

Appendix O

John Muder, Jr., IMCO – Deposition Transcript

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

JOHN MUDER, JR. -----

February 8, 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 JOHN MUDER,
JR.

9:53 a.m.
February 8, 2001
1201 Third Avenue
Suite 2760
Seattle, Washington

Cheryl Macdonald, Court Reporter

00003

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE
97	(Attached as annotated)	
263	Subpoena	6
264	Witness diagram	52
265	Photograph No. ET-PH 1225	100
266	Photograph No. ET-PH 1227	100
267	Photograph No. ET-PH 1228	100
268	Photograph No. ET-PH 1235	100
269	Photograph No. ET-PH 1236	100
270	Photograph No. ET-PH 346	113
271	Photograh No. ET-PH 345	113
272	Photograph No. ET-PH 549	113
273	Photograph No. ET-PH 563	113
274	Photograph No. ET-PH 564	114

EXAMINATION INDEX

BY MR. NICOLL:
Pages: 12 - 142

160 - 162 BY MR. VERV

BY MR. WOLFE:

150 - 157

BY MR. FLOYD:

157 - 160

00004

A P P E A R A N C E S

FOR KYRIACOS TSIORVAS:

HARRY B. PLATIS
Attorney at Law
4202 198th Street SW
Suite 2
Lynnwood, WA 98036

FOR PLAINTIFFS KING AND DALEN:

DAVID BENINGER
LUVERA BARNETT
BRINDLEY BENINGER &
CUNNINGHAM
Attorneys at Law
701 Fifth
Avenue
Suite
6700
Seattle,

WA 98104

FOR OLYMPIC PIPE LINE COMPANY:

CHRISTOPH
ER W.
NICOLL
COZEN AND
O'CONNOR
Attorneys
at Law
1201 Third Avenue
Suite 5200
Seattle, WA 98101-3071

AND
Avenue
Floor
WA 98104

G. VAL TOLLEFSON
DANIELSON HARRIGAN &
TOLLEFSON Attorneys
at Law
999 Third
44th
Seattle,

FOR EQUILON PIPELINE COMPANY:

VERWOLF

NICK

DAVIS
WRIGHT
TREMAINE
Attorneys
at Law
1800 Bellevue
Place
10500 NE 8th
Street Bellevue,
WA 98004-4300
00005

A P P E A R A N C E

S (Cont'd.)
FOR IMCO GENERAL CONSTRUCTION
COMPANY:

WEIGEL

DOUGLAS K.

FRANCIS S.
FLOYD
FLOYD &
PFLUEGER
Attorneys
at Law
300 Trianon Building 2505 Third
Avenue Seattle, WA 98121-1445

FOR EARTH TECH:

PETER
OFFENBECHE

R
SKELLENGER
BENDER
Attorneys
at Law
1301 Fifth
Avenue
Suite 3401
Seattle,

WA 98101-2605

FOR FRED CROGNALE:

MICHAEL R.
SPAAN
PATTON
BOGGS
1031 West Fourth Avenue
Suite 504

Anchorage, AK 99501

00006

1 THE VIDEOGRAPHER: This is the
videotaped
2 portion in the deposition of John Muder,
Jr. My name
3 is Steve Dahl. I am the videographer from
ProVideo
4 Seattle, located at 80 South Washington,
Suite 200 in
5 Seattle, Washington 98104. This
deposition is being
6 recorded this 8th day of February 2001.
The time is
7 approximately 9:53 a.m., and we are at
1201 Third
8 Avenue, Suite 5200 in Seattle, Washington.
9 This deposition is being
recorded in the
10 matter of Katherine Dalen, et al., vs.
Olympic Pipe
11 Line, et al., case No. 99-2-01468-1, and
Frank S. King,

12 et al., vs. Olympic Pipe Line, et al., Case
No.

13 99-2-01467-3 in the Superior Court of the
state of

14 Washington in and for the county of Whatcom
and was

15 noticed by Chris Nicoll.

16 Will counsel and all present
please identify

17 themselves for the record and will the court
reporter

18 please swear in the witness.

19 MR. BEININGER: David Beninger on
behalf of

20 the plaintiffs.

21 MR. NICOLL: Chris Nicoll on
behalf of

22 Olympic Pipe Line.

23 MR TOLLEFSON: Val Tollefson
for Olympic

24 Pipe Line.

25 MR. PLATIS: Harry Platis,
plaintiffs.

00007

1 MR. VERWOLF: Nick Verwolf
for Equilon

2 Enterprises and Equilon Pipeline
Company.

3 MR. WOLFE: John Wolfe for
Frank Hopf.

4 MR. FINEGOLD: Larry Finegold
for Ron

5 Brentson.

6 MR. SPAAN: Mike Spaan for
Fred Crognale.

7 MR. OFFENBECHER: Frank
Offenbecher for

8 Earth Tech.

9 MR. FLOYD: And Francis Floyd
for Imco.

10 MR. WEIGEL: Doug Weigel for
Imco.

11 MR. BENINGER: Before we go on the
record, I

12 just want to say that I have no objection to
a non-

13 party observer, basically Peter

Offenbecher, who is
14 here on behalf of no party but here to
observe, I
15 understand, the deposition. I have no
problem and no
16 objection to that happening, but I want to
have
17 everyone to have notice that in fact
we have an
18 observer present, and allow them to
raise any
19 objections that they may feel they need to do
to any
20 type of observer being present.

21 MR. FLOYD: Do you intend to come
to all the
22 depositions?

23 MR. OFFENBECHER: It's not
entirely clear,
24 actually, but we've been sitting in on some
of the
25 depositions.

00008

1 MR. NICOLL: As far as Olympic is
concerned,

2 we have no objection to Earth Tech
attending. We

3 reserve the right to object to others
attending for

4 purposes of observation. We understand
Earth Tech's

5 reason and desire to be here to be
related to the

6 potential that Earth Tech could be called
upon to

7 become a defendant in this litigation or to
provide

8 defense and indemnity to other parties. So
they've got

9 a specific reason for being here, as we
understand it.

10 MR. FLOYD: And I want to make my
record

11 clear, too. The fact that I am allowing you
here today

12 does not mean that I waive any right at a
later date to

13 object. So I may think about it and I may
object at

14 lunch or I may decide at the next
deposition that I

15 don't want you here. But I don't see any
reason why

16 I should object now. But I don't want you
to say

17 anything at all. That's clear, I think.

No

18 objections, no comments.

19 MR. WOLFE: On behalf of Mr.
Hopf, I have

20 previously indicated an objection to --
or stated a

21 position that I believe that civil
discovery is not

22 public, that it is not open to the public.

My concerns

23 relate to any issues related to Fifth
Amendment and the

24 publication of invocation to the Fifth
Amendment by a

25 party or a witness. I'm concerned, and the
concern is

00009

1 based upon dissemination of an invocation or
answers

2 that might provide the federal investigators
with some

3 link in the chain, evidentiary chain, as it
relates to

4 their investigation.

5 Peter, with all due respect, I
object to

6 your presence here, and I want to make the
record clear

7 that I view these as nonpublic discovery
proceedings.

8 MR. FLOYD: I think you're going
to have to

9 leave, Peter. Short dep.

10 MR. BENINGER: Let me state my
position on

11 the record on that. There's been no
protective order

12 obtained to prevent nonparties or observers

to be
13 present. So, again, I don't have any
objection, and
14 unless there's a movement for a protective
order to be
15 obtained, I don't think that that's
something that
16 Peter has to leave. But I understand the
positions of
17 the parties. They may want to protect
themselves.
18 They may want to move for a protective order
to prevent
19 this from occurring, if they really feel
strongly
20 that in fact they want to prevent all third
party
21 observers from being present at
depositions, or maybe
22 they just want to allow it to be waived
here and sort
23 of pick and choose as it may suit their
purposes.

24 MR. NICOLL: Well, for what it's
worth,
25 I think we can cut a fine line here and
simply say that

00010

1 in a case where a person is representing a
party who
2 has a demonstrable interest in these
proceedings as a
3 litigant or potential litigant or a
representation of a
4 party who has the potential of being liable
by way of
5 indemnity or some other obligation, you
know, and
6 provided that they are prepared to agree not
to
7 disseminate publicly what goes on in these
depositions,
8 I don't have a particular problem with it.
9 MR. BENINGER: Obviously, I can't
agree to
10 that. I mean, I'm not going to agree to not
11 disseminate publicly what happens at these

depositions

12 or to my clients or anyone else. That's why
I've

13 raised before a protective order. If
there's a

14 protective order, I'm certainly going to
abide by the

15 court's rulings in that regard. If someone
feels the

16 need to get a protective order then go to
it, but we

17 have a party or nonparty observer present.
I have no

18 objection to it. As far as I'm concerned
he can stay

19 here and anyone else that wants to attend
any of these

20 depositions can come on in and do it unless
there's a

21 protective order.

22 MR. WOLFE: I think the trial
judge

23 addressed this and indicated that as far as
he was

24 concerned that these were private and to a
large extent

25 up to the party that is hosting the
deposition, that

00011

1 the party could elect to exclude people or
not, and

2 even charge rent, I believe the court
indicated. But I

3 do object. And Peter, it's simply because I
have a

4 unique interest in this issue. I don't
believe these

5 discovery -- pretrial discovery matters are
public, and

6 I believe that we have the right to exclude
nonparties

7 from...

8 MR. OFFENBECHER: Whose
deposition is it?

9 MR. NICOLL: Olympic's.

10 MR. BENINGER: It's all the
parties'

11 deposition, obviously. And I take an
opposite view of
12 all of that. I think the public proceedings
are open
13 unless there's been a particular order to
protect
14 against it. So my position is contrary, to
the
15 opposite, and I have no objection.

16 MR. FLOYD: I'm not asking you to
leave

17 either. I'm not taking a position on it.

18 MR. OFFENBECHER: As I understand
it, there

19 is no protective order?

20 MR. BENINGER: Not that I'm aware
of. Not

21 pertaining to this person's deposition. I
think

22 there's a protective order that covers two
or three

23 other people.

24 MR. FLOYD: Well, let's get
going. We have

25 to decide whether you're going to stay here
or not.

00012

1 THE WITNESS: Please.

2 MR. NICOLL: Go off the record
for a few

3 minutes.

4 THE VIDEOGRAPHER: Going off the
record.

5 The time is approximately 10:01 a.m.

6 (Recess.)

7 THE VIDEOGRAPHER: Back on the
record. The

8 time is approximately 10:04 a.m.

9 MR. NICOLL: The gentleman from
Skellenger

10 Bender left voluntarily. Okay.

11

12 EXAMINATION

13 BY MR. NICOLL:

14 Q. State your name and your current
residence

15 address, please.

16 A. My name is John D. Muder, Jr. I

17- -----

18 Q. And ----- County,
 right?

19 A. Yes, it is.

20 Q. Would you take a look at Exhibit
263?

21 That's a copy of the subpoena that you were
 served in
22 order to come down here today; is that
correct?

23 A. That is correct.

24 Q. And the subpoena asks for you to
bring
25 certain materials, personal books, papers, et
 cetera.

00013

1 You can see all of that on page 3, do you
see that?

2 A. Yes, I do.

3 Q. And you read that before coming
down today?

4 A. Yes, I did.

5 Q. Do you have any documents or
things that are

6 responsive to the subpoena?

7 A. No, I don't.

8 Q. Did you conduct a thorough search
of your

9 personal belongings in order to determine
if you had
10 anything?

11 A. I never looked, no.

12 Q. And you didn't look why?

13 A. Because I'm a general helper. I
 don't have

14 those documents.

15 Q. You don't have any documents like
 that?

16 A. No.

17 Q. You didn't need to look to know
it?

18 A. No.

19 Q. You can take Exhibit 263, lay it
aside.

20 Thanks. Are you represented by counsel here

today?

21 A. Yes, I am.

22 Q. Who is your attorney?

23 A. Francis Floyd.

24 Q. And have you been represented by a
lawyer

25 previously in connection with any matter
arising out of

00014

1 the June 10, 1999 rupture?

2 A. I -- no. The reason -- do I --
nothing.

3 Q. Did you contact Mr. Floyd or did
he contact
4 you?

5 A. He contacted me.

6 Q. And when did he contact you?

7 A. Some time ago. They had been
trying to get

8 a hold of me.

9 Q. Did you ask Mr. Floyd to become
your lawyer

10 or did he offer to become your lawyer?

11 A. They asked.

12 Q. They asked you?

13 A. Yes.

14 Q. And when did that happen?

15 A. I think I started getting
contacted a few

16 months ago.

17 Q. But when was it that they asked
to become

18 your lawyer?

19 A. About a week ago, two weeks ago.

20 Q. And when did you decide to
appoint or hire

21 them as your attorney?

22 A. To be honest with you, I didn't
hire them.

23 They represent me from Imco.

24 Q. So you're not paying them?

25 A. No, I'm not.

00015

1 Q. And you understand that they are
Imco's

2 lawyers?

3 A. I do understand that.

4 Q. And but you understand that
they're
5 providing you services as attorneys for
some purpose,
6 right?
7 A. Yes.
8 Q. Free of charge to you?
9 A. Free of charge to me.
10 Q. Is Mr. Floyd representing you for
any
11 purpose other than this litigation?
12 A. No, he's not.
13 Q. Did Mr. Floyd or anybody from Mr.
Floyd's
14 office indicate to you why it was that Imco
was willing
15 to provide him to be your lawyer?
16 A. No. Just to represent me about
the
17 pipeline.
18 Q. Did anybody other than Mr. Floyd
or someone
19 from his office indicate to you that Imco
would be
20 paying the fees of Mr. Floyd in relation to
his
21 representation of you?
22 A. No.
23 Q. Prior to your agreement to have
Mr. Floyd
24 and his law firm represent you in this
deposition, did
25 you have any discussion with him regarding
whether that
00016
1 presented a conflict of interest, in other
words,
2 whether he could represent you without
conflict?
3 A. Will you run that question by
me one more
4 time.
5 Q. Yeah. Prior to your agreeing
to have Mr.
6 Floyd represent you in this deposition,
did you have
7 any discussion concerning whether he

could represent

8 you without a conflict of interest?

9 A. I don't understand the
question, but --

10 because what conflict? I don't know. I'm
going to be

11 honest with you. I don't know what you're
asking

12 there.

13 Q. Did you have any discussion about
anything

14 called a conflict of interest?

15 A. No.

16 MR. FLOYD: Counsel, you're
getting real

17 close to me just instructing him not to
answer. I

18 don't see how this is going to lead to
any relevant

19 information. Why don't you ask him about
what he knows

20 about the accident and move on.

21 Q. How long have you lived at your
current

22 address?

23 A. March will be one year.

24 Q. And prior to March 2000 where did
you live?

25 A. On the streets. Just kidding.
In an

00017

1 apartment -----, and
that was in

2 Ferndale.

3 Q. How long did you live there?

4 A. I think two years.

5 Q. Prior to that where did you
live?

6 A. At my bother's house.

7 Q. Where was that?

8 A. I don't know his address. Smith
Road.

9 Q. Smith Road, Bellingham?

10 A. Bellingham.

11 Q. And how long did you live there?

12 A. I don't know. Probably about a
year, I

13 think. Enough to save up to buy a house.
14 Q. And prior to living with your
brother for a
15 year, where did you live?
16 A. I lived on Portalway with my
wife.
17 Q. Portalway, Bellingham, right?
18 A. No, Custer.
19 Q. That's right. What's your wife's
name?
20 THE WITNESS: Does this have
anything to do
21 with this?
22 MR. FLOYD: Well, I hope they're
not going
23 to try and call her and interview her now.
24 A. Her name is Kim. She's my ex-
wife.
25 Q. Same last name as you, Muder?
00018
1 A. No, Krey.
2 Q. Say it again?
3 A. Krey, K R E Y.
4 Q. Were you married to her in
1994?
5 A. I sure was.
6 Q. When did you and she become
divorced?
7 A. '95.
8 Q. Were you living together in
1994?
9 A. Yeah.
10 Q. Where did you live then?
11 A. Where did I live then?
12 Q. In 1994 with your wife Kim
Krey.
13 A. On Portalway.
14 Q. In Custer, Washington?
15 A. Yes.
16 Q. Have you lived all your life in
Washington
17 state?
18 A. Yes.
19 Q. So you were born in this state?
20 A. No. I was born in New Hampshire,
21 Portsmouth, New Hampshire.
22 Q. When did you move out here?

23 A. When I was one.
24 Q. Have you ever had a name change?
You always
25 been John Muder?
00019
1 A. Yes.
2 Q. Always been John Muder?
3 A. Yes.
4 Q. Have any nicknames, aliases?
5 A. Nope.
6 Q. No nicknames?
7 A. No, unless you want -- they call
me Spinner
8 out at work, if that's important to you.
9 Q. Well, what did they call you out
at the job
10 at the Dakin-Yew?
11 A. John.
12 Q. Where did you go to
high-----
13 A. -----
High School.
14 Q. You
graduate?
15 A.
Yes, I did.
16 Q.
What year?
17 A.
'83.
18 Q. -----old are you today?
19 A. I-----
20 Q. What was your date of birth?
21 A. -----
22 Q. After graduating Ferndale High
School, did
23 you go on to any other education?
24 A. No, I did not.
25 Q. Have you had any technical
training?
00020
1 A. Nope.
2 Q. After graduating high school did
you join
3 the military?
4 A. Nope.
5 Q. Have you ever been rejected by the

military?

6 A. Nope.

7 Q. After graduating high school did
you --

8 obviously you did. You went to work?

9 A. Yes.

10 Q. Who did you go to work for?

11 A. At that time, right out of high
school, I

12 went to work for Brian Cole, which is a
grocery chain.

13 Q. How long did you work for them?

14 A. Total of six years.

15 Q. Consecutively?

16 A. Nope.

17 Q. Who else did you work for?

18 A. Well, the list is fairly long. If
you'd

19 like to know it all I could go. Whatever you
want.

20 Q. Just the major ones, the big ones.

21 A. Timber Line Road Construction,
which was

22 owned by Carol York. I worked for Nordic
Yacht,

23 Chriscraft, Imco. Now I'm presently employed
at Alcoa.

24 Q. Alcoa. Do you have any health
problems that

25 would affect your memory or ability to
recall?

00021

1 A. No.

2 Q. And are you taking any medications
today?

3 A. Nope.

4 Q. Do you have a criminal history?

Have you

5 been arrested or convicted of any crimes?

