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BEFORE THE COURT-APPOINTED REFEREE  
IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION  
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 22008-HICIL-35  
Proof of Claim Number: EMTL 705271-01  
Claimant Name: VIAD Corp  
Claimant Number:  
Policy or Contract Number: HEC 9557416  
HEC 9304783  
HEC 4344748  
Insured or Reinsured Name: VIAD (predecessor The  
Greyhound Corporation/  
Transportation Leasing  
Company)  
Date of loss:

DEPOSITION OF KENNETH RIES

Phoenix, Arizona  
January 12, 2009

BY: SANDRA L. MUNTER, RPR/CSR  
Certified Reporter 50348

ORIGINAL

1 at the Greyhound site. So that was an initial  
2 finding that we came to.

3 In 1989 Greyhound Lines, a company that  
4 currently owned Greyhound Lines with no connection  
5 to Viad, actually became the owner of site in  
6 1987. And in 1989 they removed all of their tanks  
7 at the site to upgrade them to a new double-walled  
8 underground storage tank for diesel fuel and a  
9 couple of above-ground tanks.

10 And so we excavated the property and  
11 the arrangement was that the tank removals and  
12 replacement was the obligation of Greyhound Lines,  
13 says the owner of the site and operator of the bus  
14 system. And Viad Corp was held responsible for  
15 any contamination resulting that was found on the  
16 site. That was the agreement, actually in the  
17 sale agreement in 1987, that would there be any  
18 contamination found, then that would be the  
19 responsibility of Viad.

20 So when the tanks were removed, we paid  
21 for the excavation of contaminated soil that was  
22 found when we removed the tanks. What we found  
23 was that there was evidence of overfilling and  
24 spillage of the underground tanks.

25 Q Did you find evidence of leakage?

1           A       There was some piping that was  
2       discovered that was abandoned.  And, by inference,  
3       we concluded that the piping was installed in  
4       1954, from historical records, and had been  
5       abandoned in 1973, when apparently new piping had  
6       been installed.

7                       That piping had some corrosion holes in  
8       the piping.  And in addition to the apparent  
9       overfills and spillage that there was some leakage  
10      from this piping system that was apparently in use  
11      from '54 to '73.

12          Q       With respect to leakage from the piping  
13      system, were you able to determine when that  
14      began?

15          A       No.

16          Q       Were you able to determine when it  
17      occurred?

18          A       Well, a reasonable assumption would be  
19      if you installed piping in '54, it wouldn't be  
20      corroded.  So it would be unlikely to have been a  
21      source of any releases in the earlier years.

22                       But with time, corrosion occurs.  And  
23      so it would be probably toward the end of that  
24      period, where the leakage would have been more  
25      prevalent.

1 Q Were any reports prepared that  
2 attempted to fix the time period in which this  
3 leakage occurred?

4 A No, because there was no need to at the  
5 time and nor is it really possible to make that  
6 determination, to the best of my understanding.

7 Q And you mentioned that you came to the  
8 conclusion that there were some overfills?

9 A Uh-huh.

10 Q What do you mean by that?

11 A When the tank receives a delivery of  
12 fuel from a visiting fuel tank truck, and they  
13 fill the tank. There's been occasions throughout  
14 Greyhound's experience in all of its, virtually  
15 all of its locations where occasionally they have  
16 filled the tank to beyond its capacity, and the  
17 fuel overflows and actually spills out.

18 Q Sort of like if I fill my car up with  
19 gas and I keep pumping and it shoots out?

20 A Exactly right.

21 Q Did you reach the conclusion that these  
22 overfills occurred at each of the underground  
23 storage tanks on the site?

24 A Yes.

25 Q And were you able to find any evidence

1 as to when these overfills occurred?

2 A No.

3 Q Did you ever look for any  
4 contemporaneous records that would document that a  
5 report was made that there was an overfill or  
6 anything like that?

7 A No. The problem with that is that  
8 Greyhound Lines didn't keep their daily records  
9 for more than a few years, so any historical  
10 records would have been destroyed years ago.

