

ROUGH DRAFT TRANSCRIPT

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THE VIDEOGRAPHER: This is the videotaped

deposition of Scotty Patrick taken in the matter of Robert Cole, et al., vs. Ashland, Incorporated, for the United States District Court, Eastern District of

Louisiana, case number 09-6584. This deposition is being held at Ashland, Incorporated, in Columbus, Ohio, on September 22nd, 2010, at 12:30 p.m.

My name is Jessie Smulski, and I am the videographer. The reporter is Kendra Johnston.

Counsel will now introduce themselves for the record.

MR. WILLIAMS: Yes. Eric Williams for the plaintiffs.

MR. CHILTON: And Larry Chilton on behalf of Ashland, Inc.

THE VIDEOGRAPHER: The reporter will now swear in the witness.

Witness sworn.

BY MR. WILLIAMS:

Q. Hell, Mr. Patrick. Can you hear me?

A. Yes.

Q. Okay. Great. Would you please state your full name and address for the record?

A. Scotty Patrick. Legal address is 8575 Danbury Boulevard, Apartment 204, Naples, Florida

34120.

Q. And what is your date of birth, sir?

A. May 4th, 1935.

Q. Okay. Did you receive a notice of deposition for your deposition here today?

A. Yes, I did.

MR. WILLIAMS: Okay. Could you please hand it to the court reporter so we can mark that as number one.

MR. CHILTON: And, Eric, just so -- you're referring to the video telephone deposition notice of Scott Patrick; correct?

MR. WILLIAMS: Yes.

MR. WILLIAMS: Thank you.

Exhibit marked.

MR. CHILTON: Okay.

BY MR. WILLIAMS:

Q. Okay. Sir, if you turn the page to page 2, did you bring anything in response to number 1?

A. Yes.

Q. Okay. What did you bring in response to number 1?

A. The documents that I reviewed prior to me preparing the written statement and also some of the

documents that I looked at after that.

Q. And what documents did you review prior to you preparing the statement?

A. I have them here, right here.

Q. Are we talking a large amount of documents? What are we talking about?

A. Oh, it's five or six sets of documents.

Q. Okay. And how thick in inches are we talking?

A. Two inches.

MR. WILLIAMS: Okay. Well, we will mark that as 1A, that stack.

MR. CHILTON: If you'd hand that stack to the reporter.

Exhibit marked

THE WITNESS: Okay.

BY MR. WILLIAMS:

Q. Okay. Were there any exhibits to your report?

A. No.

Q. Okay. Did you bring any scientific or medical literature that you relied on in forming your opinions?

A. Nothing really medical. The scientific,

some of the documents that are in this first batch here could be classified as scientific.

Q. Okay. Were there any journal articles in that stack?

A. Yes.

Q. Okay. Fair enough. Have you brought a list of all cases that you have testified either at a deposition or trial in the last four years?

A. I did not -- I have not done any.

Q. Okay. You have not served as an expert in any other cases in the last four years?

A. No.

Q. Have you ever served as an expert in litigation?

A. Yes. Well, I've served as a witness. I'm not sure of the classification.

Q. Okay. Do you understand what I mean by expert witness?

A. Maybe you could explain.

Q. Where you offer expert witness opinions in

21 litigation.  
22 A. Well, I would -- I can offer information  
23 based on my experience and training and so forth.  
24 Somebody will have to determine whether that's expert

6

1 or not.  
2 Q. Okay. Did you bring a statement itemizing  
3 the total amount of work you've done in this case?  
4 A. Well, in what regard? I'm --  
5 Q. An invoice for your services, compensation.  
6 A. I do not have an invoice, no.  
7 Q. Have you charged for services in this case?  
8 A. No.  
9 Q. Do you plan on charging for services in this  
10 case?  
11 A. I don't know.  
12 Q. You don't know? Have you discussed your  
13 hourly rate or your fees for services offered in this  
14 case with anyone?  
15 A. No.  
16 Q. Okay. Did you bring your file in this case?  
17 A. What file? The stuff I reviewed before the  
18 written -- the written statement and also what I've  
19 reviewed since, I brought that, yes.  
20 Q. And that would be in 1A that we already  
21 discussed?  
22 A. Yes, before.  
23 Q. Okay. All communications between you and  
24 the attorneys in this case, did you -- did you bring

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7

1 anything in response to number 7?  
2 A. The communications that I had were basically  
3 relating to the preparation of my written statement.  
4 Q. And did you bring those with you here today?  
5 A. I do not have them, no.  
6 Q. Okay. Were you provided this notice and  
7 told that you were to bring those communications?  
8 MR. CHILTON: Mr. Williams, for the  
9 record --  
10 MR. WILLIAMS: Yes.  
11 MR. CHILTON: The notice, as you know, just  
12 came in a couple days ago. I don't believe that there  
13 are any significant communications other than just the  
14 report and any transmittals in between, but to the  
15 extent that there are, why don't we just refer to those  
16 as Exhibit 1B, and I will provide those to you, and we  
17 can add those to the transcript.  
18 MR. WILLIAMS: Okay. Actually, if you could  
19 provide them straight to the court reporter, that would  
20 be -- that would be great.  
21 MR. CHILTON: We would be happy to do so,  
22 and I'll make sure that happens within the next day.  
23 MR. WILLIAMS: Okay.  
24

8

1 BY MR. WILLIAMS:  
2 Q. Have you served as an expert witness in any  
3 other cases where there's allegation of exposure to  
4 benzene or toluene?  
5 A. I've served as a witness relative to  
Page 6

