

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

Phoenix, AZ

Page 2

INDEX TO EXAMINATIONS

WITNESS:

PAGE

KENNETH RIES

Examination by Mr. O'Connor

4

Examination by Mr. Simmons

48

INDEX TO EXHIBITS

EXHIBIT

DESCRIPTION

MARKED

(All Exhibits Retained By Mr. O'Connor.)

NO. 1

Email Dated 12/17/08

5

To: Mr. O'Connor

From: Ms. Etzler

(3 pages)

NO. 2

Letter Dated 5/19/89

23

To: Mr. Sorgee

From: Ladin Delaney

(60 pages)

NO. 3

Affidavit of Kenneth Ries

61

(7 pages)

1 DEPOSITION OF KENNETH RIES

2 was taken on January 12, 2009, commencing at 8:36
3 a.m., at the Viad Corp, 1850 North Central Avenue,
4 Ninth Floor, Phoenix, Arizona 85004, before
5 Sandra L. Munter, Certified Reporter No. 50348 for
6 the State of Arizona.
7

8 APPEARANCES

9 For Home Insurance Company:

10 BY: JOHN F. O'CONNOR, ESQ.
11 STEPTOE & JOHNSON, LLP
12 1330 Connecticut Avenue, NW
Washington, DC 20036-1795

13 For the Viad Corp:

14 BY: DAVID H. SIMMONS, ESQ.
15 De BEAUBIEN, KNIGHT, SIMMONS, MANTZARIS &
NEAL, LLP
16 332 North Magnolia Avenue
P.O. Box 87
17 Orlando, Florida 32802-0087

18 Also Present:

19 Deborah DePaoli, Esq.
20 Stuart Meislik, Esq.
21
22
23
24
25

1 KENNETH RIES,
2 the witness herein, having been first duly sworn
3 to speak the truth and nothing but the truth, was
4 examined and testified as follows:

6 EXAMINATION

7 BY MR. O'CONNOR:

8 Q Good morning, Mr. Ries.
9 Did I pronounce that right?

10 A Yes.

11 Q My name is John O'Connor. We met
12 before we went on the record. I am counsel for
13 the liquidator in the Viad --

14 MR. SIMMONS: Viad.

15 Q (By Mr. O'Connor) -- liquidation
16 proceedings with the Home Insurance Company in
17 liquidation.

18 Have you had your deposition taken
19 before?

20 A Yes.

21 Q I'm going to skip the longer intro and
22 just say that if I ask you a question, you don't
23 understand it, just tell me, and I'll try to ask a
24 question that you understand.

25 If you give an answer and I don't

1 understand it, I'll tell you. And I'll try to
2 make sure that I understand what you're saying so
3 that we end up with you knowing what I'm saying
4 and me knowing what you're saying so we have a
5 nice, clean record.

6 I will try hard not to interrupt you
7 when you're answering. And if I start to ask
8 another question or to clarify before you finish,
9 just tell me, and I'll wait and let you finish.
10 And what I would ask you to do is do the same and
11 wait until I completely finish the question before
12 you start answering so that the record is clear
13 exactly what question you're answering.

14 If there's any reason that you need to
15 take a break, you need to make a phone call, use
16 the men's room, get a drink of water, let me know,
17 and we'll do that. I'm hoping that we are not
18 going to be burning the midnight oil with you
19 today.

20 (Deposition Exhibit No. 1 was marked
21 for identification.)

22 Q (By Mr. O'Connor) I start by handing you
23 what's been marked as Ries Exhibit 1.

24 Ries Exhibit 1 is a three-page document
25 that I received from Viad's counsel that, in part,

1 sets forth the matters on which you'll be expected
2 to provide testimony by affidavit in the
3 liquidation proceeding. And I'm going to ask you
4 to turn to Page 2.

5 Just read to yourself everything under
6 Paragraph No. 2.

7 A I have read it.

8 Q Have you, as you're sitting here today,
9 signed an affidavit to be used in the liquidation
10 proceedings?

11 A No.

12 Q Have you seen drafts of one?

13 A Yes.

14 Q Okay. Is there anything that's not
15 listed in Paragraph 2 on Exhibit 1 that you think
16 you're likely to be testifying about by affidavit?

17 A No.

18 Q Are you currently employed by Viad?

19 A I am a consultant retained by them.
20 I'm not an employee.

21 Q Okay. Have you ever been employed by
22 Viad?

23 A Yes.

24 Q Okay. When were you employed by Viad?

25 A From 1970 to 2001.

1 Q During the time that you were employed
2 by Viad, did you hold a number of job titles?

3 A Yes.

4 Q Let's start in 1970 when you joined
5 Viad, what was your job title?

6 A Assistant manager, corporate
7 environmental control department, Armour &
8 Company.

9 Q How does Armour & Company relate to
10 Viad?

11 MR. SIMMONS: Objection; calls for
12 legal conclusion.

13 Q (By Mr. O'Connor) You can answer.

14 MR. SIMMONS: Okay. Whatever he
15 testifies to is going to be just his own
16 knowledge.

17 MR. O'CONNOR: He can't give me any
18 more.

19 THE WITNESS: My understanding is
20 Armour was a subsidiary of Viad Corp.

21 Q (By Mr. O'Connor) Okay. Did you have an
22 understanding what line of work Armour & Company
23 was involved in?

24 A Yes.

25 Q What was that?

1 A Numerous businesses, including
2 primarily meat packing, meat processing.

3 Q Are they the hot dog company?

4 A Yes.

5 Q Okay. How long were you assistant
6 manager for the corporate environmental control of
7 Armour & Company, roughly?

8 A Until 1974.

9 Q Okay. What happened in 1974 to change
10 that?

11 A I became the corporate manager of
12 energy.

13 Q Also for Armour?

14 A No. In 1971, my position was switched
15 from Armour to Viad Corp.

16 Q Do you know why your position was
17 switched from Armour to Viad Corp?

18 A Yes. There were two of us engaged in
19 environmental work in Armour, and the company
20 moved its headquarters from Chicago to Phoenix in
21 '71. And at that time, the corporate had no
22 environmental staff. And so the decision was made
23 that the two of us would be switched from the one
24 subsidiary to the corporate so that we could work
25 for all the subsidiaries of Viad.

