

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
DUCK SOO KIM,
Plaintiff,

vs. Index No.
19029/08
Action 1

ALWALL CONSTRUCTION
CORPORATION, CON EDISON and
LIBERTY PLUMBING & HEATING,
INC.,
Defendants.

-----X
ALLWALL CONSTRUCTION
CORPORATION,
Third-Party Plaintiff,

vs. Third Party
Action 1

LIBERTY PLUMBING & HEATING, INC.,
Third-Party Defendant.

-----X
IVONNE ZALDUMBIDE, as Administrator of
the Goods, Chattels and Credits which
were of EDGAR ZALDUMBIDE, deceased,
MELISSA ZALDUMBIDE, an infant by her
mother and natural guardian, IVONNE
ZALDUMBIDE and IVONNE ZALDUMBIDE,
Individually,
Plaintiffs,

vs. Index No.
23047/08
Action 2

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC., VISHNU GOPAULSAMMY,
LIBERTY PLUMBING & HEATING, INC.,
and ALWALL CONSTRUCTION CORP.,
Defendants.



1 -----X
 2 SAEHEE AHM, LISETTE ALEJANDRO, JAYLIN
 3 CORDOVA, an infant, by her Mother and
 4 Natural Guardian, LISETTE ALEJANDRO,
 5 PETER RODIGUEZ, MAHENDRBIR
 6 BAJRACHARYA, ANITA BAJRACHARYA,
 7 HARRISON BIRBAJRACHARYA, an infant,
 8 and SIDDARTHA BIRBAJRACHARYA, an
 9 infant, by their Mother and Natural
 10 Guardian, ANITA BAJRACHARYA, MARGARITA
 11 BAYRO, PAMELA BAYRO, LUIS BOBEA,
 12 LUCHY BOBEA, an infant, and MELISSA
 13 BOBEA, an infant, by Their Mother
 14 and Natural Guardian, LUCHY BOBEA,
 15 ELAINE BROWN, LUKE JOSEPH, an infant,
 16 by His Mother and Natural Guardian,
 17 ELAINE BROWN, DAMIAN CAMBELL, YOONG
 18 SOO CHUN, RAUL CLAVIJO, LUCERNIS
 19 CLAVIJO, ALEXJANDRA ESCOBAR, JAVIER
 20 ESCOBAR, an infant, by His Mother
 21 And Natural Guardian, LUCERNIS
 22 CLAVIJO, SUDIP DAS, MOSHUMI DAS,
 23 RICHA DAS, an infant and ROMEO DAS,
 24 An infant, by Their Mother and Natural
 25 Guardian, MOSHUMI DAS, PAULINE DURDEN,
 DANA JOSEPH, an infant, by Her Mother
 and Natural Guardian, PAULINE DURDEN,
 SHANTEL WILLIAMS, JEANA GIM,
 JAMES GIM, JANG IN SOON, HAN SOO
 HONG, IN SOOK HONG, SONGI HONG,
 SUN M. HONG, ETHAN HONG, an infant,
 by His Mother and Natural Guardian,
 SUN M. HONG, DO KEUN JANG, MYUNG SON
 JANG, ANASIA JEAN, FRANKLIN FERDINAND,
 ALSIE JOHNS, DARNELL ARROLA, an
 infant, by Her Mother and Natural
 Guardian, ALSIE JOHNS, SHIENE ARROLA,
 LEUONIOUS BOGLE, JOHN KIM, CHEUN MI
 KIM, YESUNG KIM, an infant, by Her
 Mother and Natural Guardian, CHELIN
 MI KIM, DUCK SOO KIM, CHOON BANG KIM,
 ILL CHUI KIM, HUNG SOOK KIM, SOO
 YOUNG KIM, NAK SOON KIM, JOY HARRIS
 LEVY, WINSTON LEVY, WINSTON A. LEVY,
 an infant, by His Father and Natural
 Guardian, WINSTON LEVY, SHERINE
 SMITH, an infant, by Her Mother and
 Natural Guardian, JOY HARRIS LEVY,



1 REN DE LIU, DE JUAN LIE, TAN JUN
 2 XIA, ABOUL SAMAD MOMEN, REZAGUL
 3 MOMEN, SAMNA MOMEN, an infant and
 4 SALMA MOMEN, an infant, by their
 5 Father and Natural Guardian, ABDUL
 6 SAMAD MOMEN, MARTHA MOJICA, LUCIA
 7 MORA, EDUARD MUNERA, JAMES TABORA,
 8 ISABEL ECHEVERRY, KWANG SE OK, YEOH
 9 KIM SANG, CHU HYUN PAEK, KYUNG HEE
 10 PAEK, OSCAR PATINO, MILLERLAY PATINO,
 11 LEIDY J. PEREZ, CHUNG S. PARK, MIGUEL
 12 PRIETO, PATRICIA DEL SALTO PRIETO,
 13 YUAN-SING YANG, SARFRAZ RANA,
 14 SHAGUFTA RANA, EMAYET RAJABIZADA,
 15 ANNULLAH BIGZADA, JERMAINE RENIGIFO,
 16 JENNIFER Z. MARIN, KOH LEE KIM RYANG,
 17 ALEXANDRIA SANCHEZ, ALEXANDER
 18 ENCARNACION, an infant, by His
 19 Mother and Natural Guardian,
 20 ALEXANDRIA SANCHEZ, MYNOR RODRIGUEZ,
 21 BELLANIRA SANCHEZ, KAMKIL SON,
 22 CHONG CHA SON, JOON SEOK SON, DAVID
 23 TROTTIE, CINTRELLA YOUNG, MAKENNA
 24 TROTTIE, an infant, by Her Father
 25 and Natural Guardian, DAVID TROTTIE,
 CARMEN ROSA VELAZCO, SERGIO ANDRE
 VELAZCO, CHUNG KU WOO and KYUNG D.
 YOO, XIE YA XIAN, AL QIANG DU, and
 ERIC DU, an infant, by his Father
 and Natural Guardian, AL QUIANG DU,

Plaintiffs,

Third Party
Action 1

vs.

ALLWALL CONSTRUCTION CORP., LIBERTY
 PLUMBING & HEATING, INC. and
 CONSOLIDATED EDISON COMPANY OF NEW
 YORK, INC.,

Defendants.

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March 11, 2011
10:20 a.m.

Continued Deposition of JOSEPH
KLESIN, held at the offices of Esquire
Deposition Solutions, One Penn Plaza,
New York, New York 10019, pursuant to
Adjournment, before Diane Buchanan, a
Notary Public of the State of New York.

Reported By:

Diane Buchanan

Job No. 318088



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A P P E A R A N C E S:

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BY: AMY FENNO, ESQ.



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A P P E A R A N C E S:

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File No. S-0708-08

LAW OFFICES OF STEVEN G. FAUTH, LLC
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BY: KIM K. TOWNSEND, ESQ.



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J. Klesin

(Document entitled "Staff Guideline Manual" marked Klesin Defendant's Exhibit G for identification, as of this date.)

(E-mail marked Klesin Defendant's Exhibit H for identification, as of this date.)

MS. DOLE: Let the record reflect before we continue with Mr. Klesin's deposition, I wanted to put a statement on the record about the deposition costs that Con Edison has been billed for the first date of the deposition.

The record should reflect that all counsel had agreed in the past to use the same court reporter, Nina Nardone, just in the interest of continuing and having a clean record and a reporter that was familiar with all of the names.

Prior to Mr. Klesin's deposition, we were informed that the carrier for Liberty Plumbing required that we use Esquire. While we did not have, Con Edison -- and I'm only speaking for Con



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J. Klesin

Edison in this statement -- did not have any problems with using Esquire, we have now been billed at a rate of \$6 a page for the first date of Mr. Klesin's deposition.

Further, I'm holding a copy of the deposition transcript in my hand and the caption, the font used in the caption, is considerably much smaller than the font used in pages 5 through the continuation of the end of the deposition. In fact, page 5 is not single-spaced or double-spaced, but actually triple spaced.

MR. DePAOLA: I would say quadruple spaced.

MS. DOLE: It is Con Edison's position we were billed at approximately \$2 a page when Nina Nardone -- when we used her reporter services. That was at first Reporters, Ink. and most recently Diamond Reporting. If Esquire cannot meet that number, then Con Edison will be ordering their own reporter, and that



1 J. Klesin
2 would be Ms. Nardone from Diamond
3 Reporting, for any further depositions.

4 MS. NG: I agree and adopt
5 everything Vivian stated.

6 MS. FENNO: Amy Fenno for
7 Harleysville. Given the
8 off-the-record conversations before your
9 statement, I brought what you said to
10 the attention of someone here at Esquire
11 reporting and we will see what they are
12 prepared to do about this.

13 For the record, it is true that the
14 insurance company for the client that I
15 am representing directs us to use
16 Esquire reporting and why don't we wait
17 and see what Esquire is prepared to do.
18 I did not agree to any particular dollar
19 cost for depositions at any time.

20 And while certainly having Ms.
21 Nardone was convenient for all of the
22 parties because of her familiarity with
23 the case after the number of depositions
24 she's taken, my hands are at this point
25 tied until such point as I'm told we are



1 J. Klesin

2 permitted to use another reporter.

3 MS. DOLE: I understand, Ms. Fenno.
4 I'm not suggesting that you agreed to
5 any type of dollar amount. I know that
6 was never discussed by the attorneys in
7 this case.

8 However, today is the 11th and the
9 next scheduled date for Mr. Klesin is
10 Tuesday. So unless we have something in
11 writing from Esquire, my intention is to
12 order Ms. Nardone through Diamond
13 Reporting for Tuesday's deposition.

14 MS. FENNO: I will bring it to
15 their attention.

16 MR. DePAOLA: I did send a letter
17 to Esquire Corporate Solutions, 101
18 Marietta Street, Atlanta, Georgia. It
19 was sent March 7, 2011, basically
20 memorializing what has been said now,
21 that the previous arrangement we had
22 with Ms. Nardone from Diamond Reporting
23 and when she was at Reporters, Ink., we
24 were being billed approximately \$2 per
25 page and we would all share on a prorated



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basis in her appearance. And I annexed to my letter to Esquire two bills, one from Diamond and one from Reporters, Ink. from Ms. Nardone.

Obviously I'm not going to be paying what they billed me, which is 5.91 a page for one of the EBT's and 4.25 for the other. I will pay what we paid when we had Ms. Nardone, which was \$2 a page. And if that doesn't work out, I will use the reporter that Ms. Dole will get or in the alternative, I will pay for the questions that I ask.

MS. ERAS: Let it be stated that the Law Offices of Michael A. Cervini wholeheartedly agrees with all other of the defense counsel and plaintiffs' counsel on the Zaldumbide case and we too will use Ms. Nardone, if necessary.

J O S E P H K L E S I N, called as a witness, having been previously sworn, was examined and testified as follows:

EXAMINATION BY

MS. FENNO (CONT'D):



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1 J. Klesin

2 Q. Again, good morning, Mr. Klesin.
3 I'm Amy Fenno. I represent one of the
4 parties in the actions that are consolidated
5 for joint trial starting with Duck Soo Kim,
6 including Zaldumbide. These are cases
7 arising out of a July 25, 2008 gas explosion
8 at a building at Sanford Avenue.

9 This is your second day of
10 testimony, is that correct, sir?

11 A. Correct.

12 Q. Have you previously given
13 testimony?

14 A. In this case or other cases?

15 Q. At any time.

16 A. I --

17 MR. DePAOLA: Objection. That was
18 asked and answered.

19 Go ahead.

20 A. I had given -- I was a factual
21 witness to a report to an incident back in
22 1997. I believe to the report we produced
23 for an incident back in -- I believe it was
24 1997.

25 Q. So, was this before the Public



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J. Klesin

Service Commission, sir?

A. It was a report that the Public Service Commission had done on an incident.

Q. And this was testimony that you gave to the Public Service Commission; is that correct?

A. Actually, it was -- there was a civil case and one of the lawyers had subpoenaed me to court to just bear witness to some facts in the report that we had generated.

Q. Is that the only time, sir, that you have ever given sworn testimony?

A. That's the only time, yes.

Q. I would like to remind you, sir, you are testifying under oath today.

If I should ask any questions you do not understand, please do not answer the question. If you will ask me to rephrase it, I will be happy to do so. And if you answer my question, I will you assume you understood the question that I put to you. Is that fair?

A. Yes.



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J. Klesin

Q. At the last session of your deposition, Mr. Klesin, we began speaking about the night of July 25, 2008 and your dispatching Mr. Mohammed Mouhmood to the scene. Do you recall that, sir? Do you recall my asking you about that?

A. Yes.

Q. I'm going to now show you a document which I will represent is part of the subpoenaed records from the Department of Public Service subpoenaed by my office.

This has been marked for identification as Defendant Klesin Exhibit I for identification today. It is a page from the documents that were provided.

It appears to be an e-mail correspondence I believe from Mr. Mouhmood and it provides in part to someone named Rachel Jenkins that I believed you mentioned last time, "It's hard for me to remember everything. The day of incident 7/26/08, I was notified by Joe Klesin at 8 o'clock p.m. I reached the location at 8:40 p.m. The road Sanford Avenue in front of the building was



1 J. Klesin
2 blocked by NYPD. The building was secured by
3 NYPD. Nobody had access to the building
4 except the occupants on the scene. I talked
5 to CENY personnel on the scene of the
6 accident."

7 I would like to show you this
8 e-mail correspondence, this document, and ask
9 whether you have seen it.

10 MR. DePAOLA: Before we go on, I
11 would ask that all exhibits that you had
12 premarked, that we stop now and you give
13 us copies of those so we can follow when
14 you are reading. You know, it's really
15 not fair. I'm not saying you are going
16 to intentionally make a mistake; you
17 could make a mistake. I think we should
18 all have copies.

19 MS. FENNO: So, you know, we
20 already made a copy of Exhibit H, which
21 is 78 pages, at my expense, which is the
22 document I intend to focus in on my
23 questions this morning. However, this
24 is a single page that at the moment I
25 decided to use -- and of course I am



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J. Klesin

more than happy to stop now and we can make copies so you can read along with me.

Q. Mr. Klesin, have you had an opportunity to see that, the e-mail that has just been marked as Defendant's Exhibit H before today?

