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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

)
ADELINO ACOSTA, et al.,)
)
Plaintiffs,)
)
vs.)
)
SHELL OIL COMPANY, et al.,)
)
Defendants.)

)
AND RELATED CASES.)

**CERTIFIED
TRANSCRIPT**

No. NC 053643

VIDEOTAPED DEPOSITION OF GEORGE BACH
Los Angeles, California
Wednesday, November 19, 2014

Reported by:
KATHLEEN E. BARNEY
CSR No. 5698
Job No. 1968439
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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Defendants.)

)
AND RELATED CASES.)

No. NC 053643

Videotaped deposition of GEORGE BACH, taken on behalf of Defendants, at 600 South Commonwealth Avenue, Department 322, Los Angeles, California, beginning at 9:36 a.m. and ending at 3:01 p.m. on Wednesday, November 19, 2014, before Kathleen E. Barney, Certified Shorthand Reporter No. 5698.

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APPEARANCES:

Before:

THE HONORABLE WILLIAM F. HIGHBERGER

For Plaintiffs:

GIRARDI & KEESE

BY: ROBERT W. FINNERTY

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Los Angeles, California, November 19, 2014

9:36 a.m.

THE VIDEOGRAPHER: Good morning. We are on
the record at 9:36 a.m. on November 19, 2014. This 09:37:06
is the video-recorded deposition of George Bach.

My name is Jill Warren, here with our court
reporter, Kathy Barney. We're here from Veritext
Legal Solutions.

This deposition is being held at 600 South 09:37:25
Commonwealth in Los Angeles, California. The
caption of this case is Acosta versus Shell Oil
Company, case number NC 053643.

Please note that audio and video recording
will take place unless all parties agree to go off 09:37:43
the record. Microphones are sensitive and may pick
up whispers, private conversations and cellular
interference.

I'm not related to any party in this action,
nor am I financially interested in the outcome in 09:37:57
any way.

If there are any objections to proceeding,
please state them at the time of your appearance.
Beginning with the noticing attorney, please state
your appearance. 09:38:07

Page 8

1 MS. MILLER: Deanne Miller from Morgan Lewis
2 for Shell and Equilon.
3 MS. CHO: Monique Cho on behalf of the Shell
4 defendants.
5 MR. AUMAIS: Chris Aumais and Bob Finnerty on 09:38:19
6 behalf of plaintiffs.
7 MR. FINNERTY: Good morning, Mr. Bach.
8 THE WITNESS: Good morning, Mr. Finnerty.
9 MR. DINTZER: Good morning. Jeffrey Dintzer
10 on behalf of the Dole defendants and the witness. 09:38:28
11 MR. SPIKER: Christopher Spiker on behalf of
12 George Bach, Dole, Oceanic, and Barclay Hollander.
13 THE VIDEOGRAPHER: Thank you.
14 The witness will be sworn in and counsel may
15 begin the examination. 09:38:44
16
17 GEORGE BACH,
18 a witness herein, having been administered an oath,
19 was examined and testified as follows:
20 09:38:57
21 MR. DINTZER: Before we begin, I just want to
22 make reference to the fact that we did serve
23 objections, and counsel have received those
24 objections, and so I wanted those just noted for the
25 record before the deposition questioning proceeds. 09:39:06

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1 MS. MILLER: And we can also note for the
2 record that my office has started the
3 meet-and-confer process with your office regarding
4 those objections, and we will bring them to the
5 court's attention as needed. Thank you. 09:39:17

6
7 EXAMINATION

8 BY MS. MILLER:

9 Q Could you please state your name for the
10 record. 09:39:21

11 A My name is George Bach, B-A-C-H.

12 Q Thank you. Mr. Bach, you understand that the
13 court reporter has given you an oath under penalty
14 of perjury to tell the truth here today.

15 Do you understand that? 09:39:30

16 A I do.

17 Q And do you understand that that oath is the
18 same oath that you would be given in a court of law
19 before a judge or jury at a trial of this matter.

20 Do you understand that? 09:39:40

21 A Yes.

22 Q All right. We are going to ask you questions
23 here today and, as you know, your testimony is being
24 videotaped. You understand that at some point in
25 time that video may be shown to a judge or a jury in 09:39:49

Page 10

1 connection with this litigation.

2 Do you understand that?

3 A Yes, I do.

4 Q All right. And I know you've been deposed
5 before because you've been deposed before in this 09:39:58
6 case, correct?

7 A Yes.

8 Q I will go over quickly the ground rules to
9 remind you of how this will work.

10 As you know, the court reporter is going to 09:40:06
11 take down my questions and your answers. Okay?

12 A Yes.

13 Q And so we will ask that you respond verbally
14 so that she can take down everything that we say
15 here today. Okay? 09:40:17

16 A Yes, I understand.

17 Q From time to time, there may be objections
18 from one or more of the attorneys here. Those
19 objections are for the court to consider at a later
20 time, and so once the objections are made, we'll ask 09:40:29
21 you to answer the question. Okay?

22 A Yes.

23 Q All right. We are entitled to your best
24 recollection and your best estimates here today.

25 Do you understand that? 09:40:39

Page 11

1 A Yes.

2 Q Okay. If I ask you a question, I'm going to
3 assume that you understood my question unless you
4 let me know that you didn't or that you need me to
5 clarify. Okay? 09:40:51

6 A Yes.

7 Q And if you don't mention that, then we'll
8 assume that you understood the question and that's
9 what your answer is related to, right?

10 A Yes. 09:40:58

11 Q Okay. Mr. Bach, is there any reason that you
12 cannot give your best and most truthful testimony
13 here today?

14 A No.

15 Q Are you under the influence of any 09:41:07
16 medications or substances that would prevent you
17 from testifying accurately here today?

18 A No.

19 Q All right. I am going to hand to you -- and
20 we're at a bit of a big table here, so I'll pass 09:41:19
21 around to reach you the first document that I'd like
22 to mark as an exhibit for today's deposition. And
23 I'll ask the court reporter to mark it as Exhibit 1.

24 (Exhibit 1 was marked for identification by
25 the court reporter and is attached hereto.) 09:41:31

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1 MS. MILLER: And then I'll send a copy your
2 way.
3 BY MS. MILLER:
4 Q Mr. Bach, I'm going to walk you through each
5 of the document requests that are contained in this 09:43:37
6 Exhibit 1. But, for starters, let me ask you, have
7 you seen this document before?
8 A Yes.
9 Q Exhibit 1 is the Shell defendants' notice of
10 your deposition, which was scheduled to take place 09:43:50
11 on November 12, 2014.
12 Do you see that on the first page of
13 Exhibit 1?
14 A Yes.
15 Q And was it your understanding that your 09:43:58
16 deposition was scheduled to take place last
17 Wednesday, November 12?
18 A Yes.
19 Q When did you come to Los Angeles in
20 preparation for this deposition that was scheduled 09:44:08
21 to take place last week on November 12?
22 A Sunday. Was that November 10th?
23 Q You came in to Los Angeles on Sunday?
24 A Yes.
25 Q All right. When you came in on Sunday, did 09:44:23

Page 13

1 you come in in the morning or the afternoon?

2 A Afternoon.

3 Q And when I say "come in," were you flying in
4 from Wyoming, I believe someone from the Gibson Dunn
5 law firm let us know? 09:44:33

6 A I was driving. I drove in.

7 Q You drove in from Wyoming to Los Angeles --

8 A Yes.

9 Q -- is that right?

10 Are you represented by counsel here today? 09:44:42

11 A Yes.

12 Q And who is your counsel?

13 A My counsel is Jeffrey Dintzer and Chris.

14 Q Is it the Gibson Dunn law firm that is
15 representing you? 09:44:52

16 A Yes.

17 Q Have you ever signed a retention agreement
18 with them asking them to be your lawyers?

19 A Yes.

20 Q And have you produced that retention 09:44:57
21 agreement in response to this deposition notice?

22 I'm asking you, not your attorney. Do you
23 know whether you've produced it?

24 A I don't have it with me, no.

25 Q All right. You have a copy of it where? 09:45:10

Page 14

1 A At the office at -- I don't have anything
2 with me today.

3 Q Okay. And you have an office here in
4 Southern California?

5 A No. 09:45:18

6 Q Which office are you referring to?

7 A It would be at Gibson Dunn.

8 Q So Gibson Dunn has a copy of your signed
9 retention agreement with them?

10 A Yes. 09:45:28

11 Q And you are not aware whether it's been
12 produced to us here today?

13 A That's correct.

14 Q What is the date on that retention letter?

15 A I don't recall. 09:45:35

16 Q Can you estimate for me? Was it this year?

17 A No. It was previous.

18 Q Was it in 2013?

19 A I believe it might have been, yes.

20 Q In 2013. You were deposed in this case, the 09:45:48
21 Acosta litigation, in March of 2013.

22 Do you recall that deposition?

23 A Yes.

24 Q And you were deposed on two different days,
25 March 7 and March 13. Do you recall that? 09:45:59

1 A Yes.

2 Q Do you recall Mr. Loewen from the Gibson Dunn
3 law firm was the one who noticed your deposition?

4 A Yes, I do.

5 Q And is it your understanding that he was both 09:46:10
6 your attorney and the person who was asking you
7 questions at that time?

8 A Yes.

9 Q Were you aware that earlier this month
10 Mr. Manakides from the Gibson Dunn law firm advised 09:46:22
11 the court that they did not represent you at Gibson
12 Dunn? Were you aware of that?

13 MR. DINTZER: That misstates the record and
14 it's a mischaracterization of the record. And lacks
15 foundation. 09:46:34

16 BY MS. MILLER:

17 Q As I mentioned earlier, some of the attorneys
18 may have objections now and again, but unless you're
19 instructed not to answer a question and you follow
20 that instruction, you can go ahead and answer. 09:46:43

21 So I will repeat the question, which is, are
22 you aware that -- do you know who Mr. Manakides is
23 from the Gibson Dunn law firm?

24 A No.

25 Q Have you met with Mr. Manakides before? 09:46:54

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A No.

Q Is it your understanding that the Gibson Dunn law firm and not an individual person there is your counsel? Do you have an understanding that the law firm represents you?

09:47:06

A That's correct.

Q All right. Would it surprise you to know that Mr. Manakides told the judge in this case that he did -- his law firm did not represent you and was not your attorney?

09:47:15

MR. DINTZER: Objection. Lacks foundation and calls for speculation.

THE WITNESS: I have no thought about that.

BY MS. MILLER:

Q Do you know one way or the other whether in September of 2014 the Gibson Dunn law firm represented you as your attorneys?

09:47:23

A They represented me, to the best of my knowledge, yes.

Q For which time period?

09:47:36

A They -- since 2013 until today.

Q And before 2013 they did not represent you, correct?

A I'm trying to remember the first time that I met with one of their attorneys, whether it was '13

09:47:49

1 or '12. I'm not certain of the first date.

2 Q Okay. It would be reflected on the retention
3 letter that you signed with them?

4 MR. DINTZER: Objection. Lacks foundation.

5 BY MS. MILLER: 09:48:02

6 Q Is that correct?

7 MR. DINTZER: Objection. Lacks foundation.

8 Calls for speculation.

9 THE WITNESS: I don't know.

10 BY MS. MILLER: 09:48:06

11 Q Do you believe that the first time you were
12 retained -- you retained the Gibson Dunn law firm,
13 that date would be reflected in the retention

14 agreement that you did not bring with you here

15 today, but that your counsel -- but that you believe 09:48:17

16 your counsel has in their possession?

17 MR. DINTZER: Same objections.

18 THE WITNESS: I don't know what the date

19 would be.

20 BY MS. MILLER: 09:48:26

21 Q If you wanted to go back and figure out what
22 that date was, where would you look?

23 MR. DINTZER: Objection. It's vague.

24 THE WITNESS: I would have to think about

25 where to look for that date. 09:48:35

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1 BY MS. MILLER:
2 Q All right. You are testifying here under
3 oath today, and I'm asking you to think about it
4 here, if you could for me, and I realize that you're
5 trying to remember back to 2013, but where would you 09:48:43
6 look if you thought about it here today to confirm
7 when it was that you retained the Gibson Dunn law
8 firm to represent you?
9 MR. DINTZER: Objection. The question calls
10 for a legal conclusion. It also lacks foundation 09:48:57
11 and it calls for speculation. And it's been asked
12 and answered now.
13 BY MS. MILLER:
14 Q That's fine.
15 A I would have to think about where to look for 09:49:05
16 it.
17 Q Can you do that for me? Can you think about
18 it now?
19 MR. DINTZER: Objection. It's argumentative.
20 BY MS. MILLER: 09:49:12
21 Q What is your best estimate, sitting here, of
22 where you would look?
23 MR. DINTZER: Objection. It's been asked and
24 answered, and it lacks foundation.
25 THE WITNESS: I would really have to think 09:49:23

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1 about what record would show the first time I was --
2 and I don't -- at the moment I don't know where to
3 look for that.

4 BY MS. MILLER:

5 Q That's fair. And so other than the retention 09:49:32
6 letter that you say that you've signed with the
7 Gibson Dunn law firm, is there any other record that
8 you can think of that would reflect that retention
9 of their law firm?

10 A No. 09:49:45

11 Q Okay. And have you ever received a bill
12 since 2013 from the Gibson Dunn law firm?

13 A No.

14 Q Do you know how much Mr. Dintzer charges per
15 hour? 09:49:59

16 A No.

17 Q What about Mr. Spiker, do you know how much
18 he charges per hour to be your attorney?

19 A No.

20 Q Do you know how much any lawyer of the Gibson 09:50:06
21 Dunn law firm is charging you to represent you?

22 A No.

23 Q Now, this deposition was scheduled to
24 commence last Wednesday. You understood that,
25 correct? 09:50:19

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1 A That's correct.

2 Q And it did not happen last Wednesday. Or,
3 more appropriately, I should say you did not appear
4 for deposition last Wednesday, correct?

5 A That's correct. 09:50:30

6 Q Why not?

7 A I don't know why the deposition was
8 cancelled.

9 MR. FINNERTY: It wasn't. It wasn't
10 cancelled. 09:50:42

11 BY MS. MILLER:

12 Q Were you told by the Gibson Dunn law firm
13 that you didn't need to appear last Wednesday for
14 your deposition?

15 MR. DINTZER: Objection. That calls for 09:50:49
16 attorney-client communication, and I'll instruct the
17 witness not to answer.

18 BY MS. MILLER:

19 Q Mr. Bach, are you following Mr. Dintzer's
20 advice or are you answering that question of whether 09:50:58
21 you were told by the Gibson Dunn law firm not to
22 appear last Wednesday?

23 A I'm going to follow my attorney's advice.

24 Q Okay. Did you have an understanding that
25 after business hours last Tuesday night, someone 09:51:13

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1 from Gibson Dunn cancelled the deposition?
2 A I have no knowledge of that.
3 Q During the day on Tuesday, which was the
4 Veteran's Day holiday, did you meet with the Gibson
5 Dunn law firm? 09:51:30
6 A Yes.
7 Q And how many hours did you meet on Tuesday?
8 A Maybe four.
9 Q When did you appear at their office -- was it
10 at their office, your meeting? 09:51:43
11 A Yes.
12 Q And what time did you get there?
13 A I believe it was 9:00.
14 Q And what time did you leave their office on
15 Tuesday? 09:51:51
16 A About 2:30.
17 Q Did you look at any documents with Gibson
18 Dunn while you were there at their office?
19 A Yes.
20 Q What documents did you look at? 09:52:04
21 A I looked at a copy of my statement of 2011.
22 I looked at copies of my depositions. And I looked
23 at a copy of a declaration that I made for Gibson --
24 with Gibson Dunn.
25 Q Did you look at any other documents on 09:52:29

Page 22

1 Tuesday, November 11th?

2 A Not that I recall, no.

3 Q Did you meet with any of the attorneys at
4 Gibson Dunn on Tuesday, November 11?

5 A Yes. 09:52:44

6 Q Who were they?

7 A Mr. -- Jeffrey and Chris.

8 Q And can you give me their last names?

9 A I'm sorry?

10 Q Mr. Jeffrey Dintzer sitting here? 09:52:57

11 A Dintzer. Mr. Dintzer.

12 Q And Mr. Spiker?

13 A Yes.

14 Q Anyone else?

15 A Krista Hernandez. 09:53:02

16 Q Anyone else?

17 A Not that I recall, no.

18 Q When you left the Gibson Dunn office at 2:30
19 on Tuesday, November 11, was it your understanding
20 at that point that you were to appear for a 09:53:26
21 deposition the next morning?

22 A Yes.

23 Q How did you get notice that you did not need
24 to appear the next morning?

25 MR. DINTZER: Objection to the extent it 09:53:43

Page 23

1 calls upon you to reveal attorney-client
2 communications. And so if that -- if that is the
3 case, then I'm going to instruct you not to answer.
4 To the extent you can answer the question without
5 revealing such communications, then you may go ahead 09:53:55
6 and respond.

7 THE WITNESS: Are you saying go ahead and
8 answer?

9 MR. DINTZER: Well, if you can without
10 revealing the communications with counsel. 09:54:03

11 THE WITNESS: A telephone message.

12 BY MS. MILLER:

13 Q Okay. What time did you receive that
14 telephone message?

15 A Sometime in the evening. I don't recall 09:54:09
16 when.

17 Q Were you given a reason for why you didn't
18 need to appear at the deposition that was noticed
19 for November 12th?

20 MR. DINTZER: Objection. It calls upon the 09:54:21
21 witness to reveal attorney-client communications,
22 and I instruct him not to answer.

23 BY MS. MILLER:

24 Q Sir, are you following the advice of your
25 counsel? 09:54:28

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1 reviewed on the next day when you went to their
2 office?

3 A I'm sorry, would you repeat the question,
4 please?

5 Q Is that the -- sure. Of course. And thank 09:55:42
6 you for asking me to.

7 Was that the same list of documents that you
8 reviewed the next day on Tuesday when you were with
9 them at their office?

10 A Yes. 09:55:51

11 Q So you reviewed your statement, what you're
12 calling your statement, your deposition, and a later
13 declaration that you gave while you met with the

14 Gibson Dunn firm on Monday and again on Tuesday; is
15 that correct? 09:56:03

16 A That's correct.

17 Q Did you meet with Gibson Dunn on Wednesday,
18 the day that your deposition was scheduled to take
19 place?

20 A Yes. 09:56:14

21 Q What time did you meet with them?

22 A I don't recall.

23 Q Was it in the morning?

24 A Yes.

25 Q Did you meet with them at their office? 09:56:19

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A Yes.

Q And how long were you with Gibson Dunn that day, Wednesday, the day your deposition was scheduled?

A I don't recall how long I stayed there. 09:56:29

Q Who did you meet with?

A I met with Mr. Jeffrey Dintzer and with Chris and with Ms. Hernandez.

Q Is that the same group of people that you met with on Monday, bouncing back to Monday now, Mr. Dintzer, Mr. Spiker, and Ms. Hernandez on Monday? 09:56:42

A Yes.

Q And then you met with them on Tuesday, correct? 09:56:49

A That is correct.

Q And then you met with them on Wednesday, the day the deposition was scheduled to take place, correct?

A That's correct. 09:56:57

Q Okay. Now, what about Thursday, did you meet with the Gibson Dunn law firm on Thursday?

A No.

Q And what about Friday, did you meet --

A No. 09:57:04

1 Q -- with them Friday?
2 Did you meet with them over the weekend?
3 A No.
4 Q How about this week, did you meet with them
5 on Monday? 09:57:12
6 A Yes.
7 Q What time did you meet with Gibson Dunn on
8 Monday?
9 A 9:00.
10 Q And who did you meet with? 09:57:18
11 A Mr. Dintzer and Mr. Spiker and Ms. Hernandez.
12 Q Okay. During any of these meetings, did you
13 meet with Mr. Loewen?
14 A No.
15 Q And during any of these meetings, did you 09:57:31
16 meet with anyone from Dole?
17 A No.
18 Q Did you meet with Gibson Dunn yesterday,
19 which is Tuesday?
20 A Yes. 09:57:43
21 Q What time did you meet with them on Tuesday?
22 A 9:00.
23 Q And what time did you leave?
24 A Noontime, just after noon.
25 Q 9:00 a.m. until after noon yesterday? 09:57:53

Page 28

1 A It was about 1:00.

2 Q All right. And I neglected to ask you, on
3 Monday, what time did you leave their office?

4 A I don't recall.

5 Q Was it after lunch? 09:58:04

6 A Yes.

7 Q Can you give me an estimate of how long you
8 were there?

9 A About 2:00 or maybe 2:30.

10 Q All right. Did you meet with Gibson Dunn 09:58:15
11 this morning before you came over to the courthouse
12 here for your deposition?

13 A I met with them just to come over here. They
14 brought me over here.

15 Q Okay. Did you provide to Gibson Dunn any -- 09:58:26
16 are you aware of which documents have been produced
17 on your behalf?

18 A I'm sorry, could you clarify that?

19 Q Yeah. Do you know which of your documents
20 have been produced in this litigation by Gibson Dunn 09:58:38
21 for you in response to the subpoena?

