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Data Summary Report Jury Research

Macpherson Oil

v.

The City of Hermosa Beach

July 21, 2009

Los Angeles, California

jury research | communications training | litigation consulting

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Project Description

On July 21, 2009, Trial Partners held a mock trial in Los Angeles, California. Trial Partners recruited 50 surrogate jurors from Los Angeles County to participate, using demographics from actual jury pools and in consultation with trial counsel.

Focus of Mock Trial

The mock trial was designed to:

- Evaluate juror reactions to case issues, themes, and key evidence
- Gauge juror reactions to damage amounts and arguments
- Determine juror predispositions that impact the case outcome (verdicts and damages)
- Identify which arguments are persuasive during the deliberation process
- Assess the overall case strengths and vulnerabilities
- Identify areas of confusion for jurors
- Test the impact of key jury instructions and verdict form questions
- Assess juror reactions to attorneys

Agenda

The mock trial included the following events:

- Completion of Confidentiality Agreement and Background Questionnaire
- Introduction by Consultants
- Presentation of Neutral Statement of the Case
- Plaintiff Presentation on Damages (Paul Chan, attorney for the plaintiff)
- Completion of Reaction Questionnaire
- Defense Presentation on Damages (Terry Bird, attorney for the defense)
- Completion of Reaction Questionnaire
- Plaintiff Rebuttal on Damages (Paul Chan, attorney for the plaintiff)
- Completion of Reaction Questionnaire
- Defense Presentation on Causation for Juries C and D (Terry Bird, attorney for the defense)
- Completion of Reaction Questionnaire (Juries C and D only)
- Plaintiff Presentation on Causation for Juries C and D (Paul Chan, attorney for the plaintiff)
- Completion of Reaction Questionnaire (Juries C and D only)
- Defense Rebuttal on Causation for Juries C and D (Terry Bird, attorney for the defense)
- Completion of Reaction Questionnaire (Juries C and D only)
- Legal Instructions
- Deliberations and Verdicts
- Completion of Group and Individual Verdict Forms
- Debriefing of Jurors

Neutral Statement of the Case

Trial Partners read the following statement of the case to all jurors:

The case you will hear about today is a civil lawsuit involving a contract dispute. The plaintiff is an oil company named "Macpherson Oil Company" and the partnership it heads, called "Windward Associates." Throughout the day, the plaintiff often will be referred to simply as "Macpherson" or "MOC." The City of Hermosa Beach is the defendant, and throughout the day it will often be referred to simply as "the City."

In 1992, the City and Macpherson entered into a contractual Lease Agreement that allowed Macpherson to drill for oil in Hermosa Beach. In 1995, the citizens of Hermosa Beach passed a proposition, called "Prop E," that outlawed oil drilling in Hermosa Beach. At the time, however, both the City and Macpherson did not believe that Prop E applied to the 1992 Lease Agreement, so each party continued to perform under the terms of the agreement.

Recently, a California Court determined that Prop E should have been applied to the contract in the first place. This means the Court determined that when Prop E was passed in 1995, the City breached its contract with Macpherson.

Macpherson is now seeking compensation from the City for the City's breach of the contract in 1995 that resulted from the passing of Prop E. Macpherson claims that it has suffered damages in the form of lost profits from the loss of the opportunity to drill for oil, and it is seeking compensation for that claimed loss. Alternatively, it is seeking restitution (compensation for its out-of-pocket expenses incurred in reliance on the contract).

The City claims that the amount of money Macpherson is requesting for its lost profits is speculative and so cannot provide a basis for an award of damages.

Trial Partners read the following statement of the case to jurors in Jury C and Jury D:

Earlier today you learned that a California Court determined that the City breached its contract with Macpherson when Prop E was passed in 1995. You will now hear arguments from both sides on the issue of "causation," which is the question of what caused Macpherson's claimed damages.

In September 1998, the City Council of Hermosa Beach voted to terminate the Macpherson oil project on safety grounds. The City contends that the project was stopped due to health and safety risks. The City further contends that the September 1998 City Council decision was a legitimate independent event that stopped the project and cuts off any damages based on the Prop E breach.

Macpherson counters that the 1998 City Council decision was not legitimate or valid, and that it did not allow the City to avoid upholding its end of the 1992 Lease Agreement.

Macpherson also contends that its project was very safe and that the City manufactured the September 1998 City Council decision as an excuse to avoid liability for the Prop E breach of its contract with Macpherson.

Participating Attorneys

Paul Chan of Bird Marella represented the plaintiff, Macpherson Oil

Terry Bird of Bird Marella represented the defendant, The City of Hermosa Beach

Jurors' Reactions to Case Presentations

We measured jurors' leanings at different points in the case presentation to assess how the group responded overall to the themes, arguments, and evidence. Jurors had four choices: strongly support the plaintiff, somewhat support the plaintiff, somewhat support the defense, and strongly support the defense.

Jurors also answered open-ended questions about each party's best arguments and what jurors found confusing or still had questions about in the case. This section summarizes jurors' responses to these questions.

Jurors' Commitment to Case

Jurors stated their leaning at a number of key points:

- After the plaintiff's presentation on damages (All Juries);
- After the defense's presentation on damages (All Juries);
- After the plaintiff's rebuttal on damages (All Juries);
- After the defense's presentation on causation (Jury C and Jury D);
- After the plaintiff's presentation on causation (Jury C and Jury D);
- After the defense's rebuttal on causation (Jury C and Jury D).

Table 1: Juror Commitment to Each Side's Case (All Leanings)

| | Leaning after Plaintiff Presentation on Damages (All Juries) | Leaning after Defense Presentation on Damages (All Juries) | Leaning after Plaintiff Rebuttal on Damages (All Juries) | Leaning after Defense Causation Presentation (Jury C and Jury D) | Leaning after Plaintiff Causation Presentation (Jury C and Jury D) | Leaning after Defense Rebuttal on Causation (Jury C and Jury D) |
|-----------------------|--|--|--|--|--|---|
| Strongly for π | 34% | 12% | 30% | 19% | 50% | 35% |
| Somewhat for π | 50% | 20% | 34% | 27% | 19% | 15% |
| Somewhat for Δ | 12% | 26% | 16% | 35% | 23% | 35% |
| Strongly for Δ | 4% | 42% | 20% | 19% | 8% | 15% |

Table 2: Juror Commitment to Each Side's Case (Jury A and Jury B)

| | Leaning after Plaintiff Presentation on Damages | Leaning after Defense Presentation on Damages | Leaning after Plaintiff Rebuttal on Damages | Leaning after Defense Causation Presentation | Leaning after Plaintiff Causation Presentation | Leaning after Defense Rebuttal on Causation |
|-----------------------|---|---|---|--|--|---|
| Strongly for π | 38% | 8% | 33% | -- | -- | -- |
| Somewhat for π | 50% | 21% | 33% | -- | -- | -- |
| Somewhat for Δ | 12% | 33% | 25% | -- | -- | -- |
| Strongly for Δ | 0% | 38% | 9% | -- | -- | -- |

Table 3: Juror Commitment to Each Side's Case (Jury C and Jury D)

| | Leaning after Plaintiff Presentation on Damages | Leaning after Defense Presentation on Damages | Leaning after Plaintiff Rebuttal on Damages | Leaning after Defense Causation Presentation | Leaning after Plaintiff Causation Presentation | Leaning after Defense Rebuttal on Causation |
|-----------------------|---|---|---|--|--|---|
| Strongly for π | 31% | 16% | 27% | 19% | 50% | 35% |
| Somewhat for π | 50% | 19% | 35% | 27% | 19% | 15% |
| Somewhat for Δ | 12% | 19% | 8% | 35% | 23% | 35% |
| Strongly for Δ | 7% | 46% | 30% | 19% | 8% | 15% |

Figure 1: Leaning Following Plaintiff's Presentation on Damages

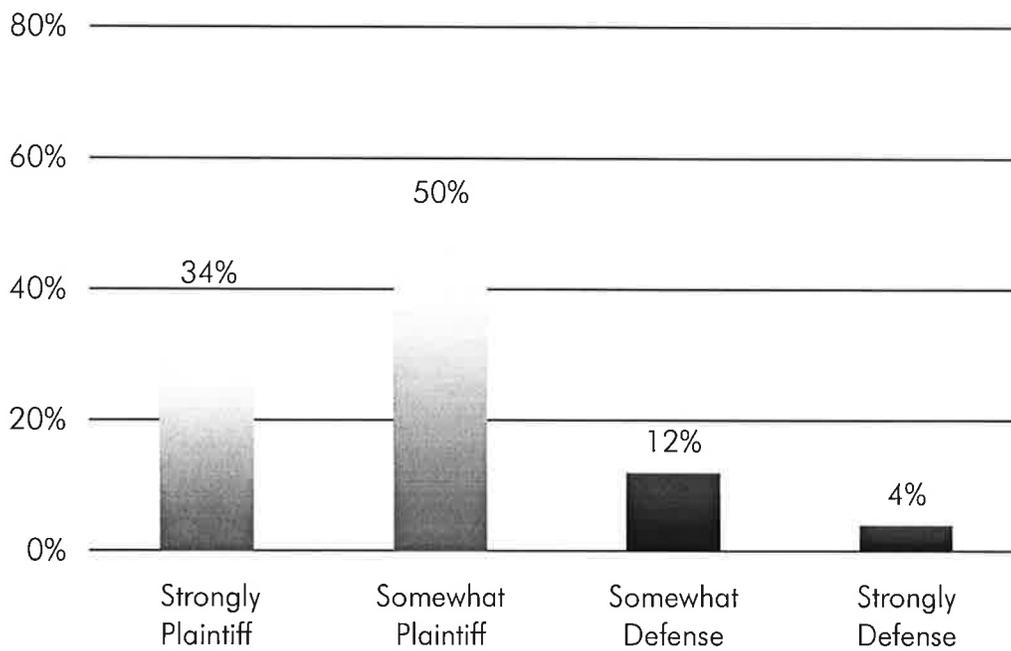


Figure 2: Leaning Following Defense's Presentation on Damages

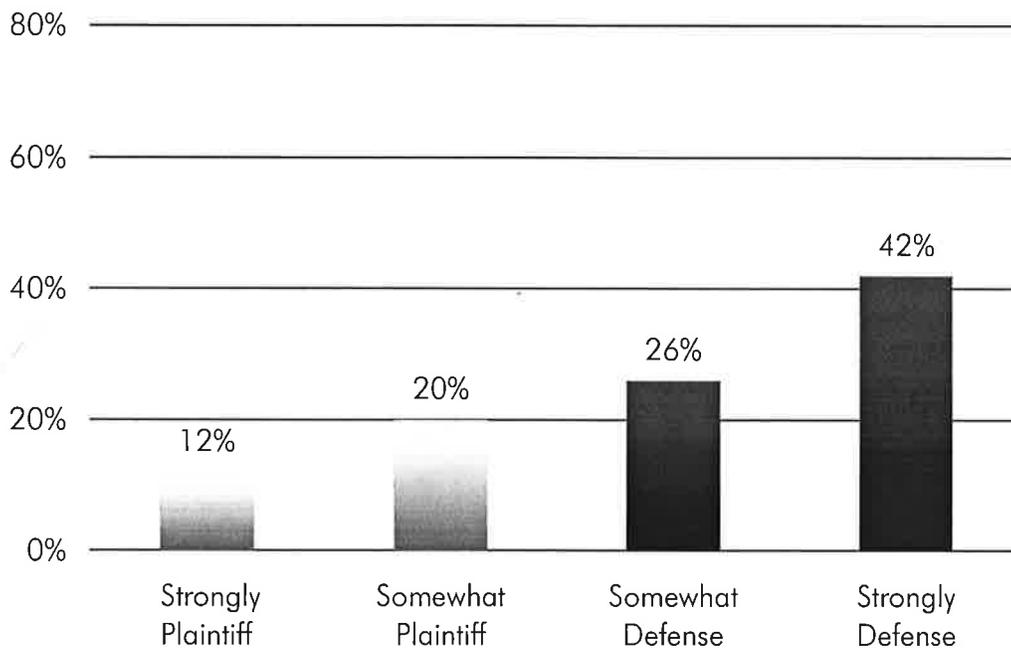


Figure 3: Leaning Following Plaintiff's Rebuttal on Damages

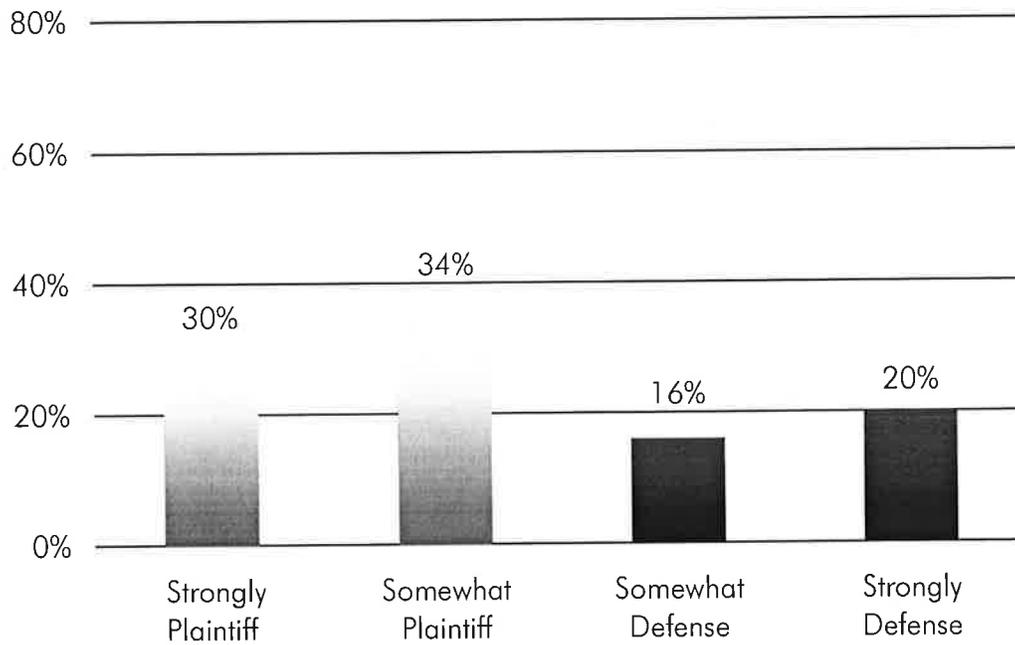


Figure 4: Leaning Following Defense's Presentation on Causation (Jury C and Jury D)

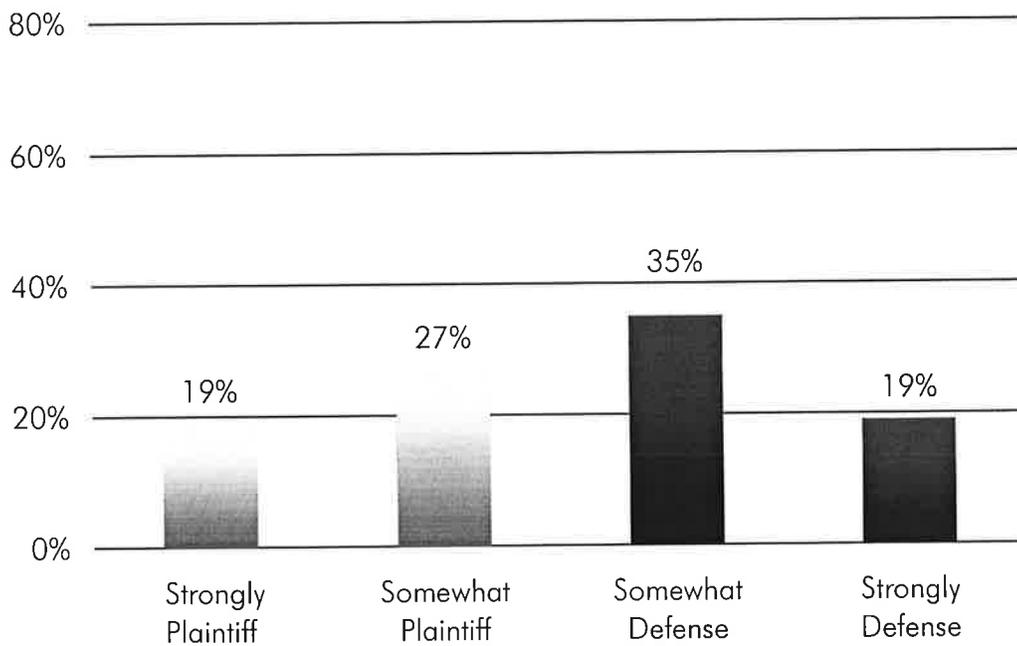


Figure 5: Leaning Following Plaintiff's Presentation on Causation (Jury C and Jury D)

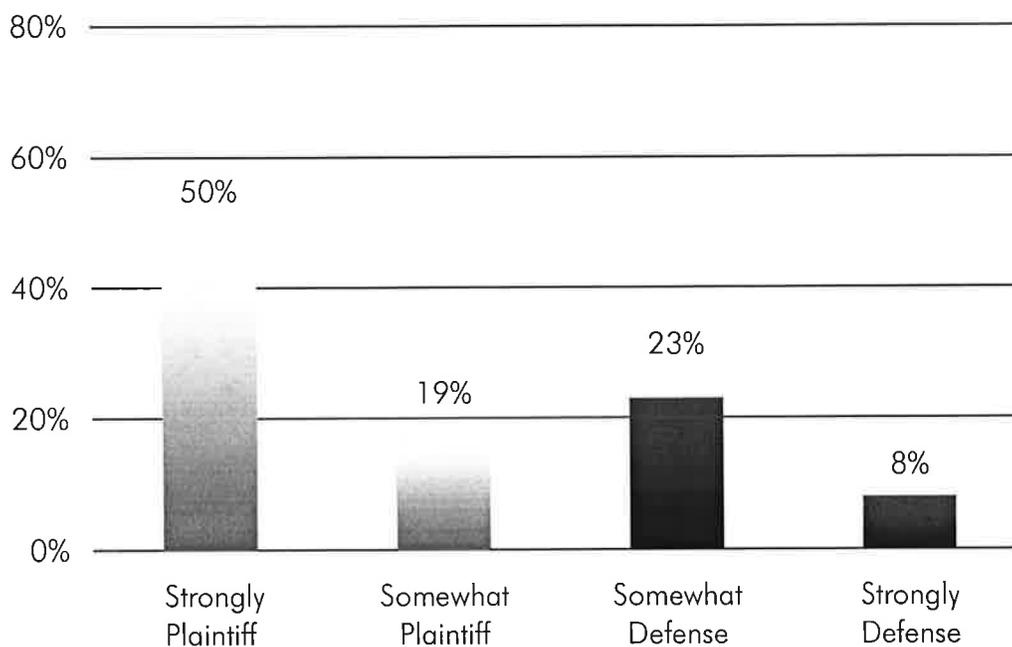
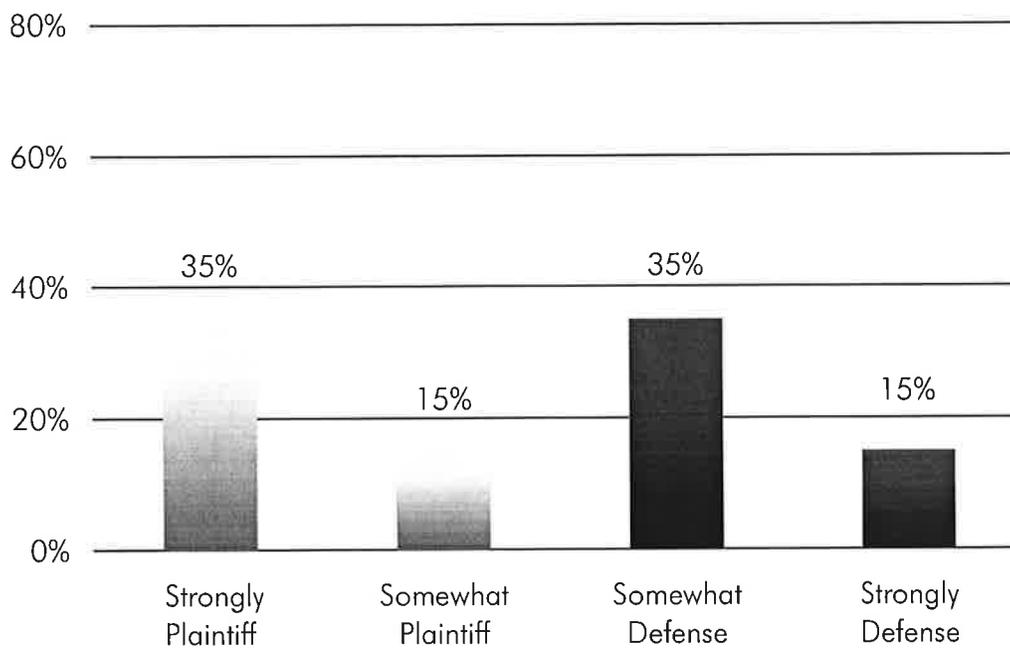


Figure 6: Leaning Following Defense's Rebuttal on Causation (Jury C and Jury D)



Jurors' Reactions to Case Presentations

Jurors had a number of opportunities to respond to open-ended questions about the strongest arguments and questions for each side's case:

- After the plaintiff's presentation on damages (All Juries);
- After the defendant's presentation on damages (All Juries);
- After the plaintiff's rebuttal on damages (All Juries);
- After the defendant's presentation on causation (Jury C and Jury D);
- After the plaintiff's presentation on causation (Jury C and Jury D);
- After the defendant's rebuttal on causation (Jury C and Jury D).

