

US District Court - Arizona
Goldberg v. Pacific Indemnity

FINAL - Richard Soleau
December 13, 2006

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1 **Q. And I believe you testified this**
2 **morning that you believe that there could be some**
3 **correlation between water intrusion issues and the**
4 **description of urine odor that the various people**
5 **are describing in this compendium of witness**
6 **statements. Do you recall that testimony?**

7 **A. I believe I said it was potentially**
8 **explanatory of those perceptions.**

9 **Q. Therefore, that would suggest that you**
10 **have information that water intrusion can lead**
11 **people to believe that -- strike that.**

12 **That would suggest to me that you have**
13 **information in your file that you relied upon**
14 **that would document definitively that the odor**
15 **from water intrusion would cause a urine like**
16 **smell, is that your position?**

17 **MR. SULLIVAN: Form.**

18 **A. That's not what I said. I only said**
19 **that the conclusion that I reached is that the**
20 **water intrusion was potentially explanatory of**
21 **offensive odors.**

22 **Q. The odors that the people in this**
23 **compendium of exhibits or statements are**
24 **describing, Exhibit 39, is a urine odor, numerous**
25 **instances of describing what they call a urine**

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1 odor. You are aware of that, aren't you, sir?

2 MR. SULLIVAN: Objection, form.

3 A. Yes.

4 Q. What information have you seen whereby
5 some definitive statement is made that water
6 intrusion would cause an odor that would cause
7 people to describe it as urine odor?

8 MR. SULLIVAN: Form.

9 A. None.

10 MR. SULLIVAN: Foundation.

11 Q. Let me show you what was previously
12 marked as Exhibit 22 during the deposition of
13 Ms. Mangold.

14 Was there a period of time when it was
15 suggested to you by Ms. Mangold or anybody else
16 that tens of thousands of gallons of water had
17 been pumped from the underneath the Goldberg
18 residence at some point?

19 A. It is my recollection that Lou Marson
20 or somebody working for Lou Marson had made that
21 type of representation to Ms. Mangold.

22 Q. Let me show you now what has been
23 marked as Plaintiff's 36 previously to the
24 deposition of Ms. Mangold. This is eighth report,
25 Bates reference M1016583, 101440 -- excuse me,

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1 **661. You were a -- the recipient of this report**
2 **along with John Penfield?**

3 A. Yes.

4 Q. **Would you go to the second page of the**
5 **exhibit, please. Do you see under the heading**
6 **dwelling that there is a discussion of contact**
7 **between Ms. Mangold and Lou Marson?**

8 A. Yes.

9 Q. The report tells you and
10 **Mr. Penfield -- excuse me, Mr. Penfield, "He**
11 **indicated that he had the pumped up from the**
12 **underground air duct returns 10,000 gallons of**
13 **water each time. He indicated that that had**
14 **occurred four times."**

15 Do you see that?

16 A. Not yet, I am looking for it. Oh,
17 yes.

18 Q. **Is this the report that provided you**
19 **the information from Ms. Mangold about her**
20 **conversation with Lou Marson?**

21 A. No, I believe I would have talked to
22 her on the phone about it before I saw it in this
23 report.

24 Q. **And when did she advise you of a prior**
25 **conversation with Lou Marson?**

1 A. I don't recall specifically.

2 **Q. Do you recall if when you spoke to her**
3 **you asked her to make a note in the electronic**
4 **file?**

5 A. No, but I would have assumed that she
6 would have in a report which would appear in the
7 electronic file.

8 **Q. Have you seen any such notation by her**
9 **in a file prior to August 12, 2004?**

10 A. No.

11 **Q. Do you recall if you authored a report**
12 **close in time to your receiving this eighth report**
13 **from Ms. Mangold?**

14 A. I don't recall. I could have.

15 **Q. Do you recall asking her to document**
16 **this in your file about her Lou Marson**
17 **conversations before you sent out that letter?**

18 MR. SULLIVAN: Objection, form.

19 A. No.

20 **Q. Going back to Exhibit 22, answers to**
21 **interrogatories from Marson defendants in a state**
22 **court action, prior to my showing you this**
23 **document, were you aware of it?**

24 A. No.

25 **Q. Do you see at the bottom of page 2,**

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1 where there is a statement by the defendant Marson
2 about the amount of water that was pumped from
3 each return?

4 A. Yes.

5 Q. And it doesn't refer to 40,000
6 gallons, does it, sir?

7 A. No.

8 Q. It says 120 gallons the first time and
9 240 gallons the second time?

10 A. Yes.

11 Q. Is today the first time that anybody
12 made you aware of the fact that Marson's position
13 in the state court action was that they pumped
14 approximately 360 gallons from the underground air
15 returns, not 40,000 gallons?

