

ALVIN WRIGHT, et.al.,
Plaintiffs

v.
LEAD INDUSTRIES ASSOC., INC.,
et.al.,

Defendants

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ALLEN WRIGHT, et.al.,
Plaintiffs

v.
LEAD INDUSTRIES ASSOC., INC.,
et.al.,

Defendants

* * * * *

* IN THE
* CIRCUIT COURT
* FOR BALTIMORE CITY
* BALTIMORE, MARYLAND
* Case No. 94363042/
* CL190487

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* Case No. 94363043/
* CL190488
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* Judge Ellen Heller

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52-123

EXHIBIT 9 TO THIS DEPOSITION DEEMED CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DWIGHT A. COGAHAN

The Videotaped Deposition of Dwight A.
Cohagan, Sherwin-Williams, taken in the above-
captioned case on Wednesday, May 8, 1996, commencing
at 10:00 a.m., at the Law Office of Peter G. Angelos,
300 East Lombard Street, Floor 18, Baltimore, Maryland
21202, and reported by Barbara J. Evans, a Notary
Public.

EVANS REPORTING SERVICE
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Baltimore, Maryland 21234
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N39084

Page 2 1 APPEARANCES: 2 THOMAS L. SAMUEL, ESQUIRE Law Offices of Peter G. Angelos 3 100 East Lombard Street Baltimore, Maryland 21202 4 On Behalf of the Plaintiff 5 MARY ALICE McNAMARA, ESQUIRE Niles, Barton & Wilmer 6 111 South Calvert Street, Suite 1400 Baltimore, Maryland 21202 7 On Behalf of the Defendant, Lead Industries Association, Inc. 8 TIMOTHY HARDY, ESQUIRE Kirkland & Ellis 9 Suite 1200 10 1225 15th Street Washington, D.C. 20005 11 On Behalf of the Defendant, Lead Industries Association 12 MARLA EISLAND, ESQUIRE Arnold & Porter 13 199 Park Avenue New York, New York 10022-4690 14 On Behalf of the Defendant, Atlantic Richfield 15 EDWARD M. BUXBAUM, ESQUIRE Whitford, Taylor & Preston 16 210 West Pennsylvania Avenue Towson, Maryland 21204 17 On Behalf of the Defendant, A. Bauer & Company 18 MICHAEL T. NILAN, ESQUIRE Shuman, Mink, Schaubrich & Kaufman 19 122 South Ninth Street Minneapolis, Minnesota 55402 20 On Behalf of the Defendant, Glidden Company	Page 3 1 APPEARANCES (CONTINUED) 2 CHARLES S. HIRSCH, ESQUIRE Ballard, Spahr, Andrews & Ingersoll 3 100 East Lombard Street 19th Floor 4 Baltimore, Maryland 21202 On Behalf of the Defendant, E.I. DuPont de Nemours 6 PAUL MICHAEL POHL, ESQUIRE Jones, Day, Reavis & Pogue 7 Metrocolina Square 1450 G Street, N.W. 8 Washington, D.C. 20005-2088 On Behalf of the Defendant, Sherwin-Williams 10 DALE A. NORMINGTON, ESQUIRE The Sherwin-Williams Company 101 Prospect Avenue 11 Cleveland, Ohio 44115 On Behalf of the Defendant, Sherwin-Williams 12 EDWARD F. HOUFF, ESQUIRE Crisp & Moulton 13 119 Water Street Baltimore, Maryland 21202 14 On Behalf of the Defendant, Sherwin-Williams 15 PATRICK G. CULLEN, ESQUIRE Rollins, Smallick, Richards & Mackie 16 401 North Charles Street Baltimore, Maryland 21201 17 On Behalf of the Defendant, Schumann Hardware 18 WADE JOYNER, ESQUIRE Crowley, Harris & Karaba 19 Two First National Plaza, Suite 2310 Chicago, Illinois 60603 20 On Behalf of the Defendant, O'Brien Corp.
Page 4 1 VIDEOTAPED PROCEEDINGS: 2 THE VIDEOGRAPHER: Good morning. Today is 3 Wednesday, May 8, 1996. The time is approximately 4 10:07 a.m. 5 Our location is Law Office of Peter Angelos 6 at 300 East Lombard Street, Baltimore, Maryland. 7 This is the deposition of Dwight Cohagan in 8 the matter of Allen Wright, et al. versus Lead 9 Industries Association, et al. The Case Number is 10 94363042/CL190487 and 94363043/CL190488. 11 The Court Reporter is Barbara Evans of Evans 12 Reporting Service. The Videographer is Lynne 13 Livingston of Deposition Specialists. 14 Will counsel please identify themselves for 15 the record. 16 MR. SAMUEL: Thomas L. Samuel for the 17 plaintiffs. 18 MR. POHL: Paul Michael Pohl for Defendant 19 Sherwin-Williams. 20 MS. EISLAND: Marla Eisland for Defendant 21 ARCO.	Page 5 1 MR. BUXBAUM: Edward Buxbaum for Defendant 2 A. Bauer. 3 MR. CULLEN: Pat Cullen on behalf of 4 Schumann Hardware. 5 MS. McNAMARA: Mary Alice McNamara on behalf 6 of NL Industries. 7 MR. NILAN: Mike Nilan on behalf of 8 Glidden. 9 MR. JOYNER: Wade Joyner on behalf of 10 O'Brien Corporation. 11 THE VIDEOGRAPHER: would you swear the 12 witness? 13 Whereupon, 14 DWIGHT A. COHAGAN, 15 the witness herein, being first duly sworn to testify the 16 truth, the whole truth, and nothing but the truth, was 17 examined and testified as follows: 18 EXAMINATION 19 BY MR. SAMUEL: 20 Q Good morning, Mr. Cohagan. 21 My name is Lou Samuel. I will be asking you
Page 6 1 some questions today. 2 If I ask you any question which you don't 3 understand, please let me know that. That is entirely 4 possible since you are a paint industry person, and I 5 am not. I will be happy to restate the question in 6 the hope that you can understand it. 7 Would you state your full name and address 8 for the record, please. 9 MR. POHL: I am not sure I need to, but let 10 me reiterate that Sherwin-Williams will repeat the 11 objection it previously articulated to the notice of 12 deposition in that it was overbroad and not adequately 13 specific. 14 I wasn't sure I needed to do that, but I 15 wanted to reserve that objection. 16 MR. JOYNER: Can I get on the record that an 17 objection for one defendant is an objection for all 18 defendants for the protocol? 19 MR. SAMUEL: That is satisfactory. 20 A My name is Dwight A. Cohagan. I live at 21 5585 Overlook Road, Parma, Ohio 44129.	Page 7 1 Q By whom are you employed, sir? 2 A The Sherwin-Williams Company. 3 Q And what is your present title? 4 A I am Director of Product Compliance. 5 Q And for what length of time have you had 6 that position? 7 A The position essentially the same, different 8 titles, since 1979. 9 Q And what are the current duties of that 10 position? 11 A The duties are to assure that all of our 12 products are in compliance with any government 13 regulations and to provide information to our 14 customers so that they can comply with all government 15 regulations. 16 Q Now, Mr. Cohagan, have you ever had your 17 deposition taken as the corporate designee of the 18 Sherwin-Williams Company before today? 19 A Yes. 20 Q And in what -- strike that. 21 How many times have you had your deposition

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1 taken in that capacity?
 2 A Somewhere between 40 and 50 times.
 3 Q Forty and 50 times.
 4 Have any of those cases involved personal
 5 injury complaints by persons claiming lead-paint
 6 poisoning as a result of Sherwin-Williams' products?
 7 A Yes.
 8 Q Have any of those cases been pending in the
 9 City of Baltimore, in Maryland?
 10 MR. POHL: Just so the question is clear,
 11 do you mean in Maryland or in Baltimore, Maryland?
 12 MR. SAMUEL: Yes. In Baltimore, Maryland.
 13 MR. POHL: All right.
 14 A I don't believe there was.
 15 Q Or elsewhere in the State of Maryland?
 16 A I don't believe so.
 17 Q Okay. Thank you.
 18 Is it fair, then, to assume, since your
 19 deposition has been taken, as you say, some 40 or 50
 20 times as the corporate designee of Sherwin-Williams,
 21 that that is part of your regular duties?

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1 laboratory?
 2 A Yes.
 3 Q Okay. That takes us to approximately 1972.
 4 What was your next position with the company
 5 after that?
 6 A I became a senior chemist in a new
 7 department called regulatory affairs.
 8 Q Who was in charge of the regulatory affairs
 9 department on its creation in 1972?
 10 A Janice Tillman.
 11 Q Is Ms. Tillman still with the corporation?
 12 A No.
 13 Q And what were your duties in the regulatory
 14 affairs department beginning in 1962 -- strike that --
 15 1972?
 16 A It was to provide material safety data
 17 sheets to our customers, to write label cautions, and
 18 to track any new government regulations that may be
 19 proposed at that time.
 20 Q And what was your tenure in that position in
 21 1972?

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1 position?
 2 A Until approximately 1979.
 3 Q And what happened to you then?
 4 A They consolidated my department with a
 5 department that had direct coordination of getting the
 6 labels onto or getting label cautions onto labels.
 7 And I became director of product compliance
 8 or director of regulatory information services at that
 9 time.
 10 Q That's based on your prior testimony as the
 11 position you now hold?
 12 A Yes.
 13 Q Over the intervening years from 1979 to the
 14 current time, have additional duties been added to
 15 that position?
 16 A Definitely, over that period of time, there
 17 has been a lot of changes in government regulations,
 18 so there is more involvement in other areas.
 19 Q And when you say government regulation, is
 20 that all government regulation of any kind?
 21 A Government regulations that affect the sale

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1 A Yes.
 2 Q When were you first hired by Sherwin-
 3 Williams?
 4 A 1968.
 5 Q And what was your educational background
 6 and -- prior to going to work for Sherwin-Williams?
 7 A I have a Bachelor of Science with a major in
 8 chemistry from Ohio State University.
 9 Q Did you go to work for Sherwin-Williams
 10 from college?
 11 A Yes.
 12 Q What was your first job with the company?
 13 A I was a chemist doing research and
 14 development on coatings.
 15 Q And where were you working at that
 16 location? What was your job location?
 17 A Cleveland, Ohio.
 18 Q And for what period of time did you remain
 19 in that position?
 20 A I was in that position for four years.
 21 Q Would that have been in a research

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1 How long were you in that position?
 2 A Until approximately 1975 when I became the
 3 supervisor of that department.
 4 Q When you say you became the supervisor, did
 5 you -- did you succeed Ms. Tillman at that time?
 6 A No.
 7 Q And what were your duties as a supervisor
 8 commencing in 1972?
 9 A Well, I had several chemists working under
 10 me to provide the same type of data. I participated
 11 more in tracking of regulations.
 12 Q So the people who were under your
 13 jurisdiction took over the jobs of, for example,
 14 preparing the material safety data sheets?
 15 A Yes.
 16 Q Subject to your supervision.
 17 And did they become, then, the -- again,
 18 subject to your supervision, the authors of the
 19 wording of warning labels?
 20 A They participated in that.
 21 Q Okay. And for how long were you in that