6 exposure of benzene, toluene. I would not classify it  
7 as being an expert witness.  
8 Q. Okay. And how many times have you served as  
9 a witness for that?  
10 A. Three, four times.  
11 Q. Okay. Remember the names of the cases?  
12 A. No.  
13 Q. Okay. And I think you said earlier you do  
14 not feel that you have served as an expert witness in  
15 the past; is that correct?  
16 A. I was never classified as an expert witness.  
17 Q. Fair enough. Did you bring any rough drafts  
18 of your report?  
19 MR. CHILTON: And, Eric, let's refer to  
20 those as 1C because that's what I was just referring  
21 to, and we'll do the same thing with that. Okay?  
22 MR. WILLIAMS: Okay. And is that here today  
23 or he didn't bring that?  
24 MR. CHILTON: He did not bring that, and I'm

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1 going to have to see if we have it and print it.  
2 MR. WILLIAMS: Okay.  
3 BY MR. WILLIAMS:  
4 Q. Did you write your report in this case, sir?  
5 A. I did not do the actual first draft, but I  
6 did review the first draft, and this was prepared based  
7 upon conversations I had with my attorney, and his  
8 office prepared a first draft. I reviewed it, made  
9 corrections, submitted them back to them. They  
10 corrected it, and I think there might have been one

Page 7

11 more iteration where we had to make some further  
12 corrections. So in --  
13 Q. And who was your -- I'm sorry.  
14 A. So, in essence, the answer is I provided all  
15 the content for the thing, but I did not physically  
16 myself prepare it other than making the corrections.  
17 Q. And you said you provided it to your  
18 attorney. Who is your attorney?  
19 A. Mr. Chilton here.  
20 Q. Okay. So you provided -- they prepared the  
21 first rough draft and then sent it to you for  
22 revisions, and you sent it back until you had a final  
23 copy; correct?  
24 A. That's correct.

10

1 Q. Okay. Did you bring a copy of your CV with  
2 you today?  
3 A. No, I did not.  
4 Q. Okay. Do you have a copy of your report  
5 with you?  
6 A. Yes.  
7 MR. WILLIAMS: Okay. Let's mark that as 1D.  
8 And if you could turn to the signature page and tell me  
9 if your copy is signed.  
10 MR. CHILTON: Eric, for the record, we had a  
11 signed copy sent to John that it was my understanding  
12 he was going to provide to you before the deposition.  
13 The copy that is here today is signed.  
14 MR. WILLIAMS: Okay. So we'll mark that as  
15 1D, sir.  
16 Exhibit marked.  
Page 8

17 Q. Okay. Let's move on. What is your  
18 educational background, sir?  
19 A. I have a degree in chemical engineering,  
20 B.S., and I also have a Master's of Science degree in  
21 chemical engineering.  
22 Q. Okay. Who do you currently work for?  
23 A. I'm retired.  
24 Q. Do you work for Ashland in any capacity at

11

1 this point?  
2 A. The only official relationship I have with  
3 Ashland at this time is -- is I did enter into a  
4 consulting agreement with them approximately a year ago  
5 which was signed, but at this point it's -- I have not  
6 really done anything in the consulting, and the  
7 question is what I'm doing today, does that fall under  
8 that agreement and will I be paid, and so that's -- I  
9 haven't discussed it with anybody, but that --  
10 probably, if the case goes to trial, I most likely will  
11 be compensated by Ashland under that agreement.  
12 Q. What is your compensation rate in that  
13 agreement?  
14 A. I think it was about 150, \$160 an hour,  
15 something like that, which was basically the rate that  
16 I had with Ashland for several years.  
17 Q. Okay. Do you have a copy of that agreement  
18 at your house or your office?  
19 A. I probably do, but I don't have it with me.  
20 MR. WILLIAMS: Okay. I would like to mark  
21 that as Exhibit No. 2 and have Mr. Chilton provide that

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22 to the court reporter. Can you forward that to  
23 Mr. Chilton for us?  
24 MR. CHILTON: Mr. Williams, we definitely

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1 will do that.  
2 MR. WILLIAMS: Okay.  
3 BY MR. WILLIAMS:  
4 Q. How many hours have you put into preparation  
5 for your report in this case?  
6 A. Probably -- we've had about three sessions.  
7 I would guess about 10 to 15 hours, something like  
8 that.  
9 Q. Okay. And how many hours have you put in  
10 since you've completed your report in preparation for  
11 your deposition today?  
12 A. Three, four.  
13 Q. Okay. All right.  
14 A. Maybe five.  
15 Q. Okay. When you were employed by Ashland,  
16 were you employed by Ashland, Inc.?  
17 A. Yes.  
18 Q. And what year did you start you said?  
19 A. 1958. Well, I served in the summer of 1957,  
20 and I became a full-time employee in July 1, 1958.  
21 Q. Okay. And what year did you retire?  
22 A. 2000.  
23 Q. Okay.  
24 A. But I did consult pretty much full time with

13

1 Ashland for about a year after that.  
Page 10

2 Q. And what year was that, sir?  
3 A. 2000, so I -- the following year I was  
4 pretty much a full-time employee doing some special  
5 projects for Ashland.  
6 Q. Did your consulting involve those cases that  
7 you served as a witness for Ashland in?  
8 A. No.  
9 Q. Okay. Were you compensated for any of those  
10 cases that you served as a witness for Ashland in?  
11 A. No.  
12 Q. Have you been compensated by Ashland since  
13 you signed that consulting agreement?  
14 A. No.  
15 Q. Who did you talk to in preparation for your  
16 report?  
17 A. Mr. Chilton, Mr. Fitzpatrick, Lisa Delhunt.  
18 Q. And who is Mr. Fitzpatrick?  
19 A. He's an attorney with Cetrulo & Capone  
20 Boston.  
21 Q. Got you. And he would be national counsel  
22 for Ashland, Inc.?  
23 A. I think so.  
24 Q. Okay. And who is Ms. Delhunt?