22 A No.

23 Q Okay. Did you give documents to Gibson Dunn
24 to produce?

25 A Copies of documents, yes. 09:58:51

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1 Q When did you give those documents to them?
2 A Monday.
3 Q This Monday or last Monday?
4 A This Monday.
5 Q When you met with Gibson Dunn last Monday, 09:59:04
6 the first time you met with them when you came into
7 town, did you have documents with you -- excuse
8 me -- that you brought with you?
9 A I don't have any documents. I only have
10 documents that were saved on my computer. 09:59:34
11 Q Okay.
12 A That's the only thing I have. I have no
13 paper documents, nothing. No archived material at
14 all.
15 Q And the documents that were saved on your 09:59:44
16 computer, when did you give Gibson Dunn a copy of
17 them to produce for you?
18 A I gave them the -- a copy of my memory from
19 my computer on Monday.
20 Q On Monday when you first came into town? 10:00:03
21 A No.
22 Q This past Monday?
23 A Yes.
24 Q Monday, the 17th of November; is that right?
25 A Yes. 10:00:12

1 Q Documents, sir, were produced to the
2 attorneys on your behalf on Tuesday, November 11th,
3 Veterans Day. Do you know how it is that Gibson
4 Dunn would have those documents if you didn't give
5 them to them? 10:00:37

6 MR. DINTZER: Objection. Calls for
7 speculation and it lacks foundation. It's also
8 compound.

9 THE WITNESS: I have no idea what documents
10 you're referring to. 10:00:45

11 MS. MILLER: I will ask the court reporter to
12 mark as Exhibit 2 a set of documents and then I'm
13 going to have her pass around the table a copy for
14 you.

15 (Exhibit 2 was marked for identification by 10:01:02
16 the court reporter and is attached hereto.)

17 BY MS. MILLER:

18 Q Sir, you don't have to read every page. I'm
19 going to call a few things out to you, but if you
20 can just take a quick flip through what we've marked 10:01:35
21 as Exhibit 2.

22 And I will describe for the record that
23 Exhibit 2 is a set of documents Bates labeled Bach
24 0001 through Bach 0159.

25 Sir, I will represent to you that Exhibit 2 10:02:10

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1 is a set of documents that Gibson Dunn produced in
2 this litigation on your behalf on Tuesday,
3 November 11, last Tuesday.

4 Do you understand that?

5 A Yes. 10:02:25

6 Q Do you recognize this set of documents as
7 documents that are on your computer that you
8 referred to earlier?

9 MR. DINTZER: Objection. The question lacks
10 a foundation because you're not giving the witness 10:02:38
11 an opportunity to review all of Exhibit 2, which is,
12 you know, close to at least half an inch to
13 three-quarters of an inch thick. So it's impossible
14 for the witness to answer such a question.

15 THE WITNESS: Some of these documents have 10:02:57
16 been around for a long time, so --

17 BY MS. MILLER:

18 Q They have. And do you believe that they've
19 been in your counsel's possession for a long time at
20 the Gibson Dunn law firm? 10:03:06

21 MR. DINTZER: Calls for speculation.

22 THE WITNESS: I'm sorry, could you rephrase
23 the question?

24 BY MS. MILLER:

25 Q Sure. You said that these documents have 10:03:12

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1 been around for a long time. And my question is, is
2 it your understanding that these documents have been
3 in Gibson Dunn's possession for a long time?

4 MR. DINTZER: Calls for speculation.

5 THE WITNESS: I don't know how long it's been 10:03:24
6 they've been in possession of these documents.

7 BY MS. MILLER:

8 Q Can you estimate for me? Has it been more
9 than a month that they've had these documents?

10 MR. DINTZER: Calls for speculation. 10:03:33

11 THE WITNESS: I have no -- I can't answer
12 that question, no. I don't know when they -- when
13 they were produced. I've seen these documents a
14 long time ago, that's all.

15 BY MS. MILLER: 10:03:42

16 Q Do you believe that there is a copy set of
17 these documents in your possession?

18 MR. DINTZER: Objection. The question lacks
19 foundation. It's unfair. You haven't given the
20 witness an opportunity to review, you know, what is 10:03:52
21 three-quarters of an inch of documents, and then you
22 want to ask questions --

23 MS. MILLER: Counsel --

24 MR. DINTZER: Wait, wait, wait.

25 MS. MILLER: -- we are in -- we are here in 10:03:59

1 the jury room so that you don't interrupt the
2 testimony.

3 MR. DINTZER: I'm allowed to make my --

4 MS. MILLER: Excuse me. I'm asking you only
5 not to make speaking objections. 10:04:07

6 MR. DINTZER: I'm not making a speaking
7 objection. I'm making a concise objection. That's
8 all I'm doing.

9 Lack of foundation. It's unfair. You
10 haven't given the witness an opportunity to review 10:04:15
11 three-quarters of an inch of documents that you've
12 provided, and then you want him to answer questions
13 about it.

14 MS. MILLER: All right. Are you done with
15 your speaking objections so that we can move on? 10:04:22

16 MR. DINTZER: It's not a speaking objection,
17 Ms. Miller. You --

18 BY MS. MILLER:

19 Q Sir, can you take a look at Exhibit 2 that
20 we've marked. Please take a look through it. Take 10:04:28
21 your time. And then my question for you is, do you
22 recognize these as documents that came from you to
23 Gibson Dunn in response to our request that you
24 produce documents?

25 MR. DINTZER: Same objection. 10:04:40

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1 MR. FINNERTY: You're objecting to him having
2 the opportunity --

3 MR. DINTZER: No. I'm objecting to the
4 latter part of the question, Mr. Finnerty, not the
5 first part. If she just wants him to look at the 10:04:50
6 documents, I have no objection to that.

7 MR. FINNERTY: And you believe that she has
8 denied him the opportunity to review the documents?

9 MR. DINTZER: I do, because she has not given
10 him a sufficient amount of time. And she 10:05:03
11 specifically instructed him that she wasn't going to
12 ask him those questions because of the -- obviously
13 the thickness of the exhibit. And I was fine with
14 that. I don't have a problem with that. But if she
15 is going to ask him about the thoroughness or the 10:05:10
16 completeness or where these records came from, then
17 he has to have an opportunity to review them.

18 MR. FINNERTY: I believe he has an
19 opportunity to review them. If you'd like to go off
20 the record --

21 (Judge Highberger enters the deposition
22 room.)

23 JUDGE HIGHBERGER: Good morning.

24 MR. DINTZER: Good morning, your Honor.

25 MR. FINNERTY: -- that would be fine with us. 10:05:25

1 MR. DINTZER: We're not going to go off the
2 record. If you want to present him with a document
3 and he needs to review it, then he can review it.
4 If he doesn't, you know, have a recollection of
5 those documents, then he will testify to that. 10:05:33

6 BY MS. MILLER:

7 Q So my question, sir, I've handed you what is
8 Exhibit 2 to your deposition, which has been
9 represented by the Gibson Dunn law firm as your
10 production of documents in response to the notice 10:05:46
11 and subpoena that we've served.

12 Do you understand that?

13 A Yes.

14 Q All right. And so my question for you is,
15 will you take a look at those documents and confirm 10:05:54
16 for me that they are the documents that you are
17 producing in response to the notice of deposition
18 and subpoena that we served to you?

19 MR. DINTZER: Objection. The question lacks
20 a foundation. 10:06:06

21 Go ahead and look at it.

22 JUDGE HIGHBERGER: Please try to answer, sir.
23 You've come here represented by counsel. Are you
24 represented by Gibson Dunn?

25 THE WITNESS: Yes, sir, I am. 10:06:17

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1 JUDGE HIGHBERGER: Okay. But the subpoena
2 was directed to you, so you understand you have a
3 personal legal obligation to respond?
4 THE WITNESS: Yes, sir. I understand.
5 JUDGE HIGHBERGER: Okay. So counsel and the 10:06:25
6 court are obviously curious to know whether or not
7 what your lawyer, as your agent, has said to be your
8 papers really are your papers, correctly described.
9 THE WITNESS: That's correct.
10 JUDGE HIGHBERGER: It's a legitimate, 10:06:40
11 straight-up question.
12 THE WITNESS: Yes.
13 JUDGE HIGHBERGER: I don't understand the
14 objection. So try to answer it.
15 MS. MILLER: Thank you. 10:06:43
16 THE WITNESS: My answer would be these appear
17 to represent all of the records that I had. When
18 they were produced or how they were produced, at
19 what time, I don't know. We made an effort to go
20 through and find everything that was on my memory, 10:06:53
21 and that's what is here.
22 BY MS. MILLER:
23 Q All right. So you believe that Exhibit 2 is
24 your production of documents responsive to the
25 subpoena, correct? 10:07:01

1 MR. DINTZER: Objection. It lacks of
2 foundation.
3 Go ahead.
4 JUDGE HIGHBERGER: Overruled. Please answer,
5 sir. 10:07:06
6 THE WITNESS: That's correct.
7 BY MS. MILLER:
8 Q Thank you.
9 JUDGE HIGHBERGER: I'll be available if you
10 need me. 10:07:11
11 MS. MILLER: Thank you, your Honor.
12 (Judge Highberger leaves the deposition
13 room.)
14 BY MS. MILLER:
15 Q Sir, I'm going to hand to the court reporter 10:07:29
16 to mark as Exhibit 3 a deposition notice, and I'll
17 have you take a look at it once she has done so.
18 (Exhibit 3 was marked for identification by
19 the court reporter and is attached hereto.)
20 BY MS. MILLER: 10:08:32
21 Q Sir, Exhibit 3 is captioned "Notice of
22 Deposition of George Bach and Request for Production
23 of Documents" served by the Girardi Keese law firm.
24 Do you see that?
25 A Yes. 10:08:42

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1 Q And have you seen this notice of deposition
2 before?

3 A Yes.

4 Q And was it your understanding that your
5 deposition, pursuant to this notice, was scheduled 10:08:49
6 for November 12, 2014?

7 A Yes.

8 Q If you turn to the third page of Exhibit 3,
9 there is a list of document requests.

10 Did you review that list of documents before 10:09:06
11 you came to Los Angeles for your deposition last
12 week?

13 A Are you referring to Exhibit A under
14 "Definitions"?

15 Q That's right. 10:09:16

16 A Yes.

17 Q And have you searched for documents
18 responsive to each of the categories in the
19 plaintiffs' deposition notice?

20 A Yes. 10:09:33

21 Q Have you produced all of the responsive
22 documents that you have -- and we'll go one by one
23 through these -- responsive to this notice as you
24 understand the requests that have been made to you?

25 A Yes. 10:09:47

1 Q Okay. And do you believe that those
2 responsive documents are the Exhibit 2 set of
3 documents that we've looked at previously?

4 A Yes.

5 Q And you testified earlier that these have 10:10:00
6 been in your counsel's possession for some time,
7 correct?

8 MR. DINTZER: Objection. That
9 mischaracterizes the witness's testimony.

10 THE WITNESS: I think my statement was 10:10:12
11 they've been around for some time.

12 BY MS. MILLER:

13 Q Around where?

14 A In the proceedings that we have been going
15 through. 10:10:21

16 Q The proceedings in which Gibson Dunn has
17 represented you?

18 A Yes.

19 MS. MILLER: I'm going to ask the court
20 reporter to mark as Exhibit 4 a set of documents, 10:10:36
21 and I'm going to have you take a look at them.

22 (Exhibit 4 was marked for identification by
23 the court reporter and is attached hereto.)

24 BY MS. MILLER:

25 Q Sir, Exhibit 4 are documents Bates labeled 10:11:19

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1 Q Besides the documents that are contained in
2 Exhibit 4 and the documents that are in Exhibit 2,
3 are you aware of any other documents that you have
4 that are responsive to the document requests that
5 we've made? 10:13:03

6 A No.

7 Q So if you'll turn back to Exhibit 1, please.

8 A Exhibit 1.

9 Q Exhibit 1 is the Shell defendants' notice of
10 your deposition. The requests begin under Exhibit A 10:13:31
11 to that document, on page 4. Can you look there,
12 please.

13 A On page 4? Exhibit A?

14 Q Correct.

15 A Yes. 10:13:47

16 Q Can you take a look at the first request,
17 Request No. 1. Request No. 1 states:

18 "Please produce all documents in
19 your possession, custody or control
20 that refer, reflect or relate to the 10:14:15
21 Carousel neighborhood tract in Carson,
22 California, including, but not limited
23 to, any declarations, statements,
24 reports, notes, e-mails and
25 summaries." 10:14:26

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1 Have you produced all of your documents --
2 the documents that you have in your possession,
3 custody or control related to the Carousel
4 neighborhood tract?

5 A Are we looking at paragraph 1 or under 10:14:36
6 document requests, Request No. 1.

7 Q There you go, the second.

8 A Request No. 1?

9 Q Document Request No. 1.

10 A I have produced all of the -- all of the 10:14:47
11 documents and information in my possession, yes.

12 Q When you met with the Gibson Dunn law firm
13 over the last several days, did you review with them
14 any documents related to the historical activities
15 of the Carousel neighborhood development? 10:15:02

16 A I'm sorry, I don't understand exactly what
17 you're asking me for.

18 Q Okay. You understand that this litigation
19 involves the Carousel neighborhood, right?

20 A Yes. 10:15:16

21 Q And you were an in-house engineer for Barclay
22 Hollander, correct?

23 A That's correct.

24 Q Barclay Hollander is one of the defendants in
25 this case, correct? 10:15:26

1 A Correct.

2 Q You gave a deposition back in March of 2013,
3 correct?

4 A Yes.

5 Q Prior to that deposition, did you look at any 10:15:32
6 of the documents produced in this litigation from
7 any of the parties regarding the development of the
8 Carousel tract?

9 A I don't recall.

10 Q Did your attorneys show you any documents to 10:15:44
11 refresh your recollection?

12 A I don't recall that, no.

13 Q Is it your testimony that before you gave
14 your deposition testimony back in March of 2013, you
15 did not look at any documents from the 1960s related 10:16:00
16 to the development of the Carousel tract?

17 A I honestly don't recall whether we did or
18 didn't, what documents we may have looked at.

19 Q You met with the Gibson Dunn law firm for
20 over 25 hours before your last deposition in 2013, 10:16:16
21 correct? You testified to that in your last
22 deposition.

23 MR. DINTZER: Well, wait a minute.

24 Objection. That's compound. And it's not a

25 question. 10:16:28

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1 BY MS. MILLER:
2 Q Do you understand my question, sir?
3 A My understanding is did you ask if I met --
4 if I met with Gibson Dunn. And the answer is yes.
5 Q You met with Gibson Dunn for 25 hours before 10:16:40
6 your last deposition, correct?
7 A I don't recall how many hours.
8 Q And you don't have any reason to believe your
9 prior testimony on that subject was inaccurate,
10 correct? 10:16:50
11 A I'm sorry?
12 Q You previously testified that you met with
13 Gibson Dunn law firm for 25 hours. Do you recall
14 that testimony?
15 A I don't recall that testimony, no. 10:16:59
16 Q On -- let's see. Last week and this week
17 during the times that you re-reviewed your
18 testimony, do you recall seeing that?
19 A I don't recall seeing that, no.
20 Q If you look at No. 2 of the document requests 10:17:11
21 on Exhibit 1, it asks you to produce all documents
22 in your possession, custody or control that refer,
23 reflect or relate to Barclay Hollander Curci.
24 Do you know who Barclay Hollander Curci is or
25 was? 10:17:47

1 communications you've had with the law firm of
2 Gibson Dunn in response to Document Request No. 8?
3 A Yes.
4 Q What have you produced?
5 A I produced copies of my e-mails that I had 10:19:22
6 saved.
7 Q Who did you produce copies of your e-mails
8 to?
9 A The copies of e-mails went to Krista.
10 Q Anything else besides e-mails? 10:19:37
11 A Not that I recall.
12 Q Have you prepared any invoices for your time
13 for the Gibson Dunn law firm to pay?
14 MR. DINTZER: Objection. It's overbroad.
15 THE WITNESS: No. 10:20:01
16 BY MS. MILLER:
17 Q Has Gibson Dunn provided you with
18 compensation for your time meeting with them either
19 in connection with this deposition or the earlier
20 2013 deposition? 10:20:11
21 MR. DINTZER: Objection. It's compound.
22 THE WITNESS: They've provided me for -- paid
23 for consulting, engineering consulting time, yes.
24 BY MS. MILLER:
25 Q Okay. Was there an invoice associated with 10:20:25

1 that engineering consulting time?

2 A I don't recall an invoice, no.

3 Q Did you receive a check from Gibson Dunn?

4 A Yes.

5 Q How did you receive it? By mail? 10:20:37

6 A I don't recall.

7 Q Were there any documents associated with your
8 receipt of that check?

9 MR. DINTZER: Objection. It's vague.

10 THE WITNESS: I have no documents relative to 10:20:49
11 that, no.

12 BY MS. MILLER:

13 Q Do you have any record of receiving payment
14 from Gibson Dunn?

15 A No. 10:20:55

16 Q Mr. Bach, when did you first become aware of
17 the litigation involving the Carousel neighborhood?

18 A Maybe in 2010, but probably 2011.

19 Q How was it that you first became aware of
20 litigation involving the Carousel neighborhood? 10:22:26

21 A I'm not sure how I first became aware.

22 Q Can you give me your best estimate of how you
23 first became aware?

24 MR. DINTZER: Objection. The question is
25 improper. 10:22:44

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1 THE WITNESS: I think I was -- I'm trying to
2 remember. I was contacted by somebody from Dole
3 Pineapple or from Gibson Dunn's office representing
4 Dole Pineapple.

5 BY MS. MILLER: 10:23:10

6 Q And you don't remember one way or the other
7 whether it was Dole or somebody from Gibson Dunn, as
8 you sit here today; is that correct?

9 A I think it was an investigator who was
10 looking -- trying to find out where I was and who -- 10:23:20
11 he probably represented Gibson Dunn.

12 Q Did you have a conversation with that person
13 about the Carousel tract?

14 A No.

15 Q After that first contact, do you recall when 10:24:05
16 it was that you next spoke with anybody about the
17 Carousel litigation?

18 A Just a minute. I'm looking for something
19 here.

20 It was, to the best of my recollection, 10:24:54
21 probably -- possibly January or February of 2011.
22 I'm not sure of the date.

23 Q And who -- and who was it that you spoke with
24 at that time, January or February, 2011?

25 A I was contacted and asked to meet people at 10:25:05

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1 the Dole Pineapple office.

2 Q Who were the people that contacted you?

3 A A man by the name of Buffington and an
4 attorney, Elizabeth Bernstein.

5 Q And so around January or February of 2011, 10:25:27
6 you went to Dole's offices; is that right?

7 A I'm not sure of the time exactly, but, yes,
8 the first contact was with Dole Pineapple.

9 Q Okay. And what did you discuss with them
10 during that meeting? 10:25:48

11 MR. DINTZER: Well, I'll object to the extent
12 it calls for the witness to reveal attorney-client
13 communication, and instruct him not to answer.

14 BY MS. MILLER:

15 Q When you met with Dole in January or February 10:26:00
16 of 2011, did you have an understanding that they
17 were your attorneys at that point, that they were
18 counsel representing you?

19 A That was part of the discussion, that they
20 would represent me, yes. 10:26:16

21 Q That discussion happened when?

22 A I'm sorry?

23 Q When did that discussion happen?

24 A I'm not certain of the date, but it was at
25 the first meeting with Dole. 10:26:27

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1 Q And you believe that in January or February,
2 2011, around that time frame --

3 A Approximately, yes.

4 Q -- the lawyers at Dole Food directly were
5 representing you as your attorneys? Is that your 10:26:38
6 testimony?

7 A Yes.

8 Q Were they asking you about the facts that you
9 recall related to the development of the Carousel
10 neighborhood during that meeting? 10:26:55

11 A It was a very brief meeting and there was
12 not -- I basically told them very quickly what I
13 remembered. The meeting might have been an hour and
14 a half, something like that. It was not a long
15 time. 10:27:13

16 Q And you told them what you remembered about
17 this project, the Carousel project development; is
18 that correct?

19 A A very brief summary of what I remembered,
20 yes. 10:27:22

21 Q And your recollection was based on your
22 experience working as the in-house engineer for
23 Barclay, correct?

24 A That's correct.

25 Q Okay. During that meeting, you and the Dole 10:27:30

1 lawyers didn't agree as to what the facts of that
2 development of the Carousel neighborhood were; is
3 that correct?

4 MR. DINTZER: I'll object. The question
5 invades the attorney-client privilege, and I'll 10:27:46
6 instruct the witness not to answer.

7 BY MS. MILLER:

8 Q Sir, do you understand the question that I'm
9 asking you?

10 A I understand the question. 10:27:53

11 Q And I'm not interested in any privileged
12 information. And, for the record, I don't agree
13 that there was a privilege that attached at that
14 time. However, my question relates to your factual
15 recollection. You are here today as a percipient 10:28:07
16 witness because you were involved with the
17 development of the Carousel tract, correct?

18 A That's correct.

19 Q All right. And did you and the lawyers that
20 were there from Dole Foods have a different 10:28:16
21 understanding of what those facts were when you met
22 with them in 2011, January or February?

23 MR. DINTZER: Same objection. Same
24 instruction.

25 THE WITNESS: No, I don't recall any 10:28:26

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1 difference.

