

2002

William G. Ercanbrack v. Oakwood Mobile Homes, Inc., Homes By Oakwood, Inc. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

WILLIAM G. ERCANBRACK,

Plaintiff,

v.

OAKWOOD MOBILE HOMES, INC. (a
North Carolina corporation) and HOMES
BY OAKWOOD, INC. (a North Carolina
corporation),

Defendants.

ADDENDUM

Appeal No: 20020690-SC

ADDENDUM TO BRIEF OF APPELLANT

**Appeal from a Jury Verdict and Judgment in the Third Judicial District Court
of Summit County, State of Utah
The Honorable Robert Hilder, District Court Judge**

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**AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS;
EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF
OFFICERS; PUBLIC DEBT; ENFORCEMENT**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

C

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART I. Courts
CHAPTER 2. SUPREME COURT

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Current through 2003 First Special Session

78-2-2 Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the School and Institutional Trust Lands Board of Trustees;

(iv) the Board of Oil, Gas, and Mining;

(v) the state engineer; or

(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

History: C. 1953, 78-2-2, enacted by L. 1986, ch. 47, § 41; 1987, ch. 161, § 303; 1988, ch. 248, § 5; 1989, ch. 67, § 1; 1992, ch. 127, § 11; 1994, ch. 191, § 2; 1995, ch. 267, § 5; 1995, ch. 299, § 46; 1996, ch. 159, § 18; 2001, ch. 302, § 1.

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART II. Actions, Venue, Limitation of Actions
CHAPTER 15. PRODUCT LIABILITY ACT

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Current through 2003 First Special Session

78-15-6 Defect or defective condition making product unreasonably dangerous
--Rebuttable presumption.

In any action for damages for personal injury, death, or property damage
allegedly caused by a defect in a product:

(1) No product shall be considered to have a defect or to be in a defective
condition, unless at the time the product was sold by the manufacturer or other
initial seller, there was a defect or defective condition in the product which
made the product unreasonably dangerous to the user or consumer.

(2) As used in this act, "unreasonably dangerous" means that the product was
dangerous to an extent beyond which would be contemplated by the ordinary and
prudent buyer, consumer or user of that product in that community considering the
product's characteristics, propensities, risks, dangers and uses together with any
actual knowledge, training, or experience possessed by that particular buyer, user
or consumer.

(3) There is a rebuttable presumption that a product is free from any defect
or defective condition where the alleged defect in the plans or designs for the
product or the methods and techniques of manufacturing, inspecting and testing the
product were in conformity with government standards established for that industry
which were in existence at the time the plans or designs for the product or the
methods and techniques of manufacturing, inspecting and testing the product were
adopted.

History: C. 1953, 78-15-6, enacted by L. 1977, ch. 149, § 6.

NOTES, REFERENCES, AND ANNOTATIONS

Meaning of 'this act'. --The phrase "this act" in Subsection (2) means Laws
1977, Chapter 149, which enacted this chapter.

CONSTITUTION OF UTAH

PREAMBLE

Article

- I. Declaration of Rights
- II. State Boundaries
- III. Ordinance
- IV. Elections and Right of Suffrage
- V. Distribution of Powers
- VI. Legislative Department
- VII. Executive Department
- VIII. Judicial Department
- IX. Congressional and Legislative Apportionment
- X. Education
- XI. Local Governments
- XII. Corporations
- XIII. Revenue and Taxation
- XIV. Public Debt
- XV. Militia
- XVI. Labor
- XVII. Water Rights
- XVIII. Forestry
- XIX. Public Buildings and State Institutions
- XX. Public Lands
- XXI. Salaries
- XXII. Miscellaneous
- XXIII. Amendment and Revision
- XXIV. Schedule

PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION.

1896

ARTICLE I

DECLARATION OF RIGHTS

Section

1. [Inherent and inalienable rights.]
2. [All political power inherent in the people.]
3. [Utah inseparable from the Union.]
4. [Religious liberty.]
5. [Habeas corpus.]
6. [Right to bear arms.]
7. [Due process of law.]
8. [Offenses bailable.]
9. [Excessive bail and fines — Cruel punishments.]
10. [Trial by jury.]
11. [Courts open — Redress of injuries.]
12. [Rights of accused persons.]
13. [Prosecution by information or indictment — Grand jury.]
14. [Unreasonable searches forbidden — Issuance of warrant.]
15. [Freedom of speech and of the press — Libel.]
16. [No imprisonment for debt — Exception.]
17. [Elections to be free — Soldiers voting.]
18. [Attainder — Ex post facto laws — Impairing contracts.]
19. [Treason defined — Proof.]
20. [Military subordinate to the civil power.]
21. [Slavery forbidden.]
22. [Private property for public use.]
23. [Irrevocable franchises forbidden.]
24. [Uniform operation of laws.]
25. [Rights retained by people.]
26. [Provisions mandatory and prohibitory.]

Section

27. [Fundamental rights.]

28. [Declaration of the rights of crime victims.]

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

1896

Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

1896

Sec. 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

1896

Sec. 4. [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

1999

Sec. 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

1896

Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

1984 (2nd S.S.)

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

1896

Sec. 8. [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

(a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person

witnesses to testify that a substance appeared to be a narcotic, so long as a foundation of familiarity with the substance is established. See, e.g., *United States v. Westbrook*, 896 F.2d 330 (8th Cir. 1990) (two lay witnesses who were heavy amphetamine users were properly permitted to testify that a substance was amphetamine; but it was error to permit another witness to make such an identification where she had no experience with amphetamines). Such testimony is not based on specialized knowledge within the scope of Rule 702, but rather is based upon a layperson's personal knowledge. If, however, that witness were to describe how a narcotic was manufactured, or to describe the intricate workings of a narcotic distribution network, then the witness would have to qualify as an expert under Rule 702. *United States v. Figueroa-Lopez*, *supra*.

The amendment incorporates the distinctions set forth in *State v. Brown*, 836 S.W.2d 530, 549 (1992), a case involving former Tennessee Rule of Evidence 701, a rule that precluded lay witness testimony based on "special knowledge." In *Brown*, the court declared that the distinction between lay and expert witness testimony is that lay testimony "results from a process of reasoning familiar in everyday life," while expert testimony "results from a process of reasoning which can be mastered only by specialists in the field." The court in *Brown* noted that a lay witness with experience could testify that a substance appeared to be blood, but that a witness would have to qualify as an expert before he could testify that bruising around the eyes is indicative of skull trauma. That is the kind of distinction made by the amendment to this Rule.

GAP Report—Proposed Amendment to Rule 701

The Committee made the following changes to the published draft of the proposed amendment to Evidence Rule 701:

1. The words "within the scope of Rule 702" were added at the end of the proposed amendment, to emphasize that the Rule does not require witnesses to qualify as experts unless their testimony is of the type traditionally considered within the purview of Rule 702. The Committee Note was amended to accord with this textual change.
2. The Committee Note was revised to provide further examples of the kind of testimony that could and could not be proffered under the limitation imposed by the proposed amendment.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

(Pub.L. 93-595, § 1, Jan. 2, 1975, 88 Stat. 1937; Apr. 17, 2000, eff. Dec. 1, 2000.)

ADVISORY COMMITTEE NOTES

1972 Proposed Rules

An intelligent evaluation of facts is often difficult or impossible without the application of some scientific, technical, or

other specialized knowledge. The most common source of this knowledge is the expert witness, although there are other techniques for supplying it.

Most of the literature assumes that experts testify only in the form of opinions. The assumption is logically unfounded. The rule accordingly recognizes that an expert on the stand may give a dissertation or exposition of scientific or other principles relevant to the case, leaving the trier of fact to apply them to the facts. Since much of the criticism of expert testimony has centered upon the hypothetical question, it seems wise to recognize that opinions are not indispensable and to encourage the use of expert testimony in non-opinion form when counsel believes the trier can itself draw the requisite inference. The use of opinions is not abolished by the rule, however. It will continue to be permissible for the experts to take the further step of suggesting the inference which should be drawn from applying the specialized knowledge to the facts. See Rules 703 to 705.

Whether the situation is a proper one for the use of expert testimony is to be determined on the basis of assisting the trier. "There is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute." Ladd, *Expert Testimony*, 5 Vand.L.Rev. 414, 418 (1952). When opinions are excluded, it is because they are unhelpful and therefore superfluous and a waste of time. 7 Wigmore § 1918.

The rule is broadly phrased. The fields of knowledge which may be drawn upon are not limited merely to the "scientific" and "technical" but extend to all "specialized" knowledge. Similarly, the expert is viewed, not in a narrow sense, but as a person qualified by "knowledge, skill, experience, training or education." Thus within the scope of the rule are not only experts in the strictest sense of the word, e.g., physicians, physicists, and architects, but also the large group sometimes called "skilled" witnesses, such as bankers or landowners testifying to land values.

2000 Amendments

Rule 702 has been amended in response to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and to the many cases applying *Daubert*, including *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167 (1999). In *Daubert* the Court charged trial judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony, and the Court in *Kumho* clarified that this gatekeeper function applies to all expert testimony, not just testimony based in science. See also *Kumho*, 119 S.Ct. at 1178 (citing the Committee Note to the proposed amendment to Rule 702, which had been released for public comment before the date of the *Kumho* decision). The amendment affirms the trial court's role as gatekeeper and provides some general standards that the trial court must use to assess the reliability and helpfulness of proffered expert testimony. Consistently with *Kumho*, the Rule as amended provides that all types of expert testimony present questions of admissibility for the trial court in deciding whether the evidence is reliable and helpful. Consequently, the admissibility of all expert testimony is governed by the principles of Rule 104(a). Under that

son v. All-Star Delivery, Inc., 1999 UT 109, 992 P.2d 969.

Defendant's statements to one individual that he would be better off killing his wife than divorcing her, to his girlfriend that his wife was going to have an "accident," and to another individual asking him to kill his wife were relevant as they tended to demonstrate defendant had a plan, intent, and motive to kill his wife. *State v. Mead*, 2001 UT 58, 27 P.3d 1115.

In prosecution for child abuse and murder, detective's testimony about a videotape in which defendant was shown beating his wife with whips and straps was relevant, as it was consistent with the bruises inflicted on the child and helped to identify defendant as the abuser. *State v. Fedorowicz*, 2002 UT 67, 52 P.3d 1194.

Scientific evidence.

The *Frye* test (that scientific tests still in the experimental stages should not be admitted in evidence, but that scientific testimony deduced from a well recognized scientific principle or discovery is admissible if the scientific principle is sufficiently established) is a valid test,

though not necessarily an exclusive test, for determining when scientific evidence is sufficiently reliable to be admitted and is not inconsistent with Rules 402, 403, and 702 of the Utah Rules of Evidence. *Kofford v. Flora*, 744 P.2d 1343 (Utah 1987).

Standard of review.

The judgment of the trial court admitting or excluding evidence will not be reversed unless it is shown that the discretion exercised therein has been abused. *Terry v. Zions Coop. Mercantile Inst.*, 605 P.2d 314 (Utah 1979), overruled on other grounds, *McFarland v. Skaggs Cos., Inc.*, 678 P.2d 298 (Utah 1984).

Cited in *State v. Larsen*, 828 P.2d 487 (Utah Ct. App. 1992); *Salt Lake City v. Alires*, 2000 UT App 244, 9 P.3d 769; *Campbell v. State Farm Mut. Auto. Ins. Co.*, 2001 UT 89, 432 Utah Adv. Rep. 44, — P.3d —, cert. granted, — U.S. —, 122 S. Ct. 2326, 153 L. Ed. 2d 158 (2002); *State v. Bradley*, 2002 UT App 348, 57 P.3d 1139; *State v. Holbert*, 2002 UT App 364, 58 P.3d 877; *State v. Houskeeper*, 2002 UT 118, 462 Utah Adv. Rep. 24, — P.3d —.

COLLATERAL REFERENCES

Utah Law Review. — *United States v. Downing*: Novel Scientific Evidence and the Rejection of *Frye*, 1986 Utah L. Rev. 839.

Note, Establishing Paternity Through HLA Testing: Utah Standards for Admissibility, 1988 Utah L. Rev. 717.

The Mysterious Creation of Search and Seizure Exclusionary Rules Under State Constitutions: The Utah Example, 1993 Utah L. Rev. 751.

Note, Utah Rule of Evidence 403 and Gruesome Photographs: Is a Picture Worth Anything in Utah?, 1996 Utah L. Rev. 1131.

A.L.R. — Admissibility of voice stress evaluation test results or of statements made during test, 47 A.L.R.4th 1202.

Admissibility and weight of evidence of prior misidentification of accused in connection with commission of crime similar to that presently charged, 50 A.L.R.4th 1049.

Products liability: admissibility of evidence of absence of other accidents, 51 A.L.R.4th 1186.

Thermographic tests: admissibility of test

results in personal injury suits, 56 A.L.R.4th 1105.

Criminal law: dog scent discrimination line-ups, 63 A.L.R.4th 143.

Products liability: admissibility of experimental or test evidence to disprove defect in motor vehicle, 64 A.L.R.4th 125.

Admissibility, in criminal cases, of evidence of electrophoresis of dried evidentiary bloodstains, 66 A.L.R.4th 588.

Admissibility, in prosecution for sex-related offense, of results of tests on semen or seminal fluids, 75 A.L.R.4th 897.

Admissibility of hypnotically refreshed or enhanced testimony, 77 A.L.R.4th 927.

Admissibility of DNA identification evidence, 84 A.L.R.4th 313.

Admissibility in evidence of composite picture or sketch produced by police to identify offender, 23 A.L.R.5th 672.

Admissibility of results of presumptive tests indicating presence of blood on object, 82 A.L.R.5th 67.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Advisory Committee Note. — This rule is the federal rule, verbatim, and is substantively comparable to Rule 45, Utah Rules of Evidence (1971) except that "surprise" is not included as a basis for exclusion of relevant evidence. The change in language is not one of substance, since "surprise" would be within the concept of

"unfair prejudice" as contained in Rule 403. See also Advisory Committee Note to Federal Rule 403 indicating that a continuance in most instances would be a more appropriate method of dealing with "surprise." See also *Smith v. Estelle*, 445 F. Supp. 647 (N.D. Tex. 1977) (surprise use of psychiatric testimony in capital

Competency of nonexpert witness to testify, in criminal case, based upon personal observation, as to whether person was under the influence of drugs, 21 A.L.R.4th 905.

Admissibility of lay witness interpretation of surveillance photograph or videotape, 74 A.L.R.5th 643.

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Advisory Committee Note. — This rule is the federal rule, verbatim. Rule 56(2), Utah Rules of Evidence (1971), was substantially the same.

Cross-References. — Blood tests to determine parentage, expert testimony, §§ 78-45a-7, 78-45a-10.

Discovery of expert's opinion, Rule 26(b)(4), U.R.C.P.

Drug paraphernalia, expert opinion in determining nature of object as, § 58-37a-4.

Pretrial conference, consideration of limiting number of expert witnesses, Rule 16, U.R.C.P.

NOTES TO DECISIONS

Basis for opinion.
Discretion of court.
Foundation.
Polygraph evidence.
Probative value.
Qualification as expert.
Reliability.
Scientific evidence.
— DNA testing.
— Hypnosis.
— Polygraph examinations.
Subjects of opinion.
— Drug use.
— Identification.
— Recording.
— Securities fraud.
— Sexual abuse.
— Simulation.
— Suicide.
Cited.

Basis for opinion.

Testimony of expert witness who relied on conversations with witnesses out of court was admissible, since he may have meant he found statements of witnesses reliable for purposes of his making judgment. *Lamb v. Bangart*, 525 P.2d 602 (Utah 1974).

Facts or data used by a properly qualified expert in forming an opinion need not be in evidence if they are of a type reasonably relied on by experts in the witness's field of expertise. *Barson ex rel. Barson v. E.R. Squibb & Sons*, 682 P.2d 832 (Utah 1984).

Trial court did not err in allowing an expert's testimony relating to drug experience reports not in evidence. *Barson ex rel. Barson v. E.R. Squibb & Sons*, 682 P.2d 832 (Utah 1984).

Expert's testimony was properly excluded where witness was unable to give his opinion based upon data made known to him at trial, as, absent personal knowledge of the facts, this was the only ground on which the evidence could have come in. *Highland Constr. Co. v. Union Pac. R.R.*, 683 P.2d 1042 (Utah 1984).

Testimony by a medical examiner that he had changed the cause of death on a death certifi-

cate from "accident pending investigation" to "homicide," upon learning of statements made by two witnesses to a detective, was not improper under this rule; the examiner's ultimate testimony before the jury was that the physical evidence of the victim's death was consistent with both accident and homicide. *State v. Mead*, 2001 UT 58, 27 P.3d 1115.

Discretion of court.

It is within the discretion of the trial court to determine the suitability of expert testimony in a case and the qualifications of the proposed expert witness. *State v. Clayton*, 646 P.2d 723 (Utah 1982); *State v. Espinoza*, 723 P.2d 420 (Utah 1986).

Under this rule, the trial court has discretion to determine the qualification of an expert witness to give an opinion on a particular matter, and to rule on the admissibility of the expert's testimony. *Schindler v. Schindler*, 776 P.2d 84 (Utah Ct. App. 1989).

Because the court based its decision to exclude the expert testimony on the judge's misconception of the law, that decision was necessarily an abuse of discretion. *Gaw v. State*, 798 P.2d 1130 (Utah Ct. App. 1990).

In exercising its discretion, a trial court should require a medical expert witness to demonstrate familiarity with the applicable standard of care based on more than just a review of the documents in the particular case. *Dikeou v. Osborn*, 881 P.2d 943 (Utah Ct. App. 1994).

Where an expert testified that his opinion was "basically speculation" the trial court did not abuse its discretion in striking the expert's opinion from the record. *Stevensen v. Goodson*, 924 P.2d 339 (Utah 1996).

Foundation.

Expert witness's testimony on the profile of a sexually abused child lacked proper foundation, because the state offered no foundational testimony as to the scientific reliability or general acceptability for the use of either the sexual abuse profile or the witness's "credibility as-

of electrophoresis of dried evidentiary bloodstains, 66 A.L.R.4th 588.

Admissibility of expert testimony that item of clothing or footgear belonged to, or was worn by, particular individual, 71 A.L.R.4th 1148.

Admissibility of hypnotically refreshed or enhanced testimony, 77 A.L.R.4th 927.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding, 79 A.L.R.4th 576.

Right of indigent defendant in criminal case to aid of state by appointment of investigator or expert, 81 A.L.R.4th 259.

Admissibility, in criminal prosecution, of expert opinion allegedly stating whether drugs were possessed with intent to distribute — state cases, 83 A.L.R.4th 629.

Admissibility of expert opinion stating whether a particular knife was, or could have been, the weapon used in a crime, 83 A.L.R.4th 660.

Right of indigent defendant in state criminal case to assistance of psychiatrist or psychologist, 85 A.L.R.4th 19.

Admissibility, in criminal prosecution, of expert opinion evidence as to “blood splatter” interpretation, 9 A.L.R.5th 369.

Propriety of questioning expert witness regarding specific incidents or allegations of expert’s unprofessional conduct or professional negligence, 11 A.L.R.5th 1.

Admissibility, in homicide prosecution, of evidence as to tests made to ascertain distance from gun to victim when gun was fired, 11 A.L.R.5th 497.

Cautionary instructions to jury as to reliability of, or factors to be considered in evaluating, voice identification testimony, 17 A.L.R.5th 851.

Necessity of expert testimony on issue of permanence of injury and future pain and suffering, 20 A.L.R.5th 1.

Admissibility of evidence of voice identification of defendant as affected by allegedly suggestive voice lineup procedures, 55 A.L.R.5th 423.

Admissibility of expert testimony concerning

domestic-violence syndromes to assist jury in evaluating victim’s testimony or behavior, 57 A.L.R.5th 315.

Admissibility of expert testimony regarding questions of domestic law, 66 A.L.R.5th 135.

Admissibility of expert testimony as to susceptibility of defendant to inducement for purpose of establishing entrapment defense, 70 A.L.R.5th 491.

Admissibility of expert testimony regarding credibility of confession, 73 A.L.R.5th 581.

Admissibility of results of presumptive tests indicating presence of blood on object, 82 A.L.R.5th 67.

Admissibility of expert testimony regarding reliability of accused’s confession where accused allegedly suffered from mental disorder or defect at time of confession, 82 A.L.R.5th 591.

Admissibility of expert and opinion evidence as to cause or origin of fire — modern civil cases, 84 A.L.R.5th 69.

Admissibility of expert and opinion evidence as to cause or origin of fire in criminal prosecution for arson or related offense — modern cases, 85 A.L.R.5th 187.

Admissibility of expert testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in criminal case, 85 A.L.R.5th 595.

Admissibility of expert testimony as to proper techniques for interviewing children or evaluating techniques employed in particular case, 87 A.L.R.5th 693.

Post-*Daubert* standards for admissibility of scientific and other expert evidence in state courts, 90 A.L.R.5th 453.

Admissibility and weight of voice spectrographic analysis evidence, 95 A.L.R.5th 471.

Admissibility of expert or opinion evidence — Supreme Court cases, 177 A.L.R. Fed. 77.

Reliability of scientific technique and its acceptance within scientific community as affecting admissibility, at federal trial, of expert testimony as to result of test or study based on such technique — modern cases, 105 A.L.R. Fed. 299.

Rule 703. Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

(Amended effective October 1, 1992.)

Advisory Committee Note. — This rule is the federal rule, verbatim, and expands Rule 56(2), Utah Rules of Evidence (1971), which limited facts or data not personally known to the expert to those made known to him at the hearing. The provision that the facts or data upon which the expert relies for his opinion in a particular field may be of the type “reasonably relied upon by experts in the particular field in

forming opinions,” and need not otherwise be admissible also seems to expand Rule 56(2), Utah Rules of Evidence (1971). But see *Lamb v. Bangart*, 525 P.2d 602 (Utah 1974). Recent Utah cases have tended towards recognition of the position taken by this rule. *Edwards v. Didericksen*, 597 P.2d 1328 (Utah 1979); *Kallas v. Kallas*, 614 P.2d 641 (Utah 1980); *State v. Clayton*, 639 P.2d 168 (Utah 1982).

proceedings as precluding waiver of privilege at trial, 36 A.L.R.3d 1367.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution, 45 A.L.R.4th 310.

Right of party to have attorney or physician present during physical or mental examination at instance of opposing party, 84 A.L.R.4th 558.

Rule 36. Request for admission.

(a) Request for admission.

(a)(1) A party may serve upon any other party a written request for the admission, for purpose of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request for admission shall contain a notice advising the party to whom the request is made that, pursuant to Rule 36, the matters shall be deemed admitted unless said request is responded to within 30 days after service of the request or within such shorter or longer time as the court may allow. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

(a)(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

(a)(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party

who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.
(Amended effective Jan. 1, 1987; November 1, 1999.)

Advisory Committee Note. — The 1986 amendment to this rule varies from the present rule and the federal rule in that it requires the request for admission to advise the party on whom the request is made of the consequences of failure to respond, i.e., that the matter will be deemed admitted for the purposes of the pending action.

For a complete explanation of the 1999 amendments to this rule and the interrelationship of these amendments with the other discovery changes, see the advisory committee

note appended to Rule 26. The Supreme Court order approving the amendments directed that the new procedures be applicable only to cases filed on or after November 1, 1999.

Amendment Notes. — The 1999 amendment added the Subdivision (a)(1) to (a)(3) designations and rewrote the last sentence in Subdivision (a)(1).

Compiler's Notes. — This rule corresponds to Rule 36, F.R.C.P.

Cross-References. — Service of summons and complaint, U.R.C.P. 4.

NOTES TO DECISIONS

Amendment to admissions.

Denial of admission.

Effect of admissions.

- Affidavit contradicting admissions.
- Introducing admissions into evidence.
- Offer of proof contrary to admission.
- Relief from judgment.
- Failure to respond.
- Deemed admitted.
- Failure to file response with court.
- Objectionable matter.
- Prison inmate.
- Reasonable excuse.
- Implicit motion to withdraw.
- Matter of law.
- Motion to dismiss.
- Tolling.
- Privilege against self-incrimination.
- Punitive damages.
- Withdrawal of admissions.
- Cited.

Amendment to admissions.

Because the trial court's decision to grant a motion under Subdivision (b) is not entirely discretionary, it is reviewed in two steps; first, its determinations as to whether amendment or withdrawal would serve the presentation of the merits and whether amendment or withdrawal would result in prejudice to the nonmoving party are reviewed, and, second, its discretion to grant or deny the motion is reviewed. *Langeland v. Monarch Motors, Inc.*, 952 P.2d 1058 (Utah 1998).

To show that a presentation of the merits of an action would be served by amendment or withdrawal of an admission, the party seeking amendment or withdrawal of an admission must (1) show that the matters deemed admitted against it are relevant to the merits of the underlying cause of action, and (2) introduce some evidence by affidavit or otherwise of specific facts indicating that the matters deemed admitted against it are in fact untrue. *Langeland v. Monarch Motors, Inc.*, 952 P.2d 1058 (Utah 1998).

The test of whether a party will be prejudiced

by the withdrawal of an admission is whether the party is now any less able to obtain the evidence required to prove the matter which was admitted than he would have been at the time the admission was made. *Langeland v. Monarch Motors, Inc.*, 952 P.2d 1058 (Utah 1998).

Denial of admission.

To deny a request for admission "specifically," as the word is used in this rule, means that denials must be forthright, specific, and unqualified, and it is well established that a mere refusal to admit is not sufficient to constitute a denial under this rule. *Bair v. Axiom Design, L.L.C.*, 2001 UT 20, 20 P.3d 388.

Effect of admissions.

— Affidavit contradicting admissions.

When defendant failed to respond to plaintiff's request for admission and made no motion to withdraw or amend the admissions but merely submitted an affidavit seeking to contradict the requested admissions, the requested admissions were deemed admitted under Subdivision (a) and conclusively established under Subdivision (b). *W.W. & W.B. Gardner, Inc. v. Park W. Village, Inc.*, 568 P.2d 734 (Utah 1977).

— Introducing admissions into evidence.

Although matters admitted pursuant to this rule are deemed conclusively established, that fact does not relieve the party who wishes to rely on those admissions from the necessity of introducing them into evidence; plaintiff's failure to introduce admissions into evidence foreclosed him from relying on them in the requested instructions to the jury. *Massey v. Haupt*, 632 P.2d 824 (Utah 1981).

— Offer of proof contrary to admission.

Defendant's statement in response to a request for admissions under this rule, that they were drilling for oil after the joint operating agreement was executed precluded proof that the drilling was done by a corporation over which the defendants had control. *Mud Control*

liability against defaulting defendant, 8 A.L.R.3d 1070.

Appealability of order setting aside, or refusing to set aside, default judgment, 8 A.L.R.3d 1272.

Defaulting defendant's right to notice and hearing as to determination of amount of damages, 15 A.L.R.3d 586.

Opening default or default judgment claimed to have been obtained because of attorney's

mistake as to time or place of appearance, trial, or filing of necessary papers, 21 A.L.R.3d 1255.

Failure to give notice of application for default judgment where notice is required only by custom, 28 A.L.R.3d 1383.

Failure of party or his attorney to appear at pretrial conference, 55 A.L.R.3d 303.

Default judgments against the United States under Rule 55(e) of the Federal Rules of Civil Procedure, 55 A.L.R. Fed. 190.

Rule 56. Summary judgment.

(a) *For claimant.* A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) *For defending party.* A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) *Motion and proceedings thereon.* The motion, memoranda and affidavits shall be filed and served in accordance with CJA 4-501. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) *Case not fully adjudicated on motion.* If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. (Amended effective November 1, 1997.)

Compiler's Notes. — This rule is similar to Rule 56, F.R.C.P.

Cross-References. — Contempt generally, §§ 78-7-18, 78-32-1 et seq.

NOTES TO DECISIONS

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| <p>Affidavit.</p> <ul style="list-style-type: none"> — Contents. — Corporation. — Experts. — Extension of time to submit. — Failure to submit. — Inconsistency with deposition. — Necessity of opposing affidavits. — Resting on pleadings. — Objection. — Sufficiency. — Hearsay and opinion testimony. — Superseding pleadings. — Unpleaded defenses. — Verified pleading. — Waiver of right to contest. — When unavailable. — Exclusive control of facts. — Who may make. <p>Affirmative defense.</p> <p>Answers to interrogatories.</p> <p>Appeal.</p> <ul style="list-style-type: none"> — Adversely affected party. — Standard of review. <p>Applicability.</p> <p>Attorney's fees.</p> <p>Availability of motion.</p> <p>Compliance with rule.</p> <p>Cross-motions.</p> <p>Damages.</p> <p>Discovery.</p> <p>Disputed facts.</p> <p>Evidence.</p> <ul style="list-style-type: none"> — Admissions of plaintiff. — Facts considered. — Improper evidence. — Proof. — Unsupported motion. — Weight of testimony. <p>Implicit rulings.</p> <p>Improper party plaintiff.</p> <p>Issue of fact.</p> <ul style="list-style-type: none"> — Contract interpretation. — Corporate existence. — Deeds. — Intent to remove trustee. — Lease as security. — Notice. — Wills. <p>Judicial attitude.</p> <p>Motion for new trial.</p> <p>Motion to dismiss.</p> <p>Motion to reconsider.</p> <p>Notice.</p> | <ul style="list-style-type: none"> — Provision not jurisdictional. — Waiver of defect. <p>Procedural due process.</p> <p>Purpose.</p> <p>Scope.</p> <p>Summary judgment improper.</p> <ul style="list-style-type: none"> — Damage to insured vehicle. — Dispersal of interest. — Findings by court. — Foreclosure of trust deeds. — Fraud or duress. — Governmental immunity. — Guardianship. — Mortgage note. — Negligence. — Nonspecific denial of requests for admission. — Note. — Product liability action. — Recovery for goods and services. — Secured transaction. — Stock ownership. — Wrongful possession. <p>Summary judgment proper.</p> <ul style="list-style-type: none"> — Breach of fiduciary duty. — Contract action. — Waiver of claims. — Contract terms. — Deceit. — Defamation. — Duty of care. — Employee status. — Federal law. — Fraud. — Judicial immunity. — Jurisdiction. — Lease action. — Misrepresentation. — Negligence. — Proximate cause. — Res ipsa loquitur. — Sovereign immunity. <p>Time for motion.</p> <p>Written statement of grounds.</p> <p>Cited.</p> <p>Affidavit.</p> <ul style="list-style-type: none"> — Contents. <p>Specific facts are required to show whether there is genuine issue for trial. <i>Reagan Outdoor Adv., Inc. v. Lundgren</i>, 692 P.2d 776 (Utah 1984).</p> <p>When a motion for summary judgment is made under this rule, the affidavit of an ad-</p> |
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(3) Subject to limitations imposed by law, any trial court of record may hold court in any location designated by this rule.

(Added effective January 1, 1992; amended effective November 15, 1995; November 1, 2001; April 1, 2003.)

Amendment Notes. — The 2001 amendment deleted “Park City” from the list of locations of trial courts and added new Subdivision (2), redesignating former Subdivision (2) as (3).

The 2003 amendment deleted “Murray” and “Roy” from the list of municipalities in Subdivision (1).

Rule 4-408.01. Responsibility for administration of trial courts.

Intent:

To designate the court locations administered directly through the administrative office of the courts and those administered through contract with local government pursuant to § 78-3-21.

Applicability:

This rule shall apply to the trial courts of record and to the administrative office of the courts.

Statement of the Rule:

(1) All locations of the juvenile court shall be administered directly through the administrative office of the courts.

(2) All locations of the district court shall be administered directly through the administrative office of the courts, except the following, which shall be administered through contract with county or municipal government pursuant to § 78-3-21: Fillmore, Junction, Kanab, Loa, Manila, Manti, Morgan, Panguitch, Randolph, and Salem.

(Added effective November 15, 1995; amended effective January 27, 1997; November 1, 1998; November 1, 2001.)

Amendment Notes. — The 2001 amendment deleted “Coalville” and “Park City” from the list in Subdivision (2).

ARTICLE 5. CIVIL PRACTICE

Rule 4-501. Motions.

Intent:

To establish a uniform procedure for filing, supporting memoranda and documents with the court.

To establish a uniform procedure for requesting and scheduling hearings on dispositive motions.

To establish a procedure for expedited dispositions.

Applicability:

This rule shall apply to motion practice in all trial courts of record except proceedings before the court commissioners and small claims cases. This rule does not apply to petitions for habeas corpus or other forms of extraordinary relief.

Statement of the Rule:

(1) *Filing and service of motions and memoranda.*

(1)(A) *Motion and supporting memoranda.* All motions, except uncontested or ex-parte matters, shall be accompanied by a memorandum of points and authorities appropriate affidavits, and copies of or citations by page number to relevant portions of depositions, exhibits or other documents relied upon in support of the motion. Memoranda supporting or opposing a motion shall not exceed ten pages in length exclusive of the “statement of material facts” as provided in paragraph (2), except as waived by order of the court on ex-parte

application. If an ex-parte application is made to file an over-length memorandum, the application shall state the length of the principal memorandum, and if the memorandum is in excess of ten pages, the application shall include a summary of the memorandum, not to exceed five pages.

(1)(B) *Memorandum in opposition to motion.* The responding party shall file and serve upon all parties within ten days after service of a motion, a memorandum in opposition to the motion, and all supporting documentation. If the responding party fails to file a memorandum in opposition to the motion within ten days after service of the motion, the moving party may notify the clerk to submit the matter to the court for decision as provided in paragraph (1)(D) of this rule.

(1)(C) *Reply memorandum.* The moving party may serve and file a reply memorandum within five days after service of the responding party's memorandum.

(1)(D) *Notice to submit for decision.* Upon the expiration of the five-day period to file a reply memorandum, either party may notify the clerk to submit the matter to the court for decision. The notification shall be in the form of a separate written pleading and captioned "Notice to Submit for Decision." The Notice to Submit for Decision shall state the date on which the motion was served, the date the memorandum in opposition, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If neither party files a notice, the motion will not be submitted for decision.

(2) *Motions for summary judgment.*

(2)(A) *Memorandum in support of a motion.* The points and authorities in support of a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the movant relies.

(2)(B) *Memorandum in opposition to a motion.* The points and authorities in opposition to a motion for summary judgment shall begin with a section that contains a verbatim restatement of each of the movant's statement of facts as to which the party contends a genuine issue exists followed by a concise statement of material facts which support the party's contention. Each disputed fact shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the opposing party relies. All material facts set forth in the movant's statement and properly supported by an accurate reference to the record shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.

(3) *Hearings.*

(3)(A) A decision on a motion shall be rendered without a hearing unless ordered by the court, or requested by the parties as provided in paragraphs (3)(B) or (4) below.

(3)(B) In cases where the granting of a motion would dispose of the action or any claim in the action on the merits with prejudice, either party at the time of filing the principal memorandum in support of or in opposition to a motion may file a written request for a hearing.

(3)(C) Such request shall be granted unless the court finds that (a) the motion or opposition to the motion is frivolous or (b) that the dispositive issue or set of issues governing the granting or denial of the motion has been authoritatively decided.

(3)(D) When a request for hearing is denied, the court shall notify the requesting party. When a request for hearing is granted, the court shall set the matter for hearing or notify the requesting party that the matter shall be heard and the requesting party shall schedule the matter for hearing and notify all parties of the date and time.

(3)(E) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing. Courtesy copies shall not be filed with the clerk of the court.

(3)(F) If no written request for a hearing is made at the time the parties file their principal memoranda, a hearing on the motion shall be deemed waived.

(3)(G) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial date. No dispositive motions shall be heard after that date without leave of the court.

(3)(H) If a hearing has been requested and the non-moving party fails to file a memorandum in opposition, the moving party may withdraw the request or the court on its own motion may strike the request and decide the motion without oral argument.

(4) *Expedited dispositions.* Upon motion and notice and for good cause shown, the court may grant a request for an expedited disposition in any case where time is of the essence and compliance with the provisions of this rule would be impracticable or where the motion does not raise significant legal issues and could be resolved summarily.

(5) *Telephone conference.* The court on its own motion or at a party's request may direct arguments of any motion by telephone conference without court appearance. A verbatim record shall be made of all telephone arguments and the rulings thereon if requested by counsel.

(Amended effective January 15, 1990; April 15, 1991; November 1, 1996; November 1, 1998; April 1, 1999; April 1, 2001; November 1, 2001.)

Amendment Notes. — The 1999 amendment substituted “claim” for “issues” in Subdivision (3)(B).

The April 2001 amendment added the second sentence to Subdivision (1)(D) and made stylistic changes in the subdivision designations.

The November 2001 amendment, in Subdivision (2)(B), at the end of the first sentence

substituted the language beginning “contains a verbatim restatement” for “a concise statement of material facts as to which the party contends a genuine issue exists” and deleted “and, if applicable, shall state the numbered sentence or sentences of the movant’s facts that are disputed” at the end of the second sentence.

NOTES TO DECISIONS

Decisions sua sponte.

Purpose.

Request for hearing.

Supplemental memoranda.

When rule applies.

Cited.

Decisions sua sponte.

While a court may refrain from addressing a matter that is not submitted for decision under this rule, nothing in this rule or any other rule bars a court from deciding such a matter sua sponte. *Scott v. Majors*, 1999 UT App 139, 980 P.2d 214, cert. denied, 994 P.2d 1271 (Utah 1999).

No notice to submit for decision under this rule is required, and a trial therefore correctly determined that it could rule on pending motions sua sponte. *Scott v. Majors*, 1999 UT App 139, 980 P.2d 214, cert. denied, 994 P.2d 1271 (Utah 1999).

Purpose.

The purpose of the code of judicial administration is not to create or modify substantive rights of litigants, but to bring order to the manner in which the courts operate. *Scott v.*

Majors, 1999 UT App 139, 980 P.2d 214, cert. denied, 994 P.2d 1271 (Utah 1999).

Request for hearing.

Once a request for hearing by one of the parties has been granted and the matter set for hearing, the other party has a right to rely upon such setting regardless of whether it made its own request. *Price v. Armour*, 949 P.2d 1251 (Utah 1997).

Supplemental memoranda.

The plural “memoranda” in Subdivision (1)(a) refers to all memoranda received by the court — from all parties that either oppose or support any motion — and does not mean that each party may submit more than one memorandum; thus, the trial court was well within its discretion in refusing to accept a supplemental memorandum that was submitted without prior invitation and outside the bounds of procedural rules. *Hartford Leasing Corp. v. State*, 888 P.2d 694 (Utah Ct. App. 1994).

When rule applies.

Because the defendants’ Rule 56(e) objection to the plaintiff’s first affidavit was framed as a

theless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correl-

ative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

NOTES TO DECISIONS

Cited in *L.C. v. State*, 963 P.2d 761 (Utah Ct. App. 1998), cert. denied, 982 P.2d 88 (Utah 1999); *MacKay v. Hardy*, 973 P.2d 941 (Utah

1998); *Lieber v. ITT Hartford Ins. Ctr., Inc.*, 2000 UT 90, 15 P.3d 1030.

ETHICS ADVISORY OPINIONS

Attorney's hiring of attorney in same law firm to collect debts.

Duties when client has materially misled court. Unethical conduct.

Attorney's hiring of attorney in same law firm to collect debts.

There is no prohibition against an attorney's hiring another attorney to collect the debts of the first attorney, even though the two attorneys are in the same law firm; however, if the debt is incurred in connection with legal services provided by the firm of the two lawyers, Utah case law clearly prohibits the recovery. Utah Ethics Advisory Op. No. 96-09 (Utah St. Bar).

Duties when client has materially misled court.

Counsel who knows that a client has materi-

ally misled the court may not remain silent and continue to represent the client, because to do so would be "assisting" the client in committing a fraud on the court. Counsel is obligated to remonstrate with the client and attempt to persuade the client to rectify the misleading or untruthful statements to the court, and if this is unsuccessful, counsel must seek to withdraw. If withdrawal is denied, counsel must disclose the fraud to the court. Utah Ethics Advisory Op. No. 00-06 (Utah St. Bar 2000).

Unethical conduct.

Depending on the facts and circumstances, it may be unethical conduct for a lawyer to manipulate the judicial system by agreeing to associate new counsel for the primary purpose of provoking a judge's recusal. Utah Ethics Advisory Op. No. 01-03 (Utah St. Bar).

COLLATERAL REFERENCES

Utah Law Review. — Truth as Second Fiddle: Reevaluating the Place of Truth in the Adversarial Trial Ensemble, 1988 Utah L. Rev. 799.

Brigham Young Law Review. — Rule 11 and Federalizing Lawyer Ethics, 1991 B.Y.U. L. Rev. 959.

Rule 3.4. Fairness to opposing party and counsel.

A lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(f)(1) The person is a relative or an employee or other agent of a client; and

(f)(2) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment. — The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for the purpose of impairing its availability in a pending proceed-

ing or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

NOTES TO DECISIONS

Cited in State v. Span, 819 P.2d 329 (Utah 1991).

ETHICS ADVISORY OPINIONS

Obstruction of access to evidence.

As a part of a criminal plea bargain agreement in a DUI case, neither the prosecuting attorney nor the defense lawyer may seek the concurrence of the investigating police officer not to respond to a subpoena lawfully issued by

the Utah Driver License Division in connection with the related driver-license revocation hearing, a state administrative proceeding, because such conduct violates Rule 3.4(a) and 8.4 of the Utah Rules of Professional Conduct. Utah Ethics Advisory Op. No. 99-06 (Utah St. Bar).

Rule 3.5. Impartiality and decorum of the tribunal.

A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law; or

(b) Communicate ex parte with a juror or prospective juror before the discharge of the jury except as permitted by law; or

(c) In an adversary proceeding, communicate, or cause another to communicate, as to the merits of the cause with a judge or other official before whom a matter is pending, except:

(c)(1) In the course of official proceedings in the cause;

(c)(2) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if such party is not represented by a lawyer;

(c)(3) Orally upon adequate notice to opposing counsel or to the adverse party if such party is not represented by a lawyer; or

(c)(4) As otherwise authorized by law; or

(d) Engage in conduct intended to disrupt a tribunal.

Comment. — Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided

according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review

C&PS inc.

November 30, 2000

Gerry D'Elia, Esq.
D'ELIA & LEHMER
7620 Royal Street East, Suite 201
P.O. Box 626
Park City, Utah 84060

Re: William Ercanbrack Propane Explosion

Dear Gerry

After my recent trip with Sam Oxborrow to meet with you and the Thatchers in Shelly, Idaho I feel we finally know what caused the accident in the above referenced manufactured home.

First accepting the premise that the initial and major explosion occurred below the floor of the home in the crawl space we must agree that there was an escape of propane from the piping system below the floor that caused an accumulation of propane sufficient to cause an explosion.

Second accepting Thatchers' premise that the rate of gas escape was fairly large and more than would escape from the threaded area of the pipe joints (of which I now have no reservations) we must assume that this escape was from a broken pipe or joint of which we have three: one in the furnace riser at the point it meets the elbow, the second in the range riser at the point it meets its elbow, and the third in the long pipe, longitudinal and parallel to the main frame below the floor of the home at the point where it meets the elbow joining it to the short pipe which connects this elbow to the elbow which joins to the vertical range riser.

Next looking at the above fracture we see that the fracture of the furnace riser occurred in a threaded area of normal thickness in a tension with some slight bending. The fracture of the longitudinal pipe also occurred in the threaded area in bending but the thread root cross section was fairly normal. Finally, the fracture of the range riser also occurred in bending starting on the inside of the 90° angle but it occurred through thread roots which had been greatly diminished in cross sectional thickness and thus weakened by over threading.

For this reason we could expect this fracture would be the most likely to fail first.

INSULATING & PROFESSIONAL SERVICES, Inc.
E. PERWOOD CR. TAYLON, UTAH 84040 Phone (801) 544-5780

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DEFENDANT'S
EXHIBIT

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Next we see that the threaded area at the point where the longitudinal pipe meets its elbow has also been over threaded but in this case as seen by the X-ray of the joint the pipe has been torqued into the elbow to such a degree that it bottoms out against the inside of the elbow and will turn no further. Now if the piping were assembled and the range riser was not vertical to the extent where it would fit through the hole in the floor and if the only way it would align would be for the pipe to turn further in to the elbow, any attempt to do so would result in bending forces similar to those which cracked and ultimately broke the vertical range riser.

I therefore strongly feel that the manufacturer did three things wrong which are indicated by strong evidence: (1) he over threaded the vertical riser greatly weakening it; (2) he over threaded the end of the longitudinal pipe at the point where it goes into the elbow allowing it to enter into the elbow and bottom out; and (3) he over torqued this pipe into the elbow so that it bottomed out and it was not possible to align the range riser in one direction without causing excessive bending stresses similar to those which caused failure.

From this evidence as well as depositions of others I conclude the following scenario took place. At time of manufacture of the home and at time of installation of the gas lines the improperly fabricated pipes and joints were assembled and the longitudinal pipe was over tightened to the point it would not turn further but the range riser did not quite align with the hole in the floor. In an attempt to align the riser and slip it into the hole in the floor it was cracked but not to the extent it would leak. During subsequent leak tests no leak was detected. Some time after the home went in service other factors, possible expansion and contraction, floor movement, slight movement of the gas line external or internal to the home, etc. caused slight growth of the crack to the point it leaked sufficiently to build up an explosive mixture. One of many possible ignition sources then caused ignition and explosion.

As an after thought it occurred to me that for no adjustment of the range riser to be possible the opposite end of the longitudinal pipe where it fits into the T connecting it to the 3/4" pipe had to be over tightened also to the point where it would not turn further in the tightening direction. I checked this visually and found the 1/2" longitudinal pipe to be threaded into the T so far that no threads were virtually visible. I'll X-ray this joint also to see if there was over threading but this would only further confirm shoddy fabrication practice as the important act is that it had been greatly over tightened to the point where rotation in one direction was not possible consistent with the above conclusion.

Sincerely,

Franklin Alex, Ph.D.

03850

IN THE THIRD JUDICIAL DISTRICT COURT

SUMMIT COUNTY, STATE OF UTAH

WILLIAM G. ERCANBRACK,	:	Case No. 980600223
	:	
Plaintiff,	:	
	:	
v	:	
	:	
OAKWOOD MOBILE HOMES, INC., et al.,	:	
	:	
Defendants.	:	

MOTION HEARING MARCH 11, 2002

BEFORE

THE HONORABLE ROBERT K. HILDER

ORIGINAL

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

00094

1 because our motion for summary, we responded against that
2 motion for summary judgment whereas SS Supply, there was never
3 a dispute created as to any of those facts because it wasn't
4 addressed.

5 THE COURT: True I do understand the position. I'm a
6 little troubled by the rules role in this but this is a very
7 significant case and I think there is a significant issue. The
8 Court is finding it as a matter of law, and it's not a real
9 issue between anybody, that the product supplied by SS Supply
10 was unreasonably dangerous due to a defect or defective
11 condition and, Mr. Plant, I'd like you to prepare this order.
12 The defect existed at the time the product was sold. The Court
13 is neither denying or granting the motion as to causation at
14 least to get, I don't have to get (inaudible) at least. I have
15 identified here potential refuting evidence. If it's not
16 stronger than I've heard or if it doesn't come out, I'm going
17 to instruct the jury on causation. But I'm not going to do it
18 today.

19 MR. PLANT: Your Honor -

20 THE COURT: I know, it doesn't help you.

21 MR. PLANT: I certainly am not giving no disrespect
22 to the Court but this is the time.

23 THE COURT: I understand your position.

24 MR. PLANT: Okay, enough said.

25 THE COURT: But I hear evidence identified that even

1 this warning of last resort may not have made a difference and
2 (inaudible) it's very appropriate that if everything else comes
3 out in such a way in the evidence that there was just no time,
4 that it couldn't have made a difference, I think we (inaudible)
5 to hear the evidence and that's the ruling.

6 MR. PLANT: But I can represent to the jury in my
7 opening statement that this Court has ruled as a matter of law
8 that the tank was defective.

9 THE COURT: Defective, defective at the time it was
10 sold.

11 MR. D'ELIA: We have no objection to that. We
12 stipulated to that.

13 THE COURT: In fact, I want you to put that in the
14 order right now.

15 MR. PLANT: Okay.

16 THE COURT: Okay.

17 MR. PLANT: I just want to be clear on that.

18 THE COURT: And as I said, I think there's a high
19 probability I will instruct the jury that it's one proximate
20 cause. Okay?

21 MR. PLANT: Thank you.

22 THE COURT: But that's why I'm reserving that ruling.
23 I want it done that way. Okay.

24 As for the plaintiff's motion for summary judgment
25 which is essentially renewed from July 25, 2001, and the Motion

No. FINED
IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

* * *

By Deputy Clerk, Summit County

ORIGINAL

WILLIAM G. ERCANBRACK,)
)
PLAINTIFF,) CASE NO. 980600223
)
VS.) TRANSCRIPT OF:
)
OAKWOOD MOBILE HOMES, INC.) MOTION HEARING
(A NORTH CAROLINA CORP) AND)
HOMES BY OAKWOOD, INC., (A)
)
DEFENDANT.)

BEFORE THE HONORABLE ROBERT K. HILDER

SILVER SUMMIT DISTRICT COURT
6300 N. SILVER CREEK DRIVE
PARK CITY, UTAH 84098

MARCH 25, 2002

REPORTED BY: EILEEN M. AMBROSE, CSR

06998

1 AHEAD.

2 MR. PLANT: WELL, I'VE HAD COURTS DO IT, I'VE HAD --

3 THE COURT: I DON'T DO IT. YOU DO IT.

4

5 DR. FRANK ALEX,

6 CALLED AS A WITNESS BY THE DEFENDANT, HAVING BEEN DULY SWORN,

7 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

8

9 THE COURT: WHAT I WAS GOING TO SAY, THE OTHER ISSUE
10 STILL TO BE DECIDED WITH DR. ALEX IS THE ISSUE REGARDING
11 WHETHER WE HAVE ANY NEED FOR ANY FORM OF INTERPRETATION BECAUSE
12 OF SOME SPEECH DIFFICULTIES.

13 AND DR. ALEX, I DON'T KNOW IF YOU REMEMBER ME, BUT
14 I'VE HIRED YOU IN THE PAST WHEN I WAS PARTNER WITH JAY JENSEN.
15 I WAS NOT AWARE YOU HAD THESE HEALTH PROBLEMS. I'M VERY SORRY
16 TO HEAR IT. THERE'S AN ISSUE, HOW WELL YOU CAN BE UNDERSTOOD.
17 AND SO AS PART OF THIS HEARING I'LL BE LISTENING TO SEE IF I
18 THINK THE JURY CAN UNDERSTAND YOU WITHOUT ASSISTANCE.

19 THE WITNESS: FINE.

20 THE COURT: BUT YOU, PLEASE, UNDERSTAND THAT TAKE
21 YOUR TIME AND DO IT YOUR WAY AS FAR AS BEING UNDERSTOOD. IF
22 YOU NEED ANY BREAKS JUST LET ME KNOW, OKAY?

23 THE WITNESS: OKAY.

24 THE COURT: THANK YOU. I INDICATED I'M FAMILIAR WITH
25 DR. ALEX. I HAVE IN FACT HIRED HIM. IT'S BEEN A LOT OF YEARS

1 AGO. AND IT WASN'T A BIG CASE, BUT MY FIRM CERTAINLY DID ON A
2 NUMBER OF OCCASIONS. I KNOW HIS BASIC QUALIFICATIONS AND I
3 KNOW THEY'RE IMPRESSIVE, BUT THAT'S REALLY NOT THE ISSUE HERE.
4 IT'S WHETHER HE'S BASING IT ON THAT METALLURGICAL EXPERTISE OR
5 SOME OTHER BASIS. OKAY. SO THE ONLY THING I REALLY HAVE IS
6 WHOSE BURDEN IS IT HERE? I MEAN, YOU ARE CHALLENGING THE
7 TESTIMONY AT THIS POINT SO I DON'T CARE WHO GOES FIRST, BUT
8 PROBABLY YOU, MR. PLANT.

9 MR. PLANT: WELL, YOUR HONOR, THIS IS A HEARING, THE
10 PROCEDURAL MAKEUP OF WHICH IS NOT VERY WELL DEFINED.

11 THE COURT: NO, IT'S NOT AT ALL. AND THE WAY I'VE
12 DONE IT, AND I'VE HAD QUITE A FEW, ALTHOUGH MOSTLY IN THE
13 CRIMINAL CONTEXT, ONE OR TWO IN CIVIL, WE NORMALLY JUST GET THE
14 TESTIMONY RIGHT TO THE HEART OF THE THREE RIMMASCH STEPS. AND
15 I THINK THE LAST ONE IS 403 WHICH REALLY ISN'T A TESTIMONY
16 ISSUE. I'LL GIVE YOU PLENTY OF LATITUDE, WHATEVER YOU'RE
17 COMFORTABLE DOING.

18 MR. PLANT: OKAY.

19 THE COURT: WE MAY EVEN ALLOW SURREBUTTAL.

20 MR. PLANT: WELL, LET'S START OFF WITH, YOUR HONOR,
21 BEFORE WE START TALKING WITH MR. ALEX, MAYBE WE OUGHT TO SET
22 THE STAGE A LITTLE BIT. RIMMASCH HAS, FIRST OFF, FOR SURE
23 THERE'S NO QUESTION IT'S BEEN USED IN A CIVIL CONTEXT.

24 THE COURT: OH YEAH.

25 MR. PLANT: WE HAD A CASE BY THE NAME OF BREWER V.

1 DENVER RIO GRANDE THAT HAS INTERPRETED THAT. WE RELY ON THE
2 BREWER CASE BECAUSE I THINK --

3 THE COURT: IT'S NOT JUST BEEN USED, I THINK IT'S
4 ERROR NOT TO IF REQUESTED, IF THERE'S ANY ISSUE THAT THIS IS
5 ANYTHING UNUSUAL.

6 MR. PLANT: I WOULD AGREE WITH THAT. BUT TO KINDA
7 SET THE STAGE, AND FORGIVE ME YOUR HONOR BECAUSE I'VE HAD
8 JUDGES LITERALLY TAKE THIS OVER AND DO IT THEMSELVES AND SO...

9 THE COURT: I CAN PROBABLY GUESS WHO SOME OF THEM
10 ARE.

11 MR. PLANT: BUT BECAUSE BASICALLY IT'S YOUR FUNCTION
12 HERE, AND SO I WOULD ASK IF YOU HAVE QUESTIONS, PLEASE, HERE --

13 THE COURT: AND DO UNDERSTAND I WILL ASK QUESTIONS
14 WHETHER IT'S IN THIS OR IN A BENCH TRIAL. I WILL NOT IN A JURY
15 TRIAL UNLESS IT'S HUGE LIKE I JUST DON'T UNDERSTAND, BUT THAT
16 ALMOST NEVER OCCURS. BUT IN A HEARING LIKE THIS I'LL ASK.

17 MR. PLANT: I WOULD HOPE SO AND I WOULD ASK YOU TO DO
18 THAT.

19 THE COURT: THANK YOU.

20 MR. PLANT: AND THE REASON I BRING UP RIMMASCH, YOUR
21 HONOR, IS THIS CASE PROBABLY HAS MORE SIMILARITY TO A CASE THAT
22 I'LL -- STEVENSON V GOODSON, IF I MIGHT APPROACH.

23 THE COURT: THANK YOU.

24 MR. PLANT: AND LAST NIGHT WHEN I WAS LOOKING AT THIS
25 I KNOW THE COURT IS AWARE OF THIS CASE BECAUSE YOUR NAME SHOWS

1 AS ONE OF THE LAWYERS ON IT.

2 THE COURT: IT DOES LOOK FAMILIAR.

3 MR. PLANT: WE HAVE A SITUATION HERE WHERE AGAIN, I
4 DON'T CHALLENGE DR. ALEX'S CREDENTIALS. HE CERTAINLY IS
5 QUALIFIED AS AN EXPERT METALLURGIST.

6 THE QUESTION I HAVE, AND AGAIN, MAYBE I SHOULD JUST
7 MARCH INTO THIS, IS WHETHER OR NOT THERE IS REALLY ADEQUATE
8 FOUNDATION FOR HIM TO TESTIFY HERE. RIMMASCH TALKS ABOUT IT A
9 LITTLE DIFFERENTLY. AND I'M NOT 100 PERCENT SURE THAT THIS IS
10 A STRAIGHT UP RIMMASCH CASE IN THAT THE FIRST STEP UNDER
11 RIMMASCH IS A THRESHOLD SHOWING THAT THE SCIENTIFIC PRINCIPLES
12 OF TECHNIQUES UNDERLYING THE EXPERT'S TESTIMONY ARE INHERENTLY
13 RELIABLE.

14 I THINK WHAT WE'RE REALLY SAYING IS WHAT THAT SAYS,
15 AND BASICALLY THAT, ESSENTIALLY, THERE'S INADEQUATE FOUNDATION
16 HERE, OR STATED ANOTHER WAY, THAT THERE ARE NO SCIENTIFIC
17 PRINCIPLES RELIED UPON.

18 THE COURT: I UNDERSTAND IT TO BE IN THIS CASE ON
19 THIS NARROW ISSUE THAT THERE ARE NO SCIENTIFIC PRINCIPLES, BUT
20 THERE'S METHODOLOGY PERHAPS, OR AN EXPERIENCE OR RECONSTRUCTION
21 I THINK IS THE WAY YOU HAVE TO LOOK AT IT. AND I THINK THAT
22 CAN BE SUBJECT TO RIMMASCH. SURELY IT'S BETTER TO DO THE
23 GATEKEEPER FUNCTION RATHER THAN MESS WITH IT IN FRONT OF THE
24 JURY.

25 MR. PLANT: I COULDN'T AGREE MORE. AND I THINK THIS

1 IS ENTIRELY APPROPRIATE. SO HAVING SAID ALL THAT, YOUR HONOR,
2 PERHAPS WHAT WE OUGHT TO DO IS SKIP THE QUALIFICATIONS, WE
3 DON'T CHALLENGE THAT, AND JUST ASK GO AHEAD AND ASK DR. ALEX
4 SOME QUESTIONS.

5 THE COURT: PLEASE.

6

7

DIRECT EXAMINATION

8 BY MR. PLANT:

9 Q FIRST OFF, DO YOU MIND IF I CALL YOU FRANK?

10 A THAT'S FINE.

11 Q I WON'T DO THAT IN FRONT OF A JURY. FRANK, ABOUT
12 WHEN DID YOU GET INVOLVED IN THIS MATTER?

13 A OH, APPROXIMATELY FOUR YEARS AGO.

14 Q ABOUT FOUR YEARS AGO?

15 A I HAVE THE EXACT DATES BUT I DON'T RECALL THEM RIGHT
16 NOW.

17 Q ALL RIGHT. WHEN ABOUT DID YOU REACH YOUR -- SO THAT
18 WOULD HAVE BEEN ABOUT FEBRUARY OF '98, THEREABOUTS, IF IT'S
19 FOUR YEARS AGO?

20 A SOMEWHERE IN '98, I BELIEVE.

21 Q OKAY. ACTUALLY, IT'S MARCH AND I APOLOGIZE FOR THAT.
22 I LOST A MONTH THERE. AND YOU'VE BEEN WORKING ON THE CASE ON
23 AND OFF EVER SINCE THEN?

24 A YES, I HAVE.

25 Q AND YOU REACHED YOUR OPINION CONCERNING CAUSATION

1 HERE, AS I RECALL, IN NOVEMBER OF 2000, RIGHT?

2 A YES.

3 Q AND THAT'S WHEN YOU --

4 A NOT COMPLETE OPINION BUT I DID START REACHING SOME
5 CONCLUSIONS.

6 Q BUT UNTIL THEN YOU JUST DIDN'T KNOW WHAT HAD HAPPENED
7 HERE, RIGHT?

8 A NO, THAT'S NOT TRUE. I SUSPECTED SOME THINGS BUT I
9 DIDN'T KNOW FOR SURE BECAUSE I HAD, MORE INFORMATION CAME IN IN
10 THE FORM OF DEPOSITIONS, THINGS LIKE THAT.

11 Q OKAY. AND THEN YOU WORKED ON AND GOT THAT OPINION
12 PRETTY MUCH FINALIZED, AS I RECALL, ABOUT MARCH OR SO OF 2001,
13 RIGHT?

14 A YES, WITH SOME CHANGES.

15 Q RIGHT. AND IF I CAN JUST STATE -- WELL, LET ME ASK
16 YOU, FRANK. YOUR OPINION, ESSENTIALLY, IS YOU HAVE FOUND THE
17 WEAK LINK IN THE OAKWOOD PIPING SYSTEM, ISN'T THAT CORRECT, AND
18 YOU THINK THAT WEAK LINK IS THE STOVE RISER IN THE GAS SYSTEM?

19 A I HAVE FOUND A NUMBER OF WEAK LEAKS, BUT I FOUND THE
20 WEAKEST LINK, I THINK THAT'S THE MOST PROBABLE.

21 Q AND IT IS BASED UPON THE FACT THAT THIS IS THE
22 WEAKEST LINK, AND SPECIFICALLY WE HAVE A GAS RISER THAT'S
23 ATTACHED TO A HORIZONTAL PIPING SYSTEM, RIGHT?

24 A RIGHT.

25 Q AND YOU BELIEVE THAT IT HAS THREE THREADS TOO MANY,

1 RIGHT?

2 A AT LEAST.

3 Q WELL, IS IT MORE?

4 A IT COULD BE.

5 Q HOW MANY?

6 A IT COULD BE THREE AND-A-HALF, FOUR.

7 Q THREE AND-A-HALF --

8 A WE START QUIBBLING WHEN WE START TALKING ABOUT ONE
9 THREAD.

10 Q I APPRECIATE THAT. THE STANDARDS ALLOW FOR AS MUCH
11 AS 11 THREADS ON A HALF INCH PIPE; IS THAT RIGHT?

12 A THAT'S RIGHT.

13 Q AND THIS ONE HAS ALWAYS BEEN REPRESENTED AS HAVING
14 14.

15 A THAT'S RIGHT.

16 Q AND SO 11 FROM 14 IS THREE?

17 A EXCEPT IT COULD BE 10, 10 TO 11.

18 Q OKAY. SO SOMEWHERE AROUND THREE, 3.5?

19 A YEP.

20 Q AND IN ADDITION TO THAT THIS PIPE, AS I UNDERSTAND
21 IT, WAS NOT INSERTED APPROPRIATELY?

22 A THAT'S RIGHT.

23 Q AND IT WAS INSERTED SIX AND-A-HALF THREADS INSTEAD OF
24 SEVEN AND-A-HALF THREADS?

25 A FIVE TO SIX.

1 Q OKAY. SIX THREADS, FIVE TO SIX THREADS. AND IT
2 SHOULD HAVE BEEN INSERTED WHAT, SEVEN?

3 A SEVEN TO EIGHT.

4 Q OKAY. AND SO YOU HAVE IDENTIFIED THE FACT THAT THIS
5 IS GOING TO BE WEAKER THAN THE OTHER PORTIONS OF THE PIPING
6 SYSTEM, RIGHT?

7 A THAT'S RIGHT.

8 Q AND WHAT YOU HAVE DONE TO DETERMINE THAT WEAKNESS IS
9 YOU'VE DONE SOME BENDING TESTS, RIGHT?

10 A YES, I HAVE.

11 Q AND ON OTHER PIPES, NEVER ON THIS PIPE. YOU'VE NOT
12 BEEN ABLE TO TEST THE BENDING STRENGTH OF THIS PIPE?

13 A NO, IT'S BROKEN.

14 Q EXCUSE ME?

15 A IT'S BROKEN.

16 Q SO YOU TOOK SOME PIPE THAT YOU THOUGHT WERE EXEMPLARS
17 AND YOU BEND THOSE AND IT TOOK 80 POUNDS TO GET THOSE TO BREAK?
18 IN A SIMILARLY THREADED AND INSERTED PIPE?