Jurors' responses to the attorney presentations appear summarized in this section. Note that jurors may give more than one response, so the total number of responses may be more than the total number of jurors.

Jurors' responses help to gauge how successfully each side conveys its themes, determine which facts make the strongest impression on jurors, and illuminate areas of misunderstanding, doubt, or confusion in jurors' minds. If a side effectively presents its main arguments, we expect to see convergence in the themes and language used by jurors in their answers about the best facts or arguments for that party. If a party has not made its case as well, we expect to see responses all over the map. These responses also help indicate how jurors' perceptions about each side's case shift (or not) as they hear additional evidence and arguments.

What do you think are the strongest arguments and facts supporting the plaintiff (Macpherson Oil) after the plaintiff's presentation on damages?

Response

Frequency

Both sides originally agreed with the estimated value of the project. Macpherson and COHB entered into a joint contract, which projected their estimated income. The fact they lost money based on an overturned decision does not seem legal based on their projected financial income and preexisting contract prior to the overturned Prop E. Macpherson entered into a contract with COHB (and area) that has been historically involved with oil drilling. There was a lease agreed to by both parties. The City and Macpherson entered into an agreement and expected revenue to be generated. The contract seems airtight. Macpherson entered into the contract with COHB and began to follow through on their end. Macpherson had no say in the ending of the contract and Macpherson should not be left empty-handed. Both parties agreed that it would be very profitable. The contractual agreement. The signed agreement and performance rendered. They had a legal and binding contract with the COHB. There were several contracts involved. There was a contract. Both sides agreed (in a contract) that there would be a substantial amount of oil drilled in Hermosa Beach. The contract. The contracts between the parties. What both sides thought and expected when they entered into the contract. They entered into the contract in good faith. They had a contract before Prop E was voted on so COHB is liable. The leases signed by both parties. The City broke the contract. The contracts that were signed by both parties. The contracts and lease agreement. There were two lease agreements. There was a contract agreement with the City and some compensation is definitely owed to Macpherson.

25

There is oil there and they did the research. The reports, especially those paid for by specialists, and especially as the projected profits and barrels started to increase. The research done by both sides projecting profits. The charts of how much profit would be made. The estimated profit loss. The projection of lost profits. The research that went into projecting the costs and lost profits. The lengthy research by both parties about the oil opportunity and the independent research speculating greater quantities of oil. There were studies done by both sides over 9 years. The historical facts, independent consultants, and studies done by Macpherson and COHB. The money that was projected to be made. The studies that always showed that oil existed, and revised after more extensive studies were done to show an increase in projected quantity. The years of research and reports from Hermosa showing they were going to benefit from drilling, as well as independent research from outside company (Inter West) that believed there would be benefits from

17

Response

Frequency

drilling. The reports by Morris & Williams. The projection of lost profits. The rate of return could be greater. Third party research. There was third party independent research.

Macpherson could have spent 12 years on another project if they had known they'd be blocked by the COHB. The costs absorbed for the 12 years of prep work. Macpherson continued on for 12 years with the development of the project and spent millions of dollars in the process. Macpherson spent a lot of money over 12 years doing research with an expectation of making a profit in the end. Macpherson spent a lot of time and intended to drill. MOC spent a lot of time and effort working on this project. They invested a lot of money in it. Macpherson spent a lot of money. The amount of years and money spent by MOC to prepare for the project. Macpherson spent 12 years to study the project. The investment already made to research it. The costs absorbed for environmental research. MOC already spent 8 million in the project. Macpherson spent 8 million without the City spending anything at all. Macpherson deserves to be reimbursed for their expenditures and potential profit.

15

The great potential for the project. The proven potential of neighboring oil fields. The large profits and millions of barrels of oil. The commonsense argument of oil at existing neighboring sites. The map of the area showing where the oil fields are. The geo surveys were strong on facts relating to the potential of the project. The documentation supporting the trends as far as the amount of oil to be recovered. The geological studies done by both sides. The reports identifying the amount of barrels in the fields. There was a history of oil production in the areas.

9

COHB did not try to overturn Prop E. The City broke the lease by allowing a proposition on the ballot. The court ruled that the City was responsible for the passage of the ban. The City did not hold voting ballots for Prop E and the City knew that Prop E would stop oil drilling. The City passed Prop E and it is responsible for the project to be stopped. The court already ruled against the City and it determined that the only way to settle this is a monetary award. The court already ruled on Prop E.

7

The City has a no-cost vested interest in the contract. The City did not put up any money and stood to gain a lot of money or revenue for the City. The City just wanted to benefit from the revenue. Macpherson put up a large sum of money beforehand while the City simply planned on reaping the benefits. The City was involved with MOC when it meant profits for the City. The City was aware of the potential significant revenue to it.

6

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Settlement demand was less than one-half of the estimated value. Macpherson is asking for an amount way below what it projected it could have gotten. Macpherson is asking for half of what was estimated. MOC is not asking for the full amount. MOC went for a moderate amount and did not ask for the full projected amount. | 5 |
| I do not support any arguments that Macpherson has made so far. No good arguments. | 2 |
| It is a relatively small, family-owned, local player on the oil scene. It is a family-owned company. | 2 |
| Most of the same experts were used throughout. The same geologists were used in calculating the amount of oil to be recovered. | 2 |
| Macpherson needs to be reimbursed for the oil project. | 1 |
| Macpherson always had the money. | 1 |
| There were lost profits but not the amount that MOC is requesting. | 1 |

What did you have doubts about or not believe in the plaintiff's presentation on damages?

Response

Frequency

I had doubts about the amount of oil that would have been drilled over the 30 years. The projections of oil [production]. Who paid for these "independent studies?" Having the same people revise their own profit projections could also have an adverse effect. The projection studies were prepared/sponsored by MOC and its potential partners, and they were only projections. I have doubts about the "expert" analyses, especially those who worked with MOC. The actual "30 year" projection amount. Did MOC pad its projections to get the City's cooperation, or did they sense that this might end up in court? What amount of barrels of oil was [really] projected by the research companies? How many barrels would be produced each year? Even though MOC has cut the barrel amount to 20 million, it is still hard to agree 100% with that estimate. I have doubts about the reports that were [presented]. I'm not sure if they should make that amount based on projections. I have doubts about the quantity of oil to be recovered. How many barrels of oil [would really be produced]? Why would the consultant say 27 to 40 million barrels and the company would only want 20 million barrels? Even though independent studies were done, they were done by companies that would profit from a partnership with MOC, so it makes me question the accuracy.

16

Lost profit damages request. I have doubts about the total amount MOC is claiming in damages because this amount is a projected amount. I have concerns about all this money MOC is asking for. \$551 million? This money was not actually made. I doubt that they would have made that much or really produced that much oil, but if they would have shared some of the profits... The estimated profit loss. Actual monetary amounts requested for lost profits. The determination of lost profits seems excessive. I don't really understand how he's coming up with \$550 million in lost profits for the City to pay out—I don't believe this amount. The amount of money lost. The amount of lost profits [requested] was too high. I don't believe 100% the amount of money MOC is asking for, as the drilling never actually started. I have doubts about the way compensation was calculated.

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Nothing. Nothing—it all seemed realistic and verifiable. I believed it all, and I have no doubts at this time. Nothing at this point. I felt good about the whole presentation. At this point I do not have any doubts or disbeliefs in anything that has been said or shown to me. None. Actually, to me, everything was believable. Nothing yet. None at this time. Nothing at this point. I don't have doubts about the MOC case—they are entitled to monetary compensation.

16

Response

Frequency

The reports are speculative. There is always the idea of speculation, although it is small given today's technology and research sophistication. Speculated losses. All of the reports are speculative—they may be well researched, but they are speculative nonetheless. What if there was a major shift in oil consumption? Would MOC still hold the City responsible for a change in the market? A lot could change in the 30-year lifespan of the project. The figures are speculations and not guaranteed. The reports were just estimates.

6

Why did the voting system okay this before they started drilling? There should have been some kind of grandfather clause to bypass this. After Prop E passed, why was this ignored or missed by both parties? The company [MOC] itself ignored Prop E. This should have been part of the contract (what to do if such a proposition is passed). Why didn't MOC do research on Prop E to see if it would stop or invalidate their contract with the City?

4

I would need to know how such a lawsuit would affect the public and the City. Hermosa Beach has, what, 10,000 people? How will they come up with \$500 million? I know it's not MOC's fault, but I kind of wish that it would contribute something positive to the City with all of that money.

3

What about the legacy costs of getting the oil out? Was MOC really able to produce that amount with the equipment it had? Was it the very latest equipment? In the different reports, what level of technology was used? How close was MOC to actually getting these amounts of oil, according to their schedule?

3

The fact that the contract had a contingency clause for MOC to opt out of the contract if no oil was found demonstrated that there was no wrongdoing by the City. The provision in the contract by MOC to stop drilling.

2

[Awarding money damages] is the only way to settle this, but at this time in history we need to consider shifting to alternatives to drilling for oil.

1

I have doubts that they really found oil in the City of Hermosa Beach. I'm still not clear on that??? [sic]

1

I have questions about the Court's ruling in favor of Hermosa.

1

I'm not sure the investors were really ready in time or that they had enough money to invest [with MOC].

1

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Is a city really legally responsible for the democracy of its citizens? | 1 |
| Is MOC just trying to force the City to allow drilling now that the price of oil is so high? | 1 |
| It took too long (12 years) to complete the studies and obtain the permits. | 1 |
| It would be informative to learn more in terms of the financial planning for the future and the time and effort put into the project (in depth). | 1 |
| MOC did not do anything or drill for oil. Nothing was taken from the oil site. | 1 |
| The fact Prop E passed demonstrated that there was no wrongdoing by the City. | 1 |
| They did not say which projects were actually [started]—did they drill at all between 1992 and 1995? | 1 |

What do you think are the strongest arguments and facts supporting The City of Hermosa Beach after the defendant's presentation on damages?

Response

Frequency

No certainty of profit. It was all speculation and they assumed how much money they would make. 551 million is speculative. The amount of guesswork done by MOC. Speculation about the amount of barrels to be drilled. The MOC costs are speculative and not proven without doubt. The estimated projections. The information is speculative and cagey. The figures are speculative and the plaintiff did not prove its case. It is uncertain whether or not the total loss is reasonable based on the evidence presented. The 550 million figure is not a proven loss to MOC. It is speculation and cannot be confirmed. The damages amounts are speculative and uncertain. They can't be given accurately according to the reports or evidence that was shown. There is no way to know the estimated loss. It is all speculation. The selling projections – there was no proof that MOC would have found any oil and that is worth 550 million in lost profits. There is no guarantee the wells would have approached their projections – MOC is guilty of wishful thinking. The profits are speculative and there is no basis to determine actual profits. The damage amounts are only estimates and might not be large enough. The speculative premise of the plaintiff's monetary damages request. It is all speculative. There is no proof. Everything is totally speculative until the drilling actually occurred. Profit speculations. Speculation! The speculative and contingent arguments. The amount of money is sketchy and not realistic. The amount of the demand is speculative. The amount of lost profits is too unreasonable and too speculative. There are unknowns and uncertainties. Macpherson knew the project was risky with drilling oil. MOC assumed the project was risky and that is what companies do.

27

MOC never explored the oil field or turned over dirt. The plaintiff never drilled so they wouldn't know how much oil they could have gotten. They never drilled. There was no drilling to prove the projected damages. There was no ground testing. The drilling did not occur. MOC has never explored or developed oil fields – they only invested in proven fields. MOC never drilled anything. No drilling was done. No oil was drilled. MOC never drilled in the first place. No drilling was done for testing. There was no drilling. MOC never started drilling so we don't know if there was oil. They never drilled. No initial drilling to prove oil potential. No drilling ever took place. They didn't drill anything. No drilling was done so there was no proof of oil. MOC never drilled one oil well to support their cause. MOC has no experience in drilling wells from scratch.

22

Response

Frequency

The reports speculating a high amount of producible oil were given by paid experts of the plaintiff. The expert reports were possibly biased. The number of barrels increased when MOC paid for the studies. The experts were paid by MOC for their reports and varied so greatly from the internal reports. The studies for projections showing the greatest concentrations of viable oil were the result of those being paid by MOC and these studies were being used to raise capital from investors. MOC has a higher estimated number of barrels based on the fact that these projections are from reports provided by experts MOC hired. The estimates were given by MOC-sponsored studies. The conflicts in the speculative amounts of oil to be drilled (inflated numbers to be presented to investors and very minimal internal projections). The flow rates looked good for the investors. The specialists MOC hired changed their estimates. At first the numbers were low and later revised to be higher. The reports were conflicting as to the amount of oil. MOC didn't have credibility with the 30 barrels of oil. Ambiguous statements by MOC. The estimates all vary.

18

Macpherson's own engineers were not convinced that oil was at the Hermosa Beach site. The reports by MOC shows lower estimates of potential oil. There is reasonable uncertainty if oil is present. MOC's acknowledgement was uncertain. Most of the "pre-lease" studies fall below 15 million barrels of oil. The Redondo wells are inconsistent. The reports were conflicting about the amount of oil in Redondo (If I'm correct in what I heard).

8

MOC was "only" optimistic in doing a series of wells. If one well was a dud, two is questionable and there would have been no point in drilling three. The document showing Macpherson's unwillingness to commit 100% to the drilling of the wells. The Lease allowed MOC to pull out of the study. Don Macpherson said they would not drill if they did not find oil with the third drilling.

7

Don Macpherson stated that you cannot be completely positive of the output until drilling. The comment made by Don Macpherson that it is uncertain how much oil would be found unless you drill. Don Macpherson said it himself that they are not sure if there are 15 million barrels of oil. Don Macpherson said himself that the only way of knowing was to drill. The comments made by Don Macpherson himself. Don Junior's statement that test drilling is the only way to be certain.

6

The investors pulled out. They could not find investors to come up with the money. Why did the two partners pull out? This is a red flag. MOC was always rallying to find new investors. MOC couldn't find investors. Investors?

6

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| The amount of barrels needed to break even. Macpherson's report that says drilling is not viable if they don't expect 15 million barrels. Macpherson Jr. said they needed an estimate of 15 million barrels to begin drilling. | 3 |
| The communities surrounding the area would have been in harms way by the gas from the drilling. There were homes and businesses too close to the site. | 2 |
| The horizontal drilling issue – how it had not been used in Southern California. The horizontal drilling is not proven. | 2 |
| Macpherson is motivated by greed and not the community's well being. | 1 |
| MOC was the only company who bid on this project. | 1 |
| The 1990 MOC internal report from Williamson stating great concern that the project would be a drain on the company. | 1 |
| The City had a constitutional right to ban drilling. | 1 |
| The City should not pay 55 million. Both parties should be responsible. | 1 |
| The COHB conclusion was that the project would be a significant downside. | 1 |
| The judge's instruction on damages cannot be based on "remote, contingent, or merely possible evidence." | 1 |
| The letters from MOC to the Coastal Commission. | 1 |

What did you have doubts about or not believe in the COHB's presentation on damages?

Response

Frequency

It doesn't prove to me that there would not be a sufficient amount of oil to drill commercially. The fact that he said they also do not know how much, if any, oil was there. There was confusion about the quantity of what oil was speculated on or the values. What the overall projected amount of oil would be discovered through drilling. The amount of barrels able to be produced. They weren't positive about the amount of oil. All parties did agree through studies that there was oil there. Maybe not the amounts speculated, but there was strong oil potential. Research estimates might have been biased towards MOC. MOC actually believed they were certain of being successful in finding oil.

9

I have doubts about the damages. I have doubts about how much money the plaintiff is asking for. The profit losses on Macpherson's side. The actual estimates of MOC's loss. That they have been able to find that much oil in the area and if it would have been worth the amount they are asking for is not justified in this case. The City should not pay that amount of money for something that was never drilled. Fault lines? We can't predict earthquakes, so how can they predict where oil is? Doubts about the varying amounts and estimations based on the employment of the estimators. Even if they tested for oil and did find some, the oil company still might not drill for oil.

8

I have a bit of doubt that the City wasn't in the project for the money. If they were to make money in the end, it would have made the City quite happy with the results. That the City wasn't in favor of the project. The City thought it was a worthwhile investment at the time. That the City had the desire to make money or they would not have done the agreement in the first place. It was about money to be gained originally and not about the citizens who lived close by. The reality is the City stood to profit quite a bit. The City entered into this agreement believing that they were going to make a profit – "common sense." Now they are saying Macpherson was not going to make a profit because they do not want to pay, which is not cool.

7

Response

Frequency

I don't believe that the City did not know beforehand that there would be health risks for the residents. I doubt that the City was completely innocent. I have doubts about the City's position that they were "sold" and "lobbied" by the oil company. It is a little suspicious to paint the City as innocent bystanders; it has a history of the City Council wanting oil speculation but its residents have been against it. The actual site being close to residences is something that the City had to have known about. They provided the City information (size, population, number of blocks). They sold out their residents and now are trying to make that reflect badly on Macpherson.

6

There was not anything that I did not believe. Nothing at this point. Everything is believable. None. Not at this time. I strongly favor the defense.

6

Terry Bird stated repeatedly that proof of profitability can only be attained by drilling, yet Prop E forbids drilling. Both sides believed it would be successful all along – only Prop E stopped the project. Even Prop E supporters believe it would be a successful project if allowed to continue. The only doubts I have is that both companies were going to make money and if Prop E wouldn't have passed, both clients would have been happy with their decision.

4

I feel out-of-pocket expenses should be paid or at least something for the breach, but not the \$550 million. I just want the plaintiff to get the out-of-pocket expenses. That maybe a little more than \$6 million should be given back to MOC.

