

1 YOU KNOW, OUR INVESTIGATION IS NOT DONE, ONLY THE ATTORNEYS  
2 AND THE EXPERT WITNESSES KNOW, THAT WILL ALL BE THE SUBJECT  
3 OF EXPERT DISCOVERY.

4 SO DESPITE HAVING HAD MR. WEEKS VERIFY, AMONG  
5 ALL THE PEOPLE AT WATSON -- HE WAS THE VICE-PRESIDENT OF  
6 ENVIRONMENTAL AFFAIRS, YOU'LL RECALL -- IN SPITE OF ALL THE  
7 DIFFERENT PEOPLE THEY COULD HAVE PICKED, THEY PICKED  
8 MR. WEEKS AS THE MOST KNOWLEDGEABLE PERSON TO VERIFY -- THEY  
9 PRODUCE A DEPOSITION FOR DAMAGES. AND HIS WHOLE STORY  
10 WAS -- AGAIN, AND THAT ONLY THE LAWYERS AND THEIR HIRED  
11 CONSULTANTS KNOW, AND WILL TELL YOU WHEN YOU DEPOSE THEM.  
12 THAT'S WHAT THEIR WHOLE RESPONSE WAS. OKAY.

13 AND I ASKED HIM A LITTLE BIT ABOUT THAT.

14 BUT I TOLD HIM WHEN HE VERIFIED THOSE  
15 RESPONSES, I SAID (READING):

16  
17 "AND YOU WERE TOLD BY WATSON'S  
18 FOLKS, INCLUDING THEIR ATTORNEYS, THAT THOSE  
19 WERE TRUE AND CORRECT?

20 "A. YES.

21 "Q. RIGHT?

22 "A. RIGHT.

23 "Q. AND TO YOUR KNOWLEDGE, THEY  
24 WERE TRUE AND CORRECT?

25 "A. YES.

26 "AND THAT'S WHY YOU VERIFIED  
27 THEM?

28 "A. YES.

1 "Q. OKAY. SO DESPITE ALL THE  
2 MUMBO JUMBO AND THE CAVEATS AND THE  
3 OBJECTIONS AT THE BEGINNING, TO YOUR  
4 KNOWLEDGE, THOSE DISCOVERY RESPONSES WERE  
5 TRUE AND CORRECT, CORRECT?

6 "A. YES."

7  
8 SO HE WAS TOLD AT THE TIME THAT THOSE WERE TRUE  
9 AND CORRECT. HE VERIFIED THEM. HE THOUGHT OF HIS OWN  
10 KNOWLEDGE THEY WERE TRUE AND CORRECT.

11 AND WHAT WATSON ADMITTED AS RECENTLY AS LAST  
12 FALL, BEFORE THE ARCO SETTLEMENT, THAT THE CONTAMINATION AT  
13 ISSUE HERE WAS, AT A MINIMUM, JOINTLY ATTRIBUTABLE TO SHELL  
14 AND TO ARCO.

15 AND THEY SHOULD BE HELD TO THAT HERE.

16 THEY CAN'T CHANGE THEIR STORY JUST BECAUSE ONE  
17 OF THE DEFENDANTS HAS SETTLED AND THEY WANT TO PROVE A CASE  
18 AGAINST THE OTHER DEFENDANT.

19 NOW, WHAT ELSE DO WE KNOW?

20 WE KNOW, IN TERMS OF THE BENZENE ISSUE, I ASKED  
21 DR. DAGDIGIAN (READING):

22  
23 "SO LET'S LOOK AT A COUPLE OF  
24 THESE BECAUSE I THINK YOU SAID EARLIER IN  
25 YOUR DIRECT TESTIMONY THAT IF WE HAVE GOT A  
26 BENZENE, WE KNOW THERE'S GASOLINE IN THERE  
27 SOMEWHERE?

28 "A. TRUE.

1 "Q. ISN'T THAT YOUR TESTIMONY?

2 "YOU AGREE WITH THAT, DON'T

3 YOU?"

4 AND HE SAID: "SURE."

5

6 AND THAT'S THE CASE -- WELL, LOOK AT ALL THE  
7 BENZENE OVER ON THE ARCO REFINERY. AS A MATTER OF FACT, IN  
8 EVIDENCE IS AN EXHIBIT WHERE THEY TESTED AND WHEN THEY WERE  
9 TRYING TO, DESIGN THE POOL II BARRIER SYSTEM.

10 AND I ASKED MR. KIRK ABOUT THAT EXHIBIT. AND I  
11 SAID (READING):

12

13 "IT TALKS ABOUT THE POOL II  
14 SAMPLES THAT WERE TAKEN AS PART OF THIS PILOT  
15 PROJECT. IT SAYS 'PROBABLE GROUNDWATER  
16 CONTAMINANT SOURCE.'

17 "AND THEN YOU HAVE BENZENE  
18 LEVELS."

19

20 AND THEN HE'S BUSY TRYING TO FIGURE OUT WHERE I  
21 AM. SO I ASK HIM (READING):

22

23 "DID YOU HAVE THAT?"

24 AND HE SAID: "YES," HE'S GOT

25 THAT.

26

27 SO THEN ARCO'S OWN RESULTS SAID (READING):

28 /

1 "IT HAS A MINIMUM LEVEL OF  
2 38,000 PARTS PER BILLION, A MAXIMUM LEVEL OF  
3 4,885,000 PARTS PER BILLION BENZENE AND AN  
4 AVERAGE OF 2,856,000 PARTS PER BILLION  
5 BENZENE.

6 "AND THIS IS WHAT THE PILOT  
7 TEST SHOWED WOULD HAVE TO BE TREATED BY THE  
8 POOL II BARRIER SYSTEM, CORRECT?

9 "A. YES. THAT APPEARS TO BE THE  
10 DATA.

11 "Q. SO THERE'S VERY, VERY HIGH  
12 BENZENE LEVELS OVER IN PORTIONS OF POOL II  
13 BASED ON THIS STUDY, CORRECT?

14 "A. YES, THAT'S CORRECT."

15  
16 THE MINIMUM LEVEL WAS 38,000 PARTS PER BILLION  
17 BENZENE. THE MAXIMUM WAS 4.8 PARTS PER BILLION WITH AN  
18 AVERAGE OF 2.8 MILLION PARTS PER BILLION BENZENE RIGHT OVER  
19 IN POOL II RIGHT OVER IN THE AREA WHERE ARCO DESIGNED ITS  
20 OFF-SITE RECOVERY TO TRY TO PREVENT ON-SITE MIGRATION.

21 AND HOW CAN WATSON LAND COMPANY SAY WITH A  
22 STRAIGHT FACE THAT THE BENZENE IN THE AREA OF THE B2 PLUME  
23 CONCLUSIVELY COULD NOT POSSIBLY HAVE COME FROM THE  
24 ARCO REFINERY?

25 NOW, I ASKED DR. DAGDIGIAN AND MS. BERESKI  
26 ABOUT THE A PLUME. YOU HAVEN'T HEARD MUCH ABOUT THE A PLUME  
27 BECAUSE THERE'S VERY LITTLE DATA ON THE A PLUME, BUT I ASKED  
28 HIM ABOUT THAT VERY IRONY.

1 I SAID (READING):

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"WHAT I'M INTERESTED IN IS,  
IT'S TRUE, IS IT NOT, SIR, THAT WITH RESPECT  
TO THE A PLUME, YOU DO NOT HAVE ANY SOIL DATA  
OF CONTAMINATION THAT WOULD ALLOW YOU TO  
IDENTIFY WHERE, IF AT ALL, THERE WAS A LEAK  
FROM THE SHELL PIPELINES IN UTILITY WAY?"

AND HE SAID: "OTHER THAN THE  
MODEL THAT WERE PROVIDED THROUGH THE GATX  
DATA, THERE'S NO SAMPLING DATA IN THE UTILITY  
WAY CORRIDOR THAT ALLOWS US TO COME TO THAT  
CONCLUSION; THAT IS ABSOLUTELY TRUE."

SO WHAT HE'S SAYING IS, OTHER THAN WHAT GATX  
OBSERVED, WHICH SHOWED IN AT LEAST ONE OF THE BORINGS A TRACK  
TO GROUNDWATER, THERE IS NO SOIL DATA WHATSOEVER IN THE AREA  
TO A PLUME THAT ALLOWS HIM TO SAY IT CAME FROM THE SHELL  
PIPELINES.

AND I WENT ON AND I ASKED HIM (READING):

"BY THE WAY, OF ALL THE DATA  
THAT YOU GATHERED, YOUR TEAM GATHERED UP IN  
THAT AREA, ALL THE CPT, SO-CALLED C WELLS,  
DON'T INCLUDE ANY SOIL DATA AT ALL?

"A. THAT'S CORRECT.

"THEY DON'T INCLUDE ANY DATA  
AS TO WHAT THE LITHOLOGY IS UP THERE?"

1 "A. THAT'S CORRECT.

2 "Q. YOU DIDN'T COLLECT IT?

3 "A. THAT'S CORRECT."

4

5 ~~DESPITE HAVING NO SOIL DATA THAT WOULD ALLOW~~  
6 THEM TO DEMONSTRATE THAT IT'S A LEAK FROM THE SHELL PIPELINE,  
7 THEY'RE SAYING THAT AT THIS TRIAL, BUT THEY ALSO DIDN'T  
8 COLLECT IT.

9 NOW, I ASKED MS. BERESKI ABOUT HER A PLUME,  
10 TOO (READING):

11

12 . . . "BASED UPON THE DATA THAT  
13 YOU GUYS GATHERED, YOU DON'T HAVE GROUNDWATER  
14 FLOW DIRECTION INFORMATION UP IN THE AREA OF  
15 THE A PLUME?

16 "THAT'S TRUE.

17 "NOW, MA'AM, THE WAY YOU HAVE  
18 DRAWN THIS A PLUME -- THE WAY YOU HAVE DRAWN  
19 THIS A PLUME IS ELONGATED UP TOWARDS THE  
20 NORTH, RIGHT?

21 "A. THAT IS TRUE."

22

23 REMEMBER, THERE'S THE LITTLE HOT SPOT ON THE  
24 CORNER OF THE BUILDING AND THEN THERE'S THE TAIL THAT GOES UP  
25 TOWARDS THE NORTH.

26 (READING:)

27

28 "AND ONE OF THE THINGS THAT

1 YOU WERE TELLING US THAT MAKES YOU THINK THAT  
2 THE B2 PLUME AND THAT THE A PLUME CAME FROM  
3 THE PIPELINE IS BECAUSE THEY HAVE A  
4 NORTH/SOUTH ELONGATION" --

5  
6 THEY'RE STRETCHED OUT, IN OTHER WORDS.  
7 SHE SAID (READING):

8  
9 "THAT'S TRUE."

10 "NOW, MA'AM, IT'S NOT USUAL  
11 WHEN YOU SEE A PLUME TO HAVE A HOT" -- EXCUSE  
12 ME.

13 "NOW, MA'AM, IT'S NOT USUAL  
14 WHEN YOU SEE A PLUME TO HAVE A HOT SPOT THAT  
15 THEN HAS A LONG TAIL COMING UP AGAINST THE  
16 GROUNDWATER FLOW DIRECTION THAT'S SORT OF THE  
17 OPPOSITE OF WHAT YOU WOULD EXPECT, ISN'T IT,  
18 IF YOU WERE HAVING A NORTH/SOUTH FLOW  
19 DIRECTION?

20 "A. THAT'S TRUE."

21 SHE SAYS: "WE HAVE NOT DONE  
22 ANY SAMPLE POINTS TO THE NORTH OTHER THAN  
23 THAT ONE YOU POINTED OUT, THAT IS TRUE.

24 "Q. AND THAT'S WHY YOU PUT IN YOUR  
25 QUESTION MARKS, RIGHT?

26 "A. THAT'S RIGHT.

27 "Q. YOU ALSO PUT IN QUESTION MARKS  
28 RIGHT ALONG THIS BOUNDARY, MEANING THAT YOUR

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28

ONLY TWO POINTS TO DEFINE THIS BOUNDARY ARE  
THIS ONE UP HERE AND THIS ONE UP HERE."

AND I WAS POINTING TO SOME POINTS UP IN THE  
UPPER A PLUME.

SHE SAID (READING):

"RIGHT."

SO WHAT DOES THAT MEAN?

THAT MEANS THAT WATSON LAND COMPANY, WHICH HAS  
THE BURDEN OF SHOWING THAT EACH AREA OF CONTAMINATION CAME  
FROM THE SHELL PIPELINE, ADMITS THAT IT'S GOT NO SOIL  
INFORMATION THAT WOULD ALLOW IT TO SAY THAT THAT COMES FROM  
THE SHELL PIPELINE.

AND AS WE'LL SEE IN A MINUTE, THE SOIL  
INFORMATION THAT THEY DO HAVE FROM THE WSB BORING SHOWS THAT  
IT'S NOT GASOLINE. SAYS, DEGRADED DIESEL FUELS AND REFINERY  
SLOPS.

OKAY. YOU'VE GOT TO TAKE THAT INTO ACCOUNT.

SO IS IT UNUSUAL, THEN, THAT DR. DAGDIGIAN  
MISTAKENLY MENTIONED IN HIS SUMMATION QUESTION THAT IT CAME  
FROM THE ARCO REFINERY?

HE DOESN'T CONTEND THAT HERE, AND THAT WAS  
CLEARLY A MISTAKE. BUT IT MIGHT BE WHAT THEY CALL A FREUDIAN  
SLIP. THIS IS MRS. BRIGHT.

(READING:)

/

1 "ANOTHER QUESTION FOR YOU,  
2 DR. DAGDIGIAN.  
3 "OTHER THAN THE SHELL OIL  
4 COMPANY PIPELINES THAT CARRY GASOLINE TO THE  
5 UTILITY WAY PIPELINE CORRIDOR, HAVE YOU BEEN

6 ABLE TO FIND ANY OTHER SOURCES OF LEADED  
7 GASOLINE WITH THE FIVE LEAD ALKYL PACKAGE  
8 WITH EDD, WITH EDC, WITH DIPE IN IT THAT  
9 COULD HAVE CONCEIVABLY CAUSED PLUME B2?

10 "A. NO. THE ONLY SOURCE IS THE  
11 ARCO REFINERY -- EXCUSE ME" -- THE SHELL  
12 PIPELINE" -- EXCUSE ME -- "THE SHELL PIPELINE  
13 UTILITY WAY."

14  
15 AND THAT -- WE ALL WERE AMUSED BY THAT. AND I  
16 ASKED, "CAN WE JUST STOP THERE?"

17 AND OF COURSE, WE DIDN'T. SO I HAVE TO -- BUT  
18 THE POINT IS, IS THAT WATSON LAND COMPANY THROUGH MANY, MANY  
19 YEARS OF THIS LITIGATION AND THROUGH THE TIME PERIOD BEFORE  
20 THAT, IDENTIFIED THE ARCO REFINERY AS A SOURCE OF THE  
21 CONTAMINATION IN THE B2 AREA.