A. No, I have not.

Q. Does this e-mail appear to reflect a statement in an e-mail correspondence to Ms. Jenkins that you dispatched him to the scene at about 8:40 p.m.? Does that refresh your recollection, sir, as to when you dispatched Mr. Mouhmoed to the accident scene on the accident date?

MS. DOLE: Objection.

MR. DePAOLA: Objection.

A. Looking at the e-mail, it states that he was notified at 8:00 and reached the location at 8:40 p.m., not that he was dispatched at 8:40. And I believe I previously testified that there was some issue of getting staff to the location, finding available staff to dispatch to the



1 J. Klesin
2 location from the receipt, once we got the
3 call from Con Ed.

4 Q. So, then if the incident occurred
5 sometime after 4:00 p.m., then the Office of
6 Electric, Gas and Water would have first
7 dispatched a staff member to the scene
8 approximately four hours later; is that
9 correct?

10 MR. DePAOLA: Objection.

11 MS. DOLE: Objection.

12 A. That would not be -- the call comes
13 in, that call from a company could be -- it
14 should be timely. Sometimes it comes within
15 an hour, half-hour. Within the hour is when
16 we want to be notified of something like
17 this, immediately actually. And then it's up
18 to us to, you know, try to get an available
19 staff to be dispatched to the location.

20 Q. Perhaps you didn't understand my
21 question.

22 If you look at Klesin Exhibit H for
23 identification, it appears that Mr. Mouhmoed
24 made an error in terms of the date of the
25 accident. He has 7/26/08 as the day of the



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J. Klesin

accident.

A. I noted that.

Q. Do you understand the accident to have taken place the previous day on July 25, 2008, do you, sir?

A. Yes.

Q. And if you look in the part of Defendant's Exhibit H for identification where it says "Day one," immediately below that it says "CENY."

Is that Con Edison, sir?

A. Correct.

Q. "Received call from FDNY 4:55 p.m. CENY responded time 5:03 p.m."

Do you see that, sir?

A. Yes.

Q. Do you believe that you received a call from CENY, Con Edison, sometime around 5:00 p.m., sir?

MR. DePAOLA: Objection.

MS. DOLE: Objection.

A. I do not recall the exact time that we were notified. When I mean "we," I mean staff. I may not gotten the call; it may



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J. Klesin

have been another staff member that got the call.

Q. I believe you suggested that you thought the last time Con Edison had notified your office of the occurrence was shortly after it happened; is that right?

A. Yes.

Q. Which would have been sometime between 4 and 5 o'clock, can we agree on that?

MR. DePAOLA: Objection.

MS. DOLE: Objection.

A. I don't recall exact, but within the hour.

MR. DePAOLA: Wouldn't have been at 4:00, okay.

Q. You dispatched somebody to the scene according to Mr. Mouhmood at about 8:40 p.m., which would be approximately four hours later; is that correct?

MR. DePAOLA: Objection.

MS. DOLE: Objection. You are mischaracterizing in your question the times that are actually set forth in



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Klesin's Exhibit H. It says Con Edison of New York received a call from the fire department at New York at 4:55 p.m., that's five minutes before 5:00. You keep using between 4:00 and 5:00. That is --

MS. FENNO: Is this an objection?

MS. DOLE: Yes, it is an objection.

MS. FENNO: It's a speaking objection. It's in violation of the C.P.L.R. You can certainly object and ask questions once it's your turn to do so, but I would appreciate you not interrupting my question.

MR. DePAOLA: She has a right to object.

MS. DOLE: I do have the right to object. And this witness is here without counsel. He is not an experienced witness in terms of testifying. He told you he testified approximately 14 years ago once only. And I believe that your questions are misleading and misguiding this witness,



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J. Klesin

so on that I have an objection.

MR. DePAOLA: I think they are palpably improper.

Q. According to Defendant's Exhibit H, approximately how long after your office was notified of the occurrence did you first dispatch Mr. Mouhmood to the scene?

MR. DePAOLA: Objection. Asked and answered.

A. I don't recall. If I could look at the report.

Q. If there's another document you would like to look at, sir, to refresh your recollection, please do so.

Are you looking at the report that was briefly discussed in the last session prepared by your office?

A. Yes.

Q. And that was marked as --

MS. DOLE: -- Defendant's C. The witness doesn't have a copy of the actual marked report.

MS. FENNO: I think the last time we marked it separately.



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J. Klesin

MS. DOLE: He's right now looking at a separate copy which was marked Plaintiff's 1 on May 7, 2010.

Q. Would you like to look at your report marked Defendant's Exhibit C, go right ahead.

A. Okay.

Q. Sir, have you had a chance to look at Defendant's Exhibit C --

A. Yes.

Q. -- the report prepared by your office?

A. Yes.

Q. Are you able to determine from your report approximately how long after your office received notice from CENY, you dispatched someone from your office to the scene?

A. Yes. According to the report, staff received notification of the explosion at 5:15 and staff was dispatched to the location and arrived at approximately 8:40 p.m.

Q. And that would be approximately



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J. Klesin
three-plus hours later; is that correct?

A. Correct.

Q. Mr. Klesin, I would like to ask you about a few other individuals. We ran down a list of several individuals the last time you were here to determine whether you could identify them and I would like to ask you about a few other individuals at this time.

Are you familiar with a company by the name of Liberty Plumbing & Heating?

A. No, I'm not.

Q. No, you are not?

A. I mean, I'm aware that they are the plumber involved in the incident, but yes.

Q. When you say "involved in the incident," are you aware that Liberty Plumbing was involved in performing plumbing work at the Sanford Avenue building we have been talking about prior to the explosion?

A. Yes.

Q. Are you familiar with an individual by the name of Michael Copella?

A. Not familiar.

Q. Are you familiar with an individual



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J. Klesin
by the name of Billy Mannino?
A. Not familiar.
Q. Are you familiar with an individual
by the name of Eddie Allito?
A. I'm not familiar.
Q. Are you familiar with an individual
by the name of Steven Rabbisi?
A. Not familiar.
Q. Are you familiar with an individual
by the name of Frank Guida?
A. Yes.
Q. How are you familiar with
Mr. Guida?
A. Frank, I believe, is the
superintendent of the building who I met that
night on location when I responded to the
incident.
Q. Mr. Klesin, are you a bowler?
A. Yes, I am.
Q. Do you belong to a bowling league?
A. Yes, I do.
Q. What league do you belong to, sir?
A. The Salisbury Men's League.
Q. Where does the Salisbury Men's



1 J. Klesin

2 League bowl?

3 A. East Meadow, Long Island.

4 Q. And Mr. Klesin, is Mr. Frank Guida
5 also a member of the Salisbury Men's League?

6 A. Yes, he is.

7 Q. And did you know Mr. Guida prior to
8 the commencement of your investigation on
9 behalf of the Office of Electric, Gas and
10 Water in connection with your participation
11 in the Salisbury Men's League?

12 A. If you are asking if I knew him
13 from the bowling league prior to this
14 incident, the answer is yes.

15 Q. How long had you known Mr. Guida
16 before the incident?

17 A. I think that was the first, that
18 might have been his first. He joined the
19 league later on, so six months maybe. I
20 don't recall exactly how long.

21 Q. Did you have occasion to speak with
22 Mr. Guida when you both participated in the
23 Salisbury Men's League?

24 A. When we bowl against each other.
25 That would happen maybe once, twice a season,



1 J. Klesin

2 depending.

3 Q. Did you also have occasion to
4 socialize with Mr. Guida in connection with
5 your participation on the team together?

6 A. At the lanes we just -- you know,
7 we are bowling and there would be
8 conversations discussing, you know, sports,
9 stuff like that.

10 Q. Were you aware, prior to the
11 commencement of your office's investigation,
12 that Mr. Guida was the building
13 superintendent at the Sanford Avenue building
14 that your office was going to be
15 investigating the explosion in?

16 A. Repeat the question.

17 (Question read.)

18 A. Yes.

19 Q. Did you ever advise anyone in the
20 Department of Public Service of your
21 familiarity with Mr. Guida at the start of
22 your investigation or at any time?

23 A. I don't recall. I may have, but I
24 don't recall. I don't recall.

25 Q. As you sit here today, do you



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J. Klesin

recall advising any of your superiors in the Department of Public Service of your association with Mr. Guida before the date of the explosion?

A. I don't recall. I may have, but I can't remember.

Q. If you may have, who would you have told?

MS. DOLE: Objection as to form.

MR. DePAOLA: Objection.

A. Again, I don't recall.

Q. Well, I would like to leave a space in the record and if your recollection is refreshed of having advised someone within the Department of Public Service of your prior knowledge of Mr. Guida, would you kindly fill in the name of the individual that you advised?

INSERT: _____

Q. In response to a subpoena served by my office following your last day of testimony, Mr. Klesin, I was provided by the Office of General Counsel with what they



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represented to me to be the field manual that you testified guided your investigation into the explosion which was in effect on the date of the explosion. And it's been marked today as Defendant's G. And I believe you have a copy in front you, sir.

Have you had a chance to glance at this document?

A. I have in the past, yes.

Q. Have you had a chance to glance at the copy that is in front of you today, sir?

A. Yes, in the past.

Q. And today?

A. No. Well, it's in front of me now, I haven't had a chance to look through it yet.

Q. Would you take some time, then, right now and please look at Defendant's Exhibit G and tell me if you can, sir, whether this is the field manual that you were referring to in your previous day of testimony as the document which guides the investigation and procedures of your office in investigating a gas explosion such as the



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Sanford Avenue explosion as of July 25, 2008.

A. This is the "Staff Guideline Manual" that I referred to in my testimony.

Q. It is?

A. Yes.

Q. And, to your knowledge, is this the manual that was in effect on the date of the Sanford Avenue gas explosion?

A. Yes, these guidelines were existent at the time of the incident.

Q. I would ask you, sir, to turn in Defendant's Exhibit G to Roman numeral IV entitled "Accident Investigation, Section 9.9.1.

A. 9 point --

Q. Do you see the heading, sir, it says "Accident Investigation"?

A. 9.12?

Q. Roman numeral IV.

MR. DePAOLA: 9.1. Sir, is this the section of the field manual which guided your office's investigation of the gas explosion of July 25, 2008?

THE WITNESS: This is the section



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of the field of the guideline manual, the Staff Guideline Manual, that discusses, you know, guidelines that could be taken -- that should be taken when conducting an accident investigation.

Q. Are there any other parts of this manual that assisted your office in guiding the investigation of the explosion in issue?

A. I'm not -- there's other parts that talk about notification requirements and there may be some other parts of the guideline manual that were followed as part of the -- or utilized as part of the investigation into the Sanford incident.

Q. We will get to those and let's just start with Section IV, if we could. Turn please to Section 9.5 entitled "Incidents General." "Incidents General" where it says, "It is the responsibility of the safety section to" conduct -- it says "conducting," I believe that's probably an error -- "onsite investigation of explosions, fires and accidents that may involve natural gas,



1 J. Klesin
2 liquid petroleum, LNG, LPG or steam
3 facilities under the jurisdiction of the
4 Department of Public Service to ensure that
5 the hazardous conditions have been alleviated
6 and determine the cause of the incident and
7 take actions necessary to prevent a
8 recurrence."

9 MS. DOLE: I will object as to the
10 reading. It was not complete.

11 MS. FENNO: I apologize.

12 Q. Do you see that section, sir?

13 A. Yes.

14 Q. Does that statement fairly and
15 accurately reflect your understanding of the
16 charge of your office in conducting an
17 investigation of the gas explosion --

18 A. Yes.

19 Q. -- such as the Sanford Avenue
20 incident?

21 MR. DePAOLA: Objection. We say
22 it's incomplete.

23 Q. Does it, sir?

24 A. Yes, it describes the role and
25 responsibility that our section does.



1 J. Klesin

2 Q. Did you understand, sir, as of July
3 25, 2008 that the Office of Energy, Gas and
4 Water had a responsibility to conduct an
5 independent investigation in order to
6 determine whether actions by the utility
7 company, in this case Con Edison, caused or
8 contributed in any way to the July 25, 2008
9 gas explosion?

10 MR. DePAOLA: Objection.

11 A. Repeat the question, please.

12 (Record read.)

13 A. Yes.

14 Q. The paragraph immediately below the
15 first paragraph that I read states, "If it
16 can be positively determined through testing,
17 inspections, et cetera, that a company's
18 facilities or actions of company employees
19 were not a causative factor in the incident,
20 our involvement in the investigation is
21 ended."

22 Did your office, sir, determine
23 through testing, inspections, et cetera, that
24 Con Edison's actions were not a causative
25 factor in the gas explosion of July 25, 2008?



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A. If I can refer to the report.

Q. Please, do.

A. Because I believe the report does not conclude conclusively.

Q. Referring to the report, page 19, third paragraph, "Staff's report concludes that the Con Edison employees failed to follow company's procedures. During procedures July 25, 2009 at 1475 Sanford Avenue, did not perform the bleeds following the integrity test. Did not gas in at least one appliance per riser that preceded with the re-sporing the gas service despite conditions in apartments. Example: Lack of installed ACC valves contradicted their own procedures in the plumber's affidavits, apparently assuming the plumbers would later take care of those conditions."

MR. DePAOLA: We will have to stop. What I gave you, you did not give me back. I'm missing pages. They are out of order. I don't know how it went from there's 1, then 2 and it goes 5. I got the first page back. This is all messed



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up.

(Final report prepared by the Office of Electric, Gas and Water dated April, 2009 marked Klesin Defendant's Exhibit C-1 for identification, as of this date.)

MS. FENNO: And for the record, at a break we have marked a copy of the final report prepared by the Office of Electric, Gas and Water dated April, 2009 as Klesin Exhibit C-1 for identification, which Mr. Klesin is using now to assist him in giving his answer.

Q. Isn't that right, Mr. Klesin?

A. Yes. Reread the paragraph again.

Q. How would you like to read the question that was put to you. Do you want to use the --

A. Page 19, second paragraph, basically details some of the conclusions that staff's investigation had come up with and -- but also states, "Therefore, consideration must be given whether the



1 J. Klesin

2 actions or interactions contributed to the
3 incident."

4 Q. So in answer to my question whether
5 your office conclusively determined that the
6 utility, Con Edison, was not involved in the
7 explosion in causing the explosion, are you
8 suggesting, sir, that your office did not
9 reach that determination?

