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**NUCLEAR REGULATORY COMMISSION**

Title: Status Conference ITMO David Geisen

Docket Number: IA-05-052

Location: (telephone conference)

Date: Thursday, August 17, 2006

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5 ATOMIC SAFETY AND LICENSING BOARD

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7 -----X

8 IN THE MATTER OF: :

9 DAVID GEISEN : Docket Number:

10 ENFORCEMENT PROCEEDING : IA-05-052

11 JOINT STATUS CONFERENCE :

12 -----X

13  
14 Thursday,

15 August 17, 2006

16  
17 The teleconference came to order, pursuant  
18 to notice, at 1:00 p.m.

19 BEFORE:

20 JUDGE MICHAEL FARRAR

21 JUDGE E. ROY HAWKENS

22 JUDGE NICHOLAS TRIKOURAS

23  
24  
25  
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1     APPEARANCES:2             On Behalf of Mr. Geisen:

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11             On Behalf of the Nuclear Regulatory Commission:

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19             ALSO PRESENT:

20                     TIM MATTHEWS

21                     DANIEL HORNER, McGraw Hill

22                     MARY BEATTY

23                     LISA CLARK

24

25

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1 P-R-O-C-E-E-D-I-N-G-S

2 (1:05 p.m.)

3 JUDGE HAWKENS: Let's go on the record on  
4 Thursday, August 17th. We're here for a prehearing  
5 conference call in the Geisen matter.

6 Would the counsel for Mr. Geisen identify  
7 themselves?

8 JUDGE FARRAR: I'm here at -- this is Mike  
9 Farrar. I'm the Board Chairman. I'm here at NRC  
10 Headquarters with Judge Hawkens. Judge Trikouras is  
11 on another line calling in, which will limit us in our  
12 ability to confer with each other before any  
13 decisions, but I don't think anything controversial is  
14 coming up today.

15 Counsel for Mr. Geisen?

16 MR. HIBEY: This is Richard Hibey for Mr.  
17 Geisen.

18 MR. McALEER: Also for Mr. Geisen Charles  
19 McAleer and Matthew Reinhard.

20 JUDGE HAWKENS: McAleer, I think this is  
21 the first time you've been on the phone with us.  
22 Welcome to the proceeding. We've seen your filings.

23 For the Staff?

24 MS. BROCK: Hi. Sara Brock and Michael  
25 Spencer are representing the Staff, and Mary Beatty

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1 and Lisa Clark, also from our office, are with us on  
2 the call.

3 JUDGE HAWKENS: All right. Thank you, Ms.  
4 Brock.

5 Mr. Matthews, do you want to identify  
6 yourself, please?

7 MR. MATTHEWS: Sure. This is Tim Matthews  
8 of Morgan, Lewis & Bockius here monitoring the  
9 proceeding for First Energy.

10 JUDGE FARRAR: All right. Is there anyone  
11 else on the line who has not been identified?

12 (No response.)

13 All right. Then, let's go ahead. If Mr.  
14 Daniel Horner calls in -- he is a reporter for McGraw  
15 Hill -- he has written some stories, at least one  
16 story on the case, for Inside NRC. And we informed  
17 him that since, unlike court proceedings, prehearing  
18 conference, we have a transcript, and if it was -- it  
19 would be in open court with observers that he would be  
20 permitted to observe but not to participate.

21 And, Mr. Matthews, that's I guess pretty  
22 much the same for you, since you're not formally a  
23 party.

24 Judge Hawkens I mentioned is here with me.  
25 I think last time we were on the phone he was the

1 junior Justice here, but as of June 30th or so is now  
2 the Chief Judge of the entire panel. So if you catch  
3 me being more deferential to him than I used to be,  
4 you're probably correct.

5 On the motion -- the Geisen motion to  
6 compel production of a non-redacted copy of the Office  
7 of Investigations report, we have your motion filed  
8 August 11th. As I understand it, a response is due  
9 around the 21st from the Staff, a reply from Mr.  
10 Geisen, if any, would be August 28th. We had asked  
11 you before to reserve Wednesday, September 6th in the  
12 afternoon for a possible oral argument.

13 Based on our looking at the motion, it  
14 looks like it will be a complicated enough question  
15 that we will want to have oral arguments. We will get  
16 back to you on a precise time. I assume we'll start  
17 around 1:00 or 1:30, and we will let you know by the  
18 end of August if on reading the two additional filings  
19 that are due to come in we determine that one side or  
20 the other has clearly the better of it, and we don't  
21 need argument.