22 AND FOR THEM TO ALL OF A SUDDEN NOW JUST CHANGE  
23 AND SAY THERE'S NO WAY THAT YOU COULD REASONABLY FIND --  
24 THERE'S NO SCIENTIFIC DATA PURPORTING THE ARCO REFINERY HAD  
25 ANY CONTRIBUTING CAUSE TO THE B2 PLUME, I JUST DON'T THINK IS  
26 BELIEVABLE.

27 SO WHAT DO THEY RELY ON TO TRY TO GET THERE?

28 THEY RELY ON THE PRODUCT TYPING INFORMATION,

1 AND YOU CAN LOOK AT EXHIBIT 3261 BACK IN THE JURY ROOM.

2 BUT WHAT WE'VE SEEN FROM THAT PRODUCT TYPING  
3 INFORMATION IS THAT WELL 543, WHICH IS RIGHT AT THE HEART OF  
4 THE B2 PLUME, WAS TYPED BY WATSON'S OWN CONSULTANTS AS A MIX  
5 OF LEADED GASOLINE AND DIESEL OR REFINERY SLOPS. THE SAME  
6 SORT OF STUFF WE'RE FINDING ALL OVER UP AND DOWN THE  
7 ARCO REFINERY.

8 IT'S NOT PURE GASOLINE.

9 NOW, WHAT DID THEY FIND IN MW-1 AND MW-3?

10 WELL, THEY FOUND THAT IT WAS MOSTLY GASOLINE  
11 RANGE TYPES. AND THEY FOUND SOME MIXED LEAD ALKYLs IN THAT  
12 AREA, AND THEY FOUND SOME DIPE IN THAT AREA.

13 BUT DOES THAT MEAN WE SHOULD IGNORE ALL OF THE  
14 EVIDENCE TO SHOW THE PROBLEMS OVER AT ARCO?

15 DOES THAT MEAN WE SHOULD IGNORE THE EVIDENCE OF  
16 THE PERCHING LAYER OF THE GROUNDWATER FLOW OF THE MASSIVE  
17 SCOPE OF THE PROBLEM OVER AT ARCO?

18 DOES THAT MEAN WE SHOULD IGNORE THE FACT THAT  
19 THE SAME TYPES OF THINGS PRESENT ON THE REFINERY WERE FOUND  
20 UP IN WELL 543?

21 NO. IT DOESN'T MEAN THAT AT ALL.

22 FOR WATSON TO CONVINCING YOU THAT THE FACT THAT  
23 THERE'S NOT A SHRED OF EVIDENCE THAT THE PIPELINES WERE  
24 LEAKING, THERE'S NO SOIL DATA TO SHOW THAT THE PIPELINES WERE  
25 LEAKING, NONE OF SHELL'S HISTORICAL RECORDS THAT -- TO THE  
26 EXTENT WE STILL HAVE THEM AT THIS POINT.

27 MR. UNDERWOOD'S TESTIMONY WAS THAT NOBODY EVER  
28 REPORTED LEAKS ALONG THE PIPELINE -- EXCUSE ME -- ALONG THE

1 REFINERY. NOBODY WAS EVER AWARE OF ANY LEAKS THEY DUG IN  
2 AMONGST THEM, DIDN'T FIND ANY EVIDENCE OF CONTAMINATION.

3 CAN YOU IGNORE ALL OF THAT EVIDENCE, THE  
4 EVIDENCE OF THE FACT THAT WHEN THE ISOBUTANE LINE HAD LEAKED,  
5 THAT THEY TIED INTO ANOTHER 1965 LINE AND IT WAS PERFECTLY  
6 FINE?

7 IN ORDER TO IGNORE ALL OF THAT EVIDENCE, ARCO  
8 HAS THE -- EXCUSE ME -- WATSON HAS THE BURDEN OF PROOF OF  
9 TELLING YOU, OF PERSUADING YOU THAT JUST THE CHEMICAL TYPING  
10 DATA ALONE IS ENOUGH TO TRUMP ALL OF THAT INFORMATION.

11 AND WHAT DO WE KNOW ABOUT THAT CHEMICAL DATA?  
12 WELL, WE KNOW SOME DIFFERENT THINGS.

13 FIRST OF ALL, WE KNOW THAT WHEN YOU LOOK UP IN  
14 THIS AREA, WSB-25, WATSON'S CONSULTANTS SAY THERE WAS NAPHTHA  
15 OR WEATHERED GASOLINE RIGHT THERE.

16 LEVINE-FRICKE MONITORING WELL 1, WE KNOW THAT  
17 THEY SAID THAT THERE WAS GASOLINE COMPONENTS AS WELL IN A  
18 REFINERY INTERMEDIATE SUCH AS REFORMATE WHICH IS GASOLINE  
19 RANGE PRODUCT.

20 OKAY. SO WE KNOW THAT.

21 SO WE KNOW RIGHT IN THIS AREA, WE'RE GETTING  
22 SOME GASOLINE.

23 WE KNOW FROM WHAT MS. MAXFIELD FOUND WHEN THEY  
24 LOOKED AT THE ARCO DATA THAT THERE WAS GASOLINE IN THE VAPOR  
25 UP THERE.

26 AND WE KNOW FROM MR. KIRK'S TESTIMONY THAT  
27 ARCO, IN FACT, DID PURCHASE THE MIXED LEAD ALKYLs.

28 AS A MATTER OF FACT, DR. DAGDIGIAN TESTIFIED ON

1 THAT PROPERTY TYPING ISSUE. AND WHAT HE SAID WAS -- I ASKED  
2 HIM (READING):

3  
4 "IN FACT, IN YOUR DEPOSITION,  
5 YOU DID NOT SAY THAT THE FIVE MIXED LEAD  
6 ALKYLs WERE A MARKER FOR SHELL GASOLINE, DID  
7 YOU, SIR?

8 "A. I'M NOT SAYING THAT NOW.

9 "Q. IN FACT, WE KNOW THAT MANY,  
10 MANY DIFFERENT OIL COMPANIES USE THE FIVE  
11 LEAD ALKYLs; IS THAT CORRECT?

12 "A. PRETTY MUCH ALL OF THEM USED  
13 THEM BETWEEN THE TIME PERIOD OF 1960 TO" --  
14 IT MUST BE -- "1980."

15 "Q. INCLUDING ARCO, CORRECT?

16 "A. YES."

17  
18 EVERYBODY USED THEM. EVERYBODY WHO MADE LEAD  
19 GASOLINE, ACCORDING TO WATSON'S OWN EXPERTS, USED THE FIVE  
20 LEAD ALKYLs.

21 OKAY. NOW, WHERE DO WE TAKE THAT?

22 WELL, WE KNOW FOR A FACT THAT THOSE FIVE LEAD  
23 ALKYLs WERE FOUND ON THE PROPERTY.

24 WE KNOW IT WAS UP IN THE NORTH.

25 AND MR. KIRK TESTIFIED AS FOLLOWS (READING):

26  
27 . . . "THIS CONFORMS WITH YOUR  
28 RECOLLECTION THAT THE FIVE MIXED LEAD ALKYLs

1 WERE, IN FACT, FOUND ON WELLS LOCATED AT THE  
2 ARCO REFINERY, CORRECT?

3 "A. YES, THAT'S CORRECT."  
4

5 SO MR. KIRK ADMITTED THAT AS WELL.

6 NOW, WELL, WHAT ABOUT THE ISSUE RAISED BY  
7 WATSON THAT IN THE AREA IN THE COUPLE TESTS THAT WERE TAKEN  
8 IN THIS AREA ALONG THESE WELLS, THAT THERE WAS NO LEAD  
9 ALKYLs, THERE WAS SOME TETRAETHYLLEAD AND SOME OF IT WAS  
10 NONDETECT?

11 NOW, DOES THAT PROVE THE NEGATIVE?

12 DOES THAT PROVE FROM A PREPONDERANCE OF THE  
13 EVIDENCE THAT THERE'S NO WAY THAT ANY OF THE ARCO GASOLINE  
14 CONTAINED THE FIVE MIXED ALKYLs OR THAT IT COULD HAVE  
15 MIGRATED OVER TO THE B2 PLUME?

16 IT DOES NOT.

17 AND HERE'S WHY IT DOES NOT.

18 MS. MAXFIELD TOLD YOU THAT SHE WOULD NOT  
19 EXPECT, GIVEN THE FACT THAT THE MIXED LEAD ALKYLs WERE PHASED  
20 OUT IN 1980, SHE WOULD NOT EXPECT THE GASOLINE IN  
21 LEVINE-FRICKE MONITORING WELL 1, UP ALONG THAT AREA OF THE  
22 REFINERY, NOR WSB-25, TO HAVE LEAD PRODUCTS IN THEM.

23 BECAUSE IF THERE WAS SEVERAL FEET OF FREE  
24 PRODUCT CURRENTLY, WHEN THAT WAS TESTED OVER THE LAST COUPLE  
25 YEARS AND UP UNTIL THIS VERY DAY OF MOSTLY GASOLINE PRODUCT,  
26 WOULD YOU EXPECT THE OLD LEAD PRODUCT TO STILL BE THERE?

27 WHAT THAT INDICATES IS THAT THERE'S A  
28 CONTINUING SOURCE OF CONTAMINATION UP IN THAT AREA.

1                   AND MS. MAXFIELD TESTIFIED THAT IN HER  
2 EXPERIENCE, SEEING A LOT OF DIFFERENT SITES, WHAT YOU WOULD  
3 EXPECT TO FIND IS YOU WOULD EXPECT TO FIND THAT THE OLD LEAD  
4 GASOLINE WOULD HAVE MIGRATED OUT OF THAT AREA AND HAVE BEEN  
5 ~~DISPLACED BY THE NEW GASOLINE UP IN THAT AREA.~~

6                   SHE WOULD NOT EXPECT TO FIND IT. AND WE DON'T  
7 HAVE A LOT OF SAMPLES, UNFORTUNATELY, IN BETWEEN  
8 LEVINE-FRICKE WELL 1R UP IN THIS AREA AND THE B2 PLUME.

9                   BUT WATSON DIDN'T COLLECT ANY SAMPLES UP IN  
10 THAT AREA. THEY DIDN'T TRY TO FILL THAT GAP. AND OF COURSE,  
11 ARCO DIDN'T, FOR OBVIOUS REASONS, EITHER IN THEIR  
12 INVESTIGATION.

13                   SO THE FACT THAT MIXED LEAD ALKYLs WERE NOT  
14 FOUND IN THE FEW TESTS THAT WERE DONE IN THE POOL II IS NOT  
15 CONCLUSIVE TO SHOW THAT YOU CAN JUST -- YOU GO FOR ALL OF THE  
16 OTHER DATA IN THIS CASE.

17                   WHAT IS IT?

18                   INSTEAD, IT'S ONE -- JUST ONE MORE PIECE OF  
19 DATA, AND YOU HAVE TO BALANCE THAT ONE PIECE OF DATA WITH THE  
20 BURDENS OF PROOF AND WHAT ELSE YOU FOUND IN THIS CASE IN  
21 ORDER TO DETERMINE WHETHER THE B2 PLUME IS PARTLY OR  
22 COMPLETELY CAUSED BY THE SHELL PIPELINES OR THE ARCO  
23 REFINERY.

24                   AND THAT'S WATSON'S BURDEN OF PROOF TO CARRY.  
25 SAME THING WITH THE DIPE.

26                   OKAY. THEY MADE A BIG ISSUE OF DIPE. THEY  
27 SHOWED THE SHELL FUEL REPORTS, EXHIBIT 732 ABOUT DIPE.

28                   WELL, WE'VE NEVER SAID THAT SHELL DIDN'T USE

1 DIPE IN ITS GASOLINE, EVER. WE NEVER SAID THAT IN THIS  
2 TRIAL.

3 AND AS A MATTER OF FACT, MS. -- OR DR. RHODES  
4 TESTIFIED THAT SHE KNOWS THAT, AT LEAST IN THE EAST COAST,  
5 SHELL USED DIPE IN SOME OF ITS GASOLINE. BUT SHE ALSO  
6 TESTIFIED THAT OTHER PEOPLE USED DIPE IN THEIR GASOLINE AS  
7 WELL.

8 AND NOT ONLY THAT, SHE TESTIFIED THAT THERE WAS  
9 WHAT THEY CALLED GASOLINE EXCHANGES WHERE ONE REFINERY, SUCH  
10 AS THE SHELL REFINERY, MIGHT WELL SELL GASOLINE TO ANOTHER  
11 REFINERY SUCH AS THE ARCO, BECAUSE GAS IS EXCEPTIONALLY  
12 FUNGIBLE, IT'S ESSENTIALLY THE SAME, UNTIL YOU ADD YOUR  
13 ADDITIVE PACKAGE AT THE VERY END.

14 AND IF MORE GAS NEEDED TO SERVE A CERTAIN  
15 SERVICE STATION, ACCORDING TO DR. RHODES -- AND THERE'S NEVER  
16 BEEN ANYTHING TO CONTEST THIS -- PEOPLE WOULD EXCHANGE -- THE  
17 DIFFERENT OIL COMPANIES WOULD EXCHANGE.

18 SO EVEN IF DIPE WAS A UNIQUE MARKER FOR SHELL  
19 GASOLINE, WHICH IT WASN'T -- AND WHICH DR. RHODES TESTIFIED  
20 IT WASN'T, AND MRS. BRIGHT SAID IT WAS, BUT DR. DAGDIGIAN  
21 NEVER TESTIFIED TO THAT -- THEN, THAT WOULD NOT MEAN THAT IT  
22 COULDN'T COME FROM A LEAKY TANK UP ON THE ARCO REFINERY.

23 BUT WHAT DO THESE FUEL REPORTS SHOW?

24 THEY SHOW THAT THE LOWEST CONCENTRATION IS  
25 ZERO.

26 SURE, IT'S IN SOME OF THE GAS. BUT IF YOU LOOK  
27 AT ALL OF THESE; DIPE, ZERO; DIPE'S PRESENT BUT THE LOWEST IS  
28 ZERO; DIPE'S PRESENT, BUT THE LOWEST IS ZERO; DIPE'S PRESENT,

1 BUT THE LOWEST IS ZERO.

2 LOOK AT EXHIBIT 732.

3 AND COUPLE THAT WITH THE FACT THAT DIPE HAS  
4 BEEN FOUND OVER ON THE ARCO REFINERY AS WELL.

5 NOW, HAS IT BEEN FOUND IN THE PRECISE AREA  
6 RIGHT UP IN HERE?

7 NO.

8 BUT THERE'S BEEN SOME VERY LIMITED TESTING UP  
9 THERE THAT WAS DONE BY MOBIL JUST IN 2001. I THINK IT WAS  
10 EVEN FEBRUARY OF 2001, MOBIL DID SOME TESTING UP IN THERE  
11 BEFORE THEY SETTLED OUT OF THE CASE.

12 BUT THERE'S NOTHING TALKING ABOUT DIPE IN ANY  
13 OF THIS AREA IN HERE, AND THAT IS BECAUSE ARCO NEVER TESTED  
14 FOR DIPE. ARCO NEVER TESTED FOR DIPE.