11 Q When you say Greyhound Lines, that  
12 would have been your company until nineteen --

13 A Yeah, until 1987, right.

14 Q So when you say that the records were  
15 destroyed --

16 A That was the company practice to  
17 destroy daily operating records of underground  
18 storage tanks. There's usually only about a year  
19 of retention.

20 Q When you became aware in 1986 that the  
21 City of San Diego had found contamination in the  
22 vicinity of the San Diego site, did you have any  
23 involvement in the decision whether to advise  
24 Viad's insurance carriers about this event?

25 A We had an insurance department, and my

1 recollection was that yes, they were notified.

2 Q "They" being the insurance department?

3 A Yes.

4 Q Do you know if the insurance department  
5 notified any insurance companies?

6 A Not really all that aware of what  
7 practices they followed. I'm not involved in the  
8 insurance part of it.

9 Q You didn't see any letters from the  
10 '80s from Viad to insurance companies about  
11 contamination?

12 A I don't recall any.

13 Q Okay. In Paragraph 2b of Exhibit 1, it  
14 also indicates that -- Well, before I move on, let  
15 me ask:

16 Is there any other facts and opinions  
17 relating to the San Diego site that you expect to  
18 testify about that we haven't talked about so far?

19 A That's a pretty broad question. I  
20 don't know.

21 Q Okay. Is there anything I'm missing  
22 that you think you're likely to testify about?

23 A I don't know.

24 Q Okay.

25 MR. SIMMONS: I'll object to the

1 continue to contaminate five more feet of depth of  
2 the water. This is where the heaviest  
3 concentration of fuel was found.

4 And in these areas, there was  
5 sufficient fuel in that soil that when you  
6 installed the well and then let the water rise in  
7 a well to the true water table level, any fuel  
8 that would be there that would be migratable  
9 through the soils would actually collect in the  
10 well and form a layer in the well. And that's  
11 called free product. And there were wells that  
12 had four feet of free product in the wells due to  
13 this condition.

14 So the results of our assessment was  
15 essentially that the soil was contaminated,  
16 virtually all the soil in the site was  
17 contaminated to some degree. And it got very,  
18 very heavy. And there was this, what we call a  
19 smear zone from 22 to 27 feet, where the water  
20 table would fluctuate up and down and would cause  
21 that fuel to concentrate in that layer of soils  
22 quite deep.

23 And this is typical of how sites look  
24 when you have fuel spills. This is a kind of  
25 conditions that are normal.

1 Q Did the fuel products that emanated  
2 from the San Diego site migrate off site?

3 A To a minor extent. We were not  
4 ultimately required to do any remediation of any  
5 of the surrounding streets that surrounded our  
6 property.

7 When we did the remediation, we  
8 actually installed sheathing at the barrier of the  
9 property lines downward to effect the excavation  
10 of soils. And there was soils on the other side  
11 of the sheathing that we did not access because it  
12 was a barrier, physical barrier. The purpose of  
13 the barrier was to keep the street from caving  
14 into the hole.

15 And so there was some remaining minor  
16 contamination, which the regulators agreed should  
17 be left in place because it was not practical to  
18 excavate the streets.

19 Q The next subject in Paragraph 2b  
20 indicates that you would be expected to testify by  
21 affidavit concerning the interrelationship between  
22 the extent and type of the contamination.

23 What do you know about that subject?

24 A The issue of a site being contaminated  
25 is one of damage to the ground water. And as



1                   He said, "Certainly," which indicated  
2                   to him that this was the best permanent solution.  
3                   And from purely a technical point of view, it is.  
4                   It's the most effective way of cleaning up a  
5                   property to improve the groundwater quality. And  
6                   so that's what we ultimately wound up doing.

7                   Q           Did Viad ever end up in court against  
8                   the State regulating authorities concerning the  
9                   San Diego site?

10                  A           No.

11                  Q           There was no court judgments involved  
12                  here?

13                  A           No.

14                         MR. SIMMONS:  Objection; calls for a  
15                         legal conclusion as to what is a judgment.

16                  Q           (By Mr. O'Connor) The next subject in  
17                         Paragraph 2b indicates that you may testify  
18                         concerning the remediation methodology.

