

Appendix Q

Mark Graham, Triad – Interview and Deposition Transcripts

Pipeline Rupture and Fire
Bellingham, Washington
June 10, 1999
DCA-99-MP-008

NATIONAL TRANSPORTATION SAFETY BOARD

In the Matter of: *
DCA-99-MP-005 *

INTERVIEW OF:

MARK GRAHAM

P R O C E E D I N G S

1
2 INTERVIEWER: It's December 16th and I am here
3 with Mark Graham.

4 And Mark, thank you for calling me and
5 contacting me and offering to come in and talk to me.
6 I just want to make sure that it is okay with you if I
7 record this conversation.

8 MR. GRAHAM: It is okay.

9 INTERVIEWER: Okay. I appreciate it.

10 Mark, if you could just kind of start off
11 with some of the things that you told me the other
12 night and how you came to be involved in the --
13 construction project and what your role there was.

14 MR. GRAHAM: I was an employee of Triad(ph)
15 Electric, who was a subcontractor of IMCO Construction.
16 The contract we had was through the modifications to
17 the Dankin-Yew Water Treatment Plant and the
18 construction of the pumping station. And the role that
19 I had there was foreman for Triad Electric.

20 INTERVIEWER: You had mentioned to me that you
21 were out there for quite an extent of the project. Do
22 you recall when --

23 MR. GRAHAM: I was there, I was there
24 approximately from May of 1993 to May of 1994.

1 INTERVIEWER: Okay. Start out with what we
2 talked about the other night, just kind of go through
3 with me what you can remember from your work out there
4 and anything that you saw or heard.

5 MR. GRAHAM: From what I saw was in the late
6 Summer '93 or late fall, was IMCO Construction doing
7 some excavation around the northwest corner of the --
8 pump station. At that time I was a bit concerned as to
9 where they were digging, due to the fact that there
10 were two, 200 phone lines and Olympic pipeline gap
11 running through there. While this was going on I
12 brought it to the operator's attention that he was in
13 the -- of the bulk load utility and he said, no, I am
14 probably 15, 20 feet away. While he was digging, I
15 continued to observe what he was doing and at sometime
16 frame, in early morning, I don't know exactly what day
17 it was, he struck Olympic Pipeline pipe. And at that
18 time I was, it scared me to death. I turned and ran.
19 Notified their project manager, who was Paul
20 Glackenberger(ph), at that time. And they came down
21 and they looked at it and there was definitely physical
22 damage to the pipe. The membrane on the pipe was also
23 torn. And at that time they were going to just bury
24 it. And I harassed them, and, you know, they needed to

1 notify somebody. They refused to notify Tom Franklin,
2 Olympic Pipeline. They took an asphalt -- spread it
3 over the area of the damage of the pipe and backfilled
4 it and went on.

5 INTERVIEWER: Did you mention, what kind of
6 material was that, do you know?

7 MR. GRAHAM: Like a black mastic. It was
8 something used to coat a foundation wall with or
9 something of a concrete material.

10 INTERVIEWER: And do you remember, I mean,
11 during the course of the conversation in terms of, what
12 was the, what were they worried about in terms of
13 contacting Olympic? Was there some reason specific
14 they mentioned?

15 MR. GRAHAM: I think they were hesitate simply
16 because Olympic was very adamant as to what they could
17 do near their pipes, around their pipes. Olympic was
18 very stringent as far as the criteria that they
19 required around their pipes. And I am not saying that
20 they were the entire time, the time period that I was
21 there, I probably only saw them on the site four or
22 five times. But, while they were there, they were very
23 adamant as to how they wanted their utilities taken
24 care of. And I think that was one of the things that

1 they were concerned with. I don't know if there was a
2 fine involved if they did do a damage. I kind of got
3 that feeling that, yes, there was. And I don't think
4 they wanted to go through all that. Knowing the
5 possibility that they were going to have to shut that
6 line down, do an inspection or whatever it was going to
7 cost them. It was my attitude or my belief from their
8 attitude was that it was a bigger can of worms than
9 they wanted to deal with.

10 INTERVIEWER: Okay. And you said they --
11 didn't want to bring it to Tom Franklin's attention,
12 was that for similar reasons?

13 MR. GRAHAM: Yeah. Tom did a fairly decent
14 job of inspecting this project, within limited
15 knowledge and construction that he had, this type of
16 construction. His background mainly, was mainly
17 highway maintenance and construction and at times, Tom
18 could be a real pain in the ass. I mean, I fought with
19 him more than once over the specs in regards to how we
20 were suppose to do something. I mean, industry
21 standards are industry standards. If you don't
22 understand those and that is one of the things that we
23 would always fight with Tom about. I am not saying Tom
24 wasn't reasonable, because once he understood what the

1 problem was, or what we were trying to do, he
2 understood and he went along with us, but for the most
3 part, I think it was the attitude of the project
4 manager and the foreman for -- the less Tom knew, the
5 better.

6 INTERVIEWER: Now, the project manager, you
7 mentioned was Paul Glackenberger, correct?

8 MR. GRAHAM: Yes.

9 INTERVIEWER: And you said the foreman also,
10 who would that have been?

11 MR. GRAHAM: That would have been Greg
12 Burson (ph).

13 INTERVIEWER: Was Greg out there this
14 particular time?

15 MR. GRAHAM: I don't believe Greg was on the
16 site the day that they struck the pipe. Greg was there
17 initially went they installed the 60 inch and the 72
18 inch. And once that line, those two lines were
19 installed, he was relocated to another project on --
20 Island. And he was gone the better part of the summer
21 and returned later, late that fall or early winter.
22 But, I don't remember him being there. The people that
23 I remember on site at that time were Paul
24 Glackenberger, myself, the project manager -- the

1 operator, who was Bret --. They had a laborer, and all
2 I can remember is that the laborer, his first name was
3 Johnny. I don't remember Johnny's last name. I had an
4 apprentice by the name of Tim Lenderman on site and
5 myself. Those were the only ones that around. At that
6 time they were pretty much down to a small crew,
7 probably four guys, Inco guys.

8 INTERVIEWER: I -- I am sorry, go ahead.

9 MR. GRAHAM: Then they had their
10 subcontractors on site. Primarily which was Triad
11 Electric.

12 INTERVIEWER: Okay. Did they have many other
13 subs, or was it just --

14 MR. GRAHAM: No, they did a major of the work
15 themselves, the mechanical, they did. The primary
16 subcontractor for the project was Triad Electric.

17 INTERVIEWER: Okay. You did the electric
18 part.

19 MR. GRAHAM: Yeah.

20 INTERVIEWER: Okay. So, there was not a lot
21 of other folks around that might have seen what had
22 transpired?

23 MR. GRAHAM: No.

1 INTERVIEWER: It was primarily just the four
2 of you.

3 MR. GRAHAM: Yes.

4 INTERVIEWER: Was your apprentice included in
5 the conversations?

6 MR. GRAHAM: When he struck the pipe, I
7 distinctly remember yelling at Tim, get the hell out of
8 the pump station, run. And once everything calmed
9 down, and we realized we didn't rupture the line, you
10 know, then everybody was involved. There was the five
11 of us standing there. And when they said they were
12 just going to backfill it, I started harassing them.
13 You can't just do that. What happens if that thing --
14 and blows up five years down the line?

15 INTERVIEWER: Okay. How long did that, I
16 mean, how long do you remember that conversation
17 lasted?

18 MR. GRAHAM: Probably 15, 20 minutes. They
19 were, they were very insistent on taking care of the
20 problems immediately and covering it up as soon as they
21 could.

22 INTERVIEWER: Who is they? Who was the
23 primary person driving this?

1 MR. GRAHAM: Paul Glackenberger.

2 INTERVIEWER: Okay. So, when you say the
3 other guys were kind of whatever?

4 MR. GRAHAM: Yes. They were hired help.
5 Basically they were told to do what they were told to
6 do and they didn't question it, and they even said to
7 me, later, after the fact, I don't think I would have
8 just left that.

9 INTERVIEWER: Okay. Now, when you saw the
10 pipeline was hit, how did you, how could you tell that?

11 MR. GRAHAM: Well, I was standing on the front
12 landing at the entrance to the pump station, itself and
13 I was standing there observing Brett, who was
14 operating, I think it was a 560 Hitachi.

15 INTERVIEWER: Okay.

16 MR. GRAHAM: And I was standing there and I
17 just had talked to him earlier, I said, you had better
18 watch where you are digging and I said there is the
19 phone line and the gas line there. And I said, I even
20 stopped him. I said, do you know where you are at,
21 just to bring it to his attention. He said, oh, yeah,
22 oh, yeah, that pipeline is not here. It is 15 feet to
23 the left. And I said, okay. And I stood there and I
24 watched, I probably didn't watch more than 10, 15

1 minutes, and all of a sudden you hear a definite metal
2 to metal contact. It was very abrupt and there was a,
3 it sounded like a collision. Now, you can tell the
4 difference hitting metal and metal and metal and rock.
5 And when it happened, all I could, like I said, I
6 turned and I ran. It scared the hell out of me. I
7 mean, the adrenal was just, it was too much.

8 INTERVIEWER: Was that the only time that you
9 recognized that sound or heard something similar to
10 that or --

11 MR. GRAHAM: You know, I mean, in the
12 construction industry we hit pipe all the time, we hit,
13 you know, electrical, we hit sewer, we hit storm
14 drains. I mean, it is not something that is unique. I
15 mean, you know when you hit something you are not
16 suppose to.

17 INTERVIEWER: But, this particular time --

18 MR. GRAHAM: In this project, yeah. I would
19 say, well, I couldn't say that, because -- our
20 underground, the electrical underground. I mean, every
21 time we would put something in the ground, they would
22 come back and dig it up. I probably had 30 or 40 --
23 during the year that I was there, repairing stuff that
24 they dug up.

1 INTERVIEWER: In terms of him digging in this
2 particular day or this particular hour, or whatever --

3 MR. GRAHAM: No. That was the only one that
4 he dug up that day or struck that day, other than the
5 two 200 phone lines that U.S. West has running through
6 there. He severed those that same day about four hours
7 after he hit the pipeline.

8 INTERVIEWER: Okay. All right. Let's go to
9 the -- Well, let's go to this drawing here and just
10 kind of talk about this. This is the drawing number
11 P-1, P-16 and 66 from the construction drawings for
12 the -- Pump Station that we were looking at. Can you
13 identify approximately where you think they were
14 working at the time that this happened?

15 MR. GRAHAM: You know, it was an area 15 to 25
16 feet off the northwest corner. It would have been
17 right in this area in here.

18 INTERVIEWER: Okay. You circled that area.
19 That is the, well, that is in the vicinity of the 72
20 inch water line across there. Would that have been
21 north or south of there?

22 MR. GRAHAM: Well, actually it would have been
23 east of that 72 inch water line, I think. No, no,
24 okay, I guess you are right, it is north. It would be

1 north of the 72 inch. This way here. More into the
2 other 24 inch line.

3 INTERVIEWER: Okay. So, you are looking at
4 the --

5 MR. GRAHAM: I am looking at this --

6 INTERVIEWER: The T where they tie into the
7 twisting lines.

8 MR. GRAHAM: Not so much the T, it is in
9 between the T and the structure, itself. It is more
10 about right in here, is where I saw them struck that
11 pipe. Like I said, it was 15 to 20 feet off this --
12 because he had his machine set up right here. I was
13 standing on the landing right there, talking to him.

14 INTERVIEWER: Okay. So -- between the -- and
15 the pipeline.

16 MR. GRAHAM: The Olympic Pipeline, yeah, he
17 did. He was in between the two lines. I mean, when --
18 the line was on the drawing, where the structure is,
19 yes, he was in between the two. He was pulling
20 material back towards the north.

21 INTERVIEWER: You don't recall what activity,
22 or what they might have been doing, what they were
23 excavating to do, do you recall that?

1 MR. GRAHAM: No, I don't. Like I said to you
2 before, they had dug that site up so many different
3 times. They would find a leak the -- and they would
4 dug it back up, fix it, bury it. And then they would
5 find another one and they would do, I mean, it was a
6 continuous thing. And the only thing I can think is
7 there would have been in that 24 inch -- line, for the
8 discharge line, from out of the pump station.

9 INTERVIEWER: Did they do any concrete work in
10 that particular time frame or that day, do you recall?

11 MR. GRAHAM: No, not that day. Most of the
12 pipes they installed, they embedded, you know, --
13 concrete, sand mixture. There was 60, 72 inch, I
14 believe the 24 inch was also embedded PVC. But, I
15 don't remember. I know they were not installing pipe
16 that day. It was more of a, it was more of a general
17 cleanup. They were trying to keep that slope. Some
18 were a lot lower than they anticipated. Because that
19 phone line was right on the surface.

20 INTERVIEWER: (inaudible)

21 MR. GRAHAM: Right. They probably only had 18
22 inches of cover on the, and I am thinking that the
23 pipeline, Olympic Pipeline pipe probably only had two
24 and a half, or two feet of cover on it at that time,

1 too. And that (inaudible) to go 10 feet above grade.

2 INTERVIEWER: There was a --

3 MR. GRAHAM: No. The pump station right
4 there, you mean right there.

5 INTERVIEWER: Where the road came out of
6 the --

7 MR. GRAHAM: Right.

8 INTERVIEWER: That might be shown in one of
9 the photographs, probably.

10 (Pause.)

11 INTERVIEWER: Okay. We are looking at the
12 photographs I have previously marked as an exhibit in
13 Tom Franklin's interview and page eight, the photo on
14 the left. Do you see the -- line on that photo?

15 MR. GRAHAM: (inaudible)

16 INTERVIEWER: Okay. In that particular
17 photograph the excavator is sitting there, is that
18 about the same location you recall him being in?

19 MR. GRAHAM: Actually, no. In relationship to
20 the plans, he would have been further to south, he
21 would have been back this way.

22 INTERVIEWER: Okay. So, he would have been
23 further south, along the Olympic Pipeline.

1 MR. GRAHAM: Yes.

2 INTERVIEWER: You are referring to the lines
3 that are going off to the north, out of the pump
4 station.

5 MR. GRAHAM: Right. That would be the 24
6 inch. This is --

7 INTERVIEWER: No, it is the -- line at the
8 pump station.

9 MR. GRAHAM: Yes.

10 INTERVIEWER: It ties into the 48 inch line up
11 to, on the north side of that, far north side of that
12 drawing.

13 (Pause.)

14 MR. GRAHAM: That 60 inch water line -- the
15 gas line, the gas line.

16 INTERVIEWER: On page 10 on the right hand
17 photo.

18 MR. GRAHAM: Looking at the --

19 INTERVIEWER: Well, yes, it is and you know,
20 it is --

21 MR. GRAHAM: I am trying to get a relationship
22 as to where the thing is at and -- okay, this is the 24
23 inch line and the discharge line.

1 INTERVIEWER: This is on page 12.

2 MR. GRAHAM: Right.

3 (Pause.)

4 INTERVIEWER: Were you out there when they
5 installed the 24 inch line --

6 MR. GRAHAM: It was about the same time that
7 we were doing this duct bank, going back to page E-3 or
8 E-2.

9 (Pause.)

10 MR. GRAHAM: E-2. We were doing this duct
11 bank here, it comes back up into the water treatment
12 plant, itself. And we were doing this work down in
13 here.

14 INTERVIEWER: Okay. So, that comes out the
15 opposite side of the pump station and back up into the
16 main water treatment plant.

17 MR. GRAHAM: Yes. And all that work was
18 going on at one time. I mean, there was a very big
19 hole in the ground, for quite awhile.

20 (Pause.)

21 MR. GRAHAM: (inaudible.)

22 INTERVIEWER: Okay. This is page on 14 of
23 the -- All right.

1 MR. GRAHAM: -- what they were doing.

2 INTERVIEWER: Okay. But, you did physically
3 remember that on the same day they damaged it, they
4 also cut these phone lines.

5 MR. GRAHAM: Yes, they did. I remember that
6 because I was out there.

7 INTERVIEWER: Now, there was also a, you,
8 guys, well, the question, did you -- this duct, when it
9 crossed, the 12 inch utility duct, it crossed there,
10 did you put that in?

11 MR. GRAHAM: Actually, no, that was part of
12 Inco's scope of work. What that contained was the
13 sampling tube for the test equipment, which includes a
14 coring line, a water line with a coring solution into
15 it and that all went out to corning injection --
16 reservoir. We did, however --

17 INTERVIEWER: Okay. So, that was installed.

18 MR. GRAHAM: -- from Coronation -- back to
19 the pump station, itself.

20 INTERVIEWER: Okay. Was that a similar
21 conduit?

22 MR. GRAHAM: Actually it was about 10 conduits
23 there.

1 INTERVIEWER: Okay.

2 MR. GRAHAM: At least five conduits. Three
3 power pipes and two control pipes.

4 INTERVIEWER: Okay. So, that was separate
5 from that 12 inch PVC that had --

6 MR. GRAHAM: Correct.

7 INTERVIEWER: Okay.

8 MR. GRAHAM: And that was, that basically went
9 right down the middle of the road side. It is a
10 separate -- system from that 12 inch line. -- the
11 utility back here on that is continuing -- actually
12 through like --

13 INTERVIEWER: That means (inaudible)

14 MR. GRAHAM: Yes.

15 INTERVIEWER: Okay. You can see a little
16 better on -- That 12 inch looks like a PVC pipe that
17 they put in across --

18 MR. GRAHAM: You know, they may have been
19 doing that. I don't remember, like I said. That would
20 have been far enough along in the project, that would
21 have been about the right time frame, because they did
22 not install those until after the deep earth work was
23 done, and once they started topping off their manholes,
24 they started having that duct -- from point A to point

1 B, and that would have been about the right time frame.

2 That would have probably been plenty deep enough, too.

3 If I remember right, this thing dug in about eight
4 feet above the slab in the basement of the pump
5 station. It was fairly deep. That would have been
6 about the right area, been about the right place where
7 he hit it.

8 INTERVIEWER: Let's go back, I want to make
9 sure we have got the individuals involved and the
10 discussion that you all had. You mentioned that to me
11 the other night that Brett Leaks(ph) was the operator
12 and you said he still works in Bellingham.

13 MR. GRAHAM: Yes, he works for Wilder
14 Construction here in Bellingham.

15 INTERVIEWER: Okay. And do you know whether
16 Paul is still at Inco?

17 MR. GRAHAM: I have no clue where Paul is. I
18 haven't seen him in, since 1994.

19 INTERVIEWER: Okay. And the laborer, the
20 first name you remember --

21 MR. GRAHAM: John.

22 INTERVIEWER: John.

23 MR. GRAHAM: Johnny is working for a property
24 management company now. I have seen him in the last

1 year.

2 INTERVIEWER: Is he still with Triad?

3 MR. GRAHAM: No, he is actually an employee of
4 Bird Electric and he has a resident of Bellingham.

5 INTERVIEWER: Okay. And let's see, what else
6 did I want to go back and make sure it was fully
7 understood.

8 (Pause.)

9 MR. GRAHAM: I have been done so much work
10 since then, I am just trying to remember the
11 particulars.

12 INTERVIEWER: Is Triad still, Triad, are they
13 still in business?

14 MR. GRAHAM: Yeah, they are. They are
15 currently operating under the name of Triad Service
16 Electric, in their same location as they were prior to
17 this, which is 2020 Lombard, Bellingham, Washington.

18 INTERVIEWER: When did you leave Triad?

19 MR. GRAHAM: I left late Fall of '94.

20 INTERVIEWER: And then you went to work for?

21 MR. GRAHAM: I am currently a member of the
22 IEW Local 191. Currently I am working for Cascade
23 Electric out of Downing.

1 INTERVIEWER: Technically you work out of the
2 hall, okay.

3 MR. GRAHAM: Yes.

4 INTERVIEWER: Is there anything else in the
5 pictures that jogs your memory that, we kind of went
6 through them and that stood out? I just want to make
7 sure that I have got everything here and tried to jog
8 your memory as best we can.

9 MR. GRAHAM: The picture, this manifold, this
10 right here.

11 INTERVIEWER: That is on -- Straight out to
12 the discharge line tie in.

13 MR. GRAHAM: (inaudible)

14 INTERVIEWER: That was provided by the
15 orientation --

16 MR. GRAHAM: Yeah. This is a beautiful
17 picture of the --

18 (Pause.)

19 INTERVIEWER: You are talking about that
20 outfall?

21 MR. GRAHAM: Yeah. Some work on these pipes
22 for -- I don't remember much of what we did.

23 INTERVIEWER: Oh, you mean on the water line?

1 MR. GRAHAM: Right. (Inaudible) Right in this
2 general area.

3 INTERVIEWER: The area on page 12, again, the
4 T.

5 MR. GRAHAM: Yes.

6 INTERVIEWER: You mentioned that vault looking
7 at this drawing, were you, you said you were standing
8 near the doorway to the pump station. Were you looking
9 towards that vault?

10 MR. GRAHAM: No, it would be looking more to
11 the south, southwest. I wasn't looking in this
12 direction here. He had his machine set up right about
13 here and he was throwing material back towards. Like I
14 said, I don't, I am totally lost as to what exactly it
15 was they were doing.

16 INTERVIEWER: Okay. If you can't recall, you
17 know, I don't want you to try and force something that
18 you can't recall.

19 MR. GRAHAM: I don't.

20 INTERVIEWER: Okay. That is fine.

21 When he hit the pipe, could you tell what
22 part, what part of the pipe did he hit?

23 MR. GRAHAM: It would have been to the eastern
24 side, it would be the pipe that is transverse in this

1 direction, north, northeast direction. He struck it on
2 the north, northern side of it, in towards the --

3 INTERVIEWER: Okay. I didn't quite follow
4 that. I was thinking more around the top, bottom.

5 MR. GRAHAM: Oh, it was, it would have been,
6 if I were looking to the south, it would have been at
7 about this, between, about the 10 o'clock position,
8 where he hit it, from looking south back to this
9 direction, it would have been in the top left hand
10 quad.

11 INTERVIEWER: Okay. Top left side of the
12 pipe, looking towards the south.

13 MR. GRAHAM: Right. Right.

14 INTERVIEWER: Okay.

15 MR. GRAHAM: And then it was a substantial, a
16 good two, two and a half inches visibly --

17 INTERVIEWER: Long you mean?

18 MR. GRAHAM: Yes, it was, well, he had a 24
19 inch bucket on the backhoe, and it was a good two feet
20 long, and you could see every tooth mark on the side of
21 the pipe, you know, fairly deep, depth wise. It was a
22 definite dent.

23 INTERVIEWER: Okay. Well, can you think of
24 anything else at all that might help us out here? Like

1 I said, I appreciate you calling me.

2 MR. GRAHAM: Not at this time. I mean, like I
3 said, I am at a lost as to what was going on at that
4 time. I have done probably 50 construction projects
5 since then and I -- you can remember the particulars,
6 but you can't remember everything.