22 But I think that's unlikely, so you can  
23 pretty much not just pencil but ink in Wednesday,  
24 September 6th, for the oral argument. Is that date  
25 all right with everybody? Any problems that would

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1 cause?

2 MS. BROCK: Your Honor, from the Staff,  
3 the date is fine. We were wondering if we could  
4 potentially do the argument in the morning. We're  
5 currently scheduled to have, in a related matter,  
6 depositions in Cleveland the next day.

7 JUDGE FARRAR: I think we had a -- if I  
8 remember right, we had a problem with Judge Trikouras  
9 and his travel back from somewhere. Nick, is --

10 JUDGE TRIKOURAS: I might be able to do it  
11 at approximately 10:30. If need be, I can do it at  
12 10:00.

13 JUDGE FARRAR: Would that help the Staff?

14 MS. BROCK: This is Sara Brock for the  
15 Staff. Yes, 10:00 or 10:30 would help us quite a bit,  
16 actually.

17 JUDGE FARRAR: Mr. Hibey? Or Mr. McAleer?

18 MR. HIBEY: We'll be there, Your Honor.  
19 This is Richard Hibey.

20 JUDGE FARRAR: Okay. Then, let's -- who  
21 just came on the line?

22 MR. HORNER: This is Daniel Horner. I'm  
23 a reporter with McGraw Hill Nuclear Publications.

24 JUDGE FARRAR: Right, Mr. Horner. I  
25 previously told -- this is Judge Farrar. I previously

1 told the parties that you had asked to be on the call,  
2 and explained to them that while that wouldn't  
3 ordinarily be done in a judicial conference call, our  
4 proceedings are -- could have been held live, and you  
5 certainly would have been permitted to be an observer  
6 there, if we were in the courtroom. So we welcome you  
7 as an observer, but of course not as a participant.

8 MR. HORNER: Well, thank you very much,  
9 and I apologize for being a little bit late getting  
10 on.

11 JUDGE FARRAR: That's all right. What  
12 we're doing right now is talking about a date for  
13 likely oral argument on a motion to compel -- Mr.  
14 Geisen's motion to compel production of the Staff's  
15 Office of Investigations report.

16 Judge Trikouras, do you think you could be  
17 here by -- well, we'll work that out later, and so it  
18 will start at either 10:00 or 10:30, depending on  
19 Judge Trikouras' schedule. And we'll get word to you  
20 before the end of August on that.

21 But I think, Mr. McAleer, you had filed an  
22 agreed-to motion after the fact to exceed the page  
23 limits, and of course we will grant that when we write  
24 this up.

25 MR. McALEER: Thank you, Your Honor, and

1 I would also like to thank NRC Staff for their consent  
2 to that motion and appreciate the Board's ruling.

3 JUDGE FARRAR: All right. Thank you, sir.

4 MS. BROCK: I'm not -- this is Sara Brock  
5 for the Staff. Can I just ask one clarifying question  
6 on the page limit?

7 JUDGE FARRAR: Yes.

8 MS. BROCK: We are making every effort to  
9 make our response under 10 pages, but in -- with the  
10 lengthy motion, we -- we're over that. We're  
11 wondering, while we'll try to keep it under 10 pages,  
12 if we could also file something no more than 15 pages?

13 JUDGE FARRAR: Right. That will be no  
14 problem. In fact, usually when we grant a motion like  
15 this before the fact, it's accompanied with a -- you  
16 know, with a consent it's accompanied by a deal where  
17 the other side gets the same privilege. So don't even  
18 bother filing a motion. We will put in our little  
19 order summarizing this conference that Mr. McAleer's  
20 motion is granted and that you will have the same  
21 leeway.

22 MS. BROCK: Thank you.

23 JUDGE FARRAR: Thank you. We had called  
24 this conference primarily to go over the parties'  
25 joint status report, which had a discovery schedule

1 which while agreed upon looked a little bit long to  
2 us. And we wanted to just find out what's behind that  
3 before we pass upon it.

4 Before we get to that, is there anything  
5 new in the criminal case? Last I heard you were  
6 supposed to file motions October 20th? Is --

7 MR. HIBEY: That's the only date out  
8 there, Your Honor.

9 JUDGE FARRAR: Okay. And to the extent  
10 that there is exchange of documents in that case, that  
11 has already happened?

