

1 SOMETHING ABOUT IT?

2 AND THEY DIDN'T. THEY DIDN'T.

3 AND WHAT THEY'RE ASKING FOR HERE, INSTEAD, IS
4 MONEY. AND THEY'RE NOT JUST ASKING FOR MONEY TO CLEAN IT UP,
5 ~~EVEN WHAT THEY SAY WILL CLEAN IT UP, THEY'RE ASKING FOR THIS~~
6 YOU KNOW, HUMONGOUS, MULTIPLIER USING THIS 20 PERCENT
7 INTEREST RATE CALLED THE WEIGHTED AVERAGE COST OF CAPITAL.

8 OKAY. AND WHAT'S GOING TO HAPPEN TO THAT
9 MONEY?

10 I MEAN, IS THAT GOING TO BE NECESSARY?

11 IS THAT ALL GOING TO BE SPENT ON CLEANING IT
12 UP?

13 NO, IT HAS NOTHING DO WITH THAT IT.

14 SO YOU NEED TO KEEP IN MIND THAT WATSON HAS
15 TESTIFIED -- ALL OF THE WATSON WITNESSES HAVE ADMITTED THAT
16 THEY'VE NEVER LOST A TENANT, THEY'VE NEVER INCURRED A NICKEL
17 IN REMEDIATION COSTS, THEY'VE NEVER INCURRED A NICKEL IN
18 FINANCING COSTS. THESE TENANTS NEVER HAD TO PAY OUT. NO
19 TENANTS EVER ASKED THEM TO PAY OUT. NO REASON TO BELIEVE
20 THAT THEY HAVE A CLAIM. AND I'LL GO OVER A LOT OF THAT
21 EVIDENCE WITH YOU.

22 NOW, A SITUATION WHERE WATSON HAS DONE NOTHING
23 IN TEN YEARS, AND CERTAINLY, HAS DONE NOTHING IN THE RECENT
24 SIX YEARS SINCE THEY HIRED LEVINE-FRICKE TO LOOK UNDER
25 BUILDING 165, AND DAMES & MOORE, THEY'VE DONE NOTHING
26 WHATSOEVER TO CLEAN THIS UP.

27 AND THE REASON WHY THEY HAVEN'T DONE THAT IS
28 BECAUSE IT'S NOT EFFECTING THE USE OF THEIR PROPERTY AT ALL.

1 OKAY. SURE, IT'S A PROBLEM. SURE, IT NEEDS TO
2 BE DEALT WITH.

3 BUT DOES THAT NECESSARILY MEAN THAT EVEN IF YOU
4 DETERMINE THAT IT CAME FROM THE PIPELINES OR PARTIALLY OR
5 WHOLLY FROM THE PIPELINES AS OPPOSED TO ARCO, THAT THAT'S
6 SOMETHING THAT FITS INTO ONE OF THEIR CAUSES OF ACTION?

7 WATSON LAND COMPANY IS THE MASTER OF THEIR OWN
8 COMPLAINT. AND OUT OF ALL THE DIFFERENT LEGAL CAUSES THAT
9 THEY COULD PICK, THEY PICKED TWO. THEY PICKED TRESPASS,
10 WHICH IS AN INVASION OF SOMEBODY'S LAND. AND I'LL GO OVER
11 THE ELEMENTS OF THAT IN A MOMENT. AND THEY PICKED NUISANCE.
12 AND THERE'S SPECIFIC ELEMENTS THAT THEY HAVE TO MEET THAT
13 IT'S THEIR BURDEN OF PROOF TO MEET BEFORE THEY CAN EVEN GET
14 TO THE ISSUE OF DAMAGES.

15 AND SO WHAT I'D LIKE TO DO, IF I COULD, IS I'D
16 LIKE TO GO OVER SOME OF THESE ISSUES IN A LITTLE BIT MORE
17 DETAIL.

18 BUT LET ME PUT UP FOR YOU, JUST SO WE HAVE IN
19 MIND WHAT THEY NEED TO DO, LET'S LOOK AT THE INSTRUCTION ON
20 CONTINUING NUISANCE.

21 OKAY. IN ORDER TO PREVAIL ON THE THEORY OF
22 CONTINUING NUISANCE, WATSON HAS THE BURDEN TO PROVE BY A
23 PREPONDERANCE OF THE EVIDENCE THAT SHELL CONTAMINATED THE
24 WATSON CENTER.

25 NUMBER ONE, THEY HAVE TO PROVE THAT ALL OR PART
26 OF THAT CONTAMINATION CAME FROM THE PIPELINES. AND I'LL TALK
27 ABOUT THAT.

28 BUT THAT DOESN'T MEAN THAT THEY'RE DONE.

1 THEN THEY HAVE TO SHOW THAT "THE CONTAMINATION
2 CAUSED BY SHELL INTERFERES WITH WATSON'S FREE USE AND
3 COMFORTABLE ENJOYMENT OF THE WATSON CENTER."

4 THAT'S A SEPARATE ELEMENT. IF THEY PROVE
5 NUMBER ONE AND THEY DON'T PROVE NUMBER TWO, THAT'S A FINDING
6 FOR SHELL.

7 AND SECOND OF ALL, THEY HAVE TO SHOW THAT "THE
8 INTERFERENCE WITH WATSON'S FREE USE AND COMFORTABLE ENJOYMENT
9 OF ITS PROPERTY IS CONTINUING."

10 SO THE TWO KEY ELEMENTS FROM MY STANDPOINT IS:

11 NUMBER ONE, THEY HAVE TO PROVE WHERE THE
12 CONTAMINATION CAME FROM. THEY HAVE TO REBUT THAT IT CAME
13 FROM ARCO. THEY HAVE TO PROVE IT CAME FROM THE PIPELINES.

14 AND SECOND OF ALL, THEY HAVE TO PROVE, THEN,
15 THAT IT'S SUBSTANTIAL, THAT IT INTERFERES WITH THEIR FREE USE
16 AND COMFORTABLE ENJOYMENT OF THE WATSON CENTER.

17 AND THERE'S A WRINKLE ON THAT, TOO.

18 AND WHAT THAT SHOWS IS -- LET ME SHOW YOU SOME
19 OTHER INSTRUCTIONS THAT PERTAIN TO BOTH OF THESE.

20 FIRST OF ALL, THEY DON'T JUST HAVE TO SHOW THAT
21 THERE'S AN INTERFERENCE.

22 (READING:)

23
24 . . . "WATSON MUST PROVE THAT
25 THE INTERFERENCE WITH WATSON'S USE AND
26 ENJOYMENT OF THE WATSON CENTER IS" -- NOT
27 MINIMAL -- IT HAS TO BE "SUBSTANTIAL, AND
28 THAT THE INTERFERENCE WITH WATSON'S USE AND

1 ENJOYMENT OF THE WATSON CENTER IS OF SUCH A
2 NATURE, DURATION AND AMOUNT THAT IT
3 CONSTITUTES AN UNREASONABLE INTERFERENCE.
4

5
6 SO THEY HAVE TO PROVE THAT IT'S SUBSTANTIAL.
7 THEY CAN'T JUST PROVE THAT IT'S NOTHING, THAT IT'S MINIMAL,
8 THAT IT'S SOMETHING THAT MIGHT HAVE TO BE DEALT WITH. THEY
9 HAVE TO PROVE THAT THE WATSON'S USE AND ENJOYMENT OF ITS LAND
10 IS SUBSTANTIALLY INTERFERED WITH.

11 NOW, WHAT DOES THAT MEAN, SUBSTANTIAL?

12 WHAT THE COURT INSTRUCTED YOU WAS THAT
13 (READING):

14
15 "INTERFERENCE WITH PLAINTIFF'S
16 INTEREST IN THE USE AND ENJOYMENT OF ITS LAND
17 IS SUBSTANTIAL IF IT CAUSES THE PLAINTIFF TO
18 SUFFER SUBSTANTIAL ACTUAL DAMAGES."
19

20 OKAY. IT'S GOT TO INTERFERE. IT'S GOT TO BE
21 SUBSTANTIAL.

22 AND THE WAY YOU TEST WHETHER IT'S SUBSTANTIAL
23 IS IT HAS TO CAUSE SUBSTANTIAL, ACTUAL DAMAGE, AND THAT HAS
24 NOT HAPPENED IN THIS CASE, EVEN APART FROM THE CAUSATIONAL
25 ISSUE.

26 OKAY. NOW, WHAT DOES IT MEAN IN TERMS OF THE
27 BURDEN OF PROOF?

28 MRS. BRIGHT TALKED TO YOU A LITTLE BIT ABOUT

1 THAT.

2 OKAY. IT'S NOT THE CRIMINAL STANDARD. IT'S A
3 DIFFERENT STANDARD. IT'S CALLED THE PREPONDERANCE OF THE
4 EVIDENCE.

5 ~~AND YOU'VE HEARD A LOT OF TESTIMONY IN THIS~~
6 CASE, AND TO SOME EXTENT, YOU KNOW, YOU MIGHT HAVE HEARD ONE
7 WITNESS, AND YOU SORT OF SAY, WELL, THAT SOUNDS REASONABLE.
8 AND YOU HEAR THE OTHER WITNESS AND YOU SAY, HMM, WELL, THAT'S
9 A GOOD POINT.

10 IF AT THE END OF THE DAY YOU CANNOT TELL WHICH
11 SIDE IS MORE PERSUASIVE, THEN, THE COURT HAS INSTRUCTED YOU
12 THAT WATSON HAS NOT PREVAILED IN ITS BURDEN OF PROOF.

13 (READING:)

14
15 "IF THE EVIDENCE IS SO EVENLY
16 BALANCED THAT YOU ARE UNABLE TO SAY THAT THE
17 EVIDENCE ON EITHER SIDE OF AN ISSUE
18 PREPONDERATES, YOUR FINDING ON THAT ISSUE
19 MUST BE AGAINST THE PARTY WHO HAD THE BURDEN
20 OF PROVING IT."

21
22 IF YOU GO BACK IN THE JURY ROOM, AND AFTER YOU
23 LOOK AT ALL THE EXHIBITS, AFTER YOU THINK ABOUT THE
24 TESTIMONY, AFTER YOU DISCUSS IT, IF YOU'RE IN THE POSITION OF
25 SAYING, YOU KNOW, I CAN'T SAY EITHER WAY THAT IT CAME FROM
26 THE PIPELINE OR ARCO, I JUST DON'T KNOW, AFTER ALL OF THAT,
27 IT'S EVENLY BALANCED, THEN WATSON -- YOUR FINDING HAS TO BE
28 AGAINST WATSON ON THAT ISSUE.

1 AND THAT'S NOT JUST ON THE CAUSE ISSUE. IT'S
2 ON THE SUBSTANTIAL INTERFERENCE TEST. IT'S ON ISSUES OF
3 DAMAGES.

4 HOW DO WE KNOW THAT?

5 BECAUSE (READING):

6
7 . . . "WATSON HAS THE BURDEN
8 OF PROVING BY A PREPONDERANCE OF THE EVIDENCE
9 ALL OF THE FACTS NECESSARY TO ESTABLISH THE
10 ESSENTIAL ELEMENTS OF EACH SEPARATE CLAIM."

11
12 SECOND OF ALL (READING):

13
14 . . . "WATSON HAS THE BURDEN
15 OF PROVING BY A PREPONDERANCE OF THE EVIDENCE
16 ALL OF THE FACTS NECESSARY TO ESTABLISH THE
17 NATURE AND EXTENT OF THE DAMAGES CLAIMED TO
18 HAVE BEEN SUFFERED, THE ELEMENTS OF WATSON'S
19 DAMAGE AND THE AMOUNT THEREOF."

20
21 OKAY. SO THEY HAVE THE BURDEN ON EACH OF THE
22 INDIVIDUAL ISSUES IN THIS CASE.

23 THEN WHAT ABOUT THEIR SECOND CAUSE OF ACTION?

24 MRS. BRIGHT SHOWED YOU THE INSTRUCTION ON THAT.
25 AGAIN, YOU HAVE TO SHOW -- FIRST OF ALL, THERE HAS TO BE
26 CAUSATION, THAT SHELL CAUSED THE CONTAMINATION AT ISSUE.

27 SECOND OF ALL, YOU HAVE TO GO BEYOND THAT AND
28 SHOW SOME TORTIOUS CONDUCT.

1 WHAT TORTIOUS CONDUCT IS DEFINED TO BE -- LET
2 ME TAKE ONE STEP BACK.

3 HERE'S -- EXCUSE ME.

4 OKAY. WELL, ANYWAY, THEY HAVE TO SHOW THE
5 CONTAMINATION.

6 BUT THEY HAVE TO SHOW MORE THAN THAT. THEY
7 HAVE TO SHOW EITHER (READING):

8
9 . . . "THAT SHELL ACTED
10 INTENTIONALLY IN CAUSING DAMAGE TO WATSON'S
11 PROPERTY."

12
13 WHICH THERE IS ABSOLUTELY NO EVIDENCE OF
14 WHATSOEVER. THERE'S NO EVIDENCE THAT SHELL DID ANYTHING ON
15 PURPOSE TO HURT WATSON OR CAUSE POLLUTION.

16 SECOND OF ALL, THEY HAVE TO SHOW (READING):

17
18 . . . "THAT SHELL ACTED
19 RECKLESSLY IN CAUSING DAMAGE TO WATSON'S
20 PROPERTY."

21
22 THERE'S NO EVIDENCE WHATEVER ON RECKLESS.
23 THAT'S THAT YOU KNOW YOU HAVE REASON TO KNOW THAT SOMETHING
24 IS GOING TO HAPPEN AND YOU IGNORE IT ANYWAY. YOU SAY, I
25 DON'T CARE WHAT THE CONSEQUENCES OF MY BEHAVIOR ARE. THERE'S
26 NO ISSUE THERE AT ALL.

27 (READING:)

28 /

1 "A PERSON ACTS RECKLESSLY IF
2 THAT PERSON ACTS WITH A CONSCIOUS DISREGARD
3 FOR THE SAFETY OF PROPERTY."

4
5 OKAY. THERE'S NO EVIDENCE ON THAT AT ALL.

6 SO THEN, WE'RE REALLY BOILING DOWN TO: DID
7 SHELL ACT NEGLIGENTLY IN CAUSING DAMAGE TO WATSON'S PROPERTY,
8 OR THAT SHELL CREATED A NUISANCE?

9 OKAY. CREATING A NUISANCE. WE JUST SAW WHAT
10 THAT REQUIRES. IT REQUIRES ACTUAL CAUSATION, CONTAMINATION
11 FROM THE PIPELINES, PLUS SUBSTANTIAL ACTUAL DAMAGE AND A
12 SUBSTANTIAL ACTUAL INTERFERENCE.

13 WHAT DO YOU HAVE TO FIND NEGLIGENTLY?

14 WHAT YOU HAVE TO SHOW FOR NEGLIGENCE IS

15 (READING):

16
17 "IT IS THE FAILURE TO USE
18 ORDINARY OR REASONABLE CARE."

19
20 OKAY. (READING:)

21
22 "YOU WILL NOTE THAT THE PERSON
23 WHOSE CONDUCT WAS SET UP AS A STANDARD IS NOT
24 THE EXTRAORDINARILY CAUTIOUS INDIVIDUAL NOR
25 THE EXCEPTIONALLY SKILLED ONE, BUT A PERSON
26 OF REASONABLE AND ORDINARY PRUDENCE ENGAGED
27 IN THE ACTIVITY THAT IS CLAIMED TO HAVE BEEN
28 CONDUCTED IN A NEGLIGENT MANNER."

1 WHAT THAT MEANS HERE IS, YOU HAVE TO LISTEN TO
2 THE TESTIMONY OF ROGER UNDERWOOD WHO WAS IN CHARGE OF
3 OPERATING ALL THESE PIPELINES, WHO WORKED FOR YEARS IN THE
4 PIPELINES. AND YOU HAVE TO ASK YOURSELF, DID MR. UNDERWOOD
5 AND SHELL FAIL TO DO WHAT THEY COULD TO MAKE SURE THAT THE
6 PIPELINES WERE TESTED PROPERLY, TO MAKE SURE THAT THEY WERE
7 CATHODICALLY PROTECTED, TO MAKE SURE IF THERE
8 HAD BEEN -- WHEN PEOPLE WERE DIGGING AROUND THE PIPELINES, IF
9 THAT -- IF THERE WAS A LEAK, THAT THEY WOULD REPORT THE LEAK,
10 AND IF THERE WAS A LEAK, THAT THEY FIXED THE LEAK?

11 OKAY. IF YOU FIND THAT SHELL AND MR. UNDERWOOD
12 AND HIS TEAM ACTED REASONABLY AND CAUTIOUSLY AS YOU WOULD
13 EXPECT AN ORDINARY PIPELINE COMPANY TO ACT, THEN THAT'S NOT
14 NEGLIGENCE.

15 THE ALTERNATIVE WOULD BE STRICT LIABILITY.

16 THERE'S A LEAK, CAUTIOUS; AND, SORRY. TOO BAD.
17 DOES NOT MATTER. YOU HAVE TO PAY DAMAGES ON THAT.

18 BUT THAT'S NOT WHAT -- THAT'S NOT THE TYPE OF
19 STANDARD THAT WATSON HAS ASKED FOR.

20 SO JUST KEEP THAT IN MIND AS WE GO THROUGH THE
21 CASE. AND I KNOW THAT'S A LOT OF, YOU KNOW, LEGAL MUMBO
22 JUMBO WE USE. IT'S IMPORTANT MUMBO JUMBO, AND YOU NEED TO
23 PAY ATTENTION TO THAT BECAUSE THAT'S -- THE JUDGE HAS
24 INSTRUCTED YOU THE CRITERION ON IT.

