

ORAL ARGUMENT – 01/22/03
02-0356
KERR-MCGEE CORP V. HELTON

MORRIS: In this alleged drainage case, as in any damage suit, the plaintiff must not only prove that they sustained damages, but also the amount of those damages with reasonable certainty by competent evidence.

PHILLIPS: This type of suit has been brought for a long time.

MORRIS: It has been, but there's been a lot of differences in them.

PHILLIPS: Are you saying that pre-Daubert, pre-Roberts, pre-Robinson, Pre-Hammel their case might be alright and now it's not because of those changes, or are you saying this case would have _____ a good case under Texas law?

MORRIS: I don't think it would have ever been a good case under Texas law. Certainly not since Shaffer v. Texas Employers in which this court squarely held that the mere fact that an expert says it's based on reasonable medical probability, it has probative value when it doesn't have any factual foundation for it. So I think we go way back before Daubert.

The broad issue of course is whether there is any legally sufficient evidence to support a finding of damages. That's the broad issue. The underlying issue though is what amount of gas would the well have produced? Only one witness testified on that. Their expert Mike Reily. He opined that the protection well would have produced 6.1 BCF of gas, and plaintiff royalty share would have been over \$2 million.

We challenged his opinion because it did not have a reliable factual foundation. We challenged it by motion to strike. We challenged it by numerous motions for judgment, all of which were overruled.

PHILLIPS: _____ strike filed a day after he testified?

MORRIS: At the close of my crossexamination when I had an adequate foundation laid to challenge his opinion, I moved to strike it at that point.

PHILLIPS: And there was opportunity to redirect after your motion...

MORRIS: Three days of opportunity thereafter. This occurred on the 2nd day of trial and plaintiffs had three days after that in which to restructure their case if they could.

PHILLIPS: At your cross, you made this motion, and then he gave redirect at that time.

They asked further questions of him.

MORRIS: Not only redirect, but they also recalled him later on. Now the law on this is just absolutely clear. There can't be any doubt about it any longer that an expert's opinion in order to be admissible he must not only be qualified. It must be reliable. And to be reliable it must have a reliable factual foundation and reliable methodology. That essentially was held in the Shaffer case, 14 years before Daubert, then came Daubert, then came Robinson in this court, and the numerous cases since then, which have repeated, and repeated and repeated that rule. We challenged Mr. Riley's opinion because it did not have a factual foundation.

Now in order to orient that, I need to give a little bit of background history. The upper Morrow formation in the Anadarko basin in the Texas Panhandle, particularly the South part of it, is over 300 million years old, and it's 15,000 to 16,000 feet deep. It's generally accepted _____ the stream beds in narrow deposits here and there. They are hard to find, and when you find them they may or may not be productive.

Dawn Wilson, Kerr-McGee's _____ geologist in 1991 and 1993 developed a prospect by examining the records of scorns of wells in the South part of the Anadarko basin, and came up with the prospect where he thought there was a possible opportunity for Puryear formation in the upper Morrow. And he visualized the stream beds in that particular area as running generally North and Southwest to Northeast. After having examined all of that, he located the first well in section 17 in the Northwest corner of it. Low and behold he hit it square on the button. A producer was developed, but it was in the new zone of the upper Morrow, which had previously been unknown. Called the lower Puryear. Then immediately after that, Kerr-McGee drilled 8 more wells in that field, which was called the West Part Field. Eight more wells trying to find and define and develop the lower Puryear formation.

The Fleetwood trust well which is south by southwest from Holmes turned out also to be a prolific producer, considerably better than Holmes. Every other well in the entire zone was unproductive insofar as the lower Puryear formation was concerned. Two wells in the plaintiff's section 10, Mitchell 10-1 and Mitchell 10-2. Mitchell 10-1 had none. Mitchell 10-2 had about 7 feet with poor porosity. It was noncommercial. Even 11-1 across the corner to the Northwest had 7 feet with purporosity and was noncommercial. All of the rest of the wells had no productive lower Puryear formation. Now that's what we were dealing with insofar as geology is concerned.

HECHT: Did Kerr's testimony indicate a 60 foot thickness by 60 foot...