3

The City should have drawn a contract that would relieve it of any responsibility with something like Prop E; the plaintiff did. MOC had clauses to protect it. Why did the City not have a backup plan that would cover inconsistencies in the contract or possible failures? Why didn't the City protect itself from liabilities?

3

Defense relied too much on speculation to negate the plaintiff's claim. Entire presentation was not believable as Plaintiff has more materials, charts, and figures, which were understandable. It seemed a little glib to call oil speculation more of an art than a science. There are big variables but it does seem like MOC did quite a bit of homework, even if it was commissioned and even if MOC was motivated by its desire to sell the project to potential investors.

3

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Settlement offer was not realistic and was too low. City did not monitor project performance as it should have. Settlement amount. The amount of restitution the City feels responsible for seems irresponsibly low. | 3 |
| Expert reports. Defendant's experts came on board too late and not often enough. | 2 |
| When the contract was made originally and when the contract was terminated, after Prop E passed, why did the City have Macpherson still working on this project knowing that it was banned? Why did it take three years from the passage of Prop E until the project was terminated? What was the City's role in allowing that to happen? | 2 |
| I understand the City did not put any money into this. Did the City put money up? | 2 |
| The City did say yes to it (the project) so they are accountable to that extent as well. I believe the evidence, but because of the breach of contract, MOC did not have a fair chance, therefore the City should be liable for consequences. | 2 |
| City's knowledgeable involvement in project. The City seems to be underestimating the information from the beginning. | 1 |
| How he stressed too much that the area was located across from the housing area. I did not care for that part. | 1 |
| I believed that MOC could have made some profit or why bother to spend all the time and money. | 1 |
| I have doubts as well because he also didn't mention that there was court information that it had been proven and all they needed was an amount to settle. | 1 |
| It's hard to believe the one report (the marketing bumped up) supplied by MOC. During the plaintiff presentation, I did not even think of it as a marketing tool. Mr. Bird used that effectively in his presentation. | 1 |
| Macpherson could not find partners. | 1 |
| MOC said drilling continued from 1995 to 1998. City said no drilling occurred and no oil found. Horizontal drilling. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| The City wanted to do this project because it put it out to bid. The City did it because they had an idea that it was possible. | 1 |
| The City's contract that was signed by the parties. Little is known about the contract. | 1 |
| The effectiveness of horizontal drilling. | 1 |
| There were broken promises. | 1 |
| What is constitutional right to drill by COHB? How does City of \$50K income pay \$550? Why was MOC the only bidder – and not big oil? | 1 |
| Why did the City put its trust in MOC in guiding the studies and research if MOC had never done this type of drilling or was an unproven company? Why did the City not talk about independent studies of the 43 million barrels? | 1 |
| I believe that both parties entered this contract haphazardly. | 1 |

What were the strongest arguments and facts supporting the plaintiff (Macpherson Oil) after the plaintiff's rebuttal on damages?

Response

Frequency

Breach of contract. Courts already decided that the City breached the contract and Macpherson was never given the chance to test drill to prove the profits they felt were undeniable. Breach of contract – Macpherson was not given an opportunity to drill and both parties were well aware of what was going on. Macpherson did have a Lease Agreement from the City of Hermosa Beach, but the ban (Proposition E) forced them to abandon the project. The Court has already ruled in Macpherson's favor [that there was a breach]. Macpherson never had the opportunity to test drill. That [Macpherson] really didn't have a chance to drill for oil. The defendant violated the contract and pulled out because of a ballot initiative due to the citizens of Hermosa Beach. That the City didn't let the plaintiff drill. That the City breached the contract. The City didn't allow drilling and breached its contract. That there was a breach of contract that has already been decided by the Court. The City did not allow drilling. The court's decision that the City breached the contract. The law states a Lease Agreement was violated. The determination [by the court] that the City breached their Lease Agreement. The court acknowledging [a breach] in Macpherson's favor. The validity of the contract – Hermosa Beach prevented them from ever actually trying to drill. The City breached their contract after approving permits all along. The strongest argument centered on the contractual agreement that had been entered into by Macpherson Oil and the City of Hermosa Beach, which was breached per the passage of Proposition E. There was a breach of contract, and whatever amount the plaintiff spent, it should be repaid for out-of-pocket expenses. There was a Lease Agreement/contract between the parties, and some monetary benefits should be paid. Macpherson feels they should be paid for not being able to start the project [because of the breached contract].

23

Response

Frequency

The amount of effort spent on researching the investment. Going forward with getting permits, etc., and spending money to develop the project. Cost and expense of permits, studies, etc. Research done. Macpherson did all the research and obtained permits to do the project. Macpherson believed that the project would go forward or it would not have gone through all that preparation. The City has to pay for the consequences/damages/time [from] the time the contract was entered to the time that the City prevented the oil drilling. The expenses for permits, operations, and studies of possible oil in the Hermosa Beach area. Macpherson had a signed agreement and spent money on this project. Macpherson's willingness to invest out-of-pocket expenses versus the City not investing anything. The argument for restitution of \$8 million. Why would MOC bother if they weren't in it for the long haul?

11

The City agreed to enter into the Lease Agreements. The contracts with the City. The City voluntarily entered into the contract, but it would not let the plaintiff drill, so the City cannot use this reason as a defense. The City is not being reasonable; it did not act like it had a contract with Macpherson. The contract that the City entered with them should be somewhat honored. The City entered [into an agreement] two times with a contract; they should have done more research themselves. Both sides believed in the documents and the existence of a contract before Proposition E. The City entered the Agreement – it proposed to do the project by putting it out to bid, even though it knew it may have been impossible to do. The argument stating that both parties entered into an agreement suspecting that large amounts of oil were present. The fact that Hermosa entered a contractual agreement. The strongest argument is the fact that both parties entered into this Agreement. If they (COHB) thought there was risk, why enter into the contract?

11

Macpherson's experience (70 years). Seventy years in business. Macpherson experience in drilling. The fact that Macpherson does have experience developing oil fields in adjacent lands. Macpherson's experience opening new wells near working ones.

5

There was a strong possibility that there was going to be a substantial amount of oil drilled. An independent report showed an over 40 million barrel potential. Oil presence in Redondo and Torrance. Evidence of oil in surrounding areas that were profitable. Projected cash flow chart with barrel estimates. The geographic location in regards to a previous drilling site.

5

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| There was agreement from government [agencies] the City wanted, and Macpherson got permits. Macpherson got every permit. All the permits Macpherson obtained. That Macpherson continued applying for permits. | 4 |
| The issue of "reasonable certainty" of damages and lost profits. Macpherson has \$550 million in lost profits. Hands were tied because after entering the contract, the City of Hermosa Beach never allowed Macpherson to prove "reasonable certainty" [of lost profits]. | 3 |
| The two contracts show the City's trust in Macpherson and the potential profit for the City. The data given by experts and the City's belief in the possibilities of benefits. The expert reports and the financial gain on both sides as an incentive to see project happen. | 3 |
| I am not against oil companies making money – big money – but they have to make it. I don't see any arguments for the plaintiff as being strong. I do not support any [plaintiff arguments]. | 1 |
| Independent study (Intra West). | 1 |
| Macpherson had a sister company that wanted to come in with \$43 million. | 1 |
| That we are to decide on lost profits for Macpherson, and that Macpherson did not pay the last company (which estimated 40 million barrels). | 1 |
| The fact that both parties were in agreement initially that Proposition E did not apply. | 1 |
| The final assessment [of the potential amount of oil] was from an unpaid, unbiased source. | 1 |
| The lawyer was more logical and convincing. | 1 |
| Timeline of facts – look at the big picture and how these disagreements came about after the breach of contract. | 1 |

What were the strongest arguments and facts supporting the defendant (The City of Hermosa Beach) after the plaintiff's rebuttal on damages?

Response

Frequency

The amount [of oil] is speculative. Macpherson never got around to drilling, but they said themselves that it [the amount of oil] is not proven until you drill. Uncertainty of oil exploration. That Macpherson never drilled into the oil site. Letters of concern of amount of oil needed [to be profitable]. Need to be certain, but the Williamson internal report stated great concern, with significant downside. Don Jr.'s 1991 statement that only [after] test drilling can one be certain. Macpherson did take a gamble –the amount of oil present was not known. The project was speculative and the calculation of monetary value does not add up to what the plaintiff is asking. Good documentation of Macpherson's "wishful thinking" about oil in Hermosa Beach, with documentation of mediocre yields in Redondo Beach drillings. Macpherson did not drill so how can it know the oil quality/quantity? Speculation of potential oil production based on no initial drilling. Statements given by Macpherson about the lack of certainty from drilling at least three wells. Demand amount is speculative; Macpherson engineer admitted it took 15 million drilled barrels to decide if a project was lucrative. Oil produced is speculative. That the oil drilling was not done and we only have speculative estimates. The testimonies claiming there is a risk of not finding oil or turning a profit. The fact that Macpherson knew it could come across problems. There was no guarantee that there was any oil, because there was no drilling. The conflicting speculative profit opportunities. Speculation on total amount of barrels drilled over 30 years. Highly speculative nature of profits (studies sponsored by Macpherson and its partners). The amount of factors that prevent anyone from knowing the amount of drillable oil. That Macpherson was only speculating that oil was in the Hermosa Beach area. The actual \$550 million is uncertain. The fact that they do not know if there was any oil even after drilling; it does not add up to the amount Macpherson is asking for. The amount of guesswork and the number of assumptions being presented. They never started drilling so they had no idea if there was oil there. The lack of a factual basis for the expected amount of money versus what would have actually been found. The speculative figures and facts provided by the plaintiff. Only speculation – no certainty on profit and Macpherson assumes how much money [it would have made], but Macpherson never explored the oil field. Speculations. Speculation, with no drilling done. The amount of lost profits is unreasonable and too speculative. The cost of damage for which Macpherson is asking was speculative and overestimated. The speculative aspect of dollar amounts (for loss of profit); no drilling actually took place, so we don't know the true dollar amount or productivity of the drill site. Reports showing uncertainty of drills, wells, and

37

Response

Frequency

costs. Prior unproven fields to drill around. There were no test drills or proof of such oil present. Macpherson still had doubts – if they didn't get 15 million barrels [of oil] it wouldn't be a viable option. Documents by Macpherson expressing doubt and concern regarding drilling for oil.

The citizens' constitutional right to stop drilling with Proposition E. The City could not deny its citizens their proposition, so it shouldn't be punished for that. It is not the City's fault that they did not drill. It is the choice of the people and the City should not have to pay for the people's choice. Public choice in the City for Proposition E; the community must have felt harmed to start a campaign. Proposition E was passed because the people did not want it [drilling].

5

None – the City's arguments were not strong and the documents provided were out of context; minimal risks acknowledged were blown out of proportion. None. Weak "facts." At first, the evidence regarding the risks involved started swaying my opinion, but then, I realized that the City entered into the Lease Agreements after they had evaluated the risks. Therefore, I feel the City really does not have any strong arguments. I believe the City's defense is weak.

4

Information regarding payment of experts for information. The fact that [Macpherson's] numbers were inflated by paid sources.

2

[Macpherson's] lack of funding.

1

1997 Coastal Commission's indication of 15 million as minimal.

1

Cash flow charts as selling tools.

1

City was "sold" on the project based on estimates that were not realized, but voters (however small the numbers) later voted to have the agreement not honored (i.e., commitment to democracy versus commitment to a corporation).

1

Facts on plaintiff's research.

1

Macpherson believed that if they did not find oil, they would lose profits. If Macpherson did [find oil], the residents would be in danger of any problems.

1

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Macpherson entered into the Lease assuming the full cost of exploration, etc. | 1 |
| Macpherson has not developed new wells. | 1 |
| Since no drilling was done, only out-of-pocket expenses should be incurred [by the City]. | 1 |
| That the plaintiff never drilled – but the defendant never let them drill, so I don't know. | 1 |
| That they [the City] are willing to pay some amount to Macpherson for Proposition E. | 1 |
| The City feels they should not pay for something Macpherson never started. | 1 |
| The option-out clause written in contract; while standard, it is there for a reason. | 1 |
| The project would have been profitable for both sides. | 1 |

What, if anything, bothers you or confuses you most about this case?

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| <p>How to solve the lost profit issue somehow. Speculation on profits. [Macpherson] never drilled and is only using speculation. The actual amount of money to be paid out. I'm unsure about how much is actually valid or fair. Amount of projected oil. The total uncertainty. The amount of money lost – why didn't they drill to see if there was oil? The huge discrepancy between the two sides as to monetary damages and the inability to award a number other than \$0 or \$550 million. I feel Macpherson should get more than out-of-pocket expenses, but there is not enough proof to speculate what would be the fair amount. It should be more than out-of-pocket [expenses] but less than what they are asking – maybe midway? How many barrels of oil would be produced? This is somewhat speculative. The limited amount of opinions as to how much oil might be available. The amounts of estimated damages [from Macpherson and the City] are extremely different and the City has to show all expenses, if any, it incurred in the process. That the reports [on project oil amounts] can be used for either side – you can go either way to support your claim for lost profits. No conclusive case. How should we determine an appropriate dollar amount for restitution? Should it be closer to what the City claimed (\$6 million) or what Macpherson is seeking (\$8 million)?</p> | 13 |
| <p>I'm bothered by the ridiculous amount of money asked for by the plaintiff for what <i>might have been</i> profit. The amount that Macpherson is asking seems exorbitant. Nothing bothers me aside from what I perceive to be the plaintiff's greed. The amount that Macpherson wants to be awarded.</p> | 4 |
| <p>The fact that the City is trying to get out of paying for what would have been profits; the City didn't have a problem when it thought it was going to share in the profits. Hermosa claiming Macpherson would not profit from the project, after it [Hermosa] entered into a contract assuming Macpherson would [profit]. The City now wants to play the victim, not wanting to take responsibility and pay for the consequences. I'm confused by how the City really felt at the time of the contract. Are they just trying to protect themselves from losing \$550 million, even if, at the time, they [the City] were all for drilling?</p> | 4 |

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Why was Proposition E passed? What in the constitution lets Hermosa Beach do this? What was the exact role of the Hermosa Beach City government in starting/passing Proposition E? The only thing that “bothers me” is the fact that Proposition E essentially robbed Macpherson of its right to drill for oil. Why would the City allow anything on a ballot that would go against a contract? That would be going back on its agreement [with Macpherson]. | 4 |
| How the City didn’t do a thorough investigation on the drilling and it didn’t allow Macpherson to prove that there was oil. How can you complain there is no proof of oil when Proposition E forbids drilling for proof? | 2 |
| I’m bothered by Hermosa Beach backing out of the agreement. The City of Hermosa Beach backed out of its agreements. | 2 |
| The court’s decision holding the City of Hermosa Beach responsible for the breach does not automatically assume damages or that requests for them [damages] are imminent. How this can even be a case, [when there’s nothing to decide] except about the amount. | 2 |
| The fact that the City did not let the voters know about their liability regarding the signed contract. It bothers me that no one, especially the City, put this prospective project up to the citizens first before entering into any contractual agreement. | 2 |
| Why did the drilling not begin as soon as Macpherson had an opportunity to start, when the oil ban wasn’t in effect? Once the ban was lifted in 1986, Macpherson started reports and permits [at its] own expense and retained a Lease in 1992. After the Lease was obtained in 1992, why wasn’t drilling started? When did this litigation start? After 1995, when Proposition E passed, both parties were in agreement to continue. It wasn’t until 1998 when they terminated the contract. | 2 |
| Both parties are at fault. | 1 |
| Did the City put up some money [for the project]? That was mentioned but not explained. | 1 |
| Don Macpherson indicating that he knew he would be taking a risk. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| I don't understand why the defense [City of Hermosa Beach] feels that the projected amount/cost of drilling was speculative, when both parties willfully entered into a contract that they both were able to research prior to signing. | 1 |
| I would like to know more about the plaintiff's track record. | 1 |
| If Macpherson was so sure about the 40 million barrels told to them by Intra West, why only go for 20 million barrels [in damages request] and not 30 or 35 million, when 15 million was just for operating costs? | 1 |
| Is the City punishable because of a proposition that was out of its hands? | 1 |
| It bothers me that Macpherson is going after the City for what the people chose. Macpherson should utilize their money and time by drilling elsewhere or by paying the people of Hermosa to vote and overturn Proposition E. | 1 |
| No way of knowing if Macpherson would've ever gotten around to drilling or finding investors. | 1 |
| The City entering into the contract in the first place without proper research. Contracts should be honored for some damages. | 1 |
| The same City Council might not exist in the early 80s and the late 90s. When the area was undeveloped (perhaps residentially), drilling didn't seem to be a major threat or concern. As beach communities became more sought after, citizens became more environmentally conscious and things (attitudes) changed. New council members are elected. | 1 |
| They should have kept going with the job; I don't understand why they just stopped. | 1 |
| What bothers me most about this case is that very little is being said about the contract. I feel that more details should have been described about the contract. | 1 |
| Why did the City re-lease? | 1 |
| Why didn't bigger oil companies try to do this? | 1 |
| Why the City put its "trust" in what it calls an unproven oil company. | 1 |

Jurors' Reactions to Causation Presentations

What do you think are the strongest arguments and facts supporting the defendant (The City of Hermosa Beach) after the defendant's presentation on causation? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| The California Coastal Commission findings. They acted in good faith when they denied the project. The drilling permit should not have been granted. The discovery of health and safety risks, a finding that came up because of the CA Coastal Commission's lingering concerns (e.g., H ₂ S levels, etc.) and then described in detail by the Aspen Bercha Report. The safety hazards. The Coastal Commission was concerned about safety and the City Council did study and vote based on results. COHB did not terminate the lease until then and it had helped MOC for three years after Prop E had passed. The risk factors regarding safety hazards for the public. Environmental safety for its community. It involved health risks from the start. COHB is emphasizing the danger to human health. Mr. Bercha's statement, which stated that the plans to drill could be detrimental to the COHB. The 1998 study covering safety issues. The City put the health and safety of its residents first and foremost. The children and well-being of the people. There was a chance for a disaster around the neighborhood if there was an explosion or leakage of fumes. COHB was told it was unsafe. The City Council was advised per the reports by consultants that the safety of its citizens was at risk per the continuance of the project. Aspen Bercha's report concluded risks, leaks, and environmental issues to the local community. The safety of the City's residents. The safety issues of the project as it related to the citizens. The recommendation from Aspen Bercha telling the City that there are risks and that they need to act accordingly. | 19 |
| No good arguments. | 3 |
| Given the new regulations and concerns for public safety, COHB was able to show that Prop E may not have been the cause of stopping MOC. | 1 |
| I find it hard to believe that the City would give up millions of dollars it could earn potentially or have to pay out for litigation for no compelling reason. | 1 |
| I think that when they entered into the project that they should have held the Council meeting before signing the contract. | 1 |
| It was done in good faith. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| No proof of damages. | 1 |
| The City established municipal codes in 1985 regarding drilling. The leases of 1986 and 1992 required adherence to the codes. The codes were in place prior to the lease agreements. Macpherson was aware of these requirements. | 1 |
| The City performed in good faith per the issuance of permits for three years after Prop E passed. The City Council held meetings to elicit feedback from its citizens. | 1 |
| The Council requested a safety report, which was never presented to the City or Coastal Commission for purposes of drilling and possible risk. | 1 |

***What did you have doubts about or not believe in the defendant's presentation on causation?
(Juries C & D only)***

Response

Frequency

The timing of when they hired Aspen Bercha to provide a study advising of any public safety issues to consider. They should have done this study from the get-go and had a meeting of the community before any contracts were signed. Why didn't the City have the expert provide the detailed report on safety before they made the agreement with Macpherson? It does seem a bit, shall we say, "convenient" that this came up as an issue for the COHB, which may have been under pressure by its residents to drop the MOC project. It could have been because of health and safety issues, but in reality it's hard to ignore the political climate at the time. Why did they have a public hearing after the fact when it should have been beforehand? The timing of the Aspen Bercha report seems too convenient, coinciding with the City's desire to stop the contract. They used the study to stop the contract and avoid being sued by Macpherson over canceling the contract after Prop E. Why weren't such safety precautions taken from the beginning? Why did the City wait three years to make this decision? The hazards existed before the Aspen report. COHB should have pulled out then if it wanted. The COHB is contradicting itself. First, it initiated the project and then it supported Prop E, which was against the project. I question the City having moved forward with the project after Prop E passed. Prop E banned oil drilling and that should have been the end of the project. I question the City's diligence in the initial signing of the contract. The Aspen Bercha study should have been completed before the signing of the lease agreement. Why didn't the COHB ask for the safety report sooner, at the time Prop E passed or even when the agreement was signed in 1992? Why didn't they think of the health and safety issue before? That would be one of my first concerns. I question the timing of new concerns and studies. At what point does it end or invalidate something that happened earlier? Even public safety is of greater concern. Doesn't MOC have some validity to their claim given they had a contract?

