

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

JOSEPH BICK,)
)
Plaintiff,)
)
-vs-) CAUSE NO.
) 08 L 865
A.W. CHESTERTON COMPANY,)
et al.,)
)
Defendants.)

DEPOSITION OF RICK GIES

The deposition upon oral examination of
RICK GIES, a witness produced and sworn before me,
Debbi S. Austin, RMR, CRR, Notary Public in and for
the County of Hendricks, State of Indiana, taken on
behalf of the Plaintiff, at the offices of Cantrell
Strenski & Mehlinger, 2400 Market Tower, 10 West
Market Street, Indianapolis, Marion County,
Indiana, on the 30th day of April, 2009, commencing
at 9:05 a.m., pursuant to the Illinois Rules of
Civil Procedure with written notice as to time and
place thereof.

1 APPEARANCES (CONT'D)

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4 CROSS-EXAMINATION 138
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7 Plaintiff's Deposition Exhibit No.:

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11 2 Notice of Discovery Deposition 8
12 3 Curriculum Vitae 9
4 Safety Manual 1 45
13 5 Safety Manual 2 45
6 Fire, Safety, and Security 51
14 Contractors' Procedure Manual
7 Corporate Risk & Environmental 64
Affairs Guide

1 (Plaintiff's Deposition Exhibit(s) 1 and 2
2 were marked for identification.)

3 MR. FRENCH: This is Bart French for
4 plaintiff. Before starting, I need to note that
5 Marathon has still not produced documents in
6 discovery, discovery that plaintiff has been
7 seeking since November 2008. My understanding
8 is that Mr. Gies is one of the persons most
9 responsible for obtaining these documents.

10 After two motions to compel filed by
11 plaintiff and much correspondence, an agreed
12 discovery order requires that Marathon produce
13 all responsive documents to plaintiff today on
14 April 30th at our St. Louis office. I'll note
15 that I do have a couple of things that were sent
16 electronically on my way to Indianapolis, and
17 today defense counsel did provide me with some
18 documents. And I'll just note what they are,
19 but I don't -- I don't believe this covers all
20 of our discovery requested.

21 One document is entitled "Corporate Risk &
22 Environmental Affairs Guide by Marathon Oil
23 Company." It's a document of many pages in
24 length, somewhere in the order of 200 pages or

1 better.

2 There's also two safety manuals; one a
3 Safety Manual 1, Safety Rules and Safe
4 Practices, Refining Organization, Marathon Oil
5 Company, and Safety Manual 2, Safe Handling of a
6 Hazardous Materials Refining Organization,
7 Marathon Oil Company.

8 They're undated. And my understanding too
9 is that the witness, Mr. Gies, brought in a
10 couple of documents which may or may not be the
11 exact same versions of these same documents, the
12 last two documents, Safety Manual 1 and Safety
13 Manual 2.

14 I would note that it has been quite a
15 process just to have Mr. Gies available for
16 deposition. I think there's quite a bit of
17 ground that can be covered today. However,
18 depending upon what information is produced
19 today in discovery, and obviously has not been
20 received nor reviewed before this deposition,
21 plaintiff reserves the right to redepose
22 Mr. Gies prior to trial. This, of course, would
23 be if Mr. Gies is allowed by the court to
24 testify at trial depending upon the outcome of

1 plaintiff's motion to strike Marathon witnesses.

2 And I'm prepared to begin now.

3 MS. SCHMIDT: Well, I'd like to make a
4 response to that.

5 MR. FRENCH: Sure.

6 MS. SCHMIDT: As far as the discovery
7 responses are concerned, we have an agreed order
8 that the documents that are required -- or that
9 we have been requested by plaintiff's counsel
10 would be provided today and that -- you know,
11 and they will be, pending -- or barring the case
12 being resolved before the end of the day.

13 RICK GIES,

14 having been duly sworn to tell the truth, the whole
15 truth, and nothing but the truth relating to said
16 matter was examined and testified as follows:

17 DIRECT EXAMINATION,

18 QUESTIONS BY MR. T. BARTON FRENCH:

19 Q Mr. Gies, again, we met briefly before the
20 deposition, and my name is Bart French. I am
21 the attorney for plaintiff, one of them.

22 And I'd like to ask you first just to look

1 at this document, which is the Second Amended
2 Notice of Discovery Deposition which has been
3 marked as Gies Exhibit 1 and tell me if you have
4 seen this document before today.

5 A I have seen Exhibit A prior to today.

6 Q Okay. And that's probably the most interesting
7 point. I'll note that there is a Plaintiff's
8 Exhibit Gies 2 which contains the exact -- that
9 was actually originally set for May 5th, based
10 upon correspondence we had, we thought that we
11 were setting this up for May 5th. And so but
12 the Exhibit As on both of these exhibits are
13 exactly the same.

14 And in response to the Exhibit A, did you
15 bring any documents with you today? If you
16 want, sure (hands document).

17 A Yes. I brought the response to No. 1, which was
18 the current curriculum vitae.

19 Q Okay.

20 A The other piece of information would have been
21 the two small refinery safety handbooks.

22 MR. FRENCH: Okay. And I think with the
23 resume or the CV, let's mark this as Gies
24 Exhibit 3.

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1 (Plaintiff's Deposition Exhibit(s) 3 was
2 marked for identification.)
3 Q And it's my understanding that the two pamphlets
4 that you brought in today are currently being
5 copied, so probably later in the deposition we
6 may mark those as well.
7 A Yes.
8 Q And Exhibit A asks for a number of other
9 categories of information, but that is the sum
10 and total of what you brought today are the
11 three documents you've described today?
12 A That's correct, aside from the two previous
13 depositions that -- that I had given.
14 Q Okay. And I'll note that I do have two prior
15 depositions that were provided by defense
16 counsel before today, and that is the Lenora
17 Satterfield v. Marathon case that was filed
18 apparently in Lawrence County, Illinois, from
19 February 2001 there was your deposition, and the
20 William Shaw and Joseph Kadivnik, and I'll spell
21 that last name, K-A-D-I-V-N-I-K, cases from
22 April 2006 in Marion County, I believe that is?
23 MR. HAYS: It's Kadivnik.
24 MS. SCHMIDT: Kadivnik. There's no I in

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1 there. I mean, there's an I in there, but not
2 where you put it.
3 MR. FRENCH: What's the correct spelling,
4 do you know?
5 MR. HAYS: K-A-D-I-V-N-I-K.
6 MS. SCHMIDT: Oh, it is right. But it's
7 not Kadivnik?
8 MR. HAYS: It's Kadivnik.
9 MR. FRENCH: Oh, okay.
10 BY MR. FRENCH:
11 Q And those were in two asbestos cases; is that
12 correct?
13 A That's correct.
14 Q I notice that in -- I believe the William Shaw
15 deposition, you had given an estimate of being
16 deposed in about five asbestos -- four or five
17 asbestos cases.
18 Is that -- is that correct?
19 A Was the Shaw the one with Kadivnik, or was it --
20 Q Yes, yes.
21 A Yes, and at that point in time I thought that I
22 may have had some earlier depositions for
23 asbestos. I might have confused that with some
24 benzene depositions that I had done or possibly

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1 just some responses to interrogatories that I
2 might have had in the past.
3 Q Okay, I understand. And just if there are, and
4 I've asked defense counsel informally, but I
5 would make this request, if there are additional
6 transcripts, either deposition or trial, where
7 you've testified in an asbestos case, I would
8 ask those be produced to plaintiff -- to me.
9 MS. SCHMIDT: And for the record, I spoke
10 with Bart this morning about this, Mr. Gies
11 checked his records to determine whether he had
12 any other transcripts and did not find any.
13 Marathon is checking their files to see if they
14 can find any other transcripts and have not been
15 able to find them. And so we're doing our best
16 to find them, and if we do, we'll pass them
17 along.
18 MR. FRENCH: Understood.
19 BY MR. FRENCH:
20 Q Mr. Gies, what I'd ask you to do now, if you
21 could detail for us what you have done to
22 prepare for today's deposition.
23 A I have reviewed the two previous depositions.
24 Q The ones that I've just mentioned?

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1 A The ones that you've just mentioned.
2 Q Okay.
3 A And I've also looked at the two small pamphlets
4 that we have provided to you, the refinery
5 safety handbooks.
6 Aside from that, it's just been some
7 discussions with counsel.
8 Q And I don't think I'm going to ask you about
9 those discussions with counsel.
10 Are you represented by Ms. Schmidt today in
11 this proceeding, is that your understanding?
12 A Yes.
13 Q And without revealing any of the substance of
14 the conversations that you've had with
15 Ms. Schmidt, how many -- when did you first talk
16 with Ms. Schmidt about this case of Joseph Bick
17 or talk with any member of her law firm, Hepler
18 Broom?
19 A It's probably been within the last month. I
20 don't recall that it was earlier than that.
21 MS. SCHMIDT: Yeah, I don't believe so, no.
22 In fact, it's been within the last just few
23 days.
24 THE WITNESS: Okay.

1 Q And how did that first contact -- how was it
2 made to you?
3 A It was made by way of a Marathon attorney.
4 Q And who is that Marathon attorney that first
5 contacted you?
6 A Michele Malloy.
7 Q And can you give me just a very brief background
8 on Ms. Malloy, how -- is she in-house counsel,
9 is she an outside firm that is not Hepler Broom,
10 or who is she?
11 A I believe she's employed directly by Marathon,
12 so she works out of the Houston office, the
13 Houston law organization, Marathon's Houston law
14 organization.
15 Q Okay. And then what was your next contact about
16 the -- or what did you do next? You were
17 contacted by Ms. Malloy about this case.
18 What happened next?
19 A The -- I think the process was where -- that I
20 would have contact with Anne Schmidt, and she
21 would provide documents that I should review in
22 preparation for this deposition.
23 Q And are there any documents other than the ones
24 that you've already described that you reviewed

1 in preparation for this deposition?
2 A No, there are not.
3 Q Okay. You did not review, for example,
4 plaintiff's discovery and/or evidentiary
5 depositions in this matter?
6 A I'm sorry, say that again, please.
7 Q Sure, sure. There have been discovery
8 depositions and evidentiary depositions taken
9 earlier in this case of Joseph Bick who's the
10 plaintiff in this matter.
11 Did you review any of his testimony in
12 preparing for today's deposition?
13 A I have not.
14 Q Have you reviewed the testimony of any other
15 witness in this case or any other potential
16 witness in this case in preparation?
17 A I have not.
18 Q Have you worked with Ms. Schmidt or the Hepler
19 Broom law firm before in a Marathon asbestos
20 case?
21 A I don't believe so.
22 MS. SCHMIDT: Well, and if I could clarify,
23 in the Satterfield case, I wasn't with the firm
24 at the time, but we represented Marathon locally

1 in the Satterfield case that he was involved in.
2 Q Okay. My understanding is that reviewing -- and
3 I'm going to try not to go into areas that have
4 been dealt with in some detail in your previous
5 depositions. I have had an opportunity to read
6 them. I will follow up with some questions that
7 either it wasn't clear to me or I think needs
8 some following up.
9 Was it -- I understand the Lenora
10 Satterfield case was the first time that you
11 were involved in any way in an asbestos case on
12 behalf of Marathon; is that correct?
13 A I may have provided some assistance support to
14 the law organization by way of interrogatories
15 in some earlier asbestos cases, but from what I
16 can recall, that's the first deposition that I
17 would have given.
18 Q Okay. Have you ever testified at trial on
19 behalf of Marathon in any type of matter?
20 A I have not.
21 Q Have you -- are you aware of Marathon being in
22 trial since your association with Marathon,
23 which I believe began in 1977?
24 A Correct.

1 Q Are you aware of Marathon being in trial in an
2 asbestos case since 1977?
3 MS. SCHMIDT: Well, I'm going to object as
4 far as the characterization of being in trial.
5 I'm not sure what you mean by that.
6 You mean start trial, you mean to verdict,
7 what do you mean?
8 Q Again, the question is just your awareness, has
9 Marathon been in trial in any capacity since you
10 started in 1977 in an asbestos case?
11 MS. SCHMIDT: If you understand that
12 question, go ahead and answer it.
13 A Not that I'm aware of.
14 Q Mr. Gies, I'm looking at your CV, which is
15 Exhibit 3, and I understand that you retired
16 from Marathon in 2007, or was it 2008?
17 A 2007.
18 Q Okay. And when did you retire?
19 A August 1st, 2007.
20 Q Congratulations.
21 A Thank you.
22 Q And have -- are you completely retired now,
23 or -- in terms of are you doing any other
24 outside jobs, even not associated with Marathon?

1 A The only outside jobs perhaps would be providing
2 support on a case-by-case basis for the Marathon
3 law organization.

4 Q Okay. Explain how that works. Are you -- are
5 you doing consulting work for Marathon now?

6 A I don't know if you would call it consulting
7 work. It's work where if they call and they ask
8 me for what's my understanding of this or that,
9 then I would -- I would respond to that.

10 So I think that in a case like this
11 particular one, they have asked for my
12 assistance in terms of -- you know, whether I
13 could, you know, lend any information towards
14 the -- perhaps the history of the company as
15 long as I was working with the company.

16 MS. SCHMIDT: Marathon considers him a
17 consultant.

18 MR. FRENCH: Okay.

19 Q Is it also your understanding that for purposes
20 of Mr. Bick's case, and the case I'm
21 representing today, the client I'm representing
22 today, that you are considered the person most
23 knowledgeable with respect to Marathon's
24 asbestos policies and other safety policies?

1 A Yes.

2 Q Just a brief diversion. I should have said this
3 in the beginning.

4 I think this deposition will take a little
5 bit of time today, and I understand that you've
6 been through depositions before, but please,
7 since I didn't say this in the beginning, I
8 anticipate that one or all of us are going to
9 need a break at some time, and please just say
10 the word whenever you need a break.

11 A Thank you.

12 Q Now, as a -- how many times or approximately
13 have you consulted on asbestos cases for
14 Marathon since your retirement on August 1st,
15 2007?

16 A Since my retirement, there have probably been
17 maybe two other cases that I've consulted on.

18 Q Now, in this case, obviously you signed off as
19 the verifier of Marathon's discovery responses;
20 correct?

21 A That's correct.

22 Q How many times have you done that prior to
23 Mr. Bick's case since your retirement?

24 A Probably two or three times.

1 Q Why, as a retired person from Marathon, are you
2 the one that signs the discovery rather than a
3 current employee?

4 A It's probably because I have the historical
5 knowledge of the company during the time period
6 that I worked there as well as to some extent in
7 my dealings with people that worked there before
8 me. So I guess I've got maybe some historical
9 perspective that Marathon values.

10 Q And I assume -- I assume you are billing
11 Marathon in some way for your work on this case;
12 is that correct?

13 A There is a charge, yes, yes.

14 Q Do you charge by the hour?

15 A I do.

16 Q What is your hourly rate?

17 A \$100.

18 Q What is -- does that rate -- does that remain
19 the same regardless of what activity you're
20 doing, and by that I mean, for example, do you
21 charge a hundred dollars for preparing for
22 today's deposition, a hundred dollars for the
23 time you're actually in deposition, and a
24 hundred dollars for if you are called to -- at

1 trial as a witness?

2 A It's -- it's pretty informal, but it's -- at
3 this point in time, it's a hundred dollars no
4 matter what I'm doing, correct.