6 A. Yeah.

7 Q. Could you go through that for us
real quick?

8 A. DWI and assault.

9 Q. Any of these felonies?

10 A. One was.

11 Q. What was the felony?

12 A. Assault on a police officer.

13 Q. When was that?
14 A. I couldn't tell you. I think -- I
could not
15 tell you. I don't remember.
16 Q. Now, I want to talk about your
employment
17 for Imco. When were you first hired?
18 A. Well, I quit in '95 to go to work
for
19 Intalco, and I worked for them, what, three
or four
20 years. So I'd say, what's that? '90
probably? I
21 don't know. '90, '91. I believe I worked
a total of
22 six years, but I think I was off and on
prior to me
23 working for them full-time.
24 Q. Did you -- do you remember who
it was who
25 first hired you at Imco?
00022
1 A. I believe it was Kip Smith, I
think. My
2 brother actually worked with Kip at the time
and got me
3 on.
4 Q. What's your brother's name?
5 A. Jim Muder.
6 Q. So the two of you worked at Imco
at various
7 times; is that correct?
8 A. Together, yeah.
9 Q. Did you fill out an application
in order to
10 get a job at Imco?
11 A. Yes.
12 Q. And were you interviewed?
13 A. I don't believe so, no, because I
had prior
14 construction so they just hired me.
15 Q. What position were you hired into
when you
16 were first --
17 A. General helper.
18 Q. And during the period of time
that you

19 worked for Imco, did you have any
advancements,
20 promotions, anything like that?
21 A. No.
22 Q. So you were always in the
category of
23 general helper?
24 A. Yes.
25 Q. What were your duties, generally?
I guess

00023

1 it would vary from site to site, but in a
general way
2 what would the duties of a general helper be?
3 A. My duties as a general helper was
to assist
4 on my lead men. They'd sent me out on
various jobs
5 shoveling, basically. I mean, I can make a
list but...
6 Q. When was it that you left Imco?
You
7 mentioned a moment ago about 1995.
8 A. I left, yeah, '95.
9 Q. And why?
10 A. Because I got tired of traveling.
I wanted
11 to -- my wife and I were going through a
divorce, and I
12 care a lot about my kids and I felt they
needed me
13 around.
14 Q. So that's why you looked for a
different job
15 and started working for Intalco?
16 A. Correct.
17 Q. How many kids do you have?
18 A. Two.
19 Q. Do you have any friends at Imco,
people you
20 would call friends?
21 A. I have acquaintances at Imco. I do
not hang
22 out with them today, no.
23 Q. Who were they?
24 A. On the job sites it's whoever was
on the job

25 site, depending on who was there.
00024
1 Q. But sitting here today, I mean,
who would
2 you count as among your acquaintances who
currently
3 worked for Imco?
4 A. Jeff Hinkle, Brett Lucas,
Calvin, Mike
5 Vanderpol, Ray Nicholas, Ronnie Nicholas.
6 Q. Any others?
7 A. That's about all I can think of
at this
8 time.
9 Q. You said Brett Lucas. Is that
Britt Lukes
10 or somebody different?
11 A. Brett Lucas, or it's Brett is
basically how
12 you pronounced it. I always called him
Brett.
13 Q. He was a heavy equipment
operator?
14 A. Yeah. Basically at Imco
Construction when
15 you're an operator you're basically a ditch
guy, too.
16 They just let the guys operate plus they
have to do
17 labor work, too. It ain't just a one --
like in some
18 construction companies.
19 Q. When is the last time -- not to
be exact,
20 I'm just trying to understand, you know,
how good a
21 relationship you have with these guys.
When was the
22 last time you got together and socialized
with any of
23 them?
24 A. Last day of the job.
25 Q. So it's acquaintanceship on the
job?
00025
1 A. Exactly.
2 Q. You guys got along real well; is

that right?

3 A. Yeah.

4 Q. But it's not really a friendship
that lasted

5 beyond the job?

6 A. No.

7 Q. But if you got together today?

8 A. Oh, it would just be, yeah, be
normal

9 talking, yeah.

10 Q. When is the last time you spoke
with any of

11 them?

12 A. Well, Calvin I speak to, you
know, on

13 occasion because he's -- grown up with
Calvin. I've

14 known Calvin. He's good friends with my
brothers.

15 He's the only one that I've associated with.

16 Q. So you grew up with Calvin?

17 A. Yeah.

18 MR. FLOYD: His bother grew up
with Calvin.

19 THE WITNESS: Brother, yeah.

20 A. I'm not in the same class.
Calvin's a lot

21 older than I am, so I didn't hang out with
him.

22 Q. So about when was the last time
you spoke

23 with Calvin?

24 A. Last week. Said hi to him.
That's about

25 it.

00026

1 Q. Have you spoken with Calvin about
anything

2 to do with the June 10 rupture?

3 A. Yes, I did.

4 Q. More than once?

5 A. Nope, just the one day.

6 Q. How long was that?

7 A. I believe it was on Thanksgiving.

We

8 invited him out to the family and we kind of
slightly

9 talked about it. He didn't want to talk
about it, and
10 I just asked him one question because I was
kind of

11 curious as to why I wasn't informed that
Olympic Pipe

12 Line ran through there, because I didn't
know that

13 Olympic Pipe Line ran through that job site,
and he

14 told me it did, and I was a little bit
shocked.

15 Q. Just to be clear, this would be
Thanksgiving

16 2000?

17 A. Of last year, yeah. I think it
was

18 Thanksgiving or Christmas. It's one of
those.

19 Q. Have you had any conversations
with -- I'm

20 going to come back to this with Calvin
Vanderpol in

21 just a minute, but have you had any
conversations with

22 anybody else from Imco about the incident?

23 A. Nope.

24 Q. So when Calvin told you or
confirmed that

25 the pipeline in fact did run through the
construction

00027

1 site, did you say anything back to him
about that?

2 A. I just said I couldn't believe
it, and that

3 was it. That was the end of the
conversation. He

4 didn't want to talk about it and that was
it.

5 Q. Did he tell you why he didn't
want to talk

6 about it?

7 A. Nope. Just said, "I don't care
to talk

8 about it."

9 Q. After the June 10 rupture, did

you receive

10 any letters from Imco concerning their
involvement?

11 A. Nope.

12 Q. I'm going to -- just to be sure
about this

13 I'm just going to show you three letters.
They're

14 already in the record as exhibits 38, 39 and
40.

15 A. I'm going to tell you -- you don't
even have

16 to show me -- I know I didn't get no
letters.

17 Q. So nobody from Imco has ever told
you or

18 suggested to you that you should not speak to
anybody

19 about the incident?

20 A. No.

21 Q. Has any representative of Imco
ever told you

22 that you should not speak to anybody about
the

23 incident?

24 A. Yes.

25 Q. Who?

00028

1 A. Doug.

2 Q. Doug Weigel?

3 A. Uh-huh.

4 Q. I'm sorry, in the deposition you
need to use

5 words. "Uh-huh" doesn't come across as
clearly. That

6 was yes?

7 A. That is yes.

8 Q. And when did Mr. Weigel give you
this

9 instruction?

10 A. Last week.

11 Q. At one point last week you and I
had a

12 telephone conversation, right?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. You telephoned me after you were
served with
17 a subpoena; is that correct?
18 A. That is correct.
19 Q. And you and I were in the process
of talking
20 about possibly getting together for a
meeting to go
21 over in detail what you might -- what your
testimony
22 might be; is that right?
23 A. That is correct, yes.
24 Q. And it was after that that you
were
25 contacted by Mr. Floyd's office; is that
correct?

00029

1 A. That is correct.
2 Q. And that's when you decided to
utilize them
3 as your counsel. Is that true?
4 A. That is correct.
5 Q. And that's when once they were
your counsel
6 they instructed you not to have any
conversations
7 outside of their presence; is that correct?
8 MR. FLOYD: Don't answer that.
Don't answer
9 the question. Privileged information.

Sorry.

10 MR. WOLFE: Just for the record,
I'm going
11 to note that I believe the privilege has
been waived by
12 virtue of this witness's answers to
questions related
13 to conversations he's had with Mr. Weigel
already.

14 MR. FLOYD: Fine. Well, we're
still going
15 to assert the privilege.
16 MR. FINEGOLD: The question did
not call for
17 privileged information. It simply asked what
he did as
18 a result of a conversation.

19 MR. FLOYD: Ask your next
question.
20 Q. That was actually my last
question on the
21 topic. Since you've been instructed not to
answer the
22 question I'm just going to move on.
23 MR. FLOYD: Perfect.
24 A. Yes.
25 Q. Now, did you -- on the job site
down there

00030

1 at Dakin-Yew you got to know some folks.
And one of
2 them would be Paul Krakenberg; is that
right?
3 A. That is correct.
4 Q. Not like a friend, but somebody
who worked
5 with you on the job site?
6 A. Yeah, he was my boss.
7 Q. He was your boss. And of course
you've
8 already talked about Calvin Vanderpol. Did
you work
9 with Calvin actually on the job at Dakin-
Yew?
10 A. Yep.
11 Q. And Britton Lukes, you worked with
Britton
12 on the job at Dakin-Yew; that is correct?
13 A. That is correct, yes.
14 Q. And how about Greg Burress? You
worked with
15 him on the job as well?
16 A. Yeah.
17 Q. And there's a guy named John
Avinue
18 (phonetic). Do you remember him?
19 A. I do not recall that name.
20 Q. You knew Rodney
Staples?
21 A. I did know
Rodney Staples.
22 Q. You worked with him on the job?
23 A. Yeah. And I worked for him in
his own

24 business.

25 Q. Rodney had good things to say
about you

00031

1 last week, by the way.

2 MR. FLOYD: Counsel, you don't
need to make

3 those comments to the witness, okay?

You're trying to

4 ingratiate yourself. Just ask questions.

He's not

5 going to change his testimony by what you
say to him.

6 Don't try to butter yourself up to him. Go
ahead and

7 ask your next question.

8 MR. NICOLL: Philosophy.

9 MR. FLOYD: Just ask questions,
okay?

10 Q. When did you --

11 MR. FLOYD: If I talk to Olympic
people and

12 tell them how great they are and how
attractive they

13 are and how wonderful they are, you're
going to object

14 too. So just ask him questions. He wants
to get out

15 of here.

16 MR. WOLFE: Francis, I wouldn't
object if he

17 said that to my client.

18 MR. NICOLL: I don't think I
probably would

19 either.

20 MR. FLOYD: Go ahead and continue.
This guy

21 wants to get back to work.

22 Q. When did you first start working
on the

23 Dakin-Yew job, if you recall?

24 A. Right at the beginning of the job
site.

25 Q. What was the -- what was your
position, your

00032

1 duties on that job?

2 A. My position/duty on the job?
3 Q. Yes.
4 A. To begin with I helped set it up.
5 Q. Could you explain a little bit
what you mean
6 by that?
7 A. Well, you know, you bring in
heavy
8 equipment, you're bringing in parts and
setting up
9 trailers, and basically my duties were to
just start
10 being the go-fer. Go wherever the finger was
 pointed.
11 Q. But basically your position
remained general
12 helper, right?
13 A. Yeah.
14 Q. And it was -- and of course the
duties for
15 that position were pretty broad ranging
because you're
16 doing whatever anybody tells you to do?
17 A. That's correct.
18 Q. And who was your lead man on that
 job?
19 A. That would be Greg Burress and
Paul
20 Krakenberg. Basically Paul.
21 Q. Paul is a young guy, wasn't he?
22 A. Yeah, he was young.
23 Q. And had he been to college? Was
 he just out
24 of college, did you know?
25 A. I believe I had heard rumors of
 that. I
00033
1 don't know that for fact.
2 Q. And Greg was an older guy?
3 A. Yeah. I think Greg is my age, if
you
4 consider that older.
5 Q. Well, older than Paul.
6 A. Yes.
7 Q. And these two guys, Paul and
Greg, they were
8 basically your supervisors then?

9 A. That's correct.
10 Q. When you were on the job as a
general
11 helper, were you obliged to prepare any kind
of a
12 written report such as, for example, keeping
track of
13 your hours or what you had done?
14 A. No.
15 Q. You did none of that?
16 A. None of that.
17 Q. You didn't keep a diary or any
other sort of
18 written record?
19 A. Nope.
20 Q. Were you given any kind of an
orientation
21 what this job was about in advance of
going out and
22 setting it up and starting the work?
23 A. At this time I don't recall,
but I've been
24 in construction long enough, you know, you
just kind of
25 know what you're doing, I guess. So that's
how I'll
00034
1 answer that.
2 Q. Was that something that would
typically be
3 done?
4 A. I don't know. I've never gone
through an
5 orientation of what the job is going to
consist of on
6 any of the jobs.
7 Q. So I guess the answer is, as
far as you're
8 concerned, no?
9 A. No.
10 Q. Were you ever given any drawings
or plans to
11 review?
12 A. No.
13 Q. Did you ever happen to look at any
drawings
14 or plans?

15 A. No.
16 Q. Did you ever feel like you should
have been

17 given those?

18 A. No.

19 Q. You had no expectation based on
your prior
20 experience that you had received plans or
drawings?

21 A. Correct.

22 Q. You said this already in the
context of your

23 conversation with Calvin, but prior to
working on the

24 Dakin-Yew job site, were you ever told that
there was a

25 petroleum products pipeline that ran beneath
the site?

00035

1 A. No.

2 Q. At any time during the job were
you ever

3 told that?

4 A. No.

5 Q. And you had no independent
knowledge of that

6 fact?

7 A. No.

8 Q. Not until your recent
conversation with

9 Calvin?

10 A. No. The only reason I knew that
Olympic

11 Pipe Line ran through there is because I seen
it on TV

12 when it blew, and I was shocked.

13 Q. When you saw it on TV was one of
the first

14 things that came to your mind the fact that
you had

15 been working in
that site?

16 A. Yeah.

17 Q. Why?

18 A. Because I worked on that site.
When it

19 blows up you're going like, yeah, oh.

20 Q. When you were on the job site at
the early

21 stages, before a lot of the ground had been
dug up and

22 that sort of thing, did you take notice of
whether

23 there were stakes around marking the
location of any of

24 the underground utilities that ran through
the area?

25 A. Oh, yeah, of course.

00036

1 Q. So you saw stakes?

2 A. Yeah.

3 Q. Did you look at them closely?

4 A. No, I have no reason to.

5 Q. And there was also like spray-
painted --

6 different color spray paint on the ground
surface; is

7 that right?

8 A. I can't recall on that.

9 Q. Did you know -- I mean this in
the most

10 general sense -- Tom Franklin from Barrett
Consulting

11 Group?

12 A. No.

13 Q. Do you remember the guy who was
sort of like

14 the inspector on the scene for the design
company?

15 A. I knew we had an inspector on the
job site,

16 but I don't pay attention to that thing. I
mean, the

17 only reason I would pay attention to any of
those guys

18 is if I had plans to move up. I had no
plans, no

19 intentions. I don't like that limelight,
that part of

20 it. I like being just a general laborer, do
my stuff,

21 go home.

22 Q. Did you know a guy on the job site
by the

23 name of Mark Graham?
24 A. I sure do.
25 Q. You do now and you did then?
00037
1 A. I met Mark on the job and there's
no further
2 relationship between Mark and I at all.
3 Q. You just knew each other from
that job?
4 A. From the job site.
5 Q. Did you get along okay with Mark
on the job
6 site?
7 A. At times.
8 Q. Were there times when you
didn't?
9 A. I have a tough time dealing
with arrogant
10 people.
11 Q. And Mark seemed arrogant to
you?
12 A. Very arrogant.
13 Q. Kind of a know-it-all?
14 A. Kind of a know-it-all. He
liked to think
15 that he was better than others and I don't
buy into
16 that.
17 Q. Did he ever say he felt he was
better than
18 others?
19 A. No. You could tell by his
presence.
20 Q. So it was basically the way he
carried
21 himself?
22 A. Yeah, the way he looks down on
people.
23 Q. And do you recall specific
dates that you
24 were at work during the Dakin-Yew
project?
25 A. No.
00038
1 Q. Without looking at a document,
would you be
2 able to tell me whether you were at work on

July 6?

3 A. No.

4 Q. July 7?

5 A. I could have.

6 Q. But you'd need a document?

7 A. You don't sit back and remember
dates when

8 you're not for sure of the future. I don't
sit back

9 and say I'm going to remember this day
because Olympic

10 Pipeline is going to blow up. I don't
remember things

11 like that.

12 Q. Let's take a look at -- show you
Exhibit 41,

13 page 252. This is a certification report
from Imco

14 General Construction Company on the
Dakin-Yew pump

15 station. You'll see down at the bottom
it has your

16 name and certain dates worked.

17 A. Oh, there I am.

18 Q. Do you see that?

19 A. Uh-huh.

20 Q. And what dates does that show
that you

21 worked?

22 A. 7-24, 25 -- no. It's 24 I was
off, so it's

23 25th, 26th, 27th and 28th.

24 Q. Of July 1994?

25 A. Yep.

00039

1 Q. And?

2 MR. FLOYD: Can I see that
again, please?

3 MR. NICOLL: Yeah.

4 Q. And again on the page 255, the
same exhibit

5 41, you'll see an entry at the bottom of
the page for

6 dates in August for you. Do you see that?

7 A. Yeah.

8 Q. August 1?

9 A. 1 through 4.

10 Q. And then page 258 of Exhibit 41,
do you see
11 that?
12 A. Yeah. 6-8 through 6-11.
13 Q. Well, that's actually 8-6 through
8-11;
14 isn't that right?
15 A. Yeah. That's 8 now. Yeah, that's
correct.
16 Q. 1994 Dakin-Yew job?
17 A. Yeah.
18 Q. Have you take a look at Exhibit
263 -- I'm
19 sorry, 262. You kind of need to pull this
thing down
20 in order to be able to see it. But this is
the same
21 kind of record and you'll see --
22 A. Yeah, I see.
23 Q. Do you see yourself there?
24 A. Yeah.
25 Q. And the dates worked, could you
tell us what

00040

1 those dates are?
2 A. Same ones I told you earlier.
3 Q. July -- actually those are July
dates,
4 right?
5 A. Yeah. July 5, 6, 7 and 8.
6 Q. 1994?
7 A. Yeah.
8 Q. And based on your recollection --
you don't
9 really have any reason to disagree with those
exhibits?
10 A. No, I was there.
11 Q. But if I understand your testimony
right,
12 you don't have any specific recollection
based on a
13 date of what you did on that date?
14 A. That is correct.
15 Q. Do you remember participating in
the work
16 related to digging a hole for placement of
a tee joint

17 that connected the 16-inch water line with
a 24-inch

18 discharge line from the pump station?

19 A. That is correct.

20 Q. You do recall that?

21 A. Yes.

22 Q. I'm just going to represent to
you that the

23 records show that that work at various
different times

24 occurred or seemed to occur on July 6, July
7 and July

25 8, 1994. What role did you play in that
work? What

00041

1 was it that you did?

2 A. Paint, put on bags, tighten
bolts.

3 Q. Did you do any of the digging?

4 A. No.

5 Q. Others dug?

6 A. Others dug, yes.

7 Q. Were you present when any of the
digging was
8 done?

9 A. Yeah.

10 Q. What kind of equipment was used
for the

11 digging?

12 A. An EX 150 Hitachi, a John Deere
790, and I

13 believe we had something else on there, but
I don't

14 remember the size of that one.

15 Q. Do you remember anything having to
do with a

16 need to relocate the hole for that tee
joint?

17 A. No.

18 Q. Do you have any recollection
concerning

19 pours of concrete in relation to the
tee joint?

20 A. Yeah. You put a thrust
block down.

21 Q. Where did you put the
thrust block?

22 A. I can't recall, but I would
 imagine at its
23 force point.
24 Q. But you don't have a specific
 recollection
25 of where that was done?
00042
1 A. I would -- I can't remember
whether we did
2 it. I would imagine we would.
3 Q. Do you recollect on that job
doing any of
4 the concrete work yourself?
5 A. No.
6 Q. So that wasn't part of what you
did?
7 A. No. I might have vibrated it,
get the air
8 bubbles out of it, you know. I do that
kind of stuff,
9 but as far as the finish work, stuff like
that, nope.
10 Q. Like you to take a look at a
photograph
11 which is Exhibit 133, and I want to ask you
 if you
12 recognize any of the people in the
photograph. First
13 would you hold it up just so the camera can
kind of get
14 a gander of it?
15 A. Yeah. There's me, Jeff Hinkle,
Greg
16 Burress, and I don't know the guy behind him
17 (indicating).
18 Q. Which one is you?
19 A. I'm the one with the blue sweater
on.
20 That's me. That's Jeff Hinkle. That's Greg
Burress.
21 I don't know who the guy is back there
(indicating).
22 Q. What are you doing in that
 photograph?
23 A. By the way it looks, watching.
24 Q. Understand, but what is the group
 doing in

25 the photograph?

00043

1 A. I can't really tell the picture
so I

2 couldn't honestly tell you what we're doing,
but it

3 looks like we're probably putting a Dressler
on it or

4 some sort to tie in the two pipes.

5 Q. That's to tie in the tee joint to
the 16-

6 inch line?

7 A. That is correct by the way the
picture

8 looks, yes.

