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OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Cameo Diagnostic Centre, Inc.
(Byproduct Material License
No. 20-27908-01, EA93-005)

Docket No. 30-29567-CivP and ALSBP No.
94-686-01-CivP

LOCATION: Bethesda, Maryland

DATE: Tuesday, April 26, 1994

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD
5

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7 In the matter of: :

8 CAMEO DIAGNOSTIC CENTRE, INC. : Docket No. 30-29567-CivP

9 (Byproduct Material License : ASLBP No 94-686-01-CivP

10 No. 20-27908-01 :

11 EA-93-005) :

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13 Tuesday, April 26, 1994
14 4350 East-West Highway
15 Room 428
16 Bethesda, Maryland
17
18

19 The above-entitled telephone conference commenced
20 at 10:00 a.m., pursuant to notice.
21

22 Before Administrative Law Judges:

23 Ivan W. Smith, Chairman

24 Dr. Richard F. Cole

25 Dr. Charles N. Kelber

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1 APPEARANCES:

2 FOR THE LICENSEE CAMEO DIAGNOSTIC CENTRE, INC.

3 MR. PAUL J. ROSENBAUM, PRESIDENT

4 155 Maple Street

5 Springfield, Massachusetts 01105

6 (413) 788-7000

7

8 FOR THE NUCLEAR REGULATORY COMMISSION:

9 BERNARD M. BORDENICK, ESQUIRE

10 CATHERINE L. MARCO, ESQUIRE

11 Office of the General Counsel

12 U.S. Nuclear Regulatory Commission

13 Washington D.C. 20555

14 (202)504-1585 (Tel. conf. No.)

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JUDGE SMITH: We're on the record now. I understand that this prehearing conference was requested by Mr. Rosenbaum, and I infer that it relates to the interrogatories and his motion.

MS. MARCO: We both requested it.

JUDGE SMITH: You did.

MS. MARCO: Yes.

JUDGE SMITH: Well, go ahead and tell me why you wanted it. there is no use guessing. You are Ms. Marco who just spoke? Who was the speaker just now?

MS. MARCO: This is Catherine Marco, for the staff.

JUDGE SMITH: What was the purpose, Ms. Marco?

MS. MARCO: On April 21st, we received the motion from the licensee, entitled Motion to Deny Staff's Request for Production of Documents and to Allow Substituting Licensee's Prepared testimony from the February 18, 1993 Enforcement Conference as an Alternative.

And we're bringing this up, we'd like a conference call now on it because scheduled next week we have a deposition for Springfield, Massachusetts; and we'd like to get this business resolved first before we go ahead into that.

JUDGE SMITH: All right. I take it that you

1 oppose the motion?

2 MS. MARCO: That is correct.

3 JUDGE SMITH: Mr. Rosenbaum?

4 MR. ROSENBAUM: Yes, Sir

5 JUDGE SMITH: Your motion to us -- incidently, we
6 haven't received it yet except from the staff -- doesn't
7 really tell us much, but we have no idea what it is you are
8 substituting. You know, we are not privy to that.

9 But I suggest that we go directly to the
10 interrogatories and discuss the reach of them, whether they
11 are burdensome, whether they are necessary or appropriate,
12 and see if both of your needs cannot be resolved.

13 Now, all three Board members are here, and each of
14 us have read the interrogatories, and while we believe with
15 some exceptions that each question is certainly relevant to
16 the case, as information the staff might want to have, by
17 the time you have -- what do we have 28 interrogatories with
18 subparts? You have well over 100 questions you are putting
19 to Mr. Rosenbaum, and this is a case at the outset we regard
20 -- well, it's much more than that. You have 33
21 interrogatories and most of them have four subparts.

22 So, you know, we're talking about a large number
23 of interrogatories, and the Commission not too long ago had
24 contemplated a discovery rule which, even in a large case,
25 would have limited interrogatories to somewhere around 60.

1 This is a case that we thought could have been stipulated.
2 The essential facts could have been stipulated early on, and
3 all we received was, "No, no stipulation is possible."

4 So we'll begin by that. Just tell me, there were
5 no facts that could have been stipulated in this case?

6 MS. MARCO: Your Honor, the staff has proposed the
7 set of facts for stipulation and it was rejected completely.

8 JUDGE SMITH: Are you president of Cameo
9 Diagnostic Centre, Inc., Mr. Rosenbaum?

10 MR. ROSENBAUM: Yes, I am, your Honor.

11 JUDGE SMITH: Could you not have stipulated that
12 fact?

13 MR. ROSENBAUM: Well, I think had I agreed with
14 the stipulations, as presented by the staff, I would have
15 presented -- the stipulations would have presented the wrong
16 picture. What I think is necessary for the Board to
17 consider was the entire picture, not something that would
18 prejudice me.