14

1 A. She's a paralegal assistant for Ashland law  
2 department.  
3 Q. Can you tell me what year Ashland first  
4 started manufacturing toluene?  
5 A. Probably '57, 1957, maybe '58, somewhere in  
6 that time frame.

Page 11

7 Q. Can you tell me what plants they started  
8 manufacturing toluene in in '57 or '58?  
9 A. This -- this would have been at our Buffalo  
10 refinery in Buffalo, New York.  
11 Q. And what year did they start manufacturing  
12 toluene in the Kentucky facility?  
13 A. In the early '60s, probably 1961, '62,  
14 somewhere in that time frame.  
15 Q. Okay. Since Ashland began manufacturing  
16 toluene in approximately '57, '58, did they produce any  
17 other grade besides nitration grade?  
18 A. Not to my knowledge.  
19 Q. Okay. Have you reviewed all the documents  
20 to determine if there has ever been production of any  
21 other type of toluene besides nitration grade?  
22 A. Of the documents that I reviewed, there's no  
23 indication that we produced anything but nitration  
24 grade.

15

1 Q. And the documents that you reviewed, are  
2 those the ones you have with you today?  
3 A. Yes.  
4 Q. Where did you get those documents from?  
5 A. I was provided them by Mr. Chilton, the  
6 attorney.  
7 Q. Did you make any independent investigation  
8 into the archive records of Ashland to determine if  
9 there was another grade of toluene ever sold?  
10 MR. CHILTON: Object to the form.  
11 MR. WILLIAMS: You can answer, sir.  
12 A. I did not personally delve into the records,  
Page 12

13 no.  
14 BY MR. WILLIAMS:  
15 Q. Do you know if historical records for the  
16 sale or the manufacture of toluene from the '60s and  
17 '70s exist today with Ashland?  
18 A. I do not know of any records existing, no.  
19 Q. Okay. When did Ashland start selling  
20 benzene?  
21 A. Well, it would have been about the time we  
22 started producing toluene up at -- up at Buffalo  
23 because we produced benzene, toluene and xylene up  
24 there.

16

1 Q. And that would be around '57 or '58?  
2 A. Yes.  
3 Q. Okay. And when did Ashland start producing  
4 toluene in Kentucky?  
5 A. At the time that we started up the Udex  
6 plant, which would have been in early '60, '61,  
7 somewhere in that -- '62, somewhere in that time frame.  
8 Q. When did Ashland start testing toluene for  
9 benzene content that they manufactured?  
10 A. Well, that would have been when we started  
11 our production up in Buffalo, which would have been  
12 '57, '58.  
13 Q. And can you tell me what type of testing  
14 methods were used in '57 or '58 to determine the  
15 benzene content of toluene in '57 and '58?  
16 A. I do not have any direct knowledge of that  
17 particular testing because that was at the Buffalo

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18 refinery, and my knowledge of that particular  
19 production was -- was based on records that I saw  
20 whereas the production at Catlettsburg, I had more  
21 direct knowledge.  
22 Q. And can you tell me the name of the testing  
23 methods used since 1961 for toluene that contain  
24 benzene?

17

1 A. Well, the basic testing method was what we  
2 call the ASTM, or American Society for Testing  
3 Materials, testing approach.  
4 Q. And you believe that Ashland was using an  
5 ASTM method in 1961 to determine the benzene content of  
6 toluene?  
7 A. Well, you -- that particular test does not  
8 directly give you the benzene content. It -- it tests  
9 for the boiling point, for the color, for the acid wash  
10 color, for various other things. It doesn't give you  
11 the direct content, but through various correlations,  
12 you can show that -- if you have a boiling point that  
13 is one degree Celsius or less, then -- then there is a  
14 maximum amount of benzene that can be in the toluene.  
15 Q. And would that be like a boiling point  
16 diagram that you're referring to?  
17 A. Well, it's -- well, it's called a boiling  
18 point curve, and -- and that's a standard ASTM test.  
19 Q. And those are methods that have been in  
20 textbooks for decades?  
21 A. Been there for a long time.  
22 Q. Okay. On page 4 of your report, you refer  
23 to Ashland chemists authored documents. What are you

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24 referring to?  
1 A. What page was that?  
2 Q. Four, sir.  
3 A. And what line? Where are we?  
4 Q. Okay. Go to the last line before the last  
5 paragraph.  
6 A. Okay.  
7 Q. Okay. And it says Ashland chemists who  
8 authored some of these documents. What documents are  
9 you referring to?  
10 A. These documents were the letters I think  
11 that were written to customers asking about the quality  
12 of the toluene.  
13 Q. And are those documents in Exhibit 1A?  
14 A. They're in this -- I'm not sure whether this  
15 is Exhibit 1A or not, but this is the document I have  
16 right here.  
17 Q. Fair enough. What suppliers did Ashland buy  
18 toluene from the 1961 to 1994 period?  
19 MR. CHILTON: Object to the form.  
20 THE WITNESS: May I answer?  
21 MR. CHILTON: Yes.  
22 MR. WILLIAMS: Yes.  
23 A. Most of the toluene that we sold through our  
24 distribution group was produced by Ashland, but we did

18

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3 were purchased to fulfill certain specific geographies  
4 that we may not be able to, you know, serve  
5 economically and so forth, or maybe there's some -- we  
6 needed more production than we could produce at any  
7 particular time.  
8 BY MR. WILLIAMS:  
9 Q. Did Ashland run tests on toluene that was  
10 purchased from suppliers since 1961 through 1994?  
11 A. The answer is yes.  
12 Q. And was that done on a routine basis for  
13 every shipment?  
14 A. I can't say that specifically because  
15 sometimes those products were shipped directly to the  
16 distribution location, and that would be their  
17 responsibility to test that, and I have indirect  
18 knowledge of that, but no direct knowledge.  
19 Q. Okay. Did the distribution locations have  
20 laboratories?  
21 A. Yes.  
22 Q. And are you familiar with a distribution  
23 location in Jackson, Mississippi?  
24 A. Yes.