1 Q From 1970 to 2001, were you working
2 here in the Phoenix area?

3 A From 1971 to 2001, yes.

4 Q In 1970 you were --

5 A We were in Chicago.

6 Q Okay. I understand.

7 In 1971 you switched from Armour &
8 Company to Viad Corporation. What were your job
9 duties?

10 A Same. It's just we had further
11 responsibilities for all of the corporation,
12 instead of just one division.

13 Q Okay. You told me what your job title
14 was. What sort of things did you do to accomplish
15 your work?

16 A We were involved in virtually all
17 environmental affairs of Armour, which is water
18 treatment, water supply, wastewater treatment,
19 solid waste disposal, and treatment of waste.
20 Those were typical duties at that time. In
21 addition air emissions, getting permits for
22 compliance with regulations.

23 Q Is it fair to say, then, that in 1971,
24 when you switched to Viad Corporation, you did
25 these same types of duties, but you did it for all

1 of Viad Corporation?

2 A Correct.

3 Q Was Greyhound a part of Viad
4 Corporation in 1971?

5 A Well, when I use the term Viad Corp, at
6 the time the name of the corporation was the
7 Greyhound Corporation.

8 Q Okay. I understand.

9 When did the Greyhound Corporation
10 change its name to Viad Corporation? Roughly.

11 A It's recent. They sold the Greyhound
12 Lines division that did inter-city bus services in
13 1987. And it was thereafter that they changed
14 their name to Greyhound Dial and then the Dial
15 Corp and then Viad Corp. But it's all still the
16 same entity, to my understanding, what was
17 originally the Greyhound Corporation.

18 MR. SIMMONS: I will object; calls for
19 legal conclusion.

20 Q (By Mr. O'Connor) Is it correct, then,
21 that Viad Corp, as we sit here today, is not in
22 the bus business?

23 A Correct.

24 Q Okay. In 1974, you became a manager
25 for energy; is that what you said?

1 A Correct.

2 Q What did those job duties entail?

3 A Primarily two in nature. The primary
4 mission was to assure supplies of energy to
5 continue operations of the various businesses
6 because that was the period of cutbacks in fuel
7 supply, and there were few shortages in the United
8 States. And it was critical to keep the company
9 operating with essential supplies of needed
10 energy: Gas, electricity, and diesel fuel,
11 primarily.

12 The second duty was to effect energy
13 conservation in the operating facilities, to
14 reduce our demand on energy to make us more energy
15 efficient.

16 Q As a corporate manager for energy, did
17 your job duties involve dealing with the
18 environmental aspects of energy?

19 A Not at that time.

20 Q Okay. After 1974, when is the next
21 time that your job title changed?

22 A It was in 1982, and I became manager,
23 environmental and energy engineering.

24 Q What sort of job duties did you do as
25 manager, environmental and energy engineering?

1 A At that point the focus on energy
2 management was relegated down to the individual
3 operating facilities more so than active at the
4 corporate level. And my job changed primarily
5 back into doing pretty much almost full-time
6 environmental duties.

7 Q When you say doing full-time
8 environmental duties, what sort of environmental
9 duties were you doing?

10 A The same as what I was doing when I
11 first joined the company. I was involved in
12 virtually all aspects of environmental management
13 for the operating facilities to assure their
14 compliance with environmental laws and regulations
15 and to undertake whatever work was required in
16 that area.

17 Q How long did you hold the job title of
18 manager, environment and energy engineering?

19 A Until 1987.

20 Q What happened in 1987?

21 A Well, my boss, who at the time was vice
22 president, environment and energy, retired. His
23 position was not filled. And I became director,
24 environment and energy, for the corporation.

25 Q How did your job duties change when you

1 became director?

2 A None. I don't know.

3 MR. SIMMONS: Took on more
4 responsibility --

5 THE WITNESS: Yeah. I didn't have a
6 boss.

7 MR. SIMMONS: -- for the same pay, you
8 know. You know what it's like.

9 MR. O'CONNOR: I'm familiar with that.

10 Q (By Mr. O'Connor) Okay. How long were
11 you director of environment and energy?

12 A Until I retired in November 2001.

13 Q Okay. And you testified that you're a
14 consultant for Viad?

15 A Yes.

16 Q When did you start working as a
17 consultant for Viad?

18 A Immediately after retiring.

19 Q What sort of job duties did you do as a
20 consultant for Viad?

21 A Essentially the same work.

22 Q Were you working as a consultant for
23 Viad full time?

24 A No.

25 Q Did someone else pick up the part of

1 the work that you stopped doing in November 2001?

2 A No.

3 Q The work just diminished?

4 A Yes.

5 Q What's your educational background?

6 A I have a Ph.D. in environmental
7 engineering.

8 Q Where did you receive that from?

9 A Purdue University.

10 Q When did you receive that?

11 A 1967.

12 Q What sort of subjects are covered
13 within the rubric of environmental engineering, in
14 the sense of your Ph.D.?

15 A Water supply, wastewater treatment and
16 disposal, air emission control, solid waste
17 disposal treatment, and virtually any other
18 subject that might arise that would be called
19 environmental matters.

20 Q When did you first have involvement
21 with the San Diego site that's at issue in this
22 matter?

23 A 1986.

24 Q What was the nature of your involvement
25 in 1986?

1 A I became aware of the fact that the
2 City of San Diego's development organization
3 called Centre -- that's C-e-n-t-r-e -- Centre City
4 Development Corporation, had, in the process of
5 redeveloping a property called Super Plating in
6 downtown San Diego, had, in the course of
7 developing that property, had discovered some
8 contamination on that site.

9 And a Greyhound maintenance bus garage
10 was diagonally opposite that corner. And the
11 belief was, at that time was that the Greyhound
12 facility was a source of the contamination on the
13 Super Plating site, and we were so advised of
14 that.

15 Q So advised by whom?

16 A By the City.

17 Q The City of San Diego?

18 A Yes.

19 Q Did you pay any site visits to the
20 San Diego sites?

21 A Numerous.

22 Q How many would you say?

23 A Fifty.

24 Q What did those site visits involve you
25 doing?

1 A Most of the visits entailed meetings
2 with various parties because in the process of
3 assessing what was initially discovered at Super
4 Plating turned out to be an area of contamination
5 involving six blocks.

