

1 NO. 07-CI-008553

JEFFERSON CIRCUIT COURT
DIVISION EIGHT (8)
JUDGE A. C. MCKAY CHAUVIN

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ERIC KEELING, et al.

PLAINTIFFS

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VS. REMOTE DEPOSITION FOR THE DEFENDANT

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ROHM AND HAAS COMPANY

DEFENDANT

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DEPONENT: NANCY M. McCLELLAN

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DATE: APRIL 13, 2021

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JESSICA MYERS, RPR
Coulter Reporting
101 East Kentucky Street
Suite 200
Louisville, Kentucky 40203
(502) 582-1627
FAX (502) 587-6299
www.coulterreporting.com

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22
23
24
25

INDEX

Examination by Mr. Kresge.....	4
Reporter's Certificate.....	179

EXHIBITS

Exhibit No. 10.....	21
(Photograph)	
Exhibit No. 27.....	53
(Pages from transcripts of William Tompkins, III depositions)	
Exhibit No. 17.....	63
(Louisville Electrical Safety Policy)	
Exhibit No. 3.....	81
(NFPA 70E, 2015 Edition)	
Exhibit No. 7.....	101
(Regulation 1910.132)	
Exhibit No. 9A.....	112
(Regulation 29 C.F.R. 1910.1001)	
Exhibit No. 9B.....	125
(Regulation 29 C.F.R. 1910.1025)	
Exhibit No. 9C.....	133
(Regulation 29 C.F.R. 1910.1053)	
Exhibit No. 6.....	138
(KRS 33.285, 337.355 and 337.365)	
Exhibit No. 2.....	146
(Pages from booklet entitled Controlling Electrical Hazards)	
Exhibit No. 8.....	148
(Regulation 29 C.F.R. 1910.333)	
Exhibit 11.....	154
(E-mail to Michelle Mertes from Liz Ammons dated 9-18-20 with attachments)	

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APPEARANCES

FOR THE PLAINTIFFS:

GLEN M. CONNOR
Quinn, Connor, Weaver,
Davies & Rouco, LLP
2700 Highway 280, Suite 380
Birmingham, Alabama 35223
gconnor@qcwdr.com

FOR THE DEFENDANT:

RAYMOND A. KRESGE
Cozen O'Connor
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, Pennsylvania 19103
rkresge@cozen.com

ALSO PRESENT:

SEAN OATES, Moderator
AMY WORDEN

1 The remote deposition of NANCY M.
2 McCLELLAN, taken with the witness being present in her
3 home, Michigan, on Tuesday, the 13th day of April,
4 2021, at approximately 1:10 p.m.; said deposition
5 being taken pursuant to Notice for use in accordance
6 with the Kentucky Rules of Civil Procedure.

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8 * * *

9

10 MODERATOR: It is Tuesday, April 13th,
11 1:10 p.m. and we are now on the record.

12 COURT REPORTER: The witness will now
13 be sworn remotely by agreement of all parties.

14

15 NANCY M. McCLELLAN, after first being
16 duly sworn, was examined and testified as follows:

17

18 EXAMINATION

19

20 BY MR. KRESGE:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. My name is Ray Kresge. I'm an
24 attorney for Rohm and Haas Company, which is the
25 defendant in a lawsuit that has been brought by Eric

1 Keeling and approximately 160 other former or existing
2 production operators at the Louisville plant that had
3 been operated by Rohm and Haas and they were acquired
4 by Dow Chemical Company. This is in the action
5 captioned Keeling versus Rohm and Haas, which is Civil
6 No. 07-005853 (sic). This is a civil lawsuit pending
7 in the Jefferson Circuit Court in Kentucky. Have you
8 ever been -- please state your name for the record.

9 A. Nancy Manning McClellan.

10 Q. And have you ever been deposed before?

11 A. Yes.

12 Q. Okay. When -- when were you deposed
13 last?

14 A. Well, I gave testimony in February.

15 Q. Okay. And do you have a testimony
16 list that you have compiled as part of being an
17 expert?

18 A. No, I do not.

19 Q. Okay. So in February you testified,
20 and how about before February? Have you ever
21 testified in a deposition as -- or at trial as an
22 expert?

23 A. Yes.

24 Q. Okay. And when -- how many -- about
25 how many times have you been -- have you testified?

1 A. Probably five to seven times.

2 Q. Okay. And tell me about the cases in
3 which you've testified. Let's start with February of
4 2021.

5 A. Well, in February 2021 it's a case
6 regarding facility pandemic resilience. I represented
7 the plaintiff, In Flight Services, defendant was
8 Stockbridge Aventura, in the Miami-Dade County in
9 Florida.

10 Q. And what was the specific issue that
11 you were providing an expert opinion on?

12 A. The resilience or the pandemic
13 resilience of the facility in order that it be
14 occupied by people in a safe manner.

15 Q. Okay. And what was the position that
16 you -- what was your opinion in that deposition?

17 A. The facility was not prepared for
18 people to occupy it.

19 Q. Has there been any resolution to that
20 case?

21 A. Yes. My side won.

22 Q. Okay. And did you end up having to
23 testify at all at trial?

24 A. Yes.

25 Q. Okay. And when did you testify in

1 trial?

2 A. In February.

3 Q. Oh, I see. So your February testimony
4 was a trial testimony. Did you have any testimony
5 before that in that case that was deposition
6 testimony?

7 A. No.

8 Q. And what court was that? I know you
9 said you were down in Miami, but what court was it?

10 A. I think it was in the -- it's in the
11 judicial court in Miami-Dade County. I could look it
12 up for you if you'd like.

13 Q. Okay. Well, that's -- that's okay for
14 now. Maybe we can get -- through Mr. Connor we can
15 get a list of your testimony and the specific case and
16 the court in which you testified.

17 Before February 2021 in Miami, did you
18 testify in any trial before?

19 A. Yes, it was probably previous to 2011
20 when I returned to industry working directly for two
21 large corporations.

22 Q. And so you're saying between -- let's
23 say 2012 and 2020, in that period did you testify at
24 all --

25 A. No.

1 Q. -- either by deposition or at trial as
2 an expert?

3 A. No.

4 Q. Let me -- Jess mentioned a couple of
5 ground rules which I know you're familiar with, I'm
6 sure, in terms of having testified before, but if you
7 could just simply wait for my question to be fully
8 asked before answering so the court reporter can take
9 it down. Also, please tell me if you do not hear any
10 one of my questions, I'll be glad to repeat it.
11 Please tell me if you do not understand any one of my
12 questions and I'll be glad to rephrase it. If you
13 answer any one of my questions, I'll presume that you
14 both heard and understood the question. Is all of
15 that understood?

16 A. Yes.

17 Q. And you understand that you're under
18 oath today in this deposition?

19 A. Yes.

20 Q. And you understand that your answers
21 given today in this deposition may be used for any
22 legitimate purpose in this case, including -- and up
23 to and including at trial?

24 A. Yes.

25 Q. Are you on any medication today that

1 would influence your ability to testify?

2 A. No.

3 Q. Okay. So I was going back just so I'm
4 clear, so between 2012 and 2020 had you testified at
5 all as an expert, either in a deposition or trial
6 context?

7 A. No.

8 Q. Okay. So prior to 2011 in what cases
9 did you testify?

10 A. There were multiple cases that I don't
11 have a list of. I didn't keep a record. They were
12 either representing industry, they were Michigan OSHA
13 cases, they were -- I have a -- somewhat of a list
14 that I turned in to Glen. Let me look at this. Okay.
15 Yeah, they were for insurance industry, Michigan OSHA
16 and for manufacturing industry, but I did not keep a
17 record. And that was when I was consulting prior to
18 direct employment.

19 Q. And have you ever testified in a case
20 involving a chemical plant facility?

21 A. No.

22 Q. Have you ever worked for a chemical
23 company?

24 A. Yes.

25 Q. Okay. When was that?

1 A. I worked for AbbVie Biopharmaceutical,
2 and when you produce pharmaceuticals, half of your
3 production is chemical process. It's called active
4 pharmaceutical ingredient production.

5 Q. Other than the pharmaceutical company,
6 have you ever worked for a chemical company?

7 A. Yes, as a consultant.

8 Q. Okay.

9 A. I have consulted to a number of
10 chemical companies.

11 Q. And has that been since you returned
12 to consulting more recently?

13 A. Recently and then prior to 2011 in
14 consulting, so both sides of that time span.

15 Q. And when was it that you resumed
16 consulting more recently?

17 A. 2018.

18 Q. And so from 2018 to the present, what
19 chemical companies have you provided consulting
20 services to?

21 A. Just this one. Just this case.

22 Q. Oh, just this case. So my question
23 was more have you provided consulting services for a
24 chemical company since -- your consulting role since
25 2018?

1 A. I'd have to look through my caseload
2 to be sure.

3 Q. Is all of your consulting work
4 litigation related?

5 A. No. No, I provide field services as
6 well. Actually, yes, I can think of some chemical
7 companies that are in Michigan that I have provided
8 consulting services to since 2018.

9 Q. And just generally speaking, what --
10 what are -- what have you done in terms of providing
11 consulting services to chemical --

12 A. I've --

13 Q. -- companies?

14 A. I've provided hazard assessment for
15 these chemical companies to evaluate what the hazards
16 are, how they should be prioritized and what
17 appropriate response should be in terms of controls.

18 Q. Do you know a Dr. Zack Mansdorf?

19 A. Yes, I do.

20 Q. And how do you know him?

21 A. I know him through volunteer
22 professional associations.

23 Q. And what type of associations do you
24 -- have you come across him?

25 A. He now serves on the board of

1 directors of an organization that I helped found and
2 was chair of for 13 years.

3 Q. And what is Dr. Mansdorf's reputation
4 in the field of industrial hygiene?

5 A. He has a very solid reputation.

6 Q. And what is Dr. Mansdorf's reputation
7 in the field of chemical protective clothing?

8 A. That I am not aware of.

9 Q. For purposes of our case, did you
10 speak with any plaintiffs?

11 A. No, I did not.

12 Q. Did you review any deposition
13 testimony that exists in this case?

14 A. Yes, I did.

15 Q. Okay. Other than Mr. Tompkins'
16 deposition, which you cited in your report --

17 A. Mm-hmm.

18 Q. -- did you review any other deposition
19 testimony in this case?

20 A. Yes. There were two depositions that
21 I reviewed in preparation for this case, and it's the
22 Beam deposition, B-E-A-M.

23 Q. So other than Mr. Beam's deposition
24 and Mr. Tompkins' deposition, did you review any other
25 depositions in consulting in this case?

1 A. No, I have not.

2 Q. What -- what chemicals are made at the
3 plant at Louisville, Kentucky, that's at issue here,
4 the plant that Rohm and Haas had owned and that Dow
5 acquired?

6 A. Methacrylates or it appears the basis
7 for glues, adhesives.

8 Q. And are you aware of any other
9 chemicals that are -- have been made at the Louisville
10 plant either by Rohm and Haas or by Dow Chemical?

11 A. Yes. According to the PPE grids,
12 that's clear indication of the materials that are
13 being used and produced at the facility.

14 Q. And what -- what is your understanding
15 of what the plaintiffs in this case did at work?

16 A. They donned or put on personal
17 protective equipment prior to their shift and then --

18 Q. I'm interested in terms of what they
19 did during their job --

20 A. Oh.

21 Q. -- their workday. I'm not talking
22 about your report yet.

23 A. Oh.

24 Q. I'm just talking about generally what
25 was it that -- what is it and what was it, has it

1 been, that the plaintiffs did as part of their
2 workday?

3 A. They were operators and so they had a
4 multitude of tasks that they performed, also outlined
5 in the PPE grids.

6 Q. And what is your understanding of what
7 the operators -- these plaintiffs who were operators
8 did?

9 A. I'm not sure I understand your
10 question.

11 Q. Well, what did they do during the
12 course of a day?

13 A. Operators typically load materials or
14 move materials in order for the process to go forward.
15 They're operating the equipment that would facilitate
16 reactions in order for the process of synthesizing
17 chemicals to go forward, so they're basically
18 operating the equipment.

19 Q. Well, my question is not typically
20 what operators do, my question is what do the -- what
21 have the Louisville plaintiffs in this case, the
22 plaintiffs who worked at the Louisville plant, what
23 did they do in their job?

24 A. Okay.

25 Q. Can you -- do you know the answer

1 without looking at anything?

2 A. Oh, I do.

3 Q. Okay. What is it -- what did they do?

4 A. They're load -- like I said, they're
5 loading equipment or they're loading materials into
6 the process, they're going to operate controls that
7 either start or stop or change the process, they're
8 going to monitor the process, they're going to make
9 changes as necessary and then they're going to be
10 responsible for making sure that product moves through
11 the process.

12 Q. And what is your understanding as to
13 how the operators actually do that work in terms of
14 loading raw materials into the process and operating
15 the controls and monitor the process? Where are they?
16 What are they -- how are they actually doing that?

17 A. They're going to move in and out of
18 control rooms, they're going to move in and out of
19 reactor rooms, they're going to move about probably a
20 multitude of areas.

21 Q. Well, you're saying probably. Do you
22 know what it is that the Louisville operators have
23 done, whether it be at Rohm and Haas or since the
24 acquisition by Dow?

25 A. I have not had the opportunity to

1 physically watch them specifically in their
2 environment.

3 Q. And what is your understanding of
4 their work environment?

5 A. My understanding is watching and
6 observing and performing hazard assessment firsthand
7 in similar operations for a long period of time in my
8 career.

9 Q. Well, I'm asking what your actual
10 factual knowledge is about the Louisville plant --

11 A. Oh, it's --

12 Q. -- and what the work environment is
13 that these plaintiff operators work in. Do you have
14 any understanding?

15 A. Yes, I do. It's very clear from the
16 hazard assessment within the personal protective
17 equipment grids what the process was, what they were
18 working with, what the task was called upon for, and
19 what was expected of them.

20 Q. Do you have any understanding, though,
21 of their work environment? Are they working in a --

22 A. Yes.

23 Q. -- control room for the most part
24 looking at and working with a variety of different
25 computer screens to run the production processes? Is

1 that what --

2 MR. CONNOR: Object to that to the
3 extent that it's leading, I mean, but go ahead.

4 A. Yeah. I don't agree that there's a
5 way to form a conclusion that they were in a control
6 room for most of the time based on the tasks that are
7 outlined. That's not clear at all.

8 Q. Okay. So you don't have a clear
9 understanding of what -- where the operators
10 physically worked for most of their day or all of
11 their day at the Louisville plant, do you?

12 A. I -- I do have a clear understanding
13 based on experience and based on the personal
14 protective equipment grids that provide very clear
15 analysis of the hazards that these workers were
16 exposed to.

17 Q. Well, did you ever explore with any of
18 the plaintiffs where they worked in order to formulate
19 an opinion about their work environment?

20 A. With a reasonable degree of scientific
21 certainty as a certified and experienced industrial
22 hygienist, there were a multitude of tasks that was
23 required of these workers and sitting in a control
24 room was not the majority of their time.

25 Q. And I just want to understand your

1 factual basis for that conclusion that being in the
2 control room did not constitute the majority of the
3 plaintiff's work time or workday.

4 A. Correct.

5 Q. I want to understand what the basis is
6 for that.

7 A. The basis --

8 Q. Other than -- other than -- you know,
9 other than some kind of general industry knowledge. I
10 want to understand specifically what your
11 understanding is and what your factual basis is for
12 that -- that conclusion.

13 A. If I went through and did task
14 assessment based on the PPE grids, it would disclose a
15 semblance of methods and analysis time, so part of my
16 job as an industrial hygienist is to look at task
17 analysis. The task analysis placed before me, also
18 placed before you, indicate a multitude of
19 requirements of their job that doesn't reflect that
20 the majority of their time was spent in a control
21 room.

22 Q. Now, aren't PPE grids or PPE documents
23 that talk -- they're task specific; correct? You
24 know, if you're going -- you're about to do something,
25 you need to put on a Tyvek suit or you need to put on

1 splash goggles or things like that; correct?

2 A. Correct.

3 Q. All right. And -- and no matter how
4 infrequent a particular PPE specific task is, it's
5 going to appear on the grid; correct?

6 A. Correct.

7 Q. So what basis do you have for
8 ascribing any kind of time during a workday for any
9 particular PPE task that's on the PPE grids?

10 A. Based on my experience in observing
11 PPE being donned on or doffed, taken off, there's a
12 general amount of time that you typically observe in
13 those tasks that a worker must perform in addressing
14 PPE prior to a task and after the task is completed.

15 Q. So if there's PP -- if PPE grids
16 obviously will encompass certain tasks such as
17 encountering a line opening, for example --

18 A. Mm-hmm.

19 Q. -- did you see those in the PPE grids?

20 A. Yes.

21 Q. And let me ask you this, so are those
22 part of the grids that you were -- you're relying on
23 for this conclusion?

24 A. Correct.

25 Q. Okay. So -- so you had different --

1 now, did you understand that the Louisville site had
2 different buildings?

3 A. Yes.

4 Q. Okay. So you would see initials that
5 would -- that would be associated with different
6 buildings, so you'd see KBK with an opening or you
7 would see KB line opening, you would see KAC line
8 opening; correct?

9 A. Correct.

10 Q. And what is your -- and so you're
11 reaching a conclusion about what the operators did and
12 what their work environment was based in part on those
13 line opening grids; correct?

14 A. In part, yes.

15 Q. Okay. And do you know if any of the
16 plaintiffs actually did line opening?

17 A. No, I do not.

18 Q. Now, if we were to look at -- let's
19 take a look at -- if we could show what we've marked
20 as Exhibit -- Exhibit 10. I'll note that many of the
21 documents that we're going to be looking at today and
22 this afternoon are -- have been marked confidential.
23 They have been produced pursuant to the parties'
24 stipulated confidentiality agreement and/or protective
25 order, and so all of those terms are to be adhered to

1 with regard to this deposition.

2 By the way, did you get a copy of the
3 protective order in this case or the --

4 A. Yes, I did.

5 (McCLELLAN DEPOSITION EXHIBIT 10 DISCUSSED)

6 Q. Okay. So those are the terms that
7 we're applying to most everything that we're looking
8 at today.

9 A. May I ask what is the title of
10 Exhibit 10?

11 Q. Exhibit 10 is a photograph.

12 A. Okay.

13 Q. And I'll represent to you that
14 Exhibit 10 is a photograph taken of a control room and
15 this photograph was requested by Dr. Mansdorf as part
16 of preparation of his report.

17 Is this -- this look in terms of what
18 you have -- in terms your own experience look like a
19 typical control room --

20 A. It could be.

21 Q. -- work environment? All right. Do
22 you have any reason to believe that this is not a
23 photo of a control room at the Louisville plant in one
24 of the plastic additives production buildings?

25 A. I have no reason to believe otherwise.

1 Q. And so for these operators who are
2 here, there are two of them, we have blacked out the
3 face of one of them for privacy and as well as his
4 name, is this a control room -- a typical control room
5 kind of work environment that you have experience
6 with?

7 A. Not really. The fact that there's a
8 ventilation unit in the center of the room indicates
9 to me that in terms of hazard assessment that there's
10 high potential for hazards to be present in that room,
11 that it's not just a control room, it could be
12 adjacent to a process where they're worried about
13 contamination inside the room.

14 Q. Do you have any knowledge of that?

15 A. I have no knowledge but I have some
16 clear indication that that's a possibility.

17 Q. Right. All right. And so what we see
18 here are a bunch of different computer screens;
19 correct?

20 A. Correct.

21 Q. And is that your understanding of how
22 chemical operators move chemical production batches?

23 A. Correct.

24 Q. Okay. So they're sitting in a room
25 looking at a computer console?

1 A. Potentially contaminated.

2 Q. And how is -- how is -- go ahead.

3 A. Because it's requiring local -- what's
4 called local exhaust ventilation in that room, you can
5 see by the ductwork coming down into the center of the
6 room, and then you have a ventilation unit attached to
7 it.

8 Q. All right. And what -- is it -- what
9 -- is it your understanding, based upon the documents
10 that you've looked at, that you would ascribe to the
11 percentage of time that the plaintiffs who are
12 operators, reactor operators, work in a control room
13 like this?

14 A. Yes. A potentially contaminated
15 control room but not -- I don't know what percentage
16 of time. Like I indicated before, given the task
17 assessment and the PPE grids, there's no way of
18 knowing what percentage of time, but based on my
19 experience, the majority of their time is not spent in
20 a control room.

21 Q. So it's your -- based -- it's your
22 view that if these operators worked 12-hour shifts
23 that they were outside of that control room for more
24 than 6 of those 12 hours?

25 A. That is very possible.

1 Q. Well, again, do you know one way or
2 the other? You're saying it's very possible. I want
3 to understand what you -- what you actually believe
4 factually to be true.

5 A. I don't have a methods and time
6 analysis.

7 Q. All right. So in the end you really
8 don't know how much time reactor operators in their
9 respective control room, do you, at the Louisville
10 plant?

11 A. In part.

12 Q. Well, what is it that you know
13 factually in part?

14 A. I know factually that their
15 environments that involve all the tasks listed provide
16 exposure to chemicals, and as your photograph
17 indicates here, the control room is another
18 environment that is potentially contaminated.

19 Q. You're saying potentially
20 contaminated. Do you know if it's contaminated? Do
21 you have any factual basis to conclude that this
22 control room environment is contaminated?

23 A. If it's a -- no, I do not.

24 Q. Do you have any factual basis to
25 conclude that any control room environment at -- in

1 any of the buildings at the Louisville plant are
2 contaminated?

3 A. I have evidence that the people who
4 are qualified to assess their spaces believe that it
5 is potentially contaminated because they provided a
6 very expensive engineering control to address
7 potential contamination and it is right --

8 Q. And you --

9 A. -- right here before me.

10 Q. All right. Do you have any factual
11 basis, though, to conclude that any one of the control
12 rooms at the Louisville site has ever been
13 contaminated?

14 A. Potentially contaminated, yes.

15 Q. I'm asking do you have any basis that
16 it is and/or has ever been contaminated?

17 A. That's what I'm saying, yes, it had to
18 have been contaminated in the past for them to employ
19 engineering controls such as the one that you have
20 placed before us because you would not do that unless
21 you had contamination. So, yes, by inference that was
22 a potentially contaminated space and they have
23 addressed it.

24 Q. Right. So as they are working in the
25 space, is there any basis to conclude that it is

1 contaminated?

2 A. I don't know because I don't know if
3 that control is working properly.

4 Q. So do you have any factual basis to
5 conclude that any control room work environment at the
6 Louisville plant has ever been contaminated?

7 A. Yes, I do. It had to have been
8 contaminated at one point. Whether it's contaminated
9 now, I do not know, but it had to have been
10 contaminated at an earlier point in time, so, yes.

11 Q. So this -- you've just basing it on
12 nothing more than this ventilation system that you're
13 referring to?

14 A. Yes.

15 Q. Is that it?

16 A. Correct.

17 Q. All right. And do you know if this
18 ventilation system that's sort of sitting here in the
19 middle of the photograph exists in any other control
20 room at the Louisville plant?

21 A. I do not know. Do you have additional
22 pictures that you would like to share?

23 Q. Well, I'm asking you. I'm asking you
24 what you know. I'm just asking for your knowledge.

25 A. No. This is the only picture that's

1 been provided today.

2 Q. Okay. So let's take a look at -- let
3 me ask you just generally speaking. For any of the
4 other control rooms that exist at the Louisville
5 plant, do you have any factual basis to conclude that
6 any of them had ever been contaminated?

7 A. No, I do not.

8 Q. Do you have any factual basis to
9 conclude that any of the operators who have worked in
10 this particular plastic additives control room that we
11 have here as a photograph as Exhibit 10 have ever
12 actually worked in a contaminated control room? I
13 understand your testimony that this ventilation system
14 is designed from your perspective to prevent
15 contamination, but my question is, you know, have any
16 of these operators ever worked in a contaminated
17 control room?

18 A. With a reasonable degree of scientific
19 certainty as a certified industrial hygienist, yes.

20 Q. And what's the basis for that
21 conclusion?

22 A. Ventilation engineering controls have
23 been implemented for a good reason.

24 Q. Right. It's to prevent any
25 contamination; correct?

1 A. Right.

2 Q. So --

3 A. But you implement it when you know you
4 have a problem unless you took a proactive approach,
5 but this kind of ventilation is a retrofit. This is
6 not an originally engineered ventilation control, this
7 is a retrofit, which is what you would put in after
8 the fact of knowing that you have a hazard present.
9 If it was originally installed because they had a
10 proactive approach and anticipated appropriately that
11 there could be a hazard -- an airborne hazard entering
12 the space, it would have been part of the ventilation
13 system that would have worked at an upstream point in
14 this process. But this is a retrofit, so this
15 indicates to me that they discovered a hazard in the
16 air contamination in this room and they've provided
17 this ventilation system to address it. So, yes, I can
18 say with a reasonable degree of scientific certainty
19 as an industrial hygienist that there was
20 contamination in this room and workers were exposed to
21 it.

22 Q. Do you have any -- can you state with
23 any degree of certainty as to when that occurred?

24 A. No. I do not know.

25 Q. Okay. And -- now, you see here the

1 operators wearing a -- what appears to be a uniform.

2 A. Correct.

3 Q. Do you see that?

4 A. Yes.

5 Q. And is that what you understand to be
6 the work uniform that has been provided in the -- at
7 least since 2009 when Dow -- in or around when Dow
8 acquired Rohm and Haas, is that the work uniform that
9 you understood to be supplied to the plaintiffs?

10 A. I believe so.

11 Q. Okay. And -- now, do you have an
12 understanding as to -- we can take that down. Do you
13 have an understanding as to who else works in the
14 production area other than the plaintiffs?

15 A. No, I do not.

16 Q. Did you -- do you have any
17 understanding that supervisors or team leaders work
18 and are physically present in the production areas?

19 A. In some of the correspondence it did
20 indicate or some of the documents that I reviewed it
21 did indicate that you have engineers, you have tours,
22 you have other people in that space, yes.

23 Q. Right. So let's talk about
24 supervisors or team leaders. Do you have any
25 understanding as part of your report and your analysis

1 as to whether or not there are supervisors or team
2 leaders who are physically present in the production
3 area of the Louisville plant buildings?

4 A. Yes.

5 Q. And do you have an understanding in
6 terms of whatever you've reviewed as part of this
7 record that there are also engineers, plant engineers
8 who are physically present in the production areas of
9 the Louisville plant?

10 A. Correct, yes.

11 Q. Do you also have an understanding as
12 part of the preparation of your report that there are
13 contractors who are present in the production areas of
14 the Louisville plants and the different buildings at
15 different times?

16 A. Correct.

17 Q. Okay. And as part of your preparation
18 in terms of your report, did you obtain an
19 understanding as to what clothing the supervisors or
20 team leaders wear when they are at work and in the
21 production areas of the Louisville plant?

22 A. My understanding is that there was not
23 a requirement for them to wear a uniform.

24 Q. Right. And did you ever obtain an
25 understanding based upon the record that exists in

1 this case that the supervisors and/or team leaders who
2 worked in the production areas actually work and come
3 to work in their street clothes, work in their street
4 clothes and go home in their street clothes?

5 A. Based on duration and intensity of
6 exposure, that is appropriate because their duration
7 of exposure and the likely intensity of exposure to
8 what is in the workplace, uniforms are not mandated.

9 Q. And what is your understanding about
10 the duration of exposure that the supervisors and/or
11 team leaders have in the production areas when
12 compared to, let's say, the reactor operators who are
13 in the control rooms?

14 A. It would be less.

15 Q. And what's the basis for that
16 understanding?

17 A. It's --

18 Q. What's --

19 A. The base --

20 Q. Go ahead.

21 A. It's understanding the roles that are
22 typical in a chemical production facility.

23 Q. Other than what you view to be
24 typical, do you have any factual basis as it pertains
25 to the Louisville plant as to the comparative time

1 that the supervisors and team leaders are in the
2 production areas of the plant when compared to the
3 reactor operators?

4 A. I have not been provided a time and
5 methods analysis of your engineers, production
6 supervisors, tour -- tour guides or whomever that are
7 in the facility.

8 Q. And with regard to the plant engineers
9 compared to the plaintiffs, who are the production
10 operators, if we take a look at the plant engineers,
11 do you have any factual basis to conclude as to how
12 much time they are actually in the production areas of
13 the plant when compared to the operators?

14 A. No, I do not.

15 Q. And how about with regard to the
16 contractors? If we have -- if there are contractors
17 at the Louisville plant, would it not be your
18 understanding that they are actually as contractors
19 there in the production areas for much of the day?

20 A. I don't have any factual way of
21 knowing how much time they're spending in the
22 facility.

23 Q. So you have no factual basis to
24 conclude as to whether or not the contractors who are
25 in their street clothes for the duration of the day

1 and go home in their street clothes are actually in
2 the production areas more or less when compared to the
3 production operators, who are the plaintiffs?

4 A. Correct.

5 Q. Did you also learn as part of your --
6 in preparation for your report that when new
7 operator -- production operators start, people who are
8 in the positions that the plaintiffs have held at the
9 Louisville plant, that they actually for the first
10 several days or several weeks wear their street
11 clothes to and from work and do not -- until their
12 actual work uniforms are created for them and provided
13 to them?

14 A. That period of time was never
15 specified for how long they wait for a uniform that is
16 mandatory.

17 Q. Okay. And did you have an
18 understanding, though, that at least for some period
19 of time new hires into the production unit, which is
20 where the plaintiffs all have worked, that new hires
21 do have a period of time where they are just coming to
22 work in their street clothes and working in their
23 street clothes and going home in their street clothes?

24 A. That time was never specified, so I'm
25 not sure of the accuracy of your statement.

1 Q. Do you have an understanding if there
2 is at least some period of time --

3 A. No, I do not.

4 Q. -- in which new hires --

5 A. No, I do not.

6 Q. Do you have any basis to dispute my
7 statement that new hires have some period of time
8 where they're wearing their street clothes into
9 production areas before their uniforms are provided?

10 A. No, I do not.

11 Q. Do you have any understanding that --
12 as part of the preparation for your report that some
13 operators, regardless of uniforms being provided to
14 them, worked in their street clothes during the course
15 of their day in a production area?

16 A. As part of noncompliance, yes.

17 Q. And did you have any understanding as
18 to whether or not the company ever disciplined any
19 such employees?

20 A. I do not have an awareness of whether
21 discipline occurred.

22 Q. Did you ever learn as part of the
23 preparation of your report that on occasion the
24 uniform company may not have uniforms supplied for
25 particular production operators?

1 A. Based on size, I remember mention of
2 that, yes.

3 Q. And so as a result of that, you know,
4 for those particular days in which a -- the uniform
5 company did not have uniforms for a particular
6 production employee who would be a plaintiff, that
7 that plaintiff would then work the entire day in his
8 or her street clothes; correct?

9 A. That could be an assumption.

10 Q. I'd like to break up the time period
11 between 2002 to 2009 and then 2009 to the present.
12 And the reason I'm saying that is that on April 1,
13 2009, the Dow Chemical acquired Rohm and Haas, and I
14 know that Rohm and Haas Chemicals, a subsidiary of the
15 Dow Chemical company, continues to operate in
16 Louisville, but for ease of our discussion I'm going
17 to refer to the April 1, 2009, to present period as
18 the Dow period and the 2002 to 2009 period as the Rohm
19 and Haas period.

20 A. Okay.

21 Q. Okay. And the reason I'm going back
22 to 2002 is that that's how far this case goes back.
23 So I'm going to look at the Rohm and Haas period first
24 in the 2002 to 2009 period. What is your
25 understanding of what the work uniform materials were

1 comprised of during that time period?

2 A. Cotton.

3 Q. Cotton for the entire time period?

4 A. There's some variation.

5 Q. And what is the -- what is the
6 variation as you understand it to be --

7 A. There might have --

8 Q. -- during -- go ahead.

9 A. There might have been polyester.

10 Q. So for some -- some period of time --
11 do you know when it was that there was some polyester
12 in the clothing for the plaintiffs in -- within this
13 2002 to 2009 period?

14 A. I don't remember the exact date.

15 Q. And then at some point in time is it
16 your understanding that Rohm and Haas converted it all
17 over to all cotton?

18 A. Correct.

19 Q. Okay. And what is your understanding
20 of -- let me make sure we're on the same page. The
21 uniform that we're talking about, whether it be the
22 Rohm and Haas period or the Dow period, was a shirt
23 and a pair of pants; is that correct?

24 A. Correct.

25 Q. Okay. And that's what your opinion is

1 all about, is that shirt and the pair of pants;
2 correct?

3 A. Correct.

4 Q. What was the -- during the 2002 to
5 2009 period, what was the material of the pants?

6 A. I'm not sure it was specified.

7 Q. So do you have any understanding of
8 what the material is that was of the pants in the 2002
9 to 2009 period?

10 A. No, I do not.

11 Q. So is your opinion with regard to work
12 clothes limited to the work shirt?

13 A. No.

14 Q. Okay. So --

15 A. We're --

16 Q. Go ahead.

17 A. We're looking at personal protective
18 equipment that was captive. It needed to be
19 consistent, it needed to be clean, free of charge and
20 eventually it needed to become cotton as their
21 awareness improved with their hazard assessment.

22 Q. So what is it that you're opining
23 about in terms of what you describe as PPE? What is
24 -- what are the -- what is it that you're talking
25 about?

1 A. Personal protective equipment is the
2 first layer -- in this case with uniforms is the first
3 layer of protection from a multitude of hazards.

4 Q. All right. So you're referring to
5 both the pants and the shirt?

6 A. Correct.

7 Q. Is there anything else that you're
8 referring to in your opinion other than the pants and
9 the shirt that were provided to the plaintiffs first
10 in 2002 to 2009 under Rohm and Haas and then later
11 under Dow?

12 A. No.

13 Q. Okay. Now, I know you testified that
14 you don't know what the material composition was of
15 the pants in 2002 to 2009. What was the material
16 composition of the pants in the Dow period 2009 to the
17 present?

18 A. Cotton.

19 Q. Cotton. And let's just focus on 2002
20 to 2009 again, the Rohm and Haas period. Did you
21 learn as part of your preparation of your report that
22 in that period of time that Rohm and Haas allowed the
23 plaintiffs to wear short sleeves?

24 A. Yes.

25 Q. Okay.

1 A. Well, as part of noncompliance.

2 Q. Well, are you -- is it your
3 understanding that Rohm and Haas required long sleeves
4 but that --

5 A. Correct.

6 Q. -- the operators wore short sleeves?

7 A. As part of noncompliance. What was
8 written in the policy and what was written in the
9 documentation was that long sleeves were required.

10 Q. All right. And I just want to make
11 sure we're clear. I'm focused only on the Rohm and
12 Haas period, 2002 to 2009.

13 A. Mm-hmm.

14 Q. Is it your understanding that Rohm and
15 Haas had a written requirement during that period of
16 time that all production operators, all plaintiffs,
17 had to wear long-sleeved shirts?

18 A. Let me look that up. In the corporate
19 personal protective equipment standard dated 2008,
20 Appendix 1 lists personal protective equipment is
21 mandatory. Could you repeat your question --

22 Q. My question --

23 A. -- for me.

24 Q. -- is, is the only thing that you rely
25 on that shows a written requirement by Rohm and Haas

1 in the 2002 to 2009 period that required long-sleeved
2 shirts to be worn by the plaintiffs?

3 A. No.

4 Q. Okay. And so is it your
5 understanding, then, that the long-sleeved requirement
6 came into being after Dow acquired Rohm and Haas in
7 2009?

8 A. Actually, according to the Rohm and
9 Haas personal protective equipment grids for -- that
10 are dated October 28th, 2008, there are requirements,
11 and I will find that, that long sleeves -- this is
12 Document No. EHS 521.004, that long sleeves are
13 required as general protection from the work
14 environment, and that's in the section to be
15 protected, the skin and the arms. So there is written
16 evidence in the period of 2002 to 2009 that long
17 sleeves were required.

18 Q. And where is that again? What's the
19 document number?

20 A. Document number EHS 521.004, and it's
21 the environmental health and safety standard entitled
22 Personal Protective Equipment, and you're looking on
23 Page 367.

24 Q. And what's the title of the document
25 again, please?

1 A. It's entitled Personal Protective
2 Equipment.

3 MR. CONNOR: Nancy, is there a Bates
4 number on it?

5 THE WITNESS: I don't have it --
6 well -- oh, yeah. Wait, no, there's -- it's labeled
7 Exhibit No. 2, when -- this was for the deposition for
8 Tompkins, so it was Exhibit 2 in the Tompkins
9 deposition exhibits, if that helps.

10 Q. And in that particular document you're
11 reading from, it says -- it refers first to disposable
12 sleeves; correct?

13 A. Yes.

14 Q. Like Tyvek and Corex, and it also
15 refers to electrically rated rubber sleeves; correct?

16 A. Mm-hmm. Correct.

17 Q. And so in order to prevent -- shock
18 protection or any kind of electrical protection, you
19 need to have that rubber insulation to the sleeve;
20 correct?

21 A. Correct.

22 Q. Okay. And then what you're referring
23 to says, long sleeves, including static uniforms and
24 lab coats; do you see that?

25 A. Correct.

1 Q. And then in the comments section it
2 says, evaluate need during MOC hazard review or SOP;
3 correct?

4 A. Correct.

5 Q. Right? So it doesn't say that long
6 sleeves are required at all times, it says you have to
7 evaluate and it says here long sleeves, including
8 static uniform. What's a static uniform?