16 A. Yes.

17 Q. Are you surprised to learn this
18 information?

19 A. No. I had acknowledged that there was
20 a discrepancy between what Marsons had told us and
21 what Mr. Goldberg was asserting and I brought out
22 that that, the discrepancy existed and
23 acknowledged it in my letter to him.

24 Q. When did you become aware of the
25 discrepancy, to use your words?

1 reference there to Leroy?

2 A. Yes.

3 Q. OK. Exhibit 55 is a lengthy letter
4 from Mark Goldberg to you which it starts out by
5 saying, "I received your letters dated July 19,
6 2004, first letter, July 29, 2004, second letter,
7 and August 6, 2004, third letter." That's how the
8 letter starts, right?

9 A. Yes.

10 Q. Then he goes on, Mr. Goldberg on
11 behalf of Mark and Sherry Goldberg addresses
12 numerous issues that you had presented in your
13 letters, correct?

14 A. Yes.

15 Q. And if you go to section 6, starting
16 with S201218, there is a section heading, VI
17 entitled, "The information that Chubb has received
18 suggesting that 'thousands of gallons of water'
19 were pumped out from our underground return air
20 ducts is inaccurate based on the information I
21 received from Leroy Dowdy." Do you see that?

22 A. Yes.

23 Q. And at the end of the page 201218,
24 Mr. Goldberg tells you the total gallons of water
25 extracted was approximately 338 gallons. Do you

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1 see that?

2 A. Yes.

3 Q. He gave you the name of Leroy Dowdy,
4 right?

5 A. Yes.

6 Q. He was telling you that your reference
7 to thousands of gallons of water was not accurate,
8 right?

9 A. Yes.

10 Q. He gave you Mr. Dowdy's phone number
11 on page S201219, right? In the middle of the
12 page, he said, "We have no objections to you
13 contacting Leroy Dowdy at Tin Works at (480)
14 998-1122 concerning the water removal." He gave
15 you the guy's phone number, didn't he?

16 A. I am sorry, I don't see that.

17 Q. Go to page 219.

18 A. OK. Oh, I see it now, thank you.

19 Q. Did you call Mr. Dowdy?

20 A. No, I didn't.

21 Q. Did you have somebody else call
22 Mr. Dowdy?

23 A. I don't know if anybody else called
24 Mr. Dowdy.

25 Q. And one month later, after receiving

1 **Mr. Goldbergs' letter, you allowed Mr. Cain,**
2 **Dr. Cain to be told about thousands of gallons of**
3 **water being pumped from under the house during the**
4 **remodeling period, right?**

5 A. Yes.

6 **Q. And you are suggesting to us that your**
7 **information to Dr. Cain was even-handed, balanced**
8 **and fair to the insured?**

9 MR. SULLIVAN: Objection to form.

10 A. Yes, I don't think it was any
11 consequence whether we introduced a matter that
12 was under investigation such as this or not to
13 Dr. Cain.

14 **Q. As of September of 2004, Mr. Soleau,**
15 **you were focusing on the water intrusion issues as**
16 **a potential explanation for what all of these**
17 **people were describing in their witness**
18 **statements, weren't you?**

19 MR. SULLIVAN: Form and foundation.

20 A. No.

21 **Q. You weren't? Then what were you**
22 **focused on?**

23 A. I was focusing on trying to find the
24 source of offensive odors being reported.

25 **Q. If you weren't focused particularly on**

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1 water intrusion issues, what would be the reason
2 why you gave an incomplete description of
3 everybody's input to you about the water being
4 pumped from underneath the house?

5 MR. SULLIVAN: Objection to form,
6 argumentative.

7 A. We believe we gave Mr. Cain the most
8 complete factual description that we had on hand
9 at the time.

10 Q. So you must have had to have made some
11 assessment on your part that you were going to
12 believe what Lou Marson said to Mona Mangold and
13 tell that information to Dr. Cain and ignore what
14 Mark Goldberg was telling you?

15 MR. SULLIVAN: Form.

16 A. We believed that we would tell
17 Mr. Cain what was told to us by Mr. Marson and
18 investigate what Mr. Goldberg told us.

19 Q. When did you investigate what
20 Mr. Goldberg was telling you?

21 A. We continued to investigate all
22 aspects of the claim.

23 Q. So you called Leroy Dowdy?

24 A. I did not call Leroy Dowdy.

25 Q. And you are not aware that anybody

1 else had called Leroy Dowdy?

