232.

16 (Plaintiffs' Exhibit 33 was
17 marked for identification, a copy of
18 which is attached hereto.)

19 BY MR. PRAGLIN:

20 Q And it's the same situation on CHEMRISK 232,
21 Dr. Kerger, if you wouldn't mind taking a look at
22 Exhibit 1 and look at page CHEMRISK 233 because that's
23 the end of the document that the Court ordered be
24 produced.

25 A Okay.

1 Q Who drafted Exhibit 33?

2 A This would have been drafted in my office.
3 Irvine.

4 Q By who?

5 A I'm not sure who created it, but I would have
6 reviewed the draft.

7 Q And again, this was prepared for PG&E's lawyers
8 to use in the Anderson chromium litigation?

9 MR. WILKINSON: Objection. Misstates the testimony.

10 THE WITNESS: This looks like a copy of the briefing
11 materials we did produce for -- only for the attorneys
12 to use.

13 BY MR. PRAGLIN:

14 Q You didn't intend for me to get this, did you?

15 MR. McLEOD: Objection. It's argumentative.

16 The witness has already testified he prepared
17 it for the attorneys.

18 THE WITNESS: It was my understanding it was
19 prepared for the attorneys.

20 BY MR. PRAGLIN:

21 Q The PG&E attorneys, right?

22 A I don't know how they intended to ultimately
23 use it or whether they intended to turn it over, but I
24 didn't think they would.

25 Q And this document, being that you gave it to

1 PG&E's attorneys for use in the Anderson arbitration,
2 everything that you put in here would be true and
3 accurate, right?

4 A As best we could do it, yes.

5 Q In the section entitled "Overview" on Exhibit
6 33, you have some bullet items. The third bullet item
7 down, you write, "Some occupational exposure studies
8 have suggested that CrVI may be responsible for the
9 development of a variety of gastrointestinal tumors;
10 however, confounding factors were not accounted for in
11 these studies and the studied workers were chronically
12 exposed to relatively high concentrations of chromium,"
13 correct?

14 A That's what it says.

15 Q That was true?

16 A That was a reasonable representation in my view
17 of what the literature said.

18 Q What occupational studies were you referring
19 to?

20 A I don't know. I would have to look at the
21 entire original document and collection of articles to
22 give you any detailed answer on that.

23 Q So as you sit here now you can't name any one
24 of those articles?

25 A Not off the top of my head. I wouldn't want to

1 guess.

2 Q How many were there?

3 A Epidemiology studies?

4 Q Yes.

5 MR. McLEOD: This is getting beyond the scope of the
6 noticed deposition, which is Blue Ribbon Panel and
7 contacts with third-party authors.

8 THE WITNESS: There were probably less than 20.

9 BY MR. PRAGLIN:

10 Q That would be a lot, wouldn't it?

11 MR. McLEOD: Objection. That's argumentative.

12 THE WITNESS: I'm saying there were perhaps 20
13 epidemiology studies. I didn't say -- I didn't mean
14 that there were 20 that said there were gastric tumors,
15 but that was -- the weight of evidence we could look at
16 was all the studies. And some of those studies, which
17 didn't create a weight of evidence, suggested that
18 gastrointestinal tumors might be elevated in certain
19 groups, but there was not consistency across those
20 studies, and so that was the reason we still conclude
21 that there wasn't a causal relationship shown for oral
22 cancer but digestive cancers related to chromium.

23 BY MR. PRAGLIN:

24 Q In the bottom section on Exhibit 33 entitled
25 "Human Studies - Ingestion of CrVI via Drinking Water,"

1 that has ChemRisk's review of the '87 study, correct?

2 A I'm not sure what you mean by "ChemRisk's
3 review."

4 Q Well, isn't that ChemRisk's view of the Zhang
5 '87 study as of December 20, 1994?

6 A Who do you mean by "ChemRisk," because, you
7 know, we -- I created this in my office and this was a
8 work product from my office. So I can't say that every
9 word in here was endorsed and blessed by, say,
10 Paustenbach or other people who weren't involved in
11 creating this material.

12 All I can say is at the time we created these
13 summaries and overviews, we believed that these were
14 accurate and correct, scientifically, and that they
15 reflected what were reasonable scientific
16 interpretations relating to the issues that we
17 understood the attorneys wanted to be briefed on.

18 Q What persons are you referring to as "we" in
19 that last answer?

20 A Well, my office was myself, Gwen Corbett,
21 again, at the time of these briefing booklets -- other
22 than Gwen, because there was change in staff over time,
23 I'm not absolutely sure who else was on -- would have
24 taken part in this, but definitely Gwen and myself.

25 Q Now, you say in the section on the bottom of

1 Exhibit 33 in your review of the Zhang '87 article,
2 "However, these results were based on surveys of
3 self-reported complaints among exposed people and were
4 not adequately assessed for potential bias and
5 confounding factors (alternative explanations),"
6 correct?

7 A Yes.

8 Q So you were already thinking that there might
9 have been either potential bias or confounding factors
10 to Dr. Zhang's '87 opinion, weren't you?

11 A That's not really what I was implying by that
12 sentence.

13 Q Well, aren't you saying in that sentence that
14 Dr. Zhang's work was not adequately assessed for
15 potential bias and confounding factors, which would be
16 two alternative explanations for the disease?

17 A That's what it says.

18 Q And this was your view before you were ever
19 tasked by PG&E's lawyers to contact Dr. Zhang and write
20 a follow-up, wasn't it?

21 A My view was consistent with the comments of the
22 article you just went over with me, the Gibb and Chen
23 article, and the ATSDR Toxicological Profile and their
24 review of the paper that it wasn't sufficiently
25 documented in terms of the scientific analysis and the

1 scientific conclusions, the basis for the scientific
2 conclusions to be considered a strong piece of evidence
3 from a epidemiologic or scientific standpoint.

4 And so I think I've explained it now several
5 different ways; the 1987 paper didn't stand out to
6 anybody as a strong piece of evidence, as it stood. And
7 so it certainly -- that's the way we represented it, for
8 what it was, in our view.

