

U.S. DEPT. OF TRANSPORTATION
PIPELINE AND HAZARDOUS
MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY,
Washington, D.C. 20590

CPF No. 4-2016-1008

IN THE MATTER OF WILLIAMS
PARTNERS, LP,
Respondent

**RESPONSE TO REGION RECOMMENDATION SUBMITTED
ON BEHALF OF WILLIAMS PARTNERS, LP**

This brief is submitted by Williams Partners, LP (“Williams”) in response to the December 28, 2017 Region Recommendation (the “Region Recommendation”) submitted by Jon Manning, Acting Director, Southwest Region (“Southwest Region”) in the above-captioned matter. Williams objects to the Region Recommendation because it was not timely filed. The Region Recommendation was filed more than 90 days after the October 13, 2017 deadline imposed for such filing. Thus, it was untimely and should not be considered. In addition, Williams objects to the consideration of the Region Recommendation to the extent it addresses the Notice of Proposed Violation issues. Those issues have previously been addressed by the Southwest Region in its post-hearing brief filed within the time period allowed for those briefs on August 14, 2017.

Both Southwest Region and Williams were given thirty days from the date of the hearing (which took place on July 14, 2017) to address the Notice of Proposed Violation issues in post-hearing briefs. Southwest Region is now attempting to get another bite at the apple by re-addressing those issues in its Region Recommendation. The Region Recommendation also attempts to respond to the arguments raised by Williams in its post-hearing brief. Since Southwest Region did not request, and was not given, leave to file a supplemental brief on those issues, the portion of the Region Recommendation that addresses the Notice of Proposed

Violation issues should not be considered. In the alternative, if that portion of the Region Recommendation will be considered, Williams should be allowed to address those issues by responding to the arguments made by Southwest Region in the Region Recommendation. The following is offered in response to the Region Recommendation.

Finally, although Williams agrees with the Region Recommendation that NRC reporting requirements must be met by individuals filing such a report on behalf of the Company, there has been no evidence offered that such requirements were not adequately conveyed to Ross Sinclair prior to the incident. Therefore, the Region Recommendation regarding Proposed Compliance Order 1 is moot, and in the alternative, should be considered satisfied.¹

I. WILLIAMS DID NOT VIOLATE 49 CFR 191.5 (NOPV 1)

49 CFR Sec. 191.5 requires that an operator notify the NRC “at the earliest practicable moment” following discovery of an incident as defined in 49 CFR 191.3.² Part (b) of that statute specifies what information must be provided in that initial notice:

- 1) Names of operator and person making report and their telephone numbers;
- 2) The location of the incident;
- 3) The time of the incident;
- 4) The number of fatalities and personal injuries, if any; and,
- 5) All other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages. (emphasis added)

PHMSA contends that Williams violated 49 CFR 191.5 by failing to provide “all significant facts relevant to the extent of the incident when it gave notice to the National

¹ All references to exhibits pertain to those documents already admitted into evidence.

² There is no dispute that the incident involved in this matter was a reportable incident.

Response Center (NRC)” following the explosion and fire at the compressor station.³ It is undisputed that Williams’ first notification to the NRC occurred at 12:06 p.m. CST (the “NRC Report”).⁴ Despite extensive discussion in PHMSA’s Pipeline Safety Violation Report (“Violation Report”), during the Hearing, in the post-hearing brief, and in the Region Recommendation, Southwest Region relies on conduct or knowledge that Williams may have become aware of **after** the NRC Report, in support of NOPV 1. Any such information is not relevant to any fact at issue in this matter. The sole issue relevant to a determination of whether Williams violated 49 CFR 191.5, is whether Williams had actual knowledge of facts regarding the specific number of injuries and fatalities at the time of the NRC Report, and failed to disclose those facts to the NRC.

The evidence relied upon by PHMSA to support Proposed Violation 1 not only contains outright errors, but much of it deals with Williams’ conduct or knowledge **after** the NRC Report was provided at 12:06 p.m. CST on the day of the incident. Since Williams’ knowledge must be evaluated based on what it knew at that time it made that report, a great deal of the evidence discussed in the Violation Report, during the Hearing, and in both the Region’s post-hearing brief and the Region Recommendation, has no relevance to the proposed violation of 49 CFR 191.5.