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1 of our product.
 2 Q So that would apply to state laws as well
 3 as -- as laws passed by Congress?
 4 A Yes.
 5 Q And any of the municipal ordinances passed
 6 by cities or political subdivisions?
 7 A Yes.
 8 Q And that all comes under your jurisdiction
 9 and has from 1979 to the present?
 10 A That is correct.
 11 MR. SAMUEL: Let me mark as Deposition
 12 Exhibit 1 the notice to take deposition.
 13 (Whereupon, Cohagan Deposition Exhibit
 14 Number 1 was marked for identification.)
 15 MR. POHL: Are you marking the notice or the
 16 amended notice?
 17 MR. SAMUEL: Just the notice.
 18 BY MR. SAMUEL:
 19 Q Mr. Cohagan, Sherwin-Williams has
 20 previously filed responses to discovery propounded by
 21 my clients consisting of answers to interrogatories

Page 14 1 and responses to requests for admissions. 2 Did you assist your company's counsel in 3 preparing those discovery responses? 4 A I provided what information I have had to 5 our legal department in the past. 6 I did not directly participate in answering 7 the interrogatories or collection of the data for this 8 case. 9 Q Have you had the opportunity to review those 10 written discovery responses that have been filed by 11 Sherwin-Williams in this case prior to coming here 12 today? 13 A No. 14 Q And have you reviewed any documents prior to 15 coming here today to give this deposition? 16 A Yes, I have. 17 Q And what documents have you reviewed in 18 preparation for this deposition? 19 A There were two books of documents provided 20 to me by our legal counsel that my understanding those 21 had been turned over in this case.	Page 15 1 Q We were supplied some four banker boxes of 2 documents. 3 Were you shown just documents in two books? 4 A Yes. 5 MR. SAMUEL: I will direct this question to 6 counsel. 7 Counsel, are those documents that were 8 turned over to the plaintiffs as part of the document 9 production? 10 MR. POHL: It is my understanding and belief 11 that, leaving aside things that would be work product 12 prepared by counsel, and I don't know if there are any 13 of those, everything that the witness examined has 14 been provided to you, if called for by your request. 15 MR. SAMUEL: Thank you. 16 BY MR. SAMUEL: 17 Q Do you have those documents with you this 18 morning? 19 A No, I don't. 20 (Whereupon, noise interruption.) 21 MR. SAMUEL: Excuse me. Can you mute that?
Page 16 1 BY MR. SAMUEL: 2 Q Now, Mr. Cohagan, in a response to an 3 interrogatory for the record, this is interrogatory 4 number 81, Sherwin-Williams stated that, quote, it 5 became a member of the LIA in 1928 and ceased to be a 6 member of the LIA in 1947. 7 The LIA is a euphemism for the Lead Industry 8 Association. 9 Are you familiar with that trade 10 organization? 11 MR. POHL: Object to the form of the 12 question. 13 BY MR. SAMUEL: 14 Q Are you able to answer it? 15 A I am familiar with what I have read in the 16 documents concerning that organization. 17 Q I understand that your company left that 18 organization, according to this answer, nearly 20 19 years before you were employed. 20 What -- what records does Sherwin-Williams 21 maintain of its prior membership in the LIA that you	Page 17 1 have reviewed? 2 MR. POHL: I will just object to the form of 3 that. 4 MR. SAMUEL: Okay. 5 MR. POHL: Just so it is clear so you can 6 clear up the question, I am not sure whether -- when 7 you said do they maintain, some of what he was shown, 8 he was shown or may have been shown could have come 9 from the productions of others. 10 That's why I just -- 11 MR. SAMUEL: Okay. 12 MR. POHL: I don't want any misunderstanding 13 about that. 14 MR. SAMUEL: I appreciate counsel's 15 guidance. 16 And let me restate the question, Mr. 17 Cohagan. 18 BY MR. SAMUEL: 19 Q You said in answer to a prior question that 20 you had seen some records of Sherwin-Williams' 21 participation in the LIA.
Page 18 1 Is that correct? 2 A Yes. 3 Q And were those records that you had 4 reference to in those responses, were those records 5 that Sherwin-Williams has in its possession? 6 A I don't know that. Those are records that 7 was provided for me to review. Where they came from, 8 I am not aware of. 9 Q Well, when were they provided to you? 10 A About six weeks ago. 11 Q What department -- strike that. 12 Were those documents from some corporate 13 archive that Sherwin-Williams maintains? 14 A I do not -- I do not know where they came 15 from. They were provided me by our legal counsel. 16 Q And would you describe the records you were 17 furnished by your legal counsel some weeks ago 18 regarding the Lead Industry Association? 19 A There were some -- a ledger showing paying 20 of dues or fees and minutes of various meetings. 21 Q Were those meetings of particular -- strike	Page 19 1 that. 2 Were those meetings -- were those records 3 minutes of the annual meetings of the LIA? 4 A I believe they were minutes of the executive 5 committee. 6 Q Okay. Were there any records of 7 subcommittees of the LIA furnished to you for your 8 review? 9 A Yes. 10 Q And what committees would they be? 11 A The White Lead Technical Committee. 12 Q Was Sherwin-Williams a member of that 13 committee? 14 MR. POHL: Object to the form and ask to 15 clarify by stating at what particular time the 16 question is directed. 17 MR. SAMUEL: Okay. 18 BY MR. SAMUEL: 19 Q What time frame was encompassed in the 20 minutes of the White Lead Technical Committee that you 21 were furnished to review?

Page 20 1 A I don't recall when the earliest one, but 2 the latest was 1950. 3 Q Did Sherwin-Williams have membership on the 4 White Lead Technical Committee? MR. POHL: Same objection. 6 A I don't know their relationship. They 7 certainly were in attendance at various meetings. 8 Q At some point that you are unable to recall 9 the earliest time, but up to approximately 1950; is 10 that correct? 11 A Yes. 12 Q Was there any minutes of other subcommittees 13 of the Lead Industry Association furnished you for 14 your review? 15 A Would you repeat that? 16 Q Okay. Were there any minutes of meetings of 17 any other subcommittees other than the White Lead 18 Technical -- Technical Committee furnished you for 19 your review? 20 A There may have been -- I think there was a 21 brief note about some advertising committee.	Page 21 1 MR. SAMUEL: I will ask the Court Reporter 2 to mark as Cohagan Deposition Exhibit 2 a document 3 consisting of some five pages bearing the Bates stamp 4 numbers 10130, 13134, 35, 36, and 38. 5 (Whereupon, Cohagan Deposition Exhibit 6 Number 2 was marked for identification.) 7 MR. POHL: Do you have a copy? 8 MR. SAMUEL: Yes, I sure do. 9 BY MR. SAMUEL: 10 Q Mr. Cohagan, in fairness to you, I am going 11 to be showing you a number of documents, and you take 12 your time. 13 I want you to review them or the parts of 14 them that I designate. 15 THE VIDEOGRAPHER: Excuse me. 16 (Whereupon, discussion off the record.) 17 BY MR. SAMUEL: 18 Q I want you to have enough time to prepare 19 yourself to answer any questions that I may have. 20 A Okay. 21 (Whereupon, documents tendered to witness.)
Page 22 1 MR. POHL: Let me just observe for the 2 record that what we marked as Exhibit 2 is stapled 3 together apparently as if it is supposed to be one 4 document, but the Bates numbers have a gap in the 5 sequence. 6 And what is page 2 of this exhibit is 7 really -- the page that has the page 2 typed at the 8 top is really page 3. 9 And I am just wondering if counsel can 10 indicate whether this is one document or -- is this 11 something that has been randomly stapled together or 12 what we know about the history of it? 13 MR. SAMUEL: Let me see if we can clarify 14 that for the record. 15 These are documents that were furnished by 16 Sherwin-Williams in its document production. And 17 they -- it is a composite exhibit consisting of three 18 separate documents, the first being a memo apparently 19 prepared by a Mr. R. W. Sieplein on October 22, 1923. 20 Its subject matter is history of auxiliaries. 21 The second document comprising this exhibit	Page 23 1 is -- bears the title, quote, A Brief History of the 2 Ozark Smelting and Mining Company's Activities from 3 1909 to 1944, inclusive. 4 And the last document bears the title, Our 5 Mines -- quote, Our Mines - Taken From December Issue 6 of the Chameleon, pages 156, 7 and 8 by L.P. Pressler. 7 And someone has added the year date 1911 above 8 December. 9 MR. POHL: Just so we are clear on the 10 record, when you said it is a composite, is that this 11 one that you have put together as a composite and 12 stapled? 13 MR. SAMUEL: Yes. These were separate 14 documents furnished to us by Sherwin-Williams. They 15 were not stapled together at the time we received 16 them. 17 MR. POHL: Thank you. 18 MR. JOYNER: If I could make a couple 19 points, when you identify the documents, Mr. Samuel, 20 if you wouldn't mind identifying the entire Bates 21 number; a lot of the defendants have produced
Page 24 1 documents. 2 I believe they all start with the prefix 3 35-SWP. That will make it much easier for all of us. 4 MR. SAMUEL: Sure. I will be happy to do 5 that. 6 MR. JOYNER: I think you gave us a set to 7 pass around. I think it looks like it is numbers 130, 8 34, 35, 36, 38 and 39. My notes indicate that is -- 9 MR. SAMUEL: That is right. 10 MR. JOYNER: That's right? 11 MR. SAMUEL: That is right. 12 MR. JOYNER: Sorry to slow things down. 13 MR. POHL: We will reserve any objection we 14 have to using something that arguably isn't complete 15 or an unofficial composite. 16 MR. SAMUEL: That's fine. 17 THE WITNESS: This does not have page 39. 18 MR. POHL: The witness' copy doesn't have 19 39. 20 Do you have an extra copy of that? 21 THE WITNESS: It is this.	Page 25 1 MR. POHL: I think when you originally 2 identified it, you did not mention 39 as part of the 3 document, but I assume it is your intent to have 39? 4 MR. SAMUEL: Yes. Let me -- may I have 5 that, sir? 6 (Whereupon, document tendered to counsel.) 7 MR. SAMUEL: Can we substitute this as 8 Exhibit 2? 9 (Whereupon, Cohagan Deposition Exhibit 10 Number 2 was remarked for identification.) 11 BY MR. SAMUEL: 12 Q Mr. Cohagan, have you had an opportunity -- 13 take a moment, if you will, and look at the last 14 page. 15 I am sorry. That page was omitted from the 16 one that was furnished you. 17 (Whereupon, the witness is reviewing the 18 document.) 19 A I have glanced over what the information I 20 have. 21 Q Thank you, sir.