19 A ARE YOU TALKING ABOUT THE PIPE THAT'S PROPERLY
20 INSERTED OR ARE YOU TALKING ABOUT PIPE THAT'S NOT PROPERLY?

21 Q I'M TALKING ABOUT A SIMILARLY THREADED AND INSERTED
22 PIPE. AS I RECALL YOUR DEPOSITION, IT TOOK YOU 80 POUNDS OR SO
23 TO GET THAT PIPE TO BREAK.

24 MR. D'ELIA: AGAIN, YOUR HONOR, I'M JUST, FOR
25 CLARIFICATION, WHEN YOU SAY "A SIMILAR," YOU'RE TALKING SIMILAR

1 TO THE ACTUAL ERCANBRACK PIPE?

2 MR. PLANT: RIGHT.

3 Q (BY MR. PLANT) YOU UNDERSTOOD THAT, RIGHT FRANK?

4 A I CAN'T FIGURE THAT RIGHT NOW BUT I THINK IT WAS A
5 LITTLE BIT LESS THAN THAT. BUT SOMEWHERE IN THAT. YOU CAN
6 LOOK AT MY REPORT.

7 Q DO YOU WANT ME TO SHOW YOU IN YOUR DEPOSITION?

8 A YES, WOULD YOU PLEASE?

9 MR. PLANT: I DON'T KNOW HOW MUCH YOU WANT TO DO
10 THAT, YOUR HONOR.

11 THE COURT: WELL, IN TERMS OF IMPEACHMENT OR
12 CLARIFICATION, I GUESS.

13 MR. D'ELIA: MAY I OFFER SOME ASSISTANCE? IT MIGHT
14 NOT BE ANY AT ALL, DON'T GET ME WRONG, I GOT NO HANDLE ON
15 ANYTHING, BUT THIS IS MORE OR LESS GOING THROUGH THE KINDS OF
16 STUFF MR. PLANT HAS ALREADY SAID HE'S QUALIFIED TO TESTIFY TO
17 SO I DON'T THINK IT'S REALLY A BIG DEAL AS TO WHETHER IT'S OVER
18 THREADED AND UNDER INSERTED.

19 MR. PLANT: I'M JUST TRYING TO ESTABLISH --

20 THE COURT: OH, IN THAT SENSE I SEE WHAT YOU MEAN.

21 MR. PLANT: NO, WE ADMIT THE PIPE IS OVER THREADED.
22 I'M JUST TRYING TO ESTABLISH WHAT THAT MEANS IN TERMS OF THE
23 AMOUNT OF FORCE THAT IT TAKES TO BREAK AN UNDER INSERTED PIPE.

24 THE WITNESS: MAYBE A BETTER WAY TO PUT THAT WOULD BE
25 THE PERCENTAGE REDUCTION IN STRENGTH WHEN YOU PROPERLY

1 DETERMINE THE THREAD VERSUS WHEN IT'S OVER THREADED AND OVER
2 INSERTED -- OR UNDER INSERTED. THERE'S ABOUT 20 PERCENT DROP
3 IN STRENGTH.

4 Q (BY MR. PLANT) AND SO AGAIN, BUT DO YOU REMEMBER
5 THE ACTUAL NUMBERS?

6 A I DON'T REMEMBER THE ACTUAL NUMBERS. I REMEMBER THE
7 DIFFERENCE.

8 Q IN TERMS OF PERCENTAGES?

9 A RADIUS.

10 Q LET ME SHOW YOU THE DEPOSITION. IF I CAN DO THIS A
11 LITTLE LESS FORMALLY THAN NORMAL.

12 I ASKED YOU ON PAGE 103, LINE 9, I ASKED, SO YOU
13 GUYS, REFERENCING YOU AND CLYDE LARSON, CONTINUED TO LOAD THE
14 THING AND YOU GOT A STEADY INCREASE OF LOAD UP UNTIL THE
15 FAILURE AT 80 POUNDS. AND YOUR ANSWER WAS SURE.

16 SO THEN YOU WENT ON TO SAY, THE PROPERLY THREADED AND
17 INSERTED PIPE HAD A BREAKING STRENGTH OF ABOVE 100 POUNDS,
18 WHICH WOULD EQUATE WITH YOUR 20 PERCENT. DOES THAT SOUND
19 RIGHT?

20 A ABOUT 28.

21 Q OKAY. NOW WHAT YOU DID THEN, AFTER YOU FOUND THAT,
22 AND BY THE WAY YOU DIDN'T EVEN KNOW THAT WHEN YOU REACHED YOUR
23 ORIGINAL OPINION, YOU HADN'T DONE THOSE BEND TESTS, HAD YOU?

24 A THAT'S RIGHT.

25 Q SO WHAT YOU THEN DID IS YOU FIGURED, YOU RELIED ON

1 RICHARD THATCHER TO SUPPORT THE CONTENTION THAT THE GAS HAD TO
2 COME FROM AN INSIDE SOURCE, RIGHT?

3 A THAT'S RIGHT.

4 Q AND THEN WHAT YOU DID IS YOU SAID -- ACTUALLY, I'M
5 GOING TO NEED YOU TO LOOK AT YOUR DEPOSITION. TURN TO PAGE 154
6 IN THIS. CAN YOU READ THAT OKAY? I KNOW THE PRINT IS KINDA
7 SMALL. YOU SAID THAT YOUR OPINIONS WERE BASED UPON THE FACT
8 THAT THERE WAS AN EXPLOSION, THAT THE PROPANE HAD TO COME FROM
9 AN OUTSIDE LINK, AND THE ONLY THING YOU COULD IDENTIFY -- AND
10 THEN YOU WENT ON TO SAY, THAT THE WEAKEST LINK IN THE WHOLE
11 SCENARIO WOULD BE THE STOVE RISER, AND SO IT HAD TO COME FROM
12 THE STOVE'S RISER.

13 MR. KARREBERG: PAGE AND LINE WE'RE READING FROM?

14 MR. PLANT: SORRY. PAGE 154.

15 THE WITNESS: ESSENTIALLY, THAT'S WHAT I SAID. MOST
16 LIKELY.

17 Q (BY MR. PLANT) IS THAT STILL YOUR OPINION?

18 A YES, MOST LIKELY IT CAME FROM THE STOVE RISER BUT IT
19 COULD BE ONE IN THREE FRACTURES UNDER THE TRAILER.

20 Q LET'S MAKE SURE THE COURT UNDERSTANDS. YOU'VE
21 TESTIFIED THERE WAS PLENTY OF FORCE ASSOCIATED WITH THIS
22 EXPLOSION TO BREAK ALL FOUR OF THE PIPES THAT WERE BROKEN?

23 A THAT'S RIGHT.

24 Q THAT ALL FOUR OF THE PIPE FRACTURE SURFACES ARE ALL
25 CONSISTENT, INCLUDING THE GAS RISER, IS CONSISTENT WITH A ONE

1 TIME OVERLOAD EXPLOSION TYPE BREAK?

2 A YES, BUT YOU KNOW FOR SURE ONE HAD TO BREAK BEFORE.

3 Q WELL, AND THAT'S YOUR ASSUMPTION, ISN'T IT, THAT ONE
4 HAD TO BREAK?

5 A NO, I DON'T THINK IT'S AN ASSUMPTION, IT'S REALLY A
6 MATTER OF SCIENTIFIC PRINCIPLE. YOU HAD TO GET THE GAS FROM
7 SOMEWHERE AND SO YOU HAD TO HAVE A FRACTURE TO GET --

8 Q TELL ME NOW ALL OF THE EVIDENCE THAT YOU RELY ON,
9 OTHER THAN THE FACT THAT THERE HAD TO BE, HAD TO HAVE GAS FROM
10 SOMEWHERE, AND IT HAD TO BE IN ONE OF THE PIPES UNDER THE HOME.
11 OTHER THAN THAT, TELL THIS COURT, AND DO IT IN DETAIL, ALL OF
12 THE EVIDENCE THAT YOU RELY ON TO SUPPORT YOUR CONTENTION THAT
13 THE PIPE, THE STOVE RISER BROKE BEFORE THE ACCIDENT.

14 A THERE'S NO QUESTION ABOUT THE FACT THAT IT HAD TO
15 BREAK BEFORE THE ACCIDENT.

16 Q NO, THAT'S NOT WHAT I ASKED.

17 A NUMBER TWO, THERE'S NO QUESTION THAT THERE IS A
18 DEFICIENCY IN THE PIPING SYSTEM, THAT THEY WERE NOT PROPERLY
19 MANUFACTURED. AND THERE'S, AFTER YOU READ THE DEPOSITION,
20 THERE'S NO QUESTION IN MY MIND THAT OAKWOOD DID NOT FOLLOW A
21 STANDARD PROCEDURE IN DOING THINGS.

22 Q FRANK, TELL ME ALL OF THE -- ARE YOU DONE WITH ALL OF
23 THE EVIDENCE THEN? IS THAT IT?

24 A WELL, PRETTY WELL.

25 THE COURT: WELL, THAT WAS THE CONCLUSION. WHAT'S

1 THE EVIDENCE?

2 Q (BY MR. PLANT) I NEED SOME HELP HERE. I NEED YOU
3 TO TELL ME THE EVIDENCE YOU RELY UPON, NOT THE CONCLUSION THAT
4 YOU REACHED, BUT THE EVIDENCE THAT YOU RELY UPON TO SUPPORT
5 YOUR CONCLUSION THAT PRIOR TO THIS ACCIDENT THE PIPE BROKE.
6 AND BEFORE I DO THAT LET'S MAKE SURE WE UNDERSTAND SO THE COURT
7 KNOWS.

8 THIS PIPE PASSED LEAK TEST BEFORE THE ACCIDENT,
9 DIDN'T IT?

10 A THAT'S RIGHT.

11 Q AND YOU HAVE NO REASON TO BELIEVE IT WASN'T --

12 A IT PASSED LEAK TEST SOME TIME BEFORE THE ACCIDENT.

13 Q LET'S TALK ABOUT ALL THE LEAK TESTS IT PASSED. FIRST
14 OFF, THERE IS A LEAK TEST PERFORMED AT THE OAKWOOD FACTORY.

15 A THAT'S RIGHT.

16 Q DO YOU HAVE ANY REASON TO BELIEVE IT DIDN'T PASS A
17 LEAK TEST THERE?

18 A NO.

19 Q IT WAS LEAK TESTED AT LEAST THREE OR FOUR TIMES BY
20 S. & S. PROPANE WHEN IT WAS PUT INTO SERVICE. ARE YOU AWARE OF
21 THAT?

22 A I'M AWARE OF ONLY ONE.

23 Q OKAY?

24 A AT LEAST.

25 Q ARE YOU AWARE THAT IT PASSED THAT TEST?

1 A YES.

2 Q OKAY. SO WHEN THE HOME, WHEN THE PROPANE WAS PUT
3 INTO THE SYSTEM BY S. & S. PROPANE THE SYSTEM DIDN'T LEAK, DID
4 IT?

5 A NO.

6 Q AND THAT'S YOUR ASSUMPTION?

7 A THAT'S RIGHT.

8 Q NOW, WE ALSO KNOW THAT THE PIPE DIDN'T LEAK AFTER THE
9 ACCIDENT, DID IT? EXCUSE ME, STATE IT ANOTHER WAY.

10 THAT NONE OF THE JOINTS IN THE PIPE SYSTEM LEAKED
11 AFTER THE ACCIDENT UNDER THE HOME?

12 A THAT'S RIGHT.

13 Q SO THIS ACCIDENT, IN TERMS OF THE JOINTS AT LEAST,
14 DIDN'T CAUSE ANY OF THOSE JOINTS TO START LEAKING. I'M JUST
15 SAYING THE SAME THING ANOTHER WAY.

16 A NOT THROUGH THE JOINT.

17 Q RIGHT. SO THE ONLY CANDIDATES THAT YOU CAN COME UP
18 WITH ARE THE PIPES THEMSELVES, BECAUSE AFTER THE ACCIDENT WE
19 HAVE FOUR BREAKS, THREE UNDER THE HOME, AND ONE OUTSIDE THE
20 HOME, THAT WERE BROKEN, FOUND TO BE BROKEN?

21 A THAT'S CORRECT.

22 Q AND AGAIN, REPETITIVELY, BUT SETTING THE STAGE, WE
23 KNOW THAT THOSE PIPES DIDN'T ALL BREAK BEFORE THE ACCIDENT,
24 RIGHT? YOU DON'T MAINTAIN THAT?

25 A WELL, WE DON'T, WE ASSUME THEY DON'T.

1 Q AND WE KNOW THAT THIS EXPLOSION WAS, AGAIN, I'M BEING
2 REPETITIVE, BUT I WANT TO MAKE SURE, HAD PLENTY OF FORCE TO
3 CAUSE THESE PIPES TO BREAK?

4 A THAT'S RIGHT.

5 Q HAVING SAID THAT, WITH THAT IN MIND, YOU TELL ME ALL
6 OF THE EVIDENCE, OTHER THAN WHAT YOU'VE SAID, THAT YOU RELIED
7 ON TO SUPPORT YOUR CONTENTION THAT THE MOST LIKELY BREAK IN
8 THIS SYSTEM BEFORE THE ACCIDENT WAS THE RANGE RISER?

9 A JUST THE SAME AS I SAID BEFORE.

10 Q NOTHING MORE?

11 A NOTHING MORE.

12 Q ABSOLUTELY NOTHING?

13 A NO.

14 Q LET ME REPEAT THAT. IT TURNS OUT TO BE THE WEAKEST
15 LINK, AND SO IT HAD TO BREAK SOMEWHERE, SO IT HAD TO BREAK AT
16 THE WEAKEST LINK?

17 A NO, IT DIDN'T HAVE TO BREAK AT THE WEAKEST LINK. IT
18 MOST PROBABLY BROKE AT THE WEAKEST LINK.

19 Q YOU HAVE NO OTHER EVIDENCE WHATSOEVER TO SUPPORT THAT
20 POSITION?

21 A THAT THAT WAS THE WEAKEST LINK? OR THAT IT BROKE
22 THERE?

23 Q THAT IT BROKE THERE.

24 A I HAVE EVIDENCE THAT IT BROKE SOMEWHERE.

25 Q YOU HAVE NO EVIDENCE TO SUPPORT -- AND THAT EVIDENCE

1 IS YOU THINK THE GAS HAD TO COME FROM UNDERNEATH THE HOME,
2 THAT'S IT, RIGHT?

3 A THAT'S RIGHT.

4 Q BUT AS TO THE -- LET'S TALK ABOUT SOME THINGS. AS TO
5 THE FRACTURED SURFACE, YOU HAVE NO EVIDENCE?

6 A REPEAT THAT, PLEASE.

7 Q WELL, IN ADMITTING THAT YOU'RE A QUALIFIED
8 METALLURGIST, FRANK, WHAT I'M REALLY SAYING IS YOU KNOW THAT
9 GENERALLY WHAT YOU DO IS YOU LOOK AT FRACTURE SITES IN TRYING
10 TO DETERMINE IF THERE'S SOME EVIDENCE OF WHAT HAPPENED IN
11 CAUSING A FAILURE, CORRECT?

12 A NO, YOU'RE WRONG.

13 Q WELL, THAT'S ONE OF THE THINGS YOU CAN DO, RIGHT?

14 A THAT'S ONE OF THE THINGS YOU DO, BUT I'LL GO AHEAD
15 AND EXPLAIN THE PROCESS TO YOU. FOR EXAMPLE, LET'S SUPPOSE YOU
16 HAVE AN AIRLINE CRASH, YOU'VE GOT ALL THESE BROKEN PARTS AND
17 YOU DON'T GO AHEAD AND STOP AND SAY, I'M GOING TO SORT THROUGH
18 EVERY ONE OF 'EM AND DETERMINE WHAT THEIR FRACTURE IS FOR EVERY
19 PART.

20 THE FIRST THING YOU DETERMINE IS WHAT WOULD BE THE
21 CHARACTERISTIC OF THE ACCIDENT. DID IT APPEAR THAT THERE WAS A
22 FAILURE OF A PART, OF A SYSTEM OR SOMETHING. AND THEN YOU
23 CONCENTRATE ON THAT SYSTEM. AND YOU DON'T GO AHEAD, LIKE, FOR
24 EXAMPLE, IF YOU HAD AN AIRPLANE AND YOU THINK THE CONTROL
25 SYSTEM FAILED, YOU DON'T GO OUT AND LOOK AT A MOONLIGHT AND

1 SAY, WELL, I WANT TO LOOK AT THE LIGHT AND SEE IF THE LIGHT'S
2 OKAY. YOU TRY TO NARROW IT ON DOWN.

3 WHEN YOU GET IT NARROWED ON DOWN TO SOMETHING THAT
4 YOU THINK MIGHT HAVE BEEN, MAYBE FOUR OR FIVE DIFFERENT THINGS,
5 OR MAYBE A DOZEN THINGS, YOU START DOING SOME TESTING ON THOSE
6 THINGS. IT MAY INVOLVE EXAMINATION OF THE FRACTURE SURFACE, IT
7 MAY INVOLVE OTHER TESTS, BUT WHEN YOU GET ALL THROUGH YOU MAY
8 HAVE MAYBE ONE OR TWO OR THREE DIFFERENT POSSIBLE CAUSES. YOU
9 MAY NEVER KNOW EXACTLY WHICH ONE THAT CAUSED IT.

10 Q AND IT COULD BE ONE OF SEVERAL, COULDN'T IT?

11 A BUT YOU MIGHT COME UP WITH, MOST PROBABLY IT WAS THIS
12 REASON. YOU'VE SEEN THE WORK THAT'S BEEN DONE ON THE TWA CRASH
13 IN NEW YORK. THAT WAS DONE ABOUT FOUR OR FIVE YEARS AGO.

14 Q I DON'T MEAN TO STOP --

15 A AND THAT'S WHAT I'M TRYING TO SAY. THEY DON'T KNOW
16 EXACTLY THAT THIS WIRE FAILED AND CAUSED THE PROBLEM. THEY
17 SAID MOST LIKELY THIS BUNDLE OF WIRES FAILED.

18 THE COURT: DR. ALEX, WHAT I THINK YOU'RE SAYING IS,
19 THAT THE FIRST STEP IS TO NARROW THE POSSIBLE CAUSES DOWN. AND
20 IS IT CORRECT TO SAY THAT YOU'VE NARROWED IT INITIALLY TO THE
21 LEAK WAS UNDER THE HOUSE?

22 THE WITNESS: YES.

23 THE COURT: WHAT IS YOUR EVIDENCE THAT ALLOWS YOU TO
24 NARROW IT TO THAT POINT?

25 THE WITNESS: FIRST OF ALL, WE KNOW WE HAD AN

1 EXPLOSION AND IT'S TIED TO THE HOUSE.

2 SECONDLY, WE, FROM WORK I'VE SEEN DONE, MAX HAD DONE,
3 THE AMOUNT OF LEAKAGE YOU GET, THE AMOUNT OF GAS YOU GET ON THE
4 INSIDE FROM THE OUTSIDE SOURCE, IS NOT SUFFICIENT TO CAUSE AN
5 EXPLOSION TO BE ABLE --

6 THE COURT: SO YOU ARE TALKING ABOUT THE MODEL THAT
7 WAS BUILT, NOT FULL SIZE, WHERE THEY TESTED POSSIBILITIES OF
8 MIGRATION. YOU ARE RELYING ON THAT SOMEWHAT?

9 THE WITNESS: YES.

10 THE COURT: OKAY.

11 THE WITNESS: SO THEN IF YOU SAY, BASED UPON THAT YOU
12 HAD TO HAVE A LEAK UNDERNEATH THE HOUSE OF SUFFICIENT SIZE TO
13 CAUSE AN EXPLOSION. YOU HAVE THREE FRACTURES. SO
14 SCIENTIFICALLY IT HAS TO BE ONE OF THOSE THREE. IT CANNOT BE
15 ANYTHING ELSE.

16 THE COURT: UNLESS YOUR FIRST PREMISE IS WRONG AND IT
17 COULD HAVE BEEN OUTSIDE, LIKE THE REGULATOR.

18 THE WITNESS: THAT'S RIGHT.

19 THE COURT: BUT YOU'RE SATISFIED, TO A DEGREE OF
20 PROBABILITY, THAT IT DID NOT OCCUR OUTSIDE, THERE WAS NOT
21 MIGRATION.

22 THE WITNESS: THAT'S RIGHT. I'M NOT AN EXPERT ON
23 THAT, BUT I HAVE LOOKED AT THAT THING FROM MY SCIENTIFIC
24 BACKGROUND, AND I AGREE WITH THAT INFORMATION. I DON'T
25 DISAGREE WITH IT. SO THEN I GET DOWN TO A POINT WHERE IT HAD

1 TO BE ONE OF THREE FRACTURES. I'M NOT SAYING 100 PERCENT THAT
2 IT WAS THIS ONE OR THAT ONE OR THAT ONE.

3 THE COURT: BUT YOU ARE SAYING 100 PERCENT IT WAS ONE
4 OF THEM?

5 THE WITNESS: YES.

6 THE COURT: OKAY. MR. PLANT?

7 Q (BY MR. PLANT) TELL ME WHAT EVIDENCE YOU RELY UPON,
8 OTHER THAN WHAT YOU'VE SAID, AND IF YOU'RE DONE YOU'RE DONE, TO
9 SAY THAT ONE OF THOSE THREE PIPES FAILED IN SUCH A WAY THAT IT
10 RELEASED GAS BEFORE THIS EXPLOSION?

11 A I THINK I JUST SAID IT.

12 Q NOTHING MORE?

13 A NO.

14 Q NO METALLURGY -- LET ME ASK THE QUESTION BETTER.

15 IS THERE ANY METALLURGICAL EVIDENCE TO SUPPORT YOUR
16 OPINION?

17 A YES.

18 Q WHAT?

19 A FROM THE STANDPOINT THAT A METAL COMPONENT FAILED.
20 THAT'S METALLURGICAL.

21 Q I'M SORRY?

22 A A METAL COMPONENT FAILED.

23 Q WELL, I KNOW METAL COMPONENTS CAN FAIL, AND I'M NOT A
24 METALLURGIST. WE ALL KNOW ANYTHING CAN FAIL. WHAT DID YOU
25 BRING AS A METALLURGIST OR A FAILURE ANALYST OR WHATEVER HAT

1 YOU WANT TO PUT ON, TO SUPPORT YOUR POSITION THAT THIS, THAT
2 ONE OF THE PIPES FAILED? YOUR EXPERT OPINION.

3 A IT'S BASED ON WHAT I JUST SAID PREVIOUSLY.

4 Q YOU DIDN'T EVEN HAVE TO LOOK AT THE FRACTURE SITE,
5 DID YOU? THAT WAS NOT PART OF YOUR ANALYSIS, THE SURFACE?

6 A OH, YES, IT WAS.

7 Q DID IT SHOW YOU ANYTHING?

8 A SURE, IT SHOWED FAILURE IN BENDING. IN A BENDING
9 MODE. IT ALSO SHOWED A CERTAIN AMOUNT OF DIRT AND THINGS LIKE
10 THAT.

11 Q BUT IT DIDN'T SHOW YOU ANYTHING ABOUT, DISPLAYING
12 ANYTHING ABOUT A FAILURE PRIOR TO THE EXPLOSION, DID IT?

13 A MY BACKGROUND AND KNOWLEDGE INDICATES THAT I WOULDN'T
14 SEE ANYTHING THERE. AND ACTUALLY, WHAT HAPPENED WAS I DIDN'T
15 SEE IT, I LOOKED FOR IT, I DIDN'T SEE IT, AND THEN I WENT AHEAD
16 AND RAN SOME TESTS TO PROVE WHAT I HAD PREVIOUSLY KNOWN, THAT I
17 WOULDN'T SEE ANYTHING.

18 Q OKAY. LET'S TALK ABOUT SOME OTHER THINGS. SO WE'VE
19 TALKED ABOUT ALL THE EVIDENCE YOU HAVE TO SUPPORT YOUR POSITION
20 THAT THE WEAKEST LINK FAILED AND, ESSENTIALLY, THERE IS NO
21 EVIDENCE OTHER THAN IT IS THE WEAKEST LINK?

22 A MOST PROBABLY FAILED. BUT IT HAD TO BE ONE OF THE
23 THREE.

24 Q OKAY. NOW, WHAT CAUSED THE FAILURE AT THE TIME? WE
25 CAN GO THROUGH THIS WHOLE THING. THE PROBLEM WE HAVE IS THAT

1 THIS THING HELD GAS FOR SOME TIME, DIDN'T IT?

2 A THAT'S RIGHT.

3 Q AND SO THAT'S WHERE YOU'VE ESPOUSED THIS PRE-CRACK
4 THEORY OR THERE WAS SOME SORT OF PARTIAL CRACK?

5 A THAT'S RIGHT.

6 Q ALTHOUGH THERE'S NO EVIDENCE TO SUPPORT THAT.

7 A THERE'S NO EVIDENCE TO SUPPORT IT EITHER WAY.

8 Q SO WHAT EVENT OCCURRED TO CAUSE THE PIPE TO CRACK?

9 A WELL, FIRST OF ALL, IT WAS NOT PROPERLY MANUFACTURED
10 OR ASSEMBLED.

11 Q I KNOW THAT, DR. ALEX.

12 A AND THEN WHEN IT WAS PUT INTO THE TRAILER IT COULD
13 HAVE BEEN VERY EASILY BROKEN. I ORIGINALLY HAD THOUGHT VARIOUS
14 WAYS THEY COULD DO IT, BUT THEN I'VE SEEN FILMS ON HOW THEY DO
15 IT, I'VE ALSO WENT AHEAD AND BUILT SOME MODELS TO SHOW IT CAN
16 BE DONE THAT WAY. AND SO I'M CONVINCED THAT IT WAS DONE DURING
17 THE MANUFACTURING.

18 Q OKAY. BUT THE EVIDENCE THAT YOU'RE RELYING UPON FROM
19 THE THATCHERS IS THAT THE LEAK OCCURRED 24 HOURS OR SO
20 BEFOREHAND, RIGHT?

21 A MOST PROBABLY.

22 Q AND THERE HAD TO BE AN EVENT TO CAUSE THAT. IT JUST
23 DOESN'T HAPPEN, RIGHT?

24 A YES, THAT'S RIGHT.

25 Q OKAY. AND YOU'VE OPINED THAT THAT EVENT WAS LIKELY

1 EXPANSION AND CONTRACTION, RIGHT?

2 A MOST PROBABLY, YES.

3 Q AND YOU'VE DONE ABSOLUTELY NO CALCULATIONS TO
4 DETERMINE WHAT THE LEVEL OF EXPANSION AND CONTRACTION IS
5 NEEDED?

6 A THE AMOUNT OF EXPANSION AND CONTRACTION DEPENDS ON
7 HOW FAR THE CRACK IS BROKEN IN THE FIRST PLACE. AND WE DON'T
8 KNOW THAT.

9 Q BUT WE KNOW IT WASN'T LEAKING, WE DO KNOW THAT.

10 A IT COULD HAVE BEEN BROKEN ALMOST ALL THE WAY THROUGH,
11 OR IT COULD BE BROKEN ALL THE WAY THROUGH AND THE PIPE DOPE
12 COULD HOLD THE PRESSURE TOGETHER, BECAUSE WE'RE ONLY TALKING
13 ABOUT OUNCES OF PRESSURE.

14 Q SO YOU DON'T HAVE ANY EVIDENCE IN THAT REGARD SO
15 YOU'RE SPECULATING, RIGHT? YOU DON'T KNOW HOW FAR ALONG THE
16 PIPE WAS BROKEN OR NOT BROKEN?

17 A NOBODY DOES.

18 Q SO YOU ARE SPECULATING?

19 A THAT'S RIGHT.

20 Q YOU'RE ALSO SPECULATING AS TO WHETHER OR NOT IT EVEN
21 BROKE BECAUSE YOU DON'T HAVE EVIDENCE TO THAT EFFECT, CORRECT?

22 A SPECULATING ON THE FACT THAT IT BROKE?

23 Q YES.

24 A OH, I DO KNOW ONE OF THE THREE BROKE.

25 Q OKAY. AGAIN, BECAUSE SOMETHING HAD TO PUT THE GAS IN

1 THE HOUSE?

2 A THAT'S RIGHT.

3 Q THAT'S ALL?

4 A THAT'S RIGHT.

5 Q IS THAT A METALLURGIST -- YOU'RE NOT THEN --

6 DR. ALEX, IS IT FAIR TO SAY YOU'RE NOT REALLY TESTIFYING AS A
7 METALLURGIST, YOU'RE JUST SAYING THATCHERS SAY AND OTHERS SAY
8 IT HAD TO COME FROM AN INSIDE SOURCE SO YOU'RE SAYING OKAY,
9 THEN IT HAD TO COME FROM ONE OF THESE THREE PIPES, RIGHT?

10 A I AM TESTIFYING AS A FAILURE ANALYST FIRST OF ALL.
11 LET ME DESCRIBE TO YOU AGAIN. VERY OFTEN THE WORK YOU DO MAY
12 NOT SHOW ANYTHING FROM A METALLURGICAL STANDPOINT. IT MAY, IT
13 MAY NOT. BUT YOU HAVE TO START WITH THE BROAD SITUATION AND
14 NARROW IT DOWN, AND THEN IF YOU'RE LUCKY YOU MIGHT SEE WHAT'S
15 THERE. SOMETIMES IT SHOWS IT, SOMETIMES IT DOESN'T.

16 Q SO YOU RESORT TO SHEAR SPECULATION AS TO WHICH ONE
17 BROKE AND IF IT BROKE?

18 A THERE'S NO QUESTION IT BROKE, OKAY?

19 Q AND WHEN I SAY "BROKE" I MEAN BEFORE THE EXPLOSION.
20 WHEN I SAY -- YOU'RE SPECULATING. YOU DON'T KNOW IF ONE BROKE
21 OR -- LET ME CHANGE THE THINGS.

22 LET'S ASSUME THAT IT IS POSSIBLE TO GET GAS FROM AN
23 OUTSIDE SOURCE. JUST TAKE THAT AS A GIVEN. WOULD THAT CHANGE
24 YOUR TESTIMONY?

25 A IF YOU CAN PROVE THAT, YES.

1 Q WHY?

2 A THAT'S NOT WHERE IT CAME FROM. I DON'T BELIEVE IT
3 DID, BUT IF YOU CAN PROVE TO ME IT CAME FROM THERE I WOULD
4 CHANGE, YES.

5 Q ACCEPT AS A PREMISE THAT THE GAS CAME FROM AN OUTSIDE
6 SOURCE, WHATEVER. BE IT THE EXTERNAL REGULATOR BOX OR
7 WHATEVER, THEN YOUR TESTIMONY FAILS, DOESN'T IT?

8 A IF YOU GO AHEAD AND ALSO ASSUME IT DIDN'T EXPLODE IT
9 FAILS.

10 Q WELL, YOUR TESTIMONY FAILS BECAUSE YOU ARE TOTALLY
11 RELYING UPON THAT FACT AND THAT FACT ALONE TO SUPPORT YOUR
12 OPINION. YOU HAVE NOTHING ELSE, DO YOU?

13 A WELL, THAT'S NOT RIGHT. THE WEAKEST POINT IS
14 INTERNALLY.

15 Q WELL, YOU'RE ALWAYS GOING TO FIND A WEAK LINK, AREN'T
16 YOU, IN THE SYSTEM?

17 A TO SOME EXTENT, BUT THIS ONE WAS VERY POSSIBLY VERY
18 WEAK.

19 Q WELL, ALL YOU KNOW --

20 A THE WAY IT WAS HANDLED.

21 Q ALL YOU KNOW IS IT MAY HAVE TAKEN, INSTEAD OF 100
22 POUNDS TO BREAK IT IT MAY HAVE TAKEN 80 POUNDS TO BREAK IT.
23 RIGHT?

24 A TO CRACK IT?

25 Q YEAH.

1 A WELL, AT 40, WHEN YOU START GETTING UP AT 41
2 AND-A-HALF INCHES YOU'RE ONLY TALKING ABOUT 25, 30 POUNDS.

3 Q WELL, EXCEPT UP THERE, YOU NEED TO BEND THE PIPE OUT
4 NINE INCHES, DON'T YOU?

5 A THAT'S RIGHT.

6 Q THAT'S THE DEFLEXION.

7 A THAT'S RIGHT.

8 Q SO IN ADDITION TO YOUR LOAD YOU HAVE GOT TO HAVE NINE
9 INCHES OF MOVEMENT. SOMEBODY HAS TO PULL THAT THING NINE
10 INCHES, OF 41 INCHES ABOVE THE CRACK, TO GET IT TO BREAK, DON'T
11 THEY? HOW DID THAT HAPPEN?

12 A NO, WELL, THAT'S NOT TRUE.

13 Q YEAH, IT IS. DO YOU WANT ME TO SHOW YOU WHERE YOU
14 JUST TOLD ME THAT? AT 41 INCHES YOU --

15 MR. D'ELIA: LET'S NOT ARGUE, JUDGE. LET'S JUST HAVE
16 HIM SHOW SOMETHING.

17 MR. PLANT: YOU'RE RIGHT. THANKS, GERRY.

18 Q (BY MR. PLANT) AT 41 INCHES, IN ORDER TO GET A
19 CRACK AT THE JOINT WHERE IT JOINS THE ELBOW, WHEN I SAY "41
20 INCHES" I MEAN 41 INCHES AWAY, YOU HAVE GOT TO MOVE THAT THING
21 NINE AND-A-HALF INCHES, DON'T YOU?

22 A IN ORDER TO GET A CRACK YOU MOVE UP. AND IT'S OPEN,
23 NOT A CRACK, JUST A CRACK THAT'S GONE THROUGH THE WALL SO IT'S
24 NOT ALL THE WAY. IT HAS TO BE ABOUT NINE INCHES.

25 Q AND IN THIS INSTANCE, BECAUSE WHAT YOU'RE SAYING IS

1 WE HAVE THE STOVE RISER AND THE FURNACE RISER PULLING AGAINST
2 EACH OTHER. THERE'S THE PRESSURE, BECAUSE OTHERWISE, IF IT
3 CONTRACTS, IF THERE'S NO COUNTER BALANCE IN PRESSURE, IT'S NOT
4 GOING TO DO ANYTHING. THERE HAS TO BE FORCE PULLING AGAINST
5 THE RANGE RISER AND THE FURNACE RISER, RIGHT?

6 A YES.

7 Q NOW, SO, AND BOTH OF THOSE HAVE TO BE FULLY EXERTED
8 UPON, DON'T THEY?

9 A THERE'S FORCE IN KIND OF A FORCED AREA.

10 Q RIGHT. SO WE HAVE TO HAVE, BETWEEN THE TWO RISERS,
11 WE HAVE TO HAVE ESSENTIALLY 18 INCHES OF DEFLEXION?

12 A NO, THAT'S NOT RIGHT.

13 Q BUT AT LEAST NINE?

14 A FIRST OF ALL, YOU'RE ASSUMING THAT THEY BOTH BROKE
15 AND THEY BOTH WERE BROKEN ALL THE WAY OPEN. IF YOU WENT AHEAD
16 AND SAID, I BEND 'EM FAR ENOUGH TO BREAK 'EM BOTH, AND MAKE
17 SURE THEY WERE BOTH OPEN, WE CAN TALK ABOUT 18 INCHES AT THE 41
18 AND-A-HALF INCH POINT.

19 AT THE FLOOR LEVEL YOU'RE ONLY TALKING ABOUT A FEW
20 INCHES.

21 Q THREE INCHES YOU TOLD ME. RIGHT?

22 A RIGHT.

23 Q SOMEBODY HAD TO MOVE THAT THING THREE INCHES ON THE
24 ONE AND CLOSE TO THREE INCHES ON THE OTHER SO YOU HAVE THE
25 COUNTER BALANCING FORCE?

1 A NO, YOU DON'T. YOU'D HAVE JUST ONE.

2 Q DO YOU HAVE ANY EVIDENCE OF ANY THREE INCH MOVEMENT
3 HERE?

4 A NO.

5 Q DO YOU HAVE ANY EVIDENCE OF ANY EXCESSIVE FORCE --

6 A JUST --

7 Q DO YOU HAVE ANY EVIDENCE OF ANY FORCE BEING EXERTED
8 ON THIS PIPE?

9 A WELL YES.

10 Q THAT'S WHAT THIS IS ALL ABOUT, RIGHT?

11 A RIGHT.

12 Q NOW, DO YOU HAVE ANY EVIDENCE -- LET'S GO THROUGH
13 THIS. WHAT YOU'RE GOING TO DO IS YOU'RE GOING TO SHOW THAT BY
14 OVER INSERTING OUR PIPE INTO THE OTHER JOINTS WE SHORTEN THE
15 OVERALL DISTANCE OF THE PIPE, RIGHT?

16 A RIGHT.

17 Q AND IT WAS A HYPOTONUS OF THAT TRIANGLE, IF WE CAN
18 JUST USE THIS, THIS IS THE TRIANGLE OF THE PIPES, RIGHT, AND
19 YOU'RE GOING TO SHORTEN THE HYPOTONUS OF THE TRIANGLE?

20 A THAT'S RIGHT.

21 Q YOU'RE GOING TO BRING IT TOGETHER AN INCH AND I THINK
22 YOU TOLD ME 5/8.

23 A I ACTUALLY REDID IT AND IT'S AN INCH AND 5/16.

24 Q SO IT'S LESS?

25 A YES.

1 Q NOW THAT ASSUMES YOU KNOW WHERE THEY DRILLED THE
2 HOLES. DO YOU?

3 A NO.

4 Q DO YOU HAVE ANY EVIDENCE WHATSOEVER THAT DURING THE
5 MANUFACTURING PROCESS THAT THERE WAS ACTUAL FORCE PUT ON THIS
6 PIPE SUFFICIENT TO CAUSE THE PIPE TO BE BROKEN?

7 A FROM THE FILM THEY DESCRIBED TO ME OF HOW THE OAKWOOD
8 HOMES ARE MANUFACTURED, IT SHOWS VERY PLAINLY THAT WHEN THEY
9 WENT AHEAD AND ASSEMBLED IT THE PIPE WAS NOT SITTING
10 VERTICALLY, AND IF IT IS NOT SITTING VERTICALLY IT MEANS THE
11 PIPE IS NOT THE SAME LENGTH AS WHERE THE HOLES ARE AT.

12 Q DR. ALEX, THAT FILM, WHICH IS GOING TO BE THE SUBJECT
13 OF ANOTHER MOTION IN LIMINE, THAT WAS SHOT ON ANOTHER MODEL IN
14 HILLSBOROUGH, TEXAS, WASN'T IT? ANOTHER MODEL HOME.

15 A YES.

16 Q HILLSBOROUGH, TEXAS?

17 A RIGHT.

18 Q WHERE WAS THIS ONE MADE?

19 A PARDON?

20 Q WHERE WAS THIS HOME MADE?

21 A I THINK IN TEXAS. I'M NOT SURE WHERE IT'S MADE. THE
22 ONE THAT WE'RE TALKING ABOUT?

23 Q YEAH, THE ERCANBRACK HOME.

24 A I'M NOT SURE. NORTH CAROLINA?

25 Q IT WAS MADE IN FORT MORGAN, COLORADO. DO YOU HAVE

1 ANY EVIDENCE THAT IN FORT MORGAN, COLORADO, AT THE TIME THIS
2 HOME WAS BUILT THAT THERE WAS EXCESSIVE PRESSURE PUT ON THIS
3 PIPE?

4 A OTHER THAN IT FAILED?

5 Q I'M ASKING FOR EVIDENCE.

6 A NO, I DON'T.

7 Q NOT YOUR CONCLUSIONS.

8 A I DON'T. AND NOBODY DOES.

9 Q SO YOU DON'T HAVE --

10 A EITHER WAY, WHETHER IT DID OR DIDN'T.

11 Q YOU DON'T HAVE ANY EVIDENCE OF THAT, YOU DON'T HAVE
12 ANY EVIDENCE OF AN EVENT OCCURRING AT OR NEAR THE TIME OF THIS
13 ACCIDENT, YOU DON'T HAVE ANY EVIDENCE THAT ON THE PIPE FACE
14 THAT THE PIPE BROKE. CHIME IN AND TELL ME IF I'M WRONG. SO
15 WE'RE BACK TO YOUR THEORY, SOMETHING HAD TO GIVE, LOOK AT THE
16 WEAKEST LINK, AND THAT'S IT, RIGHT?

17 MR. D'ELIA: IT'S A LITTLE HARD FOR HIM TO ANSWER.

18 THE WITNESS: IF YOU GO AHEAD AND SAY, WAS I THERE
19 LOOKING AT WHAT HAPPENED, MAJOR AND EVERYTHING, NO, I DIDN'T.

20 MR. KARREBERG: I'M DONE.

21 THE COURT: BEFORE THERE'S ADDITIONAL EXAMINATION,
22 DR. ALEX, I KNOW YOUR EXPERTISE IS A METALLURGIST, AND THAT'S
23 ONE THING YOU DO, BUT YOU ALSO INDICATED YOU APPLY FAILURE
24 ANALYSIS OR YOU ARE A FAILURE ANALYST; IS THAT CORRECT?

25 THE WITNESS: THAT'S RIGHT.

1 THE COURT: OKAY. IN REACHING YOUR CONCLUSIONS, YOUR
2 OPINION, ESSENTIALLY THE OPINION THAT EITHER THE STOVE RISER OR
3 ONE OF THE OTHER TWO PIPES, IN ALL PROBABILITY, FAILED BEFORE
4 THE EXPLOSION, WHICH ELEMENTS OF YOUR EXPERTISE WERE YOU
5 EMPLOYING?

6 THE WITNESS: WELL, MECHANICAL ENGINEERING, KNOWING
7 HOW THE THING STANDS AND HOW IT FITS TOGETHER. I GUESS YOU
8 WOULD LOOK AT FRACTURE SURFACES AND DETERMINE IF THEY WERE
9 BROKEN. THERE'S NO QUESTION ABOUT THAT. WHICH ONE HAPPENED
10 FIRST I CAN'T TELL. NOBODY CAN. KNOWING THERE WAS AN
11 EXPLOSION, KNOWING THE PHYSICAL EVENTS, THE ENGINEERING
12 PRINCIPLES INVOLVED.

13 THE COURT: NOW IS THERE A PARTICULAR METHODOLOGY YOU
14 FOLLOW THAT'S ACCEPTED OR CAN YOU DESCRIBE -- I MEAN, I THINK
15 THAT'S WHAT YOU'RE DESCRIBING TO ME, A METHODOLOGY, BUT IS THIS
16 THE ONE YOU USE ROUTINELY IN YOUR WORK?

17 THE WITNESS: IT IS, YES. PRETTY WELL. MOSTLY THEY
18 START WITH THE RESULTS AND WORK BACK FROM THAT AND TRY TO WORK
19 BACK TO AN ORIGIN, AND THEN IF THEY HAVE A BUNCH OF DIFFERENT
20 ORIGINS THEY LOOK AT 'EM AND HOPEFULLY THEY CAN FIND AN EXACT
21 ONE. BUT IF THEY CAN'T THEN WE HAVE TO END UP SAYING, WELL, IT
22 WAS PROBABLY, IT WAS DEFINITELY ONE OF THOSE THREE OR FOUR, BUT
23 IT WAS PROBABLY THE ONE OF THE THREE OR FOUR.

24 THE COURT: WHAT IS THE LINE, IN YOUR OPINION,
25 BETWEEN THIS PROBABLY AND SPECULATION? YOU MENTIONED AIRPLANE

1 CRASHES AS AN EXAMPLE. AND TWA. BUT I MEAN, IS THERE A LINE,
2 IN YOUR OPINION, BETWEEN MOST PROBABLY THIS OCCURRED, PERHAPS
3 IT OCCURRED, AND WE JUST ARE SPECULATING AS TO CAUSE?

4 THE WITNESS: NO. SPECULATION IS WHEN YOU'RE JUST
5 COMPLETELY GUESSING. PROBABLY IS WHEN YOU SAY, WHEN YOU HAVE A
6 DEFINITE EVENT AND YOU'RE SAYING, GIVE ME THE PROBABILITY OF
7 WHICH ONE OF THE THREE OR FOUR IS THE MOST LIKELY AND YOU SAY,
8 WELL, I'VE GOT THREE EVENTS HERE AND IT DEFINITELY HAD TO BE
9 ONE OF THE THREE. IT COULDN'T BE OTHERWISE. SO THEN THEY GO
10 AHEAD AND YOU SAY, WELL, BASED UPON EXAMINATION OF ALL THREE,
11 NUMBER ONE HAS A 40 PERCENT PROBABILITY, NUMBER TWO HAS A 30
12 PERCENT AND NUMBER 3 HAS 30 PERCENT. WHAT I'M TRYING TO SAY
13 IS, SO YOU LOOK AT THE MOST PROBABLE OF THE THREE.

14 BUT IN THIS CASE YOU WOULD SAY, WELL, THERE WERE
15 THREE, IT HAD TO BE ONE OF THE THREE FOR SURE, THE PHYSICAL
16 EVIDENCE, WHAT'S HAPPENED IN THE ACCIDENT. YOU KNOW IT HAD TO
17 BE ONE OF THE THREE. SO THEN YOU GO AHEAD AND SAY, WELL, LET'S
18 LOOK AT THE WEAKEST OF THESE PARTS AND YOU SAY, WELL, THE ONE
19 PART IS A LOT WEAKER THAN THE OTHERS SO YOU GO AHEAD AND SAY
20 THAT PROBABLY HAS AN 85 PERCENT AND THE OTHER HAS SEVEN
21 AND-A-HALF EACH, OR SOMETHING LIKE THAT.

22 THE COURT: DO YOU AGREE, DR. ALEX, THAT THE VALIDITY
23 OF YOUR CONCLUSION THAT IT WAS ONE OF THOSE THREE POSSIBILITIES
24 STANDS OR FALLS ON THE VALIDITY OF YOUR PREMISE THAT GAS DID
25 NOT MIGRATE INTO THE CRAWL SPACE?

1 THE WITNESS: THAT'S RIGHT.

2 THE COURT: BUT YOU'RE ACCEPTING OTHER OPINIONS IF
3 NOT YOUR INDEPENDENT CONCLUSION?

4 THE WITNESS: THAT'S RIGHT.

5 THE COURT: THAT AT LEAST THE TYPE OF CONCLUSIONS YOU
6 WOULD NORMALLY RELY UPON?

7 THE WITNESS: THAT'S RIGHT.

8 THE COURT: MR. D'ELIA OR MR. KARRENBERG?

9 MR. D'ELIA: THANK YOU, YOUR HONOR.

10 I THINK IT WOULD BE WORTHWHILE IF I GAVE A CONCISE
11 SUMMARY OF WHAT IT IS I'M ABOUT TO GET INTO AS TO WHAT THE
12 THEORY IS, BECAUSE A ROAD MAP SOMETIMES --

13 THE COURT: COULD I ASK YOU, BEFORE YOU DO, I THINK I
14 HAVE AN OFFICER HERE WHO NEEDS AN INFORMATION SIGNED AND LET
15 HIM GET BACK TO WORK.

16 WHENEVER YOU'RE READY, MR. D'ELIA.

17 MR. D'ELIA: THANK YOU, YOUR HONOR. THERE'S GOING TO
18 BE A LITTLE BIT OF REPETITION HERE OF WHAT YOU'VE ALREADY HEARD
19 BECAUSE I WANT TO PUT IT INTO AN ENCAPSULIZED VERSION OF WHAT
20 THE THEORY IS AND THEN WE CAN PROCEED WITH MR. ALEX'S
21 TESTIMONY.

22 CORRECT, FIRST THING THAT WE ABSOLUTELY RELY UPON IS
23 ROMIG, DR. ROMIG'S OPINION FROM HIS TESTING, FROM HIS
24 EXPERIENCE AND FROM HIS CALCULATIONS THAT THERE IS NO WAY THAT
25 GAS CAN COME FROM AN OUTSIDE LEAK TO THE INSIDE, IN THE AMOUNTS

1 NECESSARY TO CAUSE THE EXPLOSION. SURE, A LITTLE BIT GETS IN
2 HERE AND THERE BUT IT'S NOT ENOUGH TO CAUSE AN EXPLOSION AND
3 NOT ENOUGH TO HAVE CAUSED WHAT IT IS THAT OCCURRED AT THE
4 ERCANBRACK PREMISES.

5 THE NEXT THING THAT WE HAVE IS WE HAVE THE TESTIMONY
6 FROM THE REMAINDER OF THE EXPERTS OUT THERE IN OUR CAMP, SUCH
7 AS MR. THATCHER, AND PEOPLE THAT HAVE HAD A LOT OF EXPERIENCE
8 IN THE PROPANE INDUSTRY. WHAT THEY SAY IS, WELL, WE'VE CHECKED
9 THE PIPE. AND THIS IS A LITTLE BIT OF AN EXEMPLAR OF WHAT THE
10 PIPE LOOKS LIKE. LET ME GET THE OTHER ONE. SEE, OUR TWO
11 RISERS, THEY'RE VERY SHORT. WHAT HAPPENS IS THE GAS COMES IN
12 FROM HERE, AND THIS IS WHERE THE REGULATOR WOULD HAVE BEEN,
13 SOMEWHERE IN THIS PARTICULAR AREA, THE CINDER BLOCK WALL RIGHT
14 HERE.

15 THE COURT: RIGHT.

16 MR. D'ELIA: GOES IN AND THEN PROCEEDS ON A THREE
17 QUARTER INCH PIPE TO THE FURNACE. THIS IS A LITTLE
18 ABBREVIATED.

19 THE COURT: I UNDERSTAND.

20 MR. D'ELIA: THIS IS, I BELIEVE IT'S IN SCALE BUT
21 IT'S NOT -- IT'S IN A MINIATURE SCALE BUT IT'S ACTUALLY
22 PROPORTIONAL.

23 MR. PLANT: ISN'T IT 40 PERCENT IS THE SCALE?

24 THE COURT: WHOSE IS THIS?

25 MR. D'ELIA: IT'S HIS. AND HE'LL BE ABLE TO TELL US

1 WHAT PERCENTAGE THAT IS IN A SECOND, BUT I'M NOT SURE. BUT
2 IT'S CERTAINLY PROPORTIONAL.

3 HERE IS THE HALF INCH PIPE. GOES AROUND ON AN ELBOW
4 AND THIS IS THE RANGE RISER. THIS IS THE RISER THAT WE
5 DETERMINED IS MORE LIKELY THAN NOT, DOWN HERE IN THE THREADS,
6 TO HAVE BROKEN. BUT THERE ARE ACTUALLY THREE BREAKS HERE. WE
7 KNOW THERE ARE THREE BREAKS. THE BREAKS ARE IN THIS AREA AS TO
8 WHERE THIS IS BROKEN, RIGHT HERE, WHERE THE HALF INCH GOES INTO
9 THE --

10 THE COURT: THAT'S THE ONE YOU REFER TO THE
11 LONGITUDINAL PIPE?

12 MR. D'ELIA: YEAH. MANY PEOPLE HAVE CALLED IT
13 HORIZONTAL OR LONGITUDINAL AS OPPOSED TO THESE RISERS BEING THE
14 VERTICAL PIPE. SO THIS WOULD BE ONE.

15 THE SECOND BREAK IS RIGHT HERE ON THIS RANGE RISER
16 WHERE IT'S JUST COMPLETELY BROKEN, THREE PARTS. ACTUALLY, THE
17 THREE BREAKS, FOUR PARTS, EXCUSE ME. SO YOU HAVE THE RANGE
18 RISER IN ONE PART, YOU GOT THIS PART AS THE NEXT PART, THEN WE
19 COME DOWN HERE AND WE HAVE A BREAK DOWN HERE AT THE FURNACE
20 RISER. THOSE ARE THE THREE BREAKS. ONE RISER, ONE RISER AND
21 RIGHT HERE WHERE THE HALF INCH GOES INTO THE "L."

22 SO, WHAT HAPPENED IS THERE ARE OBVIOUSLY A COUPLE OF
23 PLACES WHERE THERE ARE THREADING. THERE'S SOME THREADING. AND
24 CAN YOU LEAK OUT OF A THREAD? SURE, IF YOU DON'T HAVE IT IN
25 TIGHT ENOUGH, YOU DON'T HAVE ENOUGH PIPE DOPE, WHATEVER THE

1 CASE MAY BE. BUT OUR EXPERTS, ESPECIALLY THATCHER, SAYS, YOU
2 KNOW, I'VE BEEN AROUND THIS A LONG TIME AND I'VE DONE QUITE A
3 BIT OF TESTING. WHAT IT IS THAT OCCURRED IN HERE IS THAT EVEN
4 IF THERE WAS A MINUTE, OR EVEN IF THERE WAS ANY KIND OF A LEAK
5 HERE, IN THESE THREADS, THEY COULD NOT HAVE LEAKED ENOUGH GAS
6 AGAIN TO HAVE CAUSED THE EXPLOSION. THEREFORE, YOU CAN
7 ELIMINATE ALL OF THE PIPE THREADING.

8 SO NOW, THAT'S WHAT MR. ALEX STARTS WITH. THAT IT
9 COULDN'T BE A PIPE THREAD, THAT IT COULDN'T BE AN OUTSIDE LEAK,
10 AND SO WHAT HAS HE GOT? HE'S GOT THOSE THREE PIPE FRACTURES,
11 BECAUSE THOSE ARE THE ONLY OTHER POINTS WHERE THERE IS A
12 FRACTURED PIPE WHERE, IN FACT, THERE COULD BE A LEAK.

13 SO NOW, WHAT MR. ALEX DOES, FRANK THEN SAYS, WELL,
14 WE'VE PROVEN THROUGH THE TESTING AND THROUGH THE EVIDENCE AND
15 THE CALCULATIONS, NOT SPECULATION, THAT IT COULDN'T HAVE BEEN
16 AN OUTSIDE LEAK, COULDN'T HAVE BEEN A THREADING LEAK, SO NOW
17 WE'RE GOING TO HUNT FOR WHERE IT IS THAT THE LEAK ACTUALLY
18 OCCURRED WITH HIS FAILURE ANALYSIS.

19 HE LOOKS AT THE PIPE. FIRST THINK HE SAYS, WELL, AND
20 THIS IS WHAT MR. PLANT CONCEDES THAT, IN FACT, DR. ALEX CAN
21 TESTIFY TO. I'M GOING TO SHOW YOU AN EXEMPLAR THAT'S BEEN DONE
22 EXACTLY AS THE ERCANBRACK HOME. DR. ALEX SAYS, WELL, I'VE
23 STUDIED NOW --

24 MR. PLANT: YOUR HONOR, I DON'T MEAN TO GET IN YOUR
25 WAY. ARE WE TAKING TESTIMONY OR ARE WE ARGUING?

1 THE COURT: WELL, AS HE SAID, IT'S A LITTLE INFORMAL,
2 BUT A RIMMASCH REALLY IS A COMBINATION OF ARGUMENT AND
3 TESTIMONY. AND THIS MAY BE ALL THE ARGUMENT HE GETS.

4 MR. PLANT: BECAUSE HE'S TELLING DR. ALEX WHAT TO
5 SAY, ESSENTIALLY, HERE.

6 MR. D'ELIA: WE CAN LEAD HIM THROUGH.

7 THE COURT: I'M NOT REAL CONCERNED. THAT CAN BE AN
8 ISSUE. BUT DR. ALEX HAS DONE THIS LONG ENOUGH, HE'S GOING TO
9 SAY WHAT HE'S GOING TO SAY.

10 MR. PLANT: OBVIOUSLY, THERE'S SOME LEADING AND IT'S
11 OBJECTIONABLE.

12 THE COURT: WE WON'T LET HIM DO THIS FOR THE JURY.

13 MR. D'ELIA: IF YOU'D LIKE MR. ALEX TO LEAVE DURING
14 MY PRESENTATION.

15 THE COURT: THERE IS NO NEED FOR THAT.

16 MR. D'ELIA: ALL RIGHT. FIRST THING WE START IS HE
17 LOOKS AT THE ENGINEERING, SPECIFICATIONS, THE ANSI/ASME
18 B1.20.1, 1983. HE LOOKS IN THE SPECIFICATIONS. THE
19 SPECIFICATIONS SAY YOU CAN NOT HAVE AS MANY THREADS AND YOU CAN
20 NOT BE IN AS FAR AS INTO THIS JOINT AS YOU ARE. IN OTHER
21 WORDS, THIS ONE HAS MORE THREADS AND IT'S IN WITH NO THREADS
22 SHOWING. THERE ARE SUPPOSED TO BE APPROXIMATELY THREE THREADS
23 SHOWING. SO HE SAYS, WELL, THIS IS OVER THREADED, IN VIOLATION
24 OF THE STANDARD, AND IT'S OVER INSERTED, IN VIOLATION OF THE
25 STANDARD. WHAT DOES THAT DO? THE CONCLUSION IS IS THAT WHEN

1 YOU OVER THREAD IT AND OVER INSERT IT ON A PARTICULAR PIPE
2 THAT'S CUT TO A PARTICULAR LENGTH YOU'RE NOW INSERTING THIS
3 PARTICULAR ELBOW, IT'S ACTUALLY A "T," YOU'RE NOW PUTTING THAT
4 SO FAR, FARTHER ON THE PIPE THAN IT SHOULD BE, BECAUSE IT'S
5 RISING UP ON THE PIPE. AND IF YOU'RE DOING THAT YOU'VE NOW
6 CHANGED THE DISTANCE BETWEEN ANY POINT ON THE PIPE AND WHERE
7 THIS RISER COMES UP. YOU'VE SHORTENED IT.

8 THE SECOND THING HE SAYS HE'S GOING TO SEE IS, WELL,
9 RIGHT HERE. HE'S GOING TO TESTIFY WITH RESPECT TO HIS ACTUAL
10 OBSERVATIONS WHEN WE CUT THE PIPE AND HIS X-RAYS. THAT'S HOW
11 YOU LOOK INSIDE. I KNOW YOU KNOW THAT. I'M JUST TRYING TO
12 TELL YOU WHAT HE'S GOING TO SAY. AND THEN HE SAYS, WELL, THIS
13 IS ALSO OVER THREADED BY APPROXIMATELY THREE THREADS, IN
14 VIOLATION OF STANDARD. IT'S ALSO OVER INSERTED. SO NOW YOU
15 HAVE SHRUNK THIS WHOLE PIPE A PARTICULAR AMOUNT OF WHATEVER
16 THREADS THAT YOU OVER THREADED AND OVER INSERTED.

17 THEN HE SAYS, WELL NOW, LET'S LOOK HERE ON THIS
18 PARTICULAR JOINT, ASME B1.20.1 SAYS THAT THERE ARE TOO MANY
19 THREADS ON THIS PIPE AND IT'S INSERTED TOO FAR.

20 NOW WE LOOK DOWN HERE. B1.20.1 ALSO SAYS THERE ARE
21 TOO MANY THREADS ON THIS PIPE AND IT'S OVER INSERTED. SO WHAT
22 HAVE YOU DONE? YOU'VE ALSO SHRUNK THE LENGTH OF THIS PIPE.

23 THEN HE LOOKS AND CALCULATES AND SAYS, WELL, IF YOU
24 SHRUNK A TRIANGLE, THAT THIS IS THE HYPOTONUS AS MR. PLANT HAS
25 SAID, THEN WE HAVE A BASE AND A HEIGHT, TWO LEGS TO THE

1 TRIANGLE. IF YOU SHRINK ONE LEG AND YOU SHRINK THE OTHER LEG
2 YOU'VE GOT TO SHRINK THE HYPOTONUS, WHICH IS THE DISTANCE
3 BETWEEN THE RANGE RISERS. THAT'S PRETTY STRAIGHT FORWARD. AND
4 NOT TO BE TRITE, BUT IT'S ESSENTIALLY "A" SQUARED PLUS "B"
5 SQUARED EQUALS "C" SQUARED, BECAUSE BEING A RIGHT TRIANGLE
6 ANYBODY CAN CALCULATE THAT. WELL, MOST PEOPLE ANYWAY.

7 THEN FROM THERE HE SAYS, WHAT'S THE LAST THING I'M
8 LOOKING AT HERE? WELL, ON THE RANGE RISER -- IS THIS THE RANGE
9 RISER, FRANK? EITHER ONE, RIGHT?

10 THE WITNESS: NO, THAT'S THE FURNACE.

11 MR. D'ELIA: ALL RIGHT. LET ME GET THE OTHER ONE.
12 THE NEXT THING HE DOES IS LOOKS AT B1.20.1 ASME/ANSI 1983
13 STANDARD. IT IS THE STANDARD FOR THE INDUSTRY WHEN THREADING
14 PIPE.

15 WELL, THE RANGE RISER, NOT ONLY IS IT OVER THREADED,
16 BUT IT'S UNDER INSERTED. IT'S NOT INSERTED FAR ENOUGH IN.
17 THEREFORE, THAT IS WEAK BECAUSE ALL OF THESE ARE OVER THREADED
18 AND OVER INSERTED, BUT THIS ONE IS OVER THREADED AND UNDER
19 INSERTED, SO THIS IS THE WEAKEST ONE OUT OF ALL OF 'EM.

20 THEN WHAT HE DOES IS HE BUILDS TWO EXEMPLARS. HE
21 LOOKS AT THE OAKWOOD FILM. AND I THINK THE OAKWOOD FILM, WHEN
22 WE BREAK FOR LUNCH, WOULD BE APPROPRIATE TO PUT THAT ON AND LET
23 HIM TELL YOU WHAT HE RELIES ON, BECAUSE THAT'S KINDA KILLING
24 TWO BIRDS WITH ONE STONE, BUT THE MOTION ON THAT TAPE AS WELL
25 AS HIS TESTIMONY.

1 THEN WHAT HE DOES IS HE SAYS, WELL, LET'S SEE HOW
2 MUCH WE'VE REALLY SHRUNK THIS. BECAUSE YOU GOT A LEG, A LEG.
3 HOW MUCH HAVE YOU SHRUNK THE TWO OF THOSE? SO HE BUILDS ONE
4 THAT'S ACTUALLY DONE ACCORDING TO THE SPECS B1.20.1. CORRECT
5 THREADING, CORRECT INSERTION. HE THEN MEASURES AND HE SAYS,
6 WELL, THIS HOLE AND THIS HOLE, THAT'S WHERE IT FITS. ONE
7 THAT'S DONE COMPLETELY CORRECT. HE DRILLS THE HOLE SO WE KNOW
8 WHERE THEY ARE.

9 THEN HE TAKES THE ONE THAT'S OVER THREADED AND OVER
10 INSERTED, WHICH ACTUALLY IS OVER HERE. SEE WHAT HAPPENS?
11 CAN'T GET THAT RANGE RISER UP AND THROUGH. WHEN YOU'RE OVER
12 THREADED AND YOU'RE OVER INSERTED YOU'VE GOT TO PUT FORCE TO
13 GET THAT RANGE RISER UP INTO THERE. WHAT HE HAS CALCULATED IS
14 IS THAT THE FORCE THAT IT TAKES TO DO THAT, IF THERE'S NO
15 THIRD, IF THERE'S ONLY ONE RANGE RISER IN DOWN THERE, THEN THE
16 FORCE TO GET THIS UP HERE IS APPROXIMATELY -- CORRECT ME, IF
17 I'M WRONG.

