

FREEMAN & GARCIA

ATTORNEYS AT LAW

SAN FRANCISCO

655 MONTGOMERY ST., SUITE 1140

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MODESTO

1101 SYLVAN AVE., SUITE C-106

MODESTO, CA 95350-1680

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December 1, 1993

Ms. Eva Chu
Hazardous Materials Division
Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Mr. Lorenzo Perez
Hazardous Materials Specialist
City of Berkeley
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: **Xtra Oil Co.**

Sites: 5330 Foothill Boulevard, Oakland
1201 The Alameda, Berkeley
1399 San Pablo Avenue, Berkeley

Dear Ms. Chu and Mr. Perez:

I appreciated the opportunity to meet all of the regulators involved with the above-referenced sites, at the hearing on October 26, 1993, in Oakland. The following is a discussion of: (1) our position regarding each site referenced above; (2) information regarding potentially responsible parties ("PRPs") or persons who have specific factual knowledge relevant to each site and; (3) our specific requests for documents or other information.

5330 FOOTHILL BOULEVARD, OAKLAND

Statement of Position:

The ownership history of this site, prior to it being acquired by Ted Simas, is detailed in my letter to Eva Chu, dated November 12, 1993 (see, Exhibit "A"), which was sent pursuant to her request. In sum, the Foothill property was owned in 1977 by Simas Bros., a California Corporation and was transferred by Walter Simas to Ashland Oil Company of California, a Limited Partnership in December of 1977. Walter Simas created the Limited Partnership, naming himself the General Partner and relegating Ted Simas to the position of Limited Partner. This Deed transfer, as well as the creation of the Limited Partnership, was all completed without Ted Simas' knowledge. Ted Simas was a minority shareholder in Simas Bros. (between 11% and 14%), and his interest in the business was further diminished by Walter Simas when he made Ted Simas a Limited Partner. Ted Simas did not actively participate in the day-to-day operation of the business when he was a minority shareholder, nor when he was a Limited Partner.

ALCO
HAZMAT
DEC-6 PM 1:38

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In January of 1979, Ted Simas succeeded in having a receiver, Mr. John McDougal, appointed by the Court to manage and administer the affairs of the companies involved in the underlying estate suit of Simas v. Simas (which included, among others, Ashland Oil Company of California, a Limited Partnership). Mr. John McDougal operated the gas station at the Foothill site for approximately four (4) years, from January of 1979 through early 1983. Prior to the property being quitclaimed to Ted, the receiver emptied the underground storage tanks ("USTs"), boarded up the station and closed it to business. Ted Simas personally acquired the property in February of 1983, and sold it to L. Hue Crosby in August of 1983. Ted never operated the USTs.

The history of site ownership, post Ted's interest, is less clear. In 1988 or 1989, it appears that Crosby attempted to sell the site at 5330 Foothill to George Clark. The sale fell through, but only after Mr. Clark had used the property, rent free, for approximately four or five years, and had paid to have the USTs removed. Mr. Crosby then sold the property to Messrs. Flores and Del Rio. Current ownership is unknown at this time.

PRPs and Others With Specific Factual Knowledge.

Since one of the reasons the Pre-Enforcement Review Panel is convened is to determine who the PRPs are in a given situation, we would like to see all of the PRPs participating in the process. Pursuant to Title 23, California Code of Regulations, Chapter 16, Section 2720, several people were not identified as PRPs that should have been. The following is a list of those persons and the reason why they should have been noticed:

- (1) Mr. Walter Simas owned the site and had day to day operational control over the USTs until January 1979.
- (2) Mr. John McDougal had control over and operated the USTs, as the court appointed receiver, from January 1979 through early 1983.
- (3) Mr. George Clark attempted to purchase the property at 5330 Foothill in 1988 or 1989. Although the sale eventually fell through, it was Mr. Clark that paid to have the USTs removed.

There were also people who were noticed for the hearing, yet failed to appear. They are:

- (1) ~~Mr. L. Hue Crosby who purchased the property in August 1983.~~
- (2) Mr. Del Rio who purchased the property from Mr. Crosby.
- (3) Mr. and Mrs. Flores who purchased the property with Mr. Del Rio from Mr. Crosby.

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Due to the lack of connection between Ted Simas and the Foothill property, and for the reasons stated in Mary Ann Aguirre's letter to Mr. Peacock, dated May 17, 1993 (see, Exhibit "B"), and sent to Ms. Eva Chu on June 11, 1993, pursuant to her request, neither Ted Simas nor Xtra Oil Co. are PRPs for the contamination identified at the 5330 Foothill site.

Requested Documents and Information.

We request, any and all documents or other information relating to:

1. The removal of the USTs from 5330 Foothill Boulevard.
2. Mr. George Clark and his relationship, past or present, to the property at 5330 Foothill Boulevard.
3. The purchase, sale or condition of the property at 5330 Foothill Boulevard after August of 1983. These documents include, but are not limited to: (1) the escrow documents between Mr. Crosby, the Floreses and Mr. Del Rio and; (2) the note to Mr. Crosby from the Floreses or Del Rio allegedly relieving Mr. Crosby of liability for contamination at the site.
4. The effect of a noticed PRP failing to participate with the Pre-Enforcement Review Panel.

1399 SAN PABLO AVENUE, BERKELEY

Statement of Position.

Ted Simas is aware of the contamination problems at the 1399 San Pablo site. He has hired a consultant to work on the project and create a remediation plan for approval. The first proposed plan was submitted in December of 1992, and was disapproved in March of 1993, by the City of Berkeley Toxic Management Program. The second remediation plan was submitted in September of 1993. No approval or disapproval was ever received on the second plan. A meeting had been scheduled, with Lorenzo Perez of the Toxic Management Program, to discuss the plan on October 15, 1993. However, notice was received on October 13, 1993, that this site had been referred to Alameda County District Attorney, Gilbert Jensen and the Pre-Enforcement Review Panel. At this time, Ted Simas awaits direction from the Panel before he proceeds with any remediation plan.

The second plan, submitted by Xtra Oil Co. (see, Exhibit "C") was substantially similar to a plan that was approved by the Berkeley Health and Human Services Department for the Chevron Station located at 1300 San Pablo Avenue and in close proximity to the San Pablo site (see, Exhibit "D"). Paradoxically, the Chevron station had almost three feet of free product in some of its wells (Quarterly Groundwater Monitoring Report, dated July 15, 1992, from Alton

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Geoscience) whereas the Xtra Oil Co. station has never had any visible product whatsoever in its wells. It should also be noted that at least three of the Chevron monitoring wells were condemned by July of 1992, three years after the plan was approved by the Berkeley Health and Human Services Department.

Thus, it appears that the City of Berkeley has approved a remediation plan for the Chevron gas station which is (1) quite similar to the one submitted by Xtra Oil Co.; (2) situated within one city block of the Xtra Oil Co. station, and; (3) suffering from worse contamination problems than the Xtra Oil Co. site. Yet, the City of Berkeley has failed to approve a similar remediation plan for the San Pablo site. This causes a great deal of trepidation, especially in light of Gilbert Jensen's comments at the October 26, 1993 hearing where he stated that, "our office has been criticized for only going after the big oil companies", and is trying to "level the playing field". Levelling the playing field is an admirable goal, but to apply one set of standards to the big oil companies and different, more stringent standards to the smaller businesses does not accomplish the stated goal. Any information that clarifies this apparent inequity would be appreciated.

1201 THE ALAMEDA, BERKELEY

Statement of Position.

Ted Simas has a long record of compliance and cooperation regarding the property at 1201 The Alameda. Mr. Simas purchased the station at 1201 The Alameda in the early 1960's from George Smithson. Mr. Smithson purchased his gas from Mobil Oil. When Ted Simas bought the station, he switched gas companies and purchases his gas from Shell Oil Company. Mr. Ted Simas ran the station until the mid 1980's virtually without incident. Then in 1984 and 1985 some of the surrounding neighbors complained of gas fumes. The Berkeley Fire Department responded to a number of these complaints and conferred with Ted Simas on a few occasions. It was decided that a storm drain should be sealed to help alleviate some of the odors. Thus, Xtra Oil promptly sealed the drain. In December 1984, Ted Simas discovered that the "screw on" fill caps to the USTs would work better. Mr. Simas demonstrated this to Captain Hiatt of the Berkeley Fire Department, and then proceeded to replace the floating plastic caps with the "screw on" caps, that same day.

Between April of 1985 and April of 1991, there were no complaints from neighbors. In April 1991, there was one complaint and in September of 1991, there was one complaint. Each of these complaints related to gas fumes, and were investigated. The City of Berkeley Health & Human Services Environmental Health Inspector, that investigated the April 1991 complaint states in their report that they contacted the complainant. However, the complainant was not satisfied with the investigation because the investigator "did not find anything".

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In September 1991, another complaint was made regarding gas fumes. This complaint was also investigated. The Investigator filed a report which stated when he stood at the northeast corner of the property he could detect a "faint odor" of gasoline. The investigator went on to state that the tank vents are located near the northeast corner of the property.

Since there were only two complaints and no known regulatory problems at this site since 1985, Ted Simas was shocked to receive the Pre-Enforcement Review Panel Notice. On October 13, 1993, Ted Simas received the Notice of the hearing scheduled for October 26, 1993. This was two days before he had a scheduled meeting with Lorenzo Perez from the City of Berkeley Hazardous Materials Division to discuss a remediation plan for the San Pablo site (discussed above). It was not until the hearing on October 26, 1993, that we learned the reason for The Alameda site being referred to the Pre-Enforcement Review Panel. At the hearing Mr. Lorenzo Perez, indicated that he was frustrated with the process regarding the San Pablo site and since that site had been referred to the Pre-Enforcement Review Panel, he went through "the files" to find what other sites were owned by, or affiliated with, Ted Simas so that he could have them all reviewed by the Pre-Enforcement Review Panel.

A review of the City of Berkeley Health & Human Services Department and the Berkeley Fire Department records specifically reflect the following:

1. Ted Simas has never been provided with copies of any of the tests or reports relating to the property at 1201 The Alameda.;
2. Whatever the regulators have asked Ted Simas to do, he had done, in a timely manner.
3. A letter from the Berkeley City Manager to a private attorney and "carbon copied" to a multitude of regulators regarding the "intermittent gasoline odor in the area of Hopkins and The Alameda" (intersection of 1201 The Alameda), dated May 31, 1985, states "that there is no problem at this time" (see, Exhibit "E").
4. A City of Berkeley Hazardous Materials Inspection Report dated, May 5, 1993, and signed by Inspector Lorenzo Perez, indicates that The Alameda site had been inspected that same day for the purpose of its annual inspection. Mr. Perez signed this report without any comment as to the site being deficient in any way (see, Exhibit "F").
5. Ted Simas is specifically cited for his cooperation (see, Exhibit "G").

There can be no question regarding Ted Simas' cooperation with the regulators, or his conscientious administration of business affairs. The record speaks for itself. To insinuate that at any time Ted Simas failed, in any way, to perform as required by law and the regulators, misstates the truth. To infer that he has ever conducted himself in a manner that maximizes

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profits at the expense of the environment or the community is not supported by the facts and is entirely without merit.

PRPs or Persons With Specific Factual Knowledge.

Since one of the purposes of the Pre-Enforcement Review Panel is to determine who are PRPs, we want to ensure that all the PRPs have been noticed by the Panel. We believe that the following people should have received notices as PRPs, or as persons with specific factual knowledge, for the hearing on October 26, 1993:

1. Shell Oil Company - Delivers fuel to 1201 The Alameda;
2. Chevron Oil Co. - Owned and operated a gas station across the street from 1201 The Alameda until it was torn down in the early 1980's;
3. Mobil Oil - Provided fuel to George Smithson as the previous owner of the gas station at 1201 The Alameda; and
4. George Smithson - Prior owner of 1201 The Alameda.

Requested Documents and Information.

We request the following information relating to:

1. Copies of any and all test results, run on samples taken on or near the 1201 The Alameda site. These documents include, but are not limited to, copies of the tests run in July or August of 1985, that allegedly identify contamination near this site as having originated at the Xtra Oil Co. station at 1201 The Alameda.

SUMMARY

Due to the lack of connection to the property, neither Ted Simas nor Xtra Oil Co. should be considered as PRPs for the 5330 Foothill location. However, Ted Simas intends to continue to fully cooperate with your offices regarding the San Pablo site and The Alameda sites. He is concerned, however, that any order from the panel, allow sufficient time for the bidding requirements under the State UST Reimbursement Fund to be met. Furthermore, the Pre-Enforcement Review Panel should insist that the other PRPs identified above be required to participate. It is futile to attempt to determine rights and liabilities without all of those concerned actively participating.

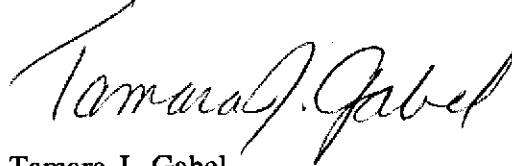
FREEMAN & GARCIA

December 1, 1993

Page 7

We look forward to hearing from you in the near future, and to working with you to positively resolve the matters set forth in this letter. We also look forward to receiving the requested documents. Please do not hesitate to call me, if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Tamara J. Gabel". The signature is written in black ink and is positioned above the printed name.

Tamara J. Gabel

TJG/dar
Enclosures

cc: Gilbert Jensen, Esq.
Richard Hiatt
Steve Ritchie

\site

FREEMAN & GARCIA

ATTORNEYS AT LAW

SAN FRANCISCO
655 MONTGOMERY ST., SUITE 1140
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MODESTO
1101 SYLVAN AVE., SUITE C-106
MODESTO, CA 95350-1680
TEL: (209) 491-5330
FAX: (209) 524-7061

November 12, 1993

Via Facsimile & U.S. Mail
(510) 569-4757

Ms. Eva Chu
Hazardous Materials Division
Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

**Re: Xtra Oil Company
5330 Foothill Site**

Dear Ms. Chu:

I enjoyed the opportunity to speak with you recently regarding the above-referenced site. We are drafting a letter which more thoroughly states our position regarding the site. However, as requested, I am forwarding information regarding:

1. The history of site ownership;
2. Information relating to control of the USTs at the site;
3. The Relationship between Simas Bros. and Xtra Oil Company; and
4. Addresses for Walter Simas and John McDougal, the court appointed receiver.

Many of the documents, related to Ted Simas' acquisition of property, have been sealed by the Superior Court in Alameda County in the underlying case of Simas v. Simas. I have attached a copy of the Court's Order for your files and have provided copies of those documents that are relevant, but that have not been sealed.

Site Ownership History

1. When Jean (mother of Ted, wife of Walter) died in 1977, she left two conflicting wills which set off a battle of the "wills" between Ted and Walter.
2. Simas Bros. owned the property at 5330 Foothill at the time of Jean's death. Walter was the President of Simas Bros. (See, Exhibit "A", pages 1, 2 and 3 of the verified complaint in Simas v. Simas, dated June 15, 1978, hereinafter referred to as the "Verified Complaint").

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November 12, 1993

Page 2

3. In December 1977, Walter, for Simas Bros., granted the property to Ashland Oil of California, a Limited Partnership, to which Walter was the General Partner (See, Exhibit "B", pages 1, 2, and 3 of the Verified Complaint) and Ted was a limited partner.

4. On January 3, 1979, Ted succeeded in having a court receiver appointed. (See, Exhibit "C", Order of the Court appointing the receiver). John McDougal, the receiver managed the affairs of Ashland Oil of California, a Limited Partnership, including operation of the gas station at 5330 Foothill (see, Exhibit "C"), from approximately December 1978, until the property was quitclaimed to Ted on February 22, 1983. (See Exhibit "D", the Quitclaim to Ted), a period of over four (4) years.

5. Approximately six months after having the Foothill property conveyed to him, Ted sold it to L. Hue Crosby. (See, Exhibit "E", Real Property Agreement of Sale; Exhibit "F", Note Secured By Deed of Trust; and Exhibit "G", Substitution of Trustee and Deed of Full Conveyance).

Control of the USTs:

Prior to the transfer of the property from the receiver to Ted, all of the USTs at the site were emptied, the station boarded up and closed down. (See, Exhibit "H", copy of letter to the attorneys in the receivership action). Neither the gas station nor the tanks were ever operated again. Specifically, Ted never operated the gas station, it was closed before he acquired the property.