2 BY MS. MILLER:

3 Q Okay. Let's take a look at Exhibit 4, and if
4 you'll turn to the fourth page of Exhibit 4, take a
5 look, please. Bates number is Bach 0163. 10:28:43

6 A 0163, yes, I have that.

7 Q If you look in the middle of that page, there
8 is an e-mail from yourself to a person named Adam
9 Mitchell.

10 Do you see that? 10:29:02

11 A Yes.

12 Q And the date is March 10, 2011.

13 Do you see that?

14 A Yes.

15 Q Okay. Can you read for the record and for 10:29:09
16 the video the last sentence of that e-mail.

17 A The last sentence?

18 Q Correct.

19 A Okay.

20 "Let me know. Trip and time is 10:29:21
21 about \$1,000."

22 Q You're paying attention. I made a mistake.
23 How about one sentence before that?

24 A Oh, okay.

25 "As I told you, I did meet with 10:29:31

1 Dole, but we are not on the same page,
2 and I specifically told Bernside that
3 I was not to be on their witness
4 list."
5 Q This is an e-mail that you sent to Adam 10:29:40
6 Mitchell of the Girardi Keese law firm, correct?
7 A That's correct.
8 Q At that time, you had no intention of serving
9 as a witness for Dole, correct?
10 A I didn't have any intention about serving as 10:29:55
11 a witness for anybody.
12 Q At that time, you explained to Mr. Mitchell
13 that you and Dole were not on the same page,
14 correct?
15 A Yes. 10:30:05
16 Q And that followed your meeting with Dole in
17 their offices, correct?
18 A Yes.
19 Q And that meeting was for an hour and a half
20 to talk about the facts as you recalled them related 10:30:12
21 to the Carousel development, correct?
22 MR. DINTZER: Objection. That invades the
23 attorney-client privilege, and I'll instruct you not
24 to answer.
25 ////

1 BY MS. MILLER:

2 Q Do you understand my question, sir?

3 A I think I'll follow my attorney's advice.

4 Q And I'm asking you not for attorney-client
5 privileged information. What I want to confirm is 10:30:29
6 that when you met with Dole in their offices, it was
7 to discuss the facts as you recalled them on the
8 Carousel development, correct?

9 MR. DINTZER: I'll object and instruct the
10 witness not to answer. 10:30:39

11 MS. MILLER: Let's have the judge rule on
12 that one, please.

13 MR. DINTZER: That's fine.

14 (Judge Highberger enters the deposition
15 room.) 10:31:38

16 JUDGE HIGHBERGER: Good morning.

17 MR. DINTZER: Good morning.

18 MS. MILLER: Good morning, your Honor.

19 JUDGE HIGHBERGER: Is there a question
20 pending? 10:31:45

21 MS. MILLER: Can you read the question
22 pending. Thank you.

23 MR. DINTZER: Yes, there is, and there's an
24 objection to it.

25 MS. MILLER: Thank you. 10:32:06

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1 (The record was read as follows:
2 "And I'm asking you not for
3 attorney-client privileged
4 information. What I want to confirm
5 is that when you met with Dole in
6 their offices, it was to discuss the
7 facts as you recalled them on the
8 Carousel development, correct?")
9 MR. DINTZER: And my objection, your Honor,
10 is that it invades the attorney-client privilege. 10:32:08
11 The witness has established -- there is testimony
12 that an attorney-client relationship existed and
13 that that -- and at that conference that she is
14 asking about, a relationship was established, and
15 now she is asking about the content of the 10:32:21
16 discussions that took place.
17 JUDGE HIGHBERGER: Let me back up. Is there
18 a date in reference to this?
19 MS. MILLER: The witness has testified that
20 he met at Dole in January or February 2011. 10:32:31
21 JUDGE HIGHBERGER: Fair enough.
22 Now, when did you work for Dole or its
23 predecessors before you retired? Approximate years.
24 THE WITNESS: I -- before -- you say Dole or
25 its predecessors, you mean Barclay Hollander -- 10:32:49

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1 JUDGE HIGHBERGER: Barclay Hollander.
2 THE WITNESS: -- Curci?
3 I worked for Barclay Hollander Curci from
4 1960 until 1970.
5 JUDGE HIGHBERGER: And then went on to other 10:32:57
6 things or retired?
7 THE WITNESS: And then I went -- well, I
8 didn't retire. I went to work for other employers.
9 JUDGE HIGHBERGER: Fair enough. So in
10 December of 2010, did you consider yourself to be 10:33:04
11 represented by any lawyers in regard to the Barclay
12 Hollander issues?
13 THE WITNESS: In December of 2010?
14 JUDGE HIGHBERGER: Correct.
15 THE WITNESS: No. 10:33:15
16 JUDGE HIGHBERGER: Was there a time when you
17 believed you commenced to have an attorney-client
18 relationship with a lawyer in regard to these
19 issues?
20 THE WITNESS: Yes. 10:33:23
21 JUDGE HIGHBERGER: And when did that begin?
22 THE WITNESS: When I first met with Dole and
23 an attorney -- the Dole legal people and Elizabeth
24 Bernside from Gibson Dunn. And that was
25 approximately January or February of '11. 10:33:33

1 JUDGE HIGHBERGER: Was that your first
2 face-to-face meeting with Dole in 2011 about these
3 issues?

4 THE WITNESS: Yes.

5 JUDGE HIGHBERGER: To the lawyers in the 10:33:43
6 room, it would seem like the privilege would attach
7 if he believes he was represented by a lawyer.

8 MS. MILLER: And, your Honor, my question was
9 not the substance of what they discussed. However,
10 he is a fact witness with facts going back to the 10:33:53
11 1960s, and I merely want to confirm that their
12 discussion related to his percipient knowledge at
13 that time.

14 JUDGE HIGHBERGER: Subject-wise it would be
15 within the privilege, but why don't you ask him what 10:34:05
16 he remembers from back in the '60s to '70s? That
17 would seem to be the most relevant line of inquiry.

18 MS. MILLER: Fair enough. And we will get
19 there. Thank you.

20 MR. DINTZER: Just for the record, it's been 10:34:15
21 an hour almost exactly. So if we could take a
22 five-minute break --

23 MR. MILLER: Absolutely.

24 MR. DINTZER: -- just to give the witness a
25 chance to clear his head a little bit, that would be 10:34:21

1 appreciated.

2 MS. MILLER: Absolutely. We mentioned at the
3 beginning that we'll take a break as often as you
4 need, sir.

5 THE WITNESS: Thank you. 10:34:30

6 MS. MILLER: Thank you.

7 JUDGE HIGHBERGER: You can use the jury
8 restroom right around the corner here if you want.

9 MS. MILLER: Off the record. Thank you.

10 THE VIDEOGRAPHER: This is the end of Media 10:34:31
11 No. 1. Off the record at 10:34 a.m.

12 (Recess.)

13 THE VIDEOGRAPHER: We are back on the record
14 at 10:43 a.m. This is the beginning of Media No. 2.
15 Counsel may proceed. 10:43:39

16 BY MS. MILLER:

17 Q Mr. Bach, you understand that you're still
18 under oath, correct?

19 A Yes.

20 Q All right. And are you able to continue at 10:43:44
21 this time with your deposition?

22 A Yes.

23 Q All right. Before the break, we were talking
24 about a meeting that you had in early 2011 with
25 Dole. Do you recall that testimony? 10:43:59

1 A Yes.

2 Q Can you tell me what it means to be an
3 adverse witness?

4 MR. DINTZER: Objection. Calls for a legal
5 conclusion. 10:44:11

6 THE WITNESS: Adverse just means against,
7 opposite.

8 BY MS. MILLER:

9 Q And you've used that phrase before, correct?

10 A Yes. 10:44:22

11 Q After meeting with the Dole lawyers, did you
12 conclude that you would be an adverse witness to
13 their interests?

14 A No. The statement about not being on the
15 same page had to do with compensation for travel 10:44:40
16 time, and that's why I wasn't on the same page with
17 Dole.

18 Q You were not on the same page with Dole
19 because you wanted them to compensate you for your
20 time? 10:44:52

21 A They had agreed to pay for travel time and
22 they hadn't done it. And that's why I was a little
23 bit ticked off at that time.

24 Q Let me mark for you as Exhibit 5 the
25 following document. And I have only one copy of it. 10:45:10

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1 So once the court reporter marks it, I'm going to
2 ask the attorneys to take a look.

3 MS. MILLER: Jeff, could you please move the
4 water pitcher?

5 MR. DINTZER: Sure. 10:45:30

6 MS. MILLER: There we go.

7 MR. DINTZER: Is it out of the way now?

8 THE VIDEOGRAPHER: Yes.

9 (Exhibit 5 was marked for identification by
10 the court reporter and is attached hereto.) 10:45:55

11 BY MS. MILLER:

12 Q Sir, Exhibit 5 is an e-mail from you to Adam
13 Mitchell of the Girardi Keese law firm, correct?

14 A That's correct.

15 Q And what is the date on that e-mail? 10:46:24

16 A The date was March the 5th, 2011.

17 Q And on March the 5th, 2011, you told Adam
18 Mitchell of the Girardi Keese law firm that Dole
19 would need to call you as an adverse witness in this
20 case, correct? 10:46:44

21 MR. DINTZER: That's leading.

22 THE WITNESS: That's correct.

23 BY MS. MILLER:

24 Q Can you read that e-mail for the record,
25 please. 10:46:50

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"I did notify them that I did not want to be on their witness list and if they wanted testimony at trial, they would have to subpoena me as an adverse witness."

10:47:00

Q And those are the words that you told Adam Mitchell in that e-mail, correct?

MR. DINTZER: Leading.

THE WITNESS: Yes.

10:47:08

BY MS. MILLER:

Q All right. Thank you.

Mr. Bach, that -- a copy of that e-mail I did not see in the production of documents that we talked about earlier, Exhibit 2 and Exhibit 4 to your deposition.

10:47:19

MR. DINTZER: Wait, wait. There is no question. There's no question yet.

BY MS. MILLER:

Q Do you have an understanding of whether that e-mail is still on your computer?

10:47:33

A No. There was a problem with the e-mails -- there's a gap in the time, and in trying to take the e-mails off of my computer, Yahoo locked me out two different times because it didn't recognize the

10:47:56

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1 computer that I was trying to download to. And so
2 there's a gap. And it may have been lost in that
3 gap, I don't know.

4 Q Do you know over what time period that gap
5 exists? 10:48:09

6 A It existed for three days. Every time I
7 tried to go on, it would -- and try to go to a
8 different computer, it locked me out for 24 hours
9 each time. And the reason was that it was an
10 unknown -- unrecognized computer. 10:48:22

11 Q What kind of computer is this that you have?
12 Is this your personal computer?

13 A I just have a laptop.

14 Q All right. Do you have your laptop here in
15 Los Angeles with you? 10:48:35

16 A It's in Los Angeles.

17 Q Okay. Is it at the Gibson Dunn law firm?

18 A Yes.

19 Q Has anyone from Gibson Dunn tried to assist
20 you in retrieving e-mails that were in that gap? 10:48:42

21 A Yes. And that's how these were produced.

22 Q Okay.

23 A On the 17th.

24 Q Has anyone tried to determine what, if any,
25 other e-mails are missing during the gap that you 10:48:54

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referred to?

A We did a complete search of everything on my computer, and so if it didn't show up, it may have been actually lost.

Q Who assisted you in doing that? 10:49:07

A It was a young lady, just an IT person, I guess, from Gibson Dunn.

Q Anyone else?

A I'm sorry?

Q Anyone else? 10:49:20

A No.

Q Okay. And when did you give the Gibson Dunn law firm your laptop to pull down your e-mail records?

A On the 17th. 10:49:28

Q Your deposition was scheduled for -- for November 12. Why is it that you got here on the 10th and didn't give your computer to Gibson Dunn until the 17th?

A I was having problems with my computer. It wasn't really working until last week. 10:49:42

Q Did you have an understanding that your documents were due when your deposition was supposed to take place on November 12?

A I had an understanding that there was a 10:49:54

1 subpoena out for them, but I couldn't produce them
2 because the computer just wasn't cooperating.

3 Q Okay. And your counsel was aware of that
4 fact, correct?

5 A I guess so, yes. 10:50:05

6 Q All right. When are you planning to -- I
7 assume you're driving back to -- Pennsylvania is
8 your home, correct?

9 A Well, I'm going to go to the Bay area for
10 Thanksgiving and then back to Wyoming and then back 10:50:18
11 to Pennsylvania.

12 Q So you'll be in California through
13 Thanksgiving?

14 A Until Thanksgiving, yes.

15 Q Okay. How much longer are you planning to 10:50:27
16 stay in Southern California?

17 A Probably I will leave next Wednesday. Maybe
18 Tuesday. Tuesday, Wednesday. I'm having repairs
19 done to my car.

20 Q Okay. Sir, I asked you about the document 10:51:02
21 requests on the notice from Shell that was
22 Exhibit 1. Will you turn to the plaintiffs'
23 deposition notice, which I believe we marked as
24 Exhibit 3.

25 A Which exhibit are we on? 10:51:14

1 Q Exhibit 3.

2 A On 3?

3 Q Do you see it there?

4 A I have 3 here, yes.

5 Q Perfect. If you turn to the second to last 10:51:20
6 page, you will see some requests starting with
7 Request No. 9.

8 I asked you earlier, and I believe it was
9 your testimony that you believe all of the documents
10 responsive to Shell's notice have been produced; is 10:51:38
11 that right? I asked you that earlier.

12 A I'm sorry, all the documents relative to
13 what?

14 Q To the -- the Shell notice, you believe they
15 have been produced? 10:51:51

16 A Yes.

17 Q Now, plaintiffs have a few additional
18 requests on their notice, and I'd like to go through
19 them with you. Request No. 11 in particular:

20 "Please produce any and all 10:52:01
21 communications with Gibson Dunn."

22 Do you have any documents, e-mails, other
23 records reflecting communications with Gibson Dunn?

24 A Only the e-mails that are in the copies of
25 e-mails you have. 10:52:16

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1 Q No e-mails between you and Gibson Dunn have
2 been produced to us. So my question is, do any
3 exist?

4 A My response is that the IT person took off
5 everything that was on my computer. 10:52:32

6 Q And you have communicated from time to time
7 with the Gibson Dunn law firm by e-mail, correct?

8 A From time to time, I have had e-mails
9 requesting me to call them or to --

10 MR. DINTZER: Wait, wait. Don't get into the 10:52:48
11 substance. But you can testify. She asked you
12 whether you had them.

13 THE WITNESS: Whether I had them? I guess my
14 testimony is you have everything that is on my
15 computer that we were able to get off. 10:52:58

16 MR. DINTZER: That wasn't her question. Her
17 question was -- she asked whether or not you had
18 e-mail communications with Gibson Dunn.

19 THE WITNESS: Yes.

20 BY MS. MILLER: 10:53:08

21 Q All right. Did you have e-mail
22 communications with Gibson Dunn in the month prior
23 to setting up this deposition here today?

24 A I don't recall. Probably.

25 Q In the last 60 days, you've e-mailed with 10:53:19

1 Gibson Dunn, correct?

2 A There have been e-mails, yes.

3 Q All right. Request No. 12 asks you to
4 produce documents exchanged with Gibson Dunn.

5 Have you ever exchanged documents with Gibson 10:53:34
6 Dunn?

7 MR. DINTZER: We'll stand by our objection to
8 that request.

9 THE WITNESS: Other than the e-mails, no.

10 BY MS. MILLER: 10:53:47

11 Q Have you looked -- has Gibson Dunn shared
12 with you documents produced by Shell relating to the
13 oil storage reservoirs that were at the Carousel

14 property prior to the development of the
15 neighborhood? 10:53:59

16 MR. DINTZER: Objection. Lacks foundation.

17 THE WITNESS: I don't recall Shell documents,
18 no.

19 BY MS. MILLER:

20 Q Has Gibson Dunn shared any documents with you 10:54:12
21 related to Barclay Hollander from the 1960s and the
22 development of the Carousel neighborhood?

23 A There were exhibits in my depositions relative to
24 Shell and Barclay Hollander, yes.

25 Q And you had reviewed those exhibits prior to 10:54:30

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1 that deposition, correct?

2 A Yes.

3 Q In fact, when you answered questions from
4 Mr. Loewen during that deposition -- Mr. Loewen is
5 from Gibson Dunn. You understand that, right? 10:54:42

6 A Yes.

7 Q And he asked you questions in your March,
8 2013 deposition, correct?

9 A Yes.

10 Q And he showed you many documents from the 10:54:51
11 1960s related to the development of the Carousel,
12 right?

13 A That's correct.

14 Q And you saw those documents before the
15 deposition, and then during the deposition he asked 10:55:02
16 you questions about them, correct?

17 A Correct.

18 Q None of those historical documents have been
19 produced to us. Have you in your possession,
20 custody or control had such documents related to the 10:55:16
21 historical development activities?

22 MR. DINTZER: Objection. The question lacks
23 a foundation.

24 THE WITNESS: No, I have no records of --
25 archival records is what they would be. I don't 10:55:29

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1 have any of those.

2 BY MS. MILLER:

3 Q At one point in time did you have them in
4 order to review them for your deposition in 2013?

5 MR. DINTZER: Vague. 10:55:39

6 THE WITNESS: No, I never had them except as
7 they were presented at deposition.

8 BY MS. MILLER:

9 Q So the places in your prior deposition where
10 you said that you had seen the document in 10:55:47
11 preparation for it, what was that referring to?

12 A Well, that's what I referred to, in
13 preparation -- the only time I've seen those
14 documents is in preparation for the depo or in the
15 depo as exhibits. 10:56:00

16 Q Okay. Request No. 13 asks you -- for you to
17 produce any checks, payments or invoices related to
18 your work with Gibson Dunn.

19 Do you have any checks, payments or invoices
20 related to your work with Gibson Dunn? 10:56:18

21 A No.

22 Q Do you believe that Gibson Dunn has hired you
23 as a consultant?

24 A They have used -- they have asked me to do
25 engineering consulting to explain how things 10:56:32

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1 happened or worked, yes.

2 Q And they were asking you for your factual
3 recollection of how things were and how they worked,
4 correct?

5 MR. DINTZER: Objection. It's leading. And 10:56:43
6 I'm going to -- wait a second. I'm going to object
7 and instruct the witness not to answer because it
8 invades the attorney-client privilege.

9 BY MS. MILLER:

10 Q Other than to -- other than to convey the 10:57:07
11 facts as you recall them, have you been asked to do
12 any other engineering work related to this
13 litigation?

14 A Could you clarify that in some way? I'm not
15 sure what you're asking me. 10:57:28

16 Q Have you been asked to do any work as an
17 engineer, as a professional engineer?

18 MR. DINTZER: I'll allow you to answer this
19 question. It's a yes or no question, okay, though.

20 BY MS. MILLER: 10:57:38

21 Q For this case. Thank you.

22 A No.

23 Q Can you take a look at Request No. 14. It
24 asks you to produce any documents related to work
25 done by you for Barclay Hollander or Dole Food 10:58:01

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1 Company.

2 Do you have any documents related to work
3 that you have done for Barclay Hollander Corporation
4 or Dole Food Company?

5 MR. DINTZER: Objection. It's vague. 10:58:18

6 THE WITNESS: No.

7 BY MS. MILLER:

8 Q Have you written any reports for Barclay
9 Hollander or Dole Food Company?

10 MR. DINTZER: Same objection. 10:58:30

11 THE WITNESS: No.

12 BY MS. MILLER:

13 Q You did write a -- a declaration for the
14 Gibson Dunn law firm to submit to the water board;
15 is that correct? 10:58:38

16 A Yes.

17 Q I didn't see that declaration in the
18 documents that you produced. Did you search for it
19 on your computer and produce it in preparation for
20 today's deposition? 10:58:56

21 A It isn't on my computer.

22 Q Whose computer is it on?

23 MR. DINTZER: Objection. Calls for
24 speculation.

25 THE WITNESS: I don't know. 10:59:05

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BY MS. MILLER:

Q The declaration that was submitted to the water board was prepared by Gibson Dunn, correct?

MR. DINTZER: Objection. It's leading.

THE WITNESS: No. 10:59:14

BY MS. MILLER:

Q Did you type the declaration that was submitted to the water board?

A No.

Q Gibson Dunn typed it, correct? 10:59:20

MR. DINTZER: Calls for speculation.

THE WITNESS: Somebody --

MR. DINTZER: Go ahead.

THE WITNESS: Somebody at Gibson Dunn did type it, yes. 10:59:28

BY MS. MILLER:

Q Okay. Thank you.

Somebody at Gibson Dunn would have transmitted that declaration to you to review; is that correct? 10:59:39

MR. DINTZER: Objection. It's leading.

THE WITNESS: No.

BY MS. MILLER:

Q How is it that you came to see the declaration that was prepared by somebody at Gibson 10:59:45

1 State of California and have personal
2 knowledge of the facts hereinafter
3 referred to. If called as a witness,
4 I can completely -- I can competently
5 testify thereto." 11:03:07

6 Q All right. And if we turn to the last page
7 of Exhibit 6, which is page 12 -- sir, let's go back
8 to page 1. I see that you started reading at line 4
9 of Exhibit 6. What does line 2 of the exhibit say?