6 The state regulators, specifically the
7 California Regional Water Quality Control Board,
8 San Diego Region, became the lead environmental
9 agency overseeing this matter and ultimately named
10 four parties potentially responsible for this
11 contamination in the area, of which Greyhound was
12 one.

13 And we had meetings with the
14 regulators. We had meetings with the City, with
15 the City's development agency, the Centre City
16 Development Corporation. We met amongst the four
17 of us, the four parties, which included Greyhound,
18 a Shell property, a Unocal property, and a former
19 Arco property, and to hire a common consultant,
20 which was GeoMatrix, to undertake assessment of
21 the area of contamination.

22 I ultimately retained a company called
23 ERC as our consultant specifically for Greyhound's
24 interest, and I oversaw their work. They are
25 headquartered in San Diego, or at least the office

1 I used for that company was located in San Diego.
2 And I met numerous times with them on site to
3 discuss various aspects of assessing the property
4 to determine what the problem was and what we
5 might want to do about it in terms of corrective
6 action.

7 Those were the primary purposes of the
8 on-site visits.

9 Q The Ries Exhibit 1, in Paragraph 2b it
10 says that you're expected to testify in your
11 affidavit regarding the facts and your opinions
12 regarding the facts relating to the San Diego
13 site.

14 What facts and opinions does that
15 entail?

16 A When we were first -- when I say "we,"
17 I say Viad, was first advised of the alleged
18 contamination coming from Greyhound to the Super
19 Plating, we were reasonably certain this was not
20 true.

21 And there were a series of tests that
22 were done on the existing fuel system to determine
23 whether it was leaking or not or tight. And all
24 of those tests confirmed that there was no leaking
25 from the existing fuel handling system underground

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 question as being way too broad. Just continue
2 asking him what happened throughout the whole set
3 of events.

4 MR. O'CONNOR: I didn't write the
5 disclosure, you did. I'm just working off of
6 that.

7 Q (By Mr. O'Connor) It says in Paragraph
8 2b that you expect to testify concerning the
9 abatement order of 1989.

10 Do you recall there being an abatement
11 order in 1989?

12 A Yes. I have that.

13 (Deposition Exhibit No. 2 was marked
14 for identification.)

15 Q (By Mr. O'Connor) I'm handing you what's
16 been marked as Exhibit 2. Exhibit 2 is a
17 multi-page document that Viad's counsel provided
18 me.

19 The first page appears to be a letter
20 dated May 19, 1989, from the California Regional
21 Water Quality Control Board, San Diego Region, to
22 Greyhound Lines.

23 Is this the 1989 abatement order that
24 you're taking about?

25 A Yes.

1 Q I'm going to ask you to turn to the
2 fourth page of the exhibit. In Paragraph 11
3 there's some information provided in the abatement
4 order that appears to relate to the San Diego
5 site.

6 In 11a it says that, "The two 10,000
7 steel fuel tanks" -- I assume that's two
8 10,000-gallon steel fuel tanks -- "and the
9 5,000-gallon waste oil tank (abandoned about 1975)
10 were installed in '53 and are now 36 years old."

11 Were there two 10,000-gallon steel fuel
12 tanks at the site?

13 A Yes.

14 Q Was there a 5,000-gallon waste oil
15 tank?

16 A Yes.

17 Q And with respect to the waste oil tank,
18 it says abandoned about 1975. Is that the line
19 that you said was abandoned and some corrosive
20 holes were found in it?

21 A There were fuel lines that, when the
22 tanks were excavated in 1989, there was a series
23 of fuel lines that had appeared to have been
24 abandoned that were still in the ground that were
25 to deliver contents from these tanks out to

1 fill-ports for refueling the buses.

2 And this series of pipes was
3 independent of the new piping that was installed
4 in '73 to deliver fuel to a fill-port that was in
5 another location on the property.

6 Q Okay.

7 A So there were two separate fuel line
8 systems. The new one that installed in '73 was
9 tight and no evidence of leakage. The ones that
10 were installed in '54, that were abandoned in '73,
11 appeared, those are the ones that had the
12 corrosion holes.

13 Q In Paragraph 11b it says, "from 1953 to
14 1967 the 10,000-gallon tanks held leaded
15 gasoline."

16 Is that consistent with your
17 understanding of the history?

18 A Yes.

19 Q And was it part of your job with
20 Greyhound to become familiar with the history of
21 the use of those tanks?

22 A Only so far as it related to our
23 understanding of the environmental conditions of
24 the property. With respect to its operations back
25 then, I would not have been involved in that at

1 all.

2 Q Okay. The next sentence in Paragraph
3 11b says, "From 1967 to 1973, they held diesel
4 Number 1-D."

5 Is that consistent with your
6 understanding?

7 A Yes.

8 Q It says, "From 1974 to present, they
9 have held diesel No. 2-D."

10 Is that consistent with your
11 understanding?

12 A Yes.

13 Q Let's go down to Paragraph 11e. In
14 there it indicates, "Monitoring wells drilled near
15 the 10,000-gallon tanks detected four to five feet
16 of floating hydrocarbon product."

17 Is that consistent with your
18 recollection of what happened at the site?

19 A Yes.

20 Q The next sentence says, "The floating
21 product beneath the facility contains the same
22 petroleum hydrocarbon constituents which have
23 historically been stored on site in the
24 10,000-gallon tanks."

25 Was it ever determined of the

1 contamination whether it was gasoline, diesel, or
2 some combination of the two?

3 A The test on the fuel in the ground
4 indicated it was primarily gasoline and No. 1
5 diesel.

6 Q Was No. 2 diesel also present?

7 A To a minor extent.

8 Q In 11f it says, "Results of precision
9 tests conducted by Greyhound in 1987 and 1988
10 indicate that the four active tanks are leaking
11 small amounts of product."

12 Do you see that?

13 A That's not my recollection.

14 Q Do you recall Greyhound challenging --
15 Strike that.

16 Do you recall Viad challenging this
17 conclusion as incorrect at the time?

18 A Well, both Greyhound Lines, who was
19 operating the property at that time, separate
20 company from Viad Corp, and Viad, were involved in
21 various tests of the system that indicated that
22 the systems were tight. So that's contrary to
23 this conclusion.

24 Q Do you recall there being any
25 correspondence from Viad or Greyhound Lines saying

1 that this conclusion is not borne out by the
2 facts?

