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

**STAUFFER PLANT**

21. Watson is informed and believes, and thereon alleges, that Stauffer operated a chemical manufacturing facility at the Stauffer plant until 1976 on behalf of the American Chemical Company, a joint venture between Stauffer and ARCO. Watson is informed and believes, and thereon alleges, that the Stauffer plant continued operating subsequent to 1976, and ceased to operate in or around 1982. Watson is informed and believes, and thereon alleges, that in or around July of 1994, Stauffer signed a consent order with the DTSC requiring Stauffer to investigate and remediate contamination emanating from the Stauffer plant. In or around of January of 1995, Watson received a copy of a fact sheet prepared by the DTSC concerning activities conducted by Stauffer at the Stauffer Plant. The fact sheet affirmatively represented that Stauffer had agreed to undertake field work at the Stauffer site to identify and determine the extent and nature of the contamination caused by Stauffer. The fact sheet indicated that Stauffer would prepare a remedial investigation workplan for the purpose of identifying contaminants on the site. The fact sheet further indicated that following the initial assessment, alternatives for remedial measures would be evaluated in a feasibility study which would be followed by a remedial action plan recommending clean up actions for the site. None of the information supplied to Watson indicated that the Stauffer Plant had contaminated the soil or groundwater beneath the Watson Center. As a result, Watson had no reason to
suspect that Stauffer had contaminated the Watson Center, until the discoveries made by Watson in 1996, as more fully described below.

22. In addition to the fact that Watson had no reason to believe that the Stauffer Plant had contaminated the soil and groundwater under the Watson Center, as a result of the public representations made by Stauffer in connection with the DTSC consent order, the DTSC fact sheet, and the DTSC consent order, Watson also believed that Stauffer had accepted responsibility for the contamination emanating from the Stauffer plant and would fully investigate, delineate and remediate that contamination under supervision of the DTSC. In reliance upon the representations of Stauffer and the information supplied by the DTSC, which indicated that the Watson Center was not contaminated by the Stauffer Plant and that Stauffer would clean up the contamination it caused, Watson did not initiate any legal action to protect its rights or assert any claims against Stauffer prior to this action.

LEONARD PROPERTY

23. In 1990, the Leonard's supplied information to Watson concerning the environmental condition of the Leonard Property. The information affirmatively represented that gas station operations conducted on the Leonard Property had caused the contamination of soil and groundwater beneath that property, including the creation of a free-floating pool of contaminants in the groundwater, which was entirely contained under the Leonard Property. All of the information supplied to Watson in connection with that review indicated that the contamination under the Leonard Property had not migrated from the Leonard Property onto or under Watson Center. Watson is informed and believes, and thereon alleges, that soil and groundwater remediation has been going on at the Leonard Property under RWQCB supervision since at least February of 1994. By virtue of the information supplied to Watson by the Leonard's, Watson believed that the contamination under the Leonard Property had not migrated under the
Watson Center and that the Leonard's had undertaken the remediation of that contamination. As a result, Watson had no reason to suspect that the gasoline operations on the Leonard Property had contaminated the Watson Center, until the discoveries made by Watson in 1996, as more fully described below.

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

THE PIPELINE CORRIDOR

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

26. Watson is informed and believes, and thereon alleges, that ARCO has installed as many as three pipelines (described below) in the Pipeline Corridor immediately west of Building 165. Watson is informed and believes, and thereon alleges, that there are currently two abandoned ARCO pipelines and one active ARCO pipeline in the Pipeline Corridor. Watson is informed and believes, and thereon alleges, that ARCO has transported a variety of petroleum, petroleum products and other chemicals through the ARCO pipelines in the Pipeline Corridor.
27. Watson is informed and believes, and thereon alleges, that subsurface pipelines periodically corrode and leak. Watson is informed and believes, and thereon alleges, that substances carried through the Shell and ARCO pipelines in the Pipeline Corridor contained compounds discovered to exist in the groundwater beneath Building 165 as a result of the investigation conducted by Watson in 1996, as more fully described below.