18 THE WITNESS: 12 TO 13 POUNDS.

19 MR. D'ELIA: 12 TO 13 POUNDS FOR THAT FORCE. BUT
20 THEN I TAKE A DEPOSITION OF MR. GIBSON ON FRIDAY NIGHT.
21 MR. GIBSON SAYS, WELL, BEFORE YOU INSERT THE RANGE RISER, YOU
22 ALSO ARE TAKING DOWN HERE WHERE YOU EXIT, WHERE YOU HOOK THE
23 GAS INTO THE LINE ON THE OUTSIDE OF THE TRAILER, YOU'RE
24 BLOCKING IT AND YOU'RE STRAPPING IT. WHICH MEANS NOW YOU HAVE
25 TWO POINTS THAT ARE ACTUALLY POTENTIALLY STRAPPED AND ARE IN

1 PLACE. AND IF YOU TRY TO BEND ANY OF THESE TO GET THEM INTO
2 THE HOLES, AND THOSE TWO POINTS ARE STRAPPED, HOW MUCH FORCE
3 HAS TO BE EXERTED?

4 THE WITNESS: 70 POUNDS PLUS.

5 MR. D'ELIA: 70 POUNDS PLUS. AND AS YOU HEARD, WE
6 DON'T EVEN -- DO YOU KNOW WHAT THE HIGH END IS?

7 THE WITNESS: YEAH, I WOULD SAY BELOW 150.

8 MR. D'ELIA: BELOW 100 --

9 THE WITNESS: I DON'T KNOW EXACTLY WHAT THE HIGH END
10 IS.

11 MR. D'ELIA: AND THE REASON THAT IT'S 70 POUNDS PLUS
12 IS WHEN YOU ACTUALLY MEASURED IT, YOU ONLY HAD A SCALE OF --

13 THE WITNESS: ONLY 70 POUNDS. AND WE WERE STILL
14 ABOUT HALF AN INCH OFF.

15 MR. D'ELIA: SO NOW, NOT ONLY DO YOU HAVE A CONSTANT,
16 A MINIMUM CONSTANT OF 12 TO 13 POUNDS THAT IS TUGGING ON THIS
17 PIPE, BUT YOU ALSO HAVE THE ABILITY TO IMPOSE A LOAD AMOUNT
18 THAT IS IN EXCESS OF WHAT IT TAKES TO BREAK IT.

19 THESE ARE THE MECHANICS THAT MR. PLANT NEVER GOT
20 INTO, THESE ARE THE THINGS THAT MR. PLANT LEAVES OUT OF HIS
21 MEMORANDA, AND THAT'S WHAT I WANT TO WALK FRANK ALEX THROUGH.

22 THE COURT: JUST SO I'M CLEAR, DID I MISUNDERSTAND?
23 I THOUGHT THE DEFENSE POSITION WAS THERE IS, IN FACT, NOT A
24 FORCING ISSUE BECAUSE THE LAST HOLE WAS NOT DRILLED UNTIL IT'S
25 ALL LINED UP.

1 MR. PLANT: ACTUALLY, YOUR HONOR, THE TESTIMONY IS IF
2 THEY NEED TO REDRILL A HOLE THEY WOULD REDRILL A HOLE.

3 SECONDLY, THE RANGE RISERS ARE NOT PUT THROUGH FROM
4 UNDERNEATH THEY ARE ACTUALLY PUT DOWN FROM ABOVE AND MR. D'ELIA
5 KNOWS THAT.

6 THE COURT: AND THEN CONNECTED.

7 MR. D'ELIA: AND SO --

8 THE COURT: SO THERE'S SOME DIFFERENCE AGAIN ON THE
9 FACTUAL PREMISE.

10 MR. D'ELIA: AND SO WHAT HAPPENS IS, JUST TO SHOW
11 WHAT MR. PLANT IS SAYING, YOU INSERT ONE RANGE RISER. THAT
12 CAME IN FROM THE TOP. NO PROBLEM, RIGHT? NOW YOU'VE GOT TO
13 GET THIS ONE IN FROM HERE. NO MATTER HOW YOU SLICE IT, YOU'VE
14 GOT TO STRETCH IT. GOT TO. AND WHEN YOU DO THAT'S WHERE THOSE
15 FORCES COME INTO PLAY. SO IT MAKES NO DIFFERENCE WHETHER YOU
16 INSERT IT THROUGH THERE OR NOT, IT IS GOING TO HAVE TO TAKE
17 FORCE BETWEEN 12 AND 150 POUNDS OF FORCE TO GET THAT TO ACCEPT
18 THAT RANGE RISER. THAT'S WHERE THE FORCE COMES IN POTENTIALLY
19 FOR THE BREAKAGE, AND ALSO POTENTIALLY FOR HOW THE CRACK THEN
20 GREW BECAUSE YOU HAVE A CONSTANT PRESSURE, YOU HAVE CONSTANT
21 FORCE BEING PUT ON THAT PIPE, SO A LITTLE BIT OF EXPANSION AND
22 CONTRACTION CAN EASILY ADD WITH THAT FORCE AND THEN BRING A
23 SMALL CRACK TO SOMETHING THAT THEN LEAKS.

24 NOW, THERE'S ONE OTHER THING THAT IS COMPLETELY
25 WRONG. AND MR. PLANT, I DON'T KNOW WHAT HE SAID, BUT I'M NOT

1 TRYING TO SAY HE'S MISLEADING YOU, BUT EVERY TIME THAT OAKWOOD
2 INSERTS THE RISERS THEY PUT ALL OF THE PIPING IN UNDERNEATH.
3 AND YOU'LL SEE ON THE MOVIE, THEY PUT IT UNDERNEATH, THAT'S THE
4 RIGHT SIDE UP, THEN THEY FLIP IT, SO NOW IT'S UNDERNEATH. THEN
5 WHAT THEY DO IS THEY BUILD THE REST OF THE TRAILER. NOW YOU'VE
6 GOT A FLOOR, YOU CAN'T SEE THE PIPE OR ANYTHING OF THE SORT,
7 YOU'VE GOT WALLS, AND THEN WHAT THEY DO IS THEY GO IN, AND
8 EVERY TIME, EVERY WITNESS STATES UNEQUIVOCALLY, THE HOLES ARE
9 ALWAYS DRILLED FROM THE TOP ACCORDING TO A MEASUREMENT. YOU
10 CAN'T SEE THE PIPE UNDERNEATH. THEY'RE NEVER DRILLED FROM THE
11 BOTTOM.

12 MR. GIBSON SAID ON FRIDAY NIGHT, YOU CAN NOT DRILL
13 FROM THE BOTTOM BECAUSE YOU HAVE, BECAUSE YOU'VE GOT FLOORING.
14 IN THE KITCHEN WHERE THE RANGE RISER'S GOING, YOU POTENTIALLY
15 GOT LINOLEUM. YOU CAN'T DRILL UP THROUGH A LINOLEUM FLOOR,
16 YOU'RE GOING TO TEAR THE LINOLEUM FLOOR APART. YOU HAVE TO
17 DRILL DOWN BEFORE YOU START INSERTING THE RANGE RISERS. EVERY
18 TIME IT'S A DRILL DOWN. NEVER ONCE DOES IT DRILL UP, NEVER
19 ONCE IS THERE A MEASUREMENT. IT'S ALWAYS DONE TO A TEMPLATE.
20 SO, UNDER THE CIRCUMSTANCES, THERE'S NO WAY THAT YOU EVER DRILL
21 FROM THE BOTTOM, ACCORDING TO WHERE IT HITS, YOU'RE ALWAYS
22 DRILLING FROM YOUR MEASUREMENTS, ACCORDING TO THE PLANS, DOWN,
23 AND THEN YOU SEE IF IT HITS.

24 NOW, MR. PLANT STATES THAT MR. GIBSON AND MS. MEEK,
25 WHO ARE THE WITNESSES FOR THE OAKWOOD MANUFACTURING PROCESS --

1 WELL, THAT'S NOT A POINT WORTH MAKING. LET ME MOVE ON.

2 SHOULD I JUST GET INTO THE EXAMINATION?

3 THE COURT: HOW LONG DO YOU THINK YOU'LL BE ON THE
4 EXAMINATION? I'M TRYING TO DECIDE IF WE SHOULD --

5 MR. D'ELIA: OH, I'M THINKING 20 MINUTES, 15 MINUTES.

6 THE COURT: YOU WANT TO DO SOMETHING FROM VIDEO TOO,
7 YOU SAY?

8 MR. D'ELIA: WE ARE GOING TO SHOW HIM THE VIDEO
9 AFTERWARDS SO HE CAN TELL YOU WHAT HE RELIED UPON. AND WHAT
10 THAT DOES IS TWO THINGS. IT SHOWS YOU WHAT THE EXPERT WITNESS
11 IS RELYING UPON AND HOW THE VIDEO COMES OUT.

12 THE COURT: WHY DON'T WE TAKE A BREAK AND YOU CAN SET
13 UP EVERYTHING, DO THE TESTIMONY AND THE VIDEO ALL AT ONE TIME.
14 IS THAT OKAY?

15 MR. D'ELIA: ABSOLUTELY.

16 THE COURT: 1:15. IS THAT OKAY WITH EVERYBODY?

17 MR. PLANT: YEAH, THAT'S FINE. ARE YOU GOING TO
18 ALLOW MR. D'ELIA TO LEAD MR. ALEX THROUGH THIS PROCESS?

19 THE COURT: WELL, TYPICALLY NO. I MEAN, IT'S NOT
20 CROSS IN THE NORMAL SENSE. HE IS NOT ADVERSE. I DON'T THINK
21 HE'LL NEED TO BE LEADING, BUT DO YOU INTEND TO?

22 MR. D'ELIA: AND IT IS AN EXPERT. YOU KNOW, EXPERTS
23 ARE A LITTLE BIT DIFFERENT THAN A MERE FACT WITNESS. YOU CAN
24 LEAD THEM INTO DIFFERENT POSITIONS AN --

25 THE COURT: WELL, MORE FOR THE BACKGROUND, BUT NOT

1 FOR THE SUBSTANCE. I DON'T THINK IT'LL BE NECESSARY.

2 MR. D'ELIA: OKAY.

3 THE COURT: THANK YOU.

4 MR. D'ELIA: THANK YOU.

5 THE COURT: I WANT TO ASK YOU, MR. ALEX. I'VE BEEN
6 LISTENING TO YOUR SPEECH. FRANKLY, I FOUND YOU VERY
7 UNDERSTANDABLE. ARE THERE TIMES WHEN YOU'RE MORE TIRED OR
8 MEDICATION OR ANYTHING ELSE WHERE YOU HAVE MORE DIFFICULTY
9 SPEAKING?

10 THE WITNESS: YES, IN THE AFTERNOON.

11 THE COURT: YOU BETTER GET HIM ON IN THE MORNING. I
12 CAN HONESTLY SAY RIGHT NOW I DON'T THINK THE JURY'S GOING TO
13 HAVE A PROBLEM.

14 MR. D'ELIA: BUT WE CAN'T AMPLIFY HIM, RIGHT?

15 THE COURT: THEORETICALLY WE DO. YOU'D HAVE TO PUT
16 YOUR MOUTH ON THAT THING, BUT I DON'T KNOW IF WE CAN DO
17 ANYTHING BETTER. BUT HE'S NOT A PROBLEM FOR VOLUME.

18 MR. KARRENBERG: JUDGE, MY CONCERN IS, DR. ALEX, HE
19 MENTIONED, GETS TIRED. AND SOMETIMES IT SEEMS, LIKE AT THE END
20 OF A SENTENCE, IF IT'S BEEN LONGER --

21 THE COURT: IT'S DEFINITELY A LONGER SENTENCE, A
22 LONGER STATEMENT. THAT'S WHEN I NOTICE A LITTLE PROBLEM, BUT I
23 THINK HE COULD REPEAT, IF NECESSARY. I THINK ANYTHING ELSE
24 JUST MIGHT BE DISTRACTING. I MEAN, SO FAR I FOUND -- I MEAN, I
25 HEAR ENOUGH WITNESSES. HE'S BETTER THAN A LOT OF ONES I HEAR.

1 IF THAT'S OKAY WITH YOU, DR. ALEX.

2 MR. D'ELIA: OKAY. AND AGAIN --

3 THE COURT: LET'S SHOOT FOR WHEN HE'S FRESH. LET'S
4 TRY AND WORK WITH THAT.

5 MR. D'ELIA: WE ARE NOT PRESSING THE ISSUE. WE JUST
6 SAID IT WAS A GOOD IDEA AND WE'RE LETTING YOU --

7 THE COURT: I WANT THE JURY TO UNDERSTAND, BUT SO
8 FAR -- HAS THE REPORTER HAD ANY PROBLEMS? NO. OKAY. 1:15.

9 (RECESS).

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1 THE COURT: WE ARE BACK ON THE RECORD ON THE MOTIONS
2 HEARING. I NOTICE MR. ALEX IS STILL ON THE STAND. I GUESS
3 WE'LL CONTINUE WITH THAT EXAMINATION. MR. D'ELIA?

4

5 CROSS EXAMINATION

6 BY MR. D'ELIA:

7 Q FRANK, LET'S JUST START OUT WITH ASKING YOU A
8 QUESTION. YOU HEARD EVERYTHING THAT I REPRESENTED TO THE JUDGE
9 PRIOR TO LUNCH, RIGHT?

10 A YEAH, I HAVE.

11 Q WHAT, IF ANYTHING, IN THERE IS INACCURATE OF WHAT I
12 REPRESENTED TO THE JUDGE?

13 MR. PLANT: YOUR HONOR, I HAVE A PROBLEM WITH THAT
14 KIND OF QUESTION. HE TALKED FOR TWO HOURS. THAT'S NOT
15 APPROPRIATE.

16 THE COURT: HE DIDN'T TALK FOR TWO HOURS. I THINK WE
17 ALL DID IT TOGETHER.

18 MR. D'ELIA: NOW YOU SEE WHAT I'VE BEEN PUTTING UP
19 WITH FOR THREE OR FOUR YEARS.

20 THE COURT: NOW YOU'RE EXAGGERATING IT.

21 MR. PLANT: FOR 20 MINUTES, WHATEVER, HE TALKED FOR A
22 LONG PERIOD OF TIME. THAT'S NOT APPROPRIATE. HAVE HIM ASK A
23 QUESTION.

24 MR. D'ELIA: JUDGE, WOULD YOU LIKE ME TO WITHDRAW THE
25 QUESTION?

1 THE COURT: YOU KNOW, HE'S JUST ASKING IF YOU
2 GENERALLY REPRESENTED THE SCENARIO. AND I REALLY DON'T HAVE A
3 PROBLEM WITH THAT AS LONG AS IT'S SUBJECT TO MORE DETAIL
4 QUESTIONING.

5 MR. D'ELIA: THAT'S WHAT WE'RE GOING TO DO. AND THE
6 ONLY THING I'M DOING IS STARTING FROM THAT POINT SO IN CASE
7 THERE'S ANYTHING HE WANTS TO CORRECT --

8 THE COURT: WHEN YOU PUT IT THAT WAY, DR. ALEX, HAVE
9 YOU SEEN ANYTHING DEMONSTRATED BY MR. D'ELIA OR STATED BY HIM
10 THAT YOU BELIEVE IS OBVIOUSLY INCORRECT?

11 THE WITNESS: NO, I HAVEN'T.

12 THE COURT: LET'S CONTINUE FROM THERE ON THE VITAE.

13 Q (BY MR. D'ELIA) ALL RIGHT, FRANK. THEN AFTER
14 GETTING THE OPINIONS AND RELYING UPON THE OPINIONS THAT NO GAS
15 COULD HAVE MADE IT INTO THE CRAWL SPACE, DID YOU THEN START
16 WITH THE THREE FRACTURE SURFACES AS A POTENTIAL LEAK SOURCE?

17 A THAT'S RIGHT.

18 Q AND WHY -- LET ME JUST ASK THIS. THERE WAS SOME
19 EXPLANATIONS MADE TO YOU BY DIFFERENT PEOPLE, INCLUDING THE
20 THATCHERS, HAVING TO DO WITH LEAKS, OTHER THAN THE FRACTURE
21 SURFACES. IS THERE ANY PLACE THAT THE PIPES, INTO THE CRAWL
22 SPACE, COULD HAVE LEAKED BESIDES THE THREE FRACTURE SURFACES TO
23 HAVE CAUSED THIS EXPLOSION?

24 A WELL, THE THREADS MIGHT GET A VERY MINUTE AMOUNT OF
25 LEAK BEHIND IT, BUT THERE WASN'T ENOUGH THERE TO WORRY ABOUT.

1 Q OKAY. SO DID YOU THEN EXAMINE THE ERCANBRACK PIPE?

2 A YES, I DID.

3 Q AND YOU EXAMINED SPECIFICALLY THE THREADING AND HOW
4 THE THREADING, THE NUMBER OF THREADS AND HOW THE THREADS FIT
5 INTO THE RESPECTIVE JOINTS?

6 A THAT'S RIGHT.

7 Q DID YOU UTILIZE ANY ENGINEERING STANDARDS WITH
8 RESPECT TO THE THREADING OF THE PIPE?

9 A OH, OF COURSE.

10 Q WHAT DID YOU UTILIZE?

11 A I USED THE ASME STANDARD.

12 Q IS THAT THE B1.20.1?

13 A THAT'S RIGHT.

14 Q OR IS THAT THE A53?

15 A THE ONE REFERS TO THE PIPE ITSELF, THE OTHER ONE
16 REFERS TO THREADING.

17 Q OKAY. BUT YOU CONSULTED BOTH OF THEM?

18 A YES, I DID.

19 Q WHEN YOU LOOKED AT THE THREADING STANDARDS DID YOU
20 THEN COME TO A CONCLUSION AS TO THE PIPE THREADING AND THE
21 JOINT INSERTION ON THE ERCANBRACK PIPE AS PER THE B1.20.1?

22 A YES, I DID.

23 Q AND DID YOU MAKE ANY CONCLUSIONS WITH RESPECT TO THE
24 ERCANBRACK PIPING -- WHAT I'LL DO IS I'LL BRING UP AN EXEMPLAR
25 FOR YOU TO SHOW THE COURT. MY QUESTION IS, DID YOU MAKE ANY

1 CONCLUSIONS AS TO THE ERCANBRACK PIPING AS PER THE
2 SPECIFICATIONS OF B1.20.1?

3 A YES, I DID.

4 Q WOULD YOU START ANYWHERE ON THIS PIPE, AND WOULD YOU
5 TELL THE COURT WHAT IT IS THAT YOU DETERMINED WITH RESPECT TO
6 THE ERCANBRACK PIPE WHEN COMPARED TO B1.20.1?

7 A WELL, LET'S START AT THE FURNACE RISER RIGHT HERE.
8 RIGHT ON THE END OF THIS PIPE, WHICH IS 96 AND-A-HALF INCHES
9 LONG, THERE IS A REDUCER "T" THAT REDUCES IT DOWN TO HALF AN
10 INCH. THAT PARTICULAR, WHEN YOU LOOK AT THAT IN THIS CONDITION
11 YOU KNOW IT'S BEEN OVER INSERTED FOR SURE. YOU CAN'T TELL HOW
12 MANY THREADS ARE ON THERE BECAUSE THEY ARE HIDDEN RIGHT NOW.
13 YOU HAVE TO LOOK ON THE INSIDE OR ELSE YOU HAVE TO TAKE AN
14 X-RAY.

15 Q DID YOU TAKE AN X-RAY?

16 A YES.

17 Q DID YOU DETERMINE HOW MANY THREADS WERE ON THE END OF
18 THE PIPE TO THE RANGE RISER?

19 A THAT'S RIGHT.

20 Q HOW MANY THREADS ARE SUPPOSED TO BE ON THE PIPE?

21 A TEN TO 11.

22 Q HOW MANY THREADS ARE ON THE ERCANBRACK PIPE WHERE IT
23 FITS INTO THE FURNACE RISER?

24 A AT LEAST 14.

25 Q OKAY. IS THAT IN VIOLATION OF B1.20.1?

1 A ABSOLUTELY.

2 Q THEN, WITH RESPECT TO THE INSERTION OF THE THREADS,
3 HOW MANY THREADS ARE INSERTED INTO THE "T" THERE, THE FULL 14?

4 A PRETTY WELL, YES.

5 Q WHAT WAS THE NEXT POINT ON THE ERCANBRACK PIPING THAT
6 YOU MADE A DETERMINATION ON WITH RESPECT TO B1.20.1?

7 A I WENT DOWN THROUGH THE OTHER END OF THIS 96
8 AND-A-HALF INCH LONG PIPE, AND THERE'S A REDUCER "T" THAT GOES
9 FROM THREE QUARTER TO AN INCH DOWN TO HALF AN INCH. THE FIRST
10 JOINT WE LOOK AT IS THE ONE HERE ON THE END. IT'S THREE
11 QUARTERS OF AN INCH PIPE GOING INTO THE "T." IT'S ALSO OVER
12 INSERTED ALMOST ALL THE WAY IN TO THE POINT WHERE YOU SEE VERY
13 FEW THREADS SHOWING, IF ANY. AND IT'S ALSO, IF YOU LOOK AT IT
14 FURTHER, YOU FIND IT'S ALSO OVER THREADED.

15 Q OKAY. AND DOES THIS TAKE YOUR METALLURGICAL AND
16 ENGINEERING EXPERIENCE TO DETERMINE THIS?

17 A DEFINITELY ENGINEERING EXPERIENCE, YES.

18 Q WHAT IS THE NEXT POINT ON THE ERCANBRACK PIPE THAT
19 YOU THEN COME TO A CONCLUSION WITH RESPECT TO THREADING AND
20 INSERTION?

21 A I LOOKED AT THE POINT WHERE THE HALF INCH PIPE GOES
22 INTO THE "T" AND I FOUND BOTH THAT IT WAS OVER THREADED AND
23 ALSO OVER INSERTED.

24 Q AND WHEN YOU OVER THREAD AND YOU OVER INSERT A PIPE
25 WHAT DOES THAT DO WITH RESPECT TO THE TOTAL LENGTH OF THE PIPE?

1 A SHORTENS IT.

2 Q SO THE THREE QUARTER INCH PIPE THAT WE WERE TALKING
3 ABOUT THAT WAS OVER THREADED AND OVER INSERTED ON BOTH SIDES,
4 WHAT DOES THAT DO TO THE DISTANCE BETWEEN THE EDGE OF THIS "T"
5 AND THE EDGE, LEADING EDGE OF THAT FURNACE RISER "T"?

6 A MAKES IT SHORTER.

7 Q WHAT WAS THE NEXT THING THAT YOU LOOKED FOR WITH
8 RESPECT TO COMPARING IT TO B1.20.1?

9 A I LOOKED AT THE HALF INCH PIPE. AND IT'S SUPPOSED TO
10 BE APPROXIMATELY 69 AND-A-HALF INCHES LONG. AND IT IS ALSO
11 OVER THREADED AND OVER INSERTED.

12 MR. D'ELIA: OKAY. NOW, WHEN WE START UP AGAIN NEXT
13 WEEK WE'RE GOING TO BE HAVING A JURY OVER HERE AND THAT'S WHERE
14 WE ABSOLUTELY WILL BE DIRECTING OUR THOUGHTS, BUT TODAY, CAN
15 YOU HEAR HIM OKAY?

16 THE COURT: JUST FINE.

17 MR. D'ELIA: I WANTED TO MAKE SURE THAT YOU'RE ABLE
18 TO.

19 Q (BY MR. D'ELIA) WHAT CONCLUSIONS, IF ANY, DID YOU
20 MAKE WITH RESPECT TO THE HALF INCH LATERAL THAT GOES FROM THE
21 THREE-QUARTER REDUCER INTO THE ELBOW? WHAT CONCLUSIONS DID YOU
22 MAKE WITH RESPECT TO WHETHER OR NOT THE THREADS WERE
23 APPROPRIATE AND THE INSERTION WAS APPROPRIATE?

24 A BOTH ENDS OF THE PIPE WERE OVER THREADED AND OVER
25 INSERTED.

1 Q AND DOES THAT AGAIN RESULT IN A SHORTENING OF THE
2 DISTANCE, ULTIMATE DISTANCE OF THE PIPE?

3 A YES, IT DOES.

4 Q WHEN I SAY "ULTIMATE DISTANCE OF THE PIPE" THE PIPE
5 REMAINS THE SAME BUT WHAT HAPPENS TO THE TWO FITTINGS?

6 A WE'RE REALLY TALKING ABOUT THE HOOK UP BETWEEN HERE,
7 AND THIS SHORTENS, AND THE HYPOTONUS IS ALSO EFFECTED.

8 Q OKAY. SO THIS WOULD BE A LEG OF A TRIANGLE, THE
9 THREE-QUARTER?

10 A RIGHT.

11 Q THE HALF INCH WOULD BE A LEG OF A TRIANGLE?

12 A RIGHT.

13 Q AND THE HYPOTONUS WOULD RUN BETWEEN THE TWO RANGE
14 RISERS, CORRECT?

15 A THAT'S RIGHT.

16 Q NOW, WITH RESPECT TO THE SIX INCH NIPPLE, THE HALF
17 INCH NIPPLE, THAT'S BETWEEN THE TWO 90 DEGREE ELBOWS, DID YOU
18 INSPECT TO SEE WHETHER OR NOT THAT NIPPLE WAS THREADED
19 APPROPRIATELY AS PER B1.20.1?

20 A YES, I DID.

21 Q AND WHAT CONCLUSIONS DID YOU DRAW?

22 A IT APPEARED TO BE A STANDARD NIPPLE THAT WAS NOT OVER
23 THREADED NOR OVER INSERTED TO ANY EXTENT. MAYBE ONE-THIRD TOO
24 MUCH.

25 Q SO WHAT YOU'RE SAYING IS THAT THERE'S NOTHING WRONG

1 WITH THE THREADING AND INSERTION OF THIS SIX INCH NIPPLE?

2 A ESSENTIALLY, YES.

3 Q NOW, WHERE ELSE DID YOU LOOK TO MAKE A DETERMINATION
4 AS TO WHETHER OR NOT B1.20.1 STANDARDS WERE MET ON THIS
5 ENTIRE -- DID YOU LOOK AT THE RANGE RISER?

6 A YES, I DID.

7 Q DID YOU COMPARE THAT TO B1.20.1?

8 A YES, I DID.

9 Q WHAT DID YOU FIND WITH RESPECT TO THE INSERTION AND
10 THE THREADING OF THE RANGE RISER?

11 A IT WAS OVER THREADED BUT IT WAS ONLY INSERTED ABOUT
12 FIVE TO SIX THREADS.

13 Q HOW MANY THREADS SHOULD THIS RANGE RISER HAVE BEEN
14 INSERTED, THIS HALF INCH RANGE RISER, INTO ITS COMPONENT?

15 A SEVEN TO EIGHT.

16 Q SO IT'S APPROXIMATELY TWO THREADS LESS?

17 A THAT'S RIGHT.

18 Q DID YOU EVER RUN ANY TESTS IN YOUR LABORATORY OR ANY
19 PLACE ELSE TO DETERMINE HOW MUCH STRENGTH IS LOST OR GAINED IN
20 A RANGE RISER THAT HAS BEEN INSERTED TWO THREADS LESS YET OVER
21 THREADED TO 14 THREADS?

22 A YES, I DID.

23 Q WHEN DID YOU DO IT AND HOW DID YOU DO IT?

24 A RIGHT NOW, OFF THE TOP OF MY HEAD I CAN'T GIVE YOU AN
25 EXACT DATE, BUT I THINK IT WAS IN AUGUST OF LAST YEAR. AND WE

1 DID IT BY COMPARING SOME HALF INCH PIPE OUT OF THE SAME LOT.
2 AND THEY WERE CUT TO A LENGTH OF I THINK 41 AND-A-HALF INCHES.

3 Q WHY DID YOU DO 41 AND-A-HALF INCHES ON THE LENGTH OF
4 THE RANGE RISER PIPE WHEN YOU WERE PERFORMING THESE TESTS?

5 A WELL, IT JUST HAPPENED TO BE A FIGURE THAT WAS A
6 NIPPLE THAT WAS USED ON THE ASSEMBLY IN THE ERCANBRACK HOME.

7 Q THAT WAS THE LENGTH THAT THE RANGE RISER WAS?

8 A YES.

9 Q WHERE DID YOU PUT THE LOAD? HOW FAR OUT FROM THE
10 INSERTION OF THE PIPE THREADS INTO THE 90 DEGREE ELBOW?

11 A 17 INCHES.

12 Q DID YOU FIND THAT THERE WAS ANY DIFFERENCE -- EXCUSE
13 ME, DID YOU ALSO TEST CORRECTLY THREADED AND CORRECTLY INSERTED
14 PIPES IN COMPARISON?

15 A YES, I DID.

16 Q WERE YOU ABLE TO DETERMINE WHETHER OR NOT THERE WAS A
17 DIFFERENCE IN BENDING STRENGTH? IS THAT WHAT YOU CALL IT,
18 BENDING STRENGTH?

19 A YES.

20 Q DID YOU DETERMINE WHETHER OR NOT THERE WAS A
21 DIFFERENCE IN BENDING STRENGTH BETWEEN A CORRECTLY INSERTED 41
22 AND-A-HALF INCH AND A CORRECTLY THREADED RANGE RISER VERSES THE
23 ONE THAT YOU WERE TALKING ABOUT HAVING TO DO WITH THE 14
24 THREADS AND THE UNDER INSERTION?

25 A YES, I DID.

1 Q AND WHAT DID YOU DETERMINE WAS THE DIFFERENCE IN THE
2 STRENGTH, THE BENDING STRENGTH, OF THOSE RANGE RISERS?

3 A I DON'T RECALL THE EXACT FIGURES RIGHT NOW BUT IT WAS
4 A DIFFERENCE OF APPROXIMATELY 28 PERCENT.

5 Q DID YOU SEE THE DEFENDANT'S EXPERT, MR. MOORE'S
6 DEPOSITION DURING THE COURSE OF YOUR INVESTIGATION?

7 A YES, I DID.

8 Q DID YOU SEE WHETHER OR NOT MR. MOORE ALSO BROKE PIPE
9 SIMILAR TO WHAT YOU DID?

10 A YES, I DID.

11 Q DO YOU KNOW WHETHER OR NOT MR. MOORE ALSO FOUND A
12 DIFFERENCE IN STRENGTH ON THE BENDING STRENGTH OF THESE RANGE
13 RISERS PRIOR TO FAILURE?

14 A YES, HE FOUND A DIFFERENCE.

15 Q WHAT DID HE FIND?

16 A WELL, HE DID ONE THING WRONG. HE MEASURED THAT THE
17 PIPE HAD BEEN INSERTED FIVE TO SIX THREADS BUT HE INSERTED HIS
18 PIPE SEVEN TO EIGHT THREADS.

19 Q SO DID HE MAKE THE PIPE RANGE RISER STRONGER OR
20 WEAKER BY DOING THAT?

21 A STRONGER.

22 Q SO WHAT DID HE FIND, HOWEVER, EVEN THOUGH HE MADE IT
23 STRONGER, AND HE TESTED IT, WHAT DID HE FIND IS THE DIFFERENCE
24 IN STRENGTH FOR AN OVER THREADED, UNDER INSERTED HALF INCH
25 SCHEDULE 40 RANGE RISER?

1 A AS I RECALL, A 22 PERCENT DROP IN STRENGTH.

2 Q OKAY. DOES THAT COMPARE -- LET ME ASK THIS. DOES IT
3 COMPARE TO YOURS IN THE SENSE OF, ARE THEY TALKING ABOUT THE
4 SAME KINDS OF DIFFERENCES AND STRENGTH?

5 A ESSENTIALLY, YES.

6 Q AND HIS IS JUST A LITTLE DIFFERENT BECAUSE OF HIS
7 INSERTION BEING DIFFERENT?

8 A YES, THAT'S RIGHT.

9 Q OKAY. NOW, YOU WERE TALKING ABOUT THE WAY THAT
10 LENGTH IS TAKEN FROM THE TWO EDGES OF THE FITTINGS, PLACED ON A
11 PIPE THAT'S BEEN OVER THREADED AND OVER INSERTED, REMEMBER
12 THAT?

13 A YES.

14 MR. D'ELIA: JUDGE, BECAUSE OF FRANK'S PHYSICAL
15 DISABILITY MAY I ASSIST HIM ON JUST SHOWING YOU WHAT IT IS THAT
16 IS HAPPENING HERE AS OPPOSED TO -- CAUSE HE'S GOT A CANE AND I
17 DON'T THINK HE'S GOING TO BE ABLE TO BALANCE AS WELL.

18 THE COURT: THAT'S FINE.

19 MR. PLANT: YOUR HONOR, MAYBE I CAN SHORT-CIRCUIT
20 THIS. WE HAVE NOT CONTESTED THAT THE PIPE WAS WEAKER. WE HAVE
21 NOT CONTESTED THAT THE PIPE WAS SHORTER. ALL WE'RE CONTESTING,
22 AND SO GERRY YOU CAN DO WHAT YOU WILL, BUT SO FAR WE STIPULATE
23 HE CAN TESTIFY ABOUT EVERYTHING HE SAID. WHAT WE'RE TALKING
24 ABOUT IS THE CAUSATION.

25 THE COURT: I UNDERSTAND THAT, AND I'VE WONDERED TOO

1 IF WE NEED ALL THIS, BUT I ASSUME MR. D'ELIA IS LAYING HIS
2 FOUNDATION.

3 MR. D'ELIA: THAT'S ALL I WAS TRYING TO DO, YOUR
4 HONOR, SO I CAN GET A COMPLETE RECORD FOR WHATEVER RULING YOU
5 MAKE.

6 THE COURT: OKAY, CONTINUE. BUT YOU CAN TAKE SOME
7 SHORTCUTS.

8 MR. D'ELIA: WE ARE RIGHT TO THAT POINT RIGHT NOW.

9 THE COURT: OKAY. GO AHEAD.

10 Q (BY MR. D'ELIA) DR. ALEX, YOU HAVE GOT TWO EXEMPLAR
11 PIPE MODELS HERE; IS THAT CORRECT?

12 A THAT'S RIGHT.

13 Q DID YOU MAKE THESE EXEMPLAR MODELS TO ANY
14 PROPORTIONATE DIMENSION TO THE ERCANBRACK PIPE?

15 A THAT'S RIGHT, THEY ARE.

16 Q WHAT IS THE PROPORTIONAL DIMENSIONS?

17 A THEY ARE ABOUT 40 PERCENT AS LONG AS THE ERCANBRACK
18 PIPE.

19 Q SO THE LATERAL THREE QUARTER WOULD BE 40 PERCENT OF
20 THAT LENGTH OF THE ERCANBRACK LENGTH?

21 A THE CHANGE IN THE HYPOTONUS WOULD BE EXACTLY WHAT THE
22 ERCANBRACK IS. THE PIPE IS, THE ASSEMBLY IS SMALLER BUT THE
23 HYPOTONUS CHANGED, NOT THE HYPOTONUS, BUT THE CHANGE IS THE
24 SAME.

25 Q OKAY. AND WOULD THAT BE BECAUSE YOU'RE STILL ADDING

1 A PARTICULAR NUMBER OF THREADS AND YOU'RE KEEPING THE NUMBER OF
2 THREADS THE SAME ON BOTH MODELS?

3 A THAT'S RIGHT.

4 Q THE FIRST MODEL THAT YOU BUILT WAS WHAT?

5 A IT WAS WHAT IT SHOULD BE. IT WAS PROPERLY THREADED
6 AND PROPERLY INSERTED.

7 Q AS PER THE SPECIFICATIONS OF B1.20.1?

8 A THAT'S RIGHT.

9 Q WHAT WAS THE SECOND MODEL THAT YOU -- EXCUSE ME.
10 MAYBE YOU CAN JUST POINT OUT WHICH MODEL IS THE -- I AM GOING
11 TO SHOW YOU THIS ONE AND THE ONE THERE. WHICH IS THE MODEL
12 THAT YOU BUILT THAT WAS --

13 THE COURT: DO YOU HAVE AN OBJECTION?

14 MR. PLANT: I DO. FOR PURPOSES OF THIS HEARING WE
15 WILL STIPULATE THAT DR. ALEX FOUND A SHORTENING OF ONE AND 5/16
16 IN THE HYPOTONUS, AS HE'S ALREADY INDICATED. WE WILL STIPULATE
17 TODAY, JUST FOR PURPOSES OF THIS HEARING ONLY, THAT WAS THE
18 FINDING, AS HE'S ALREADY SET FORTH. AND WE WILL FURTHER
19 STIPULATE THAT GERRY'S PRIOR DEMONSTRATION IS WHAT HE'S GOING
20 TO DO HERE. I MEAN, THERE'S NO REASON TO GO THROUGH THIS
21 AGAIN. WHAT WE NEED TO GET TO IS THE CAUSATION STUFF.

22 THE COURT: I AGREE. IF WE CAN MOVE TOWARD THAT.

23 MR. D'ELIA: OKAY. WE WILL GO RIGHT TO IT.

24 THE COURT: THANK YOU.

25 Q (BY MR. D'ELIA) ALL RIGHT. WE TALKED ABOUT BEFORE,

1 FRANK, THE DIFFERENT ASPECTS OF THE DIFFERENCE ON THE
2 HYPOTONUS, CORRECT?

3 A THAT'S RIGHT.

4 MR. D'ELIA: NOW, WE ALSO, AND I DON'T KNOW WHETHER
5 WE STIPULATED TO THAT OR NOT, BUT WE WERE TALKING ABOUT FORCES
6 NECESSARY IN ORDER TO BEND THE PIPE IN ORDER TO --

7 MR. PLANT: NO, WHAT I'M WILLING TO STIPULATE TO IS
8 ACCORDING TO WHAT, JUST AGAIN, I DON'T, NOT FOR PURPOSES OF
9 TRIAL --

10 THE COURT: I UNDERSTAND.

11 MR. PLANT: -- FOR PURPOSES OF THE HEARING, THAT
12 THERE WAS A ONE 5/16 INCH DIFFERENCE IN THE HYPOTONUS OF THE
13 TRIANGLE. ISN'T THAT RIGHT, MR. ALEX?

14 THE WITNESS: THAT'S CORRECT.

15 MR. PLANT: AND WE'RE WILLING TO STIPULATE TO THAT
16 AND NOTHING ELSE.

17 MR. D'ELIA: NOTHING ELSE, OKAY.

18 Q (BY MR. D'ELIA) FRANK, WHAT I'M GOING TO DO IS, I
19 AM GOING TO SHOW YOU THIS. THIS IS THE CORRECT ONE, RIGHT?

20 A THAT'S RIGHT.

21 MR. D'ELIA: SO THIS OTHER ONE OVER HERE THAT WE
22 HAVEN'T LABELED, THAT'S OKAY FOR PURPOSES OF THIS HEARING?

23 THE COURT: CERTAINLY.

24 Q (BY MR. D'ELIA) THE ONE THAT I'M USING THEN IS THE
25 ONE THAT'S BEEN OVER THREADED AND OVER TORQUED, RIGHT?

1 A THAT'S CORRECT.

2 Q DID YOU HAVE AN OPPORTUNITY TO PLACE THE PROPERLY
3 THREADED AND PROPERLY INSERTED MODEL ON THAT PIECE OF PLYWOOD
4 AND THEN DRAW HOLES?

5 A THAT'S RIGHT.

6 Q DO THOSE HOLES REPRESENT THE PROPERLY THREADED AND
7 PROPERLY INSERTED --

8 A YES, THEY DO.

9 Q -- PIPING. DID YOU THEN TAKE THE OVER THREADED AND
10 OVER INSERTED PIPING AND ATTEMPT TO DETERMINE WHETHER OR NOT IT
11 WOULD TAKE FORCE TO -- ONCE ONE RANGE RISER WAS INSERTED DID
12 YOU EVER TEST TO SEE HOW MUCH FORCE IT TOOK IN ORDER TO GET THE
13 OTHER RANGE RISER INTO THE HOLE?

14 A I ACTUALLY BUILT A MODEL THAT WAS TO SCALE.

15 Q EXACTLY TO SCALE OF EXACT DIMENSIONS, RIGHT?

16 A THAT'S RIGHT.

17 Q AND SO WHAT YOU DID WAS YOU -- WELL, LET ME JUST ASK
18 YOU WHAT YOU DID RATHER THAN LEAD YOU.

19 A THEN I WENT AHEAD, FIXED ONE END, AND DETERMINED HOW
20 FAR IT HAD TO MOVE TO GO AHEAD AND SLIP INTO A HOLE IF IT WAS
21 OVER THREADED. AND I TOOK AND MEASURED THE AMOUNT OF FORCE IT
22 TOOK TO REMOVE IT THAT FAR.

23 Q DURING YOUR TESTING OF THE PIPE DID YOU EVER COME UP
24 WITH A FAILURE OF THE PIPE IN LESS THAN 80 POUNDS?

25 MR. PLANT: YOUR HONOR, CAN I ASK ONE POINT OF

1 CLARIFICATION WITH GERRY FOR PURPOSES OF THIS? WHEN YOU SHOWED
2 ME THIS AT YOUR HOUSE, FRANK, THE PIPE, YOU WERE ASSUMING AN
3 INCH AND 5/8 DIFFERENCE, REMEMBER?

4 THE WITNESS: YES.

5 MR. PLANT: TODAY YOU'VE CHANGED THAT AND SAID IT'S
6 AN INCH AND 5/16.

7 THE WITNESS: THAT'S RIGHT.

8 MR. PLANT: IS THAT HOLE NOW AN INCH AND 5/16, HAS IT
9 BEEN ADJUSTED?

10 THE WITNESS: OH, YES.

11 MR. PLANT: SO THIS IS A DIFFERENT PIECE OF PLYWOOD
12 THAN YOU SHOWED ME?

13 MR. D'ELIA: NO, THE HOLE'S NOT ADJUSTED, THE PIPE IS
14 ADJUSTED.

15 MR. PLANT: THANK YOU. THAT'S BETTER SAID. HAVE YOU
16 CHANGED THAT NOW SO IT PROPERLY REFLECTS THE QUARTER INCH OR SO
17 DIFFERENCE?

18 THE WITNESS: YES.

19 MR. PLANT: OKAY, THANKS.

20 Q (BY MR. D'ELIA) WHY DON'T YOU JUST EXPLAIN TO THE
21 COURT WHAT THAT WAS ABOUT THAT YOU WERE TALKING WITH MR. PLANT,
22 HOW THIS MISCALCULATION CAME UP AND HOW YOU CORRECTED IT?

23 A WHEN WE TESTED THE PIPE ORIGINALLY IT TOOK OVER 70
24 POUNDS. IN FACT, QUITE A BIT OVER 70 POUNDS TO MOVE IT. WHEN
25 WE GOT UP TO 70 POUNDS ON OUR LOAD CELL WE WERE STILL AT LEAST

1 A HALF AN INCH OFF WHERE WE SHOULD BE TO GO THROUGH THE HOLE,
2 PROVIDING YOU HAVE THREE POINTS FIXED, PROVIDING THE FURNACE
3 RISER IS IN PLACE AND YOU FIX ONE MORE PLACE ON THE PIPE.

4 Q THAT REALLY WASN'T WHAT WE WERE TALKING ABOUT. YOU
5 SAID THAT THERE WAS A DIFFERENCE IN THE HYPOTONUS NOW OF 5/16
6 OF AN INCH, RIGHT?

7 A THE HYPOTONUS DIFFERENCE IS 1.3 -- OR THE 1 5/16.

8 Q THAT'S NOT WHAT WE'RE TALKING ABOUT. YOU WERE JUST
9 TALKING WITH MR. PLANT. YOU SAID YOU CHANGED YOUR DIMENSIONS
10 ON THE PIPING BECAUSE I THINK YOU SAID THAT YOU DIDN'T ACCOUNT
11 FOR THIS BEING PROPERLY THREADED.

12 A THAT'S RIGHT.

13 Q SO YOU CHANGED IT FOR TODAY, RIGHT?

14 A THAT'S RIGHT.

15 Q SO THESE PIPES HERE TODAY DO REFLECT YOUR CHANGE IN
16 THE DIMENSIONS AND ASSEMBLY RIGHT?

17 A THAT'S RIGHT.

18 Q AND SO THE ACTUAL DISTANCE BETWEEN THE CENTER OF THE
19 HALF INCH RANGE RISER AND THE CENTER OF THAT HOLE NOW WITH THE
20 CORRECTIONS IS HOW MUCH?

21 A ONE AND 5/16 OF AN INCH.

22 Q OKAY.

23 MR. PLANT: AND AGAIN, GERRY, I'M TRYING TO SHORT
24 CIRCUIT. DID YOU REPEAT YOUR FORCE CALCULATION WITH THE NEW
25 DISTANCE?

1 THE WITNESS: DID I RECALCULATE?

2 MR. PLANT: YEAH. YOU SAID YOU USED A LOAD CELL TO
3 MOVE IT EIGHT, ONE AND 5/8 INCHES, AND YOU SAID IT TOOK 13
4 POUNDS. DID YOU DO THE SAME THING WITH THE NEW DISTANCE?

5 THE WITNESS: ARE WE TALKING ABOUT TWO DIFFERENT
6 TESTS OR DIMENSIONS OR THE LOADS?

7 MR. D'ELIA: LET ME BRING IT OUT CAUSE THAT'S REALLY
8 NOT VOIR DIRE, THAT'S MORE OF CROSS. AND I'LL BRING THAT OUT
9 RIGHT HERE AND NOW.

10 MR. PLANT: THAT'S FINE.

11 Q (BY MR. D'ELIA) SO WHEN YOU ORIGINALLY TESTED THE
12 AMOUNT OF FORCE THAT IT TOOK TO GET THE FULL SCALE MODEL INTO
13 THE HOLE WHEN IT WAS SHORTER, YOU CAME UP WITH APPROXIMATELY 12
14 TO 13 POUNDS?

15 A IF IT'S FREE ON EVERY END BUT ONE.

16 Q SO WHAT YOU'RE SAYING IS, WITH ONLY ONE RANGE RISER
17 INSERTED, IN ORDER TO GET THE PIPE TO ACCEPT THE OTHER RANGE
18 RISER TOOK 12 TO 13 POUNDS?

19 A RIGHT.

20 Q WHAT IS THE DIFFERENCE BETWEEN THE AMOUNT OF FORCE
21 NECESSARY FOR YOUR ADJUSTMENT, IN THE SENSE OF BEFORE IT WAS
22 ONE AND 5/8 FORCE, NOW IT'S ONE AND 5/16. DO YOU HAVE A
23 DIFFERENCE IN FORCE THAT'S NECESSARY FOR LINING UP THOSE RANGE
24 RISERS NOW THAT YOU MADE THE ADJUSTMENT?

25 A YES, I DO.

1 Q WHAT IS IT?

2 A LESS THAN ONE POUND.

3 Q SO IT WOULD STILL BE APPROXIMATELY THE SAME, PLUS OR
4 MINUS, 1/13?

5 A THAT'S RIGHT.

6 Q OKAY. NOW ON FRIDAY, AFTER I SPOKE WITH AND TOOK A
7 DEPOSITION OF MR. GIBSON, DID I CALL YOU AND IMPART SOME
8 INFORMATION TO YOU?

9 A YES.

10 Q AND WHAT INFORMATION, SPECIFICALLY, WAS IT THAT I
11 IMPARTED TO YOU THAT MADE A DIFFERENCE ON YOUR TESTING AND YOUR
12 OPINIONS?

13 A YOU INDICATED TO ME THAT THERE'S MORE THAN ONE
14 POSITION ON THE PIPE THAT'S FIXED BEFORE IT'S INSERTED INTO THE
15 RANGE RISER.

16 Q AND WOULD THAT OTHER POSITION THAT WAS FIXED HAVE
17 BEEN APPROXIMATELY IN THE AREA OF THE BLOCK AND THE INSERTION
18 OF THE GAS LINE?

19 A AS I UNDERSTAND.

20 Q OKAY. DID YOU RUN ANY TESTS, WHEN YOU WERE RUNNING
21 THESE TESTS DID YOU RUN ANY TESTS THAT ALSO SHOWED WHAT WOULD
22 HAPPEN IF THERE WERE TWO POINTS THAT WERE BLOCKED -- OR TWO
23 POINTS THAT WERE FIXED?

24 A YES, I DID.

25 Q AND DID YOU COME UP WITH A CALCULATION OR A READING

1 FOR HOW MANY POUNDS OF FORCE IT TOOK TO LINE UP THE RANGE RISER
2 IF THERE WERE TWO POINTS THAT WERE FIXED AS MR. GIBSON HAD
3 INDICATED WITH THE FIXING OF THE BLOCK?

4 MR. PLANT: WELL, YOUR HONOR, I AM GOING TO OBJECT.
5 IT ASSUMES FACTS NOT IN EVIDENCE. THE DEPOSITION WILL SHOW
6 THAT EVEN THOUGH THEY DID ATTACH THE PIPE TO A BLOCK, IF AND
7 WHEN THERE WAS ANY NECESSITY TO MOVE THE PIPE, THEY UNDED THE
8 STRAPS. THAT WAS THE TESTIMONY. SO I JUST WANT THE RECORD TO
9 BE CLEAR.

10 THE COURT: REQUIRE STRAPS IT SOUNDS LIKE. THAT'S
11 NOW FLEXIBILITY. BUT YOU HAVE CONTRARY TESTIMONY?

12 MR. D'ELIA: WELL, TO ADD TO ONE THING, MR. GIBSON
13 SAID HE WAS NOT THE PERSON THAT DID THIS. SO HE DOES NOT KNOW.

14 THE COURT: DO YOU HAVE ANY TESTIMONY ON HOW FIXED IT
15 WAS OR IS YOUR POSITION THAT THEY DON'T KNOW AND THAT'S ANOTHER
16 ONE YOU'VE GOT TO CONSIDER ALL POSSIBILITIES?

17 MR. D'ELIA: MR. GIBSON TOLD US THAT ABSOLUTELY,
18 BEFORE ANY RANGE RISER IS INSERTED, THAT THIS POINT HAS TO BE
19 FIXED, BECAUSE THERE'S A BLOCK, THERE'S A STRAP, SO THAT MEANS
20 IF THIS PART IS FIXED THEN YOU ENTER ONE RANGE RISER, NOW WE'RE
21 GOING TO THE THIRD IN THE CALCULATIONS.

22 THE COURT: AT THIS POINT, THAT IS AFTER THE ONE
23 RISER IS ENTERED, SO YOU REALLY HAVE TWO FIXED POINTS.

24 MR. D'ELIA: YOU HAVE TWO FIXED POINTS. THIS IS
25 FIXED ORIGINALLY RIGHT HERE WHERE IT ENTERS, AND THEN ONE RANGE

1 RISER IS PUT ON AND THEN THE SECOND RISER IS PUT ON.

2 THE COURT: THERE IS TESTIMONY REGARDING THE STRAPS
3 BEING RELEASED?

4 MR. PLANT: THE ONLY TESTIMONY ON THAT ISSUE.

5 THE COURT: IT IS NOT CONTRARY?

6 MR. PLANT: ABSOLUTELY NOT. AND UNFORTUNATELY, WE
7 DID HIS DEPOSITION ON FRIDAY. HIS TESTIMONY WAS, AS
8 MR. D'ELIA'S POINTED OUT, HE DIDN'T DO THIS ONE. BASED UPON
9 HIS EXPERIENCE HE KNOWS THAT WHEN YOU GET TO THAT STATION,
10 CAUSE HE'S DONE THIS BEFORE, IF THERE'S ANY NECESSITY TO MOVE
11 THE PIPE, THE STRAP ON THE BLOCK IS UNDONE. THAT'S THE ONLY
12 EVIDENCE ON THIS ISSUE. I JUST WANT TO MAKE SURE THE RECORD'S
13 CLEAR ON THAT. THE RECORD WILL BEAR ME OUT. UNFORTUNATELY, WE
14 DON'T HAVE THE TRANSCRIPT BACK SO I CAN'T READ IT TO THE COURT.
15 BUT MR. D'ELIA CAN REPRESENT --

16 THE COURT: I WILL LET YOU DO IT WITH BOTH SCENARIOS
17 FOR THE PURPOSE OF THIS HEARING. WE WILL HAVE THE TESTIMONY
18 CLEARER, I ASSUME, BY FRIDAY.

19 MR. D'ELIA: I SHOULD HOPE SO BECAUSE I PLAN ON USING
20 IT IN CASE IN CHIEF.

21 THE COURT: I ASSUME YOU'LL BE USING IT. ARE YOU
22 CALLING GIBSON OR ARE YOU WAITING THE DEFENSE CASE?

23 MR. D'ELIA: ME? I'M GOING TO ENTER HIS DEPOSITION
24 MOST LIKELY FOR MY CASE AND THEN LET HIM CALL HIM FOR HIS.

25 THE COURT: BASED ON UNAVAILABILITY?

1 MR. D'ELIA: HE'S OUT OF STATE. AND MR. PLANT HAS
2 TOLD ME HE CANNOT GET HIM HERE TWICE. DO YOU REMEMBER?

3 THE COURT: I DO RECALL THAT.

4 MR. PLANT: WELL, YOUR HONOR, HE'LL BE HERE TO
5 TESTIFY. HE IS NOT UNAVAILABLE AS A WITNESS.

6 THE COURT: WELL, YES AND NO. I MEAN, IT'S AFTER THE
7 PLAINTIFF'S CASE IN CHIEF. HE'S BEYOND SUBPOENA POWER.

8 MR. PLANT: TRUE. I AM TELLING THE COURT HE WILL BE
9 HERE.

10 THE COURT: I AM PLEASED TO HEAR IT. I THINK THAT'S
11 IMPORTANT. IS THE DEPOSITION BEING PROPERLY --

12 MR. PLANT: I'M COMFORTABLE WITH HIS DEPOSITION AND
13 WE'LL SEE.

14 THE COURT: I'M NOT SURE IT'S THAT CRITICAL FOR
15 TODAY'S HEARING, THAT POINT.

16 MR. PLANT: I AGREE. BUT I WANT THE RECORD TO BE
17 CLEAR THAT THERE IS COUNTER EVIDENCE IN THAT REGARD.

18 THE COURT: OKAY.

19 MR. D'ELIA: YOUR HONOR, BUT I MEAN, AGAIN, THIS IS
20 PART ARGUMENT AND EVERYTHING ELSE. I MAY AS WELL LAY IT ON YOU
21 NOW. HE ALSO SAYS YOU WOULDN'T BE OVER INSERTING AND OVER
22 THREADING EITHER, THE WAY THIS IS, BUT OBVIOUSLY IT IS OVER
23 THREADED AND OVER INSERTED, DIFFERENT THAN WHAT HE CLAIMS HE
24 WOULD HAVE DONE. AND HE DID NOT WORK ON THIS.

25 THE COURT: I UNDERSTAND.

1 MR. PLANT: WELL, MY POINT IS MADE. IT'S OKAY FOR
2 TODAY, YOUR HONOR.

3 THE COURT: CONTINUE.

4 MR. D'ELIA: THIS IS A RIMMASCH HEARING.

5 THE COURT: I KNOW. AND I WONDER IF WE'RE NOT
6 GETTING A LITTLE TOO DETAILED FOR IT, BUT CONTINUE. THERE'S A
7 CAUSATION ISSUE BUT LET'S NOT GET HUNG UP ON ISSUES LIKE THIS.

8 MR. D'ELIA: ALL RIGHT.

9 Q (BY MR. D'ELIA) NOW, IF THE TWO POINTS WERE FIXED,
10 HOW MUCH FORCE, IN POUNDS OR ANY OTHER MEASUREMENT THAT YOU
11 HAVE, WOULD IT TAKE TO GET THIS RANGE RISER TO LINE UP WITH THE
12 HOLE IN THE FITTING?

13 A WHEN I ORIGINALLY TESTED IT, AND I TESTED IT TO SEE
14 HOW MUCH FORCE IT WOULD TAKE FOR A ONE AND 5/8 INCH DEFLEXION
15 MOVEMENT, I HAD A LOAD GO UP TO 70 POUNDS AND WE HAD EXCEEDED
16 70 POUNDS WHEN WE WERE STILL ABOUT HALF AN INCH OFF, WHICH
17 WOULD MEAN TO ME THAT IF YOU WERE ONLY GOING TO GO INSTEAD OF
18 GOING ONE 5/8, YOU WENT ONLY ONE 5/16, WHEN YOU WENT UP TO 70
19 POUNDS YOU'D STILL BE OFF. YOU'D HAVE TO GO BEYOND 70. SO I
20 WOULD SAY FOR A CERTAINTY BEYOND IN ONE, 70 POUNDS.

21 MR. PLANT: OBJECT TO THE RESPONSE AS NONRESPONSIVE.
22 I THINK DR. ALEX IS TALKING ABOUT ONE ATTACHMENT POINT. ISN'T
23 THAT CORRECT, MR. D'ELIA?

24 MR. D'ELIA: NO.

25 THE COURT: WAS THAT ONE OR TWO POINTS, THAT ANSWER?

1 MR. D'ELIA: IT WAS TWO POINTS. THAT'S THE
2 FOUNDATION WE LAID FOR --

3 THE COURT: THAT WAS THE FOUNDATION AND THAT WAS YOUR
4 ANSWER?

5 THE WITNESS: YES.

6 MR. D'ELIA: AT LEAST 70, RIGHT?

7 MR. PLANT: I APOLOGIZE. I DIDN'T HEAR, THAT'S MY
8 PROBLEM.

9 Q (BY MR. D'ELIA) SO IS THAT ENOUGH TO BREAK ANY ONE
10 OF THESE FITTINGS THAT IS OVER THREADED AND UNDER INSERTED SUCH
11 AS THE RANGE RISER?

12 A TO CAUSE A CRACK, YES.

13 Q NOW WHEN YOU SAY "TO CAUSE A CRACK" UNDER THE
14 CIRCUMSTANCES, WHAT FORCES WOULD POTENTIALLY CAUSE THIS CRACK?

15 A WOULD YOU DEFINED THAT, WHAT YOU MEAN "WHAT KIND OF
16 FORCES"?

17 Q OKAY. FOR INSTANCE, THE FORCES THAT WE WERE JUST
18 TALKING ABOUT HERE HAPPEN TO BE BENDING FORCES. AND THEY ARE
19 BENDING FORCES IN ORDER TO STRETCH THE PIPE TO INSERT THE RANGE
20 RISER. ARE THOSE BENDING FORCES ALWAYS, ALSO BEING EXERTED
21 UPON THE RANGE RISER DURING CONSTRUCTION?

22 A THE TENSION ON THE PIPE WILL CAUSE A BENDING FORCE ON
23 THE RISER, YES.

24 Q OKAY. DID YOU HAVE ANY FAILURES IN ANY OF YOUR TESTS
25 THAT YOU SAW THAT POTENTIALLY INDICATED THAT PIPING THAT WAS

1 OVER THREAD) AND OVER INSERTED WOULD FAIL AT LESS THAN 80
2 POUNDS?

3 A YES.

4 Q WHAT?

5 A DURING ONE OF THE TESTS THAT WE WERE ACTUALLY
6 TESTING, AND WE'RE TALKING ABOUT 80 POUNDS, WAS THE LOAD AT
7 WHICH YOU WOULD SEE CRACK UP ALL THE WAY.

8 Q IS THAT FAILURE?

9 A WELL, WE DEFINE IT AS SUCH, BUT IT'S NOT THE FAILURE
10 WE'RE TALKING ABOUT HERE. IF YOU REALLY WANT TO TALK ABOUT
11 CRACKING IT'S A MUCH LOWER LOAD. AND WE SEEM TO INDICATE THAT
12 YOU COULD GET SOME CRACK AS LOW AS 15 OR 20 POUNDS. MAYBE I'M
13 WRONG. MAYBE IT WAS 25, BUT I'M SURE I'D HAVE TO LOOK AT MY
14 NOTES.

15 Q OKAY. SO WE'VE DISCUSSED ONE OF THE FORCES THAT CAN
16 BE APPLIED BY STRETCHING THE PIPE TO ACCEPT THE RISER DURING
17 THE COURSE OF MANUFACTURE, RIGHT? THAT'S ONE OF THE WAYS THAT
18 FORCES CAN BE APPLIED TO THE PIPE TO BREAK THE PIPE?

19 A TO CRACK IT.

20 Q TO CRACK THE PIPE.

21 A THAT'S RIGHT.

22 Q HOW ABOUT SUCH THINGS AS YOU WERE TALKING ABOUT RANGE
23 RISERS WHEN MR. PLANT WAS TALKING WITH YOU AND EXAMINING YOU,
24 YOU WERE SAYING SOMETHING ABOUT THE VERTICAL NATURE OF RANGE
25 RISERS AND HOW THAT MIGHT FIT INTO FORCE THAT CAN EXPLAIN HOW

1 THIS CRACK OCCURRED

2 A WELL, I SAW A FILM THAT'S SUPPOSED TO TYPIFY WHAT
3 THEY DO WHEN THEY ASSEMBLE THE SAME, PUT IT TOGETHER. AND THE
4 PERSON DOING THE WORK WAS PULLING UP ON THE PIPE PRETTY HARD,
5 NUMBER ONE, AND THEN WHEN HE WENT TO INSERT THE VALVE ON THE
6 END HE WAS MOVING IT BACK AND FORTH QUITE A BIT.

7 Q IS THAT AT 41 AND-A-HALF INCHES?

8 A YES.

9 MR. PLANT: YOUR HONOR, WE HAVE ALSO MADE A MOTION TO
10 EXCLUDE REFERENCE TO THAT VIDEOTAPE HE'S REFERRING TO.

11 THE COURT: I'M AWARE OF THAT MOTION.

12 MR. PLANT: SO I WOULD OBJECT UNTIL THE COURT HAS
13 RULED ON THAT, ANY RELIANCE ON THAT VIDEOTAPE.

14 THE COURT: WELL, WE'LL LET IT IN SUBJECT TO YOUR
15 MOTION. THEN THE OTHER BASIS FOR HIS KNOWLEDGE ABOUT HOW IT IS
16 CONSTRUCTED, YOU NEED TO GET THAT IN, BECAUSE WHAT I DO
17 UNDERSTAND ABOUT THAT VIDEO IS THE ALLEGATION IS AT LEAST IS
18 IT'S NOT AT THE SAME PLANT AND IT'S NOT THE SAME MODEL; IS THAT
19 CORRECT?

20 MR. PLANT: NOT THE SAME PIPE CONFIGURATION OR
21 ANYTHING.

22 THE COURT: SO IF YOU HAVE OTHER EVIDENCE THAT
23 DR. ALEX IS RELYING ON TO STATE HIS UNDERSTANDING OF HOW THE
24 CONSTRUCTION PROCESS OCCURRED YOU NEED TO GET THAT IN TODAY.

25 MR. D'ELIA: OKAY.

1 Q (BY MR. D'ELIA) DID YOU ALSO REVIEW THE DEPOSITION
2 OF JULIE MEEK?

3 A YES, I DID.

4 Q DID YOU ALSO REVIEW THE DEPOSITION OF MICHAEL SLIFKA?

5 A THAT'S RIGHT.

6 Q DID MICHAEL SLIFKA INDICATE TO YOU THAT HOW WE'RE
7 TALKING ABOUT RIGHT NOW WITH INSERTING A RANGE RISER FROM THE
8 TOP, AND THINGS OF THAT NATURE, THAT THAT WAS THE WAY THAT HE
9 VIEWED, AT LEAST HE WAS AWARE, THAT THEY HAD CONSTRUCTED THE
10 RANGE RISER?