3 A I recall a number of discussions with
4 Greyhound Lines that the tanks and the piping in
5 1989 were tight. And that was one of the reasons
6 that we felt we were not responsible for the area
7 contamination that the city and the state
8 regulator alleged we were a contributor to.

9 And one of those processes was by daily
10 inventory record keeping. Greyhound practices a
11 process of reconciling their fuel and tanks every
12 day. They stick the tanks every morning at
13 6:00 a.m. to determine the actual amount of
14 gallons in the tanks.

15 Then the next morning you take that
16 prior day's reading, you add the deliveries to
17 that, then you subtract the dispensing by meters
18 out from those systems, and you calculate a
19 difference as to what the net amount of fuel still
20 remaining in those tanks ought to be. Then you
21 compare that to the actual stick readings.

22 That variance would often be less than
23 a hundred gallons. And over a course of a month,
24 you would get pluses and minuses from day to day
25 that will indicate that, generally, you were

1 accounting for all of your fuel.

2 And that was a technique that was used
3 throughout the company for determining if you
4 started to get leaking, such as a series of
5 negative readings, like day after day, you had
6 200, 300 gallons loss every day. That would
7 indicate a loss. That was not the case in these
8 records.

9 We subsequently did tracer testing
10 where we introduced a tracer into the fuel and
11 then did borings along the various pipes and
12 around the tanks to see if the tracer could be
13 detected because it would be in the fuel. And if
14 it appeared in the outside of the system, then we
15 would know we have a leak.

16 All of that tracer testing indicated no
17 leaks.

18 Q This abatement order indicates that the
19 subparagraphs in Paragraph 11 are based on
20 pertinent information provided to date.

21 Do you know what that information would
22 have been to support the conclusion in 11f that
23 there were --

24 A I would have then, but I don't recall
25 what was sent.

1 Q Okay. And let's turn to the next page.
2 The abatement order indicates, "From available
3 data, it appears that a discharge of hydrocarbon
4 fuel to the environment has occurred and is still
5 occurring in the vicinity of the Greyhound
6 maintenance center tanks and that the discharge
7 has reached the historic water table."

8 Do you have a recollection of what this
9 conclusion was based on?

10 A No.

11 Q I'm going to ask you to turn back three
12 more pages, which at the top of the page, there's
13 the number six?

14 A Uh-huh, yeah.

15 Q There's handwriting on this page. My
16 question is whether you know whose handwriting
17 that is.

18 A No.

19 Q Do you know if it's yours?

20 A I know it is not mine.

21 Q Okay. In E on that page, there's
22 language that says, "A site map showing the
23 contours and/or boundary of the soil
24 contamination," and then underneath it, in
25 handwriting, it appears to say, "found under" --

1 I can't make out the next word -- "or piping that
2 is due to leaks or spills/overfills."

3 Do you know what that notation refers
4 to?

5 A In the process of determining the site
6 conditions, we did various studies that revealed
7 that there was in fact contamination. The word
8 that you didn't know was "tanks," "found under
9 tanks or piping," due to leaks or overfills; that
10 the soil was found to be contaminated with
11 primarily gasoline and No. 1 diesel in these
12 areas.

13 Q On Exhibit 1, in Paragraph 2b, it also
14 indicates that you're expected to testify by
15 affidavit concerning the type of contamination
16 found on the site and ten in parentheses it says
17 petroleum.

18 Is there anything concerning the type
19 of contamination found on the site that you know
20 that you haven't talked about so far today?

21 A No.

22 Q Basically that it's gasoline --

23 A And No. 1 diesel.

24 Q -- and some small amount of No. 2?

25 A And some small amount of diesel 2.

1 Q We looked at some documents indicating
2 that there was a tank for waste oil. Was that a
3 contaminant that was found at the site?

4 A Good point. We'll have to amend that
5 and say waste oil, as well. Minor. Very minor.

6 Q Okay. Was that something that would
7 have come from leakage from the tanks, or is this
8 an overfill issue?

9 A Well, since my recollection was the
10 tanks were tight, it would probably have come from
11 an overfill of the tank.

12 Q How, in an operational sense, did the
13 waste oil tank work? Would a contractor come and
14 pump out the waste oil periodically?

15 A Yes.

16 Q Okay. So if you're pumping waste oil
17 in, you could overflow it if --

18 A No. You would overflow it by filling
19 it --

20 Q Right. Right.

21 A -- not by removing.

22 Q Right. Okay.

23 The next subject in Paragraph 2b
24 indicates that you're expected to testify
25 concerning the contamination timing and duration.

1 Is there anything, besides what you've
2 talked about so far today, that you know about
3 that subject?

4 A I do not believe so.

5 Q The next topic is the extent of
6 contamination and in parentheses it says soil and
7 groundwater. I don't believe we've talked about
8 that.

9 What do you know about the extent of
10 contamination at the site?

11 A The various releases of fuel that enter
12 soil by gravity would tend to migrate down through
13 the soil pores in soil that is above the water
14 table. That's called the vadoze zone. It's soil
15 that doesn't contain water, groundwater.

16 Those soils were found contaminated
17 from these various source areas downward
18 vertically, and some of the fuel forms a gaseous
19 state as opposed to liquid state. And that gas is
20 found generally throughout the soil in the vadoze
21 zone.

22 If sufficient releases occur over time,
23 the fuel continues to migrate down, further down
24 until it encounters saturated, soil that's
25 saturated with water, which is actually,

1 technically slightly above the water table.

2 And at that point the fuel, which
3 happens to be lighter in specific gravity than
4 water, tends to float on top of that zone of soil
5 that's saturated with water. And if the fuel
6 continues to be a source to this area, it will
7 migrate down horizontally at that point outward,
8 extending outward like in a flat pancake fashion
9 throughout the site.

10 That's what we found was that the site
11 was almost totally contaminated with fuel, both
12 from the liquid in the soils migrating outward at
13 this zone of saturated water in the ground and
14 plus the gaseous state of contamination in the
15 vadoze zone of the soils where there's no water.

16 The problem with the site was that the
17 convention center to the south of the site was
18 being developed, and they were in the process of
19 dewatering the site. And what happened was that
20 the water table, which was originally around
21 22 feet depth of water, had been depressed
22 five feet, down to 27 feet deep.

