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UNITED STATES OF AMERICA

98 MAY -8 P3:20

NUCLEAR REGULATORY COMMISSION

AD.

**Title: TELEPHONE CONFERENCE CALL
FOR NDT SERVICES, INC.**

Case No.: 030-17711-EA

Work Order No.: ASB-300-265

LOCATION: Caguas, PR

DATE: Friday, May 1, 1998

PAGE 1 - 43

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :

TELEPHONE CONFERENCE CALL FOR : Docket No.: 030-17711-EA

NDT SERVICES, INC. :

- - - - - X

U.S. Nuclear Regulatory Commission
Two White Flint North, Rm. 3B-51
11545 Rockville Pike
Rockville, MD 20852-2738
Friday, May 1, 1998

The above-entitled matter came on for telephone
conference call, pursuant to notice, at 10:00 a.m.

BEFORE:

THE HONORABLE PETER BLOCH,
Administrative Judge

THE HONORABLE CHARLES KELBER,
Administrative Judge

THE HONORABLE JERRY KLINE,
Administration Judge

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1 APPEARANCES:

2 On Behalf of NDT Services, Inc.:

3 THOMAS B. CROSSLAND, Owner

4 CLARENCE DAVID VAUGHN

5 JOHN ROCHELLE, Assistant Radiation Safety Officer

6
7 On behalf of the Nuclear Regulatory Commission:

8 STEVEN R. HOM, Esquire

9 DENNIS DANLEY, Esquire

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C O N T E N T S

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WITNESS

EXAMINATION

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[NONE.]

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E X H I B I T S

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IDENTIFIED

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[NONE.]

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P R O C E E D I N G S

[10:15 a.m.]

JUDGE BLOCH: Good morning, this is Judge Peter Bloch from the Nuclear Regulatory Commission. With me this morning are Judge Jerry Kline, and Judge Charles Kelber. We are holding a telephone conference call in the matter of NDT Services, Inc. which is located in Caguas, is that the right pronunciation?

MR. HOM: Caguas.

JUDGE BLOCH: Caguas, Puerto Rico.

MR. HOM: Yes, that's correct.

JUDGE BLOCH: I'd like the parties to identify themselves for the record. First representing NDT Services?

MR. VAUGHN: David Vaughn.

JUDGE BLOCH: Okay. Good. And who else is next?

MR. ROCHELLE: John Rochelle, Assistant Radiation Safety Officer.

JUDGE BLOCH: And Mr. Crossland is not there at this time?

MR. CROSSLAND: Tom Crossland, owner.

JUDGE BLOCH: Okay. And for the Staff, please identify yourself for the record?

MR. HOM: Yes, Steve Hon, counsel for NRC Staff and not in the room at the moment, but he will be here, Dennis Danley who is the Deputy Assistance General Counsel

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1 for Materials, Antitrust, and Special Proceedings.

2 JUDGE BLOCH: Mr. Hom, to begin the conference
3 call, I would just like you to explain so it's clearly
4 stated on the record whether or not there's an ongoing
5 investigation and what effect, if any, that might have on
6 this proceeding?

7 MR. HOM: An ongoing investigation in terms of the
8 Office of Investigations?

9 JUDGE BLOCH: Yes.

10 MR. HOM: Yes, there is. And I'm not sure exactly
11 what type of discussion you're asking me to provide.

12 JUDGE BLOCH: Well, have we clearly informed the
13 individuals from NDT Services, Inc. about the effective
14 statements made in this case?

15 MR. HOM: About the effect of the statements on
16 this proceeding?

17 JUDGE BLOCH: No, the effect that the statements
18 made in this case could have on possible criminal
19 proceedings against them?

20 MR. HOM: I don't know what OI has disclosed to
21 NDTS.

22 JUDGE BLOCH: Okay.

23 MR. HOM: There is a statement in the order that
24 references an ongoing OI investigation.

25 JUDGE BLOCH: All right. I'd just like to make it

1 clear for the purpose of being entirely fair and open that
2 because there's an ongoing criminal investigation that the
3 individuals from NDT Services, Incorporated should know that
4 anything they say in this proceeding or anything they say in
5 a filing in this proceeding could potentially be used
6 against them if there were some kind of criminal action. At
7 this time that's very uncertain, but the fact that there's
8 an investigation might cause you to use caution; do you
9 understand that?

10 MR. CROSSLAND: I appreciate your intent on
11 fairness, Judge, and I understand what you're saying, but
12 we're willing to proceed to provide our best responses here
13 today. Our position is, we're not in belief of any criminal
14 actions and we hope to clarify that.

15 JUDGE BLOCH: Okay. I appreciate that also.

16 Now, the other thing is that this case could get
17 fairly complicated and I'd like you to know that I know
18 you're here without a lawyer today; is that correct?

19 MR. CROSSLAND: Yes, sir. We believe we might
20 provide information to you today that could greatly affect
21 the direction that the investigation is taking. And based
22 on your observations, or based on your comments today, we
23 would elect to engage an attorney if necessary in the
24 future, but we believe we're prepared and willing to go
25 forward without one at this time.

1 JUDGE BLOCH: Okay. And who is speaking, Mr.
2 Crossland?

3 MR. CROSSLAND: Yes, sir, this is Mr. Crossland.

4 JUDGE BLOCH: Mr. Crossland, have you read the
5 Staff filing, particularly the discussion beginning on page
6 3 of the Staff filing?

7 MR. CROSSLAND: Let me turn to it, because it is
8 pretty thick, and we did only receive it a couple of days
9 ago.

10 JUDGE BLOCH: Okay.

11 MR. CROSSLAND: It is pretty technical language.

12 JUDGE BLOCH: It is, and that is one of the
13 reasons I was thinking it's a fairly complex case.

14 MR. CROSSLAND: OI, okay.

15 JUDGE BLOCH: So what they have done is written a
16 careful section on page 3 called "Legal Standards for
17 Issuing and Challenging an Immediately Effective Order" and
18 they've referred extensively to the regulations of the
19 Commission, they've even quoted them for you to try to help
20 you to understand the situation. But the major points that
21 they are making, as I understand it, and Mr. Hom may correct
22 me if I'm wrong, there are two major points.