5 Q Okay. How much time have you spent in
6 preparation for -- before today? Or actually,
7 before the start of today's deposition.

8 A Hmm. Probably about six hours.

9 Q I have a question. I read that you had a -- you
10 did a master's thesis at the University of
11 Cincinnati, I believe?

12 A That's correct.

13 Q And what was your -- first of all, your master's
14 in, what was the actual degree?

15 A My master's degree was environmental health.

16 Q Okay.

17 A Which had a strong industrial hygiene component
18 to it.

19 Q All right. And as I understand it, your thesis
20 was on respiratory protection; is that correct?

21 A That's correct.

22 Q Do you still maintain a copy of that? Do you
23 still have a copy of your thesis?

24 A I do.

Page 21 1 Q Is that something that you can provide a copy of 2 to Marathon counsel? 3 A I may have already provided that copy at some 4 point in time. 5 MS. SCHMIDT: I haven't seen it. Michele 6 may have it, I guess. I haven't seen it, 7 though. 8 MR. FRENCH: And that's another thing I 9 would request to be directed to plaintiff's 10 counsel. 11 And I know -- if it's acceptable, if I put 12 it on the record today, will that -- will that 13 be acceptable to you as a request to get this 14 information? 15 MS. SCHMIDT: I tell you what, I'd prefer, 16 just because I do have about a million things 17 going on -- 18 MR. FRENCH: Put it in a list afterwards? 19 MS. SCHMIDT: Yeah, if you could give it to 20 me in even a handwritten note so that I have 21 something to make sure I remember it, I'd 22 appreciate that. 23 MR. FRENCH: Okay, I will request -- that's 24 one of the things.	Page 23 1 A I don't recall that that was a particular issue 2 in 1972, 1973. 3 Q Do you recall it being an issue in terms -- was 4 there -- when was -- to your understanding, when 5 was OSHA enacted? 6 A The law was enacted in 1970, but the regulations 7 pursuant to that were 1971, 1972. 8 Q And what's your understanding of the first OSHA 9 regulations with respect to asbestos? 10 A Well, I was aware that that was included in the 11 original regulations. 12 Q All right. I'm looking at the Defendant 13 Marathon Petroleum Company, LLC's Answers to 14 Plaintiff's Premises Interrogatories directed to 15 defendant, and it looks -- and I'll show you a 16 copy of this and show you -- show defense 17 counsel this. I know you've obviously seen it. 18 Is this -- is this your signature? 19 A Yes, it is, uh-huh. 20 Q Okay. And can you read the date of when you 21 signed this? 22 A Let's see. I guess it would be -- oh, this was 23 the -- this was the date that the notary signed 24 it. It was March 7th, 2009.
Page 22 1 MS. SCHMIDT: Because I don't want three 2 weeks from now you saying I didn't remember it, 3 because I may not. 4 MR. FRENCH: Okay. I will get you a 5 request in some form of everything I'd like 6 produced. 7 MS. SCHMIDT: That's fine. Even an e-mail, 8 Bart, whatever's easiest for you, but I'd just 9 appreciate some nudge. 10 MR. FRENCH: Okay. 11 BY MR. FRENCH: 12 Q All right. Can you give me a summary, if you 13 will, of what your thesis was about in terms of 14 respirators and respiratory protection? 15 A What the thesis concerned was the types of 16 respirators that were presently in use and maybe 17 historically used at the time of the thesis, 18 which would have been 1972, 1973; the approval 19 process, the certification process for the -- 20 for the respirators and how they were used and 21 their effectiveness. 22 Q Did any part of your thesis look at the 23 effectiveness of respirators for protecting 24 against asbestos dust exposure?	Page 24 1 Q And did you sign it on that date or before that 2 date, obviously? 3 A No, I think I signed it on that particular date. 4 Q Okay. 5 A That's correct. 6 Q So I'm not -- this is not to trip you up. I 7 mean, you mentioned that you thought you were 8 first contacted about this case within the last 9 month. 10 Would that refresh your memory to suggest 11 an earlier date than within the last month? 12 A Yes, it would. 13 Q And so your first contact with Ms. Malloy would 14 have been sometime prior to March 7th; is that 15 correct? 16 A That's correct. 17 Q Do you know how much time prior to March 7th 18 it would have been? 19 A No, I don't recall. 20 Q Do you know roughly how much time that you spent 21 putting together or assisting in putting 22 together the answers to these interrogatories 23 that were directed to Marathon? 24 A My review of the responses to the

interrogatories was approximately three hours.
 Q I have a few questions -- just one moment --
 about the interrogatories themselves. Could
 you -- I'm going to hand you a copy, and I have
 kind of a work copy for myself.

Could you turn to page 46. And 46 is
 Marathon's answer to Interrogatory No. 42. I'm
 not going to read the entire question. You
 certainly can take the time to do so if you want
 to. I really just have a question about the
 last paragraph of the answer. And if you could
 read the last paragraph of the answer which is
 on page 46, where it starts, "Studies of."

A "Studies of and control of airborne dust
 conditions began at the Robinson refinery in the
 1970s, and it is believed that airborne dust
 level measurements by safety personnel began
 there in the early 1970s. Formal documented
 studies of airborne dust conditions at the
 Robinson refinery began in 1977."

Q Okay. Obviously it's -- that's two sentences,
 and I have questions about the first sentence.

It's my understanding that you believe from
 talking to people when you started at Marathon

in 1977 that you believe by talking to others
 that there were dust studies conducted at
 Marathon?

A That's correct.

Q And were those done like for the -- I guess I
 would call them bulk samples -- not bulk
 samples, where they were done on personal
 monitoring systems, or was it done in a way that
 was measuring dust concentrations within certain
 areas of the refinery?

A I don't know the answer to the question as to
 whether it was personal monitoring or area
 monitoring, but the information that -- that
 was -- that I had reviewed indicated that it was
 essentially done using the same methodology,
 which is a portable sampling pump with a small
 filter attached, which normally you would use
 for personal monitoring, but if you put it in an
 area of the facility, it can also be used for
 area monitoring as well.

Q Have you ever actually seen the records, and by
 records, I mean the results of those air
 monitoring which you've heard was done prior to
 your -- prior to you getting to Marathon in

1977?

A I have not.

Q How did -- am I correct in this -- the sentence
 that we just read on the interrogatory answer,
 that was information that you supplied?

A That's correct.

Q How did you come to that understanding, that
 there were studies done, but you've never seen
 the results?

A From a document that had been prepared in the
 mid 1970s, probably 1974 perhaps, that indicated
 that an individual had done -- had undergone
 training to do air monitoring using the NIOSH
 sampling methodology, and some discussion,
 again, in that memo with an individual at one of
 our refineries that indicated that this type of
 monitoring is the approach to take for asbestos.

Q Who was the individual that had the training
 that you're referring to?

A I believe his name was John Parziale.

Q Do you know, did you get to know -- was
 Mr. Parziale still employed by Marathon when you
 got there in 1977?

A Yes.

Q And I understand he retired sometime during your
 tenure?

A That's correct.

Q Do you know if Mr. Parziale is still alive?

A I do not.

Q And, therefore, you don't know any contact
 information or how to get ahold of him?

A I do not.

Q Do you know which individual or individuals were
 monitored?

A I was not aware of any individuals that were
 monitored. It was -- the idea of the -- of the
 memo was essentially saying that this
 methodology is available for -- for use at the
 facility.

Q Okay, okay. So the methodology was available,
 but you don't know if it was actually done at
 Robinson, during the time prior to 1977?

A My recollection was that the memo that I saw was
 in reference to Texas City. It was not in
 reference to the Robinson refinery.

Q All right. So you don't have -- do you have --
 you don't have any indications one way or
 another whether monitoring, air monitoring was

done of any sort at Robinson prior to you getting to Marathon in 1977?

A Correct.

Q All right. The next sentence -- the last sentence of the answer, "Formal documented studies of airborne dust conditions at the Robinson refinery began in 1977."

What do you mean, first of all, by formal, documented studies?

A Probably the fact that we didn't have any information from prior to 1977, and one of my jobs was essentially to look at the facilities, determine where needs were, conduct air monitoring as appropriate.

Q And as I understand it, from reading -- I actually don't remember which deposition, but that it took you some time to get situated so that you could actually oversee or whatever -- or supervise the air monitoring, is that -- and so that it might not have been sometime until the later '70s, 1978 or 1979, that the first air monitoring was done at the Robinson refinery?

A I don't know that for sure, but I think that -- that would be logical.

Q Okay. And I think too that I've seen that you have -- you have -- and by you, I mean you and Marathon, have tried to maintain those records from the first time that they were done?

A That's correct.

Q So whatever the date of the first air monitoring done at Marathon, Marathon would still have records of those?

A Yes, they should.

Q Okay. I'm going to get a little bit more into the details of how those records are kept a little later on, but that would be another thing that I would request, that any and all air monitoring done at Marathon's Robinson refinery, and I'm making this more to Ms. Schmidt than to you, be turned over to us in this case.

Do you know how many -- and when the first studies, the first airborne studies that were -- air monitoring -- strike that.

The first air monitoring that was done at the Robinson refinery sometime after 1977, was that personal monitoring done first, or was that area-wide monitoring done first, if you know?

MS. SCHMIDT: You're just talking about

Robinson?

MR. FRENCH: Yes.

A I don't recall, but most likely it might have been personal monitoring.

Q Do you know how many times personal monitoring was done at Marathon during your tenure, between 1977 -- at Marathon Robinson between 1977 and your retirement in 2007?

MS. SCHMIDT: Just before we go on, can we agree that when -- if you say Marathon, you're meaning Robinson unless you specify otherwise?

MR. FRENCH: That's fine.

MS. SCHMIDT: Just for ease of --

MR. FRENCH: Sure. Because I will say Findlay occasionally. So if I say Findlay, I'm referring to obviously your office or whatever in Findlay, but that's fine.

MS. SCHMIDT: But if you say Marathon, otherwise you mean the Robinson refinery?

MR. FRENCH: Okay.

MS. SCHMIDT: Is that okay?

MR. FRENCH: That's okay.

MS. SCHMIDT: I just think it'll be easier.

MR. FRENCH: Yeah.

MS. SCHMIDT: So I apologize, go ahead and answer it.

A For the monitoring, are we talking specifically about asbestos and are we talking specifically about air monitoring as opposed to bulk monitoring?

Q That's good points, and let me start with air monitoring and just for asbestos.

A I don't know the specific number of samples that were taken during -- during that time period, but it -- no, let me just leave it, I don't know the specific number of instances where air monitoring was done for asbestos.

I can tell you that because of the infrequency at which Marathon employees were involved with asbestos that there is not a huge amount of data that we can -- we can fall back on.

Q And what I'm trying to get a sense of, just because I'm going to ask that that information be produced, whether we're talking about, you know, a dozen tests over the years on personal monitoring or whether we're talking about thousands of tests.

1 Do you know, does it fall closer to dozens
2 or hundreds or thousands? And again, this is
3 obviously an estimate that you're providing
4 here, not an exact number.
5 A I would say that for the air monitoring,
6 probably it would number in the hundreds.
7 Q Okay. How about for the testing of bulk
8 samples? And just so that we're clear for the
9 record, what do you mean by testing of a bulk
10 sample?
11 A Testing of the bulk sample is where essentially
12 a piece of the material in question is taken, a
13 representative sample of the material is taken
14 and provided to an outside laboratory for
15 analysis, specifically for asbestos.
16 Q And how often do you think that was done during
17 your tenure, and I'm referring just to Robinson,
18 between 1977 and your retirement?
19 A That would have been done a large number of
20 times, clearly in the thousands.
21 Q I am going to request -- how about for the time
22 period between -- do you have access to
23 records -- do you know whether bulk sample
24 analysis was done prior to you arriving at

1 Marathon in 1977? And that would be analysis
2 for asbestos content.
3 A I don't know the answer to that.
4 Q Okay. Again, I am going to -- do you know how
5 far back Marathon's records go in terms of not
6 necessarily keeping the asbestos sample itself,
7 which I understand from your previous testimony
8 was generally thrown away after a period of a
9 couple months or so; is that correct?
10 A That's been the practice of the laboratory that
11 does the analysis, yes.
12 Q But the reports generated by the laboratory and
13 distributed at Marathon, those reports have been
14 kept?
15 A That's correct.
16 Q What's your understanding of when the earliest
17 records are that Marathon has in its possession?
18 A The earliest records for bulk analysis?
19 Q Yes.
20 A Well, they would go back to 1977. I'm not sure
21 when the first bulk sample of insulation was
22 submitted for analysis. It probably was done in
23 that time period, roughly 1980.
24 Q The first one would have been done in roughly

1 1980? Just so I understand.
2 A That's very much an estimate --
3 Q An estimate?
4 A -- on my part.
5 Q Okay. I would request if -- are the records for
6 the bulk samples, are they kept in one location,
7 so even if they -- I imagine this is going to
8 number in the thousands of reports too.
9 A That's correct.
10 Q Are they kept in one location?
11 A Yes.
12 Q All right. And so that they are fairly easily
13 reproducible in electronic form or otherwise?
14 A Yes.
15 MR. FRENCH: I would request that the bulk
16 samples from Robinson also be produced.
17 MS. SCHMIDT: Now, when you say the bulk
18 samples --
19 MR. FRENCH: The reports for the bulk
20 samples, the laboratory analysis.
21 BY MR. FRENCH:
22 Q In those bulk sample analyses, do you -- I have
23 seen some of these in the past, not in this
24 particular case, but they often describe the

1 content of the sample by percentage.
2 Is that how your recollection is for most
3 of the bulk samples that you've seen?
4 A Yes.
5 Q And does that break it -- I imagine it would
6 obviously refer to a percentage of asbestos;
7 correct?
8 A Yes.
9 Q Does it break it down by fiber type, meaning
10 amosite, chrysotile, or crocidolite?
11 A Some of the laboratory analysis would do that.
12 I don't know that the computer database has the
13 data stored in that particular fashion.
14 Q Are there -- are there still the original
15 reports, though, available? I understand your
16 database may track the reports with its own
17 system, if you will, but are the original
18 reports still available in a reproducible form?
19 A Yes.
20 Q And those original reports, I understand, would
21 have been that information concerning fiber
22 type; is that correct?
23 A Yes, they should.
24 Q How much of a percentage of the bulk samples

1 that have been submitted during your tenure
2 of -- or however long you're aware that Marathon
3 has analyzed these bulk samples for asbestos
4 content, how much of those bulk samples would
5 have been thermal insulation, if you can give a
6 percentage?

7 A Probably 75 to 80 percent. That would be my
8 guess.

9 Q And what would be the remaining bulk samples,
10 what would they be analyzing? If 75 to
11 80 percent were thermal insulation, what type of
12 products would be in the remaining reports?

13 A When you say thermal insulation, you're
14 referring to the pipe lagging, is that correct?

15 Q Pipe lagging, and I suppose thermal insulation
16 could be considered more broadly to also
17 include, for example, vessel insulation.

18 Were you including in that in your -- in
19 your -- when you're describing thermal
20 insulation?

21 A Yes, we could do that, yes. So it's probably
22 about the same percentage, I would guess.

23 Q Okay.

24 A The other percentages could be things like --

1 could be gaskets, could be steam tracing,
2 rope -- asbestos-containing rope. It could be
3 ceiling tile. It could be floor tile.

