

BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
)
TAOTAO USA, INC., TAOTAO) Docket No. CAA-HQ-2015-8065
GROUP CO., LTD and JUNYUN)
COUNTY XIANGYUAN INDUSTRY)
CO., LTD,)
)
Respondents.)

Room 1152
EPA East Building
1201 Constitution Ave., N.W.
Washington, D.C.
Wednesday,
October 18, 2017

The parties met, pursuant to notice of the
Court, at 9:00 a.m.

BEFORE: HONORABLE SUSAN L. BIRO
Chief Administrative Law Judge

APPEARANCES:
For the Complainant:
ROBERT G. KLEPP, Esquire
ED KULSCHINSKY, Esquire
MARK PALERMO, Esquire
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(972) 392-9888

EXHIBITS

COMPLAINANT'S

EXHIBITS:	IDENTIFIED	RECEIVED
22	(Prev.)	555
23	(Prev.)	556
24	(Prev.)	556
25	(Prev.)	558
30	(Prev.)	564
31	(Prev.)	564
35	(Prev.)	646
42	(Prev.)	646
61	(Prev.)	573
64	(Prev.)	575
67	(Prev.)	599
69	(Prev.)	607
70	(Prev.)	609
71	(Prev.)	610
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78	(Prev.)	628
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81	(Prev.)	629

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WITNESSES: DIRECT CROSS REDIRECT RE CROSS DIRE

For the Complainant:

Cleophas Jackson -- 341 369 -- --

James Carroll 374 -- -- -- 383
3919 450 525 534 --
Amelie Cara Isin 541 -- -- -- --

EXHIBITS

COMPLAINANT'S EXHIBITS:	IDENTIFIED	RECEIVED
92	(Prev.)	590
93	(Prev.)	591
94	(Prev.)	592
95	(Prev.)	649
98	(Prev.)	592
140	(Prev.)	576
148	(Prev.)	579
155	(Prev.)	544
159	(Prev.)	379
161	(Prev.)	650
162	(Prev.)	650
163	(Prev.)	650
167	(Prev.)	431
168	(Prev.)	647
169	(Prev.)	656
170	(Prev.)	657
171	(Prev.)	650
183	(Prev.)	568
184	(Prev.)	568
185	(Prev.)	568
186	(Prev.)	568
187	(Prev.)	568
188	(Prev.)	568

EXHIBITS		
COMPLAINANT'S EXHIBITS:	IDENTIFIED	RECEIVED
189	(Prev.)	567
190A	(Prev.)	637
192	(Prev.)	395
194	(Prev.)	437
197	(Prev.)	661
198	(Prev.)	661
199	(Prev.)	661
200	(Prev.)	661
201	(Prev.)	661
202	(Prev.)	661
203	(Prev.)	661
205	(Prev.)	672
206	(Prev.)	671
207	(Prev.)	662
208	(Prev.)	678
209	(Prev.)	681
213	(Prev.)	684
214	444	--
215	615	617

1 PROCEEDINGS
2 (9:00 a.m.)
3 JUDGE BIRO: We're going to go back on the
4 record. I think when we left off yesterday, we said
5 we were going to begin again today at 9:00? Is that
6 correct, Mr. Palermo, Mr. Kulschinsky?
7 MR. PALERMO: Yes, Your Honor.
8 JUDGE BIRO: And have we heard from
9 Respondents' counsel?
10 MR. PALERMO: No, we haven't.
11 JUDGE BIRO: Okay. Well, let the record
12 reflect that Mr. Chu is not here, and it is 9:00. So
13 we'll give him the courtesy of 10 more minutes, and
14 then we will proceed without him.
15 MR. PALERMO: Fine.
16 JUDGE BIRO: Okay. We'll stand in recess
17 for 10 minutes.
18 MR. PALERMO: Thank you, Your Honor.
19 (Whereupon, a brief recess was taken.)
20 JUDGE BIRO: Please be seated.
21 Mr. Chu?
22 MR. CHU: Yes, Your Honor.
23 JUDGE BIRO: You were late this morning.
24 MR. CHU: Good morning.
25 JUDGE BIRO: We said we would start at 9.

1 MR. CHU: I got caught up there in the
2 security. There was a public hearing or something
3 this morning. People were ahead of us.
4 JUDGE BIRO: Right. We need to plan for
5 those things, so if we said we're going to start at 9,
6 you've got to be here way before 9 to make sure we can
7 start at 9 --
8 MR. CHU: Yes, Your Honor. My apologies.
9 JUDGE BIRO: -- because we're not going to
10 delay it tomorrow.
11 Okay. Where were we? Mr. Jackson --
12 MR. KLEPP: Your Honor?
13 JUDGE BIRO: -- could you please take the
14 stand again.
15 Are there any preliminary matters before we
16 begin?
17 MR. KLEPP: Yes. Yes, Your Honor. Thank
18 you. We would like to raise a point of order.
19 Yesterday, what arrived at our table from Respondents'
20 counsel is a book of exhibits. And we did a cross-
21 walk, not a complete cross-walk because of the
22 shortness of time, but a cross-walk between what was
23 given to us yesterday and the Respondents' prehearing
24 exchange. There are some differences I think we
25 should raise to the Court.

1 In terms of exhibits, we had been through
2 the prehearing exchange aware of exhibits that go from
3 RX-001 through RX-028, I believe. What we got
4 yesterday it looks like are documents that overlap
5 with those prehearing exchange documents, but there
6 are different numbers on the page. They have
7 different exhibit numbers referred to. And in some
8 instances, there are substantive differences. So I
9 just want to point that out to the Court. As we go
10 through this, I'll be raising objections if those
11 documents as we saw them yesterday try to come in.
12 JUDGE BIRO: Okay. If we renumber them,
13 while it may be somewhat difficult from the prehearing
14 exchange, we can probably accommodate that. No
15 substantive differences from what was exchanged during
16 the prehearing exchange, no documents will be
17 admitted. We had a deadline. That was the deadline.
18 So we're done with that point. So submit your
19 documents as they were in the prehearing exchange, or
20 we're not going to admit them. Numbering, you know,
21 it's not an issue. We can deal with that.
22 MR. KLEPP: Thank you, Your Honor.
23 JUDGE BIRO: Anything else?
24 MR. CHU: Nothing from us, Your Honor.
25 JUDGE BIRO: Okay. I went over all the

1 notes yesterday from the testimony, and I had some
2 difficulty, it seems to me, from looking back
3 following some of your questions, Mr. Chu. So, if on
4 leading, since you -- on cross, since you can lead, if
5 you can make your questions a bit more pithy, that
6 would really help me follow your arguments.

7 And in terms of your objections, if you
8 could just specify all the objections you have in a
9 very concise way, that would really help me make sure
10 that I hear everything you have to say and respond to
11 each and every objection you raise because I don't
12 want to miss anything.

13 MR. CHU: Yes, Your Honor.

14 Whereupon,

15 CLEOPHAS JACKSON

16 having been previously duly sworn, was
17 recalled as a witness herein and was examined and
18 testified further as follows:

19 JUDGE BIRO: Mr. Jackson, you remain under
20 oath from yesterday. Do you have a complete set of
21 the exhibits in front of you still?

22 THE WITNESS: Yes, ma'am, I believe so.

23 JUDGE BIRO: Thank you.

24 Okay. We're going to continue with the
25 cross of Mr. Jackson.

1 MR. CHU: Yes. Good morning. May it please
2 the Court.

3 CROSS-EXAMINATION (RESUMES)

4 BY MR. CHU:

5 Q Mr. Jackson, I want to reference you over to
6 the series from CX-12, and in one of the drafts here,
7 there is an explanation for a change, okay? Are you
8 familiar with those changes?

9 A I'm sorry. CX-12, what page?

10 Q No. We're going to start with CX-12, okay?
11 And there was a series of drafts of guidances. And so
12 what I'm asking you, are you familiar in these
13 documents where it talks about and guides on how to
14 make changes?

15 A How to make changes to the application? I'm
16 sorry. I have to look at the document --

17 Q Okay.

18 A -- and actually read through it.

19 Q I'm sorry?

20 A I have to look at the document to make sure
21 I read the steps correctly.

22 Q Okay. You mentioned yesterday something
23 about change orders. Do you remember that?

24 A Change orders? No, I don't.

25 Q Or running changes.

1 A Running changes, yes.

2 Q Okay. And in these guides here, it spells
3 out what it's in reference to, is that correct?

4 A The way to amend an application should be
5 discussed in guidance documents, yes.

6 Q Okay. And what is your understanding of
7 what the running changes specifically apply to in
8 terms of the description of the vehicle?

9 A So manufacturers can make running changes
10 that address issues associated with the adding models
11 to a family if they'd like to add models to a family,
12 vehicle models to a family. But if they're making
13 substantive changes to the design, those are not
14 allowed as a running change.

15 Q And when we talk about design, I mentioned
16 to you yesterday -- I guess you mentioned it, Section
17 86, is that correct?

18 A 40 CFR Part 86?

19 Q Yes.

20 A Yes.

21 Q And you are aware that the specific
22 identification referencing design is no longer in the
23 then 2012 and up to today's date regulations, correct?

24 A I'm sorry, I'd have to go back and look at
25 the regulations as printed. Again, I never like to

1 make a citation without actually reading the
2 regulations.

3 Q I understand. But you don't remember going
4 over that in your deposition?

5 A I don't recall the specifics of it. I
6 apologize. I don't recall the specifics.

7 Q Okay. So running changes are not necessary
8 unless you're adding a model type, correct?

9 A No, I didn't say that. It's the
10 manufacturer's decision to make a running change.

11 Q I understand. But every change is not
12 considered a defined running change.

13 A I think your statement is correct. Every
14 change is not a running change. Okay. That sounds
15 right.

16 Q Okay. So changes can be made but only if
17 it's a change involving what you just testified to.
18 Those would require a written request to your
19 department, is that correct?

20 A Meaning a substantive change, yes, that
21 would require a submission.

22 Q Now are you aware of any other provisions in
23 the CFR that governs adjustments, changes, or
24 addendums?

25 A To the application? To the certificate of

1 conformity?
 2 Q To the certificate of conformity, not the
 3 application, to the certificate of conformity.
 4 A So I'm aware of the fact that in Part 86, it
 5 covers that. I'm not sure I understand your question.
 6 Am I aware of something other than making amendments
 7 to the app -- amendments to your certificate? What
 8 are you asking me?
 9 Q Well, I'm saying based upon your expertise
 10 in dealing with the regulations --
 11 A Uh-huh.
 12 Q -- are you aware of any other regulations or
 13 possibly any rules with the EPA that deals with
 14 adjustments --
 15 A So all of the --
 16 Q May I finish, please?
 17 A Oh, please.
 18 Q -- amendments or addendums?
 19 A So all of the regulatory provisions that
 20 govern all the sectors allow for amendments.
 21 MR. CHU: I'm sorry. Your Honor, could I
 22 turn the mike turned up a bit on --
 23 THE WITNESS: All of the regulatory sections
 24 allow for amendments that govern each of the sectors.
 25 //

1 BY MR. CHU:
 2 Q So there are so-called adjustments that can
 3 be made and accepted by your department, correct?
 4 A Yes.
 5 Q Okay. Now, sir, I'm going to ask you to
 6 look at the Respondents' exhibit booklet that you have
 7 there with you, and we're going to be looking at
 8 Exhibit 26 for the --
 9 MR. KLEPP: Point of order, Your Honor.
 10 This is what I brought up earlier, that Exhibit 26
 11 versus what we have in the prehearing exchange, I'm
 12 not quite sure. So I'd have to look in two places.
 13 I'd ask for the Court to allow that before I can say
 14 that we're on the same page.
 15 JUDGE BIRO: Okay. So what was the number
 16 of Exhibit 26 in the Respondents' prehearing exchange?
 17 MR. CHU: Ms. Tariq is going to pull up the
 18 number for us. RX-28 and 29.
 19 JUDGE BIRO: And is this an exact duplicate
 20 of the prehearing exchange documents that were 28 and
 21 29, Ms. Tariq?
 22 MS. TARIQ: Yes, Your Honor, except for the
 23 page numbers.
 24 JUDGE BIRO: Except for the page numbers.
 25 MS. TARIQ: Yes.

1 JUDGE BIRO: Okay. Let's move ahead based
 2 on that representation. If it turns out to be
 3 mistaken, we'll come back to it.
 4 MR. KLEPP: Thank you, Your Honor.
 5 BY MR. CHU:
 6 Q Did you find that?
 7 A 26? Yes.
 8 Q Yes, okay. And before we start there, I
 9 want you to look at CX-15, EPA Bates No. 405.
 10 A CX-15, EPA page number which? Which page
 11 number?
 12 Q Bates No. 405.
 13 MR. CHU: Your Honor, may I get the overhead
 14 turned on, please?
 15 JUDGE BIRO: Okay.
 16 MR. SASSANO: If you could take that piece
 17 off of there, obviously. I left something on there.
 18 JUDGE BIRO: He removed it. Okay. Please
 19 proceed.
 20 BY MR. CHU:
 21 Q Did you find that page, sir?
 22 A Yes.
 23 Q Okay. Now I'm going to reference you to No.
 24 10. Do you see that?
 25 A Yes.

1 Q So does that -- and could you read that for
 2 the record, please, what's in that block?
 3 A Sure. No. 10, "Submit amendments to the
 4 application, if any."
 5 Q Okay. So that confirms what you said. You
 6 can make amendments, adjustments, and addendums,
 7 right?
 8 A You can make amendments to the application,
 9 yes.
 10 Q Okay. And that's just to make sure that
 11 everything at the end of day is clear to the agency of
 12 what's going on. Is that accurate?
 13 A The manufacturer decides why they want to
 14 amend.
 15 Q And, again, when we talk about
 16 manufacturers, we're also identifying companies that
 17 don't actually make anything but are just importers,
 18 correct?
 19 A When I use the term manufacturer, I'm
 20 referring to the certificate holder.
 21 Q Okay, fine, because there's no agreement
 22 between the OEM manufacturer in China and the EPA on
 23 these certificates, are there?
 24 MR. KLEPP: Objection, Your Honor, calls for
 25 a legal conclusion.

1 MR. CHU: I'm asking for the existence of an
 2 agreement.
 3 JUDGE BIRO: In this particular case you
 4 mean?
 5 MR. CHU: Yes, Your Honor.
 6 JUDGE BIRO: Okay. In this case.
 7 THE WITNESS: Sure. So the responsibility
 8 is to the certificate holder. The responsibility at
 9 EPA is with the certificate holder.
 10 MR. CHU: I'm having trouble hearing.
 11 THE WITNESS: I'm sorry. The responsibility
 12 to EPA is the certificate holders.
 13 MR. CHU: Your Honor, I'm sorry. I'm going
 14 to have to object to that as being non-responsive.
 15 JUDGE BIRO: Sustained. Is there a
 16 difference in this case between the manufacturers
 17 under the regulations and the importers?
 18 MR. CHU: I was asking if there was an
 19 agreement with the two Respondents that are the
 20 manufacturers in China with the EPA, an agreement.
 21 JUDGE BIRO: A written agreement?
 22 MR. CHU: Any agreement.
 23 JUDGE BIRO: That was your question? Okay.
 24 MR. CHU: Yes. That, in other words,
 25 something that binds -- we have the certificate holder

1 that makes the application, and the OEMs don't have an
 2 application in, nor is there an agreement. I just
 3 wanted to establish that on the stand here.
 4 JUDGE BIRO: I understand.
 5 Do you understand the question now?
 6 THE WITNESS: I believe so. And, again,
 7 I'll try to reiterate my point. I want to be clear.
 8 The relationship is between EPA and the certificate
 9 holder, the person who submitted the application.
 10 There's no other agreement, but there's a clause, a
 11 contribute clause, in the act that if someone else
 12 causes a violation, the agency can also address that
 13 issue as far as I understand. And I'm not an
 14 attorney, but I believe there's a clause, a contribute
 15 clause. So, when you ask is there an agreement, I
 16 don't know of any contractual agreement, but there are
 17 obligations.
 18 MR. CHU: Is there any way we can get that
 19 mike turned up?
 20 THE WITNESS: I'm sorry. Am I not speaking
 21 loudly enough? I can say that again if you'd like.
 22 JUDGE BIRO: I think Mike will come and
 23 hopefully be able to fix the situation.
 24 THE WITNESS: I apologize.
 25 JUDGE BIRO: No problem.

1 MR. CHU: I'm sorry. Maybe it's me that's
 2 not being able to hear.
 3 (Pause.)
 4 THE WITNESS: Is this okay? Can you hear
 5 me?
 6 MR. CHU: Yes, I can hear you just fine.
 7 Thank you.
 8 THE WITNESS: Okay.
 9 (Pause.)
 10 THE WITNESS: Thank you.
 11 JUDGE BIRO: Thank you, Mike.
 12 BY MR. CHU:
 13 Q Sir, now back to Exhibit 26. Can you take a
 14 look at that, please?
 15 JUDGE BIRO: Respondents' Exhibit 26.
 16 MR. CHU: Respondents' 26. It has a yellow
 17 tab on it.
 18 (Pause.)
 19 MR. KLEPP: Your Honor, if I might be heard.
 20 This is just for clarification, but if we were to look
 21 at Respondents' prehearing exchange 26, it's not the
 22 documents that are being questioned on in court this
 23 morning. So that's some confusion.
 24 MR. CHU: It's 26 of the one that we turned
 25 in. He's correct. I'll get the number again. What

1 we said was it's Respondents' 28 and 29.
 2 JUDGE BIRO: On the prehearing exchange --
 3 MR. CHU: Yes, Your Honor.
 4 JUDGE BIRO: -- that were identified as
 5 Exhibits 28 and 29?
 6 MR. CHU: Yes, Your Honor.
 7 JUDGE BIRO: But for these purposes they've
 8 been -- for the hearing, it's been identified as
 9 Exhibit 26?
 10 MR. CHU: That's our position.
 11 MR. KLEPP: I'm looking and doing a cross-
 12 walk. That seems to make sense to us over here, Your
 13 Honor. Thank you.
 14 JUDGE BIRO: Okay.
 15 MR. CHU: Proceed?
 16 JUDGE BIRO: Please proceed.
 17 MR. CHU: All right.
 18 BY MR. CHU:
 19 Q Do you see this addendum?
 20 A Yes.
 21 Q Okay. And can you tell us what your
 22 impression of the request is?
 23 A So I'm not familiar with seeing this request
 24 before, but it appears to be a request to modify
 25 previously submitted applications.

1 Q Correct. In line with the test results that
2 the EPA obtained through their designated and improved
3 so-called testing agencies. Is that accurate?

4 A You're asking me the source of the data?
5 Are you asking me for the source of the data, or what
6 are you asking me?

7 Q I'm representing to you that the information
8 on Exhibit 26 comes from the data that is being used
9 by the agency in this complaint to note that there
10 might be differences with what was on the original
11 vehicle that was tested for the certificate of
12 conformity application. Does that help you?

13 MR. KLEPP: Objection, Your Honor. I ask
14 that that be stricken. Counsel is not testifying and
15 shouldn't testify in this case.

16 JUDGE BIRO: Sustained.

17 BY MR. CHU:

18 Q Okay. So you're saying you've not seen this
19 exhibit?

20 A This document?

21 Q Yes.

22 A I think it was -- I saw something like this
23 in the documents that were shared with us, but I'm not
24 familiar with the source of the data. I didn't
25 research that.

1 Q So what I'd like to do is -- you see the
2 references to the Complainant's exhibits in that first
3 paragraph?

4 A Yes.

5 Q Since you asked to see the data, could I ask
6 you to go ahead and turn to the first reference?

7 A Okay. To clarify, I didn't ask to see the
8 data, but okay.

9 MR. KLEPP: Your Honor, I missed where we're
10 going now in terms of the cross-walk.

11 JUDGE BIRO: We're going to see the
12 applications or the certificates of conformity.

13 MR. CHU: Let me turn to the first one.

14 JUDGE BIRO: We're looking at Complainant's
15 Exhibit 1?

16 MR. CHU: No, it's going to be CX-106.

17 JUDGE BIRO: Oh. Complainant's Exhibit 106.

18 MR. KLEPP: Your Honor, may I be heard? If
19 we're about to do a crawl through all the cross-
20 referenced data that pertain to any of these engine
21 families, we're in for a very long day, and I don't
22 see the relevance.

23 MR. CHU: May I respond, Your Honor?

24 JUDGE BIRO: Of course.

25 MR. CHU: The easiest way is the Exhibits

1 106, 104, 120, and 122 is what we're representing this
2 data came from. This compliance director says he has
3 seen this, but he's not familiar with it. But this is
4 something that should have gone to his department to
5 go ahead and add this addendum to the information on
6 the application.

7 So the relevance is that once it's
8 established as the witness has testified that you can
9 add amendments to, and the regulations provide for
10 that, then basically you have these test results that
11 show a lower limit. And as such, when that's added to
12 the information on the application, with no emissions
13 issues, as we discussed yesterday, you basically are
14 in a good place at that point because everything
15 matches up. So the relevance is clearly there.

16 JUDGE BIRO: Okay. First, that seems to go
17 to liability one more time. And then I can't imagine
18 there's any dispute if, in fact, these limits come out
19 of the CEE documents that the agency has admitted into
20 the record. They do. They speak for themselves. You
21 amended -- your clients amended their COC at some
22 point. But these are not even dated, these documents.
23 So how do I know when these happened or --

24 MR. CHU: May I respond, Your Honor? These
25 are not referencing the CEE. These are reference --

1 CEE only did emissions testing. The actual entities
2 involved with the catalyst testing was a company known
3 as SGS and ER -- is it G? ERG. And you got that
4 report yesterday that we submitted as -- from Harrison
5 Wolf that was admitted, where we talked about the
6 three catalysts, and those catalysts were tested at
7 SGS.

8 JUDGE BIRO: Didn't you just refer me to
9 Exhibit 106?

10 MR. CHU: That's a different document from
11 the one we had admitted yesterday.

12 JUDGE BIRO: I know. But you told me these
13 numbers came out of Exhibit 106. I'm looking at 106,
14 and that's a CEE report.

15 MR. CHU: I apologize, Your Honor. It's the
16 footnote or the catalytic converter test results.

17 JUDGE BIRO: A footnote?

18 MR. CHU: Yes, on this document, on 26.

19 JUDGE BIRO: In Respondents' Exhibit 26, it
20 says, "See catalytic converter results, CX-66, 86,
21 89," et cetera.

22 MR. CHU: Correct, Your Honor.

23 JUDGE BIRO: And those CX are referring to
24 exhibits in this case?

25 MR. CHU: Correct.

1 JUDGE BIRO: In their prehearing exchange?
 2 MR. CHU: Correct.
 3 JUDGE BIRO: So this letter was submitted
 4 sometime after this action began and the Complainant's
 5 prehearing exchange was submitted?
 6 MR. CHU: Correct. Correct.
 7 JUDGE BIRO: Okay. And if I look back on
 8 those exhibits in the prehearing exchange, assuming
 9 they're admitted into the record, that's where this
 10 data will come from?
 11 MR. CHU: Correct.
 12 JUDGE BIRO: Okay. So aren't we good?
 13 MR. CHU: Yes, Your Honor.
 14 JUDGE BIRO: I accept that.
 15 MR. CHU: I can move on?
 16 MR. KLEPP: If I might be heard, Your Honor.
 17 The word submitted was mentioned by counsel. Submit
 18 to what? As part of our prehearing exchange, we
 19 received these documents, as you pointed out, Your
 20 Honor, unsigned, undated, in their exchange. I am not
 21 aware of any other submission in the context of
 22 Environmental Protection Agency. So we're going to
 23 have this long, drawn-out discussion, I believe, about
 24 what the CX-106 cross-reference is to an emissions
 25 test. This table on this unsigned, undated document

1 refers to catalyst component tests. There's this pile
 2 of stuff that I don't think really is worth going
 3 into. I don't see its relevancy, and it hasn't been
 4 put forward to Your Honor in an official manner.
 5 JUDGE BIRO: Mr. Chu, let me clarify. When
 6 you say you submitted these letters, were they
 7 submitted to agency counsel in this litigation?
 8 MR. CHU: Correct, Your Honor.
 9 JUDGE BIRO: Okay. But they were not
 10 submitted to the agency?
 11 MR. CHU: No. I didn't want to violate any
 12 contact with the client or the EPA counsel, so we gave
 13 it to them. I didn't want to have communications in
 14 reference to this matter with representatives of the
 15 EPA.
 16 JUDGE BIRO: Okay. So it wasn't submitted
 17 to Mr. Jackson's office directly or through whatever
 18 system he accepts -- computerized system he accepts
 19 filings for certificates of compliance.
 20 MR. CHU: That's correct, Your Honor.
 21 JUDGE BIRO: Okay. All right. Let's move
 22 on.
 23 MR. CHU: Thank you.
 24 BY MR. CHU:
 25 Q Okay. Now there are entities known as

1 approved labs that work in relation to EPA matters, is
 2 that correct?
 3 A So, from the Office of Transportation and
 4 Air Quality, that is not correct.
 5 Q So how does CEE even come up as a company
 6 that the EPA accepts test results from?
 7 A The laboratory conducts a compliant test,
 8 and someone uses that data and submits it. EPA does
 9 not approve laboratories. We have a list of companies
 10 who claim they're laboratories, but they're not
 11 approved. In fact, the document on our website says
 12 these are not approved laboratories. The EPA doesn't
 13 approve laboratories. OTAQ doesn't approve
 14 laboratories.
 15 Q So any laboratory, basically, is acceptable
 16 to the EPA?
 17 A We may conduct audits, and if they don't
 18 pass the audit, then we would raise questions about
 19 the data they submitted to us. So I wouldn't say any
 20 laboratory is acceptable.
 21 Q Now how many labs in China are you aware of
 22 that has been accepted to do either emissions testing
 23 or catalyst testing where the EPA has not determined
 24 there were any questions?
 25 Q So I don't know how many laboratories EPA

1 receives emissions data from because I don't know -- I
 2 don't have that answer for all sectors. I think there
 3 may be one or two that I've heard about that I know
 4 we've interacted with, but I don't know all the
 5 laboratories from all sectors that may submit data to
 6 EPA.
 7 Q And the one or two that you're referring in
 8 China, that's just something that's most recent, like
 9 in 2016, 2017. Is that accurate?
 10 A No. I think some of those laboratories have
 11 been submitting data to us prior to 2016. But, again,
 12 I don't know the exact year they started.
 13 Q Would you be able to date that as far back
 14 as 2010, or is that going too far?
 15 A Again, I don't know the exact year that they
 16 started, so I couldn't give you a date.
 17 Q Okay. Would there be any particular reason
 18 why test results from a laboratory in China would be
 19 unacceptable to the EPA?
 20 MR. KLEPP: Objection, calls for
 21 speculation, Your Honor.
 22 MR. CHU: Your Honor, may I respond? To the
 23 extent that this expert --
 24 JUDGE BIRO: Expert opinion, or it's within
 25 his knowledge, if he knows.

1 THE WITNESS: Sure. If for some reason they
 2 didn't pass auditing, then we would have questions
 3 about the data they provided to us.
 4 BY MR. CHU:
 5 Q So, without having conducted any audits or
 6 reason to instigate one, then basically are you saying
 7 that test results from a testing facility in China
 8 would be considered by the EPA?
 9 A I would say that in some instances we ask
 10 some laboratories to do round robins so that we can
 11 understand if they're doing testing in a manner that's
 12 consistent with a laboratory we've already reviewed.
 13 Q I'm sorry. You said round robins?
 14 A Round robin test program, where they
 15 basically participate with another labor and do
 16 testing so that we can see if the results compare.
 17 Q It's a checking system, kind of what you're
 18 talking about, is that right?
 19 A Sure.
 20 Q Okay. And I believe yesterday you announced
 21 that one way of testing a catalyst is crushing the
 22 catalyst, correct?
 23 A That is my understanding.
 24 Q Okay. Now do you know if there are any
 25 other methods of testing a catalyst besides crushing

1 it?
 2 A So I think there are some other chemical
 3 methods, but I'm not familiar with how to do those
 4 methods, so I wouldn't be able to speak to those.
 5 Q Okay. Now, currently, your offices, they're
 6 holding and not approving certain applications from
 7 Taotao USA, the Respondent. Is that accurate?
 8 A Am I -- so, again, going back to the issue
 9 yesterday of what may be considered CBI for that
 10 particular manufacturer -- am I required to respond to
 11 that question if it's potentially disclosing something
 12 that --
 13 JUDGE BIRO: Has there been a general
 14 release for Mr. Chu to receive all CBI information in
 15 regard to Taotao, including matters outside of what's
 16 at issue in this case?
 17 MR. CHU: I'm not aware of any written
 18 release, but Taotao is the Respondent, and I'm here as
 19 their attorney at this point. So I'm not sure where
 20 that's going. But this goes to the issue of ability
 21 to pay. If the agency is not allowing them to carry
 22 on their business, then I believe it's important to
 23 hear from this witness what's going on there as to why
 24 applications are being held back at this time for this
 25 Court to consider that issue.

1 MR. KLEPP: Your Honor, may I suggest a
 2 sidebar on this particular issue?
 3 JUDGE BIRO: Okay.
 4 MR. KLEPP: Thank you.
 5 JUDGE BIRO: We'll go off the record for a
 6 minute.
 7 (Discussion held off the record.)
 8 JUDGE BIRO: Are we ready to go back?
 9 MR. CHU: Yes, Your Honor.
 10 JUDGE BIRO: Okay. Mr. Jackson, we had a
 11 little sidebar conversation off the record among
 12 counsel.
 13 THE WITNESS: Yes, ma'am.
 14 JUDGE BIRO: And counsel has represented to
 15 me, Mr. Chu has represented to me, that he represents
 16 Mr. Matao Cao in this matter and in regard to
 17 everything concerning this matter and its ability to
 18 pay, and what information he's asking relates to that.
 19 THE WITNESS: Yes, ma'am.
 20 JUDGE BIRO: And I feel that he's entitled
 21 to obtain all the information from you in defense of
 22 this case that he's requested --
 23 THE WITNESS: Yes, ma'am.
 24 JUDGE BIRO: -- on behalf of Mr. Cao,
 25 regardless of whatever feelings or instructions Mr.

1 Cao might have given you --
 2 THE WITNESS: Yes, ma'am.
 3 JUDGE BIRO: -- in regard to pending
 4 applications. So we're going to proceed, and to the
 5 extent that you disclose any CBI, it's being done at
 6 my direction and my order and my responsibility.
 7 THE WITNESS: Thank you, Your Honor.
 8 JUDGE BIRO: Please proceed.
 9 BY MR. CHU:
 10 Q So are you currently holding applications
 11 that's been submitted for approval?
 12 JUDGE BIRO: Oh, yeah. Let's stop one more
 13 minute. Do we need to close the courtroom again for
 14 this?
 15 MR. CHU: I don't have a problem with not
 16 closing it, Your Honor.
 17 JUDGE BIRO: Oh, okay. Then let's proceed.
 18 THE WITNESS: So, to answer your question,
 19 no, certificate applications are not being held. We
 20 are waiting for responses from the manufacturer.
 21 BY MR. CHU:
 22 Q So, to make it clear, there's no retaliatory
 23 actions being taken by your department to hold
 24 applications that are not in the ordinary course of
 25 business. Is that accurate?

1 A That is accurate. There's no retaliatory
 2 action.
 3 Q Now yesterday we talked about your meeting
 4 in China. Remember that?
 5 A Yes.
 6 Q And you told us that you had a conversation
 7 with a gentleman that you identified as the father of
 8 Matao Cao, is that correct?
 9 A That's how he was introduced to us, yes.
 10 Q And so, at first, you failed to disclose the
 11 State Department interpreter. Remember that?
 12 A Yes, I do recall forgetting to mention that
 13 the interpreter was present.
 14 Q So why would you have a conversation with a
 15 manufacturer executive and not utilize the State
 16 Department interpreter in having that conversation?
 17 A I don't believe I said I didn't utilize the
 18 interpreter. If he spoke to us in English, I would
 19 listen.
 20 Q Okay. So that's what I don't quite
 21 understand. Are you saying that the conversation was
 22 completely in English, that gentleman to you and you
 23 to him?
 24 A No, I did not say that.
 25 Q Okay, good. I just want to make it clear

1 that --
 2 A And, again, the conversation was not to me.
 3 It was in the context of the meeting.
 4 Q And I wanted to make that clear as well. So
 5 somehow this gentleman that was identified as the
 6 father of Matao Cao got up and said something, is that
 7 right?
 8 A So I don't know if he got up. I think he
 9 was still seated when he said it.
 10 Q Was he next to you, or where was he?
 11 A He was across the room, across from -- there
 12 was a table, right? So we had -- the configuration
 13 was a U-shaped table. We were on one side, and they
 14 were on the other side of the U-shaped table.
 15 Q And where was the interpreter in relation to
 16 where you were?
 17 A The interpreter was on my right.
 18 Q Okay. Would it be accurate to say that this
 19 conversation was communicated through an interpreter,
 20 if any?
 21 A So, again, parts of the conversation were
 22 communicated through the interpreter, and some
 23 statements were made in English.
 24 Q Can you tell this Court specifically what
 25 you remember accurately as to what this gentleman that

1 you identified as the father of Matao Cao had said to
 2 you?
 3 A So I cannot -- if you say specifically and
 4 accurately, I can't give you verbatim word for word
 5 what he said. I don't want to misquote him, you know,
 6 as a verbatim, word for word. I can tell you what
 7 he -- what the context of what he said was, which was
 8 we're all one organization, and he was in charge.
 9 Q So he actually used the words in English to
 10 you, we are all one organization on this record?
 11 A So, again, I just said I can't recount the
 12 exact words to you.
 13 Q I understand. But was it a complete
 14 sentence, is what I'm getting to.
 15 A So they weren't speaking -- he wasn't
 16 speaking necessarily in full, complete English
 17 sentences. He spoke some in English, but it was a
 18 little broken.
 19 Q But somehow your interpretation in general
 20 of the complete conference was something of that
 21 nature, right?
 22 A My understanding from what he said.
 23 Q Is it just what he said, or what was -- all
 24 that was said?
 25 A So it was what he said and what others in

1 the room said from the company.
 2 Q Now did Mr. David Garibyan get up and add
 3 anything or say anything?
 4 A He did say a few things. I don't recall
 5 everything Mr. Garibyan said, though, so I couldn't
 6 give you a transcript of that.
 7 MR. CHU: Thank you, Mr. Jackson.
 8 Pass the witness, Your Honor.
 9 JUDGE BIRO: Would you like to proceed?
 10 MR. KLEPP: I would, Your Honor. May I just
 11 have a minute to gather some notes here from
 12 yesterday?
 13 JUDGE BIRO: Sure. We can take a 10-minute
 14 break and come back.
 15 MR. KLEPP: That would be much appreciated.
 16 Thank you.
 17 JUDGE BIRO: Okay. Let's stand in recess
 18 'til 10:00.
 19 Mr. Jackson, feel free to step down. Don't
 20 discuss your testimony.
 21 (Whereupon, a brief recess was taken.)
 22 JUDGE BIRO: Okay. Mr. Klepp, having had an
 23 opportunity to consider the situation, do you want to
 24 do redirect?
 25 MR. KLEPP: I have just a few questions on

1 redirect, Your Honor.
 2 JUDGE BIRO: Okay. Mr. Jackson, thank you
 3 for your patience.
 4 (Pause.)
 5 MR. KLEPP: May I proceed?
 6 JUDGE BIRO: Please proceed.
 7 MR. KLEPP: Thank you.
 8 REDIRECT EXAMINATION
 9 BY MR. KLEPP:
 10 Q Good morning, Mr. Jackson.
 11 A Good morning.
 12 Q I have just a couple of questions to follow
 13 up. This is redirect. You spoke during your
 14 testimony about the area of amendments or running
 15 changes. Would you describe the regulatory limits on
 16 uses of running changes?
 17 A So the regulatory limits are -- again, as
 18 alluded to earlier, are specifically that
 19 manufacturers may not make changes that are
 20 substantive. So, if they change catalyst formulation,
 21 that would not be something that would be considered
 22 an amendment to an application. That would be
 23 considered a new family.
 24 Q New family meaning new engine family?
 25 A New engine family, yes.

1 Q Is there any limitations in terms of timing
 2 of the request for a running change?
 3 A We would typically not approve a running
 4 change request after the model year. So, if someone
 5 wanted to make a running change after the model year
 6 had ended, the certificate will have already expired,
 7 so we would not approve that running change request.
 8 Q And in the case of a submission for a
 9 running change, what are the regulatory provisions
 10 regarding what should accompany that request?
 11 A The data to support that there are no
 12 changes to the emissions associated with that change.
 13 Q Do the reg --
 14 MR. CHU: Objection, not responsive. He
 15 asked for a specific regulatory reference.
 16 JUDGE BIRO: No. I think he said what has
 17 to accompany it.
 18 MR. KLEPP: I'm sorry, Your Honor. Can --
 19 JUDGE BIRO: Overruled. Go ahead.
 20 MR. KLEPP: Thank you.
 21 BY MR. KLEPP:
 22 Q The package, do they at times -- are they
 23 accompanied by an engineering analysis?
 24 A Yes. In some instances, manufacturers
 25 actually provide engineering data to support -- or

1 test data to support their assertion that there's no
 2 change associated -- no emissions change associated
 3 with the running change or the amendment.
 4 Q I would also draw your attention to
 5 yesterday. There was in the questioning the use of
 6 the term low-emission vehicle. Is that a regulatory
 7 term as you understand it?
 8 A The term low-emission vehicle, as I
 9 understand it, is a light-duty regulatory term. There
 10 is a low emissions test that we made reference to, but
 11 a low-emissions vehicle, I believe, is a term used to
 12 characterize light-duty vehicles, cars.
 13 Q I just heard you say the word low-emission
 14 test. Is that the same as low-hour test?
 15 A Low-hour test, yes.
 16 Q Low-emission test -- from your knowledge of
 17 the vehicles and engines involved in this case, do any
 18 of them fit the regulatory definition of low-emission
 19 vehicle?
 20 A I'm not aware that any of these vehicles fit
 21 the category of low-emission vehicle.
 22 MR. KLEPP: Okay. Thank you.
 23 No further questions, Your Honor.
 24 JUDGE BIRO: Any recross, Mr. Chu?
 25 MR. CHU: No. No, Your Honor.

1 JUDGE BIRO: Thank you so much for your
 2 patience, Mr. Jackson.
 3 THE WITNESS: Thank you, Your Honor.
 4 JUDGE BIRO: I very much appreciate it.
 5 THE WITNESS: Thank you.
 6 JUDGE BIRO: You're free to go.
 7 No intention to recall Mr. Jackson?
 8 MR. CHU: We have none. I have no issues
 9 with this witness being released, but I would ask that
 10 he not talk about his testimony with the other
 11 witnesses.
 12 JUDGE BIRO: Do you release him so he can go
 13 back to beautiful Michigan?
 14 MR. KLEPP: Yes, Your Honor.
 15 JUDGE BIRO: Okay. Thank you, Mr. Jackson.
 16 THE WITNESS: Have a good day.
 17 (Witness excused.)
 18 (Asides.)
 19 JUDGE BIRO: Mr. Klepp, do we need to take
 20 another break?
 21 MR. KLEPP: I don't -- what would you like?
 22 Oh, you're next.
 23 MR. PALERMO: Yeah.
 24 MR. KLEPP: We're going to switch seats.
 25 JUDGE BIRO: That's a no? Okay.

1 MR. KLEPP: We're ready, Your Honor. Thank
 2 you.
 3 JUDGE BIRO: Mr. Palermo, call your next
 4 witness.
 5 MR. PALERMO: Dr. James Carroll.
 6 JUDGE BIRO: Mr. Reporter, could you please
 7 swear the witness?
 8 Whereupon,
 9 JAMES CARROLL
 10 having been duly sworn, was called as a
 11 witness and was examined and testified as follows:
 12 JUDGE BIRO: Please proceed.
 13 MR. PALERMO: Your Honor, just a preliminary
 14 matter. We, as you know, we had submitted a corrected
 15 version of Dr. Carroll's expert report as CX-214.
 16 JUDGE BIRO: Yeah. And I haven't accepted
 17 it because it's too late.
 18 MR. PALERMO: Okay.
 19 JUDGE BIRO: So I'll let you mark it as an
 20 exhibit, but I'm not going to accept it into the
 21 record.
 22 MR. PALERMO: May Dr. Carroll --
 23 JUDGE BIRO: So you can identify it if you
 24 like.
 25 MR. PALERMO: -- speak to it, and can I use

1 it as an exhibit?
 2 JUDGE BIRO: If you like.
 3 MR. PALERMO: Okay. Thank you. And there
 4 will be discussion of CBI at a certain time. There
 5 will be tax data.
 6 JUDGE BIRO: Okay. So should we close the
 7 courtroom now?
 8 MR. PALERMO: Well, given -- yeah, I think
 9 we should.
 10 JUDGE BIRO: Okay.
 11 MR. PALERMO: May I proceed?
 12 JUDGE BIRO: Please proceed.
 13 DIRECT EXAMINATION
 14 BY MR. PALERMO:
 15 Q Dr. Carroll, could you please introduce
 16 yourself and state your full name for the record?
 17 A Dr. James J. Carroll, CPA.
 18 Q And where do you live?
 19 A 1374 Roger Avenue, Bridgewater, New Jersey.
 20 That's my home office.
 21 Q What is your current employment?
 22 A I have -- I hold a professorship in business
 23 administration at Georgian Court University, Lakewood,
 24 New Jersey. I provide expert services in cases
 25 through a company that carries my own name, Dr. James

1 J. Carroll, CPA. And the third thing I do is I
 2 provide continuing education courses as part of the
 3 licensure requirements for CPAs in New Jersey.
 4 Q And I may have missed it. What university
 5 are you a professor?
 6 A Georgian Court University in Lakewood, New
 7 Jersey.
 8 Q How long have you been a professor there?
 9 A This is my 27th year, a full-time professor,
 10 yes.
 11 Q And have you been a full-time professor at
 12 other universities?
 13 A I had full-time faculty status at Fairleigh
 14 Dickenson University and also William Patterson
 15 University, both in New Jersey.
 16 MR. CHU: I'm going to object as non-
 17 responsive. The question was professorship, and he
 18 said faculty. So I'm not sure if that's one and the
 19 same. I'm objecting as non-responsive.
 20 JUDGE BIRO: Overruled. Go ahead.
 21 BY MR. PALERMO:
 22 Q Previous to your current position, were
 23 you -- how long were you -- had been a full-time
 24 professor in the entirety of your profession?
 25 A This, I think it's my 35th year as a full-

1 time faculty member, started out as associate
 2 professor and promoted to full professor.
 3 Q And how long have you been consulting?
 4 A About -- since about 1988.
 5 Q And who are your clients?
 6 A I do litigation support. My clients are
 7 largely attorneys, and I testify in matters relating
 8 to economic damages. Those are largely personal
 9 injury, wrongful death cases. I also get into
 10 commercial damages, product liability, breach of
 11 contract, and then occasionally other case -- I've
 12 been in an election case, and I do some accounting
 13 malpractice cases as well.
 14 JUDGE BIRO: Don't we have his resume in the
 15 record?
 16 MR. CHU: I have no problem with that, Your
 17 Honor.
 18 JUDGE BIRO: Is there any problem
 19 identifying him as an expert?
 20 MR. CHU: No, Your Honor.
 21 JUDGE BIRO: Okay. So maybe we could skip
 22 over that all. We can identify Dr. Carroll as an
 23 expert in accounting.
 24 MR. PALERMO: I'm not sure that's the --
 25 JUDGE BIRO: Well, what would you like to

1 identify him as an expert in?
2 MR. PALERMO: We're -- we would like him to
3 be tendered as an expert in accounting and corporate
4 finance.

5 JUDGE BIRO: Okay. Is there any basis for
6 not certifying him as an expert in those fields, Mr.
7 Chu?

8 MR. CHU: The accounting I would not have an
9 issue with, but the corporate finance I would.

10 JUDGE BIRO: Okay. Please proceed to lay a
11 foundation on corporate finance, if you can.

12 BY MR. PALERMO:

13 Q What educational degrees do you hold?

14 A I have an undergraduate degree in industrial
15 engineering, New Jersey Institute of Technology. I
16 have an MBA in finance, Rutgers University. I have a
17 doctorate in business administration from NOVA
18 Southeastern University. In addition, I have a series
19 of professional credentials. May I list those?

