



507: The Nuts & Bolts of Settling Environmental Cases

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Faculty Biographies

David H. Franzel

David Franzel is legal counsel, Hawaii lands for the Estate of James Campbell. Mr. Franzel provides legal counsel and support in asset management, construction, leasing, environmental, risk management, trust, ADA compliance, and transactional areas to the trustees and Hawaii and U.S. based mainland managers for the \$2 billion+, 100 employee private Hawaii trust. He has negotiated the disposition of environmentally impacted properties, complex development agreements, ground leases, and real property exchanges. At the same time Mr. Franzel has managed outside litigation counsel to pursue, defend, and settle complex, multi-party commercial, environmental (including mold issues), insurance, and personal injury litigation in Hawaii and on the U.S. mainland. He also conducts seminars on in-house counsel activities and on how to prevent and settle disputes.

Prior to joining the Estate of James Campbell, Mr. Franzel practiced construction law in Chicago.

He provides pro bono services to the Hawaii State Bar Association, serves on several non-profit boards including the Mid-Pacific Institute board of counselors and Ohana Computer, and volunteers for a variety of organizations including Diamond Head Theater, Hawaii Special Olympics, and the American Cancer Society.

Mr. Franzel received a BA from the University of Wisconsin, Madison and is a graduate of the John Marshall Law School in Chicago.

Vincent M. Gonzales

Vincent M. Gonzales is senior counsel for Sempra Energy, working in both Los Angeles and San Diego. He provides environmental legal counsel to Sempra Energy's regulated entities (Southern California Gas Company and San Diego Gas & Electric Company) and its unregulated entities.

Prior to joining Sempra Energy, Mr. Gonzales was in-house counsel for Atlantic Richfield Company (ARCO) in Los Angeles. In addition to environmental law, Mr. Gonzales provided counsel in the area of commercial and real estate law for the various ARCO companies. Before ARCO, he was an associate in the corporation department of O'Melveny & Myers.

Mr. Gonzales serves as treasurer and a member of the board of directors of the Asian Pacific American Legal Center of Southern California. He is also a member, and former president, of the Philippine American Bar Association of Los Angeles. He is currently serving as vice president and a member of the board of directors of ACC's Southern California Chapter. He is a member of the executive committee of ACC's Environmental Law Committee. Mr. Gonzales has published a number of articles in the areas of environmental law and commercial law, the most recent being "Responding to an Environmental Disaster: The First 48 Hours," which appeared in the July/August 2003 issue of the *ACC Docket*.

Mr. Gonzales received a BA from Haverford College and an MA in philosophy from the University of California, San Diego. He is a graduate of the University of Southern California Law School where he served as a staff member and publication editor of the *Southern California Law Review*.

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Panelists

- David H. Franzel, Legal Counsel, The Estate of James Campbell
- Vincent M. Gonzales, Senior Environmental Counsel, Sempra Energy
- Jill A. Tracy, Assistant Counsel, Unocal Corporation

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Program Goals

- Unique about environmental cases
- Factors to consider
- Monetary vs. Non-Monetary
 - Use of settlement monies
 - Attorneys' fees & costs
- Best practices

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Program Format & Structure

- Hypothetical Scenario
- Illustrate Key Points
- Develop Settlement Strategies
- Mock Settlement
- Audience Participation
- Open Discussion

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Santa Mona, Florida

- Beautiful resort town on Gulf of Mexico
- Nice beaches
- Championship golf courses
- Expensive vacation homes and estates
- Home to the world famous *El Pollo Del Mar* resort and spa

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Refineries and a pipeline

- Two refineries north of Santa Mona:
 - Huey Oil Company Refinery
 - Dewey Oil Company Refinery
- Dualon Pipeline transports gasoline, jet fuel, marine diesel & heating oil from refineries to points south of Santa Mona

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Dualon Pipeline:

- Owned by Dualon Partners:
 - Huey Oil Company
 - Dewey Oil Company
- Operated by Daffy Pipeline Company
- Dualon Pipeline runs below Santa Mona
- For a few miles, pipeline adjacent to Coco Creek

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During 1998 hurricane season . . .