9 Q Other than you and the other scientists at
10 ChemRisk, can you cite me to any person who wrote
11 somewhere that the Zhang '87 paper didn't stand out as a
12 strong piece of evidence as it stood?

13 MR. McLEOD: Objection.

14 MR. WILKINSON: Objection. Argumentative, asked and
15 answered.

16 MR. McLEOD: I'll join in that.

17 THE WITNESS: I mean I can refer you to two sources,
18 one we already went over, which is on Exhibit 32, that
19 where the authors, Gibb and Chen, acknowledged it wasn't
20 a rigorous examination of the epidemiologic data; and
21 the second would be the ATSDR Toxicological Profile on
22 chromium, which I think was dated -- the one that was
23 published prior to this analysis I think was dated 1990
24 or 1993, I don't remember.

25 BY MR. PRAGLIN:

1 Q The one before the 1995 version, right?

2 A Again, I don't -- I'm just guessing as to what
3 the date was. But this document was created in 1994, so
4 we wouldn't obviously have had a 1995 document to
5 review.

6 Q What, if anything, did you or the other
7 scientists at ChemRisk do to interview the villagers in
8 China that Dr. Zhang studied for potential bias or other
9 confounding factors?

10 MR. MCLEOD: Objection. Asked and answered.

11 THE WITNESS: We did not interview villagers. The
12 study was done 15 to 30 years prior.

13 BY MR. PRAGLIN:

14 Q So there was no new information on the
15 potential bias or confounding factors from the '87 Zhang
16 article, correct?

17 MR. WILKINSON: Objection. Misstates the record for
18 two days of testimony, asked and answered.

19 THE WITNESS: No, that's not true. We -- one of the
20 papers that Dr. Zhang found for us and sent to us was an
21 analysis of these confounding factors, including alcohol
22 and smoking contributions with respect to the cancer
23 mortality in that JinZhou suburb population, and it was
24 very insightful as to whether or not those factors
25 played into the overall analysis and conclusions that we

1 drew initially based on the 1987 study.

2 BY MR. PRAGLIN:

3 Q Did Dr. Zhang ever author a document where he
4 said that alcohol or smoking were confounding factors to
5 the disease in China that he studied?

6 A Yes.

7 Q Which document is it, could you find it for me?
8 We're talking about alcohol and smoking as confounders.

9 A Exhibit 1, CHEMRISK 34 through 48 -- not 48 --
10 I think the Chinese version was attached behind this,
11 but through 43. 34 through 43, "Epidemic Study of
12 Malignant Neoplasm in JinZhou Suburb: JinZhou
13 Anti-epidemic Station: Zhang JianDong."

14 Q And you say that's CHEMRISK 34 through what
15 page?

16 A 43, which describes a table where Dr. Zhang
17 outlines history of smoking and drinking alcohol for
18 cancer incidence in the suburb of JinZhou.

19 Q And where in here does he conclude that smoking
20 and alcohol were confounding factors to the disease that
21 he studied in China?

22 A Well, there's probably other places but on
23 CHEMRISK 39, bottom paragraph, it says, "Among all types
24 of cancers, less than 50% of the cases drink alcohol.
25 The highest percentage is in esophagus cancer, which is

1 45%. Drinking does not show a significant correlation
2 with cancer. Among the top three cancers which have the
3 highest percentage of smokers, 76.47% of lung cancer
4 cases are smokers. 75% of nasopharyngeal cancer are
5 smokers. 69.50% of esophagus cancer are smokers. It
6 seems that the correlation between smoking and cancer
7 needs to be given more concern. (Table VI)."

8 Q So Dr. Zhang actually said that drinking does
9 not show a significant correlation with cancer, right?

10 A That was our translation. It's not true, but
11 that's our translation.

12 Q You've got to stand by your translation now,
13 don't you?

14 A Well, again, we didn't -- we didn't attempt to
15 integrate everything in this into any of the other
16 publications that we worked on. But in my view, it
17 answers the question you were asking, whether or not
18 confounding factors were an issue with respect to his
19 studies.

20 Q But it says that drinking does not show a
21 significant correlation with cancer, which is the
22 opposite of what you said Dr. Zhang said, right/?

23 A As of --

24 MR. WILKINSON: Objection. Argumentative, misstates
25 the documents and the testimony.

1 THE WITNESS: As of the early 1980s, that may have
2 been true. I never really tried to do an analysis as to
3 how much evidence had accumulated as to whether drinking
4 was associated with these cancers, in particular,
5 esophageal cancer, which is clearly related, stomach
6 cancers and others.

7 So I took on face value that that was his
8 thought at the time, but today we know better.

9 BY MR. PRAGLIN:

10 Q But this translation that Tony Ye did for you
11 in the 1995 time frame of this document that you cited
12 me to, beginning at CHEMRISK 34 of Exhibit 1, you stand
13 by that translation, don't you?

14 A Yeah. I mean it's amazing to me that 75
15 percent of the lung cancer patients -- I mean the
16 smoking frequency in this population is stunning to me,
17 everyone of them is -- in Table 6, we show that the
18 smoking status -- the vast majority of cancer cases were
19 identified as heavy to moderate smokers, and on a
20 percentage basis approximately 50 percent to 76 percent
21 of the smoke -- of the population was smokers for
22 stomach, lung, liver and esophagus, as well as
23 nasopharyngeal. That's stunning information on -- on
24 confounding factors.

25 And while, you know, we didn't choose to go

1 into describing that in the short communication format
2 that we were collaborating with Dr. Zhang on, it was in
3 our minds when we were drawing the conclusion that it's
4 like, you know, these cancers, these elevated cancers
5 are likely related to other environmental factors. It
6 made perfect sense and it was supported by his documents
7 that he wrote without our ever having contacted him.

8 Q If you look at this page CHEMRISK 39 where
9 Dr. Zhang says drinking does not show a significant
10 correlation with cancer, isn't that inconsistent with
11 the statement that you published in the Zhang '97
12 article at the end of that article where it
13 says, "Nonetheless, these results suggest that lifestyle
14 or environmental factors not related to the chromium
15 (VI) contamination are the likely source of the
16 variation in these cancer rates"?