7 INTERVIEWER: Sure. Okay. All right, well,
8 thanks a lot, Mark, I appreciate it.

9 MR. GRAHAM: Well, I hope I helped. Like I
10 said, I don't remember everything.

11 INTERVIEWER: Well, you helped by coming
12 forward and volunteering to talk to us and we certainly
13 appreciate that.

14 (Pause.)

15 INTERVIEWER: I just want to ask Mark a few
16 more questions.

17 One of, let's talk a little bit further about
18 when Olympic's people were involved out there. Mark
19 mentioned they were out there five or six times that
20 you remember. Do you recall when they might have been
21 out, what activity was going on when they might have
22 been out there?

23 MR. GRAHAM: Initially, the first time I saw
24 Olympic out there was during the initial excavation for

1 the 60 inch and the 72 inch water lines, during the
2 soft dirt and the bedrock excavation. And that was
3 probably two, three days there, while they were
4 excavating around the gas pipeline lines. And then I
5 saw them one more time probably four months later, when
6 they were starting to do the final backfill, around
7 those lines. For the most part, they were very scarce.

8 I only saw the big green truck a couple of times.

9 INTERVIEWER: Okay. So, they drove a big
10 green trucks.

11 MR. GRAHAM: Yeah, green, basically, you know,
12 usually they basically stood around and they were, they
13 were very particular. I must say that. They were very
14 adamant as to how their pipe be treated. And they laid
15 down some ground rules for, you know, Inco Construction
16 that and they had to follow, period. So, as far as
17 being there during the entire time of the construction,
18 no, they weren't there.

19 INTERVIEWER: Okay. Did you attend any of
20 the meetings that they had, progress meetings?

21 MR. GRAHAM: I attended weekly progress
22 meetings, construction meetings.

23 INTERVIEWER: Do you remember Olympic ever
24 being at any of those or --

1 MR. GRAHAM: No, I don't.

2 INTERVIEWER: Okay.

3 MR. GRAHAM: I do not remember those. If it
4 was, it was prior to me. During the course of the
5 construction, no, I don't remember them even being
6 there.

7 INTERVIEWER: Do you remember in those weekly
8 project meetings if Olympic was discussed on, say
9 anything in particular?

10 MR. GRAHAM: If it was it was in -- it was
11 like an afterthought. It was not a highly thought of
12 safety issue. It was one of the things that I thought
13 was, you know, looking back in retrospect, the safety
14 issue in regard to the pipeline, it was never
15 mentioned. I mean, it was never brought up during
16 construction meetings. It was never brought up during
17 safety meetings. It was like it was a non issue.

18 INTERVIEWER: Okay. So, that didn't seem to
19 be a real high level of concern for the --

20 MR. GRAHAM: No.

21 INTERVIEWER: -- the fact that it was
22 present.

23 MR. GRAHAM: No.

1 INTERVIEWER: Okay.

2 MR. GRAHAM: Primarily the ones, the safety,
3 or the project -- their individual engineering, the
4 city representatives -- Construction, Triad, and Tom
5 Franklin, that was basically the scope. You know, we
6 did have a subcontractor in there doing -- protection
7 and they were there for the most part. Olympic was
8 never involved.

9 INTERVIEWER: Okay. All right. I think that
10 wraps up my questions.

11 (Whereupon, the interview was concluded.)



National Transportation Safety Board
Washington, D.C. 20594

February 2, 2000

Mr. Mark Graham
8342 Van Buren Road
Everson, Washington 98247

Re: Pipeline Rupture and Fire, Bellingham, Washington, DCA-99-MP-008

Dear Mr. Graham:

Enclosed is the transcript of our conversation from December 16, 1999. Since it was generated from a tape recording, there are numerous spelling corrections that I will be making. Please review the transcript for factual inaccuracies and note any necessary corrections that need to be made. I have enclosed pre-paid overnight packaging for you to use to return the corrected transcript. If you wish to retain a copy, that would be fine, however, please return the original to us. I would appreciate receiving these corrections by February 18, 2000.

Thank you again for coming forward and providing valuable information to us to assist in the Safety Board's investigation into this tragic accident. Thank you also for your prompt attention to reviewing the enclosed transcript. If you have any questions, please contact me at (202) 314-6201.

Sincerely,

Signed and sent overnight on 2/2/2000. ^{ACB}

Allan C. Beshore
Investigator-in-Charge

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF WHATCOM

3 KATHERINE DALEN, Individually
 4 and as the Personal Represent-
 5 ative of the Estate of STEPHEN
 6 M. TSIORVAS, and as Guardian
 7 ad Litem for ANDREW R. TSIORVAS
 8 and GEORGE K. TSIORVAS,
 9
 10 Plaintiffs,
 11
 12 -vs- No. 99-2-01468-1

13 OLYMPIC PIPE LINE COMPANY, a
 14 foreign corporation, EQUILON
 15 PIPELINE COMPANY LLC, a foreign
 16 corporation, and EQUILON
 17 ENTERPRISES, LLC, a foreign
 18 corporation, and FRED CROGNALE,
 19 FRED HOFF, RON BRENTSON and
 20 JOHN DOES,
 21
 22 Defendants.

23 OLYMPIC PIPE LINE COMPANY, a
 24 foreign corporation,
 25
 26 Third-Party Plaintiff,
 27
 28 -vs-

29 IMCO GENERAL CONSTRUCTION, a
 30 domestic corporation,
 31 Third-Party Defendant.

32 -----

33 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF

34 MARK GRAHAM

35 -----

36 June 27, 2000

37 Susan Cannon, CCR
 38 Court Reporter
 39 CANNOS07PS

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1 FRANK S. KING, as the Personal
 2 Representative of the Estate
 3 of WADE B. KING, and FRANK S.
 4 KING and MARY L. KING, Individ-
 5 ually, and TRACY K. BELL,
 6 individually, and JASON KING,
 7 individually,
 8
 9 Plaintiffs,
 10
 11 -vs- No. 99-2-01467-3

12 OLYMPIC PIPE LINE COMPANY, a
 13 foreign corporation, EQUILON
 14 PIPELINE COMPANY LLC, a foreign
 15 corporation, and EQUILON
 16 ENTERPRISES, LLC, a foreign
 17 corporation, and FRED CROGNALE,
 18 FRANK HOFF, RON BRENTSON and
 19 JOHN DOES,
 20
 21 Defendants.

22 OLYMPIC PIPE LINE COMPANY, a
 23 foreign corporation,
 24
 25 Third-Party Plaintiff,
 26
 27 -vs-

28 IMCO GENERAL CONSTRUCTION CO., a
 29 domestic corporation, and JOHN
 30 DOE DEFENDANTS ONE THROUGH FOUR,
 31
 32 Third-Party Defendants.

33 -----

34 VIDEOTAPED DEPOSITION OF MARK GRAHAM

35 -----

36 9:40 a.m.
 37 June 27, 2000
 38 1201 Third Avenue
 39 Suite 5200
 40 Seattle, Washington

41 Susan Cannon, Court Reporter

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1
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7
1 THE VIDEOGRAPHER: This is the videotaped portion in
2 the deposition of Mark Graham. My name is Steve Dahl. I am
3 the videographer from ProVideo Seattle located at 80 South
4 Washington, Suite 200 in Seattle, Washington 98104.
5 This deposition is being recorded this 27th day
6 of June, 2000. The time is approximately 9:57 a.m. And we
7 are at 1201 Third Avenue, Suite 5200 in Seattle, Washington.
8 This deposition is being recorded in the matter
9 of Katherine Dalen, et al versus Olympic Pipe Line Company,
10 et al. Case number 99-2-01468-1 in the Superior Court of
11 the State of Washington in and for the County of Whatcom and
12 was noticed by Christopher Nicoll.
13 Will counsel please identify themselves for the
14 record and will the court reporter please swear in the
15 witness.
16 MR. BENINGER: David Beninger on behalf of the
17 plaintiffs Dalen and King.
18 MR. NICOLL: Chris Nicoll on behalf of Olympic
19 Pipe Line Company.
20 MR. VERWOLF: Nick Verwolf on behalf of the
21 defendants Equilon Enterprises and Equilon Pipeline Company.
22 MR. WOLFE: John Wolfe on behalf of Frank Hopf.
23 MR. FINEGOLD: Larry Finegold on behalf of Ron
24 Brentson.
25 MR. PLATIS: Harry Platis on behalf of Tsiorvas.

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19 HARRY B. PLATIS
20 Attorney at Law
21 PLATIS LAW FIRM
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25 COURT REPORTER: SUSAN CANNON
DEAN MOBURG & ASSOCIATES
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Seattle, WA 98101
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27 VIDEOGRAPHER: STEVE DAHL
PROVIDEO SEATTLE
80 South Washington, Suite 200
Seattle, WA 98104
28
29 ALSO PRESENT: KIM SWENOT, Paralegal
• • • • •

8
1 MR. FLOYD: Francis Floyd on behalf of IMCO.
2 MR. ALLEN: Dick Allen on behalf of Olympic Pipe
3 Line Company.
4
5 MARK GRAHAM, having been first duly sworn upon
6 oath by the Notary, testified as
7 follows:
8
9 EXAMINATION
10 BY MR. NICOLL:
11 Q. Would you please state your full name?
12 A. Mark Andrew Graham.
13 Q. Mr. Graham, what's your residence address?
14 A. [REDACTED]
15 Q. And how long have you lived at that address?
16 A. About sixteen months.
17 Q. Where did you live before that?
18 A. Bellingham. I don't remember the address. [REDACTED]
19 [REDACTED]
20 Q. How long have you lived in the
21 Bellingham/Whatcom County area?
22 A. Approximately fifteen years.
23 Q. How old are you now?
24 A. I'm 37.
25 Q. Are you employed?

9

1 A. Yes, I am.

2 Q. By whom are you employed?

3 A. Dutton Electric.

4 Q. Can you spell that?

5 A. D-u-t-t-o-n. They are out of Everett.

6 Q. How long have you been employed by Dutton

7 Electric?

8 A. About two and a half weeks.

9 Q. What's your profession or occupation?

10 A. I'm a *journeyman inside wireman with the*

11 *I.B.E.W.*

12 Q. Could you explain for people what that means?

13 A. I'm a *journeyman*.

14 Q. Electrician?

15 A. Electrician basically.

16 Q. And the I.B.E.W. is the --

17 A. The inside wireman is basically anything to do

18 other than utilities. And the I.B.E.W. is the International

19 Brotherhood of Electrical Workers.

20 Q. A union for electrical workers?

21 A. Yes.

22 Q. Now how do you get employment as a member of the

23 I.B.E.W? How does that work?

24 A. We work on an out-of-work book basis of from the

25 time you sign the book to whenever a call is available

10

1 reaches you through the out-of-work list which has nothing

2 to do with seniority. It just has chronological dates as to

3 when you signed the out-of-work list.

4 Q. So employers needing to hire an electrician and

5 wanting to hire a union electrician will go through the

6 I.B.E.W.?

7 A. Correct.

8 Q. And then members go to the I.B.E.W. and connect

9 with employers who want to use their service; is that right?

10 A. That is correct.

11 Q. Are there others for whom you have been employed

12 other than Dutton Electric in the immediate past?

13 A. Yes. D.W. Close General Construction.

14 MR. FLOYD: Excuse me?

15 A. General Construction. Cascade Electric and

16 Mills Electric. These are over the last two years.

17 Q. How usual or unusual is it for a journeyman

18 electrician who worked through the labor union to be

19 employed by this many employers?

20 A. It's very common.

21 Q. It's very common. Okay.

22 A. It's extremely common.

23 Q. Mr. Graham, what education have you had, formal

24 education?

25 A. High school graduate. I've got numerous classes

11

1 in electronics through the military. And I went through a

2 four year apprenticeship for electrical.

3 Q. Who did you do your apprenticeship with?

4 A. It was with the Cascade Chapter of the

5 Independent Electrical Contractors.

6 Q. How long ago did you finish that apprenticeship?

7 A. 1988. Or '89, excuse me.

8 Q. What branch of the military were you in?

9 A. I was in the Navy.

10 Q. How long were you in?

11 A. Four years.

12 Q. What was your rating?

13 A. I was an aviation electronics technician second

14 class.

15 Q. That means a second class petty officer?

16 A. Yes.

17 Q. That would be the grade of E5?

18 A. That is correct.

19 Q. Explain to us what an AD2 --

20 A. AT2?

21 Q. -- aT2 does.

22 A. Initially my billet or job description when I

23 was first stationed at Whidbey Island was an intermediate

24 maintenance level technician which basically is repair

25 communications navigation radar to the component level. And

12

1 when I first showed up to Whidbey I had one piece of

2 equipment to work on.

3 Q. One jet?

4 A. No. One radio.

5 Q. One radio?

6 A. Black box.

7 Q. Then did you become part of a squadron?

8 A. Yes. I was later transferred to VAQ132 which is

9 an electronic warfare squadron and basically it was aircraft

10 maintenance.

11 Q. So would you maintain the electronic components

12 of the aircraft in the squadron?

13 A. That is correct.

14 Q. Did you go to sea with the squadron?

15 A. Yes, I did.

16 Q. When?

17 A. January through May 1985.

18 Q. What carrier did you go on?

19 A. On the U.S.S. Dwight D. Eisenhower.

20 Q. Where was your --

21 A. The Mediterranean.

22 Q. Did the Dwight D. Eisenhower see any action when

23 you were out there?

24 A. No combat, but flexed plenty of muscle.

25 Q. Sure. So how old were you when you enlisted?

13

1 A. I was 18.
 2 Q. What kind of electronic courses did you obtain
 3 through the Navy?
 4 A. Basic electronics, electricity, UHF, VHF, HF
 5 radios, various antenna arrays. That's about it. A lot of
 6 on-the-job training.
 7 Q. And then what year was it that you were
 8 discharged from the Navy?
 9 A. October 18, 1985. Or excuse me. Yes, the 18th.
 10 Q. Why is it that everybody always remembers the
 11 date they were discharged. It's one of those things.
 12 What kind of discharge did you receive from the
 13 Navy?
 14 A. Honorable.
 15 Q. So if I understand right, the commands that you
 16 were assigned to in the Navy other than any training
 17 commands you might have had were Whidbey Island Naval Air
 18 Station and VAQ132?
 19 A. Correct.
 20 Q. Any others?
 21 A. Various other training.
 22 Q. Just training?
 23 A. Yes.
 24 Q. Did you ever work for a company call Triad
 25 Electrical Contractors, Inc.?

14

1 A. Yes, I did.
 2 Q. When did you work for Triad?
 3 A. 1989 through 1995 I believe.
 4 Q. What was your position when you started with
 5 Triad?
 6 A. Journeyman electrician.
 7 Q. Did you supervise any people when you started?
 8 A. No, not initially.
 9 Q. What kind of work did you do for Triad
 10 initially?
 11 A. Primarily electrical construction.
 12 Q. Interior wiring?
 13 A. Yes.
 14 Q. Did you later become more in the nature of a
 15 supervisor of employees?
 16 A. Yes, I did.
 17 Q. When was that?
 18 A. It would have been probably 1990.
 19 Q. 1990?
 20 A. Yeah.
 21 Q. Did they have a title for that position?
 22 A. Foreman.
 23 Q. As a foreman for Triad Electrical how many
 24 people would you typically supervise?
 25 A. It varied on the size of job from one to two to

15

1 ten to fifteen.
 2 Q. How long were you a foreman for Triad?
 3 A. From '90 to '95.
 4 Q. Backing up just for a moment, when you were in
 5 the Navy as a second class petty officer I can imagine you
 6 had plenty of supervisors. Did you have people that you
 7 supervised?
 8 A. Yes. There were other junior airmen in our shop
 9 that I was responsible for training and such.
 10 Q. How many others?
 11 A. It varied.
 12 Q. When you left Triad in 1995, would you mind
 13 telling us why you departed Triad?
 14 A. At that time Triad was under some financial
 15 constraints and there was a mutual disagreement and we
 16 decided to part our ways.
 17 Q. How do you think the people at Triad would
 18 characterize it?
 19 A. I'm not sure I quite understand your question.
 20 Q. So what you are saying is that you were let go
 21 and you resigned?
 22 A. You're fired, I quit.
 23 Q. That's --
 24 A. That's probably pretty much the way it would be
 25 looked at.

16

1 Q. Okay. While you were employed for Triad did you
 2 work on a project called the Dakin-Yew pump station in
 3 Bellingham, Washington?
 4 A. Yes, I did.
 5 Q. What was your position on that job?
 6 A. I was the foreman on that job.
 7 Q. For Triad?
 8 A. Yes.
 9 Q. And what was Triad's role on the job, if you
 10 know?
 11 A. Triad was the subcontractor to IMCO General
 12 Construction primarily responsible for installation of new
 13 electrical work and remodel of existing.
 14 Q. We've obtained records from Triad and I may take
 15 you through some of those records later only to the extent
 16 that they bear on the testimony that you have.
 17 But for the time being I'm going to kind of
 18 steer clear of records and just ask you to tell us what part
 19 of the work that you were involved in, how the work
 20 progressed, and bring you really to the point that wants us
 21 to have you in this case and testify. Okay?
 22 A. Okay.
 23 Q. Did you work on the physical pump station
 24 itself?
 25 A. Yes.

17

1 Q. So the building, as we understand it from other
 2 testimony in this case, a foundation was dug, the concrete
 3 for the building was poured and the exterior, I guess four
 4 walls and roof, of the pump station were put in place. Is
 5 that the point of time at which you started to become
 6 involved in terms of doing the wiring in that building?
 7 A. No. I actually got to the pump station after
 8 the foundation was dug and poured up to the ground level.
 9 Once it was poured up to that point is the time at which I
 10 came on to the site.
 11 Q. Are you familiar with an area of piping leading
 12 from the south end of the pump station called the 24-inch
 13 discharge line?
 14 A. Yes, I am.
 15 Q. And how did you become familiar with that?
 16 A. Working through the construction process and
 17 working documents.
 18 Q. By working documents, what do you mean?
 19 A. The specifications for the project and the
 20 blueprints themselves.
 21 Q. So you read through the plans for the project?
 22 A. Yes.
 23 Q. Were you present during any of the time when the
 24 hole for the 24-inch discharge line was dug and that pipe
 25 was laid and connected up with the 16-inch waterline?

18

1 A. Yes.
 2 Q. And did you have any knowledge or understanding
 3 about where the tee joint that intersected the 16-inch
 4 waterline and the 24-inch line was located?
 5 A. Yes.
 6 Q. How did you get that knowledge?
 7 A. There was several different drawings. The
 8 initial drawing showed that 24-inch tee being on the south
 9 side of the 60-inch discharge line from the million gallon
 10 reservoir underneath the treatment plant itself. It was
 11 later revised. Copies of that revision were sent to not
 12 only IMCO but myself and to my office for documentation as
 13 far as changes.
 14 Q. So you were aware of the change through the
 15 receipt of these documents?
 16 A. Correct.
 17 Q. Were you ever present while excavation was being
 18 done in the vicinity of that tee joint between the 24-inch
 19 line and the 16-inch line?
 20 A. Yes, several times.
 21 Q. I'm going to move away from that just for a
 22 moment and ask you a couple other questions.
 23 Did you know or have knowledge at the time of
 24 the location, the approximate location of the Olympic
 25 pipeline?

19

1 A. Yes.
 2 Q. And how did you get that knowledge?
 3 A. At the beginning of the project there was a
 4 safety meeting involving IMCO Construction, Paul Krakenberg
 5 mainly being he is the project manager for the project on
 6 site. He and I walked the line showing me where it was at
 7 in relationship to everything else.
 8 Q. Do you recall whether there were any markings
 9 indicating the approximate location of the pipeline, stakes,
 10 things of this sort stuck into the ground?
 11 A. Yes.
 12 Q. Were there?
 13 A. Yes, on the outside boundaries of the excavation
 14 areas.
 15 Q. And were there markings that indicated the
 16 location of the pipeline?
 17 A. On the outside boundaries of the excavation.
 18 Once it was marked it was smeared out.
 19 Q. What do you mean?
 20 A. Well, you paint a line on the ground and drive a
 21 track hoe over it half a dozen times or more and it just
 22 basically disappears.
 23 Q. But there were stakes on the outside boundaries
 24 north and south of the project?
 25 A. Correct.

20

1 Q. Were you present when any potholing was done to
 2 locate the depth of the line below the surface of the
 3 ground?
 4 A. No, I wasn't. If I was I was unaware of it.
 5 Q. As best you can recall, when was the first time
 6 that you were present at the time that excavation was being
 7 done in the vicinity of that 24-inch tee joint location?
 8 A. I want to -- I'm trying to remember exact. It
 9 would have been March or April of '94 I believe. I don't
 10 remember exactly when I went on site.
 11 Q. So that's the first time you went on site?
 12 A. Yes.
 13 Q. March or April of 1994?
 14 A. Yeah.
 15 Q. Were you present as best you can recall when the
 16 24-inch line was tied into the 16-inch discharge line?
 17 A. Yes.
 18 Q. And were you present for any other excavation in
 19 the vicinity of the 24-inch tee joint?
 20 A. Yes.
 21 Q. When was that?
 22 A. Throughout the project. I mean basically when I
 23 went on site early that year I was there until the
 24 completion of the project.
 25 Q. Did you keep records at -- or did Triad keep

21

1 records of your time related to the work that you did on the
 2 Dakin-Yew pump station project?
 3 A. Yes, through payroll. I did keep a daily
 4 journal which at times I was -- I was not very good at
 5 keeping the paperwork simply because I had too many other
 6 things I was trying to do at one time. I figured the work
 7 was more important getting done than the documentation of
 8 what it was we were doing.
 9 Q. So would you provide your payroll department at
 10 Triad with some kind of an accounting for your time?
 11 A. Yes.
 12 Q. What kind of accounting was that?
 13 A. We would do job costs per job as to what the
 14 breakdown was from the pump station to the treatment plant
 15 itself from underground to pulling wire.
 16 Q. And from that kind of paperwork, what would
 17 payroll do, if you know?
 18 A. I'm not sure. I'm not sure.
 19 Q. Once it left your hands it got into payroll and
 20 you don't know what happens there?
 21 A. Correct. I mean it could be sitting in the
 22 archives as far as I know.
 23 Q. Did there come a time on the Dakin-Yew pump
 24 station project when you were actually now inside the pump
 25 station and installing wiring and control panels and things

22

1 of this sort?
 2 A. Yes. It was about August of 1994 we started the
 3 interior piping of the pump station itself. Up to that
 4 point we had been doing primarily underground work from the
 5 treatment plant down to the pump station, doing work inside
 6 the treatment plant itself, various underground throughout
 7 the site.
 8 In August we had started doing the branch
 9 circuitry for the lighting, convenience receptacles, remote
 10 control panel for the motor control center, the motor
 11 feeders themselves and various other associated conduit runs
 12 and such.
 13 Q. While you were in the pump station in August
 14 doing work on the interior of the pump station as you have
 15 just described, did you observe any excavation activity in
 16 the vicinity of that 24-inch tee joint?
 17 A. Yes.
 18 Q. By this time had the hole for that tee joint
 19 been filled?
 20 A. At that point in time, major civil excavation,
 21 construction of the pipelines and such had been completed.
 22 Q. Describe, if you would, what it looked like.
 23 A. Subgrade at that time was in relation -- I've
 24 got to use a bearing point.
 25 Q. Okay.

