

ORIGINAL

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DEPOSITION OF ALDEN S. KLOMPARENS

Place - Midland, Michigan

Date - Monday, 14 May 1979

Pages 1-53

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DEPOSITION OF ALDEN S. KLOMPARENS

Dow Center
Patrick Road and Abbot Street
Building 2030
Executive Wing
Midland, Michigan
Monday, 14 May 1979

Deposition of ALDEN S. KLOMPARENS, called for examination at 2:15 p.m., pursuant to prehearing conference order of the Atomic Safety and Licensing Board, before Helen M. Rabbage, a notary public in and for the County of Midland, State of Michigan, when were present on behalf of the respective parties:

WILLIAM J. OLMSTEAD, Esq., Office of Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D. C., on behalf of the NRC Regulatory Staff.

WILLIAM C. POTTER, Jr., Esq., Fischer, Franklin, Ford, Simon & Hogg, 1700 Guardian Building, Detroit, Michigan;

R. L. DAVIS, Esq., Michigan Division, Legal Department, 47 Building, Midland, Michigan 48640; and

LESLIE F. NUTE, Esq., Dow Chemical Company, Midland, Michigan, 48640, on behalf of Dow Chemical Company.

GERALD CHARNOFF, Esq., and ALLEN WEISBARD, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M. Street, N.W., Washington, D. C. 20036, on behalf of Consumers Power Company.

RONALD G. ZAMARIN, Esq., Isham, Lincoln & Beale, One First National Plaza, Chicago, Illinois 60603, on behalf of Consumers Power Company.

C O N T E N T SWITNESS:DIRECT CROSS REDIRECT RECROSS

Alden S. Klomparens

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EXHIBITS:

(None)

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P R O C E E D I N G S

MR. OLMSTEAD: Before we begin this next deposition, I'd like to put on the record the fact that the parties in attendance at these depositions on May 14 placed a conference call to Chairman Miller, Chairman of the Atomic Safety and Licensing Board for this proceeding, to discuss with him the presence of Mr. William Nute, counsel for Dow Chemical Company, at depositions of other Dow personnel.

As a result of that conference call, it was stipulated between NRC Staff and counsel for Dow Chemical Company that Mr. Nute would be excluded from depositions of Mr. Wessel and Mr. Durand, and that Mr. Durand would be excluded from Mr. Wessel's and Mr. Nute's depositions, and Mr. Wessel would be excluded from Mr. Durand's and Mr. Nute's depositions.

Since that resolved the matter in controversy between counsel for the parties present at the depositions, the conference was terminated without the need for a Board ruling.

Is there anything you would like to add, Mr. Potter?

MR. POTTER: And as I understand, we also have agreed, though, that Mr. Nute may sit in on the deposition of Mr. Temple and on the depositions to be taken of Consumers

1 Power Company people.

2 MR. OLMSTEAD: That is correct.

3 MR. POTTER: I'm sorry -- in any other deposi-
4 tions that may arise, that may come out of these things,
5 provided they don't involve Mr. Wessel and Mr. Durand.

6 MR. OLMSTEAD: Any other depositions which at
7 this time have been noticed by the Staff.

8 MR. POTTER: Well, we'll resolve the issue of
9 subsequent depositions as they arise.

10 MR. OLMSTEAD: All right.

11 MR. CHARNOFF: Off the record.

12 (Discussion off the record.)

13 MR. OLMSTEAD: Let's go ahead and swear the
14 witness.

15 Whereupon,

16 ALDEN J. KLOMPARENS

17 was called as a witness and, having been first duly sworn,
18 was examined and testified as follows:

19 MR. OLMSTEAD: Mr. Charnoff, while you were out
20 of the room, Mr. Klomparsens was sworn by the notary public.

21 DIRECT EXAMINATION

22 BY MR. OLMSTEAD:

23 Q Please state your full name, address and
24 employment for the record.

25 A I am Alden J. Klomparsens. I work for Dow

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1 Chemical, ~~currently~~ business manager of styrene plastics.
2 My current address is 1205 Bayberry Lane, Midland, Michigan.

3 Q Are you now employed in the same capacity as you
4 were during the period July 1, 1976 to June 1, 1977?

5 A No.

6 Q In what capacity were you then employed?

7 A I was assistant director of sales in Dow, US.

8 Q Throughout that year's period?

9 A Yes.

10 Q Prior to September 6, 1976 did you have any role
11 on behalf of Dow Chemical Company concerning the Dow-
12 Consumers nuclear steam contract?

13 A No.

14 Q When were you first assigned responsibilities
15 for Dow relating to that contract?

16 A I think it was about September 14, something
17 like that. It was about approximately that.

18 Q At or about that time did you attend a presenta-
19 tion by Joe Temple of the Michigan Division on that contract
20 which was made to either Paul Orefice or Dow USA board?

21 A No.

22 Q Do you have any notes or memos of any meetings
23 with Mr. Temple concerning that contract?

24 A No, not concerning the contract.

25 Q Were you present when Mr. Orefice ordered a

1 corporate review of the contract?

2 A Yes.

3 Q Would you relate in your own words what you
4 understood the substance of his direction to be?

5 A Mr. Temple asked Mr. Orefice to consider having
6 a corporate review of the Michigan Division position. Paul
7 subsequently elected to do that, elected to follow that
8 suggestion, and named a review team, myself as chairman and
9 several other members.

10 Our express charter or objective was to review
11 the Michigan Division position, as Mr. Temple had stated.

12 Q Were there any substantive aspects of that
13 position that you were to particularly review?

14 A I'm not sure I understand that question.

15 Q Was there anything of particular -- any special
16 instructions given to you, that you recall?

17 A Well, there was some guidance given us in terms
18 of which areas to look at, from the safety aspects, nuclear
19 versus conventional fuel, some of the other alternate
20 technologies of producing steam and power, the impact on
21 the community, impact on future nuclear power -- these
22 kinds of things.

23 But we were also given free rein to look at
24 anything we felt had a bearing on the situation.

25 Q Did you request any legal review or analysis of

1 the Dow-Consumers steam contract at that time?

2 A Did I personally?

3 Q Yes.

4 A No.

5 Q Prior to your review team's getting into the
6 substance of the review, and before the final action by
7 the Dow USA board, are you aware of any corporate board
8 position, officially or unofficially, endorsing the Michigan
9 Division findings before the review that you thought would
10 be necessary or undertaken?

11 A No.

12 Q What was your understanding of Dow's legal
13 obligations under the contract at that time?

14 A There was a clause in the contract that stated
15 something to the effect that Dow would support Consumers
16 Power in its efforts to obtain the various licenses and
17 construction permits, and so on. And this was a paragraph
18 I think that I read and the entire team had read, review
19 team.

20 That was the key thing, I understood, other than
21 the dates and . . .

22 Q What did you understand "support" to mean?

23 A Well, to provide testimony where necessary. to
24 provide statements in regard to Dow's position with regard
25 to its future power needs, and so on.

