

BRIGHT AND BROWN
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1 contamination under supervision of the DTSC. In reliance upon the
2 representations of Monsanto and the information supplied by the DTSC which
3 indicated that the Watson Center was not contaminated by the Monsanto Plant
4 and that Monsanto would clean up the contamination it caused, Watson did not
5 initiate any legal action to protect its rights or assert any claims against Monsanto
6 prior to this action.

7 STAUFFER PLANT

8 21. Watson is informed and believes, and thereon alleges, that
9 Stauffer operated a chemical manufacturing facility at the Stauffer plant until
10 1976 on behalf of the American Chemical Company, a joint venture between
11 Stauffer and ARCO. Watson is informed and believes, and thereon alleges, that
12 the Stauffer plant continued operating subsequent to 1976, and ceased to operate in
13 or around 1982. Watson is informed and believes, and thereon alleges, that in or
14 around July of 1994, Stauffer signed a consent order with the DTSC requiring
15 Stauffer to investigate and remediate contamination emanating from the Stauffer
16 plant. In or around of January of 1995, Watson received a copy of a fact sheet
17 prepared by the DTSC concerning activities conducted by Stauffer at the Stauffer
18 Plant. The fact sheet affirmatively represented that Stauffer had agreed to
19 undertake field work at the Stauffer site to identify and determine the extent and
20 nature of the contamination caused by Stauffer. The fact sheet indicated that
21 Stauffer would prepare a remedial investigation workplan for the purpose of
22 identifying contaminants on the site. The fact sheet further indicated that
23 following the initial assessment, alternatives for remedial measures would be
24 evaluated in a feasibility study which would be followed by a remedial action plan
25 recommending clean up actions for the site. None of the information supplied to
26 Watson indicated that the Stauffer Plant had contaminated the soil or
27 groundwater beneath the Watson Center. As a result, Watson had no reason to
28

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1 Watson Center and that the Leonard's had undertaken the remediation of that
2 contamination. As a result, Watson had no reason to suspect that the gasoline
3 operations on the Leonard Property had contaminated the Watson Center, until
4 the discoveries made by Watson in 1996, as more fully described below.

5 24. As a result of the discoveries made by Watson in 1996, as
6 described more fully below, Watson is informed and believes, and thereon alleges,
7 that the contamination created beneath the Leonard Property by the gasoline
8 operations thereon, or resulting from the migration of contamination to the
9 Leonard Property from the ARCO Refinery, has now migrated down-gradient
10 beneath the Watson Center and thereby caused or contributed to the contamination
11 of soil and/or groundwater under the Watson Center.

12 THE PIPELINE CORRIDOR

13 25. Watson is informed and believes, and thereon alleges, that
14 Shell has operated as many as 22 pipelines (described below) through the Pipeline
15 Corridor immediately to the west of Building 165. Watson is informed and
16 believes, and thereon alleges, that there are currently seven abandoned Shell
17 pipelines, six idle Shell pipelines and nine active Shell pipelines in the Pipeline
18 Corridor. Watson is informed and believes, and thereon alleges, that Shell has
19 transported a variety of petroleum, petroleum products and other chemicals
20 through the Shell pipelines in the Pipeline Corridor.

21 26. Watson is informed and believes, and thereon alleges, that
22 ARCO has installed as many as three pipelines (described below) in the Pipeline
23 Corridor immediately west of Building 165. Watson is informed and believes, and
24 thereon alleges, that there are currently two abandoned ARCO pipelines and one
25 active ARCO pipeline in the Pipeline Corridor. Watson is informed and believes,
26 and thereon alleges, that ARCO has transported a variety of petroleum, petroleum
27 products and other chemicals through the ARCO pipelines in the Pipeline
28 Corridor.

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1 Carson which are also believed to have caused contamination to groundwater,
2 ARCO became a part of the Carson Regional Groundwater Group (hereinafter the
3 "CRGG Group") organized by the RWQCB for the purpose of assessing and
4 remediating groundwater contamination under the City of Carson.

5 30. In connection with ARCO's participation in the CRGG group
6 and its remediation of the contamination in the groundwater beneath the ARCO
7 Refinery, ARCO has made various reports to the RWQCB regarding the
8 groundwater contamination which ARCO caused at the ARCO Refinery. ARCO
9 delivered copies of portions of some of those reports directly to Watson for the
10 express purpose of informing Watson about ARCO's remediation activities. All of
11 the information delivered by ARCO to Watson to date has indicated that the free-
12 floating pools of contamination in the groundwater caused by the ARCO Refinery
13 exist under the ARCO Refinery but not under the Watson Center, and that the
14 ARCO Refinery had not caused any contamination of the soil under the Watson
15 Center.

16 31. Watson is informed and believes, and thereon alleges, that
17 ARCO is under current order of the RWQCB to design and install a light
18 nonaqueous phase liquid hydrocarbon (LNAPL) recovery and remediation system
19 in order to remediate groundwater contamination emanating from the ARCO
20 Refinery and to create a subsurface barrier which will prevent the westerly
21 migration of contamination in the groundwater from the ARCO Refinery to the
22 Watson Center and properties beyond. RWQCB Abatement Order No. 90-121 dated
23 August 22, 1990 originally obligated ARCO to complete an off-site assessment of
24 the contamination caused by the ARCO Refinery by December 15, 1990, and to
25 begin remediation of off-site dissolved petroleum hydrocarbon contamination by
26 April 30, 1992.

27 32. Watson is informed and believes, and thereon alleges, that
28 pursuant to RWQCB order, ARCO has installed numerous water monitoring

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1 wells on the ARCO refinery in order to sample soil and groundwater beneath the
2 ARCO Refinery for various contaminants and for the purposes of reporting those
3 findings to the RWQCB.

4 33. In December of 1990, ARCO entered into a Temporary License
5 Agreement (hereinafter the "ARCO License Agreement") with Watson to install
6 water monitoring wells on the Watson Center. A true and correct copy of the
7 ARCO License Agreement is attached hereto as Exhibit "A" and is incorporated
8 herein by reference. In pertinent part, the ARCO License Agreement provides
9 that ARCO shall immediately deliver to Watson any data, reports, or analysis
10 pertaining to the installation, sampling or testing of any of the water monitoring
11 wells or any groundwater or soil removed from such wells on the Watson Center,
12 as well as copies of any documentation submitted to any agency in connection with
13 the wells installed on the Watson Center. (See Ex. A, ¶¶3, 10.)

14 34. As a result of the ARCO License Agreement, ARCO became a
15 "renter" of portions of the Watson Center which thereby additionally obligated
16 ARCO, as a matter of statute, to disclose to Watson the existence of any discharge
17 of contamination under the Watson Center which ARCO discovered or reasonably
18 suspected to exist. (See Health & Safety Code §25359.7.)

19 35. Watson is informed and believes, and thereon alleges, that in
20 or around March of 1993, ARCO caused another report to be prepared for
21 submission to the RWQCB entitled: "Phase I Off-Site Migration Barrier Plan,
22 ARCO Los Angeles Refinery." ARCO thereafter supplied a copy of this document
23 to Watson. The document is described in the introduction as a "work plan"
24 presenting the scope of work "to collect data necessary for the design and
25 installation of a light nonaqueous phase liquid hydrocarbon (LNAPL) recovery and
26 groundwater remediation system along the down-gradient western perimeter of
27 the ARCO Los Angeles Refinery (LAR). This system will be designed to function
28 as a barrier to off-site migration of LNAPL." ARCO's Phase I Off-Site Migration

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1 Barrier Plan further indicated that ARCO was conducting aquifer remediation
2 (see Page 3-1) and affirmatively represented that it would undertake
3 implementation of cleanup of the contamination in the groundwater caused by the
4 ARCO Refinery (see Page 3-2). The extent of the water table contamination caused
5 by the ARCO Refinery is represented in a map designated as Figure 4. Figure 4
6 affirmatively represents that no groundwater contamination exists beneath the
7 Watson Center.

8 36. In or around March of 1993, Watson sought a loan for
9 operating capital which was to be secured by liens against several of the buildings
10 located within the Watson Center. In connection with that loan application, the
11 lender required Watson to undertake an environmental investigation of the
12 subsurface conditions below the buildings forming the collateral. As a result of
13 this environmental investigation, the lender required Watson to undertake a
14 supplemental investigation to assess the potential impact of the ARCO Refinery
15 contamination upon the soil and groundwater beneath the Watson Center. In
16 connection with that supplemental investigation and at Watson's request, ARCO
17 supplied information to Watson's environmental consultant which included a
18 report indicating that no contamination had migrated under the Watson Center
19 from the ARCO Refinery, that ARCO had been identified by the RWQCB as the
20 responsible party for contamination in the groundwater adjacent to the Watson
21 Center, and that ARCO was responding to RWQCB orders to investigate, mitigate
22 and remediate contamination from the ARCO Refinery. In reliance upon the
23 information supplied by ARCO, Watson's environmental consultant concluded
24 that the groundwater beneath the Watson Center had not been significantly
25 impacted by the operations at the ARCO Refinery and that no further investigation
26 was warranted. Watson supplied that report to its lender and both Watson and its
27 lender relied upon the conclusions drawn from the information supplied by
28 ARCO. The operating loan was funded in or around October of 1993.

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1 37. On or around August 5, 1994, ARCO affirmatively
2 represented to Watson that it intended to install a groundwater barrier system
3 along the western perimeter of the ARCO Refinery by the second quarter of 1995
4 which would provide containment of groundwater contamination at the ARCO
5 Refinery as well as off-site recovery of groundwater contamination.

6 38. Watson is informed and believes, and thereon alleges, that
7 throughout the relevant period ARCO has repeatedly advised the public (including
8 Watson) that it is remediating all of the contamination caused at the ARCO
9 Refinery, and within the last several years has been doing so under RWQCB
10 supervision.

11 39. By virtue of ARCO's remediation activities supervised by the
12 RWQCB and the information supplied to Watson by ARCO, Watson believed that
13 the contamination under the ARCO Refinery had not migrated beneath the
14 Watson Center. Watson also believed that ARCO had accepted responsibility for
15 and would remediate all of its contamination, whether under the ARCO Refinery
16 or adjacent properties. As a result, no reason existed to suggest that the Watson
17 Center had been damaged by ARCO, that claims existed against ARCO or that
18 ARCO would not voluntarily cleanup after itself in the event contamination
19 ultimately migrated beneath the Watson Center, until the discoveries made by
20 Watson in 1996, as described more fully below.

