THREE MILE ISLAND LITIGATION
20 YEARS LATER:
ANY LESSONS FOR CANADIAN UTILITIES?

a paper delivered

for

the Annual Canadian Nuclear Association Conference

Montreal, Spring 1999.

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Introduction.

Lawsuits have long half-lives. March 28th marked the twentieth anniversary of the Three Mile Island (TMI) nuclear reactor meltdown, and some 2,100 plaintiffs are still in court. On June 7th, 1996, Judge Sylvia Rambo of the U.S. 3rd Circuit Court summarily dismissed their claims, reasoning they had failed to establish a causal link between the radiation that escaped from the reactor and the alleged injuries suffered.[1]

Because of the summary dismissal, much evidence was ignored. The plaintiffs appealed. When I spoke with one of their lawyers Laurence Berman this past January, the appeal was still pending. Mr Berman said that if the appeal confirmed Judge Rambo's judgement, the plaintiffs would have the option to go to the US Supreme Court.

This would be the second time the case reaches the peak of the American Justice system. The first time was in 1996, when the US Supreme Court ruled punitive damages could be awarded against the defendant manufacturers of the reactor. With this warning, the case went back to Judge Rambo, who dismissed it for lack of evidence. In the meantime, the plaintiffs had tried another strategy: have Judge Sylvie Rambo removed on grounds of partiality. Their argument was that because Judge Rambo had since 1981 managed the $20-25 Million settlement fund that was awarded to residents of the area, she was partial to the industry's arguments, since they had supplied part of the settlement funds. That motion was also dismissed and Judge Rambo stayed on. The utilities are still facing a consolidated suit from some 24 businesses in the area for loss of business, especially tourism. Plaintiffs claim to have spent some $ 2 Million in litigation costs, and the industry says it has spent over $10 billion cleaning up the area. Today, the reactor is shut down and for sale.

[1] In Re: TMI Litigation Consolidated Proceedings, 927 F. Supp. 834 (M.D.) Pa. (1996)

This paper [2] will attempt to do as follows: in Part I: highlight the chronology of the litigation that followed TMI; in Part II: examine the amended U.S. *Price-Anderson Act* and compare it with the soon-to-be promulgated *Nuclear Safety & Control and Nuclear Liability Acts* in Canada; and in Part III: pose questions for further research for the Canadian, Ukrainian/Chernobyl contexts.

[2] Note to the reader: the chronology is a highlight and not complete; some legal citations are indirect and to journals only.

Part I - Chronology of the litigation that followed TMI.

September 1974: Three Mile Island Unit 1 nuclear reactor begins running and Unit 2 comes into operation in December 1978.

26 June 1978: US Supreme Court rules in 9-0 decision that Price-Anderson Act is constitutional and in particular does not violate "due process," because limits on liability are required to encourage private industry. Wrote Justice Stevens:

> The string of contingencies that supposedly holds this case together is too delicate for me. We are told that but for the Price-Anderson Act there would be no financing of nuclear power plants, no developments of those plants by private parties, and hence no present injury to persons such as the appellees….It is remarkable that such a series of speculations is considered sufficient either to make this case ripe for decision or to establish the appellees' standing.[3]

March 28, 1979: A breakdown in a pumping system sets off an automatic shutdown of Unit 2. Later, equipment problems and operator mistakes allow cooling water to drain away, causing the radioactive core to overheat and start to melt. About one-third eventually melts.

March 30, 1979: An exodus from the local community begins. Gov. Richard Thornburgh's advice that pregnant women and young children clear away from within five miles of the plant. The next day President Jimmy Carter visits the plant -- the only one in U.S . history to face an accident known as a general emergency. Regulators, scientists and industry personnel debate the potential for a hydrogen bubble to explode and spew radioactive gases into the air. But it never happens. A week later the evacuation advisory is lifted.