10 MS. DOLE: Objection.

11 A. That statement that consideration
12 must be given to whether these actions or
13 interactions contributed to the incident, you
14 know, leaves some -- leaves room -- the
15 following -- the paragraph that follows in
16 the report do take into consideration some
17 scenarios that had they been followed, those
18 scenarios would have occurred, that, you
19 know, the same incident would have happened.
20 So it does -- the report does go a little
21 further to depict -- to try to answer that
22 question whether actions or interactions, Con
23 Edison's or interactions, may have
24 contributed to the incident.

25 Q. My question is a little different



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than that, sir. And I am referring to the second paragraph in subject heading 9.5 of the field manual that has been marked for identification today as exhibit -- the field manual is Exhibit G.

My question to you, sir, is: Did your office positively determine through testing, inspections, et cetera, that the company, Con Edison's, actions were not a causative factor in the incident of July 25, 2008?

MR. DePAOLA: Objection. Asked and answered.

MS. DOLE: I join.

MR. DePAOLA: I also object to form.

Q. I think the answer calls for a yes or no.

MR. DePAOLA: No, he doesn't have to answer yes or no. I object to that.

MS. FENNO: Mr. DePaola, these are speaking objections continuously on the record. I would ask you to voice your objection pursuant to C.P.L.R. and leave



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it at that.
MR. DePAOLA: He's not represented
by counsel. For you to tell him it's a
yes or no answer is improper.
MS. FENNO: I'm not engaging in
colloquy with you, Mr. DePaola.
(Record read.)
A. The answer is based on the report
and what I read before. The answer to that
would be no.
Q. Okay. Let's go to Section 9.14
entitled "Reports to the Commission." We
were discussing a bit at the last session of
your deposition, Mr. Klesin, the factors
which would weigh into your office's decision
to refer your investigation to the Public
Service Commission.
Do you recall giving testimony
regarding that?
A. Yes.
Q. Section 9.14 states in part,
"Generally incidents that result in injuries,
fatalities and/or substantial property damage
and/or which result in specific



1 J. Klesin
2 recommendations will be formally reported to
3 the commission."

4 Do you see that, sir?

5 A. Yes.

6 Q. Does that statement, based upon
7 your knowledge and experience of the workings
8 of your department, suggest to you, sir, that
9 in incidents that result in fatalities, your
10 specific recommendations are required to be
11 formally reported to the commission?

12 MS. DOLE: Objection as to form.

13 MR. DePAOLA: Objection.

14 A. You are referencing this is a
15 guideline, okay, that is referenced; it's
16 not. And that's basically what it is, it's a
17 guideline. So generally, you know, what you
18 will see within the Staff Guideline Manual,
19 again, it's just a guideline. It's not
20 followed wholeheartedly 100 percent all of
21 the time.

22 In this particular case, I think I
23 already answered. I can't answer for why the
24 report did not go to the commission; that
25 decision was made above me.



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Q. We would agree the July 25, 2008 gas explosion resulted in injuries?

A. Yes, it did.

Q. We would agree the July 25, 2008 gas explosion resulted in fatalities?

MR. DePAOLA: Fatality?

MS. FENNO: Excuse me?

A. Yes.

Q. We can agree the July 25, 2008 resulted in substantial property damage?

A. Yes.

Q. And based upon the criteria enumerated in 9.14 according to the field manual, would you agree, sir, that your office was required to submit your recommendations to the commission?

MR. DePAOLA: Objection.

MS. DOLE: I object.

A. There are other factors that rolled into the decision, other factors that were evaluated to make a determination that it would have gone to the commission. One being I can't really speak for them because the decision was not mine. There was discussion



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2 on it and it had to do with jurisdiction over
3 facilities, piping beyond the meter and
4 things of that, you know. So there's more to
5 it than what you are reading out of the Staff
6 Guideline Manual.

7 Q. I will ask you to elaborate on what
8 you are suggesting right now, sir, but I want
9 to stick to the point for the moment.

10 You are suggesting I believe, based
11 upon your prior testimony, and please correct
12 me if I'm wrong, that someone other than
13 yourself made the decision about whether or
14 not to refer your office's investigation to
15 the Public Service Commission; is that
16 correct?

17 A. Correct.

18 Q. And you mentioned several names
19 when you were here the last time, among them
20 Gavin Nicoletta?

21 A. Correct.

22 Q. Is Mr. Nicoletta the chief safety
23 inspector for the Office of Electric, Gas and
24 Water, sir?

25 A. Yes.



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MS. DOLE: Objection. Asked and answered.

Q. And you mentioned another individual. Who was that, sir?

A. I think --

Q. Steven Blaney?

A. -- Steven Blaney.

Q. Who was Mr. Blaney?

A. A support engineer in Albany. Normally his responsibility is putting these reports, you know, together in prep for filing and/or when they are taken to the commission.

MS. DOLE: Objection. Asked and answered.

Q. Is Mr. Blaney a licensed engineer?

A. He is a P.E.

Q. And your particular office, where was your office located back in July of 2008?

MR. DePAOLA: Objection.

A. 90 Church Street.

Q. Was there a licensed engineer working out of your office on July 25, 2008?

A. Out of the 90 Church Street office,



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no.

Q. To your knowledge, was a licensed engineer ever dispatched by the Office of Electric, Gas and Water to the Sanford Avenue address in the course of your office's investigation of the gas explosion?

A. No, there was not. No licensed engineer was dispatched to.

Q. To your knowledge, was a licensed plumber dispatched to the gas explosion location at Sanford Avenue in the course of your investigation?

A. No.

Q. To your knowledge, was a physicist or any scientific expert dispatched by your office to the Sanford Avenue address in the course of your investigation?

A. No.

Q. Further down in Section 9.14 it states, "This memorandum from the Office of Gas and Water to the commission will follow the same outline as the field investigation report. This report will be prepared by the engineering staff and will be approved by the



1 J. Klesin
2 section chief and the director of the Office
3 of Gas and Water."

4 I think we stated before that
5 Mr. Nicoletta was the section chief; is that
6 correct?

7 A. Correct.

8 Q. And that Mr. Blaney would be the
9 member of the engineering staff that
10 participated in preparing the final draft of
11 the report dated April 2009 prepared by your
12 office?

13 A. Correct.

14 Q. And who was the director of the
15 Office of Gas and Water back on July 25,
16 2008?

17 A. Director would be Tom Devorski.

18 Q. To your knowledge, was a memorandum
19 ever prepared by anyone from the Office of
20 Gas and Water and delivered to the commission
21 pertaining to your office's investigation of
22 the gas explosion?

23 MR. DePAOLA: Objection. Asked and
24 answered.

25 MS. DOLE: Objection to form.



1 J. Klesin

2 A. No. There was no memo prepared,
3 not that I recall.

4 Q. Was a unique case number assigned
5 to the investigative report prepared by your
6 office?

7 MR. DePAOLA: Objection. Asked and
8 answered.

9 A. I previously testified that in prep
10 for this, at some point in time to go to the
11 commission, a case number -- and I guess the
12 hang-up is assigned. A case number was
13 reserved to be assigned in the event that it
14 needed to go to the commission.

15 Q. So you take issue, sir, with the
16 binding effect of this, this field report, as
17 to your office's obligation to refer the
18 results of your investigation to the Public
19 Service Commission; is that correct?

20 MR. DePAOLA: Objection. You are
21 arguing with the witness.

22 MS. DOLE: Objection.

23 A. In the previous testimony you had
24 asked me what -- what is it that we -- how
25 did we conduct our investigations. I



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referred to the Staff Guideline Manual and that's when you stated that you were going to subpoena. And that's -- basically, this is a guideline. It's a guideline how we do our job. It's not -- it's to be used as a tool to help us.

Q. Okay.

You were the chief investigator of the Sanford Avenue explosion for the office of local gas and water; is that correct?

MR. DePAOLA: Objection. Asked and answered.

A. I was not the lead investigator; it was Carlos Ortiz.

Q. And your role was what, sir?

A. I oversee its New York City office. I would have been involved in ensuring that staff was assigned, the direction of the investigation, tests that were going to be performed, you know, and to report on it to Albany.

Q. I thought you told us the last time that you were more senior to Mr. Ortiz; is that correct?



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A. Yes, I am.

Q. And that you had overall responsibility for the Sanford Avenue investigation that was undertaken by the Office of Electric, Gas and Water; is that statement fair and accurate?

MR. DePAOLA: Objection.

MS. DOLE: Objection as to form.

A. Repeat the question, please.

Q. Were you responsible from your particular office for the investigation?

A. I'm responsible to oversee the operations of the New York City office; one of them being accident investigation as to which I am responsible to ensure the investigation gets conducted, assign staff, ensure proper tests are conducted, you know, to reach conclusions, to formulate a report. It then gets sent up to filing and/or to the commission.

Q. Did you have responsibility as to the manager in which the investigation was undertaken to determine that it was an independent investigation on behalf of the



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people of the State of New York?
A. Can you repeat that again, please?
(Record read.)
A. That would be one of my
responsibilities, yes.
Q. How many times in your experience
did staff of the Office of Electric, Gas and
Water fail to follow the reporting guidelines
set forth in Section 9.14?
MR. DePAOLA: Objection.
A. I don't recall. I can't answer. I
wouldn't know. There's -- we investigate
numerous incidents. Some that don't meet the
level to go to the commission for various
reasons and, you know --
Q. My question is a little different,
sir.
My question is: On how many
occasions did your office deviate from the
requirements set out in 9.14?
MR. DePAOLA: Objection.
MS. DOLE: I will object.
MR. DePAOLA: That's an improper
question. You are mischaracterizing.



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No, I object to this. I really do. You are mischaracterizing its requirements. What he says, it totally flies in the face of his testimony and it's improper. I know he's not represented by counsel; it's palpably improper.

MS. FENNO: For the record, the Department of Public Service has an Office of General Counsel that I, in fact, provided all of the documents that are being referred to in the course of Mr. Klesin's deposition testimony. So the fact that counsel may not be present here with Mr. Klesin today at the deposition certainly does not mean that the Department of Public Service is not represented by counsel. They certainly are.

MR. DePAOLA: He's a non-party, as you know, and not one of the non-parties has come with their attorneys.

MS. DOLE: I will object as to the form.

A. 9.14 is out of the guideline



1 J. Klesin
2 manual. The guideline manual is not a
3 requirement and I do not know the answer to
4 that question.

5 Q. Can you recall, as you sit here
6 today, any other instances that involved
7 injuries, fatalities, substantial property
8 damage wherein your office did not refer such
9 incidents to the Public Service Commission?

10 A. There have been some. I do recall.

11 Q. Can you please name those incidents
12 for me?

13 MR. DePAOLA: Objection. This has
14 been asked and answered.

15 MS. DOLE: I will object on that
16 ground as well.

17 A. I recall an incident on Jericho
18 Turnpike, contractor damage resulted in a
19 service line that ignited, burnt down three
20 storefronts. And if I recall, that did not
21 go to the commission. The report was done,
22 filed, and did not go to commission on that.

23 Q. When did that incident occur, sir?

24 A. I don't recall.

25 Q. Did you occupy your same position



1 J. Klesin
2 in the Office of Electric, Gas and Water at
3 the time of that incident?

4 A. I was in -- I wasn't lead
5 supervisor. I was the New York City lead
6 officer at that time.

7 Q. What was your position with the
8 Office of Gas and Water?

9 A. New York City supervisor.

10 Q. What year did that occur in?

11 MS. DOLE: Objection. You just
12 asked him and he answered. He said he
13 didn't recall.

14 Q. Was it in the 1980s, 1990s,
15 approximately when? If you can even give me
16 a decade.

17 A. Late '90s, early 2000.

18 Q. If you go to, sir, Section 9.13
19 entitled "Field Investigation Report"
20 immediately previous to the section you were
21 referring to and it says, "Investigation
22 Report - All major incidents such as
23 explosions, major outages and incidents with
24 injuries/death that require an investigation
25 will be documented on the Office of Gas and



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Water form entitled NYS DEP 26789 of Public Service Office of Gas and Water Safety Section, incident investigation report. This form follows the federal report format and does allow for a narrative summary to be attached. The form can be found at the following location. Consult supervisor for Albany engineering if you have questions regarding the investigation or report."

Sir, does Section 9.13 reflect the type of report that your office prepared in connection with its investigation of the Sanford Avenue explosion?

A. The Sanford Avenue --

MR. DePAOLA: Note my objection. When it says "Investigation Report," there's a hyphen between "Report" and "All." Other than that, you read perfectly.

MS. FENNO: Thank you.

MR. DePAOLA: Just note my objection for that.

A. The Sanford Avenue report was a narrative report, which is generally the type



1 J. Klesin
2 that goes to the commission. And what is
3 being discussed here is more of a checklist
4 type form or tablet form, something to that
5 effect.

6 MS. DOLE: F-1.

7 A. But it's more geared toward -- and
8 another reason the other report is more
9 geared toward -- has a lot of checked boxes
10 for type of pipe, operating pressures, sizes,
11 a lot of technical data that needs to be
12 captured, and it's geared more toward outside
13 facilities. When I say "outside," piping
14 beyond the meter or internal piping and a lot
15 of the boxes on that report would be N/A.
16 I'm not saying that's the reason, but
17 generally narrative is what gets put together
18 when we go to the commission.

19 Q. If we turn to Section 9.15, "Indent
20 Report Files," it refers to, "If a formal
21 report of the incident to the commission is
22 not necessary, then the completed field
23 report will be the department's final report
24 on the incident and thus become a public
25 record. The final report along with the



1 J. Klesin
2 original G-05 will be filed in the Albany
3 office."

4 Does that section refer to the type
5 of report that you have just been testifying
6 about?

7 A. I'm not 100 percent sure, but I do
8 believe it's referring to a narrative.

9 Q. So your report, I believe you
10 testified the last time, was a narrative
11 style report and I believe you testified,
12 please correct me if I'm wrong, that you
13 fashioned it after other narrative reports
14 that your office prepared in incidents that
15 you regarded as precedent for your
16 investigation of the Sanford Avenue
17 explosion; is that correct?

18 MR. DePAOLA: Objection.

19 MS. DOLE: Objection.

20 A. I think I testified that the
21 narrative was the typed up into a report,
22 went to the commission. We utilize the
23 narrative format.