21 40. Watson is informed and believes, and thereon alleges, that
22 each of the defendants who have undertaken investigation and remediation
23 activities pursuant to order by the RWQCB or DTSC, have held themselves out to
24 the public as accepting responsibility for the contamination caused by that
25 defendant at its respective site, and therefore have led the public and Watson to
26 believe that it would not be necessary to pursue a legal action against each such
27 defendant to compel that defendant to remedy the damages it caused by its
28 respective contamination.

THE 1996 INVESTIGATION

1
2 41. The Watson Center has been developed with buildings which
3 are rented for light industrial purposes. Because of the nature of light industrial
4 occupants, the leases of the buildings on the Watson Center average a term of
5 approximately seven years. As a result, approximately one-seventh of the total
6 number of leases for the buildings at Watson Center terminate every year, and the
7 buildings are thereafter leased again.

8 42. In 1995, Watson undertook to lease one of the buildings located
9 on the Watson Center, most commonly known as "Building 165." In connection
10 with lease negotiations for Building 165, the prospective tenant requested that it be
11 permitted to undertake an environmental site investigation for the purposes of
12 establishing whether identifiable contamination existed within the soil or
13 groundwater beneath Building 165. Pursuant to agreement with Watson, the
14 prospective tenant undertook the requested site assessment which was completed
15 in March of 1995. That investigation revealed the presence of high concentrations
16 of contaminants in the groundwater beneath the Watson Center at the Building
17 165 location.

18 43. As a result of the discovery of contamination beneath Building
19 165, Watson retained an independent environmental consulting firm to further
20 investigate that contamination (hereinafter referred to as the "1996
21 Investigation"). In connection with the 1996 Investigation, Watson reviewed all of
22 the data previously supplied by ARCO with respect to contamination caused by the
23 ARCO Refinery, and caused its environmental consultant to separately review the
24 files of the RWQCB for materials submitted by ARCO with respect to the ARCO
25 Refinery as well as for other information about operations by others on and within
26 the vicinity of the Watson Center. Watson also attempted to identify potential off-
27 site sources which may have caused or contributed to the contamination
28 discovered under the Watson Center. As a result of that 1996 Investigation,

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1 Watson learned for the first time that four off-site properties had likely
2 contaminated the soil and groundwater under the Watson Center: the ARCO
3 Refinery, the Leonard Property, the Stauffer Plant and the Monsanto Plant. As a
4 result of the 1996 Investigation, Watson further learned for the first time that the
5 Shell and ARCO pipelines located in the Pipeline Corridor immediately west of
6 Building 165 are also likely contributors to the contamination discovered under the
7 Watson Center.

8 44. Prior to the 1996 Investigation, Watson was unaware that
9 contamination had migrated beneath the Watson Center from the ARCO Refinery,
10 the Leonard Property, the Stauffer Plant and the Monsanto Plant, and was
11 unaware that the Shell and ARCO pipelines had also contaminated the Watson
12 Center.

13 45. As a result of the 1996 Investigation, Watson also discovered
14 that ARCO withheld and misrepresented information about the contamination
15 emanating from the ARCO Refinery. ARCO had drilled a water monitoring well
16 within a public street running through the Watson Center in the immediate
17 vicinity of Building 165, designated as "MW-543." MW-543 is located immediately
18 adjacent to the three water monitoring wells installed by the prospective tenant at
19 Building 165. Sampling data which ARCO obtained itself in 1990 in connection
20 with the installation of MW-543 and submitted to the RWQCB showed that
21 contamination existed in the groundwater beneath Watson Center at Building 165.
22 According to records filed with the RWQCB by ARCO, MW-543 was installed by
23 ARCO in December of 1990. However, a review of all of the materials supplied by
24 ARCO to Watson showed that although ARCO had advised the RWQCB of the test
25 results from MW-543 in 1990, as part of an off-site assessment report dated
26 December 14, 1990, ARCO never supplied a copy of that report to Watson. Instead,
27 on May 28, 1993, after Watson requested data in connection with the financing
28 describe above, ARCO supplied only tables summarizing the test data for wells

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1 MW-541-545 and MW-565-566. On July 12, 1993 ARCO advised Watson of an error
2 affecting all of the tables provided to Watson on May 28, 1993. As of December 1990,
3 ARCO was obligated to supply all data, reports and information obtained from
4 water wells drilled on Watson Center to Watson under the terms of the ARCO
5 License Agreement as well as by virtue of statute, Health & Safety Code §25359.7.

6 In addition, to the extent that ARCO supplied information to Watson, ARCO was
7 obligated to provide full and complete information and not to provide only partial
8 information which would be misleading to Watson absent the full disclosure of all
9 the information known to ARCO. ARCO breached its various disclosure
10 obligations by entirely withholding the December 14, 1990 off-site assessment
11 report and by failing to supply even an erroneous version of the underlying
12 monitoring well test data to Watson until May 28, 1993.

13 46. In addition, the 1996 Investigation revealed that despite the
14 fact that MW-543 showed the existence of contamination in the groundwater,
15 ARCO did not subsequently sample that test well and prepared annual water
16 monitoring information for the RWQCB without testing MW-543. In fact, a review
17 of the data supplied by ARCO to the RWQCB revealed that of the seventeen water
18 monitoring wells installed by ARCO west of Wilmington Avenue, ARCO has
19 regularly monitored only wells which showed substantially no contamination,
20 and that ARCO has not conducted any further testing of MW-543 since 1990.

21 47. A review of the December 14, 1990, off-site assessment report
22 submitted by ARCO to the RWQCB in 1990 also revealed that ARCO knew there
23 was free-floating contamination in the groundwater under the Watson Center
24 which had emanated from the ARCO Refinery. At no time has ARCO ever
25 informed Watson of the existence of this contamination under the Watson Center
26 and ARCO has provided information and maps to Watson since 1990 which
27 specifically represent that there are no free-floating pools of contamination in the
28 groundwater beneath the Watson Center.

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1 48. The 1996 Investigation has also revealed that ARCO is has
2 changed its position and is now contending that it is not liable for any
3 contamination in the soil and groundwater beneath Watson Center, despite the
4 map contained in the December 14, 1990 off-site assessment report which shows a
5 pool of free-floating contamination to extend westerly from the ARCO Refinery
6 across Wilmington Avenue and under the Watson Center. In addition, the 1996
7 Investigation has also revealed that ARCO has just now completed the installation
8 of the barrier system intended to prevent the migration of groundwater
9 contamination from the ARCO Refinery to Watson Center and properties beyond,
10 and that ARCO is years behind the time table originally set by the RWQCB for the
11 off-site remediation of contamination caused by the ARCO Refinery. Watson is
12 informed and believes, and thereon alleges, that ARCO will be remediating
13 contamination in the groundwater caused by operations at the ARCO Refinery for
14 at least the next 30 to 40 years and has no intention to remediate the groundwater
15 or soil contamination caused by ARCO to the Watson Center.

16 49. Watson is informed and believes, and thereon alleges, that
17 ARCO knowingly and deliberately withheld copies of reports, maps, data and
18 information disclosing the existence of free-floating contamination in the
19 groundwater beneath Watson Center and emanating from the ARCO Refinery for
20 the purpose of concealing such contamination from Watson and so that Watson
21 would not take action to protect its property interests from the damages caused by
22 ARCO.

23 50. Watson has been damaged by ARCO's concealment of this
24 information. As a result of the contamination discovered beneath Building 165,
25 the prospective tenant declined to lease Building 165. Watson ultimately leased the
26 Building 165 approximately one year later, after losing the prospective tenancy
27 described above. However, Watson disclosed the existence of the discovered
28 contamination to all prospective tenants interested in leasing Building 165 and

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1 was only able to lease Building 165 by providing significant concessions to its
2 tenant directly attributable to the presence of the contamination. Without such
3 concessions, no tenant could be found to rent Building 165. The concessions would
4 not have been required had the contamination not been present under the Watson
5 Center.

6 51. Since the discovery of contamination beneath Building 165,
7 Watson has also attempted to lease other buildings on the Watson Center. As a
8 result of the disclosure of the contamination, Watson has been unable to enter into
9 any new leases without providing significant concessions to the tenants as a result
10 of the contamination and Watson has been further damaged in that the average
11 length of time in which Watson was previously able to lease buildings at the
12 Watson Center upon the expiration of a previous lease term has now increased
13 due to the presence of the contamination.

14 52. In addition to leasing the buildings on the Watson Center,
15 Watson utilizes the Watson Center as collateral for the purposes of obtaining
16 operating capital. As a result of the discovery of contamination beneath the
17 Watson Center, the value of the Watson Center has been diminished, which in
18 turn, has adversely impacted Watson's ability to obtain operating capital, and has
19 and will continue to cause the loss of profits and increase costs to Watson,
20 including, but not limited to, increased costs of financing.

21 53. In addition, ARCO's failure to disclose all of the information
22 known to ARCO about the contamination under the Watson Center prevented
23 Watson from earlier asserting its rights and initiating a cleanup of the
24 contamination to levels that would permit the Watson Center to be leased without
25 all of the same substantial concessions required by tenants as a result of the
26 current presence of the contamination. In addition, because groundwater
27 contamination migrates over time, the extent of the contamination under Watson
28 Center has been increasing throughout the period of time during which ARCO

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1 has concealed the existence of such contamination thereby increasing both the
2 time and costs of remediating the same. As long as contamination exists in the
3 soil and/or groundwater under the Watson Center the value of Watson Center will
4 be diminished and the ability to lease, finance or sell the Watson Center will be
5 adversely affected.

6 FIRST CAUSE OF ACTION

7 (Permanent Trespass Against All Defendants)

8 54. Watson incorporates by reference the allegations of
9 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

10 55. Defendants, and each of them, unlawfully caused or
11 permitted environmental contaminants to be released, discharged or left to
12 migrate through or into the soil or groundwater under the Watson Center, all of
13 which continue to migrate through and under the Watson Center. Watson is
14 informed and believes, and thereon alleges, that by virtue of law, defendants did
15 not have the right to release or discharge such contamination when the
16 discharges occurred. Watson is further informed and believes, and thereon
17 alleges, that it was unlawful to leave such contamination in the ground and the
18 groundwater beneath the Watson Center. At no time did Watson consent to the
19 placement of contamination on or in the soil or groundwater under the Watson
20 Center. The creation of this contamination by the defendants in the soil and
21 groundwater under the Watson Center violated and continues to violate Watson's
22 exclusive right of possession to the Watson Center and interferes with Watson's
23 use and enjoyment of the Watson Center.

