

FILE NAME: DuPont (DUP)

DATE: 1987 Apr 21

DOC#: DUP177

DOCUMENT DESCRIPTION: Legal - Trial Testimony of Vincent Gallagher

Vincent Gallagher
Trial Testimony
4/21/87
Millison v. E.I. DuPont

Page Line
1428-1455:3

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAMDEN COUNTY
DOCKET NO. L-27251-79

WILLIAM B. MILLISON AND MARIE
MILLISON, HIS WIFE; VERNON G.
KRONMAIER, AND DOROTHY KRONMAIER,
HIS WIFE; HAROLD SCHWEBEL AND
SUSAN SCHWEBEL, HIS WIFE;
CLARENCE SCHWEBEL AND GERALDINE
SCHWEBEL, HIS WIFE; FRANK
BAPTISTE AND CATHERINE BAPTISTE,
HIS WIFE; AND EDWARD B. AGAR
AND EILEEN AGAR, HIS WIFE,

PLAINTIFFS,

TRANSCRIPT OF
PROCEEDINGS

VS.

E.I. DU PONT DE NEMOURS AND COMPANY,
DEFENDANT.

* * * * *
BEFORE: HONORABLE H. HURLBURT TOMLIN, J.S.C.
* * * * *

CAMDEN COUNTY HALL OF JUSTICE
CAMDEN, NEW JERSEY
TUESDAY, APRIL 21, 1987

A P P E A R A N C E S:

TOMAR, SELIGER, SIMONOFF,
ADOURIAN & O'BRIEN, ESQUIRES
BY: DAVID JACOBY, ESQUIRE
JOSHUA M. SPIELBERG, ESQUIRE
DEBORAH SILVERMAN KATZ, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

CARPENTER, BENNETT & MORRISSEY, ESQUIRES
BY: THOMAS L. MORRISSEY, ESQUIRE
ROSEMARY ALITO, ESQUIRE
SILVIO J. DE CARLI, ESQUIRE
ATTORNEYS FOR E.I. DU PONT

W I T N E S S I N D E X

2 WITNESS DIRECT CROSS REDIR. RECROSS

3	VINCENT A. GALLAGHER	1428	1451	^	^
---	----------------------	------	------	---	---

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 WITNESS THAT YOU WANT TO PUT ON THE STAND, I
2 UNDERSTAND?

3 MR. JACOBY: YES, YOUR HONOR, FINAL
4 PLAINTIFFS' WITNESS WILL BE VINCENT A. GALLAGHER,
5 JUNIOR.

6 THE COURT: WOULD YOU STEP UP AND BE
7 SWORN BY THE CLERK, PLEASE, SIR.
8 (VINCENT A. GALLAGHER, HAVING BEEN DULY SWORN, WAS
9 EXAMINED AND TESTIFIED AS FOLLOWS:)
10 (DIRECT EXAMINATION OF MR. GALLAGHER BY MR.
11 JACOBY:)

12 Q. GOOD AFTERNOON, MR. GALLAGHER.

13 A. GOOD AFTERNOON.

14 Q. COULD YOU GIVE US YOUR ADDRESS, PLEASE?

15 A. FOUR LONGWOOD COURT, STRATFORD, NEW JERSEY.

16 Q. ARE YOU CURRENTLY EMPLOYED, SIR?

17 A. YES, SIR.

18 Q. BY WHOM?

19 A. IT'S THE OCCUPATIONAL SAFETY AND HEALTH
20 CONSULTATION GROUP.

21 Q. AND WHAT IS THAT?

22 A. IT'S AN ORGANIZATION THAT CONSISTS OF ME AND
23 I PROVIDE CONSULTIVE SERVICES IN THE FIELD OF
24 OCCUPATIONAL SAFETY AND HEALTH TO INTERNATIONAL
25 AGENCIES, TO LABOR ORGANIZATIONS AND TO LAWYERS.

GALLAGHER - DIRECT - JACOBY

1 Q. MR. GALLAGHER, WERE YOU AT ONE TIME EMPLOYED
2 BY THE UNITED STATES DEPARTMENT OF LABOR
3 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION?

4 A. YES, SIR.

5 Q. AND WHEN DID YOU BEGIN YOUR -- I WILL REFER
6 TO THEM AS OSHA FROM NOW ON, WHEN DID YOU BEGIN
7 YOUR EMPLOY WITH OSHA?

8 A. IN APRIL OF 1982.

9 Q. 1982?

10 A. EXCUSE ME, 1972.

11 Q. AND DID YOU HAVE A JOB TITLE WHEN YOU BEGAN
12 YOUR EMPLOYMENT THERE?

13 A. YES, SIR, IT WAS SAFETY SPECIALIST.

14 Q. AND WHAT WAS THAT?

15 A. AS A SAFETY SPECIALIST I WOULD ENFORCE THE
16 OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND
17 REGULATIONS BY MAKING INSPECTIONS IN WORKPLACES
18 BASED UPON WORKER COMPLAINTS OR BASED UPON
19 IMMINENT DANGER COMPLAINTS OR GENERAL SCHEDULE
20 INSPECTIONS OR WE WOULD ALSO RESPOND TO OTHER
21 INCIDENTS OF PUBLIC ATTENTION.

22 Q. HOW LONG DID YOU REMAIN WITH OSHA?

23 A. I LEFT OSHA IN OCTOBER OF 1985.

24 Q. DID YOU WORK CONTINUOUSLY FOR OSHA FROM 1972
25 UNTIL OCTOBER OF 1985?

GALLAGHER - DIRECT - JACOBY

1 A. I HAD A TWO-YEAR LEAVE OF ABSENCE FROM OSHA
2 FROM NOVEMBER OF 1980 UNTIL NOVEMBER OF 1982 WHERE
3 I SERVED AS THE REGIONAL ADVISOR IN OCCUPATIONAL
4 SAFETY AND HEALTH FOR THE ORGANIZATION OF AMERICAN
5 STATES WORKING IN LIMA, PERU -- WORKING OUT OF
6 LIMA PERU, MY TERRITORY WAS LATIN AMERICA AND THE
7 CARIBBEAN.

8 Q. UPON YOUR RETURN YOU WENT BACK TO OSHA, IS
9 THAT CORRECT?

10 A. YES, SIR.

11 Q. MR. GALLAGHER, DID YOUR JOB TITLE OF SAFETY
12 SPECIALIST EVER CHANGE AT ANY POINT IN TIME DURING
13 YOUR EMPLOY AT OSHA?

14 A. MY JOB FUNCTION CHANGED ALTHOUGH THE
15 TITLE -- THE TITLE HAS CHANGED ALSO FROM SAFETY
16 SPECIALIST TO OCCUPATIONAL SAFETY AND HEALTH
17 SPECIALIST.