20

1 Q. What year did that business start?  
2 A. I don't know because that was an acquired  
3 facility.  
4 Q. When did -- when did Ashland acquire it?  
5 A. Late '60s when we purchased the F.H. Ross  
6 Company.  
7 Q. Okay. Prior to the purchase of it sometime  
8 in the late '60s, did Ashland sell or supply toluene,

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9 xylene or benzene to the company that was acquired?  
 10 A. You're talking about to that location or --  
 11 Q. Yes, sir.  
 12 A. -- just the company or what?  
 13 Q. Yes, sir, that location.  
 14 A. I would -- and this is -- would be based  
 15 upon the way we ran our business. That would be one of  
 16 the last locations that we would probably supply out of  
 17 our toluene produced at our refinery because of the  
 18 geography, the distance from our production location,  
 19 and also because of the geography.  
 20 Q. And when you say "last," what do you mean by  
 21 that?  
 22 A. Well, as we acquired more and more of the  
 23 distribution locations, we would over a period of time  
 24 move our product from Catlettsburg into those

21

1 locations, but this took a period of several years, and  
 2 Jackson, Mississippi, is on the outer fringe of what we  
 3 might consider serving out of our Catlettsburg.  
 4 Q. Right. But was the company that was  
 5 acquired doing business with Ashland prior to the  
 6 acquisition of the distributorship?  
 7 MR. CHILTON: Object to the form.  
 8 A. We were not a big supplier to them prior to  
 9 the acquisition to my knowledge. They were operating  
 10 in a geography that was outside our marketing territory  
 11 at that time, and that was one of the reasons we wanted  
 12 to purchase them, so that we could have access to that  
 13 market area.

Page 17

14 BY MR. WILLIAMS:  
 15 Q. But you did supply chemicals such as  
 16 toluene, xylene and benzene prior to the acquisition;  
 17 is that fair to say?  
 18 MR. CHILTON: Object to the form.  
 19 A. My -- I have no information that says that  
 20 we did, and my recollection is that we did not.  
 21 BY MR. WILLIAMS:  
 22 Q. Okay. Well, earlier you said you were not a  
 23 big supplier to that location prior to the acquisition.  
 24 Does that mean you didn't --

22

1 A. No, no. I said it would be -- I said that  
 2 it was -- would be one of the last locations that we  
 3 would provide -- Ashland supplied toluene to.  
 4 Q. But after that you said it was not a big --  
 5 we didn't -- we're not a big supplier to that location  
 6 prior to the acquisition. If you'd like, I can get the  
 7 court reporter to read it back.  
 8 A. I didn't say that, I don't think.  
 9 Q. You didn't mean to say that is what you're  
 10 saying?  
 11 MR. CHILTON: I'll object to the form of  
 12 that question because you are mischaracterizing what he  
 13 said.  
 14 MR. WILLIAMS: We can have -- Miss Court  
 15 Reporter, could you please read that back for the  
 16 witness?  
 17 MR. CHILTON: Eric, can we go off the record  
 18 for a second? I think I can clarify, make it easier.  
 19 If you want to have her read that, that's fine.  
 Page 18

20 MR. WILLIAMS: I don't think we need to go  
 21 off the record for this.  
 22 MR. CHILTON: I'm just asking if you want  
 23 to.  
 24 MR. WILLIAMS: That's okay.

23

1 MR. CHILTON: Okay. She can read several  
 2 pages.  
 3 You need to go back quite a ways because the  
 4 difference between the questions about F.H. Ross as a  
 5 company as opposed to the specific Jackson,  
 6 Mississippi, location. That's all I was going to  
 7 suggest, Eric, because I think that's where the  
 8 confusion lies in terms of where you changed your  
 9 questioning.  
 10 MR. WILLIAMS: Okay. Well, we can move on.  
 11 Disregard, Miss Court Reporter.  
 12 BY MR. WILLIAMS:  
 13 Q. In your report, you make a statement Ashland  
 14 could not and did not sell benzene, toluene and xylene  
 15 in drums to any Louisiana customers until the early  
 16 '70s. Can you explain why you said they could not, and  
 17 then tell me why they did not?  
 18 A. At what particular location? I'm sorry.  
 19 Q. Well, you said to customers in Louisiana.  
 20 I'm just asking you --  
 21 A. Oh, okay.  
 22 Q. -- why did you opine that they could not and  
 23 did not?  
 24 A. Well, first off, again, it's geography and

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1 the ability to supply that. Basically, when we produce  
 2 toluene at Catlettsburg, which is in Kentucky, we would  
 3 ship that out by tank -- by, again, rail car and by  
 4 barge, and we did not ship benzene by drums out of our  
 5 refinery, so -- so we would not be supplying a location  
 6 with drum material.  
 7 Q. Did you supply toluene or benzene or xylene  
 8 to any distributor in Mississippi or Louisiana prior to  
 9 1970?  
 10 A. I have no knowledge that we did, no.  
 11 Q. Do you have any documentation to either  
 12 prove or disprove that benzene, toluene or xylene was  
 13 sold or supplied to any distributors in Louisiana or  
 14 Mississippi prior to 1970?  
 15 A. I have no proof that we did, no.  
 16 Q. You said "We did not have a drumming  
 17 operation in Kentucky until 1970."  
 18 A. No, we did not have a drumming operation in  
 19 Kentucky.  
 20 Q. Did the distributorships such as the one in  
 21 Jackson, Mississippi, have the capability to drum  
 22 solvents such as benzene, toluene and xylene prior to  
 23 1970?  
 24 MR. CHILTON: Object to the form of the

