

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

- - - - - X
 KEVIN REMMES, :
 Plaintiff, :
 v. :
 INTERNATIONAL FLAVORS & : CASE NO.
 FRAGRANCES, INC., GIVAUDAN : C04-4061MWB
 FLAVORS CORPORATION, FLAVORS :
 OF NORTH AMERICA, INC., and :
 SENSIENT FLAVORS, INC., :
 Defendants. : Volume 1
 - - - - - X

VIDEOTAPE DEPOSITION
OF JOHN B. HALLAGAN, ESQ.

1 IN THE COURT OF COMMON PLEAS

2 HAMILTON COUNTY, OHIO

3

4 - - - - - X

5 TIMOTHY ARTHUR, et al., :

6 Plaintiffs, :

7 v. : CASE NO.

8 INTERNATIONAL FLAVORS & : A-03-07157

9 FRAGRANCES, INC., et al., :

10 Defendants. :

11 - - - - - X

12 Washington, D.C.

13 Friday, July 28, 2006

14 Videotape deposition of JOHN B.

15 HALLAGAN, ESQ., a witness herein, called for
16 examination by counsel for Plaintiffs in the
17 above-entitled matter, pursuant to notice, taken
18 at the offices of Venable, LLP, 575 Seventh
19 Street, N.W., Washington, D.C., beginning at
20 9:18 a.m., before Jana Mulhollan, a Registered
21 Professional Reporter and Notary Public in and
22 for the District of Columbia.

1 A P P E A R A N C E S

2

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14 Group and the Witness, Individually:

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1 A P P E A R A N C E S

2 (Continued)

3

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1 A P P E A R A N C E S

2 (Continued)

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20 ALSO PRESENT:

21 DAVID EGILMAN, M.D.

22 NANCY J. MOSIURCHAK, Videographer

1 C O N T E N T S

2 WITNESS EXAMINATION

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1 Will all counsel present, please,
2 introduce themselves and who they represent,
3 starting with the Plaintiffs' counsel, please.

4 MR. McCLAIN: On behalf of both
5 Plaintiffs, Kenneth McClain and Steven Crick.

6 MR. KILLEFER: This is
7 Campbell Killefer of Venable. I represent the
8 Flavor and Extract Manufacturers Association of
9 the United States, The Roberts Group -- they are
10 Defendants in this case -- and I also represent
11 the witness, John Hallagan, here today.

12 MR. BRIGGS: Alan Briggs of Squire,
13 Sanders & Dempsey. I represent Givaudan Flavors
14 Corporation.

15 MR. WOODSIDE: Frank Woodside with the
16 law firm of Dinsmore & Shohl. I represent
17 International Flavors and Fragrances and Bush
18 Boake Allen, which is also a Defendant in the
19 Arthur case.

20 MR. BENSON: Paul Benson with Michael,
21 Best & Friedrich, LLP. I represent Sensient
22 Flavors, a Defendant in the Remmes case only.

1 MR. MARZOUK: I'm Tobey Marzouk,
2 representing the Research Institute of Fragrance
3 Materials.

4 MR. KILLEFER: I would note, for the
5 record, that Dr. David Egilman, one of
6 Plaintiffs' experts in the Remmes case -- I
7 believe he's also an expert in the Arthur
8 case -- is here with the Plaintiffs' lawyers.

9 I would also note and seek
10 agreement that -- my understanding is that we
11 have a standing agreement that an objection by
12 one Defendant will be deemed an objection by all
13 Defendants.

14 MR. McCLAIN: That's true.

15 MR. KILLEFER: Thank you.

16 THE VIDEOGRAPHER: Will the
17 court reporter please swear in the witness.

18 Whereupon,

19 JOHN B. HALLAGAN, ESQ.,
20 a witness, was called for examination by counsel
21 for Plaintiffs and, having been duly sworn, was
22 examined and testified as follows:

1 EXAMINATION BY COUNSEL FOR PLAINTIFFS

2 BY MR. McCLAIN:

3 Q. Mr. Hallagan, would you state your
4 full name.

5 A. John Brian Hallagan.

6 Q. Mr. Hallagan, do you currently work
7 for the Flavor and Extract Manufacturers
8 Association --

9 A. Yes, sir.

10 Q. -- otherwise known as FEMA?

11 A. Yes, sir.

12 Q. When did you start with FEMA?

13 A. I began serving FEMA in 1979.

14 Q. Mr. Hallagan, are you here today in
15 response to the notice of deposition which was
16 served in the Kevin Remmes case, a so-called
17 30(b)6 notice of deposition?

18 A. Yes, sir.

19 Q. That is, you're here representing the
20 Flavor and Extract Manufacturers Association to
21 answer certain questions?

22 A. Yes, sir.

1 Q. And also The Roberts Group?

2 A. Yes.

3 Q. And also you were noticed individually
4 for a deposition, and you're here answering
5 questions that you can answer as an individual
6 as well. Am I right?

7 A. Yes, sir.

8 Q. What did you do in your representative
9 capacity of FEMA and The Roberts Group to
10 prepare to be able to answer questions regarding
11 the categories of information that we requested
12 in the notice?

13 A. I reviewed the transcript of my
14 previous deposition. I reviewed the declaration
15 that, I think, was recent -- that was recently
16 submitted in connection with the Remmes case,
17 and I met with Mr. Killefer yesterday and met
18 with him once before when we were previously
19 scheduled to do this deposition.

20 Q. Did you review any other documents to
21 help you prepare to testify about certain
22 information that FEMA might have?

1 A. Yes, sir, I did. I reviewed the
2 documents yesterday with Mr. Killefer that, I
3 think, were produced in association with the
4 notice of deposition.

5 (Exhibit No. 1 was marked for
6 identification.)

7 BY MR. McCLAIN:

8 Q. Let me hand what you we'll mark as
9 Exhibit 1, which is the notice of deposition for
10 this case, and ask if you have seen that before.

11 A. Yes, sir, I have.

12 Q. Did you bring any documents with you
13 today in response to this notice of deposition?

14 A. No, sir, I did not.

15 Q. And mister -- in the past,
16 Mr. Killefer has produced some documents,
17 although not all of the documents that we think
18 are responsive.

19 Has he asked you to look for any
20 additional documents which we have recently
21 requested?

22 A. Yes, sir.

1 Q. And tell me how that's going.

2 A. I believe I've produced everything
3 that we have both in the deposition I gave --
4 was that last year?

5 Q. Yes.

6 A. -- last year and then in association
7 with this one. I have nothing else in my files.

8 Q. You have nothing else that you believe
9 is responsive to the list of documents which we
10 have identified here?

11 A. That's correct. In response to the
12 subpoena.

13 Q. Were you able to find any notes that
14 related to your meeting with Dr. Lockey in 1996
15 or thereabouts?

16 A. I've produced the notes that I have.
17 I've given them to Mr. Killefer.

18 Q. Okay. And so if he hasn't produced
19 them to us, it's not because they don't exist;
20 in fact, notes do exist?

21 A. That's correct.

22 Q. And how many pages of your notes are

1 there?

2 A. I think there's just three or four
3 pages. It may be even two. I don't recall.

4 Q. All right. Any other materials that
5 you produced to Mr. Killefer in regard to that
6 meeting?

7 A. No, sir. Well, there may have been an
8 agenda of the meeting -- for the meeting. I
9 don't recall. I think I did see an agenda that
10 is in the documents we produced, I think.

11 Q. Okay. I think that I have an agenda
12 that was produced by Givaudan. I'm not sure
13 that -- if you produced it, but we may come to
14 it during this deposition.

15 A. Yes.

16 Q. But those items have been given to
17 Mr. Killefer to the extent that they were in
18 your files. Is that right?

19 A. Yes, sir.

20 Q. What about any information before
21 1995; were you able to locate any documents
22 before 1995 that were responsive?

1 A. No, sir. I did not have anything
2 prior to 1996, 1997.

3 Q. Did you search your files to determine
4 whether or not you had any information regarding
5 the International Bakers study or the situation
6 surrounding it?

7 A. Yes, sir. The only thing I had from
8 International Bakers was the NIOSH HHE that was
9 actually given to me by Dr. Lockey in the first
10 meeting with him, which I think was 1996.

11 Q. When you came to work for FEMA in
12 1979, was Dick Hall the director of FEMA?

13 A. No, sir. But Dick Hall at that time
14 was an employee of McCormick and Company. Dick
15 is an expert scientist in food science and
16 toxicology and was very involved in FEMA, but I
17 don't believe he was on the board of directors
18 at the time.

19 Q. Did he ultimately go on to the board
20 of directors?

21 A. He had been on the board of directors,
22 and I just don't recall if he was on it then.

1 But he's also served as president of FEMA at one
2 time.

3 Q. All right. Did you ever inquire of
4 Mr. Hall in regard to his or FEMA's involvement
5 in the International Bakers study or
6 investigation?

7 A. No, I did not. But when he saw the
8 report, I recall that it was news to him as
9 well.

10 Q. It was?

11 A. Yes, sir.

12 Q. All right. Well, we'll come back to
13 that in just a moment.

14 That's what he told you, this is news
15 to me?

16 A. I don't remember the exact words, but
17 I remember he let me know that he was not
18 familiar with it.

19 Q. Not familiar with the study?

20 A. Not familiar with the study, yes, sir.

21 Q. But he was familiar with the
22 situation?

1 A. I don't recall. I don't believe so.

2 Q. He was an expert witness in the case?

3 A. I didn't know that.

4 Q. He was FEMA's representative in the
5 case?

6 A. I did not know that.

7 Q. Givaudan was a defendant in the case?

8 A. I did not know that.

9 Q. Polarome, another of your members, was
10 a defendant in the case?

11 A. I did not know that.

12 Q. Citrus and Allied, another of your
13 members, was a defendant in the case?

14 A. I did not know there was a case,
15 Mr. McClain.

16 Q. Why didn't you know there was a case?

17 A. I was never told. I never was even
18 aware that there was a case.

19 Q. What investigation have you made about
20 it?

21 A. We had the HHE that we received from
22 Dr. Lockey. And obviously we paid careful

1 attention to the HHE. We communicated that to
2 our members. And there was never any mention by
3 anyone that there was any litigation involved
4 with that.

5 Q. Why didn't Mr. Hall, who was president
6 of this organization, FEMA, tell you about it;
7 do you have any idea?

8 A. No, sir.

9 MR. KILLEFER: Objection. Lack of
10 foundation.

11 MR. McCLAIN: Well, we're going to
12 come to some foundation here in a minute,
13 Mr. Killefer. I'm just asking questions now.

14 BY MR. McCLAIN:

15 Q. Go ahead.

16 MR. KILLEFER: Objection.

17 BY MR. McCLAIN:

18 Q. Do you know?

19 MR. KILLEFER: I'm making objections.

20 THE WITNESS: Could you repeat the
21 question, please.

22 BY MR. McCLAIN:

1 Q. Yes, sir. Why did Mr. Hall not tell
2 you about his personal involvement in the
3 lawsuit that arose -- that is, the bronchiolitis
4 obliterans cases that arose from exposure to
5 flavoring chemicals in the mid 1980s at the
6 International Bakers study?

7 MR. KILLEFER: Objection. Lack of
8 foundation.

9 MR. BRIGGS: Objection.

10 BY MR. McCLAIN:

11 Q. I said study. I meant plant. Plant.

12 MR. KILLEFER: You can answer.

13 THE WITNESS: I do not know.

14 BY MR. McCLAIN:

15 Q. We'll come back to that.

16 You started in 1979 with FEMA. Am I
17 right?

18 A. Well, my employer was the Law Offices
19 of Daniel R. Thompson, but one of the clients
20 that I began working on in 1979 was FEMA, yes,
21 sir.

22 Q. And although you worked for the

1 Daniel Thompson law firm, you worked as a
2 scientist; you were not a lawyer at that point
3 in time?

4 A. That's correct. I had not yet gone to
5 law school.

6 Q. You did go to law school?

7 A. Yes, sir.

8 Q. And what was the year that you
9 graduated?

10 A. 1984.

11 Q. And then you came back to work with
12 FEMA, right?

13 A. Yes, sir.

14 Q. And now you work for FEMA?

15 A. I'm general counsel for FEMA and do
16 scientific work for them, yes, sir.

17 Q. Do you have another official position
18 with FEMA besides general counsel?

19 A. My title with The Roberts Group is
20 senior advisor, and I work with FEMA on a
21 variety of scientific matters.

22 Q. But your only official title with FEMA

1 is general counsel?

2 A. Yes, sir.

3 Q. Okay. Will you describe for the jury,
4 please, what FEMA is.

5 A. FEMA is an association whose members
6 include manufacturers of flavors, several
7 companies that use flavors to manufacture foods.
8 There are members of FEMA who are trade press,
9 and there are members of FEMA who are raw
10 material suppliers.

11 Q. What is FEMA's purpose?

12 A. FEMA's purpose is to provide the
13 members with assistance in safety assessment,
14 provide the members with assistance in
15 compliance with regulatory issues and to provide
16 a forum for discussion of scientific and
17 regulatory and safety issues that are important
18 to the members.

19 Q. International Flavors and Fragrances
20 is a member of FEMA?

21 A. Yes, sir.

22 Q. Has been for decades?

1 A. Yes, sir.

2 Q. They've had board members?

3 A. Yes, sir.

4 Q. In fact, Mr. Block from IFF served as
5 president for a time?

6 A. Yes, sir.

7 Q. Bush Boake and Allen is a -- was a
8 member. Am I right?

9 A. Yes, sir.

10 Q. They have subsequently merged with
11 International Flavors and Fragrances, to your
12 understanding?

13 A. Yes, sir.

14 MR. WOODSIDE: Object to the form of
15 the question. Foundation.

16 BY MR. McCLAIN:

17 Q. They were a member, in their own
18 right, before merging with IFF?

19 MR. WOODSIDE: Objection.

20 MR. KILLEFER: You can answer.

21 THE WITNESS: Yes, sir.

22 MR. KILLEFER: Just so it's clear,

1 unless I instruct you not to answer, after my
2 objection, you can go ahead and answer.

3 THE WITNESS: Thank you.

4 BY MR. McCLAIN:

5 Q. IFF had employees that also served on
6 the board. Isn't that true?

7 A. Mr. Block was a member of the board of
8 directors, and before Mr. Block, there was
9 another individual, I believe -- and I'm trying
10 to recall who that was -- who was a member of
11 the board of directors.

12 Q. Givaudan is a member. Am I right?

13 A. Yes, sir.

14 Q. And they've been a member for decades?

15 A. Yes, sir.

16 Q. Mike Davis, their president, was a
17 president of FEMA?

18 A. Yes, sir.

19 Q. Tastemaker ultimately was purchased by
20 Givaudan. Isn't that true?

21 A. I believe that's correct, sir.

22 Q. And Tastemaker was a member of FEMA.

1 Am I right?

2 A. Yes, sir.

3 Q. And Fries & Fries was an entity which
4 was a predecessor of Tastemaker, to your
5 understanding. Am I right?

6 A. Yes, sir.

7 Q. And they, too, were a member of FEMA?

8 A. Yes, sir.

9 Q. Now, Citrus and Allied is a member.

10 Am I right?

11 A. Yes, sir.

12 Q. And they've been a member for decades
13 as well?

14 A. Yes, sir.

15 Q. Who is Richard Pisano?

16 A. There are two Richard Pisanos. Senior
17 has -- I'm not sure of his title at the company.
18 Richard Pisano, Jr., his son, is a current
19 member of the FEMA board of governors.

20 Q. And when you say the company, does
21 that -- which company are you referring to?

22 A. Citrus and Allied.

1 Q. And you've had involvement with both
2 Mr. Pisanos. Is that correct?

3 A. Yes, sir.

4 Q. And you mentioned Mr. Dick Hall.

5 Tell us more about Mr. Hall in terms
6 of his involvement with FEMA, how long he was
7 involved.

8 A. Dick has been involved in FEMA since I
9 remember -- since 1979. I believe he's been
10 involved for a significant period of time before
11 that.

12 Q. And he's been advisor to you on these
13 issues, has he not?

14 A. Dr. Hall was involved in these issues
15 in 1996, 1997. He retired from McCormick and
16 has been decreasing his involvement with FEMA.
17 He does still attend some board of governors
18 meetings as a senior adviser.

19 Q. Okay. But more importantly, to give
20 us some context, an issue arose that was brought
21 to your attention in 1996 regarding
22 bronchiolitis obliterans in the flavoring

1 industry. Am I right?

2 A. Yes, sir.

3 Q. And you consulted with Dick Hall
4 specifically about that issue in preparation for
5 a conference that you held in 1997, didn't you?

6 A. Yes, sir.

7 Q. Okay. So he has been an advisor to
8 you, hasn't he?

9 A. Yes, sir.

10 Q. On these very issues?

11 A. Yes, sir.

12 Q. Now, what is Dick Hall's training?
13 You said he's a doctor. What kind of doctor is
14 he?

15 A. Dr. Hall has a Ph.D. in organic
16 chemistry, I believe.

17 Q. All right. And you say he worked for
18 McCormick.

19 Is that the spice company?

20 A. Yes, sir.

21 Q. And what was his position at
22 McCormick?

1 A. I believe he had a title similar to
2 senior vice president or executive
3 vice president or something similar to that.

4 Q. And was he in charge of any safety
5 issues at McCormick?

6 A. I believe so, but I don't know for
7 sure.

8 Q. All right. When you say you believe
9 so, what do you believe about the position that
10 he held?

11 A. I understood -- understood that when
12 he was with McCormick he did some responsibility
13 for safety assessment issues. But I don't know
14 exactly.

15 Q. Why is it that you consulted with
16 Dick Hall when for the first time you were
17 presented with this issue of bronchiolitis
18 obliterans in the flavoring industry?

19 A. Dr. Hall is -- had many years of
20 experience in the flavor industry and is a very
21 intelligent individual in thinking things
22 through.

1 Q. All right. And you expected him to be
2 fully forthcoming with you about such issues,
3 did you not?

4 MR. WOODSIDE: Objection.

5 THE WITNESS: Yes, sir.

6 BY MR. McCLAIN:

7 Q. Where is Dr. Hall now?

8 A. Dr. Hall lives outside of Baltimore.

9 Q. Do you have his address?

10 A. Not with me.

11 Q. But you could obtain it if you desired
12 to?

13 A. Yes, sir.

14 Q. Am I right?

15 A. Yes, sir. At my office.

16 Q. All right. You mentioned earlier that
17 one of the goals of FEMA is to collect and
18 disseminate credible scientific and regulatory
19 information to your members. Is that correct?

20 A. Yes, sir.

21 Q. In fact, that's a statement contained
22 in your mission statement, isn't it?

1 A. I believe so. I don't have it in
2 front of me, but I think that's correct.

3 Q. FEMA prepares a list of flavor
4 chemicals that it represents to the public it
5 believes is safe. Am I right?

6 A. We have a list of chemicals which are
7 determined to be generally recognized as safe
8 under the provisions of Section 201(s) of the
9 Food, Drug and Cosmetic Act.

10 Q. And that's the so-called GRAS list,
11 the generally regarded as safe list?

12 A. Yes, sir. Generally recognized as
13 safe.

14 Q. And on that list are a variety of
15 chemicals which are generally regarded as safe
16 for eating. Am I right?

17 A. For consumption in foods, yes, sir.

18 Q. All right. Not for inhalation. Am I
19 right?

20 A. That's correct.

21 Q. Now, in addition to that, FEMA makes
22 information available to its members -- that is,

1 other flavoring companies or people involved in
2 the flavoring trade presses, you've indicated --
3 regarding the other hazards of chemicals. Am I
4 right?

5 A. Yes, sir.

6 Q. And those are called Flavor Fragrance
7 Ingredient Data Sheets or FFIDS's. Am I right?

8 A. That's correct.

9 Q. What are those? Can you describe
10 those for us?

11 A. Those are summary sheets which were
12 first produced in the early to mid 1980s to
13 assist companies in complying with the Federal
14 Hazard Communication Standard, which was
15 promulgated by OSHA in 1982.

16 The sheets are intended to be one
17 source of information that companies can use to
18 produce Material Safety Data Sheets. They are
19 not Material Safety Data Sheets and were never
20 intended as such. They are intended as a source
21 of information together with other databases and
22 accompanying proprietary information.

1 Q. But that is one of the sources of
2 information upon which -- companies utilize to
3 develop Material Safety Data Sheets. Isn't that
4 true?

5 A. Yes, sir.

6 Q. Now, you also have available to
7 members monographs on certain substances. Am I
8 correct?

9 A. They are synopses of information.
10 They are known by the term monograph.

11 Q. And you maintain the monograph system
12 with another organization called RIFM. Am I
13 right?

14 A. Yes, sir.

15 Q. And, in fact, the database is called
16 the RIFM/FEMA database.

17 A. It's most often referred to as the
18 RIFM database, but, yes, sir.

19 Q. And the idea is to collect information
20 in the RIFM/FEMA database upon which members can
21 look and rely in determining hazards of products
22 that they manufacture. Am I correct?

1 A. That's one of the purposes that
2 companies use it for, yes, sir.

3 Q. And one of the things that you
4 represent to your members is that you maintain
5 that database so that it is current in terms of
6 information about the hazards of ingredients in
7 products that are manufactured by your members.
8 Am I right?

9 A. Well, we have a warranty disclaimer
10 statement on the database which says that this
11 is a source of information which we do our best
12 to maintain up to date. We do make efforts to
13 keep it up to date, but we don't warrant that it
14 is always up to date. It is an ongoing process.

15 Q. I understand what you're saying. But
16 your goal, is it not, to -- let me start again.

17 It is your goal, isn't it, that the
18 information that you provide will be up to date,
19 and to the best of your ability, you do so?

20 A. Yes, sir. Our goal is to keep it as
21 current as is possible.

22 Q. And one of the missions of FEMA is to

1 do research in areas where there is not
2 sufficient information on ingredients. Am I
3 correct?

4 A. Yes, sir. Focussing on the safety and
5 use in foods, yes, sir.

6 Q. And one of the things that you expect
7 of your members is that they will give you
8 information in a timely way about the hazards of
9 materials so that you can disseminate that
10 information to other members of the industry.

