

THE COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

Superior Court
Trial Dept.

James J. Decoulos, Decoulos & Company,
LLC, and Wright Industries, Inc.,

Plaintiffs

vs.

Civil Action No. 05-

Eagle Gas, Inc., Najib Badaoui, individually,
the Marina Nominee Trust,
a real estate trust, and Najib Badaoui, as
Trustee of the Marina Nominee Trust,

Defendants.

**AFFIDAVIT OF JAMES J. DECOULOS IN SUPPORT OF
PLAINTIFFS' EX PARTE APPLICATION FOR A WRIT OF ATTACHMENT**

My name is James J. Decoulos and the following facts are true to the best of my
knowledge, information and belief.

1. I have practiced environmental engineering since 1981.
2. I have been licensed as a "hazardous waste site cleanup professional", otherwise known as a Licensed Site Professional ("LSP"), since 1996.
3. An LSP is an individual who, by reason of appropriate education, training, and experience, is qualified, as attested by being licensed by the Board of Registration of Hazardous Waste Site Cleanup Professionals (the "Board") to render a "waste site cleanup activity opinion" that can be relied on as sufficient to protect public health,

safety, welfare, and the environment in compliance with the Massachusetts Oil and Hazardous Material Release Prevention Act, G.L. c. 21E.

4. In January of 2003, defendant Najib Badaoui of Carver, MA (“Badaoui”), contacted me to discuss the potential of c. 21E liability for a petroleum release at a gas station that he owned at 131 Main Street in Carver (“the Site”).
5. Badaoui operated the gas station as Eagle Gas, Inc. (“Eagle”).
6. On January 16, 2003, I represented Badaoui in a telephone conference call with Theodore J. Kaegael, Jr. and Brian Clarke of Kaegael Environmental, Inc. to discuss the petroleum release at the Site.
7. Kaegael was the representative LSP for the former owner of the Site, Richard S. Nantais, Trustee, Nantais Realty Trust, who incurred c. 21E liability for a petroleum release prior to selling the Site to Badaoui.
8. Nantais maintained responsibility for addressing the c. 21E liability after he sold the property to Badaoui.
9. During the inspection of groundwater monitoring well BP-5RR in front of the Site, Clarke measured approximately ten inches of pure petroleum, otherwise known as non-aqueous phase liquid (“NAPL”), on top of the groundwater table.
10. Kaegael informed Badaoui that the identification of NAPL in well BP-5RR was a new condition and that Nantais was not responsible for the petroleum release to the ground. Kaegael recommended that Badaoui notify the Massachusetts Department of Environmental Protection (“DEP”) of a new release of petroleum under the provisions of c. 21E, § 7 and 310 CMR 40.0310 of the Massachusetts Contingency Plan (“MCP”).

11. On January 21, 2003, I notified DEP of the new petroleum release on behalf of Badaoui. DEP assigned Release Tracking Number ("RTN") 4-17582 to the release: identified Eagle Gas, Inc. as the Potentially Responsible Party ("PRP"); and, issued a Notice of Responsibility ("NOR") letter to Eagle.
12. On February 6, 2003, I submitted a proposal to Badaoui to represent his corporation as the LSP-of-record in addressing RTN 4-17582. When signed by both parties, the proposal was to become a contract between the parties.
13. Badaoui executed the contract between Eagle and Decoulos & Company ("D&C") on February 11, 2003 (the "Contract") and provided a \$5,000.00 retainer. The Contract is attached hereto as Exhibit 1.
14. On March 27, 2003, D&C Invoice No. 444 was submitted to Eagle for services and expenses incurred between January 16, 2003 and March 27, 2003. The total amount of Invoice No. 444 was \$10,213.72.
15. In April of 2003, I requested the services of Wright Industries, Inc. of Essex, MA ("Wright Industries") to provide remedial contracting support for D&C at the Site.
16. Eagle and Badaoui agreed to accept Wright's services.
17. On April 24, 2003, Wright Industries arrived on Site with a drum vacuum system to remove NAPL from BP-5RR and evaluate the recovery of NAPL back into the well.
18. Before Wright Industries evacuated the NAPL on April 24, 2003, I measured the apparent thickness of the NAPL at BP-5RR as 6.27 feet with a Solinst™ Oil/Water Interface Meter. The top of the NAPL was at 3.67 feet below the ground surface; the NAPL/groundwater interface was at 9.94 feet below grade; and, total well depth was 11.30 feet below the existing ground surface.