- Dora Bridge (over Coco Creek) damaged
- Santa Mona Department of Public Works hired Bert & Ernie Bridge Repair Company
- During repair, Bert & Ernie hit pipeline
 - Pipeline not visibly damaged, but impact loosened a flange that is not visible
 - Written report of incident ignored by DPW

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Over time . . .

- Loosened flange source of imperceptible leak of petroleum product from pipeline
- Product release contaminates Coco Creek
- Contamination eventually reaches the beach
- Beachgoers complain of petroleum smells, visible sheen on water, & beach staining
- Santa Mona DEH mobilized

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DEH Tests Beaches, Coco Creek

- Petroleum smell more pronounced at Coco Creek outfall
- Noticed smell similar to MTBE
- Concluded contamination was gasoline
- Did not test further for other contaminants

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Service stations targeted

- DEH reviewed release reports filed by service stations
- Conducted surprise inspections
- Identified one service station as likely source of contamination
- Investigative Order issued by DEH to Louie Oil Company

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Louie Oil Company's consultant:

- Conducted more comprehensive sampling and testing of Coco Creek
- Found contaminants in addition to gasoline: jet fuel, marine diesel and heating oil
- Checked municipal real estate records and found the Dualon Pipeline
- Also learned that Coco salmon affected

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Louie Oil Company's consultant:

- Asked Dualon and Daffy permission to review pipeline records, but is denied
- Convinced DEH to issue IO against Daffy and Dualon Partners
- Daffy and Dualon strongly contest IO and refuse to comply

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In the meantime

- Significant decrease in beachgoers, tourists
- Tourism income declines
- Even El Pollo Del Mar experiences unusual phenomenon: Vacancies

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Residences adjacent to Coco Creek

- Bad smell coming from Coco Creek
- Some residents tried to sell their homes, but received low offers, if any at all
- Headaches and nausea experienced
- Teens got sick after eating Coco salmon
- Soon, the Coco Creek contamination received national media coverage

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Publicity attracts lawyers

- “Slick Willie” and his famous paralegal, Edith Bonovich visit Santa Mona
- “Public Information Meetings” held
- Mildred McDonald (“Grandma Millie”)
- Media blitz launched
- Signed up enough homeowners to get lawsuit certified as a class action

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First lawsuit is filed

- El Pollo Del Mar, et al. vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company
- Santa Mona Superior Court

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Second lawsuit filed

- Mildred McDonald, et al vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company
- Certified class action lawsuit
- Santa Mona Superior Court

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Third lawsuit filed

- The City of Santa Mona Department of Environmental Health Services vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company and Dewey oil Company
- Criminal proceeding
- Santa Mona Superior Court

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60 days later, fourth lawsuit filed

- Salmon Society and Citizens for Coco Creek vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company
- Federal District Court

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Fifth lawsuit filed

- Louie Oil Company vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company
- Federal District Court

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Bert & Ernie

- Soon after these lawsuits are filed, Dualon, Daffy, Huey & Dewey:
 - Review City's files and find report that Bert & Ernie accidentally hit the Dualon Pipeline but did not observe any damage
 - Investigate and conclude that Bert & Ernie's act caused a flange to loosen and product to leak

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Sixth lawsuit filed

- Daffy Pipeline Company, Dualon Partners, Huey Oil Company and Dewey Oil Company vs. The City of Santa Mona Department of Public Works and the Bert & Ernie Bridge Repair Company
- Federal District Court

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Seventh lawsuit filed

- The City of Santa Mona Department of Public Works vs. the Bert & Ernie Bridge Repair Company
- Santa Mona Superior Court

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After first round of discovery

- Louie's gasoline plume commingled with the gasoline, jet fuel, heating oil and marine diesel plumes from the Dualon Pipeline
- Experts disagree whether Louie was responsible for 1% or 5% of the total volume of the contamination

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After first round of discovery (Cont.)