20 Q Please do.

21 A Okay. I'm a licensed CPA in the State of
22 New Jersey. I'm a certified management accountant.
23 That's a designation put forth by Institute of
24 Management Accountants in Montvale, New Jersey. I'm
25 certified as a -- in financial forensics. That's a

1 designation put forth by the AICPA. I'm a certified
2 fraud examiner. That's a designation put forth by the
3 Institute of Fraud Examiners in Austin, Texas. I'm a
4 certified financial manager. That's a designation put
5 forth by the Institute of Management Accountants in
6 Montvale, New Jersey. And finally, I'm a chartered
7 global management accountant, a designation put forth
8 by the American Institute of Public Accountants.

9 Q How did you become engaged in this matter?

10 A I have a little bit of advertising, and I've
11 gotten -- I got a call from a company called ERG,
12 Eastern Research Group, asking me if I might be
13 interested in submitting a proposal to do work in this
14 particular case. That was about more than a year ago.

15 Q Can you explain what we mean -- what
16 corporate finance expertise means?

17 A Yeah. Corporate finance is the financing of
18 running a business. It's different than individual
19 finance and investments. It's different than public
20 policy finance. So, when you look at someone with a
21 background like mine, we're used to running businesses
22 or studying businesses and running the financial
23 aspects of the business. That includes bank loans,
24 stock issues, cash management. Those areas are
25 usually thought of in financial management.

1 Q Have you provided a resume in this matter?

2 A I did.

3 Q Can you please turn to CX-159? I think it's
4 in Book 3.

5 A Thank you, sir. I have it.

6 Q Do you recognize this document?

7 A I do.

8 Q What is it?

9 A My CV. And its last update was January of
10 this year, the CV through January of this year.

11 Q Who prepared this resume?

12 A I did.

13 Q Does this resume accurately describe your
14 educational background and work experience?

15 A Yes, through January of this year.

16 MR. PALERMO: Your Honor, at this time, I'd
17 like to move to admit CX-159 into evidence.

18 MR. CHU: No objections, Your Honor.

19 JUDGE BIRO: CX-159 is admitted into the
20 record.

21 (The document referred to,
22 previously identified as
23 Complainant's Exhibit No.
24 159, was received in
25 evidence.)

1 BY MR. PALERMO:

2 Q With respect to your career as a professor,
3 what kind of courses have you taught?

4 A I think you'll find that in the resume.
5 Under the Georgian Court, I taught the same type of
6 courses for my 35 years. They are largely finance and
7 accounting. The finance -- the accounting courses I
8 taught are pretty much everything. My focus heavily
9 is on auditing. That's the gathering of evidence to
10 form an opinion on the issuing of financial
11 statements. I also do cost accounting.

12 In the area of finance, I do graduate and
13 undergraduate courses in financial management, the
14 first course, the second course in both those degree
15 programs. I also have a very strong background in
16 professional ethics. So I teach courses in
17 professional ethics, and I've also picked up the
18 corporate strategy course, the Capselin (phonetic)
19 course in our MBA program.

20 Q What is financial management?

21 A Financial management in the sense we mean it
22 here is a management of running a corporation or any
23 entity. It includes where does the money come from --
24 that's bank loans or getting investors. It includes
25 the management of the company -- the money while it's

1 here, and includes the management of the sources of
2 those monies later on. For example, it might include
3 collections management, credit management, things that
4 relate to the money coming in and out of a business.

5 Q Did any of your courses cover analyzing the
6 financial health of privately held companies?

7 A Analyze the financial health of companies,
8 yes. We do all types, that it's not only public but
9 private companies the way we do it, yes.

10 Q And do your courses cover assessing the
11 impact of taking on liabilities?

12 A Absolutely, yes.

13 Q In your career as a consultant, have you
14 been qualified to testify as an expert in accounting
15 before?

16 A Yes.

17 Q And in corporate finance?

18 A Yes.

19 Q And in your work as a consultant, have you
20 assessed whether a privately held company can take on
21 a liability before?

22 A Yes.

23 Q Before you were a consultant and a
24 professor, did you hold any jobs in the private
25 sector?

1 A I did. I was the -- I worked for the big
2 accounting firm, Deloitte, for a short period of time.
3 I also had jobs in the financial aspect -- management
4 aspects of other corporations, including being the
5 chief financial officer of the U.S. subsidiary of a
6 Swedish company. And then I've been chief financial
7 officer of academic organizations. That doesn't even
8 show on my resume, several of them.

9 Q Have you co-written a textbook?

10 A I did.

11 Q Is that textbook in the field of corporate
12 finance?

13 A It's actually in the field of
14 entrepreneurship, but it's got a finance and
15 accounting angle. The goal of that book was to try
16 and identify whether we should buy a business. Well,
17 to do that, we have to look at the finance and
18 accounting statements to make sure they make sense and
19 analyze them, and kind of kick the tires on the car
20 and see if it makes sense. And that's the goal of
21 that particular book, yes. It's called Investigating
22 Entrepreneurial Opportunities, and it's got the word
23 due diligence in the title.

24 Q When was it written?

25 A It was published in 2000, the year 2000.

1 MR. PALERMO: Your Honor, at this time, I'd
2 like to tender Dr. Carroll as an expert in accounting
3 and corporate finance.

4 MR. CHU: Permission to voir dire, Your
5 Honor?

6 JUDGE BIRO: You may.

7 VOIR DIRE EXAMINATION

8 BY MR. CHU:

9 Q Good morning, Dr. Carroll.

10 A How are you, sir?

11 Q Good. How are you?

12 A Good.

13 Q We meet again.

14 A Yes.

15 Q Now will you tell this Court, please, your
16 experience with the examination of tax returns?

17 A Tax returns are a regular part of every
18 forensic study I've done. I wouldn't think all of
19 them, but probably 95 percent of them. So I've
20 probably done literally hundreds of investigations of
21 tax returns.

22 Q But you in your practice do not prepare tax
23 returns for filing, do you?

24 A Absolutely not, sir, no.

25 Q Now you talked about the private sector.

1 That was with Deloitte, was it?

2 A Okay, yes. I see why you would call it
3 private sector. We usually call it public accounting,
4 but, yes, we'll call it private sector. That's
5 usually called public accounting.

6 Q Right. I just wrote that down from what you
7 mentioned earlier.

8 A I'm sorry. Your question? I didn't get it.

9 Q I said I wrote that down from what you
10 mentioned earlier. So you did not mention private
11 sector?

12 A Oh, private? Sir, I'm -- can I -- what
13 question are you asking so I can address it?

14 Q The question is this accounting company that
15 you worked at, that was how many years ago?

16 A In the early '70s.

17 Q And that was -- you weren't actually an
18 employee of Deloitte, is that right?

19 A Yes, I was.

20 Q And you were there basically to train. Is
21 that accurate?

22 A No, sir. I was the billable consultant.

23 Q In terms of working as a financial manager?

24 A I did a lot of -- a variety of things. Some
25 of it was financial management, yes.

1 Q Now you testified that you have been
 2 qualified as a corporate financial expert before. Can
 3 you tell this Court in what cases?
 4 A I have a long list, sir. I'd have to think
 5 about which one. I can take a minute and look.
 6 Q Certainly.
 7 A And certainly, with anything regarding
 8 business damages, my list of cases starts on page 2 of
 9 my resume and goes to page 9. Recently -- may I do a
 10 couple of recent ones for you, sir? Maybe we'll do
 11 that, okay? Or I don't know how you want to do this.
 12 You want a couple, or do you want -- I got 4- or 500
 13 to go through. How do you want to handle that?
 14 Q Just pick one where you were qualified by
 15 the Court and accepted as a financial man -- what do
 16 you call it, a financial what?
 17 A The area is generally called corporate
 18 finance or managerial finance. It's the management of
 19 a company's finances, is the area we're talking about.
 20 Q Right. But what you're being presented for
 21 is as a corporate finance expert, not a corporate
 22 management expert. Is that accurate?
 23 JUDGE BIRO: Yes, that's accurate.
 24 THE WITNESS: Yes, that's accurate, yes.
 25 //

1 BY MR. CHU:
 2 Q Okay. So I just want to know about where
 3 your most recent case was where the Court accepted you
 4 as a corporate finance expert.
 5 A I'm going to go to the resume because I've
 6 got the list in front of me, and I see Nadia Srahim v.
 7 ADM. I'm on page 10, and I'm taking from the end of
 8 the list and working up to the first one that has
 9 finance in it.
 10 Q Can you give me the EPA Bates number that
 11 you're talking about?
 12 A EPA-002080.
 13 (Pause.)
 14 MR. CHU: Yeah, I apologize. The one that I
 15 was given in the Complainant's book does not seem to
 16 have the 80.
 17 JUDGE BIRO: CX-159. Here, I'll be glad to
 18 give you my copy.
 19 MR. CHU: Thank you. May I approach?
 20 (Pause.)
 21 BY MR. CHU:
 22 Q You said on page 10, the name was Nadia, you
 23 said?
 24 A Yes. Go to the long -- end of the long
 25 list, about halfway down the page, and go up to --

1 Q Is it Nada? Is that --
 2 A Nada Srahim v. ADM Management, yes.
 3 Q Okay. I'm sorry. I thought I heard you say
 4 Nadia. Okay, Nada, okay. So all right. That was a
 5 case where you actually testified in the courtroom?
 6 A Yes.
 7 Q And that was a state court case?
 8 A Yes.
 9 Q Okay. And as far as the corporate finance
 10 issue, without telling us who the parties were or
 11 whatever, can you give us the general essence of what
 12 the corporate finance issue was that you testified to?
 13 A Pause and think about that a little bit.
 14 It's been a few years. The company made a claim about
 15 a fraudulent lease application, and my testimony was
 16 that they could not have successfully operated that
 17 business, lease or not. And that was the testimony,
 18 that the company was so poorly structured and financed
 19 that the company would have failed. And that was the
 20 testimony.
 21 Q So, basically, it was just relating the
 22 information that was on the balance sheet that it was
 23 poorly financed? In other words, you looked at a
 24 loan?
 25 A No. The balance sheet -- I don't trust

1 balance sheets. I trust -- I more logically touch --
 2 trust tax returns. So I took the information from the
 3 tax returns of the company, which does have a balance
 4 sheet in it, and then I drew that -- I looked at that
 5 scenario, and I did some projections on it about the
 6 business, what the business would have done given the
 7 structure that it had. And it couldn't have made the
 8 payment, so there was no basis for their complaint.
 9 Q Now I see on here that at the Georgian Court
 10 University that you teach or have taught financial
 11 management. Is that accurate?
 12 A Yes.
 13 Q Now the only finance class that I see, and
 14 maybe I'm missing it, is the healthcare finance. Is
 15 that accurate?
 16 A No, sir.
 17 Q Which other one is on here that has finance?
 18 A Let me see what I called it. Well,
 19 financial management undergrad -- graduate and
 20 undergraduate -- both of those are two-course
 21 combinations. So, when I said financial management
 22 there, it's actually four different courses.
 23 Q So I was right to say that what I see on
 24 here is a class that you teach or have taught dealing
 25 with financial management, correct?

1 A Four courses. Oh, what you see -- I see
2 what you're saying. I listed the topic of financial
3 management. If I listed every course I taught, it
4 would be extremely long. So that, when I said
5 financial management, that's four separate courses.

6 Q And in this case here, did you apply
7 corporate finance principles to come up with the
8 opinion that you intend to state for the Court?

9 A Yes.

10 Q Okay. And so, in regards to corporate
11 finance, you've really never had a position for any
12 period, extended period of time dealing specifically
13 with corporate finance as we're familiar with let's
14 say on Wall Street, right?

15 A I wouldn't call that corporate finance.
16 That's investment finance. That's not what I'm
17 talking about. We're talking about managing
18 businesses. I'm not talking about being a
19 stockbroker. I'm not talking about stock
20 recommendations. I'm talking about managing -- being
21 the chief financial officer of a company. I've had
22 that title many times.

23 Q So that's more on the management side and
24 not more on the corporate finance side, seeking
25 financing either through private or public means,

1 correct?

2 A No, sir. Okay. Let's -- when I say
3 management finance -- managerial finance or corporate
4 finance, they're the same thing. The textbooks --
5 even the textbooks have different names, same chapters
6 in the same books. So management finance and
7 corporate finance are the same thing. What that means
8 is running a business. As the CFO of the company,
9 where is the money coming from to pay the paychecks.

10 Q Can you tell this Court the five basic
11 corporate finance rules?

12 A There are so many, sir, I would have to -- I
13 could write a couple books on that. Which five are
14 you referring to?

15 Q The five that are the most important.

16 JUDGE BIRO: I think now we're getting into
17 the weight that you might want to ask on cross, on the
18 weight to be given his testimony, not whether he's
19 qualified.

20 MR. CHU: Yes, Your Honor.

21 JUDGE BIRO: Do you still have any
22 objection, Mr. Chu, to his qualification?

23 MR. CHU: Yes. I will lodge my objection
24 that he has not been qualified sufficiently based upon
25 experience and training to be able to render opinions

1 as to corporate finance, specifically not corporate
2 management, which he says he's not being tendered for.
3 But strictly on corporate finance, I would object that
4 he has not been qualified at this time based upon his
5 experience and testimony this morning.

6 JUDGE BIRO: Okay. I'm going to overrule
7 your objection. I think Dr. Carroll's education,
8 training, and experience over the past 30, 40 years is
9 more than enough to qualify him as an expert both in
10 accounting and corporate finance.

11 Please proceed with your direct.

12 MR. CHU: Your Honor, may I --

13 JUDGE BIRO: Thank you.

14 DIRECT EXAMINATION (RESUMES)

15 BY MR. PALERMO:

16 Q Dr. Carroll, what did EPA ask you to do for
17 this matter?

18 A They asked me to look at this particular
19 matter, and that involves really a series of
20 disclosures which I signed off on to be able to look
21 at documents. They provided me background documents,
22 and, of course, I always ask for the tax returns. And
23 we got the tax returns and a series of documents, and
24 I started reading.

25 Q Did EPA ask you to prepare a report for this

1 case?

2 A Eventually, we were going to prepare a
3 report. I had to -- I knew that was going to be the
4 goal, to have a report, so I eventually -- I knew I
5 was going there. Before I did that, I was reading a
6 lot.

7 MR. CHU: Objection, not responsive, Your
8 Honor. Yes or no.

9 JUDGE BIRO: Sustained. Did you prepare a
10 report?

11 MR. CHU: Objection, not responsive. He's
12 asking a yes or no question.

13 JUDGE BIRO: Sustained.

14 BY MR. PALERMO:

15 Q Dr. Carroll, I'd like you to turn to CX-192.
16 (Pause.)

17 MR. PALERMO: I think it is Binder 4-4.
18 (Pause.)

19 BY MR. PALERMO:

20 Q Do you have it?

21 A I have it, sir. Thank you.

22 Q Do you recognize this exhibit?

23 A I do.

24 Q What is it?

25 A It's a report I rendered in this matter

1 dated June 16, 2017.
 2 Q Have you prepared a corrected report for
 3 this?
 4 A I did.
 5 Q What -- could you explain what the nature of
 6 those corrections were?
 7 A Yes.
 8 MR. CHU: I'm going to object to this line
 9 of testimony. It's a surprise to us. We deposed this
 10 witness, and we have not had any opportunities to
 11 depose. We'd object to references of a corrected
 12 report.
 13 MR. PALERMO: Your Honor, I don't think the
 14 deposition transcript freezes his opinions in time.
 15 JUDGE BIRO: Uh-huh.
 16 MR. PALERMO: There was --
 17 JUDGE BIRO: Yeah, okay. Well, first, I
 18 don't seem to have it, 194, his June report. I
 19 haven't --
 20 MR. PALERMO: 192.
 21 JUDGE BIRO: 192.
 22 MR. PALERMO: Sorry.
 23 JUDGE BIRO: Okay. And then you just
 24 submitted his corrected report, so I'd like you to go
 25 off of his old report. You can ask him --

1 MR. PALERMO: This is his old --
 2 JUDGE BIRO: -- some questions, whether he
 3 thinks it's still accurate.
 4 MR. PALERMO: The questions as to whether
 5 it's -- whatever the changes were, were material to
 6 his opinion, that's --
 7 JUDGE BIRO: Yes. I guess he can update it
 8 if he now, as his current testimony says, it's no
 9 longer his opinion. I'm just -- I'm really -- I think
 10 it's very unfair to change expert witnesses' opinions
 11 or testimony at the last moment.
 12 MR. PALERMO: He's not changing the
 13 substance of his testimony. He had corrections he
 14 made to the numbers, but the overall changes were not
 15 significant enough to change his opinions in this
 16 case. And I want to elicit --
 17 JUDGE BIRO: Okay. Let's start with his
 18 opinions that aren't changing and see where we get to.
 19 BY MR. PALERMO:
 20 Q We're looking at CX-192.
 21 A I see it, sir. Thank you.
 22 Q Does this document accurately summarize the
 23 financial analysis you did in this case?
 24 MR. CHU: Objection, leading.
 25 JUDGE BIRO: Overruled. Go ahead.

1 Is this your report?
 2 THE WITNESS: This is my report, Your Honor,
 3 yes.
 4 JUDGE BIRO: Okay.
 5 MR. PALERMO: Your Honor, at this time, I'd
 6 like to move CX-192 into evidence.
 7 JUDGE BIRO: Do you have any objection, Mr.
 8 Chu?
 9 MR. CHU: I would object to the report being
 10 admitted as evidence since the witness is here to
 11 testify. This is a situation of the witness and
 12 hearsay, so my objection is hearsay. The declarant's
 13 here to testify.
 14 JUDGE BIRO: Overruled. Exhibit 192 is
 15 going to be admitted into the record.
 16 (The document referred to,
 17 previously identified as
 18 Complainant's Exhibit No.
 19 192, was received in
 20 evidence.)
 21 BY MR. PALERMO:
 22 Q Dr. Carroll, do you have an opinion as to
 23 whether Taotao USA is able to pay a penalty of at
 24 least \$1.6 million and continue to stay in business?
 25 A Yes, it is. It's stated on the first page.

1 The payment of a fine will not adversely impact the
 2 ability of Taotao USA to continue in business. Yes,
 3 it is.
 4 Q Can you explain how you began your analysis
 5 for this case?
 6 A Yes. This is going to be a bit of a time
 7 line for me. I get --
 8 MR. CHU: I would object to the extent it
 9 calls for a narrative and a lecture. We request that
 10 it be a question/answer.
 11 JUDGE BIRO: I think a narrative is
 12 appropriate here.
 13 Go ahead, Doctor.
 14 THE WITNESS: Thank you, Your Honor.
 15 JUDGE BIRO: Explain to me how you came to
 16 that conclusion.
 17 THE WITNESS: Thank you, Your Honor. When I
 18 get a case of this type or any type, I read a lot of
 19 documents, and almost somewhere in between reading the
 20 documents I grab those tax returns, and I call --
 21 spread them out, take out my Excel spreadsheet, run
 22 all the numbers out for as many years as I have tax
 23 returns.
 24 And now I go back and re-read the documents
 25 and start to understand what the numbers mean a little

1 bit, and that's where I start, okay? I start looking
2 at the numbers on the tax returns, and I do what some
3 people might call a smell test. Does something look
4 right or wrong? And I looked at these. And, by the
5 way, they're summarized in the appendix of this if you
6 want to follow it, but if you don't, that's okay.

7 And I looked at the numbers. I said what is
8 out of line here. I just need to get the feel whether
9 it's credible or not. Without doing that type of
10 test, I find just throwing things into a computer
11 model to be, frankly, accounting malpractice really,
12 just wrong. I'm not trained that way. I just don't
13 do it.

14 So, when I did this one, two large areas
15 popped out at me. They are the receivables of the
16 company. I need to define receivables. Receivables
17 are shipments that any organization has made or sales
18 that the company -- a company has made that they
19 haven't been paid for yet. And on the other side is
20 something called accounts payable. That's items that
21 have been incurred that haven't been paid yet.

22 Now, just to explain that, on a personal
23 level, we usually are employees, so we don't have
24 receivables. But we really do have payables, accounts
25 payable. Usually everybody I know has a bill box or a

1 bill drawer with a pile of envelopes, and that
2 essentially is accounts payable. Corporations just
3 have a bigger bill box or a bill drawer, and they
4 probably put it on a computer file.

5 So I started to look at that. So both of
6 those stood out at me as being very odd, and I noted
7 them. And I started looking at the rest of the data.
8 I didn't see any trends in the data that were
9 significant over time, but those two things stood out.
10 So my first step was to do a crude study of the
11 accounts receivable data, and that starts, if you're
12 following along -- I just have a lot of background in
13 the front of this thing -- on page 8, which is EPA-
14 002583.

15 MR. CHU: I'm sorry, Your Honor. What
16 exhibit number?

17 MR. PALERMO: It's Exhibit CX-192.

18 THE WITNESS: Page 8 of my report is another
19 way to find it.

20 MR. CHU: Okay.

21 THE WITNESS: Thank you, Your Honor.

22 So I -- oh, thank you. I see it's behind
23 me. Okay. I think I'll stay here, but I can point to
24 it if you want. So this is the broad approach for
25 accounts receivable. This is what I might call a

1 smell test, to make sure it makes sense. So up on the
2 screen you see the gross receipts for a few years.

3 And, Mark, I wonder if you can -- there you
4 go. Thank you.

5 Now my first cut is I'm looking at 30 to 60
6 days ought to be about what the receivables should be.
7 That's typical. People collect bills in 30 to 60
8 days, not every company, but that's a typical number.
9 So I started by putting 12-1/2 percent, which is 45
10 days of receivables as a number I might see there,
11 okay?

12 By the way, the company's actual receivable
13 number is zero. Hmm. What's going on? Okay. So I
14 start to think something is really different here.

15 Okay. The second step I did is I did an industry-
16 specific one. Now what that calls for here is where
17 you go to get industry-specific data, okay?

18 Every organization files a tax return using
19 something called a NAICS Code, North American Industry
20 Classification System Code. It's found on the tax
21 return, put on by the tax preparer, and submitted. I
22 looked at the Taotao tax returns and found their
23 number, okay? And I think you'll see the number in
24 here, 42311100, okay? Is that on this page? It might
25 be on the next page. I'm not sure, but there is the

1 number that they reported, somewhere around here we
2 got the number.

3 So I looked at their number, and I went to
4 the NAICS code list. There are thousands and
5 thousands of NAICS code. The book describing them is
6 650 pages long. So they got them -- the subcategories
7 go down very finely, okay? The number that they
8 picked ended in double zero. There is no double zero.
9 You have to add another digit.

10 So I went to the one logically next. I
11 expected the one with the one zero, two zeros, et
12 cetera, and the one that made sense was the one zero
13 code. And I have the detail behind that and the
14 logical choice of why theirs needed to be slightly
15 corrected.

16 I think what happened is they didn't put all
17 the digits in. And year after year, they've been
18 reporting double-oh, and there's no actual code.
19 You've got to go down further. So using that code,
20 now I've identified the NAICS category that I want to
21 use for their data, okay?

22 So now I've got a general idea of what
23 industry they're in, and I think that's important to
24 describe, and I think it's called the wholesale --
25 wholesaler of vehicles category, right? And I think

1 that's written in the report too. I'm not sure.
2 Maybe on the next page it's described what the NAICS
3 Code actually is, somewhere. It's probably right
4 around where I used it the first time. There it is.
5 I see it. Thank you, sir.

6 As shown on this screen, 42300 is the one
7 that they reported, but the one that -- can't, there's
8 no number like that. It's 42310. Now that is the
9 motor vehicle, motor vehicle parts, and suppliers
10 merchant wholesalers. That's the definition of the
11 NAICS Code as provided by -- it's not even --

12 MR. CHU: Your Honor, can we get the Bates
13 number?

14 THE WITNESS: I have an EPA number, sir, if
15 that will be helpful to you.

16 JUDGE BIRO: EPA-0002580.

17 THE WITNESS: Okay. So I -- now I have the
18 right NAICS Code information. There are companies
19 that provide data about financial information.
20 There's publicly traded companies which are much
21 larger, and then there's a hard-to-get data set on
22 privately owned companies. And that company that does
23 it is called RMA. RMA currently stands for Risk
24 Management Associates. It used to stand for Robert
25 Moore & Associates. They've been around for

1 hundreds -- 50 years or something more, and they
2 collect data like this.

3 Now important to understand what that group
4 is. They're a group of largely bank lending officers
5 who take the actual applications that they get and
6 feed them into their computer system and aggregate the
7 data. So there's no names on it, and there's I think
8 a quarter million companies that have data entered in
9 that system every year. And it's sorted by NAICS Code
10 and then published in a book, okay?

11 So the RMA book is a highly regarded piece
12 of information used by bank lending officers
13 primarily. It's also used by other people in this
14 area. And the RMA organization is a -- I think it's
15 based in Philadelphia, but it's nationwide. They have
16 local chapters, chapter meetings where bank lending
17 officers meet and discuss how to make bank lending
18 decisions. They're recruiting students on my campus
19 now. So the company, the organization, is highly
20 regarded.

21 So now we use their data, all right? Now
22 I've got their data for this particular situation.
23 Now I go back to where we were earlier.

24 If we could, Mr. Palermo. Down a little
25 bit.

1 So theirs, now I see theirs is 10.3 percent
2 of the total assets of the company. My rough estimate
3 is 12.5, which means my smell test was pretty good.
4 But I really would rather use the data specific to
5 this particular company, okay? So I used the NAICS
6 Code data to come up with their receivables as should
7 be shown on the company's statements. Now I want to
8 talk about that a little bit, okay?

9 The company is looking at tax returns. We
10 have to kind of use what we call Generally Accepted
11 Accounting Principle data, GAAP data, because that's
12 what everyone uses. So I have to kind of correct
13 things to GAAP information, and that's one thing that
14 might be considered in making a correction to GAAP.
15 The receivables as zero, it doesn't make sense, okay?

16 More investigation -- what's that?

17 JUDGE BIRO: Wouldn't it make sense to have
18 zero receivables if they required payment in advance
19 for all of their inventory?

20 THE WITNESS: Absolutely. Absolutely, Your
21 Honor, absolutely. The issue with that is I don't
22 know many companies that do that. You're absolutely
23 right, Your Honor. Now I might address that. I will
24 say that later on, after my report was written, I saw
25 two deposition transcripts of the president of the

1 company, Mr. Cao and a Mr. Garibyan, who indicated
2 that they paid in advance.

3 Now, in the context of reading those, Mr.
4 Cao didn't seem as familiar with the details, although
5 he -- I think he was president of the company. And
6 Mr. Garibyan was operating out of a West Coast
7 location, not in the Texas location. But both did say
8 that they seemed to get payment in advance. So, if
9 that was the case, that -- my number is actually
10 wrong. And I need to talk about that right now
11 because had I seen those -- they did not exist because
12 the depositions were taken after my report was given.

13 I would have done more work on that. I
14 don't know what I would have done because no
15 information was available for me to test that, okay?
16 And I doubt I would get any more. I've been asking
17 for information from -- through ERG and the EPA for a
18 long time, and we got what we got.

19 So, after studying that a long time, I
20 started to say, gee, I don't know that I have enough
21 evidence, my definite evidence, to defeat those two
22 statements. So, although I see it there, I'm having
23 trouble supporting my conclusion on this topic.

24 I'm not sure I'm wrong, but I'm really not
25 sure I'm right. And I think that's where I have to

1 leave that one because data came in after I got my
2 report that indicated they got cash in advance. Very
3 surprising. The industry doesn't look that way, but
4 it could be, okay? The tax return reads that way.
5 I'll get to the tax return in a minute.

6 So I've got three pieces of data against the
7 industry data. I don't have enough information to
8 defeat the deposition information, so I need to flag
9 it as saying I'm not confident that my opinion is
10 correct here. I don't think it's wrong, but I don't
11 think it's right either, and I'm going to leave it at
12 that because I don't have any more data to push it one
13 way or the other. And that's all the information I
14 have on that one, okay?

15 So I just -- being blunt, that's what we
16 got. Had I seen those -- the deposition was done
17 months after my report was issued. I would have done
18 more research right away or at least flagged it here,
19 and I found this out later. I just didn't know, okay?

20 So I think we pretty much found that topic,
21 so -- now what that's going to say is you take the
22 number there -- let's just take the 2012 number,
23 \$612,000. If I'm right -- and, again, not sure if I'm
24 right, okay -- that would add value to the company
25 that wasn't there of \$612,000. That goes a long way

1 to pay a penalty, okay?

2 Finding money that really was there that
3 wasn't reported in the books -- repeat again, whether
4 my conclusion is right or not -- I'm not sure because
5 I don't have data to support my conclusion, but I
6 don't trust the other one, but I can't go any further
7 with it. And that's about as far as I could go, okay?

8 That's about all I can do. That's it for
9 that topic, okay? All right.

10 BY MR. PALERMO:

11 Q But what else did you --

12 A We did -- the other one we looked at was
13 accounts payable. Now that's the pile of bills that
14 the company has to pay. And the same approach was
15 used there. We did a basic smell test on it, and I
16 think --

17 Q What -- I'm sorry, Dr. Carroll.

18 A What page?

19 Q What kind of bills, accounts payable?

20 A Accounts payable are things in the ordinary
21 course of business. Those are suppliers, utility
22 bills, things like that in the ordinary course of
23 business. They don't include tax payables. They
24 don't include payroll payables. That's the definition
25 used in the accounting world of accounts payable.

1 But things in the ordinary course of
2 business. I'm not talking about buying a building.
3 That's not ordinary. I'm talking about day-to-day
4 transactions, as we all have with our own regular pile
5 of bills. And I cited the definition of accounts
6 payable in there as well.

7 Okay. All right. So let me take a look at
8 that. And I rolled forward my report a couple pages.
9 All right. And I'm --

10 Q What page are you referring to?

11 A I'm going to start on the bottom of page 9
12 of my report, with EPA Bates number 002584. So this
13 is my first broad cut at this to understand where it
14 should be. And we're looking -- my experience working
15 with companies and looking at this over the years, a
16 month, month and a half of data, that means if I make
17 a sale to a company 30 to 60 days later, the check
18 arrives paying for it. That's what that means, okay?

19 That would -- if it's paid on a credit card
20 or something, that would be paid currently. I
21 wouldn't have that transaction. I'm sorry. I'm
22 sorry. I'm thinking payables. I got to flip my head
23 into payables. Sorry about that.

24 If I pay my suppliers, it's typically 30 to
25 60 days. Now there's a range, and industries are

1 specific, and some industries are better or worse than
2 others, but 30 to 60 days is the typical number. So I
3 looked at theirs, and that's when I have months in my
4 crude number. Theirs, when I looked at theirs, is
5 seven and a half months.

6 Wow. This is different. I don't
7 understand, okay? That's my first cut. The second
8 cut, let's do the industry data again. So we roll the
9 page over.

10 Mr. Palermo, if you could -- okay.

11 So my crude cut is it looks like I'm going
12 to have to take 80 percent of the payables on my first
13 cut at it -- that's over \$4 million -- and add it to
14 the worth of the company. Hmm. Well, I'll talk about
15 what to do with the worth in a minute, but I want
16 to -- so, so far we've got an odd thing happening
17 here, okay? I'm not going to deal with that, where to
18 put it until -- in a few more minutes, if that's okay
19 with Your Honor.

20 Okay. Next thing I did, I looked at the
21 industry-specific data, okay? I went to the RMA data,
22 and they have a couple of ratios that do this. And
23 what we do -- I can go through the details of the
24 ratio. The costs of goods sold accounts payable
25 ratio, as you see --

1 Q Maybe you can explain what a ratio is and
 2 how that ratio --
 3 A A ratio is a valueless number drawn from --
 4 it's not measured in dollars or inches. It's drawn
 5 from financial numbers or actually any numbers of two
 6 things that might relate. Body mass index is a health
 7 indicator or something like that. So what it does is
 8 it allows you to compare things that might be very
 9 different in size or different in time by using a
 10 ratio as long as it's consistent.
 11 So ratios are useful to get, kind of put
 12 things that of a common size. We do the ratio study
 13 as opposed to size dollars. The size of the company
 14 would just ruin things in terms of it, so we have a
 15 ratio. The ratio studies are Chapter 3 in my
 16 textbook. They've been Chapter 3 in every book I've
 17 used since -- in the last 35 years.
 18 Voluminous studies of ratio analysis, and
 19 exactly what I did here, they looked at trends, which
 20 there wasn't a trend here -- I didn't see a trend
 21 worth looking at -- and industry studies. And that's
 22 exactly what we have here, textbook material, okay?
 23 So I see the Taotao number for their cost of
 24 goods --
 25 Q I'm sorry, Dr. Carroll. You spoke of ratio

1 analysis. Was that the methodology you used in this?
 2 A Oh, yes.
 3 MR. CHU: Your Honor, I'm going to object to
 4 counsel interrupting his narrative, if he's giving a
 5 narrative. He appears to be trying to cut him off in
 6 certain areas.
 7 JUDGE BIRO: I actually think he's trying to
 8 clarify, but sustained. Just tell me.
 9 THE WITNESS: Okay.
 10 JUDGE BIRO: So we talked about ratios.
 11 THE WITNESS: Yes, please, Your Honor.
 12 Thank you.
 13 JUDGE BIRO: I understand what a ratio is.
 14 THE WITNESS: Okay. Thank you, Your Honor.
 15 I appreciate that. Okay. So I don't have to go --
 16 you know what a ratio is, okay. Now I looked at
 17 the -- the RMA data has ratios on things. So I --
 18 they have one called costs of goods sold over accounts
 19 payable. And I -- so I took the Tao data -- Taotao
 20 data, and calculated it. It shows on that table.
 21 It's 1.9, 1.7, 245, 311, average of 233 for that four-
 22 year period. And look at the RMA number. Wow. What
 23 is going on here? I don't know, okay?
 24 So I looked at it again, and I used that
 25 number to re -- and I call it recharacterize. I'll

1 explain that term in a minute. Their current pay --
 2 their current reported number payables -- and I see an
 3 adjustment recharacterization -- I'm holding onto the
 4 next page -- of \$4.8 million. Now what does that
 5 mean? Okay. That means the payables aren't stated
 6 correctly.
 7 Now we get to the discussion of
 8 recharacterization. What are they? These, over the
 9 years, these are very long, high numbers that have
 10 been that way for all the years I've had tax returns.
 11 They aren't turning over like the regular payables.
 12 Hmm. What is this? Who is the supplier here? Hmm.
 13 It's the parent company in China.
 14 What does that look like? It looks like
 15 investment of money and not a payable. Now we get to
 16 this issue in accounting a lot. It's substance over
 17 form. I see it's called accounts payable, but in
 18 substance, it looks like an investment because it's so
 19 long-term, it hasn't changed. I'm sure the actual
 20 number rolls over, but the pile of unpaid bills is
 21 very high and out of line with the -- remarkably out
 22 of line with the industry, okay?
 23 Now what do I call it? This is a good
 24 topic, a very interesting topic. It really is an
 25 investment because that really is money that the

1 Chinese company has invested. Also, it's a related-
 2 party company, into this company in the United States,
 3 okay?
 4 I want to support that a little more. Hmm.
 5 How is the company doing on bank loans? That would be
 6 the other way we'd finance the company. There's no
 7 bank loan. I'm stunned. I just don't know where to
 8 go with that. How can you have a company of this size
 9 with no bank loans? Big inventories, things that are
 10 financable, but no bank loan, and none for years, but
 11 remarkably high accounts payable. Hmm, okay.
 12 Well, here is what I'm going to talk about
 13 now, where that property should be posted. And that
 14 number -- let me use that 4.8 million -- really should
 15 be recorded as an equity to the company. I want to
 16 move it out of payables.
 17 If I might, Your Honor, imagine a balance
 18 sheet with me. I didn't have one, imagining -- but
 19 you see the assets are on one side, the liability and
 20 the equity on the other side. You want to take the
 21 liability from the top of the sheet in the payables
 22 area and move it down into the equity section because
 23 that's essentially what it is. That's my opinion of
 24 what it is. That process is called --
 25 JUDGE BIRO: You're saying it's not debt.

1 THE WITNESS: That's a good question,
2 whether it's debt or not. I -- it's -- the question
3 of that -- if it was debt, there would be a loan.
4 There would be some interest payments. There's
5 nothing like that. Now what I do see here is the
6 reward of that investment being transferred or gained
7 by the Chinese company because they are selling their
8 vehicles through the U.S. company and getting a return
9 on their investment.

10 So it's in their best interest to finance
11 the company. I don't care what we call it, but they
12 want to keep this company going, and they're getting a
13 return on their investment and taking a risk. The
14 company is thinly financed but doesn't have a bank
15 loan. This is the financing, and they're getting a
16 return on investment in the way of profit on the
17 vehicles that are sold through the U.S. company or
18 purchased through the Chinese company.

19 Recharacterization is something that comes
20 up. In the accounting world, it's not very common,
21 but it happens. It's the substance over form
22 discussion, and it will only come up when we do
23 published financial statements.

24 A company doesn't have a bank loan, they're
25 never going to have published financial statements

1 because the bank is usually the one that wants it.
2 Where we do see recharacterization in the literature
3 is bankruptcy court, where the judge is called to make
4 a decision as to whether this is really payables or
5 equity because it changes the ranking and it gets
6 paid.

7 If you do a little Google study on it,
8 you'll find a number of court cases talking about is
9 it debt or equity, or I call it payables to equity.
10 There we would find it. Now I'm not here, and I don't
11 think you are, Your Honor, to draw a legal
12 conclusion on that. We're talking about ability to
13 pay.

14 So they can call it what they want, but just
15 to answer the question, I got to use GAAP accounting
16 that would call that rechar -- I would recharacterize
17 that to equity and clearly indicate the company has
18 the ability to pay the debt -- the penalty, and keep
19 going, okay?

20 So that's part of it. Now I think I wrapped
21 it up a little bit. If you might, Mr. Palermo, going
22 forward. I think there's a summary at the end. Roll
23 the page. Okay.

24 Now here is what we did. I put the four
25 years of data together, and I started out -- the table

1 gets a little busy, but it's yearly columns, and we
2 have the equity report on the tax return is the first
3 line. And I'm just going to look at 2015 to
4 illustrate. We started out where we reported net
5 worth of the company on the tax return of \$717,840.

6 The first correction I made, tentative as
7 may be, and I'm recording it as tentative today,
8 \$612,000 of additional value to the company. The
9 second one is the accounts payable adjustment of
10 \$4.8 million, okay? It means a corrected equity after
11 the adjustments of \$6.5 million. This clearly has the
12 ability to -- that suggests the company clearly has
13 the ability to pay it because the value of the company
14 is that much money.

15 If I take the 612 number off, I'm still up
16 about \$5.9 million in net worth. Now where would I
17 get the money? Now there's the next step, okay? I'm
18 sorry. I just -- Your Honor, have I gotten that clear
19 to you?

20 JUDGE BIRO: I'm sorry?

21 THE WITNESS: Is that clear to you what I'm
22 doing there?

23 JUDGE BIRO: I understand it.

24 THE WITNESS: Okay. Thank you, Your Honor.
25 Okay. So just for example, in the wording

1 there, it says we've added \$5.9 million of net worth
2 to the company. Now, when I started this, my report,
3 the fine -- the penalty was proposed at
4 \$3.295 million. I understand it's been reduced.

5 Oh, boy, this is a walk in the park now. We
6 got an extra almost \$6 million to pay a penalty of a
7 million six. It's not too difficult. Now where would
8 I get the money? Sources of the payable down here.
9 So this minor loans to shareholders, financing based
10 on accounts receivable -- if they're not there, that
11 one comes off the list. Financing based on
12 inventories. There is where I see the value. The
13 inventories are quite high, and a bank would love to
14 lend on that kind of asset.

15 Liquidation of other assets, loans based on
16 equity -- I want to add one more. All I have to do is
17 stop, slow pay the Chinese company, okay? Here is the
18 detail on that. Current purchases are running about a
19 little over a million dollars a month, okay? The
20 million dollars a month is -- so I have to get about a
21 month and a half of purchases worth of money. In the
22 end of 2015, they had four and a half months of
23 payables. That was taking four -- that's a long time.
24 If we slide that up to six months, we pay the penalty.
25 No paperwork, no loan applications, just slow pay the

1 Chinese company.
2 What was the -- how many months payables did
3 they have at the end of 2014? Not six, seven. So
4 they already have a pattern of doing this, by slow
5 paying or just slowing down the payments of the
6 payables to the Chinese company, the money would be
7 available to make -- to pay the penalty. No bank
8 applications, nothing.

9 These are related parties, and they have a
10 history of doing this. So my conclusion is that they
11 have, clearly have the ability to pay the penalty and
12 not have a problem staying in business.

13 BY MR. PALERMO:

14 Q I just had some follow-up questions for you.
15 Dr. Carroll, what is GAAP?

16 A GAAP is Generally Accepted Accounting
17 Principles. It's kind of analogous to the Uniform
18 Commercial Code. It's a body of systems and
19 procedures and common definitions that we all use, and
20 it's generally accepted because it isn't big enough to
21 cover anything -- everything. So there's exceptions.

22 But what we find is all of the statements
23 that are audited ever in the United States using --
24 have to be done in U.S. GAAP because that's the common
25 language that everyone uses when they look at

1 financial statements. And that's what I've done here,
2 essentially corrected the statements to U.S. GAAP.

3 So I'd love to tell you this is my opinion.
4 It's really not. It's the opinion that's gained from
5 following U.S. GAAP. So my opinion is the ability to
6 pay, but the GAAP opinion draws the numbers to allow
7 me to have that conclusion.

8 Q I'd like to follow up on your testimony on
9 receivables. You saw that there are no accounts
10 receivable.

11 A Correct.

12 Q And why -- I think you testified it didn't
13 make sense to you. Why doesn't it make sense?

14 A Normally companies want -- I'm selling these
15 small motor vehicle items. I won't describe it any
16 more because my lack of knowledge will show. But
17 they're selling -- they sell through dealers. I went
18 to the website, and there's a dealer, inquiries about
19 becoming a dealer right on their website. They sell
20 through dealers.

21 Dealers need to have inventory in their
22 showroom so the customer can actually see it and make
23 the sale, okay? I imagine it's a lot easier to make a
24 sale if I've got inventory in my showroom so that the
25 person could literally take it home that day or have

1 it delivered in a day or two. I don't want to have to
2 go back to Texas or China or wherever else. I want to
3 take it home from the showroom or put it in the back
4 of my truck and go home, okay?

5 So, when I see them with no receivables, I'm
6 saying, gee, how is that possible? They've got to get
7 paid in advance. I'm troubled with that, but I don't
8 have anything to defeat the testimony. You get -- my
9 knowledge in this area -- I know some of the companies
10 that sell these things. They're small, local shops.
11 Maybe they don't -- they can't handle their own
12 credit.

13 But they're not all that small. Somebody
14 should have a big enough business so there should be a
15 payment. Here, take the vehicles, you can pay us in a
16 month type of deal. That would make them -- that
17 would create an accounts receivable to the company.
18 None of that? It doesn't hang together to me.

19 Although I note that's what's in the
20 deposition transcripts and the accounting statements
21 read that way, I -- just go back in the accounting
22 statements too, the tax returns. Funny thing, the way
23 they're filed as well.

24 But I want to stop on that. What I'm saying
25 is it doesn't -- the street sense I have, this doesn't

1 make sense. Could be, but it's an exception.

2 Q Okay. How would a company that has cash
3 only payments from its distributors operate?

4 MR. CHU: Objection. Calls for speculation.
5 He has not been qualified to be an industry specialist
6 in this area.

7 JUDGE BIRO: Overruled. Go ahead, tell me.

8 THE WITNESS: I would -- well, companies
9 that are paid in advance are usually custom items,
10 where it's got to be made to a particular
11 specification. And I don't -- to my knowledge, when I
12 went on the website, there were model numbers or maybe
13 color differences, but that's not very specific.