19. On May 16, 2003, I inspected the surrounding area to the NAPL impacted well BP-5RR. Due to the close proximity of the well to the stormwater drainage system on Main Street, an immediate concern of the NAPL discovery was that the petroleum product could travel underground along either the interior or exterior of the stormwater drainage piping.
20. Based on the sensitive agricultural use of wetland resources in the Carver area for cranberry production, on May 16, 2003 I inspected South Meadow Brook, which ran underneath Main Street approximately 600 feet south of the Site.
21. The South Meadow Brook (the "Brook") inspection revealed the presence of a sheen on the surface of the Brook. The sheen was observed from Main Street on both the easterly (upgradient) and westerly (downgradient) flows of the Brook.
22. DEP was contacted and representative Mark Jablonski responded to the scene at approximately 2:30 PM on May 16, 2003. With the support of the Carver Department of Public Works, drainage structure covers in Main Street were removed and the headspace within each drainage structure was screened for volatile organic compounds ("VOCs").
23. Although the drainage structures and underground piping in front of the Site did not show any signs of causing the sheen on the water surface of the Brook, DEP issued an immediate Notice of Responsibility to Eagle due to the likelihood that the source of the outfall contamination originated from the Site. DEP assigned RTN 4-17825 to the release.

24. Based upon the release identified at the Brook, I informed Badaoui that the \$20,000.00 estimate in the Contract would be exceeded. Badaoui acknowledged the additional cost and asked that D&C and Wright continue our work.
25. At this time, I recommended to Badaoui that he pursue any insurance coverage that either he or Eagle may have carried for the pollution damage.
26. On June 5, 2003, Badaoui transferred the title of the Site to himself as trustee of the Marina Nominee Trust. The deed and memorandum of trust was recorded at the Plymouth Registry of Deeds in Book 25358, Pages 110-113. Exhibit 2.
27. On June 13, 2003, Eagle paid D&C \$5,000.000 that was applied to Invoice No. 444.
28. On June 25, 2003, Eagle paid D&C \$5,213.72 that was applied to Invoice No. 444.
29. At Badaoui's request, on July 8, 2003 I submitted information regarding the releases to Badaoui's and Eagle's insurer, Harleysville Worcester Insurance Company ("Harleysville").
30. On July 21, 2003, D&C Invoice No. 450 was submitted to Eagle for services and expenses incurred between March 28, 2003 and July 21, 2003. The total amount of Invoice No. 450 was \$12,008.17.
31. On July 29, 2003, Harleysville notified Eagle and Badaoui that he would not be covered for any pollution losses under existing policies. In their response, Harleysville stated that "A more detailed letter will be sent to you outlining our position in the near future."
32. On July 29, 2003, Eagle paid D&C \$6,000.00 that was applied to Invoice No. 450.
33. On August 23, 2003, Eagle paid D&C \$6,008.17 that was applied to Invoice No. 450.

34. On March 4, 2004, Harleysville submitted their "more detailed letter" explained the reasons they were failing to provide coverage for the pollution damage.
35. I recommended to Badaoui that he contact an environmental attorney to pursue a claim against Harleysville.
36. On April 2, 2004, D&C Invoice No. 479 was submitted to Eagle for services and expenses incurred between July 21, 2003 and April 2, 2004. The total amount of Invoice No. 450 was \$3,282.50.
37. On April 22, 2004, Eagle paid D&C \$3,282.50 that was applied to Invoice No. 479.
38. On May 19, 2004, I met with administrator Jean Bouchard with the Carver Board of Selectmen at Town Hall to discuss grants that may be available to assist in cleaning the stormwater drainage system and outfall that flowed into the Brook (RTN 4-17825). I hand delivered a meeting request with the Selectmen for their next meeting
39. On May 25, 2004, Badaoui, his brother Aboodi Badaoui and I went before the Selectmen to discuss the release that impacted the stormwater drainage system and Brook. The Selectmen provided their support for Eagle to pursue a grant on behalf of the Town of Carver ("Town").
40. On June 5, 2004, D&C Invoice No. 505 was submitted to Eagle for services and expenses incurred between April 2, 2004 and June 5, 2004. The total amount of Invoice No. 505 was \$9,396.42. Exhibit 3.
41. On July 9, 2004, D&C Invoice No. 515 was submitted to Eagle for services and expenses incurred between June 5, 2004 and July 9, 2004. The total amount of Invoice No. 515 was \$18,391.65. Exhibit 4.
42. On July 19, 2004, Eagle paid D&C \$4,396.42 that was applied to Invoice No. 505.