In the Region Recommendation, Southwest Region focuses on alleged knowledge of Transco employees and the Houma Today news story. Just as the other evidence previously relied upon by Southwest Region, neither of these establishes that Williams had knowledge of fatalities or injuries at the time it filed the NRC Report, about an hour after the incident occurred.

³ PHMSA Pipeline Safety Violation Report, page 4, Part E-1—“Describe the Operator’s Conduct that Violated the Regulations.”

⁴ PHMSA Pipeline Safety Violation Report, Exhibit A-1.

Indeed, other than the NRC Report provided by Williams, none of the evidence relied upon at the hearing, referenced in the Southwest Region post-hearing brief, or referenced in the Region Recommendation, indicates what Williams knew at the time that report was filed. The sole evidence on that count was provided by Ross Sinclair of Williams Pipeline Control. Accordingly, the Southwest Region failed to present evidence to establish that Williams failed to comply with the reporting requirements of 49 CFR 191.5.

A. The NRC Report is the only reliable evidence of Williams' knowledge at the time the report was filed.

The NRC Report was attached as Ex A-1 to the Violation Report. This document establishes that at 12:06 p.m. CST, approximately one hour after the incident, a Williams' employee, Ross Sinclair, notified NRC that an incident had occurred. As demonstrated in the chart below, the information set forth in the NRC Report establishes that Williams provided the required information at the earliest practicable moment following its discovery of the incident.

49 CFR 191.5 Requirements	Exhibit A-1 Information
(a) Notify NRC at the earliest practicable moment following discovery;	<u>Report taken by NRC:</u> 13:06 EST [12:06 p.m. CST], October 8, 2015
(b)(1) Names of operator and person making report and their telephone numbers;	<u>Reporting Party:</u> Ross Sinclair <u>Organization:</u> Williams Gas Pipeline Transco <u>Address:</u> 2800 Post Oak Blvd, Houston, TX
(b)(2) The location of the incident;	<u>Incident Location:</u> 4711 Bayou Black Drive,

	Gibson, LA
(b)3 The time of the incident;	<u>Incident Occurred:</u> 08-OCT-15 at 11:18 local incident time
(b)4 The number of fatalities and personal injuries, if any;	<u>Injuries:</u> unknown <u>Fatalities:</u> no ⁵
(b)5 All other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages.	<u>Remedial actions:</u> Local fire responded, employees are being evaluated for injuries, waiting for the all clear before anyone can go into the facility to investigate.

What is clear from the NRC Report (Exhibit A-1), as well as from the testimony of Mr. Sinclair, is that Mr. Sinclair did not speculate or guess during his reporting, but instead provided the **facts that were known as of 12:06 p.m. CST** as required by 42 CFR 191.5.⁶ Mr. Sinclair testified that he spoke to Gibson Safety Director Corey Erdmann, who was at the scene of the incident, and reported to the NRC operator that there were injuries, but he did not know how many or if there were any fatalities.⁷ Significantly, the report notes that at the time of the report, Mr. Sinclair was “waiting for the all clear before anyone can go into the facility to investigate.” This evidence is uncontroverted. Clearly this document establishes that, at 12:06 p.m. CST,

⁵ Mr. Sinclair testified that he told the NRC dispatcher that there were reports of some injuries, but he did not know how many and did not know if there were any fatalities. See also, the affidavit of Ross Sinclair.

⁶ See affidavit of Ross Sinclair.

⁷ See footnote 5.

Williams' employee Mr. Sinclair provided the information available to him at that time and was anticipating obtaining additional information related to injuries as soon as Williams was given the all clear to go into the facility to investigate. Until given the all clear, neither Mr. Sinclair nor anyone else on behalf of Williams, could enter the area to obtain more detailed information.

B. The Houma Today news story published at 11:32 a.m. does not indicate knowledge by Williams of any fatalities or injuries.

Up until now the main evidence offered and relied upon by Southwest Region as evidence of what was known by Williams as of 11:32 a.m. CST was the media blog report from the Houma Today. However, in the Region Recommendation, Southwest Region has now conceded that the blog article was indeed updated later in the day to “update the number of fatalities and injuries.”⁸ While the Southwest Region continues to argue in the Region Recommendation that the original article contained a report of fatalities and injuries, there is no evidence to support that position. Clearly, the record indicates that reliance on the Houma Today blog report that the Southwest Region concedes was updated later in the day, is an unreliable source for determining what Williams knew at the time it filed the NRC Report. Accordingly, this evidence does not support a finding that Williams violated 49 CFR 191.5.