24

25

1 question. I don't know what you mean by  
 2 distributorships before 1970.  
 3 BY MR. WILLIAMS:  
 4 Q. Mr. Patrick, you testified that there was a  
 Page 20

5 distributorship in Jackson, Mississippi; is that  
6 correct? Ashland?  
7 A. You told me there were, right.  
8 Q. Oh. My question to you is, did that  
9 facility have the capability of drumming a bulk solvent  
10 such as benzene or toluene prior to 1970?  
11 A. I don't know.  
12 Q. Fair enough.  
13 Did Ashland have any distributorships in  
14 Louisiana from '62 to '94?  
15 A. In Louisiana?  
16 Q. Yes, sir.  
17 A. Yes.  
18 Q. Can you tell me where those distributorships  
19 were located?  
20 A. In Louisiana?  
21 MR. CHILTON: For which time frame, Counsel?  
22 I'm sorry.  
23 MR. WILLIAMS: Any time from 1962 to 1994.  
24 A. These would have been not in the '60s, but

26

1 certainly after -- after we -- up in '94, we definitely  
2 had -- well, I think we shut it down, but in Shreveport  
3 and Baton Rouge, we had locations.  
4 Q. Was there a specific name for the one in  
5 Shreveport?  
6 A. I don't know what name you're asking for.  
7 It would be an Ashland distribution facility.  
8 Q. Okay. And can you give me the dates that  
9 the Shreveport facility was in operation?

Page 21

16 Q. Okay. Can you tell me if the Shreveport  
17 facility supplied benzene in the 1980's?  
18 A. Again, I'm speculating because I don't have  
19 any direct knowledge on that, but the answer is  
20 probably.  
21 Q. Can you -- can you tell me if the Shreveport  
22 facility supplied or sold toluene in the '60s?  
23 A. I think the same answer applies. I'd have  
24 to speculate and guess, and the answer is I would say

28

1 no.  
2 Q. Can you tell me if the Shreveport facility  
3 supplied toluene in the '70s?  
4 A. Again, speculating is maybe.  
5 Q. Okay. Can you tell me if the Shreveport  
6 facility supplied toluene in the '80s?  
7 A. Maybe, speculating again.  
8 Q. Can you tell me if the Shreveport facility  
9 supplied toluene in the '90s?  
10 A. Again, speculating.  
11 Q. Have you -- Does Ashland have any documents  
12 to either prove or disprove whether or not the  
13 Shreveport facility sold benzene or toluene at any  
14 period from '62 to '94?  
15 A. I have no direct knowledge of that.  
16 Q. Fair enough. Can you tell me what year  
17 Ashland sold benzene in drums?  
18 A. Well, we started in 1958 selling benzene. I  
19 think most of the benzene sold out of -- out of Buffalo  
20 was bulk benzene, but then as we acquired more and more

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10 A. I cannot.  
11 Q. Would it be fair to say in the '60s, '70s,  
12 or '80s? Can you give me a decade?  
13 MR. CHILTON: I'll object to the form  
14 because he's said not in the '60s.  
15 BY MR. WILLIAMS:  
16 Q. Can you tell me if the Shreveport facility  
17 was in operation in the '70s?  
18 A. Probably.  
19 Q. Okay. Can you tell me if the Shreveport  
20 facility was in operation in the '80s?  
21 A. Probably.  
22 Q. Can you tell me if the Shreveport facility  
23 was in operation in the '90s?  
24 A. Probably, but most likely, yeah.

27

1 Q. Okay. Can you tell me if the Shreveport  
2 facility supplied benzene in the '70s, '80s and '90s?  
3 A. Well, you're asking a pretty broad time  
4 frame. Can you narrow the time frame?  
5 Q. Sure. Okay. Can you tell me if the  
6 Shreveport facility supplied benzene in the '60s?  
7 MR. CHILTON: And I'll object only because  
8 he already said there wasn't a facility in the '60s.  
9 A. To my knowledge, I don't know.  
10 BY MR. WILLIAMS:  
11 Q. Okay. Can you tell me if the Shreveport  
12 facility supplied or sold benzene in the 1970's?  
13 A. You're asking me to make a guess, and the  
14 answer is I -- you know, I can speculate, but I can't  
15 give information based on my knowledge.

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21 of the distribution facilities, then we would have --  
22 we would have started selling it in drums, and that  
23 would probably be in the late '50s, early '60s, in --  
24 in what we would call the heart of America where we had

29

1 a lot of distribution facilities.  
2 Q. Can you tell me what year Ashland started  
3 selling toluene in drums?  
4 A. Again, the answer would be the same as for  
5 benzene.  
6 Q. Which -- could you give me a date, please?  
7 A. Probably in the early '60s.  
8 Q. Fair enough. Would that be the same answer  
9 for xylene?  
10 A. Yes.  
11 Q. Fair enough. Is the Jackson, Mississippi,  
12 distributorship still in operation today?  
13 A. I do not know.  
14 MR. CHILTON: And just for the record, when  
15 you keep saying distributorship, do you mean the IC&S  
16 distribution facility? If you could clarify that.  
17 BY MR. WILLIAMS:  
18 Q. I assume that's the only facility in the  
19 Jackson, Mississippi, area that Ashland owns; Is that  
20 correct, Mr. Patrick?  
21 A. That's the only one I'm aware of.  
22 Q. Fair enough.  
23 MR. CHILTON: Thank you.  
24