THE ARCO REFINERY

28. Watson is informed and believes, and thereon alleges, that some time prior to 1977, ARCO discovered that the ARCO Refinery operations had contaminated the groundwater beneath the ARCO Refinery with petroleum, petroleum products and various other hazardous substances. Petroleum is lighter than water and when introduced into an aquifer, will rise and collect at structural or hydrological high points in the aquifer. Watson is informed and believes, and thereon alleges, that the contamination which the ARCO Refinery caused has resulted in the creation of several identifiable "pools" of such contamination floating at the top of the groundwater, at approximately 65 to 85 feet below ground surface, which ARCO has identified as "Pool I" through "Pool VII." Watson is informed and believes, and thereon alleges, that since 1977, ARCO has been actively recovering free-floating petroleum product and removing contamination from the groundwater beneath the ARCO Refinery and, since at least 1985, has done so under order of the Los Angeles Regional Water Quality Control Board (hereinafter "RWQCB"). Watson is further informed and believes, and thereon alleges, that as of November of 1995, ARCO had recovered over 380,000 barrels (i.e., over 16,000,000 gallons) of free-floating petroleum product from the groundwater and had remediated over 14,643,000 barrels (i.e., over 613,200,000 gallons) of groundwater.

29. Watson is informed and believes, and thereon alleges, that as a result of the proximity of the ARCO Refinery to other operations in the City of
Carson which are also believed to have caused contamination to groundwater, ARCO became a part of the Carson Regional Groundwater Group (hereinafter the "CRGG Group") organized by the RWQCB for the purpose of assessing and remediating groundwater contamination under the City of Carson.

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

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

32. Watson is informed and believes, and thereon alleges, that pursuant to RWQCB order, ARCO has installed numerous water monitoring
wells on the ARCO refinery in order to sample soil and groundwater beneath the
ARCO Refinery for various contaminants and for the purposes of reporting those
findings to the RWQCB.

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

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

35. Watson is informed and believes, and thereon alleges, that in
or around March of 1993, ARCO caused another report to be prepared for
submission to the RWQCB entitled: "Phase I Off-Site Migration Barrier Plan,
ARCO Los Angeles Refinery." ARCO thereafter supplied a copy of this document
to Watson. The document is described in the introduction as a "work plan"
presenting the scope of work "to collect data necessary for the design and
installation of a light nonaqueous phase liquid hydrocarbon (LNAPL) recovery and
groundwater remediation system along the down-gradient western perimeter of
the ARCO Los Angeles Refinery (LAR). This system will be designed to function
as a barrier to off-site migration of LNAPL." ARCO's Phase I Off-Site Migration
Barrier Plan further indicated that ARCO was conducting aquifer remediation (see Page 3-1) and affirmatively represented that it would undertake implementation of cleanup of the contamination in the groundwater caused by the ARCO Refinery (see Page 3-2). The extent of the water table contamination caused by the ARCO Refinery is represented in a map designated as Figure 4. Figure 4 affirmatively represents that no groundwater contamination exists beneath the Watson Center.

36. In or around March of 1993, Watson sought a loan for operating capital which was to be secured by liens against several of the buildings located within the Watson Center. In connection with that loan application, the lender required Watson to undertake an environmental investigation of the subsurface conditions below the buildings forming the collateral. As a result of this environmental investigation, the lender required Watson to undertake a supplemental investigation to assess the potential impact of the ARCO Refinery contamination upon the soil and groundwater beneath the Watson Center. In connection with that supplemental investigation and at Watson's request, ARCO supplied information to Watson's environmental consultant which included a report indicating that no contamination had migrated under the Watson Center from the ARCO Refinery, that ARCO had been identified by the RWQCB as the responsible party for contamination in the groundwater adjacent to the Watson Center, and that ARCO was responding to RWQCB orders to investigate, mitigate and remediate contamination from the ARCO Refinery. In reliance upon the information supplied by ARCO, Watson's environmental consultant concluded that the groundwater beneath the Watson Center had not been significantly impacted by the operations at the ARCO Refinery and that no further investigation was warranted. Watson supplied that report to its lender and both Watson and its lender relied upon the conclusions drawn from the information supplied by ARCO. The operating loan was funded in or around October of 1993.
37. On or around August 5, 1994, ARCO affirmatively represented to Watson that it intended to install a groundwater barrier system along the western perimeter of the ARCO Refinery by the second quarter of 1995 which would provide containment of groundwater contamination at the ARCO Refinery as well as off-site recovery of groundwater contamination.