9 Q. So you were involved, based on
that

10 photograph, in putting that tee joint in
position; is

11 that right?

12 A. That is correct.

13 Q. Do you recollect having to
relocate the tee

14 joint?

15 A. I don't. I don't know why we
would have to
16 relocate it. I mean, just on my recollection

-- or

17 however you pronounce that word, but I mean,
obviously

18 the picture, why would you relocate it.

19 Q. I'm just asking.

20 A. Yeah.

21 Q. Now that you look at that
photograph, can

22 you recall whether you were personally
involved in

23 digging the hole into which the tee joint was
placed?

24 A. No. I wouldn't have no part of
the digging.

25 I don't operate. I'd have no part of it. I
mean, I

00044

1 might have dug around the pipe, you know, to
expose

2 underneath the pipe. Obviously you need to

expose that

3 to get a Dressler or whatever they're going
to use

4 right there, but yeah. I'd imagine I
probably had

5 something to do with the digging.

6 Q. But you don't have a specific
recollection

7 of it?

8 A. I'm going to say yeah, I do. I
probably

9 dug, yeah. If that's what you're asking.

10 Q. Let me be clear --

11 A. I guarantee you it's either Jeff
Hinkle or I

12 that dug around that pipe right there.

13 Q. One or the other of you?

14 A. Yes.

15 Q. Do you recall the pipe -- the
hole for the

16 pipe having to be widened or for the tee
joint having

17 to be widened?

18 MR. FLOYD: I'm going to object
as been

19 asked and answered. Go ahead and
answer again.

20 A. I don't recall. No, I
don't recall.

21 Q. So to be clear, you're the guy in
the hooded

22 blue sweatshirt with the white hardhat with
your hand

23 on what would be about the north end of that
tee joint;

24 is that right?

25 A. Yeah. Is there a chance we're
going to get

00045

1 to what I do now?

2 Q. Yeah. I wanted to show you also
Exhibit

3 134. Do you see that and also would you
hold it up?

4 MR. NICOLL: You got it?

5 THE VIDEOGRAPHER: Yes, that's
good. Thank

6 you.
7 Q. Exhibit 134, is that also a
photograph of
8 the same tee joint that was shown in Exhibit
133?
9 A. We put in a couple tee joints. I
can't be
10 for sure.
11 Q. You see the wood bracing at the
bottom of
12 the tee joint?
13 A. Yes.
14 Q. Is that the kind of thing that
you worked
15 on, putting in wood bracing and that sort
of thing?
16 A. If it was called upon for me
to do that,
17 yes.
18 Q. Do you have a specific recollection
of doing
19 it with respect to this tee joint?
20 A. Yeah.
21 Q. What kind of -- what kind of wood
did you
22 use? What was the size of the wood?
23 A. Looks like two by six to me.
24 Q. And I guess I'm going to just
guess,
25 independent of the photograph you wouldn't
have any
00046
1 recollection of how many pieces you used to
brace that?
2 A. I would not, no.
3 Q. So whatever the photograph shows
is --
4 A. That's how many pieces we used.
5 Q. When did you normally arrive on
the job?
6 A. I believe seven. Depends on what
hours
7 we're working. If we're working four tens or
if it's
8 winter hours we went back to five eights.
9 Q. Well, this is summer and I'm going
to

10 represent to you it was four tens. So that
would mean

11 you'd get to work usually about seven; is
that right?

12 A. I think so, seven, yeah.

13 Q. Okay. On those dates, the July 6,
7 and 8,

14 do you recall who was operating the heavy
equipment?

15 A. I could not tell you that.

16 Q. All right. I want to talk now a
little bit

17 about what you do know, and because I think
I'm pretty

18 satisfied that you can't tie your memory
into a

19 particular date, at least not without maybe
reference

20 to other documents. So let me ask you this:
When you

21 were on the job at the Dakin-Yew site, was
there ever a

22 time when you were called upon to apply some
kind of

23 mastic or substance to a pipe that had been
damaged?

24 A. Yes, I was.

25 Q. When, as best you can recall, when
was that?

00047

1 A. I could not tell you the dates. I
know it

2 was -- had to have been summer. It was a
nice day out.

3 Q. Who was the operator of the
backhoe?

4 A. At that time I believe it was
Brett.

5 Q. Britt?

6 A. Yeah. I'm not going to
guarantee you that,

7 but I believe it was Brett because nobody
was in the

8 hoe at the time, so I could not tell you.

9 Q. But you think it was Britt
Lukes?

10 A. Could be.

11 Q. Why do you think it was
Britt Lukes?

12 A. Because usually he ran the
EX 150.

13 Q. So it was the Hitachi?

14 A. The Hitachi.

15 Q. What time of day was it?

16 A. I don't know, I don't
know.

17 Q. Where on the site did this
occur?

18 A. I don't know my north and south
there so it
19 would be down -- there's a 24-inch ductile
line that
20 comes out the one side. It would be on the
farther
21 side of this, of the pump house, I
should say.

22 Q. Well, okay.

23 A. Heading more toward the
creek.

24 Q. Heading towards the
creek?

25 A. Heading toward the creek.
00048

1 Q. It was on what size line? What
size pipe
2 was it?

3 A. That --

4 Q. The damaged pipe.

5 A. 24-inch.

6 Q. And you're saying that this pipe
that you
7 were working on was closer to the creek?

8 A. Yeah. Because I remember getting
called
9 down there. I came out of the silos and I
came out on
10 that side of the pump house.

11 Q. Do you remember where the big
reservoir was
12 put in?

13 A. The big reservoir?

14 MR. FLOYD: Tanks, is that what
you're
15 talking about?

16 Q. The big tank.
17 A. You mean the water tanks?
18 Q. Yes.
19 A. Yeah. Way down at the very end
of -- yeah.
20 Q. That's to the west of the pump
station; is
21 that right?
22 A. I could not -- I don't -- I'm not
a very
23 good directional type of guy. I couldn't tell
you
24 west, south, northeast, what.
25 Q. It's the opposite side of the
water
00049
1 treatment plant which is right behind the
pump station?
2 A. Correct.
3 Q. So the one thing we know is that
the pipe
4 that you went to work on, the damaged pipe
that you
5 went to work on, was between the pump
station and the
6 water tanks?
7 MR. FLOYD: Counsel, can we call
it the 24-
8 inch pipe because that's what he indicated
it was.
9 MR. NICOLL: No, we can't.
10 MR. FLOYD: I believe he called it
a 24-inch
11 pipe.
12 MR. NICOLL: I'm just going to
call it the
13 damaged pipe and then we'll get around to
that.
14 A. And your answer is no. It ain't
toward the
15 pumps. The damaged pipe was not toward the
water
16 reservoirs.
17 Q. Where was it towards?
18 A. Say this is the pump house. 24-
inch ductile
19 went out this way. The water towers are

down here.

20 The damaged pipe would come out of the
thing. I was
21 asked to fix a pipe that was sitting right
here

22 (indicating).

23 Q. A pipe on the --

24 A. (Indicating).

25 Q. Why don't you draw it for us.
Here's a pen.

00050

1 A. The reason I can really recall
this

2 -- because I'm going to answer a question
that you're

3 probably going to ask. The reason I can
recall that

4 is because when I watched it on the news
where the pipe

5 blew up and where it was goozing (sic) out
was over

6 here, and I know that we worked on a pipe
that was over

7 here (indicating).

8 Q. The little rectangle that you
drew, write

9 "pump station."

10 A. (Complying).

11 Q. Why don't you put in something for
where the

12 water treatment facility is. Do you
remember where

13 those big lines that ran out of the water
treatment?

14 A. 70 and 64, yeah. Right here
(indicating).

15 Q. Remember where the 24-inch
discharge line

16 met up with that tee joint?

17 A. Yeah, right here. Well, this is
the one I

18 recalled because it wasn't very deep
(indicating).

19 Q. It turned out of there?

20 A. Yeah, it came out here. We had
plastic bags

21 on it, and that's why I'm pretty sure I know

the depth.

22 MR. FLOYD: You have two other
marks here,

23 and I wanted to clarify those.

24 THE WITNESS: Yeah.

25 Q. Now, the first mark that you
wrote there,

00051

1 why don't you circle that.

2 A. This one (indicating)?

3 Q. Yeah. That's where your
understanding of

4 where the pipeline rupture was?

5 A. I'm pretty sure because I seen a
picture of

6 it in the grand jury.

7 Q. Why don't you mark that A.

8 A. (Complying).

9 Q. And the second mark that you
wrote, that's

10 the place where you remember working on a
piece of

11 damaged pipe?

12 A. That is correct.

13 Q. Why don't you mark that B.

14 A. (Complying).

15 Q. And that was -- now, your
description of

16 that pipe was 24-inch ductile iron; is that
right?

17 A. That is correct.

18 Q. Was the pipe at the time that you
saw it,

19 was it the --

20 MR. FLOYD: Could you clarify
you're talking

21 about the damaged pipe, correct?

22 Q. -- the B pipe? The B pipe.

23 A. Yes.

24 MR. FLOYD: Counsel, you're
talking about

25 the damaged pipe as the 24-inch ductile pipe,
correct?

00052

1 MR. NICOLL: I'm talking about
the pipe that

2 he's referring to on item B on his drawing.

3 A. And that's what I'm telling.
That's the 24-
4 inch ductile iron that I believe it was the
24 ductile
5 iron, yes.

6 MR. NICOLL: Could we mark this
as the next
7 exhibit in order, please.

8 (Marked Deposition Exhibit 264.)

9 Q. Was the pipe that was damaged,
the 24-inch
10 ductile iron that you're referring to here
on item B on
11 Exhibit 264, was that pipe at the time, had
it already
12 been back filled?

13 A. Yeah. It was an existing
line.

14 Q. It was an existing line?

15 A. Yeah.

16 Q. And it's a line that led to the
 pump

17 station?

18 A. I don't know where it led
because it just

19 exposed -- you know, I don't remember it
being all

20 exposed.

21 Q. So you didn't expose the entire
 line?

22 A. No. The whole entire line was not
 exposed.

23 Q. Let's talk about what you did do.

Who

24 called you over to that job?

25 A. I can't recall, but I'd imagine
 it's one of

00053

1 my supervisors.

2 Q. Either Krakenberg or Burress?

3 A. Or Burress, yeah.

4 Q. Do you remember whether either
one of them

5 were present?

6 A. Yeah. I think -- I'm pretty sure
it was

7 Paul.

8 Q. Paul Krakenberg?
9 A. Yeah.
10 Q. And who else was present?
11 A. I'd be just guessing.
12 Q. Was Mark Graham present?
13 A. No. Mark Graham was not present.
14 Q. Was -- and you're sure about
that?
15 A. Yeah, I'm pretty sure. Because I
came out
16 of the pump station up at the soda ash bins.
I don't
17 recall him following me.
18 Q. So Mark Graham was at the soda ash
bins when
19 you were?
20 A. Yeah.
21 MR. FLOYD: Counsel, your question
wasn't
22 clear as to when Mark Graham was present.
23 MR. NICOLL: I mean when he was
doing the
24 work over at --
25 Q. Did you understand me to be asking
about
00054
1 when you were --
2 A. Yeah. You wanted to know if Mark
was at
3 point B.
4 Q. Right.
5 A. No, Mark was not at point B.
6 Q. And you say you were called down
there from
7 where you had been working at the soda ash
bins?
8 A. Yes. I do recall that, yes.
9 Q. And the soda ash bins are up in
the water
10 treatment plant?
11 A. Correct.
12 Q. And your recollection is that Mark
Graham
13 was up there when you were called down?
14 A. Yeah, because at that time -- the
reason I
15 know Mark was up there because at that time

we were

16 doing a lot of electrical work up there.

That was

17 where all Triad was because at that time -
- I believe

18 at that time the pump station wasn't
ready. I don't

19 think the pumps were installed at that
time. Why we

20 would need an electrician down there at
that time.

21 Q. Now, the ground around the pipe
that you

22 found damaged, this 24-inch ductile iron
pipe, that was

23 all packed down. It had already -- there
had already

24 --

25 A. Yeah, because when the pipe was
scratched we

00055

1 had to dig around it so I could put mastic
on it and a

2 vinyl coating that I put on it. The
existing ground

3 was full of rocks, it was hard. It was an
existing

4 pipe. It's been there for a long time. I
would

5 -- you know, might not have been. Could
have been

6 there a month. I don't know how grounds
work.

7 Q. Was this pipe that you worked on,
was it

8 wrapped in plastic?

9 A. No.

10 Q. What was it -- what kind of
coating did it

11 have on it, if any?

12 A. Just like ductile iron. I know
ductile

13 iron. I've worked ductile iron a lot on all
our jobs.

14 It has the same rough black feeling. You
know, you

15 can't -- you can obviously make it --

observe the
16 difference between steel and ductile iron.
17 Q. Did it have any protective
coating on it at
18 all?
19 A. Yeah, ductile iron protective
coating.
20 Nonrusting. That's what ductile iron does.
21 Q. And when you worked on this pipe,
did you
22 dig it so that you exposed all of it?
23 A. No. Just -- you know, because
obviously
24 whenever you're repairing something -- the
reason I
25 know it was no big deal is because it wasn't
that big
00056
1 of a deal. I believe Paul said, hey, can
you come down
2 and tape this pipe? And let's fix it.
There was no
3 panic, there was nobody going, oh, boy, you
know, let's
4 do this. It was, hey, just fix this little
scratch we
5 got on this pipe so it doesn't rust.
6 So I exposed it -- we exposed a
little bit
7 of it, put some mastic on it, wrapped the
white cell --
8 or thing around it. Twelve inches on each
side of it
9 probably, so you definitely were getting a
complete
10 seal.
11 Q. A white what?
12 A. White vinyl. It was what we were
using to
13 wrap the ductile iron pipe with. Because
ductile iron
14 when it came in, it came in with already a
vinyl
15 coating on it, and when you weld two joints
together
16 you want to continue that wrap.
17 Q. How much of the pipe that you were

working
18 on was exposed while you were working on it?
19 A. Not very much. Enough, like I
said, I dug
20 out maybe two feet of it so we can get a
good wrap on
21 it.
22 Q. Based on what you saw of it, what
direction
23 was it running in? From where to where?
24 A. Say this is the pipe. It's
running like
25 this. Here's the pump station over here
(indicating).

00057

1 The scratch that we fixed went from probably
three
2 quarters the way of the pipe to the edge of
it to where
3 it fell off the pipe, because obviously it's
not
4 going to go underneath. If whoever was
operating at
5 the time probably skimmed it and it fell
off. The scar
6 on there is probably maybe 8 to 10 inches
long. I
7 would say not even a quarter inch
deep, if that.

8 Q. Using Exhibit 264, and
based on having
9 uncovered two feet of the pipe, can you
tell us which
10 direction the pipe was running?
11 A. It was running with the pump
station,
12 parallel to the pump station.
13 Q. So it was running parallel to
the pump
14 station?

15 A. Yes, this way (indicating).
16 Q. Would you draw that, please, for
us. Just
17 draw a line indicating.
18 A. (Complying).
19 Q. Mark that C, would you?
20 A. (Complying).

21 MR. NICOLL: There's a C with an
arrow
22 pointing to the line that you just drew.
23 Q. Now hold up the drawing and show
it. Point
24 to line C that you just drew so that this
fellow can
25 see it.

00058

1 A. The camera guy?
2 Q. The camera guy. Thanks.
3 THE WITNESS: Did he get it?
4 THE VIDEOGRAPHER: Yes.
5 Q. What kind of mastic, do you
recall what kind
6 it was?
7 A. I don't remember the brand name,
but it's a
8 black, fairly runny type paint.
9 Q. Where did you have to go to get
the stuff?
10 A. I don't know where they got their
supplies,
11 to be honest with you. Came in a little
white can. I
12 think there was pictures shown of the white
can
13 somewhere in all the pictures I've seen.
14 Q. And this is something you'd apply
before you
15 put on the white --
16 A. Yeah. It's a rust inhibitor.
17 Q. And was the stuff that you wrapped
it with,
18 was that something called Amerron or
something like
19 that?
20 A. No. Amerron is the pipe.
21 Q. Oh, Amerron is the pipe itself?
22 A. Yes.
23 Q. You didn't see the pipe get
struck?
24 A. No, I did not.
25 Q. Was the backhoe -- you said the
backhoe was

00059

1 empty at the time; is that right?

2 A. Empty?

3 Q. It was there but nobody was
sitting --

4 A. Yeah. Nobody was in it, no.

5 Q. Was Britt Lukes in the hole
helping you?

6 A. I can't recall.

7 Q. Was somebody else helping you?

8 A. The only people I really recall
being there

9 is Paul and myself. I would assume somebody
else was

10 there. I'm not real positive. Could have
been Britt,

11 could have been Jeff. Could have been John
Ellis. I

12 don't know. I think that's his name, John,
or whatever

13 his name is. I can't recall.

14 Q. John Ellis?

15 A. No, not Ellis. I can't think.
We called

16 him Ellis. I think his last name is Ellis.
I don't

17 even remember. Big burly guy. I don't know
his name.

18 Q. But you're pretty sure there was
somebody

19 helping you do the digging?

20 A. Yeah. I think I did most of the
digging

21 around it, yeah.

22 Q. Do you remember any other times
when pipes

23 were struck on that job site?

24 A. I think a couple of times, yes.
It's like

25 any normal job, yeah.

00060

1 Q. Can you explain or describe some
of those

2 other times when pipes were struck?

3 A. I cannot totally describe. I
don't know

4 where. I don't know when. I could be
thinking about

5 another job, because I guarantee you, when

you're in a

6 water treatment plant you're going to hit something.

7 There's pipes everywhere.

8 Q. Now, do you recall why there was digging

9 going on at that location? Did anybody tell you that?

10 MR. FLOYD: Object to the form of the

11 question. He's never said there was digging involved

12 other than the digging he did by hand. Go ahead and

13 answer.

14 Q. There's a Hitachi there, right?

15 THE WITNESS: In my -- I don't get it. Am I

16 still answering?

17 MR. FLOYD: Yeah. I just wanted to clarify

18 the question.

19 MR. VERWOLF: Francis is.

20 MR. FLOYD: I get to testify some, too

21 because I get to come. The question is do you recall

22 any digging with the Hitachi?

23 A. No, because I wasn't present, so I don't

24 recall if they were digging.

25 Q. So your counsel has just told you you don't

00061

1 remember?

2 MR. FLOYD: I didn't tell him he doesn't

3 remember.

4 A. No, he didn't tell me that. I wasn't there.

5 I don't know. There was nobody in the equipment. I

6 was up in the building.

7 Q. There was a Hitachi backhoe there?

8 A. Correct.

9 Q. There was a hole that was partially dug?

10 A. Correct.
11 Q. There was a scrape on the surface
of the
12 pipe?
13 A. But there wasn't just a hole.
14 Q. Tell me what was there.
15 A. The whole area was exposed.
16 Q. Everything?
17 A. Not the whole pipe, just -- there
was part
18 of the -- I don't know. I'd have to show you
pictures.
19 Q. Okay.
20 A. I believe it was -- maybe not
because -- I
21 can't recall. I ain't going to sit there and
say
22 anything. I don't know.
23 Q. Do you remember the footing for the
-- the
24 footing on the -- what would be the --
25 A. Pump station?
00062
1 Q. -- pump station? And on Exhibit
264 it
2 would be where that 90-degree bend comes out.
Do you
3 remember that little wall that came out?
4 A. Yeah.
5 Q. Was that wall already poured and
in place?
6 A. This one, retaining wall?
7 Q. The retaining wall on the other
end, on the
8 other side.
9 A. There (indicating)?
10 Q. There, yes.
11 A. Yeah, I believe so. I always
thought it was
12 here, though (indicating) --
13 Q. Let me show you a photograph.
14 A. -- because I don't know why we'd
have one
15 here because it sloughs this way.
16 Q. I'm going to show you Exhibit 190
and ask
17 you to hold it up just for a moment.