18 Q. DO YOU KNOW WHEN THAT CHANGE TOOK EFFECT?

19 A. APPROXIMATELY 1980.

20 Q. AND YOU SAY YOUR FUNCTIONS CHANGED?

21 A. ACTUALLY THE JOB TITLE CHANGE WAS AFTER THE
22 FUNCTION CHANGE. I WORKED AS A SAFETY SPECIALIST
23 UP UNTIL APPROXIMATELY 1976. IN 1976 I WAS
24 TRAINED IN OCCUPATIONAL HEALTH. AND STARTED TO
25 PERFORM INSPECTIONS IN THE FIELD OF OCCUPATIONAL

GALLAGHER - DIRECT - JACOBY

1 HEALTH IN 1976. MY OFFICIAL GOVERNMENT TITLE WAS
2 SAFETY SPECIALIST UNTIL APPROXIMATELY 19 -- IT WAS
3 WHEN I CAME BACK FROM PERU IN '82 THAT I LEARNED
4 THAT THE TITLE OF THE PEOPLE WHO DID WHAT I DID
5 HAD CHANGED FROM SAFETY SPECIALIST TO OCCUPATIONAL
6 SAFETY AND HEALTH SPECIALIST.

7 Q. DID YOU RECEIVE ANY SPECIALIZED TYPE OF
8 TRAINING WHEN YOU WENT INTO OCCUPATIONAL HEALTH?

9 A. YES, SIR.

10 Q. WOULD YOU RECOUNT FOR US, PLEASE, THE TYPE
11 OF TRAINING THAT YOU RECEIVED?

12 A. WELL, I HAD TAKEN A COURSE AT THE
13 UNIVERSITY -- AT TEMPLE UNIVERSITY IN THE MEDICAL
14 ASPECTS OF OCCUPATIONAL HEALTH AND A COURSE IN
15 INDUSTRIAL HYGIENE AT RUTGERS AND THEN THERE WAS A
16 WEEK-LONG PROGRAM PUT ON BY THE NATIONAL INSTITUTE
17 FOR OCCUPATIONAL SAFETY AND HEALTH IN CONJUNCTION
18 WITH TEMPLE UNIVERSITY AS WELL AS A WEEK PROGRAM
19 PUT ON BY OSHA AT THE OSHA TRAINING INSTITUTE IN
20 DES PLAINES, ILLINOIS.

21 Q. ANYTHING ELSE IN REGARD TO YOUR TRAINING?

22 A. I DID FIELD TRAINING WITH INDUSTRIAL
23 HYGIENISTS FOR SOME AMOUNT OF TIME BEFORE DOING
24 HEALTH EVALUATIONS AND SAMPLING IN THE FIELD OF
25 OCCUPATIONAL HEALTH ON MY OWN.

GALLAGHER - DIRECT - JACOBY

1 Q. ARE THERE ANY DIFFERENCES BETWEEN SAFETY AND
2 OCCUPATIONAL HEALTH?

3 A. BASICALLY THE DIFFERENCE BETWEEN A SAFETY
4 SPECIALIST AND AN INDUSTRIAL HYGIENIST OR
5 OCCUPATIONAL HEALTH SPECIALIST IS THAT THE SAFETY
6 SPECIALIST WOULD BE CONCERNED WITH THOSE TYPES OF
7 ENVIRONMENTS THAT WOULD CAUSE DAMAGE TO THE
8 OUTSIDE OF THE BODY, FROM FALLS, FROM
9 ELECTROCUTIONS, FROM MACHINE GUARDING PROBLEMS,
10 MATERIAL HANDLING PROBLEMS, WHEREAS IN
11 OCCUPATIONAL HEALTH AN OVERSIMPLIFICATION OF THE
12 FIELD IS THOSE TYPES OF INCIDENTS WHICH WOULD
13 CAUSE DAMAGE TO THE INTERNAL PORTION OF THE BODY,
14 SUCH AS LUNG DISEASES, BLOOD DISORDERS, AND
15 DERMATITIS, HEARING LOSS AND OTHER TYPES OF
16 PROBLEMS THAT ARE MORE RELATED TO INTERNAL
17 FUNCTIONS.

18 Q. FROM 1976 UNTIL YOU CEASED YOUR EMPLOYMENT
19 WITH OSHA DID YOU REMAIN IN THIS FIELD OF
20 OCCUPATIONAL HEALTH?

21 A. YES, SIR.

22 Q. MR. GALLAGHER, DID YOU EVER HAVE OCCASION TO
23 VISIT THE REPAUNO PLANT OF THE DU PONT COMPANY?

24 A. YES, SIR.

25 Q. AND COULD YOU TELL US, PLEASE, WHEN THAT

GALLAGHER - DIRECT - JACOBY

1 WAS?

2 A. IN APPROXIMATELY AUGUST OF 1978 I WAS ASKED
3 TO RESPOND TO A WORKER COMPLAINT OF A LUNG
4 DISORDER RELATED TO NITROUS OXIDE EXPOSURES AT THE
5 REPAUND PLANT.

6 Q. AND YOU VISITED THE PLANT PERSONALLY?

7 A. YES, SIR.

8 Q. DID YOU HAVE OCCASION SUBSEQUENT TO THIS
9 INVESTIGATION TO EVER AGAIN VISIT THE REPAUND
10 PLANT?

11 A. YES, SIR. IN CONJUNCTION WITH THE FIRST
12 INSPECTION WE WERE ALERTED TO A --

13 MR. MORRISSEY: I'M GOING TO OBJECT
14 TO THIS, YOUR HONOR. THE ANSWERS ARE GOING WELL
15 BEYOND -- I'M CONCERNED ABOUT HEARSAY TESTIMONY.
16 CALLS FOR A YES OR NO ANSWER.

17 THE COURT: I'LL HEAR COUNSEL AT
18 SIDEBAR IN CHAMBERS. ASK EVERYONE TO STAY IN
19 PLACE AND WE'LL HAVE THE FURTHER REVIEW OF THIS
20 OBJECTION.

21 (SIDEBAR CONFERENCE)

22 THE COURT: ALL RIGHT, WILL YOU STATE
23 YOUR OBJECTION ON THE RECORD, PLEASE.

24 MR. MORRISSEY: YES, JUDGE, IN THE
25 PRIOR QUESTION HE WAS ASKED HAVE YOU EVER VISITED

GALLAGHER - DIRECT - JACOBY

1 THE REPAUNO PLANT ON BUSINESS AND HE SAID YES AND
2 PROCEEDED TO GIVE THE OCCASION OF A NITROUS OXIDE
3 EXPLOSION OR SOMETHING. THIS MAN IS A
4 PROFESSIONAL WITNESS. HE DOESN'T LISTEN TO THE
5 QUESTION, JUST ENOUGH TO GIVE HIMSELF A BASE ON
6 WHICH TO TAKE OFF AND MAKE A SPEECH. THAT'S HIS
7 BUSINESS. I LET THAT ONE GO BY, I DON'T WANT TO
8 BE LOOKING AS THOUGH I'M TRYING TO HIDE
9 SOMETHING.

10 THE COURT: THAT ALREADY EXCEEDED
11 WHAT I UNDERSTOOD YOU WERE GOING TO ELICIT.

12 MR. JACOBY: I CUT HIM OFF. DID YOU
13 EVER HAVE OCCASION, AND HE STARTED TO ANSWER, AND
14 I GOT HIM TO THE NEXT OCCASION. THIS GUY IS
15 HARDLY A PROFESSIONAL WITNESS. HE'S NERVOUS AS
16 HELL UP THERE. HE'S TRYING TO ANSWER THE
17 QUESTIONS.