11 MR. PLANT: OBJECTION, YOUR HONOR. MR. SLIFKA IS AN
12 EXPERT. HE'S NOT ASSESSED OF ANY MORE FACTS THAN MR. ALEX IS.

13 THE COURT: MEEK IS.

14 MR. PLANT: MEEK IS A FACT WITNESS.

15 MR. D'ELIA: YOUR HONOR, I BEG TO DIFFER WITH
16 MR. PLANT. I HAVE SPECIFIC REFERENCE IN MR. SLIFKA'S TESTIMONY
17 THAT HE SAID HE HAS BEEN DOING THIS AND GOING TO PLANTS FOR 20
18 SOME ODD YEARS, THAT HE HAS BEEN IN THE PLANTS OF OAKWOOD, TO
19 EVERY OAKWOOD PLANT, VIRTUALLY AT LEAST ONCE, THAT HE HAS BEEN
20 IN THE TEXAS PLANT --

21 THE COURT: YOUR QUESTION WILL BE WHETHER HE CAN TIE
22 IT SPECIFICALLY TO THIS TYPE MODEL WHATEVER.

23 MR. PLANT: THAT'S THE POINT THAT I WAS GOING TO
24 MAKE. THANK YOU, YOUR HONOR.

25 THE COURT: YOU HAVE IDENTIFIED THE SOURCES, THAT'S

1 FINE.

2 MR. D'ELIA: OKAY. SO JUST RIGHT NOW THAT'S ALL YOU
3 WANT IS IDENTIFICATION OF SOURCES?

4 THE COURT: WHATEVER BASIS HE HAS.

5 THE WITNESS: THE DEPOSITION I READ BY AN INDIVIDUAL
6 THAT WORKED FOR OAKWOOD AT THE COLORADO PLANT. HE WAS A
7 CO-WORKER WITH JULIE MEEKS AND I THINK HE ALSO EXPLAINED WHAT
8 THEY DO.

9 THE COURT: WHO WAS THAT?

10 THE WITNESS: I DON'T REMEMBER HIS NAME RIGHT OFF.

11 MR. D'ELIA: WHO'S THE HUD INSPECTOR?

12 MR. PLANT: LARRY WEBBER.

13 THE WITNESS: I BELIEVE SO, YES.

14 THE COURT: OKAY.

15 MR. PLANT: I CAN ASK, TELL US WHAT THEY SAID, NOT
16 WHAT MR. D'ELIA SAYS, BUT WHAT THEY SAY.

17 MR. D'ELIA: LET ME TELL YOU ONE OF THE PROBLEMS TOO.
18 FRIDAY AFTERNOON AT 5:00 O'CLOCK I TOOK A DEPOSITION, AS I
19 SAID, THAT ISN'T WITH US YET. I SPOKE WITH MR. GIBSON. AT THE
20 VERY END OF THAT DEPOSITION I ASKED A DOZEN QUESTIONS WHICH
21 LINED UP EXACTLY THE PROCESS AT OAKWOOD IN COLORADO BEING THE
22 SAME AS THE ONE IN TEXAS. I ASKED HIM WHETHER OR NOT THEY
23 DRILLED THE HOLES FROM THE TOP. I ASKED HIM WHETHER OR NOT
24 THEY HAD ON JIGGLE THE PIPE UNDERNEATH. I ASKED HIM ABOUT HOW
25 THEY DO THE THREADING AND THINGS LIKE THAT. AND HE INDICATED

1 THAT, IN FACT, THE PROCESS WAS THE SAME FOR THE TEXAS PLANT AS
2 FOR THE COLORADO PLANT. AND ALL WE'RE TALKING ABOUT IS
3 METHODOLOGY. WHETHER MR. PLANT WANTS TO ARGUE ABOUT WHETHER
4 THEY USED A THREE QUARTER INCH PIPE AS A RISER OR WHETHER THEY
5 USED A HALF INCH PIPE AS A RISER, WHETHER OR NOT THERE HAPPENED
6 TO BE MORE POINTS FIXED THAN JUST TWO OR ONE. THAT'S WHAT
7 MR. PLANT'S TALKING ABOUT. WE ARE GOING WITH THE LOWEST COMMON
8 DENOMINATOR. AND MR. GIBSON HAS INDICATED, AS WELL AS
9 MR. SLIFKA, AND I KNOW THAT IS AN EXPERT, BUT HE SAID THAT THE
10 PROCESS IS THE SAME FOR THE COLORADO PLANT AS IT IS FOR THE
11 TEXAS PLANT. HE VISITED THEM BOTH. AND MR. GIBSON LAID THE
12 FOUNDATION THAT THEY ARE DOING THE PROCESS THE SAME WAY AT THE
13 COLORADO PLANT AS THEY DO IN THE TEXAS PLANT.

14 MR. PLANT: WELL, BUT THE POINT HERE, MR. D'ELIA IS,
15 WHAT IS IT YOU'RE MAINTAINING? YOUR HONOR, I WILL STIPULATE
16 THAT WE PRE-DRILLED THE HOLES. IF THAT'S WHAT YOU'RE SAYING,
17 THAT'S TRUE. WE DID NOT -- WE PUT THE HOLES DOWN THROUGH THE
18 FLOOR. THAT'S WHAT MR. SLIFKA SAYS. I CAN POINT IT. I CAN
19 SHOW YOU IN JULIE MEEK'S DEPOSITION. AND I WOULD LIKE MR. ALEX
20 TO TELL ME, AND I THINK THIS IS WHAT THE COURT WANTS, WHAT
21 EVIDENCE HE RELIES UPON, AND I'LL SHUT UP.

22 MR. D'ELIA: HE IS. HE'S RELYING UPON THE OAKWOOD
23 TAPE WE GOT IN HERE.

24 MR. PLANT: THEN LET HIM TELL US, MR. D'ELIA.

25 THE COURT: HE'S REVIEWED THE TAPE, HE'S REVIEWED THE

1 MEEK DEPOSITION. HAS WEBBER HAD A DEPOSITION?

2 THE WITNESS: YES.

3 THE COURT: OKAY.

4 MR. KARRENBERG: AND THE REPRESENTATION FROM
5 MR. D'ELIA ON WHAT MR. GIBSON SAID.

6 THE COURT: AND THEN THERE WAS THE EXPERT, SLIFKA.
7 SO WE'VE IDENTIFIED THEM.

8 MR. D'ELIA: OKAY. AND I'M ONLY TRYING TO DO WHAT
9 THE COURT'S ASKING ME TO DO. THAT'S ALL I'M TRYING TO DO.

10 Q (BY MR. D'ELIA) SO WE WERE TALKING ABOUT HOW THE
11 FORCE OF BEING, OF STRETCHING THIS PIPE TO ACCEPT A RISER WHEN
12 THERE'S BEEN ANOTHER POINT OR TWO FIXED, WE WERE TALKING ABOUT
13 THAT FORCE AS BEING POTENTIAL.

14 NOW THEN WE SLIPPED INTO THE ASPECT OF THE RANGE
15 RISER AND WHETHER OR NOT THERE'S EXISTING FORCES THAT WERE
16 PLACED ON THE RANGE RISER IN ORDER TO CAUSE THE CRACK. YOU
17 WERE EXPLAINING, AND THEN I THINK THE OBJECTION CAME. SO COULD
18 YOU EXPLAIN TO US WHAT IT IS THAT YOU SAW IN THE OAKWOOD VIDEO
19 THAT LEADS YOU TO BELIEVE THAT OTHER FORCES CAN BE PLACED ON
20 THE PIPE WHEN, IN FACT, THEY ARE ASSEMBLING IT?

21 MR. PLANT: AGAIN, I WOULD OBJECT ON ANY REFERENCE TO
22 THAT VIDEO UNTIL IT'S BEEN ESTABLISHED THAT IT'S PROPERLY
23 BEFORE THE COURT.

24 THE COURT: WE MAY HAVE TO MAKE A DECISION TO TAKE A
25 DEVIATION AND DECIDE ON THE VIDEO.

1 MR. D'ELIA: ALL RIGHT. THERE IS ONE OTHER THING I
2 CAN DO. IN MR. GIBSON'S TESTIMONY I SPECIFICALLY ASKED HIM, I
3 SAID, ISN'T IT TRUE THAT SOMETIMES THE RANGE RISER, WHICH COMES
4 UP THROUGH THE HOLE, IS NOT NECESSARILY STRAIGHT AT THAT POINT
5 IN TIME? IS THAT SOME KIND OF A SKEW, SOME KIND OF AN ANGLE?
6 AND HE ANSWERED YES. THAT'S DIRECT TESTIMONY WITHOUT A VIDEO.

7 THE COURT: DO YOU DISAGREE WITH THAT TESTIMONY?

8 MR. PLANT: THE PROBLEM I HAVE IS THIS WITNESS NEVER
9 SAW IT TIL FRIDAY.

10 THE COURT: WELL, IT'S BEEN REPRESENTED TO HIM, IT'S
11 THERE NOW. AND I AGREE IT WASN'T HOW HE FORMED HIS OPINION IN
12 FEBRUARY OR DECEMBER OR WHATEVER.

13 MR. PLANT: WHAT HE SAID IS WE SOMETIMES DON'T GET
14 THEM ENTIRELY, VERTICALLY STRAIGHT. BUT KEEP IN MIND WHAT HE
15 HAS SAID. AND I THINK MR. D'ELIA WILL AGREE. NO WITNESSES
16 SAID THAT WE DO NOT PUT THE PIPES DOWN THROUGH THE FLOOR TO
17 MEET THE HORIZONTAL PIPING THAT WE NEED. AND THAT'S ON THE
18 BOOK. THAT'S THE FACT. THE FACT IS WE DO --

19 THE COURT: LET'S CLARIFY FOR DR. ALEX, WITH
20 DR. ALEX. ARE YOU BASING ALL OF YOUR OPINIONS ON AN UNDISPUTED
21 POSITION THAT THE RISER GOES DOWN THROUGH THE FLOOR TO MEET THE
22 PIPING?

23 THE WITNESS: I AGREE WITH THAT, YES.

24 THE COURT: ALL RIGHT. SO THAT'S CLEAR.

25 MR. PLANT: THANK YOU.

1 MR. D'ELIA: ANYTHING ELSE THAT NEEDS TO BE CLEARED
2 UP CAUSE THEN I'LL MOVE ON TO THE NEXT POINT OF FORCE THAT
3 POTENTIALLY CAN CAUSE THE PIPE TO BREAK?

4 THE COURT: I THINK YOU CAN MOVE ON.

5 MR. D'ELIA: THAT'S WHAT YOU WANT TO HEAR, THE
6 POTENTIAL FORCES?

7 THE COURT: YES, INDEED, THAT IS WHAT I WANT TO HEAR.

8 Q (BY MR. D'ELIA) WHAT IS THE NEXT FORCE THAT YOU
9 POTENTIALLY SAW, WHETHER IT BE IN SUCH THINGS AS MANUFACTURE,
10 TRANSPORTATION, ANYTHING ELSE THAT COULD POSSIBLY CAUSE THE
11 PIPE TO CRACK FROM THE WAY THAT IT WAS INSTALLED BY OAKWOOD?

12 A WELL, I SAID PREVIOUSLY, TWO THINGS. WHEN THEY
13 FINALLY GET THE PIPE PLACED AND INSERTED INTO THE ELBOW I SAW
14 THEM PUTTING UP ON THE PIPE PART. AND THAT WILL PUT A BENDING
15 FORCE ON THE POINT IN QUESTION.

16 Q THE RANGE RISER?

17 MR. PLANT: YOUR HONOR, HE'S REFERRING TO THE VIDEO
18 AGAIN, WHICH HAS NOT BEEN ADMITTED.

19 THE COURT: WELL, I'LL NOTE YOUR OBJECTION AND I'LL
20 RULE ON THAT ACCORDING TO HOWEVER THE VIDEO --

21 MR. PLANT: THAT'S FINE. I JUST WANT THE RECORD TO
22 BE CLEAR.

23 THE WITNESS: AND ALSO, FROM THE VIDEO, IT WAS PRETTY
24 OBVIOUS THE PERSON PUTTING THE VALVE ON TOP OF THE RANGE RISER
25 WAS EXPERIENCING SOME PRETTY GOOD FORCE SIDEWAYS IN THE PROCESS

1 OF PUTTING IT IN PLACE.

2 THE COURT: IS THAT YOUR ONLY EVIDENTIARY BASIS,
3 DR. ALEX, FOR THE AMOUNT OF FORCE BEING APPLIED IN THE
4 INSTALLATION OF THIS CONSTRUCTION PROCESS?

5 THE WITNESS: THE AMOUNT OF FORCE THAT IS APPLIED
6 AFTER YOU PUT IT IN PLACE.

7 THE COURT: OKAY. THANK YOU.

8 Q (BY MR. D'ELIA) MAYBE I CAN SOLVE THIS A LITTLE BIT
9 AND CUT RIGHT THROUGH TO THE CHASE. UNDER THE DIRECT
10 EXAMINATION YOU WERE TELLING MR. PLANT THAT ANY TIME THAT YOU
11 TAKE UP LENGTH OF PIPE FROM OVER INSERTION AND OVER THREADING
12 THAT THE RANGE RISER WILL NOT SIT COMPLETELY VERTICAL. IS THAT
13 A FACT?

14 A THAT'S TRUE.

15 Q SO BY THE NATURE OF THE FACT THAT THERE IS AN OVER
16 THREADING AND AN OVER INSERTION YOUR EXPERT OPINION IS THAT IT
17 WILL THEN BE AT SOME SORT OF AN ANGLE AND NOT COMPLETELY
18 VERTICAL TO THE RANGE RISER?

19 A THAT'S RIGHT.

20 Q (BY MR. D'ELIA) OKAY. WE'VE IDENTIFIED THOSE
21 ASPECTS. WHAT ABOUT TRANSPORTATION? CAN TRANSPORTATION AT ALL
22 ADD TO ANY OF THE STRESSES THAT ARE PLACED ON THE RANGE RISER
23 AND OTHER PIPE IN THE ERCANBRACK HOME?

24 A WELL, I BELIEVE THAT THERE WAS A CRACK PLACE THAT
25 COULD CAUSE TO GROW.

1 Q OKAY. AND SO WHAT DOES THE TRANSPORTATION FORCES, IF
2 ANYTHING, WHAT DO THEY DO TO THE PIPE?

3 A WELL, THEY MOVE THE PIPE UP AND DOWN AND MOVE IT
4 AROUND.

5 Q SO THE PIPE CAN MOVE UP AND DOWN?

6 A YES.

7 Q AND HOW DO YOU KNOW THAT?

8 A BECAUSE AT SOME POINT IT'S ONLY HIGHWAY STRAPS.

9 Q AND DID YOU OBSERVE THE STRAPS OVER IN THE OAKWOOD
10 YARD ABOUT THREE YEARS AGO?

11 A YES, I DID.

12 Q SO HOW FAR CAN THE PIPE MOVE UP AND DOWN IN
13 TRANSPORTATION?

14 A I THINK, AT SOME POINTS IT CAN'T MOVE AT ALL BECAUSE
15 THERE'S A BLOCK IN PLACE, BUT THERE'S, I THINK THERE IS AT
16 LEAST A POINT WHERE IT'S FREE TO MOVE.

17 Q CAN IT MOVE UP AT THE RANGE RISER POSITION?

18 A AS I RECALL, YES, BECAUSE THE BLOCKING STRAPS ARE ON
19 THE OTHER END OF THE --

20 Q THEY'RE OVER HERE BY THE ENTRANCE OF THE GAS?

21 A THEY ARE DOWN HERE BY THE OTHER END.

22 Q BUT THE RANGE RISER CAN STILL GO UP AND DOWN?

23 A I WON'T SWEAR TO THAT BUT I'D HAVE TO LOOK AT THE
24 PHOTOGRAPHS AGAIN.

25 Q AND IF, IN FACT, THE RANGE RISER IS ABLE TO TRAVEL UP

1 AND DOWN DOES THAT ALSO PLACE A BENDING FORCE ON THE RANGE
2 RISER?

3 A IT PLACES A BENDING FORCE ON THE CRITICAL POINT WE'RE
4 TALKING ABOUT.

5 Q THE CRITICAL PART BEING THE THREADED SECTION OF THE
6 RANGE RISER?

7 A THAT'S RIGHT.

8 Q WHERE IT FITS INTO THE 90 DEGREE ELBOW?

9 A THAT'S RIGHT.

10 Q AND THEN FROM THESE SCENARIOS THAT YOU'RE TALKING
11 ABOUT, FROM THERE, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT
12 THERE WAS A POTENTIAL FOR A CRACK WITHOUT NECESSARILY BEING
13 THROUGH THE ENTIRE WALL OF THE PIPE FROM THOSE FORCES THAT WE
14 WERE TALKING ABOUT?

15 A YES.

16 Q AND SO YOU'RE SAYING THAT THERE COULD BE A CRACK BUT
17 THE CRACK DOES NOT NECESSARILY LEAK, RIGHT?

18 MR. PLANT: THAT'S THE VERY KIND OF LEADING QUESTION
19 THAT I WAS WORRIED ABOUT.

20 THE COURT: SUSTAINED. REPHRASE.

21 Q (BY MR. D'ELIA) TELL US ABOUT THE CRACK AND WHAT IT
22 IS YOU ACTUALLY ARE OPINING?

23 A I THINK ORIGINALLY DAVE MOORE HAD TALKED TO SOMEBODY
24 ELSE FROM THE SERVICE DIVISION. HE DIDN'T THINK YOU COULD GET
25 IT APART WHILE A CRACK THAT DOESN'T GO ALL THE WAY TO THE WALL.

1 HE THOUGHT ONCE YOU HAD A CRACK IT WOULD HAVE TO GO CLEAR
2 ACROSS THE WALL. THAT'S CONTRARY TO WHAT MY KNOWLEDGE AS FAR
3 AS MILD STEELS AND THAT. THAT'S WHAT WE'RE TALKING ABOUT HERE.
4 YOU CAN GET A CRACK AND IT'LL START TO GO INTO IT PART WAY.
5 AND IT DOESN'T NECESSARILY HAVE TO LEAK. I THINK LATER ON HE,
6 ACTING IN HIS FIRST DEPOSITION HE SAID --

7 Q THIS IS MR. MOORE?

8 A THIS IS HIS FIRST REPORT. HE SAID THAT HE HAD A PART
9 WALL CRACK WHERE IT HADN'T GONE ALL THE WAY THROUGH. THEN I
10 THINK ON HIS LAST REPORT, HE SAID, IT'S PRETTY HARD TO DO IN A
11 LAB, BUT AS A MATTER OF FACT, HE HAD DONE IT A NUMBER OF TIMES.
12 AND SO YOU CAN GET A CRACK THAT DON'T GO ALL THE WAY THROUGH.
13 NOW, HOW FAR IT GOES DEPENDS ON HOW FAR YOU MOVE THE PART. OR
14 BEND IT. I'M NOT SURE HOW FAR IT'S BEEN BENT. SO YOU CAN HAVE
15 A CRACK OVER JUST A SHORT DISTANCE OR YOU CAN HAVE A CRACK THAT
16 GOES ALMOST ALL THE WAY THROUGH.

17 NOW IF IT GOES ALMOST ALL THE WAY THROUGH, OR EVEN
18 ALL THE WAY THROUGH, IF YOU ARE TALKING ABOUT LOW PRESSURE LIKE
19 YOU ARE HERE, OUNCES OF GAS PRESSURE, YOU'RE TALKING ABOUT EVEN
20 THE PIPE DOPE MIGHT KEEP IT FROM LEAKING. BUT EVEN IF THE PIPE
21 DOPE, THE METAL MEMBRANE IT WOULDN'T TAKE MUCH FOR IT TO CAUSE
22 THE LEAK AFTER THAT.

23 MR. D'ELIA: JUST TO BE -- I GUESS I CAN JUST ASK.
24 YOU UNDERSTAND WHAT HE'S TALKING ABOUT, ABOUT THE PIPE DOPE,
25 DON'T YOU?

1 THE COURT: I DO.

2 Q (BY MR. D'ELIA) NOW, WE'RE ALSO TALKING ABOUT
3 HAVING TO STRETCH THE PIPE IN ORDER TO ACCEPT THE RANGE RISER,
4 RIGHT? AND I THINK YOU SAID THERE WAS APPROXIMATELY 12 POUNDS
5 OF PRESSURE PUT ON THE PIPE.

6 A THAT'S RIGHT.

7 Q WHEN I SAY "PRESSURE," EXCUSE ME, PRESSURE RELATES TO
8 GAS, FORCE?

9 A FORCE.

10 Q SO GOING BACK TO FORCE, WITH 12 POUNDS OF FORCE, ONCE
11 YOU INSERT THE RANGE RISERS, IS THAT 12 POUNDS OF FORCE OR
12 APPROXIMATELY 12 POUNDS OF FORCE ALWAYS ON THAT PIPE OR DOES IT
13 FADE AT ONE POINT IN TIME?

14 A IT ALL DEPENDS HOW FAR BACK THE ASSEMBLY MOVES. IF
15 IT DOESN'T MOVE BACK AT ALL, IT'S COMPLETELY VERTICAL, AND IT
16 WILL HAVE FULL AMOUNT OF FORCE ON IT. IF IT MOVES BACK SOME IT
17 WILL BE LESS.

18 Q DOES THAT -- IF IT HAD A CONSISTENT AND CONSTANT 12
19 POUNDS OF FORCE HOW DOES THAT FIGURE INTO YOUR OPINION THAT THE
20 PIPE ONCE CRACKED CAN THEN OPEN UP FURTHER?

21 A WELL, IT WOULD TAKE THAT MUCH LESS FORCE TO CAUSE A
22 CRACK TO GROW.

23 Q IS THERE ANYTHING THAT YOU HAVE TOLD US TODAY THAT'S
24 SPECULATION THAT YOU DON'T HAVE EVIDENCE FOR WHEN I'VE BEEN
25 ASKING THE QUESTIONS?

1 MR. PLANT: OBJECTION, YOUR HONOR.

2 MR. D'ELIA: I THINK I CAN ANSWER THAT WITHOUT HIM
3 EVEN ANSWERING IT. ALL RIGHT.

4 THE WITNESS: WELL, I JUST.

5 THE COURT: NO.

6 MR. D'ELIA: JUDGE, IS THERE ANY OTHER AREA YOU WANT
7 ME TO COVER THAT --

8 THE COURT: I DON'T THINK SO, MR. D'ELIA. BETWEEN
9 THE WRITTEN BRIEFS, THE TESTIMONY, THE ARGUMENTS SO FAR I THINK
10 I'M PRETTY WELL INFORMED.

11 MR. D'ELIA: THAT'S ALL I WANTED TO KNOW. ALL RIGHT.

12 THE COURT: IT IS MR. PLANT'S MOTION. DID YOU HAVE
13 ANY FURTHER QUESTIONS OR ARGUMENT THAT YOU'D LIKE?

14 MR. PLANT: JUST ONE. FRANK, IS THERE ANY EVIDENCE
15 WHATSOEVER, ANY PHYSICAL EVIDENCE WHICH YOU HAVE THAT -- START
16 OVER.

17 DO YOU HAVE ANY PHYSICAL EVIDENCE WHATSOEVER TO
18 SUPPORT YOUR CONTENTION THAT THE RANGE RISER BROKE BEFORE THE
19 EXPLOSION OCCURRED?

20 MR. D'ELIA: ASKED AND ANSWERED BUT GO AHEAD.

21 MR. PLANT: ANY PHYSICAL EVIDENCE THAT YOU CAN
22 SUPPORT, THAT YOU CAN CITE ME TO, TO GIVE ME THAT, TO SUPPORT
23 YOUR OPINION?

24 MR. D'ELIA: YOUR HONOR, I'D JUST OBJECT TO THAT.
25 THE TESTIMONY'S BEEN THAT HE SAYS THAT THE PHYSICAL EVIDENCE

1 IS -- I MEAN, WE CAN DO THIS OUTSIDE THE JURY.

2 THE COURT: HE'S ANSWERED THAT QUESTION IN
3 DEPOSITION. I THINK HE'S ANSWERED IT HERE.

4 MR. PLANT: THE DEPOSITION IS WHAT I'M READING FROM.
5 WE DON'T NEED TO REVISIT THAT. I WOULD LIKE A CHANCE TO ARGUE.
6 I DON'T THINK I HAVE ANYTHING MORE FOR DR. ALEX.

7 THE COURT: DR. ALEX, WHY DON'T YOU STEP DOWN AND
8 I'LL LISTEN TO ARGUMENT AT THIS POINT. THANK YOU. GO AHEAD,
9 MR. PLANT.

10 MR. PLANT: JUST ONE MOMENT, YOUR HONOR.

11 THE COURT: CERTAINLY.

12 MR. PLANT: YOUR HONOR, LET ME JUST SAY THIS. I
13 PREPARED THIS LITTLE THING. THIS IS IN OUR BRIEF. TALKING
14 ABOUT THE ASSUMPTION OF FRANK ALEX.

15 THE COURT: UH-HUH.

16 MR. PLANT: IF YOU'D LIKE TO COME UP AND SEE IT,
17 MR. D'ELIA.

18 MR. D'ELIA: CAN I STAND UP THERE AND WATCH?

19 MR. PLANT: SURE. THERE WAS AN EASEL WHEN WE
20 STARTED. BASICALLY, YOUR HONOR, THERE'S SEVERAL ASSUMPTIONS
21 THAT MR. ALEX MAKES. NUMBER ONE, THAT THERE WAS, THE GAS HAD
22 TO COME FROM THE CRAWL SPACE.

23 THE COURT: THAT'S A BIG ONE.

24 MR. PLANT: HE RELIES ON SOMEBODY ELSE. HE ADMITS
25 HE'S NOT THE MAN THAT'S EITHER SAYING THAT'S TRUE OR FALSE.

1 THE POINT IS, NO EVIDENCE. THERE'S NO EVIDENCE PRODUCED BY HIM
2 OTHER THAN HIS RELIANCE --

3 THE COURT: BUT TELL ME THIS, AND THAT IS AN ISSUE.
4 THERE IS NONE BY HIM. HIS CONSTRUCTION OF AN OPINION COULD
5 COLLAPSE IF THE EVIDENCE DOESN'T COME IN SUPPORTING THAT
6 SUFFICIENT TO GO TO THE JURY.

7 MR. PLANT: RIGHT.

8 THE COURT: BUT IS THAT A BASIS FOR HIM NOT TO GO
9 FORWARD IT HE'S RELYING ON THAT?

10 MR. PLANT: NO. YOU KNOW WHAT? I AGREE. THE RULES
11 ALLOW FOR AN EXPERT TO RELY ON OTHER EXPERTS. WHAT I'M TELLING
12 YOU IS HE HAS NO INDEPENDENT KNOWLEDGE OR EVIDENCE IN THAT
13 REGARD ON HIS OWN BEHALF.

14 THE COURT: I AGREE.

15 MR. PLANT: HE'S TOTALLY RELYING UPON SOMEBODY ELSE.
16 SO, ESSENTIALLY, THIS WITNESS BRINGS NO EVIDENCE TO THE
17 COURTROOM IN REGARDS TO THAT.

18 THE COURT: THAT'S UNDERSTOOD.

19 MR. PLANT: THE SECOND THING HE SAYS IS THAT THE GAS
20 PIPE IN THE CRAWL SPACE PARTIALLY CRACKED, BUT NOT TO THE
21 EXTENT THAT IT LEAKED, AND THAT THIS PARTIAL CRACK SOMEHOW GREW
22 INTO A FULL CRACK SOMETIME PRIOR TO THE EXPLOSION WHICH ALLOWED
23 PROPANE TO LEAK INTO THE CRAWL SPACE.

24 THERE'S BEEN NO EVIDENCE WHATSOEVER THAT THAT
25 ACTUALLY OCCURRED. WHAT DR. ALEX DID WAS IDENTIFY A POTENTIAL

1 SPOT, A WEAK SPOT, BUT THEN AS AN EXPERT CAME IN WITH NO
2 EVIDENCE TO SUPPORT THAT. NONE. ZERO. HE COULDN'T CITE ANY.
3 I ASKED HIM SEVERAL TIMES.

4 THAT THE RANGE RISER MOST LIKELY CRACKED PRIOR TO THE
5 EXPLOSION. SAME THING. NO EVIDENCE.

6 THAT SOMEHOW OAKWOOD PERSONNEL PLACED UNDUE STRESS ON
7 THAT RANGE RISER DURING INSTALLATION WHICH CAUSED IT TO
8 PARTIALLY CRACK WITHOUT LEAKING. NOW, THERE'S NO EVIDENCE THAT
9 THAT HAPPENED HERE. THERE'S BEEN SOME ILLUSIONS -- AND LET'S
10 BE CLEAR ON THIS. THE ILLUSIONS TO THE RECORD ARE SIMPLY THAT
11 WE PRE-DRILLED THE HOLES. THE EVIDENCE IS, AND SAID IT RELIED
12 UPON THE DEPOSITION OF JULIE MEEK.

13 THE COURT: RIGHT.

14 MR. PLANT: JULIE MEEK, ON PAGE 40 OF HER DEPOSITION
15 SAYS THIS. THIS IS WHO HE'S RELYING UPON. SHE DOES SAY
16 THAT -- 40, LINE 21, FOR THE RECORD. SHE DOES SAY THAT WE
17 PRE-DRILL THE HOLES. BUT THEN SHE SAYS IN RESPONSE TO THIS
18 QUESTION, MY QUESTION IS, IF THERE'S ANY KIND OF FUDGE FACTOR,
19 THIS IS MR. D'ELIA'S QUESTION, IN THE PIPE ITSELF, WHERE IT
20 WERE CONSTRUCTED AND ASSEMBLED, IT WOULDN'T NECESSARILY COME UP
21 THROUGH THE HOLE, I'M JUST WONDERING IF THE PIPE THEN IS WHAT
22 IT IS THAT'S MAYBE LENGTHENED OR SHORTENED SO IT COMES THROUGH
23 THE HOLE EXACTLY. IN OTHER WORDS, THE VERY QUESTION THAT IS
24 BEING ALLUDED TO WITH THIS. HERE'S HER ANSWER. "THE PIPE CAN
25 BE LENGTHENED OR SHORTENED, OR THE DECKING, AREA OF THE STOVE

1 DECKING COULD BE PREPARED AND WE COULD, WITHIN DAPIA," AND
2 DAPIA IS THEIR REFERENCE MANUAL TO TELL THEM HOW TO BUILD A
3 HOME, "OR 3280," WHICH IS THE HUD STANDARDS, "THAT APPLY TO
4 THIS HOME. WE COULD MOVE AND SIMPLY MOVE THE HOLE IN THE
5 DECKING WITHOUT HAVING TO ADJUST THE PIPE AND STILL MEET OUR
6 STANDARD."

7 THAT'S WHAT JULIE MEEK TALKED ABOUT WHEN THERE'S THIS
8 DISCREPANCY. THAT'S WHAT HE'S RELYING ON. THERE'S NO
9 TESTIMONY IN ANY OF THESE DEPOSITIONS, AND I'LL INVITE
10 MR. D'ELIA TO SHOW ME WHERE IT SAYS WE PULL IT INTO PLACE. THE
11 ONLY TESTIMONY AND THE ONLY THING THEY'RE --

12 THE COURT: PLEASE CORRECT ME IF I MISHEARD YOU SAY,
13 WE COULD CHANGE THE HOLE. DID SHE EVER TESTIFY THAT'S OUR
14 STANDARD PRACTICE? CERTAINLY, NO ONE'S TESTIFIED WHAT HAPPENED
15 IN THIS CASE, CORRECT?

16 MR. PLANT: WELL, JULIE MEEK WAS THE QUALITY
17 ASSURANCE PERSON ON THIS HOME. RICK GIBSON WAS THE PIPE
18 TESTER. HE DID THE PIPE TESTING ON THIS HOME.

19 THE COURT: RIGHT, I UNDERSTAND. THEY DON'T -- AT
20 LEAST I DON'T HEAR ANY TESTIMONY THAT THEY KNOW THE HOLE WAS
21 MOVED TO ACCOMMODATE A PROBLEM.

22 MR. PLANT: WELL, FIRST OFF, THERE'S NO EVIDENCE
23 WHATSOEVER THAT IT WAS NECESSARY, THAT THESE HOLES WERE TOO FAR
24 APART.

25 THE COURT: NO, BUT I HEAR YOU ARGUING, I THINK, THAT

1 I SHOULD BE CONSIDERING THAT THERE'S NO EVIDENCE THAT, AND HE
2 WAS FORCED TO ACCOMMODATE A SHORTENING. BUT I'M NOT SURE
3 THERE'S EVIDENCE EITHER WAY.

4 MR. PLANT: THE TESTIMONY IS UNDER DAPIA --

5 THE COURT: SO IT'S AN OPTION.

6 MR. PLANT: -- THE WAY THEY WOULD DO IT.

7 THE COURT: WHAT I HEARD YOU REALLY WAS, THEY COULD
8 DO IT THAT WAY, AND I'M ASKING YOU MORE DIRECTLY, IS THERE ANY
9 EVIDENCE THAT THEY DID DO IT THAT WAY. THAT'S AN OPTION OPEN
10 TO THEM.

11 MR. PLANT: WELL, NO. 1, THERE IS NO EVIDENCE THAT
12 THE PIPE DIDN'T FIT.

13 THE COURT: THAT'S NOT MY QUESTION.

14 MR. PLANT: I KNOW. BUT THAT'S NO. 1. NO. 2, THERE'S
15 NO DIRECT EVIDENCE AS TO WHAT OCCURRED ON THIS HOME. I'M
16 TELLING YOU FROM A PRACTICES AND PROCEDURES, A HABIT.

17 THE COURT: IS THERE ANY EVIDENCE THAT THEY NEVER
18 FORCED IT TO ANY DEGREE EVEN A COUPLE MILLIMETERS?

19 MR. PLANT: MR. GIBSON WILL TELL YOU BASED UPON HIS
20 UNDERSTANDING THAT NEVER OCCURRED.

21 THE COURT: NEVER. OKAY.

22 MR. D'ELIA: OF COURSE, GIBSON DIDN'T WORK ON THIS.
23 HE DIDN'T INSTALL THE PIPE.

24 THE COURT: I'M WORRIED ABOUT GENERAL PRACTICE.

25 MR. PLANT: BUT HE ALSO SAID HE WORKED ON THIS HOME.

1 AND HIS TESTIMONY VERY STRONGLY STATED TO MR. D'ELIA, AND THE
2 RECORD WILL BEAR ME OUT OR NOT, IS THAT HE KNOWS THE PEOPLE
3 THAT DID, AND HE KNOWS THEIR WORK PRACTICES WELL ENOUGH TO KNOW
4 THAT THEY WOULDN'T HAVE DONE IT. AND THAT'S HIS DIRECT
5 TESTIMONY.

6 SO, AT ANY RATE, IT'S AGAIN, THIS IS THEIR OBLIGATION
7 TO COME IN AND TELL ME WHAT HAPPENED, NOT WHAT MIGHT HAVE
8 HAPPENED. THEIR OBLIGATION, IT WOULD SEEM TO ME, FOR HIM TO
9 KEEP THIS OUT OF PURE SPECULATION, TO SAY, WE'VE GOT EVIDENCE
10 THAT THIS PIPE WAS SHORTENED, OR EXCUSE ME, THAT THIS PIPE HAD
11 TO BE STRETCHED TO PULL. WE LOOKED AT THAT WITH THE FACT THAT
12 MR. ERCANBRACK COULD COME IN AND SAY THIS PIPE WAS BENT OVER.
13 I WILL TELL YOU THE RECORD'S CLEAR THAT MR. ERCANBRACK HAS
14 NEVER SAID THAT, THAT NO ONE WHO'S SEEN THAT PIPE IN ITS
15 FINISHED CONDITION, HAS SAID THE PIPE WAS TILTED. NO ONE. NO
16 ONE.

17 THE COURT: OKAY.

18 MR. PLANT: SO THERE'S NO EVIDENCE WHATSOEVER OF THE
19 APPLICATION OF FORCE OF THIS PIPE. NONE. AND SO WE ARE LEFT
20 WITH THE SITUATION, WITH AN EXPERT UNDER THE GUISE OF EXPERT
21 TESTIMONY, COMING IN AND TESTIFYING WITHOUT ANY EVIDENCE THAT
22 THIS IS WHAT HAPPENED. THAT'S NOT WHAT EXPERTS DO. THEY RELY
23 ON EVIDENCE, AND MORE THAN JUST THEORY, THEY RELY ON THE FACTS
24 OF THE CASE AND SAY, HERE'S WHAT THOSE FACTS TELL ME. THEY
25 LOOK AT PHYSICAL EVIDENCE. THE FRACTURE SURFACE, FOR EXAMPLE.

1 THERE'S NO METALLURGICAL EVIDENCE. WE REPEATED THAT AD
2 NAUSEAM.

3 SO WE'RE LEFT WITH THE SITUATION WHERE IF MR. ALEX IS
4 ENTITLED TO COME IN HERE AND TESTIFY WE WILL BE RIGHT BACK TO
5 YOUR HONOR'S CASE THAT I GAVE YOU EARLIER, THE GOODSON CASE,
6 WHERE THAT'S EXACTLY WHAT THE COURT, THE SUPREME COURT TALKED
7 ABOUT. IN THAT CASE, AS YOU'LL RECALL, THERE WAS A QUESTION
8 ABOUT THE FACT THAT AN EXPERT WAS GOING TO SAY THAT THERE MAY
9 BE THESE CROSS MEMBERS THAT GO THROUGH AND CAUSE DAMAGE TO AN
10 ADJOINING PROPERTY AND HURT THE MORTGAGE VALUE. I DON'T NEED
11 TO TELL YOU.

12 THE COURT: I REMEMBER IT WELL NOW.

13 MR. PLANT: IT WAS YOUR CASE. AND THE COURT SAID YOU
14 CAN'T DO THAT. THAT AMOUNTS TO PURE SPECULATION BECAUSE
15 THERE'S NO EVIDENCE TO SUPPORT IT. WHETHER THIS IS A RIMMASCH
16 CLAIM, AND RIMMASCH WOULD COME IN HERE WHEN IT TALKS ABOUT THE
17 INHERENT RELIABILITY OF THE PRACTICE. THOSE ARE RIMMASCH
18 WORDS. IT HAS TO BE INHERENTLY, THE SCIENTIFIC PRACTICES HAVE
19 TO BE INHERENTLY RELIABLE. IF THEY'RE NOT, THEN IT CAN'T COME
20 IN. AND THAT'S WHAT WE'RE DOING HERE TODAY. CLOSELY RELATED
21 TO THIS IS THE PROPER FOUNDATION THAT THE GOODSON COURT TALKED
22 ABOUT.

23 THE COURT: GOING BACK TO THE RELIABILITY OF THE
24 PRACTICE, AND IT'S SCIENTIFIC, BUT IT'S BASIC EXPERT -- I MEAN,
25 SCIENTIFIC, I'M NOT SURE HOW NARROWLY TO CONSTRUE THAT TERM,

1 BUT FAILURE ANALYSIS IS A FAIRLY RECOGNIZED SKILL, PROFESSION,
2 CALL IT WHAT YOU WILL, WE ALL DEAL WITH IT A LOT.

3 MR. PLANT: RIGHT.

4 THE COURT: THERE ARE TYPES OF ACTIONS. I THINK THE
5 PLANE CRASH IS NOT A BAD ANALOGY, WHERE THERE'S LITTLE
6 EVIDENCE. THERE'S A RESULT. AND OFTEN YOU START WITH THE
7 RESULT, AND WORKING BACKWARDS, MAKE SOME ASSUMPTIONS AND THEN
8 TRY TO FIT THEM TO THE KNOWN FACTS. I MEAN, IS THAT A
9 SCIENTIFIC, OR AT LEAST A RECONSTRUCTION, I DON'T KNOW IF
10 THAT'S THE RIGHT TERM, METHODOLOGY THAT IS GENERALLY ACCEPTED,
11 OR DO YOU CONTEST THAT VERY APPROACH? REALLY, THAT'S THE HEART
12 OF DR. ALEX'S THING, IS HIS APPROACH TO --

13 MR. PLANT: THE APPROACH WOULD BE RIGHT IF,
14 UNDERSCORE AND PUT IN BOLD LETTERS, IF THERE WAS SOME EVIDENCE
15 TO SUPPORT THE FACT THAT THIS RANGE RISER ACTUALLY FAILED. IF
16 HE COULD POINT ME TO ONE THING --

17 THE COURT: WHAT ABOUT A CASE WHERE THERE'S A PLANE
18 OR THIS EXPLOSION WHERE THERE SIMPLY IS NOT GOING TO BE
19 ANYTHING LEFT? I KNOW YOU HAVE AN EXPERT TO TALK ABOUT ARREST
20 MARKS AND SOME OTHER THINGS, AND NOW THAT'S A LITTLE FUZZIER.

21 MR. PLANT: WE DISAGREE.

22 THE COURT: BUT WHAT ABOUT A CASE WHERE THE NATURE OF
23 THE EVENT SIMPLY LEAVES NO PHYSICAL EVIDENCE? DOES THAT
24 TOTALLY ELIMINATE THAT APPROACH?

25 MR. PLANT: BUT THE WHOLE PHYSICAL EVIDENCE THAT'S

1 EVER GOING TO BE HERE IS HERE. THIS ISN'T THE PLANE CRASH
2 ANALOGY.

3 THE COURT: SO WHAT YOU HAVE IS A RESULT.

4 MR. PLANT: WE HAVE A RESULT.

5 THE COURT: AND YOU HAVE CERTAIN DEDUCTIONS BASED ON
6 EXPERIENCE, EXPERIENCE THAT'S VERY SPECIFIC WHEN IT COMES TO
7 HOW FAILURES COULD OCCUR IN CERTAIN SCENARIOS. I MEAN, THIS IS
8 A TOUGH ONE. I'VE READ A LOT OF MOTIONS THIS WEEKEND AND A LOT
9 OF YOU ARE ARGUING SIMILAR THINGS.

10 MR. PLANT: RIGHT. IT'S TRUE. THEY'RE ALL RELATED
11 TO THIS VERY ISSUE.

12 THE COURT: VERY RELATED, INDEED. SO I THINK THE
13 OTHER MOTIONS WILL GO A LITTLER QUICKER, ALTHOUGH, I DON'T KNOW
14 IF WE CAN GET TO ALL OF THEM WITHOUT THE ACTUAL RIMMASCH
15 TESTIMONY, BUT I GUESS I'M STILL WONDERING, ARE YOU ATTACKING
16 THE WHOLE PROCESS OR IS IT REALLY ALL BASED ON THE EVIDENCE
17 JUST ISN'T THERE PHYSICALLY TO SUPPORT IT?

18 MR. PLANT: IF THE PROCESS IS THIS, I SEE AN
19 EXPLOSION, I LOOK UNDER THE HOUSE AND IDENTIFY THE WEAKEST
20 POINT, AND THEN DEDUCE THAT THAT HAD TO BE THE FAILURE, THEN
21 I'M ATTACKING THAT PROCESS. THAT IS NOT SCIENTIFIC. THAT'S
22 CIRCUMSTANTIAL EVIDENCE, THAT BECOMES JURY ARGUMENT BASED UPON
23 CIRCUMSTANTIAL EVIDENCE. THAT SHOULD NOT BE GIVEN AND ELEVATED
24 TO THE LEVEL OF EXPERT WITNESS TESTIMONY. DOES IT HELP THE
25 JURY UNDER RULE 702? I THINK NOT. DOES IT HELP THE JURY

1 UNDERSTAND THE ISSUES BETTER? NO. BECAUSE IT'S SHEER, TOTAL
2 SPECULATION. HE DOESN'T KNOW WHAT HAPPENED. NO ONE DOES.
3 THAT'S THEIR BURDEN OF PROOF. HOWEVER, THEY HAVE TO ESTABLISH
4 SOMETHING THAT MY CLIENT DID WRONG THAT CAUSED THIS ACCIDENT.
5 THEY HAVE NOT DONE THE CAUSE THING. THAT'S WHY I'VE STOOD UP
6 SEVERAL TIMES AND SAID, WE ACKNOWLEDGE IT WAS OVER THREADED,
7 BUT THEY HAVEN'T GONE THE EXTRA STEP AND ESTABLISHED THAT
8 CAUSATION. THAT'S WHAT NEEDS TO OCCUR HERE AND IT HASN'T. AND
9 THERE'S NOTHING SCIENTIFIC OR, IN THIS CASE, MORE APPROPRIATELY
10 FOUNDATIONAL TO SUPPORT THAT CONTENTION. IT JUST DOESN'T
11 EXIST.

12 AND SO YOU HAVE TO UNDERSTAND, YOUR HONOR, WHAT'S HE
13 GOING TO TELL THE JURY? THAT THIS IS THE WEAKEST LINK AND I
14 CAN'T THINK OF ANYTHING ELSE SO THIS IS WHERE IT BROKE?

15 THE COURT: I THINK WHAT HE'S GOING TO TELL THE JURY
16 IS, AND I ASSUME IT'S GOING TO HAVE TO BUILD ON IT AS PART OF
17 OTHER WITNESS'S TESTIMONY, THAT IF YOU ACCEPT, MEMBERS OF THE
18 JURY, THAT THE GAS COULD NOT HAVE MIGRATED, THEN THIS IS THE
19 LIKELY SCENARIO BASED ON EXPERIENCE ON HOW THESE ITEMS COULD
20 FAIL AND, IN MY OPINION, DID FAIL, AND IF THERE ISN'T THAT
21 FOUNDATIONAL TESTIMONY HE WON'T BE TELLING THEM ANYTHING.

22 MR. PLANT: BUT, YOUR HONOR, WHAT IS IT THAT HE
23 RELIES UPON THAT THIS RANGE RISER ACTUALLY FAILED? NOTHING.

24 THE COURT: WELL, HE DOESN'T EVEN SAY IT DEFINITELY
25 DID, BUT HE SAID SOMETHING DID, THEN HE GIVES A HIERARCHY OF

1 PROBABILITY, STARTING WITH THE RANGE RISER, FOR CERTAIN
2 REASONS, SUGGESTED ALTERNATIVES, BUT COMING DOWN TO IF IT
3 HAPPENED UNDER THE HOUSE, ONE OF THESE CAUSES DID, IN FACT,
4 CREATE THE LEAK. NOW, I CAN'T -- THIS IS DIFFICULT, I AGREE,
5 AND I HAVE REALLY STRUGGLED WITH THIS, BUT I THINK YOU REALLY
6 ARE COMING DOWN TO AN ISSUE OF HE'S GOT TO DO HIS FOUNDATION,
7 THE EVIDENCE HAS TO BE IN FROM THE PLAINTIFF, AND THEN IT'S
8 CROSS-EXAMINATION FOR YOU TO UNDERMINE IT. IT SEEMS LIKE
9 YOU'VE GOT PLENTY TO TALK ABOUT.

10 MR. PLANT: ADMITTEDLY, AND I HAVE GIVEN A VERY, VERY
11 SHORT VERSION OF THAT, AND I TRIED TO PUT THE REIGNS ON, BUT
12 THAT'S ANOTHER ISSUE. SO AT THE END OF THE GAME, IF DR. ALEX
13 SAYS, I HAVE NO OTHER EVIDENCE, I DON'T KNOW THAT THIS PIPE WAS
14 STRETCHED, I DON'T KNOW THAT THIS PIPE HAD A CRACK IN IT, I
15 DON'T KNOW THAT THERE WERE ANY PROBLEMS IN THE MANUFACTURING
16 PROCESS --

17 THE COURT: I COULD BE CONFUSING POINTS, BUT ISN'T
18 HIS TESTIMONY GOING TO BE, AT LEAST FROM OUR PREVIEW, THAT HE
19 DOES KNOW WE HAVE A THREADING ISSUE, AN OVER INSERTION ISSUE,
20 BASED ON HIS PROOF YOU HAVE NOT CHALLENGED, AND THAT WOULD LEAD
21 TO, IN HIS VIEW, AND RELUCTABLY, TO STRETCHING. NOW THAT'S HIS
22 OPINION. IT DOESN'T MEAN IT'S RIGHT. BUT ISN'T THAT EVIDENCE
23 BASED ON, KNOWN, WELL, IT'S NOT KNOWN, SCIENTIFIC FACTS,
24 STANDARDS, THREADS THAT HE'S X-RAYED?

25 MR. PLANT: WITH RESPECT TO THE COURT, I THINK THAT'S

1 TWO THINGS THAT ARE PUT TOGETHER.

2 THE COURT: I HOPE I'M NOT GETTING TOO CONFUSED HERE.

3 MR. PLANT: AND THAT'S OUR FAULT IF YOU ARE. THERE
4 ARE TWO SEPARATE ISSUES. THIS WHOLE BUSINESS ABOUT SHORTENING
5 OF THE PIPES DOES NOT DEAL WITH STRENGTH OF THE PIPE. THAT
6 JUST DEALS WITH THE OVERALL SHORTENING OF THE PIPE.

7 THE ISSUE THEN, WAS IT NECESSARY BECAUSE OF THAT
8 OVERALL SHORTENING TO STRETCH THIS PIPE. THAT'S THE AREA THAT
9 THERE'S NO EVIDENCE ON WHATSOEVER.

10 THE COURT: THAT COMES DOWN TO THE CONSTRUCTION OR
11 INSTALLATION ISSUES, DOESN'T IT?

12 MR. PLANT: EXACTLY.

13 THE COURT: I UNDERSTAND.

14 MR. PLANT: WELL, YOUR HONOR, WE BELABORED THIS
15 ENOUGH. MY RECORD'S CLEAR. OBVIOUSLY, YOU KNOW, TO BE VERY
16 STRAIGHT TO THE POINT WE BELIEVE THAT THE CAUSATION ISSUE, THEY
17 CAN BRING IN FRANK AND SAY IT WAS OVER THREADED, UNDER
18 INSERTED, IT WAS EVEN DIMINISHED IN A CERTAIN AMOUNT OF POUNDS,
19 IF THEY CAN ESTABLISH THE FORCE IT TOOK WAS, TO BREAK IT WAS
20 DIMINISHED, IF THEY CAN ESTABLISH THAT FOUNDATIONALLY, THAT IT
21 WOULD HAVE BEEN THE WEAKEST LINK. I'VE LOOKED AT IT. BUT THEN
22 TO GO THAT NEXT STEP AND SAY, SO IT HAD TO FAIL, IS OUR
23 PROBLEM. THAT'S WHERE THE INHERENT, IT'S NOT BASED UPON
24 INHERENTLY RELIABLE SCIENTIFIC PRINCIPLES, THEY'RE NOT BEING
25 PROPERLY APPLIED BECAUSE THEY'RE NOT EVEN HERE. AND, YOU KNOW,

1 IF WE GO TO THE THIRD STEP UNDER 403, IT SOUNDS FAMILIAR FROM
2 EARLIER TODAY, IS THAT MISLEADING TO THE JURY? CERTAINLY.
3 NOW, IF MR. D'ELIA WANTS TO GET UP AND ARGUE, BASED UPON THE
4 THINGS THAT I AGREE ON, THAT MEANS IT HAD TO COME UNDER THE
5 HOME, THAT'S FINE. THAT'S ARGUING CIRCUMSTANTIAL EVIDENCE. TO
6 HAVE AN EXPERT WITNESS COME IN AND SAY THAT IS NOW WHAT
7 HAPPENED TO MY EXPERT OPINION WHEN HE DOESN'T KNOW, IS
8 MISLEADING TO THE JURY.

9 THE COURT: WELL, HE HAS TO SAY UNEQUIVOCALLY THAT HE
10 IS WRONG, IN CIRCUMSTANTIAL EVIDENCE DOESN'T PERSUADE THE JURY,
11 BECAUSE HE CAN NOT THEN SAY THIS IS THE ONLY POSSIBLE
12 EXPLANATION. BUT FIRST THEY'LL HEAR THE EVIDENCE, THEN THEY'LL
13 SEE IF THEY'RE PERSUADED, BUT CAN HE NOT SAY -- I MEAN, EXPERTS
14 ALWAYS RELY ON SOMETHING FACTUAL AND IT'S NOT ALWAYS DIRECT
15 TESTIMONY.

16 MR. PLANT: YEAH, BUT WHEN WE GET TO A POINT OF A
17 FAILURE THERE HAS TO BE SOME EVIDENCE THAT HE RELIES ON. FOR
18 EXAMPLE, IF HE COULD POINT TO A PRODUCTION DOCUMENT AND SAID,
19 WE HAD TO PUT TOO MUCH FORCE ON IT, OR IF HE CAN LOOK AT THE --
20 THIS IS WHAT METALLURGISTS REALLY DO, LOOK AT THE FRACTURE
21 SURFACE AND SAY THERE'S --

22 THE COURT: RIGHT. I AM FOCUSSED QUITE A BIT ON
23 SOURCE OF GAS MIGRATION, BUT CERTAINLY THERE HAS TO BE EVIDENCE
24 TOO. I MEAN, IF THE ONLY EVIDENCE IS THAT WE ADAPT, WE DRILL A
25 DIFFERENT HOLE, WHERE IS THE EVIDENCE BEFORE US?

1 MR. PLANT: RIGHT.

2 THE COURT: LACKING THAT, THERE'S NO BASIS FOR THE
3 REST OF THE ARGUMENT. THAT HAS TO BE THERE TOO.

4 MR. PLANT: YOU SHOULD KNOW THIS, YOUR HONOR. HIS
5 INITIAL THING WAS WE PUT THESE THINGS UP TO THE FLOOR FIRST, SO
6 WE HAD TO BRING IT UP TO VERTICAL. THAT'S WHERE WE DID IT. HE
7 ABANDONED THAT.

8 NOW, IN HIS DEPOSITION HE SAYS, IF WE DRILLED THE
9 HOLE INSTEAD OF FORCING IT, THIS DOESN'T WORK TOO. I CAN SHOW
10 YOU IN HIS DEPOSITION WHERE HE SAYS THAT. SO THERE'S OTHER
11 THINGS. BUT THE POINT IS HE HAS TO COME IN AND SAY, WE DIDN'T
12 DRILL THE HOLE, HE HAS TO COME IN AND SAY, HERE'S THE EVIDENCE
13 TO SUPPORT MY OPINION, AND ABSENT THAT, IT'S JUST SHEER
14 SPECULATION, AS TO CAUSATION. AGAIN, VERY LIMITED, AS TO THIS
15 PIPE BREAKING.

16 THE COURT: I UNDERSTAND. YOU KNOW, ONE THING I HAVE
17 APPRECIATED FROM BOTH OF YOU, YOUR MOTIONS HAVE FOCUSSED ON
18 SPECIFIC THINGS. THEY ARE ABOUT, YOU ARE ACCEPTING WHAT YOU
19 DON'T THINK THERE IS A REAL ARGUMENT ABOUT AND YOU HAVE
20 FOCUSSED. SO I DO UNDERSTAND THAT, YOU'VE BOTH DONE THAT, BUT
21 I'VE HEARD YOUR ARGUMENT, I'VE WRESTLED WITH IT, I DID NOT EVEN
22 MAKE A PRELIMINARY DETERMINATION BEFORE HEARING THIS EVIDENCE
23 TODAY, BUT I THINK WE ARE PAST THE GATEKEEPER FUNCTION FOR
24 DR. ALEX. I THINK HE CAN TESTIFY, PROVIDED THE FACTUAL
25 PREDICATE'S IN THERE THROUGH OTHER TESTIMONY. AND IT COULD

1 CONCEIVABLY GET TO A POINT THAT EVIDENCE THAT WE'RE TOLD WE
2 WILL HEAR, IF IT DOESN'T COME IN, I WILL STRIKE DR. ALEX. I
3 KNOW THAT WOULD WORRY YOU BECAUSE STRIKING EVIDENCE ISN'T
4 ALWAYS EFFECTIVE, BUT IT WOULD BE WHAT I WOULD DO IF THE
5 EVIDENCE DOES NOT STACK UP AS I'M TOLD IT WILL. THAT IS
6 EVIDENCE ON MIGRATION OR FAILURE OF MIGRATION, EVIDENCE ON THE
7 INSTALLATION. IF THE ONLY EVIDENCE, FOR EXAMPLE, THAT COMES IN
8 IS THAT WE ADAPT, WE DRILL EXTRA HOLES, WE NEVER FORCE IT,
9 WELL, THAT'S A BIG HOLE AND I THINK WE'D HAVE TO STRIKE HIS
10 CONCLUSIONS, BUT IT'S GOT TO COME IN THAT WAY. SO I'M DENYING
11 YOUR MOTION TO EXCLUDE HIS EVIDENCE ON CAUSATION AT THIS TIME.

12 MR. PLANT: LET ME JUST CLARIFY THEN. ESSENTIALLY,
13 OUR SAME POSITION WAS AS TO THE, WE TAKE THE SAME POSITION AS
14 TO MR. OXBORROW.

15 THE COURT: MR. OXBORROW, DO YOU KNOW IF HE'S COMING
16 OR NOT?

17 MR. D'ELIA: WE DON'T PLAN ON OFFERING HIM BECAUSE
18 MR. ALEX IS IN PHYSICAL SHAPE.

19 THE COURT: HE SEEMS FINE. I MEAN, WE COULD ALL GET
20 HIT BY A TRUCK TOMORROW. I HOPE WE DON'T, BUT I KNOW YOU WANT
21 TO KEEP HIM IN RESERVE. BUT IT SEEMS LIKE HE'S RELYING A
22 LITTLE MORE ON MR. ALEX. DO WE HAVE A FURTHER ISSUE OR AM I
23 REMEMBERING --

24 MR. PLANT: WELL, GERRY'S TOLD ME HE DOESN'T, SO LONG
25 AS FRANK IS ABLE PHYSICALLY TO BE HERE.

1 YOU WON'T BE IN THE COURTROOM.

2 MR. KARRENBERG: I GOT NO PROBLEM WITH THAT, YOUR
3 HONOR.

4 THE COURT: JUST REMEMBER. I THINK YOU KNOW THE
5 DIFFERENCE.

6 MR. PLANT: WHAT'D HE DO? I'D LIKE TO KNOW.

7 THE COURT: I DON'T THINK HE AGREED WITH WHAT YOU
8 WERE SAYING.

9 MR. HITT: CIRCUMSTANTIAL EVIDENCE IS INADMISSIBLE.

10 MR. D'ELIA: SO IT'S NON-VERBAL.

11 MR. KARRENBERG: IF HE'S SAYING CIRCUMSTANTIAL
12 EVIDENCE I WAS WONDERING WHAT WE WERE DOING HERE.

13 THE COURT: I DON'T WANT ANYONE TO BE SURPRISED IF I
14 GET THAT SORT OF CONDUCT WHEN YOU GET OUT OF KICKED OUT OF A
15 COURTROOM DON'T SAY I WASN'T TOLD. OKAY.

16 MR. KARRENBERG: JUDGE, DID THEY EVER KICK YOU OUT OF
17 THE COURTROOM AND NO JUDGE EVER HAD A REASON TO DO IT?

18 THE COURT: YOU BET THEY HAVE. BUT THEY'VE
19 RESTRAINED THEMSELVES.

20 MR. KARRENBERG: HOW MUCH?

21 THE COURT: I DIDN'T SAY IT DIDN'T HAPPEN,
22 MR. KARRENBERG. I SAID I BET THEY HAD A REASON.

23 MR. PLANT: MY ONLY POINT AS TO THATCHER, I THINK
24 WHAT MR. D'ELIA AND I ARE AGREEING UPON IS HE IS NOT GOING TO
25 BE OFFERED TO TALK ABOUT --

1 MR. D'ELIA: WHAT I SAID BEFORE, YOUR HONOR, HOLDS
2 COMPLETELY WHEN I MADE AN OPENING STATEMENT. THE TESTING OF
3 ROMIG, THATCHER, THATCHER AND FINOCCHARIO IS GOING TO PLACE THE
4 LEAK INSIDE THE CRAWL SPACE AT ONE OF THE THREE FRACTURED
5 BROKEN PIPE. PERIOD. THAT'S WHERE ALEX PICKS UP AND TAKES
6 OFF. SO WE AREN'T TRYING TO SAY THAT THATCHER'S GOING THE
7 SAY --

8 THE COURT: THATCHER'S NOT GOING TO SAY WHAT IT
9 LEAKED FROM UNDER THE CRAWL SPACE.

10 MR. D'ELIA: HE'S GOING TO SAY IT HAD HAVE TO BE ONE
11 OF THE THREE --

12 THE COURT: YOUR MOTION DOESN'T GO TO THAT.

13 MR. PLANT: WELL, IT REALLY DOES.

14 THE COURT: WELL, HE CAN'T GET INTO ONE OF THE THREE.
15 HE CAN SAY IT DIDN'T MIGRATE.

16 MR. D'ELIA: BUT HE ALSO CAN SAY --

17 THE COURT: HE CAN'T SAY IT IS ONE OF THE THREE.

18 MR. PLANT: THAT'S MY PROBLEM.

19 MR. D'ELIA: BECAUSE TERRY'S LOSING SIGHT. REMEMBER
20 WHEN I SAID TO YOU THAT MR. THATCHER, AND MR. ALEX SAID HE
21 RELIED UPON IT, MR. THATCHER SAID, YOU KNOW, THERE ARE NO LEAKS
22 IN THE THREADING OR ANY PLACE ELSE TO ACCOUNT FOR THE GAS
23 UNDERNEATH. THAT'S IMPORTANT BECAUSE THAT ELIMINATES ANY
24 THREADING LEAK BECAUSE HE'S THE PERSON THAT'S BEEN DOING
25 PROPANE FOR LONG ENOUGH THAT HE ACTUALLY OPENED THINGS UP, LET

1 THINGS LEAK, AND YOU CAN'T GET ANY KIND OF ACCUMULATION. SO
2 THEN IT NARROWS IT TO THE THREE BROKEN PIPE. THAT'S ALL HE
3 DOES. THEN HE WALKS AWAY AND SAYS IT'S YOURS FROM THERE, ALEX.

4 THE COURT: IT NARROWS IT BUT HE SHOULDN'T BE THE ONE
5 TO OPINE IT'S FROM ONE OF THE THREE PIPES. I DON'T THINK. I
6 THINK HE'S GONE JUST A LITTLE BIT BEYOND THE LINE AT THAT
7 POINT. HE DOESN'T NEED TO DO THAT. HE IS THE BASIS FOR THOSE
8 WHO DO THE PIPE.

9 MR. D'ELIA: COULDN'T HAVE BEEN IN THE CRAWL SPACE,
10 NUMBER ONE, FROM THE TESTS; NUMBER TWO, COULDN'T HAVE BEEN FROM
11 ANY OTHER SOURCE OF A LEAK IN THE PIPE -- WELL SEE, THE PROBLEM
12 IS --

13 THE COURT: WHERE DID HE GET THAT?

14 MR. D'ELIA: WELL SEE, HE TESTED, HE'S LOOKED AT ALL
15 OF THE THREADS AND, YOU KNOW, THIS IS SOMETHING THAT REALLY
16 ISN'T AN ISSUE --

17 MR. PLANT: I AGREE.

18 MR. D'ELIA: -- BECAUSE MR. PLANT'S WITNESSES ARE
19 GOING TO SAY THE EXACT SAME THING, THAT THERE IS NO OTHER
20 PLACE --

21 MR. PLANT: WE AGREE HERE, JUDGE. YOU'RE PREACHING
22 TO THE CHOIR. THERE IS NO EVIDENCE THAT AFTER --

23 MR. D'ELIA: I'M NOT PREACHING TO THE CHOIR, BUT AT
24 LEAST WE DON'T DISAGREE ON THIS ONE.

25 MR. PLANT: THE POINT IS, THE EVIDENCE IS CLEAR, AND

1 I THINK IN A STIPULATED FACT IS THAT AFTER THE ACCIDENT NONE OF
2 THE JOINTS UNDER THE HOME LEAKED.

3 MR. D'ELIA: SUFFICIENT ENOUGH TO HAVE CAUSED THE
4 EXPLOSION.

5 MR. PLANT: PERIOD. THEY DIDN'T LEAK.

6 MR. D'ELIA: ONE OF THEM DID LEAK VERY, VERY LIGHTLY
7 BUT IT WAS AT THE --

8 THE COURT: BUT YOU ARE NOT GOING TO USE THAT LEAK TO
9 PERSUADE THE JURY.

10 MR. D'ELIA: OH NO, NOT AT ALL.

11 MR. PLANT: SO THE POINT IS, THAT DOESN'T HAVE TO
12 COME IN. WE WILL STIPULATE TO THAT.

13 THE COURT: LET'S BE CLEAR. THAT COULD BE CONFUSING
14 IF WE START GOING ABOUT IT IN A MINOR LEAGUE HERE. I DON'T
15 KNOW IF IT IS CONFUSED MORE.