17 MR. WILKINSON: Objection. Argumentative, misstates
18 the prior testimony.

19 THE WITNESS: I don't take it that way, no.

20 BY MR. PRAGLIN:

21 Q You don't see how someone would read that as
22 being inconsistent?

23 A Again, these are his thoughts as of, you know,
24 10, 12 years prior. A lot has happened in the meantime
25 that a person publishing a current paper has to take

1 into account.

2 I'm telling you that he knew what, you know,
3 what the alternative causes were for different types of
4 cancers and he had reflected a lot of that knowledge,
5 not all of it, in this paper. So I think he knew and he
6 agreed that environmental, and particularly lifestyle
7 factors like drinking and smoking, and perhaps more
8 importantly I think in the more recent epidemiology in
9 China, is that hepatitis and other types of infections,
10 HPV, that these -- H. Pylori infection, these have a
11 very important role in what the rank order of cancers
12 is. That's why liver and stomach are the leading cancer
13 types in China is because hepatitis is rampant, as far
14 as a background infectious disease in China, and
15 hepatitis is associated with elevated risk of cancer.

16 Similarly, H. Pylori, due again to the
17 sanitation conditions and to common infectious agents
18 across the population, it's no surprise today that
19 stomach cancer was and probably still is a leading cause
20 of death in China, and that's just the way it is.

21 That's what we understand the science to be
22 today. Confounding factors -- what he -- I think our
23 earlier comment that you criticized me about about
24 saying that the environmental pollution was the cause of
25 most cancers, it's environmental factors like that,

1 including smoking, drinking, infections, that lead to
2 these kind of patterns of cancer mortality in third
3 world countries.

4 Q That statement that you just said that I
5 criticized you about, that's the statement that you
6 annotated in the margin that Dr. Zhang wrote something
7 that was "bullshit," right?

8 A That's right.

9 Q And you said a moment ago that Dr. Zhang knew
10 and he agreed that environmental, and particularly
11 lifestyle factors, like drinking and smoking, have a
12 very important role in the rank order of cancers.

13 How do you know that that was Dr. Zhang's view
14 if you never spoke to him and you never saw it in
15 writing?

16 A I just recall that being part of our
17 discussions and considerations that Bill Butler and I
18 had with Tony Ye. And Tony Ye, as I think he's
19 testified several different places, always shared the
20 information or critique that was relevant to making any
21 changes in the document or to supporting any changes in
22 the document that we were collaborating on.

23 So it's my belief and expectation that Tony did
24 so.

25 Q And you don't think that the cancer rate in the

1 JinZhou area of China has something to do with the fact
2 that the industrial polluter there dumped 300,000 tons
3 of chromium ore waste on the ground?

4 A I don't know how to answer that question. I
5 think, you know, the epidemiology study that Dr. Zhang
6 did addressed that issue, or attempted to address that
7 issue, and the end result was what was published in the
8 '97 paper. So the outcome, in effect, for what was the
9 issue we were looking at, which was groundwater exposure
10 to hexavalent chromium, did not appear to relate to that
11 contamination.

12 Q But you'd agree that 300,000 tons of chromium
13 waste is a large quantity, wouldn't you?

14 A Well, I don't know exactly what the 300,000
15 tons corresponds to, if that's rock or -- I mean when
16 they're talking about thousands of tons, they're not
17 talking about hexavalent chromium in the pure state,
18 they're talking about ore -- what we call spent ore, ore
19 chromite, ore processing residue, and that's rock and
20 it's a lot of pounds of rock.

21 Q Well, Dr. Zhang wrote in his '87 article on
22 CHEMRISK 22, if you want to follow along in Exhibit 1.
23 He wrote on CHEMRISK 22 under the section "Source of
24 Pollution," "By the 1970's, the dump site had
25 accumulated 300,000 tons of dregs and a substantial

1 amount of chromium had seeped underground."

2 Isn't that true?

3 A That's what it says. It says "300,000 tons of
4 dregs," that's what I was meaning by rocks or the
5 chromite -- the spent ore -- spent chromite ore,
6 processing residue, as they call it.

7 Q And he says in that same paragraph, "The
8 maximum discharge rate was 125 tons per hour and
9 chromium content was up to 150 mg/L."

10 Isn't that true?

11 A That's what this translation of the butchered
12 Chinese Preventative Medicine article says.

13 Again, I wouldn't rely solely or even primarily
14 on this article to know what Dr. Zhang's interpretation
15 of the data was. I would go to the translations of
16 actual articles that he provided to us. But that's what
17 it says.

18 Q So you think that ChemRisk's translation that
19 was paid for by PG&E is more reliable than ATSDR's
20 translation of Dr. Zhang's work?

21 MR. McLEOD: Objection. Argumentative, misstates
22 his testimony.

23 BY MR. PRAGLIN:

24 Q Which is more reliable, Dr. Kerger, your work
25 or ATSDR's?

1 MR. McLEOD: Objection. Argumentative, assumes
2 facts not in evidence. It's an incomplete question.

3 You don't have to answer that.

4 BY MR. PRAGLIN:

5 Q What's more reliable on the interpretation of
6 Dr. Zhang's '87 work, ChemRisk's translation or ATSDR's?

7 MR. McLEOD: That isn't what the witness testified
8 to. He testified --

9 MR. PRAGLIN: I'm trying to get his answer.

10 MR. McLEOD: Well, you're -- the question is
11 argumentative and has no basis in fact.

12 THE WITNESS: I would say that neither. I would say
13 the word of Dr. Zhang is the most authoritative answer,
14 and that's what we got.

15 BY MR. PRAGLIN:

16 Q You don't think that ATSDR got his written
17 word?

18 A Who cares what ATSDR thinks, I've got the
19 author that I'm speaking with on the telephone now, you
20 know what I mean? What would you trust? Would you
21 trust the translation of what the author said was a
22 butchered article, or would you trust what the author
23 sent you and what he's telling you now?