9 A. Static could mean one of two things.
10 It could mean something that is captive or maintained
11 there or it could be what's called an ESD garment,
12 electrostatic dissipating garment. I'm not sure
13 which.

14 Q. All right. And what's a lab coat?

15 A. A lab coat --

16 Q. What's your -- just a normal lab coat?

17 A. A lab coat, yes.

18 Q. And it says here in -- part of the
19 protection reason is for special protection from
20 static buildup; do you see that?

21 A. Sure. That's -- that's --

22 Q. What's the --

23 A. -- an additional use, it's not just
24 static buildup. They're saying including static
25 uniforms, lab coats.

1 Q. Right. But that's what they're
2 specifically referencing, static uniforms and lab
3 coats as part of this --

4 A. Not --

5 Q. -- long sleeve statement?

6 A. I don't agree. I don't think it's
7 excluding uniforms.

8 Q. But where does it say that it's -- if
9 it says here evaluate need during MOC, hazard review
10 or SOP; correct?

11 A. Correct.

12 Q. That's the comment to this -- to this
13 -- to the right of what you're referring to. So that
14 -- so what MOC, hazard review or SOP do you have that
15 states that long sleeves are required at all times for
16 all production operators during any point in time that
17 Rohm and Haas operated the Louisville plant?

18 A. I don't need an MOC or a hazard review
19 or SOP. I have this document that says, long sleeves
20 are required as general protection from the work
21 environment, and it matches the PPE grids that also
22 state the same.

23 Q. But the PPE grids came from Dow;
24 correct?

25 A. Well, it -- it's carried over from

1 2008 Rohm and Haas saying long sleeves are required.

2 Q. Well, where's it say that long sleeves
3 are required?

4 A. In the reference that we just
5 reviewed.

6 Q. Where does it say are required? It
7 says, evaluate need during MOC, hazard review or SOP.
8 Evaluate need, it doesn't say required.

9 A. If it's on this personal protective
10 equipment evaluation, the insinuation is that it's
11 required.

12 Q. But --

13 A. They don't put it here as a
14 suggestion.

15 Q. But there's nothing else -- there's --
16 if you take a look at that particular page, there's no
17 other reference in any of the comments section to
18 evaluating a need. This particular one says, evaluate
19 need during MOC, hazard review or SOP. So my question
20 to you is, what did you look to in terms of MOC,
21 hazard review or SOP to determine that Rohm and Haas
22 required long sleeves to be worn by the production
23 operators?

24 A. When they say evaluate need, it refers
25 to the other circumstances, such as including static

1 uniforms and lab coats. When you're looking at those
2 variations or those deviations from normal work
3 uniforms that should have long sleeves, that's when
4 you're going to evaluate need for what that should
5 look like.

6 Q. But that doesn't -- that limitation
7 that you're imposing on those words, evaluate need,
8 are not stated there; correct? That's just your
9 interpretation --

10 A. And --

11 Q. -- of a document that you didn't
12 write.

13 A. And with a reasonable degree of
14 scientific certainty in not only reading this document
15 but writing these kinds of documents, that's an
16 appropriate inference.

17 Q. But what's reasonable degree of
18 scientific certainty have to do with understanding
19 what some Rohm and Haas person wrote in terms of
20 evaluating need? What does that have to do with
21 scientific certainty?

22 A. I'm assuming that -- with a reasonable
23 degree of certainty that the person who designed this
24 and who wrote this personal protective equipment
25 policy was competent and in good faith effort

1 indicated that long sleeves should be included as
2 general protection from the work environment. That
3 means uniforms.

4 Q. So you're making a lot of jumps here,
5 you know, you're saying that means a uniform. Why
6 does it mean a uniform?

7 A. I'm not sure I understand your
8 question.

9 Q. Why does the long sleeves have to be a
10 uniform?

11 A. I still don't --

12 Q. I can understand --

13 A. -- understand your question.

14 Q. -- a static lab coat -- I can
15 understand a static lab coat being something you have
16 to get from the company, but why is the long sleeve
17 not a street clothes long sleeve?

18 A. Your long-sleeved uniform is dispensed
19 from stores like all the other personal protective
20 equipment. Within the documentation that I was
21 provided, PPE in general is being paid for and
22 dispersed to the workforce through stores, including
23 work uniforms, long-sleeved work uniforms.

24 Q. Where did you get that conclusion,
25 that -- do you know what the Rohm and Haas reference

1 is to stores? Let me just ask that of you.

2 A. I can find that --

3 Q. Well, you tell me now. You're
4 referring to it. Tell me what you understand stores
5 to mean at the Louisville plant.

6 A. It's -- they also call it the crib
7 sometimes in work environments, but --

8 Q. I don't want generalities. You used
9 the word stores and that's a Louisville plant term.

10 A. Okay.

11 Q. I understand that.

12 A. Yeah.

13 Q. What is your understanding of stores?

14 A. It says all PP -- I'm referring to a
15 document that was also -- actually this was the same
16 document. If you look on Page 2 of 13 or I think its
17 Bates number might be Rh 007350. And the very last
18 sentence on that page for protective personal
19 equipment policy states, all PPE used in the plant by
20 employees and visitors should be obtained from stores.
21 PPE obtained by any other means must be approved by
22 EHS department.

23 Q. Okay.

24 A. Uniforms are coming from stores;
25 therefore, it is protective personal equipment.

1 Q. Oh, that's the leap I'm trying to
2 understand. I understand what you read and I
3 indeed -- I understand that, that stores is where PPE
4 is provided and/or stored. So if you need a Tyvek
5 suit, you go to what they call the stores at the
6 Louisville plant and I'm with you on that and I
7 understand that. Where does it say that uniforms are
8 provided at the stores?

9 A. I'm at Page --

10 Q. Okay. So it's your working
11 assumption, then, that since you view uniforms to be
12 PPE, then the uniforms must come from the stores?

13 A. They could come from the stores.

14 Q. Oh, but you just testified that it
15 did. Now you're backing off of that as you were
16 saying it just could?

17 A. I'm saying that it is possible, and
18 that was my original statement.

19 Q. No, I think your testimony was that it
20 came from the stores, just like all the other PPE.

21 A. Uh-huh.

22 Q. Right? That was your testimony. Did
23 you ever determine if the uniforms came from the
24 stores?

25 A. No, I have not.

1 Q. Did you ever determine how indeed
2 uniforms are delivered and where they're delivered
3 to --

4 A. No, I have not.

5 Q. -- at the Louisville plant?

6 A. No.

7 Q. Did you ever determine how dirty
8 clothes are handled? You know, that is dirty, that is
9 worn clothes, not necessarily -- I'm just saying, you
10 know, at the end of the day you've worn them after
11 your 12-hour shift, did you ever determine as part of
12 your report how those clothes were handled?

13 A. I think that the later information
14 that you provided indicated that there was a cleaning
15 service, Cintas --

16 Q. Yes.

17 A. -- that picks up and launders, but
18 when I was forming my opinions, I didn't have access
19 to that information.

20 Q. Did you ever ask for the information
21 as to how the clothes were handled as part of your
22 report?

23 A. No.

24 Q. Did you ever ask to determine whether
25 or not there were any special laundering instructions

1 for purposing of handling the plaintiffs' work
2 clothes?

3 A. No.

4 Q. Do you know if there are any special
5 laundering instructions for handling the plaintiffs'
6 work clothes?

7 A. Not in this case.

8 Q. Do you know what the plaintiffs do
9 with their work clothes once they -- once their
10 workday ends?

11 A. I know that on a weekly basis that
12 they're turned in for laundering.

13 Q. Where are they turned in? Where are
14 they placed?

15 A. In a locker room or wherever they
16 change out into their street clothes.

17 Q. So what do they -- what does that --
18 what do the plaintiffs do at the end of each workday,
19 though? At the end of their shift what do they do
20 with their clothes that they just wore?

21 A. Hang them up in a locker where they're
22 contained and they change into their street clothes
23 and go home.

24 Q. So it's your understanding that they
25 just hang them up in the locker where they have their

1 street clothes?

2 A. Unless they're contaminated and then
3 they turn them in for laundering immediately.

4 Q. Okay. So in the event of a
5 contamination, it goes through a different special
6 procedure; correct?

7 A. No. It would just get turned in
8 earlier for laundering.

9 Q. Where do you see that in any document?
10 Is that -- let me ask you this. What's the basis for
11 your --

12 A. It --

13 Q. -- for your statements here?

14 A. It would depend on the level of
15 contamination. Okay. To qualify what I just said, it
16 would depend on the level of contamination what the
17 worker would do with their clothing. If it were
18 contaminated minimally and the worker threw it in the
19 regular laundry or versus heavily contaminated and the
20 worker bags it and contains it in of itself so that it
21 gets special handling, those are the two likely
22 scenarios.

23 Q. So you just used the word likely. Do
24 you know --

25 A. No, I do not know.

1 Q. -- how contaminated clothes are
2 handled --

3 A. No.

4 Q. -- at the Louisville plant?

5 A. I do not know. Not the specific
6 details, but based on experience in working in this
7 industry, based on experience for likelihood of
8 contamination, those are the most typical routes for
9 how laundry is handled when you have a laundry service
10 like Cintas, which I am well familiar with.

11 Q. But you never -- you never asked to
12 find out --

13 A. No.

14 Q. -- exactly how the clothes are handled
15 at the end of the work shift?

16 A. No, I did not.

17 Q. Now, let me take you to --

18 MR. CONNOR: Ray, if you're shifting
19 gears, would now be a good time for a short break?

20 MR. KRESGE: Yes. Could we -- could
21 we just do one thing, Glen, if I could?

22 MR. CONNOR: Sure, yeah.

23 MR. KRESGE: And then we'll take a
24 break after that.

25 Q. Let me direct your attention to

1 Exhibit 27, please.

2 A. And what is that entitled?

3 Q. He's going to pull it up.

4 MODERATOR: Give me just a second.

5 Q. It's the Tompkins deposition that you
6 read.

7 A. Okay.

8 (McCLELLAN DEPOSITION EXHIBIT 27 DISCUSSED)

9 MODERATOR: I think this is right.
10 Hold on.

11 MR. KRESGE: Yes, it is.

12 Q. If we could, then, Sean, move it to --
13 four pages in. So we'll stop -- let's go three pages
14 in first. There we go. Okay. So that's the -- the
15 second -- let's go back one page just to the cover.
16 So there we're looking at -- Mr. Tompkins was deposed
17 on two days. I know that you read this particular
18 transcript because you cited it in your report, so
19 this is the second day, which is April 25, 2018. And
20 so now let's go to the next page and if we can
21 highlight that answer on the bottom back when we made
22 the -- Line 21.

23 MR. CONNOR: Can you make it a little
24 bigger? Thank you.

25 Q. There we go. Do you see that?

1 A. Mm-hmm.

2 Q. Do you --

3 A. Yes, I do.

4 Q. Do you recall reading that at all as
5 part of your preparation of your report because that
6 is -- I think you cited Pages 36 to 38 but that's
7 Page 39. Do you see that?

8 A. I do.

9 Q. So do you remember reading that,
10 Mr. Tompkins testified on behalf of the company that
11 Rohm and Haas had no requirement to wear long sleeves
12 and that they had short-sleeved shirts?

13 A. Okay.

14 Q. Okay. Do you remember reading that?

15 A. Yes.

16 Q. Okay. And do you have any reason to
17 dispute that statement that Mr. Tompkins testified to,
18 which is that during the Rohm and Haas period
19 short-sleeved shirts were allowed?

20 A. In Mr. Tompkins' opinion, there were
21 no requirements to wear long-sleeved shirts at that
22 time.

23 Q. Well, he's not testifying as to an
24 opinion, he's testifying factually on behalf of the
25 company. So he's not providing an opinion, he's

1 stating what happened, and so he's saying that they
2 had short-sleeved shirts and no long-sleeved shirt
3 requirement. Do you have any reason -- during the
4 Rohm and Haas period.

5 A. Mm-hmm.

6 Q. Do you have any --

7 A. If there's --

8 Q. And, again, Rohm and Haas gets
9 acquired by Dow on April 1, 2009. Do you have any
10 reason to dispute his statement that during the Rohm
11 and Haas period, before April 1, 2009, that the
12 plaintiffs had the option of wearing short-sleeved
13 shirts?

14 A. Yes. Based on the personal protective
15 equipment policy that I just read that indicated that
16 they had a general requirement for long sleeves.

17 Q. And is it your testimony that Rohm and
18 Haas implemented that long-sleeve requirement?

19 A. Could you state that again.

20 Q. Is it your testimony, based upon that
21 one document that you looked at that you cited to us,
22 which is the 2008 PPE policy, that Rohm and Haas
23 implemented a long-sleeved shirt requirement at least
24 in 2008?

25 A. I have no evidence that they

1 implemented what they stated in their own policy.

2 Q. So do you have any knowledge or basis
3 for what the practice was?

4 A. No, I do not.

5 Q. Did you ever inquire about the
6 practice as to whether or not short-sleeved shirts
7 were allowed throughout the time that Rohm and Haas
8 owned the Louisville plant?

9 A. There were documents that indicated
10 short sleeves were part of noncompliance with the
11 policy.

12 Q. Well, was there any policy -- I
13 understand and we may respectfully disagree over
14 whether or not that particular document that you
15 referred to from October 2008 is a policy of
16 long-sleeved requirement, but before that document was
17 there any document that you're aware of in which you
18 base a conclusion that there was a long-sleeved
19 requirement at Rohm and Haas?

20 A. Are you -- are you asking me if there
21 were other documents in addition to the PPE document
22 that would indicate a requirement for long sleeves?

23 Q. Other documents before October 28th,
24 2008, which is the date of EHS 521.004 that you cited?

25 A. No.

1 Q. So do you have any basis for
2 concluding -- any factual basis for concluding that
3 before October 28th, 2008, Rohm and Haas had a
4 long-sleeved shirt requirement for the plaintiffs?

5 A. No, I don't.

6 MR. KRESGE: All right. Let's take
7 our break. We'll come back in -- I think we always
8 try to make it shorter but let's do it 10 to
9 15 minutes.

10 MR. CONNOR: All right. Thanks.

11 MR. KRESGE: All right.

12 MODERATOR: All right. It is 2:23 and
13 we're going off the record. We are off the record
14 now.

15 (OFF THE RECORD)

16 MODERATOR: We're back on the record
17 right now.

18 MR. KRESGE: Yes, I just don't know --
19 can you hear me?

20 MODERATOR: I can hear you.

21 MR. KRESGE: No, no, the witness I'm
22 asking.

23 MODERATOR: Ms. McClellan, can you
24 hear us?

25 MR. KRESGE: She doesn't seem to be.

1 That's why I was waiting.

2 MODERATOR: Okay. Let me take us back
3 off the record. Okay. Hold on. It is 2:41 and we're
4 going off the record. We're off the record.

5 (OFF THE RECORD)

6 MODERATOR: It is 2:42 and we're back
7 on the record.

8 Q. Do you agree that a short-sleeved
9 shirt offers no protection against any hazards in the
10 workplace?

11 A. No, I don't agree with that.

12 Q. All right. Do you agree that a
13 short-sleeved shirt is not PPE?

14 A. No, I do not agree with that.

15 Q. All right. So is it your expert
16 position that a short-sleeved shirt is PPE in this
17 case?

18 A. It depends on the circumstances.

19 Q. Well, I'm asking -- I asked it
20 specifically in this case. So was a short-sleeved
21 shirt as worn by the operators, at least at some point
22 during the Rohm and Haas period, and we'll get back to
23 that, is it PPE in your opinion?

24 A. Again, it depends on the hazard.

25 Q. Well, you've offered an opinion that a

1 long-sleeved shirt is PPE in this case; correct?

2 A. Correct.

3 Q. All right. And all I'm asking is, is
4 it your opinion that a short-sleeved shirt is not PPE
5 in this case?

6 A. No. I would have to say that
7 short-sleeved shirt could be personal protective
8 equipment depending upon the hazard.

9 Q. So --

10 A. It depends on what part of the body
11 you want to protect.

12 Q. I just want to understand your
13 position. So in terms of this case, one way or the
14 other is the short-sleeved shirt PPE for the
15 production operators, who are the plaintiffs?

16 A. In part, yes.

17 Q. Okay. And then tell me what part it
18 is that it is actual PPE.

19 A. It could provide skin protection for
20 the core of the body, simply not the arms.

21 Q. So having anything on your body in
22 your opinion in a chemical plant is PPE?

23 A. Depending on the hazard, yes.

24 Q. All right. So just having -- let's
25 say I had a tank top. Would a tank top be PPE because

1 it would be covering part of my body?

2 A. No.

3 Q. Why not?

4 A. Because it doesn't cover the majority
5 of your body or of your torso.

6 Q. So at what point in the coverage of
7 the body is it that you make a determination that
8 something's PPE and then something's not?

9 A. Aside from this case?

10 Q. No, this case. That's all I'm
11 interested in.

12 A. Long sleeves are better PPE than short
13 sleeves.

14 Q. I'm not -- that's not my question. My
15 question is that you've made it -- you've stated that
16 at some point with body coverage something goes from
17 being PPE for the plaintiffs in their chemical plant
18 at Louisville and at some point it becomes not PPE
19 depending upon the body coverage, and I want to
20 understand at what point. What's the scientific
21 breakdown in your opinion as to where body coverage at
22 what point becomes PPE?

23 A. It depends on the hazard. It's --

24 Q. Well, I'm asking about this job. You
25 know -- you --

1 A. Which job, KAC KB, KVPA and which
2 tasks?

3 Q. So are you saying that a short-sleeved
4 shirt is PPE for certain production buildings but not
5 others at Louisville?

6 A. According to -- according to the
7 defendant, they considered uniforms as PPE because for
8 many of the hazards in the PPE grids nothing
9 additional was called for even though specific
10 chemicals were at risk of producing skin exposure.

11 Q. What -- so what document are you
12 referring to that states that a short-sleeved shirt
13 was viewed by Rohm and Haas company to be PPE?

14 A. In the Louisville plant electrical
15 safety policy they list T-shirt, short-sleeve, as in
16 the matrix for PPE. This is issue date November 2005,
17 Page No. 21 of 25.

18 Q. What's the name of the document?

19 A. It's called Louisville Electrical
20 Safety Policy. I think the Bates number is
21 RH 00003154.

22 Q. Just give me one second, please.

23 A. Sure.

24 Q. I know the document you're referring
25 to, but I just need to find it. I have a document

1 that's electrical safety EH 537, but you're saying
2 that's not it?

3 A. This is part of the Beam exhibits, so
4 look in your exhibits that are --

5 Q. No, I have to go -- I have to find
6 that. I -- what's the title of the document again?

7 A. Louisville electrical safety policy.

8 Q. Go ahead and -- I'll find it. I don't
9 have it right here with me, but I'll get it quickly.
10 But go ahead and tell me what you're referring to.

11 A. Here. Maybe I can help you. All
12 right. Okay.

13 Q. Oh, okay.

14 A. So I'm looking --

15 Q. At the grid.

16 A. Yes, it's a grid.

17 Q. Appendix 2?

18 A. Yeah. And it's --

19 Q. (Audio cuts out) 3154?

20 A. 31 -- yeah.

21 Q. Okay.

22 A. Okay. So on that grid you have a
23 listing of personal protective equipment. It lists
24 short-sleeved shirts and it ticks boxes for where
25 short-sleeved shirts are considered appropriate PPE.

1 For that hazard -- like I said, it's according to
2 hazard, they're listing it -- they're calling it PPE.

3 Q. Let's take a look at Exhibit 17,
4 please.

5 A. Okay. What's the title of that one?

6 Q. It's what you were looking at.

7 A. Okay.

8 MODERATOR: Hold on a second.

9 A. Okay.

10 (McCLELLAN DEPOSITION EXHIBIT 17 DISCUSSED)

11 Q. Now, 17 is just a three-page document?

12 A. Yeah. 3134.

13 MR. KRESGE: 17, Sean, remember we did
14 that? There we go.

15 MODERATOR: I'm sorry. I kept that
16 one in there just so we would note 17.

17 Q. Okay. So 17 is this -- what you were
18 looking at; correct?

19 A. Correct.

20 Q. If we could blow it up a little bit
21 for everybody, just a little bit.

22 A. I can see it fine.

23 Q. Okay.

24 A. But, yes, if you look at Line A in the
25 far left-hand column it says T-shirt, short-sleeve.

1 Q. And if you -- you understand that this
2 is a chart or a matrix that came from NFPA 70E;
3 correct?

4 A. Okay.

5 Q. Do you understand that?

6 A. I do, and whenever I adopt a chart
7 from a reference such as this into my policy, it
8 becomes my policy.

9 Q. Yeah. And your understanding of -- do
10 you have a working -- good working understanding of
11 NFPA 70E?

12 A. Yes.

13 Q. Okay. And what is it? What is NFPA
14 70E just generally speaking?

15 A. It's -- it revolves around personal
16 protective equipment.

17 Q. But is it an industry consensus kind
18 of standard?

19 A. Yes.

20 Q. Okay. It's not a regulation; correct?

21 A. No. It's a guideline.

22 Q. Okay. It's not something from OSHA --
23 is it something at all from OSHA?

24 A. No. It's not legally enforceable; you
25 are correct.

1 Q. All right. Now, if we take a look at
2 this matrix that Rohm and Haas just took from
3 NFPA 70E, it has hazard ratings on the top.

4 A. Correct.

5 Q. Okay. You see hazard risk category.
6 And a hazard risk of zero means that there's zero
7 risk; correct?

8 A. Correct.

9 Q. And then as the risk goes up, it gets
10 higher from one to two to three to four with
11 Category 4 being the highest risk in terms of exposure
12 to electrical shock or other electrical hazards;
13 correct?

14 A. Correct.

15 Q. So if zero means zero risk, minus one
16 reflects less than zero risk; correct?

17 A. Correct.

18 Q. So it's only in this nonexistent risk
19 category that we see a reference to a short-sleeved
20 shirt; correct?

21 A. It's -- no, it's also noted for risk
22 categories two, three and four.

23 Q. I see. In terms of that option. All
24 right. And so how does -- then explain to me, how
25 does a short-sleeved shirt protect one against an

1 electrical hazard?

2 A. It's a base layer that would go under
3 your -- your protective clothing that's fire resistant
4 or fire rated.

5 Q. Well, this -- this distinguishes from
6 fire rated, which is in the column below. You see FR
7 clothing?

8 A. Right.

9 Q. And then the top, the short-sleeved
10 shirt is not FR clothing; correct?

11 A. Correct. Your question to me is, does
12 a short-sleeved shirt count as personal protective
13 equipment --

14 Q. Yes.

15 A. -- my answer is yes.

16 Q. And what does a short-sleeved shirt --
17 you know, if production operators like the plaintiffs
18 would come to work at their choice wearing a
19 short-sleeved shirt --

20 A. Okay.

21 Q. -- so -- and that's what they would
22 come to work in and they would work the day in a
23 short-sleeved shirt, what does that short-sleeved
24 shirt protect against in terms of electrical hazards?

25 A. If it's a untreated natural cotton

1 fiber, it counts as personal protective equipment in
2 the event of a negative one, two, three or four
3 electrical risk.

4 Q. And what is that -- that's -- my
5 question, though, to you is, what is that
6 short-sleeved shirt protecting our plaintiffs against?

7 A. You mean in the event of an electrical
8 hazard?

9 Q. Yes. Let's take a look at an arc
10 flash, for example. What is the -- what is the
11 short-sleeved shirt protecting our plaintiffs against
12 in terms of -- in the context of an arc flash?

13 A. It's protecting against additional
14 harm that would come from a noncotton or nonnatural
15 fiber.

16 Q. So what you're saying is that a
17 nonnatural fiber could aggravate or exacerbate a burn
18 because it would melt to the skin; correct?

19 A. Correct.

20 Q. Okay. So all this -- all we're doing
21 by moving to a natural fiber like cotton is that we're
22 preventing against that -- we're eliminating that
23 potential for an aggravation of the burn; correct?

24 A. Correct. And it's listed as
25 protective clothing and equipment.

1 Q. And you -- well, it's listed here as
2 but we'll get to it later in terms of whether it
3 really is, because -- but we'll get to that, but let's
4 take a look at the T-shirt. So the short-sleeved
5 shirt, if you're exposed to electrical hazard such as
6 an arc flash or it could be any other electrical
7 hazard, it does not protect you against getting a
8 burn; correct?

9 A. Correct.

10 Q. Okay. And, in fact, the fact that
11 your arms are completely exposed means that you have a
12 lot less protection by wearing a short-sleeved shirt;
13 correct?

14 A. I don't know if you have a lot less
15 protection but you do have less protection.

16 Q. And this short-sleeved shirt that's
17 cotton or untreated natural -- some other -- I guess
18 it's really referred to as cotton, so we'll just call
19 it a cotton short-sleeved shirt, that is something
20 that anyone could buy at a department store like
21 JCPenney; correct?

22 A. That is possible.

23 Q. Right. And a long-sleeved cotton
24 shirt that we're talking about of the material that
25 the plaintiffs wore is something that anyone could buy

1 at a department store like JCPenney; correct?

2 A. You can buy it. It doesn't mean that
3 it meets the requirements as a uniform.

4 Q. I'm just trying to understand what the
5 shirt is. So -- you know, I just want to make sure.
6 So, again, when we're referring to a long-sleeved
7 shirt as worn by the plaintiffs, we're referring to a
8 shirt of the nature that one could buy at a department
9 store like JCPenney; correct?

10 A. Not in consistency with a uniform, no,
11 that I disagree with.

12 Q. What is done to the shirt? Is there
13 anything done to the shirt -- the shirts that were
14 worn, whether they were short-sleeve or long-sleeve,
15 that were worn by the plaintiffs?

16 A. Yes. The shirts that are provided as
17 uniform are in good repair, they are consistent and
18 they are clean. That is different than a shirt that
19 you're going to buy at JCPenney's.

20 Q. How? Is JCPenney selling me a dirty
21 shirt?

22 A. Perhaps.

23 Q. So your testimony is that a shirt at a
24 department store is dirty or potentially?

25 A. Potentially.

1 Q. I see. All right. Putting that
2 aside, then isn't the materials of a short-sleeved or
3 long-sleeved shirt that the plaintiffs wore at the
4 Louisville plant of the type and material that you
5 could buy at a department store?

6 A. I do not know.

7 Q. All right. Did you ever determine by
8 looking at any one of the shirts that the plaintiffs
9 wore?

10 A. I have photographs of consistent
11 quality cotton uniforms from the documents that were
12 provided.

13 Q. That was last night you mean?

14 A. Correct.

15 Q. Okay. Before that, when you did your
16 report, you didn't have those documents, did you?

17 A. No, I did not.

18 Q. All right. So when you formulated
19 your opinion, did you ever see any picture of a
20 long-sleeved or short-sleeved shirt that the
21 plaintiffs wore at the Louisville plant?

22 A. No, I did not.

23 Q. And did you -- before you
24 formulated -- in writing your opinion, as of the time
25 of reaching your opinion and your opinion letter, did

1 you speak with any plaintiff about what their shirt
2 was like?

3 A. No, I did not.

4 Q. And you agree with me that the
5 short-sleeved or the long-sleeved shirts that were
6 provided to the plaintiffs were not treated in any
7 way; correct?

8 A. I would not have that awareness.

9 Q. Well, didn't you ask? Because that's
10 what you're -- you're opining about these work
11 uniforms. Didn't you bother to ask about whether or
12 not the shirts were treated in any way?

13 A. Are you referring to the flame
14 resistant or fire resistant?

15 Q. I'm just referring to anything because
16 this is referring to an untreated cotton shirt. So
17 I'm asking you, did you ever determine or -- whether
18 or not the shirts that were provided, whether they be
19 short-sleeved or long sleeved, that were provided to
20 the plaintiffs were ever treated in any way?

21 A. No. No. It's on the basis of cotton
22 uniforms.

23 Q. Okay. So was it your understanding
24 that the shirts that the plaintiffs wore at all times,
25 whether they be short-sleeved or long-sleeved, were

1 indeed untreated?

2 A. Correct.

3 Q. Okay. And, now, with regard to the
4 pants that the plaintiffs wore at all times, what is
5 your -- is it your understanding that those pants were
6 cotton?

7 A. I'm not sure.

8 Q. Okay. Did you ever determine what the
9 material composition was of the pants that were worn
10 by the plaintiffs --

11 A. That --

12 Q. -- at any time --

13 A. Oh.

14 Q. -- during this case, which is going
15 back to 2002?

16 A. Cotton during the period of time for
17 Dow Chemical.

18 Q. And did you ever determine what the
19 material composition was of the pants during the 2002
20 to 2009 Rohm and Haas period?

21 A. I don't believe I'm aware of the
22 composition.

23 Q. And were the pants ever treated in any
24 way, that the pants that the plaintiffs wore at any
25 point in time dating back to 2002 ever treated in any

1 way?

2 A. I'm not sure, but let me look.

3 Q. But in terms of your opinion, is your
4 opinion based upon the pants being treated or not
5 treated?

6 A. In terms of the clothing being worn
7 for purposes of chemical exposure, my opinion was on
8 the basis of them being untreated. For my opinions
9 regarding electrical exposure hazards, I know that the
10 company transitioned into using treated clothing that
11 was flame resistant for that purpose, so there was a
12 response to that hazard. So it depends on the hazard
13 once again.

14 Q. Okay. And so let's just talk about
15 the work uniforms. Is it your understanding that the
16 work uniforms were ever -- that the plaintiffs wore
17 that your opinion is all about were ever treated to
18 become flame resistant?

19 A. My opinion was on the basis that there
20 was not a clear indication of what kinds of
21 long-sleeved uniforms were provided by Rohm and Haas.

22 Q. Okay. So you've written an opinion in
23 this case which relates to -- which encompasses a 2002
24 to 2009 period in which you don't even know the
25 composition of the uniform materials during that

1 period; is that correct?

2 A. It was variable composition. They
3 went from polycotton blends to cotton blend around the
4 period of time that Dow Chemical acquired them. That
5 was very clear from the evidence.

6 Q. Okay. How about the fire-resistant,
7 the flame-resistant clothing?

8 A. Again, there was a transition during
9 the Rohm and Haas period of time where they recognized
10 a need for treated clothing in response to the
11 electrical hazard.

12 Q. And that -- you're saying that -- and
13 it's your understanding as part of your report that
14 that would -- that occurred for the plaintiffs, that
15 transition to flame-retardant for flame-resistant
16 clothing occurred for the plaintiffs? Is that --

17 A. Yes. I believe --

18 Q. -- your understanding?

19 A. I believe so.

20 Q. Okay. Now, what goes into
21 flame-resistant clothing? What makes it flame
22 resistant?

23 A. Chemical treatment.

24 Q. And what is that chemical treatment?
25 What is it -- what's done to the clothes to make it

1 flame resistant?

2 A. It's -- I'm not sure what the chemical
3 is that's used to treat fabric in order to make it
4 chemically -- or make it flame resistant.

5 Q. Now, NFPA 70E changes every couple of
6 years; correct?

7 A. Correct. It's updated.

8 Q. And in 2015 NFPA 70E was changed to
9 remove risk categories negative one and zero; correct?

10 A. Mm-hmm.

11 Q. Is that correct?

12 A. Correct.

13 Q. Let me show you -- and that was done
14 because the analysis was that there's no reason to
15 include a zero hazard rating in a PPE table because
16 there's no PPE required for a zero hazard rating;
17 isn't that right?

18 A. Correct.

19 Q. So as of -- from 2015 to the present
20 the NFPA 70E matrix does not include columns for
21 negative one or a zero risk as appeared here on
22 Exhibit 17; correct?

23 A. Correct.

24 Q. Now, did the plaintiffs ever engage in
25 any work that touched upon or which they encountered

1 hazard with one, two, three or four on an NFPA 70E
2 matrix?

3 A. There were indication in the PPE grids
4 that there was exposure to electrical hazards.
5 Whether it fell within the one, two, three or four
6 exposure risk category, I would have to look.

7 Q. And if there was an exposure to one,
8 two, three or four for any particular work, was there
9 associated with that actual PPE other than the work
10 uniform?

11 A. I don't believe so, no.

12 Q. All right. What your -- make sure I
13 understand what you're saying, is that you don't know
14 whether any of the plaintiffs did any work that
15 involved them with hazard risk ratings one, two, three
16 or four on the NFPA 70E matrix; correct?

17 A. If it was included in their tasks as
18 part of operator's responsibility, there is
19 probability that they would have exposure.

20 Q. I'm not asking -- I'm asking for what
21 you understand because it's per your report, what is
22 your understanding, did -- one way or the other, did
23 any of the plaintiffs engage in any work that exposed
24 them to hazard risk ratings one, two, three or four on
25 the NFPA 70E matrix?

1 A. I'll let -- I'll look.

2 Q. Well, do you remember? Before -- as
3 you look -- I'm going to let you look but I want to
4 make sure I understand -- you know, since you wrote in
5 your report and you have an opinion, before you look
6 just -- if you could just answer my question before
7 you look for documents, what is your understanding?

8 A. My understanding is, yes, they had
9 exposure.

10 Q. To hazard risk one, two, three and
11 four. And can you identify without looking at any
12 documents what job tasks they did, any of the
13 plaintiffs did, that exposed them to hazard risks one,
14 two, three or four?

15 A. No. Oh.

16 Q. And do you know if -- let's just
17 take --

18 A. Oh, actually I take that back. The
19 answer is, yes, for the dryer task, there is
20 electrical exposure.

21 Q. Okay. What are you looking at?

22 A. Dryer PPE grid regular duties, second
23 -- well, it's my second page, may not be your second
24 page, dated September 2018 updates.

25 Q. Can you give us a Bates stamp number

1 on the bottom?

2 A. I don't have a Bates stamp on mine.

3 Q. Okay. So you're looking at a dryer's
4 PPE grid, and what's on top of it? Is it line
5 equipment opening or is it something else?

6 A. Here. Let me open it on my computer.
7 Okay.

8 Q. And I know these are all awfully hard
9 to read.

10 A. Yeah, that's why I've opened it on my
11 screen, so that I can read it --

12 Q. Okay.

13 A. -- more readily. If you look at
14 Line 40 of that document.

15 Q. I don't know what you're looking at.

16 A. Okay. At the very top of the -- top
17 of the document, it's called EHS safety dryer PPE
18 grid.

19 Q. I --

20 A. It's an Excel -- it's an Excel
21 spreadsheet, if that helps.

22 Q. And it says EHS on it?

23 A. Mine does.

24 Q. And it doesn't have a -- it doesn't
25 have a Bates stamp number in the corner anywhere?

1 A. Not on mine. I have my -- it's part
2 of the Tompkins exhibits. Oh, wait, you know what,
3 maybe it's not, though, because I blended Tompkins
4 exhibits with additional documentation, but it's --
5 it's one of the PPE grids that were provided.

6 Q. All right. Go ahead and say what it
7 says.

8 A. It says on Line 40 being within
9 50 feet of fired equipment during lighting sequence,
10 and the hazard is flash and the potential route of
11 exposure is skin.

12 Q. I don't know what you're looking at,
13 I'm sorry.

14 A. Here. We can do what I did before.
15 And I have it marked electrical in my notes.

16 Q. I don't remember -- this is a much
17 nicer version than what I have. I don't remember
18 this.

19 Glen, do you know where that
20 document's coming from?

21 MR. CONNOR: Ray, we produced that --
22 that was some of the documents. We produced them a
23 little bit later. We didn't Bates stamp them. We --
24 I can't remember, I was just looking to see when I
25 sent those to you. I sent those to you at one point.

1 Q. Hmm. Oh, might explain it because if
2 I -- because all I did was look through Bates stamp
3 production documents in preparation for this.

4 All right. Well, so what -- do you
5 know what hazard rating that particular task is
6 associated with?

7 A. No, I do not.

8 Q. Okay. And other than that one task
9 that you just identified, is there any other task at
10 which -- with which the plaintiffs had that exposed
11 them to any electrical hazards?

12 A. There are additional tasks, but do you
13 want me to go back through and find the rest of them?

14 Q. Well, I'm just asking you what you
15 remember.

16 A. I do remember --

17 Q. Do you remember --

18 A. I do remember additional tasks that
19 carried electrical hazards.

20 Q. And do you remember any of them off
21 the top of your head?

22 A. No.

23 Q. Okay. And do you know what hazard
24 rating on the NFPA 70E matrix any of those tasks were
25 associated with?

1 A. No, I do not.

2 Q. Do you know if any of the plaintiffs
3 were actually qualified to do electrical work?

4 A. I do not know.

5 Q. Do you know if Dow Chemical ever
6 adopted or applied NFPA 70E as part of its policies?

7 A. I do not know.

8 Q. And I'll show you what we've marked as
9 Exhibit 3. What is your background, if any, in
10 electrical engineering?

11 A. I studied it in graduate school and I
12 have conducted electrical hazard assessments with
13 teams of people as part of my job responsibilities at
14 AbbVie Biopharmaceutical.