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

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

40. Watson is informed and believes, and thereon alleges, that each of the defendants who have undertaken investigation and remediation activities pursuant to order by the RWQCB or DTSC, have held themselves out to the public as accepting responsibility for the contamination caused by that defendant at its respective site, and therefore have led the public and Watson to believe that it would not be necessary to pursue a legal action against each such defendant to compel that defendant to remedy the damages it caused by its respective contamination.
THE 1996 INVESTIGATION

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

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

43. As a result of the discovery of contamination beneath Building 165, Watson retained an independent environmental consulting firm to further investigate that contamination (hereinafter referred to as the "1996 Investigation"). In connection with the 1996 Investigation, Watson reviewed all of the data previously supplied by ARCO with respect to contamination caused by the ARCO Refinery, and caused its environmental consultant to separately review the files of the RWQCB for materials submitted by ARCO with respect to the ARCO Refinery as well as for other information about operations by others on and within the vicinity of the Watson Center. Watson also attempted to identify potential off-site sources which may have caused or contributed to the contamination discovered under the Watson Center. As a result of that 1996 Investigation,
Watson learned for the first time that four off-site properties had likely contaminated the soil and groundwater under the Watson Center: the ARCO Refinery, the Leonard Property, the Stauffer Plant and the Monsanto Plant. As a result of the 1996 Investigation, Watson further learned for the first time that the Shell and ARCO pipelines located in the Pipeline Corridor immediately west of Building 165 are also likely contributors to the contamination discovered under the Watson Center.

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

45. As a result of the 1996 Investigation, Watson also discovered that ARCO withheld and misrepresented information about the contamination emanating from the ARCO Refinery. ARCO had drilled a water monitoring well within a public street running through the Watson Center in the immediate vicinity of Building 165, designated as "MW-543." MW-543 is located immediately adjacent to the three water monitoring wells installed by the prospective tenant at Building 165. Sampling data which ARCO obtained itself in 1990 in connection with the installation of MW-543 and submitted to the RWQCB showed that contamination existed in the groundwater beneath Watson Center at Building 165. According to records filed with the RWQCB by ARCO, MW-543 was installed by ARCO in December of 1990. However, a review of all of the materials supplied by ARCO to Watson showed that although ARCO had advised the RWQCB of the test results from MW-543 in 1990, as part of an off-site assessment report dated December 14, 1990, ARCO never supplied a copy of that report to Watson. Instead, on May 28, 1993, after Watson requested data in connection with the financing describe above, ARCO supplied only tables summarizing the test data for wells
MW-541-545 and MW-565-566. On July 12, 1993 ARCO advised Watson of an error affecting all of the tables provided to Watson on May 28, 1993. As of December 1990, ARCO was obligated to supply all data, reports and information obtained from water wells drilled on Watson Center to Watson under the terms of the ARCO License Agreement as well as by virtue of statute, Health & Safety Code §25359.7.

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

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

47. A review of the December 14, 1990, off-site assessment report submitted by ARCO to the RWQCB in 1990 also revealed that ARCO knew there was free-floating contamination in the groundwater under the Watson Center which had emanated from the ARCO Refinery. At no time has ARCO ever informed Watson of the existence of this contamination under the Watson Center and ARCO has provided information and maps to Watson since 1990 which specifically represent that there are no free-floating pools of contamination in the groundwater beneath the Watson Center.
48. The 1996 Investigation has also revealed that ARCO is has changed its position and is now contending that it is not liable for any contamination in the soil and groundwater beneath Watson Center, despite the map contained in the December 14, 1990 off-site assessment report which shows a pool of free-floating contamination to extend westerly from the ARCO Refinery across Wilmington Avenue and under the Watson Center. In addition, the 1996 Investigation has also revealed that ARCO has just now completed the installation of the barrier system intended to prevent the migration of groundwater contamination from the ARCO Refinery to Watson Center and properties beyond, and that ARCO is years behind the time table originally set by the RWQCB for the off-site remediation of contamination caused by the ARCO Refinery. Watson is informed and believes, and thereon alleges, that ARCO will be remediating contamination in the groundwater caused by operations at the ARCO Refinery for at least the next 30 to 40 years and has no intention to remediate the groundwater or soil contamination caused by ARCO to the Watson Center.