23 And when that happened, the area of
24 ground that was saturated with water was dropped
25 five feet, which allowed the fuel, then, to

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 indicated by the name of the agency, it's the
2 California Regional Water Quality Control Board,
3 not the soil quality control board. And the
4 entire remediation is directed to effecting an
5 improvement in the groundwater.

6 What we know from this site and from
7 other sites that are like this, the fuel in the
8 soil, once it contacts groundwater, it prefers to
9 stay in the soil, as opposed to being in the
10 groundwater. But there are certain compounds that
11 are more soluble than others that are present in
12 fuel that tend to dissolve to a minor extent into
13 the water.

14 And particularly one of them, one
15 compound that's present in gasoline and to a much
16 lesser extent in diesel fuel is a compound call
17 Benzene, which is slightly soluble in water.

18 And when fuel containing that compound
19 encounters groundwater, some of the Benzene that's
20 in the fuel will dissolve actually and become a
21 component, like sugar is dissolved in water. It
22 will be present in the groundwater.

23 And Benzene is a known carcinogen, and
24 a typical standard throughout the country is one
25 part per billion parts of water concentration of

1 Benzene in water is the limit of what would be
2 acceptable in drinking water quality. So you're
3 talking about extremely trace amounts of this
4 Benzene in water, turning the water in an
5 unacceptable quality for drinking purposes.

6 And the Water Quality Control Board is
7 interested in removing contaminations from the
8 water. And in order to do that, you have to
9 remove the source. And the source is the fuel
10 that's present in the soil that allows this
11 dissolving of certain compounds into the water.

12 Q The next subject in Paragraph 2b
13 indicates that you may testify concerning the
14 reasonableness of Viad's conduct regarding the
15 remediation agreement.

16 What remediation agreement are we
17 talking about?

18 A There were a series of requests by the
19 water board to effect clean-ups. The initial one
20 was free product removal. For many years that's
21 what we practiced, was removing free product from
22 various wells. This is that layer of fuels that
23 you could find present in wells that you would
24 install in the property.

25 We next undertook an exercise at the

1 request of the regulators to do vapor extraction
2 to remove the gaseous state of fuels. And where
3 that's somewhat helpful for gasoline, it's not
4 particularly suitable technology for removing
5 diesel. And that was eventually abandoned by the
6 regulators. They changed their mind.

7 And in 1999 it was, the director of the
8 water board called me and asked me to come over to
9 San Diego to meet with him, and I did. He said,
10 "This site is going to be developed with
11 condominiums, and the order now is that we're
12 going to expect you to excavate all the
13 contaminated soils on the site," which we had
14 never in our wildest dreams thought we would have
15 to do.

16 So he said that, "This is the most
17 effective method of assuring proper groundwater
18 quality, and this is what you're going to do."

19 And I said, "Well, the State has
20 reimbursement funds to pay for clean-ups. Are you
21 willing to pay for this clean-up?"

22 And he said, "Certainly."

23 I said, "If we do this, when it comes
24 time to seek State reimbursement funds, are you
25 going to help us?"

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 have the heavy equipment that our consultants
2 possess. So, yeah, the subcontractors do the bulk
3 of the work, physically, on site.

4 Q In Paragraph 2c of Exhibit 1, it
5 indicates you may provide affidavit testimony
6 concerning the similarities between prior sites
7 for which Viad provided Notice of Claim to Home
8 and the San Diego site.

9 What do you know about that subject?

10 A Could you read that again?

11 Q Sure. It's right in front of you.

12 A Which one?

13 Q 2C. Why don't you go ahead and read it
14 to yourself.

15 A My understanding was, like I said, I
16 wasn't involved in the insurance department's
17 activities, but I recall that they had provided
18 notice to, I think they told me that they had
19 provided notice to Home on Greensboro and Chicago
20 Heights. What was the third one? I can't
21 remember the third one. And a third site that
22 were also former-owned sites that required
23 remediation.

24 The contaminants were different, but in
25 a sense it was similar in the sense that you had

1 to excavate contaminant soils for removal to
2 effect the clean-up of the groundwater.

3 And my recollection was that they told
4 me that Home, I think, had issued a reservation of
5 rights letter and then had not responded any
6 further, even though they had provided further
7 evidence, I guess, on details of the projects.

8 Q When were you advised of this
9 information?

10 A I do not recall.

11 Q Would it have been back in the 1980s
12 when you were first involved with the San Diego
13 site?

14 A Probably the 1990s, would be my best
15 recollection.

16 Q So this would have been a number of
17 years after the California authorities contacted
18 Viad concerning the San Diego site?

19 A I don't recall the times.

20 Q Okay. And in your prior answer, and I
21 apologizes for this but you sort of coughed
22 halfway through one of your sentences, and I want
23 to make sure I got it right.

24 A Sure.

25 Q You said you were not involved in the

1 insurance aspects of it?

2 A Correct.

3 Q Right around the "was" or "was not" you
4 coughed, and I wanted to make sure the record came
5 out clear on that.

6 In Paragraph 2d it indicates, Paragraph
7 2d in Exhibit 1 indicates you may testify by
8 affidavit concerning Viad's application for
9 financial reimbursement from the State of
10 California.

11 What do you know about that subject?

12 A The State of California has a program
13 for reimbursement of owners of underground storage
14 tanks that are involved in cost for clean-up of
15 contaminated properties due to spillage or leakage
16 from underground storage tanks.

17 And when that program first became
18 available to site owners, I applied for
19 eligibility and was granted eligibility for the
20 San Diego property.

21 When the clean-up was essentially
22 completed in 2001, my consultant, ERC, under my
23 direction, completed an initial application to the
24 State of California for reimbursement of our costs
25 that we had incurred on this property.

1 And we amended that in, I think in a
2 2004 submittal and again in a 2007 submittal. And
3 in 2006 we were granted \$314,000 of State funds as
4 payment of what they thought was an appropriate
5 total amount of money that we should be entitled
6 to.

7 We disagreed, and in 2007 we submitted,
8 without ERC's involvement, we did this in-house
9 here at Viad, we resubmitted our costs for
10 recovery up to their cap, which was \$1.49 million
11 per site limit on what the State would allow in
12 recovery. And we received almost all of that with
13 a second check that came in at about \$1.1 million
14 in late 2007, or 2008.

15 Q You testified, I believe, earlier today
16 that some of the contaminants from the San Diego
17 site reached the groundwater; is that accurate?