24 Q I'd trust ATSDR.

25 A Well, you're obviously not a scientist.

1 Q Who is ATSDR, by the way? I know it's the
2 Agency for Toxic Substances Disease Registry. What
3 relationship to the U.S. government do they have?

4 A They're a part of the Centers for Disease
5 Control and the advisor to EPA on chemical toxicity.

6 Q So U.S. EPA uses ATSDR as an advisor; is that
7 right?

8 A I guess that's fair.

9 MR. McLEOD: It's 6:00.

10 MR. PRAGLIN: It is. We can either wind up tonight
11 or we can bring him back. I've got some more and I'll
12 tell you exactly what I have; I have two documents here
13 and then some questions about the Mexican studies.

14 MR. McLEOD: What does that translate to timewise?

15 MR. PRAGLIN: I don't know. I think it's an hour or
16 less.

17 Do you want to talk about it off the record for
18 a second?

19 THE WITNESS: I'm okay.

20 MR. PRAGLIN: My preference would be to finish now
21 but I don't want to inconvenience anybody.

22 MR. McLEOD: I've got to meet my father for dinner
23 at 7:00 in Northern Orange County.

24 MR. PRAGLIN: They live in Orange County?

25 MR. McLEOD: In Northern Orange County. I have to

1 meet him in a restaurant in Northern Orange County at
2 7:00.

3 MR. PRAGLIN: It sounds like you're already late.

4 MR. McLEOD: Correct.

5 MR. PRAGLIN: You want to have Mr. Wilkinson slide
6 over and represent Dr. Kerger?

7 MR. McLEOD: I think I'll pass on that.

8 Why don't you just try to be nonargumentative
9 and efficient and we'll get through this.

10 MR. PRAGLIN: Okay.

11 The videographer tells me we have 50 minutes on
12 the tape. Let's do it.

13 Let's mark as Exhibit 34 a page Bates stamped
14 BRP 69.

15 (Plaintiffs' Exhibit 34 was
16 marked for identification, a copy of
17 which is attached hereto.)

18 BY MR. PRAGLIN:

19 Q What is Exhibit 34, Dr. Kerger?

20 A This is a task description on ChemRisk
21 letterhead from -- probably drafted by my office and
22 addressed to Steve Hoch. It's a part of -- it's one
23 page of a correspondence that's probably multiple pages,
24 identifies one of the tasks that we did, that we scoped
25 out for PG&E's work.

1 Q And you say here in the middle of the document,
2 "Although we have not made formal contact, we anticipate
3 that they will accept a consulting fee arrangement of
4 \$250 per month total payment for three months, and will
5 provide up to three written reports as requested for
6 this basic consulting fee," correct?

7 A Yes.

8 Q And you're talking about both Dr. Zhang and
9 Dr. Neri there?

10 A No.

11 Q Are you talking about Dr. Zhang there?

12 A I believe that's -- we're really just talking
13 about Dr. Zhang.

14 Q How would you know that Dr. Zhang would accept
15 that rate if you hadn't made formal contact yet?

16 A Well, we must have made contact or at least
17 gotten an impression in order to write this scope of
18 work.

19 Q Now, this was written on March 7, 1995, right?

20 A That's what the date is on the top.

21 Q So you're saying that before that time, some
22 contact had already been made with Dr. Zhang and you had
23 reason to believe that he'd accept \$250 a month?

24 A That's what --

25 MR. WILKINSON: Objection. Misstates the document

1 and the testimony.

2 BY MR. PRAGLIN:

3 Q What were you told that would lead you to that
4 belief?

5 A I think we've been through our initial contacts
6 in the first deposition, and I would stick with that
7 original thought process, that we identified, just as it
8 describes here in the scope of work, through our
9 Shanghai office, that Mr. Zhu Guang would find this
10 person, Dr. Zhang, and see if he wanted to consult. He
11 apparently did so, at least before this authorization
12 was signed off on.

13 We might not have had any of our technical
14 discussions yet at that point, but at least that
15 information had been -- had gotten back to us from China
16 at that point.

17 MR. PRAGLIN: Let's mark as Exhibit 35 a page Bates
18 stamped BRP 68.

19 (Plaintiffs' Exhibit 35 was
20 marked for identification, a copy of
21 which is attached hereto.)

22 BY MR. PRAGLIN:

23 Q What is Exhibit 35?

24 A It's a June 12, 1995 task authorization, it's
25 addressed to Greg Read and Steve Hoch.

1 Q Also prepared by your office?

2 A Yes, most likely.

3 Q And you say, "ChemRisk will continue to follow
4 up on the epidemiological data developed by Drs. Zhang
5 and Neri in attempts to more clearly define the
6 methodological issues and potential implications of this
7 research for the Hinkley case," right?

8 A That's what it says.

9 Q The Hinkley case would be the Anderson
10 arbitration, right?

11 A Yes.

12 Q And so you were following up with Dr. Zhang to
13 use the information that you obtained in the Anderson
14 arbitration, weren't you?

15 A I think it's laid out pretty clearly that
16 that's what we did, we collaborated with him, as I've
17 testified a number of times.

18 Q What involvement did you have with the
19 so-called Mexican chromium authors?

20 A We attempted to obtain all of the Spanish
21 articles that were not in English and had them
22 translated. We attempted to contact authors from those
23 studies to collect the same type of additional
24 information that would allow us to judge more completely
25 what the value or significance of any published

1 information was from those particular research
2 investigations done in Mexico.

3 Q Did you personally do anything with regard to
4 the Mexican authors?

5 A I'm not sure what you mean. I did what I just
6 said.

7 Q Did you write any articles?

8 A I think we had some correspondence back and
9 forth with certain of the people that we tried to
10 contact. I read the translations of those articles and,
11 through conversations with the authors, came to certain
12 conclusions about what the value of that information
13 was.

