

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ADVISORY COMMITTEE ON CONSTRUCTION
SAFETY AND HEALTH

Friday, December 10, 2010

8:05 a.m.

U.S. Department of Labor
Room N-3437 A/B/C, Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C. 20210

PARTICIPANTS:

Frank Migliacco, Chairman

Ben Bare, DFO

Robert Biersner, SOL

Eric Harbin, AFO

Michael Thibodeaux

Thomas Broderick

Steve Hawkins

Susan Bilhorn

Kevin Beauregard

Daniel Zarletti

Emmett Russell

James Tomaseski

Liz Arioto

William Ahal

Thomas Shanahan

Walter Jones

Matt Gillen

Thomas Kavicky

PRESENTERS:

Dean McKenzie

Jordan Barab

Jennifer Kole

George Van Sickle

Reynold LeBlanc

Lee Anne Jillings

Patrick Showalter

Elizabeth Way

C O N T E N T S

FULL COMMITTEE AGENDA, DECEMBER 10

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

2 CHAIRMAN MIGLIACCO: All right. For those who
3 weren't here yesterday, we'll go back over the
4 housekeeping fire drills, which -- we had one
5 expectedly yesterday.

6 Go downstairs. And we all went downstairs and
7 went that direction, once we got out of the building.

8 Our shelter in place is this room here. Rest
9 rooms are located on either side of this room, men's
10 and women's.

11 This morning we're pretty far ahead, so we're
12 going to do the last work group, which is the OTI, and
13 then we have the Director of Enforcement Programs
14 coming in.

15 We have LeBlanc Crane Hazard Presentation.
16 Then we have Directorate of Cooperative and State
17 Programs. And then we have Jordan Barab coming in here
18 from the Office of Assistant Secretary. Then we'll
19 have our Public Comment after that, any closing
20 remarks, and then the adjournment.

21 The Public Comment sheets in the back.
22 Anybody in the public who would like to speak, please

1 sign in now. And I'll make that announcement several
2 times.

3 All right. OTI Work Group. Who will be doing
4 the presentation?

5 MR. SHANAHAN: I will.

6 CHAIRMAN MIGLIACCO: Okay.

7 (Discussion was held off the record.)

8 CHAIRMAN MIGLIACCO: No, go ahead and start,
9 we got a quorum.

10 (Laughter.)

11 (Simultaneous conversation.)

12 MR. SHANAHAN: All right. So for the -- Tom
13 Shanahan, NRCA Employee rep for Education and Training
14 Work Group.

15 The minutes are coming around, and we had 24
16 people attend that meeting. Myself and Walter Jones of
17 the Labor Safety & Health Fund of North
18 America -- ACCSH employee representative -- we're the
19 co-chairs, and we called the meeting to order at 3:10.
20 All in attendance introduced themselves, and the
21 minutes of the previous meeting were approved as
22 written.

1 We had a number of items tabled from our
2 meeting last time, and most of those, if not all of
3 them, dealt with the office of training education.
4 Hank Payne was at our meeting last time, and it was a
5 terrific report that he gave us.

6 And so Jim Barnes was here this time, and he
7 answered all of the things. And he was asked to
8 provide an update, and reported that progress has been
9 made on posting of the Susan Harwood Grant Materials in
10 Spanish and English. That's kind of stalled a little
11 bit, because of funding issues; but he will be getting
12 that going as soon as he can.

13 He also reported there has been more added to
14 strengthen the controls on trainers to perform their
15 duties as required. And they're looking at
16 establishing a national database to affirm credentials
17 of trainers. There have been some fraud issues that
18 have occurred, and this has given rise to that need.

19 Mr. Barnes was asked how many online programs
20 are active, and he responded that there are currently
21 20 -- yet aren't currently listed on the OSHA website,
22 but they're working to make that happen.

1 There were questions regarding ensuring the
2 person who receives the 10-hour card from an online
3 course actually is that person, and he indicated that
4 new requirements and thresholds are being instituted to
5 minimize the ability of some to achieve.

6 The practical training test requirement has
7 been added to the curriculum of the 510 course, and as
8 a result, some have not passed -- and that will be
9 incorporated into their materials going forward.

10 That was something that the committee in the
11 past had really talked about, the need to have
12 practical training in the 510 course, so people can
13 really understand -- so we can really see how well they
14 perform in front of a classroom. I thought that was
15 very important.

16 He also indicated that the new CAL OSHA 10 and
17 30 Hour Programs are being taught. And he reported at
18 the summer ACCSH meeting how all of that has been
19 going.

20 Then we had a significant discussion as a
21 result of recent mandates to the OSHA 10-hour program
22 requiring two hours devoted to the Intro to OSHA module

1 at the beginning of the program, and that the program
2 always be taught over two days, instead of having the
3 option to offer it in one day. Mr. Barnes reported
4 that the exchanges were sent to them to implement from
5 the home office.

6 The Committee expressed its displeasure with
7 the fact that the work group was not given its usual
8 opportunity to debate the matters and offer its
9 recommendations. In the past, the Work Group had
10 provided extensive input on program changes, and many
11 of them had been incorporated. The feeling of the Work
12 Group was that this process has been very beneficial to
13 what ends up occurring in the classroom.

14 Mr. Barnes indicated that further changes to
15 the 10 and 30-hour programs would be forthcoming. He
16 reported that these changes present program controls
17 and not content. However, one such change might be
18 that the authorized trainer would have to teach at
19 least 50 percent of the classes.

20 There was discussion on pushback on this
21 point. Namely, as long as authorized instructors are
22 teaching a portion of the program and oversee the

1 entire execution of it, why is it necessary for any one
2 trainer to teach half the class?

3 The proposed mandate would negatively affect
4 the classroom experience, if an instructor is forced to
5 teach sections outside his or her area of expertise:
6 for example, to meet the 50 percent time requirement.
7 Mr. Barnes will take those comments back for
8 consideration.

9 He mentioned that the work group has provided
10 them with some very good directions on ways that they
11 can do more to help stakeholders, and he didn't have
12 any specific recommendations for future work activity.

13 As a result of these discussions, the chairs
14 were asked to discuss the matter of whether a motion
15 should be made recommending OSHA to use the mechanism
16 of the work group as a clearinghouse for changes to the
17 10 and 30-hour programs, before unilateral changes are
18 made.

19 If this is agreed to then, in particular we
20 will ask OSHA to allow the Work Group to reconsider the
21 two-day and two-hour deduction module requirements, and
22 provide feedback to OSHA as to these program changes.

1 The Chairs then brought up the idea of OSHA
2 offering supervisory type training. There has been a
3 tremendous amount of training aimed at workers, but
4 really very little aimed at supervisors: for example,
5 foremen.

6 Topics to include safety & risk management,
7 communication skills, management skills, promoting
8 safety culture. And there was unanimous support and
9 enthusiasm for this idea. As a result, two
10 deliverables were identified: one being a guidance
11 document, and the other a face-to-face class.

12 For the next meeting, the co-chairs will ask
13 participants to submit supervisory management training,
14 ideas, programs, and other materials to use in
15 developing a guidance document for employers wishing to
16 put their own program together.

17 In addition, the chairs will use this
18 information to develop a framework for a face-to-face
19 class that could include learning objectives, and the
20 time frame for suggestion.

21 Once this is completed, the goal would be to
22 submit it to ACCSH to make a formal recommendation that

1 OSHA Office of Training and Education Programs create
2 this in-person class.

3 There being no other business to discuss, the
4 meeting was adjourned at 4:45.

5 And so those are the minutes. We did want to
6 discuss the one matter, though, after --

7 CHAIRMAN MIGLIACCO: Okay. Walter, do you
8 have anything you'd like to add?

9 MR. JONES: I don't.

10 CHAIRMAN MIGLIACCO: Okay. At this time I'll
11 accept a motion to accept the work group's report.

12 Liz? Liz, first. Second? Bill Ahal.

13 All right. Question, discussion?

14 MR. ZARLETTI: Well, I just want to say that
15 there is a misrepresentation of the acronym on the
16 Committee, and it just needs to be corrected.

17 MR. SHANAHAN: Where is it?

18 MR. ZARLETTI: See you got an extra O in this?

19 MR. SHANAHAN: Oh, yeah, I noticed.

20 MR. ZARLETTI: Yeah.

21 (Discussion was held off the record.)

22 MR. ZARLETTI: I mean, you might as well

1 correct that.

2 MR. SHANAHAN: Yeah. Just strike it out.

3 Liz?

4 MS. ARIOTO: Liz Arioto. I would like to
5 thank the co-chairs. I think there was such a vast
6 amount of information given at this committee meeting,
7 and it was really well done. So thank you very much,
8 Walter and Tom.

9 MR. SHANAHAN: Thanks.

10 CHAIRMAN MIGLIACCO: Any other questions or
11 discussion?

12 (No response.)

13 CHAIRMAN MIGLIACCO: All in favor of accepting
14 the report say aye.

15 (Chorus of ayes.)

16 CHAIRMAN MIGLIACCO: Opposed?

17 (No response.)

18 CHAIRMAN MIGLIACCO: The ayes so have it.

19 Okay. Now your OSHA?

20 MR. SHANAHAN: So Walter, you can help me
21 here.

22 As I mentioned there, you know, we had a lot

1 of discussion about the changes that were made to the
2 program. And as we understand it, the way those
3 changes -- they came right here from the home office to
4 Jim and to Hank, and they just had to implement them.
5 And they weren't changes that the Committee had a
6 chance to vet.

7 And so the Committee really felt strongly that
8 that process of them weighing in on matters -- and as a
9 matter of fact, during the meeting, we started really
10 getting into -- especially not the two-day issues so
11 much, but the new introductory to OSHA module that is
12 now being required to teach. The issue that people
13 were coming up with is that it takes much longer than
14 two hours to teach that section, that it covers more
15 material than probably is necessary, it over-emphasizes
16 things. Those were some of the objections.

17 And so, as we were getting into it -- and Jim
18 was there, Jim Barnes was there -- you know, Walter and
19 I stopped the meeting, and just said, "Well, this is
20 exactly why we wanted to have that discussion, because
21 there was a lot of energy about those issues.

22 And so we stopped discussion, because that it

1 currently isn't a mandated part of the program it felt
2 that it was just a waste of time to do that.

3 And so we wanted to come. So the issue before
4 the Committee asked us -- and Walter and I agreed -- to
5 bring it to you all here is, you know, we feel like the
6 work groups have -- that there's a reason that they're
7 in place, you know, the ideas to advise OSHA on these
8 matters. And whether or not OSHA takes that
9 information is really kind of beside the point. It's
10 the idea that we want to be able to offer them that
11 input. And we weren't allowed to do this on this, and
12 they actually are pretty -- two contentious items, as
13 far as everybody around the table is concerned.

14 And so, we really didn't know what the best
15 way of approaching that was, and that's why we wanted
16 to be in terms of: Do we make a motion here that says
17 in the future OSHA should do that, when I think that's
18 probably understood? But maybe there's a way that we
19 could recommend or make a -- I just didn't know exactly
20 what the right mechanism was for that, and if everybody
21 agreed.

22 CHAIRMAN MIGLIACCO: Questions? Discussion?

1 MR. JONES: I'll just follow up just really
2 quickly.

3 The point is that in the past, when OSHA
4 wanted to make changes to the OSHA 10 or the OSHA 30,
5 they ran everything through the committee. And these
6 recent changes that -- they chose to not go through the
7 committee, whether it was because of the charter issue
8 and we haven't been meeting, it's not clear if they
9 would have at least explained that it would be useful,
10 because we don't want to see OSHA begin to not use the
11 committee as an opportunity to run some of these issues
12 by to get our advice and consent.

13 And especially, as he says on in the
14 introductory issue, a OSHA class, maybe we could have
15 vetted some of these problems in advance.

16 CHAIRMAN MIGLIACCO: Anybody else?

17 (No response.)

18 CHAIRMAN MIGLIACCO: If you'll recall, before
19 I took over the chair -- oh, I'm sorry, Tom?

20 MR. BRODERICK: I guess just philosophically
21 -- and we are, my organization is a part of an ed
22 center -- and historically we have done 10-hour

1 training on NASI. And basically, we have two separate
2 groups. We train workers, and then we train
3 supervisors who are coming oftentimes because of owner
4 requirements and other local requirements and so forth,
5 for supervisory people to have the 10-hour training.

6 And I think one of the opportunities that's
7 being missed is -- and we talked about the need for
8 supervisor training -- for those people who are already
9 foremen -- and that's -- I mean, that's where our real
10 opportunity, in my humble opinion, is -- the foremen
11 are really the fingertips of management. When they
12 agree to put that stripe on -- and go out and run the
13 crew, they are the people that are right at the point
14 where work is being done, and they're assigning the
15 work, and they're watching over it.

16 I think that an argument could be made that
17 the workers really do need to know about what their
18 rights are under the Act, to have a safe workplace, and
19 how to file that complaint, and how to document it.

20 And you know, we talked about in the
21 multi-lingual work group a little bit about the 11p
22 protection.

1 So I think those are valuable, and in the same
2 token, I think 2 hours in the beginning of a 10-hour or
3 a 30-hour that is filled with a room of supervisors
4 from foremen on up to superintendents, or project
5 managers, or what have you, if we don't use a part of
6 that 2 hours to really instill in them the spirit of
7 how everything works, and in terms of them being
8 responsible for safety, and some tips on how that
9 responsibility can be carried out, that it would seem
10 like a, you know, reminder about the protections under
11 the Act that would be a good thing.

12 But I don't know that a full two hours that we
13 were given from OTI that we had to do about rights and
14 complaint filing, is necessarily appropriate for an
15 audience of management people and supervisory people.

16 So, you know, in a perfect world, if we're
17 trusting people to go through the 510, and now we're
18 testing them and go through the 500, I think that we
19 should -- and they have to have the 5 years of safety
20 background -- it would seem like we should be able to
21 trust those people to manage the class that they are
22 responsible for, and makes some decisions about how

1 much of that 2 hours would be to go over supervisory
2 responsibilities under the Act, management
3 responsibilities, and then some of the other. That's
4 my thought.

5 CHAIRMAN MIGLIACCO: Any other discussion?

6 (No response.)

7 CHAIRMAN MIGLIACCO: Okay. If you recall,
8 before I took over the chair, I was co-chair of this
9 work group with Tom, and Walter took my place.

10 And at that point, that's when we had the
11 first inclination that OTI wasn't coming through the
12 committee. If you recall, when it came to the 510,
13 they were pushing that 510. And in fact, if you
14 recall, we had Hank come in here, and he was told the
15 committee will assist them; but they have to ask us and
16 to give us a chance to assist them.

17 And it seems like what we thought we got
18 straightened out at that time has not been straightened
19 out, if they had done what -- you know, this again. So
20 I don't know if we have Hank come from Chicago again at
21 our next meeting, and try to reiterate what we've been
22 trying to do, and why we're here.

1 I mean, we're here to assist them and give
2 guidance. It seems like I'm not sure who gave them
3 their marching orders to do this. I mean, they
4 didn't -- probably didn't tell you this, but it was
5 just the home office. So -- the home office is pretty
6 big, so (laughing).

7 MR. JONES: Well, he said second floor, he was
8 pretty clear that it was the second floor. Without
9 giving names, he was pretty clear that it was from the
10 Assistant Secretary --

11 CHAIRMAN MIGLIACCO: Well, it could have been
12 the solicitors, it could have been the Secretary, it
13 could have been anybody. It's just that I mean, it
14 just seems kind of funny that, I mean, here, you know,
15 we're trying to help him and assist him, and they're
16 not even asking for our assistance, and they're pushing
17 things through. So --

18 MR. SHANAHAN: He definitely said to us that
19 they didn't have a choice in the matter. So,
20 whatever -- however it came to them, it wasn't an issue
21 open for discussion.

22 CHAIRMAN MIGLIACCO: I don't know, I think you

1 always have a choice.

2 MR. SHANAHAN: Mm-hmm.

3 CHAIRMAN MIGLIACCO: You might not want to
4 take that choice, but you always have a choice
5 (laughing). So --

6 MR. SHANAHAN: That's what he told us.

7 CHAIRMAN MIGLIACCO: Yeah. Oh, no, no. I'm
8 just saying that just you buck the system, you usually
9 get --

10 MR. ZARLETTI: Well, I don't know if this is a
11 motion, but it certainly is a suggestion, then.

12 We need to determine what our role will be
13 with them, going forward. And if the role continues as
14 it is now, then we've found a place to fit I2P2 as far
15 as the work groups goes, because we don't need this one
16 anymore.

17 CHAIRMAN MIGLIACCO: It's almost -- yeah.

18 MR. BRODERICK: You're right.

19 MR. ZARLETTI: Well, then just -- we were
20 looking -- we could only have eight, and we have nine.
21 Something's got to go. If we have one that's not
22 working, it's gone, and we move on.

1 And if they need help, why don't we do what we
2 did this time? We needed to get I2P2 discussed, so we
3 dropped the residential follow-through date for the
4 week to make room for it.

5 So if something big came up with OTI, we'd
6 drop something for the week, go over it, deal with it,
7 back to normal.

8 CHAIRMAN MIGLIACCO: All right. Discussion?

9 MR. SHANAHAN: Well, I'm not so sure, Dan,
10 that that's the right read of what happened. I think,
11 you know, what we're asking -- or what the group
12 is -- because this group, in all honesty, I think, has
13 had a very positive impact on those classes.

14 I mean we've done a lot of work with OTI. I
15 mean, I didn't realize that that -- where it come from,
16 Frank. So it's good to have that history. Because
17 when I came, you know, a couple of years ago, we were
18 kind of just starting to work on the 10 and 30-hour
19 Program, but we had a lot of impact on those classes.

20 So in other words, I think that process has
21 really worked. And this time, for some reason, they
22 chose not to use it. And so our issue was to kind of

1 make a statement asking what's the best way to make a
2 statement to remind OSHA, the second floor or whoever,
3 that if you're going to make these changes, has it gone
4 through the committee work group?

5 CHAIRMAN MIGLIACCO: Walter?

6 MR. JONES: I don't know that we need to do a
7 motion, but maybe we could just informally ask the
8 directorate to follow up on these concerns, and bring
9 back some information on exactly, you know, the
10 procedures and why.

11 And the big issue is just why didn't they just
12 come to us yesterday and say, "Wow, we had to institute
13 these two changes. You guys haven't met, and they need
14 to be done right away," or whatever as their rationale,
15 "and we don't plan on doing this again in the future,"
16 and that would have been it. And then maybe we could
17 discuss it and provide them information for them going
18 forward on future changes.

19 I mean, there's lots of different things. But
20 I don't know that we necessarily need to do a motion at
21 this time. We could just ask for advice. I'm not
22 ready to shake the tree that much, I guess, on the

1 issue. But just if you could bring back some
2 information on what's the thinking here, and was it an
3 anomaly or --

4 CHAIRMAN MIGLIACCO: Of the group sitting here
5 of the committee members that do perform the OSHA 10
6 and 30's, it went into effect April. I think it was
7 April 9th, in fact.

8 What's your take on the two hours and the over
9 two days? Steve?

10 MR. HAWKINS: Well, personally, I think the
11 two days is needed. I'm an authorized trainer and
12 have -- do a lot of training at our office, anyway.
13 And you know, you really can't do this 10-hour justice
14 by doing ten straight hours, then taking a lunch break,
15 and -- I mean, it just doesn't seem doable to me
16 really.

17 The two-hour module has a lot of good
18 information in it, it -- I think most of our staff
19 think that two hours is -- I mean, when you do two
20 hours on that, that's an hour and an hour or so that
21 you can't do something else.

22 And really, it depends. Sometimes you feel

1 like that two hours is well spent with the group you're
2 talking to, and sometimes exactly like Tom said, if
3 it's supervisors and managers and more experienced
4 people, then two hours on worker rights doesn't seem to
5 be time well spent.

6 I guess -- I mean, that's been kind of our
7 take on it.

8 CHAIRMAN MIGLIACCO: Anybody else? Liz?

9 MS. ARIOTO: Oh, I think for the two hours, I
10 think it's a push. I think, you know, you have to move
11 the class along with two hours.

12 I agree with the 5 hours -- I think a 10-hour
13 class in 1 day -- I wonder how much the student is
14 really retaining. So I think over really having two
15 days is a lot better than the straight 10 hours.

16 But I think the information is good. I agree
17 with Tom, I think this part for supervisory could be
18 added in there, or something else deleted. I think
19 that's a, you know, great concept.

20 But the product itself I think is good. I
21 think it's good information for everyone.

22 CHAIRMAN MIGLIACCO: Anybody else? Kevin?

1 MR. BEAUREGARD: I would mirror what Steve
2 said.

3 I do think that trying to get everything in in
4 one day is difficult, and the feedback we've gotten is
5 there's a retention issue when you're trying
6 to -- you've sat through 10-hour classes, and it starts
7 to drag at the end. And I do think that two days works
8 better.

9 I know it's more time-consuming for people
10 that are dealing with productivity issues and other
11 things; but it's been our experience as far as the
12 training to be effective, it seems to work better to
13 have it over two days than one day.

14 The two-hour component, like Steven and Tom
15 said, it really depends on what the audience is. I
16 think the intent was to make sure that employees going
17 through that course knew what their rights were in
18 regards to making complaints, and the other rights that
19 they have in regards to Safety & Health.

20 And so I don't think that's a bad thing, but I
21 think that, dependent upon what the target audience is,
22 the types of comments that we're getting back from

1 those that attend the class are that there may be cases
2 where an hour may be sufficient, and it may be better
3 to use an hour of that time to more specific Safety &
4 Health issues that they're going to encounter on the
5 job.

6 CHAIRMAN MIGLIACCO: Okay. Mike?

7 MR. THIBODEAUX: Mike Thibodeaux. I've talked
8 to a few of the folks who have done this new 10-hour
9 presentation. And the 2-hour module that they've set
10 up usually goes over the 2 hours, because all of the
11 detail that they have, and the things that they have to
12 present in that 2-hour presentation, it says -- again,
13 it takes away from, you know, other safety classes that
14 show these folks how to be safe when they're working.

15 So, that's something else that maybe OTI needs
16 to look at, as to the content that they have here, and
17 if what they've scheduled for two hours is really a
18 two-hour presentation. Because I've had three or four
19 people tell me that they went 15 and 20 minutes over,
20 because of the going through all of the detail and
21 giving their little -- breaking them up into groups,
22 and things of that nature.

1 And again, I personally think, from the
2 training that I've done before, that two hours is a
3 little much for all of that. It can probably be done
4 in an hour or an hour and 15 minutes. And that will
5 give you more time to get to practical safety issues on
6 the job for the workers.

7 CHAIRMAN MIGLIACCO: All right. Tom and
8 Walter? There is -- I guess that's one suggestion when
9 you meet at your next time, you hopefully they will
10 either be there on the phone, or whatever, and bring
11 that to their attention at that two-hour part.

12 It seems like people don't have a problem with
13 the two-day, but they do have a problem with the two
14 hours.

15 PARTICIPANT: Right.

16 CHAIRMAN MIGLIACCO: And Ben's office said
17 that they would contact and find out what are they
18 going to -- what do they want us for? I mean and see
19 what, you know, our task is with those people, with
20 that group. So --

21 MR. SHANAHAN: I guess just to reiterate --

22 CHAIRMAN MIGLIACCO: Tom?

1 MR. SHANAHAN: So in other words, this is
2 exactly what happened in our meeting, as we started
3 debating, then, the tenets of those -- of the issue.
4 And that's a valid discussion to be having, because
5 there is -- it needs to be vetted.

6 But there really is a super-issue, and that
7 really is, in the first place, it should have
8 come -- you know, our belief is that it should come
9 here. That's the whole purpose of the work group.

10 CHAIRMAN MIGLIACCO: Well, that's right.

11 MR. SHANAHAN: And so I don't -- I just wanted
12 to ask the question -- and Walter teed up the idea of,
13 you know, giving, you know, the staff the -- to kind of
14 take it there.

15 You know, my concern is that after having done
16 this now for a couple of years is: If we don't make a
17 motion about it, even the motions we're having a hard
18 time recapping, you know, just because of turnover and
19 things like that.

20 And I guess I would just like the idea of
21 having us as a group to decide whether or not a
22 motion -- I mean, in deference to what Walter was

1 saying too; maybe that's overkill -- but I kind of
2 would like to make the point; because I think the group
3 was pretty animated about that, and, you know, I think
4 it's a valid point.

5 I mean, you spent your time doing that and
6 working on it, and it feels a little bit like
7 you're -- when push comes to shove, you're not being
8 consulted with, and then that's -- and we've spent a
9 lot of time working on that, on those classes.

10 So, I would like to discuss for a moment, if
11 a --

12 CHAIRMAN MIGLIACCO: No, you don't have to
13 discuss it.

14 MR. SHANAHAN: Oh.

15 CHAIRMAN MIGLIACCO: Make the motion. If you
16 make a motion, then we'll have questions and discussion
17 on the motion.

18 MR. SHANAHAN: Oh, okay.

19 CHAIRMAN MIGLIACCO: So?

20 MR. SHANAHAN: You'd think I'd learn that by
21 now.

22 (Laughter.)

1 MR. SHANAHAN: All right. So I guess I'd like
2 to make a motion that ACCSH ask OSHA to run changes
3 that --

4 SPEAKER: Ensure that they run changes.

5 MR. SHANAHAN: To ensure that the changes that
6 are proposed for the OSHA 10 and 30-hour first be run
7 through the --

8 (Discussion was held off the record.)

9 MR. SHANAHAN: Through the chairs for vetting.

10 CHAIRMAN MIGLIACCO: Second?

11 SPEAKER: Second.

12 CHAIRMAN MIGLIACCO: Okay. Questions,
13 discussion? Tom?

14 MR. BRODERICK: From a process standpoint, I'm
15 kind of wondering what -- how many of these
16 recommendations -- I mean, we can put them in, and my
17 concern is that if they would be picked up at some
18 point, that OTI would see them.

19 But if the second floor is driving the bus, is
20 there a reasonable expectation that such a
21 recommendation would get there for them to place the
22 onus on OTI to do that?