4 Q Any other materials that you think -- or can
5 remember Marathon having tested for asbestos
6 content besides those?

7 A Not that I recall.

8 Q What percentage of those tests would you imagine
9 or would you estimate -- not imagine, what would
10 you estimate as being gasket samples?

11 A Probably a relatively small fraction of the --
12 of those would be gasket material, perhaps less
13 than 5 percent, if even that.

14 MS. SCHMIDT: Are you saying less than
15 5 percent of the 20 to 25 percent, or are you
16 saying less than 5 percent of the total?

17 A I was saying less of the -- perhaps of the
18 20 percent, remaining 20 percent, so ...

19 Q All right. So I'm horrible at math, but I'm
20 just going to give a rough estimate. Somewhere
21 around 1 percent of the total samples would
22 be --

23 A 1 or 2 percent might be gasket material, right.

24 Q Okay. Are those type of bulk samples in any way

1 organized so that you can quickly divide between
2 thermal insulation samples versus gasket samples
3 versus some other type of material sample?

4 MS. SCHMIDT: You're talking about the
5 reports of the bulk samples?

6 MR. FRENCH: The reports of the bulk
7 samples, to be clear.

8 A There may be a way to distinguish between them
9 to indicate gasket material. I -- I don't quite
10 remember or can't quite visualize how that
11 database is set up right now, but there may be a
12 way to determine that.

13 Q The -- let's talk about the early period, and
14 I'll define that a little bit. You're
15 estimating about 1980 is approximately when
16 you've seen the first bulk sample analyzed for
17 asbestos content.

18 From 1980 to 1985, how -- what were the
19 typical asbestos fibers that you were seeing in
20 the -- from the reports in the thermal
21 insulation?

22 A You're talking about the form of asbestos?

23 Q Yes.

24 A It would be primarily amosite.

1 Q Did that ever change, where the bulk samples,
2 when they were analyzed for asbestos content,
3 you know, first we're talking about 1980 to 1985
4 as primarily amosite. Did that ever change,
5 where the content of the asbestos changed to
6 more chrysotile or something else, or did it
7 always remain very similar?

8 A Not that I recall. I -- my recollection is that
9 pretty much the thermal insulation was amosite.

10 Q And when was the first time that you're aware of
11 the Robinson facility being abated?

12 A You were asking when the first time I saw that
13 the Robinson refinery was removing insulation
14 that they thought was asbestos to --

15 Q Correct. Or other asbestos-containing
16 materials. When was the first time you recall
17 some material, most likely, like you say,
18 thermal insulation, pipe insulation, vessel
19 insulation, et cetera, when was the first time
20 that you recall that being done at Robinson?

21 A I don't recall a specific date or even a year,
22 but my guess would be it would probably be prior
23 to 1980. This was sort of an ongoing process
24 to -- when they were looking at doing remodeling

Page 41 1 or whatever the case may be would be to 2 determine the nature of the material that they 3 were working with and treat it appropriately. 4 Q Did abatement activities continue through your 5 retirement at Marathon for asbestos? 6 A Yes. 7 Q Was there asbestos thermal insulation still in 8 place when you retired at Marathon in 2007? 9 A Yes. 10 Q Are you aware of any abatement activities done 11 since your retirement at Robinson? 12 A I am not. 13 Q Have you been to Robinson since your retirement? 14 A I have not. 15 Q Have you spoken to anybody at Robinson about any 16 abatement activities since your retirement in 17 2007? 18 A I have not. 19 Q Okay. If you -- I think you still have a copy 20 of the interrogatories there. I'd like you to 21 turn to page 54, and again, I'm looking at an 22 answer that was given in response to 23 Interrogatory 50, and the -- I'm looking at the 24 last paragraph after Marathon has provided some	Page 43 1 question? He's talking about the information 2 contained in the statement. 3 Q And just to give you a little context of this. 4 I mean, I'm a lawyer. I understand that, you 5 know, everything in here as an answer was 6 drafted by Marathon lawyers in some capacity. 7 What I'm really interested in, though, is the 8 underlying information, who provided the 9 underlying information so that this response was 10 drafted. 11 My understanding from what you're saying is 12 you, and I want to know if there's anybody else 13 who provided information -- the underlying 14 information so that this response could be 15 drafted. 16 A Yes, I provided part of the information in 17 connection with this paragraph. I think the 18 other part of the information was provided, as 19 you've indicated, by Marathon counsel who has a 20 number of these materials available at their 21 disposal. 22 Q Okay. Why don't -- why don't we just 23 concentrate on -- well, let me ask this: Do you 24 know if there are any other nonlawyer types who
Page 42 1 objections. 2 Did you -- first of all, did you provide 3 the information necessary for Marathon to answer 4 this question? And I'm not talking about the 5 first paragraph which is the objections which 6 I'm guessing was done by legal counsel. 7 A Okay. So we're talking about the safety 8 handbooks, we're talking about the standard 9 operating procedures manual, which I have a 10 corporate guideline. 11 Q And feel free to read the entire paragraph, and 12 I may have -- because I may have several 13 questions about it. And take your time, and 14 when you're done reading that paragraph, please 15 let me know. 16 A Is your question whether I assisted in 17 formulating this statement? 18 Q Yes. 19 A Yes, I did. 20 Q Did you -- were there others who helped in 21 putting together the information for this 22 statement besides you? 23 A Yes. 24 MS. SCHMIDT: Now, you understand his	Page 44 1 provided information necessary to answer this, 2 are you aware of any? 3 A Not that I'm aware of. 4 Q Okay. What information were you able to provide 5 Marathon, which parts of this paragraph did you 6 provide information on and what parts of this 7 did you not provide information on? 8 A To the extent that there was information in the 9 refinery safety handbooks regarding insulation 10 and the handling of insulation, I think I may 11 have identified that particular section. 12 Q That's -- and that's the books that were 13 available prior to your arriving there? 14 A That's correct. 15 Q Would that -- are those -- are there -- those 16 books? 17 MS. SCHMIDT: Here they are. 18 MR. FRENCH: Oh, they're back, okay. 19 MS. SCHMIDT: Yes. There's a couple of 20 copies there and the originals. 21 MR. FRENCH: Okay. 22 BY MR. FRENCH: 23 Q Let's have you look at this one, and I'm going 24 to -- actually, look at both of these. And if

1 the court reporter would just take a moment
2 to --

3 MS. SCHMIDT: I think there's two copies of
4 each.

5 MR. FRENCH: -- to mark these two as the
6 next exhibits in line.

7 (Plaintiff's Deposition Exhibit(s) 4 and 5
8 were marked for identification.)

9 Q Okay, we took a very short break so the court
10 reporter could mark two documents; the Safety
11 Manual 1 as Exhibit 4, and Safety Manual 2,
12 Exhibit 5.

13 And I believe these are copies of the two
14 pamphlets that you brought in today; correct?

15 A That's correct.

16 Q Are these the manuals you're referring to when
17 you say that there was -- safety handbooks began
18 at Marathon Oil in the 1970s, or is it different
19 information?

20 A That is the information that I was referring to.

21 MS. SCHMIDT: And I'm sorry, just for the
22 record, we're assuming that the copies that were
23 made are page by page the same. We haven't gone
24 through them page by page, but they were made of

1 the books that Mr. Gies is referring to.

2 MR. FRENCH: That's my assumption too, and
3 obviously --

4 MS. SCHMIDT: If there's a page missing or
5 something --

6 MR. FRENCH: Yeah, it would be corrected.

7 MS. SCHMIDT: -- it's not by any kind of
8 antics.

9 MR. FRENCH: Well, there's plenty of those.

10 So yes, it's my understanding, and I have
11 not had a chance to review, nor has anybody else
12 had a chance to review, the copies, but it's my
13 understanding, what I'm referring to as Safety
14 Manual 1 and Safety Manual 2, the two pamphlet
15 form of documents that Mr. Gies brought in with
16 him today.

17 MS. SCHMIDT: Uh-huh.

18 BY MR. FRENCH:

19 Q Okay. Besides these two documents, were you
20 referring to any other information for that
21 statement about safety handbooks began at
22 Marathon Oil in the 1970s?

23 A Yes, there's another statement, and it reads,
24 "In 19- -- April 1977."

1 Q Right, and I'll -- if I may interrupt you, and
2 I'll get there. I will definitely get there.

3 Those will be some of my next questions, but
4 just for this statement, okay, "Verbal
5 orientations on asbestos in coverage via safety
6 handbooks began at Marathon Oil in the 1970s."

7 And so the record is clear and my question
8 is clear: Were there any other safety handbooks
9 that you are referring to other than Exhibits 4
10 and 5?

11 A Basically it would be the same handbook that
12 we're referring to except that it might have
13 been an earlier version of what we have in front
14 of us.

15 Q Understood, okay. I want to go back --
16 backtrack for just a moment.

17 You were giving your opinion, you were
18 giving your statement as to what was contained
19 in the thermal insulation when bulk analysis was
20 done.

21 Do you know what -- for the gasket, which I
22 understand was a much more limited bulk supply
23 analysis done, do you know what type of
24 substance you had seen in the gaskets based upon

1 the reports done on the bulk analysis?

2 A I don't recall.

3 Q All right. And going back -- sorry to jump
4 around, but going back to this answer on page 54
5 that we're discussing, it also notes that,
6 "Marathon Oil Company also disseminated asbestos
7 information through its standard operating
8 procedures manuals."

9 What are you referring to, then, as -- or
10 what is referred to there as -- what is a
11 standard operating procedure manual?

12 A A standard operating procedure manual is one
13 that the facility would develop, essentially
14 providing the information that's needed to be
15 communicated to employees.

16 Q Are those standard operating procedures manuals,
17 are they also disseminated to outside
18 contractors who work at the facility?

19 A I'm not aware of that practice.

20 Q Okay. Do you think that that practice happens?

21 A I personally think that there was communication
22 of that kind of information to contractors.

23 Q Why do you say that?

24 A I say that because of maybe understanding a

1 history of how Marathon works with its
2 contractors. Marathon has always been concerned
3 about contractors or other people that are not
4 employees that are coming onto their property
5 and wants to provide a safe working environment
6 for them as well.

7 Q And consistent with that concern, what type of
8 actions did Marathon undertake in the mid 1970s
9 to inform outside contractors, such as
10 boilermakers, about the dangers at the refinery
11 in general?

12 A I am not aware of any specific practices that
13 they may have employed. I'm not aware of any
14 formal evidence to indicate that there was that
15 kind of communication going on.

16 Q Do you know whether there -- I mean, so a more
17 simple question, do you know whether any
18 communication was being done in the mid 1970s
19 from Marathon to outside contractors?

20 A I think we have one document, and as a standard
21 operating procedure, that refers to some
22 communication with contractors, but I don't
23 recall the date of it. And I think it's
24 probably in one of the -- one of the documents

1 that we have here, if we could check the data on
2 that.

3 Q Okay. Why don't we take a moment to do that.
4 I'm not sure what documents you're --

5 MS. SCHMIDT: I believe, if we're thinking
6 of the same thing, I believe it was an exhibit
7 to his deposition in Kadivnik.

8 MR. FRENCH: I don't know if I have -- if
9 you give me a moment. I don't know if I've seen
10 those exhibits.

11 MS. SCHMIDT: I gave them -- we gave you
12 those exhibits when we gave you that deposition.

13 MR. FRENCH: Okay. I'm not saying you
14 didn't. I'm just looking.

15 MS. SCHMIDT: Well, okay. No, I just want
16 to get on the record that we did. And I have
17 them here if you don't have them with you. But
18 there were four exhibits to his deposition in
19 Kadivnik, two of which were notices, I believe,
20 and two of which were all Marathon company
21 documents.

22 MR. FRENCH: Let's just go off the record
23 for just a moment, because I'd like you to
24 basically get that document and show me what you

1 think is the document which was a standard
2 operating procedure as what was communicated to
3 contractors.

4 THE WITNESS: Okay.

5 (A recess was taken.)

6 (Plaintiff's Deposition Exhibit(s) 6 was
7 marked for identification.)

8 Q Back on the record after a short break.

9 At the break, Mr. Gies, I had the court
10 reporter mark as the next exhibit in line Gies
11 Exhibit 6. The -- it consists of a cover letter
12 dated November 23rd, 1982, and then the rest
13 of the document is something entitled "Marathon
14 Oil, Robinson, Illinois, Contractors' Securities
15 Procedures and Regulations Manual." And I'm
16 going to ask you to -- ask you some questions
17 about that.

18 A Yes.

19 Q Okay. Is this the document you were referring
20 to when you said that you believe there was a
21 standard operating procedure in regard to
22 contractors?

23 A This is the document that I guess I was
24 referring to as an example --

1 Q Right.

2 A -- of a standard operating procedure that
3 existed in 1982, and in all likelihood, some
4 form of it existed earlier than 1982.

5 Q Do you have any -- have you seen any such
6 manuals that -- that are dated prior to 1982?

7 A I have not.

8 Q If there are such manuals prior to 1982 which
9 would apply to Mr. Bick's situation, I would ask
10 that they be produced by Marathon.

11 If you could turn to the -- the last
12 page -- well, second to last page. I think
13 there's actually a section on asbestos policy.

14 A Yes.

15 Q And if you would, if you could read that section
16 in its entirety.

17 A "Prior to working with insulation, Garlock
18 gaskets, packing glands on pumps and valves,
19 et cetera, the contractor will determine if the
20 material contains asbestos. This can be
21 accomplished by contacting the Marathon
22 representative that is in charge of the project.
23 If the material is determined to contain
24 asbestos and it will produce airborne asbestos

dust, it will be handled only by qualified personnel as outlined in the OSHA asbestos Standard 1910.1001. Contractors will stay out of areas that are roped off with yellow asbestos barricade tape. No one is to enter the area without proper personal protective equipment (respirator, disposable coveralls, head coverings, gloves, and foot coverings). All nonasbestos insulation is identified with a speckled-type insulation."

Q Okay. Is it correct to state that that was Marathon Robinson's asbestos policy in regard to outside contractors as of 1982?

A I don't know if we could call it their policy. What we can call it is this was their standard operating procedure as to how they would deal with asbestos in the plant in 1982.

Q And you don't have information as to whether or not that policy was in place prior to the date of this document of 1982; is that correct?

A I do not.

Q Thank you. Okay, the next thing I'd like to ask you about is going back to the answers to interrogatories. I think you still have it open

to that page 54 where we've been going over some things.

It states that, "In April 1977, a former corporate guideline for asbestos exposure control program was implemented at Marathon."

And I have a few questions about that, if you give me just a moment. Do you have a policy of that 1977 -- and I think you previously described that as a guideline; is that correct?

A The title of the document that -- that this is referring to was a health and safety guide.

Q Okay.

A So I guess by virtue of having guide in the title would suggest that it was a guideline.

Q And do you have a copy of that 1977 document?

A Yes, we have a copy of it. I thought maybe that was provided with these earlier documents, but evidently not. This here, the corporate risk and environmental affairs guide was a later version of that document.

Q Okay.

MS. SCHMIDT: I don't have a copy of that with me, this 1977 document today. I don't have it with me today. And frankly, I don't know

that I personally have ever seen it, but I'm sure that it's available, and I'm sure that it's --

MR. FRENCH: I hope it's part of today's discovery, but if it's not, I would definitely request a copy of that.

MS. SCHMIDT: Well, and I -- go ahead, I'm sorry.

MR. FRENCH: Go ahead.

MS. SCHMIDT: No, that's okay.

