

**CITY OF BEVERLY HILLS
LEGISLATIVE PROCEEDING
SUMMARY & FINDINGS REPORT**

September 3, 2004

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I.	MASRY/BROCKOVICH CLAIMS IN THE MEDIA.....	1
II.	THE CITY’S INVESTIGATION.....	1
	A. The City Hires An Independent Environmental Firm.....	1
	B. The South Coast Air Quality Management District.....	2
	C. The City Commences A Formal Legislative Investigation.....	2
	D. The City Issues Subpoenas	3
	E. Masry & Vititoe, Baron & Budd And Their Consultant, Bernard Endres, Refuse To Comply With The City’s Subpoenas.....	4
III.	THE CITY’S LAWSUIT TO OBTAIN COMPLIANCE WITH THE SUBPOENAS.....	4
	A. The City Files Suit	4
	B. The Court Orders Masry & Vititoe, Baron & Budd And Bernard Endres To Comply With The City’s Subpoenas	4
	C. Masry & Vititoe, Baron & Budd And Bernard Endres Fail To Comply	5
	D. The Court Again Orders Masry & Vititoe, Baron & Budd And Bernard Endres To Produce Documents.....	5
	E. Masry & Vititoe, Baron & Budd And Bernard Endres Challenge The Court’s Orders In The Court Of Appeal And The California Supreme Court.....	5
	1. Writ Petitions Are Denied by Both the Court of Appeal and the Supreme Court	6
	2. The Appeal Is Dismissed	6
IV.	RESULTS OF THE CITY’S INVESTIGATION.....	6
	A. The Air Quality At The High School Is Consistent With That Which Is Found In The Los Angeles Basin.....	6
	1. Camp Dresser & McKee’s Review of the Data Obtained by Masry & Vititoe, Baron & Budd and Bernard Endres	7

2.	Camp Dresser & McKee’s Data, and the Data Collected by South Coast Air Quality Management District	9
3.	Indoor Air Testing Conducted by The Phylmar Group	10
4.	Testing Conducted by the California Department of Health Services.....	11
B.	No Evidence Of Increased Health Risks.....	11
V.	CLOSING	12

I. MASRY/BROCKOVICH CLAIMS IN THE MEDIA

In February 2003, attorney Edward Masry and his legal assistant, Erin Brockovich, began telling the local and national media that there is a problem with the air quality at Beverly Hills High School. They claimed the air was contaminated by oil operations conducted adjacent to the High School.

Mr. Masry and Ms. Brockovich did not talk to anyone at the City of Beverly Hills before going public with their claims. In newspaper articles and television broadcasts, Mr. Masry and Ms. Brockovich made two claims:

- That the air at “Beverly Hills High School has five times higher benzene than the 405 freeway.”
- That “the High School’s cancer rate is 20 to 30 times above the national average.”

Copies of newspaper articles containing these allegations are included in the Appendix to this Report at Tab “A.”

After the allegations were made, the City commenced a comprehensive and in-depth investigation into the matter. The City’s investigation addressed current environmental conditions at the High School and was based on testing of the air, soil and soil gas at the High School on multiple occasions, using recognized United States Environmental Protection Agency sampling and laboratory protocols. In addition, the High School’s consultant conducted extensive indoor air quality sampling, again following well recognized government-approved procedures.

This Summary and Findings Report, and the accompanying Appendix, summarize the City’s Legislative Proceeding and set forth the findings and supporting data regarding the City’s investigation. To date, the City’s investigation has found no credible evidence to support the Masry/Brockovich claims.

II. THE CITY’S INVESTIGATION

A. The City Hires An Independent Environmental Firm

The City hired Camp Dresser & McKee, a nationally prominent environmental consulting firm with over 3,600 employees in 75 offices around the United States and 32 offices in other countries, to review the data and conduct an independent investigation of the air, soil and soil gas at the High School. Camp Dresser & McKee is well known for

its independence and professionalism. A copy of Camp Dresser & McKee's Annual Report and excerpts from its website are included in the Appendix to this Report at Tab "B."

Camp Dresser & McKee was asked to formulate an appropriate testing program for the High School and to conduct the testing as promptly as possible. The firm recommended testing the air, soil and soil gas. The City followed Camp Dresser & McKee's recommendations, and the work has been carried out. Ongoing monitoring of air quality continues through this date.