April 12, 1979: Suit filed representing thousands of unnamed persons who allegedly lost profits or wages, or who suffered emotional distress about developing cancer after the accident. The settlement arrived at does not address personal injury claims

August 1979: Cleanup of Unit 2 begins with the shipment of some low-level radioactive waste to Richland, Wash.

8 December 1980: GPUC, under the 1946 *Federal Tort Claims Act* files a $ 4.010 billion suit against Nuclear Regulatory Commission in negligence for, inter alia, performance of its regulatory duties vis-à-vis Babcok & Wilcox, manufacturer of plant and its training programs.[4]

February 1981 : Three Mile Island Public Health Fund is established as part of a $25 million settlement between residents of central Pennsylvania and the insurers and

[3] Quoted in *Nuclear Law Bulletin* No. 22, December 1978, p. 29, at 32.
[4] *Nuclear Law Bulletin*, No. 27, June 1981, p. 21.

operators of the Three Mile Island nuclear plant. The broader settlement provided $20 million for property damage, and $5 million to study the health effects of the Three Mile Island accident, which released low levels of radiation. The plan is fund monitoring radiation from TMI, studying the health-related effects of the accident, educating the public, designing evacuation plans, and doing general research on the effects of low-level radiation; Judge Rambo considered her preliminary approval of the settlement to mean it "is reasonable and equitable for consideration" by those bringing the suit.

Spring 1981: Notices sent out to 550,000 potential claimants within 25 miles (30 kilometers) of the plant. Of the 550,000, only 20,000 had requested claim forms and Judge Rambo's court received 14,047 claims by the deadline of which approximately half were for evacuation expenses. Another 3,681 were for wage losses or employee compensation. More than 2,300 claims were for personal property and business losses.

8 June 1981: NRC denies GPUC federal tort claim, arguing it is responsible only for prescribing licensing standards to public health and safety, it does not certify to the industry that the designs and procedures are adequate. *Federal Tort Claims Act* states claimants may now file suit in federal district.[5]

3 December 1981: GPUC files tort claim and on 5 March 1982, NRC denies the claim, and files to dismiss.[6]

24 November 1982: Federal District Court denies NRC's motion to dismiss GPUC's claim, but sends its decision to Third Circuit Court of Appeal, because of potential for huge liabilities; court stays all proceedings until higher court rules.[7]

1983: After 3 months of trial, Babcock & Wilcox (manufacturer) and GPUC (operator) settle out of court : GPUC to receive $ 37 million in rebates on goods & services over 10 years.[8]

11 January 1984: US Supreme Court rules in the case of Silkwood v. Kerr-McGee Corporation[9] that the *Atomic Energy Act* does not preempt States from avoiding punitive damages; jury awarded compensatory and punitive damages after receiving instructions from trial judge that it was not bound by federal regulations to which operator had abided.

October 1986 : Judge Rambo throws out a petition to remove the trustee of $ 5 million TMI Health Fund, after mis-management complaints from public and elected officials.

10 May 1988: Summary judgement motion by defendants denied in GPUC et al. v. Glass Kitchens of Lancaster, Inc. at al., where plaintiffs had alleged loss of tourism income:

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[5] *Nuclear Law Bulletin,* No. 28*,* December 1981, p. 32
[6] *Nuclear Law Bulletin*, No. 29, June 1982, p. 30
[7] *Nuclear Law Bulletin*, No. 31, June 1983, p. 22
[8] *Nuclear Law Bulletin*, No. 31, June 1983, p. 22.
[9] (1984) 464 US 238, 78 L Ed 2d 443, 104 S Ct 615, 14 ELR 20077.

although no physical injury found, there remains burden of proving physical injury, and this cannot be removed summarily by defendants.[10]

26 March 1990 * : US District Court for Middle District of Pensylvania rules in Lewinter, et al. v. GPUC., et al. that Congress exceeded powers in its appropriation of the right to bring an action for recovery of damages for injuries; this right is created by State law and exists regardless of the Price Anderson Act.[11]

April 1990: The last canister of Unit 2 uranium fuel is shipped to an Idaho research center, accounting for more than 98 percent of the fuel.