23 One is that you have to respond if you want to get
24 this immediately-effective order lifted, you have to respond
25 with a sworn statement. And you haven't done that yet.

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1 And the second thing that you have to do is that
2 you have to meet the standard for lifting the stay and the
3 immediate effective order, and that standard is higher than
4 having to prove that you're innocent. You have to prove
5 what their summary of it is, is that there's not probable
6 cause in this case, that there really is a pretty bad
7 mistake being made, and that you can show convincingly that
8 this order shouldn't stay in effect.

9 Mr. Hom, do you want to clarify that?

10 MR. HOM: No, that's correct, Your Honor. And I
11 would also like to note, just for the record, our footnote
12 1, although we are not specifically making an argument
13 concerning this, it is something that I'm a little concerned
14 with in terms of any future filings. Everything that we're
15 aware of, this filing or the answer from NDTs, is not filed,
16 not only not under oath or affirmation, but was not filed
17 properly and in a timely manner.

18 MR. CROSSLAND: Can I make a comment, Your Honor?

19 MR. HOM: There's been also no showing of good
20 cause for any delay.

21 JUDGE BLOCH: So there's a requirement in rules
22 that the filing should have been made by when, Mr. Hom?

23 MR. HOM: April 16th.

24 JUDGE BLOCH: Okay. And, yes, Mr. Crossland, do
25 you want to respond?

1 MR. CROSSLAND: Yes, when we had the conference
2 call before, when we were notified of the suspension, and I
3 don't know if there's a record, there's possible a record or
4 a recording that was made of that conversation that might be
5 able to be checked, but while the requirements are -- while
6 we might be required somewhere to file a response under
7 certain guidelines the statements that were made during the
8 suspension were that we were to write a letter and, you
9 know, it was in general terms. I was not aware that there
10 were certain guidelines and requirements that had to be
11 followed in our response. We just said that we would
12 respond to the allegations made in the notice of suspension.

13 JUDGE BLOCH: Okay. But there are two problems
14 with the response.

15 MR. CROSSLAND: The delay, with regards to the
16 delay is that they didn't tell us. We didn't receive any
17 sworn statements that were made against us that were -- that
18 were mentioned that they were sworn statements or
19 allegations that were made. We didn't receive copies of
20 those or the persons that made those statements.

21 JUDGE BLOCH: Okay. Now they are attached to the
22 Staff filing, right? You've seen them now?

23 MR. CROSSLAND: Yes, sir.

24 MR. HOM: Your Honor, if I can just respond for
25 one moment.

1 JUDGE BLOCH: Yes.

2 MR. HOM: Paragraph Section 6 of the order is
3 fairly clear concerning the time within which the Respondent
4 must file its answer.

5 JUDGE BLOCH: Okay. In any event I don't want to
6 argue the merits either of lateness or of the order itself
7 on the phone. What I want to do is to just lay out the fact
8 that if you have cause for late filing, that should be a
9 part of what you send here in writing.

10 MR. CROSSLAND: Our hope was that we had the --

11 JUDGE BLOCH: No, no, no, I don't want to hear it
12 now.

13 MR. CROSSLAND: Okay. Yes, sir.

14 JUDGE BLOCH: And then you have to send sworn
15 statements and they have to respond in detail showing why
16 there's been a mistake made, why the grounds for this order
17 are invalid. Not that you have evidence contrary to what
18 was said, but that your evidence is so powerful that I
19 should dissolve the order.

20 And you want to read very carefully the legal
21 standard because that's what you have to address. If you
22 can't do it yourself, you may need a lawyer.

23 MR. CROSSLAND: Well, if we fail to satisfy you
24 today we'll get one.

25 JUDGE BLOCH: Well, I'm not planning to hold a

1 hearing today because this is not the way to get a sworn
2 ordered statement on our record. The purpose of today's
3 hearing was just to let you know about the status of this
4 case and what has to be done to satisfy the legal
5 requirements.

6 I will, right now, on the record, refuse the
7 motion that you filed because it doesn't meet the standards
8 that are promulgated by the Commission. You have to file a
9 formal sworn statement that responds in detail and meets the
10 standards that the Staff lays out.

11 MR. CROSSLAND: Yes, sir.

12 JUDGE BLOCH: And I will try to act quickly, after
13 I get that, I promise you that. And if you give good cause
14 for late filing, I will carefully consider that. I promise
15 you that as well.

16 MR. CROSSLAND: We're to respond in writing and
17 not give our comments --

18 JUDGE BLOCH: Right. Because it has to be sworn
19 statements in writing that you've thought through and
20 ordered -- and you may have to have different kinds of
21 proof. There might be documents you'll attach to it,
22 whatever it is that's necessary to show that this is a big
23 mistake.

24 And then if you want, we also can schedule a
25 hearing soon. I mean, if we have a hearing on the case,

1 your motion to dissolve the order might be less important.
2 If you are ready to go to a hearing where you're going to
3 have to give sworn testimony, we can set that up even now.

4 MR. HOM: Your Honor, I would like to state that
5 we would intend to exercise our discovery rights. This is
6 the Staff speaking.

7 JUDGE BLOCH: Yes.

8 MR. HOM: In order to develop -- certainly we had
9 adequate evidence to base the immediately-effectiveness
10 order on. However, there are certainly other items that we
11 need to fully discover.

12 JUDGE BLOCH: Okay. Could you tell us what kind
13 of discovery? First of all, explain to the Respondents what
14 you mean by discovery, and what kind of discovery you need,
15 and how much time you think you need to do it?

16 MR. HOM: The discovery that at least
17 preliminarily that Staff is considering are: Number one,
18 requests for admissions to clarify the answer that we got.
19 There are some things in the answer that to us are not
20 clear.

21 JUDGE BLOCH: Okay. Could you explain what a
22 request for admission is because these people are not
23 lawyers?

24 MR. HOM: A request for admission is basically we
25 would serve on NDTs a list of facts that we would request

1 the recipient to respond as to the truthfulness of the facts
2 as listed.