Camp Dresser & McKee's testing reflects nothing abnormal about the air, soil or soil gas at the High School.

B. The South Coast Air Quality Management District

The South Coast Air Quality Management District ("AQMD") is the governmental agency charged with monitoring the air in the Los Angeles Basin. It has regulatory oversight authority over the heating and air conditioning facility located adjacent to the High School, as well as the oil and gas operations currently being operated by Venoco, Inc. Following the Masry/Brockovich claims, the AQMD began taking regular air quality samples at and around the High School.

Camp Dresser & McKee obtained and examined the records and sampling results of the AQMD and included them in its analysis of the environmental conditions at the High School. Those records confirm that there is nothing abnormal or out of the ordinary about the air at the High School.

As stated by Barry Wallerstein, the Executive Director of the AQMD, "government monitoring has not shown readings of benzene, hexane and other air toxic levels that are considered abnormal." Copies of news articles quoting the AQMD are included in the Appendix to this Report at Tab "C."

C. The City Commences A Formal Legislative Investigation

Because Mr. Masry and Ms. Brockovich claimed to have data indicating the presence of contaminants posing a health risk at the High School, whereas both Camp Dresser & McKee and the AQMD reported there was nothing out of the ordinary about the air there, the City decided to take further action.

The City adopted a Resolution on June 3, 2003 establishing a formal legislative investigation into the health and safety of the environment at the High School. A copy of the City's Resolution is included in the Appendix to this Report at Tab "D."

D. The City Issues Subpoenas

In furtherance of its investigation, the City issued subpoenas to obtain documents from parties who the City believed might have relevant information. These parties included:

- Venoco, Inc., which is the oil company operating the oil wells adjacent to the High School;
- Sempra Energy, which is the utility company operating the heating and air conditioning facility adjacent to the High School;
- Chevron, U.S.A., Inc., whose predecessors operated oil wells on or adjacent to the High School;
- Masry & Vititoe, which is the law firm that took air samples from the High School property between October 2002 and February 2003, and then told the media that the air at the High School was contaminated;
- Baron & Budd, a Texas law firm working with the Masry & Vititoe law firm;
- Bernard Endres, an individual with whom Masry & Vititoe worked in gathering samples at the High School;
- Columbia Analytical Services, the laboratory to which Masry & Vititoe sent the samples it acquired from the High School; and
- Zymax Forensics, another laboratory to which Masry & Vititoe sent samples it acquired from the High School.

Venoco, Inc., Sempra Energy and Chevron, U.S.A., Inc. produced the documents sought by the City's subpoenas. The City, in turn, provided Camp Dresser & McKee with copies of such documents for inclusion in its analysis.

The City subpoenas to Masry & Vititoe and Baron & Budd sought production of the testing data which Mr. Masry and Ms. Brockovich referenced in their statements to

the media: (1) that “Beverly Hills High School had five times higher benzene than the 405 freeway;” and (2) that “the High School’s cancer rate is 20 to 30 times above the national average.”

E. Masry & Vititoe, Baron & Budd And Their Consultant, Bernard Endres, Refuse To Comply With The City’s Subpoenas

Masry & Vititoe and Baron & Budd objected to the City’s subpoenas and refused to produce their data and information – the same data and information which they claimed supported their allegations of environmental risks at the High School. Masry & Vititoe also instructed their consultant, Bernard Endres, and the laboratories not to comply with the City’s subpoenas.

III. THE CITY’S LAWSUIT TO OBTAIN COMPLIANCE WITH THE SUBPOENAS

A. The City Files Suit

On July 8, 2003, the City filed an action in Los Angeles Superior Court to enforce the legislative subpoenas and compel Masry & Vititoe, Baron & Budd, Bernard Endres, Columbia Analytical Services and Zymax Forensics to produce their testing data and any other information supporting their claims.

Zymax Forensics immediately complied; Columbia Analytical Services told the City it would follow the Court’s instructions. Masry & Vititoe, Baron & Budd and Bernard Endres, however, challenged the enforceability of the City’s subpoenas.