10 A "Declaration of George Bach." 11:03:40

11 Q And that's the title that you put on this
12 document when you typed it, correct?

13 A Yes.

14 Q And then you wrote the paragraph that you
15 just read into the record, lines 4 through 8,
16 correct? 11:03:47

17 A That's correct.

18 Q The declaration is based on your personal
19 knowledge of what you wrote, correct?

20 A Yes. 11:03:54

21 Q Okay. And if we turn to page 12 --

22 MR. DINTZER: Objection. Wait a minute.

23 BY MS. MILLER:

24 Q -- of the --

25 MR. DINTZER: Hold on. I'll interpose an 11:04:00

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1 objection to the last question because it misstates
2 the record.
3 BY MS. MILLER:
4 Q If you turn to page 12 of Exhibit No. 6, at
5 line 5 there's a signature line. Do you recognize 11:04:10
6 that to be the signature -- your signature of George
7 Bach?
8 A It appears to be my signature.
9 Q And it's dated? What is the date?
10 A 5/13/2011. 11:04:20
11 Q And under the signature line at line 6, it
12 states what?
13 A "George Bach, RCE 11092, GE 107."
14 Q RCE 11092 is your registered civil
15 engineering license, correct? 11:04:42
16 A Yes.
17 Q And GE 107 is your geotechnical engineering
18 license, correct?
19 A Yes.
20 Q Okay. Now, if you look at Exhibit No. 6, 11:04:50
21 there are 12 pages in total; is that correct?
22 A Yes.
23 Q Exhibit No. 6 contains the statements that
24 you typed into your computer regarding your
25 recollection of the Kast property and the Carousel 11:05:45

1 development, correct?

2 A That was my recollection at that time.

3 Q And you met with someone from Girardi Keese,
4 Mr. Mitchell, who was asking you for your
5 recollection; is that right? 11:06:02

6 A Yes.

7 Q And you explained to Mr. Mitchell that you
8 wanted to put your recollection into your own words
9 in this declaration, correct?

10 MR. DINTZER: Objection. That's leading. 11:06:08

11 BY MS. MILLER:

12 Q Is that right, Mr. Bach? You told
13 Mr. Mitchell that you would write a declaration in
14 your own words, correct?

15 MR. DINTZER: Same objection. 11:06:19

16 THE WITNESS: Yes.

17 BY MS. MILLER:

18 Q Can you read for me on page 1 the paragraph
19 starting at line 13 through line 24.

20 A 11:06:27

21 "I was employed by Barclay
22 Hollander Curci in 1960 as an in-house
23 engineer. I provided civil
24 engineering services to include
25 performing or supervising performance 11:06:46

1 by other consultants, design of
2 grading plans, design of street,
3 sewer, and storm drain plans, and the
4 processing for approval by government
5 agencies of these plans. I prepared 11:07:03
6 proposals for bid by subcontractors,
7 the analysis of the bids and the
8 selection of the subcontractors to
9 complete the work shown on the plans.
10 Once the work was awarded and started, 11:07:22
11 I represented BHC in supervising and
12 checking the progress of the work as
13 it was executed in the field. I was
14 consulted on and resolved the work and
15 the progress as the work was performed 11:07:38
16 and completed."
17 Q And the next two lines as well, please.
18 A
19 "In performing these functions, I
20 was knowledgeable of and aware of the 11:07:49
21 details of the day-to-day problems as
22 the work was performed."
23 Q In these paragraphs of Exhibit 6 that you
24 just read for the record, you were summarizing your
25 work as an in-house engineer for Barclay Hollander 11:08:06

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1 back during the 1960s time period, correct?

2 A That's correct.

3 Q Let's take a look at page 2 of your
4 declaration starting at line 4. I'd like you to
5 read lines 4 through 10 for the record, please. 11:08:31

6 A

7 "BHC had a history and a track
8 record for acquiring and developing
9 properties in the South L.A. County,
10 Harbor City (L.A.) area. Shell Oil 11:08:47
11 Company also had many parcels of land
12 in the area that were used for various
13 operations, including large capacity
14 storage facilities. One of these
15 properties was known as the Kast Ranch 11:09:06
16 and was located at Lomita Boulevard,
17 east of Figueroa Street in the County
18 of Los Angeles."

19 Q The BHC that you are referring to in this
20 paragraph is Barclay Hollander Curci, correct? 11:09:22

21 A That's correct.

22 Q And that was the entity that you served as
23 the in-house engineer in the 1960s for, right?

24 A Yes.

25 Q Was it your understanding that at that period 11:09:33

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1 in time, BHC was a sophisticated developer of
2 residential homes?
3 MR. DINTZER: Objection. The question is
4 vague.
5 THE WITNESS: That Barclay Hollander Curci 11:09:43
6 were?
7 BY MS. MILLER:
8 Q Correct.
9 A Yes.
10 Q They had done many other housing developments 11:09:48
11 before the 1960s development of the Carousel,
12 correct?
13 A That's correct.
14 Q In fact, in your earlier deposition, you
15 testified that they had done a development on 11:09:56
16 another industrial property that was being converted
17 to residential, right?
18 MR. DINTZER: Objection. It's leading.
19 THE WITNESS: Yes.
20 BY MS. MILLER: 11:10:23
21 Q Now, on page 3 of your declaration in the top
22 paragraph, there's a parenthetical that says, "See
23 attached plan."
24 Do you have a version of this declaration
25 that has a plan attached to it? 11:10:32

1 MR. DINTZER: I'm going to object because the
2 question lacks a foundation.

3 BY MS. MILLER:

4 Q Do you see where you wrote that?

5 A I'm going to ask you to restate the question 11:10:40
6 because I missed part of it.

7 Q Sure. Let's go to the top of page 3 at lines
8 5 and 6. Do you see that you wrote there, "See
9 attached plan"?

10 A Yes. 11:10:54

11 Q Was there a plan attached to this declaration
12 when you prepared it?

13 MR. DINTZER: Objection. It lacks a
14 foundation.

15 THE WITNESS: Yes, there was. 11:11:03

16 BY MS. MILLER:

17 Q And where is that plan now?

18 A I have no copy of it.

19 Q Did you give a copy to Gibson Dunn at some
20 point in time? 11:11:12

21 A Not to the best of my knowledge. I haven't
22 seen a copy of it.

23 Q What plan was it that you are referring to?

24 A I'm sorry?

25 Q What was the plan that you were referring to? 11:11:20

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1 Q And can you read the paragraph that comes
2 after that, 28 through 31.

3 A

4 "Although I frequently had an
5 opportunity to make a site inspection 11:12:56
6 and evaluation of properties being
7 considered for acquisition, the
8 transfer from Shell was done quickly
9 and I did not have prior knowledge of
10 the site. 11:13:09

11 Q You had a -- a recollection that for Barclay
12 Hollander, time was of the essence in developing the
13 Carousel project, correct?

14 MR. DINTZER: Objection. Leading.

15 THE WITNESS: Yes. 11:13:26

16 BY MS. MILLER:

17 Q In fact, if you turn to page 4, I believe at
18 line 20, that's what you wrote, correct?

19 MR. DINTZER: Objection. It's leading.

20 BY MR. MILLER; 11:13:33

21 Q Let's go ahead and read --

22 A That's correct.

23 Q Thank you.

24 At the top of page 4, can you please read the
25 first sentence at lines 1 through 3. 11:13:49

1 footnote ever have words attached to it?

2 A I don't recall what the footnote was, no.

3 Q Sir, did you prepare an addendum regarding
4 the relationship of Pearson and Pacific Soils to
5 BHC? 11:15:06

6 A Are you referring to something in this
7 document?

8 Q I'm asking you if you recall ever preparing
9 an addendum that related to the relationship of
10 Pearson, Pacific Soils and BHC? 11:15:22

11 A An addendum to this document?

12 Q Correct.

13 A I don't recall that.

14 Q Why don't you go to Exhibit 2, which is your
15 document production, and take a look at Bates stamp 11:15:39
16 number Bach 0146.

17 A Just a minute. I have to make sure -- 2? I
18 have 1, 3, 5 -- here, 2.

19 Q There you go. Mr. Dintzer can help you with
20 those. 11:16:08

21 Let's look through --

22 MR. DINTZER: She wants you to go to page
23 146. Is that it?

24 MS. MILLER: Thank you.

25 MR. DINTZER: This is page 146. See at the 11:16:20

1 top there?

2 THE WITNESS: Uh-huh.

3 BY MS. MILLER:

4 Q Sir, this appears to be an earlier draft of
5 the declaration that you prepared. And you'll see 11:16:27
6 that Footnote 1 states:

7 "See supplement for the
8 relationship of E.L. Pearson and
9 Pacific Soils to BHC and Lomita
10 Development." 11:16:35

11 Do you see that?

12 MR. DINTZER: Objection. Lacks a foundation.

13 THE WITNESS: I see that, yes.

14 BY MS. MILLER:

15 Q Do you know what that Footnote 1 is referring 11:16:47
16 to?

17 A I don't recall writing a supplement. In the
18 end, I thought that was included in the letter -- in
19 the statement itself.

20 Q Turn to page 141, a few pages earlier, if you 11:16:57
21 would, sir.

22 It appears to me that Bates stamps numbers
23 141 through 146 are an earlier version of your
24 declaration.

25 MR. DINTZER: Objection. 11:17:29

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1 BY MS. MILLER:
2 Q Is that correct?
3 MR. DINTZER: I'm sorry. Objection. Lacks a
4 foundation.
5 THE WITNESS: I see the pages, yes. What was 11:17:37
6 the question, sir -- ma'am?
7 BY MS. MILLER:
8 Q Is this an earlier draft of the declaration
9 you were preparing?
10 MR. DINTZER: Objection. Lacks a foundation. 11:17:47
11 THE WITNESS: I don't recognize this
12 document. Okay. I don't even think that this was
13 something I typed. It might have been typed from
14 some notes or something, but I don't recognize the
15 document. 11:18:01
16 BY MS. MILLER:
17 Q All right. Let's go back to the document
18 that you do recognize, which is Exhibit 6, which you
19 testified that you typed, correct?
20 A Yes. 11:18:11
21 Q At line 19 you describe the site work related
22 to the initial demolition work of the storage
23 reservoirs at the Carousel property; is that
24 correct?
25 MR. DINTZER: What page? What page? 11:18:35

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MS. MILLER: Page 4.

MR. DINTZER: Page 4.

MS. MILLER: Line 20.

BY MS. MILLER:

Q Is that what the site work is referring to? 11:18:40

A Yes.

Q All right. And can you read for me lines 20 through 27.

A

"Time was of the essence, so I 11:18:52
contacted a grading contractor, Lee
Vollmer, that had done a lot of
specialized work for BHC and that I
trusted for ability to do the work at
a fair price. Due to the uncertainty 11:19:06
of the problems and the cost of doing
the work, it started out as a time and
materials contract while we
experimented on how to remove the
concrete and how to bury it on site. 11:19:21

Lee Vollmer and I discussed the
removal of the concrete with Shurl
Curci and decided that on-site
disposal would be best if we could do
it. I met Vollmer, the soils engineer 11:19:38

1 and the County Inspector in the first
2 or second week of February, 1966, in
3 the bottom of the first circular
4 reservoir (#1) near the entrance to
5 the property. Vollmer had removed -- 11:19:58
6 had moved in a large loader and a
7 tractor and opened a slot through the
8 wall of the dike so we could get to
9 the concrete bottom inside the
10 reservoir. The roof of this reservoir 11:20:13
11 had been removed. There wasn't any
12 sticky oil in the reservoir, but
13 merely a thin black film of very dried
14 out oil residue. We could walk on the
15 surface with no problem." 11:20:31

16 Q In this paragraph of your declaration, you
17 were describing your initial work on the Kast
18 property in or around February of 1966; is that
19 correct?

20 MR. DINTZER: Objection. It lacks a 11:20:49
21 foundation and it's leading.

22 THE WITNESS: That's the next paragraph in
23 this statement, yes.

24 BY MS. MILLER:

25 Q You were a part of the Barclay Hollander team 11:21:05

1 that was experimenting on how to remove the concrete
2 which was the floor of the oil storage reservoirs at
3 the property, correct?

4 MR. DINTZER: Objection. Leading.

5 THE WITNESS: Yes. 11:21:20

6 BY MS. MILLER:

7 Q And there was discussion of whether the
8 concrete should be removed or whether it could be
9 broken up and buried on site, correct?

10 MR. DINTZER: Objection. Compound. Leading. 11:21:29

11 THE WITNESS: Yes.

12 BY MS. MILLER:

13 Q Ultimately you decided that you would break
14 up the concrete and leave it in place, correct?

15 MR. DINTZER: Objection. Leading. 11:21:39

16 THE WITNESS: Yes.

17 BY MS. MILLER:

18 Q Let's go to page 5, beginning at line 6
19 through line 13. Can you read that paragraph for
20 the record, please. 11:22:10

21 A Yes.

22 "We had Vollmer make some trials
23 at removing the concrete and found
24 that since it wasn't reinforced, it
25 could be broken up into reasonable 11:22:20

Page 91

1 sized chunks that could be buried.
2 The issue was discussed and it was
3 agreed by all that we would break up
4 the concrete and bury it in the areas
5 that we understood would be 'backyard' 11:22:33
6 or not under any structure. The
7 concrete would be buried with a
8 minimum cover of seven feet, which we
9 believed would be below any excavation
10 for a swimming pool." 11:22:47

11 Q In this paragraph of the declaration, you're
12 describing what we just talked about, which is the
13 decision that was made by Barclay Hollander to break
14 up the concrete of the oil storage reservoirs and
15 leave it on site, correct? 11:23:04

16 MR. DINTZER: Objection. Leading and lacks a
17 foundation.

18 THE WITNESS: Correct.

19 BY MS. MILLER:

20 Q Go ahead and read the next paragraph, which 11:23:23
21 is lines 14 through 17.

22 A

23 "The grading work started in the
24 southeast corner of the site and moved
25 north as a second round reservoir was 11:23:34

Page 92

1 deroofed and available for removal of
2 the concrete and the underlying earth
3 embankment."
4 Q Now, your reference here to the removal of
5 concrete and the underlying earth embankment, what 11:23:50
6 was that referring to?
7 A The concrete there was concrete that had been
8 placed on the side walls of the reservoir, and the
9 earth embankment was the earth that was under and
10 had really created the reservoir itself. 11:24:07
11 Q And the reservoir side walls and the earthen
12 embankment were used to fill in the reservoirs,
13 correct?
14 MR. DINTZER: Objection. Leading.
15 THE WITNESS: Correct. 11:24:22
16 BY MS. MILLER:
17 Q Let's go to line 18 with the next paragraph.
18 Can you read that for the record, please.
19 A
20 "By May work started on removal 11:24:37
21 of the large 10-acre roof on the last
22 reservoir, #3, the one along the north
23 property line."
24 Q And let me stop you there for a minute. This
25 is May of 1966, correct? 11:24:50

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A Correct.

Q Okay. Go ahead.

A Let's see. Where are we here?

"During this time access to the site was along the top of the retention dikes or over areas where some grading had been done. An area at the southeast corner of #3 was the most accessible and had been set up as an access point and a work area for #3. Removal of the roof had been mostly completed by the middle of May. The removal of the sheathing was

11:25:02

11:25:16

essentially completed, only the structural supporting 6-by-6 post and the 4-by-12 beams remained. On Saturday, I believe the 14th of May, I was at home and received a call that a problem was developing at the site. I went down and found that the structure was collapsing into the oil that was in the reservoir. I was told that a wind came up and blew one or two of the 4-by-12s off their posts. As they fell, they pulled the posts over.

11:25:32

11:25:48

11:26:05

1 Since the posts were tied together
2 with cables at mid height, each one
3 pulled the adjacent posts over and
4 slowly the entire structure collapsed
5 into the oil. It was like a giant 11:26:19
6 game of pick-up sticks with posts and
7 beams intermixed and sticking up
8 through the oil."

9 Q This paragraph of your declaration refers to
10 your recollection of these events that occurred with 11:26:35
11 respect to the reservoir that you've labeled as #3;
12 correct?

13 MR. DINTZER: Objection. It's compound and
14 overbroad. It lacks a foundation and it's leading.

15 THE WITNESS: Correct. 11:26:48

16 BY MS. MILLER:

17 Q You can continue on page 6 at line 5 through
18 21.

19 A

20 "The problem now became one of 11:27:00
21 how to get the wood removed from the
22 oil. The demolition subcontractor was
23 from Mexicali and used Mexican
24 nationals as labor. They were willing
25 to work four-hour shifts going into 11:27:17

1 the oil in working clothes and
2 removing the pieces one by one,
3 passing them out of the work area --
4 out to the work area where they were
5 loaded onto trucks and taken to 11:27:30
6 Mexico. In Mexico, women removed the
7 nails and the wood was sold for
8 construction there. At the same time,
9 removal of the oil began. The product
10 was very thick, almost like a soft or 11:27:54
11 semi-liquid asphalt. It had to be
12 heated with a steam coil, then picked
13 up with a vacuum truck (Chancelor and
14 Ogden) and exported to a Class A dump
15 site. I believe the site was 11:28:14
16 Agajanian's Montebello or Monterey
17 Park site. As this work progressed,
18 Vollmer was able to get two tractors
19 (a small International Harvester and a
20 Euclid C-60) into the reservoir so 11:28:31
21 that he could push the oil into the
22 corner where the steam coil was
23 installed. All of this took place in
24 an area at the south side of #3 and
25 adjacent to the east property line." 11:28:47

1 Q Now, this work, sir, that you're describing
2 in this paragraph of your declaration is all work
3 that you recall as the in-house engineer of Barclay
4 Hollander, correct?

5 MR. DINTZER: Objection. It's overbroad, 11:29:01
6 it's compound, it lacks a foundation and it's
7 leading.

8 THE WITNESS: Correct.

9 BY MS. MILLER:

10 Q And the persons doing the work were Barclay 11:29:07
11 Hollander and the subcontractors that Barclay
12 Hollander hired, correct?

13 MR. DINTZER: Objection. Overbroad and
14 leading.

15 THE WITNESS: It was -- it was our contractor 11:29:19
16 for grading, yes.

17 BY MS. MILLER:

18 Q When you say "our," you're referring to
19 Barclay Hollander, right?

20 MR. DINTZER: Objection. Leading. 11:29:28

21 THE WITNESS: Yes.

22 MR. DINTZER: Let me get my objection in.

23 BY MS. MILLER:

24 Q Let's continue at page 6, line 22, and go
25 through the end of that paragraph. And, sir, I'm 11:29:36

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1 just going to ask you to slow down a little bit so
2 that our court reporter can transcribe.

3 A Okay.

4 Q Thank you.

5 A 11:29:47

6 "The demolition contractor (I
7 believe the company was J.J. Williams
8 from Los Angeles) wanted to get the
9 work completed, and several times he
10 said, 'Man, what you need is a fire.' 11:30:07

11 All I could do was smile but I never
12 approved the idea. That didn't
13 matter. On Monday morning as I was
14 getting ready to go to work, my wife
15 called out, 'Hey, your job is on TV.' 11:30:27

16 The news item was that there had been
17 an all-night fire at a construction
18 site in Lomita. The fire had started
19 on Sunday afternoon and continued all
20 night. There were several units on 11:30:52

21 site. It had been covered by news
22 helicopters and ground reporters. I
23 went to the site and found out that
24 the fire department had responded to a
25 small fire in the reservoir early in 11:31:18

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1 the afternoon. The fire was
2 extinguished. They responded to a
3 second call a few hours later, which
4 they again extinguished. This time
5 they remained at the front gate and 11:31:47
6 called Vollmer to come to the site.
7 Lee's father, who was hard of hearing,
8 came to the site where the FD chief
9 told him, 'Vollmer, if this catches on
10 fire again, you are going to jail.'" 11:32:12
11 Q And let me stop you there. The FD you're
12 referring to is the fire department, correct?
13 A Fire department.
14 Q And Lee is Lee Vollmer and his father is Al
15 Vollmer, correct? 11:32:25
16 A No. Al Vollmer is his brother.
17 Q Did I have that backwards?
18 A His father might have been Al, but I just
19 knew him as old man Vollmer.
20 Q Okay. But the Lee that you're referring to 11:32:34
21 is Lee Vollmer, correct?
22 A That's correct.
23 Q Okay. Thank you. Following the "Vollmer, if
24 this catches on fire" --
25 A "You are going to jail." 11:32:44

1 Q Correct.

2 A

3 "At about the time they finished
4 with Vollmer, the fire erupted again,
5 but this time it took off and spread 11:32:52
6 over the entire oil surface. The
7 FD" -- fire department -- "used water
8 and foam to try to put the fire out,
9 but it was too large and too hot.

10 Eventually as the 'light ends' burned 11:33:15
11 off, things cooled down and the foam
12 was able to smother the fire. Later I
13 found out that someone had come over

14 the back fence and poured diesel oil
15 over the slop oil and torched it. In 11:33:43
16 the last fire, all of the equipment
17 (tractors) was burned in the fire."

18 Q This fire event that you're referring to in
19 your declaration in the paragraphs that you just
20 read, it took place sometime between May and June of 11:34:06
21 1966, correct?

22 A That's correct.

23 Q And it took place while Barclay Hollander was
24 doing its work to decommission the oil storage
25 reservoirs to develop the property into the Carousel 11:34:22

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1 neighborhood, correct?

2 MR. DINTZER: Objection. It's leading.

3 And to the last question I'll also interpose

4 the objection it was leading and lacks a foundation.

5 THE WITNESS: Correct. 11:34:33

6 BY MS. MILLER:

7 Q The "light ends" that you're referring to are

8 the light ends of the oil; is that right?