25 OKAY. NOW, LET'S LOOK, FIRST, AT THE ISSUE OF
26 THE INTERFERENCE WITH THE USE AND ENJOYMENT OF WATSON'S LAND.

27 AND YOU REMEMBER MR. FRAZIER WAS HERE
28 TESTIFYING.

1 AND FIRST OF ALL, WHAT ABOUT RISKS TO HEALTH,
2 MR. FRAZIER?

3 I ASKED HIM (READING) :

4
5 "SIR, YOU ARE NOT AWARE, ARE
6 YOU, OF ANY RISKS TO ANY OF YOUR TENANTS'
7 HEALTH FROM THE SUBSURFACE GROUNDWATER PLUMES
8 UNDERNEATH THE WATSON INDUSTRIAL CENTER
9 SOUTH?

10 "A. NO, I AM NOT.

11 "AND YOU ARE NOT AWARE OF ANY
12 RISKS TO HUMAN HEALTH FOR PEOPLE THAT MIGHT
13 PASS BY OR VISIT THE DIFFERENT PROPERTIES
14 THAT WOULD ARISE FROM THE SUBSURFACE
15 CONTAMINATION THAT'S AT ISSUE HERE?

16 "A. I AM NOT AWARE OF ANYONE."

17
18 OKAY. THERE HAS BEEN NO CONTRARY EVIDENCE TO
19 THAT.

20 THIS CONTAMINATION, REGARDLESS OF WHO IT WAS
21 CAUSED BY, IS 70 OR 80 FEET UNDER THE GROUND. THERE'S NO
22 EVIDENCE THAT IT'S -- ANYBODY IS EVER GOING TO BE EXPOSED TO
23 THIS, THAT THERE'S ANY -- THAT THERE'S ANY ISSUE OF PEOPLE
24 BEING EXPOSED TO DRINKING WATER WELLS. THERE ARE NO DRINKING
25 WATER WELLS. THERE'S NO USE OF THIS AT ALL. AND IT'S NOT
26 HARMING ANY SENSITIVE ENVIRONMENTS.

27 DOES THAT MEAN WE SHOULD IGNORE IT?

28 NO.

1 BUT THAT'S AN IMPORTANT ISSUE IN TERMS OF
2 KEEPING IN MIND IN TERMS OF WHETHER WATSON HAS SATISFIED THE
3 STANDARD THAT THEY ARE REQUIRED UNDER THE LAW TO SATISFY.

4 WHAT ABOUT THE INDEMNITIES?

5 MR. FRAZIER SAID -- I ASKED HIM (READING):

6
7 WATSON'S "NEVER HAD TO PAY A
8 NICKEL OUT ON ANY THOSE INDEMNITIES; IS THAT
9 RIGHT?

10 "A. THAT'S CORRECT, WE HAVE NOT
11 PAID ANY CLAIMS ON THE INDEMNITIES.

12 "Q. OKAY. AND EVEN THOUGH
13 WATSON LAND COMPANY HAS HAD TO MAKE CERTIFIED
14 DISCLOSURES OF SOME OF THE CONTAMINATION
15 REGARDING THE LAND COMPANY TO THE LENDERS,
16 THEY HAVE NOT EVER LOST A LOAN AS A RESULT OF
17 THAT, AS A RESULT?

18 "A. NO. GIVEN THE PROTECTIONS
19 THAT WE ARE WILLING TO GIVE."

20
21 OKAY. NEVER HAD TO PAY ANY INDEMNITIES. NEVER
22 LOST A LOAN.

23 OKAY.
24 WHAT ABOUT DIMINISHMENT IN THE VALUE OF THE
25 PROPERTY?

26 WELL, MR. FRAZIER TALKED ABOUT THAT, TOO.

27 (READING:)

28 /

1 "Q. AS FAR AS YOU KNOW,
2 WATSON LAND COMPANY HAS NO CURRENT PLANS TO
3 SELL ANY OF THE PROPERTIES UNDER THE WATSON
4 INDUSTRIAL CENTER SOUTH, DOES IT?

5 "A. AS FAR AS I KNOW.

6 "Q. WATSON LAND COMPANY'S GOAL IS
7 TO RENT THESE THINGS OUT LONG-TERM; IS THAT
8 RIGHT?

9 "A. THAT'S BEEN OUR BUSINESS, YES.

10 "Q. AND THE LAND HAS BEEN IN THE
11 FAMILY FOR YEARS AND YEARS, DECADES,
12 CENTURIES, MAYBE; IS THAT RIGHT?

13 "A. CORRECT.

14 "Q. SO THE WATSON INDUSTRIAL
15 CENTER SOUTH AREA HAS NEVER BEEN FOR SALE ON
16 THE MARKET, AS FAR AS YOU KNOW; IS THAT
17 RIGHT?

18 "A. AS A WHOLE PROPERTY?

19 "Q. YEAH, AS A WHOLE PROPERTY.

20 "A. NO.

21 "Q. AND WATSON LAND COMPANY HAS NO
22 CURRENT PLANS TO SELL IT, THEY JUST PLAN TO
23 LEASE IT, IS THAT ACCURATE?

24 "A. THAT'S OUR CURRENT PLAN."

25

26 OKAY. SO IT'S ONLY A RENTAL PROPERTY. OKAY.
27 WHAT ABOUT IMPACTS ON THE LEASES?

28 (READING:)

1 MR. FRAZIER SAID:
2 "BASICALLY," THE LEASES "VARY IN THEIR
3 EFFECT. BUT SOME TENANTS HAVE THE ABILITY TO
4 TERMINATE THE LEASE". . .

5 AND I SAY: "LET ME STOP YOU
6 THERE.

7 "HAS THAT EVER HAPPENED?

8 "A. NO, IT HASN'T HAPPENED YET."

9 I ASKED HIM: "WHAT ELSE ARE
10 YOU CONCERNED ABOUT?

11 "A. THE OBLIGATION TO COVER ANY
12 THIRD-PARTY CLAIMS IN THE -- ANY EMPLOYEE
13 CLAIMS, ANY REMEDIATION CLAIMS.

14 "Q. HAS THAT EVER HAPPENED?
15 HAVE YOU EVER HAD TO COVER
16 ANY -- STRIKE THAT.

17 "HAS WATSON LAND COMPANY EVER
18 HAD TO COVER ANY THIRD-PARTY ENVIRONMENTAL
19 EXPOSURE PERSONAL INJURY CLAIMS?

20 "A. NOT YET.

21 "Q. HAS WATSON LAND COMPANY EVER
22 HAD TO COVER ANY TENANT COSTS FOR
23 ENVIRONMENTAL REMEDIATION UNDER THESE
24 INDEMNITY PROVISIONS?

25 "A. THEY HAVE NOT YET.

26 "Q. SO THE -- UNDER THE VARIOUS
27 ENVIRONMENTAL INDEMNITIES, WATSON HAS NEVER
28 ACTUALLY PAID OUT, ARE THERE ANY OUTSTANDING

1 CLAIMS THAT TENANTS HAVE MADE AGAINST
2 WATSON LAND COMPANY SAYING, I WANT YOU TO PAY
3 OUT IN THE FUTURE, IN OTHER WORDS, I AM
4 TRYING TO GET OUT, WHETHER THERE IS SOMETHING
5 PENDING OR IF YOU HAVE ALREADY SAID YOU
6 HAVEN'T PAID OUT ANYTHING?

7 "A. I DON'T BELIEVE ANYBODY HAS
8 TENDERED A CLAIM, ANY SPECIFIC CLAIMS, SAYING
9 WE WANT YOU TO PAY THIS."

10
11 OKAY. SO THEY HAVEN'T LOST TENANTS. THEY
12 HAVEN'T LOST LEASES. THEY HAVEN'T LOST ANY LENDING.

13 HE ALSO TESTIFIED, IF YOU RECALL, THEY HAVEN'T
14 HAD TO PAY ANY INCREASED FEES FOR THE LENDERS.

15 SECOND OF ALL, WHAT ABOUT THEIR LEASE RATES?

16 REMEMBER, WE WENT THROUGH SOME LEASE RATES FROM
17 THE WEBSITE AND ALSO FROM SOME OF THE LEASES THAT THEY HAD
18 PRODUCED IN THIS LITIGATION?

19 I ASKED HIM (READING):

20
21 . . . THE "BUILDING 165 RATES
22 OF 51 CENTS, THAT'S HIGHER THAN THE OTHER
23 HISTORICAL LEASES THAT WE WERE LOOKING AT; IS
24 THAT RIGHT?"

25
26 BUILDING 165, REMEMBER, IS RIGHT UNDER THE B2
27 PLUME?

28 (READING:)

1 "A. YEAH. THERE ARE REASONS FOR
2 THAT.

3 "Q. OKAY, I AM SURE THERE ARE.
4 AND THERE'S, AND THE ASKING
5 PRICE FOR BUILDINGS 105 AND 106 ARE AS HIGH
6 AS ANY OF THE ASKING PRICES CURRENTLY ON THE
7 WEBSITE FOR THE WATSON INDUSTRIAL CENTER
8 SOUTH?

9 "A. CORRECT, THE ASKING PRICES
10 ARE."

11
12 OKAY. SO, THEN, IF THEIR LEASE RATES HAVE NOT
13 BEEN IMPACTED -- AS YOU RECALL, I DID A LITTLE CHART AS I WAS
14 ASKING HIM. THIS IS EXHIBIT 3206. I DON'T HAVE THE
15 UNDERLYING COLORED MAP.

16 BUT IF YOU RECALL, WE LOOKED AT THE ASKING
17 PRICE ON THE WEBSITES OF BUILDING 105 AND 106, AND THOSE WERE
18 50 CENTS, 46 CENTS, 40 CENTS ON SOME OF THESE OTHER ONES.

19 WE GET DOWN TO BUILDING 165 AND WE HAD ACTUAL
20 LEASE RATES FOR THOSE. ABOUT 51 CENTS EACH.

21 OKAY. 50 CENTS -- EXCUSE ME -- 50 CENTS AND
22 49 CENTS FOR THESE ONES UP HERE.

23 SO WE ALSO HAD NOT JUST MR. FRAZIER'S TESTIMONY
24 ON THAT, BUT WE HAVE MR. MEXIA'S TESTIMONY ON THAT.

25 AND HE'S VERY FAMILIAR WITH THE WATSON CENTER.
26 HE'S ACTUALLY TOURED MOST OF THESE BUILDINGS, AND HE'S
27 CONFIRMED THAT. THERE HAS BEEN NO IMPACT WHATEVER SO FAR ON
28 THE LEASE RENTS.

1 EXHIBIT 3241. HE DID A LITTLE CHART WITH THE
2 RED BEING WATSON, SHOWING THAT THE AVERAGE RATES COMPARED TO
3 COMPARABLE PROPERTIES IN THE AREA OF WATSON ARE CONSISTENTLY
4 HIGHER.

5 OKAY. WHAT ABOUT THE BREAKING IT UP BY SIZE?

6 BECAUSE MR. FRAZIER SAID THAT SIZE WAS A
7 FACTOR.

8 OKAY. AGAIN, RED IS WATSON. LOOKING AT
9 COMPARABLE AREAS, WATSON GETS SUBSTANTIALLY HIGHER LEASE
10 RATES.

11 OKAY. FINALLY, WHAT ABOUT THE TENANT
12 INDEMNITIES?

13 EXHIBIT 3242. YOU'LL REMEMBER THAT MR. MEXIA
14 TESTIFIED THAT THOSE AREN'T UNUSUAL, THOSE INDEMNITY TERMS,
15 AT ALL. AS A MATTER OF FACT, THE STANDARD REAL ESTATE FORM
16 CONTRACT IN USE BY PEOPLE HAS TENANT INDEMNIFICATION.

17 AND I WON'T BOTHER READING THAT AGAIN. WE'VE
18 SEEN THAT BEFORE.

19 OKAY. SO THE INDEMNIFICATION IN AND OF ITSELF
20 IS NOT UNUSUAL AMONG INDUSTRIAL PROPERTIES. AND YOU WOULD
21 EXPECT THAT TO BE THE CASE BECAUSE PEOPLE, INCLUDING PEOPLE
22 ON THE WATSON CENTER, THAT RENT FROM THE WATSON CENTER, IN
23 FACT, USE SOME HAZARDOUS CHEMICALS, HAVE UNDERGROUND STORAGE
24 TANKS. IN FACT, THERE'S BEEN LEAKS FROM SOME OF THOSE.

25 OKAY. NOW, LET'S LOOK AT, AGAIN, SOME OF THE
26 PICTURES FROM 3258, WHICH WAS THE SLIDE SHOW THAT MR. LEITER
27 DID, AND THAT'S SOMETHING THAT YOU CAN TAKE INTO ACCOUNT.

28 FIRST OF ALL, WHEN WE LOOK AT THE INTERSECTION

1 OF WILMINGTON AND WATSON CENTER ROAD, IT'S PRETTY OBVIOUS
2 THERE'S A REFINERY ACROSS THE STREET.

3 NO TENANT THAT EVER RENTS FROM
4 WATSON LAND COMPANY IS UNDER ANY MISIMPRESSION UNDER -- FROM
5 THAT ISSUE.

6 DRIVING DOWN WILMINGTON BETWEEN 230TH AND 223RD
7 STREET, CONTINUING DOWN WILMINGTON, THERE'S NO MYSTERY THAT
8 THERE'S GREAT, BIG TANKS ALL THE WAY ALONG THE WAY.

9 THEN, WHAT ABOUT THE AREA OF THE CONTAMINATION?
10 THIS IS LOOKING EAST DOWN 223RD STREET TOWARDS
11 BUILDING 165 RIGHT HERE.

12 YOU CAN SEE THAT APART FROM LITTLE TINY DOTS IN
13 THE PAVEMENT, THERE'S NOTHING THAT WOULD INTERFERE WITH THE
14 USE AND ENJOYMENT OF THE PROPERTY OF WATSON OR ITS TENANTS.

15 SAME THING WITH THE GATX PLUME.

16 THIS IS, AGAIN, LOOKING ACROSS THE STREET.

17 THAT'S LOOKING RIGHT OVER THE GATX PLUME, OKAY,
18 WHICH IS A MUCH BIGGER PROBLEM THAN THE B2 PLUME.

19 SO WHAT DOES THAT MEAN?

20 DOES THAT MEAN THAT WE'RE ASKING YOU -- OR
21 WE'RE TRYING TO TRIVIALIZE THE FACT THAT THERE'S POLLUTION
22 HERE?

23 NO, IT DOESN'T AT ALL. WE KNOW WHAT THE
24 POLLUTION IS. THERE'S BEEN A LOT OF TESTIMONY ON THAT.

25 BUT THE POINT IS, WATSON HAS TO PROVE NOT JUST
26 THAT SHELL CAUSED THE CONTAMINATION; AS I MENTIONED, WATSON
27 HAS TO PROVE THAT THEY'VE SUFFERED SUBSTANTIAL, ACTUAL DAMAGE
28 AND SUBSTANTIAL INTERFERENCE WITH THE USE AND ENJOYMENT OF

1 THEIR PROPERTY IN ORDER TO PREVAIL ON THE CLAIMS THAT THEY
2 HAVE CHOSEN TO BRING IN THIS CASE WHICH ARE A NUISANCE.

3 SO I MENTIONED THAT ONE OF THE THINGS THAT'S
4 ALSO IMPORTANT TO KEEP IN MIND WHEN YOU'RE ASSESSING THE
5 SEVERITY OF THE PROBLEM AND THE SEVERITY OF THE INTERFERENCE

6 WITH WATSON LAND COMPANY'S USE AND ENJOYMENT OF ITS LAND IS
7 THE FACT THAT THEY'VE KNOWN ABOUT THIS FOR YEARS AND YEARS
8 AND YEARS AND HAVEN'T TAKEN ANY STEPS WHATSOEVER TO REMEDY
9 THESE WELLS.

10 AND ONE OF THE THINGS THAT MR. KIRK TESTIFIED
11 FROM ARCO -- WHOOPS, EXCUSE ME -- IS THAT (READING):

12
13 . . . "IN ORDER FOR ARCO TO
14 INSTALL THE WELLS, THEY HAD TO ASK PERMISSION
15 OF WATSON LAND COMPANY TO ENTER ONTO THE LAND
16 AND INSTALL THOSE WELLS" . . . ?

17 HIS ANSWER WAS: "YES. FOR
18 THE WELLS THAT WERE INSTALLED ON THEIR
19 PROPERTY.

20 "Q. AND YOU HAD SOME DEALINGS WITH
21 THAT, DIDN'T YOU?

22 "YES.

23 "Q. WHEN ARCO ASKED FOR PERMISSION
24 TO COME ONTO THE WATSON CENTER TO INSTALL
25 THESE OFF-SITE WELLS, THEY TOLD
26 WATSON LAND COMPANY THAT THE PURPOSE OF THESE
27 WELLS WAS TO DETERMINE WHETHER THERE HAD BEEN
28 OFF-SITE MIGRATION FROM THE ARCO REFINERY?

1 "A. THAT WAS ONE OF THE COMPONENTS
2 OF THE CLEANUP AND ABATEMENT ORDER THAT HAD
3 BEEN ISSUED BY THE REGIONAL WATER QUALITY
4 CONTROL BOARD."

5 ~~THAT WAS SOMETHING THAT ARCO WAS REQUIRED TO~~
6 DO.

7 (READING:)

8
9 "Q. AND THAT WAS SOMETHING THAT
10 YOU GUYS TOLD WATSON LAND COMPANY AT THE
11 TIME, RIGHT?

12 "A. YES.

13 "Q. AND THOSE WELLS WERE INSTALLED
14 WHEN?

15 "I BELIEVE IT WAS SEPTEMBER OF
16 1990.

17 "AND BEFORE THAT, IN EARLY
18 '90, LATE '89, THERE HAD BEEN DISCUSSIONS
19 WITH WATSON LAND COMPANY TO SAY THAT ARCO
20 WANTED TO INSTALL THESE WELLS.