B. The Court Orders Masry & Vititoe, Baron & Budd And Bernard Endres To Comply With The City’s Subpoenas

The refusal of Masry & Vititoe, Baron & Budd and Bernard Endres to provide data led to a legal dispute over the enforceability of the City’s subpoenas. Judge Valerie Baker of the Western Division of the Los Angeles Superior Court reviewed the parties’ briefs, researched the law and conducted hearings in the case.

On July 21, 2003, the Court upheld the City’s subpoenas and ordered Masry & Vititoe, Baron & Budd, Bernard Endres and Columbia Analytical Services to comply with the subpoenas by producing documents and a “privilege log” describing any documents being withheld. On July 22, 2003, the Court issued its written order, a copy of which is included in the Appendix to this Report at Tab “E.”

Columbia Analytical Services thereupon complied with the Court's order, turning over all of the documents in its possession. Masry & Vititoe, Baron & Budd and Bernard Endres said they complied, turning over to the City what they claimed was all their data.

The City sent the data to Camp Dresser & McKee for review and analysis. Camp Dresser & McKee concluded that the data provided by Masry & Vititoe, et al. contained no credible evidence of environmental health or safety problems at the High School.

C. Masry & Vititoe, Baron & Budd And Bernard Endres Fail To Comply

In November 2003, the City learned, from additional newspaper articles and television appearances by Masry/Brockovich, that Masry & Vititoe, Baron & Budd and Bernard Endres still had not fully complied with the Court's order.

D. The Court Again Orders Masry & Vititoe, Baron & Budd And Bernard Endres To Produce Documents

On December 19, 2003, the City filed another motion with the Court, seeking another order requiring Masry & Vititoe, Baron & Budd and Bernard Endres to produce the documents they were withholding from the City. In response, Masry & Vititoe, Baron & Budd and Bernard Endres contended that the Court's July 22, 2003 Order was unclear.

On January 27, 2004, the Court issued another order, reiterating that Masry & Vititoe, Baron & Budd and Bernard Endres were obligated to produce all responsive documents to the City, and provide a privilege log listing any documents not produced. A copy of the Court's January 27, 2004 Order is included in the Appendix to this Report at Tab "F."

E. Masry & Vititoe, Baron & Budd And Bernard Endres Challenge The Court's Orders In The Court Of Appeal And The California Supreme Court

Seeking to challenge Judge Baker's July 22, 2003 and January 27, 2004 Orders, Masry & Vititoe, Baron & Budd and Bernard Endres filed a Notice of Appeal on February 9, 2004 and, at the same time, also filed a Petition for Writ of Mandate and request for immediate stay with the California Court of Appeal, Second Appellate District.

1. Writ Petitions Are Denied by Both the Court of Appeal and the Supreme Court

The Court of Appeal denied Masry & Vititoe's, Baron & Budd's and Bernard Endres' writ petition and request for stay on February 13, 2004.

Following this denial, Masry & Vititoe, Baron & Budd and Bernard Endres, on February 17, 2004, filed a Petition for Review and request for immediate stay in the California Supreme Court. The Supreme Court denied relief on February 18, 2004.

On February 18, 2004, Masry & Vititoe, Baron & Budd and Bernard Endres made an application before Judge Baker for a Protective Order to preclude the use or dissemination of the documents they were ordered to produce to the City. Judge Baker denied the application.

Having lost in three different Courts, on February 19, 2004, Masry & Vititoe, Baron & Budd and Bernard Endres produced the previously withheld documents and provided privilege logs to the City.

2. The Appeal Is Dismissed

On April 8, 2004, after briefing by both sides, the Court of Appeal dismissed the appeal that Masry & Vititoe, Baron & Budd and Bernard Endres had filed on February 9, 2004.

IV. RESULTS OF THE CITY'S INVESTIGATION

A. The Air Quality At The High School Is Consistent With That Which Is Found In The Los Angeles Basin

To date, the City has found no credible evidence that the ambient air at the High School contains elevated concentrations of benzene¹ or other harmful contaminants related to oil and gas operations or the heating and air conditioning facility. The data from all sources shows just the opposite.

¹ Benzene is frequently used in manufacturing rubber, paint, dye, plastics, resins, drugs, pesticides and other products. Benzene is also present in oil, perfume, automobile exhaust, cigarette smoke and gasoline, and is emitted into the air during forest fires. The normal, or background, level of benzene in the air at any given time in the Los Angeles Basin was approximately 4 parts per billion at the time when the MATES II study was conducted in 1999, and was presumed higher in the years prior thereto.