Page 26 1 A I did not read it in-depth. 2 Q This is a bit of ancient history, but you 3 agree -- would you agree with me from your cursory 4 review that, for a period of time during the 20th 5 Century, Sherwin-Williams was a miner of lead at its 6 mines at Magdalena, New Mexico? 7 MR. POHL: Let me object to the question in 8 that -- this line of questioning in that this was not 9 an area that was identified in the notice of 10 deposition. 11 So while the witness is here and will 12 certainly be cooperative, you can see what personal 13 knowledge he has. 14 With respect to matters not identified in 15 the notice of deposition, we object to the testimony 16 being designated as the testimony of the corporate 17 representative of Sherwin-Williams. 18 You can explore this as could you in 19 discovery. 20 BY MR. SAMUEL: 21 Q Can you answer my question, Mr. Cohagan?	Page 27 1 A Would you repeat it again, please. 2 Q Would it appear from Exhibit 2 that 3 Sherwin-Williams operated mines at Magdalena, New 4 Mexico? 5 MR. POHL: And I would object on foundation 6 and form grounds, if you are asking the witness does 7 that appear in the document, but it has not been 8 established there is a foundation on which he can give 9 personal testimony about the matters recited therein, 10 so I continue the second objection to this line. 11 A These documents indicate that we did own 12 mines and mined lead ores from those mines. 13 Q And do the documents also indicate that 14 Sherwin-Williams operated ore-smelting activities? 15 A Yes. 16 Q If you happen to know, what became of 17 Sherwin-Williams lead mines at Magdalena, New Mexico, 18 subsequent to 1947? 19 A Unless there is something in here that 20 indicates something happened to it, I am not 21 personally aware of what happened to the mines.
Page 28 1 MR. SAMUEL: We will mark this as Cohagan 2 Deposition Exhibit 3. 3 (Whereupon, Cohagan Deposition Exhibit 4 Number 3 was marked for identification.) 5 MR. POHL: Do you have an extra one of 6 those? 7 MR. SAMUEL: Sure. 8 (Whereupon, document tendered to counsel.) 9 MR. POHL: Thank you very much. 10 (Whereupon, document tendered to witness.) 11 MR. SAMUEL: Off the record. 12 (Whereupon, discussion off the record.) 13 MR. SAMUEL: Back on the record. 14 BY MR. SAMUEL: 15 Q Mr. Cohagan, have you had an opportunity to 16 review Deposition Exhibit 3? 17 A Yes. 18 Q If you will note at the top on both sides of 19 the page, there is a listing of various corporations, 20 the first one on the left side being the Sherwin- 21 Williams Company.	Page 29 1 Do you see that, sir? 2 A Yes. 3 Q And there are then listed some seven 4 additional companies starting with the -- with, quote, 5 ACME Quality Paints. 6 Was ACME a -- was or is ACME a subsidiary 7 of Sherwin-Williams? 8 MR. POHL: Let -- let me, once again, make 9 an objection to this line of questioning. It was not 10 fairly identified in the notice of deposition that the 11 witness was being called on to talk about the 12 corporate structure, corporate history or 13 subsidiaries. 14 So he can answer from his personal 15 knowledge, but we reserve our objection that, with 16 respect to this line, he is not testifying as the 17 corporate representative. 18 MR. JOYNER: Mr. Samuel, I have a question. 19 Was this document produced by Sherwin- 20 Williams in this litigation? 21 MR. SAMUEL: Yes.
Page 30 1 BY MR. SAMUEL: 2 Q Mr. Cohagan, are you able to answer the 3 question? 4 I ask, would you like to have it read back 5 to you after this lengthy delay? 6 A At this period of time, I don't know whether 7 they were a wholly owned subsidiary or just a group 8 that was part of Sherwin-Williams. 9 Q Okay. But ACME Quality Paints marketed 10 Sherwin-Williams paints; is that -- is that correct? 11 A No. ACME Quality Paints marketed -- was a 12 marketing group under label of ACME Quality Paints. 13 Q But did they produce their own paints, or 14 did they sell paint stocks manufactured by Sherwin- 15 Williams? 16 A I don't know whether they had their own 17 manufacturing facilities at this time or not. 18 Q Well, thank you. 19 Do you know whether ACME sold paints in the 20 City of Baltimore? 21 A No, I don't.	Page 31 1 Q The next corporation listed is the Lowe 2 Brothers Company. 3 Was that a subsidiary of Sherwin-Williams in 4 1969? 5 MR. POHL: Let me just show a continuing 6 objection, while objections as to relevance are 7 reserved, of course, is there any indication that any 8 of these companies had anything to do with the paint 9 on the premises involved in this case? 10 MR. SAMUEL: No, sir, there is not. 11 MR. POHL: And -- 12 MR. SAMUEL: And I will very gladly give you 13 a continuing objection, sir. 14 MR. POHL: To the extent that then it isn't 15 involved in the case, I object that, while we will 16 allow this questioning to continue, there will come a 17 point where it appears that to be so patently 18 irrelevant that we think it is not a fair use of our 19 time, but you can continue. 20 BY MR. SAMUEL: 21 Q Was Lowe Brothers a subsidiary of Sherwin-

Page 32 1 Williams? 2 A I don't know whether they were a subsidiary 3 or were just part of the corporation. They are a 4 company that we bought a long time ago. 5 And how their relationship with the company 6 was developed, I am not aware. 7 Q And what can you tell me about the Rogers 8 Paint Products? 9 Is that a subsidiary of Sherwin-Williams or 10 was it at that time? 11 A Again, I am not aware of the -- of the 12 legal connection of any of these companies. 13 Q Okay. Martin-Senour, is that a Sherwin- 14 Williams subsidiary? 15 A At this time, I am not aware of the direct 16 relationship. 17 Q Okay. And W.W. Lawrence and Company? 18 A Again, I am not aware of the direct 19 relationship. 20 Q How about John Lucas and Company? 21 A The same. I am not aware of the direct	Page 33 1 relationship. 2 Q All right. And Deshler Products? 3 A I am not aware of the relationship at this 4 time. 5 Q Okay. Thank you. 6 MR. SAMUEL: We will mark this as Exhibit 4 7 to the Cohagan deposition. 8 (Whereupon, Cohagan Deposition Exhibit 9 Number 4 was marked for identification.) 10 MR. SAMUEL: For the record, this is a 11 three-page document produced by Sherwin-Williams in 12 response to the plaintiffs' document production 13 request. 14 It is a -- further describing it for the 15 record it bears the title, General Purchasing 16 Department, Cleveland. 17 The date May 4, 1948. And it is further 18 described as Bulletin Number 21, Addendum Number 19 Three, paren, Complete Revision, closed paren, 20 Subject, Lead Products. 21 MR. POHL: Do you have a copy of that for
Page 34 1 me? 2 MR. SAMUEL: Here. 3 MR. POHL: Thank you. 4 (Whereupon, documents tendered to counsel 5 and the witness.) 6 BY MR. SAMUEL: 7 Q In response to the earlier request, the 8 first page bears a Bates stamp which is unusual to 9 this litigation, PLO 1461. 10 The second page has PLO 1462 and also SW 11 005036. Page 3 is PLO 1462 and SW 005037. I will 12 speculate that apparently -- 13 MR. POHL: You must have been -- misspoke. 14 BY MR. SAMUEL: 15 Q This must have been produced over and over 16 again, and different Bates stamps for different 17 litigation. 18 Is that a likely scenario? 19 MR. POHL: I think you misspoke, Lou. The 20 first one is PLO 1460. The next one is 1461, then 21 1462.	Page 35 1 MR. SAMUEL: Right. 2 MR. POHL: Okay. Yes. You had two 1462s 3 when you described it. 4 MR. SAMUEL: Okay. 5 MR. POHL: I just -- 6 MR. SAMUEL: I am sorry. 7 (Whereupon, pause.) 8 BY MR. SAMUEL: 9 Q Mr. Cohagan, this document on the front page 10 identifies a number of items of what appear to be 11 various lead pigments, preceded by this sentence. 12 Our -- quote, our contract for the National 13 Lead Company and W.P. Fuller and Company provide for 14 the following items. 15 My question to you is, sir, in 1948, it 16 would appear that Sherwin-Williams was purchasing lead 17 pigments from National Lead Company and W.P. Fuller. 18 Is that an accurate description of that 19 text? 20 MR. JOYNER: Objection. 21 MR. POHL: Object to the form also.
Page 36 1 A This seems to be a purchasing directive on 2 from whom and where to purchase the items listed. 3 Q Do you know when Sherwin-Williams began to 4 purchase lead pigments from National Lead Company? 5 A No, I don't. 6 Q Do you know for what period of time after 7 1948 Sherwin-Williams continued to purchase lead 8 pigment from National Lead Company? 9 MR. POHL: I am going to object to -- not 10 only to the form, but perhaps we can clarify. 11 I don't think that question is within the 12 scope of the deposition notice, unless you limit it to 13 lead pigments for paints or residential paints, as 14 opposed to other products. 15 MR. SAMUEL: I will accept counsel's 16 amendment. 17 BY MR. SAMUEL: 18 Q And as so amended, Mr. Cohagan, are you able 19 to answer that question? 20 A My understanding as to the last time is 21 that it was somewhere in the late '50s that we	Page 37 1 discontinued using white lead. 2 Q Purchased from any source; is that correct? 3 A Yes. 4 Q Was it then -- 5 A For paints. 6 Q For paints. 7 And from our further understanding, as of 8 that point of time in the '50s, Sherwin-Williams 9 stopped using white lead pigments in its paints; is 10 that correct? 11 MR. POHL: I am going to object to the form 12 and ask counsel to clarify. 13 When you say in its paints, that is -- 14 obviously, I don't think this case is about industrial 15 or military paints. 16 If you specify residential or exterior or 17 interior, I have no objection. It is within the 18 scope. 19 MR. SAMUEL: I will accept your counsel's 20 suggestion. And let me reform the question, restate 21 the question.

Page 38 1 BY MR. SAMUEL: 2 Q Is it your understanding, sir, that, as of 3 this time in the late '50s, when white lead pigments 4 ceased to be purchased that, from that point on, 5 Sherwin-Williams did not put white lead pigments in 6 any of its residential paints; is that correct? 7 A I know in 1972 that we did not use any lead 8 materials in our interior or residential paints. 9 Q Okay. Did Sherwin-Williams Company 10 manufacture, if you know, any lead pigments itself 11 during the period 1950 to 1980? 12 A I believe we were manufacturing some leaded 13 zinc oxide. 14 Q And where was that being manufactured? 15 A Cockeysville, Kansas. 16 Q And was leaded zinc oxide pigment used in 17 residential paints? 18 MR. POHL: Let me object to the form, unless 19 the -- the time is specified. 20 BY MR. SAMUEL: 21 Q All right. In the time period between 1950	Page 39 1 and 1980. 2 MR. POHL: Object to the form. It is 3 overbroad. 4 You can answer. 5 A I have -- I do not know. 6 Q Another area of inquiry in the notice of 7 deposition is Sherwin-Williams Company's involvement 8 in the National Paint Varnish and Lacquer Association, 9 Mr. Cohagan, during the years between 1928 and 1980. 10 In answer to plaintiffs' interrogatory 11 numbered 81, Sherwin-Williams stated, and I quote for 12 the record, Sherwin-Williams was a member of, at 13 various discrete times, the National Paint Varnish and 14 Lacquer Association, paren, quotation mark, NPVLA, 15 quotation mark, closed paren, paren, later known as 16 the National Paint and Coatings Association, although 17 the precise dates of its NPVLA membership are 18 unknown. 19 And your company, sir, produced certain 20 documents under a category called trade associations, 21 which included documents relating to Sherwin-Williams'
Page 40 1 membership in the NPVLA. 2 I am not going to mark this, but I will ask 3 you, sir, the earliest document furnished to us was 4 what purported to be the 25th Anniversary Edition of 5 the Scientific Section, Education Bureau of the 6 American Paint and Varnish Manufacturers Association. 7 Have you ever heard of the American Paint 8 and Varnish Manufacturers Association? 9 A No, I haven't. 10 Q Could it have been the National Paint 11 Varnish and Lacquer Association under a different 12 name? 13 MR. POHL: Object to the form of the 14 question. There is no foundation. 15 MR. SAMUEL: I am just asking if he knows. 16 A I don't. 17 Q Also produced, and I am not going to mark 18 this either, is a portion of the proceedings of the 19 Raw Material Forum of the 58th Annual Convention of 20 the National Paint Varnish and Lacquer Association at 21 Atlantic City, New Jersey, on November 8, 1946.	Page 41 1 This would suggest that the National Paint 2 Varnish and Lacquer Association had its genesis at 3 approximately 1888. 4 Would that -- do you know whether or not 5 that organization goes back that far in time? 6 MR. POHL: I am going to object. It is 7 beyond the scope of the notice, but you can ask him if 8 he has any personal knowledge. 9 A No, I do not know. 10 Q Okay. 11 MR. JOYNER: Mr. Samuel, would you mind 12 marking that as an exhibit? 13 MR. SAMUEL: Sure. 14 MR. JOYNER: Okay. Mark this then as 11. I 15 don't want to get my sequence out of order. 16 (Whereupon, Cohagan Deposition Exhibit 17 Number 11 was marked for identification.) 18 BY MR. SAMUEL: 19 Q Before coming here today, Mr. Cohagan, have 20 you reviewed any documents of Sherwin-Williams 21 concerning its membership in the National Paint
Page 42 1 Varnish and Lacquer Association? 2 A Yes, I did. 3 Q And would you characterize those records for 4 the record in this proceeding, please. 5 A Some of them were minutes of meetings with 6 the -- with the associations. 7 Some of them were -- were responses to 8 information that the association requested from 9 various companies. 10 Q What time frame did the documents that you 11 reviewed encompass? 12 When did they begin, for example? 13 A I don't remember the dates. 14 Q All right. Is this organization still 15 extant? 16 A It is -- 17 MR. POHL: Just for the sake of the record, 18 when you say this organization, are you talking about 19 just NPVLA or are you treating NPCA as its successor? 20 Q The NPVLA as now known, as your counsel 21 suggests, as by another name, is it still an ongoing	Page 43 1 organization? 2 A Yes. It is. 3 Q Has Sherwin-Williams maintained its 4 membership in the organization, however so named, down 5 to the present time? 6 A No, they have not. 7 Q Okay. During the time frame 1950 to 1980, 8 was Sherwin-Williams a member of the NPVLA? 9 A As far as I can understand, yes, they were a 10 member. 11 Q What corporate department of Sherwin- 12 Williams provided members to the NPVLA? 13 MR. POHL: Object to the form. 14 You can answer. 15 A Various corporate departments would provide 16 people to be members on the various committees of 17 their discipline in NPCA. 18 Q So the NPVLA had various committees? 19 A Yes. 20 Q Do you know how many? 21 A No.