23

1 A. The doorway at the pump station itself on the
 2 southwest corner -- or northwest corner or southwest --
 3 southwest corner was approximately a foot to 18 inches above
 4 grade, the floor of the doorway itself. And that was their
 5 rough grade.
 6 Q. So describe what you were doing then and where
 7 you were located.
 8 A. I was standing just inside the doorway of the
 9 pump station itself to it would be the southwest corner, and
 10 there is a remote panel for the motor control center which
 11 operates the turbine pumps for the pump station.
 12 Q. Where is that in relation to the doorway?
 13 A. It would be if you're facing the doorway looking
 14 out, it would be on the left hand side.
 15 I was working on that control panel running
 16 raceways to the various motors.
 17 Q. What does that mean?
 18 A. I was running conduit.
 19 Q. And what day was this, do you recall?
 20 A. I don't remember off the top of my head. I can
 21 hardly remember what I did yesterday.
 22 Q. But you remember this day where you were working
 23 on the motor control panel and installing raceways?
 24 A. Yes.
 25 Q. You are standing there at the door doing this

24

1 work and what was happening?
 2 A. There was a piece of equipment, it was actually
 3 a orange Hitachi moved right up next to the doorway and a
 4 little unnerving. I'm particularly concerned with my
 5 safety, knowing what my surroundings are. And I attribute
 6 part of that to my military background working on the flight
 7 deck of a carrier.
 8 Q. Right. You don't have a lot of Hitachis on the
 9 flight deck of a carrier.
 10 A. No, you don't. And they don't suck either.
 11 Q. That's true. Well, explain just for the
 12 purposes of people who are watching this videotape who might
 13 not know what you are talking about, when you say Hitachi,
 14 what do you mean?
 15 A. A Hitachi is a track hoe. It's an excavating
 16 piece of equipment.
 17 Q. It has a big articulating arm?
 18 A. Correct.
 19 Q. With a shovel at the end?
 20 A. Yes.
 21 Q. Describe the shovel or bucket.
 22 A. That day it was a 24-inch bucket and the bucket
 23 had four teeth on it. It wasn't a scraper bucket which is
 24 basically straight.
 25 Q. Now, you just said that this Hitachi excavator

<p>25</p> <p>1 come up alongside the pump station where you were working.</p> <p>2 What happened next?</p> <p>3 A. I had ducked my head out the door and yelled at</p> <p>4 the operator who was Britton Lukes.</p> <p>5 Q. Britton Lukes?</p> <p>6 A. Yes. And I asked Britt what are you doing. We</p> <p>7 all had a pretty tight working relationship. I mean we've</p> <p>8 all become friends. You have to become friends to get</p> <p>9 something done. If you have an adversarial relationship</p> <p>10 with several people on a construction site it's not fun.</p> <p>11 And he had said that he was digging up the valve</p> <p>12 stem to the 24-inch tee. They had tried to open that tee</p> <p>13 and it was jammed.</p> <p>14 Q. Is that what he explained to you?</p> <p>15 A. Yes. Or actually what he explained to me was</p> <p>16 the fact I was digging up the tee. And I said why. Then he</p> <p>17 explained as to why.</p> <p>18 I thought it was very strange that they were</p> <p>19 digging up something that had been buried for six weeks.</p> <p>20 Q. Okay. And so he said that he had to dig it up</p> <p>21 because the valve stem was frozen. Did he tell you why it</p> <p>22 was frozen?</p> <p>23 A. No. He had no clue.</p> <p>24 Q. Did you later find out why it was frozen?</p> <p>25 A. Yes.</p>	<p>27</p> <p>1 we should do.</p> <p>2 Could we go off record for one moment?</p> <p>3 THE VIDEOGRAPHER: Going off the record. The</p> <p>4 time is approximately 10:25 a.m.</p> <p>5 (Off the record)</p> <p>6 THE VIDEOGRAPHER: Back on the record. The time</p> <p>7 is approximately 10:33 a.m.</p> <p>8 Q. (By Mr. Nicoll) When we broke we were going to</p> <p>9 take a look for a photograph that might help you to describe</p> <p>10 how much of the 24-inch discharge line was visible to you on</p> <p>11 that day in August that you have been describing.</p> <p>12 And we've found an exhibit which has previously</p> <p>13 been marked in this case called Exhibit No. 144 which I'm</p> <p>14 going to ask the witness to hold up and show.</p> <p>15 Do you recognize what Exhibit 144 depicts?</p> <p>16 A. Yes.</p> <p>17 Q. Could you tell us what it is?</p> <p>18 A. It's the 24-inch discharge line.</p> <p>19 Q. What side of the pump station does it show?</p> <p>20 A. South side.</p> <p>21 Q. Now, could you point to a 90 degree bend in the</p> <p>22 line?</p> <p>23 A. That would be right there.</p> <p>24 Q. How much of the line, the discharge line, were</p> <p>25 you able to see on the day in August that you have been</p>
<p>26</p> <p>1 Q. How did you find out?</p> <p>2 A. It was -- well --</p> <p>3 Q. First how did you find out and then tell us what</p> <p>4 it was.</p> <p>5 A. It was just having my ears open paying</p> <p>6 attention.</p> <p>7 Q. Being on the job site?</p> <p>8 A. Correct.</p> <p>9 Q. Why was it frozen?</p> <p>10 A. It had been filled with an overspill of control</p> <p>11 density fill, which is basically sand and concrete.</p> <p>12 Q. CDF?</p> <p>13 A. CDF, correct.</p> <p>14 Q. Did you have any reference points for the</p> <p>15 location of the tee joint on the day that the excavator was</p> <p>16 out there?</p> <p>17 A. Part of the 24-inch line itself was exposed. It</p> <p>18 actually comes out of the pump station at a slight grade</p> <p>19 sloping down towards the west.</p> <p>20 Q. So you could see part of that 24-inch line. Did</p> <p>21 you see it before the 90 degree bend where it comes out at</p> <p>22 the south or after the 90 degree bend?</p> <p>23 A. I'm trying to picture what you are asking me.</p> <p>24 Q. Do you recall -- we have got photographs and we</p> <p>25 can refer to those as well. But in fact maybe that's what</p>	<p>28</p> <p>1 describing?</p> <p>2 A. I would say up to the corner of the pump station</p> <p>3 itself which is approximately ten, fifteen feet.</p> <p>4 Q. Were you actually able to see the tee joint</p> <p>5 which is shown at the sort of midpoint of that?</p> <p>6 A. No, I could not.</p> <p>7 Q. That was still under the earth?</p> <p>8 A. Right.</p> <p>9 Q. Where was the Hitachi excavator?</p> <p>10 A. It was actually right about here on this outside</p> <p>11 corner more towards the doorway on the west side. He was</p> <p>12 pulling the material in this direction across the pipeline</p> <p>13 itself, the 24-inch suction line back this way. And he was</p> <p>14 placing his material back over here on the opposite side of</p> <p>15 the tee.</p> <p>16 Q. Okay. So although we have a visual record of</p> <p>17 what you are describing by using the photograph, I'm going</p> <p>18 to try to put it into words for the written record.</p> <p>19 What you are describing is that the bucket for</p> <p>20 the Hitachi excavator was reaching from a point on about</p> <p>21 somewhere off of the southwest corner of that pump station</p> <p>22 in a southwesterly direction?</p> <p>23 A. Actually --</p> <p>24 Q. Go ahead.</p> <p>25 A. Excuse me, I don't want to interrupt.</p>

<p>1 Q. You describe it.</p> <p>2 A. It was actually more of a southeasterly</p> <p>3 toward -- he was pulling from the southeast to the</p> <p>4 northwest, in that direction, and placing his material</p> <p>5 towards the southwest.</p> <p>6 Q. Let's get our directions correct here. From the</p> <p>7 pump station which direction would be -- there is a water</p> <p>8 treatment plant near the pump station; right?</p> <p>9 A. Correct.</p> <p>10 Q. And where is that in relation to the pump</p> <p>11 station?</p> <p>12 A. It was on the east.</p> <p>13 Q. Then the big reservoirs that were being</p> <p>14 installed, where are those?</p> <p>15 A. The 16 million gallon reservoir is to the</p> <p>16 southwest.</p> <p>17 Q. And then the pipe that's exiting, the 24-inch</p> <p>18 line that's exiting the pump station is to the south?</p> <p>19 A. Correct.</p> <p>20 MR. VERWOLF: Do you want to mark this as an</p> <p>21 additional exhibit and just have him draw on it? That would</p> <p>22 be easier for all concerned.</p> <p>23 MR. NICOLL: What's our next exhibit?</p> <p>24 THE COURT REPORTER: 190.</p> <p>25 MR. NICOLL: Would you mark this as 190?</p>	29	<p>1 Q. How much of the area did the excavator dig up,</p> <p>2 if you can describe?</p> <p>3 A. It was probably a hole fifteen by ten. The</p> <p>4 reason they dig a hole that size is to prevent sloughing</p> <p>5 back in on itself for not only exposing the area of work,</p> <p>6 but also safety.</p> <p>7 Q. How far back did that hole go towards the</p> <p>8 northeast?</p> <p>9 A. To the northeast. It didn't go that far.</p> <p>10 Because on the drawing or picture you see a footing for a</p> <p>11 foundation wall which is right there.</p> <p>12 Q. Yes.</p> <p>13 A. That was already poured. So he couldn't dig</p> <p>14 underneath it without compromising the stability of that</p> <p>15 footing. So he is basically digging from here this</p> <p>16 direction. And he went just past the tee.</p> <p>17 Q. Describe what happened next. You are watching</p> <p>18 him dig. He has told you about the valves frozen and he</p> <p>19 doesn't know why. What happened next?</p> <p>20 A. What happened next is I brought to his</p> <p>21 attention, I questioned aren't you close to the pipeline,</p> <p>22 referring to Olympic Pipe Line's gasline going through</p> <p>23 there.</p> <p>24 Q. Why did you do that?</p> <p>25 A. Safety. I mean, like I said, you've got to</p>	31
<p>1 (Exhibit No. 190 is</p> <p>2 marked for identification)</p> <p>3 Q. Hold up Exhibit 190 just for a moment. Exhibit</p> <p>4 190 is a duplicate of Exhibit 144.</p> <p>5 Now, using Exhibit 190 would you please just</p> <p>6 indicate approximately where it was that the material was</p> <p>7 being pulled out by the Hitachi excavator on the day that</p> <p>8 you are describing?</p> <p>9 A. He was digging in -- okay. This is where the</p> <p>10 excavator was and he was digging in this direction here</p> <p>11 exposing this pipeline. He was placing the material that he</p> <p>12 pulled out in this area over here.</p> <p>13 Q. Hold that up. Now you've described the</p> <p>14 direction that the digging is going on with the red arrow?</p> <p>15 A. Correct.</p> <p>16 Q. And you've described the place where the</p> <p>17 material is being placed with a red X in the upper left hand</p> <p>18 corner of the photograph?</p> <p>19 A. Correct.</p> <p>20 Q. Then you have written exc, e-x-c, to indicate</p> <p>21 the location of the excavator?</p> <p>22 A. Correct.</p> <p>23 Q. How long was the Hitachi excavator digging while</p> <p>24 you were working there in August 1994?</p> <p>25 A. About two and a half hours.</p>	30	<p>1 watch out for other people. Other people will kill you on a</p> <p>2 construction site. And it happens all the time.</p> <p>3 Q. So what did he say?</p> <p>4 A. He said no, the pipeline is ten feet over there</p> <p>5 and he pointed towards the east, more towards the pump</p> <p>6 station itself. And I questioned it. I still questioned</p> <p>7 him. He kept digging. He goes, ah, don't worry about it.</p> <p>8 And I stood there and I watched and I watched. And the next</p> <p>9 thing I hear is metal to metal and a very definite impact.</p> <p>10 Q. How long were you standing there watching before</p> <p>11 the metal to metal impact sound?</p> <p>12 A. Probably five, ten minutes, if that.</p> <p>13 Q. Who else was present when that occurred, if</p> <p>14 anyone?</p> <p>15 A. I had an apprentice by the name of Tim Linderman</p> <p>16 working inside the pump station.</p> <p>17 Q. Tim Linderman?</p> <p>18 A. Linderman.</p> <p>19 Q. Where was he?</p> <p>20 A. He was inside the pump station itself.</p> <p>21 Q. In relation to you, how far away was he?</p> <p>22 A. 25, 30 feet.</p> <p>23 Q. Was he standing at the door watching?</p> <p>24 A. No.</p> <p>25 Q. So anybody else present?</p>	32

33	<p>1 A. No.</p> <p>2 Q. Where was Tom Franklin there?</p> <p>3 A. Not at that time on the site. He had been there</p> <p>4 earlier in the day and later in the day.</p> <p>5 Q. Were there any other IMCO people in the</p> <p>6 immediate area besides Britton Lukes?</p> <p>7 A. No. They had a laborer working on another spot</p> <p>8 on the site and they had their project manager in their</p> <p>9 office.</p> <p>10 Q. Where was the office located?</p> <p>11 A. It was to the northeast in the upper parking lot</p> <p>12 from the pump station.</p> <p>13 Q. In a trailer?</p> <p>14 A. Yes.</p> <p>15 Q. And the office manager, what was his name?</p> <p>16 A. The project manager.</p> <p>17 Q. Project manager, sorry.</p> <p>18 A. The project manager was Paul Krakenberg.</p> <p>19 Q. What was the name of that laborer, if you can</p> <p>20 recall?</p> <p>21 A. I only remember him as Johnny. That's all I've</p> <p>22 ever called him.</p> <p>23 Q. When that loud you described metal to metal</p> <p>24 sound occurred, what happened?</p> <p>25 A. I ran like hell.</p>	35	<p>1 A. I finally -- Paul Krakenberg saw me come running</p> <p>2 by. He stepped out the door as I -- he goes what's going</p> <p>3 on. And I said Britt just hit the pipeline.</p> <p>4 Q. Paul Krakenberg stepped out of what door?</p> <p>5 A. Out of their office door of their office trailer</p> <p>6 itself.</p> <p>7 Q. So you told Paul that Britt, meaning Britton</p> <p>8 Lukes?</p> <p>9 A. Correct.</p> <p>10 Q. Had just hit the pipeline?</p> <p>11 A. Correct.</p> <p>12 Q. What did Paul say?</p> <p>13 A. It wasn't pretty.</p> <p>14 Q. Tell us. We can deal with it.</p> <p>15 A. It was basically aah, shit, now what. It's</p> <p>16 just -- he got pissed immediately.</p> <p>17 Q. What happened next?</p> <p>18 A. We both walked down together to the southeast</p> <p>19 corner of the pump station looking down over the 24-inch</p> <p>20 discharge line in the tee. And at that time Britt and</p> <p>21 Johnny -- Johnny had come down to the scene and they were</p> <p>22 excavating the pipe by hand.</p> <p>23 Q. Using what?</p> <p>24 A. Shovels.</p> <p>25 Q. Where was the excavator at that time?</p>
34	<p>1 Q. Where?</p> <p>2 A. Towards the entrance of the pump station. I was</p> <p>3 probably 250 yards before I stopped.</p> <p>4 Q. Where were you when you heard the sound?</p> <p>5 A. I was standing right in the doorway.</p> <p>6 Q. You say you ran towards the entrance of the pump</p> <p>7 station?</p> <p>8 A. Excuse me. The water treatment plant itself.</p> <p>9 Q. So you ran up the hill?</p> <p>10 A. Yes.</p> <p>11 Q. Back towards the east?</p> <p>12 A. Yes.</p> <p>13 Q. Were you saying anything when you ran?</p> <p>14 A. No. I yelled at Tim to get out of the building</p> <p>15 and took off running.</p> <p>16 Q. Why did you do that?</p> <p>17 A. Because my biggest fear was he actually hit</p> <p>18 Olympic's gas pipeline and there was a rupture. I don't</p> <p>19 know. It just scared the hell out of me.</p> <p>20 Q. Was Olympic's pipeline exposed so it was</p> <p>21 visible?</p> <p>22 A. No, it wasn't.</p> <p>23 Q. At that point?</p> <p>24 A. No.</p> <p>25 Q. What happened next?</p>	36	<p>1 A. It was still in the same location parked with</p> <p>2 the bucket in a parked position.</p> <p>3 Q. While you are walking back down to the pump</p> <p>4 station with Paul Krakenberg did you and he have any</p> <p>5 conversation?</p> <p>6 A. Not that I recollect.</p> <p>7 Q. You just walked down there?</p> <p>8 A. We walked down there. He was a little hot.</p> <p>9 Britt had had a penchant for striking objects that shouldn't</p> <p>10 have been struck.</p> <p>11 MR. FLOYD: I'll move to strike the last part of</p> <p>12 the answer as non-responsive.</p> <p>13 Q. While you were walking down with Paul</p> <p>14 Krakenberg, did he have anything to say that you can recall</p> <p>15 concerning the person who was operating the excavator,</p> <p>16 Britton Lukes, what you were watching, what you've just</p> <p>17 described?</p> <p>18 A. His basic comments were -- he was pissed off.</p> <p>19 Because Britt on several occasions hit objects. He has dug</p> <p>20 up several of my conduit runs, dug up some cathodic</p> <p>21 protection, had dug up a telemetry cable to a flow sensor in</p> <p>22 several different locations on the site throughout the</p> <p>23 project.</p> <p>24 MR. FLOYD: I'll object again. Asked what was</p> <p>25 said, non-responsive, move to strike. Go ahead.</p>

37

1 Q. Did Mr. Krakenberg specifically tell you why he
2 was, as you've described it, hot?
3 A. No, not specifically.
4 Q. Do you recall any of the statements that he made
5 that may have led you to conclude that he was hot, angry?
6 A. His behavior led me to believe that he was hot.
7 Q. Had you had experience on the job involving
8 Britton Lukes which caused you to in any way call into
9 question his abilities as an excavator?
10 A. No. And I say no because in our business stuff
11 or items are struck on a regular basis. It all depends on
12 how much prep you take and knowing what your surroundings
13 are. I mean things happen. I mean we strike stuff on a
14 regular basis. It may have been laid out wrong. It may
15 have been located wrong.
16 Britt was a good operator. I have no problem
17 with Brit's ability to operate that piece of equipment.
18 Q. So this occurred. I'll come back to Britton
19 Lukes in a little while. But this occurred, you observed
20 what you observed. And then you and Paul got back down
21 there and the two of you see Britton and Johnny digging with
22 shovels. What happened next?
23 A. They exposed an area of the pipe that was
24 struck. It was approximately eight feet long and exposed
25 approximately 75, 80 percent of the pipe.

38

1 Q. Which pipe?
2 A. The gas pipeline.
3 Q. How do you know it was the gas pipeline?
4 A. Going through the construction documents it's
5 laid out, the markings on the site as far as the location,
6 lines and such.
7 Q. Where was this area of exposed gas pipeline in
8 relation to the tee joint?
9 A. It was towards the northeast approximately
10 three, four feet.
11 Q. And what did the exterior of the gas pipeline
12 look like?
13 A. It was black. It had kind of a rubber membrane
14 on it.
15 Q. What, if anything, did you notice about the
16 pipeline after it was uncovered?
17 A. I saw a very large dent. It had four distinct
18 teeth marks. It was approximately two, two and a half feet
19 wide in length and about an inch, an inch and a half in
20 depth. The metal was bright, shiny. It was a definite
21 fresh blow. There was no corrosion, nothing.
22 Q. What happened next?
23 A. Paul Krakenberg stated that he wanted them to
24 bury it.
25 Q. What happened next?

39

1 A. I looked at him like he was nuts. And I
2 questioned you can't just bury that.
3 Q. Why?
4 A. Well, number one, you're looking at -- you've
5 degraded the integrity of the corrosion protection on that
6 pipe, plus it's weak. And I brought that up to him. I
7 said, what's going to keep this thing from failing ten,
8 fifteen years from now.
9 Q. What did he say?
10 A. He says, you got a point there. And he started
11 thinking. And he paused momentarily and he turned to his
12 laborer, Johnny, and says I want you to take some of that
13 black asphalt sealer, cover it, and just backfill it.
14 Q. So what happened next?
15 A. They did just what he said.
16 Q. Did you say anything?
17 A. I just shook my head. I said I can't believe
18 you're going to just leave it that way. His statement to me
19 was, and this is a direct quote, don't say a damn word to
20 Franklin, referring to Tom Franklin.
21 Q. How did you feel about that?
22 A. At that point in time or now?
23 Q. Then.
24 A. Excuse me?
25 Q. Then.

40

1 A. Then? I thought it was wrong. But there was
2 not much I could do about it.
3 Q. So did you stay in the vicinity?
4 A. Yes.
5 Q. What happened next?
6 A. I went back to work and was working on my
7 control panel throughout the day. They had finished the
8 work that they had to do on the valve stem, cleared it and
9 they found CDF in there.
10 Q. Did you see all this happening?
11 A. Yeah. I mean I'm working 20 feet away from them
12 just inside the door. You know, now what's going on.
13 They finished the work, the repair work, on the
14 valve itself. They finished the backfill and compaction.
15 And Britt Lukes went about doing some grading with the
16 Hitachi at that time through that whole entire area.
17 Q. Did you observe Johnny or Britt, or whoever,
18 actually applying this black, what did you call it?
19 A. It's an asphalt sealer.
20 Q. An asphalt sealer?
21 A. It's a mastic sealer.
22 Q. Did you watch them apply that?
23 A. Yes, I did.
24 Q. How did they apply it?
25 A. They brushed it on.

