

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No.: 3:18-cv-197-RJC

BRUCE RHYNE and JANICE RHYNE,)
)
Plaintiffs,)
)
vs.)
)
UNITED STATES STEEL)
CORPORATION, *et al.*,)
)
Defendants.)
)

PLAINTIFFS' NOTICE OF FILING OF DEPOSITION DESIGNATIONS

Plaintiffs hereby file certain deposition designations along with objections and counter-designations for the following deponents:

- 1. James Breece
- 2. Debra Niemaszuk
- 3. James Wells (Cowey)
- 4. James Wells (Oakley)

O = Overruled
S = Sustained

Respectfully Submitted,

Dated: September 2, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served by e-filing via the Western District of North Carolina's e-Filing Portal to all counsel of record on September 2, 2020

Dated: September 2, 2020

/s/Mark Doby

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Exhibit 1

Transcript Report



Breece, James

Transcript of Breece, James

Tuesday, September 1, 2020

Full Transcript Report

Designation Legend

-  BREECE, JAMES - (JOHNSON) 1-28-14 PLF Designations
-  BREECE, JAMES - (JOHNSON) - Safety-Clean Counter Designations

Transcript of Breece, James

Breece, James
Rhyne Trial Master

Page 1

01 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

02 IN AND FOR THE COUNTY OF ALAMEDA

03 ---oOo---

04

05 DAVID JOHNSON and LAURA

06 JOHNSON,

07

08 Plaintiffs,

09

10 vs. No. RG13669270

11

12 ARMORED AUTOGROUP, INC.,

13 et al.,

14

Defendants.

15 /

16

17

18 VIDEOTAPED DEPOSITION OF JAMES BREECE

19

COR/PMK for Safety-Kleen

20

21 Taken before KIMBERLY R. HENDERSHOTT, RPR

22

CSR NO. 12552

23

January 28, 2014

24

25

26

27

28 Aiken Welch Court Reporters

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Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James
Rhyne Trial Master

01	I N D E X	
02		PAGE
03		
04	EXAMINATION BY MR. DUPONT	10
05		
06	EXAMINATION BY MS. KAHN	177
07		
08	EXAMINATION BY MR. CAIRONE	185
09		
10		
11	E X H I B I T S	
12	PLAINTIFF'S	PAGE
13	Exhibit 1 Safety-Kleen Corp. Memorandum	37
14	dated December 26, 1991	
15		
16	Exhibit 2 Safety-Kleen Corp. Memorandum	42
17	dated April 1, 1992	
18	Exhibit 3 Safety-Kleen Corp. Memorandum	47
19	dated April 14, 1992	
20		
21	Exhibit 4 Virgin Parts Washer Solvents	50
22	Benzene Data Compilation dated	
23	August 20, 1993	
24		
25	Exhibit 5 Safety-Kleen Corp. Memorandum	78
26	dated June 8, 1988	
27	Exhibit 6 Safety-Kleen Corp. Memorandum	101
28	dated July 7, 1989	
29		
30	Exhibit 7 Safety-Kleen Corp. Memorandum	107
31	Bates stamped of SAL SK 05678	
32	through SAL SK 05743	
33		
34	Exhibit 8 Safety-Kleen Corp.	122
35	Inter-Office Communication	
36	dated April 1, 1976	
37		
38	Exhibit 9 Safety-Kleen Corp.	124
39	Inter-Office Communication	
40	dated October 20, 1980	
41		
42	Exhibit 10 Safety-Kleen document from L.	134
43	Dean Hufsey	
44	Exhibit 11 Safety-Kleen document dated	138

Breece, James
Rhyme Trial Master

Page 3

	PAGE
01 PLAINTIFFS'	
02 Exhibit 12	140
03 Safety-Kleen document dated	
04 February 26, 1988	
05 Exhibit 13	143
06 Customer Inquiries about	
07 Chemical Exposure from	
08 Safety-Kleen Products	
09 Exhibit 14	155
10 Safety-Kleen Corp. Memorandum	
11 dated April 25, 1990	
12 Exhibit 15	158
13 Label Meeting	
14 Exhibit 16	160
15 Safety-Kleen 105 Solvent	
16 Composition Summary for MSDS	
17 Revision	
18 Exhibit 17	163
19 Safety-Kleen Corp. Memorandum	
20 dated March 9, 1994	
21 Exhibit 18	168
22 Safety-Kleen Corp. Memorandum	
23 dated March 15, 1990	
24 Exhibit 19	172
25 Weekly Training Topic	
26 Exhibit 20	175
27 Safety-Kleen Corp.	
28 Authorization for Expenditure	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	

Breece, James
Rhyne Trial Master

Page 4

01 VIDEOTAPED DEPOSITION OF JAMES BREECE

02

03 BE IT REMEMBERED, that pursuant to Notice, and on
04 the 28th day of January 2014, commencing at the hour of
05 9:14 a.m., in the offices of LEWIS BRISBOIS BISGAARD &
06 SMITH, 333 Bush Street, Suite 1100, San Francisco,
07 California 94104, before me, KIMBERLY R. HENDERSHOTT, a
08 Certified Shorthand Reporter, personally appeared JAMES
09 BREECE, produced as a witness in said action, and being
10 by me first duly sworn, was thereupon examined as a
11 witness in said cause.

12

13 ---oOo---

14

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Breece, James
Rhyne Trial Master

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Breece, James

Rhyne Trial Master

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Breece, James

Rhyne Trial Master

Page 7

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10 Larry Cossar, Videographer

11

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Breece, James

Rhyne Trial Master

Page 8

01 THE VIDEOGRAPHER: On the record. My name
02 is Larry Cossar. I am a qualified video
03 technician. I'm videotaping on behalf of
04 Tele-Video Production Services. The court reporter
05 today is Kimberly Hendershott of Aiken Welch.

06 Today's date is January 28th, 2014. The
07 present time is 9:14 a.m. The location of this
08 deposition is Lewis Brisbois in San Francisco.
09 Today's PMQ witness is James Breece in the case of
10 David Johnson versus Armored Autogroup,
11 Incorporated, et al. Case number RG13669270, filed
12 in the Superior Court of California in and for the
13 county of Alameda.

14 This deposition was noticed by the -- the
15 Kazan Law Firm for the plaintiff.

16 Would counsel for parties please identify
17 themselves and for whom they are appearing.

18 MR. DUPONT: Andrew DuPont for David and
19 Laura Johnson.

20 MS. WOO: Good morning, Rhonda Woo for
21 Genuine Parts Company.

22 MS. KAHN: Ruth Kahn with Steptoe &
23 Johnson for three defendants: Sunoco, Inc.;
24 Chevron USA, Inc.; and Texaco, Inc.

25 MR. WOOD: Jeff Wood on behalf of

Breece, James

Rhyne Trial Master

Page 9

01 Safety-Kleen.

02 THE VIDEOGRAPHER: On the telephone.

03 MR. EBERLEIN: John Eberlein on behalf of
04 3M Company.

05 MS. FRAENKEL: Good morning, Constance
06 Fraenkel on behalf of CSK Auto, Inc.

07 MR. CAIRONE: Matt Cairone on behalf of
08 the United States Steel Corporation.

09 MS. MALKOFSKY: Lauren --

10 MR. SCADDEN: Jim Scadden for Radiator
11 Specialty Company.

12 MS. MALKOFSKY: Laura Malkofsky for Volvo
13 North America.

14 MR. ZECH: Jeff Zech for Justice Brothers,
15 Inc.

16 MR. ALLEN: Jeff Allen on behalf of
17 Berryman Products, Incorporated.

18 THE REPORTER: I'm sorry. On behalf of --

19 MS. HOSN: Sally Hosn on behalf of Turtle
20 Wax, Inc.

21 THE REPORTER: Jeff, if you could say that
22 again.

23 MR. ALLEN: Jeff Allen on behalf of
24 Berryman Products, Incorporated.

25 THE VIDEOGRAPHER: Anyone else?

Breece, James

Rhyne Trial Master

Page 10

01 If there's no stipulations, the
02 reporter -- reporter may swear in the witness.

03 JAMES BREECE,
04 sworn as a witness,
05 testified as follows:

06 EXAMINATION BY MR. DUPONT:

07 Q. Good morning, Dr. Breece.

08 A. Good morning.

09 Q. How are you this morning?

10 A. I'm good.

11 Q. All right. My name is Andrew DuPont. We
12 are here today to take your deposition. I
13 understand you've given a number of depositions in
14 the past; is that correct?

15 A. That's correct.

16 Q. All right. So I'm sure you're familiar
17 with the procedures, but I'll briefly review them
18 and so that we are on the same page.

19 First instruction I have for you is that
20 if I ask you any question that you do not
21 understand, will you please let me know that and I
22 will do my best to rephrase or reask the questions
23 so that you do understand it.

24 A. Yes.

25 Q. If you have a question that you're asked

Breece, James

Rhyne Trial Master

Page 11

01 and you're not exactly sure of the response but you
02 can give a reasonable estimate, it's fair to do
03 that. We don't want you to guess in response to
04 any question. Okay?

05 A. I understand.

06 Q. If at any point in time you feel that you
07 need to take a break from the proceedings, we can
08 do that. I only ask that you answer any question
09 that's pending at the time that you request the
10 break?

11 A. Certainly.

12 Q. All right. Would you begin by providing
13 us with your current title as it regards to
14 Safety-Kleen?

15 A. Yes, I'm -- I'm employed by Safety-Kleen
16 as a -- basically under the title of a consultant
17 and predominantly -- well, I should say in -- in
18 litigation support is -- is what my current role
19 is.

20 Q. Okay. And how long have you held a
21 position as consultant to Safety-Kleen and
22 litigation support?

23 A. From the time I left employment at -- with
24 Safety-Kleen full time in the -- in the late '90s
25 until present. There have been some time intervals

Breece, James

Rhyne Trial Master

Page 12

01 in which there were no legal matters pending but...
02 in which I did not -- was not involved in any sort
03 of litigation support, especially during the
04 bankruptcy which Safety-Kleen underwent in the
05 early 2000 era. And -- but otherwise, I've been
06 retained by Safety-Kleen during the entire time
07 frame from '99 until present.

08 Q. And are you compensated for your time as a
09 consultant in litigation support for Safety-Kleen?

10 A. I am.

11 Q. At what rate?

12 A. 300 per hour.

13 Q. Since you've been testifying as a
14 consultant in the litigation support for
15 Safety-Kleen since the late 1990s, in how many
16 cases have you been involved with?

17 A. I'm -- I'm going to have to estimate that,
18 because I didn't come prepared with a checklist of
19 all of them. I would -- I would estimate that to
20 be roughly 12 to 15 cases.

21 Q. 12 to 15 cases?

22 A. Yes.

23 Q. And those cases concern individuals who
24 contracted leukemia or another form of blood or
25 bone marrow cancer after exposure to Safety-Kleen

Breece, James

Rhyne Trial Master

Page 13

01 solvents?

02 A. A variety of things. A variety of health
03 issues not -- not -- not specifically leukemia, but
04 other health issues as well.

05 Q. The majority of cases that you've
06 testified in, have they concerned individuals who
07 contracted leukemia or blood or bone marrow cancers
08 from exposure to Safety-Kleen products?

09 MR. WOOD: Objection to form. Assumes
10 facts not in evidence.

11 THE WITNESS: I believe that's a fair
12 representation, yeah.

13 BY MR. DUPONT:

14 Q. Okay. Would you take me to the beginning
15 of your time with Safety-Kleen. When did you start
16 with the company?

17 A. I was recruited by Safety-Kleen in 1978,
18 and actually began working for them in 1979. July
19 the 16th of '79.

20 Q. What was your last date of employment as
21 an actual employee of Safety-Kleen as opposed to a
22 consultant for litigation services?

23 A. I -- I resigned in -- in June of 1999.

24 Q. Can you walk me through your positions
25 with Safety-Kleen from Sept -- excuse me -- July

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 14

01 16, 1979 through June of 1999.

02 A. Yes, I'll attempt to do that. I was
03 initially hired in as a chemical engineer because
04 of my multitude of engineering background, and
05 really not to ruffle the feathers of -- of the
06 other chemists over there. So I was actually hired
07 in as a -- as a chemical engineer, and -- and so I
08 worked roughly two years independently as a chem
09 engineer in various R&D projects for the company.

10 At the end of that time, I became a
11 manager of R&D which included functional
12 responsibility for the laboratories. That
13 continued through the mid '80s. And approximately
14 1985, I was given a position in sales, and I was
15 the manager of industrial solvents for a period of
16 about a year and a half. And at the end of that
17 time frame, I -- I was given a title, general
18 manager of -- for engineering and tech service.
19 And I held that position from the -- approximately
20 1987 until early '90s. At that point I was
21 promoted to vice president of technical with
22 responsibility for product development hardware and
23 chemical product development and operation of the
24 Safety-Kleen technical center.

25 Q. Did you maintain that position of vice

Breece, James

Rhyne Trial Master

Page 15

01 president of technical services through the time
02 you left in June of 1999?

03 A. I did.

04 Q. Who started Safety-Kleen?

05 A. The original name for the -- for the
06 product and the service was as a result of a patent
07 belonging to a gentleman in -- in Wisconsin who
08 worked for a gravel company, and he successfully
09 applied and received a patent for the solvent based
10 parts cleaning sink on the drum concept. That
11 company was a very small one, and he and other
12 people attempted to operate that out of the
13 Milwaukee area, and it was purchased -- that
14 company was purchased by Chicago Rawhide in, I
15 believe -- I believe the dates would have been
16 about 1968 or '69.

17 After -- after roughly a year or year and
18 a half of being a subdivision of Chicago Rawhide,
19 Safety-Kleen as a parts cleaning company was spun
20 off individually -- as an individual company in the
21 early '70s. And I may be off a few months or a
22 year or so in regard to this, but historically
23 it's -- it's correct. The dates may be a little
24 fuzzy, but it's -- it's generally in that concept.

25 Q. I've seen information regarding

Breece, James

Rhyne Trial Master

Page 16

01 Safety-Kleen being founded as a company in 1970.
02 Would that indicate to you to be the year that
03 Safety-Kleen was spun off as its own organization?

04 A. Yes.

05 Q. And who was in charge of Safety-Kleen at
06 the time it was spun off in 1970? Who were the
07 owners? Who was the president?

08 A. The president and CEO was Don Brinckman.
09 Donald Brinckman, B-R-I-N-C-K-M-A-N-N [sic].

10 Q. And who owned the company in 1970?

11 A. I believe the ownership still -- as of
12 1970 was still Chicago Rawhide. It later -- I
13 don't have the details exactly in regard to that,
14 but there are a family of individuals, the Olson
15 family who held controlling interest in that --
16 that company early on. I think it's O-L-S-O-N I
17 believe is the correct spelling on that.

18 Q. Until what year -- strike that.

19 Donald Brinkman was the president and CEO
20 of Safety-Kleen in 1970. So what year did he act
21 as the president and CEO of Safety-Kleen?

22 A. He was actively in the company both as
23 president around CEO up until the late '80s, early
24 '90s when the presidency of the company was turned
25 over to a fellow by the name of Joe -- Joseph

Breece, James

Rhyne Trial Master

Page 17

01 Knott, K-N-O-T-T. And Mr. Knott didn't live very
02 long. He passed away after being president for
03 roughly -- as memory served me, about a year,
04 untimely death. And at that point Mr. Brinkman
05 stepped back into the company as the chief
06 operating officer. And after a year or so, the
07 company hired a new president by the name of Jack
08 Johnson. And Johnson was the president of the
09 company, and Mr. Brinkman remained as the CEO until
10 the late '90s approximately 1997, 1998. In -- in
11 1998, Mr. Johnson was fired and Mr. Brinkman
12 stepped back in into full-time management of the
13 company, and the decision was made in 1998 to sell
14 the company and the company was sold in -- in 19 --
15 late 1997 or early 1998 to -- to environmental arm
16 of Laidlaw Industries.

17 So that's -- that's the history up through
18 the '90s and -- and I actually worked one year
19 after the ownership changed until my departure in
20 1999.

21 Q. From the beginning of it's business going
22 back to the time when it was a company in
23 Milwaukee, incidentally you -- you mentioned that
24 there was an individual who had a patent for the
25 sink on the drum solvent base parts cleaning system

Breece, James

Rhyne Trial Master

Page 18

01 in Milwaukee. Who was that?

02 A. His name was Glen Palmer, P-A-L-M-E-R.

03 Q. Did Mr. Palmer have a business or did he
04 just hold that in his own name?

05 A. Initially, he developed a patent, and his
06 marketing strategy was to go on fishing trips down
07 to Florida and sell part cleaners out of the back
08 of his pickup truck. Not a very effective
09 marketing strategy but good fishing. So it -- it
10 was really more kind of a hobby with him, and he
11 sold that -- that partially to another group of
12 individuals. Exact structure, I don't know, but
13 Palmer remained involved with it with the major
14 portion of the ownership. But it was a very small
15 company, operated basically out of the Milwaukee
16 area.

17 Q. From 1970 when Safety-Kleen was a
18 corporation, was the focus of its business
19 centrally the parts washing solvent business? In
20 other words, was that the primary focus of his
21 business?

22 A. Yes.

23 Q. And does that remain the case up through
24 the present time?

25 A. No. In the -- in the '90s there became

Breece, James

Rhyne Trial Master

Page 19

01 a -- other group businesses associated with -- with
02 parts cleaning including the industrial waste
03 services or the fluid recovery services.

04 (Reporter interruption for clarification.)

05 THE WITNESS: Fluid recovery services,
06 FRS.

07 And -- and simultaneous with that we
08 acquired Brezi Lube, which was an oil re-refining
09 company, and that became a -- a major portion. So
10 they were -- at that stage, there were industrial
11 services, parts cleaning and oil re-refining
12 services that made up -- by the late '90s, that
13 made up the predominance of the company.

14 In the years since I've left the company,
15 there's been a major emphases by Safety-Kleen to
16 orient itself towards waste disposal and oil
17 re-refining. So today the -- I haven't looked at
18 an annual report, but my understanding is that the
19 predominance of the sales and effort today is
20 toward the oil re-refining side of the business.

21 BY MR. DUPONT:

22 Q. Okay. So from 1970 until the late 1990s,
23 the majority of Safety-Kleen's business was parts
24 washing solvent services; is that correct?

25 A. It was the largest. It was the largest

Breece, James

Rhyne Trial Master

Page 20

01 single element to the sales and service side. It
02 was the largest of -- of those. And there were
03 three or four additional ones, but that was the '
04 largest one, yes.

05 Q. And then from the late 1990s to the
06 present, parts washing service continued to be a
07 substantial part of Safety-Kleen's business, but
08 perhaps not the largest second of its business?

09 A. I believe that to be correct.

10 Q. In 1970, what geographical area did
11 Safety-Kleen do business in?

12 A. The initial business really centered
13 around Milwaukee and the Chicago-land area. That
14 was the initial proof of concept and the -- the
15 details beyond here what I've told you here are
16 fuzzy. If you've -- I don't recall the exact
17 rollout schedules to each part of the country, but
18 it -- it didn't take long until it was spread
19 throughout all areas of the country.

20 Q. Within the first two years of
21 Safety-Kleen's business, had it spread out
22 throughout the country?

23 A. I don't know.

24 Q. Have you undertaken to conduct any
25 research to prepare yourself for this deposition to

Breece, James

Rhyme Trial Master

Page 21

01 determine when Safety-Kleen began to do business
02 throughout the country and particularly in
03 California?

04 A. I have not.

05 Q. Who would be the person most knowledgeable
06 that you would speak to regarding when Safety-Kleen
07 began to do business in California?

08 MR. WOOD: Objection. Foundation.

09 THE WITNESS: I would actually consult
10 historical records. I wouldn't -- wouldn't attempt
11 to do it -- to find an individual person. I
12 wouldn't know how to find those people who would
13 know.

14 BY MR. DUPONT:

15 Q. What records would you consult?

16 A. There's a book written by one of the
17 senior vice presidents, Gordon Wood, and it's a
18 book specifically about Safety-Kleen, and it's
19 called Waste Not.

20 Q. Is that a published book or something
21 internal at Safety-Kleen?

22 A. I don't know. I know I had -- I had a
23 copy at one time. I don't know whether it was
24 widespread copy or not. I haven't looked for it on
25 Amazon. It was -- it was of interest mainly to

Breece, James

Rhyne Trial Master

Page 22

01 people inside the company at the time, but I really
02 don't know.

03 Q. What's your understanding of the earliest
04 time period that Safety-Kleen did business in
05 California?

06 A. I believe it to be the middle -- the
07 middle of the '70s. It was operational in
08 California when I came in '79, and that occurred
09 sometime before I arrived.

10 Q. You're saying middle of the 1970s. Are
11 you talking about between '73 and '76.

12 A. I -- I can't be more specific than what I
13 have. It -- it was in existence in '79. That's --
14 a full business was operating in '79, and in order
15 to -- from meager start in -- in Chicago and
16 Wisconsin --

17 (Reporter interruption for clarification.)

18 THE WITNESS: Meager.

19 -- a meager business in Wisconsin and in
20 Chicago, it took some time frame in exactly how
21 long that was, I'd have to -- I'd have to consult
22 that book. I don't -- I don't know that.

23 BY MR. DUPONT:

24 Q. Is that a book that Safety-Kleen
25 maintained at its office, the Waste Not book by

Breece, James

Rhyne Trial Master

Page 23

01 Gordon Wood?

02 MR. WOOD: Objection. Foundation.

03 THE WITNESS: I don't know.

04 BY MR. DUPONT:

05 Q. Is that a book that you have at your home?

06 A. Yes.

07 Q. Okay. When did Safety-Kleen first do
08 business on the east coast in states like New York
09 and New Jersey and Pennsylvania?

10 A. I'd have to consult to get an exact date
11 on that. Sometime in the -- in the early to mid
12 '70s.

13 Q. Safety-Kleen's parts washing solvent
14 business in 1970, did that consist of recycling
15 spent parts washing solvent, or was it solely
16 taking out new solvent to customers with
17 Safety-Kleen parts washing machines?

18 A. Initially, it was only providing the
19 hardware and the solvent to the customers and
20 collection of the spent material.

21 Q. So beginning in 1970, Safety-Kleen would
22 provide its customers with a parts washing machine
23 which consisted of what?

24 A. It consisted of a sink on a drum either as
25 a Model 16 or a Model 30. And those model numbers

Breece, James

Rhyne Trial Master

Page 24

01 refer to the size of -- of the container
02 themselves. The 16 being a 16-gallon container,
03 the 30 being a 30-gallon container. The sink and
04 the washing area was proportional to the volume of
05 solvent contained. The sink on the model 16 was
06 smaller than that on a model 30.

07 Q. What were the colors of the sinks and
08 drums that Safety-Kleen used in 1970?

09 A. Both container and sink was red.

10 Q. And in addition to providing the sink and
11 the container, Safety-Kleen provided the solvent
12 that came -- that came in the container?

13 A. Yes.

14 Q. What was that solvent?

15 A. That was regular mineral spirits with a
16 minimum flash point of 105 degrees Fahrenheit.

17 Q. At what point in time did Safety-Kleen
18 begin to recycle the solvent that it took back from
19 the customer?

20 A. Again, I'd have to consult historically,
21 but I believe that to be about 1973 at Elgin.

22 (Reporter interruption for clarification.)

23 THE WITNESS: Elgin, E-L-G-I-N. Elgin,
24 Illinois.

25 BY MR. DUPONT:

Breece, James

Rhyne Trial Master

Page 25

01 Q. What was the name of the facility in
02 Elgin, Illinois in 1973?

03 A. It was -- it was noted as the Elgin
04 Recycle Center.

05 Q. Did Safety-Kleen eventually create other
06 recycle centers in other parts of the country?

07 A. Yes.

08 Q. What were they in the years that they were
09 created?

10 A. I can probably only give you exact numbers
11 only. One, since I helped build that one, the
12 initial facility was in Elgin followed by Clayton,
13 New Jersey, then Lexington, South Carolina. In
14 Denton, Texas which was built I would estimate
15 about 1976 or '77. And I don't know exactly where
16 in that sequence Reedley, California. I don't
17 recall exactly, but somewhere in that time frame,
18 and I'm not sure where in that it fits. And the
19 last of which that was actually built from scratch
20 by Safety-Kleen was in Hebron, Ohio, and that was
21 done in the -- that was completed in the early
22 '80s.

23 Q. You're not certain whether Reedley,
24 California was created before 1976 or 1977 when
25 Denton, Texas was created?

Breece, James

Rhyne Trial Master

Page 26

01 A. No. No, I don't -- I don't know. I don't
02 know the order on them.

03 Q. Okay. And Clayton, New Jersey and
04 Lexington, South Carolina, those recycling centers
05 were established sometime between 1973 and 1976?

06 A. That's my recollection, yes.

07 Q. Before Safety-Kleen had recycling centers,
08 what types of facilities did it do business out of?

09 A. In -- in terms of business structure, the
10 first of the infrastructure was a branch structure
11 which housed the sales personnel and storage tanks
12 for both the clean and dirty solvent.

13 Q. What did Safety-Kleen do with dirty
14 solvent that it took back from the customers
15 facility before it began to recycle solvents in
16 1973?

17 A. Being there to have to seen it, I can only
18 do it based upon information that I received from
19 my boss. They actually sold it to -- the spent
20 solvent to waste oil dealer, and they recognized
21 that wasn't a good use for it after a few months,
22 and decided it -- one of the chem -- chemical
23 engineers we were working for, Chicago Rawhide,
24 modified a design for distilling mineral spirits,
25 and they chose to establish a recycling operation

Breece, James

Rhyme Trial Master

Page 27

01 rather than selling the spent material as -- for
02 other purposes. And I think some of the material
03 was probably burned by asphalt plants in the early
04 days as well.

05 Q. Okay. Where did Safety-Kleen have
06 branches in the 1970 and -- 1973 time period?

07 A. Well, obviously the ones there in
08 Milwaukee in the Milwaukee area and the ones around
09 Chicago were the first. Beyond that, I would have
10 to check the records. I would have to consult with
11 Waste Not. I don't know -- when I began as an
12 employee, there were 165 of them, so I don't know
13 the order in -- in which they were established.

14 Q. Okay. When did Safety-Kleen first have a
15 branch in California?

16 A. I don't know that either. Again, that's a
17 historical fact that I -- I don't -- I don't have
18 any knowledge of.

19 Q. By the time you began with the company in
20 1973, Safety-Kleen -- excuse me. Strike that.

21 When you began with the company in 1979,
22 Safety-Kleen had branches in California?

23 A. Yes.

24 Q. And when you began with the company in
25 1979, Safety-Kleen had the Reedley, California

Breece, James

Rhyne Trial Master

Page 28

01 recycling center?

02 A. That's correct.

03 Q. Where in California is the Reedley
04 recycling center?

05 A. Near Fresno.

06 Q. Is that a facility that's still opened and
07 operated by Safety-Kleen today?

08 A. Nah. No, it isn't. That was closed in
09 some years after I left the company, exact day I
10 don't know, but that facility is closed.

11 Q. Who did Safety-Kleen acquire the mineral
12 spirits solvents from between 1970 and 1973?

13 MS. KAHN: Objection. Calls for
14 speculation.

15 THE WITNESS: I don't know who the vendors
16 were.

17 BY MR. DUPONT:

18 Q. Who sold mineral spirits to Safety-Kleen
19 between 1973 and 1979?

20 MS. KAHN: Objection. Calls for
21 speculation.

22 THE WITNESS: I don't know.

23 BY MR. DUPONT:

24 Q. Are there documents that Safety-Kleen has
25 that we can look at to determine who its vendors

Breece, James

Rhyne Trial Master

Page 29

01 were during that time period?

02 MS. KAHN: Objection. Calls for
03 speculation.

04 THE WITNESS: I'm not sure there are.

05 BY MR. DUPONT:

06 Q. When you began with the company in 1979,
07 who was Safety-Kleen purchasing mineral spirits
08 from?

09 A. Unocal, AMSCO...

10 MR. WOOD: Slow down a little bit.

11 THE WITNESS: AMSCO, A-M-S-C-O; Sunoco; I
12 believe Exxon; possibly some Shell; Hunt Refining.

13 MS. KAHN: I'm sorry.

14 THE WITNESS: Hunt, H-U-N-T, Hunt
15 Refining. There are probably others but that's --
16 those are the ones that stick with me mentally.

17 BY MR. DUPONT:

18 Q. Okay. Did the -- strike that.

19 Did Safety-Kleen buy mineral spirits from
20 these vendors in 1979 for particular geographical
21 areas or were they bought from these vendors
22 throughout the country?

23 A. You're going to have to re-ask that one.

24 I -- that's a complex question, and I can't answer.

25 Q. Sure. I'll -- I'll go about it a

Breece, James

Rhyme Trial Master

Page 30

01 different way. Until what year did Safety-Kleen
02 continue to buy mineral spirits from Unocal?

03 A. It depended upon the product. By the time
04 I began as an employee in 1979, Safety-Kleen
05 basically had three products which were suitable --
06 three version products which were suitable for use
07 in the parts cleaner, that was the regular 105
08 mineral spirits, a 140 mineral spirits solvent, and
09 a Rule 66 solvent, which was specified here on the
10 west coast.

11 Q. Okay. When you say "here on the west
12 coast," do you mean California?

13 A. California, yeah, and the western states.

14 Q. Were there states beyond California that
15 Rule 66 was specified for?

16 A. I don't recall any others.

17 Q. So let's talk about that for a little bit
18 before we get to these individual vendors.

19 Was regular mineral spirits 105 the
20 product that Safety-Kleen began to sell in 1970?

21 MS. KAHN: Objection. Calls for
22 speculation.

23 MR. WOOD: Objection. Assumes facts not
24 in evidence and asks for a legal conclusion about
25 the sale versus lease.

Breece, James

Rhyne Trial Master

Page 31

01 THE WITNESS: First of all, Safety-Kleen
02 did not sell this product. That's the first
03 clarification necessary. We provided services in
04 which we leased the hardware and the solvent as
05 part of that service, but we never sold the
06 product.

07 BY MR. DUPONT:

08 Q. Okay. Was regular mineral -- mineral
09 spirits 105 mineral spirits that Safety-Kleen
10 provided to its customers beginning in 1970?

11 MS. KAHN: Objection. Calls for
12 speculation.

13 THE WITNESS: Yes, based upon the records
14 that I've seen, that would be true.

15 BY MR. DUPONT:

16 Q. And Safety-Kleen continued to provide
17 regular mineral spirits 105 to its customers
18 through the present time?

19 A. I can only --

20 MR. WOOD: Objection. Foundation.

21 THE WITNESS: I can only state through
22 1999 when I was employed. Today I don't know.

23 BY MR. DUPONT:

24 Q. All right. When did Safety-Kleen begin to
25 distribute mineral spirits 140, or 140 mineral

Breece, James

Rhyne Trial Master

Page 32

01 spirits?

02 A. It was prior to my becoming employed.
03 That was in place in 1979. I don't know the exact
04 date.

05 Q. And when did Safety-Kleen begin to
06 distribute Rule 66 mineral spirits?

07 A. Same answer.

08 Q. Some point in time before 1979?

09 A. Yes.

10 Q. All right. Which form of mineral spirits
11 was Safety-Kleen acquiring from Unocal in 1979?

12 A. Regular 105 solvent is my recollection and
13 possibly some of the others as well.

14 Q. When you say "possibly some of the
15 others," you're referring to Rule 66 mineral
16 spirits?

17 A. And 140. Depended upon the location, and
18 you have to remember that I wasn't in purchasing,
19 so this is tangential to being a technical person.
20 I don't have the kind of knowledge that -- about
21 who the vendors were in those days as compared to
22 the technical side. So I'm doing that based -- my
23 good friend was the purchasing agent, and that's
24 only by -- as a result of my association with him
25 do I know this stuff. So that's -- that's the

Breece, James

Rhyme Trial Master

Page 33

01 source of much of my information was knowledge of
02 Bob Culmer who was the purchasing agent for
03 Safety-Kleen.

04 Q. Okay. Was Safety-Kleen still purchasing
05 regular mineral spirits 105 from Unocal in 1999
06 when you left?

07 MS. KAHN: Objection. Calls for
08 speculation.

09 THE WITNESS: No. With the introduction
10 of the 150 solvent -- in the 1993 vantage, the
11 purchasing of 105 solvent was virtually eliminated.

12 BY MR. DUPONT:

13 Q. Okay. Was Safety-Kleen still buying
14 regular mineral spirits 105 from Unocal in 1993?

15 A. I believe so.

16 Q. Did Safety-Kleen continuously buy regular
17 mineral spirits 105 from Unocal from at least 1979
18 through 1993?

19 MS. KAHN: Objection. Calls for
20 speculation. Lack of personal knowledge.

21 THE WITNESS: I don't know.

22 BY MR. DUPONT:

23 Q. Was Safety-Kleen still purchasing Rule 66
24 mineral spirits from Unocal in 1999 when you left?

25 A. No.

Breece, James

Rhyme Trial Master

Page 34

01 Q. When did Safety-Kleen stop purchasing Rule
02 66 mineral spirits from Unocal?

03 A. I can't state unequivocally the date, but
04 it was the same effect, the introduction of the 150
05 solvent. We ceased to offer much in the way of the
06 Rule 66 or the 140. There was no need for it.

07 Q. Okay. Was Safety-Kleen purchasing Rule 66
08 mineral spirits from Unocal in 1993?

09 A. I believe so.

10 Q. Have you reviewed records to determine
11 whether or not Safety-Kleen was purchasing Rule 66
12 mineral spirits from Unocal from 1979 continuously
13 through 1993?

14 A. I have not.

15 Q. And was Safety-Kleen purchasing 140
16 mineral spirits from Unocal in 1993?

17 MS. KAHN: Objection. Calls for
18 speculation. Lack of personal knowledge.

19 THE WITNESS: I don't know. I don't know
20 who the supplier for that product was.

21 BY MR. DUPONT:

22 Q. Okay. Did Safety-Kleen distribute Unocal
23 Rule 66 mineral spirits in California?

24 MR. WOOD: Objection. Form. The use of
25 the word "distribute." Assumes facts not in

Breece, James

Rhyne Trial Master

Page 35

01 evidence. Foundation.

02 THE WITNESS: I would have to consult a
03 study we did in 1993 that told us who the vendors
04 were and -- and the products that were being
05 supplied. I can't quote that from memory.

06 BY MR. DUPONT:

07 Q. Okay. All right. Well, we'll look at
08 some of these documents.

09 A. Sure.

10 Q. And I think it will provide us with
11 some -- some clarity.

12 You mentioned another company AMSCO. Is
13 AMSCO an acronym for a larger name?

14 A. Yeah, and I don't know what it is.

15 Q. Okay.

16 A. It is, but I don't know what it is.

17 Q. If I told you American Mineral Spirits
18 Company, would that sound familiar?

19 A. It may be. I don't know.

20 Q. Okay. Was there a particular geographical
21 region that Safety-Kleen acquired mineral spirits
22 from AMSCO for use of?

23 A. There was, but I don't know what it was.

24 Q. Okay. Was Safety-Kleen purchasing mineral
25 spirits from Sunoco in 1979?

Breece, James

Rhyne Trial Master

Page 36

01 MS. KAHN: Objection. Calls for
02 speculation. Lack of personal knowledge.

03 THE WITNESS: In 1979, I believe so.

04 BY MR. DUPONT:

05 Q. Until what time period did Safety-Kleen
06 continue to purchase mineral spirits from Sunoco?

07 A. I know that was still operative up until
08 1993.

09 Q. What forms of mineral spirits did
10 Safety-Kleen purchase from Sunoco?

11 A. It was predominantly the 1 -- the 105
12 solvent.

13 MR. DUPONT: Let's go off the record for a
14 moment.

15 THE VIDEOGRAPHER: The time is 9:59 a.m.
16 We're going off the record.

17 (Break taken.)

18 THE VIDEOGRAPHER: The time is 10:13 a.m.
19 We're back on the record.

20 BY MR. DUPONT:

21 Q. Okay. Dr. Breece, we took a break and now
22 we're going to go through some information about
23 Safety-Kleen suppliers and mineral spirits.
24 Earlier in your testimony you mentioned some
25 studies that had been done which might provide you

Breece, James

Rhyne Trial Master

Page 37

01 with -- with more information regarding
02 Safety-Kleen suppliers of mineral spirits.

03 MR. DUPONT: I'm going to hand you a
04 document that I've marked as Exhibit 1.

05 (Plaintiff's Exhibit 1 marked
06 for identification.)

07 MR. WOOD: Do you have Bates numbers on
08 these?

09 MR. DUPONT: This one does not have a
10 Bates number on it.

11 MR. WOOD: All right. Do you have one for
12 me to follow? Oh, you have copies.

13 BY MR. DUPONT:

14 Q. This is a December 26, 1991 memorandum
15 from Paul Dittmar to Rick Donnelly.

16 MR. WOOD: Andrew, before we go further,
17 let me just make a mention on the record that this
18 document may have very well been produced in this
19 case stamped confidential pursuant to the
20 confidentiality order. So pursuant to the
21 confidentiality order, I reserve the right to
22 review the transcript once it's complete and note
23 any portions of the deposition that we're going to
24 assert as being confidential pursuant to the
25 confidentiality order. I think we have seven days,

Breece, James

Rhyne Trial Master

Page 38

01 within seven of receipt of the transcript to
02 designate those portions, and then we can make
03 those determinations afterwards. I just wanted to
04 get that on the record.

05 BY MR. DUPONT:

06 Q. Dr. Breece, this is a December 26, 1991
07 Safety-Kleen Corporation memorandum from Paul
08 Dittmar to Rick Donnelly.

09 A. Yes.

10 Q. And who was Paul Dittmar in 1991?

11 A. Paul Dittmar was a -- my -- one of my
12 right-hand guys, a chemical engineer and a chemist
13 together who worked in the -- the product
14 development section at the tech center.

15 Q. And who was Rick Donnelly?

16 A. Rick Donnelly was the purchasing for
17 Safety-Kleen.

18 Q. And this memorandum from December 26th,
19 1991 addresses amongst other things the benzene
20 content of mineral spirits solvents that
21 Safety-Kleen acquired from various distributors.

22 A. Well, the particular report I have in
23 front of me doesn't report -- let me make sure of
24 that. But I don't think it reports benzene content
25 at all on this. It -- it references but there's no

Breece, James

Rhyne Trial Master

Page 39

01 report.

02 Q. Okay.

03 A. If I'm -- let me -- this is -- this
04 Exhibit 1 that I'm looking here, correct?

05 Q. Yes.

06 A. Only three pages?

07 Q. Yes, sir.

08 MR. WOOD: And, Counsel, for the benefit
09 of the other lawyers in the room, I think this is
10 Bates number 1 -- 1827 through 1829 produced in --
11 in the Johnson case. Sorry.

12 BY MR. DUPONT:

13 Q. One of the subjects of this memorandum,
14 Dr. Breece, is benzene in mineral spirits that
15 Safety-Kleen has acquired from its suppliers,
16 correct?

17 MR. WOOD: Objection. Misstates the
18 document.

19 THE WITNESS: Well, it's only one of
20 multiple things we're looking at, yes.

21 BY MR. DUPONT:

22 Q. Okay. And this document also identifies a
23 number of suppliers of mineral spirits to
24 Safety-Kleen; is that correct?

25 A. As of that date, yes, it does.

Breece, James

Rhyne Trial Master

Page 40

01 Q. All right. And who does this document
02 identify to these suppliers of mineral spirits of
03 Safety-Kleen as of December 26th, 1991?

04 A. You don't want me to read this list, do
05 you?

06 Q. Well, let's start from the first page.

07 A. Okay.

08 MS. KAHN: Objection. Overbroad as to
09 geographic area, and in other respects, objection
10 to form.

11 BY MR. DUPONT:

12 Q. The first page of this exhibit, there's a
13 section with the title Benzene, correct?

14 A. Yes.

15 Q. All right. And underneath Benzene, it
16 lists a number of suppliers of mineral spirits to
17 Safety-Kleen; is that correct?

18 A. Yes.

19 Q. All right. And those suppliers include
20 Exxon, Witco, and Sun; is that accurate?

21 A. It includes others, but the ones that had
22 a low benzene concentrations were from this
23 document where Exxon, Witco, and Sun.

24 Q. All right. And then the document also
25 indicates that other suppliers of mineral spirits

Breece, James

Rhyme Trial Master

Page 41

01 with Safety-Kleen, notably Unocal and Koch showed
02 higher benzene levels; is that correct?

03 A. That's correct.

04 Q. So that would indicate to you that Unocal
05 and Koch were also suppliers of benzene to --
06 strike that.

07 That would indicate to you that Unocal and
08 Koch were also suppliers of mineral spirits to
09 Safety-Kleen; is that correct?

10 A. Yes.

11 Q. All right. And in particular, Unocal was
12 a supplier of mineral spirits to Safety-Kleen, and
13 the mineral spirits that Unocal supplied to
14 Safety-Kleen contained greater amounts of benzene
15 than some other suppliers; is that fair?

16 A. That is correct.

17 Q. If you look to the second page of the
18 exhibit, there is a chart of information with the
19 number of columns, and on the far left-hand side of
20 the chart, there's a column for RCID number. Is
21 that the recycling center?

22 A. That's correct, uh-huh.

23 Q. And are you familiar with the
24 identification numbers of the recycling centers
25 that are listed here?

Breece, James

Rhyne Trial Master

Page 42

01 A. Not the recycling ID numbers, but the
02 recycling -- the code for the recycle centers, yes.

03 Q. Okay. What are the codes for the
04 recycling center?

05 A. Well, it's the first letter of the -- the
06 name of that facility. C being Clayton, D being
07 Denton, E being Elgin, L being Lexington. I don't
08 see a Reedley on here, but H is Hebron. There's no
09 information here on Reedley.

10 (Reporter interruption for clarification.)

11 THE WITNESS: Reedley.

12 MR. WOOD: R-E-E-D-L-E-Y, Reedley.

13 THE WITNESS: I don't see a sample for
14 that region.

15 MR. DUPONT: All right. I'm handing
16 you -- the next exhibit is marked Exhibit Number 2.

17 (Plaintiff's Exhibit 2 marked
18 for identification.)

19 MR. WOOD: And, Andrew, to make things
20 easier, can I just get a running objection on
21 documents, because I -- I believe that this
22 document was stamped confidential and produced in
23 this case. You're handing me a document without
24 the Bates number from this case or without the
25 confidential stamp. I just want to make sure I

Breece, James

Rhyne Trial Master

Page 43

01 don't waive anything. And just so we're clear, I'm
02 not designating prophylactically everything we talk
03 about as being confidential, but I'll follow the
04 protective order, and after seven days of the
05 transcript go through it and designate portions.

06 MR. DUPONT: You can have that running
07 objection.

08 MR. WOOD: Okay. This is more of a
09 housekeeping issue than anything else, but for
10 counsel, this document that Andrew marked as
11 Exhibit 2 is -- well, I believe it had been Bates
12 number 2462 through 2472 from our document
13 production in this case.

14 BY MR. DUPONT:

15 Q. Dr. Breece, I've handed you Exhibit 2
16 which is an April 1, 1992 memorandum titled Virgin
17 Parts Washer Solvent from Paul Dittmar to Hyman
18 Bielsky; is that correct?

19 A. Yes.

20 Q. And was Hyman Bielsky an attorney for
21 Safety-Kleen?

22 A. Yes, he was.

23 Q. During what years was Safety-Kleen's
24 attorney Hyman Bielsky?

25 A. He was one of Safety-Kleen's attorneys

Breece, James

Rhyne Trial Master

Page 44

01 beginning in the -- approximately 1976 -- no, no,
02 no, no. 1986 up through, I believe, the -- about
03 1993. So roughly '86 through '93. That's the
04 approximate range.

05 Q. Okay. And was Hyman Bielsky also a
06 officer or executive of Safety-Kleen in addition to
07 being an attorney employed by the company?

08 MR. WOOD: Objection. Foundation.

09 THE WITNESS: Not to my knowledge.

10 BY MR. DUPONT:

11 Q. All right. Hyman Bielsky was employed by
12 Safety-Kleen?

13 A. Yes.

14 Q. Was he the head of Safety-Kleen's legal
15 department?

16 A. No.

17 MR. WOOD: Objection. Foundation.

18 THE WITNESS: No, he wasn't.

19 BY MR. DUPONT:

20 Q. This memorandum like Exhibit 1 that we
21 went through also address the issue of benzene
22 concentration in virgin parts washer solvent which
23 was purchased from vendors to Safety-Kleen?

24 A. Yes.

25 Q. And this memorandum also identifies Exxon,

Breece, James

Rhyne Trial Master

Page 45

01 Sun, and Unocal as suppliers of mineral spirits to
02 Safety-Kleen?

03 MS. KAHN: Objection. Overbroad.

04 MR. DUPONT: Strike that. I'll withdraw.

05 BY MR. DUPONT:

06 Q. Does this memorandum identify Sun to be
07 one of the suppliers to Safety-Kleen?

08 MS. KAHN: Objection. Overbroad. The
09 document speaks for itself.

10 THE WITNESS: Yes.

11 BY MR. DUPONT:

12 Q. And does this memorandum also identify
13 Unocal to be a supplier of mineral spirits to
14 Safety-Kleen?

15 A. As of 1992, yes.

16 Q. And this memorandum indicates that the
17 mineral spirits that Unocal supplied to
18 Safety-Kleen had benzene levels that were
19 consistently higher than other suppliers?

20 A. Yes.

21 Q. And if we look through the exhibit
22 beginning at the third page of the exhibit, there
23 is a Bates number on the bottom SK 3477. Do you
24 see that?

25 A. 3477, uh-huh.

Breece, James

Rhyne Trial Master

Page 46

01 Q. And this is exhibit between pages 3477
02 through 3484 also contain a chart identifying
03 vendors of mineral spirits to Safety-Kleen
04 recycling centers and benzene content of mineral
05 spirits?

06 MS. KAHN: And, I'm sorry. What was the
07 Bates range again of this new document?

08 MR. WOOD: I believe it's 2462 through
09 2472.

10 MS. KAHN: I heard 3477 for some reason.

11 THE WITNESS: It does not.

12 BY MR. DUPONT:

13 Q. I'm sorry?

14 A. It does not. To answer your question, it
15 does not.

16 Q. Okay. Let's turn to the third page of the
17 exhibit which has a Bates number on it SK 3477 at
18 the bottom?

19 A. Yes.

20 Q. Okay. What is this chart?

21 A. This chart is a presentation of solvent
22 received at branches. And the relative
23 concentration of benzene.

24 Q. Okay. Do you know what these branch
25 numbers that are under the column branch correspond

Breece, James

Rhyne Trial Master

Page 47

01 to?

02 A. No.

03 MR. DUPONT: I've handed you a document
04 that's been marked as Exhibit 3.

05 (Plaintiff's Exhibit 3 marked
06 for identification.)

07 THE WITNESS: I'm sorry. I was so
08 enthralled in my own document there I forgot where
09 I was. Okay, go ahead.

10 BY MR. DUPONT:

11 Q. All right. Look at Exhibit 3, is this an
12 April 16, 1992 Safety-Kleen Corporation --

13 (Reporter interruption for clarification.)

14 BY MR. DUPONT:

15 Q. Let me start over. Sorry.

16 Is this an April 14, 1992 Safety-Kleen
17 Corporation memorandum from Rick Donnelly to Paul
18 Dittmar, yourself, along with several other
19 individuals?

20 A. Yes, it is.

21 MR. WOOD: Andrew, and let me just state,
22 I believe this document was produced in this case
23 and confidential pursuant to the confidentiality
24 order, and it is Bates -- I believe it was Bates
25 2496 to 2497 in this case.

Breece, James

Rhyne Trial Master

Page 48

01 BY MR. DUPONT:

02 Q. Okay. Dr. Breece, does this memorandum
03 identify vendors of mineral spirits to
04 Safety-Kleen?

05 A. It is.

06 Q. And is Sunoco identified as one of the
07 vendors of mineral spirits to Safety-Kleen?

08 MS. KAHN: Objection. Documents speaks
09 for itself. The question is overbroad as phrased.

10 THE WITNESS: Sun is Sunoco I believe,
11 correct.

12 BY MR. DUPONT:

13 Q. Okay.

14 A. That's the question?

15 Q. Is that your understanding that Sun Oil is
16 the same as Sunoco?

17 A. I believe that to be true, yes.

18 Q. All right. So where we saw the word Sun
19 on Exhibits 1, 2, and 3, is it your understanding
20 that Sun refers to Sun Oil also known as Sunoco?

21 A. That's my understanding, yes.

22 Q. All right. The second page of the
23 document, Exhibit 3, discusses suppliers to
24 California being limited.

25 A. Yes.

Breece, James

Rhyne Trial Master

Page 49

01 Q. All right. Who were the suppliers to
02 Safety-Kleen in California as of 1992.

03 A. Unless I can identify it from this
04 document -- bear with me just a moment. I -- I
05 can't tell you. And there is not information
06 contained on these documents identifying Reedley --
07 recycling centers. Okay. What this -- what -- I'm
08 dropping back to document 2. It correlates with --
09 with the branch to the -- which recycle center
10 serviced it. So if you -- you look at the second
11 and third column, those give you a correlation
12 between the actual branch and which recycle center
13 would, in fact, supply solvent to that branch.
14 However, there's no information contained on this
15 initial testing about Reedley. So I don't have
16 that information with the exception of what Rick
17 Donnelly pointed out that the need for 140 for --
18 let's see. Yeah, he's suggesting we continue the
19 research on 140 and -- and Rule 66. So this isn't
20 a complete report. This is kind of a -- a work-in
21 progress as of '92.

22 THE VIDEOGRAPHER: Excuse me. Mr. Wood, I
23 have you in the frame a little bit. If you could
24 just -- sorry about that. Okay. Sorry to
25 interrupt.

Breece, James

Rhyne Trial Master

Page 50

01 BY MR. DUPONT:

02 Q. All right. Is there another document that
03 you're familiar with? You referenced a study from
04 a particular date that would indicate information
05 about suppliers. Is there another document you're
06 familiar with that would indicate suppliers to
07 Reedley, California?

08 A. Yes, there is.

09 Q. Which document is that?

10 A. It's -- I can't give you the exact title,
11 but it's a completed study. This is the initiation
12 of the study. It is a completed study by Steve Vlk
13 and -- and O'Donnell in which it --

14 (Reporter interruption for clarification.)

15 THE WITNESS: And O'Donnell.

16 -- and it summarizes additional testing
17 for a total of about 14 to 1500 samples. So this
18 is the first of the phase of what we began. And
19 there's additional information on that, and I
20 can't -- I can't give you the -- the exact title of
21 it, but it exists.

22 (Plaintiff's Exhibit 4 marked
23 for identification.)

24 BY MR. DUPONT:

25 Q. All right. I'm going to hand you a

Breece, James

Rhyne Trial Master

Page 51

01 document that's entitled Virgin Parts Washer
02 Solvents, Benzene Data Compilation, date August
03 20th, 1993. Prepared by Steve A. Vlk, I think you
04 pronounce it.

05 A. Yes.

06 Q. Spelled V-L-K, and O'Donnell and Paul
07 Dittmar.

08 Is this the study you were referring to
09 that would provide us information on suppliers to
10 Reedley, California?

11 MS. KAHN: Bates range, please.

12 MR. WOOD: Give me a second. Can we go
13 off the record for a second, Andrew.

14 THE VIDEOGRAPHER: Do you mind if I change
15 video for a few minutes?

16 MR. DUPONT: Sure.

17 THE VIDEOGRAPHER: This is the end of
18 Video Number 1. The time is 10:36 a.m. We're
19 going off the record.

20 (Discussion held off the record.)

21 THE VIDEOGRAPHER: This is the beginning
22 of Video Number 2 in the deposition of Dr. Breece.
23 The time is 10:45 a.m. We're back on the record.

24 MR. WOOD: This is Jeff Wood on behalf of
25 Safety-Kleen. The document that was marked as

Breece, James

Rhyne Trial Master

Page 52

01 Exhibit 3 --

02 MS. FERGUSON: 4.

03 MR. WOOD: -- 4 in this case -- in this
04 deposition and handed to Dr. Breece was produced
05 stamped confidential in this case and comprises
06 Safety-Kleen documents production Bates number 3030
07 through 3034.

08 Exhibit 3 also has an appendix which is a
09 data compilation attached to it, that one -- 33
10 pages long which I believe was either produced
11 pursuant to a confidentiality order -- or
12 confidentiality agreement in another case or it was
13 produced separately in the Johnson case under
14 another Bates -- other Bates numbers that I cannot
15 at this time identify. But I want to state on the
16 record that Safety-Kleen does not intend to waive
17 any confidentiality with respect to the document or
18 the appendix. And Safety-Kleen has objected during
19 this deposition to the use of nonBates stamp
20 documents produced in other cases because it's
21 difficult for us to determine where the document
22 comes -- comes from and whether it's subject to
23 confidentiality order, but I have plaintiff's
24 counsels agreement, I believe that, although he has
25 not agreed with the document in Exhibit 4 and the

Breece, James

Rhyme Trial Master

Page 53

01 appendix are confidential, he agrees that I'm not
02 waiving any right to the confidentiality under the
03 confidentiality agreement in this case, by letting
04 you ask questions about -- about it. Is that fair?

05 MR. DUPONT: Yeah. And I'll only say that
06 these documents were produced in other cases
07 without a confidentiality restriction then they
08 wouldn't be confidential. But I understand that
09 by -- to the extent you have a right to
10 confidentiality, you're not waiving that right by
11 proceeding with this deposition.

12 MR. WOOD: And I would assert that these
13 documents were produced subject to confidentiality
14 orders in prior cases marked confidential and that
15 Safety-Kleen complied with the confidentiality
16 protection in that case. So I'm not -- I'm not
17 going to argue about where these documents came
18 from or which particular case they came from,
19 because I don't know that, because they don't
20 demonstrate that on their face.

21 But I believe they are subject to
22 confidentiality orders in other cases. I believe
23 they're likely subject to confidentiality
24 agreements in this particular case -- and we'll
25 comply with the confidentiality in this particular

Breece, James

Rhyne Trial Master

Page 54

01 case to maintain the confidentiality of the
02 documents.

03 THE WITNESS: Furthermore, I believe that
04 they were confidential within Safety-Kleen, so
05 there's absolutely no reason to believe that we
06 wouldn't report this as a -- report it as a
07 safety -- as a -- as a confidential document. It
08 was my intent, and this was done under my
09 direction, for this to be a confidential document.
10 Now, whether or not -- enough said.

11 BY MR. DUPONT:

12 Q. Okay. All right. Let's get back to it.

13 A. Okay.

14 Q. Dr. Breece, do you recognize the document
15 marked as Exhibit 4?

16 A. I do.

17 Q. All right. What is this document?

18 A. It's a compilation of a study that
19 encompassed 1,400 plus samples of parts washer
20 solvent collected over a time frame of about a
21 little over a year. The time of this report is
22 August of 1993, and I believe it covers back to the
23 time frame of that initial report that we were
24 reviewing earlier. This is a study of suppliers
25 version parts washer solvent to Safety-Kleen at

Breece, James

Rhyne Trial Master

Page 55

01 that time.

02 Q. All right. Now, does the appendix --
03 strike that. Let me go back.

04 Was this a study that you personally were
05 involved with while working at Safety-Kleen?

06 A. Yes. I initiated the study. I was the
07 primary responsible party for this entire study.

08 Q. And is this a document that Safety-Kleen
09 generated in the ordinary course of its business in
10 further -- furtherance of its business interest?

11 A. Yes, it was.

12 Q. All right. Let's look through the
13 document. Does this document provide us with
14 indication of which suppliers were supplying
15 mineral spirits to Safety-Kleen for use in
16 California?

17 A. It does.

18 Q. Where does it indicate that?

19 A. On the -- basically the first page of the
20 document.

21 Q. All right. So we're looking at --

22 A. Third paragraph. "The solvent vendors
23 predominantly regional and Sun..."

24 (Reporter interruption for clarification.)

25 MR. WOOD: Slow down.

Breece, James

Rhyne Trial Master

Page 56

01 THE WITNESS: "...are predominantly
02 regional. Sun, Witco and Kendall supply the east;
03 Hunt the southeast; Exxon..."

04 (Reporter interruption for clarification.)

05 THE WITNESS: "...Exxon, Kerr and Cisco
06 the southwest. Exxon, Unocal, and Kerr serve the
07 Midwest. Route 66 solvent purchases are filled by
08 Ashland, Calsol, and Kern."

09 BY MR. DUPONT:

10 Q. All right. I notice that in this
11 paragraph -- and we're looking at the -- it's
12 actually the second page of the exhibit, there's a
13 title Virgin PWS Benzene Data; is that correct?

14 A. Yes.

15 Q. All right. And when you say Virgin PWS,
16 that's talking about the mineral spirits as its
17 acquired from Safety-Kleen's vendors, correct?

18 A. Yes. That acronym is parts washer solvent
19 is what that is.

20 Q. Okay. So parts washer solvent as it's
21 being used in the context of this document is
22 synonymous with mineral spirits, correct?

23 A. Yes.

24 Q. And you say "virgin" -- I say you, I mean
25 Safety-Kleen, says virgin parts washer solvents or

Breece, James

Rhyne Trial Master

Page 57

01 virgin mineral spirits because separate from
02 getting mineral spirits from the supplier,
03 Safety-Kleen had mineral spirits stream that was
04 coming back from users of the Safety-Kleen parts
05 washer solvent that was in-turn recycled into its
06 process stream, correct?

07 A. No, that's not correct. What you said is
08 not correct.

09 Q. Okay. Well, is -- let me -- let me make
10 this more simple perhaps. Is virgin parts washer
11 solvent a way to distinguish mineral spirits that
12 Safety-Kleen got directly from the supplier as
13 opposed to mineral spirits that Safety-Kleen has
14 recycled?

15 A. Yes.

16 Q. Okay. And this document refers to a
17 vendor sampling program that has been in place
18 since September 1991; is that correct?

19 A. Yes.

20 Q. And the purpose of that program was to
21 sample mineral spirits that Safety-Kleen was
22 receiving from its vendors to determine their
23 benzene content, correct?

24 A. Benzene among other properties.

25 Q. All right. Safety-Kleen was aware since

Breece, James

Rhyme Trial Master

Page 58

01 at least 1977 that there was benzene in mineral
02 spirits, correct?

03 MR. WOOD: Objection. Foundation.

04 THE WITNESS: Not having been there in
05 1977, I can't -- I can't say personally. All I can
06 depend upon is correspondence that I saw in the
07 record. I didn't have any writings from any
08 Safety-Kleen personnel. There are documents in the
09 records from the vendors talking about benzene
10 content of the materials that they were providing
11 to us.

12 BY MR. DUPONT:

13 Q. Okay. You've seen correspondence in
14 Safety Kleen's records from 1977 from Safety
15 Kleen's vendors of mineral spirits indicating that
16 there's benzene in mineral spirits that they sold
17 to Safety-Kleen?

18 MR. WOOD: Objection. Misstates testimony
19 and foundation.

20 MS. KAHN: Join.

21 MR. WOOD: You can answer.

22 THE WITNESS: Repeat the question, please.

23 BY MR. DUPONT:

24 Q. Sure. Did you see correspondence in
25 Safety Kleen's records that was received from

Breece, James

Rhyne Trial Master

Page 59

01 vendors of mineral spirits to Safety-Kleen which
02 indicated in 1977 that there was benzene in mineral
03 spirits being sold to Safety-Kleen?

04 MR. WOOD: Same objection.

05 MS. KAHN: Join.

06 THE WITNESS: It's not unequivocal from
07 the correspondence I saw that the vendors stated
08 that, that their products contained benzene. It --
09 it was totally dependent upon who the vendor was
10 and their statement of detection limits and logic
11 in which they used to identified whether benzene
12 was present or not. So it's not a -- it's not a
13 clearcut pattern of what the vendors told us in
14 1977.

15 BY MR. DUPONT:

16 Q. Okay. Is it fair to say that in 1977,
17 Safety-Kleen received correspondence from some of
18 its vendors that indicate that there was benzene
19 mineral spirits that those vendors were selling to
20 Safety-Kleen?

21 MR. WOOD: Objection. Assumes facts not
22 in evidence. Foundation.

23 MS. KAHN: Join.

24 THE WITNESS: The answer to that is yes.

25 BY MR. WOOD:

Breece, James

Rhyne Trial Master

Page 60

01 Q. Is it fair to say that by 1977
02 Safety-Kleen had information in its possession that
03 there was benzene in mineral spirits that it was
04 using?

05 MR. WOOD: Objection. Foundation.

06 THE WITNESS: I can't know that exactly.
07 I can only go by the correspondence.

08 BY MR. WOOD:

09 Q. All right. In 1999, Safety-Kleen began on
10 its own to test mineral spirits as they came from
11 vendors to determine their benzene content,
12 correct?

13 A. Yes.

14 Q. Benzene could get into Safety-Kleen's
15 parts washing solvent in several ways. It was
16 initially in there when it came from the vendors of
17 mineral spirits, and benzene could be introduced
18 into the stream if a user of a Safety-Kleen product
19 introduced something like gasoline or another
20 solvent that contained benzene while using
21 Safety-Kleen as parts washer solvent?

22 MS. KAHN: Objection. Assumes facts.
23 Overbroad. Calls for an expert opinion testimony.

24 MR. WOOD: Join. And I would add
25 incomplete hypothetical.

Breece, James

Rhyne Trial Master

Page 61

01 THE WITNESS: Read it back, please.

02 BY MR. WOOD:

03 Q. Okay. I'll ask the question. One way
04 that benzene was present in mineral spirits used by
05 Safety-Kleen was that it was already in the mineral
06 spirits when it was sold from the vendor to
07 Safety-Kleen, correct?

08 A. Yes.

09 Q. Another way that benzene was present in
10 mineral spirits used by Safety-Kleen was that a
11 customer of Safety-Kleen could wash a part, an item
12 in Safety-Kleen parts washer that had gasoline or
13 another solvent in it or on it. And that gasoline
14 or other solvent that contained benzene would be
15 introduced into the Safety-Kleen parts washing
16 solvent, correct?

17 MR. WOOD: Objection. Assumes facts.
18 Calls for speculation. Foundation. Incomplete
19 hypothetical.

20 THE WITNESS: Yes.

21 BY MR. DUPONT:

22 Q. And Safety-Kleen was aware that there were
23 materials that customers used in the course of
24 their working with Safety-Kleen parts washers that
25 contained benzene, such as gasoline?

401, 402 irrelevant
evidence is
inadmissible:
there is no
evidence of
gasoline
contamination in
this case. In fact,
Plaintiff testified he
never dumped or
saw anyone else
dump gasoline, oil,
etc. into a parts
washer;
Assumes facts:
nowhere
established
customers
introduce gasoline
in this manner;
Speculative; and
Incomplete
hypothetical

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 62

602, 701 lack of
personal
knowledge; no
foundation showing
witness ever
perceived this
happening, witness
denies knowledge
below (62:12-14)
assumes facts no in
evidence
Assumes facts:
nowhere
established Safety-
Kleen customers
used other products
in the course
washing parts; and
Lacks Foundation

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A. Yes.

Q. Safety-Kleen was aware that there were other products that its customers used in the course of using Safety-Kleen parts washers that contained benzene such as solvents like Liquid Wrench and B12 Chemical?

MS. FERGUSON: Can I have that question read back, please.

(Record read.)

MR. WOOD: Objection. Assumes facts. Overly broad. Foundation.

THE WITNESS: I don't know the composition of B12. I don't know what the composition of that is, but for Liquid Wrench, the answer is yes.

BY MR. DUPONT:

Q. Okay. What's your understanding what the composition of Liquid Wrench was?

MR. WOOD: Objection. Foundation.

MR. CAIRONE: Objection. Outside the scope of this deposition.

(Reporter interruption for clarification.)

MR. DUPONT: That's Barry Steel.

MR. CAIRONE: That's Matt Cairone for U.S. Steel.

MR. DUPONT: I was wrong.

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 63

01 BY MR. DUPONT:

02 Q. Sure. I'll ask --

03 A. Do you want me to answer it?

04 Q. I'll ask it again since we have an
05 objection.

06 What's your understanding of what the
07 composition of liquid wrench was?

08 MR. WOOD: Objection. Foundation.

09 MR. CAIRONE: Same objection.

10 THE WITNESS: Based upon my personal
11 knowledge and -- and the analytical data which we
12 had performed or the analytical testing which we
13 performed, we knew that Liquid Wrench could be high
14 in benzene content, especially from the early days,
15 and I'm going from records in regard to the
16 raffinate which was used in that formulation of
17 Liquid Wrench in the early days. That -- that
18 strain was high in benzene.

19 BY MR. DUPONT:

20 Q. When did --

21 MR. WOOD: Objection. Unresponsiveness.

22 (Reporter interruption for clarification.)

23 MR. WOOD: Objection. Unresponsiveness.

24 BY MR. DUPONT:

25 Q. When did Safety-Kleen conduct testing on

401, 402 irrelevant
evidence is
inadmissible; there
is no evidence of
gasoline
contamination in
this case. In fact,
Plaintiff testified he
never dumped or
saw anyone else
dump gasoline, oil,
etc. into a parts
washer. Further,
Liquid Wrench was
found in
Safety-Kleen's
waste disposal
services, never in
parts washer
service (65:1-66:2).
Lacks Foundation.

0

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 64

01 raffinate?

02 A. We didn't conduct raffinate. That was a
03 public document in regard to compositional
04 information regarding the Liquid Wrench.

05 Q. Okay. You said Liquid Wrench, and I said
06 raffinate, so I apologize.

07 Did Safety-Kleen conduct any testing on
08 Liquid Wrench?

09 A. I believe we did.

10 Q. When did Safety-Kleen conduct testing on
11 Liquid Wrench?

12 A. I can't say for sure. I believe that the
13 time frame was in the early '90s. Recognize that
14 we analyzed an average of -- during the '90s, an
15 average of 15,000 samples a year. So there were
16 hardly any products that we didn't sample and test.

17 Q. Why was Safety-Kleen testing products in
18 the early 1990s?

19 A. Part of their business as far as their
20 waste collection business, to characterize the
21 waste so we could properly manifest it, treat it,
22 or dispose of it.

23 Q. Okay. Was Safety-Kleen acquiring waste
24 streams from Radiator Specialty Company?

25 A. I don't recall that specifically.

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 65

01 Q. Okay. Is it your understanding that
02 Safety-Kleen conducted testing on Liquid Wrench in
03 the early 1990s because it was processing waste
04 streams of Liquid Wrench?

05 A. Waste streams which contained Liquid
06 Wrench.

07 Q. Okay. So Safety-Kleen didn't test Liquid
08 Wrench in and of itself. It tested parts washing
09 solvent that came back from its customers that had
10 been used with Liquid Wrench?

11 A. No, I didn't say that.

12 Q. Okay. Can you clarify what you meant by
13 that?

14 A. Yes, as part of their fluid recovery
15 services program, which was the mass of -- mass of
16 the analytical work we did during the '90s, we
17 sampled and analyzed more than 100,000 waste
18 streams during that time frame. And some of those
19 waste streams indicated cross-contamination with
20 that, and as a result, we identified benzene
21 concentrations from that.

22 Q. Okay. And were any of the benzene
23 concentrations in the waste streams tied by
24 Safety-Kleen to the use of Liquid Wrench in
25 particular?

Breece, James

Rhyne Trial Master

Page 66

01 A. Only through the waste disposal services,
02 not the parts washer service.

03 Q. Okay. What did Safety-Kleen learn about
04 benzene and Liquid Wrench through the waste
05 disposal services?

06 A. As memory serves me -- and again, remember
07 we're talking a massive amount of data here. That
08 the modern version of the Liquid Wrench was more or
09 less normal regular mineral spirits containing with
10 an expected benzene concentration, but we saw the
11 releases for the raffinate which had previously
12 been used which was very high in the benzene
13 content. So we saw nothing unusual about Liquid
14 Wrench when we tested the waste products in the
15 '90s.

16 Q. Okay. Do you know of a product called
17 B-12 Chemtool?

18 A. I don't. I know the chem -- I know of
19 some of the Chemtool products, but I am not
20 familiar with the B-12, and I didn't attempt to
21 research it. I read about it until I was sick and
22 tired of hearing about it in this depo, but it's --
23 I do not know its composition.

24 Q. Okay. You read about B-12 in which
25 deposition?

Breece, James

Rhyne Trial Master

01 A. In Mr. Johnson's deposition.

02 Q. Okay. And you were sick and tired of
03 hearing Mr. Johnson testify about B-12?

04 MS. FERGUSON: Argumentative.

05 THE WITNESS: Yes, and Liquid Wrench both.
06 (Reporter interruption for clarification.)

07 MS. FERGUSON: Argumentative.

08 BY MR. DUPONT:

09 Q. Turning back to Exhibit Number 4, we
10 looked at the paragraph on the second page of the
11 exhibit, the introduction paragraph under Virgin
12 PWS Benzene Data, and I noticed that there's a
13 number of regions that are identified including
14 east, southwest, and Midwest.

15 A. Yes.

16 Q. And west is not specifically identified.
17 Was there a breakdown of which suppliers supplied
18 the western area -- the Western region of the
19 United States?

20 A. I believe that's characterized in the Rule
21 66, because of the west was one of the primary
22 areas where the Rule 66 solvent was used, and
23 Reedley was the only recycle center which was
24 recycling Rule 66 base material.

25 Q. Okay. So the Rule 66 solvents suppliers,

401, 402
Irrelevant
e nce is not
Plaintiffs allege all
of the exposure to
Defendants'
products occurred
in North and South
Carolina (i.e. the
East). This is a
discussion of
suppliers to the
West with nothing
to indicate its
relevance here.



Breece, James

Rhyne Trial Master

Page 68

01 those suppliers that Safety-Kleen was using in
02 California?

03 A. Yes.

04 Q. And if we look to the third page of this
05 document under Conclusions, this sets forth some of
06 the findings in this study; is that correct?

07 A. Yes.

08 Q. Okay. And one of the findings is that as
09 we discussed the benzene in the recycled 105
10 solvent does not appear to come entirely from the
11 vendor; is that correct?

12 A. That's correct.

13 Q. And the same statement would be true for
14 Rule 66 mineral spirits?

15 A. Yes.

16 Q. In fact, Safety-Kleen was able to compare
17 the benzene content of Rule 66 mineral spirits from
18 vendors versus the recycle Rule 66 benzene content
19 and determine that the recycled Rule 66 mineral
20 spirits had higher benzene content?