MORRIS: Dr. Dennis Kerr opined, and he was incidentally a professor who had no experience in the Anadarko basin at all, but he opined that a well at the corner where Mr. Riley proposed it, as close as legally possibly to the Holmes' well, that it would have had 60 feet of lower Puryear formation. He didn't know any its other qualifications except that he thought it would be

reservoir quality. But he defined reservoir quality as any reservoir which any formation which simply has sufficient porosity to hold gas, and sufficient permeability to move the gas. That was what he defined as reservoir quality.

HECHT: Do you take issue with the 60 feet thickness?

MORRIS: I accept it for purposes of arguing in this court. I take issue with it strongly. But for this court, I accept it as okay. We have 60 feet there.

HECHT: If there were 60 feet of all the factors that you list in your brief that can influence productivity, it look at if the hypothetical well were over 60 feet of thickness, that at least its production would be in relation to the Holmes and Fleetwood wells bare that same relationship?

MORRIS: I disagree with that entirely. It's 80 feet of thickness in the Fleetwood, 70 feet plus in Holmes.

HECHT: So why wouldn't the hypothetical well produce relative to those to the same relationship that the thickness to those _____ two?

MORRIS: Because we know nothing about its other characteristics. We have no knowledge whatsoever as to what its other characteristics might be. Such as, it's permeability. It's porosity. It's water saturation. And so on. The factors that affect production of a well. And to extrapolate those in some manner by the use of data, you can't just pull it out of there. You can't say well that's a good well over here. The formation must extend up here. And therefore I ought to get a well just as good as those wells. You can't do that.

PHILLIPS: Well then can you ever win one...

MORRIS: Well certainly you can win won. You've got to do your homework. And you've got to analyze the factors and do the proper interpolation of how those relate to this...

PHILLIPS: I mean everyone of these other wells have been a huge producer. Every well up there. Then do you refer to this well...

MORRIS: No. You couldn't even do it then. Because you have to get well data. You have to have some points of data in order to determine those things. And even Dr. Kerr admitted that he had no well data north of this line by which to extend this formation at all. He had no well data. He had to do it simply on the generalities that the trend was north, and, therefore, this formation ought to trend up there, and ought to be there and it ought to be 60 feet thick.

We provided Mr. Riley with all the data of all the wells. And you can take the logs, all of those, and study those and study the trends and determine what there ought to be in taking some reasonable averages of what it might be in that particular hole. But he can't be exact.

And you can't expect him to be exact. But he must make a reasonable effort to determine what that well would be.

Now let's examine how Mr. Riley got there. He didn't do any of that. He didn't use any of those factors. All he did was step over here and take the production from Holmes, and the production from Fleetwood and say that the hypothetical well ought to be as good as those. And he prepared production forecast graphs in which he showed those three wells and the timing at precisely the same rate. You just follow the straight lines. You get Holmes production for the first year. Then you get Holmes plus the hypothetical well with the same line, and then you get Holmes plus Fleetwood, plus the hypothetical well all on exactly the same line. Well anybody with an ounce of sense about the oil and gas business, and particularly in the Anadarko basin knows that no two wells will decline at precisely the same rate. But that's what he based his opinion on.

Now what's wrong with that? Not only is it not supported by any facts. It's absolutely contrary to the facts that we know. And the facts that we know concerned the two producing wells, Fleetwood and Holmes, and let me give you a run through of what they show. Holmes had 70 feet; Fleetwood had 80 feet. Their permeabilities from the record, their porosities from the records were about the same. Their water saturations from the record were about the same. Initial open flow of Holmes was 10,800 MCF starting with the virgin pressure of 8,000 PSI. Fleetwood starting three years later with a depleting reservoir, with 400 PSI of pressure, had 12,000 MCF initial open flow at that time. Three years later. Second, production in April 1997 when Fleetwood went on stream, Holmes produced 83,000 plus MCF, Fleetwood produced 399,000 MCF. Over four times as much as Holmes.

During 7 years, Holmes produced 8.7 BCF of gas, and Fleetwood in four years produced 7 BCF of gas.

In Sept. 1997, Holmes ceased production. Fleetwood during that month produced 85,000 MCF, and was still producing at the time of trial in March 2001. So those are absolute positive proof that the assumption which Mr. Riley used to formulate his opinion is not only unfounded, it is contrary to the facts. And as this court said in *Burris ___ v. _____*, when an expert's opinion is not only unfounded, but is contrary to the undisputed facts, it is unreliable, has no probative value, and constitutes no evidence to support a finding.

PHILLIPS: Can't hear whole question.