18 A. (Indicating).
19 Q. Do you see the foundation in the
foreground
20 of Exhibit 190?
21 A. Yeah, I see that.
22 Q. Do you recognize that as the
foundation for
23 the retaining wall?
24 A. Where that is, that's the front
of the pump
25 station, right? I believe it is. No, I
couldn't

00063

1 recall if that was the footing for the
retaining wall

2 or not.

3 Q. Do you see the 90-degree bend?
Do you see

4 that pipe that's coming out 90 degrees?

5 A. Yeah.

6 Q. And it goes down to a tee joint?

7 A. Uh-huh.

8 Q. Isn't that the -- hold up
Exhibit 264.

9 A. Yeah. That's the pipe that I'm
showing

10 here (indicating).

11 Q. That's the pipe that you're
showing --

12 A. Yeah. This one (indicating).

13 Q. -- there, right. So that's not
the front of

14 the pump station, is it? It's the side.

15 A. That's the side. That's this
side. That

16 pipe there is what I'm recollecting right
here

17 (indicating).

18 Q. And the footing, the base of that
foundation

19 that you're pointing to, why don't you hold
that up?

20 A. (Indicating).

21 Q. Was that built by the time that
you saw what

22 you saw on the other side of the pump
station?

23 MR. FLOYD: Counsel, are you
talking about
24 the repair to the 24-inch ductile? Is that
what you're
25 talking about?

00064

1 A. Is that what you're talking
about? I'm not

2 sure I'm following what you're saying.

3 Q. What I'm asking is, for the
events that

4 you're describing on Exhibit 264, at the
time of those

5 events, was the pipe that you see in Exhibit
190

6 buried, and was the concrete retaining wall
in place?

7 A. No.

8 Q. Was the pipe buried?

9 A. No.

10 Q. That pipe was still exposed?

11 A. Yeah. When I fixed the pipe,
yes.

12 Q. So the -- all of that black
plastic-wrapped

13 pipe was still exposed when you fixed the
pipe on the

14 other side; is that right?

15 A. Yes.

16 MR. FLOYD: What exhibit was
that?

17 MR. NICOLL: 190.

18 Q. You referred to this 24-inch
ductile line as

19 existing; is that right?

20 A. Uh-huh, yes.

21 Q. Why did you think it was
existing?

22 A. Because of the way it was bedded.
I mean,

23 if it was a freshly new pipe it wouldn't be
so hard. I

24 wouldn't need a pick.

25 Q. You had to dig with a pick?

00065

1 A. Yeah.

2 Q. Was there any other excavation

that was

3 going on -- I'm going to state that
differently. Was

4 there any excavation going on on the side
of the pump

5 station where you described what you did at
point B on

6 Exhibit 264?

7 A. You know, I'm going to just tell
what I

8 know. I would imagine so, because the EX
150 was

9 sitting there, had a slope bucket on it.
Didn't have a

10 ripping type bucket. It had a slope bucket
on it. So

11 I believe whoever was operate -- could have
been Britt,

12 could have been whoever -- was pulling back
slope,

13 because that was open, exposed. You know,
I've seen

14 pictures in the grand jury where the EX
150 with the

15 slope bucket on there. That's what I told
them, and

16 that's what I'm telling you today.

17 Q. So you saw a Hitachi EX 150
with a slope

18 bucket on it on the side of the pump
station opposite

19 to where the 90-degree bend came down to the
tee joint?

20 A. Correct.

21 Q. And that's where you did the work
that you

22 did?

23 A. Correct.

24 Q. That's what you recall?

25 A. Yep.

00066

1 Q. But you also recall that pipes
were damaged

2 on other occasions on that job site?

3 A. I'm going to hem and haw on that
one because

4 I would imagine, yeah, we probably scraped a

few pipes.

5 MR. FLOYD: If you don't have any
specific

6 recollection just say --

7 MR. WOLFE: I'm going to object --

8 A. That's what I'm going to say.

9 MR. WOLFE: -- to coaching the
witness, and

10 that's a deliberate coaching of the witness.

11 MR. NICOLL: Agreed. I object as
well.

12 Q. Just tell us in your own words. Do
you have

13 a recollection of working on any other pipes?

14 A. Yeah, lots of them. Normal
practice is that

15 we're not out there just tearing up pipes.
When we're

16 digging, if you're ripping -- using a ripper
bucket

17 you're scraping slowly. You got a ditch
guy that's

18 watching it, chinking, digging and looking
for pipe.

19 It ain't like Imco is out there just
tearing up pipes

20 and here we go. It ain't the way it is.

21 Q. I understand that, but there
were times

22 nonetheless when pipes got hit?

23 A. Yeah.

24 Q. And you recall the --

25 A. And I do not recall which --
what pipe I

00067

1 hit, I don't recall, or whoever hit.

2 Q. But you were called upon as the
general

3 helper on the site to come and help when
pipes were

4 hit; is that right?

5 A. Not always.

6 Q. More than once?

7 A. A percentage of your pipes that
you hit you

8 don't have to fix, I would assume.

9 Q. More than once?

10 A. On that job?
11 Q. Yes.
12 A. I'd say no. I'd say maybe one
pipe extra.
13 I don't know. I don't recall. I'm not the
operator.
14 I don't know what pipes they hit. That was
the only
15 pipe I fixed on that job. I'm just going
off the
16 assumption that on most jobs with that many
pipe in the
17 ground, that much stuff in the ground, you
are going to
18 hit something. That is what I'm going off
of.
19 MR. FLOYD: Just so the record is
clear, he
20 was pointing to Exhibit 264.
21 Q. On that job you were known as
Johnnie; is
22 that right?
23 A. John.
24 Q. John. Nobody called you Johnnie?
25 A. They could have.
00068
1 Q. Rodney Staples the other day told
us that --
2 A. What's Johnnie got to do with it,
though?
3 Q. Just want to know, is that a name
you were
4 known by?
5 A. They could have, they could have.
6 Q. Anybody else on that job site
that you know
7 of that was also known as Johnnie?
8 A. No.
9 MR. FLOYD: I think it's time to
take a
10 break, Counsel. It's 11:15. We've been
going hot and
11 heavy.
12 MR. NICOLL: I agree with you.
13 THE VIDEOGRAPHER: Going off the
record.
14 The time is approximately 11:15 a.m.

15 (Recess.)
16 THE VIDEOGRAPHER: Back on the
record. The
17 time is approximately 11:30 a.m.
18 Q. I'm going to show you Exhibit 97.
Would you
19 take a look at that for a second and hold it
up
20 then after you're finished looking at it,
show it to
21 the camera.
22 A. (Complying).
23 Q. Exhibit 97 is a drawing showing
the location
24 of the tee intersection between the 24-inch
discharge
25 line at the pump station and the 16-inch
water line,
00069
1 showing also the location of the Olympic
pipeline. Do
2 you see all that?
3 A. Uh-huh.
4 Q. Now, using Exhibit 97, could you
indicate
5 where it was that this ductile iron pipe --
6 A. (Indicating).
7 Q. I'm going to ask you to use a
pink, hot pink
8 actually, just put an X --
9 A. Where I think --
10 Q. -- where you
think it was.
11 A. Right there
(indicating).
12 Q. And why don't you circle that X
for us.
13 A. Okay.
14 Q. Hold it up.
15 MR. FLOYD: Let's make this an
exhibit
16 because you've marked, I mean --
17 MR. NICOLL: I think we made a
record of the
18 fact that we've now used a hot pink pen and
he's done
19 what he's done.

20 MR. FLOYD: But you're going to
be the

21 only person that has this exhibit, right?

22 MR. NICOLL: No. Actually this
is the

23 official copy of the exhibit.

24 MR. FLOYD: Okay, great. That's
fine.

25 MR. NICOLL: It's the court
reporter's copy

00070

1 of the exhibit. If anybody wants to get a
copy of it

2 later it's easily done.

3 Q. Were there other buckets used on
the

4 excavation equipment on that job site?

5 A. Yeah.

6 Q. What kind of buckets were there?

7 A. The ones with teeth on it.

8 Q. There were different toothed
buckets?

9 A. There's only two types of
buckets. Either

10 you got a ripping bucket or a slope
bucket.

11 Q. How many ripping buckets were
there?

12 A. Oh, I don't know. There's four
hoes,

13 there's probably four ripping buckets because
they're

14 not all the same for each, obviously.

15 Q. Do you remember where they were
kept on that

16 job site?

17 A. No. It depends on where we haul
them to.

18 Could be anywhere.

19 Q. Well, was there a place where they
were

20 usually kept?

21 A. No. We didn't have a specific
place that

22 said, hey, put ripping buckets here, no.

23 Q. Did you participate in changing
buckets out?

24 Did you help do that?
25 A. Yes.

00071
1 Q. How long would it take you to
change a
2 bucket out?
3 A. Probably about five, ten minutes.
4 Q. And that would include going
getting the
5 bucket or going to the bucket?
6 A. Yeah, bringing it, undoing the two
bolts,
7 placing it down, greasing it up. Ten,
fifteen minutes.
8 Five, ten, depending on how far you got to
bring the
9 bucket.
10 Q. I wanted to talk a little bit about
the tee
11 joint itself. If you could -- and again, I
realize
12 maybe you don't remember it, and if you
don't that's
13 okay. But a little bit about the mechanics
of getting
14 the tee joint in place. Do you recall any
of that?
15 A. Yes, somewhat of it.
16 Q. Obviously, the first thing you do
is you dig
17 the hole, right?
18 A. Yes.
19 Q. And then there was a water line
there. I
20 mean, what was done with the water line?
21 A. I believe procedures would be is
to have the
22 city shut the water off, cut it out.
23 Q. Cut the water line out?
24 A. Cut the water line out, set the
tee in
25 place.

00072
1 Q. Did you help cut the water line?
2 A. I don't believe so.
3 Q. When the water line was cut, do
you recall

4 if you were there?
5 A. I would imagine. I worked on the
job every
6 day so I imagine I was there.
7 Q. But, I mean, were you right there
when the
8 water line was cut?
9 A. I would assume so, yes.
10 Q. When the water line was cut, water
obviously
11 would come out of it, right, or was it
already fully
12 drained by then?
13 A. It should be fully drained. I
think they
14 drained it somewhere. I'm not sure.
15 Q. Then you'd, what, haul this piece
of pipe
16 out?
17 A. Yes.
18 Q. And then what?
19 A. Then we probably set the tee in
there. Some
20 dunnage probably. I believe we shot it in.
21 Q. Explain what you mean by "shot it
in."
22 A. Well, you got to get your correct
elevation.
23 Can't just set it down there and just bolt it
up and
24 let it hang and do all the things. You got to
shoot it
25 in, I imagine.
00073
1 Q. So by "shoot it in," you mean you
had
2 somebody with some surveying equipment to
make sure --
3 A. Yes.
4 Q. -- that you were on a level?
5 A. Uh-huh.
6 Q. Is that right?
7 A. Uh-huh.
8 Q. And that's what would help you
determine how
9 many dunnage you needed to put in place; is
that right?

10 A. Yeah, and I would -- yeah. I would
assume.

11 Q. Well --

12 A. See, you're asking me questions
that I have
13 nothing -- no knowledge of, really. I'm a
general
14 helper. They shoot it in. I'm just giving
you

15 pictures, you know, of what I can remember.
I believe

16 they shoot it in. If you want to know why I
think they

17 shoot it in I could give you those answers,
basically.

18 They shoot them in because we want the proper
level. I

19 don't know. I don't know all those answers.

20 Q. Okay. And then after the tee
joint is

21 lowered and it's in place and shot in or made
level or

22 whatever is done, then a connection is made to
the

23 existing pipe; is that right?

24 A. Yes.

25 Q. And did you participate in that?
00074

1 A. Yes. More than sure. Positive,
probably.

2 Q. Do you recall how that connection
was made?

3 A. I believe when you're hooking up
ductile

4 iron you use what they call Dresslers. And I
believe

5 that was used on that. Like I said, I
believe.

6 Dresslers is where you put in two pieces of
pipe, you

7 bolt them all up, the gaskets squeeze
together, and you

8 got a good solid fit.

9 MR. FLOYD: You said gasket,
right?

10 THE WITNESS: Yeah. They got
gaskets, yeah.

11 Q. Now, had you done this work -- I
mean, the

12 work on that tee joint that you've just
described, was

13 that work already done by the time you were
called upon

14 to perform the repair work at point B on
Exhibit 264

15 that you've described earlier?

16 A. Yes. I believe it was done.

17 Q. So the tee joint was in the line,
right?

18 A. Uh-huh.

19 Q. But the piping running from the
pump station

20 down to the tee joint and the tee joint
itself were not

21 yet buried. That stuff wasn't yet back
filled?

22 A. Yeah. What I showed you in that
picture,

23 those were the pipes that were exposed, yes.
The 90,

24 the ductile iron, the tee was all exposed.
And it was

25 done just what it showed in the picture. It
was all

00075

1 taped up, mastic'd, painted on it, yes.

2 Q. Do you recall having to put into
place some,

3 I guess -- I don't know what they're called
-- box

4 sleeves or some kind of risers to protect
the valve

5 stems on that tee joint?

6 A. Yeah, probably installed a
couple of those,

7 yes.

8 Q. And those were there in order to
protect

9 them against the earth and everything else
that would

10 be in place once it was back filled?

11 A. Yeah. As you're backfilling you
put in one

12 section, backfill it, chenk it in, make sure

off just a

17 little bit you don't have to dig all the
way. I

18 mean, you could put a bar -- we used to put
bars in

19 them and shake them and wiggle them around
and you

20 could do it that way.

21 Q. But you don't remember
specifically what was

22 done to correct those valve stems?

23 A. No. I would be just going off
what my

24 knowledge is as what I've been shown how to
do it.

25 Q. You'd be going off of general
knowledge, not

00077

1 specific recollection?

2 A. Yes.

3 Q. I can take that back. Have you
worked on

4 other jobs where there was a natural gas or
gas or oil

5 pipeline running through the job site?

6 A. I would assume so.

7 Q. Okay. Do you know that you've
worked on

8 other jobs where there was natural gas,
gasoline, oil

9 pipelines running through the job site?

10 A. Boy, I don't know because I
worked on the

11 Murrow water treatment plant. I don't know
if there

12 was gas lines going through a water treatment
plant. I

13 don't know on that one. And then I worked
at the

14 Dalles. Those are only basically the jobs I
worked on

15 for Imco, and that's a dam. And it was an
existing

16 dam.

17 Q. Well, on any other job where you
worked for

18 Imco, were you ever advised in advance of

the location

19 of underground utilities that were --

20 A. No.

21

Q. No?

22

A. No.

23 MR. FLOYD: Make sure you wait
until he's

24 done with his question because it's hard
for the court

25 reporter.

00078

1 Q. How about for any other
employer? Did you

2 ever work for any other employer where
there was

3 underground work that was going on?

4 A. No.

5 Q. Now, on any of the jobs that
you've worked

6 for Imco, do you remember having to remove
any of the

7 tees that were put in place, any of the tee
joints?

8 A. No. I think that one tee joint
we set it

9 once, put it in, that I recall.

10 Q. But you don't recall ever
removing a tee

11 joint -- not this specific tee joint, any
tee joint.

12 A. No. I'm going to say no.

13 Q. Now, with respect to the one
time that you

14 have a recollection or that you've been
discussing,

15 at any rate, where you were called out of
the soda ash

16 silo to come and do some repair work on the
pipe, do

17 you recall who specifically it was who called
you down?

18 A. Not specifically. I would assume
it would

19 be Paul, though. And I believe the operator
probably

20 had said something and that's how it got
relayed to me.

21 Q. And how would it be relayed to
you?

22 A. Just somebody needed -- probably
somebody

23 that didn't want to do the work.

24 Q. Did you carry a radio of some
sort?

25 A. No. They just -- the job site was
fairly

00079

1 small so they probably just came and got me.

2 Q. So somebody went and got you and
you think,

3 as you're sitting here, that that was Paul;
is that

4 right?

5 A. Yeah, I believe so.

6 Q. Do you recall what was said to
you?

7 A. No.

8 Q. Not anything?

9 A. Well, I imagine he said, hey,
John, we got a

10 scratch on the pipe. I don't know. I can't
sit here

11 and -- I'd be speculating.

12 Q. We don't want you to speculate.

We just

13 want to know if you have any recollection
at all of

14 what was said.

15 A. No, I do not.

16 Q. Do you have any recollection of
what was

17 said out by the site of the work that you
were doing

18 once you got down there?

19 A. I'd imagine there was orders
said dig

20 around, let's -- probably some decisions
made by Paul

21 or whoever it was. Probably said let's
dig around it

22 and let's put some mastic on it. Let's put
some vinyl

23 cover on it and call it good. I would
imagine those
24 were the kind of orders that were told me and
then Paul
25 probably took off.

00080

1 Q. Tell me more about this vinyl
cover. Does

2 it have like an industry name or a trade
name?

3 A. I do not know that. But it's got
a black,

4 tarry, sticky substance on the inside and a
really

5 smooth nonsticky vinyl on the outside.

6 Q. You're saying it's white on the
outside?

7 A. Yes, it is white.

8 Q. And do you have any reason to
believe that

9 that white vinyl substance wouldn't be on
this 24-inch

10 ductile iron pipe today?

11 A. Oh, it would be there.

12 Q. And this -- again, this was a 24-
inch

13 ductile line that was running parallel to
the front of

14 the pump station?

15 A. Correct.

16 Q. When you were working on the
length that you

17 saw had been damaged, was it about two feet
long you

18 said?

19 A. Yeah. I would assume, yeah.

20 Q. And it started at the top of the
pipe and

21 went down the side and trailed off?

22 A. Not quite the top. I would say
three

23 quarters.

24 Q. If you were looking at the pipe
head on from

25 -- let's say from point A up to point B and
just think

00081

1 of that as the face of a clock, where were
you seeing

2 the damage?

3 A. It's easier if I just show you
here

4 (indicating). The reason -- this is just me
thinking

5 of obvious things. I don't think that --
this pipe was

6 not exposed, so whoever was operating was
probably

7 sloping, and the EX probably was here, and
sometimes

8 when you slope you want to dig out this way
and pull it

9 up. So what I think was happening is that
it probably

10 just skimmed the out sort of that pipe
(sic), and

11 that's how come I had to dig around it.

Probably just

12 skimmed it, came up like that (indicating).

13 It would be right here. It went
from here

14 to probably there (indicating).

15 Q. Well, I understand that. It's
kind of hard

16 to actually describe that unless we know
which

17 direction we're looking from, because if
you're looking

18 from one end it's going to be on one side
and if you're

19 looking from the other -- you know what I
mean?

20 A. If it's going from the top of the
pipe --

21 okay, the scratch that I fixed went from the
top of

22 this pipe -- or actually probably where the
EX hit it,

23 or whatever hit it, probably went from this
way up this

24 way. It went up (indicating).

25 Q. So from the pump station side up;
is that

00082

1 right?
2 A. Yeah. If you were looking at it
this way,
3 the scratch went this way. This is the pipe
so the
4 scratch went like this (indicating).
5 Q. All right.
6 A. Just like that.
7 Q. What I want to do now is I've
drawn a circle
8 in front of you. I'm not trying to depict a
pipe of
9 any particular size, but let's imagine we're
looking at
10 the pipe in a profile -- in a sort of a cut
away
11 looking down the pipe. What I want you to
give me is
12 an indication of how much of the pipe you
exposed when
13 you dug around in that two foot area.
14 A. The whole thing.
15 Q. Underneath as well?
16 A. Underneath as well.
17 Q. So you dug all the way down and
exposed the
18 entire pipe, its entire diameter?
19 A. Correct.
20 Q. From top to bottom and its entire
diameter
21 from side to side?
22 A. Correct.
23 Q. And you did that for an
entire two-foot
24 length?
25 A. Approximately.
00083
1 Q. Were there any other markings
on the pipe
2 that you saw?
3 A. No.
4 Q. Did you see any identifying
markings,
5 writing of any sort?
6 A. No.
7 Q. Did you see any weld spots or
joints?