3 JUDGE BLOCH: So, in other words, they would say,
4 one-by-one each of the facts true, or false, or perhaps
5 don't know; right?

6 MR. HOM: Right. And any denial of the
7 truthfulness of the facts using Rule 36, I believe, of the
8 Federal Rules, as guidance would not -- the burden would not
9 necessarily be just to deny, but to deny with a reasonable
10 basis as to why you are denying the facts.

11 JUDGE BLOCH: All right. So that's one form of
12 discovery. There are other forms you might need after that.

13 MR. HOM: Yes, a limited number of
14 interrogatories, a very limited number, basically to explore
15 what appear to be some affirmative defenses raised by NDTs.

16 JUDGE BLOCH: Okay. And these interrogatories are
17 questions that would have to be responded to by the
18 Respondent?

19 MR. HOM: Under affirmation.

20 JUDGE BLOCH: Under affirmation, under oath.

21 MR. HOM: We also would be seeking document
22 production because the issue of the records of the
23 Respondent is at issue in the order.

24 JUDGE BLOCH: So you would listing certain
25 documents that they would have to either send to you or copy

1 accurately for you; is that right?

2 MR. HOM: That's correct. Also, more difficult to
3 pin down -- the preceding items that we listed could
4 probably be done relatively quickly, however, the more
5 difficult phase of discovery would be either taking of
6 depositions. Each deposition not necessarily being an
7 extensive deposition, but certainly taking sworn depositions
8 of a number of witnesses.

9 JUDGE BLOCH: So that might be two to four
10 witnesses, five witnesses?

11 MR. HOM: I'm talking, more, Your Honor, like up
12 to 15 or so.

13 JUDGE BLOCH: Up to 15 witnesses?

14 MR. HOM: There are incidents charged in the order
15 where we do have a witness already that has testified as to
16 an incident, but it involved more than that one person. It
17 involved, in some cases, up to four other individuals.

18 MR. CROSSLAND: But you took the testimony from
19 only one of the four, right?

20 MR. HOM: Im sorry?

21 JUDGE BLOCH: There was a question from whom?

22 From Mr. --

23 MR. CROSSLAND: Crossland, Your Honor, here.

24 JUDGE BLOCH: -- Crossland.

25 MR. CROSSLAND: The testimony that you're

1 referring, you all got an allegation or a statement by one
2 of the people not all, like you mentioned, four.

3 MR. HOM: Any particular incident. Yes, there's
4 more than one statement that we do have.

5 JUDGE BLOCH: Now, Mr. Crossland, these are things
6 that the staff wants to do to obtain additional information.
7 There are legal grounds in which some of these things might
8 be able to be resisted, or there might be motions filed.
9 But they're outlining the way they want to develop their
10 case.

11 And about how much time, Mr. Hom, would you need
12 for this discovery?

13 MR. HOM: Well, Your Honor, unfortunately it's
14 very difficult to estimate in terms of the depositions
15 because a number of these individuals, as we understand it,
16 are no longer in Puerto Rico, and are scattered throughout
17 the United States.

18 JUDGE BLOCH: Well, I still would need an
19 estimate, because like it or not, we're intended to manage
20 cases. So I need to know about how long this would take and
21 you would be able to make motions later that would extend
22 the time.

23 MR. HOM: I would proffer four months.

24 JUDGE BLOCH: Four months. Now, I'd like Mr.
25 Crossland to know that they're asking for discovery. Under

1 the rules you also could ask them for discovery and that's
2 one of the reasons it gets complicated here. You can be
3 asking them for admissions and you could be asking them
4 interrogatories, questions that they've got to answer under
5 oath, and you could be asking for documents and you also
6 could depose witnesses that were involved in this case. So
7 that's why this gets complex.

8 MR. HOM: In fact, Your Honor, if I may interject.
9 This is the Staff again. There may be circumstances under
10 which it will be very difficult to bring some of these
11 witnesses to a hearing site because of their current
12 location elsewhere throughout the country. So I would
13 anticipate that on more than one occasion we would be moving
14 to have the depositions introduced, obviously with an
15 opportunity for NDTs to cross-examine, at the time of the
16 deposition.

17 JUDGE BLOCH: Okay. In those cases, if feasible,
18 I would prefer that they be done on video tape so that I can
19 see what happened.

20 MR. HOM: Well, if we can arrange to do that, I'll
21 make a note of that.

22 JUDGE BLOCH: Okay.

23 MR. HOM: I think some of these witnesses are
24 located in small areas in the United States. I'm not sure
25 what type of equipment or availability there is in --

1 JUDGE BLOCH: Well, my knowledge of video cameras
2 is that they can be carried easily.

3 MR. HOM: Okay. As long as the court reporting
4 service has those available, I guess we can probably make
5 arrangements with them.

6 JUDGE BLOCH: Mr. Crossland, have you any comments
7 that you would like to make about what you're hearing now,
8 either about the immediate effective order, or the
9 discovery, or trial?

10 MR. CROSSLAND: Yes, sir. I've got some
11 information that I would like to impart to your group there
12 just in order for you to take into consideration that --

13 JUDGE BLOCH: All right. Now, you understand that
14 we need evidence. We can't just take arguments. That's one
15 of the --

16 MR. CROSSLAND: Oh, no, no, I understand that.

17 JUDGE BLOCH: I'm willing to hear whatever you
18 have to say.

19 MR. CROSSLAND: I don't expect to win or lose the
20 case today, it's just that it seems to me that the
21 investigation took part only with a limited number of people
22 and the people in good standing with my company are the
23 existing RSO, myself, or other people that left the company
24 in good standing, it seems -- and I could be incorrect --
25 that they were not interviewed and that the only allegations

1 that are made are from employees that have been in ongoing
2 lawsuits to our company for over a year or so for
3 discrimination and other items they have not been able to
4 win.

5 And they had made complaints in writing evidence
6 to the Department of the Labor and in all of their other
7 complaints, and writings and lawsuits, they have never
8 mentioned anything or any items that are stated in these
9 recent allegations.