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

50. Watson has been damaged by ARCO's concealment of this information. As a result of the contamination discovered beneath Building 165, the prospective tenant declined to lease Building 165. Watson ultimately leased the Building 165 approximately one year later, after losing the prospective tenancy described above. However, Watson disclosed the existence of the discovered contamination to all prospective tenants interested in leasing Building 165 and
was only able to lease Building 165 by providing significant concessions to its tenant directly attributable to the presence of the contamination. Without such concessions, no tenant could be found to rent Building 165. The concessions would not have been required had the contamination not been present under the Watson Center.

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

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

53. In addition, ARCO's failure to disclose all of the information known to ARCO about the contamination under the Watson Center prevented Watson from earlier asserting its rights and initiating a cleanup of the contamination to levels that would permit the Watson Center to be leased without all of the same substantial concessions required by tenants as a result of the current presence of the contamination. In addition, because groundwater contamination migrates over time, the extent of the contamination under Watson Center has been increasing throughout the period of time during which ARCO
has concealed the existence of such contamination thereby increasing both the
time and costs of remediating the same. As long as contamination exists in the
soil and/or groundwater under the Watson Center the value of Watson Center will
be diminished and the ability to lease, finance or sell the Watson Center will be
adversely affected.

FIRST CAUSE OF ACTION

(Permanent Trespass Against All Defendants)

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

55. 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.

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

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

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

SECOND CAUSE OF ACTION
(Continuing Trespass Against All Defendants)

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

60. 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.

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

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

63. Watson is informed and believes, and thereon alleges, that defendants, and each of them, knew that unlawful discharges of environmental contaminants had occurred which would likely damage the Watson Center and the groundwater beneath the Watson Center, knew that readily available methods existed to remedy, terminate and/or mitigate such discharges, knew that if such discharges were not remediated additional damage would occur as a result of continued migration of environmental contamination through the soil and groundwater beneath the Watson Center, but nonetheless failed to remediate, terminate or mitigate such environmental contamination. Watson is informed and believes, and thereon alleges, that defendants, and each of them, knew or had reason to know that the operations which they conducted at their respective businesses in the vicinity of the Watson Center were causing environmental contamination which would likely damage the Watson Center and that such action nevertheless continued in willful and conscious disregard of the law, the rights of Watson and the safety of the waters of the State and all persons on or using water from beneath the Watson Center. As a result, Watson is entitled to recover punitive damages from defendants, and each of them, in an amount to be proven at trial.
THIRD CAUSE OF ACTION
(Permanent Private Nuisance Against All Defendants)

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

65. 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.

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

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

68. Watson is informed and believes, and thereon alleges, that defendants, and each of them, knew that unlawful discharges of environmental contaminants had occurred which would likely damage the Watson Center and the groundwater beneath the Watson Center, knew that readily available methods existed to remedy, terminate and/or mitigate such discharges, knew that if such discharges were not remediated additional damage would occur as a result of continued migration of environmental contamination through the soil and groundwater beneath the Watson Center, but nonetheless failed to remediate, terminate or mitigate such environmental contamination. Watson is informed and believes, and thereon alleges, that defendants, and each of them, knew or had reason to know that the operations which they conducted at their respective businesses in the vicinity of the Watson Center were causing environmental contamination which would likely damage the Watson Center and that such action nevertheless continued in willful and conscious disregard of the law, the rights of Watson and the safety of the waters of the State and all persons on or using water from beneath the Watson Center. As a result, Watson is entitled to recover punitive damages from defendants, and each of them, in an amount to be proven at trial.
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.
72. Watson is informed and believes, and thereon alleges, that the nuisance created by this environmental contamination of the Watson Center is permanent in nature in that it either cannot be completely abated or will take so many years to abate as to affect a permanent diminution in the property value of the Watson Center. As a result, defendants, and each of them, have created or are responsible for a condition on the Watson Center that constitutes a permanent nuisance.