1 CHAIRMAN MIGLIACCO: Well, I think with the
2 reports coming back from before, when Bill Parson was
3 done it, and then yesterday Ben coming back with
4 recommendations, letting us know where they're at, at
5 least next meeting we'd have an idea if the second
6 floor did get it and what they're doing with it.

7 If they didn't get it, well, then they're not
8 doing anything with it.

9 MR. JONES: Or, as Susan says, if they said,
10 "No, we're not going to," then we could "Okay, fine,"
11 and move onto another issue.

12 CHAIRMAN MIGLIACCO: Move on to another issue.

13 MR. BRODERICK: Well, either that, or we can
14 be tagging both, you know, a direct transmittal from
15 ACCSH to the Assistant Secretary.

16 MR. JONES: Can we do that?

17 MR. SHANAHAN: I don't know.

18 MR. JONES: I mean, the lawyers there -- I
19 thought --

20 (Discussion was held off the record.)

21 CHAIRMAN MIGLIACCO: You'd better ask him the
22 question.

1 MR. JONES: Oh, I'm saying, is that our role?

2 I thought we advised.

3 CHAIRMAN MIGLIACCO: Yeah, we advise.

4 SPEAKER: We advise.

5 MR. JONES: Yeah. So I don't know.

6 SPEAKER: Yeah.

7 MR. JONES: I'm just following --

8 CHAIRMAN MIGLIACCO: Kevin?

9 MR. BEAUREGARD: I just wanted to say, I don't
10 disagree with items going through -- and I think it's
11 nice, certainly, that items go through OTI if there are
12 significant changes being proposed to the 10 or 30, or
13 whatever training it is.

14 I do think that we got to be careful of asking
15 or making a motion that all changes go through that
16 work group, because there could be a myriad of
17 different things, and we got to remember that the 10
18 and 30-hour Program course is a voluntary program
19 that's put together by OSHA.

20 And they may have, you know, some type of
21 minute change that may not be necessarily needed to
22 open up discussion. But at the same time, I think the

1 intent is -- I think it would be a good idea to get
2 real good clarification on what exactly the OTI work
3 group's charter is, and how OSHA wants to work with
4 that work group. Because it is an advisory committee,
5 and we do need to advise them.

6 Now. OSHA can take that advice or not take
7 that advice, but they're -- you know, coming from a
8 state entity as well, we develop policies and
9 procedures and programs all the time. And we do
10 appreciate getting advice. But you know, at some point
11 in time, you know, somebody on the second floor may
12 decide, "This is the way I want to go with the
13 program."

14 So I think you just need to, on your motion,
15 just be careful about recommending that all changes go
16 through the OTI Committee.

17 CHAIRMAN MIGLIACCO: Thomas?

18 MR. JONES: Well, I think one point he did say
19 is "through the chair." So that doesn't necessarily
20 imply the committee, and that the committee has to meet
21 and go over it. They could give a phone call or e-mail
22 to the chair, as in "This is what we're thinking," and

1 then we could decide on whether it's important -- or
2 not just we, but whoever is chairing the committee
3 could decide on --

4 (Discussion was held off the record.)

5 MS. BILHORN: Is that possible? Is it
6 possible to operate that way?

7 CHAIRMAN MIGLIACCO: Oh, they can notify the
8 chairs, because the chairs can decide whether --

9 MS. BILHORN: That's not what he said. He
10 said not just notify but actually run it through the
11 chairs, so whatever --

12 CHAIRMAN MIGLIACCO: That's what I'm saying.
13 Well, notifying and running through is the same thing.

14 MS. BILHORN: Okay. Is that possible?

15 CHAIRMAN MIGLIACCO: Yeah.

16 MS. BILHORN: Okay.

17 CHAIRMAN MIGLIACCO: Because it's been done
18 before.

19 Steve?

20 MR. HAWKINS: Just speaking personally, I
21 would feel more comfortable with a motion that just
22 says, "ACCSH encourages the agency to seek the input of

1 the OTI Training Work Group before making major changes
2 to the program." That sounds better to me than --

3 CHAIRMAN MIGLIACCO: All right --

4 MR. HAWKINS: I mean, the way we're saying it,
5 it's almost like somehow --

6 MS. BILHORN: We own it.

7 MR. HAWKINS: Yeah. And they have an
8 obligation to run it through, though they really don't.
9 We all know that.

10 And I do think it's an important group of
11 people to get their input from. But there's lots of
12 other factors at play here, you know, one of which is
13 fraud, frankly. And you know, the Agency did a lot of
14 work to try to tighten that program up. But they
15 didn't run that program through us, nor do I think they
16 need to.

17 So, you know, I think our motion should be
18 something more in line with encourage them to seek
19 input from the OTI Work Group before making, you know,
20 major changes to the program, and I just would feel
21 more comfortable with that. I will vote either way,
22 but --

1 CHAIRMAN MIGLIACCO: Tom, are you willing to
2 accept the changes?

3 MR. SHANAHAN: Sure. I wrote it down, ACCSH
4 to encourage the Agency to seek input from the work
5 group before making changes to the 10 and 30-hour
6 program.

7 SPEAKER: Major --

8 MR. HAWKINS: Major changes.

9 MR. JONES: Significant?

10 SPEAKER: Significant.

11 MR. HAWKINS: Significant changes.

12 (Simultaneous conversation.)

13 MR. HAWKINS: Because just as Kevin said, you
14 know, they didn't come to ask us what we thought about
15 fraud, nor did I think they would need to, you know,
16 before -- they don't call us and tell us of things,
17 but --

18 MR. SHANAHAN: Steve, actually, they did.

19 MR. HAWKINS: These are content changes, and I
20 think they should have -- I think they would want to
21 know what the people on the OTI work group would think
22 about those content changes.

1 But other changes they might make to the
2 program really wouldn't necessitate coming through the
3 work group. And that doesn't seem --

4 MR. SHANAHAN: Well, you know, but to your
5 point -- because we were debating that, but then at the
6 meeting, Jim brought up the 50 percent issue, which
7 really isn't a content issue. I mean, it really is a
8 programmatic change, that if -- you know, that you
9 would have to teach --

10 MR. HAWKINS: That's a pretty major change. I
11 mean, I'm thinking that's a significant change, if you
12 say that a single instructor has to teach 50 percent of
13 the course, you know, I think that's a mistake, and I
14 think they would want our input on a major change.

15 MR. SHANAHAN: But my point is that's not a
16 content issue, that's a --

17 MR. HAWKINS: Oh, no. I'm just using content
18 for an example. I mean, I would want our motion to be
19 significant issues.

20 (Simultaneous conversation.)

21 MR. HAWKINS: Not just content.

22 MR. SHANAHAN: Yeah. Okay.

1 CHAIRMAN MIGLIACCO: Tom, will you read the
2 motion as you'd like it to be now?

3 MR. SHANAHAN: Sure. So I change the motion
4 to ask ACCSH to encourage the agency to seek the input
5 from the OTI Work Group before making significant
6 changes to the OSHA 10 and 30-hour classes.

7 CHAIRMAN MIGLIACCO: Okay. Second?

8 MS. ARIOTO: Second.

9 CHAIRMAN MIGLIACCO: Any discussion or
10 question on that?

11 (No response.)

12 CHAIRMAN MIGLIACCO: There being none, all in
13 favor say aye?

14 (Chorus of ayes.)

15 CHAIRMAN MIGLIACCO: Opposed?

16 (No response.)

17 CHAIRMAN MIGLIACCO: Ayes so have it.

18 All right. Bob, would you like to enter
19 your --

20 MR. BIERSNER: Yes. Mr. Chair, I'd like to at
21 this time submit to the record Exhibit No. 33, entitled
22 Meeting Minutes, US Department of Labor, OSHA, Advisory

1 Committee on Construction Safety and Health, ACCSH,
2 Education and Training Work Group, December 8, 2010,
3 Washington, D.C.

4 CHAIRMAN MIGLIACCO: And do you have the
5 writing of the motion --

6 MR. BIERSNER: Yeah. And could I get a
7 writing of the motion, please?

8 PARTICIPANT: Oh, sure.

9 CHAIRMAN MIGLIACCO: All right. That
10 concludes the work groups for this session.

11 Emmett, let's go back to what we started
12 yesterday after we were asked to go over this, and
13 discuss that now.

14 MR. RUSSELL: My question would be: Has
15 everyone had a chance to review the document that we
16 got yesterday, which is the statement of Best Practices
17 of General Training and Familiarization of Aerial Work
18 Platform Equipment?

19 And if so -- and going through the document,
20 the document really does a good job, I think, of
21 outlining training and training resources and the
22 difference between training and familiarization, to the

1 point where I think it would -- for the industry to
2 really understand these concepts and implement these
3 concepts, I think it would actually be a good thing.

4 So again, my motion was to have OSHA take a
5 look at the document and actually place it or make it
6 available on the OSHA website, so that the industry can
7 actually take advantage of the information presented
8 here.

9 Now, you know, again, I don't -- at this
10 point, I guess I'd like to deal with the concept first.
11 Terms of how OSHA might do it, I think, becomes a
12 different item.

13 (Discussion was held off the record.)

14 MS. ARIOTO: Liz Arioto. Are we
15 talking -- are we recommending the product itself?
16 Because there are some questions that were listed in
17 here that I would like us to address.

18 MR. RUSSELL: For me, I guess I'm not so
19 detailed on the product as the concept. And if OSHA
20 were to say, "Well, there are some excellent concepts,
21 and we'd like to actually deal with some of the
22 concepts, I think, "Fine."

1 If OSHA feels comfortable that -- to actually
2 place the document as it is written, I would not have a
3 problem with that.

4 CHAIRMAN MIGLIACCO: Any other questions or
5 discussion on this?

6 MR. HAWKINS: Would our motion be to recommend
7 to the agency that they review this, and consider for
8 posting on the scaffold page? Because they already
9 have a scaffold page, and this could just be a link on
10 the scaffold page. Is that what we're basically
11 talking about, Emmett?

12 MR. RUSSELL: Yes.

13 MS. ARIOTO: I was just going to give an
14 example. On page 14, there's one that says,
15 "Frequency," you know, and it was -- so you should have
16 training prior and retrained every three years. But
17 there's one thing I think is important; you should be
18 retrained after an accident or incident.

19 MR. RUSSELL: Okay.

20 MS. ARIOTO: Retrained. And these little
21 things I think that are missing in here that could be
22 important.

1 And just a couple of other things. But that
2 was one of the things I noted in here. I think that's
3 an important one, if someone's had an injury or had an
4 incident with a forklift, they should go through
5 retraining.

6 MR. RUSSELL: Well, and I guess my -- in
7 response to what you're saying, would it be more
8 appropriate to have the Agency review and implement
9 content?

10 MR. JONES: What exactly are we discussing?

11 (Discussion was held off the record.)

12 MR. RUSSELL: Yes.

13 MR. JONES: I mean, but what's the motion?

14 MR. HAWKINS: What I just said, and Emmett
15 said he agreed, is that we would recommend that OSHA
16 consider this document and consider posting it on their
17 scaffold web page.

18 MR. JONES: Okay. Right, right.

19 MR. HAWKINS: That they would review it and
20 then they would consider posting it on their web page.
21 Because it does do a pretty good job of --

22 MR. JONES: All right, okay.

1 MR. HAWKINS: -- discussing the differences
2 between familiarization of the equipment and actual
3 training on it.

4 MR. JONES: Oh, okay.

5 CHAIRMAN MIGLIACCO: Okay. At this time I'd
6 like Dean McKenzie to come up and speak on this. We've
7 been talking about this. And he might have an easier
8 way to get this through and worked out for us.

9 MR. MCKENZIE: Good morning. Dean McKenzie,
10 Office of Construction Services.

11 One potential mechanism that we could use for
12 this document would be to -- we've been encouraged
13 where there is due cause, like mast climber issues, to
14 run them through the Alliance Program.

15 That would be a product that the Scaffold
16 Industry Association and the OSHA Alliance could vet
17 the product, edit to a format that would be acceptable
18 in OSHA's terms, and it will go on the web page and in
19 SIA's web page, as well as an Alliance product.

20 So it would be cobranded. It is something
21 that would, you know -- we are the implementation team
22 members Scaffold Industry Association Alliance. So,

1 you know, we can potentially run it through that way,
2 if that recommendation would suffice for the committee.

3 CHAIRMAN MIGLIACCO: Emmett? Matt?

4 MR. GILLEN: Yeah. Matt Gillen. I was just
5 going to say, when I look at this and read it, I think
6 of it as something that would be useful for the
7 Directorate of Standards and Guidance and OTI to see,
8 just as examples of models of -- the concept of
9 familiarization and model-specific familiarization are
10 interesting ones that could be useful, you know, for
11 future issues, for people to use those similar concepts
12 in regulation and guidance, too.

13 CHAIRMAN MIGLIACCO: But putting it through
14 the way Dean has just suggested, would that meet --

15 MR. GILLEN: Do you think they would look at
16 it at that point? Do you think if it's posted there,
17 they would know to take a look?

18 MR. MCKENZIE: Well, and we could encourage
19 that, you know, to the best of our abilities.

20 MR. GILLEN: Okay.

21 MR. MCKENZIE: But the original request was to
22 find a way to get on web, then publish it. It doesn't

1 mean that's the only place it can go. But that would
2 be a mechanism that we could do and it would suit one
3 of our office's mandates of trying to get the Alliance
4 Program to develop products that are suiting a need
5 where people are getting hurt and dying.

6 CHAIRMAN MIGLIACCO: Okay. Tom?

7 MR. KAVICKY: I have to agree with -- Tom
8 Kavicky with the Carpenters -- I have to agree with
9 Dean.

10 Thinking about this, and we are involved in
11 Alliances back home, and that is a mechanism to bring
12 products to OSHA. And with OSHA participating, you can
13 tweak it the way it's got to be done. So I would
14 encourage that.

15 MR. RUSSELL: Yes, so I would not have a
16 problem amending my motion to the point where this
17 could be looked at by OSHA and placed on the Alliance
18 page.

19 CHAIRMAN MIGLIACCO: Okay. Tom?

20 MR. SHANAHAN: Frank, I have a question for
21 Dean.

22 So if it's placed on there, that doesn't limit

1 access to it in any way, shape, or form?

2 MR. MCKENZIE: Oh, no --

3 (Simultaneous conversation.)

4 CHAIRMAN MIGLIACCO: Any discussion,
5 questions? Susan?

6 MS. BILHORN: Susan Bilhorn. Yeah. I was
7 hearing it as slightly different and -- on the page,
8 but encouraging the Alliance to review it. Right?

9 MR. MCKENZIE: Oh, the Alliance it would have
10 to be vetted, like any Alliance product.

11 MS. BILHORN: Before it gets on the -- yeah.

12 MR. MCKENZIE: Then potentially edited to meet
13 all standards and be in a format, you know, not
14 necessarily endorsing any agent, you know, group, or
15 product, or anything like that.

16 You know, and once that process is done, it
17 could go on to the Alliance web page with the Scaffold
18 Industry Association -- and are a partner in the
19 document, so --

20 MS. BILHORN: Okay.

21 CHAIRMAN MIGLIACCO: I think this is just a
22 quicker way of getting the train to the station. Okay.

1 Thank you.

2 MS. BILHORN: And more effective.

3 CHAIRMAN MIGLIACCO: Yes. That's what I said,
4 we just want to get there as quickly as possible, and
5 that's what we're trying to figure out, how would we go
6 about -- rather than -- OSHA, to have OSHA go to an
7 Alliance.

8 All right. Is there any more question, or
9 discussion on -- Tom?

10 MR. BRODERICK: I just want to -- I know that
11 IPAF right now is in the process of applying for
12 negotiating with OSHA on an Alliance as well. I don't
13 know if that muddies the water or not.

14 And, well, I guess to follow that up, I'm sure
15 that they would be interested in championing this
16 document as well, since it does really -- that elevated
17 work platform.

18 CHAIRMAN MIGLIACCO: I don't think there can
19 be two champions on this. I think they gave it to us
20 yesterday to use, you know, however we can get it on
21 there. I'm not saying -- I don't think they would mind
22 going through an Alliance, and if they have an

1 Alliance, they could put it through themselves also.

2 MR. BRODERICK: Right. It's still the same.

3 CHAIRMAN MIGLIACCO: It's still the same,
4 yeah, it's still the same mechanism.

5 MR. MCKENZIE: Right.

6 CHAIRMAN MIGLIACCO: Any other questions or
7 discussions on the motion? Emmett, could you read the
8 motion for Bob?

9 (Laughter.)

10 CHAIRMAN MIGLIACCO: He has to write it down.

11 (Laughter.)

12 (Simultaneous conversation.)

13 MR. RUSSELL: The motion is -- we have a
14 document, the statement of best practices of general
15 training and familiarization for aerial platform
16 equipment. And the motion would be to actually have
17 this document be vetted by OSHA and the Alliance, and
18 placed on the web, at least initially on maybe an
19 Alliance web page and other spots that it would serve
20 the industry's interests.

21 (Discussion was held off the record.)

22 SPEAKER: Second.

1 CHAIRMAN MIGLIACCO: Okay. It's been
2 seconded. Any more questions or discussion?

3 MS. BILHORN: Only, I don't think it's about
4 the document, it's about the contents. So I just
5 wouldn't -- your motion said that the document be
6 placed. And I don't think it's the document that
7 you're worried about, it's the content, right?

8 MR. RUSSELL: I agree, yes.

9 CHAIRMAN MIGLIACCO: So "document," we'd
10 change to "content?"

11 MR. RUSSELL: Content.

12 CHAIRMAN MIGLIACCO: Okay --

13 MR. RUSSELL: Content of the document.

14 SPEAKER: Or concept.

15 (Laughter.)

16 CHAIRMAN MIGLIACCO: All right. Seeing no
17 other questions or discussion, all in favor say aye,
18 accepting this?

19 (Chorus of ayes.)

20 CHAIRMAN MIGLIACCO: Opposed?

21 (No response.)

22 CHAIRMAN MIGLIACCO: Seeing none, the ayes so

1 have it.

2 (Discussion was held off the record.)

3 CHAIRMAN MIGLIACCO: All right. Let's move it
4 right along here. Let's see what we have here next.

5 Directorate of Enforcement of Programs? Is
6 there someone here from SVEP?

7 SPEAKER: Jennifer.

8 CHAIRMAN MIGLIACCO: Jennifer, if you will
9 come up and state your name for the record there, and
10 then --

11 (Discussion was held off the record.)

12 MS. KOLE: Sorry about that.

13 CHAIRMAN MIGLIACCO: State your name please.

14 MS. KOLE: Yes. Good morning, my name is
15 Jennifer Kole, I'm with the Directorate of Enforcement
16 Programs, Office of General Industry.

17 I'm here to talk about the Severe Violator
18 Enforcement Program, otherwise known as SVEP.

19 (Discussion was held off the record.)

20 MS. KOLE: Go ahead, you can go on.

21 (Discussion was held off the record.)

22 MS. KOLE: This SVEP program, it replaces the

1 enhanced enforcement program, which had been in place
2 since 2003.

3 The reason that we had taken a look at the EEP
4 program, as we called it, was the Office of Inspector
5 General had done a review of the program, and in their
6 findings they had identified as -- deficiencies within
7 some of the criteria and some of our procedures. So
8 they had recommended that we come together and review
9 the program.

10 So, in May of 2009, we compiled a high-level
11 task force. It was comprised of regional
12 administrators, deputy regional administrators, the
13 Office of the Solicitor, and the Directorate of
14 Enforcement Programs to go over the criteria and look
15 at how we could refine and sort of tweak the EEP, and
16 create what is now known as the SVEP.

17 Some of the significant changes that we see
18 with the SVEP is that -- what we termed as
19 high-emphasis hazards. These high-emphasis
20 hazards -- I will highlight a few of them in the
21 upcoming slides, but they're based on fall hazards and
22 hazards identified in our National Emphasis programs.

1 And this is the list of, at the time, the current
2 National Emphasis programs.

3 We have recently seen two new Emphasis
4 programs come in our Office of Health Enforcement. So
5 we will be making changes. It's just at this time we
6 are still going only with these hazards identified in
7 the SVEP. But we have left room for changes as certain
8 emphasis programs drop and certain ones begin.

9 The other change that we made was a nationwide
10 referral. And this is also -- state plans now become
11 mandatory adoption. The states had 6 months from the
12 date of the effective date of the SVEP, which was June
13 18, 2010. So we are actually rapidly approaching the
14 deadline in which all state plans will have to let us
15 know whether or not they're adopting the SVEP as OSHA
16 states, whether they will come up with one that is at
17 least effective, or if they will come up ones with
18 more, I guess, higher criteria.

19 So we should be having information, and we
20 will be connecting with the state plans. We heard from
21 a few of them so far, but we have been working with our
22 Office of -- Directorate of Compliance

1 and -- Cooperative and State Programs on this.

2 In terms of the nationwide referrals, this
3 means that if we find a company that -- an employer
4 that we feel that there seems to be a broader pattern
5 of non-compliance, that we're finding issues and other
6 things that are just making us feel that it's not just
7 site-specific, that this might be something that is
8 systematic throughout the company, we will then refer.

9 And the referrals could be either
10 region-to-region or, if it's four or more sites, they
11 will -- they have to -- the area office that has the
12 SVEP has to notify the national office.

13 We will then contact our Office of Statistics,
14 they will run a random sample, using, as pointed out up
15 here, the same three-digit NACs or the two-digit SIC
16 code, to find all related establishments that are in
17 that similar industry. And then we will conduct
18 inspections.

19 There have been a few referrals, mostly off of
20 egregious cases, and egregious cases are
21 instance-by-instance. And so we have seen, in some of
22 the egregious cases, referrals being made to other

1 sites.

2 What we've also found is that on some of these
3 referrals, those referrals are in compliance. That's
4 it, that's the end of the referral.

5 There has also been, on the other spectrum,
6 where that referral has actually also -- the inspection
7 has been found to be -- has found to have met the
8 criteria, and has become a SVEP itself.

9 In addition, you know, we are working with
10 construction, general industry, and maritime, depending
11 on what inspection and the SVEPs found.

12 The nationwide inspection we deemed -- through
13 1908.7, we deemed that this is a critical inspection.
14 This allows us, with a SVEP, to go into do referrals,
15 to put them in line.

16 And also, the effects upon the consultative
17 visits, meaning that, should we find a SVEP, or should
18 we go in and it is determined to be a SVEP, the
19 consultation, if it's already in progress, it has to
20 stop, and the consultation visit cannot take place
21 until the SVEP enforcement action or inspection has
22 been completed.

1 As I was mentioning, to become a SVEP, you
2 have to meet our certain criteria. The criteria was
3 definitely refined and changed from the Enhanced
4 Enforcement Program.

5 Under the EEP, it was a fatality with a
6 serious. Now we're looking at a fatality with one or
7 more willful repeated or failure-to-abate. And it's
8 based on serious violations and related to the death.
9 This can be any combination. It could be one willful,
10 or it could be one repeat. Under the fatality, it
11 truly is just -- the fatality with the willful is
12 usually what we have been finding.

13 The next criteria is our non-fatality
14 catastrophe criterion. These are where the
15 high-emphasis hazards come in. And again, I will show
16 some listings of which standards we have chosen and
17 have deemed to be the high-emphasis hazard.

18 Under this criteria, you have to have two or
19 more willful repeat or failure-to-abate. It can be any
20 combination of those. So you may have two willfuls;
21 you may have a willful or a repeat; a repeat and a
22 failure-to-abate. But they have to be based on

1 high-gravity serious violations.

2 We have seen some where it has been based on
3 low gravity, and that is not a SVEP. It, again, has to
4 be based on a high-gravity serious.

5 The next criteria is our criteria for hazards
6 due to the potential release of highly-hazardous
7 chemicals, or PSM.

8 This one, instead of two, it is three or more
9 willful, based on high-gravity serious violations. And
10 that's, of course, of 1910.119. This was due to the
11 fact that the PSM standard is a little bit more
12 complex, and they felt that they didn't want just
13 "paperwork violations," that it was truly due to the
14 high-gravity violations. And so PSM we moved to three
15 instead of two.

16 The last criteria is, as I mentioned, is
17 through our egregious or instance-by-instance citation,
18 these enforcement actions. And this also includes any
19 record-keeping egregious cases that we may see.

20 As I've been talking about the high-emphasis
21 hazard, this just gives you an example. It is not the
22 complete list. The complete list is -- can be found in

1 the SVEP directive. Only these citations that are
2 listed -- if you have a violation and you meet those
3 criteria. So, you know, on here we have 1910.23 and
4 .28. So should you have a 1910.27, a .25, you would
5 not fall under this criteria.

6 You know, certainly, we do -- we cover general
7 industry, we cover construction and maritime.

8 And this is showing falls. These are showing
9 some of our health. This is showing silica.

10 And for some of our health high hazards, it's
11 based on sampling, and over-exposures.

12 MR. GILLEN: So there is
13 really -- that's -- is there anything equivalent for
14 construction, for silica?

15 MS. KOLE: I think right -- I'm not sure.

16 (Simultaneous conversation.)

17 MS. KOLE: Yeah, 1926, I was going to say
18 1955.

19 MR. KAVICKY: But that's not it --

20 MR. GILLEN: But that's not silica, though.
21 Basically silica is unenforceable right now, I guess.

22 MS. KOLE: Oh.

1 MR. GILLEN: Thanks.

2 MS. KOLE: Next page, please.

3 MR. SHANAHAN: I --

4 MS. KOLE: Yep?

5 MR. SHANAHAN: Oh the previous two slides
6 back, so the fall hazards there, for example, so
7 in -- 1926.501 -- fall protection, is it that specific
8 citation or is it anything in that sub-paragraph?

9 MS. KOLE: It's anything that has 501, so it
10 could be 501 -- I'm just going to throw out --

11 MR. SHANAHAN: A or B --

12 MS. KOLE: -- 501(c)32i, or you know, what
13 not.

14 MR. SHANAHAN: Okay.

15 MS. KOLE: It's as long as it meets the 501.

16 MR. SHANAHAN: In that whole section?

17 MS. KOLE: Mm-hmm, that entire section.

18 MR. SHANAHAN: Wow.

19 MS. KOLE: Thank you. And again, this is the
20 PSM for 1910.119.

21 Once an inspection has found to meet the
22 criteria, and is then termed a SVEP, there are several

1 actions that the area and the regional office may
2 decide to do. For all -- all SVEPs -- will receive an
3 enhanced follow-up inspection.

