

1 DECEMBER 21, 2016 - MORNING SESSION
2 (Whereupon the following proceedings
3 were held in open court in the presence
4 of the Court and Counsel:)

5 THE COURT: We will be on the record. Counsel
6 are present.

7 As I think you know, the jury announced
8 yesterday afternoon that they had arrived at a verdict.
9 One of them -- I don't know which one -- but one of them
10 had a doctor's appointment at four o'clock, and we
11 decided that we could not get the process completed by
12 then, given when they announced their verdict. So -- and
13 I think the jurors agreed that they would go home
14 yesterday afternoon and come back this morning to take
15 the verdict.

16 So we are ready to do that, unless anybody has
17 any comments.

18 MR. BURNTON: None here, your Honor.

19 MR. MILLER: We are ready, your Honor.

20 THE COURT: Okay. Let's bring in the jury.

21 All right. Welcome back, ladies and gentleman.
22 Please have a seat, everyone.

23 Good morning, folks.

24 Mr. Wirebaugh, I understand you're the presiding
25 juror.

26 JUROR MR. WIREBAUGH IN SEAT NUMBER EIGHT:

1 That's correct.

2 THE COURT: I was advised yesterday afternoon
3 that the jury has arrived at a verdict; is that correct?

4 JUROR MR. WIREBAUGH IN SEAT NUMBER EIGHT: That
5 is correct.

6 THE COURT: Would you hand the form to Officer
7 Kem, please.

8 All right. The verdict form appears to be in
9 order. I will have the clerk read the verdict.

10 THE CLERK: In the case of the City of Clovis
11 versus Shell Oil Company, Case No. 15 CECG03767. We
12 answer the question submitted to us as follows:

13 Section A, Design Defect. Question No. 1: Did
14 Shell manufacture, distribute, or sell Shell D-D Soil
15 Fumigant? Answer: Yes.

16 Question No. 2: Was the City of Clovis harmed
17 by the design of D-D Soil Fumigant? Answer: Yes.

18 THE COURT: One moment, Madam clerk. Can
19 everybody hear this? Is the microphone on?

20 THE CLERK: Can you hear me?

21 MR. MILLER: I can.

22 THE COURT: Can everybody hear?

23 MR. BURNTON: Yes.

24 THE COURT: All right. Everybody is nodding, so
25 you play proceed.

26 THE CLERK: Question No. 3: Was the design of

1 Shell's D-D Soil Fumigant a substantial factor in causing
2 harm to the City of Clovis? Answer: Yes.

3 Question No. 4: Did Shell prove that the
4 benefits of Shell's D-D Soil Fumigant outweighed the
5 risk? Answer: No.

6 Section B, Failure To Warn. Question No. 5:
7 Did Shell manufacture, distribute, or Shell's D-D Soil
8 Fumigant? Answer: Yes.

9 Question No. 6: Did Shell D-D Soil Fumigant
10 have potential risks that were known or knowable in light
11 of the scientific knowledge that was generally accepted
12 in the scientific community at the time of manufacture,
13 distribution, or sale? Answer: Yes.

14 Question No. 7: Did the potential risks present
15 a substantial danger to persons using or misusing D-D
16 Soil Fumigant in an intended or reasonably foreseeable
17 way? Answer: Yes.

18 Question No. 8: Would ordinary consumers have
19 recognized the potential risk? Answer: No.

20 Question No. 9: Did Shell fail to adequately
21 warn or instruct of the potential risk of D-D Soil
22 Fumigant? Answer: Yes.

23 Question No. 10: Was the lack of sufficient
24 warnings a substantial factor in causing harm to the City
25 of Clovis? Answer: Yes.

26 Section C, Negligence. Question No. 11: Did

1 Shell manufacture, distribute, or sell Shell's D-D Soil
2 Fumigant? Answer: Yes.

3 Question No. 12: Was Shell negligent in
4 designing, manufacturing, supplying or selling D-D Soil
5 Fumigant? Answer: No.

6 Section D, Damages. Question No. 17: What do
7 you find to be the amount of damages, if any, suffered by
8 the City of Clovis? Answer in dollars for each of the
9 items claimed by the City of Clovis.

10 ^ one: Well No. 10, the answer is,
11 \$2,091,103.05. Two: Well No. 12, \$3,171,600. Three:
12 Well No. 15-A, \$3,300,000. Four: Well No. 18,
13 \$3,300,000. Five: Well No. 21, \$2,720,720. Six: Well
14 No. 26, zero. Seven: Well No. 27, zero. Eight: Well
15 No. 28, \$3,227,940. Nine: Well No. 41, zero. Ten:
16 Well No. 42, \$4,085,920.

17 For a total of all damages in the amount of
18 \$21,897,283.05.

19 Section E, Punitive Damages. Question No. 16:
20 Was conduct constituting malice or fraud committed by one
21 or more officers, directors, or managing agents of Shell
22 acting on behalf of Shell? Answer: No.

23 Question No. 17: Did an agent or employee of
24 Shell engage in conduct with malice or fraud? Answer:
25 No.

26 The verdict form is dated December 20, 2016, and

1 signed by the presiding juror.

2 THE COURT: Thank you, Madam clerk.

3 Ladies and gentleman, if you would answer
4 collectively, please. Is that your verdict?

5 (All jurors responded "Yes.")

6 THE COURT: Does either side wish to have the
7 jury polled?

8 MR. BURNTON: Shell does, your Honor.

9 THE COURT: Madam clerk, would you poll the
10 jury. Ladies and gentleman -- excuse me -- the clerk is
11 going to poll you now. This is what I referenced in the
12 instructions. So she's going to do it individually by
13 question and ask each of you how you voted on that
14 question, starting with No. 1 and going through No. 12.

15 Okay. Madam clerk, would you poll the jury,
16 please.

17 THE CLERK: The same case name and number as
18 previously stated on the record, we answer the questions
19 submitted as follows: Section A, Design Defect.

20 Question No. 1: Did Shell manufacture, distribute, or
21 sell Shell D-D Soil Fumigant? Answer: Yes.

22 Ladies and gentleman of the jury, as I call your
23 seat number, please tell me if this is how you voted on
24 question No. 1.

25 Juror number one?

26 JUROR MR. TREJO IN SEAT NUMBER ONE: Yes.