September 1990: Columbia University researchers report finding no excess cancer from radiation releases forced by the accident. A National Cancer Institute study reaches a similar conclusion.

26 July 1991 *: US Court of Appeal for Third District states that "there can be no action for injuries caused by the release of radiation from federally licensed nuclear power plants separate and apart from the federal public liability action created by the [Price-Anderson] Amendments Act".[12]

October 1992 : Judge Rambo signs Court order allowing release of 1.1 Million to TMI Alert a citizens' group which had petitioned the NRC to have public hearings on the methods of permanent storage of Unit 2; the fund halted the proceedings, but gave the TMI Alert group an independent radiation monitoring plan.

17 October 1995: ♣ Third Circuit Appeal Court rules that ALARA concept is not to be considered a "radiation protection standard", but that this concept is reserved for the NRC, thus providing protection to the public and "a definitive standard by which their [operators] conduct will be measured."[13] But the Third Circuit Appeal Court also found that the Silkwood decision (1984) was not changed by the 1988 amendments to the Price-Anderson Act, and that punitive damages could be awarded in Pennsylvania. The court also warned that a trial court could so prioritize claims to avoid exceeding the limits set by the Price-Anderson Act.[14]

April 1996 : The US Supreme Court refused to hear an appeal from industry intended to block more than 2,000 plaintiffs from seeking punitive damages, refusing to consider GPUC's argument that people who lived or worked near the plant must prove they were exposed to excessive radiation before the trial.

[10] *Nuclear Law Bulletin,* No. 43, p. 56-57.
[11] *Nuclear Law Bulletin*, No. 45 June 1990, pp. 35-36.
[12] *Nuclear Law Bulletin*, No, 48 December 1991, pp. 32-33.
[13] *Nuclear Law Bulletin,* No. 57, June 1996, p. 68
[14] *Nuclear Law Bulletin,* No. 57, June 1996, p. 69

June 1996 : A judge's ongoing administration of a fund which resulted from the settlement of earlier litigation involving the 1979 Three Mile Island accident did not merit her disqualification from the present litigation.

June 1996: Judge Sylvia Rambo dismisses the ten "test cases" (5 selected by defendant, 5 by plaintiffs) thus removing the opportunity for trial hearings for all 2,100 lawsuits claiming injury from the accident; Judge Rambo dismisses the case citing slim proof.

March 1997: Dr Steven Wing of the University of North Carolina at Chapel Hill, publishes a re-evaluation of the Columbia University research and claims up to ten times more cancer than previously estimated exists among people living downwind of the reactor.

November 1997 : Plaintiffs appeal Judge Rambo's summary dismissal of their case; appeal pending as of January 1999.

July 1998: AmerGen, a partnership of PECO Energy of Philadelphia and British Energy of Scotland, offers to buy Unit 1 for $ 100 million. Government approval of the sale is expected in mid-1999.

April 2014: Unit 1's license is scheduled to expire.[15]

[15] The Associated Press, Reuters news agencies – cumulated reports

PART II. How did the U.S. Price-Anderson Act applied to TMI ?

How does the Price-Anderson Act apply to the TMI case, and how does it compare to the Nuclear Safety & Control and Nuclear Liability Acts in Canada ? To answer this question, three issues must be examined: A) constitutionality and jurisdiction; B) negligence and breach of duty and C) liability.

A. Constitutionality and jurisdiction.

The first issue, constitutionality and jurisdiction appears at first blush to be simple: both Canada and the U.S. recognize as primordial the jurisdiction of the federal government in nuclear matters. In Canada, the issue was resolved first in 1956 in Pronto Uranium Mines Ltd. v. Ontario (Labour Relations Board) [16] and again more recently in Energy Probe v. Canada (Attorney General) (hereinafter "Probe") and Ontario Hydro v Ontario Labour Relations Board,[17] (hereinafter ("Hydro").