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1 Q Were you yourself ever a member of the NPVLA
2 or one of its subcommittees as a Sherwin-Williams
3 representative?
4 A I was Sherwin-Williams' representative on
5 the organization known as National Paint Coatings
6 Association involving labeling and a subcommittee
7 involving material safety data sheets.
8 Q And when were you designated as the
9 Sherwin-Williams representative to those two
10 subcommittees or either of them?
11 A My involvement with the labeling committee
12 began right around '75, '76.
13 Q Okay. And what period of time did you hold
14 membership on that committee as Sherwin-Williams'
15 representative?
16 A When we were members of the National Paint
17 and Coatings Association, I was always on that
18 committee.
19 Q Until what year?
20 A There is a period of time between '82 and
21 '84 which we were not a member. And since '89, we

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1 Bates stamp SWP-000003427 to 000003485.
2 (Whereupon, Cohagan Deposition Exhibit
3 Number 5 was marked for identification.)
4 (Whereupon, document tendered to witness.)
5 THE VIDEOGRAPHER: Mr. Samuel, while he
6 looks at that, can we go off the record to change the
7 tape?
8 MR. SAMUEL: Sure.
9 THE VIDEOGRAPHER: We are off the record.
10 The time is approximately 11:09.
11 MR. SAMUEL: why don't we take a break?
12 (Whereupon, a brief recess was taken --
13 11:09 a.m.)
14 (Whereupon, discussion off the record.)
15 (Whereupon, after recess -- 11:20 a.m.)
16 MR. SAMUEL: Are you ready?
17 THE WITNESS: Yes.
18 MR. SAMUEL: Back on the record.
19 THE VIDEOGRAPHER: One second, please.
20 Okay. We are back on the record in the
21 deposition of Dwight Cohagan. The time is

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1 A Yes.
2 Q Let me now direct your attention, sir, to
3 the very last two pages of Exhibit 5, which, for the
4 record, is a letter dated October 11, 1971, written by
5 Mr. H.E. Spitzer, S-p-i-t-z-e-r, Technical Director,
6 Coatings, to Mr. R.G. Bull.
7 Is that Bull, B-u-l-l?
8 A Yes.
9 MR. POHL: Just let me interject at this
10 point this same reservation or objection I made as to
11 a prior composite exhibit.
12 While it is convenient to use them here, we
13 reserve any objection with regard to unrelated
14 documents being perhaps improperly assembled and
15 reserve any right to have them placed separately or in
16 context later.
17 Sorry to interrupt.
18 MR. SAMUEL: Counsel, would you be more
19 comfortable then if I were to pull this two-page
20 document out and make it, for example, Exhibit 5-A?
21 I will be happy to do that, if you wish.

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1 have not been members.
2 Q Okay. Now, when did you become a member of
3 the hazardous material data sheet subcommittee?
4 MR. POHL: Object to the form of the
5 question.
6 I am not sure he said hazardous material. I
7 think he said MSDS.
8 A Material safety data sheet.
9 Q I am sorry. I didn't mean to misspeak or
10 mislead you.
11 When did you become a member of that
12 committee?
13 A That committee was part of the occupational
14 health committee. And when they revised their
15 directions for the industry on completion of the
16 material safety data sheet, I participated in that
17 organization. And that happened about three times.
18 Q Thank you.
19 MR. SAMUEL: Let me mark as Cohagan
20 Deposition Exhibit Number 5 a collection of -- of
21 documents furnished by Sherwin-Williams bearing a

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1 approximately 11:20.
2 BY MR. SAMUEL:
3 Q Mr. Cohagan, let me direct your attention to
4 the very first page of what has been marked as your
5 Deposition Exhibit 5, which is a document dated
6 December 8, 1971 under the masthead National Paint
7 Varnish and Lacquer Association.
8 And this document is directed, quote, to
9 all, quote, A, closed quote, members.
10 What is an A member or -- strike that.
11 On December 8, 1971, what constituted an A
12 member of the NPVLA?
13 A My understanding is that A members are paint
14 manufacturers.
15 Q All right. If you happen to recall, what
16 were the other classes of membership in the NPVLA in
17 this time frame, in 1971?
18 A A B manufacturer would be suppliers of
19 materials for paints.
20 Q Could a -- a lead-pigment manufacturer then
21 qualify as a B for B membership in the NPVLA?

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1 MR. POHL: Yes. I think I would. I don't
2 know if it was part of the rest of this or whether you
3 have any background about it, but --
4 MR. SAMUEL: Off the record.
5 MR. POHL: Whatever is easier for you for
6 the deposition.
7 THE VIDEOGRAPHER: We are off the record in
8 the deposition of Dwight Cohagan. The time is
9 approximately 11:24.
10 (Whereupon, discussion off the record.)
11 MR. POHL: I will just reserve an
12 objection.
13 MR. SAMUEL: Back on the record.
14 THE VIDEOGRAPHER: We are back on the record
15 in the deposition of Dwight Cohagan. The time is
16 approximately 11:24.
17 MR. POHL: Should we reflect that, off the
18 record, it was established that the staples -- these
19 were not stapled into this packet together not by
20 Sherwin, but by you, and we reserve the objection?
21 MR. SAMUEL: I adopt counsel's

Page 50 1 characterization. 2 BY MR. SAMUEL: 3 Q You were with the company in October of 4 1971, were you not, Mr. Cohagan? 5 A Yes. 6 Q Did you know Mr. R.G. Bull at that time? 7 A I knew who he was. 8 Q What was his title? 9 A I think he was the -- at that time, the 10 director of marketing. 11 Q And Mr. Spitzer was the technical director 12 of coatings. 13 What department was he in? 14 A He was in the technical and research 15 department. 16 Q Which was the department that you started 17 off in in 1968? 18 A Yes. 19 Q Okay. Let me direct your attention, Mr. 20 Cohagan, to page 1 of the Spitzer-Bull letter and, the 21 third paragraph, has an indented number two and next,	Page 51 1 which reads, quote, face up to the problem and propose 2 elimination of all, quote, added lead, closed quote, 3 underscored, from interior paints by some date. 4 Would you define the term added lead for 5 me, please, sir. 6 MR. POHL: Let me object to the form. 7 Are you asking him to define it as he uses 8 it, or does he know how the writer of this document 9 was using it? 10 MR. SAMUEL: I will accept that. 11 Q And, first, let me ask you what your 12 definition of added lead is. 13 A Added lead is when you intentionally add a 14 leaded material to a product. 15 Q And is that a term of art in the paint 16 industry? 17 A That is commonly used in the paint industry 18 in that context. 19 Q So would it be likely that Mr. Spitzer used 20 that term in the same sense that you understand it in 21 this letter of October 11, 1971 to Mr. Bull?
Page 52 1 A If he -- yes, he would use it in that same 2 context, although this -- he is paraphrasing what 3 Robert Roland is saying. 4 Q Thank you. 5 Is added lead -- strike that. 6 If you have a paint that has a white lead 7 pigment in its composition, and for the sake of -- of 8 my example for purposes of seeking education, let's 9 say that that lead pigment results in a two-percent 10 leaded paint. 11 Are you with me so far? 12 A I believe so. 13 Q Okay. If you put something in that is added 14 lead, would that increase the lead percent of the 15 paint beyond the two percent in my example? 16 MR. POHL: Object to the form of the 17 question. 18 A If you have a two-percent lead paint, and 19 you add additional lead to it, yes, it would increase 20 the percentage. 21 Q So if, for example, you add in a drying	Page 53 1 agent, and it was .035 lead, your -- your total lead 2 in the dried film is going to be two percent, plus 3 .035 percent lead; is that right? 4 MR. POHL: I am going to object on two 5 bases. 6 One, I object to the form of it. 7 Second, I object that we are going now to an 8 area that is not identified in the notice of 9 deposition. 10 Again, in the spirit of cooperation, we will 11 let the witness answer from his personal knowledge, 12 but note we reserve our objection to going into this, 13 and it is not speaking necessarily on behalf of the 14 corporation. 15 MR. CULLEN: Object to the question, because 16 it is an incomplete hypothetical. 17 BY MR. SAMUEL: 18 Q Can you answer, Mr. Cohagan? 19 A If I understand what you are asking me 20 that, if I added material that has .035 percent lead 21 to it, to something that is already two percent,
Page 54 1 theoretically, it would not increase it. 2 Q It would not increase beyond the two 3 percent? 4 A In -- that is correct. 5 Q Look, if you will, sir, at page 2 of the 6 document, and the first sentence of the top paragraph 7 states, quote, complete elimination of, quote, added 8 lead, closed quote, from exterior products is much 9 more difficult. 10 Why would it be more difficult to eliminate 11 added lead from exterior products than from interior 12 products? 13 MR. POHL: Same -- same objection. You can 14 ask for his personal knowledge. 15 I take it the question is not what did Mr. 16 Spitzer think, but what -- you are asking for his 17 knowledge? 18 MR. SAMUEL: Right. 19 A Certainly, exterior coatings are exposed to 20 the extremes of the -- of the environment, which it 21 requires it to be more durable, more light-fast. It	Page 55 1 has to be -- have its own cleaning power. 2 It -- also, some of the exterior paints have 3 to be resistant to corrosion. It is a whole, you 4 might say, a whole different world out there from 5 interior paints. 6 Q Did the technology exist prior to, say, 7 October of 1971 to eliminate, quote, added lead, 8 closed quote, from interior paints? 9 MR. POHL: Object to the form. 10 A There may be some alternatives for the 11 materials in the paints before then. Certainly, there 12 had to be some developments -- developments in the 13 systems in order to totally eliminate it. 14 It was not a situation where you can say, I 15 can pull this out and put something else in. 16 There had -- there was considerable 17 technical development going on for that period of time 18 to try to get to an equivalence of the standards of 19 performance from the coating previous. 20 MR. SAMUEL: We will mark as Cohagan 21 Deposition Exhibit 6 a collection of documents