24 56. Watson is informed and believes, and thereon alleges, that the
25 trespass created by this environmental contamination of the Watson Center is
26 permanent in nature in that it either cannot be completely abated or will take so
27 many years to abate as to affect a permanent diminution in the property value of
28 the Watson Center. As a result, defendants, and each of them, have created or are

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1 responsible for a condition on the Watson Center that constitutes a permanent
2 trespass.

3 57. Watson has been damaged by this permanent trespass in an
4 amount in excess of the jurisdiction of this Court. The value of the property has
5 been permanently diminished, the reasonable rental value for depositing such
6 contamination on the Watson Center has been lost, past and prospective profits
7 have and will be lost, operating expenses for the Watson Center will be increased,
8 costs will be incurred to minimize future damages, and significant testing costs
9 will be incurred in connection with prospective leasing of the Watson Center.
10 Watson is further entitled to recover the value of the wrongful occupation to each
11 defendant, and any other damages permitted by law, all in an amount to be proven
12 at trial.

13 58. Watson is informed and believes, and thereon alleges, that
14 defendants, and each of them, knew that unlawful discharges of environmental
15 contaminants had occurred which would likely damage the Watson Center and
16 the groundwater beneath the Watson Center, knew that readily available methods
17 existed to remedy, terminate and/or mitigate such discharges, knew that if such
18 discharges were not remediated additional damage would occur as a result of
19 continued migration of environmental contamination through the soil and
20 groundwater beneath the Watson Center, but nonetheless failed to remediate,
21 terminate or mitigate such environmental contamination. Watson is informed
22 and believes, and thereon alleges, that defendants, and each of them, knew or had
23 reason to know that the operations which they conducted at their respective
24 businesses in the vicinity of the Watson Center were causing environmental
25 contamination which would likely damage the Watson Center and that such
26 action nevertheless continued in willful and conscious disregard of the law, the
27 rights of Watson and the safety of the waters of the State and all persons on or
28 using water from beneath the Watson Center. As a result, Watson is entitled to

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1 recover punitive damages from defendants, and each of them, in an amount to be
2 proven at trial.

3 SECOND CAUSE OF ACTION

4 (Continuing Trespass Against All Defendants)

5 59. Watson incorporates by reference the allegations of
6 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

7 60. Defendants, and each of them, unlawfully caused or
8 permitted environmental contaminants to be released, discharged or left to
9 migrate through or into the soil or groundwater under the Watson Center, all of
10 which continue to migrate through and under the Watson Center. Watson is
11 informed and believes, and thereon alleges, that by virtue of law, defendants did
12 not have the right to release or discharge such contamination when the
13 discharges occurred. Watson is further informed and believes, and thereon
14 alleges, that it was unlawful to leave such contamination in the ground and the
15 groundwater beneath the Watson Center. At no time did Watson consent to the
16 placement of contamination on or in the soil or groundwater under the Watson
17 Center. The creation of this contamination by the defendants in the soil and
18 groundwater under the Watson Center violated and continues to violate Watson's
19 exclusive right of possession to the Watson Center and interferes with Watson's
20 use and enjoyment of the Watson Center.

21 61. Watson is informed and believes, and thereon alleges, that the
22 above described contamination constitutes a trespass which is continuing in
23 nature in that the contamination is abatable and can be remediated using existing
24 technology and customary environmental practices undertaken at a reasonable
25 cost.

26 62. Watson has been damaged by this continuing trespass in an
27 amount in excess of the jurisdiction of this Court in costs to assess, evaluate and
28 test the conditions resulting from the trespass and Watson will continue to incur

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1 expenses to assess, evaluate, test, and to repair, remediate and restore the Watson
2 Center to its original condition. Watson has been further damaged in that the
3 reasonable rental value for depositing such contamination on the Watson Center
4 has been lost, past and prospective profits have and will be lost, operating
5 expenses for the Watson Center will be increased, costs will be incurred to
6 minimize future damages, and significant testing costs will be incurred in
7 connection with prospective leasing of the Watson Center. Watson is further
8 entitled to recover the value of the wrongful occupation to each defendant, and any
9 other damages permitted by law, all in an amount to be proven at trial.

10 63. Watson is informed and believes, and thereon alleges, that
11 defendants, and each of them, knew that unlawful discharges of environmental
12 contaminants had occurred which would likely damage the Watson Center and
13 the groundwater beneath the Watson Center, knew that readily available methods
14 existed to remedy, terminate and/or mitigate such discharges, knew that if such
15 discharges were not remediated additional damage would occur as a result of
16 continued migration of environmental contamination through the soil and
17 groundwater beneath the Watson Center, but nonetheless failed to remediate,
18 terminate or mitigate such environmental contamination. Watson is informed
19 and believes, and thereon alleges, that defendants, and each of them, knew or had
20 reason to know that the operations which they conducted at their respective
21 businesses in the vicinity of the Watson Center were causing environmental
22 contamination which would likely damage the Watson Center and that such
23 action nevertheless continued in willful and conscious disregard of the law, the
24 rights of Watson and the safety of the waters of the State and all persons on or
25 using water from beneath the Watson Center. As a result, Watson is entitled to
26 recover punitive damages from defendants, and each of them, in an amount to be
27 proven at trial.

28

1 THIRD CAUSE OF ACTION

2 (Permanent Private Nuisance Against All Defendants)

3 64. Watson incorporates by reference the allegations of
4 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

5 65. Defendants, and each of them, unlawfully caused or
6 permitted environmental contaminants to be released, discharged or left to
7 migrate through or into the soil or groundwater under the Watson Center, all of
8 which continue to migrate through and under the Watson Center. Watson is
9 informed and believes, and thereon alleges, that by virtue of law, defendants did
10 not have the right to release or discharge such contamination when the
11 discharges occurred. Watson is further informed and believes, and thereon
12 alleges, that it was unlawful to leave such contamination in the ground and the
13 groundwater beneath the Watson Center. At no time did Watson consent to the
14 placement of contamination on or in the soil or groundwater under the Watson
15 Center. The creation of this contamination by the defendants in the soil and
16 groundwater under the Watson Center violated and continues to violate Watson's
17 exclusive right of possession to the Watson Center and interferes with Watson's
18 use and enjoyment of the Watson Center.

19 66. Watson is informed and believes, and thereon alleges, that the
20 nuisance created by this environmental contamination of the Watson Center is
21 permanent in nature in that it either cannot be completely abated or will take so
22 many years to abate as to affect a permanent diminution in the property value of
23 the Watson Center. As a result, defendants, and each of them, have created or are
24 responsible for a condition on the Watson Center that constitutes a permanent
25 nuisance.

26 67. Watson has been damaged by this permanent trespass in an
27 amount in excess of the jurisdiction of this Court. The value of the property has
28 been permanently diminished, the reasonable rental value for depositing such

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1 contamination on the Watson Center has been lost, past and prospective profits
2 have and will be lost, operating expenses for the Watson Center will be increased,
3 costs will be incurred to minimize future damages, and significant testing costs
4 will be incurred in connection with prospective leasing of the Watson Center.
5 Watson is further entitled to recover the value of the wrongful occupation to each
6 defendant, and any other damages permitted by law, all in an amount to be proven
7 at trial.

8 68. Watson is informed and believes, and thereon alleges, that
9 defendants, and each of them, knew that unlawful discharges of environmental
10 contaminants had occurred which would likely damage the Watson Center and
11 the groundwater beneath the Watson Center, knew that readily available methods
12 existed to remedy, terminate and/or mitigate such discharges, knew that if such
13 discharges were not remediated additional damage would occur as a result of
14 continued migration of environmental contamination through the soil and
15 groundwater beneath the Watson Center, but nonetheless failed to remediate,
16 terminate or mitigate such environmental contamination. Watson is informed
17 and believes, and thereon alleges, that defendants, and each of them, knew or had
18 reason to know that the operations which they conducted at their respective
19 businesses in the vicinity of the Watson Center were causing environmental
20 contamination which would likely damage the Watson Center and that such
21 action nevertheless continued in willful and conscious disregard of the law, the
22 rights of Watson and the safety of the waters of the State and all persons on or
23 using water from beneath the Watson Center. As a result, Watson is entitled to
24 recover punitive damages from defendants, and each of them, in an amount to be
25 proven at trial.

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27
28

FOURTH CAUSE OF ACTION

(Permanent Public Nuisance Against All Defendants)

69. Watson incorporates by reference the allegations of Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

70. Defendants, and each of them, unlawfully caused or permitted environmental contaminants to be released, discharged or left to migrate through or into the soil or groundwater under the Watson Center, all of which continue to migrate through and under the Watson Center. Watson is informed and believes, and thereon alleges, that by virtue of law, defendants did not have the right to release or discharge such contamination when the discharges occurred. Watson is further informed and believes, and thereon alleges, that it was unlawful to leave such contamination in the ground and the groundwater beneath the Watson Center. At no time did Watson consent to the placement of contamination on or in the soil or groundwater under the Watson Center. The creation of this contamination by the defendants in the soil and groundwater under the Watson Center violated and continues to violate Watson's exclusive right of possession to the Watson Center and interferes with Watson's use and enjoyment of the Watson Center.

71. Watson is informed and believes, and thereon alleges, that the defendants have created a public nuisance which has injured the waters of the State. Watson has been separately damaged by this public nuisance, beyond the damage suffered by the public at large, in that the contamination extending under the Watson Center has caused Watson to lose prospective tenants, has impaired Watson's ability to lease the buildings on the Watson Center, has compelled Watson to make rental concessions in order to lease buildings on the Watson Center, has caused Watson to lose profits and has impaired the value of the Watson Center for use as collateral.

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1 72. Watson is informed and believes, and thereon alleges, that the
2 nuisance created by this environmental contamination of the Watson Center is
3 permanent in nature in that it either cannot be completely abated or will take so
4 many years to abate as to affect a permanent diminution in the property value of
5 the Watson Center. As a result, defendants, and each of them, have created or are
6 responsible for a condition on the Watson Center that constitutes a permanent
7 nuisance.