15 AND THERE WAS A BIG POINT MADE OF, WELL, IF YOU  
16 DIDN'T USE DIPE IN YOUR GAS, WHY WOULD YOU TEST FOR GAS.

17 WELL, THAT'S NOT A BAD POINT, EXCEPT FOR THE  
18 FACT THAT NOW THE AGENCIES, ACCORDING TO MR. LEITER, ARE  
19 INCREASINGLY REQUIRING EVERYBODY TO TEST FOR DIPE EVEN -- AND  
20 TO THIS DAY, ARCO IS NOT TESTING FOR DIPE.

21 AND SO DOES THAT MEAN THAT THERE'S NO DIPE  
22 ANYWHERE IN THE AREA OF POTENTIAL MIGRATION PATHWAYS?

23 NO, IT DOES NOT MEAN THAT AT ALL. IT SIMPLY  
24 MEANS THEY DIDN'T TEST IT.

25 ALL WE HAVE IS WE HAVE A FEW ISOLATED DATA  
26 POINTS IN THESE MULTI-DOZEN ACRE POOL RIGHT HERE OF ALL SORTS  
27 OF DIFFERENT MIX OF PRODUCTS, AND IT DOESN'T RULE OUT -- IT'S  
28 NOT A TRUMP CARD, AS MUCH AS WATSON WOULD LIKE IT TO BE, TO

1 ALLOW US TO IGNORE ALL THE PIPELINE DATA, ALL THE SOIL DATA,  
2 ALL OTHER CHEMICAL DATA WE HAVE.

3 NOW, THIS IS A LEGITIMATE DISPUTE BETWEEN THE  
4 EXPERTS. OKAY. NOW, YOU MAY DISAGREE WITH OUR EXPERTS ON  
5 THAT SUBJECT. YOU MAY THINK --- YOU MAY DISAGREE WITH ME.

6 YOU MAY THINK THAT, HEY, I LOOKED AT IT, I KNOW  
7 WATSON'S TRYING TO PROVE A NEGATIVE, YOU KNOW.

8 I KNOW THERE WEREN'T THAT MANY SAMPLES.

9 I KNOW THAT DIPE'S BEEN FOUND ON ARCO.

10 I KNOW THAT ARCO HAS ADMITTED USING THE MIXED  
11 LEAD ALKYLS.

12 I KNOW THAT THEIR OWN INVESTIGATION INDICATED  
13 THAT MIXED LEAD ALKYLS WAS USED IN THEIR REGULAR.

14 I KNOW THAT IT'S BEEN FOUND CERTAINLY UP IN THE  
15 NORTH.

16 I KNOW THAT IT'S BEEN -- THE GASOLINE STORAGE  
17 TANKS THROUGH THE YEARS HAVE BEEN IN THIS GENERAL AREA OF THE  
18 REFINERY AND, OBVIOUSLY, THEY'RE MAKING LEAD -- EXCUSE  
19 ME -- LEAD GASOLINE WITH THE MIXED LEAD ALKYLS. IT WOULD BE  
20 SOMEWHERE IN THIS AREA EVEN THOUGH THEY MAY NOT HAVE TESTED  
21 FOR IT AND FOUND IT.

22 YOU MAY SAY, DESPITE ALL THAT STUFF THAT  
23 MR. LESLIE SAID, I'M NOT CONVINCED THAT THERE IS -- ISN'T A  
24 POTENTIAL COMPONENT FROM THE SHELL PIPELINES.

25 OKAY. THAT'S SOMETHING THAT YOU HAVE TO  
26 DETERMINE.

27 BUT WHEN YOU GET TO THAT STAGE, IF YOU MAKE  
28 THAT DETERMINATION, YOU CAN'T REST THERE. YOU HAVE TO

1 DETERMINE, NUMBER ONE, IS SHELL THE ONLY SOURCE OF THE  
2 CONTAMINATION IN THE B2 AREA, OR IS ARCO A CONTRIBUTING  
3 SOURCE.

4 AND WE'VE SEEN FROM WELL 543 THAT THE ARCO  
5 ~~STUFF HAS CERTAINLY GOT OVER INTO THE B2 PLUME AREA, AND WE~~  
6 THINK THERE'S GOOD EVIDENCE TO SHOW THAT, IN FACT, ARCO  
7 CAUSED THE B2 PLUME, INCLUDING THE GASOLINE COMPONENTS OF  
8 THAT.

9 BUT YOU MAY DISAGREE WITH THAT, BUT THAT DOES  
10 NOT MEAN IT'S AN ALL OR NOTHING THING. YOU HAVE TO ASSESS  
11 WHAT PERCENTAGE THE CONTAMINATION OVER THE B2 PLUME CAME FROM  
12 ARCO AND WHAT MAY HAVE COME FROM SHELL. AND YOU NEED TO  
13 APPLY THAT WHEN YOU GET INTO YOUR DAMAGES ANALYSIS.

14 AND WHY IS THAT?

15 WHY DO YOU HAVE TO FIGURE THAT OUT?

16 LET ME SHOW YOU AN INSTRUCTION ON THAT.

17 BECAUSE THE JUDGE HAS INSTRUCTED YOU (READING):

18

19 "IN DETERMINING THE AMOUNT OF  
20 DAMAGES CAUSED TO WATSON'S PROPERTY BY SHELL,  
21 YOU MAY NOT AWARD ANY DAMAGES FOR INJURY OR  
22 HARM CAUSED BY ARCO OR ANY OTHER THIRD  
23 PARTY."

24

25 WHAT THAT MEANS IS, THAT IF YOU THINK THAT  
26 THERE'S SOME COMPONENT, IF YOU DISAGREE WITH ME AND WITH  
27 MS. MAXFIELD AND WITH MR. LEITER, AND YOU FIND THAT THERE'S  
28 SOME COMPONENT OF CONTRIBUTION FROM THE SHELL PIPELINES,

1 DESPITE THE EVIDENCE TO THE CONTRARY, WHICH YOU'RE CERTAINLY  
2 ENTITLED TO DO, THEN, YOU CANNOT AWARD DAMAGES AGAINST SHELL  
3 FOR INJURY OR HARM CAUSED BY ARCO.

4 AND WE'VE SEEN THAT WATSON, ITSELF, LISTED ARCO  
5 AS AT LEAST A CONTRIBUTING FACTOR TO THE B2 PLUME.

6 AND WE DON'T HAVE ENOUGH DATA TO EVEN INDICATE  
7 THAT THE A PLUME CAME FROM THE SHELL PIPELINE AT ALL. AND  
8 EVEN DR. DAGDIGIAN ADMITTED THAT HE'S GOT NO SOIL DATA TO DO  
9 THAT.

10 SO YOU HAVE TO TAKE THAT INTO ACCOUNT.

11 IF IT'S GOING TO COST \$5 MILLION TO REMEDIATE  
12 THAT, IN YOUR VIEW, AND IF YOU THINK THAT HALF OF THE  
13 CONTAMINATION CAME FROM ARCO, THEN, YOU HAVE TO TAKE THAT  
14 INTO ACCOUNT WHEN YOU WRITE DOWN THE NUMBER ON THE VERDICT  
15 FORM, ACCORDING TO THIS INSTRUCTION.

16 NOW, LET'S TAKE A LOOK AT THE REMEDY ISSUES.  
17 AND I WANT TO TALK ABOUT THOSE BECAUSE, AS I SAY, THIS IS A  
18 LEGITIMATE DISPUTE. AND THAT'S WHY WE HAD MR. LEITER COME TO  
19 ADDRESS THE ISSUE OF WHAT IS THE REASONABLE REMEDY.

20 WELL, WE KNOW A COUPLE OF THINGS THAT PROVIDE  
21 US WITH CROSSCHECKS ON THE AMOUNT OF DR. DAGDIGIAN'S DAMAGE  
22 ANALYSIS.

23 WE KNOW THAT ACCORDING TO THE EVIDENCE, TO  
24 REMEDIATE THE 2 MILLION GALLONS OF JET FUEL NAPL OVER AT  
25 GATX, THAT THAT WILL COST APPROXIMATELY \$500,000, ACCORDING  
26 TO THE TESTIMONY THAT WE'VE HAD SO FAR.

27 WE KNOW THAT WHAT GATX IS PLANNING ON DOING IS  
28 REMOVING THE FREE PRODUCT FROM THAT JET FUEL PLUME THROUGH

1 THE PUMPING WELLS.

2 WE ALSO KNOW IF YOU LOOK AT EXHIBIT 3234, WHICH  
3 IS THE RECOMMENDED PLAN THAT'S IN EVIDENCE, THAT  
4 NOTWITHSTANDING DR. DAGDIGIAN'S STATEMENT HERE, YOU NEED  
5 EXCAVATION, YOU NEED SOIL VAPOR, YOU NEED 17 WELLS.

6 WHAT GATX PROPOSED WAS, IN FACT, RUN BY  
7 BRIGHT AND BROWN. MODIFICATIONS WERE MADE TO THE DRAFT WORK  
8 PLAN FOR THE GATX PIPELINE RELEASE, TO INCORPORATE COMMENTS  
9 SUGGESTED BY AND REPRESENTATIVES OF BRIGHT AND BROWN.

10 SO BRIGHT AND BROWN, OTHER WATSON'S COUNSEL,  
11 HAVE ALREADY SIGNED OFF ON THE NATURE OF THE REMEDY OVER AT  
12 THE GATX PLUME.

13 AND WE KNOW THAT THE NUMBER OF WELLS THEY'RE  
14 GOING TO PUT IN THERE ARE SOMEWHERE BETWEEN SIX AND EIGHT.  
15 AND THEY POSTULATE THE WHOLE THING IS GOING TO COST ABOUT  
16 \$500,000.

17 THAT'S SOMETHING YOU SHOULD TAKE INTO ACCOUNT.  
18 BECAUSE YOU KNOW MOST PEOPLE DON'T KNOW WHAT THE REMEDIATION  
19 SYSTEM COSTS. AND SINCE THIS WHOLE REMEDIATION SYSTEM  
20 PROPOSED BY DR. DAGDIGIAN IS TOTALLY SPECULATIVE, THERE'S NO  
21 BIDS, THERE'S NO WORK PLAN, THERE'S NO -- PILOT TESTS HAVEN'T  
22 BEEN RUN PASSED BY ANY AGENCIES. NOBODY HAS ANY PLANS TO  
23 IMPLEMENT IT, NO CONTRACTS HAVE BEEN LET, NOBODY'S EVER TOLD  
24 DR. DAGDIGIAN FROM WATSON LAND COMPANY THAT THEY'RE EVER  
25 GOING TO USE HIM TO ACTUALLY IMPLEMENT THIS REMEDY.

26 THIS IS A PROPOSAL FOR LITIGATION DAMAGES  
27 ANALYSIS. SO WE NEED SOME CROSSCHECKS.

28 SO ONE OF THOSE IS THE GATX.

1                   NOW, ANOTHER CROSSCHECK IS WHAT ARCO SPENT,  
2                   ACCORDING TO MR. SIMONS, TO PUT IN ITS BARRIER WELL SYSTEM.  
3                   AND WHAT MR. SIMONS' TESTIMONY WAS, ALTHOUGH HE COULDN'T  
4                   REMEMBER ALL OF THE PRECISE NUMBERS, HE SAID THAT WHAT STUCK  
5                   IN HIS HEAD WAS IT WOULD BE SOMEWHERE BETWEEN 2- AND \$400,000  
6                   TO INSTALL THE BARRIER WELLS AND SOMEWHERE BETWEEN 1- TO  
7                   \$2 MILLION, INCLUDING ALL THE INVESTIGATION AND THE OPERATION  
8                   AND MAINTENANCE.

9                   NOW, WHAT DID WATSON SAY TO TRY TO CONTEST  
10                  THAT?

11                  WELL, OTHER THAN POINTING OUT THAT, ON  
12                  QUESTIONING BY WATSON, HE SAID, WELL, I'M NOT QUITE SURE.  
13                  I'M NOT QUITE SURE.

14                  WHEN IT COMES TO THAT, YOU REMEMBER THAT  
15                  INSTRUCTION THE JUDGE GAVE YOU THAT ARCO'S WITNESSES HAVE A  
16                  REASON TO BE BIASED IN WHAT THEY SAY AND WHAT THEY DON'T SAY  
17                  IN FAVOR OF WATSON AND AGAINST SHELL.

18                  BUT EVEN ASSUMING THERE WAS SOME -- SOME  
19                  QUESTION, THAT WAS WHAT HE TESTIFIED.

20                  NOW, MRS. BRIGHT SHOWED YOU EXHIBIT 285 TO TRY  
21                  TO SHOW YOU THAT ON MARCH 7TH, 1994, THERE WAS AN AFC  
22                  REQUEST, REQUEST FOR CAPITAL, ACCORDING TO MR. KIRK, FOR THE  
23                  POOL II GROUNDWATER BARRIER SYSTEM.

24                  WELL, THIS ISN'T THE FINAL AFC. AND YOU CAN  
25                  TELL THAT BY LOOKING AT EXHIBIT 285. WE INTRODUCED IT  
26                  BECAUSE WE WERE VERY INTERESTED IN THE LANGUAGE HERE TALKING  
27                  ABOUT WHAT ARCO PLANNED TO DO AND WHAT THEY SAW AS THEIR  
28                  BARRIER WELL SYSTEM AND THAT WAS TO CREATE A REVERSAL OF

1 . DIRECTION OF GROUNDWATER FLOW UNDERNEATH WILMINGTON AVENUE.

2 THIS WILL ALLOW ARCO THE OPPORTUNITY TO  
3 RECAPTURE THE SMALL AMOUNTS OF HYDROCARBON, BOTH FREE AND  
4 DISSOLVED, WHICH HAVE ALREADY MIGRATED FROM THE PROPERTY.

5 THAT'S WHY WE PUT THIS INTO EVIDENCE. BUT IT'S  
6 OBVIOUSLY NOT FINAL.

7 LOOK AT THIS. IT SAYS, INSERT FIGURE HERE. IT  
8 HAS A DESCRIPTION, INSERT FIGURE 2.

9 THIS IS JUST A DRAFT, ONE OF THE SEVERAL DRAFTS  
10 THAT WE SHOWED YOU THAT MR. KIRK WORKED ON.

11 AND SO WHAT WATSON LAND COMPANY IS DOING AND  
12 THEY'RE TRYING TO SAY, OH, DR. DAGDIGIAN'S COST ESTIMATES ARE  
13 REASONABLE. SEE, THERE'S LOTS OF SPACES FOR FIGURES IN HERE.  
14 SEE PAGE 12.

15 AND THEN THEY INSTALL A SCOPE OF WORK, AND  
16 THESE ARE THE FIGURES THAT MRS. BRIGHT SHOWED YOU RIGHT HERE,  
17 THE 4 MILLION FIGURE FOR TOTAL.

18 BUT WHAT WE ALSO FOUND WAS THAT THE INITIAL  
19 PROPOSAL THAT ARCO HAD FOR ITS BARRIER WELL SYSTEM WAS TO  
20 PUMP AT SOMEWHERE AROUND 100 GALLONS FOR THE WHOLE SYSTEM.  
21 IN FACT, WE KNOW IT'S PUMPING AT ABOUT 16.

