

EXHIBIT A

In The Matter Of:

*THE CITY OF NEW YORK, ET AL
EXXON MOBIL CORPORATION, ET AL*

*VOLUME 22
September 2, 2009*

*TRIAL
SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK., NY 10007
212-805-0300*

Original File 992dcif.txt, Pages 3174-3367 (194)

Word Index included with this Min-U-Script®

[1] Judge.

[2] **THE COURT:** However, he did point out that that was
[3] five hours after discovering the issues in conference. They
[4] quoted three sentences from Mr. Sher's opening which arguably
[5] could have been done in five minutes rather than five hours.

[6] So while the G-mail servers around the country were slow and he
[7] did get it at midnight, it was too late to forward it to me
[8] because I was sleeping. But in any event, that is the story.

[9] It was e-mailed at 9:13. He received it at midnight,
[10] and it was five hours after you raised it at the conference.

[11] **MR. SACRIPANTI:** Yes. Thank you, your Honor.

[12] **THE COURT:** You are welcome.

[13] (Recess)

[14] (Continued on next page)

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[1] says, on the "ic" there is a reference to R. A. Scala. Do you
[2] see that down on the lower left?

[3] **A.** I do.

[4] **Q.** That's you?

[5] **A.** Yes, it is.

[6] **Q.** And if you turn to the next page, sir, there is the
[7] enclosure draft. Do you see that?

[8] **A.** Just a moment, please.

[9] (Pause)

[10] Yes, I see it.

[11] **Q.** And the document is entitled "Hydrocarbon Contamination of
[12] Groundwater," correct?

[13] **A.** Yes, it is.

[14] **Q.** The Toxicology Overview?

[15] **A.** Yes.

[16] **Q.** And this was a draft that you were going to work on,
[17] correct?

[18] **A.** Yes.

[19] **Q.** And it says, under "Background," that "Groundwater is
[20] recognized as an invaluable natural resource, used by society
[21] for human consumption, crop irrigation, for watering livestock,
[22] as a source for industrial water, and geothermal energy."

[23] It goes on to say: "Contamination of groundwater by
[24] hydrocarbons due to the accidental spillage/leakage of gasoline
[25] into the environment is therefore of high concern to the

[1] (Jury present)

[2] **THE COURT:** Please be seated. My clerk said during
[3] the recess that I should tell you the checks are coming before
[4] lunch. I thought that would make you cheerful.

[5] **A JUROR:** Yes. Thank you.

[6] **THE COURT:** That's what I was told to say. The checks
[7] are coming before lunch. OK.

[8] **MR. CHAPMAN:** Thank you.

[9] **BY MR. CHAPMAN:**

[10] **Q.** Dr. Scala, I would like to refer you to PL3652.

[11] Sir, on June 13, 1984, you were at Exxon, correct?

[12] **A.** Yes, sir.

[13] **Q.** And you'll notice that this refers to a revised overview
[14] statement for the Gasoline Groundwater Tox Group. Do you see
[15] that?

[16] **A.** Yes.

[17] **Q.** It says that, "Please return your comments to Ben as soon
[18] as you can. Once this is done, he and Bob Scala will redraft
[19] the statement, according to the wishes of the work group as
[20] well as API management."

[21] Do you see that?

[22] **A.** Yes, I do.

[23] **Q.** And that is a reference to you, Bob Scala?

[24] **A.** Yes, it is.

[25] **Q.** If we go further down on that page, you'll see where it

[1] petroleum industry."

[2] Do you see that?

[3] **A.** I do.

[4] **Q.** And this is a document that you were revising on behalf of
[5] the API, correct?

[6] **A.** Yes, it is.

[7] **Q.** So you knew at the time that groundwater contamination by
[8] the accidental spillage or leakage of gasoline into the
[9] environment was a matter of high concern?

[10] **A.** Yes, it is.

[11] **Q.** So --

[12] **A.** And was.

[13] **Q.** So the leak that we talked about, the 50,000-gallon leak,
[14] was a matter of environmental concern, wasn't it?

[15] **A.** Yes, indeed it was.

[16] **Q.** And you knew that at the time?

[17] **A.** I did.