- Remediation & restoration of Coco Creek will cost at least \$20 million.
- NRDA Damages: about \$50 million.
 - Public survey >>> \$50 per salmon.
 - Experts say about 1,000,000 Coco salmon lost.

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After first round of discovery (Cont.)

- Lost hotel profits: \$25 million
 - Difficult to prove consequential damages
 - Already large drop-off in tourism in 2002, because of effects of 9/11
- Property value diminution: \$250 million
 - Values already declining since 2002 because of 9/11 and mostly vacation homes

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After first round of discovery (Cont.)

- Boards of Huey, Dewey and Louie Oil Companies very concerned over negative publicity and falling share prices of respective companies
- Therefore, Boards direct lawyers to expedite settlement of lawsuits

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Pollution Legal Liability Insurance

- Daffy, Dualon, Huey, Dewey and Louie eac have PLL policies issued by B.I.G. Insurance Company
 - Huey, Dewey & Louie each have \$50 million limit
 - Daffy & Dualon each have \$10 million limit
 - Daffy's policy was not renewed in 2003

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Business Interruption Insurance

- El Pollo Del Mar and the other hotels in Santa Mona each have business interruption insurance policies
 - Issued by Boyd's of England
 - \$10 million per occurrence limit

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CGL Insurance Policies

- City of Santa Mona and Bert & Ernie Bridge Repair Company have CGL policies issued by A.I.E. Insurance Company
 - Absolute pollution exclusion
 - \$1 million per occurrence per year limit

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1. El Pollo Del Mar, et al v. Daffy, et al

- Allegations made:
 - Defendants caused contamination resulting in loss of tourism and decline in business
- Remedies sought:
 - Consequential damages from lost profits
 - Injunction ordering immediate remediation of the contamination

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2. McDonald, et al v. Daffy, et al

- Allegations made:
 - Defendants caused contamination resulting in nuisance, personal injury and diminution in property value to plaintiff class
- Remedies sought:
 - Reimbursement of medical costs, stigma damages, pain & suffering damages
 - Punitive damages

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3. Santa Mona DEH v. Daffy, et al.

- Criminal proceeding
- Allegations made:
 - Defendants willfully violated an investigative order issued by Santa Mona DEH
- Remedies sought:
 - Payment of criminal penalties and fines
 - Jail time

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4. Salmon Society, et al v. Daffy et al.

- Allegations made:
 - Violated CWA and EDSA
- Remedies sought:
 - Injunction ordering remediation and restoration of Coco Creek
 - Payment of penalties, NRDA damages, & attorney's fees

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5. Louie Oil Company v. Daffy, et al.

- Allegations made:
 - Defendants caused contamination resulting in Plaintiff incurring investigative costs
- Remedies sought:
 - Reimbursement of costs for complying with investigative order

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6. Daffy, et al. v. Santa Mona, et al.

- Allegations made:
 - Defendants' negligence caused contamination
- Remedies sought:
 - Reimbursement of plaintiffs' defense costs
 - Recovery of lost profits
 - Injunction that defendants take plaintiffs' place in first five lawsuits listed above

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7. Santa Mona v. Bert & Ernie

- Allegations made:
 - Defendant's negligence caused contamination resulting in Plaintiff getting sued
- Remedies sought:
 - Reimbursement of defense costs incurred so far

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A few months later . . .