1. Camp Dresser & McKee's Review of the Data Obtained by Masry & Vititoe, Baron & Budd and Bernard Endres

Camp Dresser & McKee evaluated the data and associated documentation collected by Masry & Vititoe and Bernard Endres at the High School.

The Masry & Vititoe, Baron & Budd, Bernard Endres, Columbia Analytical Services and Zymax Forensics data is consistent with that obtained by Camp Dresser & McKee, from both its own sampling and from the AQMD, Venoco, Inc. and Semptra Energy – none of which showed elevated levels of benzene or other harmful contaminants in the air or soil at the High School associated with the oil and gas operations or the heating and air conditioning facility.

Of the many air samples taken at the High School by Camp Dresser & McKee, the AQMD, and Masry & Vititoe and Bernard Endres, there were two samples, collected by Masry & Vititoe and Bernard Endres, that purported to show benzene levels above the current background level of approximately 2 parts per billion. Both of these samples, however, are unreliable and reflect serious breaches of government mandated quality assurance and quality control (“QA/QC”) requirements. Both samples came from sampling canisters which failed to carry quality control certifications. Both were contradicted by other sampling results gathered simultaneously.

Masry & Vititoe's first purported elevated benzene finding (of 9.3 parts per billion) was reported on the second day of a test (on the first day, no benzene was found). None of the other hydrocarbons that would have had to accompany benzene if it was coming from oil operations, as opposed to other potential sources of benzene, was elevated in the subject sample. When benzene is released from oil operations, it typically does not occur alone. Rather, it is accompanied by other hydrocarbon chemicals that are also contained in the oil, such as ethylbenzene, toluene and xylene. None of these chemicals was present in the Masry & Vititoe and Bernard Endres sample.

The second purported elevated benzene finding during the Masry & Vititoe and Bernard Endres sampling (18 parts per billion) was reported in a “grab” sample taken in a very short (5-second) period of time. At the same time, a long duration (8-hour) air sampling test was conducted by Masry & Vititoe and Bernard Endres in the same area. The simultaneous 8-hour test showed no benzene at all.

Camp Dresser & McKee also concluded that the sampling procedures employed by Masry & Vititoe and Bernard Endres failed to comply with standard operating procedures and basic QA/QC protocols followed by professionals in the field.

According to Camp Dresser & McKee:

- Standard procedures designed to ensure sample and data integrity were not followed. For example, “field blanks” and “trip blanks,” which allow for the evaluation of whether sampling containers leaked or became contaminated during transport or handling, were not used.
- Standard procedures which verify the accuracy of the sampling data were not followed. For example, the testers failed to take duplicate samples to allow for a check in measurement errors due to sampling procedures.
- Proper chain of custody documentation was not maintained for the samples. Chain of custody is required to ensure against tampering with samples or contamination during transport or handling.
- Atmospheric data such as wind speed, wind direction, temperature and barometric pressure was not recorded during any of the sampling. This information can and does have a substantial impact on ambient air samples, which is what Masry & Vititoe and Bernard Endres say they were collecting.
- The locations where, and the heights from which, the samples were taken were not adequately recorded. Without this information, it cannot be determined accurately where the air samples were taken.
- Field notes or logs were not contemporaneously recorded, as is required and routinely done by professionals in the field. They serve, among other things, to identify what the people collecting the samples were doing, where they were doing it, under what conditions and why.
- Standard quality assurance procedures were not followed in handling field sampling equipment. For example, Masry & Vititoe and Bernard Endres collected the air samples in used “summa” and “silco” canisters. Such canisters are reused from project to project and therefore have to be cleaned and purged by a laboratory between use. A “QC Certification” is issued by a laboratory whenever it does so. The canisters used by Masry & Vititoe and Bernard Endres at the High School, in which the allegedly elevated benzene detections were collected, failed to carry such a QC Certification.

A copy of Camp Dresser & McKee's Report Reviewing the Masry & Vititoe and Bernard Endres Sampling on the High School is included in the Appendix to this Report at Tab "G."