10 JUDGE BLOCH: Okay.

11 MR. CROSSLAND: Some of the people you took the
12 statements from were terminated for -- or not terminated,
13 became underemployed for testing positive for cocaine, for
14 example, or --

15 JUDGE BLOCH: So you think -- I'm hearing that you
16 think a lot of the evidence is false.

17 MR. CROSSLAND: In all of these statements, all
18 four people, we have tangible evidence, they have been suing
19 us for a year and a half. I continued their employment.
20 Both the level ones at both the incidents where the ribbons
21 were left down, were notified and aware the NRC was coming
22 that same day without telling the level twos. Both of the
23 level ones have been suing the company for what they
24 considered discrimination and their main complaint is that
25 they wanted to be level twos and they could have passed the

1 test.

2 Instead of terminating them as president, I met
3 with them personally many times. I believe they all had
4 four tests. I urged David Vaughn and the other people in
5 the company to provide books, an open book test at home,
6 take home additional training, tutoring, at my conference
7 table here ongoing training where they were able to test and
8 failed their test four times. But their position is they
9 were being discriminated against because they weren't being
10 allowed to be a level two.

11 I had their tests graded -- besides the RSO, I had
12 their test results checked by two Puerto Rican women in
13 order to try to ensure --

14 JUDGE BLOCH: Okay. I hear that part of the case.
15 You're saying that a lot of those witnesses --

16 MR. CROSSLAND: All.

17 JUDGE BLOCH: -- were not telling the truth.

18 Now, have you any comments on --

19 MR. CROSSLAND: -- and that Jesse -- I mean Eddie
20 Reese he told the inspector on I believe the Berumudas that
21 he didn't know if he was trained or he was out there working
22 without training. He had been a level two for many years.

23 JUDGE BLOCH: Okay.

24 MR. CROSSLAND: When I bought the company he was
25 demoted because he couldn't pass the qualifications. He had

1 been trained, and trained, and tested, and failed the test
2 to be a level two. But he was definitely qualified to do
3 what he was doing as a level one.

4 JUDGE BLOCH: All right.

5 MR. CROSSLAND: All of the allegations and
6 comments and communications that you all were making were
7 solely with people that were in ongoing litigation against
8 the company for items. And none of the items that you have
9 in the allegations were listed as part of their complaints
10 or their prior complaints, and that they searched and came
11 up with these allegations after they were contacted by the
12 NRC in hopes that that would extend or increase their
13 opportunities for litigation or to receive money.

14 And then one other comment that I had made over
15 the telephone to the investigating officer, and I think it's
16 extremely important to know is that before we received our
17 orders of termination, it must have been during or after he
18 was contacted, or during your initial investigations, Marcus
19 Alvarado contacted me by telephone in which I guess there's
20 no other word, but to extort money to say that he wanted to
21 know if I was willing to make a payment to him on behalf of
22 him and Jose Cruz.

23 JUDGE BLOCH: Okay. Let's stop. Mr. Crossland,
24 what you are outlining are facts that you're going to want
25 to set forth under oath including statements from as many

1 people as can corroborate what you're saying.

2 MR. CROSSLAND: Yes, with the copies of their
3 complaints to the Department of Labor that don't list any of
4 these allegations.

5 JUDGE BLOCH: Okay. All right. So anything that
6 you have that demonstrates the truth of what you're now
7 saying can be compiled and filed so that you make the case
8 that a mistake is being made.

9 But in the meantime, you're also going to want to
10 be very clear about what you do admit and what you don't
11 admit. Because some of the stuff from Mr. Bermuda seems to
12 be eyewitness evidence that he saw him self.

13 MR. CROSSLAND: Yes, he told the guy that had been
14 litigating that he was coming at a certain hour, or they had
15 planned and scheduled it with Mr. Martinez, the head of
16 inspection at the electric company, which I'll furnish
17 business cards to show.

18 JUDGE BLOCH: Okay.

19 MR. CROSSLAND: That showed the nuclear --

20 JUDGE BLOCH: So this was all a setup and a frame
21 is what you're saying; right?

22 MR. CROSSLAND: He's got his own private
23 inspection company and the tangible evidence in the business
24 cards and my position, he wants to slay anybody else. He
25 scheduled this visit to the facilities, the level ones that

1 were biased to the company were aware it was coming, they
2 left the back ribbon down on a gate that they had been
3 putting that ribbon up for years. We admit, it's the level
4 two's responsibilities to be sure the level ones do --

5 JUDGE BLOCH: Okay. Mr. Crossland, again, I
6 understand the outline of your case now, and that's really
7 what I wanted to hear from you so the I would have your
8 point of view.

9 MR. CROSSLAND: Yes, well, they were notified that
10 morning, we weren't notified. All the statements were taken
11 from the people that were biased to our company and so I
12 believe Mr. Bermudas and the NRC was used as a vehicle for
13 the assassination of my company and elimination so that --

14 JUDGE BLOCH: Okay. Now, Mr. Crossland, you're
15 going to state this very fully with evidence.

16 MR. CROSSLAND: Yes, sir.

17 JUDGE BLOCH: And I'd suggest that after you've
18 filed that, very carefully with evidence, that you also talk
19 to Mr. Hom at that time to see whether anything you've
20 written and said has changed his mind. Because that
21 sometimes happens. You can maybe have negotiations with
22 him.

23 MR. CROSSLAND: I would have to wait four months
24 to get our license back, if some of this can be bared out,
25 that's what I'm hoping.

1 JUDGE BLOCH: If you can file all of this in sworn
2 statements so that you demonstrate there's a mistake being
3 made, there's a possibility you'll persuade me and the
4 Board, and there's also a possibility that you'll actually
5 persuade the Staff of the Commission that it may be making a
6 mistake. But you're going to have to be very careful, and
7 you're going to have to respond in detail.

8 MR. CROSSLAND: I appreciate that, sir.

9 MR. HOM: And, Your Honor, I would like to
10 emphasize that this -- the type of submittal that is
11 required under the Rules is under oath or affirmation, or by
12 affidavit which are subject to penalties of perjury and
13 criminal prosecution for false statements.

14 MR. CROSSLAND: I think that that's a real
15 important thing because I would like to see the enforcement
16 of that on the people that made these false allegations
17 against me when their evidence is provide in a
18 non-disputable fashion.

