

Appendix N

Britton Lukes, IMCO – Deposition Transcript

The references to NTSB representatives contained in this transcript are erroneous.

NTSB investigators did not interview Mr. Lukes.

00001

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM -----

KATHERINE DALEN, Individually
and as the Personal Represent-
ative of the Estate of STEPHEN M.
TSIORVAS, and as Guardian
ad Litem for ANDREW R. TSIORVAS
and GEORGE K. TSIORVAS,

Plaintiffs,

-vs-

No.

99-2-01468-1

OLYMPIC PIPE LINE COMPANY, a
foreign corporation, EQUILON
PIPELINE COMPANY LLC, a foreign
corporation, and EQUILON ENTERPRISES, LLC,
a foreign corporation, and FRED CROGNALE,
FRANK HOPF, RON BRENTSON and JOHN DOES,

Defendants.

OLYMPIC PIPE LINE COMPANY, a
foreign corporation,

Third-Party Plaintiff,

-vs-

IMCO GENERAL CONSTRUCTION CO., a domestic
corporation,

Third-Party Defendant.

VIDEOTAPED DEPOSITION UPON ORAL
EXAMINATION OF

BRITTON LUKES -----

February 27, 2001

Cheryl Macdonald, Court Reporter
MA-CD-OC-A457LC

00002

FRANK S. KING, as the Personal
Representative of
the Estate
of WADE B. KING,
and FRANK S. KING
and MARY L. KING,
individually, and
TRACY K. BELL,
individually, and
JASON KING,
individually,

Plaintiffs,

-vs-

No.

99-2-01467-3

OLYMPIC PIPE LINE COMPANY, a
foreign
corporation, EQUILON
PIPELINE COMPANY
LLC, a foreign
corporation, and
EQUILON
ENTERPRISES, LLC, a
foreign
corporation, and
FRED CROGNALE,
FRANK HOPF, RON
BRENTSON and JOHN
DOES,

Defendants.

OLYMPIC PIPE LINE
COMPANY,
a foreign corporation,
Third-Party Plaintiff,

-vs-

IMCO GENERAL CONSTRUCTION CO., a domestic
corporation, and JOHN DOE DEFENDANTS ONE
THROUGH FOUR,

Third-Party Defendants.

VIDEOTAPED DEPOSITION OF BRITTON
LUKES

9:40 a.m.
February 27, 2001
1201 Third Avenue
Suite 2760
Seattle, Washington

Cheryl Macdonald, Court Reporter

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EXAMINATION INDEX

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00005

A P P E A R A N C E

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00006

1 (The introduction to the
videotaping was
2 stipulated by all parties present.)
3 (Marked Exhibit 275.)
4 MR. TOLLEFSON: I'm Val Tollefson
here for
5 the Olympic Pipe Line today.
6 MR. CALFO: Angelo Calfo for
Olympic Pipe
7 Line.
8 MR. PLATIS: Harry Platis for
plaintiffs
9 Tsiorvases.
10 MR. BENDER: Bill Bender for Earth
Tech.
11 We're a nonparty.
12 MR. VERWOLF: Nick Verwolf for
Equilon
13 Enterprises and Equilon Pipeline Company.
14 MR. BENINGER: David Beninger on
behalf of
15 the remaining plaintiffs.
16 MR. FLOYD: Francis Floyd on behalf
-- is
17 there a phone going off here -- here on
behalf of Imco.
18 MR. BENINGER: For the record, I
understand
19 there's a nonparty representative present. I
don't
20 have a problem with that.
21 MR. TOLLEFSON: Nor do I.
22 BRITTON LUKES, witness herein, having been
first

deposed
23
24
25

duly sworn by the Notary,
and said as follows:

00007

1 EXAMINATION

2 BY MR. TOLLEFSON:

3 Q. Could you state your full name,
please.

4 A. Britton Leroy Lukes.

5 Q. And how do you spell your last
name?

6 A. L U K E S.

7 Q. What's your home address,
Mr. Lukes?

- - - - -

9 Washington.

10 Q. Handing you what's been marked
as Exhibit

11 275, which is the first exhibit in your
deposition

12 today, do you recognize that as a copy of
a subpoena

13 that you've received in connection with
this

14 deposition?

15 A. Yeah.

16

Q. Yes?

17

A. Yes.

18 Q. And have you brought any records
with you

19 today in response to that subpoena?

20 A. The only thing that I have in
regards to

21 this case is my amended subpoena, is the
only thing I

22 have. Same thing. All I got.

23 Q. Specifically you have no
notebooks,

24 photographs, calendars of any kind with any
information

25 at all relating to your work for Imco on the
Dakin-Yew

00008

1 project?

2 A. Huh-uh.

3 Q. You're going to have to answer
yes or no so

4 that the court reporter is able to get it
down.

5 A. No.

6 Q. You have no copies of any
subpoenas that

7 have been issued to you by any other entity?

8 A. No.

9 Q. Have you been deposed before?

10 A. No.

11 Q. Have you testified under oath
before?

12 A. No.

13 Q. Have you testified before a grand
jury?

14 A. No.

15 Q. Have you had the meaning of the
oath that
16 you've taken today explained to you by
anyone?

17 A. I'm not sure what you're
getting at.

18 Q. Do you understand that you
have sworn to

19 tell the truth?

20 A. Yes.

21 Q. Has anybody explained what that
means to

22 you?

23 A. No.

24 Q. Do you have any questions about
what your

25 obligations are having sworn to tell the
truth today?

00009

1 A. No, I don't.

2 Q. Are you represented here today by
a lawyer?

3 MR. FLOYD: We're representing
him for

4 purposes of this litigation.

5 Q. When did you retain Mr. Floyd?

6 A. I didn't actually retain Mr.

Floyd. I was

7 contacted by them approximately a year ago.
That was

8 my first communication with him. Had
communications a

9 couple of times and they actually called me
about this

10 and asked if I wanted them to be here with
me and I

11 said sure.

12 Q. Has Mr. Floyd told you before you
heard it

13 just now that he is here as your attorney
today?

14 A. Yeah. We met this morning and
talked about

15 it and discussed what exactly our
relationship is on

16 the thing.

17 MR. FLOYD: Counsel, you're
getting into

18 technically privileged areas, but if you
will agree

19 that it's not a waiver of privileges for
other

20 purposes, I'll let you go ahead.

21 MR. TOLLEFSON: I'll certainly
agree to

22 that.

23 MR. FLOYD: Okay. I have no
problems with

24 you asking him what...

25 Q. Prior to your meeting with Mr.
Floyd today,

00010

1 have you had any discussions with anyone
from -- Mr.

2 Floyd or anyone from his office as to the
fact that

3 they were acting as your attorneys?

4 A. No.

5 Q. Have you been represented by any
other

6 attorneys at all since June 10, 1999?

7 A. No.

8 Q. Have you been advised by anyone
at all since

9 June 10, 1999 that you may face criminal charges in

10 connection with the pipeline explosion in Bellingham?

11 A. No.

12 Q. Have you ever been told by anyone that you

13 do not face the possibility of such criminal charges?

14 A. No.

15 Q. Are you being paid for your time here today

16 other than the witness fee that you're owed?

17 MR. TOLLEFSON: Has he been paid a witness

18 fee?

19 MR. FLOYD: If he's been paid a witness fee

20 it would probably be by you, wouldn't it?

21 MR. TOLLEFSON: It would be by whoever

22 originally served him with a subpoena.

23 Q. Have you received a witness fee?

24 MR. FLOYD: Don't proceed unless he gives

25 you the money right now.

00011

1 THE WITNESS: That's what I'm thinking.

2 Somebody has got to pay that parking.

3 MR. BENINGER: You better check it first.

4 THE WITNESS: The old Payton switch.

5 MR. BENINGER: That came out too fast.

6 Q. You indicated that you met -- first met with

7 Mr. Floyd or somebody from his office about a year ago?

8 A. Yeah.

9 Q. Since that time, how many times have you met

10 with representatives of that firm?

11 A. Twice including today -- no, excuse me,

12 three times including today.

13 Q. Have you provided them with any
written
14 statements?
15 A. No.
16 Q. Have any of your meetings with them
been
17 tape recorded to your knowledge?
18 A. No.
19 Q. Have you been compensated for any
of the
20 time you've spent meeting with those
attorneys?
21 A. No.
22 Q. You haven't received any money
from them?
23 A. The first meeting I had about a
year ago I
24 came down and met with Mr. Weigel, and he
gave me money
25 to pay for my parking because I paid a \$11
parking
00012
1 thing, so that's pretty much it.
2 Q. Excuse me. I don't mean to jump
on you when
3 you're talking. Have you been promised any
4 compensation in connection with your
testimony here
5 today?
6 A. Nope.
7 Q. When after the June 10, 1999
explosion did
8 you first meet with anyone investigating
that event?
9 A. Approximately a year ago some
NTSB agents
10 came to my house.
11 Q. Was that before or after you had
first
12 talked to somebody from Mr. Floyd's
office?
13 A. Before I had talked to them.
14 Q. Do you recall the name or names
of the
15 investigator?
16 A. No, I don't.
17 Q. Was there more than one?

18 A. There was three.
19 MR. BENINGER: I'm sorry, you
 said three?
20 THE WITNESS: Yes.
21 MR. BENINGER: You're doing
 fine. I'm
22 catching some of it. You're talking a
little low, so
23 if I interrupt you'll understand why. I
got pretty
24 good hearing, but I'm not catching some of
it.
25 THE WITNESS: It's a habit I
 have, when I
00013
1 start thinking I start talking quieter. I
don't know
2 why. That's just what I do.
3 Q. Any of those NTSB investigators
provide you
4 with a business card?
5 A. Yes, they did. All three of
them did.
6 Q. Did you keep those business
cards?
7 A. I kept them for a while and then
I did a
8 polygraph analysis for them, and then I had
one more
9 interview at Imco's office with them, and
at that time
10 I thought I was pretty much done with this
case, and I
11 have pretty much burned everything that I
 had in
12 relation to it.
13 Q. You indicated that you pretty
much burned
14 everything you had in connection with this
case. What
15 other than the business cards from the NTSB
16 investigators did you have?
17 A. For some reason I was on the
attorney's list
18 for a while so I was getting all sorts of
mailings. I
19 think every mailing everybody else got in

relation to

20 the case as far as motions. I got all kinds
of
21 interesting reading.

22 Q. Are you licensed to practice law?

23 A. Nope.

24 Q. Would you like to be?

25 A. Nope. Most of it was Greek.

00014

1 Q. Other than things that you got
because you

2 were on somebody's mailing list, what other
information

3 did you have or documents did you have that
you have

4 since disposed of?

5 A. That's the only thing I can
recall offhand.

6 Q. You didn't have any photographs?

7 A. No.

8 Q. You didn't have any diaries or
personal

9 notes from the time you were working for
Imco on this

10 job?

11 A. No.

12 Q. Since first meeting with Mr.
Floyd or

13 representative of his office maybe about a
year ago,

14 have they provided you with any documents to
read?

15 A. No.

16 Q. Have you been provided with a copy
of any

17 depositions or statements or summaries of
interviews by

18 any other witnesses in this case?