18 MR. MORRISSEY: ALL HE HAD TO ANSWER
19 WAS YES OR NO. DID HE HAVE OCCASION TO GO BACK TO
20 THE PLANT. ALL HE HAD TO SAY WAS YES. HE STARTS
21 TO TAKE OFF. I DON'T KNOW WHERE HE'S GOING TO
22 WIND UP. HE'S GOING TO SAY THAT THE UNION
23 PRESIDENT TOLD HIM THAT THERE WERE A LOT OF
24 COMPLAINTS ABOUT ASBESTOS AND SO ON. AND I THINK
25 WE'RE MOVING FAST INTO THE HEARSAY AREA.

GALLAGHER - DIRECT - JACOBY

1 MR. JACOBY: I'M GOING TO ASK HIM
2 WHEN YOU WERE THERE, WHAT DID YOU OBSERVE, IF
3 ANYTHING, WHAT DID YOU DO AND I'M FINISHED WITH
4 HIM.

5 THE COURT: WHY DON'T YOU PROTECT IT,
6 MR. JACOBY, BY PREFACING YOUR QUESTION AND SAY I
7 WANT TO ASK YOU IN ADVANCE TO AVOID TELLING US
8 WHAT SOMEONE TOLD YOU BUT WHAT WAS PROVOKED AS A
9 RESULT OF YOUR PRESENCE THERE, SOMETHING LIKE
10 THAT. AND I THINK HE CAN SAY I SAW THE PRESENCE
11 OF A LOT OF THE INSULATION-COVERED PIPES. I GUESS
12 THAT'S WHAT YOU'RE GOING TO HOPE FOR.

13 (BACK IN OPEN COURT)

14 THE COURT: STAY SEATED, PLEASE. ARE
15 WE RECORD TO PROCEED?

16 MR. JACOBY: YES, YOUR HONOR.

17 BY MR. JACOBY:

18 Q. MR. GALLAGHER, AT THIS TIME BEFORE HE GO ANY
19 FURTHER, LET ME ASK YOU, AND I KNOW IT'S
20 DIFFICULT, TO TRY VERY HARD TO AVOID TELLING US
21 WHAT SOMEONE ELSE TOLD YOU. OKAY?

22 NOW, YOU TOLD US THAT YOU HAD VISITED
23 REPAUNO ON ONE OCCASION AND THEN YOU BEGAN TO TELL
24 US THAT YOU WENT BACK AGAIN, IS THAT CORRECT?

25 A. YES, SIR.

GALLAGHER - DIRECT - JACOBY

1 Q. CAN YOU TELL US HOW MANY TIMES YOU VISITED,
2 TOTALLY, THE REPAUNO PLANT?

3 A. PROBABLY FOUR, MAYBE THREE OR FOUR TIMES.

4 Q. AND ON THOSE OCCASIONS ~~WHEN YOU VISITED THE~~
5 ~~REPAUNO PLANT, CAN YOU TELL US -- WHAT CAN YOU~~
6 TELL US IN REGARD TO ANY ~~OBSERVATIONS~~, THAT YOU MAY
7 HAVE MADE?

8 A. AS I WAS WALKING AROUND, THE ~~UNION~~
9 ~~PRESIDENT, DAVE WATSON, POINTED OUT TO ME --~~

10 THE COURT: JUST A MOMENT. THE
11 INSTRUCTION OF THE COURT IS THAT YOU REFRAIN FROM
12 TELLING WHAT CONVERSATIONS TOOK PLACE BETWEEN YOU
13 AND THE UNION PRESIDENT OR ANY OTHER PERSON
14 BECAUSE THAT WOULD BE HEARSAY.

15 THE WITNESS: YES, YOUR HONOR.

16 BY MR. JACOBY:

17 Q. MY QUESTION TO YOU IS --

18 THE COURT: WHAT DID YOU OBSERVE OF
19 YOUR OWN OBSERVATION?

20 THE WITNESS: I ~~OBSERVED THAT THERE~~
21 ~~WERE LITERALLY TONS OF ASBESTOS INSULATION ON~~
22 ~~MILES OF PIPE AS WELL AS OTHER HEAT GENERATING~~
23 ~~EQUIPMENT TO INSULATE AGAINST HEAT LOSS?~~

24 BY MR. JACOBY:

25 Q. ANYTHING ELSE?

GALLAGHER - DIRECT - JACOBY

1 A. WE WERE INVESTIGATING -- ~~WE~~ ~~HAS~~ INVESTIGATING
2 IN ORDER TO DETERMINE WHETHER WORKERS WERE ABLE TO
3 IDENTIFY INSULATION WHICH CONTAINED ASBESTOS AND
4 INSULATION WHICH ~~DID NOT~~ CONTAIN ASBESTOS. SO WE
5 CONDUCTED A SURVEY IN ORDER TO DETERMINE THE
6 ACCURACY OF THEIR OBSERVATIONS.

7 Q. HOW DID YOU DO THAT?

8 A. WORKERS WERE ASKED TO SAY WHETHER A
9 PARTICULAR AREA OF INSULATION CONTAINED ASBESTOS
10 OR WHETHER IT DIDN'T CONTAIN ASBESTOS. WE WERE --
11 SO WE TOOK, IF I REMEMBER CORRECTLY, APPROXIMATELY
12 20 SAMPLES OF INSULATION WHICH WORKERS THOUGHT DID
13 NOT CONTAIN ASBESTOS AND APPROXIMATELY 20 OF WHICH
14 THEY SAID -- THEY THOUGHT CONTAINED ASBESTOS AND
15 WE HAD THEM -- SAMPLES EVALUATED IN A LABORATORY.
16 THE RESULT WAS THAT WE FOUND --

17 MR. MORRISSEY: I'M GOING TO OBJECT
18 TO THIS, YOUR HONOR, THIS IS HEARSAY.

19 MR. JACOBY: I THINK YOUR HONOR HAS
20 INDICATED --

21 MR. MORRISSEY: HE'S TALKING ABOUT
22 WHAT A LABORATORY DID.

23 THE COURT: I'M GOING TO ALLOW IT.

24 SIR.

25 BY MR. JACOBY:

GALLAGHER - DIRECT - JACOBY

1 Q. GO AHEAD, MR. GALLAGHER.

2 A. THE LABORATORY RESULTS INDICATED THAT WHEN
3 WORKERS THOUGHT THAT THE -- EXCUSE ME, THE
4 INSULATION DID NOT CONTAIN ASBESTOS; APPROXIMATELY
5 20 PERCENT OF THE TIME IT DID, INDEED, CONTAIN
6 ASBESTOS. AND WHEN THEY THOUGHT IT DID CONTAIN
7 ASBESTOS, IT WAS OVER 95 PERCENT OF THE TIME THAT
8 THEY WERE ACCURATE THAT IT DID, INDEED, CONTAIN
9 ASBESTOS.

10 Q. DID YOU HAVE OCCASION ON -- WHEN YOU WERE AT
11 THE REPAUNO PLANT, TO TALK TO ANY MANAGEMENT
12 PERSONNEL OR MANAGEMENT REPRESENTATIVES?

13 A. YES, SIR.

14 Q. CAN YOU RECALL WHO YOU DID SPEAK TO?

15 A. I SPOKE WITH DOCTOR REICHWEIN AND I SPOKE
16 WITH APPROXIMATELY THREE OR FOUR OTHER MANAGEMENT
17 PERSONNEL.

18 Q. IN REGARD TO DOCTOR REICHWEIN, CAN YOU
19 RECALL THE NATURE OF THE DISCUSSIONS -- ON HOW
20 MANY OCCASIONS DID YOU TALK TO HIM?