8 A. No.
9 Q. What was the color of the pipe
you were
10 looking at?
11 A. Black.
12 Q. What was the condition of the
wrapping?
13 A. The wrapping? There was no
wrapping on it.
14 Q. No wrapping on it at all. Did it
look to
15 you to be new pipe?
16 A. No.
17 Q. Where, if any, were other points
where there
18 was digging that had been -- that had gone
on? Are you
19 able to show us on that drawing where other
holes were
20 dug?
21 A. All around it (indicating).
22 Q. All around?
23 A. Yeah. There's -- I believe
there's a
24 60-inch that was being dug out over here
(indicating).
25 Q. To the north?
00084
1 A. Yeah. And that being exposed.
These were
2 all -- this was all exposed over here to
place those
3 in (indicating).
4 Q. The 72 and 60-inch lines?
5 A. Yeah. And that's all I can
recall at that
6 time that was open.
7 Q. Weren't the 72 and 60-inch lines
already in
8 at that point?
9 A. I don't know if they were or not.
10 Q. Do you remember a trench that was
dug in
11 order to place a 24-inch line running from
that
12 northwest corner of the pump station out to
another

13 network of lines?
14 A. Yeah, I believe so. I recall
that.
15 Q. I want to show you Exhibit 253.
Take a look
16 at that and hold it up for the camera.
17 MR. NICOLL: Can you see that
through the
18 glare?
19 THE VIDEOGRAPHER: Yes, thanks.
20 Q. That photograph, Exhibit 253,
shows the
21 trench that was dug in order to lay that 24-
inch line?
22 A. Underneath it?
23 Q. Right.
24 A. Is that the one you're talking
about? Yes.
25 Q. That also shows the area that
you've been
00085
1 describing as point B on Exhibit 264,
doesn't it?
2 A. Is that the front of the pump
house, that
3 door? I'm imagine so. I think there's only
one door.
4 Okay. There's the water -- yeah, it's
fairly close to
5 that.
6 Q. Was that trench that you're
looking at there
7 already dug out?
8 A. No.
9 Q. It was not dug out when you did
the repair
10 work you're talking about at point B?
11 A. No. I don't remember that big of
a trench,
12 no.
13 Q. So I guess what I want to ask
you is, did
14 you do the repair work you're talking about
before the
15 trench was dug to lay the 24-inch line to
the pump
16 station?

17 A. I would be just assuming yes,
because I
18 don't remember that trench. I don't recall
 going in
19 that deep to fix anything.
20 Q. Do you see a pipe in that
 photograph near a
21 ladder? Do you see that?
22 A. Yes, I do.
23 Q. Do you know what that is?
24 A. I believe -- isn't that the pipe
 that goes
25 to the tee?
00086
1 Q. I'm asking if you know what it
is.
2 A. That's what I'm assuming. By
the way it
3 looks and where it's going I would --
4 MR. FLOYD: You don't know.
5 A. I don't know. I was going to
say assume so
6 I'd just be assuming.
7 MR. FLOYD: We don't want you to
-- just
8 tell him what you know or you don't know,
otherwise
9 we're going to go beyond lunch.
10 THE WITNESS: Okay.
11 A. No.
12 Q. Do you see the pipe that you worked
 on?
13 A. No. Could have been that. Could
 have been
14 that pipe.
15 Q. Could have been that pipe.
16 A. Could have been.
17 Q. What if I told you that's a 16-inch
 pipe?
18 Could have been a 16-inch pipe, right?
19 A. Could have been.
20 Q. In fact, it would had to have been,
 wouldn't
21 it?
22 A. Huh-uh.
23 Q. When was the first time that you
told

24 somebody the pipe that you repaired was a 24-
inch pipe?

25 A. Grand jury.

00087

1 Q. And was that before or after you
were shown

2 photographs in the grand jury?

3 A. That was before. Everything was
before.

4 Q. Were you shown a photograph like
the

5 photograph I just showed you?

6 A. I don't recall if I -- I don't
recall. No.

7 Q. I know there's a photograph of you
in here,

8 and I'm just looking to get it real quick.
Hang on.

9 Exhibit 203 is a different
photograph than

10 the one I was looking for, but I want you to
take a

11 look at it anyway. Have a look and show it.

12 A. (Indicating).

13 Q. Do you recognize the front of the
pump

14 station and the door in that photograph,
don't you?

15 A. Yes, I do.

16 Q. And that's a photograph that is
pointed sort

17 of in the general direction of the corner of
the pump

18 station near where you've been talking about
as point B

19 on Exhibit 264; is that correct?

20 A. That is correct. It's more that
way, but

21 yeah, correct.

22 Q. Right. And do you see the piping
in the

23 background?

24 A. Yes.

25 Q. Above ground piping?

00088

1 A. Yeah.

2 Q. That's not the piping that

you're talking

3 about, right?

4 A. This pipe (indicating)?

5 Q. No, in the photograph. Yeah,
that's -- the

6 piping shown in the photograph in the upper
left-hand

7 corner is not the piping that you're
talking about as

8 being between points A and B on Exhibit
264.

9 MR. BENINGER: You mean the one
that was

10 labeled as C?

11 MR. NICOLL: The one that was
labeled as C,

12 that's right.

13 A. No. Do you mean the one that I
fixed?

14 Q. Yeah.

15 A. No, that's not the pipe.

16 Q. Was that -- I'm not even sure
what you call

17 that. Do you know what you call that kind
of odd

18 arrangement?

19 A. Yeah. It's a shoring.

20 Q. The pipe in that shoring right
there, was

21 that in place when you did the work that
you did at

22 point B on Exhibit 264? If you don't know
it's okay.

23 A. I don't know.

24 Q. I'm just trying to circle in on
dates.

25 A. Yeah, I don't know, I don't
know.

00089

1 Q. Can I have that back, please?

2 A. All I know is that I fixed a
pipe. That's

3 all I know.

4 MR. FLOYD: Counsel, it's one
minute to

5 twelve.

6 MR. NICOLL: Let me just finish

up with

7 these photos, and then we'll take a break
for lunch.

8 MR. FLOYD: He drove all the way
from

9 Blaine.

10 MR. NICOLL: I understand that.
You drove

11 this morning?

12 THE WITNESS: Uh-huh.

13 MR. NICOLL: You need a break.

I'll finish

14 up on this. I just want to find the
photograph that

15 has you in it.

16 Q. Take a look at Exhibit 138 and hold
that up.

17 Exhibit 138 also shows you in the hole with
the tee

18 joint doing some work; is that right?

19 A. Correct.

20 Q. Looks like you're doing something
there.

21 What are you doing?

22 A. Probably tightening, fitting them
together.

23 Q. Do you recall whether the hole was
dug any

24 deeper than it shows in that photograph?

25 A. No.

00090

1 Q. Have the pictures back. One
more. No, you

2 don't recall or --

3 A. No.

4 Q. I'm going to have to ask that
question

5 again. Sorry. Do you recall if the tee --
the hole

6 for the tee joint was dug any deeper than
it shows in

7 Exhibit 138?

8 A. No, it wasn't.

9 Q. It wasn't dug any deeper?

10 A. Huh-uh.

11 Q. You're sure of that?

12 MR. FLOYD: You have to answer

yes or no.

13 Q. Are you sure of that?

14 A. Am I sure that it wasn't dug any
deeper?

15

Q. Yes.

16

A. Yes.

17 Q. Do you recall standing in a bunch
of water

18 when you were doing the work that you were
doing?

19 A. Yes.

20 Q. And it shows on this photograph,
doesn't it?

21 A. Yes.

22 Q. Would the water come from when you
drained

23 the pipe?

24 A. I believe so, yes.

25 Q. Did you tap into it using some kind
of a tap

00091

1 valve or do you recall?

2 A. To tap into what?

3 Q. Do you recall how you drained the
16-inch

4 water line?

5 A. I don't know. I know we had a
company on

6 the job site that did pressure releasing
thing.

7 Q. Do you recall what that
company was?

8 A. I do not.

9 THE VIDEOGRAPHER: Excuse me.

There are

10 five minutes left on the videotape.

11 MR. NICOLL: I've got less
than that in

12 terms of questioning.

13 Q. Here's another photograph,
Exhibit 145.

14 That's not you, is it?

15 A. No, that's Jeff.

16 Q. Hinkle?

17 A. Uh-huh.

18 Q. Show you Exhibit 148. Do you see
that

19 exhibit?

20 A. Yes, I do.

21 Q. Do you see the rebar that's now
been put in

22 place on the footing?

23 A. Yeah. Now that I see that,
that's the

24 retaining wall.

25 Q. And that retaining wall actually
ran pretty

00092

1 close to where that 24-inch line came out of
the pump

2 station at the 90-degree bend and down to
the tee

3 joint; is that right?

4 A. Yes.

5 Q. Now, was that retaining wall
completed when

6 you did the work that you did at point B on
Exhibit

7 264?

8 A. Don't know.

9 Q. Show you Exhibit 199. Have you
been shown

10 that photograph before?

11 A. No.

12 Q. Does Exhibit 199 have any
resemblance to the

13 way the scene looked at the time that you
were doing

14 the work that you did?

15 MR. FLOYD: Kind of an overly
broad, "any

16 resemblance."

17 Q. I guess I'm sort of backing in
from the

18 general to the specific. Does it look the
way it

19 looked like on the day that you did the
work that you

20 did it at point B on the exhibit?

21 A. I think, I think --

22 Q. Now, you remember earlier you
said that --

23 you said that the plastic-coated piping
for the tee
24 joint was exposed, and of course it's not
in this
25 photograph.

00093

1 A. Yeah. So I think, to answer
your question,

2 no. I think it was more open.

3 MR. NICOLL: Let's take a break
here.

4 MR. FLOYD: Hold on. How much
more do you

5 have?

6 MR. NICOLL: Well, I really think
I've got

7 about an hour.

8 MR. FLOYD: Well, we'll take a
break then.

9 THE VIDEOGRAPHER: This is the
end of tape

10 No. 1 in the deposition of John Muder, Jr.
The time is

11 approximately 12:06 p.m. Going off the
record.

12 (Lunch recess.)

13

14

15

16

17

18

19

20

21

22

23

24

25

00094

1

AFTERNOON SESSION

2

1:20 P.M.

3

4 THE VIDEOGRAPHER: Back on the
record. This

5 is the beginning of tape No. 2 in the
deposition of

6 John Muder, Jr. The time is approximately
1:20 p.m.

7

8 BY MR. NICOLL:

9 Q. All right. Before the break we
were looking

10 at some photographs. I've gone back and
looked at a

11 couple more. I want you to take a look at
Exhibit 193,

12 which is a photograph, take a look and hold
it up for

13 the camera the way we've been doing if you
don't mind.

14 A. (Complying).

15 Q. Is the guy painting, do you
recognize that

16 guy?

17 A. Yes.

18 Q. Who is that?

19 A. It's Jeff Hinkle.

20 Q. You know that's not you, right?

21 A. Yeah.

22 Q. Take a look at first Exhibit 196
and then

23 Exhibit 197. 196, hold it up.

24 A. (Complying).

25 Q. That's a photograph of the soda
ash silo,

00095

1 right?

2

THE WITNESS: Were you done, sir?

3

THE VIDEOGRAPHER: Yes.

4

A. Yes.

5

Q. Do you recognize the guy in the
photograph?

6

A. No, I do not.

7

Q. On the day that you went and did
the work

8 that's shown on Exhibit 264, was the soda
ash silo that

9

far completed, in other words, for the --

10

A. I don't know.

11

Q. You don't know. What was the work
that you

12

were doing in the soda ash silo?

13

A. Removing concrete, because they

had Action

14 Concrete coming in and chip away at the
floors. Pipe

15 removal. I had to remove the old silos so I
had to do

16 cutting and torching.

17 Q. So that was the work that you
were doing on

18 the day that you did the repair at point B
on Exhibit

19 264; is that right?

20 A. I don't know if that's exactly
what I was

21 doing that day, no.

22 Q. What I want to know is what work
were you

23 doing that day in the soda ash bin, if you
know?

24 A. I don't know.

25 Q. Had you already finished breaking
up the

00096

1 floors?

2 A. I'd be speculating. I don't
know. I don't

3 remember.

4 Q. Do you know if Action Concrete
had already

5 come and gone? Same thing?

6 A. Yeah. Same thing.

7 MR. FLOYD: "Same thing" meaning
you don't

8 remember, you don't know?

9 A. I don't know.

10 Q. If I could have that back. Well,
actually,

11 why don't you just turn to the next one.

It's Exhibit

12 197. That's also a photograph of the soda
ash silo; is

13 that right?

14 A. Yes.

15 Q. Does that spark any memory about
whether

16 that's the condition of the soda ash silo on
the day

17 that the incident occurred or not?

you did what

20 you did at point B on Exhibit 264?

21 A. Like I answered before, I'm not sure.

22 Q. Before we talk about that I just wanted to

23 look at one more in the previously marked exhibits.

24 Look at Exhibit 19 -- I'm sorry, 200. Take a look at

25 that and show it to the camera.

00098

1 A. (Complying).

2 Q. Do you recognize the person in the doorway

3 in that photograph?

4 A. I recognize him. I don't know his name.

5 Q. Was the condition around the exterior of the

6 pump station on the day that you did the work you did

7 at point B similar or different from that?

8 A. I think it's pretty close to this. I think

9 it might have been, you know, because we had stairs

10 there. The stairs weren't there when I had gone down

11 in there that I recall, but I guess, yes.

12 Q. Just to be -- to try to draw this a little

13 closer. You'll remember there was a period of time in

14 the construction of the pump station where you could

15 see all the exposed rebar, right?

16 A. Yeah, there was that.

17 Q. On all the exterior walls, do you remember

18 that?

19 A. Yes.

20 Q. And then -- of course then the concrete was

21 poured and the rebar was no longer exposed, right? Do

22 you remember that?

23 A. Yeah.

24 Q. So when you went out there to do
the work

25 that you did on the pipe at point B on
Exhibit 264, had

00099

1 the concrete been poured on the exterior
walls of the

2 pump station?

3 A. I'm going to just say -- like I
said earlier

4 and testified earlier is that during the
process I'm

5 not thinking of what I got to remember.

6 Q. I understand.

7 A. So when you're asking me what
stage we were

8 in, I don't recall what stage we were in.

9 Q. I understand.

10 A. We could have been in a million
different

11 stages.

12 Q. I understand. And understand
what I'm

13 trying to do. I'm not trying to do
anything --

14 A. I realize that.

15 Q. -- other than use photographs and
documents

16 to --

17 A. To try to jog my memory, and I
can't. They

18 tried it at the grand jury. The only thing
I told the

19 grand jury is what happened. I know fixing
-- I know

20 for damn well that I wrapped a pipe. That
was it.

21 That's all I know. I don't know what stage I
was in.

22 I don't have a frigging clue where we were
at. Sorry.

23 I don't know no more than that.

24 Q. I've got some other photographs
that I went

25 back -- and there will be some others coming
in in the

00100

1 hopes -- I understand what you're saying.
You still

2 don't have a clue, but in the hopes maybe
some of these

3 photographs can be helpful.

4 A. That's what they did at the grand
jury.

5 They tried to do that too and I just --

6 MR. NICOLL: Why don't we mark
those in
7 order.

8 (Marked Deposition Exhibits 265
through

9 269.)

10 Q. Question I had for you is, of 265
is, does

11 the pipe that you see in 265 look like the
pipe that

12 you recalled
repairing?

13 A. I
can't say.

14 Q.
Could be?

15 A.
No.

16 Q.
Couldn't be?

17 A. I can't say unless I'm in the
ditch looking

18 at the pipe. I don't know. I can't tell
the texture

19 of the pipe. I can't sit here and
speculate on a

20 picture.

21 Q. Well, based on the way it
appears in the

22 picture, can you say that it isn't the
pipe that you
23 repaired?

24 A. No, I can't say that.

25 Q. Let's look at 266, next photograph.
By the

00101

1 way, just hold that photograph up for the
camera.

2 Point to the pipe that we were just
discussing, please.

3 A. (Indicating).

4 Q. Thank you. Look at 266. I'm
going to guess

5 this is the soda ash bin by virtue of the
fact there's

6 a whole bunch of bags that say soda ash on
them.

7 A. Yeah. We're filling them.

8 Q. There's a hard to read date on
this

9 photograph. The guy who took these pictures
testified

10 that he was using a camera that had a date
stamp on it,

11 and the date here would appear to be 7-20-
94. Do you

12 see that?

13 A. Yes.

14 Q. Who is the person in the
photograph in the

15 background, do you know?

16 A. I don't have a clue.

17 Q. Question I have for you is kind of
like the

18 other question about soda ash bin. Do you
recall

19 whether the work in the soda ash silos was
as far along

20 as depicted in this photograph at the time
that you did

21 what you did over there at point B on
Exhibit 264?

22 A. Well, this is before we moved any
of the

23 soda ash bins. This is us filling them up.

24 Q. Are you sure?

25 A. That's why the soda ash is there,
if that

00102

1 was what we're doing, yeah. The answer to
your

2 question, I don't know.

3 Q. Well, more likely than not that
means, then,

4 that this was -- actually what you did over

there at

5 point B was after the date of this
photograph, right?

6 A. 9-20?

7 Q. 7-20.

8 A. 7-20. Are you asking me --
rephrase that,

9 please.

10 Q. Well, I've gone by what you said
before. It

11 sounded like what you said before was that
the work

12 that you had been doing in the soda ash bin
involved

13 tearing out some of the concrete and the
form material

14 and getting it ready for pouring the soda
ash, and

15 whatever else it was that you were doing.
You also

16 said that you weren't really sure where in
the cycle of

17 things this occurred.

18 A. Yes.

19 Q. But if photograph 266 shows the
soda ash bin

20 before you started the work, then it follows
that the

21 repair of the pipe occurred after this
photograph,

22 right?

23 A. Yeah. Yes. If this is the start
of the job

24 it obviously -- these pipes we put in so
this could be

25 -- you know, we didn't remove the silos
right away. We

00103

1 couldn't.

2 Q. So maybe, maybe not?

3 A. We did one at one time and then
got that one

4 going and then did another one.

5 Q. So I guess what you're saying is
it could

6 have been before, it could have been after,
you really

7 don't know?
8 A. Yean, I don't know.
9 Q. Let's look at 267. Hold it up,
if you
10 would.
11 A. (Complying).
12 THE VIDEOGRAPHER: Should I be
zooming into
13 each or --
14 MR. NICOLL: Just generally
focus. If we
15 need to zoom in on something we'll do that.
16 Q. You recognize the area in this
photograph,
17 right?
18 A. Yes, I do.
19 Q. But you see up in the upper
right-hand
20 corner of Exhibit 267, appears to be the
front of the
21 pump station where the entry door is?
22 A. Uh-huh.
23 Q. Yes?
24 A. Yes.
25 Q. So the area that we're looking at
is the

00104

1 trench that we discussed before the break
that had been
2 dug to connect a new 24-inch ductile iron
pipe to the,
3 I guess, north side of that pump station,
right?
4 A. Are you talking about the one
with the bag?
5 Q. Yes.
6 A. Yes.
7 Q. Now, the one with the bag isn't
the one that
8 you did any work on; isn't that right?
9 A. That's correct.
10 Q. Do you see there are two other
pipes kind of
11 under which the 24-inch line is running
there?
12 A. Uh-huh.
13 Q. Yes?