4 And this is one thing that the IG's office
5 really greatly stressed, is that follow-ups must be
6 completed. So there is definitely an awareness in the
7 region, in the area office, to put resources to do
8 inspections and follow-ups.

9 Certainly in the construction industry, as we
10 all know, this can present challenges due to work sites
11 being closed, work-site -- certainly the process,
12 possible the work site may be open, but the process has
13 been finished.

14 So through construction, what we have said is
15 that there is two things. You can work with the
16 employer and ask them for a list of related sites. And
17 then you can go out and, instead of doing a followup,
18 go to another site and try to look at a related
19 activity.

20 Or, if this is -- if they do not have any job
21 sites available currently, if they have gone out of
22 business, if this is something where it's just getting

1 to be difficult to find their next project, you can
2 report back to the National Office.

3 And all area offices, through the regional
4 office, have to report back to us the SVEPs. We do
5 keep a log of all of them.

6 And so they are allowed to do what we call a
7 compelling reason not to conduct a followup. So they
8 have to document that within their case file.

9 They can also, as I explained, the nationwide
10 inspection. This is for both construction and general
11 industry. And again, that is where they look at other
12 facilities or other work sites. They can do sending
13 out notifications to the company headquarters.

14 A lot of times, this is general industry, and
15 headquarters may be in a different state, and they may
16 not be aware of the inspection happening at the
17 facility.

18 Some area offices and regional offices have
19 opted to do issue a press release, as well, notifying
20 that they have been deemed a SVEP.

21 Some other actions include an enhanced
22 settlement provision, so this comes into play with our

1 Solicitor's Office. When they are doing the
2 settlement, some of these enhanced are -- you can do a
3 corporate-wise settlement agreement. We are currently
4 in the process of revising our corporate-wide
5 settlement agreement, but you know, under the current
6 agreement, you can look to do and see other facilities.
7 Or, you can possibly recommend or require hiring a
8 qualified safety and health person to come in to look.

9 There is different -- these are just a couple
10 of the examples of enhanced provisions; but there are
11 other ones as well.

12 And then certainly you can go to federal court
13 enforcement action under 11(b) of the OSH Act.

14 This is our current data, as I mentioned. All
15 area offices do submit to us monthly their SVEP
16 inspections. They also send in whether or not these
17 were fatalities, which criteria they met, whether it
18 was construction, whether it was a small employer.

19 We have them broken down between 1 through 25;
20 50 through 100; 101 through, I think, 150; and 150 and
21 above, or some sort of breakdown like that. We take
22 that information and every month we do a summary. This

1 is some of the data that we -- I felt may be
2 interesting to you.

3 So, as of close of business on November 30th,
4 we have recorded 80 SVEP cases. As you can see, 50 out
5 of the 80 are in construction. So more than half are
6 construction cases. Out of those 50, 5 or 10 percent
7 were fatalities. That compares to 12 out of the 80
8 that are either general industry or maritime, or
9 construction cases.

10 MR. JONES: Since it's only 10 percent in
11 fatalities, what are the leading causes of being in
12 that category?

13 MS. KOLE: It would be the non-fatality, and I
14 don't --

15 MR. JONES: What is a typical topic, falls?

16 MS. KOLE: What I see a lot of is --

17 SPEAKER: Trenching probably is one of the --

18 MS. KOLE: Trenching is one of the biggest,
19 and trenching fatalities.

20 (Simultaneous conversation.)

21 MR. JONES: Yeah, trenching.

22 MS. KOLE: You know, for the non-fatality, I'm

1 trying to think. I think a lot -- I see a lot of
2 scaffolding falls, but not fatal falls. We see a lot
3 of lock-out, tag-out issues, electrical.

4 We have the breakdown; I just don't know,
5 offhand. What they report to me isn't just the
6 criteria, whether it was a fatality or a non-fatality
7 or a PSM. The way that I personally am able to know is
8 they also give the inspection number. So, I go into
9 our IMIS database and look up the actual inspection
10 number.

11 And as I do the quality check and make sure
12 that they've met the high-gravity serious, that they've
13 met the two willful or repeat, I'm able to then look
14 up. But this is not something that they actually
15 report on our log.

16 MR. JONES: Yeah. So, but your experience,
17 it's mainly scaffolding fall issues? Or entrenchment?

18 MS. KOLE: Yeah. And a lot of trenching.

19 MR. JONES: Trenching.

20 MS. KOLE: I mean, there's been -- trenching,
21 I would say, is probably the number one for
22 construction.

1 MR. JONES: Severe Violator? Okay.

2 MS. KOLE: Mm-hmm.

3 CHAIRMAN MIGLIACCO: Jennifer, excuse me.
4 Frank Migliacco, employee representative.

5 If I'm reading this right, what we're saying
6 is where you have the 12, 15 percent, that's 7
7 fatalities occurred outside construction?

8 MS. KOLE: Correct. With willful. You've got
9 to remember that it has to be with the willful repeat
10 or failure-to-abate.

11 CHAIRMAN MIGLIACCO: Thank you.

12 MS. KOLE: Yeah. There's been more
13 non-fatality. For general industry, I've seen more
14 non-fatality criteria than fatality.

15 And then any questions you may have on any --

16 MR. SHANAHAN: Can we get a copy of that?

17 MS. KOLE: Yes. And I'm sorry, I meant to
18 bring a copy of the presentation, so I will bring back.
19 After I leave I will make copies for everybody.

20 MR. SHANAHAN: Great, thank you.

21 MS. ARIOTO: Thank you

22 CHAIRMAN MIGLIACCO: Any questions from

1 members of the Committee? Kevin?

2 MR. BEAUREGARD: Kevin Beauregard. I'd like
3 to say that, you know, as a state plan, I think the
4 concept certainly makes sense of the SVEP, and it's
5 something that we reviewed, and we're in the process of
6 responding.

7 We actually do many of the items that are
8 already in there, under different programs. And so,
9 although we may not adopt the entire SVEP, we have all
10 the components already in place elsewhere.

11 But what I would like to comment on -- and I
12 don't know if you can comment on this as well -- in
13 reading through, we found that it was -- we thought
14 that, although it was a good program, that it seemed to
15 be little bit unnecessarily complicated and confusing,
16 particularly in regards to, you know, how the
17 candidates are selected. And you know, we worried
18 about the impact it would have on the staff of trying
19 to weed through that.

20 And I'm not trying to be critical of it.
21 That's just how we found it when we read it. And I
22 don't know if you got any feedback from your compliance

1 staff in regards to that for selecting candidates and
2 doing the activities.

3 MS. KOLE: And when you say "selecting
4 candidates," could you explain that a little bit more?

5 MR. BEAUREGARD: Well, I'm sorry. I didn't
6 hear what you said.

7 MS. KOLE: Selecting candidates, when you say
8 "selecting candidates," could you please explain?

9 MR. BEAUREGARD: Well, and I don't have the
10 document in front of me. But under the program, in
11 order to do an inspection under this program, the
12 employer needs to meet certain criteria. There are a
13 certain number of violations that they need to be cited
14 for, and I believe --

15 MS. KOLE: No. Well, the two. You have
16 to -- I mean, and it's -- again, it's not a target
17 program, it's an after.

18 MR. BEAUREGARD: Right.

19 MS. KOLE: So it's something that we go out on
20 either a complaint, an accident, a programmed
21 inspection, all of our mechanisms, and then that
22 inspection meets that criteria.

1 So it's only, as I pointed out, one willful
2 repeat, or failure-to-abate for a fatality.

3 And under that I should have made mention,
4 too, that under the fatality it is for any standard.
5 So it is a fatality of -- with a willful repeat of
6 failure to abate of any standard. For the
7 non-fatality, it's specific only to those standards
8 listed in -- so it's only two. So there's not --

9 MR. BEAUREGARD: But then when you get further
10 in the document -- and again, I apologize, and probably
11 I need to go back and take a look at it, and then send
12 you some comments -- but as you get further into the
13 document, there is different things that need to be
14 followed as far as then what type of activity that you
15 perform at that particular site, if I'm remembering
16 correctly.

17 And we just found that, although we agree with
18 the concept, we found it difficult to follow. And, you
19 know, when we were approaching it on our side, we kind
20 of changed it up to clarify it for our staff. But I
21 didn't -- apparently that hasn't been an issue for your
22 staff, then.

1 MS. KOLE: Not that it's been an issue. And
2 certainly they don't have to take any of the actions.
3 You know, it's just -- except for the followup. That's
4 the only mandatory action that is required.

5 And again, you know, for construction or for
6 facilities that are out of business, you know, we do
7 have a mechanism for them to report back to say "This
8 is not possible at this time."

9 So we haven't had a problem. And in fact, the
10 reports that we've gotten back is this is much less
11 complicated than the EEP. This is much less
12 resource-intensive, because we're not going after and
13 looking at every fatality with a serious, which
14 obviously widens the group.

15 It's more focused in looking at only those
16 that have willfuls, who are really, you know --

17 MR. BEAUREGARD: Okay.

18 MS. KOLE: Yeah.

19 MR. BEAUREGARD: All right. And I will go
20 look back at the thing, and I'll try to send you a
21 note, if you give me your e-mail address.

22 MS. KOLE: Yeah. That would be great. And if

1 I can answer any questions, or certainly sort things
2 out, you know, I'm happy to do so.

3 MR. BEAUREGARD: All right. Thank you.

4 CHAIRMAN MIGLIACCO: Any other questions?

5 MR. GILLEN: Yes, I'm Matt Gillen. A couple
6 questions.

7 So, the whole issue that this sort of triggers
8 in when you have "willfuls," and those are -- can be
9 difficult to substantiate, to begin with. So I was
10 wondering how it currently works across federal and
11 state offices.

12 So, say a compliance person in a state, like
13 say Tennessee, Steve's state, and there is a somebody
14 who's got a trenching violation there. So is it easy
15 for me to find out if that same contractor has had
16 serious violations for trenching in other states? Or
17 when I'm -- so that currently does exist, so that's
18 easy to --

19 MR. HAWKINS: All of our state navigates into
20 the federal computer system. So if you wanted to pull
21 up a Tennessee inspection, it would come up no
22 different than it would an inspection in Texas or

1 Florida.

2 MR. GILLEN: Okay. Great.

3 MS. KOLE: Correct. And I think -- please
4 correct me if I'm wrong for those who -- I've not been
5 in a field office -- but my understanding is that when
6 they do an inspection, the compliance officers, one of
7 the first things they do is going to look at history
8 and going to look at that, and pull up that employer
9 and see.

10 MR. GILLEN: Great. And then it seems like if
11 you fall in this category, you should feel, as the
12 employer, that your job sites are going to have an
13 increased likelihood of an inspection in the future.
14 We all know it's difficult to target construction jobs.
15 Does that work well? How do you find the future ones?

16 I remember, it was at Tom Broderick's
17 conference, there was a presentation by a compliance
18 officer, where they had a particular violation. And
19 part of the settlement agreement was that the firm had
20 to provide information to the area office for new jobs
21 that they were going to do for the following year.

22 MS. KOLE: And I think --

1 MR. GILLEN: So that --

2 MS. KOLE: -- that's one of the enhanced
3 provisions that they can do.

4 MR. GILLEN: That is one?

5 MS. KOLE: But your knowing that --

6 MR. GILLEN: It wasn't mentioned, but it is
7 one that's in the program now?

8 MS. KOLE: Mm-hmm. It's in -- that's part of
9 the enhanced settlement.

10 MR. GILLEN: Okay.

11 MS. KOLE: So, you know, again, the employer
12 is going to know that, and going to work during the
13 settlement in negotiations.

14 MR. GILLEN: Great.

15 MS. KOLE: We also do ask -- and we
16 encourage -- the compliance officers to ask them,
17 because they will be notified that there will be a
18 mandatory followup.

19 So, you know, the way that we do a mandatory
20 followup is obviously we need to know where their job
21 sites are.

22 We have had varying degrees with that. Some

1 say, you know, "Here's where we're going to be next."
2 Some will use Dodge Reports. Others say "We don't have
3 any more work, it's the winter," it's, you know, or
4 "Our company is struggling, we're not going to have
5 anything maybe, you know, for six, seven, eight months
6 down the road."

7 MR. GILLEN: Okay.

8 MS. KOLE: So it's the decision of the area
9 office at that time. What we have -- when -- some of
10 the circumstances we've seen is they are to look for a
11 year, but really, if it's something that the resources
12 within the area office, you know, trying to track
13 something that may or may not happen in a year's time.

14 MR. GILLEN: Okay.

15 MR. HAWKINS: And you can't use the Dodge
16 Report for that, because --

17 MS. KOLE: Yeah. Right.

18 MR. HAWKINS: There's no contractor names on
19 the Dodge Report. So --

20 MS. KOLE: Yeah. So it's really trying to
21 work with the employer and you know, it's -- I think
22 it's depending on the negotiations with that particular

1 employer.

2 MR. GILLEN: Okay. My last question is that
3 you had silica mentioned as the health side. We know
4 that injury is a huge issue, and that that's an
5 appropriate focus.

6 But for silica, OSHA is working on their
7 standard, but I mean even OSHA describes the current
8 silica standard for construction as obsolete. So it's
9 really not a useful tool for construction.

10 I was wondering if you thought of, you know,
11 asbestos and lead, which are both areas where there are
12 still a lot of problems in, you know, implementing --

13 MS. KOLE: Right. Lead is actually -- as I
14 mentioned, that this was just a small sample of the
15 actual --

16 MR. GILLEN: Okay.

17 MS. KOLE: -- high hazards. And again --

18 MR. GILLEN: So lead in construction --

19 MS. KOLE: It's listed. They're all listed
20 within the SVEP directive.

21 MR. GILLEN: Okay.

22 MS. KOLE: Lead is a National Emphasis

1 program. And that is included in the SVEP. We have
2 recently talked about asbestos. We do not have an
3 Emphasis program on that.

4 There was discussion within, actually, the
5 last week as to adding in asbestos. And also, we have
6 recently signed a directive on Hex Chrome.

7 So, at this time, we're not making
8 modifications, but we're looking down in a couple
9 months or in the future that, as was intended with this
10 document, to include new Emphasis programs and
11 certainly these two.

12 MR. GILLEN: Okay. Thanks a lot. Thank you.

13 CHAIRMAN MIGLIACCO: Any other questions by
14 the Committee?

15 (No response.)

16 CHAIRMAN MIGLIACCO: Seeing none, Jennifer,
17 thank you very much for an excellent and very
18 informative presentation.

19 MS. KOLE: Great. Thank you very much. And
20 again, my apologies, I will have the handouts to you
21 hopefully short --

22 SPEAKER: We have it here.

1 (Simultaneous conversation.)

2 MS. KOLE: Oh, you do. Great.

3 (Laughter.)

4 MS. KOLE: Ask and you shall receive. Thank
5 you.

6 CHAIRMAN MIGLIACCO: Thank you.

7 MR. BIERSNER: Mr. Chair, I'd like to admit to
8 the record the slide presentation entitled Severe
9 Violator Enforcement Program, as Exhibit No. 34.

10 CHAIRMAN MIGLIACCO: All right. At this time
11 we'll take a 15-minute break.

12 (A brief recess was taken.)

13 CHAIRMAN MIGLIACCO: All right. Our next
14 presentation is on crane hazards. The gentleman here?

15 (Discussion was held off the record.)

16 CHAIRMAN MIGLIACCO: Go ahead.

17 MR. LEBLANC: Go ahead?

18 CHAIRMAN MIGLIACCO: Yep.

19 MR. LEBLANC: Oh. My name is Reynold LeBlanc,
20 and I want to talk to the Committee about crane safety,
21 and some issues that I have. I want to say thanks
22 foremost, for allowing me to come here and do this.

1 I'll give the Committee a little bit of
2 insight on myself. I've been out in the field for 42
3 years in the hydraulic petrochemical business in south
4 Louisiana, Houston, Corpus; all up and down the Gulf
5 Coast.

6 What I'm going to talk the committee today
7 about is primarily on the Galion Dresser hydraulic
8 crane. And the reason I say Galion Dresser is Dresser
9 bought out Galion in the late '80s, early '90s. But
10 they kept the machine the same, they never did change
11 it. They made a few changes, but not to the part that
12 I'm going to show the committee about today.

13 And it's concerning the hoist brakes, the
14 hoist brakes on the winch that holds the load up,
15 suspends the load. I'm in no way trying to downplay
16 the Galion crane. In the petrochemical business, down
17 in my part of the country, we got them on every corner
18 and every block. And they built nearly, if not all, or
19 helped build many of the petrochemical business and
20 refineries up and down the Gulf Coast.

21 But they did have a problem. And to give a
22 little background on me, I started out as a mechanic.

1 And from a mechanic, I went to a crane owner. I
2 did -- became a crane owner, did -- I bought and sold
3 cranes, primarily Galions.

4 I've had rental companies, rented Galion
5 cranes, operated and maintained, or Bear rental. And
6 that's what I've been involved with. But all the years
7 of working on these cranes and only these cranes, there
8 is a problem, and there is a problem today with the
9 hoist brakes holding the maximum 110 percent of the
10 load line pull.

11 I learned this by experience. And I want to
12 tell the committee here we're not talking about 100 or
13 200 cranes; we're talking -- an estimate that was given
14 to me by a company that done the estimation of how many
15 of these cranes were out in the United States working
16 today, and there is a very conservative figure of 5,000
17 to 6,000 of these cranes with these problems on them.

18 I'm going to do a slide presentation here in
19 just a few minutes, and -- that actually shows the
20 brake mechanisms on the gear box. And I'll try and
21 explain the best I can of what the problem is, and why
22 they don't maintain the recommended 110 percent of the

1 load line pull, or, if you want say "permissible load
2 line pull," whichever one.

3 When a load line slips, when a load line
4 slips, it puts an employee in potential -- in a
5 dangerous situation. He may get a hand mashed off. He
6 may get a finger smashed. He may get an arm off. The
7 load may shift and turn over and possibly there would
8 be some fatalities.

9 And I have to be honest with this committee,
10 in the 42 years -- well, let me back up, because 30
11 years ago I got familiar with this, the regulations
12 that are required for a crane -- all the years of
13 working on these cranes and selling, I knew of OSHA. I
14 didn't know about the B30.5-1968. I didn't know
15 anything about the power crane shovel. Didn't know
16 anything about mobile hydraulic standard tube. Didn't
17 know any of the requirements that are for hoisting
18 brake on a crane; never entered my mind.

19 I was doing everything I could with the
20 manufacturers' supplied parts to repair the cranes.
21 But to no avail; they won't hold. There's not a
22 mechanic out in the country, you can go across the

1 country and ask any of them. They won't guarantee when
2 they put the new parts and mechanisms in there, that it
3 will hold. It may hold when they get through, it might
4 not hold tomorrow or the next day, next week, or next
5 month.

6 So, it's inadequate. And I guess the
7 Committee is wondering -- and I did myself -- why
8 hadn't anybody said anything about it? People like me
9 out in the industry just dealt with it. I've talked to
10 hundreds of operators, and they say "We just learn to
11 adapt to it."

12 And what the operator will do, if he picks a
13 load up and it starts slipping down -- he lets the
14 hoist level go into the neutral position, and it starts
15 slipping down -- the operator will pull back on the
16 lever, and hold the load up with the hydraulics, and do
17 his job.

18 But now, when he does that, we're putting a
19 one-armed operator out there now. This operator
20 doesn't have another arm; this arm has to stay on the
21 lever to maintain the load, because the brake is
22 inefficient to hold the load. And so then we do all

1 our work with our one arm, whatever control lever.

2 And then, from an operator's standpoint, the
3 operator has enough to deal with, that he doesn't have
4 to deal with is this brake going to hold the load, does
5 he have to deal with holding the lever back to hold the
6 load. He's got a lot of other things to worry about,
7 as you well know.

8 And I've done this holding lever back
9 thousands of times, myself. I, as a mechanic, knew it.
10 I just lived with it. Some operators out there will
11 tell you, "Well, that's the way they're made, they're
12 made to slip." And the argument -- you don't make a
13 hoist brake to slip. If the winch picks it up, the
14 brake should hold what it picks up.

15 Out in the field I run across people and I
16 tell them about this problem. And they say, "Well,
17 OSHA doesn't require us to load-test our crane." I've
18 had third-party inspectors that I know well -- and I
19 won't mention names, but I know them and they know me
20 -- and I talked to them about this problem. And they
21 know it. They are old ex-mechanics or ex-crane
22 operators that are now doing third-party inspections,

1 which I applaud. I think that's very good for
2 third-party inspections.

3 And "We're checking the cables, we're checking
4 the beackets, we're checking the wedges, we're checking
5 the dead-ends, we're checking the pins, we're checking
6 the boom length, cable length, we're checking the
7 tires, the windshield wipers, head lights, tail lights,
8 back-up alarms," and such and such and such. But
9 there's nothing on there that says "Check the hoist
10 brakes on the Galion Dresser crane."

11 These inspectors that I spoke to says, "Yeah,
12 Reynold, you're right. But OSHA doesn't mandate us to
13 do an inspection. And if I inspected my customer's
14 hoist brake -- and I know they'll slip -- and I have to
15 give the a deficiency, because his brakes didn't hold,
16 and I know they won't hold on the 110-percent line
17 pull, or even permissible line pull -- I'm going to
18 have to give him a deficiency."

19 "And the next time he needs an inspection on
20 his crane -- this customer may have 25 cranes, Galion
21 Dresser cranes" -- and this is coming from third-party
22 inspectors -- "he'll just simply pick up the phone and

1 call somebody else that won't do that load test."

2 And it drives me wild, because you read the
3 regulations and it says, "A competent, qualified
4 person." Now some of the inspectors out there I have
5 to say to this committee done have a clue that it
6 happens. But there some out there that do. And it
7 drives me crazy, because you go to the point of a
8 competent, qualified person. But he's more interested
9 in money than he is in safety.

10 Another argument I get out there, or combat
11 out there in the field -- this is people out in the
12 field -- they say, "Well, we don't lift capacity loads
13 with our crane. We don't let our crane operators pick
14 up half the load of the capacity."

15 And there's nowhere in the regulations that I
16 read that it says, "Because you're not going to pick up
17 but -- say on a 30,000-pound capacity machine you're
18 not going to let your operators pick up but 6,000
19 pounds, therefore you're brake doesn't have to hold the
20 30,000 pounds." Nowhere in the regulation it says
21 because you are XYZ Company or XYZ Crane Rental
22 Company, that you're exempt from it. It says "all

1 load-sustaining parts." All.

2 And it goes on in some of the
3 regulations -- and I'm not going to do them here; you
4 people know them better than I do -- one of the
5 regulations says, "With no assistance from the
6 operator." In other words, the operator doesn't have
7 to assist at all.

8 I'm going to give this committee, after I do
9 the little slide thing, an actual thing that happened
10 to me, that brought me to where I am today, and brought
11 me to making a -- doing a solution, or coming up with a
12 solution to this problem. And it actually happened to
13 me. And I'm going to give the committee a little
14 actual -- nobody told me. This actually happened to
15 me.

16 If you would, go ahead and do the slide. I'm
17 going to show the Galion brake assembly, and give the
18 committee some -- a few pictures. You can go ahead
19 with the next one.

20 This is a Galion spec sheet. And it says on
21 the performance, a hoist performance -- hold it right
22 there, or back it up, could you -- it says on there

1 that the hoist performance, as you'll see, the single
2 line pull, the maximum, is 7,500 pounds.

3 The single line pull they call it, -- then
4 they say a 6,200 pounds. Galion's kind of gray with
5 that. Some people put permissible line pull. So I'm
6 going to assume that the single line pull of 6,200
7 pounds is their permissible load; the maximum is 7,500.

8 This is the line pull that the line on the
9 winch will pull. And that's what the brake should
10 hold. Actually 110 percent higher than that.

11 Next one. This just gives you, in their
12 regulations or in their inspection manual, what to do
13 in the event that you have a load drifting. And they
14 got eight things on the bottom there to do.

15 But I underlined the very bottom, the bottom
16 of number seven and number eight, number seven -- and I
17 don't have my glasses -- okay, "the oil seal or spotted
18 brake shoes can cause slipping" -- so they're aware
19 they slip -- "and should be replaced." And you can
20 replace them and replace them and replace them, and
21 they're not going to stop slipping.

22 Number eight is the glazed. They tell you in

1 the instruction manual to unplug the hydraulic line
2 that releases the brake and burn your brakes;

3 And what you're doing is you're like going
4 through a water puddle with your car. When you come
5 out the other side of the puddle, they tell you to ride
6 your brake or press your brakes, and you're going to
7 heat up the shoes and you're going to dry up the brake
8 disk or calipers, and you're going to heat things up.

9 And if I take the Galion brake and I heat it
10 up like that, I can hold a load. But there's no
11 operators out there that's doing that. Prior to a
12 load, they're just out there -- say, "Pick this up" and
13 they pick it up.

14 All right. The next one. This is an
15 assembly. This is just a picture I made, this is the
16 Galion winch housing. That little round drum is there,
17 brake drum. That's what holds their load through that
18 gear box. In the bottom is a hydraulic cylinder that
19 releases the brake.

20 Next, that's just another picture without the
21 cylinder. Go ahead again.

22 This is a picture of the brake shoes that are

1 in the drum on the Galion gear box. Stop right there.
2 Whoops, there you go, right there. It's just showing
3 the shoes that are inside the brake drum, those little
4 bitty shoes. That's the ones they say replace.

5 Next one. Now, stop right there. This is
6 what you'll find on every -- and I can tell this
7 committee -- every Galion crane that has a problem
8 slipping, you're going to find those shoes spotted like
9 that. And if the committee will look here, can you see
10 the little dark spots every so often on there?

11 SPEAKER: You want to point them out?

12 MR. LEBLANC: That is your only point of
13 contact on the drum -- it's spotted, very little
14 contact -- on a four-inch shoe to begin with, five-inch
15 shoe. Okay?