19 I have had no offer to meet with me to go over the
20 details and perhaps agree to a negotiated settlement as to
21 what the stipulations might be, so that when presented to
22 the Board, they would provide a complete picture.

23 As I mentioned to Ms. Marco, the list of
24 stipulations was significant by the number of omissions
25 rather than by the number of commissions.

1 JUDGE SMITH: All right. That is entirely
2 predictable. I can see that your concern here is you are
3 going to stipulate to a lot of cold facts --

4 MR. ROSENBAUM: Yep.

5 JUDGE SMITH: -- and you are not going to have an
6 opportunity to see the underlying concerns that you have
7 about the enforcement action against you come up. What you
8 are overlooking, the fact is that you are going to be
9 afforded an opportunity to come before all three Board
10 members and tell your story. And I think you are afraid
11 that somehow it is going to be cut off short.

12 MR. ROSENBAUM: You got it, your Honor, that is
13 exactly right.

14 JUDGE SMITH: Well, it's not going to happen.

15 MR. ROSENBAUM: I'll have a hearing regardless, is
16 that what you are saying, your Honor?

17 JUDGE SMITH: Exactly right.

18 MR. ROSENBAUM: Well, if that's the case then,
19 I'll go ahead, I'll stipulate. I'm not worried about that.
20 I'm just worried I may be sandbagged without an opportunity
21 to be heard.

22 JUDGE SMITH: Well, no. You could be sandbagged.
23 You could admit facts in an interrogatory, or admissions, or
24 a stipulation that would be used in cross-examining you, if
25 you should depart from, you know, your previous answers.

1 See, that is mainly the purpose of this prehearing
2 discovery. It is to nail down just what your view of the
3 case is. Not to prohibit you from making your case, but so
4 that they have no surprises when we go to the hearing.
5 Basically, that's it.

6 MR. ROSENBAUM: Well, I appreciate what you are
7 saying, your Honor. But I am not a lawyer. I have had no
8 experience whatsoever in this sort of issue, and I am
9 frightened to death of being sandbagged.

10 JUDGE SMITH: Right. And I don't suppose that
11 when you receive an interrogatory that takes seven pages
12 before even a question is asked, that does much to put you
13 at your ease. You know, there are seven pages of
14 definitions before the first question comes out. And I
15 can see that that is not something you are probably
16 accustomed to. These interrogatories are about the size
17 that you might expect of a full-scale licensing hearing.

18 MR. ROSENBAUM: Exactly. What we're talking about
19 is an allegation of some possible misconduct with a fine of
20 \$500 escalated 250 percent.

21 JUDGE SMITH: Well, let's go on down the nature of
22 the interrogatories and see just what can be done about it.
23 We'll take them one at a time. We might as well get them
24 resolved. Maybe we can get done with it today.

25 All right, number one. You don't have any

1 question that they have a right to know who you are going to
2 call as a witness, do they? I mean, you know that, that
3 they have a right to know that?

4 MR. ROSENBAUM: Yes. Let me describe my feelings
5 about that, your Honor. I'm old-fashioned and I think
6 everything is fair and square, and if you come before an
7 adjudicatory body, you are given a fair shake.

8 Well, lo and behold, I discover upon careful
9 examination of Part Two that, in fact, I'm locked out. I
10 think I had a list of about 21 or 22 potential witnesses
11 that I wanted to call, about 18 of whom are NRC employees.
12 Well, lo and behold, apparently Part Two grants immunity
13 from subpoenas to all NRC employees and documentation.

14 JUDGE SMITH: I think you've misread that.

15 MR. ROSENBAUM: I read 2.720(h)(1) and
16 2.720(h)(2)(i) -- small Roman numeral one --

17 JUDGE SMITH: Well, you know, I think you've made
18 a good point at the very beginning of this conversation.
19 You may very well be in over your head on this because you
20 have not read that regulation completely and accurately.

21 MR. ROSENBAUM: Well, I've got it in front of me.
22 And, perhaps, if I made a mistake, you can tell me how I
23 have, and I'd like to conform to whatever you think I should
24 conform with. According to my --

25 JUDGE SMITH: See, this gets into sticky grounds

1 here. Now, we cannot be your legal counsel.