C. Evidence of information purportedly provided by Transco employees does not establish what Williams knew when it filed the NRC Report.

1. 49 CFR 191.5 does not require an operator to speculate.

Williams takes issue with the Southwest Region's argument that any information known by any Williams' employee or contractor is imputed to Williams as Williams' actual knowledge. With all due respect, this position borders on the absurd, and is not a reasonable interpretation of the requirements of 49 CFR 191.5.

⁸ See pp. 5-6 of the Region Recommendation.

49 CFR 191.5 provides: “At the earliest practicable moment **following discovery**, each operator shall give notice in accordance with Paragraph B of this section of each incident defined in Section 193.3.” Mr. Sinclair, the Williams employee whose duty required providing first notification to the NRC, testified at the Hearing regarding the steps he took to obtain information from the field leadership personnel and how he was unable to immediately reach them,⁹ which is not unreasonable given the explosion and that all employees were ordered to immediately evacuate the area to their Muster Stations for safety reasons, leaving no one inside the facility. Nevertheless, Mr. Sinclair continued to call cell phones of various local plant personnel until he reached someone, eventually reaching Gibson Safety Director, Corey Erdmann. As Mr. Sinclair testified, Mr. Erdmann was unaware of fatalities, but suspected injuries. Again, given the explosion and the subsequent evacuation, as well as the time at which they spoke, this is not unreasonable. The affidavits of both Mr. Sinclair and Mr. Frasier, attached hereto, overwhelmingly establish that the information provided by Williams in the NRC Report was reasonable, appropriate, and relayed all known relevant information that it could practically report at the time the report was made. 49 CFR 191.5 does not require speculation or guessing, as it should not. It requires reporting of **facts** “discovered” at the “earliest practicable moment.” Mr. Sinclair reported that there were injuries, but he did not know how many or if there were fatalities. The argument in the report and recommendation that because “unknown” was listed on a computer generated printout pertaining to “injuries” on the NRC report, therefore the entire testimony at the hearing of Mr. Sinclair is somehow negated, also borders on the absurd.

PHMSA argued at the Hearing that the statute requires more than just reporting facts and requires the operator to speculate as to the number of fatalities and injuries. In support, PHMSA

⁹ See affidavit of Ross Sinclair.

claimed its position was supported by various prior final rulings of the Associate Administrator in other cases. The referenced final rulings were ultimately provided as PHMSA Exhibit 1, and there is no better evidence supporting Williams' claims than these 3 rulings. Those cases do not stand for the proposition that an operator must provide speculative information, as opposed to known facts. In fact, the final orders not only prove that Williams did not violate 49 CFR 191.5 but also demonstrate that it went above and beyond the minimum reporting requirements.

2. Even if the knowledge of the employees or contractors is imputable (which is denied), there must be evidence of when that knowledge was obtained and when, from a practicable standpoint, that information could have been relayed to NRC.

Williams also takes issue with Southwest Region's position that any and all information known by its employees or contractors at the time it filed the NRC Report, related to injuries or fatalities should have been included in the NRC Report. To the extent Williams can be deemed to have knowledge of any information known to its employees and contractors (which is denied), PHMSA still had to come forward with proof of when that knowledge was actually obtained and proof that Williams had that knowledge at a time whereby it could have, as a practical matter, included that information in the NRC Report it provided at 12:06 p.m. CST.

As noted above, 49 CFR 191.5 clearly indicates that there is a reasonableness standard with regard to what should be reported as well as when it should be reported. The statute requires the operator to notify the NRC "at the earliest **practicable moment**" following discovery of the incident, certain details, as well as other significant facts "known by the operator" that are relevant to the cause of the incident or the extent of the damages. Southwest Region argues that if any Williams' employee or contractor had knowledge of an injury or a fatality, such information should have been included in the NRC Report that was provided by Williams at 12:06 p.m. Clearly, this position is not in accordance with the reasonableness

standard set forth in the regulation. There is nothing in the regulation that would support a finding that the instant an employee or contractor became aware of an injury or fatality that information had to be in a report to the NRC. In contrast, the regulation requires that such information be relayed as soon as practicable.