2 A. I do not have a recollection as I sit
3 here.

4 Q. At the time that you saw
5 Mr. Goldberg's letter to you, Exhibit 55, you knew
6 that he had sued Lou Marson & Sons?

7 A. I don't recall.

8 Q. You knew when you first got involved
9 in the case that Lou Marson's and Shared Auto
10 Owners had already been brought in as a result of
11 the Goldbergs making a claim against Lou Marson &
12 Sons, right?

13 A. Yes.

14 Q. You would therefore be concerned about
15 the credibility and accuracy of Lou Marson & Sons
16 and Lou Marson's statements to Ms. Mangold in view
17 of that adversarial position in view of the
18 Goldbergs and Mr. Marson, right?

19 MR. SULLIVAN: Form.

20 A. I had no reason to believe that they
21 were lying to us.

22 Q. Well, didn't Ms. Mangold tell you that
23 she had tried to follow up with Mr. Marson and get
24 something in writing and she had not got that
25 information from him?

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1 MR. SULLIVAN: Form.

2 A. No, I understood that we asked to
3 follow up with Mr. Marson and Mr. Goldberg didn't
4 want us to.

5 Q. Who advised you of that?

6 A. Our attorneys.

7 Q. When did, when did that information
8 come to your attention?

9 A. I don't recall the date.

10 Q. All right. Can you go to
11 Mr. Goldbergs' letter, page 20.

12 A. OK.

13 Q. Doesn't he say, "We have no objections
14 to you contacting Leroy Dowdy," and he gives you
15 the phone number?

16 A. Yes.

17 Q. And he says, "Questions to contractors
18 and employees involved in our third-party
19 litigation in which Pacific Indemnity is a
20 coplaintiff are more problematic because of the
21 litigation." Right?

22 A. Yes.

23 Q. It says, "Attorneys for Chubb could
24 not talk with the contractors directly because the
25 defendants are represented by counsel." Right?

1 A. Yes.

2 Q. Then it says, "Obviously, if a
3 **nonattorney contacts Marsons, his motives of**
4 **credibility will be suspect in answering questions**
5 **about the home, because of the various pending**
6 **claims."**

7 He -- he says, "Obviously if a
8 **nonattorney contacts Marson, his motives and**
9 **credibility will be suspect in answering**
10 **questions about our home because of the various**
11 **pending claims that Pacific Indemnity and**
12 **Goldbergs have against him and his company."**

13 Do you see that? Have I read that
14 correctly?

15 A. Yes.

16 Q. And he says, "As you know, Pacific
17 **Indemnity has sued the contractors including**
18 **Marson. We have no control over whether**
19 **nonattorney representatives from Chubb contact**
20 **Marson." Do you see that?**

21 A. Yes.

22 Q. So what he is saying is an attorney
23 **representing Pacific Indemnity can't call**
24 **Mr. Marson, he is telling you issues about**
25 **Marson's motives and credibility because of the**

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1 lawsuit and then he says, we have no objection to
2 you calling Leroy Dowdy though, right?

3 MR. SULLIVAN: Objection, form,
4 foundation.

5 A. He is pointing out, I believe, the
6 legal aspects and then he goes on to state, "Chubb
7 must not however take any action that will
8 adversely impact the litigation in which we are
9 coplaintiffs with Pacific Indemnity," and we took
10 that to be a direct request if not an insistence
11 that we do not contact anybody.

12 Q. He didn't say that though, sir, he
13 said, We have no objection to Chubb contacting
14 Leroy Dowdy.

15 A. With the codicil that we must not take
16 any action that might adversely impact the action,
17 yes.

18 Q. But he didn't include in that the fact
19 that you couldn't call Leroy Dowdy, did he?

20 A. It was a conditional, You could call
21 Leroy Dowdy if you don't adversely impact the
22 litigation.

23 Q. And is there any reason why you didn't
24 tell Dr. Cain about this statement to you by Mark
25 Goldberg that he thought you should be aware that

1 it is 336 gallons, not 40,000 gallons?

2 MR. SULLIVAN: Objection, asked and
3 answered.

4 A. Frankly, counselor, I think that the
5 presence of hundreds of gallons of water sitting
6 stagnant in a return air duct in this type of
7 house is just as serious as thousands of gallons.
8 So it didn't make any difference to me.

9 Q. OK. What is the highest measurement
10 of water in the underground air return ducts that
11 you have seen documented in 2003?

12 A. I don't recall any recollection or
13 presence of water in 2003.

14 Q. What is the highest amount of water
15 documented in the underground air returns in 2004
16 before Mr. Shipstead sent his letter to Dr. Cain?