8 73. Watson has been damaged by this permanent trespass in an
9 amount in excess of the jurisdiction of this Court. The value of the property has
10 been permanently diminished, the reasonable rental value for depositing such
11 contamination on the Watson Center has been lost, past and prospective profits
12 have and will be lost, operating expenses for the Watson Center will be increased,
13 costs will be incurred to minimize future damages, and significant testing costs
14 will be incurred in connection with prospective leasing of the Watson Center.
15 Watson is further entitled to recover the value of the wrongful occupation to each
16 defendant, and any other damages permitted by law, all in an amount to be proven
17 at trial.

18 74. Watson is informed and believes, and thereon alleges, that
19 defendants, and each of them, knew that unlawful discharges of environmental
20 contaminants had occurred which would likely damage the Watson Center and
21 the groundwater beneath the Watson Center, knew that readily available methods
22 existed to remedy, terminate and/or mitigate such discharges, knew that if such
23 discharges were not remediated additional damage would occur as a result of
24 continued migration of environmental contamination through the soil and
25 groundwater beneath the Watson Center, but nonetheless failed to remediate,
26 terminate or mitigate such environmental contamination. Watson is informed
27 and believes, and thereon alleges, that defendants, and each of them, knew or had
28 reason to know that the operations which they conducted at their respective

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1 businesses in the vicinity of the Watson Center were causing environmental
2 contamination which would likely damage the Watson Center and that such
3 action nevertheless continued in willful and conscious disregard of the law, the
4 rights of Watson and the safety of the waters of the State and all persons on or
5 using water from beneath the Watson Center. As a result, Watson is entitled to
6 recover punitive damages from defendants, and each of them, in an amount to be
7 proven at trial.

8 FIFTH CAUSE OF ACTION

9 (Continuing Private Nuisance Against All Defendants)

10 75. Watson incorporates by reference the allegations of
11 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

12 76. Defendants, and each of them, unlawfully caused or
13 permitted environmental contaminants to be released, discharged or left to
14 migrate through or into the soil or groundwater under the Watson Center, all of
15 which continue to migrate through and under the Watson Center. Watson is
16 informed and believes, and thereon alleges, that by virtue of law, defendants did
17 not have the right to release or discharge such contamination when the
18 discharges occurred. Watson is further informed and believes, and thereon
19 alleges, that it was unlawful to leave such contamination in the ground and the
20 groundwater beneath the Watson Center. At no time did Watson consent to the
21 placement of contamination on or in the soil or groundwater under the Watson
22 Center. The creation of this contamination by the defendants in the soil and
23 groundwater under the Watson Center violated and continues to violate Watson's
24 exclusive right of possession to the Watson Center and interferes with Watson's
25 use and enjoyment of the Watson Center.

26 77. Watson is informed and believes, and thereon alleges, that the
27 nuisance created and maintained by the defendants is continuing in nature in
28 that the contamination is abatable and can be remedied using the existing

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1 technology and customary environmental practices undertaken at a reasonable
2 cost. As a result, defendants, and each of them, have created and are responsible
3 for a condition on or under the Watson Center that constitutes a continuing
4 private nuisance.

5 78. Watson has been damaged by this continuing nuisance in an
6 amount in excess of the jurisdiction of this Court in costs to assess, evaluate and
7 test the conditions resulting from the nuisance and will continue to incur
8 expenses to assess, evaluate, test and to repair and restore the Watson Center to
9 its original condition. Watson has been further damaged in that the reasonable
10 rental value for depositing such contamination on the Watson Center has been
11 lost, past and prospective profits have and will be lost, operating expenses for the
12 Watson Center will be increased, costs will be incurred to minimize future
13 damages, and significant testing costs will be incurred in connection with
14 prospective leasing of the Watson Center. Watson is further entitled to recover the
15 value of the wrongful occupation to each defendant, and any other damages
16 permitted by law, all in an amount to be proven at trial.

17 79. Watson is informed and believes, and thereon alleges, that
18 defendants, and each of them, knew that unlawful discharges of environmental
19 contaminants had occurred which would likely damage the Watson Center and
20 the groundwater beneath the Watson Center, knew that readily available methods
21 existed to remedy, terminate and/or mitigate such discharges, knew that if such
22 discharges were not remediated additional damage would occur as a result of
23 continued migration of environmental contamination through the soil and
24 groundwater beneath the Watson Center, but nonetheless failed to remediate,
25 terminate or mitigate such environmental contamination. Watson is informed
26 and believes, and thereon alleges, that defendants, and each of them, knew or had
27 reason to know that the operations which they conducted at their respective
28 businesses in the vicinity of the Watson Center were causing environmental

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1 contamination which would likely damage the Watson Center and that such
2 action nevertheless continued in willful and conscious disregard of the law, the
3 rights of Watson and the safety of the waters of the State and all persons on or
4 using water from beneath the Watson Center. As a result, Watson is entitled to
5 recover punitive damages from defendants, and each of them, in an amount to be
6 proven at trial.

7 SIXTH CAUSE OF ACTION

8 (Continuing Public Nuisance Against All Defendants)

9 80. Watson incorporates by reference the allegations of
10 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

11 81. Defendants, and each of them, unlawfully caused or
12 permitted environmental contaminants to be released, discharged or left to
13 migrate through or into the soil or groundwater under the Watson Center, all of
14 which continue to migrate through and under the Watson Center. Watson is
15 informed and believes, and thereon alleges, that by virtue of law, defendants did
16 not have the right to release or discharge such contamination when the
17 discharges occurred. Watson is further informed and believes, and thereon
18 alleges, that it was unlawful to leave such contamination in the ground and the
19 groundwater beneath the Watson Center. At no time did Watson consent to the
20 placement of contamination on or in the soil or groundwater under the Watson
21 Center. The creation of this contamination by the defendants in the soil and
22 groundwater under the Watson Center violated and continues to violate Watson's
23 exclusive right of possession to the Watson Center and interferes with Watson's
24 use and enjoyment of the Watson Center.

25 82. Watson is informed and believes, and thereon alleges, that the
26 defendants have created a public nuisance which has injured the waters of the
27 State. Watson has been separately damaged by this public nuisance, beyond the
28 damage suffered by the public at large, in that the contamination extending under

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1 the Watson Center has caused Watson to lose prospective tenants, has impaired
2 Watson's ability to lease the buildings on the Watson Center, has compelled
3 Watson to make rental concessions in order to lease buildings on the Watson
4 Center, has caused Watson to lose profits and has impaired the value of the
5 Watson Center for use as collateral.

6 83. Watson is informed and believes, and thereon alleges, that the
7 nuisance created and maintained by the defendants is continuing in nature in
8 that the contamination is abatable and can be remedied using the existing
9 technology and customary environmental practices undertaken at a reasonable
10 cost. As a result, defendants, and each of them, have created and are responsible
11 for a condition on or under the Watson Center that constitutes a continuing public
12 nuisance.

13 84. Watson has been damaged by this continuing nuisance in an
14 amount in excess of the jurisdiction of this Court in costs to assess, evaluate and
15 test the conditions resulting from the nuisance and will continue to incur
16 expenses to assess, evaluate, test and to repair and restore the Watson Center to
17 its original condition. Watson has been further damaged in that the reasonable
18 rental value for depositing such contamination on the Watson Center has been
19 lost, past and prospective profits have and will be lost, operating expenses for the
20 Watson Center will be increased, costs will be incurred to minimize future
21 damages, and significant testing costs will be incurred in connection with
22 prospective leasing of the Watson Center. Watson is further entitled to recover the
23 value of the wrongful occupation to each defendant, and any other damages
24 permitted by law, all in an amount to be proven at trial.

25 85. Watson is informed and believes, and thereon alleges, that
26 defendants, and each of them, knew that unlawful discharges of environmental
27 contaminants had occurred which would likely damage the Watson Center and
28 the groundwater beneath the Watson Center, knew that readily available methods

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1 existed to remedy, terminate and/or mitigate such discharges, knew that if such
2 discharges were not remediated additional damage would occur as a result of
3 continued migration of environmental contamination through the soil and
4 groundwater beneath the Watson Center, but nonetheless failed to remediate,
5 terminate or mitigate such environmental contamination. Watson is informed
6 and believes, and thereon alleges, that defendants, and each of them, knew or had
7 reason to know that the operations which they conducted at their respective
8 businesses in the vicinity of the Watson Center were causing environmental
9 contamination which would likely damage the Watson Center and that such
10 action nevertheless continued in willful and conscious disregard of the law, the
11 rights of Watson and the safety of the waters of the State and all persons on or
12 using water from beneath the Watson Center. As a result, Watson is entitled to
13 recover punitive damages from defendants, and each of them, in an amount to be
14 proven at trial.

15 SEVENTH CAUSE OF ACTION

16 (Fraud Against Defendant ARCO)

17 86. Watson incorporates by reference the allegations of
18 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

19 87. Defendant ARCO was under a duty to Watson to disclose the
20 existence of any contamination which ARCO knew or reasonably suspected to
21 exist in the soil or groundwater beneath the Watson Center. Despite the fact that
22 ARCO ascertained the existence of such contamination by no later than 1990, and
23 knew or should have known that Watson was not likely to discover the presence of
24 the contamination, ARCO concealed the existence of such contamination from
25 Watson and instead provided reports and data to Watson which specifically
26 misrepresenting subsurface contamination to be contained under the ARCO
27 Refinery site and not under Watson Center.

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1 88. Watson is informed and believes, and thereon alleges, that
2 ARCO deliberately withheld information about the contamination in the soil and
3 groundwater beneath the Watson Center and misrepresented the location of the
4 contamination for the purpose of preventing Watson from ascertaining the true
5 facts and acting to protect its rights with respect to the Watson Center.

6 ~~89. By virtue of the ARCO License Agreement and ARCO's~~
7 ~~obligations at law, Watson relied upon ARCO to supply information concerning~~
8 ~~the contamination of the Watson Center and trusted and accepted the information~~
9 ~~provided by ARCO to Watson as being wholly accurate and including all~~
10 ~~information known to ARCO about potential contamination under Watson Center.~~
11 ~~As a result of the affirmative information supplied by ARCO and the information~~
12 ~~concealed by ARCO, Watson was unaware of the existence of the contamination~~
13 ~~under the Watson Center, did not undertake steps to investigate or remediate that~~
14 ~~contamination, could not avoid the loss of profits attributable to a delay in property~~
15 ~~rentals and the loss of prospective tenants, and did not initiate any legal action to~~
16 ~~protect its property rights concerning the Watson Center.~~

17 90. Watson has been damaged as a result of the affirmative
18 misrepresentation and concealment of material information from Watson by
19 ARCO in that Watson has lost the opportunity to lease portions of the Watson
20 Center, and the Watson Center has been continually damaged during the
21 intervening period as a result of the migration of the subject contamination and
22 because Watson has been prevented from earlier initiating legal action to protect
23 its rights.