14 So it doesn't -- the whole -- it just
15 doesn't make sense. I can't -- I don't have any data
16 to defeat the deposition transcripts of the two
17 parties, but it's just a surprise. And given the
18 other numbers I've seen here, my confidence in the
19 number isn't good that it's zero, and I'll leave it at
20 that. I don't know what I could say it is, though,
21 because the data that's available, the two deposition
22 transcripts, are consistent with that, and that is
23 consistent with the tax returns.

24 I should go back to the tax return because I
25 wanted to talk about that one as well if I might. Can

1 I circle back a bit?

2 BY MR. PALERMO:

3 Q Sure.

4 A Okay. Back in my report -- I'm going to ask

5 you to flip back a couple of pages. I should -- well,

6 I had picked this up earlier, but I just -- page --

7 the bottom of page 6 of my report, which is EPA Bates

8 number 002581 -- okay. Page -- okay, on that page, I

9 see that Taotao, when they filed their tax returns,

10 notes that they file using hybrid accounting.

11 Hybrid accounting is a combination of cash

12 and accrual, okay? Okay. The IRS allows that, and

13 here is the description that comes out of the

14 instructions for Form 1120. That's the corporate tax

15 return that would be filed by corporations in the

16 United States. And it talks about the hybrid

17 accounting in that box.

18 Okay. It says generally you can use

19 combinations of cash -- cash means it only counts it

20 when the money hits the bank -- accrual, which I've

21 been talking about, you get paid later, or specific

22 message, which I don't -- doesn't apply here -- if the

23 combination will reflect your income and use it

24 consistently. However, the following restrictions

25 apply. Look at the first one.

1 If an inventory is necessary -- okay.

2 Hybrid accounting shouldn't have been used here. But

3 I'm not here to talk about tax issues. I just note

4 it, which means I'm -- the whole -- all of the numbers

5 are a little shaky to me based on consistent -- things

6 that are just not normal.

7 Now I didn't make that up. That's the

8 instructions that came out of the IRS publication for

9 the corporate tax return, Form 1120. That's out of

10 the instruction booklet. So there's little doubt in

11 my mind, even though I've got pretty weak data here,

12 that the company clearly has money to pay this type of

13 penalty and not even slow down. All they have to do

14 is slow pay their provider, or if they did their

15 accounting right, they could go to a bank and get a

16 loan.

17 With the accounting the way it's done now,

18 the bank would not probably lend money, okay? But,

19 with using GAAP accounting, they would lend money. So

20 we've got internal sources -- that's the related

21 parties in China -- external sources as well that I

22 don't see any difficulty in covering a million six of

23 a penalty.

24 Q Okay. And what about the payables, the

25 reported payables? Are they consistent with a going

1 concern?

2 A The going -- well, I corrected it. Oh, I

3 see what you're saying. That's a problem, the going

4 concern issue, because this is so thinly financed, a

5 bank wouldn't go near this because there's too much

6 current -- what they would call current liability.

7 It's not a current liability. It's equity, and it's

8 been there for years.

9 Q What if it was a liability for the sake --

10 what if it was, consistent with GAAP, a liability?

11 Would this business be able to continue to operate?

12 A Well, okay. Consistent with GAAP -- wait a

13 minute now. It's a related party transaction. I'd

14 have to look at recharacterizing it because it's a

15 long-term situation. The risks of that investment

16 have been transferred -- are gained by the Chinese

17 company. So it would be clearly -- in my opinion,

18 clearly -- and a GAAP opinion, clearly recharacterized

19 to equity. And therefore the company would be worth

20 the money, so they could get a bank loan. Or they

21 just slow pay the supplier.

22 MR. CHU: Objection, non-responsive. He did

23 not lay out what the GAAP principles were to the

24 question that's being asked, and the responses are not

25 responsive.

1 JUDGE BIRO: Okay. Rephrase your question.

2 Sustained.

3 BY MR. PALERMO:

4 Q The payables --

5 A Uh-huh.

6 Q -- your testimony was --

7 A Uh-huh.

8 Q -- they didn't characterize it consistent

9 with GAAP, right?

10 A Correct, uh-huh.

11 Q For the sake of argument, what if this

12 all -- these millions of dollars were a liability, a

13 debt, as opposed to equity? What would that mean for

14 Taotao USA as a going concern?

15 A To answer that question, I look at the

16 definition of payables which I provided in my report.

17 I just have to put my fingers on it. Frankly, I don't

18 care what you call it. It's going to be equity. You

19 can call it anything you want, but anybody who's using

20 GAAP accounting would recharacterize that to equity.

21 Q I'd like to turn to the last page.

22 A Sure. This is my very busy spreadsheet,

23 okay.

24 Q This includes the tax data and your

25 calculations.

1 A Yes. You'll see it's headed Taotao USA from
2 Form 1120. That's their tax return. And I created or
3 I copied the numbers off the balance sheet that's
4 created there, and below it, I copied the numbers off
5 the income statement. And the first -- the years
6 columns are 2012, 2013, 2014, 2015. That's just a
7 copy job of the numbers onto the return, okay? And I
8 filled it in all the way down the bottom.

9 Now I have sort of a blank column where I
10 posted the two adjustments, okay? And adjustment
11 number one, you'll see, is the trade receivables. And
12 I put a number one on that, and that number one
13 matches the number one that is now transferred to the
14 equity section of the balance sheet. You see the
15 number one about halfway down the page? That's
16 journal entry adjustment number one.

17 Journal entry adjustment number two is the
18 payables, the larger number, okay? And that matches
19 the journal entry two entry halfway down, also now in
20 the equity section.

21 So if I just want to look carefully a little
22 bit about the -- if you look at the payables, because
23 I can see it here, in year 2015, there are 5 million
24 2. Just a year before, it was 5 million 8, of much --
25 of smaller purchases. So you can see the company has

1 a history of running these payables quite high. That
2 \$5.8 million is seven months of payables, okay, where
3 the one in 2015 is four and a half months.

4 So they've driven it down a little bit, but
5 all they have to do is undo that payment plan, and
6 they'll have the money to pay the penalty.

7 Q You mentioned before about the Chinese
8 companies being related to Taotao USA. What did you
9 mean by that?

10 A Well, I understand that the ownership of the
11 company is all in the same family. There's a father
12 and son here. And I'm not sure who works for who, but
13 they're all one, big, happy family. I think I heard
14 that this morning in Mr. Clee's (sic) testimony,
15 almost that phrase.

16 Q And is looking at closely related companies
17 typical in a analysis of a company like this?

18 A Absolutely. It's called the related-party
19 transaction. It red flags every audit. We have to
20 look at it, what's the reality here. It reminds me of
21 the story about did you ever buy a car from your
22 father. Did you really pay a dollar for the car?
23 That's a related-party transaction. We have related-
24 party transactions here. I don't trust them. They
25 probably are -- they could be different than what they

1 seem. And, to me, they seem like an equity investment
2 supported by GAAP. And that's how -- that's my
3 opinion, and that supports my -- that's the GAAP
4 opinion, not even my opinion, GAAP opinion. And that
5 supports the ability-to-pay conclusion I reached.

6 Q In your review of the tax returns, did you
7 review the assets of Taotao USA?

8 A I did.

9 Q Was there anything significant you saw
10 there?

11 A Well, I just noticed this strange one. I
12 don't have any data. It isn't even in my report, but
13 if you look down the column, you see in 2015 an
14 intangible asset. I don't know if you can see that,
15 Your Honor, \$267,000. What is that? I don't know.

16 Now intangible assets are usually patents,
17 trademarks, trade names. They've been operating for
18 years without that. Why all of a sudden do they
19 acquire something? I don't have any data. I'm not
20 going to get any answers. I'm just red-flagging it.
21 What is that? I have no answer.

22 Q Would a company that's acquiring significant
23 assets like this be considered a failing business?

24 A A failing business? They look very healthy
25 except there's no money in it because it's all

1 recorded as payables. So I wouldn't -- it's a good,
2 stable business, but there's no money in this
3 business. It's sort of a piggy bank that the money
4 flows in and out of.

5 Q What do you mean by a piggy bank?

6 A It's a casual term we use about informal
7 relationships. That did come up in the deposition
8 transcripts, about how they're paid. I think it was
9 Mr. Cao that -- he was asked about when they pay the
10 payables, and he said, well, whenever we have the
11 money, give or take. That doesn't sound like an
12 ordinary business transaction. That's almost the
13 exact words of the deposition transcript. That sounds
14 like a familial relationship, familial as in family,
15 or a piggy bank. It doesn't sound like an ordinary
16 business transaction. And that's the words out of the
17 deposition.

18 Q And just to be clear, you recall Mr. Cao
19 talking about paying the Chinese manufacturers?

20 A Yes. That's what I'm talking about, yes.

21 Q I would like you to turn to CX-167.

22 A Oh, another book.

23 (Pause.)

24 MR. PALERMO: It's Binder 3 of 4.

25 (Pause.)

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1 THE WITNESS: I see it. Let me get this by.
2 I see it, sir. Thank you.
3 BY MR. PALERMO:
4 Q Do you recognize this document?
5 A Yes. This is a document that I obtained.
6 It's the description that goes with the RMA annual
7 statement studies. And this is the one for the 2015
8 year, and the first 15 or so pages describes the
9 organization, how the data is collected. And this is
10 the book that I use to get the data from.
11 Q Where was this document obtained again?
12 A Well, the actual copy of the document that I
13 got was the Rutgers University Business School library
14 in Newark, New Jersey. This particular document, I
15 believe, is a PDF that I downloaded off their website.
16 Okay. So that's the actual description of what the
17 company does, how the data is characterized, and some
18 ratios are defined there. And it's just the
19 introduction to the book, okay?
20 Now in the back are the actual statements
21 that cover this particular industry. So I go now
22 to -- I don't even know if there's a number on this
23 thing. Here we go. It doesn't have -- the EPA number
24 has been wiped out. I think it's EPA-002291. It's
25 buried in the print of the statement, okay? And I

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1 think you found it, sir.
2 MR. CHU: Your Honor, at this time, we'd
3 object to the reading of a document that has not been
4 authenticated, properly proven up, and offered into
5 testimony.
6 MR. PALERMO: Your Honor?
7 JUDGE BIRO: You want to offer Exhibit --
8 MR. PALERMO: I would like to offer CX-167
9 into evidence at this time.
10 MR. CHU: Yeah. We would object that this
11 document has not been properly authenticated.
12 Clearly, this gentleman is not the author of this
13 particular article. He downloaded it from the
14 internet. That does not authenticate the exhibit.
15 JUDGE BIRO: Dr. Carroll, did you personally
16 download this document and print it out and provide it
17 to the agency?
18 THE WITNESS: I personally downloaded it
19 from the internet, but it's also the front pages of
20 the book I found in the Rutgers University library.
21 So it's the same -- this -- the reason why I provided
22 this one, it was clear to read because I could
23 download the PDF file and print it. The one is the
24 front 15 or so pages of the big, fat book that's in
25 the Rutgers University library.

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1 JUDGE BIRO: And you've looked through this,
2 and this is what you provided to the agency that you
3 personally Xeroxed or downloaded?
4 THE WITNESS: Yes, Your Honor, this is my
5 work, yes.
6 JUDGE BIRO: Okay. Overruled. Exhibit
7 197 -- no, 167 is admitted into the record.
8 (The document referred to,
9 previously identified as
10 Complainant's Exhibit No.
11 167, was received in
12 evidence.)
13 MR. PALERMO: Correct.
14 MR. CHU: I would state one further
15 objection, that this document is subject to copyright,
16 and would ask the Court to consider the offer and
17 tendering of this document without the copyrighted
18 permission.
19 THE WITNESS: May I cite the fair use
20 doctrine for that one? Thank you, Your Honor.
21 JUDGE BIRO: Okay.
22 BY MR. PALERMO:
23 Q Okay. Dr. Carroll, are these the RMA --
24 this is where you got the RMA ratios corresponding
25 to -- what was the NAICS number again?

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1 A Two -- 423110. And on my -- it's easier to
2 find the page number here on mine. It's in the upper
3 left. It's page 756.
4 Q And the industrial category is wholesale
5 automobile and other motor vehicle merchant
6 wholesalers?
7 A Yes. That's the one that I used. It's
8 slightly different than the Taotao motors because
9 there isn't a double zero. They use one zero.
10 Q Okay. And did you independently verify in
11 any way that this should be the correct NAICS Code to
12 apply?
13 A Well, first of all, I really didn't pick it.
14 That was the Taotao Company's code, and I just had to
15 adjust it a bit to fit the current structure. I
16 didn't pick it, they did. I concurred with their
17 choice.
18 Q And in terms of the information here, do
19 they categorize ratios based on business size?
20 A They do, they do. And you'll see that
21 across the top. The data is very dense. You could
22 see the paper is so thin it photocopies through the
23 back. But the -- yes, they do.
24 Q Okay. For your June report, what business
25 size did you apply?

1 A I used 100 million to 250 million column.
 2 Q Was that correct?
 3 A No, it wasn't. In preparing for the trial,
 4 I realized I should have used a different column.
 5 Q Which column should you have used?
 6 A There's a number across here of 10 to 50
 7 million.
 8 Q Are the ratios significantly different?
 9 A Not significantly. And since I'm going
 10 to -- my opinion isn't of an exact number. It's
 11 ability to pay. It really didn't change my opinion.
 12 I did prepare a corrected report, which we hinted at
 13 earlier today. But it didn't change my opinion. The
 14 report, except for the numbers, is identical, and it
 15 doesn't change the final opinion at all.
 16 Q In terms of the receivables, the number that
 17 you recharacterized as equity --
 18 A Uh-huh.
 19 Q -- how significant was the number change?
 20 A I'm going to have to look at the corrected
 21 report to see that. It was about a 10 or 15 percent
 22 change in that one, I think.
 23 Q But it was still a significant amount of
 24 money, right?
 25 A Not for the ability to pay. When I have

1 such extra money here, I don't find that significant,
 2 no.
 3 Q And for accounts payable?
 4 A So the receivables actually went up, the
 5 adjustment payables went down about the order of 5 or
 6 6 percent. Since I don't have the report in front of
 7 me, I can't exactly answer it. But we're looking at
 8 such a overwhelming source of evidence that they had
 9 the ability to pay, a 5 percent correction doesn't
 10 change the opinion.
 11 Q Did you do a supplemental report for this
 12 case?
 13 A I did.
 14 Q Do you recall what you did for that
 15 supplemental report?
 16 MR. CHU: Your Honor, I'm going to object to
 17 the testimony about the supplemental report.
 18 JUDGE BIRO: Well, I told them they could
 19 mark it for the record. I'm not going to admit it.
 20 But they can mark it and put it in evidence, and if
 21 the appeals board or the court above the appeals board
 22 think they should have put it in --
 23 MR. PALERMO: I'm sorry. That report is not
 24 what I'm talking about.
 25 JUDGE BIRO: Oh, okay.

1 MR. PALERMO: Sorry, Your Honor.
 2 Could you please turn to CX-194?
 3 (Pause.)
 4 BY MR. PALERMO:
 5 Q Do you recognize this document?
 6 A I do.
 7 Q What is it?
 8 A It's a report I issued dated 21 August 2017.
 9 Q What did you do the report for?
 10 MR. CHU: Your Honor, I object to references
 11 of this report. Clearly, it says on there I'm unable
 12 to form an opinion here. So relevance.
 13 JUDGE BIRO: Overruled. Go ahead.
 14 THE WITNESS: Okay. I was asked to look at
 15 another aspect of Taotao USA, and I was provided
 16 information on their import data that was assembled
 17 from the U.S. Customs Association. I don't have that
 18 name right, Customs Authority, based on their imports
 19 that go through the various ports of the United
 20 States. And I was given that data, and that data is
 21 posted on an annual basis in the table.
 22 I actually had a few more years than that,
 23 but I didn't have any more data of Tao, so I just
 24 posted the years that I had, and I matched it up to
 25 the Tao data. So each year can stand on its own, but

1 we -- then we take a look at the average because
 2 that's representative of what's going on here. The
 3 company records by the U.S. Government records, based
 4 on their import records, is importing an average of
 5 \$34,606,183 a year.
 6 Okay. I go to the purchases as shown on the
 7 tax return of the company in Texas, and I see
 8 \$12,469,000 and 855 -- 800 -- 12,469,855. There's a
 9 lot of vehicles missing here. For every one that they
 10 record, there's two more, three to one -- 2.81 ratio.
 11 I can't form an opinion. I don't have any more
 12 evidence, but a big red flag goes up. And that's all
 13 the data I have. So you can see why I don't have an
 14 opinion, but I think somebody else should look at
 15 this.
 16 MR. PALERMO: At this time, Your Honor, I
 17 would like to enter CX-194 into evidence.
 18 MR. CHU: We would object, Your Honor. This
 19 is some sort of statement rather than a report. And,
 20 again, it says, "I'm unable to form an opinion here,"
 21 and other than further investigation is appropriate on
 22 this matter, I don't believe this document is
 23 relevant.
 24 JUDGE BIRO: Overruled. 194 is admitted
 25 into the record.

1 (The document referred to,
2 previously identified as
3 Complainant's Exhibit No.
4 194, was received in
5 evidence.)

6 BY MR. PALERMO:

7 Q Dr. Carroll, what do you know about the ABEL
8 model?

9 MR. CHU: I'm sorry. I can't hear that,
10 Your Honor.

11 JUDGE BIRO: Could you repeat the question?

12 BY MR. PALERMO:

13 Q Dr. Carroll, are you familiar with the ABEL
14 model?

15 A I am somewhat familiar with it. When I was
16 called upon by EPA to get involved with this case, and
17 people at ERG, the contractor company, had run an ABEL
18 model, I became aware of it. I thought about using it
19 later on in my analysis. And, actually, we had a
20 meeting, and we put my corrected numbers -- well, the
21 numbers that Tao represented were run through an ABEL
22 model, okay? We had a meeting, and someone other than
23 me, who happens to be in this courtroom, ran the
24 numbers through that ABEL model.

25 Q Could you identify who that person --

1 A Yeah. Ms. Isin, who is right there --

2 Q Thank you.

3 A -- ran the numbers through the ABEL model.
4 The ability to pay didn't change. What? What is
5 going on? How can this be? Well, looked at the ABEL
6 model, tried to understand the calculations. And they
7 really don't look at the balance sheet. They look at
8 only cash flow items. Now what does that mean? The
9 numbers I found -- and I have to use a street type of
10 analogy here -- are like finding numbers in your --
11 cash in your sock drawer. You didn't know it was
12 there. You didn't earn it.

13 So all of a sudden on the books comes
14 millions of dollars that weren't there. The ABEL
15 model can't deal with that. They can't deal with
16 corrected balance sheets. So when you do -- use the
17 ABEL model -- in just this crude study, I went, wow,
18 this is not useful at all. I put millions of dollars
19 on the books of this company, and it didn't change the
20 ability to pay. Huh? This does not make sense.

21 So, I mean, I would have tested the numbers
22 anyway, but that test said, wait, this is -- we're not
23 going to spend much time on this. This is not a very
24 useful model. Now I think had the company been using
25 GAAP accounting, we wouldn't have all this account --

1 it might have some value and might have value in other
2 cases. But when you get financial statements that
3 aren't stated in GAAP terms, you're going to get
4 garbage in, garbage out.

5 And so we just didn't spend much time on the
6 ABEL model. I didn't put it in my report. I never
7 ran it again because it just wouldn't work in this
8 situation. It may work in others, but not here
9 because the numbers need to be tested before they put
10 it into an ABEL model. You just can't run it through
11 a computer program and expect to get a good result.
12 If you've got garbage going in, you're going to get
13 garbage going out.

14 MR. CHU: Objection, non-responsive.

15 JUDGE BIRO: Overruled. Go ahead.

16 BY MR. PALERMO:

17 Q What other documentation did EPA provide
18 you?

19 A Oh, boy.

20 MR. CHU: Your Honor, I'm going to object
21 here. We had asked them to produce the stack of
22 documents, and we have not received that yet. So I
23 object to this line of questioning.

24 JUDGE BIRO: Did you move to compel?

25 MR. CHU: No, Your Honor, we did not. But I

1 believe that, again, that's my objection.

2 JUDGE BIRO: Okay. Overruled. Go ahead.

3 THE WITNESS: What I typically do is in my
4 report I list the documents that I relied on
5 specifically. I'm not going to say I did every
6 document, but the key documents are listed in my
7 report. What is the Bates number of my -- the --
8 yeah, here it is. I'm on 192 again. So you see on
9 the bottom of -- if I might read my --

10 BY MR. PALERMO:

11 Q What are you on, sir? What page are you on?

12 A Report page 5, which is EPA Bates No.
13 002580. And we have a list there of the documents. I
14 list two categories, sources specific to the case and
15 general outside references. So the sources specific
16 to the case are the amended complaint file. I always
17 read the complaint, okay? Federal tax returns for
18 Taotao for the years stated, 2012 through '15; the
19 dollar value of Tao's imports in recent years --
20 that's the data I used for the supplemental report --
21 EPA guidance documents concerning penalty calculations
22 evaluating a violator's ability to pay. That's my --
23 so I can understand what the EPA guidelines are
24 supposed to say.

25 That's the ones that are specific to the

1 case. And then I have one, the broad reference
2 documents, okay? The broad reference documents are
3 found on the very next page, and they are -- I'll just
4 go ahead if it's okay. They're the RMA annual
5 statement studies, financial ratio benchmarks for the
6 year 2015. That's the book we looked at, and the
7 specific page study. And the IRS published
8 instructions for the Form 1120, which we talked about
9 earlier. That's about hybrid accounting.

10 Investopedia, that was for the definition of
11 either payables or receivables. And the other one was
12 found in the Kieso Weygandt intermediate accounting
13 textbook. That's the largest selling accounting
14 textbook in the United States.

15 Q Was there any financial documentation
16 besides tax returns from Taotao USA?

17 A There was. There was some financial
18 statements, but they weren't signed. I got enough
19 trouble understanding what's here, and they did look
20 sort of consistent, but they weren't signed. There
21 was no CPA. There wasn't even a -- the company was
22 identified, but who prepared them wasn't identified.
23 To me, I need to know that. If that was said it was
24 company records, I would have liked to know it's that.
25 It wasn't identified. So I tended not -- and I have

1 trouble putting reliance on a company-generated
2 document because I've got to know it's internally
3 consistent.

4 Tax returns have a little bit more of that
5 because they add up. They fit the definitions that
6 are in the boxes, and somebody signed them. So that
7 to me pushes tax returns up over the financial
8 statements. So I really didn't do much work with the
9 financial statements. The tax returns were a more
10 reliable source of data because there's a signature on
11 the bottom and a consistent use of definitions.

12 Q What are audited financial statements?

13 A Audited financial statements are -- first of
14 all, I got to tell you they're expensive, okay? And
15 the only reason why you get an audited financial
16 statement is because somebody is making you do it,
17 which is typically the investors or creditors.

18 So this company has no bank loans. It
19 doesn't need audited financial statements. And
20 audited financial statements are done by a licensed
21 certified public accountant who's doing a particular
22 thing called an audit, and they do extensive studies.

23 Some of the studies are just like mine, by
24 the way. The ratio studies are just classic, right
25 out of the audit material. And then, at the end, they

1 issue a report that goes as a cover letter. The
2 financial statements are consistent with Generally
3 Accepted Accounting Principles, and they are fairly
4 stated. That's the letter that goes with it.

5 That letter is the same letter on every
6 statement, but that letter is expensive to get because
7 of all the testing that goes with it. I don't have
8 anything like that here. There's a lower level that
9 the company might go to called a review, which is
10 maybe half the cost but half the work. And it's still
11 a lot of money, and why would you do that if you don't
12 have a bank demanding it?

13 If they don't have a bank, then they don't
14 have a review. There's not even -- the lowest level
15 of statement is a compilation. They don't even have
16 that. That would at least have the CPA firm's
17 letterhead on top. They don't even have that because
18 the bank didn't ask it because there's no bank here.

19 Sometimes investors want it too. If it's a
20 publicly traded company, the stock market demands it.
21 But in this case, we don't have any of that. There's
22 no private -- there's no bank here, and the only
23 investors we have are the owners of the company, and
24 that's it. So there's no need for an audited
25 financial statement or even a review or compiled

1 statement.

2 MR. CHU: Objection, non-responsive. The
3 question was what is a audited financial statement,
4 not was there one, et cetera, should they have one, et
5 cetera, these type of comments.

6 JUDGE BIRO: Okay. Overruled. Go ahead.

7 BY MR. PALERMO:

8 Q At the beginning of your assignment, did EPA
9 provide you any financial reports?

10 A There was a report, text report, done by Ms.
11 Maureen Kaplan, as I recall, that gave me background
12 information about the company.

13 Q Who is Maureen Kaplan?

14 A Maureen is an employee of ERG. She -- I
15 understand she's since retired, and she's based in
16 Massachusetts. And she had done an investigative type
17 of report on many things about the company.

18 Q The company being Taotao USA?

19 A Taotao USA, yes.

20 MR. CHU: Your Honor, I object to this line
21 of testimony about a report that's not part of these
22 exhibits. It's clearly hearsay.

23 JUDGE BIRO: Did you rely on this report to
24 make yours?

25 THE WITNESS: No specific numbers, background

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1 information only, no specific numbers at all. It's
 2 like what was in a daily newspaper, was that -- what
 3 was specific to this company, general background
 4 information, no specific numbers.
 5 JUDGE BIRO: Okay. Overruled. An expert
 6 doesn't have to have everything that he based his
 7 report put into the record. Go ahead.
 8 MR. PALERMO: Your Honor, with the leave of
 9 Court, understanding the Court would not consider it,
 10 I'd like to mark the corrected report CX-214 for the
 11 record.
 12 JUDGE BIRO: Okay.
 13 (The document referred to was
 14 marked for identification as
 15 Complainant's Exhibit No.
 16 214.)
 17 BY MR. PALERMO:
 18 Q Do you know a Jonathan Shefftz?
 19 A I have read his work. I read his -- I read
 20 a report he wrote, and I read his deposition taken in
 21 this matter. Other than that, I do not know him.
 22 Q Do you recall what he did on ability to pay
 23 in his report?
 24 A He -- his report was largely on a benefits
 25 report. And I think he literally in his deposition,

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1 he said he did an ABEL run on his own time and took
 2 the numbers without looking at them. I mean, there's
 3 no -- indicating he looked at the financial numbers
 4 anyway in his procedures -- and he ran an ABEL run,
 5 and that ABEL run was attached to his report.
 6 Q Do you believe that that ABEL run he
 7 conducted was adequate to assess ability to pay?
 8 MR. CHU: Objection. He has not been
 9 qualified as someone knowledgeable in the use of the
 10 ABEL program. He's being asked an opinion. He said
 11 himself, I don't really -- didn't use it, and there's
 12 no evidence he has any real familiarity with the --
 13 JUDGE BIRO: I think he's asking about the
 14 conclusion of the ABEL model.
 15 MR. PALERMO: Correct, Your Honor.
 16 JUDGE BIRO: Okay. Overruled. Go ahead.
 17 THE WITNESS: There was no indication that
 18 Mr. Shefftz did any investigation of the number. If
 19 you don't investigate the number, the conclusions are
 20 not reliable. That I will conclude. There's not a
 21 hint in his work, in his deposition transcript, or in
 22 the report itself that hints that he even looked at
 23 the numbers other than putting them into the ABEL
 24 model. I'm sorry, not acceptable, to me or any other
 25 professional that I know.

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1 MR. PALERMO: I have no further questions.
 2 JUDGE BIRO: It's 11:42. Mr. Chu, would you
 3 like to conduct cross, or would you like to break for
 4 lunch?
 5 MR. CHU: I would like to break for lunch.
 6 But, Your Honor, I would request that I would reserve
 7 my examination of this witness in my case-in-chief.
 8 JUDGE BIRO: You want to call him in your
 9 case-in-chief and not conduct cross-examination?
 10 MR. CHU: That's correct, Your Honor.
 11 JUDGE BIRO: Did you list him as a witness?
 12 MR. PALERMO: Your Honor, Dr. Carroll has
 13 commitments tomorrow.
 14 JUDGE BIRO: Okay. So that's not going to
 15 happen. He's unavailable tomorrow, and you didn't
 16 list him as a witness. So would you like to proceed
 17 with cross, or would you like to break for lunch?
 18 MR. CHU: I would like to break for lunch.
 19 JUDGE BIRO: Okay.
 20 MR. CHU: That's what I said earlier.
 21 JUDGE BIRO: Okay. So let's break for lunch
 22 until -- it's 11:45 -- until 12:45.
 23 MR. CHU: That's okay with me, Your Honor.
 24 JUDGE BIRO: Okay. We'll stand in recess
 25 'til 12:45.

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1 Dr. Carroll, please don't discuss your
 2 testimony with anybody.
 3 THE WITNESS: Thank you, Your Honor.
 4 JUDGE BIRO: Okay? Mr. Chu is entitled to
 5 have you just as you are now, as if we continued on.
 6 THE WITNESS: Thank you, Your Honor.
 7 JUDGE BIRO: Okay.
 8 THE WITNESS: I appreciate your advice.
 9 JUDGE BIRO: Thank you.
 10 We'll stand in recess.
 11 (Whereupon, at 11:45 a.m., the hearing in
 12 the above-entitled matter recessed, to reconvene at
 13 12:45 p.m. this same day, Wednesday, October 18,
 14 2017.)
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1 AFTERNOON SESSION
 2 (12:45 p.m.)
 3 JUDGE BIRO: Please be seated. Before we
 4 begin, let me understand what's the schedule for Dr.
 5 Carroll. When do you have to leave?
 6 THE WITNESS: (Away from microphone.)
 7 JUDGE BIRO: Your microphone.
 8 THE WITNESS: I'm hoping to get out of here
 9 by the end of the day. What time that is is up to
 10 your call.
 11 JUDGE BIRO: Okay. You don't have a flight
 12 tonight at a specific time?
 13 THE WITNESS: No flight. I'm just -- I have
 14 to be north tomorrow, and I just would rather be
 15 driving in the daylight hours. So sometime 8:00 max,
 16 8 p.m. I don't know how you feel about that.
 17 JUDGE BIRO: I want to get you out of here
 18 today.
 19 THE WITNESS: Okay.
 20 JUDGE BIRO: Whatever it takes, that's what
 21 we'll do.
 22 THE WITNESS: Thank you, Your Honor. I
 23 appreciate your concerns.
 24 MR. CHU: Proceed, Your Honor?
 25 JUDGE BIRO: Please proceed.

1 (Pause.)
 2 Whereupon,
 3 JAMES CARROLL
 4 having been previously duly sworn, was
 5 recalled as a witness herein and was examined and
 6 testified further as follows:
 7 CROSS-EXAMINATION
 8 BY MR. CHU:
 9 Q Dr. Carroll, remember you used the words "I
 10 quit"?
 11 A I might have. Help me recall when I said
 12 that.
 13 Q In your deposition.
 14 A I still, I'm going to have to have context
 15 like that. I don't know the context, sir.
 16 Q Have you had an opportunity to review your
 17 deposition?
 18 A I did very briefly, not in great detail, no,
 19 I did not.
 20 Q Now I notice somehow you appear to have read
 21 in detail and made present recollections of a
 22 deposition of Matao Cao. Is that correct?
 23 A Correct.
 24 Q So when had you looked at that deposition?
 25 A Two, three weeks ago, something like that.

1 Q And I take it that you have notes that you
 2 took from that reading?
 3 A I think I did, yes.
 4 Q So you did not review those notes in
 5 preparation for your testimony today?
 6 A That's correct, I did not.
 7 Q And would that answer also be true for the
 8 deposition of Mr. Garibyan?
 9 A Correct. That's correct, yes.
 10 Q Now I'm going to ask you to look at the
 11 front page of your report.
 12 A For clarity, that's the report dated 16 June
 13 2017?
 14 Q Let me get there right quick.
 15 A 192 is the page I have for it -- is the tab
 16 I have for it.
 17 JUDGE BIRO: The exhibit number 192.
 18 MR. CHU: Thank you, Your Honor.
 19 BY MR. CHU:
 20 Q And you're correct, Doctor, it is described
 21 as CX-192, okay?
 22 A Yes, I see it, yes.
 23 Q Now you qualified in this court as an
 24 accounting expert, is that correct?
 25 A Part of it, yes, also corporate finance,

1 yes, correct.
 2 Q Now, normally, when one does an audit, they
 3 tend to state their qualifications, what generally
 4 accepted principles that they are applying, and et
 5 cetera. Is that not correct?
 6 A Not correct.
 7 Q Okay. Now why is it that you chose to put a
 8 paragraph of disclaimers on this?
 9 A Standard. I've done it for every report of
 10 the 500 I've done. I want to make it clear, it is not
 11 an audit or review of financial statements, for the
 12 purposes of expressing an opinion on their fairness.
 13 Standard language I've used for 30 years.
 14 Q Tell me why you choose to disclaim any
 15 professional standards.
 16 A The standards for auditing and reviews and
 17 compilations, the three traditional services, are
 18 fairly clearly enunciated. Had I done any of those
 19 services, I would have been presumed that I followed
 20 those standards. This type of report is not a
 21 standard report, and it doesn't fit exact standards.
 22 So I said that I didn't -- there are no standards on
 23 reports specific like this.
 24 Q Let's talk about it. This report does not
 25 constitute an audit. That's clear, correct?

1 A Correct.

2 Q You're not qualified to do audits ethically,

3 are you?

4 A Yes, I am a licensed certified public

5 accountant only in the State of New Jersey. No, I'd

6 be qualified in other states as well as long as I did

7 it under a CPA firm in that state.

8 Q How many audits have you performed in the

9 past?

10 A None. But I'm qualified.

11 Q How many audits had you been involved in?

12 A My involvement was on the other side of the

13 audit. I was the chief financial officer of companies

14 that were being audited. So I was the auditee, not

15 the auditor. And in that role, I assisted -- I

16 provided data to the auditor.

17 Q Thank you, Doctor. The answer is -- the

18 question is how many have you been involved in, so

19 it's either side.

20 A I'm sorry. I didn't hear --

21 Q It's either side, either the --

22 A Oh, on either side.

23 Q -- being audited or conducting the audit.

24 You've answered that. So thank you.

25 A Yes. Thank you. Okay, I answered that.

1 Oh, several years of audits. When I had a -- when I

2 was in the corporate world, I would do it as the chief

3 financial officer of a company, or in the staff of the

4 chief financial officer, I would be part of the group

5 that was being audited.

6 Q Well, let's talk about that corporate world.

7 Is that okay?

8 A Surely.

9 Q What year and what was the first company?

10 A I, after my MBA, I worked for a company

11 that's now called Deloitte. Then it was called Touche

12 Ross, which became Deloitte and Touche, which is now

13 just called Deloitte.

14 Q So you're saying that you acted as the chief

15 financial officer of Deloitte after graduating with

16 your MBA?

17 A No, sir. If that's what you heard, that's

18 not what I meant. As I claimed -- I stated earlier, I

19 worked as one of the consulting staff in Deloitte. I

20 was an employee of the company.

21 Q Let me make my question a little more clear,

22 okay?

23 A Thank you. Uh-huh.

24 Q I'm interested in your work in the corporate

25 world as a chief financial officer.

1 A Uh-huh. Okay. So your question is -- that

2 became -- that didn't happen for a few years. I

3 worked my way up to the job of chief financial

4 officer.

5 Q Thank you, Dr. Carroll. Can you just tell

6 us the first job and year, if you can remember it?

7 A All right. Sandvik Conveyors, the name of

8 the company.

9 Q And that's a European company, is that

10 correct?

11 A Yes. The U.S. subsidiary of a Swedish

12 company.

13 Q And you were actually hired on as the CFO.

14 Is that accurate?

15 A That's correct.

16 Q And what was the employee size of the

17 company when you were there on the average?

18 A Wow. That was a long time ago, sir. I'm

19 thinking about 75 people. That's a somewhere in the

20 ballpark number.

21 Q And did you have CPAs working under you?

22 A The staff was not that qualified. I was the

23 only -- I had no CPAs working for me.

24 MR. CHU: Thank you, Doctor.

25 Your Honor, if I may ask the Court to

1 instruct the witness to answer the question being

2 asked, I could get through this a lot quicker.

3 JUDGE BIRO: Dr. Carroll, if you can answer

4 yes, no, or a specific number, that would help speed

5 things along. I'd appreciate it.

6 THE WITNESS: Thank you, Your Honor. I'll

7 do that. I'll do my best.

8 BY MR. CHU:

9 Q Now you've testified in many state courts.

10 Is that accurate?

11 A Yes.

12 Q Would that be over 100?

13 A No.

14 Q Over 50?

15 A About 50 court appearances is what I can --

16 what my resume shows.

17 Q Okay. Now was there actually a corporate

18 finance department at this -- is it Sandek?

19 A Sandvik. The corporate finance department

20 was based in New Jersey. Well, I've got to describe

21 it if it's okay. We had a subsidiary in

22 Massachusetts, and I was the CFO. We had local staff

23 in New Jersey, as well as local staff in

24 Massachusetts, and I was the chief financial officer

25 in charge of the accounting done at -- accounting and

1 reporting done at both locations.
 2 Q So it's your testimony that there was a
 3 corporate finance department in Massachusetts?
 4 A No. That would be New Jersey.
 5 Q And just for the court reporter, could you
 6 spell that name for us of the company?
 7 A S-A-N-D-V-I-K.
 8 Q What's that again?
 9 A S-A-N-D-V-I-K.
 10 Q What part of Europe is that company from?
 11 A Sweden.
 12 Q So how many people were in your corporate
 13 finance department?
 14 A On the order of five. A number of years
 15 ago. It could be three to five, something in that
 16 area, yes.
 17 Q So did those corporate finance people have
 18 to report to you directly?
 19 A Yes.
 20 Q Okay. And was their job in actually
 21 attempting to obtain financing?
 22 A No. That was my job. That was more -- they
 23 did the routine accounting. They did -- they paid the
 24 bills. They did collections. The financing job was
 25 mine.

1 Q So, just to make it clear, when you talk
 2 about corporate finance, you're actually talking about
 3 the bookkeepers?
 4 A No, sir. Corporate finance -- if you want a
 5 longer answer -- you don't want a longer answer. It's
 6 not clear that's the right answer then. No, it's not.
 7 Q I'm just looking for the answers to this
 8 company that you worked at, where you are telling us
 9 there was a corporate finance department.
 10 A Yes. That was me. That was me, okay? I
 11 was the finance people. The rest of the people who
 12 worked for me did more routine accounting. Does that
 13 answer your question?
 14 Q I believe it does. And let me clarify it.
 15 You were hired as the CFO.
 16 A Correct.
 17 Q You also independently, individually, became
 18 the corporate finance department.
 19 A That was part of the job.
 20 Q I'm sorry. Is that a yes?
 21 A Independently and individually, I don't --
 22 it gets confusing to me. It was part of my job to be
 23 the financial officer of the company. It wasn't an
 24 extra task added later. It was my job walking in the
 25 door.

1 Q My question was you became the corporate
 2 finance department individually. Is that accurate?
 3 A I had no one else in the organization that
 4 did financing, except maybe collections. They did
 5 accounting.
 6 Q That's a yes?
 7 A I'm not sure what the question is.
 8 Q I'll be happy to clarify the question. Just
 9 tell me when you're not understanding it, okay?
 10 A Well, if you recite the question, maybe I'll
 11 be very careful to answer exactly what it is. I'm
 12 trying to just give you a yes or no. Please restate
 13 it, and I'll do as best I can. I'm sorry I keep
 14 explaining. I'm a professor.
 15 Q You're used to talking to people but not
 16 really answering questions, is that right?
 17 A Oh, professors have been accused of that for
 18 years. No, sir. I answer the questions.
 19 Q Okay. So here is the question. When you
 20 were hired to work at Sandvik, you became their
 21 corporate finance department individually, is that
 22 correct?
 23 A Yes.
 24 Q Thank you. And that occurs very often in
 25 companies less than 100 employees, right?

1 A Yes.
 2 Q One person is given the responsibility of
 3 handling anything having to do with paying bills,
 4 collecting -- well, not actually collecting but
 5 receiving monies on behalf of the company, right?
 6 A Right.
 7 Q Because you weren't doing collections also,
 8 were you?
 9 A We had a collection person, a credit
 10 manager, who did that work, who worked for me.
 11 Q So the answer is yes?
 12 A I wasn't doing it personally. The credit
 13 manager did, who worked for me.
 14 Q And the reason I asked that, because I'm not
 15 sure when you tell me you had someone doing it that
 16 that necessarily says you didn't do it.
 17 A I did it if they didn't do it.
 18 Q Okay.
 19 A That's correct, yes.
 20 Q So you did do it, okay. So you also
 21 functioned as the corporate financial manager?
 22 A I'm having -- I was the chief financial
 23 officer. That was the only -- I was the only one that
 24 did that job, except maybe the collection person,
 25 which is often part of things. I don't know how to

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1 answer you. I'm trying to be helpful. I don't know
 2 how to give you a yes or no answer, so I'm trying to
 3 be helpful.
 4 Q Now how long did you work in that position?
 5 A Oh, about a year or two.
 6 Q A year or two?
 7 A That's correct.
 8 Q Now, prior to that employment, you had only
 9 the work experience at Deloitte, right?
 10 A No. There were other positions in there.
 11 Q So you had another CFO position before this
 12 one?
 13 A No. I worked for larger corporations, and I
 14 was part of the -- in a larger corporation, I was well
 15 down the organization chart but still -- but doing
 16 accounting.
 17 Q Doing what? I'm sorry.
 18 A Accounting.
 19 Q How do you differentiate someone who does
 20 bookkeeping and someone that performs the functions of
 21 an accountant doing accounting?
 22 A Uh-huh. Bookkeeping is usually the book --
 23 the routine business transactions of payables and
 24 receivables, possibly payroll. Accounting is putting
 25 those routine transactions into financial statements

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1 following GAAP to be given to the outside world.
 2 Q You spoke on bankruptcy earlier. Do you
 3 remember?
 4 A I did, uh-huh.
 5 Q I take it that you have been qualified in
 6 bankruptcy court as a financial expert?
 7 A Yes, I was.
 8 Q Okay. And what type of case was that?
 9 A Actually, I was testifying in the economics
 10 area of a bankruptcy, and it was a legal malpractice
 11 case.
 12 Q Now economics is quite different from
 13 finances, correct?
 14 A The root of finance is usually thought to be
 15 in economics because economics is a very broad area.
 16 Applied, they are very different, but the root of
 17 finance is thought to always be in the economics area.
 18 So are they different? They have the same root, but
 19 finance goes in a different direction.
 20 Q You don't teach economics, right?
 21 A No.
 22 Q You never have.
 23 A Never have.
 24 Q Just maybe two finance classes, right?
 25 A Well, two undergraduate and two graduate,

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1 total of four, that's correct. That's here. And,
 2 historically, I taught other finance classes at
 3 Georgian Court and elsewhere.
 4 Q So is it safe to say that in the bankruptcy
 5 case you did not qualify or didn't receive
 6 qualification as a corporate financial expert?
 7 A It was financial matters I was testifying
 8 about. It happened to be in bankruptcy court. That's
 9 the fact.
 10 Q I understand what you did. My question was,
 11 this morning you were qualified as a corporate
 12 financial expert, right?
 13 A Yes.
 14 Q So can you tell this Court whether or not
 15 you sought certification by the bankruptcy court as a
 16 corporate financial expert in that bankruptcy case?
 17 A In that case, I believe I was qualified as
 18 an economist.
 19 Q Thank you. So the answer would be no.
 20 A No.
 21 Q So you didn't perform the function of
 22 determining whether or not debt was equity in that
 23 case in the bankruptcy court, did you?
 24 A Correct.
 25 Q How would an audit have helped you

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1 understand the equation or the statement debt versus
 2 equity classification?
 3 A An audit of the financial statements on this
 4 company or any company would have dealt with the
 5 classification of liabilities, and an audit done per
 6 GAAP would have dealt with that issue and put it in
 7 the appropriate place.
 8 MR. CHU: Objection, non-responsive.
 9 THE WITNESS: I'll try again. Sorry.
 10 BY MR. CHU:
 11 Q Let me ask it this way.
 12 A You said how. I tried to answer how. I'm
 13 sorry.
 14 Q Let me ask it this way.
 15 MR. PALERMO: Your Honor, he responded to
 16 the question.
 17 JUDGE BIRO: Overruled.
 18 Go ahead. It's fine, Dr. Carroll.
 19 BY MR. CHU:
 20 Q Doctor, debt versus equity, remember those
 21 discussions on direct?
 22 A Yes.
 23 Q Okay. I know I used the word how. Let me
 24 try it this way. Does an actual audit assist the
 25 determination of whether or not items or an item is

1 debt versus equity?