BY MR. FRENCH:

Q Mr. Gies, I -- you talked about this 1977 guidelines a little bit, and I just want to confirm some things and ask some other questions.

Was it James Slaughter who drafted this guidelines which was -- was it part of the Health and Safety -- excuse me, let me start over.

Was this guidelines on asbestos in 1977, was that part of the overall document, the health and safety guidelines?

A That's correct, it was a part of a binder that contained other guidelines besides asbestos.

Q And just to be clear, my request would be for the whole binder, including the guidelines on asbestos.

MS. SCHMIDT: Bart, one thing that -- one thing I do have with me are copies of two of the things that we disclosed on our exhibit list and provided to you that may actually be part of the health -- because it was a binder, there were apparently -- well, I'm not testifying, of course, but what we provided to you on our exhibit list may be a part of what's contained in that binder in total.

MR. FRENCH: Okay. Well, that actually -- just so it's not confusing, if the whole binder as it existed in 1977 is produced as one document so that it's not confusing, because it does get confusing to things that are updated over various years, but what's important that I'm asking for is the document, the whole binder, as it existed in 1977.

MS. SCHMIDT: Okay.

BY MR. FRENCH:

Q My understanding from previous testimony is that James Slaughter was the author of the -- now,

1 I'm not sure if that's the health and safety
 2 guide in total or if that was just on the '77
 3 asbestos guidelines.
 4 A I believe James Slaughter was the author of the
 5 entire binder.
 6 Q Okay. Did you provide any information for the
 7 1977 guidelines just on the asbestos part?
 8 A I did not, because it predated my arrival.
 9 Q It did predate, okay.
 10 So it was drafted in 1977, but in months
 11 prior to your arriving there; is that right?
 12 A Correct. I think the date was April of 1977,
 13 and I arrived in August.
 14 Q Because it was a guideline, it's my
 15 understanding that the individual facilities,
 16 such as Robinson -- and this was a guideline
 17 issued by corporate in Findlay, Ohio; is that
 18 correct?
 19 A That's correct.
 20 Q And because it was a guidelines, it was not
 21 something that corporate required the managers
 22 of the individual facilities to follow; is that
 23 correct?
 24 A I think it could be interpreted that way. It's

1 interesting that many times facilities interpret
 2 corporate guidelines as being essentially
 3 required to do even though they were intended as
 4 guidelines.
 5 Q Were there -- do you know -- you don't know the
 6 extent to which Robinson was complying with the
 7 asbestos guidelines in 1977; is that correct?
 8 A If I could maybe qualify something about those
 9 guidelines. Those guidelines, those 1977
 10 guidelines, were essentially a condensation of
 11 what OSHA had required in their standard, and so
 12 what was available to our facilities was the
 13 entire standard, and what this guideline was
 14 doing was taking excerpts from that and
 15 essentially saying, bare bones, this is what is
 16 required for you to do that.
 17 But I think the answer to your question is
 18 that the facility was operating consistent with
 19 OSHA requirements in 1977, which would have
 20 included the OSHA asbestos standard that was
 21 promulgated in 1972.
 22 Q Unfortunately, we don't have the 1977 guidelines
 23 in front of us today, but based upon your
 24 recollection, did those guidelines by Marathon

1 add to anything? You mentioned a condensation
 2 of OSHA. Did they add to any of the OSHA
 3 requirements?
 4 A I don't recall that there was anything that
 5 supplemented what OSHA had required. What I --
 6 I do think the intent of that was to reemphasize
 7 those key points in making sure that the
 8 facilities understood they needed to do these.
 9 Q And that -- and those '77 guidelines were
 10 intended for employees of Marathon; correct?
 11 A That's correct.
 12 Q And not for outside contractors?
 13 A The guidelines were directed at employees, but I
 14 think that there was probably an underlying
 15 belief that not only should our employees follow
 16 the OSHA requirements, but our contractors as
 17 well. And I think to a certain extent, in any
 18 contracts, written, formal contracts with
 19 contractors, there was a statement that they
 20 will, essentially, follow governmental
 21 requirements, including OSHA.
 22 Q These written -- these guidelines were not the
 23 written guideline -- it was in a written form
 24 obviously; correct?

1 A The 1977 guidelines?
 2 Q Yes.
 3 A Yes, correct.
 4 Q They were not given to outside contractors; is
 5 that correct?
 6 A I am not aware of that.
 7 Q Would you agree that because the written
 8 guidelines were not given to Marathon and
 9 outside Marathon, that it would be important for
 10 Marathon to communicate about where -- No. 1,
 11 where asbestos was in Marathon's facilities?
 12 A Well, first of all, I don't know that they
 13 weren't given to outside contractors.
 14 Q Okay.
 15 A They may have been. In terms of whether there
 16 should have been communication to contractors
 17 about hazards in the work area, I think this
 18 1982 document has indicated that -- and again,
 19 if -- you know, if you can say, okay, what they
 20 were doing in 1982 is -- would have been
 21 something very similar to what they were doing
 22 in the 1970s.
 23 Q You're making that assumption?
 24 A I am making that assumption, but I'm also making

1 the assumption based on the fact that Marathon
2 would not let anybody on their premises that
3 would present a risk to the refinery.

4 Q Okay.

5 A And whether that risk was safety or fire or
6 whatever the case may be. And I think that
7 probably included -- again, in my opinion,
8 included asbestos, where there could have been
9 some release of asbestos fibers that could have
10 impacted their employees as well.

11 Q And I understand that's your belief, but you
12 don't have evidence suggesting that Marathon was
13 communicating these dangers to -- or excuse me,
14 communicating to outside contractors about the
15 hazards of asbestos at Marathon, you don't have
16 any evidence of that, is that correct?

17 A Probably this might be the earliest documents
18 that we found so far.

19 Q In 1982?

20 A That they would communicate that kind of
21 information.

22 Q Okay. I've noticed -- was there also a 1977
23 respiratory protection program in place? And
24 the reason -- where I got some information

1 leading me to that conclusion was in that
2 Satterfield deposition, you testified, I
3 believe, about a 1977 respiratory protection
4 program, is that correct?

5 A That's correct. I believe that was in that same
6 binder with the asbestos guidelines.

7 Q Okay. Just in case it's not, I would ask that
8 that be produced. If it's part of the binder,
9 great, but separately I'd ask that to be
10 produced.

11 Did you create the -- this respiratory
12 program, or was this in existence prior to you
13 coming on with Marathon?

14 A I think that predated my -- my time there as
15 well.

16 Q And this was not a -- this was a policy intended
17 for Marathon employees?

18 A I would have to look at the guidelines
19 specifically to see whether it referenced
20 contractors or not.

21 Q Do you know one way or another as we're sitting
22 here today?

23 A I don't.

24 Q All right. The -- okay, going back to the

1 interrogatory answer, because it's chock full of
2 information, the next sentence, "In 1984, the
3 corporate guideline was updated and required
4 that a formal asbestos health monitoring program
5 be established at each facility."

6 Is that what you'd previously referred to
7 in deposition testimony as the -- I think you
8 were dating it as 1983 or 1984 asbestos exposure
9 control plan?

10 A Yes.

11 Q Okay. Again, you don't have a copy of that '84
12 program here today, correct?

13 MS. SCHMIDT: Is that this? This was
14 also --

15 THE WITNESS: Well, that was -- yeah, this
16 is a hazard communication plan.

17 MS. SCHMIDT: Okay.

18 A But yeah, this one, again, would have been a
19 separate document, very similar to -- it would
20 be in this document here, which is essentially
21 the corporate risk and environmental affairs
22 guide that was issued -- well, it says 1984, and
23 there should be a separate -- there's a separate
24 section in here for respiratory protection and

1 asbestos exposure control, asbestos exposure
2 program. So yes, it is in this group of
3 documents.

4 Q So that's it, it's in there?

5 A That's correct.

6 Q Okay. Can you take a moment and find me
7 specifically the '84 asbestos exposure control
8 plan.

9 MS. SCHMIDT: When you're talking about
10 this asbestos exposure control plan, that's what
11 this is?

12 THE WITNESS: That's correct, that would be
13 that document.

14 MS. SCHMIDT: Okay.

15 Q Can I take a peek at this?

16 A (Hands document.)

17 MR. FRENCH: If we could go off the record
18 so I could review this for just a moment.

19 (A recess was taken.)

20 (Plaintiff's Deposition Exhibit(s) 7 was
21 marked for identification.)

22 Q Going back on the record, we've marked a
23 Plaintiff's Exhibit Gies 7 as the asbestos
24 exposure program which is several pages, and

1 it's dated 4-6-84.

2 And if you could -- would you confirm that
3 this is the document that you were referring to
4 in the interrogatory answer as the corporate
5 guideline was updated and it required that a
6 formal asbestos health monitoring program be
7 established at each facility?

8 A This is the document that's referenced, yes.

9 Q Okay. My understanding, and correct me if I'm
10 wrong, is that this was drafted by a number of
11 people, including yourself; Jennifer Sologub, if
12 I've pronounced -- S-O-L-O-G-U-B; John Parziale;
13 Steve Bandy; Bob Sovin; Jim Slaughter; and
14 Charles Steinmetz, who was the medical director
15 at the time?

16 A I'm not aware that all of those people were
17 involved in developing this guideline. In fact,
18 John Parziale had essentially left his function
19 around 1975, so he would not have been one of
20 the authors.

21 Q Okay.

22 A I'm not sure Jennifer Sologub was either.

23 Q Okay.

24 A But the others may very well have been involved.

1 Q All right. Can you explain the difference
2 between this '84 plan and the 1977 guidelines?

3 A The 1977 guidelines were essentially a
4 condensation of the OSHA requirements. It was a
5 first attempt by Marathon to put together a
6 corporate guideline that facilities could use
7 for -- for developing their own standard
8 operating procedures.

9 The 1984 document reflects more than just a
10 restatement of the OSHA regulations, but
11 essentially it's broken into three provisions,
12 three sections. One is provisions and
13 interpretations, which is essentially a --
14 largely a statement of what the policy will be;
15 a second section which deals with administrative
16 procedures, which is just an indication of who
17 does what and when; and then a third section
18 called special interpretations, which provides
19 two facilities an example plan that they could
20 use as a template for their own -- for their own
21 workplace.

22 Q Okay. And Mr. Gies, I'll admit that I have not
23 reviewed that in any detail. I've just scanned
24 it today at today's deposition, but my reading

1 of it is that that is a plan that applies to
2 employees and does not reference outside
3 contractors; is that correct?

4 A Without looking at it more closely, I probably
5 couldn't respond one way or the other to that.

6 Q Why don't we -- why don't we do this. Why don't
7 we take a short break right now to allow you to
8 review that to be able to answer that question
9 as to whether or not this 1984 plan applies to
10 outside contractors or not.

11 A Okay.

12 MR. FRENCH: We'll go off the record.

13 (A recess was taken.)

14 Q Back on the record, and when we took this short
15 break for you to review this 1984 plan, my
16 question was whether or not by the terms of this
17 plan outside contractors were included.

18 A Outside contractors by name are not identified
19 in this asbestos exposure program, although
20 there are statements in the program which
21 certainly would have implications for
22 contractors at least insofar as the training
23 that is being provided and consistent with this
24 program is one that Marathon employees would be

1 expected to ensure that safe procedures were
2 being followed.

3 Q Okay.

4 A Even if the work were being done by contractors.

5 Q Do you know whether or not that this written
6 policy was provided to outside contractors? Or
7 written plan?

8 A I am not aware of that.

9 Q Do you believe that they were or weren't; it was
10 or wasn't?

11 A I don't think I could speculate on that.

12 Q Okay. There's nothing in the document itself,
13 correct, that indicates that such written plan
14 was disseminated to outside contractors;
15 correct?

16 A That's correct.

17 Q If I could ask you -- I know we have had the
18 interrogatories open for a while, to turn to
19 page 74. All right, and 74 is at the -- at the
20 top of that page is Marathon's interrogatory
21 response to No. 75. The first paragraph are
22 objections that Marathon has. The second
23 paragraph is an answer. If you could read that
24 paragraph, please.

Page 69 1 A "It became generally aware of the health risks 2 associated with exposure to asbestos-containing 3 products as early as OSHA's regulations in 1972. 4 Different individuals within Marathon management 5 during the relevant time period obtained varying 6 degrees of knowledge or information at different 7 times about the potential health risks 8 associated with exposure to asbestos-containing 9 products." 10 Q Mr. Gies, in the information supplied for that 11 paragraph, who provided the information so that 12 that paragraph could be drafted? 13 A I provided part of the information. 14 Q What information did you provide? 15 A Well, to a certain extent sometimes these -- 16 these responses to interrogatories are maybe 17 repetitious of what we had provided in other 18 interrogatories, so ... 19 Q Understood. 20 A So it's a little hard for me to historically go 21 back and say that, you know, maybe two or three 22 interrogatories ago, maybe, yeah, I provided 23 that statement. I probably can say that I was 24 responsible for that statement.	Page 71 1 that would have been basically Marathon counsel. 2 Q Okay, thank you. 3 MS. SCHMIDT: You're not talking about the 4 background information for that, you're talking 5 about the way the sentence is written? 6 THE WITNESS: That's correct, that's 7 correct. 8 Q All right. Let's see, could you next turn to 9 page 84, and in -- this is Marathon -- I'm 10 referring to Marathon's response to 11 Interrogatory No. 85. And again, the first -- 12 the first paragraph is an objection by Marathon, 13 and then the second paragraph, could you 14 review -- could you recite the first sentence in 15 that paragraph, please. 16 A "In reviewing Marathon's documents, it has found 17 no evidence to date that anyone at Marathon had 18 any information prior to the hiring of Rick Gies 19 in 1977 that use of asbestos-containing products 20 at its refineries posed a risk of harm to 21 Marathon's employees or to anyone else there." 22 Q And just in reference to that sentence, did you 23 provide that information, the underlying data, 24 if you will, for that sentence, or were there
Page 70 1 Q You can or can't? 2 A I believe I can say that I am responsible for 3 that statement. 4 Q Okay. And when we say the statement, you mean 5 the whole paragraph? Because you said that you 6 were responsible for part of the information. I 7 just wanted to make sure there wasn't other 8 individuals also responsible for providing the 9 information. 10 A That's fine, I think the statement is correct as 11 written, I think I probably did provide primary 12 authorship of it, yes. 13 Q Do you know if there were other individuals who 14 supplied the information necessary to draft that 15 paragraph? 16 MS. SCHMIDT: I think he's asked -- I think 17 you've asked that, and I think he's answered it. 18 I think he said -- 19 MR. FRENCH: And he qualified it with 20 primarily, and that's why I asked if there were 21 any other individuals who I don't know about 22 that also supplied the information. 23 A Perhaps the only other information provided 24 would have been more wordsmithing than -- and	Page 72 1 other individuals who did? 2 A I think that was -- that was probably a sentence 3 that was maybe authored by -- by Marathon 4 counsel, but I had reviewed it and found that it 5 was appropriate. 6 Q Okay. And you're not -- and just to make sure, 7 you're not aware of any other individuals other 8 than Marathon counsel that -- that provided 9 underlying information for that sentence? 10 A No, I am not. 11 Q All right. And if I could direct your attention 12 to pages 8- -- well, let's start with 87. And 13 there's an answer that -- there's Interrogatory 14 No. 87, and again, the first paragraph, of 15 course, is an objection. 16 The second paragraph, could you read that 17 sentence, please. 18 A "The Industrial Hygiene Foundation"?; 19 Q Yes. 20 A "Marathon became a member of the Industrial 21 Hygiene Foundation in approximately the 1970s." 22 Q My question is: Do you have any documents that 23 evidence that, that Marathon became a member of 24 the Industrial Hygiene Foundation? And by you,

