



**PRODUCT LIAB.--DEFECTIVE PIPE ELBOW BRINGS REFINERY BLAST, RECORD VERDICT**

(YY 10/1) *Citgo Petroleum Corp., PDV Midwest Refining LLC, Certain Underwriters at Lloyds of London v Babcock & Wilcox Co., Babcock & Wilcox Co. Tubular Products Division 03L-9812* Tried Oct. 3-Nov. 6, 2006 (11)

**Verdict:** \$387,421,695 after 15% off \$455,790,229 (\$141,500,000 property damage plus \$314,290,229 business interruption losses). The jury apportioned liability 45% to defts, 40% to the prior refinery owner (Unocal n/k/a Chevron), and 15% to Citgo. In a pretrial Joint Stipulation and Accord relating to Babcock & Wilcox's emergence from Chapter 11 bankruptcy in early 2006, the parties agreed to a cap of \$50 million on its uninsured exposure for the verdict, \$7.5 million of which was paid in February 2006, with the remainder contingent on various events. Defense appeal is anticipated.

**Judge:** James Michael Varga (IL Cook-Law)

**Pltf Attys:** Randy G. Donato, Brook F. Minx and Robbie A. Moehlmann of *Donato, Minx* (Houston, TX) and Matthew J. Egan of *Pretzel & Stouffer* for Citgo Petroleum Corp., PDV Midwest Refining LLC Demand: \$375,000,000 Asked: \$547,790,229; Mark E. Christensen, Eric D. Stubenvoll and Katherine A. Jones of *Christensen & Ehret* for Certain Underwriters at Lloyds of London

**Deft Attys:** John Donley, Andrew R. McGaan, Nader R. Boulos and Joshua Z. Rabinovitz of *Kirkland & Ellis* for both defts (Lloyd's of London; American Home Assurance; Starr of Bermuda) Offer: none

**Pltf Experts:** Kimble Clark, Ph.D. (Mechanical Engineer), Geoffrey Egan, Ph.D., Aptech Engineering Service, 601 W. California Ave., Sunnyvale, CA (408-745-7000) (Metals), Kenneth Gibson, Hagen Streiff Newton & Oshiro, 15601 Dallas Pkwy., Addison, TX (972-980-5060) (Accountant/CPA) and Karl Weisheit, 15601 Dallas Pkwy., Addison, TX (972-980-5060) (Accountant/CPA) for all pltf's

**Deft Experts:** Tom Schneider, Stancil & Co., 125 E. John Carpenter Freeway, Irving, TX (214-688-0255) (Accountant/CPA), Kathy Spletter, 125 E. John Carpenter Freeway, Irving, TX (214-688-0255) (Accountant/CPA), James Conroy, P.O. Box 337, Blackwood, NJ (856-256-0074) (Metals) and William Abington, Alvarez & Marsal, 122 W. John Carpenter Freeway, Houston, TX (214-496-0990) (Accountant/CPA) for both defts

Aug. 14, 2001 a fire at the Citgo Refinery (Lemont) started when a pipe elbow manufactured by Babcock & Wilcox ruptured, allowing 650-degree crude oil to escape and auto-ignite, causing extensive property damage. Portions of the refinery had to be rebuilt, a project that took nine months to complete (\$233.5 million property damage plus \$314.3 million business interruption losses claimed). A subsequent investigation concluded that the pipe fitting was made from the wrong kind of metal and had succumbed to corrosion. Pltf's insurers intervened in this lawsuit, which Citgo filed in 2003, to recover payments made toward the business interruption losses. In 1981, when Unocal operated the refinery, B&W sold Unocal the pipe elbow at issue, along with 9 others. A year later, B&W discovered that some of its fittings were defective (after Unocal and another users rejected some "off-spec" elbows), and generally warned Unocal but--for whatever reason--the specific elbow was not located and replaced. In 1997, Citgo bought the refinery from Unocal. B&W faulted Citgo for not noticing the problem part during subsequent routine refinery inspections. B&W had brought a 3rd-party complaint for contribution against Unocal, but that action was dismissed pretrial on the basis that, under its sale agreement with Citgo, Unocal no longer had tort liability for the refinery. B&W appealed to the 1st District Appellate Court (1-05-3827) which sustained the dismissal on other grounds--that the 10-year construction statute of repose barred the action--two days after this verdict was rendered. Defense further contended that because Citgo had assumed Unocal's tort liability with the refinery purchase, and because the jury assigned Unocal and Citgo a total of 55% liability for the incident, the pltf's should be barred from recovering. However, pltf's attorneys insisted that the jury's joint and several liability assessment as to 3rd-party Unocal did not equate to a contributory negligence finding as to Citgo, and trial Judge Varga agreed. Pltf's attorneys assert that the appellate court's decision further undermines B&W's position that Unocal's allocated fault should be imputed to Citgo since there is now no liability to assume. This is the largest jury verdict in Cook County Circuit Court history (prior "high" \$127 million in 1991).