1 Q Did that understanding of that particular
2 contract phrase affect in any way the review that you
3 undertook for Dow?

4 A Well, it's a factor that we had to consider.
5 We have a contract with Consumers Power, and that's one of
6 the factors that we had to take into account, certainly,
7 in the review, as opposed to not having a contract at all.

8 Q Do you think it weighed heavily, somewhat
9 heavily, not too heavily in the ultimate decision?

10 MR. POTTER: By ultimate, you mean the one made
11 by Dow USA board?

12 MR. OLMSTEAD: The one made by the review group
13 to recommend to the Dow USA board.

14 THE WITNESS: Yes, I would say it was a factor.
15 I'll state those categories again, and maybe -- what did
16 you say? Heavily --

17 BY MR. OLMSTEAD:

18 Q Heavily, somewhat heavily or not too heavily.

19 A Somewhat heavily.

20 Q Maybe I should have said slightly, some and
21 heavily.

22 What lawyer was assigned to you to provide legal
23 advice?

24 A Jim Hanes.

25 Q Was there any other lawyer that you consulted

1 during this period of time?

2 A Well, we didn't consult directly, but Lee Nute
3 helped us in terms of getting us started in the study,
4 providing us with where we should go to get facts, and so
5 on. And Jim Hanes was mainly legal counsel on the review
6 team.

7 Q During the course of the review did the members
8 of the team exchange memoranda, notes, thoughts, or any
9 kind of written communications?

10 A Oh, yes. Not a lot of written communication.
11 We met, divided up our task in a coordinated fashion, and
12 both did our own thing -- or all of us did our own things.
13 I did mainly the coordination and integration of these.
14 And we met frequently to discuss the progress, coordination
15 of the things left to do.

16 Q Did someone develop meeting notes of those
17 meetings that you had?

18 A I don't recall we had any formal notes. There
19 may have been some written things. If there were they
20 should be in the notes that I would have taken and others
21 on the team. But there were no structured notes of those
22 meetings.

23 Q When the review was completed and you made your
24 presentation to the Dow corporate board, did you prepare
25 any written communications?

1 A We had some slides that we used in the presenta-
2 tion.

3 Q Okay. During the course of your presentation to
4 the Dow corporate board, did the board members ask questions?

5 A Yes. I think there were some questions asked,
6 if I recall. Not a lot. But we went down through a logical
7 sequence of the various aspects that we reviewed and the
8 conclusion. Maybe there were a few questions of clarifica-
9 tion along the way.

10 Q Do you remember anyone in particular who may
11 have asked questions?

12 A No.

13 Q Did you have contact with Consumers Power
14 personnel during your review?

15 A Yes.

16 Q One of those was a meeting of September 21, I
17 believe. Were there other meetings?

18 A There was one other meeting that I personally
19 had, which was, I believe, September 24, I believe it was.

20 Q That was when Mr. Aymond --

21 A Yes, Mr. Aymond and Mr. Oreffice and Mr.
22 Youngdahl. I believe the minutes are there.

23 Q Did you have any meetings with Consumers Power
24 personnel other than those two?

25 A I did not, no. Some of the task force did.

1 Q Do you remember anyone in particular?

2 A I think Jerry Decker had talked with Consumers
3 Power, relative to comparison of fuel costs versus--nuclear
4 fuel versus fossil fuel. That's one in particular.

5 Q Do you remember specifically who was assigned to
6 your review group?

7 A Yes.

8 Q Would you name those people and their responsi-
9 bilities?

10 A Jim Hanes, from Legal, did the legal aspects.

11 Irv Schneider reviewed the technical or technol-
12 ogies of other alternate steam power, alternatives to
13 nuclear.

14 Roger Gohrband did our work related to economics
15 of the alternates.

16 Jerry Decker looked at the long-term impacts and
17 the future of nuclear power.

18 Juli Johnson looked at the safety aspects of
19 nuclear with regard to our plant, our Michigan Division
20 plant.

21 Phil Schneider considered some of the impact of
22 this nuclear plant on the community.

23 Did I cover everybody?

24 I think that's everyone. I may have missed
25 someone on that.

1 Q Following your report to the Dow USA board did
2 you subsequently have any occasion to deal with the Dow
3 nuclear steam contract negotiations or preparation of
4 testimony for the Nuclear Regulatory Commission hearings?

5 A No.

6 Q Were you ever asked to follow up on a Consumers
7 Power statement by the chairman, Mr. Aymond, to the effect
8 that Consumers Power was willing to release Dow from the
9 contract by 1985, during the course of your review? I
10 believe that statement was made at the September 24 meeting
11 that you were at.

12 A Yes, I remember the statement. I don't recall
13 that I was asked to follow up in any way.

14 I'm not sure what you mean by follow up.

15 Q I just meant if somebody asked you to check that
16 out with Consumers, ask somebody about it --

17 A No.

18 Q -- or take any responsibility with regard to it?

19 A No, I don't believe so.

20 Q Were you asked to prepare any testimony concerning
21 your role in the Dow review group for presentation to an
22 NRC Licensing Board?

23 A Yes.

24 Q Who requested that?

25 A This was, I think, Lee Nute, at one point.

1 Milt Wessel.

2 MR. CHARNOFF: Excuse me. Could I have the
3 question read back?

4 (Whereupon, the Reporter read from the record,
5 as requested.)

6 BY MR. OLMSTEAD:

7 Q As a result of that request, did you prepare any
8 draft testimony for presentation?

9 A I'm not sure now what you mean by draft
10 testimony. They reviewed the possibility that I might have
11 to testify at the upcoming hearing. We never did write
12 anything down, or it never got to that point.

13 Q All right.

14 In discussing with you that possibility, were
15 there any suggestions that you might be a key witness in
16 the proceeding?

17 A There was a possibility that I might be.

18 Q Was the nature of the testimony that you might
19 present discussed?

20 A Well, yes, I think it was. And I think it
21 related almost entirely -- it did relate entirely to our
22 study and our conclusions.

23 Q Was it suggested to you that you might be a
24 witness rather than Mr. Temple, for instance?

25 A I can't recall that particularly. There was

1 discussion a time or two about who the Dow witness might be,
2 and I can't remember if it occurred at that time.

3 I don't believe it did at that time. I believe
4 that Mr. Temple was going to be a witness, and Mr. Orefice.
5 There was a possibility I might.

6 Q Was it ever suggested to you by Mr. Nute and
7 Mr. Wessel or any other Dow attorney that you might be the
8 only Dow witness?

9 A No.

10 Q At any time during the Dow review did you have
11 occasion to consider the effect that the NRC hearings might
12 have on Dow's need for the steam?