22 SO THERE WERE MODIFICATIONS MADE WITH THE  
23 POOL II BARRIER SYSTEM.

24 SO THE BEST EVIDENCE WE HAVE IS NOT THE DRAFT  
25 THAT ARCO DIDN'T FINALIZE, BECAUSE WE DON'T -- WATSON NEVER  
26 SHOWED YOU THE FINAL AUTHORIZATION FOR CAPITAL. WE HAVE  
27 MR. SIMONS TESTIMONY.

28 SO THAT GIVES YOU A LITTLE CROSSCHECK.

1 BUT LET'S LOOK, ALSO -- BECAUSE WE DON'T HAVE  
2 TO REST THERE -- LET'S LOOK ALSO AT THE PROPOSALS.

3 AND YOU HAVE TO WEIGH DR. DAGDIGIAN'S TESTIMONY  
4 ABOUT THE REMEDY, GIVEN THE FACT HE WAS HIRED FOR LITIGATION,  
5 WITH MR. LEITER, WHO TESTIFIED THAT HIS JOB IS TO GO OUT  
6 THERE AND SOLVE PROBLEMS AND AT, LITERALLY, HUNDREDS OF SITES  
7 WHERE HE'S PUT THESE THINGS INTO THE GROUND. HE HAS A VERY  
8 GOOD HANDLE ON COSTS. HE'S GOT A VERY GOOD HANDLE ON HOW  
9 THESE OPERATE.

10 MANY OF THOSE SITES WERE FOR SHELL. HE'S A  
11 PROBLEM SOLVER. HE'S OUT THERE PUTTING THIS IN THE GROUND  
12 EVERY DAY AS OPPOSED TO SOMEBODY JUST WRITING NUMBERS ON A  
13 BOARD ON A SPECULATIVE DAMAGE ANALYSIS.

14 AND THERE'S A COUPLE OF PROBLEMS WITH  
15 DR. DAGDIGIAN'S ANALYSIS.

16 THE FIRST ONE IS THIS SOIL EXCAVATION.

17 YOU'LL RECALL THAT HE'S PROPOSING TO USE DOZENS  
18 AND DOZENS OF DUMP LOADS OF EXCAVATION. REMEMBER MR. LEITER  
19 TELLING YOU WHAT THE VOLUMES HE WAS TALKING ABOUT WERE?

20 IN AN AREA WHERE HE ADMITS THAT THE SOIL THAT'S  
21 BEEN TAKEN SO FAR IS CLEAN. WHERE HE ADMITS THAT HE DOESN'T  
22 HAVE ANY EVIDENCE AS TO EXACTLY WHERE TO LOCATE THESE  
23 50-BY-150-BY-15 FOOT DEEP SOIL EXCAVATIONS. HE JUST KNOWS  
24 THAT THE SHELL PIPELINES ARE LEAKING, SO HE KNOWS THEY'RE  
25 GOING TO FIND THEM THERE.

26 I MEAN, HOW SPECULATIVE IS THAT?

27 THAT'S ABOUT AS SPECULATIVE AS YOU CAN POSSIBLY  
28 GET. AND THAT IS A MASSIVE DAMAGE ITEM, AS I'LL SHOW YOU IN

1 A MOMENT.

2 SAME THING WITH UP IN THE A PLUME AREA.  
3 REMEMBER, HE TESTIFIED IN TESTIMONY THAT YOU'VE SEEN TODAY  
4 THAT HE'S GOT NO SOIL DATA, NO SOIL DATA THAT INDICATES  
5 WHERE -- FIRST OF ALL, THAT THERE WAS A LEAK AT THE SHELL  
6 PIPELINE.

7 SECOND OF ALL, WHERE TO PUT AN EXCAVATION OR  
8 EVEN THAT ONE IS NECESSARY.

9 YET, HE'S PROPOSING NOT ONLY EXCAVATION, BUT  
10 SOIL VAPOR EXTRACTION. BECAUSE THAT MAKES THE NUMBER HIGHER.  
11 AND THAT HAS A HUGE EFFECT WHEN YOU GET INTO THE DAMAGES  
12 ANALYSIS OF -- OF THE BENEFIT DAMAGES.

13 HE'S SUGGESTING MANY, MANY, MANY WELLS IN EACH  
14 OF THESE SYSTEMS.

15 HE'S SUGGESTING 17 WELLS IN THIS ONE, AND HE'S  
16 SUGGESTING SEVEN WELLS UP IN THE A PLUME AREA. AND WHY IS HE  
17 SUGGESTING THAT?

18 HE'S SUGGESTING THAT BECAUSE HIS THEORY IS THAT  
19 HE WANTS TO SUCK SO MUCH WATER OUT OF THAT AREA THAT HE  
20 ACTUALLY DEWATERS THE WATER TABLE SO THAT THERE'S AN,  
21 ESSENTIALLY, A 15- TO 17-FOOT HOLE IN THE GROUNDWATER IN THAT  
22 AREA.

23 THINK WHAT HAPPENS WHEN YOU'RE AT THE BEACH AND  
24 YOU DIG A HOLE AND THERE'S WATER FLOWING INTO IT AND THEN YOU  
25 DIG, DIG, DIG -- OR MY KIDS GO DIG, DIG, DIG -- YOU MIGHT  
26 HAVE KIDS DOING IT.

27 YOU KNOW, YOU MIGHT DEPRESS THE WATER A LITTLE  
28 BIT, BUT WHAT HAPPENS TO THAT WATER?

1                   IT FLOWS IN FROM ALL AROUND TO FILL UP THE  
2 HOLE. WATER DOES NOT LIKE TO HAVE A HOLE.

3                   OKAY. WHAT THE TESTIMONY IN THIS CASE IS, THAT  
4 THE GROUNDWATER GRADIENT IN THE AREA OF THE WATSON CENTER AND  
5 THE ARCO REFINERY IS THAT IT DECREASES ABOUT TWO FEET FOR  
6 EVERY 1,000 FEET, MAXIMUM ABOUT FOUR FEET, FROM TWO TO FOUR  
7 FEET OVER EVERY 1,000 FEET IS HOW MUCH THE GROUNDWATER  
8 SLOPES. AND THAT MAKES A VERY DECISIVE FLOW.

9                   BUT WHAT'S GOING TO HAPPEN WHEN YOU HAVE SUCKED  
10 OUT A HOLE 15 FEET DEEP?

11                   IS IT REASONABLE, AS DR. DAGDIGIAN TESTIFIES,  
12 THAT THAT'S NOT GOING TO HAVE ANY EFFECT ON THE GATX PLUME,  
13 RIGHT NEXT-DOOR, THAT THAT'S NOT GOING TO HAVE ANY EFFECT ON  
14 THE ARCO BARRIER WELL SYSTEM WHEN YOU'VE GOT A 15- TO 17-FOOT  
15 HOLE?

16                   WHAT MR. LEITER TESTIFIED IS THAT IT WILL HAVE  
17 A TREMENDOUS EFFECT.

18                   AND NOT ONLY WILL DR. DAGDIGIAN'S SYSTEM NOT  
19 CLEAN IT UP BETTER, NOT CLEAN IT UP FASTER, IT'S GOING TO  
20 MAKE IT WORSE. AND THAT NO AGENCY ON EARTH WOULD EVER ALLOW  
21 IT.

22                   AND NEITHER WOULD ARCO ALLOW IT, NOR GATX ALLOW  
23 IT, BECAUSE IT WOULD MEAN THAT IT WOULD TOTALLY OVERWHELM  
24 BOTH OF THEIR SYSTEMS, BOTH THE ARCO BARRIER WELL 2 SYSTEM,  
25 WHICH PUMPS AT A TOTAL OF 16 GALLONS PER MINUTE. AND ALSO,  
26 THIS GATX SYSTEM WHERE THEY'RE JUST GOING TO BE REMOVING THE  
27 FREE PRODUCT.

28                   SO IT'S EASY FOR DR. DAGDIGIAN TO WRITE UP SOME

1 NUMBERS ON A BOARD TO MAKE THEM LOOK BIG, BUT WHEN YOU LOOK  
2 AT THE HYDROLOGY, WHEN YOU LOOK AT THE GROUNDWATER MODELING,  
3 AND WHEN YOU USE YOUR COMMON SENSE AS TO WHETHER IT'S  
4 REALISTIC THAT YOU COULD SUCK THE WATER TABLE DOWN 15 FEET  
5 AND NOT HAVE ANY EFFECT ON FLOWING FROM THE GATX AREA OR THE  
6 ARCO AREA, YOU'LL SEE THAT THAT'S JUST SIMPLY NOT A  
7 REASONABLE REMEDY.

8 NOW, HE CAME IN HERE WITH THIS CHART, 1577, ON  
9 REBUTTAL. AND YOU'LL REMEMBER THIS CHART. AND THE POINT HE  
10 WAS TRYING TO MAKE HERE WAS THAT ARCO'S GROUNDWATER MODELING  
11 ON A WELL THAT HAS LESS THAN TWO GALLONS PER MINUTE PER WELL  
12 HAS A ZONE OF INFLUENCE THIS LARGE.

13 AND YOU'LL REMEMBER, I LAID THIS LITTLE THING  
14 ON TOP OF IT THAT I HAD DRAWN RIGHT FROM DR. DAGDIGIAN'S OWN  
15 EXHIBITS, AND THEY COVER UP THE B2 PLUME.

16 NOW, WHAT CONCLUSIONS CAN WE DRAW FROM THAT?

17 DOES THAT MEAN THAT MR. LEITER PROPOSES THAT A  
18 REASONABLE REMEDY WOULD BE THREE WELLS AT 1.6 GALLONS PER  
19 MINUTE EACH?

20 NO. HE'S PROPOSING A MUCH MORE VIGOROUS SYSTEM  
21 THAN THAT. THAT'S NOT JUST REMOVAL OF FREE PRODUCT, BUT THAT  
22 IS ALSO DUAL-PHASE EXTRACTION SYSTEM. BUT WHAT THAT SHOWS IS  
23 THE INFLUENCE THAT EVEN A SMALL AMOUNT OF PUMPING CAN HAVE ON  
24 THE AQUIFER AND ON THE ZONE OF INFLUENCE.

25 AND SO IF YOU CHANGE THESE THREE PARABOLAS HERE  
26 THAT DR. DAGDIGIAN TOOK FROM THE ARCO MODELING REPORTS AND  
27 YOU AMP THAT UP FROM A TOTAL OF ABOUT SIX GALLONS PER MINUTE  
28 TO 200 GALLONS PER MINUTE, IS IT REASONABLE?

1                   DOES IT MAKE ANY SENSE WHATSOEVER THAT HE'S  
2 GOING TO BE ABLE TO RESTRICT THE IMPACT OF THE PUMPING OF  
3 THESE WELLS SO THAT IT DOESN'T OVERLAP WITH GATX, SO IT  
4 DOESN'T OVERLAP WITH ARCO?

5                   THAT SIMPLY DOESN'T MAKE ANY SENSE.

6                   SOMETHING ELSE THAT'S IMPORTANT TO TAKE INTO  
7 ACCOUNT IS THAT HE SAID THAT HE TOOK THESE PLUMES FROM THE  
8 ARCO MODELING REPORT. IN CONTRAST TO MS. MAXFIELD, WHO'S  
9 DONE 60 DIFFERENT GROUNDWATER MODELS, DR. DAGDIGIAN HAS NOT  
10 DONE ONE. IT'S NOT AN AREA OF HIS EXPERTISE.

11                   DR. DAGDIGIAN WAS UP HERE TELLING US ABOUT HOW  
12 HIS WELLS WON'T INFLUENCE THE HYDROLOGY. AND HE ADMITS HE'S  
13 NOT A HYDROLOGIST. THAT'S NOT AN AREA OF HIS EXPERTISE.

14                   HE'S UP HERE OPINING ABOUT HOW CHEMICALS WERE  
15 USED AND HOW THEIR PRESENCE IN THE B2 PLUME CONCLUSIVELY  
16 ESTABLISHES THAT THAT CONTAMINATION CAME FROM THE SHELL  
17 PIPELINE.

18                   BUT HE ADMITTED HE'S NOT AN EXPERT IN  
19 ADDITIVES. HE'S NOT AN EXPERT IN FINGERPRINTING. HE'S NOT  
20 AN EXPERT IN PETROLEUM CHEMISTRY. AND HE'S NOT AN EXPERT IN  
21 FATE AND TRANSPORT.

22                   WHAT HE IS AN EXPERT IN IS HE'S AN EXPERT AS  
23 BEING A CONSULTANT. AND HE KNEW WHY HE WAS HIRED AND HE WAS  
24 GOOD AT SAYING WHY HE WAS HIRED.

25                   SO DR. DAGDIGIAN'S REMEDY IS SIMPLY NOT  
26 REASONABLE.

27                   SO MR. LEITER -- AND I WON'T GO THROUGH THESE  
28 IN DETAIL, BUT PLEASE LOOK AT THESE WHEN YOU GET BACK INTO

1 THE JURY ROOM, EXHIBITS 3255 AND EXHIBIT 3256. THOSE ARE THE  
2 SPREADSHEETS THAT TALK ABOUT THE COSTING OF THE REMEDY THAT  
3 MR. LEITER THINKS WOULD BE THE ONE THAT WOULD ULTIMATELY BE  
4 IMPLEMENTED AT -- BOTH AS TO THE A PLUME AND THE B2 PLUME.  
5 AND THOSE TOTAL UP TO, NOT \$12.8 MILLION; THEY TOTAL UP TO  
6 BETWEEN 2- AND \$3 MILLION.

7 AND WE WOULD SUBMIT THAT IF YOU FEEL -- IF YOU  
8 DISAGREE WITH US AND WITH THE EXPERTS, AND IF YOU FEEL THAT  
9 SHELL HAS A COMPONENT OF THE CONTAMINATION HERE, THOSE ARE  
10 THE NUMBERS THAT YOU SHOULD APPLY, BOTH WITH RESPECT TO  
11 AWARDED REMEDIATION COSTS, AND ALSO WITH RESPECT TO AWARDED  
12 BENEFIT DAMAGES, IF ANY. THOSE ARE THE NUMBERS THAT YOU  
13 WOULD HAVE TO TAKE BACK AND EXTRAPOLATE USING THE  
14 MULTIPLIERS.

15 AND IF YOU DETERMINE THAT ARCO WAS RESPONSIBLE  
16 IN WHOLE OR IN PART FOR SOME OF THIS CONTAMINATION, YOU WOULD  
17 HAVE TO REDUCE THOSE FIGURES ACCORDINGLY, BECAUSE THE JUDGE  
18 HAS INSTRUCTED YOU THAT YOU MAY NOT AWARD DAMAGES AGAINST  
19 SHELL ATTRIBUTABLE TO THE ARCO REFINERY.

