

Shell Oil Toxic Waste Spill

In a massive lawsuit between Shell Oil Co., and its 250 insurance companies, a jury ruled in December 1988, that the company, not its insurers, must pay more than \$1 billion to clean up toxic waste at the Rocky Mountain Arsenal north of Denver, Colorado.

The parties battled it out in a 14-month trial before San Mateo County Superior Court Judge William Lanam, in which Shell claimed that the millions it spent on insurance premiums since it began working on the site in 1952 covered it against claims involving the contamination from 30 years of pesticide manufacture.

In response, attorneys for the insurers argued that the cleanup cost was not the insurance companies' responsibility because Shell's reckless acts, and not mere negligence, caused the pollution. The insurers claimed that Shell knew virtually from the time it purchased the facility that it was causing damage. Insurance does not cover a company that knew that it was polluting the environment and chose not to change its ways in order to protect its profit margin.

UNAWARE OF LEAKAGE

During the trial, Shell repeatedly claimed that it was unaware of leakage. However, insurance company lawyers presented evidence that the company knew of the environmental damage it was causing. They focused the jury's attention on the deaths of hundreds of ducks on the site, starting in 1952. The fowl succumbed after eating snails and other food from polluted ponds. The evidence showed that Shell was aware of massive deaths of ducks, 1,200 of them, in 1952, and was caught covering up the deaths in the 1960s by state officials.

BY KEN TORRE
AND AMANDA L. RIDDLE, ESQ.

The evidence further showed that hundreds of millions of gallons of highly toxic waste were dumped during the 30 years of operation, and that Shell knew of ground-water pollution as early as 1954.

DEPOSITED WASTES

Shell deposited its wastes into an Army-operated sewage system, claiming that the Army required it to use the disposal system, and that there was no evidence that it knew before 1979 of any contamination. However, the insurers presented evidence showing that the Army sewage system was woefully inadequate. Untreated liquid chemicals were dumped into thinly lined or unlined ponds. Solid waste was buried in drums that broke open.

The EPA and the State of Colorado sued Shell in Colorado to force it to correct the damage. In an agreement reached between the parties in that case, Shell and the U.S. Army agreed to split evenly the first \$500 million in costs. Shell was then required to pay 35% of the next \$200 million, and 20% of everything over that amount, with the government paying the remainder. The full cost of the clean-up was estimated to reach \$2 billion.

Shell, in turn, sued its insurance carriers in 1983 in San Mateo County. The company could have filed the case in any jurisdiction in the United States, however, San Mateo County was the chosen due to the superior court's judicial reputation and the management of the court calendar.

After an extensive search for a facility that could house such a trial, the chosen arena for the battle was an unlikely spot: a converted auditorium at the abandoned Crestmoor High School

in San Bruno. It was redesigned at a cost of \$350,000 to model the situs for the first asbestos trials in San Francisco. The "courtroom" was approximately 7,000 sq. feet, and, in all, there were four rows of 24 desks that each seated two or three lawyers, for a total of 65 trial attorneys. The "courtroom" was state-of-the-art for its time, with computer data bases and instant retrieval of information, laser disk document storage and electronic reproduction of the court reporters' transcript. Another \$400,000 was spent to turn old classrooms into offices for the lawyers directly involved in the trial.

A jury box to seat 24 jurors was constructed. Judge Lanam did not inform the initially chosen 12 jurors who they were in an effort to keep the whole group's attention on the trial. Friday was a designated preparation day for the attorneys and the judge. Any juror who missed a day of testimony had to attend the Friday court session to view a video tape of the missed testimony.

5,000 EXHIBITS & 7,000 PLEADINGS

The case involved 5,000 exhibits and 7,000 pleadings. In addition, Judge Lanam had a light buzzer installed in case of an objection, so that he could focus on which of the numerous attorneys made the objection. Two court reporters were assigned to provide daily transcripts of the proceedings, along with a real time dirty copy to the support staff in the on-site law offices.

The trial and the facilities drew national attention. For his work not only on this case, but throughout his entire career, Judge Lanam was considered a steadfast and devoted public servant. □

Ken Torre served as the Master Calendar Coordinator of the San Mateo County Superior Court from 1973-1981, its Assistant Superior Court Administrator from 1981-1985, and the San Mateo County Superior Court Administrator from 1985-1996.