12 MR. HIBEY: We have received material from  
13 the Government. I expect we'll be receiving more,  
14 from time to time we get some, but the -- shall we  
15 say, the larger universe of material I think has been  
16 turned over to us. We're working through it.

17 JUDGE FARRAR: All right. Refresh me. Do  
18 you have any reciprocal obligations?

19 MR. HIBEY: We have reciprocal  
20 obligations. They are continuing in nature.

21 JUDGE FARRAR: Okay.

22 MR. HIBEY: So they're out there.

23 JUDGE FARRAR: If you file the motions  
24 October 20th, is it still way too early to know what  
25 you're looking at in terms of the District Court's

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1 docket for a trial date?

2 MR. HIBEY: Yes.

3 JUDGE FARRAR: Okay.

4 MR. HIBEY: At least from our standpoint,  
5 we've had no engagement with the trial Judge to this  
6 point.

7 JUDGE FARRAR: All right.

8 MR. HIBEY: So I don't know exactly what  
9 his calendar is like. I believe he is a Senior Judge.

10 JUDGE FARRAR: Okay. All right. Thank  
11 you, Mr. Hibey.

12 Then, let's turn directly to the discovery  
13 matter. On page 4 of your joint status report that  
14 you filed at the beginning of August, you lay out a  
15 schedule. And if I recall the Commission's  
16 milestones, you're looking at roughly four months for  
17 discovery, I think in the Miller Moffitt case allowed  
18 five months, and this seems to be somewhat longer and  
19 a little bit indefinite. Maybe one of you can help us  
20 with it.

21 For example, you have -- in the Miller  
22 Moffitt case they did not separate fact from expert  
23 discovery. Here you do. What's the difference in the  
24 cases, and how long would that expert discovery take?

25 MS. BROCK: This is Sara Brock from the

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1 NRC Staff. I think I may be in the best position to  
2 address that. The Staff has essentially agreed to  
3 whatever the various different parties have asked for,  
4 since we feel like it's their expedited hearing and  
5 their need. So Mr. McAleer asked for the separate  
6 expert discovery, so I agreed to that.

7 Now, in terms of the length of time for  
8 the Miller Moffitt proceedings, I can tell you -- and  
9 I mentioned to Ms. Penny that I would probably mention  
10 this on the call -- at least with respect to Mr.  
11 Moffitt we are going to have to file a motion to  
12 extend discovery, because we literally can't fit in  
13 all the necessary depositions.

14 JUDGE FARRAR: All right. All right. So  
15 this is not -- so if I understand what you just said,  
16 it's the targets of the investigations that are  
17 driving the schedule, and you're accommodating their  
18 need.

19 MS. BROCK: Yes.

20 JUDGE FARRAR: So you didn't make any  
21 attempt to achieve consistency in the two, as I  
22 understand it.

23 MS. BROCK: In terms of the schedules of  
24 them, no.

25 JUDGE FARRAR: Okay, good. Then, that

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1 explains some of it.

2 Mr. Hibey, what did you have in mind with  
3 expert discovery as opposed to fact discovery? What  
4 does that mean in this kind of case?

5 MR. HIBEY: Well, I think, Your Honor,  
6 that the thinking was that in the event there was  
7 expert testimony to be offered it traditionally, at  
8 least in the traditional civil litigation experience,  
9 is discovery which is taken after fact discovery has  
10 concluded.

11 And so in -- with that experience in mind,  
12 but without specifically having an expert in mind, we  
13 felt that the way to order the discovery was to do it  
14 in that fashion -- get the facts, and then if there is  
15 expert testimony to be elicited by either side, expert  
16 reports would be submitted and discovery taken  
17 accordingly.

18 JUDGE FARRAR: All right. Of course, most  
19 of our proceedings, unlike the enforcement  
20 proceedings, involve almost exclusively expert  
21 testimony with, you know, people trying to predict,  
22 you know, what will happen in future occurrences. I  
23 guess I had assumed that we would have only fact  
24 witnesses in this case, but I think what you're saying  
25 is the discovery, the experts, would not be an overly

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1 long process if there are any experts.