11 Am I correct?

12 A. Yes, sir.

13 Q. Now, let's talk about the 1997 FEMA
14 conference.

15 It's your representation that the 1997
16 FEMA conference was triggered by a report from
17 Tastemaker about bronchiolitis obliterans in
18 their own plant. Am I correct?

19 A. Yes, sir.

20 Q. And that was brought to your attention
21 for the first time in 1996. Am I right?

22 A. In mid 1996, yes, sir.

1 Q. It was your representation when I took
2 your deposition last year that you were only
3 told about one case. Am I correct about that?

4 MR. KILLEFER: Objection. Misstates
5 the evidence.

6 THE WITNESS: My recollection is that
7 I stated that Dr. Lockey told us about what, I
8 believe, he called an index case and several
9 other possible cases. And as I've explained,
10 that situation was clarified later on when
11 Dr. Lockey published an abstract.

12 BY MR. McCLAIN:

13 Q. Well, the conference materials that
14 were presented in 2002 represented one case from
15 a flavor manufacturing plant.

16 A. Right.

17 Q. Was that incorrect information? In
18 fact, did Dr. Lockey tell you about more than
19 one case back in 1996?

20 A. Dr. Lockey --

21 MR. BRIGGS: Objection. Form.
22 Misstates the evidence.

1 THE WITNESS: Dr. Lockey, I believe,
2 informed us of what he called an index case.
3 That was the case that he communicated he had
4 the most confidence in, for some reason, and
5 that there were several other possible cases.

6 BY MR. McCLAIN:

7 Q. So as early as 1996, you were aware of
8 several possible cases of bronchiolitis
9 obliterans at the Tastemaker plant. Am I right?

10 A. Based on what Dr. Lockey told us.

11 Q. Now, we're sitting here in 2006. You
12 had a conference in 1997 about that subject that
13 we will be discussing in a minute.

14 Tell the jury, please, about all of
15 the studies that FEMA commissioned from 1996
16 through today, a decade, regarding bronchiolitis
17 obliterans and its occurrence in the flavoring
18 industry.

19 A. FEMA --

20 MR. KILLEFER: Objection. Ambiguous.

21 Go ahead.

22 THE WITNESS: Excuse me?

1 MR. KILLEFER: You can answer.

2 THE WITNESS: FEMA has been very
3 active in the area of respiratory health and
4 safety.

5 In 1996, 1997 FEMA began an active
6 relationship with National Jewish Medical and
7 Research Center and specifically
8 Drs. Cecile Rose and John Martyny. We conducted
9 a series of investigations into flavor
10 manufacturing, which are described in our August
11 2004 report.

12 Since that time, the National Jewish
13 people, Drs. Rose and Martyny, have been very
14 active in working with individual flavoring
15 facilities doing studies in those facilities.

16 BY MR. McCLAIN:

17 Q. Tell me what studies that FEMA has
18 commissioned to determine the relationship
19 between flavoring ingredients and bronchiolitis
20 obliterans. Have you done any?

21 MR. KILLEFER: Objection. Ambiguous.

22 THE WITNESS: Yeah. I'm not -- I

1 don't --

2 BY MR. McCLAIN:

3 Q. Have you sponsored any animal studies?

4 A. We have not sponsored animal studies.

5 Animal studies have been conducted by NIOSH and
6 NIEHS.

7 Q. I don't want to know about NIOSH or
8 NIES (sic). I want to know about FEMA.

9 Have you conducted any?

10 A. FEMA has not sponsored animal studies.

11 Q. Has FEMA -- in 1996, it's true, is it
12 not, that Dr. Lockey recommended to FEMA that it
13 should do an industry-wide survey of all of its
14 members --

15 MR. KILLEFER: Objection.

16 BY MR. McCLAIN:

17 Q. -- regarding the occurrence of
18 bronchiolitis obliterans in the plants of FEMA
19 members?

20 MR. KILLEFER: Objection. Lack of
21 foundation.

22 Go ahead.

1 THE WITNESS: I don't recall that
2 Dr. Lockey did make that recommendation.

3 What we talked about doing and what we
4 did do in FEMA is, I went out and talked to
5 virtually the entire membership seeking
6 information and did not have any reports coming
7 back from companies who had workers with
8 respiratory illness.

9 BY MR. McCLAIN:

10 Q. Well, if Dr. Lockey did, in fact, make
11 that recommendation to you in 1996, you didn't,
12 in fact, conduct a survey, did you?

13 A. Well, yes, I did. I went out and
14 conducted a survey of the membership at that
15 time, which we then repeated in 2002 in a
16 reporting system.

17 Q. So by that, you mean you asked for
18 people to tell you about cases?

19 A. I went around and personally
20 interviewed individuals from companies in a
21 position to know if they had workers with
22 respiratory illness. That's what I did.

1 Q. And is it your testimony that no one
2 from Bush Boake Allen reported any respiratory
3 problems in any of their employees?

4 A. Yes, sir, it is.

5 Q. And is it your testimony that none of
6 your other members reported any respiratory
7 problems in any of their employees?

8 A. Not in 1997 and 1998 when I was
9 talking to companies at that time. We were --

10 Q. And -- go ahead. I'm sorry.

11 A. In our August 2004 report, we report
12 the results of the survey that I did beginning
13 in 2001 and 2002, and some companies did report
14 then.

15 Q. Did FEMA -- did Givaudan ever, in
16 response to your request for information,
17 clarify for you between 1996 and 2004 just how
18 many cases of bronchiolitis obliterans had been
19 confirmed in their own plant?

20 MR. BRIGGS: Objection. Form.
21 Misstates the evidence.

22 MR. McCLAIN: I didn't -- the question

1 was did they.

2 THE WITNESS: Can I answer?

3 MR. McCLAIN: Well, I just want to
4 clarify so I understand the objection --

5 THE WITNESS: Okay.

6 MR. McCLAIN: -- because I don't think
7 that Mr. Briggs heard my question.

8 MR. BRIGGS: I did. My objection was
9 intended to be to the word clarify, because it
10 wasn't a suggestion, it was ambiguous or
11 unclear.

12 BY MR. McCLAIN:

13 Q. Well, let me ask you: It was not
14 clear to you, was it, after your meeting with
15 Dr. Lockey just how many cases, in fact, had
16 occurred at the Tastemaker plant in 1996?

17 A. That's correct. And as I report in
18 the August 2004 report, we gained clarification
19 when Dr. Lockey published his abstract at the
20 ATS meeting, which I believe was in 2002 or
21 possibly 2003.

22 Q. And in that abstract, he reports four

1 cases. Am I right?

2 A. I don't recall specifically, but I
3 could look at the report and give an answer.

4 Q. Would it surprise you that there are
5 eight confirmed cases of bronchiolitis
6 obliterans at the plant and were from 1998 on?

7 MR. KILLEFER: Objection. Lack of
8 foundation.

9 MR. BRIGGS: Objection.

10 THE WITNESS: Yes, sir, it would
11 surprise me.

12 BY MR. McCLAIN:

13 Q. Did Givaudan ever tell you that?

14 A. No, sir.

15 Q. Did you ever convey to the membership
16 the fact that Givaudan had eight confirmed cases
17 of bronchiolitis obliterans?

18 MR. BRIGGS: Objection.

19 THE WITNESS: I didn't know that, so I
20 couldn't convey it.

21 BY MR. McCLAIN:

22 Q. Did you know that they had a death

1 that probably was caused by exposure to
2 flavoring chemicals?

3 MR. BRIGGS: Objection.

4 THE WITNESS: No, sir.

5 BY MR. McCLAIN:

6 Q. And that, of course, was not reported
7 to your membership either. Am I right?

8 A. That's correct.

9 Q. Now, let's go back to the 1997
10 conference for a few minutes.

11 (Discussion off the record.)

12 BY MR. McCLAIN:

13 Q. Let's come back to the 1997
14 conference, if we can.

15 You held this conference in 1997
16 regarding respiratory protection in the flavor
17 and fragrance workplace. Am I right?

18 A. Respiratory health and safety in the
19 flavor and fragrance workplace, yes, sir.

20 Q. And for that work you brought in
21 Cecile Rose. Am I right?

22 A. Cecile Rose and John Martyny from

1 National Jewish.

2 Q. Now, as far as you knew, Cecile Rose
3 had never examined any potential plaintiffs from
4 the flavoring industry who had bronchiolitis
5 obliterans. Am I right?

6 A. That's correct.

7 Q. And Cecile Rose, to your knowledge,
8 had never examined any of the patients from the
9 Givaudan plant. Am I correct?

10 A. That's correct.

11 Q. And to your knowledge, Cecile Rose did
12 not have any contact with Dr. Lockey regarding
13 his findings from the Givaudan plant. Am I
14 right?

15 A. That's correct.

16 Q. You did not invite Dr. Lockey to
17 present information at the 1997 conference, did
18 you?

19 A. That's correct.

20 Q. Even though you knew that Dr. Lockey
21 had direct contact or direct involvement in
22 cases of bronchiolitis obliterans at that plant.

1 Am I right?

2 A. Dr. Lockey did not participate in the
3 conference.

4 Q. And, in fact, Givaudan -- Givaudan
5 forbade you -- that is, John Hallagan -- from
6 telling anyone that they had cases of
7 bronchiolitis obliterans in their own plant. Am
8 I right?

9 MR. BRIGGS: Objection.

10 THE WITNESS: No, sir. Givaudan gave
11 us permission to disseminate the information
12 that Dr. Lockey gave us. They did not give us
13 permission to identify them as a company.

14 BY MR. McCLAIN:

15 Q. Okay. That's what I meant to say.

16 Now -- and when we say Givaudan, at
17 the time it was Tastemaker in 1996, right?

18 A. Yes, sir.

19 Q. It became Givaudan later?

20 A. Yes, sir.

21 Q. So when we use Tastemaker or Givaudan
22 in this exam, we're using them synonymously. Is

1 that correct?

2 MR. BRIGGS: Objection.

3 BY MR. McCLAIN:

4 Q. That's the way you're using it?

5 A. Yes, sir.

6 Q. All right. Now, in regard to -- in
7 regard to this issue, let's clarify that then.

8 Givaudan allowed you to say that a
9 member company had a case of bronchiolitis
10 obliterans, but they did not allow you to
11 identify them as that company -- that is,
12 Givaudan as that company. Am I right?

13 MR. BRIGGS: Objection. Misstates the
14 evidence.

15 THE WITNESS: That's correct. Except
16 as we just discussed, it was Tastemaker at the
17 time.

18 BY MR. McCLAIN:

19 Q. Right.

20 A. Yes, sir.

21 Q. Okay. Well, let's make sure that our
22 question is clear.

1 Tastemaker did not allow you to tell
2 people that they were the company that had a
3 case of bronchiolitis obliterans. Am I right?

4 MR. BRIGGS: Objection. Misstates the
5 evidence.

6 THE WITNESS: Yes, sir.

7 BY MR. McCLAIN:

8 Q. And they did not allow you to invite
9 Dr. Lockey to speak to the conference either,
10 did they?

11 MR. BRIGGS: Objection. Misstates the
12 evidence.

13 THE WITNESS: I don't recall them
14 saying that we could not invite Dr. Lockey.

15 BY MR. McCLAIN:

16 Q. But that was -- that was your
17 understanding from the context of the meeting
18 where they wanted to keep their identity secret
19 from the audience. Am I right?

20 MR. BRIGGS: Objection. Misstates the
21 evidence.

22 THE WITNESS: Yes, sir.

1 BY MR. McCLAIN:

2 Q. And you complied with that request?

3 A. Dr. Lockey did not participate in the
4 conference.

5 Q. So the answer to that is yes?

6 A. Yes, sir.

7 MR. BRIGGS: Objection. Move to
8 strike.

9 BY MR. McCLAIN:

10 Q. And you didn't disclose to the
11 conference participants that Dr. Lockey had been
12 conducting a study at the Givaudan/Tastemaker
13 plant. Am I right?

14 A. That's correct.

15 Q. Or that they, in fact, had at least
16 one case of bronchiolitis obliterans and
17 possibly more. Am I right?

18 A. Yes, sir.

19 Q. Now, you prepared some remarks for
20 that conference. Am I right?

21 A. Yes, sir.

22 Q. And you showed those to Dick Hall --

1 am I right -- in advance?

2 A. I don't recall.

3 (Exhibit No. 2 was marked for
4 identification.)

5 BY MR. McCLAIN:

6 Q. Let me show you what we'll mark as
7 exhibit -- I can't find my stickers.

8 Let me show you what we'll mark as
9 Exhibit 2.

10 A. Okay.

11 Q. Does this refresh your recollection?

12 A. Yes, sir, it does.

13 Q. And you also forwarded them on to
14 Cecile Rose. Am I right?

15 A. And John Martyny, yes, sir.

16 Q. In this document, if you'll look over
17 at page -- it's 005 at the bottom on the Bates
18 stamp number.

19 A. Yes, sir.

20 Q. You point out in -- one of the few
21 relevant reports is the 1986 NIOSH Health Hazard
22 Evaluation Report of International Bakers

1 Services, a company based in South Bend, Indiana
2 which provided flavors and other materials to
3 the baking industry.

4 Do you see that?

5 A. Yes, sir, I do.

6 Q. In this instance, NIOSH evaluated a
7 cluster of respiratory illness in the workplace.

8 And then you say: NIOSH was unable to
9 identify any specific chemicals that may have
10 caused the respiratory effects noted in several
11 workers, nor were they able to specifically
12 identify the disease, although they concluded
13 the disease may have been bronchiolitis
14 obliterans.

15 Do you see that?

16 A. Yes, sir, I do.

17 Q. Is it your testimony that Mr. Hall did
18 not comment to you about that statement?

19 A. I don't recall that Dr. Hall commented
20 on that statement.

21 Q. Let's look at a couple of documents
22 and see if Dr. Hall brought any of these to your

1 attention.

2 Did he ever show you the complaint
3 that had been filed by the workers at that
4 plant?

5 MR. McCLAIN: We'll mark this as
6 Exhibit 3.

7 (Exhibit No. 3 was marked for
8 identification.)

9 BY MR. McCLAIN:

10 Q. Did he ever show you the complaint
11 that had been filed?

12 A. No.

13 MR. KILLEFER: Objection. Lack of
14 foundation.

15 THE WITNESS: No, sir. This is the
16 first time I've seen this document.

17 BY MR. McCLAIN:

18 Q. Did you ever look at the witness list
19 that had been supplied by Citrus and Allied, one
20 of your member companies, in that very matter
21 involving the workers who had been diagnosed
22 with bronchiolitis obliterans?

1 A. No, sir. I've never seen this
2 document before.

3 (Exhibit No. 4 was marked for
4 identification.)

5 BY MR. McCLAIN:

6 Q. Looking down this list, which is the
7 pretrial submission --

8 MR. WOODSIDE: Excuse me. Is this 4?

9 MR. McCLAIN: Yes.

10 THE WITNESS: Yes.

11 BY MR. McCLAIN:

12 Q. -- the pretrial submission from Citrus
13 and Allied Essences.

14 They were a member company, were they
15 not?

16 A. Yes, sir.

17 Q. You mentioned Mr. Richard Pisano.

18 He's listed as a witness in this
19 document, is he not?

20 A. Yes, sir, he is.

21 Q. Did you know any of these other
22 people -- Mary Ann Sudlow from Citrus and

1 Allied?

2 A. I know the name. I've never met her.

3 Q. Sylvia Young, the senior chemist at
4 Citrus and Allied?

5 A. No, sir.

6 Q. Did you know Dr. Richard Ford, the
7 president of the Research Institute for
8 Fragrance Materials?

9 A. Yes, sir.

10 Q. And Dr. Richard Hall, the Flavor and
11 Extract Manufacturers Association --

12 A. Yes, sir.

13 Q. -- was named as a witness?

14 A. Yes, sir.

15 Q. And no one ever told you about this.
16 Is that right?

17 A. That's correct, sir.

18 Q. Did Mr. Hall not tell you that, in
19 fact, diacetyl and butter flavoring ingredients
20 had been the focus of the expert testimony in
21 the case as being causative of bronchiolitis
22 obliterans?

1 A. Sir, no one told me until I got a call
2 from Dr. Kay Kreiss at NIOSH in September 2001.

3 Q. The truth is, Mr. Hallagan -- and it's
4 well known within FEMA -- FEMA has been covering
5 up this issue for decades from other members of
6 the industry and from the general public. Isn't
7 that true?

8 MR. KILLEFER: Objection. Lack of
9 foundation and argumentative.

10 THE WITNESS: That is not true. I was
11 the person involved from the beginning in 1996,
12 and I am absolutely certain that this
13 information was not available to me. The first
14 that we heard of the possible risks associated
15 with diacetyl was September 2001 from Kay Kreiss
16 at NIOSH.

17 I've never seen these documents
18 before, Mr. McClain.

19 BY MR. McCLAIN:

20 Q. Well, it was clearly available to
21 Citrus and Allied, your member, was it not?

22 A. I can't answer that, sir. I don't

1 know.

2 Q. That would your conclusion based on
3 these documents, if they are true. Am I right?

4 MR. BRIGGS: Objection.

5 THE WITNESS: Based on these
6 documents, which I am seeing for the first time,
7 I would say that they did have access to that
8 information.

9 BY MR. McCLAIN:

10 Q. Yes. And Dick Hall did too. Am I
11 right?

12 MR. BRIGGS: Objection.

13 MR. KILLEFER: Objection. Lack of
14 foundation.

15 MR. BRIGGS: Lack of foundation.

16 THE WITNESS: It appears from these
17 documents that that's correct.

18 BY MR. McCLAIN:

19 Q. Would you go through the petition,
20 that is Exhibit 3, in front of you and identify
21 all of your member companies that were
22 defendants in that case.

1 A. This list here?

2 Q. Yes, sir.

3 A. Members at that time, as best as I
4 can --

5 MR. WOODSIDE: Excuse me. Could I
6 just ask a question. We're talking about the
7 case in which David H. Spaulding is the
8 plaintiff?

9 MR. McCLAIN: Yes, sir.

10 MR. WOODSIDE: Thank you.

11 BY MR. McCLAIN:

12 Q. Just list all of the -- the companies
13 that have been members, and then we'll clarify
14 when they became members, if that's necessary.

15 A. Okay. Bedoukian Research -- and,
16 again, Mr. McClain, I'm just telling you the
17 companies that I'm aware of that have been
18 members at one time.

19 Is that what you want, sir?

20 Q. Yes, please.

21 A. Okay. Bedoukian Research, Berje,
22 Citrus and Allied Essences, Chem-Fleur, Comax,

1 Elan, Florasynth, Givaudan, Meer, Northwestern,
2 Polarome. That's it, sir.

3 MR. BRIGGS: Objection.

4 BY MR. McCLAIN:

5 Q. Now, would you look at the attendance
6 list.

7 Now, first of all, just to clarify,
8 this is a complaint about a worker -- one of the
9 two workers that were diagnosed with
10 bronchiolitis obliterans at the International
11 Bakers Services, Inc., which was the study that
12 we've been discussing that you mentioned in your
13 introductory comments. Am I right?

14 MR. BRIGGS: Objection.

15 MR. KILLEFER: Objection. Lack of
16 foundation.

17 MR. BRIGGS: Objection. Misstates the
18 evidence.

19 BY MR. McCLAIN:

20 Q. Do you see over here at
21 paragraph 11 --

22 MR. KILLEFER: Mr. Hallagan, I would

1 caution you not to speculate about documents you
2 haven't seen before.

3 MR. McCLAIN: I ask you not to
4 instruct the witness with objections. You just
5 make objections.

6 MR. KILLEFER: Thanks. I just did.

7 MR. McCLAIN: No. You made a speech
8 which was an instruction to the witness.

9 And the witness is doing just fine.
10 He's a lawyer and a scientist and has understood
11 the questions and has answered them directly.
12 And I don't appreciate the speech directing him
13 to say something different than what he
14 understands.

15 MR. KILLEFER: Are you done?

16 MR. McCLAIN: Yes.

17 MR. KILLEFER: I'll make my
18 objections, and I stand by my objection.

19 BY MR. McCLAIN:

20 Q. Look at paragraph 11, Mr. Hallagan.

21 Beginning on or about January 2nd,
22 1983, plaintiff was employed at International

1 Bakers Services, Inc. in the City of South Bend,
2 County of St. Joseph, State of Indiana. During
3 his time of employment at that place, plaintiff
4 used the chemicals, products or other substances
5 manufactured, distributed, supplied and/or sold
6 to International Bakers Services, Inc., which
7 substances were provided to plaintiff by his
8 employer. During the course of plaintiff's
9 duties at his place of employment, these
10 substances came in contact with plaintiff's skin
11 and clothing, and he inhaled the fumes and
12 vapors, all of which resulted in great and
13 grievous physical injuries, which shall be
14 further described below.

15 Do you see that?

16 A. Yes, sir, I do.

17 Q. Does this appear to you, based on your
18 review of the International Bakers study, to be
19 the same circumstance that's described there?

20 A. I don't recall with specificity.

21 Q. All right. You do recall that there
22 were two employees at the International Bakers

1 Services who suffered grievous physical
2 injury -- that is, bronchiolitis obliterans --
3 from inhaling some substance at that place. Am
4 I right?

5 MR. BRIGGS: Objection.

6 THE WITNESS: The way that I recall it
7 is consistent with the paragraph that was in my
8 introductory comments --

9 BY MR. McCLAIN:

10 Q. All right.

11 A. -- yes, which I have here somewhere.

12 (Exhibit No. 5 was marked for
13 identification.)

14 BY MR. McCLAIN:

15 Q. All right. Now, I want you to make a
16 comparison for me -- and this is exhibit -- this
17 is Exhibit 5, which has been produced by you
18 previously -- you, being FEMA. Maybe by you
19 personally. I'm not sure.

20 And I'd like for you to compare the
21 list of attendees with the defendants in the
22 International Bakers case, all right?