11

Why sign a lease when it knew the risks and damages to health that it may cause? The COHB should have had more knowledge before entering into the contract. The same people were living in the area when they started the project. They have to take some responsibility. If the City is accepting responsibility for environmental risk that suddenly came to light then I feel it should really have more to back up its position legally. They should have looked into the health risks for the surrounding community prior to entering into the contract in 1992. Since COHB isn't that large geographically the environmental issue should have been handled first. It sounds like the City was more interested in its fiscal intake in 1992. I actually sympathize more

5

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| with MOC now because the City knew where they were planning to drill. They never worried about the proximity to homes, etc. before that time! They should have known it was an inappropriate area and never allowed any permits – Prop E or not. They have some accountability on this! It’s a no-brainer! I doubt that the City didn’t know the risks from the very beginning. When they proposed the project they knew what the area was like. | |
| No questions. Don’t believe his statistics. No doubts. | 3 |
| The safety reasons were not a primary factor in the fundamental fabric of the contract. Safety risks were not the issue. | 2 |
| Dr. Bercha’s report and facts caused COHB to break the contract. If there were 31 leaks what was being done to prevent further damage? | 1 |
| The City failed at the staff and council level. | 1 |
| It is really hard to say who is at fault here. | 1 |
| It seems that the City had every right to stop Macpherson from resuming with the job. | 1 |
| The City did not follow up on the early part of the contract back in 1985, which they should have. | 1 |

What do you think are the strongest arguments and facts supporting the plaintiff (Macpherson Oil) after the plaintiff's presentation on causation? (Juries C & D only)

Response

Frequency

MOC tried to complete certain tasks according to the timeline it offered at the time that the contract was agreed upon, but the City delayed things (e.g., support for permits, addressing MOC's issues), including giving up the City Yard for preparation to become an oil drilling site. MOC could persuasively argue that all this time and wasted effort cost money. The City did not cooperate and it refused to turn over the yard for drilling. The City sat on the plan. The factual information such as the City delaying approval times and other delay tactics after Prop E passed. The letter introduced that cited different reasons for the cessation of the contract and was used the following week at the hearing. The City was intentionally slow to respond to permit requests. The City was dragging its feet on the permits. The COHB increased costs, delayed permits, and added additional measures. The City refused to turn over land (City Yard) to MOC. The COHB did not show good faith in support of the initial efforts. The City refused to turn over the yard for drilling. Refusing to release the yard in July 1997 showed a lack of cooperation by the City. The City did not turn over the land and it failed to cooperate in a timely manner to permit requests. The City did not turn over the site as agreed to in the lease. The City was looking for a way out by burying MOC in paperwork, permits, and politics. The City apparently sat on a lot of MOC's attempts to go ahead with the drilling.

13

The 1998 public safety meeting was a sham to get out of the contract. The hearing had trumped-up charges and tried to sway Dr. Bercha. The hearing was biased with the townspeople against MOC. The timing of public safety concerns were after-the-fact. It occurred a week before the September meeting. MOC had no idea what to expect at the meeting. The transcript of the council meeting showed that the resolution came after the hearing and the public should have had a hearing beforehand. The council meeting with Aspen Bercha testifying for the defense, but Bercha made the mistake of not substantiating the claim of safety as the issue. Dr. Bercha's testimony in which he did not immediately describe the risk as substantial. The council meeting shows that Hermosa was trying to create a way out of the contract.

7

The COHB was trying to get out of the contract all along and Prop E is the only thing holding me from completely going with Macpherson. The COHB allowing Prop E was a breach of contract. The City did breach the contract. The City was trying to get out of the contract for the wrong reasons all along. They had a contract.

5

Response

Frequency

The Coastal Commission approved it to go forward but it sounds like it was in conflict with the City, which did not agree to go forward. The Coastal Commission approved the project. The danger is possible but it is not extensive enough to terminate the project. The Coastal Commission approved the project and determined it was safe. The Coastal Commission gave approval and it was an independent study. The Coastal Commission had given approval and if it thought the public was at any risk then it wouldn't have authorized the project.

5

MOC showed that "public safety" became a diversion or scapegoat for freeing COHB from its contractual obligations. Safety was not always the COHB's focus. The City tried to make a last ditch effort to get out of the contract, but it should have known of the risks and dangers before it got into this situation. Safety was not a top concern for the City and it is trying to use it to get out of the contract.

4

The ban was passed in 1995, prior to that date. The lease included adherence to municipal codes.

1

The City should have been on top of the project before the Council meeting,

1

The drilling site was not cleared for MOC and the lease was terminated because drilling had not started.

1

What did you have doubts about or not believe in the plaintiff's presentation on causation? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| No doubts or questions. | 8 |
| I have doubts about how much MOC should be compensated. They shouldn't get everything they are asking for. MOC's claims to \$550 million seem grossly inflated even with this additional information about how things went down. The corporate bottom line argument of lost profits is still not sitting well with me. It is such a high price tag regardless of what Hermosa Beach's tactical missteps and motives may have been. | 2 |
| According to the chronological events leading up to the September 9 hearing there is not much supporting the City's position that the problem was environmental, so I think the City's case has to be much stronger if it wants to win. | 1 |
| Bercha's report needs to be explained further and more effectively. | 1 |
| Did MOC press the issues when the City was not cooperating civilly and on time? If so, COHB should have taken these issues right up. | 1 |
| I do not believe that Dr. Bercha would report that there is a substantial risk if he did not believe the risk was in fact substantial. | 1 |
| I don't believe that the City opted out of the contract because of the "changing political climate" as Mr. Chan said. The City had a lot to lose monetarily so safety seems to be the reason why. In addition, whether the City dragged its feet on issuing permits or not, the permits were ultimately granted, the yard (drill site) was provided, and the City cooperated for three solid years after the passage of Prop E. | 1 |
| I still feel safety was an issue – whether it was legal or not. | 1 |
| Macpherson received approval from the Coastal Commission "with conditions." It was not stated what those conditions were – if they involved health/safety issues or lack thereof. | 1 |
| MOC's lack of geological support for its position. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| That the City pulled people to attend the hearing in order to get out of the contract. | 1 |
| The admission that they might have been concerned about drilling in highly residential areas as compared to other sites. | 1 |
| The Coastal Commission report said, "yet because of its setting in a medium density urban..." I wonder what the rest of the sentence said. I couldn't see it. | 1 |
| The point to me is that the area was unsafe and it (the project to drill) should never have been allowed. So yes, the City was in breach of the contract. COHB was stuck between a rock and a hard place. Its citizens rallied and the City was squirming. I do not believe MOC has the right to anything but out-of-pocket expenses, however. | 1 |
| They did not show what danger it could have caused around the neighborhood. | 1 |
| When Prop E passed, that was a warning up front that Macpherson is not wanted there. The City represents its people who wanted to stop the drilling and sent a letter before Prop E passed. | 1 |
| When were the parties aware that Prop E applied to their agreement? It seems logical that the passage of the ban would have been effective immediately. Did the proposition specify "additional" drilling or was it a complete ban? Since Macpherson had not broken ground, it seems that the ban would supersede the lease agreement. | 1 |

Overall, what do you believe are the strongest arguments and facts supporting the plaintiff (Macpherson Oil), after the defendant's rebuttal on causation? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| The City waited to cancel the contract because of safety when Prop E stopped the project for drilling in 1995. The contract should have been terminated in a reasonable amount of time. The timeline of events seem to support the plaintiff because of the delaying tactics on the part of the City after the passing of Prop E. The City waited such a long time to [raise] this second claim. They explain a few reasons why the City pulled out of the contracts and why it took so long. | 5 |
| The approval of the project by the Coastal Commission, even though they requested a HAZOP. It was an operational plan, probably standard for all projects. The fact that the Coastal Commission had given them their approval – if the public was at risk of any kind, I don't think they would allow that to happen. The report from the Coastal Commission approving the project to move forward. The approval from the Coastal Commission raises a question why the City did not agree (if I am hearing it right). | 4 |
| The contract was terminated. The fact that Hermosa breached the contract. Contract. The breach of contract itself. It was a breach of contract and Macpherson does deserve some type of money in return. | 4 |
| They had no anticipation of canceling the project. They were still submitting permits and following through with the Coastal Commission hearings. The contractual agreement and follow-up on permits and time invested. The paper trail of permits that were obtained by Macpherson. | 3 |
| The drill yard was never released to Macpherson. The City refused to vacate the lot. | 2 |
| The City wanted out of the contract. The City did not cooperate. The City sat on the plan and withdrew support from the Coastal Commission. | 1 |
| Dr. Bercha's report was well known before the council meeting. It was significant so why wasn't it addressed in a more informational way? Instead, he was a grilled witness. Also, the report states "safe as comparable projects." | 1 |
| Dr. Bercha's testimony. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Macpherson had a contract, partnered with the City, but they never had an opportunity to drill. | 1 |
| Statistics. | 1 |
| The circumstances of the Coastal Commission and the Aspen Bercha Report findings seem so convenient for the City — even if it did not manipulate things, which Macpherson claims it did. | 1 |
| The City has probable cause to terminate the contract. | 1 |
| The City slowed down approvals, trying a last-ditch effort with Aspen Bercha after the tides had changed. | 1 |
| The City took their name off the Coastal Commission application. | 1 |
| The strongest argument for the plaintiff was the transcript of the City Council meeting and the fact that the City could've possibly wanted to get out of the contract. | 1 |
| Undecided now because they both seemed strong, however, Prop E was a breach in contract. | 1 |
| None. | 1 |

Overall, what do you believe are the strongest arguments and facts supporting the defendant (The City of Hermosa Beach), after the defendant's rebuttal on causation? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Putting the community first and not money – they had a right to say no drilling where our families live. The interest in the safety and welfare of the residents. If it was going to be a physical hazard to the public, then the City did the right thing. Public safety is a genuine concern. Climates and concerns change, especially as communities change. They had to honor the citizen's requests and did what they could. Report document stated "poses risk." The termination of the contract was justified per a clause in the contract allowing for safety concerns. That, ultimately, the City had the final say as to whether or not the drilling could commence. It might be subjective, but an expert did in fact claim there were health and safety risks. The environment and the people's choice. Strongest argument is the human danger factor — that's all. The danger of what might happen if a disaster happened in the neighborhood. The safety issue. | 12 |
| All in all, Macpherson was not ready nor did it have the right things to start drilling. The plaintiff didn't have their drilling permits, so how could the City hand over the property. A safety report was requested and the drilling permit was not given because not all permits and requirements had been met. | 3 |
| Nothing. None. None really. | 3 |
| The lease specifies adhering to municipal codes and requirements of obtaining permits. | 1 |
| The actual written report done by Dr. Bercha which stated the risk was indeed substantial. The report from Aspen Bercha identifying potential hazards. | 2 |
| If it wasn't for the City, Macpherson wouldn't have gotten their permits. | 1 |
| No strong arguments, just strong feelings from citizens against oil drilling. | 1 |
| Support of Macpherson efforts in some instances. | 1 |
| The Coastal Commission wanted safety tests and the results were not favorable. | 1 |
| Why would they wait three years to push out Macpherson? | 1 |

What, if anything, now bothers you or confuses you the most about this case? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| If safety was so big, why sign any contract? They should have been as concerned for the citizens before they signed a contract with MOC. | 2 |
| The three years between the passing of Prop E to the hearing seems like a long time to wait. The timing of the City Council meeting bothers me. | 2 |
| MOC focuses on Prop E as causation for the breach. But the City, as an entity, did not pass Prop E. The <u>citizens</u> of Hermosa Beach passed the measure. Perhaps MOC needs to sue the citizens. The City, as an entity, is responsible for upholding the laws passed by the citizenry. | 1 |
| What bothers me is how obvious it is that the proximity of the plant was always too close to housing and, until the people spoke up, the City did not "notice." MOC was always in it for the profit. | 1 |
| What bothers me is that the report on safety should have been done earlier. | 1 |
| Even if the plaintiff was ready to drill, Prop E and the people would not allow drilling. | 1 |
| How can the City not honor the contract? | 1 |
| I didn't understand at first that the Aspen report was the Hazop. I thought Hazop had to be done before Phase I and II? | 1 |
| It's very clear to me who is at fault. Both sides have issues! | 1 |
| The City Council lied to MOC at the City Council meeting. | 1 |
| The City dragged its feet a little and given that the Coastal Commission wanted a study, that part should have been extended, but the tests were still unfavorable. | 1 |
| The City is using Prop E and the angry citizens as a scapegoat to being held liable. | 1 |
| The City said MOC couldn't drill without permits and they said the lease was being terminated because drilling had not started. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| The defense is weak and needs to back up its verbal argument with more definitive information to support its argument. | 1 |
| The length of the case and the passage of Prop E after all of the time invested by MOC bothers me. | 1 |
| The plaintiff is withholding information. When Prop E passed, the project should have been stopped and they should have come to an agreement to terminate the contract. | 1 |
| What were nearby cities experiencing in terms of oil production, hazards, and community issues? | 1 |
| Which side is telling the truth? | 1 |
| Why didn't Dr. Bercha come out and state the risk was substantial during his testimony? | 1 |
| Why was a Hazop not immediately requested? | 1 |
| Why was Prop E all of a sudden put on the ballot? | 1 |
| Why wasn't this settled out of court earlier? It seems that it ultimately boiled down to the project that was still a matter of unrealized potential – not something that had been started – and that the City, in bad faith, later tried to take down. | 1 |
| This case is difficult because both sides have very good points. | 1 |

What caused Macpherson's breach of contract damages, if any? Please explain: (Juries C & D only)

"Proposition E" responses (15 jurors)

It paralyzed the city government and tied its hands to move ahead. Proposition E made it unlawful to proceed with the contract if passed. (2 comments)

Breach of contract.

It appears that the City began looking for ways to delay the project after Proposition E was passed.

Prop E had to just *begin* the real intent. Contracts can be broken if government or city – which represents its people – need to pull out for safety and other reasons. This is reasonable and should override the court's decision.

Public safety is a natural follow-up argument after Prop E.

That changed the law. The City was under the assumption that the agreement was grandfathered, but when it was not it took the safety route as a way to get out of the contract.

The City Council was looking to get out of the Lease without paying damages. If they could prove it was a safety issue, then they could get out, but it showed no concern for the public until cost was an issue.

No explanation provided. (7 jurors)

"The September 1998 City Council decision to end the project on safety grounds" responses (7 jurors)

After Proposition E was passed, the City and Macpherson continued to work together until the City Council decision.

Although I believe the concern should have been explored prior to signing the Lease, the safety concerns were always a term of the lease. The lease was signed in 1992, prior to the passage of Proposition E in 1995.

Health issues for the people.

It took six years to suddenly stop and think about environmental repercussions? It seems odd that the City never thought about its environmental safety going into the 1992 contract.

"The September 1998 City Council decision to end the project on safety grounds" responses (7 jurors)

The community spoke out – the council members were listening to what people wanted.

They signed a contract before Prop E.

Yes, it's suspicious that all of this happened after Prop E passed, but ultimately the City had the right – and reserved the right – to end the project for health and safety reasons. These are very salient reasons in such a small city, with the yard so close to the actual ocean.

"Both" responses (4 jurors)

Both did. Proposition E legally put a stop to them. The City Council meeting only gave the city a false reason to back out of the contract. The City is using Proposition E and its citizens as reason not to be liable for the contract.

Both, as the passage of Proposition E and subsequent investigation led to the city council's holding of a hearing.

I think that both things caused the breach of contract damages. They were interactive.

No explanation provided. (1 juror)

Verdicts, Pre- and Post-Deliberations

After the plaintiff's rebuttal (but before the jurors heard jury instructions or had the chance to deliberate), the jurors completed a questionnaire in which they answered questions that elaborated on the verdict form questions. Jurors in four separate deliberation groups then deliberated until they reached verdicts. At the end of deliberations, each juror completed an individual verdict form. Below are the findings from both the pre-deliberation questionnaire and the jurors' individual post-deliberation verdict forms.