Relationship Between Simas Bros and Xtra Oil Company:

At the hearing on October 26, 1993, you also requested any information we have regarding the relationship between Simas Bros. and Xtra Oil Company. As indicated in the above statement and attached documents, there is none. All assets of Simas Bros. were transferred to the Ashland Oil of California, a Limited Partnership, by Walter Simas on December 1977 (see, Exhibit "I", page 7 of the Verified Complaint), and was officially suspended by the Franchise Tax Board in May of 1980. In other words, Simas Bros. had ceased to exist years before Ted acquired the Foothill property. Not only did Walter transfer the Foothill property from Simas Bros. (of which he was President) to Ashland Oil of California, a Limited Partnership (of which he was the sole General Partner) within months of Jean's death, he did the same thing with all of the Simas Bros. assets, all without Ted's knowledge.

Xtra Oil Company was incorporated in December of 1972. It never had or has had any relationship to Simas Bros. or the 5350 Foothill site.

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November 12, 1993

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Addresses:

When we spoke last week you also requested that I provide you with Walter Simas' and the receiver, John McDougal's, address. The following is the most recent information we have in our files:

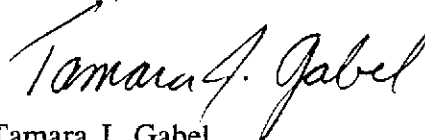
Walter Simas
P.O. Box 403
Diablo, CA

John McDougal
Carmichael, CA
(916) 481-4327

Summary:

Ted Simas was a minority shareholder of the company that owned the site at the time of Jean's death. Walter and Jean owned over eighty percent (80%) of the company and Walter actually had day-to-day control over the station. After Jean died, Walter transferred the assets of Simas Bros. to the Ashland Oil Company of California, a limited partnership. Walter made himself the general partner and relegated Ted to the position of a limited partner. All of this was done without Ted's knowledge. When Ted finally was able to have the court appoint a receiver, in December 1978, John McDougal, operated the gas station for approximately four (4) years. Before the site was transferred to Ted, the receiver had all of the USTs emptied, and the station boarded up. Ted sold the property seven months after acquiring it to L. Hue Crosby. Also, as stated above, there is no relationship between Simas Bros. which had its assets liquidated in late 1977, by Walter Simas and Xtra Oil Company.

Sincerely,



Tamara J. Gabel

TJG/dar
Enclosures

cc: Gil Jensen, Alameda County District Attorney
Ted Simas, Xtra Oil Company

chu

PROTECTIVE ORDER

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
 2 201 - 19th Street
 3 Oakland, California 94612
 (415) 444-6800

**ENDORSED
 FILED**

FEB 10 1978

4 DALE I. STOOPS, ESQ.
 Wells Fargo Bank Building
 5 415 - 20th Street
 Oakland, California 94612
 6 (415) 836-2204

RENE C. DAVIDSON, County Clerk

By ANNETTE L. HART Deputy

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

11	EDWARD T. SIMAS, ETC., ET AL.,	)	NO. 503556-6
12	Plaintiff,)	
13	vs.	)	STIPULATION FOR PROTECTIVE
14	WALTER J. SIMAS, ETC., ET AL.,	)	ORDER RE CONFIDENTIAL
15	Defendants.	)	INFORMATION AND ORDER
16)	

17 STIPULATION

18 This Stipulation For Protective Order Re Confidential
 19 Information and Order is executed as of February 7, 1978, by
 20 and between plaintiff Edward T. Simas, individually and as
 21 executor of the will of Jean Lenore Simas, also known as Jean
 22 L. Simas, and Mrs. Walter John Simas, deceased and by defendants
 23 Walter J. Simas, also known as Walter John Simas, individually and
 24 as General Partner of Ashland Oil Company of California, a
 25 California Limited Partnership; Simas Bros., a California corpora
 26 tion; Ashland Company, a California corporation, and Ashland Oil
 27 Company of California, a California Limited Partnership, by their
 28 respective attorneys of record.

1 WHEREFORE, it is hereby stipulated and agreed as follows:

2 1. All documents, materials and information obtained by
3 inspection of files or facilities or by production of documents
4 (hereinafter collectively "Information") which sets forth, refers
5 to, or contains any confidential, trade secret, proprietary,
6 technical, commercial and/or financial information (hereinafter
7 collectively "Confidential Information"), may be designated by
8 the party producing the Information either as "CONFIDENTIAL -
9 ATTORNEYS ONLY" or as "CONFIDENTIAL." As used herein, the term
10 "attorney of record" shall include employed attorneys, associates,
11 paralegals, clerks and secretaries.

12 2. Any Information designated as "CONFIDENTIAL - ATTORNEYS
13 ONLY" or as "CONFIDENTIAL", and all information derived therefrom
14 (excluding such information as is derived lawfully from an
15 independently obtained source) shall not be disclosed to anyone
16 except as provided in Paragraphs 3 and 4 herein, shall be used only
17 for the purposes of this litigation, and shall not be used for any
18 business, financial or other purpose whatsoever.

19 3. Information designated as "CONFIDENTIAL - ATTORNEYS ONLY"
20 shall not be given, shown, made available or communicated in any
21 way to any person or entity, including any party or any employee
22 of any party, with the exception of the attorneys of record for
23 the parties in this action. If an attorney of record desires to
24 give, show, make available or communicate to any person, including
25 any party or any employee of any party, any Information designated
26 as "CONFIDENTIAL - ATTORNEYS ONLY", said attorney of record shall
27 first disclose the identity of such person to, and obtain the
28 written consent of, the attorney of record for the party who

1 designated the information. Each person to whom the information
2 is to be given, shown, made available or communicated must execute
3 and deliver to the attorney of record for the designating party a
4 written instrument agreeing not to disclose to anyone any of the
5 contents of the information received and to be bound by the terms
6 of this stipulation and order. Only after these conditions have
7 been fully satisfied may the information be given, shown, made
8 available or communicated to any person other than an attorney of
9 record. In the event of any dispute regarding the propriety
10 of any designation or the refusal to give any written consent,
11 either party may on noticed motion seek such court orders regarding
12 such designation or refusal as that party believes appropriate.

13 4. Information designated as "CONFIDENTIAL" shall not be
14 given, shown, made available or communicated in any way to any
15 person or entity with the exception of the attorneys of record for
16 the parties to this action and to other specifically identified
17 individuals who are requested by an attorney of record to furnish
18 technical or expert services or to give testimony in this action.
19 Before disclosure to any such individual, the individual shall be
20 identified to the attorney of record for the party who designated
21 the information and shall execute and deliver to said attorney of
22 record a written instrument agreeing not to disclose to anyone any
23 of the contents of the information and to be bound by the terms
24 of this stipulation and order. If an attorney of record desires to
25 give, show, make available or communicate to any additional person
26 or entity any information designated as "CONFIDENTIAL", said
27 attorney of record shall first disclose the identity of such person
28 or entity to, and obtain the written consent of, the attorney of

1 record for the party who designated the Information. Each such
2 additional person or entity to whom the Information is to be
3 given, shown, made available or communicated must likewise
4 execute and deliver to the attorney of record for the designating
5 party a written instrument agreeing not to disclose to anyone any
6 of the contents of the Information received and to be bound by
7 the terms of this Stipulation and Order. Only after the foregoing
8 conditions have been fully satisfied may the Information be given,
9 shown, made available or communicated to any person. In the event
10 of any dispute regarding the propriety of any designation or the
11 refusal to give any written consent, either party may on noticed
12 motion seek such court orders regarding such designation or
13 refusal as that party believes appropriate.

14 5. A file shall be maintained by the attorneys of record
15 of all written agreements signed by persons to whom materials
16 designated as "CONFIDENTIAL - ATTORNEYS ONLY" and as "CONFIDENTIAL"
17 have been given. Said file shall be made available upon request
18 for inspection and copying by an attorney of record.

19 6. Papers filed herein by the attorneys of record shall not
20 disclose any documents, materials or information of a financial
21 nature which have been designated as "CONFIDENTIAL - ATTORNEYS
22 ONLY" or as "CONFIDENTIAL", unless such documents, materials or
23 information are first sealed in a manner to prevent any disclosure
24 other than to the court.

25 7. Upon the final disposition of this action, all attorneys
26 of record shall promptly return to the party or witness from whom
27 obtained, all items which have been marked "CONFIDENTIAL - ATTORNEYS
28 ONLY" or "CONFIDENTIAL" and all copies made thereof, including any

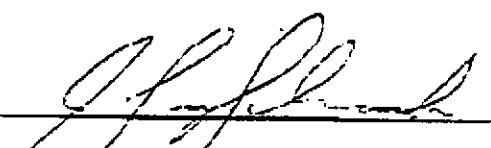
1 of said items or copies thereof provided to any other persons.

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DATED: February 7, 1978

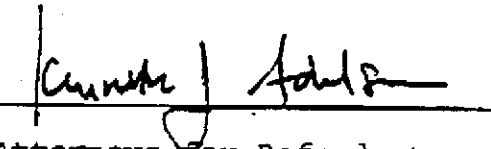
MOORE, CLIFFORD, WOLFE, LARSON
& TRUTNER

DALE I. STOOPS, ESQ.

By 
Attorneys for Plaintiff
Edward T. Simas

DATED: February 7, 1978

COOLEY, GODWARD, CASTRO,
HUDDLESON & TATUM

By 
Attorneys for Defendants

ORDER PURSUANT TO STIPULATION

The parties hereto having entered into the foregoing agreement and having stipulated that the provisions of said agreement may be presented to this Court without notice as a proposed Order, and good cause appearing therefor,

IT IS HEREBY ORDERED that the provisions of the foregoing agreement are approved and that performance of each and every term thereof is ordered.

DATED: Feb. 10

JOHN P. SPARRON
JUDGE OF THE SUPERIOR COURT

335
14811

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
2 A Professional Corporation
3 201 - 19th Street
4 Oakland, California 94612
5 Telephone: (415) 444-6800

FILED

JUN 15 1978

RENE C. DAVIDSON, County Clerk

By *James Kitterman*
JAMES KITTERMAN, Deputy

4 DALE I. STOOBS, ESQ.
5 Wells Fargo Bank Building
6 415 - 20th Street
7 Oakland, California 94612
8 Telephone: (415) 836-2204

7 Attorneys for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 EDWARD T. SIMAS, individually and)
11 as executor of the will of JEAN)
12 LENORE SIMAS, also known as JEAN)
13 L. SIMAS, and MRS. WALTER JOHN)
14 SIMAS, deceased,)

NO. 803556-6

13 Plaintiff,

FIRST AMENDED COMPLAINT

14 vs.

15 WALTER J. SIMAS, also known as)
16 WALTER JOHN SIMAS, individually)
17 and as General Partner of ASHLAND)
18 OIL COMPANY OF CALIFORNIA, a)
19 California Limited Partnership;)
20 SIMAS BROS., a California)
21 Corporation; ASHLAND OIL COMPANY OF)
22 CALIFORNIA, a California Corporation;)
23 ASHLAND OIL COMPANY OF CALIFORNIA, a)
24 California Limited Partnership;)
25 and DOES 1 through 100, inclusive,)

21 Defendants.

23 Plaintiff alleges:

24 1. Plaintiff EDWARD T. SIMAS, as an individual, is
25 the owner of 862 shares of the Class B non-voting common stock
26 of defendant SIMAS BROS., a California Corporation, representing

JUN 15 1978

1 in excess of 27% of the outstanding Class B non-voting common
2 stock of said corporation.

3 2. On August 1, 1977, the Alameda County Superior
4 Court of California in probate action #207794-9 entitled "Estate
5 of JEAN LENORE SIMAS, also known as JEAN L. SIMAS and MRS.
6 WALTER JOHN SIMAS, deceased" made its order appointing plaintiff
7 EDWARD T. SIMAS as executor of the will of said decedent.
8 Letters testamentary were duly issued to plaintiff pursuant to
9 said order, and plaintiff has at all times since said issuance
10 been, and he now is, the duly appointed and acting executor of
11 the will of said decedent.

12 3. Plaintiff, as executor of the will of said decedent,
13 is the owner of 1,550 shares of the Class A voting common stock
14 of defendant SIMAS BROS., a California Corporation, representing
15 50% of the outstanding Class A voting common stock of said
16 corporation. Plaintiff, as executor of the will of said decedent,
17 is also the owner of 1,119 shares of the Class B non-voting
18 common stock of said corporation representing in excess of 36%
19 of the outstanding Class B non-voting common stock of said
20 corporation.

21 4. Defendant SIMAS BROS. is a California Corporation
22 which, as of December 30, 1977 was, and based upon plaintiffs'
23 belief still is, a California Corporation in good standing
24 having its principal office in Alameda County, California.

25 5. Defendant WALTER J. SIMAS, also known as WALTER
26 JOHN SIMAS, is the owner of the remaining 1,550 shares of

1 Class A voting common stock of SIMAS BROS.; the owner of the re-
2 maining 1,119 shares of Class B non-voting common stock of SIMAS
3 BROS.; the president of SIMAS BROS.; (on information and belief)
4 a director and the chairman of the board of directors of SIMAS
5 BROS.; (on information and belief) the president, director, and
6 chairman of the board of directors of defendant ASHLAND OIL COM-
7 PANY OF CALIFORNIA, a California corporation; the general partner
8 of defendant ASHLAND OIL COMPANY OF CALIFORNIA, a California limited partnership.

9 6. ASHLAND OIL COMPANY OF CALIFORNIA, a California corporation,
10 referred to hereinafter as ASHLAND CORPORATION, is wholly owned by SIMAS BROS.
11 Said ASHLAND CORPORATION is and/or was an integral part of the business opera-
12 tion conducted by SIMAS BROS. and/or ASHLAND OIL COMPANY OF CALIFORNIA, a
13 California limited partnership.

14 7. ASHLAND OIL COMPANY OF CALIFORNIA, a California
15 limited partnership, referred to hereinafter as ASHLAND PARTNERSHIP,
16 has its principal place of business in Alameda County, California.
17 Its general partner is defendant WALTER J. SIMAS.

18 8. Plaintiff is ignorant of the true names and capa-
19 cities of defendants sued herein as DOES 1 through 100, inclusive,
20 and therefore sues these defendants by such fictitious names.
21 Plaintiff will amend this complaint to allege the true names and
22 capacities along with further appropriate charging allegations
23 when ascertained.

24 9. At all times herein mentioned, each of the defendants
25 was the agent, servant and/or employee of each of the other
26

///

CERTIFICATE OF SERVICE BY MAIL

The undersigned, at Oakland, California, certifies to be true, under penalty of perjury:

That she is a citizen of the United States, is employed in Alameda County, California, is over 18 years of age, and is not a party to the within action or proceeding

That her business address is 201-19th Street, Oakland, California 94612.

That she served a copy of the attached:

FIRST AMENDED COMPLAINT

by placing said copy sealed in an envelope () sealed in separate envelopes (XXX) addressed as follows:

COOLEY, GODWARD, CASTRO, HUDDERSON & TATUM
One Maritime Plaza, Suite 2000
San Francisco, California 94111

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612

with postage thereon fully prepaid, and thereafter was deposited in the United States Mail at Oakland, Alameda County, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed. That the date of deposit in the mail and the date of the execution of this certificate was

June 15, 1978

Martha Neilson
MARTHA NEILSON

JJS
14811

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
A Professional Corporation
2 201 - 19th Street
Oakland, California 94612
3 Telephone: (415) 444-6800

4 DALE I. STOOBS, ESQ.
Wells Fargo Bank Building
5 415 - 20th Street
Oakland, California 94612
6 Telephone: (415) 836-2204

7 Attorneys for Plaintiff

FILED

JUN 15 1978

RENE C. DAVIDSON, County Clerk

By *James Kitterman*
JAMES KITTERMAN, Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 EDWARD T. SIMAS, individually and)
as executor of the will of JEAN)
11 LENORE SIMAS, also known as JEAN)
L. SIMAS, and MRS. WALTER JOHN)
12 SIMAS, deceased,)

NO. 803556-6

13 Plaintiff,)

FIRST AMENDED COMPLAINT

14 vs.)