21 A. ON ONE OCCASION.

22 Q. AND CAN YOU RECALL THE NATURE OF THE
23 DISCUSSION THAT YOU HAD WITH DOCTOR REICHWEIN?

24 A. YES, SIR.

25 Q. CAN YOU TELL US ABOUT IT, PLEASE?

GALLAGHER - DIRECT - JACOBY

1 A. THE NATURE OF THE DISCUSSION WAS TO
2 DETERMINE WHETHER DOCTOR REICHWEIN HAD ADVISED ANY
3 WORKERS OF ANY CONDITIONS, ANY LUNG CONDITIONS,
4 WHICH HE THOUGHT WERE RELATED TO ASBESTOS
5 EXPOSURE. AND ALSO TO DETERMINE WHETHER HE
6 THOUGHT THAT WORKERS, THE LAGGERS IN PARTICULAR,
7 THAT IS THE CRAFT THAT SPENT THE GREAT MAJORITY OF
8 THEIR TIME REMOVING INSULATION WHICH CONTAINED
9 ASBESTOS AND REPLACING INSULATION WITH
10 ASBESTOS-CONTAINING INSULATION, WHETHER THE
11 LAGGERS HAD DISEASE AMONG -- IF THERE WAS
12 ASBESTOS-RELATED DISEASE AMONG THE LAGGERS BASED
13 UPON HIS MEDICAL EXAMINATIONS OF THOSE PEOPLE.

14 Q. DID HE RESPOND TO YOU?

15 A. YES, SIR.

16 Q. CAN YOU TELL US WHAT HE SAID?

17 A. HE SAID THAT HE DIDN'T TELL ANY WORKERS THAT
18 THEY WERE -- THAT THEY HAD ANY CONDITION THAT WAS
19 RELATED TO THE JOB. WE WERE DETERMINING WITH
20 REFERENCE TO ONE PARTICULAR -- WE WERE TRYING TO
21 DETERMINE INITIALLY WITH REFERENCE TO ONE
22 PARTICULAR WORKER WHETHER HE HAD A LUNG CONDITION
23 THAT WAS AS A RESULT OF HIS APPROXIMATELY 25 YEARS
24 OF WORKING WITH ASBESTOS. AND WITH REGARD TO THAT
25 PARTICULAR WORKER, AS WELL AS ALL OF THE OTHER

GALLAGHER - DIRECT - JACOBY

1 WORKERS IN THAT PARTICULAR CRAFT, THE LAGGERS OR
2 ASBESTOS WORKERS, ~~THERE WAS NO DISEASE IN DOCTOR~~
3 ~~REICHWEIN'S MIND AND THERE WAS NO REASON TO TELL~~
4 ~~ANYBODY OF -- TO TAKE ANY PRECAUTIONS ABOUT THE~~
5 ~~FUTURE~~

6 Q. WHAT, IF ANYTHING, WAS PROVOKED AS A RESULT
7 OF YOUR TRIPS TO THE REPAUNO PLANT?

8 A. THERE WAS --

9 MR. MORRISSEY: OBJECT TO THAT AS
10 LEADING, YOUR HONOR.

11 MR. JACOBY: I WOULD BE VERY HAPPY TO
12 REPHRASE IT, YOUR HONOR, IF IT'S A PROBLEM.

13 THE COURT: I THINK YOU SHOULD
14 REFRAME THE QUESTION, YES.

15 BY MR. JACOBY:

16 Q. CAN YOU TELL US - DID YOU TAKE ANY ACTION
17 AS A RESULT OF YOUR INSPECTIONS OF THE REPAUNO
18 PLANT?

19 A. YES, SIR.

20 Q. AND CAN YOU TELL US WHAT, IF ANYTHING, YOU
21 DID?

22 A. I STRONGLY RECOMMENDED TO THE AREA
23 DIRECTOR --

24 MR. MORRISSEY: I'M GOING TO OBJECT
25 TO THIS.

GALLAGHER - DIRECT - JACOBY

1 THE COURT: THAT'S OBJECTED TO.
2 WHAT, IF ANYTHING, DID YOU FURTHER DO BY WAY OF
3 INVESTIGATIVE ACTIVITY OR ANALYSIS?

4 THE WITNESS: WELL, I PUT TOGETHER
5 ALL OF THE INFORMATION THAT WE HAD GATHERED AND
6 EVALUATED THE DATA THAT WE HAD DISCOVERED AS A
7 RESULT OF THE INVESTIGATION.

8 BY MR. JACOBY:

9 Q. WHAT INFORMATION HAD YOU GATHERED?

10 A. WE HAD GATHERED --

11 MR. MORRISSEY: I'M GOING TO OBJECT
12 TO THIS, YOUR HONOR.

13 THE COURT: I THINK WHAT WE OUGHT TO
14 KNOW IS HOW DID YOU COLLECT DATA?

15 THE WITNESS: PART OF THE DATA WAS
16 COLLECTED FROM PHYSICAL SAMPLES OF INSULATION,
17 FROM THE LAB RESULTS AS A RESULT OF THE EVALUATION
18 OF THOSE SAMPLES. WE ALSO HAD X-RAYS OF WORKERS
19 EVALUATED. WE ALSO GATHERED WORK HISTORIES OF THE
20 VARIOUS CRAFTS TO DEFINE THE EXTENT OF EXPOSURE.
21 WE HAD TO CONSIDER HOW OFTEN THE VARIOUS CRAFTS
22 ARE EXPOSED TO ASBESTOS DUST AND SO WE HAD WORK --
23 WE HAD WORK HISTORIES AND WE HAD THE RESULTS OF
24 THE X-RAYS AND WE HAD THE WORK PRACTICES. WHEN I
25 SAY WORK HISTORIES AND WORK PRACTICES WERE

GALLAGHER - DIRECT - JACOBY

1 DIFFERENT BECAUSE THE WORK HISTORIES WERE RELATED
2 TO THE AMOUNT OF TIME THAT THEY WERE WORKING WITH
3 ASBESTOS-CONTAINING INSULATION AND THE WORK
4 PRACTICES WERE RELATED TO COMPLIANCE WITH THE
5 OCCUPATIONAL SAFETY AND HEALTH STANDARDS TO SEE
6 WHETHER THE WORK THAT THEY PERFORMED WAS BEING
7 PERFORMED IN A WAY THAT COMPLIED WITH THE LAW.