24 Q. Which was the type of report that
25 you prepared in connection with the Sanford



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Avenue explosion; is that correct?

A. Yes.

Q. If we turn to Section 9.12.3, "Evidence Procurement," it's just before the sections that we have just been talking about.

"When a component or section of pipe is suspected of being related to or involved in an incident or determined that the component or section of pipe will be examined by an independent expert, the following steps must be taken: Ensure that the item to be tested is in as close to its original state as possible. For example, if there was a leak caused by corrosion of the pipe, do not disturb or clean the area of the hole. If there is a cracked -- if there is a cracked steel cast iron or plastic facility, care must be taken to see that further damage does not occur during the removal process. Every effort must be made to ensure no damage is done to the surface area of an item to be tested?"

Do you see that section, sir?



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J. Klesin

A. Um-hum.

Q. Is your understanding of this section that the goal is to ensure that the conditions of the site where your investigation is taking place are there as close to the same conditions as existed at the time of the incident that your office was investigating?

MR. DePAOLA: Objection.

A. Just give me a minute.

This is more in line with a component failure.

Q. Sorry?

A. This is more in line with a component failure. If you had section of pipe that failed to corrosion, a valve that might have failed or started leaking, it refers more to ensuring that those pieces do not get disturbed. And there's a protocol in securing it for possible further testing.

Q. Well, the start of the paragraph that I began reading immediately after the section having says, "When a component or a section of pipe is suspected of being related



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J. Klesin
to or involved in an incident."
Is it your understanding, sir, that
the Sanford Avenue explosion involved an open
gas valve?
A. That's correct.
Q. Is, sir, an open gas valve a
section of pipe?
A. Yes, you can call it that or a
component.
Q. So would it be a fair statement,
sir, that Section 9.12.3 entitled "Evidence
Procurement" is intended to direct your
office to do what it can to make sure that
the conditions of the site being investigated
are as close to the conditions that existed
at the time of the incident as possible?
MS. DOLE: Objection.
A. Again, this was a guideline.
It's -- and I believe this is -- the section
is pointing into a component or piece of
paper that would fail, not a valve that was
left open or that was open.
Q. Would it be a fair statement, sir,
it would have be of assistance to your office



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J. Klesin

in conducting an investigation to be as confident as possible that the incident site is as close to the way that it was at the time of the incident as existed at the time of the incident?

A. Agreed.

Q. Section 3 says, "Depending on the seriousness of the incident associated with the testing, law enforcement or safety section personnel may have to escort the component to the testing site in order to maintain the chain of custody of the evidence. In all cases the evidence must be clearly marked and/or tagged and photographed to ensure that the appropriate component is delivered to the testing site."

And then Section 4, "To establish events leading up to and during the incident, attempts to interview witnesses including members of the public, company employees, and civil authority who may have knowledge of the incident."

Do these sections suggest to you, sir, that among the goals stated in the Staff



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J. Klesin

Guideline Manual was to protect the site of the incident to make sure that it was not in any way contaminated by persons who had access to the site --

MR. DePAOLA: Objection.

MS. DOLE: Objection.

Q. -- in order to conduct your investigation?

MR. DePAOLA: Objection.

A. Shortly after the incident, we ourselves were unable to get access to the location.

Q. You bring up a very good point.

MR. DePAOLA: He hasn't finished.

A. We ourselves can't get access to the location; it may be the fire department, police department is there not allowing any access to anybody. And I'm sure there are protocols that they have that they follow. Once that was alleviated and we were allowed to get access, you know, I think we worked with all parties to have a retest done of the component or the riser that we thought was in question.



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J. Klesin

Q. You bring up a very good point, sir. Let's refer back again to Klesin Exhibit H for identification, the e-mail again from Mr. Mouhmood. Which suggests that in the middle section, where we were referring earlier, Con Edison responded to the scene at 5:03 p.m.

Do you see that?

A. Yes.

Q. Do you see that point?

A. Yes.

Q. If we read down a little further in the section, it suggests that if you go to the bottom paragraph, "Nobody was allowed to enter the building except the crime scene and fire marshals. According to CENY, Apartment 2-P was on fire so I was waiting up to 1:00 a.m. to get inside the building to see the Apartment 2-P. Finally with the help of fire marshals, I was able to get inside the building with two CENY personnel. CENY took several pictures of the destroyed Apartment 2-P. In the kitchen the oven was flipped over. The floor with flex hose disconnected



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J. Klesin

from the gas supply point. Fire marshal did not allow us to us stay longer inside the Apartment 2-P. However, around 3 a.m. I updated the status to Joe Klesin and left the scene."

Do you see that section, sir?

A. Yes.

Q. So on the basis of Mr. Mouhmood's report and on the basis of your independent recollection, sir, was the scene of the explosion for a period of time designated an active crime scene?

MR. DePAOLA: Objection.

A. I don't recall. I don't recall if after Mouhmood left if it was designated an active crime scene and no access was allowed until the next day.

Q. Did you understand the District Attorney's Office for a period of time was undertaking a criminal investigation with the possibility that criminal procedures would take place related to this explosion?

A. I was aware they were looking into the incident. I didn't know to what extent.



1 J. Klesin

2 Q. Were you aware that the fire
3 department was conducting its own
4 investigation, sir?

5 A. Typical cases like this, the fire
6 department always does their own
7 investigation.

8 Q. You were aware the police
9 department was conducting their own
10 investigation?

11 A. I mentioned that they were -- we
12 were aware they were looking into the
13 incident as well.

14 Q. As of April of 2009, do you know
15 whether the District Attorney's Office, the
16 fire department and the police department had
17 concluded their investigation of the
18 explosion at Sanford Avenue on July 25, 2008?

19 A. I don't recall. I know since the
20 incident we were looking to obtain I think
21 the fire marshal's fire report. I don't
22 believe we got one.

23 Q. So as of your final version of your
24 April of 2009 report, you had not yet
25 received the final report from the fire



1 J. Klesin
2 marshal; is that correct?

3 A. Correct.

4 Q. Now, based upon Mr. Mouhmood's
5 e-mail and based upon your own independent
6 recollection, it was your understanding that
7 at least part of the building was off-limits
8 to your staff the night of the explosion?

9 A. Yes.

10 Q. And at a certain point in time
11 according to Mr. Mouhmood's e-mail, he was
12 allowed access to Apartment 2-P with a
13 representative or representatives of Con
14 Edison; is that correct?

15 MR. DePAOLA: Objection. You want
16 him to give testimony based on an
17 e-mail?

18 A. I can't. I can't answer to that.
19 You have to ask Mouhmood.

20 Q. What is your recollection, sir?

21 A. My recollection that he was onsite,
22 he was reporting that he had access. Exactly
23 with who and who else was there, the e-mail
24 says the fire marshals were there. I'm sure
25 after an event like this the marshals would



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J. Klesin

not allow anybody in there without their presence.

Q. As you sit here today, do you know whether Con Edison had access to the rest of the building the night of the explosion?

A. I'm -- I believe based on pictures that we have seen of that, there was access probably to the apartments.

Q. We are going to get those pictures, sir, in a moment.

But my question to you: As you sit here today, do you know whether Con Edison was allowed to roam the building, other than Apartment 2-P where the explosion occurred, on July 25, 2008?

MS. DOLE: Objection to the word "roam."

MR. DePAOLA: Objection.

A. I don't know.

Q. You don't know?

A. No.



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J. Klesin

A F T E R N O O N S E S S I O N

March 11, 2011

12:30 p.m.

Q. The e-mail from Mr. Mouhmood states in part, "CENY took several pictures of the destroyed Apartment 2-P."

There is no indication in the e-mail that I read, and please correct me if I'm wrong, that photographs of any other apartment other than 2-P were taken that night; is that your understanding?

MS. DOLE: Objection.

A. Reading the e-mail, I concur. However --

Q. Do you have any independent knowledge as to whether Con Edison took any other photographs the night of the explosion?

A. I don't recall. There are photographs of other apartments. Exactly when they were taken, they were taken the night of the explosion, I don't recall.

Q. Did your office, Mr. Klesin, take any photographs the night of the explosion?

A. Not that I'm aware of.



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J. Klesin

Q. Did your office --

A. There may have been in 2-P, maybe outside 2-P. I can't answer for that.

Q. To your knowledge, did your office take any photographs at all concerning the investigation?

A. I believe photographs were taken. I believe Rachel did take photographs. And I believe --

Q. I am unaware of --

MR. DePAOLA: I don't think he finished.

A. To the best of my knowledge, I believe -- I believe photographs were taken. I'm not 100 percent certain, but I believe photographs were taken, I can't answer for Rachel or Carlos.

Q. And, to the best of your knowledge, what became of those photographs?

A. They would be filed; we would have them. We would have them; they would be filed. And if there were and they were subpoenaed, they would be turned over. So if you don't have photographs from us, then it's



1 J. Klesin
2 possible we didn't take photographs. I'm not
3 100 percent sure.

4 MS. FENNO: At this time I am going
5 to call for production of any existing
6 photographs taken by anyone in the
7 Department of Public Service, including
8 Ms. Jenkins, if such photographs in fact
9 exist.

10 Q. Mr. Klesin, according to
11 Mr. Mouhmood's e-mail -- which again refers
12 to the first day as being July 26, 2008 and
13 we have previously discussed the date of the
14 explosion as actually July 25, 2008; is that
15 correct?

16 A. Correct.

17 Q. -- he suggests in the first full
18 paragraph under "Day one: Big boss Joe
19 Klesin showed up at the scene around 11:30 to
20 12:00 p.m."

21 Is it your understanding that
22 Mr. Mouhmood was referring to you?

23 A. Yes.

24 Q. And does this e-mail accurately
25 reflect your best recollection as to the



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J. Klesin

approximate time that you arrived on the scene following the explosion?

A. I don't recall the exact time arrivals and departures, but I would say yes.

Q. Sometime between 11:30 and 12:00 p.m. you arrived at the Sanford Avenue address; is that correct?

A. Again, I don't recall exactly. But if Mouhmood said that's when I was there, it's possible, yes, I was there.

Q. I don't want to know if it's possible. I want your best recollection.

MR. DePAOLA: Objection. He answered twice.

A. I really can't answer. I don't recall at this moment the exact time. I can probably -- I know I was sending out emergency notification updates throughout the entire -- they are in the e-mails. I can get a better handle on exactly what time I was out there.

Q. We will be going through the e-mails.

But in Mr. Mouhmood's e-mail, he



1 J. Klesin

2 suggests that around 3:00 a.m. he sent you
3 status updates. Is your best recollection
4 that you left the scene sometime prior to
5 3:00 a.m.?

6 A. That would --

7 MS. DOLE: Objection.

8 Q. When you were at the scene --

9 A. -- make sense.

10 Q. When you were at the scene, what
11 did you do there?

12 A. Basically arrived just to see if we
13 can get access. From the time we got there,
14 there was no entry into the building. Fire
15 marshals were there. Again, it was just we
16 were in a holding pattern to try to get in.
17 And when I realized there was no way we were
18 going to get in that night or any time soon,
19 I left the location. I left Mohammed just in
20 case.

21 Q. Did you speak to anyone from Con
22 Edison when you arrived at the building that
23 night?

24 A. I may have. Who exactly, I don't
25 recall. I would have, but I don't recall who



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J. Klesin

exactly.

Q. Was there an emergency response team from Con Edison present when you arrived at the building?

MS. DOLE: Objection as to form.

A. There were numerous Con Ed personnel present.

Q. And do you have a specific recollection of speaking to anyone in particular from Con Edison that night?

A. No, I did not.

Q. Do you have a recollection as to whether Con Edison had been able to gain access to the building prior to when Mr. Mouhmoed indicated he went with the fire marshals into Apartment 2-P?

A. Not that I'm aware of. I don't recall.

Q. Going back to the field manual that was marked for identification as Exhibit G, Section 9.12.3 under "Evidence Procurement," subparagraph 4, it states: "To establish events leading up to and during the incident, attempt to interview witnesses including



1 J. Klesin
2 members of the public, company employees and
3 civil authorities who may have knowledge of
4 the incident. Before attempting to interview
5 company employees, explain what you want to
6 determine to the company supervisor in charge
7 and request assistance. If persons are to be
8 interviewed by law enforcement authorities at
9 a later time and different location, request
10 details so that you can be present."

11 It was your understanding back on
12 July 25, 2008 that as part of your office's
13 independent investigation, staff was to
14 conduct interviews of various witnesses with
15 knowledge that may assist in your
16 investigation?

17 A. Yes.

18 Q. Did anything in either the field
19 manual or precedent or anything else in your
20 prior experience suggest to you, sir, that
21 the interviewing of witnesses could be
22 conducted by persons associated with the
23 utility or Con Edison as opposed to staff of
24 your office?

25 A. I don't quite understand the



1 J. Klesin

2 question.

3 Q. Do you want to hear the question
4 back or do you want to --

5 A. If you can clarify the question.
6 Yes, repeat the question.

7 (Record read.)

8 A. We would generally conduct our own
9 interviews, but we would also utilize
10 interviews conducted by the company, their
11 employees' interviews conducted by the police
12 department, fire department when we
13 investigate these incidents.

14 Q. So your experience, then, was that
15 it was permissible for you to, in combination
16 with your own interviews, utilize interviews
17 conducted by the utility, in this case Con
18 Edison; is that correct?

19 A. Correct. We would -- we would,
20 yes. We would look at them, we would, you
21 know --

22 Q. And what efforts or what steps did
23 you take to verify information that came to
24 you from interviews that were conducted by
25 the utilities, in this case Con Edison, in



1 J. Klesin
2 connection with the Sanford Avenue explosion?

3 MS. DOLE: Objection.

4 A. Well, based on the
5 interviews -- the interviews are conducted,
6 specific questions are asked and based on
7 those questions or the answers, there's
8 also -- part of the investigation is a record
9 review. Based on those record reviews,
10 that's how we verify if what maybe the
11 company personnel is stating is accurate and
12 there's various means by which that gets
13 done.

14 Q. Who specifically, sir? I think we
15 started to talk about it last time. I think
16 you indicated that Ms. Jenkins conducted some
17 interviews on behalf of your office; is that
18 correct?