19 A. No.

20 Q. Have you had any information at
all provided

21 to you regarding a deposition of Mark
Graham?

22 A. Any -- could you repeat that for
me, please.

23 Q. Yeah. Have you had any
information provided

24 to you at all with regard to the deposition of
Mark

25 Graham?

00015

1 A. Yes.

2 Q. What have you been told about Mr.
Graham's

3 testimony?

4 A. I'm not sure the information that
I got was

5 in regards to his deposition, but I've
been told that

6 Mark Graham had said that he saw me hit
the gas line,

7 and I'm not even -- I can't recall even
who told me

8 that or -- but I remember hearing that.

9 Q. Do you remember when you were
told that?

10 A. Last summer, six or eight months
ago. I

11 think I remember hearing that.

12 Q. Other than information that
you've been

13 provided about what Mark Graham said, have
you been

14 provided information about any other
witnesses in this

15 case?

16 A. Nothing specific, no.

17 Q. Have you been provided any
information

18 regarding deposition testimony of John
Muder?

19 A. Yes.

20 Q. What?

21 A. That was part of our conversation
this

22 morning, you know. They just --

23 Q. You're not to tell me what they
told you.

24 I'm just asking you what you know.

25 MR. FLOYD: Any information, any
documents

00016

1 or anything like that.

2 A. No.

3 Q. What information -- what do you
know about

4 the testimony of John Muder?

5 A. I know that he got upset and
maybe lost his

6 cool a little bit so they asked me to make
sure I

7 remained calm and if I need to take a break
to relax,

8 take a break and relax.

9 MR. FLOYD: Don't tell him what I
told you

10 or anyone that was there, so I'm going to
have to move

11 to strike because that's privileged. He
just wants to

12 know what documents you saw.

13 A. I didn't see any documents
regarding John

14 Muder.

15 Q. You know that -- you understand
that Mr.

16 Muder got upset at his deposition. Do you
know

17 anything about what he testified about?

18 A. Nope.

19 Q. Do you know if Mr. Muder provided
any

20 testimony about you striking any pipeline?

21 A. Yes, actually.

22 Q. What do you know about that?

23 A. They told me that he thought that
I hit --

24 here I go again. I don't know how to answer
that

25 question.

00017

1 Q. Well, just tell me, just tell me
what you

2 know.

3 A. Apparently John thought that I
had hit some

4 ductile iron pipe, and I don't have any
recollection of

5 hitting it so I don't know what -- I'm in
trouble with

6 that one.

7 Q. That's all right. We'll get back
to that.

8 Other than your being under oath and
testifying here

9 today, since the June 10, 1999 incident,
have you

10 provided any other statement or testimony
under oath?

11 A. No.

12 Q. That includes your two interviews
with the

13 NTSB?

14 A. I don't remember being sworn in
before any
15 of these interviews or my polygraph analysis.

16 Q. Did you provide the NTSB with any
written

17 statements?

18 A. Nope.

19 Q. Did you sign anything as a result
of either

20 of your meetings with NTSB personnel?

21 A. No.

22 Q. The first time you met with the
NTSB three

23 agents came to your house?

24 A. Yes.

25 Q. Did you know they were coming?

00018

1 A. No.

2 Q. They came unannounced?

3 A. Yes.

4 Q. And that was approximately a year
ago?

5 A. I would say, yeah, approximately a
year ago.

6 Q. What did they talk to you about?

7 A. Just my memory and recollection of
working

8 in that area, working for Imco.

9 Q. What time of day did they come to
your

10 house?

11 A. Late afternoon.

12 Q. And how long were they there?

13 A. I would say 45 minutes to an hour.

14 Q. Did they ask you whether or not you

15 had any
recollection of striking any pipes at all
16 while you
were working for Imco?
17 A. I don't know. I mean, they asked
me a lot
18 of questions. I'm not sure if they asked me
19 specifically if I had any recollection of
striking any
20 pipe.

21 Q. Do you recall any specific
questions that
22 they asked you?
23 A. No.
24 Q. Do you recall things that they
were
25 particularly interested in by reason of the
questions

00019

1 they were asking you?
2 A. Yes.
3 Q. What?
4 A. My knowledge of the whereabouts
of the
5 Olympic pipeline was something they asked me
about, my
6 relationship with Paul Krakenberg they asked
me about.
7 They wanted to know how many -- if I
remembered
8 everybody that was on the job or if I could
identify
9 any other persons working in that area.
Those are the,

10 I would say, the things that come to mind
most. That
11 was kind of the point of our whole
conversation.

12 Q. What did you tell them about your
knowledge
13 of the location of the pipeline?
14 A. That we knew where it was.
15 Q. Did they ask you how you knew?
16 A. Yes.
17 Q. And what did you tell them?
18 A. That it was located before we got
there, and

19 any time we did any excavation anywhere near
it we had

20 to dig by hand to locate it. So we always
knew where

21 it was.

22 Q. When you say it was located before
you got

23 there, what do you mean?

24 A. When I arrived on the job site, I
remember

25 seeing like fiberglass reflectors, one
basically on
00020

1 each end of the job, and the pipe ran
straight, so you

2 could stand there and say it runs from this
one to that

3 one. So we knew where it was in that
regard.

4 Q. Was there any other staking or
marking on

5 the job site which you understood indicated
the

6 location of the Olympic pipeline other than
the two

7 markers you've described?

8 A. We would place some. You know,
if we

9 located the pipe in a specific area, we
would make an

10 offset in reference to it to make sure we
always -- any

11 time you exposed it you gained that
knowledge so you

12 knew better the next time where it was and
how deep it

13 was. So, yeah.

14 Q. What did you tell the NTSB
investigators

15 regarding your relationship with Paul
Krakenberg?

16 A. My relationship with Paul
Krakenberg was

17 okay. I wouldn't say that we were the best
of friends,

18 but it was a working relationship.

19 Q. Do you recall providing any other

20 information to the NTSB investigators about
Mr.

21 Krakenberg?

22 A. No.

23 Q. What about other people working
for Imco on

24 the job? Do you recall any other specific
information

25 you provided to the NTSB regarding other
Imco

00021

1 employees?

2 A. No.

3 Q. Do you recall anything else that
the NTSB

4 was interested in during their interview of
you a year

5 ago?

6 A. No, I don't.

7 Q. Now, you indicated that you did a
polygraph

8 for the NTSB?

9 A. Uh-huh.

10 Q. When did you do that?

11 A. Last spring.

12 Q. How long after your meeting with
the NTSB

13 did you do that?

14 A. Couple of months, three months
maybe.

15 Q. And how did that come about?
Did they

16 contact you again?

17 A. Uh-huh.

18 Q. And was it one of the
investigators that had
19 interviewed you originally that contacted
you?

20 A. Yes.

21 Q. What did they ask you?

22 A. Asked if I would be objected, you
know, to

23 coming and doing a polygraph.

24 Q. And did you agree to do that in
the course

25 of that initial conversation?

00022

1 A. Yeah.
2 Q. You did not consult with a lawyer
before
3 agreeing to take a polygraph?
4 A. No.
5 Q. Had you talked to anyone from Mr.
Floyd's
6 office before you were asked by the NTSB to
take a
7 polygraph?
8 A. Yes.
9 Q. Had you asked for any advice as
to whether
10 or not you should have contact with any
investigators
11 regarding the accident?
12 A. At which point?
13 Q. When you first talked to Mr.
Floyd's office.
14 A. I'm not sure what you're asking
me.
15 Q. When you first talked to anybody
from Mr.
16 Floyd's office, did you ask them for any
guidance as to
17 whether or not you should talk to anybody
else
18 regarding the accident?
19 A. No.
20 Q. So where did you go to take the
polygraph
21 for the NTSB?
22 A. At the Bellingham police
department.
23 Q. And do you know who
administered it?
24 A. No, I don't know. I
believe it was a
25 representative of Bellingham police
department, their
00023
1 own technical guy that did that.
2 Q. Was it a uniformed officer that
administered
3 the polygraph?
4 A. No. I don't believe so.
5 Q. Were you given a business card by

the person

6 that administered the polygraph?

7 A. I don't recall.

8 Q. Do you have any way to determine
the actual

9 date on which you took the polygraph at the
Bellingham

10 police department?

11 A. I don't, no.

12 Q. Were you employed at the time?

13 A. Yeah.

14 Q. Did you have to take time off from
work to

15 do it?

16 A. I don't remember taking time off
work to do

17 it.

18 Q. Who was your employer at the
time?

19 A. Wilder Construction.

20 Q. What time of the day did you
arrive at the

21 Bellingham police department to take a
polygraph?

22 A. I believe it was like 9:30 in the
morning.

23 Q. And how long were you there?

24 A. I would say about three hours.

25 Q. And during the course of that
three hours,

00024

1 what happened?

2 A. Just asked a series of questions.
I believe

3 we went through three times, and in
different order.

4 Q. Same questions were administered
three

5 different times in different sequences?

6 A. In random order.

7 Q. Was anybody else present while
you were

8 taking this test?

9 A. I don't know.

10 Q. Why wouldn't you know?

11 A. It was a small room with two-way
mirrors on

12 it, and I could see movement in the rooms
next to you,
13 but I don't know if there was other police
officers or
14 if there were people there to witness it. I
don't --
15 nobody told me.
16 Q. Physically in the room with you
was, I
17 believe, the person giving the examination?
18 A. Right.
19 Q. Have you been told by anybody
what the
20 results of that polygraph examination were?
21 A. No.
22 Q. Have you taken any other
polygraph
23 examination?
24 A. No.
25 Q. Have you taken any kind of
psychological

00025

1 test or what you would think of as a
psychological test
2 of any sort as a result of the June 10, 1999
explosion?
3 A. No.
4 Q. You've been interviewed by the
NTSB on two
5 occasions. The second occasion was at
Imco's office,
6 did you say?
7 A. Correct.
8 Q. And what was the purpose of that
interview?
9 A. I don't really know. They wanted
to talk to
10 me again. Basically we just touched on some
of the
11 points from our initial interview and some
questions
12 they had.
13 Q. And when was that?
14 A. I don't know. Last -- early last
summer.
15 Q. Who was present?
16 A. Francis, and I think there was two

23 A. About ten minutes.
24 Q. Did you sign anything in
25 that session?
00027
1 A. No.
2 Q. Other than that person, have you
been
3 contacted by anybody else who you
understand to be
4 involved in investigation of this accident?
5 A. No.
6 Q. What's your education
background?
7 A. High school.
8 Q. Where did you go to high school?
9 A. Mt. Baker High School.
10 Q. And that's Bellingham?
11 A. Yeah, outside of
Bellingham, Deming.
12 Q. When did you graduate?
13 A. '87.
14 Q. Any formal education or formal
vocational
15 training since high school?
16 A. No.
17 Q. How have you been employed then
since high
18 school?
19 A. I'm not sure what you're asking
there.
20 Q. What did you do when you first got
out of
21 high school?
22 A. I worked for Imco.
23 Q. Were you ever in the service,
military
24 service?
25 A. Nope.
00028
1 Q. Were you ever rejected for
military service
2 for any reason?
3 A. Not formally, no.
4 Q. Informally?
5 A. Informally, yes.
6 Q. Why?