1 A. Yes, sir.

2 Q. All right. And I'll just give you a
3 minute to do that because I need to go use the
4 rest room.

5 A. Can I take a break as well?

6 MR. McCLAIN: You can.

7 THE WITNESS: Okay.

8 MR. McCLAIN: You can take a break
9 anytime, by the way.

10 THE WITNESS: Can we stop here?

11 MR. McCLAIN: Yes.

12 MR. KILLEFER: Let's go off the record
13 then.

14 THE VIDEOGRAPHER: We're going off the
15 record. The time is 10:05 a.m.

16 (Recess.)

17 THE VIDEOGRAPHER: We're going back on
18 the record. The time is 10:16 a.m. This begins
19 Tape 2 in the video deposition of John Hallagan.

20 BY MR. McCLAIN:

21 Q. Comparing Exhibit 5, which is the list
22 of people registered to attend the FEMA

1 conference, and -- is it Exhibit 3, which is the
2 complaint?

3 A. 3, yes, sir.

4 Q. Okay. Comparing those two, can you
5 tell us which parties who were defendants in the
6 lawsuit also attended the 1997 FEMA conference?

7 MR. BRIGGS: Objection. The documents
8 speak for themselves.

9 THE WITNESS: I compared the two
10 lists, and I find on the list of the attendees
11 Bedoukian Research.

12 BY MR. McCLAIN:

13 Q. And there were two representatives of
14 Bedoukian. Am I right?

15 A. It appears so, sir, yes. There's two
16 people with name tags.

17 Q. All right.

18 A. And actually I should clarify. This
19 is the name tag list. I can't say for sure
20 whether these people were there or not, but we
21 made name tags for them, which indicates they
22 registered.

1 Q. All right.

2 A. Berje, I find one person.

3 Citrus and Allied, I see two people
4 registered with name tags.

5 Comax, I see one person.

6 A company listed as Givaudan-Roure,
7 which is different from the complaint, but --
8 it's Givaudan Corporation on the complaint and
9 Givaudan-Roure on the name tag. There appear to
10 be -- one, two, three, four, five, six, seven,
11 eight -- eight people.

12 There's a company with a name tag
13 H&R Florasynth. Florasynth is listed on the
14 complaint. And there are three people listed
15 from H&R Florasynth as having name tags.

16 Polarome International, one person
17 with a name tag. It's Polarome Manufacturing on
18 the complaint.

19 I believe that's it.

20 Q. Now, in addition, was -- did Mr. Hall
21 attend the conference?

22 A. I don't recall. I notice there's not

1 a name tag for him. If he had attended, I
2 believe there would have been a name tag.

3 Q. Do you know why he did not attend?

4 A. No, sir, I do not.

5 Q. Now, at the point in time that
6 Dr. Rose spoke at the conference, she had
7 already seen one employee from the Jasper
8 popcorn plant. Isn't that true?

9 A. She told me that in, I believe it was,
10 2002 or so when the individual, whose name I
11 don't remember -- the name appeared in a
12 newspaper article which I had sent to Dr. Rose.

13 Q. Angela Nally. Am I right?

14 A. I believe that's correct, sir.

15 Q. And at that point in time, Dr. Rose
16 told you that she had seen an employee with
17 bronchiolitis obliterans that had been exposed
18 to flavors. Am I right?

19 A. She told me she had seen this
20 individual but did not tell me what her findings
21 were regarding that individual.

22 Q. During the course of the conference,

1 did any of these companies stand up --

2 MR. WOODSIDE: Object to the term
3 these companies unless you better define it.

4 MR. McCLAIN: Okay. Let me -- let's
5 back up.

6 BY MR. McCLAIN:

7 Q. All right. At the conference Dr. Rose
8 did not tell the participants of the conference
9 that she had examined a worker with
10 bronchiolitis obliterans who was exposed to
11 flavors in a food plant. Am I right?

12 MR. BRIGGS: Objection.

13 MR. KILLEFER: Objection. Lack of
14 foundation.

15 THE WITNESS: That's correct.

16 BY MR. McCLAIN:

17 Q. And at this conference did any of the
18 companies that you've identified on Exhibit 5
19 who were defendants in the International Bakers
20 lawsuit tell the participants of the conference
21 in any way that you're aware of that they had
22 been defendants in a case involving

1 bronchiolitis obliterans in workers who worked
2 around flavors?

3 MR. BRIGGS: Objection.

4 THE WITNESS: Not that I'm aware of.

5 BY MR. McCLAIN:

6 Q. So when you say that you made a survey
7 and talked to all of your members about
8 instances of bronchiolitis obliterans that they
9 were aware of back in 1997, Dr. Rose didn't tell
10 you about the case she had been involved in. Am
11 I right?

12 MR. BRIGGS: Objection. Misstates the
13 evidence.

14 THE WITNESS: In my conversation with
15 Dr. Rose, which I believe was in 2002 or 2003
16 when the newspaper article appeared -- as soon
17 as I sent her the article, she called me and
18 said that she had seen this person.

19 She did not tell me what she had found
20 in her examination of that person, but she said
21 she had not made the connection, given when she
22 saw the person, with the flavor work that she

1 was doing for us.

2 BY MR. McCLAIN:

3 Q. She didn't tell you anything about her
4 in 1997, did she?

5 A. She did not.

6 Q. And none of these companies, when you
7 did this survey that you told us about, told you
8 about their involvement in the previous lawsuit.

9 Am I right?

10 MR. BRIGGS: Objection.

11 THE WITNESS: The International Bakers
12 lawsuit?

13 BY MR. McCLAIN:

14 Q. Right.

15 A. That's correct.

16 Q. And Dr. Hall hadn't told you that he
17 had been named as an expert witness. Am I
18 right?

19 MR. BRIGGS: Objection.

20 THE WITNESS: That's correct.

21 BY MR. McCLAIN:

22 Q. And Dr. Richard Ford, the president of

1 the Research Institute for Fragrance Materials,
2 had not told you that he'd been an expert
3 witness in the case also, had he?

4 MR. BRIGGS: Objection. Misstates the
5 evidence.

6 THE WITNESS: That's correct.

7 BY MR. McCLAIN:

8 Q. And Givaudan/Tastemaker had told you
9 to keep their identity secret. Am I right?

10 MR. KILLEFER: Objection.
11 Mischaracterizes the evidence.

12 MR. BRIGGS: Objection. Misstates the
13 evidence.

14 THE WITNESS: Givaudan gave us
15 permission to talk about the information they
16 had shared with us but told us not to reveal
17 their company name.

18 MR. KILLEFER: Objection.

19 BY MR. McCLAIN:

20 Q. So in other words --

21 MR. BRIGGS: Objection. Move to
22 strike --

1 BY MR. McCLAIN:

2 Q. -- to keep --

3 MR. BRIGGS: Objection. Move to
4 strike as the witness indicated Givaudan but it
5 was Tastemaker.

6 BY MR. McCLAIN:

7 Q. Let's clarify. At the time the
8 company was called Tastemaker. Am I right?

9 A. That's correct.

10 Q. And Tastemaker said do not disclose
11 our identity to the conference participants, and
12 you complied with that request.

13 MR. BRIGGS: Objection.

14 BY MR. McCLAIN:

15 Q. Am I right?

16 MR. BRIGGS: Objection. Misstates the
17 evidence.

18 THE WITNESS: That's correct.

19 BY MR. McCLAIN:

20 Q. Now, did mister -- did mister --
21 Dr. Hall or Dr. Ford -- that is, the president
22 of the Flavor and Extract -- the previous

1 president of the Flavor and Extract
2 Manufacturers Association, Dr. Hall, and the
3 president of the -- of RIFM, Dr. Ford, did they
4 ever tell you that, in fact, Dr. Susan Daum, the
5 world renowned occupational physician from
6 Mt. Sinai School of Medicine in New York had
7 been an expert in the International Bakers case
8 and had filed an affidavit?

9 A. No, sir.

10 MR. KILLEFER: Objection. Lack of
11 foundation.

12 BY MR. McCLAIN:

13 Q. Clearly you did not invite Dr. Daum to
14 come testify -- or come make a presentation to
15 the FEMA members in 1997 or thereafter. Am I
16 right?

17 A. That's correct.

18 Q. Because no one identified her to you
19 as someone that had had previous experience in
20 this matter --

21 MR. BRIGGS: Objection.

22 BY MR. McCLAIN:

1 Q. -- right?

2 A. That's correct.

3 Q. Now, I think that -- I think that you
4 have told us that at the time of your meeting
5 with Tastemaker that the only chemical which
6 they made you aware of was acetaldehyde. Am I
7 right?

8 A. That's correct.

9 Q. Did they tell you that in their
10 interviews -- that is, the physician interviews
11 with these patients -- many of them identified
12 diacetyl as being a chemical which caused their
13 shortness of breath?

14 MR. BRIGGS: Objection. Misstates the
15 evidence.

16 THE WITNESS: No, sir.

17 BY MR. McCLAIN:

18 Q. Have they ever told you that even
19 through today?

20 A. No, sir.

21 Q. Wouldn't that have been helpful --

22 MR. BRIGGS: Objection.

1 BY MR. McCLAIN:

2 Q. -- if that, in fact, is true?

3 MR. BRIGGS: Objection. Calls for
4 speculation.

5 THE WITNESS: Yes, sir.

6 BY MR. McCLAIN:

7 Q. Let me ask you, Mr. Hallagan: Do you
8 feel like Givaudan/Tastemaker has misled you in
9 this matter?

10 MR. KILLEFER: Objection.

11 MR. BRIGGS: Objection.

12 MR. KILLEFER: Calls for speculation.

13 THE WITNESS: I don't know what I feel
14 right now.

15 BY MR. McCLAIN:

16 Q. That is a thought that's crossed your
17 mind, isn't it?

18 MR. BRIGGS: Objection. Calls for
19 speculation.

20 THE WITNESS: Mr. McClain, I've got
21 information here I've never seen before. I'd
22 like some time to process it.

1 BY MR. McCLAIN:

2 Q. I can respect that, and I'm going to
3 give that to you.

4 But in the course of -- in the course
5 of your dealings with this, you've had to be out
6 front for the flavoring industry. Am I right?

7 A. I have been the person who has worked
8 on this issue the most in the flavoring
9 industry, yes, sir.

10 Q. And it's true that, in addition to the
11 information I've just given you, at several
12 points along the way you have been surprised
13 about the extent of information that your member
14 companies have had and not disclosed to you. Am
15 I right?

16 MR. KILLEFER: Objection.

17 MR. BRIGGS: Objection. Form.

18 MR. WOODSIDE: Lack of foundation.

19 THE WITNESS: Again, Mr. McClain, I'd
20 like some time to sort of process this and think
21 about it.

22 BY MR. McCLAIN:

1 Q. All right. I'll give you time. Just
2 go ahead and just think about it for a few
3 minutes and tell me if that's not true.

4 Because I get the sense from you,
5 Mr. Hallagan, in my two dealings with you that
6 this information that I've shown you in two
7 separate depositions that have come from files
8 that we have obtained through discovery have
9 left you disappointed in the information that
10 your members have supplied you.

11 But you think about that, and you tell
12 me whether or not I'm right.

13 MR. KILLEFER: Objection. That's a
14 narrative statement.

15 MR. McCLAIN: Yes, it is.

16 So we'll start again after
17 Mr. Hallagan has had a minute to process it.

18 MR. KILLEFER: Do you need a break?

19 THE WITNESS: No.

20 Mr. McClain, this is new information.
21 You asked me a question, if I thought it would
22 be helpful to have known this at certain points,

1 and my answer is yes.

2 Whether I'm disappointed or not, as I
3 said earlier, I don't know yet. You know, I
4 would ask that I would have more time than just
5 a few minutes to think about it.

6 BY MR. McCLAIN:

7 Q. Well, here's what -- here's what
8 I'd -- I want to get at.

9 You have been a person who has been
10 involved in discussions, which were not public
11 discussions, about this very important public
12 health issue with your member companies. Am I
13 right?

14 MR. BRIGGS: Objection. Move to
15 strike.

16 THE WITNESS: The information that we
17 obtained from members, aside from the identity
18 of a few companies, is information that we've
19 all put out there in our workshops and in our
20 August 2004 report.

21 So as soon as FEMA got information,
22 largely often as soon as I got it, we shared it

1 very quickly, again, with the only exception
2 being the identity of the companies. And from a
3 public health perspective, I'm not sure that the
4 name of the companies is that important. We put
5 the information is out there.

6 BY MR. McCLAIN:

7 Q. All right. I understand that that
8 was --

9 MR. BRIGGS: Objection.

10 BY MR. McCLAIN:

11 Q. -- that was your --

12 MR. BRIGGS: Objection. I don't think
13 the witness had completed his answer. Perhaps
14 he had.

15 BY MR. McCLAIN:

16 Q. Did you complete your answer?

17 A. I'm done, yes, sir.

18 MR. BRIGGS: Pardon me.

19 BY MR. McCLAIN:

20 Q. I mean, Mr. Hallagan, I'm -- I
21 understand what you've just said is your
22 intention individually.

1 But your expectation in this process
2 was that the companies that you were dealing
3 with that are the members that make up FEMA --
4 after all, FEMA exists to serve its members. Am
5 I right?

6 A. Yes, sir.

7 Q. So these members, which essentially
8 are your -- the core and the reason for your
9 belief (sic), you believe that they were sharing
10 all relevant information with you so you could
11 act on it for the benefit of the industry and
12 ultimately for the benefit of public health. Am
13 I right?

14 MR. BRIGGS: Objection.

15 THE WITNESS: Yes, sir. That's what
16 we were trying to accomplish, absolutely.

17 BY MR. McCLAIN:

18 Q. And so you expected your members,
19 including your past presidents, members of your
20 board, to be fully forthcoming with you about
21 these issues so that you could share it with
22 members of the public. Am I right?

1 A. I always expect that, yes, sir.

2 Q. And to the extent that they didn't do
3 that and to the extent that you agreed to keep
4 their identities and other things secret --
5 would have frustrated the purpose which you have
6 explained to us, that is, to protect the public
7 health. Am I right, Mr. Hallagan?

8 MR. BRIGGS: Objection.

9 MR. KILLEFER: Objection.

10 Argumentative.

11 MR. BRIGGS: Objection. Misstates the
12 testimony.

13 THE WITNESS: As I said earlier, the
14 information that we received was shared except
15 for the identity of the companies. So the key
16 information on exposures, potential illness,
17 that was all shared, and it's recounted in our
18 August 2004 report.

19 BY MR. McCLAIN:

20 Q. Yes, sir. But the member companies
21 knew you were dealing with NIOSH. Am I right?

22 A. Yes, sir.

1 Q. They knew you were dealing with the
2 Food and Drug Administration?

3 A. Yes, sir.

4 Q. And OSHA?

5 A. Yes, sir.

6 Q. State agencies concerned with public
7 health as well?

8 A. Yes, sir.

9 Q. And so the companies that were your
10 members knew that, in fact, the public health
11 agencies were relying upon FEMA to share
12 information with them which was accurate. Am I
13 right?

14 MR. BRIGGS: Objection.

15 THE WITNESS: Yes, sir.

16 BY MR. McCLAIN:

17 Q. And to the extent that FEMA members
18 knew about previous incidents of bronchiolitis
19 obliterans from their involvement in lawsuits,
20 you didn't share that with any public agencies,
21 did you?

22 MR. KILLEFER: Objection.

1 MR. BRIGGS: Objection.

2 MR. KILLEFER: Calls for speculation
3 and lack of foundation.

4 MR. BRIGGS: Objection. Assumes facts
5 not in evidence.

6 THE WITNESS: That information was not
7 shared because we didn't have that information.

8 BY MR. McCLAIN:

9 Q. You didn't have it personally, but
10 other members of FEMA may have had it. Am I
11 right?

12 MR. KILLEFER: Objection.

13 MR. BRIGGS: Objection.

14 MR. KILLEFER: Calls for speculation.

15 THE WITNESS: I'm assuming that the
16 parties to this litigation had this information,
17 yes, sir.

18 BY MR. McCLAIN:

19 Q. And they did not share it with you?

20 MR. BRIGGS: Objection. Based on
21 assumption. Move to strike.

22 THE WITNESS: This is the first time

1 I've seen this information, sir.

2 BY MR. McCLAIN:

3 Q. And, likewise, if Givaudan
4 specifically, Tastemaker previously, had
5 information regarding the -- a greater number of
6 cases than was shared with you, a specific
7 diagnosis of bronchiolitis obliterans and that
8 other chemicals than acetaldehyde were causative
9 of this disease, that information was not shared
10 by you because it was not shared with you by
11 Givaudan/Tastemaker. Am I right?

12 MR. BRIGGS: Objection.

13 MR. KILLEFER: Objection. Ambiguous.

14 MR. BRIGGS: Assumes facts not in
15 evidence.

16 THE WITNESS: I've explained the
17 information that was provided. If you're
18 referring to information in addition to that,
19 that was not provided.

20 BY MR. McCLAIN:

21 Q. Now let's talk about something else
22 that you've become familiar with in time.

1 In 2001 you came in -- you came into
2 possession of a rat study that was done by BASF.

3 Am I right?

4 A. A rat -- inhalation rat study on
5 diacetyl conducted by BASF in Germany was
6 provided to RIFM, the Research Institute for
7 Fragrance Materials, in late 2001.

8 Q. And, of course, the results of that
9 study were made available to customers of BASF,
10 many of whom were members of your organization.

11 Am I right?

12 MR. BRIGGS: Objection.

13 THE WITNESS: I don't know.

14 MR. McCLAIN: Let me -- I need to find
15 a document.

16 (Discussion off the record.)

17 MR. McCLAIN: We'll mark this as
18 Exhibit 6.

19 (Exhibit No. 6 was marked for
20 identification.)

21 BY MR. McCLAIN:

22 Q. Now, there are -- first of all, there

1 are board meetings of FEMA members. Am I right?

2 A. Yes, sir.

3 Q. And there are times that members are
4 encouraged to share information about hazards
5 that they become aware of. Am I right?

6 A. Yes, sir. There's board meetings and
7 membership meetings, among other meetings, yes,
8 sir.

9 Q. And just so I'm clear, I asked you
10 about at the conference.

11 But before the 1997 conference, did
12 any FEMA board member share you with information
13 relevant to the issue of bronchiolitis
14 obliterans or exposure to flavoring chemicals?

15 A. Prior to the --

16 Q. The '97 --

17 A. -- 1997 conference?

18 Q. Yes, sir.

19 MR. BRIGGS: Objection.

20 Could you read that question back?

21 Could I hear that again?

22 MR. McCLAIN: Sure.

1 (Whereupon, the requested record was
2 read back by the reporter.)

3 MR. BRIGGS: Thank you.

4 THE WITNESS: So before the 1997
5 conference --

6 BY MR. McCLAIN:

7 Q. Yes.

8 A. -- the only information that I
9 received from a member was from the Tastemaker
10 meeting, which was in 1996.

11 Q. And that information that you received
12 from Tastemaker appears to have been at least
13 incomplete, correct?

14 MR. BRIGGS: Objection. Move to
15 strike.

16 BY MR. McCLAIN:

17 Q. That would be your conclusion today?

18 MR. BRIGGS: Objection. Calls for a
19 conclusion.

20 THE WITNESS: It appears that there
21 was additional information available.

22 BY MR. McCLAIN:

1 Q. Now, if you look at this 1997 Material
2 Safety Data Sheet that we obtained from the
3 files of Bush Boake Allen, that has two dates on
4 it, 1994 and 1997, for the revision date --

5 MR. WOODSIDE: Mr. McClain, excuse me.
6 It also has a third date, which is the --

7 BY MR. McCLAIN:

8 Q. -- and there's a fax number of 1998 at
9 the top.

10 MR. WOODSIDE: Thank you.

11 BY MR. McCLAIN:

12 Q. In any of those years -- '94, '97 or
13 '98 -- did BBA, Bush Boake Allen, bring to your
14 attention the fact that BASF had published
15 inhalation toxicity data --

16 MR. WOODSIDE: Objection to the form.

17 BY MR. McCLAIN:

18 Q. -- as is evidenced on page 2 of this
19 Material Safety Data Sheet?

20 MR. WOODSIDE: And foundation.

21 THE WITNESS: No, sir.

22 BY MR. McCLAIN:

1 Q. Now, when you finally requested the
2 information from BASF in 2001, BASF did supply
3 you the underlying study regarding the hazards
4 of inhaling diacetyl on rats. Am I right?

5 MR. WOODSIDE: Objection. Objection.
6 The question itself is misleading and misstates
7 the evidence.

8 THE WITNESS: My recollection is that
9 we did not -- we, being FEMA -- certainly FEMA
10 did not request the information from BASF. FEMA
11 was not aware of it. BASF has never been a
12 member of FEMA.

13 My understanding is that BASF
14 voluntarily sent the study, which is
15 unpublished, to the Research Institute For
16 Fragrance Materials for inclusion in their
17 database.

18 BY MR. McCLAIN:

19 Q. There was no -- there was no
20 indication to you that BASF was trying to keep
21 it secret. Am I right? They voluntarily
22 produced it?

1 A. Yes, sir.

2 Q. All right.

3 A. I believe so.

4 Q. And as you can see from this document,
5 the data from the study was available before
6 that -- that is, in their Material Safety Data
7 Sheet -- as early as 1994 and as late as 1998,
8 right?

9 MR. BRIGGS: Objection.

10 MR. WOODSIDE: Objection.

11 MR. BRIGGS: Calls for a conclusion.

12 MR. WOODSIDE: Speculation.

13 THE WITNESS: I can't tell that from
14 this document, but I...

15 BY MR. McCLAIN:

16 Q. Do you remember that the -- the
17 results of the LC-50 data from the -- from the
18 study, 2.25 to 5.2 milligrams per liter? Do you
19 see that on page 2 of the study?

20 A. I see that, but I'd have to look at
21 the study and this to give you an answer. I
22 don't...

1 MR. McCLAIN: We have it, don't we?

2 (Discussion off the record.)

3 BY MR. McCLAIN:

4 Q. Would your own monograph tell you?

5 A. It probably would, yeah.

6 Q. Yeah. Your diacetyl monograph
7 contains it, I think.

8 MR. McCLAIN: Let's mark this as
9 Exhibit 7 so you can confirm that.

10 (Exhibit No. 7 was marked for
11 identification.)