13 A I'm not sure I understand. Would you enlarge
14 on that, or state it another way?

15 Q I'll describe a set of facts as I understand
16 them, and if you have any differences or disagreement,
17 you're free to interrupt me and correct me.

18 But following the Court of Appeals remand in
19 July of 1976 there was some concern expressed about the
20 effect of a suspension of the construction activities at
21 the Midland site as a result of a ruling by the Licensing
22 Board.

23 I'm asking whether or not you considered that
24 possibility during your review?

25 A Yes. That was a factor that was known and

1 considered.

2 Q Did you consider the fact that Dow was unhappy
3 with the current construction schedule for the Midland
4 plant?

5 A Yes.

6 Q Did it occur to anyone that a delay in
7 construction, further delay in the construction of the
8 Midland plant, might be advantageous to Dow?

9 A Advantageous?

10 Q Right.

11 A That further delay might be advantageous?

12 Q From the standpoint that if the nuclear option
13 became less and less advantageous, that that might be the
14 critical factor that led the corporate board to decide to
15 take some other alternative as suggested by the Midland
16 Division recommendations?

17 A Well, further delay would be disadvantageous if
18 we were obligated under the contract to continue to take
19 steam and power from Consumers.

20 Q Did anyone --

21 A I think maybe what you're getting at is if
22 it got delayed far enough that Dow would no longer be
23 obligated, which I don't think that's an advantage or
24 disadvantage. It could be a problem for both parties.

25 Q Was that considered during the review, that

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1 particular scenario?

2 A I don't think so, not that I can recall, partic-
3 ularly. We looked at further delay as being a risk that
4 was rather difficult to weigh, but in terms of the proba-
5 bility of it happening, and that's how we treated delay.

6 Q Did anyone consider what would happen if the
7 construction permit were to be revoked altogether?

8 A Al Aymond outlined that in one meeting with
9 Consumers. He outlined the consequences of that.

10 Q So that was considered by the review board?

11 A It was known.

12 Q Are you aware of any other communications or
13 conversations or discussions attendant to what Dow's
14 positions would be if the construction permit were to be
15 revoked?

16 A No.

17 MR. OLMSTEAD: I have no further questions.

18 MR. CHARNOFF: I have a few.

19 CROSS-EXAMINATION

20 BY MR. CHARNOFF:

21 Q Do you have any idea, Mr. Klomparens, why you
22 were suggested by Mr. Temple and approved by Mr. Orefice
23 to be chairman of the Dow corporate review group?

24 A No.

25 Q Did you ask anybody why you were chosen as

1 Lucky Pierre for this job?

2 A No, I don't think I ever did.

3 Q You mentioned that you took -- that you attended
4 two meetings with Consumers Power during the course of
5 your review. One was September 21 and one was September
6 24?

7 A Yes.

8 Q Did you take notes at those meetings?

9 A Yes.

10 Q I show you a four-page document which is
11 captioned, "Meeting with Consumers Power Attorneys," dated
12 9-21-76, listing as attendees for Consumers, Judd Bacon,
13 Jim Falahee, Rex Renfrow; and for Dow, Jim Hanes, Lee Nute
14 and A. Klomparens.

15 Are these a copy of your notes?

16 A Yes.

17 Q Let me show you some notes dated 9-24-76 of
18 a meeting with Consumers, showing people present as PFO,
19 LN, JT, MW, JH, and HAK. I take it HAK are your initials?

20 A Yes.

21 Q Is that first line, these are the people from
22 Dow Chemical?

23 A Yes.

24 Q And on the second line, Al Aymond, Russ Y. and
25 Jim Falahee, Judd Bacon and Steve Howe.

1 Are those the representatives of Dow?

2 A No, Consumers.

3 Q Consumers, I'm sorry. And this is a 3-page set
4 of notes of the September 24 meeting. Are these your notes?

5 A Yes.

6 Q I was going to show you another piece of paper
7 that appears to be in a different handwriting, which refers
8 to the 9-24 notes.

9 Are these yours?

10 (Document handed to the witness.)

11 A No.

12 MR. CHARNOFF: Do you have copies of those notes?

13 MR. POTTER: Of the first two, but I didn't see
14 what you --

15 MR. CHARNOFF: Just the first two.

16 MR. POTTER: Yes, I do.

17 MR. CHARNOFF: Could you give Mr. Klomparens
18 copies of those notes?

19 (Documents handed to the witness.)

20 BY MR. CHARNOFF:

21 Q I take it when you began the review work, Mr.
22 Klomparens, you were made aware of the letters to Mr.
23 Orefice by Mr. Temple dated September 8 and September 15,
24 1976, with regard to his recommendation that there be a
25 Dow review group, and the substance of what that review

1 should consider?

2 A Right.

3 Q Do you have a copy of that document, Mr. Potter?

4 (Document handed to the witness.)

5 If I could just ask you to turn to the September
6 15 memorandum from Mr. Temple to Mr. Oreffice and the
7 attachment, which lists seven tasks, and ask you to look
8 at item 2 for the moment.

9 MR. POTTER: Could we just clarify for the record
10 whether the witness has ever seen this specific document
11 or not?

12 MR. CHARNOFF: I thought he said yes.

13 MR. POTTER: I'm not certain. He didn't have
14 the document in front of him, so --

15 MR. CHARNOFF: I'm sorry.

16 BY MR. CHARNOFF:

17 Q Have you seen this document?

18 A Yes.

19 Q I take it you were made aware of this document
20 at the beginning or during the course of your review
21 assignment.

22 A Right.

23 Q And I would assume that specifically you probably
24 had this early, if not at the inception of that review.

25 A Yes.

1 Q So that you'd know what your responsibilities
2 were, is that right?

3 A Right.

4 Q What specifically were your personal responsibil-
5 ities as the chairman or head of this review group?

6 A Well, to pull the whole study together and
7 coordinate these studies to a conclusion.

8 Q So you knew and discussed, I guess, with each
9 of the task members what they were going to be doing, so
10 that there was some understanding between you and them as
11 to what they were going to cover, is that right?

12 A (Nodding affirmatively.)

13 Q Okay. Looking at item 2 for a moment, which
14 refers to the review of the legal aspects, past, present
15 and future outlook, for Jim Hanes. What did you understand
16 Mr. Hanes' responsibilities with regard to the future
17 outlook of the legal aspects to be?

18 A With regard to the future outlook?

19 Q Yes.

20 A Well, I think I recall Jim's responsibility was
21 to interpret the existing contract to us, and to project
22 future alternatives or consequences of where Dow was
23 going with regard to renegotiation of future contracts,
24 as well as the existing clauses in the contract.

25 Q Do you know whether it included looking into the

1 future to determine what the impact would be if Dow termin-
2 ated or somewhat frustrated its performance? That is, what
3 kind of damages Dow might have to face up to?