20 SO YOU'VE GOT TO, FIRST OF ALL, DECIDE, WAS  
21 THERE CAUSATION?

22 DID THE SHELL PIPELINES CONTRIBUTE TO THE  
23 CONTAMINATION?

24 LOOK AT ALL THE EVIDENCE ON THAT.

25 YOU HAVE TO, THEN, SAY, DID WATSON MEET THE  
26 EXTRA BURDEN OF PROOF ON THE OTHER ELEMENTS?

27 DID THEY PROVE SUBSTANTIAL AND UNREASONABLE  
28 INTERFERENCE SUFFICIENT TO CAUSE A NUISANCE, WHICH IS DEFINED

1 UNDER THE LAW AS BEING SUBSTANTIAL, ACTUAL INJURY TO WATSON?  
2 NOT JUST THAT THEY'RE WRITING NUMBERS ON BOARD  
3 THAT THIS MIGHT HAVE TO BE REMEDIATED, BUT SUBSTANTIAL,  
4 ACTUAL INJURY.

5 DID THEY PROVE THAT SHELL INTENTIONALLY,  
6 RECKLESSLY OR NEGLIGENTLY CAUSED A RELEASE?

7 THAT'S WHAT YOU HAVE TO FIND TO GET OVER THE  
8 TRESPASS HURDLE.

9 IF YOU FOUND ALL OF THOSE, YOU THEN HAVE TO  
10 DECIDE WHAT, IF ANY, WAS THE PROPORTION OF THE CONTAMINATION  
11 THAT WAS CAUSED BY ARCO. KEEP THAT IN MIND.

12 THEN YOU HAVE TO FIND OUT WHAT IS THE  
13 REASONABLE COST OF REMEDIATION, WHATEVER YOU FIND WAS SHELL'S  
14 PORTION OF THE CONTRIBUTION.

15 AND I SUBMIT THAT DR. DAGDIGIAN'S REMEDY IS  
16 GOING TO MAKE THINGS WORSE, NOT BETTER, AND THAT IT'S JUST  
17 SIMPLY NOT REASONABLE.

18 THEN YOU FINALLY HAVE TO COME AND LOOK AT THE  
19 SO-CALLED BENEFIT TO SHELL DAMAGES.

20 AND LET ME SPEND A LITTLE BIT OF TIME ON THAT,  
21 BECAUSE THAT IS SUCH A HUGE DOLLAR FIGURE. THAT'S REALLY  
22 WHAT'S DRIVING THIS CASE.

23 AND SOME PEOPLE WONDER ALWAYS WHY CASES GO TO  
24 TRIAL. I THINK THE NUMBERS THAT WATSON LAND COMPANY HAS BEEN  
25 WRITING UP ON THE BOARD SHOULD GIVE YOU A PRETTY GOOD  
26 INDICATION OF THAT.

27 AND YOU HAVE TO DECIDE, IS THAT JUST COMPLETELY  
28 OUTRAGEOUS?

1 ARE THEY OVERREACHING?

2 IS THAT JUST A WINDFALL TO A COMPANY FOR  
3 SOMEBODY ELSE'S ACCIDENT OR NOT AND WHETHER THAT'S  
4 REASONABLE.

5 BUT LUCKILY, WE'VE GOT SOME JURY INSTRUCTIONS  
6 ON THAT. AND LET ME GO OVER THOSE.

7 OKAY. BECAUSE THESE ARE VERY IMPORTANT.

8 FIRST OF ALL, WHAT ABOUT THE ASSESSMENT COST  
9 ISSUE?

10 THE ONLY OUT-OF-POCKET DAMAGE, ACCORDING TO  
11 MR. WEEKS, ACCORDING TO WATSON, ARE ABOUT \$430,000, ROUGHLY,  
12 ASSESSMENT COSTS.

13 BUT YOU ALSO HEARD TESTIMONY THAT THOSE WERE  
14 ALMOST ALL INCURRED AFTER THEY FILED A LAWSUIT.

15 AND THE JUDGE HAS INSTRUCTED YOU THAT

16 (READING):

17

18

"IF YOU FIND" --

19

20

21

THIS IS VERY HARD TO READ -- EXCUSE ME. I'LL  
ZOOM IN.

22

(READING:)

23

24

"IF YOU FIND THAT WATSON

25

INCURRED EXPENSES TO INVESTIGATE AND ASSESS

26

THE CONTAMINATION ON THE WATSON CENTER, SUCH

27

EXPENSES ARE PROPERLY INCLUDED AS A PART OF

28

THE COST OF ABATEMENT, TRESPASS AND/OR

1 NUISANCE." HOWEVER, "EXPENSES IN CONNECTION  
2 WITH PREPARATION OF EXPERT TESTIMONY ARE NOT  
3 PROPERLY INCLUDED AS PART OF THE COST TO  
4 ABATE A TRESPASS OR NUISANCE."

5  
6 SO IF YOU DETERMINE THAT THE AMOUNTS OF THE  
7 ASSESSMENT COSTS WERE FOR PURPOSES OF HAVING WATSON'S EXPERTS  
8 HAVE SOME DATA TO RELY UPON AT TRIAL, THEN THOSE AREN'T  
9 PROPER TO INCLUDE, AND YOU CAN DETERMINE WHAT PERCENTAGE YOU  
10 THINK ARE APPROPRIATE TO INCLUDE.

11 IN TERMS OF THE BENEFIT DAMAGES, MS. BRIGHT  
12 MADE A GREAT BIG ISSUE OUT OF, GEE, THIS IS WHAT POLLUTERS  
13 PROFIT IF THEY DON'T CLEAN STUFF UP. THIS IS WHY YOU SHOULD  
14 SET AN EXAMPLE. THIS IS WHY WE NEED TO, FOR THE PUBLIC GOOD,  
15 AWARD THIS TYPE OF DAMAGES.

16 SHE IMPLIED THAT THAT'S WHAT THE LEGISLATURE  
17 DETERMINED.

18 BUT WHAT THE JUDGE HAS SPECIFICALLY INSTRUCTED  
19 YOU HERE IS (READING):

20  
21 "YOU MAY NOT INCLUDE AS  
22 DAMAGES ANY AMOUNT THAT YOU MIGHT ADD FOR THE  
23 PURPOSE OF PUNISHING OR MAKING AN EXAMPLE OF  
24 THE DEFENDANT FOR THE PUBLIC GOOD OR TO  
25 PREVENT OTHER ACCIDENTS. SUCH DAMAGES WOULD  
26 BE PUNITIVE AND THEY ARE NOT AUTHORIZED IN  
27 THIS ACTION."  
28 /

1                   SO ALL OF THOSE STATEMENTS THAT MRS. BRIGHT  
2 TESTIFIED -- I MEAN, ARGUED TO YOU, ARE NOT APPROPRIATE UNDER  
3 THE LAW TO TAKE INTO ACCOUNT. INSTEAD, YOU HAVE TO LOOK AT  
4 WHAT THE LAW PROVIDES AS TO THESE BENEFIT DAMAGES.

5                   WHAT THE LAW PROVIDES AS TO THE BENEFIT  
6 DAMAGES -- I'LL SHOW YOU -- OKAY -- IS THAT THAT IS ONE  
7 ALTERNATE REMEDY THEY CAN GET UNDER THEIR TRESPASS CAUSE OF  
8 ACTION.

9                   NOW, THINK ABOUT THIS -- AND THIS IS WHERE YOUR  
10 COMMON SENSE COMES IN.

11                   ISN'T IT A NON SEQUITUR TO SAY THAT SHELL  
12 DERIVED A BENEFIT FROM CLEANING UP CONTAMINATION IT DIDN'T  
13 KNOW ABOUT?

14                   WELL, IT MAKES NO SENSE TO -- FOR  
15 WATSON LAND COMPANY TO SAY THAT SHELL SHOULD BE AWARDED SOME  
16 WINDFALL DAMAGES AGAINST IT TO DEPRIVE IT OF THE BENEFIT IT  
17 GOT BY NOT CLEANING UP CONTAMINATION THAT THERE'S NO EVIDENCE  
18 THAT IT KNEW ABOUT.

19                   AND THINK BACK TO THE PIPELINE EVIDENCE.

20                   THINK BACK TO ROGER UNDERWOOD.

21                   THINK BACK TO THE SOIL EVIDENCE.

22                   IF THIS IS STILL A LEGITIMATE DISPUTE TODAY,  
23 AND IF YOU'VE LISTENED TO THE EXPERTS AND GONE BACK AND FORTH  
24 THROUGHOUT THE TRIAL, THEN, IT'S NOT REASONABLE TO SAY THAT  
25 SHELL KNEW OR HAD REASON TO KNOW OF THIS CONTAMINATION, EVEN  
26 ASSUMING THAT IT WAS SHELL'S.

27                   SO IT DOESN'T MAKE ANY SENSE WHATSOEVER THAT  
28 SHELL GOT SOME SORT OF A BENEFIT FROM NOT CLEANING UP

1 CONTAMINATION.

2 IF YOU DETERMINE THAT SHELL WAS WRONG, THAT  
3 SHELL'S EXPERTS ARE WRONG AND THAT SOME PORTION OF THE  
4 CONTAMINATION WAS, IN FACT, DUE TO THE PIPELINES, THAT'S  
5 AFTER EIGHT TO NINE WEEKS OF TRIAL. THAT'S AFTER LISTENING  
6 TO A BUNCH OF DIFFERENT EXPERTS.

7 THAT DOESN'T MEAN THAT YOU THEN GO BACK AND  
8 THAT IT'S APPROPRIATE TO THEN AWARD BENEFIT DAMAGES TO  
9 DEPRIVE SHELL THE BENEFIT OF NOT CLEANING UP SOMETHING IT  
10 DIDN'T KNOW ABOUT.

11 THAT SIMPLY MAKES NO SENSE AT ALL.

12 THE LAW, LUCKILY, RECOGNIZES THAT. WHAT THE  
13 JUDGE HAS INSTRUCTED YOU ON THESE BENEFIT DAMAGES IS THAT  
14 (READING):

15  
16 "IF YOU FIND THAT A CONTINUING  
17 TRESPASS OR CONTINUING NUISANCE OCCURRED AS A  
18 RESULT OF A MISTAKE OF FACT BY SHELL, THEN  
19 THE VALUE OF THE USE OF THE PROPERTY IS  
20 LIMITED TO THE REASONABLE RENTAL VALUE."

21  
22 AND YOU'LL RECALL THAT WATSON IS NOT CLAIMING  
23 THAT IT SUFFERED ANY DAMAGES TO THE REASONABLE RENTAL VALUE.  
24 THAT'S IN THE INSTRUCTIONS.

25 IT DOES NOT MEAN THEY DON'T GET COST OF A  
26 BENEFIT IF YOU DETERMINE IT'S FROM SHELL.

27 WHAT THAT MEANS IS THAT YOU CANNOT AWARD THEM,  
28 UNDER THE LAW, THE SO-CALLED BENEFIT DAMAGES. BECAUSE IT

1 DOESN'T MAKE ANY SENSE IN THAT CONTEXT.

2 NOW, BECAUSE THIS IS AN AFFIRMATIVE DEFENSE

3 (READING) :

4

5 "IT IS SHELL'S BURDEN TO PROVE  
6 MISTAKE OF FACT BY A PREPONDERANCE OF THE  
7 EVIDENCE."

8

9 NOW, WHAT DOES THAT MEAN?

10 THIS IS ANOTHER INSTRUCTION THE JUDGE HAS READ  
11 TO YOU (READING) :

12

13 "A NUISANCE OR TRESPASS OCCURS  
14 UNDER A MISTAKE OF FACT IF THE PERSON  
15 WRONGFULLY OCCUPYING THE PROPERTY ACTS UNDER  
16 A REASONABLE BELIEF, IN THE EXISTENCE OF  
17 CERTAIN FACTS AND CIRCUMSTANCES, THAT, IF  
18 TRUE, WOULD NOT CONSTITUTE A WRONGFUL  
19 OCCUPATION."

20

21 NOW, WHAT DOES THAT MEAN IN THE FACTS OF THIS  
22 CASE?

23 THAT MEANS THAT IF SHELL HAD POLICIES, AS  
24 MR. UNDERWOOD TESTIFIED, THAT ANYBODY WHO DIGS AROUND A  
25 PIPELINE, IF YOU EVER SEE ANY EVIDENCE OF CONTAMINATION, IF  
26 YOU EVER KNOW OF ANY LEAKS, YOU ARE TO REPORT IT IMMEDIATELY;  
27 IF SHELL TAKES PRECAUTIONS TO TESTS PIPELINES; IF SHELL TAKES  
28 PRECAUTIONS TO PROTECT THEM WITH COATINGS AND THIS CATHODIC

1 PROTECTION; IF SHELL OPERATES THEIR PIPELINES IN SUCH A WAY  
2 AS TO NOT CAUSE AN UNREASONABLE DANGER WITH THOSE PIPELINES;  
3 THEN IT'S TAKING REASONABLE STEPS TO TRY TO PREVENT LEAKS.

4 AND IN LIGHT OF MR. UNDERWOOD'S TESTIMONY, THAT  
5 IN ALL OF HIS YEARS AT SHELL, NOBODY EVER SAID TO HIM THAT  
6 THERE WERE ANY LEAKS IN UTILITY WAY'S PIPELINES, EXCEPT FOR  
7 THE ISOBUTANE LEAK, IN LIGHT OF THE FACT THAT THERE ARE NO  
8 RECORDS THAT DEMONSTRATE THAT IN THIS CASE THAT THERE WAS ANY  
9 LEAK, THAT SHELL KNEW OF ANY LEAK, AND IN LIGHT OF THE FACT  
10 THAT THE SOIL DATA IN AND AROUND THE PIPELINES DOESN'T SHOW  
11 EVIDENCE OF ANY LEAKS IN THE PIPELINES, AND THAT THERE'S NO  
12 EVIDENCE WHATSOEVER IN THIS CASE THAT SHOW THAT SHELL HAD ANY  
13 KNOWLEDGE OR ANY REASON TO KNOW THAT THESE PIPELINES WERE  
14 ANYTHING OTHER THAN OPERATING AS PROPER PIPELINES WITHOUT  
15 LEAKING -- THE ONLY EVIDENCE OF A LEAK WAS THE ISOBUTANE  
16 LEAK, AND THEY TIED THAT OFF INTO ANOTHER ONE OF THE 1965  
17 LINES, AND THERE'S NO EVIDENCE TO THE CONTRARY THAT ANY OF  
18 THESE LINES WERE LEAKING -- NOTWITHSTANDING MRS. BRIGHT'S  
19 MONKEYS, NOTWITHSTANDING THE INFERENCES THAT SHE WANTS YOU TO  
20 DRAW -- ANYTHING TO THE CONTRARY WOULD BE SPECULATION.

21 SO IF YOU FIND THAT SHELL WAS REASONABLE IN ITS  
22 BELIEF THAT ITS PIPELINES WERE NOT LEAKING OR DID NOT CAUSE  
23 THE LEAK HERE, THEN YOU MAY NOT, UNDER THE LAW, AWARD THESE  
24 BENEFIT DAMAGES.