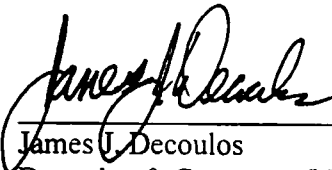
43. On August 10, 2004, Eagle paid D&C \$8,391.65 that was applied to Invoice No. 515.
44. On August 19, 2004, Eagle paid D&C \$5,000.00 that was applied to Invoice No. 505.
45. On October 8, 2004, Eagle paid D&C \$5,000.00 that was applied to Invoice No. 515.
46. On October 22, 2004, D&C Invoice No. 530 was submitted to Eagle for services and expenses incurred between July 9, 2004 and October 22, 2004. The total amount of Invoice No. 530 was \$11,318.32. Exhibit 5.
47. On October 29, 2004, Eagle paid D&C \$5,000.00 that was applied to Invoice No. 515.
48. Based upon demands by DEP to accelerate the remedial response actions to remove NAPL and ensure the protection of public health, Badaoui informed me in November of 2004 of the financial difficulties he was facing in paying the invoices of D&C and Wright Industries.
49. On December 6, 2004, Eagle paid D&C \$6,318.32 that was applied to Invoice No. 530.
50. On February 14, 2005, D&C Invoice No. 552 was submitted to Eagle for services and expenses incurred between October 22, 2004 and December 31, 2005. The total amount of Invoice No. 552 was \$19,865.13. Exhibit 6.
51. On March 3, 2005, Eagle paid D&C \$5,000.00 that was applied to Invoice No. 530.
52. On March 24, 2005, I contacted environmental attorney Adam D. Rogoff to identify whether Eagle and Badaoui could pursue a claim against Harleysville for failing to cover pollution damage.
53. Rogoff contacted Badaoui to identify if he would engage his services to pursue an insurance claim against Harleysville.
54. Badaoui decided to not pursue the insurance claim with Rogoff.

55. Sometime in April of 2005, Badaoui informed me of discussions he was having with Cumberland Farms, Inc. ("Cumberland") to sell the station.
56. On April 20, 2005, Eagle paid D&C \$5,000.00 that was applied to Invoice No. 552.
57. On April 29, 2005, I spoke with attorney Benjamin J. Ericson, the acting Brownfields Unit Chief of the Massachusetts Attorney General's office, regarding the possibility of seeking brownfield funding for Eagle.
58. Ericson provided contact information for brownfield funding options. One of the contacts suggested was Thomas Barry of the Massachusetts Business Development Corporation ("MassBusiness").
59. I arranged a meeting with Badaoui, Barry and myself for May 12, 2005 to outline brownfield financing programs that may be available for Eagle.
60. Barry could not attend the May 12, 2005 meeting but later met Badaoui at the Site and provided information on MassBusiness programs that could benefit Eagle.
61. On June 9, 2005, Eagle paid D&C \$5,000.00 that was applied to Invoice No. 552.
62. On June 17, 2005, Badaoui and I met his attorneys Jonathan M. Graham and Theodore L. Bosen at their office in Sagamore Beach, MA to review the project status and discuss negotiations that Eagle was undertaking to sell the Site to Cumberland.
63. Invoices to Eagle were withheld in anticipation of the sale to Cumberland.
64. On June 23, 2005, I discussed the project status with Emile Tayeh of Cumberland. Tayeh informed me that Cumberland was planning on purchasing the Site, demolishing the building, replacing the underground storage tanks and constructing a completely new gas station and convenience store facility. Tayeh also informed me of Cumberland's desire to allow D&C and Wright to continue our remedial actions until

our work was completed. I later that day emailed Tayeh recent reports that we had filed with DEP.

65. On August 11, 2005, attorney Shephard S. Johnson, Jr. notified me during a telephone conversation that I would no longer be the LSP representing Eagle.
66. On August 19, 2005, D&C Invoice No. 580 was submitted to Eagle for reimbursable services and expenses incurred between December 31, 2004 and August 19, 2005. The total amount of Invoice No. 580 was \$20,089.17 and a past due amount of \$4,518.05 from Invoice No. 552 was listed. The cover letter and invoice is attached hereto as Exhibit 7.
67. On November 7, 2005, D&C Invoice No. 584 was submitted to Eagle for non-reimbursable services and expenses incurred between December 31, 2004 and October 11, 2005. The total amount Eagle owes D&C is \$29,013.47 and a copy of the invoice is attached hereto as Exhibit 8.
68. Eagle owes Wright Industries \$50,096.91 and a statement reflecting this amount is attached hereto as Exhibit 9.

Signed under the pains and penalties of perjury this 15th day of December, 2005.



James J. Decoulos
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