41	<p>1 Q. Where did they get the sealer?</p> <p>2 A. It was a product that they used to seal the 60</p> <p>3 and 72-inch lines.</p> <p>4 Q. Do you recall where it was stored?</p> <p>5 A. They had a laydown yard in the upper parking</p> <p>6 yard.</p> <p>7 Q. So did somebody walk up there to get it?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall who that was?</p> <p>10 A. It was Johnny.</p> <p>11 Q. Did Johnny continue to work at the site?</p> <p>12 A. Yes.</p> <p>13 Q. Had he worked at the site previously?</p> <p>14 A. Yes.</p> <p>15 Q. Have you seen John since?</p> <p>16 A. Once.</p> <p>17 Q. Where?</p> <p>18 A. At the federal courthouse here in Seattle. It</p> <p>19 was just hi, how are you doing.</p> <p>20 Q. Do you know why he was at the courthouse?</p> <p>21 A. He had been subpoenaed by the grand jury.</p> <p>22 Q. In connection with the Olympic Pipe Line</p> <p>23 criminal investigation?</p> <p>24 A. Yes.</p> <p>25 Q. Was Paul Krakenberg present while they applied</p>	43	<p>1 Q. What do you mean by grading?</p> <p>2 A. Smoothing out the surface, prepping it for the</p> <p>3 next task at hand, doing some housekeeping as far as getting</p> <p>4 the material on a level surface where you are not working on</p> <p>5 a bunch holes.</p> <p>6 Q. As I have this kind of envisioned in my mind,</p> <p>7 instead of getting the bucket and digging out earth and</p> <p>8 putting it in a big pile, grading would involve scraping the</p> <p>9 bucket along the surface and smoothing the surface?</p> <p>10 A. That is correct. He was --</p> <p>11 Q. Go ahead.</p> <p>12 A. He was doing that in the area to the south of</p> <p>13 the pump station. And there were two two hundred pair of</p> <p>14 phone lines that at that time according to the contract</p> <p>15 documents should have been buried three, three and a half</p> <p>16 feet deep. The locator was incorrect and he had severed one</p> <p>17 and partially damaged the other.</p> <p>18 Q. Britton did?</p> <p>19 A. Yes. And it was in actually anywhere between 12</p> <p>20 and 18 inches deep.</p> <p>21 Q. So the phone lines were shallower than they were</p> <p>22 supposed to be?</p> <p>23 A. Correct.</p> <p>24 Q. And they got damaged?</p> <p>25 A. Yes. I specifically recall that due to the fact</p>
42	<p>1 the mastic?</p> <p>2 A. I don't recall. I don't know whether he went</p> <p>3 back to work or back to work in his office or if he hung</p> <p>4 around. I don't remember exactly.</p> <p>5 Q. Did he have a hand-held radio or phone with him?</p> <p>6 A. Not that I can remember. I don't know.</p> <p>7 Q. Did anybody else from IMCO or elsewhere come</p> <p>8 over to participate in what was happening between yourself</p> <p>9 and Paul and Britton Lukes and Johnny?</p> <p>10 A. No.</p> <p>11 Q. It was just the four of you?</p> <p>12 A. Yes.</p> <p>13 Q. Was there anybody present from Olympic Pipe Line</p> <p>14 while the digging was going on that day in August in the</p> <p>15 vicinity of the 24-inch tee joint?</p> <p>16 A. No.</p> <p>17 Q. Is there any record that you could refer to that</p> <p>18 would aid you in refreshing your recollection as to the</p> <p>19 precise day on which these events occurred?</p> <p>20 A. Yes. Later that day, it was probably three or</p> <p>21 four hours after everything had been backfilled -- this all</p> <p>22 happened early in the morning between 8:30 and 10 -- later</p> <p>23 that day about two o'clock Britt had been doing some</p> <p>24 excavation, not excavation, but actually grading with the</p> <p>25 Hitachi.</p>	44	<p>1 I was responsible for contacting utilities.</p> <p>2 Q. I'm going to hand you pages -- I've opened up</p> <p>3 this exhibit to pages ET0006405.</p> <p>4 MR. FLOYD: What exhibit is it?</p> <p>5 MR. NICOLL: 64.</p> <p>6 Q. And 6406. This is an inspection report.</p> <p>7 MR. FLOYD: What's the number again?</p> <p>8 MR. NICOLL: Exhibit 64. Numbers, the last four</p> <p>9 digits 6405 through 6406.</p> <p>10 MR. FLOYD: Could you let me get ahold of that?</p> <p>11 MR. NICOLL: Yes. In fact, let's go off record</p> <p>12 for a moment while he takes a look at this.</p> <p>13 THE VIDEOGRAPHER: Going off the record. The</p> <p>14 time is approximately 10:57 a.m.</p> <p>15 (Off the record)</p> <p>16 THE VIDEOGRAPHER: Back on the record. The time</p> <p>17 is approximately 11:11 a.m.</p> <p>18 Q. (By Mr. Nicoll) Mr. Graham, you've taken a look</p> <p>19 at pages 6405 and 6406 of Exhibit 64; is that right?</p> <p>20 A. Correct.</p> <p>21 Q. For the record, that's an inspection report,</p> <p>22 report number 120, which we obtained from a company called</p> <p>23 Earth Tech which is the successor I guess of Barrett</p> <p>24 Consulting Group. Who was Barrett Consulting Group? Do you</p> <p>25 remember them?</p>

45

1 A. Barrett was the consulting firm hired by the
 2 City of Bellingham to oversee the construction of this
 3 project.
 4 Q. And Tom Franklin, who did he work for; do you
 5 remember?
 6 A. Well, I'm a little conflicted. I always thought
 7 Tom was an independent contractor working as a subcontractor
 8 to Barrett, or whether he was a direct employee of Barrett I
 9 don't know.
 10 Q. But at any rate, he had some relationship to
 11 Barrett as far as you knew?
 12 A. Correct.
 13 Q. This inspection report refers to activity on
 14 what date?
 15 A. 8/11/94.
 16 Q. Now, on the second page, page 6406, there is
 17 reference to telephone conduit. Do you see that?
 18 A. Yes, it is, at the top of the page.
 19 Q. What does that say?
 20 A. It says telephone conduits in front of southwest
 21 pump station corner fifteen feet from the 72-inch line was
 22 damaged severely by IMCO loader. It was only plus or minus
 23 one and a half feet below grade at the time. About half the
 24 wires were cut. U.S. West personnel on site repairing
 25 wires. Two people -- I'm not sure -- from.

46

1 Q. It's just a guess. From noon?
 2 A. From noon on working on wires.
 3 Q. Now, is what's reported here -- I'm not asking
 4 you to tell us anything about the preparation of this
 5 inspection report. I assume you don't know who prepared
 6 this inspection report or how it was prepared or anything
 7 like that?
 8 A. Tom Franklin's signature is on it is all I know.
 9 Q. But this description of activity, the telephone
 10 conduit being damaged in that location, is that the event
 11 that you referred to before the break?
 12 A. Correct.
 13 Q. So based on that and on this report, are you
 14 able to say whether or not the events that you described as
 15 occurring in August when Britton Lukes struck something and
 16 the Olympic pipeline was dug up, are you able to say whether
 17 those events occurred on August 11, 1994?
 18 A. Both events happened on the exact same day.
 19 Q. So the damage to the telephone conduit and the
 20 damage to the pipeline that you witnessed occurred on
 21 August -- on the same day?
 22 A. Yes.
 23 MR. FLOYD: I'm going to object to the form of
 24 the question. He didn't witness the damage. Go ahead. I'm
 25 just making objections.

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1 Q. At any rate, the events involving the pipeline
 2 and the events involving the telephone conduit both occurred
 3 on the same day?
 4 A. Yes.
 5 Q. Now look at the first page of that report number
 6 120, ET0006405 of Exhibit 64. And on the bottom of the page
 7 it reads excavation of pump station using ram hoe and
 8 Hitachi backhoe is taking several hours, about two-thirds of
 9 day. The operator is back and forth using both pieces of
 10 equipment. One-third of time both pieces are used.
 11 Confining space is an obvious reason in duration. The
 12 excavated material was choking the site. Do you see that?
 13 A. Yes, I do.
 14 Q. You were there on the scene. Does that written
 15 description on this exhibit describe what you witnessed?
 16 A. Yes, it is.
 17 Q. Do you see the reference to equipment in the
 18 upper left hand quadrant of this exhibit?
 19 A. It's the same as 8/10/94.
 20 Q. Flip back to 8/10/94. Do you see inspection
 21 report number 119?
 22 A. Yes, I do.
 23 Q. It's ET0006408. If nobody has that page I can
 24 give it to you.
 25 Do you see the equipment itemized there?

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1 A. Yes.
 2 Q. Is the Hitachi excavator that you saw working on
 3 August 11th listed or itemized there?
 4 A. Yes. It's the Hitachi EX150 backhoe.
 5 MR. NICOLL: I'm going to ask that this next
 6 document be marked, please. Unlike every other day I don't
 7 have a bunch of extra copies of this, but it's not a very
 8 long one.
 9 (Exhibit No. 191 is
 10 marked for identification)
 11 Q. Before I have you take a look at it I'm going to
 12 pass this down and have everyone take a look at it.
 13 Take a look at Exhibit 191. Can you tell us
 14 what that is?
 15 A. It looks like a payroll record for Triad
 16 Electric.
 17 Q. Do you have any knowledge about when or how
 18 those records are prepared?
 19 A. Vague as far as certified payroll is concerned.
 20 I'm assuming that they take my field reports and generate
 21 their documents from that.
 22 Q. But you don't know?
 23 A. No. I have no workings inside the office
 24 itself.
 25 Q. This Exhibit 191 purports to be a record, a

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1 certified payroll record for job 9411, prime contractor IMCO
 2 General Construction contract for Dakin-Yew pump station
 3 for the week ending 8/17/94. And then it has on there a
 4 column for Thursday, the 11th. Do you see that?
 5 A. Yes, I do.
 6 Q. Do you see your name on the report, Exhibit 191?
 7 A. Yes, I do.
 8 Q. Does that confirm that you were on the job on
 9 August 11, 1994?
 10 A. Yes. Yes, it does.
 11 Q. Also look back at Exhibit 64, report 120.
 12 You've got it right in front of you. Do you see where at
 13 the top of it there is a space for subcontractors?
 14 A. Yes.
 15 Q. Next to it it reads Triad - two electricians?
 16 A. That's correct.
 17 Q. How many electricians were from Triad on the job
 18 that day?
 19 A. Myself and one other.
 20 Q. I'm going to take out --
 21 MR. FLOYD: Could I see Exhibit 191 while you
 22 are doing that?
 23 MR. NICOLL: Sure.
 24 MR. FLOYD: Thanks.
 25 Q. Exhibit 116. Oh. Exhibit 191 lists a guy named

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1 Zangari as -- unless I'm wrong. Is that right, Francis?
 2 MR. FLOYD: Kenneth C. Zangari, Z-a-n-g-a-r-i.
 3 Q. As the other worker on the job that day. Is it
 4 possible your recollection of who was working with you that
 5 day is in error?
 6 A. It's very possible.
 7 Q. So it might be Zangari rather than who is the
 8 other guy you mentioned?
 9 A. Tim Linderman.
 10 Q. This other fellow is somebody who was on the job
 11 sometimes?
 12 A. Yes.
 13 Q. And Zangari is also someone who was on the job
 14 sometimes?
 15 A. Yes.
 16 Q. When is the last time you have spoken with Ken
 17 Zangari?
 18 A. Probably two, three years ago.
 19 Q. I would ask you to take a look -- and we'll take
 20 a break pause so you can do that -- Exhibit 116 and
 21 specifically the drawings attached to Exhibit 116.
 22 MR. FLOYD: What was the exhibit?
 23 MR. BENINGER: 116.
 24 MR. NICOLL: 116.
 25 MR. BENINGER: Any drawing in particular?

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1 MR. NICOLL: Yes, the ones that deal with the
 2 revision.
 3 A. Okay.
 4 Q. Do you recall having seen those drawings before?
 5 A. Yes, I have seen them.
 6 Q. Those drawings part of Exhibit 116, did they
 7 show the location of the Olympic pipeline as best you can
 8 recall?
 9 A. Yes, they did.
 10 Q. Are those the drawings that deal with the
 11 revised location of that tee intersection?
 12 A. I believe so. Just briefly looking at them they
 13 do show the revised location.
 14 Q. Is there a drawing P-1 there?
 15 A. Yes.
 16 Q. Can you hand that to me, please? I've opened up
 17 drawing P-1 which is part of Exhibit 116 and it shows
 18 revised pump station discharge pipe 5/13/94 as the latest
 19 revision. Do you see that?
 20 A. Yes.
 21 Q. I wonder if using this drawing you would be able
 22 to indicate to us the general area where you saw the
 23 material cleared away from what you described as the Olympic
 24 pipeline after hearing the sound of metal striking metal and
 25 your conversation with Paul Krakenberg. Take a moment and

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1 look at that drawing and see if you can tell us.
 2 MR. BENINGER: I didn't have a P-1 in the
 3 attachments to Exhibit 116.
 4 MR. FLOYD: I didn't either.
 5 MR. BENINGER: I don't know if you want to make
 6 that separate.
 7 MR. NICOLL: For the record, those were
 8 delivered later that morning. I remember there were three
 9 or four oversized drawings that did not initially make it in
 10 the package of material during day two of Tom Franklin's
 11 deposition and they were delivered later that same morning.
 12 So everybody has received a stack of those drawings.
 13 MR. FINEGOLD: They were received here?
 14 MR. NICOLL: Here. It's an exhibit already.
 15 MR. BENINGER: Are these all part of 116?
 16 MR. NICOLL: They are all part of 116, that's
 17 right.
 18 A. I'm trying to --
 19 Q. You're trying to figure out where north and
 20 south is?
 21 A. No. I know exactly where I'm at. I'm trying to
 22 figure out what you're asking me.
 23 Q. What I want to know is where did you see the
 24 damage on the pipeline.
 25 A. It's right here.

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1 Q. Okay.

2 MR. FLOYD: I'm going to object to the form of

3 the question. There has been no testimony that -- I will

4 withdraw that -- damage to the pipeline. He didn't say it

5 was damaged. He talked about what he saw. Go ahead.

6 Q. Do you see the dashed line indicating Olympic

7 pipeline?

8 A. Yes, I do. It's right here. It travels this

9 direction.

10 Q. And then down?

11 A. Yes.

12 Q. Is that location of the pipeline, can you tell

13 us whether or not that as shown on the drawing here, drawing

14 P-1, does that location of the pipeline accord with your

15 recollection of where it was marked at the construction

16 site?

17 A. Approximately, yes.

18 Q. Are you able to using P-1 show us the

19 approximate location of the damaged pipe, whatever pipe it

20 was, that you saw on August 11th?

21 A. Yes. It was right in this vicinity right here.

22 Q. I'm going to hand you a green magic marker and I

23 would ask you to highlight the area that you just pointed

24 to.

25 A. (Witness complies).

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1 Q. Now, if you would please take Exhibit 116

2 drawing P-1 and hold that up. And while you do I'm going to

3 point -- you point. There you go. And the area that you

4 are pointing to on the dashed line, the Olympic pipeline, is

5 the area that you say you saw damage on on August 11, 1994?

6 A. Correct.

7 Q. I would like to take you back to Exhibit 191 for

8 a moment. I know that you didn't prepare Exhibit 191.

9 A. Correct.

10 Q. You testified earlier that you don't have

11 specific knowledge about how documents like that are

12 prepared at Triad. But notice the number of hours reported

13 for you for August 11th. How many hours is reported?

14 A. Four.

15 Q. Does that comport with your recollection of how

16 many?

17 A. No.

18 Q. Tell us how long you recall working on August

19 11th.

20 A. We worked a ten hour day that day. As to why

21 this certified payroll states only four, I can't tell you

22 why. The only thing I could speculate, and this is purely

23 speculation and it would be wrong on my part to say in this

24 indeed happened, would be that Triad backcharged IMCO for

25 our time dealing with the telephone cables that day.

55

1 And it specifically states in the daily

2 inspection report that two men prepping conduits and we were

3 doing that.

4 Q. You were doing what?

5 A. Prepping the conduits for U.S. West so they

6 could repair their cables and get the cable back inside the

7 conduit.

8 Q. How much time did you spend prepping those

9 conduits?

10 A. I spent most of the day, the rest of the day. I

11 don't remember off the top of my head exactly how long we

12 were at that. All I know is we were there all afternoon.

13 Q. After the mastic, or not mastic or whatever the

14 material was that you say was painted on, the asphalt repair

15 material was painted on the pipeline, what did you see

16 happen next? What did you observe next?

17 A. I observed IMCO backfill and compact that area.

18 Q. How did they backfill it?

19 A. With the loader, the Cat 950 loader.

20 Q. Who was operating the Cat 950 loader?

21 A. Britt.

22 Q. Britton Lukes did that?

23 A. Yes.

24 Q. Could you describe for us how this backfilling

25 occurred? Physically what was done.

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1 A. Physically they -- once they decide they are

2 going to backfill they dump a portion of the material --

3 they typically do it in lifts. They will backfill it and

4 bring the compactor over and compact it, put another lift of

5 fill on it, compact it and so on and so forth until they

6 have reached the grade at which they want to be at.

7 Q. Is that how it was done on that occasion?

8 A. Yes.

9 Q. Did he have any assistance?

10 A. Not that I can remember.

11 Q. Do you recall how long it took him?

12 A. About an hour.

13 Q. Approximately what time of day was the

14 backfilling of that area completed?

15 A. Mid morning.

16 Q. Could you give us a time range?

17 A. 10:30, 11. I'm not sure. I don't remember

18 exactly.

19 Q. And when that area that you have described as

20 having been dug up to examine the damage to the pipeline was

21 excavated earlier in the morning, do you recall seeing an

22 irregularly shaped piece of concrete?

23 A. No.

24 Q. So nothing like that was there?

25 A. No, not that I recall seeing.

<p>57</p> <p>1 Q. Did the issue of the damage to the pipeline come 2 up in discussion at any other time during the day on August 3 11th?</p> <p>4 A. Not specifically. I mean in passing, you know, 5 a fun ribbing, you know, giving somebody a hard time. I 6 remember giving Britt a hard time after he hit the phone 7 lines. Gee, Britt, now what are you going to hit. Just 8 red-assing him. He felt bad enough as it was after -- you 9 know, he was having a bad day.</p> <p>10 MR. FLOYD: I'll move to strike the last part of 11 the answer as non-responsive. Go ahead.</p> <p>12 Q. What, if anything, did Britt Lukes say in your 13 presence about what had happened to that pipeline?</p> <p>14 A. I can't remember specifically what was said.</p> <p>15 Q. Do you have a sense of -- well, how did he 16 behave? How was he behaving after discovery of the damage 17 to the pipeline?</p> <p>18 A. He was behaving like he was having a really bad 19 day.</p> <p>20 Q. That's how he was behaving?</p> <p>21 A. Yeah.</p> <p>22 Q. After the two guys, Britton and Johnny, were 23 down in that hole and exposing the pipeline with shovels, do 24 you recall Johnny saying anything?</p> <p>25 A. No, I don't.</p>	<p>59</p> <p>1 A. S-e-a-m-a-n or m-e-n. 2 MR. FLOYD: Thank you. 3 MR. NICOLL: He's in the Triad records. 4 MR. FLOYD: Okay. 5 Q. You said you may have but you don't recall 6 specifically. What causes you to think that? 7 A. I just don't remember. There is a lot of events 8 transpired over the last six years that I don't remember 9 exactly who I said what to and when. 10 Q. Did you make a written report of what you 11 observed? 12 A. I thought I did. I thought I had put it in my 13 daily journal. I have not seen those records since I left 14 Triad or since I left that project. 15 Q. You mentioned this daily journal before. I want 16 to ask you some questions about that. Did you keep a daily 17 journal on the job? 18 A. I attempted to. I would probably out of a ten 19 day period I might do it five days. It was kind of a hit 20 and miss kind of thing depending on how our workload was and 21 where we were at. 22 Q. Was this daily journal on a preprinted form? 23 A. Yes, it was. 24 Q. So it was a preprinted Triad form? 25 A. Correct.</p>
<p>58</p> <p>1 Q. How old was he? 2 A. Mid to late thirties. 3 Q. And you say you saw him recently down at the 4 federal courthouse; is that right? 5 A. That's correct. 6 Q. Did you have any discussions with your co-worker 7 about what you observed when the pipeline was uncovered? 8 A. I'm sure I did. Specifics I don't remember. 9 Q. Do you have any recollection of how your 10 co-worker -- well, do you have any recollection of your 11 co-worker reacting in one way or another to information 12 about the pipeline? 13 A. I don't. 14 Q. Where did you go that night after work; do you 15 remember? 16 A. I don't remember specifically. 17 Q. Did you tell anybody else? 18 A. Not that I can remember. I may have told 19 Marshall Seaman who was my project manager, but I don't 20 remember exactly. 21 Q. Marshall Seaman, S-e-a-m-a-n? 22 A. Yes. 23 Q. From Triad? 24 A. Triad Electric. 25 MR. FLOYD: Could you spell his last name?</p>	<p>60</p> <p>1 Q. Describe it physically for us. 2 A. Basically it consists of day, date, weather 3 conditions, number of manpower -- your manpower, rental 4 equipment, the type of work going on, hindrances by other 5 crafts, phone calls, inspections, a couple different 6 miscellaneous items. 7 Q. So those are the different fields I guess that 8 you could fill in on this form; is that right? 9 A. Correct. 10 Q. What did it look like physically? Was it a 11 tablet, a bound book, what was it? 12 A. It was tablet. It was a tablet with not so much 13 a carbon copy, but it had a duplicate copy. 14 Q. It didn't have the carbon paper between it but 15 if you press on one it would make it. 16 A. Correct. 17 Q. Like one of those yellow pieces of paper 18 underneath? 19 A. Yes. 20 Q. And what would you do with these daily reports? 21 A. I would send them back to the office with my 22 weekly time report. 23 Q. You would do that on a weekly basis? 24 A. Yes. 25 Q. Do you know what the office did with the</p>

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1 reports?
 2 A. I'm assuming that the project manager would
 3 review them and they would be filed for future reference.
 4 Q. But I understand that's what you assumed. But
 5 do you know what they do with them?
 6 A. No, not for a fact.
 7 Q. You say you haven't seen them since.
 8 A. Mm-hmm.
 9 Q. No?
 10 A. Mm-hmm.
 11 Q. I'm sorry. You've got to answer verbally.
 12 A. No. No, I have not.
 13 Q. Have you tried to locate them?
 14 A. No.
 15 Q. Has anybody else tried to locate them to your
 16 knowledge?
 17 A. I believe the federal government was trying to
 18 get copies of those.
 19 Q. Did the federal government ever provide you with
 20 copies of those reports?
 21 A. No.
 22 Q. Would an event of this sort where a worker
 23 employed by a different employer had struck a pipe like the
 24 Olympic pipeline, would an event of that sort be the kind of
 25 event that you would usually enter into one of your daily

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1 reports?
 2 A. Absolutely.
 3 Q. Do you have a recollection of having done so or
 4 are you just remembering based on your usual practice?
 5 A. I have a distinct belief that I did do that. As
 6 far as certainty, I can't remember. I don't remember.
 7 Q. Do you recall any conversations with anyone
 8 concerning this pipeline damage after the workday was
 9 finished on August 11, 1994?
 10 A. Not that I can remember.
 11 Q. You say you thought you maybe would have said
 12 something to Marshall Seaman; right?
 13 A. Right.
 14 Q. You say you think you might have put it in your
 15 daily reports?
 16 A. Right.
 17 Q. Did you convey information about what you
 18 observed on August 11, 1994 to anyone in any other way?
 19 A. I may have said something to the U.S. West
 20 repairman while we were working with them.
 21 Q. Do you recall who the U.S. West repairman was?
 22 A. I can see his face. I know the individual, but
 23 I can't remember his name. I want to say it was Girer.
 24 Q. Spell as best you can.
 25 A. G-i-r-e-r.