2 MR. ROSENBAUM: Of course. But I read 2.720(h)(1)

3 --

4 JUDGE SMITH: I don't have that regulation before
5 me. But if you could read it farther on down, you will see
6 it comes to a time where you can subpoena an NRC employee,
7 if that named employee is the only person who has the facts
8 that are relevant to your subpoena.

9 See, that regulation was designed for licensing
10 purposes, where the Executive Director for Operations knew
11 who the persons were who were best qualified to address the
12 technical issues. But in an NRC proceeding where a named, a
13 particular individual has facts that no one else has, or is
14 best equipped to provide factual testimony, you can subpoena
15 that person, if you have to. Now, that doesn't mean you can
16 subpoena 18 people just willy-nilly.

17 MR. ROSENBAUM: No.

18 JUDGE SMITH: But there is no flat out immunity
19 against subpoenaing NRC personnel. And you just didn't read
20 it carefully enough. And that is a symptom of a bigger
21 problem.

22 I despair that you are going to be able to work
23 your way through these technical things with your level of
24 legal sophistication, which I am not disparaging. You are
25 not a lawyer. But you do have a problem.

1 All right. Number one, they have a right to know
2 who you intend to call as a witness. If you intend to call
3 staff people as a witness, you'll have to justify it. But
4 you are allowed to call people who have direct knowledge of
5 your case.

6 MR. ROSENBAUM: Okay. Let me be sure that there
7 is no misunderstanding on my part. You are saying to me
8 that if I list 15 or 18 NRC people, who I feel have
9 pertinent information which can be disclosed only when they
10 are subject to testimony under oath, that I may do so.

11 JUDGE SMITH: No. I didn't say anything like
12 that.

13 MR. ROSENBAUM: I'm asking for a correction of my
14 understanding.

15 JUDGE SMITH: I said, in fact, you cannot call 17
16 or 18 people willy-nilly.

17 MR. ROSENBAUM: Okay.

18 JUDGE SMITH: You know, you have to have a reason
19 to call them. You have to have a feeling that they have
20 information relevant to your case.

21 MR. ROSENBAUM: Absolutely.

22 JUDGE SMITH: You just don't call them to a
23 hearing. You should make inquiries before hand, in
24 discovery, as to who does have information about your case.
25 We're not going to turn this case into a four-week hearing

1 while you call people that you hope might have information.

2 MR. ROSENBAUM: Oh, there is no question about
3 that, your Honor. Every single one that I have in mind is a
4 direct relationship to the affairs that took place here.
5 No. There is no willy-nilly, not by any means or manner.
6 I'm not a sophisticated, sharp-eyed defense lawyer. I'm
7 just trying to get the facts.

8 My whole objective, your Honor, is to get before
9 the Board and present the facts, let the Board make a
10 decision based on the facts that I can only solicit by
11 direct under oath testimony.

12 JUDGE SMITH: Okay. Let's go back to
13 Interrogatory Number 1. Do you intend to call as a witness
14 anybody except yourself on behalf of your company?

15 MR. ROSENBAUM: Yes, Sir.

16 JUDGE SMITH: Are you able to identify those
17 people?

18 MR. ROSENBAUM: Yes, Sir.

19 JUDGE SMITH: Well, why don't you do it?

20 MR. ROSENBAUM: Okay. I'll be glad to do that.
21 No problem.

22 MR. ROSENBAUM: All right. Then you can also name
23 the people on the staff that you intend to call. This is
24 information for the staff to prepare for trial. This is
25 not, at heart, information for us. Do you understand that?

1 MR. ROSENBAUM: Yes, Sir.

2 JUDGE SMITH: We will disregard these
3 interrogatories unless portions of them are introduced as
4 evidence at the hearing. We're only making rulings now on
5 the staff's right to have information from you.

6 MR. ROSENBAUM: Okay.

7 JUDGE SMITH: An interrogatory could be used to,
8 for example, confront you with a position that the staff
9 thought you may have changed between the interrogatory and
10 the hearing. That is the basic purpose of it right there,
11 and so that they can learn how to meet your case.

12 Now, with that in mind, what is your quarrel about
13 Interrogatory Number 2? I guess you don't have any now, do
14 you?