16 MR. PLANT: RIGHT. MY UNDERSTANDING, GERRY, AND
17 FRANK CAN PROBABLY CLARIFY IT DIDN'T LEAK, BUT IF THAT'S
18 IMPORTANT TO YOU DON'T STIPULATE, BUT WHAT I HEAR YOU SAYING
19 IS, WE AGREE THERE WERE NO POST-EXPLOSION LEAKS AT THE JOINTS
20 IN THE OAKWOOD PROVIDED PIPING.

21 MR. D'ELIA: WELL, YOU'RE MISSING. THERE WAS ONE
22 SMALL LEAK THAT WAS DONE AT A TEST. AND WHAT HAPPENED WAS --

23 MR. PLANT: THAT WAS OUTSIDE, RIGHT?

24 MR. D'ELIA: -- TESTIMONY AS TO WHETHER OR NOT IT
25 ACTUALLY SCREWED DOWN OR SCREWED OPEN. REMEMBER, YOU WERE

1 ASKING A LOT OF DIFFERENT THINGS?

2 MR. PLANT: THAT WAS OUTSIDE, GERRY. THAT'S OUTSIDE.
3 THAT WAS OUTSIDE ON THE REGULATOR BOX.

4 MR. D'ELIA: WE ARE GOING TO STIPULATE THAT THAT
5 COULDN'T HAVE BEEN A CAUSE, RIGHT?

6 MR. PLANT: NO, WHAT I'M TELLING YOU --

7 MR. D'ELIA: YOU ARE NOT STIPULATING TO THAT.

8 MR. PLANT: LET'S DO THIS ONE STEP AT A TIME SO WE'RE
9 CLEAR. THERE WERE NO LEAKS PRE-ACCIDENT IN THE OAKWOOD
10 PROVIDED PIPING AT ANY JOINTS. THAT'S WHAT I'M ASKING. HENCE,
11 IT'S NOT AN ISSUE, NO ONE NEEDS TO TALK ABOUT THAT.

12 MR. D'ELIA: THAT'S WHAT WE'RE SAYING.

13 THE COURT: IT'S SOMETHING THAT CAME OUT BUT I DON'T
14 HEAR ANY REASON TO BRING IT IN, AND I THINK IT WOULD BE
15 CONFUSING IF YOU DID, SO ARE WE GOING TO AGREE NOT TO?

16 MR. D'ELIA: NOT WORRIED ABOUT IT. HE IS GOING TO
17 PUT IT INTO POSITION WHERE FRANK ALEX PICKS UP ON THE THREE
18 FRACTURES.

19 THE COURT: BUT HE'S NOT GOING TO TALK ABOUT IT'S
20 GOING TO LEAK.

21 MR. D'ELIA: WELL, WE ARE GOING TO STIPULATE THERE
22 WERE NO LEAKS. DON'T GET ME WRONG.

23 THE COURT: I WANT A REALLY CLEAR RECORD HERE. DO WE
24 HAVE AN ISSUE ABOUT LITTLE LEAK OR DO WE?

25 MR. D'ELIA: NO. THE LITTLE LEAK, WE ALL AGREE,

1 COULD NOT HAVE CAUSED THE EXPLOSION.

2 THE COURT: THEN LET'S NOT TALK ABOUT IT PERIOD.

3 MR. D'ELIA: THEN WE CAN STIPULATE THAT THERE ARE NO
4 LEAKS IN ANY OF THE THREADS OF THE GAS PIPE, AS YOU SAID,
5 UNDERNEATH THE CRAWL SPACE OR MANUFACTURED BY OAKWOOD.

6 MR. PLANT: SO LONG AS THE LAST PART IS UNDERSTOOD,
7 IN ANY OF THE OAKWOOD PROVIDED PIPING. CAUSE THERE WAS A LEAK
8 OUTSIDE IN THE REGULATOR BOX.

9 THE COURT: AND THERE MAY BE IN YOUR MIND AN ISSUE
10 ABOUT ANOTHER PIPE.

11 MR. PLANT: EXACTLY.

12 THE COURT: AND THAT'S SEPARATE.

13 MR. D'ELIA: WHICH WILL BE TAKEN UP AT ANOTHER TIME.

14 MR. PLANT: SO THERE'S NO NEED FOR MR. THATCHER TO
15 COME IN AND TALK ABOUT THE LEAKS. SO ALL HE CAN SAY, AS I
16 UNDERSTAND IT, IS IN HIS OPINION THE GAS LEAK COULD NOT HAVE
17 COME FROM AN OUTSIDE SOURCE, OUTSIDE OF THE CRAWL SPACE.

18 MR. D'ELIA: RIGHT. AND THEN WE STIPULATE THAT THERE
19 WERE NO LEAKS, THAT IT COULD HAVE COME FROM IN THE THREADING,
20 AND THEN WE'RE INTO ALEX'S THREE FRACTURES.

21 THE COURT: SO BY STIPULATION AND THE COURT'S OWN
22 UNDERSTANDING, I THINK, I'M RULING ON THE THATCHER MOTION.
23 NOW, HE HAD AN OPINION THAT BECAUSE THE EXPLOSION OCCURRED AND
24 BECAUSE THREE PIPES WERE FOUND IN THE CRAWL SPACE COMPLETELY
25 SEVERED ONE PIPE MUST HAVE CRACKED. HE'S NOT GOING TO GET TO

1 THAT. HE'S GOING TO TALK ABOUT HOW SUFFICIENT COULD NOT HAVE
2 ACCUMULATED FROM OUTSIDE, ET CETERA, ET CETERA.

3 MR. D'ELIA: RIGHT. BUT THERE IS GOING TO BE A
4 STIPULATION THAT THERE WAS NO LEAK UNDERNEATH IN ANY OF THE
5 THREADS.

6 MR. PLANT: WELL, I WILL TELL YOU. LET ME BE CLEAR.
7 THERE MAY, MY STIPULATION, THE PIPING THAT OAKWOOD PROVIDED, IF
8 I CAN JUST SHOW THE COURT. I DON'T WANT THIS TO BECOME A
9 SOURCE OF PROBLEM IN THE FUTURE. OUR PIPING ENDS HERE. WE
10 PROVIDE THE HOME. THIS IS THE INLET. AND IT GOES LIKE THIS.
11 IT GOES OVER TO THE RANGE RISER.

12 THE COURT: IT ENDS THERE, AS IN JUST BEFORE SOMEONE
13 HOOKS ON THE REGULATOR, AND THAT'S DONE WITH THE SUPPLY
14 COMPANIE'S OWN --

15 MR. PLANT: RIGHT. AND HERE'S THE PROBLEM. AND I
16 WANT GERRY TO UNDERSTAND. NO ONE, NO ONE HAS ADMITTED TO
17 PUTTING ON THE STUB OUT PIPE THAT WENT THROUGH THE CINDER BLOCK
18 SKIRTING. NO ONE HAS -- AND IF WE HAD THE ACTUAL ONE YOU'D SEE
19 THERE'S A 90 DEGREE ANGLE ON THE END OF THAT, AND THEN ANOTHER
20 SIX OR SEVEN INCH PIPE THERE. FROM HERE, WE HAVE SEVEN, AND WE
21 HAVE ABOUT 19 INCHES OF PIPE AND TWO ELBOWS, THAT NO ONE HAS
22 SAID THEY PUT ON. THEY DON'T EXIST. SO OUR STIPULATION GOES
23 FROM HERE DOWN, BUT NOT FROM HERE OUT.

24 THE COURT: AND YOU WANT TO TALK ABOUT THE 19 INCHES?

25 MR. D'ELIA: HOLD ON, BEFORE HE PUTS THAT DOWN. SEE

1 THIS? HE SAYS I AM NOT STIPULATING TO THAT. AND SEE THAT?
2 THAT'S UNDERNEATH THE CRAWL SPACE.

3 MR. PLANT: I AGREE.

4 MR. D'ELIA: SO THEREFORE WE HAVE GOT A PROBLEM.
5 THAT'S WHY I KEEP COMING BACK TO THAT.

6 MR. PLANT: THAT'S WHY I WANT TO BE CLEAR, GERRY.
7 BELIEVE IT OR NOT I'M ACTUALLY TRYING TO MAKE THIS CLEAR TO
8 BOTH OF US.

9 THE COURT: OKAY.

10 MR. PLANT: THE CINDER BLOCK WALL STARTS RIGHT HERE.

11 THE COURT: SO THAT'S UNDERNEATH?

12 MR. PLANT: WHAT I'M TALKING ABOUT IS THAT NONE OF
13 OUR OAKWOOD PROVIDED JOINTS LEAKED. THAT'S THE STIPULATION.
14 BUT FROM HERE ON OUT --

15 MR. D'ELIA: YOU DON'T MAINTAIN THAT THAT LEAKED TO
16 CAUSE THE EXPLOSION, DO YOU?

17 MR. PLANT: WELL --

18 MR. D'ELIA: YOU DON'T, DO YOU?

19 MR. PLANT: SURE.

20 MR. D'ELIA: OH, YOU CLAIM THAT NOW?

21 MR. PLANT: GERRY, I'VE NEVER SAID I DIDN'T.

22 THE COURT: IT DOESN'T SOUND LIKE THERE IS A
23 STIPULATION THERE.

24 MR. PLANT: THE STIPULATION IS, FROM HERE ON IN, BUT
25 NOT FROM HERE ON OUT.

1 THE COURT: THAT'S FINE. BUT IT STILL LEAVES AN
2 ISSUE OPEN. BUT DOES THATCHER GET TO THAT PORTION? I DON'T
3 THINK HE DOES.

4 MR. PLANT: NO, HE DOESN'T.

5 MR. D'ELIA: HE DOES. THAT'S THE PROBLEM.

6 THE COURT: NOT IF IT'S UNDER THE CRAWL SPACE. WHAT
7 DOES THATCHER KNOW ABOUT UNDER THE CRAWL SPACE?

8 MR. D'ELIA: HE CAN TELL YOU THAT FROM SUBSEQUENT
9 TESTING, NUMBER ONE, IT DID NOT LEAK, AND NUMBER TWO, EVEN IF
10 IT DID LEAK IT COULDN'T HAVE CAUSED THE EXPLOSION. SEE, THAT'S
11 WHAT I'M SAYING.

12 MR. PLANT: I AGREE.

13 MR. D'ELIA: I KEPT SAYING --

14 MR. PLANT: HE CAN TESTIFY TO THAT.

15 THE COURT: HE CAN TESTIFY THAT IS THE EVIDENCE AS
16 FAR AS THE TESTING, IT DID NOT LEAK, OR THE LEAK IS SO SMALL IT
17 COULD NOT CAUSE -- OR DO YOU DISAGREE?

18 MR. D'ELIA: THAT'S WHAT I JUST ASKED HIM. I SAID,
19 ARE YOU GOING TO STIPULATE TO THAT TOO AND HE SAID NO.

20 MR. PLANT: GERRY -- WHAT HAPPENED, I WISH WE HAD THE
21 REAL PIPE HERE. IF WE HAD THIS, YOU'LL SEE THAT THIS PIPE
22 COMES OUT LIKE THIS AND IT'S BENT UP LIKE THIS. THEIR
23 TESTIMONY IS THAT WHEN, AT THE TIME OF THE EXPLOSION, IT WAS
24 DOWN. SO THIS PIPE WAS ACTUALLY TIGHTENED A QUARTER, ALMOST A
25 HALF A TURN. WHO KNOWS WHAT HAPPENED BEFORE THAT, BEFORE THE

1 TIGHTENING, CAUSED BY THE EXPLOSION UNDER THEIR SCENARIO,
2 CONCERNING WHETHER OR NOT THIS JOINT LEAKED. OAKWOOD DIDN'T
3 MAKE THIS CONNECTION.

4 THE COURT: I'M AWARE OF OAKWOOD'S THEORIES ABOUT A
5 SOURCE OUTSIDE THE HOUSE. THE REGULATOR, ET CETERA. BUT DO
6 YOU ACTUALLY HAVE A THEORY THAT A LEAK AT THAT PLACE, THAT
7 LOCATION, WAS A CAUSE AND IT MIGRATED?

8 MR. PLANT: WHAT I WANT TO DO IS JUST LEAVE THAT
9 ISSUE OPEN, BECAUSE IT IS THEIR THEORY THAT THERE WAS A
10 TIGHTENING OF THE PIPE AS A RESULT OF THE EXPLOSION.

11 THE COURT: IF YOU LEAVE IT OPEN WHAT'S YOUR POSITION
12 ON WHETHER THATCHER HAS ANYTHING TO ADD ON THAT? IF HE'S DONE
13 THE TESTING, HE CAN TESTIFY TO THE TESTING.

14 MR. PLANT: I AGREE. HE CAN TESTIFY WHETHER OR NOT
15 THAT LEAKED --

16 THE COURT: BUT I DON'T THINK THAT WAS THE SUBJECT OF
17 YOUR MOTION IN LIMINE.

18 MR. PLANT: NO. AGAIN, MY MOTION GOES TO --

19 THE COURT: YOU REALLY DON'T WANT HIM TO BE ANOTHER
20 VERSION OF ALEX.

21 MR. PLANT: EXACTLY?

22 MR. D'ELIA: YOU KNOW, ONE OF THE THINGS WE JUST HIT
23 ON, IS SUDDENLY HE RAISES SOMETHING FROM WHERE THERE'S NO
24 TESTIMONY FOR, YOU BETTER RUN A RIMMASCH MOTION ON THAT AS WELL
25 BECAUSE HE'S NEVER CLAIMED IT BEFORE AND NONE OF HIS EXPERTS

1 HAVE EVER SAID IT.

2 THE COURT: THAT'S SOUNDS LIKE FOUNDATION.

3 MR. PLANT: THAT'S RIGHT. IF I GET IT IN, I DO, IF I
4 DON'T, I DON'T.

5 MR. D'ELIA: WAIT A MINUTE. YOU MEAN I'M NOT
6 ENTITLED TO THE THEORY OF THE EXPLOSION PRIOR TO TRIAL?

7 THE COURT: I DON'T THINK THAT'S WHAT I'M SAYING.
8 I'M SAYING YOU SAID IF THERE IS NO FOUNDATION IT WON'T COME IN.
9 NOW, AS FAR AS HIS THEORY, I THOUGHT YOU TWO HAD BEEN TALKING A
10 LITTLE BIT THE LAST SEVERAL YEARS. SO IS THIS A NEW THEORY,
11 MR. PLANT?

12 MR. PLANT: IT IS NOT A NEW THEORY IN MY MIND.

13 THE COURT: IN YOUR MIND.

14 MR. D'ELIA: BRAND NEW TODAY.

15 MR. PLANT: IT IS ONE I'VE COME UP WITH WHEN THATCHER
16 STARTED TALKING ABOUT THE PIPE TIGHTENING DURING THE --

17 THE COURT: I THINK MR. D'ELIA AND MR. KARRENBURG IS
18 CERTAINLY ENTITLED TO KNOW ANY THEORY, BUT WHO IS IT GOING TO
19 COME THROUGH?

20 MR. PLANT: THATCHER, AND/OR OUR EXPERT IF --

21 THE COURT: SO YOU ON CROSS WITH THATCHER.

22 MR. PLANT: RIGHT. MY POINT IS, IS THIS WHERE WE ARE
23 GOING TO WIN OR LOSE OUR CASE? NO.

24 THE COURT: IT DOESN'T SOUND LIKE IT. YOU JUST DON'T
25 WANT TO GIVE IT UP --

1 MR. PLANT: BINGO.

2 MR. KARREBERG: IF HE'S GOING TO ASK MR. THATCHER IF
3 YOU THINK IT COULD COME OUT OF THERE, AGAIN THIS IS THATCHER
4 SAYING NO, I THINK IT CAME OUT OF OVER HERE.

5 THE COURT: I BEG YOUR PARDON?

6 MR. KARREBERG: IF HE'S GOING TO ASK MR. THATCHER,
7 HAVE YOU GOT A THEORY WHERE IT COULD HAVE COME OUT OF HERE, A
8 CHANCE FOR THATCHER TO SAY NO, I THOUGHT IT CAME OUT OF HERE.

9 THE COURT: WELL, YOU'VE HEARD OF OPENING THE DOOR.

10 MR. KARREBERG: THAT'S WHAT I MEAN.

11 THE COURT: OPEN THE DOOR OR THE CRAWL SPACE AS WELL.

12 MR. PLANT: SO LONG AS HE HAS FOUNDATION I DON'T
13 CARE.

14 MR. D'ELIA: THAT'S WHY WHEN WE STARTED, I SAID GEE,
15 WHAT HE'S SAYING DOESN'T MESH.

16 THE COURT: I WANT TO MAKE ANOTHER THING CLEAR ON
17 OPENING THE DOOR. IT HAPPENS. BUT IF YOU THINK A DOOR HAS
18 BEEN OPENED, APPROACH THE BENCH AND MAKE SURE I THINK IT'S BEEN
19 OPENED. I BELIEVE I SEE THE SAME THING YOU DO.

20 MR. KARREBERG: THAT'S ABSOLUTELY CORRECT.

21 MR. D'ELIA: BUT I'LL TELL YOU ONE THING. NOW THAT
22 WE ARE DONE WITH FRANK ALEX I WISH I COULD BOTTLE MR. PLANT'S
23 ARGUMENT AND JUST REPLAY IT FOR YOU EVERY TIME THE RIMMASCH
24 COMES ON FOR HIS OWN EXPERTS.

25 THE COURT: THERE'S A SIMILARITY, CERTAINLY.

NO FILED
IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

Deputy Clerk, Summit Court

* * *

ORIGINAL

WILLIAM G. ERCANBRACK,)
)
) PLAINIFF,) CASE NO. 980600223
)
) VS.) TRANSCRIPT OF:
)
) OAKWOOD MOBILE HOMES, INC.) TRIAL
) (A NORTH CAROLINA CORP) AND)
) HOMES BY OAKWOOD INC., (A) DAY 11
) NORTH CAROLINA CORP.),)
) DEFENDANT.)

BEFORE THE HONORABLE ROBERT K. HILDER

SILVER SUMMIT DISTRICT COURT
6300 N. SILVER CREEK DRIVE
PARK CITY, UTAH 84098

APRIL 10, 2002

REPORTED BY: EILEEN M. AMBROSE, CSR

0701.

P R O C E E D I N G S

1
2 THE COURT: GO AHEAD AND BE SEATED, PLEASE. I THINK
3 WE HAVE TO ADDRESS ALL THE REMAINING LOOSE END MOTIONS BEFORE
4 WE CAN REALLY FOCUS ON THE LAST INSTRUCTIONS AND THE VERDICT
5 FORM. SO I THINK WE REALLY NEED TO GET TO YOUR MOTION FOR
6 DIRECTED VERDICT, MR. PLANT.

7 MR. PLANT: I THINK SO TOO, YOUR HONOR. AND I'LL BE
8 HAPPY TO DO THAT NOW.

9 THE COURT: OKAY.

10 MR. PLANT: AGAIN, FOR THE RECORD, THIS MOTION WAS
11 PRESERVED AT THE END OF PLAINTIFF'S CASE. I THINK THE RECORD
12 IS ABUNDANTLY CLEAR ON THAT BUT I WANTED TO MAKE SURE.

13 THE COURT: IT WAS.

14 MR. PLANT: YOUR HONOR, LET ME TELL YOU, THERE'S
15 SEVERAL BASES FOR THE MOTION, ONE OF WHICH, GOES TO SOMETHING
16 RATHER SIMPLE. THE PLAINTIFFS HAVE SUED OAKWOOD MOBILE HOMES,
17 INCORPORATED AND HOMES BY OAKWOOD. AND THEY HAVE FAILED TO
18 PRODUCE PROPER EVIDENCE TO ALLOW THE JURY TO ASSESS THE ROLE OF
19 EACH OF THOSE DEFENDANTS IN THIS CASE.

20 SPECIFICALLY, THEY HAVE PRODUCED NO EVIDENCE
21 WHATSOEVER OF WHAT EACH ONE DID. THERE'S BEEN SOME PRESUMPTION
22 MADE, BUT THERE'S BEEN NO TESTIMONY OR OTHER EVIDENCE TO
23 SUPPORT IF EITHER OF THOSE PARTICULAR DEFENDANTS DID ANYTHING
24 IN THIS CASE. AND IT'S THAT LACK OF SPECIFICITY AND LACK OF
25 EVIDENCE I MAINTAIN THAT WILL REQUIRE THAT THE JURY GO IN AND

1 SPECULATE AS TO THE RESPECTIVE ROLES, IF ANY, OF THOSE
2 DEFENDANTS. IT'S THEIR BURDEN TO ESTABLISH A CASE AGAINST
3 PEOPLE THAT THEY NAMED. AND I BELIEVE UNDER THE STATE OF THE
4 EVIDENCE IN THEIR CASE IN CHIEF THEY DIDN'T DO THAT. I WON'T
5 BELABOR THAT POINT BEYOND THAT.

6 THE COURT: I'LL LOOK FORWARD TO A RESPONSE.
7 MR. D'ELIA WAS NOT HERE FOR THAT ARGUMENT, AS IT WAS AT LEAST
8 FORESHADOWED LAST NIGHT, SO I'D LIKE TO HEAR HIS RESPONSE.

9 MR. PLANT: THANK YOU. AND THE OTHER ISSUE, AND I
10 THINK THIS GOES TO THE SUBSTANTIVE EVIDENCE. YOUR HONOR, AS
11 YOU POINTED OUT, AS WE'VE DISCUSSED THIS CASE, WHAT WE CAN NOT
12 ALLOW US TO DO, THIS JURY TO DO, AND IT REALLY BECOMES YOUR
13 PROVINCE AS THE JUDGE IN THIS MATTER, IS TO SPECULATE. AND
14 ONCE THEY BECOME, THEY START TO SPECULATE, THEN WE LOSE THE
15 CREDIBILITY AND THE RELIABILITY OF A JURY BECAUSE EVERYTHING
16 GOES. AND WHAT WE HAVE HERE, IT'S THE BURDEN OF PROOF OF THE
17 PLAINTIFFS TO PROVE THAT OAKWOOD, THAT SOMEBODY, WHOEVER THEY
18 SAY DID IT, BUT SOME DEFENDANT, DID SOMETHING WRONG, BE IT
19 NEGLIGENCE, BE IT BREACH OF WARRANTY, OR PRODUCTS LIABILITY,
20 THAT CAUSED THEIR CLAIMED DAMAGES. THIS IS REALLY A CAUSATION
21 ISSUE.

22 WHAT THERE IS ON THAT, KEEPING IN MIND THE SPECIFIC
23 BURDEN THAT THEY HAVE, IS THAT THE WRONG, OR THE BAD THING, IF
24 YOU WILL, BE IT AGAIN PRODUCTS LIABILITY OR WHATEVER, IS THAT
25 ONE PIPE WAS OVER-THREADED. THEY MAINTAIN THAT PIPE MAY HAVE

1 BROKEN BEFORE THIS ACCIDENT. NOW THAT'S THEIR PROOF. THAT'S
2 WHAT THEY'VE CHOSE TO ESTABLISH AS THE --

3 THE COURT: NOW, LET'S BE REAL CAREFUL OF THAT TERM.
4 I KNOW WE STRUGGLE WITH THIS. THAT THERE'S THEIR PROOF OR
5 THAT'S THEIR PHYSICAL EVIDENCE?

6 MR. PLANT: THANK YOU, YOUR HONOR. EVEN AS I SAID
7 THAT I RECOGNIZED THAT'S THE WRONG WORD. THAT'S WHAT THEY'VE
8 ESTABLISHED AS THE BAD ACT, THE NEGLIGENCE, THE PRODUCTS
9 LIABILITY, OR THE BREACH OF WARRANTY. THAT THAT PIPE,
10 THAT RANGE RISER --

11 THE COURT: WELL, EVEN THAT, THAT'S PHYSICAL
12 EVIDENCE. BUT IF THEIR THEORY'S RIGHT, WOULDN'T THE BAD ACT,
13 AS YOU CALL IT, AND I DON'T KNOW THAT IT HAS TO BE BAD,
14 NEGLIGENCE, WHATEVER, WOULDN'T IT WOULD BE, IF THEY DID IT, THE
15 FORCING OF THE PIPE, THE OVER INSERTION, THE FAILURE, IF
16 THEY'RE RIGHT, TO REDRILL AND DO IT DIFFERENTLY? I MEAN, THEY
17 WOULD BE THE ACTS, BUT THE PHYSICAL EVIDENCE IS THE THREADS.

18 MR. PLANT: CORRECT. I THINK WE'RE SAYING THE SAME
19 THING.

20 THE COURT: I JUST WANT TO BE REALLY CLEAR.

21 MR. PLANT: I APPRECIATE THE COURT CLARIFYING THAT.
22 AND IT'S VERY HELPFUL. WE HAVE BEEN DOING THIS LONG ENOUGH, IF
23 YOU'LL HELP ME SO WE'RE BOTH TALKING ABOUT THE SAME THING,
24 THAT'S HELPFUL. BUT WHAT THE POINT IS HERE, YOUR HONOR, IS
25 THERE'S NO EVIDENCE WHATSOEVER BEFORE THIS COURT THAT THAT PIPE

1 FAILED BEFORE THIS EXPLOSION OCCURRED. NONE.

2 NOW, THEY'VE PUT ON EVIDENCE THAT IT MAY HAVE BEEN
3 INSTALLED WRONG BUT THEY HAVE NOT PRODUCED ANY EVIDENCE, ZERO,
4 ZIP, NADA, THAT THERE WAS A FAILURE OF THAT PIPE BEFORE THE
5 ACCIDENT OCCURRED.

6 THE COURT: SO IT'S YOUR UNEQUIVOCAL POSITION THAT
7 EVIDENCE OF OVER THREADING AND/OR OVER INSERTION, COUPLED WITH
8 THE FACT THAT THE EXPLOSION OCCURRED, WHICH IS A FACT, COUPLED
9 WITH THEIR EXPERTS SAYING ALL THEY DO ABOUT ACCUMULATION, ALL
10 THESE ISSUES, THAT'S NOT EVIDENCE OF FRACTURE?

11 MR. PLANT: ABSOLUTELY NOT. WHAT THEY NEED TO SAY IS
12 THAT THERE IS EVIDENCE THAT PRIOR TO THIS EXPLOSION, THEY CAN
13 POINT TO SAY SOMETHING THAT THIS DID, OR AT LEAST TO A
14 REASONABLE DEGREE OF ENGINEERING, PROBABILITY DID FAIL. ALL
15 THEY HAVE IS A BACKWARDS ARGUMENT, A NONSCIENTIFIC BACKWARDS
16 ARGUMENT. THE EXPLOSION OCCURRED --

17 THE COURT: WHAT'S YOUR POSITION ON WHETHER A
18 BACKWARDS ARGUMENT CAN EVER BE USED? ISN'T A BACKWARDS
19 ARGUMENT SOME KIND OF CIRCUMSTANTIAL EVIDENCE ARGUMENT OR A
20 PRODUCTIVE BASED ON THE STATE OF OTHER EVIDENCE AND EXPERTISE
21 ARGUMENT?

22 MR. PLANT: BUT THERE'S NO EVIDENCE, YOUR HONOR. AND
23 KEEP IN MIND, THIS HAS TO BE TO A PREPONDERANCE OF THE
24 EVIDENCE.

25 THE COURT: I GUESS THAT THAT DEFINITION OF EVIDENCE,

1 I REALLY WANT TO MAKE SURE WE'RE ALWAYS TALKING ABOUT THE SAME
2 THING.

3 MR. PLANT: AGREED. IT REALLY GOES TO THE HEART OF
4 THEIR CASE. AND THAT'S FRANK ALEX'S TESTIMONY. BECAUSE THEY
5 NEED SOMEONE TO COME IN HERE AND SAY, HERE'S THE THING THAT
6 OAKWOOD DID THAT CAUSED, AND THAT'S REALLY WHAT THIS IS GOING
7 TO, CAUSED THIS ACCIDENT TO OCCUR. AND THEY HAVE NOTHING.
8 MR. ALEX COULD NOT POINT TO ANY EVIDENCE WHATSOEVER, NONE, THAT
9 THIS PIPE FAILED, OTHER THAN AN EXPLOSION OCCURRED.

10 NOW, IF THIS JURY GOES BACK THERE AND DELIBERATES ON
11 THAT EVIDENCE, THEY ARE FORCED TO SPECULATE. THAT'S ALL THEY
12 CAN DO. BECAUSE WHAT THEY HAVE -- WELL, WE KNOW THERE'S
13 EVIDENCE THAT IT HAD TO COME IN FROM OUTSIDE. THAT DOES NOT
14 ESTABLISH OAKWOOD DID ANYTHING WRONG. WE KNOW THERE'S EVIDENCE
15 OF AN EXPLOSION. THE ACCIDENT, STANDING ALONE, DOES NOT
16 ESTABLISH ANYTHING.

17 THE COURT: STANDING ALONE DOES NOT. I AGREE.

18 MR. PLANT: DOES NOT. SO WHAT THEY HAVE TO COME AND
19 DO IS THEY HAVE TO SAY THERE'S EVIDENCE, THERE'S EVIDENCE THAT
20 OAKWOOD'S ACTIONS, HOWEVER YOU QUANTIFY IT OR QUALIFY IT, DID
21 CAUSE THIS EXPLOSION. AND THEY HAVE FAILED MISERABLY IN THAT
22 REGARD IN TERMS OF THEIR PROOF. AND I DON'T MEAN ANYTHING
23 PERSONAL BECAUSE I DON'T WANT PEOPLE EXPLODING --

24 THE COURT: I UNDERSTAND IT IS A LEGAL ARGUMENT AND
25 WE'LL KEEP IT THAT WAY.

1 MR. PLANT: RIGHT. SO, YOUR HONOR, THIS COURT, IN
2 EXERCISING ITS OBLIGATION, WE HAVE, ADMITTEDLY, WE HAVE POUNDED
3 THIS ISSUE TIME AND TIME AGAIN AS TO DR. ALEX BECAUSE WE'RE NOW
4 HERE. THEY'VE HAD THEIR CHANCE. THEY HAVE NOT PRODUCED ANY
5 EVIDENCE THAT OAKWOOD DID ANYTHING TO CAUSE THIS EXPLOSION.
6 AND EVERYTHING THEY HAVE IS REALLY -- AND DR. ALEX SAID IT
7 BEST, AN EXPLOSION HAPPENED, AND SO SOMETHING HAD TO HAPPEN
8 UNDERNEATH. I DON'T KNOW WHAT IT WAS. HE EVEN WENT SO FAR AS
9 TO SAY IT COULD HAVE BEEN ANY OF THOSE RANGE RISERS. HE SAID
10 THAT. HE DOESN'T EVEN KNOW WHICH ONE IT WAS. HE CAME UP WITH
11 THIS PRE-CRACK THEORY. AND THERE'S NO EVIDENCE WHATSOEVER THAT
12 IT EXISTS. NONE. HE SAID, THE BEST HE CAN DO IS SAY, I CAN'T
13 ELIMINATE IT. BUT THAT'S NOT PREPONDERANCE OF THE EVIDENCE
14 SORT OF EVIDENCE THAT THEY HAVE TO PRODUCE. THE BEST THEY CAN
15 DO IS COME UP WITH A THEORY. AND THAT'S ALL THAT IT IS.
16 WITHOUT EVIDENCE TO SUPPORT ANY WRONGDOING ON THE PART OF
17 OAKWOOD, THAT CAUSED THIS ACCIDENT.

18 NOW, THEY HAVE TO ESTABLISH, I MAINTAIN, THAT EITHER
19 THE PRODUCT, THE DEFECTIVE PRODUCT, I.E., THE PIPE, CAUSED THE
20 ACCIDENT, BREACH OF CONTRACT CAUSED THE ACCIDENT, WARRANTY,
21 AND/OR THE NEGLIGENCE CAUSED THE ACCIDENT. THAT'S JUST IT.
22 THEY MAY HAVE A PIPE WITH TOO MANY THREADS ON IT, BUT THEY
23 DON'T HAVE ANY EVIDENCE WHATSOEVER THAT THAT PIPE CAUSED
24 ANYTHING THAT OCCURRED HERE. AND, AS SUCH, IF THIS COURT SENDS
25 THAT JURY BACK THERE TO DELIBERATE ON THE EVIDENCE THAT THEY

1 PRODUCED IN THEIR CASE IN CHIEF, IT WILL DO NOTHING MORE THAN
2 FOSTER SPECULATION. AND THAT'S WHAT CAN'T HAPPEN, BECAUSE THEN
3 WE ARE ALLOWING THE JURY, WE ARE LOSING ALL THE RELIABILITY AND
4 PREDICTABILITY OF OUR SYSTEM.

5 SO I MAINTAIN THAT THE MOTION FOR DIRECTED VERDICT
6 SHOULD HAVE BEEN GRANTED AT THE TIME, AND I WISH I HAD A CHANCE
7 TO BE HERE, BUT IT IS WHAT IT IS. SO I WILL SUBMIT IT -- OR
8 THAT'S OUR POSITION AT THIS POINT.

9 THE COURT: YOU'LL OFFER REBUTTAL? I UNDERSTAND.

10 MR. D'ELIA?

11 MR. D'ELIA: I WILL GO FIRST. I WILL APPROACH ONE OF
12 THE ISSUES AND THEN MR. KARRENBURG WILL APPROACH THE OTHER
13 ISSUE. I WILL APPROACH THE ISSUE WITH RESPECT TO THE EVIDENCE.

14 THE COURT: OKAY.

15 MR. D'ELIA: WHICH IS WHAT COUNSEL JUST ARGUED. AND
16 MR. KARRENBURG WILL THEN -- IS THAT OKAY, BECAUSE I WASN'T HERE
17 LAST NIGHT.

18 THE COURT: THAT IS FINE.

19 MR. D'ELIA: THANK YOU. I CAN UNDERSTAND MR. PLANT'S
20 CONFUSION, LOOKING AT IT FROM MY TABLE. THE REASON IS BECAUSE
21 MR. PLANT HASN'T HONED IN ON OUR THEORY YET. IF HE HAS HE'S
22 NOT TELLING IT TO ME. AND THE REASON IS BECAUSE HIS THEORY, IN
23 STRUCTURE, IS MUCH DIFFERENT THAN OURS. AND SO HE FOCUSES ON
24 HIS RATHER THAN OURS. LET ME TELL YOU WHAT'S HAPPENING AND WHY
25 I SAY THAT.

1 MR. PLANT JUST, I'LL BE REAL QUICK, I AM NOT ARGUING
2 HIS POSITION, BECAUSE I'M GIVING YOU AN ANALYSIS. HIS POSITION
3 IS HE STANDS WITH MR. MOORE. MR. MOORE TAKES A LOOK AT THE
4 FRACTURE EVIDENCE ON THE PIPE. HE SAYS, I DON'T SEE ENOUGH
5 EVIDENCE OF THE FRACTURE ITSELF TO SAY THAT THERE IS A LEAK
6 INSIDE, A LEAK IN THIS PIPE, PRIOR TO THE EXPLOSION, THEREFORE,
7 MORE LIKELY THAN NOT THE LEAK OCCURRED OUTSIDE. THEN
8 MR. PLANT'S PEOPLE GET TOGETHER AND THEY DETERMINE WELL, IF IT
9 LEAKED OUTSIDE, WHAT ARE THE POSSIBILITIES OF WHERE THE LEAK
10 COULD COME FROM. AND THAT'S HOW HE APPROACHES HIS CASE. WHAT
11 HE MISSES IS, WE DON'T APPROACH IT THAT WAY. NEVER HAVE. AND
12 I'VE ALWAYS TOLD YOU THAT FROM THE BEGINNING, AND OPENING
13 STATEMENTS TO THE JURY AS WELL.

14 WE START OUT WITH A GAS LEAK OUTSIDE, WE DO TESTS.
15 ROMIG. THATCHER. WHAT THEY DO IS THEY SIT OUT THERE, THEY PUT
16 A MOCK UP UP, A MODEL. THEY TAKE THREE TESTS IN ORDER TO
17 GATHER AS MUCH DATA AS THEY POSSIBLY CAN. AND THEN AT THE
18 CONCLUSION OF THEIR TESTS THEY THEN COME TO AN ABSOLUTE
19 CONCLUSION, AS YOU HEARD MR. ROMIG SAY, THERE'S NO WAY THERE
20 COULD HAVE BE AN OUTSIDE LEAK THAT CAUSED THE INTERNAL GAS
21 UNDER THE CRAWL SPACE, WHICH THEN CAUSED THE EXPLOSION. JUST
22 COULDN'T HAPPEN. AND THAT'S ONE OF THE THINGS, THAT'S WHAT
23 MR. PLANT NEVER EVEN ADDRESSED WITH YOU. AND AGAIN, BECAUSE
24 UNDER THE CIRCUMSTANCES, I'M NOT SURE HE'S GRASPING THAT YET,
25 WHICH IS, IF YOU HAVE NO LEAK OUTSIDE, AND YOU GOT TO REMEMBER

1 THEY NEVER CHALLENGED US ON RIMMASCH WITH ROMIG AND THATCHER ON
2 THAT TEST, WHICH INDICATES THAT THEY DON'T HAVE AN OBJECTION TO
3 OUR METHODOLOGY AND OUR APPROACH.

4 AND THEN WHAT HAPPENS IS, IF THERE CAN BE NO LEAK
5 OUTSIDE THAT'S WHERE ALEX STARTS. HE DOESN'T TAKE OVER LIKE
6 THE DEFENDANTS DO IN THE BEGINNING AND SAY, BECAUSE OF MY
7 EXAMINATION, THEREFORE. HE RELIES UPON EVERYONE ELSE. AND
8 THAT IS VERY STRONG CIRCUMSTANTIAL EVIDENCE WHEN YOU GO THROUGH
9 THREE TESTS AND YOU GATHER DATA FROM ALL THREE TESTS AND COME
10 TO THE CONCLUSION IT COULDN'T HAVE OCCURRED, THEN YOU HAND IT
11 TO FRANK ALEX.

12 FRANK ALEX THEN SAYS, WELL, LET ME LOOK AT THE PIPE
13 INSIDE, BECAUSE UNDER THE CIRCUMSTANCES, IF IT COULDN'T OCCUR
14 OUTSIDE, LET'S SEE IF THERE'S SOMETHING INSIDE THAT IS A
15 PROBLEM IN ORDER TO DETERMINE IF THERE IS SOME KIND OF AN
16 ANALYSIS WHICH WE CAN COME TO SHOW THAT THERE WAS A FAILURE.
17 SO WHAT HE DOES IS HE LOOKS AT THE PIPE. AND HE SEES, WELL,
18 OUTSIDE, COULDN'T HAVE BEEN IN HERE, NO LEAKS. NO LEAKS IN ANY
19 OF THE THREADS, SAYS MR. THATCHER. AND MR. PLANT HASN'T PUT
20 ANY EVIDENCE ON THAT THERE'S ANYTHING DIFFERENT THAN NO LEAKS
21 IN THE PIPE THREADING TO HAVE CAUSED THE GAS TO ACCUMULATE IN
22 THE CRAWL SPACE.

23 SO THEN FRANK ALEX SAYS, WELL, IF THERE'S NO LEAKS,
24 AND THAT COULDN'T HAVE CAUSED IT, AND IT COULDN'T HAVE BEEN
25 FROM THE OUTSIDE, AND THE PIPE IS INTACT, SO IT COULDN'T HAVE

1 COME OUT OF ANY PART OF THE PIPE, WELL, THERE'S ONLY THREE
2 PLACES IT COULD HAVE COME OUT OF, AND THAT'S THE THREE FRACTURE
3 SURFACES THAT ARE THERE THAT PRESENT THEMSELVES, WHICH THERE IS
4 NO ARGUMENT OF THAT EVIDENCE.

5 THE COURT: THE FRACTURE SURFACES, YOU MEAN WHERE THE
6 ULTIMATE FRACTURE OCCURRED?

7 MR. D'ELIA: YES. WELL, WHERE THE PIPES WERE
8 SEPARATED.

9 THE COURT: YEAH, WHERE THEY WERE SEPARATED WITH THE
10 EXPLOSION. AND THEY ARE THE THREE LIKELY PLACES --

11 MR. D'ELIA: WELL, THEY'RE THE ONLY --

12 THE COURT: FRACTURE --

13 MR. D'ELIA: NOT LIKELY. IF IT COULDN'T HAVE
14 OCCURRED OUTSIDE THEY'RE THE ONLY.

15 THE COURT: WELL, EACH ONE IS NOT THE ONLY, EACH ONE
16 IS ONE OF THE --

17 MR. D'ELIA: NO, ALL THREE IS THE TOTAL, OR THE ONLY
18 PLACE. THAT'S WHAT I'M TRYING TO SAY. EXCUSE ME, I DIDN'T
19 MEAN TO TAKE OFF. AND SO FROM THERE --

20 THE COURT: I THINK I'VE BEEN UNDERSTANDING YOUR
21 THEORY.

22 MR. D'ELIA: YES, I KNOW YOU DO. AND SO FROM THERE
23 HE LOOKS AT IT AND SAYS, IS THERE ANY FRACTURE ANALYSIS
24 EVIDENCE THAT I CAN DETERMINE AS TO WHETHER THERE'S A PROBLEM
25 IN THE SYSTEM TO NARROW THESE THREE DOWN TO ANY ONE? AND

1 THAT'S WHERE HE GETS INTO HIS ANALYSIS, THE THREADING, THE
2 FRACTURE SURFACES, THE THINGS OF THAT NATURE, AND THEN HE COMES
3 TOGETHER AND SAYS, MORE LIKELY THAN NOT IT WAS GOING TO BE THE
4 RANGE RISER, VERY HIGH PROBABILITY, NOT JUST MORE LIKELY THAN
5 NOT, BUT A HIGH PROBABILITY, BECAUSE THAT'S THE WEAKEST LINK
6 HERE, AND THERE WERE FORCES PLACED ON IT, ET CETERA. YOU GRASP
7 IT. NEED I GO ON FROM THERE?

8 THE COURT: I GRASP IT. THE QUESTION IS, AND I THINK
9 YOU'RE ANSWERING IT, IS THAT COMPETENT EVIDENCE? IS THAT
10 ENOUGH TO GET OVER THAT STUMBLING BLOCK OF SPECULATION? AND
11 THAT'S ALWAYS AN ISSUE. IT'S ONE I'VE ALWAYS FOCUSSED ON,
12 BECAUSE I THINK SOMETIMES WE GET A LITTLE TOO LOOSE.

13 MR. D'ELIA: LIKE MR. LATRECK.

14 THE COURT: THE JURY SPECULATES. IT HAPPENS. I'M
15 THRILLED TO SAY THE LAST TRIAL I TRIED TO A JURY I GOT A
16 DIRECTED VERDICT ON SPECULATION FROM JUDGE MEDLEY. I BELIEVE
17 IN THE DOCTRINE. I KNOW WHAT YOU'RE SAYING, MR. PLANT, BUT I'M
18 GOING TO GIVE YOU A REBUTTAL CHANCE, BUT I REALLY THINK I'M
19 HEARING THIS, AND I THINK IT COMES DOWN TO, IT'S EVIDENCE. YOU
20 DON'T LIKE THE QUALITY OF IT. IT'S ABOUT ARGUMENT. AND TO
21 TEACH ME AT THIS STAGE WHERE THEY ONLY HAVE TO HAVE THEIR PRIMA
22 FACIE CASE, I THINK YOUR MOTION IS DEFEATED, UNLESS YOU GOT A
23 NEW ARGUMENT FOR ME. ON THAT ISSUE. I NEED SOME HELP ON THESE
24 PARTIES.

25 MR. D'ELIA: YES.

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

* * *

FILED
NOV 7 2002
By Deputy Clerk, Summit Court

ORIGINAL

WILLIAM G. ERCANBRACK,

PLAINTIFF,

VS.

OAKWOOD MOBILE HOMES, INC.
(A NORTH CAROLINA CORP) AND
HOMES BY OAKWOOD INC., (A
NORTH CAROLINA CORP.),
DEFENDANT.

CASE NO. 980600223

TRANSCRIPT OF:

TRIAL

DAY 12

BEFORE THE HONORABLE ROBERT K. HILDER

SILVER SUMMIT DISTRICT COURT
6300 N. SILVER CREEK DRIVE
PARK CITY, UTAH 84098

APRIL 11, 2002

REPORTED BY: EILEEN M. AMBROSE, CSR

07012

A P P E A R A N C E S

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* * *

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P R O C E E D I N G S

THE COURT: WE ARE ON THE RECORD. THE JURY IS
PRESENT.

GO AHEAD, MR. D'ELIA, IF YOU ARE READY.

MR. D'ELIA: THANK YOU. IF IT PLEASE THE COURT, YOUR
HONOR. COUNSEL, MR. KARRENBERG, BILL.

LADIES AND GENTLEMEN OF THE JURY, GOOD MORNING.

BEEN THROUGH A LOT OF TIME HERE TOGETHER, WE'VE
GOTTEN TO KNOW EACH OTHER. YOU GOT TO KNOW ME, YOU HAVE GOTTEN
TO KNOW BILL, YOU'VE GOTTEN TO KNOW OUR FAMILY. YOU'VE ALSO
GOTTEN TO KNOW THEIR FAMILY. WE APPRECIATE YOU BEING HERE.
IT'S BEEN A TREMENDOUS IMPOSITION ON YOUR LIFE. I KNOW IT'S
NOT EASY. YOU HAVEN'T COMPLAINED. I WILL TELL YOU ONE THING,
YOU ARE THE MOST ATTENTIVE JURY THAT I'VE EVER HAD. I'VE NEVER
SEEN ANYBODY MORE ATTENTIVE AND PAYING MORE ATTENTION. WE
APPRECIATE IT. WE REALLY DO.

I DON'T WANT TO GO THROUGH BOILER PLATE TOO MUCH, I
WANT TO GO STRAIGHT TO THE FACTS AND LIMIT OURSELVES TO EXACTLY
THE TIMEFRAME THAT WE TOLD YOU, BECAUSE UNDER THE
CIRCUMSTANCES, I THINK IT'S MOST IMPORTANT THAT WE DO THAT SO
THAT YOU CAN GET ON WITH YOUR LIVES. AS WELL AS
MR. ERCANBRACK. SO THANK YOU AGAIN.

THIS CASE TOOK SO MUCH TIME. WE TOOK AS MUCH TIME AS
WE DID, AND I APOLOGIZE FOR TAKING AS MUCH TIME AS WE DID, BUT
WE HAD TO. WE HAD A LOT OF INFORMATION, WE HAD A LOT OF FACTS,

1 WE HAD A LOT OF THINGS TO SHOW YOU, A LOT OF THINGS TO MAKE YOU
2 UNDERSTAND WHAT IT IS WE WERE DOING, ESPECIALLY IN LIGHT OF
3 MR. PLANT, NO EVIDENCE, NO EVIDENCE. I THINK WE CHANGED YOUR
4 MIND. I DON'T THINK THAT'S RIGHT. LET'S GET INTO IT.

5 OUR CASE TOOK TIME BECAUSE WE GOT THE BURDEN OF
6 PROOF. WE'RE THE PEOPLE THAT HAD THE LOSS, NOT THEM. WE'RE
7 THE PEOPLE THAT HAVE TO PROVE TO YOU THAT OUR CASE IS VALID.
8 WE ONLY HAVE TO PROVE IT TO YOU BY 50 POINT ZERO, ZERO, ZERO,
9 ZERO ONE PERCENT. IF YOU JUST THINK THAT WELL, IT'S MORE
10 PROBABLE THAN NOT WHAT I'M TELLING YOU OCCURRED THEN IT'S A
11 FOREGONE CONCLUSION THAT IT'S YOUR DUTY TO THEN HOLD FOR US.

12 IN THE LAST 12 DAYS WHAT WE'VE PROVED TO YOU, WHAT I
13 THINK, I BELIEVE WE PROVED TO YOU, AND AGAIN YOU JUDGE THAT,
14 BUT I THINK WE'VE PROVED TO YOU BY AT LEAST MORE PROBABLE THAN
15 NOT THAT HOMES BY OAKWOOD, A NORTH CAROLINA CORPORATION, SHOULD
16 BE HELD STRICTLY LIABLE FOR MANUFACTURING AND SELLING A
17 DEFECTIVE PRODUCT TO THE ERCANBRACKS. A DEFECTIVE GAS SYSTEM
18 PRECISELY. AND THAT THEY WERE NEGLECT IN THE MANUFACTURE, THE
19 INSPECTION AND THE TRAINING OF THEIR PERSONNEL, AND THAT
20 OAKWOOD BREACHED THEIR WARRANTY, WE'LL GET INTO THAT IN A
21 MINUTE, AND THAT THEY VIOLATED THE STANDARDS OF THE INDUSTRY.
22 IF YOU FIND ON ANY ONE OF THOSE THAT WE PROBABLY MORE LIKELY
23 THAN NOT PROVED THAT TO YOU IT'S YOUR DUTY TO HOLD IN OUR
24 FAVOR.

25 WE'VE ALSO PROVED TO YOU THAT'S NOW THE MANUFACTURING

1 COMPANY. THAT'S HOMES BY OAKWOOD THAT WE'RE TALKING ABOUT.
2 NOW WE HAVE OAKWOOD WHO WE ALSO ARE SUING. WHAT IS THE
3 CORPORATION THAT HAS ALL OF THE DEALERSHIPS THAT SELL THESE
4 MANUFACTURED HOMES. WE'VE PROVED AS WELL THAT OAKWOOD MOBILE
5 HOMES, A CORPORATION, THE COMPANY WITH THE OFFICE ON REDWOOD
6 ROAD, THAT THEY ALSO ARE STRICTLY LIABLE FOR SELLING A
7 DEFECTIVE PRODUCT TO BILL ERCANBRACK AND HIS FAMILY, AND THAT
8 THEY WERE NEGLECT. THEY WERE NEGLECT WITH RESPECT TO THE
9 INSPECTION THAT THEY DID, REMEMBER? MICHAEL HATCH. GEE,
10 DIDN'T DO A THING BUT SAYS I INSPECTED IT. THEY WERE NEGLECT
11 IN INSPECTING THE GAS SYSTEM. AND AGAIN THEY BREACHED THEIR
12 WARRANTY AS WELL. REMEMBER, THEY WERE THE ONES THAT SAT DOWN
13 WITH BILL AND WITH HIS WIFE. THEY SIGNED THE PAPER ON THE
14 WARRANTY. THEY GAVE IT TO THEM. AGAIN, THAT WAS EXHIBIT 141.
15 AND THEY WERE GUARANTEEING THAT THEIR HOME COULD BE OCCUPIED
16 AND THAT, IN FACT, THERE WAS NO PROBLEM AND THERE WAS NO
17 DEFECT. THEY BREACHED THAT AS WELL.

18 WE'VE NOT ONLY PROVED, I BELIEVE, OF COURSE, HOLD ME
19 TO THIS STANDARD, WE'LL GET INTO THAT IN A MINUTE, BUT WE'VE
20 NOT ONLY PROVED THAT WE HAVE PREVAILED BY A PREPONDERANCE OF
21 THE EVIDENCE, I BELIEVE THAT WE'VE ACTUALLY PROVED TO YOU THAT
22 THE FACTS IN THIS CASE THAT WE PRESENTED EXIST AND WE'VE PROVED
23 OUR BURDEN BEYOND A DOUBT.

24 AT THE VERY BEGINNING OF THIS TRIAL, REMEMBER THE
25 OPENINGS, 13 DAYS AGO, STOOD UP HERE, WE STARTED TALKING WITH

1 YOU, AND I STARTED TELLING YOU WHAT WE WERE GOING TO PROVE. WE
2 TOLD YOU VERY MODESTLY WHAT WE WERE GOING TO PROVE, NOT A LOT
3 OF POINTS, JUST VERY COMMON, PRACTICAL, LOGICAL POINTS.

4 AND WE TOLD YOU THAT WE WERE GOING TO SHOW YOU THAT
5 THE ERCANBRACKS WERE THE HAPPIEST FAMILY IN THE WORLD. AND
6 THEY WERE. THEY MIGHT NOT HAVE BEEN IN RICHES, IN BILLION
7 DOLLAR HOUSES, BUT THEY WERE SO HAPPY. THEY LOVED LIFE, THEY
8 LOVED EACH OTHER, THEY LIVED, THEY LOVED TO LIVE. THEY LOVED
9 TO BE TOGETHER. I THINK WE SHOWED THAT TO YOU.

10 AND UNDER THE CIRCUMSTANCES I'M NOT GOING TO GET INTO
11 A LOT OF EXHIBITS WITH YOU. THE REASON IS YOU'RE GOING TO BE
12 TAKING THESE BACK WITH YOU, YOU'RE GOING TO LOOK AT EVERY ONE
13 OF THEM. BUT REMEMBER THE PICTURE OF THE FAMILY? A HAPPY
14 FAMILY. THEY WERE ALL TOGETHER. REMEMBER THE VIDEO? TAKE A
15 LOOK AT THE VIDEO. VERY HAPPY. THAT'S GOING TO GO BACK WITH
16 YOU.

17 THE LIVES OF TINA, JEREMY, REMEMBER LITTLE OTIS WHEN
18 WE STARTED OUT. IT'S BEEN A LITTLE CONFUSED SINCE THEN.
19 LITTLE OTIS AND TAMMY. THEY CAME TO A TRAGIC AND UNTIMELY END.
20 AND AS I SAID, BECAUSE OF THE SHODDY, SUB-STANDARD, SLOPPY
21 WORKMANSHIP OF OAKWOOD HOMES. THAT'S WHAT IT BOILED DOWN TO.
22 THE UPSTAIRS THAT WAS SLASHED THROUGH THE LINOLEUM, THAT DIDN'T
23 HAVE CARPET. NOT ONLY DID THEY DO THAT UPSTAIRS, THEY DID THAT
24 DOWNSTAIRS. REMEMBER A COMMENT THAT MR. PLANT MADE? HE WANTED
25 TO SAY TO ONE OF THE WITNESSES, DID YOU EVER HEAR OF GARBAGE

1 IN, GARBAGE OUT? ISN'T THAT THE POT CALLING THE KETTLE BLACK?

2 AND THE ERCANBRACKS, THEY PERISHED IN THEIR DREAM
3 HOUSE. THE ONE PLACE THAT THEY HAD THAT WAS SANCTITY, THAT WAS
4 SANCTUARY, THAT WAS SAFETY. IT WASN'T. ALL OF US RELY UPON
5 OUR HOUSES TO BE THE SAFEST PLACE IN THE WORLD. IT WASN'T.
6 WHAT A SURPRISE.

7 NOW, IN OUR OPENING, WHEN WE FIRST STARTED HERE, YOU
8 KNOW, AND BILL AND I, WE BEEN LIVING FOR TODAY FOR FOUR PLUS
9 YEARS, WE'VE BEEN LIVING FOR TODAY TO BE ABLE TO EXPLAIN TO
10 YOU, TO BRING EVERYTHING TOGETHER, TO HAVE YOU DELIBERATE AND
11 TO DETERMINE WHAT IT IS THAT ACTUALLY OCCURRED.

12 AND IN OUR OPENING YOU WERE TOLD THAT WE WOULD PROVE
13 THE FOLLOWING. THAT OAKWOOD MANUFACTURED DEFECTIVE PIPING. WE
14 TOLD YOU THAT. WHICH RESULTED IN A LEAK. TOLD YOU THAT. YOU
15 WERE TOLD THAT WE PERFORMED TESTS WHICH SHOWED THAT THE LEAK
16 HAD TO HAVE OCCURRED IN THE CRAWL SPACE. REMEMBER WHAT I SAID
17 THE FIRST DAY? REMEMBER, IF YOU ONLY REMEMBER ONE THING
18 THROUGHOUT THE WHOLE TRIAL, NO MATTER WHAT HAPPENED, AN OUTSIDE
19 LEAK COULD NOT HAVE ACCOUNTED FOR THE INSIDE GAS. COULDN'T
20 HAVE COME UP TO SUFFICIENT QUANTITIES.

21 NOW THE DEFENDANTS WOULD TAKE A SHOT AT THAT AND SAY,
22 YOU HAVE GOT SOME GAS. YEAH, BUT THAT'S NOT THE QUESTION. THE
23 QUESTION IS, DID YOU GET SUFFICIENT GAS AT THE OPTIMAL, WHAT
24 THEY CALL THE STOICHIOMETRIC MIX, FOUR PERCENT.

25 AND IF WE REALLY WANTED TO FUDGE TESTS, WHAT WOULD WE

1 HAVE TOLD YOU? NO GAS CAME IN. WE DIDN'T DO THAT. WE HAVE
2 BEEN HONEST WITH YOU SINCE THE VERY BEGINNING. A LITTLE BIT
3 DID, BUT NEVER ENOUGH TO DO WHAT IT DID TO THE ERCANBRACK HOME.

4 AND WE'VE PROVED THE CONCENTRATION OF THE GAS WAS IN
5 THE CRAWL SPACE. NO IFS, ANDS OR BUTS. DID ANYONE EVER TELL
6 YOU DIFFERENTLY? EVEN OAKWOOD'S EXPERTS SAID THE
7 CONCENTRATIONS OF THE GAS HAD TO BE TO THE CRAWL SPACE. HOW DO
8 YOU GET IT IN FROM THE OUTSIDE? THE EVIDENCE PROVED THIS. IT
9 WAS OAKWOOD'S PIPE THAT LEAKED. THAT'S REALLY ALL WE TOLD YOU
10 ON OPENINGS. HOLD US TO THAT. HAVE WE SATISFIED YOUR
11 QUESTIONS IN THE SENSE OF, DID WE LIVE UP TO WHAT IT IS WE TOLD
12 YOU WE WOULD DO? WE DID.

13 THE DEFENDANT, OAKWOOD'S OPENING NOW, LET'S TAKE A
14 LOOK AT THAT REAL QUICK, A SECOND, OKAY? THEY CLAIMED THAT
15 THEY WOULD PROVE, NO. 1, REMEMBER, BILL IS SEEKING ONE THING IN
16 THIS CASE, MONEY. THAT'S WHAT THEY TOLD YOU THEY WOULD PROVE.

17 WHAT ELSE DID THEY TELL YOU? REMEMBER, THEY STARTED
18 TELLING YOU BILL WAS AT THE SCENE FOR SOME PERIOD OF TIME AFTER
19 THE EXPLOSION. HE WAS THERE FOR AN HOUR, OR SOMETHING TO THAT
20 EFFECT, AND IT WAS UNACCOUNTED FOR. THAT'S WHAT THEY TOLD YOU.
21 REMEMBER THAT?

22 THREE. WHAT ELSE DID THEY TELL YOU? THE DEFENDANT
23 HAS ABSOLUTELY NO EVIDENCE. YOU REMEMBER? I THINK THERE WAS
24 EVEN POUNDING OR FOOT STAMPING GOING ON DURING THAT. NO
25 EVIDENCE. NO EVIDENCE. NO EVIDENCE. THEY HAVE NO EVIDENCE

1 FOR THEIR THEORIES.

2 AND THE FOURTH THING THEY TOLD YOU THAT THEY WOULD
3 PROVE, IT'S NOT US, NOT OAKWOOD THAT'S LIABLE, THEY SAY, IT'S
4 THE GAS COMPANY AND BILL, BUT NOT OAKWOOD. BUT AT THE
5 CONCLUSION OF THE CASE, AFTER 12 DAYS, HAVE THE DEFENDANTS
6 PROVED TO YOU WHAT IT IS THAT THEY STATED THEY WOULD PROVE? I
7 DON'T THINK SO.

8 REGARDING THE MONEY ASPECT. BILL'S NOT SEEKING JUST
9 MONEY IN THIS CASE. I THINK THAT CAME OUT PRETTY CLEARLY. ALL
10 HE WANTS IS HIS FAMILY BACK FIRST. THAT'S ALL HE WANTS OUT OF
11 LIFE. HE'D GIVE ANYTHING FOR IT. HE'D GIVE HIS OWN LIFE FOR
12 IT. HE'D GIVE ANYTHING TO HAVE HIS FAMILY BACK. BETTER THAN
13 THAT, HE ONLY WANTS HIS FAMILY BACK FOR A PERIOD OF TIME TO BE
14 ABLE TO SAY GOODBYE. THAT'S ALL HE WANTS. I MEAN, HE DOESN'T,
15 YOU KNOW, ASKING FOR SMALL THINGS. I DON'T THINK THAT'S ALL
16 BILL WANTS IN LIFE IS MONEY.

17 ACCORDING TO DR. BERMAN -- REMEMBER DR. BERMAN? HE'S
18 UP THERE TREATING BILL FOR POST TRAUMATIC STRESS DISORDER,
19 SHELL SHOCK, COMING ACROSS HIS FAMILY BLOWN AND BURNED THE WAY
20 THAT THEY WERE. WHAT DID, IN THE DIAGNOSIS, WHAT DID
21 DR. BERMAN SAY? NOT THAT BILL WANTED MONEY. ALL HE WANTS TO
22 DO IS STOP THIS FROM HAPPENING TO ANOTHER FAMILY AGAIN,
23 REMEMBER? THAT'S NOT MONEY.

24 NO. 2. THE TIME DISCREPANCY THEY TALKED ABOUT.
25 REMEMBER, THEY SAID, GEE, WE'RE GOING TO PROVE TO YOU THERE WAS

1 AN HOUR OUT THERE. BILL WAS UP AT THAT SCENE. WELL, BEFORE HE
2 CALLED 911, IS THAT WHAT YOU GOT OUT OF THE EVIDENCE? AND JUST
3 WHAT WERE THEY TRYING TO IMPLY THAT BILL DID? WHAT WERE THEY
4 SAYING? BILL WAS AT THE SCENE FOR AN HOUR UNACCOUNTED FOR.
5 WHAT DO YOU THINK THEY WERE IMPLYING? THEY WANT TO PUT BILL ON
6 TRIAL WITH YOU BECAUSE OAKWOOD'S NOT GOING TO BE LIABLE. WE'LL
7 DO ANYTHING THEY SAY IN ORDER TO ESCAPE LIABILITY. WE'LL EVEN
8 TELL YOU WHAT BILL DID DO AND IMPLY THAT SOMETHING WAS WRONG
9 WITH THAT. THEY NEVER PROVED THAT, DID THEY? WHAT THEY DID
10 WAS, THEY CHANGED IN MID STREAM. THEY MADE THEIR OPENING
11 STATEMENT AND THEN ALL OF SUDDEN THEY CHANGED BECAUSE THEY HAD
12 TO, BECAUSE THE POLICE OFFICERS ARE LIKE, NO, THAT'S ALL WRONG.
13 I MEAN, ALAN SIDDOWNAY'S NOTES, I KEPT INDEPENDENT NOTES. THE
14 DISPATCH WAS OFF BY AN HOUR, BUT THEY WERE WILLING TO TAKE
15 ADVANTAGE OF THAT. WHY? THEY'RE CLUTCHING AT STRAWS. THEY'LL
16 TAKE ANYTHING IN ORDER TO MAKE A POINT WITH YOU REGARDLESS OF
17 WHAT IT IS.

18 REGARDING THE NO EVIDENCE. THERE IS NO EVIDENCE FOR
19 THE PLAINTIFF'S CASE. REMEMBER THAT? IT CAME UP AT LEAST SIX
20 TIMES, SEVEN TIMES, EIGHT TIMES IN THE CLOSING ARGUMENT. IT
21 SEEMED TO BE A THEME. EXCUSE ME, THE OPENING ARGUMENT. AND
22 THAT WAS AN ARGUMENT BY OAKWOOD.