Verdicts: Jury A, Jury B, Jury C, and Jury D

Table 4: Did the City of Hermosa Beach prove by a preponderance of the evidence that the September 1998 City Council decision to terminate the 1992 Lease was a legitimate and justified action of the City?

| | Pre-Deliberation, Pre-Causation Individual (n = --) | | Pre-Deliberation, Post-Causation Individual (n = 26) | | Post-Deliberation Group (n = 26) | | Post-Deliberation Individual (n = 26) | |
|-----|--|---------------------|---|---------------------|-------------------------------------|---------------------|--|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | -- | -- | 23% | 6 | 4% | 1 | 4% | 1 |
| No | -- | -- | 77% | 20 | 96% | 25 | 96% | 25 |

Table 5: Did Macpherson Oil prove with reasonable certainty that it suffered damages from lost profits (i.e., the inability to earn profits from selling oil)?

| | Pre-Deliberation, Pre-Causation Individual (n = 36) | | Pre-Deliberation, Post-Causation Individual (n = 20) | | Post-Deliberation Group (n = 50) | | Post-Deliberation Individual (n = 49) | |
|-----|--|---------------------|---|---------------------|-------------------------------------|---------------------|--|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 72% | 36 | 65% | 13 | 70% | 35 | 71% | 35 |
| No | 28% | 14 | 35% | 7 | 30% | 15 | 29% | 14 |

Table 6: Did Macpherson Oil prove the amount of lost profits with reasonable certainty?

| | Pre-Deliberation, Pre-Causation Individual (n = 36) | | Pre-Deliberation, Post-Causation Individual (n = 13) | | Post-Deliberation Group (n = 37) | | Post-Deliberation Individual (n = 35) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 58% | 21 | 62% | 8 | 65% | 24 | 89% | 31 |
| No | 42% | 15 | 38% | 5 | 35% | 13 | 11% | 4 |

Table 7: What is the amount of Macpherson Oil's lost profits?

| | Pre-Deliberation, Pre-Causation Individual (n = 21) | Pre-Deliberation, Post-Causation Individual (n = 8) | Post-Deliberation Group (n = 24) | Post-Deliberation Individual (n = 31) |
|--------|---|---|----------------------------------|---------------------------------------|
| Mean | \$359,969,048 | \$266,250,000 | \$284,000,000 | \$272,250,774 |
| Median | \$550,000,000 | \$177,500,000 | \$284,000,000 | \$250,000,000 |
| Range | \$350,000 - \$551,000,000 | \$20,000,000 - \$550,000,000 | \$17,000,000 - \$551,000,000 | \$1,000,000 - \$551,137,000 |

Table 8: Did Macpherson Oil prove with reasonable certainty that it suffered from restitution damages (i.e., damages consisting of its out-of-pocket expenses)?

| | Pre-Deliberation, Pre-Causation Individual (n = 50) | | Pre-Deliberation, Post-Causation Individual (n = 20) | | Post-Deliberation Group (n = 50) | | Post-Deliberation Individual (n = 49) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 78% | 39 | 80% | 16 | 96% | 48 | 96% | 47 |
| No | 22% | 11 | 20% | 4 | 4% | 2 | 4% | 2 |

Table 9: What is the amount of Macpherson's restitution damages?

| | Pre-Deliberation, Pre-Causation Individual (n = 39) | Pre-Deliberation, Post-Causation Individual (n = 16) | Post-Deliberation Group (n = 48) | Post-Deliberation Individual (n = 47) |
|--------|--|---|-------------------------------------|--|
| Mean | \$44,013,026 | \$57,875,000 | \$3,375,000 | \$6,531,915 |
| Median | \$8,000,000 | \$8,000,000 | \$6,750,000 | \$8,000,000 |
| Range | \$8,000 - \$500,000,000 | \$7,000,000 - \$500,000,000 | \$0 - \$8,000,000 | \$0 - \$16,000,000 |

Verdicts: Jury A and Jury B

Table 10: Did Macpherson Oil prove with reasonable certainty that it suffered damages from lost profits (i.e., the inability to earn profits from selling oil)?

| | Pre-Deliberation, Pre-Causation Individual (n = 24) | | Pre-Deliberation, Post-Causation Individual (n = --) | | Post-Deliberation Group (n = 24) | | Post-Deliberation Individual (n = 24) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 83% | 20 | -- | -- | 100% | 24 | 96% | 23 |
| No | 17% | 4 | -- | -- | 0% | 0 | 4% | 1 |

Table 11: Did Macpherson Oil prove the amount of lost profits with reasonable certainty?

| | Pre-Deliberation, Pre-Causation Individual (n = 20) | | Pre-Deliberation, Post-Causation Individual (n = --) | | Post-Deliberation Group (n = 24) | | Post-Deliberation Individual (n = 23) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 50% | 10 | -- | -- | 100% | 24 | 91% | 21 |
| No | 50% | 10 | -- | -- | 0% | 0 | 9% | 2 |

Table 12: What is the amount of Macpherson Oil's lost profits?

| | Pre-Deliberation, Pre-Causation Individual (n = 10) | Pre-Deliberation, Post-Causation Individual (n = --) | Post-Deliberation Group (n = 24) | Post-Deliberation Individual (n = 21) |
|--------|---|--|----------------------------------|---------------------------------------|
| Mean | \$318,035,000 | -- | \$284,000,000 | \$296,965,429 |
| Median | \$425,000,000 | -- | \$284,000,000 | \$551,000,000 |
| Range | \$350,000 - \$551,000,000 | -- | \$17,000,000 - \$551,000,000 | \$15,000,000 - \$551,137,000 |

Table 13: Did Macpherson Oil prove with reasonable certainty that it suffered from restitution damages (i.e., damages consisting of its out-of-pocket expenses)?

| | Pre-Deliberation, Pre-Causation Individual (n = 20) | | Pre-Deliberation, Post-Causation Individual (n = --) | | Post-Deliberation Group (n = 24) | | Post-Deliberation Individual (n = 24) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 83% | 20 | -- | -- | 100% | 24 | 96% | 23 |
| No | 17% | 4 | -- | -- | 0% | 0 | 4% | 1 |

Table 14: What is the amount of Macpherson's restitution damages?

| | Pre-Deliberation, Pre-Causation Individual (n = 20) | Pre-Deliberation, Post-Causation Individual (n = --) | Post-Deliberation Group (n = 24) | Post-Deliberation Individual (n = 23) |
|--------|---|--|----------------------------------|---------------------------------------|
| Mean | \$39,100,400 | -- | \$4,000,000 | \$5,869,565 |
| Median | \$8,000,000 | -- | \$4,000,000 | \$8,000,000 |
| Range | \$8,000 - \$500,000,000 | -- | \$0 - \$8,000,000 | \$0 - \$10,000,000 |

Verdicts: Jury C and Jury D

Table 15: Did the City of Hermosa Beach prove by a preponderance of the evidence that the September 1998 City Council decision to terminate the 1992 Lease was a legitimate and justified action of the City?

| | Pre-Deliberation, Pre-Causation Individual (n = --) | | Pre-Deliberation, Post-Causation Individual (n = 26) | | Post-Deliberation Group (n = 26) | | Post-Deliberation Individual (n = 26) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | -- | -- | 23% | 6 | 4% | 1 | 4% | 1 |
| No | -- | -- | 77% | 20 | 96% | 25 | 96% | 25 |

Table 16: Did Macpherson Oil prove with reasonable certainty that it suffered damages from lost profits (i.e., the inability to earn profits from selling oil)?

| | Pre-Deliberation, Pre-Causation Individual (n = 16) | | Pre-Deliberation, Post-Causation Individual (n = 20) | | Post-Deliberation Group (n = 26) | | Post-Deliberation Individual (n = 25) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 62% | 16 | 65% | 13 | 42% | 11 | 48% | 12 |
| No | 38% | 10 | 35% | 7 | 58% | 15 | 52% | 13 |

Table 17: Did Macpherson Oil prove the amount of lost profits with reasonable certainty?

| | Pre-Deliberation, Pre-Causation Individual (n = 16) | | Pre-Deliberation, Post-Causation Individual (n = 13) | | Post-Deliberation Group (n = 13) | | Post-Deliberation Individual (n = 12) | |
|-----|---|---------------------|--|---------------------|----------------------------------|---------------------|---------------------------------------|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 69% | 11 | 62% | 8 | 0% | 0 | 83% | 10 |
| No | 31% | 5 | 38% | 5 | 100% | 13 | 17% | 2 |

Table 18: What is the amount of Macpherson Oil's lost profits?

| | Pre-Deliberation, Pre-Causation Individual (n = 11) | Pre-Deliberation, Post-Causation Individual (n = 8) | Post-Deliberation Group (n = --) | Post-Deliberation Individual (n = 10) |
|--------|--|--|-------------------------------------|--|
| Mean | \$398,090,909 | \$266,250,000 | -- | \$220,350,000 |
| Median | \$550,000,000 | \$177,500,000 | -- | \$187,500,000 |
| Range | \$8,000,000 - \$551,000,000 | \$20,000,000 - \$550,000,000 | -- | \$1,000,000 - \$550,000,000 |

Table 19: Did Macpherson Oil prove with reasonable certainty that it suffered from restitution damages (i.e., damages consisting of its out-of-pocket expenses)?

| | Pre-Deliberation, Pre-Causation Individual (n = 26) | | Pre-Deliberation, Post-Causation Individual (n = 20) | | Post-Deliberation Group (n = 26) | | Post-Deliberation Individual (n = 25) | |
|-----|--|---------------------|---|---------------------|-------------------------------------|---------------------|--|---------------------|
| | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses | Percentage of Responses | Number of Responses |
| Yes | 73% | 19 | 80% | 16 | 92% | 24 | 96% | 24 |
| No | 27% | 7 | 20% | 4 | 8% | 2 | 4% | 1 |

Table 20: What is the amount of Macpherson's restitution damages?

| | Pre-Deliberation, Pre-Causation Individual (n = 19) | Pre-Deliberation, Post-Causation Individual (n = 16) | Post-Deliberation Group (n = 26) | Post-Deliberation Individual (n = 24) |
|--------|--|---|-------------------------------------|--|
| Mean | \$49,184,211 | \$57,875,000 | \$2,750,000 | \$7,166,667 |
| Median | \$8,000,000 | \$8,000,000 | \$2,750,000 | \$7,500,000 |
| Range | \$7,000,000 - \$500,000,000 | \$7,000,000 - \$500,000,000 | \$0 - \$5,500,000 | \$3,000,000 - \$16,000,000 |

Comparison of Group Verdicts

Table 21: Comparison of Group Verdicts for Jury A, Jury B, Jury C, and Jury D

| Verdict Questions | | Jury A | Jury B | Jury C | Jury D |
|-------------------|---|---------------|---------------|---------------|---------------|
| 1. | Did the City of Hermosa Beach prove by a preponderance of the evidence that the September 1998 City Council decision to terminate the 1992 Lease was a legitimate and justified action of the City? | -- | -- | 13 – 0 No | 12 – 1 No |
| 2. | Did Macpherson Oil prove with reasonable certainty that it suffered damages from lost profits (i.e., the inability to earn profits from selling oil)? | 12 – 0 Yes | 12 – 0 Yes | 12 – 1 No | 10 – 3 Yes |
| 3. | Did Macpherson Oil prove the amount of lost profits with reasonable certainty? | 12 – 0 Yes | 12 – 0 Yes | -- | 13 – 0 No |
| 4. | What is the amount of Macpherson Oil's lost profits? | \$551,000,000 | \$17,000,000 | -- | -- |
| 5. | Did Macpherson Oil prove with reasonable certainty that it suffered from restitution damages (i.e., damages consisting of its out-of-pocket expenses)? | 12 – 0 Yes | 12 – 0 Yes | 12 – 1 Yes | 12 – 1 Yes |
| 6. | What is the amount of Macpherson Oil's restitution damages? | \$0 | \$8,000,000 | \$5,500,000 | \$0 |

Jurors' Emotional Reactions to the Case

Following the entire case presentation, but prior to deliberating, jurors indicated their emotional reactions to the case. These reactions included sympathy for the plaintiff, as well as desire to compensate the plaintiff, followed by anger towards the defendant and desire to punish the defendant. Jurors also responded to open-ended questions about the ease or difficulty of comprehending and deciding the case. Finally, we asked them a series of open-ended questions to gauge how they judged the actions of the various parties in this case. Below are the jurors' responses to these questions.

Reactions to the Plaintiff

Figure 7: How sympathetic are you towards Macpherson Oil? (All Juries)

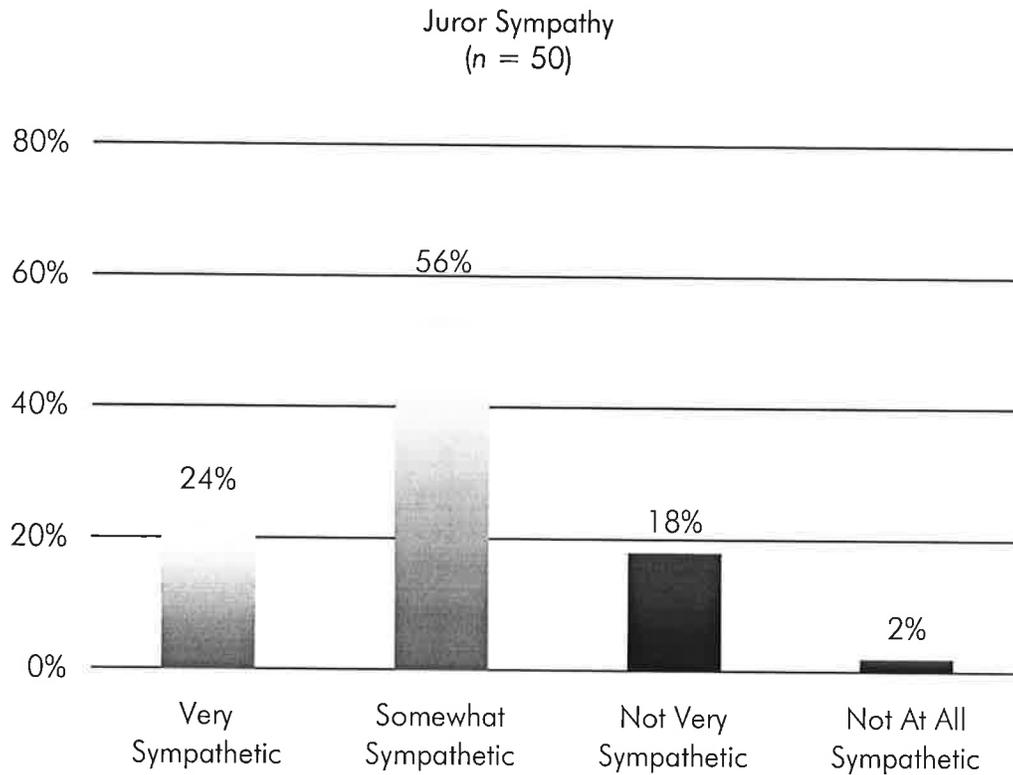


Figure 8: How sympathetic are you towards Macpherson Oil? (Post-Causation Presentation: Jury C and Jury D)

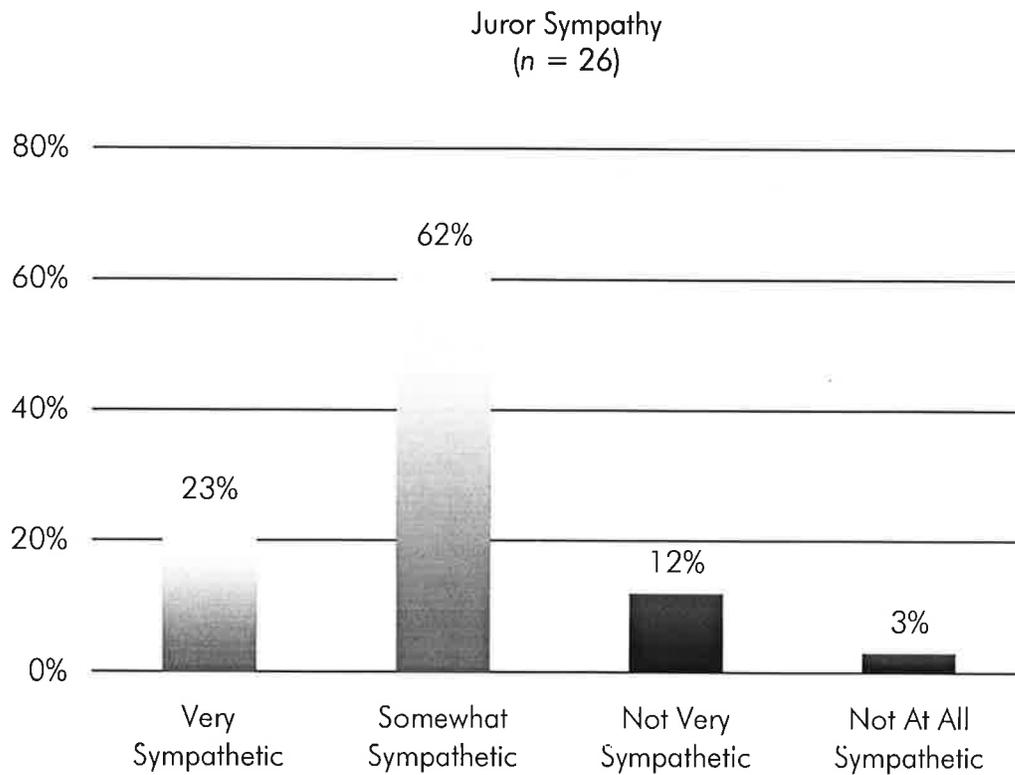


Figure 9: How strong is your feeling or desire that Macpherson Oil should be compensated in this case? (All Juries)

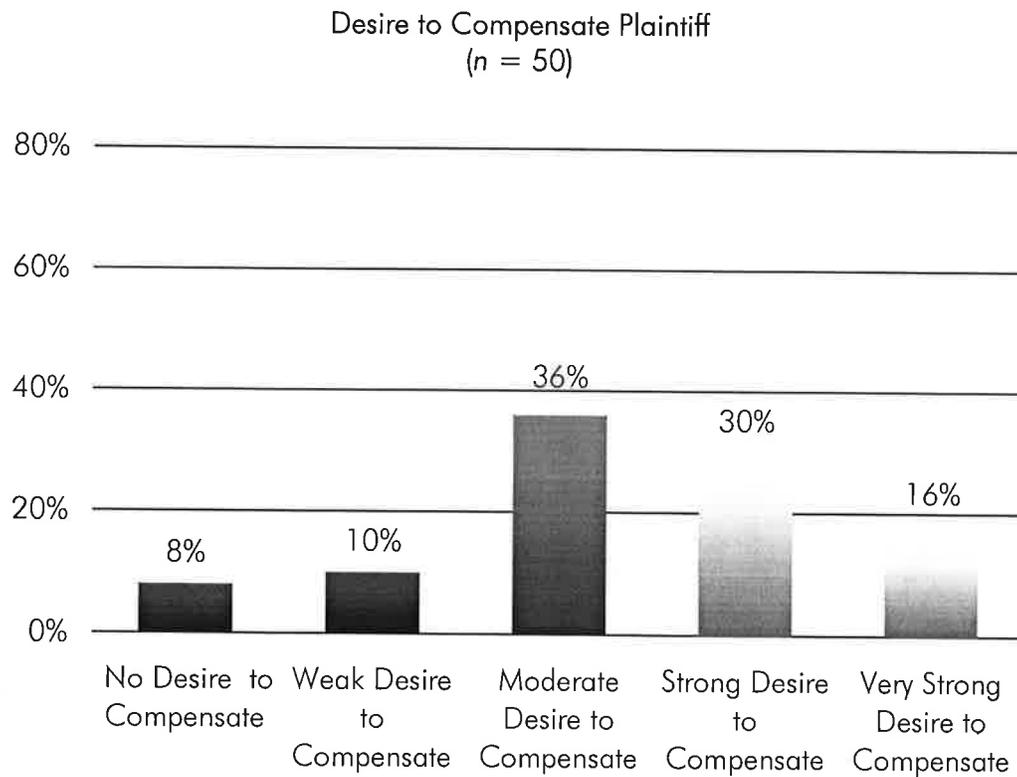
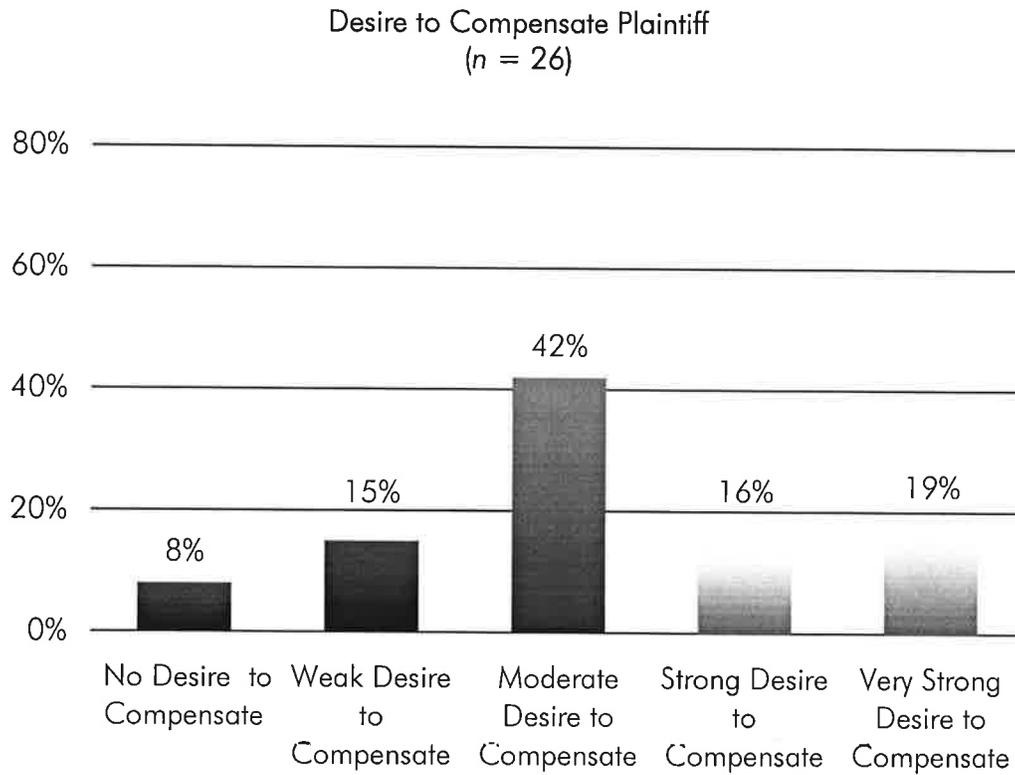