Under Southwest Region's position, assuming the information that Ted Blanchard reported was in fact obtained prior to 12:06 p.m. CST (which is denied), and assuming that knowledge is imputed to Williams, Blanchard, as the alleged representative of Williams, would have had to abandon any effort to assist the person calling for help in order to leave the area and go find a telephone to report the injury to the NRC. Clearly, 49 CFR 191.5 does not require that. Assuming the events Blanchard described had in fact occurred sometime prior to 12:06 p.m., as a practical matter, it would have taken Blanchard some time to be able to render assistance, walk out of the area of the incident, find a telephone and reach the NRC to provide that information. Likewise, the same is true with regard to the information purportedly relayed by Stuart Vawter, Jimmy Bank, Rudiad Peralta, and Wayne Plaisance, Jr. indicating they had knowledge of injuries. There is no evidence to establish the time that they allegedly obtained such knowledge and there is no evidence to demonstrate that the information they may have obtained could have been, as a practical matter, reported to NRC at 12:06 p.m. CST when the NRC Report was provided by Williams. Accordingly, the interview notes relied on by Southwest Region does not support a finding that Williams violated 49 CFR 191.5.

3. The matters relied on by PHMSA support Williams' position.

In The Matter of South Jersey Gas Pipeline Company CPN No. 15001 (Westlaw 34614778), the respondent waited 19 hours after the incident to notify NRC. The

respondent contested the proposed violation, “arguing that the cause of the incident was not immediately known.” The final order thereafter provided:

Historically, OPS is taking the position that incidents meeting the telephonic reporting criteria should be reported within one to two hours following their discovery. **OPS realizes that there will be occasions immediately following an incident where it is impossible for the operator to gather the essential information.** Thus, when OPS discovers that an operator has not submitted a telephonic report within one to two hours following an incident, it does not immediately issue a Notice of Probable Violation. Instead, OPS determines when the operator had an opportunity to gather the essential information and when it actually submitted a telephonic report. In these instances, it is important that telephonic notice be given properly so that OPS and local authorities are made aware of the incident, even if the cause has not been determined. It is crucial that information of this nature be disseminated immediately, so that OPS and local officials may respond in appropriate manner and in a timely fashion.” [Emphasis added.]

The *South Jersey Gas Pipeline* Order supports Williams’ position. Williams did not wait to notify the NRC until it determined the cause of the accident or the amount of the release. Rather, it notified the NRC approximately one hour after the incident. The fact that all of the details associated with the incident, including the number of injuries or number of fatalities, were not even knowable as of 12:06 p.m. CST mandates a finding of no violation. Williams provided timely notice of what was known. There is no question that the crucial information regarding the nature of the incident was disseminated at the earliest practicable moment following discovery (approximately one hour after the incident), providing PHMSA and all local officials the ability to respond in an appropriate and timely fashion to the incident.

Southwest Region has also relied on *In The Matter of Texas Eastern Transmission Corporation* CPN No. 4-2001-1003. In that case, the respondent waited 27 hours after a release occurred to telephonically report the release to the NRC. That case made reference to Alert

Notice ALN-91-01 dated April 15, 1991, that provided in most cases under 49 CFR 191.5A, the initial NRC Report can and should be made within one to two hours after discovery and stated:

This prompt notice is necessary, in part, for OPS and NPSB to make timely determination regarding the need for possible action. In that matter, the Associate Administrator ruled waiting 27 hours after an incident did not constitute reporting “at the earliest practical moment”.

Likewise, Southwest Region’s reliance on *In The Matter of Buckeye Partners LP* CPF No. 3-2010-5006 as support for its position is misplaced. Although regarding a hazardous liquid reporting requirement under 49 CFR 195.52, the language in that regulation was identical to 49 CFR 191.5. In *Buckeye*, the respondent waited 15 hours after a release occurred to notify the NRC. The issue in that case involved whether or not an operator had a duty to report discovery of the release itself versus discovery or acknowledgment that the accident met the reporting requirements listed in the regulation. The *Buckeye* Order recognized that a delay in reporting until an operator definitely decides an event met the reporting criteria would:

[F]rustrate a fundamental purpose of the regulation, which is to give OPS and other agencies the earliest opportunity to assess whether an immediate response to a pipeline incident is needed. Therefore, OPS requires pipeline operators to report incidents to the NRC at the earliest practical moment following discovery of the incident, even at the time of reporting, there is some question as to whether reporting will be required.