15 MR. ROSENBAUM: I don't think so.

16 JUDGE SMITH: All right. And how about Number 3?

17 MR. ROSENBAUM: Number 3 is no problem.

18 JUDGE SMITH: Well, maybe we made a break through
19 here. Maybe we don't have to go through all of them now
20 that you understand better what the purpose of discovery is
21 and the fact that you have a right to present your case in
22 full at the hearing.

23 Is it possible to go back and look through those
24 and see if you're capable of answering them, or willing?
25 Look at Number 4, for example?

1 MR. ROSENBAUM: Okay. I've got 4 in front of me.
2 There is no problem there at all.

3 JUDGE SMITH: Well, I think that you may be --

4 MR. ROSENBAUM: There is no problem with Number 4,
5 your Honor, there is no problem with Number 5, there is no
6 problem with Number 6, there is no problem with Number 7.

7 JUDGE SMITH: Now, wait a minute don't be so --
8 what about Number 8?

9 MR. ROSENBAUM: Number 8? I see a problem.

10 JUDGE SMITH: Well, what do you think the problem
11 is?

12 MR. ROSENBAUM: It says, "The licensee contends it
13 did not violate 10 C.F.R. 3513(e)." And I'd just as soon
14 not respond to that.

15 JUDGE SMITH: They have a right to information of
16 that type, but my trouble is with Interrogatory 8.B. And it
17 says, "If the response to Interrogatory 8.A is in the
18 affirmative, how does the licensee intend to establish it
19 did not violate 10 C.F.R. 3513(e)?"

20 And that interrogatory assumes that you have a
21 duty to establish that fact. And you have no such duty. It
22 is up to the staff to prove the case against you. They have
23 the burden of proof. However, if you do intend to present
24 evidence that you did not violate that section, affirmative
25 evidence, then they have a right to know what that evidence

1 is.

2 They do have a right to know whether you dispute
3 the -- I mean, at this stage, they have a right to know
4 whether you dispute the charge or not. Now, if your
5 position is, "Okay, I violated the technical terms of that,
6 but I want you to hear my point for --

7 DR. KELBER: Mitigation or escalation.

8 JUDGE SMITH: -- " mitigation or escalation."
9 That is another thing. You have a right to do that too.
10 You also have a right just to say, "You people are on your
11 proof, you go ahead and prove the case against me." I guess
12 you do have a right to not answer that question.

13 MR. ROSENBAUM: That's my attitude. You are
14 saying to me, "We've got you in the box and we want to put
15 the cover over you. We want you to allow us to put the
16 cover over you and nail you down."

17 JUDGE SMITH: Well, you know, you've raised an
18 interesting point. If it's your position that you did not
19 violate it, then you can put them on their proof. You could
20 also have taken the position that you did violate it but
21 there are mitigating circumstances.

22 I will say this, answering Interrogatory 8.A. in
23 the negative, for the purpose of putting the staff on its
24 proof, would not be a perjurious statement.

25 MR. ROSENBAUM: Well, that's what scares me. That

1 is what scares me. That's what I call sandbagging.

2 JUDGE SMITH: All right. Let's say that
3 Interrogatory 8.A. is amended to say you want the staff to
4 prove its case. We're not going to require you to relieve
5 the staff of proving its case by affirmative answer to 8.A.
6 Staff has to prove its case, if you want them to.

7 MR. ROSENBAUM: I accept that without any
8 reservation.

9 JUDGE SMITH: All right. So with that
10 understanding, we're going to suspend 8.A. Is that okay,
11 Ms. Marco?

12 MS. MARCO: Your Honor, wouldn't it be more to the
13 fact that 8.A. would be answered but 8.B. would be said,
14 well, the staff will prove it's case?

15 JUDGE SMITH: I beg your pardon?

16 MS. MARCO: Isn't it the second part going into
17 how that would be done? So isn't the first just asking for
18 basically what the -- yes or no. And then second part would
19 be more to the effect, "Wwell, I will do this, say you do
20 it."

21 JUDGE SMITH: See, Interrogatory 8.A. is not a
22 simple, straight forward, factual question. It is a
23 question of fact and law combined. He's a layman and he
24 should not be required to make the legal analysis that you
25 are requiring of him.

1 I think we'll just resolve this by saying you put
2 your case on. But, Mr. Rosenbaum, if you have information
3 that you intend to establish that you did not violate it,
4 you have to give that information. If you have information
5 that you are going to come forward, that you did not violate
6 that section, you have to provide that information now,
7 without admitting or denying that you did it.