Page 73 1 I mean Marathon and Marathon generally, not just 2 related to Robinson. 3 A There probably is a document that supports that 4 statement. 5 Q Do you remember reviewing any such document at 6 any time? 7 A I have a vague recollection of reviewing a 8 document in connection with the Industrial 9 Hygiene Foundation, but I don't remember the 10 specific year. 11 Q Okay. I'm going to add to my request for 12 information any documents that is in Marathon's 13 possession relative to the IHF I'd also like to 14 see. 15 Could you read the next paragraph about the 16 National Safety Council. 17 A "The Ohio Oil Company became a member sometime 18 around 1932. Marathon has not found any 19 evidence of its corporate membership, although 20 individual employees may have been members." 21 Q In reference to that section, do you -- have you 22 seen any documents about the National Safety 23 Council, or the NSC, as it's sometimes called, 24 at any point?	Page 75 1 I would basically like to turn to some 2 current discovery issues we are having with 3 Marathon, and one issue in particular, through 4 counsel, I have been trying to get some 5 information about asbestos-containing products 6 at the Robinson refinery, including crocidolite 7 gaskets. 8 I'm sure you've been apprised of this, is 9 that right? 10 A Yes. 11 Q And have you been one of the folks trying to 12 retrieve the information necessary to see if 13 there were asbestos-containing gaskets and 14 specifically crocidolite asbestos-containing 15 asbestos gaskets at the Robinson refinery? 16 A I have not been actively trying to do that 17 myself, but I have provided comments to counsel 18 as to, you know, maybe some additional place to 19 look. 20 Q Okay. Why don't -- why don't -- and I 21 appreciate that, and I think without describing 22 the actual -- anything confidential, can you 23 describe the process by which you would suggest 24 retrieving those documents?
Page 74 1 A Not that I recall. 2 Q From that answer, I suppose there's some 3 information that led Marathon to be able to 4 answer that, and I would ask, and again, this is 5 probably for counsel, not for you, that any 6 information that Marathon has related to the NSC 7 also be turned over. 8 And then I won't bore you with this whole 9 one, but just the next one, if you could read 10 that. 11 A "American Petroleum Institute. The Ohio Oil 12 Company was a member of API from 1919 to 1961, 13 and Marathon has been a member of API since 14 1963." 15 Q Mr. Gies, have you seen any documents related to 16 the showing -- Marathon and its predecessor 17 name, Ohio Oil Company, as a member of the API? 18 A I have not. 19 Q Again, I would ask that that information be 20 turned over. And I think it was part of the 21 request that was to be turned over today. 22 All right, I don't think I have any more 23 questions to bore you with Marathon's answers to 24 interrogatories.	Page 76 1 A Well, first of all, I have absolutely no 2 knowledge of what's -- what's at the Robinson 3 refinery. 4 Q Okay. 5 A My -- 6 Q Let me ask a better question, I think a simpler 7 question. 8 Where should Marathon go to look for these 9 documents showing crocidolite-containing gaskets 10 at Marathon? 11 A Well, one place to look would be the archived 12 material safety data sheets. At this point in 13 time, that would be my only suggestion, because 14 typically those data sheets have been saved for 15 some length of time. 16 Q Were -- where are these sheets kept? 17 A The sheets would be kept in Findlay, and there 18 is a computer database that stores that 19 information. I think the original documents 20 probably are retained in some offsite storage. 21 Q Where would that offsite storage be? 22 A Should be there in the Findlay area. 23 Q You yourself, do you have access today to this 24 computer database that I've seen you reference

1 before in previous depositions, is that
2 something that you know how to access yourself?
3 A As a retired employee, I would not have access
4 to that.

5 Q Okay. I'm not going to go ad nauseam about
6 this, but -- because I think you have done this,
7 about Marathon's document preservation policy
8 and how -- how to retrieve documents. I'm going
9 to give you my understanding of it, and if I'm
10 wrong, please correct me.

11 If there's this computer database that I've
12 seen, and you've just -- and this is the
13 database, for example, that would have these --
14 what's the initial, the MS--

15 A MSDS.

16 Q -- MSDS sheets that we're talking about, would
17 be -- and that computer database is physically
18 in Findlay, Ohio?

19 A That's correct.

20 Q Are there -- would there be hard copies of such
21 MSDS sheets that would date back to the early
22 1970s date?

23 A There may not have been since there was no
24 formal government requirement for manufacturers

1 to provide MSDSs to customers at that time.

2 Q True. Let me ask about a category of documents
3 more generally.

4 In the early 1970s, would hard copies of
5 documents showing the asbestos content of
6 gaskets or other asbestos-containing materials
7 still be kept at some location?

8 A Probably not.

9 Q I understand that there are some documents kept
10 at the individual facilities such as Robinson;
11 correct?

12 A That's correct, and consistent with records
13 retention policy.

14 Q Okay. What records would be kept at the
15 Robinson facility, or let's make it a little
16 broader to include any storage facility near
17 Robinson?

18 A I assume we're talking about safety and health
19 records?

20 Q Sure, we can limit it to that.

21 A The only record that -- the only records that
22 would require long-term retention would be those
23 that meet the requirements of the hazard
24 communications standard. Excuse me, let me --

1 let me rephrase that. It wouldn't be the hazard
2 communication standard, it would be the employee
3 access -- or access to employee and exposure
4 records, employee access to exposure and medical
5 records.

6 Q And for Robinson, how far do those records go
7 back?

8 A That standard was promulgated in the mid 1980s,
9 so only relevant records probably after that
10 date would have been retained.

11 Q Okay. Let me ask you this: I'd like to go over
12 some individual categories of documents, and to
13 the best of your knowledge, where would such
14 documents be kept for Marathon Robinson.

15 Sales or invoices of asbestos-containing
16 products, including insulation and gaskets.

17 A I do not know.

18 Q Marathon's -- the second category, Marathon's
19 attendance at outside organizational meetings,
20 such as the API, the NFC, or the IHF?

21 A What were the organizations again?

22 Q The American Petroleum Institute, the National
23 Safety Council, and the Industrial Hygiene
24 Foundation.

1 A There are some records associated with
2 attendance at American Petroleum Institute
3 meetings, and those records would have been
4 archived and retained in the Findlay records
5 storage area.

6 Q I understand you're not sure about records for
7 the NSC or National Safety Council, but where do
8 you think such records would be kept, if they
9 are -- if they exist?

10 A My impression is that probably those records
11 don't exist any longer.

12 Q Okay. Do you know why they don't exist?

13 A I think they just -- they met the records
14 retention policy requirements for disposal,
15 whereas the ones having to do with API were
16 considered exposure or potentially medical
17 records. And even though they weren't medical
18 records, per se, they may have fit that
19 description, which would have fallen under the
20 OSHA access to records standard.

21 Q Would that -- would your answer about such
22 documents also be true of the IHF, or would
23 there be something different?

24 A The IHF was -- was an organization that Marathon

1 may have belonged to before -- before my --
2 before I started work.

3 Q All right. How about asbestos abatement
4 documents, where would such documents be kept?
5 And please mention if it's more than one
6 location.

7 A I'm not aware of asbestos abatement documents
8 being retained.

9 Q Okay. That confuses me a little bit, because I
10 thought earlier in the deposition you had talked
11 about like the abatement documents -- maybe we
12 were -- were we just talking about bulk sample
13 documents are kept?

14 A Correct. The fact that the bulk samples may
15 have included a location where that sample is
16 taken and possibly the type of work that was
17 being done in conjunction of that, with that.

18 Q Okay.

19 A That would be why the -- those would be
20 retained. Otherwise, if there's major
21 renovation being done on a facility, let's just
22 say if there's no bulk samples being taken,
23 those records would have fallen under the --
24 excuse me, under the records retention policy.

1 So they would have been disposed of after a
2 certain period of time.

3 Q Under -- you've mentioned this, the records
4 retention policy several times.

5 That is -- you're talking about Marathon's
6 policy for such documents?

7 A That's correct.

8 Q Okay. You don't have a copy of that policy with
9 you today, do you?

10 A I do not.

11 Q Okay. That would be another request that I
12 would have, for the records retention policy.

13 Is that a -- do you know when the last --
14 has there been more than one edition of that, or
15 has that record retention policy stayed
16 consistent from your tenure at Marathon?

17 A There were revisions to it over time.

18 Q Do you know when the -- do you know the date of
19 the first records retention policy that you've
20 seen?

21 A I don't remember the specific date when that
22 policy was enacted. My guess would have been
23 probably in the late 1980s.

24 Q Late 1980s, okay. All right. I would ask that

1 any additions also, any revisions be provided
2 with that, starting with whatever the first
3 policy was and any revisions.

4 The air monitoring for individual personal
5 monitoring done at Robinson, where would those
6 records be kept? I understand that those
7 records -- you mentioned earlier would be kept
8 from the first time, which would have been the
9 late 1970s, until the present. Where would
10 those records be kept?

11 A Those would be kept in the industrial hygiene
12 database, which is in Findlay.

13 Q Okay. Is that the same database we've been
14 referring to before?

15 A It's a different database. The previous one we
16 were talking about was the material safety data
17 sheet database. This one is the industrial
18 hygiene database.

19 Q Is this the one you called Inhale?

20 A Correct.

21 Q Okay. In what form are these documents for air
22 monitoring, for personal monitoring done, kept,
23 what type of format?

24 A Are you asking about the computer database or

1 the hard copy data that was used?

2 Q The hard copy data that was used.

3 A They would have been kept in -- now, let me back
4 up. They would have been put in records storage
5 as well, and the information typically is on --
6 in standard format, that we may have developed a
7 form that was used for the air monitoring -- in
8 fact, we did develop a form, it was an
9 industrial hygiene sampling form. And that form
10 over the years has also undergone some revision.

11 Q Would it be correct that it's probably that form
12 that's more readable to like a layperson or an
13 outside person rather than the database sheet
14 that you could produce for the air monitoring
15 results? Does my question make sense?

16 A Yes, I think you could probably argue both ways.
17 Sometimes the computer information is a lot more
18 concise and to the point, whereas if you're
19 looking at the original sample form, it contains
20 more technical information that may not make its
21 way into the computer database because it was
22 just sort of background information for what was
23 put into the computer.

24 Q Okay. And if I didn't make this request, again,

1 that would be on my list too, whatever format is
2 easier to see, that the air monitoring for
3 Robinson for individuals.

4 And there was some monitoring done also for
5 particular areas -- air monitoring for a
6 particular area of the refinery?

7 A Yes, there was area monitoring done as
8 distinguished from personal monitoring.

9 Q Okay.

10 A The approach was very similar, using the same
11 type of monitoring equipment, but instead of it
12 being located on a person, it may have been
13 located at an area that was barricaded off
14 because there was asbestos work being done in
15 the area.

16 Q Okay. And do those records date back to
17 approximately the same time as the personal
18 monitoring, that being the late 1970s?

19 A There may be some area monitoring in there in
20 conjunction with -- with the personal
21 monitoring. I don't think it goes back quite as
22 far back as the personal monitoring.

23 Q So in other words, it would be more recent -- it
24 would be later dates than like -- like after the

1 1970s probably for the area monitoring?

2 A Yeah. We would have to look at the data, and
3 there is a way to distinguish between the area
4 monitoring results and the personal monitoring
5 results that -- but there's far less area
6 monitoring than what there is personal
7 monitoring.

8 Q And forgive me if I asked this earlier, but I
9 think you said this, that there was some area
10 monitoring done for Robinson?

11 A I believe there was some area monitoring done
12 for Robinson, yes.

13 Q Okay. That would also obviously be included in
14 my request, that such records be produced.

15 Okay, I think that's all I need to ask you
16 about document policy.

17 You obviously started in 1977 with the
18 company, and I understand that you were employed
19 as the first industrial hygienist, is that
20 correct?

21 A That's correct.

22 Q I'm -- I'm curious about this. How -- and I
23 don't see that I've read this in previous
24 depositions. How did it -- how did your

1 position come about? How did the need for your
2 position come about?

3 A Well, I think that there was a recognition that
4 there was a considerable amount of work that --
5 that could no longer be handled by safety people
6 at our facilities, and that the nature of the
7 work was more technical than what our safety
8 people would normally be involved in.

9 And I think that there was also a
10 connection between our attendance at the
11 American Petroleum Institute meeting, where
12 other similar oil companies had industrial
13 hygienists for their operations. And so I think
14 that there was a general impetus, not to mention
15 the least of which being OSHA, becoming a very
16 prominent force, that essentially led the
17 company to believe that, okay, we need to add
18 this kind of technical expertise.

19 Q How did the contact initially get made? Did you
20 contact Marathon for a job, or did they contact
21 you because they knew something about you and
22 your education and experience?

23 A I think I had seen a posting at one of our
24 national conferences, and I responded to the

1 posting and essentially met the Marathon people
2 there at the conference.

3 Q And when you say like a posting at a conference,
4 you're talking about for the industrial
5 hygienists?

6 A Correct.

7 Q When you came on board, who were the people
8 responsible for the -- for the functions that
9 you had as an industrial hygienist? And let's
10 start with who were those people just at
11 Marathon generally, like at Findlay, corporate.

12 A At Findlay corporate, probably Jim Slaughter was
13 the key person that actually interviewed me as
14 well as was providing whatever technical support
15 was available.

16 Q Okay.

17 A There were also some people in our -- what's
18 called -- what was called our loss prevention
19 department that were safety engineers that may
20 have been involved in doing some industrial
21 hygiene monitoring or providing some expertise
22 like that that also, you know, would have been
23 involved in obviously the decision process.

24 Q How about at Robinson itself? Obviously you

1 being the first industrial hygienist and working
2 out of Findlay, they did not have an industrial
3 hygienist when you came on board; correct?

4 A Correct.

5 Q What person or persons were handling what you
6 would consider industrial hygienist functions at
7 Robinson when you came on board in 1977?

8 A The safety supervisor at the Robinson refinery
9 in 1977 was Red Stewart, and he had one or two
10 people that reported to him that presumably were
11 involved in doing some industrial hygiene
12 monitoring. I don't recall the name of the --
13 of those people that were there in 1977 aside
14 from Red Stewart.

15 Q What's your understanding of Red Stewart's --
16 did he have education in safety and/or
17 industrial hygiene?

18 A I don't know what education Red had in
19 industrial hygiene aside from what he had
20 learned on the job. I think he -- he had worked
21 his way from operations into the safety
22 supervisor's job, so I think he had firsthand
23 knowledge of at least what potential exposures
24 could be there and obviously what safety

1 procedures were important. So he had -- he
2 definitely had some experience but did --
3 probably was not in industrial hygiene.

4 Q Did Robinson ever hire its own -- and when I say
5 Robinson hire, I don't know how the hiring
6 works, and I don't care, but, I mean, did
7 Robinson ever have its own industrial hygienist
8 on site; and if so, when did that start?

9 A Probably the first person that they employed as
10 an industrial hygienist came on board around
11 maybe the late 1980s.