15 WALTER J. SIMAS, also known as)
WALTER JOHN SIMAS, individually)
16 and as General Partner of ASHLAND)
OIL COMPANY OF CALIFORNIA, a)
17 California Limited Partnership;)
SIMAS BROS., a California)
18 Corporation; ASHLAND OIL COMPANY OF)
CALIFORNIA, a California Corporation;)
19 ASHLAND OIL COMPANY OF CALIFORNIA, a)
California Limited Partnership;)
20 and DOES 1 Through 100, inclusive,)

21 Defendants.)
22

23 Plaintiff alleges:

24 1. Plaintiff EDWARD T. SIMAS, as an individual, is
25 the owner of 862 shares of the Class B non-voting common stock
26 of defendant SIMAS BROS., a California Corporation, representing

JUN 15 1978

1 in excess of 27% of the outstanding Class B non-voting common
 2 stock of said corporation.

3 2. On August 1, 1977, the Alameda County Superior
 4 Court of California in probate action #207794-9 entitled "Estate
 5 of JEAN LENORE SIMAS, also known as JEAN L. SIMAS and MRS.
 6 WALTER JOHN SIMAS, deceased" made its order appointing plaintiff
 7 EDWARD T. SIMAS as executor of the will of said decedent.
 8 Letters testamentary were duly issued to plaintiff pursuant to
 9 said order, and plaintiff has at all times since said issuance
 10 been, and he now is, the duly appointed and acting executor of
 11 the will of said decedent.

12 3. Plaintiff, as executor of the will of said decedent,
 13 is the owner of 1,550 shares of the Class A voting common stock
 14 of defendant SIMAS BROS., a California Corporation, representing
 15 50% of the outstanding Class A voting common stock of said
 16 corporation. Plaintiff, as executor of the will of said decedent,
 17 is also the owner of 1,119 shares of the Class B non-voting
 18 common stock of said corporation representing in excess of 36%
 19 of the outstanding Class B non-voting common stock of said
 20 corporation.

21 4. Defendant SIMAS BROS. is a California Corporation
 22 which, as of December 30, 1977 was, and based upon plaintiffs'
 23 belief still is, a California Corporation in good standing
 24 having its principal office in Alameda County, California.

25 5. Defendant WALTER J. SIMAS, also known as WALTER
 26 JOHN SIMAS, is: the owner of the remaining 1,550 shares of

1 Class A voting common stock of SIMAS BROS.; the owner of the re-
2 maining 1,119 shares of Class B non-voting common stock of SIMAS
3 BROS.; the president of SIMAS BROS.; (on information and belief)
4 a director and the chairman of the board of directors of SIMAS
5 BROS.; (on information and belief) the president, director, and
6 chairman of the board of directors of defendant ASHLAND OIL COM-
7 PANY OF CALIFORNIA, a California corporation; the general partner
8 of defendant ASHLAND OIL COMPANY OF CALIFORNIA, a California limited partnership.

9 6. ASHLAND OIL COMPANY OF CALIFORNIA, a California corporation,
10 referred to hereinafter as ASHLAND CORPORATION, is wholly owned by SIMAS BROS.
11 Said ASHLAND CORPORATION is and/or was an integral part of the business opera-
12 tion conducted by SIMAS BROS. and/or ASHLAND OIL COMPANY OF CALIFORNIA, a
13 California limited partnership.

14 7. ASHLAND OIL COMPANY OF CALIFORNIA, a California
15 limited partnership, referred to hereinafter as ASHLAND PARTNERSHIP,
16 has its principal place of business in Alameda County, California.
17 Its general partner is defendant WALTER J. SIMAS.

18 8. Plaintiff is ignorant of the true names and capa-
19 cities of defendants sued herein as DOES 1 through 100, inclusive,
20 and therefore sues these defendants by such fictitious names.
21 Plaintiff will amend this complaint to allege the true names and
22 capacities along with further appropriate charging allegations
23 when ascertained.

24 9. At all times herein mentioned, each of the defendants
25 was the agent, servant and/or employee of each of the other
26

///

VERIFICATION

I hereby declare under penalty of perjury that I am a party to the above entitled matter; that I have read the foregoing document and know the contents thereof, and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

Dated June 15, 1973

at Oakland, California.

Edward T. Simas

(Sign Here)

EDWARD T. SIMAS

(Type or Print Name)

(Title, if any)

100

CERTIFICATE OF SERVICE BY MAIL

The undersigned, at Oakland, California, certifies to be true, under penalty of perjury:

That she is a citizen of the United States, is employed in Alameda County, California, is over 18 years of age, and is not a party to the within action or proceeding

That her business address is 201-19th Street, Oakland, California 94612.

That she served a copy of the attached:

FIRST AMENDED COMPLAINT

by placing said copy sealed in an envelope ()
sealed in separate envelopes (XXX)
addressed as follows:

COOLEY, GODWARD, CASTRO, HUDDERSON & TATUM
One Maritime Plaza, Suite 2000
San Francisco, California 94111

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612

with postage thereon fully prepaid, and thereafter was deposited in the United States Mail at Oakland, Alameda County, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed. That the date of deposit in the mail and the date of the execution of this certificate was

June 15, 1978

Martha Neilson
MARTHA NEILSON

**ENDORSED
FILED**

DEC 22 1978

**RENE C. DAVIDSON, County Clerk
By: James Kuttman, Deputy**

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
A Professional Corporation
2 201 - 19th Street
Oakland, California 94612
3 (415) 444-6800

4 DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
5 415 - 20th Street
Oakland, California 94612
6 (415) 836-2204

7 Attorneys for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10	EDWARD T. SIMAS,	)	NO. 503556-6
11	Plaintiff, :	)	<u>ORDER APPOINTING RECEIVER</u>
12	vs.)	
13	WALTER J. SIMAS, et. al.,)	
14	Defendants.)	
15	<hr/>		

16 The motion of plaintiff EDWARD T. SIMAS for an order
17 appointing a receiver to take possession, control, charge
18 and management of all the assets, business and affairs,
19 including all books and records, belonging to either of the
20 named corporate defendants and/or the defendant partnership,
21 which motion was filed March 20, 1978, having been duly and
22 timely served on all parties entitled thereto, came on
23 for hearing in Department 19 of this Court on April 5, 1978
24 and further hearings were held thereon on April 13, 1978 and
25 May 1, 1978. At said hearings, plaintiff appeared personally
26 and by and through his attorneys of record, DALE I. STOOPS

1 and MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER, A Professional
2 Corporation, by J. JAY SCENACK, and defendants WALTER J.
3 SIMAS, SIMAS BROS., a California corporation, ASHLAND OIL
4 COMPANY OF CALIFORNIA, a California corporation, and ASHLAND
5 OIL COMPANY OF CALIFORNIA, a California Limited Partnership,
6 appeared by and through their attorneys of record, COOLEY,
7 GODWARD, CASTRO, HUDDLESON & TATUM, by KENNETH J. ADELSON.
8 The matter was then continued by stipulation of the parties
9 and further hearings thereon were held October 27, 1978,
10 November 1, 1978, December 1, 1978, December 8, 1978 and
11 December 21, 1978. At each of these latter hearings, plaintiff
12 again appeared personally and by and through his aforementioned
13 counsel and said defendants appeared by and through their
14 substituted attorneys of record, CLEMENT & FITZPATRICK,
15 INC., by PAUL J. FITZPATRICK. Defendant WALTER J. SIMAS
16 also appeared personally at said hearings.

17 Evidence, documentary and oral, points and authorities
18 and extensive argument offered by all parties having been
19 considered and good cause appearing for the appointment of a
20 receiver in this action to perform the functions and execute
21 the orders hereinafter set forth,

22 THE COURT FINDS that:

- 23 1. This is an action between parties owning or interested
24 in the property hereinafter described;
- 25 2. Plaintiff is a party whose right to or interest in
26 the subject property, and the proceeds thereof, is probable;

1 3. The subject property is in danger of being lost,
2 removed or materially injured.

3 IT IS ORDERED that:

4 1. Mr. John McDougal be and he hereby is appointed
5 receiver in this action, effective January 3, 1979;

6 2. Before entering upon his duties as receiver, he
7 shall take the oath and file herein a bond with surety
8 thereon approved by this Court in the penal sum of \$75,000.00,
9 conditioned for the faithful performance of his duties as
10 receiver. The cost of the premium for said bond is to be
11 paid out of the assets subject to the receiver's control;

12 3. After so qualifying, the receiver shall take possession,
13 control, charge and management of all the assets, business
14 and affairs, including all books and records, belonging to
15 defendant ASHLAND OIL COMPANY OF CALIFORNIA, a California
16 corporation, and/or defendant STMAS BROS., a California
17 corporation, and/or defendant ASHLAND OIL COMPANY OF CALIFORNIA,
18 a California Limited Partnership, and manage, care for,
19 preserve and maintain said assets and business,
20 and incur the expenses necessary or appropriate for such
21 management, care, preservation and maintenance;

22 4. The receiver shall, subject to further order of
23 this Court, operate and conduct the business of defendant
24 ASHLAND OIL COMPANY OF CALIFORNIA, a California Limited
25 Partnership, at 1436 14th Avenue, Oakland, California, as
26 its principal place of business and elsewhere, and the

(FOLLOWING IS AN EVALUATION OF THE RECEIVERSHIP AS IN HIS DISCRETION IS NECESSARY)

1 receiver is authorized to employ and ~~or~~ discharge such
2 servants, agents, employees, clerks, attorneys and accountants
3 as he deems appropriate and to pay therefor at ordinary and
4 usual rates and prices out of funds that shall come into his
5 possession as receiver and to do all things and to incur the
6 risks and obligations ordinarily incurred by owners, managers
7 and operators of similar businesses and enterprises as such
8 receiver, and no such risk or obligation so incurred shall
9 be the personal risk or obligation of the receiver, but a
10 risk or obligation of the receivership estate;

11 5. The receiver is authorized to pay to himself a by-
12 weekly salary based upon a yearly rate of \$50,000.00;

13 6. The receiver is hereby instructed that he shall not
14 pay any salary or compensation to defendant WALTER J. SIMAS
15 by reason of WALTER J. SIMAS' capacity as general partner of
16 the defendant partnership; provided, however, that if, at the
17 request of the receiver, WALTER J. SIMAS provides services of
18 value to the receivership estate, the receiver is authorized
19 to pay to WALTER J. SIMAS for such services an amount equal to
20 what the receiver believes to be reasonable compensation therefor.

21 DONE IN OPEN COURT DECEMBER 21, 1978 AND PRESENTED FOR
22 SIGNATURE AND SIGNED DECEMBER 22, 1978.

23 JOHN P. SPARROW

24
25 JOHN P. SPARROW
26 JUDGE OF THE SUPERIOR COURT

7. EFFECTIVE JANUARY 3, 1979, THAT "PRELIMINARY
INJUNCTION PURSUANT TO STIPULATION" FILED
HEREIN ON JUNE 15, 1978, SHALL BE DISSOLVED.

RECORDING REQUESTED BY:

(#20)

SAFECO TITLE INSURANCE COMPANY WE HEREBY CERTIFY THAT THIS IS A FULL, TRUE AND EXACT COPY OF THE ORIGINAL DOCUMENT AS THE SAME APPEARS IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA INDEXED ON 2/23/93 IN BOOK _____ OF OFFICIAL RECORDS AT PAGE _____ SERIAL NO. 83-029855

SAFECO TITLE INSURANCE COMPANY
By Barbara Kelly

and when recorded mail to:
Edward T. Simas
c/o J. Jay Schnack
201-19th Street
Oakland, California 94612

Escrow No. 81507-5

Mail tax statements to:
SAME

THIS DEED IS BEING EXECUTED TO COMPLY WITH THAT CERTAIN AGREEMENT AND ORDER ISSUED BY ALAMEDA COUNTY SUPERIOR COURT, CASE NO. 503556-6. NO TAX DUE.

EXCLUDED FROM REAPPRAISAL UNDER REVENUE AND TAXATION CODE §62.

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Walter J. Simas, Margaret Jean Simas, Ashland Oil Company of California, a California limited partnership, Simas Bros., a California corporation, and Ashland Oil Company of California, a California corporation, hereby REMISE, RELEASE AND QUITCLAIM to Edward T. Simas that real property commonly known as 5330 Foothill Boulevard, City of Oakland, County of Alameda, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by reference.

ASHLAND OIL COMPANY OF CALIFORNIA, a California corporation

Walter J. Simas
Walter J. Simas

By Walter J. Simas
Walter J. Simas, President

Margaret Jean Simas
Margaret Jean Simas

By John McDougal
John McDougal, Receiver

SIMAS BROS., a California corporation

ASHLAND OIL COMPANY OF CALIFORNIA, a California limited partnership

By Walter J. Simas
Walter J. Simas, President

By Walter J. Simas
Walter J. Simas

By John McDougal
John McDougal, Receiver

REAL PROPERTY AGREEMENT OF SALE

THIS AGREEMENT made and entered into the 21 day of August, 1983, by and between EDWARD T. SIMAS, hereinafter called "SELLER," and L HUE CROSBY and RUBY CROSBY, his wife, hereinafter called "BUYER."

Seller, in consideration of the payments to be made by the Buyer, and the conditions and covenants to be kept and performed by Seller, as hereinafter set forth, agrees to sell and the Buyer agrees to buy all that real property described in Exhibit A and incorporated herein:

This Agreement of Sale is made on the following terms and conditions:

1. Purchase price is \$45,000.00 which is to be paid as follows:
 - a. \$1,000.00 check as deposit, payable to Edward T. Simas.
 - b. An additional payment of \$9,000.00, or a total down payment of \$10,000.00, will be deposited in escrow prior to close of escrow.
 - c. A promissory note secured by a First Deed of Trust in the amount of \$35,000.00, with interest at a rate of two (2) points above prime as published in the Wall Street Journal at date of signing of this note to be amortized over twenty (20) years. Interest shall be adjusted yearly on the anniversary of signing of note, and a rate set at two (2) points above prime as published in the Wall Street Journal as of that date, with amortization set each time of adjustment on a twenty (20) year schedule for \$35,000.00.
 - d. Principal and interest on the \$35,000.00, as set forth above shall be paid monthly commencing on the first day of the month following date of note and continuing on first day of each month thereafter over a five (5) year period from date of note. Payments will be adjusted annually to reflect the current interest rate as set forth above.
 - e. Buyer may make additional payments of principal at anytime without penalty.
 - f. At end of five (5) year period, balance of principal and any accrued interest shall be paid in full.

2. Property shall be conveyed to Buyer upon close of escrow, free and clear of all encumbrances except current taxes prorated as of close of escrow, covenants, conditions and restrictions of record or known to Seller; and Deed of Trust provided. Buyer shall have five (5) days after receipt of preliminary title report to approve or disapprove covenants, conditions and restrictions of record. Seller, at Buyer's expense, shall furnish to Buyer at close of escrow a standard title insurance issued by Western Title Insurance Company in the amount of the purchase price, insuring title to the property in accordance with the above conveyance. If Seller fails to deliver title as herein provided, or if Buyer disapproves in writing any covenants, conditions and restrictions within five (5) days of receipt of preliminary title report, Buyer at his option, may terminate this Agreement, and any deposit shall thereupon be returned to Buyer. Thereafter, if Buyer refuses or fails to complete purchase, the Seller may keep the \$1,000.00 as liquidated damages.

3. Property taxes shall be prorated as of the date of close of escrow. The amount of any bond or assessment which is a lien shall be paid by Seller. Other costs, including transfer tax, cost to the title insurance policy, escrow fee, and costs to title company to prepare and record documents, to be paid by Buyer.

4. An escrow shall be opened at Western Title Insurance Company, Oakland, California (Western Title) to accomplish the purpose of the sale of the property; Buyer and Seller shall execute escrow instructions consistent with the Agreement and as may be reasonably required by Western Title to complete the purchase and sale. The close of this sale shall be within sixty (60) days from the acceptance of this offer unless the parties agree otherwise in writing.

5. Possession shall be delivered to Buyer on close of escrow. Prior to close of escrow, Buyer to have reasonable right of inspection of said property.

6. Buyer is purchasing property in "as is" condition with no representations or warranties by Seller.

7. If the property is materially damaged by fire or other natural causes prior to close of escrow, then, on demand by Buyer, any deposit made by Buyer shall be returned to him and this contract thereupon shall terminate.

8. There is no realtor or broker involved in this sale.

9. Buyer's signature hereon constitutes an offer to sell or purchase the real property described herein. Unless acceptance hereof is signed by Seller, and a signed copy delivered to Western Title, either in person or by mail, within five (5) days hereof, this offer shall be deemed revoked and the deposit shall be returned to the Buyer.