24 91. Watson is informed and believes, and thereon alleges, that the
25 affirmative misrepresentation and concealment of the contamination in the soil
26 and groundwater under the Watson Center was undertaken by ARCO with the
27 intent that Watson rely thereon and refrain from taking legal action to protect its
28 rights.

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1 96. By virtue of law ARCO was obligated to immediately disclose
2 the findings of this investigation to Watson. ARCO has failed to make the
3 necessary statutory disclosure. As a result of the affirmative information
4 supplied by ARCO and the information concealed by ARCO, Watson was unaware
5 of the existence of the contamination under the Watson Center, did not undertake
6 steps to investigate or remediate that contamination, could not avoid the loss of
7 profits attributable to a delay in property rentals and the loss of prospective
8 tenants, and did not initiate any legal action to protect its property rights
9 concerning the Watson Center.

10 97. Watson has been further damaged as a result of ARCO's
11 failure to comply with Health and Safety Code §25359.7 in that Watson has lost the
12 opportunity to lease portions of the Watson Center, and the Watson Center has
13 been continually damaged during the intervening period as a result of the
14 migration of the subject contamination and because Watson has been prevented
15 from earlier initiating legal action to protect its rights.

16 98. Pursuant to Health & Safety Code §25359.7(b)(1), Watson is
17 entitled to recover all of the damages attributable to such delay as well as any other
18 remedies available at law.

19 NINTH CAUSE OF ACTION

20 (Equitable Indemnity Against All Defendants)

21 99. Watson incorporates by reference the allegations of
22 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

23 100. By virtue of its ownership interest in the Watson Center,
24 Watson has incurred and will continue to incur damages in excess of the
25 jurisdiction of this Court to assess, evaluate, test, remove and remediate the
26 contamination in the soil and groundwater under the Watson Center. In
27 addition, Watson has suffered and will continue to suffer lost profits and other
28 costs to minimize future damages.

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1 101. At no time did Watson consent to or agree to be responsible for
2 the contamination on and under the Watson Center. At no time did Watson or its
3 tenants contribute or cause the subject contamination in issue.

4 102. Watson is informed and believes, and thereon alleges, that
5 defendants, and each of them, were responsible for and deliberately and
6 intentionally caused or permitted the unlawful release and discharge of the
7 subject contaminants and permitted their continuous leaching and migrating
8 through and under the Watson Center. Watson is further informed and believes,
9 and on that basis alleges, that the defendants, and each of them, knew that the
10 releases and discharges of the subject contaminants were unlawful when they
11 occurred, that their actions would likely damage the Watson Center and the
12 groundwater beneath the Watson Center, that readily available methods existed to
13 avoid, remediate or mitigate the discharges or the migration of such discharges,
14 but the defendants nevertheless knowingly and intentionally permitted the release
15 and discharges to occur and left them concealed beneath the surface to migrate
16 through and into the soil and groundwater under the Watson Center.

17 103. As a result of the foregoing, defendants, and each of them,
18 have unfairly and unjustly avoided the cost of their wrongful and unlawful
19 conduct at the expense of Watson and, therefore, in equity, the defendants, and
20 each of them, should be made to indemnify Watson for the costs incurred as a
21 result of the wrongs of the defendant, all in an amount to be proven at trial.

22 TENTH CAUSE OF ACTION

23 (Unjust Enrichment Against All Defendants)

24 104. Watson incorporates by reference the allegations of
25 Paragraphs 1 through 53 above, inclusive, as though set forth here in full.

26 105. At no time did Watson agree to be responsible for the
27 contamination on and under the Watson Center. At no time did Watson or its
28 tenants contribute or cause the contamination in issue.

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1 alleges, that defendants, on the other hand, contend that they are not responsible
2 to Watson for such damages:

3 110. Watson desires the declaration of the Court affixing and
4 determining the rights and liabilities of the parties with respect to the subject
5 contamination and the damages resulting therefrom, including both past
6 damages and future damages caused by the presence of the contamination in the
7 soil and groundwater under the Watson Center.

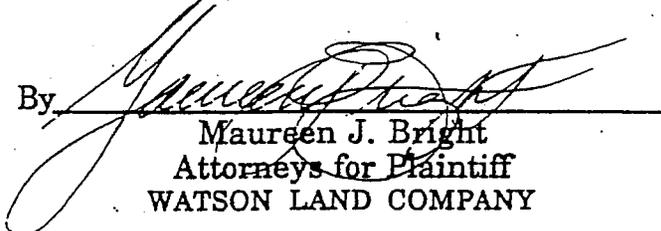
8 PRAYER FOR RELIEF

9 WHEREFORE, Watson Land Company prays for relief as follows:

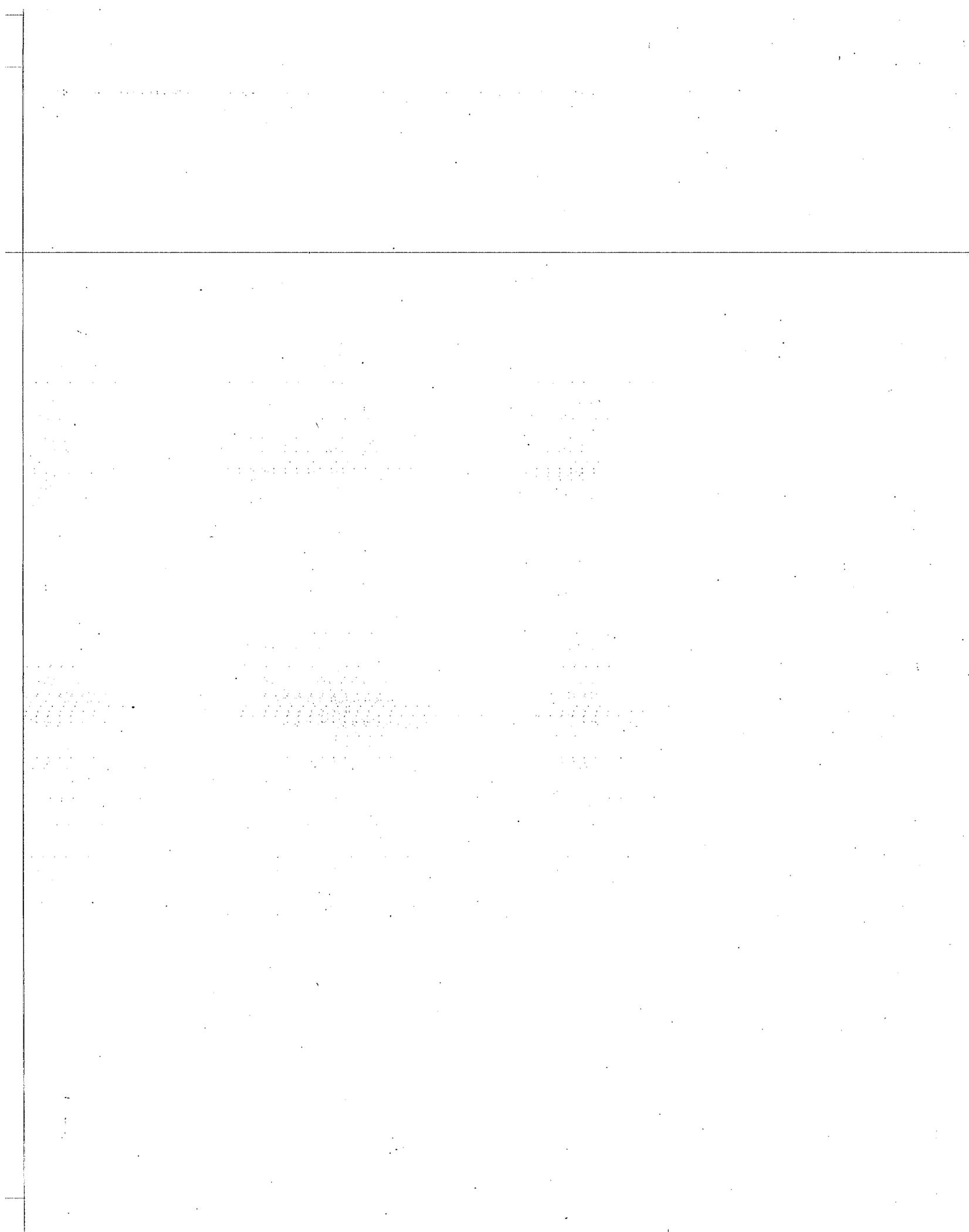
- 10 1. For damages in an amount to be proven at trial, as applicable
11 to the cause of action proven;
- 12 2. For interest thereon;
- 13 3. For punitive damages, as applicable;
- 14 4. For attorneys' fees, as applicable;
- 15 5. For a declaration by the Court determining and affixing the
16 rights and liabilities of the parties with respect to the Watson
17 Center and in the groundwater beneath the Watson Center;
- 18 6. For its costs of suit incurred herein; and
- 19 7. For such other and further relief as the Court may deem just
20 and proper.

21
22 BRIGHT AND BROWN

23
24
25 Dated: May 16, 1996

26 By 

27 Maureen J. Bright
28 Attorneys for Plaintiff
WATSON LAND COMPANY



TEMPORARY LICENSE AGREEMENT BETWEEN
WATSON LAND COMPANY AND ARCO PRODUCTS COMPANY

THIS LICENSE AGREEMENT is made as of December, 1990 between Watson Land Company, hereinafter referred to as "Licensor" and ARCO Products Company, a division of Atlantic Richfield Company, hereinafter referred to as "Licensee."