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

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

FIFTH CAUSE OF ACTION

(Continuing Private Nuisance Against All Defendants)

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

76. 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.

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

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

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

SIXTH CAUSE OF ACTION
(Continuing Public Nuisance Against All Defendants)

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

81. 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.

82. 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.

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

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

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

SEVENTH CAUSE OF ACTION
(Fraud Against Defendant ARCO)

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

87. Defendant ARCO was under a duty to Watson to disclose the existence of any contamination which ARCO knew or reasonably suspected to exist in the soil or groundwater beneath the Watson Center. Despite the fact that ARCO ascertained the existence of such contamination by no later than 1990, and knew or should have known that Watson was not likely to discover the presence of the contamination, ARCO concealed the existence of such contamination from Watson and instead provided reports and data to Watson which specifically misrepresenting subsurface contamination to be contained under the ARCO Refinery site and not under Watson Center.
88. Watson is informed and believes, and thereon alleges, that ARCO deliberately withheld information about the contamination in the soil and groundwater beneath the Watson Center and misrepresented the location of the contamination for the purpose of preventing Watson from ascertaining the true facts and acting to protect its rights with respect to the Watson Center.

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

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

91. Watson is informed and believes, and thereon alleges, that the affirmative misrepresentation and concealment of the contamination in the soil and groundwater under the Watson Center was undertaken by ARCO with the intent that Watson rely thereon and refrain from taking legal action to protect its rights.
92. Watson is informed and believes, and thereon alleges, that
ARCO undertook the described course of conduct deliberately and intentionally
and in willful and conscious disregard for the rights of Watson and in willful and
conscious violation of law. As a result, Watson is entitled to recover punitive
damages from ARCO in an amount to be proven at trial.

EIGHTH CAUSE OF ACTION

(FAILURE TO DISCLOSE DISCHARGE UNDER HEALTH & SAFETY CODE §25359.7
AGAINST DEFENDANT ARCO)

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

94. Pursuant to the ARCO License Agreement, ARCO became a
"renter" of the Watson Center with respect to the installation of groundwater
monitoring wells as reflected in that agreement. As a "renter" of the Watson
Center, ARCO was obligated pursuant to Health & Safety Code §25359.7 to inform
Watson as soon as ARCO had knowledge of a discharge or the likely discharge of
contaminants on or under the Watson Center.

95. Watson is informed and believes, and thereon alleges, that in
December of 1990, ARCO undertook an off-site assessment of contamination
emanating from the ARCO Refinery. In connection with that assessment, ARCO
caused eight water monitoring wells to be installed upon the Watson Center or in
the streets abutting or running through the Watson Center. Watson is informed
and believes, and thereon alleges, that both soil and groundwater samples were
collected and tested for each monitoring well installed and that the results of the
testing of the soil and water from the initial installation of these water monitoring
wells revealed the presence of free-floating contamination in the groundwater and
contamination in the soil beneath the Watson Center, including petroleum,
petroleum products, heavy metals, 1,2-dichloroethane, 1,1-dichloroethene, 1,4-
dichlorobenzene, 1,1,2,2-tetrachloroethylene and other hazardous substances.
96. By virtue of law ARCO was obligated to immediately disclose the findings of this investigation to Watson. ARCO has failed to make the necessary statutory disclosure. As a result of the affirmative information supplied by ARCO and the information concealed by ARCO, Watson was unaware of the existence of the contamination under the Watson Center, did not undertake steps to investigate or remediate that contamination, could not avoid the loss of profits attributable to a delay in property rentals and the loss of prospective tenants, and did not initiate any legal action to protect its property rights concerning the Watson Center.

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

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

NINTH CAUSE OF ACTION

(Equitable Indemnity Against All Defendants)

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

100. By virtue of its ownership interest in the Watson Center, Watson has incurred and will continue to incur damages in excess of the jurisdiction of this Court to assess, evaluate, test, remove and remediate the contamination in the soil and groundwater under the Watson Center. In addition, Watson has suffered and will continue to suffer lost profits and other costs to minimize future damages.
101. At no time did Watson consent to or agree to be responsible for the contamination on and under the Watson Center. At no time did Watson or its tenants contribute or cause the subject contamination in issue.