21 A. That's correct.

22 Q. One of the conclusions that was also
23 reached was that it was -- there was little chance
24 for Safety-Kleen to detect a batch of mineral
25 spirits that high -- that had a higher benzene

401, 402 Irrelevant
evidence is not
admissible:
Plaintiffs do not
allege exposure to
Rule 66 solvent or
exposure in
California to any
Safety-Kleen
product

401, 402 Irrelevant
evidence is not
admissible: Rule 66
mineral spirits is
unique to California,
and provided by
Western suppliers,
having no relevance
to the allegations
and facts of this
case, which are
limited to North and
South Carolina.
Thus, this document,
its conclusions, and
discussion of same
are irrelevant

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyme Trial Master

Page 69

401, 402 Irrelevant
evidence is not
admissible:
Plaintiffs do not
allege exposure to
virgin mineral spirits
(unrecycled, from a
vendor), nor is there
any evidence it was
supplied to
Plaintiffs' employer.
Plaintiffs'
allegations are
explicitly for
"Safety-Kleen 105
Solvent Recycled."
Misstates the
Document;
Lacks Foundation;
and
Assumes Facts

1 content before it was packaged for use at one of
2 its branches?

3 A. That's correct.

4 Q. So Safety-Kleen recognized at this period
5 of time that it had been sending out batches of
6 mineral spirits to its customers that had greater
7 benzene content than predicted and had been unable
8 to catch that before it happened?

9 MR. WOOD: Objection. Misstates the prior
10 document in prior testimony. Foundation. Assumes
11 facts.

12 THE WITNESS: Yes, and this was the basis
13 of part of this study was to establish approved
14 vendors. So the answer is yes to your question.

15 BY MR. DUPONT:

16 Q. Okay. And then prior to 1991,
17 Safety-Kleen did not have any procedure or study in
18 place from which it could systematically determine
19 and monitor the benzene content of the mineral
20 spirits it was receiving from its vendors?

21 A. Only through grab samples, individual
22 samples that may have been done at various time
23 frames. Did we have data in regard to benzene
24 concentration in parts washer solvent?

25 (Reporter interruption for clarification.)

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 70

01 MS. FERGUSON: (Shook head.)

02 BY MR. DUPONT:

03 Q. And Safety-Kleen begins to take those
04 grab-sample datas in 1987?

05 A. The earlier -- the earliest one I recall
06 is 1982.

07 Q. Okay. And was that for benzene
08 specifically?

09 A. Yes.

10 Q. So prior to 1982, Safety-Kleen didn't
11 conduct any testing to monitor whether or not its
12 mineral spirits contain benzene or what level?

13 MR. WOOD: Objection. Foundation.

14 THE WITNESS: I believe that to be true.
15 Excuse me. I need to reach -- I need to qualify
16 that statement. Safety-Kleen had analytical
17 capability that would allow them to determine prior
18 to 1982 or about 1982 if solvent contained greater
19 than approximate thousand parts per million. So
20 gross levels we had that capability, but not at the
21 levels that we're talking about in 1990.

22 BY MR. DUPONT:

23 Q. Okay. So let me see if I understand that.

24 Was 1991 the first time period that Safety-Kleen
25 was able to test for benzene in and mineral spirits

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 71

01 below the level of a thousand parts per million?

02 A. It actually began I think in 1989 and we
03 began developing the technique for that. So we had
04 the capability approximately '89 to '90, and this
05 is the time frame we applied it on a massive scale.

06 Q. Okay. So prior to 1989, Safety-Kleen
07 didn't have the technology to test mineral spirits
08 for levels of benzene below a thousand parts per
09 million?

10 A. That's right.

11 Q. And it was in 1982 that Safety-Kleen began
12 to take some grab samples of mineral spirits to
13 determine whether or not they had benzene, and it
14 can only detect benzene if it was present over a
15 thousand parts per million?

16 A. That was true of Safety-Kleen, but these
17 grab samples were analyzed by outside labs.

18 Q. And did the outside labs analyze
19 Safety-Kleen's mineral spirits for levels of
20 benzene below a thousand parts per million between
21 1982 and 1989?

22 A. Yes.

23 Q. How often did that take place?

24 A. My recollection is there were
25 approximately half a dozen samples during early to

Breece, James

Rhyne Trial Master

Page 72

01 mid '80s that were analyzed.

02 Q. Do you know where those samples were taken
03 from?

04 A. My recollection is that those samples
05 originated from the Elgin recycle center or
06 branches nearby Chicago.

07 Q. Okay. So over that seven-year time
08 period, there were six grab samples taken from the
09 Elgin/Chicago --

10 A. Yes.

11 Q. -- period?

12 A. This is an approximation. It might have
13 been four. It might have been eight. But
14 approximately a half dozen.

15 Q. Okay. Now, the recycling process for
16 Safety-Kleen was that mineral spirits would come
17 back to its recycling centers. It would be mixed
18 into a tank with mineral spirits from various
19 customers. And then they would go through a
20 distillation process, correct?

21 A. Yes.

22 Q. Okay. And the distillation process was
23 not designed to take benzene out of the process
24 stream, was it?

25 A. Only inadvertently. It was not the -- the

Breece, James

Rhyne Trial Master

Page 73

01 design of the equipment to do that.

02 Q. All right. Since the process stream
03 didn't actually remove -- strike that.

04 The distillation process didn't actually
05 remove benzene from the process stream; did it?

06 A. Some, yes.

07 Q. When Safety-Kleen brought mineral spirits
08 back from a customer, that mineral spirits had
09 various contaminants in it; is that correct?

10 A. Yes, mainly oil and grease, but yes.

11 Q. And some of those contaminants were solid?

12 A. Yes.

13 Q. And the distillation process included a
14 step where the solids were allowed to sink to the
15 bottom of the tank and were removed?

16 A. Yes.

17 Q. And then the solvent was evaporated?

18 A. From the settled solvent in which the
19 solvent had been removed, that material was then
20 distilled.

21 Q. Okay.

22 A. Or evaporated as you say.

23 Q. Safety-Kleen, at one point in time,
24 researched the ability to create a distillation
25 process, a distillation column that would actually

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 74

01 remove benzene and chlorinated solvents from
02 mineral spirits, correct?

03 MR. WOOD: Objection. Assumes facts not
04 in evidence.

05 THE WITNESS: Yes.

06 BY MR. DUPONT:

07 Q. And the Safety-Kleen decided not to use
08 that distillation column procedure, correct?

09 A. That's correct.

10 Q. And Safety-Kleen actually calculated the
11 cost of how much it would have to spend to install
12 those distillation columns into its recycling
13 centers, correct?

14 A. There were estimates of that, yes.

15 Q. And what were those estimates?

16 A. I don't recall those number.

17 Q. Safety-Kleen actually determines what the
18 cost of installation of those distal -- strike
19 that?

20 Safety-Kleen actually estimated what it
21 would cost in terms of -- strike that.

22 Who was involved in conducting the study
23 to determine the installation of distillation
24 columns that would remove benzene.

25 MR. WOOD: Objection. Assumes facts not

Breece, James

Rhyne Trial Master

Page 75

01 in evidence.

02 THE WITNESS: Repeat, please.

03 BY MR. DUPONT:

04 Q. Sure. Who was involved in studying the
05 use of distillation columns to remove benzene?

06 MR. WOOD: Same objection.

07 THE WITNESS: I authorized that study.

08 BY MR. DUPONT:

09 Q. And were there meetings regarding the
10 study?

11 A. Sure.

12 Q. Who attended those meetings?

13 A. The predominance of the meetings were
14 myself and -- and Paul Dittmar, Dennis Brinkman,
15 Robert Bentley, a chemical engineer followed by
16 more of the engineering staff in reviewing the
17 details and the -- the design.

18 Q. When did that study take place?

19 A. Study was performed in the late '80s. And

20 the decision not to produce that was -- was not
21 only an economic but a technical one as well.

22 Q. And Dennis Brinkman when he participated
23 in the meetings about that study, was the president
24 and CEO of Safety-Kleen?

25 A. No, no. Don Brinkman was the president.

611, nonresponsive

Breece, James

Rhyne Trial Master

Page 76

01 Dennis Brinkman was a Ph.D. chemist who worked for
02 me.

03 Q. Okay.

04 A. What was --

05 Q. Okay. Did Safety-Kleen's attorney Hyman
06 Bielsky participate in the meetings regarding the
07 potential for a distillation column to remove
08 benzene?

09 A. I don't recall Hyman being involved in any
10 of that discussion. We may have provided him with
11 results, but I don't recall meeting with him. This
12 was a technical meeting, not a -- not a legal one
13 at that point.

14 Q. And who ultimately approved the decision
15 not to install the distillation columns that would
16 remove benzene from the parts washing solvent
17 stream?

18 MR. WOOD: Objection. Assumes facts not
19 in evidence. Foundation.

20 THE WITNESS: I know the answer. Shall I
21 give it?

22 MR. WOOD: You can answer the question.

23 THE WITNESS: The -- the final decision in
24 terms of strategy was made by my boss who was Clark
25 Rose and Joe Chalhoub who was the president of the

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 77

01 company at that time.

02 BY MR. DUPONT:

03 Q. How do you spell Joe Chalhoub?

04 A. C-H-A-L-O-U-B [sic].

05 (Reporter interruption for clarification.)

06 THE WITNESS: -L-O-U-B.

07 BY MR. DUPONT:

08 Q. Was there a calculation made by
09 Safety-Kleen that it could pass the cost of the
10 installation of these distillation columns onto a
11 customer at eight cents per gallon?

12 MR. WOOD: Objection. Assumes facts not
13 in evidence. Foundation.

14 THE WITNESS: There was a number derived.
15 I don't recall that number as being eight; but
16 there was a number derived, yes.

17 BY MR. DUPONT:

18 Q. Okay. Do you recall it being in the
19 ballpark of eight cents per gallon?

20 A. I don't.

21 MR. DUPONT: Let's go off the record.

22 MR. WOOD: Take a break?

23 MR. DUPONT: Yes.

24 THE VIDEOGRAPHER: The time is 11:23 a.m.

25 We're going off the record.

Breece, James

Rhyne Trial Master

Page 78

01 (Break taken.)

02 THE VIDEOGRAPHER: The time is 11:37 a.m.

03 We're back on the record.

04 (Plaintiff's Exhibit 5 marked

05 for identification.)

06 BY MR. DUPONT:

07 Q. Okay. Dr. Breece, I'm going to hand to

08 you a document that I marked as Exhibit 5.

09 A. Before I address that, I'd like to have a
10 second to add -- it's amazing when you're on break
11 how you think of additional information. I
12 couldn't think of the other people involved in the
13 distillation column involved. Glen Kazborn who was
14 one of the lead senior engineers was involved and a
15 chemical engineer by the name of Steve Selk,
16 S-E-L-K. And Steve Selk ran a distillation column
17 for the production of mineral spirits for SO
18 Canada.

19 (Reporter interruption for clarification.)

20 THE WITNESS: SO Canada.

21 SO, is that right? Shell Canada. Excuse
22 me. Let me get my story straight here. Shell
23 Canada, with actual hands-on production experience
24 of that. So that was part of the evaluation team
25 that did the technical evaluation for that column,

Transcript of Breece, James

611, there's no question pending, non-responsive, object to adding a different answer to a different question

Breece, James

Rhyme Trial Master

Page 79

01 and I forgotten those two names. I just wouldn't
02 come until I took a break.

03 BY MR. DUPONT:

04 Q. Okay. Well, thank you for that.

05 Clark Rose, what was his position with
06 Safety-Kleen at the time that Safety-Kleen looked
07 into adding a distillation column that would remove
08 benzene from its mineral spirits parts washing
09 stream?

10 (Reporter interruption for clarification.)

11 BY MR. DUPONT.

12 Q. ...benzene from its mineral spirits parts
13 washing stream?

14 MR. WOOD: Objection. Form. Assumes
15 facts not in evidence.

16 THE WITNESS: Initially at the time the
17 work began, Clark Rose was a chemical engineer in
18 charge of the recycle center operations. By the
19 time the pilot work had been completed, Clark had
20 been promoted to vice president of tech services,
21 and I reported to Clark Rose.

22 BY MR. DUPONT:

23 Q. Okay. And you also gave me a name Glen
24 Kazborn?

25 A. Glen Kazborn.

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 80

01 Q. What was Glen Kazborn's position with
02 Safety-Kleen at the time this study into possibly
03 using distillation columns to remove benzene from
04 the parts washing stream took place?

05 A. Glen Kazborn was a process engineer who
06 came to Safety-Kleen as part of the acquisition of
07 the Brezi Lube facility from Canada, and both Glen
08 Kazborn and Steve Selk were, I believe. Glen was a
09 mechanical engineer and Steve Selk was a chemical
10 engineer.

611, non-responsive
no question pending
object to adding a
different answer to a
different question

11 Q. Okay.

12 A. Sorry for the little interruption.

13 Q. No, I appreciate that.

14 So I've handed you what I've marked as
15 Exhibit 5.

16 MR. WOOD: My objection to what you've
17 marked as Exhibit 5 is it is marked confidential.
18 It is as a Bates stamped SAL SK 05741. I believe
19 that to be the Salmieri case. This document was
20 produced subject to a confidentiality order in this
21 case that it not be used outside the purposes of
22 that litigation. I don't -- at this time I cannot
23 confirm that it was produced as part of the
24 document production in this case.

25 Can we go off the record for a second?

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 81

01 MR. DUPONT: Yes. And we'll go back on
02 the record, but I'll -- off the record.

03 THE VIDEOGRAPHER: The time is 11:41 a.m.
04 We're going off the record.

05 (Break taken.)

06 THE VIDEOGRAPHER: The time is 11:49 a.m.
07 We're back on the record.

08 MR. WOOD: This is Jeff Wood on behalf of
09 Safety-Kleen. Regarding Exhibit 5 that was just
10 marked, I believe it was produced in the Salmieri
11 case, Bates stamped SAL SK 05741 stamped --

12 (Reporter interruption for clarification.)

13 THE WOOD: SK 05741. It's stamped
14 confidential on the -- on each page of the
15 document. I believe it was produced pursuant to a
16 confidentiality order in that case, which is very
17 similar, if not identical to the confidentiality
18 order in the Johnson case. I believe this document
19 would have been part of the Johnson production;
20 although, I can't determine that at this time. I'm
21 going to allow questioning on the document subject
22 to plaintiff's agreement that -- plaintiff's
23 counsel's agreement that I'm not waiving any
24 potential confidentiality by doing so.

25 MR. DUPONT: Agreed.

Breece, James

Rhyne Trial Master

Page 82

01 MS. KAHN: May I take a quick look at that
02 document, please.

03 MS. FERGUSON: We'll get you copies during
04 the break.

05 MS. KAHN: Thank you.

06 BY MR. DUPONT:

07 Q. Okay. Dr. Breece, you have in front of
08 you Exhibit 5.

09 A. Yes.

10 Q. Can you identify for us what this document
11 is?

12 A. Yes. It's a memo that -- the first three
13 pages of this I recognize exactly what the back
14 pages are. I have no idea as part of the DC scan,
15 and it doesn't belong with this memo.

16 Q. Okay.

17 A. So that -- I don't know how it got there,
18 but it's been attached and it's not relevant to
19 this memo at all.

20 Q. All right. Let's talk about the first
21 three pages which are Bates number SAL SK 5741
22 through 5743.

23 A. Yep.

24 Q. Is this a Safety-Kleen Corporation
25 interoffice communication dated June 8, 1988

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 83

01 addressed to you from Dean Hufsey?

02 A. Yes.

03 Q. And Clark Rose is copied on it?

04 A. Yes, he was.

05 Q. And who was Dean Hufsey at Safety-Kleen in
06 1988?

07 A. Dean Hufsey was a chemist who worked for
08 me in the -- at the tech center, and his
09 responsibilities at this point in time were
10 material safety data sheets preparation. He was
11 also involved in some litigation support and in
12 customer service to work with customers.

13 Q. All right. And is this a document that
14 came from Safety-Kleen's business records, at least
15 the first three pages, 5741 to 5743?

16 A. Yes, I believe so.

17 Q. And did you attach this memorandum on to
18 Joe Knott?

19 A. I did. And it's indicated up in the upper
20 right-hand corner I did that.

21 Q. All right. You made a -- a note to Joe
22 Knott on June 13th, 1988 when you passed this
23 memorandum onto him?

24 A. I did.

25 Q. And in that note to Joe Knott you wrote,

Breece, James

Rhyne Trial Master

Page 84

01 "I believe Dean Hufsey is exactly correct, WRT"; is
02 that with regards to?

03 A. With respect to.

04 Q. With respect to "benzene and possibly
05 heavy metals? Please comment."

06 Is that correct?

07 A. That's correct.

08 Q. And then there's a handwritten note at the
09 bottom of the first page of the document dated June
10 16, 1988.

11 Do you see that?

12 A. Yes.

13 Q. Is that handwritten comment coming from
14 Joe Knott?

15 A. It is.

16 Q. And what does Joe Knott write on June
17 16th, 1988?

18 A. Well, I can only read part of it. The
19 original is readily legible; this one isn't. "It
20 seems prudent to me to check some samples for the
21 recycle centers at a population of say 50 to 100
22 samples to see where we are. Also, we should -- we
23 should have an ND." That's no -- no detection on
24 it.

25 (Reporter interruption for clarification.)

Transcript of Breece, James

Breece, James

Rhyme Trial Master

Page 85

01 THE WITNESS: "ND," nondetect, limit on
02 air purchased materials.

03 BY MR. DUPONT:

04 Q. Okay. Is that referring to putting a
05 limit of no detection level of benzene on purchased
06 materials specifications for mineral spirits?

07 A. That was his comment.

08 Q. All right. As of this time in June 1988,
09 is it correct that Safety-Kleen did not have a
10 specification to control the amount of benzene in
11 the mineral spirits it acquired from its vendors?

12 MR. WOOD: Objection. Assumes facts.
13 Foundation.

14 THE WITNESS: It did not have a benzene
15 specification imbedded in the purchasing specks for
16 the vendors.

17 BY MR. DUPONT:

18 Q. All right. In 1988, was Joe Knott the
19 president of Safety-Kleen?

20 A. I believe at this time Joe was -- and I
21 believe I stated this earlier. I believe Joe
22 became president about 1990. I believe he was a
23 senior vice president of tech services at this
24 point.

25 Q. Okay. I wasn't sure. I believe you

Breece, James

Rhyne Trial Master

Page 86

01 mentioned the late '80s or early '90s.

02 A. Yeah, I believe -- I believe at this stage
03 he was still the senior vice president.

04 Q. Okay. And did Safety-Kleen implement a no
05 detect limit for benzene in its purchase material
06 specifications?

07 A. It was not possible to do that.

08 Q. Well, is it correct that Safety-Kleen did
09 not implement a no detection limit for benzene in
10 its personal -- it's purchase material
11 specifications for mineral spirits from vendors?

12 MR. WOOD: Objection. Asked and answered.

13 MS. FERGUSON: Ar- --

14 MR. WOOD: Argumentative.

15 THE WITNESS: We did not implement a
16 nondetect for 105 solvent because it was not --

17 (Reporter interruption for clarification.)

18 THE WITNESS: We did not implement a
19 nondetect specification for 105 solvent because it
20 was not possible.

21 BY MR. DUPONT:

22 Q. Okay. Did Safety-Kleen implement a
23 nondetect limit for any other mineral spirits
24 solvents in its purchase material specifications
25 that it issued to vendors?

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 87

01 A. No, it is not possible for the -- for the
02 solvents used for parts cleaning to have a
03 nondetect unequivocally. Analytical methods are so
04 good that it exceeds the process capabilities of
05 the refineries.

Q. This memo from June 8, 1988 that's marked
as Exhibit 5 describes some of the history that
Safety-Kleen had with litigation concerning
injuries caused by use of its parts washing
solvent; is that correct?

A. Mr. Hufsey had described that, yes.

MR. WOOD: Objection. Assumes facts. I
don't know if you used the word alleged in the
question.

BY MR. DUPONT:

Q. It begins with a case in 1979 from Corpus
Christi entitled Frank McDole versus Safety-Kleen;
is that correct?

A. Yes.

Q. And continuing down it discusses a case
involving a Chester Rasmussen?

A. Yes.

Q. And it indicates that with respect to the
Rasmussen case, that a weakness in Safety-Kleen's
defense in the Rasmussen case was that it did not

401, 402 irrelevant
evidence is
inadmissible: the
document references
a lead case, a
mercury case, a
dismissed case, and
two pending matters
for which liability has
not been adjudicated.
Assumes facts not
in evidence: liability
for benzene exposure
was not proven in any
of the referenced
lawsuits.
404(b): inadmissible
evidence of prior
lawsuits being offered
to show that in
Safety-Kleen acted in
conformance with past
conduct.
Inadmissible
Hearsay

401, 402 irrelevant
evidence is not
admissible:
Document states
McDole alleged lead
poisoning, not
benzene. Lead is not
at issue here.
404(b): inadmissible
character evidence
Inadmissible
Hearsay

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

401, 402 irrelevant evidence is not
admissible: Document states Rasmussen
alleged mercury poisoning, not benzene
exposure.
404(b): inadmissible character evidence
Inadmissible Hearsay

Breece, James

Rhyne Trial Master

401, 402 irrelevant evidence is not admissible: neither mercury nor mercury testing is alleged or at issue here. Nothing indicates mercury testing has any relevance on benzene or benzene testing.
 404(b): inadmissible character evidence
 Inadmissible Hearsay

401, 402 irrelevant evidence is inadmissible: no discussion of the facts or merits of this Michigan case or its outcome.
 404(b): inadmissible character evidence
 Inadmissible Hearsay

Assumes facts not in evidence: This case was dismissed on summary judgment and the document merely states these were allegations.
 404(b): inadmissible character evidence
 401, 402 irrelevant evidence not admissible: the document states Safety-Kleen won summary judgment and provides no information on the details of Mr. Pierce's dismissed allegations.
 Inadmissible Hearsay

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test the recycled Safety-Kleen 105 solvent for the presence of mercury; is that accurate?

A. That's a statement in the memo.

Q. And if you continue, there's reference to a case in Michigan involving a Gerald Johnson who contracted leukemia after he used Safety-Kleen 105 solvent that contained benzene; is that correct?

MS. FERGUSON: Objection. The document speaks for itself.

THE WITNESS: Yes.

BY MR. DUPONT:

Q. And it also references a Johnny Pierce who contracted aplastic anemia through his use of Safety-Kleen 105 solvent secondary to benzene, correct?

MR. WOOD: Objection. Assumes facts.

Document speaks for itself.

THE WITNESS: I believe that's consistent with what's written here, yes.

BY MR. DUPONT:

Q. And at the time of this memorandum if we look to the last photograph on this particular page, it references two cases that were going on at the time of the memorandum, the Junker case and the Hanson case involving individuals who contracted

401, 402 irrelevant evidence is inadmissible: Cases were pending at time of memorandum, there is no discussion of their merits or outcome. To the extent there is any probative value, it would be substantially outweighed by the prejudice and confusion of referencing pending litigation in 1988.
 404(b): inadmissible evidence of prior lawsuits being offered to show that in Safety-Kleen acted in accordance with past conduct.
 Inadmissible Hearsay

Breece, James

Rhyne Trial Master

01 leukemia after using Safety-Kleen 105 solvent which
02 contained benzene?

03 MR. WOOD: Objection. Assumes facts. The
04 document speaks for itself.

05 THE WITNESS: Yes, that's what's written
06 here.

07 BY MR. DUPONT:

08 Q. And Mr. Hufsey comments in the last
09 sentence that it's highly probable that there would
10 be other cases against Safety-Kleen where it's
11 claim that 105 solvent contains benzene?

12 MR. WOOD: Objection. Document speaks for
13 itself.

14 THE WITNESS: Please repeat the question,
15 I'm --

16 BY MR. DUPONT:

17 Q. Sure.

18 A. I'm lost.

19 Q. And this last paragraph on a page that's
20 Bates number 5742, does Mr. Hufsey comment that as
21 a result of the OSHA benzene standard and
22 proposition 65, it's highly probable that there
23 will be other allegations brought against
24 Safety-Kleen where it is claimed that Safety-Kleen
25 105 solvent contains benzene?

Speculation:
"highly probable
that there will be"
**Inadmissible
Hearsay**

Assumes facts not in evidence and misstates the exhibit: the 1988 document states Mr. Hufsey's recommendation is "based on all of the above" which includes his discussion of OSHA's 1987 benzene regulation and California's 1987 Proposition 65 (92:11-94:1). 404(b): inadmissible evidence of prior lawsuits being offered to show that in Safety-Kleen acted in accordance with past conduct. Lacks Foundation: Inadmissible Hearsay

Breece, James
Rhyne Trial Master

A. That's what's written, yes.

Q. And it's Mr. Hufsey's recommendation that based on these past lawsuits brought against Safety-Kleen and the likeliness of future lawsuits brought against Safety-Kleen, that Safety-Kleen should conduct a series of tests on its mineral spirits solvent stream to determine the benzene content?

MR. WOOD: Objection. Foundation. The document speaks for itself.

THE WITNESS: Yes.

BY MR. DUPONT:

Q. So if we read this document, what we learned is that the testing that was done in 1989 through 1993, that was reported on in Exhibit 4 was testing that came about as a result of litigation brought against Safety-Kleen for people contracting leukemia, aplastic anemia, and other injury from exposure to its mineral spirits parts washing solvent?

MR. WOOD: Objection. Lacks foundation. Assumes facts.

THE WITNESS: No, that's not true.

BY MR. DUPONT:

Q. So where Mr. Hufsey writes "Based on all

Breece, James

Rhyme Trial Master

Page 91

Assumes facts not
in evidence and
misstates the
exhibit: the 1988
document states Mr.

's

recommendation is

"based on all of the

above" which

includes his

discussion of

OSHA's 1987

benzene regulation

and California's 1987

Proposition 65

(92:11-93:1)

404(b): inadmissible

evidence of prior

lawsuits being

offered to show that

in Safety-Kleen

acted in accordance

with past conduct.

Asks witness to

enter the mind of

document's author;

Inadmissible

Hearsay

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of the above, I feel that it is entirely prudent
and it is my recommendation that we examine
recycled Safety-Kleen 105 solvent distillate as a
matter of routine practice at all of our recycle
centers and as part of our quality control pro --
program, quantitatively for benzene if it is found
to be present."

He's referring when he says "to all of the
above" to these lawsuits that occurred on
Safety-Kleen?

MR. WOOD: Objection. Document speaks for
itself.

THE WITNESS: Yes.

MS. FERGUSON: It's an improper and
incomplete hypothetical, and you're asking the
witness to get into the mindset of the author.

BY MR. DUPONT:

Q. Is that correct?

A. Repeat, please.

Q. Sure. When Mr. Hufsey says "Based on all
of the above, I feel that it is entirely prudent
and it is my recommendation that we examine
recycled Safety-Kleen 105 solvent distillate as a
matter of routine practice at all of our recycle
centers and as part of our quality control program

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 92

01 quantitatively for benzene if it is found to be
02 present."

03 What he's referring to as part of all of
04 the above is the litigation against Safety-Kleen
05 where individuals contracted leukemia, aplastic
06 anemia, and other conditions from exposure to the
07 105 solvent containing benzene?

08 MR. WOOD: Objection. Assumes facts.
09 Document speaks for itself. Calls for speculation.
10 Lack of foundation.

11 THE WITNESS: All I can tell you is my
12 interpretation and my --

13 (Reporter interruption for clarification.)

14 THE WITNESS: My interpretation of this
15 memo from Dean Hufsey was that he didn't have the
16 analytical material he needed, and that there were
17 a variety of regulatory requirements that demanded
18 that we have the analytical work. In -- in terms
19 of the hazard communication standard and in
20 particular the Prop 65, we did not have the
21 information we needed to properly respond to that.
22 He also pointed out that it would be useful in
23 these cases, but I can assure you, the conversation
24 between myself and Joe Knott didn't address
25 litigation. It addressed knowing what our products

Breece, James

Rhyne Trial Master

Page 93

01 were.

02 BY MR. DUPONT:

03 Q. Joe Knott received this memorandum which
04 addressed the cases involving Mr. Johnson,
05 Mr. Pierce, Ms. -- Ms. Junker, and Mr. Hanson who
06 had contracted leukemia and aplastic anemia from
07 exposure to 105 solvent containing benzene,
08 correct?

09 MR. WOOD: Objection. Assumes facts not
10 in evidence.

11 THE WITNESS: Yeah, I guess I don't -- I
12 don't know how to answer it. Repeat it, please.

13 BY MR. DUPONT:

14 Q. Sure. Joe Knott as the president of
15 Safety-Kleen -- strike that.

16 Joe Knott as the senior vice president of
17 Safety-Kleen at the time received this memorandum
18 in 1988 that addressed these individuals who
19 brought cases because they contracted leukemia and
20 aplastic anemia from exposure to 105 solvent
21 containing benzene, correct?

22 MR. WOOD: Objection. Assumes facts not
23 in evidence. Asks for expert opinion. Incomplete
24 hypothetical.

25 THE WITNESS: He doesn't say that here,

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 94

01 and he never had that conversation with me, and he
02 is authorizing me to begin the study.

03 BY MR. DUPONT:

04 Q. Okay.

05 A. So you may imply that. You may read it
06 that way, but I can assure you from my comment and
07 from Mr. Knotts, it never addressed these over
08 here. But it -- the cases it addressed known
09 compositional information of a product and
10 basically he was saying we'd like to have it
nondetect for the 105.

11 Q. All right. And part of Mr. Hufsey's
12 responsibility for Safety-Kleen was litigation
13 support, correct?
14

15 A. At that time, yes.

16 Q. Did Joe Knott ever direct Safety-Kleen to
17 implement a distillation column that would remove
18 all the benzene from the parts washing solvents?

19 MR. WOOD: Objection. Assumes facts not
20 in evidence.

21 THE WITNESS: No, he did not.

22 BY MR. DUPONT:

23 Q. As the result of this memorandum, did Joe
24 Knott direct Safety-Kleen to include a benzene
25 disclosure on material safety data sheets for

401, 402 irrelevant
evidence is
inadmissible: Mr.
Hufsey's role in
litigation support
321 years ago in 1988
has nothing to do
with the facts of
Plaintiffs' case.
Assumes Facts



BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

01 Safety-Kleen parts washing solvents?

02 A. He did not.

03 Q. As a result of this memorandum or at any
04 time, did Joe Knott direct Safety-Kleen to place a
05 cancer warning on material safety data sheets for
06 Safety-Kleen parts washing solvents?

07 MR. WOOD: Objection. Foundation. Calls
08 for speculation. Vague and overbroad as to time
09 frame.

10 THE WITNESS: That specific request or
11 directive did not occur. What did occur was to
12 make sure we were in compliance with all the health
13 standards and the Hazcom standards that was
14 appropriate for preparation of material safety data
15 sheets.

611, non-responsive,
object to adding a
different answer to a
different question

16 BY MR. DUPONT:

17 Q. And those material safety data sheets did
18 not include a benzene warning?

19 A. They did not.

20 MR. WOOD: Objection. Form. Assumes
21 facts not in evidence. Lacks to foundation.

22 BY MR. DUPONT:

23 Q. And those material safety data sheets did
24 not include a cancer warning?

25 MR. WOOD: Objection. Lacks foundation.

Breece, James

Rhyne Trial Master

Page 96

01 Assumes facts not in evidence.

02 THE WITNESS: They did not include a
03 cancer warning in -- in the fact that this product

04 was -- was regular mineral spirits and as a product
05 regular mineral spirits is -- is not considered a
06 cancer causing chemical in total.

611, non-responsive

07 BY MR. DUPONT:

08 Q. Safety-Kleen knew in 1988 that benzene was
09 a known human carcinogen, correct?

10 A. Pure benzene we knew that.

11 Q. Safety-Kleen knew that benzene was a known
12 human carcinogen even before 1988 when it issued
13 this memorandum, correct?

14 A. Yes.

15 Q. Safety-Kleen knew since at least 1977 that
16 the government had indicated that benzene was known
17 to cause leukemia?

18 A. Pure benzene, yes.

19 Q. And Joe Knott did not -- strike that.

20 Joe Knott didn't direct Safety-Kleen or
21 anyone at Safety-Kleen to include a benzene or
22 cancer warning on the labels of parts washing
23 machines distributed by Safety-Kleen to its
24 customers, did it?

Speculative:
witness lacks
knowledge of every
conversation Mr.
Knott had with
Safety-Kleen
personnel;
Lacks Foundation

25

MR. WOOD: Objection. Foundation. Calls

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 97

01 for speculation.

02 THE WITNESS: No, and -- and I wouldn't
03 have expected he would. He would have assigned
04 that duty to environmental health and safety.

05 BY MR. DUPONT:

06 Q. Okay. Did Joe Knott assign the duty of
07 placing a cancer warning and a benzene warning on
08 labels of Safety-Kleen parts washers?

09 MR. WOOD: Same objection.

10 THE WITNESS: His assignment was to make
11 sure that they were technically regulatorily and
12 environmental health and safe, correct. And given
13 those instructions in concert with environmental
14 health and safety department, at the -- at the
15 presence of benzene, it was present as we found in
16 Safety-Kleen 105 solvent, it was not required.

611, non-responsive,
object to adding a
different answer to a
different question

17 MR. DUPONT: Objection. Move to strike.

18 BY MR. DUPONT:

19 Q. Joe Knott did not direct the environmental
20 health and safety department to issue a benzene
21 warning or a cancer warning for labels of
22 Safety-Kleen parts washers; did he?

23 MS. FERGUSON: Argumentative. He's asked
24 and answered the question. You moved to strike his
25 response because you didn't like it. But he's

Breece, James

Rhyne Trial Master

Page 98

01 answered your question, so some move on and stop
02 harassing the witness.

03 MR. WOOD: Objection. Foundation. Calls
04 for speculation.

05 THE WITNESS: I believe I did answer it.

06 BY MR. DUPONT:

07 Q. Okay. Did Joe Knott tell the
08 environmental and health -- environmental health
09 and safety department of Safety-Kleen after
10 receiving this June 8, 1988 memo at any point in
11 time, I want you to issue a cancer warning and a
12 benzene warning on labels of Safety-Kleen parts
13 washers?

14 MR. WOOD: Objection. Asked and answered.
15 Lacks foundation. Calls for speculation.

16 THE WITNESS: I'm puzzled by your -- your
17 characterization of being edict from -- from Joe
18 Knott, that is --

19 (Reporter interruption for clarification.)

20 THE WITNESS: Edict, to place something on

21 there. It was left to the staff of people to both
22 technical and environmental and health and safety
23 people to make that designation and -- and
24 certainly we couldn't agree. It went to senior
25 management, but it was left to people who were

Transcript of Breece, James

611, non-responsive, object to adding a different answer to a different question

Breece, James

Rhyne Trial Master

Page 99

01 qualified to do that, not a senior executive.

02 BY MR. DUPONT:

03 Q. Okay. And those people with environmental
04 health and safety and whoever else participated in
05 the decision-making did not come to the conclusion
06 that resulted in putting a cancer warning or a
07 benzene warning on labels of Safety-Kleen parts
08 washers?

09 A. I would agree with that.

10 MR. WOOD: Let's break for lunch when you
11 get a chance.

12 MR. DUPONT: We can break now.

13 MR. WOOD: Okay.

14 THE VIDEOGRAPHER: This is end of Video
15 Number 2. The time is 12:14 p.m. We're going off
16 the record.

17 (Lunch break taken.)

18 THE VIDEOGRAPHER: This is the beginning
19 of Video Number 3 in the deposition of Dr. Breece.
20 The time is 1:08 p.m. We're back on the record.

21 BY MR. DUPONT:

22 Q. Okay. Dr. Breece, did you have a good
23 lunch?

24 A. Oh, yes.

25 Q. Good. We're back to continue with your

Breece, James

Rhyne Trial Master

Page 100

01 deposition. And we had discussed earlier the issue
02 of the benzene content of Safety Kleen's mineral
03 spirit streams being increased by customer use of
04 the product. And one of the materials we discussed
05 getting into a Safety-Kleen solvent was gasoline.

06 You, at one point during your employment
07 with Safety-Kleen, actually became involved in
08 studying the amount of gasoline that was found in
09 Safety-Kleen parts-washing solvent used by
10 customers.

Do you recall that?

A. No.

Q. Okay. And do you recall coming up with
13 methods or devices used to study -- study and
14 determine the amount of gasoline in parts-washing
15 solvents that were supplied by Safety-Kleen and
16 used by its customers?
17

18 MS. KAHN: Objection. Lack of foundation
19 and calls for speculation.

20 MR. WOOD: Join.

21 THE WITNESS: I have no recollection of
22 that.

23 BY MR. DUPONT:
24
25

602 lack of personal
knowledge: witness
repeatedly states he
has no knowledge of
studying the amount
of gasoline in parts
washing solvent;
Calls for
Speculation; and
Lacks Foundation

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 101

01 Q. All right. Let me see if we can help you
02 remember.

03 (Plaintiff's Exhibit 6 marked
04 for identification.)

05 MR. WOOD: Just take me a moment to find
06 this document. Hold on.

07 Okay. The documents that have been marked
08 as Exhibit 6 appears to have been produced in the
09 Salmieri case, Bates'd SAL SK 07273. It's marked
10 confidential at the top, and I believe it was
11 produced in that case subject to a confidentiality
12 order.

13 I can't determine at this time if it was
14 produced or requested in this case and thus
15 produced confidentially in this case subject to the
16 confidentiality order.

17 I will allow questioning on the document
18 as long as plaintiffs' counsel stipulates that I'm
19 not waiving confidentiality of this document in
20 either the Salmiere case or the Johnson case.

21 MR. DUPONT: Jeff, you have a continuing
22 objection --

23 MR. WOOD: Okay.

24 MR. DUPONT: -- on that basis.

25 MR. WOOD: No, I just need to do it -- I'm

Breece, James

Rhyne Trial Master

Page 102

01 just going to keep doing it like this. Maybe I'll
02 try to shorten what I'm saying, but...

03 MR. DUPONT: Okay.

04 BY MR. DUPONT:

05 Q. Okay. Dr. Breece, is this a memo dated
06 July 7, 1989 from Steve Parker to yourself?

07 A. Yes.

08 Q. And is that a internal memorandum from
09 Safety-Kleen Corporation?

10 A. It is.

11 Q. And is this a memo that you received in
12 the course of your work on behalf of Safety-Kleen?

13 A. Yes.

14 Q. All right. And you received that as an
15 employee of Safety-Kleen in July of 1989?

16 A. Yes.

17 Q. And this memo is also addressed to a C.
18 Chow; is that correct?

19 A. That's correct.

20 Q. Who is C. Chow?

21 A. Carol Chow. She was the senior chemist
22 and a mass spectroscopist.

23 (Reporter interruption for clarification.)

24 THE WITNESS: Mass spectroscopist.

25 BY MR. DUPONT:

401, 402 irrelevant
evidence is not
admissible: This
memo relates to
benzene in fuels
(103:20-23). Plaintiffs
are not alleging
exposure to benzene
in fuels. Nothing in
the document
indicates the mineral
spirits shipment
discussed came from
a parts-washing
customer
(104:11-21). Plaintiffs
only allege exposure
to Safety-Kleen from
parts-washers, not
fuel streams.

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 103

01 Q. And there's a B. Blair. Who was B. Blair?

02 A. Bruce Blair. He was the senior level

03 analytical chemist there. Safety-Kleen Designation from 103:4-19

04 Q. And there's D. Brinkman. Do you know if
05 it's Donald Brinkman?

06 A. That's Dennis Brinkman.

07 Q. Dennis Brinkman?

08 A. Right.

09 Q. And J. Herman?

10 A. That's Jim Herman.

11 Q. Who was Jim Herman?

12 A. Jim Herman was in charge -- this is his
13 signature at the bottom. His initials here. He
14 was in charge of waste acceptance, evaluation of
15 waste acceptance into our waste programs.

16 Q. Okay. And then you have K. Pool?

17 A. I don't know who K. Pool is. Maybe a --
18 some -- a -- a technician. I don't recall who that
19 may have been.

20 Q. All right. This memorandum discusses
21 analyzing the benzene content of fuels; is that
22 correct?

23 A. It does.

24 Q. Okay. And on the end of the first
25 paragraph it indicates that there was a shipment of

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

401, 402 irrelevant evidence is not admissible:
Plaintiffs are not alleging exposure to benzene in
fuels. Nothing in the document indicates the mineral
spirits shipment came from a parts-washing customer
(104:11-21). Plaintiffs only allege exposure to Safety-
Kleen from parts-washers, not fuel streams.

Breece, James

Rhyne Trial Master

01 mineral spirits to Safety-Kleen, apparently, that
02 contained approximately 19 percent gasoline.

03 A. Yes.

04 Q. Is it something you became aware of in
05 July 1989?

06 A. It is. Safety-Kleen designation 104:7-21

07 Q. And as a result of that shipment, did
08 Safety-Kleen begin to investigate devices to
09 measure the amount of gasoline and other fuels in
10 mineral spirits used by its customers?

11 A. I need to explain the source of this memo
12 and it's usage. It really relates to a -- a
13 truckload which was contaminated with gasoline that
14 was incinerated at a cement kiln, and it really has
15 nothing to do with benzene and normal parts
16 washers.

611, non-responsive

17 This is a stream that was to be burned in
18 the production of cement. Totally different
19 product line. It -- it ended up failing a flash
20 test and was rejected for even inclusion into the
21 parts washer stream.

22 Q. Okay. But is it correct that this is
23 mineral spirits that have been used by a
24 Safety-Kleen customer that had 19 percent gasoline
25 in it?

401, 402 irrelevant,
evidence is not
admissible: no
indication this sample
of mineral spirits
came from a parts-
washer customer,
and in fact, witness
testified it did not
(104:11-21).

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyme Trial Master

Page 105

01 A. Yes, but at very high levels. That's
02 correct. Safety-Kleen designation 105:3-6

03 Q. Okay.
04 (Reporter interruption for clarification.)
05 THE WITNESS: High, very high in
06 concentration.

07 BY MR. DUPONT:

08 Q. All right. And at about this time in
09 1989, was Safety-Kleen investigating the use of
10 portable sensors for determining mineral spirits
11 contaminated with gasoline?

12 A. None of these would indicate a portable
13 sensor as -- as being part of it. This is
14 chromatograms from gas chromatographs here --

15 Q. Okay.

16 A. -- with a -- with full-blown stable wax
17 columns and a -- one case flame ionization detector
18 and the other one a -- let's see. What's the other
19 one. Just a single line monitoring for exact
20 identification of benzene by mass spectrometry as
21 well. There's nothing in here that I've seen that
22 talks about handheld use.

23 Q. Okay. Well, not limiting my question just
24 to what's in that document, do you remember in that
25 time period in 1989 that Safety-Kleen was

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

401, 402 irrelevant evidence is not admissible: Plaintiff testified he never dumped gasoline, nor did he ever see anyone dump gasoline, into a Safety-Kleen parts washer. Gasoline is irrelevant. Further, Plaintiffs are not alleging exposure to benzene in fuels. Nothing in the document indicates the mineral spirits shipment came from a parts-washing customer (104:11-21). Plaintiffs only allege exposure to Safety-Kleen from parts-washers, not fuel. Inadmissible Hearsay

Breece, James

Rhyne Trial Master

Page 106

01 investigating the use of portable sensors in
02 determining the amount of gasoline in mineral
03 spirits?

04 A. It was evaluated, yes. But it's not part
05 of this document.

06 Q. Okay. And you mentioned there being a
07 flash point of -- I'm not quite certain how much
08 you said or whether you said there was a certain
09 amount. But Safety-Kleen had a procedure for
10 measuring the flash point of the mineral spirits
11 that it received back from customers?

12 A. Yes, from day one. That was in place when
13 I arrived in 1979.

14 Q. All right. And was the cutoff for an
15 acceptable -- strike that.

16 What was the cutoff for an acceptable
17 batch of mineral spirits coming back from a
18 customer so that it could be recycled through the
19 Safety-Kleen system?

20 A. I don't recall that number in -- in 1979.
21 Later on, the -- the number was -- a minimum flash
22 point had to be 95 degrees Farenheit.

23 Q. Okay. Do you recall how much gasoline
24 could be in the mineral spirits before the flash
25 point got below 95 degrees Farenheit?

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 107

01 A. I don't recall that, but there's a -- we
02 performed a study to determine that, and I don't
03 recall the -- the absolute value for that, but we
04 did that.

05 (Plaintiff's Exhibit 7 marked
06 for identification.)

07 BY MR. DUPONT:

08 Q. All right. Let me hand you Exhibit 7.

09 MR. WOOD: Exhibit 7 is marked
10 confidential and it has a Bates of SAL SK 05678.
11 Got the same objection to its use in this case and
12 request plaintiffs' agreement that I'm not
13 violating any confidentiality rights from the
14 Salmiere case or this case by allowing questioning
15 on this document.

16 MR. DUPONT: You have that continuing
17 agreement.

18 MR. WOOD: All right.

19 BY MR. DUPONT:

20 Q. Dr. Breece, I've handed you Exhibit 7. Is
21 this a memo dated May 11, 1989 from Steve Parker to
22 Dennis Brinkman titled "Summary Report on Portable
23 Sensors for Use in Determining Mineral Spirits
24 Contaminated with Gasoline"?

25 A. It is.

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

401, 402 irrelevant evidence is inadmissible: the document discusses the flash point of certain liquids for transportation purposes and does not relate the solvent to which it is alleged Mr. Rhyne was exposed (105 Solvent);

Inadmissible Hearsay; and

407: inadmissible to show the feasibility of design alternatives because no alternative design alternative was proposed.

Breece, James

Rhyne Trial Master

Page 108

01 Q. If you look at the last paragraph of the
02 first page -- and incidentally, before we do that,
03 is this a document that came from Safety-Kleen's
04 records?

05 MS. FERGUSON: I'm sorry. Could I have
06 the question back, please.

07 MR. DUPONT: I'll re-ask it.

08 BY MR. DUPONT:

09 Q. Dr. Breece, is this a document that came
10 from Safety-Kleen's records?

11 A. It probably did since these were all
12 records from Safety-Kleen employees including
13 myself.

14 Q. Okay. Are some of these records involved
15 in the study that you mentioned that you
16 participated in to determine what effect of certain
17 concentrations gasoline in mineral spirits would
18 have on the flash point?

19 A. No, this isn't it. But this is -- has
20 that similar information. This is what happens
21 when corporations have a lot of people working.
22 This is duplication of effort.

23 Q. Okay. So if we look to the first page of
24 the document, in this memorandum, there's a
25 discussion of researching sensors, portable sensors

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

401, 402 irrelevant evidence is inadmissible:
the document discusses the flash point of certain
liquids for transportation purposes and does not
relate the solvent to which it is alleged Mr. Rhyne
was exposed (105 Solvent);
Inadmissible Hearsay; and
407: inadmissible to show the feasibility of design
alternatives because no alternative design
alternative was proposed.

Breece, James

Rhyne Trial Master

Page 109

01 to be used to determine whether mineral spirits
02 coming back from customers is contaminated with
03 gasoline?

04 A. Yes.

05 Q. All right. And the mineral spirits
06 contaminated with gasoline includes the
07 parts-washing solvent that Safety-Kleen is
08 providing to its customers for use in the
09 parts-washing machines?

10 A. That was its intent.

11 Q. All right. At the bottom of the first
12 page, in that last paragraph it indicates that as
13 much as four percent gasoline -- strike that.

14 If we look to the bottom of the first page
15 of the document, does it indicate that if a barrel
16 of mineral spirits contains as much as four percent
17 gasoline, the flash point can still be at or above
18 100 degrees Farenheit?

19 A. Okay. Please ask the question again, I --
20 so I -- this is a compilation of documents, some of
21 which I don't think I've ever seen and some of
22 which I have seen.

23 Q. Okay. And my question is: As a result of
24 the study that was undertaken by Safety-Kleen, was
25 it determined that mineral spirits could have as

Breece, James

Rhyne Trial Master

Page 110

01 much as four percent gasoline in it without the
02 flash point being lowered below 100 degrees
03 Farenheit?

04 A. I don't know that. I'll have to look at
05 this for just a second here to -- I don't interpret
06 that answer at all. I don't get that from -- from
07 the data nor from the -- I see that, what you're
08 reading there. What he's saying there is it's
09 highly variable.

10 But if you look at the data, it would
11 indicate that two percent -- one percent gasoline
12 would get you down well under 100. Two percent
13 gasoline would get you down under 90.

14 So what he's saying, that this is highly
15 variable in how much gasoline was required. And
16 this is not consistent with another study which we
17 performed.

18 Q. All right. Well, in the first --

19 A. And I wouldn't agree with that statement
20 it takes four percent gasoline either.

21 Q. Okay. Well, I just want to talk to you
22 about what this memorandum says. The first page of
23 the May 11, 1989 memorandum, Bates Number SAL SK
24 5678.

25 (Reporter interruption for clarification.)

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 111

01 MR. DUPONT: SAL SK 5678.

02 BY MR. DUPONT:

03 Q. Did Steve Parker write, "The results of
04 the clean mineral spirits and most of the dirty
05 mineral spirit samples taken indicated that the
06 amount of gasoline contamination needed to depress
07 the flash point to less than 10 degrees Fahrenheit
08 would be approximately one to four percent."

09 A. Yeah. Uh-huh.

10 Q. All right. And so do you read that to say
11 you could have as much as four percent gasoline in
12 mineral spirits before the flash point is depressed
13 below 100 degrees Fahrenheit?

14 MR. WOOD: Objection. Assumes facts. The
15 document speaks for itself.

16 THE WITNESS: I don't agree with this
17 document either. I hadn't read this particular
18 one. This was one that went to Environmental
19 Health and Safety, and it -- this document isn't
20 consistent with other results that we had.

21 BY MR. DUPONT:

22 Q. Okay. Well, I'm just asking you, though,
23 what this document says.

24 A. Well, you can read it as well as I. I
25 mean, it's -- it's clearcut that's what it says.

Breece, James

Rhyne Trial Master

Page 112

01 But I'm -- I'm in disagreement with this document.

02 Q. Okay. Did you write back to Mr. Parker
03 and -- and say that his analysis --

04 A. I never even received this document.
05 That's what I said.

06 MR. WOOD: Well, he said -- let him have
07 -- let him finish his question, and then you can
08 have your answer.

09 THE WITNESS: Yeah. Okay.

10 BY MR. DUPONT:

11 Q. I'm just wondering did you write back to
12 Mr. Parker and indicate that his analysis was
13 incorrect?

14 A. I never received this, so I don't -- I
15 didn't know this occurred. I knew that meters were
16 being tested, but that particular document, I
17 wasn't aware of.

18 Q. Okay. Was part of the concern that
19 Safety-Kleen, for having gasoline in its
20 parts-washing solvent, the amount of benzene that
21 would be present in the parts-washing solvent?

22 A. No.

23 Q. Gasoline has a higher benzene content than
24 mineral spirits, correct?

25 MS. KAHN: Objection. Calls for expert

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 113

01 opinion testimony.

02 THE WITNESS: Yes, it does.

03 BY MR. DUPONT:

04 Q. All right. So if a container of gasoline
05 had four percent -- strike that.

06 If a container of mineral spirits had four
07 percent gasoline in it, that would increase the
08 benzene content of the mineral spirits, right?

09 A. Yes.

10 Q. And if a customer of Safety-Kleen was
11 using that mineral spirits with four percent
12 gasoline in it, they would be exposed to
13 significantly more benzene, correct?

14 MR. WOOD: Objection. Vague. Overly
15 broad. Foundation.

16 THE WITNESS: That isn't the -- we're off
17 on an area which is beyond the scope of what this
18 study was about.

19 BY MR. DUPONT:

20 Q. Well, I'm not talking about this
21 particular document.

22 A. Yeah, I -- but I'm -- what I'm saying,
23 we're off on a different tangent to what's being
24 tested here. This is to look at flash point
25 depression as a function of gasoline, not to look

Breece, James

Rhyne Trial Master

Page 114

01 at benzene concentration.

02 Q. Okay. Was it acceptable to Safety-Kleen
03 that significant amounts of gasoline would be
04 present in its mineral spirits causing the benzene
05 content of the mineral spirits to be increased?

06 A. No. And it was not acceptable to have
07 material which was combustible be contaminated and
08 be flammable. That was the greater consent --
09 concern in regard to this.

10 If you suppress the flash point below a
11 hundred, you now have a flammable liquid, and
12 you're guilty of transporting flammable materials
13 rather than combustible materials.

14 So it's -- it's a multitude of problems
15 associated with gasoline contamination. But the
16 interest of this, this was Environmental Health and
17 Safety's attempt to get at flash point issues and
18 ben- -- and -- and gasoline contamination with a
19 meter that only measured benzene. And benzene is
20 highly variable in gasoline, depending upon the
21 source, the refinery, the location, and grade of
22 gasoline.

23 So this didn't require a great deal of
24 research. This just required technical knowledge.
25 This was a worthless project.

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 115

01 (Reporter interruption for clarification.)

02 THE WITNESS: Worthless project, with a W.

03 BY MR. DUPONT:

04 Q. Okay. So Safety-Kleen had no concern that
05 increased benzene content of its parts-washing
06 solvent due to the presence of gasoline could
07 present a health hazard to its customers?

08 MR. WOOD: Objection. Misstates his
09 testimony. Assumes facts.

10 MS. FERGUSON: Argumentative.

11 THE WITNESS: That was not the intent of
12 this test or -- or the sensor. The concern was
13 safety associated with a flash point.

611, no question
non-response, object to
adding a different answer
to a different question

14 BY MR. DUPONT:

15 Q. Independent of this test and this
16 memorandum, is it your testimony that Safety-Kleen
17 was not concerned with the health and safety of its
18 customers from increased exposure to benzene caused
19 by gasoline contamination in its parts-washing
20 solvent?

21 MS. FERGUSON: Same objections.

22 MR. WOOD: Same objections.

23 THE WITNESS: That's a -- that's really a
24 -- a strange statement for you to even ask that
25 question. We had great concern over the health and

0

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 116

01 safety of our customer. And -- and certainly,
02 anything which affected that, we had great concern
03 for it.

04 BY MR. DUPONT:

05 Q. Okay. So was Safety-Kleen concerned that
06 increased benzene content of its parts-washing
07 solvent occurred as a result of gasoline
08 contamination?

09 MR. WOOD: Same objections.

10 THE WITNESS: Anything which affected the
11 quality of the product or the safety of the
12 customer, we had concern for.

13 BY MR. DUPONT:

14 Q. And did Safety-Kleen recognize that
15 gasoline in its mineral spirits not only increased
16 the benzene content but increased the risk of
17 contracting cancer from exposure to benzene amongst
18 its customers?

19 MR. WOOD: Objection. Assumes facts.
20 Lacks foundation. Requires expert testimony.
21 Incomplete hypothetical.

22 (Reporter interruption for clarification.)

23 MR. WOOD: Yeah. Gosh, I hope I can.

24 Assumes facts. Lack of proper foundation.
25 Calls for speculation. Requires expert testimony

Breece, James

Rhyme Trial Master

Page 117

01 and -- and is an incomplete hypothetical.

02 THE WITNESS: I wouldn't reach that
03 conclusion at all. The fact that gasoline itself
04 is not classified as a carcinogen, even though it
05 may contain a couple percent of benzene, and -- and
06 then to compare that with something at less than --
07 significantly less than 50 parts per million and
08 conclude now -- now that that's a benzene causation
09 is a leap of faith that I won't make and no one at
10 Safety-Kleen would make that -- that sort of
11 assessment.

12 BY MR. DUPONT:

13 Q. Okay. So Safety-Kleen didn't have any
14 concern that its customers --

15 A. No. No, that isn't what I said. I said
16 we had ultimate concern for the well-being of the
17 customer and the safety of the customer. And --
18 and to -- to convolute that in that direction is
19 not -- is not representative of what we were doing.

20 Q. All right. I just want to ask: Did
21 Safety-Kleen have a concern that its customers
22 would have greater exposure to a carcinogen if its
23 parts-washing solvent was contaminated with
24 gasoline?

25 MR. WOOD: Objection. Assumes facts.

Breece, James

Rhyne Trial Master

Page 118

01 Lacks foundation. Calls for speculation. Seeking
02 expert opinion and is an incomplete -- incomplete
03 hypothetical.

04 MS. FERGUSON: It's also argumentative.

05 THE WITNESS: I -- I don't think I can
06 answer that question.

07 BY MR. DUPONT:

08 Q. Did Safety-Kleen have a concern that its
09 customers' risk of contracting cancer would be
10 greater due the greater amounts of benzene in its
11 parts-washing solvent from gasoline contamination?

12 MR. WOOD: Same objection. Assumes facts.
13 Lack of foundation. Calls for speculation and
14 expert opinion. Incomplete hypothetical.

15 THE WITNESS: Ask -- ask the question
16 again, please.

17 BY MR. DUPONT:

18 Q. Sure. Was Safety-Kleen concerned that its
19 customers, through using a parts-washing solvent
20 contaminated with gasoline and therefore greater
21 amounts of benzene, would have a greater risk for
22 contracting cancer from those exposures?

23 MR. WOOD: Same objections.

24 THE WITNESS: Let me state what -- what
25 our position was. We didn't want additional

Breece, James

Rhyme Trial Master

Page 119

01 benzene contamination as a result of gasoline
02 occurring, first of which for the flash point and
03 secondarily, for a adulteration of the mineral --
04 (Reporter interruption for clarification.)
05 THE WITNESS: Adulteration of the mineral
06 spirits fraction. But to conclude that before
07 benzene contamination from gasoline that that was a
08 -- that the parts-washer solvent was a carcinogen
09 or after the gasoline contamination was a
10 carcinogen is not a leap -- is a leap of faith that
11 I'm not going to take. Without knowing the
12 concentration, I don't think anyone can estimate
13 that.
14 BY MR. DUPONT:
15 Q. Has Safety-Kleen ever provided warning on
16 a material safety data sheet that its mineral
17 spirits product can cause cancer?
18 MS. FERGUSON: Same objections.
19 MR. WOOD: Objection. Lacks foundation.
20 Calls for speculation. Requires expert opinion.
21 MS. FERGUSON: Argumentative.
22 MR. WOOD: Argumentative.
23 THE WITNESS: Specifically under the state
24 of California, that's covered under Prop 65. And
25 so the answer is yes, for customers in -- in

Breece, James

Rhyne Trial Master

Page 120

01 California and -- initially and then eventually for
02 all material safety data sheets, that warning was
03 included.

04 BY MR. DUPONT:

05 Q. Was that warning put onto material safety
06 data sheets independent of Proposition 65? In
07 other words, did Safety-Kleen provide a warning
08 independent of Proposition 65 that its product
09 would cause cancer?

10 A. No, there's no evidence to that, and we
11 did not add that except as a result of the
12 requirements for Prop 65.

13 Q. When did the cancer warning first appear
14 on the Safety-Kleen material safety data sheet?

15 A. I believe that we were somewhat tardy in
16 the state of California in getting those out. And
17 I believe that first occurred for the 105 solvent
18 about 1988 or 1989.

19 And for the other products, it was later
20 on. We went through a phase of material safety
21 data sheets where there was one for California and
22 one for the rest of the United States. And then we
23 eventually consolidated them and made a universal
24 material safety data sheet. So it was dependent on
25 time frame.

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 121

01 Q. When did Safety-Kleen warn people outside
02 of California that exposure to its parts-washing
03 solvent could cause cancer?

04 MR. DUPONT: Objection. Assumes facts not
05 in evidence. Foundation.

06 THE WITNESS: I don't believe -- you're
07 going to have to redo that question for me. I
08 don't think I can answer it the way you asked it.

09 BY MR. DUPONT:

10 Q. Okay. When did Safety-Kleen warn people
11 outside of the state of California that exposure to
12 its parts-washing solvent could cause cancer?

13 MR. WOOD: Objection. Assumes facts.
14 Lacks foundation. Mischaracterizes warnings.

15 THE WITNESS: First of all, I disagree
16 with your premise that the benzene in the mineral
17 spirits causes cancer. That's the first problem
18 I've got. At the -- at the levels of exposure you
19 would expect, I'm not in agreement with that.

20 And secondarily, those warnings were
21 consistent with what was required for the state of
22 California as expressed as part of Prop 65.

23 MR. DUPONT: Objection. Move to strike.
24 Nonresponsive.

25 BY MR. DUPONT:

Assumes facts not in evidence: that Safety-Kleen causes cancer; Argumentative; and Lacks Foundation

Breece, James

Rhyne Trial Master

Page 122

01 Q. So my question really was only: When did
02 Safety-Kleen warn users of its products outside of
03 the state of California that the parts-washing
04 solvent could cause cancer?

05 MR. WOOD: Objection. Objection. Assumes
06 facts. Lacks foundation. Argumentative.

07 MS. FERGUSON: Asked and answered.

08 THE WITNESS: The pro- -- let me answer
09 the question this way, which is -- which I'd like
10 to move on, and I'm sure you would as well. The
11 consistent use of the Prop 65 warning occurred on
12 Safety-Kleen materials safety data sheets mid '90s
13 is -- is when that occurred. But it was only Prop
14 65.

15 BY MR. DUPONT:

16 Q. Dr. Breece, I'm handing you a document
17 that has been marked as Exhibit 8.

18 (Plaintiffs' Exhibit 8 marked
19 for identification.)

20 MR. WOOD: Same objections on potential
21 confidentiality. This document doesn't indicate
22 what case this is from. It just has a Plaintiffs'
23 Exhibit 46 sticker on it.

24 BY MR. DUPONT:

25 Q. Dr. Breece, do you recognize this to be a

401, 402 irrelevant
evidence is
inadmissible:
Proposition 65 is
unique to California
and has no relevance
to products in North
and South Carolina.

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 123

01 document from Safety-Kleen Corporation's records?

02 A. Yes.

03 Q. And it's an April 1, 1976 memorandum from
04 Greg Hooper to all branch managers and sales
05 representatives at Safety-Kleen?

06 A. It is, yes.

07 Q. Who was Greg Hooper?

08 A. He was the manager of advertising.

09 Q. And Mr. Hooper is distributing a brochure
10 titled the "Read Carefully Brochure"?

11 A. Yes.

12 Q. Okay. And this brochure advertises that
13 Safety-Kleen parts washers are safe and have been
14 approved for shop use by many city and state
15 agencies including the New York Fire Department and
16 the Los Angeles Department of Buildings and Safety?

17 A. Yes, that's what's written here.

18 Q. And if you look to the second page of the
19 brochure, there's a Section C where Safety-Kleen
20 represents that Safety -- Safety-Kleen solvent is,
21 by definition, considered only slightly toxic to
22 relatively nontoxic?

23 A. Yes.

24 Q. And this was a brochure that was actually
25 distributed to Safety-Kleen customers?

Breece, James

Rhyne Trial Master

Page 124

01 A. Yes, it appears that way.

02 Q. Okay. And we can agree, sir, that benzene
03 is toxic, correct?

04 MS. FERGUSON: Objection. Calls for
05 expert opinion testimony. Incomplete hypothetical.

06 MR. WOOD: Lacks foundation and calls for
07 speculation.

08 MS. KAHN: Join in all objections.

09 THE WITNESS: Without doubt pure benzene
10 is toxic. I'm not in agreement that parts-washer
11 solvent with low levels of benzene is toxic nor
12 carcinogenic.

13 BY MR. DUPONT:

14 Q. When benzene leaves a solvent such as
15 mineral spirits, it's the same benzene as when it
16 leaves pure benzene, right?

17 MR. WOOD: Assumes facts. Calls for
18 speculation. Lacks foundation. Beyond the scope
19 of the deposition. Calls for expert testimony.

20 THE WITNESS: Yes, a molecule is a
21 molecule.

22 BY MR. DUPONT:

23 Q. All right.

24 (Plaintiffs' Exhibit 9 marked
25 for identification.)

Breece, James

Rhyne Trial Master

Page 125

01 MR. WOOD: Same objections to the use of
02 the document. Plaintiffs -- it's marked
03 Plaintiffs' Exhibit 642. Doesn't indicate what
04 case it's from or provide any basis for the
05 foundation of the document.

06 BY MR. DUPONT:

07 Q. Dr. Breece, you've been handed Exhibit 9,
08 which is an October 20, 1980 Safety-Kleen
09 Corporation interoffice communication from Ted
10 Miller to Dave Dattilo?

11 A. Yes.

12 Q. All right. Have you seen this document
13 before?

14 A. I have.

15 Q. All right. And this is a document that
16 came from Safety-Kleen's business records?

17 A. I'm assuming so. That's its origin.

18 Q. All right. And this is on Safety-Kleen
19 Corporation correspondence memorandum -- strike
20 that.

21 It's a document on Safety-Kleen
22 Corporation interoffice communication letterhead?

23 A. Yes, it is.

24 Q. And is this the type of communications
25 that Safety-Kleen Corporation employees exchange

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 126

01 with each other in the ordinary course of and in
02 furtherance of Safety Kleen's business?

03 (Reporter interruption for clarification.)

04 MR. DUPONT: In furtherance of
05 Safety-Kleen's business.

06 THE WITNESS: At this point in time, that
07 is correct. This is one of the mechanisms for
08 conveying information back and forth within the
09 company.

10 BY MR. DUPONT:

11 Q. All right. And were you familiar with Ted
12 Miller from Safety-Kleen?

13 A. Very familiar.

14 Q. Who was Ted Miller?

15 A. He was a -- at this point in time, he was
16 the recycle center -- he was the manager of recycle
17 operations. All in the recycling plants reported
18 to Ted.

19 Q. And who was Dave Dattilo?

20 A. Dave Dattilo was senior vice president of
21 sales.

22 Q. And does Mr. Miller write to the senior
23 vice president of sales that: "In the past several
24 months, there have been a number of occurrences
25 which indicate that we are on the verge of losing

401, 402
Irrelevant
evidence is not
admissible:
Benzene is not
mentioned once
in the document
(131:16-132:1).
Containments
named are
paints, inks, and
fatty substances
(130:21-131:13).
None of which
Plaintiffs allege
exposure to.
Inadmissible
Hearsay

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 127

01 control of the quality of our spent solvent
02 supply"?

03 A. Yes, that's -- that's his first sentence.

04 Q. Does he continue to write that: "All five
05 recycle centers have reported that the incoming
06 spent solvent is getting worse each period"?

07 MR. WOOD: Objection. The document speaks
08 for itself.

09 THE WITNESS: Yes.

10 BY MR. DUPONT:

11 Q. And part of the problem, as we read
12 through in memo, is that branch managers and
13 Safety-Kleen employees are acquiring drums of
14 solvent from their customers without necessarily
15 knowing what's in the drums; is that correct?

16 A. I don't -- I haven't caught that in -- in
17 this memo, but that's consistent with what Ted was
18 saying at this point in time.

19 Q. And then Mr. Miller writes that: "For
20 each branch manager that calls us" -- I'm talking
21 about to inquire about to do with a drum of spent
22 solvent -- "there are probably several that have
23 taken it upon themselves to help a customer and
24 their own solvent inventory recovery by hauling and
25 dumping drums of solvent without knowing for

401, 402
irrelevant
evidence is not
admissible:
Benzene is not
mentioned once in
the document
(131:16-132:1).
Containments
named are paints,
inks, and fatty
substances
(130:21-131:13).
None of which
Plaintiffs allege
exposure to.
Inadmissible
P say

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 128

401, 402
irrelevant
evidence is not
admissible:
Benzene is not
mentioned or in
the document
(131:16-132:1).
Containments
named are paints,
inks, and fatty
substances
(130:21-131:3).
None of which
Plaintiffs allege
exposure to.
Inadmissible
Hearsay

01 certain if the liquid is compatible or even safe to
02 mix with our solvent."

03 MR. WOOD: Objection. The document will
04 speak for itself.

05 THE WITNESS: Yeah, that's -- that's
06 what's written here.

07 BY MR. DUPONT:

08 Q. Turn to the second page of the document.
09 Does Mr. Miller write in the second paragraph:
10 "Solvent contamination can quickly reach large
11 scale proportions. The spent solvent received from
12 our service centers is mixed with solvent from
13 other centers and so any contamination from one
14 soon becomes widespread"?

15 MR. WOOD: Same objection. The document
16 will speak for itself.

17 THE WITNESS: Yeah, that's -- that's --
18 that's what's written.

19 BY MR. DUPONT:

20 Q. And Mr. Miller indicates that: "One bad
21 load can foul a whole tank," talking a Safety-Kleen
22 solvent?

23 A. Yes.

24 Q. And he continues to write that: "Dilution
25 is not the solution to pollution."

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 129

01 Do you see that?

02 A. I don't see it, but that's consistent with
03 what Ted would say.

04 Q. Okay. If you look to -- to Page 2, the
05 last sentence of the -- of the second paragraph,
06 does Mr. Miller write: "Dilution is not the
07 solution to pollution"?

08 A. I've personally heard him saying that, so
09 it doesn't surprise me. I -- I'm not looking for
10 it, but that's consistent with Ted.

11 Q. Okay. And if you look to the bottom of
12 this page, Mr. Miller continues to write that:
13 "There are hundreds of truly hazardous and toxic
14 chemicals in widespread use which, if mixed in very
15 small amounts in our solvent, could endanger the
16 safety and health of unsuspecting customers and
17 Safety-Kleen employees and result in substantial
18 cost to our company"?

19 MR. WOOD: Objection. Document speaks for
20 itself.

21 THE WITNESS: Yes, that's what he said.

22 BY MR. DUPONT:

23 Q. If you turn to the third page of the
24 document, in the last full paragraph, does
25 Mr. Miller write that: "With each passing week,

401, 402
irrelevant
evidence is not
admissible:
Benzene is not
mentioned once in
the document
(131:16-132:1).
Containments
named are paints,
inks, and fatty
substances
(130:21-131:13).
None of which
Plaintiffs allege
exposure to.
Inadmissible
Hearsay

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 130

401, 402
irrelevant
evidence is not
admissible:
Benzene is not
mentioned once
in the document
(131:16-132:1).
Containments
named are paints,
inks, and fatty
substances
(130:21-131:13).
None of which
Plaintiffs allege
exposure to.
Inadmissible
Hearsay

01 more indications of indiscriminate solvent pickup
02 practices are surfacing. More evidence of the
03 decaying quality of our spent solvent is received"?

04 MR. WOOD: Objection. The document speaks
05 for itself.

06 THE WITNESS: Yes, that's what he's
07 written.

08 BY MR. DUPONT:

09 Q. And benzene and gasoline and benzene and
10 other solvents certainly was one of the
11 contaminants that was getting into Safety-Kleen's
12 part-washing solvent stream?

13 MR. DUPONT: Objection. Assumes facts.
14 Foundation. Calls for speculation. Overly broad.
15 Requires --

16 MS. KAHN: Join.

17 MR. WOOD: It's a -- or it's an incomplete
18 -- incomplete hypothetical.

19 MS. KAHN: Join.

20 MR. WOOD: Sorry.

21 THE WITNESS: Having been involved
22 specifically and working with Ted Mueller at the --
23 at this point and aware of the problem, his concern
24 was -- was predominantly of fouling of equipment
25 due to paint, mineral-spirits-based paint material

BREECE, JAMES -
(JOHNSON) VOL 1

611, no question, non-responsive, object to combining a different answer to
a different question

Transcript of Breece, James

Breece, James

Rhyne Trial Master

611, no question, non-responsive, object to adding a different answer to a different question
Page 131

01 included in the stream and was shutting down the
02 equipment. And he couldn't produce the volumes he
03 needed.