1. RECITALS

- 1.1 Licensor owns certain real property adjoining the west side of Wilmington Avenue between Sepulveda Boulevard on the South and WatsonCenter Road on the North in the City of Carson, California (the "Property").
- 1.2 Licensee desires to drill four groundwater monitoring wells ("Wells") on a portion of the Property and to perform other work on the Property as required by applicable environmental laws and regulations or required by order of regulatory agencies ("Work") at the precise locations shown on Exhibit "A" attached hereto and made a part hereof.
- 1.3 The parties desire to enter into this License Agreement to allow Licensee to install said Wells on the Property and to give access to the Property to Licensee or its representatives for the purpose of performing Work authorized by this License Agreement.

2. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree to and with each other as follows:

3. TERMS

- 3.1 Licensee or its representatives may drill, use, backfill and construct four Wells on the Property at its sole cost and expense. Additional wells required by a regulatory agency may be installed pursuant to the terms of this License Agreement with the prior written approval of Licensor. Licensee or its representatives may enter onto the Property for the purpose of performing the Work authorized by this License Agreement. Licensor hereby authorizes Licensee or its representatives to release any and all analytical geotechnical data and site assessment information obtained during such Work to applicable environmental agencies, and Licensee covenants and agrees that it will otherwise hold all such data and information in strict confidence and will not release any thereof to any other third party without Licensor's consent in writing.

- 3.2 Licensee agrees not to permit any liens to stand against the Property for Work done or materials furnished to Licensee, and Licensee agrees to save, defend, indemnify and hold Licensor harmless from and against any such liens for Work performed under this License Agreement and all costs and expenses related thereto including attorneys' fees. If any such lien is recorded against the Property Licensor may require Licensee to furnish to Licensor a good and sufficient Lien Release Bond in an amount at least one and a half times the amount of the lien and issued by a bonding company acceptable to Licensor.
- 3.3 If the surface of the Property or any improvements thereon shall be disturbed by the emplacement of Licensee's Wells, then said surface or improvements shall be promptly restored by Licensee to their condition just prior to such disturbance.
- 3.4 Specifically as determined and required by Licensor in writing Licensee shall, after the Wells are no longer useful to the investigation or upon termination of this License, whichever first occurs, either (i) backfill and/or close out such Wells according to applicable standards and shall remove all well casing and other related equipment and other personal property from the Property and restore the Property to its original condition that existed just prior to emplacement of each Well or (ii) leave one or more of said Wells in place in good operating condition with the well casing and other related equipment and personal property in place and otherwise back fill and/or close out such other wells and restore the Property as required above.
- 3.5 Licensee agrees to indemnify, defend, and save Licensor harmless from all liability, damage, expense, causes of action, suits, claims, judgments, loss or injuries including reasonable attorneys fees, resulting from injuries to persons or damage to the Property or to property on the Property or on adjoining streets and sidewalks which arise out of the act, failure to act, or negligence of Licensee, its agents, employees, invitees, or guests in performing Work under this License Agreement, including without limitation any environmental or other damage to the Property or other real property resulting from the penetration of any Well into the subsurface of the Property.
- 3.6 This License Agreement may be terminated by either party upon thirty (30) days' prior written notice, except where the Work contemplated by this License Agreement is not completed and is required under order of a regulatory agency in which event termination shall be effective when the work is completed or the order is no longer applicable, whichever first occurs.

- 3.7 Licensee shall construct, maintain, operate, locate, inspect and test the Wells in a manner so as not to interfere with Licensor's and its tenants' use and occupation of the Property as further specified in paragraph 3.8 below.
- 3.8 Licensee represents that the location, construction, maintenance and use of each Well as indicated in Exhibit "A" does not and will not in any way interfere with, ingress or egress to or from the Property either on foot or by vehicle or with the use of any structure located on the Property, and ~~will only minimally interfere with the use of any parking area on the Property during installation of a Well and periodic taking of samples therefrom.~~ If a Well is drilled through any improved surface such as cement or asphalt the specifications for the replacement cement or asphalt shall be as specified by Licensor in each case.
- 3.9 Licensor makes no representation, warranty, covenant or agreement regarding the existence of prior or superior third party rights or privileges in, on or to the various portions of the Property into which Licensee desires to drill said Wells, including without limitation, easements, licenses and rights of way and Licensee shall have the sole obligation and responsibility for determining the existence of any thereof and obtaining any necessary consents in connection therewith.
- 3.10 Licensee shall deliver immediately to Licensor, when available to Licensee, the following information regardless of whether in oral or in documentary form:
- a) any data, reports, figures, computations, analysis or other information pertaining to:
 - i) installation, development, sampling, investigation, testing or maintenance of the Wells;
 - ii) analysis of water or soil samples taken from any such Well;
 - iii) reports or documentation submitted, filed or otherwise provided to any environmental or other agency having jurisdiction over the matter pertaining to any Well or information referred to in this paragraph 3.10.
- 3.11 Each Well shall be installed by first drilling an 8 to 11-inch boring and then constructing a Well inside the boring. The boring shall be advanced using a diesel-powered, truck-mounted drilling rig with a three person crew. The boring shall be drilled using continuous flight hollow-stem auger equipment. Soil samples will be collected at periodic depth intervals and submitted to a state certified independent laboratory for analysis.

After soil sampling is completed and the boring has reached a total depth of approximately twenty-feet below the surface of the water table, the hole will be enlarged using a larger set of augers which permit the construction of the monitoring well. The well casing is installed through the center of the hollow-stem augers before the augers are pulled out of the ground.

The Well shall be constructed using flush-jointed 4-inch diameter Schedule 40 Polyvinyl Chloride (PVC) casing. A portion of the well casing shall be slotted to allow groundwater to flow into the Well. The slotted portion of the casing shall be surrounded by a gravel pack to prevent the Well from filling up with fine-grained soils. Immediately above the gravel pack a bentonite seal shall be placed which seals off the slotted zone from all upper zones which might contain moisture. The well boring shall then be cemented from the bentonite seal up to the ground surface where a flush-mount (ground level) protective cover shall be installed to protect the Well from damage by motorists (Exhibit "B"). All soil cuttings produced by the drilling activity shall be placed in 55 gallon drums and removed from the site. If subsurface conditions dictate, other materials and construction methods may be substituted in compliance with standards in California Well Standards Bulletin 74-90 (Department of Water Resources).

After the Well is completed, it shall be developed by pumping water to clean up any fine-grained soils which may have entered into the Well during construction. The water produced by development shall also be placed into 55 gallon drums and removed from the site.

The Wells will be used solely for periodic groundwater sampling to determine water quality. Licensee shall conduct this sampling program not more frequently than quarterly throughout the year. Groundwater samples will be analyzed by a state certified laboratory for the following constituents:

- Petroleum Hydrocarbons
- Aromatic Volatile Organics:
 - Benzene
 - Toluene
 - Ethylbenzene
 - Xylene
- Conductivity
- Chloride
- pH
- Phenolics
- Sulfate
- Arsenic
- Lead
- Mercury
- Nickel

Zinc

Other laboratory analyses may be performed or substituted as required by a regulatory agency.

- 3.12 From the date when Licensee or its employees, agents, contractors or subcontractors ("Licensee") first enters upon the Property for the purpose of drilling and completing a Well, Licensee shall continuously work on such Well during normal work hours on consecutive and normal work days until the Well is completed. ~~No work of drilling or completing any Well may be undertaken or done more than 30 days after the first drilling of the first Well has commenced.~~ All of the foregoing time limitations shall be extended by the length of time that applicable work is prevented by an event or events beyond the control of Licensee as defined above in this paragraph.
- 3.13 Licensor owns the fee interest in all lands underlying those portions of public streets that are adjacent to lands owned by Licensor in the general area where Licensee will be drilling, operating, monitoring and testing groundwater Wells, including the four Wells specifically referred to herein. Said lands are included in the term "the Property" used herein. The terms and provisions of this License shall also be applicable to all such Wells other than said four Wells specifically covered hereby, except for paragraphs 3.4, 3.6 and 3.12.
- 3.14 Licensee shall contact the occupant of each property upon which one of said four Wells will be drilled 48 hours in advance of conducting any work on such property, for the following purposes:
- a) to notify occupant of the time when such work will commence, where the work will be done and when the work will be completed;
 - b) to make any necessary arrangements in connection with any existing security requirements that must be complied with in order to enter the property;
 - c) to make any necessary arrangements for the moving and/or safety of any equipment and other personal property of occupant that may be at the location where the work will be done.

IN WITNESS WHEREOF, the parties hereto are authorized to and have executed this License Agreement as of the day and year first above written.

ARCO PRODUCTS COMPANY

By:

Title:

J. L. Smith
Refinery Manager

WATSON LAND COMPANY

By:

Title:

[Signature]
Pres. RW

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FILED
LOS ANGELES
JUL 23 2001
BY *[Signature]*
DEPUTY

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

WATSON LAND COMPANY, a California corporation,

Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY, a Pennsylvania Corporation; GEORGE PEARSON, an individual, dba G & M OIL COMPANY; G & M OIL COMPANY, INC., a California corporation; TEXACO REFINING AND MARKETING, INC., a Delaware corporation; TRMI HOLDINGS, INC., a Delaware corporation; REMEDIATION CAPITAL CORPORATION; a Nevada corporation; MONSANTO CHEMICAL COMPANY, a Delaware corporation; STAUFFER MANAGEMENT COMPANY, a Delaware corporation; RHONE-POULENC BASIC CHEMICALS COMPANY, a Delaware corporation, SHELL OIL COMPANY, a Delaware corporation and DOES 1 through 200, inclusive,

Defendants.

Case No. BC 150161
(Assigned to Wendell Mortimer, Jr.)

GENERAL VERDICT WITH SPECIAL FINDINGS

Action Filed: May 16, 1996
Trial Date: May 21, 2001

005731

1 WE, THE JURY IN THE ABOVE-ENTITLED ACTION, FIND AS
2 FOLLOWS:

3
4 1. ~~Did Watson prove by a preponderance of the evidence that Shell caused a~~
5 continuing nuisance on the Watson Center?

6 ANSWER "YES" OR "NO."

Answer: NO

7 2. Did Watson prove by a preponderance of the evidence that Shell caused a
8 continuing trespass on the Watson Center?

9 ANSWER "YES" OR "NO."

Answer: YES

10
11 If you answered "yes" to either question 1, or question 2, or both, please answer question
12 3 and question 4. If you answered "no" to both question 1 and question 2, please have
13 the jury foreperson date and sign this special verdict form and return the form to the
14 Clerk of the Court.

15
16 3. What is the amount of damages that Watson should receive in order to restore the
17 condition of the Watson Center?