19 A. She was involved in interviews,
20 yes.

21 Q. Who else from your office conducted
22 interviews as part of your investigation of
23 the gas explosion?

24 A. Carlos Ortiz.

25 Q. Anybody else? I think you



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J. Klesin
mentioned you participated in --
A. So I participated, correct.
Q. Anybody else from --
A. -- our office, no.
Q. On how many occasions did Ms. Jenkins conduct interviews?
A. I don't recall, but there was a series, a series of three, two or three days of interviews, conducted at College Point. I'm not sure about the interviews conducted onsite. There were some interviews conducted on sites of the tenants in the apartment. So if you are asking how many am I aware of, I can't. Two or three days' worth of interviews that I'm aware of.
Q. When you say "College Point," are you referring to joint interviews that were conducted by Con Edison, Ms. Jenkins, possibly yourself and other entities?
A. Correct.
MS. DOLE: Objection.
Q. Is it your understanding that Ms. Jenkins participated in or conducted interviews of tenants in the building?



1 J. Klesin

2 A. I believe she interviewed or was
3 with Carlos when he interviewed one of the
4 tenants of the building.

5 Q. One of the tenants?

6 A. As far as I know. I know they
7 interviewed the tenant I think 1-P. They did
8 6-P, tenant in 6-P. They zeroed in on the
9 P riser.

10 Q. Anybody else?

11 A. Not that I'm aware of. I mean,
12 there would be if so. And based upon the
13 interviews, those interviews or results
14 thereof would be --

15 Q. Who did?

16 A. I'm saying I believe those
17 interviews are referenced in the report.

18 Q. Referenced in the report, did you
19 say?

20 A. Or the --

21 Q. Can you show me in the report where
22 it is referenced the interviews that were
23 conducted by your office as opposed to
24 interviews conducted by Con Edison or other
25 persons?



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J. Klesin

A. I think there's a statement in the report that says that the report is based on interviews conducted by staff and information obtained from interviews conducted by other parties such as Con Ed and police department.

MR. DePAOLA: Do you want me to help?

THE WITNESS: Yes.

MR. DePAOLA: 15.

A. Those are references to the interviews conducted. This is a statement in the report that I recall.

MR. DePAOLA: Paragraphs 2, 3 and 4.

MS. FENNO: That's exactly what you are saying.

MR. DePAOLA: The report speaks for itself. There's a statement on top of, "Also staff conducted interviews with building plumbers, building superintendent and Con Edison personnel. Con Edison photographs were" --

A. Let me just first. Also on the staff conducted interviews with the building



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J. Klesin

plumb -- lead plumber and assistant building superintendent and Con Ed personnel. I do recall another statement, though, that talks about the basis of our report is based on interviews of various entities.

Q. Let me ask you a different question then, Mr. Klesin. It was your understanding -- I will let you refer to if you would like to, Ms. Dole has --

MS. DOLE: Just for the record, I just pointed out to Mr. Klesin, there is a footnote referenced in the section of page 15 that he was reading. There's footnote 13 and he can answer that. Because as Mr. DePaola indicated, the report speaks for itself.

MR. DePAOLA: Did I say that?

A. Did not -- staff did not directly participate in the interview. The interview was conducted. The staff did not directly participate in the interview of the 6-P tenant. The interview was conducted by Con Edison, which provided its notes to staff.

Q. So that really is the basis of my



1 J. Klesin
2 question, Mr. Klesin, which is that in
3 reading Section 9.12.3, "Evidence
4 Procurement," of your field manual, I do not
5 see any reference to the use of interview
6 materials by the utility which is being
7 investigated by your office.

8 And so my question to you is: Sir,
9 what is the precedent for the use of
10 interviews conducted by Con Edison in the
11 preparation of the report of the Office of
12 Electric, Gas and Water?

13 MS. DOLE: Objection.

14 MR. DePAOLA: Objection.

15 A. Again, this is a guideline.
16 Typically with these interviews, they get
17 conducted a lot of times jointly because of
18 the company personnel that are involved.
19 They are represented by union, like a union
20 rep has to be there. We have to get in touch
21 with the company to set it up, but -- and we
22 also rely on records. When we do audits, we
23 rely on company records for compliance with
24 certain regulations. And these interviews
25 conducted and the notes that we used from



1 J. Klesin
2 those interviews, they would have been looked
3 at and evaluated, you know.

4 Q. Are you suggesting any
5 investigations that you conducted prior to
6 the Sanford Avenue explosion, your office
7 previously used interviews conducted by the
8 utility being investigated as opposed to
9 interviews conducted by the staff of your
10 department?

11 A. We would use -- we would interview,
12 we would conduct our own interviews. We
13 would also have access to other interviews
14 conducted by other entities such as Con Ed,
15 the police department, and evaluate and take
16 a look at those interviews and the results of
17 those interviews as part of the investigation
18 process.

19 Q. Based on what you just told us,
20 Mr. Klesin, am I correct your staff
21 interviewed exactly one tenant of the Sanford
22 Avenue building in Apartment 1-P?

23 MS. DOLE: Objection. That is
24 misleading based on the report on page
25 15.



1 J. Klesin

2 Q. Mr. Klesin, can you tell me based
3 upon your report or your independent
4 knowledge whether your office interviewed
5 anybody else other than the tenant of
6 Apartment 1-P in the course of its
7 investigation of the Sanford Avenue
8 explosion?

9 A. I know for a fact we interviewed
10 the tenant in 1-P. I can't speak for staff
11 investigating.

12 Q. As you sit here today, do you know
13 of any other tenant of the building that was
14 interviewed by your staff?

15 MS. DOLE: Again, I will object
16 because this witness has already
17 testified as to his role in the
18 interviews. But it is clear from the
19 last paragraph on page 15 that other
20 interviews were conducted.

21 MS. FENNO: Ms. Dole, I think your
22 objection is completely improper. I
23 said it previously. I also think you
24 are attempting to coach a witness that
25 is not even your witness.



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J. Klesin

MS. DOLE: He is not my witness but he's already told you he did not conduct the interviews, that it was Rachel Jenkins and Carlos Ortiz. He also said perhaps those questions are best-suited to Ms. Jenkins and Mr. Ortiz, yet you continue to barrage the same witness with the same questions you asked him today and the last time without the ability to have any attorney object on his behalf. It is my ethical duty as an attorney to object when the question is improper.

MS. FENNO: I strenuously object to the statements by counsel.

MS. DOLE: You can't strike my statement.

Q. Can you answer my question, Mr. Klesin?

A. I don't recall exactly what tenants were interviewed by staff. Page 15, the footnote at the bottom, does state the tenant of 6-P that staff did not directly participate, but the interview was conducted



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J. Klesin

by Con Edison which gave notes to the staff.

Q. With respect to the interviews conducted of the Con Edison employees who were present on the date of the gas explosion, to the best of your knowledge, did your staff interview those individuals?

A. Yes, they did.

Q. On how many occasions?

A. I'm not 100 percent certain. I believe there was two to three days of interviews that were conducted at the College Point yard at Con Ed. And there were onsite interviews done as well, but I can't really say how many.

Q. At the College Point interviews, were the Con Edison employees represented by counsel?

A. There was a Con Ed counsel present.

Q. Was that Mr. Lind?

A. Mr. John Lind, yes.

Q. To the best of your knowledge, did the contents of the interviews of the Con Edison employees change over the various interviews that were conducted?



1 J. Klesin

2 A. I did not sit in on the initial
3 interviews. Carlos and Rachel did, I
4 believe. So, to the -- there was discussion,
5 there. It was noted that subsequent the
6 initial interviews on the first day that Con
7 Ed reached out to staff, to state that some
8 of the -- I believe one individual -- I
9 forget the name, it escapes me -- had
10 recanted.

11 Q. Was that the supervisor Willy
12 Montalvo?

13 A. Yes, had recanted his accounts on
14 the interviews that were conducted the first
15 day.

16 Q. We will get into those interviews.
17 But when you say someone from Con Edison
18 reached out to staff, would that have been
19 Mr. Lind, counsel for Con Edison, that
20 reached out to staff in that regard?

21 A. I don't recall, but we --

22 Q. We will wait until we get to the
23 actual interviews, but for now I would like
24 to mark for identification an e-mail from
25 John F. Lind to yourself, Mr. Klesin, as well



1 J. Klesin
2 as backup documents which he forwards to you
3 with that e-mail dated August 27, 2008.

4 MS. FENNO: Why don't we mark this
5 first, whatever it is we are up to,
6 along with the attachments.

7 MS. DOLE: I would suggest we make
8 copies for everyone before we go on with
9 the questioning.

10 (E-mail from John F. Lind to Joseph
11 Klesin dated August 27, 2008 and
12 attachments marked Klesin Defendant's
13 Exhibit I for identification, as of this
14 date.)

15 Q. Mr. Klesin, if you could please
16 have a look at what has been marked Klesin I
17 for identification.

18 I ask you whether you have ever
19 seen that document?

20 A. I must have. It was addressed to
21 me. I don't recall, but yes.

22 Q. Do you recall having received this
23 e-mail from John F. Lind of Con Edison on
24 August 27, 2008?

25 A. I don't recall, but I recall that



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J. Klesin

there was, you know, interviews conducted by Con Ed that we did get the write-ups of.

Q. And the content of the e-mail is, "For your review as a brief description of the interviews of the Sanford Avenue tenants, I bring to your attention the statement of Mir Sabiry, who is located in Apartment 6-B."

What is your recollection as to what it was that Mr. Lind was directing your attention to with respect to the statement of Mr. Sabiry in Apartment 6-B?

A. I don't recall, but I'm going to read it now.

Okay. You are asking me what do I recall from -- what was the question?

I don't recall, but I'm assuming he's reading the -- reading the interview. It's probably, "Returned to the shopping cart with plumbing materials in it."

Q. Did you have a follow-up conversation with Mr. Lind with regard to the e-mail and the written summaries of interviews conducted by Con Edison?

A. I don't recall. I may have, but I



1 J. Klesin

2 don't recall.

3 Q. You don't have a specific
4 recollection?

5 A. Yes.

6 Q. You see the follow-up pages to the
7 e-mail with a heading "Tenant Interviews at
8 147-25 Sanford Avenue Flushing, New York."

9 Do you see that on the second page?

10 A. Yes.

11 Q. Is it your understanding that these
12 are summaries prepared by John Lind or his
13 staff in connection with interviews conducted
14 by Con Edison of tenants in these apartments
15 that are indicated in this summary?

16 MS. DOLE: Objection.

17 A. That's what it would indicate.

18 Q. To your knowledge, did anyone from
19 your staff interview any of these tenants
20 that are reflected in the Con Edison summary
21 interviews that they conducted?

22 A. Again, I have to go back. I don't
23 recall exactly. There were some interviews
24 done of some tenants. Which ones
25 specifically, I do not recall.



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J. Klesin

Q. As you sit here today, can you point to any one of these apartments where the tenant was interviewed separately by a member of your staff?

A. 1-P states it there, party was interviewed by Wayne, Carlos and Rachel.

Q. Do you see any indication on any other summaries for the other apartments that a member of your staff was present?

A. No, I do not. I do not, not this document.

Q. Sir, as part of the production by the Department of Public Service, we received photographs and --

(Discussion off the record.)

MS. FENNO: I will ask that photographs that were produced pursuant to subpoena by the fire department be separately marked for identification as whatever is the next letter in sequence. And I believe all of you have received copies of the fire department photographs as well.

Let's use the photographs produced



1 J. Klesin
2 by your department and we will mark
3 these. And everyone has those, we can
4 agree?

5 MS. DOLE: Correct. That would be
6 Defendant's J.

7 (Pages of photographs from Con
8 Edison marked Klesin Defendant's Exhibit
9 J for identification, as of this date.)

10 Q. Mr. Klesin, if you would please
11 look at these photographs that were provided
12 by the Department of Public Service.

13 I would ask you, sir, whether you
14 have ever seen the stack of photographs
15 before?

16 A. I've seen these through the course
17 of the investigation, yes.

18 Q. On the very first page of Klesin
19 Exhibit J for identification, there is what
20 appears to be a memo sheet with a Con Edison
21 logo.

22 Do you see that, sir?

23 A. Yes, I do.

24 Q. And there's also a date on that
25 cover sheet of "July 7-25-8."



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J. Klesin

Do you see that, sir?

A. Yes.

Q. As you sit here today, do you know what that date refers to?

A. The date of the incident, of the explosion of Sanford Avenue.

Q. There's also a notation above "7/25/8" which says "5:30 p.m."

Do you see that, sir?

A. Yes, I do.

Q. Referring back to Mr. Mohammed Mouhmood's e-mail which says 7/26 but we discussed actually refers to the date of the incident, Mr. Mouhmood indicates, "Nobody was allowed to enter the building except crime scene and fire marshals. According to CENY, Apartment 2-P was on fire so I was waiting up to 1:00 a.m. to get inside the building to see the Apartment 2-P. Finally, with the help of fire marshals I was able to get inside the building with two CENY personnel. CENY took several pictures of the destroyed 2-P."

Do you see that, sir?



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J. Klesin

A. Yes.

Q. The e-mail suggests that your staff and Con Edison were not allowed to get into Apartment 2-P until approximately 1:00 a.m., that the building was off-limits to anyone other than the fire department until that time. Would you agree?

MR. DePAOLA: Objection.

MS. DOLE: Objection.

A. That's what -- I can't speak for Mohammed. That's what the e-mail states. Again, I can't speak for him. He was there at 6:40 that evening, so I'm sure he can't speak for what transpired before he got there.

Q. Would you agree, sir, that on July 25, 2008 at 5:30 p.m., this would have been within one hour after the explosion at Sanford Avenue, sir?

MS. DOLE: Objection.

A. I think our report states that the explosion occurred around -- can I refer to the report?

Q. Of course.



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J. Klesin

A. 4:15.

Q. 4:15.

So, in fact, 5:30 p.m. would have been within 45 minutes of the time of the explosion; is that correct?

MS. DOLE: No, Ms. Fenno, 4:15 to 5:30 is an hour and fifteen minutes.

MS. FENNO: I stand corrected.

Q. Change that please to an hour and fifteen minutes after the time that you indicate the explosion occurred; is that correct?