2 MR. HIBEY: I think that's -- I think you  
3 state it well. That's exactly true. I'm not so sure  
4 that this is a case that will turn at all on the  
5 testimony of experts, but we don't know that.  
6 Certainly we don't know that at this point. We don't  
7 know what the intentions of the Staff are in that  
8 respect. And so this is our way of dealing with that  
9 prospect.

10 JUDGE FARRAR: All right. Fine. Thank  
11 you both for that explanation.

12 Now, turning then back to the fact  
13 discovery, Miller Moffitt's proceeding where they were  
14 doing the whole thing in about five months, although  
15 I understand from what Ms. Brock just said that in  
16 Moffitt they may need more time, discovery here has  
17 been going on for a considerable period already.

18 And that middle paragraph on page 4,  
19 paragraph, I guess, 2 of your motion, makes me a  
20 little nervous because we're talking about not only  
21 waiting until after our ruling on the motion to compel  
22 before you launch depositions but your waiting for  
23 any appeal of the Board's ruling, and presumably -- I  
24 mean, I would hope our ruling will be so well reasoned  
25 no one will want to appeal it.

1 Obviously, people can go to the  
2 Commission. I suppose in certain kinds of cases there  
3 could be interlocutory review to a court from the  
4 Commission's ruling. So is going ahead with  
5 depositions -- I'd hate to put depositions off while  
6 that matter got -- I mean, it could be a two- or  
7 three-year deal. And meanwhile, Mr. Hibey, the clock  
8 is running against your client who is the subject of  
9 this order that was immediately effective.

10 Is there any way we can deal with that  
11 differently so -- or are you really saying that you  
12 can't do depositions, or it's fruitless to do  
13 depositions, or duplicative if you don't have that  
14 report?

15 MR. HIBEY: The report is a central  
16 document. I, frankly, would think that it would  
17 enable us to sharpen our focus to the point where  
18 depositions -- the number of depositions would not  
19 increase, that we might more efficiently be able to  
20 focus on those depositions we want to take once we  
21 have the fullness of the information that's on paper  
22 before us.

23 So I didn't -- our side, I would say, did  
24 not look upon that provision regarding deposition  
25 notice to unduly protract the situation. It was

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1 simply a way of assuring that the depositions we chose  
2 to notice would be against the background of all the  
3 information that lawfully is available to us going  
4 into those depositions.

5 JUDGE FARRAR: All right. Let me ask you,  
6 is that the only document that we're likely to see a  
7 motion to compel on, or are you working through all of  
8 the other privileges?

9 MR. HIBEY: We're working through the  
10 others. We cannot escape the significance, if you  
11 will, of the OI report. And we wanted -- and we  
12 wanted to, if you will, tee that up immediately upon  
13 our realization that we had needs which we've  
14 articulated in our motion to compel.

15 However, as we work through the other  
16 material in the case, there are documents the  
17 existence of which has now been made apparent to us.  
18 And from our search of the universe of materials that  
19 have been provided to us, we don't have them. So  
20 we're going to be undertaking from time to time, as we  
21 identify these materials, an effort to secure them  
22 from the Staff.

23 The Staff might very well agree to turn  
24 the material over or not. And depending upon the  
25 basis for their declination to do so, it might require

1 us to move forward with other motions for -- to compel  
2 production. But that is not to say that when we find  
3 these it would somehow cause us to push back  
4 continually the deposition practice that we all know  
5 we're going to engage in. So it's just that this is  
6 a big document.

7 JUDGE FARRAR: Right. So for purposes of  
8 the depositions, the OI report is the -- is the key  
9 document.

10 MR. HIBEY: It's a triggering document to  
11 date.

12 JUDGE FARRAR: Okay. Ms. Brock, did you  
13 want to weigh in on this?

14 MS. BROCK: Yes. The only thing I would  
15 add -- again, we agreed to the schedule that Mr.  
16 McAleer and Mr. Hibey proposed. Obviously, we don't  
17 view the OI report as central. Well, we -- we don't  
18 view the portions of the OI report that we withheld as  
19 central to being able to take depositions or even as  
20 relevant. But that goes more to the -- our response  
21 to the motion to compel on that.

22 JUDGE FARRAR: Right.

23 MS. BROCK: That being said, we're happy  
24 to agree to whatever schedule that we can meet that  
25 the Defendant wants.