21 "IN OTHER WORDS, THEY DID NOT
22 JUST COME ON AND PUMP THE WELLS; THERE WERE
23 SOME ACCESS AGREEMENTS AND SOME NEGOTIATIONS
24 THAT WENT ON BEFORE THAT; ISN'T THAT TRUE?

25 "A. THAT'S CORRECT."

26
27 OKAY. SO THERE'S NO MYSTERY WHATSOEVER THAT
28 ARCO HAD A MAJOR PROBLEM.

1 AND AT ANY TIME, THE TESTIMONY WAS CONSISTENT,
2 EVEN TO THE EXTENT THAT WATSON WAS NOT BEING FORTHCOMING WITH
3 THE -- WITH THE DATA. THEY COULD HAVE GOTTEN STUFF FROM THE
4 REGIONAL BOARD.

5 AND WHAT WOULD THEY HAVE FOUND?

6 LEVINE-FRICKE'S OWN MAP FROM EXHIBIT 2443
7 SHOWED THAT FOR WELL 543, WHICH IS RIGHT IN THE HEART OF THE
8 B2 PLUME, ARCO HAD RESULTS IN 12 OF 1991 AND EVEN BEFORE
9 THAT, OF 17,000 PARTS PER BILLION BENZENE, 30,000 TOLUENE,
10 31,000 ETHYLBENZENE AND 16,000 XYLENE.

11 SO WATSON KNEW THAT THERE WAS CONTAMINATION
12 WITH HIGH BENZENE LEVELS RIGHT IN THE AREA OF THE B2 PLUME AS
13 EARLY AS 1990 AND 1991.

14 THAT'S ALSO TRUE, IF YOU LOOK AT ANOTHER
15 LEVINE-FRICKE REPORT FOR 543, THAT'S CONSISTENT WITH THE
16 RESULTS FOR DECEMBER 1990 BY ARCO. IT'S, AGAIN, 17,000
17 BENZENE, AND THEN OTHER AMOUNTS, INCLUDING 30,000 FOR
18 TOLUENE.

19 SO THE INFORMATION WAS CERTAINLY THERE FOR
20 WATSON TO KNOW. AND THEY HAVE TO BE CONSTRUED AS TO HAVE HAD
21 THAT KNOWLEDGE.

22 AND DID THEY DO ANYTHING ABOUT IT?

23 NO, THEY DIDN'T.

24 NOW, WHAT ABOUT THE ARCO PROBLEM?

25 WATSON WOULD HAVE YOU JUST IGNORE THE WHOLE
26 ARCO PROBLEM SAYING THAT IT'S NOT RELEVANT ON CAUSATIONAL
27 ISSUES.

28 AND PROBABLY ONE OF THE MOST INFORMATIVE THINGS

1 THAT YOU CAN LOOK AT IS THINK ABOUT THE ARCO TESTIMONY, THINK
2 ABOUT THE DATA THAT'S OVER AT ARCO. AND WE HAVE AN EXHIBIT
3 UP ON THE BOARD THAT YOU'VE SEEN BEFORE AND THAT WAS TAKEN
4 FROM ARCO'S OWN PLUME MAPS.

5 ~~BUT ONE THING THAT'S VERY IMPORTANT TO KEEP IN~~
6 MIND IN ASSESSING THIS ARCO TESTIMONY AND THE QUESTIONING OF
7 WATSON LAND COMPANY IS THE INSTRUCTION THAT THE JUDGE GAVE
8 YOU BOTH BEFORE MR. SIMONS AND ALSO BEFORE MS. CALLAHAN'S
9 TESTIMONY. AND THAT INSTRUCTION IS AS FOLLOWS (READING):

10
11 "IN THIS CASE, PLAINTIFF
12 WATSON HAS REACHED A SETTLEMENT WITH
13 DEFENDANT ATLANTIC RICHFIELD COMPANY, WHICH
14 INVOLVES THE PAYMENT OF MONEY AND ASSUMING
15 CERTAIN CLEANUP OBLIGATIONS.

16 "THE ESSENTIAL NATURE OF THE
17 AGREEMENT IS SUCH THAT IT WILL BE
18 ADVANTAGEOUS TO DEFENDANT
19 ATLANTIC RICHFIELD COMPANY FOR THE JURY TO
20 RETURN A VERDICT AGAINST DEFENDANT SHELL.

21 "ACCORDINGLY, THE TESTIMONY OF
22 ATLANTIC RICHFIELD COMPANY WITNESSES MAY BE
23 BIASED IN FAVOR OF WATSON AND AGAINST SHELL.
24 THE BIAS, IF ANY EXISTS, MIGHT APPEAR EITHER
25 IN WHAT THOSE WITNESSES SAID OR IN WHAT THEY
26 FAILED TO SAY."

27
28 INCLUDING WHAT THEIR DOCUMENTS FAILED TO SHOW.

1 AND THIS IS SOMETHING THAT YOU NEED TO KEEP IN
2 MIND WHEN YOU'RE ASSESSING, NOT JUST THE TESTIMONY AND THE
3 DEMEANOR OF THE ARCO WITNESSES, BUT ALSO WATSON'S CHANGE IN
4 POSITION SINCE THEY SETTLED WITH ARCO.

5 WHEREAS BEFORE, THEY WERE SAYING THE

6 CONTAMINATION WAS DUE TO ARCO; NOW, THEY'RE SAYING IT'S
7 100 PERCENT DUE TO SHELL. YOU HAVE TO KEEP THAT IN MIND.

8 NOW, WHAT HAVE WE SEEN FROM ARCO IN TERMS OF
9 THEIR INFORMATION?

10 REMEMBER EXHIBIT 3227, WHICH IS HIS NOTES ABOUT
11 HARDER AND HARDER TO MAKE THE PLUME OUTLINES ADHERE TO
12 PREVIOUS OUTLINES, "WILL TAKE TALENT OR FALSIFICATION OF
13 DATA"?

14 YOU'LL RECALL WHEN I SHOWED THESE NOTES TO
15 MS. BERESKI, AND I SAID, MA'AM, DOES THIS CAUSE YOU ANY
16 CONCERN AS A SCIENTIST?

17 DID SHE SAY, YES, OF COURSE, IT DOES; THAT'S
18 OUTRAGEOUS FOR A SCIENTIST TO TALK ABOUT THAT; THAT MAKES ME
19 SUSPECT ARCO'S DATA?

20 NO, SHE DIDN'T. SHE SAID, WELL, I HAVE TO LOOK
21 AT THE CONTEXT. I COULDN'T POSSIBLY DRAW ANY CONCLUSIONS ON
22 THAT. YOU'RE JUST SHOWING ME ONE DOCUMENT TAKEN OUT OF
23 CONTEXT.

24 YOU'VE GOT TO ASK YOURSELF. WHY WOULD SHE DO
25 THAT?

26 WHY WOULD SHE TRY TO DEFEND A NOTE OF ARCO'S
27 LEAD CONSULTANT, DAN BAKER, WHO'S STILL INVOLVED IN THE
28 PROJECT TALKING ABOUT FALSIFICATION OF DATA?

1 SOMETHING YOU CAN KEEP IN MIND.

2 THIS IS NOT THE ONLY THING WE'VE SEEN FROM ARCO
3 IN THAT RESPECT. IN EXHIBIT 388, A LETTER COPIED TO
4 MR. KIRK, THEY'RE TALKING ABOUT GROUNDWATER MONITORING.
5 ~~WE'VE SEEN THIS BEFORE.~~

6 IT SAYS (READING):

7
8 "THERE WILL BE AN OPPORTUNITY
9 TO ADJUST THE" -- COMPUTER-GENERATED CONTOUR
10 PLOTS -- "EITHER BY ADDING ADDITIONAL DATA OR
11 FORCING THE INTERPRETATIONS THAT ARE
12 DESIRED."

13
14 HE INDICATED THAT THEY WOULD BE SENSITIVE TO
15 ARCO'S CONCERNS AND WOULD BE WILLING TO MODIFY THE MODEL AS
16 NECESSARY EITHER FOR POLITICAL OR TECHNICAL CONSIDERATIONS.

17 OKAY. THEY'RE TALKING ABOUT THE ARCO'S
18 GROUNDWATER MODELS.

19 AGAIN, I SHOWED THAT TO MISS BERESKI. SHE
20 REFUSED TO ADMIT THAT DATA CAUSED HER CONCERN, CONCERN AS A
21 SCIENTIST, AS TO WHAT ARCO WAS DOING IN THIS CASE. SHE
22 DEFENDED THAT

23 AND WHAT DID MR. KIRK SAY ABOUT THAT?
24 WHAT WERE THE POLITICAL CONSIDERATIONS?
25 MR. KIRK, I ASKED HIM (READING):

26
27 "SIR, AT THE TIME THAT THIS
28 MODELING WAS DONE AND WHILE YOU WERE

1 SUPERVISING RETEC'S EFFORTS, ONE OF ARCO'S
2 BIG CONCERNS WAS THAT IT MIGHT BE SUBJECT TO
3 LIABILITY FOR ON-SITE CONTAMINATION; ISN'T
4 THAT RIGHT?

5 "A. POSSIBLY.

6 "Q. IT CERTAINLY IS SOMETHING THAT
7 YOU GUYS THOUGHT ABOUT AND HAD IN THE BACK OF
8 YOUR MIND, RIGHT?

9 "A. YES.

10 "Q. AND IN FACT, YOU LATER ON WERE
11 SUED BY WATSON LAND COMPANY, CORRECT?

12 "A. YES."

13

14 AND THAT'S PRECISELY THE TYPE OF CONSIDERATIONS
15 THAT, WHEN I WAS SHOWING HIM EXHIBIT 388, THAT HE WAS
16 CONCERNED ABOUT.

17 NOW, LET'S REMEMBER ALSO ABOUT ARCO'S ON-SITE
18 REPORT. REMEMBER THEY COLLECTED ALL SORTS OF DATA OFF-SITE,
19 AND WE FOUND THAT THAT ON-SITE REPORT WAS NEVER FINALIZED?

20 IF YOU LOOK AT EXHIBIT 460, REMEMBER, THEY WERE
21 SAYING THAT THEY GATHERED EVIDENCE AND THE GOAL WAS TO
22 PREPARE A FINAL OFF-SITE ASSESSMENT REPORT TO OFFICIALLY END
23 ARCO'S OFF-SITE INVESTIGATIONS.

24 THE REPORT WAS TO (READING):

25

26 . . . "CONTAIN CPT/ROST AND
27 FINGERPRINTING EVIDENCE THAT WOULD ALLOW ARCO
28 TO WASH THEIR HANDS OF DOWNGRADIENT

1 SOURCE REMOVAL PROGRAMS.

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OKAY. SO ARCO CONSISTENTLY, BEFORE THEY WERE
SUED, WAS DRAWING PLUMES THAT WENT OFF-SITE. AFTER THEY WERE
SUED, THEY WERE ALL OF A SUDDEN DRAWING PLUMES THAT APPEARED
RIGHT ON WILMINGTON, AND THERE IS NO GEOLOGIC REASON WHY THE
PLUME WOULD JUST STOP AT WILMINGTON, AND THERE IS NO GEOLOGIC
REASON WHY THE DISSOLVED PHASE WOULD NOT GO FARTHER THAN
THAT.

AND INTERESTINGLY, WHEN WE CALLED MR. SIMONS TO
THE STAND AS A HOSTILE WITNESS, I ASKED HIM (READING):

"BEFORE YOUR APPEARANCE HERE
TODAY, DURING THE PENDENCY OF THE TRIAL, HAVE
YOU EVER SPOKEN WITH
BRIGHT AND BROWN, WATSON'S COUNSEL?

"A. YES.

"Q. AND DID YOU DISCUSS ISSUES
THAT HAVE BEEN RAISED IN THE COURSE OF THE
LITIGATION?

"A. THEY ASKED ME SOME QUESTIONS.

"Q. OKAY. AND WHAT TYPES OF
QUESTIONS DID THEY ASK YOU?

"A. THEY ASKED ME SOME QUESTIONS
ABOUT THE REFINERY. WE TALKED ABOUT THE
BARRIER SYSTEM.

"AND THAT WAS PRECEDING YOUR
TESTIMONY HERE TODAY; IS THAT RIGHT?

1 "YES.

2 "ANYONE ELSE WHO WAS PRESENT
3 AT THAT MEETING?

4 "YES.

5 "MR. COVINGTON WAS ALSO
6 PRESENT?

7 "YES.

8 "SO THIS WAS A JOINT MEETING
9 WITH MR. COVINGTON, ND BRIGHT AND BROWN AND
10 YOURSELF TO TALK ABOUT THE TRIAL AND YOUR
11 TESTIMONY AT THE TRIAL; IS THAT RIGHT?

12 "A. WELL, THEY HAD SOME QUESTIONS
13 FOR ME."

14
15 SO WE HAD ARCO'S WITNESSES WHO WERE NEVER
16 CALLED BY WATSON LAND COMPANY -- WATSON, REMEMBER, ONLY
17 CALLED THEIR OWN EXPERTS AND THEIR GENERAL COUNSEL -- MEETING
18 WITH BRIGHT AND BROWN AT THE BEGINNING.

19 AND YOU HAVE THE JUDGE'S INSTRUCTION THAT ARCO
20 HAS REASON TO BE BIASED AGAINST SHELL BECAUSE OF THE NATURE
21 OF THE SETTLEMENT AND THE OBLIGATIONS THAT IT'S INCURRED
22 THERE.

23 NOW, WHAT ABOUT THIS WHOLE ISSUE OF THE
24 PRESENCE OF GASOLINE?

25 THERE'S BEEN A WHOLE BACK AND FORTH ON COULD
26 THERE BE A SOURCE OF OLD LEADED GASOLINE OVER ON THE
27 ARCO REFINERY.

28 WELL, DID WATSON CALL ANYBODY FROM ARCO WHO

1 KNEW ABOUT THAT?

2 NO.

3 WE HAD TO CALL AS A HOSTILE WITNESS
4 MS. CALLAHAN FROM ARCO. AND NOT ONLY WAS SHE PRODUCED AT
5 ~~THIS LITIGATION, SHE WAS ALSO PRODUCED IN DEPOSITION AS THE~~
6 PERSON THAT WAS MOST KNOWLEDGEABLE OF ANYBODY AT ARCO OF
7 WHERE THEY HELD THEIR GASOLINE STORAGE TANKS.

8 MR. BRIGHT: OBJECTION. MISSTATES THE EVIDENCE.

9 THE COURT: WELL, THE JURY HEARD THE EVIDENCE.

10 MR. LESLIE: I ASKED HER, AS A MATTER OF FACT

11 (READING):

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"AND ARCO PRODUCED YOU AS
ARCO'S MOST KNOWLEDGEABLE PERSON ON TWO
ISSUES; THE FIRST ONE IS HISTORICAL CHEMICAL
STORAGE IN TANKS ON THE REFINERY, AND THE
SECOND IS THE CURRENT CHEMICAL STORAGE IN
USE; IS THAT CORRECT?

"A. THAT'S CORRECT.

"SO OUT OF ALL THE PEOPLE AT
ARCO, THEY DESIGNATED YOU AS THE MOST
KNOWLEDGEABLE PERSON AS TO WHAT PRODUCTS WERE
STORED IN VARIOUS TANKS, BOTH HISTORICALLY
AND CURRENTLY; IS THAT RIGHT?

"A. THAT IS CORRECT."

AND WHAT ELSE DID SHE TELL US?

SHE SAID -- I ASKED HER (READING):

1 "WELL, IS IT FAIR TO SAY,
2 THEN, THAT THE GASOLINE RANGE REFINERY
3 STREAMS THAT ARE MADE IN THE CRUDE UNITS ARE
4 SHIPPED BASICALLY THROUGHOUT THE REFINERY AT
5 DIFFERENT TIMES?

6 "A. DIFFERENT TIMES, YES.

7 "WE HAVE PIPELINES ALL
8 THROUGHOUT THE REFINERY THAT WOULD TRANSPORT
9 INTERMEDIATES AND FINAL PRODUCTS BACK AND
10 FORTH.

11 "OKAY. AND YOU ALSO HAVE SOME
12 STORAGE TANKS, DON'T YOU?

13 "A. YES, WE DO.

14 "Q. AND DO YOU USE SOME OF THOSE
15 STORAGE TANKS TO STORE ON A TEMPORARY BASIS
16 SOME OF THESE GASOLINE RANGE CUTS THAT ARE
17 MADE IN THE CRUDE UNIT?

18 "YES, WE DO.

19 "AND WHERE ARE THE GASOLINE
20 RANGE CUTS FROM THE CRUDE UNITS STORED?

21 "WHICH OF THOSE TANKS, OR DOES
22 IT VARY OVER TIME?

23 "A. WELL, WE HAVE OVER 100-SOME
24 TANKS. AND TO GIVE YOU SPECIFICS ON THAT, I
25 WOULD NEED TO LOOK AT DOCUMENTS.

26 "Q. WELL, YOU WERE DESIGNATED AS
27 THE MOST KNOWLEDGEABLE PERSON AT YOUR
28 DEPOSITION IN ALL OF ARCO AND YOU DIDN'T

1 BRING ANY DOCUMENTS THAT YOU COULD REFER TO
2 IN YOUR DEPOSITION, DID YOU?

3 "A. I DID BRING SOME DOCUMENTS.

4 "Q. OH, YOU BROUGHT SOME TODAY?

5 "A. YES."

6

7 SO SHE SAID, I BROUGHT SOME DOCUMENTS THAT WE
8 CAN ALL REFER TO THAT WOULD GIVE HER SOME INDICATION.

9 AND REMEMBER, WE SHOWED HER THAT. THE
10 DOCUMENTS WERE TOTALLY REDACTED OF ANYTHING THAT REFERRED TO
11 ANY GASOLINE.

12 AND YOU HAVE TO JUDGE FOR YOURSELF; AND IT'S
13 REASONABLE FOR YOURSELVES TO ASK, NOW, WHY WOULD ARCO REDACT
14 INFORMATION OF INTEREST AS TO WHERE GASOLINE WAS STORED?