7 A. I had a bad knee, torn cartilage
in my knee.

8 Q. From sports in high school?

9 A. Yes.

10 Q. What did you play?

11 A. I wrestled and did football and
baseball.

12 Q. So you graduated from high school
what year?

13 A. 1987.

14 Q. And you went to work for Imco at
that time?

15 A. Yes.

16 Q. And what was your job when you were
hired by

17 Imco in '87?

18 A. Laborer.

19 Q. How long did you work for them?

20 A. I think about two and a half years
the first

21 time.

22 Q. And did you work as a laborer that
entire

23 period of time?

24 A. Yeah. I would say towards the end
I started

25 operating a lot of equipment.

00029

1 Q. How did you come to start
operating

2 equipment? How did you learn how to run it?

3 A. Well, I started actually working
for Imco

4 when I was in junior high school as their
yard boy

5 doing clean up, sweeping up the shop, mowing
the lawn,

6 stuff like that, and part of my job doing
that was

7 greasing and servicing pressure washing
cleaning up all

8 the equipment. So by doing that I kind of
learned the

9 ins and outs of how the machinery worked.
Nobody had

10 a hard time if I wanted to play on it or
tried to learn

11 a little bit. They were always real willing
to let you

12 learn and try stuff. So basically through
that and

13 the whole time that I worked there that two
and a half

14 years, any opportunity I had they were
willing to let

15 you as long as you were in a safe situation,
and I

16 learned how to do it that way.

17 Q. How did you happen to get a job
with Imco

18 when you were still in school? Is it a
family

19 friendship or something?

20 A. Yes.

21 Q. What is the relationship?

22 A. The foreman for Imco that hired me
was a

23 good friend of my dad's.

24 Q. Who was that?

25 A. Vic Unick.

00030

1 Q. How do you spell that
last name?

2 A. U N I C K.

3 Q. So when you were in high
school or junior

4 high school and working for Imco, did you
actually

5 operate equipment on jobs or was this just
driving

6 around the yard or something?

7 A. Just driving around the yard.

8 Q. But after high school when you
went to work

9 for Imco you gradually were given permission
to operate

10 various pieces of equipment in connection
with actual

11 jobs they were doing?

12 A. Correct.

13 Q. Did you recall what jobs you
worked on when

14 you worked for Imco during that two and a
half years

15 out of high school?
16 A. Yeah. We did a job in Bremerton
on a sewer
17 treatment plant.
18 Q. What kind of treatment plant?
19 A. Sewer, waste water. And then
Cathcart
20 Landfill, put in a drainage system, and truck
scales in
21 Snohomish County there. Then fish hatchery
in
22 Wenatchee, and that's all I can remember.
23 Q. Do you remember whether in
connection with
24 either of those -- any of those three jobs
there were
25 any considerations of natural gas or
petroleum
00031
1 pipelines running through the job site?
2 A. I don't recall. There's another
one, too.
3 Olympia. We did a waste water treatment
facility just
4 north of Olympia.
5 MR. FLOYD: Can you hear him
okay?
6 THE WITNESS: I'm trying to turn
more toward
7 you.
8 MR. BENINGER: You're doing fine.
9 Q. After working for Imco for that
first two
10 and a half years, what did you do next?
11 A. Vic Unick left Imco, started his
own company
12 and asked me if I would come with him, so I
did.
13 Worked for him for about two years, year and
a half,
14 two years. I'm not sure. Something like
that.
15 Q. What kind of a business did he
start?
16 A. Well, obviously it was a
smaller company
17 than Imco, but mostly did site prep and

stuff,
18 foundation, excavation for houses and
side sewers,
19 water service hookups.
20 Q. I'm sorry?
21 A. Some small land clearing jobs,
stuff like
22 that.
23 Q. And what kind of work did you do
for Mr.
24 Unick?
25 A. Pretty much everything. That was
one of the

00032

1 reasons I elected to go that way is because
I had the
2 opportunity to run equipment pretty much
full-time
3 working for Vic, and so I'd drive a dump
truck and run
4 my own equipment and really got more hands-
on
5 experience running my own little jobs. They
were small
6 jobs, but you still had to do all the
planning and
7 scheduling yourself.

8 Q. How many employees were there
besides you
9 and Mr. Unick?

10 A. One other full-time, and then
there was
11 couple of young guys that would come out and
work with
12 us whenever we needed an extra hand.

13 Q. And what kind of equipment did you
operate
14 when you were working for him?

15 A. A backhoe, excavator, bulldozer.
That's
16 pretty much it unless you count dump
trucks.

17 Q. Do you recall what kind of
backhoe he had?

18 A. Yes. He had two backhoes. He
had a 210C,
19 John Deere 210C, and an old three cylinder

310. That
20 was a neat machine there.

21 Q. What about excavator, what did he
have?

22 A. EX 120. That's an Hitachi.

23 Q. And how about the bulldozer?

24 A. Case 550B or G. That was a 550,
I think.

25 Q. After you worked for Mr. Unick,
what did you
00033
1 do next?

2 A. I went back to work for Imco.

3 Q. Was that going back to Imco, was
that in the
4 spring of or early summer of 1994?

5 A. I don't remember what the year
was.

6 Q. Had you gone back to Imco on more
than one
7 occasion?

8 A. No. I believe that would have
been it.

9 Q. And you worked for Imco on that
occasion how
10 long?

11 A. I would say about another two
years, couple
12 of years. I don't recall when I left after
that. I'd
13 have to really do some thinking here, going
backwards.

14 Q. Well, wouldn't want you to stop
thinking
15 now. Does thinking about it help you recall
how long
16 you worked?

17 A. I think it was about two years.

18 Q. Why did you leave the second
time?

19 A. I had some good financial
opportunities. I
20 went to Maine and worked on a crab boat out
in the
21 Atlantic, and I thought I was going to make
a lot of
22 money doing that.

23 Q. So your next job after leaving
Imco was
24 going to Maine and working as a fisherman?
25 A. Uh-huh.

00034
1 Q. How long were you there?
2 A. Three months, or just under
three months.
3 Q. And what did you do after that?
4 A. I went to work for Callen
Construction.
5 Q. Where is that?
6 A. Custer, Washington.
7 Q. So you came back?
8 A. Yes.
9 Q. Is it Cowan, C O W A N?
10 A. C A L L E N.
11 Q. What kind of work did you do
for them?
12 A. Housing development, doing in the
storm
13 water, sewer, all the utility trenching. I
was kind of
14 the head pipe layer for them.
15 Q. Primarily equipment operation?
16 A. Yes.

17 Q. When you came back to the
northwest, did you
18 make any effort to go back to work for Imco?
19 A. No.
20 Q. Was there some reason that you
didn't want
21 to return to work for Imco?
22 A. Well, not specifically, no. I
just -- I
23 didn't really enjoy working for them towards
the end.
24 Q. Why was that?
25 A. I was a foreman for Imco when I
left, but it

00035

1 was like being a foreman but they didn't
really give
2 you any authority to be a foreman. It felt
like I was
3 always over supervised and that kind of
bothered me, so

4 I thought I would go someplace else.
5 Q. Who was your supervisor just
before you left
6 Imco the last time? Let me ask you the
question this
7 way: When you say you were over
supervised, who was
8 doing the over supervising?
9 A. Oh, everybody in the office.
Project
10 superintendents. And I just felt like I was
always
11 second guessed. If I made a decision on the
job how to
12 do something it was always second guessed,
well, you
13 should have done this, you should have been
done that,
14 and I realized that I was young and
learning, but at
15 the time I don't think I realized that.
16 Q. Who would have been your
immediate superior
17 just before you left Imco?
18 A. I believe Craig Conrad.
19 Q. Was Paul Krakenberg still there?
20 A. I believe so. I think he was on
that job,
21 too.
22 Q. What job was that?
23 A. Pump station right up here for
the city of
24 Everett.
25 Q. When you left Imco, were you
given any

00036

1 indication as to whether or not they would
rehire you
2 if you asked for a job?
3 A. I don't recall getting any
indication of
4 that, no. I believe they would.
5 Q. Did you have specific bad blood
when you
6 left Imco with any other Imco employee?
7 MR. FLOYD: Well, I'm going to
object to the

8 form of the question. It assumes that he
had bad blood

9 with someone.

10 MR. TOLLEFSON: I don't think it
does.

11 MR. FLOYD: Foundation.

12 MR. TOLLEFSON: I just want to
know if

13 he did.

14 MR. FLOYD: You said with anyone
else. That

15 presupposes there was a someone.

16 MR. TOLLEFSON: Your objection is
well

17 taken.

18 Q. Did you have bad blood? Did you
have a bad

19 relationship with anybody that you were
working with at

20 Imco immediately before you left?

21 A. I don't believe so, no.

22 Q. When you went back to work
for Imco the

23 second time what was the first job you
worked on?

24 A. I don't recall.

25 Q. Was it the Dakin-Yew
project?

00037

1 A. I don't think so, no.

2 Q. After you went back to work for
Imco, during

3 your second period of employment with them,
did you

4 take any extended vacations?

5 A. No.

6 Q. So what would be the longest
vacation you

7 would have taken while you worked for Imco?

8 A. A vacation?

9 Q. Yeah. Did you take any?

10 A. A week, I guess. Couple of days
maybe.

11 What's a vacation? Doesn't get those.

12 Q. You did at some point work on the
Dakin-Yew

13 project?

14 A. Yes.

15 Q. Do you know if Imco had other
16 projects going
17 at the same time as the Dakin-Yew project?

17 A. I believe they did, yes.

18 Q. Do you know what?

19 A. No. I don't recall offhand, no.

20 Q. Do you recall what the stage of
21 the project
22 was at Dakin-Yew when you came to work
there?

22 A. The stage, like as far as a
23 percent of
24 completion?

24 Q. Yeah. How far along. I mean,
were you
25 there from the beginning with Imco? Maybe
that's a
00038
1 better question.

2 A. No, I was not there from the
beginning.

3 Q. So you were on some other project
for Imco
4 and then was transferred to the Dakin-Yew
project?

5 A. I guess. Yes.

6 Q. Well, is it possible that you
came back to
7 work for Imco and your first job was the
Dakin-Yew
8 project?

9 A. I would suppose it's possible but
I don't
10 remember it that way, no.

11 Q. Well, do you remember it
specifically some
12 other way?

13 A. No, I don't. I just remember
working on
14 other jobs that I know were before that. I
just don't
15 know time frame when I went back to work for
them.

16 Q. Do you have anything that you
could refer to
17 that would refresh your recollection on

that?

18 A. Well, I know I worked in Cheney,
and
19 Okanogan, and I just don't remember when
Dakin-Yew fell
20 in with those projects. And Kent. Did Kent
Highlands
21 landfill project down there. I think that -
- I just
22 don't recall the order of these things is the
problem.

23 Been a while.

24 Q. Do you recall when you went to
work for or
25 when you went to Maine to go fishing? Do
you remember

00039

1 what year that was?

2 A. '95. I got married in '96. Must
have been

3 in '95. I would say September of '95.