9 MR. DINTZER: Objection. Leading.

10 THE WITNESS: Correct. 11:34:40

11 BY MS. MILLER:

12 Q All right. Let's start with the next line --

13 line 16 of page 7 with the caption or the headline

14 "Reservoir #3 Cleanup." Can you read that paragraph

15 for me. 11:34:54

16 A Okay.

17 "Reservoir #3 Cleanup. Once the

18 fire was out, the removal and cleanup

19 continued, although it was a little

20 more complicated because there was 11:35:09

21 oil, water, and partially burned wood

22 to remove. All of this was removed by

23 the end of June, but this time there

24 was a layer of sticky oil residue on

25 the bottom concrete. Vollmer dumped a 11:35:32

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1 lot of sand on the surface and used it
2 as a dike to push the oil to the
3 corner where it was picked up. The
4 most contaminated sand was exported.
5 Additional sand was then spread over 11:36:02
6 the bottom so it could be picked up.
7 It cleaned the bottom of almost all of
8 the remaining residue to the point
9 where you could walk on the bottom.
10 This sand was blended into the fill." 11:36:25
11 Q This paragraph of your declaration which you
12 prepared and based on your personal knowledge is
13 referring to the cleanup of the reservoir that you
14 had just talked about where the fire had occurred,
15 correct? 11:36:43
16 MR. DINTZER: Objection. Lacks foundation
17 and it's leading.
18 THE WITNESS: Correct.
19 BY MS. MILLER:
20 Q And your description of that clean-up effort 11:36:50
21 includes using sand to spread over the bottom of the
22 reservoir so that the residual could be cleaned up,
23 correct?
24 MR. DINTZER: Objection. Leading.
25 THE WITNESS: Correct. 11:37:03

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1 BY MS. MILLER:
2 Q And then that sand that you used was blended
3 into the fill, correct?
4 MR. DINTZER: Objection. Leading.
5 THE WITNESS: The sand that had oil was 11:37:08
6 exported, as I said in the sentence before. The
7 sand that was clean at the end, when it was clean,
8 that was used in the fill.
9 BY MS. MILLER:
10 Q Let me just make sure I understand, because I 11:37:24
11 think I'm confused as to the way you're reading
12 this.
13 "The most contaminated sand was
14 exported."
15 You wrote that, correct? 11:37:31
16 A Yes.
17 MR. DINTZER: Objection. Leading.
18 BY MS. MILLER:
19 Q And then --
20 MR. DINTZER: You've got to let me get my 11:37:34
21 objection in.
22 THE WITNESS: Okay.
23 BY MS. MILLER:
24 Q And then:
25 "Additional sand was spread over 11:37:37

1 the bottom of the reservoir so that it
2 could be picked up." Correct?

3 MR. DINTZER: Objection. Leading.

4 THE WITNESS: Correct.

5 BY MS. MILLER: 11:37:44

6 Q And that sand was blended into the fill,
7 correct?

8 MR. DINTZER: Objection. Leading.

9 THE WITNESS: The sand -- the sand that was
10 contaminated was exported. The sand -- the final 11:37:54
11 cleanup was a layer of sand that didn't pick up
12 anything, and that was used in the fill.

13 BY MS. MILLER:

14 Q And that's what you've said in your
15 declaration, which is: 11:38:07

16 "The sand cleaned the bottom of
17 almost all of the remaining residue to
18 the point where you could walk on it.
19 This sand was blended into the fill."

20 Correct? 11:38:18

21 MR. DINTZER: Wait. Objection. The question
22 is vague, and it lacks a foundation and it's
23 leading.

24 BY MS. MILLER:

25 Q That's correct? These are the words you 11:38:23

1 wrote from your personal knowledge, correct,
2 Mr. Bach?
3 MR. DINTZER: Same objections.
4 THE WITNESS: Correct.
5 BY MS. MILLER: 11:38:29
6 Q And that is the version of the facts that you
7 told Mr. Mitchell when you met with him to discuss
8 what your recollection was, correct?
9 MR. DINTZER: Objection. Leading.
10 THE WITNESS: Correct. 11:38:38
11 BY MS. MILLER:
12 Q You met with Mr. Mitchell from the Girardi
13 Keese law firm and discussed this recollection of
14 the facts before putting them to paper; is that
15 right? 11:38:51
16 A Correct.
17 Q And then you typed up this declaration --
18 MR. DINTZER: Objection.
19 BY MS. MILLER:
20 Q -- correct? 11:38:56
21 MR. DINTZER: It lacks a foundation. And
22 it's leading.
23 THE WITNESS: I typed up the declaration -- I
24 typed up the statement, yes, I did.
25 ////

1 BY MS. MILLER:

2 Q All right. And you refer to it as a
3 statement. However, you titled it the "Declaration
4 of George Bach," correct?

5 MR. DINTZER: Objection. Leading. 11:39:11

6 THE WITNESS: Yes, but it's really a
7 statement.

8 BY MS. MILLER:

9 Q And it was a statement based on your personal
10 knowledge with your signature and your licenses 11:39:16
11 behind it, right?

12 MR. DINTZER: Objection. Calls for a legal
13 conclusion.

14 THE WITNESS: Correct.

15 BY MS. MILLER: 11:39:25

16 Q All right. Did anyone from Gibson Dunn tell
17 you not to ever show this declaration to Shell?

18 A No.

19 Q Were you aware that there was an effort by
20 the Gibson Dunn law firm to make sure it was never 11:39:41
21 used in the litigation and that Shell not see it?

22 A I have no knowledge of that.

23 Q Would that surprise you, given that you
24 prepared these in your own words, this declaration
25 in your own words? 11:39:55

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1 MR. DINTZER: Calls for speculation. Lacks
2 foundation. It's argumentative.

3 THE WITNESS: I don't know -- my attorneys do
4 what they need to do.

5 MS. MILLER: I'm going to ask the court 11:40:14
6 reporter to mark the next document as the next in
7 line, Exhibit 7.

8 (Exhibit 7 was marked for identification by
9 the court reporter and is attached hereto.)

10 MR. DINTZER: Before we do that, it's been 11:40:23
11 about two hours -- in fact, let's see here.

12 MR. FINNERTY: It's been an hour since our
13 last break.

14 MS. MILLER: Let me just --

15 MR. DINTZER: Yeah, so -- it's -- yeah, so 11:40:32
16 it's been an hour since our last break. So we're
17 on -- we'll be on our third hour of this deposition
18 when we resume.

19 MS. MILLER: Let me get through this exhibit
20 and then we'll take a break. As I mentioned 11:40:42
21 earlier, we need to break for lunch anyway.

22 Are you good to go for another five minutes?

23 THE WITNESS: I'm here.

24 MS. MILLER: Very good. All right. Let's go
25 ahead. 11:40:53

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1 BY MS. MILLER:

2 Q Sir, Exhibit 7 is captioned "The Declaration
3 of Robert W. Loewen in Support of Opposition to
4 Defendant Shell Oil Company's Motion for Leave to
5 Take a Subsequent Deposition of George Bach." 11:41:51

6 Do you see that caption in the middle of the
7 page?

8 A The heavy type here?

9 Q Yes.

10 A Yes, I see that. 11:42:02

11 Q And Mr. Robert Loewen is a member of the
12 Gibson Dunn law firm, correct?

13 A That's correct.

14 MR. DINTZER: Lacks foundation.

15 BY MS. MILLER: 11:42:12

16 Q Let's turn to Exhibit C to that declaration,
17 and it's about midway through the packet. I put a
18 Post-It there so you could find it quicker. That
19 Exhibit C to this declaration is an e-mail from
20 Mr. Loewen to Mr. Finnerty and Mr. Aumais. 11:42:35

21 Do you see that?

22 A Yes.

23 Q And if you look at the second to last
24 sentence, Mr. Loewen is telling Mr. Finnerty:

25 "I will follow up next week to 11:42:49

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1 work out details. In the meantime,
2 please take steps to make sure the
3 document is not inadvertently produced
4 to Shell."
5 And if you look earlier in this e-mail, it is 11:43:00
6 referring to the declaration that you prepared.
7 Do you see that?
8 A Yes.
9 Q Were you aware that Mr. Loewen was trying to
10 prevent Shell from seeing a copy of your 11:43:10
11 declaration?
12 MR. DINTZER: Objection. It lacks a
13 foundation.
14 THE WITNESS: I have no knowledge of this
15 whatsoever. 11:43:21
16 BY MS. MILLER:
17 Q Okay. Let's turn to the next exhibit, which
18 is Exhibit D in that same document. Exhibit D to
19 Exhibit 7.
20 Do you see a subsequent e-mail from 11:43:37
21 Mr. Loewen to Mr. Finnerty and Mr. Aumais, dated
22 April 1, 2014, correct?
23 A Yes.
24 Q And do you see that, once again, the e-mail
25 is referring to the Bach declaration? 11:43:52

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1 A Let me read this, please.

2 Q Sure, of course.

3 MR. DINTZER: If that's your question, it
4 misstates the document.

5 THE WITNESS: I've read this. Your question 11:44:27
6 was?

7 BY MS. MILLER:

8 Q Do you see that the e-mail is referring to
9 the declaration that you had prepared?

10 MR. DINTZER: Objection. Lack of foundation. 11:44:32

11 THE WITNESS: Yes.

12 BY MS. MILLER:

13 Q In fact, if you turn a few more pages in
14 Exhibit 7, there's another copy of the declaration
15 that we've been talking about, right? 11:44:42

16 A Appears to be.

17 Q All right. And do you see that Mr. Loewen is
18 again instructing Mr. Finnerty and Mr. Aumais:

19 "Please withdraw the document,
20 retrieve it from Shell as 11:45:02
21 inadvertently produced."

22 Do you see that in this e-mail?

23 A Yes.

24 Q Were you aware that Mr. Loewen was attempting
25 to prevent Shell from ever seeing the declaration 11:45:10

1 that you signed and prepared based on your personal
2 knowledge regarding the facts related to the
3 development of the Carousel neighborhood?
4 MR. DINTZER: Objection. Lacks foundation.
5 THE WITNESS: I have no knowledge of this 11:45:23
6 whatsoever.
7 BY MS. MILLER:
8 Q Can you think of any reason why Mr. Loewen
9 would prevent Shell from seeing your declaration?
10 MR. DINTZER: Objection. Calls for a legal 11:45:37
11 conclusion. Lacks foundation. Calls for
12 speculation.
13 THE WITNESS: No.
14 BY MS. MILLER:
15 Q All right. Let's go back to page 7 -- 11:45:43
16 MR. DINTZER: Okay. Well, now we're going to
17 take a break.
18 MS. MILLER: Let me close out this line of
19 questions and then we're done.
20 MR. DINTZER: No, we're going to take a 11:45:51
21 break.
22 BY MS. MILLER:
23 Q Let's go back to --
24 MR. FINNERTY: We only have until 12:00.
25 MR. DINTZER: I understand that. But so -- 11:45:57

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1 she told the witness several times -- it's been an
2 hour. We're not going to finish this deposition
3 before 12:00 anyway, I take it. Is that true?

4 MS. MILLER: Mr. Bach, are you able to answer
5 one or two more questions before we take our break? 11:46:11

6 THE WITNESS: I suppose so.

7 MS. MILLER: All right. Why don't we do that
8 since the witness is able, and then we'll go to
9 lunch. How does that sound?

10 MR. DINTZER: Ms. Miller, you said you were 11:46:21
11 going to quit after the last exhibit was reviewed,
12 and so the record reflects what you've said and now
13 you're going against your word. So that's fine.

14 BY MS. MILLER:

15 Q Mr. Bach, are you able to continue so that we 11:46:31
16 can finish page 7 of your declaration?

17 A I guess I can answer questions, one or two
18 maybe. But go ahead.

19 Q Fair enough. All right. So we're turning
20 back to Exhibit 6, which is the declaration that you 11:46:45
21 prepared and signed in May of 2011. We were
22 referring to the sand that was blended into the fill
23 at the site, on page 7.

24 Do you see that?

25 A Yes. 11:47:06

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1 Q All right. What I wanted to ask you is, can
2 you take a look at that next paragraph and read it
3 into the record for us, please.

4 A Are you referring to lines 28 through 30?

5 Q That's right. Thank you. 11:47:25

6 A Yes, I see them.

7 Q Go ahead and read those for the record,
8 please, aloud. "The concrete was ripped" --

9 A

10 "The concrete was ripped and 11:47:38

11 broken up and the pieces buried as in
12 the other reservoirs."

13 Q And the next sentence? I'm sorry, the next
14 sentence, "In this case" --

15 A Oh. 11:47:55

16 "In this case, we were more
17 careful to make sure there was at
18 least seven feet of cover over the
19 concrete."

20 Q All right. And that's referring to the area 11:48:01
21 of Reservoir 3 where the cleanup was done, correct?

22 MR. DINTZER: Objection. Leading.

23 THE WITNESS: That's in reference to
24 Reservoir 3, as in my declaration.

25 ///

1 BY MS. MILLER:
2 Q That's right. So in your comment that "In
3 this case, we were more careful to be sure there was
4 at least seven feet of cover over the concrete" is
5 referring to the area of Reservoir 3 where your 11:48:23
6 clean-up work was done, correct?
7 MR. DINTZER: Objection. It's leading and it
8 lacks a foundation.
9 THE WITNESS: Correct.
10 MS. MILLER: All right. Thank you. We can 11:48:31
11 go off the record here.
12 THE VIDEOGRAPHER: This is the end of Media
13 No. 2. Off the record at 11:48 a.m.
14 (Lunch recess.)
15 THE VIDEOGRAPHER: We are back on the record 01:26:42
16 at 1:29 p.m. This is the beginning of Media #3.
17 Counsel may proceed.
18 BY MS. MILLER:
19 Q Good afternoon, Mr. Bach.
20 A Good afternoon. 01:30:03
21 Q You understand that we're back after the
22 lunch break and you are still under oath, correct?
23 A Correct.
24 Q And so the oath was under penalty of perjury,
25 that you're testifying the same as if you were 01:30:12

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1 testifying before a judge or jury in a court of law.

2 You understand that, correct?

3 A Yes, I understand.

4 Q All right. And we were talking before the

5 break about what has been marked as Exhibit 6 to 01:30:21

6 your deposition today, which is the declaration that

7 you prepared and signed in 2011.

8 Mr. Bach, you understood that you were

9 preparing this declaration at the request of Girardi

10 Keese for purposes of this litigation, correct? 01:30:38

11 MR. DINTZER: Objection. Foundation.

12 THE WITNESS: I was preparing this to -- in

13 conformance with a suggested list of topics to be

14 covered by G & K, yes.

15 BY MS. MILLER: 01:30:55

16 Q And you understood, though, that the

17 declaration was for purposes of this litigation,

18 correct?

19 MR. DINTZER: Objection. Foundation.

20 Leading. 01:31:14

21 THE WITNESS: I didn't understand it for this

22 litigation. I understood that there was litigation

23 and they wanted me to put down in writing my story

24 about the thing, and I did that in this statement we

25 have here. 01:31:28

1 BY MS. MILLER:
2 Q Okay. Because in 2011 you met with
3 Mr. Mitchell, we talked about earlier, from the
4 Girardi Keese firm, right?
5 A I'm sorry? 01:31:36
6 Q You met with Mr. Mitchell from Girardi Keese
7 before preparing this statement, right?
8 A Yes.
9 Q And Mr. Mitchell explained to you that there
10 was litigation filed by the Carousel residents, 01:31:45
11 correct?
12 MR. DINTZER: Objection. Leading.
13 THE WITNESS: He -- yes, I knew that there
14 was litigation.
15 BY MS. MILLER: 01:31:52
16 Q And you understood that he was interviewing
17 you and talking with you as a potential witness
18 because you had knowledge of facts that occurred
19 back in the 1960s, right?
20 MR. DINTZER: Objection. Leading. 01:32:02
21 THE WITNESS: As a potential witness, yes.
22 BY MS. MILLER:
23 Q All right. And you understood, in putting
24 together your declaration, that it was being written
25 based on your personal knowledge? You testified 01:32:12

1 about that earlier, correct?

2 MR. DINTZER: Same objection.

3 THE WITNESS: Correct.

4 BY MS. MILLER:

5 Q For use in this litigation with your 01:32:18
6 signature and your registrations behind it, right?

7 MR. DINTZER: Same objection.

8 THE WITNESS: I signed it and it's my
9 registration number on this statement, yes.

10 BY MS. MILLER: 01:32:31

11 Q And would you confirm for me that the
12 statements that you made in this declaration at the
13 time you made them you believed to be true and
14 accurate based on your personal knowledge?

15 MR. DINTZER: Objection. It's overbroad. 01:32:42
16 Lacks foundation.

17 THE WITNESS: The statements in here are what
18 I believed to be true after 25 -- 40 years of not
19 looking at it. It's what I could recall at that
20 time with no reference material, just out of my 01:32:59
21 head.

22 BY MS. MILLER:

23 Q And based on that, you documented what you
24 could recall and you put your signature at the end,
25 correct? 01:33:07

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1 MR. DINTZER: Objection. It's leading.
2 Foundation. Overbroad.
3 THE WITNESS: When you say I documented it, I
4 wrote the statement and signed it as a statement
5 that that's what I believed to be true. 01:33:17
6 BY MS. MILLER:
7 Q Thank you.
8 And by signing it, you believed to the truth
9 of the matter stated in the document, correct?
10 MR. DINTZER: Objection. It's leading, lacks 01:33:24
11 a foundation and is overbroad.
12 THE WITNESS: At that moment, yes.
13 BY MS. MILLER:
14 Q I wanted to understand better, on page 7 we
15 were talking before the break about the cleanup of 01:33:34
16 Reservoir #3. You testified before the break to the
17 portion of your declaration that talked about the
18 fire in what you're calling Reservoir #3. You
19 recall that testimony, right?
20 A That's correct. 01:33:56
21 Q And then afterward you read us the paragraph
22 of your declaration that talks about the cleanup
23 after the fire, correct?
24 A Yes.
25 Q All right. And as I understood the statement 01:34:07

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1 that you made here, you explained that Vollmer
2 dumped sand into the reservoir in order to use it as
3 a dike to push the oil that was left into one
4 location, correct?

5 MR. DINTZER: Objection. Leading. 01:34:22

6 THE WITNESS: That's correct.

7 BY MS. MILLER:

8 Q Okay. After you used that sand --
9 Mr. Vollmer used that sand as a dike to push the oil
10 into a corner, you talked about the most saturated 01:34:32
11 of that sand being removed from the site, right?

12 MR. DINTZER: Objection. Leading.

13 THE WITNESS: Yes, that's correct. There
14 were actually two different piles of sand. The
15 initial one and then a secondary one to pick it up. 01:34:43
16 And a third one, which was cleaned. The first two
17 were removed from the site. And here I didn't
18 enumerate one, two and three. But all of the sand
19 that was used to pick up the material, the rough
20 material was all exported. And then there was a 01:35:00
21 final layer of sand that was just clean sand.

22 BY MS. MILLER:

23 Q Now, that's a little different, your
24 testimony here, from what you wrote in this
25 statement, isn't it? 01:35:09

1 MR. DINTZER: Objection. Hold on a second.
2 Hang on a second. It's vague.
3 BY MS. MILLER:
4 Q Let's go back to what you told us and explain
5 to the jury what you told Mr. Mitchell in writing 01:35:25
6 this paragraph of your declaration. As I read it --
7 and let me ask you if my understanding is correct --
8 that you pushed the most -- the oil into the corner
9 and the most contaminated sand was exported,
10 correct? That's what it says on this page at line 01:35:43
11 23; is that right?
12 A That's correct.
13 Q Okay. And then additional sand Mr. Vollmer
14 spread over the bottom so that the rest of the
15 residue could be picked up, correct? 01:35:56
16 MR. DINTZER: Objection. Leading.
17 THE WITNESS: That's correct.
18 BY MS. MILLER:
19 Q Go ahead. I'm sorry.
20 A That's correct. That's correct except that 01:36:03
21 there were actually two -- when I said "the most
22 contaminated," there were actually two layers of
23 sand or two movements of sand in that. That's what
24 we considered the most contaminated. So the first
25 and -- the first there was a lot of bulk oil. The 01:36:16

1 second one was almost clean. We took all that away.
2 And then the third one was just sand on the bottom
3 so we could walk around on it.

4 Q So read the last two sentences for me to make
5 sure that I understand this correctly. If you could 01:36:33
6 read those for the record, please.

7 MR. DINTZER: Could we have a page?

8 BY MS. MILLER:

9 Q Page 7, line 25. We're on the same page
10 we've been. Starting with "It cleaned the bottom". 01:36:42

11 A Can I go back to line 24?

12 Q Of course.

13 A

14 "Additional sand was then spread
15 over the bottom so that it could be 01:36:50
16 picked up."

17 And so we spread sand as much as we needed
18 to pick it up. Then in the final, "It cleaned the
19 bottom of almost all remaining residue" --

20 Q Let me stop you there for a minute. So "it" 01:37:04
21 is this next layer of sand, right? This next layer
22 of sand "cleaned the bottom of almost all of the
23 remaining residue." And by the "remaining residue,"
24 you're referring to the remaining oil residue,
25 correct? 01:37:18

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1 MR. DINTZER: Objection. It's leading. And
2 you also cut the witness off. Please let the
3 witness finish his response.

4 MR. FINNERTY: Is that right?

5 MR. DINTZER: Yes. Okay. Well, usually 01:37:25
6 that's the way it works, Mr. Finnerty.

7 BY MS. MILLER:

8 Q Is that right, Mr. Bach?

9 A Would you restate your question?

10 Q Sure. Where you say, "It cleaned the bottom 01:37:31
11 of almost all of the remaining residue," your --
12 your word "it" is referring to that sand?