8 See, that's the classical lawsuit anyway. The
9 defendant will come in and deny for the purpose of the
10 record, or whatever, and then put the Plaintiff on his
11 proof, and then come in with his defense. So you have to
12 provide information as to what evidence you are going to
13 provide that you did not violate that, without admitting
14 that you violated it.

15 MR. ROSENBAUM: Well, does that come under the
16 classification of a non sequitur? How can I possibly do
17 that? How can anybody possibly do that?

18 JUDGE SMITH: Because the law puts the burden upon
19 the Plaintiff to prove its case. And you can, if you wish,
20 remain silent. And if the Plaintiff does not prove its
21 case, you win in this case. However, you have other options
22 other than remaining silent. You have the option of coming
23 in with your own evidence. If you intend to come in with
24 your own evidence, then they have a right to know what that
25 evidence is, in a civil case.

1 MR. ROSENBAUM: Yes. Again, I have no objection
2 to that. The evidence will be forthcoming when you examine
3 a witness under oath.

4 JUDGE SMITH: No. Now. They have a right to
5 prepare for their hearing now.

6 MS. MARCO: And he will be required to specify
7 what that evidence is, that it's to that question, is that
8 what you are saying?

9 JUDGE SMITH: Without admitting --

10 MS. MARCO: Okay.

11 JUDGE SMITH: -- one way or the other --

12 MS. MARCO: I understand.

13 JUDGE SMITH: -- that he violated Section 3513(e).
14 If he intends to offer evidence that he did not violate it -
15 -

16 MS. MARCO: Okay.

17 JUDGE SMITH: -- he has to give that evidence.
18 And you can also quite truthfully say in response to every
19 interrogatory, "I simply don't know," or "I don't know now."
20 But if you have in mind a document, a witness that you are
21 going to offer that you did not violate it, then you have to
22 come up with that now, if you have it mind now.

23 MR. ROSENBAUM: Okay. So I have to respond then
24 to Interrogatory 8.A. and not respond to 8.B?

25 JUDGE SMITH: You do not have to admit or deny

1 that you violated that section. But you have to come up
2 with information that you intend to produce at the hearing -
3 -

4 MR. ROSENBAUM: I see. Okay.

5 JUDGE SMITH: -- to the effect that you did not
6 violate it --

7 MR. ROSENBAUM: Okay.

8 JUDGE SMITH: -- all right? Do you understand
9 that?

10 MR. ROSENBAUM: You now clarified it very well,
11 your Honor. You are saying I can admit or deny, and in
12 either case I have to provide justification for so doing.

13 JUDGE SMITH: That's right. No, no. Not --

14 DR. KELBER: Not justification.

15 JUDGE SMITH: -- justification. You can admit it
16 or deny it, or refuse to do either, but in either case you
17 have to come up with the evidence that you intend to present
18 which would tend to disprove the allegation, the charge
19 against you.

20 MR. ROSENBAUM: Okay.

21 JUDGE SMITH: Do you understand that now?

22 MR. ROSENBAUM: Yep. I got it.

23 JUDGE SMITH: All right.

24 DR. COLE: Or mitigate it.

25 JUDGE SMITH: Or mitigate it. I think that this

1 case could be crystallized in an agreement that certain
2 facts may violate certain sections, but in mitigation you
3 want the Board to consider this. But I don't think we're
4 going to get there, but I think that's what you should have
5 been doing.

6 MR. ROSENBAUM: Would it help any if there were a
7 conference with some of the appropriate individuals from the
8 NRC staff to straighten this thing out?

9 JUDGE SMITH: Well, I don't know. I have to ask
10 them. We're disappointed that you haven't done more about
11 agreeing to these things already.

12 MR. BORDENICK: Judge Smith?

13 JUDGE SMITH: Yes.

14 MR. BORDENICK: This is Bernie Bordenick speaking.
15 First of all, I'd like to dispel a notion that you
16 apparently have. Staff counsel has had several
17 conversations with Mr. Rosenbaum regarding this case in
18 general and discovery in particular.

19 But the point I wanted to address was the point
20 that just came up, that Mr. Rosenbaum raised, about
21 discussing this with someone at the NRC. I don't recall
22 whether we've ever mentioned to him the fact that he can, if
23 he chooses to do so and the staff chooses to do so, avail
24 himself of a settlement judge.