18 \$ 3,915,851.00

19 4. Did Shell prove by a preponderance of the evidence that the petroleum
20 contamination on the Watson Center resulted from a mistake of fact by Shell?

21 ANSWER "YES" OR "NO."

Answer: NO

22 If you answered "yes" to question 4, please have the jury foreperson date and sign this
23 special verdict form and return the form to the Clerk of the Court. If you answered "no"
24 to question 4, please answer question 5.

25
26
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005732

1 5. What is the value of the benefits obtained by Shell as a result of the petroleum
2 hydrocarbon contamination that it caused on the Watson Center from June 1,
3 1993 to June 30, 2001?

4 \$ 14,275,237.⁰⁰

5 AFTER YOU HAVE ANSWERED QUESTION 5, PLEASE HAVE THE JURY
6 FOREPERSON DATE AND SIGN THIS SPECIAL VERDICT FORM AND RETURN
7 THE FORM TO THE CLERK OF THE COURT.

8
9 Dated: July 23, 2001

By: Angela Beunsa
Jury Foreperson

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EXHIBIT F

130 Cal.App.4th 69, 29 Cal.Rptr.3d 343, 35 Envtl. L. Rep. 20,114, 05 Cal. Daily Op. Serv. 4986, 2005 Daily Journal D.A.R. 6797

(Cite as: 130 Cal.App.4th 69, 29 Cal.Rptr.3d 343)

H

Court of Appeal, Second District, Division 2, California.

WATSON LAND COMPANY, Plaintiff and Appellant,

v.

SHELL OIL COMPANY, Defendant and Appellant.
No. B155019.

June 9, 2005.

Certified for Partial Publication.^{FN*}

FN* Pursuant to California Rules of Court, rules 976(d) and 976.1, this opinion is certified for partial publication. The portions directed to be published are the Introduction, Facts, part 4 of Shell's Appeal, and the Disposition.

Review Denied Sept. 28, 2005.^{FN**}

FN** Baxter, J., did not participate therein.

Background: Landowner that found groundwater and soil contamination under its land brought suit for, inter alia, trespass against oil company that had pipelines running under land. The Superior Court, Los Angeles County, No. BC150161, Wendell J. Mortimer, Jr., J., entered judgment on jury verdict awarding landowner \$3,915,851 for cost of clean up and \$14,275,237 for benefit oil company derived from its failure to clean up contamination. Oil company appealed, and landowner cross-appealed.

Holding: The Court of Appeal, Ashmann-Gerst, J., held that oil company's avoidance of remediation costs of leak in pipeline was not "benefit" that entitled landowner to those damages.

Affirmed as modified.

West Headnotes

[1] Trespass 386 ↪50

386 Trespass

386II Actions386II(D) Damages

386k50-k. Entry-on-and-Injuries-to-Real Property. Most Cited Cases

Oil company's avoidance of remediation costs of leaking gasoline pipeline under landowner's property was not "benefit" to oil company that entitled landowner to recover benefit damages under statute allowing recovery of benefits obtained by person wrongfully occupying property by reason of that wrongful occupation; oil company derived no financial advantage from leakage and resulting contamination of land. West's Ann.Cal.Civ.Code § 3334(b)(1). See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1460; 12 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 34:105; Cal. Jur. 3d, Ejectment and Related Remedies, § 54; Cal. Jur. 3d, Trespass to Realty, § 12.

[2] Statutes 361 ↪181(1)

361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k180 Intention of Legislature361k181 In General361k181(1) k. In General. MostCited Cases

Statutes 361 ↪184

361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k180 Intention of Legislature361k184 k. Policy and Purpose of Act.Most Cited Cases

When interpreting a statute, courts must ascertain the intent of the Legislature so as to effectuate the purpose of the law.

[3] Statutes 361 ↪188

361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k187 Meaning of Language361k188 k. In General. Most Cited

130 Cal.App.4th 69, 29 Cal.Rptr.3d 343, 35 Envtl. L. Rep. 20,114, 05 Cal. Daily Op. Serv. 4986, 2005 Daily Journal D.A.R. 6797

(Cite as: 130 Cal.App.4th 69, 29 Cal.Rptr.3d 343)

Cases

Statutes 361 ↪ 206

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k206 k. Giving Effect to Entire Statute. Most Cited Cases

When interpreting a statute, courts must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase, and sentence in pursuance of the legislative purpose.

[4] Statutes 361 ↪ 206

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k206 k. Giving Effect to Entire Statute. Most Cited Cases

A statutory construction making some words surplusage is to be avoided.

[5] Statutes 361 ↪ 208

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k208 k. Context and Related Clauses. Most Cited Cases

Statutes 361 ↪ 223.2(.5)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to Other Statutes

361k223.2 Statutes Relating to the Same Subject Matter in General

361k223.2(.5) k. In General. Most Cited Cases

When construing a statute, the words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.

[6] Statutes 361 ↪ 181(2)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(2) k. Effect and Consequences. Most Cited Cases

Where uncertainty exists as to the meaning of a statute, consideration should be given to the consequences that will flow from a particular interpretation.

[7] Statutes 361 ↪ 217.1

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.1 k. History of Act in General.

Most Cited Cases

Statutes 361 ↪ 217.2

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.2 k. Legislative History of Act. Most Cited Cases

Both the legislative history of a statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.

[8] Statutes 361 ↪ 184

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k184 k. Policy and Purpose of Act. Most Cited Cases

The objective sought to be achieved by a statute, as

130 Cal.App.4th 69, 29 Cal.Rptr.3d 343, 35 Env'tl. L. Rep. 20,114, 05 Cal. Daily Op. Serv. 4986; 2005 Daily Journal D.A.R. 6797

(Cite as: 130 Cal.App.4th 69, 29 Cal.Rptr.3d 343)

well as the evil to be prevented, is of prime consideration in its interpretation.

191 Trespass 386 ↪50

386 Trespass

386II Actions

386II(D) Damages

386k50 k. Entry on and Injuries to Real Property. Most Cited Cases

Under statute allowing recovery of benefits obtained by person wrongfully occupying property by reason of that wrongful occupation, benefits are not obtained by reason of a wrongful occupation unless the trespass itself provided the trespasser with a financial or business advantage. West's Ann.Cal.Civ.Code § 3334(b)(1).

1101 Trespass 386 ↪50

386 Trespass

386II Actions

386II(D) Damages

386k50 k. Entry on and Injuries to Real Property. Most Cited Cases

By amending trespass damages statute to allow recovery of benefits obtained by person wrongfully occupying property by reason of that wrongful occupation, the Legislature intended to eliminate financial incentives for trespass by eradicating the benefit associated with the wrongful use of another's land. West's Ann.Cal.Civ.Code § 3334(b)(1).

****345** Caldwell, Leslie, Newcombe & Pettit, Michael R. Leslie, Mary Newcombe, Cara A. Horowitz, Los Angeles, Andrew Esbenshade, Sandra L. Tholen; Greines, Martin, Stein & Richland, and Feris M. Greenberger, Los Angeles, for Plaintiff and Appellant.

Bright and Brown, James S. Bright, Maureen J. Bright and Brian L. Becker, Glendale, for Defendant and Appellant.

Mayer, Brown, Rowe & Maw and Gregory R. McClintock, Los Angeles, for Western States Petroleum Association as amicus curiae on behalf of Defendant and Appellant.

ASHMANN-GERST, J.

***71**INTRODUCTION

When respondent Watson Land Company (Watson) discovered groundwater and soil contamination under its land (the Watson Center), it claimed that appellant Shell-Oil-Company-(Shell), among others, was responsible. A jury awarded Watson \$3,915,851 for the cost of cleanup of contamination caused by the leakage of leaded gasoline from pipelines Shell was operating under *72 the Watson Center. Additionally, the jury found that Shell derived a \$14,275,237 benefit when it failed to clean up the contamination and awarded that amount to Watson pursuant to Civil Code section 3334. Shell appeals and urges reversal on the following grounds: (1) Because Atlantic Richfield Company (ARCO) settled with Watson and agreed to pay for the entire clean up of the Watson Center, ARCO was the real party in interest and Watson lacked standing to sue; (2) at a minimum, ARCO should have been joined as a coplaintiff at trial as an indispensable party; (3) Watson's evidence of causation was based on inadmissible evidence; and (4) the 1992 amendment to Civil Code section 3334 allowing a plaintiff to recover the benefits obtained by a trespasser should not have been applied because Shell was not benefited when its pipelines leaked. Therefore, even if there was causation, the judgment must be reduced by \$14,275,237.

Watson challenges two orders on cross-appeal. According to Watson: (1) the trial court improperly denied a motion for sanctions against Shell for bad faith conduct under Code of Civil Procedure section 128.7, FN1 and (2) the trial court erroneously gave Shell a credit for the litigation costs ARCO agreed to pay Watson through settlement and then reduced Watson's recoverable costs by half.

FN1. All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

In part 4 of Shell's appeal, we hold that for the purposes of ****346**Civil Code section 3334, Shell did not obtain any benefits when its pipelines leaked onto the Watson Center. As a consequence, the judgment in favor of Watson must be reduced by \$14,275,237. In the unpublished portion of this opinion, we explain that Watson's cross-appeal, and the rest of Shell's appeal lack merit. As modified, the judgment is affirmed in all other respects.

130 Cal.App.4th 69, 29 Cal.Rptr.3d 343, 35 Envtl. L. Rep. 20,114, 05 Cal. Daily Op. Serv. 4986, 2005 Daily Journal D.A.R. 6797

(Cite as: 130 Cal.App.4th 69, 29 Cal.Rptr.3d 343)

FACTS

The Watson Center is a fully developed commercial and industrial park with over 50 lots, most of which have been improved with buildings. Watson leases those buildings to various tenants. ARCO owns a refinery (the ARCO Refinery) across the street from the Watson Center and uses it for processing, storing and transporting crude oil, gas and petroleum products. There are two major pipeline corridors that run under the Watson Center. The first is commonly referred to as the "Utility Way Pipeline Corridor," ^{FN2} and the second *73 is commonly referred to as the "DWP Pipeline Corridor." ^{FN3} At times relevant to this appeal, Shell operated pipelines in both of those corridors.

^{FN2}. The Utility Way Pipeline Corridor is a portion of the Watson Center that is subject to a pipeline easement held by Shell.