- All complaints, with the exception of the criminal complain, have been consolidated and removed to Federal District Court
- Trial date set for June 2005
- Other discovery & pre-trial deadlines set
- Preliminary settlement conference ordered
- Scheduled one month from today

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Need in-house counsel for:

- | | |
|---|--|
| ● Huey Oil Company | ● El Pollo Del Mar Resort & Spa |
| ● Dewey Oil Company | ● B.I.G. Insurance Company |
| ● Louie Oil Company | ● A.I.E. Insurance Company |
| ● Dualon Partners | ● Boyd's of England Insurance Company |
| ● Daffy Pipeline Company | |
| ● Bert & Ernie Bridge Repair Company | |

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Settlement issues

- Cleanup of Coco Creek & Restoration of Coco Salmon habitat.
- Money:
 - Penalties and fines
 - Clean up and restoration costs
 - NRDA damages
 - Diminution in property values
 - Attorney fees and costs

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Settlement Negotiation

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The beautiful coastal resort destination of **Santa Mona** is located on the Gulf Coast of Florida. It is noted for its year-round temperate climate, famous beaches, championship golf courses, and many multi-million dollar houses and estates. Santa Mona is also home to a number of resort hotels and spas, including the world-famous **El Pollo Del Mar Resort and Spa**.

North of Santa Mona are two refineries: one owned and operated by **Huey Oil Company** and the other by **Dewey Oil Company**. These refineries transport their petroleum products – gasoline, jet fuel, marine diesel, and heating oil – to points south through an **underground petroleum pipeline** which runs about ten feet below Santa Mona. The pipeline is called the **Dualon Pipeline** and it is owned by **Dualon Partners**, a partnership consisting of Huey and Dewey. The actual operation of the Dualon Pipeline itself is contracted out by Dualon Partners to another party, **Daffy Pipeline Company**.

A portion of the Dualon Pipeline runs buried alongside **Coco Creek**, a small stream that runs through Santa Mona and empties out into the Gulf. Because of 1998's hurricanes, **Dora Bridge**, which crosses over Coco Creek, was severely damaged, and Santa Mona's department of public works (DPW) hired a contractor, **Bert and Ernie Bridge Repair Company**, to repair the bridge.

In January of 1999, while repairing Dora Bridge, Bert & Ernie's drill rig accidentally hit and nicked a portion of the Dualon Pipeline. Bert and Ernie quickly examined what they did and concluded that the damage was only cosmetic. They note the incident in their daily work log which is later submitted to the DPW which filed the log but did not review it. What Bert and Ernie did not observe was how the sudden movement caused by their hitting the pipe loosened a flange a few yards upstream, thereby causing an almost imperceptible, but steady stream of gasoline to leak into the soil. Given the pipeline's close proximity to Coco Creek, some of the leaking product also found its way into the stream and, eventually, out into the Gulf.

Over the next few years, various other petroleum products, in addition to gasoline, leaked out of the loosened flange: jet fuel, marine diesel, and heating oil. Daffy's pipeline monitors were not sensitive enough to pick up the miniscule disparities with respect to the volumes of product in and out of the pipeline. Furthermore, the parties at either end of the pipeline who were selling and buying petroleum products, did not notice these small discrepancies in the volume of product sent and the volume of product received.

As the summer tourist season started, in June of 2002, a number of beach goers noticed a sheen on the waves as well as a distinctive, petroleum smell. The **Santa Mona Department of Environmental Health (DEH)** was mobilized, taking and analyzing samples, and investigating the source of the contamination. They found that the petroleum smell was most pronounced near the outfall of Coco Creek where it empties into the Gulf.

The DEH also noticed a distinct smell similar to MTBE – an additive once used to lower emissions from gasoline, but now banned in a number of states. The DEH quickly concluded that a leaking gasoline from a service station must be the source. (It did not consider testing for other kinds of petroleum contaminants.) It then started reviewing reports of petroleum releases,

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including underground storage tank (UST) leak reports filed by service stations in Santa Mona. It also started doing unannounced inspections.

During one of these unannounced inspections, the DEH found a service station next to Coco Creek, whose UST inventory records for the first half of 2002 showed more gasoline being put into its USTs than being sold. The DEH consequently issued an **Investigative Order (IO)** to **Louie Oil Company** – the owner and operator of this service station -- to investigate and assess the full extent of its gasoline release and to submit a written report summarizing its findings.