4 Q. You are married?

5 A. Yes.

6 Q. Is this your first marriage?

7 A. Yes.

8 Q. Is it your last marriage?

9 A. I'm hoping so. The only
marriage, I'm

10 hoping.

11 Q. Other Imco projects that you
worked on other

12 than Dakin-Yew during your second stint of
employment

13 with Imco included a project in Cheney. What
was that?

14 A. Waste water treatment facility.

15 Q. And something in Okanogan?

16 A. Landfill, Okanogan county
landfill.

17 Q. And Kent Highlands landfill?

18 A. Yeah. It was a methane extraction
burner.

19 Q. And Dakin-Yew. Anything else you
can

20 recall? Any other projects you recall?

21 A. Well, I know I worked here in
Everett at

22 that waste water pump station, which would
have been
23 the last project I was on.
24 Q. So far anything that we've
discussed about
25 the various jobs you've worked on with Imco
during your
00040
1 second employment refresh your recollection
at all as
2 to whether or not Dakin-Yew was the first
job when you
3 came back to work for them?
4 A. No. Dakin-Yew wasn't the first
job I worked
5 on.
6 Q. What was?
7 A. I don't know, but I know that we
had that
8 EX 400 in Cheney brand new and we had it in
Dakin-Yew.
9 Brand new on the Cheney job. And Cheney was
definitely
10 before Dakin-Yew so...
11 Q. So you had an Hitachi. Is that
the Hitachi
12 --
13 A. Yeah, Hitachi EX 400.
14 Q. And it was new when you worked in
Cheney and
15 you had the same unit at Dakin-Yew?
16 A. I believe, yes.
17 Q. ----old are you?
18 A. ----
19 Q. What's your Social Security
number?
20 A-- -----
21 Q. Do you have any kind of special
licenses or
22 certifications relating to any kind of heavy
equipment
23 or equipment operation?
24 A. No.
25 Q. Have you ever been a member of a
union?
00041
1 A. No.

2 Q. Have you ever been the subject of
any
3 investigation by the Department of Labor and
4 Industries, state Department of Labor and
Industries

5 with regard to any job site accidents?

6 A. I don't believe so, no.

7 Q. To your knowledge, have you been
responsible

8 for any injuries to other employees on the
job site

9 during your operation of any heavy
equipment?

10 A. No.

11 Q. You went to work for Callen
Construction in

12 Custer. And how long were you there?

13 A. Nine months, eight months.

14 Q. And where did you go after that?

15 A. Wilder.

16 Q. And where are they located?

17 A. Our head office is in Everett.
Everett,

18 Washington.

19 Q. And what was the nature of your job
there?

20 A. At Wilder?

21 Q. Yeah.

22 A. Foreman.

23 Q. What kind of business are they in?

24 A. Well, do road building, primarily
road

25 building and underground structural
excavations, site

00042

1 grading.

2 Q. Do you still work for Wilder?

3 A. Yes.

4 Q. How long have you worked for them
now?

5 A. Well, since '97 so --

6 Q. Pardon me?

7 A. Since '97. Four years, I guess.

I had to

8 think about it.

9 Q. And what's your job with them now?

10 A. I'm a foreman. I was initially

hired as a
11 pipe layer and shortly thereafter was
basically
12 promoted into a foreman.
13 MR. TOLLEFSON: Why don't we take a
short
14 break.
15 THE VIDEOGRAPHER: Going off the
record.
16 The time is approximately 10:24 a.m.
17 (Recess.)
18 THE VIDEOGRAPHER: Going back on
the record.
19 The time now is approximately 10:41.
20 Q. Mr. Lukes, I want to go back and
ask you a
21 few more questions about contacts that you
may have had
22 with various people in connection with this
June 6
23 explosion, since then and now.
24 MR. TOLLEFSON: Pardon me? June
10, I'm
25 sorry.
00043
1 Q. What people who were employed by
Imco when
2 you were employed by Imco have you discussed
this
3 incident with since June 10, 1999?
4 A. The only discussion I've had with
anybody at
5 Imco would be with Greg Burress.
6 Q. And when was that?
7 A. I called him up I would say about
ten
8 minutes after the NTSB agents left my house
that Sunday
9 evening. That was my first knowledge of the
things was
10 when they came to my house. And after that I
called
11 Greg.
12 Q. And what did you talk about with
him?
13 A. Well, from my conversation with
them it kind

14 of sounded like maybe Imco was shoving some
blame off

15 on me, so I just called them up and point
blankly (sic)

16 said, hey, is someone pointing fingers at
me, and if so

17 who and why. And he just assured me that no
one was

18 doing that, and he just tried to elicit a
response from

19 me, so...

20 Q. Well, when these agents came to
your house

21 -- incidentally, let me ask you this: You
indicated

22 there were three people that came. Do you
have a

23 specific recollection that they were all from
the NTSB

24 or could there have been representatives of
some other

25 agencies?

00044

1 A. They all gave me their business
cards, and

2 they were all NTSB.

3 Q. They were NTSB business cards or
did they

4 say they were in connection with an NTSB
investigation?

5 A. Well, I believe they were NTSB
business

6 cards. That's my recollection.

7 Q. Do you know whether or not any one
of those

8 three people was an attorney?

9 A. No, I don't.

10 Q. Do you know specifically or do you
recall

11 any one of those people identifying
themselves as an

12 assistant United States attorney?

13 A. I don't recall that, no.

14 Q. What did they say to you that
caused you to

15 believe or to suspect that maybe somebody
at Imco was

16 pointing fingers at you?

17 A. They indicated to me that there
was three

18 different people that had testified to
seeing me hit

19 the pipe. And then that was a question that
they asked

20 me is if I had any idea who those three
people would

21 have been.

22 Q. What did you tell them?

23 A. "No."

24 Q. Pardon me?

25 A. "No."

00045

1 Q. Did they give you any indication
of who the

2 people were?

3 A. No.

4 Q. I take it during that interview
you denied

5 hitting the Olympic Pipe Line pipe at any
time?

6 A. That is correct.

7 Q. Did they or any one of those
investigators

8 question your honesty when you made that
statement?

9 A. Not directly.

10 Q. How did they do so indirectly?

11 A. There was a lot of questions
they asked in

12 regards to character, and it kind of felt
like we were

13 going round and round about it, but I guess
eventually

14 they got to the point where they felt
comfortable with

15 my statement.

16 Q. What kind of questions about
character?

17 A. Just they asked me a lot of
things about my

18 past and my relationships and just a lot of
personal

19 questions that -- I don't know. I'd be
speculating,

24 A. Oh, I have to retract. I talked
to Jeff

25 Hinkle. He called me up the other day
about this.

00048

1 Forgot about that.

2 Q. And who is Jeff Hinkle?

3 A. He worked on that job with us.

4 Q. And when you say he called you
the other

5 day, do you mean literally within the
last couple of

6 days?

7 A. I would say a week ago.

8 Q. Well, what did he call about?

9 A. He said that he had been
contacted about
10 this case and he asked if I had, and he said
he hadn't

11 really heard much about it. He wanted to
know if I

12 knew what was going on. And I said I really
don't know

13 what is going on. I'm supposed to go in for
a formal

14 deposition next week. He asked me if I knew
what was

15 going on, basically, is what he wanted to
know.

16 Q. Did he tell you who he had been
contacted

17 by?

18 A. Yeah. I'm not sure who contacted
him.

19 Q. Did Jeff tell you anything about
what his

20 contact with this person had been about
and what they

21 discussed?

22 A. No. They discussed the
pipeline and his

23 employment with Imco. That's all I know.
He didn't

24 tell me any specifics of their
conversation.

25 Q. Did you talk to Jeff about the
work on the

00049

1 Dakin-Yew project at all?

2 A. No.

3 Q. So other than Jeff Hinkle and
one

4 conversation with Greg Burress, you have
not had any

5 conversations with anyone else that you
worked on the

6 Dakin-Yew project with in which either that
project or

7 the explosion subjects have come up?

8 A. That is correct, no, I have not.

9 Q. Now, after you had the first
interview with

10 the NTSB, you were contacted and asked if you
would

11 take a polygraph examination?

12 A. Correct.

13 Q. And you agreed to do that?

14 A. Yes.

15 Q. Now, before actually going in to
take the

16 polygraph examination at the Bellingham
police

17 department, did you discuss that upcoming
examination

18 with anybody?

19 A. Doug Weigel.

20 MR. FLOYD: Don'ts tell him
anything that

21 was said --

22 THE WITNESS: This is where I get
in

23 trouble. I got to pay attention now.

24 MR. FLOYD: Right.

25 Q. Did you do that in person or on
the

00050

1 telephone?

2 A. On the telephone.

3 Q. Were you provided anything in
writing by Mr.

4 Weigel prior to taking the polygraph
examination?

5 MR. FLOYD: I think that's also
privileged.

6 MR. TOLLEFSON: I think that what
he was

7 provided is privileged, but the fact that
he may not

8 have been provided something is not
privileged.

9 MR. VERWOLF: I'm having a
little trouble

10 with the privilege. I understood that Mr.
Floyd's firm

11 wasn't hired until this morning or last
week.

12 MR. TOLLEFSON: That's also
correct. There

13 was not any attorney-client relationship.
Thank you.

14 MR. FLOYD: Well, we're not
conceding that.

15 At the point that Mr. Weigel was giving him
information

16 there was an attorney-client relationship.
So I won't

17 let counsel for Equilon determine when the
18 attorney-client privilege started.

19 MR. TOLLEFSON: Well, the record
will speak

20 for itself.

21 MR. FLOYD: I will assert it.

22 MR. TOLLEFSON: And he indicated
that he had

23 no such relationship before he met with you
either

24 yesterday or this morning.

25 MR. FLOYD: Well, I will make the
00051

1 objections.

2 MR. TOLLEFSON: That's fine.

3 MR. FLOYD: Fine. Just so the
record is

4 clear, I don't want you to tell him what Mr.
Weigel

5 said to you, okay?

6 THE WITNESS: Okay. You'd laugh,
though.

7 MR. TOLLEFSON: Pardon me?

8 THE WITNESS: If I did you'd
laugh.

9 MR. FLOYD: Well, if you agree
that this
10 isn't a waiver of the privilege I'll let him
tell you.

11 How's that?

12 MR. TOLLEFSON: Well, I'm not
going to agree
13 that it's not a waiver of the privilege with
regard to

14 the question that he would answer, but I'm
certainly

15 going to agree that it's not the waiver of
any other

16 privilege you might claim.

17 MR. FLOYD: Fine.

18 MR. TOLLEFSON: Or not an
admission that

19 there was no relationship at the time.

20 MR. FLOYD: I don't understand
that, but it

21 sounds like you're agreeing to it, so go
ahead.

22 Q. So that's what he said?

23 A. No. I asked him -- I told him
that I had

24 agreed to take the polygraph test and I
didn't see any

25 reason why not to, and I asked him, you
know, if he

00052

1 wanted to be present or what and he said he
didn't see

2 any need in being present. He just said
just make sure

3 you get a good night's sleep and have coffee
so you

4 don't fall asleep. That made me laugh.