15 (McCLELLAN DEPOSITION EXHIBIT 3 DISCUSSED)

16 Q. Now, when you said you studied it with
17 teams, did you particularly do the electrical
18 engineering part?

19 A. No, I did not.

20 Q. Do you have any degrees in electrical
21 engineering?

22 A. No, I do not.

23 Q. And you said you studied it in
24 graduate school. Is that just in the form of a
25 course?

1 A. Pardon?

2 Q. Is that in the form of a course in
3 graduate school?

4 A. Yes.

5 Q. Okay. So I'm showing you here just as
6 a segment of the first couple of pages of the NFPA 70E
7 that we see here on the upper left-hand corner 2015
8 edition. And I'll just direct your attention to the
9 last page of this -- or the next-to-last page.

10 MR. CONNOR: Ray, that's the
11 next-to-last page of your exhibit, not the
12 next-to-last page of -- oh, well, never mind.

13 MR. KRESGE: Yes, of the exhibit.

14 Q. So that's the last page. If we could
15 move to the prior page, please.

16 MR. CONNOR: Well, Ray, since I can't
17 see it, is the exhibit the full document?

18 MR. KRESGE: Yes, we'll pull it up.

19 MR. CONNOR: Or is it portions of --
20 or extracts from the document?

21 MR. KRESGE: It's just the first part
22 of it, Glen.

23 MR. CONNOR: Okay.

24 Q. So can you take a look at -- let's
25 blow up the bottom part. It just says, other major

1 revisions include the following, just so we have
2 context of what we're looking at. Do you see that?

3 A. No, I don't.

4 Q. Okay. Very bottom part, other major
5 revisions include the following, and it goes one,
6 two -- I just want to highlight that one.

7 A. Oh, okay.

8 Q. Other major revisions. Do we see
9 that?

10 A. Yes, I do.

11 Q. Include the following. So then if we
12 go to the bottom of this page just so we're clear that
13 there's nothing else there, just scroll up so we see
14 the bottom. Okay. Let's move to the next page. So
15 you see here a list of the major revisions that
16 NFPA 70E did, and then let's highlight No. 14, please.

17 MODERATOR: Which number?

18 MR. KRESGE: 14.

19 MODERATOR: Okay. Hold on.

20 MR. KRESGE: Sure.

21 Q. So what I've highlighted as Revision
22 Number 14 NFPA 70E states, quote, Hazard/Risk
23 Category 0 has been removed from Table 130.7(C)(16).
24 Hazard/risk category will now be referred to as PPE
25 category. Hazard/Risk Category 0 was deleted because

1 the new PPE table only specifies PPE for work within
2 the arc flash boundary. If there is no arc flash
3 hazard, then no arc flash PPE is required and it is
4 therefore not necessary on a table devoted to PPE.

5 Is that consistent with what you
6 testified to as the change that NFPA 70E made to the
7 matrix in removing Hazard Category 0?

8 A. Correct.

9 Q. What is a flash suit? We can take the
10 document down. What is a flash suit?

11 A. Flash suit is a higher level of
12 personal protective equipment for electrical work.
13 I'm not sure what's included in the ensemble. That's
14 beyond the scope of this -- this case.

15 Q. I'm just asking you what you know.

16 A. Okay. A suit -- it's a total clothing
17 system consisting of arc-rated shirt and pants and/or
18 arc-rated coveralls.

19 Q. And work uniforms that the plaintiffs
20 wore were not flash suits; correct?

21 A. Correct.

22 Q. And what is a Tyvek suit?

23 A. Tyvek suit is a suit that's chemical
24 protective equipment.

25 Q. And what does that do?

1 A. It's what's referred to as impermeable
2 where you can't -- it can't soak through to the
3 worker's skin, so it's chemical protective clothing
4 meant to protect the worker's skin from exposure to a
5 chemical. In most cases it can also be protection
6 against dust and fibers.

7 Q. So obviously if you have a
8 short-sleeved shirt on, you have no protection against
9 any chemical splash or spill; correct?

10 A. To your arms, that is correct.

11 Q. And if you even had a long-sleeved
12 cotton shirt on, there's no protection against the
13 chemical being absorbed within the shirt and remaining
14 absorbed against your skin; correct?

15 A. According to Rohm and Haas during
16 their period of time, 2002 to 2009, they considered
17 regular uniforms as protective because there was no
18 additional PPE warranted for many tasks, even though
19 there was exposure to different carcinogens, mutagens,
20 teratogens, sensitizers, hepatotoxins and
21 nephrotoxins.

22 Q. I'm asking you, isn't it true that if
23 you're wearing a long-sleeved shirt, which is --
24 you're wearing a uniform, the long-sleeved uniform --

25 A. Mm-hmm.

1 Q. -- that that long-sleeved shirt that
2 the plaintiffs wore, if they got exposed to a chemical
3 splash or spill, that shirt is not going to protect
4 them against a chemical burn; correct? Because it's
5 actually unlike the Tyvek suit that you described, the
6 shirt is actually going to absorb the chemical and
7 keep it up against the skin; correct?

8 A. It depends on the chemical, so, no,
9 that is not true. It depends on the amount, depends
10 on the duration of exposure, depends on the intensity
11 of the exposure. So what I'm saying, it depends on
12 the splash, the extent of the splash, the period of
13 time that it's left on the worker's skin, if it soaks
14 through, whether it presents a danger.

15 Q. Well, what is the long-sleeved shirt
16 protecting against in the context of a chemical spill
17 or splash?

18 A. That first line of defense. If a
19 worker is -- is splashed and he removes the shirt,
20 then the shirt did provide him with a layer of
21 protection.

22 Q. Just like any shirt we could get at a
23 department store; correct?

24 A. No. Not like any shirt that you could
25 get at the department store. The shirt that you might

1 buy at the department store may not have the same
2 cloth density, it may not be in good repair, it may be
3 torn or it already may be previously contaminated --

4 Q. But I can buy --

5 A. -- for all I know.

6 Q. -- I can go and get at a department
7 store somewhere a shirt like the plaintiffs wore;
8 correct?

9 A. I don't know. I can't confirm that.
10 Where do you shop?

11 Q. I'm asking generally speaking. I can
12 get a shirt like the plaintiffs wore somewhere in the
13 United States, online from some kind of department
14 store, vendor, L.L. Bean, somewhere; correct?

15 A. Correct.

16 Q. All right. So what you're saying is a
17 shirt I can buy online is what you're describing now
18 as personal protective equipment against a chemical
19 spill; correct?

20 A. The uniform --

21 Q. Yes or no?

22 A. Could you please re-ask your
23 question --

24 Q. Yes.

25 A. -- and I --

1 Q. Why don't you repeat -- let's go --
2 what I'm asking is, a shirt that -- you've already
3 testified that I could buy a shirt like the plaintiffs
4 wear somewhere in the United States online. So that
5 all-cotton shirt that I can buy that would be like
6 what the plaintiffs wear at the Louisville plant is
7 what you're saying is a personal protective equipment
8 in the chemical plant?

9 A. No. It wouldn't be because it
10 wouldn't be laundered, it wouldn't be handled the same
11 way as the uniforms. Part of the PPE is not that it's
12 the same cloth, it's that it's being inspected for its
13 durability, it's being laundered on a regular basis,
14 it's captive to the facility, and something that you
15 buy somewhere else does not meet those qualifications.

16 Q. Well, how do you know what it is that
17 Cintas's clothing quality is when they're bringing a
18 new shirt in to an employee?

19 A. They have their own standards for how
20 they --

21 Q. And what are those standards?

22 A. They have standards for inspection.

23 Q. No, no, what are the standards for the
24 new clothes that you're talking about?

25 A. Oh, the new -- new uniforms --

1 Q. Yes.

2 A. -- that are being brought in?

3 Q. You're saying there's Cintas
4 standards. Did you ask for those standards as part of
5 your preparation of your report?

6 A. No. I'm aware --

7 Q. Do you have those standards -- did you
8 rely on those standards in preparation of your report?

9 A. I relied on my awareness of those
10 standards in preparation for my report, yes.

11 Q. So it's your testimony that you've
12 read the Cintas standards at some point in the past?

13 A. In the past, yes, I have.

14 Q. And are the standards different from
15 company to company?

16 A. You mean from Cintas compared to other
17 cleaning companies?

18 Q. No, from Cintas as it supplies Dow
19 versus Cintas as it applies -- supplies other
20 companies?

21 A. There can be some variation, yes.

22 Q. Okay. So did you ever find out what
23 the Cintas standards are for Dow Chemical?

24 A. No, I did not.

25 Q. All right. So you don't know what the

1 standards are as it relates to the clothing to compare
2 it to something that I could buy online; correct?

3 A. I can state with a reasonable degree
4 of scientific certainty that when uniforms are handled
5 by a uniform company like Cintas that they're going to
6 arrive consistent, they're going to arrive in good
7 shape, they're not going to be torn, they're going to
8 arrive clean and it's that consistency that you're
9 paying for as part of your personal protective
10 equipment.

11 Q. What's the difference between a new
12 good shape shirt that I buy online, all-cotton shirt,
13 versus a new shirt that Cintas supplies to a new Dow
14 production operator?

15 A. I have no way of making that judgment.

16 Q. Okay. So in the context of a chemical
17 spill or splash, what protection does a short-sleeved
18 shirt provide against a chemical burn?

19 A. Against chemical burn, it provided
20 protection to the torso against chemical burn
21 depending on the duration and the intensity of the
22 splash and the hazard of the material.

23 Q. Now, do you know anything about the
24 vendors uniform supplier during the Rohm and Haas
25 period? I'll represent to you it was different than

1 Cintas. Did you -- do you know anything about them?

2 A. No, I do not.

3 Q. Okay. And did you ever determine what
4 the nature of the uniforms were that were provided by
5 the pre-Cintas vendor?

6 A. I'm not sure.

7 Q. Okay. And did you ever learn anything
8 about the laundering instructions or what was done
9 with regard to laundering by the pre-Cintas vendor at
10 the Louisville plant?

11 A. I'm not sure.

12 Q. And do the all-cotton pants provide
13 any protection against a chemical spill or splash?

14 A. It depends on the hazard and it
15 depends on the duration and intensity of exposure,
16 but, yes.

17 Q. Let me --

18 A. They can --

19 Q. Okay. Go ahead.

20 A. They can provide some level of
21 protection.

22 Q. Just like any pair of all-cotton pants
23 can; correct?

24 A. No, that's not true.

25 Q. No? I see. So now tell me what the

1 difference is between the cotton pair of pants that I
2 can buy online versus the all-cotton pants that Cintas
3 provided to the Dow employees.

4 A. You may choose a pair of jeans that
5 have holes already cut in them and you may be
6 comparing that to a uniform.

7 Q. No, I don't buy them -- I don't buy
8 them that way. So I'm buying a nice pair of jeans
9 without holes. I'm not into the mod style.

10 A. Okay.

11 Q. So I buy a regular pair of jeans or
12 all-cotton pants, you know, and so what is the
13 difference between my all-cotton pants and the
14 all-cotton pants worn by the plaintiffs?

15 A. Again, the cotton pants worn by the
16 plaintiffs that were uniform are consistent, they are
17 clean, they were in good repair and they're part of a
18 mandatory uniform.

19 Q. Right.

20 A. The ones that you choose to wear off
21 the street, I have no idea.

22 Q. What you -- do you know anything about
23 what the difference is between a new pair of pants
24 provided to a new employee at Dow who was a production
25 operator at the Louisville plant versus a new pair of

1 good quality pants, all-cotton pants or jeans that I
2 buy online? What's the difference?

3 A. I -- I don't have the information to
4 make that determination.

5 Q. Okay. And you agree that based upon
6 your review of those PPE grids that in the event of a
7 potential exposure to a chemical splash that the PPE
8 grids call for protection in the -- in different
9 forms, such as wearing a Tyvek suit or a Tyvek apron;
10 correct?

11 A. No. Not always. There's potential
12 for exposure for a number of chemicals, serious
13 chemicals, and it's medium to high potential for
14 exposure, and in many cases it does not call for
15 additional body personal protective equipment.

16 Q. So give me an example.

17 A. I have lots of those.

18 Q. Can you give me an example --

19 A. Sure.

20 Q. -- off the top of your head?

21 A. Sure. In the KAC process, there's a
22 number of mutagens, teratogens, meaning these are
23 reproductive harm in many cases, there's organ
24 damaging, like hepatotoxins and nephrotoxins. In that
25 process where the worker is exposed and there's medium

1 to high probability of exposure, the route of exposure
2 is skin and yet there's not additional PPE called for;
3 therefore, Rohm and Haas and Dow Chemical were relying
4 upon uniforms as being the personal protective
5 equipment.

6 Q. And what is the medium to high --
7 what's the high exposure?

8 A. It means it has a higher likelihood of
9 occurring.

10 Q. Right. And what -- so let's take a
11 look at your example. What's the chemical you're
12 talking about, what's the route of high exposure that
13 you're referring to? Do you recall without looking?

14 A. Yeah, I do. I should be able to --

15 Q. Oh, you can look. I'm asking first --

16 A. Thank you.

17 Q. -- do you recall without looking since
18 you did your report?

19 A. Yes, I do. Yes, I do. Methacrylate
20 is a good example.

21 Q. Okay.

22 A. There's many exposures to
23 methacrylate --

24 Q. So --

25 A. -- based chemicals in this process

1 where additional PPE is not called upon for the body
2 and there's a complete reliance on the work uniform to
3 protect that worker, even though there's high
4 probability of exposure and skin is the route of
5 exposure.

6 Q. So let's take a look -- you look at it
7 and tell me what -- give me an example of a high
8 exposure risk to skin contact with methacrylate in
9 which no PPE is required other than what you refer to
10 as a PPE in the form of a shirt and pants.

11 A. Sure. No problem.

12 MR. KRESGE: And, Glen, my problem is
13 I don't know how to deal with this because she's
14 referring to these documents that I don't have and I'm
15 confident that you provided them to us, but I can't --
16 I don't know what -- how to manage this because I
17 don't -- I don't remember it. I'm sure that you did
18 send it to us but I don't have them.

19 A. Okay. This is the KB plant PPE grid.
20 If you want I can share my screen because I do have
21 them on my screen. Would that help?

22 Q. Yes, please.

23 A. Okay. Okay. Let me fish that one out
24 of my documents here and I'll open it up and then I'll
25 share my screen. Okay. And lucky for us it's the top

1 one right across the -- and I'm assuming I have share
2 screen -- let's see.

3 Q. It may not work with this, I don't
4 know.

5 A. I think we'll be okay. Yep. All
6 right. Can you guys see my screen now?

7 Q. Yes, I can. All right. So this is an
8 August 2018 version.

9 A. Correct. And in this version, you
10 have this first duty where they're loading tank trucks
11 and they're exposed to methyl methacrylate and some
12 other acrylates, which all fall into a similar
13 category as being sensitizers. They're also
14 teratogens and it even states here what those possible
15 embryo and fetal toxics effects are for that chemical.
16 It explains to you, too, here -- I'm going to enlarge
17 this a little bit so that no one goes blind, it
18 explains that it -- route of exposure, the way it gets
19 into the body, is through exposed skin here and that
20 you have -- exposure routes for skin contact is medium
21 and yet even though you have medium potential for
22 exposure -- oops, sorry about that -- you don't have
23 any additional PPE added in that process, so you are
24 basically relying on your uniform to be your coverage
25 for your body to protect your skin with -- skin is a

1 major route of exposure to something that is a
2 mutagen, teratogen, carcinogen, sensitizer, okay? So
3 PPE is indeed the work uniform and there's --

4 Q. Can you scroll over to the right. I
5 just --

6 A. Sure.

7 Q. I'd like to see this. Thank you.

8 A. And I think there's one more column.
9 There we go. Yeah, it ends there. Is there anything
10 else that you wanted to see? There's several more in
11 this particular PPE grid that are severe irritants.
12 For instance, we can go down to some of the other
13 chemicals if you want me to.

14 Q. Can you go down to the third column,
15 unloading monomers from bottom valve?

16 A. Sure.

17 Q. And here where we have an actual high
18 skin contact for exposure, the grid requires the
19 wearing of a Tyvek full suit; correct?

20 A. Correct. And we can go up to this
21 one, sampling or draining lines, you have the same
22 methacrylate or acrylate hazards, you have exposed
23 skin as your pathway that it gets into the body and
24 it's high potential and, again, there's no additional
25 PPE added to this, so you are yet to rely on your

1 uniform as your PPE to protect your skin.

2 Q. Okay. Can we just scroll across the
3 Row 16, please.

4 A. Sure. Is that where you wanted to be?

5 Q. Just a little bit further, please.
6 Thank you.

7 A. Okay. Yep. They mention adding
8 gloves but they do not mention adding any other body
9 PPE. They don't even mention it -- anything as even
10 being optional.

11 Q. If we could go up to the upper
12 left-hand corner, please.

13 A. This -- oh, left. My other left.
14 There we go.

15 Q. And you see here -- and I know you
16 refer to this in your report, but you see here No. 4,
17 and it says, work uniform or long pants and
18 long-sleeved shirt.

19 A. Correct.

20 Q. So according to this grid and others,
21 because this line appears in the other grids as well,
22 the standard can be satisfied by wearing a nonuniform
23 long-sleeved shirt and a nonuniform pair of pants;
24 correct?

25 A. Yes.

1 Q. And you agree that the grid here, this
2 grid for KB plant we'll use as an example, does not
3 make any reference to the need to keep work clothes on
4 site; correct?

5 A. Correct.

6 Q. And is there --

7 A. There's no --

8 Q. Is there any grid that you saw and
9 that you reviewed in preparation of your report that
10 stated that any work clothes worn by the plaintiffs
11 needed to be kept on site and not taken off site and
12 needed to be, you know, retained on site or to use
13 your words held captive to the -- to the plant?

14 A. Actually, yes, there were indications
15 for the need for captive work uniforms.

16 Q. How about on this grid? Let's just
17 start with this grid.

18 A. Oh, no, not on this grid.

19 Q. And is it your testimony that there
20 are other -- there's some other plant PPE grids that
21 do reference captive clothing?

22 A. Not grids, it's policy.

23 Q. Okay. So my question is, is there any
24 PPE grid that you reviewed and that you've relied on
25 in preparing your report that states that work clothes

1 worn by the plaintiffs have to be held, in your words,
2 captive to the site and not taken off the site?

3 A. Not in the grids, no. In the policies
4 and in the OSHA laws.

5 Q. You're referring to an OSHA log. Are
6 you referring to a company OSHA log?

7 A. No. OSHA law, L-A-W.

8 Q. Oh, OSHA law.

9 A. Mm-hmm.

10 Q. Oh, all right. And you're saying it's
11 OSHA law and what else?

12 A. Policies.

13 Q. When you're saying policies, just
14 generally and then we can get to them, but generally
15 what are you looking at? What kind of policies? Are
16 you talking about like an electrical safety policy
17 or...

18 A. No. PPE policy, but I'd have to look
19 it up. I'm not sure which one.

20 Q. Okay. What -- but you did testify
21 that OSHA requires the work uniforms worn by the
22 plaintiffs to be kept, in your words, captive to the
23 plant and not taken off the -- outside of the plant.
24 What OSHA law, either statutory or regulation,
25 requires the holding of the plaintiffs' work uniforms

1 captive to the Louisville plant?

2 A. The ones for 1910.120 called hazardous
3 waste operations and emergency response,
4 Standard 1910.119, process safety management of highly
5 hazardous chemicals, 1910.132, general requirements,
6 PPE, then for your specific contaminants, such as
7 vinyl chloride, asbestos, inorganic arsenic, lead,
8 cadmium, benzene, acrylonitrile, ethylene oxide,
9 formaldehyde, methylenedianiline, butadiene, methylene
10 chloride. All of those indicate that it is considered
11 standard best practices to keep your PPE, your work
12 uniforms on site.

13 Q. All righty. Let's take a look at --
14 because I want to see where it says that and, you
15 know, as opposed to indicate, I want to see where it
16 states in these particular provisions that you're
17 citing. So let's take a look at Exhibit 7.

18 A. We can start with the lead standard,
19 which is OSHA 1910.1025 for lead.

20 Q. Let's start with Exhibit 7, please.
21 And is everything you just cited in your report?

22 A. No. I don't think that's necessarily
23 cited or described.

24 (McCLELLAN DEPOSITION EXHIBIT 7 DISCUSSED)

25 Q. All right. Well, I'm going with what

1 you cited, so if we could pull up Exhibit 7.

2 MODERATOR: Okay. Could you unshare
3 your screen, Ms. McClellan, please.

4 THE WITNESS: Oh, sorry about that.

5 MODERATOR: No problem.

6 Q. All right. Let's go to the second --
7 next page. This is a regulation that you cited,
8 1910.132. And it's referencing, of course, the
9 protective equipment.

10 A. Mm-hmm.

11 Q. Now, I'll direct your attention to the
12 third page first. Let's take a quick look at that.
13 And if we can highlight -- are we on the third page?

14 MODERATOR: Yes.

15 A. No.

16 Q. No, that's the second page.

17 MODERATOR: Next one?

18 MR. KRESGE: Yes, please. There we
19 go. And can we highlight No. 4.

20 MODERATOR: Okay. Hold on.

21 Q. All right. Here we see and this
22 regulation states that the employer is not required to
23 pay for, and then, quote, everyday clothing, such as
24 long-sleeve shirts, long pants, street shoes and
25 normal work boots.

1 A. Right.

2 Q. Do you see that? So in this
3 particular regulation that you cited, the long-sleeve
4 shirts and long pants are referred to as, quote,
5 everyday clothing; correct?

6 A. In that context, yes.

7 Q. Okay. Now, where -- where does it say
8 that the everyday clothing that's provided to the
9 plaintiffs has to be held captive to the site?

10 A. I'm not -- I'm not calling everyday
11 clothing PPE, I'm referring to uniforms being captive.

12 Q. But the work uniforms that you're
13 opining about here are long-sleeve shirts and long
14 pants; correct?

15 A. As uniforms long-sleeve shirts and
16 long pants.

17 Q. Right.

18 A. There's a difference.

19 Q. All right. But OSHA's referring to
20 long-sleeve shirts and long pants as everyday
21 clothing; correct?

22 A. If the employer's not paying for it.
23 The employer in this case is paying for the uniforms.
24 We're not referring -- and that's -- this is another
25 reason that Rohm and Haas consider their uniforms as

1 personal protective equipment, is because they pay for
2 it.

3 Q. But did you ever -- did you ever learn
4 as part of this report what the actual history was in
5 terms of how work clothing came to be provided to the
6 employees?

7 A. Yes.

8 Q. Okay. And what did you -- what did
9 you learn?

10 A. What I learned is it was an evolution.

11 Q. And how did it start?

12 A. It started with the need for
13 consistency.

14 Q. No. Did you ever learn -- did you
15 ever learn anything about a collective bargaining
16 process?

17 A. No.

18 Q. You understand that the plaintiffs are
19 all represented by a union; correct?

20 A. Correct.

21 Q. And for the past 40 years the
22 plaintiffs have all been represented by a union at the
23 Louisville plant?

24 A. Yes. And as part of their agreement
25 they began providing uniforms.

1 Q. Right? So the origin was a -- as you
2 understand it, as you've learned, was an actual
3 bargaining demand from the union to provide work
4 clothes to the employees?

5 A. Mm-hmm.

6 Q. Is that correct?

7 A. Correct.

8 Q. And did you also learn as part of
9 developing the facts for your report that that -- that
10 a change occurred in 1997 to provide -- to keep the
11 clothes on site?

12 A. Correct.

13 Q. Okay. And did you learn at all that
14 -- about -- that the company actually proposed that as
15 a matter of inventory control because it was losing
16 uniforms when they were being taken off the site and
17 as a result they wanted to sort of stop the bleeding
18 of money of lost uniforms?

19 A. Correct.

20 Q. Okay. And so as a result of a need
21 for inventory control, the company included as part of
22 the proposal that it would provide clean clothes to
23 the plaintiffs as long as they would change in and out
24 of the clothes on the site so as to retain inventory
25 control?

1 A. Right.

2 Q. And then did you also learn that the
3 original proposal language in 1997 said that dirty
4 work clothes could not be taken home but then that as
5 part of -- consistent with the inventory control
6 rationale of the company for having the clothes remain
7 on site, that the company then changed the language in
8 the next bargaining session to say that clean clothes
9 or dirty clothes or worn clothes could not be taken
10 off site, that is, that the company added in any
11 clothes, work clothes, whether they be clean or worn,
12 could not be taken off site?

13 A. Right. As I indicated earlier, it was
14 an evolution.

15 Q. Right. And that evolution was to be
16 even more encompassing and consistent with their
17 inventory control rationale, which is that they didn't
18 want to lose clean work clothes or worn work clothes
19 having them go off site; correct?

20 A. Correct. And that has a benefit of
21 ensuring that contaminants that could be on dirty work
22 clothes do not migrate to employees' vehicles, does
23 not migrate to employees' homes.

24 Q. And was your rationale of
25 contamination ever in any part of the collective

1 bargaining history between the company and the union
2 as it pertained to the Louisville plant?

3 A. In part, yes.

4 Q. All right. What is it that you can
5 point to in our record that says as part of the
6 bargaining history that prevention of contamination is
7 a reason in whole or in part for keeping the clothes
8 on site?

9 A. In the document there isn't any
10 indication in the collective agreement.

11 Q. And how about in the -- in any of the
12 discovery records, be it deposition testimony or be it
13 in any of the proposals, is there anything that you
14 can point to that would show that prevention of
15 contamination was a reason in whole or in part for
16 maintaining the clothes and keeping the clothes, the
17 work uniforms on site?

18 A. After working for United Auto Workers
19 organization, I worked for General Motors, I know that
20 the reasons behind making decisions for collective
21 bargaining agreements are based on health and safety
22 considerations and with a reasonable degree of
23 scientific certainty, I'm sure that the maintenance of
24 captive uniforms, that consideration was making sure
25 that those materials did not migrate off of the site.

1 Q. So you're now opining with a
2 reasonable degree of scientific certainty without any
3 factual basis in the record; correct?

4 A. It's based on my experience.

5 Q. Right. About what's happening over at
6 General Motors; right?

7 A. Well, what happens in collective
8 bargaining agreements with unions involved, yes.

9 Q. All right. But you have no specific
10 factual basis for concluding that prevention of
11 contamination was a reason in whole or in part for the
12 company's decision and bargaining proposal and
13 bargaining agreement to maintain the clothes, the work
14 uniforms on site; correct?

15 A. It's part -- correct, it's part of
16 best practices.

17 Q. Well, whatever you define as best
18 practices, but I'm just looking at the collective
19 bargaining agreement process --

20 A. Okay. Correct.

21 Q. -- and what they were talking about.
22 So now let's go to -- since you're talking about OSHA
23 law, let's talk about this regulation. Tell me where
24 it is that it says that a long-sleeve shirt or long
25 pants, and we can back out of this, which again is

1 referred to here as everyday clothing, where it says
2 that that needs to be kept on site.

3 A. If you look in the lead standard
4 1910. --

5 Q. No, no, no, no. No, no. Let's stay
6 with this. I -- because you cited this and you relied
7 on it, so I want to talk about what you're referring
8 to or relying on.

9 A. So in my opinion you mean?

10 Q. Yeah.

11 A. Oh, okay.

12 Q. Pull this up from -- I didn't pull
13 this out of there, I pulled it from your opinion.

14 A. Oh, I know. I didn't know if you
15 wanted to put it on the screen or not.

16 Q. Yes, I'd like it back up, please. And
17 we can take that part down, the highlighted part. And
18 if we could go back to two pages beforehand, please.
19 And if we could blow it up a little bit so that she
20 can see it. And then we can just scroll down as you
21 wish. If you can -- if you know the answer without
22 looking, fine, but if you'd like to, you can just --
23 my question generally is, looking at this particular
24 regulation that you cited, where does it state that
25 the work uniforms worn by the plaintiffs have to be

1 kept on site, had to be held, as you put it, captive?

2 A. I'm just looking for my copy of the
3 PPE standard that I have marked.

4 Q. Well, I'm looking at the OSHA law.
5 I'm not looking at the PPE standards. Are you talking
6 about an OSHA standard?

7 A. That's what a PPE standard is. That
8 is what 1910.132 is. That's the OSHA PPE standard.

9 Q. So you're looking for your version of
10 .132?

11 A. Uh-huh. Yeah.

12 Q. Okay.

13 A. Oh, there we go. Actually, it's in
14 the specific standards. So more specifically than
15 132, it's in the PPE section of material specific
16 standards, like lead, which is one of the materials
17 that they are exposed to.

18 Q. We'll get to that. And if -- my
19 question is --

20 A. Captive is not specified -- here, I'll
21 answer your question.

22 Q. Okay.

23 A. Captive is not specified in 1910.132
24 but it is specified in 1910.100 and it's also
25 specified in 1910.1025. So if we want to review

1 those, we're going to review the PPE section in those
2 standards.

3 Q. Which -- which one said -- again, you
4 said lead, is that .1025?

5 A. Yeah, we're going to look at lead and
6 asbestos.

7 Q. And that's .1001.

8 A. Which --

9 Q. Okay. Go ahead.

10 A. Yeah.

11 Q. I'm sorry.

12 A. Okay. So in asbestos if you look on
13 Page 9 out of 25, the reference is 1910.100,
14 Section H, as in Harry, (2)(ii). It states that the
15 employer shall ensure that no employee takes
16 contaminated work clothing out of the change room
17 except those employees authorized to do so for the
18 purpose of laundering, maintenance or disposal.

19 Q. Let's go to Exhibit 9A, please, and
20 that's what this is, what you're referring to. So
21 we're going to pull it up on the screen.

22 A. Okay.

23 MODERATOR: 9A?

24 MR. KRESGE: Yes, Sean.

25 A. That's not the correct --

1 Q. And if --

2 A. Oh, wait, that is the one. Okay. Go
3 to Page 9 of that document.

4 Q. I have it as Page 8, Sean, but it's
5 Section H.

6 A. It -- yeah, H and then Paragraph 4.
7 Keep going. Oh, there you go. So this is the PPE,
8 protective work clothing and equipment. If you look
9 at -- yep, Item ii, that's the statement that I just
10 made.

11 (McCLELLAN DEPOSITION EXHIBIT 9A DISCUSSED)

12 Q. Now, this standard that we're looking
13 at here is -- deals solely with asbestos; correct?

14 A. Correct.

15 Q. Okay. And on a daily basis were the
16 plaintiffs exposed to asbestos in their work?

17 A. Mm-hmm.

18 Q. Is that a yes?

19 A. I don't know, but it is on the grids,
20 there is potential for it.

21 Q. Right.

22 A. So --

23 Q. I'm not talking about potential, I'm
24 asking you were the plaintiffs exposed to asbestos as
25 part of their job on a regular basis?

1 A. Yes. According to the PPE grids, it
2 is listed as a potential contaminant on a regular
3 basis and I can look up the probabilities for you in
4 the grids.

5 Q. And then is it your testimony, then --
6 so you're -- you're relying on this particular
7 asbestos standard from OSHA based upon your view that
8 the plaintiffs were regularly exposed to asbestos in
9 their work?

10 A. No.

11 Q. Is that correct?

12 A. No. I'm relying on the PPE grids that
13 alerts the reader to the fact that asbestos is
14 potentially in the work environment of the operators.

15 Q. Right. But a PPE grid just gives
16 certain circumstances or situations that could arise
17 as part of a job; correct?

18 A. Correct.

19 Q. And if it was -- for example, there
20 could be a PPE grid for line opening that the
21 plaintiffs won't even do; correct?

22 A. I don't know.

23 Q. Right. So you don't know the details
24 of what the plaintiffs do on a -- on -- you know, at
25 any point in time --

1 A. No.

2 Q. -- during the past 19 years; correct?

3 A. I -- I do know what they do on a daily
4 basis on the basis of the PPE grids, the frequency at
5 which is indicated by the low, medium and high
6 probability rating. If you'd like for me to look them
7 up in the PPE grids, I can tell you whether it was
8 low, which means maybe that task exposed them to
9 asbestos on a very rare basis up to high, which might
10 have been a daily basis.

11 Q. Well, no, doesn't the low, medium or
12 high relate to the exposure risk in performing that
13 specific task at that time, whether it be once a year
14 or every day?

15 A. It can be a combination of duration
16 for that task and it can be in combination with some
17 of the other things that they're doing.

18 Q. Did you ever find out what it was?

19 A. Find out what it -- what it --

20 Q. You're saying it could be this -- I'm
21 sorry to interrupt you. Go ahead.

22 A. Could you repeat your question.

23 Q. Yeah. Did you ever -- you're
24 answering here and testifying, well, it could be this
25 or it could be that, but the question is, what was it

1 at Rohm and Haas and Dow in Louisville? Did you ever
2 find out what that PPE grid reference to medium, low
3 or high was?

4 A. Yes.

5 Q. Was it a reference -- was it indeed a
6 reference to just the exposure risk in doing that task
7 regardless of how -- the frequency of the task or was
8 it a reference to the frequency of the task?

9 A. The -- there's a note in the thing
10 where if you click on it, it says, degree of exposure
11 routes, low means low potential for exposure, not
12 anticipated chemical contact. Medium means under
13 normal conditions some potential for exposure.

14 Q. Right.

15 A. And it specifies it so, yes, I did
16 find out it is in here --

17 Q. Right.

18 A. -- and it does indicate what the
19 potential is.

20 Q. But your reading doesn't tell you the
21 frequency of the task, it just tells you what the
22 exposure risk is when you're performing that specific
23 task regardless of frequency; correct?

24 A. Frequency is part of exposure risk.

25 Q. That's your interpretation of the

1 grid, then?

2 A. Yes.

3 Q. Okay. So -- all right. Now, if
4 you're working with a line opening, because some of
5 those grids were for line openings; correct?

6 A. Correct.

7 Q. And in the context of line openings,
8 that typically would be something where there might
9 be, might be a potential for some asbestos exposure;
10 correct?

11 A. Correct.

12 Q. And do you know one way or the other
13 whether our plaintiffs ever did line openings?

14 A. Given that these were written for
15 regular duties for operators as well as line opening
16 -- line and equipment opening.

17 Q. Well, there's two different set of
18 grids; right? There's the line opening grids and then
19 there's the regular duty grids.

20 A. Right.

21 Q. So my question to you is with regard
22 to the line opening grids, is it --

23 A. This applies to all operators, both
24 sheets, they've simply separated out your daily duties
25 from your occasional line opening and equipment

1 opening grids.

2 Q. All right. So it's your -- your
3 testimony that the documents that you're looking at
4 were for -- that the documents you're looking at
5 related to line openings applied to the plaintiffs?

6 A. I can't confirm that with certainty,
7 no.

8 Q. Okay. Did you ever ask any of the
9 plaintiffs whether or not they did any line openings?

10 A. No.

11 Q. So when we're looking at asbestos
12 exposure in this particular standard that's 1910.1001,
13 is it your -- is it your -- is your opinion based in
14 part -- in terms of your reliance on this particular
15 standard, is it based in part -- is it based on your
16 factual conclusion that the plaintiffs were regularly
17 exposed to asbestos?

18 A. Could you restate your question.

19 Q. Okay. Is your reliance on this
20 particular section, 29 C.F.R., Section 1910.1001 on
21 asbestos, is your reliance on this, on this standard
22 in your report based on your factual assumption that
23 the plaintiffs were regularly exposed to asbestos in
24 their work?

25 A. No.

1 Q. Okay. Is it -- what's it based on?

2 A. It's based on the PPE grids that
3 actually characterize the workers' potential
4 exposures.

5 Q. Well, I'm getting to that. So that's
6 what my question is. I understand that you have --
7 you have your interpretation of those grids, but is it
8 your -- let me make sure I'm clear. Is it your
9 interpretation of the PPE grids, and we're going to
10 have to try to deal with this somehow because I'm
11 going to need to get ahold of what you're looking at,
12 but is that -- is it your interpretation of those PPE
13 grids from 2018 the basis for your conclusion that the
14 plaintiffs were regularly exposed to asbestos?

15 A. If you leave the word regularly out,
16 it's a basis for assumption or it's a basis for --
17 with a reasonable degree of scientific certainty that
18 they were exposed. The exposure potential is going to
19 vary based on what tasks they were involved in but the
20 PPE grids do indicate that they were exposed.

21 Q. And is it your testimony that the PPE
22 grids show or demonstrate the frequency of exposure of
23 asbestos to the plaintiffs?

24 A. To an extent, yes, based on the
25 exposure route probabilities that they embedded in the

1 grids.

2 Q. Okay. And your interpretation of
3 medium, low and high?

4 A. Correct.

5 Q. So, then, if -- if there is all this
6 exposure to asbestos for the plaintiffs that underlies
7 your reliance here on Section 1910.1001, then a lot
8 has to be done with regard to those clothes other than
9 just giving them over to Cintas; right?

10 A. The protocols for cleaning I'm not
11 aware of.

12 Q. I see. So -- well, let's just take a
13 look at the standard that you're relying on. It's
14 right there in part. So if we go down a little bit
15 below here to Number (iv).

16 A. Mm-hmm.

17 Q. It says that, the employer shall
18 ensure that containers of contaminated work clothing,
19 which are to be taken out of change rooms or the
20 workplace for cleaning, maintenance or disposal, bear
21 labels in accordance with Paragraph (j) of this
22 section.

23 A. Mm-hmm.

24 Q. And then if we were to go down to (j),
25 there's all these warning signs that need to be -- so

1 we have to keep going further down. It's on Page 12
2 of my document, my printout, all these warning labels
3 that have to be placed on the laundry -- the laundry
4 bags.