A. Correct.

Q. And is it your understanding, sir, based upon Mr. Mouhmood's e-mail and your independent knowledge of the explosion, that no one had access to the building until approximately 1:00 a.m. that day?

MS. DOLE: Objection.

MR. DePAOLA: Objection.

MS. DOLE: Asked and answered.

A. I can't speak for Mohammed. Again, I -- you know, he was onsite. It's, you know --



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J. Klesin

Q. What time were you onsite?

MS. DOLE: Objection. Asked and answered.

A. 11:30. We talked about that.

Q. Were you able to get into the building?

A. At the time I was there, I was not allowed to get into the building. It's possible once the fire department puts -- the fire department and the police department gets involved at a certain time, a decision is made for nobody to gain access.

Q. When you got to the building, was the fire out?

MR. DePAOLA: He had his hands up and you started talking. I don't think he finished.

MS. FENNO: I can understand why you want to interrupt me.

MR. DePAOLA: You started asking a question and he had his mouth open, that's why I objected. It looks like he hadn't finished the answer because you interrupted him.



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J. Klesin

Q. Had you finished your answer, Mr. Klesin?

A. Yes, I have.

Q. Okay.

When you arrived at the building, had the fire department finished putting out the fire and finished their work in connection with the remnants of the explosion?

MR. DePAOLA: Objection to the form. Compound question.

MS. DOLE: Objection as to "finish their work."

A. At the time I was there, the fire was out. The fire marshals were there, there were other things going on, no access to the apartment.

Q. No access to the apartment, meaning you had no access to the apartment or no one outside of the fire and police departments had access to the apartment?

A. On location we were not allowed; no one was allowed in Apartment 2-P as the fire marshals and the fire department were



1 J. Klesin

2 conducting their --

3 Q. To your knowledge, was Con Edison
4 allowed in Apartment 2-P or any other
5 apartment at that time?

6 MS. DOLE: Objection. That was
7 asked and answered several times.

8 A. As far as I know, nobody else was
9 in there.

10 Q. Let's turn, sir, please in the
11 stack of photographs marked as Klesin
12 Exhibit J for identification to one, two,
13 three, four -- five pages from the back of
14 the stack of photographs.

15 MS. DOLE: Ms. Fenno, the photos
16 the witness has are each one photo
17 individually. So, perhaps, you can do
18 the math and see how many photos from
19 the back.

20 Q. About ten photographs up.

21 A. This one?

22 Q. Yes.

23 Mr. Klesin, as you sit here today,
24 do you know where these photographs were
25 taken?



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J. Klesin

A. This is Apartment 2-P.

Q. Did you have occasion to see this particular photograph before that you are looking at right now?

A. Yes, I have.

Q. Why don't we separately mark that photograph as Klesin Exhibit J-1 for identification.

(Copy of photograph marked Klesin Defendant's Exhibit J-1 for identification, as of this date.)

Q. Mr. Klesin, as you sit here today, do you know when that photograph was taken?

A. I don't know. I can't recall, some time after the incident, is all I can say, based on the photo.

Q. Was that photograph taken by the staff of the Office of Electric, Gas and Water?

MS. DOLE: Objection.

A. I do not believe so.

MS. DOLE: It will be stipulated that the photographs marked as Defendant's Exhibit J were taken by Con



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J. Klesin

Edison company, photographs whose name appears on the bottom of the cover sheet.

MS. FENNO: Would that be Mr. Gorado, Ms. Dole?

MS. DOLE: I can't make out the second letter. I don't know if that's a first initial and Proto is the last name or Gorado. I'm not familiar with that company employee.

MS. FENNO: I'm going ask. And I don't know how everybody wants to do this, but that's a separate stack of photographs and I will --

(Fire department cover sheet entitled "Fire Scene Unit Photo Cover Sheet" and attachments marked Klesin Defendant's Exhibit K-1 for identification, as of this date.)

(Photograph of clipboard with description of some photographs and attachments marked Klesin Defendant's Exhibit K-2 for identification, as of this date.)



1 J. Klesin

2 Q. Mr. Klesin, I'm going to show you
3 what has also been marked today as
4 Defendant's Klesin Exhibits K-1 and K-2,
5 which I will represent to you are part of
6 subpoenaed documents received from the fire
7 department.

8 I would like you to take a look at
9 this exhibit and ask you, sir, whether you
10 have ever seen pages 1 and 2 attached to
11 those photographs before?

12 A. No.

13 Q. Those two pages on what appears
14 it's entitled on the first page "Fire Scene
15 Unit Photo Cover Sheet" bear a date, would
16 you agree, July 7/27/08; is that correct,
17 sir?

18 A. Correct.

19 Q. So that would have been two days
20 after the Sanford Avenue explosion; is that
21 correct?

22 A. Correct.

23 Q. And I'm referring now to Klesin K-1
24 for identification.

25 Looking at Klesin K-2 for



1 J. Klesin
2 identification, there appears to be another
3 sheet on a clipboard, would you agree, with
4 handwritten notations --

5 A. Correct.

6 Q. -- that are numbered on the left
7 side; is that correct?

8 A. Correct.

9 Q. And what is your understanding of
10 what is reflected on K-2?

11 MS. DOLE: I will object. The
12 witness has said he's never seen the
13 photograph before and the photograph
14 speaks for itself.

15 A. The second sheet does carry a date
16 of July 25th, though.

17 Q. 7/25. Do you know what that date
18 refers to, as you sit here today?

19 A. I think that's the date of the
20 incident.

21 Q. Have you ever seen K-2 before?

22 MS. DOLE: Objection. Asked and
23 answered.

24 Q. Referring back to Mr. Mouhmoood's
25 e-mail of September 15, 2008 marked as



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J. Klesin

Defendant's Klesin Exhibit H for identification, I direct your attention to what indicates is "Day 3" on the second page. He has the date as "7/28/08."

Do you see where I'm referring to?

A. Yes.

Q. And it indicates in the paragraph below Day 3, "Carlos Ortiz showed up. We witnessed the leap test of the riser P. In past Carlos went inside the APT" -- apartment I'm assuming -- "with PPE along with fire marshal, CENY, Cruz. He took some pictures. Later on we did interview two plumbers, two CENY crews. One of the CENY's crews was supervisor. Fire marshal was present during the interview. The interview sheets should be available with Carlos."

Do you see where I'm referring to?

A. Yes.

Q. Can you tell me where it indicates "he took some pictures," who was Mr. Mouhmood referring to that took some pictures?

A. I can't answer for him. To me it would appear he was speaking of Carlos, but



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J. Klesin

again I'm not going to make an assumption here.

Q. As you sit here today, do you know when Con Edison took the photographs that were produced by your department of various apartments in the Sanford Avenue building?

MS. DOLE: Objection. Asked and answered.

A. I don't recall.

Q. Well, I would like to look at some of these pictures. Picture 1, 2, 3, 4, 5, 6, 7, 8.

Let's go to picture 21. Sir, do you see that photograph?

A. Yes.

Q. Have you ever seen it before?

A. Yes, I've seen this as part of the investigation.

MS. DOLE: Do we want to mark this photograph?

(Copy of photograph marked Klesin Defendant's Exhibit J-2 for identification, as of this date.)

Q. Looking at Exhibit J-2 for



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J. Klesin
identification, do you know what is depicted
in that photograph?

A. A flex hose next to appliance and
the outlet of the riser.

Q. Were you present when this
photograph was taken?

A. No, I was not.

Q. As you sit here today, other than
what appears to be a handwritten note bearing
the number and letter "6-P," do you have any
knowledge as to where this photograph was
taken?

A. Beside from the photograph, the
sheet and photograph stating that's 6-P,
there's nothing else to tell me that's 6-P.

Q. Do you have any knowledge when the
photograph was taken?

A. No.

Q. And, to your knowledge, your staff
did not independently take any photographs
the night of the explosion; is that correct?

MS. DOLE: Objection. Asked and
answered.

A. I mentioned before I'm not



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J. Klesin

100 percent sure. There is an e-mail that Mouhmood -- we just discussed that kind of I'm not sure if he is referring to Carlos in that one. But, again, you can ask Carlos. I can't speak for him. I can't speak for Mouhmood or Carlos as to who exactly they are referring to in that e-mail as taking pictures.

Q. Do you know, as you sit here today, that Carlos took pictures throughout the building the night of the explosion?

A. I can't. I don't recall.

Q. So in looking at the photograph J-2, do you have any way of knowing, as you sit here today, when that photograph was taken?

MS. DOLE: Objection. Asked and answered.

A. No.

Q. You have no knowledge, as you sit here today, as to whether that photograph fairly and accurately depicts the subject matter of the photograph on the day of the explosion; is that correct?



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J. Klesin

A. Repeat the question again.

(Record read.)

A. Correct.

Q. What is depicted, what is your understanding as to what is depicted in that photograph?

MS. DOLE: Objection. You just asked and he answered. But certainly you can ask as often as you want, but --

A. The riser that comes up into the kitchen of Apartment 6-P where the integrity test was performed.

Q. Can you tell me, sir, what is the object that is depicted in the photograph? What do you see there based upon your personnel experience?

MS. DOLE: Objection as to form.

A. You say "object," what is protruding from the wall?

Q. Yes. What do you see protruding; what do you see in the photograph?

MS. DOLE: Objection. Asked and answered.

A. I see pipe. Pipe's exact size I



1 J. Klesin
2 can't tell based on nothing to gage it by.

3 MS. DOLE: Do you want him to
4 circle what he's referring to as the
5 pipe?

6 A. To me it looks like three-quarter
7 inch pipe, 90-degree elbow and a small
8 nipple, as they would call it, and a cap.

9 Q. Can you circle what you just
10 referred to as a cap, sir?

11 MS. DOLE: Just the cap.

12 Q. And put your initials, if you
13 would.

14 Mr. Klesin, to your knowledge, did
15 anyone from your office speak with the
16 individuals from Liberty Plumbing who were
17 present at the building on the date of the
18 explosion?

19 A. On the day of the explosion? I
20 don't recall. I was there, I don't recall
21 talking to the plumber.

22 Q. My question is: Did you or anyone
23 at any time speak with Liberty Plumbing
24 employees who had been at the building on the
25 date of the explosion?



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J. Klesin

A. I believe Carlos Ortiz has and you would have to ask him as far as what --

Q. And did Mr. Ortiz take any handwritten notes pertaining to interviews that he conducted of Liberty Plumbing staff?

A. I can't speak for Carlos, but if he did I'm sure he --

Q. Do you know Mr. Ortiz's handwriting?

A. Yes, I'm pretty sure I could.

Q. I would like show you, sir, a number of -- actually, strike the question. We are going to come to this later on, actually.

Before I go there, Mr. Klesin, I would like to show you what was previously marked Defendant's Exhibit G for identification.

I ask you, sir, whether you have ever seen that document before?

A. Yes, I have.

Q. And it bears the date --

A. I'm sorry, it's G bearing the date May 27, 2010?



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J. Klesin

Q. May 27, 2010.

MR. DePAOLA: Exhibit G what?

MS. DOLE: G as in George.

Q. Have you seen that document before, sir?

A. It's Con-Ed's turn on procedure, G-1136-11. I've seen it in the past, yes.

Q. This was not, however, the specification that was in effect on the date of the explosion; is that correct?

A. 22, the last review date to the revisions. The revisions being the date September 28, '09, so this would not have been in effect at the time of the incident, correct.

Q. This specification number indicates G-1183/11, does it not?

A. Yes, it does.

Q. I would like to show you a document previously marked Defendant's Exhibit F for identification on May 27, 2010.

And I would ask you, sir, whether you recognize that document to be the Con Edison specification G-11836-9, which was in



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J. Klesin

effect on the date of the explosion.

A. This appears to be -- this would appear to be the one that would -- this appears to be -- this would appear to be the specification in effect at the time of the incident. However, make note there is G11-836-9 and this is 11, there would be one in between these two possibly.

MS. FENNO: I would like to separately mark that which came out of the production of the Department of Public Service and we will need to mark these as whatever letter we are up to.

(Documents marked Klesin Defendant's Exhibit L, for identification, as of this date.)

MS. FENNO: This is version 10 of the specification.

Q. Mr. Klesin, I believe you have a copy of Defendant's Exhibit F in front of you marked on May 27, 2010. Would you please take a look at Defendant's Exhibit F marked on May, 27, 2010.

Was this, to your knowledge, the



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J. Klesin

specification, the Con Edison specification, in effect on the date of the explosion?

MS. DOLE: Objection.

A. You did ask me that question and I answered it. The answer is yes.

Q. Pursuant to Section 2 of that specification, if you take a look at it, was the legal requirement for specification G-11836-9 the Public Service Commission order case number 1586 of December 27, 1979 that we discussed in your previous day of testimony pertaining to the Ashburton incident?

MS. DOLE: Objection.

A. I don't recall the case number for Ashburton, but if this goes to Ashburton the answer is yes. I'm not sure if case 1586 is Ashburton.

Q. Section 10, Section 2 indicates that the specification was drafted pursuant to a Public Service Commission order; is that correct?

A. Correct. It may very well be Ashburton, but it's not stated there. It's just a case number and I don't recall



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J. Klesin

Ashburton's case number at this time.

Q. To your knowledge, had your office participated in the drafting of previous specifications, previous versions of specification G-11836?

A. When you mean "participated," what do you mean?

Q. What I mean is: Did your office assist Con Edison in drafting prior versions of this particular specification?

A. I don't -- if there were prior incidents that resulted in that; it may have been prior incidents that resulted in recommendations that might have gotten into the procedure.

Q. Okay. In connection with your investigation and follow-up of the July 25, 2008 explosion, did your office participate in revising specification G-11836?

MS. DOLE: Objection as to form.

A. There were recommendations that were made. Um --

Q. In looking at what has been marked --



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J. Klesin

MS. DOLE: Again you cut the witness off. He just said "Um" and he hadn't finished his answer. If you could, please let him finish.

Q. Did you finish your answer?

A. Yes.

Q. Mr. Klesin, in looking at Klesin Exhibit L for identification, sir, I would ask you whether this was the version of the specification in effect on the date of the explosion that your office assisted in drafting as a follow-up to your investigation?

MS. DOLE: Objection.

Mischaracterizing prior testimony by the witness.

Q. To your knowledge, Mr. Klesin, was this the version of G-11836 that followed the version in effect on the date of the explosion?

