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10 UNITED SERVICES AUTOMOBILE ASSOCIATION

11
12 UNITED STATES BANKRUPTCY COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16
17 IN RE) CASE NO. 01-30923 DM
18) Chapter 11 Case
19 PACIFIC GAS & ELECTRIC COMPANY) THE HONORABLE DENNIS MONTALI
20) Date: September 11, 2001
21) Time: 1:30 p.m.
22) Place: 235 Pine Street, 22nd Floor
23) Debtor.
24)

25 **DECLARATION OF RANDY W. GIMPLE IN SUPPORT OF UNITED SERVICES**
26 **AUTOMOBILE ASSOCIATION'S MOTION PERMITTING MODIFICATION OR**
27 **LIFTING OF THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. SECTION 362(d)(1)**

28 1. I am an attorney duly admitted to practice before the Federal District Court for the

-1- A001 Add: Kids Ogc Mail Center

1 Northern District of California and am a partner with the law firm of Carlson, Calladine & Peterson,
2 counsel for moving party, UNITED SERVICES AUTOMOBILE ASSOCIATION (hereinafter USAA),
3 in *USAA v. Pacific Gas & Electric*, San Francisco County Superior Court Case No. 316763. I make this
4 declaration in support of USAA's Motion Permitting Modification or Lifting of the Stay Pursuant to 11
5 U.S.C. Section 362(d)(1). I have personal knowledge of the facts set forth herein and am competent to
6 testify thereto.

7 2. By written agreement, USAA and PG&E stipulated that statutes of limitations on any and
8 all actions, claims or demands arising on behalf of USAA and against PG&E would be tolled effective
9 February 1, 1999 and until such time as either party served written notice of intent to discontinue said
10 toll.

11 3. Due to PG&E's failure to respond to USAA's requests, on November 16, 2000, I
12 prepared and served on behalf of USAA written notice of USAA's intent to terminate the agreement and
13 file an action to enforce USAA's rights against PG&E.

14 4. On November 16, 2000, USAA filed a Complaint for Damages and for Injunctive relief
15 for Nuisance, Trespass, Strict Liability, and Negligence in San Francisco Superior Court, Case No.
16 316763 (hereinafter the Non-Bankruptcy Action). The Complaint sets forth the relevant facts leading
17 up to the filing of the Complaint and upon which relief is sought. Attached hereto as Exhibit "A" is a
18 true and correct copy of the Complaint.

19 5. The Complaint alleges causes of action which solely involve state law issues regarding
20 a hazardous condition, strict liability, nuisance, trespass, and negligence under California law.

21 6. The Complaint was filed along with a request for a jury trial.

22 7. In addition to monetary damages, the Complaint seeks a permanent injunction requiring
23 PG&E to (a) conduct a complete and thorough investigation to determine the precise location of the leak
24 or leaks causing natural gas to contaminate plaintiff's land and property; (b) permanently repair and
25 correct all conditions causing any such leaks; (c) extract and remove from USAA's land, soil, buildings
26 and other property all detectable natural gas or natural gas residue or by-products remaining therein; (d)
27 perform detailed and thorough monitoring thereafter and for as long as the Court shall direct to confirm
28 that natural gas contamination does not reoccur; and (e) reimburse USAA for all loss, damage and costs,

1 whether direct, indirect, incidental, consequential or otherwise, resulting from PG&E's performance of
2 such measures.

3 8. Shortly after the filing and service of the Complaint, I prepared and served upon PG&E
4 written discovery relevant to the technical and factual issues in the case. On February 6, 2001, I met
5 with Steven Burke, Esq., of Sedgwick, Detert, Moran & Arnold, counsel for PG&E in the action.
6 During that meeting, Mr. Burke and I discussed the legal and technical issues in the case and began to
7 develop a streamlined discovery process. Also during this meeting, we discussed the prospects for
8 mediation and, on behalf of PG&E, Mr. Burke committed to a plan to mediate the matter within 120
9 days. I indicated that my client had become frustrated in its efforts to engage PG&E in negotiations
10 before suit was filed but that I would discuss mediation with my client again.