5 A. Correct.

6 Q. So, right, it says, warning, may cause
7 cancer, cause damage to the lungs, authorized
8 personnel only, wear respiratory protection,
9 protective clothing in this area; right?

10 A. Mm-hmm. Correct.

11 Q. Now, was any of that ever done with
12 Rohm and Haas and its vendor or Dow and its clothing
13 vendor as it came to the plaintiffs clothes?

14 A. It depends on the layer of clothing
15 that you're talking about. The outer layer of what
16 you would wear if you were suspecting that asbestos
17 was going to be in your environment, you would handle
18 that with this level of care and caution.

19 Q. I see.

20 A. Your base layer --

21 Q. Good ahead.

22 A. Yeah, your base layer of clothing,
23 which would be your work uniform, as long as it's
24 laundered and you've turned the fibers from dry to
25 wet, then there's less caution that is needed than

1 with the outer layers, the Tyvek suits or whatever
2 that you typically dispose of as regulated waste.

3 Q. So when you're -- what you're saying
4 is that when you actually are working with asbestos,
5 let's assume that the plaintiffs actually did, that
6 they have to wear Tyvek suits and other PPE on top of
7 their uniforms; correct?

8 A. When they -- yes, when you anticipate
9 exposure to asbestos, you should be wearing additional
10 PPE.

11 Q. Right. Because the work uniform
12 itself does not protect you against the asbestos --

13 A. Correct.

14 Q. -- correct?

15 A. Correct.

16 Q. And so then the work uniform itself,
17 then, because by virtue of wearing a Tyvek suit on top
18 of it, the work uniform itself whenever there's
19 exposure to asbestos does not become contaminated;
20 correct?

21 A. That is the hope.

22 Q. So then all of these provisions under
23 Section 8 -- H, I mean, if we could go back to H --

24 A. Mm-hmm.

25 Q. -- all of these provisions which are

1 quite detailed about removal and storage and cleaning
2 and replacement and showers, well, that's in I, we'll
3 get to that, but, you know, removal and storage and
4 cleaning and replacement, those particular provisions,
5 Sections 2 and 3, do not apply to our case; correct?

6 A. They -- they do not apply to our case
7 unless the worker accidentally removes their coveralls
8 or their Tyvek suit and accidentally contaminate their
9 clothing, their work clothing, their uniform, and then
10 you would be left to assume that now your work uniform
11 needs to be handled similarly.

12 Q. All right. And Section I refers to
13 special rules with regard to -- if we can scroll down,
14 Section I refers to special rules with regard to
15 change rooms and requiring of showers; right?

16 A. Correct.

17 Q. And Section I of the asbestos standard
18 does not apply to our case, either; correct?

19 A. Hygiene practices, change rooms, no,
20 these are typically the approaches that you would
21 employ if you were abating asbestos.

22 Q. Right. So, again, would you agree
23 with me that Section I of the asbestos standard here
24 that appears on Page 9 of my printout, which has
25 sections on change rooms and showers, that this

1 Section I does not apply to our case?

2 A. In the circumstances that we're
3 discussing, no.

4 Q. Okay. My question was, do you agree
5 with me, so do you agree with me that Section I of the
6 asbestos standard does not apply to our case?

7 A. To what?

8 Q. Let me ask it differently so it's
9 clear. Does Section I -- let me just make sure I have
10 it -- of the -- does Section I of this asbestos
11 standard, that is, 29 C.F.R. 1910.1001, apply at all
12 to our plaintiffs in our case?

13 A. It does if they are removing asbestos
14 or disturbing asbestos is part of line and equipment
15 operations.

16 Q. And let me make it more precise. Does
17 Section I of this regulation that we've marked as
18 Exhibit 9A apply to the plaintiffs' work uniforms?

19 A. The plaintiffs' what?

20 Q. Work uniforms.

21 A. It's not meant to apply, it says --
22 it's not -- this isn't meant to apply to a certain
23 part of their clothing, it's meant to apply to people
24 who are doing certain tasks. What I'm saying is that
25 the task that it applies to is to anybody who's

1 disturbing or removing or abating asbestos.

2 Q. And your testimony is that the
3 plaintiffs do. That's why you're relying on this
4 standard; right?

5 A. Before I answer you, let me check.
6 No, it does not.

7 Q. So does Section I of the asbestos
8 standard that we've marked as Exhibit 9A apply to the
9 plaintiffs' work uniforms? I think you just answered
10 no, but I just want to make sure it's clear.

11 A. No.

12 Q. Now, were the plaintiffs ever required
13 to shower at the end of their work shift?

14 A. I don't believe so.

15 Q. So indeed if there had been -- if
16 there was any contamination or potential contamination
17 with asbestos, there would be a requirement for
18 showering at the end of the work shift before the
19 employee leaves the work site; correct?

20 A. Correct.

21 Q. Indeed wouldn't that be true for lead
22 as well?

23 A. Typically, yes.

24 Q. Okay. And so let's take a look at the
25 lead standard that you also were relying on, which is

1 Exhibit 9B, please. Now, as the starting point, is
2 this the OSHA standard that you're relying on?

3 A. Yep, it is.

4 (McCLELLAN DEPOSITION EXHIBIT 9B DISCUSSED)

5 Q. Okay. Now, did our plaintiffs in this
6 case ever have exposure to lead?

7 A. Yes.

8 Q. Okay. And what tasks did they have
9 exposure to lead, if you know offhand? You can look
10 at it later but do you know offhand?

11 A. No. I don't remember offhand.

12 Q. And do you know how frequent the
13 exposure of the plaintiffs was to lead?

14 A. I don't remember offhand.

15 Q. Now, I noticed that the PPE grids that
16 you were looking at were created in 2018.

17 A. Mm-hmm.

18 Q. Do you know how many of our plaintiffs
19 were actually working at the Louisville plant in 2018?

20 A. I do not know.

21 Q. Did you ever look at any of the PPE
22 grids that were before 2018?

23 A. I have some PPE grids that are
24 illegible.

25 Q. That would be mine, yeah, so I'm

1 sorry.

2 A. Yeah.

3 Q. Okay.

4 A. Yeah.

5 Q. So did you ever attempt to review
6 those? I know they're hard to read but did you ever
7 attempt to review those?

8 A. I did and I found many of the same
9 contaminants and hazards.

10 Q. All right. So let's get back to lead.
11 Is it your testimony that this OSHA regulation on lead
12 requires the plaintiffs' work uniforms to be kept
13 captive to the site?

14 A. Correct.

15 Q. And that would be on a daily basis
16 regardless of whether they worked with lead or not
17 that particular day?

18 A. Correct.

19 Q. And so if on any particular day all of
20 our plaintiffs who were working at the Louisville
21 plant had no exposure to lead, why is this
22 Section 1910.1025 relevant?

23 A. In case they have had exposure that
24 they're unaware of.

25 Q. So you're just saying now we're going

1 to apply a regulation to some hypothetical exposure?

2 A. It's not hypothetical, it's in your
3 PPE grids.

4 Q. And is it your testimony that the PPE
5 grids support a position or a factual conclusion that
6 the plaintiffs on a regular basis are exposed to lead?

7 A. Yeah, I believe that was in the old
8 PPE evaluations that were -- that dated back to Rohm
9 and Haas exposures.

10 Q. And do those documents that you're
11 referring to address the frequency of exposure to lead
12 by our plaintiffs?

13 A. No, they do not.

14 Q. Do you have any knowledge, factual
15 basis I should say, for the frequency of exposure to
16 lead by our plaintiffs in the Louisville plant at any
17 point in time over the course of the last 19 years?

18 A. No, I do not.

19 Q. So let's take a look at Section G.
20 It's on Page 7 of mine. There we go. So is it your
21 testimony that Section G of OSHA regulation 1910.1025
22 requires that the plaintiffs' work uniforms be kept
23 captive to the plant and not removed?

24 A. Correct.

25 Q. All right. And so is it your

1 testimony that Section G of 1910.1025 applies to the
2 plaintiffs' work uniforms?

3 A. Potentially, yes.

4 Q. I'm not asking potentially, I'm asking
5 one way or the other, does it apply? Because you've
6 cited it and refer to it in your report as you're
7 relying on it. So I want to understand if you're
8 saying not potentially, is it your position and
9 opinion that Section G of 1910.1025 applies to the
10 plaintiffs' work uniforms?

11 A. Yes.

12 Q. Okay. So then if we were to look at
13 what Section G requires, just like with the asbestos,
14 the Section G requires very special laundering
15 instructions and disposal of clothes that have been
16 exposed to lead. So let's take a look and see what
17 those are. So let's take a look at the very next
18 page. So highlight it. So the first thing that OSHA
19 says when we've got exposure to lead is that the work
20 clothes must be changed in a change room solely
21 provided for that purpose. Do you see that?

22 A. Mm-hmm.

23 Q. And does that apply to our plaintiffs
24 and their work uniforms?

25 A. I don't know.

1 Q. You don't know. So you're testifying
2 that the section applies to the plaintiffs but you
3 don't even know how they change and what the change
4 rooms were?

5 A. Because it's listed in your hazard
6 assessments that were provided in documentation, I am
7 left to believe with a reasonable degree of scientific
8 certainty that they did have these work systems in
9 place and that there was potential for exposure to
10 lead and to the work uniforms.

11 Q. So is it your testimony that on a
12 daily basis that the plaintiffs would then have to go
13 to a special change room designated just for lead and
14 go through the process of clothes changing in that
15 room?

16 A. Maybe not on a daily basis.

17 Q. On a regular basis?

18 A. Maybe not even on a regular basis.

19 Q. On any basis?

20 A. Yes. On some basis because it is in
21 their PPE grids, yes.

22 Q. So is it your testimony, then -- all
23 right. So it's your testimony that there is some
24 special lead change room?

25 A. There -- there very well could have

1 been because it was -- yes, because it was listed in
2 the PPE grids.

3 Q. All right. And it's your testimony
4 that the plaintiffs -- did you know if one way or the
5 other the plaintiffs ever had to use that special lead
6 room --

7 A. I do not --

8 Q. -- to change?

9 A. -- know.

10 Q. Okay. Now, what OSHA also requires
11 when we've got exposure to lead is that you have to --
12 in the next Subpart (v), we have to place all this
13 contaminated clothing in a closed container in that
14 special change room to prevent the dispersion of lead.

15 A. Mm-hmm.

16 Q. Is that what -- how our plaintiffs'
17 work uniforms were handled?

18 A. I do not know.

19 Q. Okay. And then what OSHA also
20 requires in this section that you rely on is that the
21 employer, in this case either Rohm and Haas or Dow
22 Chemical, must inform the launderer of the exposure to
23 lead and label the bags of contaminated clothing with
24 all these danger warnings; do you see that?

25 A. Yes.

1 Q. Is that -- is that how -- let me just
2 say this way, is that how Rohm and Haas interacted
3 with its clothing vendor or vendors --

4 A. I do not know.

5 Q. -- when handling the plaintiffs' work
6 uniforms?

7 A. I do not know.

8 Q. And is what we see in Sections --
9 Subparts (vi) and (vii) here that are subparts of
10 Section G, is that how Dow Chemical has interacted and
11 provided -- has interacted with its clothing vendors,
12 such as Cintas, in handling the plaintiffs' work
13 uniforms?

14 A. I do not know.

15 Q. And is it your understanding that when
16 there is exposure to lead that employees are supposed
17 to shower before leaving work?

18 A. Correct.

19 Q. And, again, did Rohm and Haas or Dow
20 Chemical ever require plaintiffs to shower before
21 leaving work?

22 A. I do not know.

23 MR. KRESGE: I think this would be a
24 good time, if we could, just to take a break.

25 MR. CONNOR: Couldn't wait. Glad you

1 asked.

2 MR. KRESGE: All right. Thank you.

3 MR. CONNOR: 10 minutes, 15 minutes?

4 MR. KRESGE: Yes, that would be good,
5 Glen.

6 MODERATOR: It is 4:32 and we are
7 going off the record.

8 (OFF THE RECORD)

9 MODERATOR: It is 4:56 and we are back
10 on the record.

11 Q. I'd like to -- let me ask it just
12 generally. You also cited and relied on an OSHA
13 standard related to silica.

14 A. Mm-hmm.

15 Q. Do you recall that?

16 A. Yes.

17 Q. Okay. And what is silica?

18 A. Silica, in this specific case I'm
19 referring to respirable crystalline silica and that is
20 why that there's an OSHA standard. It's a particle
21 material, it's a solid, and it's -- when you think of
22 sand, it's -- the very finest smallest of quartz
23 silica tends to be the most hazardous and so that's
24 why it's considered a carcinogen as well as causing a
25 disease called silicosis.

1 Q. And is it a hazard through exposure by
2 breathing?

3 A. Correct. Carried on the skin,
4 exposure by breathing, yes.

5 Q. And let's take a look at -- is there
6 anything in the silica standard from OSHA that relates
7 to clothing, if you recall? We'll pull it up.

8 A. Oh, not in the standard itself. You
9 cover personal protective equipment as you develop
10 what's called an exposure control program for silica,
11 so your personal protective equipment, including
12 clothing or uniforms, would be covered in your ECP.

13 Q. Let's take a look at Exhibit 9C.

14 A. If you refer to Section F, Line 2,
15 Item I. Okay. So methods of compliance, you go down
16 to Item I, it says that the employer shall establish
17 and implement a written exposure control plan that
18 contains at least the following items. It's within
19 those sections where it mentions engineering controls,
20 work practices, RPE to limit the employee to exposure.
21 It's within that section of your exposure control plan
22 that you would make reference to PPE, including work
23 uniforms and change-out cycles and what have you.

24 (McCLELLAN DEPOSITION EXHIBIT 9C DISCUSSED)

25 Q. And does this OSHA standard that we've

1 marked as Exhibit 9C, which you cited in your report,
2 directly support in any way your position that the
3 work uniforms worn by the plaintiffs had to be kept
4 captive to the Louisville plant?

5 A. Yes. Within the exposure control plan
6 section of that, it would indicate that you need
7 captive uniforms as part of that ECP.

8 Q. Well, where is that stated in the
9 standard that we have marked as Exhibit 9C?

10 A. The standard is called a
11 performance-based standard. All OSHA standards are
12 considered performance based. They don't tell you
13 exactly how to accomplish these things, they just tell
14 you that you need to accomplish defining your
15 engineering controls and work practices, and it's
16 within work practices that you would talk about what
17 you're going to do in terms of PPE change-out.

18 Q. But the other standards that we
19 reviewed, the asbestos and lead in particular, had
20 specific sections on protective clothing that we --
21 that we reviewed.

22 A. Yeah.

23 Q. Does the silica standard that we've
24 marked as Exhibit 9C have any section on protective
25 clothing?

1 A. Yes. Just not specific details.

2 Q. Where is this section that you're
3 referring to? Is it anything other than Section F,
4 Subpart 2, little I?

5 A. Correct.

6 Q. That's it?

7 A. Yes. That's it.

8 Q. Okay. So -- all right. And other
9 than Section F, Subpart 2, little I, is there any
10 other part of the silica standard marked as Exhibit 9C
11 that you rely on to support your position that the
12 work uniforms worn by the plaintiffs had to be kept
13 captive to the Louisville plant?

14 A. No.

15 Q. And is it your position that the
16 plaintiffs had exposure to silica as part of their
17 job?

18 A. It was in the personal protective
19 equipment grid, so, yes.

20 Q. And do you know how frequent it was
21 that the plaintiffs had exposure to silica in their
22 jobs?

23 A. Yes. Based on the hazard risk ratings
24 of low, medium and high.

25 Q. So that, again, goes to your

1 interpretation of low, medium, high as relating to
2 frequency contact as opposed to the exposure risk?

3 A. Correct.

4 Q. And do you know if all the plaintiffs
5 had exposure to silica --

6 A. I do not know.

7 Q. -- as part of their job? And were
8 those instances that you saw in the PPE grids with
9 regard to exposure to silica, was there anything
10 additional in terms of body protection that was
11 required on there, if you remember?

12 A. Beyond the PPE grids, no.

13 Q. No?

14 A. I don't recall.

15 Q. No, was any -- and we'll -- as I
16 addressed with plaintiffs' counsel, we'll address the
17 grids another time, but I'm just asking you based
18 on -- if you recall if the -- in connection with the
19 silica exposure references that you're saying existed
20 on some of these PPE grids that -- was there anything
21 in the body section that was to be added for
22 protection for the employee?

23 A. No. Not that I recall. I can look it
24 up if you'd like.

25 Q. We'll deal with the grids, as we said,

1 another time. And typically when is it that there's
2 silica exposure? What creates it?

3 A. Silicon can be added as an additive to
4 a chemical process, it can be used as an abrasive. It
5 has a number of uses, it just depends on what the
6 chemical reaction calls for.

7 Q. And do you know if silica has been --
8 is indeed an additive to any of the production
9 processes that are run by the plaintiffs?

10 A. It's possible. I can look it up if
11 you'd like on the PPE grids.

12 Q. I'd like to show you what we marked as
13 Exhibit 6. Before we do that, before we pull it up,
14 do you rely on any Kentucky law in support of your
15 position that the plaintiffs' work uniforms
16 constituted PPE and had to remain captive to the
17 Louisville plant?

18 A. In terms of captive uniforms and
19 Kentucky law, I don't believe I made a statement based
20 on that association.

21 Q. And is there anything in Kentucky law
22 that you know of that supports the position that the
23 work uniforms are PPE?

24 A. Not that I'm aware of, but I'm not a
25 legal expert or a labor law expert. I only know from

1 the documents that I was provided.

2 Q. I'll show you what we've marked as
3 Exhibit 6.

4 MODERATOR: Hold on.

5 MR. KRESGE: If you could just blow it
6 up just a little bit, please. So -- and scroll up a
7 little bit so we see the title. No, up. The other
8 way. There we go.

9 Q. So I'll represent to you that
10 Exhibit 6, and we'll scroll through it, are three
11 separate Kentucky labor laws that you cited in your
12 report.

13 A. Okay.

14 (McCLELLAN DEPOSITION EXHIBIT 6 DISCUSSED)

15 Q. And so I want to go through them and
16 make sure I understand why it is -- I have your report
17 but I want to make sure I understand any connection to
18 PPE and/or -- I think you've already testified about
19 captive, but let's take a look at each statute. So
20 the first one that you cited was on minimum wages and
21 that's Section -- Kentucky law Chapter 337.285. What
22 in this Kentucky law supports a position -- what, if
23 anything, supports a position that the plaintiffs'
24 work uniforms are PPE?

25 A. It doesn't.

1 Q. Okay. And what, if anything, in this
2 Kentucky law, which is 337.285, supports your position
3 that the plaintiffs' work uniforms were -- had to be
4 retained as captive to the Louisville plant?

5 A. It doesn't.

6 Q. Now let's take a look at a couple
7 pages later to the section titled Lunch Period
8 Requirements, 337.355.

9 A. Can you --

10 Q. We're going to get there.

11 A. Okay.

12 Q. Scroll down. I apologize.

13 A. Oh, okay.

14 MODERATOR: Trying to figure out where
15 you want to go.

16 MR. KRESGE: To the lunch period
17 requirements, keep going down. 337.355.

18 A. It's the next document. It's not this
19 document.

20 Q. Right.

21 A. It's the next one.

22 Q. Next page.

23 A. Yeah.

24 Q. There we go. Let's blow that up,
25 please. All right. Now, you also cited Kentucky

1 law 337.355 in your report. What, if anything, does
2 Kentucky law 337.355 on lunch period requirements have
3 to do with your opinion that the plaintiffs' work
4 uniforms are PPE?

5 A. They're required to use their lunch
6 period to don on or -- and doff the PPE.

7 Q. What PPE?

8 A. The work uniforms.

9 Q. So your testimony that it's your
10 understanding that the plaintiffs have to change into
11 work uniforms at lunch?

12 A. If they're leaving the site they do.

13 Q. And do you know if the plaintiffs
14 leave the site for -- left the site?

15 A. I think it's fair to conclude that
16 workers do leave the site for their lunch break.

17 Q. Well, do you have any factual basis
18 for that conclusion?

19 A. No, I do not.

20 Q. Do you know as a matter of fact if
21 each of the buildings that -- the production buildings
22 that exist at the Louisville plant actually have a
23 separate lunchroom for employees?

24 A. I did not see any evidence that
25 indicated that workers were captive to the site for

1 their lunch.

2 Q. I'm not saying that they are, I'm just
3 asking you, do you know if they had lunchrooms
4 provided to them?

5 A. I -- yes, I do believe they did have
6 lunchrooms provided for.

7 Q. And so what's your -- what's the
8 factual basis for your statement that the employees
9 changed into and out of their work uniforms at lunch?

10 A. For the reasons that we just stated,
11 that there are instances where the worker could leave
12 the site for lunch and would need to leave what is
13 captive on site.

14 Q. And so for those instances that you're
15 referring to, let's assume they exist, in which the
16 employees actually leave the site to go get lunch
17 somewhere, do you know as a matter of fact if indeed
18 those employees change out of their work clothes
19 before they leave the site and change back into the
20 work clothes when they come back with their lunch or
21 after lunch?

22 A. They would have to. They would have
23 to change out of their work uniforms.

24 Q. Why?

25 A. If they're wearing -- if they're

1 wearing -- if they came in in street clothes and they
2 leave in street clothes because the uniforms are
3 captive --

4 Q. Well, you --

5 A. -- then that --

6 Q. -- concluded that they're captive.

7 The company has never said that other than for
8 inventory control reasons that they don't want people
9 leaving at the end of their work shift with their work
10 clothes.

11 A. Correct. So that's a fair estimation
12 of the situation where you're expected to leave it on
13 site, you're -- you're not allowed to leave in your
14 uniform. So if you're going to leave for lunch,
15 you're going to have to leave that uniform behind.

16 Q. Well, where is that written?

17 A. I don't know where it's written but
18 from --

19 Q. And --

20 A. -- from inference.

21 Q. -- I just -- let's cut through it to
22 make it quick, then we can move on. Is there
23 anything -- anything factual that you have based on
24 the record that supports your thinking that when a
25 plaintiff would leave the site for lunch or to get

1 lunch that he or she changed out of their work clothes
2 and then upon return changed back into their work
3 clothes?

4 A. Yes. The workers wear a supplied
5 uniform. The uniform is supposed to stay on site. If
6 you leave the site, you're going to have to change out
7 of that work uniform for whatever circumstances.
8 Those are all facts in other documents and logically
9 it leads you to the conclusion that if you're going to
10 leave for lunch you're going to have to change out of
11 that work uniform, you're going to have to spend time
12 doing so.

13 Q. I'm just asking for facts. I'm not
14 asking for whatever your logic might be. I'm asking
15 for facts. What facts do you have in the record that
16 this actually occurs, that this process of employees
17 going out to lunch and changing in and out of their
18 work uniforms as they leave to go to lunch and then
19 changing back into their work uniforms as they come
20 back to lunch? What factual basis do you have that
21 that occurs?

22 A. The first fact is that PPE or work
23 uniforms are mandatory and the second fact is that the
24 PPE or work uniforms are supposed to be left on site.
25 Those are my facts.

1 Q. And that's it?

2 A. Yes.

3 Q. All right. So other than your theory
4 that employees leave for lunch and change in and out
5 of work clothes to leave for lunch and to come back
6 from lunch, is there any other relevance of this
7 Section 337.355 to your conclusions in your report?

8 A. No.

9 Q. Do you have any idea how long the
10 plaintiffs have been provided through the years for
11 lunch, their time?

12 A. No, I do not.

13 Q. All right. Let's move to the next
14 page, please. You also cited Kentucky law 337.365 as
15 support for your opinion. How is this Kentucky law
16 337.365 relevant to your opinion that you've expressed
17 in your report?

18 A. Donning and doffing required PPE
19 shouldn't take up any of their rest break.

20 Q. And what -- and is it your testimony
21 that indeed putting on -- and I know you referred to
22 the work uniform as PPE, but putting on the work
23 uniform occurs during rest breaks?

24 A. Could you repeat that.

25 Q. Yes. Is there any factual basis or

1 any conclusion to be reached that the plaintiffs have
2 changed into or out of their work uniforms during rest
3 periods or rest --

4 A. No.

5 Q. -- breaks?

6 A. No.

7 Q. Again, does this Kentucky law,
8 373.365, have anything to do with your opinions
9 expressed in your report?

10 A. No.

11 Q. You've also cited a document put out
12 by OSHA called controlling electrical hazards?

13 A. Mm-hmm.

14 Q. Do you remember that?

15 A. Yes.

16 Q. And why is it that you rely on that
17 document for your opinions? Do you recall -- we'll
18 pull it up, I just wanted to ask if you recall
19 anything.

20 A. It has references to personal
21 protective equipment.

22 Q. Okay. Let's pull it up as Exhibit 2,
23 please.

24 MR. KRESGE: No, it's Exhibit 2.

25 MODERATOR: I'm heading there.

1 MR. KRESGE: Oh, I'm sorry. I'm
2 sorry. Okay. This is it.

3 MODERATOR: Is that it? Okay.

4 (McCLELLAN DEPOSITION EXHIBIT 2 DISCUSSED)

5 Q. Is this the document that you cited in
6 your report?

7 A. It looks like it.

8 Q. And I'll represent to you that
9 Exhibit 2 that we have marked is just a small part of
10 it, which is specifically going to the page that you
11 cited in your report. So we have, you know, table of
12 contents and then we go straight to Page 18. So if we
13 could go to Page 18 of the report, which appears in
14 the bottom left-hand corner, the page number. There
15 we go. If we could blow up particularly the top part.
16 Does this top part of Page 18, which has the heading
17 what protection does personal equipment offer, is that
18 the section that you are relying on when citing
19 controlling electrical hazards?

20 A. Mm-hmm. Yes.

21 Q. Okay. Now, the reference here to
22 personal equipment states that, quote, employees who
23 work directly with electricity should use the personal
24 protective equipment required for the jobs they
25 perform, period. This equipment may include rubber

1 insulating gloves, hoods, sleeves, matting, blankets,
2 line hose and industrial protective helmets designed
3 to reduce electrical shock hazard, period, closed
4 quote.

5 Now, in this reference you've cited a
6 reference to the word sleeves; right?

7 A. Mm-hmm. Right.

8 Q. Correct. Okay. Now, are the sleeves,
9 the long sleeves that plaintiffs wear as part of their
10 work uniform, they have worn as part of their work
11 uniform at least under the Dow era, are they insulated
12 sleeves?

13 A. Yes. In this reference it means
14 insulated sleeves.

15 Q. Right. And so are they -- and this is
16 a reference to rubber insulation; right?

17 A. Correct.

18 Q. All right. So are the work uniform
19 shirts that are worn by the plaintiffs rubber
20 insulating shirts?

21 A. No.

22 Q. And so what is the relevance of the
23 controlling electrical hazards document that refers to
24 sleeves that are rubber insulated?

25 A. Probably in this case less. They're

1 just inference that sleeves are important and there is
2 a dispute whether moving from short sleeves to long
3 sleeves was warranted in the evolution of the program.

4 Q. You would -- do you agree that this
5 particular section of controlling electrical hazards
6 that we have here up on Page 18 does not directly
7 apply to the plaintiffs' work uniforms?

8 A. Yes.

9 Q. Okay. Why don't you pull up
10 Exhibit 8, please. If you could blow that up a little
11 bit. Thank you. Now, you also cited this OSHA
12 regulation in your report, and my question is how does
13 this OSHA section regulation 1910.333 that we've
14 marked as Exhibit 8 apply to your opinions in your
15 report?

16 A. I was commenting on the evolution of
17 the program for health and safety of Rohm and Haas in
18 that there was a lack of documentation and proof of
19 consistent implementation of PPE evident in the
20 documents, and that included even long-sleeved
21 uniforms that were cotton that would provide some
22 minimization of damage in the event of electrical
23 exposure.

24 (McCLELLAN DEPOSITION EXHIBIT 8 DISCUSSED)

25 Q. So you're saying that Section 1910.333

1 applies to the Rohm and Haas period of time, the 2002
2 to 2009?

3 A. Mm-hmm. Correct.

4 Q. And not at all to the Dow period of
5 2009 to the present?

6 A. Oh, it applies to both.

7 Q. All right. Let's take a look at the
8 application to the Rohm and Haas period. You said
9 something about lack of consistent implementation.
10 What are you referring to there? Are you referring to
11 the use of short sleeves?

12 A. The documentation indicated that there
13 was dispute over what should be included for
14 fire-resistant clothing, which I indicated that the
15 program recognized that they had hazards uncontrolled
16 and that they needed to address personal protective
17 equipment further.

18 Q. What does it have to do with the
19 plaintiffs?

20 A. It indicates that there's a struggle
21 and that they're -- there was an evolution of the
22 program.

23 Q. But I think you've testified, but let
24 me make sure I'm clear. Were the plaintiffs at any
25 point in time ever provided a fire-resistant or

1 flame-resistant work uniforms?

2 A. I'm having trouble hearing you when
3 you speak down, it's muffled.

4 Q. Oh, I'm sorry. Were the plaintiffs at
5 any point in time ever provided flame-resistant or
6 flame-retardant work uniforms?

7 A. Yes.

8 Q. When?

9 A. They began providing them -- I'd have
10 to look up the dates but, again, that was evolution of
11 their program as recognizing that they needed to
12 provide fire-rated clothing.

13 Q. So -- all right -- so that's part of
14 the basis for your opinion in this case --

15 A. Mm-hmm.

16 Q. -- correct?

17 A. Correct. Correct.

18 Q. Now, if we take a look at 1910.333,
19 that we're looking at here as Exhibit 8, there's a lot
20 of reference here to working with energized parts and
21 exposed -- energized parts and exposed live parts and
22 energized equipment. You see these references
23 throughout this particular regulation. Did the
24 plaintiffs work with energized parts or on energized
25 equipment?

1 A. They had exposure to electrical
2 hazards, which included arc hazards indicated in the
3 PPE grids, so, yes.

4 Q. And did they actually -- other than
5 throwing a circuit breaker, did the plaintiffs
6 actually do work on energized equipment?

7 A. They had exposure to electrical
8 hazards. The specific work is not indicated.

9 Q. So let me get back to the question.
10 Did the plaintiffs -- do you have any facts to show
11 that the plaintiffs at any time actually worked on
12 energized equipment?

13 A. Yes. They had exposure to arcs, so
14 one would be -- if you read the task, they -- because
15 they were in proximity or were working on a task that
16 could produce arc or flash, the PPE grids indicate
17 that they were working on something that produced arc
18 or exposure.

19 Q. And isn't that just throwing a circuit
20 breaker --

21 A. I don't --

22 Q. -- that could create the arc flash?

23 A. I don't know.

24 Q. Is that true?

25 A. I don't know.

1 Q. Could throwing a circuit breaker
2 create an arc flash?

3 A. Yes.

4 Q. Okay. So if you're throwing a circuit
5 breaker, are you working on energized equipment?

6 A. I don't know. You might be locking
7 something out in order to work on a process.

8 Q. Did any of the plaintiffs actually do
9 electrical repair work?

10 A. Based on the task analysis from the
11 PPE grids, no.

12 Q. Did any of the plaintiffs ever do any
13 electrical installation work?

14 A. Not that I'm aware of.

15 Q. Did any of the plaintiffs ever work
16 with overhead lines?

17 A. Not that I'm aware of.

18 Q. Did any of the plaintiffs at any time
19 ever work with exposed live wires or parts?

20 A. Not that I'm aware of.

21 Q. Is there anything in what we've marked
22 as Exhibit 8, which is OSHA Section 1910.333, that
23 supports your opinion that the work uniforms worn by
24 the plaintiffs had to remain captive to the Louisville
25 plant?

1 A. No.

2 Q. Is there anything in OSHA
3 Section 1910.333 that supports your opinion that the
4 plaintiffs' work uniform were necessary PPE?

5 A. Could you repeat that question.

6 Q. Yes. Is there anything in
7 Section 1910.333 that supports your opinion that the
8 work uniforms worn by the plaintiffs were PPE?

9 A. In Section C or Paragraph C, Line 2,
10 it indicates such persons shall be capable of working
11 safely. My answer is no, there's nothing in there.

12 Q. Okay. Do you know -- we can take that
13 down. Do you know anything about how the plaintiffs'
14 work uniforms were laundered or handled during the
15 Rohm and Haas period of 2002 to 2009?

16 A. No, I do not.

17 Q. And do you know anything about how the
18 plaintiffs' work uniforms were laundered or handled at
19 any point during the Dow period of 2009 to the
20 present?

21 A. Cintas is mentioned in some
22 documentation.

23 Q. As of the time that you prepared the
24 report, were you aware of any -- of anything as to how
25 the plaintiffs' work uniforms were laundered or

1 handled?

2 A. I'm not sure. I'd have to look back
3 through.

4 Q. During the -- sorry. During the Dow
5 period. Go ahead.

6 A. Yeah, I'm not sure. I'd have to look
7 back through the documents if there was indication of
8 the process or the vendor.

9 Q. Show you what we'll mark as
10 Exhibit 11 -- what we've marked as Exhibit 11. Blow
11 it up a little bit, please. Okay. I'll represent to
12 you that Exhibit 11, and we can take a look through
13 it, too, as well, represents an e-mail of information
14 as well as some photographs that were requested by
15 Dr. Mansdorf in preparation of his report. So what I
16 want to do is take a look at the e-mail and take a
17 look at the photographs. I know you've been provided
18 this particular exhibit at least before the deposition
19 started today. Let me ask you that question, have you
20 seen this before we started the deposition today?

21 A. Yes.

22 (McCLELLAN DEPOSITION EXHIBIT 11 DISCUSSED)

23 Q. Okay. All right. So the first
24 statement in the first paragraph of that -- that I
25 would like you to look at is the third sentence of

1 this e-mail, which states, quote, the Louisville
2 production employees can take their cold weather
3 clothing home to launder and are responsible for
4 maintaining it, closed quote. Did you know that fact
5 at all as of the time that you prepared your report?

6 MR. CONNOR: Object to you assuming
7 that's a fact. She can -- you can ask her about what
8 that says, but --

9 MR. KRESGE: Okay.

10 MR. CONNOR: -- whether it's a fact or
11 not remains to be seen.

12 MR. KRESGE: All right. Fair enough.

13 Q. Do you know anything about how the
14 plaintiffs' cold weather -- let me ask it this way
15 first. Do you know anything as to any cold weather
16 clothing that was ever provided to the plaintiffs?

17 A. I had no awareness of cold weather
18 clothing.

19 Q. Okay. All right. And so assuming
20 that cold weather clothing was provided to the
21 plaintiffs during cold weather, do you have any
22 knowledge as to how cold weather clothing was handled?

23 A. Can you define cold weather clothing.

24 Q. It would be -- it would be certain
25 types of things like jackets, that would be one,

1 warmer clothes than a typical uniform.

2 A. Do you have any photographs of what
3 this looks like --

4 Q. No.

5 A. -- because that would get -- okay. I
6 have no --

7 Q. Well --

8 A. -- inclination.

9 Q. -- regardless of whether I have a
10 photograph or not, do you have any knowledge as to
11 anything about how cold weather clothing was handled,
12 assuming it existed?

13 A. At this particular plant --

14 Q. Yes.

15 A. -- or in general? No.

16 Q. At this plant.

17 A. At this plant, no, I do not.

18 Q. Now, under your theory of
19 contamination risk, if plaintiffs wore cold weather
20 clothing during the cold weather, should that cold
21 weather clothing also be kept captive at the
22 Louisville plant?

23 A. It would have a reduced probability of
24 contamination based on the fact that it's used
25 outdoors with natural dilution ventilation, so it is

1 less likely to need captivity as a result. That's why
2 I asked --

3 Q. All right.

4 A. -- how do you define cold weather
5 clothing. If you mean what they would wear outdoors,
6 it's going to have far less probability of
7 contamination because it's only worn outdoors.

8 Q. All right. So I guess we're without
9 knowledge of exactly what the cold weather clothing is
10 or where it's worn. Is what you're saying is that
11 your opinion would vary?

12 A. Correct.

13 Q. Okay. Now, if we go down this e-mail
14 describes the -- how, at least with regard to Cintas,
15 the uniforms are handled. Do you see that in 1, 2, 3
16 and 4?

17 A. Correct.

18 Q. Okay. And do you have any knowledge
19 that is different as to how the work uniforms are
20 handled other than what appears in Nos. 1, 2, 3 and 4
21 of this exhibit?

22 A. No, I do not.

23 Q. And then the next sentence below 1, 2,
24 3 and 4 states that, quote, there is no special PPE
25 for handling the uniforms, closed quote. Do you have

1 any different knowledge that's been provided to you or
2 facts that provide you that are contrary to that
3 statement?

4 A. No, I do not.

5 Q. And in your report you refer to the
6 work uniforms as having a, quote, high health hazard
7 contamination, closed quote.

8 A. Mm-hmm.

9 Q. Do you recall that?

10 A. Correct.

11 Q. And consistent with that
12 characterization of the work uniform as having a high
13 health hazard contamination, would a natural corollary
14 to that view of the work uniforms be that there would
15 be special laundering instructions for Cintas to
16 handle high health hazard contaminated clothing?

17 A. Cintas will make assumptions that
18 there should be special handling. Do you have any
19 instructions from Cintas indicating what -- what
20 you're aware of in their handling? It's been my
21 experience that they do handle it with -- with
22 precautions because they assume it is contaminated.