13 A I'm referring to the final -- to the first
14 two layers of sand that went through, yes.

15 Q Okay. 01:37:46

16 A Okay. The bulk of -- the bulk of the sand
17 that was down there.

18 Q And that was used to clean the remaining
19 residue, the remaining oil residue, correct?

20 A That cleaned the residue. 01:37:55

21 Q And this sand was blended into the fill, is
22 what you said in 2011, correct?

23 MR. DINTZER: , Objection. It's ambiguous.

24 THE WITNESS: What -- what I did not
25 delineate in here was that there were actually -- in 01:38:05

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1 moving it, there was the rough -- the first layer of
2 sand that picked up most of the oil. The second
3 layer was -- also picked up a lot of the oil. This
4 was the final layer of sand, which was just sand.
5 By that time, the bottom was clean from the first 01:38:22
6 sand -- and I bulked it all together. Even though
7 there were -- I didn't in here say there were two
8 layers. We just had a lot of sand down there. We
9 pushed it around, picked up all the oil, and when it
10 was clean, we put one final layer of sand down and 01:38:37
11 we could walk on that.

12 BY MS. MILLER:

13 Q Do you think that the recollection that
14 you're giving today would have been important to
15 Mr. Mitchell in 2011 when you spoke with him? 01:38:45

16 MR. DINTZER: Objection. Calls for
17 speculation and lacks foundation.

18 MR. FINNERTY: You think his memory is better
19 after meeting with you?

20 MR. DINTZER: No, I think that -- do you want 01:38:57
21 to have a discussion in front of the witness about
22 this? I mean, really? Don't you think that is kind
23 of inappropriate, Mr. Finnerty?

24 MR. FINNERTY: I think all of your comments
25 during this deposition are inappropriate. 01:39:04

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1 MR. DINTZER: Well, that's fine. I think --
2 all I'm doing is making my objections for the
3 record.

4 MS. MILLER: All right. Counsel, let's not
5 waste our time here with this. 01:39:09

6 BY MS. MILLER:

7 Q Sir, my question to you was that this issue
8 regarding multiple layers was not something you
9 shared with Mr. Mitchell in 2011, was it?

10 MR. DINTZER: Objection. It lacks a 01:39:19
11 foundation.

12 THE WITNESS: It's something that I didn't
13 realize would be an issue, whether there was one
14 layer, two layers or three layers. What I said was
15 we used sand, we picked up all the material, we put 01:39:31
16 down a final layer of sand. This is what we did.

17 BY MS. MILLER:

18 Q And you referred to the sand being blended
19 into the fill in 2011, correct?

20 A The final layer of clean sand, yes. 01:39:41

21 Q Now, how many hours could you estimate you've
22 discussed this case with the Gibson Dunn law firm?

23 A I -- on and off over a period of time, I
24 really -- I don't want to speculate about it. I
25 don't know. 01:40:02

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1 Q Well, let's try to put some markers on it,
2 then.

3 Before your last deposition in 2013, you
4 testified that you had spent about 25 hours with
5 Gibson Dunn. Do you recall that testimony? 01:40:10

6 MR. DINTZER: Objection. It's been asked and
7 answered.

8 THE WITNESS: Yes.

9 BY MS. MILLER:

10 Q All right. And then over the course of this 01:40:16
11 morning, you testified about the days last week and
12 this week that you have met with the Gibson Dunn law
13 firm, correct?

14 A Correct.

15 Q All right. Did Gibson Dunn share with you 01:40:26
16 their view that perhaps Barclay Hollander did not
17 blend oil into the fill?

18 MR. DINTZER: Objection. That calls for an
19 attorney-client communication and I'll instruct the
20 witness not to answer the question. 01:40:40

21 BY MS. MILLER:

22 Q Was that something you discussed with Gibson
23 Dunn, sir?

24 MR. DINTZER: Instruct the witness not to
25 answer the question. You're invading the 01:40:46

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1 attorney-client privilege, Ms. Miller.

2 BY MS. MILLER:

3 Q Are you going to follow --

4 A I'm going to follow my attorney's advice.

5 Q Fair enough. I understand. 01:40:53

6 When you met with Mr. Loewen in Denver,

7 Colorado, before you signed the declaration for him,

8 did you discuss the Gibson Dunn law firm's view of

9 whether there was oil blended into the fill?

10 MR. DINTZER: I'll object. It calls for an 01:41:07

11 attorney-client communication, and I'll instruct the

12 witness not to answer the question.

13 THE WITNESS: I'll follow my attorney's

14 advice.

15 BY MS. MILLER: 01:41:17

16 Q Okay. Now, when you were meeting with

17 Mr. Mitchell in order to prepare -- and subsequently

18 prepared your declaration, you spoke with him about

19 some -- some of the soil having odors.

20 Do you recall that discussion? 01:41:37

21 MR. DINTZER: Objection. It's leading and it

22 lacks foundation.

23 THE WITNESS: We discussed that there was a

24 soils report that indicated that there was some

25 odor. I didn't -- myself, I didn't recall smelling 01:41:58

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1 or having the odor there, but it was in a report.
2 BY MS. MILLER:
3 Q When did you first begin work on the Carousel
4 project?
5 A I'm sorry? 01:42:10
6 Q When did you first begin work on the Carousel
7 project?
8 A Early in February of 1966.
9 Q And when was the work to demolish the storage
10 reservoirs complete? 01:42:27
11 A Would you restate that, please?
12 Q When was Barclay Hollander's work to demolish
13 the oil storage reservoirs complete?
14 A Approximately August. I think we finished it
15 in August. 01:42:41
16 Q August of 1966?
17 A Yes.
18 Q During that time from February, 1966, to
19 August of 1966 when you were working on demolishing
20 the oil storage reservoirs, you had occasion to 01:42:54
21 observe oil in the soil at the site; is that
22 correct?
23 MR. DINTZER: Objection. The question is
24 leading.
25 THE WITNESS: No. 01:43:04

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1 BY MS. MILLER:

2 Q Is it your testimony here today that you did
3 not observe any oil at the Carousel property while
4 you were working between February, 1966, and August
5 of 1966? 01:43:16

6 A If the question is did I observe any oil?
7 Yes, there was oil in the reservoirs. We took it
8 out. And I think you'll find -- I think that --
9 basically I did see oil, but it was in the
10 reservoirs. 01:43:35

11 Q And others at Barclay Hollander who you were
12 working with at the time saw oil at the site as
13 well, correct?

14 MR. DINTZER: Objection. That calls for
15 speculation. 01:43:42

16 THE WITNESS: Would you restate the question
17 again, please?

18 BY MS. MILLER:

19 Q Sure. What I was asking is whether other
20 folks who worked with you at Barclay Hollander also 01:43:55
21 saw oil at the Carousel site while you were
22 demolishing the oil storage reservoirs?

23 MR. DINTZER: Objection. Calls for
24 speculation.

25 THE WITNESS: I don't know what the other 01:44:05

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1 guys saw, no.

2 BY MS. MILLER:

3 Q You don't know one way or the other what they

4 saw?

5 A I don't know what was in their mind, what 01:44:11

6 they saw, no.

7 Q All right. Let's turn to page 9 of your

8 declaration. Starting at page -- or, I'm sorry, at

9 line 15, can you read from line 15 through line 22

10 for me. 01:44:44

11 A 16?

12 Q 15 --

13 A 15?

14 Q -- through 22, if you could read that aloud.

15 A Yes. Line 15: 01:44:48

16 "Other Conditions.

17 "There are some other conditions

18 that may have an effect on the site

19 conditions today. Although the

20 concrete bottoms were in relatively 01:45:00

21 good condition, we did find that the

22 soil material immediately under the

23 concrete and to varying depths, up to

24 maybe 12 inches, the soil was oil

25 stained and did have an odor. Usually 01:45:15

1 the odor dissipated quickly and was
2 apparently the very light ends of the
3 product."
4 Q You wrote in your -- this declaration for
5 Mr. Mitchell that you signed and testified to your 01:45:41
6 personal knowledge of those facts, that you did find
7 that the soil immediately under the concrete was oil
8 stained and had an odor, correct?
9 MR. DINTZER: Objection. It's leading and it
10 lacks foundation. 01:45:56
11 THE WITNESS: No. What I said was we did
12 find it, but that was based on the comments from the
13 boring logs that were -- that I did look at at that
14 time. So I'm --
15 BY MS. MILLER: 01:46:10
16 Q And you didn't --
17 A -- quoting from somebody else:
18 Q But you didn't indicate that in your
19 declaration that you signed, did you?
20 MR. DINTZER: Objection. It's vague. 01:46:16
21 BY MS. MILLER:
22 Q In fact, I thought you testified earlier that
23 you didn't have any of the old documents, the
24 historical documents from the 1960s at the time you
25 met with Mr. Mitchell; is that correct? 01:46:29

1 MR. DINTZER: Objection. It's leading.
2 THE WITNESS: Did I personally have them?
3 BY MS. MILLER:
4 Q Right.
5 A No, but G & K had them. 01:46:34
6 Q Okay. So you took a look at the Pacific
7 Soils report, and I believe you talked about that in
8 your last deposition session, and it has references
9 to the soils at the site having an odor, an oil
10 odor, correct? 01:46:48
11 MR. DINTZER: Objection. It's leading.
12 THE WITNESS: That's what the soil guy,
13 Pekovich said, yes.
14 BY MS. MILLER:
15 Q And it refers to oil stains, correct? 01:46:56
16 MR. DINTZER: Objection. It's leading.
17 THE WITNESS: That was Pekovich's description
18 of the material, yes.
19 BY MS. MILLER:
20 Q And it refers to portions of the soil being 01:47:03
21 highly oil stained, correct?
22 MR. DINTZER: Objection. It's leading. The
23 document speaks for itself.
24 THE WITNESS: Again, it was Pekovich's.
25 These are excerpts from the soils report, which was 01:47:15

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1 done for Barclay Hollander Curci.

2 BY MS. MILLER:

3 Q Sure. And based on your review as the
4 in-house engineer for Barclay Hollander, you noted
5 the Pacific Soils report that was done at Barclay 01:47:27
6 Hollander's request, correct?

7 MR. DINTZER: Objection. It's leading and
8 it's also vague as to time.

9 THE WITNESS: It's from that report and it's
10 what that observer saw and the way he classified the 01:47:38
11 material. And I took the information from that.

12 BY MS. MILLER:

13 Q If you look at the top of page 10 of your
14 declaration, in line number 1 you have an additional
15 reference to "obviously saturated" soil, correct? 01:48:14

16 MR. DINTZER: Objection. Hold on a second.
17 Objection. The question is vague, it lacks
18 foundation and it's leading.

19 THE WITNESS: May I go back and read the --
20 what happened -- what was said before that line? 01:48:32

21 BY MS. MILLER:

22 Q Of course. Please do.

23 A Yes, I've read that and the word "saturated"
24 is in there. This refers to material around the
25 swing pits. 01:49:14

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Q Why don't we go ahead and read that paragraph into the record as well. Let's go back to page 9, starting at number 2.

MR. DINTZER: Do you want to start the whole thing, paragraph 23 -- line 23? 01:49:28

MS. MILLER: Correct.

THE WITNESS:

"The retention dikes that surrounded each reservoir were high enough so that they had sufficient 01:49:39

volume to contain all of the product in that reservoir. They were also designed to drain to a low spot so that storm water or, in the case of failure, the contents of the reservoir 01:49:56

would all be retained in the dikes. Material in the retention dike could be pumped out. The result is that there are several spots where all of the drainage, both water and spilled 01:50:12

product, ponded until there was enough depth to permit pumping. It appeared that in many cases the runoff was not deep enough to pump and so was simply allowed to seep into the soil. An 01:50:27

1 attempt was made to remove some of
2 that material that was obviously
3 saturated, but in some cases where the
4 saturation wasn't considered
5 excessive, the material was removed 01:50:45
6 and blended into the fill. By the
7 time we started work on the site, the
8 pumps were no longer operational. In
9 fact, I think some of them had been
10 removed, so there wasn't even an 01:50:58
11 attempt to pump out any of the
12 drainage."

13 Q Mr. Bach, your discussion in this paragraph 2
14 of your declaration reflects areas of ponding at the
15 site during the time you were working there, 01:51:25
16 correct, ponding of oil?

17 MR. DINTZER: Objection. Lacks foundation.

18 BY MS. MILLER:

19 Q Is that right?

20 MR. DINTZER: I'm sorry. Lacks foundation 01:51:31
21 and is leading.

22 THE WITNESS: In which paragraph?

23 BY MS. MILLER:

24 Q The paragraph that you just read.

25 A Oh, yes, in the paragraph I just read? 01:51:37

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Q Right.

A Yes.

Q Thank you.

And so in your deposition later in 2013 where
you testified that you didn't observe any ponding, 01:51:44
in fact, as reflected in your declaration, there was
some observation, correct?

MR. DINTZER: Objection. That question is
ambiguous and it also lacks a foundation and it's
leading. 01:51:59

BY MS. MILLER:

Q There were "several spots where all the
drainage, both water and spilled product, ponded."

That's what you told us in 2011, correct?

MR. DINTZER: Objection. It's leading. 01:52:21

THE WITNESS: That's correct. That's what
this statement says.

BY MS. MILLER:

Q All right.

A But I didn't see any ponding. There was just 01:52:29
evidence of ponding.

Q Okay. And although some of the ponded
material that was obviously saturated was removed,
where the saturation was not considered excessive it
was blended into the fill, right? 01:52:54

1 MR. DINTZER: Objection. That's compound and
2 it's leading.
3 BY MS. MILLER:
4 Q Is that right?
5 A The saturated -- when I wrote the word 01:53:00
6 "saturated," I was thinking of the swing pits, and
7 that material was all removed. And other places
8 where there was evidence that it might have ponded
9 but there was nothing there of concern at this time,
10 it was used in the fill. 01:53:15
11 Q It was blended into the fill, correct?
12 MR. DINTZER: Objection. It's leading.
13 BY MS. MILLER:
14 Q All right. Let's read the next paragraph at
15 page 10, line 7 through 10. So page 10 -- 01:53:23
16 A Do you want me to read the paragraph?
17 Q Yes, please. Lines 7 through 10.
18 A Yes.
19 "I would expect to find higher
20 level of contamination in and around 01:53:38
21 the old sump areas because it was not
22 possible to remove all of what now
23 would be considered to be and prove to
24 be contaminated soil."
25 Q And, sir, at page 10, lines 18 through 20, 01:53:51

1 can you read those to us as well.

2 A 15 through 20?

3 Q 18. 18. Thank you.

4 A 18 through 20?

5 Q Yes. Thank you. 01:54:07

6 A

7 "Marabella south of 244th for

8 about 500 feet. One of the sumps was

9 in this area and some of the oil

10 stained soils were placed here until 01:54:19

11 the final grading was completed."

12 Q You understand the "Marabella south of 244th

13 for about 500 feet" is referring to a portion of the

14 larger Carousel development, correct?

15 MR. DINTZER: Objection. Leading. 01:54:34

16 THE WITNESS: It -- it refers to that portion

17 of the street Marabella.

18 BY MS. MILLER:

19 Q And going back up, I'm sorry, lines 14 and 15

20 for us, can you read those. 01:54:44

21 A

22 "These are specific areas that

23 might have higher levels of

24 contamination."

25 Q And those include -- the next lines. 01:54:52

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"247th Street between Panama and
Ravena. And 244th Street and
Marabella."

Q And the third was the one you just read for 01:55:05
us, Marabella at 244th?

A Yes.

Q Thank you.

A And these were written because I was asked to
speculate about where things might be found. In the 01:55:15
notes that Adam sent me, that was one of the
requests.

MS. MILLER: I'm going to move to strike

as --

MR. FINNERTY: Move to -- 01:55:25

MS. MILLER: Move to strike as nonresponsive.

MR. FINNERTY: No foundation.

THE WITNESS: That's what he asked me to do.

BY MS. MILLER:

Q Sir, it just recorded on the record what you 01:55:47
said, and so I have to follow up. You said, "that's
what he asked me to do." Who are you referring to?

A I'm sorry?

Q You just mouthed to Mr. Finnerty that "that
is what he asked me to do." Are you referring to 01:56:01

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1 your counsel? Is that what he asked you to do?

2 A It's in his notes to me, yes.

3 Q Okay. What -- his --

4 MR. DINTZER: I'll object to the last

5 question as ambiguous. Are you talking about 01:56:09

6 Mr. Finnerty or are you talking about Gibson Dunn?

7 BY MS. MILLER:

8 Q That's a good question. Mr. Bach, were you

9 referring to Mr. Finnerty or Gibson Dunn when you

10 said you were doing what he instructed you to do? 01:56:22

11 A Mr. Finnerty's people.

12 Q Now, sometime after you signed the

13 declaration that we've been talking about here

14 today, you met with the Gibson Dunn law firm in

15 order to put together a second declaration; is that 01:56:54

16 correct?

17 A Yes, that's correct.

18 Q And in that second declaration, there are

19 statements from you that some of what is in the

20 first declaration were not based on your personal 01:57:14

21 knowledge. Is that what you said in the second

22 declaration?

23 MR. DINTZER: Objection. That's leading.

24 THE WITNESS: Could you tell me where

25 you're -- what you're referring to? I don't have a 01:57:24

1 copy of that declaration.

2 BY MS. MILLER:

3 Q I'm just asking for your recollection. Do
4 you recall in that second declaration that you
5 stated that some of the statements that you had made 01:57:32
6 previously were not based on personal knowledge?

7 A Yes, I do.

8 Q But, in fact, in your 2011 declaration, the
9 first line is that these are statements that you are
10 giving based on personal knowledge, correct? 01:57:44

11 MR. DINTZER: Objection. It's leading.

12 THE WITNESS: I saw other things --

13 BY MS. MILLER:

14 Q Is that correct?

15 A -- that changed my recall a little bit, yes. 01:57:51

16 Q Your subsequent declaration, this second
17 declaration that you signed, can you tell me
18 approximately when it was prepared?

19 A June of last year?

20 MR. FINNERTY: It's got a date of June of 01:58:51
21 2014, if that helps.

22 BY MS. MILLER:

23 Q Is that right?

24 A Oh, '14. I'm sorry.

25 Q And that declaration was typed up by Gibson 01:59:09

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1 on the purchase contract and certain monies -- I
2 really -- I don't know the details of it. I know
3 that in order to get releases, money had to flow to
4 Shell.

5 MS. MILLER: All right. Let's go off the 02:01:26
6 record for a moment.

7 THE VIDEOGRAPHER: Off the record at
8 2:01 p.m.

9 (Recess.)

10 THE VIDEOGRAPHER: We are back on the record 02:11:01
11 at 2:11 p.m. Counsel may proceed.

12 MR. FINNERTY: Thank you.

13

14 EXAMINATION

15 BY MR. FINNERTY: 02:11:18

16 Q Good afternoon, Mr. Bach. It's nice to see
17 you again.

18 A It's my pleasure.

19 Q Mr. Bach, you understand that the testimony
20 you're giving here today is being given under the 02:11:27
21 penalty of perjury?

22 A Yes.

23 Q And you understand what that means?

24 A Yes.

25 Q You understand that from the instructions and 02:11:34

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1 admonitions that were given to you at the beginning
2 of your last deposition, right?

3 A Yes.

4 Q And you understand, through your profession
5 as a professional engineer, that what you say is 02:11:47
6 important, right?

7 A Yes.

8 Q And when you put your professional
9 engineering stamp to something, you're telling the
10 world that this is what you think and this is the 02:12:01
11 truth, right?

12 A It's what I recall at that moment, and to the
13 best of my knowledge, it's the truth at that time.

14 Q And so we talked a little bit in this
15 deposition -- actually, a great deal -- 02:12:12
16 about Exhibit 6, which is a declaration that you
17 signed back in May of 2011.

18 A The statement, yes.

19 Q That document is entitled by yourself
20 "Declaration of George Bach," correct? 02:12:29

21 MR. DINTZER: Objection. It's leading.

22 BY MR. FINNERTY:

23 Q Take a look at Exhibit 6, please.

24 A It's a title I gave it at that time, yes.

25 Q Okay. And at the time that you prepared this 02:12:38

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1 declaration in May of 2011, you were telling the
2 world that the facts in this declaration were known
3 to you personally, right?

4 MR. DINTZER: It's leading and also
5 foundation.

02:12:52

6 THE WITNESS: It's what I recalled after a
7 gap of many years. This is -- when I got back into
8 Lomita, this is what I recalled at that time, yes.

9 BY MR. FINNERTY:

10 Q Okay. And when you prepared this declaration
11 back in May of 2011, you prepared it with the intent
12 that people would believe what you were saying,
13 right?

02:13:04

14 MR. DINTZER: Objection. Foundation and
15 leading.

02:13:17

16 THE WITNESS: I prepared it as what -- that
17 is what I recalled and what I believed about the
18 project at that time.

19 BY MR. FINNERTY:

20 Q And when you testified in your last
21 deposition that the statements in this declaration
22 were true and accurate, you meant that then and you
23 mean it today, right?