In the present matter, Williams did not wait 27 or 19 or 15 hours to make the initial report. It did not wait until it had determined the cause of the incident. It did not wait until it knew all of the details and facts relating to the incident. Rather, Williams did what was required; one hour after the incident had occurred, it **reported the facts** it knew **at the earliest practicable moment** to give “*OPS and other agencies the earliest opportunity to assess whether an immediate response to a pipeline incident is needed*”. PHMSA was in no way prejudiced or denied the earliest opportunity to assess whether an immediate response was needed. In fact,

PHMSA did immediately respond to the incident. There is no record evidence to suggest PHMSA would have responded any differently had additional information been known by Williams and included in the initial response to the NRC.

4. Williams not only complied with 49 CFR 191.5, it went beyond what the regulation requires.

Further, Williams did not stop at the minimum regulatory requirements. Although not required by regulation, when additional facts concerning the number of injuries and fatalities were known to Williams, a supplemental report was provided to the NRC.¹⁰ Shockingly, it is only recently that PHMSA even recognized the existence of a supplemental report, initially finding fault with Williams' failure to file one. In addition, Mr. Frasier called the SW Regional office to provide a point of contact and ensure that PHMSA was aware of the incident. Williams did everything that could be reasonably expected from a prudent operator to provide sufficient notice to the NRC, and all affected agencies, at the earliest practicable moment so that each could assess whether an immediate response was needed.

In conclusion, Williams did not violate 49 CFR 191.5. More importantly, PHMSA was not denied the earliest opportunity to assess whether an immediate response was needed. Not only did Williams make the initial report to the NRC one hour after the incident, but Williams took the additional step of directly contacting PHMSA Southwest Regional Office to establish a point of contact. Throughout PHMSA's entire investigation of this matter, Williams cooperated and assisted the investigator in any way that it could. As a result, there is no basis on which to support Proposed Violation No. 1, and certainly no basis for the imposition of the maximum daily penalty for such alleged violation. Although Williams sincerely appreciates, the Region Recommendation that the fine associated with Proposed Violation should be reduced, Williams

¹⁰ See Williams Exhibit R.

feels that there has been no credible evidence offered that the statute itself has been violated at all.

III. **WILLIAMS DID NOT VIOLATE 49 CFR 192.751 IF PRIOR KNOWLEDGE OF THE PRESENCE OF A COMBUSTIBLE MIXTURE OF AIR AND GAS IS REQUIRED**

PHMSA's wording of NOPV 2 accuses Williams of having **actual knowledge** of the presence of a combustible mixture of air and gas in the liquids header and nonetheless allowing welding to proceed, to wit:

On October 8, 2015, Transco failed to stop work when gas was detected inside the 42" liquid header and allowed welding to start when a combustible mixture of gas and air existed within the 42" liquid header...

This accusation suggests that PHMSA is of the opinion that prior knowledge on the part of Williams or its contractor is necessary to support a violation of 49 CFR 192.751. If that is truly PHMSA's position, Williams disputes NOPV 2. Furthermore, since the Region Recommendation on this point is no more than a recapitulation of PHMSA's post-trial brief, Williams will only briefly touch on this point.

A. If prior knowledge is a requirement for a violation of 49 CFR 192.751, there is no evidence of such knowledge and therefore no violation.