16 The next one. Go ahead to the next. That
17 just shows the shoes -- that's a lever that actuates
18 it.

19 The next one. And that's the backing plate.
20 Go ahead with the next one. Stop right there. That's
21 the drum that's on these shoes. If you'll look at the
22 very bottom, you'll see a shiny spot on that drum. If

1 you look to your left at, say, what, seven o'clock?

2 There's another little spot.

3 SPEAKER: Yeah.

4 MR. LEBLANC: If you look over to -- at three
5 o'clock, there's another little spot. There is no full
6 contact to that drum on those shoes. You are just
7 putting just little spots on contact on that drum, and
8 that is the brake drum that holds the load up on the
9 Galion, that holds the load, that goes through the
10 gearbox, goes through the winch drum, which goes on the
11 cable and lets the thing -- that is your holding
12 mechanism right there.

13 Next, this shows the spotted shoe on the left
14 and on the right is a burnished shoe, they call it.
15 When you burnish the brakes, as they recommend you to
16 do, you glaze the shoes, you get them hot, you'll hold
17 a load. But the next time your shoe is even worse,
18 because you can see it's glazed. It has less contact.
19 It goes worse when it cools down.

20 All right, next? That just shows the shoe.
21 The next one, and go ahead to the next. What I did is
22 a did a little survey myself. I gave 50 operators just

1 a little card. Didn't stand over them, and said,
2 "Look, have you ever operated a Galion crane?" "Yes."
3 "Tell me how many years."

4 And you see the question, "Have you ever had a
5 Galion Dresser hoist brake slip, and had to maintain
6 the load by holding back on the lever, yes or no?"
7 "Yes." Comment: "Galion needs to improve their brake
8 hoist." This guy's been 30 years in the industry.

9 Next, the next guy's been in there 15 years.
10 He has the same thing. "All my Galion cranes I own has
11 always given me trouble holding the rated loads."

12 The next one. And this guy's 15 years been
13 sitting in the operator's seat of a 15-ton Galion. And
14 they always slip. And that's 3 of the 50 of them I've
15 done. All right, the next one? Hold it right there.

16 Now, I asked Bill and he said I could say
17 this. But the drum you see there has some windows cut
18 at four different points. And I did that to show the
19 inside shoes. That outside red is what I build, what
20 I've done, what I've designed and patented. It's a
21 wrap band. And if you'll notice the amount of brake
22 shoe area you have where that lining goes all the way

1 around outside that drum, I have 19 inches of braking
2 service, in comparison to those 2 or 3 little inches
3 that are on the shoes.

4 Let me say right here we do not disconnect the
5 Galion brake or the Dresser brake. It is not
6 interfered with in any way. It's designed not to
7 interfere with the Galion brake. We don't remove it,
8 we don't disconnect it, it's just the same -- it may be
9 just only holding 5,000, 6,000 pounds, but it's still
10 there. But with the wrap band around it outside, we're
11 holding 33,000 pounds. And I can show the committee my
12 engineering testing and reports.

13 All right, the next one, that's the same
14 picture with the drum removed. As you can see, the
15 shoes are in the inside, and the band is on the
16 outside. And there is 100 percent braking there.

17 All right, next one. And that just shows the
18 Galion, how the lever kicks out the little shoes. And
19 that little lever will get hung up and get -- through
20 age it will get a little corrosion on it. And it won't
21 move. And I've tested cranes that came out of some of
22 the chemical plants with a five-part line. And I

1 pulled the 33,000 pounds. And they only held 8,000
2 pounds. That's a little off of 33,000.

3 Next? All right, that's just the shoe. All
4 right.

5 This is just showing the band release in the
6 open position. And then you got the shoes that come on
7 that, Galion shoes that come in, in the released
8 position.

9 The next one, that just shows the brake
10 locked, and as you can see, the Galion band shoes are
11 locked also.

12 The next one?

13 MR. HAWKINS: What's that lock do?

14 MR. LEBLANC: Sir?

15 MR. HAWKINS: What's the lock do here, with
16 that jam --

17 MR. LEBLANC: No, that's a guide. That's a
18 guide for when the band expands, it keeps it -- go back
19 to that next slide. You see how the band stays that
20 eighth of an inch or so away? You see the guide on the
21 left? There's one on the right also. And they keep
22 that band in alignment, so it doesn't drag on the drum

1 or interfere with the drum. It's in alignment.

2 And by the way, these things can be put on in
3 45 minutes.

4 But anyway, the next one, that just shows the
5 assembly. And any mechanic at there can put these on,
6 it's just simple.

7 Next one. All right, what I did here is I'm
8 showing you a damage that -- there's a snap ring that's
9 in that cylinder. That piston on the left will pound
10 it out, and it will drive it out and break that
11 housing, and hydraulic oil is going to go everywhere.

12 It's an environmental nightmare. Hydraulic
13 oil would drown that crane.

14 Go to the next picture. And what we've done
15 is I made a stop. If you'll see it, that's a stop that
16 we put on there to stop that spring from being pounded
17 out. And it stops on that oil thread there, and
18 doesn't let that snap ring get pounded out.

19 The next one, that just shows how it's
20 mounted.

21 Go ahead to the next. All right, the next
22 slide I'm going to show you just a few slides of some

1 load tests that we've done. All right, this is on a
2 Dresser crane, this is in Baton Rouge -- this is
3 Prairieville, Louisiana. This is at Volks
4 Construction, all right, they've got them on all their
5 machines.

6 Next, we have a dyno attached to a link belt,
7 108 counterweight.

8 Next one, and there's my proof test documents
9 from a professional certified engineer.

10 Next one, the next one is the positions that
11 he put the crane through to do the testing. And
12 there's his seal on the left hand side.

13 The next one, this is just a picture of the
14 brake, the Galion brake, up. You see those four holes
15 on the left there? That's where the guard is removed,
16 it's just so we could see that it's just the Galion
17 brake and drum there.

18 Next one, we pulled on that crane that we just
19 showed. We pulled 32,800 pounds. And as you can see,
20 the block slipped to some 14,600 pounds. That is about
21 the average of a five-part line on a Galion. Some of
22 them are less. Like I told you, one held 8,000 pounds.

1 Some hold 12,000. Some hold as much as 18,000. But
2 none hold the 33,000.

3 Next one, this just shows the slide of the
4 band on there.

5 The next one, this is the next pull. We
6 pulled 32,600 pounds and we held 32,600 pounds. This
7 crane right here has worked 26 months this month at
8 Volks Construction, and we've tested it every 6 months,
9 and it's still holding the 32,600 pounds, 26 months
10 later. And as a mechanic, that's quite an achievement.

11 The next one is a single-part line. We just
12 put a headache bottle on it and pulled a single. As
13 you can see, Galion spec'd -- I told you earlier it
14 holds, this one here pulls 7,200 pounds of line pull.

15 And you see where the gauge went back to about
16 35 hundred pounds is where -- that's just with the
17 Galion braking system on there.

18 The next one, that's with the wrap band. We
19 pulled 7,200 pounds, and we hold 7,200 pounds. And
20 these load tests have been done for the last 6 months
21 -- for the last 26 months. Every six months we load
22 test them.

1 Next one, that just shows the brake on the
2 crank.

3 The next one, stop right there. This guy
4 here, he's the manager of an air compressor company in
5 Baton Rouge, Louisiana. To the right of the screen,
6 you'll see a 1600 CFM air compressor. They're the
7 Ingersoll Rand Dealer in Baton Rouge, and they make
8 these off-shore skid units, and put them in skids to
9 send them offshore and different places. And John put
10 his brake on there about 18, 19 months ago. And I'll
11 say something about John in just a minute.

12 That's it right there, you can turn it off
13 right there.

14 Now, any time you want to ask a question,
15 please do. And I'll try my best to answer.

16 I've got something here more to say. I told
17 you starting of a personal experience that happened to
18 me. As I told you, I was in the crane rental business.
19 I had a crane of my own, a 15-ton Galion. And it was
20 -- I rented it, maintained it, and operated it. In
21 this particular job I was the operator. I was called
22 out there to operate it.

1 It was at a salt dome facility in Sorrento,
2 Louisiana. The dome -- they have about ten wells out
3 there, and they hold for the refinery anywhere from
4 700,000 to 1 million barrels of propane, butane,
5 butylene, liquid gas. They're a storage facility.

6 I was called upon with my crane to go out
7 there and remove -- they were going to rework a well
8 that held a million barrels of propane. I set my
9 machine to six-foot radius, six foot from the well
10 head. They removed -- "they" being the
11 contractors -- they removed the well head, the pipes,
12 and blocked off the phalanges and removed the well
13 head; I did with the crane.

14 And I'm sitting there, and here comes a
15 blow-out preventer. Of course, everybody in this room
16 has heard about blow-out preventers with the BP oil
17 spill. But this blow-out preventer wasn't as massive.
18 It was 12,000 pounds, according to the truck's shipping
19 weight.

20 It was in my radius, it -- parked over here.
21 So I pick it up -- they hooked the slings to it, and
22 chokers and stuff -- and I pick it up, and when I pick

1 it up off the float, I know to be ready, for it may not
2 hold. My own crane. So I pick it up, and immediately
3 it starts coming back down.

4 So I pick it up and I hold the lever. And I
5 grab the left-hand swing. And I swing it and I set it,
6 and I swing. About seven or eight people, contractors
7 there, lining some studs on the flange of this big
8 blow-out preventer, putting the gasket in there, and
9 setting it down to bolt it on the top of this well, so
10 the rig could come in and do a workover. Very
11 successful. Did it. Put it on there.

12 People, it hit me that night, or that
13 afternoon. What if my engine would have failed? What
14 if my hydraulics would have malfunctioned midway this
15 lift? Midway the lift, would it fell -- the blow-out
16 preventer got cocked on the well, because I wasn't
17 quite all the way there, and tilted over and came out
18 of its rigging, and fell, 12,000 pounds on a natural
19 propane line, and blew us all up? Or it have just
20 mashed somebody's hands off?

21 A lot of the guys that were working in front
22 of it, personal friends of mine. Relatives, some of

1 them.

2 And that's what aggravated me the most on my
3 own crane. I knew that I kept good maintenance of my
4 crane. I'd done all the things, done all the little
5 check sheets, done it all. But it did not hold that
6 load. And that's what pushed me. I got aggravated
7 enough to design and do my own wrap band brake.

8 That band is not new science. A wrap band
9 friction brake probably been around 100 years, 200
10 years, I don't know. But I incorporated it to this
11 hydraulic system. And it works. And it's been
12 working.

13 The last thing I want to say -- and this made
14 all this worthwhile, coming here, or doing what I've
15 done with these brakes, and talking to the
16 committee -- this guy, John Stewart, really made my
17 day -- made all the hours I put into this project, made
18 my day. And it should make your day when I read, this
19 is his own testimony. I didn't stand over him. And
20 you're welcome to call any of these people.

21 John Stewart writes and e-mailed me. So I put
22 it in my little brochure, to be honest with you. He

1 says, "We installed the wrap band brake" -- that's what
2 we call it -- "on our 150 Galion." That's the guy with
3 the big air compressors and stuff. He said, "The next
4 day I had to lift a 1600 CFM compressor that weighed
5 19,000 pounds. I brought the compressor down and
6 stopped it one inch from the skid, to allow my workers
7 to align bolts" -- with their hands -- "to align bolts
8 on the skid holes. Before installing the wrap band
9 brake," -- this is the brake that I've got -- "I had to
10 hold the load" -- which I had to -- "by holding back on
11 the hydraulic lever."

12 This is the part I really want -- this made my
13 day, and it makes my day today. "The wrap band safety
14 brake has made our job 100 percent safer." I can't
15 tell the committee or OSHA or anybody else how excited
16 I was when he said that. And you're welcome to call
17 him, I'll give you -- you're welcome to visit him.

18 But for him to say I made his job safer, I
19 think in my 42 years, rather than just being somebody
20 who just says, "Ah, somebody else will take care of
21 it" -- nobody took care of it; I took it upon myself to
22 do it.

1 And I appreciate the opportunity to come here
2 and talk to this Committee and to the people here at
3 OSHA. I talked to Mr. Bill Parson.

4 And you know, it's been my understanding that
5 if the powers that be -- OSHA or whomever -- were to
6 find this to be a true -- that was my understanding,
7 that through their own investigations, that OSHA or
8 whatever branch of the government or whatever it is,
9 would post or send an alert to the industry.

10 And it's my hope that it gets done, because
11 right now, sitting here right now, as everyone of us
12 sitting here right now, there is 1,000 operators
13 holding back on the lever right now, somebody setting a
14 vessel or tank or a pump, and some mill wright is
15 putting a shim under it with his fingers. And some
16 operator is holding the lever back right now. I can
17 assure this committee it's happening.

18 And if anybody's got any questions, that's all
19 I had to say. I hope -- I mean, kind of sweet and to
20 the point. Yes, ma'am.

21 MS. ARIOTO: Yes, thank you very much for your
22 presentation. My name is Liz Arioto.

1 MR. LEBLANC: Yes, ma'am?

2 MS. ARIOTO: A couple questions. Did you
3 say -- have you contacted the manufacturers?

4 MR. LEBLANC: The manufacturer is no longer in
5 business. The manufacturer closed down in 2000. But
6 we didn't do away with 5,000 or 6,000 thousand cranes.

7 The manufacturer was Dresser, I think I told
8 you in the beginning. Dresser Corporation was bought
9 out by Kamatsu, and Kamatsu closed the plant in 2000.
10 There is a wide range of why they closed it down,
11 from -- it wasn't the demand for the crane, because
12 this crane, like I said earlier, is the best 15-ton
13 crane that I can say has ever been built. And it's
14 really needed in our petrochemical business, and it's
15 not going anywhere; we're going to keep it there.

16 Why? I can't answer. But, yes, the
17 manufacturer is no longer available to get
18 recommendations, either denials or acceptance.

19 In the new regulations they got in that
20 1926.1434, where a provision -- if a manufacturer is no
21 longer in business, and somebody wants to make an
22 addition to a crane or to a piece of equipment, you

1 know, there is provisions that the rule-writers have
2 made that it can be done.

3 And we have fulfilled every one of those
4 recommendations with our engineer testing and our
5 documentations. And we didn't lessen the design
6 factor. We didn't increase it from a 15-ton to a
7 50-ton, or 15-ton to an 18, we just made it do its job.

8 MS. ARIOTO: A couple other questions --

9 MR. LEBLANC: Yes, ma'am. So I hope I
10 answered --

11 MS. ARIOTO: You did, you did.

12 MR. LEBLANC: I hope I did.

13 MS. ARIOTO: One is what is the cost of your
14 product, and secondly, is there another --

15 MR. LEBLANC: The product is \$1,650. Minimal,
16 compared to somebody's hands or fingers.

17 MS. ARIOTO: And are there any other products
18 like that on the market?

19 MR. LEBLANC: Not for the Galion -- and this
20 product only fits the Galion. It only addresses that
21 problem. There is no -- it's not wide across the
22 industry, no.

1 MS. ARIOTO: Thank you.

2 MR. LEBLANC: Does that answer --

3 MS. ARIOTO: That's answered my question.

4 MR. LEBLANC: Okay.

5 MS. ARIOTO: Thank you very much.

6 MR. LEBLANC: Yes, sir?

7 CHAIRMAN MIGLIACCO: Walter? Oh, oh, I'm
8 sorry, Tom.

9 MR. LEBLANC: Yes, sir?

10 MR. KAVICKY: So then our new -- the cranes
11 that are being manufactured now, do they have a device
12 similar to this?

13 MR. LEBLANC: There is no more Galion cranes
14 being made.

15 MR. KAVICKY: So these are -- so --

16 MR. LEBLANC: They're not obsolete, and
17 they're not out of the industry. They will be there
18 for another 20 years. So we've got another 20 years of
19 fingers getting --

20 MR. KAVICKY: I see.

21 MR. LEBLANC: The manufacturer was going to
22 sell it. I had some investors of mine -- friends of

1 mine -- went to buy the factory. And, as I understand
2 it, the money was there, the finances were there -- and
3 this is coming from Mr. Jack Finnergy -- that Kamatsu
4 would sell it only if whoever bought it would take all
5 liabilities from there, all the way back to the very
6 first one built. And they wouldn't sign on it. So,
7 therefore, they didn't buy the factory. And, as of
8 right now, there is no new ones being built.

9 CHAIRMAN MIGLIACCO: Question? Steve?

10 MR. LEBLANC: Yes, sir.

11 MR. HAWKINS: Steve Hawkins, from Tennessee
12 OSHA.

13 MR. LEBLANC: Yes, sir.

14 MR. HAWKINS: I don't really have a question,
15 I would just like to say that I appreciate your passion
16 for finding a problem and figuring --

17 MR. LEBLANC: Thank you, sir.

18 MR. HAWKINS: -- out a solution, and then
19 being passionate enough to come here, so --

20 MR. LEBLANC: Thank you, sir.

21 MR. HAWKINS: -- I would like to thank you.

22 MR. LEBLANC: Thank you, sir.

1 (Applause.)

2 CHAIRMAN MIGLIACCO: Dan?

3 MR. ZARLETTI: Dan Zarletti. I have a
4 question, and that is that I understand the Galion
5 crane isn't made any longer, and they're not obsolete,
6 so they can still be retrofit. But for people like
7 myself, as a general contractor, if we're going out to
8 buy a cherry picker crane today, how do we know that
9 this condition doesn't still exist on other items
10 manufactured for similar purposes?

11 MR. LEBLANC: Let me see if I can understand.

12 MR. ZARLETTI: You said it's a 15-ton picker,
13 right?

14 MR. LEBLANC: Yes, sir.

15 MR. ZARLETTI: Okay. Let's say I'm going to
16 go buy a 15-ton picker today, and it's going to be made
17 by --

18 MR. LEBLANC: Oh, oh, I'm --

19 MR. ZARLETTI: How do I know that that --

20 MR. LEBLANC: Okay, this condition --

21 MR. ZARLETTI: -- unit hasn't got what you
22 got?

1 MR. LEBLANC: This condition that I made aware
2 to the committee is not a condition on a Grove, it's
3 not a condition on a P&H, it's not a condition on a
4 link belt, it's not a condition on a Tadano --

5 MR. ZARLETTI: Okay. They've already figured
6 out something else.

7 MR. LEBLANC: They have a different braking
8 system, entirely.

9 MR. ZARLETTI: Right.

10 MR. LEBLANC: And one of the
11 reasons -- backing up a little bit, this gear box I
12 showed you -- and one of the reasons -- and I'm not
13 going to give an excuse for the manufacturer, but
14 Galion has a built-in -- and had it patented -- an
15 anti-tube lock system, or a cross-line relief system
16 that they call it. And I think it's recognized -- was
17 recognized -- by OSHA as a safeguard for tube-locking.

18 If they made a positive locking system like
19 Tadano or Grove with a different type of braking
20 system, it eliminates that feature that they're so
21 proud of. And rightfully so. And let me say to the
22 committee my system does not interfere or affect any of

1 that tube-locking devices.

2 But your answer, no other industry has that
3 problem, or --

4 MR. ZARLETTI: All right, thank you.

5 MR. LEBLANC: -- no other manufacturer.

6 MR. ZARLETTI: Thank you.

7 CHAIRMAN MIGLIACCO: Any other questions?

8 MR. GILLEN: Yes. Matt Gillen.

9 MR. LEBLANC: Yes, sir?

10 MR. GILLEN: I, too, would like to thank you
11 for your initiative and your interest in safety, and
12 your --

13 MR. LEBLANC: Thank you.

14 MR. GILLEN: -- your great problem-solving
15 skills to sort of address the issue.

16 MR. LEBLANC: Thank you.

17 MR. GILLEN: You know the story you told cuts
18 across lots of different issues. And one of the issues
19 it brings up is this whole issue about inspectors, and
20 what inspectors need to look at.

21 And I wonder. You know, we have the new crane
22 standard that goes into a lot of detail. And do you

1 think that that new standard will result in more people
2 doing inspections? And the reason I ask is because
3 OSHA is currently, you know, developing guidance for
4 interpreting the standard and all. So if there is
5 more -- perhaps more detail about issues like that,
6 load testing, it's a good time to bring that up.

7 MR. LEBLANC: Yeah. And what was your first
8 name?

9 MR. GILLEN: Matt.

10 MR. LEBLANC: Matt.

11 MR. GILLEN: Matt Gillen.

12 MR. LEBLANC: And I think that's right. Like
13 I said before, the third-party inspections are great,
14 they're doing very good. A lot of them, like I said at
15 first, they don't know of this -- I want to enlighten
16 people, people that don't know. I'm not -- I don't
17 want to beat somebody on the head and say, "You dummy,
18 you should have knew, or you should" -- the man that's
19 sitting there, that's the owner, may not know this
20 situation. But the inspectors, like I mentioned
21 before, some know.

22 And I don't think it's mandated by OSHA for

1 them to do a -- it says in ANSI that if a
2 load-sustaining part is replaced, repaired, or changed,
3 or whatever, that it should be done -- a 110 percent
4 load test needs to be done. In other words, if you're
5 going to do any repairs to those components.

6 MR. GILLEN: Sure.

7 MR. LEBLANC: But across the board, we don't
8 have anything that tells an inspector in the general
9 industry to check a load line on a -- hoist brake line
10 on a Galion Dresser.

11 MR. GILLEN: Would it be your recommendation
12 that it be --

13 MR. LEBLANC: Yes, it would, highly. It would
14 be highly recommended.

15 CHAIRMAN MIGLIACCO: Okay.

16 MR. LEBLANC: Yes, sir?

17 CHAIRMAN MIGLIACCO: Susan was next. Our next
18 panel is up, is here, so --

19 MR. LEBLANC: Okay.

20 CHAIRMAN MIGLIACCO: -- let's make them brief.

21 MS. BILHORN: Matt kind of got into
22 where -- an area I'm going, so I'd like to continue

1 that, because I think -- I mean, you're going to say
2 something along that line, too, right?

3 MR. RUSSELL: A couple things I'd like to say.
4 Number one, I would like to thank Mr. LeBlanc for
5 coming here.

6 He and I have actually had a number of
7 conversations, approximately about a year ago, as it
8 related to this issue. And a couple things came up.
9 One was that we tried to actually pursue the
10 manufacturer through my connections with the
11 Association of Equipment Manufacturers, and we actually
12 contacted them, as well as Kamatsu, who actually has
13 the license to manufacture the crane, which they chose
14 not to follow through on. And at that time, we could
15 not find anyone with Dresser or Kamatsu who was willing
16 to even talk about the issue, deal with the problem.

17 As Mr. LeBlanc said, the average
18 operator -- and I did talk to a number of
19 operators -- they basically compensate for the problem,
20 and they've been used to compensating to the problem,
21 that they really don't identify it as the true hazard
22 that it is.

1 I would say that -- and Mr. LeBlanc's
2 presentation today -- the one element I heard that I
3 did not hear as of a year ago would be that he has had
4 a qualified engineer take a look at his product, and
5 the qualified engineer has actually verified --

6 MR. LEBLANC: Yes, sir.

7 MR. RUSSELL: -- that the product works, and
8 that the product, when properly installed, will do what
9 he says it will do. And I think that was the gap that
10 we did not have a year ago.

11 So, I would have to say, based on his
12 presentation today, versus discussion a year ago -- as
13 a matter of fact, we have even -- I have even had some
14 conversations with some personnel at OSHA on the issue,
15 as well. So at this point I think, with the qualified
16 engineer involved, being that there is not a
17 manufacturer to deal with on the validity of his
18 modification, I think that does change, and we do have
19 something else to look at.

20 And it would be my recommendation that we
21 actually take another look at his product, with the
22 endorsement of the engineer, which might allow us to

1 move forward on giving a recommendation on a solution
2 to this problem.

3 MS. BILHORN: Just to add -- Susan Bilhorn --
4 just to add a little bit more, I am really struggling
5 with this, because it sounds like this has been a long
6 issue. This has been an issue --

7 MR. LEBLANC: Yes, ma'am.

8 MS. BILHORN: -- around for a long time.

9 MR. LEBLANC: Yes, ma'am.

10 MS. BILHORN: And I think it's fantastic that
11 you've got, you know, a solution.

12 But it sounds like this issue is -- and it
13 existed when the manufacturer was still existent.

14 MR. LEBLANC: Yes, ma'am.

15 MS. BILHORN: So I'm kind of struggling.

16 Because if a piece of equipment can't operate as
17 designed, as designed to operate, you know, how that
18 couldn't have already been addressed, you know -- like,
19 I don't understand. Because you don't modify how you
20 operate to compensate for a defect. I don't -- I'm
21 just struggling with that.

22 MR. RUSSELL: Let me say the average good

1 operator finds a way to operate his crane safely. And
2 any operator who has operated around this crane has
3 actually found a way to operate the crane safely, in
4 spite of the defect.

5 MR. LEBLANC: In spite of it.

6 MS. BILHORN: But that's --

7 MR. HAWKINS: Well, I don't know about
8 "safely."

9 MR. RUSSELL: Well, let me -- when I say
10 "safely," if you talk to the average operator, and you
11 say, "Hey, can you safely operate this equipment," the
12 average operator would actually say, "Yeah."

13 Is it a defect? Yes, it is. And it's only
14 been, I would say, within the last year-and-a-half to
15 two years that I have known of Mr. LeBlanc's solution.
16 And I would have to say, without a manufacture to
17 actually deal with, it did create a major gap in the
18 industry.

19 But again, I think we do have enough to move
20 forward on.

21 MR. LEBLANC: And to clarify -- and we spoke
22 about this in very -- about a good operator. And I'm

1 not going brag, but I think I'm a good operator. I
2 have successfully set that well head -- that blow-out
3 preventer on.

4 But -- and I mentioned with Emmett -- if an
5 operator is operating -- and I could see that well
6 head -- but if that well head would have had a
7 restriction that I couldn't see a building or an
8 obstacle, that it was behind something, I wouldn't have
9 knew -- you can't foresee -- you don't have any
10 tattletales or anything on the hydraulics to see it
11 slipping down. So --

12 MR. RUSSELL: Well --

13 MR. LEBLANC: -- even to compensate -- and a
14 good operator does compensate for it -- yes?

15 MR. RUSSELL: Okay.

16 MR. LEBLANC: Yes, Mr. --

17 MR. RUSSELL: Let me just add one other issue.
18 Here becomes the problem -- so the committee can
19 understand.

20 MR. LEBLANC: Yes, sir.

21 MR. RUSSELL: Any time you modify a crane, if
22 you don't have anyone to verify that modification, and

1 there is an accident where someone is actually killed,
2 there is a lot of liability there.