In the U.S., federal jurisdiction is firmly established in the Price-Anderson Act which became law on September 2, 1957, as Section 170 of the Atomic Energy Act, with two objectives, very similar to Canada's *Nuclear Liability Act* :

(1) Remove the deterrent to private sector participation in atomic energy presented by the threat of potentially enormous liability claims in the event of a catastrophic nuclear accident.
(2) Ensure that adequate funds are available to the public to satisfy liability claims if such an accident were to occur.[18]

The American Act equivalent of Canada's *Nuclear Liability Act* is now codified as federal U.S. law under 42 USCS § 2011-2210 but has been challenged and maintained several times since as the above chronology shows. The amendments that were brought

[16] [1956] O.R. 862, 5 D.L.R. (2d) 342 (H.C.)
[17] [1993] 3 S.C.R. 327 , (1994), 17 O.R. (3d) 717, 14 C.E.L.R. (N.S.) 245 (Gen. Div.)
[18] The Price-Anderson Act – Crossing the bridge to the next Century : A report to Congress, August 1998, Office of the U.S. Nuclear Regulatory Commission,

into place in 1988 were found to be constitutional, and defendants may continue to apply to have the litigation brought against them, removed from state court.[19] This would seem to establish a unified judicial track for all plaintiffs. However, as will be seen below, some cloudiness remains. The 1988 amendments also increased the statutory insurance levels that operators were obliged to keep in case of accidents, such that today, the 110 reactors active in the U.S. are insured for $83.9 million each for a total of $9.43 billion. In Canada, the statutory liability for nuclear operators is set at $ 75 million plus supplementary insurance.[20] The constitutionality of this limit was unsuccessfully challenged by Energy Probe in 1993.[21] Canada has 22 nuclear reactors, 20 of which are in Ontario.

B. Negligence and breach of duty.

The two decisions of the Third Circuit Appeal Court in 1995 (marked with a ♣ in the chronology above) resolved issues only at the level of duty and breach of duty. Furthermore, they were decided in law, at the appeal level, where facts are not considered. So this dynamic helps to explain why cases go up to appeal - - where what may appear as far-fetched rationalizations are debated - - and then back down to trial for application of the rationale to the nitty-gritty detail.

In fact, problems arise in litigation involving the escape of nuclear materials not because of the extent or lack thereof of the insurance coverage, but earlier; at the level of proving the case. In other words, plaintiffs have difficulty even getting access to the liability funds that have been established. In the U.S., however, the nuclear industry is struggling with at least three decisions which seem to have given juries an inordinate power of interpretation.

[19] In re TMI Litigation case Consol. II (1991), CA3 940 F2d 832,
[20] s. 15 Nuclear Liability Act, R.S.C. 1985, c N-28.
[21] (Energy Probe v Canada (A.G.) 1994), 17 O.R. (3d) 717, 14 C.E.L.R. (N.S.) 245 (Gen. Div.)

The first is Silkwood v Kerr-McGee[22], where the US Supreme Court re-established the compensatory and punitive damages that the jury had found for plaintiff, after a Court of appeal had overturned its findings. The Supreme Court said that Congress had not entirely occupied the jurisdiction of this aspect of the law, i.e. liability, hence the state still had the jurisdiction to award punitive damages. However, the Supreme Court in April 1996 refused for a second time, to bar punitive damages, confirming the findings of Judge Silvia Rambo, and the appeal court that state tort law was still a valid remedy to plaintiffs.[23] (The case marked ♣ above). But at least one commentator is of the opinion that if a defendant is within the scope of the stringent federal regulations, he has satisfied the burden of duty and thus exits the jurisdiction of the individual state. [24]