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1 BY MR. WILLIAMS:  
2 Q. In your report, you state that the majority  
3 of toluene and xylene sold east of the Mississippi  
4 River was produced by Ashland. When you say  
5 "majority," can you give me a percentage? Are we  
6 talking 60, 50? What percentage are you referring to?  
7 A. Probably -- it would depend on the year, but  
8 probably 80 plus percent, maybe close to 90 sometimes.  
9 Q. Okay. What's significant about east of the  
10 Mississippi River?  
11 A. Again, it's the economics of serving the  
12 market. We -- we were located on the river and we  
13 could transport products more readily on the river. It  
14 also related to rail transportation. So it's proximity  
15 to our supply location.  
16 Q. Well, let me ask you this, Mr. Patrick. Is  
17 the Shreveport facility located west of the Mississippi  
18 River?  
19 A. That's a good question. I think it probably  
20 is. It's right -- the Mississippi River goes right up  
21 part of Louisiana and also goes up in Mississippi, so  
22 my guess is it would be west of the Mississippi.  
23 Q. Okay. And so what percentage of toluene was  
24 purchased west of the Mississippi from suppliers?

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1 MR. CHILTON: I'll object to the form.  
2 A. It would certainly be more than -- than on  
3 the east because, again, for the transportation issue,  
4 and you would have to look at, you know, the real west  
5 market, California and Arizona and so forth, which

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6 would probably be the bigger part of the market, so I  
7 would say a very high percentage was purchased.  
8 BY MR. WILLIAMS:  
9 Q. Are you aware of whether or not Ashland ever  
10 purchased commercial grade toluene from suppliers?  
11 A. I'm not aware of that, no.  
12 Q. Are you aware of whether or not Ashland  
13 purchased crude toluene from any of its suppliers?  
14 A. I'm not aware of that, no.  
15 Q. Does Ashland have any paperwork to evidence  
16 testing of toluene from its suppliers?  
17 A. Ashland have --  
18 Q. Yes, sir.  
19 A. Yes.  
20 Q. They have current testing data of the actual  
21 truck or barge loads of toluene coming in from the  
22 suppliers?  
23 A. Well, you're asking me a contemporaneous  
24 question, so I -- I haven't looked at the current

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1 records.  
2 Q. Okay. So as you sit here today, you're not  
3 sure one way or the other if they still maintain those  
4 records?  
5 A. Well, I can tell you that Ashland had a --  
6 had a policy and a procedure of periodically testing  
7 products that they purchased, yes.  
8 Q. Did Ashland sell toluene in truckloads, you  
9 know, 18-wheeler truckloads, from '62 to '94?  
10 A. Again, you've got a very broad time frame,  
11 and the answer would be yes for that very broad time

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12 frame.  
13 Q. Can you tell me whether or not Ashland sold  
14 toluene in truckloads from '62 to '94 in Louisiana?  
15 A. Truckloads?  
16 Q. Yeah, 18-wheelers.  
17 MR. CHILTON: I'm just objecting to the very  
18 broad time frame. '62 to '94 was your question?  
19 MR. WILLIAMS: Yes, sir.  
20 MR. CHILTON: Thank you.  
21 BY MR. WILLIAMS:  
22 Q. Do you know, sir?  
23 A. I do not know. I would suspect not, but  
24 that's again speculating.

33

1 Q. And the same question for Mississippi. Can  
2 you tell me whether or not Ashland sold toluene in  
3 truckloads in Mississippi from '62 to '94?  
4 MR. CHILTON: Same objection.  
5 A. And my answer would be the same, is I would  
6 think not, but that would be a very specific situation  
7 where -- where it would require that much quantity.  
8 BY MR. WILLIAMS:  
9 Q. Did Ashland sell benzene in truckloads from  
10 '62 to '84 in either Louisiana or Mississippi?  
11 MR. CHILTON: I'll object to the form. You  
12 said '62 to '84. I just want to make sure that you --  
13 MR. WILLIAMS: I said '94, but --  
14 A. Well, I can tell you with assurance that we  
15 didn't sell it after '77. Well, are you saying  
16 truckloads or drums now?

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17 BY MR. WILLIAMS:  
18 Q. Truckloads.  
19 A. I don't think we sold -- I could almost say  
20 we didn't sell any certainly up in the '80s and '90s,  
21 no.  
22 Q. Okay. And you're not certain what year  
23 Ashland acquired that property in Jackson, Mississippi;  
24 is that correct?  
1 A. Well, I think it came when we purchased F.H.  
2 Ross Company, which was in the late '60s.  
3 Q. Okay. Fair enough.  
4 Sir, what was your methodology used in this  
5 case?  
6 A. I'm not sure I understand the question.  
7 Q. Your methodology in preparing your report  
8 and offering these expert opinions here today.  
9 A. Well, it was based on my own direct  
10 experience plus looking at some of the documents and  
11 refreshing my memory with some associates and so forth.  
12 Q. Did you rely on any peer reviewed literature  
13 in forming your opinions?  
14 A. Are you talking about scientific documents  
15 or --  
16 Q. Yes, sir, like peer reviewed studies in  
17 journals.  
18 A. I did not look at any outside, independent  
19 studies. I looked at our own records, and I looked at  
20 the test methods and those things, and to the extent  
21 that they were peer reviewed, why, then yes, but no  
22 independent scientific studies, no.

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23 Q. What test methods did you review?  
24 A. The ASTM test methods, the military spec, so

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1 forth.  
2 Q. And did you put those ASTM test methods in  
3 your Exhibit 1A pile of documents?  
4 A. Yes.  
5 Q. Okay. Did you perform any tests in  
6 preparing for your report?  
7 A. Physical tests?  
8 Q. Yes, sir.  
9 A. No.  
10 Q. When did Ashland first sell benzene in  
11 Louisiana?  
12 A. Ashland?  
13 Q. Yes, sir.  
14 A. As -- as labeled as Ashland or selling it  
15 through somebody else or what? I guess I'm --  
16 Q. Either.  
17 A. I guess I don't really know.  
18 Q. And the same question. When did Ashland  
19 first sell toluene in Louisiana?  
20 A. I don't know.  
21 Q. Would that be the same answer for xylene?  
22 A. Yeah.  
23 Q. How many gallons would a truckload of  
24 toluene -- a truckload contain of toluene?