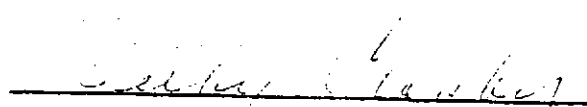
10. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

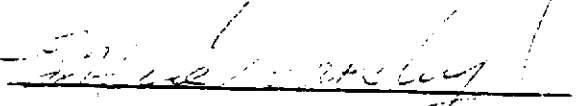
11. The covenants, representations and warranties of Seller and Buyer shall, to the extent required to be performed or determined before closing, survive the closing.

12. Buyer agrees to take out and carry Buyer's public liability and all other insurance carried by Seller and to add Seller's name as additional insured on all policies.

13. This agreement constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous understandings of the parties in connection herewith.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

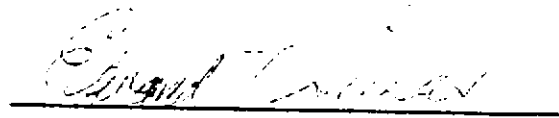




L HUE CROSBY

RUBY CROSBY

Buyer



EDWARD T. SIMAS

Seller

EXHIBIT A

Location: Northwesterly corner of Foothill Boulevard and Belvedere
 Street, Oakland

Identification: Alameda County Assessor's Parcel Number 35-2378-6

Escrow No: 264-346-2
APN: 35-2378-6

AND WHEN RECORDED MAIL TO

11-1
11-2
11-3

L. Hue Crosby &
Ruby Crosby
1414 Regent Drive
San Leandro, CA 94577

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Substitution of Trustee and Deed of Full Reconveyance

WHEREAS, L. HUE CROSBY and RUBY CROSBY, husband and wife

_____ was the original Trustor,

WESTERN TITLE INSURANCE COMPANY, a Corporation

_____ was the original Trustee, and

EDWARD T. SIMAS

was the original Beneficiary under that certain Deed of Trust dated SEPTEMBER 30, 1983

and recorded on OCTOBER 19, 1983 in book n/a page n/a of Official
Records of ALAMEDA County, California, and

WHEREAS, the undersigned Beneficiary is the present Beneficiary under said Deed of Trust and is the owner and holder of the Note secured by said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in the place and stead of said original Trustee thereunder,

NOW, THEREFORE, the undersigned hereby substitutes
EDWARD T. SIMAS

as Trustee under said Deed of Trust.

_____ hereby accepts said appointment as Successor Trustee under Deed of Trust hereinabove referred to, and as Successor Trustee, does hereby RECONVEY, without warranty, to the person or persons legally entitled thereto, the estate now held by it under said Deed of Trust referred to hereinabove.

DATED SEPTEMBER 9, 1991

SUCCESSOR TRUSTEE

BENEFICIARY

Edward T. Simas
Edward T. Simas

FOR CORPORATE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ President, and _____ known to me to be _____

Secretary of the Corporation that executed the within instrument, known to be to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed) _____

FOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ALAMEDA } SS.

On SEPT 13, 1991 before me, the undersigned, a Notary Public in and for said State, personally appeared EDWARD T. SIMAS

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person _____ whose name IS subscribed to the within instrument and acknowledged that HE executed the same. Witness my hand and official seal.

Signature _____

LINDA MALDONADO

Name (Typed or Printed)



(The area for official notarial seal)

STARK, STEWART, WELLS & ROBINSON
 ATTORNEYS AT LAW
 FIDELITY PLAZA - 14TH FLOOR
 150 GRAND AVENUE
 OAKLAND, CALIFORNIA 94612
 TELEPHONE (415) 834-8808

February 11, 1983

S

Moore, Clifford, Wolfe,
 Larson & Trutnar
 201 - 19th Street
 Oakland, CA 94612

Attention: J. Jay Schnack

D

Dale I. Stoops, Esq.
 Stoops, Sharon & Habegger
 266 Grand Avenue, Suite 200
 Oakland, CA 94610

Arthur J. Shartsis, Esq.
 Shartsis, Friese & Ginsburg
 255 California Street, Suite 900
 San Francisco, CA 94111

RE: Procedure For Delivery of Possession of Stations

P

Gentleman:

Jack McDougal proposes to handle the delivery of possession of the stations in the following manner:

The two stations that will still be operating on February 23 will be those which are to be distributed to Walter, subject to Ted's option (San Francisco and 141st in San Leandro). Jack proposes to close each of these stations on the 23rd as the cash on hand is picked up by Brinks.

Y

Possession will be turned over to Walter during the morning of February 24 in whatever sequence Walter wishes. At that time the tanks will be stuck in order to establish the amount of product on hand for the purposes of Paragraph 20 of the Settlement Agreement. (It is contemplated that all of the other stations will have been closed and their tanks pumped out prior to February 23.)

RECEIVED

FEB 14 1983


J. Jay Schnack, Esq.
Dale I. Stoops, Esq.
Arthur J. Shartsis, Esq.
Page Two
February 11, 1983

Arrangements will be made with each utility to read the meters and terminate service to the partnership on February 23. Walter may wish to make advance arrangements with the utilities to transfer the service to his name without any interruption.

Very truly yours,

STARK, STEWART, WELLS & ROBINSON

By


Donald L. Edgar

DLE/bbj

cc: Jack McDougai

C
O
P
Y

80% of the profits of the limited partnership.
(WALTER J. SIMAS presently claims a right to over 30%
of said profits)

3. WALTER J. SIMAS, as general partner, receives
a monthly salary of \$8,000.00.

18. Plaintiff has been informed by the attorney for
WALTER J. SIMAS and ASHLAND PARTNERSHIP that:
approximately December 16, 1977 SIMAS BROS. and ASHLAND CORPORATION trans-
ferred all their assets to said limited partnership in return for the full limited
partnership interest of said partnership; shortly thereafter
SIMAS BROS. was liquidated by distributing to the shareholders of
SIMAS BROS proportionate limited partnership interests in said
partnership; plaintiff's status was thereby changed from a share-
holder of SIMAS BROS. to a mere assignee of a limited partner of
ASHLAND PARTNERSHIP.

19. Prior to December 16, 1977, plaintiff, as the
owner of 50% of the voting stock of SIMAS-BROS., had the right
to: elect half of the board of directors of said corporation and
thereby oversee and influence the selection of officers (including
its president, defendant WALTER J. SIMAS) and the functioning of
corporate affairs; cause a dissolution of the corporation; and
inspect the corporate books and records. California Corporations
Code 515027 provides that an assignee of a limited partner has no
right to interfere in the management of partnership
affairs or to require any information or accounting of partnership
transactions, or to inspect the partnership books. Nor does a

VERIFICATION

I hereby declare under penalty of perjury that I am a party to the above entitled matter; that I have read the foregoing document and know the contents thereof, and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

Dated June 15, 1978

at Oakland, California.

Edward T. Simas

(Sign Here)

EDWARD T. SIMAS

(Type or Print Name)

(Title, if any)

CERTIFICATE OF SERVICE BY MAIL

The undersigned, at Oakland, California, certifies to be true, under penalty of perjury:

That she is a citizen of the United States, is employed in Alameda County, California, is over 18 years of age, and is not a party to the within action or proceeding

That her business address is 201-10th Street, Oakland, California 94612.

That she served a copy of the attached:

FIRST AMENDED COMPLAINT

by placing said copy sealed in an envelope () sealed in separate envelopes (XXX) addressed as follows:

COOLEY, GODWARD, CASTRO, HUDDERSON & TATUM
One Maritime Plaza, Suite 2000
San Francisco, California 94111

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612

with postage thereon fully prepaid, and thereafter was deposited in the United States Mail at Oakland, Alameda County, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed. That the date of deposit in the mail and the date of the execution of this certificate was

June 15, 1978

Martha Neilson
MARTHA NEILSON

LAW OFFICES OF
NORMOYLE & NEWMAN
A PROFESSIONAL LAW CORPORATION

1700 STANDIFORD AVENUE - SUITE A-340
MODESTO, CALIFORNIA 95350
TELEPHONE (209) 521-9521 TELECOPIER (209) 521-4968

MICHAEL C. NORMOYLE
RUSSELL A. NEWMAN
WYLIE P. CASHMAN
MARY ANN AGUIRRE
MICHAEL L. ABBOTT
JOHN T. RESSO

PATRICK M. McGRATH
DAVID O. ROMANO, P.E.
Land Use Analysts

June 11, 1993

Ms. Eve Chu
Hazardous Material Division
Alameda County Health Care Services Agency
Dept. of Environmental Health
State Water Resources Control Board
80 Swan Way, Room 200
Oakland, California 94621

Re: 5330 Foothill Blvd., Oakland, California 94610

Dear Ms. Chu:

In response to your recent request, enclosed please find a copy of my letter to Mr. Thomas Peacock. Please do not hesitate to contact me if you have any questions regarding the attached letter.

Sincerely,

NORMOYLE & NEWMAN



Mary Ann Aguirre

MAA/kll
Enclosure ✓
cc: Ted Simas (U.S. Mail) ✓

maryann\cr\chu

File

LAW OFFICES OF
NORMOYLE & NEWMAN
A PROFESSIONAL LAW CORPORATION

1700 STANDIFORD AVENUE - SUITE A-340
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PATRICK M. McGRATH
DAVID O. ROMANO, P.E.
Land Use Analysts

May 17, 1993

Via Facsimile & U.S. Mail
(510) 271-4320

Thomas F. Peacock, Supervising HMS
Hazardous Material Division
Alameda County Health Care Services Agency
Dept. of Environmental Health
State Water Resources Control Board
80 Swan Way, Room 200
Oakland, California 94621

Re: 5330 Foothill Blvd., Oakland, California 94610

Dear Mr. Peacock:

I appreciated the opportunity to speak with you recently regarding the property at 5330 Foothill Blvd., located in Oakland, California (the "Property"). As promised, I am writing to you to respond to your letter of February 18, 1993, to Xtra Oil Company ("Xtra Oil") which was forwarded to the attention of Mr. Edward Simas. As we recently discussed, I am environmental counsel to Xtra Oil and Mr. Simas.

As environmental counsel to Xtra Oil and Mr. Simas, I have reviewed the facts surrounding the Property and I have concluded that neither Xtra Oil nor Mr. Simas are considered responsible parties under the federal or state underground storage tank ("UST") regulations. Set forth below is a brief statement of facts regarding Mr. Simas's limited involvement with the Property, followed by an analysis regarding the applicable federal and state regulations.

I. STATEMENT OF FACTS.

Mr. Simas, in his individual capacity, first acquired the Property in late February of 1983. Title to the Property was never held in the name of Xtra Oil. Prior to 1983, Mr. Simas was neither an owner nor an operator of the Property nor did he have any control over the Property or the business conducted there. The entire service station operations, including the use of any Underground Storage Tanks ("USTs") on the Property had been

Thomas F. Peacock, Supervising HMS
May 17, 1993
Page 2

completely discontinued when Mr. Simas acquired the Property in 1983. In fact, the service station itself was boarded up and the UST's emptied before Mr. Simas became the owner of the Property. Mr. Simas did not reopen the station, or even unboard it, prior to selling it to Mr. Crosby on August 21, 1983, about six months later. At no time did Mr. Simas own or operate the USTs on the Property. Mr. Simas was merely an intervening, innocent, passive owner of the Property.

II. LEGAL ANALYSIS.

Since Xtra Oil never held title to the Property and never operated the USTs at issue, Xtra Oil is clearly not a responsible party under either the federal or state regulations. Accordingly, the analysis set forth below is limited to whether Mr. Simas can be classified as a responsible party under the applicable regulations.

A. Federal UST Requirements.

As in many environmental areas, UST law is controlled "from the top down" by federal law administered by the Environmental Protection Agency ("EPA"). In 1984, Congress adopted several amendments to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et. seq. One of these amendments added Subchapter I to RCRA (42 U.S.C. §6991, et. seq.) and required EPA to develop corrective action requirements for owners and operators of USTs containing petroleum products.¹

As you know, EPA's UST regulations are set forth in Title 40 Code of Federal Regulations ("C.F.R."), Parts 280 and 281. 40 C.F.R. §280.60 sets forth the corrective action requirements for USTs containing petroleum products. Compliance with these regulatory requirements is the responsibility of "owners" and

¹The 1984 RCRA amendments were adopted because petroleum contamination is not regulated under the Comprehensive Environmental Response and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601, et seq., the major federal statute which authorizes the government to respond to releases of hazardous substances. (See, EPA Guidance Document, dated July 31, 1987, entitled: "Scope of the Petroleum Exclusion Under Sections 101(14) and 104(a)(2).")

Thomas F. Peacock, Supervising HMS
May 17, 1993
Page 3

"operators" of the petroleum UST systems involved.

The term "owner" is defined under the federal UST regulations to mean:

(a) In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of regulated substances; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

(40 C.F.R. Ch. 1 § 280.12)

The term "operator" is defined under the federal UST regulations to mean: any person in control of, or having responsibility for, the daily operation of the UST system.

Applying these definitions, Mr. Simas would not be classified as either an "owner" or "operator" under the federal UST regulations. Thus, he is not a "responsible party" under these federal UST requirements.

Mr. Simas cannot be classified as an "owner" under the federal UST regulations. Since the UST system at issue was not in use on November 8, 1984, subparagraph (a) above does not apply. The USTs at issue were in use before November 8, 1984, but were no longer in use on that date. Thus, subparagraph (b) above applies. As stated above, at the time that Mr. Simas acquired the Property in 1983, the entire service station operations had been discontinued, the USTs at the Property were no longer in use, and the tanks have been emptied of their contents by the prior owner of the Property. Thus, under subparagraph (b) the entity that would be classified as an "owner" and thus, a responsible party would be the "owner" of the UST system immediately before the discontinuation of its use, not Mr. Simas.

B. California's UST Requirements.

As you know, in 1983, California adopted its own law governing USTs. This law is found in Division 20, Chapter 6.7 of the Health and Safety Code ("H.S.C."), Sections 25280, et. seq. Overall administration of California's UST laws and regulations is vested with the State Water Resources Control Board (the "Board"), although direct implementation of the law occurs at the county or city level. The Board's regulations are found in Title 23, Division 3, Chapter 16 of the California Code of Regulations ("C.C.R."), Sections 2610, et. seq. USTs containing petroleum products are regulated under California's UST requirements (H.S.C., Section 25281(f)).

California's UST regulations require that certain parties take corrective action in the event of an unauthorized release of a hazardous substance from a UST (23 C.C.R., Chapter 16, § 2721). Under these regulations, a responsible party is defined as one or more of the following:

- (1) Any person who owns or operates an underground storage tank used for storage of any hazardous substance;
- (2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use;
- (3) Any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and
- (4) Any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

(23 C.C.R., Chapter 16, § 2720).

Thomas F. Peacock, Supervising HMS
May 17, 1993
Page 5

Applying these definitions, Mr. Simas would not be classified as a "responsible party" under California's UST regulations. With respect to subparagraph (1) above, Mr. Simas did not own "an underground storage tank used for storage of any hazardous substance" because the USTs at issue had been emptied of their contents before Mr. Simas acquired the Property in 1983. Furthermore, Mr. Simas never operated the subject USTs. With respect to subparagraph (2) above, Mr. Simas did not own or operate the subject USTs immediately before the discontinuation of their use.

Applying subparagraph (3) above, although Mr. Simas owned the Property for a few months in 1983, he is not currently the owner of this Property, having sold it nearly ten years ago. Furthermore, applying subparagraph (4) above, Mr. Simas did not have control over the USTs either "at the time or following an unauthorized release of a hazardous substance." When Mr. Simas purchased the Property in 1983, the UST's had already been emptied of their contents. Thus, to the extent that an unauthorized release occurred from the USTs prior to Mr. Simas's purchase of the Property, he did not have control over these UST at the time of the unauthorized release. In addition, the unauthorized release could not have occurred after he purchased the Property because the USTs were emptied of their contents before Mr. Simas purchased the Property.

III. CONCLUSION.

Since Xtra Oil never held title to the Property and never owned or operated the subject USTs, Xtra Oil is clearly not a responsible party under the applicable regulations. Furthermore, for the reasons discussed above, Mr. Simas is not a responsible party under either the federal or state UST regulations. Therefore, we respectfully request that your agency remove Xtra Oil and Mr. Simas from your list of potentially responsible parties with respect to any contamination at the Property.