04 He had an overall intrinsic concern for
05 other things, but the -- the concern at hand was
06 specifically materials which fouled the stills that
07 didn't allow proper distillation to occur. That
08 was the interest -- his major interest when this
09 was occurring.

10 BY MR. DUPONT:

11 Q. Okay.

12 A. I was there personally. That's firsthand
13 information. I was there.

14 MR. DUPONT: Objection. Move to strike.

15 BY MR. DUPONT:

16 Q. My question was, though: Benzene, we can
17 agree, was one of the contaminants that was getting
18 into the Safety-Kleen parts-washing solvent stream
19 through gasoline and other solvents, correct?

20 MS. KAHN: Objection. Overbroad. Calls
21 for an expert opinion. Incomplete hypothetical.
22 Vague and ambiguous.

23 MR. WOOD: Join in that one, all those.

24 THE WITNESS: I don't think Ted even
25 mentions that in here. I don't think that's even

Breece, James

Rhyne Trial Master

Page 132

01 mentioned in his memo.

02 BY MR. DUPONT:

03 Q. Okay. But you were aware during your time
04 at Safety-Kleen that benzene was being introduced
05 to parts-washing stream through customer usage of
06 products?

07 MR. WOOD: Objection. Assumes facts.
08 Lack of foundation. Calls for speculation, expert
09 opinion, and is an incomplete hypothetical.

10 MS. KAHN: I join.

11 THE WITNESS: I was not aware of direct
12 contamination of 105 solvent by benzene alone. I
13 was aware of gasoline contamination of the product
14 since we were servicing automotive customers, which
15 might con- -- contain in some concentration
16 benzene.

17 So saying that it was benzene
18 contamination is a misrepresentation of the fact.
19 We were concerned about gasoline contamination
20 which did contain benzene.

21 BY MR. DUPONT:

22 Q. Okay.

23 A. And that's the proper statement.

24 Q. All right. So gasoline got into the
25 Safety-Kleen parts-washing solvent, and with the

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 133

01 gasoline, benzene got in there, correct?

02 MR. WOOD: Same objection. Lacks
03 foundation. Calls for speculation. Incomplete
04 hypothetical and assumes facts.

05 THE WITNESS: Repeat the question, please.

06 BY MR. DUPONT:

07 Q. You were aware that gasoline got into the
08 Safety-Kleen parts-washing solvent stream, and
09 along within the gasoline came benzene that
10 contaminated the Safety-Kleen parts-washing stream?

11 MR. WOOD: Same objections plus vague and
12 overly broad.

13 THE WITNESS: Yes, I -- I was aware of --
14 of the possibility of -- of benzene contamination
15 via gasoline in the parts cleaner since we were
16 servicing a lot of automotive applications, yes.

17 BY MR. DUPONT:

18 Q. Okay.

19 MR. WOOD: Andrew, if you're going to
20 start something new, is it all right if we break
21 now?

22 MR. DUPONT: Sure.

23 MR. WOOD: Okay.

24 THE VIDEOGRAPHER: This is the end of
25 Video Number 3 -- excuse me -- Number 4. Oh, I'm

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 134

01 sorry. 3. The time is 1:56. We're off the
02 record.

03 (Break taken.)

04 THE VIDEOGRAPHER: This is the beginning
05 of Video Number 4 in the deposition of Dr. Breece.
06 The time is 2:11 p.m. We're back on the record.

07 (Plaintiff's Exhibit 10 marked
08 for identification.)

09 BY MR. DUPONT:

10 Q. Okay. Dr. Breece, I'm handing you a
11 document that I marked as Exhibit 10.

12 MR. WOOD: Same objections to the
13 document.

14 BY MR. DUPONT:

15 Q. Have you seen this document before?

16 A. Yes, I have.

17 Q. In what context have you seen this before?

18 A. Historical record dating back to when I
19 initially came to work at Safety-Kleen in '79.

20 Q. And this is a document from Safety-Kleen's
21 business records?

22 A. Yes. It -- it was generated by Dean
23 Hufsey with supporting promatographic (phonetic)
24 scan on the back as well.

25 Q. And is this a letter that Mr. Hufsey sent

Breece, James

Rhyne Trial Master

Page 135

01 to a customer of Safety-Kleen's?

02 A. I doubt this is a letter that actually got
03 sent. This is a copy of -- of correspondence that
04 would be sent. It's not addressed to anyone, so I
05 don't think this went out to anyone in particular.
06 But it's something that could have been sent to
07 customers.

08 Q. Okay. So the purpose of this letter --
09 the first line says: "This is in response to your
10 inquiry requesting information about the benzene
11 content of Safety-Kleen 105."

12 Do you see that?

13 A. Yes.

14 Q. And was this letter intended to be sent to
15 Safety-Kleen customers who had inquired about the
16 benzene content of the 105 product?

17 A. It's my interpretation that was its
18 intent.

19 Q. All right. And was this text of the
20 letter -- and it is signed by L. Dean Hufsey,
21 correct?

22 A. Yes.

23 Q. And was this text of the letter actually
24 used in letters that went out to Safety-Kleen
25 customers?

Breece, James

Rhyne Trial Master

Page 136

01 A. I believe it was.

02 Q. All right. And in the text of the letter,
03 it represents to customers that Safety-Kleen does
04 not use benzene as one of the ingredients in its
05 product?

06 MR. WOOD: Objection. The document --

07 THE WITNESS: Well, it actually doesn't --

08 MR. WOOD: -- speaks for itself.

09 THE WITNESS: Yeah. Actually, it doesn't
10 say that. It says is not one of the ingredients
11 added to our solvent.

12 BY MR. DUPONT:

13 Q. Okay. So what it -- what it's saying is
14 that benzene is not one of the ingredients added to
15 Safety-Kleen 105 solvent?

16 A. That's what it says.

17 Q. And then it goes on to say that:

18 "Safety-Kleen continuously monitors the composition
19 of the solvent sent to our customers"; is that
20 correct?

21 A. Yes.

22 Q. Safety-Kleen, as of 1977, wasn't
23 monitoring the benzene content of the Safety-Kleen
24 105 solvent product, was it?

25 MR. WOOD: Objection. Assumes facts.

Breece, James

Rhyne Trial Master

Page 137

01 Lacks foundation. Calls for speculation.

02 THE WITNESS: Repeat the question, please.

03 BY MR. DUPONT:

04 Q. Sure. Was Safety-Kleen monitoring the
05 benzene content of the 105 solvent as of 1977?

06 MR. WOOD: Same objections.

07 THE WITNESS: Only through inference
08 associated with -- with flash point. But a
09 specific analytical test, we did not have that
10 capability.

11 BY MR. DUPONT:

12 Q. Okay. If you look to the second page of
13 the document, there's results from gas
14 chromatograph testing. And it's dated March 24,
15 1977.

16 A. Yes.

17 Q. Does that indicate to you that this letter
18 is from March of 1977 or thereabouts?

19 MR. WOOD: Objection -- sorry. Sorry to
20 interrupt. Objection. Calls for speculation.
21 Foundation.

22 THE WITNESS: The chromatogram is from
23 1977, but I don't know the date of the letter.

24 BY MR. DUPONT:

25 Q. Do you expect that the letter was dated at

Breece, James

Rhyne Trial Master

Page 138

01 approximately the same time that this gas
02 chromatogram results were generated?

03 A. I --

04 MR. WOOD: Objection. Foundation.

05 THE WITNESS: I have no knowledge of
06 exactly the correlation.

07 MR. WOOD: Calls for speculation.

08 (Reporter interruption for clarification.)

09 MR. WOOD: Lack of foundation. Calls for
10 speculation.

11 (Plaintiffs' Exhibit 11 marked
12 for identification.)

13 BY MR. DUPONT:

14 Q. Okay. Handing you a document I marked as
15 Exhibit 11, does that appear to be a December 30,
16 1987 letter from Hyman Bielsky, associate counsel
17 for Safety-Kleen to a Neal Eisenberg?

18 A. Yes.

19 Q. And have you seen this letter before?

20 A. Yes, I have.

21 Q. And this letter came from Safety-Kleen's
22 business records?

23 A. It would have, yes.

24 Q. And is it your understanding that Neal
25 Eisenberg was representing a individual that had

Breece, James

Rhyne Trial Master

Page 139

01 been exposed to Safety-Kleen 105 solvent and
02 contracted injury?

03 MR. WOOD: Objection. Assumes facts.
04 Foundation.

05 THE WITNESS: At the time I initially saw
06 this, I wasn't aware of the underlying facts behind
07 it, but subsequently, I learned that.

08 BY MR. DUPONT:

09 Q. Okay. And, in fact, Mr. Eisenberg
10 represented James and Karen Junker who were some of
11 the individuals that contracted leukemia -- well,
12 strike that.

13 It was either James or Karen Junker
14 contracted leukemia from Safety-Kleen 105 solvent?

15 MS. FERGUSON: Allegedly?

16 MR. WOOD: Objection. Assumes facts.

17 THE WITNESS: Yes, we never agreed that
18 that was caused -- it's an alleged causation. We
19 never agreed to that.

20 BY MR. DUPONT:

21 Q. In this letter Mr. Bielsky writes to
22 Mr. Eisenberg that Safety-Kleen does not contain
23 benzene -- Safety-Kleen 105 solvent does not
24 contain benzene; is that correct?

25 A. This is why you don't allow attorneys to

Assumes facts
not in evidence:
P' iff
i presents
mere allegations
as facts

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Inadmissible Hearsay: statements in an external letter
being offered for the truth of what is asserted
701 lay opinion based on scientific knowledge: Mr.
Bielsky was an attorney, not a chemist capable of writing
a technical document on the chemical composition of
Safety-Kleen 105 solvent (139:25-140:1).

Breece, James

Rhyne Trial Master

Page 140

01 write technical documents.

02 Q. Nonetheless, Mr. Bielsky, Safety-Kleen's
03 attorney, stated in this letter to Mr. Eisenberg
04 that Safety-Kleen 105 solvent does not contain
05 benzene, correct?

06 A. He did. And within a few days of this, he
07 sees me in the hall and he asks me, "Doc, does
08 Safety-Kleen 105 solvent contain benzene?"

09 And I said, "Yes."

10 And he said, "I just perjured myself."

11 So we're aware that he made a mistake. He
12 felt really bad about it. But he had no
13 background, and the information he had was not
14 correct. So it's -- and I can pound attorneys at
15 this stage for -- attorneys shouldn't write this
16 kind of letter. Even though it's to an attorney,
17 an attorney shouldn't write it.

18 (Plaintiffs' Exhibit 12 marked
19 for identification.)

20 MR. WOOD: Regarding exhibit marked
21 Plaintiff Exhibit 4 -- 12 to the deposition of Jim
22 Breece, same objection to these -- the document and
23 same reservation of rights and reserve
24 confidentiality.

25 BY MR. DUPONT:

Inadmissible
Hearsay:
801(d)(2)
inapplicable as
Mr. Bielsky was
not speaking as
a representative
of Safety-Kleen.
Also, statement
was made in
jest, as Mr.
Bielsky was not
under oath when
drafting the
letter.

611, non-responsive

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyme Trial Master

Page 141

01 Q. Dr. Breece, is this a February 26, 1988
02 letter that Safety-Kleen prepared for distribution
03 to its customers?

04 A. Yes.

05 Q. And does this letter state in the first
06 sentence that: "For almost two decades,
07 Safety-Kleen has been providing customers with a
08 parts cleaner service that makes the job of
09 cleaning metal parts easier and safer for thousands
10 of users throughout the world"?

11 A. Yes.

12 Q. By 1988, had Safety-Kleen tested how much
13 benzene exposure an individual using Safety-Kleen
14 parts-washing solvents sustained?

15 MR. WOOD: Objection. Overly broad.
16 Assumes facts. Calls for speculation. Lacks
17 proper foundation.

18 THE WITNESS: If you recall my earlier
19 deposition, I stated it during the '80s until
20 approximately 1989 we only had grab samples
21 indicating concentration of benzene contained in
22 105 solvent. So we didn't have a -- an existing
23 test and, obviously, coming out of this, we
24 recognized we have to be responsive and provide
25 routine analytical basis for our products. We

BREECE, JAMES -
(JOHNSON) 1-28-14
PLF Designations

Transcript of Breece, James

Tuesday, September 1, 2020

Breece, James

Rhyne Trial Master

Page 142

01 didn't suspect a -- health issues, but we thought
02 it was prudent from a technical and from a business
03 perspective to know the concentration.

04 BY MR. DUPONT:

05 Q. Okay. I guess my question was a little
06 bit different, though. By 1988, had Safety-Kleen,
07 either itself, conducted or hired anyone else to
08 conduct an air monitoring study to determine how
09 much benzene exposure the user of its parts-washing
10 solvent sustained?

11 MR. WOOD: Objection. Assumes facts.
12 Lacks foundation. Overbroad.

13 THE WITNESS: At this point in time, we
14 had performed internal tests that were monitored by
15 NATLESCO which determined --

16 (Reporter interruption for clarification.)

17 THE WITNESS: NATLESCO, N-A-T-L-E-S-C-O,
18 all caps.

19 BY MR. DUPONT:

20 Q. Was that -- was that of 1988?

21 A. Yes, this had -- was prior to 1988.

22 Q. And were those studies that were actually
23 placing a monitor on a person using parts-washing
24 solvent or were those area studies that tested the
25 air around the solvent machine when nobody was

Breece, James

Rhyne Trial Master

Page 143

01 actually using it?

02 A. I can't be sure of the exact details of
03 that. My recollection is that it was monitoring
04 the air around as a person that was actually using
05 it. No, it was not monitoring badges, but
06 monitoring the air around the parts cleaner.
07 That's my recollection of it.

08 (Sneezes.)

09 MR. DUPONT: Bless you. Bless you.

10 BY MR. DUPONT:

11 Q. Hand you a document that's marked as
12 Exhibit 13.

13 MS. FERGUSON: 14.

14 MR. DUPONT: 13.

15 MR. WOOD: Yeah, 13.

16 MS. FERGUSON: Wasn't the last one 13?

17 MR. DUPONT: Last one was 14 -- excuse
18 me -- 12.

19 THE WITNESS: Yeah.

20 (Plaintiffs' Exhibit 13 marked
21 for identification.)

22 BY MR. DUPONT:

23 Q. Doctor, you've been handed Exhibit 13.
24 Can you identify what that is?

25 A. It's a training topic conducted by

Breece, James

Rhyne Trial Master

Page 144

01 Safety-Kleen internally for training of its branch
02 and sales personnel about answering customer
03 questions from -- I was looking for a date. I --
04 I'm not sure of the exact date on this.

05 Q. So this was training provided by
06 Safety-Kleen to its own employees?

07 A. That's correct.

08 Q. And was the purpose of this training so
09 that Safety-Kleen employees could, in turn, pass on
10 information to Safety Kleen's customers?

11 A. That was its intent, to ensure that they
12 were responding properly and -- and able to address
13 the concerns and, if necessary, where to go with --
14 to find answers to their questions.

15 Q. Does this training advise the Safety-Kleen
16 employee that there is a known human carcinogen in
17 Safety-Kleen parts-washing solvents?

18 MR. WOOD: Objection. Assumes facts.
19 Overbroad and vague. Lacks foundation.

20 MS. KAHN: Join.

21 MR. WOOD: The document speaks for itself.

22 MS. KAHN: Join.

23 THE WITNESS: You -- you continue to use a
24 human carcinogen as if mineral spirits itself, in
25 total, is a carcinogen. That isn't the case.

Breece, James

Rhyme Trial Master

Page 145

01 We've -- we've agreed -- I've agreed routinely that
02 pure benzene is a carcinogen.

03 I am not agreeing in any form or fashion
04 that the mineral spirits is a carcinogen.

05 BY MR. DUPONT:

06 Q. My question is: Has Safety-Kleen, in this
07 document or any other document, trained its
08 employees to know that there is a known human
09 carcinogen, benzene, in its mineral spirits
10 products?

11 MR. WOOD: Same objection. Assumes facts.
12 Vague. Overbroad.

13 MS. FERGUSON: Asked and answered.

14 MR. WOOD: Asked and answered.

15 MS. FERGUSON: Argumentative.

16 THE WITNESS: Why -- why would that kind
17 of information be provided when the product has
18 been tested as a whole in terms of its
19 carcinogenicity? Why would we do that?

20 BY MR. DUPONT:

21 Q. Why would you tell your employees that
22 benzene is in your mineral spirits products and
23 benzene is a known human carcinogen?

24 MS. FERGUSON: Objection.

25 THE WITNESS: Yes, why would we do that

Breece, James

Rhyne Trial Master

Page 146

01 when the product itself has been tested as a whole?

02 BY MR. DUPONT:

03 Q. Okay. Did you consider that your
04 customers might want to know that there is a
05 carcinogen in the product that you are providing
06 them to use?

07 MR. WOOD: Objection. Asked and answered.
08 Argumentative.

09 THE WITNESS: I'm --

10 MR. WOOD: It calls for --

11 THE WITNESS: I'm done.

12 MR. WOOD: Calls for speculation. Lacks
13 foundation.

14 BY MR. DUPONT:

15 Q. I'm sorry?

16 A. I'm done. I can't answer it beyond what I
17 have.

18 Q. Okay. You look to the exhibit?

19 A. I believe I did, yeah.

20 Q. The second paragraph of this document
21 states: "Probably the most frequent question asked
22 is: 'What exposure concentration am I and my
23 employees being exposed to while using a gun
24 cleaner, parts washer, sandblaster or COMS'" -- I
25 believe that's customer-owned machine service unit?

Breece, James

Rhyne Trial Master

Page 147

01 A. Uh-huh.

02 Q. "Filled with Safety-Kleen products?"

03 Do you see that?

04 A. I do.

05 Q. Okay. And it continues to say that:

06 "When a customer asks you this question, he has a
07 genuine concern for his health and the safety of
08 his employees. However, even though he is aware of
09 recent change in the law, OSHA, he doesn't
10 necessarily understand exposures and how they
11 occur"; is that correct?

12 MR. WOOD: Objection. The document can
13 speak for itself.

14 THE WITNESS: That's what's written.

15 BY MR. DUPONT:

16 Q. All right. Is it Safety Kleen's
17 expectation that its customers didn't understand
18 exposures to chemicals and how they occur?

19 MR. WOOD: Objection. Assumes facts.
20 Calls for speculation. Lack of foundation.

21 THE WITNESS: That Safety-Kleen -- repeat
22 the question, please.

23 BY MR. DUPONT:

24 Q. Sure. Is it Safety Kleen's understanding
25 that its employees didn't understand chemical

Breece, James

Rhyne Trial Master

Page 148

01 exposures and how they occur?

02 MR. WOOD: Objection. Mischaracterizes
03 the document. And that was a different question.

04 By MR. DUPONT:

05 Q. Strike that. I don't want to
06 mischaracterize anything, so I'll withdraw that
07 question --

08 A. Okay.

09 Q. -- and ask a different question.

10 A. All right. Sure.

11 Q. Did -- was it important to Safety-Kleen
12 that its customers didn't necessarily understand
13 exposures and how they occur?

14 MR. WOOD: Objection. Calls for
15 speculation. Assumes facts. Lack of foundation.

16 THE WITNESS: It was very important to
17 Safety-Kleen that our customers understand the
18 product and -- and how to properly use it, which
19 included the potential for exposure.

20 BY MR. DUPONT:

21 Q. Okay. Including the exposure to what was
22 ever in the product, correct?

23 A. Yes, and the product itself as well.

24 Q. All right. And did Safety-Kleen train its
25 employees to advise Safety-Kleen customers when

Breece, James

Rhyne Trial Master

Page 149

01 they received inquiries about exposure to
02 Safety-Kleen parts-washing solvents that yes, you
03 should know that there are carcinogens in our
04 parts-washing solvent?

05 MR. WOOD: Objection. Argumentative.
06 Assumes facts not in evidence. Lacks foundation.
07 Calls for speculation. Incomplete hypothetical.

08 THE WITNESS: Repeat the question again,
09 please.

10 BY MR. DUPONT:

11 Q. Sure. Were Safety-Kleen employees trained
12 to advise their customers when asked about exposure
13 to Safety-Kleen products that there's a carcinogen,
14 benzene, in Safety-Kleen parts-washing solvent?

15 MR. WOOD: Same objections.

16 THE WITNESS: Our salespeople veered
17 dramatically in education, and so they were trained
18 to respond to questions. And if there was a -- a
19 technical question which they were not equipped to
20 answer, the technical center offered a customer
21 hotline. If it was beyond the scope of what the
22 sales representative could answer, we had a chemist
23 at the tech center who would answer those
24 questions. So the answer is yes, we were very
25 concerned that the customer be informed.

Breece, James

Rhyne Trial Master

Page 150

01 Q. And if a customer was on the phone with a
02 tech center representative at Safety-Kleen and asks
03 about what they were being exposed to by using
04 Safety-Kleen parts-washing solvent, would that tech
05 center representative had told him yes, you were
06 sustaining benzene exposure and benzene is a
07 carcinogen?

08 A. We would have --

09 MR. WOOD: Objection. Assumes facts.
10 Argumentative.

11 THE WITNESS: The composition of the -- of
12 the Safety-Kleen parts-washer solvent would have
13 been given in detail to that customer.

14 BY MR. DUPONT:

15 Q. Including the benzene content?

16 A. Yes.

17 Q. And would the customer had been advised
18 that while using the Safety-Kleen parts-washing
19 solvent, they were exposed to a known human
20 carcinogen in benzene?

21 MR. WOOD: Objection. Assumes facts.
22 Argumentative. Lacks foundation.

23 THE WITNESS: I'm having trouble with your
24 question in that it's your assuming that it's the
25 full responsibility of -- of the service provider,

Breece, James

Rhyme Trial Master

Page 151

01 in this case Safety-Kleen, to provide all education
02 to the customer. We attempted to convey that
03 information through material safety data sheets.
04 But clearly, if you had detailed questions, you had
05 to go to someone who was technically inclined, not
06 -- not necessarily a sales rep.

07 But to specifically talk about, okay, you
08 have these materials in there and these are human
09 carcinogens, we -- we provided those materials to
10 the -- the -- the tech center who had full access
11 to the compositional information and to the
12 material safety data sheets.

13 So I think we did do that, maybe not in --
14 in a direct technique as where you said, "Okay. By
15 the way, I want to tell you that there's human
16 carcinogens in this." Compositional information
17 was provided, and the associated exposure data that
18 we had was provided.

19 BY MR. DUPONT:

20 Q. Okay. So you're saying that Safety-Kleen
21 customers were told by tech center representatives
22 if they called that there was benzene in the
23 product and that they would be exposed to benzene?

24 A. Yes, and if -- if that was the question,
25 "does this product contain benzene," we didn't make

Breece, James

Rhyne Trial Master

Page 152

01 the same mistake that the attorney made.

02 Q. Okay.

03 A. We told factually what the content was.

04 Q. And that tech center representative would
05 also tell the customer that they were exposed to
06 benzene when using a Safety-Kleen parts-washing
07 solvent?

08 MR. WOOD: Objection. Assumes facts.
09 Lacks foundation. Calls for speculation. It's an
10 incomplete hypothetical.

11 THE WITNESS: They -- they were given
12 exposure data which we had available in terms of
13 concentration in regard to the various components
14 in regard to the threshold limit values.

15 BY MR. DUPONT:

16 Q. And were the customers told that by using
17 the Safety-Kleen parts-washing solvents they were
18 at an increased risk for contracting cancer because
19 of the benzene in the solvent?

20 MR. WOOD: Objection. Argumentative.
21 Assumes facts not in evidence. Requires expert
22 opinion. Incomplete hypothetical. Beyond the
23 scope of this deposition.

24 THE WITNESS: Without knowing the exposure
25 levels that an employee might experience, we

Breece, James

Rhyne Trial Master

Page 153

01 couldn't know, with the number of customers we had,
02 every set of circumstances to say unequivocally
03 you're going to be exposed or you aren't. That is
04 the -- the customer's business. We weren't a
05 medical advisory group on -- on ventilation
06 requirements.

07 We provided good technical information,
08 but as far as -- as telling him, "Hey, you've
09 increased your risk of cancer," first of all, I
10 don't believe that's correct, since we don't know
11 concentration of exposure.

12 And secondarily, we don't know his
13 ventilation conditions as -- as well. One of the
14 things we would tell him, "If you have any doubt
15 about this, make sure you contact NIOSH, and we'll
16 get a full evaluation on what your exposure might
17 be." And they'll do that free of charge.

18 BY MR. DUPONT:

19 Q. Okay. So did Safety-Kleen tell its
20 customers that without knowing how much benzene
21 exposure you had from using our product, we don't
22 really know whether you're at risk for contracting
23 cancer?

24 MR. WOOD: Objection. Assumes facts.
25 Mischaracterizes the testimony. Lacks proper

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 154

01 predicate and foundation with this witness. It's
02 an incomplete hypothetical, and it's beyond the
03 scope of this deposition notice.

04 MS. FERGUSON: Argumentative.

05 THE WITNESS: I -- I don't think I can
06 answer that question. It's -- it's beyond the
07 scope of -- of the kind of discussion we'd have
08 either with a -- a chemist who was there to answer
09 customer questions or to provide that to customers.
10 So I'm not sure how else I answer your question.

11 BY MR. DUPONT:

12 Q. Who was Scott Fore?

13 A. He was the vice president of environmental
14 health and safety.

15 Q. Okay. And who is Corey Fishman?

16 A. Corey Fishman would have been in the --
17 I'm not sure of his exact job title. Corey did a
18 variety of things in operations, and I think later
19 -- later on in marketing.

20 (Reporter interruption for clarification.)

21 THE WITNESS: In marketing.

22 BY MR. DUPONT:

23 Q. From time to time, would Safety-Kleen have
24 label committee meetings?

25 A. Yeah. Oh, yes. I'm sorry.

Breece, James

Rhyne Trial Master

Page 155

01 Q. Okay. And did you participate in label
02 committee meetings?

03 MR. WOOD: Same running objection to the
04 use of this document.

05 THE WITNESS: Generally not.

06 BY MR. DUPONT:

07 Q. Okay. Scott Fore participate in labeling
08 committee meetings?

09 A. Generally not. He -- he would attend them
10 occasionally, but it was -- he was not a -- a -- a
11 -- a weekly or monthly. This label committee met
12 typically once a month. If you can look at the
13 dates, March 27th, April the 10th, April 24th.
14 This looks like about every two weeks, depending on
15 the -- the requirement need.

16 Q. Did the labeling committee report to Scott
17 Fore?

18 A. The labeling committee consisted of -- of
19 people from environmental health and safety,
20 marketing, technical information. I'm -- I'm not
21 sure I recall exactly who this label committee
22 reported to. I -- I'm not sure.

23 (Plaintiffs' Exhibit 14 marked
24 for identification.)

25 BY MR. DUPONT:

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 156

01 Q. Okay. The labeling committee in this
02 memorandum that's been marked as Exhibit 14, dated
03 April 25, 1990, is providing information to Scott
04 Fore; is that correct?

05 A. Yes, it is.

06 Q. And the memos on the first page is
07 addressed from Corey Fishman, but then on the
08 signature block, it says "the labeling committee"?

09 A. Yeah.

10 Q. Okay. Is that correct?

11 A. Yes, it is.

401, 402 irrelevant
evidence is not
admissible: the
document does not
discuss benzene,
but focuses entirely
on
tetrachloroethylene,
which Plaintiffs do
not allege exposure
to.

602, 701 lack of
personal
knowledge, witness
did not attend these
meetings (155:1-5).
Inadmissible
Hearsay

12 Q. All right. And one of the things that's
13 discussed in -- in this memorandum was a issue
14 raised that the labeling committee meetings of
15 March 27, April 10, and April 24, which is the
16 label of the Safety-Kleen parts-cleaning machine,
17 parts-washing machine?

18 A. Right.

19 Q. And it indicates that one of our major
20 concerns on the proposed parts cleaner label is the
21 health hazard warning section that lists the
22 contents of our parts cleaning solvent; is that
23 correct?

24 A. Yes. Uh-huh.

25 Q. All right. And the labeling committee

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 157

01 goes on to indicate that: "This section includes
02 tetrachloroethylene, a contaminant which is listed
03 by the IARC and NTP as a suspected carcinogen."

04 A. Yes.

05 Q. And then the labeling committee continues
06 to write that: "We feel that this information
07 could be detrimental to our sales marketing
08 efforts. We have already heard about major parts
09 cleaner customers that have given us, quote, the
10 boot, when the new material safety data sheet was
11 sent out. Another concern is the potential
12 liability suit of anyone who develops cancer who
13 has ever worked with our solvent."

14 Do you see that?

15 A. Yes, I do.

16 Q. Are you aware that Safety-Kleen
17 Corporation was concerned that providing a cancer
18 warning on its product label would deter sales of
19 the product?

20 MR. WOOD: Objection. Vague. Assumes
21 facts. Lacks foundation.

22 THE WITNESS: Yes, this was a marketing
23 concern, and you note the material safety data
24 sheet which I had responsibility for already
25 contained that. And they were chafing under the --

401, 402 irrelevant
evidence is not
admissible: the
document does not
discuss benzene,
but focuses entirely
on
tetrachloroethylene,
which Plaintiffs do
not allege exposure
to.
602, 701 lack of
personal
knowledge, witness
did not attend these
meetings (155:1-5).
Inadmissible
Hearsay

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 158

01 the instructions I'd given -- given them to include
02 that.

03 BY MR. DUPONT:

04 Q. Okay.

05 A. So they got slapped down for this.

06 Q. All right.

07 A. End of discussion.

08 Q. They got slapped down for it?

09 A. Yeah.

10 Q. What do you mean by that?

11 A. Told them put it on there and shut up. Is
12 that close enough? We're putting the warning --
13 we're warning them, and we're putting it on the
14 label and be done with it. It's on the MSDS, and
15 that's it. And that's as close to a slapdown that
16 you get in the business world.

17 Q. Okay.

18 (Plaintiffs' Exhibit 15 marked
19 for identification.)

20 BY MR. DUPONT:

21 Q. I'll hand you a document that's been
22 marked as Exhibit 15.

23 MR. WOOD: Same running objection as to
24 the use of this document.

25 BY MR. DUPONT:

Breece, James

Rhyne Trial Master

Page 159

01 Q. Dr. Breece, are you familiar with this
02 document?

03 A. I can't honestly say that I recall whether
04 I was or not. I -- I knew that there was
05 discussions of this sort going on. I wasn't copied
06 on this memo. Dean Hufsey was there and -- and
07 represented the technical side of the house. He
08 was -- he was there for the label committee along
09 with -- let's see. Ted Miller was there as well.

10 So there was a variety of technical people
11 there and yes. So I was -- I was aware of this
12 effort, not necessarily this specific memo, but I
13 was aware of the effort to try to get consistency
14 on the labels, yes.

15 Q. All right. And what was the issue with
16 the inconsistency on the labels?

17 A. Well, this is, more or less, an in- --
18 internal working document trying to work through
19 what was necessary and what wasn't. I don't -- I
20 don't know that anyone -- and I'm not sure -- I'm
21 not sure the extent of what anyone wanted in this,
22 to be honest with you. Fairly detailed. Without
23 digging through this, I don't -- I don't know all
24 the concerns that --

25 Q. Was listing a constituents -- strike that.

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 160

602, 701, lack of
personal
knowledge:
witness had no
familiarity with
document
(159:1-14)
Inadmissible
Hearsay: Mr. Fore
was not testifying
when he made the
assertions, nor was
he speaking on
behalf of Safety-
Kleen

01 Was listing the contents of Safety-Kleen
02 parts washing -- parts-washer solvent on the parts
03 cleaner in 2420 label discussion in the labeling
04 committee in this document?

05 A. It appears to be, yeah.

06 Q. And Scott Fore, who was the vice president
07 at the time, indicated that he did not want the
08 contents of the product listed on the label?

09 A. I believe that's consistent with what
10 Scott's -- he -- he mainly insisted upon detailed
11 information being on the material safety data
12 sheets.

13 Q. But not on the label?

14 A. That's right. And I don't recall the
15 logic behind that at all.

16 MR. DUPONT: Hand you Exhibit 16.

17 (Plaintiffs' Exhibit 16 marked
18 for identification.)

19 MR. WOOD: Same running objection to this
20 document.

21 BY MR. DUPONT:

22 Q. Sir, is Exhibit 16 a list of the contents
23 of Safety-Kleen parts-washing solvent for
24 California?

25 A. It is.

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 161

01 Q. And it is dated December 1991?

02 A. Yes, it is. As part of a 1991 MSDS
03 revision.

04 Q. Well, this document you're looking at
05 right here, that's not an MSDS or part of an MSDS,
06 is it?

07 A. No, this is a -- a summary sheet as -- as
08 part of the evaluation of preparation of MSDS.

09 Q. All right. And this summary sheet lists
10 as one of the contents of the Safety-Kleen 105
11 solvent for California, it lists benzene?

12 A. Yes.

13 Q. And on the legend below the list it
14 indicates that benzene, if you follow the legend,
15 is a known carcinogen?

16 A. Yes.

17 Q. And it indicates that the ACGIH has listed
18 benzene as a confirmed car- --

19 (Reporter interruption for clarification.)

20 BY MR. DUPONT:

21 Q. The ACGIH has listed benzene as a
22 confirmed carcinogen?

23 A. As a confirmed, yes.

24 MR. DUPONT: Take a break.

25 MR. WOOD: Yeah.

Breece, James

Rhyne Trial Master

Page 162

01 MR. DUPONT: Off the record.

02 THE VIDEOGRAPHER: The time is 2:49 p.m.

03 We're going off the record.

04 (Break taken.)

05 THE VIDEOGRAPHER: The time is 3:05 p.m.

06 We're back on the record.

07 BY MR. DUPONT:

08 Q. Dr. Breece, did Safety-Kleen file a
09 lawsuit against some of the suppliers of its
10 mineral spirits pertaining to Safety Kleen's
11 liability for persons who were exposed to its
12 mineral spirits parts-washing solvent?

13 A. Did Safety-Kleen file it against vendors?

14 Q. Yes.

15 A. Not to my knowledge. Possible they did,
16 but I'm not aware of it.

17 Q. Okay. So you're not aware of a lawsuit
18 that was brought by Safety-Kleen against Chevron
19 USA, Inc., and others?

20 A. No, I'm not.

21 Q. Who at Safety-Kleen would have provided
22 litigation support for that type of work in the
23 early 1990s?

24 A. That, potentially, would have been Hyman
25 Bielsky. I'm not sure who -- whomever else might

Breece, James

Rhyne Trial Master

Page 163

01 have been involved in that, but it -- it's possible
02 it was Hyman. There were additional lawyers there,
03 but it's my recollection that something like that
04 might -- might come out of Hyman's office.

05 Q. Okay.

06 (Plaintiffs' Exhibit 17 marked
07 for identification.)

08 BY MR. DUPONT:

09 Q. You also identified a Dean Hufsey as being
10 involved with providing litigation support. Was he
11 doing that in the 1990s, the early 1990s?

12 A. No, that ceased in the late '80s.

13 Q. All right. You've been handed Exhibit 17.
14 Is that a March --

15 MR. WOOD: Same -- sorry, Andrew. I
16 didn't mean to cut you off. Same running
17 objection.

18 BY MR. DUPONT:

19 Q. Okay. Dr. Breece, you've been handed
20 Exhibit 17. Is that a March 9, 1994 Safety-Kleen
21 internal memorandum?

22 A. Yes, it is.

23 Q. And is -- this is from a Lyle Van Wert to
24 John Lucks?

25 A. Yes.

Breece, James

Rhyne Trial Master

Page 164

01 Q. Who was Lyle Van Wert?

02 A. He was a Safety-Kleen -- I believe an
03 industrial sales rep, specifically his -- his call
04 was on -- his -- his designation was to call on
05 major industries and obviously GM fits in that
06 category.

07 Q. And who was John Lucks?

08 A. Lucks was the -- he was a -- a marketing
09 manager for Safety-Kleen. And I'm not really sure
10 why he got this call. But anyway, so be it. I
11 mean, he was a -- was a marketing manager for
12 Safety-Kleen.

13 Q. Okay. And what's being discussed in this
14 memorandum is that at one point a material safety
15 data sheet for Safety-Kleen 105 solvent warned that
16 there was a need to provide process enclosure or
17 local ventilation?

18 MR. WOOD: Objection. Misstates the
19 document.

20 BY MR. DUPONT:

21 Q. Well, let me ask you this question: Did
22 Safety-Kleen have a -- own a company called Phelps
23 Manufacturing?

24 A. They did, yes.

25 Q. And did Phelps Manufacturing manufacture

Breece, James

Rhyne Trial Master

Page 165

01 parts-washing machines?

02 A. Custom parts-cleaning machines. I
03 wouldn't describe them as parts washer, but custom
04 equipment, yes.

05 Q. The -- the parts-washing machines that
06 Safety-Kleen supplied to its customers, were they
07 designed by Safety-Kleen?

08 A. Parts cleaners which we provided to
09 general customers not requesting a custom machine
10 were designed by Safety-Kleen early on and were
11 improved -- from the original patent design and --
12 and later on improved from internal engineering
13 changes.

14 Q. All right. And did Safety-Kleen ever
15 include in the design for the parts-washing
16 machines that it supplied to its customers any
17 local exhaust ventilation that would remove solvent
18 vapor before it got into the breathing zone of the
19 user of the parts-washing machine?

20 MR. WOOD: Objection. Assumes facts.

21 THE WITNESS: For custom equipment, that
22 was true or for equipment which the customer
23 insisted it be of that time -- type of device where
24 there were large volumes of solvent exposure, that
25 would be considered, but for the smaller sink on

Breece, James

Rhyne Trial Master

Page 166

01 the drum design, it was not considered.

02 BY MR. DUPONT:

03 Q. Was it ever even investigated by

04 Safety-Kleen to put a local exhaust -- exhaust

05 ventilation to remove solvent vapors from the

06 breathing zone?

07 A. Our testing indicated it wasn't necessary

08 based upon the -- the exposure data which we had

09 and developed subsequently, that it was not

10 necessary for normal applications. And since we

11 can't know every case, it was not a option that we

12 offered on the smaller units.

13 Q. Did Safety-Kleen ever investigate what

14 would be involved in actually putting in a local

15 exhaust ventilation to remove solvent vapors before

16 they reached the zone -- the breathing zone of the

17 user of a regular Safety-Kleen parts-washing

18 machine that it supplied to its customers?

19 MR. WOOD: Objection. Assumes facts.

20 Foundation. Asked and answered.

21 THE WITNESS: Ask the question again,

22 please.

23 BY MR. DUPONT:

24 Q. Sure. Did Safety-Kleen investigate what

25 would be involved in putting a local exhaust

611,non-responsive

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 167

01 ventilation device on the parts-washing machines to
02 remove solvent vapors before they got to the
03 breathing zone of the user?

04 MR. WOOD: Same objection.

05 THE WITNESS: First of all, we -- we
06 didn't see -- from normal usage, we did not see the
07 absolute necessity of -- of doing that.

08 And secondarily, depending on the
09 location, a -- a one-size-fits-all design might
10 work in one location and -- and not in others. So
11 we chose to -- we chose to make sure that the parts
12 cleaner functioned properly and minimized the

13 emissions of solvent. But we did not attempt to
14 put a one-size-fits-all ventilation system on the
15 Model 30 or the Model 16 parts cleaner.

16 BY MR. DUPONT:

17 Q. Okay.

18 A. There is an error in -- in regard to this
19 document here. Should I -- I should point out,
20 too. There is a -- a conflict between the GM
21 premium 150 and then the body of the -- the memo
22 it's referring to 105. So what's attached, I'm not
23 sure. It says "premium solvent" on this one, which
24 would be the 150, but there is some conflict
25 between the -- between the title and -- and what's

611, non-responsive
objection to adding a
different answer to a
different question

0

Transcript of Breece, James

Breece, James

Rhyne Trial Master

01 written.

02 Q. Okay. Well, there wasn't a question
03 pending, so I move to strike.

04 A. I -- I wanted to get that in because I
05 didn't want to answer a question --

06 MR. WOOD: There's not a -- there's not a
07 question pending.

08 MR. DUPONT: I'm going hand you Exhibit
09 18.

10 (Plaintiffs' Exhibit 18 marked
11 for identification.)

12 MR. WOOD: Same running objection.

13 BY MR. DUPONT:

14 Q. And does that exhibit include a brochure
15 for a Phillips Manufacturing Company parts washer
16 that includes a lip vent exhaust designed to remove
17 the solvent vapors before they get to the breathing
18 zone of the user of Safety-Kleen parts-washing
19 solvent?

20 A. Yes, this is information about one of the
21 parts cleaners offered on a custom basis by a
22 Phillips manufacturer.

23 Q. Okay. And this parts cleaner includes a
24 lip at the top of the machine with exhaust on three
25 sides that is intended to prevent the vapor from

401, 402 irrelevant
evidence is not
admissible:
Plaintiffs do not
allege use of a
Phillips parts
washer.
403 danger of
misleading the
jury and
confusing issues:
the Phillips
machine is a vapor
degreaser that
heats up solvent,
which increases
vapor exposure.
(169:9-21). Safety-
Kleen's parts
washers do not
heat up solvent.
(169:2-6).

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 169

01 getting to the breathing zone of the user?

02 A. Typically -- this -- this design is
03 typical for virtually all vapor degreasers, so
04 there's nothing unusual about this. The fact it
05 happened to be suggested for another product, yes,
06 its -- its technology is well known.

611, no question,
non-responsive, object
to adding a different
answer to a different
question

①

07 Q. And was suggested for use in conjunction
08 with Safety-Kleen parts-washing solvent?

09 A. Well, I don't think it said that. It has
10 heaters available which we aren't going to heat
11 parts-washer solvent. And we probably wouldn't
12 have allowed this to be used with immersion cleaner
13 because, again, it's heated. It increases the
14 vapor exposure. Neither product is suitable for a
15 heated application here.

16 So it would not have been -- we would not
17 have allowed, had we seen this -- I don't remember
18 what our final response was, but we nixed the idea,
19 to my recollection, of considering any parts
20 cleaner to a customer where he could heat mineral
21 spirits or immersion cleaner.

22 Q. Okay. I was looking at the Phillips
23 Manufacturing Company. It says, "Data sheet 42 PC,
24 dated December 17, 1987." Excuse me, "December 1,
25 1987."

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 170

01 A. Uh-huh.

02 Q. Do you see that? And -- is that a "yes"?

03 A. The -- let me -- let me find that again.

04 Q. If you turn to the second --

05 A. I think -- I think I found it. Let me
06 make sure.

07 Q. If you can turn to the second page of the
08 exhibit.

09 A. Okay. They --

10 Q. See in the top right-hand corner it's --
11 it's hard to read because it's a little dark, but
12 it says, "data sheet 42 dash PC, date December 1,
13 1987"?

14 A. I do.

15 Q. All right. And if you look at the --
16 towards the bottom of the document under the
17 diagram of the parts-washing machine, it says:
18 "Phillips Manufacturing Company is a wholly owned
19 subsidiary of Safety-Kleen Corporation."

20 A. Yes.

21 Q. And on the left-hand column in the
22 document there's a section for general information,
23 which says, "Industrially rated and safe to use,
24 Phillips parts cleaners are designed to meet all
25 current OSHA and EPA regulations. Motors and

Breece, James

Rhyne Trial Master

Page 171

01 controls meet NEC Class I, Group C and D for use
02 with mineral-based solvents."

03 A. Yes.

04 Q. And if you continue down, it says: "Along
05 with our parent company, Safety-Kleen, you can have
06 complete confidence that the difficulty of
07 disposing dirty solvent is no longer a problem.
08 Safety-Kleen will, at specified intervals, pick up
09 and recycle your solvent, and if desired, furnish
10 you with clean solvent for use in this equipment."

11 A. Yes.

12 Q. And is the mineral-based solvents referred
13 to here mineral spirits?

14 A. I have no idea. I can assure you if this
15 came across my desk, which it did, apparently, I
16 would have nixed the whole idea from a -- a safety
17 standpoint. I wouldn't have allowed it. I would
18 immediately have put thumbs down on it if -- if
19 anyone tried to put mineral spirits in this, I
20 would have not only have hammered them myself, but
21 I would have passed it to Environmental Health and
22 Safety and say, "No, we can't use this." You
23 cannot heat mineral spirits safely.

24 Q. Okay. And who was Paul Allen?

25 A. He was a sales -- a sales rep.

Breece, James

Rhyne Trial Master

Page 172

01 Where the heaters came to bear was aqueous
02 cleaners. That would have been a suitable
03 application.

04 (Reporter interruption for clarification.)

05 THE WITNESS: Aqueous cleaners.

06 BY MR. DUPONT:

07 Q. Okay. I'm looking for where you see a
08 reference to using a heater.

09 A. Third paragraph, "Mike Weiner, Don Racquet
10 from Phillips also present agree to let us use a
11 Model-42 for the first test. The unit has heaters
12 available so you can test it in varying
13 temperatures." I believe this was totally nixed at
14 this phase.

15 Q. Okay.

16 A. That's my recollection of that.

17 Q. All right.

18 (Plaintiff's Exhibit 19 marked
19 for identification.)

20 BY MR. DUPONT:

21 Q. And Dr. Breece, you've been handed Exhibit
22 19. And is this an internal Safety-Kleen training
23 document?

24 A. Yes. Uh-huh. I'm familiar with this
25 document.

Breece, James

Rhyme Trial Master

Page 173

01 Q. Okay. And this comes from Safety Kleen's
02 business records?

03 A. It would have, yes.

04 Q. If you can turn to the second page,
05 there's a discussion of permissible exposure limits
06 and threshold limit values. I'm talking about the
07 second full paragraph.

08 A. Okay. This is under the bullet point
09 Page 2?

10 Q. At Page 2, there's -- above the bullet
11 points, there's a paragraph that begins with: "PEL
12 and TLV exposure values are generally reported in
13 milligrams of the material per cubic meter of air
14 or more often by per million."

15 Do you see that?

16 A. That sounds correct, but I don't see it on
17 this document.

18 Q. That's because I handed you the wrong
19 document.

20 A. Oh.

21 Q. Sorry. I'm going to withdraw that exhibit
22 and re-mark it.

23 A. Okay.

24 Q. I apologize.

25

Breece, James

Rhyne Trial Master

Page 174

01 A. No problem.

02 (Plaintiff's Exhibit 19 re-marked
03 for identification.)

04 BY MR. DUPONT:

05 Q. Okay. So now if you would look to Page 2.

06 A. Okay.

07 Q. Do you now see the paragraph that begins
08 with: "PEL and TLV exposure values are generally
09 reported in milligrams of material per cubic meter
10 of air or more often by parts per million"?

11 A. Yes.

12 Q. All right. And there's some examples of
13 what one PPM would be equivalent to. And when we
14 say "one PPM," we mean one part per million?

15 A. That's correct.

16 Q. And it states: "Well, one part per
17 million would be equivalent to one penny and
18 \$10,000"; is that correct?

19 A. I believe that's right, yeah.

20 Q. And it also states: "One part per million
21 would also be the same as one inch in 16 miles, one
22 ounce of salt in 62,500 pounds of sugar or one
23 ounce of vermouth in 7,812 and an half gallons of
24 gin. As you can see, one part per million is not
25 very much."

Breece, James

Rhyne Trial Master

01 A. Yeah, I see that.

02 (Plaintiffs' Exhibit 20 marked
03 for identification.)

04 BY MR. DUPONT:

05 Q. Okay. Dr. Breece, I'm going to hand to
06 you a document that's been marked as Exhibit 20.

07 MR. WOOD: The same running objection.
08 The same question -- to reserve the rights of
09 confidentiality.

10 BY MR. DUPONT:

11 Q. And is this document a 1991 authorization
12 for expenditure concerning the construction of the
13 distillation column to remove benzene from
14 parts-washing solvents?

15 MR. WOOD: Objection. Assumes facts not
16 in evidence. And the document would speak for
17 itself.

18 THE WITNESS: Yes, I'm familiar with this.

19 BY MR. DUPONT:

20 Q. Okay. And the second sentence of the
21 document reads: "This project has been deemed
22 necessary to minimize or preclude further
23 defections of circulating parts-cleaner customers
24 and long-term risks of health-based lawsuits that
25 heretofore have resulted from current levels of

401, 402 irrelevant evidence is not admissible: document states expenditure is for the Hebron facility, no evidence this facility serviced Plaintiffs' employers.
403, misleading and confusing: the document states, "for the purpose of cleaning chlorinated solvents (primarily perchloroethylene) and benzene from recycled mineral spirits solvents."
Assumes facts not in evidence: document does not state column would remove benzene.
Inadmissible Hearsay

BREECE, JAMES - (JOHNSON) VOL 1

Transcript of Breece, James

401, 402 irrelevant evidence is not admissible: no evidence the "health-based lawsuits" are similar to this case. No disease type or product discussed and 105 Solvent (the product Plaintiffs allege) is not mentioned. Further, Document states expenditure is for the Hebron facility, no evidence this facility serviced Plaintiffs' employers. Also, document states expenditure is for the Hebron facility, no evidence this facility serviced Plaintiffs' employers.
Inadmissible Hearsay

Breece, James

Rhyne Trial Master

Page 176

01 chlorinated solvents and benzene contamination
02 respectively."

03 Did I read that correctly?

04 A. Yes.

05 Q. Okay.

06 MR. DUPONT: No further questions.

07 THE VIDEOGRAPHER: Anybody else? This is
08 the end of --

09 MS. KAHN: I have -- I actually have a few
10 questions --

11 THE VIDEOGRAPHER: Sure.

12 MS. KAHN: -- for the witness, but I don't
13 mind if we take a break for a couple minutes first.

14 THE VIDEOGRAPHER: Okay.

15 THE WITNESS: I don't mind --

16 MR. CAIRONE: And -- and this is Matt. I
17 have a few as well. I don't want to get cut off
18 before I get a chance, so -- are we taking a break
19 now?

20 THE VIDEOGRAPHER: Yeah.

21 MS. KAHN: Yeah.

22 THE VIDEOGRAPHER: The time is 3:30 p.m.
23 We're going off the record.

24 (Break taken.)

25 THE VIDEOGRAPHER: And the time is 3:42

BREECE, JAMES -
(JOHNSON) VOL 1

Transcript of Breece, James

Breece, James

Rhyne Trial Master

Page 177

01 p.m. We're back on the record.

02 EXAMINATION BY MS. KAHN:

03 Q. Good afternoon, Dr. Breece. I am Ruth
04 Kahn. I'll reintroduce myself to you. And my
05 questions are going to focus on Safety-Kleen and
06 Sunoco or Sun Oil Company.

07 A. Okay.

08 Q. Okay. You identified Sun Oil or Sunoco as
09 one of Safety Kleen's suppliers of regular mineral
10 sprits from 1979 to 1993. Was there a particular
11 geographic region for which Safety-Kleen obtained
12 mineral spirits from Sunoco or Sun Oil?

13 A. To my recollection, yes, there was.

14 Q. What was that, please.

15 A. Middle Atlantic states, predominantly
16 around the --

17 (Reporter interruption for clarification.)

18 THE WITNESS: Middle Atlantic states
19 around Clayton, New Jersey and later Linden, New
20 Jersey. So the areas serviced by the -- and it's
21 not -- may not be exactly that location, but in
22 that general area around Northern New Jersey.

23 BY MS. KAHN:

24 Q. Okay. To your knowledge, did Safety-Kleen
25 purchase any other type of mineral spirits from

Breece, James

Rhyne Trial Master

Page 178

01 Sunoco or Sun Oil Company besides what you called
02 regular mineral spirits that was used in the 105
03 solvent in the Mid Atlantic region?

04 A. I don't recall any other products.

05 Q. To your knowledge, did Safety-Kleen ever
06 buy mineral spirits, any type of mineral spirits
07 from Sunoco or Sun Oil Company in connection with
08 services that Safety-Kleen provided from its
09 Reedley, California center?

10 A. I'm not aware of any. I'd have to refer
11 back to that 1993 document to make sure that that's
12 true, but I don't have a recollection of any being
13 provided.

14 Q. Is the 1993 document that you're referring
15 to one that was marked as an exhibit here today?

16 A. It was.

17 Q. Okay. I think it was Exhibit 4.

18 MS. KAHN: In fact, Ms. Reporter, if you
19 wouldn't mind, please hand him Exhibit 4.

20 (The document was handed to the witness.)

21 THE WITNESS: Yes. Yes.

22 BY MS. KAHN:

23 Q. All right.

24 A. That's the one I'm referring to.

25 Q. All right. Please take a moment and take

Breece, James

Rhyme Trial Master

Page 179

01 a look at this and tell me if it refresh- --
02 refreshes your recollection in any way about Safety
03 Kleen's purchase of mineral spirits from Sunoco for
04 its center in Reedley, California.

05 A. I'll just -- I'll double check the data
06 here. Let me look just to make sure. No, I don't
07 believe so. None at Reedley.

08 (Reporter interruption for clarification.)

09 THE WITNESS: Reedley.

10 BY MS. KAHN:

11 Q. At all times that you were employed by
12 Safety-Kleen, was it the Reedley, California
13 Safety-Kleen center that provided parts-wash
14 services to companies in Northern California?

15 A. I can't be absolutely sure. I can -- I
16 can tell you my recollection that predominance of
17 the production was from Reedley. However, Northern
18 California potentially could have been supplied
19 solvents from a facility in -- I got to think where
20 that location is. I -- I want to say it's in --
21 outside of Seattle or potential for that.

22 Q. Can you identify any documents, as you sit
23 here today, that discuss the supply of parts-wash
24 solution by Safety-Kleen from a facility near
25 Seattle to Northern California during the time

Breece, James

Rhyne Trial Master

Page 180

01 period of 1979 to 2012?

02 MR. DUPONT: Objection. Vague.

03 THE WITNESS: I believe -- I believe the
04 closest identification I can provide is -- I
05 believe that's PetroSource. And in -- on page --
06 it's under Rule 66, vendor data. And that is -- I
07 wish those pages were numbered. They were at one
08 time, but it's under Rule 66, vendor data about --
09 unfortunately, the page numbers have been lost on
10 this document.

11 BY MS. KAHN:

12 Q. Well, why don't you just count back from
13 the front of the exhibit. You can tell me it's --

14 A. Why don't we count from the back forward.
15 One, two, three, it's the --

16 MS. FERGUSON: Fourth last page.

17 THE WITNESS: Yeah. Fourth last page,
18 correct.

19 BY MS. KAHN:

20 Q. Okay. Unfortunately, when my copy of the
21 exhibit was made, it was only copied every other
22 page, so I don't have that.

23 MR. WOOD: Hold it up and show her what
24 you're talking about.

25 THE WITNESS: Sure.

Breece, James

Rhyne Trial Master

Page 181

01 MS. KAHN: Thank you.

02 BY MS. KAHN:

03 Q. Okay. You're referring to a page where at
04 the top it says "Rule 66, vendor data"?

05 A. Yes.

06 Q. And then the vendor is identified as Kern,
07 K-E-R-N?

08 MR. DUPONT: Continue to the next page.

09 THE WITNESS: And go to the next page now.

10 BY MS. KAHN:

11 Q. The next page, the vendor is identified as
12 Ashland. This is the problem with an
13 every-other-page document.

14 MS. FERGUSON: Let me see.

15 THE WITNESS: Here.

16 MS. KAHN: One, two.

17 THE WITNESS: Show her that page so
18 she can see the --

19 MS. FERGUSON: That's the actual exhibit.

20 MS. KAHN: It's not here either. Thanks.

21 BY MS. KAHN:

22 Q. Okay. On the -- the page that you handed
23 me, sir, which is one, two, three, the fourth page
24 from the end of the document, Exhibit 4, it says:
25 "Rule 66, vendor data," and then PetroSource is

Breece, James

Rhyne Trial Master

Page 182

01 identified as one of the vendors. PetroSource is a
02 raw material supplier as far as you know? Or what
03 is PetroSource?

04 A. PetroSource, if memory serves me
05 correctly, was a combination broker and at one
06 time, was a recycler of solvent in the Seattle
07 area.

08 Q. Okay. I'm -- I'm going to hand -- hand
09 this back to you. There are several branch numbers
10 identified next to PetroSource. One is 717201,
11 another is 701501, 716601, 718501. I think those
12 are all of them.

13 Can you tell me what those branch numbers
14 refer to?

15 A. Unfortunately, I can't. Without the --
16 without the phone book, which identified -- the
17 Safety-Kleen phone book which identified all this,
18 I -- I don't know where those are. But we do know
19 it's Rule 66, so it would have been on the west
20 coast. That's the only -- that's as close as I can
21 get to guessing where they would be.

22 Q. Okay. As you sit here today, do you have
23 any knowledge as to what suppliers PetroSource was
24 a broker for?

25 A. I do not.

Breece, James

Rhyne Trial Master

Page 183

01 Q. Okay. Do you have any reason to believe
02 PetroSource was ever a broker for Sun Oil or
03 Sunoco?

04 A. No, I -- I -- I have no knowledge of that.

05 Q. To your knowledge, did PetroSource have
06 any relationship whatsoever with Sun Oil or Sunoco?

07 A. Not aware of any relationship there.

08 Q. To your knowledge, did Sun Oil Company or
09 Sunoco ever supply any type of mineral spirits so
10 Safety-Kleen in connection with Safety Kleen's
11 Reedley, California facility?

12 A. Not aware of there ever being that
13 relationship for supply at Reedley.

14 Q. Are you aware, to your knowledge --
15 withdrawn.

16 To your knowledge, did Safety-Kleen ever
17 obtain mineral spirits from Sun Oil Company by any
18 facility in the Seattle, Washington area?

19 MR. DUPONT: Objection. Foundation.

20 THE WITNESS: I have no knowledge of any
21 such relationship.

22 BY MS. KAHN:

23 Q. Okay. I'd like you to take a look,
24 please, at what was marked as Exhibit 2. In the --
25 starting on Page 3 of the document, which is Bates

Breece, James

Rhyne Trial Master

Page 184

01 stamped SK 3477, there's a list of vendors. The
02 second column, which is head "R/C" has letters in
03 it. LLCCC.

04 Do you see where I -- I am?

05 A. Yes. Uh-huh.

06 Q. Okay. And the L stands for Linden, the C
07 stands for Clayton; is that right?

08 A. Let me check the date of this. What is --
09 what's the date of this report? The reason I say
10 that, L could stand for Linden or it could stand
11 for Lexington. Let me make sure if I can tell
12 something about that. L is Lexington because it is
13 inclusive of -- with Hunt.

14 Q. Okay. Take a minute and look through
15 Exhibit 2, if you would, and tell -- tell me if you
16 see any reference to the Reedley, California
17 facility whatsoever.

18 A. I think I stated earlier that there was
19 not reference to Reedley. It was not included in
20 this initial phase of that. Let me make sure that
21 that's true. No, that is -- that is true. Reedley
22 is not included in this initial part of the study.

23 Q. Assuming Sun Oil, in fact, supplied
24 mineral spirits to Safety-Kleen in the Mid Atlantic
25 region in the United States, do you have any reason

Breece, James

Rhyne Trial Master

Page 185

01 to believe that that mineral spirits made its way
02 out to California?

03 A. No, ma'am, it did not.

04 Q. How do you know that?

05 A. Safety-Kleen was a for-profit company, and
06 that sort of -- that would have been a suicidal
07 transportation error.

08 MS. KAHN: Thank you, sir. Those are all
09 the questions I have.

10 THE WITNESS: Very good. Thank you.

11 THE VIDEOGRAPHER: On the phone? Do we
12 have someone else with questions?

13 MR. CAIRONE: Yes, this is Matt Cairone
14 for United States Steel. I have a few.

15 THE VIDEOGRAPHER: Hold on one moment.
16 I'm going to reposition the microphone.

17 MR. WOOD: Give that back to her.

18 THE WITNESS: I'm sorry.

19 MR. WOOD: Just --

20 THE VIDEOGRAPHER: Okay, sir.

21 EXAMINATION BY MR. CAIRONE:

22 Q. Okay. Sir, it's hard to do this by
23 telephone, so if you can't hear me at any time,
24 please let me know. Okay?

25 A. Yes.

Breece, James

Rhyne Trial Master

Page 186

01 Q. I -- I'm going to ask you a few questions
02 about something you testified to a long time ago
03 today, and that has to do with the product Liquid
04 Wrench.

05 Do you remember that testimony?

06 A. Yes, I do.

07 Q. Okay. Now, you started with Safety-Kleen
08 in 1979; is that correct?

09 A. Yes.

10 Q. And you talked earlier about some
11 analytical testing that Safety-Kleen did on Liquid
12 Wrench.

13 Do you remember that?

14 A. Yes.

15 Q. Is it true that none of that analytic
16 testing that Safety-Kleen did on Liquid Wrench
17 occurred prior to 1979?

18 A. That's correct to my knowledge, yes.

19 Q. Okay. So anything you testified --
20 testified about earlier had to do with analytical
21 testing that took place after 1979; is that right?

22 A. That is correct.

23 Q. Okay. I think you said that Safety-Kleen
24 did some testing on Liquid Wrench in the 1990s; is
25 that right?

Breece, James

Rhyne Trial Master

Page 187

01 A. Late '80s, early '90s, I -- I believe we
02 did as some particular project, yes.

03 Q. Okay. And I think you also said earlier
04 that you found nothing unusual about the Liquid
05 Wrench that you tested in the late '80s and early
06 '90s; is that correct?

07 A. That is correct. We found --

08 Q. And you did say something -- okay. Go
09 ahead. I'm sorry.

10 A. We found it to be consistent
11 compositionally wise to regular mineral spirits for
12 its solvent phase.

13 Q. Okay. I think you also mentioned that
14 based on some public document, I think you said,
15 you were aware of a high benzene content in Liquid
16 Wrench.

17 Do you remember that?

18 A. Yes. And that's strictly from a
19 historical technical articles. It -- we performed
20 no analyses which indicated that. So it -- it --
21 that's from a historical perspective with my
22 knowledge of what I've read.

23 Q. Can you -- can you identify what you read?

24 A. I can't identify the source. I can
25 basically identify the source of the solvent used

Breece, James

Rhyme Trial Master

Page 188

01 by Liquid Wrench as -- I think -- I think the term
02 that was described for the distillate was a
03 raffinate, which was a hydrocarbon stream derived
04 from coking operations, if I recall correctly.

05 Q. But you can't identify the document that
06 you read?

07 A. No, I cannot. It's been a long time ago.

08 MR. CAIRONE: Okay. Thank you, sir.
09 That's all I have.

10 THE WITNESS: Very good.

11 THE VIDEOGRAPHER: Anyone else?

12 MR. WOOD: If there's no one else, we'll
13 reserve our questions until the time of trial.

14 THE VIDEOGRAPHER: Okay. This is the end
15 of Video Number 4 and the conclusion of today's
16 proceeding. The time is 4:02 p.m. We're off the
17 record.

18 (Discussion held off the record.)

19 THE REPORTER: Does anybody need a
20 transcript that hasn't already told me?

21 MR. SCADDEN: Hi. This is Jim Scadden. I
22 would like a copy, please.

23 MS. MALKOFSKY: And also for Kevin Tully's
24 law firm.

25 THE REPORTER: And that's Laura --

Breece, James

Rhyne Trial Master

Page 189

01 MS. MALKOFSKY: Laura Malkofsky.

02 MR. CAIRONE: This is Matt. I would like
03 a copy.

04 MS. HOSN: Hi. This is Sally from Poole &
05 Shaffery. Can I also get a copy.

06 THE REPORTER: Yes. Thank you.

07 (Whereupon, the deposition was concluded
08 at 4:02 p.m.)

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Breece, James

Rhyne Trial Master

Page 191

01 REPORTER'S CERTIFICATE

02

03

04 I, KIMBERLY R. HENDERSHOTT, a Shorthand

05 Reporter, State of California, do hereby certify:

06 That JAMES BREECE, in the foregoing deposition
07 named, was present and by me sworn as a witness in the
08 above-entitled action at the time and place therein
09 specified;

10 That said deposition was taken before me at
11 said time and place, and was taken down in shorthand by
12 me, a Certified Shorthand Reporter of the State of
13 California, and was thereafter transcribed into
14 typewriting, and that the foregoing transcript
15 constitutes a full, true and correct report of said
16 deposition and of the proceedings that took place;

17 IN WITNESS WHEREOF, I have hereunder
18 subscribed my hand this 12th day of February, 2014.

19

20

21 KIMBERLY R. HENDERSHOTT, RPR, CSR NO. 12552

22 State of California

23

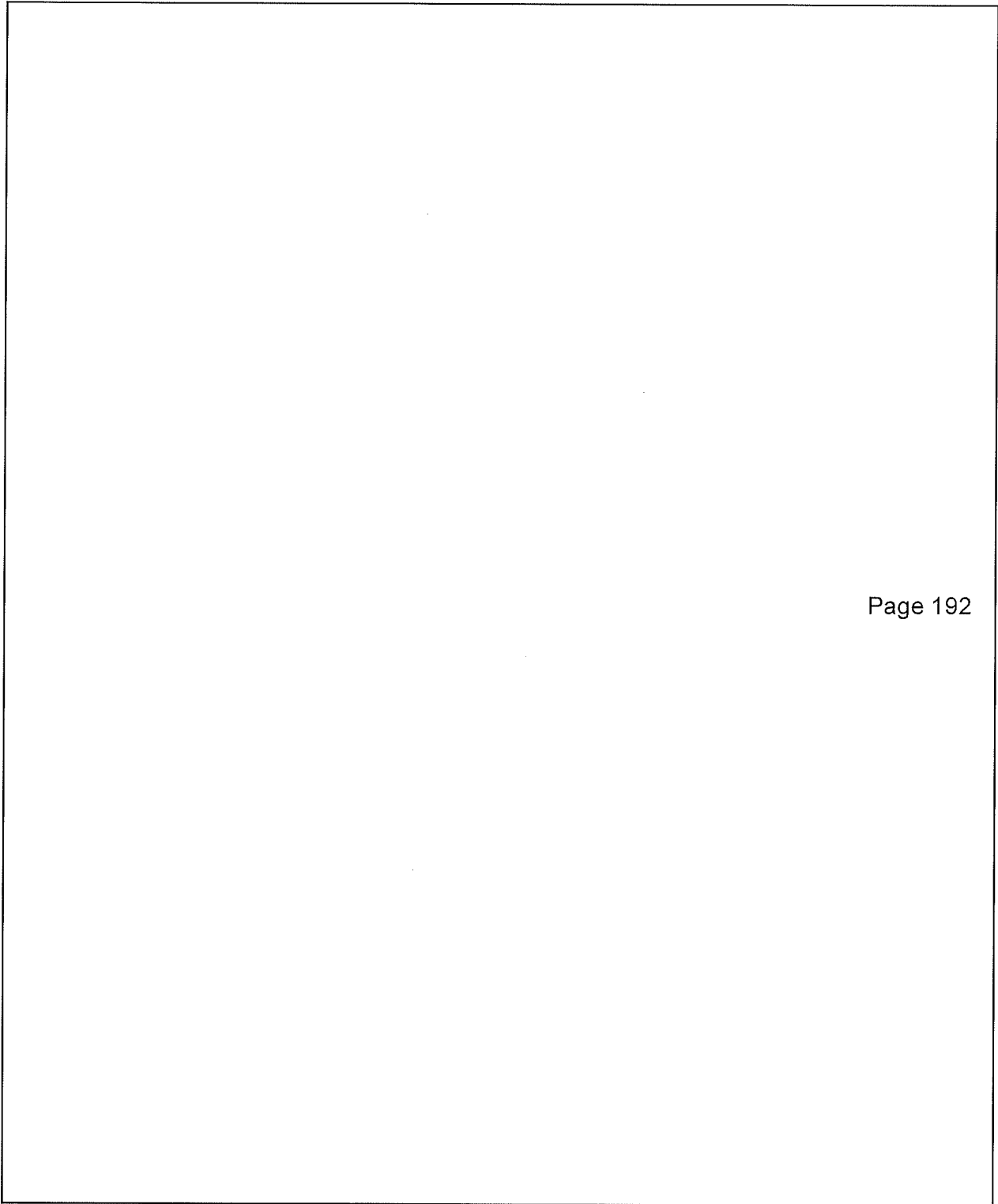
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Breece, James

Rhyne Trial Master



Page 192

Exhibit 2

Transcript Report

Niemaszyk, Debra

Plaintiff designations in yellow

Safety-Kleen counter designations in green

Transcript of Niemaszyk, Debra

Full Transcript Report

Designation Legend

NIEMASZYK, DEBRA - VOL 1

ranscript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 1

01 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

02 IN AND FOR THE COUNTY OF ALAMEDA

03 ---oOo---

04 DAVID JOHNSON and LAURA JOHNSON,

05 Plaintiffs,

06 vs. No. RG13669270

07 ARMORED AUTOGROUP, INC.,

08 et al.,

09

10 Defendants.

11 /

12

13

14

15 VIDEOTAPED DEPOSITION OF DEBRA NIEMASZYK

16 COR/PMK for SAFETY-KLEEN

17

18 Taken before KIMBERLY R. HENDERSHOTT, RPR

19 CSR NO. 12552

20 January 29, 2014

21

22

23

24

25 Aiken Welch Court Reporters

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30 www.aikenwelch.com

Transcript of Niemaszyk, Debra

Niemaszyk, Debra
Rhyne Trial Master

01	I N D E X	
02		PAGE
03	EXAMINATION BY MR. DUPONT	7

04		
05		
06		
07	E X H I B I T S	
08	PLAINTIFF'S	PAGE
09	Exhibit 1 Declaration of Debbie	9
10	Niemaszyk	
11		
12	Exhibit 2 Safety-Kleen System, Inc.	14
13	Legal Scan Customer Search	
14	Exhibit 3 Safety-Kleen System, Inc.	20
15	Legal Scan Document List	
16		
17	Exhibit 4 Exhibit C	43

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Niemaszyk, Debra
Rhyne Trial Master

Page 3

01 VIDEOTAPED DEPOSITION OF DEBRA NIEMASZYK

02

03 BE IT REMEMBERED, that pursuant to Notice, and on
04 the 29th day of January 2014, commencing at the hour of
05 9:05 a.m., in the offices of LEWIS BRISBOIS BISGAARD &
06 SMITH, 333 Bush Street, Suite 1100, San Francisco,
07 California 94104, before me, KIMBERLY R. HENDERSHOTT, a
08 Certified Shorthand Reporter, personally appeared DEBRA
09 NIEMASZYK, produced as a witness in said action, and
10 being by me first duly sworn, was thereupon examined as
11 a witness in said cause.