23 UNDER THE CIRCUMSTANCES WHAT DID WE SHOW YOU?
24 OVER-THREADED PIPE, OVER-THREADED PIPE ON THE RANGE RISER,
25 OVER-THREADED PIPE AT MULTIPLE CONNECTIONS, ONE, TWO, THREE.

1 AND THEN THE BIG PIPE. WHERE'S THAT? FOUR, FIVE, SIX
2 OVER-THREADED, OVER-INSERTED PIPES. WHAT OAKWOOD IS SAYING TO
3 YOU, ARE YOU GOING TO BELIEVE, ME, WHAT WE HAVE TO TELL YOU, OR
4 ARE YOU GOING TO BELIEVE YOUR LYING EYES? THAT'S WHAT THEY'RE
5 TRYING TO ASK YOU TO DO. THAT WEAKENED THE PIPE WHEN YOU'RE
6 OVER-THREADING AND UNDER-INSERTING. OVER-THREADING AND
7 OVER-INSERTING SHORTENS THE PIPE. THERE'S NO DOUBT ABOUT THAT.
8 COMMON SENSE. DID WE REALLY NEED AN EXPERT UP THERE TO TELL
9 YOU? WE DID BECAUSE OF OUR BURDEN OF PROOF, BUT THAT'S ONLY
10 COMMON SENSE. YOU ALL KNOW THAT.

11 THE HOLES WERE NOT REDRILLED. THERE'S NO EVIDENCE
12 WHATSOEVER THAT THE HOLES WERE REDRILLED. IT'S NOT IN THE
13 TRAVELLER, REMEMBER, IT'S NOT A ON A DISCREPANCY SHEET, GIBSON
14 DOESN'T REMEMBER OR RECOLLECT ANY KIND OF A REDRILLING, OR DOES
15 ANYONE ELSE, NOR DOES ANYONE ELSE. REMEMBER, GIBSON SAYS WELL,
16 I CAN SPECIFICALLY REMEMBER ONE TIME, THE ONE TIME ALONE IT'S
17 HAPPENED BEFORE, BUT HE'S JUST SAYING THAT. HE ONLY HAS A
18 SPECIFIC RECOLLECTION OF ONE TIME AND IT WASN'T THE ERCANBRACK
19 HOME. SO THAT WAS NOT REDRILLED, BUT THEY WILL TRY TO TELL
20 YOU, WELL, WE WOULD HAVE, WE WOULD HAVE, WE WOULD HAVE. IT IS
21 NOT A QUESTION OF WHAT WE WOULD HAVE DONE, IT IS NOT A QUESTION
22 OF WHAT WE COULD HAVE DONE, IT'S A QUESTION OF WHAT THEY DID.
23 AND THEY DIDN'T REDRILL ANY HOLES. THEY PROVED NOTHING ON
24 THAT.

25 THEN FROM THERE, COULDN'T BE AN OUTSIDE LEAK. DID WE

1 PROVE THAT TO YOU? WE PROVED IT TO YOU WITH NOT ONE, NOT TWO,
2 BUT THREE INDEPENDENT VERIFIABLE TESTS. EACH ONE DONE BY A
3 TEAM. AND WHAT WAS THAT TEAM? PRETTY GOOD TEAM, WASN'T IT?
4 WE GOT DICK THATCHER, THE ELDERLY MAN, BEEN IN THE PROPANE
5 BUSINESS HIS ENTIRE LIFE. A BLUE COLLAR WORKER. STARTED
6 WORKING WITH HIS FATHER AS A TEENAGER. WORKED ON A PROPANE
7 TRUCK. GREW UP IN THE INDUSTRY. I SUBMIT TO YOU THAT THERE'S
8 NO PERSON IN THE WORLD THAT HAS ANY MORE KNOWLEDGE ABOUT
9 PROPANE THAN DICK THATCHER. AND THAT'S ONE OF THE REASONS WE
10 PUT HIM ON, TO EDUCATE YOU, TO GIVE YOU WHATEVER IT IS THAT YOU
11 WANTED TO KNOW THAT YOU THOUGHT WAS MISSING FROM THE EQUATION
12 ON PROPANE, TO UNDERSTAND THE CHARACTERISTICS OF PROPANE.

13 AND THEN WHAT DID WE DO? WE TEAMED HIM UP WITH A
14 ROCKET SCIENTIST, ROMIG, A PH.D. WORKING ON NASA. YOU PUT THE
15 TWO OF THOSE TOGETHER AND I SUBMIT TO YOU THAT YOU'VE GOT
16 EVERYTHING COVERED WITH RESPECT TO HOW TO LAUNCH A MIGRATION
17 TEST AND MAKE A DETERMINATION. THEY DID IT. THEY LISTENED TO
18 THE QUESTIONS THAT THEIR EXPERTS RAISED. THEY WENT BACK IN AND
19 TRIED TO ANSWER THEM. AND WE'LL GET BACK TO THAT IN A FEW
20 MINUTES.

21 LAST, OAKWOOD VIOLATED INDUSTRY STANDARDS AND THE
22 REGULATIONS REGARDLESS OF WHETHER THEY'RE ENFORCED BY HUD.
23 REMEMBER, MR. SLIFKA? HE TRIED HIS BEST UP HERE WHEN MR. PLANT
24 GOT DONE ON THE FIRST DAY, WHEN YOU LEFT, YOU UNDERSTOOD WHEN
25 YOU WENT HOME, I BET, THAT GEE, B1.20.1 NFPA 54, THEY ARE NOT

1 APPLICABLE TO MOBILE HOMES.

2 WHEN WE GOT DONE WITH HIM THE NEXT MORNING, I BET
3 WHEN HE GOT OFF ON THE STAND YOU STARTED TO SAY, GEE, THAT'S
4 NOT REALLY THE CASE. WERE YOU BEING MISLED THE DAY BEFORE?
5 THE CASE IS, IN FACT, WHAT HAPPENED IS THAT B1.20.1 NFPA 54
6 CERTAINLY ARE APPLICABLE. WE ASKED HIM THAT. DOESN'T THE
7 MANUFACTURE STILL HAVE TO BE HELD LIABLE TO THE STANDARDS?
8 YES, HE DOES. WE JUST DON'T ENFORCE THEM. THAT'S ALL IT WAS.
9 DOESN'T SAY, DO YOU RELIEVE ANY LIABILITY FROM OAKWOOD. WE'LL
10 GET INTO THAT A LITTLE BIT LATER TOO.

11 FOUR. LAST ONE. THE GAS COMPANY HAD NO ODORANT,
12 THEY SAID, IN THEIR OPENINGS. GRANTED, AS A MATTER OF FACT, WE
13 STIPULATED TO IT, DIDN'T WE? WE DID THAT SO THAT YOU DIDN'T
14 HAVE TO WASTE YOUR TIME GETTING INTO A NON-ISSUE. WE AGREED
15 THERE WAS NO ODORANT. WE STIPULATED TO IT. WE ADMITTED IT.
16 JUST TO SAVE TIME.

17 BUT OAKWOOD NEVER PRESENTED ANY EVIDENCE OR ANY
18 TESTIMONY THAT IF THE FAMILY ON JANUARY 31ST OF 1997, IF THE
19 FAMILY HAD SMELLED THE PROPANE, THAT THEY WOULD HAVE BEEN ABLE
20 TO ESCAPE. NO EVIDENCE WHATSOEVER. WE PRESENTED EVIDENCE
21 THROUGH BILL. THEY WOULD HAVE GONE OVER, SNIFFED AROUND, SHE
22 WOULD HAVE LOOKED OVER AT THE STOVE, SHE'S IN HER PANTIES,
23 LET'S GET DRESSED, GET THE KIDS OUT. WE WILL GET INTO THAT IN
24 A FEW MINUTES. THERE WAS NO TIME. BUT DID OAKWOOD PRESENT TO
25 YOU ANY EVIDENCE ON THAT? NONE. AND THEY TALK ABOUT US HAVING

1 NO EVIDENCE. I WOULD SUGGEST AGAIN WE PROVED THAT. AND
2 WITHOUT SOMETHING LIKE THAT, OAKWOOD MUST BE THE SOLE PERSON
3 RESPONSIBLE, UNLESS THEY CAN PROVE THAT. WE WILL GET INTO THAT
4 A LITTLE LATER TOO.

5 AND THEN THEY SAID IT WAS BILL. BLOW HIS FAMILY UP,
6 CAUSE THE DEATH OF EVERYBODY AND THEN COME BACK WITH INSULT ON
7 TOP OF INJURY. IT WAS YOU, BILL. WOW.

8 SO DESPITE WHAT THEY SAID, OAKWOOD DID NOT PROVE WHAT
9 THEY SET OUT TO DO AND WHAT THEY TOLD YOU THAT THEY WOULD.

10 I THINK THIS IS IMPORTANT IN DETERMINING WHETHER
11 OAKWOOD IS TRYING TO CONFUSE THE ISSUES WITH SMOKE AND VOO DOO.
12 I'LL TELL YOU WHY THAT'S IMPORTANT. BECAUSE IF THEY SET OUT TO
13 PROVE SOMETHING AND THEY DIDN'T, THEY GOT A PROBLEM. WE SET
14 OUT TO PROVE MINIMAL. I THINK WE DID IT. THEY SET OUT TO
15 PROVE THE WORLD AND THEY DIDN'T. YOU ARE GOING TO HAVE TO
16 EMBRACE ONE OF OUR POSITIONS. YOU'RE EITHER GOING TO HAVE TO
17 EMBRACE HIS OR YOU ARE GOING TO HAVE TO EMBRACE OURS. AND THE
18 QUESTION IS, WHO IT IS YOU ARE GOING TO EMBRACE SHOULD BE WHO'S
19 BEEN TRUE TO YOU. THAT'S A FACTOR.

20 ADDITIONALLY, OAKWOOD TRIED TO EXPRESS MEANINGLESS
21 ISSUES. THEY STIPULATED IN THE OPENING THAT THERE WAS THREE
22 THREADS OVER THE STANDARD, BUT THEN THEY ARGUED WITH THATCHER
23 AS TO WHETHER OR NOT IT WAS ONE THREAD OR THREE THREADS.
24 WHAT'S THE POINT? THEY STIPULATED. BUT THEY'RE TRYING TO
25 DIVERT YOUR ATTENTION BY ARGUING WITH THATCHER. DO YOU HAVE

1 ONE THREAD OVER, THREE THREADS OVER? TAKE A LOOK AT THAT.
2 WHAT IS THE POINT OF EVEN STIPULATING IF THAT'S WHAT THEY'RE
3 GOING TO DO? SMOKE.

4 SECONDLY. STIPULATE TO THREE THREADS, BUT AGAIN THEY
5 START ARGUING THAT 14 THREADS IS NOT THE STANDARD. HOW CAN YOU
6 ARGUE THAT 14 THREADS IS WITHIN STANDARD IF YOU'VE ALREADY TOLD
7 THE JURY, IF HE'S ALREADY TOLD YOU, I STIPULATE? WHY? BECAUSE
8 THEY'RE CLUTCHING AT STRAWS. ANYTHING THAT THEY CAN GET BEFORE
9 YOU TO CONFUSE THE ISSUES. THEY CHANGED THAT, ESSENTIALLY,
10 AGAIN TRIED TO CHANGE IT IN MID-STREAM, ADMIT TO YOU ONE THING
11 AND THEN RENIG ON IT LATER. TRUE TO YOU? I DON'T THINK SO.

12 THEY MADE A BIG DEAL ON THE STUB OUT. WHO DID THAT
13 STUB OUT? AS IF THAT MADE A DIFFERENCE. EVERY EXPERT SAID,
14 STUB OUT DIDN'T LEAK. SO THE QUESTION IS, AT THAT POINT IN
15 TIME, AS MY PROPERTY TEACHER ANDERSON USED TO SAY, SO WHAT.
16 THAT'S EXACTLY WHAT IT IS. THIS IS ALL IMPORTANT IN THE LONG
17 RUN. AGAIN, AS I SAID, YOU HAVE TO SIDE WITH ONE OF US, AND IT
18 SHOULD HAVE SOME TRUTHFULNESS AS BEING ONE OF ASPECTS.

19 HOW WERE THE DEFENDANTS NEGLIGENT? WELL, OAKWOOD IS
20 A LARGE CORPORATION WITH ITS PRINCIPLE OFFICE IN NORTH CAROLINA
21 AND PLANTS IN CALIFORNIA, TEXAS, COLORADO AND OTHER PLACES.
22 THEY BUILD AND THEY SELL, THEY MASS PRODUCE HOMES. THEY RELY
23 UPON MANUFACTURING LARGE NUMBERS OF HOMES AND THEN PRODUCING
24 THEM FOR MAKING A PROFIT JUST LIKE ANY OTHER CORPORATION. NOT
25 BAD, NOT BAD AT ALL, BUT THE PROBLEM IS, YOU GOT TO AT LEAST

1 FOLLOW THE STANDARDS. MS. MEEK AND MR. GIBSON REFERENCED AT
2 LEAST 10,000 HOMES IN FIVE YEARS JUST COMING THROUGH THE
3 COLORADO FACILITY. NOT EVEN THE REST. 2000 HOMES A YEAR.
4 THAT'S A LOT. THAT'S A LOT. THEIR PLANTS ARE, AND ARE
5 EXPECTED TO BE, STATE OF THE ART. THE HOMES ARE BUILT IN AN
6 IDEAL CLIMATE. THEY'RE MADE WITH NO WEATHER. WHEN EVERYBODY
7 BUILDS A STICK HOUSE OUTSIDE BUT IT'S SNOWING THINGS DON'T
8 HAPPEN RIGHT. IF THE SUN'S NOT OUT THINGS DON'T HAPPEN RIGHT.
9 IF IT'S RAINING YOU CAN'T PUT THE ROOF ON THE SAME WAY. IF IT
10 IS SNOWING YOU ARE GOING TO HAVE A BIG PROBLEM LANDSCAPING.
11 BUT UNDER THE CIRCUMSTANCES HERE THEY HAD NO PROBLEMS. IT WAS
12 INSIDE.

13 THE POINT IS, THEY SHOULD HAVE BEEN ABLE TO GET IT
14 RIGHT AT LEAST RIGHT EVERY TIME. THEY HAD EVERY ADVANTAGE IN
15 THE WORLD. THEY HAVE INSPECTORS, THEY HAVE EFFICIENCY EXPERTS
16 TO DETERMINE HOW TO SAVE TIME AND MONEY. THERE'S ABSOLUTELY NO
17 EXCUSE WHY THEY CAN'T GET IT RIGHT. BUT OAKWOOD IS NEGLIGENT
18 AND THEY THOROUGHLY IGNORED THE STANDARDS. THE INSPECTORS HAVE
19 NO QUALIFICATIONS WHATSOEVER, LIKE JULIE MEEK. TAKE HER, FOR
20 EXAMPLE. ESSENTIALLY, A BARTENDER THAT COMES IN AND GRABS A
21 PARTICULAR AMOUNT PER HOUR, WORKS FOR OAKWOOD, GIVE HER A STACK
22 OF PAPERS, YOU'RE AN INSPECTOR. THEY DO.

23 THEY HAVE INSUFFICIENT TRAINING ON WHAT TO LOOK FOR.
24 WE PROVED THAT. OAKWOOD REFUSED TO MAKE THEM AWARE OF A FEW
25 SIMPLE, STRAIGHTFORWARD STANDARDS FOR MANUFACTURING GAS PIPE.

1 AND THE ASSEMBLY OF THAT PIPE DOESN'T TAKE MUCH. THE NUMBER OF
2 THREADS ON A PIPE, THAT'S ALL YOU HAVE TO KNOW. THE THREAD
3 SHOWING FOR A PROPERLY INSERTED PIPE. THAT'S ALL YOU HAVE TO
4 KNOW. DON'T OVER REAM. THERE'S A PICTURE IN THERE. TAKE A
5 LOOK AT SOME OF THAT PIPE. THAT'S OVER REAMED RIGHT THROUGH
6 THE WALLS TO A POINT IT'S JUST AMAZING.

7 MOUNT THE HANGERS. REMEMBER HATCH? HATCH SAID,
8 YOU'RE RIGHT, THAT IS NOT A WORKMAN-LIKE JOB. EVEN THEIR OWN
9 PEOPLE ARE SAYING THAT TO YOU. ALL THEY HAVE TO DO IS SAY,
10 GEE, THIS IS WHAT YOU HAVE TO DO TO PROPERLY SUPPORT THE
11 PIPING. JUST MAKE IT SO IT DOESN'T HAVE ANY WEIGHT GOING DOWN.
12 IT DOESN'T HAVE TO BE TIGHT, JUST TO STOP IT FROM BOUNCING
13 DOWN. DID THEY DO THAT? NO. DOESN'T TAKE MUCH, DOES IT?
14 WHAT DOES IT TAKE? AN HOUR'S WORTH OF TRAINING BEFORE YOU TAKE
15 THE PLUMBING BENCH? GEE, THIS IS WHAT WE HAVE, THIS IS WHAT
16 YOU SHOULD DO, THANK YOU VERY MUCH.

17 A LITTLE SIGN? YOU KNOW, IN THAT VIDEO YOU SAW THERE
18 WAS A SIGN BACK THERE WITH RESPECT TO EFFICIENCY. WHY DIDN'T
19 YOU PUT A LITTLE ONE UNDERNEATH THAT JUST SAYS SO MANY THREADS,
20 THIS TO TAPER, REMEMBER THAT SAFETY IS AN ISSUE. REAL EASY.
21 THEY REFUSED TO DO IT AND THEY REFUSED TO FOLLOW THE INDUSTRY
22 STANDARDS THAT WERE PROMULGATED FOR THE REASON OF SAFETY.

23 BUT SINCE HUD DOESN'T ENFORCE OAKWOOD DOESN'T CARE.
24 SUCH A MINOR EFFORT BY OAKWOOD WOULD HAVE PROBABLY SAVED THE
25 LIVES OF THE ERCANBRACKS, BUT THEY DON'T CARE. THEY'RE

1 ARROGANT, PRESUMPTUOUS. WE DON'T CARE. REMEMBER LILLY TOMLIN?
2 THE OLD SHOW. WHAT WAS IT, LAUGH-IN? WE'RE THE PHONE COMPANY,
3 WE DON'T HAVE TO CARE. THAT'S WHERE WE ARE.

4 EVEN STILL, SOME OF OAKWOOD'S EMPLOYEES, SUCH AS RICK
5 GIBSON, THEY ADMITTED THAT THEY WOULD QUESTION EIGHT THREADS ON
6 A PIPE RISER. THEY WOULD LOOK AT IT. THEY WOULD QUESTION IT.
7 BUT THIS HOME MADE IT THROUGH. THEY JUST DIDN'T CATCH IT.
8 EVEN THE EMPLOYEES KNEW THERE WAS A PROBLEM. THIS IS
9 ESSENTIALLY AN ADMISSION BY THE OAKWOOD EMPLOYEES THEMSELVES
10 THAT THEY KNEW THIS PIPING WAS OBVIOUSLY DEFECTIVE, THERE WAS
11 SOMETHING WRONG WITH IT, THEREFORE, OAKWOOD IS STRICTLY LIABLE.

12 I'M JUST GOING TO GIVE YOU A QUICK INSTRUCTION. I'M
13 NOT GOING TO REFER TO THEM TOO MUCH. YOU'RE GOING TO BE TAKING
14 THEM OUT. BUT ESSENTIALLY, THERE'S AN INSTRUCTION IN HERE,
15 IT'S NO. 37, IT SAYS, "ONE WHO MANUFACTURES OR SELLS A
16 DEFECTIVE AND UNREASONABLY DANGEROUS PRODUCT," UNREASONABLY
17 DANGEROUS, WOULD THE AVERAGE CONSUMER EXPECT GAS WOULD LEAK AND
18 BLOW THEIR FAMILY UP? THAT'S UNREASONABLY DANGEROUS. "YOU'RE
19 THEN LIABLE TO THE INJURY TO THE ULTIMATE USER, UNDER THE ABOVE
20 CIRCUMSTANCES, EVEN THOUGH, AND IT SAYS, YOU EXERCISED
21 REASONABLE OR THE UTMOST CARE IN MANUFACTURING AND INSPECTION."
22 THEY DIDN'T DO THAT. BUT EVEN IF THEY DID, IF YOU RELEASE A
23 PRODUCT INTO THE STREAM OF COMMERCE YOU'RE STRICTLY LIABLE,
24 WHICH MEANS THERE'S NO EXCUSE, THERE'S NOTHING YOU CAN DO. IF
25 YOU PUT THAT INTO THE STREAM OF COMMERCE AND SOMEBODY DIED OVER

1 IT THERE'S NO DEFENSE. YOU CAN'T RAISE ONE AT THAT POINT. AND
2 THAT'S WHAT THAT SAYS AND THAT'S YOUR DUTY TO HOLD THAT.

3 TRUE? THE HUD PEOPLE AREN'T ON TOP OF THEIR GAME.
4 ABSOLUTELY, THEY ARE NOT ON TOP BY ANY STRETCH OF THE
5 IMAGINATION.

6 SLIFKA EVEN ADMITS BY HIS STANDARDS THERE SHOULD BE
7 APPROXIMATELY 10 THREADS ON A PIPE, BUT THERE'S 15. THERE'S 50
8 PERCENT INCREASE OF THREADS. ESSENTIALLY EVEN SAID 20 IS OKAY
9 IF YOU GOT IT HOLDING PRESSURE. I GUESS THAT'S WHERE YOU GET
10 THE IDEA THAT YOU KNOW THAT'S OKAY. THAT'S OKAY FOR GOVERNMENT
11 WORK. THAT'S ESSENTIALLY WHAT WE HAVE.

12 IF THE PARENTS OF THE CHILDREN, HUD AND OAKWOOD, IF
13 THE PARENTS DON'T CARE WHY WOULD THE CHILDREN CARE. WELL, THIS
14 IS THE TIME TO TEACH THE CHILDREN A LESSON. IT IS THE ONLY WAY
15 TO BE ABLE TO SEND A MESSAGE. THIS EXPLOSION IS IN HUD'S DATA
16 BASE, BUT NOT BECAUSE THE PIPE WAS SUBSTANDARD. SO WHAT
17 DIFFERENCE DOES IT MAKE? THEY'RE JUST GOING TO PUT IN THERE,
18 WELL, PEOPLE DIED IN A MANUFACTURED HOME. THAT'S NOT GOING TO
19 DO ANYTHING. IT'S OF NO CONSEQUENCE. THE THREAD STANDARD
20 AIN'T GOING TO BE ENFORCED ANY BETTER TODAY THAN BEFORE THE
21 ERCANBRACK FAMILY DIED. WHAT DOES IT TAKE? IT TAKES YOU TO
22 SEND A MESSAGE.

23 THERE'S NO QUESTION THAT MR. SLIFKA STATED B1.20.1
24 ARE APPLICABLE OR NFPA 54. AND AS FRANK ALEX STATED, THERE'S
25 GOOD REASONS FOR THESE STANDARDS, SAFETY, STRUCTURAL INTEGRITY.

1 WHEN NOT FOLLOWED YOU SEE WHAT HAPPENED. BILL WAS THE ONLY
2 LIVING ASPECT OF THIS FAMILY LEFT TO TELL YOU WHAT HAPPENED.
3 IT'S A GOOD REASON TO ENFORCE THE STANDARDS.

4 WHO'S THE HUD ADVISORY COMMITTEE TO TAKE A 40-YEAR
5 OLD STANDARD AND START DICTATING, WELL, WE ARE NOT GOING TO PAY
6 ATTENTION TO THIS, WE ARE NOT GOING TO PAY ATTENTION TO THAT.
7 AGAIN, THE ARROGANCE. THE FEDERAL GOVERNMENT AND OAKWOOD
8 IGNORING STANDARDS THAT THEY ARE HELD TO JUST BECAUSE, WELL,
9 HAVEN'T HAD ENOUGH COMPLAINTS, DATA BASE ISN'T BIG ENOUGH,
10 HAVEN'T HAD ENOUGH PEOPLE DIE YET.

11 AND LADIES AND GENTLEMEN, WE'RE NOT SAYING ONE OVER
12 THREAD IS A PROBLEM, WE'RE SAYING THE PROBLEM DOESN'T COME
13 ABOUT UNTIL YOU GET FIVE, SIX, SEVEN IN A ROW. IT'S LIKE THE
14 ALIGNING OF THE PLANETS, THE AGE OF AQUARIUS, THINGS HAVE TO
15 LINE UP PARTICULARLY FOR AN EVENT TO OCCUR. THAT'S WHAT
16 HAPPENED. NOT JUST ONE LITTLE OVER THREAD. WE'RE TALKING
17 ABOUT FIVE OR SIX ABSOLUTE PROBLEMS IN A GAS PIPE WHERE THERE'S
18 ONLY SO MANY CONNECTIONS, I SUBMIT TO YOU, OVER 50 PERCENT OF
19 THE CONNECTIONS ARE WRONG. VERY CONSISTENT, THE PERSON AT THIS
20 TABLE. DID EVERYTHING WRONG.

21 AND LASTLY, THE HOLES WEREN'T REDRILLED. IT TOOK A
22 BUNCH OF MANUFACTURING, INSPECTION BLUNDERS, MANUFACTURING
23 BLUNDERS TO GET WHERE WE ARE TODAY. BUT IT HAPPENED. THEY SAY
24 IT COULDN'T HAVE HAPPENED. IT DIDN'T HAPPEN. WE WOULDN'T HAVE
25 DONE IT. IT DID. IT HAPPENED. AGAIN, YOU'RE LYING EYES ARE

1 GOING TO TELL YOU SO. JUST LOOK AT THE PIPE, LISTEN TO THE
2 EXPERTS.

3 UNFORTUNATELY, SOME CORPORATIONS WILL DO AS LITTLE AS
4 THEY CAN GET AWAY WITH UNDER THE REGULATIONS AND GUIDELINES.
5 AND ALTHOUGH THESE STANDARDS ARE LAW, HUD CHOOSES NOT TO
6 ENFORCE. WELL, LOOKS LIKE WE'RE GOING TO HAVE TO SEND A
7 MESSAGE TO OAKWOOD BECAUSE NO ONE ELSE IS. WE ARE GOING TO
8 HAVE TO SEND A MESSAGE THAT THEIR PRACTICES ARE UNACCEPTABLE.

9 MR. PLANT: YOUR HONOR --

10 THE COURT: MR. D'ELIA. MR. D'ELIA, APPROACH,
11 PLEASE.

12 (WHEREUPON, A DISCUSSION BETWEEN COURT AND COUNSEL
13 WAS HELD AT THE BENCH, AFTER WHICH, THE FOLLOWING PROCEEDINGS
14 WERE HAD):

15 THE COURT: MEMBERS OF THE JURY, YOU ARE INSTRUCTED
16 IN THIS CASE THAT PUNITIVE DAMAGES ARE NOT AN ISSUE, ANY
17 DAMAGES AWARDED MUST BE TO COMPENSATE NOT TO PUNISH.

18 PLEASE CONTINUE, MR. D'ELIA.

19 MR. D'ELIA: THANK YOU. I'M NOT SAYING TO PUNISH
20 THEM. THAT'S NOT WHAT I'M SAYING.

21 MR. PLANT: YOUR HONOR, I OBJECT TO THAT, THAT'S
22 EXACTLY WHAT HE'S BEEN SAYING.

23 THE COURT: I HAVE RULED, MR. PLANT.

24 MR. PLANT: THANK YOU.

25 MR. D'ELIA: UNDER THE CIRCUMSTANCES, LADIES AND

1 GENTLEMEN, EVEN WHAT WE HAVE HERE IS ANALOGOUS TO A SPEED
2 LIMIT. YOU GOT A 40 MILE AN HOUR SIGN ON THE ROAD, HOWEVER,
3 EVERYBODY STARTS TO DO 70 THROUGH THERE. THE COPS DON'T
4 ENFORCE IT. WHY? THEY'RE BUSY HAVING DONUTS AND THE MAYOR
5 SAYS I DON'T WANT YOU BOTHERING ANYBODY OUT OF TOWN. SO PEOPLE
6 DO 70 MILES AN HOUR CAUSE THEY CAN GET AWAY WITH IT. FINALLY,
7 SOMEONE GETS IN HIS CAR AND DOES 75 MILES AN HOUR, HITS A CAR
8 AND KILLS A FAMILY. THEN THEY'RE TRIED TO BE HELD LIABLE FOR
9 THEIR NEGLIGENCE OF DOING 70 OR 80 MILES AN HOUR. WHAT IS IT
10 THEY CLAIM TO YOU? THEY CLAIM, WELL, WE CAN'T BE HELD LIABLE,
11 THE COPS DIDN'T ENFORCE THE SPEED LIMIT, WE NEVER GOT A TICKET,
12 WE WERE NEVER CITED. THAT'S EXACTLY WHAT THEY'RE TRYING TO
13 PULL ON YOU TODAY. SIMPLY BECAUSE EVERY ONE DOES IT DOESN'T
14 MEAN IT'S NOT NEGLIGENCE. AND OAKWOOD HAS LEARNED NOTHING TO
15 DATE. THEY'RE ABOUT TO GET UP AND ARGUE WITH YOU AGAIN THAT
16 THEY DIDN'T DO ANYTHING WRONG. IT WAS EVERYBODY ELSE BUT THEM.

17 OUR THEORY. YOU WANT TO HEAR WHAT OUR THEORY
18 ESSENTIALLY CONSISTS OF? WE START AT THE TOP. WE START WITH
19 THESE TESTS. THE TESTS THEN SHOW GAS CANNOT COME IN FROM THE
20 OUTSIDE. THAT'S THE MIGRATION TEST. THEN WHERE DO WE GO? WE
21 GO TO FRANK ALEX. WE SAY FRANK, GAS COULDN'T COME IN FROM THE
22 OUTSIDE, CHECK THE PIPE OUT, SEE IF THERE'S ANYTHING WRONG.
23 WHAT DOES HE DO? HE LOOKS AT THE PIPE. NO LEAK IN THE THREADS
24 COULD HAVE CAUSED IT, SO WHAT DO WE HAVE? THREE FRACTURES.
25 THEREFORE, IT HAD TO HAVE BEEN ONE OF THESE THREE FRACTURES

1 CAUSE THERE'S NO OTHER PLACE THERE COULD HAVE BEEN A LEAK. AND
2 AGAIN, CAN'T BE COMING IN FROM THE OUTSIDE. SO WHAT DOES HE
3 DO? HE TAKES A LOOK AT THE STANDARDS, TAKES A LOOK AT THE
4 PIPE, AND WA LA, OVER-THREADING UNDER-INSERTION, OVER-THREADING
5 OVER-INSERTION, FORCES, NO RE-DRILL, BENDING, PROBLEMS.

6 WHAT DOES OAKWOOD DO? WELL, OAKWOOD PUTS ON A
7 METALLURGIST THAT SAYS, I CAN'T FIND ANY EVIDENCE THAT THERE
8 WAS AN ARREST FRACTURE, EXCUSE ME, THAT THERE WAS A CRACK PRIOR
9 TO THE FRACTURE. AND WHAT I'M TELLING YOU IS, IT DIDN'T HAPPEN
10 THEREFORE. JUST BECAUSE YOU SEE NO EVIDENCE DOESN'T MEAN IT
11 DIDN'T HAPPEN. LOOK AT THE SURROUNDING CIRCUMSTANCES. THEY
12 REFUSE TO CONSIDER THEM.

13 THEN WHAT THEY DO IS, WE HAVE THE FACTS, WE MAKE A
14 THEORY, THEY START WITH A THEORY AND TRY TO MAKE THE FACTS
15 MATCH. TWO DIFFERENT THINGS. THE EVIDENCE SHOWED THAT BILL
16 WAS SOLD A HOME WITH A WARRANTY AND A GUARANTEE. THAT IT HAD
17 NO DEFECTS, BUT THERE WERE DEFECTS. THERE WERE GOOD
18 FOUNDATIONS. THAT'S NOT A PROBLEM. PROPANE COMPANY INSTALLED
19 CORRECTLY. DOESN'T REALLY MEAN A PROBLEM. EVENTUALLY, IT DID
20 LOSE ITS ODORANT, BUT AGAIN, THE ODOR OF UNODORIZED PROPANE,
21 THAT WAS NEVER A PROBLEM UNTIL THE PIPE LEAKED.

22 REGARDLESS OF WHO INSTALLED STUB OUTS, THAT CAN'T BE
23 A SOURCE OF THE LEAK. SO WHAT'S THE DIFFERENCE? OVER THREAD
24 AND UNDER INSERTION, OVER THREAD, OVER INSERTION, THE GAS HAD
25 TO ACCUMULATE IN THE CRAWL SPACE. NO DISAGREEMENT. THE LEAK

1 COULDN'T HAVE BEEN OUTSIDE FOR ENOUGH GAS TO GET IN.

2 AND OUR TESTING, THREE TESTS, WE RESPONDED TO THEIR
3 CRITICISMS. WE KEPT RUNNING TESTS TO SEE. YOU SAY THIS, OKAY,
4 WE WILL RUN ANOTHER TEST TO ANSWER THAT QUESTION, IF WE CAN.
5 WE UNDERSTAND, IT'S WHAT ROMIG STATED.

6 AND THEN AFTER A WHILE THEY HAD NO PLACE TO GO,
7 BECAUSE NOW WE'VE ANSWERED ALL YOUR QUESTIONS. SO WHAT DID
8 THEY DO? THEY CHANGED THE FACTS. THEY TRIED TO CONVINCE YOU
9 THAT THERE WAS SNOW ON THE VENT WHEN, IN FACT, THE ONLY
10 EVIDENCE IN THIS CASE IS THAT BILL ERCANBRACK HAD SHOVELED IT.
11 SO WHEN THEY RUN OUT OF WHAT IT IS THEY CAN ASK QUESTIONS ON
12 AND POKE QUESTIONS WITH RESPECT TO OUR TESTS, THEY THEN CHANGE
13 THE FACTS. THAT'S NOT APPROPRIATE.

14 AND WHILE WE'RE HERE LET'S DISCUSS WHAT YOU MUST FIND
15 IN ORDER TO BUY THEIR THEORY. YOU MUST FIND THAT ONE, A
16 REGULATOR MYSTERIOUSLY FAILED WITH NO EVIDENCE. AND NO. TWO,
17 BILL ERCANBRACK IS AN ABSOLUTE LIAR. NOT ON ONE, NOT ON TWO,
18 BUT ON SEVEN POINTS. AND I SUBMIT TO YOU THIS IS BILL
19 ERCANBRACK. HE IS NOT A LIAR. HE'S NOT. THIS IS ABSURD.
20 THEIR STYLE IS TO ADD AGAIN, AS WE SAID, INSULT TO INJURY.
21 FIRST THEY KILL THE FAMILY AND THEY CLAIM HE'S LYING, AND ABOUT
22 WHAT ONE? THE REGULATOR ON THE HOME. YOU CHANGED IT. BILL
23 SAID, I DID NOT. HAD NOTHING TO DO WITH IT.

24 TWO, THE SNOWFALL. IT SNOWED AN INCH. IT DIDN'T. I
25 PLOWED THE DRIVEWAY TO KEEP IT SAFE FOR MY FAMILY. THERE'S NO

1 SNOW OUT THERE. ANY TIME THERE WAS SNOW I SHOVELED IT. THERE
2 WASN'T ANY SNOW. LOOK AT THE ROAD. IN THESE PICTURES LOOK AT
3 THE ROAD. CLEAN. DRY. THERE'S NO EIGHT INCHES OF SNOW LIKE
4 THEY TRY TO INFER. AGAIN, LET'S CHANGE THE FACTS AND CALL BILL
5 A LIAR.

6 CONVERSATION WITH RIGBY ON THE REGULATOR. BECAUSE
7 THEY RAN OUT, REMEMBER? HE WAS PUT ON REBUTTAL YESTERDAY. RAN
8 OUT OF THE REAR MOUNTED REGULATOR, HAD TO PUT IN A STRAIGHT
9 THROUGH REGULATOR. EVERYTHING IS FINE. JUST BUILD A BOX
10 AROUND IT. HE IS A LIAR ON THAT, ACCORDING TO OAKWOOD. AND
11 YOU HAVE TO BELIEVE THAT IN ORDER TO BUY THEIR CASE. THAT'S
12 INAPPROPRIATE. HE IS NOT A LIAR.

13 WHETHER HE REALLY BUILT THE BOX. YOU REMEMBER THAT?
14 THEY'RE EVEN TRYING TO QUESTION, DID YOU EVER SEE THE BOX, DID
15 YOU EVER SEE, MR. FREEMAN, ANY REMAINS OF THE BOX? NO. WHAT
16 RELEVANCE WOULD IT HAVE UNLESS THEY'RE TRYING TO PROVE THERE
17 WASN'T EVEN A BOX. REMEMBER BLAINE? BLAINE SAID I SAW THAT
18 BOX BEFOREHAND. AND THEIR THEORIES REMAIN CRUCIAL TO THE
19 BUILDING OF A BOX, THE WAY THE GAS ESCAPED AND ALL. BUT THEY
20 STILL WANT TO PUT THAT BEFORE YOU. WHY? A LITTLE SMOKE WON'T
21 HURT.

22 A CONVERSATION WITH RIGBY BEFORE HE SET THE TANK THE
23 FIRST TIME ON THE TELEPHONE, REMEMBER? RIGBY SAID, I DIDN'T
24 HAVE ANY CONVERSATION. BILL SAYS YES, YOU DID, YOU CALLED ME
25 AND SAID FLARE'S UP THERE, WAIT TIL THEY'RE DONE BEFORE I COME

1 UP. AND THAT'S WHEN THAT, IN THAT CONVERSATION BETWEEN WHEN
2 RIGBY SAYS HE CAME UP AND LEFT, THAT'S WHEN THAT STUB OUT
3 MYSTERIOUSLY CAME TO BE AT THE HOME.

4 REGARDING THE STUB OUT, YOU HAVE TO BELIEVE THEM,
5 BILL PUT THE STUB OUT.

6 THEN THE DIMENSIONS OF THE BOX. THEY'RE EVEN GETTING
7 A POINT OF WHERE THEY'RE TRYING TO GET YOU TO FOCUS ON, WELL,
8 THAT'S WRONG. YOU SAID 32 INCHES IN YOUR DEPOSITION, PAUL, NOW
9 YOU'RE CHANGING IT SAYING IT IS 34. ALL THEY'RE TRYING TO DO
10 IS MAKE BILL A LIAR. A LIAR. A LIAR. AND ONE THING, YOU
11 MIGHT GET WRONG IN YOUR HEAD, YOU DON'T GET SEVEN THINGS WRONG.
12 IT JUST DIDN'T OCCUR. IT'S JUST LIKE THE HOME. THEY SAY, IT
13 COULDN'T HAVE HAPPENED, BUT IT DID.

14 BILL RELATED HIS FACTS IN HIS FIRST DEPOSITION BEFORE
15 OAKWOOD EVEN HAD A CHANCE TO TELL US WHAT THEIR THEORIES WERE.
16 AND THERE'S ABSOLUTELY NO EVIDENCE OF A REGULATOR FAILURE.
17 DID YOU EVER HEAR ANY EVIDENCE WHATSOEVER EXCEPT ONE BOLD
18 ASSERTION, THERE HAS TO BE OUT OF A PROCESS OF -- NO EVIDENCE.
19 IF THERE'S SOMETHING LIKE THAT OCCURRING THEY WOULD HAVE PUT
20 SOMEBODY ON TO SAY THE SPECIFICS AS TO HOW IT FAILED. YOU
21 NEVER HEARD ANYTHING, DID YOU? NEVER ONCE HOW IT FAILED. YOU
22 THINK IT JUST FAILED? YOU HEARD RIGBY SAY, GEE, IN YOUR 40
23 YEARS IN THE BUSINESS OR SO, YOU EVER SEE A REGULATOR FAIL LIKE
24 THAT AND BLOW OUT 10 PSI? NEVER. SAME THING WITH THATCHER.
25 NEVER. AND THAT'S 80 COMBINED YEARS, 90 YEARS IN THE BUSINESS.

1 PURE SPECULATION.

2 AND FREEMAN. HE ADMITS THAT THERE'S NO EVENT TO
3 BREAK THAT OUTSIDE PIPE. HE SAYS, YOU GOT TO HAVE AN EVENT.
4 TO BREAK THE INSIDE, CONVERSELY, YOU GOT TO HAVE ONE IN THE
5 OUTSIDE. HE SAID, THERE IS NONE, DON'T KNOW OF ANY.

6 WE PERFORMED TESTS. THEY DID NONE ON THE MIGRATION.
7 YOU KNOW WHY? I SUBMIT TO YOU IT'S BECAUSE IF THEY DID THEY
8 WOULD HAVE PROVED THEIR OWN THEORY WRONG. IT'S EASIER TO SIT
9 BACK AND TAKE MONDAY MORNING POT SHOTS AT YOUR TEST THAN IT IS
10 TO DO YOUR OWN, BECAUSE IF THAT PROVES THAT YOU'RE WRONG, WE
11 GOT A PROBLEM, SO DON'T UNDERTAKE THE TESTS. THAT'S WHY
12 EXPERTS DON'T UNDERTAKE THE TESTS FROM OAKWOOD, THEY WOULD
13 PROVE THEIR OWN THEORY WRONG.

14 REMEMBER MOORE'S DEMONSTRATION? THIS IS PRETTY
15 IMPORTANT. REMEMBER, WE'RE TALKING ABOUT THE RISER. DID YOU
16 SEE MR. MOORE? HE WAS OVER HERE, SHOWING WITH HIS FINGER, LIKE
17 PULL IT. EVERYTHING ELSE WAS OVER HERE HOLDING THIS PIECE OF
18 WOOD. AS SOON AS HE PULLED IT, ANYBODY SEE WHAT HAPPENED?
19 THAT RANGE RISER WENT RIGHT BACK. IT CHANGED DIRECTION EXACTLY
20 AS WE SAID. I HOPE SOMEBODY SAW THAT.

21 AND AGAIN, WHAT HE DID WAS, DID YOU SEE HIM, HE PUT
22 THAT IN EXACTLY THE NUMBER OF THREADS HAND TIGHT THAT THE WOMAN
23 AT OAKWOOD PUT THAT RANGE RISER IN BELOW. THE SAME THREADS.
24 THE SAME AMOUNT. SO, IN OTHER WORDS, I SUBMIT TO YOU IT WASN'T
25 EVEN MORE THAN HAND TIGHT AT THAT POINT.

1 AND THEN YOU CAN EXPECT, WITH HUMAN NATURE, IF THERE
2 ARE 20 STATIONS AFTER YOU PUT THE RANGE RISER IN, THE WALLS
3 AREN'T EVEN UP, YOU DON'T EXPECT SOMEBODY TO STRAIGHTEN THAT
4 OUT, SOMEBODY TO TAKE IT AND YANK IT. THAT'S ALL IT TAKES IS
5 WHAT FRANK ALEX SAID.

6 AND MR. MOORE'S TESTS SHOW FOUR OUT OF FOUR TIMES HE
7 CAN GET A CRACK THAT EXTENDS HALFWAY THROUGH THE WALL OF THE
8 PIPE, BUT NOT ALL THE WAY THROUGH. THAT'S WHY THE LEAK TESTS
9 CAME BACK POSITIVE, BUT THERE'S STILL A CRACK THERE.

10 MR. MOORE ALSO CHANGED HIS TESTIMONY. REMEMBER WHEN
11 I ASKED HIM, GEE, DIDN'T YOU SAY BEFORE IT WAS ACTUALLY 17
12 PERCENT DIFFERENCE IN STRENGTH? YES, BUT I CHANGED IT TODAY TO
13 NINE, TO MAKE OAKWOOD LOOK BETTER.

14 FRANK ALEX CAME UP WITH 25 PERCENT OF LOSS TO
15 STRENGTH. THEY BOTH AGREED, WHEN YOU OVER THREAD THE RANGE
16 RISER AND UNDER INSERT IT, YOU'VE LOST STRENGTH. PERIOD. IT'S
17 COMMON SENSE. YOU TAPER THREAD, THINNER WALLS.

18 NOW, DAMAGES. IT'S A VERY HARD PART. VERY, VERY
19 HARD. AND UNDER THE CIRCUMSTANCES I WOULD SUBMIT TO YOU THAT,
20 IN FACT, THIS IS THE HARDEST PART OF THE CASE. AND THE REASON
21 THAT THIS IS THE HARDEST PART OF THE CASE IS BECAUSE YOU NOW
22 HAVE TO START THINKING ABOUT SOMETHING THAT YOU'VE NEVER
23 THOUGHT OF BEFORE. YOU MUST CONSIDER THE DEATHS OF TINA,
24 JEREMY AND TAMMY, THE PAIN, THE ANGUISH AND THE SUFFERING
25 EXPERIENCED BY BILL, THE LONE SURVIVOR. HERE AGAIN, THERE ARE

1 INSTRUCTIONS HERE THAT SPECIFICALLY STATE, "THAT IN DETERMINING
2 SUCH PECUNIARY LOSS YOU MAY ALSO CONSIDER THE PAIN, ANGUISH AND
3 MENTAL SUFFERING FROM THE DEATH OF THE PLAINTIFF'S WIFE AND THE
4 DEATH OF THE PLAINTIFF'S CHILDREN."

5 SO CONSIDER WHAT HE CAME UPON, THE ABSOLUTE
6 DEVASTATION. A SON, A DAUGHTER, A WIFE LYING THERE WHERE HE
7 LEFT THEM THAT MORNING, THEY WERE FINE. THINK OF THE STRAIN
8 AND SORROW THAT HE GOES THROUGH, AND THE FLASHBACKS, THE
9 NIGHTMARE THE REST OF HIS LIFE, THE P.T.S.D., POST TRAUMATIC
10 STRESS DISORDER. THINK OF WHEN HE GOES HOME AT NIGHT, CRIES
11 HIMSELF TO SLEEP. HE'S ALONE. HE'S LOST EVERYTHING IN HIS
12 LIFE THAT HE HAD WHEN HE HAD LEFT THAT MORNING.

13 THIS PART OF THE CASE IS DIFFICULT FOR YOU. AND YOU
14 PROBABLY NEVER DONE THIS, YOU PROBABLY NEVER EVEN CONSIDERED
15 IT, PROBABLY HAD NO REASON TO. BUT WE'VE GOT TO UNDERTAKE THE
16 TASK OF VALUING THE LOSS OF AN ENTIRE FAMILY IN ONE FELL SWOOP,
17 ONE SHOT.

18 CONSIDER WHAT CHILDREN REPRESENT. CHILDREN ARE THE
19 MEANING OF EXISTENCE FOR US. THEY'RE THE REAL GEMS OF THE
20 WORLD, THE MOST VALUABLE ASPECT OF LIFE. THEY COMPRISE MOST OF
21 OUR LIFE. PEOPLE SAY, WHAT IS THE MEANING OF LIFE? I SUBMIT
22 TO YOU THE MEANING OF LIFE IS CHILDREN. THE MEANING OF LIFE IS
23 TO BE ABLE TO RAISE YOUR CHILDREN TO BE BETTER THAN YOU, TO BE
24 ABLE TO HAVE A HEALTHY FAMILY, TO BE ABLE TO HAVE A HAPPY
25 FAMILY, AND PREPARE THEM FOR THE WORLD. THAT IS THE MEANING OF

1 LIFE.

2 AND TO BILL, WITH RESPECT TO WHAT HE FELT, AS ANY
3 CARING PARENT WOULD, THAT THIS IS WHAT GIVES HIM HOPE,
4 HAPPINESS, AND KEEPS HIM GOING. THE OBJECT OF HIS LOVE, THE
5 REASON FOR HIS LABOR, THIS IS THE MEANING OF CHILDREN.

6 IT'S IMPOSSIBLE TO PLACE A VALUE ON A CHILD'S LIFE,
7 THOUGH. BILL WOULD GIVE ANYTHING TO GET 'EM BACK. EVEN JUST
8 TO SAY GOODBYE. BUT, UNDER THE CIRCUMSTANCES, THAT JUST
9 DOESN'T HAPPEN. AND SO WHEN YOU'RE LOOKING AT A CHILD HOW DO
10 YOU PUT A VALUE ON A CHILD? IT'S IMPOSSIBLE. I MEAN, TO SAY A
11 CHILD IS WORTH ZERO, OR TO SAY A CHILD IS WORTH A HUNDRED
12 MILLION DOLLARS, I MEAN, ONE MAKES AS MUCH SENSE AS THE OTHER
13 SIMPLY BECAUSE YOU CAN'T DO IT.

14 DEFENDANTS WOULD HAVE YOU BELIEVE FROM THEIR
15 CROSS-EXAMINATION OF OUR ECONOMIST, CHRIS LEWIS, THAT THE LOSS
16 OF CHILDREN ACTUALLY SAVE BILL MONEY, BUT THAT'S A LITTLE
17 UNCARING AND CALLOUS. IT'S NOT THAT SIMPLE.

18 WE DON'T GENERALLY THINK ABOUT WHAT AN ENTIRE FAMILY
19 IS VALUED AT IN SOCIETY, BUT AGAIN, WE GOT TO DO IT TODAY AND
20 IT IS YOUR DUTY AS JURORS. THAT'S ONE OF THE THINGS THAT WE
21 HAVE TO UNDERTAKE. NOW, YOU MUST LOOK INSIDE YOURSELF AND YOU
22 MUST DIG DEEP, AND YOU MUST FIND WHAT IS THE VALUE OF A CHILD
23 TO BILL, AND WHAT IS THE VALUE OF HIS PAIN, SUFFERING AND
24 DISTRESS THAT HE GOT OVER LOSING HIS ENTIRE FAMILY. AND AS WE
25 SAID, BILL ONLY WANTS THE FAMILY BACK, BUT THIS AIN'T GOING TO

1 OCCUR.

2 OUR LEGAL SYSTEM DICTATES THAT BILL CANNOT GET HIS
3 FAMILY BACK, SO UNDER THE CIRCUMSTANCES THE ONLY THING WE CAN
4 DO IS GIVE HIM MONEY. THAT'S THE ONLY THING WE CAN DO.

5 WHAT MAKES THIS CASE SO UNIQUE AND SO EGREGIOUS AND
6 SO HEARTBREAKING IS BILL DIDN'T LOSE JUST ONE MEMBER OF HIS
7 FAMILY, HE LOST HIS ENTIRE FAMILY AT ONCE. HIS BEAUTIFUL
8 CHILDREN, HIS WIFE, TAMMY. AND THIS IS THE GREATEST LOSS THAT
9 ANYONE CAN EXPERIENCE IN THIS LIFE.

10 SO SINCE THIS IS THE FIRST TIME THAT YOU ARE DOING
11 THIS I'VE GOT A LITTLE BIT OF GUIDANCE. AND I'VE LEARNED THAT
12 I CAN'T BE, AND PART OF MY JOB, I CAN'T BE SHY ABOUT TELLING
13 YOU ABOUT THIS ASPECT. AND SO UNDER THE CIRCUMSTANCES I'VE
14 DEvised A FORMULA.

15 FIRST, IN TRYING TO FIGURE THE VALUE OF A CHILD, THE
16 BARE MINIMUM THAT A CHILD WOULD BE WORTH, ANYBODY PLACED UP
17 HERE IN THE SNYDERVILLE BASIN, IN THE PARK CITY AREA, THE
18 MINIMUM VALUE MUST BE AT LEAST A MILLION DOLLARS FOR THE FIRST
19 CHILD. HAS TO BE. THAT'S NOT MUCH MONEY THESE DAYS. THAT'S
20 REALLY NOT MUCH AT ALL. BASED UPON OUR IMMEDIATE COMMUNITY, IN
21 THESE DAYS, THAT'S GOT TO BE A STARTING POINT.

22 SO, IN OTHER WORDS, WE START UP HERE, FIRST CHILD,
23 JEREMY. THEN FROM THERE WHAT'S THE SECOND CHILD WORTH? ONCE
24 YOU LOSE A FIRST CHILD, WHEN YOU LOSE THE SECOND CHILD AT THE
25 SAME TIME THAT'S COMPOUNDED, COMPOUNDED TREMENDOUSLY TO THE

1 POINT THAT THE WHOLE IS GREATER THAN THE SUM OF ITS PARTS.
2 SIMPLY, WHEN YOU LOSE ONE CHILD -- WHEN YOU LOSE THE SECOND ONE
3 AT THE SAME TIME THAT'S COMPOUNDED. THE SECOND CHILD MUST BE
4 WORTH TWICE OF WHAT THE FIRST IS UNDER THE CIRCUMSTANCES.
5 TINA. THEY BOTH DIED AT ONCE.

6 NOW, THE QUESTION IS, WHAT'S THE PAIN AND THE ANGUISH
7 WORTH IN BILL'S LIFE TODAY. AND AGAIN, AS JURORS WE'VE GOT TO
8 CONSIDER TAMMY. HE'S LOST HIS WIFE, HIS SOULMATE, IN ADDITION
9 TO HIS CHILDREN ALL IN ONE FELL SWOOP. NOT ONE A FEW YEARS
10 LATER AND A FEW -- AT ONCE. THIS IS A HARD YET PREVENTABLE
11 PROPANE GAS EXPLOSION. TAMMY WAS THE ONLY PERSON THAT COULD
12 COMFORT BILL IN THIS SITUATION, TO BE ABLE TO COMFORT EACH
13 OTHER AS HUSBAND AND WIFE, TO REMINISCE ABOUT THE CHILDREN, TO
14 REMEMBER THEIR HAPPY TIMES, TO REMEMBER THE CHILDREN. TO
15 REMEMBER THEIR FACES, TO REMEMBER THEIR LOVE. THINK ABOUT IT,
16 LADIES AND GENTLEMEN, HE DOESN'T EVEN HAVE HIS WIFE TO CONSOLE
17 HIM, OR FOR HIM TO CONSOLE HER. HE DOESN'T HAVE THEM. BILL'S
18 ALONE, WITHOUT ANY MEMBER OF HIS FAMILY. AND UNDER THE
19 CIRCUMSTANCES, CAN YOU IMAGINE AGAIN WHAT IT'S LIKE AT NIGHT TO
20 GO HOME ALONE LIKE THAT, AFTER HAVING LOST YOUR FAMILY, TO LOSE
21 ALL INTEREST IN LIFE, TO LOSE MOTIVATION. IT'S DEVASTATING.

22 I SUBMIT TO YOU THAT WHEN YOU LOSE YOUR WIFE IN ONE
23 FELL SWOOP -- NOW AGAIN, THIS IS ALL BECAUSE IT HAPPENED AT
24 ONCE. AGAIN, THE WHOLE IS GREATER THAN THE SUM OF ITS PARTS.
25 I WOULD SUBMIT TO YOU THAT IF THE CHILDREN WERE WORTH THREE

1 MILLION AT THAT TIME THAT TAMMY SHOULD BE WORTH THE SAME,
2 BECAUSE, UNDER THE CIRCUMSTANCES, SHE IS THE ONLY LAST MEMBER
3 OF THE FAMILY TO GIVE HIM CHILDREN FOR THE REST OF HIS LIFE,
4 EVEN IF HE WANTS TO HAVE THEM AGAIN. SO UNDER THE
5 CIRCUMSTANCES -- TAMMY.

6 THEN, LET'S GO BACK TO WHAT WE WERE TALKING ABOUT
7 WITH CHRIS LEWIS. CHRIS LEWIS EXPLAINED A LOT OF THINGS.
8 FUNERAL EXPENSES. HE ALSO EXPLAINED LOST WAGES. I'LL TELL YOU
9 RIGHT NOW, THE JUDGE HAS RULED, LOST WAGES, WE AREN'T ABLE TO
10 CLAIM, SO WE HAVE ELIMINATED THAT FROM CHRIS LEWIS'S REPORT.
11 WE'RE NOT GOING TO TALK ABOUT THAT.

12 SECONDLY, THE JUDGE IS GOING TO INSTRUCT YOU THAT
13 YOU'VE GOT TO TAKE WHATEVER CHRIS LEWIS HAS DONE ON FUTURE
14 VALUE AND BRING IT BACK TO PRESENT VALUE BECAUSE IT'S TODAY.
15 WE'VE DONE THAT. EVERYTHING THAT HE'S DONE IS AT PRESENT
16 VALUE. AND SO WHAT DO WE HAVE? WE'VE GOT \$17,000.00 IN
17 FUNERAL EXPENSES, WE'VE GOT \$97,000.00 IN HOUSE DAMAGE, WE'VE
18 GOT \$3,000.00 DAMAGE TO THE EXPLORER. TOTAL? \$117,000.00.

19 SO UNDER THE CIRCUMSTANCES, WHAT WE'VE GOT IS THE
20 LOSS OF TAMMY'S HOUSEHOLD SERVICES. WHAT DID HE SAY IT WAS?
21 YOU'RE GOING TO HAVE THE CHART AND YOU ARE GOING TO TAKE IT IN
22 WITH YOU. 480,295.00. TAKEN FROM THE CHARTS, TAKEN FROM WHAT
23 EVERYBODY USES. YOU CAN TAKE IT RIGHT OFF THE INTERNET.
24 THAT'S WHAT HE USES. LOSS OF TAMMY'S VALUE OF RANCH SERVICES.
25 UNDER THE CIRCUMSTANCES, SHE WORKED, AND SHE WORKED HARD. THAT

1 AGAIN, CHRIS LEWIS VALUED AT 285,993.00.

2 THE TOTAL OF THOSE, OF THE VALUE OF HER HOUSEHOLD AND
3 RANCH SERVICES IS 766,288.00.

4 THE GRAND TOTAL IS 883,288.00.

5 AND DEFENDANT'S, OAKWOOD, HAVE PUT NO EVIDENCE TO THE
6 CONTRARY, SO I WOULD SUBMIT TO YOU THAT'S ACCEPTED. IT'S NOT
7 CONTESTED.

8 SO IF WE ADD, 883.288.00, WHAT DO WE HAVE?
9 \$6,883,288.00. I SUBMIT TO YOU THAT'S THE STARTING POINT OF
10 YOUR DELIBERATIONS OF WHERE A FORMULA CAN AT LEAST BE PRESENTED
11 TO YOU TO UTILIZE SOMEHOW OR ANOTHER AND AT LEAST GET TO YOUR
12 DAMAGE ISSUE THROUGH SOME ASSISTANCE THROUGH THIS FORMULA.

13 I'M GOING TO SIT DOWN NOW. MR. PLANT'S GOING TO GET
14 AN OPPORTUNITY TO TALK TO YOU. I GET AN OPPORTUNITY AGAIN TO
15 TALK WITH YOU LAST. THAT'S THE WAY THE SYSTEM IS, AS MR. PLANT
16 SAID IN OPENING STATEMENT. THE REASON THAT'S THE WAY THE
17 SYSTEM IS IS BECAUSE WE'VE GOT THE BURDEN OF PROOF TO PUT YOU
18 OVER THAT .00051 PERCENT. AND THEN AT THE SAME TIME WE'VE
19 SUSTAINED THE DAMAGES, NOT OAKWOOD. SO THINK ABOUT WHAT I
20 SAID. I'LL ADDRESS YOU AND I'LL PRESENT TO YOU REBUTTAL AT
21 THAT POINT IN TIME AS TO WHAT MR. PLANT'S GOING TO ARGUE. AND
22 THEN YOU'LL BE ABLE TO DELIBERATE. I'LL TALK WITH YOU ABOUT
23 OH, HALF HOUR TO AN HOUR. THANK YOU.

24 THE COURT: THANK YOU, MR. D'ELIA. MEMBERS OF THE
25 JURY, I THINK IT IS NORMALLY BEST TO TAKE A SHORT BREAK BETWEEN

1 PLAINTIFFS AND DEFENDANTS SO WE'RE FRESH FOR EACH ONE SO WE'RE
2 GOING TO TAKE EXACTLY 10 MINUTES. THANK YOU.

3 (RECESS)

4
5 THE COURT: WE ARE BACK ON THE RECORD. THE JURY ARE
6 PRESENT, COUNSEL AND THE PARTIES.

7 MR. PLANT, PLEASE GO AHEAD.

8 MR. PLANT: THANK YOU, YOUR HONOR. LADIES AND
9 GENTLEMEN, THANK YOU. I MEAN THAT. YOU KNOW, IN OUR SOCIETY
10 THERE'S SOME DIFFICULT THINGS THAT WE DO, AND ONE OF 'EM IS WE
11 CALL ON YOU TO HELP US. AND I KNOW WE'VE DONE THAT AND WE
12 APPRECIATE THAT. I KNOW THERE'S BEEN INCREDIBLE SACRIFICE.
13 QUITE FRANKLY, I'M SHOCKED THAT PEOPLE DO THIS, BUT I
14 APPRECIATE, ON BEHALF OF MY CLIENT, THAT YOU WERE WILLING TO DO
15 THAT. AND I MEAN THAT AND I HOPE YOU UNDERSTAND THAT.

16 IT IS NOW MY TIME, MY TURN TO TELL YOU WHAT I THINK
17 WE'VE HEARD OVER THE LAST SEVERAL WEEKS. SEEMS LIKE MONTHS IN
18 THIS MATTER. AND IT'S IMPORTANT THAT, FIRST OFF, I TELL YOU
19 THAT THIS IS A SYMPATHETIC CASE. I TOLD YOU THAT GOING IN.
20 AND I THINK IT IS. MR. ERCANBRACK HAD A BIG LOSS. WE DON'T
21 DENY THAT. NEVER HAVE. WHAT WE DENY, AND WHAT I'M GOING TO
22 TELL YOU IS THAT WE DENY THAT OAKWOOD HAD ANY ROLE WHATSOEVER
23 IN THAT LOSS.

24 BUT SYMPATHY BEING WHAT SYMPATHY IS, CAN GET IN THE
25 WAY. THAT'S WHY WHEN WE SELECTED YOU YOU RECALL WE MADE A

1 GREAT BIG DEAL OUT OF IT, CAN SYMPATHY BE AN ISSUE. AND A LOT
2 OF PEOPLE WERE EXCUSED FOR THAT. SOME OF YOU CAME BACK AND
3 WERE ACTUALLY QUESTIONED ABOUT THAT BECAUSE IT'S SUCH A BIG
4 DEAL. ONE OF THE INSTRUCTIONS THAT YOU WILL BE GIVEN AND, IN
5 FACT, SPECIFICALLY INSTRUCTION NO. 3, TALKS ABOUT THAT AGAIN.
6 IT SAYS "THIS CASE MUST NOT BE DECIDED FOR OR AGAINST ANYONE
7 BECAUSE YOU FEEL SORRY FOR ANYONE OR ANGRY AT ANYONE. IT IS
8 YOUR SWORN DUTY TO DECIDE THIS CASE BASED UPON THE FACTS AND
9 LAW WITHOUT REGARD TO SYMPATHY, PASSION OR PREJUDICE." THAT'S
10 YOUR OBLIGATION.

11 YOU KNOW, ONE OF THE THINGS I PAID CLOSE ATTENTION TO
12 WHEN YOU WERE SELECTED, BECAUSE IT'S HARD, THAT YOU ALL DID
13 THIS, AND YOU SAID, I SWEAR I'LL ABIDE BY THE LAW. YOU KNOW, I
14 DON'T AGREE WITH ALL THE LAWS, YOU DON'T AGREE WITH ALL THE
15 LAWS, I'M SURE, BUT THAT DOESN'T MATTER. WE ARE ALL BOUND BY
16 THEM. YOU NOTICED WE FOUGHT AND WE STRUGGLED AND THE JUDGE IS
17 THE DETERMINER OF THE LAW. I MADE A LOT OF OBJECTIONS, SOME
18 HAVE BEEN SUSTAINED, SOME HAVEN'T. WE DEAL WITH THE LAW. AND
19 SOMETIMES THAT'S FRUSTRATING, BUT THAT'S THE LAW, AND THIS IS
20 THE LAW, AND YOU HAVE TO ABIDE BY IT WHETHER YOU AGREE WITH IT
21 OR NOT. AND WE NEED TO RELY ON THAT. WE NEED TO RELY ON YOUR
22 OATH. YOU HAVE SEEN A LOT OF OATHS. WELL, THERE IS A LOT OF
23 THINGS GOING ON IN TERMS OF SWEARING TO DO THINGS IN THIS
24 COURT. THAT'S ONE OF THEM. AND I TRUST YOU'LL DO THAT. AND
25 IF YOU DO, YOU WILL FIND OAKWOOD HAD NOTHING TO DO WITH THIS.