Page 56 1 produced by Sherwin-Williams to the plaintiffs with 2 Bates stamp numbers 0035-SWP-000003409 through 3426 3 and out of sequence document bearing the Bates stamp 4 number 0035-SWP-000010392 and then another document of 5 two pages bearing the Bates stamp number 0035-SWP- 6 000003470, and 3471. 7 (Whereupon, Cohagan Deposition Exhibit 8 Number 6 was marked for identification.) 9 MR. POHL: Do you have that? 10 MR. SAMUEL: Yes. 11 MR. POHL: Thank you. 12 Once again, for the record, you -- Mr. 13 Samuel, you are the one that has organized these and 14 stapled them together in this fashion? 15 MR. SAMUEL: I have, indeed, sir. 16 MR. POHL: And I will reserve the same 17 objection. 18 MR. SAMUEL: You may certainly have it. 19 (Whereupon, document tendered to witness.) 20 BY MR. SAMUEL: 21 Q A couple general questions, first, Mr.	Page 57 1 Cohagan, not directed to the document itself. 2 Did the National Paint Varnish and Lacquer 3 Association have a national -- strike that -- an 4 American Standards Association subcommittee in 1953? 5 MR. POHL: I would just object to the form 6 in that it is vague. 7 Are you saying, was the American Standards 8 Association a subcommittee of NPVLA, or did NPVLA work 9 with a separate organization ASLA? 10 BY MR. SAMUEL: 11 Q I will adopt your counsel's suggestion and 12 change the question to ask, did the NPVLA have a 13 subcommittee in 1953 that worked with the American 14 Standards Association? 15 A I do not know. 16 Q If I asked you that same question and 17 changed the time frame to 1955, would you be able to 18 answer that? 19 A No, I would not. 20 Q How about 1964? 21 A No, I would not.
Page 58 1 Q To your knowledge, has the NPVLA ever had a 2 standing subcommittee which concerned itself with the 3 American Standards Association? 4 A The American Standards Association writes 5 voluntary standards for all kinds of industries, 6 including paint, and they write health specs. 7 Is there a standing committee for -- for the 8 American Standards Association, no. 9 Q Let me change the question slightly and ask 10 you, sir, if the NPVLA had a subcommittee known as the 11 Z66.1 subcommittee? 12 MR. POHL: What point in time? 13 Q In 1953. 14 A I would not know. 15 Q How about 1955? 16 A I would not know. 17 Q How about 1964? 18 A I would not know. 19 Q At any time, has the NPVLA had a Z66.1 20 subcommittee? 21 A Not that I am aware of.	Page 59 1 Q Let me direct your attention, Mr. Cohagan, 2 to a page Bates stamp numbered SWP-000003418. 3 (Whereupon, the witness is reviewing the 4 document.) 5 Q I note that the membership and alternates of 6 the subcommittee which developed this standard are as 7 follows. 8 And one of those names, as an alternate, is 9 Mr. S.B. Coolidge of the Sherwin-Williams Company. 10 What was Mr. Coolidge's position with the 11 company in 1955? 12 MR. POHL: I will incorporate my earlier 13 objection to this line of questioning to the extent it 14 goes beyond the scope of the deposition notice. 15 A I do not know what his position was at that 16 time. 17 Q Was Mr. Coolidge still with the company when 18 you came on board in '68? 19 A I don't recall. 20 Q I take it, then, you did not know this 21 gentleman by personal; is that correct?
Page 60 1 A No, I did not know him. 2 Q Let me ask you to turn over a few pages, 3 Mr. Cohagan, to page Bates stamped 0035-SWP- 4 000003421. 5 (Whereupon, the witness is reviewing the 6 document.) 7 Q This document consists of minutes of the 8 Z66.1 subcommittee of a meeting held on April 10, 9 1963. 10 I note members present a Mr. Charles R. 11 Martins of the Sherwin-Williams Company. 12 Do you know Mr. Martins? 13 MR. POHL: Same continuing objection with 14 regard to outside the scope of the deposition notice. 15 MR. SAMUEL: You have it. 16 A Yes, I do. 17 Q And what was Mr. Martins' title with the 18 company in 1963? 19 A I don't know. 20 Q When did you first know Mr. Martins 21 personally?	Page 61 1 A In 1968. 2 Q What was Mr. Martins' title at that time? 3 A He was director of associated products 4 laboratory. 5 Q And what was the work of that laboratory? 6 A They worked on products which essentially 7 were not paint products, but related type to the usage 8 of paints. 9 Q Okay. Did Sherwin-Williams then at that 10 time have two laboratories, one dedicated to paint 11 products and one for nonpaint products? 12 A They had various laboratories specializing 13 in certain areas. 14 Q Let me now direct your attention, Mr. 15 Cohagan, to a letter bearing the Bates stamp number 16 0035-SWP-000010392. 17 It is a letter from a Mr. A.J. Morales to a 18 number of people dated February 27, 1970. 19 Do you see that, sir? 20 MR. POHL: Is this part of the exhibit? 21 MR. SAMUEL: Yes.

Page 62 1 MR. POHL: Read me the last four digits. I 2 am not sure it is in the copy that I have. 3 (Whereupon, document tendered to counsel.) 4 MR. POHL: Let me see. 5 (Whereupon, discussion off the record.) 6 MR. POHL: I do have it. 7 Once again, was this -- this is inserted, I 8 guess, out of sequence? This is your compilation? 9 MR. SAMUEL: Yes, indeed it is, sir. 10 MR. POHL: Thank you. 11 BY MR. SAMUEL: 12 Q My question to you simply, Mr. Cohagan, is, 13 did Mr. Martins, in response to Mr. Morales' letter, 14 did he retain, in 1970, his membership in the Z66.1 15 subcommittee? 16 A I do not know. 17 Q Did Sherwin-Williams, in fact, retain a seat 18 on the Z66.1 subcommittee until 1980? 19 MR. POHL: Object to the form and object as 20 beyond the scope of the deposition notice. 21 You can answer, if you know.	Page 63 1 A I don't know. 2 Q When you became involved in regulatory 3 affairs in 1972, did you have personally any dealings 4 with the Z66.1 subcommittee? 5 A Would you repeat that, please. 6 Q Sure. 7 (Whereupon, the record was read as 8 requested.) 9 A No, I didn't. 10 Q At any time thereafter, until 1980, did you 11 have any personal dealings with the Z66.1 12 subcommittee? 13 A No. 14 Q Thank you. 15 Are you familiar with Sherwin-Williams' 16 operation of branch retail stores? 17 A I -- over the last 20 years, yes. 18 Q Sherwin-Williams operates a great number of 19 retail stores across the country; is that a fair 20 statement? 21 A We operate stores across the country. What
Page 64 1 is a great number is -- we operate about 2,000 stores 2 across the country. 3 Q And based on an inspection of today's Yellow 4 Pages in our local telephone directory, apparently you 5 operate about 26 stores throughout the State of 6 Maryland, including several in the City of Baltimore. 7 That doesn't surprise you, does it? 8 MR. POHL: Are you talking about today? 9 MR. SAMUEL: Pardon? 10 MR. POHL: Today? 11 MR. SAMUEL: Yes. 12 A No, it does not surprise me. 13 Q And Sherwin-Williams sells a broad range of 14 its manufactured products through its retail stores, 15 does it not? 16 MR. POHL: Object to the form. 17 A We sell a broad range of products through 18 our stores division. Not all of the stores are retail 19 stores. There is also commercial stores. 20 Q Okay. And Sherwin-Williams has -- has been 21 in the retail store business for a good many years,	Page 65 1 has it not? 2 A Yes. 3 Q And it would have been in the retail store 4 business in 1980? 5 A Yes. 6 Q Are these stores owned and operated by the 7 company itself? 8 A Yes. 9 Q And are -- the employees who man the stores, 10 are they Sherwin-Williams Company employees? 11 A Yes. 12 MR. POHL: Just so the record is clear, 13 your question is about Sherwin-Williams stores owned 14 by the company? 15 MR. SAMUEL: Yes. 16 BY MR. SAMUEL: 17 Q And just as background, as suggested by your 18 counsel's question, Sherwin-Williams sells its 19 products to independent retail operators, does it -- 20 MR. POHL: Let me object to the form of 21 that. If you are asking about the present, my
Page 66 1 objection is that it is irrelevant. 2 If you are asking about what -- to the 3 extent that your question is reflected in the 4 deposition notice, it is proper, but I would ask that 5 you identify the time frame. 6 BY MR. SAMUEL: 7 Q Okay. I'll be happy to do so. 8 In 1980, did Sherwin-Williams sell its 9 products to retail -- to independent retail operators? 10 A No, they did not. 11 Q You sold your products only through your own 12 stores in 1980? 13 A As a Sherwin-Williams product, yes. 14 Q Did Sherwin-Williams sell products which it 15 manufactured under other than its own brand names to 16 retail independent operators? 17 A Yes. 18 MR. POHL: Are you talking about 1980 now? 19 MR. SAMUEL: Yes. 20 BY MR. SAMUEL: 21 Q And those products would have included	Page 67 1 paint, paint products? 2 A Yes. 3 MR. SAMUEL: I will mark as Exhibit 7 to 4 the Cohagan Deposition -- 5 (Whereupon, document tendered to witness.) 6 MR. POHL: Thank you. 7 MR. SAMUEL: -- an exhibit consisting of two 8 letters, one dated September 14, 1971, written by Mr. 9 H.E. Spitzer, technical director, coatings, to a Mr. W 10 C. Fine, a two-page letter bearing the Bates stamp 11 number 0035-SWP-000003622, and 3623. 12 And a second letter also written by Mr. 13 Spitzer or at least a document apparently authored by 14 him. 15 The addressee of the document is not 16 identified in the document produced to plaintiffs. 17 And this bears Bates stamp number 0035-SWP-000003562, 18 and 63. 19 MR. POHL: I will state the objection -- 20 incorporate the objection I mentioned earlier with 21 regard to juxtaposition of unrelated documents in a