12

13 ---oOo---

14

15

16 APPEARANCES:

17 For the Plaintiff:

18 ANDREW DUPONT
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25 For the Defendant CSK Auto, Inc.:

26

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Transcript of Niemaszyk, Debra

Niemaszyk, Debra
Rhyne Trial Master

Page 4

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Transcript of Niemaszyk, Debra

Niemaszyk, Debra
Rhyne Trial Master

Page 5

01 For the Defendant Armor All/STP Products Company;
02 Chevron USA, Inc.; CRC Industries, Inc.; Texaco, Inc.;
03 Sunoco, Inc. (R&M); Kingsford Products:
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20

21 Also Present: Larry Cossar, Videographer
22
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Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 6

01 THE VIDEOGRAPHER: On the record. My name
02 is Larry Cossar. I'm a qualified video technician
03 videotaping on behalf of Tele-Video Production
04 Services. The court reporter today is Kimberly
05 Hendershott of Aiken Welch. Today's date is
06 January 29th, 2014. The present time is 9:05 a.m.

07 The location of this deposition is Lewis
08 Brisbois in San Francisco. Today's witness is
09 Deborah Niemaszyk in the case of David Johnson
10 versus Armored Autogroup, Incorporated, et al.,
11 case number RG13669270 filed in the Superior Court
12 of California in and for the county of Alameda.
13 This deposition was noticed by the Kazan Law Firm
14 for the plaintiff.

15 Would the counsel for the parties present
16 please identify themselves for whom they are -- and
17 for whom they are appearing.

18 MR. DUPONT: Andrew DuPont for David and
19 Laura Johnson.

20 MS. KAHN: Ruth Kahn on behalf of Chevron,
21 Texaco, and Sunoco.

22 MR. WOOD: Jeff Wood on behalf of
23 Safety-Kleen's Systems, Inc.

24 THE VIDEOGRAPHER: And on the phone,
25 please.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 7

01 MR. SKAAR: This is David Skaar for the
02 United States Steel Corporation.

03 MS. FRAENKEL: Good morning, Constance
04 Fraenkel for CSK Auto, Inc.

05 MR. CHON: Richard Chon for Genuine Parts
06 Company.

07 MR. ZECH: Jeff Zech on behalf of Justice
08 Brothers, Inc.

09 MR. ALLEN: Jeff Allen on behalf of
10 Berryman Products, Incorporated.

11 MS. HOSN: Sally Hosn on behalf of Turtle
12 Wax, Inc.

13 THE VIDEOGRAPHER: Okay. If there are no
14 stipulations, the court reporter will now swear the
15 witness.

16 DEBRA NIEMASZYK,
17 sworn as a witness,
18 testified as follows:

19 EXAMINATION BY MR. DUPONT:

20 Q. Good morning.

21 A. Good morning.

22 Q. My name is Andrew DuPont. I'm an attorney
23 for David Johnson and Laura Johnson. Would you
24 kindly give us your full name, please.

25 A. Deborah Niemaszyk.

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 8

01 Q. Okay. Ms. Niemaszyk, I'm going to be
02 asking you questions in the case for the purposes
03 of gathering evidence and -- and learning more
04 about what Safety-Kleen has done to acquire
05 certain -- and find certain records. Have you
06 given a deposition in the past?

07 A. Yes.

08 Q. On how many occasions?

09 A. One time.

10 Q. And what did that deposition concern?

11 A. A settlement case.

12 Q. Was it an individual who contracted cancer
13 after exposure to a Safety-Kleen solvent?

14 MR. WOOD: Objection. Assumes facts.
15 Foundation. You can answer if you know.

16 THE WITNESS: I don't remember.

17 BY MR. DUPONT:

18 Q. When did you give that deposition?

19 A. I believe it was 2008.

20 Q. I'll review some of the procedures. I'm
21 sure you remember them from your prior deposition
22 and from getting ready for the deposition today.
23 Most important instruction I have for you is that
24 if I ask you a question and you do not hear it well
25 or you do not understand it, please let me know,

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 9

01 and I'll do my best to re-ask it or rephrase the
02 question. Is that acceptable?

03 A. Yes.

04 Q. I don't want you to guess in response to
05 any question. If you need to provide an estimate,
06 that's fine, but if you'll agree that you are not
07 guessing in response to any question I ask, I would
08 appreciate that. Okay?

09 A. That's fine, yes.

10 Q. All right. If at any point in time you
11 need a break, please let me know. I don't expect
12 this deposition to take too long. But in the event
13 you do need a break, I'd be happy to oblige -- as
14 long as you answer any question that's pending
15 before we take a break. Okay?

16 A. Yes.

17 Q. What did you do to prepare for your
18 deposition today?

19 A. I went over my declaration and reviewed
20 the customer list, document list, and the
21 documents.

22 (Plaintiffs' Exhibit 1 marked
23 for identification.)

24 BY MR. DUPONT:

25 Q. All right. I'm going to hand you a

Niemaszyk, Debra

Rhyne Trial Master

Page 10

01 document that's been marked as Niemaszyk Exhibit 1
02 and ask you if this is your declaration.

03 A. Yes, it is.

04 Q. Was that a declaration you made specific
05 for this case or is that the type of declaration
06 that you've provided on numerous occasions before?

07 A. We have used a declaration like this
08 before.

09 Q. All right. I understand that you became
10 employed by Safety-Kleen in 1986?

11 A. That's correct.

12 Q. And what was your position at that time?

13 A. Microphone clerk.

14 Q. Then in the early 2000s, in your
15 declaration, it's indicated that you've become
16 responsible for maintaining and retrieving
17 Safety-Kleen service records, microfilmed or
18 scanned from Safety-Kleen branch offices
19 nationwide; is that accurate?

20 A. Yes.

21 Q. Did you obtain a new job title in the
22 early 2000s?

23 A. Yes.

24 Q. And what was that?

25 A. Imaging supervisor.

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 11

01 Q. When you say "the early 2000s," do you
02 recall a more precise date?

03 A. I believe it was 2001.

04 Q. Thank you.

05 And your job title from 1986 to 2001 was?

06 A. Microphone clerk, then lead microphone
07 clerk, and then imaging supervisor.

08 Q. Is your current position imaging
09 supervisor?

10 A. I am a contractor currently with
11 Safety-Kleen.

12 Q. Okay. Are you no longer employed by
13 Safety-Kleen directly?

14 A. Directly, yes.

15 Q. All right. When did you become a
16 contractor for Safety-Kleen?

17 A. In March of 2013.

18 Q. Why did you become a contractor as opposed
19 to a direct employee?

20 A. We were bought out -- Safety-Kleen was
21 bought out and there was a reduction in force.

22 Q. Okay. And have you worked exclusively for
23 Safety-Kleen since March of 2013?

24 A. Yes.

25 Q. Do you work on a full-time basis for

Niemaszyk, Debra

Rhyme Trial Master

Page 12

01 Safety-Kleen since March of 2013?

02 A. No.

03 Q. When you began with Safety-Kleen in 1986,
04 did your responsibilities include pulling service
05 records for the purposes of litigation?

06 A. Yes.

07 Q. Between 1986 and 2001, what percentage of
08 your time working for Safety-Kleen as a microfilm
09 clerk and a lead microphone clerk involved pulling
10 service records for the purpose of litigation?

11 A. And then I would have to guess because it
12 would -- it would vary depending on if there's a
13 lawsuit.

14 Q. Okay.

15 A. I mean there would be times there would
16 be -- I wouldn't do that at all for months at a
17 time, and then there would be times that that's all
18 I would be doing.

19 Q. Well, I don't want you to guess, but do
20 you have a reasonable estimate on what percentage
21 of your time was spent pulling records for
22 litigation?

23 A. That's two -- from 1986 to 2001?

24 Q. Yes, ma'am.

25 A. Twenty-five percent.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 13

01 Q. And between 1986 and 2001, were you
02 pulling records of Safety-Kleen service records in
03 cases that concerned individuals who contracted
04 cancer after working with Safety-Kleen parts
05 washing solvents?

06 MR. WOOD: Objection. Assumes fact.
07 Foundation. Calls for speculation.

08 MS. KAHN: Also calls for expert opinion
09 testimony. There's an expert opinion implicit in
10 the question.

11 (Reporter interruption for clarification.)

12 MS. KAHN: Opinion implicit in the
13 question.

14 MR. WOOD: I'll join in that objection as
15 well.

16 THE WITNESS: I don't know why I'm pulling
17 them. I'm not given that information.

18 BY MR. DUPONT:

19 Q. Okay. In the context of retrieving
20 service records from Safety-Kleen's databases and
21 other historic records between 2000 -- strike that.

22 Did you receive information concerning the
23 cases that records were being requested in between
24 1986 and 2001 when you were asked to obtain
25 Safety-Kleen records?

Niemaszyk, Debra

Rhyme Trial Master

Page 14

01 A. I would get a request from the -- the
02 legal department.

03 Q. All right. Did you have the opportunity
04 to see the complaints that were filed in the case
05 to see interrogatory answers, deposition
06 transcripts --

07 A. No.

08 Q. -- anything like that?

09 In 2001 as an imaging supervisor, how did
10 your duties change?

11 A. The system went from microfilm to imaging,
12 there was just changes in the way things were
13 done --

14 Q. Okay.

15 A. -- from microphone to images stored
16 electronically. I was responsible for the people
17 that -- the other employees in the department.

18 Q. How many other individuals were in the
19 imaging department?

20 A. There were seven at that time.

21 (Plaintiffs' Exhibit 2 marked
22 for identification.)

23 BY MR. DUPONT:

24 Q. Okay. Marked as Exhibit 2 to your
25 deposition, what's identified as Exhibit A to your

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 15

01 declaration and it's entitled Safety-Kleen System,
02 Inc., legal scan customer search, customer data as
03 of 1/30/2010. I'm going to hand that exhibit to
04 you and ask that you confirm for me that that is
05 what is marked as Exhibit A to your declaration.

06 A. Yes, it is.

07 Q. Now, you have a copy of that document in
08 front of you, so do you mind if I take the exhibit
09 back and then we'll look at it together?

10 A. Okay.

11 MS. KAHN: Do you have an extra copy for
12 me.

13 MR. DUPONT: I did not bring an extra copy
14 for you since it was circulated by Safety-Kleen.
15 So everyone should have a copy.

16 MS. KAHN: Jeff, can you tell me when it
17 was produced, and I'll look it up in the record.

18 MR. WOOD: Let me -- let me look. It
19 would have been an E-mail from our office with her
20 declaration and exhibits. I don't know if it
21 was -- I can't tell you right now if it was served
22 on everyone or if it was just served initially to
23 Andrew.

24 MS. KAHN: I don't remember seeing it
25 before because this is the first time hearing of

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 16

01 the declaration. I don't have any objection, but I
02 would like to see it.

03 MR. WOOD: I don't have a hard copy of it.
04 There's one hard copy there, there's one hard copy
05 there, and I have a copy on my computer which
06 you're welcome to look at because I've seen it
07 before, so...

08 THE VIDEOGRAPHER: Should we go off the
09 record?

10 MR. DUPONT: Yeah.

11 MR. WOOD: Yeah.

12 THE VIDEOGRAPHER: The time is 9:17 a.m.
13 We're going off the record.

14 (Discussion held off the record.)

15 THE VIDEOGRAPHER: The time is 9:20 a.m.
16 We're back on the record.

17 BY MR. DUPONT:

18 Q. All right. Would you kindly look at
19 Exhibit 2 to your deposition, which is Exhibit B to
20 your Affidavit with me.

21 MR. WOOD: This is Exhibit A to the
22 declaration, Exhibit 2 to the deposition.

23 MR. DUPONT: Okay.

24 MR. WOOD: I just want to make sure --

25 MR. DUPONT: I'll correct that then. I'll

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 17

01 withdraw that question.

02 BY MR. DUPONT:

03 Q. We're looking at Exhibit 2 to your
04 deposition, which is also Exhibit A to your
05 declaration, and can you explain what this document
06 is?

07 A. This is a Customer search that tells the
08 customer name, the address, city, state, zip, when
09 they became a customer, when they ended as a
10 customer, the old customer number, and if there is
11 a new customer number.

12 Q. So there's a column for customer name, and
13 that obviously tells us who the name of the
14 business that is the customer of Safety-Kleen?

15 A. Yes.

16 Q. There's a column address one and two.
17 What does that represent?

18 A. Some businesses have more than one
19 address, like a PO Box possibly so you would see
20 that on there too if there was one.

21 Q. Next is a city, I presume it's the city
22 that the customer is located in?

23 A. Yes.

24 Q. Followed by the state that the customer is
25 located in?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 18

01 A. Yes.

02 Q. Followed by the zip code that the customer
03 is located in?

04 A. Yes.

05 Q. And then there's a column from. What's
06 the significance of the data underneath the from
07 column?

08 A. The from column is when the customer
09 became a Safety-Kleen customer.

10 Q. And the next column is end. Is that the
11 last date that the customer was a Safety-Kleen
12 customer?

13 A. Yes.

14 Q. Is it the last date absolutely that they
15 were a Safety-Kleen customer or is it the last date
16 that they were a customer for a particular period
17 of time?

18 A. I don't know the answer to that.

19 Q. Okay. In other words, are there
20 circumstances where a customer has a Safety-Kleen
21 parts washing solvent service for one year, and
22 then the next year they don't have the service,
23 then the next year they have -- do -- do have the
24 service?

25 A. Yes.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 19

01 Q. In other words, there could be gaps in the
02 time periods of service?

03 A. Yes, but they would have a new customer
04 number.

05 Q. Okay. All right. The next column over is
06 the old customer number?

07 A. Yes.

08 Q. What does that represent?

09 A. The first three digits 7185 -- and 01 are
10 the branch, and the last four are of our customer
11 number -- the account number.

12 Q. All right. And are you familiar with the
13 branch numbers?

14 A. As far as what branches 718501?

15 Q. Yes.

16 A. I was before when I was doing this more
17 back then when it was old customer numbers, but I
18 don't know all the branches anymore.

19 Q. Do you know which branch correlates to
20 7185001 [sic]?

21 A. My recollection is that it was Salida.

22 Q. Okay. Is there a master list maintained
23 by Safety-Kleen that identifies the name of the
24 branch corresponding to a branch number?

25 A. Yes.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 20

01 Q. What is that document called?

02 A. I don't have that. I would -- I don't
03 have a document like that.

04 Q. Do you know what the name of that document
05 is?

06 A. No, I don't.

07 Q. If you were to ask someone at
08 Safety-Kleen, could I see the list of all of our
09 branch -- branches and branch numbers, what would
10 you ask for?

11 MR. WOOD: Objection. Foundation.

12 BY MR. DUPONT:

13 Q. You can answer.

14 A. I would probably try to ask somebody if I
15 could have a list like that but I don't know who I
16 would ask anymore or where to get that from.

17 Q. Okay. All right. And there's a new
18 customer number is the last column.

19 A. Yes.

20 Q. And what does that represent?

21 A. Safety-Kleen eventually ran out of
22 customer numbers, and then they started using new
23 customer number.

24 (Plaintiffs' Exhibit 3 marked
25 for identification.)

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 21

01 BY MR. DUPONT:

02 Q. Okay. I've marked as Exhibit 3 to your
03 deposition what is Exhibit B to your declaration
04 and it's entitled Safety-Kleen System, Inc. Legal
05 Scan Document List.

06 Thank you.

07 And do you have a copy of that in front of
08 you?

09 A. Yes, I do.

10 Q. What is Exhibit 3 to your deposition?

11 A. This is the -- I take the customer number
12 and I run it into the legal scan document list
13 which produces a list of the services.

14 Q. All right. So you have listed on the
15 left-hand column old customer number, and on the
16 first two pages to almost midway down the third
17 page the customer -- the new Customer numbers are
18 all zeros. What does that mean?

19 A. That means there wasn't a new customer
20 number.

21 Q. Okay. And the next column is C-U-S-T
22 N-U-M, old. I take it that's customer number old?

23 A. Yes.

24 Q. And the third column is service date.
25 What does the service date mean?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 22

01 A. That is the date the sales rep went out
02 and performed the service for the customer.

03 Q. Does the service date listed under that
04 column correspond to a date written on a particular
05 service record?

06 A. On the preprint placement or end document.

07 Q. Okay. And the next column is service
08 document number?

09 A. Yes.

10 Q. And it's abbreviated service doc, D-O-C,
11 N-U-M?

12 A. Yes.

13 Q. Under this column there is a -- for some
14 of the numbers there is a letter followed by
15 numbers. Can you tell me what the significance of
16 the letter preceding the numbers is?

17 A. A "P" document was a placement. An "M"
18 document was an unscheduled service, and the other
19 ones are regular scheduled services, preprints.

20 Q. Okay. So were there --
21 (Reporter interruption for clarification.)

22 THE WITNESS: Preprints.

23 BY MR. DUPONT:

24 Q. Is that an OO or a zero zero?

25 A. Zero zero.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 23

01 Q. So there's P for placement, M for
02 unscheduled service, and 00 for regular visit?

03 A. That's correct.

04 Q. And a regular visit is that just a -- an
05 ordinarily scheduled plan visit?

06 A. Yes.

07 Q. Looking onto the next page, there's also a
08 prefix of CP coming before the numbers. What does
09 "CP" signi -- signify?

10 A. I believe those were compliance documents.
11 I -- they weren't used very much. I can't really
12 speak. I don't remember what CP stood for.

13 Q. Okay. If you look to the fourth page of
14 this exhibit under the service dock number column,
15 the second to the last entry is a WP coming before
16 the numbers. What does the "WP" mean?

17 A. I don't remember what those were either.
18 Those were not used very often either.

19 Q. Okay. Then after the letters are a series
20 of numbers. What are the numbers under service
21 document number represent?

22 A. It's the preprint number.

23 Q. Can you explain what that is?

24 A. A number that was assigned through the
25 system. A document number.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 24

01 Q. Okay. So that's a number that appears on
02 the preprint form?

03 A. Yes.

04 Q. And the preprint form, can you explain
05 what a preprint form is?

06 A. It's the sales and service document.

07 Q. So that's a --

08 A. That's -- I'm sorry.

09 Q. I apologize. I cut you off. Please
10 continue.

11 A. When the service rep would go out and
12 perform the service, that's the document he would
13 have the customer sign.

14 Q. Okay. Then on the right-hand side of the
15 entries under service document number, there are
16 what appear to be handwritten checks and notes?

17 A. That's correct.

18 Q. Did you make these handwritten checks and
19 notes?

20 A. I did.

21 Q. Okay. What's the significance of a check?

22 A. I found it.

23 Q. And there's notes of "can't find."

24 Does that mean you couldn't find the
25 document?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 25

01 A. Yes.

02 Q. And there's also, if you turn to the
03 second page, there's a note for one of the entries.
04 It says "best possible" -- and I can't read the
05 rest.

06 A. It should say copy.

07 Q. Okay. So it's "best possible copy" on the
08 second page. For that entry, does that mean that
09 you found a record that wasn't entirely legible or?

10 A. I tried to get it to the best legible copy
11 I could get. I just wanted them to know this is
12 the best I can do.

13 Q. How -- how do you work with the document
14 to get it to the best legible copy?

15 A. You can lighten or darken them.

16 Q. Are there originals avail -- available
17 somewhere?

18 A. No.

19 Q. Okay. So why don't you walk me through
20 what Safety-Kleen's procedures have been for
21 maintaining service records since the company was
22 started in 1970?

23 A. To the best of my knowledge? They would
24 mail in their copy to corporate. We would either
25 microphone them or image them, and then they were

OBJECTION:
Lack of
Foundation/
Assumes facts
not in evidence:
Start of Safety-
Kleen
(cont. to 26:1);
See errata

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 26

01 destroyed.

02 Q. And I understand that there are some
03 changes in the procedures over the years?

04 A. As far as going from microfilm to imaging;
05 otherwise, no.

06 Q. Okay. When did the change from microfilm
07 to imaging take place?

08 A. In 1997 period 9, they started imaging the
09 preprints but they still used microfilm for the
10 placements and manuals. And 1999, 11/5 of 1999,
11 everything became imaged.

12 Q. Has it always been the procedure to mail
13 the service records to Safety-Kleen headquarters,
14 or are they ever imaged at the branch?

15 A. To the best of my knowledge, they were
16 mailed in. I don't know what they are doing now.

17 Q. Okay. So to understand that a service
18 record, whether it was a preprint or a -- give me
19 examples, there's preprints, there's --

20 A. Placement.

21 Q. Placement?

22 A. Manual.

23 Q. Okay. And are those the three options?

24 A. On your list there was a WP, which I don't
25 remember, and a C P. On my exhibits, if I found

Niemaszyk, Debra

Rhyne Trial Master

Page 27

01 those, it should say what they were.

02 Q. Okay. What's a manual?

03 A. An unscheduled service.

04 Q. And is that -- is it called manual because
05 it's handwritten out?

06 A. I don't -- I don't know.

07 Q. Okay. And preprints are scheduled
08 services?

09 A. Yes.

10 Q. And placements, what is that?

11 A. When they went out to place a machine at
12 the customer.

13 Q. Okay. And a seen at time is referenced
14 to a -- someone might write pull on a record. Are
15 you familiar with that term?

16 A. I've seen that.

17 Q. Okay. Is there a specific document used
18 to record when a Safety-Kleen parts washing machine
19 is taken out of a customer location or a service is
20 discontinued?

21 A. I don't know.

22 Q. So does a service branch generate the
23 preprint placement and manual records?

24 A. I don't know how those are generated
25 either.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 28

01 Q. Okay. In -- in general terms, what's your
02 understanding of how the documents generated, how
03 it's taken to the customer, and then how it gets
04 back to the corporate office?

05 A. To the best of my knowledge, the sales rep
06 gets the documents, but I don't know where they
07 come from. We go out to the customer, perform the
08 service, get a signature and mail them back in to
09 corporate.

10 Q. And during the steps of generating the
11 document, taking it to the customer, bringing it
12 back to the service department then mailing it to
13 the corporate headquarters, is there any type of
14 operation to make a copy or scan a copy or image a
15 copy of the document before it's sent to corporate
16 headquarters by mail?

17 A. I don't know.

18 Q. Are the service document numbers entered
19 into some sort of system with Safety-Kleen as soon
20 as service documents come back from service
21 branches?

22 A. I know at -- at one time they were --
23 there was a data entry department. I don't know
24 how they do it today.

25 Q. When there was a data entry department,

OBJECTION:

403,

Prejudicial:

Vague,
confusing
question;

**602, Lack of
personal**

knowledge:
wide scope
of witness's job
duties /
responsibilities,
admitted lack
of knowledge

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 29

01 how did it work?

02 A. I don't know. I just know there was a
03 data entry department and a branch services
04 department, but I didn't work in either one of
05 those departments.

06 Q. Okay. Is the service document number
07 entered into the system when you conduct or someone
08 in your position conducts a search for documents
09 responsive to a request in litigation, or have they
10 already been entered into a system by the time you
11 conduct your search?

12 A. They would have already been entered in.

13 Q. Is there a -- a backup system? In other
14 words, if a document, a service record is misplaced
15 when it's mailed back to corporate headquarters
16 from a particular branch, that's possible that
17 there were service records that were lost in the
18 mail or someone forgot to mail them, okay. Is
19 there any type of system that Safety-Kleen has a
20 backup in accounting or wherever for recording when
21 particular service documents were generated, what
22 information was on the service document, that sort
23 of thing?

24 A. Not to my personal knowledge.

25 Q. Okay. Can you walk me through the -- the

Niemaszyk, Debra

Rhyme Trial Master

Page 30

01 steps of how it is you go about retrieving
02 documents at the request of counsel for
03 Safety-Kleen in litigation?

04 A. I get a request with whatever information
05 they have: Customer name, address, city, I take
06 that into the legal database, and I search either
07 by customer name, personal names, address, city,
08 and see what kind of hits I get. At that point I
09 send it back to them, and then they will send me
10 another document requesting the documents -- the
11 document search from the customer search. I put
12 that in to a different system, a different
13 database, and come up with a document list which I
14 \ATXnt99790 14\ATXnt1003014 \ATXnt0 send back to them.

OBJECTION:
Transcription
error designated;
see errata

15 Q. Okay. The -- the first list that you
16 created, does that -- did you call that a document
17 search list?

18 A. The first list is a customer search
19 list --

20 Q. Okay.

21 A. -- based on the information that I get
22 from the attorneys.

23 Q. And is that what we've marked as Exhibit 2
24 and Exhibit A to your declaration?

25 A. Yes.

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

01 Q. Which locations or which businesses did
02 you search for in this case?

03 A. Whatever was on the list I got from the
04 attorneys.

05 Q. Do you have that list?

06 A. I don't.

07 Q. Do you remember what was on the list?

08 A. No.

09 Q. Do you remember the names of the locations
10 you searched for?

11 A. Only according to my customer list, that
12 I'm looking at.

13 Q. Do you remember if you searched for a
14 business by the name of Bob's Tex- -- Texaco?

15 A. I -- I don't know.

16 Q. How many searches for service records have
17 you conducted, to your best estimate, in cases that
18 involve an individual who filed a lawsuit after
19 using a Safety-Kleen parts washer solvent and
20 contracting cancer?

21 MR. WOOD: Objection. Assumes facts.
22 Foundation. And requires expert opinion. Outside
23 the scope of the deposition. You can answer.

24 THE WITNESS: There's been hundreds. I
25 couldn't give you an exact amount.

Objection shouldn't be played

OBJECTION:
401,
Relevancy:
Prior lawsuits are irrelevant;
403,
Prejudicial:
Jury's knowledge of prior suits is prejudicial;
404,
Character evidence:
Prior lawsuits impermissible to show character;
602, **Lack of personal knowledge:**
Content of prior lawsuits' claims;
Assumes facts not in evidence/
Lack of foundation:
Allegations of lawsuit are not facts.

BZYK,
OL 1
t of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 32

01 BY MR. DUPONT:

02 Q. Okay. And is that something you've been
03 doing since you started with the company in 1986?

04 A. Yes.

05 Q. What are the oldest service records you've
06 been able to pull, not just in this case, but in
07 general?

08 A. 1984.

09 Q. Do I understand that you've never actually
10 retrieved a service record that's dated earlier
11 than 1984?

12 A. There's no way to access them.

13 Q. Explain for me what you mean by that?

14 A. They didn't electronically store -- do any
15 indexing of the ones prior to '84 to get a list
16 like this, so I'm not able to look at those. I
17 have the actual reel of microfilm but there's no
18 information to go search from.

19 Q. Okay. So Safety-Kleen service records
20 dated prior to 1984 are stored how?

21 A. On microfilm.

22 Q. How many microfilm rolls?

23 A. Prior to '84?

24 Q. Yes.

25 A. That would be a guess too.

Niemaszyk, Debra

Rhyne Trial Master

Page 33

01 MS. KAHN: Excuse me.

02 MR. DUPONT: Bless you.

03 MS. KAHN: Thank you.

04 BY MR. DUPONT:

05 Q. Are there more than one microfilm rolls?

06 A. Yes.

07 Q. Are there more than fifty?

08 A. Yes.

09 Q. More than a hundred?

10 A. Yes, but then I would get -- you know,

11 I -- I'm not sure. 500 maybe.

12 Q. How were the microfilm rolls --

13 MR. DUPONT: God bless you.

14 MS. KAHN: Excuse me again.

15 BY MR. DUPONT:

16 Q. How were the microfilm rolls organized?

17 A. By branch, date, and period and year.

18 Q. Are there -- is there a particular
19 microfilm for a particular branch exclusively? In
20 other words, does one microfilm roll correspond to
21 one branch?

22 A. There can be more than one branch on a
23 reel depending on how large the branch is.

24 Q. Is -- are the reels organized by region of
25 the country?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 34

01 A. By branch number.

02 Q. Okay. Is there a list that's been
03 generated by Safety-Kleen or a record generated by
04 Safety-Kleen on which branch numbers are on which
05 reels?

06 A. No, there's not a list.

07 Q. Has anyone gone through the old microfilm
08 reels to determine which branches are on which
09 reels?

10 A. I guess I don't understand the question.

11 Q. Sure. At -- I'm trying to get a better
12 sense of how these microfilm reels with pre1984
13 records are organized?

14 A. The same way as the ones after '84.
15 They're by branch -- by year first. So in 1976
16 would be their branch starting with the first
17 branch there is, 10000, the dates and the period.

18 Q. Okay. So if -- if you want to look for
19 the years 1972 to 1973, does that -- are you able
20 to narrow down which reels you need to look at to
21 get to the years 1972 and 1973?

22 A. There aren't any reels for 1972 or 1973.

23 Q. Okay. When do they -- when do the
24 microfilm records begin?

25 A. 1976.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 35

01 Q. All right. So Safety-Kleen has microfilm
02 records between 1976 and 1984?

03 A. Yes.

04 Q. Does Safety-Kleen have records for the
05 time period of prior to 1976?

06 A. No.

07 Q. So do I understand that Safety-Kleen has
08 no records of service -- strike that.

09 Do I understand that Safety-Kleen does not
10 have any service records for the period of 1970 to
11 1976?

12 A. That I'm aware of, not on microfilm.

13 Q. When in 1976 did Safety-Kleen begin to
14 save records on the microfilm?

15 A. I don't really look at those very much
16 because I can't really access them. I believe it
17 was period 9.

18 Q. Okay. If you would look back to Exhibit B
19 to your declaration which is Exhibit 3 to the
20 deposition, for those records where you've written
21 can't find, why is it that you're unable to find
22 them?

23 A. They weren't in the system, either on
24 microfilm or if it's later than the microfilm, I
25 couldn't find them in the imaging system either.

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 36

01 Q. Okay. So those records that have been
02 lost or misplaced?

03 A. Or were never mailed in.

04 Q. If they were never mailed in, how would
05 you have a service document for them?

06 A. I don't know.

Q. Has it been your experience in other cases
that you've been unable to find service records?

A. Yes.

Q. And how common is that?

A. Depending on the branch, some branches
were really good about the way they sent in their
records and some weren't. So it just -- it
depends. Sometimes I find everything; sometimes I
don't.

Q. Which branches stick out in your mind as
being not good about sending in rec -- service
records?

18
19 A. Offhand, there was an east coast branch
20 that I had problems with. And that doesn't always
21 mean that I didn't find the documents. I would
22 have to search more for them, which I do. When I
23 can't find something, I just keep searching.

24 Q. Okay. Which east coast branch?

25 A. I believe it was 211808. I think it was

OBJECTION:

401, Relevancy:
Ability to find
service records in
other, unrelated
cases/branches
not relevant to this
case or these
alleged branches.

403, Prejudicial:
Danger of
confusing the
issues/misleading
the jury into
making irrelevant
branches/cases
are at issue;

**404, Character
evidence:** Prior
lawsuits
impermissible to
show character

NIEMASZYK,
DEBRA - VOL 1

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 37

01 out of New York.

02 Q. Is it New York City?

03 A. I don't -- I don't remember where the
04 branch was. I just remember that -- that stands
05 out in my mind as a branch number I would have
06 problems finding some of the documents.

07 Q. Okay. And you said if you didn't find it,
08 you would keep searching for it. Where else would
09 you look?

10 A. On the same reel. On the microfilm reel
11 there are daily dates. They're -- they would -- we
12 would microfilm these daily dates that would tell
13 what would -- what should have been in that batch,
14 what they should have sent in. So if I can't find
15 something, according to this list, then I will just
16 keep going to the date before or the date after and
17 keep searching until I'm sure I can't find.

18 BY MR. WOOD:

19 Q. All right. And you say the microfilm
20 reels are -- these are the post1984 microfilm
21 reels?

22 A. No, not for those.

23 Q. Okay.

24 A. Those I don't search for.

25 Q. Okay.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 38

01 A. Because I can't get a list.

02 Q. All right.

03 MR. WOOD: I need to object because I
04 think your question said post '84, and I think
05 you're --

06 THE WITNESS: Oh, I'm sorry.

07 MR. WOOD: I think you meant -- I think
08 you meant to ask pre '84. I think there's some
09 confusion between the question and answer.

10 BY MR. DUPONT:

11 Q. All right. Why don't you -- let me see if
12 I can clarify that. You can search the microfilm
13 reels from period 9, 1976 through 1984?

14 A. No.

15 Q. Okay. You cannot?

16 A. No, I cannot. Period one of 1984 I can.

17 Q. All right. Okay. Then Exhibit C to your
18 declaration, are those all of the service records
19 that you were able to find from the list that's set
20 forth in Exhibit B to your declaration and Exhibit
21 3 to your deposition?

22 A. Yes.

23 Q. Have you conducted any search for --
24 strike that.

25 In -- in your responsibilities since 1986

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 39

01 of managing and retrieving microfilm and imaging
02 records, has that included records of purchase of
03 mineral spirits made by Safety-Kleen?

04 A. Not that I'm aware of.

05 Q. Is there a separate department that you're
06 aware of or department that you're aware of at all
07 at Safety-Kleen that would have a responsibility
08 maintaining records of purchases of mineral
09 spirits?

10 A. No.

11 (Reporter interruption for clarification.)

12 BY MR. DUPONT:

13 Q. -- records of purchase of mineral spirits?

14 MR. WOOD: Objection. Foundation. Calls
15 for speculation.

16 (Reporter interruption for clarification.)

17 THE WITNESS: No.

18 BY MR. DUPONT:

19 Q. Okay. That's not -- that hasn't been
20 within your job responsibilities. So if -- if
21 there were records maintained of purchases of
22 mineral spirits by Safety-Kleen in a separate
23 department, you just wouldn't be aware of that?

24 THE WITNESS: That's correct.

25 BY MR. DUPONT:

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 40

01 Q. Is that fair to say?

02 Do you have somewhere a list of the
03 locations that you looked for for records in this
04 case?

05 A. It would have been from the letter from
06 the lawyer.

07 Q. And do you still have that letter?

08 A. I would have it on my computer.

09 Q. Okay. And is that something you have with
10 you here today?

11 A. No.

12 MR. DUPONT: All right. Let's go off the
13 record.

14 MR. WOOD: Okay.

15 THE VIDEOGRAPHER: The time is 9:52 a.m.
16 We're going off the record.

17 (Break taken.)

18 THE VIDEOGRAPHER: The time is 9:58 a.m.
19 We're back on the record.

20 BY MR. DUPONT:

21 Q. All right. Has Safety-Kleen or anyone on
22 behalf of Safety-Kleen ever actually retrieved
23 records from the microfilm reels from period 9 of
24 1976 through 1984?

25 A. No.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 41

01 Q. I take it people have looked through those
02 reels?

03 A. I've looked through them.

04 Q. On how many occasions?

05 A. Just a couple times to see what the
06 documents look like that were that old.

07 Q. And were those documents legible?

08 A. For the most part.

09 Q. Are the reels kept in sequential order?

10 In other words, do they -- do they go from the
11 earliest to the most recent? How does that work?

12 A. Yes.

13 Q. Okay. And how are the reels identified?
14 Are they reel one, reel two, reel three?

15 A. We did start with reel one.

16 Q. And does reel one correspond to a
17 particular year?

18 A. Yes.

19 Q. Which year?

20 A. It would be the first year, 1976.

21 Q. All right. What other reels contain
22 records from 1976?

23 A. Would be the next few reels in numerical
24 order until 1976 was over.

25 Q. Okay. Typically how many reels did a

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 42

01 year -- a year's worth of service records consume?

02 A. I don't remember.

03 Q. Okay. Was there a range that would be at
04 least two -- two reels per year, no more than five
05 reels per year?

06 A. No, it would be much larger than that.
07 Maybe -- and I would be guessing.

08 Q. What's your best estimate?

09 A. My best estimate would be -- one year
10 might be 100 to 150 reels.

11 Q. Okay. How many images are on each reel?

12 A. Approximately 3,500.

13 Q. Is there a way to extract the records from
14 those reels and put them in to digital format?

15 A. Not that I'm aware of.

16 Q. Have you ever had any responsibility for
17 imaging, maintaining or retrieving records that are
18 records other than Safety-Kleen service records?

19 A. No.

20 Q. And have you ever provided a declaration
21 or testified as a custodian of records for records
22 other than Safety-Kleen service records?

23 A. No.

24 Q. Who at Safety-Kleen or what department at
25 Safety-Kleen was responsible for maintaining and

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 43

01 retrieving records that relate to internal
02 correspondence concerning Safety-Kleen products,
03 other Safety-Kleen business records?

04 MR. WOOD: Objection. Lacks foundation
05 and calls for speculation.

06 THE WITNESS: I don't know.

07 BY MR. DUPONT:

08 Q. Okay. But if I wanted to talk to somebody
09 about what search was conducted for, say, records
10 of internal correspondence at Safety-Kleen
11 concerning health hazards of parts washer solvents,
12 you would not be individual -- the individual I
13 should speak with?

14 A. No.

15 Q. That's correct?

16 A. That's correct.

17 Q. So if I wanted to learn about
18 Safety-Kleen's record retention policies, record
19 maintaining and record retrieval for documents
20 other than service records, I would need to speak
21 with somebody else with Safety-Kleen?

22 A. Yes.

23 (Plaintiffs' Exhibit 4 marked
24 for identification.)

25 BY MR. DUPONT:

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 44

01 Q. Okay. I'm going to go ahead and mark as
02 Exhibit 4 to the deposition of what's been
03 identified as Exhibit C to your declaration. And
04 those are the actual service records that
05 correspond to the service document numbers that you
06 were able to find on the Safety-Kleen Systems,
07 Inc., legal scan document list that's Exhibit 3 to
08 your deposition?

09 A. Yes.

10 Q. Okay.

11 MR. WOOD: She's got a copy there.

12 BY MR. DUPONT:

13 Q. All right. Okay. So I want to talk to
14 you about some of these records within Exhibit C
15 and some are Bates numbered but the majority are
16 not. So I'll try and work with you on the ones
17 that are Bates numbered to make it a little easier
18 to go through. Referring to the Bates numbers, can
19 you explain for me what each particular type of
20 document is, just so I can understand whether it
21 falls into the category for preprint form, a
22 placement form, or a manual form?

23 A. The first document is a preprint.

24 Q. And is there anything on the document that
25 identifies it to be a preprint so that I can say

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 45

01 okay, whenever I see that information on a
02 particular document I know it's a preprint?

03 A. It's the upper right-hand corner,
04 there's -- it should be a six digit number. It
05 starts with 105.

06 Q. Okay.

07 A. On my copy there's something covering --

08 Q. There's a -- there's a E service --

09 A. Yes.

10 Q. -- record on there so that blocks out part
11 of that number. So maybe we can find another one
12 that doesn't have that -- that stamp on it?

13 A. Okay. Well, the second document is a P
14 document, placement document.

15 Q. Okay. And that's Bates number SKS JOH 2,
16 correct?

17 A. Oh, yes.

18 Q. Okay. So this is a placement document?

19 A. That's correct.

20 Q. And if I want to look at another document
21 and I don't have the good fortune of having you
22 here with me to be able to guide me through the
23 documents, what would I look at on this document to
24 know that it's a placement?

25 A. The upper right-hand corner will say P,

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 46

01 and then a number after that -- a series of
02 numbers.

03 Q. So on this particular page, we have
04 P94484?

05 A. That's correct.

06 Q. And is that 94484 number to distinguish
07 and identify this particular page as opposed to
08 some other placement form?

09 A. Yes.

10 Q. The next page is Bates numbered SKS JOH 3.
11 Is this a preplacement form?

12 A. This is a preprint.

13 Q. Preprint. Okay.

14 A. And the upper right-hand corner there's a
15 six-digit number that tells that it's a preprint.

16 Q. And the six-digit number starts with 370
17 then 516?

18 A. Correct.

19 Q. What's the significance of that number?

20 A. I don't know how they -- the numbers were
21 generated. It's just, for me, I know that that's a
22 preprint because it doesn't have a P or an M before
23 it.

24 Q. Okay. So any -- any document that has an
25 identifying number that does not begin with a P or

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 47

01 an M is a preprint?

02 A. Yes.

03 Q. So next if you could identify for me an
04 example of a manual form?

05 A. I find one at 20.

06 Q. Okay. So I have Bates number 20 from
07 Exhibit C to your declaration, Exhibit 4 to the
08 deposition in front of me. And then in the top
09 right-hand column -- excuse me, the top right-hand
10 corner of the page there's an M 20146?

11 A. Correct.

12 Q. And the fact that it starts with the
13 letter M tells us that this is a manual form?

14 A. That's correct.

15 Q. Now, we turn to the next page, Bates
16 number 21. This is an example of a preprint form?

17 A. Yes.

18 Q. And are you familiar with the information
19 that's inputted into the preprint form other than
20 the reference number?

21 A. No.

22 Q. So in terms of what the product is that
23 this -- or the services that this preprint form
24 relates to, that sort of thing, you're not going to
25 have any information about that?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 48

01 A. No.

02 Q. Customer PO number. Does that have any
03 relationship to the customer numbers that appear on
04 your legal scanned document list and your legal
05 scanned customer search that are marked as
06 Exhibit 3 and 2 to your deposition?

07 A. No, they do not.

08 Q. Does the branch number appear on the
09 preprint form?

10 A. Yes.

11 Q. Where does the branch number appear?

12 A. Left hand -- upper left-hand corner,
13 7185012289, 718501 is the branch number.

14 Q. Okay.

15 A. And 2289 is the account number.

16 Q. All right. Then at the bottom of the form
17 there's a category for designated facility name and
18 address, and it says "Safety-Kleen Corp., 5050
19 Salida Boulevard in Salida, California. Is that
20 the branch name that corresponds to the 718501
21 number?

22 A. I would believe so.

23 Q. Okay. Was that the procedure for
24 Safety-Kleen to input the name of the branch under
25 designated facility name and address that

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 49

01 corresponds to the branch number?

02 A. I don't have personal knowledge of that.

03 That's what it looks like to me.

04 Q. Has that been your experience in going
05 through these types of records?

06 A. I --

07 MR. WOOD: Objection. Lacks foundation.
08 Calls for speculation.

09 THE WITNESS: I don't really look at that
10 when I'm pulling documents.

11 BY MR. DUPONT:

12 Q. Okay. Is there anything on this document
13 that identifies the recycle center that service
14 this particular customer?

15 A. I wouldn't have knowledge of that either.

16 Q. Okay. Okay. So talking about the time
17 period from 1984 to the present, would you agree
18 with me that if Safety-Kleen does not have a
19 service record for a particular business or
20 location that doesn't exclude the fact that
21 Safety-Kleen provided a service to that business
22 and location?

23 MR. WOOD: Objection. Assumes facts.
24 Lacks foundation. Calls for speculation.

25 THE WITNESS: I -- I don't understand the

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 50

01 question.

02 BY MR. DUPONT:

03 Q. Sure. We've seen some examples on Exhibit
04 3 to your deposition that there are records that
05 you were unable to find; okay? Is that correct?

06 A. That's correct.

07 Q. Since you were unable to find records for
08 particular service documents, would you agree with
09 me that Safety-Kleen's service document records
10 aren't complete?

11 MR. WOOD: Objection. Vague. Overbroad.
12 Assumes facts.

13 MS. KAHN: Join.

14 THE WITNESS: I don't know why they're not
15 there. I wouldn't know why it's on a list but it's
16 not there.

17 BY MR. DUPONT:

18 Q. Okay.

19 A. There may be a reason I'm not aware of.

20 Q. You've exhausted every search that can be
21 made for the service record?

22 A. Yes.

23 Q. And you've satisfied yourself that that
24 service record can't be found?

25 A. Yes.

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 51

01 Q. Okay. So since those service records
02 can't be found, would you agree with me that
03 Safety-Kleen's records of customer service records
04 for the period of 1984 to the present are not
05 complete?

06 MR. WOOD: Objection. Assumes facts.
07 Lacks foundation. Calls for speculation.

08 THE WITNESS: And I don't want to
09 speculate on that. I don't know why they wouldn't
10 be there.

11 BY MR. DUPONT:

12 Q. Okay. Well, I'm not asking you to make a
13 determination as to why they're not there, but you
14 would agree that they're not there, right?

15 A. I would agree that they're not there.

16 Q. And you would agree that if certain
17 service records are not within Safety-Kleen's
18 business records, then Safety-Kleen's business
19 records are not complete?

20 MR. WOOD: Objection. Assumes facts.
21 Calls for speculation.

22 MS. KAHN: Join.

23 THE WITNESS: I'm -- I'm not comfortable
24 giving an answer to that.

25 BY MR. DUPONT:

Niemaszyk, Debra

Rhyne Trial Master

Page 52

01 Q. All right. If Safety-Kleen does not have
02 all of the service records, how can its service
03 records be complete?

04 MR. WOOD: Objection. Assumes facts.
05 Calls for speculation. Argumentative.

06 MS. KAHN: Join. Also asked and answered.

07 THE WITNESS: I just -- I don't know what
08 to say to that. I'm not going to answer that.

09 BY MR. DUPONT:

10 Q. Okay.

11 MR. DUPONT: All right. Off the record.
12 Just a couple minutes.

13 THE VIDEOGRAPHER: The time is 10:14 a.m.
14 We're going off the record.

15 (Discussion held off the record.)

16 THE VIDEOGRAPHER: The time is 10:20 a.m.
17 We're back on the record.

18 BY MR. DUPONT:

19 Q. Is there any correlation between the
20 account number that exists on a preprint form and
21 the customer number?

22 A. Say that again, please.

23 Q. Sure. Is there any correlation between
24 the account number on a preprint form and a
25 customer number? For example, we were looking at

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 53

01 Bates number 21 and in the top left-hand corner --
02 I'll wait till you get to that page, and I'll ask
03 the question. Thank you.

04 A. I'm here now.

05 Q. Okay. We're looking at Bates number 21
06 from Exhibit 4 to your deposition and Exhibit C to
07 your declaration, and in the top left-hand corner
08 you identified that there was a branch number
09 718501 followed by an account number, 2289.

10 A. That's correct.

11 Q. And that account number identifies the
12 customer in this case Barbarian European Motors?

13 A. Yes.

14 Q. Okay. Is there a -- is the account number
15 here synonymous to the customer number?

16 A. Yes.

17 Q. Okay. And is there any way for me to tell
18 when an account number with the branch number on a
19 preprint form is a new customer number versus an
20 old customer number?

21 A. You would see in the upper left-hand
22 corner, you will see a new customer number instead
23 of the old customer number.

24 Q. So on -- preprinted onto the actual form
25 itself?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 54

01 A. Eventually became new customer numbers.

02 Q. Okay.

03 A. And sometimes they would have both numbers
04 down.

05 Q. Are there any lists that have been
06 compiled that tell us not only what the customer
07 number is, the service date and the service
08 document number is, but also tell us what product
09 the service record or what service the service
10 record corresponds to?

11 A. Not that I have access to.

12 Q. Are you aware of that being done by
13 Safety-Kleen or on behalf of Safety-Kleen?

14 A. No, I'm not.

15 Q. What is the name of the database of
16 documents that the imaged service records appear
17 on?

18 A. It was called IXOS, it's an SAP based
19 system.

20 Q. You said it was called IXOS. Is there a
21 separate system now?

22 A. They're in the process of moving it to a
23 new system.

24 Q. Okay. Are there records that are
25 nonservice records that are kept on that database?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 55

01 A. Not that I know of.

02 Q. Are you familiar with what other databases
03 Safety-Kleen has for storage of its historic
04 business records?

05 A. No.

06 Q. Have you searched for service records for
07 all of the places of employment of David Johnson or
08 only certain places of employment?

09 A. I would have searched according to what
10 was requested from the attorney.

11 Q. And is it your understanding that you were
12 asked to search for all places of employment or
13 only certain places of employment?

14 A. My understanding is that would be all of
15 them.

16 Q. And sitting here today, you can't remember
17 the names of the locations you were asked to search
18 for other than what's listed on Exhibit 2 to your
19 deposition?

20 A. That's correct.

21 MR. DUPONT: Okay. Those are all the
22 questions I have.

23 MS. KAHN: I have no questions.

24 THE VIDEOGRAPHER: Anyone on the phone
25 have questions?

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 56

01 This is the end of Video Number 1 in the
02 conclusion of today's proceeding. The time is
03 10:25 a.m. We're going off the record.

04 MR. WOOD: I was going to state my
05 reservation of no questions, but you beat me to it.

06 THE VIDEOGRAPHER: You can still do it on
07 her record.

08 MR. WOOD: If no one has any further
09 questions, we'll reserve our questions until trial.

10 THE REPORTER: And does anybody need a
11 copy of the transcript? On the phone?

12 And in the room, does anybody need a copy
13 of this transcript?

14 MR. WOOD: I do.

15 MR. DUPONT: I do.

16 THE REPORTER: And Ms. Kahn, you don't
17 need it?

18 MS. KAHN: Um, yes. I would like a copy.

19 THE REPORTER. Okay. And before we go off
20 the record if there's anyone on the phone that
21 needs a copy of the transcript, let me know.

22 MR. CHON: Richard Chon. I'd like a copy
23 of the transcript.

24 THE REPORTER: Thank you. Anybody else?

25

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyme Trial Master

Page 57

01 (Whereupon, the deposition was concluded

02 at 10:26 a.m.)

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Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

01 SIGNATURE OF DEPONENT

02 I, the undersigned, DEBRA NIEMASZYK, do hereby
03 certify that I have read the foregoing deposition and
04 find it to be a true and accurate transcription of my
05 testimony, with the following corrections, if any:

06

07	PAGE	LINE	CHANGE
08	-----	-----	-----
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22	-----	-----	-----

23 DEBRA NIEMASZYK DATE

24
25
26

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 59

01 REPORTER'S CERTIFICATE

02

03

04 I, KIMBERLY R. HENDERSHOTT, a Shorthand
05 Reporter, State of California, do hereby certify:

06 That DEBRA NIEMASZYK, in the foregoing
07 deposition named, was present and by me sworn as a
08 witness in the above-entitled action at the time and
09 place therein specified;

10 That said deposition was taken before me at
11 said time and place, and was taken down in shorthand by
12 me, a Certified Shorthand Reporter of the State of
13 California, and was thereafter transcribed into
14 typewriting, and that the foregoing transcript
15 constitutes a full, true and correct report of said
16 deposition and of the proceedings that took place;

17 IN WITNESS WHEREOF, I have hereunder
18 subscribed my hand this 12th day of February, 2014.

19

20

21 KIMBERLY R. HENDERSHOTT, RPR, CSR NO. 12552

22 State of California

23

24

25

26

Transcript of Niemaszyk, Debra

Niemaszyk, Debra

Rhyne Trial Master

Page 60

Transcript of Niemaszyk, Debra

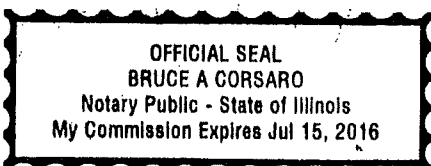
SIGNATURE OF DEPONENT

I, the undersigned, DEBRA NIEMASZYK, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

<u>PAGE</u>	<u>LINE</u>	<u>CHANGE</u>
6	9	Deborain to Debra
7	25	Deborah to Debra
10	13	microphone to microfilm
11	6	microphone to microfilm
12	9	microphone to microfilm
13	15	microphone to microfilm
14	25	microphone to microfilm
15	30	7 personal to partial
16		
17		
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19		
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21		

Debra Niemaszyk
DEBRA NIEMASZYK

3/3/14
DATE



BAC 3/3/14

Exhibit 3

James Wells Vol II
11-6-2008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION
ROBERT B. OAKLEY and IRENE)
OAKLEY)
vs.) Civil Action File No. 2:07-CV-351
AIR PRODUCTS AND CHEMICALS,)
INC., ET AL)

ORAL VIDEOTAPED DEPOSITION
CORPORATE REPRESENTATIVE OF RADIATOR SPECIALTY COMPANY
November 6, 2008
Volume 2

ORAL VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE OF
RADIATOR SPECIALTY COMPANY, produced as a witness at the
instance of the Plaintiffs and duly sworn, was taken in the
above-styled and numbered cause on November 6, 2008, from
1:35 p.m. to 6:51 p.m., before IRENE VALDES, Certified
Shorthand Reporter in and for the State of Texas, reported by
computerized stenotype machine at the offices of Coats, Rose,
Yale, Ryman & Lee, 3 Greenway Plaza, Suite 2000, Houston,
Texas, pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

Plaintiffs designations are in yellow
US Steel's designations are in green

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713-481-2180

James Wells Vol II
11-6-2008

1	INDEX	
2	CORPORATE REPRESENTATIVE OF RADIATOR SPECIALTY COMPANY	
3	PAGE	
4	Examination by Mr. Sykes	264
	Examination by Mr. Riley	270
5	Further Examination by Mr. Lubel	279
	Further Examination by Mr. Riley	289
6	Signature Page	290
	Court Reporter's Certificate	292

EXHIBITS

10	EXHIBIT	DESCRIPTION	PAGE
11	3	File	108
12	4	Consumer Product Safety Commission - Federal Hazardous Substances Act Regulations	
13			
14	5	Mariner's info	173
15	6	Photograph	174
16	7	Radiator Specialty Co. testing laboratory report	
17			
18	8	May 29, 1969 Foster D. Snell report	188
19			
20	9	Drawing	205
21			
22	10	Appendix No. 2	220
23			
24	11	Detail specifications threaded fastener conditioning - 7/12/50	
25	12	Photograph	240
	13	US Steel laboratory report	264
	14	Sale of coal chemicals	265

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James Wells Vol II
11-6-2008

1 APPEARANCES

2

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ALSO PRESENT:

Mr. Brian Bobbitt - Videographer

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James Wells Vol II
11-6-2008

1	EXHIBITS (cont.)		
2	EXHIBIT	DESCRIPTION	PAGE
3	15	Federal Register	269
4	16	Foster D. Snell testing documents	270
5	17	Foster D. Snell reports - Oct. 15, 1954	272
6	18	Product list	274
7	19	Photograph	276
8	20	Layout drawing	281
9	21	Layout drawing	286
10	22	Layout drawing	287

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James Wells Vol II
11-6-2008

Page 100

1 (Volume 2 started with new court reporter.)
2 THE VIDEOGRAPHER: The time is 1:35 p.m. We
3 are back on the record. This is the beginning of tape 3.
4 MR. LUBEL: Hey, Jim, I have -- I've executed
5 of your protective order agreement except I made two minor
6 changes on page 4 I want you to see, but I'm not going to be
7 at the hearing tomorrow and I understand you're going to
8 tender an agreed protective order to the court.
9 MR. RILEY: Let me see your changes.
10 MR. LUBEL: Yeah. I mean an agreed one. I'm
11 going to need to see whatever the confidential documents are.
12 So having somebody come back and tell me what it says isn't
13 good enough.
14 MR. RILEY: Okay. Basically I'll tell the
15 court and Robert can tell the court that you want to a copy;
16 and if the judge says you can have a copy, you can have a
17 copy.
18 MR. LUBEL: Okay.
19 MR. RILEY: But, you know, it's a closely held
20 corporation; so I want it back.
21 MR. LUBEL: I think the protective order allows
22 for you to get it back at the conclusion of the case.
23 MR. RILEY: It does. It's sealed. I haven't
24 even looked at it. It's still in the original seal. But I
25 will represent to the Court that you have asked for a copy not
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James Wells Vol II
11-6-2008

Page 101

1 just to be seen.
2 MR. LUBEL: That's correct. And secondly I
3 think we've already established we've got an agreement between
4 you, me and Sykes and that is that we can use the Cowey
5 depositions of Mr. Wells, the corporate rep in that case. I
6 think that will shortcut what I'm going to do today.
7 MR. SYKES: I want to be clear, Lance, also
8 that in our pretrial disclosures, I forget exactly the form of
9 the pleading, but we designated passages from Cowey and DeOrio
10 of Mr. Wells.
11 MR. LUBEL: I've not seen -- I'm not sure that
12 I've seen DeOrio.
13 MR. SYKES: That's the one where Al Stewart
14 couldn't pronounce his --
15 MR. RILEY: No, it wasn't Al Stewart. It was
16 Michael Stewart.
17 MR. SYKES: Michael Stewart. Sorry.
18 MR. LUBEL: Okay. I think we've seen that one.
19 I'm not --
20 MR. SYKES: I just want to be clear since we're
21 on the record we had done that.
22 MR. LUBEL: No, no, no, I think that's good
23 because what I don't -- I don't want to agree at this point
24 that we're going to use depositions outside of ones I've been
25 at, okay? So that was a different law firm and a different
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James Wells Vol II
11-6-2008

Page 102

1 plaintiff.
2 MR. SYKES: Well, we'll take it up at the right
3 time.
4 MR. LUBEL: Yeah, we can take that up, but for
5 now we've got an agreement we can use -- all of us can use
6 Cowey subject to the specific objections made in the
7 deposition, that they're not waived, right?
8 MR. SYKES: Correct.
9 MR. LUBEL: Isn't that the treatment we have?
10 MR. SYKES: That's the agreement.
11 MR. RILEY: Yeah. I think we have one
12 exception to that and that's Blightschmidt? I think
13 Blightschmidt?
14 MR. SYKES: Yeah, we never talked about
15 Blightschmidt or however you say his name.
16 MR. LUBEL: I'm just talking about Wells right
17 now.
18 MR. SYKES: Correct.
19 MR. LUBEL: I know we have an agreement on
20 other people. I can't remember if Blightschmidt was raised in
21 our agreement or not.
22 MR. SYKES: We just talked about Blightschmidt
23 and Sinus and Wells that day on that Friday afternoon.
24 MR. RILEY: The party depositions. The party
25 depositions. In other words, you asked if --
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 103

1 MR. LUBEL: Corporate reps?
2 MR. SYKES: Yes.
3 MR. RILEY: You asked if Jim Wells could be
4 used, his video deposition and transcript and Cowey. And I
5 agreed to that. And you also asked me about Alan Blumenthals'
6 deposition that it could be used as if taken in this case
7 subject to all objections as is Jim's deposition subject to
8 objections.
9 MR. LUBEL: That were lodged in the deposition?
10 MR. RILEY: Well, substantively you wouldn't
11 have lodged any in the deposition.
12 MR. LUBEL: Whatever depositions -- whatever
13 objections you were required to lodge at that time?
14 MR. RILEY: Sure, responsiveness and form.
15 MR. LUBEL: Right. I think we had an agreement
16 on Masitis and Grossman too; is that right?
17 MR. SYKES: Graver.
18 MR. LUBEL: And Graver. And so Blightschmidt
19 was the one that you don't think that we specifically talked
20 about?
21 MR. SYKES: Correct.
22 MR. LUBEL: We'll address that at another time.
23 MR. RILEY: I wasn't even involved in that one;
24 so --
25 MR. LUBEL: It was in the Cowey case, wasn't
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<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 104</p> <p>1 it? That's my recollection of when -- 2 MR. SYKES: Yeah. 3 MR. RILEY: It was, but I wasn't involved in 4 the discussion about what happened. 5 MR. LUBEL: About Blightschmidt? 6 MR. RILEY: Yeah. So I can't tell you what was 7 talked about. 8 MR. LUBEL: What agreement? 9 MR. RILEY: Whatever. 10 MR. LUBEL: Gotcha. 11 Q. (BY MR. LUBEL) Okay. Lets go back, Mr. Wells, and 12 let's get back to the document search that you conducted. 13 Remember before we took a break we were talking about that 14 topic? 15 A. Yes. 16 Q. You were giving us -- you had given us a description 17 of these file cabinets in the caged area. You remember 18 generally talking about that? 19 A. Yes. 20 Q. And I wrote down that that took place in building 2? 21 A. Yes. 22 Q. And that there was a file cabinet or cabinets that 23 had a label on the outside -- these are these metal file 24 cabinets, right? 25 A. Yes. Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 106</p> <p>1 pull them. 2 Q. Okay. Do you remember who the -- your competitors 3 were for Liquid Wrench? 4 A. Yeah, WD40 for one. And there were others, but I 5 just haven't associated with those companies in ten years; 6 so -- 7 Q. Did you look at the file on competitors to kind 8 of -- 9 A. No, I did not. 10 Q. -- remind yourself? The supplier info, did you pull 11 that file? 12 A. I did not. 13 Q. For Liquid Wrench I mean? 14 A. I did not. 15 Q. The patents, do you know if there's a patent on 16 Liquid Wrench? 17 A. There is a patent on Liquid Wrench No. 2. 18 MR. RILEY: For the record, Lance, you have 19 that. That was produced about a month ago. 20 Q. (BY MR. LUBEL) That was around 1986 or so? 21 A. Could have been. I've forgotten. 22 MR. RILEY: It was in the '90s. 23 Q. (BY MR. LUBEL) It was in the '90s? 24 A. '90s? Okay. That sounds better. 25 Q. Was there is not a patent on any of the previous Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 105</p> <p>1 Q. That said products? 2 A. Yes. 3 Q. And so you went to that file cabinet, right? 4 A. Yes. 5 Q. But there was other file cabinets that had other 6 labels -- 7 A. Yes. 8 Q. -- correct? Do you recall generally what the other 9 labels were on those other file cabinets? 10 A. I believe I gave to you some that I could remember 11 earlier. It was some of our competitors, suppliers, patents, 12 could have been lawsuits. I'm not sure about that. 13 Q. Testing? Was testing one of them? 14 A. Testing? 15 Q. Testing on developmental products or something like 16 that I wrote down. Does that sound right? 17 A. Oh, it could have been yeah, developmental products. 18 I'm sure that's not all of them. That's just what comes to 19 mind. 20 Q. Okay. Did you pull any of those files for this 21 lawsuit? 22 A. No. 23 Q. Did you look at those when you did this inspection? 24 A. I opened the drawers hoping to find something out of 25 place like that Liquid Wrench I was looking for, but I did not Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 107</p> <p>1 versions of Liquid Wrench? 2 A. Not to my knowledge. 3 Q. Have you looked for it specifically? 4 A. No. 5 MR. RILEY: Lance, let me interrupt you. Jim 6 was talking about L108 and in building 2 and frankly it 7 appears he was mistaken. That file wasn't in building 2, but 8 my client did locate some L108 and L132, L-16 material. And 9 let me see how many pages it is. 10 THE WITNESS: I do get to see that before he 11 does? 12 MR. RILEY: You can both see it at the same 13 time. 14 MR. LUBEL: You can show it to him first. What 15 do you think this represents, Jim? You think this is the L108 16 file? Jim Riley. 17 A. This -- okay. I'll shut up then. 18 Q. (BY MR. LUBEL) Let's see what Mr. Riley thinks it is 19 first, then I'm going to ask you. 20 MR. RILEY: I think it's records on L132, L108, 21 L116 and this is produced in response to a description of what 22 Jim gave in the deposition that my client looked for. They 23 did not find it where Jim thought he had seen it, but they 24 found it in a different building. So this is what I've got to 25 tender. How many pages? Again I lost my count. One, two -- Stratos Legal Services, LP 713-481-2180</p>

<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 108</p> <p>1 MR. LUBEL: Jim, would you like to put Exhibit 2 sticker 3 on there so that we're clear? 3 MR. RILEY: Sure. 4 MR. SYKES: Is that the L108 file? 5 MR. LUBEL: It sounds like it's broader than 6 that. 7 MR. RILEY: Yeah, it does sound like it's 8 broader. Twelve pages, Exhibit 3. I'll tender to Mr. Wells 9 to take a look at it. It does not appear that there's 10 anything from the '70s, but that's up to you guys to take a 11 look at. Maybe Jim will be able to tell you something about 12 it. 13 (Exhibit No. 3 marked) 14 MR. LUBEL: While we're doing this, Phil, what 15 is y'all's problem with -- or I guess injection with using the 16 Blichtschmidt deposition? He was -- as I recall it, he was 17 both a fact witness and an expert that U.S. Steel retained. 18 MR. SYKES: I haven't looked at the deposition, 19 but -- so I couldn't answer you; but we don't intend to use 20 him in this case, call him in this case. 21 MR. LUBEL: Do y'all have control over him, do 22 you know? 23 MR. SYKES: I have no idea. 24 MR. RILEY: Have we marked the date of first 25 sale book? Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 110</p> <p>1 MR. RILEY: Well, Lance, you already know from 2 the sale records of raffinate that the last shipment would 3 have been at the latest early January; so there couldn't have 4 been anymore. 5 MR. LUBEL: January what? 6 MR. SYKES: Here. I've got them. We can mark 7 them. 8 MR. RILEY: '78. 1978. Jim resigned the 9 raffinate formula in March of 1978 and there are no more 10 shipments of raffinate after January of '78 so you already 11 know -- I mean, the production records aren't going to show 12 you anything that you don't already know. 13 MR. LUBEL: Well, I'm trying to figure out when 14 you sold of your last -- it could relate to when you sold your 15 last Liquid Wrench containing raffinate. 16 MR. RILEY: Sometime in '78 when they stopped 17 making it. 18 MR. LUBEL: I assume that's true, but I just 19 want to see what the records show. 20 MR. RILEY: I have no objection to it. I'm 21 just letting you know that the last raffinate shipment was 22 January 1978; so I don't think -- 23 A. There is document already produced that I wrote that 24 says exactly when the runout dates were going to be. It's not 25 here. Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 109</p> <p>1 MR. LUBEL: Not yet. 2 MR. RILEY: Okay. Well, that's been tendered 3 today also. I really don't think -- I think the portions we 4 tendered to you were the relevant portions before, but I knew 5 that you want to look at the whole thing; so I brought it in. 6 MR. LUBEL: Stacey, are you able to get the 7 production records while we're doing the depo specifically for 8 the 1978 time period? Is that something you can get faxed 9 over do you think? 10 MS. YATES: Which production records? I'm not 11 sure. 12 MR. LUBEL: Liquid Wrench. 13 MR. RILEY: Liquid Wrench production records 14 from '72 to '78 is another thing that Lance had requested, but 15 I got the impression that they were big volumes. 16 MR. LUBEL: Well, if we can just do '78 for 17 starters -- 18 MS. YATES: I can see. 19 MR. LUBEL: -- so we can clear up when the last 20 production for Liquid Wrench was. 21 MS. YATES: Where were they located? They were 22 in the notebook? 23 MR. RILEY: Were they in building 2? 24 MR. LUBEL: Yeah. On the top of the file 25 cabinet there were these 3 ring binders I think. Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 111</p> <p>1 MR. RILEY: Can we find it, Jim? 2 A. We produced it earlier. It's not in this bunch. 3 MR. RILEY: It's in the original regular file 4 production. 5 MR. LUBEL: Okay. 6 MR. RILEY: Let me go get it. 7 MR. LUBEL: Well, I've got it. Here's the 8 problem, Jim. I just -- he's given an affidavit where he says 9 July. There's a document where he likes to say it's April or 10 March. I want to see what the production records say so we 11 can get a better handle on that time period. 12 MR. RILEY: The reality of it is -- 13 A. There is an email that I wrote that specifically 14 addresses that and it's been produced. 15 MR. RILEY: I think the reality of it is when 16 he said July, he didn't want to be accused of, you know, of 17 shortening it just in case he added some months on to it just 18 in case something was sold after that. But, you know, I'll 19 get the production materials and him them look at it if that's 20 what you'd like. 21 MR. LUBEL: Do you have this email he's 22 referring to? 23 MR. RILEY: This is research and development. 24 MR. SYKES: Look on the next page. 25 MR. RILEY: Yeah, here it is. It's RSC00011, Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008
Page 112

1 March 30, 1978. "It is expected that our supply of
2 benzene-containing raffinate will be exhausted by the end of
3 April, 1978. When a closer date can be pinpointed, an
4 additional memo will be issued covering an addition to the
5 cutoff date."
6 MR. LUBEL: Right. Have we seen that
7 additional memo?
8 MR. RILEY: I don't think there is one.
9 A. There was never one.
10 MR. LUBEL: Okay. Let's get started. Are we
11 ready?
12 THE WITNESS: Yeah.
13 MR. RILEY: So if the supply of raffinate was
14 exhausted by the end of April, 1978, him saying July was
15 giving himself extra room just in case it was sold.
16 MR. SYKES: May I ask a question? Have we been
17 on the record this whole time, ma'am?
18 COURT REPORTER: Yes.
19 MR. RILEY: Yes.
20 MR. SYKES: Do you want the raffinate sales
21 records marked as an Exhibit, Lance.
22 MR. LUBEL: I've got them started in 1968.
23 I've got those. Thanks.
24 MR. RILEY: Lance, do you still want the
25 production records?
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James Wells Vol II
11-6-2008
Page 113

1 MR. LUBEL: Yeah, oh, yeah.
2 MR. RILEY: Okay. We'll do what we can to get
3 them.
4 MR. LUBEL: Great.
5 MR. RILEY: Hopefully today. If not, get to
6 you as quick as possible.
7 Q. (BY MR. LUBEL) In these file cabinets that we were
8 talking about before we took another break, remember that?
9 You gave us a list of competitors' files and supplier info and
10 patents and testing and possibly lawsuits? Do you remember
11 that discussion?
12 A. Yes.
13 Q. Do you recall there being individual file folders
14 for each of those areas, topics?
15 A. Yes.
16 Q. Within the file cabinets, correct?
17 A. Yes.
18 Q. Now, where if -- in these file cabinets were the
19 sales records, like who your customers were?
20 A. I don't think there would be any records of that
21 nature in any of those files. I don't recall any of that --
22 in any of those files.
23 Q. Where would this sale records have been kept,
24 customer list, how much you'd supplied, things like that?
25 A. That would have been in Charlotte in the sales
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 114

1 manager or somebody in sales.
2 Q. Who was that?
3 A. Well, that was a moving target. There was more than
4 one sales manager.
5 Q. Who do you remember being that person in '72 when
6 you started?
7 A. I believe that guy's name was Green. I've forgotten
8 his first name but --
9 Q. Where did he office?
10 A. Where was his office?
11 Q. Right.
12 A. In Charlotte.
13 Q. In the headquarters or in a production building?
14 A. Headquarters.
15 Q. In the headquarters.
16 MR. RILEY: Lance, just to clarify, I know
17 you're not asking about this document, but from my review of
18 the data for the sale book, there are customers listed in
19 there.
20 MR. LUBEL: There are some.
21 MR. RILEY: Okay.
22 MR. LUBEL: But I'm looking to the specific
23 sales records to each customer and appreciate you bringing
24 that up.
25 Q. (BY MR. LUBEL) Where did Mr. Green keep the sale
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 115