Pursuant to the IO, Louie hired an environmental consultant who immediately began to investigate Louie's gasoline release. The consultant took and analyzed water samples from the stream, and learned that the stream is heavily contaminated with hydrocarbons originating not just from gasoline, but also from a variety of other petroleum products: marine diesel, jet fuel and heating oil. Louie's service station did not sell marine diesel, jet fuel nor heating oil. After researching real estate and municipal records, the consultant found that the other possible source of this massive petroleum contamination could only be the Dualon Pipeline. Finally, after talking with residents living next to Coco Creek, the consultant also learned that the fish – including the **endangered Coco salmon** -- have virtually disappeared from the stream.

The consultant then requested pipeline operating records from its operator, Daffy, but was curtly refused any such information. After presenting its initial IO findings to the DEH, Louie and its consultant succeeded in convincing DEH to issue an IO to Daffy and to Dualon Partners as the owners of the pipeline. Both Daffy and Dualon Partners strongly contest this action, to the point where both parties virtually ignore the IO issued by the DEH, and refuse to comply with it.

In the meantime, the petroleum contamination of Coco Creek has become much more noticeable, while the petroleum sheen and smell on Santa Mona's beaches has worsened considerably. There is a significant decrease in beachgoers and vacationers, and consequently a decrease in tourism dollars for the summer of 2003. Many Santa Mona hotels and resorts begin to experience an unusual phenomenon: vacancies. The homeowners living next to Coco Creek were starting to find the petroleum smell unbearable. Many tried to sell their homes, but either received no offers or very low ones. Several residents complained of headaches and nausea. At one point, two teenagers got sick after they caught and ate a Coco salmon. The Coco Creek contamination has now become the focus of national media attention.

Several hotels and businesses have teamed up with El Pollo Del Mar to file suit against Daffy, Dualon Partners, and Huey, Dewey and Louie. The plaintiffs allege that the defendants' actions have caused their businesses to suffer.

Among those tracking the developments in Santa Mona is the world-famous plaintiff's attorney and class action specialist, **William Mastery** (a.k.a. **Slick Willie**). Slick Willie, together with his equally well-known paralegal, **Edith Bonovich**, visit Santa Mona. They start holding "public information meetings" in school gyms and churches to discuss the health effects from living in an environment where the air, soil and water are contaminated with petroleum products, such as

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gasoline (laced with MTBE), jet fuel and marine diesel. They find a very sympathetic plaintiff – Mildred McDonald, also known as “Grandma Millie” – who is a long-time resident of Santa Mona and whose rather modest house is now worth less than the mortgage she has on it.

Using their media savvy, Slick Willie and Ms. Bonovich flood the media markets with ads soliciting even more clients suffering health effects from the petroleum contamination, as well as property owners whose homes have suffered diminution in their values as a result of the contamination. Before long, Slick Willie and Ms. Bonovich have signed on enough clients to file a class action lawsuit against Dualon Partners, Daffy Pipeline Company, Huey Oil Company, Dewey Oil Company, and Louie Oil Company.

At the same time, the **Santa Mona District Attorney’s Office (DA)** is asked by the DEH to prosecute its IO against Daffy and Dualon Partners, as well as Huey and Dewey. A criminal complaint is filed by the DA in Santa Mona Superior Court.

A number of environmental groups, including the venerated **Salmon Society (SS)**, and the newly formed “NIMBY” -- **Citizens for Coco Creek (CCC)** -- combine their forces and submit the required 60-day notice of intent to file suit under the citizen suit provisions of the federal Clean Water Act (CWA), alleging that Dualon Partners, Daffy, Huey, Dewey, and Louie, have violated the CWA by unlawfully discharging petroleum products into waters of the United States without a permit. The plaintiffs also alert the US EPA that the Endangered Species Act may have been violated because of the unlawful “taking” of the Coco Salmon, an endangered species.