14 Q Did you analyze any data in connection with the
15 Mexican chromium studies?

16 A Probably.

17 Q Did you analyze the water quality sample
18 that Dr. Finley took in Mexico when he was with
19 Dr. Hernandez?

20 A No, I don't do water analysis.

21 Q You know that Dr. Finley went to Mexico and met
22 Dr. Hernandez, don't you?

23 A Yes.

24 Q Have you seen his trip report before?

25 A Yes.

1 MR. PRAGLIN: Let's mark that as Exhibit 36.

2 (Plaintiffs' Exhibit 36 was
3 marked for identification, a copy of
4 which is attached hereto.)

5 BY MR. PRAGLIN:

6 Q What is Exhibit 36?

7 A It says -- it's entitled "Summary of Mexico
8 Visit to Leon and Lecheria."

9 Q Authored by Dr. Finley?

10 A I don't know that it explicitly says Dr. Finley
11 wrote this, but that would make sense to me, since he
12 was one that went.

13 Q Was he the only one who went from ChemRisk?

14 A Yes.

15 Q And did you approve all of his expenses to go
16 on that trip?

17 A Internally, yes.

18 Q When you say "internally," what do you mean?

19 A Well, in other words, I don't approve work, the
20 client approves work and scope of work and what can be
21 spent or not spent. If Finley sent me an expense report
22 from his trip, then I certainly would have initialed it
23 if it was within the scope of work that we agreed to do
24 with the client, and I'm sure I did in this case.

25 Q Whose idea was it that Dr. Finley go to Mexico

1 to meet with Dr. Hernandez?

2 A I'm not sure if it was his idea or collectively
3 mine and his. I don't really recall.

4 Q But you knew in advance that he was going,
5 didn't you?

6 A Sure.

7 Q What was the purpose for his visit?

8 A The purpose for his visit was to meet with
9 Dr. Armienta-Hernandez and visit the two locations to
10 get additional information and insights on what the
11 published Mexican studies implied scientifically.

12 Q And wasn't this information that you were
13 gathering on the published Mexican studies for PG&E's
14 use in the Anderson chromium litigation?

15 A It was part of our research that was funded by
16 PG&E.

17 Q For that purpose, correct?

18 A For what purpose?

19 Q The purpose of PG&E using it in the Anderson
20 chromium litigation.

21 MR. McLEOD: What do you mean by "use"?

22 MR. PRAGLIN: Use it as they saw fit.

23 THE WITNESS: I don't know. I mean it was part of
24 our research that was within the scope that the client
25 approved, and we carried out that research.

1 BY MR. PRAGLIN:

2 Q Well, didn't you understand that PG&E would be
3 using the information that you gathered on the Mexican
4 chromium studies in its defense in the Anderson chromium
5 litigation?

6 A I didn't know whether or not the information we
7 would gather would have any use in the litigation, but
8 we followed up on it because the judges requested
9 further details and information, clarifications, on
10 those scanty reports; in other words, reports that were
11 not rigorously documented in the literature and
12 therefore were difficult to interpret. And so we
13 followed on that lead, so to speak, from the judges.

14 Q By "scanty reports," are you talking about the
15 Hernandez and the Neri, Rosas articles?

16 A Not specifically.

17 Q What were you talking about as "scanty
18 reports"?

19 A Well, we were looking for epidemiological
20 evidence, and -- in particular relating to cancer or
21 chronic effects from exposure to groundwater chromium,
22 and it turned out that none of reports from Mexico gave
23 us any epidemiological evidence that had any scientific
24 rigor to be able to develop conclusions on that data.

25 So the Mexican research did not turn out to be

1 useful, in my view, to the PG&E project or to our
2 overall understanding of chromium, you know, the adverse
3 effects of long-term exposure to hexavalent chromium.

4 Q Well, did the Zhang research turn out to be
5 useful, in your opinion, to the PG&E project to your
6 overall understanding of chromium and the adverse
7 effects of long-term exposure to hexavalent chromium?

8 A I would say, yes.

9 Q And so because the Zhang research was useful,
10 you used it, but because the Mexican research wasn't,
11 you didn't use that; is that right?

12 MR. McLEOD: Objection to the term "use" as being
13 vague, ambiguous and overbroad.

14 THE WITNESS: We considered all of the available
15 evidence and made our conclusions based on the
16 scientific integrity and judgments that we would apply
17 in any case.

18 BY MR. PRAGLIN:

19 Q Well, when Dr. Finley went down to Mexico, if
20 you look at the second page of his trip report, Exhibit
21 36, when he was with Dr. Hernandez in Leon, Mexico, he
22 says, "We collected a sample for analysis, and
23 Dr. Hernandez later informed me that it contained
24 approximately 8 ppm Cr(VI)," right?

25 A That's what it says.

1 Q That's a high level of chromium (VI), isn't it?

2 A That's the level that this report indicates
3 that pig farmer was feeding to his pigs; so, yeah, the
4 pigs were getting 8 part per million, based on his
5 little investigation there.

6 Q So why wouldn't you bring to the attention of
7 PG&E the fact that Dr. Finley collected a water sample
8 in Mexico and it tested out at 8 parts per million
9 chrome (VI)?

10 A We weren't investigating pig epidemiology. It
11 wasn't relevant.

12 Q Weren't those pigs being raised for market?

13 A Probably.

14 Q People were eating the pigs, right?

15 A I have no idea for sure, I'm just speculating.

16 Q Seems pretty reasonable, though, that that's
17 why a pig farmer would raise pigs, right?

18 MR. McLEOD: Don't speculate.

19 This is getting argumentative.

20 THE WITNESS: I don't know. I didn't go on the
21 trip. I'm going on face value from what Dr. Finley
22 said. There was no epidemiology data of any substance
23 that we could be able to interpret the long-term effects
24 of chromium on humans. Their water system had been
25 replaced shortly after the contamination was discovered,

1 and so there wasn't anything there scientifically; so
2 it, of course, didn't become a principle part of our
3 opinions or our further research on chromium.

4 BY MR. PRAGLIN:

5 Q As a scientist, did you think it was important
6 that somebody inform the local public health officials
7 in Mexico that the people have been exposed to chromium
8 in their water?