2 A The correct answer is they concur with
3 management's opinion of whether it's debt or equity.
4 If they don't, they issue a very bad letter, okay? If
5 they concur, they issue an unqualified letter. So
6 they don't really assist, sir. That would be
7 unethical.

8 Q Exactly. So the answer is it doesn't
9 clarify it, correct?

10 A The audit often causes it to be clarified.

11 Q Okay. So an audit will clarify whether or
12 not items or an item is a debt versus an equity. Is
13 that accurate?

14 A Yes.

15 Q Can you tell us what the GAAP principle is
16 that supports that?

17 A I look to the definition -- I can't cite the
18 exact GAAP principle. It's a big book, sir. I can't.

19 Q Now is that GAAP principle book a different
20 book from this renowned accounting textbook that you
21 referenced in your report?

22 A Sir, it's a big book. I'd have to look at
23 it. Bankruptcy is covered in the book, and I haven't
24 looked at the book in a while. Yes, it's covered in
25 the book.

1 Q I'm sorry, Doctor. I was asking you whether
2 or not -- let me break it down. You talked about an
3 accounting book that was widely used.

4 A Yes.

5 Q Do you remember that?

6 A Right.

7 Q So my question to you is, is the GAAP
8 book -- go ahead.

9 A Okay. There's not really a GAAP book.

10 There's -- GAAP is quoted and it's widely quoted in a
11 lot of places. A good college textbook in
12 intermediate accounting, such as what I talked about,
13 covers a good bit of GAAP. But there is GAAP beyond
14 the book. Does that answer your question?

15 Q Right. The book simply talks about a number
16 of GAAP principles, but all the principles are not
17 contained within the textbook. Is that accurate?

18 A Correct.

19 Q And I notice you did not reference the GAAP
20 book, the edition, or anything in your report. Did I
21 miss that?

22 A That's correct.

23 Q So you did not reference that?

24 A Correct.

25 Q Okay. Now, in this textbook that you talk

1 about, okay, can you tell me what chapter the smell
2 test is on or in?

3 A Chapter smell tested on what, sir?

4 Q I'm sorry. What is the name of this
5 accounting textbook, so I don't lose you.

6 A It's called Intermediate Accounting, and we
7 usually refer to it by the author's name, which is the
8 Kieso Weygandt book.

9 Q Would you spell that for me?

10 A It's in my report if you want to see the
11 words, somewhere.

12 Q Yes. For the benefit of the court reporter.

13 A It's on my report, page 6, EPA Bates No.
14 002581.

15 MR. CHU: So I'll spell it for the record if
16 I may, Your Honor.

17 JUDGE BIRO: Go ahead.

18 MR. CHU: K-E-I-S-O, that is the first name.

19 BY MR. CHU:

20 Q Is that correct?

21 A It's the first author, yes.

22 Q And that would be the last name, in fact,
23 wouldn't it?

24 A That's the last name of the first author of
25 the book.

1 Q Correct. That would be Mr. Kieso, right?

2 A Right.

3 Q Is this a textbook that you had used when
4 you had your intermediate accounting class?

5 A That's a long time ago, sir. I don't
6 recall.

7 Q Certainly.

8 A It might have been.

9 Q Okay. Do you happen to know what university
10 Mr. Kieso was associated with, like Chicago or
11 Wharton?

12 A I just don't.

13 MR. PALERMO: Objection, relevance.

14 THE WITNESS: I just don't.

15 JUDGE BIRO: Overruled. Go ahead.

16 BY MR. CHU:

17 Q All right. So, when you say it's widely
18 used, what do you base that upon? Because I believe
19 you're saying basically it's used almost at every
20 university.

21 A I'm not going to claim to have market share
22 statistics. I do look at the -- it's the 15th
23 edition, so the 15th edition -- editions turn over
24 every two to three years. This book -- (cell phone
25 rings). I'm so sorry about that. Excuse me. That

1 should not have happened. Pardon me. I apologize.
 2 Okay. It's the 15th edition. If editions
 3 turn over every two to three years, it's about 35
 4 years it's been running. And to my understanding,
 5 it's the biggest seller in the field.
 6 Q And that's what I'm asking you, because your
 7 quantifications are very important to us, the
 8 Respondents. Are you aware of that?
 9 A Yes, sir.
 10 Q So, based upon your quantification of how
 11 it's widely used, can you please tell me what you base
 12 that statement upon?
 13 A I go to meetings involving other people who
 14 teach accounting. Everybody uses the word Kieso
 15 Weygandt. We all know what we're talking about.
 16 Q Anything else?
 17 A That's basically it, talk to the book reps,
 18 the people who sell us books, and they all know it's
 19 the most widely one used one. There's a new one
 20 coming in called Spiceland. Spiceland I've used a
 21 little too, but I used the Kieso Weygandt in this
 22 particular report.
 23 Q So you're saying particular salesmen that
 24 sell Kieso Weygandt tell you that. Is that accurate?
 25 A They might tell me that. I don't believe

1 salespeople, okay? I believe other professors who use
 2 the book.
 3 Q Anything else to support your
 4 quantification?
 5 A Of this particular book? Is that what
 6 you're talking about?
 7 Q Yes, sir.
 8 A Of this particular book? That's what I know
 9 about that particular book. It's widely used.
 10 Q And so, when I say empirical data, what does
 11 that mean to you?
 12 A Measured data, tested data. That would be
 13 empirical.
 14 Q So can we rely on your opinion that this
 15 book is widely used based upon empirical data that you
 16 had reviewed and tested?
 17 A No.
 18 Q Okay. So that would just be an opinion
 19 unsupported and basically on the line of a rumor?
 20 MR. PALERMO: Objection, compound question.
 21 JUDGE BIRO: Overruled.
 22 THE WITNESS: It's clearly opinion, and I
 23 base it on conversations with hundreds -- maybe 50 to
 24 100 accounting professors over the last number of
 25 years.

1 BY MR. CHU:
 2 Q Had any of those professors answered a
 3 question from you, do you use this book in classes?
 4 A Did I ask the question? We talk about books
 5 in general. We don't have polling to see who is using
 6 which book. But we talk about what's new, what's the
 7 latest edition, what has changed, what the publisher
 8 is now providing. That's what we talk about.
 9 Q So would it be accurate to say this is one
 10 of Professor Carroll's smell results?
 11 A I smell a popular book, is what I smell.
 12 Q Thank you. Sir, so basically in this Kieso
 13 Weygandt 15th edition and prior editions, can you
 14 please tell this Court, based upon your familiarity
 15 and usage of this book, what chapter the smell test is
 16 taught in?
 17 A It's two areas the smell tests are taught
 18 in. The ratios is what is the basis of the smell
 19 test. That's the start, the ratios. The accounting
 20 books cover the ratios. They actually want to use the
 21 word crank out the number. In the finance books, we
 22 get the meaning of the number, the same number, but
 23 the finance books ask what does it mean, and the
 24 accounting books crank out the number. I hope I've
 25 addressed your question.

1 Q Sir, if I were to tell you I'm going to give
 2 you an edition test, it would be clear to you what I'm
 3 asking you to perform, correct?
 4 A I hope so.
 5 Q So, if I am an accounting student and I want
 6 to know, Professor Carroll, can you point me to the
 7 chapter where it discusses the smell test, with those
 8 words in it?
 9 A Those words are not in the book. That's the
 10 language of people in the field, yes.
 11 Q Thank you, Professor.
 12 A Okay. Uh-huh.
 13 Q Now I'm sure you're aware that the federal
 14 rules require an expert to have opinions that can be
 15 verified or tested. Do you know anything about that?
 16 A Anytime I give an opinion in a written
 17 report, it's backed up with something. It may not be
 18 tested, maybe backed up with textbooks or research
 19 from other areas. But, yes, it's backed up with
 20 something. It's supported.
 21 Q And something which is backed up versus
 22 something which can be tested, would you agree that's
 23 different?
 24 A Yes, it's different.
 25 Q Okay. And so is it accurate to say that the

1 opinions that you have given us today are basically
 2 opinions that you have backed up only?
 3 A Yes, fair.
 4 Q And so, if we were to ask 10 CPAs to look at
 5 the tax returns --
 6 A Uh-huh.
 7 Q -- is it possible that we could get more
 8 than one interpretation of what those tax records
 9 indicate?
 10 A Interpretation is a broad word, sir. In
 11 what context do you mean it?
 12 Q Well, the answer would be the same if we
 13 asked the question what is the gross income, correct?
 14 A Gross income you said?
 15 Q Yes.
 16 A Okay.
 17 Q The answer would be 10 -- the answer is --
 18 A If you had 10 CPAs do -- well, again, a CPA
 19 in an audit doesn't create the income. That's
 20 prepared by the company, and the CPA concurs with
 21 their opinion. That's what an audit is, okay? So, if
 22 you had 10 different accounting staffs using the same
 23 set of numbers, they're going to come up with
 24 differences, and the CPAs would probably concur with
 25 most of them because GAAP is a wide thing.

1 Q Now GAAP is just a general accounting -- or
 2 general accounting principles that are accepted
 3 basically in the United States and some other places
 4 that may follow that, right?
 5 A Very rare to find U.S. GAAP followed
 6 anywhere. There's another set of standards followed
 7 elsewhere in the world.
 8 Q So, if you go to Europe, what's that
 9 standard called?
 10 A International Finance Reporting Standards,
 11 IFRS.
 12 Q And if you go to China, aren't there at
 13 least three norms for standards there?
 14 A I'm not as knowledgeable on China, Chinese
 15 accounting, but I wouldn't be surprised. Usually the
 16 lender demands statements in a certain format. And if
 17 they're getting money based on a European bank,
 18 they'll want them with an IFRS format. If they're
 19 getting it from a U.S. bank, it would be U.S. GAAP.
 20 And if you know of a third, it's not out of the
 21 possibility, sir, not out of the realm of possibility.
 22 That's correct.
 23 Q My question to you was whether or not China
 24 has at least three different standards for accounting.
 25 A It wouldn't be --

1 MR. PALERMO: Objection, relevance.
 2 JUDGE BIRO: Overruled. Do you know?
 3 THE WITNESS: I really don't know.
 4 BY MR. CHU:
 5 Q Thank you. And you testified to that
 6 previously in your deposition, that you have no idea
 7 of how accounting principles are applied with Chinese
 8 companies in China. Is that accurate?
 9 A If I answer yes or no, I'm going to give you
 10 a misleading answer, so I need to --
 11 Q Explain if you need.
 12 A Okay. Usually the lender or the investor
 13 through the investment process specifies the
 14 reporting. That's why I said it's not surprising to
 15 find a Chinese company reporting on international
 16 standards and U.S. standards both because they have
 17 two different lenders.
 18 MR. CHU: I'm sorry, Your Honor. I have to
 19 object as non-responsive.
 20 JUDGE BIRO: Sustained.
 21 BY MR. CHU:
 22 Q Sir, I'm asking you -- we described a
 23 standard in the United States known as GAAP, G-A-A-P,
 24 correct?
 25 A Correct.

1 Q We described a standard in Europe that's
 2 normally -- that is utilized, right?
 3 A IFRS, I-F-R-S.
 4 Q Right. And then, in China, my question to
 5 you is whether or not you're aware that Chinese
 6 companies use a minimal of three potential possible
 7 standards.
 8 A My answer described -- it's not so much the
 9 government structure but the lender or creditor that's
 10 going to describe the financial reporting system. So,
 11 if the money is coming from an IFRS-based country,
 12 they're going to have that system. It is very common
 13 to have two different sets of reports, one in one
 14 accounting system and one in another.
 15 Q I'll try it this way. Can you tell us what
 16 the accountings standards that are used in China?
 17 A I would guess several, and I don't know
 18 them.
 19 Q I'm sorry. I don't want you guessing.
 20 A Thank you.
 21 Q If you have --
 22 A I don't know them. I don't know them, but I
 23 do know the lenders dramatically specify them. That's
 24 how I know they exist. The lender or creditor or the
 25 investor specifies it.

1 Q So now can you tell us what your experience
 2 is with reviewing financial statements, financial
 3 data, from companies that operate in or from China?
 4 A Nothing at all.
 5 Q Thank you, Doctor. Now are you familiar
 6 with the RMA for China?
 7 A No, sir, I'm not.
 8 Q Are you aware -- strike that. You are aware
 9 that a similar type of study could be performed in
 10 China. Would you agree?
 11 A You said could be? Could be performed
 12 anyway. Whether it is or not, I don't know. But you
 13 said could be. Yes, it's possible.
 14 Q But you are unaware of any such study?
 15 A Correct.
 16 Q And the RMA reports basically assist, as you
 17 have told us, lenders. Is that accurate?
 18 A Correct.
 19 Q And for educational research purposes,
 20 right?
 21 A As an aid in decision-making.
 22 Q Do you see in front of you there where I
 23 have a portion highlighted? I'm sorry. Is it on your
 24 screen? Is your screen not --
 25 A Oh, oh, thank you, sir. Of course. I see

1 it, sir. The yellow shows, yes. Sorry about that.
 2 Q Does it not specifically -- the part what I
 3 just said, that this is intended for educational,
 4 informational -- well, I didn't say information, but
 5 it's for educational purposes, is that right?
 6 A Well, let me -- let's complete it.
 7 Educational and informational research purposes.
 8 Q Right.
 9 A So, yes, right.
 10 Q It's some sort of preliminary survey to
 11 assist in further in-depth research and study.
 12 Accurate or not?
 13 A It depends -- it's part of the research
 14 study. How deep it goes after this is a question of
 15 the individual lending officer, yes.
 16 Q You understand the concept behind surveys,
 17 right?
 18 A Yes.
 19 Q It's a social scientist or some social
 20 scientist deciding a certain set of parameters would
 21 be interesting to look at, right?
 22 A Yes.
 23 Q Is this a social science work here?
 24 A This would -- this is -- in the sense you're
 25 using it as a social science research, yes, it's

1 social science research, yes.
 2 Q Now all social science is not fake science.
 3 Is that accurate?
 4 A Yes.
 5 Q But most probably is?
 6 A The right answer -- the results of the
 7 research are in the eye of the reader.
 8 Q So you don't want to touch that one, right?
 9 A If you think it's fake, it's going to be
 10 fake. If I think it's real, it's going to be real,
 11 okay? And thousands of people use this.
 12 Q Well, every social scientific paper comes
 13 down to a conclusion, doesn't it?
 14 A Yes.
 15 Q And part of the things that you do with your
 16 graduate students is to ask them to use this RMA
 17 survey to conduct further in-depth analyses of
 18 whatever research you and that student have agreed
 19 that they should work on. Is that accurate?
 20 A That could be, yes.
 21 Q And this is basically just a fundamental
 22 step.
 23 A It's fair to say a first step is to hit the
 24 RMA data and see how we -- how it looks, yes, correct.
 25 Q And the reason for that, it's convenient,

1 right?
 2 A Absolutely, very -- it's easy to do, and
 3 it's all coded in a way we know how to use it, yes.
 4 Q And so we're unable to look back into the
 5 particular companies that were actually participating
 6 in the survey. Is that accurate?
 7 A By design, yes, it's all confidential, yes.
 8 Q All right. And so, therefore, when you use
 9 a NAICS Code -- and is that spelled what, N --
 10 A N-A-I-C-S, NAICS.
 11 Q NAICS, yeah. That is a code that is
 12 actually identified by the RS, is it, or the RMA?
 13 A No, it comes from -- it's actually bigger in
 14 than United States. It's North America. We used to
 15 have one in the United States that was taken over by
 16 the -- I think it's the NAICS Commission, which is a
 17 multi-country commission that sets up the codes.
 18 Q Is that a necessary classification in terms
 19 of the IRS rules and regulations?
 20 A It's required reporting on the tax return of
 21 a corporation, yes.
 22 Q And as far as -- well, I'm sorry. You
 23 really don't know about the responsibilities in
 24 preparing tax returns because that's not really what
 25 you do, right?

1 A I teach professional ethics. I know quite
 2 enough about that, yes. You can ask me about that.
 3 Q So you know enough about the tax code to
 4 tell us what section of the code requires the company
 5 to pick a NAICS --
 6 A NAICS Code.
 7 Q NAICS Code.
 8 A I can't cite the tax section. I know the
 9 ethics area. I won't say I know the tax code.
 10 Q Can you tell us based upon your teachings
 11 why the IRS requires a NAICS Code to be used?
 12 A The goal of the NAICS Code and the
 13 collection of data on that is to allow for research on
 14 companies and industries for many, many people
 15 throughout the United States and academic and business
 16 sources. It's a widely used code.
 17 Q So, basically, it's an attempt by Big
 18 Brother to know what we're doing, is that right?
 19 MR. PALERMO: Objection.
 20 JUDGE BIRO: Sustained.
 21 BY MR. CHU:
 22 Q Now, as far as the collection of this
 23 information, this information gets transmitted to this
 24 nonprofit organization?
 25 A Yes.

1 Q Okay. And someone at that end decides how
 2 to correlate the data that they collect. Is that
 3 accurate?
 4 A Well, they use established reporting
 5 documents, tax returns or others, and they use the
 6 NAICS Code that comes off that tax return. There's
 7 not much interpretation there. A number is a number,
 8 and the NAICS Code is reported.
 9 Q Now, Doctor, based upon your teachings and
 10 expertise as a tax preparer, okay, or a reviewer of
 11 tax returns, can you tell us what the appropriate
 12 NAICS Code should have been for Taotao USA?
 13 A I would expect the tax preparer to make sure
 14 the right NAICS Code is there, correct.
 15 MR. CHU: Objection, non-responsive.
 16 JUDGE BIRO: Sustained.
 17 MR. CHU: I'm asking can you --
 18 JUDGE BIRO: He asked you whether you know
 19 the specific number.
 20 THE WITNESS: Do I know the specific number?
 21 The tax -- the company or the tax preparer would put
 22 the number down.
 23 BY MR. CHU:
 24 Q Well, let me make it this way. Someone has
 25 to decide which number to put in, correct?

1 A Correct.
 2 Q So, based upon your expertise, can you tell
 3 this Court what number you would have selected?
 4 A The one that's used in my report, 423110.
 5 Q And can you tell this Court also what the
 6 other options would have been?
 7 A There's 423120, 423130. There's a series
 8 like that. There is no 423100 option, and that's what
 9 Taotao has.
 10 Q So you're saying the option that was
 11 selected doesn't exist?
 12 A Correct.
 13 Q How is that possible?
 14 A The book doesn't have a number with the
 15 double zero at the end. It has a number with one-oh
 16 and two-oh at the end, but no double zero.
 17 Q So what you did was slice it up to fit
 18 something, right?
 19 A I took the list of NAICS Codes in the
 20 vicinity of that to see what other digit was needed,
 21 reviewed the list, and picked the one, 423110, yes, I
 22 did.
 23 Q So this is what accountants and CPAs are
 24 allowed to do, right?
 25 A One would prefer the company does it first,

1 but sometimes in a case on a tax return, the CPA does
 2 it.
 3 Q What I'm saying, CPAs move numbers. Would
 4 you agree?
 5 A Well, report numbers given to them from
 6 someone else is probably the better answer.
 7 Q Right. And, I mean, this forensic
 8 accounting fraud that you talked about earlier -- and
 9 you also teach that, and you also teach the Enron
 10 fraud type of things where numbers were moved. Is
 11 that accurate?
 12 A Numbers are reported in different ways, yes.
 13 I teach that material, yes.
 14 Q The liabilities were reported as equity in
 15 that case, right, just like what you're telling us?
 16 A I hadn't considered Enron -- there were
 17 hidden liabilities in the case of Enron. I hadn't
 18 considered it a match to this, to right now. But
 19 there were hidden liabilities in the case of the Enron
 20 that really blew the company up. The assets were
 21 overstated, yes.
 22 Q So, in this fraud class that you teach, you
 23 didn't teach anything about the \$3 billion liability
 24 being moved over to the equity side or whatever that
 25 number was.

1 A Actually, I'd rather teach personal fraud,
 2 small cases. The big cases with the big guys are
 3 interesting, but let's see how it's done every day,
 4 because I'm teaching how to defense it rather than
 5 talk about old history cases, and I teach more
 6 context.
 7 Q So, when you applied your forensic
 8 accounting skills to the Taotao --
 9 A Yep.
 10 Q -- tax returns, it was your opinion that it
 11 smelled funny?
 12 A Yep. Yes, absolutely.
 13 Q Now it took the CPAs quite a while to figure
 14 out that funny smell for Enron, right?
 15 A That one blew up pretty quick. I was
 16 surprised. That one just fell apart in a couple of
 17 weeks.
 18 Q And it took down some major accounting
 19 firms, kind of like the one you had worked for, right?
 20 A No. I worked for the other one, thank
 21 goodness. Arthur Andersen disappeared because of that
 22 situation, yes. That's correct. I worked for
 23 Deloitte.
 24 Q Okay. And so, going back to the disclaimer
 25 you have here, you really want to act in the role of a

1 CPA, but you don't want any responsibilities
 2 associated with that. Is that accurate here?
 3 A No, sir, it's nearly not true. I want to be
 4 very clear this is not an audit, review, or
 5 compilation of financial statements. And I don't want
 6 anything I do to be confused with that, and I
 7 encourage every CPA I know who does reports like this
 8 to put a disclaimer on it, just for that reason.
 9 Q And I get the first two.
 10 A Uh-huh, yes.
 11 Q But look how broad the other one is, the
 12 third one.
 13 A Yes.
 14 Q Would you agree that a very broad statement,
 15 or other defined professional standards --
 16 A Uh-huh.
 17 Q -- would you agree that's very broad, that
 18 fragment of the statement?
 19 A Yes.
 20 Q Thank you. So how is it that you can make
 21 that statement in your report and then give us an
 22 expert opinion when it's not based upon any
 23 professional standards?
 24 A There's no professional standard I'm aware
 25 of on ability to pay, and that's what my opinion was

1 on, ability to pay. I'm not aware of any professional
 2 standard in the AICPA guidelines about ability to pay.
 3 Q Now this Maureen -- Maureen --
 4 A Maureen -- I remember her last name as
 5 Kaplan.
 6 Q Kaplan.
 7 A K-A-P-L-A-N.
 8 Q Okay. You mentioned that she did an ABEL
 9 model, as well as Ms. Isin. Is that accurate?
 10 A It might have been off the same data. I
 11 don't know that. I just don't recall. But it might
 12 have been the same data. Yes, she ran an ABEL model.
 13 Q The data would not have changed, would it?
 14 A I don't know if they had all of the tax
 15 returns that time. They probably -- it might have
 16 been the exact same data.
 17 Q Well, you know that spreadsheet --
 18 A It was --
 19 Q -- that you kind of complained about a
 20 little bit?
 21 A Spreadsheet? I'm sorry. Which one did I
 22 complain about? Oh, mine, my --
 23 Q Yes, sir.
 24 A -- Appendix A spreadsheet. Yes --
 25 Q Yeah.

1 A -- I complain about that one a lot. Yes,
 2 absolutely, yes.
 3 Q And you had other complaints about the data
 4 in terms of I need more data, right?
 5 A Yes.
 6 Q Now where in your conclusion do you state
 7 that this opinion is based upon only this data spelled
 8 out and that I would not be able to -- I would want or
 9 need additional data to accurately support this
 10 opinion?
 11 A So you said where in the opinion is that --
 12 I want to be -- try to address your question.
 13 Q CX-192.
 14 A Yes, sir.
 15 Q Where in your conclusion is that statement,
 16 anywhere?
 17 A No, sir, it's not there.
 18 Q But it is in 194, right?
 19 A The one-page report, the supplemental
 20 report, 194? Let me see.
 21 Q No. That's the one --
 22 A Yes, sir.
 23 Q -- I had objected to.
 24 A Which one did you object to that time?
 25 Q 194.

1 A 194, yes, sir.
 2 Q Do you remember that?
 3 A Yes, sir.
 4 Q Do you remember what I had said?
 5 A Frankly, if you say it again, it would be
 6 helpful.
 7 Q Could you please look at 194? You see the
 8 highlighted portion under the box?
 9 A Yes, sir.
 10 Q And could you read that for us?
 11 A It says, "I am unable to form an opinion
 12 here other than further investigation is appropriate
 13 on this matter."
 14 Q So why didn't you make that same statement
 15 when you had the shortage of information that you
 16 insisted during your direct examination that you
 17 needed?
 18 A My ability -- the ability to pay conclusion
 19 that I provided an opinion didn't need all that data.
 20 Q So are you aware of EPA penalty assessments
 21 that rely heavily on the use of ABEL?
 22 A I've heard of them, yes. I've not used
 23 ABEL, so I heard of them, yes.
 24 Q And you in your deposition as well as today
 25 have really not sanctioned the ABEL model. Is that

1 accurate?
 2 A Help me out. What do you mean by
 3 sanctioned, sir?
 4 Q Would it be some --
 5 MR. PALERMO: Objection, mischaracterizes
 6 previous testimony.
 7 JUDGE BIRO: Sustained.
 8 BY MR. CHU:
 9 Q You don't approve of the use of the ABEL
 10 model, do you?
 11 A Too broad, sir. Using the data, good data,
 12 well investigated before it's put in, ABEL might be a
 13 useful tool. It wasn't useful in this case.
 14 Q So it's your opinion that now the ABEL model
 15 is a useful tool provided that they use Professor
 16 Carroll's investigative techniques. Is that accurate?
 17 A Well, thank you for flattering me that way,
 18 sir. Standard investigating techniques I think,
 19 consistent with the profession, would be appropriate,
 20 and understanding the limitations of the model would
 21 be an appropriate thing to do.
 22 Q And correct me if I'm wrong, but you said
 23 that based upon your data that you utilized, that you
 24 came up with a result, correct?
 25 A An opinion. The result is the opinion, yes.

1 Q And you actually didn't do anything to
 2 investigate the data, i.e., an audit or some other
 3 type of accounting analysis, correct?
 4 A I did what's described in the report, sir,
 5 and I asked for a lot more data that I wasn't able to
 6 get.
 7 Q So that's a yes?
 8 A Yes.
 9 Q Thank you.
 10 A I did what's in the report, yes.
 11 Q Thank you, okay. And the report cries out
 12 for help, right?
 13 A What kind of help do you -- what are you
 14 talking about, sir? Help me. I want to help you with
 15 your -- I want to answer your question.
 16 Q Well, when an investigator needs information
 17 and they can't get it, then by writing somewhere,
 18 someplace, I need this, if I describe it as a cry for
 19 help, is that --
 20 A I see what you're saying, yeah.
 21 Q Is that within your realm of appreciation?
 22 A Yes, I do. I see. If you want to classify
 23 it as documents that were requested -- is that what
 24 you mean?
 25 Q Yes, sir. Data, data information.

1 A Yes. We request --
 2 Q Answers.
 3 A We requested through the EPA, and I reviewed
 4 extensive document lists that were requested, and some
 5 were provided. But that document list went on and on.
 6 I was part of the review process before it was
 7 submitted. It was submitted fall of 2016, as I
 8 recall.
 9 Q Were you aware that the EPA at the last
 10 minute wanted to replace you as an expert?
 11 A That's certainly their right, sir. I --
 12 fine.
 13 Q I'm sorry?
 14 A That's their right. I work when I'm paid.
 15 That's it.
 16 MR. PALERMO: Objection. Assumes facts not
 17 in evidence.
 18 JUDGE BIRO: Sustained.
 19 BY MR. CHU:
 20 Q Were you aware of another consultant that
 21 was offered as an expert witness on behalf of the EPA
 22 in the hearings?
 23 A In the last few days, I became aware of
 24 another name. That's it. What can I say?
 25 Q So you were aware of that?

1 A Only in the last few days, yes, sure. Yes,
 2 a couple days ago.
 3 Q And was it because of those conversations
 4 that you decided you needed to incorporate the work of
 5 another person to prepare a corrected report?
 6 MR. PALERMO: Objection, assumes facts not
 7 in evidence.
 8 MR. CHU: I'm asking a question, Your Honor.
 9 JUDGE BIRO: Overruled. Go ahead.
 10 THE WITNESS: I'm sorry. Who's the other
 11 person? I don't know how to address the question.
 12 BY MR. CHU:
 13 Q You said you became aware that there was
 14 another expert, financial expert.
 15 A Yes.
 16 Q So that's the person I'm referring to.
 17 A I became aware -- I'm not even sure I
 18 remember the name. That's all I heard. I don't know
 19 anything else about it. That's it.
 20 Q And my question is, was it because of that
 21 conversation you had that drove you to make
 22 corrections to your first opinion?
 23 A No, sir, it was not.
 24 Q So there was no motivation on your part to
 25 make those corrections that you can remember?

1 A The motivation was I saw small errors. I
 2 wanted it to be as perfect as possible. That's why I
 3 made the corrections.
 4 Q Now are you familiar with Toys "R" Us?
 5 A Yes. I know the company name a bit, yes.
 6 Q Are you familiar with the fact that they're
 7 currently in bankruptcy?
 8 A Yes.
 9 Q To the tune of almost \$5 billion in debt?
 10 A I read a little bit. I haven't read much
 11 about it, so that's all -- what you know about -- what
 12 you said is about what I know.
 13 Q What would your opinion be as to what
 14 portion of that \$5 billion is related to accounts
 15 payable?
 16 MR. PALERMO: Objection, relevance.
 17 JUDGE BIRO: Sustained.
 18 BY MR. CHU:
 19 Q So, when you made a determination that
 20 accounts payable, by definition, do not include
 21 amounts owed, can you tell us now what the proper GAAP
 22 classification for amounts owed, other than short-term
 23 liabilities?
 24 A Amounts owed is a term that isn't used in
 25 the accounting world. It's a broad term. The

1 general -- I'm going to speculate on what you're
 2 looking for.
 3 Q I'm sorry, Doctor. I --
 4 A If you don't want me to speculate, I can't
 5 answer the question.
 6 Q Thank you. Okay. So C-O-G-S.
 7 A C-O-G-S, Costs Of Goods Sold, yes.
 8 Q That's one of the primary terms that is
 9 taught the first week of Introduction to Accounting,
 10 is it not?
 11 A Correct, yes.
 12 Q Okay. And to determine the cost of goods
 13 sold, that's not difficult, is it?
 14 A Oh, it could be. Inventory has values that
 15 are difficult to determine sometimes, and it depends
 16 on the industry. Let me leave it at that.
 17 Q Now, since you're an expert, and you're
 18 familiar with industries, you're familiar with
 19 companies like Walmart and Sam's, are you not?
 20 A Yes. I've been in the stores, yes.
 21 Q And you understand that those companies have
 22 a tendency to hold paying their vendors for more than
 23 two months. Are you aware of that?
 24 A Some companies have that policy, yes.
 25 Q So do you apply your same smell principles

1 to those companies that all those vendors who don't
 2 get paid within two months per your GAAP definition in
 3 your report --
 4 A Uh-huh.
 5 Q -- are actually equity holders in those
 6 companies?
 7 A Well, if I use your question, since you told
 8 me in that industry two large players in that industry
 9 do pay later than that, it's normal. By using your
 10 two large players in the company, you create a
 11 situation where it's normal and not extraordinary. I
 12 used an industry where it is extraordinary.
 13 Q So, going back to the RMA, we've discovered
 14 that that RMA doesn't apply because there's not a
 15 NAICS Code that is found that matches the exact NAICS
 16 Code on the returns reviewed for Taotao USA. Is that
 17 accurate?
 18 A I don't agree with that conclusion, sir.
 19 No, I don't.
 20 Q I understand you moved some numbers around
 21 to make it work. Is that accurate?
 22 A No, sir. I wouldn't call it moving numbers
 23 around, no.
 24 Q You ignored some numbers.
 25 A I looked at the error on the tax return of

1 Taotao by recording on a non-existing code, and I
2 moved it to the nearest code one digit away that did
3 exist that matched the business description that I got
4 from my investigations of the company.

5 Q And your investigations, you testified to,
6 was your internet research that you did, correct?

7 A That's largely it, sir, yes.

8 Q Did you call Kawasaki or Yamaha and ask them
9 about floor plans, financing, and basic operations in
10 terms of finance?

11 MR. PALERMO: Objection, relevance.

12 MR. CHU: May I respond?

13 JUDGE BIRO: Overruled.

14 THE WITNESS: There's no basis for that,
15 sir. I'm looking at a private -- a small, privately
16 traded -- privately owned company versus a large
17 multinational company. No basis for that comparison.
18 That would be a spurious comparison. I don't like to
19 do those.

20 BY MR. CHU:

21 Q Well, putting this in a code with
22 automobiles and vehicles, that's up there with Honda,
23 Toyota, GM, Porsche, Mercedes, and those companies, is
24 it not?

25 A Not in RMA data, sir, no, it's not.

1 Q I'm sorry. Did you say vehicles?

2 A Oh, the code is, but the way the RMA data is
3 constructed is not. Fine, ask --

4 Q Let me start over, okay?

5 A Go ahead.

6 Q You decided to slip a code in that you
7 thought would work, right?

8 A I had to make an adjustment to their code
9 because they reported on a non-existent code, correct.

10 Q And so everything begins on your assumption
11 that Taotao USA belongs in that group, right?

12 A That assumption is backed up with research,
13 which is in my work papers, listing what the group
14 says and other companies in the group that makes it
15 look like it should be there, yes, correct.

16 Q And you decided not to do any research on
17 how other similar companies selling scooters and ATVs
18 select their NAICS Code, right?

19 A I'm looking at RMA data. RMA data is
20 privately held companies. Those are large, publicly
21 traded companies. There's not a match. Interesting
22 to look at but not relevant to what I'm doing here.

23 Q So the answer is you did not do that, right?

24 A I did not do that, no.

25 Q Okay. Thank you. Okay. And so even though

1 that data was available through your Google searches,
2 right?

3 A I imagine I could find it with Google, yes.

4 Q Well, how would you -- what four words would
5 you pick?

6 A No, you wouldn't use it that way. There's a
7 place called EDGAR, which is the place the SEC filings
8 were made. I would have gone to the EDGAR database
9 and pulled up the EDGAR data on the publicly traded
10 company. That's what I would have done if I had
11 companies -- if I had specific company names. That's
12 what I would have done.

13 Q If you wanted to find private companies that
14 imported as distributors -- strike that. Are you
15 aware as to whether or not Taotao USA was a dealer or
16 a distributor?

17 A The technical term of what they did didn't
18 come into my analysis.

19 Q I see. Now can you tell the Court the
20 difference between a automobile dealership and the
21 distributor?

22 A A dealer doesn't do much to the item, just
23 turns it over. A distributor might rebox it or
24 something like that. So dealers usually don't -- they
25 just -- they take title for a short period of time and

1 turn the vehicle over, where a distributor does more
2 work to the item than that. That's my understanding
3 of the two terms.

4 Q So, if Taotao USA was a distributor, they
5 would have to hold long-term inventories. Would you
6 agree?

7 A It depends on the industry.

8 Q Talking about ATVs, how is that?

9 A I didn't study how much inventory they
10 should have, sir. That didn't come up in my study. I
11 could. The NAICS -- the RMA data covers that. I did
12 not look at that.

13 Q Talking about scooters and motorcycles?

14 A In that NAICS Code, yes.

15 Q So there is a NAICS Code for distributors
16 and/or retailers of motorcycles and scooters. Would
17 you agree?

18 A I would imagine retailers -- this one
19 specifically calls out wholesalers. That's what this
20 group is, and that's my understanding of what Taotao
21 is. This word wholesale is in the NAICS Code
22 description, yes.

23 Q Okay. But by selecting vehicles and --
24 what's the third word there?

25 A I have to look.

1 Q You don't remember it?
 2 A I don't recall, no.
 3 Q But vehicle is correct, the first part,
 4 right?
 5 A Yes.
 6 Q So vehicles would necessarily include
 7 companies like Honda, Mercedes, Volkswagen, and these
 8 companies, correct?
 9 A Not in the RMA data, no, sir.
 10 Q You said wholesalers.
 11 A Correct.
 12 Q So don't the manufacturers and importers of
 13 vehicles from Europe, let's say, they would be a
 14 wholesaler, wouldn't they?
 15 A But -- yes, they would, yes. But they would
 16 never make it in the RMA book. That's right.
 17 Q So we're using your definitions to support
 18 your opinion. You see where I'm going?
 19 A I disagree on using my opinion -- my -- I
 20 didn't do much of an opinion to put the right NAICS
 21 Code down. That would be the company's opinion with a
 22 slight correction for not putting out the exact right
 23 NAICS Code. That's mostly their opinion. They put
 24 themselves in a category, and I looked at it. That
 25 makes sense. They just put -- they missed the last

1 code, and there's no code where they reported theirs.
 2 Q Now, so when we talk about this industry of
 3 vehicles, is it safe to say if I refer to Mercedes
 4 S500s that are made in Europe, okay, then the initial
 5 seller of that vehicle would be in a similar position
 6 as with the one Respondent, Taotao USA in this case?
 7 Would you agree?
 8 MR. PALERMO: Objection, vague.
 9 JUDGE BIRO: Sustained.
 10 BY MR. CHU:
 11 Q Okay. So Mercedes in Germany manufactures
 12 vehicles. Accurate?
 13 A Yes.
 14 Q And when they import the vehicles or someone
 15 imports that vehicle --
 16 A Yes.
 17 Q -- that would be a similar function that
 18 Taotao USA performs, right?
 19 A Yes.
 20 Q Okay. So, once that vehicle is imported --
 21 because part of your analysis was these type of
 22 companies normally do X, Y, and Z. Is that accurate?
 23 A That's -- I'm sorry. It's such a broad
 24 question. I'm sure I said something like that, but I
 25 don't know if I agree or disagree with your question.

1 It's just too broad.
 2 Q I'm just saying you herded Taotao USA in a
 3 group that you selected that talked about vehicle
 4 wholesalers, right?
 5 A Correct.
 6 Q Okay. And so I'm just trying to get from
 7 you, if you can tell us, some of those vehicle
 8 wholesalers that came to your mind when you made that
 9 selection?
 10 A I did a study which is -- my work papers,
 11 which are not here, talked -- and it listed some
 12 companies I was able to identify. Now that's
 13 difficult to do because RMA data is all confidential,
 14 and I'm not going to get it through an RMA source.
 15 But I found something that allowed me to look at other
 16 people in that same industry that would match.
 17 The second reason why the other things
 18 wouldn't work is we have a company size-specific thing
 19 as well. So, if I had a big dealership, it would be
 20 outside or something different than Taotao, be outside
 21 the range of companies we looked at.
 22 Q So, therefore, the NAICS data has a separate
 23 group under that classification for 100 to 200 million
 24 and 10 million to 50 million. Is that your testimony?
 25 A No, sir. That's the RMA data that has that.

1 NAICS does not.
 2 Q Okay. So NAICS doesn't differentiate in
 3 reference to size?
 4 A That's correct.
 5 Q Okay. So, when you have that, then you have
 6 to compare firstly with the 100 to 200 million, is
 7 what you did, correct?
 8 A Yes, I did. That's correct.
 9 Q And so those 100 to 200 million companies,
 10 dollar-volume companies, you have no idea what type of
 11 companies would have been in those groups, is that
 12 right?
 13 A They matched the RMA code that came from the
 14 tax return that was used that was put into the RMA
 15 database. That's where it came from.
 16 Q You have no idea what type of company --
 17 A Yes, I do. The RMA -- the NAICS Code tells
 18 me what type of companies. Yes, I do.
 19 Q I understand. But do you know the names of
 20 any companies that would fit that criteria, by
 21 guessing?
 22 A I believe I looked up something in my work
 23 papers. I cannot get that data. RMA by definition is
 24 confidential.
 25 Q And I understand that. So, when you plug in

1 Taotao USA in the RMA data, that's just your social
 2 science type of plugging in. Is that accurate?
 3 MR. PALERMO: Objection.
 4 JUDGE BIRO: Sustained. It's argumentative.
 5 BY MR. CHU:
 6 Q So, when you are trying to come up with a
 7 result, you have to somehow either guess or use data.
 8 Is that accurate?
 9 A I don't guess. I use data.
 10 Q So, when you didn't guess as to this vehicle
 11 code for Taotao, what data did you use?
 12 A I looked at the RMA codes -- the NAICS Codes
 13 that were available, and picked the one that was one
 14 digit off, the one that fit exactly what Taotao was
 15 doing.
 16 Q So how is that data -- because you're
 17 selecting a reference. Remember, you said you used
 18 data.
 19 A Yes.
 20 Q So selecting an RMA code is not using data,
 21 but rather you're just making a selection, right?
 22 A Make your selection based on available RMA
 23 code -- NAICS Codes around that data, and looked at
 24 the detail definition of each of those codes, yes. I
 25 did exactly that.

1 Q So, since you broadly stated data, tell me
 2 specifically what that data was.
 3 A We've had a lot of -- help me out. What
 4 data did you want? I'll be glad to help you.
 5 Q You just mentioned that you went up and down
 6 the RMA --
 7 A I see.
 8 Q -- codes, and based upon that data --
 9 A I see.
 10 Q -- you made a decision.
 11 A Okay. Let me -- I looked at the NAICS Codes
 12 available and looked at the best fit for this company.
 13 Q And that's why I said earlier you made a
 14 selection rather than applying any data analysis.
 15 A The next NAICS Code down was tires. It
 16 didn't fit. So that's when I put in the vehicle one.
 17 That's what it was. The next code was tires.
 18 Q How is making a selection the use of data?
 19 A I looked at the description of the company.
 20 That's data. I looked at the NAICS coding system.
 21 Maybe that's not data. That's a coding system. And
 22 matched the two.
 23 Q Is it accurate that your wife helped you
 24 with this report?
 25 A Yes. I -- let me limit that to

1 proofreading, okay? She -- I wish she'd have a better
 2 feel for the numbers, but she's a wonderful woman.
 3 Q I'm sorry. I'm not asking those questions.
 4 I just asked whether or not she helped you.
 5 A She proofread the report, yes, sir.
 6 Proofread, that's it.
 7 Q Do you teach in your finance management
 8 courses to slow pay vendors, service providers, et
 9 cetera, as a financial management technique?
 10 A Yes.
 11 Q Why is that?
 12 A We need the money. And we're looking to
 13 manage the assets, the cash coming in and out of the
 14 business. It's standard to do that, yes.
 15 Q How does the fact that you push aside and
 16 ignore your legal obligation create increased buying
 17 power?
 18 A Legal obligation means the terms -- the term
 19 of the debt in terms of days. Is that exactly what
 20 you meant, the legal obligation?
 21 Q Well, I'm just trying to figure out how it
 22 is that a person's net worth or a company's net worth
 23 goes up by not paying their obligations.
 24 A It doesn't.
 25 Q Exactly. So that's not a factor that should

1 be used in someone's --
 2 A That's not -- that's what I -- that's not
 3 what I did here, sir. I did not do that.
 4 Q Well, didn't you suggest that they shouldn't
 5 pay A, and then pay B is kind of like that robbing
 6 Peter to pay Paul theory?
 7 A Robbing Peter to pay Paul is certainly a
 8 good observation, yeah.
 9 Q And companies do that to survive, right?
 10 A Yes, they do it to survive, yes.
 11 Q But the adage also is that never works,
 12 right?
 13 A Oh, it's worked.
 14 Q Okay. So now you've gone through the
 15 guidelines that the EPA has worked hard to come up
 16 with, correct?
 17 A Yes.
 18 Q Do you see anywhere in the guidelines where
 19 it says one should consider not paying financial
 20 obligations so that they could pay the EPA?
 21 A I saw a discussion of related parties. I
 22 did see that. And the details of the financial
 23 management, it was not found in the -- I don't recall
 24 seeing that in the EPA guidelines, yes. I don't
 25 recall seeing that.