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1 A. Well, you could have different varieties,  
Page 29

2 but up to 4,000 gallons would be a typical, 3,500 maybe  
3 to 4,000, depending on the size truck.  
4 Q. Can you tell me whether or not the  
5 distributorship in Shreveport, Louisiana, or the one in  
6 Jackson, Mississippi, would store toluene that it  
7 received from suppliers with toluene manufactured by  
8 Ashland in the same storage tank?  
9 MR. CHILTON: Object to the form of the  
10 question and foundation. He hasn't testified that they  
11 received it from suppliers at those two locations.  
12 BY MR. WILLIAMS:  
13 Q. Let me rephrase my question. Did the  
14 Shreveport facility have storage tanks?  
15 A. Yes.  
16 Q. Did the Jackson, Mississippi, facility have  
17 storage tanks?  
18 A. Yes.  
19 Q. Did the Shreveport facility store toluene in  
20 the storage tanks at its location?  
21 A. I have no direct knowledge, but I would  
22 speculate that they did.  
23 Q. Did the Jackson, Mississippi,  
24 distributorship store -- have storage tanks and store

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1 toluene in their storage tanks?  
2 A. Again, I have no direct knowledge, but I  
3 would speculate that they did.  
4 Q. Okay. Can you tell me when Ashland created  
5 its first warning label for 55-gallon drums of toluene?  
6 A. Warning label?  
7 Q. Yes, sir, the labels that are affixed on the  
Page 30

8 drums.  
9 A. We've always had warning labels ever since I  
10 joined the company back in '57, '58. The warning  
11 labels changed over time as the requirements changed,  
12 but, you know, that was a practice when I joined the  
13 company.  
14 Q. And can you tell me what year Ashland first  
15 created warning labels that went on the 55-gallon drums  
16 for benzene?  
17 A. Well, again, it would go back to when  
18 they -- when they got into the business for selling  
19 benzene.  
20 Q. Which was -- the year?  
21 A. Well, would have been in '57, '58.  
22 MR. WILLIAMS: Fair enough I'm going to --  
23 Miss Court Reporter, would you hand the witness the  
24 toluene warning labels? And we can mark that -- I

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1 forget. What did you say? The next one should be 3;  
2 right?  
3 MR. CHILTON: That's fine. Yes. Do you  
4 have more than one copy of that or is it just one group  
5 exhibit?  
6 MR. WILLIAMS: It's just one group exhibit  
7 of the toluene labels that were produced in this case.  
8 MR. CHILTON: Thank you. Do you know if the  
9 set you provided to the reporter has the Bates numbers  
10 on them?  
11 MR. WILLIAMS: Yeah. Look on the side.  
12 MR. CHILTON: Great. Thank you.  
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13 THE WITNESS: Okay. I have a bunch of  
14 papers in front of me on labeled toluene.  
15 BY MR. WILLIAMS:  
16 Q. Yes, sir. These are the labels that were  
17 produced in this case on toluene, and I'd like you to  
18 look starting with the first one, and can you tell me  
19 anywhere on any of these labels do you see the words  
20 "nitration grade toluene"?  
21 A. I do not.  
22 Q. Okay. Do you know what a CAS number is?  
23 A. Chemical abstract -- I don't know what the S

39

1 stands for. Chemical abstract series, I guess.  
2 Q. Just tell us in layman's terms, what is that  
3 number used for?  
4 A. Well, it's to classify what the chemical is  
5 so that the government and the scientific body can --  
6 can understand what that chemical is. It's a way of  
7 labeling chemicals.  
8 Q. Fair enough. Can you tell me if there is a  
9 different CAS number for nitration grade toluene and  
10 crude toluene or commercial toluene?  
11 A. The answer is I do not know.  
12 Q. Fair enough. Okay. We can hand that back  
13 to the court reporter.  
14 I'm going to show you the next document that  
15 we should mark as 4, and it's got a Bates stamp  
16 starting of 001, and it is the first material safety  
17 data sheet that was provided from Ashland in this case.  
18 And let me in know when she's marked it.  
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19 MR. CHILTON: She's just starting now.  
20 Exhibit marked.  
21 THE WITNESS: Okay. I have a material  
22 safety data sheet.  
23 BY MR. WILLIAMS:  
24 Q. Okay. And it should have a Bates stamp of

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1 00001; correct?  
2 A. Correct.  
3 Q. Can you tell me the date on that?  
4 A. Where is it?  
5 Q. I can't find it either.  
6 A. The date prepared is blank.  
7 Q. Okay. Can you tell me this? What year did  
8 Ashland first prepare material safety data sheets for  
9 toluene?  
10 A. Well, this -- if we're talking about the  
11 current material safety data sheet, this would have  
12 gone back to the -- the requirements that took place  
13 when SARA Title -- Title XIII or Title III came into  
14 effect, and we've been -- we had been preparing safety  
15 data sheets ever since then. We also had safety data  
16 sheets prepared before then, but they would not have  
17 been according to government requirements. They would  
18 have been more to commercial and industrial standards.  
19 Q. Okay. And I guess my question to you is --  
20 I know this is the first one that was produced and it's  
21 early on. Do you know what decade, approximately, the  
22 first MSDS sheet for toluene was produced by Ashland?  
23 A. Probably in the '80s.