As established by Williams in its post-hearing brief, the record is completely devoid of any facts which suggest that **anyone** knew that the liquids header contained combustible mixture of gas and air and nonetheless allowed welding to proceed. At the outset, it is important to properly define what constitutes "a combustible mixture of gas and air". As explained by John Suchar, Williams' Director of Employee Safety, one of the primary tools used by the pipeline industry to measure work areas to ensure that a combustible mixture of air and gas is not present are instruments which measure the atmosphere and provide a reading expressed as a percentage of the Lower Explosive Level (LEL). The LEL is the lowest concentration of a gas in air

capable of producing a flash of fire when exposed to an ignition source. An LEL reading below 100% is, by definition, not a “combustible mixture of air and gas”. The mere presence of a hydrocarbon in the air does not make it explosive. Rather it is the mixture of air and hydrocarbon in certain critical percentages depending upon the temperature and pressure that result in a “combustible” mixture. At a concentration in air below 100% LEL, the gas mixture is too lean to burn and does not constitute a combustible mixture of gas and air (*See* affidavit of John Suchar attached.)

The only evidence offered by PHMSA related to knowledge of the contents of the liquids header was the undocumented Lower Explosive Limit (LEL) gas monitor reading allegedly obtained by a contractor employee, Luke Marange. Mr. Marange was interviewed by the PHMSA investigator on October 10th and 12th. The notes from the October 12 interview state:

Molly confirmed that the LEL reading in the header was at 4%, and that it was taken prior to installing the foreman’s plug. After the foreman’s plug was installed, the reading was 0% LEL. ***¹¹

That is the only evidence in the entire record relating to an LEL reading in excess of zero obtained from the liquids header. As previously stated, a reading of 4% LEL is, by definition, not a combustible mixture of gas and air.

Proposed Violation No. 2 accuses Williams of having “failed to stop work when gas was detected...and allowed welding to start when a combustible mixture of gas and air existed with the 42” header.” There is no evidence to support that accusation. To the contrary, the Violation Report relating to this issue establishes that Williams acted in good faith and had a credible justification for its actions or lack of actions:

Williams planned the work and employed multiple layers of protection, through isolation of the work area, purging of the structure and monitoring for

¹¹ Investigation Notes, Luke Marange interview notes, page 18, attached to Violation Report.

hydrocarbons, but fell short due to the failure to have personnel trained on the operator's Hot Work Plan at the worksite, and the failure to prevent the accumulation of vapors inside the pipe.¹²

The operator had taken steps to meet the requirements through the use of work planning, purging, lockout/tag-out, cleaning, vapor barriers and atmospheric monitoring and their interpretation of the requirements was appropriate.¹³

The operator's interpretation of the requirement was reasonable, and it had a credible justification for its actions or lack of actions.¹⁴

If prior knowledge is required, there is no evidence of such. Thus, Williams is entitled to a finding of no violation.

B. If prior knowledge is not required, the language of NOPV should be revised.

If, on the other hand, prior knowledge is not required to support a violation of 192.751, Williams is prepared to accept Violation 2. No one can, in good faith, dispute that at some point in time after welding commenced, a combustible mixture of gas and air existed inside of the liquids header, because this tragic explosion occurred. However, if prior knowledge is not required, references to such are not relevant and should be omitted from the language of NOPV.

2. If the language of NOPV 2 cannot be changed through this process, Williams respectfully requests that the recommended action and ultimate final order clearly establish that there is no evidence that Williams was aware of a combustible mixture of air and gas in the work area prior to the incident.

V. CONCLUSION

For the reasons stated above, and based on the evidence both written and oral submitted at the July 14, 2017 Hearing in the above-captioned matter, Williams requests a finding that it did not violate 49 CFR 191.5 or 49 CFR 192.75, that the proposed Civil Administrative Penalties

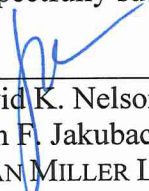
¹² Violation Report, page 15, Part E8-Culpability—"Provide Details to Support the Selection Above"

¹³ Violation Report, page 16, Part E9- Good Faith—"Provide Details Supporting the Selection Above"

¹⁴ Violation Report, page 16, Part 9-Good Faith—"Description"

associated with those violations should be eliminated. In the alternative, Williams has put on adequate evidence that if a violation has been proven by PHMSA, an allegation which is denied, that the proposed Civil Administrative Penalties associated therewith should be greatly reduced.

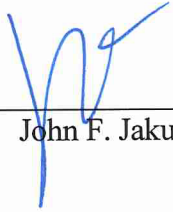
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief has been served on all counsel of record, this 30th day of January, 2018, via electronic mail, facsimile, and/or U.S. Mail, properly addressed and postage prepaid to all counsel of record.



John F. Jakuback