12 Q Okay. And who was that person?

13 A That would have been Jim Marietta. Do you need
14 for me to spell that?

15 Q Sure.

16 A M-A-R-I-E-T-T-A.

17 Q Okay. And his responsibility was to be the
18 industrial hygienist for the Robinson refinery?

19 A That's correct.

20 Q Have they had somebody constantly employed in
21 that position or a similar position since that
22 time?

23 A That's correct.

24 Q All right. I want to talk a little bit about

1 the air sampling process that was done at
2 Robinson from the late 1970s. And I guess we
3 ought to break this down. We'll just start when
4 you first -- when you're aware when it first
5 started in the late 1970s.

6 My understanding from reading the -- your
7 deposition in the Shaw deposition is that Steve
8 Bandy at Robinson would collect the personal
9 monitoring samples, would send those to you at
10 Findlay, and then you, in turn, would forward
11 them to an outside lab for testing. And then
12 finally, when the results came back, you would
13 write a report and then disseminate it within
14 Marathon, however it had to be distributed.

15 Is that correct?

16 A That's correct.

17 Q How long was this process in place?

18 A That process was probably in place for seven or
19 eight years.

20 Q Can you give an estimate during that time frame,
21 however it's easier for you to do, whether it be
22 a total or a monthly calculation, of how often
23 that happened, where Steve Bandy would be
24 collecting these personal monitoring results,

1 send them to you, and the whole process went
2 through?

3 A That would be hard to estimate. If I were to
4 guess, I would say that that process occurred
5 perhaps every -- every week or two.

6 Q And in each week or two, how many samples as an
7 average would Mr. Bandy be sending to you?

8 A Well, that, again, is a very rough estimate, but
9 probably anywhere from -- anywhere from one to
10 perhaps a dozen.

11 Q Okay. And those -- and I guess to be clear,
12 we're talking about area monitoring results
13 that -- as opposed to area-wide results? I
14 mean, it was being done much more frequently
15 with the personal monitoring?

16 A That may have included some area monitoring
17 results in there as well.

18 Q Okay. And this was in -- this was monitoring
19 Marathon employees; correct?

20 A To the best of my knowledge, it probably was
21 Marathon employees.

22 Q Do you know whether it included any monitoring
23 of outside contractors?

24 A Not that I recall.

1 Q If there was a result that showed an exceedance
2 of the exposure limit, what was the procedure?
3 What happened to remedy that -- or no, just what
4 was the procedure that happened when you saw a
5 result that exceeded the exposure limit?

6 A Typically what we would do is we would call the
7 facility and let them know that we had a result
8 that exceeded the exposure limit, and that we
9 would ask them perhaps some additional details
10 about what had occurred, whether there was
11 anything that wasn't documented on the sample
12 data form to indicate why the exceedance might
13 have occurred.

14 We would then follow that up with a formal
15 report that essentially documented those
16 results. And then in addition to that, we would
17 also provide a separate notification that could
18 be transmitted to the employee about what his
19 monitoring result was.

20 Q Okay. And again, this is going to be in my
21 compilation of things. I would -- well, let me
22 ask, before I ask for this.

23 The formal reports that were done to
24 document this issue, are those still in

1 existence?

2 A Yes, they should be.

3 Q Okay. The separate reports to the employees
4 talk -- discussing the issues, have those also
5 been kept?

6 A Yes, they should be.

7 Q All right. I'd request both categories of
8 documents be sent to us.

9 A Excuse me. Were you looking for examples of
10 that type of situation, or are you looking at
11 the universe of monitoring that was done, you
12 know, on employees and the exposure
13 notification?

14 Q Well, my questions were in -- and just so we're
15 clear and make sure it's your understanding, my
16 question was what was -- you know, what was the
17 procedure, and I think you've given the
18 procedure after there was an exceedance of the
19 exposure limit; correct?

20 A Correct.

21 Q And that was your understanding of my line of
22 questions too, just so --

23 A Yes.

24 Q And I am requesting the documents that show

1 that, the formal report that was done, which I
2 understand is one document; and the second
3 document, which I understand is the
4 communication of that exceedance to the
5 employees?

6 A Correct.

7 Q Correct.

8 A So we are really looking maybe at something to
9 give you an example of what the process was?

10 Q Yes. And I'll make this clear in my request --
11 and this is more directed to counsel than to
12 you. I mean, I would be looking not for just a
13 representative example but all such reports that
14 show the -- show exceedance at Robinson.

15 I know that you've talked about -- in the
16 Shaw deposition again, in 1977 -- excuse me,
17 1978, there was a comprehensive survey done at
18 Robinson where you were onsite for approximately
19 a week which is -- first of all, is that
20 correct, is that your recollection?

21 A What was the time frame?

22 Q 1978.

23 A Okay. I vaguely recall a report to Robinson in
24 1978.

1 Q And it's my understanding that you -- I think it
2 was your words describing this as a
3 comprehensive survey that was done at Robinson
4 which included not just asbestos monitoring, but
5 it did include some asbestos air monitoring.

6 Do you recall that testimony? And if not,
7 I can show the deposition testimony if that
8 refreshes your memory.

9 A Yes, if you can show me that deposition
10 testimony. In fact, do we have the document?

11 Q Just one second.

12 MR. FRENCH: If you have the Shaw
13 deposition, I think it's at around page 44.

14 Q Oh, it starts around page I think 42, actually.

15 A Okay, I'm with you.

16 Q Does that refresh your memory a little bit about
17 something that was done at Robinson in 1978?

18 A I guess it refreshes my memory to the extent
19 that something was done in 1978.

20 Q Okay.

21 A Without knowing the specifics of what we had
22 done.

23 Q Okay. I'll ask you a few specifics, and if you
24 can answer.

1 Do you recall any of the results from that
2 time in 1978 in regard to the asbestos
3 monitoring?

4 A No, I do not.

5 Q Do you recall which tradesmen or trades were
6 wearing the personal air monitors for asbestos
7 sampling then?

8 A I do not.

9 Q Okay. Do you -- now, I'm using this term
10 comprehensive survey, because I read it in the
11 deposition transcript.

12 Does that -- does a comprehensive survey of
13 a refinery such as Robinson mean anything to
14 you? And I guess my question is: When I use
15 that term, what do you understand that to be?

16 A Well, comprehensive as opposed to limited. I
17 would say that the comprehensive survey is one
18 where you would go into a facility and you would
19 try to monitor all of the employees at the
20 facility for whatever the relevant exposure
21 might be.

22 Q Okay.

23 A As opposed to a limited survey which maybe
24 you're going in and focusing just on a

1 substance. The comprehensive survey essentially
2 says, well, what's going on during this week
3 that's happening, we need to monitor and assess
4 what the exposure is to whatever that substance
5 is.

6 Q So comprehensive would include every hazardous
7 material there at a refinery that you can think
8 of, essentially?

9 A It would include every hazardous substance where
10 you would anticipate that there could be a
11 problem exposure.

12 Q And from 1978 forward, would a comprehensive
13 survey always include asbestos monitoring?

14 A It would not necessarily include asbestos
15 monitoring, because it may well be that people
16 are doing little or no work with asbestos at the
17 time that we were there.

18 Q Do you know how many comprehensive surveys that
19 were done at Marathon from 1978 forward that
20 would include asbestos monitoring?

21 A Are we talking company-wide?

22 Q Just Robinson.

23 A Just Robinson. There may have been two or three
24 comprehensive surveys that might have included

1 asbestos.

2 Q Can you identify years or approximate part of
3 the decade that these two or three -- is that in
4 addition to 1978, or does that two or three
5 include the 1978?

6 A That may be including 1978.

7 Q Okay. Do you know when the next comprehensive
8 survey was done, approximately?

9 A I think it was probably done perhaps three or
10 four -- maybe three years later.

11 Q Okay.

12 A We were doing them at approximately three- to
13 four-year intervals up until 1990.

14 Q All right. Do you know when the last one that
15 you can recollect being done at Robinson?

16 A I think it was 1987.

17 Q All right. I'd ask that those records be
18 produced too, of the comprehensive surveys that
19 included asbestos monitoring.

20 Is there a reason why the kind of
21 comprehensive surveys stopped at Robinson in
22 1987?

23 A Because we started placing industrial hygienists
24 at field locations about that time.

1 Q Okay. I think you testified in a previous
2 deposition, and I apologize, I don't remember
3 which one, but you've been there -- you've seen
4 the removal of the thermal insulation, whether
5 it be pipe insulation or vessel insulation, at
6 Robinson with your own eyes; correct?

7 A Correct.

8 Q Was the first time 1977 or approximately then?

9 A I don't recall when I first saw that at
10 Robinson.

11 Q Do you know what part of a decade you would have
12 been when you first saw it at Robinson?

13 A Well, if it -- if I did not see it in 1978, it
14 certainly would have been the early part of
15 1980.

16 Q Okay. Can you estimate how many times you've
17 seen thermal insulation being removed at
18 Robinson?

19 A That would be very difficult to do.

20 Q How about -- let me -- would it help if I
21 limited it to a time period from whenever your
22 first time was to 1985, just that time period?

23 A If we're just talking about maybe observing what
24 was -- what was happening?

1 Q Yes.
 2 A Oh, probably two or three times in that time
 3 period.
 4 Q Can you describe what process you saw? And if
 5 you can go back to the first time, that would be
 6 the most helpful, the first time that you saw
 7 the removal of thermal insulation, what was
 8 going on?
 9 A The years start running together.
 10 Q Okay.
 11 A In terms of what I have -- what I have seen. I
 12 can tell you my recollection of removal has been
 13 one where any insulation that was removed was
 14 very carefully removed and removed in sections.
 15 Wetting of asbestos was literally occurring from
 16 the time that I started working, and the wetting
 17 started including things like surfactants so you
 18 could try to more thoroughly wet the asbestos.
 19 Q Okay. I get to use a favorite defense lawyer
 20 word.
 21 Is that a specific recollection you're
 22 having about Robinson?
 23 A I can't tell you the specific year that I saw
 24 that happening. Again, it's -- my recollection

1 is one of where these images are all coming
 2 together. I can tell you that in that 1977
 3 health and safety guide, wetting was one of the
 4 procedures that was indicated, and I guess all I
 5 can do is sort of put two and two together and
 6 say that we know they were following these
 7 guidelines. That was our expectation. If they
 8 weren't following the guidelines, then they were
 9 taken to task for that.
 10 So that being the case, I'm going to assume
 11 that wetting was a regular practice to avoid
 12 generating dust.
 13 Q Do you know, can you describe any differences
 14 from the process that you first saw in removing
 15 thermal insulation versus the -- what you've
 16 seen at the last time in the removal of thermal
 17 insulation, the differences that occurred in the
 18 interim? And let me -- and let me say this.
 19 This I would include -- be -- since you've only
 20 seen it two, three times at Robinson, I would
 21 include this for all Marathon facilities.
 22 How did it change over time of how
 23 insulation was removed that was suspected to be
 24 asbestos containing?

1 MS. SCHMIDT: Well, and I'll object to that
 2 question just based on relevance as to what was
 3 happening all over Marathon facilities.
 4 But subject to the objection, if you can
 5 answer that, go ahead.
 6 A Well, and I think I can even address it
 7 specifically at Robinson, how the technology has
 8 changed, that there's no question that
 9 technology has improved. And, in fact, there's
 10 been subsequent OSHA regulations that have been
 11 issued in 1987, 1994, that essentially said
 12 that, okay, these are new procedures that you
 13 need to follow. And, of course, the most
 14 obvious one is local exhaust ventilation for --
 15 to help minimize generation of dust.
 16 Q And so the local exhaust ventilation, you saw
 17 that in later years but not in your first years
 18 observing the process; is that correct?
 19 A That's correct.
 20 Q In a deposition, I think this was the
 21 Satterfield deposition, you -- you mentioned
 22 that you could identify asbestos-containing
 23 insulation at Robinson by a white label.
 24 Do you remember that -- giving that

1 testimony?
 2 A I do remember reviewing the deposition and
 3 essentially that being what -- how I responded.
 4 Q Well, do you have an independent memory of that,
 5 of seeing white labels at Robinson?
 6 A Yes, I do.
 7 Q And besides -- did the white label -- and this
 8 is what I was unclear of. What was on the white
 9 label that indicated to a person that this was
 10 asbestos-containing insulation?
 11 A Our refineries have taken different approaches
 12 to the labeling of asbestos. Some of them have
 13 taken the approach that asbestos-containing
 14 insulation would be labeled as such: Warning,
 15 contains asbestos.
 16 In other cases, other facilities may have
 17 taken the case of putting the label on the
 18 nonasbestos material and assuming that the rest
 19 of it still contains asbestos.
 20 Q Okay.
 21 A So I guess I don't recall the specifics of
 22 Robinson aside from I think another comment in
 23 that same deposition about them going to the use
 24 of Thermo-12, which was a pipe lagging that

1 contained speckles, and that was an indication
2 that the material did not contain asbestos.

3 Q When you first went to Robinson, your first time
4 going to Robinson, do you have a recollection of
5 how much pipe insulation you saw with speckles
6 versus pipe insulation that did not contain
7 speckles and, therefore, we can assume would be
8 asbestos containing?

9 A No, we can't. I think that about the time that
10 I mentioned that -- made that reference to
11 Thermo-12, it was one where they were -- they
12 were just starting to incorporate that approach.

13 Q Okay. Do you agree that boilermakers hired in
14 the 1970s to work on equipment at the refinery
15 would have more opportunity for exposure than
16 Marathon employees for exposure to asbestos?

17 A I think it would depend on what they did.

18 Q Okay.

19 A Frequently we find that boilermakers don't do
20 just boiler maker work.

21 Q Could I ask you and your counsel to look at the
22 Satterfield deposition if you have a copy of
23 that, and turn to page 74, I believe. Let me
24 make sure.

1 Okay, if I could ask you -- starting on
2 page 74, there was a question and then your
3 answer. Could you read the question and the
4 first paragraph of your answer?

5 A I'm sorry, where are we at?

6 Q Oh, I'm sorry, 74, line 20.

7 "Question: So" -- it starts with, "So
8 wouldn't it be a good idea."

9 A Okay.

10 "So wouldn't it be a good idea to -- for
11 the plant to have given the contractor the same
12 reinforcement and guideline for the asbestos
13 standard?"

14 Do you want the answer as well?

15 Q Please.

16 A "There was a difference in the -- probably the
17 amount of work that contractors would do versus
18 what Marathon employees would do. The
19 contractors were being hired for their skills at
20 doing the asbestos work. Essentially Marathon
21 employees' opportunity for exposure was probably
22 minimal compared to, you know, the contractors
23 were coming in and doing any kind of major work.
24 This asbestos procedure, that asbestos program,

1 as it was called, issued in 1977."

2 Q Sorry. I'm sorry, you don't need to read
3 further. I just -- do you recall giving that
4 type of deposition testimony?

5 A Yes.

6 Q And you understood at that time that you were
7 under oath; correct?

8 A Yes.

9 Q And do you find anything incorrect with that
10 statement?

11 A I stand by the statement.

12 Q Okay. Mr. Gies, are -- do you -- are you aware
13 of any internal memos between people at
14 Marathon, whether you're included or not, where
15 the cost of compliance -- of complying with the
16 OSHA standards for asbestos has been discussed?

17 A Not that I recall.

18 Q Do you recall ever yourself authoring any memo,
19 notes talking about any costs of complying with
20 the asbestos standards that started in 1972 with
21 OSHA?