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1 Q. Girer?
 2 A. Yeah. I believe he is now retired from the
 3 phone company.
 4 Q. How old was he at the time or how old did he
 5 appear?
 6 A. About 60.
 7 Q. Okay. Did you have any sense or feeling about
 8 the adequacy of the attempt to repair, if that's what it
 9 was, the damage that you saw in the pipeline?
 10 A. Common sense told me it wasn't right.
 11 Q. Did you call Olympic Pipe Line about that?
 12 A. No, I did not.
 13 Q. Did you call any federal, state, local
 14 government agencies?
 15 A. No, I did not.
 16 Q. Did you call Paul Krakenberg's superior at IMCO,
 17 Mr. Imhof?
 18 A. No, I did not.
 19 Q. Did you call anybody at Barrett Construction or
 20 bring it to Tom Franklin's attention?
 21 A. No.
 22 Q. Mark, why not?
 23 A. In retrospect the only thing I can think of is
 24 watching out for my job. That's the only thing I can think.
 25 I don't know. I really couldn't answer that as to why I

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1 didn't do it at that time. A lack of maturity, I couldn't
 2 tell you. A lack of fully understanding the ramifications
 3 of what transpired, I don't know.
 4 Q. So time went by; right?
 5 A. Hm-mm.
 6 Q. And everybody of course became aware of the
 7 explosion and fire on June 10, 1999. How did your hearing
 8 that news -- well, do you remember where you were and what
 9 you were doing?
 10 A. I was on Interstate 5 trying to get to the Jerry
 11 Fields ball fields adjacent to the burn zone. I was
 12 supposed to be playing a softball game. And I was probably
 13 two miles south of Ferndale when I saw the smoke plume. And
 14 then I switched over to the radio listening to what was
 15 transpiring at that time.
 16 I went to the union hall or tried to go to the
 17 union hall on State Street to participate in a union
 18 election which they had closed the hall. Then went to the
 19 ball fields which I found were closed at that time also due
 20 to the evacuation.
 21 Q. Did you talk to anybody about what was
 22 happening?
 23 A. I talked to several people, other union members
 24 that were at the hall trying to figure out what was going
 25 on. All we knew is there was a very large explosion and

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1 there was a lot of speculation and rumors as to what
2 actually transpired.

3 Q. What kind of speculation and rumors were you
4 hearing?

5 A. I heard a whiskey still. I mean that was one of
6 the things that was broadcast on the radio. They really
7 didn't know.

8 Q. At that stage?

9 A. No.

10 Q. When did you first become aware that what had
11 happened was that there was a rupture and a leak from the
12 pipeline?

13 A. The following morning, the 12th -- or the 11th,
14 excuse me.

15 Q. Do you recall where you were when you found that
16 out?

17 A. I was working at Arco at the Cherry Point
18 refinery.

19 Q. What, if anything, did you do when you heard
20 that it was the pipeline that had given way?

21 A. I was really curious. Because, I mean, it threw
22 questions out there, where. All I heard was Whatcom Creek.
23 I thought I had heard that it was at one of the creek
24 crossings and various other things, but I never heard
25 anything in regards to the pump station.

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1 Q. So what happened next?

2 A. I went throughout the day working. Got home
3 that night. Our game was cancelled and I was calling the
4 members of the team letting them know that we were going to
5 be rescheduled at a later date.

6 I had called one of the individuals that I
7 played ball with, Mike Lee.

8 Q. Who is he?

9 A. He is an employee of the City of Bellingham. He
10 works for the water department. And Mike and I started
11 talking. And I asked so what happened. I questioned him
12 because I knew that he was working up in that area.

13 And I said what happened. And he told me the
14 water treatment plant blew up. And I said what. He says,
15 yeah, the water treatment plant blew up. I said let me
16 guess. It blew up 15 to 25 feet off the southwest corner of
17 the pump station. And the first words out of his mouth was
18 how do you know.

19 And I said I was there at the construction of
20 the pump station. And I saw the pipe struck.

21 Q. What did he say?

22 A. He was dumbfounded. He couldn't believe I
23 actually had pinpointed with no information at all. I mean,
24 at that time it wasn't public record. There was no
25 photographs, no nothing.

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1 Q. And this fellow, Mike Lee, he is somebody who is
2 known to you obviously?

3 A. Yes.

4 Q. Plays on your softball team?

5 A. He did. We did play. I'm no longer playing.

6 Q. What is the name of that team?

7 A. Bellingham Blaze Softball Club.

8 Q. Do they still play?

9 A. I'm not certain. I'm no longer active in the
10 softball scene.

11 Q. Any particular reason why not?

12 A. I'm too old. I'm tired of waking up Monday
13 morning hurting.

14 Q. You say Mike Lee was a City of Bellingham
15 employee. Do you know what he did for the City?

16 A. He works for the water department.

17 Q. Do you know what his position is?

18 A. I couldn't tell you exactly what his title is.

19 Q. Do you know where his office is?

20 A. I believe he works out of the public works
21 office on Pacific Street. I know I had met him there a
22 couple times after work.

23 Q. Any reason you can think why he wouldn't
24 corroborate your story, this description?

25 A. No.

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1 Q. What happened next? After you spoke with Mike
2 Lee you told him where --

3 A. I kind of kept my mouth shut.

4 Q. Why?

5 A. Part of it is fear.

6 Q. Fear of what?

7 A. Various different things. One was my general
8 safety. I know it was probably paranoia, but it's just
9 something I didn't want to get involved in. I knew my gut
10 feeling was telling me what was right and what I should do
11 and it was just convincing myself to do so, and that was to
12 step forward.

13 Q. How long did you go before you actually did step
14 forward?

15 A. It was about five months. I had been talking to
16 a friend and unbeknownst to me who his father was. I was
17 just talking with him in general conversation, the subject
18 came up and we discussed what I had seen. And this
19 individual, Greg Davis, his eyes lit up and he couldn't
20 believe what I had just told him.

21 He goes, would you mind talking to my dad. And
22 I looked at him like who is your dad. And he said his dad
23 was C. Bob Davis who was working as an investigator for the
24 plaintiffs' attorneys and that's what initially started me
25 talking. And I talked with his father a couple of times

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1 briefly, and shortly thereafter I contacted the NTSB.
 2 Q. Do you know whether C. Bob Davis is the same C.
 3 Bob Davis who works for Mr. Beninger?
 4 A. Yes.
 5 Q. He does?
 6 A. Yes, he does.
 7 Q. So after talking with Mr. Davis those times what
 8 did you do next?
 9 A. I contacted the NTSB. I'm trying to remember
 10 the individual's name. I can't remember his name. Met with
 11 him, gave him a statement as to what I saw.
 12 Q. Was this a written statement?
 13 A. Yes. There is a transcript that they have and I
 14 don't have a copy of it.
 15 Q. You signed this statement?
 16 A. Yes, I believe I did. Shortly thereafter I
 17 contacted Mr. Lincoln with the U.S. Attorney's office here
 18 in Seattle.
 19 Q. Why?
 20 A. More out of concern as to my own general safety.
 21 Q. Had you received any threats or anything like
 22 that?
 23 A. No. I've kind of hid out. As you well know,
 24 I'm very hard to get ahold of.
 25 Q. Yes.

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1 A. It's by choice.
 2 Q. Yes, I understand that. How did you know to
 3 call --
 4 MR. FLOYD: Counsel, don't comment on the
 5 evidence and testifying. If you are implying there is some
 6 threat against this guy's life or something, you're going to
 7 have to prove that other than making comments on the record.
 8 So go ahead and just ask questions.
 9 MR. NICOLL: I certainly didn't mean to imply
 10 that. I just meant I understand he didn't want to be the
 11 center of a lot of attention. That's all.
 12 THE WITNESS: May I --
 13 MR. FLOYD: I don't think that's been
 14 established either. It may be the opposite if we're
 15 testifying. So why don't you just ask him questions.
 16 THE WITNESS: May I interject one moment?
 17 MR. FLOYD: If there's a question pending you
 18 can answer it.
 19 THE WITNESS: Okay. Thank you.
 20 Q. Is there anything you would like to say to Mr.
 21 Floyd?
 22 A. No, not at this time.
 23 Q. How did you know to contact Mr. Lincoln?
 24 A. The individual with the NTSB referred me to him.
 25 Q. What happened next?

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1 A. I had a meeting with the U.S. Attorney's office,
 2 the EPA and the Department of Transportation in regards to
 3 what I've testified here. And shortly thereafter I received
 4 a subpoena to appear before the grand jury.
 5 Q. Have you now testified before the grand jury?
 6 A. Yes, I have.
 7 Q. I'm going to want to go through some photographs
 8 after the break, so I think now is a good time to take a
 9 break for lunch.
 10 THE VIDEOGRAPHER: Going off the record. The
 11 time is approximately 11:56 a.m. This is the end of tape
 12 number one in the Mark Graham deposition. The time is
 13 approximately 11:58 a.m. Going off the record.
 14 (Noon recess)
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1
 2 AFTERNOON SESSION
 3 June 27, 2000
 4 1:05 p.m.
 5
 6 (Exhibit Nos. 192 to 204
 7 are marked for identification)
 8 THE VIDEOGRAPHER: Back on record. This is the
 9 beginning of tape number two in the deposition of Mark
 10 Graham. The time is approximately 1:05 p.m.
 11
 12 EXAMINATION
 13 BY MR. NICOLL:
 14 Q. Mr. Graham, welcome back. During the break I
 15 had some colored xerox copies of selected photographs from a
 16 set of photographs that were provided to us by a company
 17 called Earth Tech which is the successor to Barrett
 18 Consulting.
 19 And these are photographs, we understand anyway,
 20 that were taken at the job site at various different times
 21 by Tom Franklin. Okay?
 22 A. Mm-hmm.
 23 Q. Before I ask you about the photographs which we
 24 previously had numbered, I wanted to ask you did you take
 25 any photographs of your own at the job site?

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1 A. I did at one time.
 2 Q. Do you recall when you took the photographs,
 3 about when during the job?
 4 A. About June of '94.
 5 Q. Did you take any photographs on August 11, 1994?
 6 A. No, I didn't.
 7 Q. Do you know where your photographs are now?
 8 A. No.
 9 Q. You can't find them?
 10 A. Ex-girlfriend thought I didn't need them and
 11 tossed them.
 12 Q. That was helpful. Starting with the first
 13 photograph that you have in front of us, would you tell us
 14 what exhibit number that is, please?
 15 A. That's 192.
 16 Q. Could you hold it up for the camera?
 17 A. (Witness complies).
 18 Q. I realize you don't know anything --
 19 MR. FLOYD: Can you hold it up one more time? I
 20 missed it. Thank you.
 21 Q. Do you know anything about how the date got in
 22 the lower right hand corner of Exhibit 192?
 23 A. I'm assuming that it was dated by the camera.
 24 Q. This is a different question. I understand that
 25 you are assuming it was dated by the camera, but you didn't

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1 take the picture; right?
 2 A. Not that I'm aware of. I didn't have a camera
 3 that was capable of doing such.
 4 Q. So I'm not going to ask you to verify the dates
 5 on these photographs or anything like that. But first of
 6 all, can you tell us what Exhibit 192 is a photograph of?
 7 A. That is an exhibit of the second floor slab
 8 demolition above the soda ash silos inside the water
 9 treatment plant itself.
 10 Q. So this is not a photograph of anything in the
 11 pump station?
 12 A. No, it is not.
 13 Q. So just so you know, in a hurry I just ran
 14 through and tried to pull out photographs that I could find
 15 around the August '94 time frame, so some of these might not
 16 mean anything.
 17 Does this have anything to do with the pipeline
 18 rupture as far as you can tell, Exhibit 192?
 19 A. No.
 20 Q. The next photograph, would you hold it up and
 21 tell us what exhibit number it is?
 22 A. Exhibit 193.
 23 Q. Let the people down at the end see.
 24 MR. FLOYD: Can you hold that up again, please?
 25 Q. Can you tell what this is a photograph of?

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1 A. This is a photograph of the south end of the
 2 pump station, of the Dakin-Yew pump station.
 3 Q. Do you see in the foreground of the photograph
 4 there seems to be an orange thermos sitting on top of it?
 5 A. Correct.
 6 Q. Can you identify what that object is that the
 7 thermos is sitting on?
 8 A. That is a 24-inch discharge line.
 9 Q. Is that the 24-inch discharge line that you also
 10 identified in Exhibit 190?
 11 A. Yes.
 12 Q. I can't really read the date. Can you read that
 13 date stamp in the lower right hand corner of that
 14 photograph?
 15 A. It almost looks like 10/2 or 10/3/94.
 16 MR. BENINGER: I thought it was 7/28 myself.
 17 MR. NICOLL: I thought it was 8/10.
 18 MR. VERWOLF: I can't see it at all.
 19 Q. Well, that's neither here nor there.
 20 A. 7/23/94.
 21 Q. It's hard to read. Based on the -- forget the
 22 date for a moment and let's look at the photograph.
 23 Based on the activity that's occurring in this
 24 photograph and the level of completion of the pump station,
 25 can you tell us approximately when this photograph would

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1 have been taken?
 2 A. That would have been prior to what I saw.
 3 Q. So this is a photograph of what it looked like
 4 prior to August 11, 1994?
 5 A. Correct.
 6 Q. Do you see where the 24-inch discharge line
 7 enters the ground or where it's covered after that 90 degree
 8 bend in the bottom of the photograph?
 9 A. Yeah.
 10 Q. Is that the same approximate location where it
 11 entered the ground on August 11, 1994?
 12 A. Plus or minus a couple feet.
 13 Q. Would you circle that spot using the red marker
 14 I threw at you earlier and just circle it and mark it A if
 15 you wouldn't mind on Exhibit 193.
 16 A. (Witness complies).
 17 Q. Thanks.
 18 MR. PLATIS: Could he show us that and also show
 19 it to the camera, please?
 20 Q. Show the camera.
 21 A. (Witness complies).
 22 Q. Thanks. Do you recognize by the way any of the
 23 people in the photograph?
 24 A. The individual painting the wall is Johnny.
 25 Q. So the person painting the wall is Johnny. Why

<p>77</p> <p>1 don't you circle Johnny.</p> <p>2 A. (Witness complies).</p> <p>3 Q. And hold that up to the camera.</p> <p>4 A. (Witness complies).</p> <p>5 Q. All right. Now anybody else?</p> <p>6 A. The gentleman bending over, I'm not sure who he</p> <p>7 is, but no.</p> <p>8 Q. Do you recognize any of the gear in the</p> <p>9 photograph?</p> <p>10 A. Yes.</p> <p>11 Q. Tell us what you see.</p> <p>12 A. The piece of equipment they call the ram hoe</p> <p>13 which is basically the compactor and the Hitachi in the</p> <p>14 background.</p> <p>15 Q. So the ram hoe that's in the foreground, that's</p> <p>16 the John Deere?</p> <p>17 A. Correct.</p> <p>18 Q. Then the Hitachi, you can just basically see the</p> <p>19 boom in the background; is that right? Or the arm; is that</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. The next photograph is Exhibit 194; is that</p> <p>23 right?</p> <p>24 A. Correct.</p> <p>25 Q. Could you hold it up for the camera? This is a</p>	<p>79</p> <p>1 station. The construction of the reservoir and the pump</p> <p>2 station water treatment plant facilities were two separate</p> <p>3 contracts, two separate general contractors.</p> <p>4 Q. And you didn't work on the reservoir contract?</p> <p>5 A. No.</p> <p>6 Q. And you didn't see anything like is shown in</p> <p>7 Exhibit 194 in the pump station area?</p> <p>8 A. No.</p> <p>9 Q. So let's look at 195. And for sake of speed,</p> <p>10 let me just ask you to confirm that 195 appears to be a</p> <p>11 photograph of the same section that is depicted in 194?</p> <p>12 A. Correct.</p> <p>13 Q. Let's move on. Photograph Exhibit 196, could</p> <p>14 you hold that up and show the guys at the end of the table,</p> <p>15 please?</p> <p>16 A. (Witness complies).</p> <p>17 Q. Can you tell us, please, what is Exhibit 196 a</p> <p>18 photograph of, if you know?</p> <p>19 A. It's soda ash silos.</p> <p>20 Q. So this is in the water treatment plant?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Do you recognize the person in the photograph?</p> <p>23 A. No, I don't.</p> <p>24 Q. And is there a date stamp on this photograph</p> <p>25 that you can see?</p>
<p>78</p> <p>1 photograph that --</p> <p>2 MR. FLOYD: Can we see a copy this way too?</p> <p>3 A. Sure.</p> <p>4 MR. FINEGOLD: Are these in order so we know</p> <p>5 down at this end? Did you number them in the order we've</p> <p>6 got them sitting on the packets here?</p> <p>7 MR. NICOLL: Your packet came with the --</p> <p>8 MR. VERWOLF: Don't count on it.</p> <p>9 MR. NICOLL: Don't count on it.</p> <p>10 MR. FLOYD: Chris, there is two that are in</p> <p>11 here. Is it this one right here with the black pipe in the</p> <p>12 middle of it?</p> <p>13 MR. NICOLL: Let me see here.</p> <p>14 MR. FLOYD: The black pipe is in the middle of</p> <p>15 it. Okay. I've got it.</p> <p>16 Q. This photograph has a clearly readable 8/11/94</p> <p>17 in the lower right hand corner. Do you see that?</p> <p>18 A. Mm-hmm. Yes.</p> <p>19 Q. Do you know what this is a photograph of?</p> <p>20 A. I think I do.</p> <p>21 Q. Okay.</p> <p>22 A. I've never been here. I believe that's the</p> <p>23 interior of the 16 million gallon reservoir.</p> <p>24 Q. So is it a different section of the --</p> <p>25 A. It's a separate contract from the Dakin-Yew pump</p>	<p>80</p> <p>1 A. Yes, there is.</p> <p>2 Q. What is it?</p> <p>3 A. 8/11/94.</p> <p>4 Q. Were you up in the soda ash silos at all on</p> <p>5 8/11/94?</p> <p>6 A. I'm sure I walked through there, looked at the</p> <p>7 scope of work that was being performed and what impact it</p> <p>8 was going to have upon us.</p> <p>9 Q. The soda ash silos are actually in that water</p> <p>10 treatment plant behind the pump station; is that right?</p> <p>11 A. That is correct.</p> <p>12 Q. What's the next photograph? Hold it up, please?</p> <p>13 A. (Witness complies).</p> <p>14 MR. BENINGER: What is that number?</p> <p>15 A. 197.</p> <p>16 MR. BENINGER: Thank you.</p> <p>17 Q. Exhibit 197 is also a photograph of the soda ash</p> <p>18 silos?</p> <p>19 A. Yes, that is correct.</p> <p>20 Q. And it's also dated 8/11/94?</p> <p>21 A. Yes.</p> <p>22 Q. Let's move on. Could you hold up Exhibit 198?</p> <p>23 Show the guys. Thank you.</p> <p>24 A. (Witness complies).</p> <p>25 Q. Do you recognize what Exhibit 198 depicts?</p>

<p>81</p> <p>1 A. Yes. It's the branch circuits and controls from 2 the water treatment plant to the Dakin-Yew pump station. 3 MR. FLOYD: Could you read it back, please, his 4 answer. 5 (The previous answer was 6 read by the reporter) 7 MR. FLOYD: Thank you. 8 Q. Earlier you testified that some of the work that 9 you had been doing involved working on controls and circuits 10 that were on the east side of the pump station. Do you 11 recall that? 12 A. Yes. 13 Q. Is that what these are, these conduits? 14 A. Yes, it is. 15 Q. Based on your knowledge and familiarity with the 16 work site, are you able to look at this photograph and tell 17 us approximately when it was probably taken? 18 A. I want to say it was mid to late July of '94. 19 MR. BENINGER: There is a date stamp down at the 20 bottom. 21 MR. NICOLL: I know there is. I can't really 22 make it out. 23 Q. See in the lower right hand corner? Actually on 24 the photograph it's the lower left hand corner. 25 A. I can't make a date out.</p>	<p>83</p> <p>1 A. It's actually just a backhoe. 2 Q. Backhoe? 3 A. Light duty rubber tired backhoe. 4 Q. One that's hard to see, I guess you are just 5 seeing the top of the cab you have marked B, what is that? 6 A. The John Deere loader. 7 Q. And then the one marked C is the Hitachi 8 excavator? 9 A. Correct. 10 Q. Can you tell by looking at that photograph which 11 bucket is on that excavator? 12 A. No. 13 Q. And just draw a line out -- well, you don't 14 actually have to do that. If you would hold up the 15 photograph again. See all the piping that's going, all the 16 conduit that's running to the back of the black painted 17 building, that's the conduit from the water treatment 18 facility to the pump station? 19 A. Correct. Part of those conduits also went out 20 to the coordination injection manifold vault. 21 Q. And the building that the person is kneeling on, 22 is that the pump station? 23 A. That is correct. 24 Q. Do you recognize any of the people in the 25 photograph?</p>
<p>82</p> <p>1 Q. There are two pieces of equipment in the 2 background. Do you see? 3 A. I see three. 4 Q. Okay. Three pieces of equipment. What pieces 5 of equipment do you see? 6 A. I see a John Deere backhoe on the right 7 foreground. 8 Q. Could you circle that and mark it A? 9 A. (Witness complies). 10 Q. What else do you see? 11 A. I see the John Deere loader in the middle. 12 Q. Why don't you circle that and if you can mark it 13 B? Maybe mark the B out in the margin and draw a line to 14 it. Do you know what I mean? 15 A. Okay. 16 Q. And what else do you see? 17 A. And I see the Hitachi on the left top center. 18 Q. Could you circle that, please? 19 A. (Witness complies). 20 Q. And mark it C. 21 A. (Witness complies). 22 Q. Do you want to hold it up for the camera? So 23 from the camera point of view the yellow piece of equipment 24 to the right that you have marked A is the John Deere front 25 end loader; is that right?</p>	<p>84</p> <p>1 A. Standing on the ground, the individual on the 2 left is Ken Zangari. 3 Q. With his back towards the photo? 4 A. Yes. The individual in the red shirt, I'm not 5 certain who that is. It looks like Paul Krakenberg. And 6 the individual on the left in the white T-shirt is myself in 7 the blue hard hat. 8 Q. In the blue hard hat. 9 MR. BENINGER: There's two blue hard hats. 10 A. The one on the right. 11 MR. BENINGER: You're the one on the right? 12 A. Yes. 13 Q. Next to the guy with the rolled up sleeves and 14 the reddish shirt; is that right? 15 A. That's correct. 16 Q. Why don't you hold the -- 17 MR. FLOYD: Did you say the person in the red 18 was Mr. Krakenberg? 19 A. I believe so. I'm not certain. It kind of 20 looks like Paul's build. 21 Q. Holding up Exhibit 198, point to Mr. Zangari. 22 A. Right there. 23 Q. Point to the person who you think might be Mr. 24 Krakenberg. 25 A. The individual in the red shirt.</p>

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1 Q. Point to the person who is you?
 2 A. The individual in the white T-shirt.
 3 Q. Right next to the --
 4 A. On the right hand side.
 5 Q. Do you know who the person is kneeling on the
 6 roof?
 7 A. No, I don't.
 8 Q. Now, what exhibit are we on, the next one?
 9 A. 199.
 10 Q. Would you hold it up, please? Hold it up for
 11 the guys down at the end.
 12 MR. BENINGER: Thank you.
 13 Q. Take a look at Exhibit 199. I think in the
 14 lower right hand corner of that exhibit the date stamp might
 15 be a little more legible?
 16 A. It's 8/9/94.
 17 Q. What does that photograph depict from your
 18 recollection?
 19 A. It's the west side of the Dakin-Yew pump
 20 station.
 21 Q. The big building in brick in the background,
 22 what building is that?
 23 A. That's the water treatment plant itself.
 24 Q. Is that where those soda ash silos are located?
 25 A. Yes, they are.