1 FOLKS, WE DON'T RELY ON SYMPATHY, WE DO RELY ON
2 EVIDENCE. EVIDENCE IS HARD AND FAST. EVIDENCE IS
3 NON-SUBJECTIVE. IT CAN'T BE -- IT IS WHAT IT IS. IT'S NOT --
4 AGAIN, SYMPATHY MOVES IT, BUT IF YOU COME BACK HERE AND YOU
5 LOOK AT IT IN ITS OBJECTIVE FORM, IT SAYS SOMETHING. AND WE'VE
6 HEARD AND SEEN EVIDENCE THAT SAYS SOMETHING. WHAT HAVE WE
7 SEEN? WELL, LET'S GO OVER THAT TOGETHER.

8 I'M GOING TO RELY -- AND I'VE NEVER SEEN JURIES TAKE
9 NOTES AND BE SO ACTIVE AS YOU. I KNOW YOU KNOW THE EVIDENCE
10 AND THAT GIVES ME A GREAT DEAL OF CONFIDENCE. A GREAT DEAL OF
11 CONFIDENCE. BECAUSE THAT'S WHAT WE RELY ON. WE DON'T RELY ON
12 MIRRORS AND SMOKE. LET ME SUGGEST TO YOU THERE IS A LOT OF
13 THAT ON THEIR SIDE. AND LET ME EXPLAIN THAT.

14 THE FIRST THING THE PLAINTIFFS HAVE TO DO, WHICH THEY
15 HAVE NOT DONE TO SUSTAIN THAT BURDEN OF PROOF THAT MR. D'ELIA
16 TALKED ABOUT -- THEY GET TO GO FIRST. REMEMBER, I SAID I HAVE
17 TO SIT THROUGH THEIR CASE BEFORE I EVEN GET TO SAY ANYTHING?
18 WELL, I HAD TO SIT THROUGH EIGHT OR NINE DAYS BEFORE WE PUT ON
19 TWO DAYS. WE HAD TO LISTEN TO THEIR WHOLE CASE. AND THE
20 REASON WE DID THAT, AND THE REASON MR. D'ELIA GOT TO GO FIRST,
21 AND THE REASON HE GETS TO GO LAST IS THEY HAVE THE BURDEN.
22 MR. D'ELIA TALKED ABOUT ME PROVING STUFF. I DON'T HAVE TO
23 PROVE A THING. THAT'S THE WAY THE SYSTEM GOES. I HAVE TO
24 PROVE NOTHING. THEY HAVE TO PROVE THEIR CASE. THEY HAVE NOT
25 DONE THAT AS TO OAKWOOD. THEY HAVE NOT DONE THAT. LET ME

1 EXPLAIN WHY.

2 WHAT IS THERE PRIMARY PROOF? TWO OR THREE THREADS.

3 YEAH, I SAID THIS HAD TOO MANY THREADS ON IT. DIDN'T I? IT
4 DOESN'T MATTER. YOU'VE HEARD THAT IT DOESN'T MATTER. YOU'VE
5 HEARD IT'S NOT A VIOLATION OF ANY STANDARD. AND THAT'S THE KEY
6 HERE. ANYTHING THAT OAKWOOD HAD TO COMPLY WITH. IT'S REAL
7 INTERESTING WHAT THEY'VE DONE HERE.

8 DO YOU REMEMBER WHEN FRANK ALEX SAT UP THERE AND HE
9 SAID, AND THIS ANSI B1.20.1 HEARD OVER AND OVER AGAIN, WAS
10 FIRST BROUGHT UP, AND I SAID OBJECTION, YOUR HONOR, THERE'S NO
11 INDICATION THAT IT APPLIES HERE. AND THEY SCRAMBLED. YOU
12 REMEMBER WHAT THEY DID? THEY WENT OUT AND THEY READ THROUGH
13 WHOSE DEPOSITION? MICHAEL SLIFKA. AND AS PART OF THAT PROCESS
14 THEY READ SEVERAL PAGES FROM HIS DEPOSITION. AND THEY SET HIM
15 UP AS THE EXPERT AS TO THE APPLICATION OF STANDARDS IN THIS
16 CASE. HE'S THE MAN. THEY MADE HIM THE MAN. THEY KNOW NOTHING
17 ELSE AS TO WHY THIS THING APPLIES OR DOESN'T. IT'S ONLY
18 APPLICABLE BECAUSE MR. SLIFKA SAID IT APPLIES. THAT'S WHAT
19 THEY PROVED, OR ATTEMPTED TO PROVE, IN DOING THIS BURDEN OF
20 PROOF THING.

21 NOW WHAT DID MR. SLIFKA SAY? HE'S THE MAN. THERE IS
22 NO CONTRADICTORY EVIDENCE. MR. ALEX DIDN'T EVEN KNOW WHY IT
23 APPLIED. HE HAD TO GO TO MR. ALEX'S, OR MR. SLIFKA'S
24 DEPOSITION. HERE'S THIS EXPERT WITH A HUNDRED YEARS OF
25 EVIDENCE, EXPERIENCE, WHATEVER, AND HE DOESN'T EVEN KNOW WHY IT

1 APPLIES. THEY HAVE TO RUN OUT AND TAKE FIVE MINUTES OUTSIDE TO
2 FIGURE OUT WHY IT APPLIES. THEIR WHOLE CASE IS BASED UPON IT.
3 THEY DON'T EVEN KNOW WHY IT APPLIES.

4 SO THEY GO TO MR. SLIFKA. AND WHAT DOES MR. SLIFKA
5 TELL YOU WHEN HE SITS ON THAT STAND? IT DOESN'T APPLY. I'M
6 MISTER HUD. NOW, MR. D'ELIA STOOD UP HERE AND SAID, THEY DON'T
7 ENFORCE IT. THEY DON'T ENFORCE IT BECAUSE IT'S NOT THERE. HE
8 DIDN'T SAY THEY DID NOT, NOT ONLY DIDN'T ENFORCE IT, WHAT DID
9 HE TELL YOU? IT DOESN'T REQUIRE ANYTHING REGARDING THREADING.
10 NOTHING.

11 WHAT WE'RE WORRIED ABOUT, LADIES AND GENTLEMEN, IS
12 GAS TIGHTNESS. DOES IT LEAK? HOW MANY TIMES DID YOU HEAR
13 THAT? DOES IT LEAK? DOES IT PERFORM ITS FUNCTION? ONE THING
14 WE KNOW FOR SURE THAT'S NOT BEEN CONTRADICTED IN ANY WAY IS
15 THIS SYSTEM DID NOT LEAK. EVER. THIS SHODDY, HORRIBLE SYSTEM
16 SUSTAINED THIS HORRIFIC EXPLOSION AT THE END OF THE GAME DIDN'T
17 LEAK. WHY? WE PERFORMED, PLAINTIFF'S EXPERTS PERFORMED LEAK
18 TESTS ON EVERY PART OF THIS SYSTEM. THEY EVEN PERFORMED LEAK
19 TESTS OF THE JOINTS THAT WERE BROKEN OFF. THEY PUT PLUNGERS
20 DOWN IN, AND YOU KNOW WHAT, THOSE JOINTS STILL DIDN'T LEAK.
21 EVEN AFTER THIS HOUSE HAD BEEN TORN APART, IT NEVER LEAKED.
22 NOW THAT'S WHAT THE STANDARDS REQUIRE. THE STANDARDS DON'T
23 CARE ABOUT NUMBER OF THREADS. MR. SLIFKA TOLD YOU ABOUT IT.
24 IT IS NOT A MATTER OF ENFORCEMENT, IT IS A MATTER OF
25 REQUIREMENT. THAT'S WHY, WHEN OUR EMPLOYEES WERE QUESTIONED

1 ABOUT IT, THEY DIDN'T KNOW BECAUSE IT'S NOT A STANDARD.

2 THERE WAS ANOTHER GENTLEMAN THAT TESTIFIED.

3 MR. LARRY WEBBER. DO YOU REMEMBER HIM? HE WAS THE HEAD OF THE
4 HUD ENFORCEMENT FOR THE STATE OF COLORADO, WHICH WAS THE ENTITY
5 THAT HAD THE RESPONSIBILITY TO INSPECT THESE HOMES. NOW, THERE
6 WAS -- THE WAY THIS WORKS, SO THERE'S SOME CONFORMITY ACROSS
7 THE COUNTRY, THERE'S ONLY ONE ENTITY WITH THE ABILITY TO
8 ENFORCE AND REQUIRE -- EXCUSE ME, TO ESTABLISH STANDARDS.
9 THAT'S HUD. IT'S DONE BY CONGRESS. EACH STATE THEN HAS TO
10 COMPLY WITH THAT. MR. WEBBER WAS THE HEAD OF COLORADO WITH
11 CHIEF RESPONSIBILITY FOR THE ENFORCEMENT AND DETERMINATION OF
12 WHAT THOSE STANDARDS REQUIRE.

13 HE CAME OUT HERE AND HE LOOKED AT THE PIPES. HE SAW
14 IT AS IT WAS. AND HE SAYS THERE WAS NO VIOLATION. THAT'S NOT
15 A MATTER OF ENFORCEMENT, THAT'S A MATTER OF SAYING, HERE'S WHAT
16 THE STANDARDS REQUIRE AND IT DIDN'T VIOLATE ANYTHING.

17 NOW, WHY'S THAT IMPORTANT? FOR THEM TO CREATE, TO
18 ESTABLISH THE FACT THAT THIS WAS NEGLECT THEY HAVE TO CREATE A
19 VIOLATION OF A DUTY, SOMETHING WE SHOULD HAVE DONE THAT WE
20 DIDN'T. THEY HAVEN'T DONE THAT BECAUSE THERE'S NO VIOLATION OF
21 ANYTHING THAT WE HAD TO DO. IN ORDER FOR IT TO BE DEFECTIVE IT
22 HAS TO VIOLATE SOME SORT OF DUTY, SOME SORT OF REQUIREMENT. IT
23 DIDN'T. THEY WANTED YOU TO BELIEVE B1.20.1 OVER AND OVER
24 AGAIN, BUT IT DOESN'T APPLY. AND THEY PRODUCED NO EVIDENCE
25 THAT IT DID. THE BEST SHOT THEY HAD WAS, GEE, I DON'T KNOW,

1 BUT YOUR EXPERT'S THE MAN. AND THAT'S WHAT THEY SAID. LADIES
2 AND GENTLEMEN, THERE IS NO STANDARD ESTABLISHED, THERE IS NO
3 VIOLATION OF WARRANTY. WE WERE NOT OBLIGATED TO THREAD THIS
4 THING IN A CERTAIN WAY. OTHER THAN GAS TIGHT. AND IT WAS GAS
5 TIGHT AT ALL TIMES. THEREFORE, THERE'S NO VIOLATION OF
6 WARRANTY. THEY GOT EXACTLY WHAT THEY WANTED. THEY GOT A GAS
7 TIGHT SYSTEM. THERE IS NO NEGLIGENCE. THERE IS NO VIOLATION
8 OF DUTY. NEGLIGENCE MEANS THAT YOU DON'T DO SOMETHING THAT YOU
9 SHOULD. THERE IS NO DEFECT BECAUSE IT'S AGAINST THE STANDARD,
10 THERE CAN BE NO DEFECT. SO THIS PIPE, WITH TWO OR THREE EXTRA
11 THREADS, HAD NOTHING TO DO WITH THIS ACCIDENT.

12 NOW, LET'S ASSUME FOR THE SAKE OF THE MOMENT THAT IT
13 DID VIOLATE SOME STANDARD OR SOMETHING. I STRONGLY URGE YOU IT
14 DID NOT. WE'VE ESTABLISHED THAT CLEARLY THROUGH MR. SLIFKA AND
15 MR. WEBER, TWO PEOPLE WITH THAT OBLIGATION TO KNOW WHAT THE
16 STANDARD SAYS AND TO ENFORCE IT. IT DIDN'T VIOLATE THE
17 STANDARD. HAS NOTHING TO DO WITH ENFORCEMENT. THERE'S NO
18 EVIDENCE THAT THIS WAS EVEN SEEN BY HUD INSPECTORS TO ENFORCE
19 OR NOT, BUT THEY'LL TELL YOU AFTER THE FACT, IT DIDN'T VIOLATE
20 ANYTHING.

21 NOW, IF THEY'D COME IN AND SAID, IF MR. ALEX HAD
22 SAID, WELL, I KNOW IT APPLIES BECAUSE I KNOW IT ON MY OWN,
23 BECAUSE I'VE HAD ALL THIS EXPERIENCE, IT MIGHT BE A DIFFERENT
24 CASE. THAT'S NOT WHAT YOU HEARD. THAT'S NOT AT ALL WHAT WE
25 HEARD. THEY RELIED ON MR. SLIFKA.

1 NOW, LET'S TALK ABOUT WHAT OTHER PROOF THEY PUT IN TO
2 ESTABLISH AND CARRY THEIR BURDEN OF PROOF. KEEP IN MIND, AS
3 MR. D'ELIA TALKED, HE TALKED ABOUT, DID THEY PROVE ANYTHING?
4 DON'T HAVE TO. THAT'S THE BEAUTY OF IT. THAT'S WHY THEY GET
5 ALL THIS ADVANTAGE IN GOING FIRST AND GETTING THE LAST WORD. I
6 DON'T HAVE TO. BUT LET'S SEE WHAT THEY'VE PROVEN.

7 THEIR EXPERT, TO ESTABLISH THAT OUR PIPING SYSTEM,
8 THE OAKWOOD PIPING SYSTEM WAS SOMEHOW RESPONSIBLE FOR THIS, WAS
9 MR. FRANK ALEX. WHAT DID HE DO TO ESTABLISH THAT? HE DIDN'T
10 EVEN LOOK AT THE PIPE SURFACE FRACTURE, THE FRACTURE SURFACE
11 UNDER A MICROSCOPE. AND YOU KNOW WHY? HE SAID I DON'T HAVE
12 TO. I KNOW EVERYTHING. DIDN'T EVEN LOOK AT IT. AND THEN HE
13 SAID SOMETHING THAT'S VERY IMPORTANT. HE SAID, I HAVE NO
14 PHYSICAL EVIDENCE WHATSOEVER TO SUPPORT MY CONTENTION, MY
15 THEORY, MY CONCOCTION OF A PRE-CRACK. NONE. ZERO. THAT MUCH.
16 NO EVIDENCE. WHAT I HAVE, WHAT I HAVE, LET'S UNDERSTAND HIS
17 THEORY, WHAT I HAVE IS, I SAID, I LOOKED AT THIS SYSTEM, AND
18 DOG GONE IT, I THINK THIS WAS PROBABLY THE WEAKEST SPOT SO IT
19 HAD TO BREAK.

20 WELL, MR. MOORE CAME IN AND HE SAID, YOU KNOW WHAT, I
21 ANALYZED THIS THING MATHEMATICALLY THROUGH PHYSICS, AND I DON'T
22 EVEN THINK IT IS THE WEAKEST SPOT. BUT THE IMPORTANT THING
23 HERE IS, FOLKS, THIS PIPE WAS GOING TO BREAK NO MATTER WHAT.
24 AND HOW DID IT BREAK? THIS BECOMES A REAL IMPORTANT ISSUE.
25 THE DIRECTION OF THE BREAK. IT BROKE LIKE THAT. WHY DID IT

1 BREAK THAT WAY? DO YOU REMEMBER? IT WAS ATTACHED TO THE STOVE
2 AND THE STOVE WAS THROWN OUT THAT WAY. ABSOLUTELY, IT BROKE
3 AND IT BROKE THAT WAY. I HAVE IN FRONT OF YOU EXHIBIT 252.
4 THAT'S WHERE THE FRACTURE BREAK OCCURRED. MR. MOORE TOLD YOU
5 IT WAS A ZERO ANGLE. AND IT BROKE THAT WAY. THAT'S EXACTLY
6 HOW IT WAS GOING TO BREAK IN THE EXPLOSION. IT WAS ATTACHED TO
7 THIS, EXHIBIT 16. THIS WAS THROWN 100 FEET DOWN THE THING.
8 GEE, YOU THINK THERE WAS A LITTLE BIT OF FORCE ON THAT PIPE?
9 DO YOU THINK THIS RANGE RISER MIGHT HAVE BROKEN IN THIS
10 EXPLOSION? ABSOLUTELY. AND NO ONE SAYS OTHERWISE. NO ONE
11 SAID THAT IT WOULDN'T HAVE BROKE. SO THIS DIRECTION OF THE
12 FRACTURE BECOMES A BIG DEAL BECAUSE THAT'S ALL MR. ALEX HAD.
13 BROKE THIS WAY.

14 NUMBER ONE, MR. MOORE SAID, THEIR WHOLE THEORY, IN
15 FACT, MR. ALEX WENT ON TO SAY, IF WE DRILL THE HOLES, HIS WHOLE
16 THEORY IS GONE. HE SAID THAT. WHAT IS HE TELLING YOU? IF WE
17 DIDN'T STRETCH THIS THING ACROSS THAT ONE AND QUARTER INCHES TO
18 MAKE THIS MYSTERY CRACK APPEAR THAT STAYED THERE UNTIL THE DAY
19 BEFORE THE ACCIDENT, AND SOMEHOW MAGICALLY HAPPENED THE DAY
20 BEFORE THE ACCIDENT, THEN HIS WHOLE THEORY IS GONE. THAT'S
21 WHAT HE SAID. I DIDN'T SAY IT.

22 WELL, THE DIRECTION'S WRONG, FOLKS. LOOK IN THE
23 DIAGONAL. MR. MOORE TOLD YOU, IF SOMEHOW WE BROKE THIS THING
24 WHILE WE WERE PULLING IT ONE AND-A-QUARTER INCHES, WELL, LOOK,
25 IT'S RIDICULOUS. YOU'LL HAVE THIS IN THE JURY ROOM. PLAY WITH

1 IT. BEND IT. WATCH. WILL IT BEND AN INCH AND A QUARTER? YOU
2 BET. BUT MR. ALEX SAYS THAT WE HAVE TO GET -- WE KNOW WE HAVE
3 TO GET THIS DEFLECTION THING BECAUSE WE KNOW THAT IS A
4 COMPONENT OF A FRACTURE, DON'T WE. HAS TO DEFLECT A CERTAIN
5 DISTANCE BUT, YOU KNOW, DEFLECTION DOESN'T EVEN START UNTIL
6 WE'VE TAKEN THE FLEX OUT OF THE SYSTEM. MR. D'ELIA SAID, IN
7 OUR DEMONSTRATION THAT WE BENT THE PIPE, LOOK, IT'S INSERTED
8 THE SAME WAY. THAT THIS TURNED OVER. EVEN SO, EVEN IF THAT
9 PIPE DIDN'T, DO IT, GO BACK THERE. I URGE YOU TO SEE IF IT
10 WILL GIVE AN INCH AND A QUARTER, EVEN ASSUMING WE DIDN'T DRILL
11 THE HOLE. THIS THING HAS NUMEROUS INCHES. WE MOVED IT FIVE
12 INCHES WITH MR. MOORE'S FINGER. FIVE INCHES.

13 NOW, KEEP IN MIND SOMETHING. FOR THEIR THEORY TO
14 APPLY, REMEMBER WHAT IT IS? IT SAID, ON THE DAY OF THE
15 ACCIDENT THIS THING WAS SO CLOSE TO BREAKING THAT IT NEEDED A
16 20TH OF AN INCH, LESS THAN THAT, AND I'LL EXPLAIN THAT IN A
17 MINUTE, TO FINISH THE BREAK. WHAT DOES THAT TELL YOU? THAT
18 THIS WHOLE SYSTEM WAS COMPLETELY FLEXED, BOTH RISERS, SO THAT
19 THERE WAS THE REQUISITE FORCE TO BE CONSTANTLY PUT ON IT SO THE
20 THERMAL CONTRACTION WOULD COMPLETE THE FRACTURE. THAT'S WHAT
21 THEY HAVE TO SAY.

22 NOW, IF I'M MOVING IT THAT DISTANCE DOWN HERE, WHAT'S
23 HAPPENING UP HERE? 17 INCHES, WE MOVE IT, LOOK WHAT'S
24 HAPPENING. AND IT HAS TO BE ON BOTH. IT HAS TO BE ON BOTH THE
25 RANGE AND THE FURNACE RISER BECAUSE BOTH OF 'EM HAVE TO HAVE

1 THE ENTIRE FLEX AND DEFLECTION TAKEN OUT. IT COULDN'T HAVE
2 HAPPENED, FOLKS. OUR RISER WOULD HAVE BEEN OVER HERE. AND
3 MR. D'ELIA KEEPS TELLING YOU, WELL, DID ONE OF OUR WORKERS PUT
4 IT BACK? YOU KNOW WHAT? IF THEY HAD, THE ENTIRE FRACTURE
5 SURFACE CHANGES BECAUSE NOW WE HAVE ANOTHER FORCE. THERE'S
6 NOTHING.

7 MR. MOORE DID LOOK AT THE FRACTURE SURFACE. THIS IS
8 IT. NOW, I DON'T UNDERSTAND IT EITHER, BUT I UNDERSTAND THAT
9 MR. MOORE UNDERSTANDS IT. MR. MOORE TOLD YOU THERE'S NOTHING
10 ON HERE THAT SUGGESTS ANYTHING INCONSISTENT WITH THE ONE TIME
11 OVERLOAD. FANCY WORD FOR SAYING BOOM, AN EXPLOSION. THAT'S A
12 ONE TIME OVERLOAD. THAT'S WHAT HAPPENED TO THIS THING. EVERY
13 ONE OF FRACTURE SURFACES THAT BROKE IS CONSISTENT WITH THE ONE
14 TIME BOOM OVERLOAD. EVERY ONE OF THEM. DOES THAT SURPRISE
15 YOU? YOU'VE SEEN THE HORRIFIC NATURE OF THIS EXPLOSION. THAT
16 SHOULDN'T SURPRISE ANYBODY. IT DOESN'T SURPRISE ME. I'M
17 SURPRISED MORE OF IT DIDN'T BREAK.

18 NOW, SO THEIR EVIDENCE, TO SUSTAIN THEIR BURDEN OF
19 PROOF THAT OUR HORRIBLE PIPE CAUSED THIS ACCIDENT, IS NOTHING.
20 NO PHYSICAL EVIDENCE. NOTHING. MR. ALEX COULD NOT POINT TO
21 ONE THING THAT WAS WRONG WITH OUR PIPE THAT CAUSED THIS
22 EXPLOSION. THAT'S THE KEY.

23 YOU'RE GOING TO READ ABOUT PROXIMATE CAUSATION. WE
24 LAWYERS HAVE A GREAT WAY OF TAKING SIMPLE CONTEXT AND MAKING
25 THEM HARD. IT JUST SAYS, WAS IT SUBSTANTIALLY, PLAY A

1 SUBSTANTIAL ROLE. THAT'S A KEY ELEMENT OF WHAT YOU HAVE TO DO.
2 DID IT PROXIMATELY CAUSE THE ACCIDENT. EVEN IF SOMEHOW THIS IS
3 DEEMED DEFECTIVE, KIND OF LIKE RUNNING A STOP SIGN, YOU CAN GO
4 OUT AND RUN A STOP SIGN ALL DAY LONG, AND YOU MAY BE NEGLIGENT,
5 BUT UNTIL SOMEBODY'S THERE FOR YOU TO HIT, IT'S NOT ACTIONABLE.
6 THERE'S NO CAUSATION HERE. NOTHING ABOUT THESE PIPES CAUSED
7 ANYTHING. AND THEY DIDN'T PROVE IT. AND IF YOU DON'T BELIEVE
8 IT, AGAIN, THERE IS PREPONDERANCE OF THE EVIDENCE, IF THEY
9 DIDN'T PROVE IT SO IT'S MORE PROBABLE THAN NOT, THEN THEY LOST,
10 THEY LOSE.

11 LET'S TALK ABOUT SOME OTHER THINGS. MR. D'ELIA
12 TALKED ABOUT OUR LACK OF PROOF ABOUT AN OUTSIDE LEAK. LET'S
13 TALK ABOUT WHAT WAS IN THAT BOX. A COUPLE OF THINGS WERE IN
14 THERE. WE KNOW BECAUSE S.S. SUPPLY PEOPLE TOLD US THAT THERE
15 WAS A BACK MOUNTED REGULATOR. WHY DOES THAT MATTER? YOU KNOW,
16 IT PROBABLY SHOULDN'T, THEY BOTH WORK THE SAME. BUT YOU KNOW
17 WHAT? SOMEBODY IS LYING. HOW DO WE KNOW THAT? RIGHT THERE.
18 THIS ELBOW AND THIS NIPPLE. EITHER S.S. SUPPLY IS LYING OR
19 MR. ERCANBRACK IS LYING. IT'S THAT SIMPLE. NOW S.S. SUPPLY,
20 THROUGH JOHN BAILEY AND MR. BREWSTER, CAME IN HERE AND THEY
21 TOLD YOU SOMETHING. THEY SAID, WE PUT ON A BACK MOUNTED
22 REGULATOR, THIS PIPE WASN'T THERE WHEN I LEFT IT. THAT'S WHAT
23 THEY SAID. THEY WENT ON TO SAY, WE DIDN'T EVEN HAVE A
24 FLOW-THROUGH REGULATOR IN OUR STOCK. MR. D'ELIA BROUGHT IN AN
25 EXHIBIT TO SAY WE ORDERED SOME, THEY ORDERED SOME IN DECEMBER,

1 AND REMEMBERING, THIS WAS APPLIED OR INSTALLED IN JULY, AND
2 SOMEHOW THAT MEANS THEY HAD THEM THEN, AND MR. RIGBY, YOU
3 REMEMBER WHAT HE SAID, I SPECIAL ORDERED THOSE, WE DON'T EVEN
4 HAVE THOSE IN STOCK. NOW, HOW IN THE WORLD COULD THEY PUT
5 SOMETHING ON THAT THEY DON'T EVEN STOCK? THEY CAN'T.

6 IMPORTANTLY, AND YOU'RE GOING TO READ THIS IN THE
7 INSTRUCTIONS. THERE'S AN INSTRUCTION THAT TELLS YOU THAT S.S.
8 SUPPLY SETTLED. AND ONE OF THE THINGS THAT INSTRUCTION TELLS
9 YOU IS ONCE THEY SETTLE THEY DON'T HAVE ANY INTEREST ANY MORE
10 IN TAKING A POSITION. THEY DON'T CARE. THEY PAID THEIR MONEY
11 AND GOT OUT. THE PLAINTIFFS, HOWEVER, HAVE A FINANCIAL REASON
12 TO MAKE YOU BELIEVE THE OTHER WAY. THAT NOW IT'S NOT S.S.
13 SUPPLY'S FAULT. I'M GOING TO TALK ABOUT THAT IN A MOMENT AND
14 I'M GOING TO TELL YOU WHAT THEY TOLD US ABOUT S.S. SUPPLY. I'M
15 GOING TO TELL YOU, AND IF YOU THINK THEY HAVE BEEN FAIR AND
16 HONEST IN PRESENTING THEIR CASE. YOU CAN MAKE THAT DECISION.

17 BUT BACK TO THIS. IN THAT BOX, WHAT DID WE FIND
18 AFTER THE ACCIDENT? WE FOUND THIS. MR. RIGBY AND MR. BAILEY
19 BOTH SAID THEY SAW IT WHEN THEY LEFT AND IT WASN'T LIKE THAT.
20 IN FACT, MR. RIGBY TOLD YOU HE HAD THIS PICTURE TAKEN, EXHIBIT
21 204, EXCUSE ME, MR. BAILEY, AND HE WAS SO UPSET THAT THIS THING
22 WAS IN THERE HE WANTED TO MAKE SURE THAT IT WAS NOTED, BECAUSE
23 HE REMEMBERED SIX MONTHS BEFORE THAT HE DIDN'T PUT IT ON THAT
24 WAY. WHY WOULD YOU REMEMBER THAT? HE NEVER PUTS FLOW-THROUGH
25 REGULATORS ON. AND AN EXPLOSION HAPPENED. HE'LL REMEMBER THAT

1 FOR THE REST OF HIS LIFE. HAVE YOU EVER WITNESSED AN ACCIDENT?
2 YOU REMEMBER IT AFTER IT HAPPENS. SURE YOU DO. AND THAT'S
3 WHAT HE DOES.

4 NOW, MR. RIGBY CAME ON THE SITE TWICE AND HE SAW IT
5 TWICE AND HE SAID THE SAME THING. WHY WOULD THEY LIE? THEY
6 DON'T CARE. IT DOESN'T MATTER, THEY BOTH WORKED THE SAME WAY.
7 THERE'S NO REASON FOR THEM NOT TO TELL YOU THE TRUTH.

8 NOW, WHAT HAPPENED INSIDE THAT BOX? SOMEBODY ADDED
9 SOME PIPE. IT WASN'T S.S., HENCE, WE KNOW IT WASN'T A
10 QUALIFIED PERSON. S.S. WAS QUALIFIED. WE ARE GOING TO TALK
11 ABOUT THAT IN A MINUTE. BUT WE KNOW SOMEBODY ADDED SOMETHING
12 THAT THEY HAD NO BUSINESS ADDING. THIS SHOULDN'T HAVE BEEN ON
13 THERE.

14 AND WHAT WE ALSO KNOW, THAT NOBODY TALKED ABOUT MUCH,
15 WAS THIS PIPE WAS BROKEN AFTER THE ACCIDENT. IT WAS A
16 FRACTURED PIPE. MR. ALEX NEVER EVEN CONSIDERED THAT AS BEING A
17 MEANS OF THE GAS ESCAPING. DIDN'T EVEN LOOK AT IT. BUT IT WAS
18 BROKEN. WE NEVER FOUND THE CORRESPONDING, NOT WE, THEY NEVER
19 FOUND THE CORRESPONDING PIECE OF PIPE THAT WAS BROKEN OFF OF
20 IT. WE DON'T EVEN KNOW IF IT WAS ATTACHED TO IT. THERE'S BEEN
21 SOME ASSUMPTIONS IT WAS A RING BUT IT COULD HAVE BEEN, WHO
22 KNOWS. WE DON'T KNOW. SO WE DON'T KNOW WHAT WAS IN THAT
23 REGULATOR BOX.

24 REMEMBER, THERE WAS EVEN TESTIMONY FROM THE FLARE
25 CONSTRUCTION PEOPLE THAT THEY SAW IT WITHOUT EVEN A REGULATOR

1 ATTACHED. WHAT HAPPENED IN THAT BOX? I DON'T KNOW, BUT I DO
2 KNOW THIS, I KNOW OUR PIPE CHECKED OUT LEAK PROOF TO THE BOX
3 AND THE FLEX PIPE CHECKED OUT TO THE REGULATOR, AND EVERYTHING
4 WAS FINE EXCEPT IN THAT BOX.

5 I KNOW THIS EXTRA PIPE WAS ADDED, I KNOW SOMEBODY'S
6 NOT TELLING US THE TRUTH. IT'S EITHER S.S. OR IT'S
7 MR. ERCANBRACK BUT IT'S NOT OAKWOOD. WE HAD NOTHING TO DO WITH
8 THIS, LADIES AND GENTLEMEN. I STOOD UP HERE AND I SAID, THIS
9 IS MYSTERY PIPE. YOU REMEMBER ME TELLING YOU THAT? NOBODY PUT
10 THIS ON. BUT DID ANYBODY FESS UP? NO ONE. BUT WE KNOW IT
11 WASN'T OAKWOOD BECAUSE WHEN WE LEFT IT IT WAS TO THAT FITTING
12 RIGHT THERE. WE KNOW IT WASN'T OAKWOOD.

13 DOES IT MATTER? SURE IT DOES. CAUSE SOMETHING
14 HAPPENED. WE KNOW MR. ERCANBRACK WORKED AROUND THIS, WE KNOW
15 HE BACK FILLED AROUND IT, WE KNOW HE BACK FILLED UP TO 12
16 INCHES, EVEN THOUGH IN THEIR TESTS THEY DIDN'T DO THAT. WE
17 KNOW HE HAD A SHOVEL, HE HAD A BULLDOZER AROUND IT. I DON'T
18 KNOW WHAT HAPPENED. WE'LL NEVER KNOW WHAT HAPPENED. BUT I
19 KNOW THAT SOMETHING HAPPENED AND SOMETHING HAPPENED THAT YOU
20 WERE NEVER TOLD ABOUT, BECAUSE THIS PIECE OF PIPE HAS NEVER
21 BEEN EXPLAINED BY ANYONE. THAT MATTERS. THAT'S EVIDENCE,
22 CAUSE YOU CAN HOLD IT AND YOU CAN TOUCH IT. AND IT'S HERE.

23 NOW, I WANT TO TALK TO YOU ABOUT THEIR THEORY ABOUT
24 THE GAS COMING IN FROM THE OUTSIDE. DID YOU CATCH WHO IT WAS
25 THAT CAME UP WITH THIS TEST IDEA? DO YOU REMEMBER? IT WASN'T

1 ANY OF THEIR EXPERTS. IT WAS MR. D'ELIA. DO YOU REMEMBER WHAT
2 THEIR EXPERTS SAID? I'VE NEVER USED A TEST LIKE THIS BEFORE.
3 NO ONE HAS. MISTER PROPANE, MR. THATCHER, NEVER HAD USED ONE.
4 MISTER ASTROGEOPHYSICS GUY, ROMIG, NEVER USED ONE. MR. FREEMAN
5 NEVER USED ONE. THEY DON'T NEED IT. THAT'S WHY THEY'RE
6 EXPERTS. THEY'RE ABLE TO DETERMINE THE CHARACTERISTICS OF WHAT
7 HAPPENED WITHOUT TESTS. THEN WHY IS A TEST MEANINGLESS HERE?
8 IT'S NOT THE ERCANBRACK HOUSE, IT'S A SELF-CONSTRUCTED LITTLE
9 BOX, CONSTRUCTED BY THE PLAINTIFF HIMSELF, THE MAN WITH ALL THE
10 INTEREST IN THIS CASE, PUT THIS THING TOGETHER. YOU THINK IT
11 WAS AS GAS TIGHT AS THEY COULD GET IT? I'LL ASK YOU THAT. IS
12 THAT SCIENTIFIC OBJECTIVE SORT OF TESTING WHEN THE PLAINTIFF
13 HIMSELF BUILDS THE STRUCTURE? IS THAT APPROPRIATE? IS THAT
14 SCIENTIFIC TESTING? I SUBMIT TO YOU IT'S NOT AND IT'S
15 MEANINGLESS. IT'S MEANINGLESS FOR A LOT OF REASONS.

16 IT'S MEANINGLESS BECAUSE THAT'S IT. DOES THAT LOOK
17 LIKE A MANUFACTURED HOME? NO. DOES THAT LOOK LIKE A HOME THAT
18 CAN CONDUCT AIR THROUGH NEGATIVE PRESSURE THAT YOU'VE HEARD ALL
19 ABOUT? NO. DOES THAT LOOK LIKE A HOME THAT HAS THE KIND OF
20 SNOW THAT EVEN MR. ERCANBRACK HIMSELF DESCRIBED? AND I AM
21 GOING TO TALK ABOUT THAT IN JUST A SECOND. BUT LOOK AT IT.
22 ALL HE SAID HE DID SIX DAYS BEFORE WAS REMOVE THE SNOW FROM THE
23 VENTS AND OFF THE TOP OF THE BOX. OFF THE TOP OF THE BOX. IS
24 THAT JUST OFF THE TOP OF THE BOX OR IS IT DOWN ABOUT EIGHT
25 INCHES? I'M NOT A PHYSICIST, I'M NOT A GAS GUY, BUT I CAN TELL

1 YOU, YOU KNOW WHAT, IF I EXPOSE THESE GAPS I DON'T NEED TO DO
2 MUCH TESTING, I KNOW THERE'S GOING TO BE A LOT OF DISSIPATION.
3 WE CAN ALL FIGURE THAT OUT. EVIDENCE, IS THAT MR. ERCANBRACK
4 SAID HE DID WHAT HE DID SIX DAYS BEFORE AND NEVER SAW IT AGAIN.
5 THAT'S THE EVIDENCE.

6 THE EVIDENCE IS THAT IT SNOWED THE DAY BEFORE THIS
7 ACCIDENT. IT SNOWED AN INCH IN COALVILLE. DO YOU REMEMBER
8 WHAT I ASKED MR. ERCANBRACK BEFORE HE UNDERSTOOD THE
9 SIGNIFICANCE OF IT? I SAID, BILL, WHEN IT SNOWS AN INCH IN
10 COALVILLE WHAT HAPPENS UP IN CLARKS CANYON. DO YOU REMEMBER
11 HIS RESPONSE? OH, IT'S ABOUT EIGHT INCHES UP THERE. THEN
12 THEY'RE SHOWING YOU SOME PICTURES THAT WERE TAKEN FOUR OR FIVE
13 DAYS LATER AND THEY'RE RELYING ON THOSE TO SAY THERE WAS NO
14 SNOW ON THE ROAD.

15 HE ALSO SAYS, I DON'T SCRAPE MY WALKS OFF UNLESS
16 THERE'S AT LEAST THREE INCHES OF SNOW. WELL, REMEMBER WHAT
17 PROMPTED THIS IN THE FIRST PLACE? MR. ERCANBRACK'S SITTING IN
18 THERE AND HERE'S THE SNOW COMING OFF THE ROOF AND COMPACTING
19 AGAINST HIS HOUSE. REMEMBER THAT? THAT'S WHAT THAT ROOF DOES.
20 IF SNOW WAS ON THERE, AND WE KNOW IT SNOWED, IT'S GOING TO,
21 WHEN IT GETS WARM, IT'S GOING TO FALL DOWN. AND THE EVIDENCE
22 IS MR. ERCANBRACK NEVER SAW THAT AGAIN. HE CAN'T TELL YOU HOW
23 IT WAS THE DAY BEFORE THE ACCIDENT. HE CAN ONLY TELL YOU HOW
24 IT WAS SIX DAYS BEFORE THE ACCIDENT. THEY WANT YOU TO BELIEVE
25 THAT SOMEHOW THE SNOW WENT DOWN EIGHT INCHES. HE DOESN'T KNOW

1 THAT.

2 THE EVIDENCE IS THAT IT SNOWED. THE EVIDENCE IS THAT
3 IF IT SNOWS AN INCH IN COALVILLE IT SNOWS EIGHT INCHES UP IN
4 CLARKS CANYON. NOW, I DON'T KNOW IF IT SNOWED THAT MUCH, BUT I
5 KNOW IT SNOWED SOME. AND THAT'S WHAT'S IMPORTANT.

6 MY COMMENT ABOUT GARBAGE IN GARBAGE OUT WAS A
7 COMPUTER TERM. YOU'VE ALL HEARD IT. IF THIS TEST WASN'T DONE
8 UNDER THE RIGHT PARAMETERS IT'S MEANINGLESS. MR. ROMIG HIMSELF
9 SAID IF THERE WAS SNOW UP AROUND THIS BOX THAT'S A POSSIBILITY,
10 IT GOT IN. THAT'S WHAT THEIR EVIDENCE SHOWS.

11 YOU KNOW, FOLKS, DO YOU EVER WONDER WHY THEY USE A
12 DIFFERENT VENT ON THEIR TEST? THIS ONE IS ALMOST COMPLETELY
13 AIR TIGHT. THAT'S THE ONE THEY USED. THIS IS THE ONE THAT WAS
14 ON THE ERCANBRACK HOME. AND WHAT WAS THEIR EXCUSE? WE
15 COULDN'T FIND THIS. IT'S HERE. MR. ERCANBRACK TOLD YOU HE HAD
16 EXEMPLARS OF THESE IN HIS GARAGE, AND YET, THEY'RE GOING UP
17 THERE TO BUILD THIS TEST JUST EXACTLY LIKE THE ERCANBRACK HOME
18 WITH THAT CONNECTING. AND THEY PUT IN ANOTHER KIND OF VENT.
19 IT'S A LOT TIGHTER.

20 NOW, ONE OF THE THINGS THAT MR. ROMIG TALKED ABOUT,
21 THIS EXHIBIT, IT'S THE BACK OF EXHIBIT 173. TALKED ABOUT THIS.
22 AND ALL HE SAID IS, UNDER HIS TEST CRITERIA, IF YOU GET A
23 CERTAIN GAS CONCENTRATION GOING IN, THEN IT'S GOING TO LEVEL
24 OUT AT SOME TIME. BUT WHAT'S CRITICAL IS THE GAS CONCENTRATION
25 GOING IN. AND ALL WE NEED TO DO, ACCORDING TO EVEN MR. ROMIG,

1 IS GET THAT SNOW UP THERE TO CREATE SOME SORT OF CONCEALMENT --
2 NO, THAT'S NOT WORD. CONTAINMENT. EXCUSE ME. IT NEEDS TO BE
3 CONTAINED. AND ONCE IT'S CONTAINED, THEN IT CAN GET OVER IT
4 AND YOU'VE GOT A HIGHER PERCENTAGE OF GAS CONCENTRATION GOING
5 IN. AND MR. FREEMAN TOLD YOU THAT IT WOULD BE AS HIGH AS 12
6 PERCENT GAS GOING IN IF THAT CHANNEL IS ESTABLISHED. TWELVE
7 PERCENT. WHAT WAS THE L.E.L.? BETWEEN TWO AND NINE. THEIR
8 TEST IS MEANINGLESS. THEY DIDN'T EVEN LOOK AT THE HOUSE. HOW
9 DO WE KNOW WHAT POLES ARE THROUGH THE FOOTPRINT OF THE HOME?
10 MR. ERCANBRACK HAS TESTIFIED ON THAT. WE KNOW THAT BOX WAS
11 CHANGED INSIDE BY SOMEONE. WE KNOW THAT BECAUSE WE HAVE
12 EVIDENCE.

13 WE KNOW THAT IN THE CIRCUMSTANCES OF THE ERCANBRACK
14 HOME THE GAS COULD HAVE GOTTEN IN THERE BY ONLY ONE SMALL
15 THING, A LITTLE BIT OF SNOW. AND WE KNOW IT SNOWED.
16 MR. ERCANBRACK NEVER TESTIFIED THAT ON THE DAY BEFORE THIS
17 ACCIDENT THERE WASN'T SOME CONTAINMENT AROUND THIS BOX. HE
18 SAID HE MOVED IT OFF THE TOP SIX DAYS BEFORE AND THAT WAS IT.
19 THAT'S WHAT HE TESTIFIED TO.

20 NOW, ANOTHER ISSUE HERE. PRETTY IMPORTANT ISSUE.
21 S. & S. PROPANE'S NOT HERE. YOU NOTICE THAT? YOU'VE BEEN
22 INSTRUCTED THAT THEY SETTLED. LET ME TELL YOU WHY THEY SETTLED
23 AND WHY THEY HAVE CONSIDERABLE FAULT IN THIS CASE. GOING TO DO
24 IT RATHER EASILY. YOU'RE RIGHT, OR MR. D'ELIA'S RIGHT. WE
25 DIDN'T PRESENT A LOT OF EVIDENCE ON THIS.

1 MR. D'ELIA: YOUR HONOR, I THOUGHT THE REASONS FOR
2 SETTLEMENT, THAT YOU INSTRUCTED THE JURY THAT THEY'RE NOT TO BE
3 CONCERNED WITH THE REASONS FOR SETTLEMENT.

4 THE COURT: THAT'S A CORRECT STATEMENT, NOT THE
5 REASONS FOR SETTLEMENT, BUT MR. PLANT CAN ARGUE THEIR FAULT.

6 MR. PLANT: THANK YOU.

7 THE COURT: JUST KEEP IT AT THAT.

8 MR. PLANT: I'M GOING TO SHOW YOU, PLEASE WRITE THIS
9 DOWN, INSTRUCTION NO. 48, BECAUSE IT TAKES THE PLACE OF A LOT
10 OF EVIDENCE THAT I WOULD HAVE HAD TO HAVE PUT ON. LET'S READ
11 IT, BECAUSE IT'S IMPORTANT.

12 "IN THIS CASE THE FOLLOWING FACTS HAVE BEEN
13 CONCLUSIVELY ESTABLISHED. THAT'S PRETTY STRONG. NO. 1,
14 ETHYLMERCAPTAN WAS ADDED TO THE PROPANE SOLD TO MR. ERCANBRACK
15 BY S.S. SUPPLY, IN ORDER TO PROVIDE WARNING TO MR. ERCANBRACK
16 AND HIS FAMILY, IN THE EVENT OF A PROPANE LEAK."
17 ETHYLMERCAPTAN IS THAT CHEMICAL THAT SMELLS. YOU CAN'T SMELL
18 PROPANE, YOU SMELL ETHYLMERCAPTAN.

19 "NO. 2, THESE ARE ALL" -- YOU DON'T HAVE TO HEAR
20 TESTIMONY. THESE ARE CONCLUSIVELY ESTABLISHED.

21 "NO. 2, THE PROPANE TANK SOLD TO MR. ERCANBRACK BY
22 S.S. SUPPLY CONTAINED RUST AT THE TIME OF THE SALE." NO BIG
23 DEAL UNTIL YOU HEAR THE THIRD ONE.

24 "THE RUST IN THE PROPANE TANK SOLD TO PLAINTIFF BY
25 S.S. SUPPLY CAUSED COMPLETE DEPLETION OF THE ETHYLMERCAPTAN IN

1 THE PROPANE SOLD TO PLAINTIFF BY S.S. SUPPLY."

2 IT WAS ALL GONE. DID YOU HEAR MR. ERCANBRACK TELL
3 YOU HE COULDN'T SMELL IT BECAUSE OF THE RUSTED TANK THEY
4 SUPPLIED TOOK IT ALL OUT. IT WAS GONE. THE WARNING WAS GONE.
5 "THE PROPANE TANK SOLD TO MR. ERCANBRACK BY S.S. SUPPLY WAS
6 DEFECTIVE AND UNREASONABLY DANGEROUS." TALK ABOUT THAT IN JUST
7 A MINUTE.

8 "AND THEN TRACES OF PROPANE WERE FOUND IN
9 MR. ERCANBRACK'S WIFE AND DAUGHTER AFTER THE EXPLOSION."

10 YOU KNOW WHAT THAT MEANS? THAT MEANS THAT THIS
11 WARNING SYSTEM THAT IS EXPECTED TO BE IN PROPANE WAS NOT THERE.
12 SO THAT MRS. ERCANBRACK AND HER FAMILY HAD NO CHANCE OF KNOWING
13 IF THERE WAS GAS IN THE HOME NO MATTER HOW IT GOT THERE. IT'S
14 THE LAST WARNING.

15 WHAT'S OUR EVIDENCE ON THAT THAT IT WOULD HAVE MADE A
16 DIFFERENCE? YOU'VE HEARD ALL THESE PEOPLE TALK ABOUT HOW THE
17 GAS IS SUCKED UP IN THE HOME. YOU'VE HEARD EVIDENCE ABOUT HOW
18 THERE HAD TO BE AN EXPLOSIVE LEVEL IN THE HOUSE AT THE TIME OF
19 THE EXPLOSION BECAUSE THERE WERE NO IGNITION SOURCES IN THE
20 CRAWL SPACE. SO WE KNOW THERE WAS PROPANE IN THE LIVING SPACE
21 AT THE TIME OF THE ACCIDENT.

22 MR. THATCHER, THEIR EXPERT, TOLD YOU IF IT'S PROPERLY
23 ODORIZED, AND THIS WASN'T, IT HAD NO ODORANT, YOU HAVE TO BE
24 ABLE TO SMELL IT AT 150 L.E.L. REMEMBER L.E.L. IS ABOUT 2.3.
25 SO WE ARE TALKING ABOUT A .04 PERCENTAGE OF GAS TO AIR. ALMOST

1 NOTHING. THAT'S WHAT IT'S GOT TO BE DETECTABLE AT. AND WE
2 KNOW THAT THE FAMILY SMELLED IT. WHY? BECAUSE IT'S IN THEIR
3 SYSTEM. REMEMBER DR. GREY, DR. TODD GREY SAT THERE AND SAID, I
4 DID SOME ANALYSIS AND I FOUND OUT IT CAN ONLY GET -- THEY HAD
5 PROPANE IN THEIR SYSTEM. MR. D'ELIA'S GOING TO SAY WE DON'T
6 KNOW HOW MUCH AND WE DON'T KNOW HOW LONG, BUT NONETHELESS THEY
7 HAD PROPANE IN THEIR SYSTEM. AND THE ONLY WAY YOU GET IT IS
8 THROUGH RESPIRATION.

9 NOW, WE ALSO KNOW ONE OTHER THING. REMEMBER WHEN
10 MR. ERCANBRACK WAS TELLING YOU ABOUT HIS WIFE AND THIS INCIDENT
11 WHERE THEY WERE LIGHTING THE PROPANE TANK, OR EXCUSE ME, THEIR
12 PELLET STOVE, EXCUSE ME, AND THEY USED A PROPANE TORCH? AND TO
13 DO THAT THEY LET A WHIFF OUT OF THE PROPANE. AND SHE SAID,
14 WHAT'S THAT SMELL? WHERE DID THE PROPANE COME FROM? SHE KNEW
15 EXACTLY WHAT PROPANE SMELLED LIKE.

16 NOW, IT'S UP TO YOU. WOULD THAT HAVE MADE A
17 DIFFERENCE IF SHE'D SMELLED PROPANE OR HER KIDS SMELLED PROPANE
18 AS IT WAS FILLING THEIR HOME? ABSOLUTELY. AND THAT'S WHAT'S
19 S. & S. DID WRONG. THEY PROVIDED A DEFECTIVE PRODUCT.

20 LET ME TELL YOU ALSO WHAT THE COURT IS GOING TO TELL
21 YOU ABOUT THAT. ONE THING YOU'RE GOING TO GET IS A SPECIAL
22 VERDICT. IT IS A BUNCH OF QUESTIONS YOU GOT TO ANSWER. THAT'S
23 HOW YOUR VERDICT IS GOING TO COME IN. NO. 13 SAYS THIS. A LOT
24 OF STUFF TO REMEMBER. SORRY ABOUT THAT. "YOU ARE INSTRUCTED
25 THAT THE COURT HAS RULED, AS A MATTER OF LAW, THAT THE PROPANE

1 TANK AND DELIVERY SYSTEM PROVIDED TO MR. ERCANBRACK BY S.S.
2 SUPPLY WAS DEFECTIVE AND UNREASONABLY DANGEROUS." THAT'S
3 EXACTLY WHAT THEY WANT YOU TO TRY AND FIND AGAINST OAKWOOD. NO
4 EVIDENCE. THAT'S THE CRITERIA FOR DETERMINING FAULT. "IT WAS
5 DEFECTIVE AND UNREASONABLY DANGEROUS TO PLAINTIFF'S DECEDENTS.
6 ACCEPTING THAT RULING AS FACT." THIS IS WHAT JUDGE HILDER IS
7 TELLING YOU. I'VE ALREADY DETERMINED THAT, YOU DON'T HAVE TO,
8 THAT'S WHY YOU DIDN'T GET MUCH EVIDENCE. IT WAS A GIVEN. THAT
9 TANK WAS DEFECTIVE, AS A MATTER OF LAW, BECAUSE IT TOOK THE
10 PROPANE ODOR RIGHT OUT. AND THEN ALL YOU HAVE TO FIGURE OUT,
11 WAS THAT A CAUSE OF THE ACCIDENT. WAS IT A CAUSE. WOULD THEY
12 HAVE SMELLED IT AND GOT OUT OF DODGE? ABSOLUTELY. YOU KNOW
13 WHAT, YOU DON'T HAVE TO BELIEVE ME.

14 I NEED YOU FOLKS TO WRITE DOWN ANOTHER EXHIBIT.
15 WRITE DOWN EXHIBIT 307. WHAT 307 IS IS PLAINTIFF'S ANSWER TO
16 INTERROGATORIES THEY PROVIDED TO S.S. SUPPLY. WHEN S.S. SUPPLY
17 WAS IN THIS CASE S.S. SUPPLY WROTE SOME QUESTIONS TO THE
18 PLAINTIFF. AND THEY SAID, WHAT DID WE DO WRONG? LET ME TELL
19 YOU WHAT THE PLAINTIFF SAID THEY DID WRONG. ON PAGE 5 OF THAT
20 DOCUMENT. THE PLAINTIFFS -- THIS IS NOT MY WORDS. LET ME SHOW
21 YOU SOMETHING. THIS DOCUMENT, ON THE LAST PAGE, PLEASE CHECK
22 IT OUT, IS SIGNED BY MR. D'ELIA AND MR. ERCANBRACK HIMSELF.
23 THIS IS WHAT THEY'RE TELLING YOU THAT S.S. DID WRONG. THEY'RE
24 TELLING YOU S. & S. WAS RESPONSIBLE FOR INSTRUCTING, INSPECTING
25 AND TESTING, MAINTAINING THE PROPANE SYSTEM IN PLAINTIFF'S HOME

1 DURING AUGUST OF 1997. THEY TELL YOU TESTING OF THE PROPANE AT
2 THE TIME OF THE EXPLOSION SHOWED THERE WAS NO ODORANT, AND I'M
3 READING FROM PAGE 5 OF THAT EXHIBIT, NO ODORANT IN THE PROPANE
4 SUPPLIED TO THE PLAINTIFF WHICH RESULTED FROM THE IMPROPER
5 ACTIONS, PRACTICES AND INSPECTIONS PERFORMED BY DEFENDANT,
6 S.S., WHEN THE PROPANE WAS CONVERTED FROM ANHYDROUS AMMONIA
7 STORAGE TO PROPANE."

8 PAGE 6. THEY TELL YOU THAT DURING THE TIME OF
9 AUGUST, 1977, DEFENDANT, S.S., WAS TO SUPPLY TO PLAINTIFF SAFE,
10 ODORIZED PROPANE IN CONFORMITY WITH LAW AND INDUSTRY STANDARDS
11 AS WELL AS SAFE, OPERATIONAL, NON-LEAKING PROPANE SYSTEM AND
12 ALSO PROVIDE THE PROPER EQUIPMENT AND MATERIALS AND ADEQUATELY
13 DESIGN, INSPECT AND INSTALL. WE'LL GET TO THAT IN A MINUTE,
14 THAT SYSTEM. IT'S NOT MY WORDS, FOLKS, IT'S NOT MY ARGUMENT.

15 PAGE 7. THEY TELL YOU, IN ADDITION, S.S. PROVIDED TO
16 PLAINTIFF DEFECTIVE PROPANE. THOSE ACTIONS AND PRACTICE OF
17 S.S. DEFECTIVE PROPANE WAS SUPPLIED TO PLAINTIFF IN THAT THE
18 PROPANE DID NOT CONTAIN ODORANT, AS REQUIRED BY LAW AND
19 INDUSTRY STANDARDS. S.S. PROVIDED A DEFECTIVE PROPANE TANK.

20 AND HERE'S WHAT THEY SAID RESULTED FROM THAT. PAGE
21 8. THESE DEFECTS CONTRIBUTED TO THE EXPLOSION IN THAT, NO. 1,
22 THE SYSTEM FAILED AND LEAKED, NO. 2, THE OCCUPANTS OF THE HOME
23 WERE UNABLE TO DETECT LEAKING PROPANE AND SHUT DOWN THE GAS AND
24 IGNITION SOURCES OR ESCAPE DANGER AND NOTIFY THE DEFENDANT OF
25 THE LEAK SO THAT A REPAIR COULD HAVE BEEN ACCOMPLISHED.

1 NOW, IF HE STANDS UP HERE AND TELLS YOU THAT IT
2 WASN'T FACT, AFTER HE SIGNED THESE, AND MR. ERCANBRACK SIGNED
3 THEM, WHAT ARE THEY TELLING YOU? THEY'RE TELLING YOU THAT S.S.
4 PAID THEIR MONEY AND THEY DON'T WANT YOU TO KNOW WHAT S.S. DID
5 WRONG. THAT'S WHAT THEY SAID THEY DID WRONG. LET'S READ ON.

6 ONE OTHER THING THEY TELL IN YOU THESE ANSWERS TO
7 INTERROGATORIES. THEY MAINTAIN ONE OF THE THINGS S.S. SUPPLY
8 DID WAS TO IMPROPERLY INSPECT THE SYSTEM WHEN THEY PUT IT IN.
9 THAT PUTS THEM IN AN INTERESTING QUANDARY, DOESN'T IT? THINK
10 ABOUT THIS FOR A SECOND. REMEMBER MR. THATCHER SITTING UP
11 THERE AND SAYING, AS A MATTER OF LAW, S.S. SUPPLY WAS OBLIGATED
12 TO INSPECT THIS THING AND MAKE SURE THAT IT COMPLIED WITH CODE.
13 AND THE CODE, NFPA 54, EVEN TALKED ABOUT AN PROXIMATE NUMBER OF
14 THREADS. AND MR. BAILEY SAID SOME THINGS. I INSPECTED THIS
15 AND I KNEW I HAD THAT JOB. AND DO YOU REMEMBER WHAT HE SAID
16 ABOUT THE RISER? HE INSPECTED THE RISER AS IT CAME UP TO THE
17 RANGE AND IT WAS STRAIGHT. THEIR THEORY CAN'T FLY UNLESS IT'S
18 BENT OVER ALL THE WAY.

19 I'LL SUBMIT TO YOU THAT IT WAS SO CLOSE TO THE WALL
20 THAT IT COULDN'T HAVE GONE ANY FARTHER THAN ABOUT AN INCH OR
21 TWO AND, HENCE, THERE WASN'T EVEN ENOUGH ROOM FOR IT TO BEND
22 AND DEFLECT IN A WAY SO IT COULD HAVE BROKEN. THEIR THEORY IS
23 PHYSICALLY IMPOSSIBLE. IT COULDN'T HAVE HAPPENED. THEY DIDN'T
24 ACCOUNT FOR THE SPRING IN THE SYSTEM. PLEASE LOOK AT IT.
25 PLEASE PLAY WITH IT.

1 A COUPLE OTHER THINGS. ONE OF THE THINGS THEY SAID
2 ABOUT THEIR THEORY, AGAIN, I'M GOING TO TALK EVIDENCE, WAS THAT
3 BECAUSE THIS THING WAS TIED DOWN AT THE INLET IT NEEDED 80
4 POUNDS OR SOMETHING LIKE THAT TO CAUSE THE FRACTURE. REMEMBER
5 THAT? YOU KNOW, I WAS VERY FORTUNATE TO LEARN THIS TRADE BY A
6 VERY SEASONED LAWYER BY THE NAME OF REX HANSON. AND HE TOLD ME
7 ONE THING. HE SAID, YOU KNOW, THE BEST EVIDENCE ARE THE
8 RECORDS THAT ARE KEPT AT THE TIME BEFORE A LAWSUIT HAPPENS.

9 EXHIBIT 207. NO. 1. WE KNOW THAT THE GAS SYSTEM WAS
10 INSTALLED AT SECTION THREE, FOUR, FIVE. REMEMBER THAT? IN
11 THIS CASE GAS LINES INSTALLED BY STATION NUMBER 10. THERE WERE
12 NO BLOCKS. THERE WAS NO POINT OF ATTACHMENT. ALL OF THAT
13 NONSENSE ABOUT THE FORCE NEEDED IS JUST THAT. NONSENSE. AND
14 EVEN IF THE BLOCK HAD BEEN THERE, REMEMBER MR. WEBER SAID THAT
15 BLOCK IS ATTACHED 13 INCHES UP WITH TWO SCREWS. HE SAID IF YOU
16 PUT MORE THAN FIVE OR 10 INCHES OF FORCE ON IT IT'S JUST GOING
17 TO PULL OUT. IT WILL NOT WITHSTAND THE 80 POUNDS THAT THEY ARE
18 TALKING ABOUT EVEN HAD IT BEEN THERE. BUT THE EVIDENCE SHOWS
19 IT'S NOT THERE. IT'S NOT THERE.

20 AGAIN, YOU'LL NOTICE I'M TALKING EVIDENCE RATHER
21 REPEATEDLY, TRYING TO KEEP IT TO THE EVIDENCE, FOLKS. THAT'S
22 WHAT WE'RE TALKING ABOUT, NOT SMOKE AND MIRRORS ABOUT WHAT WAS
23 THE WEAKEST PART AND WHAT MIGHT HAVE HAPPENED. NOT SMOKE AND
24 MIRRORS ABOUT THIS PARTIAL CRACK THAT NOBODY KNOWS EXISTED AND
25 MR. MOORE SAID COULDN'T HAVE HAPPENED BECAUSE THE FRACTURE

1 SURFACE DIDN'T SHOW IT, AND THE CIRCUMSTANCES WOULD NOT ALLOW
2 IT, THE FLEX OF THE PIPE WOULDN'T ALLOW IT.

3 HE TOLD YOU HE WAS ABLE TO RECREATE A PARTIAL WALL
4 THICKNESS IN THE LABORATORY. AND WHAT HE HAD TO DO IS HE HAD
5 TO TAKE A MACHINE THAT WAS VERY, VERY SENSITIVE AND HE HAD TO
6 WATCH IT VERY CAREFULLY. AND THEY GOT ONE. HERE HE TOLD YOU
7 YOU CAN'T GET A PARTIAL WALL THICKNESS CRACK. WHY IS THAT?
8 BECAUSE YOU HAVE TO ACCOUNT FOR THE FLEX IN THE SYSTEM. AND TO
9 PULL IT OVER IT'S FLEXING SO THAT YOU CAN'T STOP IT ONCE IT
10 STARTS. BECAUSE THE SYSTEM IS FLEXED. THAT'S REAL WORLD.

11 THE FORCE TESTS WERE DONE WITH THE PIPE LOCKED IN A
12 VICE, REMEMBER? IT WAS LOCKED IN A VICE NOT IN A FLEXIBLE
13 SYSTEM LIKE THIS. THIS IS REAL WORLD. IT'S SIMPLY NOT
14 POSSIBLE. AND MORE IMPORTANTLY IT'S SIMPLY NOT PROBABLE THAT
15 WHAT THE PLAINTIFFS SAY HAPPENED, HAPPENED. AND IF IT'S NOT
16 PROBABLE THEY LOSE.

17 NOW DOES THAT MEAN WE ARE NOT SENSITIVE TO
18 MR. ERCANBRACK? ABSOLUTELY NOT. ABSOLUTELY NOT. I DON'T WANT
19 YOU FOLKS TO THINK THAT FOR A MINUTE. BUT WE DIDN'T DO IT.
20 OAKWOOD DID NOT DO THIS. THE EVIDENCE SHOWS THAT.