15 WHY WOULD THEY DO THAT?

16 AND SECOND OF ALL, WHY WOULD MS. CALLAHAN FIGHT
17 ME WHEN I WAS JUST ASKING -- I WAS ASKING HER QUESTIONS?

18 I SAID (READING):

19

20 "MOST OF THIS FORM HAS BEEN
21 REDACTED."

22

23 AND SHE SAID: "OH, JUST
24 INDIVIDUAL LINES, INDIVIDUAL COLUMNS, YOU
25 KNOW. I CAN'T SAY THAT WE REDACTED ANY
26 SPECIFIC CATEGORY."

26

27 SHE REFUSED TO ADMIT THAT -- EVEN THOUGH THE
28 TANKS ARE ALL CONSECUTIVELY NUMBERED, GO FROM 60 TO 70,

1 71, DOWN FROM 86, 87 DOWN TO 97, THEY'RE ALL OBVIOUSLY
2 CONSECUTIVE -- SHE REFUSED TO ACKNOWLEDGE THAT THESE HAD BEEN
3 REDACTED TO REMOVE ANYTHING BUT VERY, VERY SPECIFIC
4 REFERENCES.

5 ~~AND NOT ONLY THAT, BUT THESE DOCUMENTS ONLY~~
6 REFER TO VERY SPECIFIC DAYS -- EXCUSE ME -- SPECIFIC TIME
7 PERIODS.

8 THERE WAS ONE FROM 1989.

9 THERE WAS ONE FROM 1981. REMEMBER THIS ONE?

10 WE KNEW IT WAS REDACTED BECAUSE IT WAS QUITE
11 OBVIOUS FROM THE FACT THAT THEY HAD THESE LITTLE BRACKETS
12 HERE.

13 SHE STILL REFUSED TO ACKNOWLEDGE THAT.

14 WE HAVE A COUPLE FROM 1965. AGAIN, SIMILAR
15 KINDS OF REDACTIONS. SIMILAR KINDS OF REDACTIONS.

16 AND YET, MRS. BRIGHT ASKED MS. MAXFIELD, WHY
17 ARE YOU SAYING THAT ARCO IS NOT BEING FORTHCOMING?

18 ARE YOU SAYING ARCO IS NOT BEING FORTHCOMING?

19 ARCO IS BEING FORTHCOMING; AREN'T THEY
20 FORTHCOMING?

21 WE KNOW THAT'S NOT THE CASE. WE JUST SAW THAT.
22 WE SAW THEIR WITNESSES, AND WE SAW THE Demeanor OF THEIR
23 WITNESSES, AND THAT'S SOMETHING YOU CAN TAKE INTO ACCOUNT IN
24 TRYING TO ASSESS WHAT'S GOING ON IN THIS CASE.

25 SO THE WHOLE ISSUE THAT MRS. BRIGHT SPENT A
26 HUGE AMOUNT OF TIME WITH MS. MAXFIELD TRYING TO SHOW THAT
27 THERE'S NO GASOLINE IN TANKS 58 AND 59 WHEN MR. SIMONS AND
28 MS. CALLAHAN SAID THAT GASOLINES WERE, THEY KNEW, WERE STORED

1 IN THE 50'S UP TO THE MID 50'S AND APPROXIMATELY 10 OTHER
2 TANKS.

3 AND THE ONLY PEOPLE THAT WE WERE ABLE TO -- THE
4 PEOPLE THAT WE WERE ABLE TO ACTUALLY TRY TO FIND OUT MORE
5 INFORMATION ABOUT THAT FOR YOU AND FOR THE RECORD WERE
6 SHOWING UP WITH REDACTED DOCUMENTS AND WERE CLAIMING BAD
7 MEMORIES. OH, I COULDN'T POSSIBLY SAY WHAT'S BENEATH THAT; I
8 COULDN'T POSSIBLY KNOW WHAT OTHER TANKS IN THAT AREA HOLD
9 GASOLINE.

10 AND WHY IS THAT?

11 WHAT DO THEY HAVE TO HIDE?

12 AND YOU HAVE TO ASK YOURSELF, WHAT DO THEY HAVE
13 TO HIDE WITH RESPECT TO WHERE GASOLINE WAS STORED?

14 AND HOW FAR DOES THAT RELATE TO MIGRATION
15 PATHWAYS AND HOW DOES THAT RELATE TO WHAT WAS FOUND UNDER B2?

16 OKAY.

17 NOW, WHAT ABOUT THE -- WHAT ABOUT -- WHAT DID
18 MS. CALLAHAN SAY ABOUT THE LEAD ISSUE?

19 I ASKED HER SOMETHING ABOUT THAT. I'LL GO INTO
20 THE LEAD IN A LITTLE BIT MORE DETAIL.

21 (READING:)

22
23 "SO I GUESS WHAT WE DO KNOW IS
24 THAT ARCO -- ONE OF ARCO'S MAIN PROJECTS OR
25 PRODUCTS AT THE REFINERY IS GASOLINE.

26 "WE KNOW THAT, DON'T WE?

27 "A. YES.

28 "Q. AND THAT IN THE PAST, ARCO

1 MADE LEADED GASOLINE, CORRECT?

2 "A. YES.

3 "AND THAT ARCO HAD TANKS FULL
4 OF VARIOUS LEAD PRODUCTS TO ADD TO THE
5 GASOLINE, CORRECT?

6 "A. YES.

7 "Q. AND THAT THE VARIOUS GASOLINE
8 RANGE PRODUCT, INCLUDING THE BLENDED GASOLINE
9 WITH LEAD, WAS SHIPPED THROUGHOUT THE
10 REFINERY?

11 "A. NOT THROUGHOUT THE REFINERY.

12 "Q. TO SPECIFIC LOCATIONS IN THE
13 REFINERY IN SPECIFIC LOCATIONS WITHIN THE
14 REFINERY, INCLUDING THE STORAGE TANKS, RIGHT?

15 "A. INCLUDING STORAGE TANKS.

16 "Q. OKAY. AND WE KNOW THAT SINCE
17 YOU'VE BEEN THERE, THERE HAVE BEEN FIVE --
18 OVER FIVE TO 10 OVERFILLS" --

19
20 THAT IS WHERE A TANK OVERFILLS AND IT SPILLS ON
21 THE GROUND.

22 AND SHE SAYS: "THAT I'M AWARE OF."

23 AND YET, WE DON'T KNOW WHERE THESE THINGS
24 PRECISELY ARE OTHER THAN TO KNOW THAT THEY'RE IN THE
25 50 SERIES, AND THAT'S SOMETHING THAT YOU CAN TAKE INTO
26 ACCOUNT.

27 SO THERE CERTAINLY ARE AMPLE SOURCES OF
28 GASOLINE IN THAT AREA.

1 LET'S GO INTO WHAT THE EVIDENCE SHOWS ON THE
2 CONTAMINATION BECAUSE THAT'S SOMETHING THAT'S VERY IMPORTANT
3 IN THE CASE.

4 AND JUST TO REMEMBER BACK, THINK OF WHO YOU
5 HEARD AS WITNESSES IN THIS CASE.

6 OKAY. YOU HEARD FROM WATSON. THE ONLY TWO
7 PEOPLE FROM WATSON LAND COMPANY THEY CALLED WERE MR. WEEKS,
8 WHO ONLY WAS HERE TO AUTHENTICATE SOME INVOICES. THAT'S THE
9 ONLY OUT-OF-POCKET THEY SPENT WITH SOME INVOICES.

10 AND YOU HEARD MR. FRAZIER, THEIR GENERAL
11 COUNSEL, WHO SAID HE SUPERVISED THE LITIGATION AND HE ALSO
12 TESTIFIED THAT WATSON DIDN'T SUFFER ANY DAMAGES OTHER THAN
13 THAT.

14 ALL YOU HEARD WAS -- WAS FROM THEIR EXPERTS.
15 OKAY. AND WHEN YOU'RE ASSESSING EXPERTS -- BECAUSE EXPERTS
16 ARE VERY SOPHISTICATED -- YOU NEED TO TAKE INTO ACCOUNT NOT
17 JUST WHAT THEY SAY, WHAT THE FACTS ARE BASED ON, BUT ALSO
18 WHAT INHERENT BIASES THEY MAY HAVE.

19 FIRST OF ALL, AS TO THE BIAS -- DR. DAGDIGIAN
20 TESTIFIED WHEN I ASKED HIM, I SAID (READING):

21

22 "SO" WATSON "HIRED YOU FOR
23 YOUR LITIGATION EXPERTISE, THEN?

24 "A. PARTIALLY, SURE.

25 "AND SO ONE OF YOUR JOBS IN
26 THIS CASE, SINCE YOU ARE RETAINED TO BE THE
27 LITIGATION CONSULTANT AND TESTIFYING EXPERTS,
28 WAS TO TRY TO GO OUT AND GATHER DATA TO

1 DEMONSTRATE THAT SHELL'S PIPELINES WERE THE
2 SOURCE, CORRECT?

3 A. THAT'S TRUE."

4
5 OKAY. SO WHEN DR. DAGDIGIAN WAS -- HE

6 ACKNOWLEDGED HE WAS HIRED, AT LEAST IN PART, FOR HIS
7 LITIGATION EXPERTISE. HE WAS HIRED AT A TIME WHEN HE KNEW
8 THAT HIS JOB WOULD BE TO TESTIFY IN COURT AND TO TRY TO
9 CONVINCING YOU OF WATSON'S CASE.

10 AND HE KNEW AT THE TIME WHEN HE WAS TESTIFYING,
11 BEFORE HE GATHERED ANY DATA, THAT HIS JOB WAS TO GO OUT AND
12 TRY TO FIND AND GATHER DATA TO DEMONSTRATE THAT SHELL'S
13 PIPELINES WERE THE SOURCE.

14 THAT'S HARDLY A NEUTRAL AND INDEPENDENT
15 INVESTIGATION.

16 AND WE'LL SEE THAT DR. DAGDIGIAN AND HIS TEAM
17 MADE CERTAIN DECISIONS, INCLUDING NOT TO COLLECT ANY SOIL
18 DATA IN OR AROUND THE PIPELINES, NOT TO COLLECT ANY
19 LITHOLOGIC DATA THAT WOULD ENABLE PEOPLE TO TRACE THE
20 PERCHING ZONE, BUT JUST TO GRAB VARIOUS GROUNDWATER SAMPLES.
21 AND THAT'S SOMETHING YOU CAN KEEP IN MIND.

22 THE SECOND THING THAT'S VERY IMPORTANT ABOUT
23 DR. DAGDIGIAN IS -- YOU KNOW, HE WAS A GOOD WITNESS. HE
24 STOOD UP THERE AND HE SPOKE WITH CONFIDENCE ON VARIOUS
25 SUBJECTS.

26 BUT YOU HAVE TO TAKE INTO ACCOUNT, DOES HE JUST
27 SIMPLY TALK A GOOD GAME OR DOES HE REALLY HAVE THE BACKGROUND
28 NECESSARY IN ORDER TO TALK ABOUT MODELING, IN ORDER TO TALK

1 ABOUT GROUNDWATER FLOW, IN ORDER TO TALK ABOUT PERCHING ZONES
2 OR THE LACK OF PERCHING ZONES AND MIGRATION PATHWAYS AND ALL
3 OF THAT?

4 AND HE TESTIFIED THAT, IN FACT, HE DOESN'T HAVE
5 THAT EXPERTISE. AND THIS IS NOT JUST A TRIVIAL ISSUE,
6 BECAUSE WE DID PUT ON PEOPLE THAT WERE EXPERTS IN GROUNDWATER
7 MODELING, FATE AND TRANSPORT AND REMEDIATION THAT HAD PUT
8 LITERALLY HUNDREDS AND HUNDREDS OF REMEDIES IN THE GROUND.

9 MS. MAXFIELD TESTIFIED SHE'S DONE DOZENS AND
10 DOZENS OF GROUNDWATER MODELS. SHE'S TESTIFIED SHE'S TESTED
11 OVER 60 DIFFERENT SITES WITH PIPELINE RELEASE. AND IN EVERY
12 SINGLE CASE SHE TESTIFIED, THEY WERE ABLE TO TRACE THE LEAK
13 RIGHT INTO THE SOIL TO THE EXACT POINT OF THE RELEASE IN THE
14 PIPELINE.

15 WHAT DID DR. DAGDIGIAN SAY, THOUGH (READING):

16
17 "Q. BUT YOU ARE NOT AN EXPERT IN
18 GROUNDWATER MODELING, THAT'S SAFE SAY; YOU
19 JUST TOLD US THAT, CORRECT?

20 "A. I'M NOT.

21 "Q. OKAY. AND YOU'RE NOT AN
22 EXPERT, YOU TOLD US, ON YOUR DIRECT, ON FATE
23 AND TRANSPORT EITHER, ARE YOU, SIR?

24 "A. NO, I'M NOT.

25 "Q. YOU DON'T HAVE ANY TRAINING IN
26 GEOLOGY, DO YOU?

27 "A. NO, I DON'T.

28 "Q. YOU DON'T HAVE TRAINING IN

1 HYDROLOGY, DO YOU, SIR?

2 "A. NO.

3 "Q. YOU'RE NOT AN EXPERT IN
4 HYDROGEOLOGY, SIR, ARE YOU?

5 "A. NO.

6 "Q. YOU'RE NOT A PETROLEUM EXPERT
7 IN --

8 "A. NO.

9 "Q. -- LEAD OR ADDITIVES THAT HAVE
10 BEEN ADDED TO GASOLINE THROUGHOUT THE YEARS,
11 CORRECT?

12 "A. I AM NOT AN EXPERT FORMULATOR
13 FOR GASOLINE, NO."

14

15 ALL OF THOSE SUBJECTS, DR. DAGDIGIAN WAS UP
16 THERE OPINING ABOUT AS A PURPORTED EXPERT. HE WAS, YOU KNOW,
17 TALKING ABOUT, OH, MY GROUNDWATER REMEDIATION SYSTEM, THERE'S
18 NO CHANCE IT'S GOING TO SUCK OVER THE GATX PLUME OR ARCO
19 PLUME, AND I KNOW THAT BECAUSE I'VE LOOKED AT ARCO MODELS.

20 HE'S NOT AN EXPERT IN GROUNDWATER MODELING.

21 HE SAYS, I KNOW FROM LOOKING AT ALL THE BORING
22 DATA THAT THERE'S NO CLAY LAYER SUFFICIENT TO PROVIDE A
23 MIGRATION PATHWAY. BUT HE'S NOT AN EXPERT IN FATE AND
24 TRANSPORT. HE'S NOT AN EXPERT IN GEOLOGY.

25 OKAY. SO KEEP THAT IN MIND AND COMPARE.

26 COMPARE THE EXPERTISE AND ALSO THE FACTUAL BACKGROUND OF THE
27 DIFFERENT PEOPLE IN THE CASE.

28 THE FIRST THING THAT WATSON HAS TO PROVE IS

1 THEY HAVE TO PROVE THAT THE CONTAMINATION CAME FROM THE SHELL
2 PIPELINES.

3 WATSON DID NOT CALL ANYBODY FROM SHELL. THEY
4 DID NOT CALL ANY OTHER WITNESS THAT EVER SAID THAT THEY SAW A
5 ~~LEAK IN A PIPELINE, THAT OVER THE YEARS THERE WAS ANY KIND OF~~
6 A LEAK, THAT OVER THE YEARS, THAT ALL THE DIGGING IN AND
7 AROUND THE PIPELINES, THAT THERE WAS EVER ANY SORT OF SOIL
8 CONTAMINATION THAT WAS FOUND.

9 THEY DIDN'T CALL ANY SUCH WITNESSES, BUT WE
10 DID. WE CALLED ROGER UNDERWOOD. WE CALLED ALAN ROSENKRANTZ
11 WHOSE JOB WAS TO DRIVE UP AND DOWN THE PIPELINE.

12 AND WE ALSO SHOWED YOU VARIOUS RECORDS OF
13 DIFFERENT TESTS, DIFFERENT Y MAPS AND THINGS OF THAT NATURE,
14 AND THERE'S NOT ONE SHRED OF EVIDENCE IN THIS CASE THAT THERE
15 WAS AN ACTUAL LEAK FROM THE UTILITY WAY CORRIDOR, NOT IN THE
16 SOIL, NOT IN SHELL'S RECORDS, NOT IN TESTIMONY FROM ANY
17 WITNESS WHO KNEW ABOUT IT, NOT IN TERMS OF ANY RECORDS OF
18 DIGGING OF CONTAMINATION, NOT IN REPORTS TO ANY ENVIRONMENTAL
19 AGENCY AND NO FINDINGS BY ANY ENVIRONMENTAL AGENCIES.

20 INSTEAD, WHAT WATSON IS RELYING UPON IS WHAT
21 THEY CALL INFERENCES, BUT WHICH I THINK IS MORE FAIRLY
22 CHARACTERIZED AS JUST SHEER SPECULATION. AND THAT WAS BASED
23 UPON MR. KARLOZIAN'S TESTIMONY THAT THERE WAS NO REASON TO
24 REPLACE THE 1973 -- EXCUSE ME -- THE 1965 PIPELINES IN 1973.

25 OKAY. BUT WE'LL SEE THAT THERE WERE REASONS
26 FOR THAT. AND IN FACT, THERE IS A SUBSTANTIAL AMOUNT OF
27 EVIDENCE ON THAT.

28 AND THE THING TO KEEP IN MIND IS WHAT THE JUDGE

1 INSTRUCTED YOU ON INFERENCES. THE JUDGE INSTRUCTED YOU THAT
2 (READING) :

3
4 "AN INFERENCE MUST BE A
5 REASONABLE CONCLUSION FROM THE EVIDENCE AND
6 CANNOT BE BASED UPON SUSPICION, IMAGINATION,
7 SPECULATION, SURMISE, CONJECTURE, OR
8 GUESSWORK."