19 JUDGE BLOCH: And because you're going to swear to
20 these statements, what you say will be more credible because
21 you are going to be subject to penalties for perjury also if
22 they're false, and that makes your statement more credible,
23 but it also makes it important that you be very careful not
24 to stretch the truth at any point.

25 MR. CROSSLAND: Yes, sir, I'll just say what I

1 have evidence attached. Like I plan to take copies of all
2 their complaints to the Department of Labor, their previous
3 lawsuits and have those attached when I make the statement
4 that all of them are biased and involved in ongoing
5 litigation and that the nature of the litigation didn't
6 apply to any of these allegations.

7 JUDGE BLOCH: Okay. Now, one more thing you
8 should know is that when you make a sworn statement the
9 things that you have seen and that you know because you've
10 seen them, specific details are very important because you
11 are an eyewitness to those, and those things become
12 evidence.

13 Your general conclusions are going to be less
14 important to us than the specific things that have happened,
15 the events you've been at, the things that other people have
16 said to you, the documents that you have, that will be more
17 important than your general conclusions about what kind of
18 people they are, for example, you know?

19 MR. CROSSLAND: This is just meant to be a general
20 statement at this time.

21 JUDGE BLOCH: No, I understand. I'm not saying
22 you're doing anything wrong with a general statement, but I
23 am trying to help you, because I know you're not a lawyer,
24 with knowing that you're going to need very specific facts,
25 things you've seen and heard, and when you saw them and

1 heard them, and exactly what's happened.

2 MR. CROSSLAND: Yeah, my RSO and people wanted me
3 to terminate these level ones, and in an interest of trying
4 to be legal minded I in turn tried to satisfy them. They
5 thought they weren't getting a fair chance, and I didn't
6 terminate them and --

7 JUDGE BLOCH: All right. If your RSO wants to do
8 that --

9 MR. CROSSLAND: -- giving them opportunities and
10 shaking their hand and meeting them and they never made any
11 allegations to me in any of my meetings or handshakes, or
12 did they ever make any of these comments or allegations to
13 my RSO or my assistant RSO.

14 JUDGE BLOCH: Okay. Now, your RSO and your
15 assistant RSO can also file eyewitness testimony to things
16 they've seen, to things they've heard, the dates and times.
17 I would suggest being pretty thorough with this document
18 because you're trying to persuade the staff that a real
19 mistake has been made and to persuade us. So you want to be
20 thorough. The faster you can file it, the better, but you
21 also want to be very careful with it so you get all your
22 facts straight.

23 MR. CROSSLAND: Yes, sir. But the one point that
24 is a fact and they can be aware of right now is all four of
25 the people that made those allegations have been extremely

1 biased in an ongoing litigation against the company and that
2 the chief inspector for the power company in direct conflict
3 of interest has his own private inspection company and with
4 the elimination of NDT, the only licensed company on the
5 island of Laso Cruz has an alignment or a compromise, or a
6 commitment with him and --

7 JUDGE BLOCH: Okay. The documentation of those
8 facts could help to show a motive for why these facts that
9 have been given to the NRC are false.

10 MR. CROSSLAND: And we admit that the ribbon on
11 the back gate where it was left off on the two incidences
12 and we know that technically the level two is responsible.
13 However, the fact that the level one was called and notified
14 before the NRC's visit, you know, I think put us at a
15 disadvantage.

16 JUDGE BLOCH: Okay. You've got to just show
17 exactly what it is that you admit to doing.

18 MR. CROSSLAND: -- cut that ribbon or went and
19 took that ribbon off when my guy wasn't looking as part of
20 the arrangement.

21 JUDGE BLOCH: All right. So what I'm hearing is
22 there are some of the allegations that are true, but you
23 believe that they are not as serious as the NRC has. So be
24 very clear on which ones are true.

25 MR. CROSSLAND: So the ribbons weren't at a

1 particular gate for those reasons, but all the --

2 JUDGE BLOCH: No, no, not now, when you make the
3 filing -- the sworn filing, that's when you have to be clear
4 as to which things you're admitting and which not. Now
5 nothing you say now is going to matter because this is not
6 the sworn statement that's carefully prepared that we're
7 asking for.

8 MR. CROSSLAND: I'm just trying to let you all
9 know the insights since you heard the biased side story very
10 clearly and none of us have really got an opportunity to
11 give at least a general response kind of until now.

12 JUDGE BLOCH: Okay. But I hear from you that you
13 think it's entirely biased and that there's a lot of false
14 things that have been said to us.

15 MR. CROSSLAND: Oh, absolutely.

16 JUDGE BLOCH: We'll be anxiously waiting for your
17 detailed sworn statement.

18 MR. CROSSLAND: And those people, those level ones
19 all had their screenings, and had training, not just the
20 original training they had it ongoing and tested four
21 separate times to be a level two. And I'll go ahead and
22 we'll proceed and David Vaughn here --

23 JUDGE BLOCH: Mr. Hom, do you have anything that
24 you would like to add?

25 MR. HOM: Yes, Your Honor, I would like to put the

1 Board on notice that obviously depending upon what further
2 information comes to us as well as is provided by the
3 Licensee, there also is, as the Board's aware, and I'm
4 telling the Respondent this procedure that we can move for
5 summary disposition on this case and -- or partial summary
6 disposition. And we would like to narrow the case as much
7 as possible based on what facts are admitted or not in
8 dispute versus what remaining facts are in dispute.

9 From what I've heard of NDTs, they sound like they
10 are going to be providing information that they believe will
11 dispute some of the allegations or some of the charges.
12 However, there are other charges that I have heard nothing
13 about that appears will be disputed, certainly in the
14 answer. As best as I can tell, there are a certain number
15 of charges that have been admitted and, therefore, we will
16 -- we intend at least, barring some changes we're not aware
17 of, to file motions for summary disposition once we can get
18 a handle on exactly what is admitted, what is in dispute, so
19 on and so forth.