Enclosed for your information is an article regarding a recent jury decision on UST liability. In the case referenced in the article, Emerald Oil Co., Inc., which was one of a series of owners of a UST system, was dismissed from the case on the grounds that it was not the owner of the tank when the leak took place.

Thomas F. Peacock, Supervising HMS
May 17, 1993
Page 6

We remain open to fully cooperating with your office and the other regulatory agencies involved in this matter. However, in light of the facts set forth above, Mr. Simas cannot accept responsibility for a contamination problem which he did not cause and which neither he nor Xtra Oil Company are legally responsible for. Please do not hesitate to contact me should you have any questions regarding this letter.

Sincerely,



Mary Ann Aguirre

MAA:vlf

Enclosure

cc: R. Hiatt, RWQCB
Hue Crosby
Marcela & Miguel Florez
M. & Jorge Del Rio
Gil Jensen, Alameda County District Attorney's Office

P & D ENVIRONMENTAL

300 Monte Vista, #101
Oakland, CA 94611
Telephone (510) 658-6916

September 27, 1993
Workplan 0015.W2

Mr. Lorenzo Perez
City of Berkeley
Department of Environmental Health
2180 Milvia Street
Berkeley, CA

SUBJECT: GROUNDWATER REMEDIATION WORKPLAN
XTRA OIL Company
1399 San Pablo Ave.
Berkeley, CA

Dear Mr. Perez:

In accordance with your request for a continuous remediation system requested in your letter dated March 12, 1993, P&D Environmental (P&D) is pleased to present this workplan for the installation and operation of a continuously operating groundwater pumping system at the subject site. Installation and operation of the groundwater remediation system will entail the following tasks.

- o Regulatory coordination.
- o Installation of a pneumatic pump in well MW2.
- o Installation of carbon canisters to treat the pumped groundwater.
- o Installation of piping for use of the treated water for onsite irrigation.
- o Installation of three temporary well points in the vicinity of well MW2 to evaluate the effects of the remedial activities on groundwater levels.
- o Monthly recording of gallons pumped and monitoring of the carbon for breakthrough.
- o Quarterly reporting of progress towards site remediation.

Each is discussed below in more detail.

Regulatory Coordination

Following approval of this workplan by your office, all necessary permits will be obtained from the appropriate City of Berkeley offices for installation of piping associated with the installation of the remediation system. In addition, permit applications will be submitted to the Regional Water Quality Control Board (RWQCB) for discharge of the treated groundwater to the onsite planters for irrigation purposes and to the Zone 7 Water Agency for the well points.

Installation of a Pneumatic Pump in Well MW2

Following approval of all necessary permits, a pneumatic pump will be installed in well MW2. The pneumatic pump will operate continuously once started, to provide the requested continuous remediation.

Installation of Carbon Canisters to Treat the Pumped Groundwater

To remove dissolved gasoline from the groundwater, the pumped groundwater will be treated with carbon. Two carbon canisters will be placed in series with a monitoring port between the canisters. Periodic monitoring will be performed at the monitoring port to evaluate when the first carbon canister can no longer adsorb the dissolved gasoline. Once breakthrough is observed, the first carbon canister will be removed, the second carbon canister will be moved into the position of the first carbon canister, and a new carbon canister will be installed as the new second carbon canister.

Installation of Piping for Use of the Treated Water for Onsite Irrigation

Pending approval of all necessary permits, piping will be installed for the use of the treated water for onsite irrigation. Irrigation will be performed in accordance with RWQCB permit requirements.

Installation of Three Temporary Well Points in the Vicinity of Well MW2

To evaluate the effects of the remedial activities on groundwater levels, three temporary well points will be installed in the vicinity of well MW2. These well points will be used for the collection of water level data only, and not for the collection of water quality data. The well points will consist of one-inch diameter galvanized steel pipe, with perforations in the lower ten feet of the pipe. In anticipation of annual groundwater fluctuations (groundwater is seasonally encountered between approximately eight and thirteen feet below the ground surface) and water table drawdown associated with the pumping activities, the well points will be driven to a depth of eighteen feet. The tops of the well points will be surveyed by a State-licensed surveyor to the nearest 0.01 foot relative to the existing onsite groundwater monitoring wells for determination of groundwater surface elevations at the site and evaluation of the cone of depression generated by the pumping well during remedial activities.

Remediation System Monitoring

Monthly recording of gallons pumped and well point and monitoring well groundwater levels, and the results of monitoring of the carbon for breakthrough will be performed. The number of gallons pumped will be recorded with an in-line flow meter. Water level measurements will be performed with an electric water level indicator to the nearest 0.01 foot. Based upon calculated carbon loading rates, in addition to observed site-specific carbon consumption rates which will be determined after operation of the system for several months, the carbon breakthrough monitoring will be performed by analyzing water samples collected from the carbon system monitoring port for Total Petroleum Hydrocarbons as Gasoline and for Benzene, Toluene, Ethylbenzene and Xylenes.

Quarterly Reporting of Progress Towards Site Remediation

To evaluate progress towards site remediation, the existing quarterly groundwater monitoring and sampling program will be continued. In addition to the quarterly groundwater sample results, monthly records of gallons pumped by the remediation system, monthly groundwater levels, and carbon monitoring results will be reported. The information will be presented in a tabulated format, and a discussion of the information will be provided in each report.

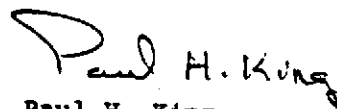
September 27, 1993
Workplan 0015.W2

3

Should you have any questions, please do not hesitate to contact me at
(510) 658-6916.

Sincerely,

P&D Environmental



Paul H. King
Hydrogeologist

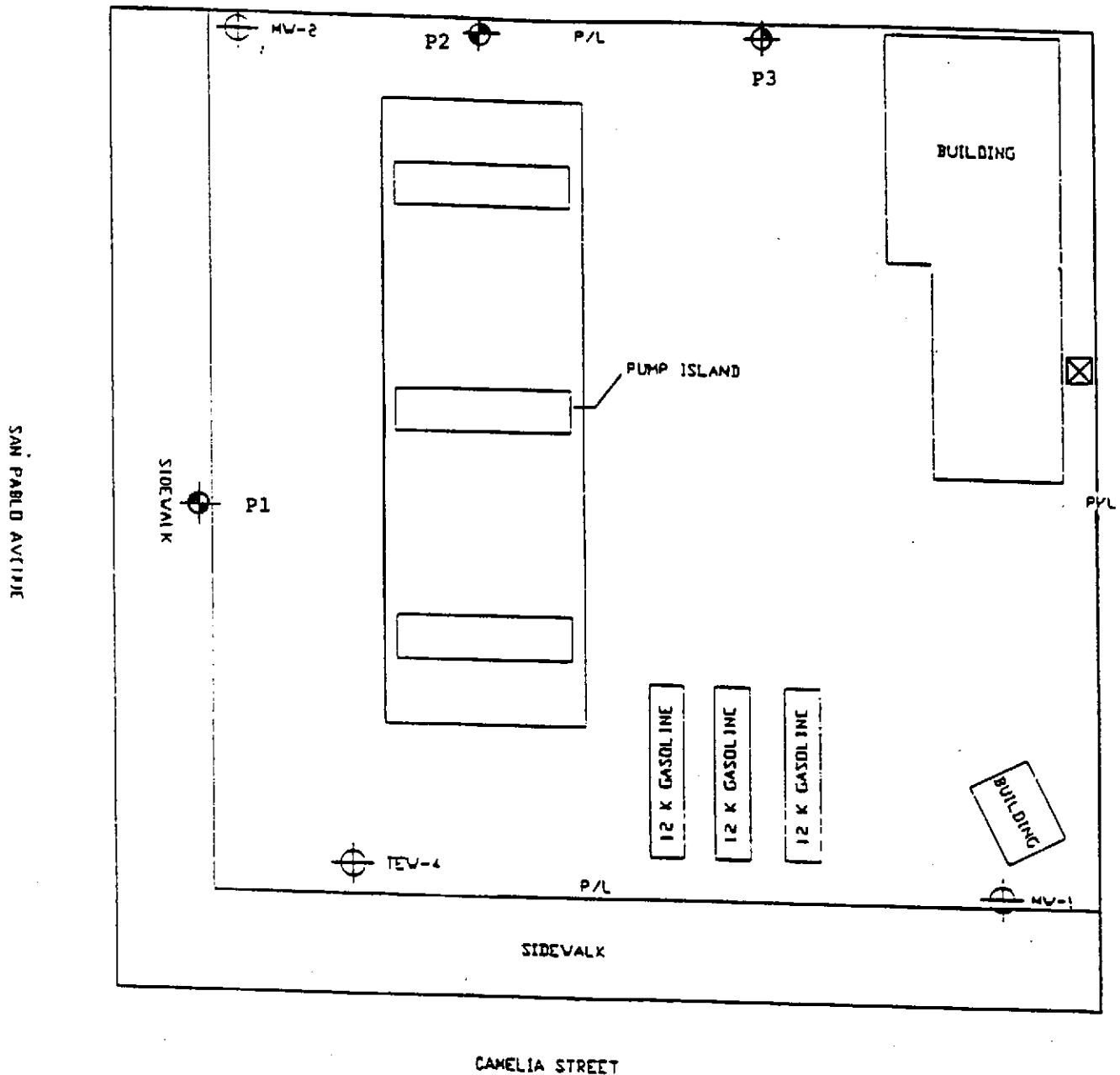
PHK
0015.W2

cc: Mr. Ted Simas and Mr. Keith Simas, XTRA OIL Company




Attachment: Figure 1

P & D ENVIRONMENTAL

300 Monte Vista, #101
 Oakland, CA 94611
 Telephone (510) 658-6916



LEGEND

-  Existing Monitoring Well Location
-  Proposed Well Point Location
-  Proposed Groundwater Treatment System Location

P/L Property Line

Base Map from:
 K&B Environmental
 dated 6/30/92

Figure 1
 SITE PLAN
 XTRA OIL Company



GeoStrategies Inc.

2140 WEST WINTON AVENUE
HAYWARD, CALIFORNIA 94545

(415) 352-4800

August 20, 1989

Gettler-Ryan Inc.
1992 National Avenue
Hayward, California 94545

Attn: Mr. Jerry Mitchell

Re: PROPOSED WORK PLAN
Chevron Service Station No. 1745
1300 San Pablo Road
Berkeley, California

Gentlemen:

This proposed work plan has been prepared for further work and remediation of the above referenced location.

BACKGROUND

Exploratory borings and monitoring wells initially installed by EMCON Associates in December 1986, and March 1987, revealed floating product and dissolved petroleum hydrocarbons (memorandums dated January 23 and March 20, 1987). In May 1987, Pacific Environmental Group (PACIFIC) installed four more on-site monitoring wells and collected soil samples for chemical analysis (memorandum dated May 29, 1987). In October 1987, PACIFIC submitted a report entitled Risk Assessment which described the potential risk from the site plume. This report contained a benzene transport model which estimates that concentrations of benzene would degrade in approximately 900 lineal feet of downgradient transport, using estimated velocities contained in that report.

PACIFIC installed four off-site monitoring wells and one on-site monitoring well in June 1988. Woodward Clyde Consultants (WCC) installed one monitoring well in October 1988, upgradient to the site, and included a summary of site conditions in their report dated April 11, 1989. Gettler-Ryan Inc. (G-R) sampled the existing wells in November 1988, which detected dissolved concentrations of low boiling hydrocarbons (as gasoline), Benzene, Toluene and Xylenes, and very low concentrations of 1,2-Dichloroethene (Total), Trichloroethene and Tetrachloroethene.

GeoStrategies Inc.

Gettler-Ryan Inc.

August 20, 1989

Page 2

G-R sampled all existing wells at the site in July, 1989. Separate phase floating product was observed in monitoring wells C-1, C-3, C-5, C-6 and C-7. Low boiling hydrocarbons ranged from not detected (ND) to 94,000 parts per billion (ppb). Benzene ranged from ND to 14,000 ppb. A copy of the G-R sampling report is attached.

TECHNICAL APPROACH

The site has been investigated both on and off-site by the above mentioned consultants, the results of which appear to have mapped the plume extent and direction of movement. PACIFIC noted in their risk assessment report that the hydrogeology displays a range of hydraulic conductivities as determined by rising and falling head (slug) tests. Overall, PACIFIC interpreted a relatively low permeability hydrogeology, and estimated a linear velocity of about 100 feet per year for use in the transport model.

The recommended approach is to utilize the projected biodegradation mechanisms and the existing 3-inch monitoring wells for interim product recovery, and groundwater recovery and treatment. Given the fairly low permeability of the underlying site, long term groundwater removal at fairly low, long term pumping rates are currently envisioned. Thus both natural biological degradation processes and active pumping comprise the conceptual remediation approach. In our opinion extraction from several points would effect capture of the plume in a more rapid time, and therefore expedite the cleanup. The groundwater extraction will be attempted using selected existing 3-inch diameter wells for interim remediation. If using these wells for extraction is workable, then a final remediation plan will be prepared following the interim remediation. This plan will include a proposed site monitoring plan, and will outline any needed changes, additional wells or other modifications for groundwater extraction.

The following scope of work tasks are proposed:

TASK 1. An existing well (C-5) will be used to initiate an interim site remediation. As this interim remediation proceeds, step pumping tests will be done on the well to ascertain pumping well and aquifer parameters. This information will be used to concurrently improve efficiency of well yield and observe zone well influences to maximize contaminant capture.

GeoStrategies Inc.

Gettler-Ryan Inc.
August 20, 1989
Page 3

TASK 1. Concurrently, install an interim recovery system in Well C-5. This will remove the product and the additional dissolved constituents which could migrate downgradient.

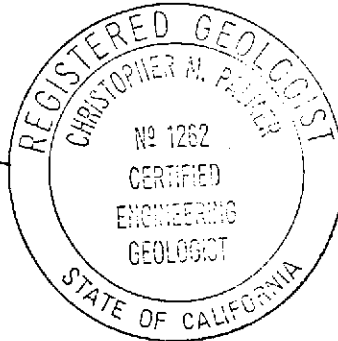
TASK 2. A report summarizing the interim remediation performance and effectiveness will be prepared. This report would document system performance, with maps illustrating the extent of capture. Recommendations for system modification and final recovery design, if necessary, will also be addressed. The report would also summarize from previous investigations the site geology and hydrogeology. This would include subsurface cross-sections showing geology and soil contamination and historic contaminate plume movement.

If you have any questions, please call.

GeoStrategies Inc. by,

Christopher M. Palmer

Christopher M. Palmer
Senior Geologist
C.E.G. 1262, R.E.A. 285



CMP/mg

Attachments: Site Plan
G-R Groundwater Sampling Report
Field Methods and Procedures
G-R Groundwater Sampling Protocol



City of Berkeley



City Manager's Office
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

(415) 644-6580
TTY (415) 644-6915

JUN 6 1985

May 31, 1985

Mr. Richard E. Blumberg
Madway, Blumberg, Bishop & Smith
1950 Addison Street
Berkeley, CA 94704

Dear Mr. ^{*Dick*} Blumberg:

Thank you for your letter of May 17, 1985 regarding citizen concerns with intermittent gasoline odor in the area of Hopkins Street and The Alameda.

As you may be aware, representatives from every applicable department in the City of Berkeley have been involved with the issue, along with the Bay Area Air Quality Management District and the California Regional Water Quality Control Board. All agencies are committed to the resolution of the problem.

The Fire and Health Departments are working with the Water Quality Control Board and the service station owner at 1201 The Alameda to correct any problem that may be occurring at the station.

The Air Quality Management District is conducting air sampling tests on a routine basis in order to obtain an air sample that can be used for laboratory analysis.

It is my understanding that there is no problem at this time. It is very important that any future occurrences be reported to the Fire Communication Dispatch Center in order for the Fire Department to access any potential hazard and to assist in the determination of the source.

Mr. Richard E. Blumberg

May 31, 1985
Page Two

Any questions regarding the status of the investigation may be directed to Fire Marshal Rayford R. Hiatt at 644-6158. If you have questions, do not hesitate to contact him.