14 A. Yes.
15 Q. Do you recognize either of those
 two pipes
16 as the one that you did your work on?
17 A. Well, like I said in the grand
jury, the one
18 that I fixed was the one closest to the
friggig pump
19 house.
20 Q. The one closest to the pump
house?
21 A. Yes. And I don't know -- I'm
 going to say
22 no, I don't know if it's that pipe.
23 Q. But of the two pipes in this
photograph,
24 Exhibit 267, it was -- the one that you
fixed was
25 closer to the pump house than the one in the
 bottom of
00105
1 the photograph?
2 A. Correct.
3 Q. Now, I would like you to hold the
photograph
4 up again.
5 MR. NICOLL: Could you zoom in,
please.
6 Q. So point to the one closer to the
pump
7 house, please.
8 A. (Indicating).
9 Q. Now, so I got your testimony
straight,
10 you're not saying that that was the pipe
that you
11 fixed, right?
12 A. Correct, yes.
13 Q. But of the two pipes in Exhibit
 267, the one
14 that you fixed would not have been the one
that's
15 furthest away from the pump house, in other
 words, the
16 one at the bottom?
17 A. That is correct.
18 Q. And at the time you did the work

that you
19 did, this trench wasn't there; is that
right?
20 A. That's correct. I don't remember
going down
21 that deep. There was something fairly
shallow, because
22 I was able to come off the slope, go down a
little
23 ways, and there it was.
24 Q. What was the surface of the earth
like
25 around, if you can remember, not where the
slope was

00106

1 and where the digging had been done, but
around it?
2 A. It was flat.
3 Q. Was it compacted?
4 A. Probably not. It was -- probably
been
5 contacted by heavier equipment
running over it.
6 Natural ground, I would suspect.
7 Q. Do you know, though?
8 A. No.
9 Q. Next photograph, if you hold it
up just for
10 a moment, generally let the camera see it.
This is
11 Exhibit 268, right?
12 A. Correct.
13 Q. Now, you see in Exhibit 268, the
photograph
14 is taken from up at the northeast sort of
corner of the
15 pump station. Do you see that?
16 A. Yeah.
17 Q. Do you agree with that?
18 A. Yes.
19 Q. And it's looking, therefore, to
the north
20 and to the west, right?
21 A. Yeah.
22 Q. Do you see the guy standing on the
top of
23 the photograph?

24 A. Yeah. Where you only see half of
him?

25 Q. Yeah, sort of from the shoulders
down. That

00107

1 guy is at the far end away from the pump
station?

2 A. Yes.

3 Q. Now, again we've got two pipes in
the

4 photograph. Two old pipes in the
photograph?

5 A. Uh-huh.

6 Q. I'm sorry, John, you need --

7 A. Yes. I keep forgetting.

8 Q. And then there's a new piece of
ductile iron

9 pipe that's being lowered into the trench?

10 A. Yes.

11 Q. And that's the 24-inch ductile
iron, right?

12 A. I don't think that's 24.

13 Q. Oh, you don't. What do you think
it is?

14 A. That could be the way I'm looking
at it,

15 too. I don't know.

16 Q. You don't think it's 24 because
it's bigger

17 than the other two pipes that you see
there, right?

18 A. Correct.

19 Q. You think the other two pipes are
24-inch,

20 right?

21 A. I can't really tell on the far
one.

22 Q. But the close one, you think
that's a 24?

23 A. I think that's 24, yeah.

24 Q. The pipe that you went out to fix
on that

25 date, that pipe, you never measured it, did
you?

00108

1 A. No.

2 Q. You didn't have a ruler or

anything like

3 that?

4 A. No.

5 Q. You're just going by kind of your
experience

6 and your memory of what --

7 A. Yeah. When I come up to 24-inch,
if I'm

8 close to it I can pretty much guess that
it's 24. I've

9 laid quite a bit of 24. But for pictures,
you know,

10 it's hard to determine.

11 Q. Okay. Would you hold that up
again, please,

12 for the camera?

13 A. (Complying).

14 MR. NICOLL: And zoom in on the
pipe that's

15 closest, if you can.

16 MR. FLOYD: 268?

17 MR. NICOLL: I'm sorry, yeah,
we're on 268.

18 MR. WOLFE: Zoom in on the pipe
that's

19 closest to what?

20 MR. NICOLL: Closest to the corner
of the

21 pump station, the one that he's pointing to.

22 MR. SPAAN: The shadow?

23 MR. NICOLL: Yeah, closest to the
shadow.

24 Q. And that's the pipe that you're
saying you

25 think is 24-inch?

00109

1 MR. FLOYD: He didn't say that.

You're

2 mischaracterizing his testimony.

3 MR. NICOLL: Fine.

4 Q. I thought that's what you said.
I'm not

5 trying to mischaracterize your testimony.

6 A. What I had said is that in the
picture it's

7 hard to determine. I can't sit there and
say it's 24.

8 I can't say that. I can if I'm there.
9 Q. Right. Earlier you said that you
believed
10 that the new piece of ductile iron pipe that
was being
11 lowered into the hole was larger than 24-
inch. Do you
12 remember saying that?
13 A. This pipe right here
(indicating)?
14 Q. Yeah, the big shiny black one.
15 A. Yeah. I'm just saying by the way
-- I can't
16 remember what size of pipe we laid on that
side, but
17 most of the pipe that we laid on that job
was 24-inch
18 ductile iron. So I'm going to assume
that's 24-inch
19 ductile iron.
20 Q. I guess I misunderstood your
testimony
21 before. So that brand new black pipe
that you're
22 seeing in Exhibit 268, you think
that's a 24-inch
23 ductile iron?
24 A. Yes, because that's basically
the size of
25 pipe that we laid on that job site.
00110
1 Q. And the pipe that's above it,
the pipe
2 that's older and closer in in the
photograph, that's
3 obviously not 24-inch, or do you disagree
with that?
4 A. It's hard for me to determine.
I mean, I
5 can't say. I just can't say.
6 Q. Can you tell me whether it's
ductile iron or
7 --
8 A. I can't say.
9 MR. FLOYD: From the picture,
right?
10 THE WITNESS: Yeah, from the

picture.

11 A. I can't say, I don't know. I'm
not an
12 expert.

13 Q. Okay. That's fine. Why don't you
turn that
14 down, and let's look at 269. Now, 269, do
you see a
15 date stamp in the lower, I guess, left-hand
corner,
16 July 1994?

17 A. Uh-huh.

18 Q. Do you see that?

19 A. Yes.

20 Q. Can you tell by looking at this
photograph

21 whether or not this is a photograph of the
same trench

22 that we're seeing in Exhibit 268?

23 A. Boy, I don't know. Could be.

Whether

24 they're the same trench?

25 Q. Do you see the pipe sort of
hanging there in

00111

1 that trench?

2 A. Yeah.

3 Q. Would you hold up Exhibit 269
again and just

4 point to the pipe that's hanging?

5 A. (Indicating).

6 Q. Can you tell by looking at the
photograph

7 what the size of that pipe is?

8 A. Just like I said, I can't really
tell.

9 They're pictures. I can't sit here and tell
you.

10 Q. You can't tell whether it's
ductile iron or

11 wrapped steel?

12 A. No, because -- yeah, exactly. I
can't tell

13 if it's wrapped or unwrapped or there's
ductile iron or

14 steel, no.

15 Q. When you did the work that you

did to repair

16 that one pipe we've been talking about, did
you report

17 it to anyone? I mean, I'm assuming you
wouldn't, but

18 did you? Did you report it to anyone?

19 A. The pipe that I was working on?

20 Q. Yeah. Did you report that you had
fixed a

21 pipe?

22 A. Why would I have to to? Paul was
there.

23 Q. I understand that. That's why I
said I'm

24 assuming that you didn't. I'm just asking.

25 A. Yeah. No. I'd just answering it
the way I

00112

1 knew how to answer it. I don't know.

2 Q. Do you know if anybody from

Barrett

3 Consulting Group was aware of the repair
work that you

4 had done on that pipe?

5 A. No, because there was nobody else
around. I

6 would say no.

7 Q. When you were doing the work on
the pipe,

8 were you told not to say anything about the
repair work

9 that you had done?

10 A. No.

11 Q. Were you told later not to say
anything

12 about the repair work that you had --

13 A. No.

14 Q. Approximately how far from the
pump station

15 was the pipe that you did the repair work
on?

16 A. I indicated that I think it was
fairly

17 close, because I think when the slope bucket
was on we

18 were worried about not hitting the building.

19 Q. By fairly close what do you

mean?

20 A. I don't know. The EX 150 has probably got

21 a what, 18, 20-inch boom. I don't know. Or 18-foot

22 boom. I meant feet not inches. Sorry about that. So,

23 yeah, it was fairly close. All I can tell you is that

24 it was fairly close to the building.

25 Q. 10 feet, 20 feet?
00113

1 A. Well, I don't -- I can't sit there and say

2 what I know because I don't know -- I don't remember

3 how long the stake was. So for him to reach out -- we

4 didn't want it to hit the building, so maybe 20 feet,

5 10 feet, 15.

6 Q. Somewhere in there?

7 A. Somewhere right in that ballpark.

8 Q. Do you know what this pipe connected to?

9 A. The one that I fixed?

10 Q. Yeah.

11 A. No, I do not. I don't know that.

12 Q. Nobody said?

13 A. No. I don't get -- I didn't get told a lot

14 of info. You got to realize that. I didn't get told

15 what pipe went where. I was the bottom of the food

16 chain.

17 Q. I understand.

18 (Marked Deposition Exhibits
270 - 274.)

19 Q. Let's take a look at Exhibit 270 which is

20 photograph ET-PH 0000346. Would you hold that up?

21 A. (Complying).

22 Q. Is this a photograph from inside

of the soda

23 ash?

24 A. Yes.

25 Q. And do you see the date July 6,
'94?

00114

1 A. Yes.

2 Q. Are you in -- is one of these
guys in the

3 photograph you?

4 A. No.

5 Q. Do you know who they are?

6 A. No. No.

7 Q. Was the work in the soda ash
beyond this

8 stage when you did the repair work that
you did?

9 A. Yeah. I'd say yes.

10 Q. So it was after July 6, '94,
we can be

11 confident of that?

12 A. Yeah. I would be confident of
that.

13 Q. I was going to ask you the
same question

14 with respect to the next photograph.
Why don't you

15 hold it up, Exhibit 271, which is photograph
ET-PH 345.

16 A. I'm just going by with the date on
the

17 bottom.

18 Q. This is -- do you agree that that's
a July

19 6, '94 date stamp, correct?

20 A. Yes.

21 Q. And you've held that up for the
camera

22 already?

23 A. Yes.

24 Q. Did you guys remove a floor?

25 A. Yes.

00115

1 Q. So what's happening in this
photograph --

2 and the reason it's so disorienting is that
somebody is

3 standing on the bottom floor taking a
4 photograph up

5 through the floor that had been removed,
6 and we're

7 seeing the top of the door on the floor
8 above; is that

9 right?

10 A. Yeah, because that must be the
11 heating

12 ventilation and all that stuff up top.

13 Q. Now, I'm going to just ask you,
14 based on

15 this photo, was the work in the soda ash
16 silo beyond

17 this phase when you did the repair work
18 that you've

19 been talking about on the pipe?

20 A. Yeah. I'd be safe to assume,
21 yes. Yes.

22 Q. Spend a second on Exhibit 272.
23 Just hold it

24 up.

25 A. (Complying).

26 Q. Exhibit 272 is ET photograph 549.
27 We talked

28 earlier about the phase of the pump station
29 with

30 exposed rebar. Do you recall that?

31 A. Yes.

32 Q. And that's what this photograph
33 shows,

34 right?

35 A. Yes.

36 Q. It's hard to read the date on
37 this

38 photograph so I'm not going to ask you. I'd
39 be

00116

40 1 speculating even to try. But was the pump
41 station, did

42 it have finished concrete around it?

43 A. Yes, it did.

44 Q. On the day that you did the pipe
45 repair?

46 A. Yes.

47 Q. So therefore if we look at
48 Exhibit 273 --

7 A. Am I done with this?
8 Q. You're done with it. Lay it
down. You can
9 hold that one up.
10 A. (Complying).
11 Q. Exhibit 273, obviously, shows the
pump
12 station with the concrete poured on the
exterior walls;
13 is that right?
14 A. That's correct.
15 Q. And is this consistent with what
the
16 exterior of the pump station looked like when
you did
17 the pipe repair that you had been talking
about?
18 A. The answer to your question, yes,
it's
19 consistent.
20 Q. You're not going to say it's
exactly the
21 same, I understand that.
22 A. Yeah.
23 Q. You note that the stairs aren't in
yet?
24 A. Yes.
25 Q. And the full wall and its footing
are in on
00117
1 the --
2 A. On this one, yes.
3 Q. -- southern side of it, right?
4 A. Yes.
5 Q. Can you recognize the person in
the
6 Foreground in front of the pump station
photograph
7 there?
8 A. I would be speculating but I
think it's Mike
9 Vanderpol.
10 Q. Oh, okay. Finally, again I
apologize for
11 how this got in here, but Exhibit 274, do you
know what
12 that is?

13 A. Yeah. It's the telephone line.
14 Q. There was a day when some
telephone cable
15 was cut. Do you remember that day?
16 A. Yes, I do.
17 Q. Tell me what you remember about
it.
18 A. Just that Vert (phonetic) had been
digging
19 around and hit the phone line.
20 Q. How close to the pump station was
this?
21 A. It ran, I believe -- if the pump
station is
22 sitting here, the front door is here, they
ran across
23 this way (indicating).
24 Q. I missed the --
25 A. The front of the pump house is
right here,
00118
1 the phone lines ran this way (indicating).
2 Q. So they ran --
3 A. Not
parallel.
4 Q.
Perpendicular?
5 A. Perpendicular, yeah.
6 Q. And this location of the break
that's shown
7 here on Exhibit 274, do you remember where
that one
8 was?
9 A. It was more up toward, if I
recall right --
10 this is only on recollection, I believe this
one was up
11 more closer toward that tee thrust valve.
12 Q. Did this happen on the same day as
the day
13 where you did your repair
job?
14 A. No, I don't
believe so.
15 Q. What makes you
say that?
16 A. Because I

don't recall.

17 Q. So you don't
recall?

18 A. Yeah. I don't remember whether
that was
19 exposed or not.

20 Q. So really you don't know if it
happened on
21 the same day?

22 A. I do not, no. Done with that
one?

23 Q. Had -- you know what CDF is,
right?

24 A. CDF, yeah.

25 Q. Was there CDF that had been dug
through or

00119

1 removed in the hole where you went in to
repair the
2 damaged pipe?

3 A. I don't recall the CDF being
there. The

4 only place I recall pouring CDF was on the
70-inch
5 line.

6 Q. I understand that, but was there
any CDF --

7 A. No. Not present, no.

8 Q. And there wasn't any CDF that you
had to

9 deal with when you were digging to expose
the line that

10 you repaired --

11 A. No.

12 Q. -- is that right?

13 A. Correct.

14 Q. Jeff Hinkle was the other general
laborer?

15 A. Yes.

16 Q. Do you know if he ever had to do
-- perform

17 any work on repairing damaged pipes on the
scene?

18 A. Could have.

19 Q. Did he ever talk to you about
that?

20 A. No.

21 Q. Did Imco hold safety meetings on
this job
22 site?
23 A. Yes.
24 Q. How frequently?
25 A. I'd say at least once a month.
00120
1 Q. And who ran those safety
meetings?
2 A. Paul and Greg.
3 Q. Were they always both there or
was it
4 usually one or the other?
5 A. No, they were usually --
everybody was in
6 there. We'd do it prior to work.
7 Q. In those safety meetings would
they discuss
8 -- well, why don't you just tell us
generally, as you
9 recall it, what would be discussed.
10 A. Just basically work safe. Be
aware of your
11 job situation. Be thinking of others.
Stuff like
12 that.
13 Q. Did they try to impress upon you
the
14 importance of looking out not only for
yourself but for
15 the other workers?
16 A. Oh, yeah.
17 Q. The kind of -- they tried to
impress upon
18 you the importance of butting in if you
thought
19 somebody was doing something unsafe?
20 A. Yeah. Yeah, I would -- yeah.
21 Q. What, if you could tell us, is
the
22 difference in appearance between what
ductile iron and
23 wrapped steel -- to you what's the
difference in
24 appearance?
25 A. Ductile iron is black in color,
like a dark

00121

1 black, and it's kind of rough. Steel is just steel.

2 It rusts unless it's got a coating on it. Steel is

3 brown, and you know if it's been in the ground for a

4 while, it's brown. You can tell the difference between

5 ductile iron and steel.

6 Q. And wrapped steel you say depends, I guess,

7 on where the wrapping is to know what it would look

8 like?

9 A. Yeah. I'm not really familiar with the

10 wrapped steel that you're talking about. I know about

11 ductile iron, which is wrapped with vinyl. I've never

12 dealt with just steel pipe. Never had to lay it except

13 for that ductile iron -- I mean that Amerron pipe.

14 Q. Did anybody at the scene, any of the people

15 at the scene when you did this pipe repair, tell you

16 what it was that needed to be repaired? Did they say

17 we need to repair this whatever?

18 A. No.

19 Q. Nobody -- they just said to repair this?

20 A. Yeah.

21 Q. I have some questions about the grand jury.

22 I might be having some other photographs, I can't

23 remember, but let me ask you, since June 10, 1999,

24 since this accident, have you told anybody besides the

25 people at the grand jury and us here today that you

00122

1 repaired some pipe on that job site?
2 A. Yeah. I told your investigator.
3 Q. Anybody else?
4 A. I
told Doug.
5 Q.
Weigel?
6 A.
Weigel and --
7 Q.
Francis Floyd?
8 A.
Francis Floyd.
9 Q.
Anybody else?
10 A.
Nope.
11 Q. On the day of the incident when
you saw
12 where it had occurred, were you concerned
that the pipe
13 that you had worked on might have been the
pipe that
14 burst?
15 A. The day I worked on it, no.
16 Q. Not the day you worked on it. On
the day
17 when you saw that there had been a rupture
and a fire
18 and everything else on June 10 or 11,
whatever day you
19 first became aware, were you concerned that
the pipe
20 you had worked on might have been the pipe
that had
21 ruptured?
22 A. No. I wasn't concerned that way,
no. I was
23 just concerned that we were working in the
area. I
24 didn't think about the pipe until people
started
25 calling me.
00123
1 Q. When did people start calling you
about the
2 pipe?

3 A. About three or four months
afterwards, and
4 it hasn't stopped since.
5 Q. Who was the first person to call
you?
6 A. Somebody from the BPA, or I
don't know,
7 some high-priced lawyers.
8 Q. Somebody from the EPA, you call
it?
9 A. I don't know what they call it.
I don't
10 know.
11 MR. BENINGER: I don't think Mr.
 Wolfe
12 called you.
13 A. No. I had quite a few of them.
 I had like
14 about five or six of them in a row.
15 Q. Do you remember who called you?
16 A. I can't think of their names, no.
 I'm going
17 to say no.
18 Q. Did the U.S. attorney call you
from --
19 A. I don't know. I don't have
 memory like
20 that.
21 Q. Any federal investigators call
you?
22 A. I don't know if they were -- I
can't even
23 remember their names. Tried to help you
out there. I
24 can't remember their names.
25 Q. Did they give you business
cards?
00124
1 A. Yeah, but I probably tossed
them.
2 Q. So they called you and also met
with you?
3 A. Yeah. One time I had to go down
there.
4 Q. Do you know you tossed them?
5 A. What's that?
6 Q. Do you know you tossed the

business cards?

7 A. Yeah.

8 Q. You're sure you did?

9 A. Positive, because I frigging
moved into a

10 new house. Trust me, I don't keep that kind
of stuff.

11 It's not important to me.

12 Q. So they met you at some other
residence?

13 A. Yes, on Washington Street.

14 Q. How many people met with you?

15 A. Two of them.

16 Q. And after that, after you met
with these

17 people, was that when you ended up going to
the grand

18 jury?