The third case is James v. Southern California Edison Co.,[25] where a federal tribunal found that the "As Low As Reasonably Allowed" (or ALARA) test was the correct one for the jury to apply. This interpretation has the effect, experts say, of ignoring years of technical research and expertise at the federal level, because it allowed a layman jury to superimpose its views over industry standards.[26]

From a classical tort perspective, however, U.S. law appears more permissive to eventual defendants because it allows the NRC the discretion to waive defenses, limitations and governmental immunities.[27] That means the defenses can act as barriers to the indemnities. Defenses based on the plaintiffs' duty to mitigate his or damages also remain in place. Furthermore, as we have seen, a plaintiff must continue to show cause after the breach: Subsection (q) of the USCS § 2014 states that there must be an "occurrence, including an extraordinary nuclear occurrence…*causing*…bodily injury, sickness, disease or death." If the plaintiff feels he or she is the victim of an extraordinary nuclear occurrence," the Department of Energy of the NRC must

[22] (1979), WD Okla) 485 F Supp 566, 570, 5 Fed Rules Evidence Serv 765, 10 ELR 20708, (1981) CA10 Okla) 667 F2d 908, 12 ELR 20367, revd 1984) 464 US 238, 78 L Ed 2d 443, 104 S Ct 615, 14 ELR 20077.
[23] The Legal Intelligencer, April 23, 1996, p. 1
[24] David S. Gooden, "Radiation injuries: ionizing radiation," 14 Am Jur Proof of Facts 3d, 113
[25] No. 94-1085-J (S.D. Calif.) (1995)
[26] D. Wiedis & D. E. Jose in *Nuclear Law Bulletin*, No. 58, pp.72-78; see also: Gooden, supra, p. 117.
[27] 42 USCS § 2210 (n)

additionally have declared such an occurrence. The lack of such a declaration seems to have played a role in at least one case.[28]

Once the plaintiff has established a duty of the operator and the subsequent breach, the cause of the injury or damages must also be proved. According to Professor David Gooden, "causation for late radiation injury is more than merely complicated – it is indeterminate."[29] This certainly would seem to confirm the decision of Judge Rambo in rejecting wholesale stacks of evidence gleaned years after the accident, including evidence that Russian and Ukrainian scientists have gathered in the 12 years since the Chernobyl accident. Wrote Judge Rambo:

> viewing all evidence before the court in a light most favorable to plaintiffs, the court finds the evidence insufficient to create any material factual dispute and insufficient to carry the plaintiff's burden of proof at trial… [t]he court has searched the record for any and all evidence which construed in a light most favorable to plaintiffs creates a genuine issue of material fact warranting submission of their claims to a jury. This effort has been in vain.[30]

This reasoning can be compared to the Canadian *Nuclear Liability Act*,[31] which in sections 4-6 establish a strict and severally joint liability for accidents: Section 4 states: "…an operator is, *without proof of fault or negligence,* absolutely liable for a breach of the duty imposed on him by this Act." The burden for the plaintiff therefore seems limited to proving a breach of a duty specified in the Act. There is no evidence of fault or negligence required. In addition, the Canadian Act states that injury or damage normally not attributable « to a breach of the duty imposed on an operator by this Act… [but] that is not reasonably separable from injury or damage that is attributable to a breach of that duty shall be deemed… to be attributable to that breach of duty. »[32] Finally, in Canada, a nuclear « incident » is an event that is a breach of duty as defined by the Act, and does not require a declaration by the Atomic Energy Control Board.[33]

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[28] O'Connor v Commonwealth Edison Co. (1990) CD Ill. 748 F Supp 672, affmd 13 F 3d 1090(7 Circuit), Appeal quashed 114 S. Ct 2711 (1994).
[29] Gooden, p. 117
[30] Toxic Chemicals Litigation Reporter, June 18, 1996, "In re Three Mile Island Litigation Cases: Pa judge throws out 2,000 TMI personal injury claims, citing lack of proof"
[31] R.S.C. 1985, Chap. N-28, as amended in 1997.
[32] s. 6 Nuclear Liability Act, R.S.C. 1985, c N-28.
[33] s. 2 Nuclear Liability Act, R.S.C. 1985, c N-28

