

MR. MATTESICH: Jim Mattesich with the law firm

9 of Greenberg Traurig.

10           Given the lateness of the hour, I'll try to be  
11 brief.

12           Also because I don't have a blackboard or  
13 something to write on, I'll ask you to use the face of the  
14 clock with me for a second.

15           In our experience of working through these  
16 matters over the years, if you will, if we use 9 to 3 for  
17 an arc of sort of the typical potential cases that you  
18 handle and the opening -- if the 9:00 is when you open  
19 your file and 3:00 is when a case that got referred for  
20 civil litigation actually went to trial, we can talk about  
21 intervening points, but I wanted to make sure I  
22 understood -- and I think we agree with it from Kirk's  
23 comment earlier today -- that it's your preference to try  
24 to resolve these matters with Air Resources Board rather  
25 than them get ultimately referred to the attorney general

1 for litigation. If we use 12 noon as sort of the referral  
2 point, it takes mutual agreement, however, as Kirk pointed  
3 out, to try to resolve it between 9 and noon with you all.  
4 And that sometimes takes longer than you would like and  
5 perhaps even our clients would like. But never the less,  
6 it also means that sometimes settlements don't happen and  
7 you do refer these cases to the attorney general's office.

8           There's a concept in civil litigation that you're  
9 all aware of that rather than having to get all the way to  
10 3:00 and the full trial on the merits in civil litigation,  
11 there is alternative dispute resolution on that side of  
12 the clock face where at perhaps near the end at 2:00 there  
13 would be a mandatory settlement conference where you would  
14 have a sitting judge work with the parties to try to  
15 assess the merits on both sides and figure out with the  
16 parties whether or not something could be resolved without  
17 having to expend the money and the time to fully try the  
18 case.

19           Earlier on than that, the parties could  
20 voluntarily agree to have a mediator, say, at 2:00, try to  
21 resolve the case by listening to both sides, looking at  
22 the law, looking at the facts that each side would  
23 present, but hopefully getting the parties to work  
24 together to resolve it.

25           Parties in that process, whether it's with a

1 sitting judge at a mandatory settlement conference or at a  
2 mediation earlier on oftentimes get from that third party  
3 a better view of the strengths and weaknesses of their  
4 case and come to an understanding and ultimately a  
5 resolution, because there is a third party in the room.

6           I would suggest to you that you should import the  
7 possibility of having a mediator in your process early on  
8 if the case warrants it. And realistically it's going to  
9 be one of the large cases, not a small one, it's probably  
10 going to be one where there is a dispute about the facts  
11 or the law. But each side would benefit, in my view, in  
12 having a third party in the room, mediator, qualified,  
13 retired judge or not, but somebody that each side would  
14 hopefully agree upon, choose, respect, listen to views,  
15 and perhaps via that process, which exists past 12:00,  
16 used before can bring you to an earlier resolution, less  
17 expensive for you, for our clients, and in a way brings  
18 you to the same point that you'd like to much earlier than  
19 you might otherwise.