MORRIS: I say had they taken a different attack, and analyzed all of the known factors and done a reasonable extrapolation from those factors as engineers do, then they could have presented a reasonably believable case. But when they base their case upon facts which are not true and are proven to be untrue...

PHILLIPS: Can't hear whole question.

MORRIS: Absolutely not. Of course you can get a drainage case if you do your homework and study it and prepare the scientific proof on it, which wasn't done in this case. But you can't stand over here and say Okay, I'm here in section 10 in this corner and there is the Holme's well right down there 1,100 feet, which is producing 7 million feet a day. And we can volumetrically and calculate the reservoir and that reservoir ought to come up here to this spot, and this well ought to be good as those. That's nothing in the world but a layman's _____. That doesn't even come close to any kind of scientific proof.

SMITH: You had a damage's expert on your own?

MORRIS: Yes. We had our own people, and I'm ignoring all of our folks.

SMITH: What was his opinion? A net profit?

MORRIS: A royalty to them would have been about \$132,000. The well probably would never produce enough to pay out. Never pay out even the drilling costs.

SMITH: What data did you rely on?

MORRIS: The same data. All of the well data. All the geological data that was presented.

* * * * *

RESPONDENT

SHEARER: The issue before you is whether there is any evidence in the record to support the damage findings of the TC. And on that issue what is not contested on appeal impacts what is. Factors not contested findings of fact that are uncontested for purposes of this appeal are that a reasonably prudent operator would have drilled at this location, that it would have paid out in a reasonable time, that's the \$1.6 million of damages, actual expense to drill and complete; and that that well over and above that expense would have made a reasonable profit.

Now it's uncontradicted, again the drilling costs is \$1.6 million, and what Mr. Riley, the engineer called by the mineral owners did, was to compare the Holmes' well. And this is only 1,127 feet North of the Holmes where the proposed well was to protect from drainage.

HECHT: These wells seem to perform differently based on thickness. Did Mr. Riley take that into consideration in his calculation regarding _____?

SHEARER: Yes he did.

HECHT: So he thought if you had 60 feet of thickness that would be a lot less 70 or 80?

SHEARER: Standing alone he did. In cross-examination counsel asked him, standing alone is that settled? But Mr. Riley said there are other factors to consider too. One item is skin damage. The Holmes's well had drilling fluids get into the productive zone. And that impedes that flow of the hydrocarbons through the productive zone. And the thought was that steps could be taken to avoid that problem in the protection well and it could very well be better than the Holmes.

Now one question is, is it a reasonable approach to look at the Holmes and compare how it produced in making a damage calculation?

HECHT: If it is a reasonable approach to do that, then Riley equated the hypothetical well with the Holmes. Did he say this will do what Holmes did or better?

SHEARER: He did. He said it would do equal for purposes of calculations.

HECHT: It looks like that a lot of these factors, the big difference is with thickness. Why wouldn't thickness matter with respect to the hypothetical well?

SHEARER: Thickness matters. Also permeability matters. But the question is, when you don't know all of the facts that you would like to know, and you've got to decide whether to drill, again it's given that a reasonable prudent operator would have drilled, and we have a nonjudicial use made of the approach taken by Mr. Riley, the engineer. And unfortunately we did not put this in our brief or appendix. And I have it before you now. It's defendant's ex. 119. It's a study commissioned by Kerr-McGee, by a Houston firm, Reservoir Description Services. This is done after the Holmes came in and while they were drilling the second well and before it was completed. The Mitchell 10-1. And they have two scenarios on the affect of a second well in this reservoir. And the first scenario is a conservative forecast of having the two wells, the Holmes and the next well being in the same productivity index. Having the same productive capacity. We say this is particularly important in view of the uncontested findings that this well would have been profitable. The question is, is this a reasonable way of projecting damages?

PHILLIPS: Can't hear?

SHEARER: The facts were that the 10-1 was being drilled when this study took place. But we say the same theory should apply when you move much closer to the Holmes' well. You improve your chances of getting into that reservoir.

OWEN: When you're talking about the second well, are you looking at the Mitchell well location or some other location?

SHEARER: It doesn't really state the location. It just says a second well in the reservoir. They assume it's going to be productive. And they are studying here the effect of a productive second well on the reservoir.

HECHT: Couldn't hear question.

SHEARER: For purposes of this appeal where this well would have been, there's no contest to the fact that this well, the protection well we're talking about, would have made a profit.