3 So you can't go in modifying cranes without
4 someone to validate the modification. And that's where
5 the problem lies. Without a manufacturer, without a
6 qualified engineer to actually verify the modification,
7 you cannot endorse a modification of a crane where
8 someone might get hurt or killed, as a result of the
9 modification.

10 MS. BILHORN: But wouldn't you reset the
11 capacity if -- I mean I don't -- that doesn't -- if it
12 can't operate as designed, as the operating manual says
13 to operate it, right, as you've been trained to operate
14 it, then you have to reset the capacity to -- at the
15 point at which --

16 MR. HAWKINS: There is nobody to reset it,
17 though. That's the problem. The institute that would
18 reset it would be the manufacturer, and they don't
19 exist any more.

20 CHAIRMAN MIGLIACCO: Dan?

21 MR. ZARLETTI: Well, I'm sorry we're holding
22 this longer than we needed to, but I'm looking at it

1 coming from a more practical standpoint.

2 If, for instance, Toyota went out of business
3 today, and some time next week we found out there was a
4 significant defense --

5 PARTICIPANT: Defect.

6 MR. ZARLETTI: -- or significant defect in a
7 Toyota automobile, and it was all over the world, this
8 government and this country would figure out some way
9 to retrofit every one of those vehicles to make them
10 safe to the operator --

11 MR. LEBLANC: Yes.

12 MR. ZARLETTI: -- so that you don't have to
13 adjust in the process of driving, you don't have to put
14 your foot out the door, or put your arm up on the side.
15 You're not peddling any harder. It's just going to be
16 a design flaw --

17 MR. LEBLANC: That's correct.

18 MR. ZARLETTI: -- has to be fixed whether
19 Toyota is here or gone. So I think we're looking at
20 the same thing here, is how is it that we can let
21 Galion go out of business and fade into the sunset,
22 have 5,000 of these units still operating

1 insufficiently, and having to make field adjustments by
2 the operator, according to what Emmett's saying.

3 It's -- this crane has to be operated this way for this
4 operator to run it safely, or that crane could be
5 totally different in its alterations by a different
6 operator to get the same end result.

7 So, all of that to say if the retrofit was in,
8 it should have been in universally, so that everybody
9 that knows that they're picking a load of 19,000 pounds
10 is picking it without slippage, and that's a safe pick
11 until it gets set. That's the operator's
12 responsibility, not to come up with some way to
13 jerry-rig this thing, or to make it function in another
14 way by operator or by crane. Because that changes as
15 you go to the different units.

16 PARTICIPANT: It's too bad, because this is an
17 important issue, and we have --

18 CHAIRMAN MIGLIACCO: Thank you very much for
19 your presentation. Do you have copies of your slide
20 presentation?

21 MR. LEBLANC: Sir?

22 CHAIRMAN MIGLIACCO: Do you have copies of

1 your slide presentation to be entered into the record?

2 MR. LEBLANC: I can leave that copy. I sent a
3 copy UPS and it didn't get here -- I mean Federal
4 Express, but it didn't -- but I can leave that one.

5 MR. BIERSNER: Okay, thank you. Mr. Chair, I
6 would like to, then, admit into the record his
7 presentation entitled, "Galion and the Wrap Band Safety
8 Brake" as Exhibit No. 35.

9 CHAIRMAN MIGLIACCO: Okay, thank you.

10 MR. GILLEN: And, Mr. Chair, we are struggling
11 with the schedule, but it is an important issue, and I
12 wonder if we could maybe --

13 CHAIRMAN MIGLIACCO: It's not the schedule I'm
14 worried about right now.

15 MR. GILLEN: Okay.

16 CHAIRMAN MIGLIACCO: It's the people who were
17 waiting to go on --

18 MR. GILLEN: Okay.

19 CHAIRMAN MIGLIACCO: -- who were told to be
20 here at a certain time --

21 MR. GILLEN: All right.

22 CHAIRMAN MIGLIACCO: -- from the federal

1 government.

2 MR. GILLEN: Okay.

3 CHAIRMAN MIGLIACCO: When we give people a
4 certain amount of time to do a presentation, we have to
5 allow them to know they have a certain amount of time,
6 and questions.

7 MR. GILLEN: Understood.

8 CHAIRMAN MIGLIACCO: All right. Our next
9 presentation will be from the director of cooperative
10 and state programs. When you take your seats, please
11 state your names, who will be giving the presentation.

12 (Discussion was held off the record.)

13 CHAIRMAN MIGLIACCO: Ready?

14 (Discussion was held off the record.)

15 MS. JILLINGS: Well, in the interest of time,
16 would like me to get started, and the slides can --

17 CHAIRMAN MIGLIACCO: Please.

18 MS. JILLINGS: Okay. I am Lee Anne Jillings,
19 the deputy director of cooperative and state programs.
20 And joining with me today are Patrick Showalter, the
21 acting director of the office of partnership and
22 recognition programs within the directorate, and

1 Elizabeth Way, the director of the office of outreach
2 services and alliances in the directorate, as well.

3 We are going to be providing you an update on
4 the directorate's cooperative program activities. I
5 will start off with a kind of high-level overview of
6 our cooperative programs, and then go into some
7 information on activities within our office of small
8 business assistance, and -- including the consultation
9 program.

10 So, as of -- brilliant, it's up, excellent.

11 (Discussion was held off the record.)

12 MS. JILLINGS: Okay, as of September 30, the
13 end of the last fiscal year, this is the figures of
14 participants within the family of OSHA cooperative
15 programs: the voluntary protection programs, with just
16 over 2,400 participants currently active; our OSHA
17 Challenge program, with 237 participants; our strategic
18 partnership program, 118; SHARP, which is the
19 recognition program that is part of the on-site
20 consultation program, had nearly 1,600 participants;
21 and finally, our Alliance program had 355 active
22 agreements.

1 The next slide shows, over the course of each
2 of the programs' existence -- or, actually, VPP started
3 before 1992, but that's as far back as this chart
4 goes -- the participation by active participants by
5 fiscal year. So you can see here the programs at the
6 top continue to grow along.

7 We have, in the last -- you probably are
8 aware -- the last 18 months to 2 years, gone through a
9 period of reviewing our cooperative programs to assure
10 that they are meeting the objectives and interests of
11 the Agency, and the other speakers after me will share
12 a little bit about how the programs their office are
13 responsible for have addressed this issue, and the
14 results out of that.

15 The next slide shows accumulative cooperative
16 program participation. So this is depicting all of,
17 over the course of time, the number of work sites or
18 agreements -- as the case may be with Alliances -- that
19 have been in place at one time or another that may not
20 necessarily currently be active. So you can see the
21 scope there.

22 So, the next slide -- I will go into now

1 information on our office of small business assistance.
2 This office is responsible for administering the
3 Agency's on-site consultation program, which includes
4 the SHARP recognition element, as well as coordinating
5 the Agency's outreach and information and interactions
6 related to the small business community, which,
7 obviously, the Agency serves.

8 On the next slide you will see a performance
9 graph of on-site consultation services provided by the
10 50 states and the territories -- 4
11 territories -- beyond -- in the past fiscal year.
12 On-site consultation conducted just over 31,000 on-site
13 visits during the past year. These include on-site
14 visits working with small business employers to address
15 either specific hazards they have requested assistance
16 on, or comprehensive visits.

17 It also includes other sorts of interaction
18 with small business, including training and education,
19 as well as follow-up visits. Consultation projects
20 also go back to facilities that they have provided some
21 assistance to, to continue that interaction and
22 assistance with them, as they strive to address

1 workplace safety and health hazards, and implement
2 safety and health management programs.

3 On the next slide you will see the number of
4 employees at work sites impacted by on-site
5 consultation. The program is designed to provide
6 assistance to small businesses. And in the program,
7 this is defined by the Agency as work sites that have
8 fewer than 250 employees on site, or fewer than 500
9 employees, corporate-wide.

10 So, basically, what this chart is describing,
11 it's showing that we are truly reaching the intended
12 audience that this program is designed to serve, with
13 nearly 98 percent of the work sites that have received
14 this assistance being under 250 employees,
15 which -- also, you can see on the left that most of
16 them are 1 to 25, which are, obviously, often employers
17 who are most in need of help in addressing safety and
18 health hazards.

19 The next slide moves on to the SHARP program
20 participation. And this program, as I mentioned
21 earlier, is the recognition element for on-site
22 consultation. Work sites that are -- achieve SHARP

1 recognition have successfully implemented a
2 comprehensive safety and health management program at
3 their individual work site, and have the required
4 injury and illness rates below their industry average
5 to obtain recognition in this program.

6 You can see the program has grown in interest
7 and participation, which we think is a positive thing
8 for small businesses to be implementing its effective
9 safety and health programs. And we have also, more
10 recently, been making an effort to highlight successful
11 work sites that have achieved SHARP, not only through
12 posting success stories on our website, but also
13 including information on the impact they have received
14 through working with consultation and the Agency's
15 bimonthly QuickTakes e-newsletter, which, hopefully,
16 you all are subscribers to.

17 The next slide talks about the rule-making
18 activity that the office of small business assistance
19 and our directorate is involved in at this time. You
20 may recall that in early September -- September
21 3 -- the Agency published in the Federal Register a
22 notice of proposed rule-making to amend the 29CFR1908,

1 the regulations which oversee the consultation program.

2 And there are three primary areas that the
3 Agency is proposing changes. They relate to
4 how -- what the definition is, how the Assistant
5 Secretary defines sites that receive inspections,
6 regardless of exemption status -- exemption status, in
7 this case, relating to participation in SHARP.

8 The second area is the ability of compliance
9 officers to conduct visits at a work site, as a result
10 of a referral. And the third area that is being looked
11 at is limiting the length of the deletion period for
12 participation in the SHARP program, the recognition
13 program that the consultation program has, as part of
14 it.

15 The comment period ended on November 3. The
16 Agency is currently in the process of reviewing the
17 comments that were submitted. And we will be
18 proceeding with that review, and hopefully come out
19 with a final rule by the end of the fiscal year.

20 The final slide in the section I will be
21 talking about this morning is an image of two of our
22 web pages that the office has recently updated,

1 redesigned, with improved usability, we hope, for
2 visitors to the OSHA website, as well as enhanced
3 information to assist the visitor in finding out
4 information about the Agency's on-site consultation
5 program, as well as the overall small business
6 resources that OSHA has.

7 If you have been to the OSHA.gov site
8 recently, you may have noticed that, in addition to
9 having a bullet in the audiences section on the left
10 side that says, "consultation," we now, right next to
11 that, have wording that says, "free," which is one of
12 the key things that we want employers -- or the
13 community, really -- to be aware, is that this program
14 is a free resource that's made available to them.

15 And, as a result of that one word, "free,"
16 being added to the home page, we have seen a dramatic
17 increase in visits to our consultation web page, and we
18 hope that this will continue to support our efforts to
19 effectively market the program to employers and other
20 in industry, to make sure that they can take advantage
21 of it.

22 The small business web page, on the right,

1 points out the benefits and resources that OSHA has
2 available for small businesses, as well as points out
3 various things that the Agency is required to make
4 employers aware of, such as their rights under SBREFA
5 and interactions that they may engage in with the Small
6 Business Administration.

7 So, with that, I will turn the presentation
8 now over to Patrick Showalter, and will take questions,
9 I believe, at the end of it. Thank you.

10 MR. SHOWALTER: Thank you. Hello, I'm Patrick
11 Showalter, I'm the acting director for the office of
12 partnerships and recognition, and I would like to cover
13 three of our programs: the voluntary protection
14 programs, VPP; the OSHA strategic partnership program,
15 or the OSPP; and OSHA Challenge program.

16 Next slide, please, next slide. Now, I
17 realize that some of you are very involved with VPP,
18 OSHA's premier recognition program for companies with
19 excellence in health management programs. But for
20 those of you who are not as familiar, I would like to
21 just provide some basic information.

22 VPP has a 28-year history of proven impact on

1 safety and health. VPP relies on cooperation between
2 OSHA, employers, and workers, and worker union
3 representatives. VPP is performance-based.

4 Participants have to meet certain criteria, and OSHA
5 verifies that the participants have met this criteria.

6 Now, management commitment and employee
7 involvement is a key tenet. Employees and employers
8 must work together to address safety and health
9 workplace hazards, set goals, measure progress, and
10 create a culture that -- of continuous improvement in
11 safety and health.

12 And the other key tenets are analysis, hazard
13 prevent and control, and training. Now, Dr. Michaels
14 has said that VPP companies "get it." They are models
15 which -- for -- what -- they are models for what can be
16 achieved when employers and employees come together to
17 implement an effective injury and illness prevention
18 program.

19 Acceptance into the VPP is OSHA's recognition
20 for providing exemplary occupational safety and health,
21 and serving as models for others.

22 Next, please. Now, the impact of

1 VPP -- participation in the VPP continues to grow.
2 Since 2001, the number of our participants has
3 increased by 170 percent. As of September the 30th,
4 there were over 2,400 participants, and this is
5 including federal and state operations covering over
6 135,000 employers and contractors.

7 On average, VPP participants have injury and
8 illness rates more than 50 percent below the national
9 average for their respective industry. VPP has been
10 successful, and has made a significant impact in the
11 construction industry. In 2008, data collected from 96
12 VPP construction participants showed a total case
13 incident rate 66 percent below the national average,
14 and days away, restricted, and transfer rates 93
15 percent below the national average.

16 Next, please. In 2009, OSHA published
17 significant changes to the VPP that opened the program
18 to previously ineligible employers by creating 3 ways
19 to participate. The three ways are: site-based,
20 mobile workforce, and VPP corporate.

21 Now, site-based, or known as the traditional
22 way of participation, is for fixed work sites. Some

1 long-term construction sites qualify, as well. But the
2 employer must control site operations, and have the
3 ultimate responsibility for ensuring worker safety.

4 Mobile workforce is for companies whose
5 workers move physically from one project to another
6 project. And this includes both the general industry
7 and the construction industry. Companies who function
8 as resident contractors at two or more fixed locations
9 can qualify, as well.

10 What's important to remember about mobile
11 workforce is the participant must identify a DGA, or a
12 designated geographical area. This can be no smaller
13 than an area office, a jurisdiction no larger than an
14 OSHA region. All of the projects within the identified
15 DGA must meet the requirements of VPP.

16 VPP corporate is just a more efficient
17 application and evaluation process for organizations
18 that are making a strong commitment to VPP. It
19 leverages OSHA's resources, as well as the
20 participant's resources. Currently, there are eight
21 participants in corporate. They are Jacobs Engineering
22 Group, the most recent approved, joined by Morton Salt,

1 Delta Airlines, Parsons Corporation, Flor Corporation,
2 General Electric, the Dow Chemical, and the Washington
3 division of URS.

4 Next, please. Continuous improvement is an
5 important aspect of VPP. In 2009, the Government
6 Accountability Office, or the GAO, issued a report that
7 identified areas in which OSHA could strengthen the
8 administration of VPP, and the GAO made suggested
9 improvements to -- for us, as well.

10 Now, since that time, since the memo was
11 issued, we have issued a series of enhancement memos.
12 Acting Assistant Secretary Jordan Barab instructed
13 OSHA's regional administrators and the national office
14 to implement various internal changes. These internal
15 changes can be grouped as consistent application of
16 policies and procedures, or quality assurances. During
17 this time we are continuing to accept applications from
18 participants, and we are exploring alternative
19 non-governmental funding options for the program, as
20 well.

21 Next, please. Next, I would like to talk
22 briefly about the OSHA Challenge program. This is a

1 three-stage -- OSHA Challenge is a three-stage road map
2 to establish an injury and illness prevention program,
3 based on the model of the VPP management system. The
4 program is ideal for employers and all major industry
5 groups. Challenge administrators, and coordinators
6 voluntarily guide the participant through the
7 three-stage process, and it may prepare a company to
8 apply -- be ready to apply -- for VPP.

9 With the OSHA Challenge, we offer online
10 tools. There are numerous online tools for
11 participants to use, including gap analysis. There are
12 two tracks, a construction and general industry. And
13 currently we have 27 OSHA Challenge
14 administrators -- that's 14 from the construction and
15 13 from general industry; 124 coordinators, 81 from
16 construction, 43 from general industry.

17 And now, the administrators and the
18 coordinators are volunteers, and are not OSHA
19 employees. Currently there are 237 active participants
20 whose over 98,000 employees are benefitting from the
21 program. Thirty-four percent of the employer
22 participants are unionized, and thirty-five percent of

1 the unionized participants are in the construction
2 industry.

3 Next, please. And, lastly, I would like to
4 briefly talk on the OSHA strategic partnership program.
5 This provides OSHA the opportunity to partner with
6 employers and employees, professional trade
7 association, labor unions, on-site consultation
8 projects, or other interested parties. Each
9 partnership, which lasts about three years, develops a
10 unique formal agreement that establishes specific
11 goals, strategies, and performance measures. This
12 program is available to all private-sector industries
13 and government agencies where OSHA has jurisdiction.

14 Since the program was launched in 1998, there
15 have been 651 OSHA partnerships, impacting over
16 1,700,000 employees, and over 26,000 employers. As of
17 September the 30th, we have 118 active participants
18 covering over 300,000 employees and over 4,000
19 employers. Eighty-eight percent of these were in the
20 construction industry.

21 And lastly, I'm just proud to note that over
22 the past 10 years, more than half the athletic stadiums

1 constructed in the United States have participated in
2 the OSHA's strategic partnership program. Thank you.

3 MS. WAY: I'm Elizabeth Way, I'm the director
4 of the office of outreach services and alliances, and I
5 will talk to you today about the Alliance program, and
6 the changes that have occurred over the last year with
7 that program, and also some of the successes and things
8 that we have done with the Alliance program, as well as
9 provide you with some information about what OSHA is
10 doing, and our office is doing, as it relates to
11 coordinating OSHA's compliance assistance activities.

12 Next slide. Through the Alliance program,
13 OSHA works with a variety of organizations, including
14 associations, unions, consulates, community and
15 faith-based organizations, educational institutions, as
16 well as government entities entering into formal
17 agreements with them to leverage the resources that
18 those organizations bring to bear to share information
19 about workplace safety and health.

20 One of the major changes, as a result of the
21 new revised Alliance criteria in July 2010 was
22 increased emphasis on worker participation within the

1 alliances. And by that we mean that the alliances must
2 include worker representation, either through having a
3 union signatory, or having worker involvement in the
4 alliance's development and its implementation.

5 Through the Alliance program we work on
6 raising awareness of OSHA's rule-making and enforcement
7 initiatives, and this is another shift, in terms of
8 supporting and aligning with OSHA's priorities.

9 Through this we would work with alliances to
10 develop products for their industries or their
11 constituents related to opportunities to participate in
12 OSHA's rule-making efforts, to be made aware of new
13 rules that impact them, from both an employer and a
14 worker perspective, to make workers aware of what their
15 rights are under the Occupational Safety and Health
16 Act, and other regulations promulgated by OSHA, and
17 getting the word out for how they can participate, as
18 workers and also employers, in the rule-making process.

19 We also focus our goals on training and
20 education, so developing training and educational
21 programs and seminars aimed at reducing workplace
22 hazards, or arranging for the delivery of training, and

1 providing feedback on products that OSHA may be
2 developing, as it relates to training.

3 And, finally -- and perhaps the largest
4 efforts through the Alliance program -- are related to
5 outreach and communication. So, creating and sharing
6 compliance assistance products in English, Spanish, and
7 other languages -- and as we move on you will see some
8 products that we have created in Portuguese -- to help
9 workers understand what their rights are, to understand
10 what an employer should provide for them; based on what
11 the regulations are, to help employers understand what
12 they are required to provide; to conduct best practice
13 seminars for OSHA staff, to help them know about
14 different industries, and understand how an employer
15 actually adheres to the regulations and how, if they're
16 doing things right, this is how things should be done.

17 So that an inspector, when they go out into
18 the field and are looking at an industry, they
19 understand what they are looking for, and understand
20 actually what the state of the art is: This is really
21 how something should be done, if we are complying with
22 what the regulations are.

1 And we are also looking to do outreach to
2 at-risk workers through our alliances with consulates
3 at community-based organizations, and reaching out to
4 hard-to-reach workers. Some of that would include
5 educating those organizations as to how they can train
6 their employees to reach out to at-risk workers, as
7 well. And particularly, we have done a lot of work
8 with the consulates.

9 May I touch briefly on the number of Alliances
10 that we have? And this just gives a break-down of the
11 number of total active Alliances, and also the -- which
12 are in the national office, and which are regional area
13 office Alliances.

14 The next slide also gives a breakdown of the
15 Alliances by signatory type. So that you can see at
16 the end of September we had 12 Alliances with
17 consulates.

18 Lee Anne Jillings and Dr. Michaels
19 participated last week in a meeting with Secretary
20 Solis and the ambassadors and representatives from a
21 number of Caribbean and Central American countries, in
22 terms of looking to perhaps replicate the same sort of

1 letter of arrangement that we have with the Mexican
2 Embassy, and the work that we have done in reaching out
3 to those organizations, either through formal
4 relationship, such as the Alliance program, or through
5 information outreach activities, in trying to reach
6 their workers, or their citizens who are working in the
7 United States.

8 So, we are looking forward to working with
9 them through the Alliance program and other avenues
10 with OSHA, to reach out to those sorts of at-risk
11 workers that may not be aware of their rights under the
12 Occupational Safety and Health Act. And often times
13 those outreach efforts are also -- the letters of
14 arrangement are also -- incorporate wage and hour, so
15 they are also aware of what their wage and hour sorts
16 of rights are.

17 And, as you can see, we have a number of
18 alliances with unions and other sorts of
19 non-traditional partners.

20 And the next slide talks some about the
21 construction-related alliances we have. And I see,
22 sitting at your table here, a number of people who

1 participate in some of our national Alliances. And we
2 also have 134 regional area office Alliances that have
3 a construction emphasis.

4 The next slide talks about what the Alliance
5 program results are. Since the program's inception,
6 more than 300 products have been developed by Alliance
7 program participants through the Alliance program,
8 including videos, fact sheets, tip sheets, Power Points
9 that could be used for training, training modules,
10 different sorts of training courses that have been
11 developed.

12 Those are all listed in a screen shot that we
13 have here as the Alliance program participants develop
14 products page. Because a tenet of the Alliance program
15 is any of those products that are developed are made
16 available for free to the public. And that's done
17 through this page, as well as the individual Alliance
18 pages that we have on the OSHA website.

19 And then, these products are also linked to
20 from another -- a variety of other places on OSHA's
21 website, like safety and health topics pages, or
22 eTools, under additional resources.

1 Through the Alliance program we also do
2 outreach to workers and employers through speeches and
3 exhibits. We talked a little bit about the best
4 practice seminar. For example, most recently, in
5 November, in Little Rock, the National Association of
6 Home Builders, through our Alliance program, did a "How
7 to Build a House" best practice seminar for 20 OSHA
8 staff, which focused on new home construction process,
9 addressing key residential worksite safety issues, such
10 as fall protection. So, to give them that information,
11 to that they would know how residential home builders
12 are adhering to OSHA regulations.

13 And we also do a number of speeches and
14 exhibits during the year, and develop a series of case
15 studies and success stories that are, again, posted to
16 the OSHA website, so that other organizations can see
17 these are things that have happened, these are the
18 efforts that we can replicate, or this is where we can
19 go to get information on a particular topic that may
20 interest us.

21 On the next slide, here is a couple of
22 pictures of products that have been developed through

1 the Alliance program.

2 On the left side, you can't really see -- and,
3 even if you did, you probably couldn't read it, because
4 that is done in Portuguese. And that's one of the
5 products that was developed by the Scaffold Industry
6 Association through the Alliance program. It's a
7 transport platform safety tip sheet that was originally
8 done in English, and then they've also had it
9 translated into Brazilian Portuguese, to reach that
10 sector.

11 On the right-hand side we have a safety and
12 health field manual that was developed through the
13 Sealant Waterproofing and Restoration Institute
14 Alliance. That product is available in both English
15 and Spanish, and it provides -- it's a little pocket
16 guide that provides a variety of information on OSHA
17 requirements in the industry, very simple language, a
18 lot of pictures, so that somebody can use those. And
19 it also gives the references for the OSHA regulation,
20 so that someone can go to the regulation to get more
21 information.

22 Our next slide talks about the Alliance

1 program construction roundtable. And through the
2 roundtable we bring together the construction-related
3 alliances to talk about things that are of mutual
4 interest, to share information with them about what's
5 going on with OSHA, what's going on with each other,
6 what's going on in the industry, so that they can use
7 that information to take it back to their employers and
8 to their workers, to develop products, to share the
9 information, to get the word out about a variety of
10 safety and health topics.

11 In addition, the round table also produces
12 products, and they work together in developing products
13 that, through their individual Alliances or
14 organizations, they might not otherwise do. Most
15 recently, they have done a prevention of sprains,
16 strains, and material handling injuries on the
17 construction site slide presentation that's posted to
18 the website. So organizations or individual workers
19 can go out and see that and use that. They have also
20 done a series of toolbox talks on sprains and strains.

21 And they have developed -- or are interested
22 in developing, I think, four to six more construction

1 workplace design solutions. And these are focusing on
2 design solutions for different sorts of fall hazards in
3 construction. So, for example, falls from non-moving
4 vehicles, falls from floor openings, and skylights and
5 skylight guards, those sorts of things.

6 The next slide -- moving away from the
7 Alliance program and moving into our compliance
8 assistance role -- is a screen shot of OSHA's
9 compliance assistance web page, which is a portal to
10 find a variety of different compliance assistance
11 products on the OSHA website.