20 MR. CROSSLAND: It's my intention to cooperate
21 with you fully, there.

22 JUDGE BLOCH: Okay. Mr. Crossland, two things I'd
23 like to say about what Mr. Hom said. One is that it would
24 be very helpful if you go through every one of the
25 allegations as you respond, and say whether you admit them

1 or whether you deny them. And what Mr. Hom is saying is,
2 that if there are enough things that are admitted then there
3 may be no genuine issue of fact that we have to go to trial
4 for. He may be able to move to conclude the case based on
5 what you've said if there are enough admissions that in the
6 staff's opinion could persuade the Board would support the
7 order the way it was issued. Narrowing the field of what
8 you've done is important, but if you don't narrow it enough,
9 there still may be enough that you're responsible for to
10 sustain the order.

11 MR. CROSSLAND: Yes, sir. Nothing will change the
12 fact that I guess you all -- am I correct in saying this, I
13 want to say it for the opportunity of my people, am I
14 correct that the fact that the level ones took down, or
15 didn't put up that particular ribbon, that's something
16 that's a non-disputable --

17 JUDGE BLOCH: All right. So you'll just admit
18 that. And I don't know how much -- how many violations you
19 have, so I don't know the seriousness of it. I assure you,
20 I have made no decision as to whether this order is valid,
21 and neither has anyone else on the Board, and we also have
22 no decision on whether the charges are valid in terms of the
23 overall case. So there is -- we are ready to hear what your
24 position is.

25 MR. CROSSLAND: Anything that we add at this

1 state, do we have to get a lawyer, or just get it notarized,
2 or what is the --

3 JUDGE BLOCH: It has to be under oath which means
4 that it has to be notarized pursuant to your law.

5 MR. CROSSLAND: In Puerto Rico, to be a notary you
6 have to be a lawyer, so --

7 JUDGE BLOCH: Well, okay, but I don't know the
8 requirements for a notarized statement in Puerto Rico. Mr.
9 Hom may.

10 MR. CROSSLAND: So do we just -- do we tell him
11 what, or do we just write it to him? I don't understand
12 that part of it.

13 MR. HOM: I'm sorry, is there a question to the
14 staff here?

15 JUDGE BLOCH: Do you know what requirements they
16 have to fulfill in Puerto Rico so that it will be a
17 statement under oath or affirmation?

18 MR. HOM: No, I do not, Your Honor.

19 JUDGE BLOCH: You're going to have to get legal
20 advice as to what that is. It has to be a formal statement
21 that complies with Puerto Rican law as to oath and
22 affirmation.

23 I mean, I know up here that it's a statement
24 that's made that's stated to be true to the notary and they
25 sign it as having been sworn to them as being true. And

1 there may be a statement of oath on it as well.

2 And my reporter at least affirms that she thinks
3 that that's true.

4 MR. ROCHELLE: My name is John Rochelle, I have a
5 question about -- there are a couple of the allegations that
6 in order for us to dispute them, we would have to have
7 direct conference with the people involved.

8 JUDGE BLOCH: Okay. Now, that's what discovery is
9 about. You won't be able to do that before filing this
10 document which is to relieve yourselves of the
11 immediately-effective order. But once we go into the case
12 preparing for trial, you will be able to confront and
13 cross-examine witnesses, there can be transcripts kept of
14 those interviews so that you can have them to introduce into
15 evidence at the trial or to rebut something that a witness
16 at the trial may say that seems to be inconsistent.

17 It is pretty complicated. We're talking about a
18 trial on a lot of facts.

19 MR. ROCHELLE: Yes, sir. In the document that we
20 just received, in there we had made the statement that of a
21 review of our records and statements made to us indicated
22 that the violation did not occur.

23 JUDGE BLOCH: All right. So you want to show
24 which records, you want to produce the records, you want to
25 state exactly what the statements were.

1 MR. ROCHELLE: Yes, sir. But in the answer was
2 that we did not provide these statements. The statements
3 were made over the phone with the assurance that they would
4 send to us a written statement. And we --

5 JUDGE BLOCH: Statements from whom? From someone
6 at the NRC?

7 MR. ROCHELLE: No.

8 MR. CROSSLAND: The previous RSO officer in charge
9 at the time of the incident; correct, Johnny?

10 MR. ROCHELLE: Yes, he was one of them.

11 JUDGE BLOCH: All right.

12 MR. ROCHELLE: And several of the level two
13 technicals --

14 JUDGE BLOCH: All right. So you can report that
15 conversation that you had with as much detail as you
16 possibly can because you're the eyewitness to that. And
17 that is in the nature of a statement against interest or an
18 admission. I'm just making an advance informal judgment
19 about whether or not that might be admissible. But in any
20 event, when you think something might be evidence, the best
21 thing to do is to include it.

22 MR. ROCHELLE: Yes, sir, but what I was saying is
23 that when we spoke to these individuals on the phone they
24 assured us that they would send us a written statement.

25 JUDGE BLOCH: So your evidence is they assured you

1 and then they didn't do it.

2 MR. ROCHELLE: Then they did not.

3 JUDGE BLOCH: So that's exactly what the evidence
4 is, they assured you and they didn't send it.

5 MR. ROCHELLE: Yes, sir. And that was denied any
6 credibility because we did not include the written
7 statement. And so --

8 MR. CROSSLAND: Johnny, maybe you can write us
9 one.

10 JUDGE BLOCH: Well, in a court of law you can
11 introduce that as evidence and there may be an objection as
12 to its admissibility and then I have to rule. So I would
13 say, report in detail exactly what those discussions were
14 and what you learned from them about what happened, and then
15 that they said they were going to file a statement and that
16 they didn't. That's the best you can do. I can't make them
17 file the statement

18 MR. ROCHELLE: Yes, and we are in the same
19 position and that was one of the clarifications that I
20 wanted to make because in the -- in our letter that whomever
21 read it, simply disregarded the whole thing because that
22 statement was not in the here and I assumed it was because
23 we did not explain and give an eyewitness statement from
24 ourselves that they had -- that they had communicated to us
25 intent to send this to us, but they had not. Is that a fair

1 assessment?

