

1 (Whereupon, jury dismissed -- 3:25 p.m.)
 2 THE COURT: Let's move. I am giving you
 3 your court time.

4 MR. SHELLENBERGER: I didn't think this was
 5 all going to happen like this.

6 THE COURT: Are you telling me you don't
 7 have any witnesses available for the rest of the
 8 afternoon?

9 MR. SHELLENBERGER: I am not going to tell
 10 you that.

11 THE COURT: You are going to let somebody
 12 else tell me.

13 MR. MCGOWAN: I will tell you that.

14 THE COURT: Don't you have any depositions
 15 or any videos we can play or something?

16 MR. SHELLENBERGER: Yes, sir. We have
 17 depositions and things that have been designated, and
 18 we are waiting for Mr. Smith to get over here.

19 We didn't think we would get there this
 20 fast, I just didn't.

21 THE COURT: Oh ye of little faith.

1 (Whereupon, discussion off the record.)

2 THE COURT: All right. Bring the jury back
 3 and tell them to bring all of their stuff.

4 MR. MCGOWAN: Your Honor, I have something
 5 to say on the record.

6 May I, please.

7 THE COURT: You sure may.

8 MR. MCGOWAN: Thank you, Your Honor. I
 9 don't say much.

10 Your Honor, during the opening for W.R.
 11 Grace, counsel repeatedly stated to this jury that
 12 myself, Owens-Corning, and Owens-Illinois, sued him.

13 That is totally incorrect. He repeatedly
 14 said this. He also said that he -- Mrs. Vandergucht
 15 had no claim against him when, in fact, Your Honor, if
 16 you look at the complaint, the complaint was filed
 17 back in '89 naming W.R. Grace as the defendant.

18 We have never sued them. That is outright,
 19 how can I say it nicely --

20 THE COURT: Advocacy.

21 MR. MCGOWAN: I believe it is more than

1 MR. SHELLENBERGER: Your timing was much
 2 more astute than ours.

3 MR. MCGOWAN: He is not used to the quick
 4 cross-examination, Judge.

5 MS. TOSTANOSKI: Judge, I will confess. We
 6 weren't told anything else was going to happen today.
 7 So if Mr. Smith arrives, we are not going to have our
 8 stuff here.

9 We were told that all that would happen
 10 today was Mr. Ball. So if Mr. Smith shows up, it is
 11 not going to do me a whole lot of good.

12 My apologies. I thought this was it.

13 MR. SHELLENBERGER: We have been losing, as
 14 you know, rapidly.

15 THE COURT: You have been doing superb jobs
 16 of advocacies on behalf of your respective clients.

17 MR. SHELLENBERGER: I know. I apologize,
 18 because I know how valuable the Court time is.

19 THE COURT: You are checking into your
 20 time.

21 MR. SHELLENBERGER: Yes, sir, I understand.

1 that, Your Honor.

2 THE COURT: You are going to come back and
 3 tell whatever it really is.

4 MR. MCGOWAN: I object for that reason and
 5 ask that the jury be instructed we did not sue them
 6 and, in fact, Mrs. Vandergucht did sue W.R. Grace.
 7 And I believe W.R. Grace has settled with the
 8 plaintiffs.

9 So for counsel to get up there and say there
 10 is no beef whatsoever is an outright, I guess, lie,
 11 for lack of a better term.

12 MR. DOUB: Your Honor, I think it is
 13 important for the jury to know who the parties are and
 14 the alignment of the parties and who is suing who. I
 15 think that is fundamental.

16 THE COURT: Isn't it fundamental as well,
 17 though, that they be told who they were accurately and
 18 what the current status of the parties are, Mr. Doub?
 19 Isn't that fundamental?

20 It wasn't accurate when you said that W.R.
 21 Grace was not sued by Mrs. Vandergucht.