12 Of particular interest to a lot of people is
13 the part that's circled on the right, which is
14 the -- it's actually shifted down a little from my
15 screen shot; apparently contents have shifted in
16 shipping -- but it's the actual new products. And it's
17 an easy place to go and see what are the new products
18 that OSHA has developed since perhaps the last time you
19 visited the website. It's a quick and easy way to see
20 what are the new things that have come along.

21 And we're working to continue to revise this
22 page, and make it more user-friendly, and as OSHA works

1 to develop more and more products that are more
2 accessible to workers, and have an increased worker
3 focus, looking at how we can make those products easily
4 identifiable and available to folks on this page.

5 And then, the final screen shot is the OSHA
6 worker page. OSHA is making a lot of efforts towards
7 making compliance assistance and reaching out to a
8 variety of at-risk workers, so increasing our emphasis
9 on worker rights and developing products for workers,
10 including low literacy and non-English sorts of
11 products. And again, as we have talked about before,
12 reaching out to worker groups and faith-based community
13 groups to help us reach those workers, either through
14 formal mechanisms or through informal mechanisms.

15 And our primary focus is making workers aware
16 of their rights under the Act, and how to exercise
17 them, and providing training to them so that they
18 understand what is safe and what isn't, and what their
19 rights are, related to that. And OSHA is continuing to
20 develop products in English, obviously, but also
21 expanding those products into other languages.

22 So, for example, a number of the products that

1 we developed for the oil spill were done in English, as
2 well as Vietnamese, to reach those workers. And we are
3 looking to target products for specific language
4 groups, based on who might be the most prevalent
5 workers in a particular industry.

6 And also, OSHA is also looking at co-branding
7 products. And I think you heard about that a little
8 earlier, in terms of the nail gun product that's being
9 done with NIOSH. So, looking to capitalize on how we
10 can work with other organizations to provide products
11 and compliance assistance materials to workers and
12 employers.

13 CHAIRMAN MIGLIACCO: Any questions from the
14 committee? Walter?

15 MR. JONES: Walter Jones, Labor rep, health
16 and safety. Thank you. Good to see you again, Lee
17 Anne.

18 I want to speak directly to you about the VPP
19 program. And in the, I guess, 20-plus years it seems
20 like we have a lot going on there. And I wonder why is
21 it -- or can we -- or -- begin to look at case studies
22 and business case approaches to what works, so that we

1 can -- and we got this laboratory of the best of the
2 best, and in a perfect world everybody would be VPP.
3 But since it's not, what is the experience that your
4 office is drilling down on? What works? What doesn't
5 work?

6 In addition to that, there are a lot of great
7 hot new topics out there, and Designed for Safety is
8 one that this committee is very strongly in. Which of
9 these VPP companies are actually involved in designing
10 safer work sites at the contract bidding stage, and
11 what is their experience, and how can they inform this
12 discussion on moving forward on prevention through
13 design, and designing for safety?

14 You talked about being involved in a lot of
15 stadium efforts, which, I guess if you're -- my guess,
16 and --

17 MR. SHOWALTER: That was the partnerships.

18 MR. JONES: Yeah, yeah, and again -- and
19 that's great. But what I'm saying is that these are
20 VPP-type companies involved in these relatively
21 short-term projects -- two-year projects, I guess -- to
22 develop a stadium. I guess they're going to have to

1 look at designing safety to keep things down.

2 Well, what is their experience, and what can
3 they inform this committee and inform the industry at
4 large on the importance of designing safety in at the
5 front end, so that they can have these back-end lower
6 -- not having the fatalities and the injuries and the
7 costs associated with poor safety records, so that we
8 can begin to move these ideas forward?

9 I don't know, I have said a lot there.

10 MR. SHOWALTER: Right.

11 MR. JONES: But that's kind of what
12 we're -- what I'm interested in, about the VPP
13 programs. A perfect opportunity to develop case
14 studies on the best approaches. Are we doing that?

15 MR. SHOWALTER: Are we doing -- as far as
16 design safety, no, I don't -- we're not capturing that
17 specific information for participants coming in to the
18 program, or actively involved in the program.

19 Obviously, you know, part of an effective
20 system in place for programs would be like pre-use
21 analysis, and things of that nature, to identify
22 hazards being brought into the work environment.

1 But I think, as far as capturing that, that's
2 a good point. You know, maybe we could look at, you
3 know, how many people are actually doing that. We do
4 capture success stories, we post a success story on the
5 web. So those are some really good suggestions, and I
6 look forward to looking into it.

7 MS. JILLINGS: I think, also for all of our
8 VPP evaluation reports, when they come in there is
9 always a section that has models or areas of
10 excellence, areas of emphasis that's identified by the
11 VPP evaluation team. So perhaps it could be additional
12 opportunities that we, as an agency, could use in
13 looking at that information.

14 Patrick mentioned we do post the success
15 stories up on the website, related to --

16 MR. JONES: Yeah, that would be useful,
17 because --

18 MS. JILLINGS: -- to those. And then I will
19 also say the -- one of the nice things about having the
20 cooperative programs within the DCSP household is that
21 we often have opportunities to share and collaborate
22 among our cooperative programs.

1 And the Alliance program -- for instance,
2 Washington division of URS -- is a VPP corporate Way to
3 Participate member, they're a VPP participant in a
4 number of their facilities. They're also an Alliance
5 program participant. And through their involvement in
6 the Alliance program and the construction roundtable,
7 they actually brought forth a very extensive
8 information that we worked with them to develop, a case
9 study --

10 MR. JONES: Yeah, it was great.

11 MS. JILLINGS: -- specifically around Design
12 for Safety. So that's an example, perhaps, that we
13 could do more to build upon.

14 MR. JONES: Yeah, that's what I'm saying, more
15 like that. And even -- and begin to drill down in a
16 way that -- and disseminate the information across to
17 contractors who may not be as big. But what
18 works -- they just don't have the money or the
19 opportunity like the Jacobs have, that -- what works.

20 And so that was the first part of my question,
21 was how can we use this, with all this wealth of
22 information, to really help those who are not in VPP?

1 You know, how do we get them up to speed, and use that
2 information, since they're the best of the best?

3 And secondarily, we're -- like I say, this
4 committee is big on designing hazards out at the
5 bidding process. And since all of these companies -- I
6 would imagine VPP companies, for the most part, do
7 that -- what can their experience be in helping us move
8 that type of thought forward?

9 CHAIRMAN MIGLIACCO: Liz?

10 MS. ARIOTO: Liz Arioto. I would like to
11 discuss or ask questions about the SHARP program. Is
12 there a change in the length of the program, or is
13 there proposed changes or --

14 MS. JILLINGS: The proposal that was published
15 in September proposes that the period that a work site
16 participating in SHARP be deleted from our general
17 scheduled inspection period be for one year with a
18 renewal of another year period. And right now it's
19 currently in our policies two and three.

20 MS. ARIOTO: The reason I ask that, because I
21 checked with them -- Cal OSHA consultation -- and it
22 was taking between six months or longer for a company,

1 six to nine months or longer, even to get into the
2 SHARP program. And I think a lot of the companies that
3 were applying appreciated that two-year period. If you
4 decrease it to one year, do you think the participation
5 may be less?

6 MS. JILLINGS: It's one plus one.

7 MS. ARIOTO: One plus one, okay.

8 MS. JILLINGS: So it's not actually --

9 MS. ARIOTO: Okay. Is there other -- are
10 there any plans -- or let me ask you a question. Is
11 there any way that a company that has already the SHARP
12 recognition get any kind of -- if they want to go on to
13 the VPP, are there any allowances different than a
14 company that is first applying for the VPP?

15 MS. JILLINGS: There is not a streamlined
16 connection --

17 MS. ARIOTO: No?

18 MS. JILLINGS: -- between the two. Although,
19 I would say, if someone is in SHARP, they have been
20 recognized for having effective safety and health
21 management programs, so that should ease their ability
22 to successfully apply to VPP. But there is no conduit

1 between the two, directly.

2 MS. ARIOTO: And there was one other question.
3 You've mentioned it fast, and I wasn't quite sure. The
4 deletion of some of the inspections? Like right now,
5 you know, you have -- so can a compliance officer just
6 walk on to a SHARP job? Is that what the proposal is
7 now, or do you still have the --

8 MS. JILLINGS: The proposal would be to allow
9 a referral to interrupt the status of an in-progress
10 visit.

11 MS. ARIOTO: Oh, okay.

12 MS. JILLINGS: Whereas, right now, that would
13 not -- that is not currently required. That is one of
14 the areas that we're asking for feedback on.

15 MS. ARIOTO: Okay.

16 CHAIRMAN MIGLIACCO: Steve?

17 MR. HAWKINS: I was just going to say,
18 actually it's been our experience that very few
19 companies go from SHARP to VPP, because the cultures
20 are so different. Most of the SHARP lawyers are very
21 -- the consultation visits are primarily 1 to 25, and
22 those people seem to get SHARP, and that seems to get

1 them what they need. And their accident and injury
2 experience rate will be similar to what they are in
3 VPP.

4 But we haven't seen very many people -- I
5 don't know about Kevin -- go on from SHARP to VPP. We
6 just haven't seen that very much. I don't know, do you
7 know --

8 MS. JILLINGS: And the programs are different.
9 I mean SHARP is statutory in our Act; VPP is not. And
10 then SHARP, as far as requirements, you know, it is
11 part of an ongoing interaction with the work site and
12 on-site consultation program and the states, who
13 continually work with them and guide them in their
14 successful implementation of a safety and health
15 management program. Whereas, in VPP, you're -- no
16 training -- you -- or full force in your ability to
17 succeed the Agency's requirements and meet VPP
18 requirements.

19 MR. HAWKINS: It also might be interesting to
20 know the consultants in the SHARP program, they
21 directly work with those employers --

22 MS. JILLINGS: Yes.

1 MR. HAWKINS: -- over anywhere from probably a
2 6 to 8 to even 12, 14-month periods.

3 MS. JILLINGS: That's what I -- yeah.

4 MR. HAWKINS: So they really work with them
5 directly to help them develop their programs. Where,
6 in VPP, by the time we get there to authenticate their
7 efforts, they should already be where they're going to
8 go. If they're not, then they can't come in the
9 program.

10 MS. JILLINGS: Yeah.

11 MR. HAWKINS: But SHARP sites are really neat
12 sites, because they usually go from, honestly, not
13 hardly knowing what OSHA stands for -- and usually it's
14 in a -- some event has -- we had one I thought was
15 really neat.

16 The owner of this company slipped on some oil
17 and busted the back of his head. Didn't have to go to
18 the hospital, but I mean he got a big egg on the back
19 of his head. And he turned around to his HR director
20 and says, "I want something done about this place."
21 And the culmination of that was they're one of our
22 SHARP sites. And they went from being just really bad

1 to really having a good site work place. And it was
2 through the direct intervention of our consultants.

3 So, it is just such a different program than
4 VPP. Even though they kind of get to similar places,
5 the approach is very different.

6 MS. ARIOTO: I mean I think both programs are
7 excellent, I mean, to help, you know, contractors, you
8 know. Thank you.

9 MS. JILLINGS: Thank you.

10 CHAIRMAN MIGLIACCO: Lee Anne, do you have a
11 copy of your group's presentation?

12 MS. JILLINGS: We can provide that to you all.

13 CHAIRMAN MIGLIACCO: Okay, thank you very
14 much, and I apologize for your delay in your
15 presentation.

16 MS. JILLINGS: Thank you for having us.

17 MR. BIERSNER: Mr. Chair, I would like to
18 admit to the record the slide presentation entitled,
19 "DCSP Programs Update" as Exhibit No. 36.

20 CHAIRMAN MIGLIACCO: Thank you. At this time,
21 Deputy Assistant Secretary Jordan Barab is going to
22 give a presentation on state program updates.

1 Jordan, again, I apologize to you, also.

2 MR. BARAB: Luckily, I have nothing else to
3 do.

4 CHAIRMAN MIGLIACCO: Oh, really?

5 (Laughter.)

6 MR. BARAB: All right. Well, thank you for
7 inviting me. Yeah, I'm going to talk a little bit
8 about what we've been doing on state programs and, of
9 course, any questions you have I would be glad to
10 answer.

11 Just to review a little bit of history
12 here -- and I think some of you are very familiar with
13 it -- in 2007 and 2008, you know, there was a rash of
14 fatalities in Las Vegas, mostly on the Las Vegas strip,
15 with the City Center project, but other places in Las
16 Vegas, as well. And, in fact, when I was working in
17 Congress, we held a hearing about both the construction
18 incidents in Nevada, as well as some of the crane
19 issues in New York City.

20 When I got over here, one of the first things
21 I did was commission a study of the Nevada State
22 program to figure out what the problem was there,

1 whether it was a problem -- whether the state program
2 has a problem, whether, you know, that was connected to
3 the fatalities, and certainly to the follow-up to the
4 fatalities and other issues that had been -- that had
5 come to our attention.

6 We did conduct, again, an in-depth study. We
7 did find some very serious problems with the state
8 plan. We asked the state plan, and they provided us
9 with a corrective action program, and we are still
10 actually working with them on addressing the issues
11 that we raised, and that they are addressing in their
12 corrective action program.

13 At the same time, we kind of asked ourselves
14 the question whether, you know, Nevada was unique among
15 state plans for having these kind of problems. And we
16 couldn't really assure ourselves that it was not
17 unique, so we decided that we really needed to take a
18 look at all the state programs, to see how well they
19 were functioning, whether they were, in fact, at least
20 as effective as the federal program, which is the
21 requirement.

22 We had changed our oversight methods on the

1 state plan some time in the mid-1990s. We used to
2 actually have a much more hands-on oversight process
3 with the state plans. We had modified that, I think,
4 assuming after that many years -- whatever it had been
5 at that point, you know, 25 years of OSHA -- we allowed
6 them basically to, you know, basically let us know, or
7 tell us what they were planning to do, what their
8 strategic plans were, and we would basically hold them
9 against their own strategic plans and what they
10 reported to us. It was much less hands-on.

11 Again, the Nevada investigation indicated to
12 us that we really needed to be much more hands-on,
13 again. Or, at least to take a look -- a one-time look,
14 at least -- on the statuses of all the state programs,
15 which we did. We called them the EFAMES -- and, you
16 know, I can never remember what FAME stands for, but
17 I'm sure somebody does.

18 But, in any case, the FAMES are the reports we
19 do every year, the annual reports we do every year on
20 the status of the state plans. The "E" came from
21 "Enhanced." So we did in-depth studies of all -- of 25
22 state plans. Those were basically all of the state

1 plans, including the public employee plans, as well as
2 the Virgin Islands and Puerto Rico, minus Illinois,
3 which has just become a state -- a public employee
4 state plan, and minus Nevada, which has, obviously,
5 just had a study.

6 What we found was we -- all of those reports
7 were released September 28th. We found a number of,
8 you know, fairly serious problems in a number of the
9 state programs.

10 We also found a number of things in the state
11 programs that were better than what federal OSHA does,
12 especially in terms of standards in some
13 states -- California, Washington, a few others -- as
14 well as some enforcement provisions in some of the
15 states that exceeded what federal OSHA did. But we
16 also found some serious problems in a number of the
17 states.

18 Penalty issues, that's one thing that's come
19 to the fore quite a bit, and I can talk a little bit
20 more about that. Many of the states -- most of the
21 states, actually -- their average penalties are below
22 OSHA, some of them significantly below OSHA's. Our

1 average penalty for a serious violation is about
2 \$1,000. Oregon, for example, is about \$300. South
3 Carolina is even less than that, in the \$200 range. A
4 lot of the states have very different definitions and
5 applications of the term "serious."

6 Anyway, there are a lot of issues with that.
7 There are a lot of issues with how some investigations
8 were conducted, how appeals were handled. And,
9 obviously, staffing issues, especially now that we're
10 having such -- the states, particularly, are having
11 such serious economic issues, there were some very
12 serious staffing issues in many of the states. In any
13 case, we found a lot of issues that we needed to deal
14 with.

15 For the most part, nothing so serious that we
16 were threatening to withdraw any state plans, with one
17 exception, and that was Hawaii. And we had been
18 dealing with issues in Hawaii even before we had done
19 the report. Hawaii, like many states, has some pretty
20 severe budgetary problems.

21 But they didn't -- weren't really responding
22 as constructively as most of the rest of the states

1 were. Some very severe budget cut-backs in their
2 program, giving us money back, in fact. Not filling
3 open positions, and it -- that also transferred over to
4 its consultation program, which was fairly
5 dysfunctional, as well -- or unfunctionally, I should
6 say, it really wasn't functioning.

7 So, we did send a letter to Hawaii, to the old
8 governor. There is now a new governor. We will
9 basically repeat that same letter, where we
10 offered -- I mean Hawaii, like most of the states, has
11 final approval. When a state has final approval, there
12 is not much we can do if there are problems with the
13 state legally, except really withdrawing federal
14 approval and re-assuming jurisdiction.

15 We did offer, however -- and the state can
16 accept, has the option to accept -- we offered,
17 basically, concurrent jurisdiction, where we would go
18 in and address some of the areas, basically help them
19 with enforcement in some of the areas where they
20 couldn't provide adequate enforcement. And they -- the
21 old governor, Governor Lingle, basically declined.

22 And we will -- but that was, again, right

1 before the election. Now there has been an election,
2 there is a new governor. We will again be talking to
3 the new administration in Hawaii, as well.

4 The idea here is we would really rather not
5 withdraw the state plan. They have made indications
6 that they would like to improve the state plan. We
7 feel that they need help doing that, and we would like
8 to work with them to, you know, kind of give them a
9 period where we can have concurrent jurisdiction, and
10 they can -- they will be able to get their state plan
11 together again.

12 Now, we have been working with the
13 occupational -- state -- I'm sorry, Occupational Safety
14 and Health State Plan Program Association, OSHSPPA --
15 and Kevin is here, looking very pleased. We have been
16 working very closely with them, because there have been
17 some issues raised. Here again, as I said, we are, you
18 know, in the process of changing our oversight. The
19 penalty issue has been rather contentious, quite
20 frankly.

21 We also are requiring the states to adopt our
22 national Emphasis programs. In return, we are working

1 much more closely, and we're setting up mechanisms to
2 work much more closely with the states to develop
3 national Emphasis programs.

4 We are in the process, right now, here -- and
5 actually, we will be working with the states on this,
6 as well -- is trying to figure out how we can re-adjust
7 the penalty system. We -- you know, OSHA issued a new
8 penalty structure a few months ago. We are looking
9 again very carefully at our -- how we do reductions in
10 penalties for size, good faith, and history.

11 Again, our penalty -- our average penalty for
12 a serious violation is only -- I'm sorry, only \$1,000,
13 which we consider to be way too low. So we are trying
14 to figure out ways that we can increase that, and add
15 to the deterrent value that the penalties provide. And
16 we think that our new system will raise that to around
17 a \$3,000 average level.

18 Again, as I said, you know, some of the
19 states, you know, are kind of in this general vicinity
20 that ours is. Some of them are much lower. There are
21 actually a few that are higher. But we want to try to
22 kind of move also the state average higher, as well.

1 And so, we are trying to figure out, right now, what
2 that means, in terms of OSHA's requirement to ensure
3 that the states have programs that are at least as
4 effective as the federal government.

5 What does that mean in terms of penalties?

6 What does an "at least as effective penalty" mean? How
7 does the fact that some of the states actually visit
8 many more sites than ours, than federal OSHA does, does
9 that factor in -- should that factor in to their
10 penalty level?

11 These are difficult issues that we are trying
12 to figure out here, and that we will need to work with
13 the states on as we go forward to, again, try to
14 basically make sure that enforcement and penalties do
15 still present a viable deterrent to cutting corners on
16 safety and health.

17 So that's pretty much it. Again, it's -- I
18 don't know if any of you have any observations from
19 your states, but again, we are trying to kind of
20 restructure our relationship with the states to a
21 certain extent.

22 We are trying to -- you know, they are our

1 partners in safety and health, they do enforce safety
2 and health -- OSHA in about half the states now -- and
3 so it's very important, I think, that we kind of move
4 along more or less on the same course, while realizing
5 at the same time that, you know, the whole point of
6 having state plans is to allow some variation, allow,
7 you know, good ideas to be tested out. And we
8 certainly don't want to discourage that from happening,
9 either.

10 So that's pretty much the state plan report
11 here. Any questions? Kevin, if you have anything to
12 add to that, I will --

13 MR. BEAUREGARD: I mean I appreciate your
14 straightforwardness, and I know a lot of the folks in
15 this room -- other than these updates -- unless they
16 happen to be in a state plan state, don't hear a lot
17 about state plans. So I think it's beneficial.

18 And I do share what you indicated. We all
19 have a common goal, state plans and OSHA, and we try
20 very hard to work together with one another. In
21 regards to the monitoring, I am the current chair of
22 the Occupational State Plan Association. And we

1 support the idea of monitoring. We think it's a good
2 idea, we think any time you look at a program, it gives
3 you an opportunity to see if there is areas for
4 improvement, as well as to see if there is areas that
5 are working well.

6 And one of the issues that we hope in the
7 future OSHA does look at a little bit more closely when
8 they're looking at state plans, and writing reports
9 about state plans, and evaluating state plans, is, you
10 know, they're equitable in looking at what's working
11 well, as well as areas that need improvement.

12 With that being said, however, you know, we do
13 think it's appropriate for the criteria for
14 effectiveness to be much better defined. And we have
15 spoken about that before. And I think that, you know,
16 what is "as effective as" needs to be defined in order
17 to move forward with that, and in order to look at the
18 criteria.

19 And we do think that there is more than one or
20 two things to look at, when you're looking at
21 effectiveness: for instance, penalties. Although we
22 do think penalties are important, and we feel that it's

1 important to have a deterrent effect, there is many
2 different levels of that, as well. There is provisions
3 for willful violations, there is provisions for failure
4 to correct, there is provisions when you have
5 recalcitrant employers. And I think you have to take
6 all that into consideration.

7 And I don't want to debate that in here, but
8 it is an issue that, you know, we all have interest in.

9 But I think the most important thing is,
10 whatever the criteria that are established, I think
11 they need to be established for both a federal level
12 and a state level, and the federal level and the state
13 level need to be held to the same quality and criteria
14 objectives. You know, what's good for the goose is
15 good for the gander. And I think we're looking at
16 national safety and health, and so there should be an
17 expectation across the country that there is the same
18 level of effectiveness. And I think that that
19 sometimes is missing when this issue is being looked
20 at.

21 And so, like I said, we do support reviews of
22 our program. I think they're beneficial. I do think

1 that there was some legitimate issues brought out in
2 these reports. I think there was other things that we
3 would probably term as questionable, as to whether or
4 not it had any impact on the effectiveness of safety
5 and health.

6 But I think continuing to work together to try
7 to establish these things is the best way to go.

8 MR. BARAB: All right, good. Any other
9 comments, questions, observations, complaints?

10 (No response.)

11 MR. BARAB: All right, good.

12 CHAIRMAN MIGLIACCO: You're off easy, Jordan.

13 (Laughter.)

14 MR. BARAB: All right, well, let me -- yes, I
15 mean, if there is nothing else on the state plans, let
16 me also, as long as I have an opportunity here, just
17 take the -- especially since David can't be here this
18 morning, just take the opportunity to thank you all for
19 all the work that you've done, not just in this
20 meeting, but certainly in past meetings.

21 And I know, you know, as I think David
22 mentioned, you know, we're going to be re-appointing,

1 going through that whole process, and some of you will
2 be back and some of you won't.

3 But I just want to say that it's
4 especially -- and I said this. I think, actually,
5 ACCSH was about the first meeting I went to when I got
6 here, that we do take these committees very seriously.
7 We take the word "advisory" very seriously. We are,
8 you know, very open to your advice. And I think ACCSH
9 has been one of -- has certainly been probably the
10 premier advisory committee to give us, you know, advice
11 that we can use. And we really appreciate that. And
12 there is going to be a lot of work, obviously, and I
13 think David and some of the other presenters here went
14 through that. There will be a lot of work coming up in
15 the next few years that we are going to be depending on
16 you all for advice on.

17 So, again, I do really appreciate it. It's no
18 secret to anyone that we are heading into some
19 difficult terrain here. There will be increased
20 oversight over our activities, and we welcome that. I
21 mean we think we have a good case to make, and we're
22 not going to shy away from that.

1 But at the same time, that also kind of puts a
2 burden on us. And, quite frankly, we're going to share
3 that burden with you all, to make sure that all the
4 American people -- and that includes the President,
5 that includes Congress, that includes other government
6 agencies -- understand the hazards that workers face
7 every day, particularly in construction, the hazards
8 that, you know, certain groups of workers -- and, you
9 know, I'm talking about, you know, hard-to-reach
10 workers, Latin immigrant workers, face in construction,
11 and that that be made very real to people, that, you
12 know, there are solutions to that.

13 These don't have to happen, there are ways to
14 prevent it. OSHA has an important role in that. Your
15 companies, your associations, your unions have
16 important roles to play in that, and that's something
17 that we all, I think, need to make sure that everyone
18 understands. So we all have a challenge in front of
19 us. And again, I am confident we can meet that
20 challenge, and we can -- you know, again, I will
21 welcome any oversight or any closer looks to what we're
22 doing and how we're doing it.

1 And you all are, again, especially valuable
2 there, in helping us do what we do even better. So,
3 again, I want to thank you all very much for that. And
4 if you have any general questions, I would be glad to
5 answer those, as well.

6 CHAIRMAN MIGLIACCO: Any questions from the
7 committee?

8 (No response.)

9 CHAIRMAN MIGLIACCO: Still getting off lucky.
10 Second time.

11 (Laughter.)

12 MR. BARAB: I guess everybody that came before
13 me must have --

14 CHAIRMAN MIGLIACCO: Well, Jordan, thank you
15 very much for spending some time with us.

16 MR. BARAB: And I think -- I don't know what
17 the rest of the meeting is, but we have a photographer
18 here that will do a group picture, as well, so -- when
19 you're ready for that.

20 CHAIRMAN MIGLIACCO: Want to do the picture
21 first, then --

22 PARTICIPANT: Yes.

1 CHAIRMAN MIGLIACCO: Okay, we will do the
2 picture first, then we will do the public comments.

3 MR. BARAB: Okay.

4 (A brief recess was taken.)