1 Q And I don't want to mix two things up, so
 2 can we stick with my point first?
 3 A Sure, go ahead.
 4 Q So that's not in there, right?
 5 A Slow paying the vendors is not -- I didn't
 6 see it in there. I didn't see it in there.
 7 Q It was don't pay or slow pay.
 8 A I don't recall seeing those in there. I
 9 read it a couple of months ago. I don't --
 10 Q But that was your suggestion here to this
 11 Court, right?
 12 A Yes, absolutely, yes.
 13 Q So, when you look at an ability to pay, you
 14 view that as how can this company allocate its
 15 resources to pay A rather than B. Is that accurate?
 16 A Accurate.
 17 Q That doesn't really comport with the
 18 guidelines you were given, does it?
 19 A Where the money comes from and where the
 20 money goes is kind of classic finance. You just
 21 provided one way, is stretching out the payables. So
 22 that's ability to pay.
 23 Q You mentioned, in haste, I believe, that
 24 there was a parent company. Do you remember those
 25 words?

1 A Yes.
 2 Q Now you teach organizational structures in
 3 your classes, don't you?
 4 A Yes, commonly.
 5 Q It's kind of a legal concept, but CPAs are
 6 known to register companies and advise people about
 7 corporate structures.
 8 A Yes.
 9 Q Is that accurate?
 10 A Yes.
 11 Q Now you know more likely than not, that's
 12 probably against the law in any state here, that the
 13 CPA advises the legal so-called responsibilities of an
 14 entity other than for tax purposes.
 15 A Actually, I tell people not to do that
 16 because --
 17 Q Exactly.
 18 A -- it's practicing law without a license,
 19 and I explain in my ethics class don't do that.
 20 Q Because you've seen that situation in your
 21 ethics reviews, ethics classes. You make it a very
 22 big point to teach that, don't you?
 23 A Yes.
 24 Q Okay. So why did you tell this Court that
 25 there was a parent company here legally?

1 MR. PALERMO: Objection, mischaracterizes
 2 previous testimony.
 3 JUDGE BIRO: Sustained.
 4 BY MR. CHU:
 5 Q When you mentioned parent company, was that
 6 just in a fun way of describing things, or did you
 7 actually mean to say that it was a parent company?
 8 A I meant literally it's a related-party
 9 transaction. Related-party transactions are red flags
 10 on any financial analysis because we wonder if the
 11 transaction is at fair-market value. That's why.
 12 Q Now can you tell us the section of the tax
 13 code that talks about transactions between parent and
 14 subsidiaries?
 15 MR. PALERMO: Objection. The tax code
 16 speaks for itself and calls for a legal conclusion.
 17 JUDGE BIRO: Overruled. Go ahead, if you
 18 know.
 19 THE WITNESS: I'm sorry. You want me to
 20 answer that?
 21 JUDGE BIRO: Uh-huh.
 22 MR. CHU: Can you tell --
 23 JUDGE BIRO: Do you know?
 24 THE WITNESS: I don't -- I'm not going to
 25 call myself an expert on taxes. You mentioned the tax

1 code. I'm going to stay out of there. It's not my
 2 area of expertise.
 3 BY MR. CHU:
 4 Q Well, somewhere you've got to come up with
 5 some support for why you identify a company that's not
 6 owned by the manufacturer, and that company, in your
 7 opinion, pursuant to GAAP rules and other qualifiers
 8 you used to qualify yourself as an expert, that it was
 9 actually a parent company.
 10 A It doesn't need to be a parent. It's a
 11 related party. That's enough to red flag it here.
 12 It's a related party for me. Whether it's a parent, I
 13 don't care. It's a related party.
 14 Q So would it be safe to say that you might
 15 have misspoken there?
 16 A Oh, about calling it exactly a parent when I
 17 should have more broadly --
 18 Q Yes.
 19 A -- called it a related party? Yeah, that
 20 would be a fair statement, a related-party
 21 transaction, yes.
 22 Q Because you're permitted to give an opinion
 23 about relationships as an expert. Is that your
 24 understanding?
 25 A I wouldn't say that. Boy, that's a very

1 broad term. I would say related-party transactions,
 2 they're suspect to further investigation whether they
 3 are done at a fair market value.
 4 Q What is your understanding of the ownership
 5 that is required to make one company a parent company
 6 over another?
 7 A I don't know that answer, sir.
 8 MR. PALERMO: Objection, relevance.
 9 JUDGE BIRO: Sustained. Go ahead.
 10 BY MR. CHU:
 11 Q So what you were getting to is because there
 12 are -- Taotao USA is a Chinese company-owned, and that
 13 the products are coming from China, so therefore it
 14 must be made from a Chinese-run or owned company, that
 15 there is a relationship. Is that it?
 16 MR. PALERMO: Objection. Assumes facts not
 17 in evidence, vague.
 18 JUDGE BIRO: Overruled. Go ahead.
 19 THE WITNESS: Taotao USA has got a U.S. tax
 20 code, and I looked at it as a U.S. company, right,
 21 because they pay U.S. taxes. The ownership, I was
 22 told, was Mr. Cao, and there was a relationship with
 23 the companies in China. It's got a U.S. tax ID
 24 number.
 25 //

1 BY MR. CHU:
 2 Q I understand that Taotao USA is a U.S.
 3 company.
 4 A Yes.
 5 Q But what information are you relying on to
 6 support your conclusion that a company in China is the
 7 parent company?
 8 A Okay. There are several pieces of data on
 9 that. I go back -- the first time I heard that was
 10 the report of Maureen Kaplan, a broad, general report.
 11 I heard it repeatedly from people in the EPA side of
 12 the case. But I also saw specific references to it in
 13 the deposition transcripts that I read, and that's
 14 where I got it particularly. The deposition
 15 transcripts to me said that.
 16 Q Are you aware that there are two suppliers
 17 of vehicles to Taotao USA from China?
 18 A Yes.
 19 Q So, if there are two companies, then it
 20 would be very difficult for both those companies to be
 21 the parent company. Would you agree?
 22 A A parent company -- to me, it's a related
 23 party. That's why I -- I'm looking at related-party
 24 transaction.
 25 Q Why didn't you identify Taotao USA as the

1 parent company of the Chinese companies?
 2 MR. PALERMO: Objection, mischaracterizes --
 3 JUDGE BIRO: Sustained.
 4 BY MR. CHU:
 5 Q So, when you made that determination, it was
 6 just based upon your smell test?
 7 A No, sir.
 8 Q What data did you rely on? Data, not
 9 statements from the EPA people.
 10 A The particular reference that I was struck
 11 by was the deposition of Mr. Cao.
 12 Q What particular testimony are you referring
 13 to?
 14 A I don't recall exactly. It was -- I think
 15 he described it as his father's company and his
 16 company, but he owned his father's company too, and
 17 that was all I needed to understand that this was a
 18 related party.
 19 Q Can you tell us the names of the company
 20 that you remember you read in this deposition two or
 21 three weeks ago?
 22 A I honestly can't, sir. It's a big, long
 23 name, and the other one is equally long. And I'd like
 24 to -- I'd look at my notes to find them. I just don't
 25 recall the exact names.

1 Q Was there reference to this third company?
 2 A Third company? There's Taotao USA and two
 3 Chinese companies. That's --
 4 Q Correct.
 5 A That's it.
 6 Q So what you're telling us is from some
 7 compilation of information provided by the EPA
 8 attorneys to you, and Ms. Isin, as well as Ms.
 9 Connelly, is it?
 10 A The Kaplan --
 11 Q Kaplan, yeah.
 12 A -- Kaplan report.
 13 Q That you have come up with this
 14 determination.
 15 A That there's a relationship between the
 16 companies, and it was confirmed by Mr. Cao's
 17 deposition.
 18 Q And don't companies in general in Asia have
 19 related connections with companies?
 20 MR. PALERMO: Objection, relevance.
 21 THE WITNESS: I'm not even going to answer
 22 that question anyway.
 23 MR. CHU: Well, I mean --
 24 JUDGE BIRO: How can he possibly know and
 25 what relevance it is what Chinese companies do?

1 BY MR. CHU:
 2 Q Have you ever studied or looked at Japanese
 3 companies?
 4 A No.
 5 Q Korean companies?
 6 A Say it again?
 7 Q Korean companies.
 8 A No, sir.
 9 Q Okay. So you're familiar with AT&T, right?
 10 A Yes.
 11 Q And AT&T has a lot of subsidiaries, correct?
 12 A Yes.
 13 Q And now it's even gone bigger with the cable
 14 and internet, right?
 15 MR. PALERMO: Objection, relevance.
 16 JUDGE BIRO: Sustained.
 17 BY MR. CHU:
 18 Q So, when you talk about related companies,
 19 that's not an unusual phenomena here in the United
 20 States, is it?
 21 A That's very fair, yes, not -- it's not a --
 22 it's very common, absolutely right, very common.
 23 Related parties is very common now, yes.
 24 Q Okay. So tell me what GAAP principle says I
 25 can look at a related company in the United States and

1 declare that certain debt is equity or that certain
 2 equity is debt?
 3 A The characterization comes about by the
 4 definition of accounts payable, the ordinary course of
 5 business. These are not in the ordinary course of
 6 business, and that would be the basis I used, the
 7 definition of accounts payable.
 8 Q And your so-called identified accounts
 9 payable is what we discussed earlier, something that
 10 is only short-term, right?
 11 A Well, that's very interesting you bring that
 12 up. It's normally short-term, and these -- it's
 13 well -- it's within a year, but this is the longest
 14 short-term I've seen in a long time. Short-term is
 15 defined as less than one year.
 16 (Pause.)
 17 BY MR. CHU:
 18 Q And you're sure that the one year is in your
 19 report, right, when you described short-term?
 20 A That's the standard definition of short-
 21 term. It's actually one business cycle, which is
 22 typically one year for most companies.
 23 Q Professor Carroll, are you sure that one
 24 year is in your report?
 25 A I don't think it is. I used the common

1 definition of accounts payable, yes.
 2 Q Based upon the tax return that you reviewed
 3 for the year 2014, can you tell this Court how much
 4 was paid to the manufacturers in that year?
 5 A The tax return doesn't specify that. It's
 6 an item called Purchases. It doesn't say who it's
 7 paid to.
 8 Q So how -- strike that. Can you tell this
 9 Court the aging of account receivables as identified
 10 in the tax return for the year 2015?
 11 A Aged receivables is not part of the tax
 12 return.
 13 Q So, therefore, it's your supposition, is it
 14 not, that it's more than one year?
 15 A Sir, I did not say more than one year. I
 16 said it was seven and a half months.
 17 Q Because you said that those items should not
 18 be identified as accounts payable, did you not?
 19 A I did.
 20 Q And so, as such, the conclusion is that
 21 those account payable items that you excluded, that
 22 you identify as equity, would have necessarily been
 23 obligations that exceed one year in duration. Is that
 24 accurate?
 25 A No, sir, that's not accurate. Equity

1 doesn't have a duration.
 2 Q I'm not speaking of equity. I'm speaking of
 3 the amounts owing to the manufacturers in China.
 4 A So, in my crude study, it was seven and a
 5 half months of data. That's about the average
 6 payables.
 7 Q Thank you. So the number that you used was
 8 seven and a half months. And you defined for us now
 9 something that wasn't in your report, that an account
 10 payable is a short-term debt that doesn't exceed one
 11 year. Is that accurate?
 12 A I wouldn't call it debt, but short-term is
 13 the right answer to it. Short-term liability would be
 14 the word we'd use, yes.
 15 Q Is it accurate, what I stated?
 16 A That it's a short-term liability? That
 17 statement is accurate.
 18 Q So seven and a half months fits into that
 19 classification, right?
 20 A Yes, it would.
 21 Q So, therefore, would it be safe to say that
 22 you're inaccurate, incorrect, in your analysis that
 23 it's not an account payable?
 24 A No, sir, it's not. My opinion stands.
 25 Q I understand it stands, but it is

1 inaccurate, is it not?
 2 A What's accurate?
 3 Q Inaccurate.
 4 A No, sir. My opinion is -- I'm solid with my
 5 opinion. I'm not going to change -- I have no basis
 6 for changing it.
 7 Q I understand that. But seven and a half
 8 months is not, according to GAAP accounting
 9 principle -- principles, okay --
 10 A GAAP is a big GAAP, and there's a big gap,
 11 but I look to industry norms, and this is outside the
 12 industry norm. That's why I concluded it.
 13 Q Doctor, if I may?
 14 A Thank you.
 15 Q The seven and a half months that you have
 16 identified for the age of the liabilities, according
 17 to GAAP principles, you cannot treat that as equity
 18 because it's not older than one year. Is that
 19 accurate?
 20 A That's not the only test you would use to
 21 determine whether it's debt or equity, so using that
 22 one, that's a very broad test. It's acceptable.
 23 However, in the industry we're looking at, it's quite
 24 extraordinary. Seven and a half months is quite
 25 extraordinary.

1 Q Doctor, if I may ask you to focus on what
 2 I'm asking you.
 3 A Surely.
 4 Q The GAAP principles, only the GAAP
 5 principles.
 6 A Yeah.
 7 Q Is it accurate that seven and a half
 8 months --
 9 MR. PALERMO: Asked and answered.
 10 JUDGE BIRO: Sustained.
 11 BY MR. CHU:
 12 Q Okay. Now, so now tell us what other
 13 principle that's in your report that you identified,
 14 that you applied that was not GAAP, to come up with a
 15 conclusion that those amounts should be classified as
 16 equity. And I'm asking in the report, not somewhere
 17 else.
 18 A In the report, I looked at the industry
 19 data. This company is an outlier to the industry, and
 20 it should be consistent with GAAP accounting, which is
 21 kind of defined within that industry. I find no basis
 22 other than financing reasons to conclude it's any --
 23 that it's really a payable, so to recharacterize it to
 24 equity.
 25 Q Sorry, Doctor, I asked for a principle.

1 GAAP's a principle, right?
 2 A GAAP is a generally accepted set of things,
 3 yes.
 4 Q Okay. And so I'm asking you, identify for
 5 me what principle you used that's written in the
 6 report, there identified in your report. Any?
 7 A No GAAP principle explicitly covers this.
 8 No, there's no GAAP principle that covers this, yes.
 9 Q I'm sorry, Professor. I'm not asking you --
 10 you've already answered the question about GAAP.
 11 A Okay.
 12 Q And you said GAAP is a poor set of rules in
 13 this situation, is that right?
 14 MR. PALERMO: Objection. Mischaracterizes
 15 previous testimony.
 16 JUDGE BIRO: No. Overruled. I think that's
 17 what he said. It is the core principles for
 18 accounting, general accrual and accounting principles.
 19 That's what they are.
 20 THE WITNESS: General rules of accounting
 21 principles, and there's quite a list, but it doesn't
 22 cover everything. Then they need to be interpreted in
 23 particular situations.
 24 BY MR. CHU:
 25 Q Doctor, I'm going to ask the question.

1 Ready?
 2 A Yes.
 3 Q Please point out for this Court the stated
 4 principle that's written in your report that you
 5 utilized to make the determination that that seven and
 6 a half month aged debt is equity.
 7 A Okay. It's extraordinary to the industry.
 8 JUDGE BIRO: Okay. Move on.
 9 MR. CHU: Thank you. I'm finished, Your
 10 Honor.
 11 JUDGE BIRO: Okay. Thank you.
 12 MR. PALERMO: I have some questions for
 13 redirect.
 14 JUDGE BIRO: Would you like to take a break,
 15 Dr. Carroll?
 16 THE WITNESS: Thank you, Your Honor. Maybe
 17 five minutes or so to stretch, just shake off --
 18 JUDGE BIRO: Sure. That's fine.
 19 THE WITNESS: Okay? That's all. Thank you
 20 so much.
 21 JUDGE BIRO: We'll stand in recess 'til
 22 2:30.
 23 (Whereupon, a brief recess was taken.)
 24 JUDGE BIRO: Mr. Palermo.
 25 MR. PALERMO: Thank you.

1 JUDGE BIRO: Please proceed.
 2 REDIRECT EXAMINATION
 3 BY MR. PALERMO:
 4 Q Dr. Carroll, could you restate your opinion
 5 as to --
 6 MR. CHU: Objection, asked and answered,
 7 Judge. This is redirect.
 8 JUDGE BIRO: Yes. We haven't even heard the
 9 whole question yet.
 10 MR. CHU: I'm sorry.
 11 MR. PALERMO: I could summarize your
 12 opinion, but I'd like you just to -- to ask you some
 13 questions --
 14 MR. CHU: Objection to the sidebar, Your
 15 Honor.
 16 MR. CHU: -- because you were asked about
 17 them.
 18 JUDGE BIRO: Hmm?
 19 MR. CHU: Objection to the sidebar.
 20 JUDGE BIRO: Okay. You want to have a
 21 sidebar on this?
 22 MR. CHU: No. I'm saying I'm objecting to
 23 counsel's sidebar. I think it was directed at me.
 24 JUDGE BIRO: Oh, sorry. Ask a question, any
 25 question.

1 BY MR. CHU:
 2 Q Dr. Carroll, accounts payable, you
 3 recharacterized a lot of those accounts payable listed
 4 in the tax returns as equity.
 5 A Yes.
 6 Q What does that mean?
 7 A It means the value of the company, because
 8 it's now equity as opposed to debt, jumps by the
 9 amount of the recharacterization, and it recognizes
 10 the risk return relationship of the Chinese company
 11 based on their continued investment in this particular
 12 business.
 13 Q When you recharacterize the accounts payable
 14 as equity, is it really a debt?
 15 A It's a debt to the owner. It's a debt I owe
 16 myself. That's the way to look at equity. It's money
 17 owed the owner, so it's really something owed the
 18 owner. And what that does is it takes out of other
 19 liabilities so the bank will now lend on a company
 20 that has now assets with no -- has a net worth that's
 21 larger.
 22 Q Well, isn't --
 23 A Because it's taken away the liability part,
 24 a large part of the liabilities, yes. Go ahead.
 25 Q Isn't the Chinese companies loaning the

1 money --
 2 A No.
 3 Q -- owning --
 4 A They're investing the money and have
 5 continued to invest it by not collecting the payables
 6 on a regular basis for a great number of years.
 7 Q So --
 8 MR. CHU: I didn't hear the last part, Your
 9 Honor.
 10 JUDGE BIRO: By not collecting the money for
 11 a number of years?
 12 THE WITNESS: Not getting repayment of the
 13 money on a regular basis for a great number of years.
 14 BY MR. PALERMO:
 15 Q So, when I hear investment, I think stock.
 16 Is that similar, a stock purchase?
 17 A It could -- they could get stock if they're
 18 willing to straighten out the accounting. They could
 19 say we'll take the money out of the liabilities, give
 20 you common stock of the company at a mutually
 21 agreeable exchange rate, and we're done.
 22 Q When you were in the cross-examination,
 23 there was some discussion about stretching out the
 24 payables.
 25 A Yes.

1 Q What did you mean by that term?
 2 A Financing comes from many places. One of
 3 the ones we talk about is a creditor's spontaneous
 4 financing because there's just no paperwork. It
 5 happens very quickly. So what we have here is
 6 spontaneous financing done by the Chinese company, but
 7 it's been in place so long, a large -- it rolled over
 8 a bit, but it's a large number of places for a long
 9 period of time. It's really an injection of equity as
 10 opposed to a loan.
 11 MR. CHU: Your Honor, I'm going to object to
 12 the answer as being vague. He described a Chinese
 13 company. There are three Chinese companies here, so
 14 it's vague.
 15 JUDGE BIRO: Overruled.
 16 BY MR. PALERMO:
 17 Q So are you suggesting that Taotao USA should
 18 delay paying its bills?
 19 A That's one financing strategy that could be
 20 used to pay the debt, the penalty to EPA, and continue
 21 in business without any change in operations, yes.
 22 Q Would that cause the Chinese suppliers then
 23 to no longer sell products to Taotao USA because they
 24 were delaying paying their bills?
 25 MR. CHU: Objection. That calls for

1 speculation.

2 JUDGE BIRO: Sustained.

3 BY MR. PALERMO:

4 Q Why didn't you use data on publicly held

5 companies in your analysis?

6 A It's not relevant. I wanted to use the

7 exact best data I could get, so I used -- the best

8 data I could get is an exact NAICS Code, the exact-

9 sized company, with the correction made, and it's a

10 privately held company. So very close to exactly

11 resembling this company. That's the data I used.

12 Q Is Honda in the RMA data?

13 A No.

14 MR. CHU: Your Honor, I'm having problems

15 hearing. If you could ask counsel to speak into the

16 mike.

17 BY MR. PALERMO:

18 Q Is Honda in the RMA data?

19 A No.

20 Q Why not?

21 A It's publicly traded.

22 Q In your report, the first page, you had

23 indicated that this report does not conduct -- does

24 not constitute an audit. What did you mean when you

25 wrote the term audit?

1 A The word audit --

2 MR. CHU: Objection, relevance, Your Honor.

3 JUDGE BIRO: No. We went through this on

4 cross extensively. Overruled.

5 What's an audit, Doctor?

6 THE WITNESS: An audit is a process where

7 the audit firm issues an opinion letter that says that

8 financial statements prepared and attached by

9 management are consistent with GAAP and fairly

10 presented. It's an attestation that they concur with

11 what management said, and that's used to give to

12 lenders and investors to make financial decisions.

13 BY MR. PALERMO:

14 Q What's a review or a compilation of

15 financial statements as --

16 A A review -- really, audits are very

17 expensive. A review is what I call in my classes

18 audit-lite. It's about half of an audit. It's about

19 half of the price. And the bank gets about half of

20 the assurance that the financial statements are

21 correct.

22 Q And what kind of information do you need to

23 have to conduct an audit, as you defined it?

24 A Quite a bit. One of the big things you want

25 to do on an audit is test all the systems out. So you

1 want to make sure that all the sales get reported in

2 the books, all the cash payments gets recorded in the

3 books. That means we have to go through and document

4 all the systems and then run tests to make sure

5 they're actually working. So that's part of the early

6 part of an audit test. And this company is just not

7 auditable because they haven't run those tests yet.

8 So I couldn't -- no one could audit this company at

9 this point, that I'm aware of, because they just don't

10 have all the systems in place.

11 Then we go around and take -- test the

12 systems to see if they're reliable. Based on the data

13 I get, I'm not sure they are. If they are reliable,

14 which I'm surprised they'd be, you would go ahead and

15 start to check balances out at the end of the year.

16 So what we have is we've tested transactions

17 through the year by taking samples. Then we take the

18 balance sheet at the end of the year, do something

19 called substantive testing that the bank account is

20 right. We have to take a physical inventory and price

21 that out to see what the inventory is at the end of

22 the year. We take all the bank records and do a bank

23 rec to make sure exactly what the bank balance is at

24 the end of the year. Then we'd look for all the

25 liabilities and figure out that they're correctly

1 stated. And if I was doing an audit, I'd have to deal

2 with this recharacterization issue, required.

3 Q What -- there was some testimony regarding

4 RMA data and talk about using it for research. Does

5 the banking industry use RMA data in decisions?

6 A Yes.

7 Q How is it used?

8 A It's a support for a decision. I notice the

9 RMA language. They don't want to say they make the

10 decision. They support the decision. So the RMA data

11 is used as a decision-support device, and it's very

12 hardly used.

13 Q Do investors, when determining whether to

14 invest in a company --

15 A Uh-huh.

16 Q -- is RMA data a possible --

17 A It could be.

18 MR. CHU: Objection on relevance.

19 JUDGE BIRO: Overruled. Go ahead.

20 THE WITNESS: Okay. It could be, but the

21 more common way of looking at it would be -- and

22 probably part of the bigger decision in the RMA data

23 would be looked at. When you make an investment

24 decision, you're looking at a long-term prospects

25 situation. So the RMA data would be part of it, but

1 there are other things that they'd look at as well.
 2 BY MR. PALERMO:
 3 Q Do you know what an arm's-length transaction
 4 is?
 5 A Yes.
 6 Q Was the transactions between Taotao USA and
 7 its Chinese suppliers arm's-length transactions?
 8 MR. CHU: Objection. It calls for
 9 speculation. A predicate has not been laid for this
 10 witness to answer that or give an expert opinion on
 11 that.
 12 JUDGE BIRO: Overruled.
 13 Do you know?
 14 THE WITNESS: Okay. The company says on --
 15 it's been identified in the documents, particularly
 16 the deposition, as well as the other background
 17 materials, support them as being related parties,
 18 related companies. So they were related companies.
 19 That's my -- part of my -- that's stated in my report
 20 that way.
 21 BY MR. PALERMO:
 22 Q And if they're related companies, what does
 23 that mean in terms of when Taotao USA has to pay its
 24 obligations to the Chinese suppliers?
 25 A It's a related party. We have to work it

1 out. So the terms are all -- aren't really arm's
 2 length. So it's a question of what the parties agree
 3 to. It's what a related party is. It's not an arm's
 4 length transaction. The key thing on that is it
 5 doesn't represent fair market value, or in this case,
 6 it doesn't represent typical terms. Typical terms
 7 would be 30 to 60 days, not whenever I feel like it.
 8 MR. PALERMO: No further questions.
 9 MR. CHU: May it please the Court.
 10 RE-CROSS-EXAMINATION
 11 BY MR. CHU:
 12 Q Sir, you talked about typical terms.
 13 A Typical terms, yes.
 14 Q And you did no research on this industry as
 15 a whole, is that correct?
 16 A I used the RMA data.
 17 Q You did no research on this industry as a
 18 whole, did you?
 19 MR. PALERMO: Objection, asked and answered.
 20 JUDGE BIRO: Sustained.
 21 BY MR. CHU:
 22 Q Sir, your RMA data that you testified to was
 23 for vehicles, not for scooters, not for ATVs. Is that
 24 accurate?
 25 A I think the whole definition includes off-

1 road vehicles. We haven't read all the words yet, but
 2 part of it is off-road vehicles, the longer definition
 3 of the NAICS Code.
 4 Q So you looked it up just now.
 5 A No, sir. I looked it up in the past, but I
 6 don't recall all the words.
 7 Q Didn't you testify earlier that motorcycles
 8 and these types of items would be under a different
 9 code?
 10 MR. PALERMO: Objection, mischaracterizes
 11 previous testimony.
 12 JUDGE BIRO: Overruled.
 13 THE WITNESS: Okay. I don't recall
 14 testifying on motorcycles before. I think you asked
 15 me a question about motorcycles. What I looked at was
 16 the definition of the company, the code that Taotao
 17 picked. It needed to have one digit added, and that's
 18 what I used.
 19 BY MR. CHU:
 20 Q Sir, you keep on referring to the code that
 21 Taotao picked. Is it clear or not clear that that
 22 code does not exist?
 23 A It's absolutely clear to me the double zero
 24 code does not exist.
 25 Q Thank you. Now, sir, you said that Taotao

1 USA is a company that cannot be audited. Is that --
 2 did I hear that correctly?
 3 A Right now, absolutely. I really believe
 4 that. It's my opinion no one could -- it would take
 5 years to get the company into a position where the
 6 financial systems work well enough to develop an
 7 opinion letter.
 8 Q So how many steps are there in an audit?
 9 A The audit planning process? Okay. The
 10 audit planning process taking on a new client -- this
 11 was what it would be. First of all, you have to
 12 assess the company and the management and make sure
 13 they're believable and we want them as a client.
 14 Q I'm sorry. I asked if you can a number.
 15 How many steps are there to conduct an audit?
 16 A It's still not numbers, sir. It's a big,
 17 long process. You could count them in hundreds or
 18 thousands.
 19 Q It's a hundred --
 20 A Hundred, or you could break them into broad
 21 categories, which I was trying to do.
 22 Q I just want to get your identification,
 23 explanation, interpretation of how many steps there
 24 are in an audit, if you can tell us.
 25 A It's not really a numberable thing. It

1 depends on how you define steps. I was giving the
 2 phase of an audit coming right out of my textbook and
 3 the audit processes. But the audit steps could be, if
 4 you count individual double checkmarks, it could be
 5 thousands and thousands.

6 Q Did you not state earlier that an audit is a
 7 validation of management's numbers?

8 A Yes.

9 Q So the audit basically is an investigation,
 10 confirmation, identification of the source of the
 11 numbers, as well as the calculations. Would you
 12 agree?

13 A Yes.

14 Q So, therefore, that is something that can be
 15 conducted with Taotao USA.

16 A No.

17 Q Why not?

18 A The systems look, in my opinion, look so
 19 weak, they have to be tested, and it would take a
 20 while to straighten out the systems to get the data
 21 right to do the audit. I would think that would take
 22 a couple of years to get the systems running right, to
 23 make sure that the systems are generating the correct
 24 data.

25 Q So using GAAP principles, you would take

1 the -- at the beginning of the year, the current
 2 assets, liabilities, and what else?

3 MR. PALERMO: Objection. This line of
 4 questioning was asked and answered.

5 JUDGE BIRO: Overruled.

6 THE WITNESS: Okay. What I would do -- it
 7 doesn't -- it generally doesn't really start at the
 8 beginning of the year because we pick an audit client
 9 up March or April, and then we say we're going to do
 10 an audit. And we're not going to get it done for that
 11 year because we have to get the opening balance right.
 12 The opening balance has already occurred.

13 So I can't take out a physical inventory
 14 because that's got to be tested and evaluated. This
 15 company has a large physical inventory. We have to go
 16 out and count everything, identify what we counted,
 17 extend it by the right prices or costs. So that's the
 18 opening balance. That has passed already.

19 BY MR. CHU:

20 Q So do you see a difficulty in getting the
 21 opening balance?

22 A Yes.

23 Q What is the difficulty?

24 A The systems themselves look suspect from the
 25 records I've seen. Also, any company, whether it's a

1 good company or not, has to have systems that are
 2 working well to have an audit. You just don't say,
 3 oh, I'll do an audit right now. It's going to take a
 4 while to get the systems running well enough to be
 5 able to do an audit. I would expect the soonest I
 6 could get through this company would be a year and a
 7 half, certainly not 2017, maybe not even 2018. Maybe
 8 about 2019 they'd be ready for an opinion letter, at
 9 the end of 2019.

10 Q And so that's speaking from someone that's
 11 never conducted an audit. Is that accurate?

12 A It's been part of my process on the inside
 13 because I set up the systems so we were auditable and
 14 we could get it done.

15 Q When you worked at this Swedish company,
 16 right?

17 A Swedish company, yes, and others, but, yes,
 18 the Swedish company. We were audited, and I set up
 19 the systems so that it was auditable systems.

20 Q You were audited by the IRS or audited by an
 21 auditor?

22 A Well, we usually call -- IRS audits are a
 23 different thing.

24 Q Yes.

25 A These are -- financial statement audits are

1 done by accounting firms. IRS audits are called
 2 compliance audits. They're different. And I was only
 3 interested in financial statement audits all
 4 throughout the day, not IRS audits.

5 Q Right. A compliance audit, right?

6 A An IRS is a compliance audit. Did you
 7 follow the rules?

8 Q Okay.

9 A Financial statement audits, are the
 10 financial statements fairly presented. That's the
 11 real big difference between the two.

12 Q So, basically, it's the conclusion that a
 13 company like Taotao based only upon the income tax
 14 returns that you reviewed could not provide you with
 15 any additional information to set up the appropriate
 16 auditing protocol.

17 A To get done -- well, eventually, yes,
 18 because you have the systems, and check them out. For
 19 2017, not possible.

20 MR. CHU: Thank you. I pass the witness.

21 JUDGE BIRO: Okay. Thank you, Doctor.

22 THE WITNESS: Thank you, Your Honor.

23 JUDGE BIRO: I appreciate your patience.
 24 Okay. We're going to release Dr. Carroll.
 25 Do you have another witness you'd like to call this

1 afternoon?
 2 MR. CHU: No objections here, Your Honor.
 3 JUDGE BIRO: Thank you.
 4 MR. KULSCHINSKY: Yes, Your Honor. We'd
 5 like to call Ms. Amelie Isin to the stand.
 6 Whereupon,
 7 AMELIE CARA ISIN
 8 having been duly sworn, was called as a
 9 witness and was examined and testified as follows:
 10 MR. KULSCHINSKY: Thank you, Your Honor.
 11 DIRECT EXAMINATION
 12 BY MR. KULSCHINSKY:
 13 Q Good afternoon, Ms. Isin.
 14 A Good afternoon.
 15 Q Could you please state your full name for
 16 the record?
 17 A Amelie Cara Isin.
 18 Q And where are you currently employed?
 19 A I'm employed in the Region 3 Air Protection
 20 Division at EPA.
 21 Q When did you begin your employment with EPA
 22 Region 3?
 23 A In September of 2015.
 24 Q And where were you employed prior to going
 25 to Region 3?

1 A I was employed with EPA Headquarters, what's
 2 now known as the Vehicle and Engine Enforcement
 3 Branch.
 4 Q Did it have a different name?
 5 A It was called the Mobile Source Enforcement
 6 Branch.
 7 Q When did you begin your employment with the
 8 Mobile Source Enforcement Branch?
 9 A In -- sometime in 2007.
 10 Q And what was your title or position with the
 11 Mobile Source Enforcement Branch?
 12 A I believe I was hired as a management
 13 analyst but then was promoted to environmental
 14 engineer.
 15 Q Did you have a position with the EPA before
 16 you joined the Mobile Source Enforcement Branch?
 17 A Yes, I did.
 18 Q And what was that position?
 19 A That was with EPA's Office of Compliance,
 20 also at Headquarters in the Information Utilization
 21 and Targeting Branch.
 22 Q When did you first join the EPA?
 23 A In 2003.
 24 Q Could you please describe your educational
 25 background?

1 A I have a Bachelor of Science in Biology and
 2 International Studies from Yale University. And I
 3 have a Master's of Science in Environmental
 4 Engineering from Virginia Tech.
 5 Q All right. Do you have any professional
 6 licenses or certifications?
 7 A I have a professional engineer license from
 8 the State of Virginia, which I obtained in 2010, I
 9 believe.
 10 Q Could you please turn to what's been marked
 11 as Complainant's Exhibit 155?
 12 A Yes.
 13 Q Do you recognize this document?
 14 A Yes, I do.
 15 Q And what is this document?
 16 A This is my resume.
 17 Q Did you --
 18 MR. CHU: Your Honor, Respondents accept
 19 this exhibit.
 20 JUDGE BIRO: Okay. Do you want to move this
 21 exhibit into evidence?
 22 MR. KULSCHINSKY: Yes, Your Honor. I'd like
 23 to move CX-155 into evidence.
 24 JUDGE BIRO: Accepted without objection.
 25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No.
 4 155, was received in
 5 evidence.)
 6 BY MR. KULSCHINSKY:
 7 Q Ms. Isin, could you please describe your job
 8 duties when you were employed with the Mobile Source
 9 Enforcement Branch?
 10 A Sure. I worked on vehicle and engine cases,
 11 primarily imports cases. I conducted inspections. I
 12 conducted investigations. I provided technical
 13 support for cases.
 14 Q What kind of technical support would you
 15 provide?
 16 A Kind of, you know, compiling the information
 17 on the violations, calculating the penalty, at least
 18 the initial penalty.
 19 Q And this was with the vehicle and engine
 20 enforcement program?
 21 A That's right.
 22 Q Okay. Did you review motor vehicle emission
 23 test reports as part of your job?
 24 A Yes, I did.
 25 Q Do you know approximately how many you've

1 reviewed?

2 A For vehicles and engines, right?

3 Q Yes, ma'am.

4 A Okay. I would estimate maybe 50.

5 Q As part of your duties, would you

6 communicate or work with other offices at the EPA?

7 A Yes.

8 Q What offices were those?

9 A Primarily the Office of Transportation and

10 Air Quality, also the Office of General Counsel.

11 Q And would you work with other federal

12 agencies?

13 A Yes.

14 Q And which agencies were those predominantly?

15 A Department of Justice, Customs and Border

16 Protection.

17 Q So, as part of your job, are you familiar

18 with how the EPA regulates vehicles and engines?

19 A Yes.

20 Q Are you a lawyer?

21 A No.

22 Q Could you briefly explain in your own words

23 your understanding of EPA's program for regulating

24 vehicles and engines?

25 A Sure. It's a certification program, and it,

1 you know, relies heavily on the truth and accuracy of

2 the manufacturer's description of what they plan to --

3 the vehicle and engine that they plan to build. That

4 vehicle and engine is described in what's called an

5 application for certification, and it's accompanied

6 with emissions test data relating to that vehicle or

7 engine, showing that it meets applicable federal

8 emission standards.

9 Vehicles are required -- vehicles that are

10 sold in the United States are required to be either

11 certified or exempt. The exemption process works much

12 the same way. Depending on the type of exemption,

13 manufacturers are typically required -- or importers

14 are required to submit a request for that exemption to

15 EPA.

16 Q Your employment with the Mobile Source

17 Enforcement Branch, would you ever investigate

18 specific companies?

19 A Yes.

20 Q What sort of resources would you use in your

21 work to collect information about a company?

22 A Well, beyond the inspections themselves, we

23 would look at the applications for certification to

24 look at, you know, how the vehicle or engine was

25 supposed to be built. We would do web research

1 occasionally to find out about the company and its

2 business. We would look in Customs' ACE database --

3 that's the Automated Commercial Environment

4 database -- to look at import history. That's pretty

5 much what I can think of right now.

6 Q You mentioned certificates of conformity.

7 Would you review applications for certificates of

8 conformity?

9 A Yes, as part of any inspection.

10 Q Did you collect documents using publicly

11 available State resources?

12 A Yes, yes. Usually any case, I would check

13 the Secretary of State website to find whatever

14 information I could about the company or any other

15 related entities.

16 Q Would you review company websites?

17 A Yes.

18 Q You mentioned something called the ACE

19 database. Could you describe what that is and how you

20 might use it?

21 A Sure. That's a U.S. Customs and Border

22 Protection database. It's one of several that they

23 use. It's, as far as I know, the only one that EPA

24 has access to. It's a database which contains

25 information, data, on all importations in the United

1 States. You can search it by importer name. You can

2 search it by date range. You can search it by product

3 type.

4 Q And would you typically utilize this

5 database in performing your duties?

6 A Yes.

7 Q Where does the information in ACE come from?

8 A I believe it's entered by the broker at the

9 time of importation.

10 Q Approximately how many vehicle and engine

11 inspections have you performed as an EPA employee?

12 A Probably on the order of 150.

13 Q Have those predominantly been at ports of

14 entry?

15 A Yeah. I would have to go back and check,

16 but, yeah, probably.

17 Q Has your work focused on vehicle and engine

18 importations?

19 A Yes.

20 Q Other than ports, what other kinds of

21 locations have you inspected?

22 A Warehouses, retail locations.

23 Q When you inspect items at a port, where are

24 they typically being imported from?

25 A They can be imported from anywhere. We

1 don't typically target by a country of origin.
2 Q What are you looking for when you conduct an
3 inspection?

4 A We're looking to see that the vehicle or
5 engine was built according to the specifications
6 described in the application for certification.

7 Q Do you use applications for certificates of
8 conformity in performing that task?

9 A Yes.

10 Q Now, without divulging any confidential or
11 sensitive information, can you briefly explain what
12 factors the EPA considers when determining which
13 importations to inspect?

14 A Sure. For port inspections, for example, a
15 lot depends on what's available. We -- for most port
16 inspections, EPA has to travel since we don't
17 typically -- Washington, D.C., is not a port itself.
18 Most -- one of the highest volume ports in the country
19 is Long Beach, California, for example. So, if we're
20 planning a trip out there, a lot will depend on what's
21 available at the time, how much time we have while
22 we're there.

23 It also depends on the cooperation of
24 Customs, what they are able to select for inspection.
25 Typically, Customs would provide us with a list of

1 what might be available, and then we would try to
2 choose amongst those entries. We would pick those
3 entries by importers that we haven't inspected before.
4 That would be a high priority, as well as high-volume
5 importers, is another area that we would focus on.

6 Q So is there a degree of randomness in
7 determining which entries are inspected?

8 A Yes.

9 MR. CHU: Your Honor, can we get the mike up
10 on the --

11 MR. KULSCHINSKY: Is that better?

12 MR. CHU: Thank you.

13 MR. KULSCHINSKY: Sure.

14 BY MR. KULSCHINSKY:

15 Q Are entries ever selected by Customs and
16 Border Protection?

17 A Yes, they are. Occasionally, Customs and
18 Border Protection will seek our recommendation as far
19 as Clean Air Act compliance on a specific entry or
20 group of entries.

21 Q What occurs during a typical port inspection
22 that you would conduct?

23 A Well, once we're there, typically, Customs
24 has already unloaded the product, so they're sort of
25 quarantined in one area of the warehouse. They unload

1 the entire container at once and, you know, lay it out
2 in rows usually. We would, prior to the inspection,
3 we would make sure that we had a copy of all the
4 paperwork related to the entry, describing what was in
5 it. And we would use that paperwork to make sure that
6 we were able to inspect at least one unique model
7 for -- that's in the entry. So, once we arrive at the
8 port, we would either unpack the box or uncrate the
9 vehicle. And we would document any identifying
10 information related to that vehicle, look at all the
11 labels on it.

12 One person would be responsible for taking
13 photos and taking notes. Another would be responsible
14 for, you know, hands-on examination of the vehicle.

15 Q And what would you do after the physical
16 inspection that you described?

17 A We would compare what we had seen with what
18 was in the application for certification. Sometimes,
19 at the exact time of inspection, sometimes we don't
20 have a copy of that application. Sometimes that
21 comparison is done when we get back to the office.

22 Q Do you have any way of knowing how a vehicle
23 or engine should be built other than the application
24 for a certificate of conformity?

25 A No.

1 Q What do you do if you discover a problem or
2 irregularity during an inspection?

3 A We take note of all discrepancies and would
4 discuss it with management and attorneys in order
5 to -- for them to make a decision on the vehicle's
6 compliance.

7 Q Do you decide if a violation of law has
8 occurred?

9 A No.

10 Q Who makes a decision whether to investigate
11 further?

12 A Typically, that's done by management, EPA
13 management.

14 Q Approximately how many investigations have
15 you been part of?

16 A If you mean cases, it's probably the same
17 number of investigations as cases, so probably about
18 50.

19 Q And what's your typical role or duties
20 during an investigation as opposed to an inspection?

21 A As part of an investigation, I collect all
22 the information related to the violations,
23 investigate -- do research on the company, its import
24 history, look at the Secretary of State website,
25 calculate the initial penalty, possibly send an

1 information request letter if we want more
 2 information.
 3 Q Approximately how many penalties have you
 4 calculated?
 5 A Probably at least 50.
 6 Q Were those all in vehicle and engine
 7 matters?
 8 A Yes.
 9 Q Could you please turn to what's been marked
 10 as Complainant's Exhibit 22?
 11 MR. CHU: Sorry. What number?
 12 JUDGE BIRO: Twenty-two.
 13 MR. CHU: Twenty-two?
 14 THE WITNESS: I'm there.
 15 BY MR. KULSCHINSKY:
 16 Q Okay. Do you recognize this document?
 17 A Yes, I do.
 18 Q Identify it, please.
 19 A Clean Air Act Mobile Source Civil Penalty
 20 Policy.
 21 Q And have you used this document when
 22 calculating penalties in your investigations?
 23 A Yes.
 24 Q Every one?
 25 A Yes.