5 Q. Did he give you any other advice,
either

6 what to do in preparation for or while
taking the

7 polygraph?

8 A. Think about the question and be
honest.

9 Q. Did you consult any other source
of

10 information about taking a polygraph test

before you
11 went to take it?
12 A. No.
13 Q. Did you go to the library and read
up on it?
14 A. No.
15 Q. When you went to take the
polygraph test,
16 did you sign any kind of an agreement or
any document
17 at all in connection with taking that
test?
18 A. I don't recall signing anything,
no.
19 Q. Were you given anything to read
that told
20 you anything about the test or what it
could be used
21 for before you actually took the test?
22 A. I don't think so.
23 Q. Were you given any information by
the person
24 who administered the test as to what uses
might be made
25 of the test?
00053
1 A. No.
2 Q. What questions were you asked?
3 A. The only question I can recall
specifically
4 was this question -- and I don't know why I
recall this
5 one, but they asked me specifically do I
recall at any
6 time hearing Paul Krakenberg tell somebody
to cover up
7 the pipe. That's the only question I
remember
8 specifically.
9 Q. Did they ask you specifically
whether or not
10 you had -- whether you had struck the
Olympic Pipe Line
11 pipe?
12 A. That was a question they asked me
is whether
13 I hit it, yes.

14 Q. Did they ask you whether you had struck any

15 other pipes while working on the Dakin-Yew project?

16 A. I don't recall.

17 Q. Did they ask you whether you had struck any

18 other underground utilities of any sort while working

19 on the Dakin-Yew project?

20 A. There was a question about hitting -- I

21 don't remember how it was worded, if it was underground

22 pipes or utilities or phone lines, but there was a

23 question regarding that, yes.

24 Q. What was your answer?

25 A. "Yes." I had to fight with the phone line

00054

1 on many occasions.

2 Q. Other than striking phone lines on a number

3 of occasions, do you in fact have any recollection of

4 ever hitting any pipe, buried pipe --

5 A. No, I do not.

6 Q. -- of any sort while working on the

7 Dakin-Yew project?

8 A. No, I do not.

9 Q. Do you know for a fact you did not?

10 A. I know for a fact I do not remember hitting

11 anything.

12 Q. But you don't know for a fact whether or not

13 you hit one, you just don't remember?

14 A. I do not remember hitting one.

15 (Marked Exhibit 276.)

16 Q. Handing you what's been marked as Exhibit

17 276, Mr. Lukes, I'll tell you that this is a, well,

18 three-page document entitled Certification

Report for

19 Period Ending 7-2-94, which I understand
to be a

20 certification of Imco personnel who worked
on the
21 Dakin-Yew project, the days they worked, and
the hours
22 they worked. Have you seen a document like
this

23 before?

24 A. No.

25 Q. Look on the second page of this
document.

00055

1 Do you see your name as the third name
listed on the

2 second page?

3 A. Yes.

4 Q. And that appears to indicate
that on June

5 26, you worked 10 hours straight time and two
and a

6 half hours over time, June 27?

7 A. June 27, yeah.

8 Q. Correct?

9 A. Yes.

10 Q. And then worked a number of days
after that?

11 A. Yes.

12 (Marked Exhibit 277.)

13 Q. Exhibit 277 is a similar
document, three

14 pages, for a period ending June 18, 1994.
Do you see

15 that on the top?

16 A. Yeah.

17 Q. And if you look down this
document, would

18 you agree that your name does not appear?

19 A. I agree.

20 (Marked Exhibit 278.)

21 Q. And Exhibit 278, which we've now
handed you,

22 is a similar document for a period ending
June 11,

23 1994. Do you see that on the top of the
first page?

24 A. Uh-huh.

25 Q. And again, if you'd look at this
document,

00056

1 can you verify that your name does not
appear?

2 A. Yes.

3 Q. So from looking at Exhibits 276,
77 and 78,

4 would you agree that it appears that you
came to work

5 on the Dakin-Yew project on June 27, 1994?

6 A. Yes.

7 Q. Exhibit 276, which is the
certification

8 report for the period that you apparently
came to work

9 on the Dakin-Yew project, has 14 names of
Imco

10 personnel employed during that period of
time. How

11 does that compare to the average number of
people that

12 Imco had on the job at Dakin-Yew while you
were there?

13 A. I would say that's kind of high.

14 MR. FLOYD: Well, I'm going to
object

15 because there's nothing that says these were
16 necessarily people on the job site. There's
a job site

17 secretary, couple of other people.

18 MR. TOLLEFSON: That's a good
point.

19 Q. Let's go down that Exhibit 276,
and tell me

20 who these people were.

21 A. John Avena, carpenter foreman.

Greg

22 Burress, superintendent. Richard Carlson I
don't

23 remember. Jane Campbell, job site
secretary. I think

24 Jane was part-time on site and then worked
in the

25 office part-time. Jeff Hinkle, laborer.
Kelly

00057

1 Johnson I don't know. Wayne, carpenter.
Paul, project

2 manager. There's me, equipment operator.
John Muder,

3 laborer. Ray Nicholas, crane operator. Rod
Staples I

4 don't remember. Calvin Vanderpol, foreman
guy.

5 Michael Vanderpol, operator.

6 Q. What did you say about Calvin
Vanderpol was

7 his --

8 A. He was a foreman.

9 Q. So the people at least listed on
Exhibit

10 276, how many of them were equipment operators
besides

11 yourself?

12 A. Let's see. Ray Nicholas and Mike
Vanderpol.

13 Looks like all on the list, doesn't it?

14 Q. Did Calvin Vanderpol operate
equipment at

15 all?

16 A. Yeah. That wasn't his job but he
was

17 certainly capable of operating equipment.

18 Q. Did he in fact operate equipment
from time

19 to time on the Dakin-Yew project?

20 A. I honestly can't say. When I came
to that

21 job Calvin left. So what -- I think I only
worked with

22 Calvin for this one week. I don't recall
him operating

23 any equipment while I was there.

24 THE WITNESS: Ray did different
shifts. I

25 think he did the night shift. I don't
remember.

00058

1 Q. What was the last part of your
comment

2 there?

3 A. I didn't really work with Calvin

on this job

4 so...

5 Q. Well, you indicated that he left
when you

6 came. Now, are you rethinking that, maybe
he didn't

7 leave?

8 A. Yes, I am rethinking that.

9 Q. So what's --

10 A. I know he left shortly after I
came, but the

11 period of time that he was there while I was
there I'm

12 not sure of.

13 Q. And when you say you didn't work
with him,

14 what do you mean?

15 A. He was over here and I was over
there.

16 Q. Physically how big was this
project, if you

17 can estimate for me, you know, yards, north,
south,

18 east, west?

19 A. I would say 100 yards wide and 300
yards

20 long.

21 Q. What was the normal procedure, if
there was

22 a normal procedure, on a day-to-day basis of
when you'd

23 show up at work in the morning? Would there
be some

24 kind of job site meeting before work would
get under

25 way?

00059

1 A. Frequently. Not as a rule, but
yes.

2 Q. How would you know from day to
day what you

3 were supposed to be doing?

4 A. Through conversations either
during the day,

5 after work or before work.

6 Q. Conversations with whom?

7 A. Between Greg Burress or when

Calvin was

8 there, Calvin or Paul Krakenberg, reviewing
the
9 schedule.

10 Q. Were those the three people from
whom you

11 would take direction as to what part of
the job you

12 were supposed to be working on or what
your next job

13 was going to be?

14 A. Yeah.

15 Q. Do you generally have -- would
you generally

16 have an awareness as to what else Imco was
doing on the

17 job on any given day?

18 A. Yes and no. I mean, you know,
you'd know

19 what the other guy is doing, but as far as
the details

20 of it you don't know what they're doing.
You know

21 they're over there putting that pipe in,
but...

22 Q. Now, what kind of information
did you have

23 other than seeing the two markers that you
previously

24 testified about that located the Olympic
Pipe Line --

25 strike that.

00060

1 You previously testified about
two markers

2 that were on the site that marked the
location of the

3 Olympic pipeline. Do you recall that?

4 A. Yes.

5 Q. You were given a job to go out
with your

6 excavator and dig a hole, okay?

7 A. Uh-huh.

8 Q. Would you be given any
information about

9 what utilities to expect in the area if
there were

10 utilities?

11 A. Yes.

12 Q. And where would you get that
information?

13 A. Well, from your job site
superintendent,

14 foreman, and as a person in charge of
running the crew

15 or whatever it's part of your
responsibility to make

16 sure that the locates have been done and
that you're

17 aware of what's in the ground.

18 Q. Were there construction drawings
available

19 to you on the job site?

20 A. Yes, sir.

21 Q. Was part of your job as an
equipment

22 operator to check the drawings to determine
whether or

23 not planned work would interfere with any
underground

24 utilities?

25 A. Yes.

00061

1 Q. And would you do that on a
regular basis?

2 A. Yes.

3 Q. What equipment did Imco have on
the job at

4 Dakin-Yew while you were there?

5 A. We had a 50-ton crane, had -- I
believe the

6 EX 400 was there, and I think we had a 792
with a rock

7 point on it.

8 Q. What is a 792?

9 A. It's an excavator also, but it
had a breaker

10 like a giant jack hammer for breaking rock.

11 Q. Is that also a Hitachi?

12 A. No, it was a John Deere.

13 Q. What else?

14 A. We had our loader, and I believe
there was a

15 dozer there most of the time. That's all

that I can
16 recall offhand.
17 Q. Now, you seem to have some
question in your
18 mind as to whether or not this Hitachi
excavator was
19 there the whole time or whether that was the
one. Are
20 you thinking that maybe that changed at
some point or
21 --
22 A. No. I'm just not 100 percent
sure what
23 equipment was on there, but I believe
I remember
24 running the EX 400 with the ripper
teeth on it.
25 Q. Now, the EX 400 would be the only
excavator
00062
1 that you recall, then, on the job?
2 A. No. There was a short period, I
think,
3 towards the end when we were down to where
we made the
4 tie-in to the tank, there was some
transverse lines
5 there and we had a little excavator there
like maybe a
6 120 or a 150. I can't recall.
7 Q. 120 or 150 what?
8 A. Hitachi.
9 Q. What about backhoes? Were there
any
10 backhoes on the job?
11 A. I don't recall a backhoe being
there.
12 Backhoes are usually on our jobs using like
pickup
13 trucks, but I don't recall one being there
14 specifically, no.
15 Q. Does that mean that there probably
was one
16 there, but you just don't have a specific
recollection?
17 A. I would be guessing if I said that
there was

18 because I don't remember it.

19 Q. Now, who besides yourself would
operate the
20 excavator on the Dakin-Yew project?

21 A. Mike Vanderpol.

22 Q. Anybody else?

23 A. I don't remember anybody else
doing it, no.

24 Q. Anybody that wasn't a designated
equipment

25 operator that was allowed to operate the
equipment at

00063

1 any time on the Dakin-Yew project that you
recall?

2 A. Not specifically, no.

3 Q. Had the rules changed since
you started

4 working for Imco as a laborer and were
allowed to

5 operate the equipment from time to
time?