[18] **Q.** And if you would go to the next page, page 2. If you look,
[19] you'll see there is another specific reference to MTBE after
[20] the middle. Do you see that?

[21] **A.** I do.

[22] **Q.** And then it says, "The contamination of groundwater by
[23] gasoline-associated compounds raises numerous questions of
[24] relevance."

[25] Do you see that?

[11] A. I do.
[12] Q. One of those gasoline-associated compounds is MTBE,
[13] correct?
[14] A. Yes.
[15] Q. So in 1984, you were working on a paper for Exxon and the
[16] API which says the following questions concerning groundwater
[17] and gasoline-associated compounds: "Is the water safe to
[18] drink? To bathe in? To wash fruit and vegetables? To cook
[19] with? To water pets and livestock? To irrigate crops? To
[20] water the lawn?"
[21] Do you see that?
[12] A. I do.
[13] Q. Those were all matters of concern in connection with
[14] groundwater and gasoline-associated compounds, correct?
[15] MR. BONGIORNO: Your Honor, could I just ask that you
[16] read the sentences like the one he just read, "Oxygenates such
[17] as methyl tertiary butyl ether," and continue the full
[18] sentence, "and various alcohols."
[19] THE COURT: Sure. "And various alcohols often migrate
[20] together as a relatively early plume."
[21] Do you want the whole sentence, "soluble arithmetic
[22] compounds such as" --
[23] MR. BONGIORNO: Up to the semi-colon.
[24] Thank you, your Honor.
[25] THE COURT: OK.

[11] MR. CHAPMAN: I have no more questions, your Honor.
[12] THE COURT: All right.
[13] MR. BONGIORNO: Could we keep this up on the screen,
[14] please?
[15] THE COURT: Sure.
[16] REDIRECT EXAMINATION
[17] BY MR. BONGIORNO:
[18] Q. Dr. Scala, Mr. Chapman just identified three questions that
[19] are raised in this document that you worked on. And if Liz
[20] could keep going with her box down to the next sentence, thank
[21] you, and pull it up, the very next sentence says, "As noted
[22] above, many of these questions are being addressed by various
[23] API technical committees."
[24] That's what it says, right?
[15] A. Yes.
[16] Q. Now, Dr. Scala, Mr. Chapman made reference to the 35,000 to
[17] 50,000-gallon spill in East Meadow, Long Island. Do you recall
[18] that testimony?
[19] A. I sure do.
[20] Q. And you recall the incident, correct?
[21] A. Very clearly.
[22] Q. Now, you personally worked with personnel from the Nassau
[23] County Department of Health with regard to that issue, did you?
[24] A. I did.
[25] Q. And you recall that work?

[11] BY MR. CHAPMAN:
[12] Q. So that's the reference to gasoline-associated compounds,
[13] with an "s", sir, correct?
[14] A. Yes.
[15] Q. Including MTBE?
[16] A. Yes.
[17] Q. And there are also taste and odor concerns about those
[18] contaminants and whether they were provided adequate warning if
[19] a contamination of groundwater had occurred, correct?
[10] A. Yes.
[11] Q. And there was also a concern that due to the taste and odor
[12] properties -- "organoleptic" means taste and odor, right?
[13] A. Yes, it does.
[14] Q. There was a concern whether those properties of the water
[15] contaminated by gasoline, including MTBE and other compounds,
[16] was such that people would refuse to drink it, right?
[17] A. Yes.
[18] Q. So as of 1984, these were all concerns of yours, Exxon and
[19] the API, correct?
[20] A. Yes.
[21] Q. And you knew at that time that gasoline storage tanks
[22] leaked, correct?
[23] A. Could leak, yes.
[24] Q. And did leak, right?
[25] A. Yes.

[11] A. I recall the people, too.
[12] Q. What people did you work with from the Nassau County
[13] Department of Health?
[14] A. Well, the key person was their chief epidemiologist, and
[15] there were other technical people. But the man I remember best
[16] was the epidemiologist.
[17] Q. So they were right on top of that situation with you,
[18] correct?
[19] A. Yes.
[20] Q. And you also worked with the County Health Department,
[21] correct?
[12] A. Yes.
[13] Q. And they were notified immediately about this spill,
[14] correct?
[15] A. Yes.
[16] Q. And you further worked with the New York State Department
[17] of Health on that East Meadow, Long Island spill, correct?
[18] A. Yes.
[19] Q. And EPA was even notified, weren't they?
[20] A. As far as I know, yes.
[21] Q. And you, in fact, to take it one step further, or Exxon
[22] retained was it a Dr. Goldstein from Robert Wood Johnson
[23] school?
[24] A. Yes, he was still at NYU at the time, yes.
[25] Q. He was at NYU at the time?