Figure 10: How strong is your feeling or desire that Macpherson Oil should be compensated in this case? (Post-Causation Presentation: Jury C and Jury D)



Reactions to the Defense

Figure 11: How angry are you towards The City of Hermosa Beach? (All Juries)

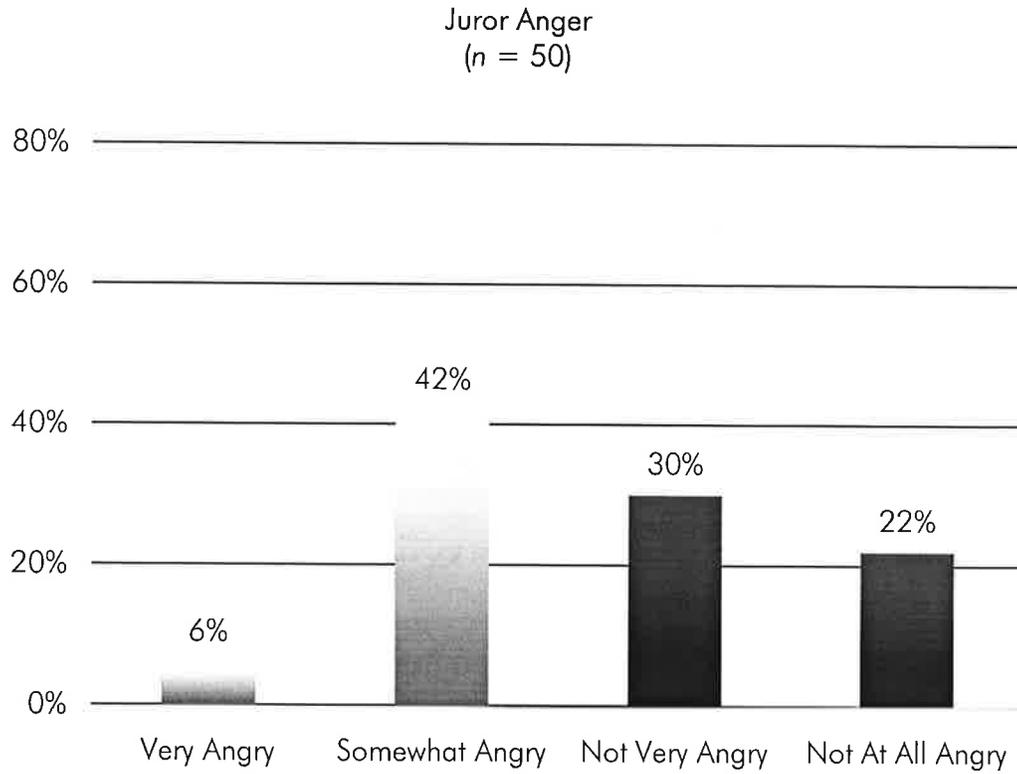


Figure 12: How angry are you towards The City of Hermosa Beach? (Post-Causation Presentation: Jury C and Jury D)

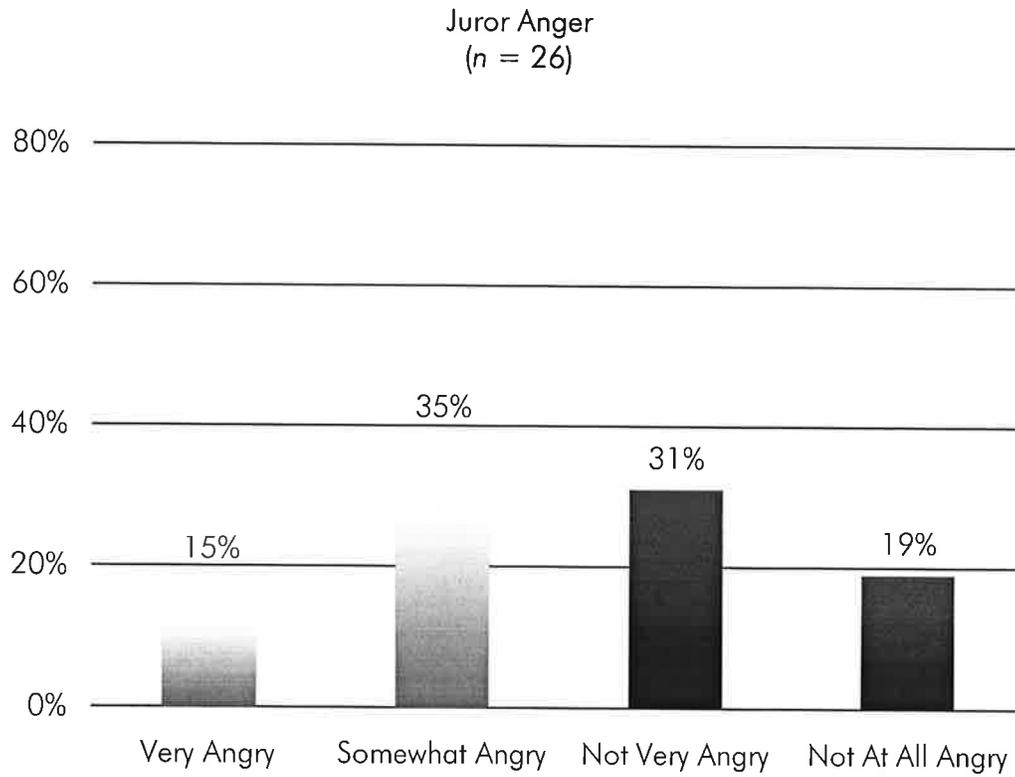


Figure 13: How strong is your feeling or desire that The City of Hermosa Beach should be punished in this case? (All Juries)

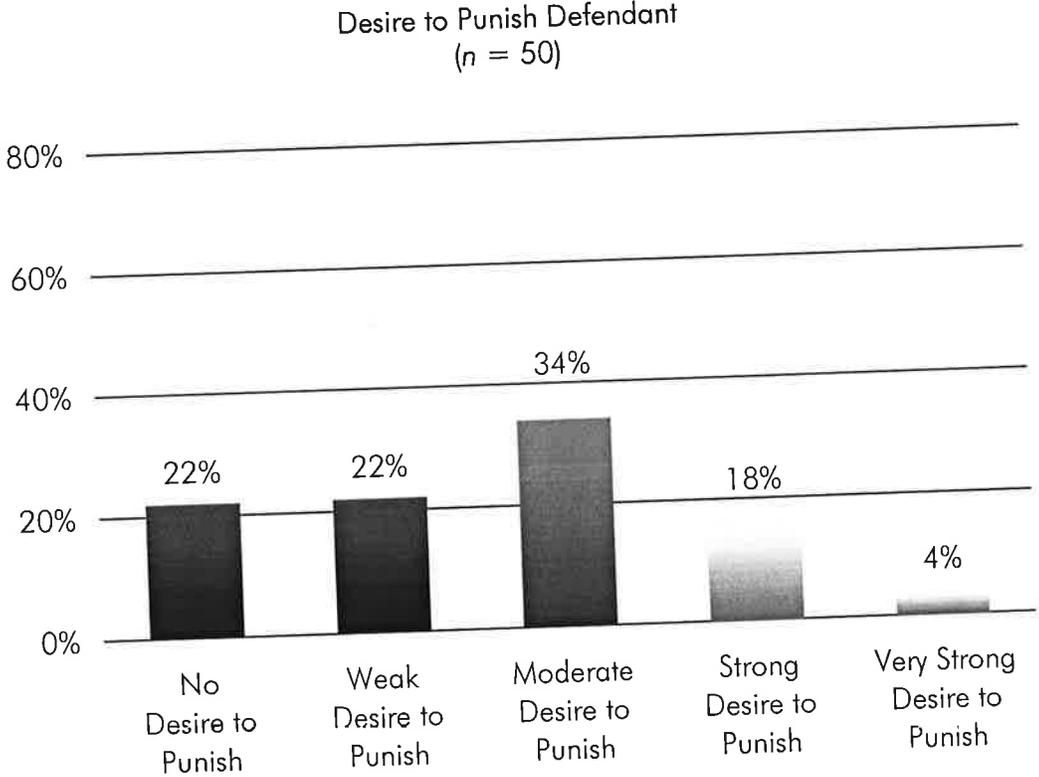
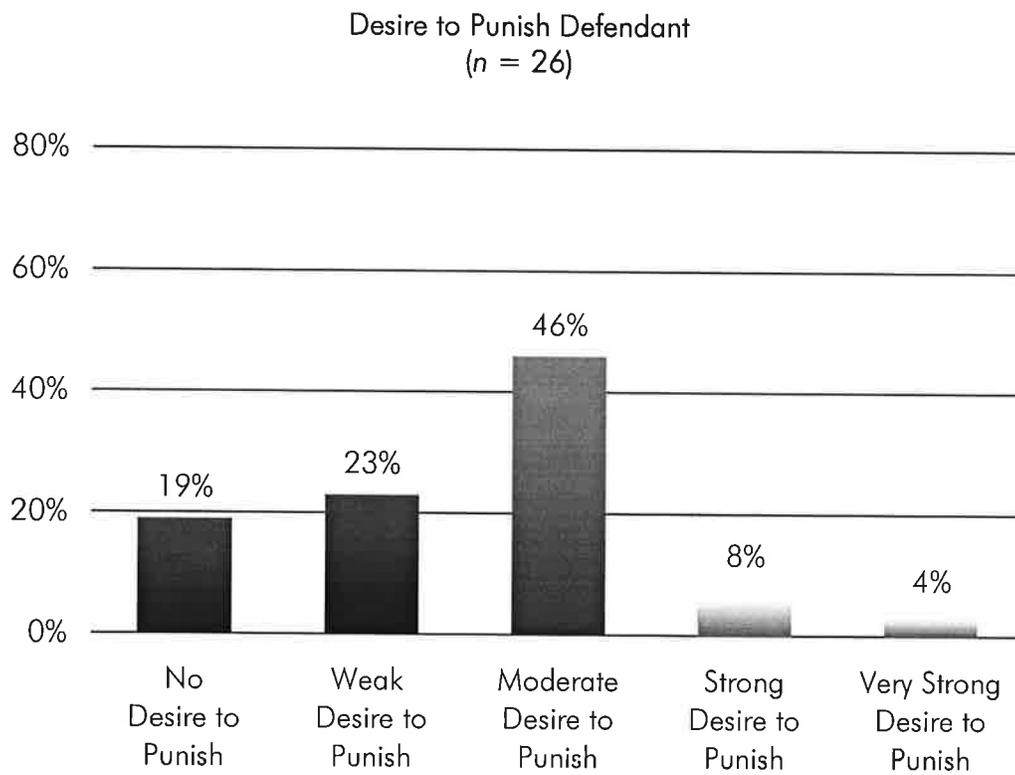


Figure 14: How strong is your feeling or desire that The City of Hermosa Beach should be punished in this case? (Post-Causation Presentation: Jury C and Jury D)



Decision Making/Comprehension Difficulty

Figure 15: How difficult was it for you to reach a decision about who should win this case? (All Juries)

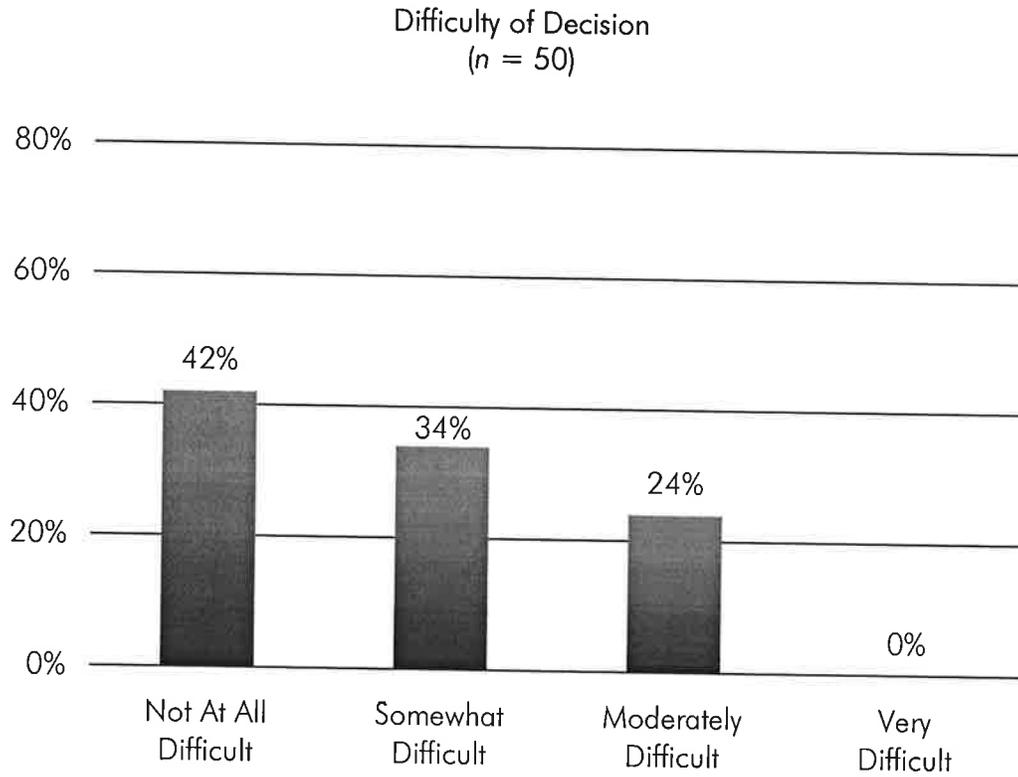


Figure 16: How difficult was it for you to reach a decision about who should win this case?
(Post-Causation Presentation: Jury C and Jury D)

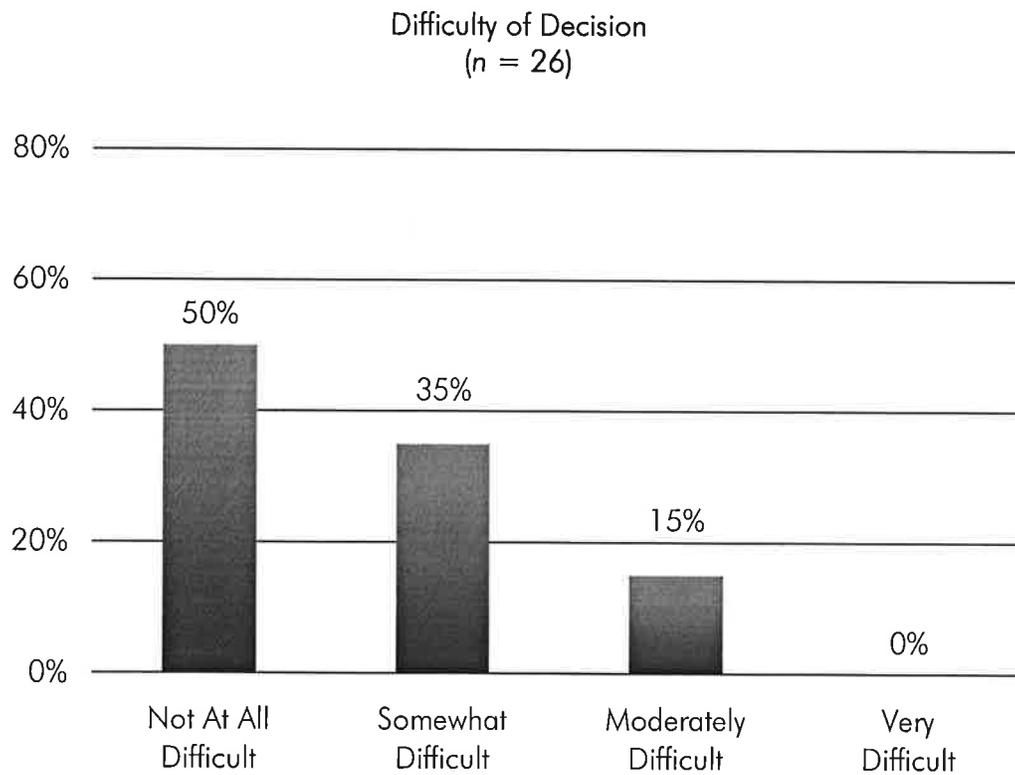


Figure 17: How easy or difficult was it to understand what the case is about? (All Juries)

Difficulty of Comprehension
(n = 50)

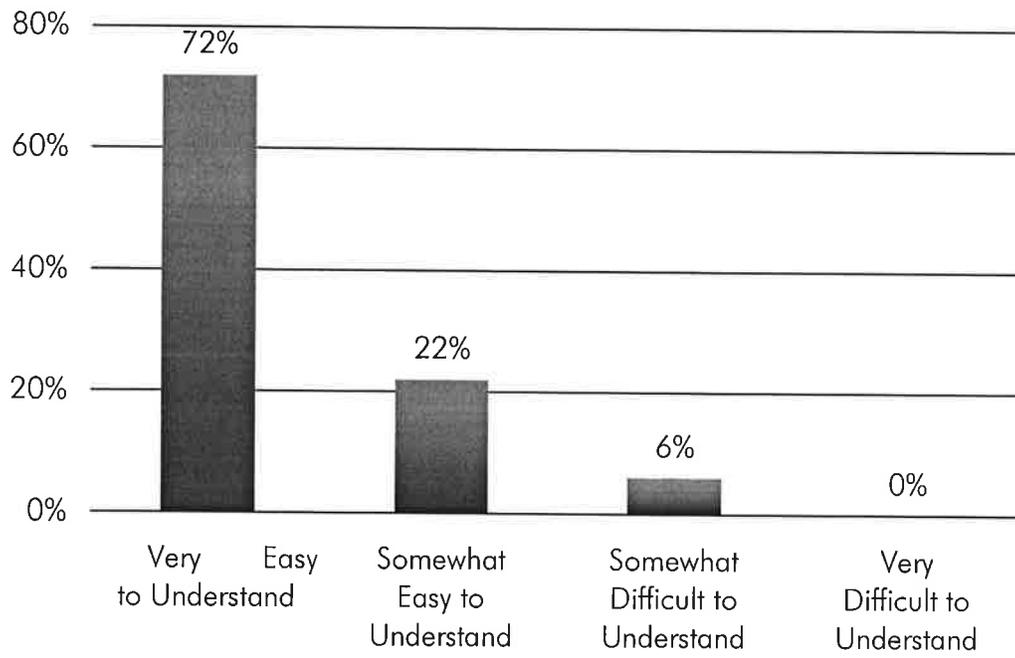
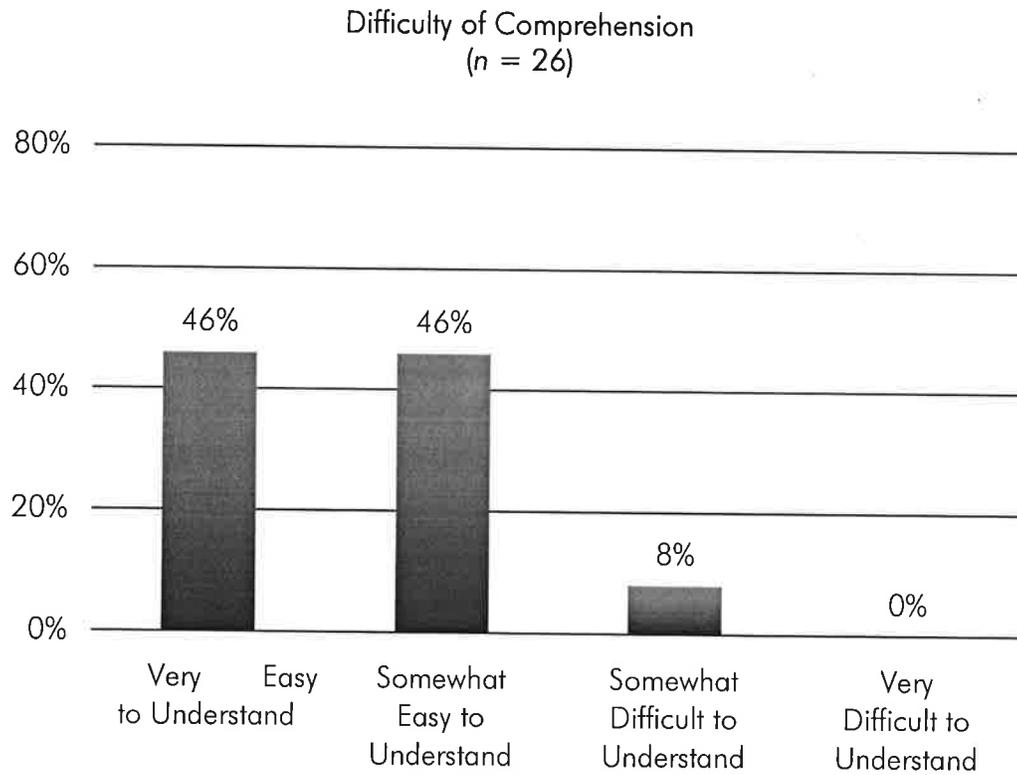


Figure 18: How easy or difficult was it to understand what the case is about? (Post-Causation Presentation: Jury C and Jury D)



Open-Ended Responses (After Damages Presentation)

If you found this case difficult to understand, what could the lawyers do to make it clearer to a jury?