11 9. By the conclusion of our meeting, Mr. Burke and I had reached agreement that, on
12 February 26, 2001, we would simultaneously exchange "position papers," in which USAA would set
13 forth the bases for its claims that PG&E was the source of the gas contamination and PG&E would set
14 forth its bases for denying those claims. On USAA's part, I agreed not to force immediate compliance
15 with our written discovery and instead to work with USAA's technical consultant in an effort to refine
16 a more narrow scope of discovery. I also agreed to provide an itemized statement of damages and to
17 discuss the concept of mediation with my client. Mr. Burke agreed that PG&E would participate with
18 us in developing a protocol for further testing at the site and that he would advise whether PG&E would
19 consider splitting the cost for that testing. As discussed, the purpose of this testing was to determine the
20 critical issue of whether there remained a gas-contamination problem at the USAA site and, if so, to
21 identify the source for that gas. By conducting the test on a mutually acceptable protocol I indicated that
22 we would then have results which neither party could challenge, thereby further streamlining the issues
23 and advancing the prospect of resolution.

24 10. After our meeting, we exchanged our respective "position papers." Thereafter, Mr. Burke
25 advised me that PG&E's technical staff had reviewed the various contentions in USAA's position paper
26 and defined for me those contentions which PG&E would concede for purposes of mediation.
27 Discussions then began to focus upon USAA's willingness to engage in private mediation, in light of
28 PG&E's then-demonstrated commitment to attempt to resolve these issues informally.

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8 Attorneys for Plaintiff
9 UNITED SERVICES AUTOMOBILE ASSOCIATION

ENDORSED
FILED
San Francisco County Superior Court
NOV 16 2000
GORDON PARK-LI, Clerk
BY: MIKE MORRIS
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 UNITED SERVICES AUTOMOBILE)
13 ASSOCIATION, a reciprocal interinsurance)
14 exchange,)
15 Plaintiff,)
16 vs.)
17 PACIFIC GAS & ELECTRIC COMPANY, a)
18 corporation, and DOES 1 through 20,)
19 inclusive.)
20 Defendants.

CASE NO. **316763**

COMPLAINT FOR DAMAGES AND FOR
INJUNCTIVE RELIEF FOR NUISANCE,
TRESPASS, STRICT LIABILITY AND
NEGLIGENCE; DEMAND FOR JURY
TRIAL

APR 20 2001

PLAN 1

9:00 AM

STATUS OF CASE

21 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22 1. Plaintiff, UNITED SERVICES AUTOMOBILE ASSOCIATION (hereinafter
23 "Plaintiff" or "USAA"), is a reciprocal interinsurance exchange and, at all times material hereto, is and
24 was the owner and possessor of buildings, improvements and land located at the intersection of
25 Silica Avenue and Harvard Streets in the City of Sacramento, County of Sacramento and State of
26 California (hereinafter referred to as "the Site").

27 2. Upon information and belief, Defendant PACIFIC GAS & ELECTRIC
28 COMPANY (hereinafter "Defendant" or "PG&E"), at all times material hereto, is and was a

1 corporation organized and existing under the laws of the State of California and maintaining a
2 principal place of business in San Francisco, California.

3 3. The true names and capacities, whether individual, corporate, associate or
4 otherwise, of defendants DOE 1 through DOE 20, inclusive, are unknown to plaintiff, who therefore
5 sues said defendants under such fictitious names. Plaintiff will amend this complaint to reflect the
6 true names and capacities of DOES 1 through 20 when same is ascertained.

7 4. At all times material hereto, USAA employed persons and performed
8 insurance business through its offices located at the Site.

9 5. Upon information and belief, PG&E installed, maintains and owns
10 underground natural gas transmission lines, as well as the natural gas within them, in the vicinity of
11 plaintiff's buildings and other improvements located at the Site.

12 6. Prior to December of 1996, USAA received from its employees and visitors
13 complaints of noxious gas odors emanating into and through Building II at the Site and, in response
14 thereto, undertook to determine the source of said odors.