Page 68 1 single exhibit. 2 MR. SAMUEL: Counsel, would you prefer that 3 I break this down into an A and a B? 4 MR. POHL: Whatever is easier for you, as 5 long as it is indicated that you are the one -- they 6 didn't come stapled together? 7 MR. SAMUEL: No, they didn't. 8 MR. POHL: Then whatever is easier for you. 9 I will reserve my right to ask they be pulled apart if 10 there is any attempt to use it later. 11 (Whereupon, Cohagan Deposition Exhibit 12 Number 7 was marked for identification.) 13 BY MR. SAMUEL: 14 Q On the second page of his letter to Mr. 15 Fine -- strike that. 16 Who is Mr. Fine, W.C. Fine? 17 A He was a vice-president of the corporation 18 at that time. I don't know his exact title. 19 Q What department was he affiliated with at 20 that time in 1971? 21 A He was a corporate officer of the company.	Page 69 1 Q And there is a P.S. there. Attached is your 2 letter from R.A. Steudel, S-t-e-u-d-e-l. 3 Who is Mr. Steudel? 4 A That's Steudel. Steudel. 5 Q Steudel. Okay. I am sorry. 6 A He was the vice-president and technical 7 director at that time. 8 Q So would Mr. Steudel have been Mr. Spitzer's 9 superior? 10 A Yes. 11 Q At page 2 of his letter to Mr. Fine dated 12 September the 14th, 1971, Mr. Spitzer has this to 13 say. 14 Quote, we do sell coatings for industrial 15 products, product finishes and maintenance through our 16 branches, period. Many of these contain lead. 17 We must educate our salespeople that such 18 products should not be sold for home use, period. For 19 example, Kern Lustral, L-u-s-t-r-a-l, has been and 20 still is being sold as an all-purpose enamel by many 21 branches, hyphen, and I am sure, on occasion, that it
Page 70 1 had been used to paint such things as bicycles, toy 2 wagons, et cetera. 3 Although all formula compositions will, to 4 the best of our knowledge, comply to the regulations 5 as we understand them, we are still vulnerable to a 6 number of things. 7 One has already been mentioned above where a 8 product might be sold for the wrong use. Second is 9 the potential contamination in production, hyphen, 10 and, of course, the very big problem of moving 11 existing products out of our inventory as quickly as 12 possible. 13 There are, however, educational programs 14 underway in all of these areas. 15 Sherwin-Williams produced no documents to 16 the plaintiffs with respect to educational programs of 17 its store employees as alluded to by Mr. Spitzer. 18 Did Sherwin-Williams, in fact, have 19 education programs which retail store employees -- 20 MR. POHL: I object to the form of the 21 question for two reasons.	Page 71 1 First, the question assumes that such 2 documents were requested. 3 Secondly, with regard to the specific 4 subject matter, it is beyond the scope of the 5 deposition notice. 6 Subject to incorporating my earlier comments 7 with regard to that objection, you can answer. 8 A I can recall during that period of time that 9 price list used by the stores had notations as to 10 which were -- or at least sometime after this period 11 of time, which products contained lead and were not to 12 be used -- sold for retail usage. 13 Q But did Sherwin-Williams have a formal 14 education program for its retail employees in 1971 or 15 thereafter to meet the concerns addressed by Mr. 16 Spitzer in this letter? 17 MR. POHL: I continue my earlier objection. 18 Q You may answer. 19 MR. POHL: You are asking him, other than is 20 stated in the letter? 21 MR. SAMUEL: Yes.
Page 72 1 A They have -- our employees go through 2 training. As to what was involved in that training at 3 that time, I do not know. 4 Q What department within the corporation 5 would have been charged with training of retail store 6 employees in 1971? 7 A It would be a department in our stores 8 division. 9 Q And where was the stores division 10 headquarters located in 1971? 11 A In Cleveland, Ohio. 12 Q Who was the senior executive in charge of 13 the stores division in 1971? 14 A I don't know. 15 Q Let me direct your attention now, sir, to 16 the document dated September 21, 1971 and apparently 17 written by Mr. H.E. Spitzer. 18 And at page 2 of that document, in the 19 second paragraph, under the subtitle general, Mr. 20 Spitzer writes, quote, while it may be an 21 oversimplification to say so, we have been able to	Page 73 1 cope with most of these new regulations by formula 2 revision. 3 There are other areas of concern which will 4 affect sales through our branches. 5 There are many nontrade painter items 6 carried in our branches in which there are either no 7 or different restrictions, hyphen, and may carry lead 8 or photochemically active solvent. 9 There is then a blank space and the word in 10 capital letters, redacted. And then text which reads, 11 quote, while I know it may be extremely difficult, it 12 seems to me the sales personnel must be educated to 13 read and understand the label analysis and to 14 recognize when and when not to sell a certain 15 product. 16 Can you define for me the term nontrade 17 painter items? 18 MR. POHL: I will incorporate the same 19 objection with regard to not fairly identified in the 20 scope of the deposition notice. 21 So to this extent, we reserve the right to

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1 indicate that Mr. Cohagan is not speaking for the
 2 company, but he can reply from his personal knowledge.
 3 A The use of the term nontrade painter items
 4 referred -- generally refers to materials like
 5 industrial maintenance coatings which are intended for
 6 industrial structures, product finishes which are,
 7 here again, a factory usage of coating products.
 8 There are caulking compounds, there is
 9 adhesives, various things like that which are not
 10 intended to be sold as what they -- the term that they
 11 used at that time was trade sales products, which
 12 means essentially retail products.
 13 Q Okay. To the average guy walking in off the
 14 street who wants to buy a gallon of paint to paint his
 15 garage, he is --
 16 A Trade sales.
 17 Q -- he is a trade salesperson?
 18 A Yes.
 19 Q And the -- the products that are nontrade
 20 painter items, were they located in a different part
 21 of the retail stores from the items that were

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1 MR. SAMUEL: I don't know.
 2 MR. POHL: So what you are saying as of the
 3 record of this date, plaintiffs have made no such
 4 allegation.
 5 MR. SAMUEL: That's my understanding.
 6 MR. POHL: Then I object to this, not only
 7 because you are going beyond the limits of this case,
 8 but certainly far beyond the scope of the deposition
 9 notice.
 10 MR. SAMUEL: Are you directing him not to
 11 answer?
 12 MR. POHL: I have not done that yet, but at
 13 some point, it becomes so improper I would reserve my
 14 right to terminate and seek guidelines from the Court,
 15 but you can explore it to some extent.
 16 I trust you are not going to insist on going
 17 far and wide into other areas.
 18 THE WITNESS: Most of my visits to the
 19 Sherwin-Williams stores was to purchase paints for my
 20 own usage.
 21 (Whereupon, laughter ensued.)

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1 feature for compliance.
 2 Q What action was taken in response to Mr.
 3 Spitzer's recommendation that sales personnel be
 4 educated to read and understand the label analysis?
 5 MR. POHL: Same objection, to the extent you
 6 have knowledge.
 7 A Well, Mr. Spitzer's letter was sent to
 8 regional direction -- directors, who would have the
 9 responsibility of setting up the programs for
 10 education in their stores.
 11 Q Okay. So would it be the obligation of each
 12 of the regional directors to see to the implementation
 13 of such an educational program in their region?
 14 MR. POHL: Let me amplify the objection. We
 15 have gone repeatedly well far beyond the scope of the
 16 deposition notice.
 17 And, obviously, we have come in good faith
 18 to try to use the deposition notice as the rules
 19 contemplate to have a witness familiarize him or
 20 herself with the facts encompassed so that the company
 21 can make a response consistent with the intent of the

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1 available for trade customers?
 2 MR. POHL: I object to the relevance, not in
 3 the scope of the deposition notice, foundation, and it
 4 assumes that there is one way of carrying that within
 5 all the stores. I think it is just hopelessly
 6 overbroad.
 7 Q If you know.
 8 A I don't know.
 9 Q So did you visit -- strike that.
 10 In your various positions with the company,
 11 starting with your involvement with regulatory affairs
 12 in 1972, did you have occasion to visit Sherwin-
 13 Williams retail stores?
 14 A Yes.
 15 Q And what would be the circumstances under
 16 which you would visit a retail store?
 17 MR. POHL: Let me just be sure that we are
 18 on a proper relevance line.
 19 There is no allegation in this case, is
 20 there, that any of the products involved were
 21 purchased from a Sherwin-Williams retail store?

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1 BY MR. SAMUEL:
 2 Q Then may I take it from that answer, then,
 3 that you were not called upon to visit the retail
 4 stores in connection with any of your duties relating
 5 to regulatory compliance?
 6 A Not during this period of time.
 7 Q Okay. At any period did you have occasion
 8 to visit your retail stores in connection with your
 9 duties relating to regulatory affairs?
 10 MR. POHL: Same objection to the extent it
 11 calls for information outside of the relevant time
 12 period.
 13 A I have done -- I have looked at a few stores
 14 on my own to say, what are the compliance issues.
 15 That is not a responsibility of mine or me
 16 to go out and do audits on our stores' function.
 17 Q So you went and looked, what, from the
 18 standpoint of understanding if there might be
 19 regulatory problems and issues; is that correct?
 20 MR. POHL: Same objection.
 21 A I may have been looking for one particular

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1 rules.
 2 I am concerned that you did not fairly
 3 identify these. And you go into areas where we were
 4 not fairly given notice that this it was to be the
 5 scope of your inquiry.
 6 I feel a little sandbagged. I have allowed
 7 the witness to give his personal knowledge, but I
 8 emphasize that personal knowledge may not be such.
 9 And certainly the notice and preparation was
 10 not such that this can be considered the statement of
 11 Sherwin-Williams.
 12 There may be a lot more that could be said
 13 on these new subjects that you are injecting now into
 14 the scope of the deposition.
 15 Once again, in the spirit of cooperation, I
 16 will allow Mr. Cohagan to give you any personal
 17 knowledge he may have, with the indication that the
 18 record should reflect that this may not be the
 19 definitive statement of the company reflected after
 20 the kind of investigation that the rule may require.
 21 MR. SAMUEL: Thank you, counsel.

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1 BY MR. SAMUEL:
 2 Q You may answer.
 3 A I need the question repeated.
 4 Q I have forgotten.
 5 MR. SAMUEL: Can you go back?
 6 (Whereupon, the record was read as
 7 requested.)
 8 A That would be my understanding.
 9 Q Understanding that -- as your counselor has
 10 indicated, that you were not prepared for this line of
 11 questioning when you came here today, who in Sherwin-
 12 Williams management would be a person who would be
 13 knowledgeable as to the company's educational programs
 14 for its retail sales personnel?
 15 MR. POHL: What year?
 16 Q In 1971.
 17 MR. POHL: If you know.
 18 A I would not know who would have had that
 19 responsibility in '71.
 20 Q And if I asked you that same question for
 21 each year starting in '72 through 1980, would your

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1 Q And who was Mr. Macatee's predecessor in
 2 that position?
 3 A I don't recall at this time.
 4 Q You indicated earlier, Mr. Cohagan, that
 5 Sherwin-Williams sold its products under other brand
 6 names to independent retail customers.
 7 Do you recall that testimony? Am I quoting
 8 it accurately?
 9 A Yes.
 10 Q Did Sherwin-Williams, through the stores
 11 division, or otherwise, have any educational programs
 12 for the employees of its independent retail customers
 13 with regard to label analysis?
 14 A I do not know.
 15 MR. POHL: Just -- where in the notice of
 16 deposition is that covered?
 17 MR. SAMUEL: I am asking questions, counsel,
 18 about documents that have been produced by Sherwin-
 19 Williams.
 20 MR. POHL: There is -- there is in item one
 21 a reference to authentication of documents. I thought

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1 BY MR. SAMUEL:
 2 Q I have handed you and the Court Reporter has
 3 marked as Cohagan Deposition Number 8 a document
 4 bearing the title, Label Manual, 1963, issued by the
 5 Sherwin-Williams Company, and having Bates stamped
 6 numbers 0035-SWP-000010001 through 0000100084, and a
 7 separate document contained in the same packet of
 8 material received from Sherwin-Williams but commencing
 9 with the Bates stamp numbers 0035-SWP-000010107
 10 through 112.
 11 And with the indulgence of counsel, I have
 12 distributed to other counsel a much abbreviated copy
 13 of Exhibit 8 which consists, really, only of the first
 14 six pages of the label manual of 1963 and all of the
 15 second enclosure beginning with Bates stamp numbers
 16 000010107.
 17 I propose to ask the witness a few
 18 questions restricted to the much shorter version of
 19 this document.
 20 (Whereupon, documents tendered to witness.)
 21 MR. POHL: Just for the record, are you

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1 answer be the same?
 2 A Yes.
 3 Q Who in the company could I notice for
 4 deposition who would be able to give me that
 5 information as to who would be knowledgeable?
 6 MR. POHL: Let me object to that. You are
 7 asking this witness to testify about the extent that
 8 someone else might have knowledge.
 9 I think it is improper in form. You can
 10 answer subject to the objection.
 11 A I don't understand the question.
 12 Q Okay. Would records of education programs
 13 for retail store employees be records that would be
 14 generated in the stores department or division?
 15 A Yes.
 16 Q Who is the present chief executive of the
 17 stores division?
 18 A A person by the name of John Macatee.
 19 Q And for what period of time has Mr. Macatee
 20 held that position?
 21 A Approximately four years.