18 A Yes.

19 Q Do you know when in time those
20 contaminants reached the groundwater?

21 A The migration downwards in these soils
22 would have been fairly rapid due to the porosity
23 of the soils so that a spill probably in a matter
24 of weeks would have probably, if sufficient
25 volume, would have migrated to the water table.

1 So a spill or an overflow of sufficient
2 volume to saturate the soils from the source all
3 the way down to where the water, where the ground
4 was saturated with water could have occurred in
5 probably in a few weeks.

6 Q In giving that answer you talked about
7 overfills and spills. Would the answer be any
8 different for leaks?

9 A No. No. It's a matter of the volume
10 of the release, not the method of the release.

11 Q Okay. The last subject in Exhibit 1 on
12 which it's indicated that you're expected to
13 possibly provide affidavit testimony concerns the
14 amount and reasonableness of the expenses,
15 charges, and damages incurred by Viad in
16 remediation of the site.

17 Is there anything that you haven't
18 testified so far about today that you know about
19 that subject?

20 A The primary function of my job here is
21 to get environmental work done properly, get the
22 right work done the first time, and ultimately
23 cost effectively. So I would say it was probably
24 a primary function of my position to ensure that
25 what we did would in fact solve the problem, not

1 waste money and would effect a remediation at the
2 lowest practicable cost. And I believe we
3 achieved that at this site.

4 Q Do you know if Greyhound had any
5 insurance, other than from the Home Insurance
6 Company, that provided coverages for property
7 damage to the San Diego site?

8 A Yes, but not in detail.

9 Q What do you know generally?

10 A I just knew that there had been various
11 policies, but I'm not familiar with those
12 policies.

13 Q Do you know what companies --

14 A No.

15 Q -- they were?

16 Okay. Do you know when they were in
17 effect?

18 A No.

19 MR. O'CONNOR: Mr. Ries, I don't have
20 anymore questions. I appreciate your time this
21 morning.

22 THE WITNESS: Thank you.

23 MR. SIMMONS: All right. Do you want
24 to take a quick break, and then I'll ask him
25 questions.

1 (Recess was taken from 9:44 a.m. to
2 9:52 a.m.)

3 EXAMINATION

4 BY MR. SIMMONS:

5 Q Mr. Ries, I want to pick up on a couple
6 of areas that Mr. O'Connor had covered with you,
7 the first being your educational background.

8 Where did you go to undergrad school?

9 A Georgia Tech. Got a bachelor's in
10 civil engineering in 1960 and then a master's of
11 science in sanitary engineering, which was the old
12 name for environmental engineering, from Georgia
13 Tech in 1963.

14 (Ms. DePaoli departs the deposition
15 room.)

16 Q (By Mr. Simmons) Now, having had, what
17 is it now, something like almost 30 or more years
18 in this area, is that how much it's been in this
19 one distinct area of environmental engineering?

20 A Yes.

21 Q All right. Would you consider yourself
22 an expert in this area, such as finding
23 contamination, dealing with and remediating
24 contamination, such as with the San Diego site
25 that Mr. O'Connor has asked you about?

1 A Yes.

2 Q All right. And how many types of sites
3 like this have you dealt with, for example, the
4 San Diego site?

5 A Probably over a hundred.

6 Q All right. And all the opinions that
7 you've given to Mr. O'Connor and that you're going
8 to be giving as I ask you these questions, are
9 they within a reasonable degree of professional
10 responsibility or certainty?

11 A Yes.

12 Q In this regard, Mr. Ries, I want to go
13 to the site that we're talking about here, the San
14 Diego site, and your involvement in it.

15 Could you just briefly summarize, is
16 this largely a groundwater issue that you've been
17 discussing, although it involved the tangential
18 remediation of the soil?

19 MR. O'CONNOR: Objection to form.

20 MR. SIMMONS: I'll rephrase the
21 question.

22 Q (By Mr. Simmons) What kind of problem
23 did you see here as a result of the discovery of
24 this contamination on the site that is known as
25 the San Diego site and referred to as the San

1 Diego site?

2 A The concern is groundwater quality.
3 And the concern of the board, of the water board
4 who regulates the water quality, is that sites
5 that pose a threat to groundwater quality, if
6 sufficiently damaging to the water quality, is
7 required by the regulators to clean up the sites.

8 And here the excavation of soil is the
9 method of removing the source of contamination to
10 the groundwater. They are totally interconnected
11 in that if you did not remove the source of
12 contamination that was present in the soils and
13 you, let's say, pump and treat groundwater to
14 clean up the groundwater and then you stopped, as
15 soon as you stop, the groundwater would again
16 become contaminated.

17 So not removing the soil would do
18 nothing to affect the quality of the groundwater.

19 (Ms. DePaoli returns to the deposition
20 room.)

21 Q (By Mr. Simmons) How are these then
22 related, between the groundwater and the soil?

23 A The fuel present in the soils directly
24 contacts groundwater. And, as I explained in my
25 earlier responses, the compounds, certain

1 compounds in fuel, once they become contacted with
2 groundwater, will become dissolved into the
3 groundwater and make the water undrinkable.

4 Q Mr. Ries, with respect to this
5 particular site, you talked about this smear area
6 in which there had been the fluctuation in the
7 groundwater level.

8 Do you recall that?

9 A Yes.

10 Q This large smear area, is that a
11 groundwater problem?

12 A Absolutely.

13 Q This smear area in which there was the
14 fluctuation of the groundwater required excavation
15 of how many feet of this area?

16 A We actually had to excavate the entire
17 smear zone down to 27 feet down to remove that
18 source of fuel that was present in the soils that
19 was dissolving in the groundwater.

20 And what made this project so costly
21 was that the lateral, horizontal migration of the
22 smear zone had extended over almost the entire
23 site, which required the entire site to be
24 excavated.

25 Q Is it fair to say, then, that the

1 requirement of excavating the smear zone was in
2 fact, along with the actual water itself, I mean,
3 to clear up the water because it was contaminated,
4 was it a driving force behind this?

5 A Absolutely.

6 Q Is it fair to say that for the first
7 ten years, Mr. Ries, that you had another plan of
8 trying to resolve this problem?

9 A Yes.

10 Q Could you explain what that plan was.

11 A As mentioned before, the initial
12 remediation proposals that were implemented were
13 first to remove free product from various wells.