1 Q Did you use it in this case?
 2 A Yes.
 3 Q And is this a true, accurate, and complete
 4 copy of the penalty policy that you used in this case?
 5 A Yes.
 6 Q Were you ever trained or instructed in how
 7 to use this policy?
 8 A Yes.
 9 Q And who trained you in that?
 10 A Managers at the time, team leaders, as well
 11 as branch chiefs.
 12 Q Okay. Now, when you calculate a penalty, do
 13 you calculate it alone, or are other individuals
 14 involved in that process?
 15 A I do the initial calculation on my own, and
 16 then I -- we meet with EPA management attorneys and
 17 get everyone's input.
 18 Q Do you make all of the decisions in how to
 19 calculate a penalty?
 20 A No.
 21 Q Can you describe your understanding of the
 22 purpose of the penalty policy?
 23 A It's to provide a consistent way of
 24 calculating penalties that are below the statutory
 25 maximum. It's to ensure a level playing field across

1 a wide range of different types of companies making
 2 different types of products.
 3 MR. KULSCHINSKY: Your Honor, at this time,
 4 I'd like to move Complainant's Exhibit 22 into the
 5 record.
 6 JUDGE BIRO: Mr. Chu, do you object?
 7 MR. CHU: I would object to the extent that
 8 this is a 2009 stamped-date document. I don't believe
 9 we've heard any evidence as to whether there's been
 10 any modifications or amendments and that this is
 11 actually the final dated policy. So I would object to
 12 the foundation that this is the actual existing policy
 13 that the EPA has available to them.
 14 JUDGE BIRO: That's what she used, so
 15 overruled. We're going to admit Exhibit 22.
 16 (The document referred to,
 17 previously identified as
 18 Complainant's Exhibit No. 22,
 19 was received in evidence.)
 20 BY MR. KULSCHINSKY:
 21 Q Ms. Isin, is it your understanding that this
 22 is the current version of the penalty policy?
 23 A Yes.
 24 Q Could you please turn to Complainant's
 25 Exhibits 23 and 24 and take a look at those documents,

1 please?
 2 A Sure. Exhibit 23 is amendments to EPA's
 3 Civil Penalty Policy to account for inflation.
 4 Q And could you identify Complainant's Exhibit
 5 24?
 6 A 24 is another amendment to EPA's Civil
 7 Penalty Policy to account for inflation. That one's
 8 dated July of 2016.
 9 Q Okay. And how are you familiar with these
 10 documents?
 11 A They're publicly available.
 12 Q Did you use them when calculating the
 13 proposed penalty in this matter?
 14 A Yes, yes.
 15 MR. KULSCHINSKY: All right. Your Honor, at
 16 this time, I'd like to move into evidence
 17 Complainant's Exhibit 23 and Complainant's Exhibit 24.
 18 MR. CHU: No objections.
 19 JUDGE BIRO: Complainant's Exhibits 23 and
 20 24 are admitted into the record.
 21 (The documents referred to,
 22 previously identified as
 23 Complainant's Exhibit No. 23
 24 and 24, were received in
 25 evidence.)

1 BY MR. KULSCHINSKY:
 2 Q Could you please turn to Complainant's
 3 Exhibit 25? Do you recognize this document?
 4 A This is guidance on determining a violator's
 5 ability to pay.
 6 Q And how are you familiar with this document?
 7 A I used it in the penalty calculation here.
 8 Q And do you generally use it in your work
 9 when you calculate penalties?
 10 A Yes.
 11 MR. KULSCHINSKY: Your Honor, at this time,
 12 I'd like to offer Complainant's Exhibit 25 into
 13 evidence.
 14 JUDGE BIRO: Mr. Chu?
 15 MR. CHU: Yeah. If I could understand the
 16 purpose it's being offered. Is it for the truth of
 17 the matter or just simply that this is a policy that
 18 they use?
 19 JUDGE BIRO: Well, it's relevant and
 20 material because she used it in calculating the
 21 penalty in this case.
 22 MR. CHU: I understand.
 23 JUDGE BIRO: So we're going to admit it for
 24 that purpose.
 25 MR. CHU: Yes, Your Honor.

1 JUDGE BIRO: Complainant's Exhibit 25 is
 2 admitted into the record.
 3 (The document referred to,
 4 previously identified as
 5 Complainant's Exhibit No. 25,
 6 was received in evidence.)
 7 BY MR. KULSCHINSKY:
 8 Q So, Ms. Isin, speaking generally, not this
 9 specific case, can you explain how you would calculate
 10 a penalty in a vehicle and engine case?
 11 A Sure. You start with the number of vehicles
 12 in violation. Actually, there's about three main
 13 factors. There's the -- three main inputs. There's
 14 the number of vehicles or engines in violation.
 15 There's the horsepower of those vehicles or engines.
 16 And then there's the gravity -- I mean, sorry, the
 17 egregiousness of those violations.
 18 And in this case, you know, we know the
 19 number of vehicles and engines in violation. That's
 20 already been decided. The horsepower was obtained
 21 from the applications for certification for each
 22 engine family. In instances where there were two
 23 power ratings listed in the application for
 24 certification, we took the average of the two. I
 25 believe the power rating was typically listed in

1 kilowatts. We applied a conversion factor to convert
 2 kilowatts to horsepower. And then we took the
 3 horsepower multiplier from Table 1 of the vehicle --
 4 of the EPA Mobile Source Civil Penalty Policy, and I
 5 believe the applicable multiplier for vehicles in this
 6 power range is about \$15 per vehicle, so we multiplied
 7 that by the horsepower and that gave us the base per
 8 vehicle penalty.
 9 Then we took that number -- or the next step
 10 was to look at the egregiousness. We -- for Counts 1
 11 through 8, we used a moderate egregiousness multiplier
 12 of 3.5 -- sorry, 3.25. That's listed in Table 2 of
 13 EPA's Civil Penalty Policy. And for Counts 9 and 10,
 14 we used a major egregiousness multiplier of 6.5.
 15 Let's see. So then we multiplied that --
 16 sorry.
 17 Q I think I asked you to describe generally
 18 how would you calculate it.
 19 A Oh, I'm sorry.
 20 Q But can you just describe broadly how you
 21 calculated the penalty in this matter?
 22 A I used the Mobile Source Civil Penalty
 23 Policy, which involves looking at gravity and economic
 24 benefit, history of noncompliance, remediation.
 25 Q I just want to be clear.

1 A Other factors.
 2 Q The description you just gave, was that how
 3 you calculated the penalty in this matter?
 4 A Yes. Well, yeah, that was the beginning of
 5 it.
 6 JUDGE BIRO: Yeah, she was on a roll.
 7 (Laughter.)
 8 MR. KULSCHINSKY: Your Honor, I --
 9 BY MR. KULSCHINSKY:
 10 Q Are you familiar with the Respondents in
 11 this matter?
 12 A I know who they are.
 13 Q You know Taotao USA?
 14 A Yes.
 15 Q And how long have you known of Taotao USA?
 16 A I think I first became aware of them in
 17 2010. We had a case against them in 2010. They
 18 imported -- when I first heard about them was they had
 19 imported quite a few entries into the Port of Long
 20 Beach in spring of 2010. Those vehicles from those
 21 entries were inspected by EPA, and we found that the
 22 carburetors were non-compliant. At that point, I
 23 think someone from Customs put Mike Hillman from
 24 Taotao USA in touch with me.
 25 Q So did Customs bring Taotao to your

1 attention?
 2 A Yes. To the best of my recollection,
 3 that's --
 4 Q Was there a company with a different name
 5 before Taotao USA?
 6 A Yes. There was another company importing
 7 the same types of vehicles made by Zhejiang Taotao
 8 Industry Company, Limited. It was the largest
 9 importer of recreational vehicles at the time, called
 10 Aimex.
 11 MR. CHU: Objection, relevance, Your Honor,
 12 and hearsay.
 13 JUDGE BIRO: Overruled. Go ahead. You can
 14 answer.
 15 THE WITNESS: The company's name was Aimex.
 16 It was also -- I think it was also doing business as
 17 Vicoo. That company, we had a case against it
 18 involving a number of different types of violations.
 19 And, in 2010, when we were trying to settle the case,
 20 the company went out of business.
 21 At the same time, independently, we had
 22 these entries by Taotao USA. And when we heard --
 23 it's my understanding, you know, at the time, Taotao
 24 USA explained that Vicoo, the company, Aimex Vicoo,
 25 was run by Mr. Matao Cao's sister and that, you know,

1 while they were going out of business, Taotao was
 2 going to do it right. And --
 3 MR. CHU: Objection, nonresponsive, Your
 4 Honor, to the question.
 5 JUDGE BIRO: Overruled. Go ahead.
 6 BY MR. KULSCHINSKY:
 7 Q So have you since done research into Taotao
 8 USA?
 9 A Yes.
 10 Q Could you please turn to Complainant's
 11 Exhibits 30 and 31?
 12 A Yes.
 13 Q Do you recognize these documents?
 14 A Yes, I do.
 15 Q What are they?
 16 A They're documents from the Texas Secretary
 17 of State database on Taotao USA, Inc. At least that's
 18 what 31 is. 32 is the same thing actually.
 19 JUDGE BIRO: Wait. Are you talking about 30
 20 and 31?
 21 MR. KULSCHINSKY: 30 and 31.
 22 THE WITNESS: Oh, sorry, sorry. Yes. 30 is
 23 documents from Texas Secretary of State for Taotao
 24 USA, Inc.
 25 //

1 BY MR. KULSCHINSKY:
 2 Q Okay. Let's try that again so we're clear.
 3 Could you take a look at Complainant's Exhibit 30, and
 4 what is that document?
 5 A It's a Certificate of Fact from the Texas
 6 Secretary of State website.
 7 Q Okay. And 31?
 8 A It's also a Certificate of Fact from the
 9 Texas Secretary of State website.
 10 Q And are you familiar with these documents?
 11 A Yes.
 12 Q How are you familiar with these documents?
 13 A I believe I pulled them from the Texas
 14 Secretary of State website.
 15 Q And are these typical documents that you
 16 would obtain and keep in your files during an
 17 investigation?
 18 A Yes.
 19 Q Are they true, accurate, and complete copies
 20 of the documents that you remember pulling for your
 21 investigation?
 22 A Yes.
 23 MR. KULSCHINSKY: Your Honor, I'd like to
 24 move to admit Complainant's Exhibits 30 and 31 into
 25 evidence.

1 MR. CHU: Your Honor, we'd object on the
 2 basis of proper predicate, authentication, and that
 3 these documents are hearsay. There are proper ways to
 4 get these documents in, and just being an exact copy
 5 is not the proper predicate.
 6 JUDGE BIRO: Overruled. Complainant's
 7 Exhibits 30 and 31 are admitted into the record.
 8 (The documents referred to,
 9 previously identified as
 10 Complainant's Exhibit Nos. 30
 11 and 31, were received in
 12 evidence.)
 13 BY MR. KULSCHINSKY:
 14 Q Ms. Isin, are you familiar with the
 15 violations alleged in this matter?
 16 A Yes.
 17 Q Okay. And how are you familiar with the
 18 violations in this matter?
 19 A I was the lead investigator on the case
 20 against Taotao USA, Inc. and other Respondents.
 21 Q Did you review the applications for
 22 certificates of conformity and the certificates of
 23 conformity for the engine families identified in the
 24 amended complaint?
 25 A Yes.

1 Q Did you estimate the approximate value of
 2 the vehicles involved in this case?
 3 A Yes, I did.
 4 Q And could you please explain how you did
 5 that?
 6 A That was based on a review of the
 7 importation paperwork for various models of vehicles.
 8 I believe it's laid out in one of our exhibits. I
 9 looked at the per unit price for each model, and I
 10 multiplied by the number of models we had in our case.
 11 Q All right. Do you recall today what you
 12 calculated the approximate value of the vehicles to
 13 be?
 14 A Yes. It was about \$43 million.
 15 Q Could you turn to what's been marked as
 16 Complainant's Exhibit 189?
 17 A Yes.
 18 Q Do you recognize this document?
 19 A Yes, I do.
 20 Q And how do you recognize it?
 21 A It's a chart that I put together.
 22 Q And what is it a chart of?
 23 A It's a chart showing the total declared
 24 value of the vehicles in this case, broken down by
 25 engine family.

1 Q And can you explain what the right-hand
 2 column indicates?
 3 A The right-most column shows the exhibit
 4 number from which I pulled the per-unit declared
 5 value, which is shown in the third -- the middle
 6 column.
 7 MR. KULSCHINSKY: Your Honor, just in order
 8 to move it along, I'd like to ask Ms. Isin to look at
 9 a range of documents, and we'll go through them. But
 10 is it acceptable if I ask her to look at multiple
 11 documents? I know I've already been doing that a bit,
 12 but --
 13 JUDGE BIRO: You want to mark this into --
 14 move this into evidence?
 15 MR. KULSCHINSKY: I was going to lay a
 16 little more foundation, but we can move it into
 17 evidence now.
 18 JUDGE BIRO: I'm sure Mr. Chu has an
 19 objection.
 20 MR. CHU: Let me look --
 21 JUDGE BIRO: Surprise me.
 22 MR. CHU: Let me look right quick, Your
 23 Honor. I don't want the Court to always be right
 24 there. Let me see. The documents look good to me,
 25 Your Honor.

1 JUDGE BIRO: Okay. So can we admit Exhibit
 2 189?
 3 MR. CHU: Yes, Your Honor, as a summary of
 4 her testimony.
 5 JUDGE BIRO: All right. Complainant's
 6 Exhibit 189 is admitted into the record.
 7 (The document referred to,
 8 previously identified as
 9 Complainant's Exhibit No.
 10 189, was received in
 11 evidence.)
 12 JUDGE BIRO: Please proceed.
 13 BY MR. KULSCHINSKY:
 14 Q All right. Ms. Isin, could you please look
 15 through what have been marked as Complainant's
 16 Exhibits 183 through 188?
 17 A Yes.
 18 Q All right. Do you recognize these
 19 documents?
 20 A Yes. These appear to be importation
 21 documents for vehicles that I inspected in Dallas,
 22 Texas, at Taotao USA, Inc.'s warehouse.
 23 Q And do you routinely handle and review
 24 shipping documents like these as part of your job?
 25 A Yes, I do.

1 Q And did these documents show declared values
 2 for vehicles from engine families identified in this
 3 case?
 4 A Yes.
 5 MR. KULSCHINSKY: Your Honor, I'd like to
 6 move the admission of Complainant's Exhibits 183
 7 through 188.
 8 MR. CHU: No objections, Your Honor.
 9 JUDGE BIRO: Complainant's Exhibits 183 to
 10 188 are admitted into the record.
 11 (The documents referred to,
 12 previously identified as
 13 Complainant's Exhibit No. 183
 14 through 188, were received in
 15 evidence.)
 16 BY MR. KULSCHINSKY:
 17 Q Now, Ms. Isin, could you please turn to 183?
 18 A Yes.
 19 Q All right. What was the date of this entry?
 20 A I believe it's shown on Bates No. 2450,
 21 ending in 2450. The entry date is listed in Box 7.
 22 It's October 16, 2013.
 23 Q And do you know which engine family these
 24 documents correspond to?
 25 A Yes. I believe there's a certificate

1 included in here.
 2 Q Could you identify where that is for the
 3 Court?
 4 A It's the Bates number ending in 2457. It
 5 looks like it's engine family ETAOC.049MC2.
 6 Q Is a certificate of conformity or a copy of
 7 one required paperwork with each entry?
 8 MR. CHU: Objection to the extent it calls
 9 for a legal conclusion.
 10 JUDGE BIRO: Overruled. Go ahead.
 11 THE WITNESS: To my understanding, it's not.
 12 It's often included, but it's not always included.
 13 BY MR. KULSCHINSKY:
 14 Q Could you please turn to Bates 2454?
 15 A Yes.
 16 Q What is depicted on this page?
 17 A Sorry. I couldn't hear you.
 18 Q What is this?
 19 A This is a -- it looks like a Department of
 20 Transportation declaration form. It shows that the
 21 vehicle was manufactured by Zhejiang Taotao and
 22 imported by Taotao USA, Inc., and signed here by Matao
 23 Cao, President of Taotao USA, Inc.
 24 Q You mentioned Zhejiang Taotao. Where are
 25 you looking on the page?

1 A I'm looking at the top left-hand corner,
 2 second row.
 3 Q And does that box read "Make of Vehicle"?
 4 A Yes, it does.
 5 Q And is your understanding that that's the
 6 same as the manufacturer of the vehicle?
 7 A Yes.
 8 Q Okay. And could you please turn to the next
 9 page, Bates 2455?
 10 A Yes.
 11 Q And what does this depict?
 12 A This is an EPA declaration form. This is
 13 paperwork we require as part of each entry to show
 14 whether a vehicle is certified or exempt and how it's
 15 certified or exempt.
 16 Q And does this form identify the
 17 manufacturer?
 18 A Yes, it does, in Box 6, towards the middle.
 19 It says Zhejiang Taotao. It's also signed by Matao
 20 Cao, President. Actually, it looks like it's signed
 21 by Mike Hillman for Matao Cao, President, Taotao USA,
 22 Inc.
 23 Q Could you identify where this document
 24 identifies the declared value of the vehicles?
 25 A Sure. If you look at the Bates number

1 ending in 2452, that's the commercial invoice. You
 2 should see in the middle of the page it lists, you
 3 know, both the model, the quantity of vehicles in the
 4 entry, and then the per-unit price of \$430.
 5 Q And I've been using the term declared value.
 6 Do you know -- can you explain what a declared value
 7 is?
 8 A As far as I know, the declared value is the
 9 price that the importer paid for the goods they're
 10 importing.
 11 Q And is the price listed on this page the
 12 declared value?
 13 A It's the per-unit price. If you multiply
 14 that per-unit price by the number of vehicles in the
 15 entry, you will get the declared value for the entry.
 16 Q And without belaboring the point,
 17 Complainant's Exhibits 184 through 188, do each of
 18 those exhibits identify a declared value on a
 19 commercial invoice?
 20 A Yes, they do.
 21 Q And do they all identify a manufacturer?
 22 A Yes, they do.
 23 Q And do you know who the manufacturer
 24 identified in each exhibit is?
 25 A I don't know off the top of my head without

1 going through each one, but I believe it might be the
 2 same. It might be Zhejiang Taotao for each one.
 3 Q Now could you please turn to what's been
 4 marked Complainant's Exhibit 61? And could you please
 5 look through 61 -- yeah. I'll leave it at that.
 6 A Yeah. I'm looking at 61.
 7 Q Okay. Do you recognize this exhibit or this
 8 document?
 9 A Yes. This is an inspection worksheet. It's
 10 for one of the vehicles in this case.
 11 Q And how do you recognize it?
 12 A It's one of the set of documents that I
 13 collected as part of my investigation.
 14 Q And, again, do you know which engine family
 15 this exhibit corresponds to?
 16 A Yes. If you look down on the inspection
 17 worksheet, you can see towards the bottom it says
 18 TAOC -- CTAOC.049MC1 as the engine family.
 19 Q And just looking through this, is this a
 20 true, accurate, and complete copy of the inspection
 21 document that you collected for your files?
 22 A Yes. And I'll note, you know, the
 23 importation paperwork is attached to it.
 24 MR. KULSCHINSKY: Your Honor, I'd like to
 25 move CX-61 into evidence.

1 MR. CHU: The same objection, Your Honor,
 2 lack of proper predicate, authentication, and hearsay.
 3 This is not a document that was created by the EPA.
 4 It appears it's created by Customs, and we really
 5 don't know, so the proper predicate has not been laid.
 6 JUDGE BIRO: Overruled. Exhibit 61 is
 7 admitted into evidence.
 8 (The document referred to,
 9 previously identified as
 10 Complainant's Exhibit No. 61,
 11 was received in evidence.)
 12 BY MR. KULSCHINSKY:
 13 Q And did you use this document to develop
 14 your table in Complainant's Exhibit 189?
 15 A Yes, I did.
 16 Q All right. Could you please turn to
 17 Complainant's Exhibit 64?
 18 A Yes.
 19 Q Do you recognize this document?
 20 A Yes. This is another inspection worksheet
 21 and attached importation paperwork. This one is for
 22 engine family DTAOXO.12A1T.
 23 Q And how do you recognize this document?
 24 A This is another set of documents that I
 25 collected for this investigation.

1 Q And, again, is it a true, accurate, and
 2 complete copy of the document you collected for your
 3 investigation?
 4 A Yes.
 5 Q And does this form part of the basis for the
 6 table depicted in 189?
 7 A Yes.
 8 MR. KULSCHINSKY: Your Honor, I'd like to
 9 move admission of Complainant's Exhibit 64.
 10 MR. CHU: Your Honor, we'd ask for a running
 11 objection as to these same types of documents
 12 allegedly from Customs.
 13 JUDGE BIRO: How did you come to have these
 14 documents? Where did you get them from?
 15 THE WITNESS: Well, whenever we do an
 16 inspection at the port, we request them from Customs.
 17 So these documents came directly from U.S. Customs.
 18 JUDGE BIRO: They routinely come in the
 19 course of you doing your business --
 20 THE WITNESS: Yes.
 21 JUDGE BIRO: -- for the agency?
 22 THE WITNESS: Yes.
 23 JUDGE BIRO: Okay. I'm going to admit over
 24 objection Complainant's Exhibit 64.
 25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No. 64,
 4 was received in evidence.)
 5 MR. CHU: And for the record, are you
 6 granting my running objection without having to state
 7 specifically?
 8 JUDGE BIRO: Yes.
 9 MR. CHU: Thank you.
 10 JUDGE BIRO: I overruled it.
 11 MR. CHU: Thank you.
 12 BY MR. KULSCHINSKY:
 13 Q All right. You mentioned that shipping
 14 paperwork is attached to this or part of this
 15 document. Can you identify the declared value?
 16 A Sure. I see here on Bates ending in 730
 17 that the per-unit price is \$720 on the commercial
 18 invoice.
 19 Q I'm sorry. What Bates number was that?
 20 A 730.
 21 Q And what was the per-unit price?
 22 A \$320.
 23 Q Thank you. Could you please turn to
 24 Complainant's Exhibit 140?
 25 A Yes.

1 Q And what is this document?
 2 A These are -- this is importation paperwork
 3 for Count 9 in our case.
 4 Q And how do you recognize this document?
 5 A It was -- I collected it as part of my
 6 investigation.
 7 Q And was it provided to you by U.S. Customs?
 8 A Yes, it was.
 9 Q And, again, is it a true, accurate, and
 10 complete copy of what's in your file?
 11 A Yes.
 12 MR. KULSCHINSKY: Your Honor, I'd like to
 13 move the admission of Complainant's Exhibit 140.
 14 MR. CHU: Same objection, Your Honor.
 15 JUDGE BIRO: Overruled. Complainant's
 16 Exhibit 140 is admitted into the record.
 17 (The document referred to,
 18 previously identified as
 19 Complainant's Exhibit No.
 20 140, was received in
 21 evidence.)
 22 BY MR. KULSCHINSKY:
 23 Q Can you identify which engine family this
 24 paperwork corresponds to?
 25 A Sure. It's FTAOX0.15G2T.

1 Q And where in this document are you
 2 determining that?
 3 A So this is a tough one from the paperwork.
 4 They have a certificate in Bates number ending in 1916
 5 for GTA0X0.15G2T. That is a model year '16
 6 recreational vehicle. However --
 7 Q How do you know that it's model year '16?
 8 A Oh, because the first letter of the engine
 9 family usually denotes the model year. So A would be
 10 2010, B would be 2011, and so forth. So, in this
 11 case, G is equivalent to model year 2016.
 12 Q Does the first digit ever not denote the
 13 model year?
 14 A Not as far as I know.
 15 Q Okay. Please continue explaining how you
 16 determined what --
 17 A So this entry actually had both 2016 and
 18 2015 model vehicles, and the way we see that is if you
 19 flip to Bates 1917, which is a VIN list of the
 20 vehicles in the entry, going through the first column
 21 of VINs, you'll notice that the top two VINs have a --
 22 if you look at the tenth digit of the VIN, if you look
 23 at the F, like Frank, that denotes a 2015 model year
 24 vehicle. And you'll see that the first two are Fs,
 25 but then the subsequent VINs all have G in the tenth

1 digit, which denotes 2016. So, from this entry, we
 2 actually inspected a 2016 vehicle as well as a 2015
 3 vehicle.
 4 Q Could you please turn to Bates 1914?
 5 A Yes.
 6 Q And do you see Taotao USA's name on this
 7 document?
 8 A Yes, I see it listed as the -- I believe
 9 it's the consignee.
 10 Q And who is listed as the notified party?
 11 A Daction Trading.
 12 Q Could you please turn to Complainant's
 13 Exhibit 148?
 14 MR. KULSCHINSKY: This is the last one, Your
 15 Honor.
 16 THE WITNESS: Yes.
 17 BY MR. KULSCHINSKY:
 18 Q Do you recognize this exhibit?
 19 A Yes, I do. It's documents obtained from
 20 Customs that I collected as part of my investigation
 21 in this case.
 22 Q In the same fashion as the previous exhibits
 23 we've been discussing?
 24 A Say that again?
 25 Q How are you familiar with this document?

1 A It was obtained from Customs, and it's part
 2 of the collection of documents that I put together for
 3 this case.
 4 MR. KULSCHINSKY: All right. And I'd like
 5 to move 148 into evidence.
 6 MR. CHU: Same objection, Your Honor.
 7 JUDGE BIRO: Over Respondents' objection,
 8 148 is admitted into the record.
 9 (The document referred to,
 10 previously identified as
 11 Complainant's Exhibit No.
 12 148, was received in
 13 evidence.)
 14 BY MR. KULSCHINSKY:
 15 Q And which engine family does this correspond
 16 to?
 17 A Looking at Bates ending in 1954, I see the
 18 certificate for the engine family in Count 10 of our
 19 case, GTA0X0.15G2T.
 20 Q And can you identify where the declared
 21 value is listed in this exhibit?
 22 A If you look at the Bates number ending in
 23 1950, you see the commercial invoice, which shows a
 24 per-unit price of \$1,123 per unit.
 25 Q What names are on the commercial invoice?

1 A What date?
 2 Q What names?
 3 A Oh, what names, sorry. The commercial
 4 invoice header actually says Jinyun Tuoyu Industry
 5 Company, Limited. The invoice is to Taotao USA, Inc.,
 6 and there's a stamp that says Jinyun Tuoyu Industry
 7 Company, Limited.
 8 Q Ms. Isin, you mentioned earlier, you
 9 testified that you calculated the penalty in this
 10 matter.
 11 A Yes, I did.
 12 Q What does the economic benefit component of
 13 a penalty represent?
 14 A It's supposed to recover the economic
 15 advantage derived from the violations, which could
 16 include any competitive advantage the company gained
 17 through the violations, any profit they made related
 18 to the violations, any voided costs as well.
 19 Q What types of expenses or benefits did you
 20 consider to be relevant to the calculation of the
 21 economic benefit penalty component in this case?
 22 A Well, the cost, in my opinion, it would be,
 23 you know, the voided cost of all the testing and
 24 monitoring that they should have been doing to catch
 25 these violations earlier, as well as the cost of the

1 compliant catalytic converters.

2 Q And how did you determine the economic

3 benefit component of the penalty being proposed today?

4 MR. CHU: Your Honor, I believe that the EPA

5 has adopted the benefit analysis by our experts at

6 this point, so I would object to the relevancy of this

7 line of questioning.

8 MR. KULSCHINSKY: Your Honor, my

9 understanding is that the Respondents continue to

10 dispute the economic benefit portion of the penalty

11 proposal. If they're prepared to stipulate to that,

12 we'll be happy to move along.

13 MR. CHU: I didn't hear the last part.

14 JUDGE BIRO: Do you stipulate to the

15 economic benefit portion of the penalty calculation by

16 the agency?

17 MR. CHU: No, not their calculation. On

18 their motion to reduce, they made a judicial admission

19 that Complainant accepts Mr. Shefftz's economic

20 benefit scenario four as the measure of Respondents'

21 economic benefit of noncompliance in this matter.

22 It's judicial -- I mean administrative admission. I'm

23 sorry.

24 MR. KULSCHINSKY: Yes, Your Honor. And if

25 the Respondents are prepared to stipulate that that

1 was the economic benefit, then we can move along.

2 JUDGE BIRO: But do you agree -- will you

3 stipulate that that was the economic benefit that the

4 Respondents received as shown in your expert's report?

5 MR. CHU: As to the -- all we're saying,

6 Your Honor, is that they've accepted that. We still

7 have arguments on this. I don't want to be tied to a

8 number, so if it's a question of having to get tied to

9 a number, even though they've made a administrative

10 admission as to the number --

11 JUDGE BIRO: Well, they've accepted your

12 number, but are you going to contest that number, or

13 that you agree that that is the number for economic

14 benefit?

15 MR. CHU: What we're saying is we have other

16 scenarios, but we don't want the number to be any

17 greater than that number. We're going to be

18 presenting other scenarios. Also, to accept that four

19 is to preclude me from talking about the other

20 scenarios for this Court to decide on.

21 JUDGE BIRO: So we're not stipulating to

22 that number. Is that right?

23 MR. CHU: All we're saying is that they made

24 an administrative admission to accepting that number,

25 and if she comes with a number that's greater than

1 that, we're objecting to that testimony at this time.

2 JUDGE BIRO: Okay. But are you going to

3 argue for a number that's lesser than whatever --

4 MR. CHU: That's one of the models, yes,

5 Your Honor.

6 JUDGE BIRO: Okay. So we're not really

7 stipulating to that number.

8 MR. CHU: No, we're not stipulating. All

9 I'm saying is there's an administrative admission, and

10 I'm objecting to them going past that with a different

11 number.

12 JUDGE BIRO: Okay. I understand.

13 Proceed.

14 MR. KULSCHINSKY: So --

15 JUDGE BIRO: I think you still have to prove

16 that that number is, in fact, the economic benefit.

17 BY MR. KULSCHINSKY:

18 Q So I believe my question was, Ms. Isin, how

19 did you calculate the economic benefit in this matter,

20 or how did you determine the economic benefit in the

21 proposed penalty?

22 A So initially we used the rule of thumb

23 because we didn't have information on the cost of

24 compliant catalytic converters or testing that the

25 company should have done, although we had requested

1 it. Then we received the report written by Jonathan

2 Shefftz, which laid out four different scenarios for

3 economic benefit calculation in this case, and we

4 adopted the fourth scenario, which is based -- I think

5 it's an economic benefit of about 219 or \$229,000.

6 And it's based on the cost -- the difference in cost

7 between compliant and non-compliant catalytic

8 converters, as well as, I believe, four years of staff

9 time for prevention of these types of violations.

10 Q And why was the scenario four proposed by

11 Mr. Shefftz accepted as the economic benefit?

12 A I think we felt that it most closely aligned

13 to the penalty policy. Page 8 of our penalty policy

14 actually specifically lays out how in catalytic

15 converter cases you can use the cost of a compliant

16 catalyst as a component of the economic benefit.

17 Q What does the gravity component of a penalty

18 represent?

19 A It represents the seriousness of the

20 violation, the significance of the violation.

21 Q And how did you calculate the gravity

22 component of the penalty being proposed today?

23 A So I had started to go into that earlier.

24 Would you like me to pick up where I left off, or

25 should I start from scratch?

1 JUDGE BIRO: No. We don't need to start
2 again.

3 BY MR. KULSCHINSKY:

4 Q You can pick up where you left off.

5 A Okay. Okay. So I think I had discussed how
6 we obtained the horsepower and what multipliers we
7 used for egregiousness. Once the per-vehicle -- the
8 base per-vehicle penalty is multiplied by the adjusted
9 gravity, it gets scaled, and the scaling is done
10 according to Table 3 of our penalty policy, where the
11 most weight is given to, you know, the first 10
12 vehicles, and then there's percentage reductions for
13 subsequent -- for the next 90 vehicles, for the next
14 900 vehicles, and so forth.

15 We -- when you scale for volume, you always
16 start with the vehicle with the highest base per-
17 vehicle penalty. In this case, we restarted our
18 scaling for Counts 9 and 10, meaning we have two sets
19 of vehicles that have the highest per-vehicle penalty
20 at full value.

21 MR. CHU: Your Honor, may it please the
22 Court. I believe that this is the area of the issue
23 of the DOJ letter, and in this situation, the evidence
24 has shown that the -- there are no emissions
25 violations on the history of this -- these -- this

1 Respondent, Taotao USA. And I'm afraid that if the
2 Court allows the discussions on using emissions that
3 we are going beyond what the DOJ has permitted this
4 proceeding to handle.

5 JUDGE BIRO: Well, here she's just going to
6 tell me how she calculated her penalty. Whether it
7 goes beyond or not, I'll determine.

8 MR. CHU: Yes, Your Honor.

9 JUDGE BIRO: Overruled. Please proceed.

10 THE WITNESS: Sorry.

11 BY MR. KULSCHINSKY:

12 Q You mentioned that you restarted the scaling
13 for Counts 9 and 1, is that correct?

14 A Yes, I did.

15 Q And why did you do that?

16 A We did that because Counts 9 and 10 we
17 discovered after filing the complaint, the initial
18 complaint in this case. We felt typically the penalty
19 policy allows the litigation team to decide whether
20 to -- how to group the violations for a penalty
21 calculation. And we typically restart scaling when --
22 in cases where we have a number of model years, and we
23 do it to reflect the longevity of the violations.

24 Q Did you refer to the applications for
25 certificates of conformity to calculate the horsepower

1 of these vehicles?

2 A Yes, I did.

3 Q And why did you think it was appropriate to
4 look there?

5 A Because that's the best description of the
6 vehicles and engines that EPA has.

7 Q Okay. Could you speak more about how did
8 you evaluate the egregiousness of the violations in
9 this matter?

10 A Sure. So, for Counts 1 through 8, we had
11 some low-hour emission test results from Taotao based
12 on a test order that we sent them in 2014. Taotao
13 took those low-hour results and multiplied a
14 deterioration factor to those low-hour results to get
15 full use, full-life results, which were I think in all
16 but one case below the applicable emissions standard.

17 I guess, you know, I have some concerns with
18 the deterioration factor that they used because those
19 deterioration factors were obtained from the
20 application for certification, which our whole case is
21 about how the vehicles that were built did not conform
22 to those applications, so --

23 MR. CHU: Your Honor, we're going to object
24 to this witness providing expert testimony in
25 reference to deterioration rates. She has not been

1 identified, nor qualified, to testify in that area.

2 JUDGE BIRO: Okay. But she's just
3 testifying how she calculated her penalty. So just
4 stick to that.

5 THE WITNESS: Sure. So Counts 1 through 8,
6 we gave Taotao the benefit of a moderate
7 egregiousness, although I think one could make an
8 argument that they would be major. For Counts 9 and
9 10, we assessed a major egregiousness. We did not
10 have any test data to rely on, and under the penalty
11 policy, in cases where you're dealing with a
12 certification violation of an emission-related part --
13 in this case, the catalyst is the primary emission
14 control device on these vehicles -- it's appropriate
15 to assess major egregiousness.

16 MR. CHU: Your Honor, at this time, we would
17 urge our objection to the use or inclusion of any
18 emission type of element in determining the penalty
19 policy. That would be in violation of what the DOJ
20 approved for this proceeding.

21 JUDGE BIRO: Overruled. Go ahead.

22 BY MR. KULSCHINSKY:

23 Q Ms. Isin, could you please turn to what's
24 been marked as Complainant's Exhibit 92?

25 A Sorry, 192 or 92?

1 Q 92, 0-9-2.
 2 A Yes.
 3 Q All right. Do you recognize this document?
 4 A Yes, I do.
 5 Q What is this document?
 6 A This is the notice of violation that we sent
 7 to Respondents on December 24, 2013.
 8 Q And how do you recognize it?
 9 A I assisted in drafting this document.
 10 Q Is this a typical document that you
 11 might -- your office would send in the course of an
 12 enforcement action?
 13 A Yes.
 14 MR. KULSCHINSKY: Your Honor, I'd like to
 15 offer Complainant's Exhibit 92 into evidence.
 16 MR. CHU: Your Honor, to the extent this is
 17 just a notice and that it's not offered for the truth
 18 of the matters asserted, we would not object. If it's
 19 offered for the truth of the matters asserted, we
 20 would object to this document as being hearsay.
 21 JUDGE BIRO: Okay. I'm going to admit
 22 Complainant's Exhibit 92 into the record.
 23 //
 24 //
 25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No. 92,
 4 was received in evidence.)
 5 BY MR. KULSCHINSKY:
 6 Q And what date was that notice of violation
 7 sent?
 8 A December 24, 2013.
 9 Q And could you turn to the next exhibit, CX-
 10 093?
 11 A Yes.
 12 Q And do you recognize these documents?
 13 A Yes.
 14 Q And what are they?
 15 A This is an email sent from Jackie Wang to
 16 myself, Chris Thompson, and I presume Phil Brooks,
 17 again dated December 24, 2013, sort of responding to
 18 an OV that we sent them.
 19 Q And who is Jackie Wang?
 20 A Jackie Wang was responsible for Taotao USA
 21 compliance around this time.
 22 MR. KULSCHINSKY: Your Honor, I'd move to
 23 admit Complainant's Exhibit 93.
 24 MR. CHU: We would also move to admit it.
 25 JUDGE BIRO: Okay. Well, with no objection

1 for a change --
 2 MR. CHU: Yes, Your Honor.
 3 JUDGE BIRO: -- I'm going to admit 93 into
 4 the record.
 5 (The document referred to,
 6 previously identified as
 7 Complainant's Exhibit No. 93,
 8 was received in evidence.)
 9 BY MR. KULSCHINSKY:
 10 Q Could you please turn to Complainant's
 11 Exhibit 94?
 12 A Yes.
 13 Q And what is this document?
 14 A This is a Request For Information that EPA
 15 sent to Respondents dated February 6, 2014.
 16 Q And how do you recognize this document?
 17 A I assisted in drafting it.
 18 Q And is this a typical type of document that
 19 you would assist in preparing?
 20 A Yes.
 21 MR. CHU: No objection to this document if
 22 counsel is laying the foundation.
 23 JUDGE BIRO: We're on a roll, 94, okay.
 24 //
 25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No. 94,
 4 was received in evidence.)
 5 MR. CHU: Is that a good thing?
 6 JUDGE BIRO: It is.
 7 BY MR. KULSCHINSKY:
 8 Q Could you please turn to Complainant's
 9 Exhibit 98?
 10 A Yes.
 11 Q And are you familiar with this document?
 12 A Yes.
 13 MR. CHU: We would move to admit, Your
 14 Honor.
 15 JUDGE BIRO: Complainant's Exhibit 98 is
 16 admitted into the record.
 17 (The document referred to,
 18 previously identified as
 19 Complainant's Exhibit No. 98,
 20 was received in evidence.)
 21 BY MR. KULSCHINSKY:
 22 Q And just briefly, for the benefit of the
 23 Court, could you describe what this document is?
 24 A This is the test plan that Taotao submitted
 25 in response to the test order that we were just

1 discussing.

2 Q Okay. Why -- what kind of testing did the

3 test plan call for?

4 A Low-hour testing.

5 Q And why did your office agree to low-hour

6 testing?

7 A I think we were cognizant of the scope and

8 the cost of the testing that we were requiring.

9 Q And where were the tests performed?

10 A At California Environmental Engineering,

11 otherwise known as CEE.

12 Q Did you choose that lab?

13 A No.

14 Q Did anybody at EPA choose that lab?

15 A No.

16 Q All right. And just very briefly, could you

17 take a look at what have been marked and already

18 admitted as Complainant's Exhibit 99 through 122?

19 A Yes.

20 Q And do you recognize these documents?

21 A These are all the CEE test reports that were

22 submitted by Respondents.

23 Q These formed the basis of assigning moderate

24 egregiousness to Counts 1 through 8?

25 A Yes, they do.

1 Q Are the engine families in Counts 9 and 10

2 carryover families from an engine family in Counts 1

3 through 8?

4 A I believe they are.

5 Q And just briefly in your own words, can you

6 explain what that means, to be carryover?

7 A Carryover is a convenience that's used on

8 the certification side, where if a manufacturer

9 manufactures an identical vehicle from one model year

10 to the next, they can submit what's called a carryover

11 application, which means they don't have to do any new

12 emission testing. They simply vouch in their

13 application for the fact that the vehicles are

14 identical to a prior model year.

15 Q So why didn't you consider the low-hour test

16 results for the vehicle in Count 1 through 8 to

17 represent the vehicles in Counts 9 through 10?

18 A Because they're different engine families,

19 and carryover is not really a term that we use on the

20 enforcement side very much given that we're typically

21 dealing with non-compliant vehicles. It doesn't make

22 sense to attribute the build of one non-compliant

23 vehicle to another.

24 Q Why didn't your office order Taotao to

25 conduct emission tests on vehicles for Counts 9 or 10?

1 A Like I said before, those violations were

2 discovered after the filing of our initial complaint.

3 Testing is a pretty lengthy process, I think, you

4 know, several months. We were already -- we had

5 already started the litigation process, and we felt

6 that Taotao could always voluntarily do emission

7 testing if they wanted to, and we would have

8 considered whatever they had done.

9 Q Are you aware of any reason that Taotao USA

10 could not independently have done emissions tests on

11 vehicles from Counts 9 or 10?

12 A Can you say that again?

13 Q Are you aware of any reason that Taotao USA

14 could not have conducted emissions tests on vehicles

15 from the engine families identified in Counts 9 or 10?

16 A No.

17 MR. CHU: Objection to the extent it calls

18 for speculation.

19 JUDGE BIRO: Sustained.

20 BY MR. KULSCHINSKY:

21 Q So could you explain again, what are the

22 consequences of characterizing Counts 1 through 8 as

23 moderate?

24 A Essentially, it cuts the penalty in half.

25 Our prior penalty had those vehicles at a higher

1 egregiousness, I believe. Or no, I'm sorry. Maybe

2 the -- I may be misremembering. In any case, using a

3 moderate egregious multiplier of 3.25, which is half

4 of the major egregious multiplier of 6.5, essentially

5 cuts the gravity component in half.

6 Q And those numbers -- do those numbers come

7 from the penalty policy?

8 A Those egregiousness multipliers do come from

9 the penalty policy, yes.

10 (Asides.)

11 BY MR. KULSCHINSKY:

12 Q So I believe you already discussed the

13 scaling step.

14 A Yes.

15 Q After scaling, what was the next step in

16 calculating the gravity component of the proposed

17 penalty?

18 A I believe we added 30 percent to the gravity

19 for failure to remediate to I think all but 66

20 vehicles which were unremediated in this case. And

21 the penalty policy allows for that type of adjustment,

22 and we felt like it was the right thing to do given

23 the lack of any attempt to remediate the vehicles

24 here.

25 Q In general, how can a violation be

1 remediated?

2 A It depends on the type of violation, but

3 generally, a violation -- you know, vehicles could be

4 retrofitted. They could be exported out of the United

5 States. They could even be destroyed.

6 Q And you may have said this, but to the best

7 of your knowledge, did Taotao remediate any vehicles

8 in Counts 1 through 8?

9 A No, they did not.

10 Q And how about in Counts 9 through 10? Were

11 any of those remediated?

12 A I believe 66 vehicles were remediated. I

13 can't remember if those were -- which count they were

14 in, but --

15 Q And did you adjust the upward adjustment to

16 reflect those vehicles that were remediated?

17 A Yes. The remediated vehicles did not get

18 the additional 30 percent of gravity.

19 Q Okay. I just want to go back for a minute

20 to the egregiousness factor. We discussed major and

21 moderate. Is there a third egregiousness category?

22 A Yes. There's minor egregiousness, and

23 that's typically reserved for violations that don't

24 result in any type of actual or potential

25 environmental harm. Those are typically things like

1 label violations, cases where the required label on a

2 vehicle is missing some of the required content,

3 possibly even a case where a label is peeling off or,

4 you know, has fallen off due to lack of the right glue

5 attached to it.

6 Q And none of the violations in this matter

7 were characterized as minor?

8 A No.

9 Q Did you adjust the penalty for a history of

10 noncompliance?

11 A Yes, I did.

12 Q And could you please explain that adjustment

13 and the basis for it?

14 A Sure. That adjustment was based on the fact

15 that we had a prior settlement with Taotao USA, Inc.

16 for several thousand uncertified vehicles that they

17 had previously imported. I believe that type of

18 adjustment is allowed for under the penalty policy. I

19 think we made about a 20 percent adjustment, and I

20 think the allowance under the penalty policy is

21 actually much higher.

22 Q And could you please turn to Complainant's

23 Exhibit 67?

24 A Yes.

25 Q Do you recognize this document?

1 A This is the administrative settlement

2 agreement that I was referring to, signed in June of

3 2010, with Taotao USA, Inc.

4 Q And how are you familiar with this document?

5 A I assisted in drafting it.

6 Q And who signed this document?

7 A Mr. Matao Cao, President of Taotao USA,

8 Inc., and Matthew Morrison for EPA.

9 Q And what's the date of this document?

10 A It was signed by Matao Cao on June 14, 2010,

11 and by EPA on June 28, 2010.

12 MR. KULSCHINSKY: Your Honor, I'd like to

13 move for the admission of Complainant's Exhibit 67.

14 MR. CHU: We would join, Your Honor.

15 JUDGE BIRO: Okay. Complainant's Exhibit 67

16 is admitted into the record.