25 PRECISELY BECAUSE OF WHAT I SAID EARLIER. IT  
26 MAKES NO SENSE, JUST AS A MATTER OF COMMON SENSE, THAT  
27 SOMEBODY SHOULD BE DEPRIVED OF A BENEFIT OF NOT CLEANING UP  
28 SOMETHING THAT THEY DIDN'T KNOW ABOUT.

1                   AND THAT ONLY MAKES SENSE IN A CONTEXT OF IF  
2                   SOMEBODY GOES OUT AND SAYS, I'M GOING TO SAVE A BUCK BY  
3                   DUMPING SOME WASTE ON SOMEBODY'S LAND, OR I'M GOING TO SAVE A  
4                   BUCK BY IGNORING THIS KNOWN LEAK THAT I KNOW IS HAPPENING.

5                   OKAY. THAT'S THE ONLY CONTEXT IN WHICH THESE  
6                   BENEFIT DAMAGES MAKE ANY SENSE WHATSOEVER.

7                   SO APART FROM THE REMEDIATION, APART FROM THE  
8                   ARCO'S SHARE, YOU HAVE TO SEPARATELY LOOK AT THE MISTAKE OF  
9                   FACT ISSUE AND AS TO WHETHER THE BENEFIT DAMAGES MAKE ANY  
10                  SENSE AT ALL.

11                  FINALLY, ON THESE DAMAGES, THERE'S  
12                  SOME -- THERE'S AN INSTRUCTION THAT SAYS (READING):

13  
14                                 "YOU ARE NOT PERMITTED TO  
15                                 AWARD A PARTY SPECULATIVE DAMAGES," WHICH  
16                                 MEANS COMPENSATION, "FOR LOSS OR HARM WHICH,  
17                                 ALTHOUGH POSSIBLE, IS CONJECTURAL AND ARE NOT  
18                                 REASONABLY CERTAIN."

19  
20                                 NOW, HOW DOES THAT APPLY TO THIS CASE?

21                                 THIS WHOLE DAMAGE ANALYSIS THAT DR. DAGDIGIAN  
22                                 HAS ENGAGED IN HAS AN ELEMENT OF UNREALITY TO IT. AND WHAT  
23                                 HE'S SAYING IS, I WAS TOLD BY COUNSEL TO GO BACK TO MAY OF  
24                                 1993, AND IF SHELL HAD KNOWN ABOUT THIS STUFF, WHICH I'VE GOT  
25                                 NO EVIDENCE THEY DID, BUT IF THEY DID, AND IF THEY HAD  
26                                 REMEDIED, HERE'S WHAT IT WOULD COST.

27                                 AND THEN WHAT I'M GOING TO DO IS I'M GOING TO  
28                                 TAKE THIS AMOUNT THAT IT WOULD HAVE COST TO CLEAN UP IF SHELL

1 HAD KNOWN ABOUT IT IN 1993. I'M GOING TO MULTIPLY THAT BY  
2 20 PERCENT A YEAR ON THIS WEIGHTED AVERAGE COST OF CAPITAL  
3 RATE.

4 I'M THEN GOING TO COME UP WITH A BIG NUMBER.  
5 I'M GOING TO SUBTRACT THE MONEY NOBODY SPENT, IN OTHER WORDS,  
6 THE 1993 REMEDIATION COST. I'M THEN GOING TO ADD BACK IN THE  
7 AMOUNT OF MONEY TO CLEAN IT UP IN 2001, AND THAT'S HOW THEY  
8 COME UP WITH THESE ABSURD BENEFIT DAMAGES.

9 THAT WHOLE EXERCISE IS INCREDIBLY SPECULATIVE.  
10 IT'S SPECULATIVE IN EXTRAPOLATING BACK TO 1993.

11 IT'S SPECULATIVE IN THAT THERE'S NO EVIDENCE  
12 THAT SHELL KNEW OR SHOULD HAVE KNOWN THAT THE PIPELINES WERE  
13 LEAKING IN 1993.

14 AND EVEN THE REMEDY AS OF TODAY IS SPECULATIVE  
15 IN THAT THERE HAS NOT BEEN ONE NICKEL SPENT BY WATSON, NOT  
16 ONE PLAN SUBMITTED IN TEN YEARS TO THE REGIONAL BOARD THAT  
17 WOULD HAVE TO APPROVE IT. NOT ONE PILOT TEST THAT WAS DONE.

18 DR. DAGDIGIAN ADMITS THAT HE DOESN'T KNOW WHERE  
19 HE WOULD DIG HIS SOIL EXCAVATION BECAUSE ALL THE DATA TO  
20 CLEANUP THERE -- HE JUST KNOWS HE MIGHT HAVE TO DO IT BECAUSE  
21 HE'S ASSUMING A LEAK.

22 BUT HE'S POSTULATING SO MUCH IN HIS DAMAGE  
23 ANALYSIS THAT'S SPECULATIVE, INCLUDING HIS SOIL VAPOR  
24 EXTRACTION.

25 ALL OF THE SOIL VAPOR IS CLEAN DOWN TO ABOUT  
26 40 FEET OR 41 FEET AND JUST A COUPLE OF WELLS. AND THE ONLY  
27 EVIDENCE TO THE CONTRARY IS MR. SCHMIDT'S DOWNHOLE FLUX.

28 WHAT WE SAW IS THIS., ALL THOSE NUMBERS ARE

1 VERY MINIMAL UNTIL YOU GET DOWN TO THE 41 FEET. WE KNOW WHAT  
2 DR. SCHMIDT'S DOWNHOLE FLUX IS ALL ABOUT.

3 SO EVERY ELEMENT OF WATSON'S DAMAGE ANALYSIS IS  
4 SPECULATIVE.

5 AND YOU MAY DISAGREE THAT SOME OF THEM ARE  
6 SPECULATIVE OR SOME OF THEM ARE NOT SPECULATIVE, BUT THAT'S  
7 GOING TO BE ONE OF THE THINGS THAT YOU NEED TO DO UNDER THE  
8 LAW IS, WHEN YOU GO BACK THERE, IS FIGURE OUT, OKAY, SHOULD  
9 WE AWARD DAMAGES THAT HAVE SOME RELATIONSHIP TO THE ACTUAL  
10 HARM?

11 SHOULD WE AWARD THESE BENEFIT DAMAGES?

12 IS THERE ANY EVIDENCE THAT SHELL KNEW OR SHOULD  
13 HAVE KNOWN OF THE LEAK SUFFICIENT TO AWARD THESE WINDFALL  
14 DAMAGES OF TENS AND TENS AND TENS OF MILLIONS OF DOLLARS?

15 SECOND OF ALL, IS IT REASONABLE FOR  
16 DR. DAGDIGIAN TO SIT UP THERE ON THE STAND, AFTER ALL OF HIS  
17 DIRECT TESTIMONY, AFTER HE WRITES HIS NUMBER ON THE BOARD OF  
18 12.8 MILLION PLUS 54 MILLION BENEFIT DAMAGES TOTALING 67  
19 MILLION, AND THEN HAVE MRS. BRIGHT AT THE VERY END OF HIS  
20 REDIRECT SAY, OH, DR. DAGDIGIAN, BY THE WAY, WHAT IF YOU  
21 CHANGE THESE THREE ASSUMPTIONS, WHAT DOES THAT DO TO YOUR  
22 DAMAGE ANALYSIS?

23 OH, WELL, IT DOUBLES IT.

24 OH, IT DOUBLES IT.

25 WELL, WHAT DOES THAT DO TO THE BENEFIT DAMAGES?

26 OH, THAT DOUBLES THAT, TOO.

27 AND THEN THAT ALLOWS THEM TO WRITE THIS ABSURD  
28 NUMBER OF \$120 MILLION ON THE BOARD AFTER HE DIDN'T SAY THAT

1 NUMBER ONCE. HE DIDN'T SAY ANYTHING OTHER THAN WHAT HE HAD  
2 ON HIS INITIAL CHART IN ALL OF HIS DIRECT TESTIMONY.

3 WHAT SORT OF CONFIDENCE DOES THAT GIVE YOU IN  
4 HOW REAL THOSE DAMAGES FIGURES ARE IN THE FIRST PLACE FOR  
5 REMEDIATION IF SOMEBODY CAN JUST WAVE THEIR ARMS AND DOUBLE  
6 THE AMOUNT?

7 WHAT THAT SHOWS, I THINK, IS IT SHOWS THAT  
8 DR. DAGDIGIAN IS DOING A LITIGATION DAMAGE ANALYSIS.

9 HIS JOB, FOR WHICH HE WAS PAID WELL, IS TO  
10 WRITE THE BIGGEST NUMBER ON THE BOARD.

11 AND WHEN I ASKED HIM SOME QUESTIONS QUESTIONING  
12 SOME OF HIS REMEDIATION STUFF, HE DOUBLED IT FOR GOOD  
13 MEASURE.

14 WATSON'S HOPING THAT YOU'LL THEN TAKE THAT  
15 ANALYSIS AND MAYBE YOU'LL SPLIT THE BABY AND AWARD HIM THE  
16 \$67 MILLION FIGURE AND SAY, OH, WELL, HE ASKED FOR  
17 120 MILLION.

18 YOU KNOW, THAT'S NOT THE WAY THE ANALYSIS OF  
19 THE EVIDENCE GOES. AND YOU NEED TO LOOK AT THE EVIDENCE.  
20 YOU NEED TO LOOK AT THE HARM AND YOU NEED TO LOOK AT THE  
21 REMEDIATION.

22 AND ON THE REMEDIATION, REMEMBER HOW  
23 MRS. BRIGHT SPENT A COUPLE OF HOURS WITH MR. LEITER OR  
24 LEITER -- MR. LEITER, TALKING TO HIM WHEN HE RAISED THE ISSUE  
25 THAT DR. DAGDIGIAN'S SYSTEM WAS NOT WELL THOUGHT OUT IN THAT  
26 IT'S GOING TO SUCK OVER THE ARCO PLUME AND THE GATX PLUME.  
27 SHE SPENT HOURS WITH HIM, SAYING, WELL, YOU CAN JUST REINJECT  
28 HERE, YOU CAN REINJECT THERE, YOU CAN REINJECT OVER HERE.

1 THAT WOULD SOLVE THE PROBLEM.

2 AND MR. LEITER SAID, NO, THAT'S NOT GOING TO  
3 SOLVE THE PROBLEM. THAT SIMPLY IS NOT GOING TO WORK.

4 WHY IS IT NOT GOING TO WORK?

5 IT'S NOT GOING TO SOLVE THE PROBLEM. IT'S  
6 GOING TO MAKE IT EVEN WORSE BECAUSE NOT ONLY ARE YOU SUCKING  
7 VAST AMOUNTS OF WATER OUT OF THAT AQUIFER, YOU'RE ALSO TRYING  
8 TO REINJECT THEM, AND YOU CAN'T CONTROL WHERE IT GOES.

9 AND DID DR. DAGDIGIAN, WHEN HE GOT UP ON  
10 REBUTTAL, SAY ONE WORD ABOUT REINJECTION?

11 NO.

12 BECAUSE IT'S A HAREBRAINED SCHEME, THOUGHT UP  
13 BY A LAWYER IN CROSS-EXAMINATION.

14 OKAY. THAT GIVES YOU SOME IDEA THAT JUST  
15 BECAUSE SOMEBODY ASKS SOMETHING IN CROSS-EXAMINATION DOESN'T  
16 MEAN THAT'S A REASONABLE POINT.

17 INSTEAD, WHAT DID DR. DAGDIGIAN RELY UPON?

18 HE KNEW THIS -- THIS REINJECTION IDEA WAS  
19 COMPLETELY HAREBRAINED AND WOULDN'T SOLVE HIS PROBLEM. HE  
20 NEVER CONTESTED THE FUNDAMENTAL POINT, REALLY.

21 WHAT HE SAID, INSTEAD, WAS, OH, I CAN ADJUST MY  
22 PUMPING SO THAT IT'S NOT GOING TO SUCK THAT OVER. OH, I  
23 LOOKED AT WATSON'S -- WATSON'S PLUME MODELING, AND I DON'T  
24 THINK THAT THESE WELLS ARE GOING TO HAVE ANY INFLUENCE.

25 BUT WE'VE SEEN THAT -- THAT HE DEFIES COMMON  
26 SENSE BECAUSE HE'S PROPOSING TO DIG, BASICALLY, A 17-FOOT  
27 HOLE, 15-FOOT HOLE IN THE WATER TABLE. OF COURSE, THE WATER  
28 IS GOING TO FLOW IN THERE. OF COURSE, THAT'S GOING TO IMPACT

1 THE REGIONAL HYDROLOGY.

2 AND IF WATSON HAD DONE SOMETHING TO CLEAN THIS  
3 UP, WE WOULDN'T BE IN THIS POSITION OF HAVING TO SPECULATE.  
4 WE WOULDN'T BE IN THIS POSITION.

5 NOW, THE QUESTION IS, HAS THE REGIONAL BOARD  
6 EVER ASKED SHELL TO CLEAN IT UP?

7 NO.

8 WATSON MET WITH THEM IN 1996. AFTER THAT TIME,  
9 NEVER MET WITH THEM. NEVER GAVE ONE PIECE OF DATA TO THE  
10 REGIONAL BOARD. NEVER SUBMITTED ANYTHING PERTAINING TO  
11 REMEDIATION TO THE REGIONAL BOARD.

12 THE ONLY EVIDENCE IS THE ONE UNDER THE CLEANUP  
13 AND ABATEMENT ORDER TO INVESTIGATE AND TO REMEDIATE OFF-SITE  
14 DAMAGE TO ARCO, ACCORDING TO THE TESTIMONY THAT I READ YOU  
15 EARLIER.

16 FINALLY, ON THIS WACC THEORY. REMEMBER  
17 MR. SUDERMAN?

18 HE ADMITTED A COUPLE OF THINGS THAT ARE VERY  
19 IMPORTANT. AND THIS JUST SHOWS HOW SPECULATIVE AND  
20 OUTRAGEOUS THESE BENEFIT DAMAGES ARE.

21 HE ADMITTED THAT HE DOESN'T CARE WHETHER OR NOT  
22 SHELL EVEN USES WEIGHTED AVERAGE COST OF CAPITAL WITH RESPECT  
23 TO A DECISION ABOUT ENVIRONMENTAL REMEDIATION. AS A MATTER  
24 OF FACT, HE TESTIFIED HE DOESN'T THINK SHELL DOES. NOBODY  
25 DOES, BECAUSE THAT ANALYSIS IS USED ONLY FOR PROFIT MAKING  
26 ENTERPRISES. IT IS NOT USED FOR ENVIRONMENTAL REMEDIATION  
27 DECISIONS.

28 BUT HE SAYS, I'M USING IT ANYWAY, BECAUSE I'M

1 DOING SOMETHING DIFFERENT. I'M DOING A LITIGATION DAMAGE  
2 ANALYSIS. THAT'S WHY I'M PICKING THIS WEIGHTED AVERAGE COST  
3 OF CAPITAL VALUE OF 20 PERCENT.