8 THE COURT: ASK YOUR NEXT QUESTION,
9 PLEASE.

10 BY MR. JACOBY:

11 Q. DID YOU DO ANYTHING ELSE?

12 THE COURT: AFTER YOU COLLECTED THAT
13 DATA, WHAT DID YOU DO WITH IT THEN.

14 THE WITNESS: I PARTICIPATED IN THE
15 WRITING OF A REPORT WHICH MADE RECOMMENDATIONS FOR
16 CITATIONS.

17 THE COURT: ALL RIGHT.

18 BY MR. JACOBY:

19 Q. TO WHOM DID YOU SUBMIT YOUR REPORT?

20 A. TO THE INDUSTRIAL HYGIENE SUPERVISOR,
21 PHYLLIS KEINER.

22 Q. DID YOU HAVE ANY INVOLVEMENT -- ONCE YOU HAD
23 SUBMITTED YOUR REPORT, TO WHAT WAS HER NAME, MISS
24 KEINER?

25 A. MISS KEINER.

GALLAGHER - DIRECT - JACOBY

1 Q. DID YOU HAVE ANY FURTHER INVOLVEMENT, SIR?

2 A. YES, SIR. WE HAD MANY HOURS OF DISCUSSION
3 ABOUT THE NATURE OF THE VIOLATION.

4 MR. MORRISSEY: I'M GOING TO OBJECT
5 TO THAT.

6 MR. JACOBY: WELL, YOUR HONOR, THESE
7 ARE DISCUSSIONS THAT HE PARTICIPATED IN, HE WAS
8 THERE, THERE IS NO HEARSAY PROBLEM HERE. HE CAN
9 CLEARLY TELL US WHAT --

10 THE COURT: WELL, APPARENTLY HE SAID
11 THAT, I PUT THE DATA INTO A REPORT WHICH MADE
12 RECOMMENDATIONS FOR CITATIONS. I HONESTLY THINK
13 THAT, TIME-CONSUMING THOUGH IT MAY BE, WE SHOULD
14 HAVE FURTHER CONSIDERATION OF THIS SUBJECT MATTER
15 IN CHAMBERS.

16 MR. JACOBY: VERY WELL.

17 THE COURT: LET'S HAVE THE REPORTER
18 COME BACK.

19 MEMBER OF THE JURY, YOU'RE EXCUSED FOR A
20 BRIEF RECESS.

21 INSTEAD OF CHAMBERS, STAY HERE.

22 PLEASE DON'T DISCUSS THE CASE EVEN AMONG
23 YOURSELVES.

24 (JURY LEAVES COURTROOM)

25 MR. JACOBY: YOUR HONOR, THIS HAS

GALLAGHER - DIRECT - JACOBY

1 BEEN AS BARE BONES AS IT CAN POSSIBLY GET. HE
2 TOLD US HE MADE RECOMMENDATIONS.

3 THE COURT: BUT NOW HE STATES WE
4 THEREAFTER HAD MANY HOURS OF DISCUSSIONS.

5 MR. JACOBY: YES.

6 THE COURT: AND I THINK THAT WHAT
7 YOU'RE NOW GOING TO DO, IF THIS FOLLOWS THE TREND
8 THAT I THINK IT IS, IS HAVE HIM TELL OF MEETINGS
9 THAT TRANSPIRED AND NEGOTIATIONS THAT TOOK PLACE
10 WITH DU PONT PEOPLE.

11 MR. JACOBY: NO, YOUR HONOR.

12 THE COURT: WELL, I THINK THAT'S WHAT
13 MR. MORRISSEY IS CONCERNED ABOUT.

14 MR. MORRISSEY: JUDGE, I WILL SAY
15 RIGHT NOW, I WAS TEMPTED TO MOVE FOR A MISTRIAL
16 WHEN THAT CAME OUT. I WILL TELL YOU NOW FOR THIS
17 MAN TO SAY TO THIS JURY AT THIS STAGE OF THE CASE
18 THEY DISCUSSED VIOLATIONS, THERE HAS BEEN NO
19 EVIDENCE IN THIS CASE THAT WE HAVE BEEN CONVICTED
20 OF ANY VIOLATIONS. WE HAVE BEEN CITED, WE HAVE
21 BEEN CHARGED, THOSE CASES HAVE BEEN DISPOSED OF
22 AND IT'S BAD ENOUGH TO HAVE TO DEFEND A CASE
23 THAT'S BEEN DISPOSED OF UNDER THE ORDER WE HAVE
24 BUT TO HAVE THEN AN INVESTIGATOR SAY TO THIS JURY
25 WE DISCUSSED THE VIOLATIONS IS TO TAR AND FEATHER

GALLAGHER - DIRECT - JACOBY

1 US WITH VIOLATIONS OF LAW AND ALL HE HAVE BEFORE
2 THIS JURY IS CITATIONS WITH A CARE, VERY GREAT
3 CARE, NEVER TO TELL THEM A CITATION IS NOTHING BUT
4 A SUGGESTION YOU MAY HAVE VIOLATED THE LAW AND
5 YOU'RE GOING TO HAVE TO FACE UP TO SOME PROFFER IN
6 THAT REGARD. HE NOW SAYS HE DISCUSSED OUR
7 VIOLATIONS.

8 THE COURT: ABSOLUTELY, MR. JACOBY,
9 AND I ALMOST SPOKE OUT MYSELF TO SAY ALLEGED
10 VIOLATIONS AND THEN FELT THAT IT MIGHT LEND
11 UNWARRANTED EMPHASIS TO THE UTILIZATION OF THAT
12 TERM. I THINK IT IS VERY OFFENSIVE.

13 MR. JACOBY: I'M GOING TO ASK NO
14 FURTHER QUESTIONS OF THIS WITNESS. I REALLY THINK
15 THIS IS MORE THAN OVERREACTION. IT IS WHAT THE
16 OSHA PEOPLE, WHEN THEY DISCUSSED THE CITATIONS,
17 AND RATHER THAN USE THE WORD CITATION HE USED
18 VIOLATION, HE HAD NOTHING TO DO WITH THE DU PONT
19 COMPANY. ALL HE WAS TALKING ABOUT IS AN IN-HOUSE
20 CONFERENCE ABOUT WHETHER OR NOT THESE VIOLATIONS
21 SHOULD BE TERMED DELIBERATE OR NOT.

22 THE COURT: EVEN AGAIN YOU'RE USING
23 IT. IT SHOULD BE ALLEGED VIOLATION.

24 MR. JACOBY: ALLEGED VIOLATION. I'M
25 SORRY, YOUR HONOR.

GALLAGHER - DIRECT - JACOBY

1 THE COURT: I THINK IT'S TOO THIN ICE
2 FOR YOU TO TAKE THE CHANCE.

3 MR. JACOBY: I'M NOT GOING TO.

4 THE COURT: I INFER HE MUST HAVE BEEN
5 A PARTICIPANT IN SOME OF THE NEGOTIATIONS THAT
6 TRANSPIRED.

7 MR. JACOBY: NO, HE LEFT FOR PERU.
8 HE HAD NOTHING TO DO WITH THE DU PONT COMPANY. HE
9 HAD IN-HOUSE DISCUSSIONS WITH THEM AFTER HE ISSUED
10 HIS REPORT.

11 THE COURT: I WOULDN'T WANT TO TAKE
12 THE CHANCE.

13 MR. JACOBY: I KNOW THAT.

14 THE COURT: IF YOU WANT TO DO IT ON A
15 RULE EIGHT BASIS, WE'LL DO IT RIGHT NOW.

16 MR. JACOBY: YOUR HONOR, I DON'T
17 THINK IT NEEDS THE TIME. I'VE GOTTEN WHAT I
18 WANTED THE MAN TO SAY ABOUT WHAT HE DID AND WHAT
19 HE OBSERVED, I NEVER WANTED ANY MORE FROM HIM.
20 I'M FINISHED WITH HIM.