12 BY MR. McCLAIN:

13 Q. I can substitute it so you can
14 determine specifically. Here's the study
15 itself, the BASF rat study. Let's --

16 A. Oh, could I just see that?

17 Q. Yes, you sure can. Let's give you
18 Exhibit 8. We'll skip Exhibit 7 for the time
19 being.

20 (Exhibit No. 8 was marked for
21 identification.)

22 BY MR. McCLAIN:

1 Q. You can keep that over there because I
2 may ask you a question about it --

3 A. Yeah.

4 Q. -- but just -- just put it to the --
5 is there more than one?

6 A. No. It's the -- do you have one
7 that's clearer -- because this printing is
8 really hard to read -- if I'm going read it --
9 I'm just saying.

10 Q. Okay.

11 MR. CRICK: That's the only one we
12 have.

13 MR. McCLAIN: Okay. All right. We'll
14 make do.

15 BY MR. McCLAIN:

16 Q. Am I right about that?

17 A. The dose levels that are listed appear
18 to be the same, but there's -- there's not a
19 reference to the study, but the dose levels do
20 appear to be the same.

21 Q. All right. And did IFF or BBA ever
22 make you aware that they had this data in their

1 files before RIFM obtained this information in
2 2001?

3 MR. WOODSIDE: Object to the form and
4 foundation.

5 THE WITNESS: No, sir.

6 BY MR. McCLAIN:

7 Q. Now, let's come back to the 1997
8 conference and talk about -- we've talked about
9 what you didn't know before the conference, but
10 let's talk about what was announced to all of
11 the participants at the conference.

12 MR. BRIGGS: Objection. Move to
13 strike the speech.

14 BY MR. McCLAIN:

15 Q. Dr. Rose did make a presentation at
16 the '97 conference, did she not?

17 A. Yes, sir.

18 Q. And at that conference she told the
19 participants that bronchiolitis obliterans was a
20 very serious disease. Am I right?

21 A. I believe that's correct.

22 Q. It was a respiratory disease?

1 A. Yes, sir.

2 Q. An obstructive disease?

3 A. I don't recall. But that would make
4 sense.

5 Q. All right. And that it was
6 irreversible. Am I right?

7 A. That's correct.

8 Q. And that it could be caused by
9 irritant chemicals. Am I right?

10 A. I don't recall.

11 Q. Do you recall that she listed
12 irritants as being one of the causes of
13 occupational lung disease?

14 A. No, sir.

15 Q. Let's look at the conference materials
16 then, if we can.

17 (Exhibit No. 9 was marked for
18 identification.)

19 BY MR. McCLAIN:

20 Q. I'm going to hand you what we'll mark
21 as exhibit --

22 MR. McCLAIN: Is it Exhibit 9?

1 MR. CRICK: Yes.

2 MR. McCLAIN: Is this the one we're
3 on?

4 MR. CRICK: Yes.

5 THE WITNESS: Where are you looking,
6 Mr. McClain?

7 BY MR. McCLAIN:

8 Q. Page 5, Possible Exposures Causing
9 Airway Diseases. Do you see that?

10 A. Dr. Rose's presentation?

11 Q. I think it's page 5 on the bottom,
12 yes, of Dr. Rose's presentation.

13 A. Okay. Yes, sir.

14 MR. KILLEFER: Could you use a Bates
15 number, please?

16 MR. McCLAIN: 1617.

17 MR. WOODSIDE: I assume you have no
18 more copies.

19 MR. McCLAIN: I am afraid I don't,
20 Frank.

21 MR. WOODSIDE: That's okay.

22 BY MR. McCLAIN:

1 Q. Possible Exposures Causing Airway
2 Diseases, do you see that?

3 A. Yes, sir.

4 Q. It talks about baking flours, grain
5 dusts, bacterial endotoxin, enzymes, silica,
6 dust, irritant chemicals, sensitizing chemicals?

7 A. I see that listed as a possible
8 exposure causing airway disease, yes.

9 Q. Now, interestingly if you look back at
10 the list of things causing bronchiolitis
11 obliterans, she lists --

12 A. What page are you referring to?

13 Q. Page 10.

14 A. Okay.

15 Q. -- toxin fume exposures, and she lists
16 some toxic fumes.

17 And then she lists viral infections,
18 rheumatoid arthritis, drug reactions, organ
19 transplantation, unusual ingestions, but she
20 doesn't mention acetaldehyde, which you had been
21 informed about by this time already. Isn't that
22 true?

1 MR. WOODSIDE: Objection. Misstates
2 the evidence.

3 THE WITNESS: On the slide on page 5,
4 she's -- she has irritant chemicals listed as
5 causing airway disease, a more generic category.

6 In this slide -- these two slides,
7 she's talking specifically about bronchiolitis
8 obliterans, and she does not list irritant
9 chemicals or acetaldehyde as causing
10 bronchiolitis obliterans.

11 BY MR. McCLAIN:

12 Q. Why didn't you stand up and make that
13 clear -- or was it clear to the participants
14 that irritant chemicals could cause all of these
15 diseases?

16 MR. BRIGGS: Objection. Misstates the
17 evidence.

18 THE WITNESS: I'm not aware that
19 irritant chemicals can cause bronchiolitis
20 obliterans.

21 BY MR. McCLAIN:

22 Q. Well, you had been told that

1 Dr. Lockey believed that the exposure to
2 acetaldehyde had caused the bronchiolitis
3 obliterans at the Tastemaker plant. That was
4 the whole reason for the conference.

5 MR. BRIGGS: Objection.

6 MR. KILLEFER: Objection.

7 MR. BRIGGS: Objection. Misstates the
8 evidence.

9 THE WITNESS: That's not what I recall
10 Dr. Lockey told us.

11 Dr. Lockey told us that there was one
12 possible -- one index case of bronchiolitis
13 obliterans. He was still at that point
14 relatively unsure exactly what he was seeing.
15 He thought there might have been several others.

16 He clearly told us that, of the people
17 involved, only one person remembered any
18 particular exposure of one of the flavoring
19 substances and that was an exposure to
20 acetaldehyde, and that's what we describe in our
21 August 2004 report.

22 BY MR. McCLAIN:

1 Q. Yes. But you didn't tell -- and you
2 didn't make that clear in the 1997 presentation.

3 Am I right?

4 A. In the 1997 presentation, in my
5 introductory comments, I do mention
6 acetaldehyde, but at that point I don't recall
7 that Dr. Lockey was certain about causation.

8 Q. Well, by this time -- by this time you
9 had not been shown the medical reports that came
10 out of the University of Cincinnati diagnosing
11 individuals with bronchiolitis obliterans and
12 specifying which flavoring chemicals they had
13 been exposed to, had you? No one showed you
14 those things?

15 MR. KILLEFER: Point of clarification,
16 by this time, do you mean the spring '97
17 conference?

18 MR. McCLAIN: Yes, sir.

19 MR. KILLEFER: All right.

20 THE WITNESS: That's correct. Still
21 have not -- have not seen that information.

22 BY MR. McCLAIN:

1 Q. Would you like to see it?

2 A. If it's available.

3 Q. Then let me show it to you.

4 MR. McCLAIN: We'll mark as Exhibit 10
5 a report on Joey Wallace.

6 (Exhibit No. 10 was marked for
7 identification.)

8 MR. McCLAIN: And we'll mark
9 Exhibit 11, also involving Mr. Wallace's case.

10 (Exhibit No. 11 was marked for
11 identification.)

12 BY MR. McCLAIN:

13 Q. I'll show you Exhibit 11 involving
14 Mr. Wallace's case from 1994. In here -- the
15 diagnosis on the second page of that document is
16 chronic bronchiolitis.

17 A. On which document, sir?

18 Q. 11.

19 MR. McCLAIN: I'm sorry. Did I not
20 pass those out, Exhibit 11, to the rest of you
21 fellows?

22 BY MR. McCLAIN:

1 Q. Until today, had anyone shown you
2 these medical records?

3 A. No, sir.

4 (Exhibit No. 12 was marked for
5 identification.)

6 BY MR. McCLAIN:

7 Q. Let me show you Exhibit 12, which is a
8 case where the identity of the individual has
9 been blocked out, but we've been informed that
10 it's from the Tastemaker plant --

11 MR. BRIGGS: Objection. Move to
12 strike.

13 BY MR. McCLAIN:

14 Q. -- 1995, again, from
15 Dr. Robert Baughman -- Baughman,
16 B-a-u-g-h-m-a-n, a case of constrictive
17 bronchiolitis.

18 Were you made aware of this 1995 case?

19 A. No.

20 (Exhibit No. 13 was marked for
21 identification.)

22 BY MR. McCLAIN:

1 Q. Let me show you Exhibit 13, which is a
2 case involving Cliff Walker.

3 Have you ever seen Exhibit 13 before?

4 A. No, sir.

5 Q. If you look on the second page where
6 right in the medical records, it says he was
7 exposed to diacetyl. Do you see this?

8 A. No, sir. Where is that?

9 Q. Second page. Do you see that?

10 A. Okay. I see diacetyl listed.

11 Q. Diacetyl listed. And do you see in
12 the -- let me find his diagnosis -- do you see
13 that -- in the discussion section on the second
14 page from the back where it says:

15 Mr. Clifford Walker is a 48-year-old gentleman
16 who has clinical findings as well as laboratory
17 results consistent with bronchiolitis
18 obliterans.

19 Do you see that?

20 A. Yes, sir.

21 Q. Is this the first time that anyone has
22 ever shared this information with you?

1 A. Yes, sir.

2 Q. Do you see that this was dated
3 the 24th of August 1995? Where it's dictated on
4 the bottom of -- it's the last page, the
5 dictation notes.

6 A. Yes, sir.

7 Q. And this is by Dr. Lockey?

8 A. Yes, sir.

9 Q. This information was not shared with
10 you at the meeting?

11 A. The meeting with Dr. Lockey?

12 Q. Yes.

13 A. No, sir. This information was not
14 shared.

15 (Exhibit No. 14 was marked for
16 identification.)

17 BY MR. McCLAIN:

18 Q. Let me show you Exhibit 14.

19 Before today, had you ever been made
20 aware of Mr. Walt Vaske's case?

21 A. No, sir.

22 Q. Do you see that Dr. Baughman diagnosed

1 him with bronchiolitis obliterans?

2 A. The document says all of these are
3 consistent with a diagnosis of bronchiolitis
4 obliterans.

5 Q. Did anyone ever make you aware that
6 Mr. Vaske complained about exposure to diacetyl?

7 MR. BRIGGS: Objection. Assumes facts
8 not evidence.

9 THE WITNESS: No, sir.

10 (Exhibit No. 15 was marked for
11 identification.)

12 BY MR. McCLAIN:

13 Q. Let me show you what we'll mark as
14 Exhibit 15.

15 Before today, has anyone showed you
16 any information about Robin Gaskins?

17 A. No, sir.

18 Q. Do you see here that it says that this
19 letter was also sent to James Lockey on that
20 date, that is, January 31 of '96? Do you see
21 that?

22 A. Yes, sir.

1 Q. And that was before your meeting. Am
2 I right?

3 A. Our meeting with Dr. Lockey was later
4 in 1996, yes, sir.

5 Q. And it says here that Ms. Gaskins has
6 bronchiolitis obliterans, right?

7 MR. BRIGGS: Objection. Misstates the
8 document. The document speaks for itself.

9 THE WITNESS: It says.

10 MR. BRIGGS: The document speaks for
11 itself.

12 THE WITNESS: The document says: I
13 feel there is a reasonable medical probability
14 that Ms. Gaskins has bronchiolitis obliterans.

15 BY MR. McCLAIN:

16 Q. Right. And she was exposed to these
17 vapors while working as a compounder at
18 Tastemaker, right? Do you see that?

19 A. Yes, sir. It says that.

20 Q. None of this information was shared
21 with you in the meetings meeting with
22 Dr. Lockey. Is that correct?

1 A. That's correct.

2 (Exhibit No. 16 was marked for
3 identification.)

4 BY MR. McCLAIN:

5 Q. Let me show you what's been marked as
6 Exhibit 16.

7 This is a document regarding
8 Mr. Ronald Feldkamp. It says here that
9 Mr. Feldkamp is a gentleman with a history of
10 shortness of breath which occurred after
11 starting to work for Tastemaker.

12 Do you see that? The first paragraph.

13 A. Yes, sir, I do.

14 Q. It is my impression that Mr. Feldkamp
15 most likely has bronchiolitis obliterans.

16 Do you see that?

17 MR. BRIGGS: Objection.

18 BY MR. McCLAIN:

19 Q. In the -- one, two, three -- fourth
20 paragraph.

21 MR. BRIGGS: Objection. Move to
22 strike.

1 THE WITNESS: No. I'm sorry. I'm not
2 seeing that. Is it on the first page?

3 BY MR. McCLAIN:

4 Q. Second page, page 2.

5 A. Which paragraph, please? Yes, I see
6 that.

7 Q. His work history is capable (sic).
8 His dramatic drop in his pulmonary function
9 tests which seems to be a fixed defect goes
10 along with this concept.

11 Do you see that?

12 A. Yes, sir.

13 Q. Did anyone ever tell you about this?

14 A. No, sir.

15 Q. This was February 19th of '96, right?

16 A. Yes, sir.

17 Q. Before your meeting?

18 A. Yes, sir.

19 (Exhibit No. 17 was marked for
20 identification.)

21 BY MR. McCLAIN:

22 Q. Let me show you Exhibit 17. This is

1 regarding Mr. Gary Shea.

2 Do you see that Mr. Shea has undergone
3 bronchoscopy and was noted to have airway
4 inflammation consistent with acute bronchiolitis
5 and probably consistent with his underlying
6 bronchiolitis obliterans? Do you see that?

7 A. Yes, sir. It says acute bronchitis
8 and probably consistent with his underlying
9 bronchiolitis obliterans, yes, sir.

10 Q. And this is a letter to Dr. Lockey
11 from Dr. Baughman?

12 A. Yes, sir, it is.

13 Q. And it's fair to say this was before
14 your meeting and Dr. Lockey did not discuss it
15 with you and no one from Tastemaker showed you
16 this report. Am I right?

17 A. That's correct.

18 (Exhibit No. 18 was marked for
19 identification.)

20 BY MR. McCLAIN:

21 Q. Let me show you what's been marked as
22 exhibit -- let me show you what's been marked as

1 exhibit -- which one are we on now?

2 MR. KILLEFER: 18.

3 THE WITNESS: 18.

4 BY MR. McCLAIN:

5 Q. Let me show you what's been marked as
6 Exhibit 18.

7 This is dated February 22nd, 1996.

8 It's a letter to Janice Dees at -- the medical
9 services coordinator at Tastemaker.

10 Did you know Ms. Dees?

11 A. No, sir.

12 Q. And it's by Dr. Susan Pinney, a Ph.D.
13 assistant professor at the University of
14 Cincinnati, where all of these tests were done,
15 who's the director of medical surveillance. Do
16 you see that?

17 A. Yes, sir.

18 Q. And it's dated February 22nd, 1996,
19 which was before your meeting. Am I right?

20 A. Yes, sir.

21 Q. And it says: Please find enclosed
22 copies of interim reports that have been

1 prepared from the pulmonary function test and
2 questionnaire data provided by Tastemaker
3 employees.

4 Do you see that?

5 A. Yes, sir.

6 Q. And the third page of this report
7 lists information from the respiratory
8 questionnaire on these 14 employees.

9 Were you aware at any time before your
10 meeting that there were really 14 employees that
11 they were examining and reviewing at Tastemaker?

12 A. No, sir.

13 Q. If you'll look back at some of these
14 pages, like page 700 of this TM700 -- 6700 at
15 the back.

16 A. Yes, sir.

17 Q. Do you see here, in terms of the
18 questionnaire, the summaries that they have,
19 this person was exposed to diacetyl?

20 A. No, sir. Where is that, please?

21 Q. Item 40.

22 MR. BRIGGS: What page are you on?

1 MR. McCLAIN: 5700 (sic).

2 THE WITNESS: It says diacetyl, dash,
3 off work for one week after exposure.

4 BY MR. McCLAIN:

5 Q. Right.

6 A. Dust and air lacerated both retinas,
7 yes, sir, I see that.

8 Q. Do you see 5701, in response to
9 Question 57, this employee, too, was exposed to
10 diacetyl. Do you see that?

11 A. No, sir.

12 Q. The next page.

13 A. Oh.

14 Q. Question 57. This is another employee
15 in the questionnaire process.

16 A. It says diacetyl, orange dust, yes.

17 Q. Look over at page --

18 A. Or orange dust.

19 Q. -- 5703 (sic), another page involving
20 another employee.

21 A. Yes, sir.

22 Q. Do you see there, under Question 81,

1 Diacetyl?

2 A. It say -- yes, acetaldehyde

3 diacetyl/capiscum.

4 Q. Capsaicin (sic). 6704, the next page.

5 A. Yes, sir.

6 Q. Do you see diacetyl?

7 A. I see diacetyl, acetaldehyde, and I

8 can't really read the next one.

9 Q. Was any of this information provided
10 to you before today?

11 A. No, sir.

12 Q. And do you see that it was in
13 existence before your meeting?

14 A. The document is dated February 22nd,
15 1996.

16 MR. McCLAIN: Let's go ahead and take
17 another break.

18 THE VIDEOGRAPHER: We're going off the
19 record. The time is 11:07 a.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are going back
22 on the record. The time is 11:25 a.m. This

1 begins Tape 3 in the video deposition of
2 John Hallagan.

3 BY MR. McCLAIN:

4 Q. Now, Mr. Hallagan, I want to clarify
5 something if it wasn't clear.

6 First of all, all of this information
7 that I just showed you through Exhibit 17 -- or
8 18 -- I'm sorry -- regarding employees diagnosed
9 at the Tastemaker plant was new information to
10 you. Am I right?

11 MR. KILLEFER: Objection. Ambiguous.

12 BY MR. McCLAIN:

13 Q. Sitting here on June 27th -- is it --
14 is that -- or is it the 26th?

15 MR. BRIGGS: 28th.

16 MR. McCLAIN: Huh? 28th? All right.

17 BY MR. McCLAIN:

18 Q. Sitting here June -- on June 28th of
19 2006 --

20 MR. KILLEFER: This is July.

21 THE WITNESS: Yeah.

22 MR. McCLAIN: Let me try again.

1 MR. WOODSIDE: He went to Michigan.

2 BY MR. McCLAIN:

3 Q. Sitting here today in July of 2006,
4 it's the first time that you have seen any of
5 the information that I've given to you. Am I
6 right?

7 MR. BRIGGS: Objection.

8 MR. KILLEFER: Ambiguous.

9 THE WITNESS: A number of these
10 documents I'm seeing for the first time. Would
11 you like me to list them? Some of them I have
12 seen before.

13 BY MR. McCLAIN:

14 Q. Yes. The 1997 materials, et cetera,
15 you have seen?

16 A. Yes, sir.

17 Q. But the information regarding the
18 specific Tastemaker employees and their
19 diagnosis, this is the first time you're seeing
20 it. Am I right?

21 A. Yes, sir.

22 Q. Now, I just want to clarify a couple

1 of things.

2 FEMA is not John Hallagan, is it?

3 A. No, sir. I am not a member of FEMA.

4 Q. You are an employee of FEMA?

5 MR. BRIGGS: Objection.

6 THE WITNESS: I'm general counsel for
7 FEMA through my law firm, and I do scientific
8 work through The Roberts Group to serve FEMA,
9 yes, sir.

10 BY MR. McCLAIN:

11 Q. Okay. And FEMA is controlled by its
12 board of directors. Am I right?

13 A. Board of governors, yes, sir.

14 Q. And it's the board of governors who
15 tell John Hallagan and the other employees of
16 FEMA what their wishes are in terms of what
17 should be done from a policy standpoint. Am I
18 right?

19 A. The board of governors provides the
20 leadership with -- in consultation with the
21 members, yes, sir.

22 Q. So it's not -- when we say FEMA does

1 this or does that, we're not talking about
2 decisions that John Hallagan makes as an overall
3 matter, but you're attempting to perform those
4 tasks which the board has given you. Am I
5 right?

6 A. I take my direction from the board of
7 governors, yes, sir.

8 Q. And you can only give to the public
9 that information which is provided to you in
10 general by others?

11 MR. KILLEFER: Objection. Ambiguous.

12 BY MR. McCLAIN:

13 Q. Let me restate.

14 Mr. Hallagan, in regard to these
15 matters -- that is, bronchiolitis obliterans in
16 the flavoring industry -- you have only been
17 allowed to share information which you have been
18 given. Isn't that true?

19 A. We have shared information with the
20 membership and the public from a number of
21 sources. We have shared information provided
22 from member companies. We provided analysis

1 from NIOSH, from CalDHS, CalOSHA, from National
2 Jewish, so a number of sources.

3 Q. Let me state it another way.

4 To the extent that the board of
5 governors has not shared information with you
6 about this issue, you have not been able to
7 share it with the public. Am I right?

8 MR. BRIGGS: Objection.

9 THE WITNESS: We have not been able to
10 share information we didn't have.

11 BY MR. McCLAIN:

12 Q. And if Givaudan, slash, Tastemaker,
13 through its representative Mike Davis or
14 Ms. Higley, both of which were board members,
15 did not share the information that I just gave
16 you here about their experience with
17 bronchiolitis obliterans, you were not able to
18 share that with the general public. Am I right?

19 A. That's correct. We couldn't share
20 information we didn't have.

21 Q. And am I right that both Ms. Higley
22 and Mr. Davis were board members of FEMA?

1 A. Mr. Davis was a board member during
2 the late 1990s, I believe, maybe into the early
3 2000s. And Dr. Higley was a board member in the
4 early 2000s following Mr. Davis, yes, sir.

5 Q. And Mr. Davis served as the president
6 of FEMA for a time. Am I right?

7 A. Yes, sir.

8 Q. What years did he serve as president,
9 do you recall?

10 A. I don't recall, but I believe it would
11 have been in the early 2000s perhaps.

12 Q. And during the time that he was
13 president, did you ever share with you the
14 information that he had regarding bronchiolitis
15 obliterans and the flavoring industry?

16 MR. BRIGGS: Objection. Assumes facts
17 not evidence.

18 THE WITNESS: I don't know what
19 information he had, but he did not share
20 information -- he did not share this
21 information, if that's your question.