1 records file if you know?
2 A. I don't know. I did have an opportunity to speak
3 with the current state of that and was told that there were no
4 sale records back I think the number was six years, anything
5 past six years back. All were destroyed.
6 Q. Were what?
7 A. All had been destroyed.
8 Q. Discarded?
9 A. Yes.
10 MR. RILEY: That's covered in the response to
11 the subpoena Exhibit I.
12 Q. (BY MR. LUBEL) And so who did you talk to that told
13 you the sales records before six years ago, would that put us
14 before 2002 or so, were discarded?
15 A. His name is Wally Jones.
16 Q. Wally Jones. Did you recall back when you were
17 there starting in '72 where Mr. Green kept the sales records?
18 A. I never knew.
19 Q. Never knew. So you don't know if he had file
20 cabinets or whatever?
21 A. No, I don't.
22 Q. Did -- do you know if the company kept customer
23 lists? I'm going to make up one for Sam's Hardware. Let's say
24 you did business with Sam's Hardware starting in 19, you know,
25 55. Did y'all have a list somewhere of your customers?
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<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 116</p> <p>1 A. I never saw one.</p> <p>2 Q. Who would have had such a list if there was one?</p> <p>3 A. It would have certainly in addition to the sales</p> <p>4 department been in customer service.</p> <p>5 Q. Were they different departments, sales and customer</p> <p>6 service?</p> <p>7 A. Customer service reported to sales.</p> <p>8 Q. And so we don't know whether there was such a list</p> <p>9 or not, correct?</p> <p>10 A. I don't.</p> <p>11 Q. Did you know who they were targeting for Liquid</p> <p>12 Wrench sales?</p> <p>13 A. You talking about a competitor?</p> <p>14 Q. No. I'm more interested in who were they -- who did</p> <p>15 they design the product for?</p> <p>16 A. I can't answer that directly because I don't know.</p> <p>17 I can tell you that Radiator's sales was broken up among two</p> <p>18 or three different sales areas. One was automotive. One was</p> <p>19 plumbing and hardware. One was export. That may have been</p> <p>20 all. The Liquid Wrench raffinate formula, my recollection is</p> <p>21 -- I'm not quoting numbers, but it just -- I have reasons to</p> <p>22 think this, that most all of it went through the plumbing and</p> <p>23 hardware duties.</p> <p>24 Q. Are there records that still exist that would firm</p> <p>25 that up?</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 118</p> <p>1 A. Do I want you to break it down?</p> <p>2 Q. Yes, sir.</p> <p>3 A. Yes.</p> <p>4 Q. Let's do it that way then. The raffinate version of</p> <p>5 Liquid Wrench was targeted or aimed at industrial uses,</p> <p>6 correct?</p> <p>7 A. I said that as my opinion based upon the experience</p> <p>8 that it went through plumbing and hardware and the size of the</p> <p>9 container being the larger volumes are not the kind of thing</p> <p>10 that a household user would need.</p> <p>11 Q. I'm just saying have I got this right that Radiator</p> <p>12 Specialty Company targeted the raffinate version of Liquid</p> <p>13 Wrench to industrial uses?</p> <p>14 A. I cannot agree to the words targeted as something</p> <p>15 they set out to do. They may or may not have. I'm not aware</p> <p>16 of that. All I'm saying is that the results were that seemed</p> <p>17 to be where it went, places like Home Depot or hardwares.</p> <p>18 Q. So in the past when you've said that the raffinate</p> <p>19 version of Liquid Wrench was aimed at trades people like</p> <p>20 mechanics, you're trying to take that back?</p> <p>21 A. No.</p> <p>22 Q. Is that true or not?</p> <p>23 A. I think it's true. I think it's true that they're</p> <p>24 the ones who used it because of the sizes and the fact that</p> <p>25 most of the Liquid Wrench raffinate went through that one</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 117</p> <p>1 A. I don't think so.</p> <p>2 Q. Did you work in the plumbing and hardware division?</p> <p>3 A. The product that we made went into a warehouse and</p> <p>4 so all sales areas pull out of the same warehouse.</p> <p>5 Q. Who worked in the plumbing and hardware division?</p> <p>6 That's how you referred to it was a division?</p> <p>7 A. Yeah, call it division. Yeah, I guess so.</p> <p>8 Q. Okay. Were you in that division or were you in a</p> <p>9 manufacturing division?</p> <p>10 A. Just manufacture.</p> <p>11 Q. So there was a separate division for plumbing and</p> <p>12 hardware, correct?</p> <p>13 A. I'm not sure division is the right word. I just</p> <p>14 think sales was broken down among what I told you and there</p> <p>15 was someone that called on those types -- hardware types.</p> <p>16 Q. Let me -- let me tell you what I've heard you say</p> <p>17 before. Tell me if I'm wrong, okay. Liquid Wrench was aimed</p> <p>18 at industrial uses like tradesmen; is that true?</p> <p>19 A. I think so.</p> <p>20 Q. And you've told us that tradesmen would be like</p> <p>21 mechanics?</p> <p>22 A. Let's back up because again you use the word Liquid</p> <p>23 Wrench. I'm not sure whether you meant deodorized or</p> <p>24 raffinate.</p> <p>25 Q. You want me to break that down?</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 119</p> <p>1 sales division.</p> <p>2 Q. And when you say that that version of Liquid Wrench</p> <p>3 mainly went to tradesmen, what do you mean other than</p> <p>4 mechanics?</p> <p>5 MR. RILEY: Objection; form.</p> <p>6 A. I said it went through the plumbing and hardware and</p> <p>7 by that I -- I'm not sure of your question now.</p> <p>8 Q. (BY MR. LUBEL) Yeah. Do you remember testifying</p> <p>9 under oath that regular Liquid Wrench was designed for</p> <p>10 plumbers, mechanics and tradesmen?</p> <p>11 A. I -- I don't doubt that I didn't say that.</p> <p>12 Q. Okay. You don't doubt that you didn't say that?</p> <p>13 A. I don't remember saying it, but that's pretty much</p> <p>14 accurate I would say.</p> <p>15 Q. It's pretty much accurate?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Why was it that regular Liquid Wrench was</p> <p>18 designed to plumbers, mechanics and tradesmen?</p> <p>19 A. My opinion is because of the larger sizes.</p> <p>20 Q. Okay. What sizes are you talking about?</p> <p>21 A. 8-ounce and up even 55-gallon drums.</p> <p>22 Q. And does this -- if you look over this, I've got</p> <p>23 your deposition from the Richter case. Can you see it up on</p> <p>24 the screen?</p> <p>25 A. I do.</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>

1 Q. It says, "Regular Liquid Wrench, it was designed and
2 manufactured for what purpose?" You said, "It was my
3 understanding it was primarily plumbers, mechanics and
4 tradesmen." Do you see that?
5 A. Yes.
6 Q. That's still your answer today, correct?
7 A. Correct.
8 Q. And so do you think that -- that the size of the
9 cans is the only reason that regular Liquid Wrench was for
10 industrial uses?
11 A. I -- I don't know how to answer that. I mean, the
12 size has an obvious effect. I don't have a good answer to
13 that.
14 Q. Well, how about the fact that it contained benzene?
15 A. Okay.
16 Q. Does that tell you anything about why it may be more
17 appropriate for an industrial use than it would be for
18 household or do you just not have an opinion on that?
19 A. I know of no reason why it would be more appropriate
20 for a pipefitter than a homeowner if it contained benzene.
21 MS. YATES: Can we take a break just so I can
22 tell him something?
23 MR. LUBEL: Sure.
24 THE VIDEOGRAPHER: Stand by. The time is
25 2:02 p.m. We're off the record.
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1 Q. You've had opportunities over the years to visit
2 with certain people that worked at Radiator to help form the
3 basis of your information about Liquid Wrench, right?
4 A. In general, yes, I think so.
5 Q. And so one of the things that we know from looking
6 at the documents is that, for instance, we know that there was
7 some 8-ounce deodorized Liquid Wrench that contained benzol
8 before you got there in 1972, correct?
9 A. Yes.
10 Q. You've seen, for instance, the mariners, you know,
11 that -- what was Mariners?
12 A. You talking about sailor? I don't know what you
13 mean by Mariners.
14 MR. LUBEL: Give me the Mariners, Hector, 1970
15 document.
16 MR. RILEY: You talking about the advertisement
17 in a magazine?
18 MR. LUBEL: Yeah.
19 MR. RILEY: Yeah, let him look at it.
20 A. Oh, that does ring a bell now.
21 Q. (BY MR. LUBEL) Yeah. I'm going to show it to you,
22 but what it's going to show is a deodorized Liquid Wrench in I
23 think an 8-ounce can that contained benzol. Have you seen
24 that before?
25 A. I have seen an 8-ounce can that contained benzol,
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1 (Recess from 2:02 to 2:05)
2 MR. RILEY: The production records, we tried to
3 get them today. Unfortunately the person who we get to get
4 the copies and sent isn't there; so we are going to try
5 tomorrow to look for those records. We're not sure if we have
6 them from the '70s; but if we do, we will get them to
7 Mr. Lubel as soon as possible.
8 THE VIDEOGRAPHER: The time is 2:05 p.m. Back
9 on the record.
10 Q. (BY MR. LUBEL) Is it your testimony that the
11 different formulas of Liquid Wrench, the deodorized versus
12 what you're calling the raffinate-based formula weren't
13 different because of the different people that were using it
14 such as households versus tradespeople, industrial versus --
15 industrial uses versus household uses, right?
16 A. Both of those formulations were in use when I came
17 to Radiator. So why and how it got to be where they were, I
18 have no idea.
19 Q. Well, you've seen documents that go back before your
20 time, correct?
21 A. Yes.
22 Q. You've had to do that as part of your role as the
23 corporate spokesperson for the company, review documents,
24 correct?
25 A. Correct.
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1 yes.
2 Q. Okay. I'm going to put it up on the screen. The
3 first thing you'll see is --
4 MR. LONGORIA: You want to give me the exhibit?
5 MR. LUBEL: When I'm ready. Just give me a
6 minute.
7 Q. (BY MR. LUBEL) You see that says Mariners annual
8 ordering guide?
9 A. Yes.
10 Q. You've seen those before, correct?
11 A. Correct.
12 Q. And, in fact, if you look at the bottom, you'll see
13 a USS. That's US Steel Cowey Bates number, correct?
14 A. Yes.
15 Q. So you recognize that being produced in a different
16 lawsuit correct?
17 A. Correct.
18 Q. And if we flip through, you'll see the first page is
19 1970 and then as we go through -- I'm going to get to the part
20 I want you to focus in on. It's this page and this shows some
21 of your products being advertised, correct?
22 A. Yes.
23 Q. And the first one is -- let me blow it up. It says
24 Radiator Specialty Company Liquid Wrench and it's got an
25 aerosol can, right?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 124

1 A. Yes.
 2 Q. And then its got your 8-ounce can, true?
 3 A. Yeah. They're called oblongs.
 4 Q. Yeah. It's not aerosol?
 5 A. Correct.
 6 Q. You call it an oblong can, right?
 7 A. That's what the can companies call it.
 8 Q. All right. And that can was predominately or mainly
 9 yellow on the front with some black on the side, correct?
 10 A. I believe so.
 11 Q. And then it's got a screw top, right?
 12 A. Correct.
 13 Q. And then if we unscrew that top, there's going to be
 14 a spout within there, right?
 15 A. Correct.
 16 Q. And then what do you do, you turn that spout over,
 17 screw it back on and you've got --
 18 A. There's a hole on top of the cap and you just turn
 19 it over and stick a spout up through the hole, yes.
 20 Q. We've seen gas cans like that in Texas, right,
 21 similar?
 22 A. Yes.
 23 Q. So if you read with me here, it says safe to use on
 24 all metals and then it says deodorized Liquid Wrench. Do you
 25 see that?
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 125

1 A. Yes.
 2 Q. As opposed to the regular Liquid Wrench. It's
 3 specifying the deodorized, right?
 4 A. Yes.
 5 Q. And this is advertised, correct?
 6 A. Yes.
 7 Q. And then if we look, if you look carefully in here,
 8 on the bottom of this deodorized can you'll see a skull and
 9 crossbones. Do you see it?
 10 A. Yes.
 11 Q. And if you look really, really carefully, you'll see
 12 another reference to deodorized up in that top left-hand
 13 corner of the can, right?
 14 A. I can see something, but I can't read it.
 15 Q. But that's -- you know from looking at previous cans
 16 and working there that that's where the word deodorized would
 17 sometimes be, right?
 18 A. Correct.
 19 Q. And sometimes it would be along the ledge here,
 20 right?
 21 A. Could be, yes.
 22 Q. It was in different spots, right?
 23 A. Right.
 24 Q. But we know this is a deodorized can because the
 25 advertisement is referring to it as deodorized, right?
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James Wells Vol II
11-6-2008

Page 126

1 MR. RILEY: Objection; form.
 2 MR. SYKES: Yeah, object to the form.
 3 Q. (BY MR. LUBEL) Isn't that what it says?
 4 A. Well, I guess I don't like what you said. You said
 5 we know this is a deodorized can because the advertising says
 6 that, but then when you look at the can, it's got a skull and
 7 crossbones, which obviously is not the correct warning for a
 8 deodorized can.
 9 Q. No, but you had some deodorized cans before you got
 10 there in 1972 that contained benzene?
 11 A. Yes.
 12 Q. All right. From raffinate. I don't mean benzene
 13 from petroleum distillate?
 14 A. You mean from the raffinate?
 15 Q. Correct.
 16 A. Yes.
 17 Q. You under stood that before you got there -- I know
 18 there's a distinction in your mind at some point after you got
 19 there you started making deodorized Liquid Wrench without
 20 raffinate, correct? Isn't that what you've told us before?
 21 A. That's correct.
 22 Q. But before -- at some points before you got there in
 23 1972, you realized and as we see, there are some deodorized
 24 version of Liquid Wrench in the 8-ounce cans that had
 25 raffinate-based product in it, right?
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James Wells Vol II
11-6-2008

Page 127

1 A. No.
 2 Q. You don't agree with that?
 3 A. I do not.
 4 Q. Okay. So what was the skull and crossbones doing on
 5 the deodorized Liquid Wrench in 1970?
 6 A. You want me to interpret what I'm looking at?
 7 Q. No. I want you to tell me why the deodorized can of
 8 Liquid Wrench in 1970 would have a skull and crossbones on it
 9 when you've told us in the past the skull and crossbones is
 10 indicative of raffinate based product?
 11 A. There is no -- well, I shouldn't say no
 12 relationship. The -- this can with its warning is different
 13 than the advertising where it says deodorized. So either
 14 someone used a can and didn't realize that they got the wrong
 15 can. And certainly the word deodorized on a can with this
 16 warning is -- there's an error there somewhere.
 17 Q. Okay. I thought you said this was an 8-ounce can?
 18 A. I don't know what size can that is.
 19 Q. Oh, you can't tell that's 8-ounce?
 20 A. Not from this picture, no.
 21 Q. Hadn't you told us previously under oath that all of
 22 the 8-ounce cans contained raffinate-based product?
 23 MR. RILEY: Objection; form.
 24 A. I did say that. Based upon the knowledge I had at
 25 the time, that was true.
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Obj:
402
403

1 MR. RILEY: Objection; form.
 2 Q. (BY MR. LUBEL) Are you now trying to tell us that
 3 when you testified under oath that the 8-ounce cans were
 4 raffinate-based, you trying to take that back?
 5 A. I said that -- no, I'm not trying to take that back.
 6 The 8-ounce cans from 1972 forward were raffinate only.
 7 MR. SYKES: From what?
 8 Q. (BY MR. LUBEL) From '72 forward?
 9 A. Yes.
 10 Q. You mean from '72 to '78?
 11 A. Yes.
 12 Q. Correct?
 13 A. Because it was discontinued in '78.
 14 Q. What you're saying is that you took -- you
 15 eliminated the raffinate, therefore the benzene from all
 16 Liquid Wrench cans, correct, in '78?
 17 A. No, just from the -- we just took out the -- we just
 18 eliminated the raffinate formula in '78. We didn't touch the
 19 deodorized formula.)
 20 Q. Well, but the deodorized formula in the 8-ounce cans
 21 had raffinate in it, correct?
 22 MR. RILEY: Objection; form.
 23 A. No.
 24 Q. (BY MR. LUBEL) All of the 8 -- have you not
 25 testified previously that all of the Liquid Wrench 8-ounce
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Obj: 402
403

Obj: 402
403

1 cans contain raffinate?
 2 A. From '72 forward.
 3 Q. Right.
 4 A. Yeah. There's that's.
 5 Q. Until you eliminated it?
 6 A. Yes, that's true.
 7 Q. And it's your position that sometime in 1978 you
 8 eliminated the raffinate from Liquid Wrench?
 9 A. That's correct.
 10 Q. If we see 8-ounce cans before 1972, don't they also
 11 have the raffinate version in there?
 12 MR. RILEY: Objection; form.
 13 A. 8-ounce cans before '72 had raffinate in them.
 14 Q. (BY MR. LUBEL) Is that right? That's what you've
 15 told us before.
 16 A. Yes, that's correct.
 17 MR. RILEY: Finish your answer. He started
 18 explaining something. Don't cut him off.
 19 Q. (BY MR. LUBEL) You've told us before that the
 20 4-ounce cans and the aerosol cans were the ones that had the
 21 deodorized version in it, correct?
 22 A. I said that, correct.
 23 Q. You've told us that before --
 24 A. I have.
 25 Q. -- under oath, right?
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Obj: 402
403

1 A. I did.
 2 Q. And you've also told us under oath that all the
 3 other cans, other than aerosol and the 4-ounce deodorized can,
 4 contain raffinate-base formula, true?
 5 MR. RILEY: Objection; form.
 6 MR. SYKES: Object to the form of the question.
 7 Q. (BY MR. LUBEL) Pre-1979?
 8 MR. RILEY: Wait a minute.
 9 MR. SYKES: Object to the form of the question.
 10 MR. RILEY: Object to the form of the question.
 11 MR. LUBEL: Well, I'm not trying to make it
 12 seem like in 2001 it had raffinate. Let me rephrase it.
 13 MR. RILEY: '72 to '79 is when he testified.
 14 Q. (BY MR. LUBEL) Are you listening to me?
 15 A. Start over again.
 16 Q. All of the other size cans, that means take out
 17 4-ounce and aerosols --
 18 A. Uh-huh.
 19 Q. -- are you with me so far?
 20 A. Yeah.
 21 Q. All of those cans contained raffinate-based product
 22 before you eliminated the raffinate sometime in 1978?
 23 MR. RILEY: Objection; form.
 24 MR. SYKES: Object to the form.
 25 Q. (BY MR. LUBEL) Isn't that right?
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Obj: 402
403

1 A. Am I supposed to answer?
 2 Q. Yes, sir, you're supposed to.
 3 MR. RILEY: Time period?
 4 Q. (BY MR. LUBEL) Before 1979?
 5 A. Before when?
 6 Q. Before 1979.
 7 A. All right. Again, from 1979 back to 1972 all of the
 8 8-ounce cans and larger contained only the raffinate formula.
 9 Q. Right. And hadn't you testified before under oath
 10 that all Liquid Wrench cans, except for the 4-ounce and the
 11 aerosol cans, contained raffinate formula?
 12 MR. RILEY: Objection; form.
 13 MR. SYKES: Object to the form.
 14 A. I said that based upon the knowledge I had at the
 15 time. Now, since that time I have become aware that there has
 16 been found an 8-ounce can that contained the deodorized
 17 formula and was properly labeled with the deodorized warnings,
 18 not the raffinate warnings. So it was a mistake, but there
 19 was a part number, L108, that existed, one with the deodorized
 20 and the different one also L108 with the raffinate. Both of
 21 them contained the proper warnings under CPSC.)
 22 Q. (BY MR. LUBEL) Okay. We're going to get to what's
 23 proper and what isn't in a minute, but do you remember
 24 testifying under oath that all of the cans, the containers
 25 contained raffinate-based product for Liquid Wrench before
 Stratos Legal Services, LP
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Obj: 402
403

704,
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issue
Plaintiffs
FHSA
MiL

James Wells Vol II
11-6-2008

Page 132

1 1979 except for the 4-ounce and the aerosols?
 2 A. And I just said that.
 3 MR. SYKES: Object to the form of the question.
 4 A. I answered that. I said I testified that I said
 5 that based upon the information at that time.
 6 Q. (BY MR. LUBEL) Were you wrong?
 7 A. But --
 8 Q. Were you wrong?
 9 A. I found -- I wasn't wrong. I just found different
 10 information since that time.
 11 Q. So what you're saying is you've actually seen a can
 12 of deodorized Liquid Wrench of the 8-ounce variety that you
 13 were able to date before 1972 that you said did not contain
 14 benzol?
 15 A. I have seen a picture and I know for a fact that I
 16 didn't produce any 8-ounce deodorized at Indian Trail. So
 17 that can had to have been produced prior to 1972. Now, when
 18 it was produced, I don't know.
 19 Q. Well, they were making Liquid Wrench at Charlotte
 20 before you got your plant up and running?
 21 A. Correct.
 22 Q. Right?
 23 A. I don't know when they started.
 24 Q. No, you don't. That's my point. Were you mistaken
 25 when you said that all of the raffinate version of Liquid
 Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 133

1 Wrench came in containers all sizes except the 4-ounce and the
 2 aerosol?
 3 A. For the third time I was not mistaken. I told you
 4 exactly what the facts were based upon the facts that I knew.
 5 Q. How did the facts change, sir? Facts usually don't
 6 change.
 7 A. The facts didn't change, but what happened was new
 8 evidence was discovered in the case of this 8-ounce can which
 9 was labeled and must have contained the deodorized formula
 10 based upon the label.
 11 Q. Who found that can for you?
 12 A. I don't know where it came from.
 13 Q. Did you see the can or the photograph?
 14 A. The photograph.
 15 Q. And were you able to date that can from looking at
 16 the photo?
 17 A. I don't think so.
 18 Q. Does it have a date on it?
 19 A. I have seen some cans that do have a date. Now,
 20 whether that was one of them, I don't know.
 21 Q. Okay. Can you show me a document from Radiator
 22 Specialty Company that reflects that the deodorized version
 23 contained something other than raffinate before 1972?
 24 MR. SYKES: Object to the form of the question.
 25 MR. RILEY: Let's short-circuit it. It was
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James Wells Vol II
11-6-2008

Page 134

1 produced in the Cowey case, USS Cowey --
 2 MR. LUBEL: Jim --
 3 MR. RILEY: -- 154 onward.
 4 MR. LUBEL: Jim, please, let him answer my
 5 question, please.
 6 MR. RILEY: He's been talking about the
 7 photographs.
 8 MR. LUBEL: I know but you're --
 9 MR. RILEY: Right. I'm sorry.
 10 Q. (BY MR. LUBEL) Can you show me a document, sir?
 11 A. The answer is, yes.
 12 Q. Okay. You have a document from Radiator Specialty
 13 Company that shows the formulation of deodorized Liquid Wrench
 14 before 1972 having something other than raffinate in it?
 15 A. I have a document that clearly says petroleum
 16 distillates in the 8-ounce can.
 17 Q. Sir, were you not aware that benzene is a petroleum
 18 distillate?
 19 A. Well, when you look under the CPSC, it separates
 20 benzene, then it also looks at petroleum distillates.
 21 Q. Can you show that to me?
 22 A. Sure. It's under CFR1617.4 -- 1E3 or B3 or
 23 something like that.
 24 Q. Here's a highlighter.
 25 MR. SYKES: For the record, what year is that?
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James Wells Vol II
11-6-2008

Page 135

1 Q. It's the early version from Mr. Blightschmidt's
 2 exhibits. We didn't use the 2001 version like Carl does.
 3 MR. RILEY: What I want to know is he looking
 4 at the right section?
 5 MR. SYKES: That's what I want to know. I mean
 6 can you --
 7 A. Okay. This is 1500.143 -- 3B and it says --
 8 Q. (BY MR. LUBEL) Can I see it so I can show the jury?
 9 You'll be able to see it too.
 10 A. You want me to read it to you?
 11 Q. I'm going to show it to everybody.
 12 A. Oh, okay.
 13 Q. That's what you've highlighted, right?
 14 A. It is.
 15 Q. Okay. Doesn't it group benzol or benzene, xylenes,
 16 toluene and petroleum distillates into the same section?
 17 A. Well, they're grouped in the same section, but that
 18 was not related to the difference of opinion that you and I
 19 had a moment ago.
 20 Q. Well, look over here. Benzene, toluene, xylene,
 21 petroleum distillates, do you see that?
 22 A. I see that.
 23 Q. Do you know what a petroleum distillate is,
 24 Mr. Wells?
 25 A. Well, I like to think I do.
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James Wells Vol II
11-6-2008

Page 136

1 Q. Well, you're a chemist. Tell me what your
2 understanding of a petroleum distillate is?
3 A. Well, as you distill an oil, these different
4 chemicals come off at different temperatures in a tower and
5 different places and you might get benzene in one place and
6 kerosene which is listed on what I first showed you and marked
7 someplace else.
8 Q. And --
9 A. In this case the CPSC chooses to use the word
10 petroleum distillate to represent kerosene when you do the
11 warnings.
12 Q. Isn't benzene a petroleum distillate?
13 A. Well, whether it is or isn't I don't think a concern
14 in this issue.
15 Q. Sir, is benzene a petroleum distillate.
16 MR. SYKES: Object to the form of the question.
17 MR. RILEY: I'll object to the form of the
18 question also.
19 A. Yeah, I guess I'll have to agree with that.
20 Q. (BY MR. LUBEL) Isn't benzene an aromatic?
21 A. Benzene is an aromatic. Kerosene is not.
22 Q. Is xylene an aromatic?
23 A. Yes.
24 Q. Is toluene an aromatic?
25 A. Yes.

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James Wells Vol II
11-6-2008

Page 138

1 Q. Right?
2 A. Right.
3 Q. It's the code of Federal regulations?
4 A. Right.
5 Q. You're familiar with it?
6 A. I am.
7 Q. When is the first time that you've studied it?
8 A. '72.
9 Q. First time you studied it was in 1972, correct?
10 A. That's my recollection.
11 Q. Did you make any changes to any of the labels of
12 Liquid Wrench when you started in '72?
13 A. No.
14 Q. Did you between '72 and '78?
15 A. No.
16 Q. The label stayed the same, correct?
17 A. It did.
18 Q. Others before you got there had made decisions
19 regarding what was on the labels, correct?
20 A. Correct.
21 Q. And it was not within your responsibility to change
22 the Liquid Wrench label?
23 A. Within my responsibility. There was no reason to
24 change the label. It was correct.
25 Q. It was correct, right?

Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 137

1 Q. Those terms like aromatics and petroleum distillates
2 are really characterizations for a number of different
3 chemicals, correct?
4 A. Yes.
5 Q. And whether a particular chemical structure fits
6 into that category, there's books that tell us that, right?
7 A. Correct.
8 Q. And so what they've done in this regulation is
9 they've referred to benzene, toluene, xylene and petroleum
10 distillates all under this section on what warnings are
11 necessary, correct? You've seen that before?
12 A. Yeah, I have.
13 Q. Right?
14 A. Right.
15 Q. And what do you refer to, I'm going to hand it back
16 to you, this set of documents I've given you? You've seen it
17 before. You've testified about it. What do you call that?
18 A. The CFR16.
19 Q. 15, right?
20 A. 16.
21 Q. Let me see.
22 MR. SYKES: It's volume 16.
23 A. Uh-huh.
24 Q. (BY MR. LUBEL) Part 1500?
25 A. Uh-huh.

Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 139

1 A. Correct.
2 Q. That's your testimony?
3 A. That's my testimony.
4 Q. Okay. Are you telling us that you analyzed the
5 label when you got there in '72 or what you're saying is that
6 that label had already been done and it wasn't up to me?
7 A. At some point. And I don't recall what year it was,
8 but, yes, I reviewed the label.
9 Q. When?
10 A. And found nothing wrong with it.
11 Q. When?
12 A. I don't recall when.
13 Q. Approximately?
14 A. I have no idea. Early '70s probably.
15 Q. And so did you likewise review this regulation?
16 A. The -- you're asking me to recall things that I
17 can't sit here and tell you yes about specific paragraphs.
18 You don't look at this regulation and decide to read one
19 little paragraph. Too many things are tied together; so --
20 answer to your question is probably, yes.
21 Q. I'm going to mark it as Exhibit 4, okay?
22 (Exhibit No. 4 marked)
23 Q. (BY MR. LUBEL) Didn't I?
24 A. Okay.
25 Q. You've seen it before. This isn't the first time,

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1 right?
 2 A. That's correct.
 3 Q. Okay. Can you show me where, if anywhere, in this
 4 regulation that says that your company could not have placed a
 5 cancer warning hazard on the Liquid Wrench containers?
 6 MR. RILEY: Objection; form.
 7 MR. SYKES: Object to the form of the question
 8 to the extent it calls for a legal conclusion.
 9 A. The experience that I have and understanding that I
 10 have is that these documents tell you exactly what you must
 11 have, no more, no less. Indeed in our experience we
 12 mistakenly had made an error in the label on one particular
 13 occasion and they wrote us a letter and said you over-warned.
 14 You just change it.
 15 Q. (BY MR. LUBEL) Sir, can you find for me in Exhibit 4
 16 that code of Federal regulations where it says that Radiator
 17 Specialty Company or any company that makes a product cannot
 18 put additional information on the container such as a cancer
 19 warning?
 20 MR. SYKES: Object to the form of the question.
 21 MR. RILEY: Objection; form.
 22 A. Well, there is a section that deals with improper --
 23 that's not the right word. Mislabeled. Now, I haven't read
 24 it in a long time, but in that section where it says
 25 mislabeled.
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1 Federal regulations that you're relying upon that says that
 2 your company was prohibited by law from adding a warning to
 3 the container of the Liquid Wrench that your company
 4 manufactured that says contains a cancer-causing substance or
 5 something like that?
 6 MR. SYKES: With all due respect to the witness
 7 and the process, I believe --
 8 MR. LUBEL: Jim, don't -- don't be showing
 9 him --
 10 MR. RILEY: You're not giving him the right
 11 regulation.
 12 MR. LUBEL: Don't be showing him -- you're
 13 woodshedding. That's improper.
 14 MR. RILEY: You're not giving him the right
 15 regulation.
 16 A. Where does that leave us?
 17 Q. (BY MR. LUBEL) Keep looking at Exhibit 4?
 18 MR. RILEY: What year is Exhibit 4?
 19 A. I may not be able to find it. There's a lot here to
 20 look over.
 21 Q. (BY MR. LUBEL) Is that the code of Federal
 22 regulations?
 23 A. It's title 16. It should be.
 24 Q. Have you seen it before?
 25 A. I've got a book, you know. It's not -- you know,
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1 Q. (BY MR. LUBEL) Can you find it for me?
 2 A. That's -- that's one area to look at.
 3 Q. Why don't you find for us the section you're relying
 4 upon for your company's position that you could not have told
 5 the consumer on the container that the product contained a
 6 cancer-causing substance?
 7 A. Well, I'm not certain that I'm relying on that --
 8 something in here to tell you that. I'm also relying upon our
 9 experience is that you cannot change it.
 10 Q. Okay. Find for me where in the code of Federal
 11 regulations it prohibits your company from warning about
 12 cancer or things of that like on the container?
 13 MR. SYKES: Object to the form of the question.
 14 MR. RILEY: Well, let's go off the record and
 15 give him some time to read it.
 16 MR. LUBEL: I'm going to let him go through it.
 17 He's testified he's familiar with it.
 18 A. There is a section -- and this is not really what I
 19 was looking for, but it's 1500.7 that says, "The legislative
 20 history reveals that Congress intended by this provision to
 21 prevent a proliferation of differing labeling requirements for
 22 household products."
 23 Q. (BY MR. LUBEL) Sir, if you can find the section --
 24 MR. SYKES: Object to the form of the question.
 25 Q. (BY MR. LUBEL) Can you find a section of the code of
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1 yeah.
 2 Q. Have you seen that code of Federal regulations
 3 before?
 4 A. I have.
 5 Q. You recognize what you're looking at?
 6 A. Well, now, I recognize the book, yeah.
 7 Q. So tell me where it is that it says Radiator
 8 Specialty Company, a company that manufactures a product
 9 cannot enhance, strengthen or put something different on a
 10 warning?
 11 A. I can tell you that from day one that has been my
 12 understanding, that you may not add any additional warnings
 13 period.
 14 Q. Sir, just tell me where in the code of Federal
 15 regulations, please?
 16 A. Right now I can't find it. I'm telling you that's
 17 my understanding from the very beginning.
 18 Q. Well, haven't you been testifying under oath for
 19 some period of time now that there's a specific provision of
 20 the code of Federal regulations that prevents Radiator
 21 Specialty Company from saying that the product contains a
 22 cancer causing substance on it?
 23 MR. SYKES: Object to the form of the question.
 24 MR. RILEY: This is getting awfully close to a
 25 Rule 30.
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James Wells Vol II
11-6-2008

Page 144

1 A. I can't tell you where it says that. All I can tell
2 you that's my understanding of the law that you cannot enhance
3 or over -- over-label.
4 Q. (BY MR. LUBEL) It's your understanding that your
5 company could not have told the consumer that the product
6 contained cancer-causing substances?
7 MR. RILEY: Objection.
8 A. We never addressed cancer-causing substances early
9 on because we weren't aware of its existence with regard to
10 our products.
11 Q. (BY MR. LUBEL) Well, could you have put it on there
12 if you knew about it?
13 A. I don't know if I could have or not except
14 everything we knew said no, you can't.
15 Q. Well, could you put it on there or not?
16 MR. RILEY: Objection; form.
17 MR. SYKES: Object to the form of the question.
18 A. I'm telling you when we did put something that was
19 different, we had a -- an extremely hazard -- extremely
20 flammable warning, they told us no. It's got to be flammable,
21 not extremely flammable. You have to change.
22 Q. (BY MR. LUBEL) What product was that?
23 A. It was Engine Bright.
24 Q. Okay. Do you have that document with you?
25 A. I don't have it with me, no.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 145

1 Q. Where is it?
2 A. Probably in my file somewhere. They sent us the
3 letter.
4 Q. Where's your documents with the Consumer Products
5 Safety Commission, your correspondence?
6 A. It would not have been filed under that. It would
7 have been filed under the product.
8 Q. Where are your correspondence, Radiator's
9 correspondence with the Consumer Products Safety Commission
10 regarding Liquid Wrench?
11 A. I just told you that if it was -- in this case the
12 letter the came in from the Commission and it was for Foamy
13 Engine Bright and that letter would have been filed --
14 actually it was in the lab file under Engine Bright.
15 Q. Sir, do you remember my question?
16 A. I thought I just answered it.
17 Q. Sir, where are the documents between your company
18 and the Consumer Product Safety Commission, if any, regarding
19 Liquid Wrench?
20 A. If you ask me did I have a file folder on
21 correspondence, not that I recall.
22 Q. Okay. Was there any correspondence in writing
23 between Radiator Specialty and the Consumer Product Safety
24 Commission regarding Liquid Wrench that you can recall?
25 A. Not that I recall.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 146

1 Q. When you went to look for documents last week at the
2 request of the -- one of the executives of Radiator Specialty
3 Company for this lawsuit, did you see any documents between
4 Radiator and the Consumer Product Safety Commission regarding
5 Liquid Wrench?
6 A. No.
7 Q. Do you recall testifying under oath in another
8 lawsuit involving Liquid Wrench that it was Radiator Specialty
9 Company's philosophy to not only meet all the regulations but
10 to enhance those warnings where it appears to be the thing to
11 do?
12 MR. SYKES: Object to the form of the question.
13 A. I don't recall saying that, but if you have it in
14 writing, maybe I did.
15 Q. (BY MR. LUBEL) Let me show it to you. See where it
16 says, "But our company's philosophy is to, first of all, meet
17 all of the regulations and secondly in addition to that, based
18 upon our experience, our knowledge that we have trained
19 through trade organizations, suppliers to enhance those
20 warnings where it appears to be the thing to do?"
21 A. Yes, yes.
22 Q. Okay. Were you telling the truth when you said
23 that?
24 A. Yes, that's accurate.
25 Q. And so isn't it a fact, sir, that if your company
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James Wells Vol II
11-6-2008

Page 147

1 had been told by U.S. Steel that benzene could cause cancer,
2 that you would have -- you would have seen that the company
3 would have enhanced its warnings?
4 MR. SYKES: Object to the form of the question.
5 A. I can't say that. If we had been told by U.S. Steel
6 it would caused cancer, we would have certainly looked into
7 it. Now, I need to explain what this is all about just so
8 that you don't misconstrue it.
9 We had a case where someone took a can and then
10 using it under the hood of a car got the can across the
11 terminals of the battery. The battery burned a hole in the
12 can. The contents, which were flammable, came out. And I
13 don't recall what ignited them, whether it was a spark off the
14 battery or the engine heat, but anyway there was a fire. So
15 we enhanced that warning by saying avoid -- I forgot what it
16 says but avoid use around battery terminals or -- it cautions
17 you about battery terminals.
18 Q. Sir, this is a Liquid Wrench lawsuit. This doesn't
19 have anything to do with battery terminals. Do you understand
20 that?
21 A. No, I don't think you understand. This is a
22 philosophy.
23 Q. Sir, this is a deposition that you gave on
24 November 8 in the year 2000 in a Liquid Wrench lawsuit. Do
25 you not know that?
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James Wells Vol II
11-6-2008

Page 148

1 A. Okay. I'm not arguing that.
2 Q. Okay. And so you're talking about the company's
3 philosophy which including enhancing warnings based upon
4 information you got from suppliers. Isn't that what you said?
5 A. I said we obtained through trade organizations,
6 suppliers and maybe I left out personal experience, but this
7 book right here goes into you must label based upon your
8 experience with the product. And that's what we did.
9 Q. Well, that's because U.S. Steel, it's been your
10 position or your company's position, didn't provide you with
11 the safety data sheet in 1967, correct?
12 MR. SYKES: Object to the form of the question.
13 A. I'm not sure I understood your question.
14 Q. (BY MR. LUBEL) Do you recall giving testimony under
15 oath before today that U.S. Steel's 1967 safety data sheet for
16 raffinate that your company was not supplied with it?
17 MR. SYKES: Object to the form of the question.
18 A. I think -- I may have, but I've never seen a safety
19 data sheet from U.S. Steel if that's what you're asking me.
20 Q. (BY MR. LUBEL) You've looked for it and you never
21 could find it?
22 MR. SYKES: Object to the form of the question.
23 A. That's correct.
24 Q. (BY MR. LUBEL) And do you recall telling me in the
25 past that if your company would have known about the benzene
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 149

1 hazards back in the 1950s and 1960s, y'all would have
2 eliminated Liquid Wrench raffinate-containing formula from the
3 market just like you did in 1978?
4 A. I think what I said was that if Kologiski had had
5 the same data that I had, he would have suggested a move of
6 some kind.
7 Q. Didn't you say that he would have suggested that the
8 product be eliminated?
9 A. I might have said that.
10 Q. You want me to find it for you?
11 A. No, it's not necessary.
12 Q. You recall that, don't you?
13 A. I recall the conversation and whether I said --
14 whether you're quoting it accurately or I am, is probably not
15 worth the effort.
16 Q. Let me show you what I have.
17 MR. RILEY: Lance, when you're done with this
18 line of questioning, we don't even have to leave the room, I
19 just want Jim to stand up and walk around a little bit.
20 MR. LUBEL: We can take a short break if that's
21 okay.
22 MR. RILEY: Whenever you want to.
23 MR. LUBEL: Can we do it now?
24 MR. RILEY: Sure.
25 THE VIDEOGRAPHER: It's 2:44 p.m. We're off
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 150

1 the record. This concludes tape 3.
2 (Recess from 2:44 to 2:50)
3 MR. RILEY: Exhibit 4 has to date on it. What
4 year are these regulations?
5 THE VIDEOGRAPHER: We're on the record at 2:50.
6 MR. RILEY: You're representing this as 1973?
7 MR. LUBEL: That's my recollection.
8 MR. RILEY: All right. If that's what you're
9 representing.
10 MR. LUBEL: Do you have any reason to think
11 something's missing?
12 MR. RILEY: Yeah.
13 MR. LUBEL: What's missing?
14 MR. RILEY: Misbranding because I have 1973 in
15 front of me.
16 MR. LUBEL: Okay. What page?
17 MR. RILEY: Page 27013.
18 MR. LUBEL: What section?
19 MR. RILEY: Section 14.
20 MR. LUBEL: Section 14?
21 MR. RILEY: Correct.
22 MR. LUBEL: And you're saying it's not in here?
23 It's right here. You want to see it? I've marked it. I put
24 a flag on it. Is that what you're talking about?
25 MR. RILEY: I stand corrected. It is in there.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 151

1 MR. LUBEL: I mean, I could not given a bigger
2 hint to anybody. I marked the page for him. Thanks.
3 MR. RILEY: I'm actually delighted to find out
4 that we're on the same page. I would not have wanted to think
5 ill of you.
6 MR. LUBEL: And we'll go back to it.
7 MR. RILEY: Oh, we're going to go back to it.
8 MR. LUBEL: Go back to it now.
9 Q. (BY MR. LUBEL) Exhibit No. 4, the code of Federal
10 regulations. You remember I showed it to you earlier?
11 A. Yes.
12 Q. I asked you to find the section in the regulations
13 that you thought or the company's position was that stopped
14 you from saying cancer or something like that on your
15 container. Do you remember that?
16 A. Yes.
17 Q. You said you couldn't find it, right?
18 A. Correct.
19 Q. You didn't even know if it was there, right?
20 MR. RILEY: Objection.
21 A. I think it's there.
22 Q. (BY MR. LUBEL) You think it's there now because you
23 heard me have a discussion with your lawyer off the record?
24 A. I've read it before. Its not a question of I think.
25 If I had my own book marked up I could have found it.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 152

1 Q. Okay. I put a little sticker on what I gave you on
2 the section under misbranding, section 14. Do you see it?
3 A. I see it.
4 Q. That was on it when I handed it to you, correct?
5 A. Yes.
6 Q. Okay. Is that what you think where it's at?
7 A. Well, I haven't read what you have in your hand.
8 Q. You've had a chance to hear your lawyer say that's
9 the section misbranding, correct?
10 A. I have.
11 Q. So if you would, as you read section 14 on
12 misbranding, will you find me the exact words that prohibit
13 your company from saying something about cancer, blood
14 dyscrasias or any other similar terminology?
15 A. Well, tell you the truth, I've read this and I don't
16 even understand what it says.
17 Q. Can I put it up there for all of us to see?
18 A. Sure. The language is not easily read in my
19 opinion.
20 Q. You're looking at the section on misbranding,
21 correct?
22 A. I am.
23 Q. Was that your impression when you got here today
24 that that's where it's at?
25 A. Well, I hadn't really thought about where it was at.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 153

1 What I said to you was its been my understanding for many
2 years that you are not allowed to over- or under- label.
3 Q. All right. Well, let's look at this section 14 on
4 labeling, okay? Do you see this section here that says an
5 affirmative statement of the principal hazard or hazards? Do
6 you see that?
7 A. Yes.
8 Q. Did you understand or did Radiator Specialty Company
9 understand that they had an obligation on the container to
10 list or identify the principal hazards?
11 A. As I recall, that section E -- yeah, the affirmative
12 statement is explaining the hazard.
13 Q. I'm just asking you if Radiator Specialty Company to
14 your understanding had an obligation to list what E says, the
15 principal hazards on the container?
16 A. Yeah, well, we did that.
17 Q. Did you have an obligation to?
18 A. That's what it says.
19 Q. Is that your recollection? I know we can see it,
20 but is that your recollection?
21 A. Oh, yeah, certainly.
22 Q. So what you see confirms what you thought, right?
23 A. Yes, yes, the affirmative statement is -- yeah.
24 It's nothing new.
25 Q. Can you show me on the can or the containers of
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 154

1 Liquid Wrench where your company talked about -- use those
2 terms absorbed through the skin?
3 A. If it's on there, I think it says avoid skin contact
4 and use well ventilated areas. I believe that's the words
5 that are used as an affirmative statement on the back of the
6 can or label.
7 Q. Do you ever remember any container of Liquid Wrench
8 using the terms, the words specifically absorbed through the
9 skin?
10 A. Not specifically.
11 Q. Okay. Weren't you required to follow the exact
12 words?
13 MR. SYKES: Object to the form of the question.
14 A. I think -- it says or similar wording descriptive of
15 the hazard.
16 Q. (BY MR. LUBEL) I've highlighted that, haven't I?
17 I've highlighted that for you?
18 A. Yeah. So that gives you a little bit of leeway when
19 you say avoid skin contact or absorbed through the skin. Most
20 people I hope would believe that's one and the same.
21 Q. Well, are they one and the same? Does avoid skin
22 contact mean the same thing as it can be absorbed through the
23 skin?
24 A. Well, if you read it literally, probably not; but if
25 you are using it, I would hope that you see it the same. Why
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 155

1 else would you be warned if you weren't concerned about it
2 being absorbed through the skin.
3 Q. You tell me. What was the intention of the company?
4 A. The intention of the company was to follow the
5 warnings as outlined by the CPFC.
6 Q. But you didn't follow it. You didn't say absorbed
7 through the skin. You said something like avoid skin contact?
8 A. Well, that's similar, isn't it?
9 Q. You tell me. Is it?
10 A. I think so.
11 Q. Okay. Did the company recognize that skin contact
12 was a consequence of using the Liquid Wrench products?
13 A. I would say yes.
14 Q. So that section there that talks about you have to
15 identify on the containers the principal hazards and then they
16 give you a list and they say or similar wording descriptive of
17 the hazard, did Radiator Specialty Company appreciate that
18 that was one of their obligations on the container?
19 A. That's an awkward situation to answer.
20 Q. You want me to ask it a different way?
21 A. When we -- when I say we meaning the liquid
22 committee, we studied these books or the book very carefully
23 and tried to follow especially all that that's on there very
24 carefully. We think we did.
25 Q. I understand you think you did. And you've said
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 156

1 that several times today, right?

2 A. I hope so.

3 Q. I'm just asking you if it was your company's

4 obligation to identify on the containers the principal hazards

5 of the product?

6 A. It's everyone's obligation to do exactly that.

7 Q. You mean everybody at your company?

8 A. No, everybody who has a product.

9 Q. Everybody that makes a product?

10 A. Yeah, a hazardous product.

11 Q. All right. So companies like Radiator Specialty

12 Company that make hazardous products have the same obligation?

13 A. Yes.

14 Q. That's what you're trying to say, right?

15 A. Yes.

16 Q. And so how did your company go about determining

17 what the principal hazards of Liquid Wrench were? What was

18 its step by step approach?

19 A. As you well know, the company conducted two tests,

20 one for absorption through the skin and one for inhalation,

21 tried to determine whether it was toxic or nontoxic.

22 Q. Did they determine whether it was toxic?

23 A. Or highly toxic.

24 Q. Was it toxic?

25 A. Well, they -- those documents have been produced. I
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 157

1 know you've read them.

2 Q. Doesn't it say it's toxic?

3 A. Well, there's an argument about it.

4 Q. There's an argument. Okay.

5 A. There's discussion that says well, it may be,

6 another that says well, it may not be. We went ahead and

7 labeled it I think with the -- under the toxic labeling.

8 Q. And how did y'all -- if you've got this disagreement

9 as whether it's toxic or highly toxic, how did y'all decide

10 that?

11 A. Well, this happened back in the early '60s; so I

12 wasn't -- you all -- Kologiski, not Jim Wells.

13 Q. How did they by looking at the documents decide that

14 it was toxic instead of highly toxic?

15 A. Well --

16 Q. Can you tell?

17 A. I can't tell. I mean, I can -- the obvious opinion

18 is straightforward, but that's just an opinion.

19 Q. Now, could you tell from the documents at your

20 company what the chronic benzene hazards were from that

21 product?

22 A. They word chronic was never used and I think we

23 didn't even consider it acute because in the testing I'm sure

24 it was done a very short period of time. And the rats or lack

25 of death, whatever it was, was there. Now, long-term to my
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 158

1 knowledge there was nothing known about that to our company.

2 Q. Well, you didn't run any long-term tests?

3 A. We did not.

4 Q. You ran one hour test on rats?

5 A. Whatever it was, yes.

6 Q. Is that your recollection, one hour exposure test?

7 A. Whatever -- I mean, you've got the documents.

8 Whatever it says, it says.

9 Q. It came from your company.

10 A. Yeah.

11 Q. Okay. You know, you're a chemist. Don't put it on

12 me. You're the witness. Do they say one hour test or not?

13 A. I don't sit here and try to remember every word of

14 every document. If the document said one hour, okay.

15 Q. Were they chronic benzene studies or were they acute

16 short-term studies?

17 A. They were acute short-term.

18 Q. Does one hour test sound familiar to you?

19 A. Yes.

20 Q. Was your company relying on U.S. Steel if there was

21 potential chronic hazards from that raffinate?

22 MR. SYKES: Object to the form of the question.

23 A. I don't know what our company was doing in the

24 1960s.

25 Q. (BY MR. LUBEL) Okay. I thought earlier you said
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 159

1 y'all relied on your suppliers and trade organizations to

2 provide you with health considerations?

3 A. When I went there in '72 we had a very close

4 relationship with our suppliers and of course when the MSDSs

5 came out, we worked very closely with them.

6 Q. When you got there in 1972, did you rely upon the

7 suppliers of the ingredients of the products to tell you if

8 there was health considerations?

9 MR. SYKES: Object to the form of the question.

10 A. Yes, we did.

11 Q. (BY MR. LUBEL) Was that some novel concept in

12 business back then or was it --

13 A. Standard.

14 Q. Y'all weren't the only company that felt that way?

15 MR. SYKES: Object to the form of the question.

16 Q. (BY MR. LUBEL) Radiator wasn't the only company in

17 America that relied on their suppliers?

18 MR. SYKES: Object to the form of the question.

19 A. I don't think so.

20 Q. (BY MR. LUBEL) Well, you had worked at other

21 companies, right?

22 A. I had.

23 Q. And let me go back. We digressed back to Exhibit 4

24 because your lawyer, Mr. Riley, asked me whether a particular

25 section was in there, do you remember that?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 160

1 A. Well, let me go back to something. I want to be
2 sure there was no misunderstanding between us. It had to do
3 with my comment was if Mr. Kologiski had had the same
4 knowledge that I had, he would have done the same thing or
5 words to that effect. Now, I want to be sure that my thought
6 process at the time, which doesn't really come out in the
7 statement or part of it, and that was that the initial
8 recommendation on my part to stop producing the raffinate
9 Liquid Wrench was because I didn't feel like it was in our
10 best interest and we would have a very difficult time meeting
11 the new expected workplace standards. The benzene situation
12 came in sort of after the fact. So I just wanted to get that
13 on the record.

14 MR. LUBEL: Objection; nonresponsive.

15 Q. (BY MR. LUBEL) Do you recall me asking you a while
16 back today whether you gave sworn testimony as a corporate
17 spokesperson for Radiator that your company, had they known
18 about these benzene toxic properties back as early as the
19 1950s or '60s, whether or not they would have done the same
20 thing that you did in 1978 and that is to eliminate the
21 product? Do you recall that?

22 A. And that's why I was just trying to explain that the
23 initial knowledge came about because of the standard in the
24 workplace. Now, the benzene just was kind of like icing on
25 the cake. That came second.

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 161

1 Q. Sir, I'm asking you if you recall giving testimony
2 just like you are today under oath with the court reporter and
3 a videographer that if your company would have known in the
4 '50s or '60s, they would have eliminated the
5 benzene-containing product?

6 A. Are those my words?

7 Q. I'm going to show you. Do you remember saying it?

8 A. Well, actually I don't, but I don't doubt that I
9 said that.

10 Q. I'm asking what the company's -- what's the
11 company's position, what's going to be you all's position at
12 trial as to what you all would have done in the '50s or '60s
13 and you said well, Mr. Blumental -- that was the owner, right?

14 A. That was the owner.

15 Q. Demonstrated his willingness to change when I
16 presented it to him in 1977. And what you're referring to is
17 to take the benzene-contain formula out, right?

18 A. Well --

19 Q. That's what it says willingness to change d?

20 A. Willingness to change. Now, the word benzene isn't
21 in that statement. What I went to him with was we won't be
22 able to meet these health standards in the plant.

23 Q. Oh, okay. So that's not what you meant when you
24 said it there?

25 A. Yeah. The benzene is not involved in this.

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 162

1 Q. It wasn't? Well, let's go down a little further.
2 And you say I see no reason why he would not have made the
3 same decision if Mr. Kologiski had gone to him with the same
4 data at an earlier date; is that true?

5 A. That's true.

6 Q. All right. Now --

7 A. Here between meaning that it couldn't meet air
8 standards.

9 Q. I know that's your story now, but let's read on.

10 MR. SYKES: Object to the form of the question.

11 Q. (BY MR. LUBEL) Your story's changed, hasn't it?

12 A. Changed?

13 Q. Well, look. Read on. And given the fact that
14 Radiator Specialty Company already had a product that could
15 take the place of was a valuable substitute for the Liquid
16 Wrench that contained benzene. Do you see that? In other
17 words, the deodorized formula, since they already had that in
18 the 1950s, it would have been an easy transition back then if
19 they would have been armed with that information, correct?
20 And what did you answer back then when you gave your
21 testimony?

22 A. It's still correct because the word that contained
23 benzene is just a description of the problem.

24 Q. Sir, is it your testimony based upon the company's
25 philosophy that if they had had the information that you got

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 163

1 in the late '70s, approximately 1977, that there was a
2 potential connection between benzene and cancer, that your
3 company, if they'd had the same information in the '50s or
4 '60s, would have done the same thing?

5 MR. SYKES: Object to the form of the question.

6 A. We're arguing over pretty much the same thing and
7 what I'm saying to you as I've said right there is that the
8 initial action was driven by our inability to meet the
9 standards. And then the benzene situation came along very
10 shortly. I don't know whether it was a day or a month or six
11 months or six weeks; but we soon as learned that benzene had
12 an effect to be considered, that maybe even drove the new
13 standard. And this -- this line here, 18, just talks really
14 about there was a valuable substitute with Liquid Wrench. I
15 could have just as easily have said deodorized as I put
16 contained benzene, reworded that.

17 Q. (BY MR. LUBEL) Sir, didn't you testify that if your
18 company had known in the '50s what you knew in 1977 about the
19 benzene-containing raffinate formula of Liquid Wrench, that
20 you would have done the same thing and that is eliminate it?

21 A. That's what we're arguing about. I don't think
22 that's what I said.

23 Q. That's not what you meant?

24 A. Well, I just been trying to say that just now
25 that -- what I said and what I meant had to do with the OSHA

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 164

1 reg.
2 Q. What change are you talking about that
3 Mr. Blumenthal demonstrated his willingness to change when I
4 presented to him in 1977?
5 A. He wanted us to change was to eliminate the product.
6 Q. The product containing benzene?
7 A. Well --
8 Q. Right?
9 A. But that's secondary. What we're really talking
10 about was the product we couldn't meet the standards, the OSHA
11 standards that were expected to come down.
12 Q. Because of benzene?
13 A. Well, now, I don't know that it's because of benzene
14 even sitting here, but it probably was in retrospect.
15 Q. You don't remember what your conversation with
16 Mr. Blumenthal was about?
17 A. It had nothing to do with benzene.
18 Q. Had nothing to do with benzene?
19 A. No, benzene wasn't even mentioned.
20 Q. You didn't tell him that it contained a
21 cancer-causing substance, Liquid Wrench?
22 A. I didn't even know it.
23 Q. You don't remember testifying in 1977 was first time
24 you found out that benzene could cause cancer?
25 A. That part's true, but it was after I found out about
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 165

1 the OSHA reg. It didn't happen at the same time.
2 Q. So once you learned that the benzene in Liquid
3 Wrench could cause cancer, didn't you go to Mr. Blumenthal, the
4 owner, and have that conversation with him about it?
5 A. No. I went to him when I found out about the
6 proposed change in the air quality.
7 Q. What was the proposed change in air quality? What
8 did it have to do with?
9 A. What did it have to do with?
10 Q. Right. What substance?
11 A. Oh, I don't recall.
12 Q. You really don't remember that it was benzene?
13 A. I'm not sure. It's been so long since I've read it.
14 Q. I thought you just read it within the last week?
15 A. I'm talking about the article that I read in the
16 magazine.
17 Q. But you read the Cowey deposition in the last week?
18 A. I did.
19 Q. You don't remember testifying under oath in the
20 Cowey deposition that you gave almost five years ago that you
21 had a conversation with Mr. Blumenthal, that he was essentially
22 so moved by your conversation that within minutes he said
23 eliminate the benzene-containing or raffinate-containing
24 Liquid Wrench?
25 A. I don't recall that, but I do recall that he said --
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 166

1 I think the conversation was over the phone although that may
2 not be accurate. I think I went to see him and he did say
3 immediately okay, eliminate it.
4 Q. Okay. And you don't recall testifying that you told
5 him that the benzene could cause cancer?
6 A. I don't recall. At this point I don't remember.
7 Q. Do you remember that?
8 A. I said I don't remember that.
9 Q. No, do you remember testifying that 1977 you read an
10 article that connected benzene to cancer?
11 A. I remember reading an article but my remembrance was
12 that benzene was not part of the article. Now, that's my
13 recall.
14 Q. So how do you learn that benzene could cause cancer
15 if it wasn't part of the article?
16 A. I don't remember that either. I just know that it
17 came -- my recollection is I learned it within a matter of
18 weeks, less than a month after that original article.
19 Q. Sir, let me refresh your recollection with some of
20 your testimony in the Cowey case. "When did you first learn
21 that exposure to benzene could cause cancer and other maladies
22 such as that?"
23 "My first learning of the seriousness was in
24 1975 -- '77 at I recall it." Do you see that?
25 A. Yeah, that's probably accurate.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 167

1 Q. See the word cancer? Do you see that?
2 A. I see it.
3 Q. And I said, "How did you learn it?"
4 You said, "I was reading a magazine, one of the
5 technical types of magazines and I ran across an article, a
6 very small article that said OSHA was making some proposals
7 about benzene." Right? Does that refresh your recollection
8 that the article was talking about benzene?
9 A. Well, see, the question says -- it uses the word
10 cancer or other maladies and I answered it the way I did --
11 Q. Sir, isn't it true that the primary reason that your
12 company took off the production lines the benzene-containing
13 Liquid Wrench was because of cancer?
14 MR. SYKES: Object to the form of the question.
15 A. No, it was not, it absolutely was not.
16 Q. (BY MR. LUBEL) Do you recall testifying to that
17 under oath?
18 A. I don't think I ever said that.
19 Q. Okay. Let's go to the next page. So you took the
20 benzene-containing Liquid Wrench off the market. What did you
21 say?
22 A. That's correct.
23 Q. Where people couldn't be exposed to it anymore.
24 What did you say?
25 A. That's correct. That's true.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 168

1 Q. And that is primarily due to the cancer hazard. Do
2 you see that question?
3 A. And the cancer is primarily --
4 Q. Do you see that, primarily due to the cancer hazard.
5 Do you see that question?
6 A. I see it.
7 Q. And here's your answer. "I'm trying to think back.
8 You know, you said primarily and it could have been but it
9 probably was." You see that?
10 A. Well, I see that but --
11 Q. Hold on.
12 A. -- that question is kind of wobbly.
13 Q. I'm not done. Then you say -- I say, "Can you think
14 of any other reason than consumers out there using your
15 products potentially getting cancer from it to take it off the
16 market?"
17 And you said, "Well, I --
18 "Is there?"
19 And you said, "I really -- stay off the
20 market?" You say, "I have to say you're probably right. That
21 was probably the primary reason." Those were your words, sir.
22 Now it's five years later and you're trying to say that you
23 didn't see that -- say that, aren't you?
24 A. Well, I said I didn't remember saying that. And I
25 think I had a little bit of leading going on there, but
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 169

1 nevertheless I said it. I'm not going to backtrack on it, but
2 I will say what I said earlier, that the whole thing began
3 with the concern about the health hazard within the plant and
4 us being able to meet that requirement.
5 Q. Health hazard what? From benzene?
6 A. Well, as it turned out to be, yeah, benzene.
7 Q. Okay. And what was your concern about your workers
8 in the plant?
9 A. We could not meet whatever the new regs were going
10 to be.
11 Q. So you weren't concerned about your workers'
12 exposures?
13 A. We were, yes.
14 Q. You were or you weren't? Let's get this straight.
15 A. We were. The workers' exposure was primary.
16 Q. You were concerned about them, right? You were
17 concerned about your own employees?
18 A. Yes, we were.
19 Q. Being exposed to too much benzene from Liquid
20 Wrench?
21 A. As it turned out, yes.
22 Q. And back then the proposed regulation was one part
23 per million, correct?
24 A. That's -- I think that's correct.
25 Q. And so your concern -- was this your concern or
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 170

1 somebody else in the company?
2 A. This was mine originally.
3 Q. Okay. It was originally your concern that you
4 couldn't keep the exposures below one part per million for
5 your employees involved in certain tasks, correct?
6 A. That's correct.
7 Q. Okay. Which employees were you concerned about?
8 A. Primarily those that were at the end of the line
9 packing the filled cans into cartons.
10 Q. Mainly those people?
11 A. Yes.
12 Q. Now, tell me what a person that's taking cans that
13 have tops on them and putting them into cardboard boxes --
14 weren't your cartons cardboard boxes?
15 A. Yes.
16 Q. How were they going to be exposed to above one part
17 per million of Liquid Wrench?
18 A. The equipment that the L108, et cetera was filled on
19 was very, very old. We had moved it out of the Charlotte
20 plant into the Indian Trail plant and it was prone to miscues
21 and drips, leaks and sometimes the capping process wasn't
22 totally adequate either and the result would be there would be
23 anywhere from drops to more than just drops on top of the can.
24 And they would have to stop, refit the cap, wipe the top of
25 the can off.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 171

1 Q. Why did that concern you?
2 A. Well, they were exposed to the material.
3 Q. To the benzene?
4 A. Well, to the --
5 Q. The raffinate?
6 A. Everything, yeah.
7 Q. But you understood the raffinate carried the
8 benzene?
9 A. Yes.
10 Q. Why didn't you just give your employees some
11 chemical resistant gloves?
12 A. Well, there was also ventilation to be concerned
13 with.
14 Q. Couldn't you have given them respirators?
15 A. Could have.
16 Q. Couldn't you have just fixed your manufacturing
17 process to where you didn't have drops sitting on top of the
18 cans?
19 A. It could be done. However, I think I testified
20 earlier that it was not economically feasible. One of the
21 reasons was the sale of this Liquid Wrench formula was not
22 very good. We were -- it was going down as I recall and I'd
23 already eliminated 16-ounce, 32-ounce. 8-ounce was all that
24 was left. And at one point I attempted to eliminate that. I
25 got so much difference of opinion from our salespeople, I had
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 172

1 to keep it for a while longer.
 2 Q. So the Liquid Wrench product had been declining in
 3 value with the company?
 4 A. Yes.
 5 Q. Starting when? Starting when?
 6 A. Liquid Wrench regular.
 7 Q. Pardon me?
 8 A. The Liquid Wrench with raffinate had been declining.
 9 Q. Starting when?
 10 A. I don't recall when. I just know that it was
 11 consistently going downward.
 12 Q. Starting since you started in 1972 or late '70s or
 13 what are we talking about?
 14 A. Probably early '70s. I mean, that's sitting here
 15 right now.
 16 Q. And why is it that the value of the Liquid Wrench
 17 with the raffinate was going down as compared to the
 18 deodorized Liquid Wrench?
 19 A. I don't know. I don't know.
 20 Q. Were they two different markets?
 21 A. Well, certainly as I said earlier, they were sold
 22 through two different type outlets and that may have been a
 23 factor.
 24 Q. What were the two different types of outlets?
 25 A. Well, the little the 4-ounce can would have gone
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 173

1 into K-Mart or Wal-Mart and the 16-ounce, 12-ounce -- 8-ounce
 2 would have gone into a Home Depot.
 3 Q. Sir, would you like to take a break where you can
 4 get something to eat or something to drink real quick?
 5 MR. RILEY: I think he does.
 6 MR. LUBEL: Is that okay?
 7 MR. RILEY: Yeah.
 8 THE VIDEOGRAPHER: It's 3:21 p.m. Off the
 9 record.
 10 (Recess from 3:21 to 3:32)
 11 THE VIDEOGRAPHER: The time is 3:32 p.m. Back
 12 on the record.
 13 (Exhibit No. 5 marked)
 14 Q. (BY MR. LUBEL) You ready, Mr. Wells?
 15 A. I am.
 16 Q. I'm going to mark as Exhibit 5 that 1970s Mariners
 17 annual page that you and I spoke about earlier. Let me zoom
 18 out. You remember this document?
 19 A. What did you ask me?
 20 Q. Do you remember talking about this earlier today?
 21 A. I do.
 22 Q. Okay. This is a 1970 document where it's difficult
 23 to read but, you know, it says on the advertisement deodorized
 24 Liquid Wrench. And then if you look up here in the left-hand
 25 corner, does that appear to be deodorized as well?
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 174

1 A. I really cannot tell from this.
 2 Q. Okay. It's difficult to read. Can you remember
 3 from your experience at the company what else they would have
 4 put in this left-hand corner other than deodorized?
 5 A. Well, my best answer is that a lot of little things
 6 got moved around like the solder seal emblem, for example. It
 7 wasn't always in the same place I don't think. So I don't
 8 have an answer for your question.
 9 Q. Let me do it this way. Let me show you what I've
 10 marked as Exhibit 6 and ask you if you recognize this can?
 11 (Exhibit No. 6 marked)
 12 A. That's probably the one that I looked at yesterday.
 13 Q. (BY MR. LUBEL) Okay. Do you see where it says
 14 deodorized up there?
 15 A. Yes.
 16 Q. And do you see where it's got the super penetrant and
 17 it's got a pipe wrench on it?
 18 A. I do.
 19 Q. And it's got a skull and crossbones, correct?
 20 A. I do.
 21 Q. Is not going to surprise you when I flip the page
 22 and it says contains benzol or benzene, right?
 23 A. Right.
 24 Q. You've seen that, correct?
 25 A. I have.
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 175

1 Q. In fact, let me see if I can zoom in. There it is
 2 right there. Now, keep fresh in your mind, if you will, this
 3 picture, okay? You see the deodorized on the left. You see
 4 it's an 8-ounce can. It's got pipe wrench. It's got the skull
 5 and crossbones, says danger poison, et cetera, okay?
 6 A. Yes.
 7 Q. Now, let's look back to the 1980 advertisement I
 8 marked as Exhibit 5.
 9 MR. LONGORIA: 1970.
 10 MR. LUBEL: No, it's 5.
 11 MR. LONGORIA: No. You said 1980.
 12 A. This was what year?
 13 Q. (BY MR. LUBEL) 1970. Do you see it?
 14 A. I don't see a 1970.
 15 Q. No. This is the -- see up here, 1970. This is out
 16 of the Mariner's annual. 1970. I showed you this at the
 17 beginning of the deposition.
 18 A. Oh, okay. Yeah.
 19 Q. Now, let me back it up, if I can learn how to work
 20 this thing. Do you see where it says deodorized Liquid
 21 Wrench, right?
 22 A. Yes.
 23 Q. Now go back. That says deodorized, right?
 24 A. Right.
 25 Q. Has a skull and crossbones and you remember it says
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 176

1 benzol on the back of it, right?
 2 A. Right.
 3 Q. Okay. Now, look right there. You see I'm going to
 4 tell you that looks like deodorized to me. You've already
 5 told us you can't read it for sure, right?
 6 A. Right.
 7 Q. Now, look at both. You see where the words are?
 8 A. Yes.
 9 Q. Don't you think that says deodorized?
 10 A. Yes.
 11 Q. And then you see where it says solder seal, right?
 12 A. Right.
 13 Q. 8-fluid ounces, right?
 14 A. Right.
 15 Q. We can't see what it says here, but that appears to
 16 be 8 fluid ounces, but it's a poorly legible copy, right?
 17 A. Yes.
 18 Q. You agree with that?
 19 A. I do.
 20 Q. And then when we look down, when we look at the rest
 21 of the product, let me zoom out a little bit, you'll see that
 22 you've got a pipe wrench on this one and you've got a pipe
 23 wrench on this one, right?
 24 A. Okay.
 25 Q. And it says the super penetrant, and on this one it
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 178

1 A. Yes.
 2 Q. And just so the record is clear, we've marked that
 3 as Exhibit No. 6. So let me -- where this can says benzol,
 4 you're saying sometime after '72 you put on there contains
 5 benzene, right?
 6 A. That's my recollection, yes.
 7 Q. Now, benzol and benzene are the same thing for the
 8 chemist, right?
 9 A. Correct.
 10 Q. It's just they're synonymous terms?
 11 A. Yeah. The word benzol has kind of got out of
 12 popular use for whatever reason.
 13 Q. For whatever reason. But benzene equals benzol?
 14 A. Yeah.
 15 Q. So you think this is probably a pre-1972 can because
 16 it says benzol instead of benzene?
 17 A. That's an indication to me that it could be.
 18 Q. All right. Now, is there anything else about the
 19 can that would indicate to you even if you didn't see the word
 20 benzol or benzene on it that it was a benzene-containing
 21 formula?
 22 A. Well, let's hold that question just for a second and
 23 go back to that picture where they had the benzol on it. The
 24 back panel.
 25 Q. Okay. You want me to put that back up?
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 177

1 says the super penetrant. Do you see that?
 2 A. Yes.
 3 Q. And then you'll see you've got a skull and
 4 crossbones here and you've got one there, right?
 5 A. Right.
 6 Q. And so I know you weren't working at Radiator
 7 Specialty Company in 1970, right?
 8 A. Right.
 9 Q. But we can tell from looking at the Mariner's annual
 10 because it's a 1970 version that they're not referring to a
 11 can in your vintage, in '72, '78 time period, right, because
 12 it's before then? It's before you got there, right?
 13 A. Well, yes, yes.
 14 Q. That makes sense, right?
 15 A. Right.
 16 Q. And then if we look at this one, can you tell from
 17 looking at this can and I'll give you the rest of the pictures
 18 whether it also is pre-1972 can? And let me hand it to you.
 19 Its got various pictures of it, front, side, back.
 20 A. The only clue to this can versus later cans -- and
 21 what I'm about to tell you is my best recollection. I could
 22 be wrong, but I don't think so. Sometime after '72 it's my
 23 recollection that we changed the word benzol to benzene.
 24 Q. Can I put that up and show the jury while you're
 25 explaining it? You're looking at the back of the can, right?
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 179

1 A. Yes.
 2 Q. All right.
 3 A. Now, you'll notice at the top -- focus on the top
 4 where it says caution, flammable mixture.
 5 Q. Right.
 6 A. Now, then it goes ahead and talks about New York
 7 City fire department.
 8 Q. Right there?
 9 A. Yeah.
 10 Q. Okay.
 11 A. First of all, that -- I think we eliminated that --
 12 all of that which you see from caution down through the
 13 New York City.
 14 Q. When?
 15 A. Well, sometime -- my recollection, I think we did in
 16 early maybe '73. Again, I'm not certain.
 17 Q. After you got there?
 18 A. Yeah, after I got there. And the other thing about
 19 it is that you'll notice it says flammable mixture. Well --
 20 Q. Right there?
 21 A. Yeah. The deodorized was not flammable. It's
 22 combustible. So the flammable is in agreement with the skull
 23 and crossbones and the rest of the label on the front.
 24 Q. Anything else on this can, container?
 25 A. That's all I see right now.
 Stratos Legal Services, LP
713-481-2180