Sincerely,



DANIEL BOGGAN, JR.
City Manager

cc: Victor C. Porter, Assistant City Manager for Public Safety
Katharine J. Kleine, Assistant City Manager for Health and Human Services
Edward Marshall, Assistant City Manager for Public Works
Nancy Bellard, Assistant to the City Manager/Risk Manager
Penny Nakatsu, Senior Attorney
Rayford R. Hiatt, Fire Marshal
Glenn Lynch, Director of Environmental Health
Robert H. Gaynor, Supervising Air Quality Inspector
Darl Boyer, State Water Resource Control Engineer

City of Berkeley Hazardous Materials Inspection Report

Facility Name: Shell Station Date: 5-5-93
 Address: 1201 Tine Alameda Inspector: L.P.
 Contact: Ted Simas Inspection Time: _____ Admin. Time: _____
 Phone: 865-9503 ID No.: _____

Purpose: Annual Investigation Installation Tank Test Reinspection Closure Cleanup
 Complaint Other _____

Complainant Name: _____ Phone: _____
 Complaint Location: 719 8501
 Nature of Complaint: data sheet

Inspection Results:

I. Toxics Compliance Plan Requirements:

Yes No N/A
 Hazardous Materials Management Plan completed properly (25503.5, 25504, 25509). If "No", deficient areas:
 Fac. Info. Empl. Training Recs.
 Inventory Emer/Evac Plan
 Maps Record Keeping
 ER Plan MSDSs

HMMP submitted (25505)
 AHMs registered (25533)

II. Hazardous Waste (HW) Requirements (Title 22):

Record Keeping (66262.40)
 EPA ID Number obtained (66262.12)
 Manifests 3 years archived (66262.40)
 Manifest properly completed (66262.23)
 TSDf-signed manifest on-site (66262.40)
 Biennial report sent to DTSC (66262.41)
 LDR documentation available (66268.7)
 Exception report filed w/DTSC (66262.42)
 Authorized to operate a TSDf (25201)

III. Hazardous Waste Storage and Handling:

HW stored under 90 days (66262.34)
 HW container(s) properly labeled (66262.34)
 HW container(s) kept closed (66265.173)
 HW container(s) in good condition (66265.171)
 HW container(s) properly managed (66265.173)
 Damaged container(s) repackaged (66265.171)
 Container(s) compatible w/ waste (66265.172)
 Separation of incompatibles (66265.177)
 Ignitable wastes >50' separated (66265.31)
 Ignitable wastes grounded (66265.174)
 Storage area inspected weekly (66265.174)

IV. Training, Contingency Plan & Emer. Procedures:

Yes No N/A
 Training records available (66265.16)
 Training program adequate (66265.16)
 Facility operated to min. release (66265.31)
 Spill control equip't. available (66265.32)
 Aisle space unobstructed (66265.35)
 Contingency plan on file (66265.51.53)

V. Miscellaneous:

Used oil filter management (66266.130)
 Spent battery management (66266.81)

VI. Underground Storage Tanks:

Permit Application (25284 H&SC)
 Pipeline leak detection (25292 H&SC)
 Records maintenance (BMC)
 Release report (BMC)
 Closure plans (BMC)

VII. New Tanks:

Monitoring Plan (BMC)
 Secured access (BMC)
 Plan submission date: _____ (BMC)
 As built date: _____ (BMC)

IX. Existing Tanks - Monitoring:

Precision tank test date: _____ (BMC)
 Inventory reconciliation (BMC)
 Soil testing (BMC)
 Groundwater (BMC)

X. Existing Tanks - Monitoring Method:

Monthly Test Daily Inventory - Vadose/GW
 Daily Vadose - 6 mo. GW Daily Inventory - Ann. tank
 Daily Vadose - Ann. tank Weekly tank gauge
 Monthly GW Annual tank test/ daily inv.
 Other: _____

Contact: _____
 Title: _____
 Signature: _____

Reinspect: _____
 Inspector: _____
 Signature: _____

MEMO TO FILE

DATE:

4/17/85

RE:

1201 THE ALAMEDA

(ADDRESS)

CB1-265

(NUMBER)

Met with Ray Hatt & Bay Area Air Quality Management District

ROBERT H. GAYNOR

JEANNETTE

COLLIN

• PUBLIC WORKS - DAVE FAXTER

• HEALTH - TOM HOLLIS

• CITY ATTORNEY - BENNY NAGATSU

apt then ran through basic chronological order of events for both BAAQMD & Cl. Brought all folks up to date.

• can not order testing of tank due to newness of installation, smallness of leak and cooperation of owner to do all other checks/looks

• felt that construction of station over the creek / storm culverts was poorly planned / located.

• hoped for some additional aid in tracking down the source of the leak.

Mr. Gaynor outlined schedule of action as follows:

• contact neighbors & station owner re: permission to go on-site for monitoring & sampling

• monitor daily with TUV motors (similar to J.W. sniffer, but more sensitive)

• if positive - call for van that has more equipment with more capacity of testing.

• review evidence

• institute sampling of air, if previous monitoring warrants
4 basic areas - on-site (1), under lines of culvert (2)
neighbors (2),

Signed:

Tom Hollis

FREEMAN & GARCIA

ALCO
HAZMAT ATTORNEYS AT LAW

SAN FRANCISCO
655 MONTGOMERY ST., SUITE 1140
SAN FRANCISCO, CA 94111-2630
TEL: (415) 834-6930
FAX: (415) 834-0119

MODESTO
1101 SYLVAN AVE., SUITE C-106
MODESTO, CA 95350-1680
TEL: (209) 491-5330
FAX: (209) 524-7061

93 NOV 17 AM 9:31

November 12, 1993

Via Facsimile & U.S. Mail
(510) 569-4757

Ms. Eva Chu
Hazardous Materials Division
Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

**Re: Xtra Oil Company
5330 Foothill Site**

Dear Ms. Chu:

I enjoyed the opportunity to speak with you recently regarding the above-referenced site. We are drafting a letter which more thoroughly states our position regarding the site. However, as requested, I am forwarding information regarding:

1. The history of site ownership;
2. Information relating to control of the USTs at the site;
3. The Relationship between Simas Bros. and Xtra Oil Company; and
4. Addresses for Walter Simas and John McDougal, the court appointed receiver.

Many of the documents, related to Ted Simas' acquisition of property, have been sealed by the Superior Court in Alameda County in the underlying case of Simas v. Simas. I have attached a copy of the Court's Order for your files and have provided copies of those documents that are relevant, but that have not been sealed.

Site Ownership History.

1. When Jean (mother of Ted, wife of Walter) died in 1977, she left two conflicting wills which set off a battle of the "wills" between Ted and Walter.
2. Simas Bros. owned the property at 5330 Foothill at the time of Jean's death. Walter was the President of Simas Bros. (See, Exhibit "A", pages 1, 2 and 3 of the verified complaint in Simas v. Simas, dated June 15, 1978, hereinafter referred to as the "Verified Complaint").

FREEMAN & GARCIA

November 12, 1993

Page 2

3. In December 1977, Walter, for Simas Bros., granted the property to Ashland Oil of California, a Limited Partnership, to which Walter was the General Partner (See, Exhibit "B", pages 1, 2, and 3 of the Verified Complaint) and Ted was a limited partner.

4. On January 3, 1979, Ted succeeded in having a court receiver appointed. (See, Exhibit "C", Order of the Court appointing the receiver). John McDougal, the receiver managed the affairs of Ashland Oil of California, a Limited Partnership, including operation of the gas station at 5330 Foothill (see, Exhibit "C"), from approximately December 1978, until the property was quitclaimed to Ted on February 22, 1983. (See Exhibit "D", the Quitclaim to Ted), a period of over four (4) years.

5. Approximately six months after having the Foothill property conveyed to him, Ted sold it to L. Hue Crosby. (See, Exhibit "E", Real Property Agreement of Sale; Exhibit "F", Note Secured By Deed of Trust; and Exhibit "G", Substitution of Trustee and Deed of Full Conveyance).

Control of the USTs:

Prior to the transfer of the property from the receiver to Ted, all of the USTs at the site were emptied, the station boarded up and closed down. (See, Exhibit "H", copy of letter to the attorneys in the receivership action). Neither the gas station nor the tanks were ever operated again. Specifically, Ted never operated the gas station, it was closed before he acquired the property.

Relationship Between Simas Bros and Xtra Oil Company:

At the hearing on October 26, 1993, you also requested any information we have regarding the relationship between Simas Bros. and Xtra Oil Company. As indicated in the above statement and attached documents, there is none. All assets of Simas Bros. were transferred to the Ashland Oil of California, a Limited Partnership, by Walter Simas on December 1977 (see, Exhibit "I", page 7 of the Verified Complaint), and was officially suspended by the Franchise Tax Board in May of 1980. In other words, Simas Bros. had ceased to exist years before Ted acquired the Foothill property. Not only did Walter transfer the Foothill property from Simas Bros. (of which he was President) to Ashland Oil of California, a Limited Partnership (of which he was the sole General Partner) within months of Jean's death, he did the same thing with all of the Simas Bros. assets, all without Ted's knowledge.

Xtra Oil Company was incorporated in December of 1972. It never had or has had any relationship to Simas Bros. or the 5350 Foothill site.

FREEMAN & GARCIA

November 12, 1993

Page 3

Addresses:

When we spoke last week you also requested that I provide you with Walter Simas' and the receiver, John McDougal's, address. The following is the most recent information we have in our files:

Walter Simas
P.O. Box 403
Diablo, CA

531-4120
attny Donald Edgar - Oakland for John McDougal
Diablo *930-6060*

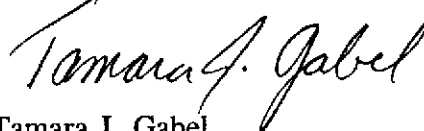
John McDougal
Carmichael, CA
(916) 481-4327

attny for W. Simas: Walter Youngman
conservator, W.J. Simas Estate.
Youngman + Erickson
4864 American River Dr.
95608
1981 N. Edwary
300
Walnut Ac
94596
P.O. Box 5293

Summary:

Ted Simas was a minority shareholder of the company that owned the site at the time of Jean's death. Walter and Jean owned over eighty percent (80%) of the company and Walter actually had day-to-day control over the station. After Jean died, Walter transferred the assets of Simas Bros. to the Ashland Oil Company of California, a limited partnership. Walter made himself the general partner and relegated Ted to the position of a limited partner. All of this was done without Ted's knowledge. When Ted finally was able to have the court appoint a receiver, in December 1978, John McDougal, operated the gas station for approximately four (4) years. Before the site was transferred to Ted, the receiver had all of the USTs emptied, and the station boarded up. Ted sold the property seven months after acquiring it to L. Hue Crosby. Also, as stated above, there is no relationship between Simas Bros. which had its assets liquidated in late 1977, by Walter Simas and Xtra Oil Company.

Sincerely,



Tamara J. Gabel

TJG/dar
Enclosures

cc: Gil Jensen, Alameda County District Attorney
Ted Simas, Xtra Oil Company

\chu

PROTECTIVE ORDER

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MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
201 - 19th Street
Oakland, California 94612
(415) 444-6800

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612
(415) 836-2204

Attorneys for Plaintiff

**ENDORSED
FILED**

FEB 10 1978

RENE C. DAVIDSON, County Clerk
By ANNETTE L. HART Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

EDWARD T. SIMAS, ETC., ET AL.,	)	NO. 503556-6
Plaintiff,	)	STIPULATION FOR PROTECTIVE
vs.	)	ORDER RE CONFIDENTIAL
WALTER J. SIMAS, ETC., ET AL.,	)	INFORMATION AND ORDER
Defendants.)	

STIPULATION

This Stipulation For Protective Order Re Confidential Information and Order is executed as of February 7, 1978, by and between plaintiff Edward T. Simas, individually and as executor of the will of Jean Lenore Simas, also known as Jean L. Simas, and Mrs. Walter John Simas, deceased and by defendants Walter J. Simas, also known as Walter John Simas, individually and as General Partner of Ashland Oil Company of California, a California Limited Partnership; Simas Bros., a California corporation; Ashland Company, a California corporation, and Ashland Oil Company of California, a California Limited Partnership, by their respective attorneys of record.

1 WHEREFORE, it is hereby stipulated and agreed as follows:

2 1. All documents, materials and information obtained by
3 inspection of files or facilities or by production of documents
4 (hereinafter collectively "Information") which sets forth, refers
5 to, or contains any confidential, trade secret, proprietary,
6 technical, commercial and/or financial information (hereinafter
7 collectively "Confidential Information"), may be designated by
8 the party producing the Information either as "CONFIDENTIAL -
9 ATTORNEYS ONLY" or as "CONFIDENTIAL." As used herein, the term
10 "attorney of record" shall include employed attorneys, associates,
11 paralegals, clerks and secretaries.

12 2. Any Information designated as "CONFIDENTIAL - ATTORNEYS
13 ONLY" or as "CONFIDENTIAL", and all information derived therefrom
14 (excluding such information as is derived lawfully from an
15 independently obtained source) shall not be disclosed to anyone
16 except as provided in Paragraphs 3 and 4 herein, shall be used only
17 for the purposes of this litigation, and shall not be used for any
18 business, financial or other purpose whatsoever.

19 3. Information designated as "CONFIDENTIAL - ATTORNEYS ONLY"
20 shall not be given, shown, made available or communicated in any
21 way to any person or entity, including any party or any employee
22 of any party, with the exception of the attorneys of record for
23 the parties in this action. If an attorney of record desires to
24 give, show, make available or communicate to any person, including
25 any party or any employee of any party, any Information designated
26 as "CONFIDENTIAL - ATTORNEYS ONLY", said attorney of record shall
27 first disclose the identity of such person to, and obtain the
28 written consent of, the attorney of record for the party who

1 designated the information. Each person to whom the Information
 2 is to be given, shown, made available or communicated must execute
 3 and deliver to the attorney of record for the designating party a
 4 written instrument agreeing not to disclose to anyone any of the
 5 contents of the Information received and to be bound by the terms
 6 of this Stipulation and Order. Only after these conditions have
 7 been fully satisfied may the Information be given, shown, made
 8 available or communicated to any person other than an attorney of
 9 record. In the event of any dispute regarding the propriety
 10 of any designation or the refusal to give any written consent,
 11 either party may on noticed motion seek such court orders regarding
 12 such designation or refusal as that party believes appropriate.

13 4. Information designated as "CONFIDENTIAL" shall not be
 14 given, shown, made available or communicated in any way to any
 15 person or entity with the exception of the attorneys of record for
 16 the parties to this action and to other specifically identified
 17 individuals who are requested by an attorney of record to furnish
 18 technical or expert services or to give testimony in this action.
 19 Before disclosure to any such individual, the individual shall be
 20 identified to the attorney of record for the party who designated
 21 the Information and shall execute and deliver to said attorney of
 22 record a written instrument agreeing not to disclose to anyone any
 23 of the contents of the Information and to be bound by the terms
 24 of this Stipulation and Order. If an attorney of record desires to
 25 give, show, make available or communicate to any additional person
 26 or entity any Information designated as "CONFIDENTIAL", said
 27 attorney of record shall first disclose the identity of such person
 28 or entity to, and obtain the written consent of, the attorney of

1 record for the party who designated the Information. Each such
2 additional person or entity to whom the Information is to be
3 given, shown, made available or communicated must likewise
4 execute and deliver to the attorney of record for the designating
5 party a written instrument agreeing not to disclose to anyone any
6 of the contents of the Information received and to be bound by
7 the terms of this Stipulation and Order. Only after the foregoing
8 conditions have been fully satisfied may the Information be given,
9 shown, made available or communicated to any person. In the event
10 of any dispute regarding the propriety of any designation or the
11 refusal to give any written consent, either party may on noticed
12 motion seek such court orders regarding such designation or
13 refusal as that party believes appropriate.

14 5. A file shall be maintained by the attorneys of record
15 of all written agreements signed by persons to whom materials
16 designated as "CONFIDENTIAL - ATTORNEYS ONLY" and as "CONFIDENTIAL"
17 have been given. Said file shall be made available upon request
18 for inspection and copying by an attorney of record.

19 6. Papers filed herein by the attorneys of record shall not
20 disclose any documents, materials or information of a financial
21 nature which have been designated as "CONFIDENTIAL - ATTORNEYS
22 ONLY" or as "CONFIDENTIAL", unless such documents, materials or
23 information are first sealed in a manner to prevent any disclosure
24 other than to the court.