15 7. After expending substantial sums and effort to investigate the characteristics
16 and cause of the gas vapors, USAA became aware in December of 1996 that the source of the gas
17 was underground natural gas pipelines owned, installed and maintained by defendant, PG&E.
18 Immediately upon this discovery, USAA requested that PG&E conduct its own inspection,
19 evaluation and remediation efforts..

20 8. Upon information and belief, in response to USAA's request for further
21 investigation by PG&E, in February of 1997 PG&E discovered a leak in its two-inch Silica Avenue
22 natural gas main line, which leak was not adequately repaired and continues to cause natural gas
23 infiltration into subsurface soils on the Site, as well as contamination of plaintiff's land, buildings
24 and improvements, including build-up of hazardous, combustible gas in and around electrical
25 conduits, switchgear and electrical boxes serving USAA's buildings on the Site.

26 9. USAA has repeatedly requested that PG&E correct and abate the natural gas
27 contaminating plaintiff's land and improvements yet PG&E has failed and refused to do so,
28 notwithstanding the fact that USAA has shared with PG&E the results of its extensive and detailed

1 14. USAA is the lawful owner and occupier of land, buildings and other
2 improvements on the Site, wherein USAA employs persons and conducts its insurance business.

3 15. Upon information and belief, defendants installed, own, maintain and exercise
4 exclusive control over underground natural gas pipelines, as well as the natural gas flowing through
5 those lines, which are situated in the vicinity of USAA's buildings and beneath other private and
6 public property and improvements adjacent to the Site.

7 16. Upon information and belief, defendants have maintained and controlled their
8 property, including their underground natural gas pipelines and the natural gas flowing through them,
9 in such a manner as to cause natural gas infiltration into subsurface soils on the Site, as well as
10 contamination of plaintiff's land, buildings and improvements, including build-up of hazardous,
11 combustible gas in and around electrical conduits, switchgear and electrical boxes serving USAA's
12 buildings on the Site.

13 17. The aforementioned use, maintenance and control of defendants' underground
14 natural gas pipelines, and of defendants' gas flowing through them, constitutes a continuing private
15 nuisance within the meaning of Section 3479 of the California Civil Code, in that it is injurious to
16 the employees and business guests of plaintiff and has further interfered with plaintiff's use of its
17 property.

18 18. On numerous occasions between December of 1996 and the filing of this
19 complaint, USAA has provided defendants both written and verbal notice of the aforementioned
20 nuisance and the damages resulting therefrom and has also requested that defendants abate the
21 nuisance, yet defendants have failed and refused, and continue to fail and refuse, to abate the
22 nuisance.

23 19. As a direct and proximate result of the private and public nuisances created
24 and maintained by defendants, USAA has suffered damages in excess of \$1,000,000 for investigation
25 costs and expenses, gas monitoring, soil remediation, interim life and safety precautions,
26 depreciation in property value and other costs and expenses reasonably necessary to protect the lives
27 and safety of plaintiff's employees and business guests and to protect plaintiff's land and

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1 build-up of hazardous, combustible gas in and around electrical conduits, switchgear and electrical
2 boxes serving USAA's buildings on the Site.

3 26. As a direct and proximate result of the aforementioned trespass of defendants'
4 natural gas in and upon the land, buildings and improvements of plaintiff, USAA has suffered
5 damages in excess of \$1,000,000 for investigation costs and expenses, gas monitoring, soil
6 remediation, interim life and safety precautions, depreciation in property value and other costs and
7 expenses reasonably necessary to protect the lives and safety of plaintiff's employees and business
8 guests and to protect plaintiff's land and improvements from further damage or destruction, all of
9 which are continuing and ongoing damages of plaintiff.

10 27. Since approximately December of 1996, defendants have had actual
11 knowledge of the aforementioned trespass and thereafter failed to abate or correct said trespass,
12 which constitutes forcible and unlawful entry by defendants' gas into plaintiff's buildings, pursuant
13 to Section 735 of the California Code of Civil Procedure, thereby entitling plaintiff to a recovery
14 equal to three times the amount of actual damages suffered from December of 1996 to the date of
15 judgment.