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| N/A. Nothing. None. | 11 |
| The City's lawyer could be clearer and use more visual aids. The defense could have shown better presentation material. The plaintiff's presentation was easier to put together with what, who, and when of the case. The defense attorney could back up his case more. The defense is weak. They need stronger evidence and arguments. | 4 |
| I did not find it difficult to understand. | 3 |
| I found the timelines hard to follow and was therefore unable to ascertain whether or not they were even relevant. Put the years up. For example, what year was the contract enforced? When did drilling begin? What are the dates of the reports from beginning to end? What was the termination date? When was Proposition E passed? Put all of these dates on the screen to show the order of events. | 2 |
| Both lawyers spoke clearly. | 1 |
| Explain how accurate past oil studies are. How successful are new technologies? | 1 |
| Explain how the residents and business owners feel about the oil prices around the neighborhood. | 1 |
| Has there ever been any previous data or reports proving oil has been produced or extracted from Hermosa Beach in the past? | 1 |
| I just don't know why Macpherson Oil didn't drill before Proposition E. If they could have proven an actual project took place during that time frame, it would make it easier to award damages other than out-of-pocket expenses. Deciding a "fair" amount is what is hard. | 1 |
| I would like more information about the court ruling which led to this case and the court instituting Proposition E. | 1 |
| I'm not sure. | 1 |

| | |
|--|---|
| It was okay. | 1 |
| Provide more examples and role play. | 1 |
| Specify the constitutional right of Hermosa Beach to pass Proposition E. | 1 |

What graphics or exhibits were particularly helpful?

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| The maps. The maps of known oil pockets being used. The maps of oil reserves and the spreadsheets. The map. The aerial view graphics. The map and aerial picture of the area where drilling would be. The location of the oil plants/drilling. The graphic showing the land around the drill area. Oil charts. The plaintiff graphic where all the local oils wells are shown around Los Angeles County. Maps of oil areas. Proof of oil wells in beach communities. Drilling zones. | 14 |
| The historical data and projected data. The plaintiff's graph showing annual chart calculations. The slides showing the yearly profits. The profit projections for Macpherson Oil and Hermosa Beach. Fact projections. The plaintiff's graph showing the periods of projections regarding barrels of oil. The flow chart showing how the plaintiff arrived at the amount of loss. The graphic that showed where the \$550 million figure came from. The lost profits showing a loss of \$550 million. | 9 |
| Quotations from documents. Quotations. Putting up the quotations while talking about the timelines. Quotations from reports, even if they are out of context and selected with certain motives. The documents and quotations. Excerpts from documentation. Highlighted captions of the contract. The numerous quotations that stated "nothing is certain until we drill." | 8 |
| The timeline of studies. The plaintiff's timeline. The timeline used by the plaintiff. Timeline information. The years showing where and when everything began. The timelines. | 7 |
| All graphics and exhibits were helpful. All graphics presented by the plaintiff and the defense were helpful. Both plaintiff and defense graphics showed two different pictures and helped their respective parties. | 6 |
| The letters. The internal memos. Letters written by Macpherson Oil. Documents indicating Macpherson Oil's acknowledgement of uncertainty. Letters from 1991. | 5 |
| Macpherson Oil's financial chart showing the barrels of oil, expenses, projects, etc. The graphic on the amount of expenditures. Cash flow charts. The cash flow chart. | 4 |
| The statements from consultants. The surveys from different geologists. Geology reports. | 3 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| It was all somewhat helpful. I feel that both sides only showed what they wanted you to know. Neither side showed the whole story! | 1 |
| The drilling site and the graphs showing dates, people, etc. | 1 |
| The original reports used by both parties. | 1 |
| The plaintiff's graphics proved more. | 1 |
| The PowerPoint with bullets to reinforce the most important facts. | 1 |
| The reports that were shown helped in clarifying some of my questions. | 1 |

What graphics or exhibits were particularly unhelpful?

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Site pictures. The aerial maps of the City. The houses around the proposed site of drilling; this had nothing to do with the case. The location graphic/picture. The maps and the location of the area. The slides showing the location of residents. The view of the City and the residential area. The picture of the City yard and proposed drilling site; describing the area would have been enough – it seemed a little manipulative, because everyone knows how densely populated Hermosa Beach is. | 8 |
| The lost profits graphics were too ambiguous. There was too much guesswork involved in coming up with the \$550 million figure regarding 20 million barrels; this figure cannot be proven. | 2 |
| The map area and satellite drilling zone. The map of Wilmington Fields does not give any indication of the Hermosa Beach location. | 2 |
| Defendant’s graph showing ambivalent “snippets” of what the city regarded as evidence of negativity. The “snippets” of information the defense pulled from a letter that was written before entering into a contract. | 2 |
| I can’t think of anything that wasn’t helpful. | 1 |
| Speculation on both sides. | 1 |
| The “governing bodies” documents were a little hard to follow. | 1 |
| The breakdown of the costs. | 1 |
| The City should have produced charts. | 1 |
| The engineer’s standard letter of risk. | 1 |
| The expert witnesses somewhat confused me. | 1 |
| The family-owned 30 oil fields. | 1 |
| The graphs, as I recall, did not have the years represented. | 1 |

Response

Frequency

There were not enough highlighted facts.

1

This case reminds me of:

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Someone changing their minds after an agreement was made; they need a neutral party to make them come to an agreement they can both live with. Two people getting into an agreement and one backing out. Someone going back on his or her word; this is why we have legal contracts to protect an agreement. The importance of keeping one's word. A city trying to back out of its promise. Someone who is trying to get out of paying what they owe. | 6 |
| A "he said, she said" case, and you won't know the truth; drilling didn't happen—but even if it did, we don't know if the site would have produced economically viable oil. "He said, she said" – there wasn't enough hard evidence. | 2 |
| Breach of contract happens a lot. Anyone who has broken a contract and doesn't want to take the blame. | 2 |
| Non-environmentalists and environmentalists. How much of an impact a small group of anti-oil activists can have on society. | 2 |
| The Alaskan oil drilling dispute. The oil disaster in Alaska. | 2 |
| The movie <i>Erin Brockovich</i> where she fights for people in a little town. I think of the movie <i>Erin Brockovich</i> , but the roles are reversed and no one got hurt. It really does not pertain. | 2 |
| Big, sophisticated companies looking for opportunities or an advantage over a smaller entity (Hermosa Beach). Companies like Macpherson Oil only thinking about money and not people in the community. How much of the money, if they had drilled, would have helped the community? | 2 |
| A car accident where the second car is liable because a third car crashed into it, which caused the second car to hit the first car. | 1 |
| A city and company wanting to have their cake and eat it too. | 1 |
| A case based on assumptions. | 1 |
| A company getting caught up in a loophole. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| A corporation involved in scandal due to profit inflation. | 1 |
| A movie. | 1 |
| A project that went south. There were good intentions, but risks were taken with no guarantees. | 1 |
| A time when a friend asked me to go to Mexico and decided to take the tickets back. | 1 |
| City Hall meetings where approval is being sought for projects and a courtroom full of counsel. | 1 |
| David versus Goliath. Both parties have attributes of "David" at times, though! | 1 |
| Divorce court where a spouse (usually a wife) might claim damages that speak to a potential loss as well as labor and services rendered. | 1 |
| Going into space. We don't know what is out there, but we are spending billions trying to go. | 1 |
| Greed on the part of the private sector. | 1 |
| Many familiar situations which anyone can relate to. | 1 |
| My personal case. | 1 |
| Something that must be resolved. | 1 |
| The City wanting oil profits from an oil company. | 1 |
| <i>The Music Man</i> , where a slick salesman convinces a small town he can make them happy. | 1 |
| The time last year when oil prices were rising and the media pointed fingers at oil companies. It is easy and common to make oil companies the "bad guys." | 1 |

Response

Frequency

This is what happens when one party does not take action.

1

The actions of Macpherson Oil remind me of:

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| A company that has been wronged or misled. A company trying to recover money and pay back investors for a failed investment. A small company trying to recoup its costs and investments. An angry company trying to recover money from Hermosa Beach after the City reneged on a contract. Going after losses. Any contractor who has been wronged. Macpherson Oil wanting what is fair to them. Someone who wants a wrong corrected to they can move on. Someone wronged. Standing up for what is legally their right according to contract. A company that is exercising its rights. The typical company that feels it has been wrongly treated. Work done and not compensated for. A company being taken advantage of. Someone who felt he could make a lot of money and now, because of what did not happen, wants some of that money. A person who was cheated out of a great opportunity. | 16 |
| A company looking out for its future. A big company trying to receive maximum benefits. Just a company trying to make a large profit by doing something that it does best. A company willing to do anything for profits. A business wanting to benefit from the appetite of a consumer society. A typical company looking to expand financially by forging new contracts. | 6 |
| Greed as well as speculation on the part of the private sector and a sense of entitlement when things go awry. Someone trying to take advantage of a situation. After winning the initial case, they seem to be trying to gouge the City to an unwarranted degree. Trying to get too much money. | 3 |
| Someone who believed in a job that would result in financial gain all around. | 1 |
| A company that is trying to attain the money it would have received had the drilling been allowed but without knowing for certain exactly how much. It is possibly a little greedy and the \$8 million would have been enough considering they had not actually "worked" for it. | 1 |
| A company that isn't in the major leagues for a good reason. Amateur, wishful thinker, and naïve. | 1 |
| A company that put a lot of work into something and failed because of its own inability to move forward or external circumstances. | 1 |
| A person injured in an accident and seeking compensation. The accident was Proposition E. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| An episode of <i>Law & Order</i> where the plaintiff argues a gun law. | 1 |
| An oil company holding on to family profits. | 1 |
| An oil company. Although their contract was initiated before Proposition E, believing they were exempt from it was their fault alone. | 1 |
| Business deals that are made in cities for profit. | 1 |
| Macpherson Oil took too long to get the job done and they should have had backers before the project started. | 1 |
| Money hungry companies who move forward even when uncertain. | 1 |
| Myself when I was in court with another defendant. | 1 |
| Oil drilling investors who stick to what the contract states. | 1 |
| Pacific Gas & Electric when it did everything in its power to avoid paying the people in the little town. | 1 |
| Showing one side how much profit could be made without thinking or discussing all of the negative attributes. | 1 |
| Someone who is going a step further than simply seeking to make the best of a bad situation. Instead, it seems a bit like trying to capitalize on a bad situation. Macpherson Oil stands to "make" as much money off of the City of Hermosa Beach as they would have had the project actually been completed. | 1 |
| Someone who lost money and wants to recover all costs and more to punish another party. | 1 |
| Someone who shouldn't waste time. Again, it is not the City's fault but rather the citizens' vote. If Macpherson Oil could truly make \$500 million, it should pay the people to overturn Proposition E and move on. | 1 |
| The importance of keeping promises. | 1 |

Response

Frequency

Trying to get a big payday for work that was not done even though the City of Hermosa Beach banned the drilling after the citizens got wind of this and wanted a ballot.

1

The actions of the City of Hermosa Beach remind me of:

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Someone trying to backpedal out of a situation they no longer wish to commit to. Backpedaling. A bureaucracy trying to weasel its way out of a business deal. A city trying to renege on its promise. A selfish person not wanting to take responsibility for something that did not go their way or an employer who is looking for a way out of paying more than what they feel is necessary. An employer that doesn't want to take responsibility for a standing agreement. Backing out of a signed agreement between two parties. A company that wrote a bad contract and is looking for a way out. Just another city trying to get out of a mess by trying to play the victim so they don't have to pay. Someone who breaks promises and does not want to pay the consequences. | 10 |
| Its honor of the constitution and propositions passed by its citizens. Someone trying to do the right thing; residents overturned the drilling and the City has to fight for its residents. A city trying to protect itself. People wanting to have control in their city. They are the little town fighting for their right to say, "Yes, your company did us wrong." | 5 |
| The City making decisions and not really looking over the contract in detail or how it might affect the City later. The City not honoring the contract at the appropriate time; it should have been responsible regarding the details of the contract. A party that is totally disorganized, takes inappropriate action, and acts too late. Hermosa Beach is a municipality and it does have a responsibility to not only act according to voters' wishes, but to also behave in a responsible manner when commercial undertakings are involved. | 4 |
| A little kid who can no longer keep his word and doesn't want to pay the consequences. My own city, Santa Monica. It is filled with a volatile pack of squabblers and people who don't keep their word. The City was capricious and behaved like "a teenage girl." | 2 |
| A kid who doesn't want to share the wealth. | 1 |
| A city willing to do "anything" for profits. | 1 |
| A government agency that has poor laws and forces others to take a loss. | 1 |
| A side that somewhat changed the rules. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| A small company claiming to have been tricked. | 1 |
| A typical, small city. | 1 |
| Ambulance-chasing lawyers. | 1 |
| Bad business. | 1 |
| Being caught in the middle between two opposing forces. They are pinned in a tough situation. | 1 |
| Being irresponsible. Once Proposition E was passed the City should have taken more action to stop the project and prevented Macpherson Oil's pointless use of resources on illegal drilling. | 1 |
| Defend yourself in the end, even if in the beginning your motives were a bit different. | 1 |
| Deplorable and hypocritical. | 1 |
| Getting what they feel is theirs in oil profits. | 1 |
| Government bureaucracy and oversight. | 1 |
| Human resource managers and employees who are somewhat capricious and who have livelihoods that are dependent upon the actions of others. | 1 |
| Someone defending his or her beliefs. | 1 |
| Someone trying to avoid the obvious. | 1 |
| Spilt milk. | 1 |
| The City giving Macpherson Oil a difficult time. | 1 |
| The City of Los Angeles arguing the Los Angeles Police Department shootings. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| The community environment and Proposition E. | 1 |
| The defendant that I took to court. | 1 |
| They didn't think they did anything wrong and shouldn't have to pay anything. | 1 |
| Wanting the revenues of drilling without providing its citizens the short term and long term costs. | 1 |
| What anyone would do under the circumstances. | 1 |

Open-Ended Responses (After Causation Presentation)

*If you found this case difficult to understand, what could the lawyers do to make it clearer to a jury?
(Juries C & D only)*

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| N/A. Did not find it difficult. They were very clear to me. I found it clear. | 14 |
| Explain in depth. Give all information, show all documents, leases, etc. in total. Attorneys need to better explain the rundown of exhibits (when lengthy information is presented); maps were good. | 3 |
| Give more examples. Role-play. | 1 |
| Presenting all pertinent information in order of importance. | 1 |
| That the defendant should explain why it took too long to decide on the contracts. | 1 |

What graphics or exhibits were particularly helpful? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Evidentiary letters/communication between parties. Letters. Letters were good. Seeing highlighted areas from plaintiff re: dialogs. | 5 |
| Dr. Bercha's written report. The report by Aspen Bercha that did not prove the City's case. Seeing highlighted areas from the defense in the Aspen Bercha report. The Aspen Bercha report and seeing more of the context during Paul Chan's statement. | 4 |
| Maps were good. Maps. Hermosa Beach's project site in residential area. Where the site is located. | 4 |
| All. All documents were helpful. | 3 |
| Detailed timeline of events. The timeline of permit signoff. The timeline displaying the time it took to receive clearance. | 3 |
| Statistics on the screen. Plaintiff's statistics. | 2 |
| A lot of the counter arguments. | 1 |
| Graphics. | 1 |
| Graphs illustrating proposed barrels by different firms. | 1 |
| Language of lease. | 1 |
| MOC's graphic that shows "safe as comparable." | 1 |
| Plaintiff documents from hearing and permit deadlines. | 1 |
| PowerPoint – visual bullet points, highlighted areas. | 1 |
| Quotes. | 1 |
| Reports. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| The charts. | 1 |
| The transcript of the city council meeting/hearing on the environmental report. | 1 |

What graphics or exhibits were particularly unhelpful? (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| Partial paragraphs. No highlighted [sections]; everyone should read the entire document for him or herself. | 2 |
| The picture of the surrounding residential area. The Google maps of Hermosa – who cares if it was a block from civilians? The City okayed that! | 2 |
| One of the slides had small numbers that most of the jury could not see. | 1 |
| The Aspen [Bercha] report. | 1 |
| The letter to the California Coastal Commission from the City Manager explaining that Hermosa Beach was no longer a partner with Macpherson in the project. This was a little confusing for me, to say the least. | 1 |
| The written transcripts of Dr. Bercha’s testimony. | 1 |
| Transcript of public meeting. | 1 |
| When the person flipping the exhibits is not on cue with what is being discussed or presented. | 1 |

This case reminds me of: (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| "Power to the people" – the citizens of Hermosa Beach, whose concern regarding safety were heard and acted upon. | 1 |
| A breach in a lot of contracts. | 1 |
| A case where nobody really wins. | 1 |
| A construction job gone wrong. | 1 |
| City council meetings and other cases that come up in the city, when the public wants out. | 1 |
| City rights and oil rights concerning money. | 1 |
| A David and Goliath saga with some gray areas. | 1 |
| Lack of responsibility and greed being more important to them than safety and progressive thinking. | 1 |
| Not wanting to pay the piper. | 1 |
| Protecting the people before the money. | 1 |
| Slight of hand by the City of Hermosa Beach. | 1 |
| Someone that just can't take "no" for an answer and wants the residents or someone to pay for time and money they put out. | 1 |
| Someone trying to get out of something they no longer see as a benefit. | 1 |
| Something very difficult to resolve. | 1 |

Response

Frequency

Special interest lobbying that ceased to have an audience once political winds had stopped blowing in [Macpherson's] favor. But ultimately, the focus in this part of the proceedings was upon safety issues and whether the City was right to refuse to assume them.