25 7. Upon the final disposition of this action, all attorneys
26 of record shall promptly return to the party or witness from whom
27 obtained, all items which have been marked "CONFIDENTIAL - ATTORNEYS
28 ONLY" or "CONFIDENTIAL" and all copies made thereof, including any

1 of said items or copies thereof provided to any other persons.

2
3 DATED: February 7, 1978

4
5 MOORE, CLIFFORD, WOLFE, LARSON
6 & TRUTNER

7 DALE I. STOOPS, ESQ.

8
9 By 

10 Attorneys for Plaintiff
11 Edward T. Simas

12 DATED: February 7, 1978

13
14 COOLEY, GODWARD, CASTRO,
15 HUDDLESON & TATUM

16
17 By 

18 Attorneys for Defendants

19 ORDER PURSUANT TO STIPULATION

20 The parties hereto having entered into the foregoing
21 agreement and having stipulated that the provisions of said
22 agreement may be presented to this Court without notice as a
23 proposed Order, and good cause appearing therefor,

24 IT IS HEREBY ORDERED that the provisions of the foregoing
25 agreement are approved and that performance of each and every term
26 thereof is ordered.

27 DATED: Feb. 10

28 JOHN F. SPARRONE
JUDGE OF THE SUPERIOR COURT

JJS
114811

FILED

JUN 15 1978

RENE C. DARDSON, County Clerk

By *James Kitterman*
JAMES KITTERMAN, Deputy

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
 2 A Professional Corporation
 3 201 - 19th Street
 4 Oakland, California 94612
 5 Telephone: (415) 444-6800

6 DALE I. STOOBS, ESQ.
 7 Wells Fargo Bank Building
 8 415 - 20th Street
 9 Oakland, California 94612
 10 Telephone: (415) 836-2204

11 Attorneys for Plaintiff

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF ALAMEDA

14 EDWARD T. SIMAS, individually and)
 15 as executor of the will of JEAN)
 16 LENORE SIMAS, also known as JEAN)
 17 L. SIMAS, and MRS. WALTER JOHN)
 18 SIMAS, deceased,)

NO. 803556-6

19 Plaintiff,

FIRST AMENDED COMPLAINT

20 vs.

21 WALTER J. SIMAS, also known as)
 22 WALTER JOHN SIMAS, individually)
 23 and as General Partner of ASHLAND)
 24 OIL COMPANY OF CALIFORNIA, a)
 25 California Limited Partnership;)
 26 SIMAS BROS., a California)
 Corporation; ASHLAND OIL COMPANY OF)
 CALIFORNIA, a California Corporation;)
 ASHLAND OIL COMPANY OF CALIFORNIA, a)
 California Limited Partnership;)
 and DOES 1 through 100, inclusive,)

27 Defendants.

28 Plaintiff alleges:

29 1. Plaintiff EDWARD T. SIMAS, as an individual, is
 30 the owner of 862 shares of the Class B non-voting common stock
 31 of defendant SIMAS BROS., a California Corporation, representing

JUN 15 1978

1 in excess of 27% of the outstanding Class B non-voting common
2 stock of said corporation.

3 2. On August 1, 1977, the Alameda County Superior
4 Court of California in probate action #207794-9 entitled "Estate
5 of JEAN LENORE SIMAS, also known as JEAN L. SIMAS and MRS.
6 WALTER JOHN SIMAS, deceased" made its order appointing plaintiff
7 EDWARD T. SIMAS as executor of the will of said decedent.
8 Letters testamentary were duly issued to plaintiff pursuant to
9 said order, and plaintiff has at all times since said issuance
10 been, and he now is, the duly appointed and acting executor of
11 the will of said decedent.

12 3. Plaintiff, as executor of the will of said decedent,
13 is the owner of 1,550 shares of the Class A voting common stock
14 of defendant SIMAS BROS., a California Corporation, representing
15 50% of the outstanding Class A voting common stock of said
16 corporation. Plaintiff, as executor of the will of said decedent,
17 is also the owner of 1,119 shares of the Class B non-voting
18 common stock of said corporation representing in excess of 36%
19 of the outstanding Class B non-voting common stock of said
20 corporation.

21 4. Defendant SIMAS BROS. is a California Corporation
22 which, as of December 30, 1977 was, and based upon plaintiffs'
23 belief still is, a California Corporation in good standing
24 having its principal office in Alameda County, California.

25 5. Defendant WALTER J. SIMAS, also known as WALTER
26 JOHN SIMAS, is: the owner of the remaining 1,550 shares of

1 Class A voting common stock of SIMAS BROS.; the owner of the re-
2 maining 1,119 shares of Class B non-voting common stock of SIMAS
3 BROS.; the president of SIMAS BROS.; (on information and belief)
4 a director and the chairman of the board of directors of SIMAS
5 BROS.; (on information and belief) the president, director, and
6 chairman of the board of directors of defendant ASHLAND OIL COM-
7 PANY OF CALIFORNIA, a California corporation; the general partner
8 of defendant ASHLAND OIL COMPANY OF CALIFORNIA, a California limited partnership.

9 6. ASHLAND OIL COMPANY OF CALIFORNIA, a California corporation,
10 referred to hereinafter as ASHLAND CORPORATION, is wholly owned by SIMAS BROS.
11 Said ASHLAND CORPORATION is and/or was an integral part of the business opera-
12 tion conducted by SIMAS BROS. and/or ASHLAND OIL COMPANY OF CALIFORNIA, a
13 California limited partnership.

14 7. ASHLAND OIL COMPANY OF CALIFORNIA, a California
15 limited partnership, referred to hereinafter as ASHLAND PARTNERSHIP,
16 has its principal place of business in Alameda County, California.
17 Its general partner is defendant WALTER J. SIMAS.

18 8. Plaintiff is ignorant of the true names and capa-
19 cities of defendants sued herein as DOES 1 through 100, inclusive,
20 and therefore sues these defendants by such fictitious names.
21 Plaintiff will amend this complaint to allege the true names and
22 capacities along with further appropriate charging allegations
23 when ascertained.

24 9. At all times herein mentioned, each of the defendants
25 was the agent, servant and/or employee of each of the other
26

///

VERIFICATION

I hereby declare under penalty of perjury that I am a party to the above entitled matter; that I have read the foregoing document and know the contents thereof, and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

Dated June 15, 1978

at Oakland, California.



(Sign Here)

EDWARD T. SIMAS

(Type or Print Name)

(Title, if any)

CERTIFICATE OF SERVICE BY MAIL

The undersigned, at Oakland, California, certifies to be true, under penalty of perjury:

That she is a citizen of the United States, is employed in Alameda County, California, is over 18 years of age, and is not a party to the within action or proceeding

That her business address is 201-19th Street, Oakland, California 94612.

That she served a copy of the attached:

FIRST AMENDED COMPLAINT

by placing said copy sealed in an envelope ()
sealed in separate envelopes (XXX)
addressed as follows:

COOLEY, GODWARD, CASTRO, HUDDERSON & TATUM
One Maritime Plaza, Suite 2000
San Francisco, California 94111

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612

with postage thereon fully prepaid, and thereafter was deposited in the United States Mail at Oakland, Alameda County, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed. That the date of deposit in the mail and the date of the execution of this certificate was

June 15, 1978

Martha Neilson
MARTHA NEILSON

JJS
14811

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
 A Professional Corporation
 2 201 - 19th Street
 Oakland, California 94612
 3 Telephone: (415) 444-6800

4 DALE I. STOOPS, ESQ.
 Wells Fargo Bank Building
 5 415 - 20th Street
 Oakland, California 94612
 6 Telephone: (415) 836-2204

7 Attorneys for Plaintiff

FILED

JUN 15 1978

RENE C. DAVIDSON, County Clerk

By *James Kitterman*
JAMES KITTERMAN, Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 EDWARD T. SIMAS, individually and)
 as executor of the will of JEAN)
 11 LENORE SIMAS, also known as JEAN)
 L. SIMAS, and MRS. WALTER JOHN)
 12 SIMAS, deceased,)

NO. 503556-6

13 Plaintiff,)

FIRST AMENDED COMPLAINT

14 vs.)

15 WALTER J. SIMAS, also known as)
 WALTER JOHN SIMAS, individually)
 16 and as General Partner of ASHLAND)
 OIL COMPANY OF CALIFORNIA, a)
 17 California Limited Partnership;)
 SIMAS BROS., a California)
 18 Corporation; ASHLAND OIL COMPANY OF)
 CALIFORNIA, a California Corporation;)
 19 ASHLAND OIL COMPANY OF CALIFORNIA, a)
 California Limited Partnership;)
 20 and DOES 1 Through 100, inclusive,)

21 Defendants.)

22
23 Plaintiff alleges:

24 1. Plaintiff EDWARD T. SIMAS, as an individual, is
 25 the owner of 862 shares of the Class B non-voting common stock
 26 of defendant SIMAS BROS., a California Corporation, representing

JUN 15 1978

1 in excess of 27% of the outstanding Class B non-voting common
2 stock of said corporation.

3 2. On August 1, 1977, the Alameda County Superior
4 Court of California in probate action #207794-9 entitled "Estate
5 of JEAN LENORE SIMAS, also known as JEAN L. SIMAS and MRS.
6 WALTER JOHN SIMAS, deceased" made its order appointing plaintiff
7 EDWARD T. SIMAS as executor of the will of said decedent.
8 Letters testamentary were duly issued to plaintiff pursuant to
9 said order, and plaintiff has at all times since said issuance
10 been, and he now is, the duly appointed and acting executor of
11 the will of said decedent.

12 3. Plaintiff, as executor of the will of said decedent,
13 is the owner of 1,550 shares of the Class A voting common stock
14 of defendant SIMAS BROS., a California Corporation, representing
15 50% of the outstanding Class A voting common stock of said
16 corporation. Plaintiff, as executor of the will of said decedent,
17 is also the owner of 1,119 shares of the Class B non-voting
18 common stock of said corporation representing in excess of 36%
19 of the outstanding Class B non-voting common stock of said
20 corporation.

21 4. Defendant SIMAS BROS. is a California Corporation
22 which, as of December 30, 1977 was, and based upon plaintiffs'
23 belief still is, a California Corporation in good standing
24 having its principal office in Alameda County, California.

25 5. Defendant WALTER J. SIMAS, also known as WALTER
26 JOHN SIMAS, is: the owner of the remaining 1,550 shares of

1 Class A voting common stock of SIMAS BROS.; the owner of the re-
2 maining 1,119 shares of Class B non-voting common stock of SIMAS
3 BROS.; the president of SIMAS BROS.; (on information and belief)
4 a director and the chairman of the board of directors of SIMAS
5 BROS.; (on information and belief) the president, director, and
6 chairman of the board of directors of defendant ASHLAND OIL COM-
7 PANY OF CALIFORNIA, a California corporation; the general partner
8 of defendant ASHLAND OIL COMPANY OF CALIFORNIA, a California limited partnership.

9 6. ASHLAND OIL COMPANY OF CALIFORNIA, a California corporation,
10 referred to hereinafter as ASHLAND CORPORATION, is wholly owned by SIMAS BROS.
11 Said ASHLAND CORPORATION is and/or was an integral part of the business opera-
12 tion conducted by SIMAS BROS. and/or ASHLAND OIL COMPANY OF CALIFORNIA, a
13 California limited partnership.

14 7. ASHLAND OIL COMPANY OF CALIFORNIA, a California
15 limited partnership, referred to hereinafter as ASHLAND PARTNERSHIP,
16 has its principal place of business in Alameda County, California.
17 Its general partner is defendant WALTER J. SIMAS.

18 8. Plaintiff is ignorant of the true names and capa-
19 cities of defendants sued herein as DOES 1 through 100, inclusive,
20 and therefore sues these defendants by such fictitious names.
21 Plaintiff will amend this complaint to allege the true names and
22 capacities along with further appropriate charging allegations
23 when ascertained.

24 9. At all times herein mentioned, each of the defendants
25 was the agent, servant and/or employee of each of the other
26

///

VERIFICATION

I hereby declare under penalty of perjury that I am a party to the above entitled matter; that I have read the foregoing document and know the contents thereof, and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

Dated June 15, 1978

at Oakland, California.

Edward T. Simas
(Sign Here)

EDWARD T. SIMAS
(Type or Print Name)

(Title, if any)

CERTIFICATE OF SERVICE BY MAIL

The undersigned, at Oakland, California, certifies to be true, under penalty of perjury:

That she is a citizen of the United States, is employed in Alameda County, California, is over 18 years of age, and is not a party to the within action or proceeding

That her business address is 201-10th Street, Oakland, California 94612.

That she served a copy of the attached:

FIRST AMENDED COMPLAINT

by placing said copy sealed in an envelope ()
sealed in separate envelopes (XX)
addressed as follows:

COOLEY, GODWARD, CASTRO, HUDDERSON & TATUM
One Maritime Plaza, Suite 2000
San Francisco, California 94111

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612

with postage thereon fully prepaid, and thereafter was deposited in the United States Mail at Oakland, Alameda County, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed. That the date of deposit in the mail and the date of the execution of this certificate was

June 15, 1978

Martha Neilson
MARTHA NEILSON

**ENDORSED
FILED**

DEC 22 1978

**RENE C. DAVIDSON, County Clerk
By: James Kitchman, Deputy**

1 MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER
A Professional Corporation
2 201 - 19th Street
Oakland, California 94612
3 (415) 444-6800

4 DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
5 415 - 20th Street
Oakland, California 94612
6 (415) 836-2204

7 Attorneys for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10	EDWARD T. SIMAS,	)	NO. 503556-6
11	Plaintiff,	)	<u>ORDER APPOINTING RECEIVER</u>
12	vs.)	
13	WALTER J. SIMAS, et. al.,)	
14	Defendants.)	
15	_____		

16 The motion of plaintiff EDWARD T. SIMAS for an order
17 appointing a receiver to take possession, control, charge
18 and management of all the assets, business and affairs,
19 including all books and records, belonging to either of the
20 named corporate defendants and/or the defendant partnership,
21 which motion was filed March 20, 1978, having been duly and
22 timely served on all parties entitled thereto, came on
23 for hearing in Department 19 of this Court on April 5, 1978
24 and further hearings were held thereon on April 13, 1978 and
25 May 1, 1978. At said hearings, plaintiff appeared personally
26 and by and through his attorneys of record, DALE I. STOOPS

1 and MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER, A Professional
2 Corporation, by J. JAY SCHNACK, and defendants WALTER J.
3 SIMAS, SIMAS BROS., a California corporation, ASHLAND OIL
4 COMPANY OF CALIFORNIA, a California corporation, and ASHLAND
5 OIL COMPANY OF CALIFORNIA, a California Limited Partnership,
6 appeared by and through their attorneys of record, COOLEY,
7 GODWARD, CASTRO, HUDDLESON & TATUM, by KENNETH J. ADELSON.
8 The matter was then continued by stipulation of the parties
9 and further hearings thereon were held October 27, 1978,
10 November 1, 1978, December 1, 1978, December 8, 1978 and
11 December 21, 1978. At each of these latter hearings, plaintiff
12 again appeared personally and by and through his aforementioned
13 counsel and said defendants appeared by and through their
14 substituted attorneys of record, CLEMENT & FITZPATRICK,
15 INC., by PAUL J. FITZPATRICK. Defendant WALTER J. SIMAS
16 also appeared personally at said hearings.

17 Evidence, documentary and oral, points and authorities
18 and extensive argument offered by all parties having been
19 considered and good cause appearing for the appointment of a
20 receiver in this action to perform the functions and execute
21 the orders hereinafter set forth,

22 THE COURT FINDS that:

- 23 1. This is an action between parties owning or interested
24 in the property hereinafter described;
- 25 2. Plaintiff is a party whose right to or interest in
26 the subject property, and the proceeds thereof, is probable;

1 3. The subject property is in danger of being lost,
2 removed or materially injured.