9
10 AND THAT'S ALL THAT WATSON HAS PUT FORTH IN
11 THIS CASE TO SHOW THAT THERE WAS ANY SORT OF A LEAK FROM THE
12 PIPELINES. THAT'S ALL THAT WATSON HAS PUT FORTH IN THIS CASE
13 TO SHOW THAT SHELL MUST HAVE KNOWN ABOUT SOME CONTAMINATION
14 IN THE PIPELINES.

15 THERE'S NOT A SINGLE ACTUAL WITNESS. THERE'S
16 NOT A SINGLE ACTUAL DOCUMENT TO SUPPORT THAT SHELL KNEW THERE
17 WAS ANY CONTAMINATION HERE OR THAT, IN FACT, THERE WAS ANY
18 LEAK FROM THAT PIPELINE IN EITHER THE B2 AREA, THE A PLUME OR
19 IN THE AREA OF THE B1 PLUME.

20 SO WHAT HAVE WE SEEN HERE?

21 WE HAD MR. KARLOZIAN TESTIFY, BASICALLY, ON TWO
22 THINGS.

23 NUMBER ONE, HE LOOKED THROUGH SHELL'S HYDROTEST
24 RECORDS AND DISCOVERED THAT THERE WERE CERTAIN ONES THAT HE
25 CLASSIFIED AS FAILED HYDROTESTS.

26 NOT A SINGLE ONE OF THOSE FAILED HYDROTESTS
27 THAT MR. KARLOZIAN IDENTIFIED HAD TO DO WITH THE 1965 LINES
28 THAT WATSON'S THEORIZES WERE LEAKING HERE.

1 MOREOVER, IN EACH CASE, MR. EARLE ESTABLISHED
2 THAT EACH OF THE LINES THAT HAD AN ALLEGED FAILED HYDROTEST,
3 IN FACT, HAD SUBSEQUENT PASSING HYDROTESTS, WITH THE
4 EXCEPTION OF ONE LINE WHICH WAS TAKEN OUT OF SERVICE IN 1993.
5 ~~IT HAD SUCCESSFUL HYDROTESTS THROUGH THE WHOLE PERIOD OF TIME~~
6 HERE.

7 SECOND OF ALL, DR. KARLOZIAN TESTIFIED ON
8 DIRECT FOR MR. BRIGHT THAT A (READING):

9
10 . . . "HYDROTEST HAS GOT SO
11 MANY SOURCES" -- EXCUSE ME -- "HAS SO MANY
12 SOURCES OF ERROR THAT COULD IMPACT OR AFFECT
13 THE RESULT OF THE HYDROTEST. THESE ERRORS
14 ARE BOTH HUMAN ERRORS AND EQUIPMENT AND
15 INSTRUMENT ERRORS.

16 MR. BRIGHT SAID: "SUPPOSING
17 YOU HAVE A HYDROTEST THAT RUNS ON A PETROLEUM
18 PRODUCT PIPELINE AND IT FAILS, DOES THAT
19 CONCLUSIVELY PROVE THAT THE PIPELINE IS
20 LEAKING?

21 "NOT CONCLUSIVELY. NO, IT
22 DOESN'T.

23 "Q. WHY IS THAT?

24 "A. SAME REASONS -- FOR THE SAME
25 REASONS OF THESE SOURCES OF ERROR THAT I
26 MENTIONED THAT IMPACT THE TEST.

27 WHAT ARE THESE SOURCES OF
28 ERROR, MR. BRIGHT WAS ASKING.

1 "IF YOU HAVE A HYDROTEST, IT
2 LOOKS LIKE IT IS FAILING OR IT HAS FAILED,
3 TELL ME WHAT YOU MIGHT LOOK FOR FOR
4 CORRECTIVE ACTIONS?

5 "A. OKAY. THE MOST COMMON ERROR I
6 HAVE SEEN IN HYDROTESTS HAS BEEN THE
7 PLACEMENT OF THE TEMPERATURE PROBE IN A
8 LOCATION THAT IS REPRESENTATIVE OF THE WHOLE
9 PIPELINE ITSELF.

10 "MEANING, THAT SOMEBODY PUTS
11 THE PROBE IN A PLACE, IN THE WRONG PLACE.

12 "THIS IS THE MOST COMMON
13 PROBLEM I'VE SEEN IN THE FIELD."

14
15 THESE ARE ALL THINGS THAT WERE BROUGHT OUT ON
16 DIRECT.

17 (READING:)

18
19 "A. THAT WOULD HAPPEN IF YOU HAVE
20 A SOURCE OF HEAT NEAR A PIPELINE THAT YOU
21 WERE TESTING AND THE SOURCE OF HEAT HEATS THE
22 PIPELINE THAT YOU ARE TESTING, IMPACTS IT,
23 THEN, OBVIOUSLY, IT IS A REAL RISE IN
24 TEMPERATURE IN THAT CASE.

25 OR IT CAN BE EXPOSED ON A HOT
26 DAY, HE SAID.

27 "FOR THE PROPORTION OF THE
28 LENGTH OF THE PIPE THAT'S EXPOSED, IT WOULD

1 HAVE AN IMPACT ON THE TEMPERATURE OF THE
2 FLUID INSIDE THE PIPE, YES, SIR.

3 "I'VE SEEN SOME OTHER
4 PROBLEMS," HE SAYS, "WHICH CORRECTIVE ACTION
5 WAS TAKEN, AND BETTER RESULTS WERE OBTAINED.

6 "ANOTHER COMMON PROBLEM IS THE
7 EXISTENCE OF AIR POCKETS IN THE WATER, IN THE
8 SECTION THAT YOU ARE TESTING.

9 "SO SOME HYDROTESTS HAVE AIR
10 POCKETS IN THEM, AND THE EXISTENCE OF THIS
11 AIR POCKET, UNFORTUNATELY, AFFECTS THE
12 PRESSURE READING AND IT JUST BASICALLY GIVES
13 YOU THE WRONG READINGS."

14
15 SO WHAT DOES THAT MEAN?

16 THAT MEANS THAT MOST OF MR. KARLOZIAN'S
17 TESTIMONY ON HYDROTESTS WAS ESSENTIALLY IRRELEVANT. IT WAS
18 NOT HELPFUL IN TRYING TO FIND OUT OR PROPER PROOF, AS WATSON
19 WOULD HAVE YOU BELIEVE, THAT THERE WERE ANY LEAKS IN THE
20 PIPELINES OR THAT SHELL'S HYDROTESTS GAVE IT REASON TO KNOW
21 THAT THERE WAS SOME SORT OF A LEAK.

22 OKAY. THERE'S NUMEROUS OTHER REASONS WHY
23 HYDROTESTS FAIL. IT'S JUST A CALCULATION. YOU REMEMBER WE
24 WENT THROUGH ONE OF THE HYDROTESTS WITH MR. UNDERWOOD THAT
25 SHOWED THAT IN ONE HOUR, THERE WAS A NEGATIVE GALLON OF TWO,
26 ANOTHER HOUR THERE WAS A POSITIVE.

27 THAT DOESN'T MEAN THE PIPE IS GAINING GALLONS.
28 IT DOES NOT MEAN IT'S LEAKING GALLONS. IT'S JUST THE MARGIN

1 OF ERROR OF THOSE HYDROTESTS.

2 OKAY. SO WATSON HAS FAILED TO PROVE THROUGH
3 USE OF HYDROTESTS THAT THERE WERE ANY LEAKS IN THE PIPELINES.

4 WHAT ABOUT THE TESTIMONY AS TO THE PIPELINES
5 THEMSELVES?

6 WE HAVE SOME TESTIMONY ON THAT. WHAT DID
7 MR. UNDERWOOD SAY ABOUT THAT?

8 (READING:)

9
10 "Q. NOW, IN ALL OF YOUR DIFFERENT
11 JOBS WITH SHELL THAT HAD TO DO WITH
12 PIPELINES, IF THERE WERE LEAKS ON THOSE
13 PIPELINES, WOULD YOU HAVE GENERALLY KNOWN
14 ABOUT THEM?

15 "A. OH, YES.

16 "Q. AND WAS THAT SOMETHING THAT
17 YOU REQUIRED OF THE PEOPLE THAT YOU
18 SUPERVISED TO REPORT THINGS LIKE THAT TO YOU?

19 "A. ABSOLUTELY.

20 "IT WASN'T JUST MY
21 REQUIREMENT. IT'S THE LAW. AND IT WAS
22 CORPORATE POLICY.

23 "WE DUG AROUND THE PIPELINES
24 MANY TIMES OVER THE YEARS BETWEEN '73 AND
25 WHEN I RETIRED. THIS WAS JUST ONE TIME.

26 "Q. AND IF ANYBODY HAD SEEN ANY
27 EVIDENCE OF HYDROCARBON CONTAMINATION OR
28 ANYTHING IN THAT AREA, WOULD THEY HAVE BEEN

1 REQUIRED TO REPORT IT TO YOU?

2 "A. YES.

3 "AND DID YOU EVER RECEIVE ANY
4 SUCH REPORTS?

5 "A. NO, SIR.

6 "WHAT WOULD YOU HAVE DONE TO
7 SOMEBODY IF THEY SAW SOME EVIDENCE OF
8 HYDROCARBON CONTAMINATION AND DIDN'T REPORT
9 IT TO YOU?

10 "A. WELL, IT REALLY WOULD HAVE
11 NEVER HAPPENED. BUT IF SOMETHING LIKE THAT
12 HAPPENED, THE PERSON PROBABLY WOULD BE
13 TERMINATED.

14 "OKAY. NOW, WERE THERE ANY
15 OTHER PIPELINES IN THE DWP CORRIDOR THAT EVER
16 HAD ANY PRODUCT LEAKS THAT YOU'RE AWARE OF?

17 "IN THE DWP CORRIDOR, NO.

18 "AND OTHER THAN THE LINE THAT
19 I THINK YOU MENTIONED BEFORE THAT YOU POPPED
20 OUT A WEAK SPOT DURING A HYDROTEST?

21 "YES. BUT THAT WAS NOT A
22 PRODUCT RELEASE. THAT WAS A WATER RELEASE
23 AND THAT'S WHY YOU DO HYDROTESTS."

24
25 THE ONLY RELEASE IN THE DWP CORRIDOR.

26 NOW, WHAT ABOUT -- THERE WAS A BIG DEAL MADE IN
27 THE CASE ABOUT A Y MAP THAT TALKED ABOUT LINES IN POOR
28 CONDITION. AND WE HEARD A LOT OF TESTIMONY ON THAT. AND

1 MS. BRIGHT KEPT IT UP ON THE SCREEN FOR QUITE A LENGTH OF
2 TIME.

3 AND THIS IS THE ONE RIGHT HERE. IT'S
4 EXHIBIT 12, IF YOU WANT TO LOOK AT IT.

5 ~~AND THIS WAS THE ONLY EVIDENCE THAT THEY COULD~~
6 REALLY POINT TO THAT HAD IMPLIED THAT THERE HAD BEEN SOME
7 SORT OF A PROBLEM.

8 REMEMBER THIS?

9 THERE'S A LINE, A LITTLE ASTERISK BY THIS NO. 6
10 LINE. IT SAYS, "LINE IS IDLE, BUT IN POOR CONDITION, NOT TO
11 BE USED FOR PRODUCT SERVICES," FEBRUARY OF 1983."

12 AND WATSON WANTS YOU TO BELIEVE THAT THAT
13 REFERRED TO SOMEHOW ALL OF THESE 1965 LINES. BUT THINK BACK
14 TO WHAT THE EVIDENCE WAS ON THAT.

15 IN FACT, THAT WAS THAT ISOBUTANE LEAK.
16 REMEMBER THE ICE BLOCK THAT CAME OUT OF THE GROUND?

17 THAT WAS THE ONLY LEAK THAT MR. UNDERWOOD SAID
18 HE WAS EVER AWARE OF IN ALL OF HIS WORK AT SHELL IN THE
19 UTILITY WAY CORRIDOR.

20 IT WAS NOT GASOLINE, IT WAS ISOBUTANE.

21 AND WHAT DID THEY DO?

22 DOES THAT MEAN THAT ALL THESE OTHER LINES WERE
23 NOT GOOD LINES, THAT THERE WAS A PROBLEM WITH THEM?

24 NO.

25 WHAT THEY DID, IF YOU LOOK AT EXHIBIT
26 1091 -- THIS IS Y MAP 5156-A. WHAT DID MR. UNDERWOOD TELL
27 YOU THEY DID TO FIX IT?

28 THIS IS THE LINE RIGHT HERE THAT WAS CAPPED

1 THAT THEY SAID WAS IN POOR CONDITION. DON'T USE AS A SAFETY
2 MEASURE.

3 SO WHAT DID THEY DO?

4 THEY TOOK THE LINE AND THEY TAPPED IT,

5 ACCORDING TO MR. UNDERWOOD, TO ANOTHER ONE OF THE 1965 LINES
6 THAT HAD BEEN IDLED.

7 THIS WAS IN FEBRUARY OF 1983. THEY HAD IDLED
8 THIS 1965 LINE IN 1973 JUST WITH ALL THE OTHER ONES.

9 AND WHAT DID THEY DO?

10 THEY HYDROTESTED IT. IT WAS FINE. THEY TAPPED
11 INTO IT, AND IT WORKED PERFECTLY WELL.

12 SO THAT HARDLY SHOWS THAT THERE WERE SEVERE
13 PROBLEMS WITH ALL OF THE 1965 LINES. IN FACT, IT SHOWS THAT
14 THE OTHER 1965 LINES WERE FINE. AND THAT THE ONLY ONE THAT
15 HAD A PROBLEM WAS THIS ONE THAT WAS CAPPED OFF THAT WAS THE
16 SOURCE OF THE ISOBUTANE LEAK.

17 AND MR. UNDERWOOD TALKED ABOUT THAT. HE
18 SPECIFICALLY SAID (READING):

19
20 "SO WE TIED INTO ANOTHER IDLE
21 PIECE OF PIPE FROM THE 1965 PIPE AND
22 ACTIVATED THAT AS THE NO. 9 LINE AND THEN
23 IDLED THAT PIECE THAT HAD THE INTERNAL
24 CORROSION PROBLEMS."

25 "AND WHAT WAS IN THE PRODUCT
26 WHEN THAT LINE, THAT NO. 9 LINE LEAKED?

27 "WHAT WAS IN THE PRODUCT -- OR
28 WHAT PRODUCT WAS IN THE LINE?

1 "IT WAS BUTANE.

2 "AND THAT'S WHY IT FORMED AN
3 ICE BLOCK RATHER THAN POOL OR SOMETHING LIKE
4 THAT?

5 "A. YES.

6 "Q. AND IS THAT THE ONLY LEAK THAT
7 YOU'RE AWARE OF EVER BEING REPORTED TO YOU OR
8 SEEING ANY DOCUMENTS REGARDING IN THE UTILITY
9 WAY CORRIDOR ON THE WATSON PROPERTY?

10 "YES."

11
12 THAT WAS THE ONLY ONE AND THAT WAS -- HE WAS
13 THERE LONGER THAN ANYONE ELSE AT SHELL. THE OTHER PERSON
14 THAT WAS THERE LONGER THAN HIM WAS MR. SIRICH, AND
15 UNFORTUNATELY, HE PASSED AWAY.

16 (READING:)

17
18 "DID YOU HAVE ANY PERSONAL
19 INVOLVEMENT IN THE REPAIR OF THAT NO. 9
20 LINE?"

21 MR. UNDERWOOD SAID: "YES," HE
22 DID, SO HE KNOWS.

23 WHAT DOES THIS LINE, "THE
24 ASTERISK, 'LINE IS IDLE, BUT IN POOR
25 CONDITION, NOT TO BE USED FOR PRODUCT
26 SERVICES.' IT'S DATED FEBRUARY OF '83."

27
28 THAT'S THE ONE THAT THEY JUST SAW. THAT'S THE

1 ONLY THING THAT WATSON HAS EVER BEEN -- EVER POINTED TO YOU
2 IN THIS ENTIRE CASE ON A SINGLE DOCUMENT THAT IMPLIES THERE
3 IS ANY PROBLEM WITH ANY OF THE 1965 LINES.

4 SO I ASKED HIM (READING):

5
6 "DOES THAT MEAN THAT -- THAT
7 THIS STATEMENT RIGHT HERE REFERS TO THE NO. 9
8 LINE?

9 "IT REFERS TO THAT SECTION
10 THAT WE IDLED, YES.

11 "NOW, DOES THIS STATEMENT
12 HERE, 'LINE IDLE BUT IN POOR CONDITION,' DOES
13 THAT REFER TO ANYTHING ELSE OTHER THAN THAT
14 NO. 9 LINE THAT HAD THE ISOBUTANE LEAK?

15 "A. NO. NO.

16 "THAT DOES NOT REFER,
17 GENERALLY, TO THE 1965 LINES?

18 "NO, IT DOESN'T," HE SAID.

19
20 WHAT DID IT MEAN?

21 IT WAS A SAFETY NOTE. IT WAS A SAFETY NOTE.

22 OF COURSE, YOU WOULD WANT SOMEBODY, IF THEY HAD
23 IDENTIFIED A PROBLEM WITH THE LINE, IF THEY HAD CAPPED IT
24 OFF, AND THEY KNEW THAT THE LINE POSED A PROBLEM, YOU'D WANT
25 THEM TO MAKE NOTATIONS ON THE Y MAPS SO THAT OTHER PEOPLE
26 WOULDN'T LATER, WITHOUT KNOWING, TIE INTO THAT LINE AND CAUSE
27 A LEAK.