19 A. Yeah. They asked me to, yes.

20 Q. Those people asked you to?

21 A. Yeah.

22 Q. When was it that you gave your
testimony to

23 the grand jury, do you recall?

24 A. Don't have the date, no.

25 Q. The month?

00125

1 A. Boy, I don't even know that.

2 Q. The year?

3 A. I only remember things I want to
remember.

4 Q. Summertime?

5 A. No, I don't think it was.

6 Q. Spring?

7 A. Yeah, it was probably spring.

8 Q. 2000 then, had to have been,
right?

9 A. Yeah.

10 Q. How long did you testify before
the grand

11 jury?

12 A. How long was I there? Probably
about an

13 hour and a half.

14 Q. Really?

15 MR. FLOYD: You sound surprised.
Is that a

16 long time or short time?

17 MR. NICOLL: It's a short time,
of course.

18 Q. After you finished testifying
before the

19 grand jury, did anybody interview you
immediately

20 thereafter?

21 A. Well, I wouldn't let nobody
interview me.

22 Q. Did anybody try to interview
you?

23 A. I had guys call me, yes.

24 Q. Who called you?

25 A. I had -- I believe Doug called
me a couple

00126

1 of times. Patty Imhof tried calling me,
and I just

2 wouldn't return their phone calls.

3 Q. They left messages and you
wouldn't return

4 them?

5 A. Yeah.

6 Q. Is that right?

7 A. That's correct.

8 Q. Why not?

9 A. I figured I already gave the
information to

10 the grand jury, that's good enough. One
time testimony

11 should be plenty.

12 Q. And but you did talk to our
investigator?

13 A. Yes, I did. I told him the same
thing I

14 just told you today.

15 Q. Why did you choose to talk to
him?

16 A. I think my tolerance of it is
getting wore

17 out, so I just figured I'd just talk to
him, answer a

18 couple of questions. I have nothing to
hide.

19 MR. FLOYD: By the way, do you
have a

20 recorded statement from him because he'd like
it if you

21 have one.

22 MR. NICOLL: We didn't take a
recorded.

23 Q. He didn't tell you he was
recording your
24 statement?

25 A. No. He just wrote down a couple
of little

00127

1 notes. I just told him about the pipe and
the tape in

2 it. That was it.

3 MR. FLOYD: I just wanted to make
sure.

4 Sorry to interrupt.

5 Q. Did you interview with the U.S.
attorney

6 before you testified to the grand jury?

7 A. Like I said, I don't know if it
was the U.S.

8 attorney.

9 Q. Couple of guys?

10 A. Couple of guys in suits.

11 Q. And they came to your house?

12 A. And they came to my house.

13 Q. Were you married still then
when they

14 interviewed you?

15 A. No.

16 Q. Did you ever tell your wife about
repairing

17 the pipe?

18 A. Nope.

19 Q. Either before or after June 10?

20 A. Nope.

21 Q. Do you remember telling our
investigator

22 that Mark Graham was present when you were
working on

23 the pipe that was hit?

24 A. No, I didn't say that.

25 Q. You didn't?

00128

1 A. No.

2 Q. But you did tell him you didn't

know that

3 the gas pipeline was running through the
area?

4 A. That is correct.

5 Q. You did tell him you believed
that Britton

6 Lukes was the operator of the equipment that
struck the
7 pipe?

8 A. I believe, yeah.

9 Q. But that you weren't absolutely
sure?

10 A. I wasn't absolutely sure.

11 Q. And you did tell him that Paul
Krakenberg,

12 the Imco foreman, was present?

13 A. Yes.

14 Q. And that he was the one who made
the

15 decision to take action to repair the pipe?

16 A. Yes.

17 Q. Now, you've told us that your
recollection

18 of the damage that you repaired on the
pipe was a

19 scrape that started sort of on the side
bottom and

20 pulled up towards the top; is that right?

21 A. Yeah, or vice versa, or going
down. I don't

22 know. I wasn't there. So it could have
been a bucket

23 going down sideways or up sideways. I'm
just

24 speculating. I don't know which way the
bucket was

25 going.

00129

1 Q. Right.

2 A. I just know what angle the
scratch was on.

3 That's it. That's all I can tell you.

4 Q. And that was on the side facing
the pump

5 station?

6 A. Correct.

7 Q. And it was running from some

point along the

8 side of the pipe towards the bottom at an
angle up

9 towards the top?

10 A. It couldn't go all the way
underneath. It

11 was going from the side to the top because
there's no

12 way unless he was really going underneath
the pipe to

13 get there. It was going from the side to
the top, and

14 it didn't even quite reach the top. It went
exact from

15 side to three quarters of the way up.

16 Q. What was the appearance of the
metal where

17 the scrape mark was?

18 A. It was just a scrape. It got
underneath the

19 coating of the ductile iron, let's say, so
you could

20 see where the scrape was in it, yes.

21 Q. Was it shiny? Was
it dull?

22 A. No, it's dull.

23 Q. It was dull?

24 A. Yeah. Kind of had like a silvery
look.

25 Q. Silvery look?

00130

1 A. (Nodding head).

2 Q. Other than your -- what I assume
is

3 transcribed testimony to the grand jury,
have you

4 provided any written or tape recorded or
videotaped

5 statements for anybody?

6 A. Yeah. That's today.

7 Q. Other than today?

8 A. Other than today, no.

9 Q. Has anybody from the media
interviewed you?

10 A. No.

11 Q. Has anybody from the media
attempted to

12 interview you?
13 A. No.
14 Q. Have you provided a written
statement to Mr.
15 Floyd?
16 A. No.
17 Q. Or anybody at his firm?
18 A. No.
19 Q. How about a recorded statement?
20 A. No.
21 Q. Have you testified to the grand
jury only on
22 the one occasion?
23 A. One occasion, yes.
24 Q. Any indication from the U.S.
attorney or the
25 grand jury foreperson whether you'd be called
back?
00131
1 A. They had said that there's a
possibility.
2 Q. But you haven't heard since?
3 A. I haven't heard since.
4 Q. If I recall your testimony -- I'm
not sure
5 that I do -- you were not represented by
counsel at the
6 grand jury?
7 A. No.
8 Q. Do you remember seeing Mark
Graham when you
9 were giving your grand jury testimony?
10 A. I did.
11 Q. The two of you speak for some
period of
12 time?
13 A. Nope. Didn't even talk to him.
14 Q. Do you know if he went in before
you or
15 after you?
16 A. Before me.
17 Q. So you saw him on the way out as
you were on
18 the way in?
19 A. On the way in, yeah.
20 Q. You don't remember the names of
the people

21 that you met with who told you that they'd
like you to

22 go down and testify to the grand jury,
right? I know

23 that, but do you remember how long you met
with them?

24 A. They stayed at my house probably,
I'd say, a

25 good hour.

00132

1 Q. Did they show you photographs?

2 A. No, not at that time. The only
photographs

3 I seen were right there in the courthouse at
the grand

4 jury.

5 Q. Did any of the photographs we
showed you

6 today, were any of those the photographs that
they had?

7 A. Maybe one or two of them, but most
of it was

8 what the pipe damage was.

9 Q. So you looked at the photographs
of the pipe

10 damage?

11 A. Where it had exploded, yes.

12 Q. What if any questions were you
asked about

13 those photographs of the pipe damage?

14 A. Basically most of the testimony or
most of

15 the questions they asked me were how I
prepared to fix

16 the pipe. What kind of mastic, was it
thick, was it

17 thin, what kind of vinyl. They asked me
how the job

18 was ran. They asked me what I thought of
certain

19 people. They asked me basic questions
like that.

20 Q. Have you been provided with
any sort of

21 immunity from prosecution by the U.S.
attorney?

22 A. No.

23 Q. Has anybody discussed with you or
suggested
24 to you that you could be subject to
prosecution in any
25 way?

00133

1 A. No.

2 Q. You've already told us that you
weren't

3 interviewed by anybody after providing
testimony

4 concerning your grand jury testimony; is
that right?

5 A. Correct.

6 Q. This is the first time anybody
has asked you

7 questions about what you said to the grand
jury?

8 A. Correct.

9 Q. You told us in general terms what
the grand

10 jury had asked. Did you tell the grand jury
that the

11 pipe that you prepared was ductile iron?

12 A. Yes.

13 Q. And did they ask any questions or
the

14 lawyers ask any questions concerning the
difference

15 between ductile iron and steel?

16 A. Correct.

17 Q. And what do you recall your
testimony about

18 that was?

19 A. Basically what I told you today.

20 Q. Did you draw anything when you
testified to

21 the grand jury? Did they ask you to draw
anything?

22 A. No. They didn't ask me -- I got
down to

23 point out a couple of times on the pictures
they had.

24 Q. To different things?

25 A. Yeah.

00134

1 Q. Were those photographs marked in

the

2 location where you pointed? In other
words, did

3 somebody circle it or X it or --

4 A. No. I don't recall the guy
marking up any

5 of the pictures. They just basically had
me point to

6 where I fixed the pipe.

7 Q. And when you pointed to where
you fixed the

8 pipe, at least the pipe that you recalled,
did you line

9 that up with any of the markings on the pipe
that was

10 photographed?

11 A. Well, let me just rephrase
something. I

12 pointed out where I thought the pipe was.
They didn't

13 actually have a picture of the pipe that I
fixed.

14 Q. So you're saying that the
photograph that

15 they had was not, in your mind, a
photograph of the

16 picture -- a photograph of the pipe that
you fixed?

17 A. That is correct.

18 Q. And you told them that?

19 A. Yes.

20 Q. Notwithstanding that they still
said, well,

21 let's just imagine or assume that it was,
right, and

22 they said assuming this was the pipe, where
on the pipe

23 did you do your repair?

24 A. Yes. I told them exactly what I
told you

25 where the repairs were on the pipe.

00135

1 Q. From not quite all the way on the
bottom but

2 from on the side near the bottom up towards
the top?

3 A. Correct.

4 Q. How deep was that gouge that you
saw?

5 A. I'm not going to say much more
than a

6 quarter inch, if that. It was just a minor
scrape. So

7 that's why nobody made a big deal out of it.

8 Q. And you had two feet of the pipe
exposed?

9 A. Yeah. I had two feet of the pipe
exposed,

10 and the scratch was anywhere from 8 to 10
inches long.

11 Q. And you didn't see any other
scratches on

12 that --

13 A. No, I did not.

14 Q. About how far from the tee joint
do you

15 think you were?

16 A. I was quite a ways. From the tee
joint to

17 the other side of the pump house that's --
it's got to

18 be over 50 feet.

19 Q. But when you were looking at the
pipe and

20 doing your repair work you were in a hole,
right?

21 A. Yeah. Well, I wasn't in a deep
hole. I was

22 -- it was almost like it was down and then
shelved up,

23 because the EX 150 was up here. I came down
on off the

24 slope down into like a flat area. The pipe
was

25 sitting there, the EX 150 right there
(indicating).

00136

1 Q. And do you -- from that location
you didn't

2 see the tee joint?

3 A. Yeah. I testified that I could
see the tee

4 joint.

5 Q. You testified that you could see

the tee

6 joint?

7 A. Yeah. It was still exposed.

8 Q. From being in the hole you could
see the tee

9 joint?

10 A. Yeah, I believe so.

11 Q. You believe so?

12 A. Yes. I can't be extremely honest
or can't

13 say for sure because, you know, it could
have been my

14 recollections of a few weeks earlier. I
mean, I can't

15 sit there -- I'm just picturing what I
remember seeing

16 around the job site. That could have been
exposed, it

17 couldn't have been. Not sure.

18 Q. Not sure.

19 THE VIDEOGRAPHER: Going off the
record.

20 The time is approximately 2:21 p.m.

21 (Recess.)

22 THE VIDEOGRAPHER: Back on the
record. The

23 time is approximately 2:31 p.m.

24 Q. Mr. Muder, I've handed you
Exhibit 97 which

25 is a drawing that we looked at earlier, and
you marked

00137

1 with a pink X in a circle. Do you remember
that?

2 A. Yes.

3 Q. Would you hold that up again for
the video?

4 A. (Indicating).

5 Q. Thanks. My question is how do
you come to

6 select that location as the place where the
repair work

7 was done?

8 A. Because I remember it being close
to the

9 pump station.

10 Q. So you remember it being close to

the pump

11 station, right?

12 A. Yes.

13 Q. And you remember it being on a
24-inch

14 ductile iron pipe?

15 A. Yes.

16 Q. And you remember it being in
basically

17 approximately the location shown on Exhibit
97; is that

18 right?

19 A. Yes.

20 Q. How accurate is that in terms of
north and

21 south? Is it within 10 feet, five feet?
How accurate

22 would you say that is?

23 A. I'd say it's pretty accurate.

24 Q. And how is that so accurate? Do
you have

25 anything that you're tying that to?
00138

1 A. Yeah, by the closeness of the
pump station.

2 Q. Well, the pump station is to the
east. So

3 you're saying it's that close to the pump
station to

4 the east, right?

5 A. Yeah. I realize that the damage
to the pipe

6 was a little past the pump station, but yes,
I still

7 recall it being close to the pump station.
That's what

8 I said and I'm sticking to my story.

9 Q. That's fine. All I want to know
is what

10 you're tying it to.

11 A. I'm trying it to the closeness to
the pump

12 station. That's what I'm tying it to.

13 Q. And when you say on Exhibit 97,
when you put

14 that mark there, I understand that you're
saying it's

15 close to the pump station, east to west.
How much --
16 how about north and south? How accurate is
that
17 location north and south? There's an arrow
right
18 there.
19 A. This must be north and south
(indicating).
20 Q. No, that's east and west.
21 THE WITNESS: Okay, I see what
you're
22 saying.
23 A. So what was the question again
then, sir?
24 Q. How much give in that location
north and
25 south? Could it be 10 feet to the south?
Could it be
00139
1 10 feet to the north?
2 A. Could be.
3 Q. And my next question is what
do you know
4 about the scale of Exhibit 97?
5 A. What do I know about the
scale?
6 Q. Yeah.
7 A. Nothing, really. It's a lot
smaller.
8 Q. I just have a few questions to
close up
9 with.
10 A. Am I done with this?
11 Q. You're done with 97. Have you
ever been
12 treated for a substance abuse problem?
13 A. None of your business.
14 Q. Yes or no?
15 A. Just what I said.
16 Q. I'm sorry, but I have to ask you
the
17 question. I need to know. Yes or no?
18 MR. FLOYD: He's refusing to
answer the
19 question. How is it relevant, Counsel?
20 THE WITNESS: That's what I want

to know.

21 Q. The next question is when were
you treated

22 for a substance abuse problem?

23 A. What's that got to do -- I'm here
to answer

24 --

25 MR. FLOYD: Let's take a break
for a second

00140

1 and I'll talk to him.

2 THE VIDEOGRAPHER: Going off the
record.

3 The time is approximately 2:36 p.m.

4 (Recess.)

5 THE VIDEOGRAPHER: Back on the
record. The

6 time is approximately 2:38 p.m.

7 Q. Mr. Muder, when were you in a
substance

8 abuse treatment program?

9 A. '95.

10 Q. How long did that program last?

11 A. 28 days.

12 Q. In patient?

13 A. In patient, yes.

14 MR. FLOYD: Counsel it wasn't
substance

15 abuse. It was alcohol. There's no drugs.

16 Q. My next question was going to be
what was

17 the substance. Was it alcohol?

18 A. It was alcohol, yes.

19 Q. That's the only time you've been
in a

20 program like that?

21 A. Yes.

22 Q. So -- well, subsequent to your
completion of

23 that program, though, you had DUI in 1997; is
that

24 right?

25 A. Correct.

00141

1 Q. Were you abusing alcohol in the
summer of

2 1994?

3 A. Yeah. I had beers.
4 Q. Would you drink at your lunch
time?
5 A. No. I was a binge drinker, if
you want to
6 know the truth. I'd quit for three months,
drink on a
7 weekend, hoop it up, get a DWI. They
diagnosed me as a
8 binge drinker.
9 Q. I take it that means that you
probably don't
10 continue any treatment today; is that right?
11 A. That is correct. And I'm proud to
say I've
12 been clean for four years.
13 Q. Good. So then your arrest and
conviction
14 for felony assault, that occurred in 1995?
15 A. '95, October of '95.
16 Q. And you pled guilty in '96?
17 A. Yes.
18 Q. And you were placed on probation
after
19 having your sentence reduced; is that right?
20 A. Correct.
21 Q. Have you ever been accused of
violating your
22 probation?
23 A. No.
24 Q. Not even as a consequence of the
'97 --
25 A. No.
00142
1 Q. -- DUI?
2 A. No. Complied with everything.
3 Q. Are you off probation now?
4 A. Yeah.
5 Q. And you've declared bankruptcy?
6 A. Yes.
7 Q. That was in June 1996?
8 A. Yeah. After my wife took me for
everything.
9 MR. NICOLL: That's all I have for
now.
10 Thanks.
11 MR. VERWOLF: David?

12 MR. BENINGER: Go ahead.
13 MR. VERWOLF: Is it picking up
okay?
14 THE VIDEOGRAPHER: Yes, thank
you.

15
16 EXAMINATION

17 BY MR. VERWOLF:
18 Q. My name is Nick Verwolf. I
represent
19 Equilon Enterprises and Equilon Pipeline
Company in
20 this matter. Few questions, initially.
If I
21 understand correctly, you were employed
by Imco
22 Construction in the summer of 1994 on the
Dakin-Yew
23 pump station project?
24 A. Correct.
25 Q. Your employment during that entire
summer

00143

1 was as a general helper?
2 A. Correct.
3 Q. You've described that as being
the bottom of
4 the food chain so far as the work goes?
5 A. Correct.
6 Q. At some point during the course
of the
7 summer you were called upon to fix damage to
a pipe in
8 the vicinity of the pump station?
9 A. Correct.
10 Q. This occurred sometime after the
11 installation of the tee in the water line
that
12 connected the discharge pipe from the pump
station?
13 A. Correct.
14 Q. The pipe that you fixed was a
preexisting
15 pipe, not one installed during the course of
the
16 project?
17 A. Correct.

18 Q. The pipe was set in its bed. You
had to
19 pick it out, you said?
20 A. Correct.
21 Q. Was it below the level of the
pipes -- the
22 pipe where the tee was installed?
23 A. No.
24 Q. What level was it?
25 A. Probably about the same level.
00144
1 Q. This pipe ran parallel to the
front of the
2 pump station?
3 A. Correct.
4 Q. What do we call the front?
That's where the
5 door is?
6 A. Where the door is, yes, correct.
7 Q. During the course of your grand
jury
8 testimony you indicated you were shown pipes
with
9 damage to them or pictures of pipes with
damage to
10 them?
11 A. Correct.
12 Q. Did you testify to the grand jury
that those
13 markings on those pipes were similar to the
ones you
14 saw in the pipe you repaired?
15 A. No, because they didn't show me
any -- they
16 just showed me the pipe that was split. I
seen the
17 picture on the board. They had a series of
pictures on
18 the board. They didn't have where I had fit
-- they
19 didn't have a picture of the pipe that I
fixed. They
20 just had the pictures of the pipes that they
pulled out
21 of the ground and where the damage was on
the pipe.
22 Q. And the pipes that they showed you

in these
23 photographs had indications of damage to them
from
24 something striking them, did they not?
25 A. The damage I seen was where the
gasoline

00145

1 actually came out of the pipe. Where the
top of the
2 pipe split open, that's the picture I seen.
That's the
3 one that stuck out in my head.
4 Q. Did you see other markings on the
pipe of
5 damage?

6 A. No, I did not.

7 Q. So you do not recall testifying
that the
8 markings were similar to those you observed
on the pipe

9 that you did repair in the summer of '94?