HECHT: You say this is a reasonable approach. And it rejected that the Mitchell well would be a producer, and it wasn't, how is it a reasonable approach?

SHEARER: It's not saying the Mitchell well, although that well was drilling. It's saying if a second well was productive. And we have the uncontradicted finding that would have been productive and profitable. So, therefore, when you're looking at the issue before this court, is this approach reasonable in estimating damages where this is a nonjudicial use of this approach made by Kerr-McGee. And this approach has been done over the years too. We cite cases in our brief where for years, obviously how else are you going to prove up a case like this other than go to the neighboring wells and get the information on it.

PHILLIPS: When you saw these wells come in, Holmes, Fleetwood, did you have the option to seek unitization _____?

SHEARER: Kerr-McGee may have had that option had the leases permitted it. Sometimes leases won't restrict unitization, but with no lease restrictions Kerr-McGee could have come in and drawn a unit different than what they did. What they did do is to come in and say all of section 17 where the Holmes is situated as a unit, and all of section 10, which is my client's land, as a unit. That's the facts.

PHILLIPS: Can't hear.

SHEARER: I think 640 units was the standard unit for this type of gas well. But they could have drawn other than all of sections.

SMITH: Your brief states that you relied on the TC's ruling denying defendant's motion to strike Riley's damages testimony. Had the motion to strike been granted, what would the plaintiff's expert had done at trial to prove the reliability of the damages?

SHEARER: If the motion to strike had been granted, what would we have done to try to overcome that?

SMITH: You are asking for a remand.

SHEARER: Yes. Because there are obviously some damages here. It's uncontested that we would have made a reasonable profit. And this court, I've seen the trend in your cases where this court has remanded where there is evidence of some damages even though the proof may have not have met the DaUbert test. As for as the scientific proof, the engineer could have gone about it a

little different obviously. On the second time around, I'm sure the engineering testimony would be somewhat different. But the fact is, the finding of this court is a very conservative one. This finding says that a second well in the reservoir that's equal to the Holmes would be a very conservative forecast. Then it doubled what the Holmes did and said that's only a slightly less conservative and still very conservative.

Now this Fleetwood trust when it came on it dominated the Holmes. But the TC's findings are fully supported by what would have happened in the field before Fleetwood Trust came on play. We have a two year window there and the TC in effect awarded about 60% of the 2 year damages that were calculated by Mr. Riley. So we have a very conservative projection in the study, and the TC even took it far more conservative than that was. So we have a very conservative finding of the TC that's well within the evidence supplied by the engineer. It's not just guesswork on his part. He took the same approach that Kerr-McGee commissioned in that study.

HECHT: Does that mean then if these two wells and the hypothetical well had produced in relationship to the thickness of the lower _____ had been struck that there still would have been as much damages as the TC found?

SHEARER: There would have been far more. You say two wells. You mean the protection well and the Holmes? So you would have the two?

HECHT: If the protection well, the hypothetical well, the Holmes and the Fleetwood had their production been relative to the thickness of the formation _____, 80 feet for Fleetwood, 70 feet for Holmes and 60 for the hypothetical well, their production had direct relation to that thickness so that porosity and other factors would not affect it, would the damages be more or less than what the TC found?

SHEARER: I think they would be more. I think the TC was very conservative on its damage finding. As I mentioned you can ignore the Fleetwood time of production. This award is fully supported by pre-Fleetwood in the two year window.

The motion to strike really was centered on the subject of the engineer not knowing exactly how the protection well will turn out. You know geologists can draw the lines. You never know till you drill. And the engineer had to admit that. Now I don't know what the permeability will be. I don't know what the depth will be. I can only make reasonable projections. What Kerr-McGee's position is without making those precise projections it's speculation and the landowner cannot recover. And if that's the law here's the effect of it. Kerr-McGee as in this case has a clear duty to drill. It owns all the leases in the area. It has a conflict of interest. Why would it drill 1.6 million well and it's going to get the gas anyway? So it refuses to do its duty. The landowner sues and says why you can't prove how this well would have turned out. Therefore, you lose. And that's in effect asking for immunity from a clear...

OWEN: Why didn't your expert look at all the other wells on porosity and all of that?