9 MR. McLEOD: Objection. This is argumentative.
10 It's also beyond the scope of the noticed deposition.

11 THE WITNESS: It's a dumb question. These papers
12 had been written decades prior and had documented the
13 contamination and what was done about it. We are going
14 back to these authors to see if there was any actual
15 epidemiologic information. It wasn't our task or our
16 goal to try to influence public health policy in Mexico.
17 We were looking as to whether or not there was
18 information that answered specific questions that we
19 wanted to know the answers to.

20 So it doesn't -- it doesn't matter that the
21 pigs were exposed to us, and what did matter was that
22 the authors that we spoke to that had worked on this
23 research did not have data that was particularly
24 meaningful for the questions we wanted to answer.

25 BY MR. PRAGLIN:

1 Q Now, ChemRisk placed Dr. Armienta-Hernandez
2 under contract; isn't that true?

3 A I think I discussed this in my first
4 deposition. I would stick with the original answers on
5 that.

6 Q Was anything done with regard to Dr. Hernandez
7 after Dr. Finley returned from Mexico?

8 A I don't think that we carried out the contract,
9 the initial contract that we had arranged with her
10 because there wasn't any information to be analyzed in
11 our view, and so we really didn't do any substantial
12 work with her.

13 Q So how much was she paid in total?

14 A I don't recall.

15 Q If you look at BRP 173, I think that's Exhibit
16 4. I'll just show you the document, it's faster that
17 way.

18 Let me show you BRP 173.

19 Attach it as Exhibit 37, please.

20 (Plaintiffs' Exhibit 37 was
21 marked for identification, a copy of
22 which is attached hereto.)

23 BY MR. PRAGLIN:

24 Q Is this a page from your report to PG&E's
25 lawyer, Steve Hoch, dated February 13, 1996 related to

1 Dr. Hernandez?

2 A Yes, it looks like it.

3 Q And it lists that the fixed price for
4 Dr. Hernandez's contract is \$8,000, right?

5 A That's what it says.

6 Q And it indicates that as of that point in time,
7 February of '96, Dr. Hernandez had received \$2,000,
8 right?

9 A Yes.

10 Q Was she ever paid more than that?

11 A My recollection is that she was never paid
12 personally for this work, that she volunteered to work
13 with us in an agreement that we would potentially fund
14 some additional research that she was interested in
15 doing; in other words, pay the university for her time.

16 And if we had done any substantial amount of
17 work, we probably would have paid this firm fixed price.
18 But based on the fact that the initial visit revealed no
19 data that was of particular interest or relevance to our
20 work, I think we curtailed that original estimated cost
21 at \$2,000, and that's my recollection of what this
22 represents.

23 Q So you didn't pay the full amount of the
24 contract?

25 A That's my recollection.

1 Q Now, would you describe Dr. Finley's work on
2 his trip to Leon, Mexico as a rigorous epidemiological
3 study?

4 A No.

5 Q It was a drive through, wasn't it?

6 A It was a visit.

7 Q Brief visit, wasn't it?

8 A I don't remember exactly how long it was, but
9 probably.

10 Q A few hours, right?

11 A Again, I don't recall.

12 Q Isn't it true that there's no way anyone could
13 reliably evaluate the adverse health consequences in
14 Leon, Mexico in a few-hour brief visit?

15 MR. McLEOD: Objection. That question is
16 argumentative.

17 THE WITNESS: I don't think that that was ever the
18 intention of Dr. Finley or any of the people that worked
19 on the project. The visit was to fill in some blanks on
20 research we had already evaluated through about a
21 half-dozen Spanish to English translated articles that
22 we had collected and looked at and had that preliminary
23 conclusion going into this trip report that where's the
24 data, where's the epidemiology.

25 And so Finley went to the authors themselves

1 and satisfied himself as a scientist as to whether or
2 not there was anything else of value that they had
3 access to that was published or unpublished.

4 And I don't think it's unreasonable to spend a
5 few hours doing that, talking directly with the authors
6 and assessing whether or not they had any additional
7 data or information that would be scientifically
8 valuable.

9 BY MR. PRAGLIN:

10 Q Were the people in Mexico ever followed up on
11 to see if they developed cancer later?

12 A I don't believe there was any epidemiology data
13 of residents exposed to chromium.

14 MR. PRAGLIN: Let's mark as Exhibit 38 a copy of an
15 article authored by Armienta-Hernandez.

16 (Plaintiffs' Exhibit 38 was
17 marked for identification, a copy of
18 which is attached hereto.)

19 BY MR. PRAGLIN:

20 Q Is Exhibit 38 the Hernandez article?

21 A It's an article authored by her.

22 Q Was this translated by ChemRisk?

23 A No, this is published in an English journal,
24 Environmental Health Perspectives. Dr. Hernandez was
25 one of the few people we interacted with that spoke good

1 English among the Mexican authors.

2 Q Did ChemRisk have the Neri and Rosas article
3 translated from Spanish into English?

4 A I think that one was in English, also, but I'm
5 not sure which one you're referring to. There was a
6 Rosas article that I recall being in English that again
7 was not an epidemiology study, and then most of them
8 were -- most of the papers that we looked at were from a
9 certain Spanish -- well, it was a Mexican public health
10 journal called Salud to Public, something in Spanish.
11 That's my recollection.

12 Q And so was there ever any follow-up with the
13 Neri and Rosas scientists after Dr. Finley's visit to
14 Mexico to the Lecheria?

15 A My recollection is that we either made contact
16 or attempted to make contact with Dr. Neri, another
17 colleague of his, Dr. Quinones, and they referred us to
18 Dr. Hernandez -- Armienta-Hernandez, and I think those
19 were the main individuals that we were able to interact
20 with or identify.

21 Q And did ChemRisk also make contact with another
22 Mexican scientist by the name of Guillermo Gasset,
23 G-a-s-s-e-t?

24 A Yeah, I saw a reference to that name in Tony's
25 file -- or in the files that I reviewed for this case.

1 I don't recall that leading to anything useful. But
2 yeah, I believe he was one of the people that we spoke
3 with.

4 Q Did you participate in any interviews of the
5 Mexican scientists?

6 A I don't remember exactly. There were letters
7 that we -- I wrote in English and/or responded to
8 letters from certain individuals that I found in the
9 files that I reviewed for this case, but I don't recall
10 specific conversations with anybody.