<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 180</p> <p>1 Q. So, isn't it a fact that pre-'72 when you got there 2 the deodorized version in the 8 fluid ounce containers of 3 Liquid Wrench contained benzol? 4 MR. RILEY: Objection; form. 5 MR. SYKES: Object to the form of the question. 6 A. No. 7 Q. (BY MR. LUBEL) Well, this one shows it does? 8 A. No. 9 Q. Look. 10 A. This is a Liquid Wrench can that contains the 11 raffinate formula. The word deodorized on the front is some 12 kind of -- I'm speculating is some kind of error in -- knowing 13 what I know about the way the art work was done. This 14 deodorized was left on there by accident when they were making 15 cans. 16 Q. Okay. Can you show me the formula for deodorized 17 pre-1972 that reflects there's no raffinate in it? Can you 18 show me that document? 19 A. I can show you that document that would be dated -- 20 it was dated before I came there. There is a document, and 21 you have it, that shows the formula. It may say '71 or may 22 say '70. May even say '72, but it was given to me after I got 23 there. 24 Q. I'm just asking you if you've seen the formulations 25 for deodorized Liquid Wrench before 1972? Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 182</p> <p>1 picture, okay. See its got the skull and crossbones? 2 A. Uh-huh. 3 Q. We've already agreed that that's the deodorized 4 version in 1970, correct? 5 A. No. 6 Q. You did. We went through it. 7 A. We agreed -- or I said that that word deodorized on 8 that can is a mistake. 9 Q. It's a mistake on this one, too? 10 A. Everything else on the can says it's the raffinate 11 formula. 12 Q. You're saying that the advertisement in 1970 is a 13 mistake, too? 14 A. We don't know where that can came from, but what I'm 15 saying is that the can that you have is a mistake and so maybe 16 this can and this can are one and the same. 17 Q. So y'all are advertising as deodorized with the 18 skull and crossbones and you're saying those were mistakes? 19 A. I'm saying that my belief is that that word was put 20 on there accidentally. 21 Q. Twice? 22 A. What do you mean twice? 23 Q. Well, you're advertising to whoever that this can is 24 deodorized and has raffinate too by virtue of the skull and 25 crossbones, correct? Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 181</p> <p>1 A. I just said yes. 2 Q. You've got one of those documents? 3 A. You have, too. 4 Q. Well, you've never been to my office, my file, have 5 you? 6 A. Well, we've produced it. Let me put it that way. 7 Q. You assume I have it? 8 A. Yes. 9 Q. True? 10 A. True. 11 Q. Now, I thought you told us earlier that the whole 12 reason that you put the skull and crossbones is because of the 13 benzene in the product. Are you saying that's a mistake? 14 A. The skull and crossbones is appropriate for what's 15 in the can, meaning the raffinate formula. 16 Q. Is it because of the raffinate is my point? 17 A. The skull and crossbones is, yes. 18 Q. Because the benzene and the raffinate, right? 19 A. Well, the toluene and the xylene, but the benzene 20 does have a special meaning as outlined in the CFR16 when it 21 comes to quantity. 22 Q. Sure. The skull and crossbones, is it to signify 23 that there's raffinate in it? 24 A. Raffinate -- yes. 25 Q. All right. Now, go back to this Exhibit 5, this Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 183</p> <p>1 A. Well, we get hung up on something here. 2 Q. You know what -- 3 A. All I can do is say it again. If you put your 4 finger over this deodorized and pretend like it's not there, 5 everything else about that can is a raffinate formula. The 6 same is true with the label that you have on there. If you 7 cover up that deodorized, everything else about it says as we 8 talked about the caution about the flammability and the skull 9 and crossbones and all the other ones that go with all the 10 things that you have to put on there when you use that 11 formula. 12 Q. Sir, the deodorized versions contain raffinate, 13 correct? 14 MR. RILEY: Objection. 15 A. No. 16 Q. (BY MR. LUBEL) So when y'all advertised this 17 deodorized version is containing raffinate with the skull and 18 crossbones you're telling us that was a mistake, right? 19 A. I'm going to tell it one more time. This is the 20 third time. 21 Q. Please do. 22 A. The word raffinate on that can is a mistake. 23 MR. RILEY: Wait a minute. You said raffinate. 24 Q. (BY MR. LUBEL) Which can? 25 A. I mean the word deodorized on this can and that one Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008

Page 184

1 is a mistake. It shouldn't have been on there.
 2 Q. Both are mistakes?
 3 A. Both are mistakes.
 4 Q. Okay. And the reason you know it's a mistake is
 5 because you're saying you've seen all the formulations for
 6 deodorized Liquid Wrench before 1972, correct?
 7 MR. RILEY: Objection; form.
 8 A. I'm saying that because in my experience the
 9 deodorized is the formula made with petroleum distillates or
 10 kerosene. The raffinate formula because of its nature carries
 11 the skull and crossbones and is flammable, not combustible.
 12 Q. (BY MR. LUBEL) Sir, can you find me pre-1972 the
 13 formulations for the deodorized version of Liquid Wrench that
 14 show that it's got kerosene in it instead of raffinate?
 15 A. That's what I just said, yes.
 16 Q. Let's take a break and find it.
 17 A. We have produced it.
 18 Q. Let's find it and let's talk about it.
 19 A. Okay.
 20 Q. Will you look for it? You said you've seen the
 21 document?
 22 A. We've got it somewhere.
 23 THE VIDEOGRAPHER: Stand by. It's 3:48 p.m.
 24 We're off the record. This concludes tape 4.
 25 (Recess from 3:48 to 3:55)
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 185

1 THE VIDEOGRAPHER: The time is 3:55 p.m. We
 2 are back on the record beginning of tape 5.
 3 Q. (BY MR. LUBEL) Were you able to locate all of the
 4 deodorized Liquid Wrench formulations in your possession?
 5 A. I was not. I only located -- well, let's back up.
 6 I believe you were asking for pre-1972. And I said I had them
 7 and I do right in front of me that's dated October 28, 1971.
 8 Q. Do you have any deodorized formulations or
 9 ingredients for Liquid Wrench other than that one page?
 10 A. I do, but it's not in here. And --
 11 Q. Are you sure of that, Mr. Wells?
 12 A. Uh-huh because I got both of them at the same time.
 13 Q. Both what?
 14 A. Formulas.
 15 Q. For deodorized?
 16 A. And regular.
 17 Q. Listen to my question. You've pulled out a piece of
 18 paper for what you're going to say is deodorized Liquid Wrench
 19 pre-1972, correct?
 20 A. No. I said this is raffinate formula.
 21 Q. Okay. What I'm trying to get you to locate -- we'll
 22 go back off and take a break for you to do it -- are the
 23 documents that give us the formulas for deodorized Liquid
 24 Wrench.
 25 A. I understood that. And I thought it was with this
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 186

1 sheet which is not deodorized. I knew that, but there was one
 2 of each. But the one I was looking for, which was the
 3 deodorized, isn't here.
 4 Q. Can you -- can we take a break so you and Mr. Riley
 5 can see if y'all can locate what you're talking about so we
 6 can talk about it?
 7 A. Well, we're not going to find it because the other
 8 document I was thinking about is in here and it's not -- it's
 9 this one right here. That's what I -- this is the other one I
 10 was thinking about, but this is not the formula for the
 11 deodorized.
 12 Q. It's the raffinate?
 13 A. Well, it's neither one.
 14 Q. It says raffinate at the top?
 15 A. Well --
 16 Q. See it?
 17 A. It's a sample. Its not Liquid Wrench. It's just
 18 pure raffinate. So --
 19 MR. LUBEL: You want to take a break?
 20 A. --the formulation that I was looking for for the
 21 deodorized --
 22 MR. RILEY: Yeah, let's take a break and find
 23 out what's going on.
 24 Q. (BY MR. LUBEL) Let's take a break. Visit with your
 25 lawyer. Here's what I'm looking for, okay. Do you have the
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 187

1 deodorized formulas for Liquid Wrench before 1972? And if you
 2 do, if you and Mr. Riley can put your hands on them, we can
 3 talk about them.
 4 A. I don't think it's in any of these document that's
 5 been produced.
 6 Q. Where do we find it?
 7 A. I'd have to look in the file cabinets.
 8 Q. Have you seen it before?
 9 A. Uh-huh.
 10 Q. Is that a yes?
 11 A. I've seen it because I used it when we first went
 12 into production.
 13 Q. In '72?
 14 A. Uh-huh.
 15 Q. Do you remember the date of it?
 16 A. No.
 17 Q. Could it be in the deodorized parts file that you
 18 said was in that file cabinet that you didn't pull for this
 19 case?
 20 A. Yes.
 21 MR. LUBEL: Jim, why don't we take a break and
 22 y'all visit and come back?
 23 THE VIDEOGRAPHER: Off the record at 3:59 p.m.
 24 (Recess from 3:59 to 4:10)
 25 THE VIDEOGRAPHER: The time is 4:10 p.m. We
 Stratos Legal Services, LP
713-481-2180

<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 188</p> <p>1 are back on the record. 2 Q. (BY MR. LUBEL) You ready to proceed? 3 A. Yes. 4 Q. At the break you and Mr. Riley went and located two 5 documents that he tendered to me right before we started, 6 correct? 7 A. Located two documents and what? 8 Q. Mr. Riley tendered to me right before we began? 9 A. Correct. 10 Q. I'm going to mark the first one as Exhibit 7 and the 11 second one as Exhibit 8. Is that fine by you? 12 A. Sure. 13 MR. RILEY: For the record they were part of 14 the initial production and disclosures. 15 MR. LUBEL: I'm not contesting it. These look 16 familiar. 17 MR. RILEY: I know. I just had to say it. 18 (Exhibit Nos. 7 and 8 marked) 19 Q. (BY MR. LUBEL) Let me start with, Mr. -- Mr. Wells, 20 with No. 8. You had a chance to study it, right? 21 A. Not in a long time, but I think I know what it is. 22 Q. Tell me when we took a break you and Mr. Riley went 23 and found the document? 24 A. Found it. 25 Q. You looked at it, right? Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 190</p> <p>1 that? 2 A. Yes. 3 Q. What is that rule? 4 A. I have no idea. 5 Q. All right. You've never had to look at that, have 6 you? 7 A. No. 8 Q. And then it's got a flash point for a tag open cup. 9 What does that mean, tag open cup? 10 A. Well, there are a couple of flash point 11 measurements. One's an open cup and one's a close cup. 12 Q. What's the difference? 13 A. Not much. 14 Q. Okay. Then it -- if we look to the back, it refers 15 to the product consists of a blend of distillable petroleum 16 solvent, petroleum based lubricating oil, petroleum 17 sulfonates, graphite and perfume, correct? 18 A. Correct. 19 Q. All right. Now, it doesn't specify what the 20 petroleum distillates are, correct? 21 A. Correct. 22 Q. This isn't a formula in the sense where it says 70 23 percent this, 10 percent this and -- it doesn't have that kind 24 of specificity, correct? 25 A. It does not. Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 189</p> <p>1 A. Yeah. 2 Q. It's a Foster Snell document and it's a report to 3 your company and it says a sample of penetrating oil and it 4 refers to Liquid Wrench and a parts number L103, right? 5 A. Correct. 6 Q. What does L103 refer to? 7 A. L103 is the part number of a little small squeeze 8 can that historically out of all the cans that I ever produced 9 and indeed when we first went into production that was what we 10 were making, L103 with the same formula that you're going to 11 look at I guess after you finish with this. 12 Q. All right. Now, just to be fair, this is May 1969 13 document, right? 14 A. That's what it says, yeah. 15 Q. And so this really isn't a formulation or formula 16 for Liquid Wrench deodorized, is it? 17 A. No. 18 Q. This is a testing document done by a third party, 19 Foster Snell, for Radiator on a particular parts number L103 20 which is a very small can, true? 21 A. True. 22 Q. Three refers to 3 ounces? 23 A. Correct. 24 Q. And so it says results of test and inspection in 25 accordance with some U.S. Coast Guard rule, right? Do you see Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 191</p> <p>1 Q. But I take it that you can tell by the flash point 2 something, correct? 3 A. Yes. 4 Q. What can you tell from this flash point? 5 A. It's combustible. 6 Q. Which means what? 7 A. That the carbon molecules are launching. 8 Q. So can we tell what percentage content of benzene is 9 in these petroleum distillants from the flash point? 10 MR. RILEY: Objection; form. 11 A. Well, the question is a little bit awkward. I'll 12 answer it this way. Benzene has a flash of about 5 degrees, 13 maybe 20 degrees Fahrenheit. And typically even though you 14 might mix less than, let's say, 2 or 3 percent benzene and the 15 rest of it kerosene, it would still flash down at the very low 16 end of those numbers. So what this really says is that I 17 doubt there's even benzene in this formula. 18 Q. (BY MR. LUBEL) Well, you know there's some. You 19 just doubt there's much? 20 A. Trace amounts. 21 Q. You doubt there's much? 22 A. Yes. 23 Q. True? 24 A. True. 25 Q. You know that you can't get all the benzene out of Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008

Page 192

1 the petroleum distillate, correct?
 2 A. Understood.
 3 Q. And so -- and you've acknowledged earlier in your
 4 deposition that benzene is one -- fits under the category of
 5 both aromatics and petroleum distillates?
 6 A. Yes.
 7 Q. And so -- but what you're reading from this flash
 8 point is there's probably not a whole bunch of benzene in
 9 there, right?
 10 A. Correct.
 11 Q. You think there's more kerosene or some other
 12 product like kerosene?
 13 A. Yes, I do.
 14 Q. Right. But you can't even testify under oath it's
 15 kerosene for sure?
 16 A. I cannot.
 17 Q. Now, have you seen the actual formula for this
 18 product?
 19 A. As I said, when I began the product at 103 is the
 20 first Liquid Wrench that we ever made and I made it by a
 21 formula. This same part number, 103.
 22 Q. So you're saying that when you started at Indian
 23 Trail, you were the first one to make this part number?
 24 A. No. They were making it in Charlotte before I --
 25 before the plant opened.
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James Wells Vol II
11-6-2008

Page 193

1 Q. Are you sure?
 2 A. Uh-huh.
 3 Q. Very sure?
 4 A. Uh-huh.
 5 Q. How?
 6 A. Well, there's lots of cans with --
 7 Q. That look to be pre-'72?
 8 A. Well, the cans made in Charlotte are totally
 9 different than the cans made in Indian Trail. They don't look
 10 the same.
 11 Q. Okay. We do need to come back to that before we
 12 leave, but let me write that one down. You said the cans in
 13 Charlotte look totally different than at your plant at Indian
 14 Trail?
 15 A. Let me be a little bit more precise. I said the
 16 can, but in reality it's the spout on the can.
 17 Q. Okay. We'll come back to that. Now, do you have a
 18 formula for this product?
 19 A. L103?
 20 Q. Right.
 21 A. Yes.
 22 Q. Okay. You don't have it with you?
 23 A. Yeah. He just gave it to you I think.
 24 Q. Okay. It's Exhibit 7?
 25 A. Yes.
 Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 194

1 Q. Let's put that up. I don't see L103 on there. And
 2 it's dated 1971, correct?
 3 A. Yeah.
 4 Q. Do you see that?
 5 A. Yeah.
 6 Q. And the prior document we were looking at was dated
 7 '69?
 8 A. Yeah, correct.
 9 Q. Now, how do we know that what's listed here in
 10 October of '71 was for sure in existence in 1969?
 11 A. We don't.
 12 Q. How do we find out other than looking at a formula?
 13 A. You're not going to find out.
 14 Q. I thought you said earlier you thought there was a
 15 formula for deodorized in the file cabinet?
 16 A. Well, that's it right there.
 17 Q. This is it?
 18 A. Uh-huh.
 19 Q. This is the only formula for deodorized Liquid
 20 Wrench that Radiator Specialty has in any of their files?
 21 A. Yes.
 22 Q. Are we clear on that?
 23 A. Yes. It never changed. From '72 on its always been
 24 what you're looking at.
 25 Q. But we can't tell what was in it before '71, can we?
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James Wells Vol II
11-6-2008

Page 195

1 A. We don't know what was earlier than this one date
 2 right here.
 3 Q. October of '71?
 4 A. Right.
 5 Q. We can agree on that, right?
 6 A. We will agree on that.
 7 Q. From a document standpoint?
 8 A. Correct.
 9 Q. And so when we look at this document, it refers to
 10 K-1, right?
 11 A. Yeah.
 12 Q. That's a code?
 13 A. That's a code.
 14 Q. Now, where would a chemist such as yourself that's
 15 employed by Radiator Specialty find the book that describes
 16 the codes?
 17 A. Well, at the time we began, all that data was
 18 transmitted to me and at some point there was expanded sheets
 19 showing the -- everyday K-1 is kerosene.
 20 Q. What's M-7?
 21 A. I forgot.
 22 Q. What's N-1?
 23 A. It was called Nacolene. It's kind of a surfactant.
 24 Q. What's B-1?
 25 A. That was a similar product and it's a barium
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 196

1 sulphonate I think.
 2 Q. Okay. What's D-5?
 3 A. That was the perfume, deodorant.
 4 Q. Okay. It was perfume?
 5 A. Uh-huh.
 6 Q. What's this?
 7 A. O-I was oil dag. That was the graphite.
 8 Q. It was the graphite, but wasn't there a book of
 9 sorts that you had codes for your 50 or more major products so
 10 you didn't have to memorize every one of them?
 11 A. There may have been. I don't remember.
 12 Q. Doesn't that make sense?
 13 A. It probably was.
 14 Q. I mean it's hard to imagine y'all doing business
 15 where every chemist had to memorize all the codes?
 16 A. Oddly enough, all these part numbers, including
 17 these and the final part number like L103, all these numbers
 18 was a way of life. No one said kerosene. It was K-1. No one
 19 said mineral spirits, M-13 or whatever it was. You didn't say
 20 Liquid Wrench. You said L104, L108. That's the way life was.
 21 Nobody talked anything but numbers.
 22 Q. Parts numbers?
 23 A. Uh-huh.
 24 Q. Is that yes?
 25 A. Yes.

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 197

1 Q. But this one didn't have a parts number. It said
 2 deodorized Liquid Wrench ingredients?
 3 A. That's true.
 4 Q. October of '71?
 5 A. Okay.
 6 Q. Right?
 7 A. Uh-huh.
 8 Q. And so you think K-1 is kerosene, right?
 9 A. It still is today.
 10 Q. Okay. Were you aware that there was a time period
 11 before kerosene was used where they were using diesel fuel?
 12 A. I don't recall that sitting here right now.
 13 Q. You don't recall that in your own documents?
 14 A. It could have been, but I don't remember.
 15 Q. Okay. Can you tell us when kerosene was first used
 16 in deodorized Liquid Wrench?
 17 A. It was used at Indian Trail when we started for the
 18 first time.
 19 Q. You're comfortable saying that because that was you?
 20 A. Yeah.
 21 Q. Can you tell us any -- before you got there?
 22 A. No.
 23 Q. So as you sit here on behalf of the company, you
 24 can't tell us what was in the deodorized Liquid Wrench before
 25 '71, correct?

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 198

1 A. This is the oldest document I have. This document
 2 was from Charlotte and what you see is what you get.
 3 Q. And so do you recall using kerosene in the Liquid
 4 Wrench, the deodorized version at Indian Trail starting when
 5 you got there in roughly '72?
 6 A. Yes.
 7 Q. Never used any diesel fuel?
 8 A. No. Well, it's easy to get a little bit confused
 9 because there was an occasion when we switched from kerosene
 10 to diesel fuel for a short period of time. Not in Liquid
 11 Wrench but in something else. And did we ever use it? Well,
 12 I'm not sure.
 13 MR. LUBEL: Let me see that book, Hector. Did
 14 you find that?
 15 MR. LONGORIA: Yeah.
 16 MR. LUBEL: Diesel fuel.
 17 Q. (BY MR. LUBEL) If you'll bear with me for just a
 18 minute, Mr. Wells. Do you remember the document I'm talking
 19 about that talks about diesel fuel?
 20 A. I'm kind of drawing a blank on that. I don't doubt
 21 that we may have used it, but I don't recall --
 22 Q. Does that ring a bell?
 23 A. -- testifying about it one way or the other.
 24 Q. Just so the record's clear, drip oil is the same
 25 thing as raffinate, correct?

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 199

1 A. That's correct.
 2 Q. What's oil dag?
 3 A. That's what I just said to you, that was the
 4 graphite, O-1.
 5 Q. Fuel oil No. 2, what was that? Fuel oil No. 2?
 6 A. That would have been diesel fuel.
 7 Q. That would have been diesel fuel?
 8 A. (Witness nods head.)
 9 Q. Let me just show you this. You recognize this
 10 document, don't you, eliminate benzene from Liquid Wrench
 11 number one standard formula?
 12 A. I don't recognize it, but go ahead.
 13 MR. RILEY: What's the RSC number?
 14 Q. (BY MR. LUBEL) Dated March 24 of '78. It's Radiator
 15 Specialty Company 00022. Do you see that?
 16 A. Yeah.
 17 Q. Okay.
 18 A. Is this one page out of the three or four that were
 19 stapled together?
 20 MR. RILEY: Here, Jim.
 21 MR. LUBEL: Here.
 22 Q. (BY MR. LUBEL) Who authored this? Tames, who is he?
 23 A. He was a chemist in our Charlotte operation.
 24 Q. Who asked him to do this study of eliminating
 25 benzene from Liquid Wrench number one standard formula?

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 200

1 A. I don't know.
2 Q. It was during your time there, right?
3 A. Yeah.
4 Q. '78?
5 A. Yeah.
6 Q. Weren't you in charge of that effort?
7 A. Well, this is kind of an unusual story because it's
8 like we had this fella working on something on his own and I
9 wasn't even aware that he was doing it. And we had already
10 made all the decisions as to the conversion. And I don't know
11 why this was even done, but it was done.
12 Q. He was just wasting his time? All right. It says
13 here that Liquid Wrench number one standard, that contains
14 raffinate, right?
15 A. That's what it says, yeah.
16 Q. And it says Liquid Wrench deodorized containing fuel
17 oil No. 2. You said that was the diesel fuel, right?
18 A. I think so, yeah.
19 Q. Where did y'all buy that from?
20 A. Axel Oil and -- lots of different people.
21 Q. That you bought the diesel fuel from?
22 A. Yeah.
23 Q. I take it you realize that diesel fuel has some
24 measure of benzene in it?
25 A. I'm not surprised.
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James Wells Vol II
11-6-2008

Page 201

1 Q. Do you have any documents that quantify that for us
2 back then?
3 A. No, I don't think -- if we ever used it, and this
4 doesn't say we used it, but if we ever did, I don't think we
5 used it very long. The reason was it -- the odor was
6 terrible.
7 Q. What was?
8 A. The odor of fuel No. 2.
9 Q. Well, I thought that's why you put perfume in it?
10 A. Well, no. The perfume was already in back when it
11 was kerosene.
12 Q. You're saying you didn't use it? This report here
13 says Liquid Wrench deodorized contain fuel No. 2 and it talks
14 about three other formulas, formula B containing kerosene.
15 Those are like the developmental ones, right?
16 A. All of these are developmental.
17 Q. Well, No 2's not. It says Liquid Wrench deodorized.
18 That's not developmental?
19 A. Yes, it is. He just used the fuel oil instead of
20 kerosene. See, this is all development work.
21 Q. So there was no deodorized?
22 A. Well, formula B containing kerosene, that's probably
23 it.
24 Q. That's probably what?
25 A. That's probably deodorized with kerosene instead of
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 202

1 fuel oil No. 2.
2 Q. Are you saying he made a mistake?
3 A. No. He intentionally was looking at various
4 formulas. Then he went ahead and there's a bunch of crafts,
5 you probably have seen, trying to show how these various
6 formulas compare for functionality.
7 Q. Evaporation rates?
8 A. Well, see, he says up at the top practical test on
9 rusted bolts and all that.
10 Q. So what was No. 2, the Liquid Wrench with deodorized
11 containing fuel No. 2? Was that the product that was being
12 sold?
13 A. I don't think -- to my knowledge, no. It was just
14 instead of putting kerosene in it, he put in fuel oil No. 2
15 thinking he could cut the price. And then of course number 4,
16 formula B was the kerosene formula being sold.
17 Q. Okay. Do you have something that would show us the
18 actual formula for the product that was sold?
19 A. Yeah. That's it I just gave you right here.
20 Q. This?
21 A. Uh-huh.
22 Q. How do we know that's not a test?
23 A. Well, I know it because I made it.
24 Q. You made it?
25 A. I made it early. I made it personally, you know.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 203

1 Weighed it out and put it in the mixer.
2 Q. Where is the test on it?
3 A. What test?
4 Q. Don't you take batch tests, production tests?
5 A. Yes.
6 Q. Where are the tests on the products to confirm
7 what's in them?
8 A. That would be a batch record.
9 Q. Okay. Do we have those?
10 A. I don't think we've ever submitted any.
11 Q. Where have they been?
12 A. Laboratory.
13 Q. How do we get our hands on them?
14 A. Well, if they're still there, they're just in the
15 files or in the notebook.
16 Q. Have you looked for them recently?
17 A. No.
18 Q. Have you ever looked for them?
19 A. No.
20 Q. Who can we get over there to look for them?
21 A. Probably Bob Gear.
22 Q. What would it tell us?
23 A. Well, the tests are the color and what it's doing.
24 The color is a match to a standard for the level of oil dag
25 that you put in there. All it does says yeah, you've got
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 204

1 something in there. You've got the right amount. They
2 probably check the odor and maybe the density, state of
3 gravity, which really doesn't mean much. And the odor, that's
4 kind of important.
5 Q. The odor is?
6 A. Uh-huh. The odor and the color, that's what it
7 would tell you primarily.
8 Q. Let me see if I can find the -- let's -- while I'm
9 searching for a document, you said the cans in the Charlotte
10 office plant look totally different than the containers in the
11 Indian Trail facility, do you recall that, because of the
12 spout?
13 A. Yes.
14 Q. What was different about the spout?
15 A. If you have some pictures of the L103, L104, that's
16 the easiest. If I can draw you a picture, that might be a
17 good way.
18 Q. But you're just talking about the 4-ounce can down,
19 right?
20 A. The 4-ounce can.
21 Q. And lower?
22 A. Well, the L103 became the L104 and all it was was a
23 change in the label.
24 Q. Okay. You want to draw a picture of how the spout's
25 different?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 205

1 A. Yeah. Give me something to draw on.
2 Q. Yes, sir. Do you have a pen handy?
3 THE WITNESS: Can I borrow that?
4 MR. RILEY: Of course.
5 A. The can was different and the spout was different.
6 Okay. Here's the difference in them.
7 Q. (BY MR. LUBEL) Okay. Let's mark that as Exhibit No.
8 9, all right?
9 A. We going to date it and all that good stuff?
10 (Exhibit No. 9 marked)
11 Q. (BY MR. LUBEL) No. What does Exhibit 9 represent?
12 What were you attempting to draw?
13 A. Well, let me write it on there.
14 Q. Here, let me put it up for the jury and then you can
15 explain what that is. That's Exhibit No. 9.
16 A. The left-hand sketch where it says C-H-A-R, that's
17 short for Charlotte. At the time they were producing L103,
18 the top of the can shows a pedestal above the top chime, the
19 top chime is where the top and the sides were seamed together.
20 Q. Right there?
21 A. That's the chime. The pedestal, of course, is the
22 part sticking up.
23 Q. That's the pedestal?
24 A. That's the pedestal.
25 Q. Okay.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 206

1 A. As you can see, the plastic --
2 Q. Let me mark that real quick. Right here?
3 A. Call that pedestal.
4 Q. How do you spell it?
5 A. I don't know.
6 Q. We're going to call it P for pedestal?
7 A. Okay. And then the sort of rubberized plastic is
8 formed so that it slips down over top of that pedestal.
9 Q. This is rubberized plastic in here?
10 A. Yeah.
11 Q. Okay.
12 A. And then if you look at IT, which stands for Indian
13 Trail, there's a hole in the top of the can but there's no
14 pedestal. And the spout has a part sticking down that is
15 inserted through the hole and the flat part of course rests on
16 top of the can and is just a stop. Little removable cap on
17 top is virtually the same, fictionalize -- functionality
18 anyway. When you see a can looks like the one on the left,
19 that's not an Indian Trail. If you see one on the right, that
20 is an Indian Trail.
21 Q. Which means post-'72?
22 A. Well, I need to add one more step to that because I
23 didn't think about it until just this moment. There was
24 another spout used at Indian Trail that was never used in
25 Charlotte and the top part where the cap is on the very top of
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 207

1 the spout was different. It was actually a little push-pull
2 valve so that you can pull it up and turn it over and squirt
3 it out and if you pushed it down, it closed and wouldn't leak.
4 We only ran about a half a million of them.
5 Q. Why?
6 A. I forgot why.
7 Q. Wasn't very popular?
8 A. Well, I don't know. We mainly had some problems
9 with it leaking. It was kind of a test. We ran some. We
10 liked it. We thought it was a good idea -- actually it was my
11 idea, but it didn't turn out too good.
12 Q. It was leaking through the insert where you put the
13 top?
14 A. No. It was leaking up in this section up at the
15 top.
16 Q. Oh, at the stem?
17 A. Yeah.
18 Q. Even with the cap on?
19 A. There was no cap.
20 Q. Well, of course it would leak if there's no cap.
21 There's a hole there, isn't there?
22 A. But there was valve in it, a cutoff. I said you had
23 to pull it, push it up and down just like you do a bottle at
24 home for dishwashing detergent or drink bottle. Same process.
25 Q. These two cans on Exhibit 9 that you're referring to
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 208

1 at Charlotte and Indian Trail, you're talking about the
2 3-ounce and the 4-ounce right?
3 A. Yes.
4 Q. I'm going to go ahead and put that on here.
5 A. Okay.
6 Q. 3 oz. 4 oz. You're not saying -- you're not
7 describing these cans as 8-ounce or 16-ounce?
8 A. It's a 4-ounce -- both of them are 4-ounce cans.
9 Q. Correct. But you're not saying this is what they
10 looked like for the 8-ounce can? They look different?
11 A. The 8-ounce can was different.
12 Q. All right. Now, let's -- let me ask you something.
13 Let me take this Exhibit out of my notes before I walk off
14 with it. Do you recall saying in the past that you could tell
15 the regular Liquid Wrench from the deodorized Liquid Wrench by
16 virtue of looking at the can to see if it had a pipe wrench on
17 it as opposed to a nut and a bolt?
18 A. I might have said that. I don't recall, but I could
19 have.
20 Q. Can I refresh your recollection with it?
21 A. If you've got it there, I accept it.
22 Q. Let me just show it to you. You see here it says --
23 look at that, Mr. Wells. It says on the label -- did it say
24 regular Liquid Wrench versus deodorized Liquid Wrench. You
25 said there was no two in the same size can, right? You with
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 209

1 me so far?
2 A. No, I'm not sure what we're talking about at this
3 point.
4 Q. All right. I'm reading your testimony from another
5 lawsuit.
6 A. On the label did it say regular Liquid Wrench versus
7 deodorized.
8 Q. Right.
9 A. Okay.
10 Q. So your answer is there were no two in the same size
11 can. And you say obviously a 4-ounce and an 8-ounce are two
12 different size cans?
13 A. Okay.
14 Q. The deodorized I believe always said deodorized?
15 A. Yeah.
16 Q. The regular didn't say that and the picture was
17 different?
18 A. Okay.
19 Q. You recall saying that?
20 A. No, but I believe it.
21 Q. Okay. Then you say -- well, you were asked how is
22 the picture different between the regular Liquid Wrench and
23 the deodorized Liquid Wrench. Do you see that question?
24 A. Yeah.
25 Q. And then you say, "Well, I really need an example
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 210

1 label to show you, but my recollection is that whereas this
2 shows a plumber device and a pipe wrench, my recollection is
3 the other one showed just a big nut and a bolt?"
4 A. Okay.
5 Q. Right?
6 A. Yeah.
7 Q. Then you say -- you're asked, "Now, would the
8 deodorized Liquid Wrench show a nut and a bolt as well?"
9 You said, "No, I said deodorized did show a nut
10 and a bolt I believe."
11 A. Okay.
12 Q. Okay. So what you were saying then was the regular
13 Liquid Wrench had the pipe wrench. Do you see it?
14 A. Uh-huh.
15 Q. And the deodorized Liquid Wrench had a nut and the
16 bolt. Two different pictures, right?
17 A. I think so. Sitting here right now that sounds
18 right.
19 Q. Is that what you recall?
20 A. Uh-huh.
21 Q. Is that a yes?
22 A. Yes.
23 Q. And so if I'm trying to determine whether a man used
24 deodorized or regular Liquid Wrench, one of the things that
25 you would recommend that I do is determine -- try and find out
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 211

1 if -- whether the picture showed a pipe wrench versus a nut
2 and a bolt, right?
3 A. That's not what I would recommend.
4 Q. I thought we just read that that was one of the
5 differences? I'm not done going through the list.
6 A. But you asked me what would I recommend. I said no,
7 I would not recommend to look at the difference between the
8 nut and bolt versus the pipe wrench. It's far easier to look
9 and see if its got a skull and crossbones or it doesn't.
10 Q. So if its got a skull and crossbones, you say it's
11 regular Liquid Wrench with benzene and if it doesn't, it's
12 not?
13 A. That's -- best of my knowledge that's correct.
14 Q. Let's repair that. Let's fix that. What you're
15 really saying is that if its got a skull and crossbones, then
16 its got the raffinate version with more benzene than the
17 petroleum distillate version that's got less benzene?
18 MR. RILEY: Objection; form.
19 A. Well, I would describe the distillate as a trace
20 amount.
21 Q. (BY MR. LUBEL) Of benzene?
22 A. Of benzene.
23 Q. But its got some benzene in it?
24 A. Yeah.
25 Q. And obviously the raffinate version has more?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 212

1 A. Correct.
 2 Q. Significantly more?
 3 A. That's -- based on all the evidence, yes.
 4 Q. So when somebody -- if they see this can that says
 5 deodorized on it, they need not concern themselves with
 6 whether it says deodorized? If it says a skull and
 7 crossbones, then its got the raffinate version of benzene in
 8 it, correct?
 9 A. I think so.
 10 Q. All right. Now, let's do it another way. Would you
 11 agree that most of the 8-ounce cans contain the raffinate
 12 version?
 13 MR. SYKES: Object to the form of the question.
 14 A. I have only recently become aware that there was an
 15 8-ounce that contained the deodorized version and I have no --
 16 not even a wild guess as to how many might have been produced.
 17 Q. (BY MR. LUBEL) But you do know there in your tenure
 18 of '72 to '78 that the 8-ounce versions that you were
 19 manufacturing for the company contained raffinate? You've
 20 told us that, right?
 21 A. Correct.
 22 Q. So at least during that time period, 1972 through
 23 '78, whenever it was that the raffinate version was
 24 eliminated, the 8-ounce containers contained raffinate, true?
 25 A. Yes.
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 213

1 Q. What you're unsure about is whether or not there
 2 were some number of 8-ounce containers pre-'72 that were
 3 deodorized, some of which did not contain raffinate?
 4 MR. RILEY: Objection; form.
 5 A. That's correct.
 6 Q. (BY MR. LUBEL) Now, why is it that you believe that
 7 the picture on the raffinate version of the Liquid Wrench
 8 would have the pipe wrench as opposed to the nut and the bolt?
 9 A. I have no opinion on that.
 10 Q. Well, you said it, so I'm trying to figure out why
 11 you said it?
 12 A. Well, I said it. I probably noticed that there was
 13 a difference and I think I was being asked, you know, how can
 14 you tell them apart. And perhaps that was the first thing
 15 that came to my mind.
 16 Q. Okay. Does this make sense to you that the products
 17 that contain the pictures of these pipe wrenches were focused
 18 on industrial uses, the mechanics, the tradesmen, the people
 19 we talked about for which you would most likely want to have
 20 benzol or benzene in it?
 21 MR. SYKES: Object to the form of the question.
 22 A. Well, how did you word that?
 23 Q. (BY MR. LUBEL) Let me do it this way. I thought
 24 I've seen you testify before, Mr. Wells, that you felt there
 25 was a distinction between those containers of Liquid Wrench
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 214

1 that were predominately targeted to households versus those
 2 that were for industrial or commercial uses. Do you not
 3 recall ever talking about that?
 4 A. Yes.
 5 Q. You know what I'm talking about now, right?
 6 A. Yes.
 7 Q. Does it make sense to you after working for the
 8 company and being a chemist that the industrial uses are going
 9 to involve projects for which you want to use materials or
 10 ingredients like benzol that you would not necessarily need in
 11 a household use on a bicycle?
 12 MR. RILEY: Objection; form.
 13 MR. SYKES: Object to the form of the question.
 14 A. Let me make it easy. I don't disagree with the
 15 advice on the raffinate formula in a nut and bolt on the
 16 deodorized.
 17 Q. (BY MR. LUBEL) I'm with you; but what I -- I mean,
 18 if you don't have an opinion or you don't know, just tell me.
 19 But does it make sense to you, sir, as the corporate
 20 spokesperson for Radiator that your target market of
 21 households would not have benzene in it. They'd have
 22 petroleum distillates. And your target market for industrial
 23 uses would have benzene in it?
 24 MR. RILEY: Objection; form.
 25 MR. SYKES: Object to the form.
 Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 215

1 A. That makes sense to me.
 2 Q. (BY MR. LUBEL) Okay. That's not same farfetched
 3 concept, is it?
 4 A. I don't think so.
 5 Q. The reverse doesn't make much sense, does it, that
 6 you'd send the benzol to the houses and you'd send the
 7 petroleum distillate with left benzene in it to the
 8 refineries? That doesn't make any sense, does it?
 9 MR. RILEY: Objection; form.
 10 MR. SYKES: Object to the form.
 11 A. I agree with that.
 12 Q. (BY MR. LUBEL) Now, another way that we can --
 13 another clue to whether it was regular Liquid Wrench versus
 14 deodorized is by the spout, correct, or am I wrong?
 15 A. You're -- I think you need to start all over again
 16 with that question.
 17 Q. Okay. Can you look at a can and look at the
 18 spout -- if I covered up whether there was deodorized on there
 19 or not, would you be able to tell whether it was a deodorized
 20 can versus a raffinate can?
 21 A. Okay.
 22 Q. By the spout?
 23 A. I guess you didn't understand what I'm saying. You
 24 said a can. Can be a little 4-ounce can that we just showed
 25 or one looks more like that when you have the screen.
 Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 216

1 Q. I gotcha. Well, you know the 4-ounce can you've
2 told us was deodorized only, right?
3 A. Right.
4 Q. So if you look at that size can or the 3-ounce,
5 you're going to say that's deodorized, not regular?
6 A. Yes.
7 Q. If you look at an aerosol can, you're going to say
8 don't need to know anything else. That's deodorized, not
9 regular?
10 A. Yes.
11 Q. But when we get to the larger cans like 8-ounce and
12 up, most of those were raffinate, correct?
13 MR. RILEY: Objection; form.
14 MR. SYKES: Object to form.
15 A. Everything produced at Indian Trail in those sizes
16 were raffinate.
17 Q. (BY MR. LUBEL) And if we go back before Indian Trail
18 in '72 and we're looking for clues, will the spout tell us
19 anything about whether it was deodorized versus raffinate?
20 A. I don't think so.
21 Q. All right.
22 MR. LUBEL: Are you doing okay? If you need A
23 break, you're welcome to --
24 COURT REPORTER: I'm good.
25 Q. (BY MR. LUBEL) The skull and the crossbones you said
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 217

1 was an indication of the raffinate version, true?
2 A. True.
3 Q. Even before 1972, right?
4 A. Well, the raffinate formula would have required that
5 skull and crossbones, et cetera anytime it was produced after
6 the, you know, the law came into effect.
7 Q. All right. So some of the clues are whether the
8 skull and crossbones are on there, correct?
9 A. Yes.
10 Q. The size of the can, correct?
11 A. Yes.
12 Q. The description on the can, whether it says benzene
13 or benzol or deodorized or what have you, correct?
14 A. Correct.
15 Q. The picture of whether its got a pipe wrench on it
16 or a nut and a bolt is a clue?
17 A. Clue, okay.
18 Q. True?
19 A. Yes.
20 Q. The people that are using it as far as what trade
21 they're in and where they're purchasing it is a clue?
22 MR. SYKES: Object to the form of the question.
23 MR. RILEY: Objection; form.
24 Q. (BY MR. LUBEL) Right?
25 A. Not a full clue, but it could be.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 218

1 Q. But a clue nonetheless?
2 A. A partial, yes.
3 Q. A partial clue, right? True, a partial clue?
4 A. Yeah.
5 Q. The color of the can tell us anything?
6 A. You're comparing the 8-ounce can when it had the two
7 -- two different formulas. Is that what you're comparing?
8 Q. Well, I'm not talking about the 3 or the 4-ounce.
9 I'm talking about the larger --
10 A. I said the 8-ounce can.
11 Q. That's one of the cans I'm talking about.
12 A. That's the only one that I have seen that contained
13 both formulas.
14 Q. Okay. So is it your testimony that the only
15 container that had both deodorized and regular raffinate was
16 the 8-ounce container?
17 MR. RILEY: Objection; form.
18 A. No. I said that's the only one I'm aware of is the
19 8-ounce.
20 Q. (BY MR. LUBEL) The only container that you're aware
21 of as Radiator Company spokesperson that contained both the
22 regular version and the deodorized version is the 8-ounce
23 size?
24 MR. RILEY: Objection; form.
25 A. Yes.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 219

1 Q. (BY MR. LUBEL) The -- and when you worked at
2 Radiator between '72 and '78, the 8-ounce came -- excuse me,
3 the 8-ounce container only contained the raffinate version,
4 correct?
5 A. Yes.
6 Q. What was the color of the 8-ounce can before 1972?
7 A. The raffinate can? Is that what you're asking me?
8 Q. Whatever. If you've got two different colors for
9 deodorized and raffinate, tell me?
10 A. The color of the can post-'72 to my knowledge was
11 the same colors, maybe even the picture going backwards some
12 period of time. And I don't know how far back. Perhaps all
13 the way back to the '60s.
14 Q. Predominately yellow with some black and a little
15 bit of red maybe?
16 A. Yes.
17 Q. Is that true whether the can was deodorized or
18 regular?
19 A. The pictures I have seen the cans that were marked
20 deodorized, marked non-deodorized were pretty much duplicated.
21 Q. The cans looked the same except for the word
22 deodorized?
23 A. And the other markings, skull and crossbones.
24 Q. Right.
25 A. Benzol.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 220

1 MR. RILEY: Lance, while you're thinking, how
2 much longer are you going?
3 MR. LUBEL: Let's take a break and you and I
4 talk for a minute.
5 MR. RILEY: Sure.
6 THE VIDEOGRAPHER: The time is 4:54 p.m. Were
7 off the record.
8 (Recess from 4:54 to 5:06)
9 THE VIDEOGRAPHER: The time is 5:06 p.m. We
10 are back on the record. Beginning of tape 6.
11 (Exhibit No. 10 marked)
12 Q. (BY MR. LUBEL) Mr. Wells, do you see this document
13 I've marked as Exhibit No. 10 to your deposition?
14 A. Yes.
15 Q. Can you generally describe for us what it is?
16 A. It was some work done in our Charlotte lab. I'm not
17 sure what the intent was. I was not involved in it.
18 Q. All right. You see where it says Liquid Wrench
19 number one up here?
20 A. Yes.
21 Q. You see under Liquid Wrench it talks about raffinate
22 having almost, what, 88 percent raffinate in it?
23 A. Yes.
24 Q. And then we look at the Liquid Wrench number one,
25 deodorized formula it shows diesel fuel No. 2 at roughly
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 221

1 90 percent. Do you see that?
2 A. Yes.
3 Q. And then there's a little asterisk by that. Do you
4 see?
5 A. Yes.
6 Q. And it says -- let's see if I can blow that up a
7 little. Samples of deodorized Liquid Wrench used in this
8 project were made with diesel fuel. Do you see that?
9 A. Yes.
10 Q. Actually diesel fuel has been replaced by kerosene,
11 right?
12 A. Right.
13 Q. And when we look under Liquid Wrench, that formula,
14 deodorized, it has nothing next to kerosene, right? There's a
15 dot?
16 A. Well, the kerosene is over there -- B.
17 Q. Yeah. The kerosene is over here under experimental,
18 right?
19 A. Yeah, yeah.
20 Q. That sound like an experimental product?
21 A. Well, they're all --
22 Q. You're not saying this one is, are you?
23 A. They're showing that as diesel fuel and that's
24 experimental.
25 Q. What he's saying is that you used to use diesel fuel
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 222

1 -- it says actually diesel fuel has been replaced by kerosene.
2 Isn't that what he says?
3 A. Right, uh-huh.
4 MR. RILEY: Objection; form.
5 Q. (BY MR. RILEY) Is that what he says?
6 A. That's what it says there.
7 Q. Okay. Is he wrong?
8 A. As I said earlier, we may have used some diesel fuel
9 at one point in time, but it wasn't for very long.
10 Q. When did kerosene replace diesel fuel in deodorized
11 Liquid Wrench?
12 A. Well, it was kerosene in the beginning in '72. And
13 it was for a long time. And I think we may have put some in
14 somewhere along the way. I don't recall whether it was a cost
15 matter or maybe availability. But my recollection is we
16 didn't do it for very long and none of this is significance
17 for any reason.
18 Q. None of this is?
19 A. (Witness shakes head.)
20 Q. You know --
21 A. It's never used. That's what I'm trying to tell
22 you.
23 Q. Wouldn't this be a lot easier if you had the actual
24 formulas on the products?
25 MR. RILEY: Objection; form.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 223

1 A. I don't understand what you're asking me.
2 Q. (BY MR. LUBEL) If you had the formula on deodorized
3 Liquid Wrench --
4 A. Yeah.
5 Q. -- from like 1951 to 1972, we wouldn't have to be
6 spending all this time talking about it, would we, trying to
7 discover what was in the product?
8 A. Oh, well, I don't think we're ever going to discover
9 what's in the product. No one knows. This is just
10 experimental stuff this guy dreamed up in his head.
11 Q. Well, you've seen the documents that the regular
12 Liquid Wrench back to the 1950s contained aromatics in it,
13 correct?
14 MR. RILEY: Objection; form.
15 A. I may have. I'm not sure, but probably.
16 Q. (BY MR. LUBEL) Have you seen the regular Liquid
17 Wrench formula back in the 1950s that reflected 80 percent
18 aromatics in the formula?
19 MR. RILEY: Objection; form.
20 MR. SYKES: Object to the form.
21 A. I don't recall seeing that. I'm not saying I didn't
22 see it.
23 Q. (BY MR. LUBEL) Just doesn't surprise you?
24 MR. RILEY: Objection; form.
25 A. It could have.
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<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 224</p> <p>1 Q. (BY MR. LUBEL) You want me to show it to you? 2 A. Yeah, please. 3 Q. Now, the aromatic content of the Liquid Wrench of 4 the raffinate version you started making in '72 was just 29 or 5 30 percent, correct? 6 MR. RILEY: Objection; form. 7 A. No. Well -- 8 Q. (BY MR. LUBEL) I'm not asking you what the raffinate 9 percentage was? 10 A. Yeah, yeah, I think the raffinate was about 11 30 percent of whatever it was. 12 Q. The raffinate was 90 percent of the total product? 13 A. Of the total. 14 Q. The aromatics portion the raffinate was roughly 29 15 or 30 percent; is that correct? 16 A. I believe I read that somewhere. 17 Q. And so in the '50s if the aromatic percentage of the 18 naptha in the product was 80 percent, that's most likely got 19 more benzene in it, correct? 20 MR. RILEY: Objection; form. 21 MR. SYKES: Object to the form. 22 A. Well, I don't know what the aromatic composition 23 was. 24 Q. (BY MR. LUBEL) Well, you know its got some benzene 25 in it? <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p></p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 226</p> <p>1 A. I did not. 2 Q. And nobody provided you with one, right? 3 A. No. 4 Q. And -- but when we look at the flash point -- 5 remember you talked about that earlier? 6 A. Yes. 7 Q. You told us that a flash point of 5 degrees to 20 8 degrees to you was indicative of benzene. Do you remember 9 that? 10 A. I said that, yes. 11 Q. And we see on this Liquid Wrench its got 5 degrees, 12 right? 13 MR. RILEY: Objection; form. 14 A. Yes. 15 Q. (BY MR. LUBEL) So open cup and then it says 16 23 degrees, right? 17 A. Yes or one's centigrade and the other's Fahrenheit. 18 Q. That's right. But this formulation of Liquid Wrench 19 is consistent with a benzene-containing product, right? 20 MR. RILEY: Objection; form. 21 Q. (BY MR. LUBEL) You need me to blow it up? 22 A. No. I'm just reading down it at the bottom where it 23 says Liquid Wrench -- approval -- is supplied -- on their I 24 specifications -- 1950. 25 MR. RILEY: This is RSA 155. <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p></p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 225</p> <p>1 MR. RILEY: Objection; form. 2 A. Probably. 3 Q. (BY MR. LUBEL) Let me show it to you. This is from 4 1950. Have you seen this document? 5 A. I have. 6 Q. Was that one of the documents in your file? 7 A. Yes. 8 Q. Your Liquid Wrench file? 9 A. I don't know where that came from, but I know I've 10 seen it. 11 MR. RILEY: What's the Bates number? 12 MR. LUBEL: 155. 13 MR. RILEY: Thank you. 14 Q. (BY MR. LUBEL) What page is it that refers to 15 petroleum nap -- there it is. You see where it says 80 16 percent of an aromatic naptha. Do you see that? 17 A. Uh-huh, yes. 18 Q. And we don't know the exact content of that that's 19 benzene, right? 20 A. I don't. 21 Q. And you don't have a test for us that gives us that, 22 do you? 23 A. I don't have a test? 24 Q. You didn't find any test results going back to the 25 1950 version of Liquid Wrench? <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p></p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 227</p> <p>1 MR. LUBEL: Yeah. Where are the pictures? 2 MR. LONGORIA: 153. 3 MR. LUBEL: 153. 4 MR. RILEY: One what? 5 MR. LUBEL: This one's 153. 6 Q. (BY MR. LUBEL) Do you understand -- you remember 7 earlier when we looked at Exhibit No. 6, you remember that 8 New York City FD? 9 A. Yes. 10 Q. Remember that? 11 A. Yes, I do. 12 Q. Mr. Wells, I need your attention on the screen for 13 this picture. You see that on there? 14 A. Yes. 15 Q. That's a Liquid Wrench container, right? 16 A. Right. 17 Q. And then what we see down here is Liquid Wrench 18 New York City fire department certificate of approval, right? 19 A. Right. 20 Q. Now, go back here. New York City fire department, 21 certificate of approval, right? 22 A. Right. 23 Q. This one says 1260. You see that? 24 A. Yes. 25 Q. This one says 1260, right? <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p></p>

<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 228</p> <p>1 A. Right.</p> <p>2 Q. Okay. Now, does this refresh your recollection that</p> <p>3 back during this 1950 time period that the Liquid Wrench</p> <p>4 contained benzene?</p> <p>5 MR. RILEY: Objection; form.</p> <p>6 Q. (BY MR. LUBEL) By virtue of it's aromatic content?</p> <p>7 MR. RILEY: Same objection.</p> <p>8 A. The data that you show me suggests that.</p> <p>9 Q. (BY MR. LUBEL) You have no data to contradict it at</p> <p>10 this point, do you?</p> <p>11 A. No.</p> <p>12 Q. You've been looking for some time for documents that</p> <p>13 would give you as much information as possible about</p> <p>14 formulations going back to the beginning of time, right?</p> <p>15 A. Right.</p> <p>16 Q. And the content of benzene, true?</p> <p>17 A. True.</p> <p>18 Q. Have you seen anything for this era 1950 that's more</p> <p>19 supportive of benzene content than what we see here?</p> <p>20 A. No.</p> <p>21 Q. This is the best we've got?</p> <p>22 A. Best I've seen.</p> <p>23 Q. Best you've seen.</p> <p>24 (Exhibit No. 11 marked)</p> <p>25 Q. (BY MR. LUBEL) We're going mark the document we just</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 230</p> <p>1 the first page of it, okay. This is a can of Liquid Wrench,</p> <p>2 right?</p> <p>3 A. Yeah.</p> <p>4 Q. You'll see it's an 8-ounce can, right?</p> <p>5 A. Yes.</p> <p>6 Q. No reference to deodorized or non-deodorized, right?</p> <p>7 A. What appear to be deodorized.</p> <p>8 Q. Okay. No skull and crossbones, true?</p> <p>9 A. Correct.</p> <p>10 Q. When you flip it over, it says contains petroleum</p> <p>11 distillates, right?</p> <p>12 A. Right.</p> <p>13 Q. Keep going, you got a bar code. Does this seem to</p> <p>14 be a post-1978 can once you remove the raffinate?</p> <p>15 A. Well, what's intriguing me is it looks like somebody</p> <p>16 put a sticker on there. It doesn't look like part of the</p> <p>17 litho. And I question that we would have -- oh, I'm not sure</p> <p>18 -- I see where you're going. I'm not sure that I can make</p> <p>19 that leap because of that -- this bar code could have been</p> <p>20 applied at a store and before we as a company ever put our</p> <p>21 labels.</p> <p>22 Q. Did y'all ever put them on y'all's labels, bar</p> <p>23 codes?</p> <p>24 A. I'm not sure. We had them on the -- I want to say</p> <p>25 yes, but right now I'm just drawing a blank.</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 229</p> <p>1 have been referring to as Exhibit No. 11. Is that okay by</p> <p>2 you? See the sticker?</p> <p>3 A. (Witness nods head.)</p> <p>4 Q. See what I've done? It's a multi-page document,</p> <p>5 Mr. Wells. You see?</p> <p>6 A. Okay.</p> <p>7 Q. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. All right. Now, let's go back. Really want to</p> <p>10 focus in on these containers. Some of these containers have,</p> <p>11 give you an example, bar codes on them. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What era is that? I'm told that bar codes hadn't</p> <p>14 existed forever.</p> <p>15 A. That's true. I'm reasonably certain that's a</p> <p>16 post-'72 and I can't remember more than that.</p> <p>17 Q. Could it be post-'78?</p> <p>18 A. It could be.</p> <p>19 Q. Okay. How could we find out when the bar codes were</p> <p>20 placed on the containers?</p> <p>21 A. There might be somebody in the company that might</p> <p>22 remember who was involved in the bar codes and right now I'm</p> <p>23 not sure who that would have been.</p> <p>24 Q. Let's do this one by example because this may</p> <p>25 refresh your recollection. It may help you. Let me show you</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 231</p> <p>1 Q. Okay. If we wanted to know what was on the labels</p> <p>2 for these containers, wasn't there an art department at</p> <p>3 Radiator?</p> <p>4 A. Yes.</p> <p>5 Q. You obviously did not work in the art department?</p> <p>6 A. No, I didn't. And that's probably the best answer.</p> <p>7 Q. Okay. Who did?</p> <p>8 A. There were some girls back there.</p> <p>9 Q. Girls? You mean ladies?</p> <p>10 A. Yeah.</p> <p>11 Q. Were they girls or ladies?</p> <p>12 A. They were ladies. Then there was a fellow who ran</p> <p>13 it, but he retired and he died. And I'm not sure who else</p> <p>14 took his placing.</p> <p>15 Q. Okay. Have you seen the art department's labels for</p> <p>16 these various cans, the drawings?</p> <p>17 A. I don't recall.</p> <p>18 Q. Okay. Have you personally looked for those or has</p> <p>19 that been somebody else's job?</p> <p>20 A. I personally three or four years ago went through a</p> <p>21 big stack of labels and it may have been Liquid Wrench or may</p> <p>22 have been something else. I just remember going through it.</p> <p>23 As I think I may have testified before, they did not keep very</p> <p>24 good records.</p> <p>25 Q. They being the art department?</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>

<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 232</p> <p>1 A. Correct.</p> <p>2 Q. Where were their office?</p> <p>3 A. Charlotte.</p> <p>4 Q. Were they in one of those office buildings?</p> <p>5 A. They were in the main office building.</p> <p>6 Q. What building number was that?</p> <p>7 A. One.</p> <p>8 Q. And where were their file cabinets?</p> <p>9 A. I don't know they even had any at all. I don't know</p> <p>10 the answer to that.</p> <p>11 Q. Three or four years ago where were they?</p> <p>12 A. How many years ago.</p> <p>13 Q. Three or four?</p> <p>14 A. I don't know.</p> <p>15 Q. Where are they today, do you know? Should I ask</p> <p>16 Mr. Winer?</p> <p>17 MR. RILEY: Objection; form.</p> <p>18 A. The -- what happened was we were dissatisfied with</p> <p>19 the art department and the ability to do what we needed done</p> <p>20 in a timely way. So we went to the computer. We started</p> <p>21 making all of our labels on the computer, what we could, you</p> <p>22 know, correct them, amend them, change them, whatever was</p> <p>23 required.</p> <p>24 Q. (BY MR. LUBEL) When was that?</p> <p>25 A. I'm going to say in the '90s sometime. So probably</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 234</p> <p>1 Q. If you went back there tomorrow, who would you ask</p> <p>2 for the labels on Liquid Wrench, the art?</p> <p>3 A. I don't think those people who were working there</p> <p>4 then still work there.</p> <p>5 Q. Okay. But who would you ask today? Like is there</p> <p>6 an art department today?</p> <p>7 A. There must be. Somebody has to do the labels for</p> <p>8 the boxes, the advertising.</p> <p>9 Q. Remember telling me that when you started in '72,</p> <p>10 thereabouts, they started to ship you some documents that</p> <p>11 preceded your time, Mr. Kologiski's time? You remember that?</p> <p>12 A. Ship me some documents?</p> <p>13 Q. Yeah. You started to get Liquid Wrench files from</p> <p>14 Charlotte?</p> <p>15 A. Well, I got those that I produced, yeah.</p> <p>16 Q. But that was right after you started, right?</p> <p>17 A. A little bit later than that. I mean, I got the</p> <p>18 formulas right after I started.</p> <p>19 Q. Isn't it conceivable that the art department people</p> <p>20 would be the people that would keep the labels that have</p> <p>21 existed overtime or do you think they would go to archives or</p> <p>22 where would they be?</p> <p>23 A. They're the ones that kept them, but as I explained</p> <p>24 to you, they -- every time they changed the label, they cut</p> <p>25 the old ones up and used the pieces to make the new one. So</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 233</p> <p>1 everything we did after that was on the computer -- computer</p> <p>2 storage.</p> <p>3 Q. Okay. I'm looking for the files before you went to</p> <p>4 computers. I'm looking for pre-'79 labels?</p> <p>5 A. I have no idea.</p> <p>6 Q. You don't even know where I begin with that?</p> <p>7 A. Well, the ones that I looked through a few years ago</p> <p>8 came out of the art department and that was before the</p> <p>9 building was torn down. Now that the building is no longer</p> <p>10 there, everything is demolished, I don't know where they are.</p> <p>11 Q. What did they do with those documents?</p> <p>12 A. I don't know.</p> <p>13 Q. Who gave them to you? Who handed you them to look</p> <p>14 at?</p> <p>15 A. I believe it was one of the girls in the art</p> <p>16 department brought them to Ron Winer's office and I sat in the</p> <p>17 conference room and looked at them.</p> <p>18 Q. How many were there? What volume were there?</p> <p>19 A. Oh, there was a stack I'm going to say four inches</p> <p>20 tall.</p> <p>21 Q. You think of they were all Liquid Wrench labels?</p> <p>22 A. I don't remember what product they were. They could</p> <p>23 have been.</p> <p>24 Q. Could have been Puncture Seal for all you remember?</p> <p>25 A. Could have been.</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 235</p> <p>1 there was no archiving of the labels.</p> <p>2 Q. So you're saying they threw them all away?</p> <p>3 A. Well, they've been used up.</p> <p>4 Q. You went and looked and they told you they were all</p> <p>5 gone. Is that what you're testifying to?</p> <p>6 A. No. What I testified was I looked at a pile of</p> <p>7 labels a few years ago. I have not looked recently.</p> <p>8 Q. You don't even know what labels those were, right?</p> <p>9 A. I don't know what they were, no.</p> <p>10 Q. Okay. Can you look at this can and tell me what</p> <p>11 vintage it is, what time period?</p> <p>12 A. Well, if you look at that spout, if that's an</p> <p>13 original, in this picture at least it does not look like one</p> <p>14 of the plastic spouts. It looks like one of the old lead or</p> <p>15 some kind of soft metal.</p> <p>16 Q. What does that tell us?</p> <p>17 A. It's a very old one. That's what it looks like.</p> <p>18 And this one does not have any warnings on the front panel</p> <p>19 which makes you think it's pre-1960.</p> <p>20 Q. '60 or '64?</p> <p>21 A. Same difference. Well, okay. '64, '62. And then</p> <p>22 on the back panel there does appear to be a date, 1950.</p> <p>23 Q. Where do you -- can you point that to me?</p> <p>24 A. Center bottom right here.</p> <p>25 Q. All right. So this one has a date?</p> <p style="text-align: center;">Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008

Page 236

1 A. Yeah.
2 Q. Most cans don't have dates, do they?
3 A. That's correct.
4 Q. When did y'all decide not to use dates?
5 A. Well, go back up there where you were. It's kind of
6 hard to tell, but this I believe is three Cs, CCC, you know,
7 expanded.
8 Q. What does that mean?
9 A. Continental Can Corporation. That was their logo.
10 Q. Okay.
11 A. And so they would have put that on there
12 irrespective of our labeling. And typically they don't put
13 dates on their cans in my experience but that one looks like
14 it--
15 Q. Why does this one say Canada? I see a lot of cans
16 with Canada on them?
17 A. All of them have Canada on them, just about.
18 They're supposed to have Canada on them.
19 Q. Why?
20 A. Because Radiator had a plant in Canada.
21 Q. Okay. But why do all your cans have a Canada
22 reference?
23 A. I think it's an advertising trying to show people
24 that -- you know --
25 Q. Worldly? That you were a worldly company?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 237

1 A. That's a good word I guess.
2 Q. Okay. Well, this one says avoid prolonged contact
3 with skin. Doesn't say anything about absorption, does it?
4 A. Well, I'm sure -- no, it doesn't.
5 Q. How long does prolonged mean, do you know?
6 A. No.
7 Q. And then it says prolonged breathing of vapor. Do
8 we know how long that means?
9 A. No.
10 Q. And it tells you what you're supposed to do with it,
11 right?
12 A. Talking about the directions?
13 Q. Yes, sir.
14 A. Yeah, how to use it, hit it with a hammer or
15 something.
16 Q. All right. Let's see if I can find the first
17 --you've got the first page. This is the front page of that
18 product, right?
19 A. Yeah.
20 Q. And that's the spout you were talking about that
21 appears to be metal instead of plastic?
22 A. Looks that way to me.
23 Q. And that -- this one looked like an older can to you
24 even before you saw the date of 1950 on it, right?
25 A. Yes.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 238

1 Q. We still see that pipe wrench, right?
2 A. Yes.
3 Q. Okay. That would be a clue that it's the raffinate
4 version, correct?
5 MR. SYKES: Object to the form of the question.
6 MR. RILEY: Same objection.
7 Q. (BY MR. LUBEL) Let me rephrase that. That would be
8 a clue to you that it's either the raffinate version or the
9 petroleum naptha version, correct?
10 MR. SYKES: Object to the form of the question.
11 MR. RILEY: Objection; form.
12 A. Petroleum naptha. Okay.
13 Q. (BY MR. LUBEL) Right? Remember the one we saw the
14 document --
15 A. It would be a clue.
16 Q. And it doesn't say deodorized, right?
17 A. It does not. At least I didn't see it.
18 Q. And what size can does this appear to be? 8-ounce?
19 A. I don't know.
20 Q. See the liters at the bottom?
21 A. I can't read it.
22 Q. I can't either. What does that mean?
23 A. I can't read it.
24 Q. I don't know if I can get any better than that.
25 Does it appear to be either an 8-ounce or 16-ounce can at any
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 239

1 rate?
2 A. I can't tell.
3 Q. Okay.
4 A. Go back up to the top and let's see what it says up
5 at the top.
6 Q. Whereabouts?
7 A. Right up here. A little higher. Okay.
8 Q. Sorry.
9 A. Looks like this one --
10 Q. That's the goofiest warning I've ever seen.
11 A. Well, this is very early --
12 Q. What does inflammable mean?
13 A. Well, that was the term used before flammable was
14 adopted and it was very misleading.
15 Q. That's the difference between sane and insane.
16 A. I think this has a 1260 over here, but I'm not sure.
17 Q. Right there?
18 A. Yeah.
19 Q. So that refers to that petroleum naptha version we
20 saw?
21 A. Yeah.
22 Q. Okay. Until -- if this is in fact the old can? If
23 it's -- when the raffinate version started and you think
24 that's around 1960, right?
25 A. Somewhere in there, '60, '62, yeah.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 240

1 Q. Okay. So it's either petroleum naptha or raffinate,
2 one of the two?
3 MR. SYKES: Object to the form of the question.
4 MR. RILEY: Objection; form.
5 A. Well, you know, it's hard to say.
6 Q. (BY MR. LUBEL) That's the best clues we have at this
7 point, right?
8 A. Yes.
9 Q. Okay. We'll mark this one --
10 MR. RILEY: I just want to see what exhibit
11 you're marking it.
12 (Exhibit No. 12 marked)
13 Q. (BY MR. LUBEL) The container we've been looking at
14 I've marked as Exhibit No. 12. Do you see that?
15 A. Yes.
16 Q. Okay.
17 MR. RILEY: Thank you, sir.
18 Q. (BY MR. LUBEL) Okay. Sit back and let's talk for a
19 minute without looking at documents, all right? At some point
20 it was your impression -- maybe it was stronger than
21 impression. You were working there. That the product Liquid
22 Wrench was not doing so well at the company, correct?
23 A. Well, those were facts based upon sales.
24 Q. What percentage of the sales did Liquid Wrench make
25 up of the company during the '70s, approximately?
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 241

1 A. That was a moving target.
2 Q. I'm trying to find out -- I'm trying to get a sense,
3 Mr. Wells, of where Liquid Wrench fit in the company as far as
4 how important it was to the company's revenues?
5 A. All right. I'm going to say -- if I said 1980, is
6 that a good year?
7 Q. Well, we can start there and we can go backwards or
8 forward.
9 A. I'm going to say in 1980 -- now, we talking about --
10 well, 1980 there was no raffinate formula. We better say
11 something --
12 Q. I just want to know about Liquid Wrench in general?
13 A. Okay.
14 Q. Liquid Wrench was as product that contained
15 different formulas for the company, right?
16 A. Right.
17 Q. How important was it to the company when you started
18 there in '72? Was it a big revenue producer, was it small?
19 Just generally give me some frame of reference?
20 A. I'm going to say it was maybe a half a percent.
21 Q. Very small?
22 A. Uh-huh.
23 Q. Did it pretty much stay that way throughout your
24 tenure there in 2001?
25 A. No. The Liquid Wrench in general was going down,
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 242

1 down, down.
2 Q. So when we get to 2001, it was even a smaller
3 percentage of sales, correct?
4 A. Yes.
5 Q. What was the driving product as far as keeping that
6 company in business?
7 A. There were I think about five or six products that
8 maintained the company.
9 Q. What kind were they?
10 A. Engine cleaner.
11 Q. Such as?
12 A. EV1.
13 Q. Any others?
14 A. Brake cleaner, M720. Puncture Seal, M1112. Brake
15 fluid -- no, not brake fluid. L1 -- L112. That's Liquid
16 Wrench. They were all aerosols primarily.
17 Q. Liquid Wrench in these types of containers, the
18 non-aerosol version was not an important part of your company,
19 true?
20 A. No.
21 Q. You could have survived without it true? Your
22 company could have survived without it?
23 A. Yeah. We -- the whole line of Liquid Wrench was
24 getting pretty serious. And we phased it out, even a part of
25 it before the other part went out.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 243

1 Q. Was the aerosol version of Liquid Wrench every
2 important to the company?
3 A. Yes.
4 Q. When?
5 A. Always.
6 Q. What percentage of sales did it constitute?
7 A. Of course all these are wild guesses. I don't have
8 anything in front of me, but three or four percent.
9 MR. RILEY: Jim, are you doing okay?
10 THE WITNESS: Yeah.
11 Q. (BY MR. LUBEL) Are you sure?
12 A. Am I sure?
13 MR. RILEY: Just looking tired.
14 Q. (BY MR. LUBEL) Yeah. Are you doing okay?
15 A. Yeah, yeah. I was just trying -- I was calculating
16 in my head numbers.
17 Q. (BY MR. LUBEL) Here's what I don't want to happen,
18 okay. If you're tired and your brain's not working up to a
19 capacity you're comfortable with, I want to shut this down and
20 do this another time. I know you don't want to see me again
21 if you can help me. But I would prefer to do that than for
22 you to be uncomfortable with your testimony and come back and
23 say you caught me when I was tired, I was, you know, not
24 feeling well. It's up to you what you want to do.
25 A. Your question's about, you know, how important it
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<p style="text-align: center;">James Wells Vol II 11-6-2008 Page 244</p> <p>1 was. So I was sitting here trying to taking gross sales and 2 then trying to remember how much in this case the L112 might 3 have been. Now, whether it's right now or next week, without 4 looking at documents, I'm still guessing. 5 Q. I just want to make sure that you were doing okay? 6 A. Yeah, I'm fine. 7 Q. All right. You sold more of the aerosol version 8 than you did the other containers combined, right? 9 A. Yes. 10 Q. Do you know why? 11 A. Aerosols are used -- one of the primary reasons is 12 because they're so user friendly. 13 Q. What does that mean? 14 A. You pick it up and you can spray it. You don't have 15 to fiddle around taking off a cap. And you can spray it up or 16 down. You can't take a pour and spray it up very well even if 17 you squeeze it. 18 Q. You're less likely to get it on your body too, 19 aren't you? 20 A. Yes, you are. 21 Q. You ever seen those -- I know you hunt. You're not 22 a beach guy. I bet you don't go out to the beach and lay out, 23 do you? 24 A. I have laid out on the beach. 25 Q. That isn't your hobby though, is it? Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008 Page 246</p> <p>1 down for, you know, one drop or ten drops. And you don't get 2 it on you. Now, if you want to put your finger on there and 3 see if you can turn it, that's a different thing, but most 4 people I don't think going to do that. 5 Q. Man, you ever use this stuff? 6 A. Have I ever used it? 7 Q. Yeah. 8 A. All of it, yeah. 9 Q. Have you ever felt one of these cans after you used 10 it and its got grease all over? Its got that film all over 11 it? Do you know what I'm talking about? 12 A. Well, not the way I use it. 13 Q. Okay. 14 A. I don't get it all over me. 15 Q. You ever cleaned a gun with hops solvent? 16 A. I have used hops. 17 Q. Okay. You put a few drops on there, you somehow get 18 it on your hands anyway, don't you? 19 A. Well, you can use rubber gloves I guess. 20 Q. Okay. If you're not using rubber gloves, you get it 21 on your hands, don't you? 22 A. Yeah. 23 Q. You imagine this was any different? I mean, you've 24 already told us that the company anticipated that people would 25 get it on their skin? Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008 Page 245</p> <p>1 A. No. 2 Q. Okay. You know today and they've had for some time 3 these sun protectants, you know-- what do they call them? 4 MR. SYKES: Sunscreen. 5 Q. (BY MR. LUBEL) Sunscreen. 6 A. Sunscreen, yeah. 7 Q. It's in spray cans where you don't have to get oil 8 and stuff on your hands and rub it on your body. Are you 9 familiar with that? 10 A. Yes. 11 Q. It seems to me like -- well, I've used it. It's a 12 lot cleaner to use the spray sunscreen than it is the kind you 13 put on your hands, right? 14 A. I think so. 15 Q. Was there a feeling within your company that the 16 aerosol spray version of Liquid Wrench was cleaner to the user 17 than these containers that you turn it over and squirted it 18 out? 19 A. I don't recall that discussion ever taking place. 20 Q. Whether it was discussed or not, was it a fact? 21 A. I can make an argument either way. The reason is if 22 you spray it, it's likely to splash back on you or on your 23 hand or whatever when you hit whatever it is you're spraying 24 it on. When you pour it on like with one of these little 25 sprout cans, it comes out nice and soft and you can let it run Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008 Page 247</p> <p>1 A. I think that's reasonable. 2 MR. SYKES: Object to the form of the question. 3 A. They could. 4 Q. (BY MR. LUBEL) The squirts, did you ever learn how 5 many squirts you'd get to a can? 6 A. No. 7 Q. Did you have an impression as to -- or was each can 8 different when you turned it over and you squeezed it how much 9 product would come out? Did it depend on the angle? What did 10 it depend on? 11 A. Well, you had to cut the tip off of that plastic. 12 Then the bigger the hole, the more that would come out. 13 Q. Take this can. Are you talking about the top here 14 you'd cut off? 15 A. Yeah, take the top off, then you had -- I think you 16 had to cut the plastic. 17 Q. Yeah. Did you use some scissors? 18 A. Yeah, a knife or whatever. 19 Q. And so depending on the size of that hole would tell 20 us how much would squirt out, right? 21 A. That's true I think. 22 Q. And you don't remember any studies by Radiator of, 23 for instance, how many squirts you'd get per can or container? 24 A. To my knowledge, none of that ever took place. 25 Q. And you can't tell us, can you, how much comes out Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008
Page 248