22 BY MR. McCLAIN:

1 Q. Yes. Now, even though this
2 information that I just gave you was not shared
3 with you before the '97 conference, all of the
4 members were told at the conference that
5 research and development activities also provide
6 the opportunity for exposure exceeding the
7 typical consumer exposures contemplated by the
8 FEMA and RIFM expert panels in their safety
9 evaluations. Am I right?

10 MR. KILLEFER: Objection. Lack of
11 foundation.

12 BY MR. McCLAIN:

13 Q. Pages 1609 through 1610 of your FEMA
14 conference materials in front of you -- I can't
15 remember what we marked that in terms of
16 exhibits.

17 A. In here?

18 Q. Yes.

19 A. Okay. What were those pages, again,
20 please?

21 Q. 1609 through 1610.

22 A. Okay. I'm there.

1 Q. I think those are part of your
2 introductory remarks.

3 A. Yes, sir. And where were you reading
4 from, please?

5 Q. I'm was reading from the second page:
6 Research and development activities also provide
7 the opportunities for exposure exceeding the
8 typical consumer exposures contemplated by the
9 FEMA and RIFM expert panels in their safety
10 evaluations.

11 Do you see that?

12 A. Could you just point the page out for
13 me, please.

14 Q. 1610 at the top.

15 A. Oh, 1610. Okay. Yes, sir. I see
16 that.

17 Q. So, in other words, you're trying to
18 alert your members by those comments that
19 exposures short of exposures to workers mixing
20 the chemicals were higher than those that had
21 ever been tested in your RIFM/FEMA expert
22 panels. Am I right?

1 MR. KILLEFER: Objection.

2 Mischaracterizes the evidence.

3 MR. WOODSIDE: Objection. Foundation.

4 THE WITNESS: These comments were

5 intended to communicate the fact that

6 opportunities for exposure in the workplace are

7 different qualitatively and quantitatively from

8 types of exposures evaluated by the two expert

9 panels.

10 BY MR. McCLAIN:

11 Q. And the two expert panels were the

12 RIFM and FEMA expert panels. Am I right?

13 A. That's correct.

14 Q. So that people exposed at levels below

15 the exposures of workers mixing chemicals could

16 be at risk, at least in your contemplation, as

17 early as 1997. Am I right?

18 A. I'm sorry. Could you repeat that? I

19 didn't follow it.

20 Q. In 1997 what you were trying to say is

21 that people in the workplace, even if they're

22 not mixing chemicals, could be exposed to higher

1 levels than consumers are and, therefore, are
2 potentially at risk for exposures to hazardous
3 chemicals. Isn't that true?

4 A. Okay. What we're trying to
5 communicate here is that, in reference to
6 research and development activities, there are
7 opportunities for exposure that would be
8 potentially greater and different -- in other
9 words, qualitatively and quantitatively
10 different than the consumer exposures evaluated
11 by the panels, yes.

12 That's what we were trying to
13 communicate here.

14 Q. And meaning that they were potentially
15 at risk?

16 MR. KILLEFER: Objection.

17 BY MR. McCLAIN:

18 Q. People in research and development.

19 A. Meaning that research and development
20 activities need to be paid attention to.

21 Q. Right. Not just the people mixing the
22 chemicals, right?

1 A. The workers that we considered and do
2 consider that need to be paid attention to are
3 mixers, people handling materials and, as we say
4 here, research and development activity workers.

5 Q. But you also know, do you not, that
6 even people like packers in the Jasper popcorn
7 plant -- people just exposed in the ambient
8 environment were diagnosed with disease?

9 MR. KILLEFER: Objection. Lack of
10 foundation.

11 BY MR. McCLAIN:

12 Q. Like Angela Nally.

13 MR. WOODSIDE: Objection. Foundation.

14 THE WITNESS: I'd have to go back and
15 look at the report, Mr. McClain. I don't recall
16 the information on packers, and I'm not sure
17 what the job description was for packer.

18 BY MR. McCLAIN:

19 Q. Now, these expert tests that you were
20 talking about were tests that went into the GRAS
21 determination?

22 A. What we're referring to here are the

1 evaluations for flavors that the FEMA expert
2 panel does when it evaluates whether a flavoring
3 substance is generally recognized as safe under
4 its conditions of intended use, as flavor in
5 food.

6 Q. So that is for ingestion, not
7 inhalation?

8 A. That's correct.

9 Q. What you're talking about is that --
10 you're trying to say that the research and
11 development people and others are exposed to
12 inhalation hazards and skin hazards and should
13 not be -- and it should not be assumed that
14 those workers, even though they're working with
15 food products, are necessarily safe. Am I
16 right?

17 MR. KILLEFER: Objection. Ambiguous
18 and mischaracterizes the evidence.

19 THE WITNESS: What we're communicating
20 here is that research and development workers
21 need to be paid attention to because they have
22 potential opportunities for exposure that are

1 qualitatively and quantitatively different from
2 the types of exposures evaluated by panels.

3 BY MR. McCLAIN:

4 Q. When you say qualitatively different,
5 you mean there may be different modes of
6 exposure?

7 A. Yes, sir.

8 Q. And by modes, coming back to my
9 previous example, it may be safe to eat but not
10 necessarily to inhale?

11 A. For workers in manufacturing and
12 workers in research and development, there may
13 be opportunities for exposure which would
14 include inhalation exposure, dermal exposure
15 versus ingestion.

16 Q. Now, by the way, coming back to this
17 issue of board members, did any other board
18 member -- strike that. Let's try this again.
19 Different question.

20 Now, after the 1997 conference, there
21 have been other cases of bronchiolitis
22 obliterans reported by members of the flavoring

1 industry. Am I right?

2 A. There have been cases reported that
3 it's unclear whether it's bronchiolitis
4 obliterans or not, as we describe in our August
5 2004 report. Some of the information is
6 suggestive of that. But given the information
7 we were able to obtain, we were unable to
8 conclude definitively that that's what it was.
9 But there are cases, and we describe it in the
10 August 2004 report.

11 Q. Now --

12 MR. WOODSIDE: Can I interrupt for a
13 second?

14 MR. McCLAIN: Yes.

15 MR. WOODSIDE: Did you mean report to
16 him or to FEMA?

17 MR. McCLAIN: To him or FEMA.

18 BY MR. McCLAIN:

19 Q. Now, it's unclear to you what those
20 cases are.

21 But as we've seen, you don't know what
22 your members are reporting to you or not

1 reporting to you. Am I right?

2 MR. KILLEFER: Objection.

3 MR. BRIGGS: Objection.

4 MR. KILLEFER: Argumentative and
5 ambiguous.

6 THE WITNESS: I'm sorry. Could you
7 repeat that?

8 BY MR. McCLAIN:

9 Q. Sure. You've done no independent
10 investigation about those cases to determine
11 whether or not the information being conveyed to
12 you is complete or accurate, have you?

13 A. We have done investigation on those
14 cases but were provided with very limited
15 information due to patient confidentiality
16 concerns at the companies.

17 Q. All right. Tell us which companies it
18 is that you have made an investigation of such
19 cases.

20 A. We have reported in the August 2004
21 publication information on three companies,
22 which is we've provided the information on --

1 that we were provided on the cases but we
2 promised that we would not identify the
3 companies.

4 Q. Okay. I understand that that's your
5 promise.

6 But this deposition is being
7 conducted, and there's no legal barrier to
8 disclosing it in this case, despite whatever
9 you've promised, because we have a lawsuit
10 against you -- that is, FEMA -- for not
11 disclosing information and not conducting proper
12 investigations about such matters despite the
13 fact that they represented that they were going
14 to do that. Do you understand?

15 So I'd like to know what the names of
16 these companies are so that we can do discovery
17 in that regard.

18 MR. KILLEFER: And despite
19 Mr. McClain's speech right now about what he
20 believes the law is, I will instruct you not to
21 answer because that information was provided to
22 you in confidence by members.

1 You've already identified one of the
2 companies, which is Tastemaker, also known as
3 Givaudan, and the others you should not reveal
4 because it is not only confidential but
5 privileged.

6 And I'm instructing the witness not to
7 answer.

8 MR. McCLAIN: So you are admitting to
9 the conspiracy that we've alleged since you
10 apparently represent them?

11 MR. BRIGGS: Objection.

12 MR. KILLEFER: There is no such
13 conspiracy.

14 MR. McCLAIN: Well, I think that we've
15 established one, but -- so is this a joint
16 conspiracy privilege that you're asserting?

17 MR. BRIGGS: Objection.

18 MR. KILLEFER: No.

19 MR. BRIGGS: Move to strike.

20 MR. KILLEFER: No. It's a privilege
21 that my client has -- my client, FEMA. I'm
22 asserting it on only on behalf of FEMA, and

1 that's the instruction.

2 BY MR. McCLAIN:

3 Q. Now, is Mr. Killefer correct that
4 there are only two other companies besides
5 Tastemaker from which you have received reports?

6 A. If we refer to the August 2004 report,
7 we refer to four companies, one of which is
8 Tastemaker, and there's companies -- I believe
9 they're described as 1, 2 and 3.

10 Q. So there are three additional
11 companies other than Tastemaker?

12 A. Referred to in that report, yes, sir.

13 Q. Are any of those three companies
14 Defendants in this lawsuit?

15 MR. KILLEFER: You shouldn't -- you
16 should not reveal that, Mr. Hallagan. I
17 instruct you not to answer.

18 MR. McCLAIN: How would that be
19 privileged? If one of those companies was, in
20 fact, here and a Defendant and had not
21 disclosed, in fact, that they had cases despite
22 discovery requests to do so, how would that not

1 be privileged -- or how would it be privileged?

2 I don't understand your --

3 MR. KILLEFER: It's privileged
4 vis-a-vis my client, FEMA, if those companies --
5 and this is a hypothetical. If those companies
6 were Defendants in this case and the proper
7 discovery requests were made of them, then they
8 are obligated to reveal it to you.

9 MR. McCLAIN: Of course.

10 MR. WOODSIDE: Could I make a comment?

11 MR. KILLEFER: But I am not here
12 representing member companies. I'm representing
13 the association FEMA.

14 And representing that client, I'm
15 instructing Mr. Hallagan not to reveal the
16 identity of the companies.

17 MR. McCLAIN: I'm not asking him to
18 reveal the identity of the companies. I'm
19 asking whether or not any of the Defendants here
20 are companies which you have investigated.

21 MR. KILLEFER: And that would help
22 identify the identity of the companies, and so

1 we're not going to get into that.

2 MR. WOODSIDE: Could I make a comment?

3 MR. KILLEFER: Please.

4 MR. WOODSIDE: The last time in this
5 deposition I asked Mr. Hallagan if it was a fact
6 that neither IFF nor BBA were one of those
7 companies so listed. He indicated that they
8 were not.

9 So I don't know what the privilege
10 situation is or is not, but it's already been
11 testified by Mr. Hallagan that my clients are
12 not any of those companies that are the 1, 2 and
13 3 or whatever. So I don't know what --

14 MR. McCLAIN: So you don't -- you
15 don't object to him saying in regard to you,
16 no --

17 MR. WOODSIDE: I don't -- clearly I do
18 not, because I asked him --

19 MR. McCLAIN: -- if, in fact, that is
20 true?

21 MR. WOODSIDE: -- because I asked him
22 myself the last time.

1 BY MR. McCLAIN:

2 Q. Okay. Having said that, do you -- was
3 IFF one of the companies you investigated?

4 MR. KILLEFER: You can answer that.

5 THE WITNESS: No.

6 MR. McCLAIN: Mr. Benson, do you
7 object to him answering in regard to Sensient?

8 MR. BENSON: No.

9 BY MR. McCLAIN:

10 Q. Was Sensient one of the companies you
11 investigated?

12 A. No, sir.

13 MR. WOODSIDE: Could you also ask him
14 about BBA while we're here?

15 MR. McCLAIN: Yes.

16 BY MR. McCLAIN:

17 Q. Was BBA one of the companies you
18 investigated?

19 A. No, sir.

20 Q. So of the four, the only company that
21 you investigated who is a Defendant here is
22 Tastemaker. Is that correct?

1 A. Tastemaker was the company that came
2 to FEMA voluntarily in 1996.

3 Q. Well, have these other companies come
4 to you under some duress?

5 A. No. They came voluntarily as well but
6 later in time.

7 Q. Now, we have also been told that
8 Cecile Rose is investigating two plants in
9 California. Is that correct?

10 A. Dr. Rose is working with more than two
11 plants in California conducting medical
12 screening and IH consultation, industrial
13 hygiene consultation.

14 Q. What plants is she conducting these
15 medical screenings at?

16 A. They're among the group of companies
17 that we've identified to CalOSHA, and frankly I
18 don't know the identities of all of the
19 companies because she has independent
20 relationships with them.

21 Q. What companies -- what companies are
22 you aware of?

1 A. I can tell you, I think, from memory
2 the companies that are in the group in
3 California. I can't do it alphabetical order.

4 Okay. It would be David Michael,
5 Firmenich, Mastertaste, Flavorchem -- I have to
6 write it down too. Blue Pacific.

7 MR. MARZOUK: What was that last one?

8 THE WITNESS: Blue Pacific.

9 Flavor Infusion, S&S&S Flavors.

10 Can you please read back the ones I
11 said so I can --

12 BY MR. McCLAIN:

13 Q. David --

14 MR. KILLEFER: We can have the court
15 reporter do it.

16 BY MR. McCLAIN:

17 Q. David Michael, Firmenich, Mastertaste,
18 Flavorchem, Blue Pacific, Flavor Infusion --
19 S&S&S Flavors, is that all one company, or are
20 those two different places?

21 A. That's all one company.

22 Q. Okay.

1 A. There's 13 altogether. So I've got a
2 ways to go.

3 Flavor Specialties, Mission Flavors,
4 T.Hasegawa. That's capital T, period, Hasegawa,
5 H-a-s-e-g-a-w-a. Western Flavors and
6 Fragrances.

7 Well, I've got ten of them from
8 memory. There's three more. They'll probably
9 come to me as we go along.

10 Q. Well, I'll just ask the reporter to
11 leave a blank here.

12 You're going to review your deposition
13 anyway, aren't you?

14 A. Yes, sir.

15 Q. Just add those three names in at that
16 time.

17 A. Fair enough.

18 Q. Have you found any -- do you know what
19 the results of this survey are?

20 A. No. Not in any specificity. That's
21 between National Jewish, as a service provider,
22 the companies and CalOSHA, CalDHS.

1 I know that as of a month or so ago
2 they had completed evaluations of about
3 150 workers and had not found any workers with
4 spirometric abnormalities, but there's more work
5 that's been done since then. So I'm not fully
6 up to date on it, nor have I seen any specific
7 information that's not available to me.

8 Q. Has Dr. Rose examined any of the other
9 three plants that we've talked about whose
10 identities you haven't disclosed?

11 A. I'm sorry?

12 Q. Has she done an evaluation of any of
13 those plants, the three plants that Mr. Killefer
14 objected to the --

15 A. Okay. The three plants from the
16 August 2004 report?

17 Q. Yes.

18 A. No, she has not, to my knowledge,
19 evaluated any workers from those plants.

20 Q. Now, have you had enough time now to
21 process the information that I gave you in terms
22 of what you haven't been told in regard to the

1 International Bakers study and the Givaudan
2 outbreak of bronchiolitis obliterans?

3 MR. KILLEFER: Objection.

4 (Discussion off the record.)

5 BY MR. McCLAIN:

6 Q. Before we ask you that question, let
7 me ask you another question. I'll reask it in a
8 second.

9 You mentioned two cases in the
10 San Francisco Bee article or the San -- no --
11 Sacramento Bee article.

12 Do you remember discussing cases of
13 bronchiolitis obliterans in the Sacramento Bee
14 article?

15 A. That was mentioned in article, yes.

16 Q. I think you said that with the out --
17 with the finding of a second case in California,
18 you were in support of a TLV or a PEL?

19 A. Well, actually that ended up being
20 inaccurate. I've talked to the reporter about
21 that.

22 The comment I made was that we would

1 support the establishment of a PEL based on
2 sound science.

3 Q. And that was after the second case was
4 discovered?

5 A. Well, actually we became active in
6 California after the first case when CalOSHA
7 asked us to come out there. The reporter was
8 mistaken on the timing.

9 Q. It's fair to say that if you'd known
10 that there were more than seven confirmed cases
11 of bronchiolitis obliterans your position would
12 have been that -- strike that.

13 It's fair to say that if after
14 becoming aware of two confirmed cases of
15 bronchiolitis obliterans in California you were
16 in favor of a science-based PEL being
17 established for flavoring chemicals, you
18 certainly would have held that position if
19 Tastemaker had told you the truth about its own
20 experience back in 1997. Isn't that true,
21 Mr. Hallagan?

22 MR. BRIGGS: Objection.

1 MR. KILLEFER: Objection.
2 Argumentative and mischaracterizes the evidence.

3 MR. BRIGGS: I join the objection.

4 THE WITNESS: Our opinion on the
5 establishment of a PEL, we have closely tracked
6 the progress on that. As recently as February
7 2006, in their JOEM article, NIOSH stated there
8 wasn't enough data to establish a PEL. And I
9 think that's being discussed right now in light
10 of the petition that was submitted the other
11 day.

12 So again, our position is we would
13 support a PEL that is based on sound science.

14 BY MR. McCLAIN:

15 Q. And you would have held that position
16 in 1997 if Dr. Lockey had been allowed to
17 disclose to you the extent of the problem at
18 Tastemaker. Isn't that true?

19 MR. BRIGGS: Objection. Misstates the
20 evidence and calls for speculation.

21 MR. KILLEFER: And it's argumentative.

22 THE WITNESS: Our position in having a

1 PEL based on sound science would apply whether
2 there was one case or seven cases.

3 BY MR. McCLAIN:

4 Q. Now -- now let's come to the second
5 answer.

6 After having time now to process this
7 information that I've given you today, don't you
8 feel like you have been misled, Mr. Hallagan, by
9 FEMA board members and by past presidents of
10 FEMA regarding the extent of their knowledge
11 regarding bronchiolitis obliterans in the
12 flavoring industry?

13 MR. BRIGGS: Objection.

14 MR. WOODSIDE: Objection to the form
15 of the question because of the all-inclusive
16 nature of your reference to board members,
17 et cetera, without particularization. Object to
18 the form of the question.

19 MR. BRIGGS: Join.

20 MR. KILLEFER: It's also
21 argumentative.

22 MR. BRIGGS: I join in all of them.

1 THE WITNESS: The information that
2 I've seen today for the first time, I have not
3 had an opportunity to carefully review it. My
4 initial impression is it would have been helpful
5 to know.

6 BY MR. McCLAIN:

7 Q. And, Mr. Hallagan, don't you feel like
8 you have been set up here?

9 I mean, you've been put out to tell
10 the public what you believe to be true when all
11 along the information that your members had was
12 different than the statements you were making to
13 the public.

14 MR. KILLEFER: Objection.

15 MR. BRIGGS: Objection.

16 MR. KILLEFER: Mischaracterizes the
17 evidence, and it's argumentative.

18 MR. WOODSIDE: Objection.

19 THE WITNESS: Mr. McClain, you're
20 asking me to say how I feel, and I don't know
21 how I feel right now. My statement is that this
22 information from what I've seen of it would have

1 been helpful to know.

2 BY MR. McCLAIN:

3 Q. And because you didn't know it, you
4 were not able to provide full and complete
5 information to the public, to regulators and to
6 government agencies. Isn't that true?

7 MR. BRIGGS: Objection. Misstates the
8 evidence and argumentative.

9 THE WITNESS: As I said earlier, we
10 couldn't share information that we didn't have.

11 MR. McCLAIN: Thank you, Mr. Hallagan.
12 That's all I have.

13 MR. KILLEFER: Let's take a short
14 break.

15 THE VIDEOGRAPHER: We're going off the
16 record. The time is 11:54 a.m.

17 (Whereupon, at 11:54 a.m., the
18 deposition was suspended, to reconvene at
19 1:00 p.m., this same day.)

20

21

22

1 J.D. while you were working?

2 A. Yes, sir.

3 Q. Was that at night school?

4 A. I would take classes during the day
5 and at night, and during that period of time, I
6 worked for the same employer,

7 Daniel R. Thompson, during the years I was in
8 law school.

9 Q. Are you married, sir?

10 A. Yes, sir.

11 Q. Do you have children?

12 A. Yes, sir, I do.

13 Q. Mr. McClain asked you a variety of
14 questions about the organization FEMA, Flavor
15 and Extract Manufacturers Association.

16 For how long have you done work for
17 FEMA?

18 A. Since 1979.

19 Q. Have the objectives of FEMA changed at
20 all over the course of your employment?

21 A. Not substantially.

22 Q. What, if any, duties does FEMA have

1 regarding the dissemination of information about
2 safety in the workplace?

3 MR. McCLAIN: I object to the form of
4 the question. Calls for a legal conclusion.

5 THE WITNESS: FEMA is -- one of FEMA's
6 primary activities is sharing information on
7 various regulatory matters, one of which is
8 workplace safety.

9 BY MR. KILLEFER:

10 Q. And how long has FEMA been around?

11 A. Since 1909.

12 Q. Mr. McClain questioned you about a
13 conference that you were a part of in the spring
14 of 1997. Do you recall that?

15 A. Yes, sir.

16 Q. What prompted you organizing that
17 conference?

18 A. We received a report from a member
19 company in 1996 that they may have had workers
20 with respiratory illness.

21 Q. And the name of that company?

22 A. The name of that company was

1 Tastemaker.

2 Q. All right. Did you have more than one
3 meeting with Tastemaker representatives prior to
4 the spring 1997 FEMA conference?

5 A. I think we had two meetings.

6 Q. Would you describe for the ladies and
7 gentlemen of the jury the first of the meetings.
8 Who was there? Who participated?

9 A. In the first of the meetings, I
10 believe it was myself, my boss, Daniel Thompson,
11 and I believe it was Mr. Davis and Dr. Higley
12 from Tastemaker.

13 Q. And what was the nature of their
14 request to have such a meeting?

15 A. Well, the request came in very
16 nonspecific, and we didn't really know what it
17 was about until they got there.