02:13:25

24 MR. DINTZER: Objection. Foundation.
25 Leading.

02:13:36

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1 THE WITNESS: What I mean -- what I meant
2 then and what I mean today, at that moment in time
3 in 2011, this is what I recalled about the project.
4 BY MR. FINNERTY:
5 Q All right. Now, let's talk about how you met 02:13:48
6 Girardi & Keese. Do you remember that?
7 A Yes.
8 Q Before you met Girardi & Keese, you went down
9 to the City of Carson, the building department, and
10 pulled the records that you could find with respect 02:14:00
11 to the Carousel development, right?
12 A I went down to the City of Carson and went to
13 the planning department and asked them for
14 information about Lomita. I was told that they
15 didn't have any at that time. Ultimately, they -- I 02:14:16
16 think her name was Denise said that she would sell
17 me two disks that had the recorded subdivision
18 grading plans on there, and that's what I had at
19 that time.
20 Q Now, at that time that you obtained those 02:14:37
21 disks, you didn't know who Girardi Keese was, right?
22 A That's correct, I did not.
23 Q And no one from Girardi Keese had ever
24 reached out to you up to that time, right?
25 A That's correct. 02:14:49

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1 Q As a matter of fact, after you reviewed those
2 disks which contained information about the Carousel
3 development, you reached out to Girardi Keese,
4 correct?

5 MR. DINTZER: Objection. Foundation. 02:15:02
6 Leading.

7 THE WITNESS: While I was getting those
8 disks, somebody else at the counter came up and
9 asked me what I knew about the project. And I told
10 them I had been the engineer, and they said you 02:15:13
11 should contact these guys, Girardi & Keese. That's
12 how I got in touch with you.

13 BY MR. FINNERTY:

14 Q So you reached out to Girardi Keese, correct?

15 A That's correct. 02:15:24

16 Q And you informed Girardi Keese that you had
17 personal knowledge of the facts and circumstances
18 regarding the development of the Carousel
19 neighborhood, right?

20 MR. DINTZER: Leading. Go ahead. 02:15:36

21 THE WITNESS: I told them I had been the
22 engineer on the project, yes.

23 BY MR. FINNERTY:

24 Q And that you had personal knowledge of that
25 project, right? 02:15:43

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1 MR. DINTZER: Leading.

2 THE WITNESS: Yes.

3 BY MR. FINNERTY:

4 Q And when you say you were the engineer on
5 that project, you were at that project on almost a 02:15:47
6 daily basis during the development of those homes,
7 right?

8 MR. DINTZER: Leading.

9 THE WITNESS: I was on the project
10 frequently, yes. 02:15:54

11 BY MR. FINNERTY:

12 Q Okay. And while you were on the project, you
13 observed contamination on the site, right?

14 MR. DINTZER: Objection. Vague and leading.

15 THE WITNESS: I observed that there were -- 02:16:02
16 that there was in some places physically oil, yes.
17 That was removed. I knew about the report with
18 Pekovich's analysis on it. I did know about that,
19 yes.

20 BY MR. FINNERTY: 02:16:26

21 Q Okay. When you say you knew about Pekovich's
22 report, you're referring to the Pacific Soils
23 report?

24 A Yes.

25 Q And that's the report that indicated that 02:16:33

1 there was oil saturation on the project, at the
2 project?

3 MR. DINTZER: Objection. Document speaks for
4 itself. Leading.

5 THE WITNESS: That's what that observer, the 02:16:44
6 way he classified it. I'm a different observer, I
7 might not have classified it that way. But he was
8 the guy who went down the hole and that's the way he
9 described it.

10 BY MR. FINNERTY: 02:16:54

11 Q You've testified on more than one occasion
12 that there was hydrocarbon contamination at the
13 site; isn't that true?

14 MR. DINTZER: Objection. It's vague.
15 Leading. 02:17:07

16 THE WITNESS: I testified that there was oil
17 and hydrocarbons on the site.

18 BY MR. FINNERTY:

19 Q Okay. And that you were aware that those
20 materials were contaminating the site during the 02:17:15
21 development of this project, right?

22 MR. DINTZER: Objection. Foundation.
23 Leading.

24 THE WITNESS: In 1966 that was not considered
25 contamination. There was no criteria for 02:17:24

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1 contamination at that time. Oil was a factor in
2 South County. It was all over.

3 MR. FINNERTY: Move to strike as
4 nonresponsive, but I'll ask you a new question.

5 MR. DINTZER: I'm going to mark it. 02:17:45

6 MR. FINNERTY: Your counsel is going to mark
7 it. Very aggressively is going to mark it.

8 BY MR. FINNERTY:

9 Q Let's turn to page 8 of Exhibit 6, please.

10 A Yes. 02:17:57

11 Q Do you recall there being a Visqueen layer
12 placed on top of the soil at that development?

13 A I recall that when we put down the slabs,
14 there was a Visqueen layer under the slab, yes.

15 Q And you recall that the purpose of the 02:18:12
16 Visqueen layer was to stop vapor and moisture
17 intrusion?

18 MR. DINTZER: Objection. It's compound.

19 THE WITNESS: At that time, the Visqueen
20 layer was put down as a moisture barrier. That's 02:18:27
21 the way it was defined and that's what it was used
22 for.

23 BY MR. FINNERTY:

24 Q Will you do me a favor and read line 25,
25 page 8, of your declaration from May of 2011, 02:18:38

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1 please. Beginning with "At the time."

2 A At line 25:

3 "At the time, the Visqueen was
4 considered more as a moisture barrier,
5 but it would also act as a vapor 02:18:53
6 barrier."

7 Q And the vapor barrier that it would act as
8 would be as a barrier to gases or vapors which would
9 move through the soil, correct?

10 MR. DINTZER: Objection. It's leading. 02:19:07

11 THE WITNESS: Any vapor. Moisture, whatever.
12 Whatever vapor was there.

13 BY MR. FINNERTY:

14 Q And back in 19 -- in the 1960s, you, as an
15 engineer, were knowledgeable that vapors or gases 02:19:18
16 had the capability of moving through soil, correct?

17 MR. DINTZER: Objection. It's leading.

18 THE WITNESS: In 1966 we did not consider
19 vapor from hydrocarbons. It was all -- for
20 construction, it was for moisture. 02:19:35

21 BY MR. FINNERTY:

22 Q And it's your testimony -- well, let me ask
23 you this. You're familiar with why Shell wanted to
24 sell the property, correct?

25 MR. DINTZER: Objection. Calls for 02:19:47

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1 speculation.

2 THE WITNESS: Yes.

3 BY MR. FINNERTY:

4 Q And one of the problems that Shell had was
5 that the materials contained on the property were 02:19:53
6 gassing off the property and causing problems with
7 the air quality, right?

8 MR. DINTZER: Objection. It's leading and it
9 lacks foundation. Calls for speculation.

10 MS. MILLER: Join. 02:20:07

11 THE WITNESS: It was my understanding that
12 Shell did not want the liability because of the
13 problem like where the kid fell into the oil. And I
14 don't recall that Shell wanted to get rid of it
15 because of APCD. It was a liability problem is what 02:20:21
16 I understood.

17 BY MR. FINNERTY:

18 Q You don't recall that today? Is that your
19 testimony?

20 A I recall that APCD had asked Shell to do 02:20:29
21 something about the emissions, but that was a
22 secondary consideration. I understood that the main
23 consideration was Shell did not want the liability
24 after the kid fell through the roof. They wanted to
25 get rid of the property. 02:20:44

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1 Q The emissions that you're referring to are
2 off-gassings, right?

3 A They were -- they were things that were
4 considered undesirable by APCD, Air Pollution
5 Control District. 02:21:00

6 Q So we have a clear record, give me your
7 definition of an emission, please.

8 A Emissions?

9 Q Yeah.

10 A Something that comes out of something else. 02:21:07

11 Q And you're referring to the gases that came
12 off the hydrocarbon materials that were being stored
13 at that site, right?

14 A I'm not referring to emissions from
15 hydrocarbon. How did emissions come into this, 02:21:20
16 Mr. Finnerty?

17 MR. DINTZER: No, no, no, no. Hold on a
18 second. He gets to ask the question, so just --

19 THE WITNESS: Okay. I just want to know
20 where emissions came from. 02:21:31

21 MR. DINTZER: No, no, no, no. He gets to ask
22 the questions.

23 Why don't you ask your next question.

24 BY MR. FINNERTY:

25 Q Mr. Bach, you began this deposition by 02:21:36

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1 MR. DINTZER: Objection. That calls for
2 attorney-client communication. I'll instruct the
3 witness not to answer.
4 BY MR. FINNERTY:
5 Q Are you going to follow your lawyer's advice? 02:22:43
6 A Yeah, I asked them --
7 MR. DINTZER: No. No. I instructed you not
8 to answer.
9 THE WITNESS: Sorry.
10 BY MR. FINNERTY: 02:22:51
11 Q Did you get a written agreement from the
12 Gibson firm in which they agreed to be your lawyers
13 in 2010?
14 A No, not that I recall.
15 Q Have you ever received a written agreement 02:23:01
16 from the Gibson firm in which they've agreed to be
17 your lawyers?
18 A I recall that there was an agreement. Do I
19 have a copy of it? No.
20 Q So it is your recollection that you received 02:23:15
21 a written agreement from the Gibson firm in which
22 they agreed to be your lawyers?
23 A I recall that there was an agreement. I do
24 not have a copy of it.
25 Q Is it possible that the agreement is for a 02:23:28

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1 consulting agreement as opposed to them being your
2 lawyers for the purposes of this lawsuit?

3 MR. DINTZER: Calls for speculation.

4 THE WITNESS: I don't recall.

5 BY MR. FINNERTY: 02:23:45

6 Q Did you read the agreement that you received
7 from the Gibson firm?

8 A Could you expand that -- rephrase it?

9 Q It's your testimony that the Gibson firm has
10 presented you with a written agreement in which they 02:23:56
11 agreed to be your lawyers, right?

12 A There was a written agreement. I signed an
13 agreement with them, yes.

14 Q And you signed that agreement after you read
15 it, right? 02:24:08

16 A Yes.

17 Q And, to your recollection, that agreement
18 says that Shell offered to be your lawyers back
19 in --

20 MR. DINTZER: No, no, no, no. You said 02:24:21
21 "Shell" again.

22 BY MR. FINNERTY:

23 Q I'm sorry, Gibson Dunn -- I still can't get
24 Shell out of my head -- that Gibson Dunn offered to
25 be your lawyers in 2010? 02:24:29

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1 A I don't recall the terminology. There was a
2 discussion and I agreed that they would represent
3 me.

4 Q Could it be possible that when you first met
5 with the Gibson firm in 2010, that you asked them if 02:24:38
6 they would hire you to be a consultant on this case?

7 MR. DINTZER: Objection. Calls for
8 speculation.

9 THE WITNESS: I'm going to ask you to
10 rephrase it. I didn't hear all the question. It 02:24:50
11 was very low.

12 BY MR. FINNERTY:

13 Q Could it be possible that when you first met
14 with the Gibson firm in 2010, you asked them to hire
15 you as a consultant in this case? 02:25:00

16 A I don't --

17 MR. DINTZER: Calls for speculation.

18 THE WITNESS: I don't recall that.

19 BY MR. FINNERTY:

20 Q And you've testified this morning that you 02:25:10
21 have not provided the Gibson firm with any
22 engineering consultation for this case, correct?

23 A I think I said I did consult with them as an
24 engineer, yes.

25 Q Did you provide them with any engineering 02:25:27

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1 opinions for this case?

2 MR. DINTZER: Well, hold on a second. In a
3 general sense, I'll allow you to answer that
4 question, but keep it general. No specifics. Okay?

5 THE WITNESS: Would you ask the question 02:25:46
6 again, please?

7 BY MR. FINNERTY:

8 Q Did you provide them -- and by "them" I'm
9 referring to the Gibson law firm -- with any
10 engineering opinions regarding this case? 02:25:53

11 MR. DINTZER: It's a yes or no question.

12 THE WITNESS: Yes.

13 BY MR. FINNERTY:

14 Q When did you first do that? When did you
15 first do that? 02:26:07

16 A I think from the very first discussion with
17 Elizabeth.

18 Q Have you paid the Gibson law firm for their
19 representation of you in this case?

20 MR. DINTZER: Objection. It's been asked and 02:26:21
21 answered.

22 BY MR. FINNERTY:

23 Q You can answer.

24 MR. DINTZER: You can answer the question.

25 THE WITNESS: Have I paid them? No. 02:26:33

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1 BY MR. FINNERTY:
2 Q Do you intend to pay the Gibson law firm for
3 their representation of you in this case?
4 A Possibly at the end of it, yes.
5 Q Okay. And how -- and how do you expect to 02:26:42
6 pay them for their representation at the end of this
7 case?
8 MR. DINTZER: Objection. Argumentative.
9 BY MR. FINNERTY:
10 Q Do you expect to pay them with money? 02:26:55
11 A That may become a part of negotiation, yes.
12 Q Have you actually negotiated with the Gibson
13 law firm that you would provide them with testimony
14 in exchange for their representation?
15 A No. 02:27:12
16 Q And has the Gibson firm paid you for any of
17 the engineering consultations that you've provided
18 so far?
19 A Yes.
20 Q And you have records of that? 02:27:25
21 A No, I don't have records of it. I lost a lot
22 of my records in a flood and only have what is on my
23 computer.
24 Q How much has the Gibson firm paid you to date
25 for your engineering consultations in this case? 02:27:43

1 feel well the day he met with you?

2 A No.

3 Q At any time prior to lunch today, did
4 Mr. Dintzer tell you that he could not represent you
5 at your deposition because he did not feel well? 02:29:09

6 A He never -- he never responded why he wasn't
7 there.

8 Q As a matter of fact, up until you appeared
9 for your deposition today, you were of the belief
10 that the deposition was cancelled by somebody other 02:29:24
11 than the Gibson law firm, right?

12 MR. DINTZER: Objection. That's compound and
13 it's overbroad.

14 THE WITNESS: I didn't speculate about who
15 cancelled it. I just knew that it wasn't going to 02:29:38
16 go.

17 BY MR. FINNERTY:

18 Q Do you remember testifying early this morning
19 that you wondered why Shell continued your
20 deposition? 02:29:50

21 A No, I don't recall that I specifically said
22 Shell.

23 Q Well, do you remember testifying earlier this
24 morning that you wondered why your deposition was
25 continued? 02:29:59

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1 titled by your own hand.

2 A I used the word "declaration."

3 Q All right. Thank you.

4 Now, please turn to page 8 of your

5 declaration. And would you do me a favor and read 02:31:19

6 into the record commencing at line 28 where it

7 starts "Since" --

8 MR. DINTZER: Just for the record, I'll

9 object on the basis of foundation.

10 THE WITNESS: "Since" -- let's see -- 02:31:43

11 BY MR. FINNERTY:

12 Q I'm sorry. Let me back up for a second and

13 ask you to start reading from page -- I'm sorry,

14 page 8, line 26, where it starts "It is my belief."

15 A 02:31:52

16 "It is my belief that vapors in

17 the ground will be slowly pushed to

18 the surface as the natural water level

19 rises under the slab. Since it is

20 then blocked by the Visqueen, it will 02:32:11

21 migrate to the edges of the slab, then

22 come to the surface. I would expect

23 to see higher levels of vapor or

24 hydrocarbon products, if any, about a

25 foot away from the edge of the slabs. 02:32:24

1 It should be noted that this method
2 was not followed in the garage area
3 where the slabs were constructed on
4 compacted backfill and are independent
5 of the surrounding foundation walls." 02:32:39

6 Q That was a true statement at the time you
7 wrote it, right?

8 MR. DINTZER: Objection. It's compound,
9 foundation, and it's leading.

10 THE WITNESS: This was speculation when I 02:32:53
11 wrote it, yes.

12 BY MR. FINNERTY:

13 Q At any place in your declaration of May of
14 2011 did you state that any of these facts contained
15 in here were speculative? 02:33:08

16 MR. DINTZER: Objection. Foundation.

17 THE WITNESS: It was my belief at the time --

18 BY MR. FINNERTY:

19 Q My question is --

20 MR. DINTZER: Wait, wait, wait, wait. No, 02:33:24
21 no, no. You don't get to do that. He gets to
22 answer the question. If you don't like it, you can
23 move to strike it. That's the way it works,
24 Mr. Finnerty.

25 MR. FINNERTY: I think the way it works is 02:33:33

1 you get to object --

2 MR. DINTZER: No, no. I get to protect the
3 witness too. And so he gets to finish his answer.
4 You do not get to stop him. And if you want to get
5 the judge in here, we'll go ahead and ask the judge 02:33:42
6 because I'm quite sure he is going to allow the
7 witness to finish his response and then give you an
8 opportunity to move to strike.

9 BY MR. FINNERTY:

10 Q Mr. Bach, let me ask you a question that your 02:33:51
11 counsel may find less objectionable.

12 Do you use the word "speculation" anywhere in
13 your declaration of May, 2011?

14 A Not that I recall, no.

15 Q Do you use the word "speculative" anywhere in 02:34:08
16 your declaration of May, 2011?

17 MR. DINTZER: Objection. Foundation.

18 THE WITNESS: No.

19 BY MR. FINNERTY:

20 Q And you are the author of Exhibit 6, your 02:34:18
21 declaration of 2011, correct?

22 MR. DINTZER: Objection. Foundation.

23 THE WITNESS: Yes.

24 BY MR. FINNERTY:

25 Q And you prepared this declaration of May of 02:34:29

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1 2011 on your computer in the privacy of your own
2 home, right?

3 MR. DINTZER: Objection. Foundation.

4 THE WITNESS: Yes.

5 BY MR. FINNERTY: 02:34:41

6 Q Now, you indicated at some point a little
7 while ago that I instructed you to do something. Is
8 that your testimony?

9 A That you, Mr. Finnerty? As -- no. My -- if
10 I used you personally, it is G & K. 02:35:04

11 Q Because your recollection is that I've never
12 instructed you to do anything, correct?

13 A That's correct, you have never instructed me.

14 Q And the only time that you met me was over
15 lunch, right? 02:35:21

16 A That is also correct.

17 Q And when you referred to Adam Mitchell
18 earlier, you understood that he was an employee of
19 the Girardi Keese law firm, right?

20 A I understood that he was an attorney at the 02:35:33
21 Girardi law firm, yes.

22 Q Did you have an understanding that he was
23 actually an attorney?

24 A That's what he led me to believe, yes.

25 Q And did you tell Mr. Mitchell that you felt 02:35:45

1 comfortable preparing and authoring your own
2 declaration, which you ultimately submitted and
3 signed on May 13, 2011?

4 MR. DINTZER: Objection. Foundation.

5 Leading. 02:36:00

6 THE WITNESS: Mr. Mitchell gave me an
7 outline. I told him I would prefer to put it in my
8 own words.

9 BY MR. FINNERTY:

10 Q And so your testimony here this afternoon -- 02:36:09
11 today is that your declaration of May, 2011 is in
12 your own words, right?

13 MR. DINTZER: Objection. Foundation.

14 THE WITNESS: It's what I believed at that
15 time in 1966, yes. 02:36:24

16 BY MR. FINNERTY:

17 Q Now, this declaration that you signed in
18 Denver earlier this year, does this declaration
19 contain your own words that you prepared in the
20 privacy of your own home? 02:36:42

21 A No.

22 MR. FINNERTY: I don't have any further
23 questions. Thank you very much.

24 MR. DINTZER: I have just a very few
25 questions and it will take just a couple minutes. 02:36:53

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EXAMINATION

BY MR. DINTZER:

Q Let's take a look at Exhibit 6 for a second.
Counsel for Shell, Ms. Miller, and counsel for 02:37:06
plaintiffs in this case, Mr. Finnerty, asked you a
series of questions each concerning Exhibit 6.

Do you generally understand that, Mr. Bach?

A Yes.

MR. FINNERTY: Do you think he forgot we 02:37:27
asked him questions about Exhibit 6?

MR. DINTZER: No, I was just establishing a
little foundation there for you.

MR. FINNERTY: We'll agree that he prepared
Exhibit 6 and we'll stipulate to the foundation that 02:37:38
he is the author of Exhibit 6.

MR. DINTZER: That's great. I'll take that
under consideration. Thank you very much,
Mr. Finnerty.

BY MR. DINTZER: 02:37:50

Q When you prepared Exhibit 6, you did not
prepare this document as an engineering report that
you would like, for example, submit to a public
agency; is that correct, sir?

MR. FINNERTY: Well, we'll object on the 02:38:13

1 basis that it is leading.

2 MR. DINTZER: Okay. Fair enough. Fair
3 enough. Fair enough. I'll withdraw. I'll
4 withdraw. I'll withdraw.

5 MR. FINNERTY: And it's probably invasive of 02:38:17
6 your attorney-client relationship.

7 MR. DINTZER: No, it's not. No, it's not.
8 But I'll -- let me ask the question again.

9 MR. FINNERTY: Don't forget he was your
10 client at the time he prepared this. So how far 02:38:26
11 into that relationship would you like to go before
12 we do get the judge in here to show that you're
13 waiving it?

14 MR. DINTZER: 'Okay. That's fine.

15 BY MR. DINTZER: 02:38:36

16 Q Let's -- let me ask the question this way.
17 This document that you prepared for Mr. Mitchell at
18 Girardi & Keese, Exhibit 6, did you prepare this
19 document with the understanding that it would be
20 submitted to some type of public agency? 02:38:45

21 A No, I did not.

22 Q Okay. When you have submitted engineering
23 reports to public agencies, is there something that
24 you do as a registered engineer to the document to
25 certify it in some fashion? 02:39:00

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1 A The documents that are submitted are signed,
2 stamped and submitted.