23 Q. And this statement is saying there is
24 no special arrangements for handling the uniforms.

25 A. Well, even in your letter here, they

1 wear gloves to handle it, so there must be some
2 concern about the contamination for them to don gloves
3 in order to handle the soiled uniforms.

4 Q. Well, if you'll look at this e-mail,
5 it states that Dow requires anybody on site to wear
6 gloves, so it's not a -- something specific to Cintas
7 for them as a laundering instruction.

8 A. Mm-hmm. And is the person who wrote
9 this e-mail qualified to make that statement?

10 Q. Well, I'm not asking you to -- she's
11 the -- she's at the Louisville site and she's the
12 inventory coordinator, so just put that aside in terms
13 of that. Assuming that fact to be true, that there is
14 no special handling for the uniform, is that
15 inconsistent with your characterization of the work
16 uniforms as, quote, high health hazard contamination,
17 closed quote?

18 A. Yes. The fact that they require
19 people to wear gloves, they're assuming that the
20 hazard is everywhere, they're assuming that it's on
21 the uniforms, and that they require a level of skin
22 protection by the use of gloves so, yes, it is
23 consistent.

24 Q. Well, how do you -- what do you know
25 as to the reasons why Dow requires gloves at the

1 Louisville plant to be worn?

2 A. Because I've worked directly for
3 chemical processing plants and I've had many clients
4 that are chemical processing plants and you assume
5 that there's a level of hazard in those environments.

6 Q. I'm not asking --

7 A. Special --

8 Q. -- you to assume anything, I'm asking
9 you what factual basis do you have for why Dow
10 Chemical has a glove requirement at the Louisville
11 plant? Do you have any factual basis for that?

12 A. Yes, I do.

13 Q. I'm not interested in your --

14 A. Okay.

15 Q. -- experience with other companies.
16 I'm interested in Louisville.

17 A. Okay. Louisville, according to the
18 personal protective equipment grids, they are in
19 contact with mutagens, teratogens, nephrotoxic
20 chemicals, hepatotoxics chemicals, dermal sensitizers,
21 and when you look at any of those alone or in
22 combination, you create the expectation for a hazard
23 that warrants at least gloves in handling the
24 materials, especially materials that are potentially
25 contaminated, such as work uniforms that are captive

1 to the site.

2 Q. All right. That's your view of what
3 you would do. My question and it keeps coming back
4 to, do you have any factual basis for concluding
5 anything about why Dow Chemical requires gloves to be
6 worn at the Louisville plant?

7 A. Because it's in their personal
8 protective equipment grids that you must wear gloves
9 as a line of skin protection, so, yeah.

10 Q. And could that be simply to prevent
11 against cuts?

12 A. It could be.

13 Q. Okay. Now, do you know if at any
14 point in time during the Rohm and Haas period of 2002
15 to 2009 if Rohm and Haas ever required the wearing of
16 gloves by anyone at the Louisville plant --

17 A. Hard to --

18 Q. -- for normal work?

19 A. I could look back through the legible
20 portion of the grids. Would you like for me to do
21 that right now?

22 Q. No. We'll get to that another time,
23 but I just want to ask if you are aware just generally
24 if Rohm and Haas had a requirement of glove wearing
25 for everyone who came onto the Louisville plant, but

1 do you know -- do you know one way or the other?

2 A. No. I would have to look through the
3 grids, but typically when you're dealing with
4 chemicals, most of which have a dermal notation for
5 exposure, skin is a route of exposure, you're going to
6 require the use of gloves for the most tasks that
7 could be included on a PPE grid.

8 Q. And when the plaintiffs are working at
9 their -- in their control rooms, do you know if they
10 wear gloves?

11 A. If there's potential for exposure such
12 as in the photograph that you showed where they're
13 obviously working hard at controlling the exposure in
14 that control room, yes, you would wear gloves because
15 it's possible that you have these various chemicals
16 deposited on surfaces that you're now touching in
17 order to operate the controls.

18 Q. So if glove wearing was required for
19 your reason, then that would be plaintiffs would wear
20 inside the control room -- wear the gloves inside the
21 control room; correct?

22 A. They -- it's possible, yes.

23 Q. That would be consistent with your
24 approach to glove wearing?

25 A. Yes, it would. If I knew I had a

1 hazard potential in any room I would require the use
2 of gloves in order to protect the worker from the
3 immediate danger and from the danger of carrying it
4 home or implement a very rigorous hand washing policy
5 or both. Those are typical.

6 Q. Now, if -- if there was a contaminant
7 risk with regard to the plaintiff's work uniforms as
8 you opine, would there not be consistent with that
9 opinion the special approach for the storage of the
10 worn uniforms?

11 A. Was that a question?

12 Q. Yeah.

13 A. Could you repeat it, please.

14 Q. Sure. So in your opinion, because you
15 opined about the contaminant risk associated with the
16 plaintiffs' work uniforms --

17 A. Mm-hmm.

18 Q. -- and so consistent with your opinion
19 should there not be a special handling procedure for
20 handling the worn uniforms; in other words, they
21 should be placed in a particular spot that's
22 contained?

23 A. Yes, and they do. They are putting it
24 -- they're isolating them into dirty bins in lockers,
25 they're putting them in a specific place that can be

1 contained, they are handling them with gloves and once
2 they've been contained and transported, then Cintas
3 executes their protocols for protecting their workers
4 and making sure that these are decontaminated. Once
5 they've been decontaminated, then they come back and
6 are sorted and returned to the site.

7 Q. And would those storage bins have to
8 be in order to -- consistent with your contaminant
9 risk, those storage bins be contained, enclosed,
10 enclosed?

11 A. Yeah, they're probably contained.
12 There's probably -- isolated in a corner of the room.
13 I have no idea, but that's typical that you'd create a
14 storage area for them so that they're not laying here,
15 there and everywhere but are in one place.

16 Q. And then -- so consistent with your
17 contaminant risk theory, there should be -- Cintas
18 should have some specialized decontamination
19 procedures with regard to the plaintiffs' work
20 uniforms?

21 A. Not necessarily special but something
22 that's characteristic to decontaminating or thoroughly
23 laundering what could be in the uniforms.

24 Q. Well, those are two different
25 statements here. You're saying decontaminated or

1 thoroughly washing, so let's just take it at --

2 A. Well --

3 Q. All right. You're saying it's one and
4 the same?

5 A. It could be one and the same.

6 Q. So the -- from your perspective
7 decontamination could be nothing more than just a
8 thorough laundering, a good cleaning?

9 A. Correct. It may depend more on what
10 you do with the wastewater from that process.

11 Q. Oh, I see. So then if you're just
12 giving it a good cleaning, that's not good enough,
13 decontamination would require some special handling of
14 the wastewater?

15 A. Probably, yes, depending on it -- as
16 they indicated, if they have somebody who's
17 excessively soiled, it gets handled by Dow's emergency
18 response team.

19 Q. Right.

20 A. Right.

21 Q. With special procedures for when
22 clothes --

23 A. Correct.

24 Q. -- are contaminated; correct?

25 A. Correct. Correct.

1 Q. And those --

2 A. But --

3 Q. Those special procedures for
4 contaminated clothes are to isolate and bag those
5 clothes and actually dispose of the clothes; correct?

6 A. Sure. Correct. What you have to
7 remember is the dose makes the poison, okay, and for
8 highly toxic materials, a very small amount goes a
9 long way. An airborne exposure to silica, the amount
10 that's on the top of a pinhead actually exceeds the
11 OSHA limit, so very little can be on a surface that's
12 contamination and creates the concern for becoming
13 airborne or on the -- contaminating the skin.

14 Q. So under your theory -- because you've
15 already testified about silica, under your theory the
16 plaintiffs' work uniforms should be disposed of;
17 correct?

18 A. No. They could be contained and --
19 and laundered.

20 Q. All right. But laundering and
21 cleaning is what's done to any dirty clothes, whether
22 they're mine or anybody else's; correct?

23 A. Correct, but Cintas has a process by
24 which the launderer is safeguarded and the uniforms
25 come back clean, ready to be reused.

1 Q. And in your experience laundry vendors
2 like Cintas would have varying, different levels of
3 handling clothes depending upon the contamination
4 risk; correct?

5 A. Not -- I don't know how widely they
6 vary. There might be some variance, yes.

7 Q. Okay. So if something has a real
8 contaminant risk, there would be more special handling
9 procedures that Cintas would implement on its own?

10 A. Or they would dispose of it, yes.

11 Q. Correct? Okay. Is that correct?

12 A. Correct.

13 Q. And what is it that you know, if
14 anything, about how Cintas has handled the plaintiffs'
15 work uniforms at any point in time since Cintas took
16 over, which I believe in the record is somewhere
17 around 2012?

18 A. I don't have any specific details for
19 how they deal with Rohm and Haas or Dow Chemical.

20 Q. And just so I'm clear and I apologize
21 if I asked, but do you have any knowledge about -- you
22 know, so let's assume Cintas came in around 2012,
23 which is what I understand it to be. So let's take a
24 look at the period of 2002 to 2012, which encompasses
25 seven years of Rohm and Haas and then three years of

1 Dow. During that time period do you have any
2 knowledge about how any of the clothing laundering
3 vendors handled the plaintiffs' work uniforms?

4 A. No.

5 Q. Would you agree that if Cintas did
6 nothing special with regard to the plaintiffs' work
7 uniforms other than pick them up, clean them and bring
8 them back, that that would be inconsistent with your
9 contaminant risk theory?

10 A. Did you say inconsistent?

11 Q. Yes.

12 A. No. I don't believe it's
13 inconsistent.

14 Q. So under your contaminant theory while
15 these clothes have to remain captive on site to
16 prevent any kind of contamination risk to the
17 plaintiffs' homes' environments for the Cintas
18 employees and -- you know, they could have no special
19 handling requirements and they would be fine? Is that
20 your -- is that what --

21 A. That --

22 Q. -- you're saying?

23 A. That is not what I'm saying.

24 Q. So then my question is more of a
25 hypothetical, I understand that you don't know the

1 facts, but if you were to assume that Cintas does
2 nothing special with the plaintiffs' work uniforms
3 other than they come up, clean them and bring them
4 back and they have no special handling instructions,
5 they just launder them, just like they would launder a
6 nonchemical plant set of uniforms, would that be
7 consistent with your contaminant risk theory?

8 A. I have no way of answering that
9 question.

10 Q. Why?

11 A. There's too many hypothetical
12 assumptions. Following your question was difficult.

13 Q. Okay. Well, then, let's break it
14 down. Don't companies like Cintas provide uniform
15 services for facilities that don't have chemical plant
16 type hazards?

17 A. Yes.

18 Q. Okay. And doesn't -- don't companies
19 like Cintas clean clothes for which there are no
20 contaminant risks?

21 A. That's possible, yes.

22 Q. Okay. And so my question is, if
23 Cintas handled the plaintiffs' work uniforms just no
24 differently than they handled the uniforms where there
25 are no -- clearly no contaminant risks, they're not

1 chemical plants, they're not plant areas or workplaces
2 where there's any contaminant risk, would that not be
3 consistent with your theory?

4 A. No.

5 Q. Why not?

6 A. Cintas' typical approach with
7 everybody's clothing, whatever's coming in, they
8 assume exposure potential. They're going to assume
9 that there's a certain level of contamination.
10 They're going to wear gloves, for instance, so there
11 is a level of protection that they're going to provide
12 their workers that's appropriate for the assumption of
13 contamination. So it's not inconsistent (sic).

14 Q. All right. But you're answering my
15 hypothetical with more assumptions on your part;
16 right? You don't know exactly what Cintas does with
17 the plaintiffs' work uniforms, do you?

18 A. No.

19 Q. All right.

20 A. No, I don't know exactly what they do.

21 Q. Okay. Now, in the last -- in the next
22 paragraph it's written that if an -- quote, if an
23 employee is involved in a release and their uniforms
24 are soiled, they would be handled by Dow's emergency
25 response team, period. We would order them new

1 uniforms so Cintas and the employee would never handle
2 them, period, closed quote.

3 So in the context of contamination
4 from a release where the uniform actually gets the
5 chemical on it, Dow's approach -- Dow's approach,
6 according to this e-mail, is to dispose of the
7 uniforms and not have them cleaned; correct?

8 A. It appears as such, yes. You're
9 assuming that.

10 Q. And do you have --

11 A. It doesn't --

12 Q. And --

13 A. It doesn't mention disposal in this
14 letter.

15 Q. I see. Okay. So we have to look at
16 the emergency response process to understand what
17 happens?

18 A. Correct.

19 Q. Now, the next paragraph states that
20 when the new hires who originally come from a
21 contractor who supplies production employees wear
22 their street clothes until the uniforms come in a few
23 -- quote, a few weeks later, closed quote; do you see
24 that?

25 A. Correct.

1 Q. Is that practice of new hires to the
2 production bargaining unit for the Dow Chemical folks,
3 is that inconsistent with your contaminant risk
4 theory?

5 A. Yes, it is.

6 Q. Okay. And the statement here also
7 states that Petroleum Services is an on-site
8 contractor who supplies production employees to the
9 Louisville plant. So do you know anything about the
10 process of becoming a Dow production operator at
11 Louisville?

12 A. No. And there's also no indication
13 there that Petroleum Services does not provide their
14 contractors uniforms.

15 Q. Okay. And so do you know one way or
16 the other how the Petroleum Services employees are
17 dressed or how their clothes are handled?

18 A. No, I do not.

19 Q. Let me direct your attention to the
20 next page, then. Now, this is a photograph of a
21 change room with -- according to the e-mail is a
22 photograph of the worn work clothes flowing out of a
23 locker; do you see that?

24 A. Yes. That's a compliance issue.

25 Q. All right. So is what we see here in

1 the second page of Exhibit 11 inconsistent with your
2 contaminant risk theory?

3 A. Yes.

4 MR. CONNOR: Ray, I'm going to go
5 object to your use of the word inconsistent. I don't
6 know that that's the right word for you -- I think
7 you're -- you're asking whether it's in violation of
8 it, not inconsistent with it.

9 MR. KRESGE: No, I think it's correct.
10 I understand and respect your -- you, Glen, but I
11 think I'm asking it the way I'd like to ask it.

12 Q. All right. Let's take a look at the
13 -- two pages later. All right. Is that photograph of
14 worn work clothes in a change room at the Louisville
15 plant inconsistent with your contaminant risk theory?

16 A. That is in -- that's a violation, a
17 compliance violation with the last document that you
18 provided that indicated that soiled uniforms,
19 contaminated uniforms were binned. That's all that
20 is.

21 Q. Well, that's -- what's your definition
22 of a soiled uniform? Just something that was worn all
23 day?

24 A. Yes.

25 Q. Okay.

1 A. Potential --

2 Q. That's your definition.

3 A. Potentially contaminated.

4 Q. A different definition of soiled
5 uniform is the actual exposure and contact to a
6 chemical; correct?

7 A. How much of a chemical do you consider
8 toxic?

9 Q. My question is -- to you is, you don't
10 -- do you have your own definition of soiled?

11 A. Yes, I do, and it's based on the
12 toxicology of all of the chemicals that were listed in
13 those PPE grids and a small amount goes a long way in
14 a work environment.

15 Q. But the company has its own approach
16 as to what constitutes soiled for purposes of
17 emergency response handling; correct? Or if you know.

18 A. It's -- yes, it's considered gross
19 contamination, all right, and it's not just a small
20 splash, but when you have gross contamination because
21 you had a large release of a chemical or you had an
22 incident occur where it's airborne and it could have
23 permeated all of the workers' clothing, those
24 circumstances are very different.

25 Q. So -- so is it your testimony that

1 anybody -- any plaintiff who wore his or her work
2 clothes for a shift has a soiled work uniform?

3 A. Correct. And that picture could be
4 the result of someone pulling it all out of the bin
5 for this photograph's purposes.

6 Q. All right. Now, so then under your
7 view, any contractors who are working a full day
8 inside the plant performing work on reactors, or just
9 to use an example, or performing, you know, capital
10 improvement work, at the end of that -- of a
11 contractor employee's workday, that contractor
12 employee's work clothes are also soiled?

13 A. Correct.

14 Q. All right. And so consistent with
15 your view, those contractor employees should not be
16 allowed to wear those clothes home; correct?

17 A. Correct.

18 Q. All right. And if the practice is
19 indeed that the contractor employees are able to wear
20 street clothes into work at the Louisville plant and
21 leave work with their street clothes on, that would be
22 consistent with your contaminant risk theory?

23 A. Yes, because there's clear indication
24 that a worker could have their uniform or whatever
25 they're wearing exposed to a variety of chemicals with

1 serious health hazards without any additional body PPE
2 according to how they handle their personal protective
3 equipment on the grids.

4 Q. Now, let's take a look at the next
5 page. And is there any way to rotate it? If not,
6 it's okay. I think -- there we go. So I'll represent
7 to you this is a photograph of the label for the work
8 shirt. You see how it says 100 percent cotton. Is
9 this label any different than a label that one would
10 find -- other than the word Cintas on it and maybe the
11 numbers, is it different than any label that one might
12 find on a shirt that could be purchased from a
13 department store or online?

14 A. Possibly. I see the term durable
15 press.

16 Q. What does that mean to you?

17 A. I'm not sure.

18 Q. Okay. So do you know if this label
19 that appears on plaintiffs' work -- at least a
20 plaintiffs' work shirt is any different than a label
21 that would appear on an all-cotton shirt that one
22 could purchase from a department store or online?

23 A. Yes, because it has the label durable
24 press, I have never seen that label in a shirt that I
25 have purchased in a department store.

1 Q. Okay. But you don't know what that
2 means?

3 A. It doesn't matter. You just asked me
4 if it's different and it is.

5 Q. Right. But you don't know why it's
6 different, then, do you?

7 A. Correct.

8 Q. And at least with regard to this
9 particular label on the shirt, you agree that there's
10 no special laundering instructions associated with the
11 shirt based upon the label?

12 MR. CONNOR: Object to that. You
13 can't see whether there are any other labels on there
14 or not, Ray, all we can see is that one part of the
15 shirt.

16 MR. KRESGE: All right. That's fair
17 enough.

18 Q. Let's assume more hypothetically that
19 this is the only label that appears on the shirt.
20 Would you agree at least that from this label there
21 are no special laundering instructions associated with
22 this shirt?

23 A. Correct. The difference is in the
24 handling instructions.

25 MR. KRESGE: All right. If we could

1 just go off the record for a second.

2 MODERATOR: Okay. Hold on. It is
3 6:10 and we are going off the record. We're off the
4 record.

5 (OFF THE RECORD)

6 MODERATOR: It is 6:20 and we're back
7 on the record.

8 MR. KRESGE: I have spoken with
9 Mr. Connor and we are in agreement that we will resume
10 and complete this deposition on another day and that
11 we'll coordinate that day with everyone involved as
12 soon as possible, and so the deposition remains open
13 at this point and we will quickly determine a date to
14 complete it and I thank everyone for their time today
15 and I appreciate it.

16 MR. CONNOR: And, Ray, and I'll give
17 you -- I'm sorry. Can we --

18 MODERATOR: Do you want me to go off
19 the record now?

20 MR. KRESGE: Yes.

21 MR. CONNOR: Yes.

22 MODERATOR: Okay. Hold on. It is
23 6:21 and we're going off the record. We are off the
24 record now.

25 (DEPOSITION CONCLUDED AT 6:21 P.M.)

1 STATE OF KENTUCKY)(
2 COUNTY OF JEFFERSON)(

3 I, JESSICA MYERS, Notary Public, State of
4 Kentucky at Large, hereby certify that the foregoing
5 deposition was taken at the time and place stated in
6 the caption; that the appearances were as set forth in
7 the caption; that prior to giving the testimony the
8 witness was first duly sworn by me; that said
9 testimony was taken down by me in stenographic notes
10 and thereafter reduced under my supervision to the
11 foregoing typewritten pages; and that said typewritten
12 transcript is a true, accurate and complete record of
13 my stenographic notes so taken.

14 I further certify that I am not related
15 by blood or marriage to any of the parties hereto and
16 that I have no interest in the outcome of the
17 captioned case.

18 My commission as Notary Public expires
19 June 8, 2024.

20 Given under my hand this the _____ day
21 of _____, 2021, at Louisville, Kentucky.

22 _____
23 JESSICA MYERS
24 NOTARY PUBLIC
25 ID KYNP7766

WORD INDEX

< 0 >	75:22	153:15 161:14	3 2:9 81:9, 15	6:21 178:23, 25
0 83:23, 25	179 2:3	167:24	122:5 157:15,	63 2:8
84:7	18 146:12, 13,	2005 61:16	20, 24	< 7 >
00003154 61:21	16 148:6	2008 39:19	31 62:20	7 2:10 101:17,
007350 47:17	19 114:2	40:10 44:1	3134 63:12	20, 24 102:1
07-005853 5:6	127:17	55:22, 24 56:15,	3154 62:19	127:20
07-CI-008553	1910 109:4	24 57:3	33.285 2:15	70E 2:10 64:2,
1:1	1910.100	2009 29:7	337.285 138:21	11, 14 65:3
< 1 >	110:24 111:13	35:11, 13, 17, 18,	139:2	75:5, 8, 20 76:1,
1 35:12, 17	1910.1001 2:12	24 36:13 37:5,	337.355 2:15	16, 25 80:24
39:20 55:9, 11	117:12, 20	9 38:10, 15, 16,	139:8, 17 140:1,	81:6 82:6
157:15, 20, 23	119:7 123:11	20 39:12 40:1,	2 144:7	83:16, 22 84:6
1:10 4:4, 11	1910.1025 2:13	7, 16 55:9, 11	337.365 2:15	< 8 >
10 2:6 20:20	101:19 110:25	72:20 73:24	144:14, 16	8 1:1 2:17
21:5, 10, 11, 14	126:22 127:21	85:16 149:2, 5	35223 3:5	112:4 121:23
27:11 57:8	128:1, 9	153:15, 19	36 54:6	148:10, 14, 24
132:3	1910.1053 2:14	161:15	367 40:23	150:19 152:22
100 176:8	1910.119 101:4	2011 7:19 9:8	373.365 145:8	179:10
1001 111:7	1910.120 101:2	10:13	38 54:6	81 2:9
101 1:21 2:10	1910.132 2:11	2012 7:23 9:4	380 3:4	< 9 >
1025 111:4	101:5 102:8	167:17, 22, 24	39 54:7	9 111:13 112:3
11 2:18 154:10,	110:8, 23	2015 2:10 75:8,	< 4 >	122:24
12, 22 173:1	1910.333 2:17	19 82:7	4 2:2 65:11	9-18-20 2:19
112 2:11	148:13, 25	2018 10:17, 18,	98:16 102:19	9A 2:11
12 23:24 120:1	150:18 152:22	25 11:8 53:19	112:6 157:16,	111:19, 23
125 2:12	153:3, 7	77:24 96:8	20, 24	112:11 123:18
12-hour 23:22	19103 3:10	118:13 125:16,	4:32 132:6	124:8
49:11	1997 105:10	19, 22	4:56 132:9	9B 2:12 125:1,
13 1:17 12:2	106:3	2020 7:23 9:4	40 78:14 79:8	4
47:16	< 2 >	2021 1:17 4:4	104:21	9C 2:13
130.7(C)(16)	2 2:15 41:7, 8	6:4, 5 7:17	40203 1:22	133:13, 24
83:23	47:16 62:17	179:11	< 5 >	134:1, 9, 24
132 110:10, 15	122:5 133:14	2024 179:10	50 79:9	135:10
133 2:13	135:4, 9 145:22,	21 2:6 53:22	502 1:22, 23	< A >
138 2:14	24 146:4, 9	61:17	521.004 40:12,	abating 122:21
13th 4:3, 10	153:9 157:15,	25 53:19 61:17	20 56:24	124:1
14 83:16, 18, 22	20, 23	111:13	53 2:7	AbbVie 10:1
146 2:15	2)(ii 111:14	27 2:7 53:1, 8	537 62:1	81:14
148 2:17	2:23 57:12	2700 3:4	582-1627 1:22	ability 9:1
15 57:9 132:3	2:41 58:3	280 3:4	587-6299 1:23	able 94:14
154 2:18	2:42 58:6	2800 3:9	< 6 >	175:19
16 98:3	200 1:21	28th 40:10	6 2:14 23:24	abrasive 137:4
160 5:1	2002 35:11, 18,	56:23 57:3	137:13 138:3,	absorb 86:6
1650 3:9	22, 24 36:13	29 2:12, 13, 14,	10, 14	absorbed 85:13,
17 2:8 63:3, 10,	37:4, 8 38:10,	17 117:20	6:10 178:3	14
11, 13, 16, 17	15, 19 39:12	123:11	6:20 178:6	access 49:18
	40:1, 16 72:15,	< 3 >		
	19, 25 73:23			
	85:16 149:1			

accidentally 122:7, 8	adhesives 13:7	analysis 17:15	128:5, 23 148:7, 14	112:13, 16, 24
accomplish 134:13, 14	adjacent 22:12	18:15, 17 24:6		113:7, 8, 13
accuracy 33:25	adopt 64:6	29:25 32:5	applying 21:7	114:9 116:9
accurate 179:7	adopted 81:6	75:14 152:10	appreciate 178:15	117:11, 17, 21, 23 118:14, 23
acquired 5:3	afternoon 4:21, 22 20:22	and/or 20:24	approach 28:4, 10 162:24	119:6 120:16
13:5 29:8	aggravate 67:17	25:16 31:1, 10	163:9 170:6	121:4, 9, 12, 19
35:13 40:6	aggravation 67:23	48:4 84:17	171:5 174:15	122:17, 21, 23
55:9 74:4	agree 17:4	138:18	approaches 122:20	123:6, 10, 13, 14
acquisition 15:24	43:6 58:8, 11, 12, 14 71:4	answer 8:13	appropriate 11:17 31:6	124:1, 7, 17
acrylate 97:22	93:5 99:1	14:25 53:21	45:16 62:25	128:13 134:19
acrylates 96:12	122:22 123:4, 5	66:15 77:6, 19	170:12	ascribe 23:10
acrylonitrile 101:8	148:4 168:5	109:21 110:21	appropriately 28:10	ascribing 19:8
action 5:4	177:9, 20	124:5 153:11	approved 47:21	Aside 60:9
active 10:3	agreement 4:13	answered 124:9	approximately 4:4 5:1	70:2 159:12
actual 16:9	20:24 104:24	answering 8:8	APRIL 1:17	asked 8:8
33:12 59:18	107:10 108:13, 19 178:9	114:24 169:8	4:3, 10 35:12, 17 53:19 55:9, 11	52:11 58:19
76:9 97:17	agreements 107:21 108:8	170:14	apron 93:9	132:1 157:2
104:4 105:2	ahead 17:3	answers 8:20	arc 67:9, 12	167:21 177:3
174:5	23:2 31:20	anticipate 121:8	68:6 84:2, 3	asking 16:9
added 96:23	36:8 37:16	anticipated 28:10 115:12	151:2, 16, 17, 22	25:15 26:23, 24
97:25 106:10	62:8, 10 79:6	anybody 123:25 159:5	152:2	56:20 57:22
136:21 137:3	91:19 111:9	166:22 175:1	arc-rated 84:17, 18	58:19 59:3
adding 98:7, 8	114:21 120:21	apologize 139:12 167:20	arcs 151:13	60:24 71:17
addition 56:21	154:5	appear 19:5	area 29:14	76:20 80:14
additional 26:21 42:23	ahold 118:11	176:21	30:3 34:15	84:15 85:22
61:9 67:13	air 28:16	APPEARANCE S 3:1 179:4	120:9 164:14	87:11 88:2
79:4 80:12, 18	airborne 28:11	appeared 75:21	areas 15:20	94:15 112:24
85:18 93:15	166:9, 13	appears 13:6	29:18 30:8, 13, 21 31:2, 11	128:4 136:17
94:2 95:1	174:22	29:1 98:21	32:2, 12, 19	141:3 143:13, 14 159:10
96:23 97:24	al 1:2	122:24 146:13	33:2 34:9	160:6, 8 173:7, 11
121:9 136:10	Alabama 3:5	157:20 171:8	170:1	assess 25:4
176:1	alerts 113:13	176:19 177:19	arms 40:15	assessment 11:14 16:6, 16
additive 137:3, 8	all-cotton 88:5	Appendix 39:20 62:17	59:20 68:11	18:14 22:9
additives 21:24 27:10	90:12 91:12, 22	application 149:8	85:10	23:17 37:21
address 25:6	92:2, 12, 13, 14	applied 81:6	arrangements 158:24	assessments 81:12 129:6
28:17 127:11	93:1 176:21	117:5	arrive 90:6, 8	associated 20:5
136:16 149:16	allowed 38:22	applies 89:19	59:20 68:11	76:9 80:6, 25
addressed 25:23 136:16	54:19 56:7	116:23 123:25	85:10	163:15 177:10, 21
addressing 19:13	142:13 175:16	128:1, 9 129:2	asbestos 101:7	association 137:20
adhered 20:25	Ammons 2:19	149:1, 6	111:6, 12	associations 11:22, 23
	amount 19:12	apply 122:5, 6, 18 123:1, 6, 11, 18, 21, 22, 23		assume 121:5 122:10 141:15
	86:9 166:8, 9	124:8 127:1		
	174:13			
	AMY 3:13			

158:22 160:4, 8 167:22 169:1 170:8 177:18 assuming 45:22 96:1 155:6, 19 156:12 159:13, 19, 20 171:9 assumption 35:9 48:11 117:22 118:16 170:12 assumptions 158:17 169:12 170:15 attached 23:6 attachments 2:19 attempt 126:5, 7 attention 52:25 82:8 102:11 172:19 attorney 4:24 Audio 62:19 August 96:8 authorized 111:17 120:7 Auto 107:18 Aventura 6:8 aware 12:8 13:8 56:17 72:21 89:6 119:11 137:24 152:14, 17, 20 153:24 158:20 161:23 awareness 34:20 37:21 71:8 89:9 155:17 awfully 78:8 < B > back 9:3 35:21, 22 53:15, 21 57:7, 16 58:2, 6, 22 72:15, 25 77:18 80:13 108:25 109:16, 18	121:23 126:10 127:8 132:9 141:19, 20 143:2, 19, 20 144:5 151:9 154:2, 7 161:3, 19 164:5 166:25 168:8 169:4 178:6 background 81:9 backing 48:15 bag 166:4 bags 51:20 120:4 130:23 bargaining 104:15 105:3 106:8 107:1, 6, 21 108:8, 12, 13, 19 172:2 base 31:19 56:18 66:2 120:20, 22 based 17:6, 13 18:14 19:10 20:12 23:9, 18, 21 30:25 31:5 35:1 52:6, 7 55:14, 20 73:4 93:5 94:25 107:21 108:4 113:7 117:13, 15, 22 118:1, 2, 19, 24 134:12 135:23 136:17 137:19 142:23 152:10 156:24 174:11 177:11 basically 14:17 96:24 basing 26:11 basis 13:6 18:1, 5, 7, 11 19:7 24:21, 24 25:11, 15, 25 26:4 27:5, 8, 20 31:15, 24 32:11, 23 34:6 50:11 51:10 56:2 57:1, 2 71:21	73:8, 19 88:13 108:3, 10 112:15, 25 113:3 114:4, 9, 10 118:13, 16 126:15 127:6, 15 129:12, 16, 17, 18, 19, 20 140:17 141:8 143:20 144:25 150:14 160:9, 11 161:4 batches 22:22 Bates 41:3 47:17 61:20 77:25 78:2, 25 79:23 80:2 Beam 12:22 62:3 B-E-A-M 12:22 Beam's 12:23 Bean 87:14 bear 119:20 becoming 166:12 172:10 began 104:25 150:9 behalf 54:10, 24 believe 21:22, 25 24:3 25:4 29:10 72:21 74:17, 19 76:11 124:14 127:7 129:7 137:19 141:5 167:16 168:12 benefit 106:20 benzene 101:8 best 101:11 108:16, 17 better 60:12 beyond 84:14 136:12 bigger 53:24 bin 175:4 binned 173:19 bins 163:24 164:7, 9 Biopharmaceuti cal 10:1 81:14	Birmingham 3:5 bit 63:20, 21 79:23 96:17 98:5 109:19 119:14 138:6, 7 148:11 154:11 blacked 22:2 blankets 147:1 bleeding 105:17 blend 74:3 blended 79:3 blends 74:3 blind 96:17 blood 179:8 blow 63:20 82:25 109:19 138:5 139:24 146:15 148:10 154:10 board 11:25 body 59:10, 20, 21 60:1, 5, 7, 16, 19, 21 93:15 95:1 96:19, 25 97:23 98:8 136:10, 21 176:1 booklet 2:16 boots 102:25 bother 71:11 bottom 53:21 78:1 82:25 83:4, 12, 14 97:15 146:14 boundary 84:2 boxes 62:24 break 35:10 52:19, 24 57:7 131:24 140:16 144:19 169:13 breakdown 60:21 breaker 151:5, 20 152:1, 5 breaks 144:23 145:5 breathing 133:2, 4	bring 168:7 169:3 bringing 88:17 brought 4:25 89:2 buildings 20:2, 6 21:24 25:1 30:3, 14 61:4 140:21 buildup 42:20, 24 bunch 22:18 burn 67:17, 23 68:8 86:4 90:18, 19, 20 butadiene 101:9 buy 68:20, 25 69:2, 8, 19 70:5 87:1, 4, 17 88:3, 5, 15 90:2, 12 92:2, 7, 11 93:2 buying 92:8 < C > C.F.R 2:12, 13, 14, 17 117:20 123:11 cadmium 101:8 call 47:6 48:5 68:18 93:8, 14 called 10:3 16:18 23:4 42:11 61:9, 19 78:17 94:2 95:1 101:2 132:25 133:10 134:10 145:12 calling 63:2 103:10 calls 137:6 cancer 120:7 capable 153:10 capital 175:9 caption 179:4 captioned 5:5 179:9 captive 37:18 42:10 88:14 99:13, 15, 21 100:2, 22 101:1
---	--	---	---	---

103:9, 11 107:24 110:1, 20, 23 126:13 127:23 134:4, 7 135:13 137:16, 18 138:19 139:4 140:25 141:13 142:3, 6 152:24 156:21 160:25 168:15 captivity 157:1 carcinogen 97:2 132:24 carcinogens 85:19 care 120:18 career 16:8 carried 43:25 80:19 133:3 carrying 163:3 case 6:5, 20 7:5, 15 8:22 9:19 10:21, 22 12:9, 13, 19, 21, 25 13:15 14:21 21:3 31:1 35:22 38:2 50:7 58:17, 20 59:1, 5, 13 60:9, 10 72:14 73:23 84:14 103:23 122:5, 6, 18 123:1, 6, 12 125:6 126:23 130:21 132:18 147:25 150:14 179:9 caseload 11:1 cases 6:2 9:8, 10, 13 85:5 93:14, 23 categories 65:22 75:9 category 65:5, 11, 19 76:6 83:23, 24, 25 84:7 96:13 cause 120:6, 7 causing 132:24	caution 120:18, 25 center 22:8 23:5 certain 19:16 61:4 113:16 123:22, 24 155:24 170:9 certainty 17:21 27:19 28:18, 23 45:14, 18, 21, 23 90:4 107:23 108:2 117:6 118:17 129:8 Certificate 2:3 certified 17:21 27:19 certify 179:3, 8 chair 12:2 change 15:7 50:16, 22 84:6 105:10, 23 111:16 119:19 122:15, 19, 25 128:20 129:3, 13, 24 130:8, 14 140:10 141:18, 19, 23 143:6, 10 144:4 172:21 173:14 changed 75:8 106:7 128:20 141:9 143:1, 2 145:2 change-out 133:23 134:17 changes 15:9 75:5 changing 129:14 143:17, 19 Chapter 138:21 characteristic 164:22 characterization 158:12 159:15 characterize 118:3 charge 37:19	chart 64:2, 6 CHAUVIN 1:2 check 124:5 Chemical 5:4 9:20, 22 10:3, 6, 10, 19, 24 11:6, 11, 15 12:7 13:10 22:22 31:22 35:13, 15 59:22 60:17 72:17 73:7 74:4, 23, 24 75:2 81:5 84:23 85:3, 5, 9, 13 86:2, 4, 6, 8, 16 87:18 88:8 89:23 90:16, 18, 19, 20 91:13 93:7 94:3, 11 96:15 115:12 130:22 131:10, 20 137:4, 6 160:3, 4, 10 161:5 167:19 169:15 170:1 171:5 172:2 174:6, 7, 21 chemically 75:4 chemicals 13:2, 9 14:17 24:16 35:14 61:10 93:12, 13 94:25 97:13 101:5 160:20 162:4, 15 174:12 175:25 chloride 101:7, 10 choice 66:18 choose 92:4, 20 Cintas 49:15 52:10 89:3, 12, 16, 18, 19, 23 90:5, 13 91:1 92:2 119:9 131:12 153:21 157:14 158:15, 17, 19 159:6 164:2, 17 166:23 167:2, 9,	14, 15, 22 168:5, 17 169:1, 14, 19, 23 170:6, 16 171:1 176:10 Cintas's 88:17 CIRCUIT 1:1 5:7 151:5, 19 152:1, 4 circumstances 44:25 58:18 113:16 123:2 143:7 174:24 cited 12:16 53:18 54:6 55:21 56:24 101:21, 23 102:1, 7 103:3 109:6, 24 128:6 132:12 134:1 138:11, 20 139:25 144:14 145:11 146:5, 11 147:5 148:11 citing 101:17 146:18 Civil 4:6 5:5, 6 clean 37:19 69:18 90:8 92:17 105:22 106:8, 11, 18 166:25 168:7 169:3, 19 cleaned 171:7 cleaning 49:14 89:17 119:10, 20 122:1, 4 165:8, 12 166:21 clear 9:4 13:12 16:15 17:7, 8, 12, 14 22:16 39:11 73:20 74:5 83:12 118:8 123:9 124:10 149:24 167:20 175:23 clearly 169:25	click 115:10 clients 160:3 closed 130:13 147:3 155:4 157:25 158:7 159:17 171:2, 23 cloth 87:2 88:12 clothes 31:3, 4 32:25 33:1, 11, 22, 23 34:8, 14 35:8 37:12 46:17 49:8, 9, 12, 21 50:2, 6, 9, 16, 20, 22 51:1 52:1, 14 74:25 88:24 99:3, 10, 25 105:4, 11, 22, 24 106:4, 6, 8, 9, 11, 18, 22 107:7, 16 108:13 119:8 120:13 128:15, 20 129:14 141:18, 20 142:1, 2, 10 143:1, 3 144:5 156:1 165:22 166:4, 5, 21 167:3 168:15 169:19 171:22 172:17, 22 173:14 175:2, 12, 16, 20, 21 clothing 12:7 30:19 36:12 51:17 66:3, 7, 10 67:25 73:6, 10 74:7, 10, 16, 21 84:16 85:3 88:17 90:1 99:21 102:23 103:5, 8, 11, 21 104:5 109:1 111:16 112:8 119:18 120:9, 12, 14, 22 122:9 123:23 130:13, 23 131:3, 11 133:7, 12
---	---	---	--	--