18 Q. Okay. What did they tell you as to
19 the purpose of the meeting?

20 A. At the meeting?

21 Q. Yes.

22 A. They told us that they had some

1 workers who may be suffering from a serious
2 respiratory illness, and they wanted to share
3 that information with us so we could share it
4 with other member companies.

5 Q. Prior to your meeting with Mr. Davis
6 and Ms. Higley, were you aware of any
7 respiratory disease at other FEMA member plants?

8 A. No, sir.

9 Q. What, if anything, did you do after
10 your meeting with Mr. Davis and Ms. Higley?

11 A. Did research on the illness they
12 mentioned, which was bronchiolitis obliterans.

13 Q. Could you -- let's stop there.

14 What do you mean by research?

15 A. Did literature searches on the
16 illness.

17 Q. Do you recall what it is you accessed
18 to try and gain information?

19 A. Accessed the various databases that
20 were available at the time such as Toxline or
21 Medline, which are comprehensive databases
22 commonly used by people who do safety assessment

1 work and medical work. They typically include
2 information available from published literature
3 on a wide variety of subjects.

4 Q. Now, during that first meeting, was
5 any chemical described to you as a particular
6 concern?

7 A. I think they mentioned -- at the first
8 meeting, I believe they mentioned acetaldehyde
9 as a chemical to which workers were possibly
10 exposed, yes.

11 Q. Was the chemical diacetyl mentioned
12 during the first meeting?

13 A. No, sir.

14 Q. You described the research you did.

15 Did you do anything else to inform
16 yourself about possible cases or respiratory
17 disease in flavor manufacturing?

18 A. Well, shortly after that, there was a
19 second meeting where we received information
20 from a medical expert that the company had
21 worked with. And right around that time also I
22 started making inquiries, doing a survey of

1 companies in the industry, to see if anybody
2 else had any reports of similar issues.

3 Q. All right. Describe for the jury, if
4 you would, please, the survey that you
5 conducted.

6 A. I personally went to virtually every
7 company in the membership and -- either in
8 person or by phone and inquired of them whether
9 they had any reports of workers with respiratory
10 illness.

11 Q. What reports did you receive back?

12 A. No companies reported any workers with
13 respiratory illness.

14 Q. Did your literature review indicate
15 that acetaldehyde or any other chemicals were of
16 particular concern as it relates to respiratory
17 disease in the workplace?

18 A. Acetaldehyde has an OSHA PEL. It's
19 considered an irritant. There's a few other
20 flavoring substances that are considered
21 irritants as well. Benzaldehyde --

22 Q. Could you stop you there --

1 A. Uh-huh.

2 Q. -- if you don't mind. You've used two
3 acronyms. OSHA and PEL.

4 What is OSHA?

5 A. OSHA is the federal Occupational
6 Safety and Health Administration. And PEL
7 stands for permissible exposure limit, which
8 is --

9 Q. And what is the significance of a PEL?

10 A. If OSHA determines that the data
11 warrant the setting of a limit, a permissible
12 exposure limit, then it will promulgate a
13 regulation to that effect.

14 Q. All right. Now, I apologize, I cut
15 you off. You were describing an OSHA PEL as it
16 relates to various chemicals.

17 What did your research indicate?

18 A. Well, acetaldehyde has a PEL, but many
19 flavoring substances don't.

20 Q. Does the chemical diacetyl have a PEL?

21 A. No, sir, it does not.

22 Q. Even today does it have a PEL?

1 A. No, sir, it does not.

2 Q. Did your research of these various
3 databases indicate anything else to you of
4 significance?

5 A. Well, we were unable to find any
6 flavoring substances that had been listed as
7 being causative of bronchiolitis obliterans or
8 even associated with it.

9 Q. Now, in this second meeting where you
10 met with Dr. Lockey, was there someone else
11 there on behalf of Tastemaker?

12 A. At that meeting I believe it was
13 Dr. Lockey and Karen Duros.

14 Q. What was Ms. Duros' position?

15 A. I believe she was an attorney with
16 Givaudan. She may have been general counsel. I
17 don't recall.

18 Q. When you say Givaudan, you're
19 referring to Tastemaker?

20 A. Oh, excuse me. Tastemaker, yes.

21 Q. Did either Dr. Lockey or Ms. Duros use
22 the word diacetyl in describing the concern?

1 A. No, sir, they did not.

2 Q. Did they indicate to you any chemicals
3 of concern?

4 A. Acetaldehyde.

5 Q. Anything else about the survey of FEMA
6 members that was of significance to you?

7 A. Well, we determined that no other
8 companies reported problems, which left us with
9 the information that we had from Tastemaker and
10 Dr. Lockey.

11 Q. All right. Did you report back to
12 Tastemaker the absence of reports from other
13 FEMA members?

14 A. Yes, we did.

15 Q. All right. What, if any, action did
16 you take after the second meeting with
17 Tastemaker and doing your survey of FEMA
18 members?

19 A. Well, we started a search process to
20 find an expert to work with. We -- I inquired
21 among contacts I had, which included John Doull,
22 an M.D./Ph.D. from the University of Kansas.

1 Q. Describe for the jury, if you would,
2 the reputation in the scientific community of
3 Dr. Doull.

4 MR. McCLAIN: I object to the form of
5 the question. It calls for an opinion of a lay
6 witness.

7 BY MR. KILLEFER:

8 Q. You can answer.

9 A. Well, Dr. Doull is a prominent expert
10 in toxicology and is -- was editor at the time
11 of a prominent toxicology text and was very well
12 regarded in toxicology and workplace safety
13 issues.

14 Q. Did Dr. Doull point you to anyone in
15 the medical community that you should consult
16 with?

17 A. Yes, he did. He suggested that we
18 talk to Cecile Rose, an M.D./M.P.H. at National
19 Jewish Medical and Research Center.

20 Q. Now, where is the National Jewish
21 Medical and Research Center?

22 A. Denver, Colorado.

1 Q. Is it like other medical centers rated
2 by U.S. News and World Report on an annual
3 basis?

4 A. Yeah. For --

5 MR. McCLAIN: Object to the form of
6 the question. Calls for heresay.

7 THE WITNESS: For at least seven or
8 eight years running, it's been the number one
9 rated pulmonary medicine institution in the U.S.

10 BY MR. KILLEFER:

11 Q. And did you receive recommendations
12 from any other sources about experts that FEMA
13 should consider retaining?

14 A. We received other recommendations, but
15 frankly I don't remember who they were. We
16 started working with Dr. Rose after -- a short
17 period of time after that.

18 Q. I believe, when Mr. McClain was
19 examining you, you indicated there was a
20 Dr. Martyny?

21 A. Dr. Martyny -- John Martyny is a Ph.D.
22 industrial hygienist at National Jewish, and he

1 joined our team as well shortly afterward.

2 Q. He's a colleague of Dr. Rose?

3 A. Yes.

4 Q. All right.

5 A. He's at the same institution.

6 Q. What, if any, role did Dr. Rose and

7 Dr. Martyny play in the FEMA conference

8 conducted for its members in the spring of 1997?

9 A. Drs. Rose and Martyny made the primary
10 presentations at that meeting.

11 Q. What were -- was the chemical diacetyl
12 discussed at all at the '97 FEMA conference?

13 A. It was not even mentioned.

14 Q. And why is that?

15 A. Diacetyl was not on our radar screen.
16 We had no indication that diacetyl would be a
17 problem, and it was not mentioned to us by any
18 of the companies that I talked to.

19 Q. Did you share with FEMA's members at
20 the '97 conference all information that you
21 thought was relevant to consideration of
22 respiratory disease in the flavor manufacturing

1 workplace?

2 A. Yes, we did. We shared everything we
3 had.

4 Q. All right. Did there come a time when
5 you were contacted by the federal agency NIOSH?

6 A. Yes, sir.

7 Q. Describe for the jury what the acronym
8 NIOSH means.

9 A. NIOSH is the National Institutes for
10 Occupational Safety and Health.

11 Q. And what is the mission of NIOSH?

12 A. To do research on workplace safety
13 issues.

14 Q. Had you worked with NIOSH previously
15 before being contacted in 2001?

16 A. No, sir.

17 Q. Describe for us, please, the phone
18 call you received.

19 A. In late September of 2001, I received
20 a phone call from Dr. Kay Kreiss, an M.D. at
21 NIOSH in Morgantown, West Virginia, and she
22 reported to me that they were working on a

1 Health Hazard Evaluation at a microwave popcorn
2 manufacturing plant in Jasper, Missouri.

3 And she asked us to provide NIOSH with
4 assistance on flavors because she thought that
5 there was an association between exposure to
6 butter flavor and specifically diacetyl and
7 respiratory illness in workers at the microwave
8 popcorn plant.

9 Q. Did you take any action to assist
10 NIOSH?

11 A. Well, we immediately shared
12 information with NIOSH in the form of scientific
13 information we had on diacetyl and other
14 flavoring substances.

15 And we invited Drs. Kreiss and -- and
16 her colleague, Dr. Greg Kullman, an industrial
17 hygienist from NIOSH, to come and speak to the
18 FEMA membership approximately within a month of
19 that first phone call.

20 Q. And did they, in fact, make a
21 presentation?

22 A. Drs. Kreiss and Kullman made an

1 extensive presentation to the membership on
2 their work at the Gilster-Mary Lee facility --
3 you can say microwave popcorn. Gilster,
4 G-i-l-s-t-e-r, Mary like the name, Lee, L-e-e.

5 They made an extensive presentation to
6 the membership. Actually each of them made
7 separate presentations, complete with
8 photographs and so forth.

9 Q. Was there any follow-up to the
10 presentation by NIOSH in terms of providing
11 assistance from FEMA to NIOSH?

12 A. Yes. We continued to have
13 interactions.

14 Myself and Dr. Rose and, I believe,
15 Dr. Adams, FEMA scientific director, traveled to
16 Morgantown for a meeting where we spent the
17 whole day sharing information -- this was in, I
18 believe it was, February of 2002 -- and
19 continued interaction after that, sharing -- us
20 providing -- largely us providing information to
21 NIOSH on flavors.

22 Q. What were the sources of your

1 information that you provided to NIOSH?

2 A. We provided information from the RIFM
3 database from the literature that we had on
4 diacetyl and other flavoring substances.
5 Discussed with NIOSH our experience from '96,
6 '97.

7 Q. Did you provide NIOSH with a copy of
8 the FEMA conference materials from the spring of
9 '97?

10 A. Yes, we did. We provided them with
11 the International Bakers HHE as well -- which
12 was their report, so I assume they already had
13 it -- and basically anything else that they
14 asked for and that we could find.

15 Q. All right. What was discussed at that
16 NIOSH meeting you attended in Morgantown,
17 West Virginia?

18 MR. McCLAIN: Objection. Calls for
19 hearsay.

20 THE WITNESS: Well, we -- once again,
21 NIOSH reviewed for us -- this was the February
22 2002 meeting. NIOSH reviewed for us the

1 information that they had collected on the
2 microwave popcorn manufacturing plant. And we
3 give them presentations on flavors, what flavors
4 are, what the typical chemical structures are
5 and various -- lots of information on toxicology
6 of flavors and so forth.

7 BY MR. KILLEFER:

8 Q. Did you provide NIOSH with all
9 information you thought relevant to NIOSH's
10 evaluation of respiratory disease in the
11 workplace?

12 A. Yes, sir.

13 Q. Did there come a time when FEMA
14 sponsored another conference focused on
15 workplace health and safety?

16 A. Yes, we did. In June -- I believe it
17 was June 2002 we sponsored a -- again, a
18 workshop for FEMA members and nonmembers, and
19 this workshop included presentations by
20 Drs. Kanwell and Kullman of NIOSH and by
21 Drs. Rose and Martyny of National Jewish, you
22 know, the information we had related to

1 workplace safety and handling flavors.

2 Q. By the way, are any members of the
3 trade press members of FEMA?

4 A. Yes, sir.

5 Q. Are such trade press members invited
6 to attend the FEMA meetings?

7 A. Yes, they are.

8 Q. Do they -- some, in fact, attend FEMA
9 meetings?

10 A. Oh, yes. Yes.

11 Q. Are some of the FEMA materials made
12 available, if requested, or posted on the FEMA
13 website?

14 A. Yes, sir.

15 MR. McCLAIN: Object to the form of
16 the question. It's leading.

17 THE WITNESS: FEMA materials are made
18 available to members through a variety of means.
19 Some are posted on the website. Some are
20 distributed through the regular mail. Some are
21 passed out at meetings.

22 BY MR. KILLEFER:

1 Q. All right. You have described for the
2 jury the 2002 conference.

3 Did there come a time when there was
4 another conference sponsored by FEMA focused on
5 training?

6 A. FEMA sponsored a workshop explicitly
7 oriented towards training in manufacturing
8 workplaces in 2005. I believe that was February
9 or March of 2005.

10 At that conference there were
11 presentations by Drs. Rose and Martyny of
12 National Jewish and other National Jewish staff
13 members related to workplace safety issues in
14 flavor information.

15 Q. When was your most recent meeting with
16 officials of NIOSH to discuss respiratory health
17 and safety issues?

18 A. That would be May 2nd.

19 Q. May 2nd of this year, 2006?

20 A. Of 2006.

21 Q. With whom did you meet?

22 A. David Weisman from Morgantown and

1 Larry Reed from the Cincinnati lab.

2 Q. And at that meeting did you provide
3 them with additional information that was
4 available to FEMA?

5 A. Yes. We discussed recent events and
6 started to talk about making arrangements to
7 continue sharing information.

8 Q. All right. We've discussed the agency
9 NIOSH.

10 Have you -- I'm sorry. Strike that.
11 We've discussed the federal agency
12 NIOSH.

13 Have you, on behalf of FEMA, worked
14 with any state regulatory agencies?

15 A. Yes, sir. We started a fairly
16 extensive working relationship with the CalOSHA.
17 That's the California Occupational Safety and
18 Health Agency.

19 And we were first contacted by CalOSHA
20 in December of 2004 when they reported to us
21 that they had identified a worker at a flavor
22 manufacturing facility in California who they

1 suspected had bronchiolitis obliterans.

2 Q. And what, if any, action did you take
3 on behalf of FEMA?

4 A. Well, it's -- we flew out to
5 California in January about a month after that
6 and met with CalOSHA staff and started providing
7 significant amounts of assistance similar to
8 what we did with NIOSH in terms of sharing
9 information and making available the expertise
10 at National Jewish.

11 Q. To your knowledge, are Drs. Rose and
12 Martyny of National Jewish Medical Research
13 Center doing any work with CalOSHA?

14 A. Well, they're working with flavor
15 companies based in California. The exact number
16 I'm not sure of, but it's significant. It's
17 five, six, seven, eight maybe. I'm not sure.

18 But they are helping these companies
19 do medical screening and prevention in their
20 flavor manufacturing workplaces. And they've
21 been doing that since approximately June 2005.

22 Q. I believe in response to Mr. McClain's

1 question you referred on several occasions to an
2 August 2004 paper or monograph. Do you recall
3 that?

4 A. Yes, sir.

5 Q. Describe for the ladies and gentlemen
6 of the jury the purpose behind FEMA's
7 preparation of that report.

8 A. In August of 2004 FEMA published a
9 document, the title of which is Respiratory
10 Health and Safety in the Flavor Manufacturing
11 Workplace. It's posted on the public portion of
12 the FEMA website. And in that document we
13 shared all of the information that we have in
14 addition to making suggestions on safe
15 practices.

16 Q. Mr. McClain questioned you about a rat
17 inhalation study conducted by BASF in Germany.
18 Do you recall that?

19 A. Yes, sir.

20 Q. When did you, on behalf of FEMA, first
21 become aware of the existence of that study?

22 A. Late 2001.

1 Q. And what were the circumstances of you
2 learning that?

3 A. The study was provided to RIFM for
4 inclusion in the database by BASF in, I believe
5 it was, September -- or October 2001. And then
6 RIFM went through its process and included it in
7 its database at some point shortly after that.

8 Q. All right. We've used another
9 acronym, that is, RIFM, and perhaps we've
10 identified it.

11 But what does the RIFM stand for?

12 A. RIFM is the Research Institute For
13 Fragrance Materials.

14 Q. Where are the RIFM offices located?

15 A. In New Jersey.

16 Q. Where are the FEMA offices located?

17 A. Washington, D.C.

18 Q. What were the circumstances of BASF
19 providing the rat study conducted by BASF to
20 RIFM?

21 A. BASF was exploring membership in RIFM,
22 and as a condition of membership, RIFM requires

1 its members to share information it has that's
2 not published.

3 The study was not published. And in
4 the course of exploring membership, BASF, my
5 understanding is, because of that requirement and
6 started the process of sharing information with
7 RIFM. They subsequently joined RIFM and remain
8 a member of RIFM.

9 Q. Mr. McClain, during his questioning,
10 inquired whether FEMA had ever conducted animal
11 studies concerning diacetyl. Do you recall
12 that?

13 A. Yes, sir.

14 Q. Is FEMA in the business of conducting
15 animal studies?

16 A. FEMA has conducted animal studies
17 oriented towards safety under conditions of
18 intended use in food, in other words, ingestion.
19 FEMA has not historically conducted studies on
20 inhalation.

21 Q. Is NIOSH conducting studies focused on
22 inhalation?

1 A. Yes. NIOSH and the National
2 Institutes of Environmental Health Sciences,
3 NIEHS, is conducting animal studies.

4 And, in fact, in our interactions with
5 NIOSH beginning in the meeting in 2002 in
6 Morgantown -- the February 2002 meeting, NIOSH
7 pointed out that it was conducting the types of
8 animal studies that would be appropriate, and we
9 agreed that they would proceed to do that and we
10 would share information.

11 So FEMA at that point did not see the
12 need to conduct animal studies.

13 MR. McCLAIN: Move to strike as
14 answering by reciting hearsay. It was not
15 called for by the question, and, therefore, I
16 raise this objection after the answer.

17 BY MR. KILLEFER:

18 Q. Stepping back, Mr. Hallagan, to the
19 meetings with Tastemaker in 1996, did you keep
20 the FEMA board apprised of the substance of your
21 meetings?

22 A. Yes. Actually Mr. Thompson did most

1 of that. I was associated with Mr. Thompson,
2 but both of us did, yes.

3 Q. All right. Now, you've previously
4 testified that at Tastemaker's request you did
5 not identify the company by name. Isn't that
6 right?

7 A. That's correct.

8 Q. Was there anything of substance you
9 learned during your meetings with Tastemaker
10 officials from Dr. Lockey that you didn't let
11 the FEMA board know or FEMA members know?

12 A. No, sir. That company name was the
13 only thing that we didn't describe.

14 Q. Describe for the jury why it is you
15 would agree not to reveal the identity of a
16 company coming to you with information.

17 A. By promising to keep the company name
18 confidential, we felt that that would encourage
19 companies to come forward in the same way that a
20 reporter promises confidentiality to a source.

21 But we explicitly told companies -- we
22 told Tastemaker that the company name was the

1 only thing that we would keep confidential, we
2 would share all other relevant information.

3 Q. Has a company ever asked you to not
4 reveal substantive information about a problem
5 at that company apart from the identity of the
6 company that you have agreed not to disclose?

7 A. No, sir.

8 Q. And why is that?

9 A. I think companies have -- when they
10 had information that they did share with us,
11 they did it in the spirit of cooperation knowing
12 that we would not reveal their name.

13 MR. KILLEFER: I have no further
14 questions. Thank you.

15 Does someone want to move over here?

16 THE VIDEOGRAPHER: Excuse me. There's
17 six minutes left on this tape.

18 MR. BRIGGS: Why don't you change it.

19 MR. McCLAIN: Why don't you change it.
20 I'm going to go to the rest room.

21 THE VIDEOGRAPHER: We're going off the
22 record. The time is 1:31 p.m.

1 (Recess.)

2 THE VIDEOGRAPHER: We're going back on
3 the record. The time is 1:36 p.m. This begins
4 Tape No. 4 in the video deposition of
5 John Hallagan.

6 EXAMINATION BY COUNSEL
7 FOR DEFENDANT GIVAUDAN FLAVORS CORPORATION
8 BY MR. BRIGGS:

9 Q. Good afternoon, Mr. Hallagan.

10 A. Good afternoon.

11 Q. We met a few minutes ago. My name is
12 Alan Briggs, and I represent Givaudan. And I
13 have a few questions that I would like to ask
14 you as well.

15 A. Sure.

16 Q. I would like to go back to the initial
17 meeting that took was a Tastemaker.

18 Do you recall when that was in 1996?

19 A. I believe the first meeting was in
20 June.

21 Q. Could you tell me a little bit more
22 about how that came about.

1 A. An inquiry was made to my boss at the
2 time, Dan Thompson -- a request for a meeting,
3 and I don't recall if its purpose was mentioned,
4 but at any rate, we had a meeting in our office
5 in June of that year, 1996. I believe it was
6 June.

7 Q. What, if anything, did you understand
8 about the purpose of the meeting?

9 A. Not much until the meeting actually
10 started. I think Mr. Thompson told me that it
11 involved the workplace safety issue but not much
12 more than that.

13 Q. Where are your offices located, in
14 what city?

15 A. Washington, D.C.

16 Q. And where was Tastemaker located at
17 the time, do you know?

18 A. I believe Cincinnati.

19 Q. And did they come from Cincinnati to
20 your office?

21 A. Yes, sir. I believe so.

22 Q. And who came from Tastemaker for the

1 meeting?

2 A. I believe it was Mike Davis and
3 Nancy Higley for the first meeting.

4 Q. And who was Mike Davis? Who is
5 Mike Davis?

6 A. Mike -- I'm not sure what his position
7 was at the company at the time, but I believe he
8 was president of Tastemaker or high up in the
9 company.

10 And Nancy Higley is a Ph.D., I
11 believe, in toxicology, and she was involved in
12 safety for the company.

13 Q. All right, sir. And how long did the
14 meeting last?

15 A. Not long. I mean, I think maybe an
16 hour or two. I don't believe it was much longer
17 than that.

18 Q. And tell me what happened during that
19 meeting.

20 A. During that meeting, Mr. Davis and
21 Dr. Higley told us that they had reports of one
22 or several workers, a small number of workers,

1 in their facility who may have a serious
2 respiratory illness called bronchiolitis
3 obliterans.