A. G-11836-10?

Q. Yes.

A. This to me looks like it's a revision of 9 as a result of the explosion,



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J. Klesin

but I can't without -- this is the first time I'm going to recall -- I don't recall seeing this.

Q. Did you ever see this document before, sir?

A. In with the changes here, I know we were working with Con Ed on changes. We had some meetings. I may have, I don't recall.

Q. Did your office participate in making changes to this specification after the explosion of July 25, 2008?

A. After the explosion there was recommendations that were made that related to Con Ed, meetings with Con Ed, on some shortcomings we felt needed to be addressed and they were implemented by Con Ed, the changes were made by Con Ed. I guess shared with us, I guess to see if we were approving, if we, you know, were in agreement.

Q. Looking at the version of the specification that was in effect on the date of the explosion, it indicates organizations responsible for carrying out the specification in Section 3, gas operating



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J. Klesin

areas and energy services in Manhattan, the Bronx, Queens and Westchester.

Was that Con Edison, sir?

A. Can you repeat that and point me out to what you are referring to?

Q. That would be the document marked, as I think I left there over with you, Exhibit F on May 27, 2010.

A. Yes.

Q. It was your understanding, sir, that this specification pertained to Con Edison, that Con Edison was the organization responsible for carrying out this specification?

A. Yes.

Q. Who, to your knowledge, Mr. Klesin, from your office participated, if anyone, in the redrafting of specification G-11836-9?

MS. DOLE: Objection.

A. Again, I don't think would be anyone we would -- Con Ed would redraft it based on our recommendations. And we would look at it and probably share with us to see if we were okay with the changes, would we



1 J. Klesin

2 approve.

3 Q. Who from your office would have
4 approved or disapproved of the changes that
5 Con Edison made to the changes based on your
6 recommendations?

7 MS. DOLE: Objection as to form.

8 A. Basically, ultimately it would be
9 like I guess the chief; Gavin would sign off
10 on the ultimate revision to the procedure.
11 They do get submitted to Albany, we do review
12 them and we have a 30-day period to review
13 them. And if we take exception, we let Con
14 Edison know.

15 In the case of an incident, these
16 changes come through quickly and there's a
17 lot of interaction between staff and company
18 to arrive at a satisfactory --

19 Q. When you mentioned Gavin earlier,
20 you are referring to Gavin Nicoletta?

21 A. Yes.

22 Q. Did any engineer that was part of
23 your office, Office of Electric, Gas and
24 Water, participate in the review of the
25 revisions to the specification?



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J. Klesin

A. I'm sure Steve Blaney would have also looked at that and possibly Jeffrey Klein is an engineer in the Albany office that looks at procedure submissions.

Q. Is Jeffrey Klein also an engineer?

A. Yes, he is.

Q. Anybody in your New York office?

A. I was probably looking at this. So was probably Carlos and Rachel possibly. I can't say for sure.

Q. On the amended specification G-11836-10, 4.2 it indicates, "When a manometer is used, the test pressure shall be a minimum of 6 to a maximum of 12 inches water column."

I said the revised specification, so it is 4.2. If you look at Section 4.2 of G-11836-9, there doesn't appear to be any indication of an amount of water column; is that correct?

A. Correct.

Q. What was the reason for the change, as best you can recall?

MS. DOLE: Objection.



1 J. Klesin

2 A. It was probably just because it
3 wasn't -- more than likely it was in response
4 to our questions as to what the test pressure
5 was which normally, you know, house piping
6 operating between 6 and 12 inches water
7 column. Maybe that's the reason why it was
8 put into the new spec, because it was lacking
9 in the previous spec.

10 Q. To your knowledge, did this
11 addition have anything to do with your
12 findings relating to the July 25, 2008
13 explosion?

14 A. Again, that's just -- I think it
15 was just an omission that was picked up as to
16 that, it -- it should be a little more
17 detailed.

18 Q. What was your understanding as to
19 the pressure that was used for the manometer
20 test performed by Con Edison on July 25,
21 2008?

22 A. Repeat the question.

23 MR. DePAOLA: Note my objection.
24 (Record read.)

25 A. I don't recall. You know, that



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J. Klesin

would be something to ask Carlos. I can't speak for him. He was there when they conducted the retest of the piping; that question probably came up.

All I can say, it generally would have been we don't -- we generally as part of the investigation would want the test to be what the system saw at the time of the incident.

Q. Looking at Section 11 of the specification in effect at the time of the explosion, so that would be Defendants' F on May 27, 2010, Section 11.2 specifically provides that a gas field supervisor shall be present after inside repairs have been completed and prior to the turn on of all elevated pressure piping upstream of the surface regulator inside buildings of public assembly. The supervisor will verify the physical repairs to ensure that no compression couplings are installed, witness the integrity test which mechanic performs, and verify that the mechanic documents his or her observations on the electronic field



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J. Klesin

report.

Is that your reading of Section 11?

A. Yes.

Q. What was your understanding as to what Section 11 required of the Con Edison gas field supervisor?

MS. DOLE: Objection.

A. Under item 2 it states that the supervisor should witness the test performed by the mechanic.

Q. When you say the gas field supervisor should witness the test performed by the mechanic, would that include the manometer test?

A. This states "witness the integrity test," which in that case would be a manometer test.

Q. What about the bleed-down; would 11.0 also cover the bleed-down?

A. The bleed-down would take place in another department. The furthest point from where the test is being conducted, so I don't see how that can --

Q. Is it your understanding, sir, that



1 J. Klesin

2 Section 11 requires a gas field supervisor to
3 witness the bleed-down that is part of the
4 integrity test turn-on procedure?

5 MS. DOLE: Objection.

6 MR. DePAOLA: Objection.

7 Q. And I'm again referring to the
8 specification in effect on the date of the
9 explosion.

10 A. I'm looking at it. I can't seem to
11 find the location, an area where it states
12 the supervisor.

13 Q. I'm talking about Section 11, not
14 of the revised specification. This is
15 Section 11 of the specification in effect on
16 the date of the explosion, which is
17 Exhibit F.

18 A. That's what I'm looking at. I'm
19 trying to find --

20 Q. Section 11, 11.22.

21 A. 11.2, "The gas field supervisor
22 shall be present and prior gas field shall be
23 present after inside repairs have been
24 completed and prior to the turn on of all
25 elevated pressure piping upstream of the



1 J. Klesin
2 surface regulator inside buildings of public
3 assembly. The supervisor will verify the
4 physical repairs, ensure that no compression
5 couplings are installed, witness the
6 integrity test which the mechanic performs,
7 and verify that the mechanic lists his
8 observations on the report."

9 Q. Do you recall my question?

10 A. Yes, but again it -- I'm a little
11 confused here because this seems to be -- I
12 know this stems from the Korean church
13 incident, buildings of public assembly where
14 they had a complex coupling installed on the
15 high side, that's why this section is in
16 here.

17 Q. Sir, did you understand that this
18 section governed the work of Willy Montalvo,
19 the supervisor who was present at the Sanford
20 Avenue building on the date of the explosion?

21 MS. DOLE: Objection.

22 Q. Did you have an understanding, sir,
23 as to whether pursuant to the Con Edison
24 specification in effect on the date of
25 explosion, Willy Montalvo was required to



1 J. Klesin
2 supervise the integrity test, the bleed-down
3 and the gas out of the gas lines that were
4 tested by Con Edison the date of the
5 explosion?

6 MS. DOLE: Objection.

7 A. There was -- there were procedures
8 in place for witnessing of the test
9 procedures that weren't followed. It's in
10 the report. I don't recall. I have to
11 reference the report exactly what we found.
12 The procedures that were not complied with
13 and followed by Con Edison.

14 Q. That is not my question.

15 A. I understand.

16 MR. DePAOLA: Objection.

17 Have you finished your statement?

18 THE WITNESS: I'm done.

19 Q. My question to you, sir, is whether
20 this is the section of the specification in
21 effect on the date of the explosion that
22 required Willy Montalvo to witness the
23 integrity test, the bleed-down and the gas
24 out of the lines that were tested by Con
25 Edison on July 25, 2008.



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J. Klesin

MS. DOLE: Objection. Asked and answered. And the specification speaks for itself.

MR. DePAOLA: The way you phrased it, that's an impossibility. Objection to the form of your question.

A. Again, I'm going back and looking at the section and I'm --

Q. Feel free to look at the entire specification and tell me if you see another section of the specification that governs the responsibility of the supervisor to witness the integrity test, the bleed-down, and the gas out performed by Con Edison on July 25, 2008.

A. It states he shall witness the test or two, doesn't -- he can't be in two locations at the same time. So, again, I'm going back to what I said before, if the test is being done in one apartment and being taken off five minutes later, ten minutes later somewhere else, he can't be in the same -- you know, the same place. It's impossible to do with one person.



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J. Klesin

Q. So you are suggesting that it would have been impossible for Mr. Montalvo to witness the bleed-down and watch the manometer at the same time, is that what you are suggesting?

A. Yes, he would be -- he's watching the gage in one apartment; somebody is going somewhere else to bleed it down. He's not watching that apartment or what is getting done there.

Q. As you sit here today, based upon your office's investigation, did Willy Montalvo, to your knowledge, verify the physical repairs that were made to the plumbing at the building pursuant to the specification in effect on the date of the explosion --

MR. DePAOLA: Objection.

Q. -- Defendant's Exhibit F on May, 27, 2010?

MR. DePAOLA: You said "repairs"?

MS. FENNO: Yes, pursuant to Section 11.

MR. DePAOLA: Where exactly is



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J. Klesin

that?

MS. FENNO: 11.2.

MR. DePAOLA: Give me a second to look at it.

MS. DOLE: Objection.

A. And if -- I'm not sure which repairs you are alluding to or referring to or if you are referring to piping that was installed as part of some of the work that was done in the building because --

Q. Yes, I am.

A. The answer I guess to whatever pipe was put in as part of the -- you know, to repair a leak or whatever, the answer to that would have to be yes. To ensure that, you know, appliance valves, ACC valves were on, yes.

Q. So that, as you sit here today, it's your understanding that Mr. Montalvo entered all of the apartments where repair work was performed by the plumbers, is that correct, before the gas turn-on took place?

MR. DePAOLA: Objection to "all of the apartments."



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J. Klesin

MS. DOLE: Objection.

A. I think the report alludes to that fact that he did not.

Q. So then the answer to the previous question is no; is that correct?

A. Correct.

Q. Does Section 11.2 as drafted in the specification in effect on January 10th of '07, according to the last review date on Defendant's Exhibit F, require the gas field supervisor to verify the physical repairs that were made by the plumbing company before allowing the gas turn-on to take place?

MS. DOLE: Objection. Asked and answered.

A. I believe I answered that yes.

Q. And you have already indicated that, to your knowledge, Mr. Montalvo did not witness all of the integrity tests that were performed on July 25, 2008, in particular the lines that were tested in the afternoon; is that correct?

MS. DOLE: Objection.

A. The answer is yes and the report,



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J. Klesin

the report alludes to that.

Q. And, to your knowledge, did Mr. Montalvo verify that the mechanic documented his observations on the electronic field report?

A. Repeat that question.

(Record read.)

A. I can't answer that. I don't -- I can't confirm that. My answer to that is I don't recall. I don't know.

Q. Is there a document that would refresh your recollection as to whether Mr. Montalvo verified that the mechanic documented his observations on the electronic field report?

MS. DOLE: You are referring to the documents in front of him; is that correct?

MS. FENNO: Or any other documents that would assist him, if the correct documents are not in front of you.

MS. DOLE: Perhaps Mr. Gopaulsammy's mobile-up report.

MS. FENNO: Are you testifying?



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J. Klesin

MS. DOLE: No, that's why I specifically asked if you were referring --

MS. FENNO: That's not my question.

MS. DOLE: You said any documents in front of you. Perhaps Mr. Gopaulsammy's field report, the mobile-up.

Q. Do you remember the question, Mr. Klesin?

MS. FENNO: Would you repeat the question to Mr. Klesin, please.

(Record read.)

A. I can't recall at this time.

Q. That's fine.

Your office interviewed Mr. Montalvo, did they not?

A. Yes, they did.

Q. How many times did they interview him?

A. At least twice.

Q. And I believe that you previously mentioned that you believed that Mr. Montalvo recanted his statement that he had



1 J. Klesin
2 been present for some or all of the testing
3 that occurred the afternoon of July 25, 2008;
4 is that correct?

5 MS. DOLE: Objection.

6 Mischaracterization of the prior
7 testimony.

8 A. That's correct.

9 Q. What is your understanding as to
10 exactly what it was that Mr. Montalvo
11 recanted?

12 A. I wasn't present on the first
13 interview, I wasn't present for the first
14 round of interviews so I can't recall exactly
15 specific -- what he specifically recanted.
16 But it had to do with his presence during
17 the integrity test, if he was present during
18 the integrity test or I believe it had to do
19 with him being in the apartments when the
20 integrity tests were being performed.

21 Q. I would like to show you an e-mail.
22 This is actually an e-mail to Rachel from
23 Carlos Ortiz with you, Mr. Klesin, cc'd on
24 the e-mail dated August 4, 2008.

25 MR. FENNO: I would ask this be



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J. Klesin

marked for identification.

MS. DOLE: I ask all counsel be given a copy before the witness is asked questions about it.

(E-mail from Carlos Ortiz to Rachel Jenkins dated August 4, 2008 marked Klesin Defendant's Exhibit M for identification, as of this date.)

(E-mail marked Klesin Defendant's Exhibit N for identification, as of this date.)

(E-mail marked Klesin Defendant's Exhibit O for identification, as of this date.)

(Handwritten documents marked Klesin Defendant's Exhibit P for identification, as of this date.)

Q. Mr. Klesin, was there something you wished to clarify concerning your answer to my prior questions?

A. Yes, going back to your question on Section 11.2 and Willy Montalvo, the supervising witnesses being present to witness the repairs, and I got a little



1 J. Klesin
2 frustrated because I basically stated that
3 this was a failure to follow procedure. It
4 would have been cited in our report if that's
5 the case; it's not in our report. And the
6 reason it's not in our report, this is for
7 building public assembly for supervisor to be
8 present on piping on the high side of the
9 meter.