SHEARER: Oh he did. In fact he commissioned another engineer to do a study on porosity. And he used that information in projecting the size of the field and how much had been drug. He did a pressure and production study using all the field, all the zones in this area, in this zone which was the Fleetwood trust and the Holmes. And Mitchell 10-2 by the way was a second well drilled over here, and it had a little bit 7 feet or so of this pay(?) and it was in pressure communication. And the engineers used this study too. And he considered all that in coming up with his damage calculations as plaintiff's ex. 21.

JEFFERSON: The CA's opinion says that Riley testified he would look at all these wells and their production for that would not tell him – I mean he has no idea based on those what this hypothetical well will produce.

SHEARER: It's not as a matter, I don't think, there is no idea that he can't tell you precisely.

JEFFERSON: It says, You have has absolutely no factual data to support that opinion do you? And he said, the only fact I have to base it on is what the wells in the intermediate area are producing. Then the question was, That does not tell you what the hypothetical well would produce does it? And his answer is, no there is not. So how do we evaluate that testimony in terms of reliability if he can't even say no a comparison wouldn't be relevant to what this hypothetical well would...

SHEARER: This gets back to the perfect defense or the applied immunity that they weigh. There's no way of knowing exactly the thickness of the pay or the permeability until you drill. And if the standard of proof in damages for a mineral owner is to have that type of precision, then there will be no more of these cases. Mineral owners will not be able to bring these cases, because you never know till you drill. Engineers have to make estimates and projections.

PHILLIPS: We have a case here where one expert, he looks at the 10 wells and says is going to pay but _____. There will never be any royalties. And the other one says that it's going to be a great well. What does a trial judge do in _____? What factors do you look at?

SHEARER: You look at what a reasonably prudent operator would do, and the type of studies that they would make. And we have a nonjudicial use made of this approach.

PHILLIPS: Do you think it was error for the trial judge to allow the Kerr-McGee experts to - it was his opinion not to scientifically rely on it?

SHEARER: There's no objection to...

PHILLIPS: I know you didn't object. But could have successfully...

SHEARER: I don't think so. I think both sides are entitled to come into court and give their views and the trier of the fact resolves it.

PHILLIPS: Wasn't this what the US SC was trying to narrow, I guess, as having two experts come in with radically different explanations for everything, and just throwing that up to the finder of fact and one case goes this way and the other case goes that way.

SHEARER: The big battle ground is whether or not it's productive. Whether or not this well would have been successful and made a profit. And that's not an issue in this appeal. In this case it's uncontested for purposes of appeal it would have made a reasonable profit. So again, starting at that point, under this record, we're looking at the amount of damages again. And we say that the nonjudicial use of computing damages made on the basis of what the neighboring wells are producing is a reasonable approach. It's one that's been sanctioned by the courts throughout Texas through many years. And we say Daubert and Gamal(?) doesn't change that. Again this court in Robinson looked very carefully at the nonjudicial use.

ENOCH: Mr. Morris says that your expert didn't use information that an expert would use in order to come to the conclusion that he claims to have come to. And so this is a no factual foundation for the opinion that was relied on. What information do you understand from Kerr-McGee to be their concern that your expert should have used but he didn't?

SHEARER: Their motion to strike sets it out. And their cross-examination that they rely on in support of that motion, that our engineer could not predict precisely what the thickness of the pay would be, or what the permeability. That's the standard that Kerr-McGee would have us meet, and we can't meet it.

ENOCH: The argument there is that because he necessarily had to speculate, they are requiring you to actually drill the well in order to have the answer. I think I agree. You don't have to drill the well. But it seems to me between the two of you some operator drills wells based on some piece of information that's purely speculation but it's an educated guess. What piece of information does Kerr-McGee says he don't have that should have been used before we can allow your witness to give an educated guess on this?

SHEARER: I don't see on the factual background that we're missing.

ENOCH: So what you're saying is there is no factual information. This is your expert's decision that would be private of what an operator would consider an educated guess

_____.

SHEARER: And indeed, Mr. Riley has had 25 years experience with a drilling company. He points out that you have to drill to protect from drainage a lot of times without knowing all the available information millions of dollars are invested by operators in the field.

ENOCH: In fact, isn't that what Kerr-McGee has done?

SHEARER: Yes. What they were doing on those Mitchells, especially the 10-1, the first step out well, they were looking for a separate pod it would seem. The evidence was these _____ bars kind of close. We say they weren't looking at protecting them from drainage on the Holmes well. They were looking for the next pod that would go in that direction, the general geological trend.