4 OKAY. EVEN THOUGH SHELL DOESN'T DO IT, HE  
5 ADMITTED THAT, AND MR. LEVITCH FROM SHELL WHO TALKED ABOUT  
6 SHELL'S USE OF THE WEIGHTED AVERAGE COST OF CAPITAL SAID THAT  
7 NO, IT IS NEVER EVER, EVER BEEN FOR EXPENSE OR ANY  
8 ENVIRONMENTAL REMEDIATION.

9 YET, WHAT WATSON WOULD HAVE YOU BELIEVE IS,  
10 THAT'S THE APPROPRIATE MEASURE TO USE BECAUSE SOMEHOW, THAT  
11 WOULD DEPRIVE SHELL THE BENEFIT OF NOT REMEDIATING.

12 BUT THAT SHOWS HOW DIVORCED FROM REALITY THEIR  
13 WHOLE BENEFIT DAMAGES AND WACC ANALYSIS IS.

14 HERE'S MR. SUDERMAN'S TESTIMONY (READING):

15  
16 "YOU DON'T HAVE ANY IDEA OR  
17 YOU HAVE NO REASON TO BELIEVE THAT SHELL,  
18 WHEN IT IS TRYING TO DECIDE WHETHER TO  
19 REMEDIATE AN ENVIRONMENTAL PROBLEM, USES THE  
20 WACC AT ALL?

21 "A: THEY PROBABLY DON'T USE THE  
22 WACC.

23 "Q. THEY PROBABLY DON'T EVEN USE  
24 THE WACC BECAUSE IT'S NOT APPLICABLE TO  
25 SOMETHING THAT'S NOT A PROFIT MAKING  
26 ENTERPRISE, CORRECT?

27 "A. IT'S NOT APPLICABLE TO A  
28 DECISION ABOUT WHETHER OR NOT YOU ARE GOING

1 TO CLEAN UP A CONTAMINATED PROPERTY OR NOT. "

2

3

4

5

6

THAT, IN MY VIEW, MEANS, YOU TOSS OUT THAT  
20 PERCENT MULTIPLIER THAT HAS THE EFFECT OF DOING NOTHING  
OTHER THAN GENERATING THIS MASSIVE WINDFALL FOR  
WATSON LAND COMPANY.

7

8

NOW, THE OTHER THING THAT HE SAID WAS, HE WAS  
USING A VERY SHORT TIME SERIES.

9

10

REMEMBER WHAT THAT DID TO THE WACC?

11

IT RAISED IT SUBSTANTIALLY.

12

13

14

AND YOU REMEMBER THAT STATEMENT I SHOWED HIM  
FROM THE CONSULTANT'S REPORT THAT HE RECOGNIZED AND USED THAT  
SAID THAT USING A SHORT TIME SERIES MEANS THAT THE ANALYST  
CAN JUSTIFY ANY NUMBER HE WANTS?

15

16

USING A LONGER TIME SERIES IS WHAT'S  
REASONABLE.

17

18

19

THAT'S WHAT MR. LEVITCH SAID. HE SAID, SHELL  
USES A LONGER TIME SERIES WHEN YOU'RE USING THE WACC, NOT THE  
SHORT ONE.

20

21

AND ISN'T THAT EXACTLY WHAT WE SAW MR. SUDERMAN  
DO IS USE THAT SHORT TIME PERIOD?

22

23

24

HE PICKED FOUR YEARS OF A BULL MARKET AND THAT  
HAD THE EFFECT OF JUSTIFYING THE NUMBER THAT HE WANTED, WHICH  
WAS 20 PERCENT.

25

26

27

SO, FIRST OF ALL, SHELL DOESN'T USE WACC AT ALL  
AND NOBODY DOES TO CLEAN IT UP. SO THE WHOLE EXERCISE IS  
TOTALLY INAPPLICABLE.

28

I ASKED HIM (READING):

1 "SO, WHEN A COMPANY LIKE SHELL  
2 USES WACC, WEIGHTED AVERAGE COST OF CAPITAL,  
3 TO TRY TO DECIDE WHETHER TO INVEST THEIR  
4 DOLLARS INTO A PROFIT MAKING PROJECT HERE,  
5 THEY USE A LONGER SERIES FOR THE RISK EQUITY  
6 RISK PREMIUM?"

7 AND HE SAID, "I  
8 WOULDN'T -- THAT WOULD NOT SURPRISE ME. I  
9 THINK I WOULD ASSUME THAT TO BE THE CASE.

10 "Q. OKAY. THAT'S NOT WHAT YOU DID  
11 HERE, THOUGH, SIR, IS IT?

12 "A. THAT IS CORRECT.

13 "Q. BECAUSE YOU USED IT FOR  
14 PURPOSES OF A LITIGATION DAMAGE ANALYSIS,  
15 RIGHT?

16 "A. THAT'S TRUE, TOO."

17  
18 SO WHAT HE'S SAYING IS NOT ONLY HE'S ADMITTING  
19 DOES THE WACC NOT EVEN APPLY, HE'S SAYING, HE DIDN'T CONTEST  
20 MR. LEVITCH'S TESTIMONY THAT SHELL'S INTERNAL WACC WAS  
21 10 PERCENT, 10-1/2 PERCENT, USING A LONGER TIME SERIES.

22 AND HE SAID HE DIDN'T CARE ABOUT THAT BECAUSE  
23 HE WAS HIRED TO DO A LITIGATION DAMAGE ANALYSIS.

24 AND THE POINT OF THAT DAMAGE ANALYSIS, I THINK,  
25 IS QUITE APPARENT FROM THE CHARTS THAT HAVE BEEN GIVEN TO YOU  
26 BY WATSON LAND COMPANY -- IS SOLELY TO WRITE THE BIGGEST  
27 NUMBER POSSIBLE, TO HOPE THEY GET SOME SORT OF A WINDFALL.

28 BEST INDICATION OF THAT IS EXHIBIT 1525.

1 DR. DAGDIGIAN ADMITTED THIS. ON THE B1 PLUME, WHICH WATSON  
2 ADMITS GATX IS CLEANING UP ANYWAY, WHICH THERE'S BEEN VERY  
3 LITTLE TESTIMONY ON IN TERMS OF SHELL CAUSATION, WATSON IS  
4 OUT-OF-POCKET \$52,361, THEY WANT YOU TO AWARD \$5.3 MILLION ON  
5 THAT PLUME ALONE.

6 SIMILARLY, IN A CASE WHERE WATSON, IN TERMS OF  
7 THE A PLUME -- EXCUSE ME -- HAS SPENT \$317,000, THEY WANT YOU  
8 TO AWARD \$14.3 MILLION.

9 ON THE B2 PLUME, THE BIGGEST CONTAMINATION  
10 HERE, \$436,000, INVESTIGATION COSTS, \$35,303.

11 OKAY.

12 35 MILLION. GEEZ. BOY. I GUESS I'M BEING  
13 OVERLY OPTIMISTIC. \$35 MILLION.

14 DOES THAT STRIKE ANYBODY AS BEING A LITTLE BIT  
15 OVERREACHING, AS BEING JUST HAVING A LITTLE BIT OF CHUTZPAH  
16 ASKING FOR THAT TYPE OF DAMAGES WHERE IT'S NOT AFFECTING  
17 THEIR TENANTS, IT'S NOT AFFECTING THEIR USE, IT'S NOT  
18 AFFECTING THEIR LEASES, THEY'VE NEVER HAD TO PAY OUT ON AN  
19 INDEMNITY, THEY'VE NEVER HAD TO INCUR ONE SINGLE NICKEL OF  
20 OUT-OF-POCKET DAMAGES AT ALL OTHER THAN THE INVESTIGATION  
21 COSTS IN CONNECTION WITH THIS LAWSUIT?

22 THAT'S JUST SIMPLY NOT REASONABLE.

23 THAT'S SO FAR OUT IN THE OZONE THAT IT'S NOT  
24 REASONABLE.

25 DR. DAGDIGIAN TESTIFIED THAT (READING):

26

27

28

"THE BIGGEST SINGLE DAMAGE  
ITEM" ON HIS CHART "IS THE COST OF AVOIDANCE

1 BENEFIT TO SHELL, RIGHT?

2 "RIGHT?"

3 "THE SINGLE BIGGEST ITEM ON  
4 CHART, OBVIOUSLY?"

5 "A. YES.

6 "AND YOU WERE TOLD BY COUNSEL  
7 TO INCLUDE THAT FACTOR, WEREN'T YOU?"

8 "A. THAT'S CORRECT.

9 "Q. ON NONE OF THE PROJECTS THAT  
10 YOU'VE EVER BEEN INVOLVED IN, THAT HAVE  
11 INVOLVED ANY SORT OF ACTUAL REMEDIATION FOR A  
12 CLIENT, HAVE YOU EVER HAD SUCH A CALCULATION?"

13 "THAT'S ABSOLUTELY TRUE."

14

15 AND HE HEARD MR. SUDERMAN, AS WELL, SAY -- I  
16 SAID (READING):

17

18 "YOU HEARD HIM SAY, DIDN'T  
19 YOU, THAT COMPANIES LIKE SHELL DO USE A WACC  
20 ANALYSIS WHEN THEY'RE DEALING WITH  
21 ENVIRONMENTAL REMEDIATION BECAUSE IT'S NOT  
22 APPROPRIATE.

23 "DO YOU REMEMBER HE SAID  
24 THAT?"

25 "A. YES, I DO."

26 HE SAID: "I WAS ASKED TO  
27 INDICATE THE BENEFIT TO SHELL AND  
28 MR. SUDERMAN'S NUMBERS, EVEN THOUGH SHELL

1 DOES NOT USE THEM FOR THEIR DECISION-MAKING  
2 PROCESS, WERE THE APPROPRIATE NUMBERS TO  
3 CALCULATE THE COST AVOIDANCE BENEFIT TO  
4 SHELL, AND THAT'S WHAT I DID.

5 "AND YOU WERE TOLD THAT BY  
6 WATSON LAND COMPANY'S LAWYERS TO USE THE WACC  
7 NOTWITHSTANDING THAT SHELL DOESN'T USE IT?

8 "I USED THE WACC THAT  
9 MR. SUDERMAN SUPPLIED, THAT'S CORRECT.

10 "YOU'VE NEVER USED A WACC  
11 ANALYSIS BEFORE IN TRYING TO CALCULATE  
12 ENVIRONMENTAL CLEANUP COSTS OR ANYTHING, HAVE  
13 YOU, SIR?"

14 AND HE SAYS: "THE WACC DOES  
15 NOT CALCULATE CLEANUP COSTS, SO, NO, I  
16 HAVEN'T."

17  
18 THIS IS THE FIRST TIME HE'S EVER MADE THAT TYPE  
19 OF A DAMAGE ANALYSIS.

20 SO WHEN YOU TAKE A LOOK BACK AT ALL OF THE CASE  
21 AND ALL OF THE EVIDENCE, YOU HAVE TO ASK YOURSELF, WHAT IS  
22 IT THAT THE EVIDENCE SHOWS?

23 WHAT DOES THE LAW SAY ABOUT THE EVIDENCE?

24 AND WHAT I'VE TRIED TO DO, ALTHOUGH IT MAY NOT  
25 BE EXCITING, IS I'VE TRIED TO SHOW YOU A LOT OF THAT  
26 EVIDENCE.

27 I'VE TRIED TO SHOW YOU TESTIMONY.

28 I'VE TRIED TO GUIDE YOU TO SOME EXHIBITS THAT I

1 THINK YOU MIGHT FIND HELPFUL.

2 BECAUSE THAT'S WHAT YOU HAVE TO DO, IS, WHEN  
3 YOU GO BACK INTO THE JURY ROOM, IS, YOU HAVE TO ASSESS THAT  
4 EVIDENCE FOR YOURSELVES, ASSESS THE ARGUMENTS OF EACH SIDE  
5 FOR YOURSELVES, ASSESS THE CAUSATION ISSUES, WHETHER ELEMENTS  
6 HAVE BEEN MET, WHAT THE DAMAGES ARE, AND WHETHER IT'S  
7 APPROPRIATE TO AWARD THESE BENEFIT DAMAGES, OR IF THERE'S  
8 BEEN A MISTAKE OF FACT OR WHETHER, IN FACT, YOU SHOULD APPLY  
9 THE WACC AT ALL.

10 AND WHATEVER NUMBERS YOU USE -- WHATEVER  
11 NUMBERS YOU USE, I THINK WE SHOULD HARKEN BACK TO THE IDEA  
12 THAT MANY OF US DISCUSSED IN THE VOIR DIRE, AND THAT IS,  
13 SHOULDN'T WHAT SOMEBODY GETS IN A LAWSUIT HAVE SOME  
14 RELATIONSHIP TO THE ACTUAL SCOPE OF THE PROBLEM TO THE ACTUAL  
15 HARM THEY HAVE SUFFERED?

16 SHOULD SOMEBODY GET A WINDFALL JUST BECAUSE  
17 THEY CHOSE TO GO TO COURT WHERE THEY HAVEN'T INCURRED ANY  
18 OUT-OF-POCKET COSTS THEMSELVES?

19 AND SECOND OF ALL, WHAT IS THE PROPER REMEDY  
20 WHERE THE ARCO PROBLEM IS SO SEVERE, THE GATX PROBLEM IS  
21 RIGHT ON THE OTHER SIDE, AND WHERE THE EVIDENCE IS THAT  
22 DR. DAGDIGIAN'S REMEDY WOULD, IN FACT, MAKE THINGS WORSE, NOT  
23 BETTER?

24 SO I'M NOT GOING TO GET A CHANCE TO SPEAK TO  
25 YOU AGAIN, AS I MENTIONED ON FRIDAY. THIS IS MY ONE SHOT,  
26 BECAUSE WATSON HAS THE BURDEN OF PROOF, NOT I.

27 BUT I WOULD JUST ASK YOU TO PLEASE THINK IN  
28 YOUR MIND WHEN MR. BRIGHT IS TALKING AND WHEN YOU GO BACK IN

1 THE JURY ROOM AND YOU'RE DISCUSSING THE EVIDENCE, YOU KNOW,  
2 WHAT WOULD MR. LESLIE SAY TO THAT?

3 WHAT OTHER EVIDENCE DID WE SEE THAT HAS TO DO  
4 WITH THAT SUBJECT?

5 WHAT OTHER TESTIMONY DID WE HEAR THAT CAN HELP  
6 US DECIDE THAT PARTICULAR ISSUE?

7 AND GO BACK AND MAKE A NEUTRAL ASSESSMENT.

8 EVEN THOUGH WE'VE GOT A DISAGREEMENT WITH  
9 WATSON LAND COMPANY AS TO WHOSE CONTAMINATION IT IS, WHAT TO  
10 DO ABOUT IT, THAT'S A LEGITIMATE DISAGREEMENT. AND BOTH I  
11 AND MY CLIENT TRUST YOU TO WORK YOUR WAY THROUGH THE THICKET  
12 OF TESTIMONY AND REACH A JUST RESULT ON THAT BY LOOKING AT  
13 THE EVIDENCE.