1 of this -- what do you call this, spigot?
2 A. It's a spout.
3 Q. How much comes out of that spout when you squeeze
4 the can, can you?
5 A. Anyone can, you know, spray it out and weigh it; but
6 I can't sitting here right now.
7 Q. Yeah, but isn't the size of the hole going to make a
8 difference?
9 A. That's what I just said.
10 Q. And how you hold that can, the angle of it, you
11 know?
12 A. Well, the angle of it --
13 Q. Didn't that make a difference?
14 A. -- does not come in much play. It's how hard you
15 squeeze it.
16 Q. How hard you squeeze it. Is there going to be some
17 individual variation in how much comes out depending on who
18 the person is?
19 A. I don't see why not.
20 Q. Why did they make two versions of Liquid Wrench?
21 A. Don't know.
22 Q. Does that seem odd to you?
23 A. Not if you consider you wanted one for household and
24 one for industrial.
25 Q. But if that isn't the reason, it's hard to make any
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 249

1 sense out of it, isn't it?
2 A. Well, we never really thought about it but -- I
3 imagine that --
4 Q. You were making it?
5 A. Yeah, I was making it.
6 Q. The company had you making both the household
7 version and the industrial version, correct?
8 A. Correct.
9 Q. And so -- and you were making how many products
10 there?
11 A. A lot.
12 Q. So many that you weren't focused on this issue that
13 now I'm raising in the lawsuit about why you had two, right?
14 A. That's probably correct.
15 Q. But at some point you started to see Liquid Wrench
16 diving, the sales?
17 A. Yes.
18 Q. You considered like narrowing the versions of Liquid
19 Wrench that were sold, right?
20 A. Yes.
21 Q. At that time did you consider why in the heck are we
22 making a household version and a commercial use version?
23 A. Is there a question there?
24 Q. Did you? Did you think about that?
25 A. Yes, I did.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 250

1 Q. Did you ever get to the bottom of it?
2 A. Yeah. Sales threw a fit. They wanted the other
3 version.
4 Q. Was it just mainly a marketing technique?
5 A. Well, it was sales. Now, you can call them
6 marketing or you can call it filling out the line or maybe
7 they had some customers that bought that and they helped them
8 get their other items in the store. I don't know.
9 Q. Could I have gone in to -- name a store that sold
10 Liquid Wrench in the '70s. Sears?
11 A. I think Kmart. Probably Sears.
12 Q. Okay. Could I have gone into a Kmart or Sears in
13 the 1970s and bought either what you've called household
14 version or the commercial use version?
15 A. I -- I have no facts to back up that.
16 Q. Who do we learn that from?
17 A. Anyone that's done it I suppose.
18 Q. Okay. Are there salespeople? Who are the people
19 that sold products at the company?
20 A. Well, the salespeople.
21 Q. Can you name some that were working back then?
22 A. None that are there now were working back then.
23 Q. I'm just saying can you name some that are alive?
24 A. Not sitting here right now.
25 Q. You knew some, right?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 251

1 A. I knew them all at that time.
2 Q. You just need to give it some thought?
3 A. Yeah.
4 Q. If I leave a -- some blanks in your deposition, can
5 you fill in the names you can remember later when you get a
6 chance to read it?
7 A. Okay.
8
9
10 Q. If I went into a hardware store, do you have an
11 impression as to whether I could have purchased this
12 commercial use or industrial use Liquid Wrench?
13 MR. RILEY: Objection; asked and answered.
14 A. I think so.
15 Q. (BY MR. LUBEL) Could I purchase the household
16 version there, too?
17 A. I think so.
18 Q. So you had a choice at the hardware store, right?
19 A. You may have had -- the person at the hardware store
20 may have just chose to carry one. I don't know.
21 Q. You told us you had different divisions, automotive,
22 plumbing and hardware and what was the third one?
23 International?
24 A. Yes.
25 Q. Automotive, were they selling to like Auto Zones?
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 252

1 A. Yes.
2 Q. Was that Sears too or was that different?
3 A. I'm not sure about Sears.
4 Q. We need to ask somebody else about the sales, don't
5 we? Somebody else knows more about the sales than you do?
6 A. Yes.
7 Q. The actual target of it, the market, true?
8 A. True.
9 Q. All right. The odors, was there a difference in the
10 odor between the deodorized and the another one?
11 A. Yes.
12 Q. The regular?
13 A. Yes.
14 Q. Can you give us any descriptive terms?
15 A. The raffinate had a very pleasant odor.
16 Q. Pleasant?
17 A. (Witness nods head.)
18 Q. Okay. How about the kerosene or diesel fuel or
19 whatever was in the deodorized?
20 A. It was kind of non-descript. It wasn't bad, but it
21 wasn't good either.
22 Q. What was better smelling, the raffinate or the
23 deodorized?
24 MR. SYKES: Object to the form of the question.
25 A. That's a matter of personal preference.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 254

1 that was?
2 A. No.
3 Q. Did y'all have employee manuals that would address
4 those issues?
5 A. Yeah. We had a book laid out that covered those and
6 there were meetings regularly and updated training, et cetera.
7 Q. Do you recall if there was any training about
8 working around raffinate?
9 A. No. All of this I think probably happened after
10 raffinate.
11 Q. So before 1978 which is when you learned about the
12 benzene cancer issue, did your company have any chemical, you
13 know, training, so to speak, where you discuss respirators or
14 chemical resistant gloves? Personal protective type equipment
15 is what I mean?
16 A. I'm sure we did. I'm just trying to remember
17 specifics. We were big on gloves, especially gloves that you
18 couldn't -- liquids didn't go through. Shoes for the mix room
19 that didn't allow materials to soak through. We were big on
20 hearing aids.
21 Q. You mean hearing protection?
22 A. I mean hearing protection, yeah. I can't remember
23 the rest.
24 MR. LUBEL: We're getting close Jim. I know.
25 Q. (BY MR. LUBEL) What documents, Mr. Wells, would we
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 253

1 Q. (BY MR. LUBEL) Which one did you prefer?
2 A. I liked the raffinate.
3 Q. Who was Bernice Coleman?
4 A. Bernice Coleman is a lady who worked as a
5 receptionist and she took care of supplies, pencils, erasers,
6 paper clips. That's about what I know about her.
7 Q. Did she work for you?
8 A. No.
9 Q. Who did she work for?
10 A. I don't remember.
11 Q. Did she work at Indian Trail or in Charlotte?
12 A. Charlotte.
13 Q. At the headquarters?
14 A. Yes.
15 Q. Did y'all have a respirator protection policy at
16 your plant before 1978?
17 A. I'm not sure about the timing but all those OSHA,
18 EPA requirements that came along, we ended that pretty big
19 about getting inside of tanks or not getting in in closed
20 areas, yeah. Respirators, all that was carried out
21 thoroughly.
22 Q. Do you remember when?
23 A. I'd like to say in the '70s, but could have been
24 early '80s.
25 Q. Have you gone back to look at documents to see when
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 255

1 go back to to get a better impression or idea of what safety
2 policies and procedures your company had for its employees
3 that were working around the raffinate?
4 A. Around the raffinate. I doubt there are any.
5 Q. Okay. So you never had your employees wearing
6 chemical resistant gloves back when they worked around the
7 raffinate?
8 A. Might have. Probably.
9 Q. How do we find out an answer to that?
10 A. Well, you know, I'm trying to remember. And you're
11 asking a lot of specific details and we used -- the people in
12 the package line routinely wore plastic gloves whenever they
13 went into a product that they knew from experience it would
14 kind of burn you or it would dry your skin out or whatever. A
15 lot of them used plastic gloves.
16 Q. Was Liquid Wrench one of those?
17 A. It could have been. I just don't remember.
18 Q. If you wanted to go look for those documents, where
19 would you go?
20 A. I don't think there would be any documents like
21 that.
22 Q. No documents on safety policies?
23 A. Well, on safety policy, we had safety meetings once
24 a month I believe. And records -- here again it was a moving
25 target. Early on a lot of that was done by me and I kept the
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<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 256</p> <p>1 agenda. And I don't know if I ever threw it away or what. 2 And after that when personnel started taking over, whatever 3 records they kept, I really don't know about. 4 Q. Let's put this in stone, okay. Are you familiar 5 with that saying? 6 A. With what? 7 Q. Let's put this in stone. Before 1978 do you recall 8 any safety policies and procedures for your employees that 9 they were trained with to use gloves, respirators or any 10 personal protective equipment when they worked around Liquid 11 Wrench? 12 A. What I said a moment ago is my best answer in that 13 they may very well have used gloves because that was pretty 14 common in the plant. Anywhere where someone felt there was a 15 need, it was automatic. You just get them. There was no 16 argument about that. 17 Q. Were these chemical resistant gloves? 18 A. Yeah. 19 Q. Okay. Do you recall seeing the use of chemical 20 resistant gloves at your plant Indian Trail for Radiator 21 Specialty Company back when you started in roughly 1972? 22 A. Rubber gloves, yeah. 23 Q. Were they available? 24 A. Yeah. 25 Q. And was it your expectation as the plant manager Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 258</p> <p>1 Q. If the employee complains about his hands being 2 irritated? 3 A. No. It's discovered regardless, whether they're 4 complaining about it. 5 Q. How do they discover it? 6 A. Well, it could be mentioned as opposed to a 7 complaint or he himself might experience that or he may just 8 go by and notice something and ask them, you know. I'm 9 guessing. I don't know what they may have done. I wasn't 10 there. I don't know. 11 Q. You don't have a recollection, do you? 12 A. No. 13 Q. You hadn't looked for documents that would 14 potentially address policies or procedures for personal 15 protective equipment, right? 16 A. I have not looked. 17 Q. And you don't think there are any documents, 18 correct? 19 A. No, I think there are a lot of documents that 20 support personal protection equipment and training and blood 21 testing and all that stuff. 22 Q. Well, there was never any air monitoring of benzene 23 at your plants, correct? 24 A. I don't think so. 25 Q. You've testified to that in the past. You don't Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 257</p> <p>1 that the employees would use those rubber gloves when they 2 worked around the ingredients of Liquid Wrench such as 3 raffinate? 4 A. Well, they used them not just on Liquid Wrench 5 raffinate, but there were other products that they would use 6 them on as well. 7 Q. I'm not trying to suggest they would only use it on 8 raffinate. I'm just asking you did you expect them to use 9 them on the raffinate as well? 10 A. I don't remember. 11 Q. Do you have a specific recollection of training your 12 employees that worked underneath you at the plant to use 13 chemical resistant or rubber gloves when working around 14 raffinate? 15 A. No, I don't think we had any training -- train 16 people to put on rubber gloves. 17 Q. You don't need to train them? 18 A. I don't think so. 19 Q. So how were your employees expected to make the 20 decisions as to whether to wear rubber gloves around 21 raffinate? 22 A. Experience. You know, if you do it once and, like I 23 said a moment ago, if your hand gets irritated, then you're -- 24 not just the employee but the supervisor learns to put rubber 25 gloves on people who are handling the cans. Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 259</p> <p>1 recall ever seeing air monitoring, correct? 2 A. We had air monitoring. I just don't remember 3 benzene being part of it. 4 Q. You don't remember any air monitoring of the 5 raffinate? 6 A. No. 7 Q. Or the Liquid Wrench, correct? 8 A. No. 9 Q. Or benzene specifically, true? 10 A. I do not. 11 Q. You don't remember any tests that were specific to 12 your employees to measure their blood to see if chemicals were 13 harming it, correct? 14 A. I don't think so. 15 Q. You don't remember the plant running any 16 epidemiological studies on their employees, correct? 17 A. Not sitting here right now, no, I don't. 18 Q. You don't recall any review of retired employees 19 looking at their death certificates to see if there was any 20 patterns of disease developing at the company, correct? 21 A. I'm not aware of any. 22 Q. You never were aware of that, right? 23 A. I never what? 24 Q. You never have been aware of that? 25 A. No. Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008
Page 260

1 Q. What is the relationship, if you know, between U.S.
2 Steel and Radiator in this lawsuit?
3 MR. SYKES: Object to the form of the question.
4 A. I think I answered that in one of those -- the lasts
5 three questions on the -- that 126 that I suppose you
6 supplied. And I said that the way it was worded, there were
7 none except the very last question, which I referred to
8 Mr. Riley.
9 Q. Were you aware that U.S. Steel and Radiator
10 Specialty Company had hired the same experts in this lawsuit?
11 A. This lawsuit?
12 Q. Yes, sir.
13 A. No.
14 Q. You didn't even know that?
15 A. I did not.
16 Q. Okay. Do you know what agreements, if any, exist
17 between Radiator and U.S. Steel?
18 A. That's what I was answering there and I said no.
19 Q. No, you don't know?
20 A. I do not know.
21 Q. Who do I need to talk to to find out if there are
22 any agreements between them?
23 MR. RILEY: I've answered in response to the
24 subpoena. The only agreements are the sharing of experts and
25 there's nothing else that's in writing. There's no written
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 262

1 MR. RILEY: There is none, Lance. I made sure
2 that was correct.
3 Q. (BY MR. LUBEL) Do you know if Radiator Specialty
4 Company participated in the funding of any chem risk studies?
5 A. My understanding is it did not.
6 Q. Do you know if they participated in any form or
7 fashion?
8 A. I'm told no.
9 Q. Okay. Do you know what, if anything, they had to do
10 with John Spencer's study?
11 A. I don't know anything about that.
12 Q. You don't know one way or the other, correct?
13 A. No.
14 Q. Your company didn't have an in-house industrial
15 hygienist, correct?
16 A. Correct.
17 MR. LUBEL: I'm getting close.
18 MR. RILEY: Thank you.
19 Q. (BY MR. LUBEL) And they did not have an industrial
20 hygienist come in to evaluate the -- your employees with
21 respect to any benzene exposures, correct?
22 A. Correct.
23 Q. Did your company ever run any tests to evaluate what
24 airborne exposures could be created by using any of the Liquid
25 Wrench that contained benzene?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 261

1 defense agreement.
2 MR. LUBEL: Are there any oral agreements that
3 I should know about?
4 MR. RILEY: I don't know of any formal.
5 MR. LUBEL: Well, I'll take informal ones. I
6 don't want to depose you, Jim. Who do I talk to?
7 MR. RILEY: Informal we both think that your
8 claim is inappropriate and we're both innocent.
9 MR. LUBEL: I'm talking about --
10 MR. RILEY: So to that extent we have that in
11 common.
12 MR. LUBEL: I'm talking about informal
13 agreements to prosecute or defend the case?
14 MR. RILEY: Other than defending the case on
15 its facts and sharing experts, I've told you everything there
16 is.
17 Q. (BY MR. LUBEL) Has your company or its lawyers
18 participated in meetings with U.S. Steel's lawyers and their
19 insurance carriers?
20 A. I don't know.
21 Q. You don't know either way?
22 A. Neither way.
23 Q. Do you know if there's any indemnity agreements, do
24 you know what that is, between the two companies?
25 A. I've read those and no, I don't know.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 263

1 A. No.
2 Q. Did your company ever evaluate what kind of skin
3 exposures could be had by somebody using the Liquid Wrench
4 that contained benzene?
5 A. No.
6 Q. Have you told us everything you've done to search
7 for documents in the lawsuit?
8 A. Yes.
9 Q. Are you the person most knowledgeable about the
10 document retention policies, the official procedures and
11 policies at Radiator Specialty Company from today through the
12 1950s?
13 A. There are no retention policies.
14 Q. Ever?
15 A. There's none today. There was none ever advised to
16 me, told to me nor am I aware of anyone following retention
17 policies.
18 Q. So anybody in the company could discard or throw
19 away any document at their own pleasure?
20 A. I would say that's true.
21 Q. And that's true even today?
22 A. That's my understanding, yes.
23 Q. Where did you get that understanding?
24 A. I asked Ron Winer if there was a document retention
25 policy in effect over in the last couple of weeks. He said
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 264

1 no, there's not.
2 Q. Okay. Well, how did you learn there never had been
3 one?
4 A. I said that in my time there no one ever advised me
5 of a retention policy and I knew of no one who was using a
6 retention policy.
7 Q. Is there is any questions or answers that you've
8 given today in response to my questions that you need to
9 modify to make them truthful and accurate?
10 A. After I read this, there might be.
11 Q. Can you think of any as you sit here right now?
12 A. I cannot.
13 Q. Have I been courteous to you as usual?
14 A. Oh, absolutely courteous as you could be. Thank you
15 very much.
16 MR. SYKES: Let's go off the record.
17 THE VIDEOGRAPHER: Stand by. The time is
18 6:03 p.m. We're off the record.
19 (Recess from 6:03 to 6:06)
20 (Exhibit No. 13 marked)
21 THE VIDEOGRAPHER: The time is 6:06 p.m. We're
22 back on the record.
23 EXAMINATION
24 BY MR. SYKES:
25 Q. Mr. Wells, my name is Phillip Sykes and I'm one of
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James Wells Vol II
11-6-2008
Page 266

1 You see it says United States Steel Corporation and in the
2 right-hand corner it says 1959. And the quantities if we can
3 zoom back out -- do you see that?
4 A. Yes.
5 Q. Are -- the quantities there are small. You see 300
6 gallons right here in the right corner. Do you see that?
7 A. Yes.
8 Q. And we can go through each one of these pages and
9 I'll show you year by year. For instance, the next page is
10 1960. Do you see that?
11 A. Yes.
12 Q. And we can go through each one of these pages that
13 show the sales of raffinate to -- from U.S. Steel to Radiator
14 Specialty. Let's jump here to the end. Do you -- is it
15 consistent with your understanding that the last year of sale
16 of United States Steel's raffinate to Radiator Specialty was
17 1978?
18 A. Yes.
19 Q. And do you see that in the top left-hand corner,
20 1978, year to date?
21 A. Yes.
22 Q. And you see the quantity information there across
23 the middle of the page, dollar sales, units, et cetera? Do
24 you see that?
25 A. I see it, but I don't see a number.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 265

1 the attorneys representing U.S. Steel. I know its been a long
2 day. I'm going to try to move through this quickly. I want
3 to begin by clarifying the dates of sale of the raffinate from
4 U.S. Steel to Radiator Specialty. You with me?
5 A. Yes.
6 Q. I'd like for you to look at the document we've
7 marked as Exhibit No. 13. It's there on the screen. And
8 direct your attention to the date here, December 11, 1959.
9 And do you see that it's for the material raffinate? Do you
10 see that?
11 A. Yes.
12 Q. And do you see Radiator Specialty's name there on
13 the document?
14 A. Yes.
15 Q. And does this appear to be a one gallon sample that
16 was delivered to Radiator from U.S. Steel?
17 A. Yes.
18 Q. Of raffinate?
19 A. Yes.
20 (Exhibit No. 14 marked)
21 Q. (BY MR. SYKES) You and Mr. Lubel discussed some of
22 the sales from U.S. Steel to Radiator and what I've put on the
23 screen here and marked as Exhibit No. 14 are certain sale
24 records from U.S. Steel. The first page is bates number USS
25 2522. And I want to draw your attention to the date here.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 267

1 Q. It's down here at the bottom of the page. I'm
2 sorry. And I can hand you this hard copy. That will make it
3 easier. My point is do you have any other information to
4 dispute that U.S. Steel sold raffinate from 1960 until
5 approximately 1978 to Radiator Specialty?
6 A. No.
7 Q. And that's consistent with your understanding?
8 A. Yes.
9 Q. I want to change subjects with you, Mr. Wells. You
10 and Mr. Lubel discussed a number of regulations today during
11 different points of your testimony. I want to focus on one in
12 particular. An amendment to part 191 of the Code of Federal
13 Regulations. And the highlighting is mine. And specifically,
14 I want to direct you to the next page. Are you familiar with
15 a document called the Federal Register?
16 A. Yes.
17 Q. And do you see a date up there in the top left-hand
18 corner?
19 A. February 6, 1980 --
20 Q. 1964. I know that's hard to read. February 6,
21 1964.
22 A. Okay.
23 Q. And are you familiar that there was an amendment to
24 the benzene regulations in the CFR in 1964? Are you generally
25 familiar with that?
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1 A. Yes.

2 Q. I want to direct your attention to paragraph 191.7,
3 products requiring special labeling under section 3B of the
4 act. Do you see that?

5 A. Yes.

6 Q. And I want to draw your attention to section B3 down
7 here where that red line is and it's entitled benzene,
8 toluene, xylene, petroleum distillates. "Because inhalation
9 of the vapors of products containing 5 percent or more by
10 weight of benzene may cause blood dyscrasias, such products
11 shall be labeled with the signal word danger, the statement of
12 hazard, vapor harmful and the word poison and the skull and
13 crossbones symbol." Did I read that correctly?

14 A. Yes, sir.

15 Q. And is it your understanding that after this
16 amendment was issued that Radiator began including these
17 special labeling requirements on the Liquid Wrench cans with
18 the raffinate formula?

19 MR. LUBEL: Objection; speculation.

20 A. That's my understanding.

21 Q. (BY MR. SYKES) And are you familiar with the term
22 blood dyscrasias, Mr. Wells?

23 A. Yeah.

24 Q. And I know its been a long day and I'll try to get
25 right to this. I've read prior testimony of yours where you
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1 said when you came to work at Radiator in early 1970s that you
2 saw the term blood dyscrasias and you looked it up. Is that
3 fair?

4 A. Yes.

5 Q. And you are aware that blood dyscrasias, blood
6 diseases generally?

7 A. Correct.

8 Q. And is it fair to say that it was your understanding
9 that in certain rare circumstances if someone were
10 over-exposed to benzene, it could be fatal?

11 A. Yeah. That's what the label calls for, says, fatal.

12 Q. And however we describe the physiological or
13 biological process, in rare circumstances over-exposure to
14 benzene could be deadly?

15 A. Yes.

16 Q. I want to mark this as exhibit -- this being this
17 CFR or Federal register 1964 amendment as Exhibit 15.
18 (Exhibit No. 15 marked)

19 Q. (BY MR. SYKES) And, Mr. Wells, as the Radiator
20 spokesman, is it your testimony based upon your experience and
21 work with the company that Radiator always did its best to
22 label the Liquid Wrench in accordance with the Federal
23 regulations?

24 MR. LUBEL: Objection; form.

25 A. Yes.

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1 Q. (BY MR. SYKES) And is it your testimony that when
2 you all had a question, you consulted with professional
3 organizations like Foster Snell?

4 A. Yes.

5 Q. Or even the Consumer Product Safety Commission?

6 A. Yes.

7 MR. SYKES: I don't believe I have any further
8 questions. Thank you.

9 MR. RILEY: I have few.

10 MR. SYKES: Do you want to come over here, Jim?

11 MR. RILEY: I will in just a minute. I've got
12 to get some documents.

13 MR. SYKES: Why don't we go off the record?

14 THE VIDEOGRAPHER: Stand by. 6:14 p.m. We're
15 off the record.

16 (Recess from 6:14 to 6:19)
17 (Exhibit No. 16 marked)

18 THE VIDEOGRAPHER: The time is 6:19 p.m. We
19 are back on the record.

20 EXAMINATION

21 BY MR. RILEY:

22 Q. Mr. Wells, Jim Riley. I represent Radiator
23 Specialty Company, your company. And you've mentioned Foster
24 D. Snell several times in this deposition, correct?

25 A. Yes.
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1 Q. And they were outside consultants and testing
2 engineers, correct?

3 A. Yes.

4 Q. I'm going to show you several pages marked as
5 Exhibit 16 and specifically referencing RSC20 and ask if these
6 are all Foster D. Snell testing documents from 1962?

7 MR. LUBEL: Before he answers, do you mind if I
8 look at it real quick?

9 MR. RILEY: Oh, of course. I'm sorry.

10 MR. LUBEL: Thank you.

11 MR. RILEY: You have them, but sure.

12 MR. LUBEL: Yeah.

13 A. Yes, they are.

14 Q. (BY MR. RILEY) Okay. Hand them to Mr. Lubel so he
15 can take a look at them. Now, on page 20 of Exhibit -- or
16 RSC20 of Exhibit 1962 --

17 MR. LUBEL: I'll run it.

18 Q. (BY MR. RILEY) The conclusion basically in 1962 is
19 that Foster D. Snell is referencing the Federal Hazardous
20 Substances Act and its regulations; is that correct or not?

21 A. Yes.

22 Q. Ant basically they determined it to be non-toxic; is
23 that correct or not?

24 MR. LUBEL: Objection; form.

25 A. Yes.

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402/403,
relevance
Plaintiffs FHSA
MiL

402/403,
relevance
Plaintiffs FHSA
MiL

402/403,
relevance
Plaintiffs'
FHSA MiL

802,
hearsay
Plaintiffs
FHSA
MiL



704, ultimate issue
402, relevance
Plaintiffs FHSA
MIL

James Wells Vol II
11-6-2008
Page 272

1 Q. (BY MR. RILEY) And Foster D. Snell was used on more
2 than one occasion by Radiator Specialty Company, correct?
3 A. Yes.
4 Q. And as you stated before, during your tenure you
5 labeled Liquid Wrench both deodorized formula and raffinate
6 formula in accordance with the Federal Hazardous Substances
7 Act and regulations, is that correct or not?
8 MR. LUBEL: Objection, form.
9 A. That's correct.
10 Q. (BY MR. RILEY) I'd like to show you another Foster
11 Snell document, sir.
12 (Exhibit No. 17 marked)
13 Q. (BY MR. RILEY) Is this is Exhibit No. 17. I'd like
14 you to take a look at this and read it, please?
15 A. What portion? Read it out loud?
16 Q. Read the entire document please?
17 A. To myself?
18 Q. Yes, please.
19 MR. LUBEL: Is there a question pending, Jim?
20 MR. RILEY: There will be when he's done
21 reading.
22 MR. LUBEL: Okay. I didn't know if you had
23 asked it.
24 A. Okay.
25 Q. (BY MR. RILEY) Okay. Now, the date of this document
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008
Page 273

1 is October 15, 1954, correct, sir?
2 A. Yes.
3 Q. And it's from Foster D. Snell. And does this
4 reference whether Foster D. Snell is doing an analysis of
5 Radiator Specialty Company's penetrating oil or not? Is
6 Foster D. Snell doing a report analysis of the penetrating oil
7 of Radiator Specialty Company in this 1954 report?
8 A. Yes.
9 Q. And it goes to Mr. Kologiski, correct?
10 A. Yes.
11 Q. Who we've already established was your predecessor?
12 A. Yes.
13 Q. Now, this 1954 document, if we look at page 1, there
14 is no reference to benzene on page 1, correct?
15 A. Correct.
16 Q. If we look at page 2 of this 1954 document, the only
17 reference to a chemical that we see -- oh, wait a minute.
18 MR. LONGORIA: Flip it over.
19 MR. LUBEL: I'll get it, Jim.
20 MR. RILEY: Thank you. I'm so used to the
21 old --
22 MR. LUBEL: Tell me which one to look at.
23 Q. (BY MR. RILEY) The only reference to any chemical in
24 the 1954 Foster Snell report is kerosene at the bottom
25 paragraph, correct?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 274

1 A. Yes.
2 Q. Next Exhibit -- I keep losing the exhibit stickers.
3 (Exhibit No. 18 marked)
4 MR. LUBEL: Can I see this while you do it?
5 MR. RILEY: Yeah, absolutely.
6 Q. (BY MR. RILEY) Are the Foster Snell documents that I
7 had labeled and shown to you as Exhibit 16 and 17 documents
8 that were business records of Radiator Specialty Company?
9 A. I --
10 Q. Exhibit 16, did this come from your files at
11 Radiator Specialty Company and is a business record?
12 MR. LUBEL: Objection; form.
13 A. This is what I looked at a moment ago?
14 Q. (BY MR. RILEY) Right.
15 A. Yes, it is.
16 Q. And the 1954 document addressed to Mr. Kologiski,
17 was that also a Radiator Specialty Company record?
18 A. Yes.
19 Q. Kept in the ordinary course of business as was 16?
20 A. Yes.
21 Q. Obviously addressed to someone in charge at Radiator
22 Specialty Company, in this case Mr. Kologiski, correct?
23 A. Correct.
24 Q. And they came out of your file that you inherited
25 from Mr. Kologiski at Radiator, correct?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 275

1 A. Correct.
2 Q. Let me show you Exhibit No. 18, sir, and ask if you
3 can tell me what that is?
4 A. These are pages showing date for sale of various
5 products.
6 Q. And in terms of the deodorized, does it show
7 deodorized and regular Liquid Wrench?
8 A. It shows only the word deodorized on some of the
9 samples, some of the interest.
10 Q. Okay. On page 1 of Exhibit No. 18 it reflects that
11 Liquid Wrench deodorized came in 8-ounce pints, quart and
12 gallons, correct?
13 A. Yes.
14 Q. And on page 2 it indicates what you have testified
15 to, that Liquid Wrench was first sold July 25, 1941, correct?
16 A. Yes.
17 MR. LUBEL: You want me to staple those, Jim?
18 MR. RILEY: I'll get it. Thanks, Lance.
19 Q. (BY MR. RILEY) And Exhibit No. 18, where did this
20 record come from, sir?
21 A. It came from a three-ring binder that was located
22 either in Mr. Blumenthal's office or his secretary's office.
23 I'm not sure where it was kept.
24 Q. And is that one of the business records of Radiator
25 Specialty Company?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 276

1 A. Yes.

2 Q. And was it made in the regular course of business?

3 MR. LUBEL: I'm not going to object to that as

4 hearsay, Jim. Does that help?

5 MR. RILEY: Pardon?

6 MR. LUBEL: I'm not going to object to that

7 document as hearsay. You don't need to predicate it.

8 MR. RILEY: You'll stipulate as to business

9 records?

10 MR. LUBEL: Yeah.

11 MR. RILEY: Okay. Thank you.

12 (Exhibit No. 19 marked)

13 Q. (BY MR. RILEY) Finally Exhibit No. 19, ask --

14 MR. LUBEL: I don't remember that one. Can I

15 see that one?

16 MR. RILEY: It's brand new. It's on the

17 Exhibit list though.

18 MR. LUBEL: It's on the Exhibit list?

19 MR. RILEY: Uh-huh. Sure is.

20 MR. LUBEL: But it hadn't been produced?

21 MR. RILEY: I just got it.

22 Q. (BY MR. RILEY) First of all, let me ask you when you

23 were the plant manager at Radiator Specialty Company during

24 1972 to 1978 when raffinate was being delivered to Radiator

25 Specialty Company, what are size cars were the -- was the

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 277

1 raffinate delivered in?

2 A. My recollection is it was a 10,000-gallon car.

3 Q. And a ten thousand dollar -- a 10,000-gallon car,

4 how was that emptied into the plant?

5 A. Gravity.

6 Q. Okay. And were there hoses hooked up and piped into

7 the plant?

8 A. Yes.

9 Q. And did the raffinate go through the production line

10 as you testified earlier?

11 A. As I testified earlier? I don't think I testified

12 to that.

13 Q. I'm sorry. In terms of it was pumped into the plant

14 -- tell me how -- where the raffinate went from the

15 10,000-gallon tank car to the plant? Explain how it went in?

16 A. The car was drained into a holding tank which held

17 only raffinate. From that point the raffinate was pumped into

18 a mechanized system which blended the raffinate with the other

19 components of the formula and exited into a holding tank for

20 regular liquid -- or raffinate Liquid Wrench. From there it

21 was pumped into the flooring machine inside the building.

22 Q. And then it went through the production line,

23 correct?

24 A. Correct.

25 Q. Like you testified earlier?

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 278

1 A. Yes.

2 Q. And does Exhibit No. 19 accurately depict the size

3 of the tank car that the raffinate would have been delivered

4 to Radiator Specialty during your time period of '72 to '78?

5 It consists of two pages.

6 A. Yes, I think so.

7 Q. Mr. Wells, two more questions, trace benzene, when

8 you talk about trace --

9 MR. SYKES: Jim, I think he needs to change

10 tape.

11 (Recess taken)

12 Q. (BY MR. RILEY) When you mention the word trace, is

13 trace a word of art that indicates that benzene could be

14 present in any petroleum product in a percentage of one-tenth

15 of 1 percent or less?

16 MR. LUBEL: Leading; objection.

17 Q. (BY MR. RILEY) Or not?

18 A. One-tenth or 1 percent or less, yes.

19 Q. So we're talking about a miniscule amount and

20 sometimes even non-detectable depending upon the years. Is

21 that be correct or not?

22 MR. LUBEL: Objection; leading.

23 A. That's correct.

24 Q. (BY MR. RILEY) In terms of employees that worked for

25 you at Radiator Specialty Company and also your knowledge of

Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 279

1 in terms of the health and safety of the employees, are you

2 aware of any employee of Radiator Specialty Company that ever

3 made a claim that they were injured by raffinate?

4 A. No.

5 MR. RILEY: I'll pass the witness. That's it.

6 MR. LUBEL: Can I get the microphone please?

7 MR. RILEY: Of course you can.

8 FURTHER EXAMINATION

9 BY MR. LUBEL:

10 Q. Do you remember this document that your lawyer

11 showed you?

12 A. Yes.

13 Q. It's the 1954 Foster Snell document?

14 A. Yes.

15 Q. You see it's referring to client sample 198A-5?

16 A. Yes.

17 Q. What product was that?

18 A. The exact product isn't named right there. It may

19 be from some reference somewhere else that was in the written

20 statements that it's referred to as Liquid Wrench and this

21 other sample which is earlier had been Liquid Wrench. I'm not

22 sure.

23 Q. What I'm trying to find out is this reference to

24 client sample that they're testing and comparing the Liquid

25 Wrench, do you know if it ever went into production?

Stratos Legal Services, LP
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<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 280</p> <p>1 A. I don't know. 2 Q. And Mr. Riley asked you about that client sample 3 having a reference to kerosene. Do you see it, client sample 4 and kerosene? 5 A. Yes. 6 Q. We just don't know if that ever went to production 7 or not, correct? 8 A. I don't know. 9 Q. Okay. What effort has the company made, if you 10 know, to follow it retirees from health considerations 11 standpoint? 12 A. I have no information except the retirees come 13 together once a year at Christmas and just have lunch. That's 14 all. 15 Q. But is there is any formal follow through of all the 16 retirees, all the people that worked at the plant since the 17 beginning of time? 18 A. None that I'm aware of. 19 MR. LONGORIA: Less than a minute. 20 MR. LUBEL: I need a couple of minutes. 21 THE VIDEOGRAPHER: Okay. Then I need to change 22 tapes. 23 MR. LUBEL: I thought that's what you did. I'm 24 sorry. 25 THE VIDEOGRAPHER: 6:37. This concludes tape Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 282</p> <p>1 Q. The people -- we can't -- not everybody can see it. 2 Are you referring to liquid line number one? 3 A. Liquid line number one. 4 Q. Right under the aerosol line number one? 5 A. Yes. 6 Q. When was that installed? 7 A. Maybe four, five, six months after aerosol line one. 8 Q. Okay. And what did it make? 9 A. Liquid Wrench. 10 Q. Okay. Which version? 11 A. The L103. 12 Q. Okay. Was that the deodorized version? 13 A. Yes. 14 Q. Only? 15 A. Yes. 16 Q. Okay. What do you have next? 17 A. I believe the next line was this line which is 18 marked liquid line 2. 19 Q. At the top of the page? 20 A. Yes. 21 Q. When was it installed? 22 A. I think it was '73. 23 Q. And what did it make? 24 A. It made Liquid Wrench the raffinate formula and at 25 it made some other products, different formulas, oil additives Stratos Legal Services, LP 713-481-2180</p>
<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 281</p> <p>1 6. 2 (Recess from 6:37 to 6:39) 3 THE VIDEOGRAPHER: The time is 6:39 p.m. We 4 are back on the record. beginning of tape 7. 5 (Exhibit No. 20 marked) 6 Q. (BY MR. LUBEL) Mr. Wells, can you identify Exhibit 7 No. 20? 8 A. This is a sketch of production layout Indian Trail 9 plant. 10 Q. When was this sketch made? 11 A. The sketch was made piecemeal, meaning as more 12 equipment was installed it was added to originally '72 or '73. 13 Q. When was this sketch completed then if it was done 14 piecemeal? 15 A. Sometime in the '80s. 16 Q. Can you tell us which portions of the plant sketch 17 are for a particular period of time? 18 A. Yes, I think so. The -- the first production line 19 put in is the one that's labeled aerosol sol line one. That's 20 this one. The second piece -- 21 Q. When was that done? 22 A. This was done in March or April of '72. 23 Q. Okay. 24 A. This was the next production line put in and it was 25 done a few months after this was put in. Stratos Legal Services, LP 713-481-2180</p>	<p style="text-align: center;">James Wells Vol II 11-6-2008</p> <p style="text-align: right;">Page 283</p> <p>1 type stuff. 2 Q. When do you think that was installed again, Liquid 3 Wrench number 2? 4 A. '73. 5 Q. Early, mid, late? 6 A. I'm going to say probably in the summertime, mid 7 year. 8 Q. Okay. 9 A. The next line -- 10 Q. Now we're going down to the middle of the bottom of 11 the page? 12 A. Yes. Probably was aerosol line two. 13 Q. Right in the middle? 14 A. It's located -- 15 Q. Right below the middle of the page? 16 A. -- beside liquid line one below the middle of the 17 page. 18 Q. Okay. What did it make? 19 A. It made Engine Bright and it made some other 20 products as well. The next line was probably liquid line 21 three. 22 Q. When? 23 A. Probably a year after aerosol line two. 24 Q. When does that put us? '75 roughly? 25 A. It made brake fluid. Stratos Legal Services, LP 713-481-2180</p>

James Wells Vol II
11-6-2008
Page 284

1 Q. And approximately 1975 you think time-wise?
2 A. That's similar in the area, yes. Then aerosol line
3 three and this line made puncture seal and some others which I
4 don't recall.
5 Q. Not Liquid Wrench?
6 A. Liquid Wrench was made on aerosol line one.
7 Q. Okay. So you don't remember it being made on
8 aerosol line three, right?
9 A. I don't think so, no.
10 Q. Okay.
11 A. That's different equipment.
12 Q. When was aerosol line three put in, do you think?
13 A. Probably '70 -- I want to say '76, '77.
14 Q. Okay. What's next?
15 A. Aerosol line four.
16 Q. What did it make.
17 A. Refrigerant, R-12 for automotive air conditioners.
18 Q. When was it installed, approximately?
19 A. The '70s.
20 Q. Mid, late?
21 A. Mid.
22 Q. Is your office depicted on this schematic?
23 A. Yes, it is.
24 Q. Where is it?
25 A. It's the office that's got a 15-foot number on it.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 286

1 Q. That's the bottom half, right?
2 A. If you want to call it that, yeah.
3 Q. Okay. So where was your office at that time? Same
4 place?
5 A. Here, yeah.
6 Q. Let me see something real quick.
7 MR. RILEY: Lance, do you have much more to go?
8 MR. LUBEL: I do not.
9 MR. RILEY: Because this is not like the most
10 cogent part of the deposition.
11 MR. LUBEL: Do not. Cogent like I'm not making
12 any sense or --
13 (Exhibit No. 21 marked)
14 Q. (BY MR. LUBEL) Let's see here, let's move on to
15 Exhibit 21. Can you tell us what that depicts?
16 A. Well, it's the same picture that you have there.
17 It's just a little more and a little less. I mean, you see
18 the same Liquid Wrench filling and explosion proof room. Some
19 tanks, mixing rooms, tanks, underground tanks.
20 Q. Is this Indian Trails?
21 A. Yes.
22 Q. Where is the production line on one of these
23 schematics where you said you were concerned about your
24 employees being exposed to drops of Liquid Wrench on the
25 containers?
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 285

1 Q. Basically center bottom of the page?
2 A. Yes.
3 Q. And who office to your right?
4 A. This one? That was the personnel office.
5 Q. Who was that?
6 A. I don't remember his name.
7 Q. Okay. Who was to your left?
8 A. That was my secretary.
9 Q. What was his or her name?
10 A. Her name is Betty Colly.
11 Q. Okay. Is she still there?
12 A. Yes.
13 Q. All right. Who does she work for now?
14 A. She works for the manager who's name I've forgotten.
15 Q. All right. Who's in the next office, next to her?
16 A. That's a lobby, just an entrance lobby.
17 Q. Okay.
18 A. And this was an office that went with the laboratory
19 and this was the lab in the corner.
20 Q. Real quick, was this a building that reassembled a
21 warehouse with office space in it?
22 A. The building when first built was vacant from early
23 on. All this was vacant. So this was all cans and boxes.
24 Q. The bottom half of the schematic?
25 A. This half right here, yeah.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008
Page 287

1 A. Right here.
2 Q. The top of Exhibit 20, that liquid line number 2?
3 A. See that little box? That's a packing table.
4 Q. And I tell you what, just -- talking about this box
5 I've highlighted yellow?
6 A. Yes.
7 (Exhibit No. 22 marked)
8 Q. (BY MR. LUBEL) What is Exhibit 22?
9 A. This is a -- I started to say this is a duplicate of
10 that, but I guess it's not. Are these the same? Yeah.
11 Q. Does it just have more detail on it?
12 A. I think the difference is you can read right here.
13 You can't read right there.
14 Q. So let me just put that up on here real quick, just
15 part of it. Over here, if you look on the screen, you see
16 Liquid Wrench regular. This room. What is that?
17 A. It's an underground storage tank.
18 Q. Okay. And then you say drip oil?
19 A. Raffinate underground.
20 Q. Okay. What is 30-gallon -- 30,000 gallons, right?
21 A. Yeah.
22 Q. And then we see Liquid Wrench deodorized?
23 A. Right.
24 Q. Is that above ground or below ground?
25 A. Below.
Stratos Legal Services, LP
713-481-2180

James Wells Vol II
11-6-2008

Page 288

1 Q. So you have three tanks?
2 A. Yeah.
3 Q. How big was the Liquid Wrench regular tank?
4 A. I think it was 2,000 gallons.
5 Q. Okay. And then what were in these tanks here?
6 A. Those are mix tanks.
7 Q. What do you mean mix tanks? Have product in them?
8 A. You mix product there. They were taken out very
9 early.
10 Q. What is the approximate date of Exhibit 22? Is this
11 early or date?
12 A. The one that shows the mix tanks was -- these were
13 taken out before -- well, when this mix room was built, these
14 were taken out and moved into the mix room. This is pre-'73.
15 Q. Okay. So where we see these mixing tanks here,
16 you're saying once this mixing room was built, these tanks
17 were moved into this room?
18 A. Yes.
19 Q. You know, I've got to tell you, I don't recall
20 seeing one of these schematics that didn't have a date on it.
21 Y'all's just didn't have dates?
22 A. I looked for a date and none of it had a date on
23 them.
24 Q. Okay. Thank you.
25 A. But as I said, it's a moving target.
Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 289

1 FURTHER EXAMINATION
2 BY MR. RILEY:
3 Q. I just have one question, final. When you took over
4 for Mr. Kologiski at Radiator Specialty Company, deodorized
5 Liquid Wrench, was that base formula kerosene or something
6 else?
7 A. Kerosene.
8 Q. That's all I have. Thank you.
9 THE VIDEOGRAPHER: Stand by. Off the record at
10 6:51 p.m.
11 (Proceedings concluded at 6:51 p.m.)
12
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Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 290

1 CHANGES AND SIGNATURE
2 CORP. REP RADIATOR SPECIALTY CO. NOV. 6, 2008
3 PAGE LINE CHANGE REASON
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

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James Wells Vol II
11-6-2008

Page 291

1 I, CORPORATE REPRESENTATIVE OF RADIATOR SPECIALTY
2 COMPANY, have read the foregoing deposition and hereby affix
3 my signature that same is true and correct, except as noted
4 above.
5
6 _____
7 CORPORATE REPRESENTATIVE OF RADIATOR SPECIALTY COMPANY
8
9 THE STATE OF _____
10 COUNTY OF _____
11 Before me, _____, on this day
12 personally appeared CORPORATE REPRESENTATIVE OF RADIATOR
13 SPECIALTY COMPANY, known to me or proved to me on the oath of
14 _____ or through _____
15 (description of identity card or other document) to be the
16 person whose name is subscribed to the foregoing instrument
17 and acknowledged to me that he/she executed the same for the
18 purpose and consideration therein expressed.
19 Given under my hand and seal of office on this ____ day
20 of _____, _____.
21
22
23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____
25 My Commission Expires: _____

Stratos Legal Services, LP
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James Wells Vol II
11-6-2008

Page 292

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3

4 REPORTER'S CERTIFICATE
5 ORAL VIDEOTAPED DEPOSITION OF CORPORATE REPRESENTATIVE OF
6 RADIATOR SPECIALTY COMPANY
7 November 6, 2008

8

9 I, the undersigned Certified Shorthand Reporter in and
10 for the State of Texas, certify that the facts stated in the
11 foregoing pages are true and correct.

12 I further certify that I am neither attorney or counsel
13 for, related to, nor employed by any parties to the action in
14 which this testimony is taken and, further, that I am not a
15 relative or employee of any counsel employed by the parties
16 hereto or financially interested in the action.

17 SUBSCRIBED AND SWORN TO under my hand and seal of office
18 on this the _____ day of _____, 2008.

19

20

21 _____
IRENE VALDES, CSR
Texas CSR 1939
22 Expiration: 12/31/2008
STRATOS LEGAL SERVICES LP
23 Firm Registration No. 484
1001 W. Loop South, Suite 809
24 Houston, Texas 77027
713-481-2180

25

Stratos Legal Services, LP
713-481-2180

Exhibit 4

James Wells
November 6, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ROBERT B. OAKLEY and)
IRENE OAKLEY,)
Plaintiffs,)
)
vs.) CASE NO. 2:07-CV-351
)
AIR PRODUCTS AND)
CHEMICALS, INC., ET AL)
Defendants.)

ORAL VIDEOTAPED DEPOSITION

JAMES WELLS
DESIGNATED CORPORATE REPRESENTATIVE OF
RADIATOR SPECIALTY COMPANY

Volume 1

November 6, 2008

ORAL VIDEOTAPED DEPOSITION OF JAMES WELLS, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 6th day of November, 2008, from 10:14 a.m. to 12:17 p.m., before Stacey Whitley, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Coats, Rose, Yale, Ryman & Lee, 3 Greenway Plaza, 21st Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Plaintiffs designations are in yellow

Stratos Legal Services
800-971-1127

Case 3:18-cv-00197-RJC-DSC Document 312-4 Filed 09/02/20 Page 2 of 26

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James Wells
November 6, 2008

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 Lance H. Lubel, Esq. Hector G. Longoria, Esq. 5 HEARD, ROBINS, CLOUD & LUBEL 3800 Buffalo Speedway, 5th Floor 6 Houston, Texas 77098 Telephone: 713-650-1200 - Fax: 713-650-1400</p> <p>7</p> <p>8 FOR THE DEFENDANT, RADIATOR SPECIALTY CORPORATION:</p> <p>9 James M. Riley, Jr., Esq. Stacy K. Yates, Esq. 10 COATS, ROSE, YALE, RYMAN & LEE 3 Greenway Plaza, Suite 2000 11 Houston, Texas 77046 Telephone: 713-651-0111 - Fax: 713-651-0220</p> <p>12</p> <p>13 FOR THE DEFENDANT, U.S. STEEL:</p> <p>14 Phillip S. Sykes, Esq. FORMAN, PERRY, WATKINS, KRUTZ & TARDY 200 South Lamar Street, Suite 100 15 Jackson, Mississippi 39201-4099 Telephone: 601-960-8600 - Fax: 601-960-8613</p> <p>16</p> <p>17 ALSO PRESENT:</p> <p>18 Stacey Whitley, CSR 19 Brian Bobbitt, Videographer</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Exhibits 1 and 2 marked)</p> <p>2 MR. RILEY: Exhibit 1 is a response which I</p> <p>3 served on the plaintiffs on Monday, November 4th, three days</p> <p>4 in advance of the deposition. It had to do with a previously</p> <p>5 issued subpoena duces tecum and there was, I think, 126</p> <p>6 issues that were requested and Exhibit 1 is Radiator's</p> <p>7 response -- yes, 126 to the subpoena going -- going number by</p> <p>8 number and documents that are referenced in the subpoena were</p> <p>9 provided to the plaintiffs in advance of the deposition. And</p> <p>10 what little objections there are are also contained in</p> <p>11 November 4 and I would like this attached and incorporated</p> <p>12 into the record as if I went down and read the whole thing</p> <p>13 and bored everybody to death.</p> <p>14 THE VIDEOGRAPHER: We are on the record</p> <p>15 November 6, 2008. The time is 10:14 a.m. This is the</p> <p>16 videotaped deposition of James Wells taken in the matter of</p> <p>17 Robert B. Oakley and Irene Oakley versus Air Products &</p> <p>18 Chemicals, Inc., et al.</p> <p>19 Would counsel like to identify themselves for</p> <p>20 the record?</p> <p>21 MR. LUBEL: We don't do that here.</p> <p>22 THE VIDEOGRAPHER: Okay. Will the court</p> <p>23 reporter please swear in the witness?</p> <p>24</p> <p>25</p>

Page 3	Page 5
<p>1</p> <p>2 INDEX</p> <p>3 PAGE</p> <p>4 JAMES WELLS</p> <p>5 Examination by Mr. Lubel 5</p> <p>6 Signature Page 93</p> <p>7 Court Reporter's Certificate 95</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 EXHIBIT DESCRIPTION PAGE</p> <p>11 1 Defendant Radiator Specialty 4</p> <p>12 objections and responses to</p> <p>13 documents requested</p> <p>14 2 Notice of Deposition 4</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 JAMES WELLS,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. LUBEL) Please state your full name.</p> <p>5 A. James Dennis Wells.</p> <p>6 Q. Where do you live, Mr. Wells?</p> <p>7 A. Indian Trail, North Carolina.</p> <p>8 Q. And what do you do for a living?</p> <p>9 A. I'm retired.</p> <p>10 Q. You're retired. Where did you retire from?</p> <p>11 A. Radiator Specialty Company.</p> <p>12 Q. You understand you're here as their corporate</p> <p>13 spokesperson for this lawsuit?</p> <p>14 A. I do.</p> <p>15 Q. You've done that before, correct?</p> <p>16 A. I have.</p> <p>17 Q. How many depositions have you given in these Liquid</p> <p>18 Wrench cases previously?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Approximately.</p> <p>21 A. Perhaps ten.</p> <p>22 Q. And so, you know enough about this process to know</p> <p>23 that if you need to take a break for any reason, if you need</p> <p>24 me to repeat or rephrase a question, you know that you have</p> <p>25 that ability to request such, correct?</p>

2 (Pages 2 to 5)

James Wells
November 6, 2008

Page 6	Page 8
1 A. Yes, I do. 2 Q. That includes whether you want to take a coffee 3 break, return a phone call, go to the bathroom. You just let 4 me know and I'll try to accommodate you; is that fair? 5 A. Thank you. Yes. 6 Q. You and I, in fact, have met before in this context 7 of lawsuits, correct? 8 A. Yes. 9 Q. And I've actually taken your deposition before 10 today, correct? 11 A. Yes. 12 Q. And in the previous ten or so depositions that 13 you've given on behalf of Radiator Specialty Company, you've 14 served as their corporate representative, correct? 15 A. Correct. 16 Q. And that's because you spent a number of years as 17 their employee, right? 18 A. Correct. 19 Q. Why don't you give us a very brief summary of your 20 employment history with Radiator Specialty Company. 21 A. I started there in March of 1972 with the title of 22 plant manager. We were building a brand-new operation -- as 23 a matter of fact, there was only four walls when I first went 24 there. So, starting at that point, I installed equipment, 25 set up the processes over the next 30 years of all the growth	1 Q. Are you still under that compensation plan for 2 defense of the lawsuits? 3 A. Yes. 4 Q. The thousand dollars a month? 5 A. Yes, I am. 6 Q. So, would it be a fair statement that from your 7 retirement, which was roughly May of 2001 -- 8 A. Correct. 9 Q. -- through today, which is November, 2008, you've 10 been paid at least a thousand dollars a month for the defense 11 of the Liquid Wrench lawsuits, correct? 12 A. I've been paid a thousand dollars a month to work 13 on whatever lawsuit was required. 14 Q. Okay. Predominantly Liquid Wrench cases, though, 15 correct? 16 A. I don't know that for a fact. 17 Q. What other lawsuits have you helped defend them in 18 other than Liquid Wrench? 19 A. An engine degreaser. 20 Q. What was it called? 21 A. Engine Brite. 22 Q. And what did it allegedly do? 23 A. It cleans engines. It's an aerosol product. And 24 also a tire inflator sealer. 25 Q. What was it called?
Page 7	Page 9
1 that took place at that location. Subsequently the title got 2 changed from plant manager to vice-president until I retired 3 in 2001. 4 Q. So, you retired as an executive, correct? 5 A. Correct. 6 Q. But you even started out as a plant manager with 7 supervisory authority over that plant, correct? 8 A. Correct. 9 Q. And since 2001, you've served as a consultant for 10 Radiator, correct, in defending these lawsuits? 11 A. Yes, I have. 12 Q. And for part of that time, if my recollection 13 serves me correctly, you were paid roughly \$1500 a month and 14 then in about 2004 it went to a thousand dollars a month, 15 correct? 16 A. I don't recall the dates, but the thousand dollars 17 is correct. 18 Q. Okay. Do you recall giving testimony under oath 19 where you admitted that you had been paid \$1500 a month from 20 approximately May of 2001 through 2004? 21 A. I don't recall that but I know that there was a 22 change and 1500 could be correct. 23 Q. And then it went down to roughly a thousand dollars 24 a month after that, correct? 25 A. Correct.	1 A. Puncture Seal. 2 Q. Puncture Seal. Any others? 3 A. That's all I recall. 4 Q. So, Puncture Seal and an engine degreaser? 5 A. Yes. 6 Q. Have you given depositions, testimony under oath 7 like you're here to do today, in those lawsuits? 8 A. I have. And there was also another Liquid Wrench, 9 not the same formulas that we're dealing with but a different 10 Liquid Wrench. 11 Q. Okay. So, on those three areas, how many 12 depositions do you believe you've given? 13 A. Well, on the other Liquid Wrench, I think there was 14 only one. In the case of the Engine Brite, I think one. In 15 the case of the Puncture Seal, I think there were two or 16 three. I'm not sure. 17 Q. Two or three? 18 A. Maybe more. 19 Q. Let's start with the Liquid Wrench, the one 20 deposition you gave there. What was the complaint as you 21 understood it in that lawsuit? 22 A. There was a fire. 23 Q. Where? 24 A. In what state? 25 Q. Yes, sir.

3 (Pages 6 to 9)

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James Wells
November 6, 2008

Page 10	Page 12
<p>1 A. I believe it was Tennessee. 2 Q. Approximately when did that happen? 3 A. Six, seven, eight years ago. 4 Q. What was the claim? That the Liquid Wrench caused 5 the fire? 6 A. The claim -- I'm not sure what the claim was. It 7 was involved in the fire. 8 Q. Did anybody claim to have like lung injuries from 9 breathing in vapors? 10 A. Not that I recall. 11 Q. You think it wasn't a personal injury case? It was 12 property damage? 13 A. It may have been some personal injury, burns. 14 Q. You think that was six or seven years ago? 15 A. Yes. 16 Q. Was Mr. Riley your lawyer in that case? 17 A. No. 18 Q. Who was it? 19 A. I don't recall. 20 Q. All right. The Puncture Seal, you said you had 21 given sworn testimony two or three times? 22 A. Yes. 23 Q. What are the general complaints that are made in 24 those kind of cases? 25 A. An accident occurs when the product is being used</p>	<p>1 Q. Of the design change or of the lawsuits or both? 2 A. The design changes -- I'm not sure when those 3 lawsuits were, whether they were back in the Nineties or in 4 the early 2000s. But what I gave you is the current. 5 Q. What was the basic design change that was made? 6 Did you take something out or put something in? 7 A. We made a change in the propellant or the gas that 8 inflated the tires. 9 Q. So that it wasn't explosive or less explosive? 10 A. So that it was not explosive. 11 Q. Not explosive. Did you invent that product, the 12 Puncture Seal? 13 A. My name is on the patent. 14 Q. When was it invented? 15 A. I don't remember. Maybe the Nineties. 16 Q. Did you invent it for Radiator Specialty Company? 17 A. I did. 18 Q. Were they the beneficiary of the patent, or were 19 you the beneficiary? 20 A. Radiator Specialty was the beneficiary. 21 Q. You did it as their employee? 22 A. I did. 23 Q. Did you receive any additional financial 24 compensation or benefits because of that patent? 25 A. No, I didn't.</p>
Page 11	Page 13
<p>1 in an automotive tire generally. 2 Q. This is when somebody has a leak, they put the can 3 on the stem and they spray something in there to inflate the 4 tire and to seal it until you can get to the gas station to 5 get you a new tire? 6 A. That's correct. 7 Q. They call that Puncture Seal? 8 A. Yes. 9 Q. Were the claims -- the complaints that were made in 10 that lawsuit related to the tires exploding or the cans 11 exploding? 12 A. The tires exploding. 13 Q. Pretty serious injuries? 14 A. Yes. 15 Q. Was there any design change made to that product as 16 a result of those claims? 17 A. That's a difficult question to answer because there 18 were design formula changes made but I'm not certain they 19 were as a result of those claims. But they're sort of 20 loosely tied together. 21 Q. Were there design changes to that product to make 22 it safer at least in the company's mind? 23 A. Yes. 24 Q. What time period are we talking about? 25 A. Late Nineties.</p>	<p>1 Q. Just part of the job? 2 A. Correct. 3 Q. The design change, when that took place, did you 4 seek a new patent on the new product? 5 A. You ask that as if there had been an old patent. 6 We only have one patent. 7 Q. On the Puncture Seal? 8 A. Yes. 9 Q. It's the one that you got in the Nineties, right? 10 A. Yes. 11 Q. Anybody else's name on that patent? 12 A. Yes. 13 Q. Who was that? 14 A. Horest Abramowsky (phonetic). 15 Q. Who? 16 A. Horest Abramowsky. 17 Q. Abramowsky? 18 A. Yes. 19 Q. Was he an employee of Radiator? 20 A. Yes. 21 Q. What did he do for them? 22 A. He was technical director. 23 Q. What was his training? Was he a chemist? 24 A. Yes. 25 Q. Engineering?</p>

4 (Pages 10 to 13)

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James Wells
November 6, 2008

Page 14

1 A. Chemist.
2 Q. Chemist. He was the technical director. Where did
3 he office?
4 A. At Indian Trail.
5 Q. At your plant?
6 A. Yes.
7 Q. Did he work for you?
8 A. Yes.
9 Q. What did he do for you?
10 A. Well, as technical director, he worked on labels
11 for production of batching, quality control, maybe some other
12 functions that were supportive of the production process.
13 Q. Was he in charge of those areas?
14 A. He was in charge of the quality control, the
15 batching.
16 Q. What about the labels?
17 A. He was involved in those.
18 Q. He was day-to-day on that?
19 A. Well, I'm not sure day-to-day is a good way to --
20 Q. That's fair. In other words, you don't look at
21 labels every day?
22 A. We looked at labels at least weekly.
23 Q. But would he have been -- you know, he was working
24 underneath you, right?
25 A. Correct.

Page 15

1 Q. He wasn't the only one at the company working for
2 you, right, at that plant?
3 A. Correct.
4 Q. And so, you had a lot of responsibility and I take
5 it that you would have to delegate some of that to people to
6 help you?
7 A. Yes.
8 Q. Would he have been one of those people?
9 A. Yes.
10 Q. Okay. So, in -- on the topic of labels, where did
11 he fall in the hierarchy?
12 A. We had a small committee that met whenever is
13 necessary to look at labels. There was three or four, maybe
14 five people who were involved.
15 Q. And was he just one of those people?
16 A. He was, yes.
17 Q. Was his role any different than the other two,
18 three, four, five people?
19 A. I would say probably.
20 Q. Because he was the technical director?
21 A. In part.
22 Q. Is there another reason his role would be
23 different?
24 A. He had a lot of experience.
25 Q. In labels?

Page 16

1 A. Yes.
2 Q. Where did he get that experience, if you know?
3 A. He worked with -- he worked for a company that made
4 Windex. He was in research. And the name of the company
5 escapes me sitting here right now.
6 Q. Did he have something to do with labels at that
7 company, whatever they're called?
8 A. Yes, he did.
9 Q. Did you know him before he got to Radiator?
10 A. Yes.
11 Q. How did you know him?
12 A. He worked in the Cincinnati plant of the company
13 that made Windex and I worked for a contract packer a hundred
14 miles away or so and we did the actual manufacturing of the
15 Windex for that company. And he came down from time to time
16 on quality issues because there was more than just Windex.
17 Other furniture polishes and things of that nature.
18 Q. Was this Bristol-Myers?
19 A. It was Bristol-Myers later. But before -- it was
20 Drackett Company at the time and then Drackett was bought out
21 by Mr. Wiresdon (phonetic). I guess Johnson & Johnson bought
22 a lot of it since then.
23 Q. Okay. It was your impression that Mr. Abramowsky,
24 as technical director, that he had had experience working
25 with the labels on these household products, correct?

Page 17

1 A. Correct.
2 Q. I take it that you felt as though he would be an
3 asset to you and your organization because of that
4 experience?
5 A. Not necessarily because of experience. When I
6 hired him, I needed someone who could take care of the
7 batching and the quality control and that was probably the
8 driving force.
9 Q. When did you hire him?
10 A. My best guess is '81.
11 Q. And is he still there?
12 A. No.
13 Q. Where did he go?
14 A. He retired.
15 Q. He retired. Okay. Now, you said he was also in
16 charge of quality control and batching?
17 A. Yes.
18 Q. What's batching?
19 A. It's process of combining all the various chemicals
20 to make a final formula to go into a can or bottle.
21 Q. So, is batching like the blending process?
22 A. Yes, it is.
23 Q. It's the production line?
24 A. Yes. It's -- yes. Batching and blending are the
25 same.