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

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

TENTH CAUSE OF ACTION

(Unjust Enrichment Against All Defendants)

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

105. At no time did Watson agree to be responsible for the contamination on and under the Watson Center. At no time did Watson or its tenants contribute or cause the contamination in issue.
106. Watson is informed and believes, and thereon alleges, that defendants, and each of them, were responsible for and deliberately and intentionally caused or permitted the unlawful release and discharge of the subject contaminants and permitted their continuous leaching and migrating through and into the soil and groundwater under the Watson Center. Watson is further informed and believes, and thereon alleges, that the defendants, and each of them, knew that the releases and discharges of the subject contaminants were unlawful when they occurred, that their actions would likely damage the Watson Center and the groundwater beneath the Watson Center, that readily available methods existed to avoid, remediate or mitigate the discharges or the migration of such discharges, but the defendants nevertheless knowingly and intentionally permitted the release and discharges to occur and left them concealed beneath the surface to migrate through and into the soil and groundwater under the Watson Center.

107. As a result, defendants, and each of them, have been unjustly enriched at the expense of Watson in that Watson has incurred and will continue to incur the costs of discharging the liabilities of the defendants. In equity, the defendants, and each of them, should be made to reimburse Watson for all such costs incurred.

**ELEVENTH CAUSE OF ACTION**

*(Declaratory Relief Against All Defendants)*

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

109. An actual controversy now exists relating to the legal rights and duties of the respective parties because Watson, on the one hand, contends that the defendants, and each of them, are liable and responsible for the costs and damages incurred by Watson as a result of the subject contamination attributable or caused by each such defendant. Watson is informed and believes, and thereon
alleges, that defendants, on the other hand, contend that they are not responsible to Watson for such damages.

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

PRAYER FOR RELIEF

WHEREFORE, Watson Land Company prays for relief as follows:

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

Dated: May 16, 1996

By

Maureen J. Bright
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 Watson Center 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
gеotechnical 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 form 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: [Signature]
Title: Refinery Manager

WATSON LAND COMPANY
By: [Signature]
Title: [Signature]
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

GENERAL VERDICT WITH SPECIAL FINDINGS
WE, THE JURY IN THE ABOVE-ENTITLED ACTION, FIND AS FOLLOWS:

1. Did Watson prove by a preponderance of the evidence that Shell caused a continuing nuisance on the Watson Center?
   
   Answer "YES" OR "NO."  
   Answer: NO

2. Did Watson prove by a preponderance of the evidence that Shell caused a continuing trespass on the Watson Center?
   
   Answer "YES" OR "NO."  
   Answer: YES

If you answered "yes" to either question 1, or question 2, or both, please answer question 3 and question 4.

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

   $3,915,851.00

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

   Answer "YES" OR "NO."  
   Answer: NO

If you answered "yes" to question 4, please have the jury foreperson date and sign this special verdict form and return the form to the Clerk of the Court. If you answered "no" to question 4, please answer question 5.
5. What is the value of the benefits obtained by Shell as a result of the petroleum hydrocarbon contamination that it caused on the Watson Center from June 1, 1993 to June 30, 2001? $14,275,237.00

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

Dated: July 23, 2001  By: 

Jury Foreperson
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., 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.


Affirmed as modified.

West Headnotes

[1] Trespass 386 §→50

386 Trespass

386II Actions
386II(D) Damages
386k50 k. Entry-on-and-Injuries-to-Real Property. Most Cited Cases


[2] Statutes 361 §→181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases

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

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 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited
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 C≈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

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 C≈184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k184 k. Policy and Purpose of Act. Most Cited Cases

The objective sought to be achieved by a statute, as
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 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 cleanup 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 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 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.
(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...
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 Dagdigan 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 Dagdigan that the contamination in those plumes was a leaded gasoline. Further, the presence of DIPE suggested to Dagdigan, 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. Dagdigan testified that DIPE was found at Shell facilities to the north and south of the Watson Center, and also at Mormon Island, where Shell stored gasoline.

*75 Dagdigan 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,
testified regarding the results he obtained using "downhole flux" testing. He testified that "the source of the B2 Plume in 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 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 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.] (Watton 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-