22 A Not that I recall.

23 Q I'd like to ask you a little bit about some of
24 the medical records I understand Marathon keeps.

1 Marathon does keep medical records for
2 employees through their health monitoring plan;
3 correct?

4 A Correct.

5 Q In 2000 -- and my understanding, at least from
6 previous depositions, is that there's no record
7 kept of -- medical records of any sort for
8 outside contractors; correct?

9 A That's correct.

10 Q In 2001, you were not aware of any employees or
11 former employees that were suffering from
12 mesothelioma?

13 A That's correct.

14 Q Has anything changed since then, since 2001,
15 where you understand that there was a former
16 Marathon employee who is suffering from
17 mesothelioma?

18 A Only hearsay. Only from what -- scuttlebutt. I
19 have no firsthand knowledge.

20 Q Okay. What did you hear about a Marathon
21 employee?

22 A Well, I had heard that some Marathon employees
23 had contracted some mesothelioma.

24 Q Do you know any more details than that?

1 A No, I don't.
 2 Q Such as name of the employees?
 3 A One of the individuals that I had heard was a
 4 former safety supervisor, was the individual
 5 that -- when I first came to the refinery in
 6 1977. That would have been Red Stewart.
 7 Q Red Stewart. Do you know if Mr. Stewart is
 8 currently alive?
 9 A I do not know.
 10 Q Do you know when you had heard -- and I
 11 understand heard, that Mr. Stewart had
 12 mesothelioma?
 13 A When did I hear?
 14 Q Yes.
 15 A Just recently.
 16 Q In 2009?
 17 A Yes.
 18 Q Have you done any checking to confirm or not the
 19 report that Mr. Stewart was suffering from
 20 mesothelioma?
 21 A I have not.
 22 Q So is it accurate to say you don't know the
 23 truth one way or the other whether he, in fact,
 24 has the disease?

1 A That's correct.
 2 Q I don't know if you were asked before, do you
 3 have -- are you aware of former Marathon
 4 employees or current employees who -- of
 5 Marathon suffering -- and this would include
 6 beyond Robinson, but who are suffering from
 7 asbestosis?
 8 MS. SCHMIDT: I'll object to the relevance
 9 of employees beyond Robinson.
 10 But subject to the objection, you can
 11 answer if you know the answer.
 12 A I don't know the answer to that.
 13 Q If I limit it just to Robinson, does your answer
 14 change, do you have any awareness of employees,
 15 former or current, suffering from asbestosis?
 16 A Aside from what we've talked about, no.
 17 Q I understand from that first deposition, the
 18 Satterfield deposition, that Marathon was not
 19 tracking records of employees, in other words,
 20 there was no medical monitoring done of them
 21 once they leave Marathon. And that was in 2001;
 22 correct?
 23 A That's correct.
 24 Q Is that still true, is there any system in place

1 now that's changed since 2002 where Marathon
 2 could see whether former employees have
 3 developed an asbestos disease?
 4 A The practice has been to provide a final
 5 examination for asbestos for employees that were
 6 leaving the company, and that was consistent
 7 with what OSHA required.
 8 Q So the policy has not changed since 2001, to
 9 your knowledge?
 10 A Let me qualify that it really -- we really can't
 11 even call it a policy. I guess let's just call
 12 it a practice.
 13 Q Okay.
 14 A Essentially, no, it has not changed, as far as
 15 I'm aware, since that time.
 16 Q Obviously since I'm here today, you're aware
 17 that some outside contractors who previously
 18 worked at Marathon have been diagnosed with
 19 mesothelioma; correct?
 20 A I am aware that the purpose for this deposition
 21 is because of a contractor who had contracted
 22 mesothelioma, Mr. Bick.
 23 Q Okay. And obviously I understand you're not a
 24 medical causation expert of any sort, but in

1 addition to Mr. Bick, you have done depositions
 2 in connection with Stanley Satterfield; correct?
 3 A Correct.
 4 Q William Shaw?
 5 MS. SCHMIDT: Kadivnik.
 6 THE WITNESS: Thank you.
 7 Q Oh, okay. There's two -- there were two in the
 8 same case, William Shaw and Joseph Kadivnik.
 9 A Okay.
 10 Q Do you know whether Mr. Shaw had mesothelioma,
 11 from your --
 12 A I do not, no.
 13 MS. SCHMIDT: From your what?
 14 Q Well, from your association with that particular
 15 case and doing a deposition in that case.
 16 A I do not.
 17 Q How about for Mr. Kadivnik?
 18 A I don't recall the diagnosis.
 19 Q Okay. What was your -- what was your best
 20 understanding of what the diagnosis was for
 21 either Mr. Shaw or Mr. Kadivnik?
 22 MS. SCHMIDT: If you recall.
 23 A I don't recall.
 24 Q Do you understand that it was some

1 asbestos-related disease and that's why you were
 2 called to testify in that case?
 3 A I would have assumed that to be the case.
 4 Q In addition to these four individuals,
 5 Mr. Satterfield, Mr. Shaw, Mr. Kadivnik, and
 6 Mr. Bick, are you aware of any other
 7 individuals, essentially outside contractors,
 8 who previously worked at Marathon and have been
 9 diagnosed with an asbestos-related disease?
 10 A I have not.
 11 Q I know we've been going for a while, and I
 12 haven't been tracking time.
 13 A And I need to take a break.
 14 (A recess was taken.)
 15 Q Mr. Gies, I wanted to ask you about API,
 16 American Petroleum Institute, and whether or not
 17 on behalf of Marathon you ever attended any
 18 meetings.
 19 A The American Petroleum Institute is obviously a
 20 large organization, so if you're asking whether
 21 I attended meetings associated with committees
 22 of the API, yes.
 23 Q Okay. When was that?
 24 A There would have been a fairly lengthy period

1 from probably when I first hired in 1977 through
 2 the late 1980s.
 3 Q Okay. And what committee meetings -- or was it
 4 more than one committee that you went to certain
 5 meetings on?
 6 A It was for the most part a committee called the
 7 Medicine and Biological Sciences Department.
 8 Q Okay. Was that -- is that a successor to what
 9 used to be called the Medical Advisory Committee
 10 of the API?
 11 A It may have been. I don't know for sure.
 12 Q Okay. Did you hold any positions within the API
 13 or within this committee of the API?
 14 A Just as sub task force chair for -- for a few
 15 projects.
 16 Q Okay. Did any of those projects involve
 17 asbestos in any way?
 18 A They did not.
 19 Q Are you aware that Ohio Oil Company, the
 20 previous name for Marathon Oil -- first of all,
 21 let me ask that, to establish that.
 22 Is the Ohio Oil Company the previous name
 23 of Marathon Oil Company which has had that name
 24 since, I believe, 1962?

1 A Correct.
 2 Q Other than a name change, was there anything
 3 that changed the organization?
 4 MS. SCHMIDT: If you know.
 5 A I'm not sure I understand your question.
 6 Q Okay. The name -- there was a name change that
 7 occurred in 1962, changing the name of the
 8 company that was previously known as the Ohio
 9 Oil Company to Marathon, and if I've forgotten
 10 some words off the end of Marathon, I'm not
 11 exactly sure when it was in 1962, but that's
 12 correct?
 13 A That's correct.
 14 Q Okay. Do you -- are you aware of any changes
 15 other than a name change that occurred in 1962
 16 that somehow was -- Marathon was a different
 17 company than the Ohio Oil Company?
 18 A I am not.
 19 Q Okay. Are you aware that Ohio Oil Company, the
 20 predecessor name, was a member of the Medical
 21 Advisory Committee in 1959?
 22 A I was not.
 23 Q Do you have any information about the length of
 24 time that the Ohio Oil Company was a member of

1 the API's Medical Advisory Committee?
 2 A No, I don't.
 3 Q Is that news to you today?
 4 A Yes.
 5 Q All right. Do you have any -- I take it you did
 6 not go to meetings of the National Safety
 7 Council; is that correct?
 8 A I may have went to one or two meetings over my
 9 30-year career with Marathon.
 10 Q Do you know when those one or two meetings
 11 occurred?
 12 A I do not.
 13 Q Do you have any recollection of what the
 14 meetings were about for the NSC?
 15 A No, I don't.
 16 Q Do you believe those meetings happened early in
 17 your tenure or middle or late?
 18 A I would say probably later in my tenure and
 19 perhaps maybe in the early 1990s.
 20 Q How about, let's see, the Industrial Hygiene
 21 Foundation, was that -- was Marathon
 22 participating with the IHF when you started in
 23 1977?
 24 A As far as I know, it was not.

1 Q Okay. I'd like to ask you, do you have any
2 experience doing dose reconstruction? And I
3 should say, specifically asbestos dose
4 reconstruction.
5 A No formal training, that's correct.
6 Q Okay. Have you ever attempted to do it, whether
7 you were trained or not for it?
8 A Certainly in no formal way or for any particular
9 project, that's correct. I'm aware that it can
10 be done and that there are procedures to do
11 that, but I have not personally done any.
12 Q And it wasn't part of your education to do dose
13 reconstruction as an industrial hygienist?
14 A Not that I recall.
15 Q And it hasn't been some on-the-job training that
16 you've had as an industrial hygienist where you
17 were able to do a dose reconstruction?
18 A That's correct.
19 Q Do you plan on doing any dose reconstruction if
20 asked to do one for Marathon in this particular
21 case of Joseph Bick?
22 A Well, first of all, I haven't been asked to do
23 it.
24 Q Okay.

1 A And if I were asked to do it, I'm not sure what
2 my response would be.
3 Q Okay. Do you have a response that comes to mind
4 as we sit here today?
5 MS. SCHMIDT: Other than are you crazy.
6 A I would be very hesitant to do it without some
7 additional formal training.
8 Q Would you agree that it would be difficult for
9 anybody to do a dose reconstruction for Marathon
10 in the -- for a Marathon exposure that occurred
11 in the mid 1970s given that there are no
12 existing monitoring records?
13 MS. SCHMIDT: I'm going to object to the
14 question. He has said he's aware of the
15 procedures. He doesn't have any expertise in
16 doing dose reconstruction. I think any answer
17 he would give would be beyond the scope of any
18 experience or training that he's had and would
19 be a speculative response.
20 Subject to my objection, I guess, if you
21 feel that you can answer the question, go ahead,
22 but I don't know how you could answer the
23 question.
24 MR. FRENCH: Okay. I will -- I'll object

1 to the speaking objection. And since it was a
2 long objection, and the question was a while
3 ago, if the court reporter could read my
4 original question.
5 (Record read.)
6 A I think I can respond from a personal opinion
7 standpoint that I think it would be difficult to
8 do something like that.
9 Q Have you seen a report by Dr. Rock in this case
10 who has been hired as an industrial hygienist by
11 Marathon?
12 A I have not.
13 Q Have you spoken with Dr. Rock?
14 A I have not.
15 Q Do you know Dr. Rock?
16 A I am familiar with him by way of his
17 publications.
18 Q Did -- have you made a suggestion in this case
19 that Marathon should hire Dr. Rock?
20 A I have not.
21 Q All right. There has been testimony in this
22 case by Mr. Bick and another coworker that at
23 the time that Mr. Bick worked at Marathon he
24 worked on a composite crew.

1 Are you aware of that?
2 A I became aware of that.
3 Q Okay. And this composite crew consisted of one
4 member of a few different trades, and it's my
5 understanding that it was a boilermaker, an
6 insulator, an ironworker, and possibly a
7 laborer. And I may have the last one wrong, but
8 in any event, it was -- and it might have been a
9 pipefitter as well, that being a composite crew.
10 Were you aware of -- of this practice at
11 Marathon in the mid 1970s?
12 A I'm certainly aware of that practice as a --
13 from a general standpoint. As to whether it was
14 going on in the 1970s, I can only assume that to
15 be the case.
16 Q Do you remember seeing that at your visits to
17 Marathon, where you saw such a composite crew
18 doing work at the Robinson refinery?
19 A Not that I specifically recall at the Robinson
20 refinery, but I -- again, I -- I don't think
21 that's an uncommon practice.
22 Q All right. Did Marathon employees ever join
23 composite crews of outside contractors that
24 you're aware of?

Page 121 1 A I don't know that. 2 Q Mr. Bick has also discussed working in an acid 3 plant at the Robinson refinery, I think it's 4 sometimes called an alky plant, like A-L-K-I or 5 A-L-K-Y as an abbreviation. 6 What's your understanding of that that 7 abbreviation stands for? 8 A It stands for hydrofluoric acid alkylation unit. 9 Q Could you repeat that one more time? 10 A Hydrofluoric. 11 Q Hydrofluoric, okay. 12 A Acid alkylation unit. 13 Q And are you aware that there was such a unit at 14 Robinson? 15 A Yes. 16 Q Do you know where that was located within the 17 Marathon refinery? 18 A I know approximately where it's located, yes. 19 Q You did not, I believe, bring any documents with 20 you like -- that would show a map or blueprint 21 or similar document showing a layout of the 22 Marathon refinery, have you? 23 A I did not. 24 Q Okay. Can -- then would you describe it, and	Page 123 1 refinery as it existed from the mid to late 2 1970s? 3 A I can't tell you how many acres it was. 4 Q Okay. 5 A But a similar unit, similar in size to the alky 6 unit that may have been -- eight or nine other 7 process units that would have essentially been 8 almost as big as the alky unit. 9 And then there was the tank farms, and the 10 tank farms could be as big as, if not bigger 11 than, the part of the refinery that included the 12 process units. 13 Q Understood. The tank farms, were they on a 14 separate piece of land from the other process 15 units? 16 A That's correct. 17 Q Okay. Can you describe where they were located 18 with respect to the processing units? 19 A The tank farms were located on the east side of 20 the refinery property. 21 Q Okay. And was there any land separating the 22 tank farms from the processing units that were 23 on the west side? 24 A There was -- there was land that physically
Page 122 1 however it's best, if it's easier for you to put 2 it on a piece of paper and draw it, that's fine 3 too. Do you think it would be easier to 4 describe or easier to draw? 5 A You mean in terms of what is the process or what 6 does the unit look like? 7 Q No, simply where the location -- where the unit 8 was located within the refinery. 9 A Okay. My understanding, and I'm -- of where the 10 unit was, and I'm trying to figure out north 11 from west and so forth. 12 MS. SCHMIDT: It would -- and I'm sorry, 13 just to clarify, you mean in the mid '70s? 14 Q Yes, as it existed in the -- and I think we 15 ought to expand it from the mid to late 1970s, 16 as it existed at Robinson at that point. 17 A Okay. The HF alkylation unit would have been 18 located in the -- on the west side of the -- of 19 the plant facility. 20 Q Okay. To get a better picture of that, how big 21 was this unit? 22 A How big was the process unit. It may have been 23 approximately as big as a city block. 24 Q Okay. And how big was the entire Robinson	Page 124 1 separated the process units from tank farms, and 2 I think that was also an area where they had a 3 railcar siting as well that separated the 4 property. 5 Q Okay. And that property, that land in between 6 the tank farm and the processing units, was 7 that, to your understanding, owned by Marathon? 8 A To my understanding, it was owned by Marathon. 9 Q Was the entire parcel consisting of what you're 10 describing as the west side of the processing 11 units, land in between with a rail station of 12 some sort, and the tank farms, was that one -- 13 was that entire area enclosed by a fence or 14 otherwise separated from -- 15 A It was enclosed by a security fence, yes. 16 Q And that would have been as it existed in the 17 mid 1970s? 18 A Yes. 19 Q Is there a -- okay, let me ask this. 20 With respect to this -- what I'm going to 21 call the entire grounds, consisting of 22 everything that was enclosed by the fence, where 23 was that in relation to the town of Robinson? 24 A The town of Robinson would have been further to

the west of the HF alky, and, in fact, would have been across a street, a city street or maybe two city streets from the -- from the fence line of the property.