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1 Q. There is a doorway opening in the pump station
 2 building?
 3 A. Yes.
 4 Q. Could you hold that photograph up and point to
 5 the doorway opening?
 6 A. It would be right here.
 7 Q. Is that doorway opening near where you were
 8 working on August 11, 1994?
 9 A. Yes, it is.
 10 Q. Do you see any equipment in Exhibit 199?
 11 A. I see a John Deere backhoe on the left hand side
 12 of the page.
 13 Q. And it appears that there is some dirt, piles of
 14 dirt, near that John Deere backhoe; is that right?
 15 A. That is correct.
 16 Q. Could you hold that photograph up and point
 17 those things out? John Deere backhoe first of all. Okay.
 18 And the dirt around it?
 19 A. (Witness complies).
 20 Q. Now take a look at Exhibit 198 again. Compare
 21 198 and 199. Do you see the location of the --
 22 A. Okay.
 23 Q. Just hold them side by side. Do you see the
 24 location of the backhoe in 198?
 25 A. Yes, I do.

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1 Q. Is that the same approximate location of the
 2 backhoe in 199?
 3 A. Yes, it does appear to be that way.
 4 Q. Look at the roof of the pump station.
 5 A. Yup.
 6 Q. What are those objects that are up and extended
 7 on the top?
 8 A. Those are access hatches for the turbine pumps.
 9 Q. Do you see how those are open or at least, yes,
 10 they are open in 198 and 199?
 11 A. Yes.
 12 Q. Do you see the hard hat and a man in 199?
 13 A. Yes, I do.
 14 Q. On the roof?
 15 A. Yes.
 16 Q. And do you see a man on the roof in 198?
 17 A. Yes, I do.
 18 Q. Comparing the two photographs and based on your
 19 own recollection of the activity, can you tell us what date
 20 you think, if you know, 198 was taken?
 21 A. It appears to be 8/9/94.
 22 Q. Is the condition of the grading on the east and
 23 southern exposures of the pump station as shown in Exhibit
 24 199 about the same as it was on August 11, 1994?
 25 A. Yes, it is.

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1 MR. BENINGER: You said east. We don't really
 2 see the east.
 3 MR. NICOLL: I'm sorry. I meant west. When I
 4 say east I mean west.
 5 Q. To clarify, in 199 are we looking at the west
 6 face of the pump station?
 7 A. Yes, you are.
 8 Q. And to the right of do you see where the ladder
 9 is up against -- hold up 199.
 10 A. This ladder here?
 11 Q. Yes. Is that on the south of the pump station?
 12 A. Yes, it is.
 13 Q. See the yellow tripod in the foreground of 199?
 14 A. Yes.
 15 Q. Do you know what that is?
 16 A. There are two of them actually. There is one
 17 laying on top of the vault there and there is one standing
 18 erect. It's a tripod for a transit or a laser.
 19 Q. Who was using that equipment, do you know?
 20 A. The only two individuals that I knew from IMCO
 21 that actually were shooting -- they use this item to shoot
 22 grade and elevations. And the only two individuals that I
 23 knew that actually did it were Greg Burress and Paul
 24 Krakenberg.
 25 Q. Are you able to see the location where IMCO's

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1 site office was in photograph 1997

2 A. Not exactly. It was actually off the picture.

3 Q. Which direction off the picture?

4 A. To the north which would be to the left hand

5 side.

6 Q. Would you hold the picture and point?

7 A. It's actually right over here.

8 Q. So off to the left of the photograph?

9 A. I think what you are seeing in the background is

10 vehicles.

11 Q. Parked in a parking lot up above?

12 A. Yes.

13 Q. Is there any place in this photograph that shows

14 the approximate location where the worker went in order to

15 get the material to repair the pipeline on August 11?

16 A. No.

17 Q. Was that also off to the north?

18 A. Yes.

19 Q. Why don't we turn 199 over. Now Exhibit 200.

20 What is Exhibit 200 a photograph of, if you can tell us?

21 A. It's the west face of the Dakin-Yew pump

22 station.

23 Q. There's a gentleman standing in what appears to

24 be a doorway there. Do you see that?

25 A. Yes, I do.

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1 Q. And first, do you recognize the guy?

2 A. No, I don't.

3 Q. Is that where you were standing on August 11,

4 1994?

5 A. Yes, it is.

6 Q. Do you see the date stamp in the lower right

7 hand corner?

8 A. Yes, I do.

9 Q. Can you read that date stamp?

10 A. 8/9/94.

11 Q. Can you see in this photograph the area of

12 IMCO's site office?

13 A. No, not plainly.

14 Q. It's still off to the north?

15 A. It's actually blocked by the pump station

16 itself. Their office was up in this area here.

17 Q. Would you hold that up?

18 A. (Witness complies).

19 Q. Why don't you take that red pen and just write

20 in the area of IMCO's office behind the pump station.

21 A. (Witness complies).

22 Q. I realize it's in red pen, but what have you

23 written there?

24 A. IMCO trailer and an arrow pointing in the

25 general vicinity.

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1 MR. PLATIS: Show us, please.

2 A. It's right up in here.

3 Q. Do you see in this photograph any of the area

4 where the workers went to get the material that was used to

5 coat the pipeline on August 11?

6 A. IMCO had a laydown area approximately right here

7 in the upper parking lot.

8 Q. Would you mind putting an X where you just

9 indicated in red?

10 A. (Witness complies).

11 Q. Hold that up. It's hard to see I know.

12 A. It's right here. It's on the upper level of the

13 parking lot.

14 Q. So the worker or workers who went to get the

15 material they used to coat the pipe went up there?

16 A. Yes.

17 Q. Where the X is on Exhibit 200?

18 A. Yes.

19 MR. FINEGOLD: Show that to us also.

20 A. It's up in this area here.

21 MR. FINEGOLD: Thank you.

22 Q. Do you know if after the area to the west of the

23 pump station was backfilled, in other words after the tee

24 joint was put in place and the backfilling occurred to the

25 point that's shown on Exhibit 199 and 200, do you know if

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1 there were any markings out there that located the Olympic

2 pipeline through that area again?

3 A. No, there was not.

4 Q. So there is no paint or anything else?

5 A. No.

6 Q. Were the stakes that marked the Olympic pipeline

7 at the southern end and at the northern end of the project

8 still in place?

9 A. Yes, they were.

10 Q. Take a look at I think it's Exhibit 201, but you

11 hold it up and confirm to us the next photograph in order.

12 A. (Witness complies).

13 Q. Exhibit 201, and if you also pull out 198.

14 Exhibit 201, can you tell us what it's a photograph of?

15 A. It's northeast corner of the Dakin-Yew pump

16 station.

17 Q. Who is the person working in the foreground?

18 A. On the conduit rack, that is Ken Zangari.

19 Q. Ken Zangari?

20 A. Yes.

21 Q. Would you circle Ken and put an A next to him?

22 A. (Witness complies).

23 Q. And what he is working on you call the conduit

24 rack; right?

25 A. Yes.

93

1 Q. There's a guy kneeling up on the roof, do you
2 have any idea who that might have been?

3 A. No, I don't.

4 Q. Then next to the man on the roof, that's all the
5 hatches?

6 A. Yes, it is.

7 Q. Do you see some equipment in this photograph?

8 A. Yes, I do.

9 Q. That equipment is what?

10 A. I see the Hitachi track hoe and a John Deere
11 excavator of some sort. What kind of attachment they have
12 on it, whether it's a bucket or a compactor I'm not certain.

13 Q. That's the one in the background?

14 A. Yes, back towards the 16 million gallon
15 reservoir.

16 Q. Then do you see that yellow bit in the very,
17 very far right hand side?

18 A. I vaguely see an edge of what appears to be a
19 backhoe, a rubber tired backhoe.

20 Q. And also there is a date in the lower right hand
21 corner of the photograph. Do you see that date?

22 A. Yes, I do.

23 Q. What's that date?

24 A. It's 8/9/94.

25 Q. In general is this how you recollect the

94

1 condition of the work site on about August 9, 1994, that
2 time frame?

3 A. Yes.

4 Q. And does this photograph appear to have been
5 taken at or near the same time as photograph 198?

6 A. Yes, it does.

7 Q. Let's take a look at the next exhibit in order.
8 Which number is it?

9 A. 202.

10 Q. If you would show the gentlemen at the end?

11 A. (Witness complies).

12 Q. Exhibit 202 shows that 16 million gallon
13 reservoir in the background; is that right?

14 A. That's correct.

15 Q. What's the date of the photograph?

16 A. 6/16/94.

17 Q. Now do you see some equipment in the photograph?

18 A. Yes. I see two pieces of equipment.

19 Q. And could you identify that equipment?

20 A. One is a John Deere rubber tired backhoe and the
21 other is the Hitachi excavator.

22 Q. Would you circle the Hitachi excavator?

23 A. (Witness complies).

24 Q. And mark the circle A?

25 A. (Witness complies).

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1 Q. The Hitachi excavator has got a bucket on it; is
2 that right?

3 A. That's correct.

4 Q. What kind of bucket is that?

5 A. It appears to be a 36-inch tooth bucket.

6 Q. Can you tell by looking at it whether it's the
7 same bucket as the one you saw on the Hitachi excavator on
8 August 11, 1994?

9 A. No. They had several buckets out there of
10 varying widths.

11 Q. Is that the same excavator though?

12 A. Yes, it is.

13 Q. Can you tell by looking at it who is at the
14 controls?

15 A. No.

16 Q. Move to the next photograph, please? Which
17 exhibit is it?

18 A. Exhibit 203.

19 Q. Would you show everybody down there?

20 A. (Witness complies).

21 MR. BENINGER: Thank you.

22 Q. What is this a photograph of?

23 A. This is the photograph of the backfilling of the
24 Dakin-Yew pump station. Actually the 24-inch suction line.

25 Q. The one that went off from the north --

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1 A. Yes.

2 Q. -- west corner; is that right?

3 A. Suction line and there is an overflow line.

4 Q. What's the equipment that's in the photograph?

5 A. I see a John Deere front end loader and the John
6 Deere ram hoe.

7 Q. Do you see some other equipment? Look
8 underneath the Deere on the John Deere?

9 A. I see the Hitachi in the background.

10 Q. To the left; right?

11 A. Yes.

12 Q. In this photograph do you see the area of the
13 IMCO site office?

14 A. No. I see a trailer that they used for storage.

15 Q. Would you circle that trailer?

16 A. (Witness complies).

17 Q. And call that A?

18 A. (Witness complies).

19 Q. On Exhibit 203. Is that the area where the --
20 what did you call it -- the laydown area?

21 A. Yes.

22 Q. Is that the laydown area?

23 A. Yes.

24 Q. So that point A on Exhibit 203 is the area that
25 the worker or workers went in order to get the material to

<p>1 paint on the pipe on August 11, 1994? 2 A. Yes. 3 Q. Is that the direction that you went running? 4 A. That was my initial route and I made a hard 5 right to the east. 6 Q. Was this dirt that's being, obviously being 7 dumped and compacted, was that dirt there on August 11? 8 A. No. 9 Q. Would you circle and mark B the doorway where 10 you were standing? 11 A. (Witness complies). 12 Q. And hold that up, please? 13 A. (Witness complies). 14 Q. B is where you were standing when you saw what 15 you saw on August 11th; is that right? 16 A. That is correct. 17 Q. What's the plastic covered line that you can see 18 under the arm of the John Deere? 19 A. I believe that's the overflow line. 20 Q. Would you hold up and point to it? 21 A. This one right here? 22 Q. Yes. You notice that it seems to be suspended 23 in some kind of a cement structure? 24 A. Yes. 25 Q. What's that, if you know?</p>	97	<p>1 MR. PLATIS: Where is it? Show it to the 2 camera. 3 Q. Show it to the camera as well. Point to it, 4 please? 5 A. It's right here. 6 Q. Photographs are notoriously bad for providing 7 depth perception so it's hard to get this, but using 8 photograph number 204 are you able to give us a sense of 9 where the excavator was on August 11, 1994? 10 A. Generally it would have been on the same plane 11 as the John Deere ram hoe, but probably 25, 30 feet deeper 12 in the photograph. 13 Q. Closer to the pump station? 14 A. Yes. 15 MR. FLOYD: 25 to 30 did you say? I just want 16 to have you read back. What was his testimony? 17 (The requested testimony 18 was read by the reporter) 19 MR. FLOYD: Thank you. 20 Q. Perhaps if you look back at Exhibit 200 or 199, 21 looking at these photographs can you give us an idea using 22 these photographs the approximate location of the Hitachi 23 excavator when you saw it operating out there in the morning 24 of August 11, 1994? 25 A. On Exhibit 199 there appears to be in front of</p>	99
<p>1 A. I believe it's just a thrust block for support. 2 Q. And we are on Exhibit 204? 3 A. Yes. 4 Q. Do you see Exhibit 204 is a photograph dated 5 8/22/94? 6 A. Yes. 7 Q. And this appears, if you look at Exhibit 203, to 8 have been taken on the same day at about the same time; 9 right? 10 A. Yes. 11 Q. Now, in the front on the left you can see that 12 same cement structure that you called a thrust block before. 13 Do you see that? 14 A. Yes. 15 Q. Is that an open pipe coming through the thrust 16 block there? 17 A. Yes, it is. 18 Q. So that would be the overflow line then? 19 A. It is an overflow line going into a catch basin 20 below it. 21 Q. Would you please circle the doorway where you 22 were standing on August 11th? 23 A. (Witness complies). 24 Q. Mark that A. 25 A. (Witness complies).</p>	98	<p>1 the sheet of plywood an item lying down there on the ground. 2 Q. Yes. 3 A. He would have been just this side of that. 4 Q. Which side of that? 5 A. Towards the forefront of the picture. 6 Q. Why don't you use that red pen and draw a circle 7 indicating that approximate area. 8 A. (Witness complies). 9 Q. Have you already marked that photograph in some 10 way? 11 A. No, I have not. 12 Q. So go ahead and on Exhibit 199 call that circle 13 A. 14 A. (Witness complies). 15 Q. Hold it up for the camera. 16 A. (Witness complies). 17 Q. And you are saying that A is the approximate 18 location of where that Hitachi excavator was located and 19 operating; is that right? 20 A. Yes. 21 MR. FINEGOLD: Show that to us. 22 MR. FLOYD: Pass it around. I would like to see 23 it too. 24 Q. Did you have any other supervisors at Triad 25 besides Marshall Seaman?</p>	100

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1 A. Roy Carr.
 2 Q. Roy Carr?
 3 A. Yes.
 4 Q. Is there another Carr who works there?
 5 A. Danny, his brother. Or Daniel.
 6 Q. Daniel. What does Dan do?
 7 A. Dan is an electrician.
 8 Q. Do you recall whether you had any conversations
 9 with either of the Carr brothers on the day August 11, 1994
 10 or thereabouts?
 11 A. No, I don't recall.
 12 MR. NICOLL: I think I am finished asking you
 13 questions. I would like a short break because I need one
 14 and maybe others do too. And maybe we can come back in
 15 five, ten minutes.
 16 THE VIDEOGRAPHER: Going off the record. The
 17 time is approximately 2:32 p.m.
 18 (Off the record)
 19 THE VIDEOGRAPHER: Back on the record. The time
 20 is approximately 2:40 p.m.
 21
 22 EXAMINATION
 23 BY MR. FLOYD:
 24 Q. Mr. Graham, my name is Francis Floyd and I
 25 represent IMCO and I'm going to ask you questions about your

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1 testimony today and about some other questions that haven't
 2 been asked.
 3 First of all, I understand you are getting a
 4 little tired; is that correct?
 5 A. Yes, I am.
 6 Q. Do you think you can last another hour?
 7 A. Yes.
 8 Q. So we can agree that unless you get really tired
 9 we'll go until 3:30 today. Okay?
 10 A. That's fine.
 11 Q. And if I don't finish, then we can go ahead and
 12 resume your deposition at a later date. Okay?
 13 A. Mm-hmm.
 14 Q. Will there be any problems getting ahold of you
 15 to reschedule?
 16 A. No.
 17 Q. What is your phone number there, [REDACTED]
 18 [REDACTED]
 19 A. [REDACTED].
 20 Q. [REDACTED].
 21 A. [REDACTED]
 22 Q. And what is your date of birth?
 23 A. [REDACTED]
 24 Q. And your social security number?
 25 A. [REDACTED]

103

1 Q. And do you have a roommate that you live with?
 2 A. Yes, I do.
 3 Q. And what is his or her name?
 4 A. [REDACTED]
 5 Q. Any other roommates?
 6 A. Yes. [REDACTED].
 7 Q. Can you spell the last name?
 8 A. [REDACTED].
 9 Q. Yes.
 10 A. [REDACTED]
 11 [REDACTED]
 12 Q. I take it [REDACTED] is a female?
 13 A. Yes.
 14 Q. Is she your girlfriend?
 15 A. No.
 16 Q. Is she [REDACTED] girlfriend?
 17 A. Yes. Soon to be wife.
 18 Q. Soon to be wife. How long have they been
 19 roommates with you at that location?
 20 A. About 16 months.
 21 Q. Does he work with you?
 22 A. No.
 23 Q. What's he do for a living?
 24 A. He's an auto mechanic.
 25 Q. Anyone else live in the house?

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1 A. No.
 2 Q. And who was the lady that accompanied you today?
 3 A. That was my girlfriend.
 4 Q. What's her name?
 5 A. [REDACTED]
 6 Q. [REDACTED]
 7 A. Yes.
 8 Q. Where does she live?
 9 A. [REDACTED].
 10 Q. How long has she been your girlfriend?
 11 A. About five months now.
 12 Q. Have you talked to her at all about your
 13 recollection of what occurred back in 1994 at the Dakin-Yew
 14 pump station?
 15 A. Yes.
 16 Q. You have?
 17 A. Yes.
 18 Q. How many times have you talked to her about it?
 19 A. Exact number --
 20 Q. More than once?
 21 A. Yeah. It's probably half a dozen times.
 22 Q. What is her address?
 23 A. To be quite honest with you I don't know her
 24 address.
 25 Q. Does she live with you?

105

1 A. No.

2 Q. How do you get ahold of her?

3 A. Phone.

4 Q. What's her phone number?

5 A. It's [REDACTED].

6 Q. How often do you see her?

7 A. Daily.

8 Q. What does she do for a living?

9 A. She's a border brokerage manager.

10 Q. A what?

11 A. A brokerage manager -- or a manager for a border

12 brokerage firm.

13 Q. Which company does she work for?

14 A. [REDACTED].

15 Q. Is that in Everett?

16 A. Actually [REDACTED] is a world wide company. I

17 believe that corporate headquarters are out of Montreal.

18 Q. Where does she work?

19 A. [REDACTED].

20 Q. How long have you been a union member of the

21 I.B.E.W.?

22 A. About five years.

23 Q. Were you a union member in 1994?

24 A. No, I was not.

25 Q. Were you non-union at that time?

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1 A. Yes.

2 Q. Have you attempted to become one of the union

3 representatives for the I.B.E.W. recently?

4 A. No.

5 Q. Shop steward or anything like that?

6 A. No.

7 Q. Have you been involved in union politics at all?

8 A. No.

9 Q. Do you know of an outfit called Laser,

10 L-a-s-e-r?

11 A. Never heard of them.

12 Q. Have they ever contacted you about this matter?

13 A. No.

14 Q. Are you sure of that?

15 A. You are referring to the Dakin-Yew pump station?

16 Q. Yes. This explosion.

17 A. No.

18 Q. Have they ever contacted you about IMCO?

19 A. No. I've never heard of them before. Now

20 you've got me curious.

21 Q. Exhibit 191 was represented to be the certified

22 payroll for Triad during the week of August 24, 1994; is

23 that correct?

24 MR. NICOLL: I'm going to object to the question

25 in that it assumes a fact not in evidence.

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1 Q. Go ahead and answer the question.

2 A. Would you repeat the question?

3 Q. Is Exhibit 191 to the best of your knowledge a

4 certified payroll for Triad?

5 MR. VERWOLF: I'll object. No foundation.

6 A. That would be a certified payroll for getting

7 paid for their job, but what they actually paid their

8 employees I'm not certain. I can't tell you that.

9 Q. Do you know if you were paid for ten hours on

10 August 11, 1994?

11 A. As far as I can remember, yes, I was.

12 Q. And how do you recall that?

13 A. At that point in time I was working a steady 40

14 hours a week throughout the summer. I didn't get slow until

15 late November, early December.

16 Q. And were you working four days a week?

17 A. Yes. We were working four tens up until the

18 point in time where it wasn't prudent to do so.

19 Q. And is it your testimony today that you are

20 absolutely positive that you worked at least ten hours on

21 August 11, 1994?

22 A. Yes.

23 Q. Now the tee that you talked about which was the

24 tee which was at the end of the 24-inch discharge line, did

25 you have anything to do with that tee? Was there any

108

1 electrical wiring on that tee?

2 A. No.

3 Q. Would there be any reason for you to be working

4 on that tee?

5 A. No.

6 Q. And was there another tee that was also

7 connected to the 16-inch waterline other than the one that

8 was on the discharge side of the pump house?

9 A. Without going back through the drawings I don't

10 remember.

11 Q. So the only tee that you recall is the tee that

12 was on the south discharge line; is that correct?

13 A. Correct.

14 Q. Did you ever see that tee?

15 A. Yes.

16 Q. And that was before it was covered; correct?

17 A. Correct.

18 Q. And do you know what that tee was covered with?

19 A. It was a black material, a rubber material and a

20 plastic baggy.