6 A. No.

7 Q. So would you expect that
some of the

8 laborers were operating equipment from time
to time?

9 A. That is a possibility.

10 Q. Is it a probability?

11 A. I don't know. It would make
sense, but I

12 don't know. It would be speculation for me
to say yes

13 or no.

14 Q. In any event, you don't have any
15 recollection of ever seeing any particular
person other

16 than yourself and Mike Vanderpol operate one
of the

17 excavators?

18 A. That is correct.

19 Q. What about the loader, any
recollection of

20 any -- who would operate the loader?

21 A. We hired a few guys to run
loader, and they

22 either couldn't pass drug tests or simply

didn't have

23 the experience they said they did on their
job

24 applications. I think I hired and fired
about four

25 guys in one week.

00064

1 Q. Any of the regular Imco crew
operate the

2 loader?

3 A. I ran loader, Mike ran loader.
The loader

4 is a pretty simple machine to run. A lot
of guys get

5 the opportunity to run loader. Hard to
mess up unless

6 you just run something over.

7 Q. So you would suspect that
anybody that was

8 out on the site actually doing work might
have from

9 time to time run the loader?

10 A. Might have. I don't have any
specific

11 recollection of anybody running loader other
than me

12 and Mike and some guys that we hired and
fired.

13 Q. Now, with regard to the Hitachi
400

14 whatever, excavator, what kind of buckets did
you have

15 for that unit?

16 A. There was a variety of buckets we
had for

17 that machine then.

18 Q. What was on the site?

19 A. I believe there was a -- the
sloping bucket

20 would have been there, cleanup bucket, and
then I

21 remember the rock bucket, thrifty. Probably
30-inch or

22 36-inch bucket. It was a smaller bucket.

23 Q. So is the slope bucket and the
cleanup

24 bucket two different buckets?

25 A. Same bucket.
00065
1 Q. And what characterizes that
bucket?
2 A. It's got a smooth lip on it, low
teeth for
3 smoothing things up, cleaning things up, and
the other
4 bucket had big jagged teeth for ripping
rock.
5 Q. Do you recall only one bucket
with teeth for
6 ripping rock on this particular job?
7 A. That's all I recall, yes.
8 Q. Do you remember how many teeth
it had?
9 A. I think four.
10 Q. As between you and Mike
Vanderpol, on the
11 Dakin-Yew project, was there any -- and if
you don't
12 understand my use of this term tell me and
I'll figure
13 out a different way to say it, but was there
 any
14 pecking order between you and Mike as to who
 would get
15 the more complicated jobs or the harder jobs
 or --
16 A. I would.
17 Q. And why was that?
18 A. I'd say because of my position.
19 Q. Been with the company longer,
better
20 operator, what?
21 A. Both. Been with the company
longer. I was
22 better on the excavator. Mike was a lot
better on the
23 dozer. If there was dozer work to do Mike
 would do
24 it. If there was excavator work to do I
would do it.
25 Q. Would that tend to be more so if
the kind of
00066
1 excavator work you were doing was actually

excavating

2 using the rock bucket, say, as opposed to
doing grading

3 using the sloping bucket?

4 A. Excavating? I would say vice
versa. If

5 you're excavating in rock, you know, and
you're just

6 trying to rip the rock out, anybody could
sit there and

7 beat themselves up all day on rock, but if
you're

8 trying to clean things up and cut the grade
and smooth

9 things up, it's more intricate.

10 Q. Do you have some kind of an
attachment for

11 one of the machines that was used to compact
the soil?

12 A. Yeah. I believe we did. I think
we had a

13 hoe pack on it. What the heck was that on?

14 Q. What kind of machine does that go
on?

15 A. I think it probably went on
the 790. I

16 don't recall. It usually goes on the
back of an

17 excavator.

18 Q. 790 is what?

19 A. Excavator.

20 Q. 790 is a different excavator than
the

21 Hitachi?

22 A. Yes.

23 Q. And that's a John Deere?

24 A. Uh-huh.

25 Q. Is that a bigger unit?

00067

1 A. No, smaller.

2 Q. Smaller. If there was -- you
called it a

3 hoe pack. If there was a hoe pack used
would that have

4 been something that would have been
particularly your

5 job or Mike's job?

6 A. Probably Mike's job.
7 Q. Did you have any time on the
Dakin-Yew
8 project during the summer? You came early
in June, I
9 think?
10 A. June 27.
11 Q. Late in June, end of June. So
July, August,
12 first couple months you were there, do you
recall
13 having any college kids, kind of summer help,
guys kind
14 of like yourself, you know, when you were in
high
15 school coming to work for the company during
the summer
16 or anything?
17 A. I don't recall that.
18 Q. Other than you, that is Imco,
other
19 contractors on your site were Triad; is that
right?
20 A. Yes.
21 Q. And was that pretty much it in
terms of
22 contractors, just Imco and Triad?
23 A. Yeah. I believe so.
24 Q. If there was cable to be buried
in
25 connection with Triad's work, was that --
would you
00068
1 guys do the ditching for that?
2 A. I believe they were supposed to
do their own
3 excavation, but in many cases, you know,
communicating
4 with them, we could say, hey, I'm digging
this ditch
5 through here, you guys want to get your
conduit in
6 there, you got an hour to throw it in. So
we tried to
7 work with them partner deal.
8 Q. Do you know whether they had any
kind of

9 summer help around?
10 A. I don't know.
11 Q. Do you have any recollection of
their hiring
12 any other equipment operators to do the
ditching or put
13 in any kind of underground utilities in
connection with
14 their work?
15 A. I don't recall.
16 Q. And then the owner's
representative on the
17 job was Barrett Consulting, Tom Franklin and
--
18 A. I don't remember his name. Yeah.
It was
19 Barrett Engineering.
20 Q. Some guy named Nordby, do you
remember him?
21 A. Huh-uh.
22 Q. Barrett, did those guys, those
consultants,
23 did they have any -- seem to have any summer
help kids
24 on the job?
25 A. I don't recall that.
00069
1 Q. Did you ever have any -- at least
do you
2 recall having any problems with vandalism on
the Imco
3 site up there at Dakin-Yew?
4 A. I can't recall specifically, but
it seems
5 like there was -- there was an incident. I
don't
6 remember if it was they spray painted the
windows in
7 the loader or something. I can't recall
specifically,
8 no.
9 Q. What would you do at the end of
the work day
10 in terms of securing your equipment?
11 A. Just make sure everything is
locked up.
12 Take the keys out, locked up.

13 Q. So you wouldn't leave the keys in
the

14 excavator or the loader or anything?

15 A. No.

16 Q. Do you have any recollection of
having any

17 vandalism in the sense that it appeared that
anybody

18 had gotten any of the equipment running and
gone around

19 and messed up the site overnight?

20 A. I don't remember that, no.

21 Q. Was Imco working more than one job
or more

22 than one shift during July and August?

23 A. There was a period of time there
that we

24 worked more than one shift, and I don't
remember

25 exactly when that was.

00070

1 Q. When more than one shift was
worked, what

2 hours were worked?

3 A. I don't remember. I think it
fluctuated

4 depending on what we were trying to get done
and where

5 we were at.

6 Q. What was your normal work day?

7 A. I think seven to five.

8 Q. And what days of the week?

9 A. Monday through Thursday.

10 Q. So four 10-hour days basically?

11 A. (Nodding head). Yes, sorry.

12 Q. Do you remember Mark Graham, one
of the

13 Triad guys on that job?

14 A. Yes.

15 Q. Have you had any conversations
with Mark

16 Graham at all since June 10, 1999?

17 A. No.

18 Q. What was your relationship with
Mark Graham

19 like during your time on the Dakin-Yew job?

20 A. It was a working

relationship.

21 Q. Good working relationship,
bad working

22 relationship, strained working
relationship, what?

23 A. Maybe moderately strained.
Mark always

24 seemed like he was overwhelmed and behind
schedule.

25 Like I was saying just a few moments ago
about we'd

00071

1 open up a trench, I'd go tell Mark we got
this opened

2 up if you want to throw some conduit in
there, get it

3 in there. It seemed like it was always a
hassle with

4 him. He was always behind. Never get it
in. Half the

5 time we'd end up throwing the conduit in for
him.

6 Q. He had an apprentice on the job,
a guy named

7 Tim Lenderman, did you know him?

8 A. Yes.

9 Q. Have you had any conversations
with him

10 since the June 10 incident?

11 A. Yes.

12 Q. What about?

13 A. Lots of things.

14 Q. Do you know Tim?

15 A. Yeah. He's a friend of mine.

16 Q. Socially?

17 A. Yes.

18 Q. Have you talked to him about the
explosion

19 at all?

20 A. Yeah.

21 Q. When? Many times?

22 A. Yes, lots of times, I guess. I
mean, I

23 hunted with him and we've traveled together,
and see

24 him quite a bit, play cards. So no real in-
depth

25 conversation. Just kind of a, you know, have
you heard

00072

1 anything more about that thing. Those guys
come and

2 talk to you, that sort of thing.

3 Q. Did he tell you whether or not
those guys

4 would come and talk to him?

5 A. Yeah.

6 Q. And they had?

7 A. Yes.

8 Q. Did he tell you what he told him?

9 A. No.

10 Q. Have you talked to Tim about this
since you

11 were -- well, of course you have. That's
how the

12 subject came up. What has Tim told you
about what, if

13 anything, he knows about anybody hitting a
pipe or the

14 Olympic Pipe Line pipe on the Dakin-Yew job?

15 A. Tim told me that he didn't
remember us

16 hitting a pipe or anything or anybody
hitting a pipe.

17 Q. Did he tell you anything about
whether he

18 remembered anybody
repairing a pipe?

19 A. No, I don't
think he --

20 Q. Pardon me?

21 A. No.

22 Q. Since you were told that Mark
Graham has

23 apparently testified that he believes you
hit a pipe,

24 have you talked with Tim Lenderman about
that?

25 A. I don't think so, no.

00073

1 Q. When did you last talk about
this subject

2 with Tim?

3 A. I would say last summer. I

don't remember

4 specifically when the last conversation we
had was

5 about this.

6 Q. Have you talked about this with
anyone else

7 that you believe had any connection at all
with the

8 Dakin-Yew project other than Tim
Lenderman, Burress,

9 and Hinkle?

10 A. And Randy Gray.

11 Q. Who is Randy Gray?

12 A. He was an electrician on that
job also.

13 MR. BENINGER: Electrician on
the job?

14 THE WITNESS: Yes. I don't know
if he was

15 an apprentice or he was an electrician. I
just know he

16 worked there.

17 Q. Is he also a social friend of
yours?

18 A. Yes.

19 Q. What conversations have you had
with Randy

20 Gray about this?

21 A. Basically the same conversation I
had with

22 Tim, you know. After he was contacted he
called me and

23 asked if I had been contacted and just
wanted to know

24 what was going on. Basically everybody, the
whole

25 question about the thing is what in the heck
is going

00074

1 on.

2 Q. Is it your understanding that
Randy Gray has

3 been interviewed by federal investigators?

4 A. Yes.

5 Q. Do you know if either Tim
Lenderman or Randy

6 Gray have been asked to take a lie detector

test?