14 AND BOTH MY CLIENT AND I TRUST THAT WHEN YOU GO  
15 BACK IN THE JURY ROOM, YOU'LL LOOK AT THE LAW THAT THE JUDGE  
16 GIVES AND YOU'LL LOOK AT THE SPECIFIC EVIDENCE AND YOU'LL  
17 WORK YOUR WAY THROUGH THAT EVIDENCE AND TRY TO COME UP WITH  
18 WHAT YOU FEEL IS THE MOST FAIR AND JUST RESULT.

19 AND I'D LIKE TO THANK YOU ONCE AGAIN FOR YOUR  
20 ATTENTION. I KNOW THIS HAS BEEN A VERY LONG TRIAL, AND IT'S  
21 BEEN A LOT OF TEDIOUS TESTIMONY. IT'S BEEN A LOT OF VERY  
22 TECHNICAL TESTIMONY.

23 BUT YOU'VE BEEN A TREMENDOUSLY ATTENTIVE JURY,  
24 AND I KNOW MANY OF YOU HAVE MANY PAGES OF NOTES TO GO  
25 THROUGH.

26 AND I HOPE THAT MY CLOSING STATEMENT TO YOU HAS  
27 BEEN SOMEWHAT HELPFUL IN TRYING TO GUIDE YOU TO SOME OF THE  
28 EXHIBITS THAT I THINK MIGHT BE HELPFUL TO REMIND YOU OF SOME

1 OF THE TESTIMONY.

2 BUT YOU SHOULDN'T LIMIT YOURSELF TO THAT IF YOU  
3 FEEL THAT YOU WANT TO LOOK AT ANY EXHIBIT. THAT'S YOUR EXACT  
4 RIGHT TO DO THAT.

5 AND I THANK YOU IN ADVANCE FOR YOUR FAIR  
6 CONSIDERATION AND FOR YOUR TIME.

7 THANKS.

8 THE COURT: THANK YOU. LET'S TAKE A 15-MINUTE BREAK.

9  
10 (RECESS.)

11  
12 THE COURT: ALL RIGHT. BACK ON THE RECORD.

13 MR. BRIGHT, YOU HAVE THE LAST WORD.

14 MR. BRIGHT: THANK YOU.

15 DID YOU HEAR THAT?

16

17 ARGUMENT

18 BY MR. BRIGHT:

19 GOOD AFTERNOON, LADIES AND GENTLEMEN.

20 I, OBVIOUSLY, HAD A PRETTY GOOD IDEA OF MANY OF  
21 THE THINGS THAT WOULD BE SAID ON BEHALF OF SHELL IN CLOSING  
22 AND SO, CERTAINLY, I PREPARED TO ADDRESS THEM.

23 BUT THERE ARE A COUPLE OF THINGS THAT WERE SAID  
24 THAT I WASN'T EXPECTING, AND SO THAT MAKES ME CHANGE THE  
25 ORDER A LITTLE BIT OF WHAT I'M GOING TO TALK TO YOU ABOUT, SO  
26 PERMIT ME SOME DEVIATIONS.

27 I WENT TO HIGH SCHOOL DURING THE HEIGHT OF THE  
28 COLD WAR, AND ONE OF THE THINGS THAT THEY SEEM TO THINK IT



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6 Attorneys for Defendant SHELL OIL COMPANY

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES,  
9 CENTRAL DISTRICT

10  
11 WATSON LAND COMPANY, a California  
12 Corporation,

13 Plaintiff,

14 vs.

15 ATLANTIC RICHFIELD COMPANY, a  
16 Pennsylvania corporation; GEORGE PEARSON,  
17 an individual, dba G&M OIL COMPANY, INC.,  
18 a California Corporation; TEXACO REFINING  
19 AND MARKETING, INC., a Delaware  
20 corporation; TRMI HOLDINGS, INCLUDE, a  
21 Delaware Corporation; REMEDIATIONS  
22 CAPITAL CORPORATION, a Nevada  
23 Corporation; MONSANTO CHEMICAL  
24 COMPANY, a Delaware corporation;  
25 STAUFFER MANAGEMENT COMPANY, a  
26 Delaware corporation; RHONE-POULENC  
27 BASIC CHEMICALS COMPANY, a Delaware  
28 corporation, SHELL OIL COMPANY, a  
Delaware corporation and DOES 1 through 200,  
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

) Case No. BC150161

) [Assigned to Dept. 52]

) SHELL OIL COMPANY'S  
) RESPONSE TO PLAINTIFF AND  
) CROSS-DEFENDANT WATSON  
) LAND COMPANY'S FIRST SET OF  
) SPECIAL INTERROGATORIES

) Discovery Cutoff: None

) Motion Cutoff: None

) Trial Date: None

1 PROPOUNDING PARTY: PLAINTIFF AND CROSS-DEFENDANT,  
2 WATSON LAND COMPANY

3 RESPONDING PARTY: DEFENDANT, SHELL OIL COMPANY

4 SET NUMBER: ONE

5  
6  
7 Pursuant to Section 2031 of the California Code of Civil Procedure, Defendant  
8 SHELL OIL COMPANY ("SHELL") hereby responds to the First Set of Special  
9 Interrogatories propounded by Plaintiff and Cross-Defendant WATSON LAND  
10 COMPANY ("Plaintiff").

11  
12 I.

13 PRELIMINARY STATEMENT

14  
15 Subject to any further objections set forth herein below, defendant SHELL's  
16 responses hereinafter set forth are provided subject to each of the following  
17 reservations:

18 (a) SHELL's investigation and discovery with regard to the subject matter of  
19 this litigation are not yet complete and are continuing; and

20 (b) SHELL's responses are limited to the extent that it has, as yet, not  
21 completed its own independent investigation into the subject matter of this litigation;  
22 and

23 (c) Although SHELL's responses to Plaintiff's FIRST SET OF SPECIAL  
24 INTERROGATORIES are complete to the extent of SHELL's knowledge based upon  
25 its review of its files and records to date, such responses are given without prejudice to  
26 SHELL's right to introduce other facts or information which SHELL may discover or  
27 upon which SHELL may subsequently come to rely at time of trial.

1 II.

2 RESPONSES TO SPECIAL INTERROGATORIES

3  
4 SPECIAL INTERROGATORY NO. 1:

5 IDENTIFY each and every pipeline ever installed by SHELL within the  
6 WATSON CENTER, regardless of whether a pipeline is currently in use, is currently  
7 idle, has been abandoned in place or has been removed.

8 RESPONSE TO SPECIAL INTERROGATORY NO. 1:

9 SHELL responds that it is producing all relevant documents in its files in  
10 response to plaintiff's first and second demand for production of documents. Any and  
11 all information falling within the parameters of this interrogatory is contained in the Y-  
12 Maps related to the subject area which are readily ascertainable within SHELL's  
13 production of documents.

14 SPECIAL INTERROGATORY NO. 2:

15 State the date of installation of each and every pipeline ever installed by SHELL  
16 within the WATSON CENTER, regardless of whether a pipeline is currently in use, is  
17 currently idle, has been abandoned in place or has been removed.

18 RESPONSE TO SPECIAL INTERROGATORY NO. 2:

19 SHELL responds that it is producing all relevant documents in its files in  
20 response to plaintiff's first and second demand for production of documents. Any and  
21 all information falling within the parameters of this interrogatory is contained in the  
22 pipeline tables related to the subject area which are readily ascertainable within  
23 SHELL's production of documents.

24 SPECIAL INTERROGATORY NO. 3:

25 State the LOCATION of each and every pipeline ever installed by SHELL  
26 within the WATSON CENTER, regardless of whether a pipeline is currently in use, is  
27 currently idle, has been abandoned in place or has been removed.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

2 SHELL responds that it is producing all relevant documents in its files in  
3 response to plaintiff's first and second demand for production of documents. Any and  
4 all information falling within the parameters of this interrogatory is contained in the Y-  
5 Maps related to the subject area which are readily ascertainable within SHELL's  
6 production of documents.

7 **SPECIAL INTERROGATORY NO. 4:**

8 IDENTIFY each and every pipeline ever installed by SHELL within the  
9 WATSON CENTER that has been abandoned in place.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

11 SHELL responds that it is producing all relevant documents in its files in  
12 response to plaintiff's first and second demand for production of documents. Any and  
13 all information falling within the parameters of this interrogatory is contained in the Y-  
14 Maps related to the subject area which are readily ascertainable within SHELL's  
15 production of documents.

16 **SPECIAL INTERROGATORY NO. 5:**

17 For each and every pipeline ever installed by SHELL within the WATSON  
18 CENTER that has been abandoned in place, state the date(s) of such abandonment.

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

20 SHELL responds that it is producing all relevant documents in its files in  
21 response to plaintiff's first and second demand for production of documents. Any and  
22 all information falling within the parameters of this interrogatory is contained in the Y-  
23 Maps related to the subject area which are readily ascertainable within SHELL's  
24 production of documents.

25 **SPECIAL INTERROGATORY NO 6:**

26 IDENTIFY each and every pipeline ever installed by SHELL within the  
27 WATSON CENTER that has been removed.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

2 SHELL responds that it is producing all relevant documents in its files in  
3 response to plaintiff's first and second demand for production of documents. Any and  
4 all information falling within the parameters of this interrogatory is contained in  
5 SHELL's project files related to the subject area which are readily ascertainable within  
6 SHELL's production of documents.

7 **SPECIAL INTERROGATORY NO. 7:**

8 For each and every pipeline ever installed by SHELL within the WATSON  
9 CENTER that has been removed, state the date(s) of removal.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

11 SHELL responds that it is producing all relevant documents in its files in  
12 response to plaintiff's first and second demand for production of documents. Any and  
13 all information falling within the parameters of this interrogatory is contained in  
14 SHELL's project files related to the subject area which are readily ascertainable within  
15 SHELL's production of documents.

16 **SPECIAL INTERROGATORY NO. 8:**

17 IDENTIFY each and every pipeline ever installed by SHELL within the  
18 WATSON CENTER that has been physically enlarged, reduced, modified, plugged,  
19 capped or otherwise physically altered, regardless of whether a pipeline is currently in  
20 use, is currently idle, has been abandoned in place or has been removed.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

22 SHELL responds that it is producing all relevant documents in its files in  
23 response to plaintiff's first and second demand for production of documents. Any and  
24 all information falling within the parameters of this interrogatory is contained in the Y-  
25 Maps related to the subject area which are readily ascertainable within SHELL's  
26 production of documents.

27

28

1 **SPECIAL INTERROGATORY NO. 9:**

2 For each and every pipeline ever installed by SHELL within the WATSON  
3 CENTER that has been physically enlarged, reduced, modified, plugged, capped or  
4 otherwise physically altered, state the date(s) of alteration, regardless of whether a  
5 pipeline is currently in use, is currently idle, has been abandoned in place or has been  
6 removed.

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

8 SHELL responds that it is producing all relevant documents in its files in  
9 response to plaintiff's first and second demand for production of documents. Any and  
10 all information falling within the parameters of this interrogatory is contained in the Y-  
11 Maps related to the subject area which are readily ascertainable within SHELL's  
12 production of documents.

13 **SPECIAL INTERROGATORY NO. 10:**

14 IDENTIFY each and every pipeline ever installed by SHELL within the  
15 WATSON CENTER that has been repaired, regardless of whether a pipeline is  
16 currently in use, is currently idle, has been abandoned in place or has been removed.

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

18 SHELL responds that it is producing all relevant documents in its files in  
19 response to plaintiff's first and second demand for production of documents. Any and  
20 all information falling within the parameters of this interrogatory is contained in the Y-  
21 Maps related to the subject area which are readily ascertainable within SHELL's  
22 production of documents.

23 **SPECIAL INTERROGATORY NO. 11:**

24 For each and every pipeline ever installed by SHELL within the WATSON  
25 CENTER that has been repaired, state the date(s) of repair, regardless of whether a  
26 pipeline is currently in use, is currently idle, has been abandoned in place or has been  
27 removed.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

2 SHELL responds that it is producing all relevant documents in its files in  
3 response to plaintiff's first and second demand for production of documents. Any and  
4 all information falling within the parameters of this interrogatory is contained in the Y-  
5 Maps related to the subject area which are readily ascertainable within SHELL's  
6 production of documents.

7 **SPECIAL INTERROGATORY NO. 12:**

8 IDENTIFY each and every pipeline ever installed by SHELL within the  
9 WATSON CENTER that is currently idle.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

11 SHELL responds that it is producing all relevant documents in its files in  
12 response to plaintiff's first and second demand for production of documents. Any and  
13 all information falling within the parameters of this interrogatory is contained in the Y-  
14 Maps related to the subject area which are readily ascertainable within SHELL's  
15 production of documents.

16 **SPECIAL INTERROGATORY NO. 13:**

17 For each and every pipeline ever installed by SHELL within the WATSON  
18 CENTER that is currently idle, state the date that each such pipeline became idle.

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

20 SHELL responds that it is producing all relevant documents in its files in  
21 response to plaintiff's first and second demand for production of documents. Any and  
22 all information falling within the parameters of this interrogatory is contained in the Y-  
23 Maps related to the subject area which are readily ascertainable within SHELL's  
24 production of documents.

25 **SPECIAL INTERROGATORY NO. 14:**

26 Has SHELL conducted any excavation of any kind within the WATSON  
27 CENTER within the last twenty years?

1 RESPONSE TO SPECIAL INTERROGATORY NO. 14:

2 Yes.

3 SPECIAL INTERROGATORY NO. 15:

4 If SHELL has conducted any excavation of any kind within the WATSON  
5 CENTER within the last twenty years, state the date of each excavation.

6 RESPONSE TO SPECIAL INTERROGATORY NO. 15:

7 SHELL responds that dates of excavation were in or about the following time  
8 periods: 1989-90 - Carson Plant #7 pipeline; 1990 - ISO-Butane line; 1992 -  
9 installation of new lines through the Watson Center location; potholing of inter-  
10 refinery lines for elevation when building Republic Supply – time period unknown.

11 SPECIAL INTERROGATORY NO. 16:

12 If SHELL has conducted any excavation of any kind within the WATSON  
13 CENTER within the last twenty years, state exactly where on the WATSON CENTER  
14 each excavation occurred.

15 RESPONSE TO SPECIAL INTERROGATORY NO. 16:

16 The Carson Plant #7 line had maintenance repairs along the DWP right-of-way  
17 between Sepulveda Blvd. and 223<sup>rd</sup> Street. The ISO-Butane was excavated around  
18 Wilmington Avenue west along 230<sup>th</sup> Street to just east of Utility Way. In or about  
19 1992 there was installation of new lines through the Watson Center location.  
20 Potholing was performed on inter-refinery lines for elevation when the industrial  
21 complex was built – time period is unknown.

22 SPECIAL INTERROGATORY NO. 17:

23 If SHELL has conducted any excavation of any kind within the WATSON  
24 CENTER within the last twenty years, state the purpose of each excavation, including,  
25 but not limited to, whether such excavation was undertaken to repair or replace  
26 pipelines, whether such excavation was undertaken to conduct tests in order to  
27 ascertain the presence of any petroleum, petroleum products, heavy metals or any other  
28