2 JUDGE BLOCH: I am not even considering what you
3 filed because it wasn't sworn. That's true.

4 MR. ROCHELLE: All right, sir.

5 JUDGE BLOCH: And also, I just want to urge you to
6 consider whether you might save a lot of time and effort by
7 having a lawyer. Although it might be expensive, you may be
8 spinning wheels a long time trying to assemble this evidence
9 without fully understanding what has to be proved. And you
10 can do it, you're welcome to. You're not required to have a
11 lawyer in this proceeding. But if you could find one that
12 could at least guide you, even if he doesn't do the work,
13 it's certainly would help you a lot.

14 MR. ROCHELLE: Yes, sir. We are at this time
15 definitely -- we -- there's no reason for us to even proceed
16 any further without the aid of a lawyer, I don't think.

17 JUDGE BLOCH: Okay. And you can make whatever
18 arrangement you can that you can afford. It could be in the
19 form of guidance by a lawyer or he could actually represent
20 you and put things together. The more he does, if he's a
21 good lawyer, the easier it's going to be for you to show the
22 truth of what you're trying to show.

23 MR. CROSSLAND: I have a question.

24 JUDGE BLOCH: Yes.

25 MR. CROSSLAND: Or a clarification that you might

1 make and then we'll try to proceed as smoothly as we can
2 here.

3 JUDGE BLOCH: This is Mr. Crossland, right?

4 MR. CROSSLAND: Yeah. With the exception of the
5 facts that I had already mentioned a couple of times where
6 the level ones were notified and left the ribbon off, with
7 the exception of that particular incident or two identical
8 exhibits, one at San Juan steam plant and one at Costa Cruz,
9 they are two different power plants, and they were both
10 identical incidents, the only difference was the level one
11 assistants, both of which were in litigation against us, it
12 was different -- two different level ones. Besides that --
13 this is my question, as owner of an NDP company, it seems
14 like that at any time that any employee is terminated for
15 whatever reason, even testing positive, or doing some sort
16 of malicious act that all he has to do is make allegations
17 and our license is terminated until we provide the proof
18 that the allegations are false? I mean, that is the
19 procedure with the NRC?

20 MR. HOM: Your Honor, if I can interject. There
21 are certainly a number of charges that are not based on
22 allegations by your former -- by NDTs former employees.
23 There also is a recent enforcement history with NDTs that
24 has essentially, if I can interpret the responses properly,
25 have been admitted as to a number of violations. So there's

1 a history that dates several years now where there has been
2 health and safety concerns that were not solely based on
3 allegations by these alleged disgruntled employees.

4 JUDGE BLOCH: Mr. Hom, could you let these people
5 know whether or not it's important to them to attempt to
6 place these prior violations in context also? That is, the
7 order is based in part, is it not, on these prior
8 violations, too?

9 MR. HOM: The order is based in part only in the
10 sense that the prior record was acknowledged and considered
11 in the issuance of this particular order.

12 JUDGE BLOCH: Okay. So I just want to point out
13 that one thing that lawyer should be aware of is that there
14 are admitted violations and they could have an effect on the
15 penalty in this case.

16 MR. VAUGHN: If I could have something to say
17 about that one. Is that we sent in one response to
18 Bermudas, Hector Bermudas.

19 JUDGE BLOCH: Who is speaking?

20 MR. VAUGHN: David Vaughn.

21 JUDGE BLOCH: David Vaughn, yes.

22 MR. VAUGHN: And he did call me back after he got
23 the response and said that it would be better off in our
24 behalf if we went ahead and said that they were violations.
25 That's what he called me back and told me. A telephone --

1 JUDGE BLOCH: So what you're saying is that you
2 admitted to things that weren't true?

3 MR. VAUGHN: We denied it first and then we
4 rewrote it again, and then we went ahead and --

5 JUDGE BLOCH: All right. If you went and admitted
6 to things that weren't true, I think you ought to state
7 that, but that's not going to be terrific either.

8 MR. CROSSLAND: Well, no, just that he advised us
9 that the conflict would require an extended time or argument
10 or bigger problems than that if we just made the acceptance
11 of it that we would take out small penalty and be able to
12 move on with it.

13 JUDGE BLOCH: Well, of course, when you admit to
14 things that have to do with violations, that's true if you
15 don't have any further violations. But there's always the
16 risk that when you have further violations it gets to look
17 real bad.

18 MR. CROSSLAND: I'd like to make one comment
19 there. This is Tom Crossland.

20 JUDGE BLOCH: Yes.

21 MR. CROSSLAND: I had the -- I guess I should call
22 it the privilege of going to Atlanta for a meeting on a
23 previous violation myself where in similar situation as
24 today where first the allegation were made by people no
25 longer working for the company or in litigation, and then I

1 had to go to defend or prove them false.

2 That when I went to Atlanta I had the copies of
3 the checks and the copies of the invoices from a licensed
4 NRC company that I hired and paid their full rate, but based
5 on the previous verbal, I guess, statements made by people
6 that I had terminated I went ahead and had to accept and pay
7 a \$16,000 fine. And at that time, and think it's 15 -- but
8 at that time that was, I guess, our only or our major
9 violation and I did have tangible evidence in my hand. I
10 had their invoices charging me the full \$35 an hour, it was
11 a fully-licensed company, and I had the checks where I paid
12 that company.

13 JUDGE BLOCH: Mr. Crossland, I know nothing about
14 that and the only way I'm going to learn about it is when
15 you file sworn statements.

16 MR. CROSSLAND: It's just that procedure seems
17 that sometimes that it seems that the statements or
18 allegations that are made by the guys first seem to override
19 or take stronger precedence than the defense that they're
20 allowed to follow with later.

21 JUDGE BLOCH: I assure you that that will not be
22 the case, but what has happened here is that the NRC
23 inspectors reached conclusions that there were violations.
24 They did not automatically accept everything that was said.
25 They would never do that, but they have concluded based on

1 what was said and on what they saw that there were serious
2 violations. And so you have the problem now of putting your
3 case in. And your case won't be made today because this is
4 not the right forum.

5 MR. CROSSLAND: Isn't it fair that they would
6 call, the inspector would call the level one and not anybody
7 else in our company and say that he's coming.