Louie sues Daffy, Dualon Partners, Huey and Dewey for recovery of the costs Louie incurred in assessing the petroleum contamination that turned out to have been caused by the defendants.

After reviewing documents at the City and finding Bert & Ernie’s work log incident report about hitting the pipeline, Dualon, Daffy, Huey and Dewey file a cross-complaint against Santa Mona and its DPW, as well as Bert & Ernie, for damaging the pipeline that caused the leak in the first place. The non-Santa Mona plaintiffs in the first five lawsuits amend their complaints accordingly. Santa Mona also files suite against Bert & Ernie.

To summarize, the following lawsuits have been filed and are currently pending:

1. *El Pollo Del Mar, et al. vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company.* Filed in Santa Mona Superior Court.
 - Plaintiffs alleged that defendants caused contamination that resulted in loss of tourism and business.
 - Remedies sought: payment of consequential damages (lost profits) and injunction ordering immediate remediation of contamination.
2. *Mildred McDonald, et al vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department*

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- of Public Works, and Bert & Ernie Bridge Repair Company. Certified class action lawsuit. Filed in Santa Mona Superior Court.*
- Plaintiffs alleged that defendants caused contamination that resulted in personal injury, nuisance, and diminution of property value.
 - Remedies sought: reimbursement of medical treatment costs, stigma damages, pain and suffering damages, punitive damages and attorneys' fees and costs.
3. *The City of Santa Mona Department of Environmental Health Services vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company and Dewey Oil Company. Criminal proceeding. Filed in Santa Mona Superior Court.*
- Plaintiff alleged that defendants willfully violated an investigative order issued by the DEH.
 - Remedies sought: payment of criminal fines and penalties, and jail time for certain individuals who work for Defendants.
4. *Salmon Society and Citizens for Coco Creek vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company. Filed in Federal District Court.*
- Plaintiffs alleged that defendants released contaminants into the waters of the state without obtaining a discharge permit, a violation of the CWA; causing the destruction of countless numbers of Coco salmon, an endangered species, in violation of the EDSA; and resulting in destruction of the Coco salmon's habitat, Coco Creek, a natural resource.
 - Remedies sought: injunction ordering complete restoration of Coco Salmon's habitat, Coco Creek; penalties for violating the CWA; reimbursement of attorney's fees pursuant to the citizen suit provisions of the CWA; and NRDA damages.
5. *Louie Oil Company vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company. Filed in Federal District Court.*
- Plaintiff alleged that defendants caused contamination which resulted in plaintiff incurring costs of having investigated the contamination.
 - Remedies sought: reimbursement of costs incurred in response to the IO issued by the DEH.
6. *Daffy Pipeline Company, Dualon Partners, Huey Oil Company and Dewey Oil Company vs. The City of Santa Mona Department of Public Works and the Bert & Ernie Bridge Repair Company. Filed in Federal District Court.*
- Plaintiffs alleged that defendants' gross negligence directly caused the contamination for which plaintiffs are being held responsible.
 - Remedies sought: reimbursement of all costs incurred by plaintiffs in their defense against several lawsuits; recovery of consequential damages in the form of lost profits and good will; and injunction ordering defendants to take Plaintiffs' place in the five other lawsuits.
7. *The City of Santa Mona Department of Public Works vs. the Bert & Ernie Bridge Repair Company. Filed in Santa Mona Superior Court.*

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- Plaintiff alleged that defendant's gross negligence was a breach of contract with respect to the agreement between defendant and plaintiff, as well as caused contamination that resulted in the City being countersued.
- Remedies sought: enforcement of agreement's indemnification provisions; reimbursement of defense and other costs incurred thus far.