7 A. I don't know.

8 Q. Did you discuss with Randy Gray
the fact

9 that Mark Graham has claimed that you hit
the pipe?

10 A. No.

11 Q. Have you had any conversations
with anybody

12 who you believe was connected with Earth
Tech or

13 Barrett Consulting about the June 10
incident?

14 A. No.

15 Q. When you were working on the
Dakin-Yew

16 project, did you ever do any excavation that
resulted

17 in exposing the Olympic Pipe Line line?

18 A. Yes.

19 Q. What do you recall about that?
What part of

20 the job was that? What do you recall?

21 A. I don't remember if it was the
feeder pipe

22 or the -- I don't remember which pipe it
was, but it

23 was on the north side of the pump station.
The pipe

24 ran at an angle. It ran underneath the gas
line. I

25 believe it was like a 24-inch, I think,
ductile iron

00075

1 pipe that ran under there.

2 Q. So you recall excavating to
expose a water

3 line that ran under the pipeline, the
Olympic

4 pipeline, and in the process had to expose
the Olympic

5 pipeline?

6 A. We had to install a pipe
underneath the

7 Olympic pipeline.

8 Q. And so in excavating for that
installation,

9 you exposed the Olympic pipeline?
10 A. Yeah -- well, the exposing of the
Olympic
11 pipeline was done by hand.
12 Q. Fair enough. Imco exposed the
Olympic
13 pipeline?
14 A. Correct.
15 Q. Were Olympic representatives on
the scene
16 when that work was taking place, to your
knowledge?
17 A. Yes.
18 Q. Do you recall any other time
while you were
19 working on the Dakin-Yew project that you
did
20 excavating -- that you personally did
excavating that
21 then was finished off to expose,
intentionally expose,
22 the Olympic Pipe Line?
23 A. On the other side of the
structure we
24 installed a pipe that I believe we located
by hand to
25 make sure that we had clearance, the top of
the Olympic
00076
1 Pipe Line.
2 Q. When you say the other side of
the structure
3 you mean --
4 A. The south side of the structure,
the pump
5 station.
6 Q. When you are excavating with the
goal of
7 exposing the Olympic pipeline -- when you
were
8 excavating with the goal of exposing the
Olympic Pipe
9 Line, what would be your procedures in
terms of use of
10 the excavator and transitioning to digging
by hand?
11 A. Well, I don't remember what the

parameters

12 were, but there was like guidelines. Any
excavation we

13 did within so many feet of the pipe you had
to have

14 representatives on hand, and then there was
15 requirements for both vertical and horizontal
distance

16 from it. And that was a conversation that I
can

17 remember having. You don't know how close
you are to

18 the top of it until you see it, because you
don't know

19 exactly how deep it is. So what we'd end up
doing is

20 digging by hand until we found the pipe.
There it is,

21 this is how deep it is, now we can use our
machine. So

22 it was a lot of hand work, labor intensive.

23 Q. So if I understand correctly, if
you knew

24 you were digging within the vicinity of the
Olympic

25 pipeline and needed to expose it, you
would first

00077

1 expose it by hand and then do what work
you could do

2 with your excavator after that?

3 A. Correct.

4 Q. At some point in early July,
around the --

5 starting on the 7th and maybe finishing on
the 8th of

6 July, Imco installed a tee on the
southwest -- in the

7 general southwest corner of the pump station
to connect

8 a 24-inch line into an existing 16-inch
water line. Do

9 you recall that at all?

10 A. Yes.

11 Q. What was your role in excavating
for that

12 work?

13 A. What was my -- I don't understand
what

14 you're asking.

15 Q. What did you do in connection
with that?

16 A. I believe I ran excavator and
 choreographed

17 the labor to be done, installation of the
 pipe.

18 Q. When you say choreographed,
choreographed

19 the labor to be done on the installation of
the pipe,

20 what do you mean?

21 A. I was in charge of making sure
we had the

22 proper personnel, things were done
correctly, we had

23 the parts that we needed.

24 Q. And do you remember in
connection with that

25 work finding that there was initially a
misalignment

00078

1 that required you to do some additional
excavation and

2 backfilling to kind of relocate where you
were going to

3 actually tee in?

4 A. I recall that it was trickier
than it was

5 supposed to be. I think the angle of that
existing

6 pipe was steeper than it was supposed to
be, so we had

7 to get some more fittings or something. I
don't

8 remember exactly the deal.

9 Q. Do you remember any
concrete pours in

10 connection with the installation of
that tee or

11 immediately after the installation of
the tee?

12 A. I don't recall anything
offhand, but I

13 recall there was a 90-degree bend on that

pipe, so we
14 -- I don't remember anything offhand.
Sorry.

15 (Recess.)

16 (Marked Exhibit 279.)

17 MR. TOLLEFSON: It's a copy of
Exhibit 97.

18 Q. Mr. Lukes, this is site plan
that's been

19 obviously marked up by other people at other
times with

20 colored pen, and now we've had it marked as
Exhibit

21 279. And what I'd like you to do is become
Mr. purple

22 and if you'd take this purple pen -- you
told me two

23 areas that you recall working exposing the
OPL

24 pipeline. I'll tell you that the red line
that's on

25 there represents the OPL pipeline and this
blue square

00079

1 is theoretically the pump station. The
blue line is

2 the line coming out, the water line, and
the tee is

3 where it intersects the long blue line
there that we

4 talked about.

5 And you indicated two areas
that you did

6 some work where the OPL pipeline was
exposed. One was

7 where you were excavating to expose it
because you were

8 going to put another line under it. Can you
indicate

9 what line you were installing?

10 A. 24-inch ductile iron pipe with a
double wrap

11 polyethylene it says on there.

12 Q. So you have highlighted in purple
the one

13 line that you recall excavating for where
you need to

14 expose the Olympic pipeline, correct?

15 A. If I recall correctly, yes,
this pipe we

16 installed and it ran underneath the gas
pipeline.

17 Q. And the second thing you
indicated was on

18 the south side of the structure that you
exposed the

19 pipeline to ensure clearance. And what
were you doing

20 there?

21 A. We installed this pipe that comes
out of the

22 pump station, makes a 90-degree bend and
then ties into

23 the existing line, and underneath that tee I
think we

24 just did some hand work to ensure clearance
for

25 fittings and whatnot between there.

00080

1 Q. So you excavated down to expose
the existing

2 16-inch water line?

3 A. Uh-huh.

4 Q. And then it's your testimony
that you -- or

5 that you dug out underneath that water line
by hand to

6 expose the Olympic Pipe Line?

7 A. Yeah. If I remember correctly,
it was all

8 hand work. There was quite a bit of CDF
from -- I'm

9 guessing from this 48-inch pipe that runs
here just to

10 the south of it there was a lot of CDF so it
was pretty

11 easy digging. It was just like chipping
sand.

12 Q. Why don't you take your purple
pen and make

13 a dashed line along that line where you
indicated the

14 CDF was.

15 A. (Complying). Now, I didn't put

that 48-inch
16 pipe in. So looks like it goes 48 to 72-
inch down

17 here. I didn't install that. I just
remember there

18 was a lot of CDF right there alongside of
it.

19 Q. And CDF is going to be easier
digging than

20 native ground?

21 A. Oh, certainly, yes.

22 Q. Now, if you would take Exhibit
64 the court

23 reporter has handed you there, and if you
would please

24 look at -- find a page that in the lower
right-hand

25 corner has the number ET 0006437, please.
00081

1 MR. FLOYD: I'm sorry, what
exhibit was

2 that, report No. 99?

3 MR. TOLLEFSON: Exhibit 64.

4 MR. FLOYD: What was the number
again?

5 MR. TOLLEFSON: 6437.

6 MR. FLOYD: ET?

7 MR. TOLLEFSON: Yeah.

8 MR. BENINGER: What's the date
at the top

9 there?

10 MR. TOLLEFSON: Should be a July
11, '94

11 date, report No. 99. Are the numbers not in
order?

12 MR. BENINGER: No, they're not. If
you find

13 6413, it looks like that may be in order.

14 Q. Actually, on the second page of
this

15 document, so we're now looking at page ET
6438, should

16 say report No. 99, 2 of 2 on the top. Do you
see that?

17 A. Yes.

18 Q. First part of -- first line on this
page

19 says, "Pipe wrapping and repair of damaged areas being

20 done this p.m." Do you know -- have any idea what that

21 would refer to being the Monday after the Friday that

22 the tee connection was made?

23 A. I don't know. I don't know what that would

24 be in relation to.

25 Q. The second -- the next paragraph, the next

00082

1 line, actually, beginning the next paragraph says, "An

2 effort by operator of hoe pack mounted on John Deere

3 792 to begin backfill of 72 - 60-inch trench this p.m.

4 was stopped." Would it be your recollection that that

5 was Mike Vanderpol who would be involved with the hoe

6 back -- hoe pack, rather, or do you know?

7 A. Well, Mike typically ran the hoe pack on the

8 job so I don't know.

9 (Marked Exhibit 280.)

10 Q. Exhibit 280 is a payroll certification

11 report for a period ending July 16, 1994. That

12 indicates that both you and Mike Vanderpol worked on

13 July 11; is that correct?

14 A. Yes.

15 Q. Ray Nicholas did what?

16 A. He was the crane operator on the job.

17 Q. Would he operate other equipment as well?

18 A. Ray can operate other equipment. I don't

19 have any specific recollection of him doing so.

20 Q. And what would he do when he wasn't

21 operating the crane?
22 A. I don't know.
23 Q. Would he work as a laborer?
24 A. He could.
25 Q. Well, I mean, you worked with him
for how

00083

1 many months?
2 A. I don't know. I worked with Ray
for years.
3 Q. And you have no recollection of
what he
4 would do, what kind of work he would do on
the
5 Dakin-Yew project when he wasn't actually
operating the
6 crane?
7 A. Ray had a way of keeping himself
busy on his
8 crane, doing maintenance and service on it.
It was his
9 baby, he was in charge of all the service
and
10 maintenance on it. If there wasn't crane
operator work
11 to do, Ray was pretty good at keeping
himself busy. So
12 I don't have a specific recollection of him
doing
13 anything other than running crane.
14 Q. Let's see if you have any better
luck there
15 finding page ET 6405, which is report No.
120. Should
16 be about 10 pages or so after the one you're
looking
17 at.
18 MR. FLOYD:
6405?
19 MR.
TOLLEFSON: Yeah.
20 MR. FLOYD:
1 of 2?
21 Q. Actually we're going to look at
2 on this
22 one also. So we're going to actually look
at 6406.

23 This is an inspection report No.
120 from

24 August 11, 1994. And it says that "The
telephone

25 conduit in front of the southwest pump
station corner

00084

1 15 feet from the 72-inch line was damaged
severely by

2 Imco loader. Was only one and a half feet
below grade

3 at the time."

4 MR. FLOYD: Val, he's still
reading the

5 first page.

6 MR. TOLLEFSON: I'm sorry.

7 A. That's fine. I remember hitting
the phone

8 line.

9 Q. So is this you operating the
loader at this

10 point?