10 "Gas field supervisor shall be
11 present after inside repairs have been
12 completed and prior to the turn on of all
13 elevated pressure piping upstream of the
14 service regulator and inside buildings of
15 public assembly."

16 This stems from the Korean where
17 there was a compression coupling on the
18 high-pressure side of the meter that let go
19 and there was a Con Edison representative
20 there. If you read the preceding paragraph,
21 it also states that is for an elevated
22 pressure building of public assembly turn-on.
23 Follow paragraph 11.2, so which would allude
24 to this. So, yes, there would be a need for
25 a supervisor to be there if there was repairs



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J. Klesin

on the high side and they were doing integrity test of the piping.

Before this particular instance, we were dealing with low-pressure piping on the outlet of the meter on the risers so, therefore, even a supervisor may not have been there, might not have been necessary for a supervisor to be present. Although, there was one because of the constant complaints that I recall the building was getting due to trying to get the gas back on after the shutoff from the fire department.

Q. You are revising the testimony at this moment. Are you suggesting that Section 11.2 of the Con Edison specification in effect on the date of the explosion did not pertain to the Sanford Avenue explosion?

A. That is what -- I'm saying it and we would have cited this as a failure in our report. We do talk about, you know, them not witnessing the pressure tester, seeing all of the apartments or seeing if the ACC valves were in compliance with the affidavits. I'm not saying that. I'm saying this requirement



1 J. Klesin
2 under 11.2 does not apply.

3 Q. Was the apartment building a
4 building of public assembly?

5 A. It can be considered a building of
6 public assembly, yes.

7 Q. Mr. Klesin, are you aware that
8 Willy Montalvo, as well as a number of
9 supervisors for Con Edison, provided
10 statements to the Bureau of Fire
11 Investigation in connection with the gas
12 explosion?

13 MS. DOLE: Objection.

14 A. I believe they were interviewed. I
15 don't recall I'm -- you know, if you are
16 asking -- I just -- if they were interviewed,
17 I believe I am aware they were interviewed.

18 Q. Did you or any member of your
19 staff, before the final drafting of the
20 April, 2009 report by your office, have
21 occasion to read the interviews conducted by
22 both the fire department and the police
23 department?

24 A. I do not believe so. I don't
25 recall.



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J. Klesin

Q. Is it that you don't believe so or you don't recall?

A. I don't recall.

MS. DOLE: Objection.

Q. Is there any document you can refer to, the report or any document, that would tell you whether, in fact, you had the benefit of the interviews conducted by the fire department at the time that you wrote your April, 2009 report?

A. I know the fire department was present for some of the interviews. We were present with the fire department. I wasn't -- I may not have been present on some of the interviews. I'm -- Carlo may have been, some of the investigators may have answers to that, but I don't recall.

Q. My question was whether you had the benefit of the written interviews performed by the fire and police department by the time you wrote the final version of the report from your office dated April, 2009.

A. I don't believe so.

Q. Would it surprise you to hear in



1 J. Klesin
2 statements given by representatives of Con
3 Edison, including Frank Basilay and Jimmy
4 Ferrara, such Con Edison supervisors
5 testified that it was, in fact, required that
6 the Con Edison supervisor supervise the
7 entire integrity test, bleed and gas-out
8 procedure?

9 MS. DOLE: Objection as to form.

10 MR. DePAOLA: Objection. Lay a
11 proper foundation.

12 MS. FENNO: Do you have a copy?

13 MR. DePAOLA: No, I don't.

14 A. Would it surprise me? How do I
15 answer that? No.

16 Q. But as far as you understand the
17 specification in effect on the date of the
18 explosion, the Con Edison supervisor was not
19 required to supervise the integrity test,
20 bleed-out and gas-out?

21 A. I am saying you asked me if 11
22 point -- under 11.2 he was required. I'm
23 saying, no, under 11.2 that does not apply.
24 He was a supervisor. A Con Ed supervisor was
25 present at the location, there were other



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J. Klesin

mechanics supervisors. You know, part of his job is to supervise. If it was required, had it been or based on the procedures, it would have been in our report as a failure to follow.

Q. Now I'm asking you, sir, whether the entire Con Edison specification in effect on the date of the explosion required Willy Montalvo, as the Con Edison supervisor onsite on July 25, 2008, to witness the integrity test, bleed-out and gas-out procedure that was supposed to have been performed of the P line and all other lines that were tested that afternoon.

MR. DePAOLA: Objection to form. Asked and answered. I probably have a few others. I will stop there.

MS. DOLE: I join.

A. Again --

Q. Please take your time and review the specification.

MR. DePAOLA: He said "Again" and you interrupted. He was in the process.

A. Yes, I'm reviewing the



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J. Klesin

specification. You are referring to 11.2 and I'm reading the report. Had we come to that conclusion, it would have been in the report as a failure to follow procedure.

Q. I'm asking you now to take your time and review the specification yourself and tell me whether the specification in toto, not just Section 11.2, required Mr. Montalvo as the supervisor onsite to supervise the testing that was performed on July 25, 2008 and by that I mean each step of the testing.

MS. DOLE: I will object because the witness already said it's physically impossible for him to be in two places at one time.

MR. DePAOLA: Again, this was asked and answered and we are going over every item until I guess you get an answer that you want.

MS. FENNO: Can you mark this, please.

(Document marked Klesin Defendant's Exhibit Q for identification, as of this



1 J. Klesin

2 date.)

3 A. Again, looking at the report and
4 looking at the procedure, nowhere in the
5 procedure do I see it states that the
6 supervisor shall be responsible to witness
7 the integrity tests. And, again, looking at
8 the report it would have been documented.

9 Q. So, as you sit here today, it's not
10 your understanding that Con Edison had any
11 requirement that it supervise or witness the
12 integrity test, bleed-out or gas-out
13 procedure on July 25, 2008; is that correct?

14 MS. DOLE: Objection.

15 A. I'm not saying -- he's a
16 supervisor, he's there. From what I
17 remember, he was there because it was a high
18 profile, a lot of complaints. Have the gas
19 turned on, there were a lot of problems. He
20 as a supervisor there, I'm sure there's
21 expectations of him to perform certain
22 duties. However, duties that are spelled out
23 by this spec, you know, duties that may not
24 be in this spec, I don't know. But --

25 Q. Do you have an end to the --



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J. Klesin

A. That's it.

Q. You are unaware of the specification requiring the supervisor to be there and physically witness the testing procedure; is that correct?

MS. DOLE: Objection. Asked and answered.

A. Correct.

Q. Okay. Mr. Klesin, I would like to show you a document marked Defendant's Klesin Exhibit Q for identification and ask you whether you ever had an opportunity to see this before.

A. I've never seen this before.

Q. I would ask you, sir, whether you were interviewed by the Bureau of Fire Investigation in connection with the Sanford Avenue explosion by Fire Marshal Robert Christoro on July 26, 2008.

A. According to that document, the answer is yes.

Q. And reading from the document it states that, "Mr. Klesin stated that he will be able to get all information for BFI in



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J. Klesin

regards to Con Edison protocol when doing integrity tests on gas lines."

Sir, do you have a recollection of having told the Bureau of Fire Investigation that you would obtain for them Con Edison protocols regarding the doing of integrity tests on gas lines?

MS. DOLE: Objection to form.

MR. DePAOLA: Objection.

A. Looking at that and since it's been so long ago, generally these incidents I will approach the fire marshal, discuss with them our roles and responsibilities, and also offer our assistance in investigating the incident. And by that I mean we have jurisdiction over utility, that we would share whatever procedures required of the utility.

So the answer to that question is yes, that would have, you know, this interview that took place, that's correct, I would have supplied.

Q. Did you obtain Con Edison's protocol regarding the doing of integrity



1 J. Klesin
2 tests for the Bureau of Fire Investigation
3 and provide that information to them?

4 MR. DePAOLA: Objection.

5 A. Based on that, I offered, I would
6 offer. I don't recall if they ever reached
7 out to us for copies of any procedures
8 or -- I don't recall.

9 Q. So are you suggesting that unless
10 they asked you again for this information,
11 you wouldn't have gotten it for them?

12 MR. DePAOLA: Objection.

13 MS. DOLE: Objection.

14 A. Can I read the statement? Can I
15 read what it said again?

16 Q. Yes, of course.

17 A. Okay, I don't -- I don't recall if
18 they came to me. I don't recall if they ever
19 got -- if they ever got back in touch with me
20 again and they wanted the information and I
21 got it for them. I don't recall.

22 Q. I would like show you a series of
23 documents that I will represent were part of
24 the documents subpoenaed from the Department
25 of Public Service marked today as Klesin



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J. Klesin

Exhibit P for identification.

And I would ask you to just take a look generally at the documents and if you can tell me what they are?

A. These look like handwritten notes by staff. Carlos possibly. This is Carlos' handwriting, I believe.

MS. TOWNSEND: Are you looking at page 1 right now?

Q. I think you indicated Carlos, do you mean Carlos Ortiz?

A. Yes. I'm not 100 percent sure it looks like his handwriting.

MS. TOWNSEND: Can we clarify what looks like his handwriting, the whole document or certain pages?

MS. FENNO: I'm about to.

Q. Does page 1 of Defendant's Exhibit P look like Mr. Ortiz's handwriting?

A. Again, it looks like it.

Q. Up to what page?

MR. DePAOLA: I thought he was going to look at everything first and then you would question him.



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J. Klesin

MS. FENNO: But he started to testify and I thought we needed to clarify for the record what he was talking about.

Q. Why don't you look at the total document and we can go page by page and you can tell us, if you can, what these documents represent.

A. Definitely interview notes of Con Ed employees. Notes on interviews of Con Ed employees. To me, they look like they are in Carlos Ortiz's handwriting.

Q. Do you see anyone else's handwriting in the 46 pages that comprise Defendant's Exhibit F that you recognize?

MS. NG: It's 47 pages.

MS. DOLE: It appears it starts on page 26. There's a one circled and then also on page 42 there's a one circled, so I don't know whether these are the same or not.

MS. FENNO: We will find all of that out.

A. To me, this all looks the same.



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J. Klesin

This all looks like the same handwriting.

Q. Do you know, sir, whose handwriting this is?

A. I'm not 100 percent certain, I believe it's Carlos'.

Q. Do these handwritten notes represent notes taken by individuals in your office, sir, with respect to the investigation of the Sanford Avenue explosion?

A. That's what it looks like, Willy Montalvo, Pat Loesey, Ken Corleu.

Q. Are you aware, sir, of any other notes taken by any other representatives of your office that are still in existence?

A. Not that I'm aware of. I don't --

Q. So these notes represent all of the interviews conducted by representatives of your office with regard to its investigation of the Sanford Avenue explosion; is that right?

MS. DOLE: Objection.

A. Our office turned over what they have, everything that we would have. And



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J. Klesin

Carlos conducted interviews and produced notes and so did Rachel. Is Rachel's in here, I don't know. Rachel Jenkins, I don't know.

Q. So the handwriting that is on page 1, can we agree that that handwriting, sir, continues up through page 25? Can we agree that handwriting appears to be the same?

A. Yes.

Q. Do you believe that the handwriting from pages 1 to 25, as best you can determine, is the handwriting of Carlos Ortiz --

A. Yes. Yes.

Q. -- as best you can determine?

A. Yes, it looks like.

Q. It looks familiar?

A. Yes, it looks like Carlos' handwriting.

Q. And the handwriting on pages 26 -- and this appears to be on lined paper some of the handwriting -- through page 47, does this to you, sir, appear to be handwriting by someone in your office that



1 J. Klesin

2 you recognize?

3 A. Could it be Rachel's, I don't know.
4 It could be Rachel's. I'm not familiar. I
5 don't recognize.

6 Q. Do you know of anyone other than
7 Carlos and Rachel that took notes and
8 interviewed witnesses for this investigation?

9 A. From our office, no.

10 Q. And you, sir, indicated that you
11 did take some notes in your planner when you
12 participated in conducting interviews,
13 second-round interviews I believe at Con
14 Edison's facility, but no longer have those
15 notes?

16 A. Right.

17 Q. As best that you know, these
18 documents represent all of the notes that
19 currently exist from your office from
20 interviews conducted of witnesses in
21 connection with the investigation of the
22 Sanford Avenue explosion; is that right?

23 A. To the best of my knowledge, yes.

24 Q. On the first page of Defendant's
25 P for identification, there's quite a bit of



1 J. Klesin
2 handwriting. And then at the very
3 bottom -- well, at the top it says, "William
4 Montalvo GDS, Supervisor." I'm reading from
5 the handwriting. Please correct me if you
6 disagree.

7 And at the bottom it indicates
8 "gassed in" and there seems to be an arrow
9 "AFNGP."

10 I will show you this document.
11 It's page 1 of Defendant's P.

12 A. Okay.

13 Q. I would ask you again if that page
14 appears to you to be from an interview
15 conducted by Carlos Ortiz of Willy Montalvo.

16 A. Yes, and then -- yes, right. Then
17 there's a line across here and this says "Pat
18 Loesey, Planner." And you referenced AFNT
19 and AFNGT.

20 Q. And at the bottom it refers to "gas
21 stand." What is your interpretation of that
22 document, if you can?

23 MS. DOLE: Objection.

24 A. I can't. These are not my notes.
25 I'm not going to make any assumptions as to



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J. Klesin

what --

Q. Let's go to page 2.

MS. DOLE: The record should reflect that the time is now about 4:48 and that I was prepared to go forward until 5:00 p.m.

(Time noted: 4:45 p.m.)

JOSEPH KLESIN

Subscribed and sworn to before me
this ___ day of _____, 2011.



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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF KINGS)

I, DIANE BUCHANAN, a Notary Public within and for the State of New York, do hereby certify:

That JOSEPH KLESIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____, 2011.

DIANE BUCHANAN



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----- I N D E X -----

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----- INFORMATION REQUESTS -----

DIRECTIONS: None
RULINGS: None
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MOTIONS: None

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DEPOSITION ERRATA SHEET

Our Assignment No. 318088
Duck Soo Kim vs. Alwall Construction
Corporation, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, same and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Joseph Klesin

Subscribed and sworn to on the _____ day of
_____, 2011 before me,

Notary Public,
in and for the State of _____



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DEPOSITION ERRATA SHEET

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Reason for change:_____

SIGNATURE:_____DATE:_____

Joseph Klesin



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