During the first round of discovery, the following facts are learned:

1. Louie's gasoline plume commingled with the gasoline, jet fuel, heating oil and marine diesel plumes from the Dualon Pipeline. The experts also disagree as to whether Louie's plume constituted between 1% or 5 % of the total volume of the petroleum contamination.
2. Remediation and restoration of Coco Creek will cost at least \$20 million.
3. Experts estimate approximately 1,000,000 Coco salmon have been lost over time because of the contamination. Natural resource damages with respect to the loss of Coco salmon are calculated to be \$50 million (based on a public survey where citizens felt that loss of Coco salmon "costs" \$50 per salmon).
4. The lost profits claimed by the hotels, including El Pollo Del Mar, are more difficult to prove, considering that in the summer of 2002, there had already been a large drop-off in tourism dollars, because of the effects of 9/11 on the travel business overall. Nonetheless, the hotels and El Pollo are claiming combined lost profits attributable to the contamination, of \$25 million.
5. Diminution of property values in Santa Mona, according to Slick Willie's real estate experts, added up to about \$250 million. However, the defendants' experts believe this estimate is too high, considering some decrease in market value had already been set in motion – since many of these expensive houses are vacation homes – as a result of 9/11.
6. Concerned over the awful publicity and their respective companies' decreasing stock prices, the Boards of Directors of each of Huey, Dewey, and Louie direct their attorneys to settle all of the lawsuits as expeditiously as possible to get this chapter behind them.
7. Insurance policies:
 - a. Daffy, Dualon, Huey, Dewey, and Louie each have pollution legal liability (PLL) insurance policies issued by B.I.G. Insurance Company. Daffy's PLL policy, however, was not renewed in 2003. In addition:
 - i. Huey, Dewey and Louie's policies each have a \$50 million limit.
 - ii. Dualon and Daffy's policies each have a \$10 million limit.
 - b. El Pollo Del Mar, together with the other hotels, have business interruption insurance policies -- each with a \$10 million per occurrence limit – issued by Boyd's of England.
 - c. The City of Santa Mona and Bert & Ernie both have a comprehensive general liability (CGL) policy issued after 1986 with a \$1,000,000 per year, per occurrence limit, and an absolute pollution exclusion. A.I.E.. Insurance Company is their carrier.

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The Nuts and Bolts of Settling Environmental Cases
Hypothetical

With the one exception of the criminal complaint, all of the lawsuits are removed to Federal District Court. The judge sets up a preliminary settlement conference for a month from now.

Audience participation: We need counsel for the following companies:

Huey Oil Company
Dewey Oil Company
Louie Oil Company
Dualon Partners
Daffy Pipeline Company
Bert & Ernie Bridge Repair Company
El Pollo Del Mar Resort & Spa
B.I.G. Insurance Company
A.I.E. Insurance Company
Boyd's of England Insurance Company

Lawsuit # 1

El Pollo Del Mar, et al. vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

Lawsuit # 2

Mildred McDonald, et al vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company (certified class action lawsuit)

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

Lawsuit # 3

The City of Santa Mona Department of Environmental Health Services vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company and Dewey oil Company (criminal proceeding)

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

Lawsuit # 4

Salmon Society and Citizens for Coco Creek vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, Louie Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

Lawsuit # 5

Louie Oil Company vs. Daffy Pipeline Company, Dualon Partners, Huey Oil Company, Dewey Oil Company, the City of Santa Mona Department of Public Works, and Bert & Ernie Bridge Repair Company

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

Lawsuit # 6

Daffy Pipeline Company, Dualon Partners, Huey Oil Company and Dewey Oil Company
vs. The City of Santa Mona Department of Public Works and the Bert & Ernie Bridge
Repair Company

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

Lawsuit # 7

The City of Santa Mona Department of Public Works vs. the Bert & Ernie Bridge Repair Company

Monetary remedies sought: _____

Non-monetary remedies sought: _____

Total insurance moneys potentially available: _____

Plaintiffs' strengths: _____

Plaintiffs' weaknesses: _____

Defendants' strengths: _____

Defendants' weaknesses: _____

What should be the right resolution to this be? _____

What will be the most likely resolution to this? _____