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4 opposed to a material safety data sheet would not  
5 necessarily make that requirement, so I'm -- I don't  
6 see that as unusual.  
7 Q. Well, let me ask you this. Do you know  
8 whether or not any of the suppliers at the Shell, Sun  
9 Oil, Exxon, Mobile sell toluene that is identified on  
10 material safety sheets as commercial grade toluene?  
11 MR. CHILTON: Object to the form.  
12 A. Are you saying do they sell commercial grade  
13 toluene?  
14 BY MR. WILLIAMS:  
15 Q. Yes, sir.  
16 A. I don't know.  
17 Q. Do you know if any of the suppliers that  
18 I've just mentioned sell crude toluene?  
19 MR. CHILTON: Same objection, to form.  
20 A. I don't know. It would not be -- you know,  
21 some people do and some people don't.  
22 BY MR. WILLIAMS:  
23 Q. Well, my question to you is would there be a  
24 different benzene content in nitration grade toluene

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1 versus commercial grade or crude toluene?  
2 A. There could be.  
3 MR. WILLIAMS: Okay. We marked the material  
4 safety data sheets?  
5 MR. CHILTON: Yes, sir.  
6 MR. WILLIAMS: Okay. Thank you.  
7 Q. Do you have any shipping or sales documents  
8 dealing with the sale of benzene, toluene or xylene in

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41

1 sheet starting with 00001, do you see the words  
2 "nitration grade toluene" anywhere on it?  
3 A. This says aromatic hydrocarbon product  
4 class, aromatic content greater than 60 percent. This  
5 is a very -- oh, the product name is toluene. Okay.  
6 So it would have been a -- a toluene, and the aromatic  
7 content was greater than 60 percent, but that doesn't  
8 mean that it wouldn't have been a hundred percent, and  
9 it goes through a bunch of hazard tests such as  
10 flashpoint and lower explosion limit and hazardous  
11 decomposition products and so forth, so it's a -- it's  
12 a communication tool to determine what hazards you  
13 might face in handling and using this material.  
14 Q. Correct. And my question is: Do you see  
15 the words "nitration grade toluene" anywhere on that  
16 document?  
17 A. I do not.  
18 Q. Okay. If you flip to the second material  
19 safety data sheet in that stack, it starts with 00104,  
20 and it's dated 9/30/1994, and the product name toluene.  
21 Can you tell me whether or not anywhere on that  
22 material safety data sheet do you see the words  
23 "nigration grade toluene"?  
24 A. Nigration or nitration?

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1 Nitration. I misspoke.  
2 A. No. And that's not unusual because that's  
3 more for classifying the quality of the product as

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9 Louisiana from 1962 to 1994?  
10 A. Me personally?  
11 Q. Yes, sir.  
12 A. No.  
13 Q. Have you reviewed any sales or shipping  
14 documents that would indicate whether or not benzene  
15 was sold in Louisiana from '62 to 1994?  
16 A. No.  
17 Q. Do you know if Ashland maintains any  
18 documents, sales or shipping documents, that would  
19 evidence whether or not benzene, toluene or xylene was  
20 sold in Louisiana from 1962 to 1994?  
21 A. I do not know.  
22 Q. Does Ashland have a document retention  
23 policy?  
24 A. Yes.

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1 Q. And what is your understanding of that  
2 policy?  
3 A. Well, it determines the various documents  
4 that are to be retained and those that are -- and the  
5 time frame you're supposed to retain those, and it also  
6 determines how you are to dispose of them whenever the  
7 time has expired, and this -- it's different for every  
8 kind of different document. There's a whole litany  
9 of -- of tests for when you keep and when you don't  
10 keep.  
11 Q. Let me ask you this. What's the retention  
12 period for sales or shipping documents of chemicals  
13 such as benzene and toluene?  
14 A. I don't know.

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15 Q. Is it your understanding there's a two-year  
16 period for documents at this point?  
17 A. I just said --  
18 MR. CHILTON: Object to the form.  
19 A. I just said I don't know.  
20 BY MR. WILLIAMS:  
21 Q. If I told you Buddy Whitlock just  
22 testified -- let me ask. Do you know a gentleman named  
23 William Whitlock?  
24 A. Yes.

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1 Q. Okay. If I told you Mr. Whitlock just  
2 testified today that there's a two-year document  
3 retention policy, do you have any reason to disagree  
4 with his testimony?  
5 MR. CHILTON: Object to the form.  
6 A. I -- you know, as I said, I don't know  
7 anything about that. Mr. Whitlock has his -- you know,  
8 he has pretty good knowledge of that, so --  
9 BY MR. WILLIAMS:  
10 Q. Fair enough.  
11 A. You'll have to ask him.  
12 Q. Do you have one piece of paper which is an  
13 Ashland document that says Ashland only purchased  
14 nitration grade toluene from suppliers for the '62 to  
15 '94 period?  
16 A. Well, that's kind of an awful broad  
17 question. I can tell you that we purchased in the time  
18 frame you're talking about nitration grade because  
19 that's what we produced in our refinery, and the

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20 distribution units were purchasing the same quality of  
21 material because the petrochemical division which I had  
22 responsibility for did the basic purchasing for them,  
23 and we set up the criteria of the type of product that  
24 we bought and distributed and delivered to the

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1 distribution units.  
2 Q. As you sit here today, do you have any  
3 documents to evidence that?  
4 A. I do not personally, no.  
5 MR. WILLIAMS: Okay. Thank you. I don't  
6 have any other questions. Larry, do you?  
7 MR. CHILTON: We'll reserve any questions at  
8 this time, and we'll also reserve signature. Thank  
9 you.  
10 MR. WILLIAMS: Okay. And I want to -- off  
11 the record I'll talk to the court reporter.  
12 THE VIDEOGRAPHER: End of deposition. Off  
13 the record at 13:23.  
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