8 JUDGE BLOCH: That sounds like a procedural
9 argument. You might want to get a lawyer to make that
10 argument if it has any validity, or it may be irrelevant.
11 So I don't want to rule on anything like that.

12 The purpose of this call is really concluded. If
13 there's anything new you want to say that has nothing to do
14 with the things you've been trying to say, I would listen to
15 that.

16 MR. CROSSLAND: Okay.

17 JUDGE BLOCH: Okay.

18 MR. CROSSLAND: Yes, sir, thank you for your
19 cooperation and your intent on fairness.

20 JUDGE BLOCH: You're welcome, and this prehearing
21 conference is --

22 MR. HOM: Your Honor, if I could make a few more
23 statements?

24 JUDGE BLOCH: Sure.

25 MR. HOM: This is the Staff again. A technical

1 matter, just a typo I would like to point out in the order
2 on the last page that it should be "Section 5" rather than
3 "Section IV" to be sure there's no confusion. It's fairly
4 apparent from the context of the order that we were
5 referring to Section 5.

6 JUDGE BLOCH: Yes.

7 MR. HOM: The other is, I understand from this
8 prehearing conference that essentially you are -- I'm just
9 trying to get some clarification, I thought I understood
10 that you were ruling basically from the bench that you're
11 refusing the motion as was filed --

12 JUDGE BLOCH: That's correct.

13 MR. HOM: -- by NDT Services, however, you are
14 providing another opportunity for them to refile --

15 JUDGE BLOCH: That's also correct.

16 MR. HOM: -- which you will fairly consider.

17 In light of the lack of legal representation at
18 this point and depending upon what transpires further in
19 terms of our written discovery efforts and responses
20 thereto, I would certainly at least like to make a note that
21 there has been some difficulty interpreting the documents
22 that we have received and that certainly that difficulty in
23 any delay in considering and reviewing a new answer and new
24 materials certainly will have some potential bearing on our
25 completion and preparation of our discovery materials.

1 So I gave you a four-month minimum timeframe at
2 least as the best timeframe I can give you in consideration
3 of all of the discovery that we have at least intended to
4 pursue at this point. And I would just like to make a note
5 on the record that there has been some difficulty in timing
6 and timeliness also interpreting documents, whatever, that
7 could have some bearing on us being able to pursue this
8 matter as expeditiously as possible.

9 JUDGE BLOCH: I appreciate that, Mr. Hom.

10 MR. CROSSLAND: We would like to enter that exact
11 same statement on our behalf. The papers that we received
12 were also very difficult for us to understand and very
13 unclear and caused delays and didn't have copies originally
14 until recently of the actual statements or allegations. And
15 so almost verbatim what he just said is --

16 JUDGE BLOCH: Okay. So both sides are upset about
17 the nature of the documentation. Mr. Crossland, I would
18 like to suggest that it might be important for you to make a
19 transcript of this hearing or a tape of this hearing
20 available to a lawyer you might consult. Are you taping the
21 proceeding now?

22 MR. CROSSLAND: Yes, sir, I hope it's with your
23 permission?

24 JUDGE BLOCH: That's okay, you have a right to do
25 that.

1 Will we also be making a copy of the transcript
2 available in a public document room near the site, Mr. Hom,
3 do you know?

4 MR. CROSSLAND: Excuse me, that last part,
5 document room here at the site?

6 JUDGE BLOCH: I'm asking Mr. Hom.

7 MR. HOM: I do not know, Your Honor, off the top
8 of my head where the local public document room is located.

9 JUDGE BLOCH: Okay. There's usually a document
10 room somewhere near to where you are, Mr. Crossland, where
11 you could actually see a written transcript in addition to
12 your recording.

13 MR. CROSSLAND: Oh, that would be really helpful
14 because we're not -- you know, like you said, we're not
15 lawyers.

16 JUDGE BLOCH: Yes.

17 MR. CROSSLAND: You know, this isn't the real
18 nature of our business. So we're going to do the best we
19 can.

20 JUDGE BLOCH: Right. And Mr. Hom, if you find out
21 where the document room is, you might call. I might also if
22 I can find out myself.

23 I also want to suggest that the scheduling of this
24 case is important and I would receive scheduling motions
25 from either of the parties concerning the time they might

1 need for discovery and the time before trial.

2 MR. HOM: When would you expect those, Your Honor?

3 JUDGE BLOCH: Well, because the other side,
4 because the Respondents are still looking for a lawyer, I'm
5 not going to urge a particular time period, but I would hope
6 that within a couple of weeks or so both sides might be able
7 to tell us what they want in terms of the time periods for
8 the rest of this case?

9 MR. HOM: And, Your Honor, from the staff's
10 standpoint, it might be helpful if we can receive at least
11 the revised answer first before filing such a motion.

12 JUDGE BLOCH: Okay. That makes some sense. Maybe
13 when the revised answer is filed, maybe even the sides can
14 talk about it after it's filed, and you might even be able
15 to reach a joint conclusion as to what the schedule of the
16 case should be.

17 MR. HOM: Okay. We will attempt to do that.

18 JUDGE BLOCH: Good.

19 So I want to thank the parties for their
20 participation, the hearing is adjourned.

21 [Whereupon, at 11:04 a.m., the telephone
22 conference was concluded.]

23

24

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REPORTER'S CERTIFICATE

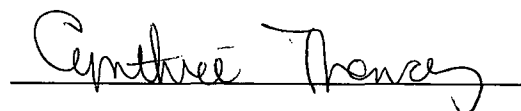
This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission in
the matter of:

NAME OF PROCEEDING: TELEPHONE CONFERENCE CALL OF
 NDT SERVICES, INC.

CASE NUMBER: 030-17711-EA

PLACE OF PROCEEDING: Caguas, PR

were held as herein appears, and that this is the original
transcript thereof for the file of the United States Nuclear
Regulatory Commission taken by me and thereafter reduced to
typewriting by me or under the direction of the court
reporting company, and that the transcript is a true and
accurate record of the foregoing proceedings.



Cynthia Thomas

Official Reporter

Ann Riley & Associates, Ltd.