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1 there was an understanding that that would be handled
 2 separately.
 3 But that question didn't go to
 4 authentication, nor did it fit into anything else. I
 5 guess your answer is, it is not covered in the
 6 notice.
 7 MR. SAMUEL: If I told you that was the last
 8 question, would you be quiet?
 9 MR. POHL: I would.
 10 (Whereupon, laughter ensued.)
 11 MR. SAMUEL: Off the record.
 12 THE VIDEOGRAPHER: We are off the record in
 13 the deposition of Dwight Cohagan. The time is 12:21.
 14 (Whereupon, a brief recess was taken --
 15 12:21 p.m.)
 16 (Whereupon, after recess -- 12:24 p.m.)
 17 MR. SAMUEL: Mark this as Deposition
 18 Exhibit Number 8.
 19 (Whereupon, Cohagan Deposition Exhibit
 20 Number 8 was marked for identification.)
 21 MR. SAMUEL: Back on the record.

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1 going to give the Court Reporter the whole thing?
 2 MR. SAMUEL: Yes.
 3 MR. POHL: So we can go back and access it.
 4 MR. SAMUEL: If you want the whole thing --
 5 MR. POHL: We can make copies at the end.
 6 MR. SAMUEL: Okay.
 7 MR. POHL: The point is, the witness only
 8 has the last six pages in front of him.
 9 MR. SAMUEL: Right. Exactly.
 10 BY MR. SAMUEL:
 11 Q Are you ready?
 12 A Yes.
 13 Q In looking through documents furnished by
 14 Sherwin-Williams, Mr. Cohagan, I understand another
 15 one of that company's firsts that it acquired, in
 16 1876, its own printing facility.
 17 Did you know that?
 18 A I did not know when they acquired one, no.
 19 Q And at some point, the company, with
 20 justification, I suppose, states that it developed
 21 into a complete printing department one of the first

Page 86 1 in American industry. 2 Were you aware of that? 3 A I am aware that, since I have been with the 4 company, we have had a printing operation that 5 printed -- main function was printing labels for our 6 products. 7 Q Where is that department located? 8 A The plant right now is in Fountain Inn, 9 South Carolina. 10 Q It started its life in Cleveland, I 11 suppose, as most of Sherwin-Williams operations did? 12 MR. POHL: Object to the form. 13 A Yes. 14 Q And was it Sherwin-Williams' practice to 15 print its own product labels in the time frame between 16 1950 and 1980 in its own printing department? 17 MR. POHL: Object to the form. Beyond the 18 scope of the notice. 19 A I am aware of the requirements since 1968 20 when I came with the company, and that was to print 21 our own labels.	Page 87 1 Q That has been -- okay. That has been the 2 practice since 1968 when you had acquired first 3 personal knowledge? 4 A That is correct. 5 Q All right. Let me direct your attention to 6 the sixth page, which bears the Bates stamp number 7 10006. 8 Does this look like what you have in front 9 of you? 10 (Whereupon, document displayed to witness.) 11 A Yes, it is. 12 Q Okay. I want to ask you to help me achieve 13 some understanding of this. It says up top there, for 14 products with viscosity over A-1 Gardner Tube, et 15 cetera, would that be -- strike that. Was this 16 particular label developed to cover all products 17 meeting that definition? 18 A Viscosity is one parameter that is used in 19 determining the label caution. 20 Q So to the experts at Sherwin-Williams, if 21 they had a viscosity -- if they had a product with a
Page 88 1 viscosity over A-1 Gardner Tube, et cetera, they would 2 know to put that label on the product; is that 3 correct? 4 MR. POHL: I am going to object to the form 5 so that it is not misleading. 6 Are you saying, unless another label was 7 applied, or are you -- I am not sure what -- is your 8 question as to -- that that is the only criteria for 9 applying that label? 10 MR. SAMUEL: I am not sure, counsel. I am 11 asking for the witness' expert assistance here. I 12 don't understand it. 13 MR. POHL: Object to the form of the 14 question. 15 BY MR. SAMUEL: 16 Q Would you be willing to educate me a little 17 bit? 18 A For -- the viscosity is one parameter for 19 selecting a label caution. There are other parameters 20 that you need to use -- 21 Q Okay.	Page 89 1 A -- to come up with the one that would be 2 required for a product. 3 Q Would the other parameters be included in 4 that statement here? 5 MR. POHL: Object to the form. 6 A Yes. One of them is, yes. 7 Q Okay. If you will look inside the little 8 rectangle portion there, the part inside the rectangle 9 is, in fact, the label itself, is it? 10 A That's the label caution that is put onto a 11 label. 12 MR. POHL: I am going to object to the 13 question and ask -- I don't suggest intentionally 14 misleading -- that unless -- I would request counsel 15 to establish the foundation that we are dealing here 16 with products as stated in your complaint, I think 17 that's supposed to have been some kind of lead paints 18 or coatings. 19 So I think if you are just going through the 20 label manual dealing with labels that may have 21 gone on other kinds of products, I think the record is
Page 90 1 misleading, and I hope not intentionally misleading. 2 MR. SAMUEL: I certainly hope not, and that 3 is not my intention. 4 BY MR. SAMUEL: 5 Q I have just one more question that I will 6 invoke. I see inside that rectangle is 1-A, paren, 7 1-62, closed paren. 8 What does that mean? 9 A The 1-A indicates the particular caution 10 that is stated in the box. And 1-62 is the time that 11 it was written. 12 Q Okay. Would that -- that date, for example, 13 I take it that is January of 1962; is that -- 14 A Yes. 15 Q Would that be the date that a particular 16 product that would require the use of this label was 17 developed for -- for retail sale? 18 A No. 19 Q Did the label -- did the -- did the text of 20 the labels change from time to time, over time? 21 MR. POHL: Are you talking about the labels	Page 91 1 generally now? 2 MR. SAMUEL: Yes. 3 BY MR. SAMUEL: 4 Q The label on any given product? 5 A Yes. 6 Q Who in the company would make the decision 7 as to the text of a label, what should be incorporated 8 in the label? 9 A Currently, that is my function, what is 10 incorporated in the label caution itself. 11 Q Going back to the time frame of, say, 1970 12 to 1980, whose function would it have been? 13 MR. POHL: What kind of products? 14 Q Any kind of product. Any paint product. 15 A Certainly during 1962, there was a label 16 caution -- 17 MR. POHL: The question was '70 to '80. Was 18 that the time period you were asking about? 19 BY MR. SAMUEL: 20 Q Let me amend it. I will say 1962 to 1980. 21 That happens to be the date of this.

Page 92 1 A There were label cautions that were in a 2 book that directed people what is the proper one to 3 use. 4 Q Who wrote the book in 1962, or who had 5 responsibility for the book in 1962? 6 A I believe it was -- it was in the technical 7 department to pull this together. 8 Q The technical department being the 9 department where new paints were formulated? 10 Would that be accurate to say? 11 A Yes. 12 MR. SAMUEL: Off the record. 13 THE VIDEOGRAPHER: We are off the record in 14 the deposition of Dwight Cohagan. The time is 12:35. 15 (Whereupon, discussion off the record.) 16 (Whereupon, a brief recess was taken -- 17 12:35 p.m.) 18 (Whereupon, after recess -- 12:38 p.m.) 19 MR. SAMUEL: Back on the record. 20 THE VIDEOGRAPHER: We are back on the record 21 in the deposition of Dwight Cohagan. The time is	Page 93 1 12:38. 2 MR. SAMUEL: I will mark as Cohagan Exhibit 3 9 a document which has been marked on its face 4 confidential, which is the Minutes of the Board of 5 Operators 1,625th meeting on November 8, 1954. 6 And consistent with my -- with my 7 stipulation to Sherwin-Williams' counsel while we were 8 off the record, I propose to ask the witness only 9 about one item, namely, the New York City Paint Law 10 which is dealt with in Bates stamp number 0035-SWP- 11 000013531 and running over to the top of 13532. 12 And I will ask no further questions about 13 this document. 14 MR. POHL: Do you have an extra copy of that 15 document? 16 MR. SAMUEL: Yes. 17 MR. POHL: We have agreed this gets marked 18 and held confidential? 19 MR. SAMUEL: Right. 20 MR. POHL: Insofar as it contains -- 21 because it contains financial data and things like
Page 94 1 that. 2 MR. SAMUEL: Off the record. 3 (Whereupon, Cohagan Confidential Deposition 4 Exhibit Number 9 was marked for identification.) 5 (Whereupon, discussion off the record.) 6 THE VIDEOGRAPHER: Off the record in the 7 deposition of Dwight Cohagan. The time is 12:40. 8 (Whereupon, a brief recess was taken -- 9 12:40 p.m.) 10 (Whereupon, after recess -- 12:41 p.m.) 11 MR. SAMUEL: Back on the record. 12 THE VIDEOGRAPHER: We are back on the record 13 in the deposition of Dwight Cohagan. The time is 14 12:41. 15 BY MR. SAMUEL: 16 Q Mr. Cohagan, have you had an opportunity to 17 look at that portion of the minutes which address 18 themselves to the New York -- to the New York City 19 Paint Law on the second and third pages of the 20 document, sir? 21 A Yes, I have.	Page 95 1 Q In 1954, who in the Sherwin-Williams 2 corporate hierarchy would have had the responsibility 3 to see that labeling of Sherwin-Williams products on 4 store shelves in New York City complied with this new 5 ordinance? 6 MR. POHL: Object. It is beyond the scope 7 of the deposition notice. And it is beyond the bounds 8 of relevance with respect to this case. 9 Please answer the question, if you know. 10 A I don't know. 11 Q As of 1972 when you became involved in 12 regulatory affairs, who would have had that 13 responsibility at that time? 14 A There was -- our department would designate 15 the wording. And the label specification department 16 would be responsible for incorporating into existing 17 labels. 18 Q Okay. And who would have the responsibility 19 to see to it that the new labels that were in 20 compliance got on existing stock on shelves in 1972? 21 MR. POHL: Are you talking about with regard
Page 96 1 to New York? 2 MR. SAMUEL: Yes. 3 MR. POHL: I will continue my relevance 4 objection and object to the form in that it assumes 5 that that is with a -- are you talking about a new 6 regulation that came in in '72, or are you talking 7 about the New York one that went in in '54? 8 BY MR. SAMUEL: 9 Q That is fair. 10 Let me withdraw that question and say, 11 hypothetically, Mr. Cohagan, assume that some city 12 were to adopt its own version of the New York City 13 Paint Law in 1972, and that that required some 14 response on the part of Sherwin-Williams in connection 15 with labeling of existing stock on shelves in that 16 particular municipality. Excuse me. 17 Who within Sherwin-Williams would have had 18 the responsibility for compliance in 1972? 19 MR. POHL: Objection. Incomplete 20 hypothetical. Beyond the scope of the notice. 21 You can answer.	Page 97 1 A In our stores, it would be our stores 2 division would have the responsibility of 3 accomplishing the labeling -- 4 Q Okay. 5 A -- and on existing stock. 6 Q Would regulatory affairs and technical 7 services give them directions how to accomplish this? 8 MR. POHL: Same objection. 9 A Yes. 10 Q And the labeling department would provide 11 them with the labels to be put on existing stock? 12 MR. POHL: Continuing objection. 13 A Yes. 14 MR. SAMUEL: I have no further questions on 15 Exhibit 9. 16 And consistent with the arrangement with 17 counsel, I return it to the Court Reporter, who will 18 put it in an envelope to be marked as confidential. 19 (Whereupon, all counsel returned their 20 confidential documents to counsel.) 21 (Whereupon, discussion off the record.)