21 Q. And how was it backfilled?

22 A. Select structural fill compacted in lifts.

23 Q. What was that? Select structural fill?

24 A. Yes.

25 Q. Is that the same as or different than CDF?

109	<p>1 A. It's different. Select structural fill is 2 actually a medium that is not native soil. It consists of 3 certain quantities of fines, largest speck particulates and 4 it's all laid out in the specifications of the project. 5 That is all material that they brought in from off site. 6 Q. Would that specification be part of your scope 7 of work? 8 A. It can be in regards to how I bed my duct banks 9 and such. 10 Q. I'm asking the tee. The backfill of the tee, 11 was that part of the scope of work that was -- 12 A. No. 13 Q. -- that you were performing? 14 A. No. 15 Q. Did you witness the backfilling of the tee? 16 MR. NICOLL: At what time? Excuse me. 17 Objection. 18 Q. At any time. 19 A. Yes. 20 Q. Did you witness all the backfilling of the tee 21 prior to August 11? 22 A. No, not all of it. 23 Q. But you said it was compacted in lifts; is that 24 correct? 25 A. Mm-hmm.</p>	111
110	<p>1 Q. You have to answer yes or no. 2 A. Yes. Compaction and lift is standard building 3 practices and specifications of that project. 4 Q. I'm not asking what standard practices were. I 5 want to know what you witnessed. Okay? 6 A. I did see compaction in lifts. 7 Q. You did see compaction in lifts on top of the 8 tee; is that correct? 9 A. Yes. 10 Q. And you're positive of that? 11 A. Yes. 12 Q. And do you recall how many lifts you witnessed? 13 A. No. 14 Q. Can you give me an estimate of the depth of the 15 fill that was above the tee on August 11, 1994? 16 A. About three and a half, four feet. 17 Q. What do you base that opinion on? 18 A. Memory. 19 Q. Did you measure it? 20 A. No. 21 Q. Did you see the tee after it had been excavated 22 on August 11, 1994? 23 A. Yes. 24 Q. And where were you standing? 25 A. I was standing in the doorway or the doorway</p>	112
	<p>1 vicinity of the pump station. 2 Q. Did you ever go over and look into the excavated 3 hole to see the tee? 4 A. Yes. 5 Q. When did you do that? 6 A. The morning of the 11th. 7 Q. Let's try to put some time on when the gasline 8 was allegedly hit. Okay? 9 A. Okay. 10 Q. What time did you arrive at the job site on 11 August 11? 12 A. We were working 7 to 5:30. 13 Q. My question isn't when you were working. I 14 wanted to know when did you arrive at the job site. 15 A. I would say probably 6:45, 6:50. 16 Q. Was that the normal time you arrived? 17 A. Typically. 18 Q. Was Greg Burress at the job site when you 19 arrived on the morning of August 11? 20 A. I don't remember Greg being there. 21 Q. Do you know Greg Burress? 22 A. Yes, I do. 23 Q. What's his nickname? 24 A. Blondie. 25 Q. Did you recall seeing Greg Burress on the job</p>	

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1 treatment plant.

2 Q. Now I'm not asking you what you normally do or

3 what you typically do. I want to know if you have a

4 specific recollection of where you parked on August 11,

5 1994.

6 A. It could have been one of two places.

7 Q. Do you have a specific recollection of which of

8 those one of two places you parked?

9 A. No, I don't.

10 Q. Do you recall what you were driving that

11 morning?

12 A. Yes, I do.

13 Q. What were you driving?

14 A. A Ford F250.

15 Q. Do you still own that pickup?

16 A. No, I don't.

17 Q. What were you wearing that day; clothing?

18 A. Blue jeans and a T-shirt, a pair of work boots.

19 Q. Is that what you normally wore?

20 A. Yes.

21 Q. What color top did you have on?

22 A. I have no clue.

23 Q. And did you have a hard hat that you always

24 wore?

25 A. Yes.

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1 Q. What color was the hard hat?

2 A. Blue.

3 Q. Do you recall what you did as the first order of

4 business on August 11?

5 A. Not exactly.

6 Q. Do you know what you were generally doing on

7 August 11 in the morning?

8 A. Yes.

9 Q. What were you doing?

10 A. I was working on the pump station prepping the

11 raceways for the control, the remote control panel for the

12 remote control center, and laying out branch circuits inside

13 the pump house itself.

14 Q. Were you working inside the pump house or

15 outside the pump house or both on the morning of August 11?

16 A. Inside.

17 Q. And was there a doorway?

18 A. Yes.

19 Q. And was that the only exit to the pump house?

20 A. Yes.

21 Q. Was there a door on the doorway?

22 A. No.

23 Q. And were you working in the vicinity of the

24 doorway or somewhere else in the pump house?

25 A. I was working adjacent to the door.

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1 Q. How far from the door?

2 A. Two and a half, three feet.

3 Q. Was there someone else working with you?

4 A. Yes.

5 Q. And I believe you testified earlier that his

6 name was Tim Linderman; correct?

7 A. That's what I said.

8 Q. Do you know if it was Tim Linderman?

9 A. At this time in point, no.

10 Q. So you do not have any specific recollection of

11 Kenneth Zangari working with you on August 11; is that

12 correct?

13 A. I do. After seeing this piece of information.

14 Q. Exhibit 1917

15 A. Yes. I do remember Ken being there.

16 Q. So you were mistaken up until today about who

17 you were working with; is that correct?

18 A. Yeah.

19 Q. Is that correct?

20 A. Yes.

21 Q. Let me ask you what you did to prepare for this

22 deposition, if anything. Okay?

23 A. I did nothing.

24 Q. You did nothing?

25 A. Nothing.

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1 Q. The deposition started twenty minutes late. It

2 started at ten minutes to ten. At what time did you arrive

3 here at the offices of Cozen and O'Connor?

4 A. About a quarter after nine.

5 Q. And what did you do?

6 A. Went to the bathroom, met with Mr. Nicoll.

7 Q. Is that the first time you talked to Mr. Nicoll?

8 A. Yes, it is.

9 Q. Where did you meet with Mr. Nicoll?

10 A. In a conference room on the other side of this

11 floor.

12 Q. And who was at that meeting with you?

13 A. I'm not sure what Kim's last name is.

14 Q. Pardon?

15 A. Kim, Mr. Nicoll's paralegal.

16 Q. The female who was in here earlier?

17 A. Yes. And I'm sorry, I've been bombarded with

18 names today.

19 Q. Mr. Allen?

20 A. Yes, Mr. Allen.

21 Q. Anyone else?

22 A. No.

23 Q. How long were you in that conference room with

24 Mr. Nicoll, Mr. Allen and their paralegal, Kim?

25 A. I would say approximately twenty minutes.

<p style="text-align: right;">117</p> <p>1 Q. Did you review anything when you were in the 2 conference room?</p> <p>3 A. We went through a couple photographs.</p> <p>4 Q. Which photographs?</p> <p>5 A. Exactly, I don't remember. I've seen too many 6 of them today.</p> <p>7 Q. So you can't tell me what photographs you 8 reviewed less than eight hours ago. Is that true?</p> <p>9 A. No.</p> <p>10 MR. NICOLL: Objection, argumentative.</p> <p>11 A. No.</p> <p>12 Q. Look through the photographs and see if you can 13 tell me which photographs you looked at.</p> <p>14 A. I looked at about 70, 80 different photographs, 15 and of those it was various stages and phases of 16 construction. I can't tell you exactly which one I did look 17 at.</p> <p>18 Q. Do you have any specific recollection of any of 19 the photographs you looked at?</p> <p>20 A. No.</p> <p>21 Q. Can you look through the photographs that have 22 been marked as exhibits to your deposition today and tell me 23 if any of those color reproductions are any of the 24 photographs you looked at prior to your deposition today?</p> <p>25 A. With a hundred percent certainty I couldn't tell</p>	<p style="text-align: right;">119</p> <p>1 Q. How long did you talk to her?</p> <p>2 A. I would say five minutes.</p> <p>3 Q. Did she call you at your house?</p> <p>4 A. No. I called her.</p> <p>5 Q. How did you get her phone number?</p> <p>6 A. It was with my subpoena.</p> <p>7 Q. I understand you have intentionally made 8 yourself unavailable prior to --</p> <p>9 A. Yes.</p> <p>10 Q. -- today; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Who has been hounding you?</p> <p>13 A. I've been getting a lot of pressure from the 14 media. I've been contacted by CNN, Bellingham Herald, 15 Seattle Times. I'm just tired of no privacy. I don't want 16 to make a statement, I don't want to make a statement.</p> <p>17 Q. Has the National Inquirer contacted you yet?</p> <p>18 A. No.</p> <p>19 Q. Are you sure about that?</p> <p>20 A. Positive.</p> <p>21 Q. And you have not talked to anyone with the press 22 so far; is that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And why is that?</p> <p>25 A. I would like to just stay out of the limelight.</p>
<p style="text-align: right;">118</p> <p>1 you. They could have been.</p> <p>2 Q. Just not sure; is that correct?</p> <p>3 A. That is correct. I'm not sure.</p> <p>4 Q. Did Mr. Nicoll or Mr. Allen or Kim say anything 5 to you at all?</p> <p>6 A. Basically it was a brief as to what the 7 procedure for this deposition was going to be and explained 8 to me what the procedures were going to be.</p> <p>9 Q. Did all they talk about with you was the 10 procedures for the deposition?</p> <p>11 A. No. They also talked about where was I and get 12 a basis of questioning I'm assuming. Asked me where I was 13 at, what I saw.</p> <p>14 Q. And what did you tell him?</p> <p>15 A. I told him exactly what I said in my earlier 16 testimony.</p> <p>17 Q. Did they have any statements that they helped 18 you with to refresh your recollection?</p> <p>19 A. No.</p> <p>20 Q. Have you ever given them a statement previously?</p> <p>21 A. No.</p> <p>22 Q. Had you ever talked to Kim previously?</p> <p>23 A. I talked to Kim last night just briefing her 24 with the facts that I will be there today and I apologized 25 for being unavailable.</p>	<p style="text-align: right;">120</p> <p>1 I'm a very private person. I'm a simple individual and I 2 want to be left that way. I don't want any publicity. I'm 3 not looking for any glory. I want to be left alone.</p> <p>4 Q. Have you requested money for your story from any 5 of the members of the press?</p> <p>6 A. Absolutely not.</p> <p>7 Q. You are absolutely positive of that statement; 8 correct?</p> <p>9 A. A hundred percent positive.</p> <p>10 Q. Were you paid for your time today?</p> <p>11 A. I was paid for lost wages.</p> <p>12 Q. How much were you paid?</p> <p>13 A. I'm not sure what the total was. It was 26.21 14 times eight hours. I have not received it.</p> <p>15 Q. You are entitled to a witness fee. How much 16 were you paid today?</p> <p>17 A. I don't know what the witness fee is. I was 18 told the statute is 25 dollars.</p> <p>19 Q. How much were you paid to show up today?</p> <p>20 A. I got \$39.25.</p> <p>21 Q. That's all you got today?</p> <p>22 A. That's all I've received at this point.</p> <p>23 MR. BENINGER: Can we go off the record?</p> <p>24 MR. FLOYD: Sure.</p> <p>25 THE VIDEOGRAPHER: Going off the record. The</p>

121	<p>1 time is approximately 3:01 p.m. 2 (Off the record) 3 THE VIDEOGRAPHER: Back on the record. The time 4 is 3:01 p.m. 5 MR. FLOYD: Back on the record. 6 Q. Mr. Graham, apparently there was a stipulation 7 that you would be paid for your witness fee plus your wages; 8 is that correct? Do you know anything about that? 9 A. It was mentioned. 10 Q. How much were you paid? You got a witness fee; 11 correct? 12 A. I received a check for \$39.25. 13 Q. Have you been promised additional money? 14 A. There was no promise. 15 Q. What were you told about additional money? 16 A. I was told I would be compensated for lost wages 17 and the additional travel expenses incurred. 18 Q. And have you submitted a -- been paid for that? 19 A. No, I have not. 20 Q. Do you intend to? 21 A. Yes. 22 Q. Let's go on. Had you requested anything more 23 than your lost wages? 24 A. No. 25 Q. What are your wages per hour?</p>	123	<p>1 Q. How long did you work there? 2 A. It was about six months. 3 Q. What did you do there? 4 A. Electrician. 5 Q. What was your reason for leaving that? 6 A. Lack of work. 7 Q. Then did you go to the union hall after that? 8 A. Yes, I did. 9 Q. When was that? When did you start working with 10 the union hall? 11 A. November of '95. Yeah. 12 Q. Has all of your work since November '95 been out 13 of the I.B.E.W. union hall? 14 A. No. I did a brief what they call salting of a 15 non-union contractor in Bellingham. 16 Q. Explain that for me, please. 17 A. Salting is an organizing recruiting term used to 18 get a non-union contractor to get their employees to 19 organize and have union representation. 20 Q. Let's go back to August 11. You were working 21 inside the pump house, correct, the morning? 22 A. Correct. 23 Q. And how long were you working inside of the pump 24 house before you first talked to Britt Lukes about his 25 excavator?</p>
122	<p>1 A. 26.21. 2 Q. For eight hours? 3 A. Yes. 4 Q. And what do you get paid for overtime? 5 A. It's time and a half after eight. After ten 6 it's double time. 7 Q. You are currently working where? 8 A. I work for Dutton Electric, currently building a 9 Costco store in Burlington. 10 Q. Where did you work prior to Dutton Electric? 11 A. Kimberly-Clarke, a paper tissue plant in 12 Everett. 13 Q. How long did you work there? 14 A. Two weeks. 15 Q. What was your reason for leaving that job? 16 A. It was a short call, 80 hours or less. 17 Q. Would the I.B.E.W. have records of all of the 18 work that you performed since you've worked for Triad? 19 A. Not all. 20 Q. Have you -- pardon me. Go ahead. 21 A. There was a time period there prior or after 22 leaving Triad that I worked for another non-union 23 contractor. 24 Q. Who was that? 25 A. Intercity Electric out of Arlington.</p>	124	<p>1 A. Probably a half hour, 45 minutes. 2 Q. Could you give me your best estimate of when you 3 believe he struck the gas pipeline? 4 A. I would assume or my best recollection would be 5 between 8:30 and 9. 6 Q. In the morning? 7 A. Yes. 8 Q. So you were on the job about an hour, an hour 9 and a half? 10 A. Yeah. 11 Q. Or actually that would be an hour and a half to 12 two hours; correct? 13 A. Correct. 14 Q. And when did you first talk to him about the 15 location of the Olympic gas pipeline? 16 A. He'd probably been ten, fifteen minutes into his 17 job task. 18 Q. So was that the first time you first started to 19 talk to him about his excavator and where it was located and 20 what he was doing? 21 A. Yes. 22 Q. So it was about ten to fifteen minutes after you 23 first talked to him that you heard the loud metal to metal 24 noise; correct? 25 A. Correct.</p>

<p style="text-align: right;">125</p> <p>1 Q. How many noises did you hear? Was it just one 2 or were there multiple noises?</p> <p>3 A. One.</p> <p>4 Q. And how long did it last?</p> <p>5 A. Instantaneous, bang.</p> <p>6 Q. It was just a bang type noise then?</p> <p>7 A. Metal to metal, very abrupt.</p> <p>8 Q. Where was Mr. Zangari at the time you heard the 9 noise?</p> <p>10 A. He would have been working inside the pump 11 station.</p> <p>12 Q. With you?</p> <p>13 A. Yes.</p> <p>14 Q. And is there any reason why he wouldn't have 15 also heard that noise?</p> <p>16 A. No, there shouldn't have been any reason he 17 wouldn't have heard it.</p> <p>18 Q. Was it a very loud noise?</p> <p>19 A. I would say it was a normal construction noise, 20 normal noise level. It wasn't abnormally loud.</p> <p>21 Q. So it wasn't a noise that was louder than the 22 general volume of construction noise; is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. How did you happen to know that it was a metal 25 to metal noise?</p>	<p style="text-align: right;">127</p> <p>1 A. It was construction.</p> <p>2 Q. Do you know if Mr. Zangari even noticed that 3 metal to metal noise?</p> <p>4 A. I couldn't speak for Ken.</p> <p>5 Q. Did you say anything to him about that noise?</p> <p>6 A. I told him it scared the shit out of me.</p> <p>7 Q. Did he say anything to you in response to that?</p> <p>8 A. I don't remember.</p> <p>9 Q. So you told him it scared the shit out of you, 10 in your own words; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And did you tell him what you thought it was?</p> <p>13 A. Yes.</p> <p>14 Q. What did you say?</p> <p>15 A. I said I thought he hit the pipeline. It's the 16 only thing I could have thought it could have been.</p> <p>17 Q. What was that 24-inch discharge line made of?</p> <p>18 A. Ductile iron.</p> <p>19 Q. And is that metal?</p> <p>20 A. Yes.</p> <p>21 Q. And would that make a different sound if it were 22 hit by the excavator?</p> <p>23 A. I don't know.</p> <p>24 Q. So why did you conclude it was the gas pipeline?</p> <p>25 A. Relative location at the point where the bucket</p>
<p style="text-align: right;">126</p> <p>1 A. Metal to metal makes a different sound than 2 metal to rock. It's just years of experience.</p> <p>3 Q. And let me ask you about that experience. What 4 experience do you have listening for metal to metal noises 5 versus metal to rock noises as an electrician?</p> <p>6 A. We do a lot of underground duct banks and we at 7 numerous times throughout my career have had to observe and 8 watch out for other utilities that we are excavating around, 9 near and around.</p> <p>10 Q. Have you ever been involved in the actual 11 excavation of utilities, you personally?</p> <p>12 A. As an operator?</p> <p>13 Q. Yes.</p> <p>14 A. No. I don't operate excavating equipment.</p> <p>15 Q. Would you as an electrician be responsible for 16 excavating around and locating utilities?</p> <p>17 A. To some extent, yes.</p> <p>18 Q. Tell me what your duties would be in that 19 regard.</p> <p>20 A. As a spotter hand excavating around those items. 21 As far as operating the equipment, no.</p> <p>22 Q. Let's go back to this noise that you heard, the 23 metal to metal noise. I misspoke and said it was a loud 24 noise. It actually was not a loud noise; is that correct? 25 It was just a normal noise.</p>	<p style="text-align: right;">128</p> <p>1 was at and where the pipeline was exposed, or the 24-inch 2 discharge line was exposed.</p> <p>3 Q. So you knew that where Britt Lukes was 4 excavating was not over the waterline but in fact over the 5 gas pipeline; correct?</p> <p>6 A. No.</p> <p>7 Q. Is that correct?</p> <p>8 A. No, that's not what --</p> <p>9 Q. How did you know it was the gas pipeline and not 10 the waterline or the tee that he was hitting?</p> <p>11 A. I didn't know.</p> <p>12 Q. Okay. But you just concluded it was the gas 13 pipeline; correct?</p> <p>14 A. Yes.</p> <p>15 Q. But you were really scared at that point in 16 time; correct?</p> <p>17 A. Yes.</p> <p>18 Q. So you ran out of that pump house 250 yards up 19 the road; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did you stop and say anything to anybody?</p> <p>22 A. I yelled at Ken to get out of the building.</p> <p>23 Q. Did he get out of the building?</p> <p>24 A. I don't think he understood what was going on.</p> <p>25 Q. So he just kept doing his work then?</p>

<p>129</p> <p>1 A. I think he was confused as to what the situation 2 was.</p> <p>3 Q. Did you stop and tell him that he needed to get 4 out of there immediately with you?</p> <p>5 A. No, I did not.</p> <p>6 Q. So you didn't try to convince him to get out of 7 the building. You just took off yourself?</p> <p>8 A. I yelled at him, get the hell out of the 9 building.</p> <p>10 Q. And you just kept running up the street; 11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you saw Paul Krakenberg?</p> <p>14 A. Yes.</p> <p>15 Q. And you told him that the gas pipeline had been 16 hit; correct?</p> <p>17 A. Yes.</p> <p>18 Q. At that point in time you really didn't know it 19 was the gas pipeline, did you?</p> <p>20 A. No, I didn't.</p> <p>21 Q. Because you didn't see what pipe had actually 22 been hit, did you?</p> <p>23 A. No. It was still buried.</p> <p>24 Q. And so you went up and talked -- did you keep 25 running past Paul?</p>	<p>131</p> <p>1 Q. Did you run past the IMCO job shack?</p> <p>2 A. Yes.</p> <p>3 Q. What did you have on? Were you wearing a tool 4 belt?</p> <p>5 A. No.</p> <p>6 Q. Did you have anything in your hands when you 7 were running?</p> <p>8 A. No.</p> <p>9 Q. Just took off running?</p> <p>10 A. Yes.</p> <p>11 Q. Were you running as fast as you could?</p> <p>12 A. I believe so.</p> <p>13 Q. So you ran past the IMCO job shack. And you 14 finally stopped running; correct? Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Why did you stop running? Was it because you 17 were tired or because you realized the pipeline hadn't blown 18 up?</p> <p>19 A. I realized the pipeline hadn't blown up.</p> <p>20 Q. So then did you stop and wait there for awhile 21 to see what was going to happen or did you come back or what 22 happened?</p> <p>23 A. I did stop, kind of waited not very long, and 24 Paul come out and that's when he and I started talking.</p> <p>25 Q. Did you feel a little foolish when you ran out</p>
<p>130</p> <p>1 A. I had already passed him when he came out.</p> <p>2 Q. Were you coming back to the job site then? I'm 3 trying to find out when you stopped running.</p> <p>4 A. Yes.</p> <p>5 Q. When did you stop running?</p> <p>6 A. When I realized there was --</p> <p>7 Q. That it was a waterline instead of gasoline?</p> <p>8 A. I don't think it was the waterline.</p> <p>9 Q. Are you sure it was the gasoline?</p> <p>10 A. I'm certain. I'm almost certain it was a 11 gasoline.</p> <p>12 Q. Almost certain. Are you positive it was the 13 gasoline?</p> <p>14 A. I'm almost positive.</p> <p>15 Q. Why is there some doubt in your mind?</p> <p>16 A. I don't know.</p> <p>17 Q. Well, let's go back and see if we can finish --</p> <p>18 A. I know --</p> <p>19 Q. I want to find out when you stopped running. 20 When did you stop running? Did you go past the gate?</p> <p>21 A. No.</p> <p>22 Q. You know where the park entrance is?</p> <p>23 A. Yes.</p> <p>24 Q. You didn't go up that far, did you?</p> <p>25 A. No.</p>	<p>132</p> <p>1 of there and nobody else did? Did that kind of --</p> <p>2 A. No.</p> <p>3 Q. -- cross your mind that maybe you had been a 4 little foolish?</p> <p>5 A. No.</p> <p>6 Q. Were the guys laughing at you when you came 7 back?</p> <p>8 A. No.</p> <p>9 Q. Did they all see you running out of that pump 10 house up the road?</p> <p>11 A. Ken did.</p> <p>12 Q. Were you screaming and yelling as you were 13 running also?</p> <p>14 A. I don't remember.</p> <p>15 Q. Did anybody else follow you?</p> <p>16 A. No.</p> <p>17 Q. So you come back. Eventually you start to come 18 back towards the pipeline; correct?</p> <p>19 A. Correct.</p> <p>20 Q. How long did it take before you were willing to 21 come back down by that pipeline?</p> <p>22 A. Several minutes. I don't remember. I know I 23 wasn't real excited about going down there right away.</p> <p>24 Q. You kind of wanted things to settle out a little 25 bit? Is that what you are saying or what?</p>

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1 A. Yes.
 2 Q. How long were you away? Was it a couple minutes
 3 or a couple of hours?
 4 A. No. A couple minutes.
 5 Q. So a couple minutes you start walking back down.
 6 You don't see any cloud of gas or anything; correct? Is
 7 that what you were kind of looking for?
 8 A. Yes.
 9 Q. And was the excavator stopped running at that
 10 point in time?
 11 A. Yes.
 12 Q. You talked to Paul Krakenberg. This is when you
 13 had the conversation with Paul; correct?
 14 A. Yes.
 15 Q. And was he just coming out of the job shack at
 16 that time?
 17 A. Yes. He went in to see why I was running.
 18 Q. I'm not asking you what -- do you know why he
 19 came out of the job shack?
 20 A. Not exactly.
 21 Q. So you're speculating as to why he came out;
 22 correct?
 23 A. I'm assuming so.
 24 Q. You don't know if he saw you running by or not,
 25 do you?