1 We may be filing some motions to compel.  
2 We have yet to receive a single document from Mr.  
3 Geisen in mandatory disclosure. So we're asking for  
4 what we need in discovery, and there may be more  
5 discovery disputes to come, depending on the results  
6 of that. But that's why we wanted to defer those  
7 disputes and see how many of them could be worked out  
8 through the exchange of written interrogatories and  
9 document requests.

10 And to the extent that there are more  
11 documents that Mr. Geisen's attorneys believe we  
12 haven't provided, of course, you know, we're an open  
13 agency, we want to provide as much information that we  
14 can as possible. We continue to endeavor every time  
15 we find something new to go ahead and turn it over.

16 JUDGE FARRAR: All right. For example, I  
17 think we received a CD today.

18 MS. BROCK: Yes.

19 JUDGE FARRAR: I'm not in my office, so I  
20 don't know what's on it, but we received a CD today.  
21 And I think since I've been away, we've received at  
22 least one other.

23 MS. BROCK: If I could speak to that, what  
24 happened, which I think that all the parties are aware  
25 of, is that the agency was notified in July of 2006

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1 that FENOC had identified more documents. And when we  
2 were provided with those, we moved quickly to turn  
3 them over to the parties, and in fact were informed  
4 that FENOC attorneys had given them directly to -- the  
5 documents directly to the Defendant.

6 And coming out of those, our Office of  
7 Investigations did an additional interview, and we  
8 turned the transcript of that interview over within  
9 two weeks of receiving the transcript, as required by  
10 2.336. So that's why there have been a few more  
11 documents coming along.

12 JUDGE FARRAR: Let me ask this about the  
13 document and the oral argument. In the other cases  
14 I've been on we never had a motion to compel an  
15 investigatory report, so I'm new to this type of  
16 issue.

17 Given that the time schedule for  
18 depositions turns on how fast -- partly on how fast we  
19 get our decision out, we would like to target the end  
20 of -- if we have oral argument on September 6th,  
21 target the end of September to issue a decision, and  
22 because the document is so important we would want it  
23 to be a more thoroughly written than abbreviated  
24 ruling.

25 Would we -- is it ever done, or would it

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1 make sense, that we would see the document in camera  
2 before the argument? Would that help us write a  
3 better, faster decision, or is that just not the way  
4 the law is practiced?

5 MR. HIBEY: We were prepared to suggest  
6 that in this phone call. We anticipated the Court's  
7 desire to move the case along. And, of course, that's  
8 helpful to --

9 THE COURT REPORTER: Please identify  
10 yourself.

11 JUDGE FARRAR: That's Mr. Hibey.

12 MR. HIBEY: I'm sorry. Forgive me. This  
13 is Richard Hibey. And we thought that perhaps if the  
14 conversation vectored in a certain direction we would  
15 ask the Court if it would exceed to looking at the  
16 material even before the argument date.

17 JUDGE FARRAR: Ms. Brock, what do you --  
18 and I'm not saying we're committed to that. It's a  
19 genuine question. You know, is that a sensible  
20 approach that would -- that would help us write a  
21 faster, better decision, or is that something the  
22 Staff would be opposed to?

23 MS. BROCK: The Staff has no objection to  
24 providing the unredacted version of the OI report to  
25 the Board for an in camera review. The sensitivity of

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1 the redacted portions of the OI reports -- the great  
2 majority of it is allegations that were not  
3 substantiated. So we don't generally -- it's a much  
4 longer report than you might get in a typical  
5 enforcement case, because it focused on so many  
6 different things.

7 JUDGE FARRAR: How many pages -- how long  
8 is it?

9 MS. BROCK: I'm confirming this. I  
10 believe it's 230 pages.

11 JUDGE FARRAR: Okay. That's good enough.

12 MS. BROCK: But we have no objection -- I  
13 mean, if Mr. Baker's attorneys want you to view it, we  
14 have no objection to it. It's potentially a -- from  
15 the Staff's perspective, we have no objection.

16 JUDGE FARRAR: Could you get -- if we --  
17 and we will not decide that today. Judge Trikouras  
18 and Judge Hawkens and I will confer on that. But  
19 would you be -- if we did want it, would you be able  
20 to give us a version that would indicate what  
21 redactions you wanted to make, but we could still see  
22 how those read? In other words, rather than blacking  
23 something out, you would -- or give us a redacted and  
24 a non-redacted, so we could instantly see what the  
25 controversy is about?