17 (The document referred to,

18 previously identified as

19 Complainant's Exhibit No. 67,

20 was received in evidence.)

21 BY MR. KULSCHINSKY:

22 Q Okay. Could you please briefly describe the

23 violations that were resolved by the administrative

24 settlement agreement?

25 A Sure.

1 MR. CHU: We would object. The document

2 speaks for itself.

3 JUDGE BIRO: Read a few sentences. Go

4 ahead.

5 THE WITNESS: The violations had to do with

6 vehicles imported by Taotao USA, Inc. with

7 noncompliant carburetors. The carburetors had

8 adjustable parameters, which were not described in the

9 application for certification.

10 MR. KULSCHINSKY: Thank you.

11 BY MR. KULSCHINSKY:

12 Q I want to go back for a minute. Did you

13 adjust the penalty for the size of the Respondents'

14 business?

15 A No, I did not.

16 Q Why not?

17 A Because we've never had very accurate

18 information on the company's net worth, and the

19 penalty policy lays out the size of business

20 adjustment according to the net worth. And on top of

21 that, we felt like, you know, even if we did estimate

22 the company's net worth, any adjustment would be

23 negligible compared to the overall size of the

24 penalty.

25 Q Did you adjust the penalty to account for

1 inflation?
 2 A Yes, I did.
 3 Q And did you use the EPA inflation policies
 4 that we discussed earlier?
 5 A Yes, I did. I think those were only used
 6 for Counts 9 and 10. For Counts 1 through 8, the
 7 violations occurred prior to those policies.
 8 Q Did you adjust the penalty due to
 9 willfulness or negligence?
 10 A Yes, I did.
 11 Q Could you explain the adjustment and the
 12 basis for it?
 13 MR. CHU: Your Honor, we would object to
 14 this line of testimony at this point. We believe that
 15 it would be in violation of the DOJ letter that
 16 authorized this proceeding.
 17 JUDGE BIRO: Okay. Overruled. Go ahead.
 18 THE WITNESS: We adjusted the penalty by
 19 20 percent upward for willfulness and negligence.
 20 This is due to the fact that, you know, under this
 21 June 2010 settlement agreement, the company was under
 22 a compliance plan which included -- which required
 23 catalyst testing pre-importation. And we felt that if
 24 the company had been doing what it should have been
 25 doing under the compliance plan, they wouldn't have --

1 we wouldn't have this case right now.
 2 BY MR. KULSCHINSKY:
 3 Q I just want to go into that a little bit
 4 more deeply. Could you explain what the
 5 administrative settlement required, or your
 6 understanding of what it required?
 7 A Sure. First of all, it addressed the
 8 noncompliant carburetors by giving the Respondent a
 9 couple options for remediating them.
 10 MR. CHU: Your Honor, we would object to the
 11 extent it goes to liability.
 12 JUDGE BIRO: Overruled. Go ahead.
 13 THE WITNESS: And then it also included a
 14 corporate compliance plan for five years, which
 15 included -- which basically laid out EPA's own
 16 framework for determining compliance of vehicles. It
 17 included vehicle and engine inspection checklists,
 18 compliance determination guidelines. It required the
 19 company to inspect one vehicle from each vehicle and
 20 engine family. Or, actually, there's a defined term
 21 there, vehicle or engine model, I think, which if you
 22 look at the definition, it's basically --
 23 BY MR. KULSCHINSKY:
 24 Q Let's take that --
 25 A Yeah.

1 Q -- one at a time. Could you identify --
 2 could you turn to Complainant's Exhibit 67?
 3 A Sure. I'm there.
 4 Q Now could you locate in this document where
 5 the requirements that you're discussing are?
 6 A Sure. The compliance plan starts on the
 7 Bates ending in 828. And, basically, it just -- it
 8 starts with definitions, and then it goes to pre-
 9 import requirements and post-import requirements. The
 10 pre-import requirements for catalyst testing are laid
 11 out in paragraph 12 on Bates ending in 830. And that
 12 paragraph refers back to the definition of vehicle or
 13 engine model on Bates 828.
 14 Q Okay. And what was the definition of
 15 vehicle or engine model as used in this compliance
 16 plan?
 17 A It's basically vehicles in the same engine
 18 family with the same mass, transmission type,
 19 displacement, and power.
 20 Q Does that include cosmetic differences?
 21 A No.
 22 Q Okay. What was the purpose of the
 23 compliance plan?
 24 A It was to get Taotao USA on track to
 25 compliance.

1 MR. CHU: Objection, Your Honor. To the
 2 extent that this witness is speculating as to the
 3 purpose, she has not been qualified as a -- with
 4 personal knowledge as to why this plan was written up.
 5 JUDGE BIRO: She said she wrote it.
 6 Overruled.
 7 Go ahead.
 8 THE WITNESS: The compliance plan was to put
 9 Taotao USA on a path to compliance. As I mentioned
 10 before, when we met Taotao in 2010, when we inspected
 11 their vehicles at the port, found these noncompliant
 12 carburetors, they showed a strong interest in being
 13 compliant in the future, and we -- so we gave them
 14 this -- you know, these detailed instructions on what
 15 we would do, you know, were we to be running a company
 16 like Taotao USA.
 17 BY MR. KULSCHINSKY:
 18 Q And what was the purpose of requiring Taotao
 19 to test a catalytic converter from each model as
 20 defined within an engine family?
 21 A To determine compliance of those catalytic
 22 converters, to determine whether they meet
 23 specifications described in the application for
 24 certification.
 25 Q And did you know if it was possible to test

1 catalytic converters in 2010?

2 A To my knowledge, it was possible. We had

3 other cases with other respondents who were doing it.

4 There were catalytic converter manufacturers in China

5 who presumably were doing it. And, you know, even if

6 it wasn't possible to do it in China, a company could

7 always test a catalytic converter here in the United

8 States.

9 Q Did you request catalytic converter test

10 reports from Taotao under the compliance plan?

11 A Yes, I did.

12 Q And why did you do that?

13 A Because I wanted to see if they were doing

14 catalytic converter testing.

15 Q Could you turn to what's been marked as

16 Complainant's Exhibit 69?

17 A Yes.

18 Q Do you recognize these documents?

19 A Yes, I do.

20 Q And what are these documents?

21 A This is an email from me to Mike Hillman of

22 Taotao talking about some of the catalytic converter

23 and inspection worksheets that I had requested. Under

24 the compliance plan, Taotao was required to submit

25 annual progress reports telling us about the vehicles

1 that they imported and their inspection findings. And

2 under the compliance plan, if we would like -- if we

3 wanted more supporting documentation, they were

4 required to provide it. So this is an example of me

5 requesting that information from Taotao USA.

6 MR. KULSCHINSKY: Your Honor, I'd like to

7 move for the admission of Complainant's Exhibit 69.

8 MR. CHU: We would join in that, Your Honor.

9 JUDGE BIRO: Sorry?

10 MR. CHU: We would join in that, moving to

11 admit it.

12 JUDGE BIRO: Okay. But there are more than

13 one page, isn't there, to Exhibit 69? And she only

14 identified the first page.

15 THE WITNESS: Yeah. This is part of a

16 series of correspondence. I had requested the

17 documents. I think they were provided to me in

18 Chinese. Then I requested them to be translated. I

19 think ultimately I received four translated checklists

20 at least in this exchange.

21 JUDGE BIRO: Okay. Complainant's Exhibit 69

22 is admitted into the record.

23 //

24 //

25 //

1 (The document referred to,

2 previously identified as

3 Complainant's Exhibit No. 69,

4 was received in evidence.)

5 MR. CHU: And, Your Honor, we would like to

6 add that we believe there were attachments to these.

7 I'm not sure where they put those in their -- it

8 doesn't appear that it's in this group, but it's

9 identified on page 51. And we would ask for optional

10 completeness that they add those to the record.

11 JUDGE BIRO: Well, if you have them, you can

12 submit them as part of the rule of completeness.

13 MR. KULSCHINSKY: Your Honor, the

14 attachments were originally admitted. I'll just

15 explain I didn't intent to rely on them and didn't

16 believe they were relevant. They were recently the

17 subject of a motion to supplement the prehearing

18 exchange that was filed by the Respondents, and you

19 denied that motion.

20 JUDGE BIRO: Oh, okay. So still, I'll let

21 you supplement if you want with those exhibits for

22 completeness.

23 MR. CHU: Thank you.

24 MR. KULSCHINSKY: Your Honor, may I have a

25 moment?

1 JUDGE BIRO: Uh-huh.

2 (Asides.)

3 MR. KULSCHINSKY: Your Honor, we have the

4 attachments that are being referenced available.

5 It'll take a few minutes to identify the specific

6 attachments. We can do that.

7 JUDGE BIRO: You don't have to produce them.

8 It's the Respondents' obligation to produce them and

9 put them in the record.

10 MR. KULSCHINSKY: Okay. We'll move on then.

11 JUDGE BIRO: You know, if you want to, you

12 can, but it's certainly not your obligation.

13 BY MR. KULSCHINSKY:

14 Q Could you please turn to what's been marked

15 as Complainant's Exhibit 70?

16 A Sure.

17 Q Do you recognize this document?

18 A Yes, I do.

19 Q And how do you recognize it?

20 A I assisted in drafting it.

21 Q What is this document?

22 A This is a letter from EPA to Taotao USA,

23 Inc., stating that we have serious concerns about

24 their implementation of the corporate compliance plan

25 and requesting that they provide the information that

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1 we had asked for, the catalyst test reports, as well
 2 as some labeling discrepancies that we had identified.
 3 Q And what's the date of the letter?
 4 A January 3, 2012.
 5 Q And is this a true, accurate, and complete
 6 copy of the letter that you remember?
 7 A Yes, it is.
 8 MR. KULSCHINSKY: I would like to move the
 9 admission of Complainant's Exhibit 70.
 10 MR. CHU: No objections, Your Honor.
 11 JUDGE BIRO: Complainant's Exhibit 70 is
 12 admitted into the record.
 13 (The document referred to,
 14 previously identified as
 15 Complainant's Exhibit No. 70,
 16 was received in evidence.)
 17 BY MR. KULSCHINSKY:
 18 Q Could you please turn to Complainant's
 19 Exhibit 71?
 20 A Yes.
 21 Q And do you recognize these documents?
 22 A I only have one page.
 23 Q Oh. Do you recognize this document?
 24 A Yes, I do.
 25 Q How do you recognize it?

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1 A This is an email from Mike Hillman at Taotao
 2 USA to Christopher Thompson that was forwarded to me.
 3 Q And is it a true, accurate, and complete
 4 copy of the email that was forwarded to you?
 5 A Yes, it is.
 6 MR. KULSCHINSKY: I'd like to move for the
 7 admission of Complainant's Exhibit 71.
 8 MR. CHU: Your Honor, we'd object to this
 9 document since it's not addressed to this witness.
 10 It's addressed to a different person.
 11 JUDGE BIRO: It's an admission against
 12 interest. It's your document. Over objection, we're
 13 going to admit Complainant's Exhibit 71.
 14 (The document referred to,
 15 previously identified as
 16 Complainant's Exhibit No. 71,
 17 was received in evidence.)
 18 BY MR. KULSCHINSKY:
 19 Q Who is Mike Hillman?
 20 A Mike Hillman was responsible for Taotao USA
 21 compliance issues in this time frame, 2010 to 2012,
 22 roughly.
 23 Q Would you please turn to Complainant's
 24 Exhibit 72?
 25 A Yes.

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1 Q Do you recognize this document?
 2 A Yes, I do.
 3 Q And what is this document?
 4 A This is a follow-up to the previous exhibit.
 5 I believe it was 71. It's a letter from EPA to Taotao
 6 USA demanding stipulated penalties for failure to
 7 perform certain requirements related to the corporate
 8 compliance plan under the ASA.
 9 Q And how do you recognize the document?
 10 A I assisted in drafting it.
 11 Q Is it true, accurate, and complete?
 12 A Yes, it is.
 13 MR. KULSCHINSKY: I'd like to move for the
 14 admission of Complainant's Exhibit 72.
 15 MR. CHU: Your Honor, again, this is signed
 16 by a different person. I would object to the extent
 17 that it's not clear how Ms. Isin assisted in drafting
 18 this document. I understand that's what she says, but
 19 she is not clear as to how she assisted in drafting
 20 it.
 21 JUDGE BIRO: Okay. Overruled.
 22 Complainant's Exhibit 72 is admitted into the record.
 23 //
 24 //
 25 //

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1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No. 72,
 4 was received in evidence.)
 5 BY MR. KULSCHINSKY:
 6 Q Could you please turn to Complainant's
 7 Exhibit 73?
 8 A Yes.
 9 Q And if you would leaf through the exhibit,
 10 do you recognize these documents?
 11 A Yes, I do.
 12 Q And how do you recognize these documents?
 13 A This is a series of email exchanges between
 14 primarily Christopher Thompson and Mr. Matao Cao,
 15 where I was CC'd.
 16 Q And when you say CC'd, does that mean you
 17 were copied on the emails?
 18 A Copied, yes.
 19 Q All right. So did you personally receive
 20 these emails?
 21 A Yes.
 22 Q And are these true, accurate, and complete
 23 copies of the emails that you remember?
 24 A Yes.
 25 MR. KULSCHINSKY: Your Honor, I'd like to

1 move the admission of Complainant's Exhibit 73.
 2 MR. CHU: No objections, Your Honor.
 3 JUDGE BIRO: Complainant's Exhibit 73 is
 4 admitted into the record.
 5 (The document referred to,
 6 previously identified as
 7 Complainant's Exhibit No. 73,
 8 was received in evidence.)
 9 BY MR. KULSCHINSKY:
 10 Q Could you please turn to what's been marked
 11 as -- or Bates 0883?
 12 A Yes.
 13 Q And could you describe what this email
 14 depicts?
 15 A I believe this email included a set of 12
 16 catalyst test reports from China. And this was in
 17 response to our request for catalyst test reports that
 18 had been pending, I think, since the prior year.
 19 Q What's the date on this email?
 20 A February 24, 2012.
 21 (Asides.)
 22 MR. KULSCHINSKY: Now, Your Honor, I'd like
 23 to refer to what was marked in the Respondents'
 24 prehearing exchange as Exhibit 27. I believe it looks
 25 a little bit different in what Respondents have

1 brought. I have printed out copies from the
 2 prehearing exchange for the Court.
 3 JUDGE BIRO: Okay.
 4 MR. CHU: No objections, Your Honor.
 5 JUDGE BIRO: This is Respondents' Exhibit
 6 27?
 7 MR. KULSCHINSKY: It's from the prehearing
 8 exchange as Respondent's Exhibit 27. I believe in
 9 what was exchanged in this proceeding --
 10 (Asides.)
 11 MR. KULSCHINSKY: -- it's now identified as
 12 Exhibit 18, but today's Exhibit 18 is different from
 13 Exhibit 27. It has different test reports mixed in,
 14 and it's not an accurate depiction of what was
 15 exchanged.
 16 JUDGE BIRO: Oh, okay. Have you seen this
 17 exhibit? Is there any issue with the corrected
 18 exhibit, so it's got the correct attachments on it?
 19 MR. CHU: We have no objections to this
 20 being offered.
 21 JUDGE BIRO: So should we mark this 18A?
 22 This would be the corrected exhibit? Or --
 23 MR. KULSCHINSKY: We could do that, Your
 24 Honor. I put stickers that have the original number
 25 on it, but we can mark it as 18A.

1 JUDGE BIRO: You want to substitute it for
 2 18?
 3 MR. CHU: Do it later. I'm confused.
 4 JUDGE BIRO: What do you want to do?
 5 MR. KULSCHINSKY: Well, I would like to
 6 offer the exhibit that was provided by Respondents
 7 with their prehearing exchange and refer to it with
 8 Ms. Isin. We can mark it as 18A if that's preferable.
 9 MR. CHU: Okay with us then.
 10 JUDGE BIRO: Okay. So it's your Exhibit
 11 18A?
 12 MR. KULSCHINSKY: If we're going to mark it
 13 as a new Complainant's exhibit, I believe we --
 14 JUDGE BIRO: Or are you going to identify it
 15 continually as Respondents' exhibit?
 16 MR. KULSCHINSKY: I was going to continue
 17 identifying it as Respondents' exhibit. We can
 18 identify it as Complainant's Exhibit CX-215 if that
 19 would be preferable. Whatever would be easier for the
 20 Court.
 21 JUDGE BIRO: Yeah. Let's mark it as
 22 Complainant's Exhibit 215.
 23 //
 24 //
 25 //

1 (The document referred to was
 2 marked for identification as
 3 Complainant's Exhibit No.
 4 215.)
 5 MR. CHU: I'm okay.
 6 JUDGE BIRO: And just read into the record
 7 exactly what it is again.
 8 MR. KULSCHINSKY: I'm sorry, Your Honor.
 9 JUDGE BIRO: Just identify it right now for
 10 the record, with the new number, what is being marked
 11 as Exhibit 215.
 12 MR. KULSCHINSKY: This is Complainant's
 13 Exhibit 215. These are the catalytic converter
 14 reports that were provided to the EPA in an email
 15 dated February 24, 2012, which is depicted in the
 16 Complainant's Exhibit CX-073, Bates EPA-000883.
 17 JUDGE BIRO: Okay. So they're basically the
 18 attachments to the email that was identified as
 19 Complainant's Exhibit 73.
 20 MR. KULSCHINSKY: Yes, Your Honor.
 21 JUDGE BIRO: Okay. Do you want to move
 22 their admission?
 23 MR. KULSCHINSKY: I would, Your Honor.
 24 JUDGE BIRO: Okay. Mr. Chu, do you have any
 25 objection to the admission of these documents?

1 MR. CHU: No, Your Honor.
 2 JUDGE BIRO: Okay. We'll admit into the
 3 record without objection Complainant's Exhibit 215.
 4 (The document referred to,
 5 previously identified as
 6 Complainant's Exhibit No.
 7 215, was received in
 8 evidence.)
 9 MR. KULSCHINSKY: Would Your Honor like a
 10 copy?
 11 JUDGE BIRO: Do you have a copy for the
 12 court reporter too, and for the Respondent?
 13 MR. CHU: Your Honor, could we ask for an
 14 afternoon break? No? Okay.
 15 JUDGE BIRO: Oh, I think we're going to make
 16 everybody suffer 'til we're done. How much longer do
 17 you think you have, Mr. Kulschinsky? It's 4:30.
 18 MR. KULSCHINSKY: We should certainly be
 19 able to finish by 6, Your Honor. We have to go
 20 through the willfulness/negligence adjustment and then
 21 discuss ability to pay.
 22 JUDGE BIRO: So another hour?
 23 MR. KULSCHINSKY: We can try to make it
 24 another hour.
 25 JUDGE BIRO: So, okay, let's take a five-

1 minute break.
 2 MR. KULSCHINSKY: Okay.
 3 (Whereupon, a brief recess was taken.)
 4 JUDGE BIRO: Please be seated.
 5 Mr. Kulschinsky.
 6 MR. KULSCHINSKY: Your Honor, I've provided
 7 a copy of what's been now marked as Complainant's
 8 Exhibit 215 to opposing counsel. Permission to hand
 9 copies to the court reporter and the witness.
 10 JUDGE BIRO: Please do.
 11 (Pause.)
 12 JUDGE BIRO: Can we do anything about the
 13 lights? Thank you.
 14 (Pause.)
 15 BY MR. KULSCHINSKY:
 16 Q Ms. Isin, could you please take a look at
 17 what's been marked as Complainant's Exhibit 215, and
 18 do you recognize these documents?
 19 A Yes, I do.
 20 Q And are these the test reports that were
 21 provided in the February 24, 2012, email we were
 22 looking at marked Bates EPA-000883?
 23 A Yes, they are.
 24 Q And did you review these reports?
 25 A Yes, I did.

1 Q Did you have any concerns about these
 2 reports?
 3 A Yes, I did.
 4 Q I'd like to go quickly through the reports
 5 in this exhibit and ask you to identify concerns that
 6 you had with each. So please take a look at the first
 7 report, which is on -- I believe it was Respondents'
 8 Bates 548 to 551. Did you have any concerns with this
 9 report?
 10 A Yes, I do.
 11 Q And what are those concerns?
 12 A Well, if you go to Bates 550, the third page
 13 of the report, that's where it identifies the test
 14 vehicle. And you can see there that the vehicle they
 15 tested, according to the 10th digit of the VIN, is a
 16 model year '12, 2012, whereas the engine family that
 17 they've identified as covering that vehicle is a model
 18 year '11, as indicated by the B in the front. So it
 19 looks to me that they've substituted a 2012 vehicle
 20 for -- to represent a 2011 engine family.
 21 Q How about the next report, Bates 552 through
 22 555?
 23 A I don't think I have any concerns with this
 24 particular report, other than the test number changes.
 25 If you look, the test number on the first page, at the

1 top right-hand corner, Bates 552, it starts with
 2 CW101. And then look at the test number in the third
 3 page, Bates number 554, top right-hand corner, it says
 4 CW111. So it's slightly off.
 5 Q How about the next report, Bates 556 through
 6 559?
 7 A This is another example where it looks like,
 8 based on the identification of the test vehicle, on
 9 Bates page 558, they've taken a model year 2012
 10 vehicle for -- to represent a 2011 engine family.
 11 Q How about the next report, 560 through 563?
 12 A Again, I have the same concern as shown on
 13 Bates 562. It's a 2012 vehicle representing a 2011
 14 engine family.
 15 Q Did you have any concerns with the report
 16 number of this report?
 17 A Yes. It's again off by at least one or more
 18 digits on the first -- if you compare the first page
 19 and the third page.
 20 Q How about the next report, 564 to 567?
 21 A Yeah. Again, if you look on Bates 566, it
 22 looks like it's a 2012 vehicle being used for 2011
 23 engine family testing. Yeah.
 24 Q The next report, 568 to 571?
 25 A It's the same thing again. If you look on

1 Bates 570, again, a 2012 vehicle is being used to
 2 represent a 2011 engine family.
 3 Q How about the next report, Bates 572?
 4 A This one looks okay to me.
 5 Q And 573?
 6 A For 573, I see a 2011 vehicle
 7 substituting -- or being used to represent a 2010
 8 engine family.
 9 Q How about the report on 574?
 10 A The same thing again, a 2011 vehicle being
 11 used to represent a 2010 engine family.
 12 Q Bates 575?
 13 A This one looks okay to me.
 14 Q Bates 576?
 15 A Yeah, that one looks okay to me as well.
 16 Q And 577?
 17 A Also looks okay.
 18 Q Why is the mismatch you identified between
 19 the model year and the VIN number and the model year
 20 and the engine family a problem?
 21 A Because, under the compliance plan, we
 22 required catalyst testing with every model year. And
 23 given the lapse in time, I think we initially
 24 requested these test reports in August of the prior
 25 year, and we didn't get them 'til February of the

1 subsequent year. It was concerning.
 2 Q Did you have any concerns with the test
 3 methods described in the reports?
 4 A No.
 5 Q Did you have any concerns with the presence
 6 of Chinese characters in these reports?
 7 A No.
 8 Q And just to be clear, when we were going
 9 through these reports, were you reading from the
 10 English portion or the portion that -- the Chinese
 11 characters?
 12 A The English portion.
 13 Q Could you turn to what's been marked as
 14 Complainant's Exhibit CX-074?
 15 A Sure.
 16 Q And do you recognize this document?
 17 A I believe I assisted in drafting it.
 18 Q What is the document?
 19 A It's a stipulated penalty agreement dated
 20 April 2012.
 21 MR. KULSCHINSKY: And, Your Honor, I'd like
 22 to move for the admission of Complainant's Exhibit 74.
 23 MR. CHU: No objections, Your Honor.
 24 JUDGE BIRO: Okay. Complainant's Exhibit 74
 25 is admitted into the record without objection.

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No. 74,
 4 was received in evidence.)
 5 (Pause.)
 6 JUDGE BIRO: Go ahead, proceed. Sorry.
 7 BY MR. KULSCHINSKY:
 8 Q Could you please turn to what's been marked
 9 as Complainant's Exhibit 76?
 10 A Yes.
 11 Q Could you please read through this exhibit
 12 briefly and tell the Court if you recognize these
 13 documents?
 14 A Sure.
 15 (The witness reviewed the documents.)
 16 THE WITNESS: Yes.
 17 BY MR. KULSCHINSKY:
 18 Q Are you familiar with these documents?
 19 A Yes.
 20 Q And could you please describe in a broad
 21 sense what the documents are?
 22 A Sure. These are a series of email exchanges
 23 between me, Christopher Thompson, and Jackie Wang, and
 24 Margaret Goldstein of Harrison Wolf related to the
 25 compliance plan.

1 MR. KULSCHINSKY: Your Honor, I'd like to
 2 move the admission of Complainant's Exhibit 76.
 3 MR. CHU: No objections.
 4 JUDGE BIRO: Exhibit 76 is admitted into the
 5 record.
 6 (The document referred to,
 7 previously identified as
 8 Complainant's Exhibit No. 76,
 9 was received in evidence.)
 10 BY MR. KULSCHINSKY:
 11 Q Ms. Isin, who is Margaret Goldstein?
 12 A Margaret Goldstein is an employee of
 13 Harrison Wolf. She assisted -- or she -- Taotao USA
 14 hired Harrison Wolf, who's a vehicle and engine
 15 consultant, to help them with the preparation of their
 16 second annual compliance report under the compliance
 17 plan.
 18 Q Did you recommend Harrison Wolf to
 19 Respondents?
 20 A No. I suggested that other companies that
 21 I -- I had heard of other companies using Harrison
 22 Wolf in the past.
 23 Q And why did you do that?
 24 A When the company -- when Taotao USA signed
 25 on to their stipulated penalty agreement under the

1 ASA, one of the requirements they had was to hire a
2 professional engineer. We -- it came to our attention
3 that they didn't have a professional engineer on
4 staff. They also claimed that they had had
5 communication difficulties, and that's why they had so
6 much noncompliance in the first year of the compliance
7 plan.

8 So one of the requirements of the agreement
9 was to hire a professional engineer, and one who spoke
10 both Chinese and English, to help facilitate
11 compliance in the future. Taotao USA came to us and
12 said they could not find such a person, and
13 ultimately, after a lot of back and forth, they
14 suggested that they would hire a consultant, and --
15 but they didn't know which one. They asked for some
16 suggestions, and I mentioned that in the past other
17 companies had used Harrison Wolf.

18 Q Could you please turn to what's been marked
19 as Complainant's Exhibit 77?

20 A Okay.

21 Q And do you recognize this document?

22 A Yes. This is the second report that they
23 submitted to us under their compliance plan.

24 Q Were catalytic converter tests provided with
25 this report?

1 A I believe there were three catalytic
2 converter tests, yes.

3 Q And to the best of your knowledge, other
4 than the tests reflected in the documents we've
5 discussed in those email attachments or in the 2012
6 annual report, did Taotao provide the EPA with any
7 other catalytic converter tests in 2012?

8 A Taotao did not provide us with any other
9 catalyst test reports in 2012.

10 Q Could you turn to Complainant's --

11 MR. CHU: I object as non-responsive. I
12 think he asked for, and she said in. Did I hear it
13 wrong? Just I thought he asked for for 2012.

14 JUDGE BIRO: I think you did, but can you
15 qualify? Can you clarify?

16 THE WITNESS: Oh, for 2012?

17 MR. KULSCHINSKY: Sorry. In 2012.

18 THE WITNESS: Taotao USA did not provide us
19 with any other catalyst test reports in 2012.

20 MR. KULSCHINSKY: Thank you for the
21 clarification. Could you turn to Complainant's
22 Exhibit 78?

23 JUDGE BIRO: Do you want to move Exhibit 77
24 into the record?

25 MR. KULSCHINSKY: I believe it was admitted

1 yesterday, Your Honor, but if it wasn't, I will
2 happily move it into the record at this time.

3 MR. CHU: No objections.

4 JUDGE BIRO: Yeah, I don't see it as
5 admitted. Was it? Okay. It was discussed but not
6 admitted. So we're going to move Exhibit 77 into the
7 record.

8 (The document referred to,
9 previously identified as
10 Complainant's Exhibit No. 77,
11 was received in evidence.)

12 MR. KULSCHINSKY: Thank you, Your Honor.

13 BY MR. KULSCHINSKY:

14 Q Could you please turn to Complainant's
15 Exhibit 78?

16 A Yes.

17 Q And do you recognize this document?

18 A Yes.

19 Q What is this document?

20 A This is a letter from EPA to Taotao USA,
21 Inc., describing concerns that we had with their
22 implementation of the compliance plan in the second
23 year.

24 Q And how do you recognize this document?

25 A I assisted in drafting it.

1 Q And is this document a part of your
2 investigation file?

3 A Yes.

4 MR. KULSCHINSKY: Your Honor, I'd like to
5 move to admit Complainant's Exhibit 78.

6 MR. CHU: No objections, Your Honor.

7 JUDGE BIRO: Complainant's Exhibit 78 is
8 admitted into the record.

9 (The document referred to,
10 previously identified as
11 Complainant's Exhibit No. 78,
12 was received in evidence.)

13 MR. KULSCHINSKY: Your Honor, maybe to move
14 this along -- I was going to go to Complainant's
15 Exhibit 79 next. It's another series of emails we'll
16 move into the record if Respondents don't object.

17 MR. CHU: No objections, Your Honor.

18 (The document referred to,
19 previously identified as
20 Complainant's Exhibit No. 79,
21 was received in evidence.)

22 JUDGE BIRO: Are we moving on to 80 and the
23 rest? Could we just --

24 MR. KULSCHINSKY: 81. We're going to skip
25 over to 81.

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1 JUDGE BIRO: 81. How about that one, Mr.
2 Chu?
3 MR. CHU: I'll get there in just a second.
4 (Asides.)
5 MR. CHU: No objections, Your Honor.
6 JUDGE BIRO: Complainant's Exhibit 81 is
7 admitted into the record.
8 (The document referred to,
9 previously identified as
10 Complainant's Exhibit No. 81,
11 was received in evidence.)
12 THE WITNESS: I think my copy of 81 is
13 missing the cover page. I don't know if anybody
14 else's is. Oh, they're backwards?
15 MR. KULSCHINSKY: Turn it around. It may
16 have gotten reversed in the production.
17 THE WITNESS: Ah, okay. Got it. I'll fix
18 it.
19 MR. KULSCHINSKY: Apologies.
20 THE WITNESS: No problem.
21 (Asides.)
22 BY MR. KULSCHINSKY:
23 Q Could you just briefly describe
24 Complainant's Exhibit 81?
25 A This is a letter from EPA to Taotao USA

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1 again describing concerns under the compliance plan.
2 I believe this is related to the third annual report
3 submitted by Taotao USA.
4 Q Ms. Isin, to the best of your knowledge, did
5 anyone from Taotao USA ever suggest that the
6 administrative settlement agreement or the compliance
7 plan did not require them to conduct catalyst testing
8 for every engine family equipped with a catalytic
9 converter?
10 A No.
11 MR. CHU: Objection to the extent it calls
12 for hearsay.
13 JUDGE BIRO: It would be an admission
14 against interest if --
15 MR. CHU: If we can identify the person is
16 what I'm concerned with.
17 JUDGE BIRO: Okay. Well, overruled.
18 THE WITNESS: No.
19 BY MR. KULSCHINSKY:
20 Q How many catalytic converter test reports
21 did Taotao provide to the EPA -- or I should say
22 provide to your office -- in 2013?
23 A I don't think they provided any.
24 Q And other than catalytic converter test
25 reports conducted pursuant to the test order we

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1 discussed earlier, how many catalytic converter test
2 reports did Taotao provide your office in 2014?
3 A None.
4 Q How many catalytic converter test reports
5 did Taotao provide in 2015?
6 A None.
7 Q Again, to the best of your knowledge, did
8 anybody from Taotao USA ever suggest that a single
9 catalytic converter report could be used for multiple
10 engine families or vehicle and engine models?
11 A No.
12 Q Within Complainant's Exhibit 81, could you
13 turn to what's been marked as Bates 991?
14 A Yes.
15 Q What does this describe?
16 A This describes the beginning of the case at
17 hand. We, in June of 2013, we inspected some vehicles
18 at the Port of Long Beach and found that the catalysts
19 appeared to be deficient. We asked for Taotao USA to
20 send us I believe two more samples under that engine
21 family, which they did. And I believe that testing
22 confirmed what we had found.
23 Q Ms. Isin, did the email correspondence and
24 the letters that we just reviewed document the events
25 that led you to adjust the proposed penalty upwards

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1 for willfulness or negligence?
2 A Yes.
3 Q Is that adjustment meant to punish the
4 Respondents for violating the settlement agreement?
5 A No.
6 Q What is the basis for the adjustment?
7 A The basis for the adjustment is Taotao's
8 continuing lack of interest in catalyst testing, in
9 preventing the types of violations that we saw here,
10 despite our repeated efforts to get them to perform
11 catalyst testing.
12 Q Ms. Isin, did you adjust the proposed
13 penalty for cooperation?
14 A No, I did not.
15 Q Why not?
16 A Well, I didn't do a downward adjustment
17 because, according to our penalty policy, downward
18 adjustments for cooperation are typically for cases
19 where there's a swift resolution, or there's self-
20 reporting of violations, that neither of those
21 situations occurred here.
22 I didn't do an upward adjustment because
23 Taotao USA has actually been cooperative with our --
24 all our inspections. You know, I went to Taotao USA's
25 warehouse in Dallas, Texas, and they complied with the

1 inspection, and they provided samples here in this
2 case that we were just talking about where we sent
3 them a letter requesting two additional exhaust
4 systems for testing. They promptly provided those.

5 Q Did you give Taotao USA or other Respondents
6 credit for prior penalties they paid to the EPA?

7 A No.

8 Q Why not?

9 A That's not typically our practice. It's not
10 outlined in the penalty policy. The prior case -- the
11 prior penalty was for a prior case involving different
12 vehicles, different violations. It was not related to
13 this matter.

14 Q Did you give the Respondents credit for the
15 costs they incurred in complying with the compliance
16 plan or conducting other tests ordered by the EPA?

17 A No. Again, that's not our practice. It's
18 not -- that's not described under the penalty policy,
19 and in my view, those -- that testing cost is the cost
20 of doing business as a U.S. company, as an importer of
21 vehicles and engines, and as a certificate holder of
22 vehicles and engines.

23 MR. KULSCHINSKY: And -- all right. Your
24 Honor, the next phase of testimony is going to be
25 about ability to pay. I think it's going to involve

1 matters that are claimed as confidential business
2 administration. Not that we have much of an audience,
3 but it may make sense to close the courtroom.

4 JUDGE BIRO: Okay. How do you feel? It's
5 5:00.

6 MR. KULSCHINSKY: I feel good.
7 (Laughter.)

8 JUDGE BIRO: Okay. Ms. Isin, how do you
9 feel?

10 THE WITNESS: I feel fine.

11 JUDGE BIRO: Okay. All right. Then we will
12 close the courtroom and keep going.

13 BY MR. KULSCHINSKY:

14 Q Ms. Isin, did you consider the impact of the
15 penalty being proposed today on Respondents' ability
16 to continue in business?

17 A Yes, I did.

18 Q What types of information did you consider?

19 A We -- so I did the usual research I would do
20 on a company that we were building a case against. I
21 looked at their import history. I looked at, you
22 know, descriptions of the company on the web. And
23 then the company submitted a series of financial
24 documents, which I also looked at, and I employed the
25 assistance of Dr. Carroll in looking at those.

1 Q Did you look into how Taotao USA ranks as an
2 importer of ATVs and highway motorcycles in terms of
3 value as an importer?

4 A Yes.

5 Q And how did you do that?

6 A I used Customs' ACE database to look at
7 Taotao USA's imports from the years 2009 to 2016, and
8 they were consistently ranked between one and three of
9 the top importers of recreational vehicles and
10 motorcycles made in China into the United States.

11 Q And were those rankings consistent over
12 time?

13 A Yes.

14 Q Could you please turn to what's been marked
15 as Complainant's Exhibit 190A?

16 A Yes.

17 Q Do you recognize this?

18 A Yes, I do. This is a chart that I put
19 together from ACE which shows Taotao's -- Taotao USA,
20 Inc.'s importations over eight different -- eight
21 years, from 2009 to 2016. And it summarizes the total
22 amount imported, the number of entries that came in,
23 as well as the total declared value for each year.

24 Q And how did you prepare this document?

25 A I did a query in ACE and looked -- I

1 searched for importations by Taotao USA, Inc., and I
2 searched for a time range for each year, and then I
3 compiled this table. So I downloaded a series of
4 files from ACE.

5 Q What format were those files in?

6 A They were in Excel.

7 Q And how large was each Excel file?

8 A Tens of thousands of rows.

9 Q And does this chart that you prepared
10 accurately reflect the information that you gathered
11 in the ACE database?

12 A Yes.

13 Q And is this part of your investigative file?

14 A Yes, it is.

15 Q And is this sort of document or summary you
16 would typically prepare in an investigation?

17 A Yes.

18 MR. KULSCHINSKY: Your Honor, I'd like to
19 offer Complainant's Exhibit 190A into evidence.

20 MR. CHU: Your Honor, we would object to
21 this. This is a summary, number one. Number two,
22 it's hearsay. It's not data that this Court can
23 verify or that we can question upon. For this to be
24 appropriate, the supporting documentation should have
25 been attached to it as an exhibit.

1 JUDGE BIRO: Okay. Well, summaries are
 2 admissible in our courtroom and under the Federal
 3 Rules. Hearsay is not a valid objection in these
 4 proceedings. And if you wanted all the background
 5 data, you should have asked for it before we got here.
 6 So I'm going to admit Complainant's Exhibit 190A.
 7 (The document referred to,
 8 previously identified as
 9 Complainant's Exhibit No.
 10 190A, was received in
 11 evidence.)
 12 BY MR. KULSCHINSKY:
 13 Q The column that is titled "Sum of Entered
 14 Value," what does that mean?
 15 A That's the total entered value for each
 16 year, and then it's summed at the bottom.
 17 Q And what is the entered value? What does
 18 that term represent?
 19 A Oh, that's the declared value for each
 20 entry, kind of how we went through it before with the
 21 prior exhibit.
 22 Q And so sum of entered value, just what does
 23 that mean, one more time?
 24 A It's the total declared value import -- of
 25 products imported by Taotao USA during these years.

1 Q What role did this information play in your
 2 evaluation of whether you should reduce the proposed
 3 penalty based on its impact on Respondents' ability to
 4 continue in business?
 5 A Well, when I looked at this information,
 6 combined with what we talked about before, which was
 7 the ranking of Taotao USA as, you know, consistently
 8 among the top importers of this type of vehicle and
 9 engine, you know, you see here in the graph the trend
 10 is upwards. It doesn't look like a company that's
 11 about to fold.
 12 Q Did you research any websites as part of
 13 your investigation in this matter?
 14 A Yes.
 15 Q And is that typical as part of an
 16 investigation you would do?
 17 A Yes.
 18 Q Could you please turn to what's been marked
 19 as Complainant's Exhibit 35?
 20 A Yes.
 21 Q Do you recognize this document?
 22 A Yes, I do.
 23 Q And what is it?
 24 A This is a printout of Taotao Motors --
 25 Taotao Group Company, Limited's profile on

1 Alibaba.com.
 2 Q And what's Alibaba.com?
 3 A It's like the Chinese Amazon.
 4 Q Is this a depiction of one of the websites
 5 that you looked at?
 6 A Yes.
 7 Q Sorry. I think my microphone keeps cutting
 8 out. What does this show?
 9 A This shows Taotao Group Company, Limited
 10 has, you know, over 1,000 employees, total annual
 11 revenue of over \$100 million. In the first paragraph,
 12 it talks about all its subsidiaries, Junyun County
 13 Xiang Yuan Industrial -- Industry Company, Limited, as
 14 well as other ones that are not in our case. Junyun
 15 County Taotao Leisure Articles Company, Limited,
 16 Junyun Tianhu Import & Export Company, Junyun County
 17 Taotao Garden Tools Company, Limited, and Zhejiang
 18 Voyage Motorcycle Company, Limited.
 19 Q Is this a true, accurate, and complete copy
 20 of the website that you remember looking at?
 21 A Yes.
 22 Q Could you please turn to Complainant's
 23 Exhibit 42?
 24 A Sure.
 25 Q Do you recognize this?

1 A Yes.
 2 Q And what is it?
 3 A This is an article from Dealernews.com as
 4 part of my web search. It shows that -- it talks
 5 about Taotao Group's market share in the United
 6 States. It talks about how they have a 30 percent
 7 market share for ATVs and motorcycles.
 8 Q Is this a true, accurate, and complete copy
 9 of that website that you remember looking at in your
 10 research?
 11 A Yes.
 12 Q Could you please turn to what's been marked
 13 as Complainant's Exhibit 168?
 14 A Yes.
 15 Q And do you recognize this?
 16 A Yes. This again is an updated version of
 17 Taotao Group Company, Limited's profile on
 18 Alibaba.com.
 19 Q And is this a depiction of one of the
 20 websites that you looked at during your research?
 21 A Yes.
 22 Q And is it a true, accurate, and complete
 23 copy of what you remember looking at?
 24 A Yes.
 25 Q I would like you to turn to Complainant's

1 Exhibit 191.
 2 A Yes.
 3 Q And do you recognize this document?
 4 A Yes. This is the PowerPoint presentation
 5 that was given to Clee Jackson when he was in China.
 6 Q And are you personally familiar with this
 7 document?
 8 A I received it from I believe Emily Chen in
 9 Clee's office earlier this year.
 10 MR. CHU: Objection, non-responsive.
 11 JUDGE BIRO: She said she received it in
 12 this --
 13 THE WITNESS: Yes, I received it.
 14 JUDGE BIRO: You personally received it,
 15 okay. Overruled.
 16 BY MR. KULSCHINSKY:
 17 Q Could you please turn to Bates page 2521?
 18 A Yes.
 19 Q Ms. Isin, do you read Chinese characters?
 20 A No.
 21 Q Okay. Looking at the English on this page,
 22 how do you interpret what this depicts?
 23 A This looks to me like Taotao Group making
 24 all kinds of products, everything from vehicles,
 25 chainsaws, garden tools, and doors.

1 Q And could you please turn to Bates 2522?
 2 A Yes.
 3 Q And what does this depict?
 4 A This looks like it shows that Taotao Group
 5 Company, Limited owns Junyun County Xiang Industry
 6 Company, Limited, and that both produce vehicles for
 7 Taotao USA, Inc., and that Matao Cao owns 100 percent
 8 of Taotao USA, Inc.
 9 Q And could you turn to page 2523?
 10 A Yes.
 11 Q And what do you understand this slide to
 12 depict?
 13 A Looks to me like Matao Cao owns 90 percent
 14 of Zhejiang Taotao Vehicle Company, Limited, and
 15 Yuejin Cao owns 10 percent of it, and that Zhejiang
 16 Taotao Vehicle Company, Limited owns 100 percent of
 17 Tao Motor, Inc.
 18 Q Have you heard of Tao Motor before?
 19 A Yes, I have.
 20 Q When did you first learn about Tao Motor?
 21 A I believe I heard about Tao Motor from our
 22 certification office, who is receiving applications
 23 for certification from Tao Motor.
 24 Q Could you please turn to Bates 2567 and just
 25 review quickly to the end of the document?