10 A. No.

11 Q. At the time you did the repair
were you told
12 what the pipe carried?

13 A. No.

14 Q. Were you told whose pipe it was?

15 A. No.

16 Q. And some of these may be
repetitive.

17 A. That's fine.

18 Q. Were you told not to say anything
about the

19 repair you did to that pipe?

20 A. No.

21 Q. Did you cover the pipe after you
fixed it?

22 A. Yes.

23 Q. How did you cover it?

24 A. Well, obviously the hole was
still exposed

25 so we just -- I don't think the pipe was
covered right

00146

1 away.

2 Q. Well, did you participate in
covering the

3 pipe?
4 A. No, I did not.
5 Q. So after you did the -- applied
the coating
6 to the pipe, what did you do?
7 A. I went on up into the soda ash
bin probably
8 and started working there again.
9 Q. So you were brought down from the
soda ash
10 building simply to put the coating on the
pipe and then
11 go back?
12 A. Yeah. Probably because there's --
everybody
13 thought it was a general helper's job. Here,
go do it.
14 MR. FLOYD: Counsel, I believe
testimony is
15 he exposed.
16 MR. VERWOLF: No. I think he's
17 testifying and we'll let him testify.
18 MR. FLOYD: I'm going to object
because it
19 mischaracterizes his testimony.
20 MR. VERWOLF: You can object all
you want.
21 MR. FLOYD: Okay, I am.
22 Q. At the time you applied the coating
to the
23 pipe, present were you and Britton Lukes and
Mr.
24 Krakenberg? Is that what you recall?
25 A. I recall, believe so.
00147
1 Q. And nobody else that you recall?
2 A. Could have been. I don't know.
3 Q. Did you observe the pipe being
re-covered?
4 If you recall. If you don't you don't.
5 A. I'm going to say no.
6 Q. You indicated that Imco had
safety meetings
7 with regard to this Dakin-Yew pump station
project?
8 A. Yeah.
9 Q. At none of those safety meetings

was the

10 presence of the Olympic pipeline mentioned?

11 A. No, not to me. I have no
knowledge.

12 Q. Isn't that something you would
expect to be

13 mentioned at safety meetings?

14 A. Yeah. If the safety meeting was
-- I'm

15 pretty sure Imco told the main guys that the
Olympic

16 pipeline was going through there. They're
not going to

17 tell me. I'm not an operator. They're not
going to

18 tell Jeff Hinkle. They're not going to tell
any of the

19 general laborers. I don't know if they even
know. All

20 I know is I didn't know it was running
through there.

21 Whether they chose not to tell me is their
problem.

22 Q. Did you ever assist the operators
when they

23 were doing excavation?

24 A. Yeah, I assisted.

25 Q. Did you work in the ditch helping
them make

00148

1 sure they didn't hit pipes?

2 A. Yeah.

3 Q. So you still weren't told where
the pipes

4 were?

5 A. No.

6 Q. So how did you tell them how not
to hit

7 pipes if you didn't know where they were?

8 A. Rephrase that question.

9 Q. If you didn't know where the
pipes were how

10 did you instruct the excavator in the
operation --

11 A. No, the one prior to that.

12 Q. I'll rephrase it for you. So if
you didn't

13 know where the pipes were how did you
instruct the
14 excavator so he would miss them?
15 A. If I didn't know where the gas
line was?
16 Q. Where any of the pipes were.
17 A. I'm not following your question.
18 Q. Did you know where any of the
pipes were
19 that were pre-existing --
20 A. No. Not while you're digging
them up, no.
21 Q. None of the pipes?
22 A. No, not where you're digging
them up. They
23 probably say, okay, well, according to the
plan it's
24 probably right here so be careful when
you're digging,
25 yes.
00149
1 Q. And that's it. You wouldn't be
told how
2 deep it was or --
3 A. I don't think anybody knew how
deep they
4 were, as far as I know. Maybe Paul did.
5 Q. My question isn't whether anybody
else knew.
6 It's whether you were told how deep they
were.
7 A. No, nobody -- Paul didn't come up
and say,
8 hey, John, I believe this is two feet. Most
obviously,
9 though, to be honest with you, most
construction sites
10 know that if it's a water line it's usually
24 inches.
11 If it's something else -- I mean, they have
certain
12 depths that certain pipes have got to be.
13 Q. Were you aware of any potholing
that had
14 been done on the site prior to the project?
15 A. I don't even know what potholing
is, to be

16 honest with you.
17 Q. That's fine.
18 MR. VERWOLF: That's all I have.
19 MR. WOLFE: I've just got a couple
of
20 questions. Probably more than a couple.
21
22
23
24

25 EXAMINATION

00150

1 BY MR. WOLFE:
2 Q. Mr. Muder, would you refresh my
3 recollection, when was the first time that
you were
4 contacted by a lawyer from Mr. Floyd's
office?
5 A. Last week.
6 Q. Last week?
7 A. Uh-huh.
8 Q. And who was it that contacted
you? Was it
9 Mr. Weigel or Mr. Floyd?
10 A. Mr. Weigel.
11 Q. And was it Mr. Weigel that
called and
12 suggested that his law firm would be willing
to
13 represent you?
14 A. Correct.
15 MR. FLOYD: Counsel, this has been
asked,
16 covered and I objected. I mean --
17 MR. WOLFE: That's fine, you can
object.
18 MR. FLOYD: I am objecting. It's
19 privileged.
20 MR. WOLFE: This is not
privileged.
21 Q. Now, how long did that telephone
22 conversation last?
23 A. Two or three minutes.
24 Q. And was it at the end of the
telephone
25 conversation that you agreed to have Mr.
Weigel and his

00151

1 colleagues represent you?

2 A. Yep.

3 Q. So at the end of a two to three
minute

4 telephone conversation you engaged the
lawyers to

5 represent you; is that correct?

6 A. That's correct.

7 Q. Now, before that point where you
engaged

8 them, would you tell me what Mr. Weigel said
to you?

9 A. What Mr. Weigel said to me?

10 Q. Yes.

11 A. Just that they are out to ask me
if I wanted

12 to be represented because they're
representing Imco

13 Construction.

14 Q. What else did he say to you?
Did he tell

15 you why they wanted to represent you?

16 A. No.

17 Q. Did he tell you why you should
be

18 represented?

19 A. No.

20 Q. Did he -- why was it that you felt
it would

21 be appropriate to be represented by this law
firm?

22 A. My personal opinion?

23 Q. Uh-huh.

24 A. I just wanted to get it over
with. I don't

25 give a crap what I say or who I tell it to.

I want it

00152

1 over with. I'm tired of being harassed.

2 Q. And you did not have counsel when
you

3 appeared at the grand jury; is that correct?

4 A. That is correct.

5 Q. Why didn't you have counsel at
that point?

6 Weren't you concerned?

7 A. Concerned about what?
8 Q. About getting it over with.
9 A. I thought it would be over with
from that
10 day forward.
11 Q. And how did you perceive by
having Mr.
12 Weigel and Mr. Floyd represent you in the
proceedings
13 today that you would get this over with?
14 A. Well, from my personal opinion I
work for
15 Imco and I'm for Imco.
16 Q. You're for Imco?
17 A. Yeah. They're for Imco, and I
want them to
18 represent me.
19 Q. Now, when you say you are for
Imco, in other
20 words, it's your testimony that you are on
Imco's side
21 in this proceeding; is that correct?
22 A. I'm not picking sides. I'm just
saying that
23 I worked for them, that's what happened at
the pipe,
24 that's my testimony. I said it from day one,
and I
25 haven't changed my story since, and that's
the way it's
00153
1 going to be. That's it.
2 Q. Now, you have testified today
that Mr.
3 Weigel told you not to talk to anybody else
about these
4 proceedings, correct?
5 A. Correct.
6 Q. Was that before or after you
agreed to have
7 Mr. Weigel and Mr. Floyd represent you?
8 A. After.
9 Q. And he was rendering to you legal
advice
10 concerning these proceedings, isn't that
your
11 understanding?

12 A. Not legal advice.
13 Q. He was advising you --
14 MR. FLOYD: Counsel, you know,
I'm going to
15 instruct him not to answer that. He said it
was after
16 he was retained, and I'm going to instruct
him not to
17 answer what we told him with respect to
legal advice.
18 MR. WOLFE: Excuse me, Counsel.
19 MR. FLOYD: I'm not going to argue
with you.
20 I'm telling you what I'm going to do. I'm
instructing
21 him not to answer the question.
22 MR. WOLF: And I'm going to give
 him an
23 opportunity because this witness has already
answered a
24 question about advice given by your law firm
after your
25 firm was retained.
00154
1 MR. FLOYD: Fine. Bring it up
with the
2 judge.
3 MR. WOLFE: That was the
subject matter
4 waiver.
5 MR. FLOYD: Bring it up with
the judge.
6 MR. WOLFE: He has waived the
privilege.
7 MR. FLOYD: Bring it up with
the judge.
8 MR. WOLFE: Are you going to
instruct him
9 not to answer any further questions about
conversations
10 after the point of engagement?
11 MR. FLOYD: Yes.
12 Q. And Mr. Muder, are you going to
 follow the
13 instruct of your counsel?
14 A. Yeah.
15 Q. Now, let's go back to the two to

three

16 minutes before you agreed to have them
represent you.

17 What did they tell you they would do for you
in the

18 course of the representation?

19 A. Nothing, nothing.

20 Q. Did they -- how did they explain
to you that

21 fees would be paid?

22 A. They didn't.

23 Q. So there was no discussion about
who would

24 pay legal fees in this matter?

25 A. No.

00155

1 Q. Did you ask them, "Who's paying
the legal

2 fees"?

3 A. Nope.

4 Q. Did you understand that Imco
would be paying

5 the legal fees for your representation?

6 A. I would assume so.

7 Q. And are you concerned that if you
offered

8 testimony adverse to Imco that this law firm
may no

9 longer represent you?

10 A. I would assume so.

11 Q. And that you may be required then
to pay

12 their legal fees?

13 A. No, I am not.

14 Q. There was no discussion about it,
was there,

15 sir?

16 MR. FLOYD: Counsel, you're
arguing with the

17 witness now, okay. You are arguing with the
witness,

18 and rephrase your question.

19 MR. WOLFE: I am not.

20 Q. There was no agreement between
you and Mr.

21 Weigel as to how legal fees would be paid.
Isn't that

22 true?
23 A. That is true.
24 Q. And to this date you have no
understanding
25 as to whether or not you are responsible for
the
00156
1 payment of legal fees incurred by these
gentlemen or
2 not, do you?
3 A. That's true.
4 Q. During the conversation was there
any
5 suggestion to you that they might help you
or that Imco
6 might help you in other employment
activities, seeking
7 other employment?
8 A. No. I don't need more
employment.
9 MR. WOLFE: And just so that
we're clear,
10 Mr. Floyd, you're instructing -- it is your
opinion
11 that the privilege has not been waived, and
therefore
12 you're instructing this gentleman not to
answer any
13 further questions?
14 MR. FLOYD: I've made my
record.
15 MR. WOLFE: And you are
continuing in that
16 position?
17 MR. FLOYD: Yes.
18 Q. And Mr. Muder, you're going to
follow the
19 advice of --
20 MR. FLOYD: Don't answer it
because it's
21 already been answered. You're not going
to sit here
22 and badger the witness any more.
23 MR. WOLFE: Excuse me.
24 MR. FLOYD: He's already said no.
25 MR. WOLFE: Francis --
00157

1 MR. FLOYD: He's going to follow
my advice
2 and you don't have to ask him again, okay.
Ask another
3 question.

4 MR. WOLFE: I have no further
questions.

5 MR. FLOYD: Thanks. I have a few
questions.

6

7

EXAMINATION

8 BY MR. FLOYD:

9 Q. John, let me ask you a couple of
things

10 about the bucket. You said it was a slope
bucket; is

11 that correct?

12 A. That is correct.

13 Q. Do slope buckets have teeth?

14 A. No.

15 Q. Are you sure that it was a slope
bucket?

16 A. Positive.

17 Q. How many scratches did you see on
the pipe?

18 A. One.

19 Q. Are you sure that there were no
other

20 scratches on the pipe?

21 MR. NICOLL: Object, leading.

22 Q. Go ahead and answer the question.

23 A. Repeat it again.

24 Q. How many scratches did you see on
the pipe?

25 A. Just the one.

00158

1 Q. Did you see any other scratches on
the pipe?

2 A. No.

3 Q. Did you look all around the pipe
when you

4 were pitting the mastic on the pipe?

5 A. Yeah.

6 Q. Did you see any other scratches as
you were

7 applying the mastic?

8 A. No.

9 Q. Did you apply mastic all the way
around the
10 entire pipe?
11 A. Just on the scratch.
12 Q. Did you apply the -- what was it --
wrap,
13 the vinyl wrap?
14 A. Yes.
15 Q. And did you apply that all the
way around
16 the pipe?
17 A. Uh-huh.
18 Q. Is that a yes?
19 A. Yes.
20 Q. And was that for about a two-foot
section?
21 A. Yeah. Give or take.
22 Q. And how long was the scratch that
you saw?
23 A. It was probably about 8 to 10
inches.
24 Q. Counsel asked you a question
where he
25 suggested that the scratch was two feet
long. Was
00159
1 there ever any question that it was
only 8 to 10
2 inches, or whatever the number you
gave?
3 A. Was there any questions?
4 Q. Yeah. Was it two feet long?
5 A. No.
6 Q. Is there any question in your
mind that the
7 pipe that you repaired was ductile iron
pipe?
8 A. It was ductile iron pipe.
9 Q. Was there any wrap on the pipe
that you
10 repaired?
11 A. No.
12 Q. Did you see any brown wrap of any
type on
13 the pipe?
14 A. No.
15 Q. Are you sure about that?

16 A. Sure.
17 Q. You were shown some pictures of
various
18 pipes. Could you tell the diameter of the
pipe from
19 looking in the pictures?
20 A. No.
21 Q. Could you tell from looking at the
pictures
22 if they were wrapped or not wrapped?
23 A. No.
24 Q. Could you tell from looking at the
pictures
25 if it were ductile pipe?
00160
1 A. Some of them I could.
2 Q. Would you say that you could be a
better
3 judge of whether it was ductile pipe or not
by looking
4 at it personally?
5 A. Yes.
6 MR. NICOLL: Object, leading.
7 Q. And is there any doubt in your
mind that the
8 pipe you repaired was 24-inch?
9 MR. NICOLL: Object, leading.
10 Q. Go ahead and answer.
11 A. Yeah. It's 24.
12 MR. FLOYD: I don't have anything
further.
13 Thanks. Done?
14 MR. NICOLL: No, I've got a
question.
15
16 EXAMINATION
17 BY MR. NICOLL:
18 Q. My question is, you weren't the
helper who
19 was assisting Britt Lukes when he was -- or
whoever was
20 digging with the backhoe -- on the day that
you
21 repaired the pipe, right?
22 A. Correct.
23 Q. And it was Imco's practice to
have a helper

24 assisting the equipment operator when
digging ditches

25 around the pipe work; is that right?

00161

1 A. That would be common practice,
yes.

2 Q. When -- evidently, at some point
in this

3 process when a problem occurred and there
was a scratch

4 on one of the pipes where this piece of
equipment was

5 digging, they went and got you from the
soda ash silo,

6 right?

7 A. Correct.

8 Q. Do you know why they didn't use
the helper

9 who was helping Mr. Lukes?

10 A. I don't know. I'm not in their
brain.

11 Q. Isn't it because there wasn't a
helper

12 helping Mr. Lukes?

13 A. Could be, couldn't be. I don't
know. It

14 depends on what Brett was digging up. I
mean, if -- if

15 he wasn't fearful of pipe being there he
probably

16 didn't need one.

17 Q. I thought you said it's a water
treatment

18 plant, there are pipes everywhere.

19 A. I'm just saying --

20 MR. FLOYD: Hold it, hold it, hold
it.

21 You're arguing with him now, Counsel. If you
want to

22 badger him, that's fine. Wait until we go
off the

23 record, okay, and have your investigator go
off and bug

24 him some more.

25 Q. Did you not testify earlier that
there were

00162

1 pipes all over the place at that
construction site?

2 A. Yeah, I testified to that.

3 Q. So maybe this will help me
understand the

4 common practice of Imco a little bit better.
Whenever

5 the backhoe was excavating in front of the
pump station

6 it wasn't necessarily the case that there
was always a

7 helper with the backhoe operator; is that
right?

8 A. Common practice is that you have
a helper

9 there if you're digging around pipe.

10 Q. Was Jeff Hinkle working with you
up at the

11 soda ash silo?

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

13 Q. He wasn't helping you repair the
pipe?

14 A. Like I testified, I don't know. I
can't

15 recall who was all in there. I don't know.

16 MR. NICOLL: That's all.

17 MR. VERWOLF: I've got nothing.

18 THE WITNESS: Are we done?

19 MR. WOLFE: I'm not agreeing that
the

20 witness be excused. We may be back.

21 MR. FLOYD: Go ahead.

22 MR. WOLFE: I just don't want to
be

23 misunderstood.

24 THE VIDEOGRAPHER: This adjourns
the

25 deposition of John Muder, Jr. The time is
00163

1 approximately 3:04 p.m. and this is the end
of tape No.

2 2. ProVideo Seattle in Seattle, Washington
will retain

3 the original videotapes. Here ends the
deposition.

4 MR. FLOYD: Is it being ordered?

5 MR. NICOLL: Yeah.

6 MR. FLOYD: Signature is
reserved. Take a
7 copy.
8 (Deposition adjourned at 3:05
p.m.)

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A F F I D A V I T

1
2
3 STATE OF WASHINGTON)
4) ss.
5 COUNTY OF KING)
6

7 I declare under penalty of perjury
that I have
8 read my within deposition, and the same is
true and
9 accurate, save and except for changes and/or
10 corrections, if any, as indicated by me on
the
11 correction sheet hereof.
12

13

14

MUDER, JR.

JOHN

15
16
17
18
19

20 Dated this _____ day of
_____, 2001.

21
22
23
24
25
00165

1 C E R T I F I C A T E

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
00166
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 Notary
21
Public in and for the State of
22 Washington,
23 residing at
Seattle.

24
25
00167
DEAN MOBURG & ASSOCIATES
COURT REPORTERS
1201 THIRD AVENUE, SUITE 2760

SEATTLE, WA 98101 206-622-3110

TO: FRANCIS FLOYD
February 14, 2001
300 Trianon Building
2505 Third Avenue
Seattle, WA 98121

DATE:

IN RE: OPL LITIGATION

DEPOSITION(S) OF: JOHN

MUDER, JR.

XXX ENCLOSED IS YOUR COPY OF THE DEPOSITION OF THE ABOVE-NAMED DEPONENT PLUS A CORRECTION SHEET AND SIGNATURE PAGE. PLEASE HAVE THE DEPONENT READ THE DEPOSITION, SIGN THE CORRECTION SHEET AND SIGNATURE PAGE AND RETURN SAME TO ME WITHIN 30 (THIRTY) DAYS OF THIS LETTER. I WILL THEN SEND THE ORIGINAL DEPOSITION TO THE ORDERING PARTY AND FURNISH ALL PARTIES WITH A COPY OF THE CORRECTION SHEET.

 ENCLOSED IS THE ORIGINAL DEPOSITION OF THE ABOVE-NAMED DEPONENT. SINCE DEPOSITIONS ARE NO LONGER FILED IN SUPERIOR AND FEDERAL COURT, I AM SENDING THE ORIGINAL DEPOSITIONS TO YOU FOR RETENTION UNTIL TIME OF TRIAL.

 REGARDING THE ABOVE ENTITLED MATTER:

SINCERELY,
DEAN MOBURG &

ASSOCIATES

BY: CHERYL

MACDONALD, CCR

CC: Chris Nicoll
David Beninger

Lisa Marchese
Peter Offenbecher

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