17 A. I believe it was minimal.

18 Q. What is the highest amount of water
19 you have seen documented in the underground air
20 returns during 2005?

21 A. I haven't seen any documentation with
22 respect to 2005.

23 Q. OK. Why then would you tell Dr. Cain
24 about 40,000 gallons or thousands of gallons of
25 water back in 2002?

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1 MR. SULLIVAN: Objection to form,
2 mischaracterizes the document.

3 A. We were just simply passing on to
4 Dr. Cain what was told to us.

5 Q. And it is your testimony that you
6 weren't trying to mislead Dr. Cain in terms of the
7 history of the El Maro residence?

8 MR. SULLIVAN: Form.

9 A. That's correct, we wouldn't want to
10 mislead anybody.

11 Q. OK. There came a point in time, sir,
12 when you became aware of the information in the
13 claims file of contact between Mona Mangold and
14 Dave Ponders at Auto Owners, right?

15 A. Yes.

16 Q. Let me show you Exhibit 23.

17 A. This is kind of hard to read,
18 counselor.

19 Q. That's why the third page is a
20 transcription of the document.

21 MR. SULLIVAN: For ease of reference,
22 we will stipulate that's a fair transcript
23 of the claim notes on the preceding two
24 pages.

25 MR. PAIGE: Thank you.

1 **Q. The document from the Chubb file is**
2 **Bates referenced M201869, M201070 and then the**
3 **last page of the exhibit describes contact with --**
4 **I think it was actually Dave Ponder but the**
5 **transcription refers to Ponders?**

6 **A. Yes, sir.**

7 **Q. When did you become aware of what is**
8 **described in Mona Mangold's entry dated August 19,**
9 **2003?**

10 **A. It would have been very shortly after**
11 **her generating that message.**

12 **Q. And this file includes a statement**
13 **that Mr. Ponder "Confirmed that the contractors'**
14 **employees relieved themselves by urinating and**
15 **also defecating in the attic." Do you see that?**

16 **A. Yes.**

17 **Q. You then received the report from**
18 **Dr. Cain in which he offered his own thoughts**
19 **about the credibility of various witness**
20 **statements that had been provided to Chubb,**
21 **correct?**

22 **A. Yes.**

23 **(Exhibit Exhibit 54, report of Dr.**
24 **William Cain marked for identification, as**
25 **of this date.)**

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1 Q. OK, would you go to Exhibit 54,
2 please.

3 A. OK.

4 Q. Go to page 7 of the report which is
5 Chubb Bates number 00345, please.

6 A. OK.

7 Q. Do you see where it says, "As I
8 mentioned above," in the middle of the page?

9 A. Yes.

10 Q. It says, "As mentioned above, a later
11 date, I received Mr. Goldberg's entire letter of
12 August 11, 2004 to Mr. Soleau. In it,
13 Mr. Goldberg stated that the entire house smelled
14 of urine and that Don Bratcher and Juan Galvez of
15 Vac Environmental Services had noted a strong
16 urine odor after a thunderstorm in July. In that
17 letter, Mr. Goldberg reminded Mr. Soleau that in a
18 letter of May 6, 2004, Mrs. Goldberg 'explained
19 how the urine in our house, our home sometimes
20 smells like urine, sometimes smells garbage and
21 sometimes smells like excrement.'"

22 Do you see that?

23 A. Yes.

24 Q. Do you know who sent Mr. Goldberg's
25 entire letter of August 11, 2004 to Dr. Cain?

1 A. I believe it was either Ginger English
2 or Pat Shipstead.

3 **Q. It says, "at a later date it was**
4 **sent." Do you have any idea as to when after the**
5 **original submittal was made in September of 2004**
6 **Dr. Cain was provided that additional information?**

7 A. No, I don't recall.

8 MR. SULLIVAN: Object to the form of
9 the question.

10 **Q. Then Dr. Cain says in a witness**
11 **statement attached to the letter, "Lori Jones**
12 **stated that the slight urine odor she detected in**
13 **the guest suite on August 6, 2004 smelled to me**
14 **just how a diaper pail smells. This observation**
15 **has importance because a diaper pail smells**
16 **largely of ammonia and amines. Old dried urine**
17 **smells less so of ammonia."**

18 **Then he goes on and another witness**
19 **statement, "Maria Robles stated earlier in**
20 **2004, the urine odor caused burning on my eyes**
21 **nose and throat. And others also implied**
22 **irritation from the odor (e.g. runny nose) and**
23 **others used the term garbage and excrement to**
24 **describe the odor." Do you see that?**

25 A. Yes.

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1 Q. Then down toward the bottom, Dr. Cain
2 says, "When such a source changes character from
3 urinous, U-R-I-N-O-U-S, to fecal from one occasion
4 to the other." Do you see that?