^{FN3}. The DWP Pipeline Corridor is property owned by the Los Angeles Department of Water and Power. The corridor cuts through the Watson Center.

In 1996, Watson sued, inter alia, Shell and ARCO pursuant to 11 causes of action, including trespass and nuisance. The first amended complaint alleged: Since some time prior to 1977, the operations of ARCO contaminated the groundwater beneath the ARCO Refinery. ARCO has been actively recovering free-floating petroleum product and removing contamination from the groundwater beneath the ARCO Refinery. In 1985, ARCO began conducting its remediation efforts under order of the Los Angeles Regional Water Quality Control Board (RWQCB). The RWQCB directed ARCO to create a subsurface barrier to prevent the migration of groundwater contamination to the Watson Center. Based on ARCO's remediation efforts and its representations, Watson believed that the contamination had not migrated to the Watson Center. However, in 1995, a prospective tenant at the Watson Center conducted an environmental site investigation and discovered contamination. In 1996, Watson engaged an independent environmental consulting firm to investigate the contamination and its sources. The ARCO Refinery and three other offsite properties were found to be likely contributors to the groundwater contamination. As well,

Watson learned that the Shell pipelines running beneath the Watson Center may also be contributors.

Watson and ARCO entered in a settlement agreement (the settlement agreement) with an effective date of November 1, 2000. The settlement agreement provided that Watson would continue to diligently pursue its claims against the other defendants in the case and deposit the proceeds into a cleanup fund (the cleanup fund). ARCO agreed to be responsible for the remediation of the Watson Center, subject to a specified right of reimbursement from the cleanup fund. The parties divided the Watson Center into three areas: Area A, Area B and Area C. Pursuant to the parties' agreement, ARCO was entitled to 100 percent reimbursement of cleanup expenses related to Area A, 90 percent related to Area B, and 5 percent related to Area C.

The trial court granted ARCO's motion for determination of good faith settlement with Watson. The order specified that **347 none of the nonsettling defendants was entitled to any set-off or credit as a result of the settlement between ARCO and Watson, that Watson would seek to "recover from the remaining defendants only their proportionate shares of liability for contamination of [the Center]," and the trial court would retain jurisdiction over the cleanup fund.

*74 Prior to trial, Shell moved to exclude evidence of remediation costs on the theory that they would be paid by ARCO and ARCO was the real party in interest. In the alternative, Shell argued that ARCO had to be joined as an indispensable party. Shell's motion was denied.

At trial, Watson expert Jeffrey Dagdigian (Dagdigian) explained that when enough gasoline contaminates soil, the gasoline will float on top of the groundwater and become a source of contamination. The gasoline slowly dissolves into the groundwater, becomes a plume, and moves in the direction of the groundwater flow. The contamination is most concentrated at the source. Then, following the second law of thermodynamics, the contamination moves from a concentrated state to a random, dissolved state.

Watson produced maps displaying three plumes of gasoline contamination: Plume A (a medium sized

130 Cal.App.4th 69, 29 Cal.Rptr.3d 343, 35 Envtl. L. Rep. 20,114, 05 Cal. Daily Op. Serv. 4986, 2005 Daily Journal D.A.R. 6797

(Cite as: 130 Cal.App.4th 69, 29 Cal.Rptr.3d 343)

plume at the northern end of the Watson Center over the Utility Way Pipeline Corridor), Plume B1 (a small plume in the southern half of the Watson Center over the DWP Pipeline Corridor at 233rd Street), and Plume B2 (a large plume in the southern half of the Watson Center over the Utility Way Pipeline Corridor at 233rd Street).^{FN4} Dagdigian testified that he was able to verify the accuracy of the plume maps by checking and rechecking facts and figures derived from unidentified "laboratory reports." He explained that overlapping concentrations of chemicals indicate a common source and then analyzed the plumes in terms of overlapping concentrations of benzene, diisopropyl ether (DIPE), methyl tertiary butyl ether (MTBE), and lead scavengers known as ethylene dichloride (EDC) and ethylene dibromide (EDB).

FN4. In their briefs, the parties concentrate on Plume A and Plume B2. GATX Terminals Corporation, one of the defendants below, settled with Watson and agreed to remove jet fuel from the same area as Plume B1.

According to the maps, Plume A contained concentrations of benzene, DIPE and EDC, Plume B2 contained concentrations of benzene, DIPE, EDC, and EDB, and Plume B1 contained concentrations of benzene, DIPE and MTBE. The absence of MTBE in Plume A and Plume B2 suggested to Dagdigian that the contamination in those plumes was a leaded gasoline. Further, the presence of DIPE suggested to Dagdigian, based on his research of Shell facilities, "that this gasoline came from one of those facilities."^{FN5} He testified that Shell's pipelines carried the type of gasoline found in those plumes.

FN5. A Shell chemist, Ileana Rhodes, testified that Shell manufactured DIPE at one of Shell's nearby refineries. Shell's quarterly reports to the Environmental Protection Agency in 1979 listed DIPE as an additive in Shell's gasoline. Rhodes acknowledged these reports. Dagdigian testified that DIPE was found at Shell facilities to the north and south of the Watson Center, and also at Morman Island, where Shell stored gasoline.

*75 Dagdigian went on to explain that the gasoline in Plume B2 contained a mixed alkyl lead package comprised of: tetraethyl lead, methyltriethyl lead,

dimethyldiethyl lead, trimethylethyl lead, and tetramethyl lead. In contrast, the only lead compound that was discovered under the ARCO Refinery was tetraethyl lead. When asked what that meant, he stated: **348 "It means that the gasoline that was released underneath the ARCO Refinery is different than the gasoline that was released underneath the Watson Center."

Nancy Beresky (Beresky), another Watson expert, opined that the Plume B2 was caused when a Shell pipeline leaked leaded gasoline. She based her opinion on four lines of evidence. Shell transported leaded gasoline through the Utility Way Pipeline Corridor. There was no evidence that there were any other pipelines in that corridor that were used to carry the same type of material. The hot spot of the plume was centered immediately underneath the Utility Way Pipeline Corridor. Additionally, the plume was comprised of leaded gasoline that contained DIPE. The same material was found underneath the Shell refinery to the north and the one to the south. Those two refineries are interconnected via the Utility Way Pipeline Corridor.

According to Beresky, there was evidence that Plume B2 was not caused by contamination migrating from the ARCO Refinery. Points between Plume B2 and the ARCO Refinery revealed no detection of the chemicals found in Plume B2. Based on the second law of thermodynamics, it would be impossible to have high concentrations at Plume B2 and lesser concentrations between Plume B2 and the ARCO Refinery if the refinery was the source. Beresky explained that the hydrology of the area supported her position. She thought that if there was migration, "we would see some smearing in this area. We don't see that."

Continuing on to Plume A, Beresky stated that it was also caused by a leaded gasoline leak from a Shell pipeline in the Utility Way Pipeline Corridor. She based her opinion on several facts. The plume was elongated in a north and south direction and the hot spot was near the corridor. The contamination contained DIPE which, again, was the same material found at the local Shell facilities. According to Beresky, the contamination did not come from the ARCO Refinery because it was too far to migrate, and the material differed.

Charles Schmidt (Schmidt), a third Watson expert,

130 Cal.App.4th 69, 29 Cal.Rptr.3d 343, 35 Envtl. L. Rep. 20,114, 05 Cal. Daily Op. Serv. 4986, 2005 Daily Journal D.A.R. 6797

(Cite as: 130 Cal.App.4th 69, 29 Cal.Rptr.3d 343)

testified regarding the results he obtained using “downhole flux” testing.^{FN6} He testified that “the source of the B2 Plume is [the] Shell pipeline in [the] Utility Way [Pipeline] *76 Corridor.” He reached this conclusion because his tests showed a “top-down source” for the contamination that was above the groundwater. Further, he stated that he was able to exclude the ARCO Refinery as a source. Based on other data he collected, Schmidt opined that Plume A was created by a leak from Shell's pipeline. Subsequently, Dagdigian was asked about Schmidt's downhole flux data. Dagdigian noted that soil gas was first detected at 15 feet. He agreed, when asked by counsel, that this was evidence of a “top-down pipeline leak coming from the Utility Way Pipeline Corridor.”

FN6. Downhole flux is measured by lowering a chamber into the ground and taking samples of the molecules of contaminants.

The jury found that Watson failed to prove a continuing nuisance, but that it did prove a continuing trespass. According to the jury, the amount Watson should receive for remediation was \$3,915,851, and the value of the benefits obtained by Shell as a result of the gasoline contamination it caused at the Watson Center from June 1, 1993, to June 30, 2001, was \$14,275,237.

The trial court entered judgment in favor of Watson in the amount of \$18,191,088 and awarded \$87,183.22 in costs. After **349 the denial of various posttrial motions, these appeals followed.

Upon application, we allowed Western States Petroleum Association to file an amicus curiae brief regarding the proper interpretation of the “benefits obtained” measure of damages in Civil Code section 3334.

SHELL'S APPEAL

1.-3.^{FN**}

FN** See footnote *, *ante*.

4. The \$14,275,237 in “benefits” damages must be reversed.

[1] The question presented is whether a gasoline leak

from a pipeline constitutes “benefits” to Shell, as contemplated by Civil Code section 3334.

[2][3][4][5][6][7][8] When interpreting a statute, we must “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386, 241 Cal.Rptr. 67, 743 P.2d 1323.) We must “look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in *77 mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations.]” (*Id.* at pp. 1386-1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) A close cousin of the foregoing quote is the rule “ ‘that the objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in its interpretation.’ [Citations.]” (*Wotton v. Bush* (1953) 41 Cal.2d 460, 467, 261 P.2d 256.)

Civil Code section 3334 reads: “(a) The detriment caused by the wrongful occupation of real property ... is deemed to include the value of the use of the property for the time of that wrongful occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, the reasonable cost of repair or restoration of the property to its original condition, and the costs, if any, of recovering the possession. [¶] (b)(1) Except as provided in paragraph (2), for purposes of subdivision (a), the value of the use of the property shall be the greater of the reasonable rental value of that property or the benefits obtained by the person wrongfully occupying the property by reason of that wrongful occupation. [¶] (2) If a wrongful occupation of real property subject to this section is the result of a mistake of fact of the wrongful occupier, the value of the use of the property, for purposes of subdivision (a), shall be the reasonable rental value of the prop-