11 Again, it would have -- in most cases, it would
12 have been a mainly Spanish-speaking individual, and I
13 don't speak Spanish; so I would have had a translator on
14 any conference calls that I had. I didn't meet with any
15 personally.

16 Q One of the exhibits to Dr. Corbett's
17 deposition, and I don't know if you saw this document or
18 not, was a memo to Tony Ye from Gwen Corbett where she
19 was enclosing a copy of the plaintiffs' brief with the
20 relevant pages marked and a copy of the New Mexican
21 study and then she said, "Brent and I will call on
22 Thursday."

23 Do you recall that brief being sent to Tony Ye?

24 A Frankly, no.

25 Q Why would Tony Ye be reviewing the plaintiffs'

1 briefs in the Anderson litigation?

2 A I think whenever we sent things to Tony Ye it
3 was inferred that Bill Butler and his group would have
4 some value to have reviewed it, and that's my estimation
5 of why it would have been sent. Bill Butler is our
6 epidemiologist, and if there was a plaintiff brief that
7 had tried to make some epidemiological claims regarding
8 any studies that were in the published literature, Bill
9 Butler would be a person I would rely on to critique or
10 further clarify what -- what might have been said.

11 Q When you were involved with the Zhang '97
12 article, in getting it published, did you ever review
13 the rules for authors by the journal JOEM?

14 A I don't recall.

15 Q Are you familiar with the rules for authors
16 that existed at JOEM in the 1995 to '97 time frame?

17 A I would say probably not. I didn't -- I don't
18 recall ever submitting a paper to JOEM myself.

19 Q Tony Ye had never submitted a paper to JOEM
20 before, had he?

21 A Probably not.

22 Q So who at ChemRisk would have familiarized
23 themselves with the rules for authors at JOEM in the '95
24 to '97 time frame?

25 A I probably would have tasked Tom Flahive to --

1 when we look at instructions to authors, the vast
2 majority of information that's provided pertains to
3 formatting conventions, the way the references are to be
4 set up, the way the tables are to be displayed and
5 numbered, number of copies to be submitted and other
6 requirements that are kind of clerical tasks in terms of
7 getting -- or formatting tasks in terms of getting that
8 manuscript in the proper form for peer review, according
9 to what the journals' standards are. So Tom probably
10 read through that and conferred with me if he had any
11 questions or problems regarding it.

12 Q Did he confer with you about that?

13 A Probably.

14 Q You can recall that?

15 A Well, I can recall that based on reviewing Tony
16 Ye's file, there was -- there were signed copyright
17 statements that were required, which was an unusual
18 requirement of that particular journal, to provide, on
19 submission to the -- on submission of the article, a
20 copyright release. And so when I saw those documents, I
21 went and read what the author's instructions were for
22 JOEM and that refreshed my recollection.

23 Q When you say you went and read them, you read
24 them when you received Tony Ye's documents in deposition
25 in these last two months or you read them back in the

1 1995/'96 time frame?

2 A I'm sure I read them both times because it was
3 an unusual practice and an unusual requirement, and we
4 had to take steps to have Dr. Zhang basically translate
5 that and be able to sign off with him and Dr. Li on the
6 copyright agreement; so it was a chore.

7 Q Were the author's instructions from JOEM
8 translated for Dr. Zhang?

9 A I don't think so. I wouldn't see any reason,
10 really, to do that.

11 Q And what efforts did ChemRisk make to make sure
12 that they obtained Dr. ShuKun Li's signature on any
13 documents requested by the journals?

14 A Well, we had to rely on Dr. Zhang to do that
15 since we had no direct contact with her. Does that
16 answer your question?

17 Q Why not contact her directly?

18 A Because she was a helper to Dr. Zhang and he
19 didn't put us in touch with her, nor did we necessarily
20 need to be in touch with her because Dr. Zhang was
21 coordinating that.

22 Q Did she contribute anything to the '97 Zhang
23 article?

24 MR. McLEOD: What do you mean by "contribute
25 anything"?

1 MR. PRAGLIN:

2 Q Did she write anything for it?

3 MR. WILKINSON: Objection. Calls for speculation.

4 THE WITNESS: My understanding from reviewing Tony
5 Ye's files is that she assisted Dr. Zhang in pulling
6 together all of the manuscripts and other pieces of
7 cancer and population data that got us over the hump in
8 terms of getting the additional rate information that
9 would give the analysis better scientific integrity.

10 So in my view and Dr. Zhang's view, she
11 certainly was a contributor. And from my understanding,
12 she was also associated with the anti-epidemic station.
13 I don't think I have any facts or written documentation
14 to share with you to support that recollection, but that
15 was my understanding after I reviewed these documents
16 and it was revealed to me that the Dr. Li on the paper
17 was not the deceased one.

18 MR. PRAGLIN: Mr. Wilkinson, do you have questions?

19 MR. WILKINSON: Very few.

20 MR. PRAGLIN: Do you want to ask yours now and I'll
21 review my notes and we'll speed things up. I may have a
22 few more but I'm almost finished here.

23 EXAMINATION

24 BY MR. WILKINSON:

25 Q Dr. Kerger, you were asked some questions about

1 an e-mail exchange that you had with Dennis Paustenbach
2 of which he sent you a couple of -- I think what the
3 e-mail referred to as mini chapters. Do you recall that
4 testimony?

5 A Yes, I do.

6 Q Do you recall approximately how much time
7 you spent reviewing and providing comments to
8 Dr. Paustenbach on those mini chapters?

9 A Probably a couple hours.

10 Q Do you recall anything about the substance of
11 the comments that you provided?

12 A Just vaguely that Dennis sometimes doesn't get
13 the years of the articles that we wrote correct and I
14 put in some comments or changes on which references went
15 where.

16 Q The term "peer review" has been used here today
17 in your testimony and the questions from counsel. Would
18 you consider yourself a peer reviewer of the chapters
19 written by Dr. Paustenbach?