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1 MS. BROCK: Yes. We can -- I think we can  
2 do that. Mr. Geisen's motion has attached to it the  
3 redacted version.

4 JUDGE FARRAR: Oh, okay.

5 MS. BROCK: And we can provide you the  
6 unredacted version.

7 JUDGE FARRAR: That would be fine.

8 MS. BROCK: We can do that. I mean, we  
9 could do that tomorrow.

10 JUDGE FARRAR: Well, don't do it yet. Let  
11 us confer and make sure it's something that we do want  
12 to do. But it -- then it may make sense and help us  
13 come to grips with the case more readily. Thank you.  
14 Appreciate, Mr. Hibey, that that was going to be your  
15 suggestion, and, Ms. Brock, for agreeing to it.

16 Well, then, with that, we -- if we got a  
17 decision out before the end of September, and if there  
18 were no appeal, then that would trigger your notices  
19 of deposition, is that correct?

20 MR. HIBEY: Yes, sir.

21 JUDGE FARRAR: And you're still on -- your  
22 status report said you would file written discovery on  
23 September 1st and have it answered by September 30th.

24 MR. HIBEY: Yes, Your Honor.

25 JUDGE FARRAR: So if we had our decision

1 out by September 30th, and everyone said what a  
2 wonderful decision it was and took no appeals, then  
3 we'd be ready to launch into the depositions?

4 MR. HIBEY: Yes, sir.

5 JUDGE FARRAR: Okay. Ms. Brock, is that  
6 correct?

7 MS. BROCK: Yes. And we're just noticing  
8 that October 1st and September 30th are a Saturday and  
9 a Sunday.

10 JUDGE FARRAR: I'm just, you know, more or  
11 less --

12 MS. BROCK: I think we did put that in our  
13 status report, though.

14 JUDGE FARRAR: Yes, that's -- you know,  
15 then, I think with those understandings and your  
16 explanations of what's been happening, then we would  
17 be in a position to approve your -- the schedule you  
18 submitted in your joint report, so we'll -- as part of  
19 our order confirming what happened here, a) we will  
20 approve that schedule.

21 I have one other item we wanted to  
22 discuss, which involves this case indirectly and the  
23 other cases directly. Before I get to that, is there  
24 anything else either counsel would like to bring up?

25 MS. BROCK: Nothing from the Staff, Your

1 Honor.

2 MR. HIBEY: Nothing here.

3 JUDGE FARRAR: Mr. Hibey?

4 MR. HIBEY: Nothing here, Your Honor.

5 JUDGE FARRAR: Okay, fine. Thank you.

6 The other night we got a motion from Mr.  
7 Geisen to quash his deposition in the Miller Moffitt  
8 case, and obviously Ms. Penny is not here on the call,  
9 so we don't want to talk too much about this, but you  
10 have an agreement in this proceeding, the Geisen  
11 proceeding, to do all depositions later.

12 We had a little bit of concern when we saw  
13 the motion that you -- by doing the Geisen deposition  
14 in the Miller Moffitt case now that that's kind of  
15 inconsistent with your agreement here. And I suppose  
16 we -- when the Staff files what I assume will be an  
17 opposition in the Miller Moffitt case to the motion to  
18 quash the deposition, they will address that  
19 inconsistency, particularly since I seem to remember  
20 a recent proceeding where the Staff said one  
21 proceeding shouldn't go forward because discovery  
22 could be misused and be used in that proceeding to get  
23 around the restrictions in another one.

24 Would you all be good enough to address  
25 that in your brief in response to the motion -- in the

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1 Miller Moffitt case to quash the Geisen deposition?

2 MS. BROCK: Sure. I'm not sure that I'm  
3 following --

4 JUDGE FARRAR: Okay. When the Government  
5 brought them -- asked us to delay the Geisen  
6 enforcement case pending the outcome of the criminal  
7 case, because Mr. Geisen could use the discovery  
8 process in the enforcement case to get around the  
9 limited discovery in the criminal case.

10 Just glancing and not forming any  
11 conclusions about the recent motion, it's like you're  
12 using -- a person might perceive that you're using the  
13 discovery in the Miller Moffitt case to get around an  
14 agreement you have in the Geisen case. I mean, you do  
15 have an agreement with Mr. Geisen in his case not to  
16 do depositions until later, as we have just discussed  
17 the last half hour or so?