3 Q Okay. When you say "stamped," what do you
4 mean by stamped?

5 A I have an engineering stamp that I stamp and 02:39:12
6 initial that I prepared the document.

7 Q And do you initial that stamp in the stamp
8 itself?

9 A Yes.

10 Q Okay. Is there any stamp -- engineering 02:39:23
11 stamp on Exhibit 6?

12 A No.

13 Q Now, the other thing I wanted to ask you
14 about Exhibit 6 is -- they've referred to it as a
15 declaration and I know you've referred to it as a 02:39:41
16 statement.

17 MR. FINNERTY: I'll object on a foundation
18 basis. He referred to it as a declaration. Not
19 only in this deposition, but his prior deposition.

20 MR. DINTZER: That's fine. 02:39:48

21 MR. FINNERTY: It's only after meeting with
22 you that he is now referring to it as a statement.

23 MR. DINTZER: All right. Are you just going
24 to make a bunch of speaking objections or are you
25 going to let me ask my questions so we can get out 02:39:57

1 of here?

2 MR. FINNERTY: Either way. I'm just trying
3 to respond in kind.

4 MS. MILLER: And I join in the objections.

5 MR. DINTZER: Okay. That's good. So you 02:40:02
6 both want to make speaking objections. That's
7 terrific.

8 MR. FINNERTY: Do you know what a speaking
9 objection is?

10 MR. DINTZER: I do. Do you know what a 02:40:08
11 speaking objection is? Because you just did one of
12 those.

13 BY MR. DINTZER:

14 Q So when you prepared this Exhibit 6, this
15 statement, did you sign it under penalty of perjury 02:40:22
16 like when you gave the deposition testimony today or
17 you signed the other declaration for Gibson Dunn or
18 you gave your prior deposition?

19 MR. FINNERTY: Objection. Foundation.

20 MS. MILLER: Join. Overbroad. 02:40:35

21 MR. FINNERTY: Leading.

22 MS. MILLER: Compound.

23 MR. FINNERTY: You're leading your own
24 client. Beautiful.

25 MR. DINTZER: It's not a leading question. 02:40:45

1 MR. FINNERTY: It looks leading to me.

2 MR. DINTZER: It didn't suggest the answer.

3 All I asked him is when you prepared this exhibit,

4 did you sign it under penalty of perjury.

5 THE WITNESS: No. 02:40:56

6 BY MR. DINTZER:

7 Q Okay. Do you understand what the legal

8 definition of a declaration is in California?

9 A It's my understanding that a declaration is

10 attested to, which I did not do, and a declaration 02:41:15

11 is -- has the effect of being notarized and, like I

12 said, attested to.

13 Q When you say "attested to," you mean like

14 under penalty of perjury?

15 MS. MILLER: Leading. 02:41:30

16 BY MR. DINTZER:

17 Q Or do you mean something else?

18 MS. MILLER: Leading.

19 MR. FINNERTY: Join.

20 THE WITNESS: Under perjury, yes. 02:41:37

21 BY MR. DINTZER:

22 Q Under penalty of perjury?

23 A Under penalty of perjury.

24 MR. DINTZER: Let's go off the record for a

25 moment. 02:42:14

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THE VIDEOGRAPHER: Off the record at
2:42 p.m.

(Recess.)

THE VIDEOGRAPHER: We are back on the record
at 2:42 p.m.

02:43:01

FURTHER EXAMINATION

BY MS. MILLER:

Q Mr. Bach, I have just a few more questions
for you.

02:43:06

When you gave your deposition in March of
2013, did you have an understanding that the Gibson
Dunn law firm was the law firm that noticed your
deposition?

MR. DINTZER: It's outside the scope.

02:43:20

THE WITNESS: My deposition? I'm sorry, I
don't understand the intent of the question.

BY MR. DINTZER:

Q Do you remember your deposition in this case
from 2013 on March 7th and 11th?

02:43:29

A Is that the first or the second?

Q That's the first two sessions of your
deposition in this case.

Do you recall that?

MR. DINTZER: Objection. Outside the scope.

02:43:41

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1 THE WITNESS: Yes.

2 BY MR. DINTZER:

3 Q All right. Did you have an understanding
4 when you sat for that deposition that the Gibson
5 Dunn law firm was the firm that asked for your 02:43:49
6 deposition?

7 MR. DINTZER: Objection. Outside the scope.

8 THE WITNESS: I have no knowledge of who
9 asked for it.

10 MS. MILLER: Let me just mark as an exhibit, 02:43:57
11 our next in line, a notice. And see if this will
12 refresh your recollection. Number 8. Thank you.

13 (Exhibit 8 was marked for identification by
14 the court reporter and is attached hereto.)

15 BY MS. MILLER: 02:44:19

16 Q Sir, Exhibit 8, you will see in the middle of
17 the page is the notice of your deposition in this
18 case.

19 Do you see that?

20 A Yes. 02:44:46

21 Q And the dates are March 7 and 11, 2013.
22 Do you see that?

23 A Yes.

24 Q And you gave a deposition in this case on
25 those days, correct? 02:44:56

1 MR. DINTZER: Objection. This is outside the
2 scope.

3 THE WITNESS: Yes.

4 BY MS. MILLER:

5 Q And do you see at the top that that document 02:45:01
6 is on the Gibson Dunn letterhead?

7 MR. DINTZER: It's outside the scope.

8 THE WITNESS: I guess, yes.

9 BY MS. MILLER:

10 Q All right. Before you gave that deposition 02:45:12
11 testimony, were you given any instruction with
12 respect to questions that you couldn't answer based
13 on attorney-client privilege?

14 MR. DINTZER: Objection. The question is
15 vague. 02:45:24

16 THE WITNESS: I don't recall that at all.

17 BY MS. MILLER:

18 Q And at the time you gave that deposition, did
19 you have any understanding of being a consultant for
20 the Gibson Dunn law firm? 02:45:32

21 A I'm sorry?

22 MR. DINTZER: It's outside the scope.

23 BY MS. MILLER:

24 Q At the time you gave your March, 2013
25 deposition, the one on that notice, did you have any 02:45:39

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1 understanding of being a consultant for the Gibson
2 Dunn law firm?

3 MR. DINTZER: It's outside the scope.

4 THE WITNESS: I did consulting work answering
5 questions about the project, yes. 02:45:53

6 BY MS. MILLER:

7 Q Did you have any understanding of any
8 privilege over that consulting that you had done?

9 MR. DINTZER: Objection. Calls for a legal
10 conclusion. It's outside the scope. 02:46:01

11 THE WITNESS: I don't -- no would be my
12 answer.

13 BY MS. MILLER:

14 Q Your answer is no, correct?

15 MR. DINTZER: That's not what he said. 02:46:09

16 THE WITNESS: I don't have any understanding
17 of it.

18 BY MS. MILLER:

19 Q Mr. Loewen asked all of the questions of you
20 during the March 7, 2013, session of your 02:46:19
21 deposition, correct?

22 MR. DINTZER: Objection. That's leading and
23 it's outside the scope.

24 THE WITNESS: I don't recall who -- who asked
25 all of the questions. 02:46:31

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BY MS. MILLER:

Q As you sit here today, you don't recall Mr. Loewen asking you questions at your deposition that first day?

MR. DINTZER: Same objections. 02:46:41

THE WITNESS: Mr. Loewen asked me questions, yes.

BY MS. MILLER:

Q And you met with Mr. Loewen -- we talked about this earlier in the deposition -- for 25 hours before you gave that testimony, correct? 02:46:48

MR. DINTZER: Objection. This has been asked and answered. It's outside the scope.

THE WITNESS: Yes.

MS. MILLER: All right. Thank you. I don't have anything further. 02:46:58

MR. DINTZER: Stipulation?

MR. FINNERTY: I don't think we'll agree to the normal stipulation, given the fact that I don't think that we should close this deposition, as there clearly hasn't been a production of documents that are complete nor responsive to either of our two deposition notices. So we would ultimately agree to the normal stip, but I don't think we're going to agree to close this deposition at this time. 02:47:11 02:47:29

1 MR. DINTZER: Our position --
2 MS. MILLER: I agree with Mr. Finnerty at
3 this time.
4 MR. DINTZER: That's fine. Our position is
5 the deposition is closed. You've had -- this is 02:47:35
6 your second chance to take this deposition, and
7 you're limited to two topics, which were the
8 statements which both counsel have present, one of
9 which I understand you haven't even marked as an
10 exhibit to this deposition. And so therefore it is 02:47:47
11 our position that Mr. Bach's deposition is closed.
12 If you want to proceed by code with respect to the
13 handling of the transcript, that is perfectly fine
14 with us.
15 MR. FINNERTY: And before we finish with your 02:47:58
16 statement and whatnot, I'm going to show you an
17 exhibit which we'll mark as No. 9, Mr. Bach.
18 (Exhibit 9 was marked for identification by
19 the court reporter and is attached hereto.)
20 MR. DINTZER: You use -- you have to use the
21 one that's marked. That's fine. You can use that
22 one.
23 MR. FINNERTY: I'm not trying to take the
24 court reporter's job away from her.
25

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FURTHER EXAMINATION

BY MR. FINNERTY:

Q So we talked a little bit about a declaration that you provided for the Gibson firm in this case.

Do you recognize Exhibit 9 as being that declaration?

02:48:53

A It appears to be the declaration, yes.

Q And is this the declaration that you worked on with Mr. Loewen in Denver earlier this year?

A Yes.

02:49:14

Q And this declaration indicates that it was executed on the 26th day of June, 2014, at Denver, Colorado.

Do you see that? Do you see that?

A Yes. I don't see it, but --

02:49:29

Q Look at page 9.

A Okay. Where is it?

Q Page 9, please.

A Oh, page 9?

Q Do you see that?

02:49:39

A Yes, I see it.

Q You executed this in Denver, Colorado?

A Yes.

Q Did you go to Denver at the request of

Mr. Loewen?

02:49:52

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A No.

Q Were you in Denver on another matter and agreed to meet with Mr. Loewen at that time?

A My family is in Longmont, which is just north of Denver, and I was with my family. 02:50:05

Q And was Mr. Loewen the only lawyer that you met with in Denver while you were working on this declaration?

A Yes.

Q But you've testified that you've worked with Mr. Dintzer, correct? 02:50:15

MR. DINTZER: Objection. Vague.

BY MR. FINNERTY:

Q On this case, correct?

A On this case? 02:50:25

Q Yes.

A Yes.

Q And Ms. Hernandez, correct?

A Yes.

Q Mr. Manakides? 02:50:32

A No.

Q Have you ever met Mr. Manakides from the Gibson law firm?

MR. DINTZER: Objection. It's been asked and answered. 02:50:43

1 THE WITNESS: No. I don't know who he is.
2 BY MR. FINNERTY:
3 Q Have you met Ms. Neuman from the Gibson law
4 firm?
5 A No. 02:50:49
6 Q And when you met with Mr. Loewen to prepare
7 or to work on this declaration, did you bring some
8 notes with you?
9 A No.
10 Q When you worked on this declaration with 02:51:08
11 Mr. Loewen, did you have your June -- I mean your
12 May 13, 2011, declaration with you?
13 A He had a copy of it. I didn't have one with
14 me, no.
15 Q But up to the time that you worked on this 02:51:22
16 June, 2014 declaration at Mr. Loewen's request, you
17 still had a copy of your 2011 declaration, right?
18 MR. DINTZER: Objection. It's leading.
19 THE WITNESS: There was one on my computer,
20 yes. 02:51:43
21 BY MR. FINNERTY:
22 Q So you knew what you had written back in 2011
23 at the time that you worked on this June, 2014
24 document, right?
25 A Yes. 02:51:53

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1 Q And while working on this 2014 document, did
2 you and Mr. Loewen discuss the facts that you had
3 written down in your 2011 declaration?

4 MR. DINTZER: Objection. Attorney-client
5 privilege. Instruct the witness not to answer the 02:52:13
6 question.

7 BY MR. FINNERTY:

8 Q Are you going to follow your lawyer's advice?

9 A My attorney -- I'll follow my attorney's
10 instructions. 02:52:26

11 Q Now, then, you were represented by Gibson
12 Dunn at the time that you prepared your 2011
13 declaration, right?

14 MR. DINTZER: I don't think he meant that,
15 but okay. 02:52:37

16 THE WITNESS: I guess the answer would be
17 yes.

18 BY MR. FINNERTY:

19 Q So that we have a clean and accurate record,
20 at the time that you sat down at your computer in 02:52:46
21 the privacy of your home and wrote down the facts
22 and circumstances as you recalled them from your
23 involvement of the Carousel development, you knew
24 you were represented by the Gibson Dunn law firm?

25 A Yes. 02:53:03

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Q And did anyone at the Gibson Dunn law firm
instruct you not to prepare your 2011 declaration?

MR. DINTZER: Objection. Foundation.

THE WITNESS: I didn't discuss it with them,
no.

02:53:20

BY MR. FINNERTY:

Q And did you discuss with Mr. Loewen at any
time that you had written your personal recollection
of your personal observations of your involvement of
the Carousel development back in 2011?

02:53:37

MR. DINTZER: Objection. Attorney-client
privilege. Instruct the witness not to answer.

THE WITNESS: I'll follow my attorney's
instructions.

BY MR. FINNERTY:

02:53:50

Q But you turned your 2011 declaration over to
the Girardi Keese firm, right?

MR. DINTZER: It's not a declaration, it's a
statement. And I'll object on foundational grounds.

BY MR. FINNERTY:

02:54:03

Q Mr. Bach, did you give the Girardi Keese firm
a copy of your 2011 declaration?

MR. DINTZER: Objection. Foundation.

THE WITNESS: Yes.

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BY MR. FINNERTY:

Q And did you give the Girardi Keese firm a copy of your 2011 declaration in the year 2011?

MR. DINTZER: Objection. Foundation.

THE WITNESS: In 2011? 02:54:28

BY MR. FINNERTY:

Q Yes.

A Yes.

Q And you intended that the Girardi Keese firm learn of your recollection of your involvement in the Carousel development back in 2011, right? 02:54:35

MR. DINTZER: Objection. Leading.

THE WITNESS: Yes. I told them the story, yes.

BY MR. FINNERTY: 02:54:48

Q And you didn't have any objection to turning that document over to Girardi Keese, right?

MR. DINTZER: Objection. It's leading.

THE WITNESS: No, I didn't have any objection. 02:55:04

BY MR. FINNERTY:

Q As a matter of fact, you volunteered that 2011 declaration to the Girardi Keese firm because you thought it was important that the facts, as you knew them, came out after you learned of this 02:55:15

1 litigation, right?

2 MR. DINTZER: Objection. Foundation and it's
3 leading.

4 THE WITNESS: I thought that what I knew
5 would be of interest to people, yes. 02:55:31

6 BY MR. FINNERTY:

7 Q So that the jury fully understands your
8 testimony, in 2011, after you learned of this
9 litigation, you thought it was important enough to
10 write down your recollection of the facts as you 02:55:47
11 knew them from your participation and observations
12 of the development of the Carousel neighborhood,
13 right?

14 MR. DINTZER: Objection. I'm sorry.
15 Leading. 02:55:59

16 THE WITNESS: I thought it would be of
17 interest to you, yes.

18 BY MR. FINNERTY:

19 Q Okay. And that's what you did when you gave
20 Girardi Keese your 2011 declaration? 02:56:05

21 MR. DINTZER: Objection. Foundation.
22 Leading.

23 THE WITNESS: Yes.

24 BY MR. FINNERTY:

25 Q And at the time that you prepared and then 02:56:13

1 subsequently gave that declaration to Girardi Keese,
2 you thought it was important that the facts, as you
3 knew them, were told, right?

4 MR. DINTZER: Objection. Leading and
5 foundation.

02:56:27

6 THE WITNESS: I thought what my recollections
7 were of the project would be important to you, yes.

8 BY MR. FINNERTY:

9 Q Now, when you were working with Mr. Loewen on
10 your declaration in 2014, Mr. Loewen represented to
11 you that that declaration was going to be supplied
12 to the water board, right?

02:56:41

13 MR. DINTZER: Objection. Calls for
14 attorney-client communication and I'll instruct the
15 witness not to answer.

02:56:56

16 THE WITNESS: I follow my attorney's
17 instructions.

18 BY MR. FINNERTY:

19 Q At any time during your working on your 2014
20 declaration, did Mr. Loewen tell you that that would
21 be used in the litigation involving the residents of
22 the Carousel against the developers of that
23 neighborhood?

02:57:06

24 MR. DINTZER: Same objection. And I will
25 instruct the witness not to answer.

02:57:20

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1 THE WITNESS: Well, I'll follow my attorney's
2 instruction.
3 BY MR. FINNERTY:
4 Q Would that matter to you?
5 MR. DINTZER: I'm sorry? Would you repeat 02:57:28
6 the question?
7 THE WITNESS: Does what matter to me, sir?
8 BY MR. FINNERTY:
9 Q Would it be important to you to know how your
10 declaration was going to be used? 02:57:39
11 A No. It's my story and that's what it is.
12 Q And take a look at Exhibit 9, please. The
13 front page is entitled your declaration, and
14 immediately above it, it says, "before the Regional
15 Water Quality Control Board." 02:58:06
16 Do you see that?
17 A Yes.
18 Q Does any information conveyed on this first
19 page indicate that this has anything to do with the
20 people who live in the Carousel with regard to their 02:58:19
21 complaints against the developer for poisoning them?
22 MR. DINTZER: Objection. The question lacks
23 a foundation. It is -- it calls for speculation and
24 it's leading.
25 THE WITNESS: My impression was it was a 02:58:46

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1 response to a question from Regional Quality Water
2 Control Board. It was that direct. That's it.

3 BY MR. FINNERTY:

4 Q And you knew that at the time you were
5 working on this document, right? 02:58:57

6 MR. DINTZER: Objection. It's leading.

7 THE WITNESS: I knew it was a response to the
8 Regional Quality Control Board, yes.

9 MR. FINNERTY: Thank you very much. I don't
10 think I have any further questions at this moment, 02:59:10
11 reserving our rights with respect to your counsel's
12 failure to produce documents responsive to our
13 deposition notices.

14 MR. DINTZER: Our view and our position is
15 clear, that this is the second deposition that 02:59:22
16 you've had an opportunity to take. You've had a
17 chance to litigate with respect to production of
18 records with respect to this witness on multiple
19 opportunities to do so. And this deposition is now
20 closed. And if you want to proceed by way of 02:59:36
21 stipulation with respect to the handling of the
22 transcript, so indicate. If otherwise, we'll
23 proceed by code.

24 MS. MILLER: The Shell defendants do not
25 agree to close the deposition in light of the 02:59:47

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1 objections and the documents that have not been
2 produced.

3 MR. DINTZER: You cannot agree -- how do you
4 want to handle the transcript? Do you want to
5 handle the transcript by way of stipulation or by 02:59:57
6 code?

7 MR. FINNERTY: Well, with respect to the
8 limited issue of handling the transcript, I think we
9 can agree to stipulate to relieve the court reporter
10 of her normal duties. 03:00:10

11 MR. DINTZER: Okay. So we'll relieve the
12 court reporter of her duties under the California
13 Code of Civil Procedure. That the original
14 transcript shall be delivered to our offices. We'll
15 take responsibility for forwarding it to the 03:00:21
16 witness, who will review it, make any corrections or
17 changes he deems necessary, let's say, within 45
18 days. Failure to comply with that, the certified
19 copy may be used in lieu of the original at trial or
20 related proceeding. 03:00:32

21 Is that so stipulated?

22 And we'll provide copies of the signature
23 page and any pages where changes have been made, I
24 guess, on the Lexis system.

25 MR. FINNERTY: Everything sounds fine except 03:00:46

1 for the 45 days because -- I don't know if you're
2 aware, but we've had an agreement with your office
3 that we're going to supplement next week, so maybe
4 we need a shorter period of time. I don't know if
5 you want to confer with the witness to see if he can 03:01:01
6 read this sooner or --

7 MR. DINTZER: How many pages is this
8 transcript? 167 pages, that's what I have.

9 THE REPORTER: Approximately.

10 MR. DINTZER: Can you review it within -- 03:01:14
11 what -- how long -- what's your deadline?

12 MR. AUMAIS: Tuesday.

13 MR. FINNERTY: So we're going to have to
14 communicate about it.

15 MR. DINTZER: We'll have to talk about that, 03:01:20
16 because I don't even know if I'll have the
17 transcript by then.

18 So within a reasonable time -- and we'll work
19 with your offices so that you have an opportunity to
20 submit whatever you want, I mean, without prejudice 03:01:30
21 to you. That's not a problem. Okay?

22 MR. FINNERTY: So stipulated.

23 MR. DINTZER: So stipulated?

24 MS. MILLER: We stipulate with the exception
25 that the deposition is not closed. 03:01:38

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MR. FINNERTY: And we join in that.

MR. DINTZER: I think that's on the record.

THE VIDEOGRAPHER: We're off the record at
3:01 p.m. and this concludes today's testimony given
by George Bach. The total number of media used was 03:01:49
three and will be retained by Veritext Legal
Solutions.

(TIME NOTED: 3:01 p.m.)

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I, GEORGE BACH, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____,
20____, at _____,
(City) (State)

GEORGE BACH

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 11/21/14



KATHLEEN E. BARNEY

CSR No. 5698