Q And was the hydrofluoric acid alkylation, if I'm saying it correctly, unit, was that the unit that was closest to town, as from the other units?

A I think that there would have been a considerable buffer area between the HF alkylation unit and the security fence and then the road and then residents.

Q Understanding that, just in terms of relative proximity of that entire fenced-off area, was that unit closer to town -- well, let's start with this, just so I get a clear picture in my mind.

That unit, as I understand your description, is closer to town, for example, than the tank farm?

A Yes.

Q And it's closer to town than the land in between the tank farm and the processing units?

A Right.

Q Okay. Has anything -- in terms of the outside perimeter of the Marathon grounds containing everything we've discussed, has anything changed in terms of the outside perimeter of that Marathon refinery from the mid to late 1970s until the present day?

A Yeah, I think that there was some modification on the west side of the property. I can't give you the specifics as to what happened. I think that there used to be a -- what they called a barrel house that would be located on that west side between the fence and maybe the HF alky, essentially that barrel house has been replaced. So there's been some modifications over there on that -- on that west side.

Q Is the refinery in whole approximately the same size today as it was in the mid to late 1970s?

A It is probably larger.

Q Larger today?

A Yes.

Q Where has it expanded in terms of its outside perimeter?

A Oh, in terms of the outside perimeter, it -- that has not changed.

Q Okay.

A Yes. My reference, I guess, was more towards modification of the size of the process units within the facility.

Q Is it your understanding that asbestos-containing gaskets would have been used at Marathon during the mid to late 1970s?

MS. SCHMIDT: At Robinson?

MR. FRENCH: At Robinson, yes.

A Yes, it's my understanding that they were.

Q Are you familiar with the term crocidolite asbestos?

A I am.

Q What is your understanding?

A My understanding is that it's a form of asbestos similar to -- well, not similar to, maybe not so much in shape, but certainly it's -- crocidolite is treated the same way as amosite and chrysotile asbestos as far as OSHA is concerned.

Q Okay.

A So I am aware that it is a type of asbestos that has unique qualities, shape, that some people would suggest lends itself to its toxicity.

Q Okay. Do you recall whether or not any

crocidolite gaskets were being used at the Marathon Robinson refinery in the mid to late 1970s?

A I don't recall.

Q You don't know one way or another?

A Correct.

Q You've mentioned, I think, earlier in this deposition that you are -- you are familiar as of the time you retired in 2007 from Marathon that the Robinson refinery still had some thermal insulation in place that was asbestos containing; correct?

A I guess at this point in time I'm not personally aware of that. I --

Q No, 2007 when you retired, I think that was your previous answer.

A Yes, they still had some pipe lagging that contained asbestos.

Q And my follow-up question to that is: Do you have an estimate of the percentage of thermal insulation at the Robinson facility that was still asbestos containing in 2007?

A I do not.

Q From an industrial hygiene perspective, do you

Page 129 1 believe that it would be a good idea for 2 Marathon to make a comprehensive effort to 3 remove all of the remaining asbestos-containing 4 insulation in place at the Robinson facility? 5 MS. SCHMIDT: I'm going to object to the 6 question. It's an ambiguously worded question. 7 Subject to my objection, if you can answer, 8 go ahead. 9 A I'd like you to repeat it, please. 10 Q Sure. Let me just ask the court reporter to 11 repeat it so I can see if I can word it 12 differently. 13 (Record read.) 14 Q Okay, I'll leave it at that. 15 A Okay. 16 Q And let me just change the word a good idea from 17 a good practice. 18 Do you think it would be a good practice to 19 remove the remaining asbestos-containing thermal 20 insulation? 21 A Well, I think it's a judgment call. I guess I 22 can't answer the question, you know, maybe black 23 and white. It's a judgment call as to whether 24 you go through the entire facility, identify	Page 131 1 hygiene, which practice do you believe is 2 better, to continue the policy of doing it on a 3 case-by-case basis or to do a comprehensive 4 effort to eliminate all remaining 5 asbestos-containing insulation? 6 MS. SCHMIDT: I'll make the same objection. 7 I think it's an inappropriate question for this 8 witness. I don't know that -- that he hasn't 9 already answered. I believe he's already 10 answered the question also. 11 You can take another stab at it if you'd 12 like to, but ... 13 A Again, I think it's a judgment call, but I think 14 in the best of all worlds, you would prefer that 15 the asbestos wasn't there to start with. 16 Assuming you still had the thermal retention 17 capabilities, asbestos has served a purpose, 18 continues to serve a purpose. So if you've got 19 similar materials that provide that thermal 20 retention capability, and you didn't have to 21 deal with the asbestos, that would -- that would 22 be great. That would be just one more potential 23 hazard that you didn't have to deal with. 24 As it is, it's one where, you know, you
Page 130 1 where it's at, and remove it, or whether you do 2 it on a case-by-case basis, which has been 3 pretty much the practice. 4 Q Understanding that -- that that has been the 5 process, that it's been a case-by-case -- let me 6 further ask a question about that. 7 Is the -- when you say case-by-case basis, 8 is it essentially that the removal of existing 9 thermal insulation that contains asbestos is 10 done when there's a problem with that area, for 11 example, a leak in a pipe or something like 12 that, so that it's basically necessary to remove 13 the thermal insulation, and then that is 14 replaced with a nonasbestos insulation? 15 A That's pretty much the current practice, yes. 16 Or what I remember as a current practice when I 17 left. 18 Q Okay. And now I'm asking for your expertise as 19 an industrial hygienist, not necessarily -- and 20 my question is not suggesting, and it's only 21 from that perspective, not from the perspective 22 of a former Marathon employee and a current 23 consultant to Marathon. 24 My question is just from industrial	Page 132 1 make your judgment call, is it more of a problem 2 to go in and do the whole scale removal, or is 3 it, you know -- is it more appropriate to do it 4 in a more strategic fashion and remove what you 5 can. I think the key thing is to keep records 6 of where you have removed it so that in the 7 future you don't have to go back to it and 8 wonder, you know, is it asbestos or is it not 9 asbestos. 10 Q Okay. Understanding that it's a judgment call, 11 what factors would you consider to -- in making 12 that judgment call as to whether it's a better 13 industrial hygiene practice to remove it 14 case-by-case or to remove it in its entirety in 15 one fell swoop? 16 A Well, and I know what you're probably getting at 17 is, you know, economics, and to a certain 18 extent, the -- there may be some economic 19 advantages, I suppose, to both. 20 On the one hand, there's an economic 21 advantage to, you know, removing it all at 22 today's cost versus removing it all, you know, 23 ten years from now at those costs. On the other 24 hand, there's the strategy of, we'll remove what

1 we need when we -- when we do it, and then let's
2 just say we'll go in and do an entire process
3 unit but not the entire plant. Therefore, we
4 know that that process unit is clean.

5 Q Is it your understanding that Marathon's primary
6 factor in deciding how to remove insulation
7 between case-by-case versus doing it all at once
8 comprehensively, that its primary factor that it
9 has considered is economics?

10 A Economics is one. Management I would say, or
11 feeling, knowing that they can manage the
12 existing asbestos in place is probably another.

13 MR. FRENCH: If we can just take a short
14 break, I want to review my notes, because we've
15 thrown documents all over the place, but I think
16 I may be finished.

17 (A recess was taken.)

18 Q Mr. Gies, this is the -- I'm going to hand you
19 Exhibit 4 that was previously marked, the safety
20 manual.

21 A Yes.

22 Q And I'm not sure that we have -- and this is a
23 copy of the two pamphlets that you brought in
24 today, that's a copy of one of the pamphlets you

1 brought in.

2 A Yes.

3 Q Again, the same question, I don't think there
4 are any dates within the document that show when
5 it was produced, but have you been able to do
6 research on this one and identify a little bit
7 better when it was produced?

8 A Well, we think that it was produced probably a
9 little bit later than that, and one of the
10 substances, for example, that was mentioned in
11 here is for benzene, where they mention an API
12 Toxicology Review, 1960.

13 Now, it clearly was not done in 1960, and
14 what they're referencing is really a pretty old
15 benzene document, but the -- well, it's not --
16 excuse me. The exposure limit that they're
17 referring to there for benzene, 25 parts per
18 million, is an exposure limit that would have
19 existed probably, again, around the mid 1970s,
20 and that was the basis for concluding that --
21 that this document, you know, might have been a
22 little later than that.

23 Q Okay. So your best estimate is sometime in the
24 mid 1970s?

1 brought in, the Safety Manual 1; correct?

2 A Yes.

3 Q Okay. I don't know if I asked you this, and if
4 I did, forgive me, but did you identify a date
5 that this safety manual was drafted? And I
6 think your answer was you don't know the exact
7 date; is that correct?

8 A That's correct, but I can tell you that we
9 did -- we did some homework to try to pin it
10 down a little better.

11 Q Okay.

12 A And went back to our graphics services people
13 who originally produced the document. They no
14 longer had the date, but we felt very
15 comfortable that it predated 1975.

16 Q Predated 1975?

17 A Yes.

18 Q Can you specify anything more than it predates
19 1975? For example, was it 1974, was it late
20 1960s or anything --

21 A Well, we think it was sometime between 1971 and
22 1975.

23 Q Okay. And if you could also look at the Gies
24 Exhibit 5, which is the Safety Manual 2 that you

1 A Probably mid 1970s. And we think that what they
2 did was they originally developed this safe
3 rules and practices which is really more safety
4 rules, and then they went back and decided they
5 needed to do something with the chemicals, and
6 that's really the orientation of -- of this
7 particular one is for chemicals.

8 So this one is probably after, considerably
9 after this one here, so maybe even later than
10 1975, maybe even 1975, 1980-type vintage.

11 Q And admittedly I have not read these
12 comprehensively, but based on the indexes, I
13 don't see references to asbestos specifically in
14 either of them; is that correct?

15 A The only reference you'll see to it is -- well,
16 there is a reference to the personal protective
17 equipment in this one, but there's also a
18 reference under insulation under -- on page --
19 let's see.

20 Q And just to be clear, this is which -- I'm
21 sorry.

22 A This is the safe rules --
23 MS. SCHMIDT: No. 1.

24 A -- and safe practices, yes.

Page 137 1 Q No. 1, okay. To help you, it looks like 2 page 39? 3 A Yes, very good. Yes. 4 Q All right. 5 A So there's a reference there to insulation as 6 well as I think there's some reference to 7 asbestos-containing insulation. 8 Q Okay. 9 A So yeah. 10 Q How about in regard to Safety Manual 2, the 11 hazardous materials one, is there any specific 12 reference to asbestos in here? 13 A Not -- not that I recall. 14 Q Okay. Thank you. 15 MR. FRENCH: Mr. Gies, thank for your time. 16 I don't have any further questions. 17 THE WITNESS: You're welcome. 18 MR. HAYS: Nothing here. 19 MS. SCHMIDT: I just have one or two 20 follow-ups, just about the safety manuals, 21 Mr. Gies. 22 23 24	Page 139 1 in place, you're speaking of the management of 2 that existing asbestos regarding safety; is that 3 correct? 4 A That is correct. 5 Q So when you say management of existing asbestos 6 in place, what do you mean? 7 A What I mean is that the asbestos insulation is 8 maintained in good condition, that it's -- that 9 it's not damaged, and that it be properly 10 identified and that obviously procedures are 11 followed to ensure that there's not any 12 excessive exposure. 13 Q Okay. 14 MS. SCHMIDT: That's all I have. 15 THE REPORTER: Do you want signature? 16 MS. SCHMIDT: You've taken or had your 17 deposition taken a couple of times before. 18 You're entitled to read the transcript and to 19 determine not whether -- not to change any 20 answer. 21 THE WITNESS: Sure. 22 MS. SCHMIDT: But to determine whether or 23 not the court reporter took down your testimony 24 as you gave it.
Page 138 1 CROSS-EXAMINATION, 2 QUESTIONS BY MS. ANNE B. SCHMIDT: 3 Q These safety manuals, how were -- to whom and 4 how were these disseminated? 5 A Okay, these -- these were distributed to 6 Marathon employees, and they were distributed at 7 the time of their employment, and they expected 8 employees to put these in their back pockets, so 9 that if they needed to refer to something, they 10 would have something very convenient; hence the 11 size of the manual being a pocket guide. So 12 they did expect the Marathon employees to have 13 them and refer to them as needed. 14 Q And would that include referring to them as far 15 as any dealings they had with outside 16 contractors? 17 A I think if there was a question, I think that 18 this would be probably a primary reference for 19 them in responding to any questions from outside 20 contractors. 21 Q Early in the deposition -- earlier in the 22 deposition you talked about the management of 23 existing asbestos in place. And when you're 24 speaking of the management of existing asbestos	Page 140 1 I won't recommend to you one way or the 2 other. If you're comfortable reading the 3 deposition and then signing it, that's fine. If 4 you're comfortable waiving that right and 5 assuming they took everything down correctly, 6 that's fine also. 7 THE WITNESS: I'm good with that. 8 MS. SCHMIDT: So you'll waive your right to 9 read and sign? 10 THE WITNESS: I will. 11 12 AND FURTHER THE DEPONENT SAITH NOT. 13 14 15 16 17 18 19 20 21 22 23 24 (Signature Waived)

1 STATE OF INDIANA)
) SS:
 2 COUNTY OF HENDRICKS)
 3

4 I, Debbi S. Austin, RMR, CRR, a Notary
 5 Public in and for the County of Hendricks, State of
 6 Indiana, at large, do hereby certify that RICK
 7 GIES, the deponent herein, was by me first duly
 8 sworn to tell the truth, the whole truth, and
 9 nothing but the truth in the aforementioned matter;

10 That the foregoing deposition was taken on
 11 behalf of the Plaintiff at the offices of Cantrell
 12 Strenski & Mehringer, 2400 Market Tower, 10 West
 13 Market Street, Indianapolis, Marion County,
 14 Indiana, on the 30th day of April, 2009, commencing
 15 at 9:05 a.m., pursuant to the Federal Rules of
 16 Civil Procedure;

17 That said deposition was taken down in
 18 stenograph notes and afterwards reduced to
 19 typewriting under my direction, and that the
 20 typewritten transcript is a true record of the
 21 testimony given by the said deponent; and that the
 22 signature of said deponent to his or her deposition
 23 was waived;

24 That the parties were represented by their

1 counsel as aforementioned.

2 I do further certify that I am a
 3 disinterested person in this cause of action, that
 4 I am not a relative or attorney of either party, or
 5 otherwise interested in the event of this action,
 6 and that I am not in the employ of the attorneys
 7 for any party.

8 IN WITNESS WHEREOF, I have hereunto set my
 9 hand and affixed my notarial seal on this _____
 10 day of May, 2009.

11
 12
 13 NOTARY PUBLIC

14
 15 My Commission Expires:
 16 July 16, 2015
 17 County of Residence:
 18 Hendricks County
 19
 20
 21
 22
 23
 24

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