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1 A. No.
 2 Q. So he comes out of the job shack for some reason
 3 and you meet him; correct?
 4 A. Correct.
 5 Q. Do you walk back or run back to the area where
 6 you thought the pipeline had been hit?
 7 A. We walked back.
 8 Q. You told him that the pipeline had been hit; is
 9 that correct?
 10 A. Yes.
 11 Q. And you thought that there was a great danger;
 12 correct?
 13 A. Yes, I did.
 14 Q. And you both walked back to the pipeline?
 15 A. Yes.
 16 Q. You knew you had a fellow worker in that pump
 17 house, didn't you?
 18 A. Yes. I wanted to get him out of there.
 19 Q. Why were you walking back and not running back?
 20 A. I don't remember.
 21 Q. Were you concerned about that worker at all?
 22 A. Yes, I was, extremely.
 23 Q. Very concerned; correct?
 24 A. Yes.
 25 Q. And how long did it take you to walk back to the

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1 area where the excavator was?
 2 A. I don't know exactly.
 3 Q. A couple minutes?
 4 A. It was probably less than that.
 5 Q. When you arrived back at the scene is the first
 6 time you look in the hole; correct?
 7 A. Yes.
 8 Q. And you see two guys down there with hand
 9 shovels; correct?
 10 A. Yes.
 11 Q. And the tee is totally exposed; correct?
 12 Correct?
 13 A. I don't believe so. I don't --
 14 Q. You testified that the tee was exposed.
 15 A. I don't remember if they --
 16 Q. You don't remember what you saw when you looked
 17 in the hole for the first time?
 18 A. I remember seeing the discharge line exposed. I
 19 don't remember if the tee was exposed.
 20 Q. The discharge line is a 24-inch line; correct?
 21 A. Correct.
 22 Q. Wrapped in black plastic; correct?
 23 A. Correct.
 24 Q. You saw that, didn't you?
 25 A. Yes.

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1 MR. NICOLL: Excuse me.
 2 MR. FLOYD: Don't interrupt.
 3 MR. NICOLL: I'm going to object, Francis,
 4 because I want to make sure that --
 5 MR. FLOYD: Make your objections.
 6 MR. NICOLL: -- we are talking about the same
 7 thing. It's vague.
 8 MR. FLOYD: You can clarify it later. Make your
 9 objection. You're not coaching anymore.
 10 MR. NICOLL: I have to make my objection.
 11 MR. FLOYD: You're not coaching this witness
 12 anymore. You had plenty of time this morning and I'm going
 13 to get to ask my questions.
 14 MR. NICOLL: The question is vague, Francis.
 15 MR. FLOYD: Make your objection.
 16 Q. Do you understand what I'm talking about? The
 17 24-inch line that's wrapped in black plastic?
 18 A. Yes, that is correct.
 19 Q. That's the 24-inch discharge line; correct?
 20 A. That is correct.
 21 Q. And that's what you saw when you first looked in
 22 the hole; correct?
 23 A. Along with another pipe.
 24 Q. Another pipe?
 25 A. Yes.

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1 Q. And what did that other pipe look like?

2 A. It was a black iron pipe that had a rubber

3 coating on it. It was not a baggy.

4 Q. Okay, rubber coating. What color was the rubber

5 coating?

6 A. Black.

7 Q. Pure black?

8 A. Black that had been covered in dirt.

9 Q. Dark black; correct?

10 A. Yeah.

11 Q. All right. Did you see the tee?

12 A. I don't remember.

13 Q. Do you recall testifying that you saw the tee?

14 A. Yes, I do.

15 Q. But now you are saying you don't remember if you

16 saw the tee or not; correct?

17 A. Correct. I remember seeing the valve stem. I

18 don't remember if I saw the entire tee.

19 Q. What is the valve stem? See if we can get

20 you -- can you look in there and see if you can find a

21 photograph that would show us what the valve stem looks

22 like?

23 A. It's not in here.

24 MR. FLOYD: Did the court reporter bring the

25 exhibits or not?

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1 MR. NICOLL: Yes, they are here.

2 MR. FLOYD: I could find it if we just show the

3 photographs. It's about 141 I think, isn't it?

4 A. It's a very poor picture but I know where it's

5 at.

6 MR. NICOLL: Look for about 141, 143, somewhere

7 in there.

8 Q. 134, does that show a valve stem?

9 A. That is the valve stem right there. Actually

10 there is one valve stem there and there is one valve stem

11 there.

12 Q. Describe it for me.

13 MR. PLATIS: Show it to the camera.

14 Q. Sure. I will show the camera. Can you point it

15 out for the camera? Show the camera what they are.

16 A. It's right there. What it is is a gear box with

17 a drive shaft coming off the side of the gear box. The gear

18 box operates a butterfly valve. It opens and closes the

19 valves inside the pipe.

20 Q. How many would there have been on the tee valve

21 on the discharge side of the --

22 A. On the discharge side there would have been one.

23 Q. Only one?

24 A. The second one on the 16-inch line that it tied

25 in to.

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1 Q. So there would have been two on the tee, one for

2 the 24-inch, one for the 16?

3 A. Correct.

4 Q. And you did see those valve stems when you

5 looked down into the hole; correct?

6 A. I saw the valve stem on the 24-inch line. I

7 don't remember seeing the entire 16-inch or the 16 to

8 24-inch tee.

9 Q. So the whole tee hadn't been exposed; is that

10 correct?

11 A. No. He was digging alongside of it digging up

12 to it so he could expose it with the hand shovel to where he

13 knew where he could dig.

14 Q. How do you know what he was doing?

15 A. Speculation.

16 Q. That's what I wanted to get to. Prior to

17 hearing the metal to metal noise were you looking at the

18 excavator at the time or were you doing your work inside the

19 pump house?

20 A. I was standing at the doorway watching the

21 excavator.

22 Q. Why were you doing that?

23 A. Because I was concerned as to the location where

24 he was digging.

25 Q. How did --

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1 A. In relationship to the pipe, Olympic pipeline.

2 Q. And why would you have known better than the

3 excavator operator where the Olympic pipeline was?

4 MR. FINEGOLD: Calls for speculation.

5 MR. NICOLL: Same thing.

6 A. I wouldn't know.

7 Q. Why did you think you knew more about where the

8 Olympic pipeline was than Britt Lukes?

9 MR. NICOLL: Objection. It assumes.

10 A. I learned a long time ago to question other

11 people's judgment when it comes to my own safety.

12 Q. Okay.

13 A. That's why I questioned where he was digging.

14 If I'm wrong, I'm wrong. I have no problem. I will be the

15 first to admit it.

16 Q. Have you ever been wrong in the past about --

17 A. Sure.

18 Q. -- various issues?

19 A. I'm a human being. I make mistakes.

20 Q. Let's go back. The first time you look in the

21 hole is after you walk back with Paul Krakenberg; correct?

22 A. Correct.

23 Q. And you see the valve stem for the first time;

24 is that correct?

25 A. It wouldn't be the first time. I'd seen it -

141	<p>1 Q. The first time that day?</p> <p>2 A. Correct.</p> <p>3 Q. And it had been hand excavated to the best of</p> <p>4 your knowledge; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And the valve stems would have been</p> <p>7 approximately how far below the grade at that point in time?</p> <p>8 A. Three, three and a half feet.</p> <p>9 Q. And you were told something about why the valve</p> <p>10 stems were exposed; is that correct?</p> <p>11 A. Why they were exposing them?</p> <p>12 Q. Yes.</p> <p>13 A. Yes. Because one -- they could not operate it.</p> <p>14 Q. And were you told that before or after you first</p> <p>15 looked into the excavation after you heard the noise?</p> <p>16 A. I want to believe it was before, long before</p> <p>17 they even started it.</p> <p>18 Q. Why do you say that?</p> <p>19 A. Because they had a continuing problem trying to</p> <p>20 get their valves to open.</p> <p>21 Q. What was the continuing problem?</p> <p>22 A. Blockage, foreign objects in the pipe from</p> <p>23 whether it be when they backfilled.</p> <p>24 Q. Why would the fact that they may have had</p> <p>25 continuous problems with the valves make you believe that</p>	143	<p>1 A. He said I'm digging up the valve stem, clear it</p> <p>2 so we can get it to work.</p> <p>3 Q. And then when were you told about the CDF and</p> <p>4 the valve stem?</p> <p>5 A. I don't remember. I don't remember if it was</p> <p>6 before or after.</p> <p>7 Q. What were you told about CDF and the frozen</p> <p>8 valve stem?</p> <p>9 A. That there was some CDF in the valve riser pipe.</p> <p>10 Q. And what is the valve riser pipe?</p> <p>11 A. That I can show you.</p> <p>12 Q. I bet if we look at the last exhibit, Exhibit</p> <p>13 204, you can tell us what the valve riser pipe is; can't</p> <p>14 you?</p> <p>15 A. Yes, I can.</p> <p>16 Q. Can you take Exhibit No. 204 and in red pen mark</p> <p>17 the two valve riser pipes that you see?</p> <p>18 A. (Witness complies).</p> <p>19 Q. Mark, show the camera.</p> <p>20 A. (Witness complies).</p> <p>21 Q. Okay. And those are two look like black ductile</p> <p>22 type pipes; correct?</p> <p>23 A. Yes, they are.</p> <p>24 Q. And one of them looks like it's right in the</p> <p>25 front of or next to this white pickup truck's passenger</p>
142	<p>1 you were told that they were having problems with the valve</p> <p>2 before you looked into the hole? I don't understand the</p> <p>3 relationship between IMCO's past problems with valves and</p> <p>4 your belief that you were told that before the excavation</p> <p>5 started, but maybe you can enlighten me on that.</p> <p>6 MR. NICOLL: Objection to the extent it</p> <p>7 mischaracterizes earlier testimony.</p> <p>8 Q. Go ahead and answer.</p> <p>9 A. I believe Britt told me. I asked him what are</p> <p>10 you doing.</p> <p>11 Q. And did you climb up in the cab and ask him</p> <p>12 that?</p> <p>13 A. No. I don't climb on their machinery when it's</p> <p>14 running. It's a safety hazard.</p> <p>15 Q. Can you have conversation with an excavator when</p> <p>16 it's running?</p> <p>17 A. When you throttle it down to an idle you can.</p> <p>18 I'm standing right beside it.</p> <p>19 Q. So did you have him throttle it down to an idle</p> <p>20 so you could talk to him?</p> <p>21 A. No, I didn't ask him to. He did it on his own.</p> <p>22 Q. What did he tell you specifically?</p> <p>23 A. He said what are you doing. You know, just</p> <p>24 general bullshit.</p> <p>25 Q. What did he say?</p>	144	<p>1 front tire?</p> <p>2 A. Yes.</p> <p>3 Q. And the other one is adjacent to this tall blue</p> <p>4 pipe; is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Can you mark those both as, what were they,</p> <p>7 riser pipes?</p> <p>8 A. Yes.</p> <p>9 Q. Mark those as riser pipes, please.</p> <p>10 A. Valve risers?</p> <p>11 Q. Yes, valve risers.</p> <p>12 A. (Witness complies).</p> <p>13 Q. And mark the other one also.</p> <p>14 A. Okay. I got them.</p> <p>15 Q. Both marked?</p> <p>16 A. Arrows to one another.</p> <p>17 Q. And the riser pipe that Britt would have been</p> <p>18 talking about as having problems would be the one down by</p> <p>19 the white truck; correct?</p> <p>20 A. No.</p> <p>21 Q. Which one?</p> <p>22 A. It's not pictured.</p> <p>23 Q. Where is it pictured?</p> <p>24 A. If you go to Exhibit 200.</p> <p>25 Q. Okay.</p>

<p>1 A. You see the green gang box in the middle of the 2 picture there? 3 Q. Right. 4 A. To the front corner on the right hand side in 5 between the two piles of conduit, that is a valve riser 6 pipe. 7 Q. Can you mark that valve riser pipe on Exhibit 8 200? Does it have some -- 9 A. Orange paint on it. 10 Q. There's two of them, isn't there, with orange 11 paint on it? 12 A. Yes. One would be for the 16-inch line and one 13 would be for the 24-inch line. 14 Q. Why don't you mark both of those as valve riser 15 pipes. 16 A. (Witness complies). 17 MR. PLATIS: Better show them to the camera. 18 Q. Show those to the camera. 19 A. (Witness complies). 20 Q. Point those out, please. 21 A. There is one there and one there approximately 22 four feet up. 23 Q. Do you know which valve riser pipe or whether 24 both of them had CDF overfill in them? 25 A. No, I wouldn't know which one.</p>	145	<p>1 him digging this 24-inch pipe up, the discharge pipe? 2 A. I couldn't tell you why he was digging it up. 3 Q. But you did see him doing that? 4 A. Yes. 5 Q. And can you explain why he would be digging 12 6 to 15 feet away from those valve stems to find them? 7 A. No. I couldn't explain that. 8 Q. Do you know what the soil was like, the 9 undisturbed soil in that area was like? Was it rocky or 10 soft? 11 A. Are you talking native? 12 Q. The native soil. 13 A. The native was actually blue clay, blue-gray 14 clay. 15 Q. Blue-gray clay? 16 A. Yeah. 17 Q. And you saw that; correct? 18 A. Yes. 19 Q. And is that what they dug the excavation in for 20 the pump house when you saw this? 21 A. No. That was actually bedrock. It was 22 blue-gray clay sitting on top of bedrock. 23 Q. So there was bedrock down there? 24 A. Yes. 25 Q. Do you know if Britt Lukes hit any bedrock while</p>	147
<p>1 Q. And those risers, that's where Britt would have 2 been digging; correct? 3 A. Yes. 4 Q. And that would have been probably the exact 5 location where he is digging because that's where the valve 6 risers are; correct? 7 A. Correct. 8 Q. He wouldn't had to have exposed the entire 9 24-inch line? 10 A. No. 11 Q. To find the valves, would he? 12 A. No. 13 Q. He could have just dug straight down those valve 14 riser pipes and the valve stem would be right there; 15 correct? 16 A. Correct. 17 Q. And the reason they put those in is because they 18 have to keep that area clear so they can run the stem down 19 there to open up the valves; correct? 20 A. Correct. 21 Q. I guess I have learned something in this case so 22 far but not very much. I'm testifying and I'll have to 23 withdraw that. I'm sorry. I can't do that. 24 Now, if the valve stems were three and a half 25 feet below those depicted on Exhibit 200, why did you see</p>	146	<p>1 you were on the job site? 2 A. I'm sure. 3 Q. Do you know what it sounded like when they hit 4 bedrock? 5 A. Metal to rock. 6 Q. Metal to rock? 7 A. Yes. 8 Q. How does that sound different from metal to 9 metal? 10 A. Metal to metal has more of a ting. 11 Q. More of a ting to it? 12 A. Yeah. Whereas rock is more of a dull thud. 13 Q. And you had specifically noticed that while you 14 were working as an electrician on that job site; correct? 15 A. Yes. 16 Q. Were they hitting rock often? 17 A. Well, yeah. 18 Q. How often were they hitting metal to metal? 19 A. Very seldom. 20 Q. How often? Had they ever hit metal to metal 21 prior to that time that you are aware of that you heard of? 22 A. Yeah. 23 Q. And did you recall hearing that? 24 A. No, because I was not near the actual excavation 25 when they hit it.</p>	148

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1 Q. So my question is, prior to August 11th on the
2 Dakin-Yew job had you ever heard a metal to metal sound?
3 MR. NICOLL: On the job?
4 Q. Yeah, on the job. Not when you are in your car.
5 I mean when you're on the job site had you ever heard an
6 excavator which was made of metal hit something else metal?
7 A. I'm sure I have but I can't tell you specific
8 instances.
9 Q. Do you have a specific recollection today of a
10 metal to metal sound?
11 A. No, I don't.
12 Q. So is it possible that that could have been the
13 first time you heard metal to metal was on August 11th?
14 A. Unlikely.
15 Q. Is it possible?
16 A. It's possible, but not probable.
17 Q. Have you ever operated an excavator?
18 A. No, I haven't.
19 Q. Have you ever been in an excavator when it's
20 being operated?
21 A. Not in an excavator. A similar piece of
22 equipment.
23 Q. One question I have that wasn't talked about is
24 if you were to look at the west wall of the pump station,
25 okay, do you see where the door is? That's the west wall;

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1 correct?
2 A. Yes.
3 Q. And you were to take the treads of the
4 excavator, the Hitachi, on August 11th as you were standing
5 there watching the excavation, which way were the treads
6 pointed relative to the west wall? Would they have been
7 parallel or at an angle?
8 A. They would have been at an angle.
9 Q. Can you tell me what angle they would have been
10 relative to that wall?
11 A. I would say, and this is an approximate, 15 to
12 30 degrees to the wall with the northern end of the tracks
13 away from the wall itself.
14 Q. So the southern part of the tracks would have
15 been closer to the wall than the northern end of the tracks;
16 correct?
17 A. Correct.
18 Q. And that angle would have been approximately you
19 said?
20 A. 15 to 30 degrees. It's an approximate. I don't
21 know.
22 Q. And how far would the tracks have been from the
23 wall itself, the closest part? So that would have been the
24 southeast corner of the tracks; right? That would have been
25 the closest part of the tracks?

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1 A. Yes.
2 Q. And how close would they have been to that wall?
3 A. I would say 15 feet.
4 Q. 15 feet?
5 A. Guesstimate.
6 Q. And where would that point have been? Would
7 that have been south or north of the door opening?
8 A. South.
9 Q. So when you were looking out the door, what
10 would you be looking at?
11 A. The cab.
12 Q. The cab?
13 A. The cab and --
14 Q. The machine itself?
15 A. If I'm looking directly out the door, the Cab.
16 Look to my left I can see the bucket.
17 Q. And approximately how far away would you have
18 been then from the operator?
19 A. 8, 10 feet.
20 Q. And when the excavator swung around you would
21 have seen the back of it?
22 A. I was on the counterbalance, yes.
23 Q. Did he swing it around like that?
24 A. I'm sure he did.
25 Q. Do you remember him swinging it around?

152

1 A. No specific instance.
2 Q. One thing that's confusing for me is you said
3 Britt was digging for two and a half hours in that same
4 spot; is that correct?
5 A. I don't remember that.
6 Q. How long was he digging in that spot?
7 A. From the time he --
8 Q. I mean he has to dig three and a half feet.
9 A. From the time he started until the time they
10 compacted and backfilled the whole thing it was two, two and
11 a half hours.
12 Q. The time they started what?
13 A. To clear that valve stem.
14 Q. No. I want to know -- well, when you got to
15 work was the excavator already parked in the position you
16 have just described?
17 A. No.
18 Q. When did it move into position?
19 A. Approximately I would say between 8 and 8:30,
20 8:30 and 9.
21 Q. Is that when you went out and started talking to
22 him about the location of the Olympic pipeline?
23 A. Thereabouts.
24 Q. And how long was he digging at that site to get
25 down to the valve stem?

153

1 A. About ten minutes.
 2 Q. And where did he put the excess dirt?
 3 A. In relationship to Exhibit 200 he would have put
 4 it in this area here.
 5 Q. If you could show the camera, please?
 6 A. It would have been in this area right in here.
 7 Q. West of the pile?
 8 A. Yes.
 9 Q. And do you know how many -- well, I'll ask you
 10 another question. I just have so many questions to ask and
 11 it's past 3:30. Can I go another ten minutes or how are you
 12 doing?
 13 A. Go ahead.
 14 Q. Is that okay if I do another ten minutes? Is
 15 that okay with you?
 16 A. That's fine.
 17 Q. All right. You said that this excavator had a
 18 24-inch bucket; is that correct?
 19 A. Yes.
 20 Q. And it had four teeth on it; correct?
 21 A. Yes.
 22 Q. Are you positive of that?
 23 A. Yes.
 24 Q. You paused a little. Are you sure it was four
 25 teeth or could it have been five teeth?

154

1 A. It was four.
 2 Q. Did you count the teeth?
 3 A. No.
 4 Q. How did you know it was four teeth?
 5 A. A standard bucket has four teeth on it.
 6 Q. But I'm not asking you what a standard bucket
 7 has. I'm asking you if you remember if it was four teeth or
 8 five teeth?
 9 A. I remember four teeth. Why I remember it, I
 10 don't know. I didn't count them. I couldn't tell you why I
 11 remember four.
 12 Q. How did you know it was a 24-inch bucket?
 13 A. Because we do a lot of excavation for trenches
 14 in regards to running conduit underground. Our standard
 15 bucket widths are one foot, two foot, three foot and five
 16 foot. And after approximately ten years of experience, I
 17 mean it's eyesight tells you that's a 24-inch bucket.
 18 Q. So you didn't measure the bucket?
 19 A. No.
 20 Q. You are not positive it was a 24-inch bucket.
 21 Are you saying it was --
 22 A. It could have been 25 and three-quarters. I
 23 don't know. Standard ditch width is two feet. They call it
 24 a 24-inch bucket.
 25 Q. Do you remember the exhibit here that showed the

155

1 excavator? Did you see that one? I think it was Exhibit
 2 202. Would you take a look at 202? 6/16/94 photograph. Is
 3 that the same Hitachi machine that Britt Lukes was
 4 operating?
 5 A. It appears to be so.
 6 Q. And is that a different or the same bucket?
 7 A. It appears to be the same bucket.
 8 Q. But you said that that was a 30-inch bucket,
 9 didn't you?
 10 A. It looks like a 36-inch bucket. It's hard to
 11 tell any dimensions on something this size.
 12 Q. But you are just not sure; right?
 13 A. No, I'm not.
 14 Q. How many teeth are on that bucket on Exhibit
 15 202?
 16 A. I see five.
 17 Q. So are you sure if there were four teeth or five
 18 teeth or just not sure now that you look at the picture? I
 19 mean tell me the truth.
 20 A. I still remember four teeth.
 21 Q. Are you sure of it?
 22 A. Yes. I am sure of it.
 23 Q. Based upon that I'm going to recess for the day
 24 and let you come back another day. Okay?
 25 A. Thanks.

156

1 Q. I have a few more questions for you.
 2 A. I'm sure you do.
 3 Q. Thank you very much.
 4 THE VIDEOGRAPHER: This adjourns the deposition
 5 of Mark Graham. The time is approximately 3:37 p.m. and
 6 this is the end of tape number two. ProVideo Seattle in
 7 Seattle, Washington will retain the original videotapes.
 8 Here adjourns the deposition.
 9 (The deposition adjourned
 10 at 3:37 p.m.)
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