25 MR. ROSENBAUM: Of a what?

1 MR. BORDENICK: I'll let Judge Smith explain it,
2 if he'd like.

3 JUDGE SMITH: There is a provision under our rules
4 where a person is reluctant to concede weaknesses in his
5 case to the Licensing Board or to the trial judge because he
6 is afraid that judge will ratchet that information against
7 him. You know, say, "Well you admitted it during settlement
8 discussions, therefore, you have admitted a weakness in your
9 case."

10 I might say that it is traditional for judges to
11 conduct settlement conferences in which people do frankly
12 admit weaknesses but they are not bound by that in the
13 trial. At the NRC we have a provision where we could refer
14 this matter to another judge who will listen to all the
15 problems that are connected with this case. We'll listen to
16 you say, if such be the case, "Well, you know, they got me
17 on the technical aspects of this, but they weren't
18 reasonable, and they over did it, and they were out to get
19 me."

20 And he would be obliged to keep your concession
21 that they have you on technical aspects confidential. He
22 would never report that to us. All he would report to us
23 would be whether there was a settlement and if so, what were
24 the terms.

25 And then we would look at the settlement and the

1 terms and see if it was in the public interest and approve
2 it or disapprove it. But he would not report to us frank
3 discussions that each side had about what they are willing
4 to do and what they are not willing to do, and what they
5 concede, and what they don't concede.

6 In other words, there would be a person you could
7 sit there to, that you could just tell your whole story to.
8 And without fear that in telling your whole story to that
9 person you would prejudice your case before us.

10 MR. ROSENBAUM: Well, this sure is welcome news,
11 your Honor. And I would not hesitate for a tenth of a
12 second to say I'm perfectly willing to present my case
13 before such an individual. That might have been a great
14 service had you mentioned this to me before.

15 MR. BORDENICK: Well, Mr. Rosenbaum, as I
16 mentioned earlier, I'm not sure whether we mentioned this or
17 not. We had discussed several things related to it, which I
18 don't want to get in to for several reasons.

19 But my suggestion would be, under the
20 circumstances, we finish this conversation. But I think
21 we're going to have to address, as we do that, scheduling in
22 general for several reasons.

23 And if Mr. Rosenbaum, whether we raised this
24 before or not, is interested in the settlement judge
25 approach, I think the staff counsel, since we only raised

1 this as a suggestion this morning, we need to check with the
2 staff to see if they have any objection to proceeding along
3 those lines. My guess is that they won't, but I need to
4 check. I can't commit the staff because I haven't
5 previously discussed it with them.

6 JUDGE SMITH: In the meantime, let's regard this
7 as a motion by Mr. Rosenbaum for the appointment of a
8 settlement judge.

9 MR. BORDENICK: That's fine. And we'll --

10 JUDGE SMITH: Would that be all right, Mr.
11 Rosenbaum?

12 MR. ROSENBAUM: Totally, your Honor.

13 MR. BORDENICK: And we'll get back to you -- now,
14 tomorrow is a Federal holiday -- we'll get back to the Board
15 and to Mr. Rosenbaum certainly by Friday on whether we agree
16 to the motion or oppose the motion for a settlement judge.
17 Is that agreeable, Judge Smith?

18 JUDGE SMITH: That's fine. Now that would suspend
19 the deposition?

20 MR. BORDENICK: Yes. Frankly, the problem in
21 requesting this conference call was the fact that we have a
22 deposition scheduled for next week, and frankly we didn't
23 know whether we should go forward with that or not. Also,
24 the fact that discovery is scheduled to come to a close on
25 May 15th. We may need to extend that date.

1 JUDGE SMITH: Yes. I think that as soon as you
2 agree to a settlement judge, which I really urge that you
3 do, then the discovery schedule stops right there, is in
4 suspense right immediately.

5 MR. BORDENICK: Well, that is certainly agreeable
6 with staff.

7 JUDGE SMITH: All right. Then I think we can
8 close this conference out now. Just let me leave it with
9 the general admonition to both of you. One is, Mr.
10 Rosenbaum, you do have to answer questions which are
11 designed to reveal to the staff the factual nature of your
12 case, and the people and the documents you intend to rely
13 upon.

14 And then let me say to the NRC staff that these
15 interrogatories and requests for admission would frighten
16 Mother Teresa into believing, you know, that she was going
17 to confess some guilt. And it's a big burden you have
18 placed upon a small business person. And we really think
19 that these things should be worked out among reasonable
20 people, and a settlement judge is a good idea.