21 THE EVIDENCE SHOWS -- AND WE'RE ENTITLED TO RELY ON
22 S.S. SUPPLY. THE EVIDENCE SHOWS, THEY MAINTAIN, PLAINTIFFS,
23 HOLD ON A MINUTE -- THAT HE TALKS ABOUT IN HIS ANSWER TO
24 INTERROGATORIES. AND PLEASE READ THEM. THAT S.S. WAS NEGLECT
25 IN IMPROPERLY INSPECTING THE SYSTEM. THAT WAS THEIR DUTY UNDER

1 THE LAW. MR. THATCHER TOLD YOU THAT. THEY DIDN'T DO IT.

2 NOW, I DON'T THINK THERE WAS ANYTHING WRONG WITH IT,
3 BUT IF THERE WAS, THEY KNEW THAT IT HAD JUST COME OVER THE
4 ROAD, THEY KNEW THAT IT COULD HAVE CRACKS IN IT. THAT'S WHAT
5 HAPPENS WHEN YOU TRANSPORT A THING OVER THE ROAD, A HOUSE OVER
6 THE ROAD. IT COULD HAVE CRACKED. THAT'S WHY THE NFPA 54
7 REQUIRES THEM TO DO THESE TESTS AND INSPECTIONS. MR. BAILEY
8 TOLD YOU THERE WAS NOTHING WRONG WITH THIS SYSTEM.
9 IMPORTANTLY, HE TOLD YOU THAT IN A DEPOSITION, WHEN IT WOULD
10 HAVE BEEN IN HIS BEST INTERESTS AS A MEMBER OF S.S. SUPPLY, TO
11 SAY THERE WAS. DO YOU UNDERSTAND THAT? IT WOULD HAVE BEEN IN
12 THEIR INTERESTS TO TRY AND PUT THE FAULT ON OAKWOOD.

13 THERE'S ANOTHER EXPERT THAT WAS CALLED, JAY FREEMAN.
14 DID YOU CATCH WHO RETAINED HIM? NOT ME. S.S. HE REACHED HIS
15 OPINIONS ABOUT GAS COMING FROM THE OUTSIDE IN BEFORE I EVEN
16 TALKED TO HIM. HE IS SO GOOD THAT MR. D'ELIA WANTED TO RETAIN
17 HIM AND HE SAID HE COULDN'T HELP HIM. HE'S THE ONE THAT SAID,
18 YEP, I BEEN DOING THIS FOR 25 YEARS, I HAVE A MASTERS DEGREE IN
19 MECHANICAL ENGINEERING, AND I HAVE INVESTIGATED 500 OF THESE
20 PROPANE EXPLOSIONS. AND I CAN TELL YOU, IT COMES IN, IT GETS
21 IN. THAT'S WHAT MR. FREEMAN TOLD YOU. THERE'S NO QUESTION
22 THAT HE WAS AN APPROPRIATE EXPERT, OTHERWISE, WHY WOULD
23 MR. D'ELIA TRY AND HIRE HIM? THAT'S WHAT HE SAID. AND HE SAID
24 IT NOT WHEN HE WAS WORKING FOR US BUT FOR S.S. WHEN HE HAD ALL
25 THE INCENTIVE IN THE WORLD TO TRY AND SHIFT BLAME OVER TO US.

1 AND HE DIDN'T DO IT. DO YOU KNOW WHY HE DIDN'T DO IT? BECAUSE
2 HE WAS A FAIR EXPERT. HE WAS BEING TRUTHFUL AND HE WAS TELLING
3 YOU IT COULD HAVE GOT IN. HE TOLD YOU. HOW DO I BASE THAT? I
4 LOOK TO WHAT MR. MOORE DID AND WHAT MR. ALEX DID. AND
5 MR. ALEX'S TESTIMONY MADE NO SENSE.

6 I LOOKED AT WHAT MR. MOORE DID AND HE ASKED HIM, DO
7 YOU RECALL, HE SAID, I ASKED HIM, DID PLAINTIFFS EVER CONVINCE
8 YOU THAT MR. MOORE WAS WRONG, AND HE SAID NO. NO, THEY
9 CONVINCED ME THAT HE WAS RIGHT, THAT HE WAS RIGHT, THAT HIS
10 ANALYSIS, THAT HIS SCIENTIFIC WORKUP, ALL OF HIS S.E.M.
11 MICROSCOPIC WORKUP, ALL OF HIS LOAD TEST, ALL THE SCIENTIFIC
12 STUFF HE DID WAS RIGHT. AND IT WAS RIGHT. AND THERE WAS NO
13 CAUSATION, THERE WAS NO DEFECT. THE STANDARD DIDN'T REQUIRE
14 THAT THIS THING BE THREADED TO A CERTAIN NUMBER OF THREADS.
15 AND EVEN IF IT DID IT DIDN'T CAUSE ANYTHING.

16 LET ME SHOW YOU WHAT THIS CASE BOILS DOWN TO. THAT'S
17 WHAT IT BOILS DOWN TO, FOLKS, A FEW EXTRA THREADS. TEN PERCENT
18 REDUCTION. MR. D'ELIA TOLD YOU THAT MR. MOORE CHANGED HIS
19 TESTIMONY. NO, HE TALKED ABOUT COEFFICIENT OF ENERGY. DO YOU
20 REMEMBER THAT? AND HE SAID, MR. D'ELIA, YOU OBVIOUSLY DON'T
21 UNDERSTAND, BECAUSE COEFFICIENT OF ENERGY IN ONE FACTOR AND
22 THEN PERCENTAGE OF A DIFFERENCE IN STRENGTH IS ANOTHER. HE
23 DIDN'T CHANGE HIS TESTIMONY. THERE WAS A MINIMAL CHANGE BUT
24 NOT ENOUGH TO MATTER.

25 AS I TOLD YOU BEFORE, THIS IS A LOW PRESSURE SYSTEM.

1 IT'S NOT STRUCTURAL. IT'S NOT A STRUCTURAL COMPONENT. WHAT IT
2 NEEDS TO DO, WHAT EVERYBODY'S TOLD YOU IT NEEDS TO DO,
3 INCLUDING MR. THATCHER, IS HOLD GAS. REMEMBER, I ASKED HIM
4 ABOUT NFPA 54? AND THIS IS IMPORTANT. I SAID, DOES THE
5 SERVICE MAN NEED TO INSPECT THE SYSTEM FOR THREADS. AND HIS
6 FIRST RESPONSE WAS, NO, ALL THEY NEED TO DO IS MAKE SURE IT'S
7 GAS TIGHT. EVEN THOUGH NFPA WENT ON, AND HE WENT ON TO SAY,
8 YEAH, THEY NEED TO CHECK THE THREADS. THEY NEED TO CHECK THE
9 THREADS. AND THE THREADS WERE THERE. AND THEY SHOULDN'T HAVE
10 PUT GAS IN IT. NOW, THAT ISN'T MUCH RESPONSIBILITY BUT IT
11 ESTABLISHES THAT NOTHING WAS WRONG WITH THIS SYSTEM. NOTHING
12 WAS WRONG WITH THIS SYSTEM THAT CAUSED THIS ACCIDENT.

13 WE COULD GO ON FOR DAYS. WE HAVE. AND SO I'M GOING
14 TO END. I'M GOING TO TELL YOU, PLEASE, DON'T LET SYMPATHY BE
15 THE FACTOR. MR. D'ELIA MADE A BIG DEAL ABOUT WE'RE A BIG
16 CORPORATION. WHETHER WE ARE OR NOT THERE IS AN INSTRUCTION
17 THAT GOES SPECIFICALLY TO THAT. THE FACT THAT WE ARE A
18 CORPORATION, INTERROGATORY 8 WILL TELL YOU, MEANS NOTHING.

19 I DO APPRECIATE YOUR ATTENTION. I'VE NEVER SEEN A
20 JURY THAT HAS BEEN SO ATTENTIVE. AND I'VE BEEN DOING THIS A
21 LONG TIME. AND YOU ARE TO BE COMMENDED. AND I'M HAPPY THAT
22 YOU ARE ATTENTIVE BECAUSE WE NEED A JURY THAT WILL LISTEN TO
23 THE EVIDENCE AND NOT BUY THE SMOKE AND MIRRORS OF DR. ALEX AND
24 THE CONTENTION THAT THE TESTING FACILITY ESTABLISHED THAT GAS
25 COULD OR COULD NOT HAVE COME IN. THAT'S WHAT THEIR CASE IS.

1 IT'S NOT BEEN ESTABLISHED BY ANY LEVEL, BUT PARTICULARLY NOT BY
2 A PREPONDERANCE OF THE EVIDENCE.

3 AGAIN, I THANK YOU FOR YOUR ATTENTION, AND I
4 APPRECIATE, ON BEHALF OF OAKWOOD, YOUR BEING HERE AND YOUR
5 WILLINGNESS TO SERVE. THANK YOU, FOLKS.

6 THE COURT: THANK YOU, MR. PLANT.

7 MR. D'ELIA?

8 MR. D'ELIA: THE ONLY THING I WANT TO DO IS WOULD YOU
9 PLEASE NOT DETRACT FROM MY TIME AND GIVE ME ONE MINUTE JUST TO
10 GET PREPARED?

11 THE COURT: OF COURSE.

12 MR. D'ELIA: LADIES AND GENTLEMEN, I TOLD YOU I'D
13 SPEAK WITH YOU AGAIN. AGAIN, ALL I WANT TO DO IS REBUT WHAT
14 MR. PLANT SAYS. LET'S TAKE A RIDE, OKAY?

15 LET'S START WITH WHAT HE'S TALKED ABOUT AT THE VERY
16 END. GEE, HE SAID, MR. MOORE NOT CHANGE HIS TESTIMONY IN ONE
17 BREATH, IN THE NEXT BREATH HE SAID TO YOU, OH, BUT HE CHANGED
18 IT. IT WAS ONLY A MINIMUM CHANGE. AGAIN, DID YOU CATCH THAT?

19 ANOTHER THING. HE WANTS TO BRING UP ABOUT
20 MR. FREEMAN, WHETHER I WANT TO HIRE HIM. WELL, THE EVIDENCE
21 SHOWS EXACTLY WHY I WOULDN'T HIRE HIM. YOU WANT TO FIND OUT
22 WHY? I'LL TELL YOU WHY. MR. FREEMAN WANTS TO KEEP CHANGING
23 THE FACTS. I SAID, MR. FREEMAN, YOU WANT TO COME ON BOARD HERE
24 AND GIVE US A LITTLE HELP HERE? YOU'RE AN ENGINEER AND
25 MR. THATCHER'S NOT. YOU CAN ASSIST US. BUT THE SNOW WAS OVER

1 THE VENT. NO, NO, THE SNOW WASN'T OVER THE VENT.
2 MR. ERCANBRACK SHOVELED THE SNOW. BUT THE SNOW WAS OVER -- THE
3 GUY WON'T GET IT OUT OF HIS MIND. HE KEEPS WANTING TO CHANGE
4 THE FACTS. THANK YOU, MR. FREEMAN. LOOKS LIKE I GO OUT AND
5 GET MR. ROMIG. YOU'RE OUT. YOU'RE NOT OBJECTIVE.

6 SO WHAT HAPPENS? THEY PICK HIM UP BECAUSE HE'S NOT
7 OBJECTIVE. BOY, THAT'S EXACTLY WHAT WE WANT, LET'S CHANGE THE
8 FACTS. THAT'S WHAT HAPPENED.

9 LET'S TALK ABOUT, FIRST OF ALL, THE ASPECT OF WHAT WE
10 HAVE HERE. I'M TRYING TO BUILD AN ANIMAL. I'M TRYING TO BUILD
11 A RABBIT. UNDER THE CIRCUMSTANCES, OBVIOUSLY, I TAKE SHOTS.
12 OBVIOUSLY, THEY ARE GOING TO CONVINCE YOU OF CERTAIN THINGS.
13 OBVIOUSLY, I DON'T DO EVERYTHING 100 PERCENT PERFECT. IF WE
14 WERE 100 PERCENT PERFECT I WOULDN'T BE HERE, I'D BE IN
15 WASHINGTON. THEY NEED PEOPLE THAT ARE 100 PERCENT PERFECT
16 THERE.

17 WHAT I'M DOING IS BUILDING YOU A RABBIT. WHAT I'M
18 DOING IS WE'RE LOOKING AT IT. IT HOPS. IT'S GOT EARS. IT'S
19 WHITE. IT'S FLUFFY. IT HANGS OUT IN DIFFERENT PLACES
20 CONSISTENT WITH WHERE THE RABBIT'S LAIR. BUT, UNDER THE
21 CIRCUMSTANCES, MIGHT MY RABBIT HAVE AN EAR NOT LOPPED OFF?
22 MIGHT IT HAVE ONE PAW THAT HAPPENS TO BE LAME? MIGHT THE TAIL
23 BE CUT OFF? YES, BUT WHEN YOU LOOK AT THAT YOU KNOW THAT'S A
24 RABBIT. MR. PLANT IS TRYING TO SAY, WELL, IF YOU ARE NOT 100
25 PERCENT PERFECT YOU LOSE. YOU CAN'T BE.

1 LET'S TALK ABOUT SOMETHING. LET'S TALK ABOUT HOW
2 S.S. SUPPLY, THE PROPANE COMPANY, FITS IN. REMEMBER WHEN WE
3 TOLD YOU THAT UNDER THE CIRCUMSTANCES THERE WOULDN'T HAVE BEEN
4 A PROBLEM WITH THE PROPANE UNLESS THERE WAS A LEAK, RIGHT?
5 NEVER HAD A PROBLEM WITH THE PROPANE. THE LEAK IS WHAT CAUSED
6 THE PROBLEM. HERE'S WHAT WE HAVE. WE HAVE HERE, THIS IS WHAT
7 IT IS THAT YOU SHOULD DETERMINE. IF, IN FACT, YOU THINK FOR
8 SOME REASON OR ANOTHER THAT, IN FACT, MRS. ERCANBRACK COULD
9 HAVE SMELLED THE GAS AND GET OUT OF THERE AND RUN OUT OF THERE,
10 STILL, WITHOUT THE LEAK, WOULDN'T HAVE BEEN A PROBLEM. I
11 SUBMIT TO YOU THEN IF, IN FACT, YOU GET TO THAT POINT, ALL
12 RIGHT, OAKWOOD'S ONLY 80 PERCENT LIABLE, 20 PERCENT OF IT IS ON
13 THE GAS. BUT IF YOU FIND THAT UNDER THE CIRCUMSTANCES
14 MRS. ERCANBRACK HAD NO TIME TO GET OUT, GOES OVER, AND UNDER
15 THE CIRCUMSTANCES, IF SHE CAME IN, SMELLED THE LEAK, COULDN'T
16 GET OUT, THEN, IN FACT, OAKWOOD'S 100 PERCENT LIABLE BECAUSE
17 SHE COULDN'T HAVE GOTTEN OUT, SO IT'S THE LEAK THAT CAUSED THE
18 PROBLEM.

19 NOW, HOW DO YOU DETERMINE IN HERE WHERE IT FITS?
20 WELL, REMEMBER THE MEDICAL EXAMINER THAT MR. PLANT WOULD LIKE
21 TO TALK ABOUT AS A WITNESS, WHICH I THINK IS A VERY
22 APPROPRIATE, DON'T GET ME WRONG. ALL I'M SAYING IS THIS. WHAT
23 DID HE SAY? HE SAYS, I CAN'T TELL HOW LONG THEY BREATHED AT
24 ALL. IT COULD HAVE BEEN ONE BREATH, IT COULD HAVE BEEN TWO
25 BREATHS. IT'S ONLY A TRACE. IT IS NOT SUBSTANTIAL AMOUNTS.

1 LET ME GIVE YOU A SCENARIO OF WHAT HAPPENED. AND IF
2 THIS OCCURRED OAKWOOD'S 100 PERCENT LIABLE, OKAY? THIS IS THE
3 SCENARIO. MRS. ERCANBRACK IS OVER IN THE OTHER PART OF THE
4 HOUSE. YOU REMEMBER THAT GAS DRYER IS SUCKING IT UP. THAT'S
5 WHY SHE GOT BURNED WHEN SHE WAS BY THE DRYER. SHE WALKS IN,
6 AND LET'S SAY SHE COULD SMELL IT. SHE WALKS INTO THE LAUNDRY
7 ROOM, THAT'S ENOUGH TO GET THE BLOOD, TO GET THE TRACE OF
8 PROPANE IN THE SYSTEM. MAN, I BETTER GO CHECK IT -- BAM. IF
9 THAT HAPPENED OAKWOOD'S 100 PERCENT LIABLE BECAUSE SHE COULDN'T
10 HAVE ESCAPED EVEN IF THERE WAS AN ODORANT IN THE PROPANE.
11 VERY, VERY IMPORTANT. MR. PLANT WON'T TOUCH THAT ONE, THOUGH.
12 BUT THAT'S WHAT YOU NEED.

13 AND DID THEY GIVE YOU ANY EVIDENCE AT ALL THAT SHE
14 COULD HAVE GOTTEN OUT? THEY GAVE YOU THE EVIDENCE THROUGH
15 THE -- THE MEDICAL EXAMINER HIMSELF SAYS, CAN'T TELL HOW LONG
16 THEY BREATHED, A COUPLE OF BREATHS WOULD HAVE DONE IT. WALKS
17 OVER TO THE STOVE -- BAM. IF THAT'S WHAT HAPPENED THEY'RE 100
18 PERCENT LIABLE. AND THEY'VE SHOWN NOTHING, NOTHING, ABSOLUTELY
19 NOTHING TO CONTRADICT THAT. THAT'S THEIR BURDEN. IF THEY WANT
20 TO MAKE S.S. LIABLE, WHICH THEY ARE TRYING TO DO, THEY HAVE A
21 BURDEN OF GIVING YOU EVIDENCE AS TO WHY THEY'RE LIABLE.
22 THEY'VE GIVEN YOU NOTHING. THEY JUST WAVE THEIR ARM. AGAIN,
23 THAT'S WHAT THE WHOLE THING'S ABOUT WITH THEM. ALL RIGHT.

24 LET'S TALK ABOUT A FEW THINGS HERE. I TOLD YOU THEY
25 WERE GOING TO GET UP AND TELL YOU THEY NEVER DID ANYTHING

1 WRONG. NOTHING. NOT EVEN THE SMALLEST PART. THEY WON'T EVEN
2 ADMIT TO OVER THREADING, OVER INSERTING OR ANYTHING OF THE
3 SORT. TOLD YOU THEY WERE GOING TO GET UP AND THEY WERE GOING
4 TO DO THAT. THEY JUST WON'T EVEN ADMIT TO WHAT IT IS THAT THEY
5 DID. I MEAN, UNDER THE CIRCUMSTANCES, YOU KNOW WHAT THEY DID.
6 OVER THREAD, OVER INSERT, RANGE RISER THINGS OF THAT NATURE.

7 NOW, LET'S GET INTO ACTUALLY WHAT HE WAS TALKING
8 ABOUT. HE SAYS, VERY SYMPATHETIC CASE. DID WE EVER ASK FOR
9 SYMPATHY? HAVE I EVER ASKED FOR SYMPATHY? WHAT WE HAD TO GO
10 THROUGH, I TRIED TO GO THROUGH IN THE MOST PROFESSIONAL MANNER
11 I COULD. WE PUT BILL ON THE STAND. WE HAD HIM DESCRIBE WHAT
12 HE SAW. HAS TO. WE DON'T RELY UPON SYMPATHY, WE RELY UPON THE
13 FACTS. THAT'S WHY IT TOOK -- IF IT WAS SYMPATHY WE WOULD HAVE
14 PUT BILL ON, SAT DOWN AND SAID OKAY. WE PUT BEFORE YOU SEVEN
15 FULL DAYS OF FACTS, NOT SYMPATHY. MR. PLANT WOULD LIKE YOU TO
16 BELIEVE THAT BECAUSE THEN HE CAN ARGUE SYMPATHY ISN'T WHAT
17 SHOULD BE CONSIDERED. WE'RE NOT ASKING FOR SYMPATHY. OF
18 COURSE IT'S PART OF A CASE, BUT WE'RE NOT ASKING FOR IT. AND
19 REMEMBER THAT.

20 NOW, YOU HEARD THAT UNDER THE CIRCUMSTANCES
21 MR. SLIFKA WOULD CHANGE. AS I SAID, HE'S GOING TO TELL THEM
22 THERE ARE NO STANDARDS, BUT THERE ARE STANDARDS. IF THERE WERE
23 NO STANDARDS THAT OAKWOOD HAD TO OBEY WE WOULDN'T BE HERE. AS
24 A MATTER OF LAW THEN, UNDER THE CIRCUMSTANCES, THIS WOULD HAVE
25 BEEN THROWN OUT, WE WOULDN'T HAVE BEEN TALKING ABOUT IT,

1 BECAUSE THEN THERE WOULD HAVE BEEN NO LAW AND MR. PLANT WOULD
2 HAVE SAID, GEE, UNDER THE CIRCUMSTANCES THERE IS NO LAW HERE,
3 THERE IS NO APPLICABLE LAW, THERE IS NO APPLICABLE STANDARDS,
4 THEY PROVED NOTHING. AS A MATTER OF LAW YOU'RE OUT. THAT
5 DIDN'T OCCUR. WE'RE HERE AND WE'RE TALKING ABOUT IT TODAY.
6 THAT DIDN'T OCCUR. THAT PROVES THERE IS NO STANDARD.

7 MR. PLANT: YOUR HONOR, THIS IS IMPROPER. TO SAY THE
8 COURT WOULD HAVE RULED OR NOT RULED IS IMPROPER.

9 MR. D'ELIA: IT'S JUST ARGUMENT.

10 THE COURT: SUSTAIN IT.

11 MR. D'ELIA: THEN AGAIN, SLIFKA SAYS, WHEN WE GET
12 DONE WITH IT, SLIFKA SAYS, IT SURE DID APPLY, IT DID APPLY.
13 AGAIN, THE 40 MILE AN HOUR SPEED LIMIT. JUST BECAUSE THEY
14 ENFORCE IT, DOES NOT ENFORCE IT, DOES NOT RELIEVE OAKWOOD OF
15 THEIR DUTY. AGAIN, IT'S LIKE GOING DOWN THE ROAD AT 80 MILES
16 AN HOUR. A COP DOESN'T STOP YOU. NEVER DOES. THEY DON'T
17 CARE. THEY'RE EATING DONUTS. AND THAT'S ALL THAT OAKWOOD'S
18 ARGUING TO YOU. I NEVER ENFORCED IT SO IF THEY NEVER ENFORCED
19 IT WE DON'T HAVE TO DO ANYTHING. I SUBMIT TO YOU THAT IT WAS
20 STANDARD. AND WE ASKED MR. SLIFKA, JUST BECAUSE YOU DON'T
21 ENFORCE IT, IS OAKWOOD RELIEVED FROM THE LIABILITY OF THE
22 STANDARDS OF B1.20.1 AND NFPA 54, WHICH HE ADMITTED WAS
23 ACTUALLY PART OF THE HUD CODES. AND NFPA 54, LOOK AT IT WHEN
24 YOU GO IN THERE. IT SAYS RIGHT THERE -- DID YOU HEAR THE
25 DISINGENUOUS ARGUMENT OF MR. SLIFKA? OH, BACK HERE, SECTION L.

1 JUST BECAUSE IT SAYS IN HERE THAT IT'S REFERENCED, OH, THAT'S
2 REALLY NOT APPLICABLE. THEN WE STARTED GETTING INTO IT. WELL,
3 WAIT A MINUTE, THAT ONLY MEANS THAT THE DOCUMENTS AREN'T PART
4 OF THE CODES, IT DOESN'T MEAN IT AIN'T PART OF THE CODE. AND
5 THEN UNDER THE CIRCUMSTANCES READ THAT NFPA 54. WHAT IT SAYS
6 IS, B1.20.1 SHALL BE APPLIED. DOESN'T SAY ONLY PARTS OF IT,
7 SAYS, SHALL BE APPLIED. BELIEVE ME, THERE'S SOMETHING GOING ON
8 HERE. AND AGAIN, HE FIGURES IF HE JUST WAIVES HIS ARMS AND
9 TELLS YOU, AND RELIES UPON MR. SLIFKA, THAT YOU ARE GOING TO
10 BUY IT. WELL, YOU'RE NOT. YOU'RE SMARTER THAN THAT. YOU
11 HEARD THE EVIDENCE. YOU KNOW THAT UNDER THE CIRCUMSTANCES
12 MR. SLIFKA TESTIFIED THAT THEY ARE HELD LIABLE TO THE STANDARD.

13 REMEMBER, WE HAD TO BRING IN HIS DEPO TO REMIND HIM
14 WHAT HE SAID. WE HAD TO READ OUT OF THE DEPO WHEN HE WAS ON
15 THE STAND BECAUSE, UNDER THE CIRCUMSTANCES, HE WASN'T COMING
16 FORWARD WITH IT. WE READ THE DEPO. IT SAYS GEE, ISN'T OAKWOOD
17 STILL LIABLE WITH RESPECT TO BEING ABLE, OR EXCUSE ME, STILL
18 HAS A DUTY WITH RESPECT TO FOLLOWING THIS? YES, THEY DO. IT'S
19 NOT ELIMINATED. NO, IT'S NOT. WE JUST DON'T ENFORCE IT. HAD
20 TO BRING IT OUT BECAUSE THE MANUFACTURED HOME INDUSTRY, THEY'RE
21 TIGHT. YOU DON'T THINK THEY'RE TIGHT? MAN, THEY'RE ALL TIGHT.
22 THEY FIGURE, LET'S CIRCLE THE WAGONS.

23 SO WHAT DO THEY DO? ALL THESE PEOPLE COME UP, THEY
24 TAKE THE STAND, EVERYBODY, ONE AFTER THE OTHER. WHAT DID
25 MR. PLANT DO? YOU'RE HERE ON OUR OWN ACCORD, AREN'T YOU?

1 YOU'RE HERE JUST BECAUSE YOU WANT TO BE HERE, RIGHT? WELL, LET
2 ME TELL YOU. THE PROBLEM IS, THE INDUSTRY, THEY ALL KEEP
3 TOGETHER, THEY ALL CAME IN, THEY ALL WERE GOING TO TESTIFY,
4 BECAUSE UNDER THE CIRCUMSTANCES, THEY CONTINUE TO WORK IN THE
5 INDUSTRY.

6 REMEMBER, WE ASKED SOME OF THE PEOPLE. WASN'T IT ONE
7 GENTLEMEN THAT WE WERE TALKING ABOUT WHICH THEY HAD, GEE, IF
8 ANYTHING HAPPENED WITH THE MOBILE HOME INDUSTRY, SOMEBODY
9 DIDN'T WANT TO GIVE YOU A JOB IN THE MANUFACTURED HOME
10 INDUSTRY, YOU'RE OUT OF A JOB. THEY'RE ALL LOOKING FOR FAVORS
11 SOMEWHERE INTERNALLY. THAT'S WHY THEY COME IN AND TESTIFY,
12 THAT'S WHY, UNDER THE CIRCUMSTANCES, IT ISN'T ALWAYS THAT EASY
13 TO BRING PEOPLE FROM THE MANUFACTURED HOME INDUSTRY TO TESTIFY
14 AGAINST EACH OTHER. IT HAPPENS.

15 FRANK ALEX. A GENUINE GENTLEMAN. HE WROTE THE
16 BOOKS. HE WAS A PIONEER IN THE FRACTOGRAPHY INDUSTRY. HE IS A
17 METALLURGIST BACK IN THE DAYS OF FRACTURE ANALYSIS BEFORE
18 FRACTURE ANALYSIS BECAME A SCIENCE AND WAS TAUGHT. HE WROTE
19 BOOKS. HE WAS PART OF THE ORIGINAL TEAM THAT DID THE VERY
20 FIRST ANALYSIS.

21 LOOK AT MR. MOORE. MR. MOORE'S BEARLY BEEN OUT OF
22 SCHOOL FOR 10 YEARS. HE MIGHT HAVE STARTED A LITTLE BIT OF
23 S.E.M. IN COLLEGE, BUT AFTER THAT, WHEN HE STARTED GETTING INTO
24 IT, HE'S BEARLY BEEN 10 YEARS OUT. WHY DOES MR. MOORE HAVE TO
25 LOOK AT IT UNDER A SCANNING ELECTRON MICROSCOPE? TWO REASONS.

1 ONE IS TO TRY AND DAZZLE YOU WITH DATA. SECOND, HE DIDN'T
2 KNOW. GEE, I'VE NEVER DONE ANYTHING LIKE THIS BEFORE SO UNDER
3 THE CIRCUMSTANCES I BETTER CHECK IT OUT AND TAKE A LOOK AND
4 SEE. OH, YES. WELL, OKAY.

5 FRANK ALEX SAYS, MAN, I BEEN DOING THIS FOR 40 YEARS.
6 I WROTE THE BOOK ON THESE STANDARDS. I HELPED GET THIS
7 PIONEERED. I KNOW WHAT IT'S GOING TO SHOW. IT'S GOING TO SHOW
8 EXACTLY WHAT IT IS THAT IT DID SHOW, WHICH IS NOTHING, BECAUSE
9 DUCTAL IRON, BECAUSE UNDER THE CIRCUMSTANCES, THE WAY IT BENT
10 IT WAS A MULTIPLE LOAD, BUT IT WAS IN THE SAME DIRECTION, AND
11 IT WOULD SHOW NOTHING. WHY DO I HAVE TO SIT DOWN AND WASTE
12 TIME? WHY DO OAKWOOD'S PEOPLE SIT DOWN AND WASTE TIME?
13 BECAUSE AGAIN, THE MORE I CAN THROW AT YOU THE MORE I CAN
14 CONFUSE YOU, THE MORE UNDER THE CIRCUMSTANCES THEY'LL TAKE
15 ADVANTAGE OF IT. THAT'S WHY. DR. ALEX. DR. ALEX. MR. MOORE.

16 DR. ALEX DIDN'T HAVE TO SIT DOWN AND DO THAT.
17 WORKING WITH HILL AIR FORCE BASE HE'S BEEN INTO FAILURES OF
18 JETS AND ENGINES MORE THAN MR. MOORE HAS DONE WITH RESPECT TO
19 PROBABLY WAKING UP IN THE MORNING. BUT, UNDER THE
20 CIRCUMSTANCES, MR. MOORE DOES NOT HAVE THE EXPERIENCE. THAT'S
21 WHY -- I MEAN, WHAT DO WE HAVE TO DO? IF I KNOW SOMETHING I
22 DON'T HAVE TO GO BACK AND TEST IT. IF YOU DON'T KNOW SOMETHING
23 THAT'S WHEN YOU GO BACK AND TEST IT. THAT'S WHAT THE PROBLEM
24 WAS.

25 REMEMBER, NO EVIDENCE. AGAIN, HE STANDS UP HERE JUST

1 POUNDING, NO EVIDENCE. REMEMBER, HE SAID, HE GOES UP, OAKWOOD
2 GOES UP AND SAYS, I ASKED DR. ALEX, ANY PHYSICAL EVIDENCE, AND
3 HE SAYS NO. IS THAT WHAT YOU REALLY REMEMBER? IS THAT WHAT
4 YOU REALLY REMEMBER? I REMEMBER. OAKWOOD'S COUNSEL IS
5 STANDING HERE AND KEEP ASKING MISTER, YOU HAVE NO EVIDENCE.
6 THAT'S NOT TRUE, MR. PLANT. YOU HAVE NO -- MR. PLANT, GIVE ME
7 AN OPPORTUNITY TO EXPLAIN. I WON'T GIVE YOU AN OPPORTUNITY TO
8 EXPLAIN. UNDER THE CIRCUMSTANCES -- NO, THAT'S NOT TRUE,
9 MR. PLANT. THAT'S WHAT HAPPENED. BUT HE'S GOING TO TRY AND
10 MAKE YOU BELIEVE TODAY THAT UNDER THE CIRCUMSTANCES MR. ALEX
11 SAID SOMETHING DIFFERENT THAN WHAT HE DID. DR. ALEX ALWAYS
12 SAID THAT HE HAD PHYSICAL EVIDENCE, TRIED TO EXPLAIN IT, WAS
13 NEVER EVEN GIVEN AN OPPORTUNITY BECAUSE THEY DON'T WANT IT IN,
14 THEY DON'T WANT TO YOU UNDERSTAND THAT THIS KIND OF EVIDENCE
15 EXISTS.

16 MYSTERY CRACK. MYSTERY REGULATOR IS WHAT I THINK.
17 MYSTERY OUTSIDE FAILURE. MYSTERY CRACK. I DON'T THINK SO.
18 ONE OF THE THINGS MR. PLANT JUST WON'T ADDRESS AT THE SAME TIME
19 FROM OAKWOOD IS THIS. GEE, YOU KNOW, IT MAKES NO DIFFERENCE
20 WHEN THAT BLOCK WAS INSTALLED. HE TRIES TO SAY IT WASN'T
21 INSTALLED IN THE BEGINNING, IT WAS INSTALLED ON STATION 10.
22 BUT STILL, WHEN YOU INSTALL THAT ON STATION 10 YOU HAVE ANOTHER
23 FORCE ON THE BLOCK WHICH HOLDS THE BLOCK SO THAT WHEN YOU APPLY
24 FORCE FROM THE SIDE ON THE RANGE RISER YOU NOW HAVE TWO PIECES
25 THAT ARE HELD DOWN. AND YOU JIGGLE THE PIPE WITH THE RANGE

1 RISER, IT MAKES NO DIFFERENCE WHETHER YOU HAD THAT BLOCK
2 INSTALLED IN SECTION ONE OR SECTION 10. YOU STILL HAVE STATION
3 10 THROUGH 20 TO GO. AND THAT'S WHEN THAT OCCURRED. THE
4 BLOCK, IS IT THE COUP DE GRACE? NO. BUT UNDER THE
5 CIRCUMSTANCES IT CERTAINLY PUTS MORE FORCE ON THERE. BUT HE'S
6 TRYING TO TELL YOU IT DIDN'T OCCUR. IT DID. THOSE NEXT 10
7 STATIONS DOWN THE ROAD, LOCK ON, ANOTHER RISER OVER THE
8 FURNACE, TAKE THE RANGE RISER, GEE, IT'S BENT. AND YOU SAW IT
9 BENT. I MEAN, UNDER THE CIRCUMSTANCES, TRY IT. PUT A RANGE
10 RISER ON IT, PUT THAT PIECE OF WOOD OVER HERE, TAKE YOUR FINGER
11 AND PULL. WHAT HAPPENS? YOU'LL SEE THAT RANGE RISER ALL OF A
12 SUDDEN GO FROM THIS, PULL WITH THE PRESSURE, NOW, SOMEONE
13 STANDS HERE, AND YOU'LL SEE IT'S MORE FORCE, OR AT LEAST, YOU
14 KNOW, HOLD IT DOWN FOR SOME PERIOD, BUT WATCH THAT RANGE RISER.
15 IT'S GOING TO GO RIGHT OVER. THE NEXT THING YOU KNOW, SOMEONE
16 COMES UP, YOU CAN'T PULL THE WALL IN. ALL RIGHT.

17 I THINK THE BETTER THING TO DO NOW -- HE SAYS BAILEY.
18 YOU REALLY BELIEVE BAILEY? SEE THE WAY HE ADDRESSES MR. PLANT?
19 GEE, UNDER THE CIRCUMSTANCES, HE'S GOING TO ASK EVERYTHING FROM
20 HIM. SMILING AT HIM. BOY, HE KNEW EXACTLY WHAT HE WAS TALKING
21 ABOUT. SPIT THOSE QUESTIONS AND ANSWERS. AS SOON AS I STOOD
22 UP, GOOD AFTERNOON, MR. BAILEY, GOOD AFTERNOON. WHEN DID YOU
23 MEET LAST? SILENCE. SORRY, I DON'T UNDERSTAND YOU HE SAID.
24 OH, WHEN DID YOU MEET WITH MR. PLANT? I DON'T REMEMBER. THREE
25 WEEKS AGO WAS ALL IT WAS SAYS MR. RIGBY. BUT HE DOESN'T

1 REMEMBER. IT'S BECAUSE HE DOESN'T WANT TO TELL YOU THE TRUTH.
2 THEY'RE IN CAHOOTS. THEY'RE ABSOLUTELY IN CAHOOTS. THEY MET
3 WITH THEM ON TIMES. I NEVER MET WITH BAILEY. DOESN'T TALK TO
4 ME, TALKS WITH THEM. HE'S THEIR WITNESS. THEY'RE IN CAHOOTS
5 BUT HE'S TRYING TO MAKE YOU BELIEVE THAT UNDER THE
6 CIRCUMSTANCES, GEE, BAILEY IS JUST THE MOST OBJECTIVE GUY IN
7 THE WORLD. HE IS JUST FOR THE PROPANE COMPANY. NO, HE'S NOT.
8 HE'S IN CAHOOTS WITH THE OAKWOOD PEOPLE RIGHT NOW, BECAUSE
9 UNDER THE CIRCUMSTANCES, WHATEVER THE REASON, HE LOCKED HIMSELF
10 INTO A STORY AT ONE TIME AND HE CAN'T CHANGE IT NOW. JUST
11 HAPPENS TO FALL IN. POLITICS MAKES STRANGE BEDFELLOWS.
12 SUDDENLY HE'S WITH HIM. THAT'S NOT THE POINT.

13 AND AGAIN, DID YOU SEE WHAT THEY STOOD UP?
14 SOMEBODY'S LYING. BOOM, THEY POINT RIGHT TO HIM. BILL'S NOT
15 LYING.

16 AGAIN, REMEMBER RIGBY? HOW COME YOU DIDN'T PRESSURE?
17 GEE, OAKWOOD ALWAYS, THE MANUFACTURED HOME PEOPLE ARE SUPPOSED
18 TO, HE SAYS. DID THEY? GEE, THEY COULDN'T EVEN INSPECT THE
19 DOG GONE HOME ON THEIR LOT PROPERLY, NO LESS THEY DID NO
20 INSPECTIONS OF ANY TESTS. THEY ASKED HIM. REMEMBER? THERE
21 WAS A QUESTION, AND SOMETHING HAPPENED, AND I ASKED MR. RIGBY,
22 HE SAYS, WILL YOU LET ME EXPLAIN. AND I'M SITTING THERE GOING,
23 GOSH, I DON'T KNOW THE ANSWER TO THE QUESTION. THAT'S A PRETTY
24 DANGEROUS THING WHEN YOU'RE A LAWYER. AND WHAT I DID SAY?
25 OKAY, WE WANT THE TRUTH, FIGURING IT WOULD MOST LIKELY HURT US.

1 GO AHEAD. EXPLAIN. GIVE HIM THE OPPORTUNITY THAT OAKWOOD'S
2 COUNSEL WOULDN'T GIVE TO OTHER WITNESSES. AND WHAT DOES HE DO?
3 HE LAYS IT RIGHT BACK ON OAKWOOD. DIDN'T UNDERSTAND THE ANSWER
4 TO THE QUESTION BUT WE DID AFTERWARDS. THEY ALWAYS RELY ON
5 OAKWOOD. THEY DIDN'T DO A DOG GONE THING.

6 OUTSIDE FRACTURE PIPING. DR. ALEX, HE DID NOT LOOK
7 AT THAT. WELL, HE SAID TO YOU, IT'S TOO CORRODED. EVEN MOORE
8 SAID, WE CAN'T LOOK AT IT. IT'S MR. PLANT IS ARGUING TODAY,
9 UH-HUH, SINCE THEY DIDN'T THEY GOT A PROBLEM. EVERYBODY SAID
10 THEY COULDN'T LOOK AT IT, IT WAS TOO CORRODED, WE'D FIND
11 NOTHING FROM THE EVIDENCE.

12 AND THEN THE SNOW AGAIN. RIGHT BACK TO WHETHER
13 BILL'S A LIAR. UNDER THE CIRCUMSTANCES, THE ROAD'S DRY, ALL
14 SNOW HAD MELTED IN COALVILLE, AND UNDER THE CIRCUMSTANCES,
15 THERE WAS ABSOLUTELY NOTHING THAT HAPPENED. AGAIN, HE AND HIS
16 WITNESSES FIGURE WE HAVE NO PLACE ELSE TO GO, LET'S CHANGE THE
17 FACTS ON YOU. IT'S NOT APPROPRIATE.

18 THE LAST THING YOU'RE GOING TO HAVE IS A VERDICT.
19 AND I JUST WANT TO GO OVER THIS WITH YOU. WHEN ERCANBRACK LEFT
20 DEFENDANT, OAKWOOD MOBILE HOMES, WAS IT IN A DEFECTIVE
21 CONDITION AND UNREASONABLY DANGEROUS? YES.

22 IF YOU ANSWERED NOT, YES, TO THE QUESTION BEFORE WAS
23 SUCH A PROXIMATE CAUSE OF THE ACCIDENT OF PLAINTIFF'S DAMAGES?
24 YES. CAUSE UNDER THE CIRCUMSTANCES, REMEMBER, CAN'T GET AN
25 OUTSIDE LEAK INSIDE.

1 WHEN ERCANBRACK LEFT THE HOME WAS IT -- WHEN THE
2 ERCANBRACK'S HOME LEFT DEFENDANT'S SITE WAS IT IN A DEFECTIVE
3 CONDITION, UNREASONABLY DANGEROUS? SURE WAS. NOBODY EXPECTS
4 YOUR HOUSE TO BLOW UP LIKE THAT. THAT'S UNREASONABLY
5 DANGEROUS.

6 IF YOU ANSWERED YES WAS IT A PROXIMATE CAUSE OF THE
7 ACCIDENT? YES.

8 CONSIDERING ALL THE EVIDENCE DO YOU FIND
9 PREPONDERANCE OF THE EVIDENCE THEY BREACHED A WARRANTY? SAID
10 IT WOULDN'T HAPPEN. IT WAS SAFE. IT WAS NO DEFECT. OBVIOUSLY
11 THERE WAS. YES AGAIN.

12 WAS SUCH A BREACH OF WARRANTY A PROXIMATE CAUSE?
13 SURE WAS. WE RELIED UPON IT. AND UNDER THE CIRCUMSTANCES IT
14 LEAKED. BLEW UP, KILLED MY FAMILY.

15 BREACH OF WARRANTY WITH RESPECT TO THE MANUFACTURED
16 HOME? YES. IF YOU ANSWERED THEN WAS IT A PROXIMATE CAUSE?
17 YES. IT WASN'T SUPPOSED TO LEAK. NO DEFECT. IT DID. KILLED
18 THE FAMILY.

19 CONSIDERING ALL THE EVIDENCE WAS OAKWOOD HOMES
20 NEGLIGENT? ABSOLUTELY. WE PROVED IT FOR SEVEN DAYS.

21 UNDER THE FOLLOWING, WAS THE NEGLIGENCE OF OAKWOOD
22 HOMES A PROXIMATE CAUSE? YES. THAT'S WHAT THE LEAK WAS,
23 UNDERNEATH. YOU CAN'T GET A LEAK TO THAT QUANTITY UNDERNEATH
24 FROM OUTSIDE GAS. JUST CAN'T HAPPEN.

25 CONSIDERING ALL THE EVIDENCE WAS OAKWOOD NEGLIGENT?

1 ABSOLUTELY.

2 AND FROM THERE, JUST A FEW MORE, AND THEN I AM GOING
3 TO SIT DOWN. WAS THE NEGLIGENCE A PROXIMATE CAUSE? YES.

4 YOU ARE INSTRUCTED BY THE COURT THAT ACCEPTING THE
5 RULE OF FACT, WAS THE DEFECT A PROXIMATE CAUSE OF THE DAMAGES?
6 THE DEFECT IS WHAT CAUSED IT TO LEAK. UNDER THE CIRCUMSTANCES,
7 AGAIN, CAN'T GET A LEAK FROM THE OUTSIDE COMING IN TO THAT
8 DEGREE.

9 CONSIDERING, WAS S.S. SUPPLY NEGLIGENT? WELL, NOW WE
10 GO OVER HERE, RIGHT? IN OTHER WORDS, IF YOU CAN SMELL IT, OR
11 IF YOU CAN'T, I SUBMIT TO YOU SHE NEVER COULD SMELL IT. SHE
12 WALKED IN THERE. AND EVEN IF SHE DID, WAS ABLE TO SMELL IT, IN
13 THERE, TAKING THE CLOTHES, BAM, SHE COULDN'T HAVE GOT OUT IN
14 TIME. SHE WOULD HAVE BEEN WALKING OVER TO THE STOVE. THE ONLY
15 EVIDENCE IN THE CASE IS BILL. THEN, WAS A PROXIMATE CAUSE.
16 WELL, THAT'S AGAIN, GOING TO HERE. IS THE PROXIMATE CAUSE 100
17 PERCENT, 80 PERCENT, WHATEVER IT IS.

18 CONSIDERING ALL THE EVIDENCE WAS THE PLAINTIFF,
19 WILLIAM ERCANBRACK, NEGLIGENT? PREPOSTEROUS. HE HAD NOTHING
20 TO DO WITH ANYTHING.

21 AND THEN FROM THERE, WAS HE A PROXIMATE CAUSE? HE
22 DIDN'T CAUSE HIS OWN FAMILY ANY GRIEF WHATSOEVER. HE DID
23 NOTHING. THEY'RE JUST TRYING TO LAY IT ON BECAUSE THEY DON'T
24 WANT TO ADMIT IT THEMSELVES.

25 AND I'M DONE IN 30 SECONDS, YOUR HONOR. I THINK I'M

1 RIGHT ON TIME.

2 THE COURT: YOU'RE FINE. THANK YOU VERY MUCH.

3 MR. D'ELIA: LAST ONE. NOW, YOU FILL IN, AT THE
4 BOTTOM HERE, PERCENTAGE OF OAKWOOD HOMES. WELL AGAIN, UNDER
5 THE CIRCUMSTANCES, BILL'S NOT LIABLE FOR ANYTHING. YOU ARE
6 LOOKING AT THE PROPANE COMPANY AND WHETHER SHE CAN SMELL IT OR
7 COULDN'T SMELL IT. SINCE THEY PRODUCED NO EVIDENCE, OAKWOOD
8 HOMES, 100 PERCENT.

9 HOMES BY OAKWOOD, 100 PERCENT.

10 S.S. SUPPLY. SHE COULDN'T SMELL IT. EVEN IF SHE
11 COULD SMELL IT, EXCUSE ME, SHE COULDN'T GET OUT. THAT'S WHAT
12 THE POINT IS. COULDN'T GET OUT IN TIME. ALREADY, BY THE TIME
13 IT COMES UP TO THE LIVING SPACE, ALL YOU NEED IS FOUR PERCENT
14 DOWNSTAIRS, YOU'VE GOT IT. BY THE TIME IT COMES UP, IN ANY
15 QUANTITIES WHATSOEVER, YOU ALREADY HAVE ENOUGH TO BLOW UP THE
16 FAMILY AND THE HOME DOWNSTAIRS.

17 ERCANBRACK, ZERO.

18 THEN WE GET INTO WHAT'S THE MINIMUM AMOUNT OF
19 DAMAGES. I CONTEND TO YOU THAT IT SHOULD FLUCTUATE IN OUR
20 SOCIETY FROM ABOUT THIS NUMBER UP TO TEN MILLION DOLLARS.

21 I APPRECIATE YOUR TIME. I APPRECIATE YOU GOING IN
22 AND DELIBERATING. AND I'M SURE THAT WHEN YOU ARE DONE
23 DELIBERATING THAT YOU WILL FIND THAT, IN FACT, OAKWOOD HOMES
24 WAS RESPONSIBLE FOR THIS ACCIDENT, CAUSED THE DEATH OF THE
25 FAMILY, AND YOU'LL MAKE THE PROPER AWARD. THANK YOU AGAIN FOR

1 YOUR TIME. I APPRECIATE IT.

2 THE COURT: THANK YOU. MR. D'ELIA, BEFORE YOU SIT
3 DOWN WOULD YOU BE GOOD ENOUGH TO PULL BACK THAT EASEL?

4 MR. PLANT: I'VE GOT IT, YOUR HONOR.

5 THE COURT: THANK YOU.

6 MR. PLANT: YOU'RE WELCOME.

7 THE COURT: MEMBERS OF THE JURY, THERE IS ONE MORE
8 THING. IT IS A DIFFICULT THING. WE HAVE TO DECIDE WHICH EIGHT
9 OF YOU ARE GOING IN THAT ROOM.

10 I WANT TO ASK FIRST, THE TWO JURORS WHO INITIALLY HAD
11 AN ISSUE FOR MONDAY ON. AS I INDICATED, YOU WILL START
12 DELIBERATING IN JUST A FEW MINUTES. AND I WILL NOT REQUIRE YOU
13 TO STAY PAST 5:00, BUT ON THE FIRST DAY JURORS TYPICALLY DO.
14 AND WE'LL STAY WITH YOU AS LONG AS YOU WANT TO STAY. IT'S YOUR
15 CHOICE. IF YOU WANT TO GO TIL MIDNIGHT, WE'LL BE HERE. WE
16 DON'T FIND THAT UNUSUAL. SO GO IN AND SEE HOW YOU'RE DOING AND
17 MAKE THAT DETERMINATION LATER IN THE DAY.

18 BUT IF YOU CAN NOT FINISH TODAY YOU WILL HAVE A LONG
19 WEEKEND, YOU'LL BE BACK MONDAY MORNING AT 9:00 A.M. SO YOU
20 NEED TO UNDERSTAND WE HAVE TO HAVE JURORS WHO CAN COME BACK
21 MONDAY.

22 AND MR. KIRKHAM, WHAT'S YOUR SITUATION RIGHT NOW?

23 MR. KIRKHAM: I'LL STAY.

24 THE COURT: THANK YOU, MR. KIRKHAM.

25 MR. SUHADOK?

1 MR. SUHADOK: UHM, IT'S NOT LIFE AND DEATH THAT I GO
2 TO WORK, IT'S IMPORTANT THAT I GO TO WORK MONDAY. AGAIN, IT'S
3 NOT LIFE OR DEATH.

4 THE COURT: IT'S REALLY YOUR CALL AT THIS POINT.

5 MR. SUHADOK: I WOULD PREFER TO GO TO WORK THEN.

6 THE COURT: YOU PREFER TO GO TO WORK?

7 MR. SUHADOK: YES.

8 THE COURT: YOU HAVE THAT RIGHT TO DO SO. YOU HAVE
9 GIVEN A GREAT DEAL. AND THE SERVICE AS AN ALTERNATE IS
10 EXTREMELY SIGNIFICANT SERVICE, SIR. THERE'S JUST NO TWO WAYS
11 ABOUT IT. SO YOU WILL BE EXCUSED WHEN THE JURY GOES IN.

12 MR. MATHER, YOU'RE THE EXTRA ALTERNATE. OKAY? SO
13 YOU'LL BE EXCUSED ALSO.

14 MEMBERS OF THE JURY, I CANNOT EXPRESS OUR GRATITUDE
15 TO THIS POINT. NOW THE TWO WHO ARE EXCUSED, I HAVE GOT TO TELL
16 YOU SOMETHING. YOU ARE NOT RELIEVED FROM DUTY IN THIS CASE.
17 SOMETIMES YOU ARE, SOMETIMES YOU ARE NOT. IT IS SO IMPORTANT
18 THAT THIS CASE GETS DECIDED BASED ON THIS TRIAL THAT YOU ARE
19 NOT RELEASED FROM THE ADMONITION THAT YOU DO NOT TALK ABOUT THE
20 CASE WITH ANYONE. IN SOME CASES YOU CAN TALK WITH THE LAWYERS,
21 IN THIS CASE YOU CAN NOT. YOU CAN NOT FORM OPINIONS. YOU NEED
22 TO JUST PUT IT IN SUSPENSION, BECAUSE SHOULD SOMETHING HAPPEN
23 TO A JUROR, WE'LL BRING YOU BACK. AND FRANKLY, THE ORDER IS
24 DETERMINED. IT'S MR. KIRKHAM AND THEN MR. SUHADOK, DEPENDING
25 ON AVAILABILITY. AND WE'LL START DELIBERATION OVER. WE CAN

1 ONLY DO THAT IF YOU DON'T GO OUT AND START TALKING ABOUT THE
2 CASE. LEAVE US A TELEPHONE NUMBER, MR. MATHER AND MR. SUHADOK.
3 MR. MATHER WILL BE THE FIRST ONE BACK AND THEN MR. SUHADOK.
4 NOT LIKELY TO HAPPEN BUT DON'T TAINT YOUR ABILITY TO SERVE.

5 SO WE ARE GOING TO EXCUSE THE JURY AFTER I SWEAR THE
6 BAILIFF. WE DID ORDER 10 LUNCHES. IF YOU CAN EAT OUR FOOD YOU
7 CAN TAKE IT WITH YOU, YOU TWO WHO ARE LEAVING. I DON'T KNOW IF
8 IT'S HERE YET.

9 BAILIFF, WILL YOU APPROACH AND BE SWORN?

10 (JUDGE SWEARS IN BAILIFF).

11 THANK YOU. IT'S GOING TO TAKE A BIT OF TIME TO GET
12 YOU ORGANIZED. JUST GO ON BACK, GET COMFORTABLE. ALL THE
13 EXHIBITS HAVE TO BE IN YOUR ROOM. WE THINK WE CAN FIT
14 EVERYTHING IN. IF NOT, WE MAY HAVE TO PUT A COUPLE OF THE
15 LARGER ONES IN A NEARBY ROOM. YOU CAN NOT, IF THAT'S THE CASE,
16 YOU MUST GO AS A GROUP WITH THE BAILIFF. YOU CAN ALWAYS DO
17 THAT. WE ARE GOING TO SEE WHAT WE CAN GET IN THE JURY ROOM
18 FIRST. WHEN YOU GO IN I SUGGEST YOU DON'T JUMP RIGHT INTO
19 DELIBERATION UNTIL WE GET EVERYTHING ORGANIZED.

20 (WHEREUPON, THE JURY LEAVES THE COURTROOM TO
21 DELIBERATE AT 11.50 A.M.)

22 RECESS.

23

24

25

C E R T I F I C A T E

STATE OF UTAH)
 :
COUNTY OF SALT LAKE)

I, EILEEN M. AMBROSE, C.S.R., DO CERTIFY THAT I AM A
CERTIFIED SHORTHAND REPORTER AND OFFICIAL COURT REPORTER IN AND
FOR THE STATE OF UTAH; THAT AS SUCH REPORTER, I ATTENDED THE
PROCEEDINGS OF THE ABOVE-ENTITLED MATTER AT THAT TIME AND PLACE
SET OUT HEREIN; THAT THEREAT I TOOK DOWN THE TESTIMONY GIVEN
AND THE PROCEEDINGS HAD THEREIN; AND THAT THEREAFTER MY NOTES
WERE TRANSCRIBED BY COMPUTER INTO THE FOREGOING PAGES; AND THAT
THIS CONSTITUTES A FULL, TRUE AND CORRECT TRANSCRIPTION OF THE
SAME.


EILEEN M. AMBROSE, C.S.R.

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH

WILLIAM G. ERCANBRACK,

Plaintiff,

SPECIAL VERDICT

vs.

OAKWOOD MOBILE HOMES, INC.
(A North Carolina corporation), and
HOMES BY OAKWOOD, INC. (a
North Carolina corporation),

Civil No. 980600223

Defendant.

Judge Robert K. Hilder

MEMBERS OF THE JURY:

Please answer the following questions from a preponderance of the evidence. If you find the evidence preponderates in favor of the issue presented, answer "Yes." If you find the evidence is so equally balanced that you cannot determine a preponderance of the evidence, or if you find that the evidence preponderates against the issue presented, answer "No." Also, any damages assessed must be proven by a preponderance of the evidence.

1. When the Ercanbrack home left defendant Oakwood Mobile Homes, Inc. was it in a defective condition, unreasonably dangerous to plaintiff's decedents?

ANSWER: Yes ☒ No ☐

2. If you answered Question 1 "Yes," then answer the following question: Was such a defect a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

3. When the Ercanbrack home left defendant Homes by Oakwood, Inc. was it in a defective condition, unreasonably dangerous to plaintiff's decedents?

06325

ANSWER: Yes ☒ No ☐

4 If you answered Question 3 "Yes," then answer the following question Was such a defect a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

5 Considering all of the evidence in this case, do you find by a preponderance of the evidence that defendant Homes by Oakwood, Inc. breached any warranty with respect to the manufacture or sale of the Ercanbrack home?

ANSWER: Yes ☒ No ☐

6 If you answered Question 5 "Yes," then answer the following question: Was such a breach of warranty a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

7 Considering all of the evidence in this case, do you find by a preponderance of the evidence that defendant Oakwood Mobile Homes, Inc. breached any warranty with respect to the manufacture or sale of the Ercanbrack home?

ANSWER: Yes ☒ No ☐

8 If you answered Question 7 "Yes," then answer the following question: Was such a breach of warranty a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

9 Considering all of the evidence in this case, was the defendant Homes by Oakwood, Inc. negligent?

ANSWER: Yes ☒ No ☐

10 If you answered Question 9 "Yes," then answer the following question: Was the negligence of Homes by Oakwood, Inc. a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

11 Considering all of the evidence in this case, was the defendant Oakwood Mobile Homes, Inc. negligent?

ANSWER: Yes ☒ No ☐

06326

12. If you answered Question 11 "Yes," then answer the following question: Was the negligence of Oakwood Mobile Homes, Inc. a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

13. You are instructed that the court has ruled as a matter of law that the propane tank and propane delivery system provided to Mr. Ercanbrack by SS Supply, Inc. was defective and unreasonably dangerous to plaintiff's decedents. Accepting that ruling as a fact, answer the following question: Was such defect a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

14. Considering all of the evidence in this case, was SS Supply, Inc. negligent?

ANSWER: Yes ☒ No ☐

15. If you answered Question 14 "Yes," then answer the following question: Was the negligence of SS Supply, Inc. a proximate cause of the accident and the plaintiff's damages?

ANSWER: Yes ☒ No ☐

16. Considering all of the evidence in this case, was the plaintiff, William Ercanbrack, negligent?

ANSWER: Yes ☐ No ☒

17. If you answered Question 16 "Yes," then answer the following question: Was the negligence of plaintiff, William Ercanbrack, a proximate cause of the accident and his damages?

ANSWER: Yes ☐ No ☒

00327

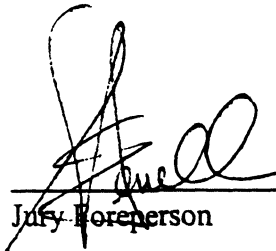
18. If you answered any or all of Questions 2, 4, 6, 8, 10, 12, 13, 15 and/or 17 "Yes," answer the following question: Assuming the combined fault of the parties to total 100%, what percentage of fault do you attribute to:

A.	Defendant Oakwood Homes, Inc.	<u>5</u> %
B.	Defendant Homes by Oakwood, Inc.	<u>55</u> %
C.	Settling defendant SS Supply, Inc.	<u>40</u> %
D.	Plaintiff William Ercanbrack	<u>0</u> %
TOTAL		100 %

19. If you have answered any or all of Questions 2, 4, 6, 8, 10, and/or 12, "Yes," state the amount of special and general damages, if any, sustained by plaintiff, William Ercanbrack, as a proximate result of the deaths of his wife and children. If none of the questions was answered "Yes," do not answer this question. **NOTE:** Please do not consider the effect of the allocation of fault stated in answer to Question 18. Simply state the total damage amount you determine from the evidence. The court will make any necessary calculations to arrive at the net amount of damages.

Special Damages	\$ <u>107,600-</u>
General Damages	\$ <u>8,846,000-</u>
TOTAL	\$ <u>8,953,600-</u>

DATED this 16 day of April, 2002.



Jury Foreperson

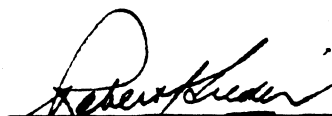
06328

Mobile Homes, Inc. and Homes By Oakwood, Inc.'s Motion to Tax Plaintiff's Bill of Costs and Motion for Judgment NOV, New Trial and Remittitur:

1. Oakwood's Motion for Judgment NOV is *denied*;
2. Oakwood's Motion for New Trial is *denied*;
3. With respect to Oakwood's Motion for Remittitur, the Court hereby reduces the judgment awarded to Plaintiff, William Ercanbrack, by the sum of \$79,936.00. The Court finds that the remainder of the jury verdict in this matter is reasonable and will not be remitted.
4. With respect to Defendants' Motion to Tax Plaintiff's Memorandum of Costs, the Court finds that Plaintiff is entitled to costs in the amount of \$8,688.71 as described in Exhibit "A" hereto.

DATED: 1st August, 2002.

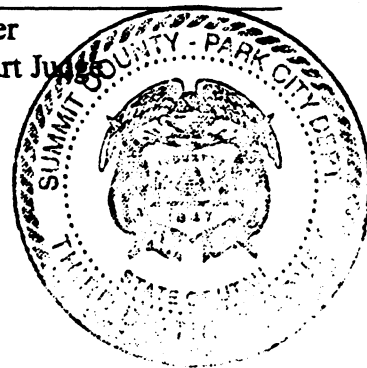
BY THE COURT:


Honorable Robert K. Hilder
Third Judicial District Court Judge

APPROVED AS TO FORM:

PLANT WALLACE CHRISTENSEN
& KANELL


Terry M. Plant
Attorneys for Oakwood Mobile Homes, Inc.
and Homes by Oakwood, Inc.



06365

CLERK OF COURT - SUMMIT

2002 AUG - 1 PM 4:00

FILED BY 

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**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SUMMIT COUNTY, STATE OF UTAH**

WILLIAM G. ERCANBRACK,

Plaintiff,

vs.

OAKWOOD MOBILE HOMES, INC. (a
North Carolina Corporation), **HOMES BY**
OAKWOOD, INC., (a North Carolina
Corporation)

Defendants.

)
)
) **AMENDED JUDGMENT**
)
)
)

) Civil No. 980600223
) Judge Robert K. Hilder
)
)
)
)
)
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06361

(a)	Filing Fee (complaint):	\$ 120.00
(b)	Jury fee:	\$50.00
(c)	Deposition transcripts used at trial:	
i.	Rocky Mountain Reporting (Jay Freeman)	1,821.55
ii.	Rocky Mountain Reporting (Jay Freeman, III)	592.50
iii.	Rocky Mountain Reporting (Michael Hatch)	600.25
iv.	Rocky Mountain Reporting (James Jackson)	377.50
v.	Rocky Mountain Reporting (Robert Mason)	345.60
vi.	Rocky Mountain Reporting (Julie Meek)	394.70
vii.	Rocky Mountain Reporting (David Moore)	1,879.15
viii.	Rocky Mountain Reporting (David Moore)	841.00
ix.	Rocky Mountain Reporting (Michael Slifka)	433.40
x.	Professional Reporters (Michael Slifka)	536.85
xi.	Rocky Mountain Reporting (Larry Weber)	466.60
xii.	Copies of transcripts/exhibits (Salt Lake Legal)	177.11
(d)	Witness fee & mileage:	
i.	Michael Hatch	\$17.50
ii.	Julie Meek	\$17.50
iii.	Larry Weber	17.50
		<u>\$8,688.71</u>

06962

After trial by jury, and the special verdict of the jury, and resolution of Defendants' post-trial motions, the Court hereby enters the following Amended Judgment in favor of Plaintiff and against each of the below-listed Defendants as follows:


Homes by Oakwood, Inc. \$4,821,335.20

Oakwood Mobile Homes, Inc. \$438,303.20

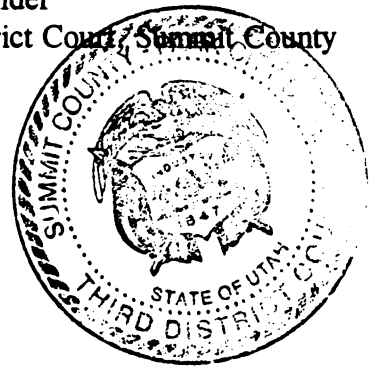
1. Plaintiff is awarded costs in the amount of \$8,688.71.
2. This judgment shall bear interest as provided by law at a rate of 4.28% per annum from and after the date of entry of judgment, May 15, 2002. This interest rate shall apply to the judgment amount and all costs to be awarded by the Court.

DATED: 1st August, 2002.

BY THE COURT:



Judge Robert K. Hilder
Third Judicial District Court, Summit County



06966