134:20, 25 149:14 150:12 155:3, 16, 18, 20, 22, 23 156:11, 20, 21 157:5, 9 158:16 168:2 170:7 174:23 coat 42:14, 15, 16, 17 46:14, 15 coats 41:24 42:25 43:3 45:1 cold 155:2, 14, 15, 17, 20, 21, 22, 23 156:11, 19, 20 157:4, 9 collective 104:15 106:25 107:10, 20 108:7, 18 column 63:25 66:6 97:8, 14 columns 75:20 combination 114:15, 16 160:22 come 11:24 31:2 48:12, 13 57:7 66:18, 22 67:14 141:20 143:19 144:5 164:5 166:25 169:3 171:20, 22 coming 23:5 33:21 47:24 79:20 161:3 170:7 comment 43:12 commenting 148:16 comments 42:1 44:17 commission 179:10 companies 10:10, 19 11:7, 13, 15 89:17, 20 160:15 169:14, 18	COMPANY 1:2 4:24 5:4 9:23 10:5, 6, 24 34:18, 24 35:5, 15 46:16 54:10, 25 61:13 73:10 89:15 90:5 100:6 105:14, 21 106:6, 7, 10 107:1 142:7 174:15 company's 108:12 comparative 31:25 compare 90:1 compared 31:12 32:2, 9, 13 33:2 89:16 comparing 92:6 competent 45:25 compiled 5:16 complete 95:2 178:10, 14 179:7 completed 19:14 completely 68:11 compliance 133:15 172:24 173:17 composition 38:14, 16 72:9, 19, 22 73:25 74:2 comprised 36:1 computer 16:25 22:18, 25 78:6 concern 159:2 166:12 conclude 24:21, 25 25:11, 25 26:5 27:5, 9 32:11, 24 140:15 concluded 142:6 178:25	concluding 57:2 108:10 161:4 conclusion 17:5 18:1, 12 19:23 20:11 27:21 46:24 56:18 117:16 118:13 127:5 140:18 143:9 145:1 conclusions 144:7 conditions 115:13 conducted 81:12 confident 95:15 confidential 20:22 confidentiality 20:24 confirm 87:9 117:6 connection 136:18 138:17 CONNOR 3:3 7:14 17:2 41:3 52:18, 22 53:23 57:10 79:21 82:10, 16, 19, 23 131:25 132:3 155:6, 10 173:4 177:12 178:9, 16, 21 consensus 64:17 consider 103:25 174:7 consideration 107:24 considerations 107:22 considered 61:7 62:25 85:16 101:10 132:24 134:12 174:18 consistency 69:10 90:8 104:13	consistent 37:19 69:17 70:10 84:5 90:6 92:16 106:5, 16 148:19 149:9 158:11 159:23 162:23 163:8, 18 164:8, 16 169:7 170:3 175:14, 22 consisting 84:17 console 22:25 constitute 18:2 constituted 137:16 constitutes 174:16 consultant 10:7 consulted 10:9 consulting 9:17 10:12, 14, 16, 19, 23, 24 11:3, 8, 11 12:25 contact 95:8 96:20 97:18 115:12 136:2 160:19 174:5 contained 50:22 163:22 164:1, 2, 9, 11 166:18 container 130:13 containers 119:18 contains 51:20 133:18 contaminant 113:2 163:6, 15 164:8, 17 167:8 168:9, 14 169:7, 20, 25 170:2 172:3 173:2, 15 175:22 contaminants 101:6 106:21 126:9 contaminate 122:8	contaminated 23:1, 14 24:18, 20, 22 25:2, 5, 13, 14, 16, 18, 22 26:1, 6, 8, 10 27:6, 12, 16 51:2, 18, 19 52:1 87:3 111:16 119:18 121:19 130:13, 23 158:16, 22 160:25 165:24 166:4 173:19 174:3 contaminating 166:13 contamination 22:13 25:7, 21 27:15, 25 28:16, 20 51:5, 15, 16 52:8 106:25 107:6, 15 108:11 124:16 156:19, 24 157:7 158:7, 13 159:2, 16 166:12 167:3 168:16 170:9, 13 171:3 174:19, 20 contents 146:12 context 9:6 67:12 83:2 86:16 90:16 103:6 116:7 171:3 continues 35:15 contractor 171:21 172:8 175:11, 15, 19 contractors 30:13 32:16, 18, 24 172:14 175:7 contrary 158:2 control 15:18 16:23 17:5, 23 18:2, 20 21:14, 19, 23 22:4, 11 23:12, 15, 20, 23
--	--	---	--	---

24:9, 17, 22, 25 25:6, 11 26:3, 5, 19 27:4, 10, 12, 17 28:6 31:13 105:15, 21, 25 106:5, 17 133:10, 17, 21 134:5 142:8 162:9, 14, 20, 21 Controlling 2:16 145:12 146:19 147:23 148:5 162:13 controls 11:17 15:6, 15 25:19 27:22 133:19 134:15 162:17 converted 36:16 coordinate 178:11 coordinator 159:12 copy 21:2 110:2 core 59:20 Corex 41:14 corner 78:25 82:7 98:12 146:14 164:12 corollary 158:13 corporate 39:18 corporations 7:21 Correct 18:4, 23 19:1, 2, 5, 6, 24 20:8, 9, 13 22:19, 20, 23 26:16 27:25 29:2 30:10, 16 33:4 35:8 36:18, 23, 24 37:2, 3 38:6 39:5 41:12, 15, 16, 20, 21, 25 42:3, 4 43:10, 11, 24 45:8 51:6 59:1, 2 63:18, 19 64:3, 20, 25 65:4, 7, 8,	13, 14, 16, 17, 20 66:10, 11 67:18, 19, 23, 24 68:8, 9, 13, 21 69:1, 9 70:14 71:7 72:2 74:1 75:6, 7, 9, 11, 12, 18, 22, 23 76:16 84:8, 20, 21 85:9, 10, 14 86:4, 7, 23 87:8, 14, 15, 19 90:2 91:23 93:10 96:9 97:19, 20 98:19, 24 99:4, 5 103:5, 14, 21 104:19, 20 105:6, 7, 12, 19 106:19, 20 108:3, 14, 15, 20 111:25 112:13, 14 113:11, 17, 18, 21 114:2 115:23 116:5, 6, 10, 11 119:4 120:5, 10 121:7, 13, 14, 15, 20 122:5, 16, 18 124:19, 20 126:14, 18 127:24 131:18 133:3 135:5 136:3 142:11 147:8, 17 149:3 150:16, 17 157:12, 17 158:10 162:21 165:9, 23, 24, 25 166:5, 6, 17, 22, 23 167:4, 11, 12 171:7, 18, 25 173:9 174:6, 17 175:3, 13, 16, 17 177:7, 23 correspondence 29:19 Cotton 36:2, 3, 17 37:20 38:18, 19 66:25 67:21 68:17, 18, 19, 23	70:11 71:16, 21 72:6, 16 74:3 85:12 92:1, 15 148:21 176:8 Coulter 1:20 counsel 136:16 count 66:12 counts 67:1 County 6:8 7:11 179:1 couple 8:4 75:5 82:6 139:6 course 14:12 34:14 81:25 82:2 102:8 127:17 COURT 1:1 4:12 5:7 7:8, 9, 11, 16 8:8 cover 53:15 60:4 133:9 coverage 60:6, 16, 19, 21 96:24 coveralls 84:18 122:7 covered 133:12 covering 60:1 Cozen 3:8 create 151:22 152:2 160:22 164:13 created 33:12 125:16 creates 137:2 166:12 crib 47:6 crystalline 132:19 cut 92:5 142:21 cuts 62:19 161:11 cycles 133:23 < D > daily 112:15 114:3, 10 116:24 126:15 129:12, 16	damage 120:7 148:22 damaging 93:24 danger 86:14 130:24 163:3 DATE 1:17 36:14 56:24 61:16 178:13 dated 2:19 39:19 40:10 77:24 127:8 dates 150:10 dating 72:25 Davies 3:4 day 4:3 14:12 17:10, 11 32:19, 25 34:15 35:7 49:10 53:19 66:22 114:14 126:17, 19 173:23 175:7 178:10, 11 179:11 days 33:10 35:4 53:17 deal 95:13 118:10 136:25 167:19 dealing 162:3 deals 112:13 decision 108:12 decisions 107:20 decontaminated 164:4, 5, 25 decontaminating 164:22 decontamination 164:18 165:7, 13 DEFENDANT 1:2 3:7 4:25 6:7 61:7 defense 86:18 define 108:17 155:23 157:4 defining 134:14	definition 173:21 174:2, 4, 10 degree 17:20 27:18 28:18, 23 45:13, 17, 23 90:3 107:22 108:2 115:10 118:17 129:7 degrees 81:20 deleted 83:25 delivered 49:2 demand 105:3 demonstrate 118:22 density 87:2 department 47:22 68:20 69:1, 8, 24 70:5 86:23, 25 87:1, 6, 13 176:13, 22, 25 depend 51:14, 16 165:9 depending 59:8, 23 60:19 90:21 165:15 167:3 depends 58:18, 24 59:10 60:23 73:12 86:8, 9, 10, 11 91:14, 15 120:14 137:5 DEPONENT 1:16 deposed 5:10, 12 53:16 deposited 162:16 DEPOSITION 1:2 4:1, 4 5:21 6:16 7:5 8:1, 18, 21 9:5 12:12, 16, 18, 22, 23, 24 21:1, 5 41:7, 9 53:5, 8 63:10 81:15 101:24 107:12 112:11 125:4 133:24 138:14 146:4 148:24
---	--	---	--	---

154:18, 20, 22 178:10, 12, 25 179:3 depositions 2:8 12:20, 25 dermal 160:20 162:4 describe 37:23 described 86:5 101:23 describes 157:14 describing 87:17 designated 129:13 designed 27:14 45:23 147:2 detailed 122:1 details 52:6 113:23 135:1 167:18 determination 60:7 93:4 determine 44:21 48:23 49:1, 7, 11, 24 70:7 71:17 72:8, 18 91:3 178:13 develop 133:9 developing 105:9 deviations 45:2 devoted 84:4 difference 90:11 92:1, 13, 23 93:2 103:18 177:23 different 16:24 19:25 20:2, 5 22:18 30:14, 15 51:5 69:18 85:19 89:14 90:25 93:8 116:17 157:19 158:1 164:24 167:2 174:4, 24 176:9, 11, 20 177:4, 6	differently 123:8 169:24 difficult 169:12 dilution 156:25 direct 9:18 52:25 82:8 102:11 172:19 directly 7:20 134:2 146:23 148:6 160:2 directors 12:1 dirty 49:7, 8 69:20, 24 106:3, 9, 21 163:24 166:21 disagree 56:13 69:11 discipline 34:21 disciplined 34:18 disclose 18:14 discovered 28:15 discovery 107:12 DISCUSSED 21:5 53:8 63:10 81:15 101:24 112:11 125:4 133:24 138:14 146:4 148:24 154:22 discussing 123:3 discussion 35:16 disease 132:25 dispensed 46:18 dispersed 46:22 dispersion 130:14 disposable 41:11 disposal 111:18 119:20 128:15 171:13 dispose 121:2 166:5 167:10 171:6 disposed 166:16	dispute 34:6 54:17 55:10 148:2 149:13 dissipating 42:12 distinguishes 66:5 disturbing 123:14 124:1 DIVISION 1:1 Document 40:12, 19, 20, 24 41:10 43:19 45:11, 14 47:15, 16 51:9 55:21 56:14, 16, 17, 21 61:11, 18, 24, 25 62:6 63:11 78:14, 17 82:17, 20 84:10 107:9 112:3 120:2 139:18, 19 145:11, 17 146:5 147:23 173:17 documentation 39:9 46:20 79:4 129:6 148:18 149:12 153:22 documents 18:22 20:21 23:9 29:20 45:15 56:9, 21, 23 70:11, 16 77:7, 12 79:22 80:3 95:14, 24 117:3, 4 127:10 138:1 143:8 148:20 154:7 document's 79:20 doff 140:6 doffed 19:11 doffing 144:18 doing 15:16 67:20 114:17 115:6 123:24 143:12	don 140:6 159:2 donned 13:16 19:11 Donning 144:18 dose 166:7 Dow 5:4 13:4, 10 15:24 29:7 35:13, 15, 18 36:22 38:11, 16 40:6 43:23 55:9 72:17 74:4 81:5 89:18, 23 90:13 92:3, 24 94:3 115:1 120:12 130:21 131:10, 19 147:11 149:4 153:19 154:4 159:5, 25 160:9 161:5 167:19 168:1 172:2, 10 Dow's 165:17 170:24 171:5 Dr 11:18 12:3, 6 21:15 154:15 draining 97:21 dressed 172:17 dry 120:24 dryer 77:19, 22 78:17 dryer's 78:3 ductwork 23:5 duly 4:16 179:5 durability 88:13 durable 176:14, 23 duration 31:5, 6, 10 32:25 86:10 90:21 91:15 114:15 dust 85:6 duties 77:22 116:15, 24 duty 96:10 116:19	< E > earlier 26:10 51:8 106:13 ease 35:16 East 1:21 ECP 133:12 134:7 Edition 2:10 82:8 effects 96:15 effort 45:25 EH 62:1 EHS 40:12, 20 47:22 56:24 78:17, 22 EIGHT 1:1 either 8:1 9:5, 12 13:10 15:7 100:24 122:18 130:21 Electrical 2:9, 16 41:18 61:14, 19 62:1, 7 65:12 66:1, 24 67:3, 7 68:5, 6 73:9 74:11 76:4 77:20 79:15 80:11, 19 81:3, 10, 12, 17, 20 84:12 100:16 145:12 146:19 147:3, 23 148:5, 22 151:1, 7 152:9, 13 electrically 41:15 electricity 146:23 electrostatic 42:12 eliminating 67:22 else's 166:22 E-mail 2:18 154:13, 16 155:1 157:13 159:4, 9 171:6 172:21
---	---	--	--	--

embedded 118:25	energized 150:20, 21, 22, 24 151:6, 12	62:23 64:16 66:13 67:1, 25 78:5 79:9 84:12, 24 87:18 88:7 90:10 93:15 94:5 102:9 104:1 112:8 116:16, 25 123:14 133:9, 11 135:19 145:21 146:17, 22, 24, 25 149:17 150:22, 25 151:6, 12 152:5 160:18 161:8 176:3	evidence 25:3 40:16 55:25 74:5 140:24	12, 18, 22 157:21 173:1
embryo 96:15	enforceable 64:24	era 147:11	evident 148:19	EXHIBITS 2:5
emergency 101:3 165:17 170:24 171:16 174:17	engage 75:24 76:23	ERIC 1:2 4:25	evolution 104:10 106:14, 15 148:3, 16 149:21 150:10	41:9 62:3, 4 79:2, 4
employ 25:18 122:21	engineered 28:6	ESD 42:11	exact 36:14	exist 27:4
employee 35:6 88:18 92:24 111:15 124:19 133:20 136:22 170:23 171:1	engineering 25:6, 19 27:22 81:10, 18, 21 133:19 134:15	especially 160:24	exactly 52:14 134:13 157:9 170:16, 20	140:22 141:15
employees 34:19 47:20 92:3 104:6 105:4 106:22, 23 111:17 131:16 140:23 141:8, 16, 18 143:16 144:4 146:22 155:2 168:18 171:21 172:8, 16 175:15, 19	engineers 29:21 30:7 32:5, 8, 10	establish 133:16	exacerbate 67:17	existed 136:19 156:12
employee's 175:11, 12	enlarge 96:16	et 1:2	examination 2:2 4:18	existing 5:1
employer 102:22 103:23 111:15 119:17 130:21 133:16	ensemble 84:13	ethylene 101:8	examined 4:16	exists 12:13 26:19 30:25
employer's 103:22	ensure 111:15 119:18	evaluate 11:15 42:2, 7 43:9 44:7, 8, 18, 24 45:4, 7	example 19:17 67:10 93:16, 18 94:11, 20 95:7 99:2 113:19 175:9	expectation 160:22
employment 9:18	ensuring 106:21	evaluation 44:18 45:20	exceeds 166:10	expected 16:19 142:12
enclosed 164:9, 10	entering 28:11	evaluations 127:8	Excel 78:20	expensive 25:6
encompass 19:16	entire 35:7 36:3	event 51:4 67:2, 7 93:6 148:22	excessively 165:17	experience 17:13 19:10 21:18 22:5 23:19 52:6, 7 108:4 158:21 160:15 167:1
encompasses 73:23 167:24	entitled 2:16 40:21 41:1 53:2	eventually 37:20	excluding 43:7	expert 5:17, 22 6:11 8:2 9:5 58:15 137:25
encompassing 106:16	environment 16:2, 4, 12, 21 17:19 20:12 21:21 22:5 24:18, 22, 25 26:5 40:14 43:21 46:2 113:14 120:17 174:14	everybody 63:21	executes 164:3	expires 179:10
encountered 75:25	environments 24:15 47:7 160:5 168:17	everybody's 170:7	exhaust 23:4	explain 65:24 80:1
encountering 19:17	equipment 13:17 14:15, 18 15:5 16:17 17:14 37:18 38:1 39:19, 20 40:9, 22 41:2 44:10 45:24 46:20 47:19, 25 55:15 59:8	everyday 102:23 103:5, 8, 10, 20 109:1	Exhibit 2:6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 20:20 21:5, 10, 11, 14 27:11 41:7, 8 53:1, 8 63:3, 10 75:22 81:9, 15 82:11, 13, 17 101:17, 20, 24 102:1 111:19 112:11 123:18 124:8 125:1, 4 133:13, 24 134:1, 9, 24 135:10 137:13 138:3, 10, 14 145:22, 24 146:4, 9 148:10, 14, 24 150:19 152:22 154:10,	explains 96:16, 18
ends 50:10 97:9			explains 96:16, 18	explores 17:17
			exposed 17:16 28:20 68:5, 11 76:23 77:13 80:10 86:2 93:25 96:11, 19 97:22 110:17 112:16, 24 113:8 114:8 117:17, 23 118:14, 18, 20 127:6 128:16 150:21 152:19 175:25	exposure 24:16 31:6, 7, 10 61:10 65:11

73:7, 9 76:4, 6, 7, 19 77:9, 20 79:11 85:4, 19 86:10, 11 91:15 93:7, 12, 14 94:1, 7, 12 95:4, 5, 8 96:18, 20, 22 97:1, 18 114:12 115:6, 10, 11, 13, 22, 24 116:9 117:12 118:18, 22, 25 119:6 121:9, 19 125:6, 9, 13 126:21, 23 127:1, 11, 15 128:19 129:9 130:11, 22 131:16 133:1, 4, 10, 17, 20, 21 134:5 135:16, 21 136:2, 5, 9, 19 137:2 148:23 151:1, 7, 13, 18 162:5, 11, 13 166:9 170:8 174:5 exposures 94:22 118:4 127:9 expressed 144:16 145:9 extent 17:3 86:12 118:24 extracts 82:20 < F > fabric 75:3 face 22:3 facilitate 14:15 facilities 169:15 facility 6:6, 13, 17 9:20 13:13 31:22 32:7, 22 88:14 fact 22:7 28:8 68:10 113:13 140:20 141:17 143:22, 23 155:4, 7, 10	156:24 159:13, 18 facts 105:9 143:8, 13, 15, 25 151:10 158:2 169:1 factual 16:10 18:1, 11 24:21, 24 25:10 26:4 27:5, 8 31:24 32:11, 20, 23 57:2 108:3, 10 117:16, 22 127:5, 14 140:17 141:8 142:23 143:20 144:25 160:9, 11 161:4 factually 24:4, 13, 14 54:24 fair 140:15 142:11 155:12 177:16 faith 45:25 fall 96:12 familiar 8:5 52:10 far 35:22 63:25 157:6 FAX 1:23 February 5:14, 19, 20 6:3, 5 7:2, 3, 17 feet 79:9 fell 76:5 fetal 96:15 fiber 67:1, 15, 17, 21 fibers 85:6 120:24 field 11:5 12:4, 7 figure 139:14 find 40:11 47:2 52:12 61:25 62:5, 8 80:13 89:22 114:18, 19 115:2, 16 176:10, 12	fine 63:22 109:22 168:19 finest 132:22 fire 66:3, 4, 6 71:14 fired 79:9 fire-rated 150:12 fire-resistant 74:6 149:14, 25 first 4:15 33:9 35:23 38:2, 9 41:11 53:14 82:6, 21 86:18 94:15 96:10 102:12 128:18 138:20 143:22 154:23, 24 155:15 179:5 firsthand 16:6 fish 95:23 five 6:1 flame 71:13 73:11, 18 74:21 75:1, 4 flame-resistant 74:7, 15, 21 150:1, 5 flame-retardant 74:15 150:6 flash 67:10, 12 68:6 79:10 84:2, 3, 9, 10, 11, 20 151:16, 22 152:2 Flight 6:7 Florida 6:9 flowing 172:22 focus 38:19 focused 39:11 folks 172:2 following 83:1, 5, 11 133:18 169:12 follows 4:16 foregoing 179:3, 6 form 17:5 81:24 82:2 95:10	formaldehyde 101:9 former 5:1 forming 49:18 forms 93:9 formulate 17:18 formulated 70:18, 24 forth 179:4 forward 14:14, 17 found 12:1 126:8 four 53:13 65:10, 22 67:2 76:1, 5, 8, 16, 24 77:11, 14 FR 66:6, 10 free 37:19 frequency 114:4 115:7, 8, 21, 23, 24 118:22 127:11, 15 136:2 frequent 125:12 135:20 full 82:17 97:19 175:7 fully 8:7 further 98:5 120:1 149:17 179:8 < G > garment 42:11, 12 gconnor@qcwdr .com 3:5 gears 52:19 general 18:9 19:12 40:13 43:20 46:2, 21 55:16 101:5 107:19 108:6 156:15 generalities 47:8 generally 11:9 13:24 27:3 64:14 87:11	100:14 109:23 132:12 161:23 getting 68:7 118:5 Give 53:4 61:22 77:25 93:16, 18 95:7 178:16 given 8:21 23:16 116:14 179:11 gives 113:15 giving 119:9 165:12 179:4 glad 8:10, 12 131:25 GLEN 3:3 9:14 52:21 79:19 82:22 95:12 132:5 173:10 glove 160:10 161:24 162:18, 24 gloves 98:8 147:1 159:1, 2, 6, 19, 22, 25 160:23 161:5, 8, 16 162:6, 10, 14, 20 163:2 164:1 170:10 glues 13:7 go 14:14, 17 17:3 23:2 31:4, 20 33:1 36:8 37:16 48:5 50:23 53:13, 14, 15, 20, 25 62:5, 8, 10 63:14 66:2 79:6 80:13 83:12 87:6 88:1 91:19 97:9, 12, 14, 20 98:11, 14 102:6, 19 106:19 108:22 109:18 110:13 111:9, 19 112:2, 7 114:21 119:14,
--	---	---	--	---

24 121:23 127:20 129:12, 14 133:15 138:8, 15 139:15, 24 141:16 143:18 146:12, 13, 15 154:5 157:13 173:4 176:6 178:1, 18 goes 35:22 51:5 60:16 65:9 74:20 83:5 96:17 135:25 166:8 174:13 goggles 19:1 going 9:3 15:6, 8, 9, 17, 18, 19 18:24 19:5 20:21 33:23 35:16, 21, 23 45:4 53:3 57:13 58:4 69:19 72:14 77:3 86:3, 6 90:5, 6, 7 96:16 101:25 111:1, 5, 21 112:7 118:9, 11, 18 120:1, 17 126:25 132:7 134:17 139:10, 17 142:14, 15 143:6, 9, 10, 11, 17 146:10 157:6 162:5 170:8, 10, 11 173:4 178:3, 23 Good 4:21, 22 27:23 45:25 52:19 64:10 69:17 87:2 90:6, 12 92:17 93:1 94:20 120:21 131:24 132:4 165:8, 12 graduate 81:11, 24 82:3 grid 19:5 62:15, 16, 22	77:22 78:4, 18 95:19 97:11, 18 98:20 99:1, 2, 8, 16, 17, 18, 24 113:15, 20 115:2 116:1 135:19 162:7 grids 13:11 14:5 16:17 17:14 18:14, 22 19:9, 15, 19, 22 20:13 23:17 40:9 43:21, 23 61:8 76:3 79:5 93:6, 8 98:21 99:20, 22 100:3 112:19 113:1, 4, 12 114:4, 7 116:5, 18, 19, 22 117:1 118:2, 7, 9, 13, 20, 22 119:1 125:15, 22, 23 127:3, 5 129:21 130:2 136:8, 12, 17, 20, 25 137:11 151:3, 16 152:11 160:18 161:8, 20 162:3 174:13 176:3 gross 174:18, 20 ground 8:5 guess 68:17 157:8 guideline 64:21 guides 32:6 guys 96:6 < H > HAAS 1:2 4:24 5:3, 5 13:4, 10 15:23 29:8 35:13, 14, 19, 23 36:16, 22 38:10, 20, 22 39:3, 12, 15, 25 40:6, 9 43:17 44:1, 21 45:19 46:25 54:11, 18	55:4, 8, 11, 18, 22 56:7, 19 57:3 58:22 61:13 65:2 72:20 73:21 74:9 85:15 90:24 94:3 103:25 115:1 120:12 127:9 130:21 131:2, 19 148:17 149:1, 8 153:15 161:14, 15, 24 167:19, 25 half 10:2 hand 163:4 179:11 handle 120:17 158:16, 21 159:1, 3 171:1 176:2 handled 49:8, 12, 21 52:2, 9, 14 88:10 90:4 122:11 130:17 153:14, 18 154:1 155:22 156:11 157:15, 20 165:17 167:14 168:3 169:23, 24 170:24 172:17 handling 50:1, 5 51:21 131:5, 12 157:25 158:18, 20, 24 159:14 160:23 163:19, 20 164:1 165:13 167:3, 8 168:19 169:4 174:17 177:24 Hang 50:21, 25 happened 55:1 happening 108:5 happens 108:7 171:17	hard 78:8 126:6 161:17 162:13 harm 67:14 93:23 Harry 111:14 hazard 11:14 16:6, 16 22:9 28:8, 11, 15 37:21 42:2 43:9, 14, 18 44:7, 19, 21 58:24 59:8, 23 60:23 63:1, 2 65:3, 5, 6 66:1 67:8 68:5, 7 73:12 74:11 75:15, 16 76:1, 15, 24 77:10, 13 79:10 80:5, 23 81:12 84:3, 7 90:22 91:14 129:5 133:1 135:23 147:3 158:6, 13, 16 159:16, 20 160:5, 22 163:1 Hazard/Risk 83:22, 24, 25 hazardous 101:2, 5 132:23 Hazards 2:16 11:15 17:15 22:10 38:3 58:9 61:8 65:12 66:24 73:9 76:4 80:11, 19 97:22 126:9 145:12 146:19 147:23 148:5 149:15 151:2, 8 169:16 176:1 head 80:21 93:20 heading 145:25 146:16 health 40:21 107:21 148:17	158:6, 13, 16 159:16 176:1 hear 8:9 57:19, 20, 24 heard 8:14 hearing 150:2 heavily 51:19 held 33:8 99:13 100:1 103:9 110:1 helmets 147:2 help 62:11 95:21 helped 12:1 helps 41:9 78:21 hepatotoxics 160:20 hepatotoxins 85:20 93:24 hereto 179:8 high 22:10 93:13 94:1, 6, 7, 12 95:3, 7 97:17, 24 114:5, 9, 12 115:3 119:3 135:24 136:1 158:6, 12, 16 159:16 higher 65:10 84:11 94:8 highest 65:11 highlight 53:21 83:6, 16 102:13, 19 128:18 highlighted 83:21 109:17 highly 101:4 166:8 Highway 3:4 hires 33:19, 20 34:4, 7 171:20 172:1 history 104:4 107:1, 6 Hmm 80:1 Hold 53:10 58:3 63:8 83:19 102:20
---	---	--	--	--

138:4 178:2, 22 holding 100:25 holes 92:5, 9 home 4:3 31:4 33:1, 23 50:23 106:4 155:3 163:4 175:16 homes 106:23 168:17 hoods 147:1 hope 121:21 hose 147:2 hours 23:24 hygiene 12:4 122:19 hygienist 17:22 18:16 27:19 28:19 hypothetical 127:1, 2 168:25 169:11 170:15 hypothetically 177:18 < I > ID 179:14 idea 92:21 144:9 164:13 identified 80:9 identify 77:11 ii 112:9 III 2:8 illegible 125:24 immediate 163:3 immediately 51:3 impermeable 85:1 implement 28:3 133:17 163:4 167:9 implementation 148:19 149:9 implemented 27:23 55:18, 23 56:1 important 148:1	imposing 45:7 improved 37:21 improvement 175:10 incident 174:22 inclination 156:8 include 75:15, 20 83:1, 5, 11 146:25 included 46:1 76:17 84:13 105:21 148:20 149:13 151:2 162:7 including 8:22, 23 41:23 42:7, 24 44:25 46:22 133:11, 22 inconsistent 159:15 168:8, 10, 13 170:13 172:3 173:1, 5, 8, 15 INDEX 2:1 indicate 18:18 29:20, 21 56:22 101:10, 15 115:18 118:20 134:6 151:16 indicated 23:16 46:1 49:14 55:15 56:9 106:13 114:5 140:25 149:12, 14 151:2, 8 165:16 173:18 indicates 22:8 24:17 28:15 149:20 153:10 indicating 158:19 indication 13:12 22:16 73:20 76:3 107:10 154:7 172:12 175:23 indications 99:14	industrial 12:4 17:21 18:16 27:19 28:19 147:2 industry 7:20 9:12, 15, 16 18:9 52:7 64:17 inference 25:21 45:16 142:20 148:1 influence 9:1 inform 130:22 information 49:13, 19, 20 93:3 154:13 infrequent 19:4 ingredient 10:4 initials 20:4 inorganic 101:7 inquire 56:5 inside 22:13 162:20 175:8 insinuation 44:10 inspected 88:12 inspection 88:22 installation 152:13 installed 28:9 instance 97:12 170:10 instances 136:8 141:11, 14 instruction 159:7 instructions 49:25 50:5 91:8 128:15 158:15, 19 169:4 177:10, 21, 24 insulated 147:11, 14, 24 insulating 147:1, 20 insulation 41:19 147:16 insurance 9:15	intensity 31:5, 7 86:10 90:21 91:15 interacted 131:2, 10, 11 interest 179:9 interested 13:18 60:11 160:13, 16 interpretation 45:9 115:25 118:7, 9, 12 119:2 136:1 interrupt 114:21 inventory 105:15, 21, 24 106:5, 17 142:8 159:12 involve 24:15 involved 76:15 108:8 118:19 170:23 178:11 involving 9:20 irritants 97:11 isolate 166:4 isolated 164:12 isolating 163:24 issue 6:10 13:3 61:16 172:24 Item 112:9 133:15, 16 items 133:18 its 47:16 81:6 88:12 120:12 131:3, 11 167:9 174:15 iv 119:15 < J > jackets 155:25 JCPenney 68:21 69:1, 9, 20 JCPenney's 69:19 jeans 92:4, 8, 11 93:1	JEFFERSON 1:1 5:7 179:1 Jess 8:4 JESSICA 1:20 179:1, 13 job 13:19 14:23 18:16, 19 60:24 61:1 77:12 81:13 112:25 113:17 135:17 136:7 jobs 135:22 146:24 JUDGE 1:2 judgment 90:15 judicial 7:11 jumps 46:4 June 179:10 < K > KAC 20:7 61:1 93:21 KB 20:7 61:1 95:19 99:2 KBK 20:6 KEELING 1:2 5:1, 5 keep 9:11, 16 86:7 99:3 101:11 105:10 112:7 120:1 139:17 keeping 107:7, 16 keeps 161:3 Kentucky 1:21, 22 4:6 5:7 13:3 137:14, 19, 21 138:11, 21, 22 139:2, 25 140:2 144:14, 15 145:7 179:1, 3, 11 kept 63:15 99:11 100:22 109:2 110:1 126:12 127:22 134:3 135:12 156:21
---	--	--	---	--

kind 18:9 19:8 22:5 28:5 41:18 64:17 87:13 100:15 168:16	25 152:6 153:12, 13, 17 154:17 155:4, 13, 15 159:24 161:13 162:1, 9 167:5, 13, 22 168:18, 25 170:16, 20 172:9, 15 173:6 174:17 175:9 176:18 177:1, 5	labels 119:21 120:2 177:13	lead 101:7, 18, 19 109:3 110:16 111:4, 5 124:21, 25 125:6, 9, 13 126:10, 11, 16, 21 127:6, 11, 16 128:16, 19 129:10, 13, 24 130:5, 11, 14, 23 131:16 134:19	120:18 159:21 160:5 170:9, 11
kinds 45:15 73:20	knowing 23:18 28:8 32:21	labor 137:25 138:11	leaders 29:17, 24 30:2, 20 31:1, 11 32:1	levels 167:2
knew 162:25	knowledge 16:10 18:9 22:14, 15 26:24 56:2 127:14 155:22 156:10 157:9, 18 158:1 167:21 168:2	lack 148:18 149:9	laundry 51:19 52:9 120:3 167:1	Liberty 3:9
know 7:8 8:5 11:18, 20, 21 14:25 15:22 18:8, 24 20:15 23:15 24:1, 8, 12, 14, 20 26:2, 9, 17, 21, 24 27:15 28:3, 24 35:3, 14 36:11 38:13, 14 46:5, 25 49:8, 10 50:4, 8, 11 51:24, 25 52:5 53:17 57:18 60:25 61:24 66:17 68:14 69:5 70:6 73:9, 24 76:13 77:4, 16 78:8, 15 79:2, 12, 19 80:5, 23 81:2, 4, 5, 7 84:15 87:5, 9 88:16 89:25 90:23 91:1 92:12, 22 95:13, 16 96:4 98:15 99:12 101:15 107:19 109:14, 21 112:19 113:22, 23, 24 114:3 116:12 122:3 125:9, 10, 12, 18, 20 126:6 128:25 129:1, 3 130:4, 9, 18 131:4, 7, 14, 22 135:20 136:4, 6 137:7, 22, 25 140:13, 20 141:3, 17 142:17 144:21 146:11 151:23,	Kresge 2:2 3:8 4:20, 23 52:20, 23 53:11 57:6, 11, 18, 21, 25 63:13 82:13, 18, 21 83:18, 20 95:12 102:18 111:24 131:23 132:2, 4 138:5 139:16 145:24 146:1 155:9, 12 173:9 177:16, 25 178:8, 20	language 106:3, 7	launders 49:17	likelihood 52:7 94:8
knowing 23:18 28:8 32:21	KRS 2:15	large 7:21 174:21 179:3	learn 33:5 34:22 38:21 91:7 104:3, 9, 14, 15 105:8, 13 106:2	limit 133:20 166:11
knowledge 16:10 18:9 22:14, 15 26:24 56:2 127:14 155:22 156:10 157:9, 18 158:1 167:21 168:2	KVPA 61:1	launder 155:3 169:5	leap 48:1	limitation 45:6
knowing 23:18 28:8 32:21	KYNP7766 179:14	laundered 88:10, 13 120:24 153:14, 18, 25 166:19	learn 33:5 34:22 38:21 91:7 104:3, 9, 14, 15 105:8, 13 106:2	limited 37:12
knowledge 16:10 18:9 22:14, 15 26:24 56:2 127:14 155:22 156:10 157:9, 18 158:1 167:21 168:2		launderer 130:22 166:24	leaves 124:19	line 19:17 20:7, 13, 16 53:22 63:24 78:4, 14 79:8 86:18 98:21 113:20 116:4, 5, 7, 13, 15, 16, 18, 22, 25 117:5, 9 123:14 133:14 147:2 153:9 161:9
knowing 23:18 28:8 32:21		laundering 49:25 50:5, 12 51:3, 8 91:8, 9 111:18 128:14 158:15 159:7 164:23 165:8 166:20 168:2 177:10, 21	learned 104:10 105:2	lines 97:21 152:16
knowing 23:18 28:8 32:21		launders 49:17	leave 118:15 140:14, 16 141:11, 12, 16, 19 142:2, 12, 13, 14, 15, 25 143:6, 10, 18 144:4, 5 175:21	list 5:16 7:15 9:11, 13 61:15 83:15
knowing 23:18 28:8 32:21		laundry 51:19 52:9 120:3 167:1	leaving 131:17, 21 140:12 142:9	listed 24:15 67:24 68:1 113:2 129:5 130:1 174:12
knowing 23:18 28:8 32:21		law 100:7, 8, 11, 24 108:23 110:4 137:14, 19, 21, 25 138:21, 22 139:2 140:1, 2 144:14, 15 145:7	leaves 124:19	listing 62:23 63:2
knowing 23:18 28:8 32:21		L-A-W 100:7	leaving 131:17, 21 140:12 142:9	lists 39:20 62:23
knowing 23:18 28:8 32:21		laws 100:4 138:11	left 86:13 98:13 122:10 129:7 140:14 143:24	litigation 11:4
knowing 23:18 28:8 32:21		lawsuit 4:25 5:6	left-hand 63:25 82:7 98:12 146:14	little 53:23 63:20, 21 79:23 96:17 98:5 109:19 119:14 135:4, 9 138:6, 7 148:10 154:11 166:11
knowing 23:18 28:8 32:21		layer 38:2, 3 66:2 86:20 120:14, 15, 20, 22	legal 137:25	live 150:21 152:19
knowing 23:18 28:8 32:21		layers 121:1	legally 64:24	Liz 2:18
knowing 23:18 28:8 32:21		laying 164:14	legible 161:19	LLP 3:4
knowing 23:18 28:8 32:21			legitimate 8:22	load 14:13 15:4
knowing 23:18 28:8 32:21			letter 70:25 158:25 171:14	
knowing 23:18 28:8 32:21			level 51:14, 16 84:11 91:20	