21 MR. BORDENICK: Judge Smith, I wanted to raise a
22 couple of things. First of all, let me say, we recognize
23 that Mr. Rosenbaum is a small licensee. On the other hand,
24 the staff feels it has in this case and in any case, the
25 right and opportunity, at least staff counsel feels they

1 have the right and opportunity to prepare the case as best
2 we can. And if that means sending a discovery package that,
3 as you put it, would scare Mother Teresa, so be it.

4 You know, we still have a client to represent and
5 regardless of who the licensee is, we have to represent that
6 client vigorously and prepare the case as best we can. So,
7 in essence, we've done nothing more or less, has the staff
8 frankly, in this case than we would in any other case.

9 And I can understand the Board's sympathy to the
10 fact that Mr. Rosenbaum is a small licensee. So I
11 understand this situation is not all black and white. The
12 second thing is, I wanted --

13 MR. ROSENBAUM: Did you say, "The situation is not
14 all black and white," Mr. Bordenick?

15 MR. BORDENICK: Excuse me?

16 MR. ROSENBAUM: Did you just say, "The situation
17 is not all black and white?"

18 MR. BORDENICK: With regard to our discovery
19 request.

20 MR. ROSENBAUM: Uh-huh.

21 MR. BORDENICK: Be that as it may, I wanted to do
22 two other things. First of all, I did want to give Mr.
23 Rosenbaum credit for calling the staff prior to filing the
24 motion, and we did, for the Board's information, try to work
25 things out. We were unsuccessful doing that.

1 And in that light, I would like to raise the
2 question of production of documents. I think that was a
3 particular concern to Mr. Rosenbaum, although he did not
4 specifically articulate that fact in his motion.

5 In discussions with him last Thursday, when he
6 called to tell us that he was contemplating the filing of a
7 motion, we pointed out to him he said something along the
8 lines of, "The staff already has copies of all the documents
9 that he is going to rely on," or words to that effect.

10 And we pointed out to him, if that is the case,
11 fine. Just identify the documents for us. Tell us they are
12 in our possession. Certainly we don't require him to send
13 us copies of something we already have. So in the case of
14 documents, if in fact we already have documents that he is
15 going to rely on, that is all he needs to do is tell us
16 that.

17 But give us an identification of the documents so
18 that we can double check to make sure we do in fact have
19 copies of the documents. He does not have to resend the
20 documents to us. I wanted to raise the document question.

21 MR. ROSENBAUM: Let me respond to that, if I may?

22 MR. BORDENICK: Sure.

23 MR. ROSENBAUM: I indicated to you when I spoke to
24 you last Thursday, that the information that is available to
25 NRC was part of the transcript of the enforcement

1 conference. This now represents the information that has to
2 be presented to the Board because these represent the facts
3 of the allegations against me.

4 And your retort was that it's spread throughout
5 the transcript, and you'd just like to have it in a fashion
6 so that you can refer back to it, and that's why you wanted
7 me to cite specific documents and dates and so forth.

8 MR. BORDENICK: My --

9 MR. ROSENBAUM: My response to you, Mr. Bordenick,
10 is that the prepared testimony goes over each individual
11 fact and allegation against me. It is to your advantage and
12 it is to the Board's advantage to have that document in
13 front of you because all the facts, all the allegations, my
14 responses thereto are contained in that document.

15 If you want to, you can make it very much more
16 complicated by saying we'll refer to the letter of so and so
17 and so and so, written by so and so and so and so. I'm
18 trying to make it easy for you and I'm trying to make it
19 easy for the Board. What we're trying to ascertain here are
20 the facts. What are the facts of the case?

21 And I'm saying to you, it would be far more
22 expeditious for everybody concerned, if you would take that
23 document and tear it to pieces, if you want. Everything is
24 in there.

25 MR. BORDENICK: Mr. Rosenbaum, with all due

1 respect, the trier of fact here is the Board. But on the
2 other hand, the staff and you have an opportunity to present
3 the case that you are going to present, or we're going to
4 present in the way that we want to do it.

5 We have a problem with your suggestion as far as
6 using the enforcement conference transcript for hearing
7 purposes. The enforcement conference was not held by staff
8 counsel, and it was in a totally different context, it's not
9 under oath --

10 MR. ROSENBAUM: I beg your pardon --

11 MR. BORDENICK: -- and it's frankly mixing apples
12 and oranges.

13 MR. ROSENBAUM: It is my understanding that it was
14 under oath.

15 JUDGE SMITH: Let's cut it short. The lawyers for
16 the NRC staff are very careful people, as they must be. And
17 they have a right to develop the case in their way, so long
18 as it's not unreasonably burdensome. So they do have a
19 right to walk into that hearing room knowing precisely
20 what's going to unfold, knowing that there will be no
21 surprises. Every careful lawyer tries to avoid surprises in
22 trial, and that is their right.