4 A Well, I think Consumers outlined that to us.

5 Q But I'm curious as to whether --

6 A And I think Jim may have made along the way an
7 interpretation of that in terms of if Dow did not support
8 Consumers under certain conditions, would they have a breach
9 of contract claim or not, and so on.

10 Q That was within his assignment to do?

11 A Well, I don't think it started that way. I think
12 it got to that after Consumers pointed out that it was.

13 Q You're referring here now to Consumers'
14 discussion of the damages they would suffer if the contract
15 were terminated?

16 A Yes.

17 Q And that they would have to sue to recover that?

18 A Right.

19 Q There's a statement in the footnote to item 2
20 where it says that the emphasis insofar as the past aspects
21 of the contract were concerned -- or past legal aspects
22 were concerned -- was to look specifically at the 1975
23 decision to renegotiate, rather than to pursue any claim
24 of breach of contract. What does the "rather than to
25 pursue a claim of breach of contract" refer to, do you know?

1 MR. POTTER: Just as a caution, you understand
2 this witness did not prepare this document.

3 MR. CHARNOFF: Understood, but he was also imple-
4 menting the document, so I'm getting at his understanding.

5 MR. POTTER: All right.

6 THE WITNESS: I'm not sure what that meant. I
7 don't think I could answer that.

8 BY MR. CHARNOFF:

9 Q Now, Mr. Olmstead asked you whether the contract
10 with Consumers weighed heavily, somewhat heavily or not
11 at all in your ultimate conclusions. Do you recall that
12 question?

13 A Yes.

14 Q And he gave you those three categories.

15 I'm curious as to whether if we added some
16 categories to that, if that would help make some choices for
17 you that weren't given to you by Mr. Olmstead. Suppose you
18 had five categories instead of three, where you had
19 heavily, somewhat heavily, moderately, slightly, or not at
20 all. How would you consider the impact of the Dow contract
21 on those --

22 A Heavily, somewhat heavily, moderate, slightly and
23 not at all?

24 Q Yes.

25 MR. POTTER: Before you answer, I want to interpose

1 an objection.

2 As I understand the facts, Mr. Klomprens served
3 as the chairman for this review team, and he received input
4 from a number of members of the review team.

5 To the extent you're asking him now as to what
6 the impact of something might be, you're in effect asking
7 him not only to speak for the chairman, but for all the
8 other members.

9 And that I know he cannot do, and I will object.

10 MR. CHARNOFF: I'm willing to accept the answer
11 in terms of -- I assume your objection is valid here, and
12 that would apply as well to the answer that he gave to Mr.
13 Olmstead earlier where he characterized the weight that
14 that matter had in the ultimate decision.

15 MR. POTTER: I understood Mr. Olmstead's question
16 to go specifically to Mr. Klomprens. If I'm wrong, the
17 question is objectionable in both cases. He can speak for
18 himself, but I don't think he can speak for the rest of the
19 review team.

20 But go ahead and answer.

21 BY MR. CHARNOFF:

22 Q Taking it for yourself. I'm really just interested
23 in your own personal --

24 A Well, I guess if you bracket it that way, I'd
25 probably put it in the middle again. The middle category I

1 believe was "moderate."

2 Q Moderate. Thank you.

3 Now, getting back to these meetings on September
4 21 and September 24, could you tell me how those meetings
5 came about?

6 A Well, I think the December 21 meeting came about
7 as --

8 MR. OLMSTEAD: Excuse me. September 21.

9 THE WITNESS: Did I say December? September 21.
10 That came about at the request of Consumers, to be sure
11 that the Dow team working on this, the review team, had
12 an understanding, a good understanding, of the ramifications
13 or the situation with regard to the upcoming hearings.

14 I think the September 24 meeting was a result of
15 again Consumers desiring to be sure that we understood some
16 of the ramifications about some of their concerns relative
17 to this hearing.

18 MR. OLMSTEAD: Could I interpose a question here?

19 You're saying that Consumers requested this
20 second meeting?

21 THE WITNESS: I believe they did. I can't
22 recall. It wasn't me who -- they didn't set the meeting up
23 with me, and I don't recall who they set it up with. I
24 thought it was at Consumers request primarily.

25 MR. OLMSTEAD: Thank you.

1 BY MR. CHARNOFF:

2 Q Are you saying if Consumers hadn't asked for
3 those two meetings that you, in the course of your review
4 activities, would not have met with them before arriving
5 at a decision?

6 A I don't know whether we would have or not.

7 MR. OLMSTEAD: I'm sorry. Again you're saying
8 that both meetings were requested by Consumers?

9 THE WITNESS: I thought they were, yes. I was
10 not personally involved in setting them up.

11 BY MR. CHARNOFF:

12 Q So if there was a request from Consumers, it was
13 not made to you, is that right?

14 A That's right.

15 Q Do you recall who set up the meeting?

16 A From Dow's side you mean?

17 Q Well, who told you?

18 A I believe . . . well, let's see, I can't
19 remember. Well, it's obvious the first one was either
20 Lee Nute or Jim Hares. But I can't remember which one it
21 was.

22 And the later one, I'm not sure.

23 Q Okay. Can I ask you to turn now to the minutes
24 of -- or your notes of the September 21 meeting? In the
25 middle of page 1 under item 3 there's an item called

1 "changed circumstances in Dow contract." And the first
2 subsection under that says:

3 "Going to have to talk about it in today's
4 situation."

5 What did that refer to, do you recall? Going
6 to have to talk about what? What is "it?"

7 A I believe at this time, if I recall, Rex Renfrow
8 was speaking, and these were some notes I took where he was
9 making reference to talk about any changed circumstances
10 with regard to the Dow position.

11 Q And when he said he was going to have to talk
12 about it, did he mean talk about it in the hearings?

13 A Yes, that would come up.

14 Q And today's situation means what? The current
15 situation?

16 A Yes.

17 Q So he was saying that that should have to be
18 talked about at the hearing, is that right?

19 A Yes. That subject would come up.

20 Q And then the next subsection says:

21 "Will have to have a Dow witness state Dow's
22 position."

23 Again, is that a statement by Mr. Renfrow?

24 A Um-hmm.

25 MR. POTTER: Excuse me, Jim, say yes or no.

1 Um-hmm may or may not be audible.

2 THE WITNESS: I'm sorry. Yes.

3 BY MR. CHARNOFF:

4 Q Did Dow Chemical at this point in the meeting
5 have any disagreement with Mr. Renfrow that you and Consumers
6 would have to talk about it in today's situation in the
7 hearing?

8 MR. POTTER: Again, what does "it" refer to?

9 MR. CHARNOFF: I'm using his language there in
10 the notes, which he has described before.

11 THE WITNESS: Well, any changed -- what the "it"
12 refers to is any changed circumstances with regard to Dow's
13 position.

14 BY MR. CHARNOFF:

15 Q Was there any Dow statement that they would either
16 agree or disagree with Mr. Renfrow that indeed both Dow
17 and Consumers would have to talk about it at the hearing?