28 AND THAT'S EXACTLY WHAT WAS DONE HERE. BUT

1 THAT'S ALL THAT WAS DONE HERE.

2 SO NONE OF THE Y MAPS THAT THEY WERE ABLE TO
3 SHOW YOU, AND THERE ARE NO OTHER SHELL DOCUMENTS, THAT SHOW
4 THERE WERE ANY PROBLEMS WITH THOSE 1965 LINES, THAT THERE
5 WERE ANY LEAKS IN THOSE 1965 LINES, OR IMPORTANTLY, THAT
6 SHELL HAD ANY REASON TO KNOW THAT ANY OF THOSE LINES HAD ANY
7 SORT OF A LEAK IN THEM IN THE UTILITY WAY CORRIDOR.

8 I ASKED HIM AGAIN (READING):

9
10 "DURING YOUR OVER 30 YEARS
11 THAT YOU WORKED AT SHELL, OTHER THAN THIS
12 ISOBUTANE LEAK IN 1983, ARE YOU AWARE OF ANY
13 OTHER LEAKS THAT ANYBODY EVER SAW DURING
14 POTHOLING OR EXCAVATION OR PIPELINE REPAIRS
15 OR MODIFICATIONS OR ANYTHING OF THAT NATURE?

16 "NO, SIR. NOT IN THE UTILITY
17 WAY CORRIDOR."

18
19 NOW, WHAT DOES THAT REFER TO?

20 REMEMBER, MR. UNDERWOOD TESTIFIED THAT ANY TIME
21 THAT SOMEBODY'S PUTTING IN A LINE THAT CROSSES ONE OF THE
22 PIPELINES, ANY TIME SOMEBODY NEEDS TO GET ACCESS TO ANY OF
23 THOSE LINES TO KNOW EXACTLY WHERE THEY ARE, THEY DIG THEM UP,
24 THEY POTHOLE THEM, AND EVERY SINGLE TIME THEY DIG AROUND ANY
25 ONE OF THOSE LINES, INCLUDING IN UTILITY WAY CORRIDOR,
26 THEY'RE REQUIRED TO TAKE NOTE AND REPORT OF ANY LEAKS.

27 AND THERE'S NOT A SINGLE DOCUMENT, THERE'S NO
28 HISTORICAL RECORDS THAT SHOW ANY SUCH LEAKS.

1 AND MR. UNDERWOOD TESTIFIED THAT IN HIS
2 30 YEARS THERE, HE WOULD HAVE KNOWN IF THERE WERE ANY LEAKS
3 REPORTED IN UTILITY WAY, AND THERE WEREN'T, OTHER THAN THAT
4 ONE ISOBUTANE LEAK.

5 SO WHAT IS WATSON LEFT WITH, THEN, IN LIGHT OF
6 THE LACK OF ANY ACTUAL EVIDENCE OF PROBLEMS WITH THOSE LINES?

7 THEY'RE LEFT WITH MR. KARLOZIAN'S CHART.

8 AND YOU REMEMBER THAT WAS ONE OF THE FEATURES
9 OF MR. KARLOZIAN'S TESTIMONY. HE SAID (READING):

10
11 "I WENT THROUGH AND I
12 TESTED -- OR I CALCULATED ALL THE FLOW RATES
13 OF ALL OF THE DIFFERENT LINES, BOTH BEFORE
14 THE '73 REPLACEMENT AND AFTER, AND I
15 DETERMINED" --

16
17 AND HERE'S HIS CHART. THIS IS AN EXHIBIT IN
18 THIS CASE. AND HE DETERMINED THAT THERE'S ONLY A 20 PERCENT
19 FLOW INCREASE.

20 AND HE SAID WITH GREAT FANFARE, THERE'S
21 NO ECONOMIC REASON WHY SOMEBODY WOULD TAKE LINES OUT OF
22 SERVICE THAT WERE BUILT IN 1965 ONLY A FEW YEARS LATER IN
23 1973 JUST TO GET A 20 PERCENT FLOW INCREASE.

24 BUT YOU'LL REMEMBER THAT MR. EARLE ESTABLISHED
25 ON CROSS-EXAMINATION THAT HE DIDN'T ACTUALLY KNOW WHAT WAS
26 GOING THROUGH ANY OF THOSE LINES. HE HAD NO KNOWLEDGE
27 WHATSOEVER AS TO THE REASONS THOSE LINES WERE REPLACED IN
28 1973 AND WERE IDLED IN UTILITY WAY CORRIDOR, WHY SHELL MOVED

1 ITS LINES OVER INTO THE DEPARTMENT OF WATER AND POWER
2 CORRIDOR.

3 BUT MR. UNDERWOOD DID.

4 AND YOU'LL RECALL THAT MR. UNDERWOOD TESTIFIED
5 THAT (READING):

6
7 "IN THE EARLY 1970'S, SHELL
8 WAS SPENDING A LOT OF MONEY REPLACING MANY OF
9 THE SYSTEMS AROUND THE SOUTHERN CALIFORNIA
10 AREA."

11 HIS "PROJECT," HE SAYS, "WAS
12 ON THE VENTURA PRODUCT LINE, AND WE REPLACED,
13 OH, SEVERAL MILES OF PIPE ON THAT PARTICULAR
14 LINE, AND THAT WAS MY PROJECT."

15 AND I ASKED HIM: "AND YOU
16 SAID THAT SHELL WAS GENERALLY REPLACING A LOT
17 OF PIPELINES.

18 "HOW DO YOU KNOW THAT?

19 "A. WELL, OUR ENGINEERING GROUP
20 WAS A SMALL GROUP AND WE DIDN'T HAVE OFFICES.
21 WE CALLED IT THE BULL PEN, SO WE ALL PRETTY
22 MUCH KNEW WHAT EACH OTHER WAS DOING.

23 "WE'D FREQUENTLY CONSULT WITH
24 EACH OTHER ON THE WORK AS OUR PROJECTS WENT
25 FORWARD.

26 "Q. AND WHAT PERIOD WAS THAT THAT
27 SHELL WAS REPLACING A LOT OF THE PIPELINES IN
28 SOUTHERN CALIFORNIA?

1 "A. THIS WOULD BE IN THE EARLY
2 '70'S, SAY '71, EVEN UP INTO THE MID 1970'S."

3
4 RIGHT DURING THIS 1973 REPLACEMENT.

5 ~~NOW, ONCE SHELL HAD DECIDED TO LAY SOME~~
6 PIPELINES UP IN UTILITY WAY, YOU'LL REMEMBER WHAT
7 MR. UNDERWOOD TOLD YOU ABOUT THE RELATIVE COSTS. ONCE YOU
8 HAVE THE TRENCH IN THE GROUND, YOU MIGHT AS WELL LAY SOME
9 MORE PIPE IN THERE. IT'S RELATIVELY CHEAP.

10 I ASKED HIM (READING):

11
12 "IN TERMS OF THE COSTS OF
13 LAYING PIPE IN THE GROUND, IS THE COSTS OF
14 THE PARTICULAR PIPE ONE OF THE BIG FACTORS OR
15 IS THE COST OF THE TRENCHING AND LABOR AND
16 PERMITTING ALL THAT ONE OF THE BIG FACTORS?

17 "A. GENERALLY, AND PARTICULARLY
18 THIS KIND OF CONSTRUCTION IN THE CITY WHERE
19 YOU'VE GOT NUMEROUS ROAD CROSSINGS, YOU'RE
20 WORKING IN VERY CONFINED AREAS. YOU'RE
21 DEALING WITH A LOT OF OTHER CROSSLINES. THE
22 ACTUAL EXCAVATION IS GENERALLY THE MOST
23 DIFFICULT PART OF THE WHOLE PROJECT.

24 "ONCE YOU'VE GOT THE DITCH
25 DUG, GETTING THE PIPE IN THERE IS EASY.

26 "Q. NOW, DOES THAT AFFECT, IN YOUR
27 OPINION, THE DECISION WHETHER TO DIG A TRENCH
28 JUST FOR A COUPLE OF LINES OR FOR A BUNCH OF

1 LINES?

2 "A. WELL, TYPICALLY, YOU WOULD.
3 IF YOU'RE GOING TO HAVE TO DIG A TRENCH
4 ANYWAY, AND IF THERE IS ANY POTENTIAL PRESENT
5 NEED OR FUTURE NEED, YOU WOULD PUT AS MANY
6 PIPES IN THE GROUND AS YOU COULD."

7
8 OKAY. SO WHAT DOES THAT MEAN IN TERMS OF THIS
9 1973 ANALYSIS THAT WATSON RELIES SO HEAVILY ON TO TRY TO SHOW
10 THAT THERE WAS SOME PROBLEM -- TO TRY TO SHOW THAT SHELL WAS
11 AWARE THAT THERE WAS SOME PROBLEM?

12 IT MEANS THAT THERE WERE OTHER REASONS SHELL
13 WAS REPLACING PIPELINES ALL UP AND DOWN ITS WHOLE SYSTEM IN
14 SOUTHERN CALIFORNIA AT THE TIME. AND MR. UNDERWOOD KNEW
15 THAT, AND HE TOLD YOU THAT BECAUSE HE WAS THERE, AND HE WAS
16 IN A POSITION TO KNOW.

17 WE KNOW, ALSO -- WE SHOWED YOU SOME Y MAPS THAT
18 SHOWED THAT THERE WERE DIFFERENT COATINGS ON THE NEW PIPES,
19 THAT THE NEW PIPES WERE OF A DIFFERENT GRADE, AND THAT IT WAS
20 JUST AS CHEAP TO LAY A BUNCH OF NEW PIPES IN THE GROUND AS
21 JUST ONE OR TWO.

22 SO WHAT ARE WE LEFT, THEN, WITH?

23 WE'RE LEFT WITH MR. KARLOZIAN'S ASSUMPTIONS,
24 BASED UPON HIS CALCULATIONS.

25 YOU REMEMBER THIS CHART. THIS CALCULATION IS
26 SOMEWHAT MISLEADING, AS EVEN HE RECOGNIZED, BECAUSE HE USED
27 THE ASSUMPTION THAT EACH AND EVERY ONE OF THESE WAS CARRYING
28 GASOLINE FOR CALCULATING THE FLOW RATE.

1 WE KNOW THAT WASN'T THE CASE. THERE WERE ONLY
2 A COUPLE OF THEM THAT WERE.

3 BUT LOOK AT THESE LINES RIGHT HERE. NO. 1 LINE
4 IS AN 8-INCH LINE. THERE'S A 10-INCH LINE. THERE'S A
5 12-INCH LINE AND THEN THERE'S THE VENTURA PRODUCTS LINE.

6 AND IF YOU LOOK AT THE NUMBERS HERE, THESE
7 NUMBERS FOR THESE LINES ARE OVER HALF THE FLOW RATE OF THE
8 PRE-1973 LINES.

9 AND HE TESTIFIED THAT HE DIDN'T KNOW WHETHER
10 ANY OF THOSE LINES WERE ACTUALLY IN SERVICE IN 1973 OR NOT,
11 OF HIS OWN PERSONAL KNOWLEDGE.

12 BUT HE DIDN'T SEE ANY REFERENCE ON THE Y MAPS
13 THAT WOULD SHOW THAT THOSE LINES WERE TAKEN OUT OF SERVICE,
14 SO, THEREFORE, EVEN THOUGH HE DIDN'T HAVE ANY KNOWLEDGE THAT
15 THEY WERE IN SERVICE, HE JUST ASSUMED THEY WERE FOR PURPOSES
16 OF HIS CALCULATIONS.

17 BUT WE HAVE A Y MAP. THAT'S EXHIBIT 1034,
18 Y MAP 4575-A, THAT IN -- IN FACT, THOSE -- THIS -- THOSE
19 LINES WERE OUT OF SERVICE PRIOR TO THE 1973 REPLACEMENT.

20 HERE'S THE EXHIBIT. IT'S A FEBRUARY 24TH, 1966
21 Y MAP. AND THE LATEST REVISION ON IT WAS APRIL 6TH, 1971.
22 AND IT'S NOT CLEAR WHAT EXACTLY WAS REVISED ON THE Y MAP, BUT
23 WE KNOW IT WAS WELL BEFORE THE 19 -- EXCUSE ME -- 1973 LINES
24 WERE PUT IN.

25 AND WHAT DOES IT SHOW?

26 ABANDONED.

27 IT SHOWS THE 8-INCH SHELL NO. 1 LINE WAS
28 ABANDONED PRIOR TO 1973.

1 IT SHOWS THE 10-INCH SHELL NO. 2 LINE WAS
2 ABANDONED.

3 IT SHOWS THE 4-INCH NO. 1813 LINE WAS
4 ABANDONED.

5 IT SHOWS THE 12-INCH NO. 15 LINE WAS ABANDONED.
6 AND IT SHOWS THE 4-INCH NO. 16 LINE ABANDONED.
7 NOW, WHEN YOU RECALCULATE THESE, AND YOU LOOK
8 AT IT, YOU, IN FACT, FIND THAT THAT'S NOT JUST AN
9 INSIGNIFICANT CHANGE. WHAT THAT LEADS TO IS, IT LEADS TO
10 CALCULATE THESE UP -- AND I ADDED THIS UP AND YOU'RE WELCOME
11 TO DO THIS IF YOU HAVE NOTHING BETTER TO DO -- BUT IT SHOWS
12 THAT THE PRE-1973 TOTAL GALLONS PER MINUTE WAS 17,560.

13 IF YOU TAKE OUT THE LINES THAT WE KNOW WERE
14 ABANDONED FROM THE Y MAP, THE AFTER-1973 FLOW RATE IS 34,980
15 GALLONS PER MINUTE. THAT'S AN INCREASE OF 100 PERCENT.
16 100 PERCENT.

17 SO WE SEE THAT YET ANOTHER PILLAR OF WATSON'S
18 CASE TO TRY TO SHOW LEAKING PIPELINES COLLAPSES WHEN YOU LOOK
19 AT THE EVIDENCE IN THE CASE.

20 SO WHAT HAVE WE SEEN ON THE PIPELINES?

21 WE'VE SEEN THAT THERE'S NOT A SINGLE DOCUMENT
22 IN THE CASE THAT SHOWS THAT ANY GASOLINE LINES, 1965 OR ANY
23 OTHER LINES, FOR THAT MATTER, FROM THE 1965 LINES, EVER
24 LEAKED. THERE'S NOT A SINGLE BIT OF TESTIMONY FROM ANYBODY
25 THAT SHOWS THAT WITH ALL THE DIGGING AROUND THE PIPELINES
26 THAT WAS DONE, ALL OF THE TESTING AND EVERYTHING ELSE, THAT
27 THE 1965 LINES LEAKED.

28 YOU HAVE MR. UNDERWOOD WHO WAS THERE LONGER

1 THAN ANYBODY ELSE THAT SAID THAT NOBODY EVER REPORTED TO HIM
2 ANY LEAKS IN THE 1965 LINES. HE WAS NOT AWARE OF ANY SUCH
3 LEAKS IN THE 1965 LINES, AND THAT HE WAS ONLY AWARE OF ONE
4 LEAK IN UTILITY WAY CORRIDOR AT ALL, AND THAT WAS THAT
5 ISOBUTANE LEAK IN 1983.

6 AND WHAT DID THEY DO?

7 THEY TIED INTO ANOTHER 1965 LINE, WHICH WAS
8 FINE.

9 OKAY. SO, SO MUCH FOR THE THEORY THAT THE
10 REPLACEMENT OF THE 1965 LINES IN 1973 SHOWS THAT SHELL KNEW
11 ANYTHING OR EVEN SHOWS THAT THERE WAS ANY SORT OF A LEAK.

12 SO MR. KARLOZIAN'S CHART JUST COLLAPSED.

13 SO WE KNOW THAT, IN FACT, THEY GOT 100 PERCENT
14 INCREASE IN FLOW RATE WHEN THEY PUT IN THE 1973 LINES.

15 WHAT ELSE DO WE KNOW ABOUT THE UTILITY WAY
16 CORRIDOR?

17 WELL, WE KNOW THAT THEY WERE TRENCHING UP AND
18 DOWN THE UTILITY WAY CORRIDOR IN 1993 WHEN THEY PUT IN SOME
19 EXTRA LINES. AND WE KNOW THAT PEOPLE THAT WERE THERE DID NOT
20 SEE ANY EVIDENCE OF CONTAMINATION WHATSOEVER.

21 NOW, WE KNOW THAT FROM THE TESTIMONY OF
22 RUSSELL GUIDRY, WHICH CAME IN BY DEPOSITION.

23 WE KNOW THAT FROM THE TESTIMONY FROM
24 MR. BALDWIN, WATSON'S -- ONE OF WATSON'S OFFICERS, WHO'S
25 STILL THERE, BY THE WAY -- THAT HE WAS THERE EVERYDAY FOR A
26 COUPLE OF MONTHS AND DIDN'T SEE ANY EVIDENCE OF
27 CONTAMINATION, DIDN'T SMELL ANY EVIDENCE OF CONTAMINATION.

28 NOW, WATSON MADE A POINT OF, WELL, IT WAS ON

1 THE OTHER SIDE OF THE UTILITY WAY CORRIDOR, WHICH IS TRUE,
2 WHICH IS TRUE.

3 BUT IF THERE WAS A MAJOR LEAK, IF THERE WAS A
4 MAJOR LEAK OF WHAT WOULD CAUSE SOMETHING THAT WATSON TRIES TO
5 REFER TO AS A MASSIVE PLUME, THERE'S A BIT OF EVIDENCE THAT
6 MIGHT HAVE SHOWN UP THEN.

7 WE'RE NOT SAYING THAT THAT'S CONCLUSIVE. BUT
8 IT'S ANOTHER PIECE OF EVIDENCE.

9 SO WHEN THEY DUG AROUND THE LINES FOR
10 MAINTENANCE, AND THEY DUG AROUND THE LINES IN 1993 TO REPLACE
11 THEM, THEY ACTUALLY EXPOSED SOME OLD LINES, ALTHOUGH THEY
12 WERE ON THE OTHER SIDE. AND WHEN WE HEARD FROM THE ACTUAL
13 PEOPLE WHO KNEW, NOBODY CAME UP WITH A SHRED OF EVIDENCE THAT
14 ANY OF THESE LINES WERE LEAKING.