Camp Dresser & McKee concluded that the failure to comply with standard operating procedures makes the data acquired by Masry & Vititoe unreliable. This is borne out by the inherent inconsistencies within the data itself.²

2. Camp Dresser & McKee's Data, and the Data Collected by South Coast Air Quality Management District

Camp Dresser & McKee collected ambient air samples at the High School during the week of April 14, 2003, on July 10, 2003, December 29, 2003 and June 22, 2004. A sampling was also conducted on August 26, 2004. However, the results of that sampling are not yet available. Most of the samples were collected at times when the oil wells at the property were operating and producing gas. Sampling followed standard United States Environmental Protection Agency methods of collection and analysis. Samples were collected over an 8-hour period during representative school and after-school activity hours. Samples were collected from a height (about five feet above the ground) equivalent to the expected breathing zone.

Camp Dresser & McKee determined that the results of its air sampling were comparable to air data collected by the AQMD in a 1999 study entitled Multiple Air Toxics Study (MATES-II). In particular, Camp Dresser & McKee found benzene in the ambient air at levels consistent with those commonly reported by the South Coast Air Quality Management District for all routine monitoring stations throughout the Los Angeles Basin.

² Camp Dresser & McKee has explained that even if one were to assume, contrary to the objective scientific data, that benzene was in the air over the High School's athletic fields at a concentration ranging from 9.3 to 18 parts per billion (as claimed by Masry & Vititoe's two "samples"), such a dose is below both the acute and chronic reference exposure levels for benzene set by the California Environmental Protection Agency Office of Environmental Health Hazard Assessment. The reference exposure levels indicate that much higher doses of benzene than 18 parts per billion in the air would be needed to even theoretically cause cancer in students "exposed" at the High School.

Benzene has been extensively studied by toxicologists, who were looking for a possible link to cancer. The only recognized link was found through studies of long-time oil refinery workers, who actually handled and breathed oil containing benzene every working day over many years. The only form of cancer to which this high-dose, long-term exposure to benzene has been linked is acute myeloid leukemia – a form of cancer which is not alleged by any of the High School alumni or students.

Camp Dresser & McKee concluded that chemicals detected in the air at the High School were at concentrations “not out of the ordinary for the Los Angeles Area” and “well below the health limits established by the State of California.”

Camp Dresser & McKee also collected soil and soil gas samples at the High School. The soil and soil gas samples were collected from more than 50 different locations at the High School and from varying depths. This was done to determine whether any chemicals present in the soil or soil gas at the High School might pose a threat to the health of students or staff.

Camp Dresser & McKee concluded that there is no basis for believing that students or staff at the High School would have any adverse health impacts from exposure to soil or soil gas at the High School.

Copies of Camp Dresser & McKee’s Summary of Findings are collectively included in the Appendix to this Report at Tab “H.”

3. Indoor Air Testing Conducted by The Phylmar Group

The Phylmar Group was retained by the High School to evaluate current indoor air quality at the High School. The Phylmar Group conducted indoor air quality testing on April 22, 2003, May 24, 2003 and July 25, 2003, checking for such things as methane, carbon monoxide, mold and petroleum production-related volatile organic chemicals.

The Phylmar Group found that indoor methane concentrations at the High School were consistent with normal background levels and, in ranging from 1,000 to 1,500 parts per million by volume, were far less than the methane lower explosive limit of 50,000 parts per million by volume. They also found that carbon monoxide levels at the High School, ranging from 0 to 2 parts per million, were less than the American Society of Heating, Refrigerating, and Air Conditioning Engineers’ guideline of 9 parts per million, and that no mold reservoirs were present at any location in the High School. The Phylmar Group also found that with three exceptions, explained by a leaking stove in Classroom 504 (formerly used as a lounge), the maximum concentrations of all petroleum-related chemicals were within the background ranges typically found within the Los Angeles Basin. A copy of The Phylmar Group’s Indoor Air Quality Monitoring Report is included in the Appendix to this Report at Tab “I.”

4. Testing Conducted by the California Department of Health Services

In response to concerns raised by residents about potentially elevated levels of radioactive materials at the High School, the California Department of Health Services performed radiological surveys at the High School and the adjacent Venoco site from August through September 2003. After conducting these surveys, the California Department of Health Services concluded that the Venoco site is not a source of radioactive material contamination and that there was no evidence of elevated radiation levels at the High School. A copy of the California Department of Health Services' Report is included in the Appendix to this Report at Tab "J."