18 A I don't think so.

19 Q Okay. When it came time -- with regard to the
20 second item, you'll have to have a Dow witness state Dow's
21 position, was there any Dow disagreement that there would
22 have to be a Dow witness?

23 A No.

24 Q Was there any Dow discussion as to who the
25 witness might be?

1 A No, I don't recall that we got into any Dow-led
2 discussion. There was some discussion about who, but it
3 was -- Consumers made some comments. Dow responded only
4 in terms of we'll provide whoever Consumers -- whoever the
5 appropriate person is for Consumers needs.

6 Q Consumers came into the meeting and said Mr. "X"
7 should be the Dow witness, or Mr. "X" should not be the
8 Dow witness?

9 A I don't think they used those words, no.

10 Q Well, Mr. "X" or the other words?

11 A Well . . .

12 Q I recognize we're a few years later, but we're
13 still trying to get your best recollection.

14 You said there was some talk about a witness led
15 by Consumers. I'm curious as to how Consumers would, after
16 there was agreement that there would be a Dow witness, how
17 Consumers would designate a witness.

18 A I think Consumers raised some question as to who
19 the Dow witness ought to be.

20 Q By inquiring and saying who should the Dow
21 witness be?

22 A Well, I think they had asked that question
23 relative to Mr. Temple, as to whether he should be the Dow
24 witness or not, and there was some question whether, because
25 of Joe's position and past involvement and biases, feelings,

1 whether he would be the appropriate witness.

2 Q Because perhaps he would not reflect the corporate
3 position, whatever it may be? Is that the objection?

4 A No, I think Joe would reflect the corporate
5 position.

6 Q Then what was the concern?

7 A I think the concern might be that he was so
8 involved and knew so much about it, and maybe someone else
9 would be a more appropriate appropriate witness who was
10 less emotionally involved and maybe less knowledgeable about
11 it.

12 Q But somebody who, nevertheless, would know what
13 the corporate position would have been?

14 A Well, I don't -- I can't recall if we got into
15 that part in the discussion, or it got into that. I would
16 find it hard to believe that anybody who was in Dow who
17 was involved with this, either in the Michigan Division or
18 on the review team or in Dow management, would not be aware
19 of what the position was.

20 Q So then perhaps they were mostly just worried
21 about Mr. Temple's personal prejudices, is that what you're
22 saying? They had agreed there should be a Dow witness, and
23 if everybody --

24 A I'm sure that was one of the things at least.
25 They might have been worried about other things. I'm not

1 sure. But that certainly I would think might be one of the
2 concerns on their part, because of Joe's heavy involvement.

3 Q What was your reaction to that suggestion or
4 question that they raised as to the appropriateness of M.
5 Temple being a witness?

6 A I don't recall that anyone in the meeting reacted
7 particularly, one way or the other. I think it was a very
8 mutual reaction.

9 Q That was your reaction?

10 A That was certainly my reaction. I don't recall
11 anyone --

12 Q The other two people were Mr. Nute and Mr. Hanes,
13 is that right?

14 A Right.

15 Q So, in effect, no decision was made that day as
16 to who the witness might be?

17 A That's right.

18 Q So the question was just left hanging as to
19 whether Mr. Temple would or would not be the appropriate
20 witness?

21 A Right.

22 Q At the bottom of page 3 of the September 21
23 meeting notes there is a deletion. Was there a deletion
24 because there were just too many words, or you just don't
25 recall exactly what you said? I'm looking at the third line

1 from the bottom.

2 A The dash lines there?

3 Q Yes.

4 A Yes. That refers to the statement that Dow said
5 they -- let me finish the sentence that I recall that I
6 wrote -- Dow said they want out of the contract because it
7 is no longer advantageous to the Michigan Division position.

8 Q I take it this paragraph and the one before it
9 and the one afterwards are simply statements of alternative
10 positions that Dow might take and that were set out by
11 Consumers Power Company at the meeting. Is that what this
12 is? Just to give you information as to the consequences of
13 the decision by the Licensing Board if they had to take
14 one position or another? Is that what this is?

15 MR. POTTER: Excuse me. I'd have to object to
16 the form of the question. He certainly could state whether
17 or not this is what Consumers said. He can't say what
18 Consumers intended to accomplish when they made the state-
19 ments, unless you wish to connect it up in your question.

20 MR. CHARNOFF: Let me state it another way.

21 BY MR. CHARNOFF:

22 Q Was Consumers Power outlining to you and the
23 other members of the Dow group there a number of alternative--
24 potential alternative Dow positions and at the same time
25 describing what the impact on the Licensing Board might be

1 if Dow opted for one or the other of the alternatives?

2 A I think that was part of it. I think that was
3 much more thoroughly done in the September 24 meeting where
4 Mr. Aymond outlined all these alternatives. I think some
5 of them were quantified. This was just more general
6 comments that I believe Rex Renfrow made.

7 Q Now, looking at page 4 on the second paragraph
8 there is a reference following the third alternative with
9 a statement in brackets, on the left-hand side, that says:
10 "Jim..." is that a reference to Jim Falahee?

11 A Yes.

12 Q So he made the statement that's there?

13 A Yes.

14 Q And you have in quotes, that Mr. Falahee
15 apparently said if Dow takes this posture Consumers and Dow
16 will have a hell of a legal problem?

17 A Right.

18 Q That was a statement that Mr. Falahee made of
19 the consequences of what termination or loss of the plant
20 might be insofar as it might result in a legal action
21 between the two companies?

22 A Yes.

23 Q Was that information that you and the review
24 committee was interested in having?

25 A Were we interested in having that?

1 Q Yes, as to whether or not the prognosis would be
2 that if you took alternative C or D that you might have a
3 hell of a legal problem. Is that a factor you wanted to
4 know about?

5 A Well, I would have preferred that someone like
6 Jim Hanes would interpret that from what's his interpretation
7 of the contract.

8 Q You mean you might have asked Mr. Hanes for his
9 best judgment as to what might happen, as distinguished from
10 hearing it from an attorney for the other side, is that
11 what you're saying?

12 A Yes.

13 Q But having heard it from the other side, is it
14 an important factor for your review committee to take into
15 account?

16 A Well, I'm not sure how important it was. I
17 couldn't give you an answer to that question. It's something
18 we heard, and I don't know how important it was.

19 Q Now, after that meeting was concluded what did
20 you do with your notes of that meeting? Did you give them
21 to anyone else?