5 CHAIRMAN MIGLIACCO: Public comment. George
6 Van Sickle. All right, George, you will state your
7 name and who you represent, and --

8 PARTICIPANT: Ready?

9 CHAIRMAN MIGLIACCO: George, you will state
10 your name and who you represent, and you will have five
11 minutes.

12 MR. VAN SICKLE: Okay. My name is George Van
13 Sickle. I'm a concrete pump operator going on 35
14 years. I am kind of wondering why there is no
15 regulations on the concrete pumps. Basically, they're
16 like a crane.

17 And it wasn't until this website came up,
18 "concretepumping.com;" I don't have pictures to pull
19 up. The computer works -- goes on the Internet, you
20 can see it. You can see people getting killed by hoses
21 and pumps tipping over, people getting killed. And
22 it's a serious problem.

1 I started pumping in the 1970s, and the
2 biggest pump was a 31-meter, pumped 125 yards an hour.
3 Now they're 70 meters, can pump 260 yards an hour. And
4 lately, there has been a rash of the 55 meters, the
5 bigger pumps, 50 and above, going over.

6 We are basically like a crane. We work over
7 people all the time, constantly. The last two, three
8 accidents have been stupid stuff like the contractor
9 didn't tell the operator of the pump that there was a
10 parking garage underneath where he was setting up, and
11 the operator went through and killed two people. You
12 know, it's serious.

13 There have been a rash of hose-whipping
14 accidents, whereas we don't have a -- there needs to
15 be, like, a distance. When a concrete pump starts to
16 repump again after it's pumped -- say there is a 15,
17 20-minute delay -- when the operator starts up, the
18 concrete might not start coming out right away. There
19 is an air build-up of pressure. It can be up to 200,
20 300, 400 pounds of psi. All the sudden it let loose.
21 The hose whips, whoops, there goes the guy off the
22 building, or takes out his head. There is another

1 fatality. And they've been happening quite a bit
2 lately.

3 You will see one, if you go to the website
4 concretepumping.com, go to the left-hand corner on the
5 bottom and you will see videos. It will pull you up to
6 videos. On the right-hand side look under pump
7 accidents. You will see all the go-overs, you will see
8 the one -- I think it was Columbus, Ohio, something
9 like that, two people got killed. That's the one where
10 the operator didn't know there was something under
11 there, outrigger.

12 And I've only got five minutes to talk, so I'm
13 trying to bring up everything. Feel free to get a hold
14 of me, I will leave my phone number, whatever. I will
15 come back again any time you want. I'm in New Jersey,
16 I will do whatever I do to get back here. I wanted to
17 see something done. I've been in -- I really care
18 about my industry.

19 You will see all the hose whipping accidents,
20 you will actually see a person get killed on video,
21 getting whipped with a hose. I pulled up your website,
22 I pulled up "concrete pumps killed." You got stuff

1 from 2006 to -- 2006, I think, is the end of it. I
2 don't know, you don't have anything recent. All this
3 stuff on concretepumping.com is recent.

4 When you first pull up the web page, you're
5 going to have the message board. Any one of you can
6 join for free, it's nothing. And my industry has been
7 regulated, basically, by the American Concrete Pump
8 Association, which started, I think, late 1970s, early
9 1980s.

10 To be a concrete pump operator, my daughter
11 can read the book, go to the seminar, and get a -- be a
12 certified pump operator. That shouldn't be the case.
13 I took the crane test when New Jersey had to have a
14 certified -- be a certified operator, take the crane
15 test. Much harder. I mean it wasn't a walk in the
16 park. I mean you actually had to study the book,
17 learn. You had to know the load charts, how to rig.
18 And basically, we have pumps now that are the size of
19 cranes. They're dangerous.

20 And what I would like to really see, besides
21 looking at the hose-whipping, the manufacturers, when
22 they give you a brand-new pump, the hose comes with no

1 end on the end of the hose. There is a reason for it.
2 And it comes with a five-inch hose with no reduction.
3 Because there is less chance of starting up and that
4 causing a plug, where you could get this hose-whipping,
5 and you don't have a metal end hitting a guy in the
6 head, also.

7 What else is there? On pumps -- I would say
8 46, because they all have the same outriggers -- but I
9 would say 50 meters and above actually need to have
10 another person on the pump, a person that's maybe like
11 a rigger-certified, or something like that, but
12 somebody who actually knows what the heck they're doing
13 on the back of the pump. Maybe that accident in Ohio
14 or all these other tipovers might not have happened if
15 the other guys says, "Hey, your outrigger is sinking."

16 The operators on a concrete pump aren't like
17 an operator in a crane, where he is sitting in a crane
18 and he can feel the crane going over. The operator is
19 100, 200 feet away sometimes. He might be up on the
20 18th floor, pumping the -- booming. And if he is
21 booming, he can't be watching the pump and what's going
22 on down below.

1 And if he has somebody that doesn't really
2 speak English, or can't explain what's going on, and
3 it's just one person running the whole show, which it's
4 been like for me for 30 years -- I mean, I'm
5 responsible for everybody around my piece of equipment,
6 and thank God -- knock on wood -- I have never injured
7 anybody.

8 But that's not the case for a lot of people.
9 A lot of people getting hurt. I would just like to see
10 some kind of regulation come up.

11 See, the pumps come up on the radar screen,
12 you know? The American Concrete Pumping Association
13 has come out with a lot of good safety. There is Petey
14 the Pumper, and all that.

15 I'm not a bigwig in the pump circles or
16 anything, I'm just a plain, normal pump operator,
17 that's all I am. But I often wondered and asked
18 questions, "How come we don't have any regulations?" I
19 mean I pull up on a job site, here is a crane set up
20 with outdoor carpeting. I pull up, I have to move half
21 a lumber yard, and I can't put out all my outriggers.
22 Why can't I have all my outriggers out?

1 You will see cranes -- you will see pumps tip
2 over. One dumb idiot had a -- moved his outrigger in
3 to let a house go by, one of them trailers, and he sat
4 there and boomed to the left, and the whole crane went
5 over.

6 But you will see a couple videos of the pumps
7 without their outriggers go over on video. I mean,
8 can't you make it mandatory they do -- Putesmeister has
9 come out with OSS. It's called One Side Safety, I
10 believe, where you can program the computer on the
11 pump, not set up the outriggers on one side of the
12 pump, and the boom will not function in a danger zone
13 where it's going to tip over the pump.

14 Now, I could see, with those pumps cheating on
15 outriggers. But I can't see why a contractor can't
16 have enough space to have the outriggers set up on a
17 construction site. I just can't see it. There is
18 other ways of doing it. They can use the trailer pump.

19 CHAIRMAN MIGLIACCO: Your time has -- five
20 minutes --

21 MR. VAN SICKLE: They can't get the outriggers
22 out, they can use a trailer pump.

1 And the reason why I got involved in this all
2 of a sudden is when I saw you guys passed a new rule
3 for a crane. You set the boom distance to 20 feet. We
4 have always had 17.

5 I mean, but then again, we can't say to the
6 contractor, "Well, I can't do that because" -- well, we
7 can't say, "Hey, I can't do this because OSHA says I
8 have to have 10 feet to prime out or restart my pump.
9 I need 10, 15, 20 feet of everybody being away from the
10 end of that hose until the concrete is flowing out." I
11 don't have any -- you know, we don't have that. My
12 boss says, "Well, I will get somebody else to do the
13 job," or, "Go look for work somewhere else."

14 Now, I don't know how many times I've turned
15 down a job, where I've actually said, "No, it's too
16 close to the electrical wires," to come back a week
17 later and what happened? A barge came in, or did they
18 do it by helicopter? You know? It's done. You know,
19 it happens. You're in the industry.

20 I just want to see the pumps get some respect
21 on a job site, that's all. I mean something needs to
22 be done. I mean if you get to concretepumping.com, you

1 look at some of the accidents and stuff, talk to Todd
2 Polis, he's easy to get a hold of. You guys could all
3 join. You can ask questions. He will have operators
4 from around the world, will tell you -- give you some
5 horror stories, you want to hear horror stories.

6 And you're not talking the owners of pump
7 companies. You're talking to the people that are out
8 there in the field every day. They're going to tell
9 you the same thing. "Well, somebody else is going to
10 come do the job," or -- hose-whipping is a big problem.
11 They need to have extra people on the big pumps. They
12 just do.

13 I mean they're big now, they're not just a
14 rinky-dink piece of equipment. I know -- the ones I
15 like here, you -- the crane has got more
16 regulation -- what do you got, 234 pages of regulations
17 on cranes. My favorite ones, the ones I saw last
18 night, were -- what is it -- 1926.1402, ground
19 conditions. That would help for our outriggers, and
20 having the contractor tell me if there is a manhole or
21 a sewer pipe going underneath there, but it's been all
22 graded over and I don't know about it. You know, I

1 just -- I don't know, we need some help.

2 Right there there is not many of us on the
3 road. We're in a recession, or whatever. But when you
4 see the mixer trucks back on the road, you know the
5 recession is over, and we will be busy again. But
6 there is an awful lot of pump accidents going on lately
7 in the last, say, six, seven months in a recession
8 time. There is a lot of go-overs.

9 And now, you got everybody making concrete
10 pumps. Here is another one to look at. I talked to
11 one of -- somebody's secretary on the second floor, and
12 it was the day I asked about when I could bring this
13 meeting -- or find out about a meeting to bring
14 something up about concrete pumps. And one of the new
15 pumps -- I don't know how long it's been made -- an
16 Alliance, 55 meter one over in Canada, the outriggers
17 were cheated on the non-working side, which is normal.
18 We've done it a million times, because we don't have
19 room to put out all our outriggers, for some reason.

20 And had it been two different brands, or three
21 different brands, the pump never would have went over.
22 But apparently, this thing was built -- the operator

1 picked up two hoses. He had the boom fully stretched
2 out, and he used D section, which is the fourth
3 section -- they all have four, five, and some of them
4 have six now -- he just picked up D and pulled up two
5 four-inch hoses. The whole pump went over. You will
6 see it. It's on the videos on the thing. But that's
7 what happened.

8 Had the outriggers been out a little way, he
9 might have had the extra weight, and the pump might not
10 have gone over. But who knows?

11 I mean, but now, like the Schwins and the
12 Putesmeisters, they have an extra built-in factor in
13 them. You know, you probably pick up, and you've
14 probably driven by a freeway and saw 10 pipes hanging
15 from a boom, where it should be crane-assisted.
16 They're only allowed to pick up two hoses, two pipes.
17 That's it. Ten-footers. They have a certain load
18 limit on them, that's it, what the manufacturer states.

19 You know, there is a lot to be done. No ends
20 on hoses. I can tell you a horror story that happened
21 in Jersey City on my old pump in Jersey City. An
22 operator took it out, he never run the pump before, and

1 this one pumps 260 yards an hour. They were up on the
2 seventh deck. They had, like, eight hoses out, and
3 they were priming into a one-yard or two-yard bucket
4 from the crane. Everybody picked up the hose and put
5 it on their shoulder.

6 Well, instead of the operator listening to how
7 many strokes it was going before he got up to the top,
8 he just went up to the top. He didn't have an
9 experienced operator down on the bottom. The pump was
10 opened up, wide open to 260 yards an hour. The hose is
11 plugged. One guy was already blind with one eye, he
12 lost the other one. One guy broke his back. Another
13 guy had three broken ribs, two broken legs. Put a lot
14 of people in the hospital.

15 But had they had the regulations, well, you've
16 got to stay 20 feet away from a hose before priming out
17 before the concrete is flowing freely, nobody would
18 have gotten hurt.

19 The major causes of accidents on pumps are
20 electrical -- used to kill all the operators all the
21 time, now all it does is kill the hose guy and the
22 mixer driver because we've got radio remote, we don't

1 have to be by our machine.

2 CHAIRMAN MIGLIACCO: Okay, thank you.

3 MR. VAN SICKLE: I think I used my five
4 minutes up.

5 CHAIRMAN MIGLIACCO: Yes.

6 (Laughter.)

7 CHAIRMAN MIGLIACCO: Thank you very much.

8 MR. VAN SICKLE: Sorry, but there is a lot to
9 squeeze in.

10 CHAIRMAN MIGLIACCO: Yes? Well, thank you
11 very much.

12 MR. VAN SICKLE: Do I get the little question
13 mark?

14 CHAIRMAN MIGLIACCO: I want to make one
15 announcement before anybody leaves here. It is snowing
16 outside here.

17 PARTICIPANT: What?

18 CHAIRMAN MIGLIACCO: It is snowing here. I
19 just want to make sure everybody knows, if you're
20 flying somewhere, check on your flights.

21 (Simultaneous conversation.)

22 MR. BRODERICK: Before we get away, I just

1 wanted to thank you very much for coming in. This is
2 an important topic. Having been one of the guys at the
3 end of that hose, I understand. And if it weren't for
4 people like you coming in, and Mr. LeBlanc coming in,
5 to make us aware of a situation with a crane, this
6 committee could not ever be as effective as it is. So
7 I think I speak for the whole committee, and a big
8 thank you to both you fellows.

9 (Applause.)

10 MR. VAN SICKLE: Well, I appreciate the
11 applause, but feel free to get a hold of me. Tell me
12 where to leave the number, and I will give you all the
13 people to get in touch with in the industry.

14 CHAIRMAN MIGLIACCO: Susan?

15 MR. VAN SICKLE: I will leave it here.

16 MS. BILHORN: I was listening, and last
17 night --

18 MR. VAN SICKLE: Think you guys could remember
19 that concretepumping.com? That's the best thing that's
20 ever happened to the industry, because the way I feel
21 about it, you remember the Concrete Pumping Association
22 has really done a lot? To me it was like --

1 CHAIRMAN MIGLIACCO: We have a comment on the
2 floor.

3 MS. BILHORN: Yeah.

4 MR. VAN SICKLE: Thank you.

5 MS. BILHORN: Well, you know, to express our
6 -- I can't go without -- an issue raised without
7 asking, you know, if -- what OSHA's thinking is on the
8 issue of concrete pumping. So I don't know if it's a
9 question that can be answered now, or if it's a
10 question to ask you to -- you know, to address next
11 time?

12 And then, you know, I'm just, you know -- an
13 issue, there has been some -- there have obviously been
14 injuries. I'm just kind of curious, what the --

15 MR. HARBIN: I don't think we have any
16 concrete statistics at this point right now to be able
17 to address the question fully.

18 And we do appreciate him bringing -- George
19 bringing -- the issue forward, and letting us know
20 about it. But hopefully at the next ACCSH meeting we
21 will be able to give you a -- we will look into it, and
22 see what there is, what's applicable, what we might be

1 able to do, going forward.

2 And, of course, the reg agenda is coming
3 out --

4 MS. BILHORN: Yeah.

5 MR. HARBIN: And we will see which direction
6 the Agency is going. So --

7 MS. BILHORN: Okay.

8 MR. HARBIN: -- thank you.

9 MS. BILHORN: I appreciate that.

10 CHAIRMAN MIGLIACCO: Oh, Emmett?

11 MR. RUSSELL: Yeah, thank you very much for
12 coming in. My name is Emmett Russell, I'm with
13 operating engineers. And I would like to get with
14 you -- and this might be the start of trying to put
15 something together. We did discuss concrete pumps in
16 the crane regulation, and it was not close enough that
17 it could be included.

18 But again, based on some of the things you
19 said, I would like to work with you, in terms of maybe
20 this might be the start of trying to put something
21 together. But again, thank you very much.

22 MR. VAN SICKLE: Thank you.

1 CHAIRMAN MIGLIACCO: Walter?

2 MR. JONES: Yeah, I -- Walter Jones with hose
3 and safety. And in California I have dealt
4 specifically with the hose issue and folks holding the
5 hoses. In the past we had a contract language that
6 ensured that you had an operator and a hose person.
7 And recently, you know, we have lost that extra man and
8 now we just have the operator.

9 So we do sympathize and understand exactly
10 what you're talking about, and we're working to change
11 those. Thanks.

12 CHAIRMAN MIGLIACCO: Any more questions or
13 discussion here?

14 MR. SHANAHAN: Frank? One thing.

15 CHAIRMAN MIGLIACCO: Tom?

16 MR. SHANAHAN: Just a matter of protocol, is
17 it possible that this item and Mr. LeBlanc's item could
18 be just tabled, so it's officially on the agenda for
19 next time?

20 CHAIRMAN MIGLIACCO: Well, it's already been
21 said it will be on the agenda next time.

22 MR. SHANAHAN: Both of them. You know, the

1 LeBlanc issue --

2 CHAIRMAN MIGLIACCO: We're going to -- no,
3 that's coming up right after we finish here.

4 MR. SHANAHAN: Oh.

5 CHAIRMAN MIGLIACCO: I said I was going to
6 reopen that.

7 MR. SHANAHAN: I see, okay.

8 CHAIRMAN MIGLIACCO: Okay? But this is for
9 the public record over there. George W. Van Sickle. I
10 want to give you his phone number, so it's in the
11 public record. It's 970-270-4123. George Van Sickle.
12 I just want to make sure that number is in there, so
13 it's not lost. Did you spell your last name, George,
14 for them?

15 MR. VAN SICKLE: V-a-n S-I-c-k-l-e, III.

16 CHAIRMAN MIGLIACCO: Thank you.

17 MR. VAN SICKLE: Thank you people.

18 CHAIRMAN MIGLIACCO: All right. We're at the
19 closing remarks, but we're going to reopen the
20 discussion on the crane again, because there were
21 several people -- and I apologize to the committee for
22 the shortness there, but we had three government

1 agencies waiting to present.

2 The problem being is when we give people an
3 amount of time to speak, and the amount of time was 30
4 minutes, and 10 minutes of it was used before the
5 presentation started, that's why I shut it down. I
6 would come back to it, I just want to make sure
7 everybody understands what I was doing.

8 Okay. All right. Mr. LeBlanc, would you come
9 back please? Because there might be questions for you.

10 PARTICIPANT: Ten minutes? How was it used?

11 CHAIRMAN MIGLIACCO: There was nothing -- one
12 slide stayed up there for 10 minutes, but nothing was
13 done. All background. That's what I'm saying, there
14 was no background that was relevant to what he was
15 doing.

16 Okay, Emmett, you had a question.

17 MR. RUSSELL: Yeah. Again, I want to thank
18 you for coming forward. But I would have to share I
19 think the committee's concern as to whether these
20 cranes can be operated safely.

21 And let me say we appreciate what you bring
22 forward. But I would have to say that the typical

1 operator can actually add line parts to life the
2 average load so that the brake can actually hold, and
3 the crane can be operated safely, in terms of not
4 having, in most cases, the load pull through the brake.

5 MR. LEBLANC: That would be correct. But on
6 the Galion hydraulic crane, you only have a 2-shiv
7 block and you have a 5-part line, and that is the
8 maximum amount of line you can put on a 15-ton Galion.

9 So, you can increase -- you cannot increase
10 the line to help eliminate or decrease the amount of
11 braking that's required for the brake to hold. On a
12 Galion you cannot increase the line --

13 MR. RUSSELL: No, I guess what I'm trying to
14 say is, for the typical operator -- the crane does not
15 take maximum load every time you use it. But for the
16 typical operator, putting multiple-part lines in will
17 take care of the problem, on average. And, again, it
18 does not take care of the deficiency. Because,
19 clearly, it is the equipment deficiency.

20 MR. LEBLANC: Well, on average, we have found,
21 through testing, that with the 5-part line, the average
22 hold of the brake is only 40 percent, 40 to 50 percent.

1 So, with that being said, a 15-ton would have to be
2 down-rated to a 7.5-ton to be efficient for the brake
3 to hold. You can down-rate the machine.

4 MR. RUSSELL: That's understood, yes.

5 MR. LEBLANC: And then, as you've seen on the
6 slide, the one-part line, which is, on a -- as you
7 know, on a headache ball type of situation.

8 Again, it will hold about 30 percent of the
9 line pull of the brake.

10 CHAIRMAN MIGLIACCO: I have a question, just
11 a --

12 MR. LEBLANC: Yes, sir.

13 CHAIRMAN MIGLIACCO: As operator of the crane,
14 knowing that this problem exists, if you were to have
15 an accident and either maimed or killed someone, would
16 the operator be held liable?

17 MR. LEBLANC: Yes, sir.

18 CHAIRMAN MIGLIACCO: So why would a person put
19 himself in that position and operate this type of
20 crane?

21 MR. LEBLANC: As I said in my presentation,
22 that the operators out in the field have learned to

1 "live with it," so to speak. But --

2 CHAIRMAN MIGLIACCO: Well, that --

3 MR. LEBLANC: Go ahead, again.

4 CHAIRMAN MIGLIACCO: But he still knows the
5 problem exists? He or she knows that problem exists?

6 MR. LEBLANC: Yes.

7 CHAIRMAN MIGLIACCO: Even -- and he's working
8 one-armed.

9 MR. LEBLANC: Yes. He knows it, and he's
10 putting himself in that position. Yes, sir?

11 CHAIRMAN MIGLIACCO: I just -- geez --

12 PARTICIPANT: Have a job or not --

13 CHAIRMAN MIGLIACCO: Well, I told them when I
14 went to work, I don't lie for nobody.

15 MR. LEBLANC: Well, it's either operate the
16 crane or they will find somebody else.

17 CHAIRMAN MIGLIACCO: Oh, yeah. I mean I
18 just -- like I said, I guess it's a personal thing.

19 MR. LEBLANC: Yes, sir.

20 CHAIRMAN MIGLIACCO: When I went to work where
21 I work I told them 20 years ago --

22 MR. LEBLANC: Yes, sir.

1 CHAIRMAN MIGLIACCO: -- "I will take the job,
2 but I won't lie for you."

3 MR. LEBLANC: Exactly.

4 CHAIRMAN MIGLIACCO: So --

5 MR. LEBLANC: And that's why I'm here to this
6 committee. I won't lie --

7 CHAIRMAN MIGLIACCO: That's why I say it's a
8 personal thing. Tom?

9 MR. SHANAHAN: Just a point of clarification.
10 So you're -- a good question that you had there. It
11 seemed like what I heard you say when you shared your
12 personal example --

13 MR. LEBLANC: Yes, sir.

14 MR. SHANAHAN: -- when you were doing it was
15 that, up until that point, you know, you were using the
16 crane in the way that you were doing it, and using the
17 hydraulic, and felt that that was okay, because you
18 could make it happen.

19 So, there was -- it wasn't until you realized
20 later that, oh my gosh, if something else went wrong,
21 this thing would fall apart or could hurt somebody. So
22 it sounds like what I'm hearing you say is that most

1 operators believe -- wrongly so, but they
2 believe -- that the thing is working properly, because
3 they're able to do it.

4 MR. LEBLANC: They --

5 MR. SHANAHAN: I mean even you -- if I heard
6 you correctly -- you were saying that it wasn't until
7 you all the sudden went home one night and was like,
8 oh, my gosh, if the machine turned off or something, it
9 would have fallen apart.

10 MR. LEBLANC: That's --

11 MR. SHANAHAN: It's like a delusion going on.
12 So, to Frank's point, I think there is a misconception
13 that doing it that way is okay --

14 MS. BILHORN: Have been doing that --

15 MR. SHANAHAN: -- because that's the way it
16 works.

17 MR. RUSSELL: It's about the end result, not
18 about how you get it done.

19 MR. SHANAHAN: Right. So that has to be
20 cleared up.

21 CHAIRMAN MIGLIACCO: Right.

22 MR. SHANAHAN: People get that that's wrong to

1 do that. You're defeating it.

2 CHAIRMAN MIGLIACCO: Okay, thanks.

3 MR. SHANAHAN: Well, you missed that, Frank,
4 but I --

5 CHAIRMAN MIGLIACCO: Oh, no. I was listening.
6 Emmett was trying to explain something else to me, off
7 of --

8 MR. SHANAHAN: But to your issue, I mean,
9 there is just a misconception that defeating this is
10 okay. So that's why I don't think these operators get
11 it, that they're doing something wrong. Because even
12 he was -- you know, I appreciate your story, it's a
13 really good story. Now --

14 CHAIRMAN MIGLIACCO: But Emmett just said that
15 most operators don't operate that crane at maximum, and
16 that's another reason how they're getting away with it.

17 MR. SHANAHAN: So there is -- right.

18 CHAIRMAN MIGLIACCO: But the thing is I don't
19 think I -- as a worker, I wouldn't want somebody
20 operating a crane with one arm.

21 PARTICIPANT: Correct.

22 CHAIRMAN MIGLIACCO: Plain and simple.

1 PARTICIPANT: Correct.

2 CHAIRMAN MIGLIACCO: Ben, you had a --

3 MR. BARE: As I recall, there is crane
4 certification requirements in maritime and marine
5 operations. Did you -- were you involved in any of
6 that?

7 MR. LEBLANC: In the crane qualifications?

8 MR. BARE: Crane inspection certification.

9 MR. LEBLANC: No.

10 MR. BARE: There are companies that do that.

11 MR. LEBLANC: Yeah, in the maritime side.

12 MR. BARE: In the maritime side.

13 MR. LEBLANC: Yes, sir.

14 MR. BARE: So, do you have any experience with
15 their inspection process? Are they just overlooking
16 this issue? Are they knowledgeable of this? Do you
17 have any information about that?

18 PARTICIPANT: It sounds like they're
19 overlooking it.

20 MR. LEBLANC: In the maritime industry, you're
21 saying?

22 MR. BARE: And --

1 MR. LEBLANC: Does that spill over to the
2 construction industry --

3 MR. BARE: Well, in the maritime
4 industry -- let's just talk about the maritime -- when
5 they go in, when the companies or the individuals go in
6 to do the crane inspection, the annual certification,
7 are they overlooking this?

8 MR. LEBLANC: Yes.

9 MR. BARE: Not knowledgeable of it? Do you
10 have any --

11 MR. LEBLANC: Both of the above.

12 MR. BARE: -- opinion about --

13 MR. LEBLANC: Not knowledgeable and -- yes, I
14 don't think they're overlooking it, personally. I
15 think they don't have the knowledge --

16 MR. BARE: Okay.

17 MR. LEBLANC: -- of the problem.

18 CHAIRMAN MIGLIACCO: So they don't realize
19 that the slippage is occurring, is what you're saying.

20 MR. LEBLANC: "They," the inspector? Some do
21 and some don't.

22 CHAIRMAN MIGLIACCO: So the ones that do are

1 overlooking it.