These apparent differences between the U.S. and Canadian legislation may have two explanations. First, Canada as a whole has a little less at stake in the nuclear sector for purely physical reasons,[34] but more obviously for security and historical motives.[35] Second, Canadians have neither litigated nor documented their nuclear accidents as extensively as the US. This is usually explained by the allegation that Canadians are less enthusiastic litigants than the US; alternatively, it may be because Canadians are just nice and like to settle.

In fact, there are only two reported cases in Canadian law which touch on the issue of liability related to damages caused radioactive materials. In CRF Holdings Ltd. v Fundy Chemical International Ltd.[36] a businessman fraudulently sold land to a purchaser without coming clean about the low-nuclear waste it contained. The case was found to turn on an issue of fraud however, and the operator's liability, a U.S. supplier, was never implicated. The second case involved a Uranium mine worker who had lung cancer. On appeal, the defendant workers' compensation board was ordered to take into consideration the workers' employment Uranium mining history, despite his smoking habit, because the radiation findings were too ambivalent to bar the claim.[37] In other words, where in the US failure to meet the burden of proof has been a defense to the defendant, this Canadian case has given the plaintiff the benefit of the doubt. But again, operator federal liabilities and insurance plans were not taken into consideration.

[34] The reactor number to population-in-millions ratio in Canada is 0.73, whereas the US it is 0.75.
[35] Canada's role is not to be downplayed however: as early 28 February 1945, Moscow knew that Canada was mining Uranium ore in Port Hope, Ontario and selling it to the United Kingdom and the U.S.
[36] (1980), 21 B.C.L.R. 345, 14 C.C.L.T. 87, 10 C.E.L.R. 10 (S.C.), affirmed (1981), [1982] 2 W.W.R. 385
[37] Decision No. 234/90 (1994), 29 W.C.A.T.R. 1 (Ont.)

C. Liability.

Two questions arise at this stage for Canadian and US operators: is the liability strict, in the sense that plaintiffs need not prove their damages or prejudice, or does that burden remain on the plaintiffs? Judging from the litigation that continues with the TMI plaintiffs today, it would appear that they still very much face a burden of proof. In what appears to be a strange twist of the law, plaintiffs who complained of commercial losses due to the TMI accident had their case heard despite a motion to dismiss their case summarily,[38] whereas those who more recently claimed physical injury were summarily dismissed without a trial.[39]

In fact, in the twenty two years since the Act has been in place organization, hundreds of claims were filed under the Act for accidents related to nuclear material under various liability policies. The insured losses and expenses paid through this period total approximately $131 million. Of this amount, about $70 million ($42 million in indemnity and $28 million in expenses) arose out of the Three Mile Island Unit 2 (TMI-2) accident that began on March 28, 1979.[40] It is also interesting to note that the 1990 Columbia University study which initially stated that the residents in a 10-mile radius of the Three Mile Island plants was paid for from the $ 5 million Health Fund that Judge Sylvia Rambo allocated in 1981.[41] The remaining $20 million went largely to commercial, loss of income claims, some of which are still outstanding.

A second distinction must be made between punitive damages under US federal law, which seem not to be permitted,[42] and under state law which are.[43] In the final showdown of the TMI legal epic, the Supreme Court has ruled that punitive damages are

[38] GPUC et al. v. Glass Kitchens of Lancaster, Inc. at al., supra.
[39] In Re: TMI Litigation Consolidated Proceedings, 927 F. Supp. 834 (M.D.) Pa. 1996)
[40] The Price-Anderson Act – Crossing the bridge to the next Century : A report to Congress, August 1998, Office of the U.S. Nuclear Regulatory Commission,
[41] Dave Airozo, Nucleonics Week , 27 February 1997, (Vol. 38, No. 9) p.1
[42] In re Three Mile Island Litigation (1986, CA3 Pa) 784 F2d 490, 16 ELR 20544, cert den 91992), 503 US 906, 117 L Ed 2d 491, 112 S Ct 1262
[43] In Re TMI Metro Edison Co. (1995) CA3 Pa) 67 F3d, 26 ELR 20014.

available to plaintiffs so long as the funds do not come out of the federal treasury.[44] But plaintiffs found themselves without a case on the level of evidence for cause.