1 A Yes.
 2 Q What do you understand these pages or slides
 3 to show?
 4 A These show what appears to be a new factory
 5 in China for Taotao.
 6 Q All right. So taken together, what did the
 7 websites we've discussed, this PowerPoint
 8 presentation -- how did they influence your impression
 9 of the Respondents in your consideration of whether or
 10 not to reduce the penalty due to its impact on their
 11 ability to continue in business?
 12 MR. CHU: Objection, vague as to which
 13 Respondent.
 14 JUDGE BIRO: Overruled. Go ahead, if you
 15 can identify individually.
 16 THE WITNESS: Well, to me, they're all kind
 17 of intertwined. You know, the manufacturer and the
 18 importer of the same vehicles.
 19 MR. CHU: Objection, non-responsive.
 20 JUDGE BIRO: Overruled. Go ahead.
 21 THE WITNESS: Based on the ACE search, it
 22 looks like there's an upward trend. You know, there's
 23 thousands of imports coming in, and they continue to
 24 come in, multiple entries per day. And that's backed
 25 up by what I see on the web, the descriptions I see on

1 the web, and then this PowerPoint that came in, you
 2 know, just a few months ago talking about expansion of
 3 the manufacturing facility in China. It seems to all
 4 lead me to the same conclusion that the company is not
 5 about to fold.
 6 MR. CHU: Objection, non-responsive.
 7 JUDGE BIRO: The question was how did it
 8 affect your ability -- your determination on ability
 9 to pay.
 10 THE WITNESS: It was a part of my ability to
 11 pay analysis.
 12 JUDGE BIRO: And it --
 13 THE WITNESS: Oh, and it showed that the
 14 company looks like it can pay a penalty.
 15 JUDGE BIRO: Okay.
 16 MR. KULSCHINSKY: Your Honor, I'd like to
 17 move for the admission of Complainant's Exhibits 35,
 18 42, and 168.
 19 JUDGE BIRO: 35, 42, and 168?
 20 MR. KULSCHINSKY: Yes, Your Honor.
 21 MR. CHU: Your Honor, we would object to 35.
 22 This appears to be just a printout from the internet.
 23 It's not properly authenticated. The author is not
 24 determinable from this document here. It does not
 25 necessarily show that this belongs to one of the

1 Respondents, nor does it indicate that this is their
2 website. I believe she said this came off of Alibaba.

3 I'm not sure where this came from, but,
4 again, there are websites where people attempt to
5 compile information, but that doesn't necessarily
6 reflect the truthfulness nor accuracy of the
7 information. So we'd object to 35 on those bases.

8 JUDGE BIRO: And on the very top it suggests
9 that it's from a website that's from Taotao Motors.
10 That's connected somehow to Alibaba, and I don't know
11 how that system works, other than Amazon, which refers
12 you to other pages to buy things. I don't know
13 Alibaba. But it seems to me Taotao Motors is the
14 first named entity of the website.

15 MR. CHU: Right. And that would be
16 appropriate to identify this web page that indicates
17 that it's Taotao Group. So clearly we don't know who
18 Taotao Motor is compared to Taotao Group. Taotao
19 Motor is not one of the Respondents, nor is it the
20 particular other company that we've heard about, Tao
21 Motor. This is Taotao Motor. We are Taotao USA. And
22 so we don't believe that the authenticity of this
23 document -- the predicates have been properly laid.

24 JUDGE BIRO: Okay. Well, I think it has.
25 I'm going to admit Complainant's Exhibit 35.

1 (The document referred to,
2 previously identified as
3 Complainant's Exhibit No. 35,
4 was received in evidence.)

5 JUDGE BIRO: How about 42?

6 MR. CHU: We would object to 42. The
7 predicate for this type of article, the source has not
8 been determined to be a reliable source. We would
9 object that this could fall under the category of fake
10 news. And so, unless they lay a proper predicate for
11 it, we do not believe it should be allowed to come in,
12 would be our objection.

13 JUDGE BIRO: I think your argument goes to
14 the weight.

15 MR. CHU: It does.

16 JUDGE BIRO: And I agree with you, it has
17 questionable weight, off of the web. It's an article
18 that somebody wrote. We don't know what it's based
19 on. But I'll admit it for whatever weight we can give
20 it. 42 is admitted into the record.

21 (The document referred to,
22 previously identified as
23 Complainant's Exhibit No. 42,
24 was received in evidence.)

25 JUDGE BIRO: How about 168?

1 MR. CHU: Again, Your Honor, the same
2 objection as to the first exhibit, 35. This is off
3 Alibaba. So we do not believe that the proper
4 predicate has been laid.

5 JUDGE BIRO: Okay. Over objection, I'm
6 going to admit Complainant's Exhibit 168.

7 (The document referred to,
8 previously identified as
9 Complainant's Exhibit No.
10 168, was received in
11 evidence.)

12 BY MR. KULSCHINSKY:

13 Q Ms. Isin, just briefly, could you please
14 turn to what's been marked as Complainant's Exhibit
15 95?

16 A Sure.

17 (Pause.)

18 THE WITNESS: Yes.

19 BY MR. KULSCHINSKY:

20 Q And do you recognize this document?

21 A I believe this is part of -- this appears to
22 be an excerpt from maybe the first annual compliance
23 report. I have to flip through it a bit more. Oh,
24 no. This is Taotao's response to our information
25 request, from 2014.

1 Q And how are you familiar with this document?

2 A I received it when Taotao responded.

3 MR. KULSCHINSKY: Your Honor, I'd like to
4 move for the admission of Complainant's Exhibit 95.

5 (Pause.)

6 MR. CHU: Your Honor, we would object that
7 this set of documents under CX-95 appears to be a
8 compilation with no beginning nor end. And so, as
9 such, the witness has not been able to identify that
10 each and every one of these documents were sent to her
11 by someone from Taotao.

12 BY MR. KULSCHINSKY:

13 Q Ms. Isin, going through CX-95, were all of
14 these documents provided by Taotao as part of their
15 response to your information request?

16 A Yes.

17 MR. CHU: Your Honor, again, I understand
18 they use the word Taotao, but there is a Taotao Group
19 and a Taotao USA, so I would object that the question
20 was vague in supporting the predicate as for these
21 documents, Taotao Group versus Taotao USA.

22 JUDGE BIRO: Who responded to the request
23 for information?

24 THE WITNESS: So our request for information
25 was to all Respondents. I don't recall which one of

1 them -- I mean, I see that there's Taotao USA
 2 letterhead here on the first page, but --
 3 JUDGE BIRO: Let me -- your request went to
 4 all of the Respondents, and was one response
 5 submitted?
 6 THE WITNESS: Yes.
 7 JUDGE BIRO: Okay. We're going to overrule
 8 the objection and admit Complainant's Exhibit 95.
 9 (The document referred to,
 10 previously identified as
 11 Complainant's Exhibit No. 95,
 12 was received in evidence.)
 13 BY MR. KULSCHINSKY:
 14 Q Ms. Isin, did your office request financial
 15 information from the Respondents?
 16 A Yes, we did.
 17 Q When did you first request financial
 18 information?
 19 A I believe it was sometime in 2015.
 20 Q Was it typical to request financial
 21 information?
 22 A Yes, if Respondents make an ability to pay
 23 claim, we typically request supporting documentation.
 24 Q Did the Respondents provide you with
 25 financial information at that time?

1 A Yes, they did.
 2 Q Did they provide you with tax returns?
 3 A Yes, they did.
 4 MR. KULSCHINSKY: All right. Your Honor,
 5 I'd like to move for the admission of Complainant's
 6 Exhibit 161, 162, 163, and 171. Those are Taotao
 7 USA's tax returns.
 8 JUDGE BIRO: 163 through 165 did you say?
 9 MR. KULSCHINSKY: No. I'm sorry, Your
 10 Honor, 161, 162, 163, and then 171.
 11 MR. CHU: Yeah. And it's our understanding
 12 that those documents will not be released for
 13 publication.
 14 JUDGE BIRO: They won't go up on our
 15 website. They'll be continued to hold the CBI.
 16 MR. CHU: Thank you, Your Honor.
 17 JUDGE BIRO: I'll admit without objection --
 18 MR. CHU: No objections.
 19 JUDGE BIRO: -- Complainant's Exhibits 161
 20 through 163, and 171.
 21 (The documents referred to,
 22 previously identified as
 23 Complainant's Exhibit Nos.
 24 161 through 163, and 171,
 25 were received in evidence.)

1 BY MR. KULSCHINSKY:
 2 Q Did the Respondents provide financial
 3 statements?
 4 A Yes, they did.
 5 Q Okay. Did you analyze any of the financial
 6 information that the Respondents provided?
 7 A I ran an ABEL analysis based on the tax
 8 returns they provided.
 9 Q And was that for all three Respondents or
 10 fewer than all three?
 11 A That was only for Taotao USA. The Chinese
 12 companies did not have tax returns.
 13 Q Okay. We've heard a bit about ABEL today,
 14 but could you just describe it very briefly in your
 15 own words?
 16 A Yeah. It's an economic model that the
 17 agency uses which is simple enough that you don't need
 18 an accounting background or financial background in
 19 order to -- you know, it involves plugging in numbers
 20 from tax returns into the appropriate lines, and then
 21 it performs some computations and comes out with a
 22 list of probabilities that a company can pay a certain
 23 penalty.
 24 Q Do you have an accounting background?
 25 A No, I don't.

1 Q Do you have an economic background?
 2 A No.
 3 Q Is ABEL a computer program, as you've
 4 described it?
 5 A Yes.
 6 Q Do you understand all of the computations
 7 behind ABEL?
 8 A No.
 9 Q Is ABEL supposed to be a definitive analysis
 10 or a definitive tool for determining a company's
 11 ability to pay a penalty?
 12 A No.
 13 Q Could you describe just briefly what did the
 14 ABEL analysis you performed show?
 15 A The ABEL analysis for the years 2012 to
 16 2015, for those tax returns, showed that Taotao USA
 17 could pay -- I believe it was -- there was a
 18 70 percent probability that they would be able to pay
 19 a penalty of approximately \$690,000.
 20 Q Did you feel like that was consistent with
 21 your understanding of Taotao USA's financial condition
 22 from the importation data you had reviewed?
 23 A Not at all.
 24 Q We discussed Mr. Jonathan Shefftz earlier.
 25 Do you recall, did he prepare a report in this matter?

1 A Yes, he did.
 2 Q And did you review that report?
 3 A I did.
 4 Q Do you recall if his report has an opinion
 5 about Respondents' ability to pay the penalty in this
 6 matter?
 7 A It does. It includes an ABEL analysis.
 8 Q Did his opinion do anything to change your
 9 evaluation of whether or not you should reduce the
 10 penalty on account of this factor?
 11 A No.
 12 Q Did the agency hire an expert to review the
 13 financial documents provided by Taotao USA?
 14 A Yes, Dr. Carroll.
 15 Q And did you hear Dr. Carroll testify earlier
 16 today?
 17 A Yes, I did.
 18 Q And was his opinion part of your decision
 19 not to reduce the penalty on account of this factor?
 20 A Yes.
 21 Q Do you have any basis to dispute his
 22 opinion?
 23 A No.
 24 Q Did you perform research into any other
 25 companies as -- other than the named Respondents in

1 this matter as part of your investigation in this
 2 matter?
 3 A Yes. There's several related companies.
 4 Q Is that typical, to look at other businesses
 5 during an investigation?
 6 A Yes. According to the EPA's ability to pay
 7 guidance document, it's suggested to look into related
 8 entities for payment of a penalty.
 9 Q And did you ask Taotao to provide -- strike
 10 that. Do you know if your office asked Respondents to
 11 provide additional information about their own
 12 financial condition or other companies?
 13 A Yes. I believe we asked several times.
 14 Q Did they do so?
 15 A No.
 16 Q Could you please turn to what's been marked
 17 as Complainant's -- CX-169?
 18 A Yes.
 19 Q Do you recognize this document?
 20 A Yes, I do.
 21 Q And what is this document?
 22 A This is a letter requesting additional
 23 information from Taotao USA related to this case.
 24 It's dated October 13, 2016.
 25 Q And how do you recognize it?

1 A It was part of the documents I compiled in
 2 my investigation.
 3 Q Was it to Taotao USA, or was it to all three
 4 Respondents?
 5 A It was to William Chu, and it talked about
 6 all three Respondents.
 7 Q Is this a true, accurate, and complete copy
 8 of the request that you're familiar with?
 9 A Yes.
 10 Q Is it typical that the agency would make
 11 this sort of request in the course of an investigation
 12 like this?
 13 A Yes.
 14 MR. KULSCHINSKY: Your Honor, I'd like to
 15 offer Complainant's Exhibit 169 for admission.
 16 MR. CHU: Your Honor, we'd object to the
 17 predicate on this document. It was not authored nor
 18 joined in its preparation by this witness.
 19 JUDGE BIRO: It was prepared by counsel, but
 20 we're not going to put the counsel on the stand to
 21 identify it. So this is as good as it gets. Okay.
 22 We're going to admit Exhibit 169.
 23 //
 24 //
 25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No.
 4 169, was received in
 5 evidence.)
 6 BY MR. KULSCHINSKY:
 7 Q And could you please turn to Complainant's
 8 Exhibit 170?
 9 A Yes.
 10 Q And do you recognize this document?
 11 A Yes.
 12 Q What is this document?
 13 A I believe it's Respondents' response to the
 14 exhibit we were just talking about.
 15 Q And how do you recognize it?
 16 A It was provided to me by counsel.
 17 Q Is it part of your investigative file in
 18 this matter?
 19 A Uh-huh.
 20 Q Is it a true, accurate, and complete copy of
 21 the response that you recall receiving?
 22 A Yes.
 23 MR. KULSCHINSKY: Your Honor, I'd like to
 24 move Complainant's Exhibit 170 into evidence.
 25 MR. CHU: We would object to the whole

1 document being offered that -- if there is a portion
 2 that they're wanting to offer, we would like the
 3 opportunity to address that.
 4 JUDGE BIRO: Why don't we want to admit the
 5 whole document?
 6 MR. CHU: They haven't established the
 7 requisites that would entitle them to the information.
 8 So, by offering this, they're still missing a step.
 9 JUDGE BIRO: This is a document you
 10 prepared --
 11 MR. CHU: Yes.
 12 JUDGE BIRO: -- and submitted in connection
 13 with this litigation?
 14 MR. CHU: A response that we gave to them.
 15 JUDGE BIRO: Okay. Over objection, I'm
 16 going to admit 170, Complainant's Exhibit 170.
 17 (The document referred to,
 18 previously identified as
 19 Complainant's Exhibit No.
 20 170, was received in
 21 evidence.)
 22 BY MR. KULSCHINSKY:
 23 Q Ms. Isin, are you familiar with a company
 24 named Daction Trading?
 25 A Yes, I am.

1 Q And when did you first learn about Daction
 2 Trading?
 3 A I believe I first learned about it through
 4 Taotao's original submission of financial documents.
 5 They included tax returns for a company called Daction
 6 Trading, Inc.
 7 Q Could you please turn to what's been marked
 8 as Complainant's Exhibit 179 and please look at that
 9 document, as well as CX-17 -- not -- well, I'm sorry,
 10 197 -- I may have transposed those numbers -- 197
 11 through 203.
 12 A These are the tax returns and the financial
 13 statements submitted for Daction Trading, Inc.
 14 Q And were those submitted by the Respondents
 15 in this matter?
 16 A Yes, they were.
 17 MR. KULSCHINSKY: Your Honor, I'd move for
 18 the admission of CX-197 through 203.
 19 JUDGE BIRO: Ms. Isin, what was the purpose
 20 for which these documents were provided?
 21 THE WITNESS: We had asked for supporting
 22 documentation for their ability to pay claim. We had
 23 asked for tax returns for Respondents as well as
 24 related entities, and this is what they provided.
 25 JUDGE BIRO: Okay.

1 MR. CHU: Your Honor, it's my understanding
 2 this was sent to them for purposes of settlement and
 3 that it was not to be a offer to them on behalf of
 4 Daction because I don't represent Daction. But, for
 5 the settlement purposes, it was given to them. And I
 6 believe they'll confirm that, and as such, this
 7 document is not a document that should be admitted in
 8 this matter here.
 9 JUDGE BIRO: Did you submit them to the EPA
 10 under some nondisclosure agreement or agreement not to
 11 use them in this proceeding?
 12 MR. CHU: Did the letter say settlement --
 13 MS. TARIQ: I believe it was sent a long
 14 time ago, pursuant to -- well, while they were still
 15 in their settlement negotiations. I'm not sure
 16 exactly when, but we did not send this. I believe
 17 Taotao might have sent this.
 18 JUDGE BIRO: Well, you may not represent
 19 Daction Trading specifically, but you must represent a
 20 company that represents them or owns them because you
 21 have their tax returns.
 22 MR. CHU: We got it for settlement purposes,
 23 but it's a different owner from Matao Cao. So it's an
 24 individual. It wasn't submitted pursuant to their
 25 request, is what I'm saying, Your Honor. It was

1 submitted for settlement purposes because they wanted
 2 to see the document, and we were able to obtain it.
 3 So I don't believe under those circumstances that
 4 they're allowed to use that. It was not in response
 5 to the letter that they've referenced earlier.
 6 JUDGE BIRO: Okay.
 7 MR. CHU: And I understand the Court is
 8 saying --
 9 JUDGE BIRO: Ms. Isin just testified that
 10 she requested ability to pay information from the
 11 Respondents.
 12 MR. CHU: Right.
 13 JUDGE BIRO: And in response, the
 14 Respondents sent her these documents.
 15 MR. CHU: And I would like to take her on
 16 voir dire as to this document that she's claiming that
 17 was received pursuant to that request.
 18 JUDGE BIRO: You can cross-examine her on
 19 that.
 20 (Asides.)
 21 JUDGE BIRO: If you can show that they were
 22 submitted under some protective agreement that was
 23 entered into, I'll strike them from the record at that
 24 time.
 25 MR. CHU: So we'll look for that. I believe

1 it was submitted pursuant to our settlement
 2 negotiations. But we're ready to continue.
 3 JUDGE BIRO: Okay. So I'm going to admit
 4 Complainant's Exhibit 197 through 201. Is that
 5 correct, Mr. Kulschinsky?
 6 MR. KULSCHINSKY: Through 203, Your Honor.
 7 JUDGE BIRO: 203. 197 through 203 is
 8 admitted into the record.
 9 (The documents referred to,
 10 previously identified as
 11 Complainant's Exhibit Nos.
 12 197 through 203, were
 13 received in evidence.)
 14 BY MR. KULSCHINSKY:
 15 Q Ms. Isin, could you turn to Complainant's
 16 Exhibit 207?
 17 A Sure.
 18 Q And do you recognize these documents?
 19 A Yes. This is a Texas Secretary of State,
 20 documents downloaded from the Texas Secretary of State
 21 database for Tao Motor, Inc.
 22 Q How are you familiar with these documents?
 23 A I downloaded them.
 24 Q Are they true, accurate, and complete copies
 25 of what you obtained from the Texas Secretary of

1 State?
 2 A Yes.
 3 Q And what's listed as the address for Tao
 4 Motor?
 5 A 2201 Luna Road.
 6 Q And when was Tao Motor formed?
 7 A January 2016.
 8 Q And do these documents identify Mr. Matao
 9 Cao?
 10 A Yes, they do.
 11 Q And how do they identify him?
 12 A As the organizer of 2201 -- of Tao Motor,
 13 Inc.
 14 MR. KULSCHINSKY: Your Honor, I'd move for
 15 the admission of Complainant's Exhibit 207.
 16 MR. CHU: No objections, Your Honor.
 17 JUDGE BIRO: Okay. We'll admit into the
 18 record Complainant's Exhibit 207.
 19 (The document referred to,
 20 previously identified as
 21 Complainant's Exhibit No.
 22 207, was received in
 23 evidence.)
 24 BY MR. KULSCHINSKY:
 25 Q When did you first learn about 2201 Luna

1 Road?
 2 A Do you mean the address or do you mean the
 3 company?
 4 Q Let's do the address first.
 5 A I learned of it as the primary address for
 6 Taotao USA, Inc.
 7 Q And when did you learn of the company?
 8 A I learned of that through a search of Texas
 9 property records website.
 10 Q Could you please turn to what's been marked
 11 as Complainant's Exhibit 205?
 12 A Yes.
 13 Q And do you recognize these documents?
 14 A Yes. These are the Texas Secretary of State
 15 records for 2201 Luna Road, LLC.
 16 Q And how do you recognize them?
 17 A I downloaded them.
 18 Q Are they full, accurate, and complete copies
 19 of what you downloaded?
 20 A Yes, they are.
 21 Q And do they identify Mr. Matao Cao?
 22 A He's identified as the manager of 2201 Luna
 23 Road, LLC.
 24 Q And when was 2201 Luna Road formed?
 25 A In September of 2015, shortly before we

1 filed our complaint.
 2 MR. KULSCHINSKY: Your Honor, I'd like to
 3 move for the admission of Complainant's Exhibit 205.
 4 MR. CHU: We would object, Your Honor. It
 5 is not relevant in this proceeding here as to the
 6 owner of this company.
 7 JUDGE BIRO: What's the connection between
 8 this company other than Mr. Matao Cao seems to have an
 9 interest in it? But other than that, what's the
 10 connection between this company and one of the
 11 Respondents in this case?
 12 MR. KULSCHINSKY: Your Honor, maybe I should
 13 keep going and re-offer this later. I think the
 14 evidence is going to show that Taotao USA is involved
 15 in various financial transactions with this company.
 16 They're all owned by Mr. Cao. We heard earlier about
 17 closely related businesses and transactions between
 18 them and how that might be relevant to the analysis of
 19 a company's finances.
 20 MR. CHU: Your Honor, it would seem to me
 21 that if he wants to go there, he needs to go there
 22 first and not last.
 23 JUDGE BIRO: Well, we're not going to admit
 24 it. We'll get back to it. Okay. Move on.
 25 MR. KULSCHINSKY: Right.

1 BY MR. KULSCHINSKY:
 2 Q Ms. Isin, could you please turn to what's
 3 been marked as Complainant's Exhibit 206?
 4 A Yes.
 5 Q And do you recognize these documents?
 6 A Yes, I do.
 7 Q And what are these documents?
 8 A These are documents for 2201 Luna Road that
 9 were downloaded from Dallas County, Texas, property
 10 records website.
 11 Q And --
 12 A Sorry, with one exception. There's also a
 13 realty flyer in here.
 14 Q And where is the realty flyer from?
 15 A Crow Holdings' website.
 16 Q And did you discover these documents during
 17 your research?
 18 A Yes.
 19 Q And are they full, accurate, and complete
 20 copies of the records that were located during the
 21 research?
 22 A Yes.
 23 Q Could you please turn to Bates 2711?
 24 A Yes.
 25 Q And is this document signed?

1 A Not on page 2711.
 2 Q Could you please turn to Bates 2706?
 3 A Yes.
 4 Q And what's the title of this document?
 5 A Third-Party Lender Agreement.
 6 Q And does the document identify a loan name?
 7 A Taotao USA, Inc.
 8 Q And the line below that, does it identify a
 9 borrower?
 10 A The borrower is 2201 Luna Road, LLC.
 11 Q And is there an operating company listed?
 12 A Yes. Taotao USA, Inc., and Daction Trading,
 13 Inc.
 14 Q And is there a third-party loan amount
 15 listed?
 16 A Yes, 6.47 -- \$6,470,500.
 17 Q And could you please turn to Bates 2719?
 18 A Yes.
 19 Q And what's the title of this document?
 20 A Assignment and Subordination of Leases.
 21 Q And could you please turn to 2722?
 22 A Yes.
 23 Q Is the document signed?
 24 A Yes. It's signed by Matao Cao for 2201 Luna
 25 Road, LLC, by Matao Cao for Taotao USA, Inc., and by

1 Qiong Li for Daction Trading, LLC -- sorry, Inc.
 2 MR. KULSCHINSKY: All right. Your Honor,
 3 I'd like to offer Complainant's Exhibit 206 into
 4 evidence.
 5 MR. CHU: Your Honor, the reference to --
 6 I'm trying to find the page where it identified the
 7 borrower, and the borrower on this is a separate
 8 entity, and that the only relationship this document
 9 shows is that there has been a lease that's been
 10 assigned to some third party. It does not show that
 11 Taotao USA in any way has any type of ownership
 12 interest in this particular entity, 2201 Luna Road,
 13 LLC. So, therefore, we would object to this document
 14 being admitted for any purposes relevant to this
 15 hearing.
 16 (Pause.)
 17 JUDGE BIRO: This identifies Taotao USA and
 18 Daction Trading.
 19 MR. CHU: In the leases that's being
 20 assigned.
 21 JUDGE BIRO: As the third-party lender, as
 22 part of the third-party lender agreement, as the
 23 operator of the borrower, is that correct?
 24 MR. CHU: Are you looking at page 2706, Your
 25 Honor?

1 JUDGE BIRO: Yeah.
 2 MR. CHU: Okay. It shows that the name of
 3 the loan -- and how they name it is up to them, but it
 4 shows clearly the borrower is 2201 Luna Road.
 5 JUDGE BIRO: And the operating company under
 6 that --
 7 MR. CHU: I understand. But if you look at
 8 the deed of trust, the document that's 2676 --
 9 JUDGE BIRO: Well, what do you think
 10 operating company means in relation to 2201 Luna Road,
 11 LLC?
 12 MR. CHU: I don't think it means anything
 13 here, Your Honor, when clearly it's an LLC, and it
 14 says it's from -- the Secretary of State documents
 15 indicate it's a manager-run LLC, so there's no
 16 operating company associated with that. That's
 17 something normally associated with a limited liability
 18 company or limited partnership.
 19 But if we look at 2676, it shows clearly
 20 who -- what entity gave the deed of trust, and that's
 21 only 2201 Luna Road, which would be the owner of the
 22 property. And so the confusing information on here,
 23 the name doesn't tell the owner. The borrower is
 24 specified clearly as 2201 Luna Road. The definitions
 25 of operating company only seems to appear related to

1 the assignment of the leases that's in that other
 2 document in this group of documents.
 3 But, again, the controlling document would
 4 be the registration showing it's managed by managers
 5 and that the deed of trust shows the ownership of the
 6 property, as well as I believe they had a deed in here
 7 that shows that as well.
 8 JUDGE BIRO: Who is Qiong Li?
 9 MR. CHU: Qiong Li is the owner of Daction.
 10 JUDGE BIRO: Daction.
 11 MR. CHU: Right, the 100 percent owner.
 12 That's in that other document that they referred the
 13 Court to earlier on that.
 14 JUDGE BIRO: And how is she related to Mr.
 15 Cao?
 16 MR. CHU: She's not related by blood or
 17 marriage as far as I know.
 18 MR. KULSCHINSKY: Your Honor, if I may?
 19 JUDGE BIRO: Uh-huh.
 20 MR. KULSCHINSKY: I think one important
 21 background fact on this is Taotao USA's address
 22 identified in the amended complaint and admitted to in
 23 the answers is 2201 Luna Road. These documents were
 24 recorded with the county in Dallas. They demonstrate
 25 in their entirety -- they largely speak for

1 themselves, but they, walking through them, illustrate
 2 a series of transactions whereby -- I'm happy to go
 3 through blow by blow, but there was a lending
 4 arrangement to 2201 Luna Road to purchase the
 5 warehouse property at 2201 Luna Road, which is
 6 currently both the address of Taotao USA and Tao
 7 Motor.
 8 What these documents show -- and we don't
 9 admittedly have the full picture. We have what has
 10 been recorded and is available. But what they show is
 11 that 2201 Luna Road, LLC, which is affiliated with Mr.
 12 Cao, obtained a Small Business Administration loan for
 13 the purchase of that property. And on Bates 2706, we
 14 have information about that loan that are identifying
 15 Taotao USA, Inc. and Daction Trading Inc. together as
 16 the operating company behind 2201 Luna Road getting
 17 the loan, and the loans are in the amount of in excess
 18 of \$11 million.
 19 JUDGE BIRO: Okay. Well, you can detail all
 20 that in your post-hearing brief, what it actually
 21 shows, and then I'll decide on the weight we're going
 22 to give these documents. But in the meantime, I'll
 23 admit them. What weight they have will depend on what
 24 the evidence shows.
 25 Okay. Complainant's Exhibit 206 will be

1 admitted into the record.
 2 (The document referred to,
 3 previously identified as
 4 Complainant's Exhibit No.
 5 206, was received in
 6 evidence.)
 7 MR. KULSCHINSKY: And, Your Honor, at this
 8 time, I'd like to renew my offer of Complainant's
 9 Exhibit 205. I'm sorry, 206, which were the
 10 property -- oh, no. Yeah, it's 205, which were the
 11 Secretary of State documents for 2201 Luna Road.
 12 JUDGE BIRO: Okay. Now I see how that gets
 13 to be relevant. Okay.
 14 Do you still object to 205?
 15 MR. CHU: Yes, Your Honor, for the same
 16 reasons. Let me look at this one piece here. Right.
 17 That's where it defines the manager. So there are no
 18 operating companies for this LLC.
 19 JUDGE BIRO: Okay. Well, I'm going to admit
 20 it for whatever weight we decide to give it in the
 21 end.
 22 //
 23 //
 24 //
 25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No.
 4 205, was received in
 5 evidence.)
 6 MR. CHU: Yes, Your Honor.
 7 JUDGE BIRO: Now, Mr. Kulschinsky, I'm
 8 getting tired. Where are we?
 9 MR. KULSCHINSKY: Your Honor, we're very
 10 close to the end. I have one more page, two more
 11 exhibits. I imagine they'll engender a bit of back
 12 and forth, but we can try to be swift.
 13 JUDGE BIRO: Do you want to keep going?
 14 MR. KULSCHINSKY: I think it would make
 15 sense to finish tonight if we can.
 16 JUDGE BIRO: Okay. Are you still okay, Ms.
 17 Isin?
 18 THE WITNESS: I'm fine.
 19 JUDGE BIRO: Would you like a piece of
 20 chocolate?
 21 THE WITNESS: I'm fine, thank you.
 22 MR. CHU: There's some more here.
 23 BY MR. KULSCHINSKY:
 24 Q Could you please turn to Exhibit 208,
 25 Complainant's 208?

1 A Yes.

2 Q And do you recognize these documents?

3 A Yes. These are documents downloaded from

4 the Texas -- Dallas, Texas, property appraisal

5 office -- central appraisal district, sorry.

6 Q How are you familiar with this document?

7 A I downloaded it.

8 Q And is it a true, accurate, and complete

9 copy of the document that you downloaded?

10 A Yes.

11 Q And could you please turn to Bates 2751?

12 A Yes.

13 Q And who is identified as the owner of 2201

14 Luna Road? It may be faded.

15 A Yeah, it's kind of --

16 JUDGE BIRO: On my copy, it shows 2201 Luna

17 Road, LLC.

18 THE WITNESS: Yeah.

19 BY MR. KULSCHINSKY:

20 Q And does the document identify a deed

21 transfer date?

22 A Yes. December 11, 2015.

23 MR. CHU: Yeah. I'm sorry. Where are we?

24 On 2755?

25 THE WITNESS: 2751.

1 JUDGE BIRO: 2751.

2 (Pause.)

3 MR. KULSCHINSKY: Your Honor, I'd offer into

4 evidence CX-208.

5 MR. CHU: Your Honor, to make clear, we're

6 looking at 208 right now, is that correct? And it's

7 records from the appraisal district, and it's being

8 offered to show what's already in the deed that was

9 previously marked, so --

10 JUDGE BIRO: Financial records of a related

11 company.

12 MR. CHU: Right.

13 JUDGE BIRO: Potentially, arguably a related

14 company.

15 MR. CHU: And, again, Your Honor, I don't

16 believe that this is a valid legal document to show

17 ownership. I think you already have that from the

18 deed that they gave you just a second ago and you

19 admitted.

20 JUDGE BIRO: I think potentially it shows

21 value.

22 MR. CHU: There are a multitude of documents

23 here, Your Honor. And it has personal property of

24 Taotao USA in the set of documents. So the documents

25 as a group is objectionable because it's not specific

1 as to a particular entity. The proper way was to

2 separate this and offer it as to each entity. So, if

3 this is being offered for the value of the appraisal

4 district in terms of 2201 Luna Road, I could see, but

5 I see in here a personal property statement for Taotao

6 USA on personal property.

7 MR. KULSCHINSKY: If I may ask a question,

8 Your Honor, of Ms. Isin?

9 JUDGE BIRO: Sure.

10 MR. KULSCHINSKY: Maybe it'll clarify.

11 BY MR. KULSCHINSKY:

12 Q Ms. Isin, what search did you perform that

13 returned this document?

14 A I did a search on 2201 Luna Road and came up

15 with all the property documents associated with that.

16 And you'll see that there are documents here for

17 Taotao USA, 2201 Luna Road, LLC, as well as Tao Motor,

18 Inc.

19 Q And is it your understanding that this

20 represents property for all of the entities affiliated

21 with that address that you searched?

22 A That's my understanding.

23 MR. KULSCHINSKY: Your Honor, I would renew

24 the offer of --

25 MR. CHU: Again, we're standing on our

1 objection that this group of documents as a whole and

2 the fact that she simply downloaded it off a website

3 is not the proper proof of market values, nor is it an

4 accurate determination of personal property, nor is it

5 reflective of property. I mean, if you look at 2749,

6 Your Honor --

7 JUDGE BIRO: Well, I'm looking at 2755,

8 which seems to suggest that for this property, 2201,

9 at least according to Dallas central appraisal

10 district, they have Taotao USA listed as the owner of

11 this property.

12 MR. CHU: And that's why I'm saying the

13 particular accuracy of these documents, in light of

14 what they've shown you, I'd say that myself -- it says

15 the transfer date, Taotao USA, doing business --

16 MR. KULSCHINSKY: Your Honor, may I ask --

17 MR. CHU: That does not comport with what

18 they've offered previously, so to the extent that

19 they're offering this, it's simply to --

20 MR. KULSCHINSKY: May I try again?

21 BY MR. KULSCHINSKY:

22 Q Ms. Isin, the document that we're

23 discussing, does this include both real and personal

24 property?

25 A Yes, it does.

1 Q Is that the real and personal property of
2 all entities that the county has affiliated with the
3 property at 2201 Luna Road?

4 A That's my understanding.

5 JUDGE BIRO: Okay.

6 MR. CHU: And, Your Honor, back to your page
7 that you were looking at, it's showing addresses
8 different from 2201 Luna Road. So, again, for the
9 purposes that it's being offered for, it doesn't seem
10 that the reliability of this document is accurate.

11 And as such, we would -- I guess the Court will say
12 argue the weight of it, but they're just throwing a
13 bunch of documents in here, and I don't think that's
14 really appropriate.

15 JUDGE BIRO: You can certainly argue the
16 weight of them. But I'll admit them, Exhibit 208.

17 MR. CHU: It takes -- it contradicts their
18 own offer of proof.

19 JUDGE BIRO: And it may. It may be worth no
20 weight, or it may undermine the credibility of other
21 things. You know, we'll sort it out when I sit down
22 and look at it all and get your briefs.

23 MR. CHU: And all I'm saying is it appears
24 that it's going to be confusing because, if you have a
25 deed document, and you have this document, it's not a

1 legal document showing that there's a deed.

2 JUDGE BIRO: I can --

3 MR. CHU: Thank you, Your Honor.

4 JUDGE BIRO: I can figure that out. I think
5 I can do it. And if you put it in your brief, I'll
6 especially take notice of it.

7 Okay. Complainant's Exhibit 208 is admitted
8 into the record.

9 (The document referred to,
10 previously identified as
11 Complainant's Exhibit No.
12 208, was received in
13 evidence.)

14 MR. KULSCHINSKY: Thank you, Your Honor.

15 BY MR. KULSCHINSKY:

16 Q Ms. Isin, did you research the assets of Mr.
17 Matao Cao?

18 A Yes, I did.

19 Q Is it typical to look into the property of
20 an owner of a company being investigated?

21 MR. CHU: Your Honor, I'm going to object to
22 this line of questioning. The personal property,
23 particularly when it's owned with someone else, it's
24 not a factor to take into consideration as to when
25 there's a company. This is no different from a

1 president when he -- at different companies, and
2 wealth. You can't put those together if you own a
3 property. We're talking about a residence in Texas.
4 In Texas, it's a homestead property. And so I believe
5 it's totally irrelevant for the purposes of what this
6 Court has to evaluate in terms of determining civil
7 penalties. So I want to object. Basically, this is a
8 major intrusion on the privacy of individual citizens
9 that are not a respondent in this matter here.

10 JUDGE BIRO: Ms. Isin, when the penalty
11 policy talks about looking into the assets of related
12 entities, does the term related entities include -- is
13 it defined to include the individuals who own the
14 corporation? Is there any interpretation of that?

15 THE WITNESS: I would need to check into
16 that. But I can tell you that in the ability to pay
17 guidance, it does suggest that in the case of a sole
18 proprietorship, where, you know, a company is owned by
19 a single individual, it is -- it can be relevant to
20 look at their personal property.

21 MR. CHU: Your Honor, I understand the sole
22 proprietorship, but not a separate legal entity, and
23 particularly when they're attempting to ask the Court
24 to review a homestead residence that belongs to two
25 individuals. I believe that should be outside the

1 scope.

2 JUDGE BIRO: Well, he's the sole manager of
3 the company, isn't he?

4 MR. CHU: No. That's the other -- that's
5 the 2201 Luna Road. And we're talking about Taotao
6 USA, which is an I-N-C, an Inc. And he's the
7 shareholder of that one, and he's 100 percent
8 shareholder of that one. I get that, but I'm just
9 saying you've gotten the information which you'll
10 review as to the 2201 Luna Road. All I'm saying is
11 they're attempting at this point to talk about a
12 personal residence that's homesteaded in the State of
13 Texas. And there's another person's name on that
14 property.

15 JUDGE BIRO: Well, we won't upload it to the
16 web. We'll maintain it as confidential business
17 information. But if he's the sole owner of the
18 Respondent, then I think his assets are part of a
19 related entity and ability to pay.

20 MR. CHU: I'm just making my objections,
21 Your Honor.

22 JUDGE BIRO: Okay. Complainant's Exhibit
23 209 will be admitted into the record.

24 //
25 //

1 (The document referred to,
 2 previously identified as
 3 Complainant's Exhibit No.
 4 209, was received in
 5 evidence.)
 6 MR. KULSCHINSKY: Thank you, Your Honor.
 7 BY MR. KULSCHINSKY:
 8 Q Ms. Isin, do the documents that we've been
 9 reviewing, these property records and information
 10 about related companies, factor into your
 11 consideration of whether you should reduce the
 12 proposed penalty based on its impact on the
 13 Respondents' ability to continue in business?
 14 A Yes.
 15 Q Could you explain how?
 16 A Your question was specific to which
 17 documents? All of these, or any particular ones?
 18 Q All of these documents together.
 19 A All these documents -- well, the most recent
 20 ones we discussed make me wonder, you know, what is
 21 the relationship between 2201 Luna Road, Taotao USA,
 22 Daction Trading, Tao Motor. How is it that they were
 23 able to obtain such a large loan? How did they
 24 qualify for that? You know, why, if they can qualify
 25 for that, why can't they pay a \$1.6 million penalty?

1 Q Ms. Isin, could you please turn to what's
 2 been marked as Complainant's Exhibit 193?
 3 A Yes.
 4 Q And do you recognize this document?
 5 A Yes. This is my old penalty calculation
 6 worksheet.
 7 Q And when you say old, have you prepared a
 8 more recent version of the penalty calculation
 9 worksheet?
 10 A Yes. We submitted one, I think it was
 11 October 9, which revised the economic benefit number.
 12 Q In the penalty calculation worksheet in
 13 front of you, does this accurately reflect the gravity
 14 calculations that you performed in this matter?
 15 A No. The gravity -- oh, I'm sorry. Yes.
 16 It's late. Yes, it does.
 17 MR. CHU: Your Honor, we're going to object
 18 to the testimony in reference to this old document.
 19 They've submitted a CX-213 with the new calculations,
 20 just to save us time. I don't see the relevance of
 21 talking about the old one.
 22 MR. KULSCHINSKY: Your Honor, I'll be happy
 23 to refer to 213 in this place.
 24 JUDGE BIRO: Okay.
 25 //

1 BY MR. KULSCHINSKY:
 2 Q Ms. Isin, could you please turn to
 3 Complainant's Exhibit 213?
 4 A Yes.
 5 Q Do you recognize this document?
 6 A Yes. This is the most current penalty
 7 calculation.
 8 Q And does this accurately reflect the
 9 proposed penalty that you calculated in this matter
 10 today?
 11 A Yes.
 12 Q And what is the total proposed penalty?
 13 MR. CHU: Objection. The document speaks
 14 for itself.
 15 JUDGE BIRO: Overruled. Go ahead.
 16 THE WITNESS: \$1,600,100 -- sorry,
 17 \$601,149.95.
 18 BY MR. KULSCHINSKY:
 19 Q And do you know approximately how much that
 20 is per vehicle in violation in this matter?
 21 A I believe it's a little bit less than \$15 a
 22 vehicle.
 23 MR. KULSCHINSKY: Thank you.
 24 Your Honor, if I may have a minute?
 25 JUDGE BIRO: Uh-huh. Of course.

1 (Pause.)
 2 MR. KULSCHINSKY: Your Honor, I'd like to
 3 move to enter Complainant's Exhibit 213 into the
 4 record.
 5 MR. CHU: We would have no objections for
 6 the fact that it's her compilation and is not offered
 7 for the truth of the matters asserted.
 8 JUDGE BIRO: Complainant's Exhibit 213 is
 9 admitted into the record.
 10 (The document referred to,
 11 previously identified as
 12 Complainant's Exhibit No.
 13 213, was received in
 14 evidence.)
 15 JUDGE BIRO: Why don't -- I was going to say
 16 we can break, and then, if you come up with any
 17 additional questions, I'll let you ask a few more
 18 tomorrow morning. And otherwise, we'll start with Mr.
 19 Chu's cross-examination, assuming he wants to do
 20 cross-examination.
 21 MR. CHU: Yes, Your Honor. I would say a
 22 little bit, but I didn't want to mislead the Court.
 23 JUDGE BIRO: Okay.
 24 MR. KULSCHINSKY: That would be fine, Your
 25 Honor. Thank you.

1 JUDGE BIRO: Okay. Ms. Isin, please don't
 2 discuss your testimony with anybody tonight. You have
 3 to come back tomorrow and start again.
 4 THE WITNESS: Okay.
 5 JUDGE BIRO: What time can you be here, Mr.
 6 Chu?
 7 MR. CHU: I will be here -- we're actually
 8 much closer today. We had to move hotels this
 9 morning. But we can get started at 9, Your Honor.
 10 JUDGE BIRO: We will all be in this
 11 courtroom at 9:00 tomorrow. So, if you are not, I'm
 12 going to start without you.
 13 MR. CHU: Yes, Your Honor. I understand
 14 that.
 15 JUDGE BIRO: If they don't have any
 16 questions, I'm going to release her.
 17 MR. CHU: I understand, Your Honor.
 18 JUDGE BIRO: Okay. We'll start tomorrow
 19 morning bright and early at 9:00.
 20 MR. CHU: Thank you, Your Honor.
 21 JUDGE BIRO: Okay. Have a good evening.
 22 MR. CHU: You too.
 23 MR. KULSCHINSKY: Thank you, Your Honor.
 24 (Whereupon, a brief recess was taken.)
 25 JUDGE BIRO: Mr. Washington.

1 MR. WASHINGTON: Yes.
 2 JUDGE BIRO: We have disclosed here today
 3 that you, in this proceeding, which you served as the
 4 computer technician operator, certain CBI information.
 5 You understand that information is confidential under
 6 law, and you will not disclose it to anyone for any
 7 purposes.?
 8 MR. WASHINGTON: Yes.
 9 JUDGE BIRO: Thank you, Mr. Washington. I
 10 really appreciate it. Thank you for also staying so
 11 late with us. I appreciate that too.
 12 MR. WASHINGTON: You're welcome.
 13 JUDGE BIRO: Okay. Have a really good
 14 evening.
 15 MR. WASHINGTON: Same to you. Thank you.
 16 JUDGE BIRO: Okay.
 17 (Whereupon, at 6:24 p.m., the hearing in the
 18 above-entitled matter adjourned, to resume at 9:00
 19 a.m. the following day, Thursday, October 19, 2017.)
 20 //
 21 //
 22 //
 23 //
 24 //
 25 //

REPORTER'S CERTIFICATE

DOCKET NO.: CAA-HQ-2015-8065
 CASE TITLE: Taotao USA, Inc., Taotao Group Co.,
 LTD and Junyun County Xiangyuan
 Industry Company, LTD
 HEARING DATE: October 18, 2017
 LOCATION: Washington, D.C.

I hereby certify that the proceedings and
 evidence are contained fully and accurately on the
 tapes and notes reported by me at the hearing in the
 above case before the U.S. Environmental Protection
 Agency, Office of Administrative Law Judges.

Date: October 18, 2017

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