21 MR. MORRISSEY: JUDGE --

22 MR. JACOBY: WE CAN'T MISUNDERSTAND
23 WHAT HE WAS TALKING ABOUT, THAT'S ALL. LET'S NOT
24 OVERREACT.

25 MR. MORRISSEY: I WON'T COMMENT ON

GALLAGHER - DIRECT - JACOBY

1 YOU GETTING ALL YOU WANTED.

2 I RESPECTFULLY REQUEST AN INSTRUCTION TO
3 THIS JURY WHEN THEY RETURN THAT THE WITNESS HAS
4 SAID THERE WAS DISCUSSIONS OF VIOLATION AND THERE
5 HAS BEEN NO EVIDENCE OF THAT AND THAT IS -- THAT
6 COMMENT IS TO BE DISREGARDED.

7 MR. JACOBY: I DON'T HAVE A PROBLEM
8 WITH THAT.

9 MR. MORRISSEY: HE DESERVE PROTECTION
10 AGAINST A GOVERNMENT OFFICIAL SAYING HE VIOLATED
11 THE LAW WHEN HIS OWN SUPERIORS WON'T SAY IT.

12 THE COURT: YOU'VE GOT IT.

13 MR. JACOBY: NO PROBLEM.

14 THE COURT: I THINK HE OUGHT TO BE
15 BROUGHT BACK ON A RULE EIGHT BASIS AND WE OUGHT TO
16 FIND OUT, JUDGE, WHAT HE WAS GOING TO SAY.

17 MR. JACOBY: ALL RIGHT.

18 (WITNESS RETURNS WITHOUT THE JURY
19 PRESENT)

20 BY MR. JACOBY:

21 Q. MR. GALLAGHER, JUST BEFORE THE JURY WAS
22 EXCUSED YOU HAD STARTED TO SAY AFTER YOU HAD MADE
23 THE RECOMMENDATIONS IN YOUR REPORT YOU WERE THEN
24 INVOLVED IN SOME DISCUSSIONS?

25 A. YES, SIR.

GALLAGHER - DIRECT - JACOBY

1 Q. COULD YOU TELL US, PLEASE, WHAT DISCUSSIONS
2 YOU WERE INVOLVED IN, WITH WHOM YOU WERE INVOLVED?

3 A. THEY WERE DISCUSSIONS WITH THE AREA
4 DIRECTOR, HARRY ALLENDORPH AND PHYLLIS KEINER, THE
5 INDUSTRIAL HYGIENE SUPERVISOR AND MELISSA HESS, AN
6 INDUSTRIAL HYGIENIST WHO WAS WORKING TOGETHER WITH
7 ME ON THE INSPECTION. AND WE WERE HAVING
8 DISCUSSIONS -- WE HAD VARIOUS DISCUSSIONS OVER
9 OSHA POLICY OVER THE CORRECT LEGAL WAY TO ADDRESS
10 THE PROBLEM THAT WE HAD APPARENTLY DISCOVERED.

11 Q. THE PEOPLE THAT YOU ENUMERATED TO US JUST A
12 SECOND AGO, THREE OR FOUR PEOPLE, WERE THEY ALL
13 REPRESENTATIVES OF OSHA?

14 A. YES, SIR.

15 Q. DID YOU HAVE DISCUSSIONS WITH ANYONE OUTSIDE
16 OF OSHA?

17 A. WE WOULD HAVE HAD DISCUSSIONS -- THEY WOULD
18 HAVE HAD DISCUSSIONS, MR. ALLENDORPH PROBABLY.

19 Q. - I MEAN YOU.

20 A. NO, SIR.

21 MR. MORRISSEY: MAY I ASK THE WITNESS
22 A QUESTION?

23 THE COURT: YOU MAY.

24 BY MR. MORRISSEY:

25 Q. DID I HEAR YOU CORRECTLY THAT YOU

GALLAGHER - DIRECT - JACOBY

1 RECOMMENDED A CITATION BE ISSUED?

2 A. I DID, SIR, YES.

3 Q. DO YOU REMEMBER BEING ASKED THIS QUESTION
4 AND GIVING THIS ANSWER ON DEPOSITION? NOW -- PAGE
5 30.

6 NOW, MR. GALLAGHER, YOU'VE TOLD ME YOU
7 DIDN'T PERSONALLY MAKE THE DECISION WHETHER OR NOT
8 TO ISSUE A CITATION. DID YOU MAKE A REPORT
9 RECOMMENDING THAT THAT BE DONE OR NOT DONE AS PART
10 OF YOUR JOB DUTIES?

11 ANSWER: NO, MA'AM.

12 DO YOU REMEMBER BEING ASKED THAT QUESTION
13 AND GIVING THAT ANSWER?

14 A. YES, SIR.

15 Q. AND GOING ON TO EXPLAIN, I WOULD JUST HAVE
16 FILLED OUT FORMS THAT WERE REQUIRED THAT WOULD BE
17 SUBMITTED.

18 DO YOU REMEMBER GIVING THAT SUPPLEMENT TO
19 IT?

20 A. YES, SIR, I MADE VERBAL RECOMMENDATIONS,
21 SIR.

22 Q. YOU WEREN'T ASKED WHETHER IT WAS VERBAL OR
23 ORAL, YOU WERE ASKED IF YOU RECOMMENDED IT AFTER
24 YOU SAID YOU WERE NOT IN A DECISION-MAKING PROCESS
25 AND YOU REPLIED NO, DIDN'T YOU.

GALLAGHER - DIRECT - JACOBY

1 A. NO, SIR, IT SAYS WRITTEN, DID YOU MAKE A
2 WRITTEN REPORT THERE, YOU'RE MISREADING THE
3 QUESTION THERE, SIR.

4 Q. IT DIDN'T SAY A WRITTEN REPORT, DID IT? DID
5 YOU MAKE A REPORT RECOMMENDING IT BE DONE?

6 A. IF YOU REREAD THE QUESTION, I'LL CONFIRM MY
7 ANSWER.

8 Q. QUESTION, NOW, MR. GALLAGHER, YOU'VE TOLD ME
9 YOU DIDN'T PERSONALLY MAKE THE DECISION WHETHER OR
10 NOT TO ISSUE A CITATION. DID YOU MAKE A REPORT
11 RECOMMENDING THAT BE DONE OR NOT DONE AS PART OF
12 YOUR JOB?

13 IT DOESN'T SAY WRITTEN OR ORAL, IT JUST SAYS
14 A REPORT, DOESN'T IT? THAT WAS THE QUESTION.

15 A. I'M SORRY, IF YOU COULD READ IT AGAIN, I
16 DIDN'T REALIZE --

17 Q. NOW, MR. GALLAGHER, YOU'VE TOLD ME YOU
18 DIDN'T PERSONALLY MAKE THE DECISION WHETHER OR NOT
19 TO ISSUE A CITATION. DID YOU MAKE A REPORT
20 RECOMMENDING THAT THAT BE DONE OR NOT DONE AS PART
21 OF YOUR JOB DUTIES? NO, MA'AM. AND THEN IT WENT
22 ON. AND TO WHOM WAS THAT ADDRESSED? I WOULD JUST
23 HAVE FILLED OUT FORMS YOU SAID.