4 Q. All right, sir. Other than that, what
5 else was said during this one to two hours?

6 A. We talked about whether anything like
7 this had been seen in the flavor industry
8 before, and Mr. Thompson and I were not aware of
9 anything.

10 They mentioned that they had a
11 physician they were working with and that -- I
12 think -- and I believe they mentioned that the
13 flavor and substance acetaldehyde may have been
14 involved in one of the exposures.

15 Q. In relaying their information to you,
16 did they appear to treat this as a matter of --
17 a serious matter?

18 A. Yes, sir, they did. They viewed it
19 very seriously and they told us that, and so did
20 we.

21 Q. Had you had any company come to you
22 before with a similar kind of serious

1 presentation with regard to potential health
2 concerns for the industry?

3 A. No, sir. It was unique in my
4 experience and, I believe, Mr. Thompson's as
5 well. There was no indication in the flavor
6 industry that this was a potential issue.

7 Q. And did Mr. Davis and Dr. Higley
8 answer for you all of the questions that you had
9 at that time?

10 MR. McCLAIN: Objection. Calls for
11 speculation. How would he know whether they
12 answered his questions? You mean did they utter
13 words?

14 THE WITNESS: They responded to
15 questions we had, but frankly the information
16 was quite sketchy at that meeting and there
17 simply weren't that many questions to ask at
18 that point. It was very new information that
19 obviously needed full and careful consideration.

20 BY MR. BRIGGS:

21 Q. All right, sir. And was there any
22 discussion at that meeting as to what, if any,

1 next steps would be?

2 A. Yes. We talked about it and decided
3 that an obvious and useful next step would be to
4 begin to look -- talk in the industry -- for me
5 to do a survey, so to speak, of the company and
6 see if anybody else had a similar problem.

7 Before really embarking on that,
8 Mr. Davis and Dr. Higley said that they would
9 make available their medical expert to talk with
10 us so we had more information. And that meeting
11 took place, I think, several months -- a month
12 or two perhaps after the initial meeting.

13 Q. All right. And where did this second
14 meeting take place?

15 A. In our offices here in Washington,
16 D.C.

17 Q. And who attended the second meeting by
18 or on behalf of Tastemaker?

19 A. I believe that was Karen Duros, who
20 was an attorney with Tastemaker, and
21 Dr. Jim Watkins from the University of
22 Cincinnati.

1 Q. And, again, did they come from
2 Cincinnati to your office in Washington, D.C.?

3 A. Yes, sir, they did.

4 Q. And how long did that meeting last?

5 A. That meeting went longer than the
6 first one. Probably two, three hours.

7 Q. And who all was present other than the
8 three of you?

9 A. Well, there was Karen Duros and
10 Jim Watkins, representing Tastemaker. Then
11 there was myself, Dan Thompson, and Dr. Richard
12 Hall, I believe, was at that meeting as well.

13 Q. And what all do you recall being
14 discussed at that meeting?

15 A. Dr. Lockey told us what information he
16 had, which was actually quite limited as well.

17 He mentioned that he thought there was
18 one worker, who he called his index case, who he
19 thought had bronchiolitis obliterans and that
20 that there were several other people who may be
21 sick as well and may have bronchiolitis
22 obliterans but was much less specific.

1 He told us that one worker -- and I
2 don't -- again, I don't recall if it was the
3 index case or any of the others -- recalled an
4 exposure to acetaldehyde and, therefore, he was
5 focusing his attention on acetaldehyde.

6 Q. All right. Any other information you
7 recall being shared by the Tastemaker
8 representatives to you at that time?

9 A. Not that I'm recalling right now, no.
10 That was the key part of it.

11 Q. Again, as far as you could tell, did
12 the -- Tastemaker's representative appear to
13 treat this as a very serious matter?

14 A. Yes, they did.

15 MR. McCLAIN: Object to the form of
16 the question. Calls for an opinion.

17 THE WITNESS: It appeared to me that
18 they were treating it very seriously, yes, as we
19 were.

20 BY MR. BRIGGS:

21 Q. Okay. What, if anything, made it
22 appear to you that way?

1 A. That they were taking it seriously?

2 Q. Yes, sir.

3 A. Well, the simple fact that they were
4 there, I thought, was quite meaningful. And
5 that they had retained a medical expert was
6 quite meaningful as well and that they
7 encouraged him to share what information he had
8 with us.

9 Q. As far as you could tell, were they
10 fully completely responsive to all of the
11 questions you asked him at that time?

12 A. For the questions that we asked at
13 that time, I felt they were responsive, yes.

14 Q. All right, sir. Now, counsel for
15 Plaintiffs, Mr. McClain, asked some questions
16 during his examination inquiring about things
17 that he said weren't discussed. Specifically
18 there were some questions with regard to the
19 medical records of specific workers who were
20 involved.

21 Do you recall those questions?

22 A. Yes, sir, I do.

1 Q. And would it -- as I understand it,
2 Dr. Lockey did not share with you the specific
3 medical records of the individual workers
4 involved. Is that correct?

5 A. That's correct, he did not.

6 Q. Did you ask for the medical records of
7 the specific workers involved?

8 A. We didn't know that he had any, and I
9 don't recall whether we asked or not.

10 Q. Okay. Now, in addition, Mr. McClain
11 referred to a lawsuit that was filed in 1986, it
12 appears.

13 Do you recall that? He handed you an
14 exhibit.

15 A. Yes, sir, I do. Yes, sir.

16 Q. And the individuals who were present
17 were from Tastemaker. Is that correct?

18 A. That's correct, sir.

19 Q. Was Tastemaker a defendant in that
20 lawsuit?

21 A. No. They're not listed here.

22 Q. Now, have you had a chance to take a

1 look at that lawsuit to see what it generally
2 referred to? What plant it referred to?

3 A. No, sir, not really. That's -- I
4 haven't had time to read it.

5 Q. All right. Well, pass it -- well,
6 take a look, if you would -- if you could pass
7 it back. Let me see if I can --

8 A. Here. I've got one here I can look
9 at.

10 Q. All right. Paragraph 11 -- take a
11 look if you would at paragraph 11.

12 A. Yes, sir.

13 Q. And just read that to yourself, if you
14 would, and then let me ask you about it.

15 (Telephone interruption.)

16 THE WITNESS: I'm sorry.

17 BY MR. BRIGGS:

18 Q. If you would just be kind enough to
19 read that paragraph and then let me ask you
20 about it.

21 A. Okay. I've read it.

22 Q. Okay. Is it accurate to say that that

1 paragraph in this lawsuit refers to --

2 (Telephone interruption.)

3 BY MR. BRIGGS:

4 Q. Sir, let me, again, invite your

5 attention to paragraph 11.

6 A. Yes, sir.

7 Q. And would it be accurate to say that

8 this lawsuit relates to an incident -- at least

9 relates to International Bakers Services, Inc.,

10 in the City of South Bend, County of St. Joseph,

11 State of Indiana?

12 A. That's what it says, sir, yes.

13 Q. And an individual who was employed

14 there and then brings this lawsuit relating to

15 injuries that he sustained in the course of his

16 employment. Is that correct as you understand

17 it?

18 A. That's what it appears to me, yes,

19 sir.

20 Q. Do you recall whether or not

21 Dr. Lockey brought to your attention any

22 information with regard to any facts or

1 circumstances concerning International Bakers
2 Services?

3 A. Yes, sir. He did. He gave us a copy
4 of a NIOSH Health Hazard Evaluation that was
5 conducted on International Bakers Services.

6 Q. All right. And when did he provide
7 that to you?

8 A. It was at the meeting we had with him
9 in 1996.

10 Q. All right, sir. Let me just invite
11 your attention, if I may, to Exhibit No. 9. I'd
12 ask you to take a look, if you would, at Exhibit
13 No. 9 and see if you can identify for me what
14 that is.

15 A. This is the contents of the workshop
16 notebook from the 1997 workshop, Respiratory
17 Safety in the Flavor and Fragrance Workplace.

18 Q. And can you tell me whether or not
19 attached to your materials, Exhibit No. 9 that
20 was provided at that workshop, was a copy of the
21 materials Dr. Lockey provided to you?

22 A. The HHE for International Bakers

1 Services was included in the notebook, and it's
2 right here.

3 Q. And when you say HHE, what is that?

4 A. Health Hazard Evaluation.

5 Q. So what's attached, then, to the
6 materials provided to the participants at the
7 meeting was the information Dr. Lockey provided
8 you in September of 1996 regarding International
9 Bakers. Is that correct?

10 A. Yes, sir. The NIOSH HHE on
11 International Bakers Services, yes, sir.

12 Q. All right. Now, have you had a chance
13 to review the International Bakers situation?
14 Are you familiar with it?

15 A. I'm -- I have read the Health Hazard
16 Evaluation, yes. I've not read it recently, but
17 I have read it, yes.

18 Q. Do you recall whether or not
19 Dr. Lockey had any discussion with you at the
20 September 1996 meeting relating to his
21 International Bakers NIOSH investigation?

22 A. We discussed it but not in great

1 detail because it was the first that we were
2 seeing it. But, yes, he did tell us about it,
3 and we sort of went through it.

4 Q. Okay. Do you have any recollection of
5 the context of the information that Dr. Lockey
6 provided you at that point in time with regard
7 to the International Bakers situation?

8 A. Well, yes, sir. He pointed out that
9 the illness that was suspected that the workers
10 had in that case was bronchiolitis obliterans,
11 the same illness that he was telling us about
12 that people possibly had from the Tastemaker
13 facility. He drew that connection.

14 Q. All right, sir. Now, after the two
15 meetings of the Tastemaker representatives that
16 you have described that came to visit with you,
17 describe for me the steps you took.

18 I think you indicated it generally in
19 your -- in response to your counsel, but if you
20 could be a little more fulsome when say you
21 went -- just tell me what you did thereafter to
22 follow it up.

1 A. Yes, sir. In the period of months
2 that followed, I inquired of virtually every
3 manufacturing company in FEMA whether they had
4 heard of or encountered any respiratory health
5 and safety issues similar to what Dr. Lockey had
6 reported from the Tastemaker facility or similar
7 to what was noted at International Papers. I
8 did a lot of conversations face-to-face and
9 personal at FEMA meetings. I did it over the
10 telephone. Basically got people anyway I could
11 get them to try to get the information.

12 The responses were uniform and
13 unanimous that no one had ever heard of this
14 sort of problem before.

15 Q. How many members were there in FEMA at
16 that time approximately?

17 A. Well, there were -- of manufacturing
18 members -- which are the ones that I focused on.
19 For example, I didn't inquire of the trade
20 press. It didn't seem relevant.

21 But of the manufacturing members,
22 there were probably similar to what there are

1 today, somewhere in the neighborhood of
2 60 manufacturing members.

3 Q. And did this take -- how much time did
4 this take of your time?

5 A. Well, a period of months. We had a
6 membership meeting in the fall of 1996, which is
7 called the FEMA Fall Symposium. I don't
8 remember the precise date, but that's a
9 membership meeting. And I was able to talk to a
10 lot of companies over the period of that
11 multi-day meeting.

12 I used other meetings as occasions to
13 also talk to people who I hadn't yet gotten to.

14 Q. Would it be fair for me to say that in
15 your months of follow-up after the two
16 Tastemaker meetings you treated this as a very
17 serious matter?

18 A. Absolutely.

19 Q. Is it, then, accurate to say you then
20 went forward and scheduled a Respiratory Safety
21 in the Flavor and Fragrance Workplace Conference
22 in March of 1997?

1 A. Yes, sir.

2 Q. Tell me why that came about.

3 A. Well, we considered this information
4 extremely important because it was a workplace
5 safety information and involved workers' health.
6 And we wanted to share the information in a
7 fuller way with the broadest possible audience.
8 So the workshop was scheduled, and we had good
9 attendance.

10 Q. How long did the workshop last?

11 A. It was basically all day.

12 Q. Up to that point in time, up to that
13 workshop, had FEMA ever held a workshop on
14 respiratory safety in the flavor and fragrance
15 industry?

16 A. No, sir. That was the first one.

17 Q. After that workshop, what was the next
18 thing that occurred so far as you and FEMA were
19 aware that suggested there could be any
20 potential problem in the industry?

21 A. Well, after the workshop, the -- and
22 not having found any other companies with

1 problems, the thought was that it may have been
2 a problem specific to that one manufacturing
3 workplace.

4 The industry became very active again
5 in -- at the -- in the fall of 2001 when we
6 received a call from NIOSH alerting us to the
7 work that they were doing in microwave popcorn
8 manufacturing.

9 Q. All right, sir.

10 A. Then we became very active again and
11 held two other workshops since then in addition
12 to any other interactions with NIOSH and others.

13 Q. I think you indicated to your counsel
14 that NIOSH had called upon you for -- had some
15 questions and asked -- which required follow-up
16 by you. Is that correct?

17 A. Yes, sir.

18 Q. In the course of that follow-up, did
19 you have occasion to call on Givaudan with any
20 questions?

21 A. Well, Givaudan was represented at the
22 workshops, I believe.

1 Q. And have you found that Givaudan has
2 been cooperative in providing you information?

3 MR. McCLAIN: Objection. Calls for an
4 opinion.

5 THE WITNESS: They have appeared to be
6 cooperative.

7 BY MR. BRIGGS:

8 Q. Okay. All right, sir. Now, in
9 connection with diacetyl, when was the first
10 time that you had any reason to believe that
11 there was any need to inquire as to whether
12 diacetyl was a potential risk or concern?

13 A. At the end of September 2001 when I
14 received a telephone call from Kay Kreiss at
15 NIOSH reporting on their microwave popcorn
16 investigation.

17 Q. All right, sir. Now, I think there
18 were some questions earlier -- some with regard
19 to information worksheets that you -- or
20 information that you have -- you provide to the
21 industry referred to as ingredient data sheets.
22 Is that correct?

1 A. Flavor Fragrance Ingredient Data

2 Sheets, yes, sir.

3 Q. Could you tell me, again, what those

4 were, sir.

5 A. Those are documents that were prepared

6 by the flavor and fragrances associations to be

7 used by members as one source of information for

8 them to prepare MSDS's. They are not MSDS's,

9 and they are not intended to be used as such.

10 They are intended to be one source of

11 information together with databases and other

12 materials that companies can use to make their

13 own MSDS's.

14 Q. All right, sir. Exhibit 1, let me

15 hand that to you, the notice of deposition, and

16 I think it had a -- had something attached to it

17 that perhaps fell in that category. Is that

18 correct?

19 A. This is a Flavor Fragrance Ingredient

20 Data Sheet, yes, sir.

21 Q. Can you just identify the Bates

22 numbers of the document to which you are

1 referring?

2 A. Is that this number over here?

3 Q. Yes, sir.

4 A. It says RIFM 3225.

5 Q. Could you tell me how many pages are
6 there in that particular document?

7 A. There appear to be five.

8 Q. Okay. And how is this document -- is
9 this a document provided by FEMA -- was it
10 provided by FEMA to its members?

11 A. Well, it was provided by FEMA and the
12 fragrance associations. It was a joint
13 flavor/fragrance project. And this is the
14 original edition from 1985.

15 Q. All right. And for what particular
16 product is that -- does that particular document
17 relate?

18 A. This is for diacetyl.

19 Q. All right. And did that particular
20 data sheet remain in effect up until recently?

21 A. I believe that this was updated by
22 RIFM, the Research Institute For Fragrance

1 Materials, in the early 2000s when new
2 information became available from NIOSH largely.

3 Q. And do you know when particularly?

4 A. No, sir, I don't.

5 Q. Are you familiar with whether or not
6 it was revised -- first revised on December 12th
7 of 2005?

8 A. I believe it was revised previous to
9 that, but that's -- I'm not aware of that
10 specific date, but that's probably an iteration
11 of it. It's often revised as new data become
12 available.

13 MR. BRIGGS: Thank you, sir. I don't
14 have any further questions.

15 MR. WOODSIDE: If I am next, I do not
16 have any questions at this time on behalf of IFF
17 and/or BBA in the respective cases.

18 MR. BENSON: And if I am after
19 Mr. Woodside, I, too, have no questions at this
20 time on behalf of my client, Sensient, in the
21 Remmes case.

22 MR. BRIGGS: Pardon me. I had one

1 question I forgot to ask, if I may -- if you
2 would be kind enough to permit me to just
3 reopen?

4 MR. McCLAIN: Absolutely.

5 MR. BRIGGS: Thank you.

6 One document that was produced from
7 your file, let me just mark this as the next
8 exhibit in line.

9 MR. CRICK: Here you go. It's 19.

10 (Exhibit No. 19 was marked for
11 identification.)

12 BY MR. BRIGGS:

13 Q. Sir, this is the document that was --
14 I believe, came out of your files.

15 If you would be kind enough to take a
16 look at that and see if you can identify for me
17 what that is.

18 A. Yes, sir. It's a report of a series
19 of LD 50 or Lethal Dose 50 studies that were
20 done on various flavor fragrance materials back
21 in 1970s, I believe.

22 Q. Okay. And is this work that you had

1 done -- that was done for the institute?

2 A. This was work was done for the
3 Research Institute for Fragrance Materials,
4 RIFM, yes, sir.

5 MR. BRIGGS: Okay. Thank you, sir. I
6 don't have any further questions.

7 THE VIDEOGRAPHER: Mr. McClain, are
8 you redirecting?

9 MR. McCLAIN: Yes.

10 (Discussion off the record.)

11 FURTHER EXAMINATION

12 BY COUNSEL FOR PLAINTIFFS

13 BY MR. McCLAIN:

14 Q. I listened with interest to the
15 questions, and I heard the word cooperate come
16 up quite a bit.

17 But I was -- I was struck by your
18 answer to Counsel's question just a second
19 ago -- Mr. Briggs' question. He asked you was
20 Givaudan cooperative, and you paused for quite a
21 time and said they appeared to be cooperative.

22 You have some doubt in your mind, as

1 you sit here, as to level of cooperation you
2 actually received from Tastemaker, slash,
3 Givaudan, don't you?

4 MR. BRIGGS: Objection. Move to
5 strike the narrative.

6 THE WITNESS: Today information was
7 made available to me that I had not seen before,
8 and that was a surprise to me.

9 BY MR. McCLAIN:

10 Q. And so it raises questions in your
11 mind regarding just how cooperative Givaudan has
12 been in this process with you for real. Isn't
13 that true?

14 MR. KILLEFER: Objection.
15 Argumentative.

16 THE WITNESS: The information that you
17 showed me would have been helpful to know.

18 BY MR. McCLAIN:

19 Q. Now, let's talk about corporation for
20 a minute. Mr. Killefer talked to you about your
21 cooperation with NIOSH, and I want to come to
22 that for a moment.

1 But to your knowledge, did Givaudan or
2 Tastemaker, as they were known at the time,
3 contact NIOSH and ask them to make an
4 investigation of the situation in their own
5 plant?

6 A. Not that I'm aware of.

7 Q. And, of course, NIOSH is right there
8 in Cincinnati where the Tastemaker plant was.
9 Isn't that true?

10 A. They have a laboratory in Cincinnati,
11 yes, sir.

12 Q. And to your knowledge, was NIOSH ever
13 told by you up and through today that there were
14 really eight cases of bronchiolitis obliterans
15 at the Tastemaker plant?

16 MR. BRIGGS: Objection. Misstates the
17 evidence.

18 THE WITNESS: Well, I know that I
19 didn't tell them, because I didn't know.
20 Whether someone else did, I can't say.

21 BY MR. McCLAIN:

22 Q. Well, whether there was four cases or

1 five cases or six cases or seven, you've never
2 spoken to NIOSH about just what the exact
3 situation was at the Tastemaker plant because
4 frankly up until today you really didn't know.

5 MR. BRIGGS: Objection.

6 BY MR. McCLAIN:

7 Q. Right?

8 MR. BRIGGS: Objection. Misstates the
9 evidence.

10 THE WITNESS: What they told NIOSH was
11 the information that we had that's reflected in
12 the August 2004 report without identifying the
13 company name. That's what we told them.

14 BY MR. McCLAIN:

15 Q. But it's important, isn't it -- and
16 NIOSH, to do its job, must know what company is
17 involved. That's what they do; they actually go
18 into workplaces and do investigations, don't
19 they?

20 MR. BRIGGS: Objection. Foundation.

21 THE WITNESS: That is one of the
22 things that NIOSH does.

1 BY MR. McCLAIN:

2 Q. And without the identity of the
3 manufacturer, they could not do that, correct?

4 A. That would be correct, yes, sir.

5 Q. I mean, the only way that they found
6 out what was going on at the Jasper popcorn
7 plant was that the owners of the Jasper popcorn
8 plant allowed NIOSH to come in and investigate,
9 right?

10 MR. BRIGGS: Objection.

11 MR. WOODSIDE: Objection.

12 MR. BRIGGS: Foundation.

13 MR. WOODSIDE: Foundation.

14 THE WITNESS: I don't know.

15 BY MR. McCLAIN:

16 Q. Well, NIOSH did go into the Jasper
17 popcorn plant and investigate it. Isn't that
18 true?

19 A. Yes. I don't know how that came
20 about. That's what I'm saying.

21 Q. To your knowledge, even today, has
22 your member Givaudan invited NIOSH into its

1 plant?

2 MR. BRIGGS: Objection. Foundation.

3 THE WITNESS: I don't know. Not that
4 I'm aware of.

5 BY MR. McCLAIN:

6 Q. How about the other three plants that
7 you have had reports of bronchiolitis
8 obliterans; has NIOSH been invited into any of
9 those plants?

10 A. Not that I'm aware of.

11 Q. Have you disclosed the identity of
12 those plants to NIOSH?

13 A. No. We have not.

14 Q. So when we talk about cooperation with
15 NIOSH, you have not given them the names of any
16 of your member companies who've had
17 bronchiolitis obliterans cases so that they
18 could investigate your plants. Am I right?

19 A. Well, first of all, we don't know that
20 these are cases of bronchiolitis obliterans.
21 And, second, it would be up to the companies to
22 make that invitation to NIOSH. The association

1 can't do that on the company's behalf.