22 A I don't remember.

23 Q Did you review either Mr. Hanes' notes or Mr.
24 Nute's notes?

25 MR. POTTER: Are you referring to the meeting of

1 September 21?

2 MR. CHARNOFF: Yes.

3 THE WITNESS: I don't recall reviewing them.

4 BY MR. CHARNOFF:

5 Q Did you --

6 A You're talking about immediately afterwards?

7 Q Well, let's say within a week or so.

8 A No, I don't recall.

9 Q So you didn't participate even indirectly in the
10 drafting of Mr. Hanes' notes or Mr. Nute's notes?

11 A No.

12 Q Okay.

13 If I could ask you to turn briefly to the
14 September 24 notes.

15 In the middle of page 2 of those notes -- well,
16 let's turn back to the first page. In the first page, as
17 I understand it, there were discussions of different
18 potential suspension periods and different financial impacts
19 of such suspension periods, is that correct?

20 A Right. Yes.

21 Q Including the impact, perhaps, of loss of the
22 permit?

23 A Yes.

24 Q And then in the middle of page 2, do I understand
25 correctly there's a four-line single sentence paragraph

1 where it says, as I read it:

2 "If Consumers has such a loss they would have to
3 stop building and could get no financing and would have
4 to . . ."

5 could you help me with that? It's your handwriting.

6 A "...massive deterioration." "Would have massive
7 deterioration."

8 Q I see. Is this Mr. Aymond's characterization of
9 what the impact of these large suspensions would be, or
10 large consequences of the suspension would be?

11 A I can't recall if he said that, or if that's my
12 notes interpreting what he might have said.

13 Q Okay. But it was his -- he was making the
14 presentation or discussion, and you understood this to be
15 the consequence he was describing?

16 A Yes.

17 Q Then immediately thereafter there is a statement
18 that reads: '

19 "Would certainly seek to recover damages from
20 that."

21 I take it that again is your understanding of
22 what Mr. Aymond was saying?

23 A Right.

24 Q In effect he was saying that if Consumers suffers
25 such large losses which would put them in a position of

1 mas ve deterioration in earnings they would certainly seek
2 to recover damages from Dow, is that correct?

3 A Yes.

4 Q Is that an untenable business position, as you
5 understand the circumstances to be if you were in Mr. Aymond's
6 position? Would you arrive at about the same position?

7 A Would I arrive at that conclusion, or would I
8 say that, or --

9 Q Both.

10 A Well, I would expect I would arrive at that
11 conclusion. I don't know if I would have said it.

12 Q Would you have kept it a secret?

13 MR. POTTER: I think this is really not produc-
14 tive. I mean if you're trying to find out whether Mr.
15 Klomprens thinks the same way as Mr. Aymond, then maybe
16 that's legitimate inquiry. But I don't see how else it
17 is.

18 MR. CHARNOFF: I think if you're objecting we
19 can have the objection recorded, but it does seem to me
20 that - -

21 THE WITNESS: Would I keep it secret?

22 BY MR. CHARNOFF:

23 Q Yes.

24 A I doubt if I'd keep it secret from Consumers.

25 Q Would you have advised the other party to the

1 contract of the concern?

2 A I don't know.

3 Q Now, on page 3 of the notes of September 24, would
4 you read the third paragraph for me? It says Al A. I take
5 it that's a reference to Al Aymond?

6 A Yes.

7 Q And there does he say that under certain circum-
8 stances he would be willing to let Dow walk away from the
9 project if completion would occur after January, 1985?

10 A January 1, 1985, yes.

11 Q And then in the next paragraph it says, "What
12 is current posture of Dow with regard to project, and what
13 we should testify to."

14 Do I read that correctly?

15 A Yes.

16 Q Now, is that statement by Mr. Aymond, in effect?

17 A I can't recall who made that statement. I don't
18 know if I wrote that down, or whether one of the Dow people
19 made that statement. I'm not sure.

20 Q Let's go back through all the paragraphs on this
21 page.

22 The top paragraph, does that purport to be a
23 statement by Mr. Aymond?

24 A Right.

25 Q How about the second paragraph, does that purport

1 to reflect what Mr. Aymond said?

2 A I don't know if he made that statement or whether
3 someone else from Consumers made it. "The March '82
4 schedule is tight, but Consumers feel they will meet the
5 schedule."

6 That may have been Howe who made that statement,
7 because he was the -- I believe -- the construction man,
8 construction project leader. I'm not sure if that's his
9 right title.

10 Q But it purports to be what a Consumers official
11 said?

12 A Right.

13 Q And the third paragraph purports to be what a
14 Consumers official said?

15 A Right.

16 Q And the fifth paragraph, does that also purport
17 to be what a Consumers Power official said?

18 A Yes, I would think that's right.

19 Q All right.

20 Let's turn back to page 2. The first four lines
21 deal with what a 12-month suspension would cost. Does that
22 purport to reflect what a Consumers Power official said?

23 A 12-month delay? Oh, yes. "A 12-month suspension
24 would cause an 18-month delay?"

25 Q Right.

1 A Right.

2 Q And that reflects what a Consumers person said?

3 A Yes.

4 Q Mr. Aymond or someone else, is that right?

5 A Yes.

6 Q And again the next four lines, which says that
7 now the Company has \$350,000 of sunk costs in the plant,
8 and the following three lines, does that again purport to
9 be what a Consumers official said?

10 A Yes.

11 Q And then the next paragraph, if Consumers has
12 such a loss they've got to stop building, and so on, does
13 that purport to be what a Consumers official said?

14 A Yes.

15 Q Okay. And the next sentence, that we discussed
16 before, would certainly seek to recover damages from Dow,
17 does that purport to be what a Consumers official said?

18 A Yes.

19 Q And the next two lines, if Dow were to repudiate
20 the contract that it will be breached, does that purport to
21 be what a Consumers Power official said?

22 A Yes.

23 Q And the next three lines, if Dow were to make
24 things hard for Consumers, et cetera, does that again purport
25 to be what a Consumers official said?

1 A Yes.

2 Q And the last two lines, if just one unit were
3 affected, and so on, does that again purport to be what a
4 Consumers official said?

5 A Yes.

6 Q Would it be reasonable, Mr. Klomparens, to assume,
7 then, that the next to the last paragraph on page 3, which
8 says, "What is current posture of Dow with regard to project
9 and what we should testify to" also represents what some
10 Consumers official said, whether it's Mr. Aymond or someone
11 else.

12 A Well, I guess so, if you line them all up like
13 that. I can't recall whether that was an official --
14 a Consumers official's statement or whether that was a Dow
15 statement, or my own notes that I wrote down.

16 Q Does it appear to be characteristic of your
17 notes that you were reflecting what Consumers officials
18 said?

19 A Right. Yes.

20 Q Would it be more than likely, then, that that
21 represents what some --

22 MR. POTTER: You're badgering the witness. I'm
23 suggesting he shouldn't answer any further. He said he
24 does not recall whether that's a Consumers statement or his
25 own. I think that's the best he can do.

1 BY MR. CHARNOFF:

2 Q Is it, Mr. Klomparens?

3 A The best I can say is I cannot recall who made
4 that statement, or whether even I wrote it down as my own
5 conclusion.