[1] A. Bernie Goldstein.
[2] Q. For what reason, Dr. Scala, did you bring in Bernie
[3] Goldstein for the East Meadow, Long Island spill?
[4] A. Because he was a recognized, independent health effects
[5] authority who could give opinion about the potential health
[6] risk of residual hydrocarbons in the groundwater after the
[7] cleanup was completed.

[8] Q. And, Dr. Scala, just to confirm one more point.
[9] You can't say or you don't recall whether that
[10] incident actually took place before or after the implementation
[11] of TSCA Section 8(e), right?

[12] A. To the best of my recollection, I cannot.

[13] MR. BONGIORNO: No further questions, your Honor.

[14] THE COURT: All right. Anything further, then, for
[15] this witness?

[16] (Continued on next page)

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[1] THE COURT: Who might be the next witness?

[2] MR. BONGIORNO: Your Honor, we have no further
[3] witnesses in this case.

[4] MR. CHAPMAN: We would like to call Dr. Kenneth Rudo
[5] as a rebuttal witness, your Honor.

[6] MR. BONGIORNO: Your Honor, I meant Phase III (a).

[7] THE COURT: I knew that. All right, it's time to let
[8] the jury in on this. In Phase III, just to be organized, the
[9] lawyers and I talked about subphasing, not to send you out to
[10] deliberate, but just to keep their presentations organized
[11] issue by issue. This was the first issue, the toxicology of
[12] MTBE. Both sides presented their evidence on toxicology. Then
[13] we are going to move on to a subphase with very short 15-minute
[14] openings. No more closings. You will not be sent out to
[15] deliberate. So A new 15-minute introduction from each side on
[16] the new issue and both sides will present evidence on the new
[17] issue, then another little opening, another issue.

[18] At the end of the phase, it goes to the jury. You
[19] don't have deliberations in between every subphase. It's just
[20] an organizational tool.

[21] THE JURY: How many?

[22] THE COURT: It went through (g), if I remember. At
[23] least seven. But look how fast this one was or is.

[24] MR. BONGIORNO: Judge, I'm being informed that I
[25] wasn't as eloquent as I should have been with regard to the

[1] RE-CROSS-EXAMINATION

[2] BY MR. CHAPMAN:

[3] Q. So in 1984, you were familiar with the fact that MTBE
[4] traveled further and faster in groundwater than other -- than
[5] the other properties of gasoline, correct?

[6] A. MTBE and other oxygenated compounds, yes.

[7] MR. CHAPMAN: I have no further questions, your Honor.

[8] MR. BONGIORNO: Nor do I. Thank you, your Honor.

[9] THE COURT: Thank you, Doctor.

[10] THE WITNESS: Thank you, your Honor.

[11] (Witness excused)

[12] (Continued on next page)

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[1] phasing issues. All counsel have agreed as to people who are
[2] coming in because of their schedule later, it's not to say
[3] their testimony isn't pertinent to (a).

[4] THE COURT: Right. We can't also be absolutely sure
[5] that some phase of III(a) is actually closed. Some people,
[6] especially in the sciences, are in academia, they are teaching,
[7] their schedule didn't permit them to come this week, they are
[8] coming next week. So we can't be perfect with this, but we
[9] were just trying to be organized.

[10] MR. PARDO: Your Honor, two points.

[11] THE COURT: Yes, Mr. Pardo?

[12] MR. PARDO: First, the subject of the email we sent
[13] last night. There is actually one other III(a) witness.

[14] THE COURT: That's what I just told the jury. We
[15] can't be perfect about it. We will have one witness out of
[16] order.

[17] MR. PARDO: Second, before this witness is seated and
[18] sworn, we have an objection. I'm happy to do this at side bar,
[19] happy to do this now.

[20] (Continued on next page)

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