16 28. Unless defendants are restrained by order of this Court, defendants will
17 continue to allow their gas to trespass in and upon the land, buildings and improvements of plaintiff.
18 and it will continue to be necessary for USAA to commence many successive actions against
19 defendants to secure compensation for damages sustained, thus requiring a multiplicity of suits, and
20 USAA will be daily threatened with great and irreparable injury, including but not limited to further
21 and additional risks of injury to its employees and business guests, possible damage or destruction of
22 plaintiffs' property, depreciation in the value of plaintiff's property, and other costs and expenses
23 reasonably necessary to secure plaintiff's enjoyment of its property and to protect the lives and safety
24 of plaintiff's employees and business guests.

25 29. Plaintiff has no plain, speedy or adequate remedy at law with respect to the
26 ongoing and continuing interference with plaintiff's enjoyment and use of its property, for which
27 Sections 526 of the California Code of Civil Procedure expressly authorize injunctive relief.
28

1 THIRD CAUSE OF ACTION

2 **Strict Liability As Against All Defendants**

3 30. Plaintiff incorporates by this reference the allegations contained in paragraphs
4 1 through 29, above, as though those allegations were fully set forth herein.

5 31. Upon information and belief, defendants installed, own, maintain and exercise
6 exclusive control over underground natural gas pipelines, as well as the natural gas flowing through
7 those lines, which are situated in the vicinity of USAA's buildings and beneath other private and
8 public property and improvements adjacent to the Site.

9 32. Upon information and belief, the containment and transmission of combustible
10 and explosive natural gas through pipelines installed under and in the vicinity of homes and businesses,
11 where electrical and mechanical ignition sources are commonplace, constitutes an ultrahazardous
12 activity, in that said activity poses a dangerous and serious risk of harm to persons and property,
13 including but not limited to the risk of death, injury and damage caused by sudden and unexpected
14 explosion and fire. Notwithstanding that USAA has by its own effort provided an acceptable interim
15 solution to protect its employees, visitors and property, plaintiff alleges that the business of PG&E in
16 containing and transmitting natural gas through underground pipelines constitutes an ultrahazardous
17 activity necessitating the imposition of strict liability as against PG&E.

18 33. While defendants were engaged in the aforementioned ultrahazardous activity of
19 containing and transmitting natural gas through pipelines installed near the Site, natural gas contained
20 within those pipelines escaped and infiltrated subsurface soils on the Site, contaminated plaintiff's land,
21 buildings and improvements, and created a build-up of hazardous, combustible gas in and around
22 electrical conduits, switchgear and electrical boxes serving USAA's buildings on the Site.

23 34. As a direct and proximate result of the aforementioned leak of defendants' natural
24 gas from defendants' underground pipelines, USAA has suffered damages in excess of \$1,000,000 for
25 investigation costs and expenses, gas monitoring, soil remediation, interim life and safety precautions,
26 depreciation in property value and other costs and expenses reasonably necessary to protect the lives and
27 safety of plaintiff's employees and business guests and to protect plaintiff's land and improvements from
28 further damage or destruction, all of which are continuing and ongoing damages of plaintiff.

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1 **FOURTH CAUSE OF ACTION**

2 **Negligence As Against All Defendants**

3 35. Plaintiff incorporates by this reference the allegations contained in paragraphs
4 1 through 34, above, as though those allegations were fully set forth herein.

5 36. Upon information and belief, defendants installed, own, maintain and exercise
6 exclusive control over underground natural gas pipelines, as well as the natural gas flowing through
7 those lines, which are situated in the vicinity of USAA's buildings and beneath other private and
8 public property and improvements adjacent to the Site.

9 37. Upon information and belief, on and before December of 1996, defendants
10 knew that natural gas is an inherently and highly dangerous commodity and that a failure to exercise
11 reasonable care in the maintenance, inspection and repair of underground natural gas pipelines, and
12 in the performance of testing to identify and locate natural gas leakage, may create a substantial risk
13 of harm to persons and property, including but not limited to the risk of fire and explosion.

14 38. Notwithstanding their knowledge, defendants failed to exercise a degree of
15 care commensurate with the inherently and highly dangerous characteristics of natural gas, in that
16 defendants failed to properly maintain and inspect underground natural gas pipelines in the vicinity
17 of the Site, failed to conduct adequate testing to identify and locate natural gas leaks emanating from
18 said underground pipelines and failed to carefully and fully repair leaks in said underground natural
19 gas pipelines.