5 (Pages 14 to 17)

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Case 3:18-cv-00197-RJC-DSC Document 312-4 Filed 09/02/20 Page 6 of 26

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James Wells
November 6, 2008

Page 18	Page 20
<p>1 Q. So, he was in charge of that blending process? 2 A. Yes. 3 Q. And then quality control, what kind of quality 4 control were y'all trying to accomplish? 5 A. The receipt of incoming products being both 6 packaging components and chemicals fell under his guideline. 7 In addition to that, we had quality control people who 8 operated on the production line checking various things. 9 They also reported to him. 10 Q. Who had the job before Mr. Abramowsky? 11 A. Me. 12 Q. You did that? 13 A. Yes. 14 Q. You were plant manager and you were in charge of 15 quality control and production? 16 A. Yes. 17 Q. Who had the job at the other plant before you got 18 there at Indian Trails at Charlotte? 19 A. George Kologiski was the chemist and they monitored 20 the production for quality of the batching or blending, for 21 your purposes. 22 Q. So, you think Kologiski was in charge of quality 23 control and production of batching -- 24 A. Yes. 25 Q. -- at the other plant?</p>	<p>1 Q. The third party did? 2 A. Yes. 3 Q. Was it a man or a woman, this third party? 4 A. Man. 5 Q. And you can't remember his name, or you don't want 6 to tell us? 7 A. I don't remember his name. 8 Q. You don't remember his name. Y'all both were doing 9 business with this unnamed person? 10 A. Yes. 11 Q. And he put y'all together? 12 A. Yes. 13 Q. Did he tell you what he thought y'all would each 14 bring to the table? 15 A. Not that I recall. 16 Q. Where were you working right before you met 17 Mr. Blumenthal? 18 A. I worked for Corning Glass. 19 Q. You are a chemist by education and training, 20 correct? 21 A. Correct. 22 Q. I think you graduated in, what, 1963 or so? 23 A. Yes. 24 Q. From Eastern Kentucky? 25 A. Yes.</p>
Page 19	Page 21
<p>1 A. Yes. 2 Q. So, you started at Radiator Specialty Company in 3 what year? 4 A. 1972. 5 Q. Who hired you? 6 A. Herman Blumenthal. 7 Q. He was, for all practical purposes, the head of 8 that company, right, at that time? 9 A. He was the head of that company. 10 Q. He was the owner? 11 A. He was the owner. 12 Q. He was the decision maker? 13 A. He was the decision maker. 14 Q. Where did you interview with him? 15 A. In Charlotte. 16 Q. And how were y'all introduced? 17 A. Mutual friend. 18 Q. Who was that? 19 A. I don't recall his name. 20 Q. Do you recall what the mutual friend told you about 21 there was a job opportunity or I want to introduce you to 22 Mr. Blumenthal or how did that work? 23 A. I really don't recall but we had -- we each, 24 Mr. Blumenthal and I, had business relationships with this 25 third party who you might say played match maker.</p>	<p>1 Q. With a major in chemistry? 2 A. Yes. 3 Q. With minors in physics and mathematics; is that 4 correct? 5 A. That's correct. Actually I had a major in physics 6 and mathematics. That's my recollection anyway. 7 Q. So, had you left Corning Glass to go interview with 8 Mr. Blumenthal or were you going to find a job before you 9 left there? 10 A. I left Corning Glass to go meet with 11 Mr. Blumenthal. 12 Q. You had already quit? 13 A. Yes. 14 Q. And what did Mr. Blumenthal tell you he wanted you 15 to do? 16 A. He was building a new plant and putting in an 17 aerosol line and there had -- they had never had an aerosol 18 production facility. So, he wanted someone with aerosol 19 experience who could come in and run everything. 20 Q. And did you understand at that time that the 21 primary purpose of this new plant was the production of 22 aerosol products? 23 A. No. The purpose of building the plant was so 24 aerosol could be made but an aerosol production line was put 25 in followed immediately by a liquid line -- liquid filling</p>

6 (Pages 18 to 21)

Stratos Legal Services
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James Wells
November 6, 2008

Page 22	Page 24
<p>1 type line. 2 Q. Well, what was your recollection at that time as to 3 the primary purpose of the plant? Was it aerosols or liquids 4 or was it both or do you recall? 5 A. It was both. 6 Q. But they had not had an aerosol production line 7 before? 8 A. That's correct. 9 Q. Okay. Did they sell aerosol products before that? 10 A. Yes. 11 Q. Were they having somebody else manufacture those 12 products? 13 A. Yes. 14 Q. Who was that? 15 A. One company was Connecticut Aerosol. There were 16 others, but I don't know who. 17 Q. And why was the decision made to do it in-house? 18 A. I don't know the answer to that. 19 Q. Well, based upon your experience, were they able to 20 do it cheaper? 21 A. You would expect so. 22 Q. Or you wouldn't do it, right? 23 A. Right. Not only cheaper but you had better control 24 of inventories. 25 Q. In other words, you could decide more quickly</p>	<p>1 A. DuPont. 2 Q. DuPont designed the building? 3 A. Yes. 4 Q. The whole building? 5 A. Pretty much. 6 Q. Have you seen those design drawings? 7 A. Yes. 8 Q. Where are they? 9 A. I have them. 10 Q. You have them? 11 A. Uh-huh. 12 Q. Still? 13 A. Sure. 14 Q. They let you keep them? 15 A. Yeah. 16 Q. Why you as opposed to the company? 17 A. Well, I say "me." I kept everything like that for 18 the company in case. 19 Q. Let me be clear, though, today because I'm going to 20 ask you about documents today. You're not saying today at 21 all that you left the company and took the documents to your 22 house, are you? 23 A. I didn't take anything. 24 Q. You left them at the company? 25 A. Yes.</p>
Page 23	Page 25
<p>1 whether to slow that production line down or speed it up, 2 depending on the demand for your product? 3 A. Well, that's not the way it worked. You always ran 4 the production line just as fast as you could and run it 5 safely and quality area. But you could decide to change and 6 fill a product if you happened to get an unusual large amount 7 of sales and your warehouse got emptied overnight. Not 8 literally overnight but very quickly. 9 Q. You wouldn't have to count on somebody else, a 10 third party, to deliver you the product, you could do it 11 in-house? 12 A. Correct. 13 Q. Which, at least theoretically, you would have more 14 faith in because it would be your people? 15 A. Correct. 16 Q. Okay. So, your memory is that Mr. Blumenthal was 17 interested in you primarily because your experience in 18 aerosols? 19 A. Yes. 20 Q. And so, at the time you interviewed with him, the 21 plant was just up and running as far as starting to build it? 22 A. It had four walls. 23 Q. Four walls. Just the beginning. Had a foundation. 24 A. Yeah. 25 Q. Who designed it?</p>	<p>1 Q. And so, these DuPont design drawings of the Indian 2 Trail facility, you still think they're at the company 3 because that's where you left them? Is that what you're 4 telling me? 5 A. I said they were DuPont design drawings. They did 6 the design. Now, the actual drawings I'm not really clear 7 on. They could have been done by a local architect. But the 8 basic design was furnished by them. 9 Q. Is there a name on the drawings? 10 A. Maybe. I don't remember. 11 Q. Who did you deal with at DuPont? 12 A. Lots of people. Engineers, salespeople. We had a 13 ongoing relationship with them. 14 Q. What are the names of the people you can recall? 15 A. I don't recall any of them. 16 Q. Not one? 17 A. No. 18 MR. RILEY: Lance, you may not have seen it, 19 it may have gone to Robert or Hector but I had hand-delivered 20 in advance of the deposition a few days ago the full design 21 plat of the Indian Trails facility. I'm not sure if that's 22 what you're getting at but you have that. I have an extra 23 copy here if you would like to see it. 24 Q. (BY MR. LUBEL) You've seen this document recently? 25 A. The one he's referring to?</p>

7 (Pages 22 to 25)

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Case 3:18-cv-00197-RJC-DSC Document 312-4 Filed 09/02/20 Page 8 of 26

2b3350d5-8a08-4f8b-b747-4b66fe0e31f8

James Wells
November 6, 2008

Page 26	Page 28
<p>1 Q. This design drawing of the plant. 2 A. I want to be sure we're talking about the same 3 piece of work. But I literally went and got this layout, 4 sketch of the production area and it was copied and I guess 5 it's already been furnished to you or it will be. 6 Q. Where did you get it? 7 A. The cabinet where all the drawings are kept. 8 Q. What drawings are in that cabinet? 9 A. Layouts. 10 Q. Of what? 11 A. Buildings, structures. 12 Q. For all the Radiator buildings? 13 A. Yes. 14 Q. And so, was there a file that had the drawing of 15 the Indian Trails plant in it? 16 A. Well, everything in that cabinet is Indian Trail. 17 And it's not a file. It's -- those map cabinets are about 18 6 inches or less deep but they're big so you can lay out a 19 full blueprint in there. 20 Q. They're blueprints? 21 A. Yeah. 22 Q. How many blueprints were in there, that 6-inch 23 deep -- 24 A. Well, I don't know, six or seven drawers. There's 25 lots of blueprints.</p>	<p>1 manager and started in, what, '72 or so, you waited on that 2 plant to be constructed, right? 3 A. Yes. 4 Q. And then your plant started to make Liquid Wrench? 5 A. Yes. 6 Q. And then at some point you phased out Charlotte, 7 correct? 8 A. At the time that we began to make the Liquid 9 Wrench, they stopped. 10 Q. When was that? 11 A. It was a two step process. The deodorized was 12 first and that was in '72. The raffinate formula was, I 13 think, '73. 14 Q. So, you think in '72 the deodorized Liquid Wrench 15 was moved from Charlotte to your plant, right? 16 A. I'm pretty sure of it, yes. 17 Q. And then in '73, the raffinate formulation was 18 moved from Charlotte to yours? 19 A. I think '73. 20 Q. All right. Are you confident and comfortable 21 saying that at least by 1973 that all the Liquid Wrench was 22 manufactured at the Indian Trail facility? 23 A. I'm confident to the extent that I think '73. At 24 the very latest '74. But it may have been '73. 25 Q. Let's just say in the '73, '74 time period, are you</p>
Page 27	Page 29
<p>1 Q. For things such as what? 2 A. Buildings, maybe additions, tank farms. 3 Q. Pipelines? 4 A. Pipelines, roads. 5 Q. All this having to do with Indian Trail, correct? 6 A. Correct. 7 Q. Now, what happened to the documents for the 8 Charlotte facility? Do you know? 9 A. Most all of them were thrown out. 10 Q. Did you physically see them thrown out? 11 A. No. 12 Q. Okay. Did you order somebody to throw them out? 13 A. No. 14 Q. How do you know they were thrown out? 15 A. I was told that. 16 Q. Who told you that? 17 A. I don't remember. 18 Q. The Charlotte facility made Liquid Wrench, correct? 19 A. The Charlotte facility had made Liquid Wrench prior 20 to Indian Trail taking over the production. 21 Q. Right. So, if we look back from 1941 until, what, 22 the early Seventies, the Charlotte plant, the one you did not 23 work at, is where Liquid Wrench was manufactured, right? 24 A. That's correct. 25 Q. And then when you got to Radiator as the plant</p>	<p>1 comfortable with that? 2 A. Yes. 3 Q. So, by at least '74, all of the Liquid Wrench for 4 Radiator Specialty Company was made at Indian Trails where 5 you worked? 6 A. The short answer is yes. Long answer is as you 7 know, there are other Liquid Wrenches, three and four, and I 8 had to stop -- and two -- to make sure that the two, three, 9 and four were not in Charlotte and I think they were not. 10 So, I think the answer is yes. '73, '74 all Liquid Wrenches, 11 deodorized and raffinate based, were at Indian Trail and no 12 more production was taking place in Charlotte. 13 Q. Of Liquid Wrench? 14 A. Of Liquid Wrench. 15 Q. What did they continue to make over there after '73 16 or '74? 17 A. They made a variety of awkward and difficult 18 things. Paste, hand cleaners, items that were small in 19 volume, difficult to make, and items that we really didn't 20 want to move to Indian Trail. 21 Q. Items that had -- the sales volume was lower? 22 A. Yes. 23 Q. They were kind of one offs, so to speak? 24 A. They were kind of what? 25 Q. One offs as opposed to huge production lines where</p>

James Wells
November 6, 2008

Page 30

1 you sold a bunch of stuff?
2 A. Yeah. There was some small production lines but
3 only one or two, not many.
4 Q. So, the real production of products for mass
5 marketing was done by the Indian Trails facility, correct?
6 A. Yes.
7 Q. Once Charlotte shut it down?
8 A. Well, not exactly. The Indian -- the Liquid
9 Wrench, as we already discussed, but the aerosol items were
10 all being done outside. So, they were brought in to house as
11 quickly as possible.
12 Q. But if we look at Charlotte in 1972, that plant,
13 what was it making?
14 A. What was it making?
15 Q. In 1972, when you first started at the company?
16 A. It made the Liquid Wrenches. And it made, as I
17 said a moment ago, a lot of small items like they would fill
18 small tubes, assemble nuts and bolts and little plastic
19 boxes. Just small runs of specialty items almost.
20 Q. Cleaners?
21 A. There was, I think -- yes. There was a cleaner and
22 there was a -- like a dressing for a vinyl top for your car,
23 a -- maybe a brake -- some kind of a brake product, stop the
24 noises on your brakes when you use them on a car.
25 Q. How many different products were they making back

Page 31

1 then?
2 A. The list of product numbers was in the hundreds but
3 that involved lots of small part numbers that came out of the
4 rubber operation. Each little O ring had a different part
5 number. So, that swelled the numbers. That number would not
6 be representative of what the business was.
7 Q. So, you think it was in the hundreds?
8 A. Yes.
9 Q. The total number of products?
10 A. Yeah. Including those O rings and small rubber
11 products.
12 Q. In the hundreds you're including it or you're not
13 including it, the O rings?
14 A. Am including it.
15 Q. You're am. Okay. If we take out the O rings and
16 those little small parts you're talking about, how many
17 products did y'all make?
18 A. A product might exist in more than one size
19 container. Could be three or four or five, as you've seen in
20 Liquid Wrench. But about a hundred.
21 Q. About a hundred different products were made?
22 A. Including the various sizes, that's my
23 recollection.
24 Q. If we take out the various sizes, how many products
25 were made?

Page 32

1 A. I'm going to say --
2 Q. Like if we say Liquid Wrench is a product --
3 A. Yes. I'm going to say -- this is a little bit of a
4 guess -- maybe 50 or so that were major products, not the
5 little onesies and twosies.
6 Q. Fifty or so major products. And how many patents
7 did they have on those 50 or so major products?
8 A. None that I know of.
9 Q. No patents?
10 A. I don't -- none that I know of.
11 Q. Who invented these products? Did they buy them
12 from inventors?
13 A. The original -- the original product that was sold,
14 which was a radiator sealant, I believe was invented by a
15 local individual who had a little shop, Tin Smith or
16 something like that. The rest of them I don't know who
17 invented them.
18 Q. Who invented Liquid Wrench?
19 A. I don't know.
20 Q. Well, did your company invent it; or did they buy
21 it?
22 A. I don't know.
23 Q. Nobody was able to tell you that?
24 A. I never asked.
25 Q. Who would we ask at Radiator Specialty Company if

Page 33

1 we wanted to find out who invented the product?
2 A. Most of the people who were there that would know
3 when I went there are dead. So, I don't know.
4 Q. I'm not asking you about dead people. I'm asking
5 you who you would call today to ask who invented the product.
6 A. I don't know. I don't have a name.
7 Q. Who's paying you the thousand dollars a month? Who
8 issues your check?
9 A. Radiator.
10 Q. Who from Radiator?
11 A. Well, it's issued out of the accounting department.
12 Q. Who over there do you know? Do you know anybody at
13 Radiator?
14 MR. RILEY: I apologize.
15 MR. LUBEL: Your lawyer thinks he's on the
16 beach.
17 Q. (BY MR. LUBEL) Can you answer my question?
18 A. Well, I know lots of people at Radiator. But
19 people who were there or who were in a position to know
20 something like that, I don't know of anyone.
21 Q. So, the company doesn't know where the products
22 came from?
23 A. I don't.
24 Q. I'm asking you if the company knows where the
25 products came from?

9 (Pages 30 to 33)

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800-971-1127

James Wells
November 6, 2008

Page 34	Page 36
<p>1 A. There are no -- there's no records anywhere that 2 says, well, we got this product from a company. The only -- 3 the only product that I know about the evolution is the 4 Engine Brite, engine degreaser and there were a couple more 5 that came to us through the purchase of an outside company. 6 Q. Let me make sure we're communicating. You told me 7 that if we excluded the different sizes of the products and 8 we took out little small products like O rings, this company 9 made about 50 or so major products. Do you recall that? 10 A. I said that's my best recollection. 11 Q. So, are you telling anybody that's watching you 12 that the company cannot go to a book or a safety deposit box 13 or some other source to find out who invented the products or 14 how they got their hands on them? 15 A. I don't know and I don't know of any place that one 16 would go to find that kind of information or any person. 17 Q. That doesn't surprise you? 18 A. I guess I never thought about it. 19 Q. Well, think about it. You got a company that's 20 been in business for how many years? 21 A. Since 1924, I believe. 22 Q. Over 80 years, right? 23 A. Whatever the math is, yeah. 24 Q. A family-owned business, right? 25 A. Yes.</p>	<p>1 Do they have an office? 2 A. They do have an office in Charlotte. 3 Q. What do they do at that office? 4 A. I don't really know. I can guess at it, but that's 5 all I can do. 6 MR. RILEY: Don't guess. 7 Q. (BY MR. LUBEL) Have any of them been involved in 8 business with the company? 9 A. Well, one of them at one time was president. 10 Q. Alan -- 11 A. Yes. 12 Q. -- Blumenthal? 13 A. Yes. 14 Q. You have any reason to believe he's no longer the 15 president or active in the company? 16 A. He left that job, I'm going to say, about 2000. 17 Maybe -- yeah. About 2000. 18 Q. So, have all the Blumenthal relatives kind of just 19 gone somewhere else and collect paychecks, have nothing to do 20 with the company? 21 A. I think they're probably some kind of self-employed 22 individuals. I don't know what they do, but they've got, I 23 guess -- I shouldn't guess. I don't know exactly what their 24 function is. 25 Q. Can you name any of the Blumenthal family members</p>
Page 35	Page 37
<p>1 Q. The Blumenthals? 2 A. Yes. 3 Q. Still in their hands, right? 4 A. Yes. 5 Q. And you don't think that that company has some 6 paper trail that talks about in general the products, where 7 they came from, how they got their hands on them? 8 MR. RILEY: Objection. Form. 9 A. As I've already told you, I don't know of anything. 10 Now, if -- a lot of that information had been held in 11 Kologiski's files and got thrown out because he died and 12 somebody else went through that but the answer is still the 13 same. I don't know anyone or any place where documents have 14 been kept. 15 Q. (BY MR. LUBEL) Who would we ask? Are any of the 16 Blumenthal kids still working there or relatives? 17 MR. RILEY: Objection. Form. 18 A. Are any of the Blumenthal kids still -- 19 Q. (BY MR. LUBEL) Employed at Radiator or have 20 anything to do with that company? 21 MR. RILEY: Objection. Form. 22 A. I'm not sure what the relationship is. There are 23 three boys; and to my knowledge, none of them have an office 24 in Indian Trail at the plant. 25 Q. (BY MR. LUBEL) I'm just talking about anywhere.</p>	<p>1 that still work at Radiator Specialty Company? 2 A. To my knowledge, there are none. 3 Q. You know this guy Ron Weiner? 4 A. Yes. 5 Q. Is it Wiener or Weiner? 6 A. Weiner. 7 Q. That's W-E-I-N-E-R? 8 A. Yes. 9 Q. Isn't he married to one of those Blumenthals? 10 A. No. 11 Q. He isn't? 12 A. No. 13 Q. What's he do for them? What's he do for the 14 company? 15 A. He is an attorney, and he has responsibility for 16 human resources. 17 Q. What does that mean? 18 A. Personnel. 19 Q. He hires and fires? 20 A. Well, the people under his organization or his 21 section have that responsibility, to maintain the records and 22 safety. Safety as well. 23 Q. What does Mr. Weiner know about safety? 24 MR. RILEY: Objection. Form. 25 A. I don't know the answer to that.</p>

10 (Pages 34 to 37)

Stratos Legal Services
800-971-1127

James Wells
November 6, 2008

Page 38	Page 40
<p>1 Q. (BY MR. LUBEL) Why would they put him in charge of 2 safety? 3 A. Because safety was tied in with personnel. Perhaps 4 it was just -- that's the way it was done. 5 Q. Okay. When you worked there, did you ever have to 6 deal with him? 7 A. With him? 8 Q. Yes, sir. 9 A. Yes. 10 Q. In what respect? 11 A. Mostly legal lawsuits like this one today. 12 Q. What about the safety stuff? 13 A. We had our own safety program initially; and then 14 at one point, it was decided to put all the safety reporting 15 under one area, namely the personnel department. 16 Q. So, under Mr. Weiner? 17 A. Yeah. Well, indirectly but yes. 18 Q. Well, I'm kind of reading into what you're saying, 19 that he delegated it to somebody else. Who was it? 20 A. Well, there was a local -- at Indian Trail, a local 21 personnel person. 22 Q. Who was that? 23 A. Steve. I can't remember his last name. 24 Q. Okay. Let's go back to this -- these 50 or so 25 products that the company has made for which you don't think</p>	<p>1 A. I don't have knowledge one way or the other. 2 Q. And you don't know how we're going to find out? 3 A. No. 4 Q. There may or may not be documents that answer that, 5 you just don't know? 6 A. If there are, I haven't seen them. 7 Q. Tell me when you went and looked for them, those 8 documents specifically. 9 A. Documents that might show who invented Liquid 10 Wrench? All of the Liquid Wrench documents that I know of 11 that exist anywhere were under my care. 12 Q. That's not my question. When -- 13 A. That was my best answer. 14 Q. Okay. When did you specifically go look for the 15 documents about who invented Liquid Wrench? 16 A. Well, specifically looking for who invented it, 17 I've never looked for that. 18 Q. When did you go look for a book, whether it be a 19 binded book or a three-ring binder or something, a file 20 cabinet that addressed the 50 or so major products, you know, 21 their origin at the company? 22 A. Well, the only book I'm aware of is what was 23 brought to you today where it was date of first sale. And 24 you can look in there for all the products, the part numbers 25 and it gives the date of first sale. It doesn't tell who</p>
Page 39	Page 41
<p>1 there's -- or you don't know whether there's any documents 2 that describe how they came into the company's being, these 3 products. 4 MR. RILEY: Objection. Form. 5 A. I think I said a moment ago I was only aware of a 6 handful that I know how they came in. Now, whether or not 7 there are any documents describing that, I don't know. 8 Q. (BY MR. LUBEL) Who would you ask if you were me? 9 Who would I start with? 10 A. Well, you're probably looking at him. 11 Q. You said you don't know. So, why would -- 12 A. That's true. 13 Q. -- I start with you? 14 A. And if I had to go look, I don't know outside of 15 maybe -- there might be something in one of my file folders 16 that mentioned it. 17 Q. Do you know, or are you just guessing? 18 A. Well, a little bit of both because I haven't looked 19 at those files in a long time; but I was involved in those 20 transactions. 21 Q. What transactions? 22 A. Where we brought in products that had been made by 23 another company somewhere else. 24 Q. Do you know if Liquid Wrench was invented by 25 Radiator Specialty or they bought it from somebody else?</p>	<p>1 invented it. 2 Q. I'm asking you did you ever go look specifically 3 for those kind of documents? 4 MR. RILEY: Objection. Form. 5 A. Who invented it? 6 Q. (BY MR. LUBEL) Or the origin of the products. 7 A. No. 8 Q. Do you have a will? 9 A. Do I have a will? 10 Q. Yes, sir. 11 A. Yes. Personal will you're talking about? 12 Q. Yes, sir. 13 A. Yes, I do. 14 Q. Do you keep that will in a safe place? 15 A. I do. 16 Q. Okay. Is that pretty standard, your understanding 17 of people or -- that it's recommend that they keep it in a 18 safe place? 19 A. That's my understanding. 20 Q. Okay. You think that the documents related to 21 these 50 or so major products such as their formulations 22 would be kept in a safe place? 23 A. All I have is an opinion. 24 Q. What is it? 25 A. I don't think they were kept.</p>

11 (Pages 38 to 41)

Stratos Legal Services
800-971-1127

James Wells
November 6, 2008

Page 42	Page 44
<p>1 Q. Is that the way this company did business? 2 MR. RILEY: Objection. Form. 3 A. I can't -- I can't agree or deny. I've never 4 thought about that question. All I'm telling you is what I 5 know and don't know. 6 Q. (BY MR. LUBEL) So, you don't think that documents 7 related, for instance, to the origin of their business 8 products, that they exist, right? 9 MR. RILEY: Objection. Form. 10 A. I don't think that documents related to the origin 11 of the products, with some exceptions, exist. 12 Q. (BY MR. LUBEL) You don't think that the initial 13 formulas of these 50 or so major products exist? 14 A. Those products which were developed or changed at 15 Indian Trail after 1972, those exist. Anything before that I 16 have no knowledge of. 17 Q. But you think the way Radiator Specialty did 18 business was that they would not keep the initial -- the 19 original formulations of these 50 or so products pre '72? 20 A. I doubt that those type information was kept. 21 Q. Matter of fact, you've went to look for them and 22 you've been told they've been throw away, right? 23 A. Yes. 24 Q. Who told you that? 25 A. Well, I've been told that everything that was in</p>	<p>1 might have said, well, this is something you need to have and 2 just offered it to me. But that never happened. 3 Q. Who are you talking about that offered it -- would 4 have offered it to you? 5 A. Well, anyone who was about to throw it away and I 6 don't know who the individuals were that actually disposed of 7 it. 8 Q. Are you just speculating now? 9 A. I think that's what you asked me. 10 Q. No. I think what you've told me -- correct me if 11 I'm wrong -- is that you've not asked for the formulas before 12 1972, correct? 13 A. That's correct. 14 Q. For Liquid Wrench? 15 A. That's correct. 16 Q. And so, you don't know if they exist or not? 17 A. I do not. 18 MR. RILEY: Objection. Form. 19 Q. (BY MR. LUBEL) And what I'm asking you is: Who at 20 the company would we go ask where the formulas are? I've got 21 to believe -- you tell me if you think I'm crazy -- that 22 there's a book, there's a file, there's something that keeps 23 the historical formulas for these 50 or so major products 24 that the company made over the years? 25 A. I don't believe that book or any facsimile exists.</p>
Page 43	Page 45
<p>1 the Charlotte lab except for one or two files that I got out 2 of Dutch Kologiski's files were thrown out. 3 Q. Okay. We may be missing each other. I'm asking 4 you if you've asked the question where are the formulations 5 for Liquid Wrench before 1972? Have you asked for those? 6 A. I would have asked -- what you want to know, who I 7 would have asked? 8 Q. Who did you ask? 9 A. The man's name was Ken Eade. 10 Q. E-A-D? 11 A. E-A-D-E. 12 Q. Okay. When did you ask him where the formulas 13 were? 14 A. I didn't specifically ask him about the formulas. 15 I'm just asking about the general -- just general information 16 files. 17 Q. Okay. I'm asking specifically about the formulas. 18 Who did you ask for the formulas? 19 A. No. I never asked about the formulas. 20 Q. So, there could be a book that's got the formulas 21 for all the products in it, correct? 22 A. As I said earlier, if there is, I've never seen it 23 nor am I aware that it exists. 24 Q. How would you see it if you didn't ask for it? 25 A. Well, someone may have -- if I didn't ask, somebody</p>	<p>1 Q. And you just say that, I take it -- because you 2 haven't asked for it. You just say that because you think 3 that's the way the company did business, they threw away 4 stuff? 5 MR. RILEY: Objection. Form. 6 A. Well, I'm not going to jump to the way the company 7 did business. All I'm telling you is that I don't know about 8 any records that you're asking about. 9 Q. (BY MR. LUBEL) And you wouldn't know if you didn't 10 go ask, right? 11 MR. RILEY: Objection. Form. 12 A. Not necessarily. As I said a moment ago, somebody 13 might have volunteered and say "you ought to have this." 14 Q. (BY MR. LUBEL) Sir, you got kids? 15 A. Yes. 16 Q. They're grown up now, right? 17 A. Yes. 18 Q. You keep pictures of your kids when they were 19 babies? 20 A. Yes. 21 Q. Don't go look at them very often but when you do, 22 it kind of brings a tear to your eye, doesn't it, for one 23 reason or another? 24 A. I enjoy looking at the kids when they were babies, 25 yes.</p>

12 (Pages 42 to 45)

James Wells
November 6, 2008

Page 46

1 Q. That's right. We do that so we can go back in
2 time. We're proud of our kids and we want to go back and
3 keep a record of it, right?
4 A. I'm not sure why people keep them. Maybe it's just
5 because they enjoy looking at them.
6 Q. That's right. You're telling this jury that out of
7 50 or more or so major products, that they have not kept the
8 formulations over the years, they've just thrown them away?
9 A. I am telling you and anyone else that I'm not aware
10 that they exist.
11 Q. If you had to pick up the phone right now and call
12 somebody over there and say do a search or a manhunt for
13 those documents, who would you call?
14 A. If those documents existed today, they would almost
15 certainly have to exist at the Indian Trail plant because the
16 Charlotte plant is no longer there.
17 Q. Are you telling this jury that the only offices
18 that Radiator had was the Indian Trails facility?
19 A. Today, yes.
20 Q. Today?
21 A. Yes.
22 Q. Did they ever have offices anywhere else?
23 A. Well, Charlotte was the home office.
24 Q. When was it closed -- completely closed?
25 A. I'm not sure when it was closed.

Page 47

1 Q. Just approximately.
2 A. It's been the last few years.
3 Q. So, after you retired?
4 A. Yes.
5 Q. Did they have --
6 A. Shortly after, I think. But the office -- the
7 sales offices were still there until very, very recently.
8 Q. Last couple years?
9 A. Last year, I think.
10 Q. Were the sales offices different than the Charlotte
11 offices?
12 A. The sales offices were in the Charlotte offices
13 which have been there all -- since 1924.
14 Q. Then you got the Indian Trails plant, right?
15 A. Yes.
16 Q. They have offices there, too, right?
17 A. Yes.
18 Q. Where else?
19 A. That's all currently. I say currently. I'm not
20 sure what you're asking when you said "where else."
21 Q. Where else has Radiator had offices other than
22 Charlotte and Indian Trails?
23 A. Well, we had warehousing a couple places.
24 Q. I'm just asking about offices, whatever kind of
25 offices they are. We're going to go down and talk about the

Page 48

1 specifics of them. But I'm just right now I'm trying to get
2 you to give me an answer of all the offices that they've
3 historically had.
4 A. There was a warehouse in Dallas, and someone ran
5 the Dallas warehouse. They had an office.
6 Q. All right.
7 A. There was one in Los Angeles. Same story there.
8 Q. All right. Where else?
9 A. There was --
10 Q. Chicago? Chicago?
11 A. Yes. There was a Chicago office.
12 Q. Where else can you remember?
13 A. That's all.
14 Q. Where was the headquarters located?
15 A. Charlotte.
16 Q. Not Indian Trails, Charlotte?
17 A. Charlotte.
18 Q. Correct?
19 A. You're asking -- you're asking me that question for
20 what period of time?
21 Q. When you retired in 2001, where was the
22 headquarters of Radiator Specialty Company?
23 A. Charlotte.
24 Q. And who was in charge of that headquarters?
25 A. John Huber.

Page 49

1 Q. What was his title?
2 A. CEO.
3 Q. Did he have anything to do with the Blumenthal
4 family?
5 A. What do you mean have anything to do with the
6 family?
7 Q. Was he related or was he just hired by them to make
8 money for them?
9 A. My understanding he was simply hired.
10 Q. All right. So, Mr. Huber was the CEO. He was in
11 charge of the headquarters when you retired in 2001, right?
12 A. Yes.
13 Q. How many buildings were at the Charlotte facility?
14 A. I'm going to say four.
15 Q. And how were they broken down, those four
16 buildings, if you know?
17 A. When you say "broken down," I'm not sure what
18 you're asking me.
19 Q. Did they do different things in different
20 buildings?
21 A. Yes. The sales and accounting, et cetera, was in
22 one building, all the main offices. There was a building
23 which housed the rubber manufacturing. There was a building
24 which housed the traffic cone production. And there was a
25 building that housed the liquid -- any of the nonliquid

13 (Pages 46 to 49)

Stratos Legal Services
800-971-1127

James Wells
November 6, 2008

Page 50	Page 52
<p>1 products that were manufactured in Charlotte. 2 Q. Anything else? 3 A. There was one other building that was -- it's just 4 a storage building, if I recall. 5 Q. What did they store in there, if you know? 6 A. Finished goods. 7 Q. Finished goods? To be shipped out? 8 A. Yes. 9 Q. So, it was more of a warehouse? 10 A. Yes. 11 Q. Who was over that warehouse, that storage building? 12 A. I don't know. 13 Q. Okay. Who was over the fourth building that housed 14 the liquid and nonliquid products? 15 A. I was at one time but only for a year or so. Prior 16 to that, I'm not sure. 17 Q. Okay. What year do you think you were in charge of 18 it? 19 A. 2000. 20 MR. RILEY: Lance, when you get to a stopping 21 point, let me know. 22 MR. LUBEL: Can we do it now? 23 MR. RILEY: Yeah. That's fine. Jim gets a 24 little bit tired and -- 25 MR. LUBEL: Let's do it now.</p>	<p>1 Q. What day of the week was it? 2 A. I'm not sure. 3 Q. You are saying it was in the last seven days. You 4 can't remember what day? 5 A. In the last seven days, yeah. 6 Q. Did you go by yourself? 7 A. Some of it yes. And some of it no. The documents 8 for the layout, I knew where they were. And the fellow who 9 now has custody of them I told him what I wanted. He knew 10 the right drawer to go to. We pulled out several. 11 Q. Who was that? 12 A. His name is Paul Jorganson. 13 Q. What does he do? 14 A. He is the -- in charge of maintenance, run the 15 plant. 16 Q. Does he still work for the company? 17 A. Yes. 18 Q. All right. Did you drive from your house to the -- 19 to a particular facility or office? 20 A. Yes. 21 Q. Okay. Did you do it all in one day? 22 A. Yes. 23 Q. You don't remember which day, right? 24 A. No. 25 Q. You drove from your house by yourself to the</p>
Page 51	Page 53
<p>1 THE VIDEOGRAPHER: Stand by. The time is 2 11:14 a.m. We're off the record. 3 (Recess taken) 4 THE VIDEOGRAPHER: The time is 11:26 a.m. We 5 are back on the record. Beginning of Tape 2. 6 Q. (BY MR. LUBEL) Is there any testimony you've given 7 so far that you need to change to make your testimony 8 truthful and accurate? 9 A. I would add something to it. A week ago or some 10 time in the last several days I was asked by Mr. Riley to 11 make a thorough search for documents even though I've been 12 through the same thing many times before. So, I did go back 13 and I went through, I'm going to say, six or eight file 14 cabinets -- multiple drawer file cabinets looking for 15 documents. I've gone through the lab's file cabinets. I 16 asked the fellow who is currently in charge of the lab if he 17 had any Liquid Wrench documents. And I spoke with my former 18 secretary, if she knew of any documents. And that took about 19 half a day doing all that. That's part of the process where 20 I went to a different office and got those documents for the 21 layout of the production facility. So -- 22 Q. When did you do this? 23 A. When did I do it? 24 Q. What day? 25 A. In the last week.</p>	<p>1 facility, right? 2 A. Right. 3 Q. Which facility? 4 A. There's only one facility. 5 Q. Where did you drive to is what I'm getting at? 6 A. Indian Trail. 7 Q. And then when you got to the office -- did you make 8 arrangements before you went? 9 A. Yes, I did. 10 Q. Who did you talk to? 11 A. Ron Weiner. 12 Q. Why did you talk to him? 13 A. Because the request from Mr. Riley had come through 14 him. 15 Q. I don't understand. 16 A. Mr. Riley had asked Mr. Weiner to have me do an 17 additional search of those areas which might contain 18 documents on Liquid Wrench. 19 Q. How do you know that? Were you part of the 20 conversation? 21 A. No. That's what I was told. 22 Q. Who told you that? 23 A. Ron Weiner. 24 Q. Okay. So, Mr. Weiner called you? 25 A. Yes. At home.</p>

14 (Pages 50 to 53)

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James Wells
November 6, 2008

Page 54

1 Q. And what did he tell you?
2 A. He asked me --
3 MR. RILEY: Jim, hold it. He has an ethical
4 duty to tell you he searched for documents; but if there's
5 any legal advice involved in this, you don't have to answer
6 that.
7 Q. (BY MR. LUBEL) My question is: What did he tell
8 you?
9 A. He told me or he asked me if I would come in and do
10 a document search.
11 Q. Okay. Did you ask him why he couldn't do the
12 document search?
13 A. No.
14 Q. Okay. Do you have -- did he tell you why he wanted
15 you to drive over to his offices to do the document search?
16 A. No.
17 Q. All right. So, how long did that conversation
18 last?
19 A. I don't remember but probably five minutes.
20 Q. He just told you he wanted you to look for some
21 more documents?
22 A. Yes.
23 Q. Did he tell you which categories of documents he
24 wanted you to look for?
25 A. He just said Liquid Wrench. Liquid Wrench.

Page 55

1 Q. Okay. And so, what did you take that to mean?
2 Every document on Liquid Wrench?
3 A. Sure.
4 Q. Okay. So, you looked for sales documents, right?
5 A. Sales, formula, anything that had Liquid Wrench
6 associated with it.
7 Q. All right. So, where did you go look for the sales
8 documents?
9 A. Well, I knew I didn't have any. But I looked
10 through the same files that -- I did have production records,
11 which do -- do production records reflect sales? To some
12 extent.
13 Q. What do you --
14 A. Gross sales.
15 Q. Gross sales?
16 A. Yeah. If there's -- if there's papers that show
17 where you produced, you know, 500,000 cans, then that's
18 indicative perhaps of what the sales are.
19 Q. So, you found those?
20 A. Well, they're there. I saw them.
21 Q. Did you grab them?
22 A. Did I do what?
23 Q. Did you put your hands on them?
24 A. They were in a three-ring binder -- multiple
25 three-ring binders and I opened up and sort of thumbed

Page 56

1 through them and that's all I did.
2 Q. Okay. And did you stick them back in the file
3 cabinet?
4 A. Actually these were on top of the filing cabinet.
5 Q. They were on top? What time period did they cover?
6 A. 1972 to 2000.
7 Q. Just a three-ring binder, right?
8 A. Yeah. About 4 inches thick, yeah.
9 Q. And did it list -- the paperwork in there identify
10 who the products were sold to?
11 A. No.
12 Q. It just -- it was production records, how much
13 product was made?
14 A. Correct.
15 Q. And so, from '72 to '78 what was the production of
16 Liquid Wrench, according to those documents?
17 A. What was the production? Are you asking me the
18 quantities?
19 Q. Yes, sir.
20 A. I didn't stop to add those up. These were daily
21 production records.
22 Q. Right.
23 A. Or monthly actually.
24 Q. Daily or monthly?
25 A. Well, both.

Page 57

1 Q. Okay. So, they were both?
2 A. Yeah.
3 Q. Did it have a cumulative total at the end of each
4 year?
5 A. Those did exist. They're probably there, but I did
6 not look at them.
7 Q. Do they give you a breakdown of sales or production
8 of particular types of Liquid Wrench like the parts numbers?
9 A. Yes.
10 Q. And can you tell us that from your recollection, or
11 do you need to look at the documents to talk about that?
12 A. I can -- I have a feel for what those numbers are
13 but I literally would -- to get them accurate, would have to
14 look at the documents.
15 Q. And I take it that you told Mr. Weiner you found
16 that book or that three-ring binder?
17 A. Now, which three-ring binder are you talking about?
18 Q. These production records.
19 A. No.
20 Q. What were you told to do with it?
21 A. I was just supposed to look for anything that we
22 hadn't already produced.
23 Q. Okay.
24 A. And these binders of daily production records did
25 not seem to be anything that anyone would have any interest

15 (Pages 54 to 57)

Stratos Legal Services
800-971-1127

James Wells
November 6, 2008

Page 58	Page 60
<p>1 in. 2 Q. That's what I'm trying to find out. Who told you 3 nobody would have an interest in it? 4 A. No one. 5 Q. You just did that on your own? 6 A. I did. 7 Q. Anybody give you any direction on what would be of 8 interest in the lawsuit -- this particular lawsuit? 9 MR. RILEY: Again, to the extent that we're 10 talking about attorney advice, that's privileged. But you 11 can answer the question. 12 A. I'm not sure what may have been told me. I don't 13 recall anything specific. 14 Q. (BY MR. LUBEL) I take it before you did this 15 document search, you weren't aware of the formal pleadings 16 specific to this lawsuit, were you? You hadn't read the 17 lawsuit? 18 A. I read -- I may have read some of it or all of it. 19 Q. Well, did you or didn't you? 20 A. Well, when you say "formal pleadings," if you'll 21 show me a copy of what you're asking me about, I can tell you 22 whether I read it or not. 23 Q. Do you know what the claims and defenses of this 24 lawsuit are? 25 A. I know in general what the claims are.</p>	<p>1 A. Cowey and Orio. 2 Q. And who? 3 A. Orio. 4 Q. Who's Orio? 5 A. It's the man's name. 6 Q. I know who Cowey is because I represented him. You 7 remember that? I took your deposition. 8 A. I do. 9 Q. Is Orio represented by somebody else? 10 A. I don't know who represented him. 11 Q. But it was your deposition? 12 A. Yes. 13 Q. Okay. Have you reviewed any depositions other than 14 your own? 15 A. No. 16 Q. Are you familiar with Radiator Specialty Company's 17 defenses in this lawsuit -- specific to this lawsuit? 18 A. When you say "defenses," I really don't understand 19 enough of the legal workings to -- what does that mean? 20 Q. Did you have a conversation with anybody from 21 Radiator Specialty Company about what their position was in 22 this lawsuit? 23 MR. RILEY: Anything to do with legal advice 24 from your attorneys, general counsel, or with me, that's 25 privileged. You don't answer that. But you can answer</p>
Page 59	Page 61
<p>1 Q. Did you learn that from talking to the lawyers? 2 A. Probably. 3 Q. Okay. You haven't read the formal lawsuit itself, 4 the paperwork, have you? 5 A. Show it to me and I will tell you. 6 Q. I don't carry it around everywhere I go. I mean, 7 tell me what you've looked at. 8 A. Well, I've looked at so many different things and I 9 don't always -- able to tell you what -- how it's titled. 10 Q. Tell me what you can remember you looked at. 11 A. There was a hundred and I think it was twenty-six 12 items that we were asked to review and comment on. I looked 13 at those a couple of times. Could have been something else. 14 Q. Tell me anything else you remember looking at other 15 than the 126 items. 16 A. Are you asking me in preparation for this 17 deposition? 18 Q. Anything having to do with this lawsuit, whether 19 you were preparing for the deposition or not. 20 A. I looked at labels that we had produced earlier. I 21 looked at documents such as the Foster D. Snell documents. 22 That's what comes to mind. 23 Q. Did you review any depositions? 24 A. I did. 25 Q. Whose?</p>	<p>1 anything else. 2 A. There was some discussion about what Radiator was 3 doing in defense of this lawsuit and -- 4 Q. (BY MR. LUBEL) What was it? 5 A. Well, I think what I just heard was that that's an 6 area that I really should not go into. 7 Q. Who did you talk to about it? 8 A. Mr. Riley. 9 Q. I'm not asking you about conversations with 10 Mr. Riley. Have you talked to Mr. Weiner -- 11 MR. RILEY: Thank you. 12 A. No, not that I recall. 13 Q. (BY MR. LUBEL) -- about this case other than 14 you're coming to look at documents? 15 A. We had a discussion about some of the -- 16 MR. RILEY: If it's legal advice, Jim, that's 17 privileged. He's your attorney. 18 A. Okay. I'll just stop right there. 19 Q. (BY MR. LUBEL) Are you taking the position that 20 Mr. Weiner is your lawyer? 21 A. No. I think Mr. Riley is my attorney, and that's 22 my understanding for some time. 23 Q. I'm asking you about Ron Weiner. Is he your 24 lawyer? 25 A. No. Mr. Riley is.</p>

16 (Pages 58 to 61)

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800-971-1127

James Wells
November 6, 2008

Page 62	Page 64
<p>1 Q. I'm not asking you about Mr. Riley. Does Mr. Ron 2 Weiner represent you in your capacity as a witness -- 3 A. No. 4 Q. -- as a lawyer? 5 A. No. 6 Q. Mr. Riley, you think, is your lawyer, right? 7 A. I do. 8 Q. So, I want to ask you about your conversations with 9 Mr. Weiner. He's -- he's an executive at the company, 10 correct? 11 A. Yes. 12 Q. Have you talked to him about the company's position 13 in this lawsuit? 14 MR. RILEY: Jim, Ron Weiner is the general 15 counsel. He's in charge of the litigation. That's 16 privileged. 17 MR. LUBEL: Are you instructing him not to 18 answer? 19 MR. RILEY: On privileged material in terms of 20 what he talked to his lawyer in-house, yes. 21 MR. LUBEL: Are you instructing him not to 22 answer my question? 23 MR. RILEY: Correct. He can say if he talked 24 to him. He just can't say what he talked to him about. 25 Q. (BY MR. LUBEL) Sir, what is Radiator Specialty</p>	<p>1 interest in the company, as far as you know? 2 MR. RILEY: Objection. Form. 3 A. No. That's not correct either. 4 Q. (BY MR. LUBEL) What do you think they do for the 5 company? 6 A. Two of them, to my knowledge, don't do anything. 7 One of them I just happened to run into recently and he was 8 speaking with another individual and my understanding was it 9 had to do with the business. Now, beyond that, I can't tell 10 you anything. 11 Q. What is he doing with the business, this other one? 12 A. What was -- 13 Q. Who are you talking about, the other one? 14 A. This was Alan. 15 Q. This was Alan? 16 A. Yes. 17 Q. He used to be in charge, right? 18 A. Yes. 19 Q. What do you-- what's your understanding of what 20 he's doing with the company now? 21 A. Nothing. 22 Q. What did you overhear him say? 23 A. Nothing. 24 Q. So, they just own the company and don't do anything 25 with it, as far as you know?</p>
Page 63	Page 65
<p>1 Company's defense in this lawsuit? 2 A. I don't know. 3 Q. Okay. Can you speak specifically to what 4 Mr. Oakley's claims are in this lawsuit? 5 A. My understanding is that he had an exposure to 6 Liquid Wrench and that as a result of that developed cancer 7 and that is his claim. 8 Q. Do you know the specifics of his claims, the 9 details? 10 A. I do not. 11 Q. Do you know if anybody within Radiator Specialty 12 Company knows the details of those claims? 13 A. I would expect that Mr. Weiner would know that. 14 Q. Anybody else? 15 A. I would be surprised if anyone else knew that. 16 Q. Like these Blumenthal kids that own the company 17 now, you wouldn't expect them to know, would you? 18 A. I would not. 19 MR. RILEY: Objection. Form. 20 A. I would not expect them to be involved. 21 Q. (BY MR. LUBEL) Your understanding of their role in 22 the company is just to collect paychecks, correct? 23 MR. RILEY: Objection. Form. 24 A. I don't even know that they collect a paycheck. 25 Q. (BY MR. LUBEL) They just have given up complete</p>	<p>1 A. As far as I know they do not on a day-to-day 2 operation. 3 Q. They just go to board meetings, as far as you know? 4 A. I don't even know they do that, but I would guess 5 that they did. 6 Q. Have you ever attended a board meeting? 7 A. No. 8 Q. Let's go back. 9 MR. RILEY: Lance, I don't mean to interrupt 10 you but I'll give you the option. I'm certainly willing to 11 continue on with the deposition. I've only instructed him to 12 answer one question pertaining to privilege. There's an 13 option of recessing and going to the Court for a ruling. I 14 just assume defer that and let you have a full examination of 15 Mr. Wells unless you would prefer to do otherwise. 16 MR. LUBEL: I'll tell you what's troubling me. 17 Okay? I'm still not satisfied with the production of 18 documents in these cases. Okay? A few documents seems like 19 every lawsuit get produced by both U.S. Steel and Radiator, 20 different ones. I've never been able to get to the person 21 who's looked specifically for documents like formulations, 22 who says specifically "I looked for them. I asked for them. 23 I turned over every stump." 24 MR. RILEY: Jim Wells is the one who looked. 25 MR. LUBEL: Well, the testimony is what the</p>

17 (Pages 62 to 65)

Stratos Legal Services
800-971-1127

James Wells
November 6, 2008

Page 66	Page 68
<p>1 testimony is. My point is -- 2 MR. RILEY: He looked for all -- anything 3 related to Liquid Wrench and he's done it repeatedly. 4 MR. LUBEL: Where is this book, this sales 5 book? 6 MR. RILEY: I just brought it here. The one 7 that we had produced -- 8 MR. LUBEL: I'm talking about the one he's 9 talking about where he's got -- 10 MR. RILEY: The production? 11 MR. LUBEL: Yeah. The production book that he 12 said he got, he put back in the -- he went to look for all 13 Liquid Wrench documents, whatever that means, and then he 14 found it and then he just stuck it back in the -- on top of 15 the cabinet. 16 MR. RILEY: If you think that's relevant, 17 we'll produce it. Doesn't have anything to do with formula. 18 Doesn't have anything to do with direct sales to any of the 19 employers. But if that's something that you think is 20 relevant -- just like we had produced the Liquid Wrench line 21 at Indian Trails and y'all wanted other areas of the plant 22 unrelated to Liquid Wrench, I got it for you. 23 MR. LUBEL: Okay. 24 MR. RILEY: Anyhow, it makes more sense to go 25 forward.</p>	<p>1 formula, 8-ounce was the only thing being produced a hundred 2 percent of its sizes. Does that help you? 3 Q. It does. But I'm trying to learn a little bit 4 about your internal market share. I mean, was the 8-ounce 5 Liquid Wrench the product that you sold the most out of all 6 the sizes of Liquid Wrench? 7 A. Well, again, you have to ask me -- are we going to 8 set aside the deodorized and talk about the raffinate formula 9 only? 10 Q. No. I'm just asking you right now was the 8-ounce 11 Liquid Wrench sold more than all the other Liquid Wrenches in 12 different sizes? 13 A. No. 14 Q. What was sold the most? 15 A. The most sold was the little 4-ounce can -- and I'm 16 quoting from memory -- of deodorized. 17 Q. Okay. So, out of all the different size containers 18 of Liquid Wrench between 1972 and 1978, you believe that the 19 4-ounce can sold the most? 20 A. Yes. 21 Q. By how many orders of magnitude? What was the 22 difference? 23 A. Compared to the 8-ounce that you're asking me 24 about, probably maybe a hundred to one. And that's just a 25 snap comment.</p>
Page 67	Page 69
<p>1 MR. LUBEL: Let's try that. 2 Q. (BY MR. LUBEL) Can you tell me between 1972 and 3 1978 how much of the 8-ounce Liquid Wrench was sold versus 4 the other size containers from your review of the production 5 records? 6 A. The -- we need to quantify, put limits on this 7 conversation because the 8-ounce was a raffinate only 8 formulation. 9 Q. Whatever is in it, I'm just looking at between 1972 10 and 1978, 8-ounce Liquid Wrench, do those production records 11 tell you how much was produced? 12 A. Yes. 13 Q. And can you help me with a comparison of how much 14 of the 8-ounce was sold versus the other sizes? 15 A. Yes. 16 Q. What is it? 17 A. The 8-ounce was dominate. 18 Q. Can you -- that helped but can you be more helpful 19 on what that means as a percentage of the total Liquid Wrench 20 sales? 21 A. I'm going to say it was the 8-ounce compared to the 22 16, 32, and 34, a gallon. Part of the difficulty in 23 answering this question is the fact that the 16 and the 32 24 were discontinued at some point leaving only the 8-ounce. 25 So, toward the end of the era which we were making that</p>	<p>1 Q. So, the vast majority of Liquid Wrench that was 2 sold around the country was 4-ounce -- 3 A. Correct. 4 Q. -- during this '72 to '78 time period? 5 A. Correct. 6 Q. Is it your testimony that during this '72 to '78 7 time period the 4-ounce was only deodorized version? 8 A. Yes. 9 Q. You did not have a raffinate blend in the 4-ounce 10 container? 11 A. Never. 12 Q. Correct? 13 A. Correct. 14 Q. By the same token, the 8-ounce can that you said 15 was dominate during this time period you told us was only 16 raffinate based, correct? 17 A. Correct. 18 Q. All right. Now, are you able to tell us anything 19 about the production figures pre '72? 20 A. No. 21 Q. So, the notebook that you went and looked at 22 started in '72, you think, right? 23 A. Let me clarify this for you because you've got a 24 misunderstanding. The notebooks, I believe there's one for 25 every year and then there's a page in there for each product</p>

18 (Pages 66 to 69)

James Wells
November 6, 2008

Page 70

1 and entries are made for every day that product was
2 manufactured with comments like number of cases, amount of
3 down time, just that type of information that was totally
4 production oriented.
5 Q. For every year there's a separate notebook?
6 A. Yes.
7 Q. And you think there's a number of notebooks that
8 cover the time period of 1972 through 2001?
9 A. Yes.
10 Q. That's what you saw when you went last week?
11 A. Yes.
12 Q. Right? If we -- if we look at the production
13 records, we're going to see them for, for example, the year
14 1978, right?
15 A. Right.
16 Q. And so, we will know when you last produced Liquid
17 Wrench from the 1978 book that had raffinate in it, correct?
18 A. Correct.
19 Q. And do you recall as you sit here when the last run
20 of production was made in 1978 from looking at the notebook?
21 A. It would be in there; and my recollection is it was
22 in March, April, that period of time.
23 Q. Did you specifically look for it last week?
24 A. No.
25 Q. This date?

Page 71

1 A. No. I did not.
2 Q. You've testified in the past that from your memory,
3 you thought it was March or April, correct?
4 A. I might have. I don't know.
5 Q. I'm trying to find out if you specifically, a week
6 ago when you went and looked at these notebooks, opened up
7 the 1978 production book for Liquid Wrench to see when the
8 last production of it was in 1978?
9 A. I did not.
10 Q. Okay. But you think it would be in there?
11 A. Yes.
12 MR. LUBEL: Jim, obviously I would like to see
13 the books.
14 MR. RILEY: I understand.
15 MR. LUBEL: Thanks.
16 Q. (BY MR. LUBEL) Now --
17 MR. RILEY: It would be nice if I could look
18 at every book a thousand miles away and make the decision but
19 we'll certainly look for it and have Jim send it to me and
20 you and I will go over it.
21 Q. (BY MR. LUBEL) You left the book at Radiator
22 Specialty Company, correct?
23 A. Yes.
24 Q. What building is it in?
25 A. It's called Building No. 1.

Page 72

1 Q. At Indian Trail?
2 A. Yes.
3 Q. What is in Building No. 1?
4 A. It's -- wait a minute. I said No. 1. That's not
5 correct. It's Building No. 2.
6 Q. What's in Building No. 2?
7 A. There are offices and a lot of warehousing of
8 components, empty cans.
9 Q. What does that mean, empty cans?
10 A. Empty cans. I said components.
11 Q. Why do you keep empty cans?
12 A. So we can fill them.
13 Q. It's a warehouse?
14 A. Yes.
15 Q. But there's file cabinets in there?
16 A. Well, the file cabinets are actually located in a
17 locked area.
18 Q. In Building 2?
19 A. Yes.
20 Q. What's that locked area called?
21 A. It's where spare parts are kept. There's an office
22 there.
23 Q. So, there's an office that's under lock and key
24 where this production -- these production books were located?
25 A. Yes.

Page 73

1 Q. And how many file cabinets are there?
2 A. Five or six.
3 Q. What's in each of those file cabinets?
4 A. Obviously they are -- well, not obviously but there
5 are file folders on everything that I kept records on.
6 Q. Tell me what's in the file cabinets. I don't --
7 A. In addition to files on individual part numbers,
8 there are competitors information, supplier information.
9 There are some patent information, some maybe testing on
10 products that we were researching and trying to develop, that
11 type of information.
12 Q. Anything else you can think of?
13 A. There probably is but that's all that comes to mind
14 right now.
15 Q. So, this room is in Building 2, right?
16 A. Right.
17 Q. It's under lock and key?
18 A. It's a caged area.
19 Q. It's a caged area. Who has a key to that room?
20 A. Well, certainly the fellow in charge of maintenance
21 has one and there's a -- the girl that works in there that
22 handles the parts and I'm sure she does.
23 Q. Who is that?
24 A. Beyond that, I don't know.
25 Q. What are their names?

19 (Pages 70 to 73)

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James Wells
November 6, 2008

Page 74	Page 76
<p>1 A. Paul Jorganson, who I mentioned to you earlier. I 2 don't know the other girl's name. 3 Q. You don't know the lady's name? 4 A. No, I don't. 5 Q. But you think they both have keys to that room? 6 A. Yes. 7 Q. And have you looked through every file cabinet in 8 there? 9 A. I've looked through part of every file cabinet 10 because the outside has a label on it. And if it was an 11 organization where I was participating in for -- let's say, 12 it's warehouse fire prevention, something like that, well, 13 you know, I might just pass on that drawer. 14 Q. So, what are the drawers -- how are they labeled, 15 the ones that you thought were relevant to your document 16 search? Tell me what the labels are. 17 A. Product. Products. 18 Q. So, on the outside of the cabinet it said 19 "products"? 20 A. Yes. 21 Q. And how many file cabinets had "products" on the 22 outside? 23 A. Only one file cabinet. 24 Q. One file cabinet. How many drawers did it have? 25 A. Four or five.</p>	<p>1 or A through F or something. The next one will be the next 2 alphabetical sequence. 3 Q. So, you went to the Ls? 4 A. Yes. 5 Q. Right? 6 A. Yes. 7 Q. How many products were in the Ls other than Liquid 8 Wrench? 9 A. I think there was eight or ten files that were 10 either Liquid Wrench or something close. 11 Q. What does that mean, "something close"? 12 A. Well, I don't recall what they were. May have been 13 lithium, you know. White lithium grease. 14 Q. Okay. So, there was Liquid Wrench files, right? 15 A. Yes. 16 Q. And what was supposed to be in those files under 17 "products" under Liquid Wrench? 18 A. Everything that I had kept since 1972 that I 19 thought might have a value to me later on. 20 Q. And how did you have it broken down in the file 21 cabinet? How was it separated? 22 A. Well, there was just a file folder -- a simple 23 manila folder. 24 Q. There was one folder on Liquid Wrench? 25 A. Well, there probably -- there may have been one for</p>
Page 75	Page 77
<p>1 Q. And did this contain documents -- documents on 2 every product the company has ever made? 3 A. No. Only products made at Indian Trail. 4 Q. So, this -- the earliest this file cabinet would 5 have covered was 1972? 6 A. Correct. Let me stop -- let me respond to that 7 differently. The documents produced, for example, to 8 Foster D. Snell came from a file which was marked "regular 9 Liquid Wrench" and I got those from the Charlotte plant. I 10 don't recall whether it was directly from Kologiski or 11 from -- I don't know how I got them. 12 Q. Right now we're just talking about this room that's 13 got documents in it. Okay? 14 A. That's where all this is. 15 Q. Okay. Let's talk about the "products" first, that 16 file cabinet. 17 A. Okay. 18 Q. Is it broken down by the 50 or so major products 19 that the company made? 20 A. Yes. 21 Q. This file cabinet? 22 A. Yes. 23 Q. Okay. And so, when you open up a drawer, how do 24 you know which drawer to open up for Liquid Wrench? 25 A. Typically there are -- you know, it's A through G</p>	<p>1 L104. That's the 4-ounce. And maybe one for L108, which was 2 the 8-ounce. So, maybe L116, which is the other one or 3 maybe -- 4 Q. What was it? 5 A. Maybe the L112, which was the aerosol. 6 Q. Was there? 7 A. Probably. 8 Q. Well, I mean, you did this a week ago. I really 9 need -- 10 A. I was looking for the regular Liquid Wrench, 11 anything that had to do with that formula. 12 Q. I'm just trying to get you to tell me, as you 13 opened up the file cabinet under "products," what you saw and 14 how it was -- how it was separated. Was it done by parts 15 number? 16 A. Sometimes, yes. 17 Q. Okay. Do you remember seeing a file folder for 18 L104? 19 A. I'm not sure. 20 Q. Do you remember seeing a file folder for the 21 8-ounce can? 22 A. Again, there were several file folders there and I 23 was looking for one in particular and I didn't pull them and 24 open the others. 25 Q. Okay. I'm asking you if the file folders were</p>

20 (Pages 74 to 77)

James Wells
November 6, 2008

Page 78

1 broken down by parts number.
2 A. And I said yes.
3 Q. Did you see one for the 8-ounce can?
4 A. I don't recall. I don't think I did, but I don't
5 recall.
6 Q. Did you see one for the 4-ounce can?
7 A. I think so.
8 Q. Did you open it up and look at it?
9 A. No.
10 Q. Okay. Did you see one for a 16-ounce can?
11 A. No, not that I recall.
12 Q. You only saw --
13 A. It was probably there, though.
14 Q. Are you telling the judge and the jury that the
15 only file folder you saw a week ago was on the 4-ounce?
16 MR. RILEY: Objection. Form.
17 A. No. I'm saying there were several of them there
18 but I was looking for one specific file folder and the others
19 I wasn't interested in.
20 Q. (BY MR. LUBEL) How do you know if you weren't
21 interested in them if you didn't look at them?
22 A. I knew what they contained.
23 Q. What's in the 4-ounce file folder?
24 A. Well, it would have been -- I don't know.
25 Q. You don't know because you didn't look at it?

Page 79

1 A. I didn't look at it.
2 Q. Okay.
3 A. It would have been a small folder, probably ten
4 pages or a few more, a few less.
5 Q. How many were there? Are you saying ten?
6 A. Pages in there?
7 Q. Yes, sir.
8 A. Just a few.
9 Q. So, you did look at it?
10 A. No, I didn't. But it was only so thick.
11 Q. Okay. And the label at the top was titled 4-ounce?
12 A. Probably said LI04.
13 Q. Probably?
14 A. Yeah.
15 Q. Are you pretty sure?
16 A. No. I'm not too sure.
17 Q. Okay. So, did --
18 A. I wasn't focusing on all these things that you're
19 focusing on. I was really focusing on the regular Liquid
20 Wrench. That's what -- the file folder said regular, R-E-G,
21 didn't have it spelled out, Liquid Wrench.
22 Q. When is the last time you remember looking
23 specifically in the 4-ounce file folder in this file cabinet,
24 if ever?
25 A. I don't know.

Page 80

1 Q. You don't even know if you've ever done it, do you?
2 A. Well, I'm the one that put files in there or
3 actually my secretary would have filed it had I gave them to
4 her from 1972 forward. So, I probably haven't looked at it
5 since before 2000.
6 Q. Assuming you ever looked at it?
7 A. Well, it -- I would look at it from time to time
8 because we had a lot of problems with the can and can
9 companies. It was someone -- they didn't want to make the
10 cans. And so, that was the big concern during that era.
11 Q. What other file folders can you specifically
12 remember seeing a week ago other than what you've called this
13 regular Liquid Wrench file folder?
14 A. Well, as I indicated to you a moment ago, the
15 production records in these three-ring binders were on top of
16 the file cabinet.
17 Q. I'm still talking about the "products" drawers.
18 A. Yeah.
19 Q. You said there was a "products" drawer --
20 A. Yes.
21 Q. -- that had four or five file cabinets. Remember
22 that?
23 A. Yes.
24 Q. Drawers, I mean.
25 A. Yes.

Page 81

1 Q. Right?
2 A. Right.
3 Q. So, I'm focused on that cabinet first that's got
4 the four or five "products" folders in it.
5 A. Okay.
6 Q. Drawers. What was in there other than a file
7 folder for 4-ounce Liquid Wrench and for regular Liquid
8 Wrench that you recall seeing a week ago?
9 A. I still don't understand the question. There
10 were -- ask me that again. I don't really understand where
11 you're going.
12 Q. You took -- did somebody let you in the room?
13 A. No.
14 Q. You just got a key and went in there?
15 A. It wasn't locked. She was in the office. I just
16 walked in.
17 Q. Okay. You walked in the room, right, by yourself?
18 A. Yeah. It's not a room. It's just an area.
19 Q. I thought you said it was under lock and key?
20 A. I did.
21 Q. Is it?
22 A. I said it was a wire mesh --
23 Q. Cage?
24 A. -- cage. The top is open.
25 Q. Why has it got a cage around it?

21 (Pages 78 to 81)

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Case 3:18-cv-00197-RJC-DSC Document 312-4 Filed 09/02/20 Page 22 of 26

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James Wells
November 6, 2008

Page 82	Page 84
<p>1 A. Because of the tools and change parts that are kept 2 in there. 3 Q. Are you afraid somebody is going to steal it? 4 A. Yes. 5 Q. Have y'all had a lot of employees stealing stuff 6 over there? 7 A. No. 8 Q. What are you worried about? 9 A. Well, at the time it seemed like the better part of 10 valor. 11 Q. Are you suggesting I start locking my computer down 12 with a chain before I leave the office? 13 A. We had some things get gone. 14 Q. All right. At any rate, you walked into the room. 15 Were you by yourself? 16 A. Yes. 17 Q. Did you open the cage to get to these file 18 cabinets? 19 A. When I walked into the cage, the cabinets are 20 located inside this cage -- 21 Q. Were you by yourself? 22 A. -- all lined up. I was by myself. 23 Q. You said that there was file cabinets that were 24 titled "products," correct? 25 A. "Products," yes.</p>	<p>1 part number of Liquid Wrench? 2 A. Yes. 3 Q. Did you see that with your own eyes? 4 A. Well, I'm the one that had them put in there, yeah. 5 Q. No. I'm saying when you went and looked at it a 6 week ago, did you see that with your own eyes? 7 A. Yes. 8 Q. Separate file folders for each Liquid Wrench part 9 number? 10 A. Yes. 11 Q. So, there would have been a file folder for Liquid 12 Wrench 8-ounce, correct? L108? 13 A. Yes. No. Yes. Yes. 14 Q. Yes or no? 15 A. Yes. Yes. 16 Q. Are we sure? 17 A. Positive. 18 Q. Did you look into that particular folder? 19 A. No. 20 Q. Why not? Who told you not to? 21 A. No one. 22 Q. So, it's still there hopefully? 23 A. Yes. 24 Q. At least when you left it a week ago it was still 25 there, right?</p>
Page 83	Page 85
<p>1 Q. In general. It didn't say which product. It just 2 said "products"? 3 A. Correct. 4 Q. So, you had to open up the drawers and find the 5 Liquid Wrench products, correct? 6 A. Correct. 7 Q. You opened up the drawer and went to the Ls, right? 8 A. Right. 9 Q. And you found a section on Liquid Wrench? 10 A. Yes. 11 Q. Okay. How big was that section on Liquid Wrench, 12 total? 13 A. I don't know. Six inches, 10 inches, 12 inches. 14 Q. All right. How was that 6 to 12 inches broken 15 down? 16 A. By various -- I'm going to use the word part number 17 because we would sometimes make a twin pack of the 4-ounce 18 can. And so, that would be a file folder, L104 twin pack. 19 And then maybe you tied a 4-ounce can to a can of engine 20 degreaser. That was a file folder. So, it was various type 21 of folders. 22 Q. By parts number? 23 A. Yeah. They had part numbers. 24 Q. And do you think that there was a part number for 25 each -- pardon me. That there was a file folder for each</p>	<p>1 A. I think so, yes. 2 Q. Now -- 3 A. I said it was there. It should have been there. 4 Q. You've got all the bases covered if it disappears. 5 It wasn't there. I didn't see it. It was there. It should 6 have been there. Which one is it? 7 A. You're asking me to be very precise about a review 8 that I made looking for one file folder which said "regular 9 Liquid Wrench," which had everything pre-assembled over some 10 time period. And that was it. I wasn't interested in L104 11 or L104 twin back. 12 Q. Maybe I'm interested in L108. 13 A. Okay. 14 Q. All right. You've told us earlier that that had 15 the raffinate blend, right? 16 A. Right. 17 Q. Had benzene in it, correct? 18 A. Right. 19 Q. And so, you can understand why I'm interested in it 20 in this lawsuit, right? 21 A. Okay. 22 Q. I'm not jumping on you for not pulling it. I'm 23 just saying I'm trying to get to the bottom of where the 24 documents are and they've called you and asked you to go 25 search for documents, right?</p>

22 (Pages 82 to 85)

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James Wells
November 6, 2008

Page 86	Page 88
<p>1 A. Right. 2 Q. You did it a week ago, right? 3 A. Right. 4 Q. You left your house and you went over to the 5 Radiator Specialty Company offices to look for it, right? 6 A. Correct. 7 Q. The L108, the 8-ounce can, that particular file 8 folder you skipped over, correct? 9 A. Apparently. 10 Q. You went to a regular Liquid Wrench file, correct? 11 A. That's what I was searching for. 12 Q. Right. Does it say -- did it say "regular Liquid 13 Wrench" on the file folder? 14 A. I didn't find it. 15 Q. Where was it? 16 A. I don't know. 17 Q. Did you ask Mr. Weiner where it was? 18 A. Yes. 19 Q. What did he say? 20 MR. RILEY: Objection. Wait a minute. If 21 we're talking about pure location and search for documents, 22 you can answer. If it's advice, you cannot. 23 Q. (BY MR. LUBEL) What did he say about the location 24 of the missing regular Liquid Wrench file? 25 A. He said maybe someone else had it. And so, he</p>	<p>1 folder or file? 2 A. How many documents in that file? 3 Q. Right. Are we talking about 6 inches, 12 inches? 4 A. No. I'm talking about maybe six pages. 5 Q. Six pages? 6 A. Maybe ten but no more than that. 7 Q. Less than ten. Ten or less, right? 8 A. Uh-huh. Yes. 9 Q. What are those ten pages made up of? 10 A. The Foster D. Snell documents and there's probably 11 six or eight of those by itself. There was a formula and 12 some correspondence from U.S. Steel. So, there could have 13 been maybe 15 instead of six or eight or ten. And there was 14 some technical data from U.S. Steel. 15 Q. Anything else? 16 A. That's what I recall. 17 Q. Okay. And just so we're clear, before it went 18 missing, there was a specific file folder in this cabinet 19 under "products" that was titled "regular Liquid Wrench," 20 right? 21 A. Yes. That's correct. 22 Q. That's what it says so you can spot it? 23 A. Yes. 24 Q. Five to 15 pages or so in there, right? 25 A. Correct.</p>
Page 87	Page 89
<p>1 called the lab and asked if they had it. They said no, they 2 didn't have it. 3 Q. So, it's now missing? 4 A. It's now missing. 5 Q. When is the last time you had seen it before you 6 went to hunt for it a week ago? 7 A. Probably the last time we had a lawsuit involving 8 Liquid Wrench. 9 Q. There's been quite a number of those. Which one 10 are you talking about? 11 A. The latest one. 12 Q. Which one is that? 13 A. Probably the Orio. 14 Q. The Orio case? 15 A. I think so. 16 Q. You went to look at the regular Liquid Wrench file? 17 A. I think so. 18 Q. You looked at it and then set it back in there? 19 What did you do with it? 20 A. I would have put it back. 21 Q. Why do you keep going and looking at the regular 22 Liquid Wrench file? 23 A. To review the documents. 24 Q. And what is the volume of documents, as you recall 25 it, the last time you saw it in the regular Liquid Wrench</p>	<p>1 Q. It's now gone? It's vanished? 2 A. Well, at least we couldn't find it the other day. 3 Q. Now, in this "product" section for Liquid Wrench, 4 what other file folders were in there other than or should 5 have been in there other than a regular Liquid Wrench file 6 folder, a file folder for each part number, what -- should 7 there have been a deodorized Liquid Wrench file? 8 A. There could be. 9 Q. Did you look for it? 10 A. No. 11 Q. Do you know one way or the other as to whether 12 there is one? 13 A. No. 14 Q. Do you imagine if there was one, it would be in 15 that file drawer? 16 A. Yes. 17 Q. Why would you have a separate file folder for 18 either regular Liquid Wrench or deodorized Liquid Wrench if 19 you had separate file folders per parts number? 20 A. The regular Liquid Wrench file folder contained 21 those papers that I had received from the Charlotte operation 22 only. All the work that had been done at Indian Trail would 23 have been in a separate folder different from that one. 24 Q. What do we call that one? 25 A. L108, L116, L132.</p>

23 (Pages 86 to 89)

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James Wells
November 6, 2008

Page 90

1 Q. It would be in the individual file folder by parts
2 number?
3 A. Correct.
4 Q. Okay. So, as you recall it, the regular Liquid
5 Wrench file folder that's now missing only contained
6 documents that the Charlotte facility sent you specifically
7 regarding -- what was his name -- Kologiski?
8 A. Kologiski.
9 Q. Right?
10 A. Correct.
11 Q. The other Liquid Wrench documents that did not come
12 from Charlotte would have, you think, been contained within
13 the other file folders?
14 A. Yes.
15 Q. Most likely by parts number?
16 A. Yes.
17 Q. And probably a file folder specific to deodorized
18 Liquid Wrench?
19 A. Yes.
20 Q. Now, do you know if within this file cabinet
21 whether there's any historical document that describes the
22 origin of the product?
23 A. Not to my knowledge.
24 Q. I take it you didn't look through every page of
25 this file drawer, did you?

Page 91

1 A. No.
2 Q. You went straight to the Liquid Wrench -- the
3 regular Liquid Wrench file to see if it was there, right?
4 A. Correct.
5 Q. And then you didn't find it. What did you do? You
6 told us you called Mr. Weiner but what did you do next after
7 you talked to Mr. Weiner?
8 A. Well, after we discussed it and still couldn't find
9 it, it was said that everything that was in that file had
10 already been produced. And so, even though it was -- at
11 least for now, it's a loss. But I think we'll find it sooner
12 or later. But there's nothing in there that hasn't already
13 been produced.
14 Q. That's what Mr. Weiner told you?
15 A. Well, I think I know that of my own but the subject
16 came up between us. We probably -- one of us said it and the
17 other one agreed to it.
18 Q. All right. Who said it, and who agreed?
19 A. I don't know.
20 Q. Let's talk about the -- what specifically would be
21 in the L108 file folder that you didn't look at this last
22 time?
23 A. The information would have been mostly on switching
24 from one can company to another, maybe things concerning the
25 spout and the cap that was on top of it because we -- we

Page 92

1 would have problems with the suppliers, either leak or the
2 spout wasn't made right. It would have been in a file
3 perhaps in the L108 or any of the others.
4 Q. Would you expect the formula to be in there?
5 A. Probably not.
6 Q. You wouldn't expect the formula for that parts
7 number to be in its file?
8 A. No.
9 Q. Copy of it?
10 A. No.
11 Q. How about the label?
12 A. Yeah. Label perhaps, yes.
13 Q. Do you know what's in the L108 file?
14 A. I haven't looked at it in a long time.
15 MR. RILEY: Before you go on any further,
16 Lance, I got a request for production at 6:40 p.m. last night
17 where you were asking for things that he just described in
18 terms of the spout and whatever. So, we're going to respond
19 to that.
20 MR. LUBEL: Can we take a short lunch break?
21 MR. RILEY: Certainly.
22 THE VIDEOGRAPHER: Stand by. The time is
23 12:17 p.m. We're off the record. This concludes Tape 2.
24 (Lunch recess) (New court reporter continued
25 after lunch with Volume 2)

Page 93

1 CHANGES AND SIGNATURE
2 WITNESS NAME: _____ DATE OF DEPOSITION: _____
3 PAGE LINE CHANGE REASON
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James Wells
November 6, 2008

Page 94

1 I, JAMES WELLS, have read the foregoing deposition and
2 hereby affix my signature that same is true and correct,
3 except as noted above.

4
5
6 _____
7 JAMES WELLS

8 THE STATE OF _____)
9 COUNTY OF _____)

10
11 Before me, _____, on this day
12 personally appeared JAMES WELLS, known to me or proved to me
13 on the oath of _____ or through
14 _____ (description of identity card or other
15 document) to be the person whose name is subscribed to the
16 foregoing instrument and acknowledged to me that he/she
17 executed the same for the purpose and consideration therein
18 expressed.

19 Given under my hand and seal of office on this
20 _____ day of _____, _____.

21
22 _____
23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____

25 My Commission Expires: _____

Page 95

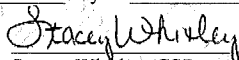
1 STATE OF TEXAS
2 COUNTY OF HARRIS

3
4 REPORTER'S CERTIFICATE
5 ORAL VIDEOTAPED DEPOSITION OF JAMES WELLS
6 November 6, 2008

7
8 I, the undersigned Certified Shorthand Reporter in and
9 for the State of Texas, certify that the facts stated in the
10 foregoing pages are true and correct.

11 I further certify that I am neither attorney or counsel
12 for, related to, nor employed by any parties to the action in
13 which this testimony is taken and, further, that I am not a
14 relative or employee of any counsel employed by the parties
15 hereto or financially interested in the action.

16 SUBSCRIBED AND SWORN TO under my hand and seal of office
17 on this the _____ day of _____, _____.

18
19 

20 _____
21 Stacey Whitley, CSR
22 Texas CSR 3999
23 Expiration: 12/31/2009
24 STRATOS LEGAL SERVICES
25 Firm Registration No.: 484
1001 West Loop South, Suite 809
Houston, Texas 77027
713-481-2180

25 (Pages 94 to 95)

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