11 A. Yes.

12 Q. Do you recall hitting the phone
line with

13 the loader as opposed to some other piece of
equipment?

14 A. Yes.

15 Q. Do you recall what time of the day
it was?

16 A. Not specifically, no. Seems to me
it was

17 afternoon, but I don't remember for sure.

18 Q. Do you know whether Tom Franklin
was on the

19 job site all day that day?

20 A. I do not know.

21 Q. The next page, about two pages on,
6408,

22 report No. 119, August 10, second paragraph
of the text

23 there, "Ram hoe is working and breaking up
rock for

24 annode bed." Do you see that?

25 A. Yes.

00085

1 Q. What is a ram hoe?

2 A. That would be the 792 with a
pecker point on
3 it. Like a big giant jack hammer.
4 Q. And who would be the person who
would -- if
5 there was a person, who would typically
operate that
6 equipment?
7 A. Mike or myself.
8 Q. Any recollection as to whether it
was you or
9 Mike on this particular day?
10 A. No. I tend to think it was me
because I
11 think I did the excavation and
 installation of the
12 annode beds, but I don't know.
13 Q. The following page, ET 6409,
 report 118,
14 August 9, 1994, do you see that?
15 A. Yes.
16 Q. My question here has to do
with the last
17 paragraph on that first page of report
118 where it
18 says "excavation this p.m. to correct valve
 for 60-inch
19 pipe pump-out." Do you see that?
20 A. Uh-huh.
21 Q. Just ask you to look at Exhibit
123 from Tom
22 Franklin's deposition, and I'll tell you,
just orient
23 you, that that shows the 60-inch pipe open-
 ended up
24 there at the end. And do you see on
either side of
25 that 60-inch pipe, do you see a little
valve box?
00086
1 A. Yes.
2 Q. Do you recall -- and let me
tell you that
3 this photograph I'm showing you is -- I'm
not trying to
4 suggest to you that it's the excavation
referred to in

5 this report that we were just talking about.
6 A. Well, it's not.
7 Q. No. It may be or it may not be.
8 A. This is where the 48 goes to the
72, isn't
9 it, in terms of 60-inch down around the
corner, other
10 pipe.
11 Q. So you don't think this is a 60-
inch pipe?
12 A. No, I don't.
13 Q. What do you think it is?
14 A. I think it's the 48-inch right at
the
15 transition to the 72-inch, be right here
(indicating).
16 Q. Then looking at -- taking your
little
17 marker, would you make an X and maybe put a
circle on
18 it?
19 A. That's just looking at the
picture, but
20 that's what it looks like to me.
21 Q. I understand, put a circle around
that X.
22 A. (Complying).
23 Q. And it is your best guess that
what we're
24 looking at in Exhibit 123 is the location of
your X
25 there; is that right?
00087
1 MR. PLATIS: Excuse me, Val, but
shouldn't
2 you have that pointed towards the camera.
3 MR. TOLLEFSON: Well, I suppose
but the
4 witness --
5 MR. FLOYD: He's got to get it
down to the
6 witness first. That other law firm wanted
him to show
7 it to the camera first.
8 A. Looks to me like that's the 48-
inch probably
9 the transition at the 72. I hate doing this

because I

10 am guessing, but that's what it looks like
to me.

11 Q. I don't want you to guess, but
I do want

12 you to give us your best estimate.

13 A. It would be your existing 16-
inch water

14 line, and that would be your gas line
underneath it

15 there (indicating).

16 Q. So your best estimate, at
least based on

17 what you can recall, as what you've
marked on your

18 purple X here, is what's shown in Exhibit
123?

19 A. That's my best.

20 Q. That's all we can ask for.
Then what I'd

21 like you to do is to tell me whether or not
you recall

22 that there was excavation required to
correct a valve

23 for the 60-inch pipe pump-out?

24 A. I don't recall that.

25 Q. That a valve would not open
because of a

00088

1 slanting valve box sleeve. You have no
recollection on

2 that?

3 A. No, I don't.

4 Q. Do you know where on Exhibit 279
the 60-inch

5 pump-out that is referred to in this
inspection report

6 would be located?

7 A. I would say right down here
around the

8 corner because your 60-inch turns to 48-inch
there, so

9 I would guess right there (indicating).

10 Q. Why don't you put another X
there.

11 A. Been a while since I looked at
these. I may

12 not remember exactly what went where.

13 Q. Circle that. And why don't we
label the one
14 that you just did -- why don't you just put a
No. 2
15 inside of your circle there, and the first X
put a No.

16 1.

17 A. (Complying).

18 Q. That would be totally illegible.

19 A. I learned to write from a
doctor.

20 MR. TOLLEFSON: There is going
to be no

21 utility in showing this to the camera.
We'll have to
22 show it to people sometime.

23 (Discussion off the record.)

24 Q. Hitachi EX 150, what kind of
equipment is

25 that?

00089

1 A. It's an excavator.

2 Q. Smaller excavator?

3 A. Correct.

4 Q. Were you ever aware of anyone,
whether it's

5 yourself or anybody else on the Dakin-Yew
project, Imco

6 employee, striking any metal pipe that was
damaged so

7 it had to be repaired?

8 A. No.

9 Q. And I take it it's not your
testimony that

10 that didn't happen, it's just your testimony
that you

11 don't recall it one way or the other?

12 A. No, I do not recall it.

13 Q. Do you recall any discussions
when you first

14 came on the job at the end of June about any
damage to

15 pipe that had happened before you got there?

16 A. No, I do not.

17 Q. Do you recall any repair
activities of

18 damaged pipe that occurred after you started
on the job

19 where you understood the damage had happened
earlier?

20 A. I don't recall any, no.

21 (Marked Exhibit 281.)

22 Q. Exhibit 281, the certification
report for

23 Imco period ending July 9, 1994, that
indicates that

24 you were at work on July 6, 7 and 8; is
that correct?

25 A. Yes.

00090

1 MR. FLOYD: Actually, 5, 6, 7
and 8.

2 MR. TOLLEFSON: Right.

3 Q. And Calvin Vanderpol was also at
work on

4 those same days, right?

5 A. Yes.

6 Q. And Mike Vanderpol worked on the
7th and

7 8th, according to this?

8 A. Correct.

9 Q. Have you ever heard of anybody
called Billy

10 Nordby?

11 A. The name Nordby kind of rings a
bell, but

12 no.

13 Q. Let me show you an exhibit that's
previously

14 been marked as Exhibit 134, which I believe
shows the

15 location of the tee end of the 24-inch line
to the

16 16-inch water line before the 24-inch line
is

17 connected. Does that look about right?

18 A. That's what it looks like, yes.

19 Q. And on that, at that junction,
you see two

20 -- what appear to be two small valve boxes
on either

21 side of one of the connections there?

22 A. Correct.

23 Q. Do you recall how those valves
are finished
24 off in terms of backfilling and making them
accessible
25 from the surface?

00091

1 A. Yeah. You fill slowly and evenly
and trying
2 to keep them straight up and down.

3 Q. But I mean, do you put in some
sort of an
4 access conduit or pipe over them?

5 A. Yeah. There's a valve boxes,
valve box
6 risers.

7 Q. And what are those made out of?

8 A. Cast iron.

9 Q. And so you get those -- are they
screwed on

10 or bolted on or something over the --

11 A. They just set on there.

12 Q. And then you backfill and somebody
manually

13 keeps it vertical while you backfill around
it?

14 A. Typically, yes.

15 Q. Are those some predetermined
length before

16 you start backfilling or are they extra long
and cut to

17 length after you finish backfilling or how
does that

18 work?

19 A. It depends on what type you
choose. There's

20 different brands, and some of them are real
long and

21 you cut them off and some of them are
screwed up

22 adjustable, and others of them come in two-
foot lengths

23 and you just stack them up in however many
lengths you

24 need.

25 Q. Do you recall one way or another
on this job

00092

1 as to what kind of risers were used?
2 A. No, I don't.
3 Q. Do you have any recollection of
this -- of
4 these risers being misaligned, making the
valves
5 inoperable after backfilling was done?
6 A. No, I don't.
7 Q. So as a follow-up from that, you
don't have
8 any recollection of this junction being re-
excavated
9 after it was covered up and backfilled and
covered up?
10 A. That is correct, I have no
recollection of
11 that.
12 Q. Looking at these certification
reports,
13 looks like there are -- how many Johns were
there that
14 worked for Imco on this job? John Muder,
John Avena,
15 any other Johns that you recall?
16 A. I don't know.
17 Q. Anybody who was called John whose
name
18 wasn't John?
19 A. I don't know. Nobody ever gets
called by
20 their actual names.
21 Q. Do you recall somebody who was
called
22 Johnnie on this job?
23 A. John Muder was John-John or
Johnnie or
24 Little John.
25 Q. So if somebody referred to Johnnie
it would

00093

1 be your guess that that's who they were
talking about?
2 A. Uh-huh.
3 MR. TOLLEFSON: That's it.
4 MR. VERWOLF: I just have a
couple of
5 things.

12
son.

MR. BENINGER: Nothing for you,

13

MR. FLOYD: We will reserve
signature.

14
p.m.)

(Deposition concluded at 12:25

15
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00095

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A F F I D A V I T

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

8 I declare under penalty of perjury
that I have

9 read my within deposition, and the same is
true and
10 accurate, save and except for changes and/or
11 corrections, if any, as indicated by me on
the
12 correction sheet hereof.

13

14

BRITTON

LUKES

15
16
17
18
19

20

Dated this _____ day of
_____, 2001.

21
22
23

24
25
00096

C E R T I F I C A T E

1
2
3 STATE OF WASHINGTON)
4) ss.
5 COUNTY OF KING)
6
7 I, the undersigned Notary Public in
and for the
8 State of Washington, do hereby certify:
9 That the annexed and foregoing
deposition of each
10 witness named herein was taken
stenographically before
11 me and reduced to typewriting under my
direction;
12 I further certify that the deposition
was
13 submitted to each said witness for
examination, reading
14 and signature after the same was transcribed,
unless
15 indicated in the record that the parties and
each
16 witness waive the signing;
17 I further certify that all objections
made at the
18 time of said examination to my qualifications
or the
19 manner of taking the deposition, or to the
conduct of
20 any party, have been noted by me upon said
deposition;
21 I further certify that I am not a
relative or
22 employee or attorney or counsel of any of
the parties
23 to said action, or a relative or employee
of any such
24 attorney or counsel;
25 I further testify that I am not in
any way

00097

1 financially interested in the said action or
the outcome

2 thereof;
3 I further certify that each witness
before
4 examination was by me duly sworn to testify
the truth,
5 the whole truth and nothing but the truth;
6 I further certify that the
deposition, as
7 transcribed, is a full, true and correct
transcript of
8 the testimony, including questions and
answers, and all
9 objections, motions, and exceptions of
counsel made and
10 taken at the time of the foregoing
examination.

11
12 IN WITNESS WHEREOF, I have
 hereunto set my
13 hand and affixed my official seal this _____
 day of
14 _____, 2001.

15
16
17
18
19

20 CHERYL MACDONALD
21 Notary Public in
and for
22 the State of
 Washington,
23 residing at
 Seattle.
24
25