14 Q So it was a groundwater problem to
15 begin with?

16 A Yes.

17 Q And stayed a groundwater problem, as I
18 understand it?

19 A Right.

20 Q You initially had a plan to clean up
21 the groundwater. And how long did that last, that
22 you were using that particular plan?

23 A Most of the ten years. Up until the
24 time we excavated, we continued free product
25 recovery.

1 Q Was there any reason to think that the
2 cost during that first ten years was going to be
3 significant?

4 A No. Free product removal is a very
5 cost-effective way to remove fuel from the ground.
6 In some cases, we have been successful in doing
7 just free product removal only that the State,
8 even though there was still contaminated soils
9 left, they allowed us to leave that in place with
10 no further action.

11 Q So the cost really, then, mushroomed at
12 what point in time?

13 A The end of 2000 was when we actually
14 implemented the excavation that was required by
15 the State regulator.

16 Q In order to remediate the groundwater?

17 A To physically remove the source of
18 contamination to the groundwater.

19 Q Now, you talked about at that time, in
20 your prior testimony to Mr. O'Connor, about your
21 meeting with the director of the California water
22 review board; is that right?

23 A Yes. The water, the California
24 Regional Water Quality Control Board.

25 Q Okay. At that time, did he give you a

1 directive?

2 MR. O'CONNOR: Objection to form.

3 MR. SIMMONS: Okay.

4 Q (By Mr. Simmons) Was this something that
5 could be voluntarily done, or is this a directive
6 by the -- what was his name? Mr. Robertson?

7 MR. O'CONNOR: Objection; form.

8 THE WITNESS: His name was John
9 Robertus, who was director of the regional board.

10 Q (By Mr. Simmons) Okay.

11 A When he called me over, he said, "The
12 site is going to be developed and, therefore, I
13 want you to undertake remediation of the soil by,
14 and improvement of the groundwater quality, by
15 excavating the site."

16 And at that point I realized that this
17 was going to be extremely costly to do so. But I
18 was also aware that this is the most effective
19 means to accomplish the ultimate goal of good
20 groundwater quality.

21 Q So is it fair to summarize that in fact
22 this was a directive made to Viad, which it then
23 felt compelled to comply with?

24 MR. O'CONNOR: Objection to form.

25 Q (By Mr. Simmons) Go ahead.

1 A He said, "This is what you are going to
2 do," and I was not given an option. This is the
3 board that ultimately decides when you're done
4 with remediation, and while the board normally
5 doesn't dictate method in this case, he did.

6 Q All right. Mr. Ries, with respect to
7 the time periods, you recall that there were
8 questions asked of you about the duration of this
9 contamination. And I believe you said that you
10 must have started in, what, in 1953 or 1954? What
11 was the time period?

12 A 1954.

13 Q How is it that you can conclude, within
14 a reasonable degree of professional responsibility
15 or certainty, that it must have started in 1954?

16 MR. O'CONNOR: Objection to form.

17 Q (By Mr. Simmons) All right. Let me
18 rephrase that.

19 How is it that you can -- can you
20 resolve, within a reasonable degree of
21 professional responsibility, that the pollution
22 started at least no earlier than 1954?

23 A Yes. Because prior to that, we had no
24 record of any fuel use on site, and it would have
25 been quite surprising to have discovered any fuel

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

1 it is today.

2 And so I would have expected that
3 throughout the period of operation that you
4 mentioned, that time period, I would have expected
5 to have concluded that the spillages and overfills
6 would have been random throughout that period.

7 With respect to leakages, if the system
8 was installed in '54 and was abandoned and the
9 piping was abandoned in '73 and new piping was
10 installed that was since found tight, suggests to
11 me that the leakage would have occurred in the
12 latter part of that '54 to '73 period. But to
13 what extent, I don't know.

14 Q (By Mr. Simmons) Okay. Is it reasonable
15 to expect that at least a significant portion of
16 the leakage would have occurred in the latter
17 portion of that time period, up from, say,
18 mid-sixties until 1972, '73?

19 A Yes.

20 Q Now, you were asked about the abatement
21 order and shown the abatement order by
22 Mr. O'Connor.

23 Do you recall that?

24 A Yes.

25 Q All right. Do you know whether that

1 constitutes a final judgment or not?

2 MR. O'CONNOR: Objection to form.

3 Q (By Mr. Simmons) Is that something
4 that's a legal conclusion?

5 A No. That order was what the board had
6 determined what their findings were and what their
7 expectations were at that time. And the board
8 subsequently amended this order numerous times.

9 Q Okay. Do you know what a final
10 judgment is, I mean --

11 A No. No.

12 Q Is it fair to say that's something
13 within the area or purview of someone such as Ms.
14 DePaoli?

15 MR. O'CONNOR: Objection to form.

16 Q (By Mr. Simmons) Go ahead.

17 A Yes.

18 MR. SIMMONS: Well, I'm just trying to
19 deal with the issue that you're trying to suggest,
20 John, that this witness is the one who knows what
21 a final judgment is or is not. And I've got to
22 deal with that. I mean, I know you're going to
23 try to take something like that.

24 Q (By Mr. Simmons) So with respect, when
25 Mr. O'Connor asked you about whether this

1 abatement order was a judgment or not, is that
2 something that somebody else would be dealing with
3 but not yourself?

4 A Yes. I would consider that a legal
5 matter, not a technical matter. And I'm a
6 technical guy, not a legal person.

7 Q When you were talking about the
8 expenses that related to this clean-up, do you
9 remember what the total amount of the expenses
10 were for clean-up remediation?

11 A It was in the area of \$3.7 million
12 total.

13 Q Okay. And is the precise amount of
14 that cost of remediation set forth in a draft
15 affidavit that you have worked on and prepared?

16 A I believe so.

17 Q All right. I'm handing you this
18 document right now.

19 Let's go ahead and mark this as
20 Claimant's Exhibit 1 for identification.

21 MR. O'CONNOR: Why don't we just make
22 it No. 3. We're going in order.

23 MR. SIMMONS: That would be fine with
24 me, John.

25 (Deposition Exhibit No. 3 was marked

1 for identification.)

2 MR. O'CONNOR: There you go.

3 Q (By Mr. Simmons) All right. You've been
4 handed Exhibit No. 3 to your deposition.

5 Are you familiar with that document?

6 A Yes.

7 Q Have you worked on the preparation of
8 this affidavit to set forth your conclusions and
9 your knowledge of the facts relating to the
10 San Diego site?