24 A. BUT MY ANSWER TO THE QUESTION DID I MAKE A
25 RECOMMENDATION IN A REPORT WAS CORRECT.

GALLAGHER - DIRECT - JACOBY

1 MR. MORRISSEY: I HAVE NOTHING
2 FURTHER, YOUR HONOR.

3 THE COURT: ALL RIGHT. LET'S HAVE
4 THE JURY, PLEASE.

5 (JURY ENTERS COURTROOM)

6 THE COURT: MEMBERS OF THE JURY,
7 PRIOR TO THE TIME THAT YOU WERE EXCUSED, MR.
8 GALLAGHER, THE WITNESS PRESENTLY ON THE STAND,
9 INCORPORATED INTO AN ANSWER THE USE OF THE TERM
10 VIOLATIONS. IT'S THE RECOLLECTION OF THE COURT
11 THAT THIS WAS AT OR ABOUT THE TIME HE SAID HE PUT
12 THE DATA THAT HE COLLECTED INTO A REPORT AND IT
13 WAS THE IMPULSE OF THE COURT AT THAT TIME TO
14 INTERRUPT AND CORRECT THAT TERM VIOLATIONS AND IT
15 PROPERLY SHOULD READ ALLEGED VIOLATIONS SO THAT
16 YOU ARE INSTRUCTED TO ACCEPT THAT PHRASEOLOGY AND
17 TO PUT OUT OF YOUR MIND THE OTHER TERMINOLOGY.
18 YOU MAY ASK YOUR NEXT QUESTION.

19 MR. JACOBY: I HAVE NO FURTHER
20 QUESTIONS, YOUR HONOR.

21 (CROSS-EXAMINATION OF MR. GALLAGHER BY MR.
22 MORRISSEY:

23 Q. MR. GALLAGHER, JUST A FEW QUESTIONS,
24 PLEASE.

25 IN THE COURSE OF YOUR INVESTIGATION YOU SAID

GALLAGHER - CROSS - MORRISSEY

1 THAT WHAT YOU OBSERVED WERE -- I DON'T KNOW
2 WHETHER YOU CALLED IT MILES BUT A LOT OF PIPES
3 WITH ASBESTOS COVERING OR ASBESTOS INSULATION?

4 A. YES, SIR.

5 Q. AND DO YOU KNOW WITH SPECIFICITY WHICH OF
6 THE PIPES WERE COVERED WITH ASBESTOS MATERIAL AND
7 WHICH PIPES HAD HAD IT REMOVED AND HAD SUBSTITUTE
8 MATERIAL PLACED ON THEM?

9 A. NOT WITH REGARD TO THE ENTIRE PLANT BUT WITH
10 REGARD TO THE SPECIFIC SAMPLES THAT WE TOOK, I
11 WOULD KNOW WHICH RUNS OF PIPE CONTAINED ASBESTOS.

12 Q. HOW MANY SAMPLES DID YOU SUBMIT?

13 A. I THINK THERE WERE APPROXIMATELY 40.

14 Q. 40 OUT OF HOW MANY MILES OF PIPE THAT YOU
15 DESCRIBED?

16 A. DURING THE -- HOW MANY MILES OF PIPE? THERE
17 WOULD HAVE BEEN PROBABLY -- A ROUGH ESTIMATE WOULD
18 BE TEN OR 20 MILES OF PIPE.

19 Q. YOU TOOK 40 PIECES OF INSULATION?

20 A. YES, SIR.

21 Q. IN WHICH YOU FOUND SOME HAD ASBESTOS AND
22 SOME DID NOT?

23 A. YES, SIR.

24 Q. YOU TOOK NO AIR SAMPLING EITHER, DID YOU?

25 A. NO, SIR.

GALLAGHER - CROSS - MORRISSEY

1 Q. AND DURING THE COURSE OF NONE OF YOUR VISITS
2 DID YOU OBSERVE ANY OF THE TEARING OUT AS I
3 BELIEVE IT WAS REFERRED TO, OF OLD INSULATION, YOU
4 DIDN'T SEE ANY OF THAT, DID YOU?

5 A. NO, SIR, NONE WAS TAKING PLACE WHILE WE WERE
6 CONDUCTING OUR INSPECTION.

7 Q. AND YOU WEREN'T THERE WHEN ANY WAS BEING
8 REPLACED, WERE YOU?

9 A. NO, SIR.

10 Q. SO YOU HAVE NO PERSONAL, FIRSTHAND KNOWLEDGE
11 OF WHAT THE ENVIRONMENT WAS WHEN THAT WENT ON, DO
12 YOU, BECAUSE YOU DIDN'T SEE IT GOING ON FIRSTHAND,
13 PERSONAL KNOWLEDGE?

14 A. NO, SIR.

15 Q. THANK YOU.

16 NOW, SIR, YOU TESTIFIED ON DIRECT
17 EXAMINATION, YOU'LL RECALL, IN RESPONSE TO A
18 QUESTION THAT YOU RENDERED A REPORT AND
19 RECOMMENDATIONS. DO YOU REMEMBER GIVING THAT
20 TESTIMONY A MOMENT AGO?

21 A. YES, SIR.

22 Q. DO YOU REMEMBER BEING ASKED THESE QUESTIONS
23 AND GIVING THESE ANSWERS ON DEPOSITION AT PAGE 30
24 IN RESPONSE TO A QUESTION PUT TO YOU BY MY
25 PARTNER, MISS ALITO WHEN SHE DEPOSED YOU NOT TOO

GALLAGHER - CROSS - MORRISSEY

1 LONG AGO IN MARCH OF '87?

2 QUESTION: NOW, MR. GALLAGHER, YOU'VE TOLD
3 ME YOU DIDN'T PERSONALLY MAKE THE DECISION WHETHER
4 OR NOT TO ISSUE A CITATION. DID YOU MAKE A REPORT
5 RECOMMENDING THAT THAT BE DONE OR NOT DONE AS PART
6 OF YOUR JOB DUTIES?

7 ANSWER: NO, MA'AM.

8 DO YOU REMEMBER BEING ASKED THAT QUESTION
9 AND GIVING THAT ANSWER?

10 A. YES, SIR.

11 Q. AND THEN BEING ASKED: AND TO WHOM -- PAGE
12 31. TO WHOM WAS THAT REPORT ADDRESSED?

13 ANSWER: IT WASN'T ADDRESSED TO ANY
14 PARTICULAR PERSON WITHIN OSHA. I WOULD HAVE JUST
15 FILLED OUT FORMS THAT WOULD BE REQUIRED THAT WOULD
16 BE SUBMITTED TO THE INDUSTRIAL HYGIENE
17 SUPERVISOR.