B. No Evidence Of Increased Health Risks

As noted above, Masry & Vititoe has claimed that "the High School's cancer rate is 20 to 30 times above the national average."

In the Court proceedings, Masry & Vititoe and Baron & Budd were ordered to produce documents relating to their allegation of an increased risk of cancer at the High School. During the Court hearings, the lawyer for Masry & Vititoe and Baron & Budd stated on several occasions that Masry & Vititoe and Baron & Budd "had not commissioned or conducted any population study or something of that sort." According to Dr. Wendy Cozen of the University of Southern California Keck School of Medicine, such a study is necessary to credibly gauge and compare cancer incidence rates. A copy of Dr. Cozen's Community Cancer Assessment is included in the Appendix to this Report at Tab "K."

Instead of producing any sort of population or epidemiological study, Masry & Vititoe and Baron & Budd initially produced only one document to the City, the 1999 Cancer Statistics compiled by the National Cancer Institute. After the Court's second order commanding the production of responsive documents, they produced a March 12, 2003 "PowerPoint presentation" by Dr. James Dahlgren, a consultant retained by Masry & Vititoe and Baron & Budd.

Dr. Dahlgren's PowerPoint presentation makes general allegations about the number of reported cancer cases among High School students and alumni, claiming that they might be indicative of a "cancer cluster." The presentation, however, provides no supporting data or analyses leading to this conclusion. Rather, Dr. Dahlgren states in the presentation that: (1) the "statistics require medical verification;" (2) the purported benzene at the High School field is "not a cancer risk;" and (3) "additional studies are required to determine the significance of these initial findings."

Shortly after Dr. Dahlgren prepared his March 12, 2003 PowerPoint presentation, he received a letter from Masry & Vititoe, dated April 23, 2003, demanding that he "Cease and Desist Use and Disclosure of Confidential and Attorney Work Product Materials and Information Owned by the Law Firms of Masry & Vititoe and Baron & Budd." Dr. Dahlgren responded, in a letter dated April 24, 2003, "In my 30 years of practicing medicine, I have never received such a letter as this from a lawyer and/or paralegal who I assumed had the best interest of their profession and clients at heart."

The 1999 Cancer Statistics, Dr. Dahlgren's PowerPoint presentation, and the other documents produced by Masry & Vititoe and Baron & Budd do not support, and are not even useful in estimating, the number of cancers that would be expected to occur among the High School students and alumni. To date, there is no support for a claim of any increased cancer risk overall at the High School.

According to the American Cancer Society Cancer Facts & Figures for 2003: "In the U.S., men have a little less than 1 in 2 lifetime risk of developing cancer; for women the risk is a little more than 1 in 3." Thus, more than one-third of all people living in the United States will develop some form of cancer during their lifetime. This does not include non-invasive forms of skin cancer, which are not included in the American Cancer Society's data.

Applying that statistic to the 40,000 or so High School alumni from the years put in issue by the Notices of Tort Claim and lawsuits, one would expect to see, over the lifetime of the High School alumni population, approximately 12,000 cases of cancer. To date, 409 High School students, alumni and persons residing or working in the Beverly Hills area have claimed to have some form of cancer.

V. CLOSING

When Mr. Masry and Ms. Brockovich began claiming that students of the High School were being exposed to harmful chemicals and developing cancer as a result, the City and its officials took those allegations very seriously. The City officials were committed to getting to the bottom of things and finding out if the air quality at the High School was being affected by nearby oil and gas or heating and air conditioning operations.

The City's agenda was, and continues to be, to find out if the claims about the High School have merit; to get to the truth. The City was required to go to Court to seek whatever data Mr. Masry, Ms. Brockovich and their co-counsel and consultants were relying on in making their allegations about the High School. When that data was finally produced, it turned out there was nothing that substantiated the claims being made.

Based on the documents they provided, and on the findings of Camp Dresser & McKee, The Phylmar Group, the California Department of Health Services and the South Coast Air Quality Management District, the claims appear to be unfounded.

To date, there has been no credible evidence presented that the air quality at the High School is out of the ordinary. Nor is there any evidence of a health and safety risk at the High School. Nevertheless, the City is continuing to have the air quality at the High School monitored on a regular basis. The City is committed to keeping the citizens of Beverly Hills informed of the results of future testing at the High School.