5 A. Yes.

6 Q. When you read that, could you tell
7 that Dr. Cain was discrediting the witness'
8 statements because at certain times they were
9 referring to fecal matter, right?

10 MR. SULLIVAN: Objection, form.

11 A. At certain times, their perception was
12 described as fecal matter.

13 Q. And no one had provided to Dr. Cain
14 information about the Dave Ponder report to Mona
15 Mangold about urination and defecation occurring
16 in the attic, had they?

17 MR. SULLIVAN: Objection to the form
18 of the question.

19 A. No.

20 Q. And no one at, to your knowledge, at
21 Chubb had provided to Dr. Cain the Air Resources
22 post-job submittal book either, had they?

23 A. I don't recall.

24 Q. I will allow to you, sir, during his
25 deposition in the state court case, he confirmed

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1 a" – and I can't read the rest.

2 "If the theoretical off gasses was the
3 culprit, more than a single truss would be
4 affected. In fact, urine touched the black
5 light – touched the black light should be able
6 to detect it." I think that grammar is a
7 product of this being cut off, counselor.

8 To go on, it says, "It may be possible
9 that a pocket of rising urine odor settled in that
10 area, but the truss itself was singled out."

11 Q. OK. So Ms. Vallee is referring to off
12 gasses of urine that could migrate to another area
13 where there was not an initial deposit?

14 MR. SULLIVAN: Object to the form of
15 the question.

16 Q. Is that how you read her?

17 A. That may have been her opinion. I
18 don't – it says what it says.

19 Q. She is a certified industrial
20 hygienist, is she not?

21 A. Yes, but she is not the expert that we
22 relied upon to give us our information with
23 respect to potential off gasses.

24 Q. What was that expert then?

25 A. That would have been Dr. Cain.

1 **Q. You have not seen his deposition that**
2 **he gave in the state court action?**

3 **A. I have not.**

4 **Q. Do you know that he was being deposed?**

5 **A. No.**

6 **Q. Well, just so you are current on what**
7 **your person you rely upon has said, let me read**
8 **from page 187 of his deposition that was attended**
9 **by Mr. Sullivan where Mr. Woods appeared as his**
10 **lawyer:**

11 **"Question: You were talking earlier**
12 **during Mr. Cook's examination about**
13 **something that could be done with regard to**
14 **the issues at the Goldberg house would be to**
15 **calculate, create some model where there**
16 **could be a calculation of threshold for**
17 **orders. Do you recall that testimony?**

18 **"Answer: Yes.**

19 **"Question: Was there a particular**
20 **reason why you didn't attempt any such**
21 **calculation as part of your July 18, 2005**
22 **report?**

23 **"Answer: Yes.**

24 **"Question: And the reason is?**

25 **"Answer: The reason is that although**

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1 one could do that with some knowledge about
2 what the chemical was, unfortunately we
3 don't have that knowledge of what the exact
4 chemical is that somebody would detect.

5 "Question: So while you suggested
6 that there could be some calculation and
7 some modeling done, what I am hearing you
8 say now is there is no such calculation that
9 you are aware of with regard to urine?

10 "Answer: Well, look, first off, you
11 will have to go back in the record to see
12 what I said. I said something about how one
13 could take -- I was asked a question and I
14 said one could take some source of emission
15 and if you know the odor threshold, you
16 could try to figure out how much it would
17 take in order for the odor to be there at
18 just detectible levels and at higher levels
19 and that is true. There is the problem that
20 we don't know exactly what material is
21 either the most potent deodorant in the
22 mixtures and we don't know what the mixture
23 itself is.

24 "So I was giving an answer that I
25 think was appropriate to the context in

1 **which the question was asked. I didn't say**
2 **to Mr. Cook, here is what I think should be**
3 **done or here is what I wouldn't do or any**
4 **such thing.**

5 **"Question: Have you ever participated**
6 **as an author in any publication where you**
7 **have set forth calculations of formulas for**
8 **threshold odor perceptions for various**
9 **chemicals?**

10 **"Answer: Yes.**

11 **"Question: Have you ever participated**
12 **in any study to attempt any such odor**
13 **threshold formulas with regard to fresh**
14 **urine?**

15 **"Answer: No.**

16 **"Question: Same question with regard**
17 **to what we would call stale urine?**

18 **"Answer: No.**

19 **"Question: Are you aware of any**
20 **literature by anyone that provides a formula**
21 **for the threshold to detect the odor of**
22 **stale urine?**

23 **"Answer: I don't know of anyone who**
24 **that is created such a formula.**

25 **"Question: Are you aware of any**