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**From:** James Caldwell  
**To:** Jim Dyer; Martin Virgilio; William Kane  
**Date:** Mon, Apr 23, 2007 10:00 AM  
**Subject:** Fwd: Toledo Blade on Davis-Besse hearing

>>> Eric Duncan 04/23/2007 9:56 AM >>>  
To all,

FYI regarding an additional impact of the Exponent Report.

Eric.

>>> Viktoria Mitlyng 04/23/2007 9:17:45 AM >>>  
Attached is the Toledo Blade story on Friday's hearing:

Article published Saturday, April 21, 2007  
Insurance claim to delay trial for 3 ex-Davis-Besse workers

By TOM HENRY  
BLADE STAFF WRITER

FirstEnergy Corp.'s attempt to recoup \$200 million from an insurance policy has caused a four-month delay in the criminal prosecution of three workers formerly associated with the utility's Davis-Besse nuclear plant in Ottawa County.

U.S. District Court Judge David Katz said at a hearing yesterday that he had no choice but to postpone the trial of Andrew Siemaszko to Sept. 10 and that of his two co-defendants, David Geisen and Rodney N. Cook, to Oct. 9 because of assertions made in a 661-page report by two FirstEnergy consultants, Exponent Failure Analysis Association of Menlo Park, Calif., and Altran Solutions Corp. of Boston.

The three were indicted last year on charges of lying to the government about the plant's condition in the fall of 2001.

All three face up to five years in prison and \$250,000 in fines, if convicted.

Both of FirstEnergy's consultants claim to be global leaders in scientific failure analysis. In their joint report, they attributed most of the vessel head's erosion to a three-week accelerated leakage period before Davis-Besse was shut down on Feb. 16, 2002, contrary to what the Nuclear Regulatory Commission had said.

FirstEnergy is using the new document to bolster its claim for \$200 million of insurance coverage the utility had on Davis-Besse's reactor head.

The company is trying to show the near-catastrophic rupture was more fluke than neglect.

It is doing so even though it admitted compromising safety for profits and paid a record \$33.5 million in fines for its role in what has been described as one of the U.S. nuclear industry's biggest attempted cover-ups.

At yesterday's hearing, defense attorneys noted the new report contradicts the NRC's assertions of the cavity forming over five to six years as well as the worldwide understanding of how the plant's reactor

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head nearly burst open in 2002.

Such a rupture could have endangered millions of people in northern Ohio by allowing radioactive steam to form in the containment building. That type of accident would have been the first since the 1979 half-core meltdown of the Three Mile Island Unit 2 reactor near Harrisburg, Pa.

The NRC has remained neutral on the new report.

Judge Katz told Justice Department attorneys he wants to know within two weeks if the NRC believes the new findings are "junk science." If so, he would prevent federal prosecutors from using the report in court.

If not, that could raise questions as to whether the trio can be prosecuted for violating inspection standards that might have been flawed.

The FirstEnergy consultants' report was completed Dec. 15. It was turned over to the NRC on March 20 and made available to defense attorneys on April 2. Jury selection for Mr. Siemaszko's trial was to start on April 30.

The other two were scheduled to have their cases heard simultaneously in June.

One of Mr. Geissen's attorneys, Richard Hibey, told the judge that "litigation might be outpacing scientific understanding."

"If you are correct that the litigation before us is outpacing the science, then it is the government's obligation to make that determination," the judge responded.

Viktoria Mitlyng, a NRC spokesman, declined comment on the judge's instructions to federal prosecutors.

She said the agency still has not taken a position on the new report.

"Once the request is made, I'm sure it's going to be reviewed by the commission and action is going to be taken," Ms. Mitlyng said.

The NRC has based many of its claims on 2004 research by the Department of Energy's Argonne National Laboratory, 25 miles southwest of Chicago.

The lab determined Davis-Besse's massive steel lid had at least two months but no more than 13 months before it would have burst.

"We didn't know there was going to be a challenge to the worldwide understanding of how these events occurred. But there is and now we have to deal with it," Chuck Boss, one of Mr. Siemaszko's attorneys, told the judge.

The other attorney, Billie Pirner Garde, called the new report "an extraordinary turn of events with extraordinary implications."

"That science was not challengeable. It was the position of the whole industry," she said. "If [FirstEnergy's consultants] are right, judge, it changes the whole science of stress corrosion cracking."

The Argonne National Laboratory, chartered in 1946, was the nation's first national laboratory and continues to be one of the country's largest research centers today. The laboratory has ties to the advent of the atomic age.

Judge Katz said he considers it highly credible.

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