23 You also have the same right. You have that same
24 right to know fully what the staff intends to present
25 against you at the hearing. I don't know to what extent you

1 have availed yourself of that right, but it's equal in that
2 regard.

3 So you have to look at all these inquiries put to
4 you in the light of the fact that this staff cannot go into
5 the hearing room without knowing the facts, and they must
6 not be surprised when they get there. You have to make it
7 known to them, your whole case.

8 Now, let's go to the settlement judge and make the
9 whole case known to him too. And then let's see what he can
10 work up. The NRC, as an institution, as represented by this
11 Board, does wish to make any decisions based upon trickery,
12 upon anything except a full consideration of all the
13 relevant information, including what you think should be
14 considered in mitigation. Is that helpful?

15 MR. ROSENBAUM: I agree with everything you said,
16 your Honor.

17 JUDGE SMITH: Just remember that the NRC staff
18 does have a right to learn in detail the elements of your
19 case.

20 MR. ROSENBAUM: Well, again, I certainly will not
21 argue that point at all. I'm simply saying and I told this
22 to Mr. Bordenick and Ms. Marco last week, the demand for
23 documents was such an onerous task. Again, you forgive me,
24 I am not a lawyer, I am a lay person. I am not only a lay
25 person, I am a business person. I've got duties to take

1 care of. I cannot physically, even if I wanted to, provide
2 copies of the documents in triplicate.

3 JUDGE SMITH: No, no. Stop that argument. That
4 argument has been undermined by the fact that all you have
5 to do is identify them.

6 MR. BORDENICK: If they are, in fact, in the
7 staff's possession.

8 JUDGE SMITH: If you have documents that they
9 don't have, you do have to provide them.

10 MR. ROSENBAUM: They have every single document.

11 JUDGE SMITH: All right. Tell them what they are,
12 and then you'll be all right.

13 JUDGE SMITH: Okay.

14 MR. BORDENICK: Judge Smith?

15 JUDGE SMITH: Yes.

16 MR. BORDENICK: Bernie Bordenick. I don't know if
17 we're at the end of the conversation or the conference call,
18 but I am at least in need of some clarification.

19 We have an oral motion for appointment of a
20 settlement judge, which staff has indicated we'll get back
21 to the Board and Mr. Rosenbaum by Friday on. Is the Board
22 suspending the discovery schedule in the interim?

23 JUDGE SMITH: Yes.

24 MR. BORDENICK: All right.

25 JUDGE SMITH: Right. I think this whole thing

1 should be a suspense as of right now.

2 MR. BORDENICK: All right then, we will go ahead
3 and notify at this point Mr. Rosenbaum that the deposition
4 scheduled for next Wednesday is, if not canceled, at least
5 postponed. In other words, Paul, you don't need to show up
6 at the agreed place next Wednesday for a deposition.

7 MR. ROSENBAUM: Very well.

8 JUDGE SMITH: All right. This transcript is
9 evidence of that. You don't have to worry about that, Mr.
10 Rosenbaum, you don't have to show up.

11 MR. ROSENBAUM: Okay, fine.

12 JUDGE SMITH: Is there anything further? I will
13 act promptly upon any agreement that a settlement judge be
14 appointed. As soon as we receive that agreement from the
15 staff, we'll act on that promptly.

16 MR. BORDENICK: Staff counsel will get right on
17 that point, and it could well be we'll get back to you
18 today. But out of caution I'll make it no later than
19 Friday.

20 JUDGE SMITH: All right, that's fine. If there is
21 nothing further, we'll adjourn this conference.

22 MS. MARCO: Okay.

23 MR. ROSENBAUM: Thank you, your Honor.

24 MR. BORDENICK: Judge Smith, the staff would like
25 to thank the Board for holding this conference. I think

1 it's been helpful to both parties, and we'll see where we go
2 from here.

3 JUDGE SMITH: That's fine. We certainly urge it.
4 We're adjourned.

5 (Whereupon, at 10:40 a.m., the hearing was
6 concluded.)

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REPORTER'S CERTIFICATE

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

NAME OF PROCEEDING: Cameo Diagnostic Centre

DOCKET NUMBER: 30-29567-CivP

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the
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