18 MS. BROCK: Right. I guess -- I think  
19 that -- do you want me to address that now, or do you  
20 want me just to address that in writing?

21 JUDGE FARRAR: Probably better in writing,  
22 since Ms. -- I don't know what Ms. Penny's position  
23 is. That's not this case. It's the Miller Moffitt  
24 case. I don't know what her position is, but I just  
25 wanted to alert you that that struck us as something

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1 that ought to be addressed. How you -- this may be  
2 the first time we've had to reconcile the three  
3 proceedings, and, you know, how they move forward,  
4 because you do have a schedule in Miller Moffitt that  
5 you're trying to adhere to.

6 MS. BROCK: I think that's the  
7 complicating factor here, Your Honor.

8 JUDGE FARRAR: Is just the schedule.

9 MS. BROCK: Trying to move those cases  
10 along to hearing.

11 JUDGE FARRAR: Yes.

12 MS. BROCK: As quickly as possible.

13 JUDGE FARRAR: Okay. But if you can -- or  
14 another suggestion might be the Board has noted  
15 privately and orally and in writing with appreciation  
16 the cooperative spirit that has been exhibited between  
17 the Staff and Ms. Penny in the Miller Moffitt case,  
18 and the Staff and Mr. Hibey and his group in the  
19 Geisen case.

20 And maybe this is something for the three  
21 of you -- the staff, Ms. Penny, and Mr. Hibey -- to  
22 get together and figure out how do you move the cases  
23 along, and at the same time, you know, reconcile the  
24 various needs while not slowing one case or the other  
25 down unduly.

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1           So if you -- maybe then if you want to,  
2 Ms. Brock, trigger those discussions, and if it looks  
3 like they are successful, we haven't issued an order  
4 saying when you should -- you know, changing the rules  
5 on when you should reply to this motion to quash. We  
6 certainly would look favorably on a motion and your  
7 time to reply, because you and the two counsel were,  
8 you know, working out a mutually agreeable situation.  
9 That might -- if that works, that would save you  
10 having to write a reply brief.

11           MS. BROCK: Well, yes. Thank you, Your  
12 Honor, I appreciate that. We've had a fair amount of  
13 discussions. I think we're just kind of between a  
14 rock and a hard place on it. But if we -- if we think  
15 that any further discussions can be fruitful, we'll  
16 certainly work on that.

17           JUDGE FARRAR: Okay. Then, we'll leave  
18 that to you. That's your option, but rest assured  
19 that if you do go that direction we would look  
20 favorably on a motion to extend your briefing time --

21           MS. BROCK: Okay.

22           JUDGE FARRAR: -- in response. And that  
23 deposition is September 11th?

24           MS. BROCK: Yes.

25           JUDGE FARRAR: If we start to run up

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1 against that date, and we have to, you know,  
2 temporarily postpone the deposition because you all  
3 are working on something else, you know, that's fine,  
4 too.

5 MS. BROCK: Okay.

6 JUDGE FARRAR: You let us know what your  
7 preference is on that, and we'll make sure -- next  
8 time anyone talks to Ms. Penny, please pass the gist  
9 of this on to her, and we will make sure she gets a --  
10 this portion of the transcript, so she can see what we  
11 were talking about.

12 All right. With that kind of collateral  
13 matter out of the way, is there anything else anyone  
14 would like to bring up?

15 (No response.)

16 Judge Trikouras, anything from you?

17 JUDGE TRIKOURAS: Not at this time, Judge  
18 Farrar.

19 JUDGE FARRAR: Then, we'll talk later, you  
20 and Judge Hawkens and I, about the -- whether we want  
21 to see that report or not.

22 Anything, Mr. Hibey, anything else?

23 MR. HIBEY: Nothing from this end, Your  
24 Honor. Thank you.

25 JUDGE FARRAR: And Ms. Brock?

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1 MS. BROCK: No, thank you.

2 JUDGE FARRAR: Thank you all for  
3 participating in this. Mr. Matthews, Mr. Horner, we  
4 were happy to have you on the line.

5 And at this point, then, we will terminate  
6 the call and go off the record. Thank you very much.

7 (Whereupon, at 1:42 p.m., the proceedings  
8 in the foregoing matter were adjourned.)

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Conference

Docket Number: IA-05-052

Location: Teleconference

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