2 MR. LEBLANC: Correct. Turn a blind eye.

3 MR. BARE: Okay. And then just one more
4 thing.

5 MR. LEBLANC: Yes, sir.

6 CHAIRMAN MIGLIACCO: That's amazing.

7 MR. BARE: Has this information been published
8 anywhere? Have you published it, or is it -- is there
9 an alert out, or any information on the Internet, or --

10 MR. LEBLANC: We put -- on the -- excuse me --

11 MR. BARE: -- publicly available?

12 MR. LEBLANC: We put an ad in the -- somebody
13 may get the Lift Access from the crane hotline. If you
14 look at -- on the Internet, if you go on the Internet,
15 and you go up to Lift Access, we have an article in
16 there. That's one that we put out there for the
17 public.

18 MR. BARE: Okay.

19 MR. LEBLANC: To make them aware that there
20 was a problem.

21 MR. BARE: Okay. Thank you very much.

22 MR. LEBLANC: Yes, sir.

1 CHAIRMAN MIGLIACCO: Thank you. Any more
2 questions? Matt?

3 MR. GILLEN: Sure, I had a question. Matt
4 Gillen. So is there an organization for the folks who
5 do crane inspections, both in construction and
6 maritime?

7 MR. LEBLANC: At this present time, it's my
8 understanding that there is no, per se, OSHA guidelines
9 for inspectors for construction. I understand it's
10 maritime industry, and many of them spill over into the
11 construction industry. But as per se, they say a
12 qualified or competent person.

13 You can even use a person in your
14 organization, but many of them are using third parties.

15 MR. HAWKINS: I think --

16 MR. GILLEN: But there is not an organization?

17 MR. HAWKINS: -- an Association of Crane
18 Inspectors, like they belong to an entity --

19 MR. GILLEN: Right.

20 MR. HAWKINS: -- like, "I belong to the
21 International Crane Inspectors," or something.

22 MR. GILLEN: Right.

1 MR. LEBLANC: Not that I know of.

2 MR. GILLEN: There is not? Of course, if
3 there was an organization, then they should be
4 correcting this kind of information. And if there
5 isn't, it sort of raises the ante for what perhaps OSHA
6 would maybe want to put together, a bulletin to inform
7 people.

8 Because once you've taken the manufacturers
9 out of the picture, it sort of really -- the inspectors
10 are, in a way, who we're relying on. And so they need
11 to have that kind of information.

12 CHAIRMAN MIGLIACCO: Emmett is going to answer
13 your question.

14 MR. RUSSELL: Yeah, let me say what the issue
15 is. We have had conversations on this before. You
16 cannot put anything out on modifying a crane without
17 manufacturer's approval, or without a competent
18 engineer's approval.

19 Up to this point, there has been no
20 manufacturer that has approved the modification. There
21 has been no competent engineer on that specific crane
22 that has approved the modification. Therein lies the

1 problem.

2 Now, today is the first time I have heard that
3 an engineer has actually looked at the modification to
4 the point where we might be able to move to the next
5 step.

6 MR. LEBLANC: Yes.

7 MR. RUSSELL: Now the engineer looked at the
8 modification, we have to verify that the engineer is
9 competent on that particular model of crane. And if
10 the engineer is competent, then now we have something
11 that we can say we can move forward on.

12 But, clearly, the regulation says you cannot
13 modify a crane without manufacturer's approval, or
14 without a competent engineer.

15 MR. GILLEN: Could I just say -- just to add
16 to that -- I see what you're saying, and I agree, but I
17 guess I'm just saying that this isn't going to be the
18 last time that something like this happens. And so,
19 I'm just looking more broadly, to say --

20 MR. LEBLANC: Oh, yes, yes.

21 MR. GILLEN: -- that something needs to be put
22 in place so that things like this are reported, or that

1 inspectors make more rigorous inspections --

2 MR. LEBLANC: Yes.

3 MR. GILLEN: -- and there is a report of
4 equipment issues like that, and that they know to do
5 it. And, if there is not an organization to do that,
6 that OSHA and NIOSH or others help them do that.

7 CHAIRMAN MIGLIACCO: Eric?

8 MR. HARBIN: Just to answer one of the
9 questions, there is one trade group, trade association
10 that we're aware of -- and there may be others, but
11 there is one that we have recently provided a speaker
12 to, and that's the Crane Certification Association of
13 America. And it's a group, a trade group, that
14 represents crane inspection services. So --

15 MR. RUSSELL: They're out of Canada.

16 MR. HARBIN: They're out of Canada? Okay.

17 MR. LEBLANC: Out of where, Canada?

18 MR. HARBIN: They're out of Canada.

19 MR. LEBLANC: Yes, sir.

20 MR. HARBIN: Correct.

21 CHAIRMAN MIGLIACCO: Susan?

22 MS. BILHORN: Yeah, I'm hearing two subjects.

1 I mean, one, which is modifying the cranes to allow
2 them to operate at fully capacity. I'm hearing
3 another, you know, about the issue of operating a
4 crane, knowing there is slippage.

5 MR. BRODERICK: Well, that was just something
6 I --

7 MS. BILHORN: But -- no, but it was my
8 question, as well. You know, it was kind of --

9 CHAIRMAN MIGLIACCO: It is -- I would --

10 MS. BILHORN: Right. So -- and then switching
11 the way you operate in a way that is unsafe. So, I
12 mean, it's two subjects.

13 CHAIRMAN MIGLIACCO: The first one, the first
14 we have to do, like Emmett says, the engineers got to
15 be, I guess -- not investigate. It just has to be
16 known that the person is qualified, and then the
17 inspection has to be --

18 MS. BILHORN: But you're missing -- it's two
19 steps --

20 CHAIRMAN MIGLIACCO: No, no, I'm just going
21 onto his -- mine, I've got my answer for.

22 (Simultaneous conversation.)

1 MR. JONES: And if inspectors just said this
2 is defective, then the owner of the crane, or renter of
3 the crane, would then go out and get it in compliance,
4 whatever --

5 MR. LEBLANC: Yes.

6 MR. JONES: -- your tool or not. But it is
7 the --

8 CHAIRMAN MIGLIACCO: Or, like he said, get
9 another --

10 MR. JONES: Or take it out of service and get
11 a different brand.

12 But the problem is because the inspectors are
13 allowed to certify these cranes as safe that's the
14 issue.

15 It's just like in New York, where we had the
16 jumping on the cranes, and you had folks certifying
17 that it was okay. And then when someone died we
18 decided that, no, maybe we need to be more rigorous in
19 our certification process. And is that what we're
20 going to do here?

21 CHAIRMAN MIGLIACCO: Elizabeth?

22 MS. ARIOTO: Yes, may I ask a question to

1 OSHA? Seeing this was brought to our attention today,
2 that there is maybe an issue, or there is an issue with
3 this type of crane, should an alert be put out to
4 anyone?

5 Or -- because we've been told now, we've been
6 notified that there is an issue with this type of
7 crane. I'm just -- I'm not sure how this is done,
8 that's why I'm asking the question.

9 MR. BARE: I can't answer you specifically.
10 But we have been thinking about that as this discussion
11 and presentation has been going on. And there is a
12 couple -- maybe two or three different options that we
13 might be able to use, and maybe something we haven't
14 thought of yet.

15 But we would be interested, and would hope
16 that the committee would recommend it to us for further
17 consideration, or something. What -- or a motion to do
18 that, or -- yes, however that works.

19 CHAIRMAN MIGLIACCO: I can't, and neither can
20 he, but somebody out here can.

21 MS. ARIOTO: Right.

22 CHAIRMAN MIGLIACCO: Bill?

1 MR. AHAL: I mean I kind of view this, in one
2 respect, if this was a job site hazard, a physical
3 hazard, this is sort of a referral, is it not, to OSHA,
4 about a potential problem, or what appears to be a
5 potential problem?

6 I mean it's a little out of the box type of
7 what you would expect to see if it was a lack of fall
8 protection, or something like that. But I'm hearing a
9 gentleman saying about an issue, and it's a -- it's
10 getting proactive, so I take this as sort of a
11 referral. It's about a piece of equipment, not about a
12 physical job site situation.

13 MR. ZARLETTI: Well, I would recommend,
14 though -- oh, I'm sorry.

15 CHAIRMAN MIGLIACCO: No, I just want to
16 see -- I understand what you're saying.

17 MR. AHAL: Well, I mean, if this gentleman was
18 here -- well, let's just take it away from this
19 setting, and this gentleman came and said, "Down on the
20 corner of Pennsylvania and Whatever, there is six guys
21 working on a roof and there is no fall protection."
22 You would think -- and what I understand -- is that

1 OSHA would respond to that, because that was a
2 referral, right?

3 I mean if I'm using the wrong
4 terminology -- okay. I hear the man saying, "Before
5 something happens," and you act as reactive about the
6 incident --

7 MR. LEBLANC: Right.

8 MR. AHAL: -- that he -- his experience is
9 seeing something.

10 MR. LEBLANC: Yes.

11 MR. AHAL: Now, it is a little different,
12 but --

13 (Simultaneous conversation.)

14 MR. RUSSELL: Emmett Russell. Frank, can I --

15 CHAIRMAN MIGLIACCO: Yes, Emmett?

16 MR. RUSSELL: Emmett Russell. He has been in
17 contact with OSHA. OSHA and I have had discussions on
18 this matter. And it keeps coming back to the same
19 thing.

20 Number one, we have done research to try to
21 find a manufacturer to approve the modification he has
22 designed. We have not been able to do that. Today is

1 the first time we have had any discussion that his
2 modification has been approved by an engineer.

3 I do not have a problem making a
4 recommendation that -- we have to verify the engineer
5 that he has had approve his modification. And if the
6 engineer does, indeed, have the qualifications to
7 approve it, we move forward and we would be able to
8 come up with something.

9 But OSHA has been contacted on this, correct?

10 MR. LEBLANC: Yes, sir.

11 MR. JONES: And what is --

12 CHAIRMAN MIGLIACCO: Eric is going to speak on
13 that right now. Eric?

14 MR. HARBIN: One of the things is, as Emmett
15 was talking about, they work closely with one of the
16 members of the directorate of construction staff. And
17 it's hard to get -- well, the manufacturer is out of
18 business in this case. So we need some type of
19 evidence to support making the decision with regards to
20 that.

21 But on the referral aspect you just talked
22 about, this being a referral, typically a referral is

1 alleging specific conditions existing in a specific
2 location.

3 CHAIRMAN MIGLIACCO: Yeah.

4 MR. HARBIN: And in this case it would be
5 problematic, at best, to identify even where these
6 cranes are in operation. It just --

7 MR. AHAL: I understand. And that's what I'm
8 saying. It's not -- it doesn't fit the mold, but -- so
9 maybe it's consumer product safety.

10 But my point is simply this. Before any more
11 people are injured -- and maybe there is no stats on
12 it -- but before you learn about it from a bad
13 incident, the man has some experience that I would hope
14 some agency within the government -- and OSHA could be
15 the champion to get the information down the street and
16 around the corner today, that maybe they should look at
17 this brand of crane, this size of crane, and, "Here is
18 the issue."

19 He has a solution, but that's not what --

20 CHAIRMAN MIGLIACCO: No.

21 MR. AHAL: He didn't come here to ask for
22 approval of that. There is an issue, and he just

1 happens to have a solution, which is a whole other
2 thing.

3 MR. LEBLANC: Right.

4 MR. AHAL: And that's what I'm hearing, is he
5 came here on his own cognizance to say, "I've got a lot
6 of experience, and here is a problem with a specific
7 crane."

8 So, I mean, it's not fitting any standard
9 way -- thing. So it's a little out of the box.

10 MR. LEBLANC: Yes, sir.

11 MR. RUSSELL: One last point -- Emmett Russell
12 again.

13 CHAIRMAN MIGLIACCO: I will get you.

14 MR. RUSSELL: I've talked to my crane
15 operators who are operating this crane. And my direct
16 question is, "Do you feel as though we need to start a
17 movement to take these cranes out of service?"
18 Straight.

19 Our operators say, "No, we feel comfortable.
20 We can put multiple parts in the crane. We can
21 compensate, and we can operate the crane safely."
22 Okay. Well, they may not pick the same load that the

1 crane has the capacity to pick, but they clearly said
2 that what they do in the field, they feel comfortable
3 they can operate the crane safely.

4 I guess what I'm trying to say is I would like
5 to move forward with his recommendation, and I don't
6 have a problem moving forward with his recommendation.
7 But I would have to say, checking with crane operators,
8 they don't feel as though the crane is unsafe to the
9 point where it needs to be taken out of service.

10 MR. AHAL: Yeah, and I understand, and I -- I
11 mean, I appreciate it, and I know your background. I
12 -- from my point of view, though, even though they are
13 making a way of compensating, go back to steel erection
14 and steel. The iron worker may know a way that gets
15 the job done, and nobody has been injured, but that
16 doesn't mean that --

17 MR. JONES: It's safe.

18 MR. AHAL: -- it is safe to do that. So I was
19 looking at the ends not justifying the means. So I'm
20 just suggesting and asking a question, because this is
21 proactive, and not waiting until we hear about it from
22 a fatality. That's --

1 CHAIRMAN MIGLIACCO: Hold it. Susan is first,
2 then Elizabeth --

3 MS. BILHORN: Okay.

4 CHAIRMAN MIGLIACCO: -- then Steve.

5 MS. BILHORN: And I actually heard Ben say
6 that he and Eric were talking about what they could do,
7 because they hear this as an issue. So I did hear
8 that.

9 But, you know, for our sake, let's try this
10 motion, okay? That OSHA consider potential issues
11 associated with Galion brakes. And, if hazards are
12 confirmed -- quickly consider -- and if hazards are
13 concerned, act with a safety alert, or whatever other
14 means, a bulletin, whatever other means to communicate
15 this issue, and recommendations on how to address them.

16 CHAIRMAN MIGLIACCO: Okay. Motion has been
17 made. Seconded?

18 MR. HAWKINS: Second.

19 CHAIRMAN MIGLIACCO: Steve? Questions?
20 Discussion?

21 (No response.)

22 CHAIRMAN MIGLIACCO: All in favor say aye.

1 (Chorus of ayes.)

2 CHAIRMAN MIGLIACCO: Opposed?

3 (No response.)

4 CHAIRMAN MIGLIACCO: The ayes so have it.

5 Well, that takes care of that part.

6 MS. ARIOTO: This is just like a legal

7 question, Frank.

8 If -- I know what you said, Emmett, about
9 operators feel safe and comfortable. But if there was
10 an accident, and they felt safe in -- and we'd been
11 notified --

12 CHAIRMAN MIGLIACCO: Understand, yes. They're
13 liable.

14 MS. ARIOTO: You know, they're liable, but --

15 MR. LEBLANC: Yes.

16 MS. ARIOTO: They notified OSHA now that it's
17 been an issue and a problem, right? Where does that
18 fall, like -- and we're aware of this, too.

19 I mean I'm just saying for a legal -- we've
20 been told that there has been a potential hazard with
21 this crane and its use. Is there any legal
22 ramification that OSHA has been notified, and that we

1 have been notified, and that we're not really moving
2 forward --

3 CHAIRMAN MIGLIACCO: Yes.

4 MS. ARIOTO: -- by now by telling people about
5 the --

6 CHAIRMAN MIGLIACCO: We, as this committee,
7 fall under the indemnification clause.

8 MS. ARIOTO: Oh, okay.

9 CHAIRMAN MIGLIACCO: We can't be held
10 responsible.

11 MS. ARIOTO: How about OSHA?

12 CHAIRMAN MIGLIACCO: I don't know about OSHA.

13 MS. ARIOTO: Okay.

14 CHAIRMAN MIGLIACCO: But I know the committee
15 can't.

16 (Laughter.)

17 MR. HAWKINS: I just want to -- real quickly;
18 I know it's snowing and we got our motion
19 passed -- but, Emmett, if I had a complaint filed and I
20 went out to a job site where a Dresser Galion crane was
21 in operation, and I had evidence that the brake was
22 insufficient as it was manufactured to hold at 7,200

1 pounds, and we had information from a crane inspector
2 who said, "I turned a crane down, but they're using it
3 anyway, I tested it and it would only hold -- with a
4 single line it would only hold 5,000 pounds, and the
5 book says it's supposed to hold 7,200," and I went out
6 and talked to a crane operator, and he said, "Oh, I
7 feel okay about it," I wouldn't -- if they didn't
8 voluntarily stop it, I think our agency would issue a
9 stop work order.

10 So, I don't really understand where we're
11 getting into an operator could say, "I know it's not
12 functioning as it's designed, but I think I'm working
13 around it okay." I don't see how that would be
14 acceptable to anybody. I just don't get that.

15 So, am I missing something, or are you saying
16 it in a different way, or --

17 MR. RUSSELL: My concern is I guess the
18 question becomes there are 6,000 of these cranes out
19 here in the industry, and they're all over the place.
20 To raise the issue to the level where we can start
21 talking about taking the cranes out of service -- and
22 to be truthful with you, a number of the operators

1 said, "My crane is okay, my crane actually works, the
2 brakes work on my crane" --

3 MR. HAWKINS: Your operator said, "My brake is
4 okay."

5 MR. RUSSELL: Some of the operators said they
6 work okay, some of the operators said there was some
7 slippage. But the way they're picking, the brakes
8 actually operate, and they operate safely, or --

9 MR. HAWKINS: But how can you operate a crane
10 if you think you've got a brake slipping? I don't --

11 MR. RUSSELL: Well --

12 MR. HAWKINS: I mean if it's slipping now,
13 what if you get in a tight spot, and now you really
14 need your brake, or the thing came off the truck at
15 2,000 pounds, but it really weighs 20 --

16 MR. LEBLANC: Yes.

17 MR. HAWKINS: -- because that happens a lot of
18 times. We investigate crane accidents --

19 MR. LEBLANC: Yes.

20 MR. HAWKINS: -- where people assume something
21 weighs one thing, and it actually weighs another. You
22 don't know when you're going to need that braking

1 capacity.

2 MR. RUSSELL: I totally agree with you. But I
3 can tell you that most of these cranes, where they're
4 used, they pick a weight that is the normal weight. A
5 number of our operators will put multiple parts in the
6 crane, where the crane cannot operate safely, based on
7 the weights they're handling.

8 MR. GILLEN: To me, the issue is that there is
9 this boundary, and on the other side of that boundary
10 is you have an accident. And how we make people safe
11 is creating a margin between that boundary and where
12 practice is.

13 MR. LEBLANC: Yes.

14 MR. GILLEN: What happens is people say, you
15 know, "I can use up some of that margin and still not
16 be to that boundary, so it's okay." But then you find
17 yourself in a situation where something else comes out,
18 and that puts you over that boundary.

19 MR. HAWKINS: And that's a bad way to go down.

20 MR. GILLEN: That happens. That's right. And
21 that happens every day. That happens every day in
22 construction.

1 (Simultaneous conversation.)

2 CHAIRMAN MIGLIACCO: One person at a time for
3 the recorder, please.

4 MR. GILLEN: I will certainly bring this issue
5 back to the NIOSH folks and let them know about it.
6 It's an important issue. And we have done work on
7 cranes in the past, so --

8 CHAIRMAN MIGLIACCO: All right. Any more
9 discussion?

10 (No response.)

11 CHAIRMAN MIGLIACCO: No questions on this? We
12 had a motion that was on the floor and passed. We will
13 go through with that. We need more information. We
14 need more information on the concrete pumps, also. All
15 right.

16 (Simultaneous conversation.)

17 CHAIRMAN MIGLIACCO: Okay, we
18 have -- yesterday we had the mast climbing -- this is
19 something else -- yesterday we had the mast climbing
20 scaffolding presentation, and we talked about possibly
21 having a work group come forward on that.

22 I would like to know -- the nail gun, who is

1 doing the nail gun? Liz? Where are you guys on that?

2 MS. ARIOTO: We're right --

3 MR. KAVICKY: NIOSH has created --

4 MS. ARIOTO: The guidance document.

5 MR. KAVICKY: -- the document, the guidance
6 document. And they are going to refine it and bring it
7 back to our next meeting. And we should, at that time,
8 if it's acceptable, recommend to OSHA to implement.

9 CHAIRMAN MIGLIACCO: So you're pretty close to
10 finalizing that one out?

11 MS. ARIOTO: Yeah.

12 CHAIRMAN MIGLIACCO: Is anybody else close to
13 finalizing out a work group? We need --

14 MR. GILLEN: Can I correct that? Because I
15 just want to avoid a misimpression. And that is that
16 we really want ACCSH members to provide us comments
17 before January 10th. But if we incorporate the
18 comments and all, we would be interested in publishing
19 and finalizing the guidance before the next ACCSH
20 meeting.

21 So I wouldn't want folks to think that the
22 next ACCSH meeting is going to be discussing the draft

1 guidance. So we're hoping to finish it up some time in
2 the spring. That committee could talk about who should
3 get it, or dissemination, or things like --

4 CHAIRMAN MIGLIACCO: Or we have the
5 possibility of having --

6 MS. ARIOTO: If I had to say something, I
7 think the nail gun may go on longer. I really do. I
8 see a lot of discussion between NIOSH and -- would like
9 to be here sometimes and not present, and with -- I
10 don't think the next two -- I think there will be at
11 least two or three more meetings. That's my own
12 personal opinion.

13 I do think women in construction can be
14 brought to a close.

15 CHAIRMAN MIGLIACCO: Really?

16 MS. ARIOTO: I have had very little
17 participation, and I have been -- I think we can get
18 the work -- the card out, if possible. I mean one more
19 meeting, I think --

20 CHAIRMAN MIGLIACCO: I need to speak --

21 MS. ARIOTO: I mean I would like
22 participation. I've invited people. But

1 maybe -- truthfully, I think this last meeting I
2 invited quite a few ladies from different
3 organizations. But due to the quick notice, they
4 couldn't come. So maybe having another meeting to see,
5 but --

6 CHAIRMAN MIGLIACCO: But we don't --

7 MS. ARIOTO: But I'm not sure how -- after my
8 next meeting, if I'm here, I can tell you --

9 CHAIRMAN MIGLIACCO: And we're trying to get
10 some information on the OTI. Green jobs has just
11 started, multi-lingual is not going anywhere.
12 Prevention by design is just starting, basically. I2P2
13 is here, and silica. So we've got two, the diversity
14 and women --

15 MS. ARIOTO: Unless we can put that with the
16 other group, Tom's group. If we could put that into
17 that group, the Latino --

18 CHAIRMAN MIGLIACCO: Oh, the multi-lingual?

19 MS. ARIOTO: The multi-lingual. If we could
20 put the women's back into the multi-lingual.

21 CHAIRMAN MIGLIACCO: All right. What we've
22 got to do, then, is --

1 MS. ARIOTO: No?

2 (Simultaneous conversation.)

3 CHAIRMAN MIGLIACCO: Yeah, we have -- you
4 figure by the next meeting we should have a pretty good
5 idea on the women in construction?

6 MS. ARIOTO: I'm going to invite as many
7 people as I can to see -- I will see where we are
8 there. Because some people said they would like to
9 come, but they couldn't come to this meeting.

10 CHAIRMAN MIGLIACCO: Well, yes. We need a
11 space, that's all I'm saying.

12 MS. ARIOTO: Oh.

13 CHAIRMAN MIGLIACCO: To put in the
14 scaffolding -- mast climbing scaffolding -- at the next
15 meeting come up with a committee, work group, or
16 something.

17 PARTICIPANT: Or just hold off on -- like they
18 did --

19 CHAIRMAN MIGLIACCO: Well, that's what I -- we
20 could pull the women off, and put that one in.

21 MS. ARIOTO: Why don't we do that for the next
22 meeting, and then that way --

1 CHAIRMAN MIGLIACCO: All right, then, we
2 will --

3 MS. ARIOTO: I still have the committee going,
4 though, or not?

5 CHAIRMAN MIGLIACCO: All right, then --

6 MS. ARIOTO: Matt?

7 CHAIRMAN MIGLIACCO: Ben and Eric and I will
8 talk about that, about pulling one of them off, and
9 moving the mast climbing scaffold into that spot, at
10 least for that -- to get it started.

11 Dan, you actually said you would like to
12 co-chair that work group?

13 MR. ZARLETTI: Yes.

14 CHAIRMAN MIGLIACCO: Okay. I need a --

15 MR. ZARLETTI: We might want to wait until
16 the --

17 CHAIRMAN MIGLIACCO: That's true. I don't
18 want to wait too long. All right --

19 MS. ARIOTO: Oh, one second, Frank --

20 CHAIRMAN MIGLIACCO: We will leave it as a
21 meeting --

22 MS. ARIOTO: Frank?

1 CHAIRMAN MIGLIACCO: -- possibility coming up,
2 and I will have two --

3 MS. ARIOTO: Yes, because we --

4 CHAIRMAN MIGLIACCO: I will do the same thing
5 I did with the I2P2. I will call over the phone, get
6 our work group co-chairs that way. I will do that.
7 That's good.

8 MS. ARIOTO: Yeah, Frank, because you know we
9 still have some, you know, open things with OSHA that
10 they have to come back to us on, considering the work
11 group. So I think I -- I would hate to close it down
12 right away, and I still think there is some more input
13 from other organizations. And coming back from
14 you -- so I hate to close it.

15 CHAIRMAN MIGLIACCO: All right.

16 MS. ARIOTO: I hate to close the -- pardon?
17 I'm sorry, I didn't hear you, Frank. I was talking.

18 CHAIRMAN MIGLIACCO: That's okay. All right.
19 Do we have anything else on the agenda that anybody
20 would like to speak about?

21 MR. HAWKINS: I hope not.

22 (Laughter.)

1 CHAIRMAN MIGLIACCO: All right. Before we
2 leave here, I would like to wish everybody a safe and
3 merry Christmas, a prosperous and happy new year. A
4 real safe and merry Christmas, though.

5 (Whereupon, at 12:15 p.m., the meeting was
6 adjourned.)

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