19                                 What do you know about that subject?

20                  A           Well, I just spoke about that.

21                  Q           I thought you might have.

22                  A           That's the remediation that we  
23                         performed was excavation of the contained soil and  
24                         pumping out of the contaminated groundwater, once  
25                         the soil was removed so that the site was left

1 with very, very little remaining soil or  
2 groundwater contamination.

3 Q The last subject in Paragraph 2b  
4 indicates that you may testify concerning  
5 supervision of the remediation contractors.

6 What do you know about that?

7 A The firm that I had, well, that I had  
8 Viad retain is a company called ERC. They are the  
9 primary consultant that managed the project, the  
10 overall managed of the project.

11 Specifically, with respect to  
12 assessment, they were the party that did all the  
13 assessment work for us, along with another  
14 consultant, GeoMatrix, which was for the group of  
15 parties that we were also involved with.

16 But when it came to the actual  
17 remediation of the site by excavation, what I had  
18 them do was to write specifications for the  
19 project, then they obtained bids from various  
20 subcontractors to do the excavating, the hauling,  
21 the soil, which had to go to treatment and then  
22 ultimately to a landfill for disposal, then the  
23 purchasing of clean soil and the shipping of that  
24 to the site, the backfilling.

25 That was all done by subcontractors who

1 existing on a site that had no prior fuel  
2 activity.

3 Q Okay. So then you also talk about when  
4 do you think is the other outside date in which  
5 there would be a conclusion of the greatest extent  
6 of the contamination?

7 A 1973.

8 Q Could you explain why, within a  
9 reasonable degree of probability?

10 A The best evidence is that the  
11 contamination on the site is, number one, diesel  
12 and gasoline. And what we were able to learn from  
13 prior Greyhound Lines operations on site is that  
14 those were the two fuels that were in use during  
15 that time period. And in 1973, Greyhound Lines  
16 switched over to No. 2 diesel, which is almost  
17 absent from the site.

18 Q All right. So is it fair to say, then,  
19 that the cause from spillage logically would be  
20 during the duration that Greyhound Lines used the  
21 facility?

22 MR. O'CONNOR: Objection to form.

23 THE WITNESS: Yeah.

24 Q (By Mr. Simmons) Is there any reason  
25 that, as an expert, that you would believe that it

1 would have occurred all prior to, let's say, for  
2 example -- the beginning time period of the  
3 insurance policies in question, I believe, is  
4 somewhere around 1966.

5 Is there some reason to suggest that  
6 all of it happened before the insurance policies  
7 went into effect by Home?

8 A Well, experience has taught me that  
9 spillage occurs randomly, so you can't define the  
10 time period for spillages or overfills. But with  
11 respect to any leakage that would have occurred,  
12 it would have occurred more so toward the end of  
13 that period than the beginning because corrosion  
14 holes take time to develop.

15 Q All right. What would be your opinion,  
16 then, taking into consideration that these Home  
17 insurance policies went from at least 1966 through  
18 1972, Mr. Ries, would these insurance policies be  
19 impacted as a result of the fact that there was,  
20 within your opinion, spillage and/or leakage  
21 during the time period from 1966 through '72?

22 MR. O'CONNOR: Objection to form.

23 Q (By Mr. Simmons) Go ahead.

24 A Yes.

25 Q Could you go ahead and explain why you

1 would -- and I realize that you've somewhat  
2 explained it, but would you further explain why  
3 you believe that there would be spillage between  
4 the time periods from '66 to '72 and also leakage  
5 from '66 to '72.

6 MR. O'CONNOR: Objection to form.

7 THE WITNESS: In those time periods,  
8 the occasional spillage and overfilling of tanks  
9 was common. And there was probably little  
10 understanding by operators that the spillage that  
11 they were experiencing would have any deleterious  
12 effects on anything. They wouldn't make any  
13 connection, so they would, these would just happen  
14 in the normal course of business from time to  
15 time.

16 Q (By Mr. Simmons) Is it fair to say that  
17 these would not be expected to be intentional  
18 spillages?

19 A Certainly not because --

20 MR. O'CONNOR: Objection; form.

21 THE WITNESS: -- the fuel represents  
22 purchased value that the company has, and to spill  
23 any gallons is a waste of money. But minor  
24 spillage, I know from experience, is common and  
25 was very common in that time period, more so than