loading 15:5, 14 96:10	67:9 68:4 73:2 76:6 77:1, 3, 5, 7 78:13 80:2 82:24 94:11, 15 95:6 100:18 101:13, 17 102:12 109:3 111:5, 12 112:8 113:3 114:6 119:13 124:24 125:9, 21 127:19 128:12, 16, 17 133:5, 13 136:23 137:10 138:19 139:6 149:7 150:10, 18 154:2, 6, 12, 16, 17, 25 159:4 160:21 161:19 162:2 167:24 171:15 173:12 176:4	Louisville 1:22 2:9 5:2 13:3, 9 14:21, 22 15:22 16:10 17:11 20:1 21:23 24:9 25:1, 12 26:6, 20 27:4 30:3, 9, 14, 21 31:25 32:17 33:9 35:16 43:17 47:5, 9 48:6 49:5 52:4 56:8 60:18 61:5, 14, 19 62:7 70:4, 21 88:6 91:10 92:25 101:1 104:23 107:2 115:1 125:19 126:20 127:16 134:4 135:13 137:17 139:4 140:22 152:24 155:1 156:22 159:11 160:1, 10, 16, 17 161:6, 16, 25 172:9, 11 173:14 175:20 179:11	maintain 108:13	72:9, 19 90:22 110:15 132:21
local 23:3, 4			maintained 42:10	materials 13:12 14:13, 14 15:5, 14 35:25 70:2 73:25 107:25 110:16 160:24 166:8
locker 50:15, 21, 25 172:23			maintaining 107:16 155:4	matrix 61:16 64:2 65:2 75:20 76:2, 16, 25 80:24 84:7
lockers 163:24			maintenance 107:23 111:18 119:20	matter 19:3 105:15 140:20 141:17 177:3
locking 152:6			major 82:25 83:4, 8, 15 97:1	matting 147:1
log 100:5, 6			majority 17:24 18:2, 20 23:19 60:4	McCLELLAN 1:16 4:2, 15 5:9 21:5 53:8 57:23 63:10 81:15 101:24 102:3 112:11 125:4 133:24 138:14 146:4 148:24 154:22
logic 143:14			making 15:10 46:4 90:15 107:20, 24 164:4	McKAY 1:2
logically 143:8			manage 95:16	mean 17:3 42:9, 10 46:6 47:5 67:7 69:2 70:13 89:16 109:9 121:23 157:5 176:16
long 16:7 33:15 39:3, 9 40:11, 12, 16 41:23 42:5, 7 43:5, 15, 19 44:1, 2, 22 45:3 46:1, 9, 16, 17 54:11 55:16 56:22 60:12 71:19 98:17 102:24 103:4, 13, 16, 20 105:23 108:24 120:23 144:9 147:9 148:2 166:9 174:13	looked 23:10 55:21	low 114:5, 8, 11 115:2, 11 119:3 135:24 136:1	management 101:4	means 46:3, 5 47:21 65:6, 15 68:11 94:8 114:8 115:11, 12 147:13 177:2
long-sleeve 55:18 69:14 102:24 103:3, 13, 15, 20 108:24	looking 15:1 16:24 20:21 21:7 22:25 37:17 40:22 45:1 53:16 62:14 63:6, 18 70:8 77:11, 21 78:3, 15 79:12, 24 83:2 94:13, 17 100:15 108:18 109:22, 23 110:2, 4, 5, 9 112:12 117:3, 4, 11 118:11 125:16 150:19	lucky 95:25	mandated 31:8	meaning 93:22
long-sleeved 39:17 40:1, 5 46:18, 23 54:21 55:2, 23 56:16, 18 57:4 59:1 68:23 69:6 70:3, 20 71:5, 25 73:21 85:11, 23, 24 86:1, 15 98:18, 23 148:20	looks 146:7 156:3	Lunch 139:7, 16 140:2, 5, 11, 16 141:1, 9, 12, 16, 20, 21 142:14, 25 143:1, 10, 17, 18, 20 144:4, 5, 6, 11	mandatory 33:16 39:21 92:18 143:23	meant 85:4 123:21, 22, 23
look 7:11 9:14 11:1 18:16 20:18, 19 21:17, 18 27:2 32:10 35:23 39:18 44:16, 20 45:5 47:16 62:4 63:3, 24 65:1	lose 106:18	lunchroom 140:23	mandatory 33:16 39:21 92:18 143:23	medication 8:25
	losing 105:15	lunchrooms 141:3, 6	man 154:9	medium 93:13, 25 94:6 96:20, 21 114:5, 11 115:2, 12 119:3 135:24 136:1
	lost 105:18	lungs 120:7	Mansdorf 11:18 21:15 154:15	meet 88:15
	lot 46:4 68:12, 14 119:7 150:19	< M >	Mansdorf's 12:3, 6	
	lots 93:17		manufacturing 9:16	
			marked 20:19, 22 79:15 81:8 110:3 123:17 124:8 134:1, 9, 24 135:10 137:12 138:2 146:9 148:14 152:21 154:10	
			Market 3:9	
			marriage 179:8	
			matches 43:21	
			material 37:5, 8 38:14, 15 68:24 70:4	

meets 69:3	100:9 102:10	MYERS 1:20	24, 25 170:25	93:11 95:9, 11
melt 67:18	105:5 112:17	179:1, 13	171:20 172:1	96:17 97:24
mention 35:1	119:16, 23	< N >	next-to-last	98:16 99:7, 18
98:7, 8, 9	120:10 121:24	name 4:23 5:8	82:9, 11, 12	100:3, 7, 18
171:13	125:17 128:22	22:4 61:18	NFPA 2:10	101:22 102:5,
mentioned 8:4	130:15 132:14	NANCY 1:16	64:2, 11, 13	15, 16, 19
153:21	145:13 146:20	4:1, 15 5:9	65:3 75:5, 8, 20	104:14, 17
mentions	147:7 149:3	41:3	76:1, 16, 25	108:9 109:5
133:19	150:15 158:8	natural 66:25	80:24 81:6	111:15 113:10,
Mertes 2:18	159:8 163:17	67:21 68:17	82:6 83:16, 22	12 114:1, 11
Methacrylate	MOC 42:2	156:25 158:13	84:6	117:7, 10, 25
94:19, 23 95:8	43:9, 14, 18	nature 69:8	nice 92:8	122:19 123:3
96:11 97:22	44:7, 19, 20	91:4	nicer 79:17	124:6, 10, 11
Methacrylates	mod 92:9	necessarily	night 70:13	125:11 126:21
13:6	Moderator	49:9 101:22	NO 1:1 2:6, 7,	127:13, 18
methods 18:15	3:13 4:10	164:21	8, 9, 10, 11, 12,	135:14 136:12,
24:5 32:5	53:4, 9 57:12,	necessary 15:9	13, 14, 15, 17	13, 15, 23 138:7
133:15	16, 20, 23 58:2,	84:4 153:4	5:6, 18 7:7, 25	140:19 144:8,
methyl 96:11	6 63:8, 15	need 18:25	8:3 9:2, 7, 21	12 145:4, 6, 10,
methylene	83:17, 19 102:2,	41:19 42:2	11:5 12:11	24 147:21
101:9	5, 14, 17, 20	43:9, 18 44:7, 8,	13:1 19:3	152:11 153:1,
methylenedianili	111:23 132:6, 9	18, 19, 24 45:4,	20:17 21:25	11, 16 155:17
ne 101:9	138:4 139:14	7, 20 48:4	22:15 23:17	156:4, 6, 15, 17
Miami 7:9, 17	145:25 146:3	61:25 74:10	24:23 26:25	157:22, 24
Miami-Dade	178:2, 6, 18, 22	99:3, 15 104:12	27:7 28:24	158:4, 24
6:8 7:11	money 105:18	105:20 118:11	29:15 32:14, 23	159:14 161:22
Michelle 2:18	monitor 15:8,	119:25 134:6,	34:3, 5, 10	162:2 164:13
Michigan 4:3	15	14 141:12	37:10, 13 38:12	166:18 168:4,
9:12, 15 11:7	monomers	157:1	40:3, 12 41:6, 7	12, 18 169:4, 8,
middle 26:19	97:15	needed 37:18,	44:16 48:19, 25	19, 23, 25 170:4,
migrate 106:22,	Motors 107:19	19, 20 99:11, 12	49:4, 6, 23 50:3	18, 20 172:12,
23 107:25	108:6	120:25 149:16	51:7, 25 52:3,	18 173:9
mind 82:12	move 14:14	150:11	13, 16 54:11, 21	177:10, 21
mine 78:2, 23	15:17, 18, 19	needs 109:2	55:2, 25 56:4,	179:9
79:1 125:25	22:22 53:12	122:11	25 57:5, 21	nonchemical
127:20 166:22	82:15 83:14	negative 67:2	58:9, 11, 14	169:6
minimally	142:22 144:13	75:9, 21	59:6 60:2, 10	noncompliance
51:18	moves 15:10	nephrotoxic	61:17 62:5	34:16 39:1, 7
minimization	moving 67:21	160:19	64:21, 24 65:21	56:10
148:22	148:2	nephrotoxins	69:10 70:17, 22	noncotton 67:14
minimum	muffled 150:3	85:21 93:24	71:3, 21 75:14,	nonexistent
138:20	multiple 9:10	never 33:14, 24	16 76:11 77:15	65:18
minus 65:15	multitude 14:4	52:11 82:12	80:7, 22 81:1,	nonnatural
minutes 57:9	15:20 17:22	142:7 171:1	19, 22 83:3, 16	67:14, 17
132:3	18:18 38:3	176:24	84:2, 3 85:8, 12,	nonuniform
Mm-hmm	mutagen 97:2	new 33:6, 19,	17 86:8, 24	98:22, 23
12:17 19:18	mutagens	20 34:4, 7 84:1	87:21 88:9, 23	normal 42:16
39:13 41:16	85:19 93:22	88:18, 24, 25	89:6, 18, 24	45:2 102:25
54:1 55:5	160:19	90:11, 13 92:23,	90:15 91:2, 24,	115:13 161:18
75:10 85:25			25 92:7, 21	Nos 157:20

<p>not 5:18 6:17 8:9, 11 9:16 12:8, 11 13:1, 21 14:9, 19 15:25 17:7, 24 18:2 20:17 21:22 22:7, 11 23:15, 19 24:23 25:20 26:9, 21 27:7 28:6, 24 29:15 30:1, 22 31:8 32:4, 14, 17, 24 33:11, 25 34:3, 5, 10, 18, 20, 24 35:5 37:6, 10 42:12, 23 43:4 45:8, 14 46:7, 17 48:25 49:4, 9, 25 50:7 51:25 52:5, 16 54:23, 25 56:4, 6, 14 58:13, 14 59:4, 20 60:3, 8, 14, 18 61:4 62:2 64:20, 22, 24 66:10 68:7 69:10 70:6, 17, 22 71:3, 6, 8, 12, 18 72:7 73:2, 4, 20 75:2, 20 76:20 77:23 79:1, 3 80:7 81:1, 4, 7, 19, 22 82:11 84:4, 13, 20 86:3, 9, 24 87:1, 2 88:11, 15 89:24 90:7 91:2, 6, 11, 24 92:9 93:11, 14 94:2 95:1 96:3 98:8 99:2, 11, 18, 22 100:2, 3, 19, 23 102:22 103:10, 22, 24 106:4, 9, 12, 22, 23 107:25 109:15 110:5, 20, 23 111:25 112:23</p>	<p>115:11 117:9 119:10 121:12, 19 122:5, 6, 18 123:1, 6, 21, 22 124:6 125:20 126:16 127:2, 13, 18, 23 128:4, 8 129:16, 18 130:7, 18 131:4, 7, 14, 22 133:8 135:1 136:6, 23 137:24 139:18 140:19, 24 141:2 142:13 143:13 144:12 148:6 149:4 151:8 152:14, 17, 20 153:16 154:2, 6 155:11 156:10, 17 157:22 158:4 159:6, 10 160:6, 13 163:8, 19 164:14, 21 165:12 167:5 168:23 169:25 170:1, 2, 5, 13 171:7 172:13, 18 173:8 174:19 175:15 176:5, 17 177:14 179:8 Notary 179:1, 10, 14 notation 162:4 note 20:20 63:16 115:9 noted 65:21 notes 79:15 179:5, 7 Notice 4:5 noticed 125:15 November 61:16 now 4:11, 12 7:14 11:25 18:22 20:1, 18 26:9 28:25 29:11 38:13 47:3 48:15</p>	<p>52:17, 19 53:20 57:14, 17 63:11 65:1 72:3 74:20 75:5, 24 81:16 83:24 87:17 90:23 91:25 96:6 102:11 103:7 108:1, 22 112:12 116:3 120:11 122:10 124:12 125:1, 5, 15 126:25 130:10 139:6, 25 146:21 147:5, 8 148:11 150:18 156:18 157:13 161:13, 21 162:16 163:6 170:21 171:19 172:20 175:6 176:4 178:19, 24 number 10:9 40:19, 20 41:4 47:17 61:20 77:25 78:25 83:17, 22 93:12, 22 119:15 137:5 146:14 numbers 176:11 < O > OATES 3:13 oath 8:18 Object 17:2 155:6 173:5 177:12 observe 19:12 observing 16:6 19:10 obtain 30:18, 24 obtained 47:20, 21 obviously 19:16 85:7 162:13 occasion 34:23 occasional</p>	<p>116:25 occupied 6:14 occupy 6:18 occur 174:22 occurred 28:23 34:21 74:14, 16 105:10 occurring 94:9 occurs 143:16, 21 144:23 O'Connor 3:8 October 40:10 56:15, 23 57:3 offer 146:17 offered 58:25 offers 58:9 offhand 125:9, 10, 11, 14 Oh 7:3 10:22 13:20, 23 15:2 16:11 41:6 48:1, 14 62:13 72:13 77:15, 18 79:2 80:1 82:12 83:7 88:25 94:15 98:13 99:18 100:8, 10 102:4 109:11, 14 110:13 112:2, 7 133:8 139:13 146:1 149:6 150:4 165:11 Okay 5:12, 15, 19, 24 6:2, 15, 22, 25 7:13 9:3, 8, 14, 25 10:8 12:15 14:24 15:3 17:8 19:25 20:4, 15 21:6, 12 22:24 27:2 28:25 29:11 30:17 33:17 35:20, 21 36:19, 25 37:14 38:13, 25 40:4 41:22 47:10, 23 48:10 51:4, 15 53:7, 14 54:13, 14, 16 58:2, 3</p>	<p>59:17 62:12, 13, 21, 22 63:5, 7, 9, 17, 23 64:4, 13, 20, 22 65:5 66:20 67:20 68:10 70:15 71:23 72:3, 8 73:14, 22 74:6, 20 77:21 78:3, 7, 12, 16 80:8, 23 82:5, 23 83:4, 7, 14, 19 84:16 89:22 90:16 91:3, 7, 19 92:10 93:5 94:21 95:19, 23, 25 96:5 97:2 98:2, 7 99:23 100:20 102:2, 20 103:7 104:8 105:13, 20 108:20 109:11 110:12, 22 111:9, 12, 22 112:2, 15 116:3 117:8, 19 118:1 119:2 123:4 124:24 125:5, 8 126:3 128:12 130:10, 19 132:17 133:15 135:8 138:13 139:1, 11, 13 145:22 146:2, 3, 21 147:8 148:9 152:4 153:12 154:11, 23 155:9, 19 156:5 157:13, 18 160:14, 17 161:13 166:7 167:7, 11 169:13, 18, 22 170:21 171:15 172:6, 15 173:25 176:6, 18 177:1 178:2, 22 old 127:7</p>
---	---	---	--	---

<p>once 50:9 73:13 114:13 164:1, 4</p> <p>ones 92:20 101:2</p> <p>online 87:13, 17 88:4 90:2, 12 92:2 93:2 176:13, 22</p> <p>on-site 172:7</p> <p>oops 96:22</p> <p>open 78:6 95:24 178:12</p> <p>opened 78:10</p> <p>opening 19:17 20:6, 7, 8, 13, 16 78:5 113:20 116:4, 15, 16, 18, 22, 25 117:1</p> <p>openings 116:5, 7, 13 117:5, 9</p> <p>operate 15:6 35:15 162:17</p> <p>operated 5:3 43:17</p> <p>operating 14:15, 18 15:14</p> <p>operations 16:7 101:3 123:15</p> <p>operator 33:7 90:14 92:25 172:10</p> <p>operators 5:2 14:3, 7, 13, 20 15:13, 22 16:13 17:9 20:11 22:1, 22 23:12, 22 24:8 27:9, 16 29:1 31:12 32:3, 10, 13 33:3, 7 34:13, 25 39:6, 16 43:16 44:23 58:21 59:15 66:17 113:14 116:15, 23</p> <p>operator's 76:18</p> <p>opine 163:8</p> <p>opined 163:15</p>	<p>opining 37:22 71:10 103:13 108:1</p> <p>opinion 6:11, 16 17:19 36:25 37:11 38:8 54:20, 24, 25 58:23, 25 59:4, 22 60:21 70:19, 24, 25 73:3, 4, 7, 17, 19, 22 77:5 109:9, 13 117:13 128:9 140:3 144:15, 16 150:14 152:23 153:3, 7 157:11 163:9, 14, 18</p> <p>opinions 49:18 73:8 145:8, 17 148:14</p> <p>opportunity 15:25</p> <p>opposed 101:15 136:2</p> <p>option 55:12 65:23</p> <p>optional 98:10</p> <p>order 6:13 14:14, 16 17:18 20:25 21:3 41:17 75:3 152:7 159:3 162:17 163:2 164:8 170:25</p> <p>organ 93:23</p> <p>organization 12:1 107:19</p> <p>origin 105:1</p> <p>original 48:18 106:3</p> <p>originally 28:6, 9 171:20</p> <p>OSHA 9:12, 15 64:22, 23 100:4, 5, 6, 7, 8, 11, 21, 24 101:19 108:22 110:4, 6, 8 113:7 125:2 126:11 127:21</p>	<p>128:18 130:10, 19 132:12, 20 133:6, 25 134:11 145:12 148:11, 13 152:22 153:2 166:11</p> <p>OSHA's 103:19</p> <p>outcome 179:9</p> <p>outdoors 156:25 157:5, 7</p> <p>outer 120:15 121:1</p> <p>outlined 14:4 17:7</p> <p>outside 23:23 100:23</p> <p>overhead 152:16</p> <p>owned 13:4 56:8</p> <p>oxide 101:8</p> <p>< P ></p> <p>p.m 4:4, 11 178:25</p> <p>page 36:20 40:23 44:16 47:16, 18 48:9 53:15, 20 54:7 61:17 77:23, 24 82:9, 11, 12, 14, 15 83:12, 14 102:7, 12, 13, 16 111:13 112:3, 4 120:1 122:24 127:20 128:18 139:22 144:14 146:10, 12, 13, 14, 16 148:6 172:20 173:1 176:5</p> <p>Pages 2:7, 16 53:13 54:6 82:6 109:18 139:7 173:13 179:6</p> <p>paid 46:21</p> <p>pair 36:23 37:1 91:22</p>	<p>92:1, 4, 8, 11, 23, 25 98:23</p> <p>pandemic 6:6, 12</p> <p>pants 36:23 37:1, 5, 8 38:5, 8, 15, 16 72:4, 5, 9, 19, 23, 24 73:4 84:17 91:12, 22 92:1, 2, 12, 13, 14, 15, 23 93:1 95:10 98:17, 23 102:24 103:4, 14, 16, 20 108:25</p> <p>Paragraph 112:6 119:21 153:9 154:24 170:22 171:19</p> <p>Pardon 82:1</p> <p>part 5:16 14:1 16:23 18:15 19:22 20:12, 14 21:15 24:11, 13 28:12 29:25 30:6, 12, 17 33:5 34:12, 16, 22 38:21 39:1, 7 42:18 43:3 49:11, 21 54:5 56:10 59:10, 16, 17 60:1 62:3 74:13 76:18 79:1 81:6, 13, 18 82:21, 25 83:4 88:11 89:4 90:9 92:17 104:4, 24 105:8, 21 106:5, 25 107:3, 5, 7, 15 108:11, 15 109:17 112:25 113:17 115:24 117:14, 15 119:14 123:14, 23 134:7 135:10, 16 136:7 146:9, 15, 16 147:9, 10</p>	<p>150:13 170:15 177:14</p> <p>particle 132:20</p> <p>particular 19:4, 9 27:10 34:25 35:4, 5 41:10 44:16, 18 53:17 56:14 76:8 80:5 97:11 101:16 103:3 109:23 113:6 117:12, 14, 20 122:4 126:17, 19 134:19 148:5 150:23 154:18 156:13 163:21 177:9</p> <p>particularly 81:17 146:15</p> <p>parties 4:13 20:23 179:8</p> <p>parts 150:20, 21, 24 152:19</p> <p>pathway 97:23</p> <p>pay 102:23 104:1</p> <p>paying 90:9 103:22, 23</p> <p>pending 5:6</p> <p>Pennsylvania 3:10</p> <p>people 6:14, 18 25:3 29:22 33:7 81:13 123:23 142:8 159:19</p> <p>percent 176:8</p> <p>percentage 23:11, 15, 18</p> <p>perform 19:13 146:25</p> <p>performance 134:12</p> <p>performance-based 134:11</p> <p>performed 14:4</p> <p>performing 16:6 114:12 115:22 175:8, 9</p>
--	---	--	---	--

<p>period 7:23 16:7 33:14, 18, 21 34:2, 7 35:10, 17, 18, 19, 23, 24 36:1, 3, 10, 13, 22 37:5, 9 38:16, 20, 22 39:12, 15 40:1, 16 54:18 55:4, 11 58:22 72:16, 20 73:24 74:1, 4, 9 85:16 86:12 90:25 139:7, 16 140:2, 6 146:25 147:3 149:1, 4, 8 153:15, 19 154:5 161:14 167:24 168:1 170:25 171:2 periods 145:3 permeated 174:23 person 45:19, 23 159:8 personal 13:16 16:16 17:13 37:17 38:1 39:19, 20 40:9, 22 41:1 44:9 45:24 46:19 47:18, 25 55:14 59:7 62:23 64:15 66:12 67:1 84:12 87:18 88:7 90:9 93:15 94:4 104:1 133:9, 11 135:18 145:20 146:17, 22, 23 149:16 160:18 161:7 176:2 personnel 120:8 persons 153:10 perspective 27:14 165:6 pertained 107:2 pertains 31:24</p>	<p>Petroleum 172:7, 13, 16 pharmaceutical 10:4, 5 pharmaceuticals 10:2 Philadelphia 3:10 photo 21:23 Photograph 2:6 21:11, 14, 15 24:16 26:19 27:11 156:10 162:12 172:20, 22 173:13 176:7 photographs 70:10 154:14, 17 156:2 photograph's 175:5 physically 16:1 17:10 29:18 30:2, 8 pick 168:7 picks 49:17 picture 26:25 70:19 175:3 pictures 26:22 pinhead 166:10 Place 3:9 129:9 130:12 163:25 164:15 179:3 placed 18:17, 18 25:20 50:14 120:3 163:21 plaintiff 6:7 16:13 35:6, 7 71:1 142:25 175:1 PLAINTIFFS 1:2 3:2 12:10 13:15 14:1, 7, 21, 22 17:18 20:16 23:11 29:9, 14 32:9 33:3, 8, 20 36:12 38:9, 23 39:16 40:2</p>	<p>50:1, 5, 8, 18 55:12 57:4 59:15 60:17 66:17 67:6, 11 68:25 69:7, 15 70:3, 8, 21 71:6, 20, 24 72:4, 10, 24 73:16 74:14, 16 75:24 76:14, 23 77:13 80:10 81:2 84:19 86:2 87:7, 12 88:3, 6 92:14, 16 99:10 100:1, 22, 25 103:9 104:18, 22 105:23 109:25 112:16, 24 113:8, 21, 24 116:13 117:5, 9, 16, 23 118:14, 23 119:6 120:13 121:5 123:12, 18, 19 124:3, 9, 12 125:5, 13, 18 126:12, 20 127:6, 12, 16, 22 128:2, 10, 23 129:2, 12 130:4, 5, 16 131:5, 12, 20 134:3 135:12, 16, 21 136:4, 16 137:9, 15 138:23 139:3 140:3, 10, 13 144:10 145:1 147:9, 19 148:7 149:19, 24 150:4, 24 151:5, 10, 11 152:8, 12, 15, 18, 24 153:4, 8, 13, 18, 25 155:14, 16, 21 156:19 162:8, 19 163:16 164:19 166:16 167:14 168:3, 6, 17 169:2, 23</p>	<p>170:17 176:19, 20 plaintiff's 18:3 163:7 plan 133:17, 21 134:5 plant 5:2 9:20 13:3, 4, 10 14:22 16:10 17:11 21:23 24:10 25:1 26:6, 20 27:5 30:3, 7, 9, 21 31:25 32:2, 8, 10, 13, 17 33:9 43:17 47:5, 9, 19 48:6 49:5 52:4 56:8 59:22 60:17 61:14 70:4, 21 88:6, 8 91:10 92:25 95:19 99:2, 13, 20 100:23 101:1 104:23 107:2 125:19 126:21 127:16, 23 134:4 135:13 137:17 139:4 140:22 152:25 156:13, 16, 17, 22 160:1, 11 161:6, 16, 25 169:6, 15 170:1 172:9 173:15 175:8, 20 plants 30:14 160:3, 4 170:1 plastic 21:24 27:10 please 5:8 8:9, 11 40:25 53:1 61:22 63:4 82:15 83:16 87:22 95:22 98:3, 5, 12 101:20 102:3, 18 109:16, 18 111:19 125:1 138:6 139:25</p>	<p>144:14 145:23 148:10 154:11 163:13 point 26:8, 10 28:13 36:15 43:16 58:21 60:6, 16, 18, 20, 22 72:25 79:25 89:12 107:5, 14 113:25 125:1 127:17 149:25 150:5 153:19 161:14 167:15 178:13 poison 166:7 policies 81:6 100:3, 12, 13, 15 Policy 2:9 39:8 45:25 47:19 55:15, 22 56:1, 11, 12, 15 61:15, 20 62:7 64:7, 8 99:22 100:16, 18 163:4 polycotton 74:3 polyester 36:9, 11 portion 161:20 portions 82:19 position 6:15 58:16 59:13 127:5 128:8 134:2 135:11, 15 137:15, 22 138:22, 23 139:2 positions 33:8 possibility 22:16 possible 23:25 24:2 48:17 68:22 96:14 137:10 162:15, 22 169:21 178:12 Possibly 176:14 potential 22:10 25:7 67:23 79:10 93:7, 11,</p>
---	--	---	---	--

13 96:21 97:24 112:20, 23 113:2 115:11, 13, 19 116:9 118:3, 18 124:16 129:9 162:11 163:1 170:8 174:1 Potentially 23:1, 14 24:18, 19 25:5, 14, 22 69:24, 25 113:14 128:3, 4, 8 160:24 174:3 PP 19:15 47:14 PPE 13:11 14:5 18:14, 22 19:4, 9, 11, 14, 15, 19 23:17 37:23 43:21, 23 46:21 47:19, 21 48:3, 12, 20 55:22 56:21 58:13, 16, 23 59:1, 4, 14, 18, 22, 25 60:8, 12, 17, 18, 22 61:4, 7, 8, 13, 16 62:25 63:2 75:15, 16 76:3, 9 77:22 78:4, 17 79:5 83:24 84:1, 3, 4 85:18 88:11 93:6, 7 94:2 95:1, 9, 10, 19 96:23 97:3, 11, 25 98:1, 9 99:20, 24 100:18 101:6, 11 103:11 110:3, 5, 7, 8, 15 111:1 112:7 113:1, 12, 15, 20 114:4, 7 115:2 118:2, 9, 12, 20, 21 121:6, 10 125:15, 21, 23 127:3, 4, 8 129:21 130:2 133:22 134:17	136:8, 12, 20 137:11, 16, 23 138:18, 24 140:4, 6, 7 143:22, 24 144:18, 22 148:19 151:3, 16 152:11 153:4, 8 157:24 162:7 174:13 176:1 practice 56:3, 6 172:1 175:18 practices 101:11 108:16, 18 122:19 133:20 134:15, 16 precautions 158:22 pre-Cintas 91:5, 9 precise 123:16 preparation 12:21 21:16 30:12, 17 33:6 34:12, 23 38:21 54:5 80:3 89:5, 8, 10 99:9 154:15 prepared 6:17 153:23 155:5 preparing 99:25 PRESENT 3:12 4:2 10:18 22:10 28:8 29:18 30:2, 8, 13 35:11, 17 38:17 75:19 149:5 153:20 presents 86:14 press 176:15, 24 presume 8:13 prevent 27:14, 24 41:17 130:14 161:10 168:16 preventing 67:22	prevention 107:6, 14 108:10 previous 7:19 previously 87:3 printout 120:2 122:24 prior 9:8, 17 10:13 13:17 19:14 82:15 179:4 prioritized 11:16 privacy 22:3 proactive 28:4, 10 probabilities 113:3 118:25 probability 76:19 94:1 95:4 114:6 156:23 157:6 Probably 6:1 7:19 15:19, 21 147:25 164:11, 12 165:15 problem 28:4 95:11, 12 102:5 Procedure 4:6 51:6 163:19 procedures 164:19 165:21 166:3 167:9 process 10:3 14:14, 16 15:6, 7, 8, 11, 14, 15 16:17 22:12 28:14 93:21, 25 94:25 96:23 101:4 104:16 108:19 129:14 137:4 143:16 152:7 154:8 165:10 166:23 171:16 172:10 processes 16:25 137:9 processing 160:3, 4	produce 10:2 151:16 produced 13:13 20:23 79:21, 22 151:17 producing 61:10 product 15:10 production 5:2 10:3, 4 16:25 21:24 22:22 29:14, 18 30:2, 8, 13, 21 31:2, 11, 22 32:2, 5, 9, 12, 19 33:2, 3, 7, 19 34:9, 15, 25 35:6 39:16 43:16 44:22 59:15 61:4 66:17 80:3 90:14 92:24 137:8 140:21 155:2 171:21 172:2, 8, 10 professional 11:22 program 133:10 148:3, 17 149:15, 22 150:11 proof 148:18 properly 26:3 proposal 105:22 106:3 108:12 proposals 107:13 proposed 105:14 protect 59:11 65:25 66:24 68:7 85:4 86:3 95:3 96:25 98:1 121:12 163:2 protected 40:15 protecting 67:6, 11, 13 86:16 164:3	protection 38:3 40:13 41:18 42:19 43:20 46:2 58:9 59:19 68:12, 15 85:5, 8, 12 86:21 90:17, 20 91:13, 21 93:8 120:8 136:10, 22 146:17 159:22 161:9 170:11 protective 12:7 13:17 16:16 17:14 20:24 21:3 37:17 38:1 39:19, 20 40:9, 22 41:1 44:9 45:24 46:19 47:18, 25 55:14 59:7 62:23 64:16 66:3, 12 67:1, 25 84:12, 24 85:3, 17 87:18 88:7 90:9 93:15 94:4 102:9 104:1 112:8 120:9 133:9, 11 134:20, 24 135:18 145:21 146:24 147:2 149:16 160:18 161:8 176:2 protocols 119:10 164:3 provide 11:5 17:14 24:15 59:19 86:20 90:18 91:12, 20 105:3, 10, 22 148:21 150:12 158:2 169:14 170:11 172:13 provided 10:19, 23 11:7, 14 25:5 27:1 28:16 29:6 32:4 33:12
--	---	---	---	---

34:9, 13 38:9 46:21 48:4, 8 49:14 69:16 70:12 71:6, 18, 19 73:21 79:5 90:19 91:4 92:3, 24 95:15 103:8 104:5 128:21 129:6 131:11 138:1 141:4, 6 144:10 149:25 150:5 154:17 155:16, 20 158:1 173:18 providing 6:11 11:10 54:25 104:25 150:9 provisions 101:16 121:22, 25 122:4 proximity 151:15 Public 179:1, 10, 14 pull 53:3 82:18 102:1 109:12 111:21 133:7 137:13 145:18, 22 148:9 pulled 109:13 pulling 175:4 purchase 176:22 purchased 176:12, 25 purpose 8:22 73:11 111:18 128:21 purposes 12:9 73:7 174:16 175:5 purposing 50:1 pursuant 4:5 20:23 put 13:16 18:25 28:7 44:13 109:15	110:1 145:11 159:12 Putting 70:1 144:21, 22 163:23, 25 < Q > qualifications 88:15 qualified 25:4 81:3 159:9 qualify 51:15 quality 70:11 88:17 93:1 quartz 132:22 question 8:7, 14 10:22 14:10, 19, 20 27:15 39:21, 22 44:19 46:8, 13 60:14, 15 66:11 67:5 77:6 87:23 99:23 109:23 110:19, 21 114:22, 25 116:21 117:18 118:6 123:4 148:12 151:9 153:5 154:19 161:3 163:11 168:24 169:9, 12, 22 174:9 questions 8:10, 12, 13 quick 102:12 142:22 quickly 62:9 178:13 Quinn 3:3 quite 122:1 quote 83:22 102:23 103:4 146:22 147:4 155:1, 4 157:24, 25 158:6, 7 159:16, 17 170:22 171:2, 23	< R > rare 114:9 rated 41:15 66:4, 6 rating 75:15, 16 80:5, 24 114:6 ratings 65:3 76:15, 24 135:23 rationale 106:6, 17, 24 raw 15:14 Ray 4:23 52:18 79:21 82:10, 16 173:4 177:14 178:16 RAYMOND 3:8 reached 145:1 reaching 20:11 70:25 reaction 137:6 reactions 14:16 reactor 15:19 23:12 24:8 31:12 32:3 reactors 175:8 read 48:2 53:6, 17 55:15 78:9, 11 89:12 126:6 151:14 reader 113:13 readily 78:13 reading 41:11 45:14 54:4, 9, 14 115:20 ready 166:25 real 167:7 really 22:7 24:7 68:3, 18 re-ask 87:22 reason 21:22, 25 27:23 35:12, 21 42:19 54:16 55:3, 10 75:14 103:25 107:7, 15 108:11 162:19	reasonable 17:20 27:18 28:18 45:13, 17, 22 90:3 107:22 108:2 118:17 129:7 reasons 107:20 141:10 142:8 159:25 recall 54:4 94:13, 17 132:15 133:7 136:14, 18, 23 145:17, 18 158:9 recognized 74:9 149:15 recognizing 150:11 record 4:11 5:8 9:11, 17 30:7, 25 57:13, 15, 16 58:3, 4, 5, 7 107:5 108:3 132:7, 8, 10 142:24 143:15 167:16 178:1, 3, 4, 5, 7, 19, 23, 24 179:7 records 107:12 reduce 147:3 reduced 156:23 179:6 refer 35:17 95:9 98:16 128:6 133:14 158:5 reference 44:4, 17 46:25 64:7 65:19 99:3, 21 111:13 115:2, 5, 6, 8 133:22 146:21 147:5, 6, 13, 16 150:20 references 136:19 145:20 150:22 referencing 43:2 102:8	referred 56:15 68:18 83:24 85:1 103:4 109:1 144:21 referring 26:13 38:4, 8 41:22 43:13 47:4, 14 61:12, 24 62:10 69:6, 7 71:13, 15, 16 94:13 95:14 100:5, 6 103:11, 19, 24 109:7 111:20 127:11 132:19 135:3 141:15 149:10 refers 41:11, 15 44:24 122:12, 14 147:23 reflect 18:19 reflects 65:16 regard 21:1 32:8, 15 37:11 72:3 91:9 116:21 119:8 122:13, 14 136:9 157:14 163:7 164:19 168:6 177:8 regarding 6:6 73:9 regardless 34:13 115:7, 23 126:16 156:9 regular 51:19 77:22 85:17 88:13 92:11 112:25 113:2 116:15, 19 127:6 129:17, 18 regularly 113:8 117:16, 23 118:14, 15 regulated 121:2 Regulation 2:11, 12, 13, 14, 17 64:20 100:24 102:7, 22 103:3
--	---	--	---	---