1

The system taking advantage of a loophole.

1

What I saw on *Law & Order* on an episode about gun lobbying.

1

The actions of the City remind me of: (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Someone justifying a mistake. A resourceful person able to find a legal out/loophole. Still reminds me of someone who is trying to find any angle to get out of a situation that has become a financial and political community problem. A council trying to get out of a contract after it realized that it made the wrong decision for its citizens. A "CYA" (Cover Your Ass) tactic that politicians might resort to in order to maintain favorable public opinion, even though their predecessors in elected public office may have gotten them into the mess to begin with. A city that failed to do its job right in the beginning. So when it entered into a deal and the political winds changed, they tried to find an out instead of paying money. | 6 |
| Politics. Government red tape, stall tactics to force a small business to cave under pressure, and the undue expense of legal action. Selfish politicians playing the game and not giving a thought to the consequences until they were confronted. Cowardly and unaccountable for actions. | 3 |
| City protecting and listening to its public. The fact that money/profit isn't everything – principles matter as does the big picture. | 2 |
| A good defense that knows what to really explain. | 1 |
| A person who is constantly trying to justify their actions, but takes no responsibility on fault. | 1 |
| Being inflexible. They should at least pay for expenses. | 1 |
| Criminal activity by elected officials. | 1 |
| Everyone not being on the same page. | 1 |
| Government greed in the face of private enterprise. | 1 |
| How they could change their minds on a contract and not follow what they drew up in 1996. | 1 |
| Someone strong arming a company to get out because it is inconvenient to them. | 1 |

| <u>Response</u> | <u>Frequency</u> |
|--|------------------|
| Taking care of what is most important to you and your family. | 1 |
| The City always takes its time. It doesn't make commission; this is my experience with them. | 1 |
| Trying to get money from oil rights. | 1 |
| Trying to please the people and sometimes not reading the fine print of what might happen in the future. | 1 |
| Very embarrassed for a city. | 1 |
| Something that just needs to get resolved. | 1 |

The actions of Macpherson Oil remind me of: (Juries C & D only)

| <u>Response</u> | <u>Frequency</u> |
|---|------------------|
| A person seeking retribution for lost time and opportunity. A company that was wronged. The innocent trying to prove and do the right thing. A company entitled to recover costs and lost profits. A strong, dedicated worker looking for justice. Small company trying to get investment back. A company wanting to be justified for wasting their time and money on a multimillion dollar project. They [the City] just want to get it resolved and get what is right to them. The little guy standing up for his rights. Wants to recover lost [profits] and pay back his investors. | 10 |
| The company trying to get paid more than what the situation is worth. Greed and a sense of entitlement for the private sector. Opportunistically trying to take advantage of a court decision in their favor by asking for exorbitant damages. Trying to inflate things to make more money. Typical businessmen looking to make a profit and not giving a care to anyone but their immediate choices – no futuristic models considered, just same old, same old. | 5 |
| A good plaintiff that was ready to “go down swinging.” | 1 |
| A private venture in hopes of obtaining profits to support civic consumerism. | 1 |
| Business deals that are made for a profit that could be other’s expense later on. | 1 |
| Hard-ball tactics assumed by sophisticated firm that is disgruntled and feels cheated. Macpherson obviously has a right to admit the COHB’s “noble intentions,” especially when they never meant to terminate the contract. | 1 |
| Oil company trying to make A profit. | 1 |
| They will be okay with restitution. | 1 |
| Unfair people. | 1 |

Jurors' Evaluation of Arguments

After hearing the complete case presentation, jurors completed a questionnaire containing key plaintiff and defense arguments in which they rated each argument for its persuasiveness. These ratings help assess the strengths and weaknesses of a case, assuming that the mock trial case presentations have been balanced and strong for both sides. This section summarizes the data on jurors' ratings of each side's arguments.

To evaluate the impact of an individual argument, we find it useful to consider both the average rating given to an argument and the range of juror agreement of an argument. The average by itself can give a misleading picture of how many jurors accept an argument or how generally persuasive jurors find it to be. Arguments are the most effective if jurors can use them in deliberations to persuade other jurors to solidify or change their positions, and the percentage of jurors who agree or disagree provides a more useful view of an argument's effectiveness in a group context than does the average score.

When analyzing jurors' reactions to the arguments, we look for a number of things. These include:

- Where are jurors converging in agreement or in disagreement with a party's arguments? Convergence suggests that jurors share a common worldview or reaction to evidence that may override plaintiff versus defense orientations.
- Where are jurors accepting one argument of a complex defense but not another?
- Where do jurors show a wide range of reaction to an argument? This may reveal an argument that works with jurors predisposed to favor one party but is not persuasive with jurors who tend to favor the other side. It can also indicate juror confusion or uncertainty.
- How strong is jurors' agreement or disagreement? Are jurors strongly polarized in their reactions to each side's arguments, or do jurors show a wide range of reaction to each side's arguments?

The following four tables analyze and present case statements for the plaintiff and the defense – first for arguments pertaining to the damages presentations and then for arguments related to the causation presentations.

Evaluation of Plaintiff Damages Arguments

We define “overall agreement” as the percentage of jurors who agree strongly with a given argument, plus the percentage of jurors who agree somewhat with that argument. A high or strong level of overall agreement is considered 70% or above. An argument receiving 90% agreement or above signifies a very strong level of agreement. None of the plaintiff arguments related to damages received this level of support, and only two of the 15 statements (13%) met with agreement levels above 70%, indicating that many of the plaintiff’s damages arguments failed to resonate strongly with the jurors.

Plaintiff’s arguments that received the highest level of agreement were:

- The City is trying to avoid paying for the contract it breached (78% agree overall, 52% agree strongly).
- Macpherson deserves to be compensated because the City broke its promises (82% agree overall, 46% agree strongly).

We define “overall disagreement” as the combined percentages of jurors who disagree *somewhat* and *strongly* with a given statement. Anything greater than 70% disagreement is considered a strong level of disagreement and indicates that respondents objected to the argument being presented. Notably, only one statement (7%) received this level of disagreement, demonstrating that, although they did not wholeheartedly endorse the plaintiff’s damages arguments, the jurors did not reject them outright either.

The following plaintiff arguments received the highest level of disagreement:

- No test wells were ever drilled because there was no need for test wells at a proven site like this one (82% disagree overall, 50% disagree strongly).

Summary of the Persuasiveness of Plaintiff's Damages Arguments

Ratings indicate the extent to which jurors agree or disagree with each statement. The arguments are listed below in descending order according to the mean rating.

Table 22: Percentage of Juror Agreement with Plaintiff Damages Arguments

| Mean | Plaintiff Damages Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|--|-------------------|-------------------|----------------|----------------|
| 3.24 | The City is trying to avoid paying for the contract it breached. | 6% | 16% | 26% | 52% |
| 3.22 | Macpherson deserves to be compensated because the City broke its promises. | 6% | 12% | 36% | 46% |
| 2.76 | The Macpherson oil project would have generated hundreds of millions of dollars in profits. | 6% | 30% | 46% | 18% |
| 2.76 | Macpherson invested too much time and money to have ever walked away from this deal. | 12% | 22% | 44% | 22% |
| 2.74 | If the project had gone forward, Macpherson would have had no trouble finding the investors it needed. | 2% | 38% | 44% | 16% |
| 2.58 | The Macpherson oil site is part of a huge and valuable proven oil field. | 6% | 34% | 56% | 4% |
| 2.54 | Hermosa Beach is a very sophisticated city that has been interested in oil for a long time. | 8% | 34% | 54% | 4% |
| 2.50 | We know the Macpherson site would have produced large amounts of oil and money given how successful the Redondo Beach site has been. | 14% | 30% | 48% | 8% |
| 2.30 | Macpherson's damage request is fair and reasonable. | 34% | 16% | 36% | 14% |
| 2.26 | Macpherson's request for damages – | 34% | 24% | 24% | 18% |

| | | | | | |
|------|---|-----|-----|-----|----|
| | based on 20 million barrels of oil – is reasonable. | | | | |
| 2.26 | We know that the site would have produced at least 20 million barrels of oil because Macpherson would have used modern drilling technology. | 20% | 40% | 34% | 6% |
| 2.18 | There is a potential for an additional 10 million barrels of recoverable oil from a deep geological zone called the schist. | 18% | 48% | 32% | 2% |
| 2.16 | Macpherson’s damages estimates are reliable because they are based on techniques that experts have used for many years. | 24% | 40% | 32% | 4% |
| 2.00 | Macpherson’s damage request is conservative and could actually be a lot higher. | 40% | 28% | 24% | 8% |
| 1.74 | No test wells were ever drilled because there was no need for test wells at a proven site like this one. | 50% | 32% | 12% | 6% |

Evaluation of Defense Damages Arguments

Only one of the City's 15 damages arguments (7%) received a strong level of agreement. It related to Macpherson's damages request, and demonstrated that a majority of jurors believed the request was excessive. However, the fact that only one argument was strongly supported also indicates that jurors did not find most of defense's damages arguments believable.

The City's damages argument that received the highest level of agreement was:

- Macpherson's damage request is excessive (72% agree overall, 36% agree strongly).

Two of the City's damages arguments (15%) met with a high level of disagreement, suggesting that a majority of jurors did not simply reject arguments supporting the City's damages case. However, many of the arguments were not strongly endorsed either, indicating that a lot of the jurors were equivocal about the City's damages arguments.

The following arguments presented by Cameron received the highest level of disagreement:

- Macpherson never would have been able to raise the money needed to complete the project (84% disagree overall, 26% disagree strongly).
- It is unlikely that the Macpherson Oil project would have ever gone forward (84% disagree overall, 20% disagree strongly).

Summary of the Persuasiveness of Defense's Damages Arguments

Ratings indicate the extent to which jurors agree or disagree with each statement. The arguments are listed below in descending order according to the mean rating.

Table 23: Percentage of Juror Agreement with Defense Damages Arguments

| Mean | Defense Damages Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|---|-------------------|-------------------|----------------|----------------|
| 2.90 | Macpherson's damage request is excessive. | 18% | 10% | 36% | 36% |
| 2.72 | Macpherson's projected lost profits are based on a series of assumptions and opinions, as opposed to determined facts. | 14% | 22% | 42% | 22% |
| 2.72 | Macpherson's own experts admit that at least two of the four geologic zones at the site were unlikely to be productive. | 8% | 26% | 52% | 14% |
| 2.68 | The only real and accurate damages are Macpherson's out-of-pocket expenses, which can be measured. | 18% | 20% | 38% | 24% |
| 2.64 | Nobody really knows if there are commercially viable oil reserves in Hermosa Beach. | 10% | 28% | 50% | 12% |
| 2.54 | Macpherson's claim of lost profits is pure speculation. | 16% | 34% | 30% | 20% |
| 2.50 | It is speculation to say that the project would have ever gotten to the commercial production phase. | 10% | 36% | 48% | 6% |
| 2.44 | Common sense tells you that Macpherson's request for damages is wishful thinking. | 22% | 28% | 34% | 16% |
| 2.42 | Macpherson made sure it had several ways to get out of the contract because it knew that its projections were highly speculative. | 14% | 42% | 32% | 12% |

| Mean | Defense Damages Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|---|-------------------|-------------------|----------------|----------------|
| 2.38 | Macpherson's own actions prove that it always knew there was a risk that the project would fail to produce commercially viable quantities of oil. | 18% | 38% | 32% | 12% |
| 2.36 | Macpherson's own internal documents prove that it saw the project as only "marginally" profitable. | 20% | 30% | 44% | 6% |
| 2.16 | Macpherson deserves nothing more than its out-of-pocket expenses because it never put a drill bit into the soil. | 36% | 28% | 20% | 16% |
| 2.00 | The most reliable and unbiased estimates indicated that the site would have produced closer to 5 million barrels – far less than the 20 million barrels it is claiming now. | 20% | 46% | 32% | 2% |
| 1.98 | Macpherson never would have been able to raise the money needed to complete the project. | 20% | 64% | 14% | 2% |
| 1.92 | It is unlikely that the Macpherson Oil project would have ever gone forward. | 26% | 58% | 14% | 2% |

Evaluation of Plaintiff Causation Arguments

As with the plaintiff's damages arguments, only two of Macpherson's causation arguments (13%) met with strong levels of support (over 70% agreement), and none received 90% agreement. Plaintiff's arguments that received the highest level of agreement were:

- It is highly suspicious that the City waited so long to raise its public health concerns about the project (81% agree overall, 39% agree strongly).
- Macpherson always performed its obligations under the contract (81% agree overall, 23% agree strongly).

None of the plaintiff's 16 causation arguments received strong levels of disagreement (greater than 70% disagreement), although one argument (6%) was close. Similar to the damages arguments, this suggests that most jurors did not completely agree with or reject the plaintiff's causation arguments as well.

The following plaintiff arguments received the highest level of disagreement:

- The project did not present any "significant" public safety risks (69% disagree overall, 23% disagree strongly).

Summary of the Persuasiveness of Plaintiff's Causation Arguments

Ratings indicate the extent to which jurors agree or disagree with each statement. The arguments are listed below in descending order according to the mean rating.

Table 24: Percentage of Juror Agreement with Plaintiff Causation Arguments

| Mean | Plaintiff Causation Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|---|-------------------|-------------------|----------------|----------------|
| 3.15 | It is highly suspicious that the City waited so long to raise its public health concerns about the project. | 4% | 15% | 42% | 39% |
| 3.04 | Macpherson always performed its obligations under the contract. | 0% | 19% | 58% | 23% |
| 2.96 | The Air Quality Management District, the State Lands Commission, and the Coastal Commission would not have given the necessary permits to Macpherson if the project was unsafe. | 4% | 27% | 38% | 31% |
| 2.96 | The City's health and safety claims are just an excuse to avoid paying Macpherson what it is owed. | 8% | 27% | 27% | 38% |
| 2.92 | The City made it difficult for Macpherson to obtain the permits it needed to begin the project. | 8% | 15% | 54% | 23% |
| 2.92 | The City's claim that Macpherson failed to start drilling in time was just another excuse to breach the contract. | 4% | 31% | 34% | 31% |
| 2.92 | The City ended the project because of political pressures, and not because of any health and safety concerns. | 8% | 27% | 31% | 34% |
| 2.85 | The City failed to perform its obligations when it failed to vacate the Maintenance Yard. | 4% | 27% | 50% | 19% |

| Mean | Plaintiff Causation Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|--|-------------------|-------------------|----------------|----------------|
| 2.77 | The City intentionally delayed the project and increased costs so that Macpherson would give up and walk away from the project. | 4% | 35% | 42% | 19% |
| 2.77 | The City tried to drive up costs of the project by making unreasonable demands on Macpherson. | 4% | 38% | 35% | 23% |
| 2.65 | Ever since the passage of Prop E, the City was looking for a way to get out of its contract with Macpherson without having to pay anything. | 19% | 23% | 31% | 27% |
| 2.58 | The City Counsel "squeezed" Dr. Bercha's opinion about "substantial" risks out of him to justify breaching the contract. | 15% | 31% | 35% | 19% |
| 2.58 | All of the risk assessments and studies reached the same conclusion: That the health and safety risks could be reduced to acceptable levels. | 8% | 42% | 35% | 15% |
| 2.54 | The City Council's September 1998 decision was a sham. | 15% | 31% | 39% | 15% |
| 2.54 | The independent Aspen-Bercha Report indicated the project could be done safely. | 12% | 34% | 42% | 12% |
| 2.27 | The project did not present any "significant" public safety risks. | 23% | 46% | 12% | 19% |

Evaluation of Defense Causation Arguments

Although none of the City's causation arguments received agreement levels above 90%, three of 18 statements (17%) reached a strong level of overall agreement. This demonstrates that, while a few of the key defense causation arguments resonated among jurors, the City still has work to do in order to persuade jurors on the issue of causation.

The City's arguments that received the highest level of agreement were:

- The City had a duty to stop the project on public safety grounds if it found that there were "substantial" risks to the community (88% agree overall, 50% agree strongly).
- In 1998, the City Council had every right to take a fresh, independent look at the health and safety issues and decide what was best for its residents (88% agree overall, 38% agree strongly).
- The City always had the right to stop the project on public safety grounds (81% agree overall, 39% agree strongly).

Notably, none of the City's causation arguments received a strong level of disagreement, indicating that jurors did not completely reject any of the City's arguments. Once again, as with the City's damages arguments, the causation arguments also appeared to meet with mixed support.

The following arguments presented by the City received the highest level of disagreement:

- Just like its damages claims, Macpherson's story on causation goes against common sense (69% disagree overall, 27% disagree strongly).
- Macpherson never would have obtained all of the permits it needed to start the project because the public safety risk was too high (61% disagree overall, 23% disagree strongly).

Summary of the Persuasiveness of Defense's Causation Arguments

Ratings indicate the extent to which jurors agree or disagree with each statement. The arguments are listed below in descending order according to the mean rating.

Table 25: Percentage of Juror Agreement with Defense Causation Arguments

| Mean | Defense Causation Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|---|-------------------|-------------------|----------------|----------------|
| 3.38 | The City had a <u>duty</u> to stop the project on public safety grounds if it found that there were "substantial" risks to the community. | 0% | 12% | 38% | 50% |
| 3.23 | In 1998, the City Council had every right to take a fresh, independent look at the health and safety issues and decide what was best for its residents. | 4% | 8% | 50% | 38% |
| 3.15 | The City always had the right to stop the project on public safety grounds. | 4% | 15% | 42% | 39% |
| 2.77 | The dense residential and small business community surrounding the site made the project too dangerous to go forward. | 15% | 23% | 31% | 31% |
| 2.73 | For three years after Prop E passed, neither the City nor Macpherson believed that Prop E applied to the project. | 8% | 38% | 27% | 27% |
| 2.58 | The City should not be penalized for trying to protect the health and safety of its residents. | 12% | 34% | 39% | 15% |
| 2.50 | The Aspen-Bercha Report identified serious health and safety risks that the City had to address. | 15% | 31% | 42% | 12% |
| 2.42 | The City terminated the Macpherson Oil project for health and safety reasons. | 31% | 15% | 35% | 19% |

| Mean | Defense Causation Arguments | Disagree Strongly | Disagree Somewhat | Agree Somewhat | Agree Strongly |
|------|---|-------------------|-------------------|----------------|----------------|
| 2.42 | Macpherson had every opportunity to defend the project before and during the September 1998 City Council meeting. | 8% | 50% | 34% | 8% |
| 2.38 | The City invested its own time and money trying to help Macpherson get the permits it needed. | 12% | 42% | 42% | 4% |
| 2.31 | The City put the health and safety of its residents ahead of any royalties it might have received from the Macpherson oil project. | 31% | 27% | 23% | 19% |
| 2.27 | Because of the 1998 public safety decision, Macpherson never would have earned any profits, even if Prop E had never passed. | 23% | 35% | 35% | 7% |
| 2.27 | The City always acted in good faith. | 23% | 35% | 35% | 7% |
| 2.27 | The fact that both parties worked together for three years after Prop E passed proves that Prop E was not the cause of the breach. | 27% | 35% | 23% | 15% |
| 2.27 | The City Council's September 1998 meeting was a fair and open hearing. | 23% | 35% | 35% | 7% |
| 2.27 | Macpherson is trying to spin the Aspen-Bercha Report to help its case. | 15% | 46% | 35% | 4% |
| 2.23 | Macpherson never would have obtained all of the permits it needed to start the project because the public safety risk was too high. | 23% | 38% | 31% | 8% |
| 2.08 | Just like its damages claims, Macpherson's story on causation goes against common sense. | 27% | 42% | 27% | 4% |