15 SO THE CONCLUSIONS THAT YOU NEED TO DRAW FROM
16 THE EVIDENCE IN THE CASE IS THAT OTHER THAN WATSON'S
17 SPECULATION, OTHER THAN THEIR GUESS OR CONJECTURE THAT THEY
18 WOULD HAVE YOU DRAW, THERE'S NO EVIDENCE OF ANY PIPELINE
19 LEAKS.

20 LAST POINT ON THE EVIDENCE OF PIPELINE LEAKS.

21 YOU'LL REMEMBER WHEN I SAID IN OPENING
22 STATEMENT THAT NOBODY EVER SAW ANY SURFACE EVIDENCE -- AND
23 THAT MOST PEOPLE HAVE TESTIFIED HERE THAT WHEN THERE'S A
24 SERIOUS PIPELINE LEAK, IT TENDS TO WORK ITS WAY UP TO THE
25 SURFACE JUST LIKE WHEN THE GATX LEAKED -- ONE OF THE THINGS
26 THAT MR. BRIGHT ASKED SOME OF THE WITNESSES WAS, HEY, UTILITY
27 WAY IS ALL PAVED, IT WOULD NEVER SHOW UP ANYWAY, YOU COULDN'T
28 POSSIBLY SEE A LEAK AT THE SURFACE.

1 BUT WE SAW THAT THAT WASN'T TRUE EITHER. AND
2 WE KNOW THAT FROM EXHIBIT 3237, WHICH IS ONE OF THE BROCHURES
3 THAT WATSON LAND COMPANY HAD THAT MR. MEXIA BROUGHT IN.

4 AND WHAT DO WE KNOW FROM THAT?

5 HERE'S BUILDING 165 RIGHT HERE. RIGHT IN THE
6 AREA WHERE THEY SAY THE PIPELINES LEAKED. RIGHT IN THIS
7 AREA.

8 WHAT'S THAT?

9 THAT'S A BIG EMPTY LOT.

10 WHAT'S OVER HERE?

11 THAT'S ALL DIRT FROM WHERE THEY TOOK OUT A
12 RAILWAY SPUR. WHAT'S RIGHT OVER ON THE OTHER SIDE HERE OF
13 UTILITY WAY?

14 THAT'S ALL DIRT.

15 WHAT DO WE HAVE WHEN WE GET UP UTILITY WAY UP
16 IN THIS AREA?

17 WE HAVE THOSE NICE PLANTING.

18 OKAY. AND WE KNOW FROM MR. ROSENKRANTZ'
19 TESTIMONY, THE PIPELINER, WE KNOW FROM MR. UNDERWOOD'S
20 TESTIMONY THAT THEY WALKED THESE LINES AND DROVE THESE LINES
21 ON A FREQUENT BASIS, PRECISELY TO TRY TO FIND OUT IF THERE'S
22 ANY EVIDENCE OF A LEAK.

23 AND THROUGH ALL THE YEARS AND YEARS AND YEARS
24 THAT THEY'VE BEEN DOING THAT, THERE'S NOT A SINGLE BIT OF
25 EVIDENCE OF ANY SURFACE LEAK.

26 AND WATSON DID NOT BRING ANYBODY HERE TO SAY
27 THAT THERE WAS. AND, IN FACT, YOU HAVE THE DEPOSITION
28 TESTIMONY OF MR. BALDWIN AND MR. GENEWICK, TWO WATSON

1 WITNESSES, WHOM THEY DIDN'T CALL, THAT SAID THAT THEY DIDN'T
2 SEE ANY EVIDENCE OF ANY SORT OF LEAK AT THE SURFACE IN THE
3 UTILITY WAY CORRIDOR.

4 SO WHAT ARE WE LEFT WITH?

5 WE'RE LEFT WITH NO EVIDENCE WHATSOEVER OF ANY
6 LEAKS FROM THESE PIPELINES. NO EVIDENCE.

7 AND YOU CAN'T -- THE JUDGE HAS TOLD YOU, YOU
8 CAN'T RELY UPON CONJECTURE AND GUESSWORK AND SPECULATION TO
9 FILL THAT GAP.

10 THAT IS WATSON'S BURDEN TO SHOW THAT THERE'S
11 EVIDENCE OF A LEAK AND THEY HAVEN'T DONE IT.

12 AND THEIR EXPERT THAT YOU HAVE, MR. KARLOZIAN,
13 THEIR PIPELINE EXPERT, FAILS BECAUSE HIS CALCULATIONS ON THE
14 CAPACITY WERE WRONG. THERE WAS A 100 PERCENT INCREASE IN
15 CAPACITY.

16 HE DIDN'T HAVE ANY PERSONAL KNOWLEDGE. AND THE
17 HYDROTEST'S INFORMATION IDENTIFYING THE FAILURES DIDN'T HAVE
18 ANYTHING TO DO WITH THE 1965 LINES THAT THEY HAVE CLAIMED
19 THROUGHOUT THIS LITIGATION LEAKED.

20 AND EVEN AS TO THE LINES THAT HE IDENTIFIED
21 THAT WERE ALLEGEDLY FAILED HYDROTESTS, THEY ALL HAD
22 SUBSEQUENT PASSING TESTS.

23 AND AS EVEN HE HAD TO ACKNOWLEDGE, PIPING LEAKS
24 DON'T FIX THEMSELVES IN THE GROUND. THERE'S ENOUGH AMBIGUITY
25 AND MARGIN OF ERROR WITH HYDROTESTS THAT SOMETIMES YOU CAN BE
26 OUT OF COMPLIANCE ON A TEST WHERE THE TEMPERATURE PROBE IS
27 PLACED CORRECTLY AND NO AIR IN THE LINE AND PASS A HYDROTEST.
28 SO THERE'S NO ACTUAL EVIDENCE OF ANY LEAK IN ANY PIPELINES.

1 SO WHAT DO WE HAVE TO RELY ON, THEN?

2 WE HAVE TO RELY ON THE SOIL DATA, WE HAVE TO
3 RELY ON THE GROUNDWATER DATA, AND WE HAVE TO RELY ON THE
4 GEOLOGIC DATA FROM ARCO.

5 AND THAT -- YOU HEARD A LOT OF TESTIMONY ON
6 THAT. AND I'LL GO OVER THAT A LITTLE BIT.

7 BUT THIS MIGHT BE A GOOD TIME FOR THE MORNING
8 BREAK.

9 THE COURT: ALL RIGHT. 15 MINUTES, LADIES AND
10 GENTLEMEN.

11
12 (RECESS.)

13
14 THE COURT: ALL RIGHT. BACK ON THE RECORD.

15 CONTINUE, MR. LESLIE.

16 MR. LESLIE: THANK YOU.

17 MY LAST COUPLE OF POINTS ON THE PIPELINES.

18 DID WATSON COME UP WITH ANY EVIDENCE THAT
19 THERE'S ANY RECORDS WHATSOEVER OR ANY HARD EVIDENCE OF A
20 LEAK?

21 I ASKED DR. DAGDIGIAN THAT QUESTION, THEIR LEAD
22 EXPERT, AND HERE'S WHAT HE SAID (READING):

23
24 "SO NO EVIDENCE TO THE
25 CONTRARY THAT AS OF 1993, HISTORICAL RECORDS
26 COMPILED BY SHELL REVEALED ANY PHYSICAL
27 EVIDENCE THAT INDICATES HYDROCARBON LADEN
28 SOILS EXIST?"

1 THAT WAS IN THE AREA OF THE UTILITY WAY
2 CORRIDOR.

3 (READING:)
4

5 "A. HISTORICAL RECORDS COMPILED BY
6 SHELL, NO."

7 AND THEN I TALKED ABOUT OBSERVATIONS OF SOIL
8 CONDITIONS.

9 NO EVIDENCE THAT WHEN ANYBODY WAS DIGGING THAT
10 THERE WAS ANYTHING IN CONTAMINATION.

11 AND I SAID (READING):
12

13 "AND YOU HAVE NO REASON TO
14 THINK THAT THAT'S NOT A TRUE STATEMENT,
15 CORRECT?"

16 AND HE SAID: "NO."
17

18 NO REASON TO THINK IT'S NOT A TRUE STATEMENT.

19 SO DR. DAGDIGIAN WAS NOT AWARE OF ANY EVIDENCE
20 OF A LEAK.

21 WHAT ABOUT DURING THE 1993 EXCAVATION?

22 I ASKED HIM (READING):
23

24 "AND ARE YOU AWARE OF ANY
25 EVIDENCE, ARE YOU, SIR, THAT AS PART OF THE
26 1993 PIPELINE EXCAVATION, THAT THEY FOUND ANY
27 EVIDENCE OF DISCOLORATION OR HYDROCARBON
28 CONTAMINATION EITHER?"

1 "A. I'M AWARE OF NO EVIDENCE."

2

3 SO THERE'S NO EVIDENCE FROM SHELL. THERE'S NO
4 EVIDENCE FROM WATSON. THERE IS NO EVIDENCE FROM

5 DR. DAGDIGIAN.

6 INSTEAD, WHAT WE HAVE ARE A SUSPICION,
7 SPECULATION, SURMISE, CONJECTURE AND GUESSWORK REPRESENTED BY
8 MRS. BRIGHT'S MONKEYS.

9 REMEMBER, THEY SAID, SHELL DIDN'T WANT TO KNOW
10 THAT THERE WAS CONTAMINATION, SO, THEREFORE, THAT PROVES THAT
11 THERE WAS CONTAMINATION?

12 THE EVIDENCE UNDISPUTED, UNDISPUTED EVIDENCE,
13 IS THAT SHELL MADE AN EFFORT TO KNOW. THEY HAD -- ALL
14 EMPLOYEES HAD AN OBLIGATION TO REPORT ANY LEAKS.

15 LEAKS WERE REPORTED, NAMELY, THE ISOBUTANE
16 LEAK, THE FAILURE OF THE HYDROTEST WITH WATER IN IT IN THE
17 DEPARTMENT OF WATER AND POWER, BUT NO EVIDENCE OF ANY LEAKS
18 IN UTILITY WAY CORRIDOR, NO EVIDENCE OF GASOLINE, NOTHING
19 WHATSOEVER.

20 AND THE MERE FACT THAT MRS. BRIGHT HOLDS UP A
21 MONKEY AND SAYS, SHELL DIDN'T WANT TO KNOW, AND THAT'S WHY
22 THERE'S NO EVIDENCE, THAT'S NOT ENOUGH TO GET THEM OVER THEIR
23 BURDEN OF PROOF.

24 AND IN FACT, THAT INFERENCE THAT SHE WANTS YOU
25 TO MAKE IS CONTRADICTED BY ALL OF THE AVAILABLE TESTIMONY AND
26 BY ALL OF THE AVAILABLE HARD EVIDENCE IN THIS CASE, AND THAT
27 IS, THAT THERE IS NO EVIDENCE OF ANY LEAKS THROUGH UTILITY
28 WAY.

1 IN TERMS OF THESE LINES THAT WERE ABANDONED
2 THAT CHANGED MR. KARLOZIAN'S CALCULATION TO 100 PERCENT
3 DIFFERENCE BETWEEN 1973 AND THE PREEEXISTING LINES, HE
4 SPECIFICALLY TESTIFIED, IF YOU'LL RECALL (READING):

5
6 "WHAT'S THE NORMAL USEFUL LIFE
7 OF THE PETROLEUM PRODUCT PIPELINE?

8 "A. IT'S VERY CUSTOMARY IN OUR
9 INDUSTRY TO DESIGN PIPELINES FOR 20 TO 30
10 YEARS."

11
12 THAT'S THE STANDARD. SOMETIMES THEY LAST
13 LONGER IF THEY'RE WELL-MAINTAINED. WE ACKNOWLEDGE THAT. BUT
14 THAT'S THE STANDARD.

15 AND THE LINES THAT, IN FACT, WE FOUND WERE
16 ABANDONED, MR. EARLE ASKED HIM ABOUT THAT (READING):

17
18 "I THINK WE ARE AGREED AT THE
19 END OF THE DAY YESTERDAY THAT THE SIX LINES
20 THAT YOU IDENTIFIED IN YOUR FLOW RATE
21 COMPARISON SUMMARY AS 1, 2, 6, 15, 17, AND
22 THE VENTURA PRODUCTS LINE" --

23 "THESE WERE ALL IN UTILITY
24 WAY, THESE WERE THE OLD NUMBERS FOR THE
25 UTILITY WAY LINES, CORRECT?

26 "THAT IS CORRECT, PRIOR TO
27 1965, YEAH.

28 "AND I THINK THAT WE WERE

1 AGREED AT THE END OF THE DAY YESTERDAY THAT
2 THESE LINES HAD PROBABLY BEEN IN SERVICE
3 SINCE 1942" --

4 "YEAH, THESE LINES WERE IN THE
5 UTILITY WAY CORRIDOR BY 1942, YES."

6
7 SO THOSE LINES THAT MR. KARLOZIAN INCLUDED IN
8 HIS ANALYSIS -- BUT THAT WE'VE SEEN FROM THE Y MAP -- WERE,
9 IN FACT, ABANDONED PRIOR TO THE 1973 SWITCHING OF THE LINES
10 OVER TO DEPARTMENT OF WATER AND POWER -- WERE FROM PRIOR TO
11 1942.

12 OKAY. SO, IS IT ANY SURPRISE THAT THOSE WERE
13 ABANDONED OR TAKEN OUT OF SERVICE?

14 NO. IT'S NO SURPRISE AT ALL.

15 AND THAT FUNDAMENTAL CHANGE IN THE FLOW RATE
16 COMPARISON TOTALLY DEPRIVES WATSON'S SPECULATION AS TO NO
17 ECONOMIC REASON.

18 IF YOU ONLY INCREASE IT BY 20 PERCENT, IT
19 DEPRIVES THAT OF ANY MEANING; IT DEPRIVES THAT OF ANY
20 PERSUASION.

21 SO WHAT DO WE HAVE TO LOOK AT IF WE DON'T HAVE
22 ANY EVIDENCE WHATSOEVER OF THE PIPELINE LEAKS?

23 OKAY. DOES THAT MEAN THERE CONCLUSIVELY
24 WEREN'T LEAKS?

25 WATSON WOULD LIKE YOU TO BELIEVE NO.

26 BUT THEY HAVE TO SHOW YOU MORE THAN JUST THEIR
27 MONKEYS. THEY HAVE TO SHOW YOU SOME DATA THAT ESTABLISH IN
28 YOUR MIND BY A PREPONDERANCE OF THE EVIDENCE THAT, IN FACT,

1 THE SOURCE OF CONTAMINATION IN THE A PLUME AND THE B2 PLUME
2 CAME FROM THE SHELL PIPELINES AS OPPOSED TO THE
3 ARCO REFINERY.

4 SO WHAT DO WE KNOW ABOUT THAT?

5 DR. DAGDIGIAN TESTIFIED THAT IF THERE'S A
6 PIPELINE LEAK AND YOU SAMPLE THE SOIL SAMPLES CLOSE TO THE
7 PIPELINES, SOIL GAS SAMPLES CLOSE TO THE PIPELINE, YOU SHOULD
8 SEE COLUMNS OF CONTAMINATION FROM THE SURFACE DOWN TO THE
9 GROUNDWATER.

10 HE ALSO TESTIFIED THAT THE ONLY WAY THAT YOU
11 CAN FOR SURE TELL WHETHER THERE'S -- WHETHER THEIR PIPELINE
12 WAS LEAKING WAS TO TRACE THE LEAK BACK IN THE SOIL TO THE
13 PIPELINE ITSELF.

14 AND WATSON TOOK IN SOME -- TOOK THAT APPROACH,
15 AND THAT'S A LOGICAL APPROACH TO TAKE, AND THAT'S THE
16 APPROACH THAT OUR EXPERTS SAY THAT THEY ALWAYS TAKE WHEN THEY
17 THINK THAT THERE'S A PIPELINE LEAK.

18 FIRST OF ALL, LET'S LOOK AT THAT TESTIMONY I
19 JUST TOLD YOU ABOUT FROM DR. DAGDIGIAN.

20 AND I ASKED HIM (READING):

21
22 . . . "THE SITUATION WHERE WE
23 HAD THE LEAK FROM THE SURFACE FROM THE
24 PIPELINE, WHICH WAS YOUR OTHER
25 SCHEMATIC" -- REMEMBER, HE DREW IN PICTURES?

26
27 (READING:)

28 /

1 . . . "IF YOU DRILLED YOUR HOLE
2 IN THE RIGHT PLACE, YOU WOULD EXPECT TO SEE,
3 TRACE DOWN THROUGH THE SOIL COLUMN OF HITS
4 FROM AROUND THE PIPELINE AND BELOW, PRETTY
5 MUCH DOWN TO THE GROUNDWATER, WITH THE
6 EXCEPTION THAT YOU MIGHT HAVE ONE OR TWO
7 POINTS WHERE YOU HAVE ZIGS OVER AND YOU MIGHT
8 HAVE A LOWER VALUE, CORRECT?

9 "YES, IF YOU GET CLOSE ENOUGH
10 TO THE PIPELINE, YOU WOULD SEE THAT."

11
12 WHAT HE SAID WAS, WE DIDN'T GET CLOSE ENOUGH TO
13 THE PIPELINE. BUT WE'LL FIND OUT ABOUT THAT WHEN WE LOOK AT
14 THE DATA.

15 WHAT DID THEY FIND?

16 BECAUSE WATSON TOOK THAT SAME APPROACH WITH
17 THEIR PREVIOUS CONSULTANTS, LEVINE-FRICKE. DR. DAGDIGIAN
18 TOLD US ABOUT THAT, TOO.

19 SO IN THAT INSTANCE, THEY ACTUALLY WERE TESTING
20 FOR VARIOUS COMPOUNDS AND THEY GOT NOTHING WHATSOEVER IN
21 MONITORING WELL 5, WHICH -- I MIGHT AS WELL SHOW THE MAP
22 AGAIN. MONITORING WELL 5 IS UP TO THE NORTH OF 223RD.