D. Extraordinary liability.

Both Canada and the US have special provisions where liability exceeds what is stipulated by the Acts. In Canada ss.18-31 of the *Nuclear Liability Act* set forth a coded procedure for Canada to pay out additional amounts after the establishment of a special commission.[45] A Presidential Commission on Catastrophic Nuclear Accidents is established by law in the US by similar provisions.[46]

PART III: Lessons, conclusions & the Chernobyl experience.

The chief lesson to glean from the US experience in these twenty years of Three Mile Island litigation pertains to information management and education. If we take Professor Gooden's word that cause in nuclear damage cases is beyond difficult to prove but is largely "indeterminate," there is ample room for endless litigation; but with a penchant for favoring the industry, since the plaintiff has the burden of proving cause. But even without this assumption, concerned citizens will rally against nuclear power because it has such negative origins: World War II, Hiroshima, Chernobyl, Nevada repository sites. Outside the courtroom, the battle is won on the precision and range of information available. Each side engages in information production and usually to no avail: the 2,100 litigants whose case was summarily dismissed by Judge Rambo have appealed, and are ready to retunr to the US Supreme Court if the ruling is confirmed. [47]

[44] Rogers v. Metropolitan Edison Co (In re TMI Litig Consol. Proceedings 1994 MD Pa, 904 F Supp 396, amd, app gr (1994), MD Pa) 1994 US Dist LEXIS 207713 and affd, remanded (1995, CA3 Pa) 67 F3d 1119, 26 ELR 20014.) Note at 42 USCS § 2210, n6.
[45] Part II of the Nuclear Liability Act, R.S.C. 1985, c N-28
[46] 42 USCS § 2210, (l)
[47] Interview with Laurence Berman, counsel to the plaintiffs, 29 January 1999.

The solution to avoid costly and long litigation seems in the joint production of information. This buys credibility not because it comes from a court --whose impartiality can also be challenged -- but rather because it contains information from both sides. Plainly said: the information is balanced. The best example of information production sharing in the TMI saga is GPU's out of court settlement with Three Mile Island Alert, a group that demanded, *inter alia*, a NRC review of the storage plans for Unit 2. The agreement between the two sides made GPU pay for an independent citizens' radiation monitoring group which it equipped with measuring equipment and software.[48] In the view of GPU own statements, this was key to enhancing their own credibility because the findings would be independent.

This example is not perfect since GPU only funds the citizens' group, that is to say it gives the group the capacity to produce the information. At the international level, there are efforts worth latching onto: on 22 July 1998, Ukraine signed a five-year agreement with the US, for the creation of the International Radioecology Laboratory.[49] And in January 1999, at the First International Nuclear Law Conference, in Ottawa, Professor Andrei Grekhov, a radioactivity measurements expert said his experience cleaning up and measuring at the Chernobyl site is catalogued and ready to be shared.

In light of Canada's upcoming efforts to sell to the public its plan to store nuclear waste from civilian reactors in the Canadian shield, it is important to sit up and take notice of the US and Ukrainian experiences in joint information production, in order to avoid expensive and long-lived litigation.

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[48] Wythe Keever & Ben A. Franklin, "GPU agrees to fund monitors, robot research to get TMI-2 into Safstor" *Inside N.R.C.* 5 October 1992 (Vol. 14, No. 20) p.
[49] *Nuclear Law Bulletin*, No. 62, December 1998, p. 91.