Page 98 1 MR. SAMUEL: I will mark as Plaintiffs' 2 Cohagan Deposition Exhibit 10 a composite exhibit 3 consisting of correspondence between various 4 Sherwin-Williams officials all during the calendar 5 year 1971 and which said correspondence addresses 6 itself to the subject of elimination of lead in-house 7 paints. 8 The Bates stamp numbers are -- 9 MR. POHL: Can I get a copy? I am sorry, 10 just so I can follow the numbers. 11 MR. SAMUEL: Yes. 12 (Whereupon, documents tendered to counsel.) 13 BY MR. SAMUEL: 14 Q 0035-SWP-000010434, 35, 36, 37, there is a 15 gap consequence and then 0035-SWP-000010459, 60, gap 16 sequence then 0035-SWP-000010467, 68, 69, gap sequence 17 0035-SWP-000010480, 81, gap sequence, then 0035-SWP- 18 000010499. And that's out of sequence. There is 99 19 then 98, 500. And then there is an out of order 20 sequence and Bates stamp number 0035-SWP-000010393. 21 And the last page of the exhibit is Bates stamp number	Page 99 1 0035-SWP-000010517. 2 MR. POHL: And I will just indicate, once 3 again, this is something the plaintiff has lumped 4 together and decided to staple as a composite exhibit, 5 not -- 6 MR. SAMUEL: That is correct. 7 MR. POHL: And I will reserve my objection 8 on that. 9 MR. SAMUEL: Did you get one? 10 THE WITNESS: No. 11 (Whereupon, documents tendered to witness.) 12 (Whereupon, Cohagan Deposition Exhibit 13 Number 10 was marked for identification.) 14 MR. SAMUEL: Why don't we take a little 15 break and give Mr. Cohagan some time to wade through 16 these letters? 17 THE VIDEOGRAPHER: We are off the record in 18 deposition of Dwight Cohagan. The time is 19 approximately 12:50. 20 (Whereupon, a brief recess was taken -- 21 12:50 p.m.)
Page 100 1 (Whereupon, after recess -- 1:02 p.m.) 2 MR. SAMUEL: Back on the record. 3 THE VIDEOGRAPHER: Okay. We are back on the 4 record in the deposition of Dwight Cohagan. The time 5 is approximately 1:02. 6 BY MR. SAMUEL: 7 Q Mr. Cohagan, do you have Plaintiffs' Exhibit 8 10 in front of you, sir? 9 A Yes. 10 Q Looking at the first page of that document 11 which appears to be a letter dated February 2, 1971, 12 to a Mr. R.S. Taub from a Mr. J.J. Lenzotti? 13 A Yes. 14 Q What was Mr. Lenzotti's title in 1971? 15 A He was within our research administration. 16 He reported to the vice-president and technical 17 director. Well, his exact title, I do not know. 18 Q Would it be accurate to say that, as the 19 result of a program commenced in 1971, as traced in 20 correspondence included in Exhibit 10 that, on January 21 1, 1972, all Sherwin-Williams residential paints had	Page 101 1 either had the lead eliminated from them or, in the 2 alternative, all such paint had been accurately 3 labeled as to the percentage of lead content? 4 MR. POHL: I am going to object to the form 5 of the question, A, because it is overbroad, doesn't 6 distinguish between interior and exterior, and that it 7 is misleading to the extent it attempts to summarize 8 the facts with regard to Sherwin-Williams' elimination 9 of lead from paint or the contents of the documents. 10 Subject to that, the witness can answer. 11 A It seems like the intent is to have all 12 paints below one percent or half a percent or -- by 13 January 1st of 1972, or for our interior paints, it 14 would be zero added lead by July 1st, 1972. 15 Any other paints that were manufactured that 16 were not residential paints would be labeled. 17 Q Thank you. 18 I saw you referring to one of the documents 19 in Exhibit 10. Would that have been the document 20 dated November 10, 1971, from Mr. Lenzotti to G.E. 21 Rost, R-o-s-t?
Page 102 1 A I don't know who he is. 2 Q Okay. Well, let me just -- 3 A Yes, that is the document. 4 Q And was that goal met within the year 1971? 5 A '72. 6 Q '72. 7 A I believe it was. 8 Q Did the 1971 lead-elimination project 9 include Sherwin-Williams subsidiaries, such as 10 Martins-Senour? 11 A Yes. 12 MR. POHL: Let me object to this line of 13 questioning, to the extent that it is misleading. 14 It could be maybe unfairly misleading that 15 references such as the questioner has used about the 16 elimination of lead may be inconsistent or not comport 17 with the definition given in the plaintiffs' amended 18 complaint with respect to the plaintiffs' use of lead, 19 lead-based paints, lead pigments and so forth. 20 There could be mixing of terms here, and it 21 could be ambiguous in the context of an evidentiary	Page 103 1 record, and I would object to that. 2 BY MR. SAMUEL: 3 Q Did all Sherwin-Williams subsidiaries which 4 sold paint retail to the public meet the deadlines or 5 goals set forth on January 1, 1972 and January 1, 6 1973? 7 A To the best of my knowledge, these tasks 8 were completed. 9 Q Okay. From 1968, when you joined the 10 company, until 1980, did Sherwin-Williams ever sell 11 residential paints in bulk to other retailers for 12 rebranding, other than its own subsidiary companies? 13 MR. POHL: Just for clarification, what do 14 you mean in bulk? You mean large quantities beyond 15 just -- 16 Q Large quantities. 17 MR. POHL: -- beyond a gallon -- 18 Q With that qualification, do you understand 19 me, Mr. Cohagan? 20 MR. JOYNER: I object to the question. 21 A What was the time frame?

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1 Q '68 to 1980 was the time frame of the
2 question.
3 A I cannot recall a situation like that.
4 Q Who in the company today would have that
information?
5 MR. POHL: Objection.
6 You can answer, if you know.
7 A I wouldn't know at this time.
8 Q Would sales of paint in bulk to other
9 entities such as, for example, the United States Navy,
10 be within the purview of the stores division?
11 A During what time period?
12 Q 1968 to 1980.
13 A It has changed over a period of time as to
14 who would have that responsibility.
15 Q It goes beyond the notice of deposition, but
16 who -- what department in the company today would have
17 responsibility for bulk sales of paint?
18 A Under the Sherwin-Williams names, it would
19 be the stores division.
20 Q Okay.
21

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1 State of Maryland
2 City of Baltimore
3 I, Barbara J. Evans, a Notary Public of the
4 State of Maryland, City of Baltimore, do hereby
5 certify that the within-named witness personally
6 appeared before me at the time and place herein set
7 out, and after having been first duly sworn by me,
8 according to law, was examined by counsel.
9 I further certify that the examination was
10 recorded stenographically by me and this transcript is
11 a true record of the proceedings.
12 I further certify that I am not of counsel
13 to any of the parties, nor an employee of counsel, nor
14 related to any of the parties, nor in any way
15 interested in the outcome of the action.
16 As witness my hand and seal this 13th day of
17 May, 1996.
18
19 Barbara J. Evans
20 My Commission Expires 10-28-98
21

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1 INDEX CONTINUED:
2 0035-SWP-00001622 and 1623,
3 Second letter by Mr. Spitzer,
4 Bates stamp number 68
5 0035-SWP-00003562 and 63.
6 Document titled Label Manual,
7 1963, Sherwin-Williams Company
8 Bates stamped 0035-SWP-000010001
9 through 0000100084 and
10 deposited in same packet
11 of material from Sherwin-
12 Williams, Bates stamped
13 0035-SWP-000010107 to 112 83
14 Document, Confidential,
15 Minutes of the Board of
16 Operators, 1954th meeting,
17 November 8, 1954, Bates
18 stamped 0035-SWP-000013530 to
19 340
20 (Sealed in envelope attached) 94
21 Documents, including letter
dated February 2, 1971, to
Mr. R.S. Laub from a Mr.
J.J. Lenzotti, Bates stamped
0035-SWP-000010434 to 37,
0035-SWP-000010438 to 420,
467 to 469, 480 to 481, 10499,
10498, 10500, 10393, 10517 99
Document of a portion of the
proceedings of the Raw Material
Forum of the 8th Annual
Convention of the National Paint
Varnish and Lacquer Association
at Atlantic City, New Jersey, on
November 8, 1946, Bates stamped
0035-SWP-00001397 to 3462 41

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1 MR. POHL: I will object to that in that it
2 assumed that they were bulk sales today.
3 MR. SAMUEL: Yes. Right.
4 That's all I have, Mr. Cohagan. Thank
5 you.
6 THE WITNESS: Thank you.
7 MR. POHL: We will reserve our right to have
8 the witness review and sign the transcript.
9 Thank you very much.
10 THE VIDEOGRAPHER: We are off the record in
11 the deposition of Dwight Cohagan. The time is
12 approximately 1:11. The deposition is concluded.
13 (Thereupon, at 1:11 p.m., the videotaped
14 deposition was concluded.)
15
16
17
18
19
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21

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1 INDEX
2 Videotaped Deposition of Dwight A. Cohagan
3 May 8, 1996
4 EXAMINATION BY: PAGE
5 Mr. Samuel 3
6 Cohagan EXHIBITS DESCRIPTION PAGE
7 1 Notice to Take Deposition 13
8 2 Document consisting of five
9 pages bearing the Bates stamp
10 numbers 0130, 13134, 15, 36,
11 38, and 39 21, 25
12 3 ACME Paint document, Bates stamp
13 numbers S-W 005021, 22 28
14 4 Document with Bates stamp
15 FLO 1460, 01, 02 33
16 5 Collection of documents
17 furnished by Sherwin-Williams
18 bearing Bates stamp SWP-00000427
19 to 000003485 46
20 6 Collection of documents produced
21 by Sherwin-Williams to the
plaintiffs, Bates stamp numbers
0035-SWP-00000409 through 3426,
0035-SWP-000010392, and
0035-SWP-000003470 and 3471 56
7 Document with two letters,
one dated September 14, 1971,
by Mr. H.E. Spitzer, Technical
Director, Coatings, to a Mr. W.C.
Fine, Bates stamp numbers

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1 WITNESS CERTIFICATION
2
3 I, Dwight A. Cohagan, hereby certify that I
4 have read the foregoing transcript of my deposition
5 taken in the aforementioned case on May 8, 1996.
6
7 I further certify that the transcript is a
8 true and correct transcription of the deposition with
9 the addition of the errata sheet, which is hereby made
10 a part of the deposition.
11
12 Dated this day of , 1996.
13
14 DWIGHT A. COHAGAN
15
16
17
18
19
20
21

Wright v. Lead Industries

Multi-Page™

'50s - according

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