11 A Yes.

12 Q All right. Could you just briefly look
13 over this affidavit and you tell me if this
14 affidavit is true and correct.

15 A Okay. I've reviewed it and recall this
16 is as I participated in the draft.

17 Q All right. Is it true and correct,
18 then, the statements that you've made in there?

19 A Yes.

20 Q All right. Now, Mr. O'Connor asked you
21 about other insurance. I believe your answer was
22 you don't know of any other insurance?

23 MR. O'CONNOR: Objection to form.

24 THE WITNESS: I was aware there was
25 other insurance, but I'm not familiar with the

1 details.

2 Q (By Mr. Simmons) Okay. But as to the
3 existence of other insurance coverage, do you know
4 if there was other insurance coverage?

5 A I don't know.

6 Q I would like to ask you about the other
7 sites that Viad had given notice to Home Insurance
8 on.

9 Do you recall that line of questioning
10 asked by Mr. O'Connor?

11 A Yes.

12 Q Okay. You stated that there were, I
13 think, three other locations; is that right?

14 A Yes.

15 Q One of them, I think, you said was
16 Chicago Heights, another one was Greensboro, and
17 the third one you couldn't remember?

18 A Correct.

19 Q Is the third Old Blue Chemical?

20 A Yeah. Yes. In Fairfax,
21 South Carolina. That is the third that I recall
22 from having seen the affidavit, yes.

23 Q All right. Could you go ahead and tell
24 us, please, how these sites that you referred to
25 in your affidavit, and as well in your testimony,

1 were the same, substantially similar, or identical
2 to the San Diego site?

3 A Okay. First of all, there's no such
4 thing as identical. Every site is unique in its
5 own right.

6 These three properties are similar to
7 the Greyhound San Diego site in the sense that
8 they were owned and operated by a subsidiary of
9 Viad. And -- Excuse me. In the case of one
10 exception, in the case of Blue Chemical, it was
11 leased. It was a leased property there, not
12 owned.

13 But similar to San Diego, all three
14 sites were found contaminated by various company
15 activities on its own properties, operating on its
16 own properties, that impacted groundwater. And
17 state regulators were ultimately involved in all
18 three of these sites, similar to that of
19 California, San Diego site, and required an
20 assessment of the extent of the problem and then
21 corrective action to address the problem that was
22 identified.

23 Q So if a notice was given to Home with
24 respect to those sites and Home denied any kind of
25 obligation to provide insurance coverage with

1 respect to those three sites, would that be the
2 same as Greensboro, the Old Blue Chemical, the
3 Chicago Heights, and the San Diego site?

4 A Yes.

5 MR. O'CONNOR: Objection to form.

6 THE WITNESS: Yes.

7 MR. O'CONNOR: This man has no
8 competence to testify to that.

9 MR. SIMMONS: Well, then let me
10 rephrase it.

11 MR. O'CONNOR: The man doesn't do
12 insurance. You can ask whatever you want, but he
13 doesn't do insurance.

14 Q (By Mr. Simmons) That's right. You
15 don't do insurance, do you?

16 A No.

17 Q You don't do legal type things, such as
18 determining whether a document is a final judgment
19 or not a final judgment, do you?

20 A No.

21 Q Are the same issues, such as
22 groundwater contamination, the same with respect
23 to the San Diego site, the Old Blue Chemical site,
24 the Chicago Heights site, and the Greensboro site?

25 MR. O'CONNOR: Objection to form.

1 Q (By Mr. Simmons) The concepts.

2 A Yes. The actual pollutants that were
3 involved were different from site to site, but
4 they have commonality in that the pollutants were
5 introduced into the soils, the soils became a
6 source of contamination of the groundwater, and
7 the groundwater quality had to be improved.

8 Q In each of these sites was it
9 determined that, within a reasonable degree of
10 probability, that what caused it was inadvertent
11 or certainly not intentional conduct?

12 MR. O'CONNOR: Objection to form.

13 THE WITNESS: Yes. The companies would
14 never intentionally damage their own property, to
15 cause pollution that would ultimately cost to
16 clean up because that would be contrary to the
17 companies' best interest.

18 Q (By Mr. Simmons) By the way, were you
19 knowledgeable about, I mean, since you started,
20 what, as early as 1970s, the early 1970s, were you
21 knowledgeable about, for example, Armour's and
22 Greyhound's corporate policies with respect to
23 these kind of things?

24 A Not really.

25 Q Okay. With respect to the San Diego

1 site, is it fair to say that this was, in essence,
2 a groundwater problem?

3 MR. O'CONNOR: Objection to form.

4 THE WITNESS: Certainly.

5 (An off-the-record discussion ensued.)

6 MR. SIMMONS: I have no further
7 questions of this witness at this time.

8 MR. O'CONNOR: I have none.

9 Thanks, Mr. Ries. I appreciate it.

10 THE WITNESS: Okay.

11 (10:23 a.m.)
12

13 _____
KENNETH RIES

14
15 SUBSCRIBED AND SWORN TO before me this _____ of
16 _____, 2009.
17

18 _____
19 NOTARY PUBLIC

20 My Commission Expires:
21
22
23
24
25

1 STATE OF ARIZONA)
) ss:
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing
4 deposition was taken before me, SANDRA L. MUNTER,
5 a Certified Reporter for the State of Arizona;
6 that the witness before testifying was duly sworn
7 by me to testify to the whole truth; that the
8 questions propounded by counsel and the answers of
9 the witness thereto were taken down by me in
10 shorthand and thereafter transcribed either by me
11 or under my direction; that the foregoing pages
12 are a true and accurate transcript of all
13 proceedings had upon the taking of said
14 deposition, all to the best of my skill and
15 ability.

16 (X) Pursuant to request, notification
17 was provided that the deposition is available for
18 review and signature.

19 () Review and signature was waived.

20 I FURTHER CERTIFY that I am in no way
21 related to any of the parties hereto, nor am I in
any way interested in the outcome hereof.

22 DATED at Phoenix, Arizona, this 13th
day of January, 2009.

23
24 _____
SANDRA L. MUNTER, RPR/CSR
Certified Reporter
Certificate No. 50348
25