2 Q. Well, I understand what you're saying.

3 But if the company gave you

4 permission, you certainly could?

5 A. Well, actually under that

6 circumstance, I would not do that. I'd have to

7 tell the company that they had to do that

8 themselves, because the trade association cannot

9 make that disclosure.

10 Q. All right. The reality is -- is that,

11 to knowledge, none of those companies have asked

12 NIOSH to come into their plant and do an

13 investigation, have they?

14 A. That's correct.

15 Q. And that certainly would clear up this

16 question that you have as to whether or not they

17 really are bronchiolitis obliterans cases.

18 Isn't that right?

19 MR. BRIGGS: Objection. Calls for

20 speculation.

21 THE WITNESS: Each of the companies --

22 the workers at each of those companies were

1 being seen by physicians, and for patient
2 privacy reasons, we don't have that information.

3 So we encouraged the companies to
4 assist those workers in getting medical care.
5 And I believe that they did in those three
6 instances, but I don't have documentation
7 because it's never provided to me nor would it
8 be appropriate for me to have that information.

9 BY MR. McCLAIN:

10 Q. Now, you believe they did, but no one
11 has ever given you any documentation to show
12 that, in fact, they are even providing medical
13 assistance to those people. Am I right?

14 A. For patient privacy reasons, I can't
15 have that information.

16 Q. So is the answer to my question,
17 correct --

18 A. The answer --

19 Q. -- I have not seen it?

20 A. I have not seen that information.

21 Q. Now, in preparation -- let's talk
22 about cooperation a little more.

1 You took -- you did this survey of
2 60 companies -- by the way, do you have your
3 notes from that survey?

4 A. I have the checklist, which was a
5 membership directory -- actually I don't know if
6 I still have it or not. But that's how I kept
7 track of who I was talking to. I made notes on
8 the membership directory.

9 Q. And has that been produced?

10 A. No. And as a matter of fact, I don't
11 even know if I still have that.

12 Q. Would you look and see whether or not
13 it exists because --

14 A. I don't believe I do, but I'll look
15 and see, yes, sir.

16 Q. Okay. Because I don't think --

17 MR. KILLEFER: If it exists, we've
18 produced it.

19 THE WITNESS: Yeah.

20 MR. McCLAIN: Well, would you
21 double-check on that --

22 MR. KILLEFER: Yes.

1 MR. McCLAIN: -- for us, please? And
2 if you could identify it by Bates number,
3 because I'm not recognizing it and maybe I'm
4 just overlooking it. But if you could
5 follow-up --

6 MR. KILLEFER: I don't believe it
7 exists, but I will do that.

8 MR. McCLAIN: Thank you.

9 BY MR. McCLAIN:

10 Q. Now, let's talk about the '97
11 conference.

12 At the '97 conference no one from
13 Polarome, Citrus and Allied or Givaudan stood up
14 and said we know about that International Bakers
15 case. Isn't that right?

16 A. That's correct.

17 Q. And no one associated with FEMA or
18 RIFM told you that, in fact, they had been
19 witnesses in that case, right?

20 MR. BRIGGS: Objection.

21 MR. KILLEFER: Objection. Lack of
22 foundation.

1 BY MR. McCLAIN:

2 Q. Am I right?

3 A. That's correct.

4 Q. In fact, Hall sat in a meeting in
5 which Lockey produced this IBC study to you in
6 advance of the '97 conference and acted as if he
7 didn't know anything about the incident. Isn't
8 a true?

9 A. He did not state to me at any time
10 that he knew anything about International
11 Bakers.

12 Q. So my statement is correct, right?

13 MR. KILLEFER: Objection.
14 Argumentative.

15 MR. BRIGGS: Objection. Calls for
16 opinion.

17 THE WITNESS: Can I listen to it
18 again, please?

19 BY MR. McCLAIN:

20 Q. Sure. Mr. Hall -- who was there as
21 FEMA's scientific advisor. Am I right?

22 A. Correct.

1 Q. -- sat there silently while Dr. Lockey
2 presented the International Bakers study by
3 NIOSH and did not tell you that he had been
4 involved in the litigation that surrounded the
5 claims of those workers, that their health had
6 been impaired by breathing flavoring chemicals.
7 Am I right?

8 MR. BRIGGS: Objection. Calls for
9 opinion. Assumes facts not in evidence.

10 THE WITNESS: Dr. Hall did not comment
11 at the meeting that he knew anything about it.

12 BY MR. McCLAIN:

13 Q. Or anytime thereafter?

14 A. Or anytime thereafter.

15 Q. So when we talk about cooperation with
16 NIOSH, you never told NIOSH our members know all
17 about that International Bakers study, in fact,
18 there was a lawsuit and they paid each of those
19 workers a million dollars? You never told them
20 anything about that substance. Isn't that true?

21 MR. KILLEFER: Objection. Assumes
22 facts not in evidence. Argumentative.

1 THE WITNESS: I did not tell NIOSH
2 because I didn't know. If I had known, I would
3 have told them.

4 BY MR. McCLAIN:

5 Q. That's back in the days when a million
6 dollars was a lot of money.

7 A. I think a million dollars is still a
8 heck of a lot money.

9 Q. It was a whole lot more money in 1985,
10 wasn't it?

11 A. It's a lot of money by any measure.

12 Q. Your members never disclosed to you
13 that, in fact, they had paid money to settle
14 those claims. Am I right?

15 A. Before today, I knew nothing about
16 that case.

17 Q. Now, when NIOSH met with your
18 membership -- back to the issue of cooperation.

19 When NIOSH met with your membership,
20 as you've told us about, Dr. Rose didn't tell
21 NIOSH that she had treated one of the Jasper
22 popcorn workers, did she?

1 A. Dr. Rose did not make the connection
2 until later.

3 Q. Can you just answer my question?

4 A. What was your question again, please?

5 MR. KILLEFER: He just did.

6 BY MR. McCLAIN:

7 Q. Did she tell NIOSH that she had
8 treated one of the Jasper popcorn workers?

9 A. Not in 2001, but when she found out in
10 2002, I believe she did tell NIOSH.

11 Q. When NIOSH met with your membership,
12 Dr. Rose didn't tell them about the connection,
13 did she?

14 A. Dr. Rose was not at the October 2001
15 meeting when Drs. Kreiss and Kullman made their
16 presentations to our members.

17 Q. Tastemaker didn't tell NIOSH about the
18 cases of bronchiolitis obliterans in its plant,
19 did they?

20 A. Not that I know of.

21 Q. Citrus and Allied and Polarome did not
22 tell NIOSH about their experience with IBC. Am

1 I right?

2 A. Not that I know of.

3 Q. Now, were you aware that Dr. Daum had
4 opined in 1989 that the fact that the defendants
5 supplied chemicals to International Bakers
6 Services as ultimate users and consumers without
7 having first tested these chemicals for
8 inhalation or taken other appropriate measures
9 to see that they were safe for use by humans was
10 tantamount to using the blenders at
11 International Bakers Services as blue-collar
12 guinea pigs?

13 MR. BRIGGS: Objection. Hearsay.

14 MR. WOODSIDE: Mr. McClain, could I
15 voice an objection? I think you will agree with
16 me.

17 You said defendants, and the way the
18 question would come out it would mean the
19 defendants in these cases here. It would not be
20 clear.

21 So would you indicate which defendants
22 you're referring to, please.

1 MR. McCLAIN: Yes. Specifically I'm
2 referring to Polarome and Citrus and Allied.

3 MR. WOODSIDE: And the defendants in
4 one or more of those cases with International
5 Bakers, but not this case?

6 MR. McCLAIN: That's right.

7 THE WITNESS: I'm sorry. Can you run
8 that by me again.

9 BY MR. McCLAIN:

10 Q. Did your members who were defendants
11 in the International Bakers case tell you that
12 back in 1989 Dr. Daum, a world renowned
13 occupational physician, had opined that, in
14 fact, the flavoring industry was using
15 blue-collar workers as guinea pigs as opposed to
16 doing their own inhalation experiments to see
17 whether or not these materials were safe?

18 MR. WOODSIDE: Objection.

19 MR. BRIGGS: Objection.

20 THE WITNESS: No, sir. I never heard
21 that before.

22 BY MR. McCLAIN:

1 Q. Well, in fact, you were not doing
2 inhalation studies, as you told Mr. Killefer.
3 Am I right?

4 A. FEMA has not sponsored inhalation
5 studies, that's correct.

6 Q. You weren't doing inhalation studies
7 on laboratory animals, but your members were
8 doing inhalation studies on their workers.
9 Isn't that true?

10 MR. BRIGGS: Objection.

11 MR. KILLEFER: Objection.
12 Argumentative.

13 THE WITNESS: No, sir. I don't agree
14 with that.

15 BY MR. McCLAIN:

16 Q. All right. Well, let's talk about --
17 some more about your cooperative spirit.

18 It took you from 1997 until 2002 to
19 put on another conference about respiratory
20 health in the flavoring industry. Am I right?

21 A. There was a workshop in 1997, and the
22 next one was in 2002.

1 Q. Five years later?

2 A. Yes, sir.

3 Q. A major priority for FEMA, I take it?

4 A. As I explained earlier, in the
5 intervening years, we had the understanding,
6 based on the information that we had obtained,
7 that the incident at Tastemaker was unique. We
8 were not aware of any other circumstances and,
9 therefore, didn't see the opportunity to do
10 additional work.

11 Q. In retrospect that was naive, wasn't
12 it?

13 MR. BRIGGS: Objection.

14 MR. KILLEFER: Objection.

15 Argumentative.

16 BY MR. McCLAIN:

17 Q. At the best and callous at the worst?

18 MR. BRIGGS: Objection.

19 MR. WOODSIDE: Objection.

20 MR. KILLEFER: Objection.

21 THE WITNESS: It was neither. It was
22 the best information we had. If we had

1 information, we would have acted on it, and I
2 think our record shows that. When we had
3 information, we acted on it.

4 BY MR. McCLAIN:

5 Q. Well, Mr. Hallagan in that interim
6 time period, most of the Jasper workers were
7 getting sick. Isn't that true?

8 MR. BRIGGS: Objection.

9 MR. KILLEFER: Objection.

10 THE WITNESS: I'm not aware of a
11 precise time frame with Jasper.

12 BY MR. McCLAIN:

13 Q. And the Marion workers were starting
14 to get sick. Isn't that true?

15 MR. BRIGGS: Objection.

16 MR. KILLEFER: Objection.

17 THE WITNESS: I don't know.

18 BY MR. McCLAIN:

19 Q. Now, let's talk some more about your
20 cooperation.

21 Recently there was an article that was
22 published in the Baltimore Sun. Isn't that

1 true?

2 A. There were two articles -- or three
3 articles now, yes, sir.

4 Q. And following the publication in the
5 Baltimore Sun, you complained to NIOSH about the
6 scientists who had spoken about the hazards of
7 the flavoring industry. Isn't that right?

8 A. No, sir. That is incorrect.

9 Q. And you demanded, did you not, that
10 they remove those scientists that spoke who had
11 been working on this issue from working on this
12 flavoring hazard from now on. Isn't that right?

13 A. Absolutely not. I did not communicate
14 with NIOSH.

15 NIOSH representatives -- Dr. David
16 Weisman contacted me by e-mail shortly after the
17 first article and requested a meeting with me,
18 which took place on May 2nd. I did not complain
19 to NIOSH, and no one associated with the flavor
20 industry did.

21 Q. And, in fact, your involvement has
22 gotten Dr. Kreiss removed from this project, the

1 author of the original NIOSH study, Dr. Kanwell,
2 removed and all persons in West Virginia that
3 were involved in the study. Isn't that right?

4 MR. BRIGGS: Objection.

5 MR. KILLEFER: Objection. Lack of
6 foundation. Argumentative.

7 BY MR. McCLAIN:

8 Q. Mr. Cooperative?

9 A. That is totally news to me. As far as
10 I know, Drs. Kanwell and Kreiss are still
11 involved and will be involved.

12 MR. McCLAIN: I don't have any more
13 questions.

14 THE VIDEOGRAPHER: Anyone else?

15 MR. KILLEFER: No.

16 MR. BRIGGS: Nothing additionally.

17 THE VIDEOGRAPHER: We're going off the
18 record. The time is 2:20 p.m. This ends
19 today's deposition of John Hallagan.

20 (Discussion off the record.)

21 THE VIDEOGRAPHER: We're going back on
22 the record. The time is 2:21 p.m.

1 (Discussion off the record.)

2 BY MR. McCLAIN:

3 Q. While we do that, Mr. Hallagan, please
4 tell me what you discussed with NIOSH when you
5 were contacted -- what was the individual that
6 contacted you?

7 A. David Weisman.

8 Q. Okay. Tell us what you discussed with
9 Mr. Weisman.

10 A. Dr. Weisman sent me an e-mail, I
11 believe, on April 25th or so, which I think is
12 probably in that collection of documents,
13 requesting to meet with me.

14 Dr. Weisman came to my office with
15 Larry Reed from the Cincinnati laboratory.
16 Dr. Weisman came into my office and told me that
17 he wanted to apologize for the statements that
18 appeared in the April 23rd Baltimore Sun article
19 and told me that the comments attributed to
20 NIOSH staff did not represent NIOSH's position.

21 We talked for about an hour and a half
22 or so and agreed that we would continue to talk

1 and reinvigorate our sharing of information.

2 Q. Now, what statements in the article
3 had you taken offense to?

4 MR. KILLEFER: Objection.
5 Mischaracterizes the evidence.

6 THE WITNESS: I did not complain to
7 Dr. Weisman, and I -- he was the one that
8 pointed out that some of the statements made
9 were very critical of the industry and
10 unjustifiably so.

11 BY MR. McCLAIN:

12 Q. And what statements were those, do you
13 recall?

14 A. I don't have the article in front of
15 me.

16 Q. What was the effect of the statements?
17 Can you summarize what they were, that you
18 recall? Not word for word. I'm not asking you
19 to -- I'm not holding you to it.

20 But what was your sense of the
21 criticisms of the NIOSH staff of the industry?

22 A. They were critical of -- they said we

1 had not provided information to them, which I
2 then documented for Dr. Weisman that we had. He
3 hadn't seen that information.

4 There were comments in the article
5 critical of the fact that industry was
6 supporting the conduct of medical screening in
7 California. And there were mistaken statements
8 in the article, I believe, related to the fact
9 that the information was all going to be shared
10 with CalOSHA and California Department of Health
11 Services.

12 Q. Any others?

13 A. Again, without looking at the article,
14 I couldn't say.

15 Q. Well, I mean, if the scientists from
16 NIOSH said that you hadn't been sharing
17 information with them, that's absolutely true,
18 isn't it?

19 A. No. That's absolutely false.

20 Q. Well, we've already documented -- who
21 did -- we've already been over this, and I don't
22 want to -- but Givaudan had not supplied all of

1 the information regarding the bronchiolitis
2 obliterans cases from its plant, had it?

3 MR. BRIGGS: Objection. Misstates the
4 evidence.

5 THE WITNESS: Yes. We've been over
6 that. And as I said, this is new information to
7 me, yes.

8 BY MR. McCLAIN:

9 Q. Okay. Likewise, in regard to the
10 medical screening, none of that information has
11 been supplied to CalOSHA to date?

12 A. I believe some of it has actually.

13 Q. All right. Where is that information?

14 A. I believe that CalOSHA has it. I'm
15 not sure.

16 Q. Do you have it?

17 A. No, sir, I don't. As I've explained
18 earlier, that relationship is between National
19 Jewish, the companies and CalOSHA. I do not get
20 that information.

21 Q. If you didn't talk to Weisman, who did
22 you talk to?

1 A. Excuse me?

2 Q. Did you talk to anyone about the
3 article, the Schneider article?

4 A. Anyone anywhere?

5 Q. Well, who did you talk to that --

6 A. At NIOSH?

7 Q. -- that talked to NIOSH?

8 A. I spoke with --

9 MR. BRIGGS: Objection.

10 THE WITNESS: I met with Dr. Weisman
11 and Dr. Reed on May 2nd. That's who I talked to
12 at NIOSH.

13 BY MR. McCLAIN:

14 Q. Did you make any complaints to anyone
15 about the Schneider article?

16 A. No, sir, I did not.

17 Q. You did not?

18 Did anyone from the industry complain
19 to NIOSH?

20 A. Not that I know of, no.

21 Q. And as we've seen, the industry is not
22 always forthcoming with you, so someone may

1 have, you just don't know?

2 MR. WOODSIDE: Objection.

3 MR. BRIGGS: Objection. Move to
4 strike.

5 BY MR. McCLAIN:

6 Q. You don't know whether anyone did or
7 not, right?

8 A. I'm not aware that anybody has.

9 MR. McCLAIN: We're going to take a
10 break for just a minute so I can look at
11 something, and then we'll be back on.

12 THE VIDEOGRAPHER: We're going off the
13 record. The time is 2:25 p.m.

14 (Recess.)

15 THE VIDEOGRAPHER: We're going back on
16 the record. The time is 2:31 p.m.

17 BY MR. McCLAIN:

18 Q. Just so that I have this correct,
19 Mr. Hallagan, Dr. Weisman at NIOSH just called
20 you out of the blue to apologize for a statement
21 that you had to explain to him was untrue. Am I
22 right?

1 MR. KILLEFER: Objection.

2 Mischaracterizes the testimony.

3 MR. WOODSIDE: Objection. Calls for
4 speculation.

5 THE WITNESS: I'm not understanding
6 your question. I'm sorry.

7 BY MR. McCLAIN:

8 Q. Well, you told us that you took
9 Dr. Weisman through all of the information about
10 how you had cooperated after he called. Am I
11 right?

12 A. During our meeting on May 2nd, I
13 showed Dr. Weisman examples of the information
14 that we had provided to his staff.

15 Q. But he had already called you in
16 advance to apologize for those statements.

17 A. He did that at the meeting, yeah. He
18 didn't call me. He sent me an e-mail.

19 Q. Out of the blue, he just called and
20 wanted to set up a meeting with you, the then
21 general counsel of FEMA; that's what you want us
22 to believe?

1 A. I wouldn't characterize it as out of
2 the blue. He did it after the publication of
3 the April 23rd article in the Baltimore Sun.

4 Q. So is that the normal practice of
5 NIOSH, as you understand it, is they scour
6 articles and call up industry representatives
7 whenever their staff has something negative to
8 say about industry? Does that normally happen?

9 MR. WOODSIDE: Objection.

10 MR. KILLEFER: Objection.

11 Argumentative.

12 THE WITNESS: Dr. Weisman explained to
13 me that NIOSH's mission is to work
14 cooperatively -- part of their mission is to
15 work cooperatively -- cooperatively with
16 industry, and Dr. Weisman was worried that the
17 negative comments made by his staff was going to
18 damage their ability to accomplish their mission
19 of working with industry, not just the flavor
20 industry.

21 BY MR. McCLAIN:

22 Q. By the way, at about this time or

1 subsequently, what contacts have you had with
2 any congressional committees trying to
3 investigate this matter?

4 A. I have had no contacts --

5 Q. None?

6 A. -- with them.

7 There is another person who works with
8 FEMA who, I believe, has contacted the staff of
9 Miller -- Representative Miller from California.

10 Q. Who contacted Representative Miller's
11 staff?

12 A. I believe it's a gentleman named John
13 Cox, who does government relations work for
14 FEMA. He works for The Roberts Group.

15 Q. And do you know what Mr. Cox said to
16 the staff members?

17 A. No, I don't.

18 Q. Do you know whether any threats were
19 made to the staff?

20 A. I would doubt seriously that anything
21 remotely resembling a threat was made.

22 Q. Do you remember Mr. Cox talking to the

1 staff about the confidential nature of the
2 information that they had received?

3 A. No, sir. I don't know anything about
4 that.

5 Q. Is there any communications -- or
6 written communications that FEMA has with the
7 congressional staff?

8 A. Not that I'm aware of.

9 Q. How was the contact made by Mr. Cox
10 with the congressional staff?

11 A. I believe by telephone.

12 Q. And how did -- how was it initiated?

13 A. I don't know.

14 Q. Did you have any involvement in it
15 whatsoever?

16 A. No, sir, I did not.

17 Q. How did it come to Cox instead of you?

18 A. Don't really know. I mean, I've been
19 very busy with other things, and John does
20 government relations work and used to work on
21 the Hill. So it was probably logical that the
22 assignment be made to him rather than me.

1 Q. Who was it that made the assignment to
2 him as opposed to you?

3 A. I believe it was Mr. Roberts, who is
4 the executive director of FEMA.

5 MR. McCLAIN: Anything else?

6 MR. CRICK: Let's go home.

7 MR. McCLAIN: Thank you.

8 MR. WOODSIDE: No questions here.

9 THE VIDEOGRAPHER: We're going off the
10 record. The time is 2:35 p.m. This ends
11 today's deposition of John Hallagan.

12 (Whereupon, at 2:35 p.m., the taking
13 of the deposition concluded.)

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CERTIFICATE OF DEPONENT

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I hereby certify that I have read the foregoing pages of my deposition testimony in this proceeding, and with the exception of changes and/or corrections, if any, find them to be a true and correct transcription thereof.

Deponent

Date

NOTARY PUBLIC

Subscribed and sworn to before me this _____ day of _____, 20__.

1 UNITED STATES OF AMERICA)

2 DISTRICT OF COLUMBIA)

3 I, Jana Mulhollan, RPR, the reporter
4 before whom the foregoing deposition was taken,
5 do hereby certify that the witness whose
6 testimony appears in said deposition was sworn
7 by me; that the testimony of the witness was
8 taken by me in machine shorthand and thereafter
9 transcribed at my direction; that said
10 deposition is a true record of the testimony
11 given by said witness; that I am neither counsel
12 for, related to, nor employed by any party to
13 the action in which this deposition was taken;
14 and, further, that I am not a relative or
15 employee of any attorney or counsel employed by
16 any party hereto, or financially or otherwise
17 interested in the outcome of this action.

18

19

20

Jana Mulhollan, RPR
Notary Public in and for the
District of Columbia

22 My Commission expires September 30, 2010