3 IT IS ORDERED that:

4 1. Mr. John McDougal be and he hereby is appointed
5 receiver in this action, effective January 3, 1979;

6 2. Before entering upon his duties as receiver, he
7 shall take the oath and file herein a bond with surety
8 thereon approved by this Court in the penal sum of \$75,000.00,
9 conditioned for the faithful performance of his duties as
10 receiver. The cost of the premium for said bond is to be
11 paid out of the assets subject to the receiver's control;

12 3. After so qualifying, the receiver shall take possession,
13 control, charge and management of all the assets, business
14 and affairs, including all books and records, belonging to
15 defendant ASHLAND OIL COMPANY OF CALIFORNIA, a California
16 corporation, and/or defendant STMAS BROS., a California
17 corporation, and/or defendant ASHLAND OIL COMPANY OF CALIFORNIA,
18 a California Limited Partnership, and manage, care for,
19 preserve and maintain said assets and business,
20 and incur the expenses necessary or appropriate for such
21 management, care, preservation and maintenance;

22 4. The receiver shall, subject to further order of
23 this Court, operate and conduct the business of defendant
24 ASHLAND OIL COMPANY OF CALIFORNIA, a California Limited
25 Partnership, at 1436 14th Avenue, Oakland, California, as
26 its principal place of business and elsewhere, and the

(FOLLOWING COURT EVALUATION PERIOD
AS IN HIS DISCRETION IS NECESSARY

1 receiver is authorized to employ and ~~or~~ discharge such
2 servants, agents, employees, clerks, attorneys and accountants
3 as he deems appropriate and to pay therefor at ordinary and
4 usual rates and prices out of funds that shall come into his
5 possession as receiver and to do all things and to incur the
6 risks and obligations ordinarily incurred by owners, managers
7 and operators of similar businesses and enterprises as such
8 receiver, and no such risk or obligation so incurred shall
9 be the personal risk or obligation of the receiver, but a
10 risk or obligation of the receivership estate;

11 5. The receiver is authorized to pay to himself a by-
12 weekly salary based upon a yearly rate of \$50,000.00;

13 6. The receiver is hereby instructed that he shall not
14 pay any salary or compensation to defendant WALTER J. SIMAS
15 by reason of WALTER J. SIMAS' capacity as general partner of
16 the defendant partnership; provided, however, that if, at the
17 request of the receiver, WALTER J. SIMAS provides services of
18 value to the receivership estate, the receiver is authorized
19 to pay to WALTER J. SIMAS for such services an amount equal to
20 what the receiver believes to be reasonable compensation therefor.

21 DONE IN OPEN COURT DECEMBER 21, 1978 AND PRESENTED FOR
22 SIGNATURE AND SIGNED DECEMBER 22, 1978.

23
24 JOHN P. SPARROW

25 JOHN P. SPARROW
26 JUDGE OF THE SUPERIOR COURT

7. EFFECTIVE JANUARY 3, 1979, THAT "PRELIMINARY
INJUNCTION PURSUANT TO STIPULATION" FILED
HEREIN ON JUNE 15, 1978, SHALL BE DISSOLVED.

RECORDING REQUESTED BY:

(#20)

SAFECO TITLE INSURANCE COMPANY WE HEREBY CERTIFY THAT THIS IS A FULL,

TRUE AND EXACT COPY OF THE ORIGINAL DOCUMENT AS THE SAME APPEARS IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA, RECORDED ON 5/23/83 IN BOOK OF OFFICIAL RECORDS AT PAGE SERIAL NO. 83-029855

and when recorded mail to:

Edward T. Simas
c/o J. Jay Schnack
201-19th Street
Oakland, California 94612

SAFECO TITLE INSURANCE COMPANY

By Barbara Kelly

Escrow No. 81507-5

Mail tax statements to:

SAME

THIS DEED IS BEING EXECUTED TO COMPLY WITH THAT CERTAIN AGREEMENT AND ORDER ISSUED BY ALAMEDA COUNTY SUPERIOR COURT, CASE NO. 503556-6. NO TAX DUE.

EXCLUDED FROM REAPPRAISAL UNDER REVENUE AND TAXATION CODE §62.

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Walter J. Simas, Margaret Jean Simas, Ashland Oil Company of California, a California limited partnership, Simas Bros., a California corporation, and Ashland Oil Company of California, a California corporation, hereby REMISE, RELEASE AND QUITCLAIM to Edward T. Simas that real property commonly known as 5330 Foothill Boulevard, City of Oakland, County of Alameda, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by reference.

ASHLAND OIL COMPANY OF CALIFORNIA, a California corporation

Walter J. Simas
Walter J. Simas

By Walter J. Simas
Walter J. Simas, President

Margaret Jean Simas
Margaret Jean Simas

By John McDougal
John McDougal, Receiver

SIMAS BROS., a California corporation

ASHLAND OIL COMPANY OF CALIFORNIA, a California limited partnership

By Walter J. Simas
Walter J. Simas, President

By Walter J. Simas
Walter J. Simas
General Partner

By John McDougal
John McDougal, Receiver

REAL PROPERTY AGREEMENT OF SALE

THIS AGREEMENT made and entered into the 21 day of August, 1983, by and between EDWARD T. SIMAS, hereinafter called "SELLER," and L HUE CROSBY and RUBY CROSBY, his wife, hereinafter called "BUYER."

Seller, in consideration of the payments to be made by the Buyer, and the conditions and covenants to be kept and performed by Seller, as hereinafter set forth, agrees to sell and the Buyer agrees to buy all that real property described in Exhibit A and incorporated herein:

This Agreement of Sale is made on the following terms and conditions:

1. Purchase price is \$45,000.00 which is to be paid as follows:
 - a. \$1,000.00 check as deposit, payable to Edward T. Simas.
 - b. An additional payment of \$9,000.00, or a total down payment of \$10,000.00, will be deposited in escrow prior to close of escrow.
 - c. A promissory note secured by a First Deed of Trust in the amount of \$35,000.00, with interest at a rate of two (2) points above prime as published in the Wall Street Journal at date of signing of this note to be amortized over twenty (20) years. Interest shall be adjusted yearly on the anniversary of signing of note, and a rate set at two (2) points above prime as published in the Wall Street Journal as of that date, with amortization set each time of adjustment on a twenty (20) year schedule for \$35,000.00.
 - d. Principal and interest on the \$35,000.00, as set forth above shall be paid monthly commencing on the first day of the month following date of note and continuing on first day of each month thereafter over a five (5) year period from date of note. Payments will be adjusted annually to reflect the current interest rate as set forth above.
 - e. Buyer may make additional payments of principal at anytime without penalty.
 - f. At end of five (5) year period, balance of principal and any accrued interest shall be paid in full.

2. Property shall be conveyed to Buyer upon close of escrow, free and clear of all encumbrances except current taxes prorated as of close of escrow, covenants, conditions and restrictions of record or known to Seller; and Deed of Trust provided. Buyer shall have five (5) days after receipt of preliminary title report to approve or disapprove covenants, conditions and restrictions of record. Seller, at Buyer's expense, shall furnish to Buyer at close of escrow a standard title insurance issued by Western Title Insurance Company in the amount of the purchase price, insuring title to the property in accordance with the above coveyance. If Seller fails to deliver title as herein provided, or if Buyer disapproves in writing any covenants, conditions and restrictions within five (5) days of receipt of preliminary title report, Buyer at his option, may terminate this Agreement, and any deposit shall thereupon be returned to Buyer. Thereafter, if Buyer refuses or fails to complete purchase, the Seller may keep the \$1,000.00 as liquidated damages.

3. Property taxes shall be prorated as of the date of close of escrow. The amount of any bond or assessment which is a lien shall be paid by Seller. Other costs, including transfer tax, cost to the title insurance policy, escrow fee, and costs to title company to prepare and record documents, to be paid by Buyer.

4. An escrow shall be opened at Western Title Insurance Company, Oakland, California (Western Title) to accomplish the purpose of the sale of the property; Buyer and Seller shall execute escrow instructions consistent with the Agreement and as may be reasonably required by Western Title to complete the purchase and sale. The close of this sale shall be within sixty (60) days from the acceptance of this offer unless the parties agree otherwise in writing.

5. Possession shall be delivered to Buyer on close of escrow. Prior to close of escrow, Buyer to have reasonable right of inspection of said property.

6. Buyer is purchasing property in "as is" condition with no representations or warranties by Seller.

7. If the property is materially damaged by fire or other natural causes prior to close of escrow, then, on demand by Buyer, any deposit made by Buyer shall be returned to him and this contract thereupon shall terminate.

8. There is no realtor or broker involved in this sale.

9. Buyer's signature hereon constitutes an offer to sell or purchase the real property described herein. Unless acceptance hereof is signed by Seller, and a signed copy delivered to Western Title, either in person or by mail, within five (5) days hereof, this offer shall be deemed revoked and the deposit shall be returned to the Buyer.

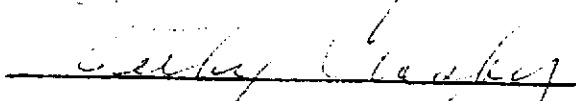
10. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

11. The covenants, representations and warranties of Seller and Buyer shall, to the extent required to be performed or determined before closing, survive the closing.

12. Buyer agrees to take out and carry Buyer's public liability and all other insurance carried by Seller and to add Seller's name as additional insured on all policies.

13. This agreement constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous understandings of the parties in connection herewith.

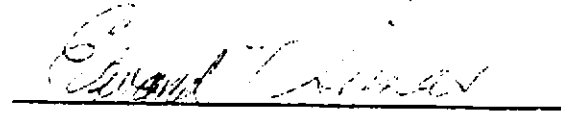
IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.



L HUE CROSBY

RUBY CROSBY

Buyer



EDWARD T. SIMAS

Seller

EXHIBIT A

Location: Northwesterly corner of Foothill Boulevard and Belvedere
 Street, Oakland

Identification: Alameda County Assessor's Parcel Number 35-2378-6

Escrow No: 264-346-2
APN: 35-2378-6

AND WHEN RECORDED MAIL TO

L. Hue Crosby &
Ruby Crosby
1414 Regent Drive
San Leandro, CA 94577

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Substitution of Trustee and Deed of Full Reconveyance

WHEREAS, L. HUE CROSBY and RUBY CROSBY, husband and wife

_____ was the original Trustor,

WESTERN TITLE INSURANCE COMPANY, a Corporation

_____ was the original Trustee, and

EDWARD T. SIMAS

was the original Beneficiary under that certain Deed of Trust dated SEPTEMBER 30, 1983
and recorded on OCTOBER 19, 1983 in book n/a page n/a of Official
Records of ALAMEDA County, California, and

WHEREAS, the undersigned Beneficiary is the present Beneficiary under said Deed of Trust and is the owner and holder of the Note secured by said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in the place and stead of said original Trustee thereunder.

NOW, THEREFORE, the undersigned hereby substitutes
EDWARD T. SIMAS
as Trustee under said Deed of Trust.

hereby accepts said appointment as Successor Trustee under Deed of Trust hereinabove referred to, and as Successor Trustee, does hereby RECONVEY, without warranty, to the person or persons legally entitled thereto, the estate now held by it under said Deed of Trust referred to hereinabove.

DATED SEPTEMBER 9, 1991

SUCCESSOR TRUSTEE

BENEFICIARY

Edward T. Simas
Edward T. Simas

FOR CORPORATE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ President, and _____ known to me to be _____ Secretary of the Corporation that executed the within Instrument, known to be to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors

WITNESS my hand and official seal.

Signature _____

Name (Typed or Printed)

FOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ALAMEDA } SS.

On SEPT 13, 1991 before me, the undersigned, a Notary Public in and for said State, personally appeared EDWARD T. SIMAS

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person _____ whose name IS subscribed to the within instrument and acknowledged that HE executed the same. Witness my hand and official seal.

Signature Linda Maldonado

LINDA MALDONADO

Name (Typed or Printed)



(This area for official notarial seal)

STARK, STEWART, WELLS & ROBINSON
 ATTORNEYS AT LAW
 FIDELITY PLAZA - 14TH FLOOR
 180 GRAND AVENUE
 OAKLAND, CALIFORNIA 94612
 TELEPHONE (415) 534-7900

February 11, 1983

G

Moore, Clifford, Wolfe,
 Larson & Trutner
 201 - 19th Street
 Oakland, CA 94612

Attention: J. Jay Schnack

D

Dale I. Stoops, Esq.
 Stoops, Sharon & Habegger
 266 Grand Avenue, Suite 200
 Oakland, CA 94610

Arthur J. Shartsis, Esq.
 Shartsis, Friese & Ginsburg
 255 California Street, Suite 900
 San Francisco, CA 94111

RE: Procedure For Delivery of Possession of Stations

P

Gentlemen:

Jack McDougal proposes to handle the delivery of possession of the stations in the following manner:

The two stations that will still be operating on February 23 will be those which are to be distributed to Walter, subject to Ted's option (San Francisco and 141st in San Leandro). Jack proposes to close each of these stations on the 23rd as the cash on hand is picked up by Brinks.

Y

Possession will be turned over to Walter during the morning of February 24 in whatever sequence Walter wishes. At that time the tanks will be stuck in order to establish the amount of product on hand for the purposes of Paragraph 20 of the Settlement Agreement. (It is contemplated that all of the other stations will have been closed and their tanks pumped out prior to February 23.)

RECEIVED

FEB 14 1983

Moore, Clifford, Wolfe, Larson & Trutner

J. Jay Schnack, Esq.
Dale I. Stoops, Esq.
Arthur J. Shartsis, Esq.
Page Two
February 11, 1983

Arrangements will be made with each utility to read the meters and terminate service to the partnership on February 23. Walter may wish to make advance arrangements with the utilities to transfer the service to his name without any interruption.

Very truly yours,

STARK, STEWART, WELLS & ROBINSON

By 

Donald L. Edgar

DLE/dbj

cc: Jack McDougal

C
O
P
Y

1 80% of the profits of the limited partnership.
 2 (WALTER J. SIMAS presently claims a right to over 30%
 3 of said profits)

4 J. WALTER J. SIMAS, as general partner, receives
 5 a monthly salary of \$8,000.00.

6 — 18. Plaintiff has been informed by the attorney for
 7 WALTER J. SIMAS and ASHLAND PARTNERSHIP that:
 8 approximately December 16, 1977 SIMAS BROS. and ASHLAND CORPORATION trans-
 9 ferred all their assets to said limited partnership in return for the full limited
 10 partnership interest of said partnership; shortly thereafter
 11 SIMAS BROS. was liquidated by distributing to the shareholders of
 12 SIMAS BROS proportionate limited partnership interests in said
 13 partnership; plaintiff's status was thereby changed from a share-
 14 holder of SIMAS BROS. to a mere assignee of a limited partner of
 15 ASHLAND PARTNERSHIP.

16 19. Prior to December 16, 1977, plaintiff, as the
 17 owner of 50% of the voting stock of SIMAS-BROS., had the right
 18 to: elect half of the board of directors of said corporation and
 19 thereby oversee and influence the selection of officers (including
 20 its president, defendant WALTER J. SIMAS) and the functioning of
 21 corporate affairs; cause a dissolution of the corporation; and
 22 inspect the corporate books and records. California Corporations
 23 Code 515027 provides that an assignee of a limited partner has no
 24 right to interfere in the management of partnership
 25 affairs or to require any information or accounting of partnership
 26 transactions, or to inspect the partnership books. Nor does a

VERIFICATION

I hereby declare under penalty of perjury that I am a party to the above entitled matter; that I have read the foregoing document and know the contents thereof, and the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

Dated June 15, 1978

at Oakland, California.

Edward T. Simas

(Sign Here)

EDWARD T. SIMAS

(Type or Print Name)

(Title, if any)

CERTIFICATE OF SERVICE BY MAIL

The undersigned, at Oakland, California, certifies to be true, under penalty of perjury:

That she is a citizen of the United States, is employed in Alameda County, California, is over 18 years of age, and is not a party to the within action or proceeding

That her business address is 201-19th Street, Oakland, California 94612.

That she served a copy of the attached:

FIRST AMENDED COMPLAINT

by placing said copy sealed in an envelope ()
sealed in separate envelopes (XXX)
addressed as follows:

COOLEY, GODWARD, CASTRO, HUDDERSON & TATUM
One Maritime Plaza, Suite 2000
San Francisco, California 94111

DALE I. STOOPS, ESQ.
Wells Fargo Bank Building
415 - 20th Street
Oakland, California 94612

with postage thereon fully prepaid, and thereafter was deposited in the United States Mail at Oakland, Alameda County, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed. That the date of deposit in the mail and the date of the execution of this certificate was

June 15, 1978

Martha Neilson
MARTHA NEILSON