HECHT: If Riley had testified that the hypothetical well would have been five times the producer of the Fleetwood well would that have been _____, or is that just something to cross-examine him on and attack his credibility?

SHEARER: I think this very report shows that five times may not be beyond the realm of possibilities. They point out this skin damage problem in this report that's in the Holmes say that hopefully skin damage won't be of concern in the new _____ and that the rate will be greater than the current status.

HECHT: An expert testifying in this area could get so far _____ of underlying the data that his report would then become unreliable even if he was going about the analysis in a certain way instead of basic way _____.

SHEARER: If his conclusion gets too far away, you get the Gamal(?) gap problem there. And I don't think we were reached by any means here.

PHILLIPS: Can't hear?

SHEARER: I think it's within the range of evidence presented to the TC. And he came on the conservative side of it. Kerr-McGee came out very well on actual damages here.

SMITH: Can't hear.

SHEARER: The methodology of doing like the reservoir description services, you kind of compare the protection well, the second well in the reservoir as having volume similar to that first well. That's a methodology. And indeed when you look at the factual background part, I think there's no dispute on the facts used by Mr. Riley. I think he used the proper facts. It's a matter of the conclusion reached from those facts.

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REBUTTAL

MORRIS: I thought we made it clear in our briefs, and I want to make it clear again. We don't admit any of the matters that he says are uncontested and undisputed. We assume facts for purposes of narrowing the issues in this court. We contested them vigorously. We simply elected

to pursue the appeal based on the proof of damages issue. And that's all that's before this court. That's what we presented to this court.

Second, this court nor any other court can make a comparative finding unless there is a reliable expert opinion from which to draw it. And if there is no reliable expert opinion, then the TC and an intermediate court and this court is powerless to make any finding because there is no evidence to support a finding. And that's the case here.

The question of what Mr. Riley could have done seems to be troubling the court somewhat. Let's look at our data. Kerr-McGee explored Holmes a good way. And the plaintiff's section first well - dry hole. No reservoir going up there. Second well, Eden across the corner to the Northwest. No lower payear. No formation. No reservoir going up there. The second well in plaintiff's section, Mitchell 10-2, only 7 feet of formation, nonproductive. A productive reservoir didn't extend up there. And no other projection except Fleetwood shows us where there was commercial good for commercial production.

An expert can do some interpolations from those things and say this was poor porosity, and poor thickness. This was poor porosity and poor thickness, therefore, this well between the two might be better, more likely would be closer to those, maybe we can take some averages of some kind. and had he attempted to do then we might have some data to work with. He didn't try to do that. He proceeded on one basis only. That is to compare the production of the two productive wells, the only two productive wells, and say that the hypothetical well would be as good as both of them, would produce at the same rate as both of them, and would decline at the same rate as both of them.

OWEN: I thought you just told me that they did a pressure and production survey and also looked at porosity in _____.

MORRIS: If he did, he didn't put it in evidence. There's not one iota of evidence as to how they tried to arrive at an opinion except on one basis, and one basis only. And that is a comparison of the production of Holmes and Fleetwood, and assumed that the hypothetical well would be as good as Holmes and as good as Fleetwood.

There was an elevation difference. Twenty five feet. You can calculate that from the structural maps that were presented in evidence. You can figure that, and that might have some affect of how soon the well would water out.

He didn't rely on it. He said, that's a factor that could be taken into consideration. But that's not what he relied on. He relied on the comparison of two wells. And what those wells did proved that His reliance is false. It's an assumption that is unsupported by facts. And when an assumption is unsupported by fact as this court said in _____, it won't fly. It's nonprobative and the opinion is no evidence to support a finding.

SCHNEIDER: The exhibits by your opponents 21 and 16.

MORRIS: Yes. Twenty one which is a calculation, and 16, 17 and 18 which are his projections. And I have placed those on the bench before the court.

SCHNEIDER: Did you object to those?

MORRIS: I did not, because those are nothing but paper expressions of opinion. I objected to his opinion, and that's what his tabulations are is his opinion of what the well would produce and how he got there. And so the objection to his opinion goes to all of his opinion evidence.

SCHNEIDER: I take it then by that you don't think that that underpins or gives any reliability to support his testimony

MORRIS: Absolutely not. When you say my opinion is such, and I base it on this, and it doesn't have a foundation, the fact that I put it on paper doesn't strengthen it any.