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REPORTER'S RECORD
VOLUME 1 OF 2 VOLUMES
TRIAL COURT CAUSE NO. 02-09156

OCCIDENTAL CHEMICAL CORPORATION,
PLAINTIFF,
vs.
MAXUS ENERGY CORPORATION AND DEFENDANTS.) IN THE DISTRICT COURT
)
) DALLAS COUNTY, TEXAS
) 14TH JUDICIAL DISTRICT

TRIAL ON THE MERITS - MORNING SESSION
TESTIMONY OF JAMES F. KELLEY

On the 16th day of May, 2006, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Mary Murphy, Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by computerized stenotype machine.

DIANE L. ROBERT, CSR, RPR
TEXAS CSR NO. 2179
Expiration Date: 12/31/2006
Official Court Reporter of the 14th
Judicial District Court
Dallas County, Texas
600 Commerce Street, Dallas, Tx 75202
214-653-7298

COPY

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APPEARANCES

REPRESENTING PLAINTIFF:

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TRIAL ON THE MERITS - MORNING SESSION
MAY 16, 2006

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VOLUME 1

TRIAL ON THE MERITS - MORNING SESSION

May 16, 2006

Appearances 4 1

Proceedings 5 1

James F. Kelley

Direct Cross

V.Dire

By Mr. Corban 5 v1

By Mr. Corban 59 v1

By Mr. Howard 63 v1

ALPHABETICAL INDEX OF WITNESSES

DEFENSE WITNESSES:

Direct Cross V.Dire

Kelley, James F. 5 v1 63 v1

Kelley, James F. 59 v1

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09:36:43 1 had been a publicly owned corporation, and most of the
2 senior management team was replaced by the company that
3 had acquired us, perfectly normal thing to happen in
4 transactions of this sort. And since then I'm somewhere
09:36:57 5 between unemployed and retired. I'm not sure which.

6 Q. Very good, sir. Now, going back for a few
7 moments, you said that you were general counsel of Diamond
8 Shamrock Corporation from 1981 until 1988; is that
9 correct?

09:37:10 10 A. Yes.

11 Q. Now, at some point during that time period
12 Diamond Shamrock underwent a name change to Maxus; is that
13 correct?

14 A. Yes. That would have been probably at the end of
09:37:22 15 '87 or thereabouts. By that time we had sold our chemical
16 business. We had spun off our refining and marketing
17 business, which refined gasoline, and then sold it under
18 the Diamond Shamrock name throughout this part of the
19 country. And at that point the company had really become

09:37:42 20 nothing but an oil and gas exploration and production
21 company, and we changed the name to Maxus in part to
22 reflect that we were in a different business and in part
23 because the gasoline stations wanted to continue to use
24 the name Diamond Shamrock.

09:37:55 25 Q. All right. And that's a business plan that the

JAMES KELLEY - MAY 16, 2006
DIRECT EXAMINATION BY MR. CORBAN

09:37:58 1 company, the Diamond Shamrock Corporation, had embarked
2 upon a couple years earlier; is that correct?

3 A. That's correct. We'd had a strategic plan, went
4 back in several years before that, to begin to divest

09:38:11 5 ourselves of some of the businesses we had been in. We
6 were in the coal business and the refining and marketing
7 business and some other miscellaneous businesses, and, of
8 course, in the chemical business. And our strategic plan
9 was to focus our management energies as well as our

09:38:27 10 capital assets, capital investment in the oil and gas
11 business because we thought at this time that was the most
12 profitable thing we could do for our shareholders.

13 Q. Very good. Now, Mr. Kelley, you mentioned the
14 sale of Diamond Shamrock Chemicals Company in 1986, did I
09:38:41 15 understand you correctly?