20 39. As a direct and proximate result of the aforementioned negligence of
21 defendants, natural gas owned by defendants has leaked through defendants' underground natural gas
22 pipelines and has caused, and continues to cause, gas infiltration into subsurface soils on the Site, as
23 well as contamination of plaintiff's land, buildings and improvements, including build-up of
24 hazardous, combustible gas in and around electrical conduits, switchgear and electrical boxes serving
25 USAA's buildings on the Site.

26 40. As a further direct and proximate result of the aforementioned negligence of
27 defendants, USAA has suffered damages in excess of \$1,000,000 for investigation costs and
28 expenses, gas monitoring, soil remediation, interim life and safety precautions, depreciation in
property value and other costs and expenses reasonably necessary to protect the lives and safety of
plaintiff's employees and business guests and to protect plaintiff's land and improvements from
further damage or destruction, all of which are continuing and ongoing damages of plaintiff.

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PRAYER

WHEREFORE, Plaintiff, UNITED SERVICES AUTOMOBILE ASSOCIATION, prays for judgment against Defendants, PACIFIC GAS AND ELECTRIC COMPANY and DOES 1 through 20, inclusive, as follows:

A. On Plaintiff's First Cause of Action for Nuisance:

1. For past compensatory damages in excess of \$1,000,000;
2. For all additional compensatory damages suffered by plaintiff between the filing of this action and up to the date of trial or abatement, according to proof;
3. For a permanent injunction requiring defendants, at their own expense, to (a) conduct a complete and thorough investigation to determine the precise location of the leak or leaks causing natural gas to contaminate plaintiff's land and property; (b) permanently repair and correct all conditions causing any such leaks; (c) extract and remove from plaintiff's land, soil, buildings and other property all detectable natural gas or natural gas residue or by-products remaining therein; (d) perform detailed and thorough monitoring thereafter and for as long as the Court shall direct to confirm that natural gas contamination does not reoccur; and (d) reimburse plaintiff for all loss, damage and costs, whether direct, indirect, incidental, consequential or otherwise, resulting from defendant's performance of the aforescribed measures;
4. For prejudgment interest at the maximum legal rate; and
5. For such other and further relief as the Court may deem just and proper.

B. On Plaintiff's Second Cause of Action for Trespass:

1. For past compensatory damages in excess of \$1,000,000;
2. For all additional compensatory damages suffered by plaintiff between the filing of this action and up to the date of trial or abatement, according to proof;

- 1 3. For treble the amount of such actual damages as may be awarded
- 2 plaintiff pursuant to Code of Civil Procedure Section 735;
- 3 4. For a permanent injunction requiring defendants, at their own expense,
- 4 to (a) conduct a complete and thorough investigation to determine the
- 5 precise location of the leak or leaks causing natural gas to contaminate
- 6 plaintiff's land and property; (b) permanently repair and correct all
- 7 conditions causing any such leaks; (c) extract and remove from
- 8 plaintiff's land, soil, buildings and other property all detectable natural
- 9 gas or natural gas residue or by-products remaining therein; (d)
- 10 perform detailed and thorough monitoring thereafter and for as long as
- 11 the Court shall direct to confirm that natural gas contamination does
- 12 not reoccur; and (d) reimburse plaintiff for all loss, damage and costs,
- 13 whether direct, indirect, incidental, consequential or otherwise,
- 14 resulting from defendant's performance of the aforescribed
- 15 measures;
- 16 5. For prejudgment interest at the maximum legal rate; and
- 17 6. For such other and further relief as the Court may deem just and
- 18 proper.

19 C. On Plaintiff's Third Cause of Action for Strict Liability

- 20 1. For past compensatory damages in excess of \$1,000,000;
- 21 2. For all additional compensatory damages suffered by plaintiff between
- 22 the filing of this action and up to the date of trial or abatement.
- 23 according to proof;
- 24 3. For prejudgment interest at the maximum legal rate; and
- 25 4. For such other and further relief as the Court may deem just and
- 26 proper.