6 Q Let's go back to page 1 and just complete the
7 pattern, just to be sure it's clear.

8 Page 1, the first three lines refer to the fact
9 that there was a meeting on September 24, and the next two
10 lines reflect who was there, is that correct?

11 A Yes.

12 Q Then the fourth line, in handwriting, is a
13 statement by Mr. Aymond, is that correct?

14 A Yes.

15 Q The fifth line, does that reflect what a Consumers
16 official said?

17 A Yes.

18 Q Is that also true with the three subsections under
19 that?

20 A Yes.

21 Q Okay. Then that takes us down to the next
22 separate section, and there's a line there that says,
23 "Suspension would be either four months or twelve months"
24 with a little note that the latter might be more probable.

25 Does that, again, reflect what some Consumers

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1 official said?

2 A Yes.

3 Q Then there's a group of about six lines in terms
4 of what an impact of a 4-month suspension may be. Does
5 that reflect what a Consumers official said?

6 A Yes.

7 Q And the final line on that page, 12 months -- it
8 says see page 2. I take it that's your own note?

9 A Yes.

10 Q Okay. So the entire three pages, with the
11 possible exception of the next to the last paragraph, you
12 agree reflects what a Consumers official said?

13 A Yes.

14 Q Okay.

15 A But you know throughout that meeting Al Aymond,
16 after the introductions, basically outlined the Consumers
17 position. I believe Al's notes are much more complete
18 than these, or the outline he talked from.

19 But toward the end of the meeting there was some
20 discussion, and this note is at the end of my notes. So
21 I am unsure whether that was my statement or somebody
22 else made that statement in the meeting, or Consumers made
23 it.

24 Q Is there anything in your notes that clearly
25 reflects that the statement was obviously something that

1 a Dow person said at the meeting?

2 A No.

3 Q Incidentally, did Consumers Power Company, at
4 either of these meetings, ever state that Dow should not be
5 completely truthful?

6 A No, not that I heard.

7 Q Now, we've just gone through the three pages of
8 your notes. I didn't see, and I wonder whether you did see,
9 any discussion in here on these three pages as to who the
10 witness, the Dow witness, might be?

11 Am I correct in not seeing that anywhere in
12 these notes?

13 A Right.

14 Q Now, Mr. Hanes testified this morning that he
15 did not recall the subject of a Dow witness coming up at
16 the September 24 meeting. Do you recall it coming up at
17 the September 24 meeting?

18 A No.

19 MR. CHARNOFF: I have no other questions.

20 BY MR. POTTER:

21 Q Mr. Klomparens, I believe it was Mr. Olmstead --
22 it might have been Mr. Charnoff who asked it -- there
23 apparently came a time after the corporate review had been
24 completed and the team's job done in that sense when you
25 apparently had some discussion with either Mr. Nute or Mr.

1 Wessel, or possibly both, of the possibility that you might
2 appear as a witness in the Nuclear Regulatory Commission
3 proceedings, is that correct?

4 A Yes.

5 Q Was it explained to you what you might have to
6 testify to at that hearing at that time, do you recall?

7 A Yes. And I can't recall exactly what it was.
8 But I think it related to some of the same things we're
9 talking about here.

10 Q Do you recall whether or not they told you you
11 might be called as a witness to explain what it is that the
12 corporate review did?

13 A Yes.

14 Q Was that the type of purpose you thought you were
15 going to be called for?

16 A Yes.

17 Q To explain what the corporate review team did
18 in preparing the study that was ultimately -- I mean that
19 ultimately wound up as a recommendation to the Dow USA
20 board?

21 A Yes.

22 Q Would you take a minute to take a look at the
23 exhibit attached to the September 15, 1976 letter -- or
24 really a transmittal memo -- from Mr. Temple to Mr. Orefice
25 that lists the seven areas.

1 (Witness reviewing document.)

2 Now, are those the seven areas that were
3 described to the team for their study and their report to
4 the Dow USA board?

5 A Yes.

6 Q Did you formulate any of those seven issues, or
7 were they suggested by somebody else?

8 A They were suggested to us by Mr. Temple and Mr.
9 Orefice -- or to me, I guess, and then . . . I believe Joe
10 did meet with the review team to briefly cover these, but
11 also gave us or suggested that anything else that we might
12 feel was pertinent we should also put forth.

13 Q All right.

14 But the question was: From whom did those issues
15 come? They came from somebody other than yourself?

16 A Yes.

17 Q Now, your particular role for the team -- did you
18 cover any one of those specific issues in depth yourself?

19 A No.

20 Q What did you conceive your function on that team
21 to be?

22 MR. CHARNOFF: Excuse me. Off the record.

23 (Discussion off the record.)

24 MR. POTTER: Back on the record.

25 It's been pointed out issue number 6 actually has

1 your name after it, does it not?

2 THE WITNESS: Right.

3 BY MR. POTTER:

4 Q But you did not regard that as a specific issue
5 for investigation, but rather was the overall assignment
6 given to the team, is that correct?

7 A That's right.

8 Q And as chairman it was your responsibility to
9 come up with the recommendation on that issue?

10 A Right. And I don't think that me, as the chairman,
11 or anyone else on the team could have done any better than
12 what Mr. Aymond outlined in the presentation that one day.
13 He very well outlined what the effect would be on Consumers
14 Power of all of the resulting things.

15 Q Now, when the actual exposition -- if we could
16 put that handle on it -- was made before the Dow USA board,
17 did the specific team members who were charged with specific
18 functions report to the Dow USA board, or did you report on
19 the whole thing?

20 A No, each team member took his part and reported
21 on it, and then I summarized the conclusion.

22 Q Okay.

23 Now, again, there was some question by -- I
24 believe it was Mr. Olmstead -- as to why the team -- by that,
25 I recognize that you can only speak for yourself as chairman

1 of the team -- whether any consideration was given to the
2 possible delay due to suspension, or for whatever reason,
3 as a possible benefit to Dow as opposed to a detriment.

4 My question to you is:

5 Did the factor of delay, if it was considered,--
6 first of all, was the factor of delay of the nuclear power
7 plant considered as an issue in the course of the review
8 team's work?

9 A Further delay?

10 Q Yes, sir.

11 A It was something that we treated as a potential
12 risk.

13 Q Not as a benefit, is that correct?

14 A Not as a benefit, but only as a problem that if
15 we ended up delaying this plant any further it's bound to
16 cause it to be more expensive and we would have more
17 difficulties.

18 Q Now, you attended the meeting on September 21,
19 1976, is that correct?

20 A Yes.

21 Q During the course of that meeting do you recall
22 any statement being made as to what type of witness should
23 be put on the stand to talk about the Dow Chemical Company?