16 A. Yes.

17 Q. Okay. Were you involved in that sale?

18 A. I was.

19 Q. And do you have an understanding of why Diamond
09:38:49 20 Shamrock decided to sell its chemical subsidiary?

21 A. Yes. There were several reasons. First of all,
22 as I say, we had made a strategic decision to focus on our
23 oil and gas business. That was where we thought we could
24 earn the most returns. We, frankly, thought we had a very
09:39:06 25 good team of people that were engaged in geological

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matters and exploration and production.
In addition, the chemical business at that point in time, actually beginning before then, had come under numerous new regulations with respect to pollution control that necessitated significant capital expenditures, improving our plants, installing pollution control equipment, and in addition, we were being required by state and federal legislation to clean up a lot of our plant sites, to clean up groundwater and other kinds of problems that had not been -- they weren't illegal, but they were just required to be cleaned up under Superfund and some of the other pollution control regulations that came into effect during the early part of the 1980s.

So we had a business that, as I say, was very management intensive because it involved a number of plants. It was very capital intensive both because of the pollution control regulations that we had to comply with, but then also, frankly, all the safety regulations that were being imposed on us. So there was a lot of additional capital and time being spent, and we just decided that we had to make some choices about what businesses we were going to continue in.

And the strategic decision that was made by the board was to focus on our oil and gas business, to divest our chemical business, to divest our coal business

JAMES KELLEY - MAY 16, 2006
DIRECT EXAMINATION BY MR. CORBAN

09:40:29 1 as well as some other -- other miscellaneous businesses
2 that we had.

3 Q. Now, did -- with respect to your decision to sell
4 Diamond Shamrock Chemicals Company, did Diamond Shamrock
09:40:40 5 have a preferred way of selling the company?

6 A. Yes.

7 Q. What was that?

8 A. We wanted to sell the business in its entirety.
9 We didn't want to retain any assets nor did we want to be
09:40:54 10 responsible for obligations and liabilities arising out of
11 the business.

12 Q. And is that something that you -- you
13 communicated to potential buyers?

14 A. Yes. I think all potential buyers clearly
09:41:05 15 understood that we were -- we wanted to do what was called
16 a stock sale. In other words, we were going to sell the
17 stock of our chemical business. We weren't going to sell
18 its assets, you know, plant by plant or machine by
19 machine, and the reason for that was we wanted to sell the
09:41:23 20 whole business in one single transaction.

21 Q. Would it even have been possible to have done an
22 asset sale of a company like that?

23 A. It would have been incredibly difficult and time
24 consuming. There were, you know, I don't know how many
09:41:35 25 plants, certainly 30 or 40 major facilities. You would

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09:41:37 1 have had to figure out who owned the real estate and
2 prepare documents to convey all of that real estate. You
3 would have to convey the machinery and the equipment and
4 transfer the employees. It would have been a horrendous
09:41:47 5 job.

6 It -- In my experience it would be very
7 unusual to try to sell such a large and complicated
8 business in an asset transaction. You always do these
9 kinds of things using a stock transaction.

09:41:59 10 Q. Now, at some point, I take it, Occidental
11 Petroleum Corporation expressed an interest in the
12 acquisition of your chemical subsidiary, correct?

13 A. Yes.

14 Q. And did you come to have an understanding of why
09:42:11 15 Occidental was interested in buying the chemical
16 subsidiary of Diamond Shamrock?

17 A. Well, broadly I think both Oxy and Diamond
18 Shamrock were relatively mid-size businesses, mid-size
19 companies in the chemical business. They were quite small
09:42:27 20 compared to companies like Dow or Dupont or some of the
21 European companies that were in the business, and I think
22 they felt they needed to be larger in terms of critical
23 mass.

24 In addition, we had some businesses that
09:42:38 25 they considered and we considered to be, you know,

JAMES F. KELLEY - MAY 16, 2006
CROSS-EXAMINATION BY MR. HOWARD

1 STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Diane L. Robert, Official Court Reporter in
4 and for the 14th District Court of Dallas County, State of
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions
7 of evidence and other proceedings requested in writing by
8 counsel for the parties to be included in this volume of
9 the Reporter's Record in the above-styled and numbered
10 cause, all of which occurred in open court or in chambers
11 and were reported by me.

12 WITNESS MY OFFICIAL HAND, on this the 25th day
13 of May, 2006.

14

15

Diane L. Robert

16

Diane L. Robert, CSR
Texas CSR 2179

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