18 DO YOU REMEMBER BEING ASKED THOSE QUESTIONS
19 AND GIVING THOSE ANSWERS?

20 A. YES, SIR.

21 Q. THAT'S WHAT YOU WERE ON THIS JOB, AN
22 INVESTIGATOR, WERE YOU NOT?

23 A. WELL, AS AN OCCUPATIONAL SAFETY AND HEALTH
24 SPECIALIST, INVESTIGATION IS PART OF MY FUNCTION.

25 Q. AND THAT'S WHAT YOU WERE DOING AT THIS TIME,

GALLAGHER - CROSS - MORRISSEY

1 ON THIS JOB?

2 A. I WAS NOT ONLY INVESTIGATING, I WAS
3 EVALUATING, SIR.

4 MR. MORRISSEY: I HAVE NOTHING
5 FURTHER.

6 MR. JACOBY: I HAVE NO QUESTIONS.

7 THE COURT: YOU MAY STEP DOWN, SIR.

8 THE WITNESS: THANK YOU.

9 (WITNESS LEAVES STAND)

10 MR. JACOBY: YOUR HONOR, MR.
11 GALLAGHER WAS THE FINAL PLAINTIFFS' WITNESS TO BE
12 CALLED IN OUR CASE IN CHIEF. THE ONLY REMAINING
13 PARTS OF THE PLAINTIFFS' CASE WOULD BE SOME
14 EVIDENTIARY MATTERS THAT WE HAD GOTTEN INTO
15 EARLIER AND WHICH HOPEFULLY WILL BE CONCLUDED
16 TOMORROW, I THINK, IS THAT -- AM I RIGHT?

17 THE COURT: ALL RIGHT. MEMBERS OF
18 THE JURY, COUNSEL HAVE OUTLINED TO THE COURT THE
19 FACT THAT THERE ARE SOME DOCUMENTS AND OTHER
20 WRITTEN MATERIAL THAT WILL BE OFFERED AS EXHIBITS
21 IN EVIDENCE. AND THOSE WILL BE ITEMS THAT
22 EXPECTABLY WILL GO TO THE JURY ROOM WITH YOU AT
23 THE TIME THAT YOU RETIRE SUBSEQUENT TO THE
24 SUMMATIONS AND CHARGE AND, OF COURSE, AFTER THE
25 DEFENSE CASE HAS BEEN PUT IN, TO PURSUE YOUR

GALLAGHER - CROSS - MORRISSEY

1 DELIBERATIONS.

2 THERE WILL BE SOME INTERCHANGES BETWEEN
3 COUNSEL IN CONNECTION WITH THE ITEMS DESCRIBED AND
4 THEIR ADMISSIBILITY AND THAT'S GOING TO TAKE SOME
5 TIME. SO I'M HEREUPON EXCUSING YOU FOR THE DAY AT
6 THIS TIME AND HOPEFULLY THE ATTORNEYS WILL BE ABLE
7 TO GET THE SUBJECT MATTER RESOLVED SO THAT WE CAN
8 PROCEED WITH OUR TRIAL AT NINE O'CLOCK TOMORROW
9 MORNING.

10 IS THAT TOO MUCH TO HOPE?

11 MR. JACOBY: PERHAPS WE BETTER
12 APPROACH, YOUR HONOR, IF WE MAY.

13 MR. MORRISSEY: I THINK WE BETTER
14 CHAT WITH YOUR HONOR ABOUT THE LOGISTICS OF THIS.

15 (OFF-THE-RECORD DISCUSSION HELD AT
16 SIDEBAR)

17 THE COURT: I GUESS IT CAN FAIRLY BE
18 SAID, MEMBERS OF THE JURY, THAT THE GREATER MINDS
19 HAVE PREVAILED. YOU ARE HEREUPON EXCUSED UNTIL
20 NINE O'CLOCK A.M., NOT WEDNESDAY, BUT THURSDAY,
21 APRIL 23. YOU HAVE A DAY OFF.

22 I ASSURE YOU THAT COUNSEL AND THE COURT WILL
23 NOT HAVE A DAY OFF. BUT THE SUBJECTS THAT WILL BE
24 CONSIDERED IN THE INTERIM ARE MATTERS THAT ARE
25 PROPERLY CONSIDERED OUT OF THE PRESENCE OF THE

GALLAGHER - CROSS - MORRISSEY

1 JURY. SO WE WILL MISS YOUR PRESENCE BUT
2 UNFORTUNATELY, THERE IS JUST NOTHING THAT CAN BE
3 DONE ABOUT IT.

4 MR. JACOBY: IF I CAN APPROACH ONE
5 MORE TIME FOR A MINUTE. ONE MORE LITTLE BIT OF
6 HOUSEKEEPING.

7 (OFF-THE-RECORD DISCUSSION HELD AT
8 SIDEBAR)

9 THE COURT: PLEASE BEAR IN MIND THE
10 COURT'S INSTRUCTIONS THAT YOU NOT DISCUSS THE CASE
11 AND LET NO ONE TALK TO YOU ABOUT THE CASE WHILE WE
12 ARE ABSENT ONE FROM ANOTHER.

13 BEVERLY J. ROBINSON, I'LL SPEAK TO YOU WHILE
14 YOU'RE ON YOUR WAY OUT, IF YOU WOULD, PLEASE.

15 THE CLERK: I THINK YOU MEAN SUSAN
16 WILLIAMS.

17 (JURY LEAVES COURTROOM)

18 THE COURT: I'M SORRY. THE ATTORNEYS
19 HAVE SUGGESTED THAT IN VIEW OF YOUR PERSONAL
20 PROBLEM, YOU BE EXCUSED.

21 MS. WILLIAMS: OKAY. THANK YOU.

22 THE COURT: EVERYONE IS IN AGREEMENT
23 THAT THAT SHOULD BE DONE. WE APPRECIATE YOUR
24 PRESENCE HERE AND YOUR WILLINGNESS TO SERVE AND I
25 THINK THAT IT'S EXHIBITIVE OF A VERY MATURE

GALLAGHER - CROSS - MORRISSEY

1 COMPREHENSION OF YOUR CIVIC DUTIES THAT HAS KEPT
2 YOU HERE.

3 GOOD LUCK TO YOU.

4 MS. WILLIAMS: THANK YOU. THANK YOU
5 VERY MUCH.

6 THE COURT: THANK YOU.

7 ALL RIGHT, I'LL LEAVE YOU FOLKS TO YOUR OWN
8 PERSUITS.

9 THERE BEING NO FURTHER FORMAL BUSINESS TO
10 COME BEFORE THIS COURT, WE HEREUPON STAND
11 ADJOURNED FOR THE DAY.

12 SEE YOU ALL AT NINE O'CLOCK.

13 (COURT ADJOURNED)

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4 I, THERESA O. MASTROIANNI, A NOTARY PUBLIC
5 AND CERTIFIED SHORTHAND REPORTER OF THE STATE OF
6 NEW JERSEY AND A COMMISSIONER OF DEEDS OF THE
7 STATE OF PENNSYLVANIA, DO HEREBY CERTIFY THAT THE
8 FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE
9 PROCEEDINGS AS TAKEN STENOGRAPHICALLY BY AND
10 BEFORE ME AT THE TIME, PLACE AND ON THE DATE
11 HEREINBEFORE SET FORTH.

12 I DO FURTHER CERTIFY THAT I AM NEITHER A
13 RELATIVE NOR EMPLOYEE NOR ATTORNEY NOR COUNSEL OF
14 ANY OF THE PARTIES TO THIS ACTION, AND THAT I AM
15 NEITHER A RELATIVE NOR EMPLOYEE OF SUCH ATTORNEY
16 OR COUNSEL AND THAT I AM NOT FINANCIALLY
17 INTERESTED IN THIS ACTION.
18
19
20
21

22 THERESA O. MASTROIANNI, C.S.R.
23 NOTARY PUBLIC, STATE OF NEW JERSEY
24 MY COMMISSION EXPIRES 4-1-87
25 CERTIFICATE NO. 857
DATE: APRIL 21, 1987