108:23 109:24 123:17 126:11 127:1, 21 148:12, 13 150:23 relate 114:12 related 11:4 117:5 132:13 179:8 relates 73:23 90:1 133:6 relating 136:1 release 170:23 171:4 174:21 relevance 144:6 147:22 relevant 126:22 144:16 reliance 95:2 117:14, 19, 21 119:7 relied 89:9 99:24 109:6 132:12 rely 39:24 89:8 97:25 130:20 135:11 137:14 145:16 relying 19:22 94:3 96:24 109:8 113:6, 12 119:13 124:3, 25 125:2 128:7 146:18 remain 106:6 137:16 152:24 168:15 remaining 85:13 remains 155:11 178:12 remember 35:1 36:14 54:9, 14 63:13 77:2 79:16, 17, 24 80:15, 16, 17, 18, 20 95:17 125:11, 14 136:11 145:14 166:7	REMOTE 1:2 4:1 remotely 4:13 removal 122:1, 3 remove 75:9 removed 83:23 127:23 removes 86:19 122:7 removing 84:7 123:13 124:1 repair 69:17 87:2 92:17 152:9 repeat 8:10 39:21 88:1 114:22 144:24 153:5 163:13 rephrase 8:12 replacement 122:2, 4 report 12:16 13:22 21:16 29:25 30:12, 18 33:6 34:12, 23 38:21 49:12, 22 53:18 54:5 70:16 74:13 76:21 77:5 89:5, 8, 10 94:18 98:16 99:9, 25 101:21 104:4 105:9 117:22 128:6 134:1 138:12, 16 140:1 144:7, 17 145:9 146:6, 11, 13 148:12, 15 153:24 154:15 155:5 158:5 REPORTER 4:12 8:8 Reporter's 2:3 Reporting 1:20 represent 21:13 90:25 138:9 146:8 154:11 176:6	represented 6:6 104:19, 22 representing 9:12 represents 154:13 reproductive 93:23 reputation 12:3, 5, 6 requested 21:15 154:14 require 131:20 159:18, 21 162:6 163:1 165:13 required 17:23 39:3, 9 40:1, 13, 17 42:6 43:15, 20 44:1, 3, 6, 8, 11, 22 75:16 84:3 95:9 102:22 124:12 136:11 140:5 144:18 146:24 161:15 162:18 requirement 30:23 39:15, 25 40:5 54:11 55:3, 16, 18, 23 56:16, 19, 22 57:4 124:17 160:10 161:24 requirements 18:19 40:10 54:21 69:3 101:5 139:8, 17 140:2 168:19 requires 97:18 100:21, 25 126:12 127:22 128:13, 14 130:10, 20 159:5, 25 161:5 requiring 23:3 122:15 resilience 6:6, 12, 13	resistant 66:3 71:14 73:11, 18 74:22 75:1, 4 resolution 6:19 respect 173:10 respectfully 56:13 respective 24:9 respirable 132:19 respiratory 120:8 response 11:17 73:12 74:10 101:3 165:18 170:25 171:16 174:17 responsibilities 81:13 responsibility 76:18 responsible 15:10 155:3 rest 80:13 144:19, 23 145:2, 3 restate 117:18 result 35:3 105:17, 20 157:1 175:4 resume 178:9 resumed 10:15 retain 105:24 retained 99:12 139:4 retrofit 28:5, 7, 14 return 143:2 returned 7:20 10:11 164:6 reused 166:25 review 12:12, 18, 24 42:2 43:9, 14, 18 44:7, 19, 21 93:6 110:25 111:1 126:5, 7 reviewed 12:21 29:20 30:6	44:5 99:9, 24 134:19, 21 Revision 83:21 revisions 83:1, 5, 8, 15 revolves 64:15 Rh 47:17 61:21 right 19:3 21:21 22:17 23:8 24:7 25:7, 9, 10, 24 26:17 27:24 28:1 29:23 30:24 38:4 39:10 42:5, 14 43:1, 13 48:22 53:9 57:6, 10, 11, 12, 17 58:12, 15 59:3, 24 62:9, 12 65:1, 24 66:8 68:23 70:1, 7, 18 75:17 76:12 79:6 80:4 87:16 89:25 92:19 94:10 96:1, 6, 7 97:4 100:10 101:25 102:6, 21 103:1, 17, 19 105:1 106:1, 13, 15 107:4 108:5, 6, 9 112:21 113:15, 23 115:14, 17 116:3, 18, 20 117:2 119:9, 14 120:6, 9 121:11 122:12, 15, 22 124:4 126:10 127:25 129:23 130:3 132:2 135:8 139:20, 25 144:3, 13 147:6, 7, 15, 16, 18 149:7 150:13 154:23 155:12, 19 157:3, 8 161:2,
---	---	---	---	---

<p>21 165:3, 19, 20 166:20 170:14, 16, 19 172:25 173:6, 12, 13 174:19 175:6, 14, 18 177:5, 16, 25 righty 101:13 rigorous 163:4 risk 61:10 65:5, 6, 7, 9, 11, 15, 16, 18, 21 67:3 75:9, 21 76:6, 15, 24 77:10 95:8 114:12 115:6, 22, 24 135:23 136:2 156:19 163:7, 15 164:9, 17 167:4, 8 168:9, 16 169:7 170:2 172:3 173:2, 15 175:22 risks 77:13 169:20, 25 rkresge@cozen.c om 3:10 ROHM 1:2 4:24 5:3, 5 13:4, 10 15:23 29:8 35:13, 14, 18, 23 36:16, 22 38:10, 20, 22 39:3, 11, 14, 25 40:6, 8 43:17 44:1, 21 45:19 46:25 54:11, 18 55:4, 8, 10, 17, 22 56:7, 19 57:3 58:22 61:13 65:2 72:20 73:21 74:9 85:15 90:24 94:3 103:25 115:1 120:12 127:8 130:21 131:2, 19 148:17 149:1, 8 153:15</p>	<p>161:14, 15, 24 167:19, 25 role 10:24 roles 31:21 room 16:23 17:6, 24 18:2, 21 21:14, 19, 23 22:4, 8, 10, 11, 13, 24 23:4, 6, 12, 15, 20, 23 24:9, 17, 22, 25 26:5, 20 27:10, 12, 17 28:16, 20 50:15 111:16 128:20 129:13, 15, 24 130:6, 14 162:14, 20, 21 163:1 164:12 172:21 173:14 rooms 15:18, 19 25:12 27:4 31:13 119:19 122:15, 19, 25 129:4 162:9 rotate 176:5 Rouco 3:4 route 79:10 94:1, 12 95:4 96:18 97:1 118:25 162:5 routes 52:8 96:20 115:11 Row 98:3 RPE 133:20 RPR 1:20 rubber 41:15, 19 146:25 147:16, 19, 24 Rules 4:6 8:5 122:13, 14 run 16:25 137:9 < S > safe 6:14 safeguarded 166:24 safely 153:11 Safety 2:9 40:21 61:15, 20</p>	<p>62:1, 7 78:17 100:16 101:4 107:21 148:17 sampling 97:21 sand 132:22 satisfied 98:22 saw 99:8 136:8 saying 7:22 15:21 24:2, 19 25:17 35:12 42:24 44:1 46:5 48:16, 17 49:9 55:1 61:3 62:1 67:16 74:12 76:13 86:11 87:16 88:7 89:3 100:10, 13 114:20 121:3 123:24 126:25 128:8 136:19 141:2 148:25 157:10 158:23 164:25 165:3 168:22, 23 says 41:11, 23 42:2, 6, 7, 18 43:9, 19 44:7, 18 47:14 63:25 78:22 79:7, 8 82:25 98:17 101:14 107:5 108:24 109:1 115:10 119:17 120:6 123:21 128:19 133:16 155:8 176:8 scenarios 51:22 school 81:11, 24 82:3 scientific 17:20 27:18 28:18 45:14, 18, 21 60:20 90:4 107:23 108:2 118:17 129:7 scope 84:14 screen 78:11 95:20, 21, 25</p>	<p>96:2, 6 102:3 109:15 111:21 screens 16:25 22:18 scroll 83:13 97:4 98:2 109:20 122:13 138:6, 10 139:12 SEAN 3:13 53:12 63:13 111:24 112:4 second 53:4, 15, 19 61:22 63:8 77:22, 23 102:6, 16 143:23 173:1 178:1 section 40:14 42:1 44:17 110:15 111:1, 14 112:5 117:20 119:7, 22 121:23 122:12, 14, 17, 23 123:1, 5, 9, 10, 17 124:7 126:22 127:19, 21 128:1, 9, 13, 14 129:2 130:20 131:10 133:14, 21 134:6, 24 135:2, 3, 9 136:21 138:21 139:7 144:7 146:18 148:5, 13, 25 152:22 153:3, 7, 9 Sections 122:5, 25 131:8 133:19 134:20 see 7:3 19:19 20:4, 6, 7 22:17 23:5 28:25 29:3 41:24 42:20 51:9 53:25 54:7 63:22 65:5, 19, 23 66:6 70:1, 19 79:24 82:7,</p>	<p>17 83:2, 8, 13, 15 91:25 96:2, 6 97:7, 10 98:15, 16 101:14, 15 102:21 103:2 109:20 119:12 120:19 128:16, 21 130:24 131:8 138:7 140:24 150:22 157:15 165:11 171:15, 23 172:23, 25 176:8, 14 177:13, 14 seen 154:20 155:11 176:24 segment 82:6 selling 69:20 semblance 18:15 send 95:18 sensitizer 97:2 sensitizers 85:20 96:13 160:20 sent 79:25 sentence 47:18 154:25 157:23 separate 138:11 140:23 separated 116:24 September 77:24 sequence 79:9 serious 93:12 176:1 serves 11:25 service 49:15 52:9 Services 6:7 10:20, 23 11:5, 8, 11 169:15 172:7, 13, 16 session 106:8 set 116:17 169:6 179:4</p>
--	---	---	--	---

seven 6:1 167:25	short 38:23 39:6 52:19 56:10 60:12 148:2 149:11	simply 8:7 59:20 116:24 161:10	small 146:9 166:8 174:13, 19	160:7 163:9, 19 164:21 165:13, 21 166:3 167:8 168:6, 18 169:2, 4 177:10, 21
severe 97:11	shorter 57:8	site 20:1 25:12 99:4, 11, 12	smallest 132:22	specialized 164:18
shape 90:7, 12	short-sleeve 61:15 63:25 69:14	100:2 101:12 103:9 105:11, 16, 24 106:7, 10, 12, 19 107:8, 17, 25 108:14	soak 85:2	specific 6:10 7:15 18:23 19:4 52:5 61:9 101:6 108:9 110:14, 15 114:13 115:22 132:18 134:20 135:1 151:8 159:6 163:25 167:18
share 26:22 95:20, 25 96:1	short-sleeved 54:12, 19 55:2, 12 56:6 58:8, 13, 16, 20 59:4, 7, 14 61:3, 12 62:24, 25 65:19, 25 66:9, 12, 16, 19, 23 67:6, 11 68:4, 12, 16, 19 70:2, 20 71:5, 19, 25 85:8 90:17	109:2 110:1 124:19 126:13 140:12, 14, 16, 25 141:12, 13, 16, 19 142:13, 25 143:5, 6, 24 159:5, 11 161:1 164:6 168:15	soaked 159:3 165:17 170:24 173:18, 22 174:4, 10, 16 175:2, 12	specifically 16:1 18:10 43:2 58:20 110:14 146:10
sheets 116:24	show 20:19 75:13 81:8 107:14 118:22 137:12 138:2 151:10 154:9	sitting 17:23 22:24 26:18	soaks 86:13	specified 33:15, 24 37:6 110:20, 23, 24, 25
shift 13:17 49:11 50:19 52:15 124:13, 18 142:9 175:2	showed 162:12	situation 142:12	soiled 159:3 165:17 170:24 173:18, 22 174:4, 10, 16 175:2, 12	specifies 84:1 115:15
shifting 52:18	shower 124:13 131:17, 20	situations 113:16	solely 112:13 128:20	spend 143:11
shifts 23:22	showing 124:18	size 35:1	solid 12:5 132:21	spending 32:21
shirt 36:22 37:1, 12 38:5, 9 55:2, 23 57:4 58:9, 13, 16, 21 59:1, 4, 7, 14 61:4, 12 65:20, 25 66:10, 12, 16, 19, 23, 24 67:6, 11 68:5, 12, 16, 19, 24 69:5, 7, 8, 12, 13, 18, 21, 23 70:3, 20 71:1, 16 84:17 85:8, 12, 13, 23 86:1, 3, 6, 15, 19, 20, 22, 24, 25 87:7, 12, 17 88:2, 3, 5, 18 90:12, 13, 18 95:10 98:18, 23 108:24 176:8, 12, 20, 21, 24 177:9, 11, 15, 19, 22	showers 122:2, 15, 25	skin 40:15 59:19 61:10 67:18 79:11 85:3, 4, 14 86:7, 13 94:2 95:4, 8 96:19, 20, 25 97:18, 23 98:1 133:3 159:21 161:9 162:5 166:13	somebody 165:16	spent 18:20 23:19
shirts 39:17 40:2 54:12, 19, 21 55:2, 13 56:6 62:24, 25 69:13, 16 70:8 71:5, 12, 18, 24 102:24 103:4, 13, 15, 20 147:19, 20	showing 82:5	sleeve 41:19 43:5 46:16, 17	something's 60:8	spill 85:9 86:3, 16 87:19 90:17 91:13
shock 41:17 65:12 147:3	shows 39:25	sleeved 71:19	somewhat 9:13	splashed 86:19
shoes 102:24	sic 5:6 170:13	sleeves 38:23 39:3, 6, 9 40:11, 12, 17 41:12, 15, 23 42:6, 7 43:15, 19 44:1, 2, 22 45:3 46:1, 9 54:11 55:16 56:10, 22 60:12, 13 147:1, 6, 8, 9, 12, 14, 24 148:1, 2, 3 149:11	soon 178:12	splash 19:1 85:9 86:3, 12, 17 90:17, 22 91:13 93:7 174:20
shop 87:10	side 6:21	sleeve 41:19 43:5 46:16, 17	SOP 42:2 43:10, 14, 19 44:7, 19, 21	spoken 178:8
	sides 10:14	sleeved 71:19	sorry 63:15 79:13 96:22 102:4 111:11 114:21 126:1 146:1, 2 150:4 154:4 178:17	spot 163:21
	signs 119:25	sleeves 38:23 39:3, 6, 9 40:11, 12, 17 41:12, 15, 23 42:6, 7 43:15, 19 44:1, 2, 22 45:3 46:1, 9 54:11 55:16 56:10, 22 60:12, 13 147:1, 6, 8, 9, 12, 14, 24 148:1, 2, 3 149:11	sort 26:18 105:17	spreadsheet 78:21
	silica 132:13, 17, 18, 19, 23 133:6, 10 134:23 135:10, 16, 21 136:5, 9, 19 137:2, 7 166:9, 15	sleeve 41:19 43:5 46:16, 17	sorted 164:6	stamp 77:25 78:2, 25 79:23 80:2
	Silicon 137:3	sleeved 71:19	space 25:22, 25 28:12 29:22	standard 39:19 40:21 64:18 98:22 101:4, 11, 18 109:3 110:3,
	silicosis 132:25	sleeves 38:23 39:3, 6, 9 40:11, 12, 17 41:12, 15, 23 42:6, 7 43:15, 19 44:1, 2, 22 45:3 46:1, 9 54:11 55:16 56:10, 22 60:12, 13 147:1, 6, 8, 9, 12, 14, 24 148:1, 2, 3 149:11	spaces 25:4	
	similar 16:7 96:12	sleeved 71:19	span 10:14	
	similarly 122:11	sleeves 38:23 39:3, 6, 9 40:11, 12, 17 41:12, 15, 23 42:6, 7 43:15, 19 44:1, 2, 22 45:3 46:1, 9 54:11 55:16 56:10, 22 60:12, 13 147:1, 6, 8, 9, 12, 14, 24 148:1, 2, 3 149:11	speak 12:10 71:1 150:3	
		sleeves 38:23 39:3, 6, 9 40:11, 12, 17 41:12, 15, 23 42:6, 7 43:15, 19 44:1, 2, 22 45:3 46:1, 9 54:11 55:16 56:10, 22 60:12, 13 147:1, 6, 8, 9, 12, 14, 24 148:1, 2, 3 149:11	speaking 11:9 27:3 64:14 87:11	
		sleeves 38:23 39:3, 6, 9 40:11, 12, 17 41:12, 15, 23 42:6, 7 43:15, 19 44:1, 2, 22 45:3 46:1, 9 54:11 55:16 56:10, 22 60:12, 13 147:1, 6, 8, 9, 12, 14, 24 148:1, 2, 3 149:11	special 42:19 49:25 50:4 51:5, 21 122:13, 14 128:14 129:13, 24 130:5, 14 157:24 158:15, 18, 24 159:14	

6, 7, 8 112:12 113:7 117:12, 15, 21 119:13 122:17, 23 123:6, 11 124:4, 8, 25 125:2 132:13, 20 133:6, 8, 25 134:9, 10, 11, 23 135:10 standards 88:19, 21, 22, 23 89:4, 7, 8, 10, 12, 14, 23 90:1 110:5, 14, 16 111:2 134:11, 18 start 6:3 15:7 33:7 99:17 101:18, 20 104:11 started 104:12 154:19, 20 starting 125:1 state 5:8 28:22 43:22 55:19 90:3 109:24 179:1 stated 45:8 56:1 60:15 99:10 134:8 141:10 179:3 statement 33:25 34:7 43:5 48:18 54:17 55:10 112:9 137:19 141:8 154:24 158:3, 23 159:9 172:6 statements 51:13 164:25 states 43:15 47:19 61:12 83:22 87:13 88:4 96:14 99:25 101:16 102:22 111:14 146:22 155:1	157:24 159:5 171:19 172:7 static 41:23 42:8, 9, 20, 24 43:2 44:25 46:14, 15 stating 55:1 statute 138:19 statutory 100:24 stay 109:5 143:5 stenographic 179:5, 7 stipulated 20:24 Stockbridge 6:8 stop 15:7 53:13 105:17 storage 122:1, 3 163:9 164:7, 9, 14 store 68:20 69:1, 9, 24 70:5 86:23, 25 87:1, 7, 14 176:13, 22, 25 stored 48:4 stores 46:19, 22 47:1, 4, 9, 13, 20, 24 48:3, 5, 8, 12, 13, 20, 24 straight 146:12 Street 1:21 3:9 31:3, 4 32:25 33:1, 10, 22, 23 34:8, 14 35:8 46:17 50:16, 22 51:1 92:21 102:24 142:1, 2 171:22 175:20, 21 struggle 149:20 studied 81:11, 16, 23 style 92:9 Subpart 130:12 135:4, 9 Subparts 131:9 subsidiary 35:14	suggestion 44:14 suit 18:25 48:5 84:9, 10, 11, 16, 22, 23 86:5 93:9 97:19 121:17 122:8 Suite 1:21 3:4, 9 suits 84:20 121:1, 6 supervision 179:6 supervisors 29:17, 24 30:1, 19 31:1, 10 32:1, 6 supplied 29:9 34:24 143:4 supplier 90:24 supplies 89:18, 19 90:13 171:21 172:8 support 127:5 134:2 135:11 137:14 144:15 supports 137:22 138:22, 23 139:2 142:24 152:23 153:3, 7 supposed 131:16 143:5, 24 sure 8:6 11:2 14:9 15:10 33:25 36:20 37:6 39:11 42:12, 21 46:7 52:22 61:23 69:5 72:7 73:2 75:2 76:12 77:4 83:20 84:13 91:6, 11 93:19, 21 95:11, 17 97:6, 16 98:4 100:19 107:23, 24 118:8 123:9	124:10 138:16, 17 149:24 154:2, 6 163:14 164:4 166:6 176:17 surface 166:11 surfaces 162:16 suspecting 120:16 sworn 4:13, 16 179:5 synthesizing 14:16 system 26:12, 18 27:13 28:13, 17 84:17 systems 129:8 < T > table 75:15 83:23 84:1, 4 146:11 take 8:8 20:19 27:2 29:12 32:10 44:16 52:17, 23 57:6 58:2 63:3 65:1 67:9 68:4 77:17, 18 82:24 84:9 94:10 95:6 101:13, 17 102:12 109:17 119:12 124:24 127:19 128:16, 17 131:24 133:5, 13 138:19 139:6 144:19 149:7 150:18 153:12 154:12, 16 155:2 165:1 167:23 173:12 176:4 taken 4:2, 5 19:11 21:14 99:11 100:2, 23 105:16 106:4, 9, 12 119:19	179:3, 5, 7 takes 111:15 talk 18:23 29:23 73:14 108:23 109:7 134:16 talking 13:21, 24 36:21 37:24 68:24 88:24 94:12 100:16 108:21, 22 110:5 112:23 120:15 tank 59:25 96:10 task 16:18 18:13, 16, 17, 23 19:4, 9, 14 23:16 77:19 80:5, 8, 9 114:8, 13, 16 115:6, 7, 8, 21, 23 123:25 151:14, 15 152:10 tasks 14:4 17:6, 22 19:13, 16 24:15 61:2 76:17 77:12 80:12, 18, 24 85:18 118:19 123:24 125:8 162:6 team 29:17, 24 30:1, 20 31:1, 11 32:1 165:18 170:25 teams 81:13, 17 tell 6:2 8:9, 11 47:3, 4 59:17 62:10 91:25 95:7 108:23 114:7 115:20 134:12, 13 tells 115:21 tends 132:23 teratogen 97:2 teratogens 85:20 93:22 96:14 160:19
--	---	--	--	---

term 47:9 176:14	168:9, 14 169:7 170:3 172:4 173:2, 15 175:22	38:22 39:16 43:16 52:19 54:22 56:7 70:24 72:12, 16, 25 74:4, 9 85:16 86:13 113:25 114:13 127:17 131:24 136:17 137:1 143:11 144:11 149:1, 25 150:5 151:11 152:18 153:23 155:5 161:14, 22 167:15 168:1 178:14 179:3	174:12 toxics 96:15 transcript 53:18 179:7 transcripts 2:7 transition 74:8, 15 transitioned 73:10 transported 164:2 treat 75:3 treated 71:6, 12, 20 72:23, 25 73:4, 5, 10, 17 74:10 treatment 74:23, 24 trial 5:21 6:23 7:1, 4, 18 8:1, 23 9:5 trouble 150:2 trucks 96:10 true 24:4 85:22 86:9 91:24 124:21 151:24 159:13 179:7 try 57:8 118:10 trying 48:1 69:4 139:14 T-shirt 61:15 63:25 68:4 Tuesday 4:3, 10 turn 51:3 turned 9:14 50:12, 13 51:7 120:24 two 7:20 12:20 22:2 42:9 51:21 53:17 65:10, 22 67:2 76:1, 5, 8, 15, 24 77:10, 14 83:6 109:18 116:17 164:24 173:13 type 11:23	70:4 169:16 types 155:25 typewritten 179:6 typical 21:19 22:4 31:22, 24 52:8 156:1 163:5 164:13 170:6 typically 14:13, 19 19:12 116:8 121:2 122:20 124:23 137:1 162:3 Tyvek 18:25 41:14 48:4 84:22, 23 86:5 93:9 97:19 121:1, 6, 17 122:8 < U > Uh-huh 48:21 110:11 unaware 126:24 uncontrolled 149:15 underlies 119:6 understand 8:11, 17, 20 14:9 17:25 18:5, 10 20:1 24:3 27:13 29:5 36:6 46:7, 12, 13, 15 47:4, 11 48:2, 3, 7 56:13 59:12 60:20 64:1, 5 69:4 76:13, 21 77:4 104:18 105:2 118:6 128:7 138:16, 17 167:23 168:25 171:16 173:10 understanding 13:14 14:6 15:12 16:3, 5, 14, 20 17:9, 12 18:11 22:21
terms 8:6 11:10, 17 13:18 15:13 20:25 21:6, 17, 18 22:9 30:6, 18 37:23 44:20 45:19 59:13 65:11, 23 66:24 67:12 68:2 73:3, 6 104:5 117:14 134:17 136:10 137:18 159:12 testified 4:16 5:19, 21, 25 6:3 7:16 8:6 9:4, 19 38:13 48:14 54:10, 17 84:6 88:3 138:18 149:23 166:15 testify 6:23, 25 7:18, 23 9:1, 9 100:20 testifying 54:23, 24 114:24 129:1 testimony 5:14, 15 7:3, 4, 6, 15 12:13, 19 27:13 48:19, 22 55:17, 20 69:23 89:11 99:19 107:12 113:5 117:3 118:21 124:2 126:11 127:4, 21 128:1 129:11, 22, 23 130:3 140:9 144:20 174:25 179:4, 5 Thank 53:24 94:16 97:7 98:6 132:2 148:11 178:14 Thanks 57:10 theory 144:3 156:18 164:17 166:14, 15	thing 39:24 52:21 115:9 128:18 things 19:1 42:9 114:17 134:13 155:25 think 7:10 11:6 43:6 47:16 48:19 49:13 53:9 54:6 57:7 61:20 96:5 97:8 101:22 124:9 131:23 132:21 138:18 140:15 149:23 173:6, 9, 11 176:6 thinking 142:24 third 97:14 102:12, 13 154:25 thorough 165:8 thoroughly 164:22 165:1 three 53:13 65:10, 22 67:2 76:1, 5, 8, 15, 24 77:10, 14 138:10 167:25 three-page 63:11 threw 51:18 throwing 151:5, 19 152:1, 4 ticks 62:24 time 10:14 16:7 17:6, 24 18:3, 15, 20 19:8, 12 23:11, 16, 18, 19 24:5, 8 26:10 31:25 32:4, 12, 21 33:14, 19, 21, 24 34:2, 7 35:10 36:1, 3, 10, 15	times 5:25 6:1 30:15 42:6 43:15 71:24 72:4 title 21:9 40:24 62:6 63:5 138:7 titled 139:7 today 8:18, 21, 25 20:21 21:8 27:1 154:19, 20 178:14 Tompkins 2:8 12:15, 24 41:8 53:5, 16 54:10, 17, 20 79:2, 3 top 59:25 65:3 66:9 78:4, 16 80:21 93:20 95:25 121:6, 17 146:15, 16 166:10 torn 87:3 90:7 torso 60:5 90:20 total 84:16 touched 75:25 touching 162:16 tour 32:6 tours 29:21 toxic 166:8 174:8 toxicology		

23:9 29:12, 13, 17, 25 30:5, 11, 19, 22, 25 31:9, 16, 21 32:18 33:18 34:1, 11, 17 35:25 36:16, 19 37:7 39:3, 14 40:5 45:18 47:13 50:24 64:9, 10 71:23 72:5 73:15 74:13, 18 76:22 77:7, 8 131:15 140:10 understood 8:14, 15 29:9 uniform 29:1, 6, 8 30:23 33:15 34:24 35:4, 25 36:21 42:8 46:5, 6, 10, 18 69:3, 10, 17 73:25 76:10 85:24 87:20 90:5, 24 92:6, 16, 18 95:2 96:24 97:3 98:1, 17 120:23 121:11, 16, 18 122:9, 10 142:14, 15 143:5, 7, 11 144:22, 23 147:10, 11, 18 153:4 156:1 158:12 159:14 169:14 171:4 173:22 174:5 175:2, 24 uniforms 31:8 33:12 34:9, 13, 24 35:5 38:2 41:23 42:25 43:2, 7 45:1, 3 46:3, 23 47:24 48:7, 11, 12, 23 49:2 61:7 70:11 71:11, 22 73:15, 16, 21 84:19 85:17	88:11, 25 90:4 91:4 94:4 99:15 100:21, 25 101:12 103:11, 12, 15, 23, 25 104:25 105:16, 18 107:17, 24 108:14 109:25 121:7 123:18, 20 124:9 126:12 127:22 128:2, 10, 24 129:10 130:17 131:6, 13 133:12, 23 134:3, 7 135:12 137:15, 18, 23 138:24 139:3 140:4, 8, 11 141:9, 23 142:2 143:18, 19, 23, 24 145:2 148:7, 21 150:1, 6 152:23 153:8, 14, 18, 25 157:15, 19, 25 158:6, 14, 24 159:3, 16, 21 160:25 163:7, 10, 16, 20 164:20, 23 166:16, 24 167:15 168:3, 7 169:2, 6, 23, 24 170:17, 23 171:1, 7, 22 172:14 173:18, 19 union 104:19, 22 105:3 107:1 unions 108:8 unit 22:8 23:6 33:19 172:2 United 87:13 88:4 107:18 unloading 97:15 unshare 102:2	untreated 66:25 68:17 71:16 72:1 73:8 updated 75:7 updates 77:24 upper 82:7 98:11 upstream 28:13 use 4:5 42:23 99:2, 12 130:5 140:5 146:23 149:11 159:22 162:6 163:1 173:5 175:9 uses 137:5 < V > valve 97:15 variable 74:2 variance 167:6 variation 36:4, 6 89:21 variations 45:2 variety 16:24 175:25 various 162:15 vary 118:19 157:11 167:6 varying 167:2 vehicles 106:22 vendor 87:14 91:5, 9 120:12, 13 131:3 154:8 vendors 90:24 131:3, 11 167:1 168:3 ventilation 22:8 23:4, 6 26:12, 18 27:13, 22 28:5, 6, 12, 17 156:25 version 79:17 96:8, 9 110:9 versus 5:5 51:19 89:19 90:13 92:2, 25 vi 131:9 view 23:22 31:23 48:11	113:7 158:14 161:2 175:7, 15 viewed 61:13 vii 131:9 vinyl 101:7 violation 173:7, 16, 17 virtue 121:17 visitors 47:20 volunteer 11:21 VS 1:2 < W > wages 138:20 wait 8:7 33:15 41:6 79:2 112:2 131:25 waiting 58:1 want 17:25 18:5, 10 24:2 39:10 47:8 59:11, 12 60:19 69:5 77:3 80:13 83:6 95:20 97:13 101:14, 15 106:18 109:7 110:25 124:10 128:7 138:15, 17 139:15 142:8 154:16 161:23 178:18 wanted 97:10 98:4 105:17 109:15 145:18 warmer 156:1 warning 119:25 120:2, 6 warnings 130:24 warranted 85:18 148:3 warrants 160:23 washing 163:4 165:1 waste 101:3 121:2 wastewater	165:10, 14 watch 16:1 watching 16:5 way 17:5 21:2 23:17 24:1 32:20 59:13 71:7, 12, 20 72:24 73:1 76:22 88:11 90:15 92:8 96:18 116:12 128:5 130:4 131:2 134:2 138:8 155:14 162:1 166:9 169:8 172:15 173:11 174:13 176:5 wear 30:20, 23 33:10 38:23 39:17 54:11, 21 88:4, 6 92:20 120:8, 16 121:6 143:4 147:9 157:5 159:1, 5, 19 161:8 162:10, 14, 19, 20 170:10 171:21 175:16, 19 wearing 29:1 34:8 55:12 66:18 68:12 85:23, 24 93:9 97:19 98:22 121:9, 17 141:25 142:1 161:15, 24 162:18, 24 175:25 weather 155:2, 14, 15, 17, 20, 21, 22, 23 156:11, 19, 20, 21 157:4, 9 Weaver 3:3 weekly 50:11 weeks 33:10 171:23
---	---	---	--	---

Well 5:14 6:5 7:13 11:6 14:11, 19 15:21 16:9 17:17 22:3 24:1, 12 26:23 39:1, 2 41:6 43:25 44:2 47:3 52:10 54:23 56:12 58:19, 25 60:24 66:5 68:1 71:9 77:2, 23 80:4, 14 82:12, 16 86:15 88:16 98:21 101:25 108:7, 17 110:4 114:11, 24 116:15, 17 118:5 119:12 122:2 124:22 129:25 132:24 134:8 140:17 142:4, 16 154:13, 14 156:7 158:25 159:4, 10, 24 164:24 165:2 169:13 173:21 went 18:13 74:3 we're 20:21 21:7 36:20, 21 37:15, 17 39:11 53:16 57:13, 16 58:3, 4, 6 67:20, 21, 22 68:24 69:6, 7 83:2, 12 103:24 111:1, 5, 21 112:12 117:11 118:9 123:2 126:25 139:10 150:19 157:8 178:3, 6, 23 wet 120:25 we've 20:19 81:8 123:17 124:8 128:19 130:11 133:25	134:23 138:2 148:13 152:21 154:10 whatever's 170:7 widely 167:5 William 2:7 wires 152:19 wish 109:21 witness 4:2, 12 41:5 57:21 102:4 179:5 won 6:21 word 47:9 51:23 118:15 147:6 173:5, 6 176:10 WORDEN 3:13 words 45:7 99:13 100:1, 22 163:20 wore 39:6 50:20 68:25 70:3, 9, 21 71:24 72:4, 24 73:16 84:20 86:2 87:7, 12 156:19 175:1 work 11:3 13:15 15:13 16:4, 12, 13, 21 17:19 18:3 20:12 21:21 22:5 23:12 26:5 29:6, 8, 17 30:20 31:2, 3 33:11, 12, 22 35:7, 25 37:11, 12 40:13 43:20 45:2 46:2, 23 47:7 50:1, 6, 9 52:15 66:18, 22 71:10 73:15, 16 75:25 76:8, 9, 14, 23 81:3 84:1, 12, 19 95:2 96:3 97:3 98:17 99:3, 10, 15, 25 100:21, 25	101:11 102:25 103:12 104:5 105:3 106:4, 11, 18, 21 107:17 108:13 109:25 111:16 112:8, 16 113:9, 14 117:24 119:18 120:23 121:11, 16, 18 122:9, 10 123:18, 20 124:9, 13, 18, 19 126:12 127:22 128:2, 10, 19, 24 129:8, 10 130:17 131:5, 12, 17, 21 133:20, 22 134:3, 15, 16 135:12 137:15, 23 138:24 139:3 140:3, 8, 11 141:9, 18, 20, 23 142:9 143:1, 2, 7, 11, 18, 19, 22, 24 144:5, 22 145:2 146:23 147:10, 18 148:7 150:1, 6, 24 151:6, 8 152:7, 9, 13, 15, 19, 23 153:4, 8, 14, 18, 25 157:19 158:6, 12, 14 159:15 160:25 161:18 163:7, 16 164:19 166:16 167:15 168:3, 6 169:2, 23 170:17 172:22 173:14 174:14 175:1, 2, 8, 10, 12, 20, 21 176:7, 19, 20 workday 13:21 14:2 18:3 19:8 50:10, 18 175:11	worked 9:22 10:1, 6 14:22 17:10, 18 23:22 27:9, 12, 16 28:13 31:2 33:20 34:14 107:19 126:16 151:11 160:2 worker 19:13 51:17, 18, 20 86:19 93:25 95:3 122:7 141:11 163:2 175:24 workers 17:15, 23 28:20 107:18 118:3 140:16, 25 143:4 164:3 170:12 174:23 worker's 85:3, 4 86:13 workforce 46:22 working 7:20 16:18, 21, 24 25:24 26:3 33:22 48:10 52:6 64:10 107:18 116:4 121:4 125:19 126:20 150:20 151:15, 17 152:5 153:10 162:8, 13 175:7 workplace 31:8 58:10 119:20 workplaces 170:1 works 29:13 worn 40:2 44:22 49:9, 10 58:21 69:7, 14, 15 72:9 73:6 92:14, 15 99:10 100:1, 21 106:9, 11, 18 109:25 134:3 135:12 147:10, 19 152:23 153:8	157:7, 10 160:1 161:6 163:10, 20 172:22 173:14, 22 worried 22:12 write 45:12 writing 45:15 70:24 written 39:8, 15, 25 40:15 73:22 116:14 133:17 142:16, 17 170:22 wrote 45:19, 24 77:4 159:8 www.coulterrep orting.com 1:23 < Y > Yeah 9:15 17:4 41:6 47:12 52:22 62:18, 20 63:12 64:9 78:10 94:14 97:9 109:10 110:11 111:5, 10 112:6 114:23 120:22 125:25 126:2, 4 127:7 134:22 139:23 154:6 161:9 163:12 164:11 year 114:13 years 12:2 75:6 104:21 114:2 127:17 144:10 167:25 Yep 96:5 98:7 112:9 125:3 < Z > Zack 11:18 zero 65:6, 15, 16 75:9, 15, 16, 21
--	--	--	--	---