20 A Well, I consider myself a peer and I did review
21 the articles or those mini chapters, but peer review, in
22 a more technical sense, describes a process on
23 submitting a final paper to a journal and then having
24 independent reviewers look at that. I did not do that
25 in this case. I obviously was not an independent person

1 in terms of the research that was done that Dennis and I
2 had co-authored, and so I was simply providing input and
3 comments, not a formal peer review.

4 MR. WILKINSON: I have no other questions.

5 MR. PRAGLIN: Any questions, Mr. McLeod?

6 MR. McLEOD: None.

7 MR. PRAGLIN: I have one more document for you.

8 Let's mark this as Exhibit 39.

9 This is Bates stamped WB 484 through 486.

10 (Plaintiffs' Exhibit 39 was
11 marked for identification, a copy of
12 which is attached hereto.)

13 FURTHER EXAMINATION

14 BY MR. PRAGLIN:

15 Q The face page of this document is on ChemRisk
16 letterhead, correct?

17 A It's a fax cover page from ChemRisk, yes.

18 Q From Gwen Corbett to Bill Butler, right?

19 A Yes.

20 Q And it's dated March 30, 1995, right?

21 A Yes.

22 Q And she says, "Bill: Here is the letter for
23 Dr. Quinones. Brent has reviewed it and approved (he
24 felt it was okay to include PG&E's name). I informed
25 him that you would be using a program to translate this

1 if it becomes too cumbersome (based on all the personal
2 names will Javier be able to translate it)," right?

3 A That's what it says.

4 Q Did you have some discussion with Gwen Corbett
5 about whether it was okay to include PG&E's name in the
6 letter that she drafted to Dr. Quinones that is attached
7 to Exhibit 39?

8 A I don't recall specifically, but it would make
9 sense because I was always concerned about our
10 contractual obligations for confidentiality. I was very
11 sensitive to that, and so Gwen knew that and would have
12 always checked with me as to whether or not we can name
13 the client in the correspondence.

14 Q And how did you determine that it would be okay
15 to include PG&E's name in this letter to Dr. Quinones?

16 A I don't -- I really don't recall the
17 conversation, but my recollection was that we had
18 nothing to hide in terms of why we were interested in
19 finding out more information about chromium toxicology;
20 so the name of the client, if they -- if the person
21 requested it or if it came up in the conversation, I
22 decided that would be fine to share it with these
23 scientists that were asking -- you know, that were
24 making themselves available to collaborate with us.

25 Q Well, did you ask someone at PG&E or PG&E's

1 counsel if it would be okay to disclose that you were
2 doing this research on behalf of PG&E?

3 A I may have but I don't recall.

4 Q On the page Bates stamped WB 486, the first
5 full paragraph that Dr. Corbett has written, is
6 everything in that paragraph true, the fact that you are
7 conducting the research on behalf of Haight, Brown and
8 PG&E?

9 A Yes.

10 Q And is it true that you were currently
11 contacting researchers in China and Mexico to determine
12 the relevance of these studies to the exposure situation
13 that you had been asked to evaluate?

14 A I think that's a reasonable statement.

15 Q And that exposure situation was the PG&E
16 Hinkley contamination, right?

17 A Yes, that was what we were trying to
18 investigate.

19 Q Were you ever asked to investigate the PG&E
20 Kettleman contamination?

21 A In relation to the Anderson case?

22 Q In relation to anything.

23 A I'm familiar with the name Kettleman, and I did
24 some review work that I don't recall whether or not
25 included plaintiffs from Kettleman, but I don't recall

1 any specifics of it.

2 Q Did you do that review work for PG&E?

3 A Probably.

4 Q Were you paid for it?

5 A Probably.

6 Q Was that in this current Aguayo lawsuit or was
7 it in the Anderson lawsuit?

8 A Was what?

9 Q The review that you did of the information
10 regarding the Kettleman chromium contamination for PG&E.

11 A No, there was nothing considering -- there was
12 nothing involving anything but the Hinkley site in the
13 Anderson case; so the answer is no.

14 Q Was that in some other case, right?

15 A It would have been probably in Aguayo or those
16 related cases.

17 MR. PRAGLIN: Thanks, Dr. Kerger. I know it's been
18 a long day. I'm all done.

19 MR. WILKINSON: I have no further questions.

20 MR. McLEOD: Same stipulation?

21 MR. PRAGLIN: Yes.

22 THE VIDEOGRAPHER: Off the record. The time is
23 6:40 p.m. This is the end of videotape tape number
24 four.

25 (Whereupon the stipulation from the deposition

1 of Tony Wong regarding Blue Ribbon Panel depositions
2 of witnesses represented by Dewey Ballantine was
3 incorporated into the record as follows:

4 "MR. PRAGLIN: We can use our standard Blue
5 Ribbon Panel stipulation.

6 "MR. McLEOD: Which is?

7 "MR. PRAGLIN: Give him 30 days to review the
8 transcript and then he can forward it, it gets, I think,
9 sent back to me for safekeeping. If we're not advised
10 of signature and of any changes within 30 days, a copy
11 can be used in lieu of the original for all purposes.

12 "THE REPORTER: Can we provide it directly to his
13 counsel this time?

14 "MR. PRAGLIN: No problem.

15 "MR. McLEOD: Send it directly to me and I will have
16 Mr. Wong review it and sign it within 30 days.

17 "Within 30 days of receipt by me, he will have it
18 reviewed and signed, and I'll notify anybody of any
19 changes, and then I'll ship the original to Mr. Praglin
20 for safekeeping for trial.

21 "MR. PRAGLIN: Okay.

22 "MR. WILKINSON: So stipulated.

23 "MR. McLEOD: He'll sign it under penalty of
24 perjury, relieve the court reporter, yackety-yack.)

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I, BRENT KERGER, Ph.D., do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____,
2003, at _____, _____.
(City) (State)

BRENT KERGER, Ph.D.
Volume 2

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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: _____

SUZANNE STRINGFELLOW
CSR No. 5652