24 A Yes. There were some comments made. My
25 recollection was -- as I think I indicated earlier -- that

1 Consumers Power questioned whether Joe Temple would be the
2 appropriate witness.

3 I think Mr. Orefice's name came up. I think the
4 suggestion -- the possibility of me. And suggestions of ...
5 I can't recall, but maybe Mr. Decker's name came up as a
6 possibility. I think there was some discussion by Consumers
7 about having a witness who might not be as knowledgeable or
8 as involved as Mr. Temple.

9 Q Now, you stated earlier, and I noted it, and I
10 don't know whether I got it down correctly or not, something
11 to the effect that a witness who is less emotionally
12 involved and less knowledgeable. Do you recall making a
13 statement like that during your interrogation?

14 A Yes.

15 Q Were those two factors included, less emotionally
16 involved and less knowledgeable? Or do you remember?

17 A I'm paraphrasing it in my -- as I recollected it.
18 I don't recall those words were said, exactly. Those are
19 my words.

20 Q Now, would you turn to page 2 of your notes of
21 September 24, 1976? I'm calling your attention specifically
22 to the line beginning, "Would certainly seek to recover
23 damages from Dow..." and then you've got three items
24 appearing underneath that.

25 I just am asking you: Do the three items

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1 appearing here appear to be like subparagraphs, explaining
2 the circumstances under which Consumers would seek damages
3 from Dow?

4 A Right.

5 Q So the paragraph beginning, "Would certainly seek
6 to recover damages from Dow" is tied in with the paragraphs
7 that follow, is that correct?

8 A Yes.

9 Q Is it tied in any way with the paragraph that
10 precedes it, to your knowledge?

11 A Well, the paragraph that precedes it is certainly
12 a preamble to that point I think. It's a preamble to the
13 sentence, "Would certainly seek to recover damages from Dow."

14 Q Now, at the time that the statement was made
15 about the Dow witness, which I think again you said you
16 were paraphrasing, but something to the effect a witness who
17 was less emotionally involved than Joe Temple and less
18 knowledgeable, --

19 MR. CHARNOFF: This is back on the September 21
20 meeting?

21 MR. POTTER: Yes. I'm sorry. That's a good
22 point.

23 BY MR. POTTER:

24 Q We're back at the September 21 meeting. Did
25 you or any of the Dow representatives have any reaction to

1 that?

2 A I don't recall any particular reaction. I think
3 if Dow reacted it was a very neutral reaction. I can't
4 recall a particular reaction.

5 Q Now, you were asked whether you helped prepare
6 the notes of Mr. Nute or Mr. Hanes after either the
7 September 21 or the September 24 meeting, and I believe
8 your answer was no, is that correct?

9 A Yes.

10 Q Is it also a fair statement that neither Mr.
11 Nute nor Mr. Hanes assisted you in preparing your notes of
12 those meetings?

13 A Right.

14 Q You prepared them on your own?

15 A Yes.

16 Q During the meeting?

17 A Yes.

18 MR. POTTER: I don't have any further questions.

19 MR. OLMSTEAD: I have a follow-up question.

20 REDIRECT EXAMINATION

21 BY MR. OLMSTEAD:

22 Q If you would go back to your September 24 notes
23 and the quotation that you attributed to Mr. Falahee -- I
24 believe it was on page 2 or 3 -- about the hell of a legal
25 problem..

1 MR. CHARNOFF: That's the September 21 notes.

2 BY MR. OLMSTEAD:

3 Q All right. Page 4 of the September 21 notes.

4 When you were answering Mr. Charnoff's questions
5 concerning that quotation you indicated that that was the
6 type of thing you would have preferred to hear from Mr. Hanes?

7 A Well, what I meant is I would have preferred that
8 Mr. Hanes would interpret for myself and the review
9 committee what our legal position was with regard to
10 Consumers contract.

11 Q Did you subsequently ask Mr. Hanes his opinion
12 of that matter?

13 A I can't recall.

14 Q At any time during the review did you ask Mr.
15 Hanes about his opinion in that matter?

16 A Mr. Hanes reviewed the contract. I think the
17 nearest thing we came to that was Mr. Hanes reviewed the
18 contract and Dow's legal obligations, both with the review
19 team and at the meeting with the U. S. Area board, where we
20 presented the conclusions.

21 Q And did he ask -- agree with Mr. Falahee's
22 analysis as you understood it?

23 A Well, I don't think he did exactly, or would
24 have stated it quite that strongly. I think Mr. Hanes'
25 position was there is a legal question here as to whether

1 Dow would be in breach of the contract if something that
2 Dow said would have caused the construction to be suspended
3 and so on.

4 Q Did he also raise the possibility that Consumers
5 might be in breach of the contract?

6 A That's right.

7 MR. OLMSTEAD: Thank you.

8 MR. CHARNOFF: I just have one question.

9 RECROSS-EXAMINATION

10 BY MR. CHARNOFF:

11 Q You mentioned that at the September 21 meeting
12 when there was some discussion of Mr. Temple's suitability
13 as a witness or selection as a witness, there was some
14 discussion of other names like Mr. Oreffice, yourself, Mr.
15 Klomparens, and Mr. Decker.

16 Do you recall whether those names were proposed
17 by representatives of Consumers or by representatives of
18 Dow?

19 A I think Consumers, if I recall, was suggesting
20 most of the things with regard to the witnesses. I think
21 Dow's position was relatively neutral, as I said, as to
22 which would be their appropriate witness.

23 But I can't recall for sure whether Mr. Decker's
24 name came up. Somewhere along the line his name has come
25 up as a potential witness, and I don't recall whether it was

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1 in that meeting for sure.

2 Q But the Oreffice and Klomparens names did come
3 up?

4 A I believe they did.

5 Q And do you recall whether they came from Consumers?
6 Do you recall whether it came from Mr. Renfrow, or Bacon,
7 or Falahee?

8 A No.

9 MR. CHARNOFF: I have no other questions.

10 Thank you.

11 MR. OLMSTEAD: The end.

12 (Whereupon, at 3:30 p.m., the taking of the
13 deposition was concluded.)
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1 CERTIFICATE OF NOTARY PUBLIC

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3 I, Helen M. Rabbage a notary public, do
4 hereby certify that the witness whose testimony appears
5 herein, appeared before me and was duly sworn by me.

6
7 Helen M. Rabbage
8 Notary public in and for the

9 Midland County, Mich.

10 Mr commission expires

11
12 HELEN M. RABBAGE
13 Notary Public, Midland County, Michigan
14 My Commission Expires August 3, 1980

15
16 CERTIFICATE OF COURT REPORTER

17 I, William E. Landon, Court Reporter, do
18 hereby certify that the testimony contained herein is a true
19 record of the testimony given by said witness, and I further
20 certify that I am neither attorney nor counsel for, related
21 to or employed by any of the parties to the action in which
22 this statement is taken; and, further, that I am not a
23 relative or an employee of any attorney or counsel employed
24 by the parties hereto, or financially interested in the
25 action.

William E. Landon

Court Reporter

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