27 D. On Plaintiff's Fourth Cause of Action for Negligence

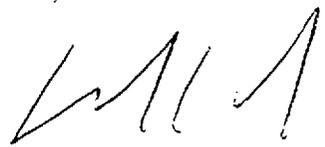
- 28 1. For past compensatory damages in excess of \$1,000,000;
2. For all additional compensatory damages suffered by plaintiff between
- the filing of this action and up to the date of trial or abatement.
- according to proof;

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- 3. For prejudgment interest at the maximum legal rate; and
- 4. For such other and further relief as the Court may deem just and proper.

Dated: November 16, 2000

CARLSON, CALLADINE & PETERSON LLP

By: 
DONALD W. CARLSON

Attorneys for Plaintiff, UNITED SERVICES
AUTOMOBILE ASSOCIATION

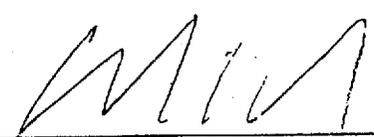
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DEMAND FOR JURY TRIAL

Plaintiff, UNITED SERVICES AUTOMOBILE ASSOCIATION, hereby demands
that this cause be tried before a jury.

Dated: November 16, 2000

CARLSON, CALLADINE & PETERSON LLP

By: 
DONALD W. CARLSON

Attorneys for Plaintiff, UNITED SERVICES
AUTOMOBILE ASSOCIATION

H T A

EXCELLENCE IN SCIENCE AND ENGINEERING
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Randy W. Gimple
Attorney at Law
Carlson, Calladine & Peterson, LLP

Confidential Attorney Work Product

REF: USAA vs PG&E litigation pertaining to natural gas leak damages in Sacramento

Pursuant to your request as attorney in the reference pending litigation, please review the following work plan for re-testing the gas content of the soils under and around the USAA Building II in Sacramento, CA.

With your approval and notice to proceed we can begin work in the next few days.
Please let me know your anticipated schedule.

Dr. C. Hugh Thompson, PE, DEE

EXHIBIT B

USAA soil gas monitoring program: follow up testing to gas extraction completed 2000

**Attorney Work Product
Gas Issues**

HTA Work Plan June 2001 USAA

		Princ.	Sr	saml tech	supplies	Equipt.	lab + sub	alternate	total
1	Notice to Proceed provided by USAA counsel, Randy W. Gimple, to collect information as attorney work product.								
2	Project set up and communications with counsel, owner and subcontractors	3	0	0	\$ 15	\$ 25			\$ 415
3	Moblize and set up; field support, power, pumps, instruments, 27 1liter and 4 6 liter canisters unless 5504 requires all glass lined 6 liter canisters.	2	0	5	\$ 450	\$ 548	\$ 2,320	\$2320 summa + no cost USAA TMX 412	\$ 3,783
4	locate wells, cleanup and repair: 31 sample points to be measured: EW1-4; MW1 - 6 (levels A,B,C) 8 interior sample points.	4	0	4	\$ 75	\$ 40	\$ -		\$ 787
5	depth sound all wells, evaluate data for sampling purposes	5	0	5	\$ 15	\$ 70	\$ -		\$ 925
6	pump excess water accumulated in wells to promote vapor sampling (fab. 50' air lift)	5	4	5	\$ 115	\$ 250	\$ -		\$ 1,545
7	run screening preliminary test using field instruments	4	0	4	\$ -	\$ -	\$ -	USAA TMX	\$ 672
8	obtain 31 point samples: lab analysis for ASTM D 1945 and ASTM D 5504; purge 3 well volumes; pull summa canisters; seal wells; chain of custody; deliver [8 per day max] and analysis;	30	0	30	\$ 125	\$ 150	\$ 10,339		\$ 15,654
9	evaluate data and results and provide telephone briefing on findings to counsel	3	0	1	\$ 15	\$ 20	\$ -		\$ 453
10	pursuant to request of counsel, prepare report for comparison of current data with former results and form conclusions and recommendations	5	0	2	\$ 25	\$ 50	\$ -		\$ 786
	Totals	61	4	56	835	1153	12659	0	25020