23 (READING:)

24
25 "THEY GOT NOTHING, RIGHT, ALL
26 THE WAY DOWN THROUGH THERE?

27 "A. NOTHING.

28 "Q. AND THEY GOT NOTHING UNTIL YOU

1 GOT DOWN TO GROUNDWATER, MONITORING WELL 1
2 THROUGH THE SOIL COLUMN, RIGHT?

3 "A. THAT IS CORRECT.

4 "AND YOU GOT ESSENTIALLY

5 NOTHING EXCEPT THERE WAS A HIT AT ABOUT 40 OR
6 45 FEET -- EXCUSE ME -- 40 TO 41-1/2 FEET IN
7 MONITORING WELL 4, RIGHT?

8 "A. RIGHT.

9 "AND SO THEY FOUND NOTHING UP
10 ABOVE THE 40 FOOT, 41 FOOT LEVEL?

11 "A. NO, THEY DIDN'T.

12 "SO WHAT THEY WERE FINDING
13 HERE, SIR, IN TERMS OF LOOKING DOWN BELOW THE
14 PIPELINE AREA DOES NOT LOOK LIKE WHAT THEY
15 FOUND UNDERNEATH THE GATX PLUME, DOES IT,
16 WHERE THEY WERE FINDING PURELY CONSISTENT
17 TRACES IN THAT BORING WE SAW DOWN TO
18 GROUNDWATER?

19 "A. IT DOESN'T LOOK ANYTHING LIKE
20 THAT."

21
22 THAT'S WHAT YOU WOULD EXPECT TO FIND.

23 I ASKED HIM ANOTHER QUESTION (READING):

24
25 "SO THAT MEANS THERE ARE SOIL
26 BORINGS DOWN TO GROUNDWATER IN THIS STUDY" --
27 THAT'S THE DAMES & MOORE STUDY -- "IN THE
28 AREA OF BUILDING 165 OR THE B2 PLUME AND UP A

1 LITTLE BIT TO THE NORTH OF THAT WHERE THE B2
2 PLUME EXTENDS DID NOT FIND ANYTHING ABOVE
3 LABORATORY DETECTION LIMITS, CORRECT?

4 "A. CORRECT.

5 "AND YOU KNEW THAT SIR, DIDN'T
6 YOU?

7 "A. YES."

8

9 I ASKED HIM AGAIN (READING):

10

11 "SIR, BASED ON ALL THE REPORTS
12 THAT YOU'VE LOOKED AT IN THE COURSE OF YOUR
13 ANALYSIS, WATSON LAND COMPANY DID NOT DETECT
14 ANY SIGNIFICANT HITS IN THE SHALLOW SOIL
15 MATRIX SAMPLING THAT IT TOOK?

16 "YES."

17 IT SAYS, "IN A SHELL SOIL" --
18 IT SHOULD BE -- "IN A SHALLOW SOIL SAMPLING
19 AROUND THE UTILITY WAY CORRIDOR, THERE'S BEEN
20 VERY LITTLE TO NO SOIL CONTAMINATION
21 DETECTED."

22 "AND SIMILARLY, IN THE SHALLOW
23 SOIL GAS, OTHER THAN DR. SCHMIDT'S DOWNHOLE
24 FLUX, WATSON LAND COMPANY HAS NOT DETECTED
25 ANY SIGNIFICANT HITS IN THE SHALLOW SOIL GAS,
26 CORRECT?

27 "CORRECT.

28 "AND IN FACT, WATSON LAND

1 COMPANY DID HAVE ITS CONSULTANTS DO SOME SOIL
2 BORINGS IN THE AREA OF THE B2 PLUME DOWN
3 THROUGH THE SOIL COLUMN. THEY TOOK SAMPLES,
4 AND THOSE DIDN'T COME UP WITH ANY SIGNIFICANT
5 HITS, EXCEPT, I THINK, WE SAW MONITORING
6 WELL 4 AT 40 FEET, CORRECT?

7 "A. EXACTLY.

8 "ALL RIGHT. NOW, SIR, WHEN
9 YOU GOT INVOLVED IN THIS CASE, YOU TOLD US IN
10 YOUR EARLIER TESTIMONY THAT YOU WERE AWARE
11 THAT THE PRIMARY DEFENDANT WAS SHELL, OKAY?

12 "MY QUESTION TO YOU IS, SIR,
13 THAT SINCE YOU GOT INVOLVED IN THE CASE, DID
14 YOU EVER SUGGEST TO WATSON LAND COMPANY THAT
15 THEY SHOULD GO IN AND TAKE SOME SOIL SAMPLES
16 OR SOIL GAS SAMPLES RIGHT IN AMONGST THE
17 PIPELINES IN UTILITY WAY?

18 "A. YES."

19
20 HE SUGGESTED THAT. WHY?

21 BECAUSE THAT'S HOW YOU FIND A PIPELINE LEAK.

22 (READING:)

23
24 "Q. ALL RIGHT. AND DID
25 WATSON LAND COMPANY EVER FOLLOW UP ON THAT BY
26 DOING A DEMAND FOR INSPECTION TO SHELL SAYING
27 THEY WANTED TO DO SOME TESTING IN THAT AREA,
28 TO YOUR KNOWLEDGE?

1 "A. I DON'T KNOW, TO MY
2 KNOWLEDGE."

3
4 AND THERE'S NO EVIDENCE THEY EVER DID.

5 SO WE HAVE DR. DAGDIGIAN RECOGNIZING THAT
6 THERE'S -- ALL OF THE SOIL DATA THAT HAD BEEN TAKEN BY
7 WATSON'S PREVIOUS CONSULTANTS SHOWED NO SIGNIFICANT HITS IN
8 THE SOIL IN OR AMONGST THE PIPELINES.

9 WE HAVE DR. DAGDIGIAN SUGGESTING TO WATSON,
10 AFTER THEY SWITCHED CONSULTANTS, THAT THEY DO SOME TESTING IN
11 AND AROUND THE PIPELINES.

12 AND WE HAVE WATSON NEVER DOING SUCH A DEMAND.
13 AND THERE'S NO EVIDENCE OF IT.

14 AND YOU HEARD SOME TESTIMONY ON THAT, SO LET ME
15 SHOW YOU ONE OF THE JUDGE'S INSTRUCTIONS.

16 (READING:)

17
18 "UNDER CALIFORNIA LAW, A PARTY
19 TO A LAWSUIT MAY DEMAND THAT ANY OTHER PARTY
20 ALLOW THE PARTY MAKING THE DEMAND, OR SOMEONE
21 ACTING ON THAT PARTY'S BEHALF, TO ENTER ON
22 ANY LAND OR OTHER PROPERTY THAT IS IN THE
23 POSSESSION, CUSTODY, OR CONTROL OF THE PARTY
24 ON WHOM THE DEMAND IS MADE AND TO INSPECT
25 AND/OR TO TEST OR TO SAMPLE THE LAND."

26
27 OKAY. THAT'S UNDER THE LAW. REGARDLESS OF
28 WHETHER SHELL WANTS THEM TO DO THAT OR NOT, THEY CAN DO THAT

1 AS A MATTER OF LAW.

2 AND THEY DIDN'T. . AND THEY DIDN'T.

3 AND YOU CAN ASK YOURSELF, WHY DID WATSON SWITCH
4 CONSULTANTS ONCE THEY SETTLED WITH ARCO FROM LEVINE-FRICKE

5 WHO FOUND NOTHING IN THE SOIL TO DR. DAGDIGIAN WHO KNEW THAT
6 HIS PRIMARY JOB WAS TO TRY TO CONVINCING YOU THAT THE
7 CONTAMINATION CAME FROM THE PIPELINES, NOT ARCO?

8 AND WHY DID MR. DAGDIGIAN -- DR. DAGDIGIAN
9 SUGGEST SOIL SAMPLING BECAUSE THAT'S HOW YOU FIND A LEAK?

10 AND WHY DID WATSON NEVER DO ANY DEMAND, NEVER
11 TAKE ANY SAMPLES AND NEVER ASK DR. DAGDIGIAN TO TAKE ANY
12 SAMPLES IN THAT AREA?

13 AS A MATTER OF FACT, YOU CAN ASK YOURSELF, WHY
14 DID DR. DAGDIGIAN'S TEAM TAKE NO SOIL INFORMATION AT ALL IN
15 ANY OF THE INVESTIGATIONS THAT THEY DID WHEN THEY WERE HIRED?

16 WHY DID THEY NOT TAKE CPT TO FIND OUT ABOUT THE
17 LITHOLOGY?

18 WHY DID THEY NOT TAKE SOIL SAMPLINGS ON THEIR
19 WAY DOWN?

20 WHY DID THEY NOT TAKE ANY SOIL GAS SAMPLINGS IN
21 AND AMONGST THE PIPELINES?

22 WHY DID THEY NOT DO ANYTHING WITH RESPECT TO
23 SOIL AT ALL WHEN HE KNEW THAT HIS JOB WAS TO TRY TO FINGER
24 THE SHELL PIPELINES?

25 AND I'LL HAVE A LITTLE BIT MORE TO SAY ON ALL
26 OF THOSE INDIVIDUAL ISSUES AS WELL.

27 BUT LET'S LOOK AT, AGAIN, AT SOME OF THE DATA
28 THAT DR. DAGDIGIAN WAS TALKING ABOUT.

1 LEVINE-FRICKE -- YOU CAN LOOK AT THIS
2 EXHIBIT 2443. THIS IS THE SOIL DATA IN AND AMONGST THE
3 PIPELINE, NONDETECT, NONDETECT, NONDETECT, ALL THE WAY DOWN
4 THE PIPELINE WITH MINOR, MINOR, MINOR HITS OF TOLUENE IN A
5 COUPLE OF THEM. BUT OTHER THAN THAT, ALL NONDETECT.

6 AND YOU'LL REMEMBER THAT MS. BRIGHT MADE A BIG
7 DEAL OF THE SIZE OF THESE TRIANGLES IMPLYING THEY COULDN'T
8 GET CLOSE.

9 WELL, IF YOU LOOK AT THIS REPORT, THE ACTUAL
10 REPORT OF THE SOIL GAS TESTING, WHAT YOU'LL SEE IS THAT THE
11 SOIL GAS CONSULTANT DID LITTLE DOTS WHERE HE DID IT RIGHT ON
12 THE VERY EDGE OF THE CORRIDOR, RIGHT IN HERE.

13 AND YOU'LL REMEMBER THAT WATSON MADE A BIG DEAL
14 WHEN THEY WERE TALKING ABOUT RUSSELL GUIDRY BEING THERE
15 DIGGING UP THIS SIDE IN 1993 ABOUT HOW -- WELL, YOU WOULDN'T
16 EXPECT TO SEE CONTAMINATION OVER HERE, BECAUSE ALL OF THE
17 PIPELINES THAT THEY SAY WERE LEAKING ARE ON THE OTHER SIDE OF
18 THIS PIPELINE CORRIDOR.

19 BUT LOOK WHERE WATSON TESTED. OVER ON THIS
20 SIDE AS WELL. THEY TESTED RIGHT ON THE EDGE OF THE CORRIDOR,
21 FEET AWAY FROM THE PIPELINE.

22 ANOTHER THING THAT JUST GIVES YOU A SENSE OF
23 HOW WATSON, TO TRY TO, IN THEIR SHELL GAME, TO TRY TO CONFUSE
24 YOU ABOUT THE DATA AND THE TYPES OF THINGS THAT THEY BRING
25 UP.

26 REMEMBER, THEY SHOWED MS. MAXFIELD'S SHALLOW
27 SOIL GAS. AND THEY SAID, OH, GEESE, YOU KNOW, IF I MEASURE
28 THESE DOTS, THESE DOTS ARE ABOUT 50 FEET WIDE.

1 THAT'S SO YOU CAN SEE THEM ON THE CHART.
2 NOBODY'S SAYING THAT THEY TOOK A SOIL BORING THAT WAS 50 FEET
3 WIDE. I MEAN, THAT'S JUST ABSURD.

4 AND THAT IS A TRUE RED HERRING, AND THAT'S THE
5 TYPE OF THING THAT I THINK YOU'VE HEARD FROM WATSON IN THE
6 SHELL GAME OF TRYING TO DISTRACT YOU FROM THE FACT THAT THEY
7 TESTED IN THE SOIL AND THEY FOUND NOTHING.

8 AND DR. DAGDIGIAN ADMITTED THAT THAT'S HOW YOU
9 FIND A PIPELINE LEAK.

10 HE'S RECOMMENDING TO YOU 300,000 CUBIC FEET OF
11 SOIL EXCAVATION, ADMITTING THAT THE DATA THAT'S BEEN TAKEN TO
12 DATE IN THE AREAS OF THE PIPELINE SHOWS NOTHING.

13 HE'S JUST CONFIDENT, SINCE HE KNOWS THAT THIS
14 IS FROM THE SHELL PIPELINE, THAT HE'S GOING TO HAVE TO DO
15 THAT CONTAMINATION.

16 BUT HE KNEW WHEN HE WAS HIRED THAT THAT WAS
17 GOING TO BE HIS CONCLUSION, THAT IT WAS FROM THE SHELL
18 PIPELINES, BECAUSE THAT'S WHAT HE WAS HIRED FOR, HIS
19 LITIGATION EXPERTISE, AND HE ADMITTED THAT TO YOU.

20 WHAT ABOUT IN THIS SAME REPORT, EXHIBIT 2443?
21 WHEN WE LOOK AT THE SOIL BORINGS THAT THEY TOOK
22 UP HERE DOWN TO GROUNDWATER, 16, 41 AND 65 FEET, ALL
23 NONDETECT.

24 SOIL BORING 1, 16, 51 AND 64 FEET, ALL
25 NONDETECTS.

26 SEE WHERE THESE ARE?

27 ALL ARE ON THE PIPELINE CORRIDOR SB-2, 16, 51,
28 66 FEET, ALL NONDETECT.

1 IT'S NOT JUST SHALLOW SOIL GAS. WE KNOW
2 MONITORING WELL 5 HAD NOTHING. WE KNOW MONITORING WELL 4 HAD
3 NOTHING, 41 FEET.

4 WE KNOW THERE WAS NOTHING SIGNIFICANT FOUND IN
5 THESE OTHERS. SOIL BORING 5 DOWN HERE, ALL NONDETECT.

6 SOIL BORING 5 -- I GUESS THAT MUST BE
7 MISNUMBERED.

8 ALSO, NONDETECT ALSO IN THIS REGION.

9 WHAT ABOUT WHEN THEY HAD DAMES & MOORE GOING
10 OUT THERE EARLY -- BECAUSE THAT'S HOW THEY DISCOVERED THE
11 CONTAMINATION, THEY SAY, IN THE B2 PLUME, WHEN, IN FACT, WE
12 SAW THAT ARCO HAD DATA BACK IN 1990 AND 1991 SHOWING THAT
13 WELL 543, 17,000 HITS -- 17,000 PARTS PER BILLION HIT OF
14 BENZENE?

15 BUT NEVERTHELESS, THEY SAY THAT THEY DIDN'T
16 KNOW UNTIL THE DAMES & MOORE -- AND DAMES & MOORE, IN FACT,
17 DID A SIGNIFICANT AMOUNT OF TESTING. AND THIS IS FROM
18 EXHIBIT 3232.

19 AND THEY PERFORATED THIS WHOLE AREA. AND
20 REMEMBER, THIS IS ONE OF THE THINGS THAT DR. DAGDIGIAN SAID
21 WAS WRONG IN THE GROUNDWATER FLOW. EVEN THOUGH THEY TOOK IT
22 FROM THESE THREE POINTS, HE JUST DISAGREED WITH WATSON'S
23 PREVIOUS CONSULTANTS.

24 BUT THEY TOOK VAPOR SAMPLES AND THEY TOOK SOIL
25 BORINGS IN HERE. AND YOU CAN LOOK AT THEM, BECAUSE THEY'RE
26 ALL ESSENTIALLY NONDETECT.

27 OKAY. BUT WHAT DID DAMES & MOORE SAY IN THIS
28 REPORT?

1 WHAT THEY DID FIND IN THE GROUNDWATER?
2 THEY FOUND (READING):

3
4 "REVIEW OF INVESTIGATIVE
5 REPORTS PREPARED FOR ARCO INDICATE THAT FREE
6 PHASE HYDROCARBONS, (FLOATING PRODUCT),
7 BTEX" -- THAT'S THE DISSOLVED
8 CONSTITUENTS -- "AND GASOLINE ADDITIVES ARE
9 PRESENT IN SHALLOW GROUNDWATER, GROUNDWATER
10 TO THE WEST OF THE ARCO REFINERY."

11
12 SO WATSON'S CONSULTANTS WERE TELLING YOU IN
13 1995 THAT TPH, BTEX AND OTHER VOC'S THAT APPEAR TO BE RELATED
14 TO REFINING OPERATIONS, WERE DETECTED IN GROUNDWATER SAMPLES
15 FROM ON-SITE WELLS.

16 (READING:)

17
18 "THE ARCO REFINERY APPEARS TO
19 BE THE LIKELY SOURCE OF THESE CONSTITUENTS AS
20 IT IS LOCATED AN 8TH MILE EAST OF THE
21 SUBJECT" -- THAT'S BUILDING 165 -- "AND
22 FLOATING PRODUCT FROM THE REFINERY HAS BEEN
23 DOCUMENTED IN GROUNDWATER."

24
25 WE'VE SEEN THAT AGAIN AND AGAIN. PRIOR TO
26 HIRING DR. DAGDIGIAN, PRIOR TO THE ARCO SETTLEMENT, PRIOR TO
27 KNOWING THAT THEY WANTED TO FINGER SHELL AT THE TRIAL, THEY
28 WERE ALWAYS SAYING THAT ARCO WAS A MAJOR SOURCE OF THESE