No. 08-10425

KELVIN KHIEU and NARIN KHIEU	§	IN THE DISTRICT COURT
VS.	§	L-193RD JUDICIAL DISTRICT
AGE REFINING, INC., et al.	§	DALLAS COUNTY, TEXAS

DEFENDANT BERRYMAN PRODUCTS, INC.'S DESIGNATION OF EXPERT WITNESSES

Defendant Berryman Products, Inc., by and through the undersigned attorneys, hereby makes and serves upon Plaintiffs the following Designation of Expert Witnesses pursuant to Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE in accordance with this Court's current scheduling order:

I.

PRELIMINARY STATEMENT

Because Plaintiffs have not yet made their experts available for depositions or provided written reports pursuant to the TEXAS RULES OF CIVIL PROCEDURE, Defendant has not yet been able to adduce the full opinions and mental impressions of Plaintiffs' experts, and therefore is unable to provide information pertaining to the mental impressions and opinions of Defendant's expert witnesses in any greater detail than set out below. At such time as additional information regarding Plaintiffs' experts is obtained, Defendant will supplement this disclosure as necessary.

PENGAD 800-631-6989
DEPOSITION EXHIBIT
4 Hardcopy
4/2/10 CAC

II.

TESTIFYING EXPERTS

John Spencer, CIH, CSP RS
Environmental Profiles, Inc.
8805 Columbia 100 Parkway, Suite 100
Columbia, MD 21045
(410) 74400700

Mr. Spencer is an expert in the field of industrial hygiene. Defendant anticipates that Mr. Spencer will testify regarding industrial hygiene, occupational health and safety, warnings, and exposure issues. He may also testify regarding OSHA regulations, standards, state-of-the-art, state-of-the-knowledge issues, government research and studies, including but not limited those done by NIOSH, and the employer responsibility to provide a safe work place, and industry adequate safety training and equipment. Mr. Spencer may also testify regarding the development of threshold limit values and permissible exposure limits in this country and worldwide, their use by industrial hygienists and the general understanding among the community of industrial hygienists regarding the extent to which threshold limit values and permissible exposure limits have been considered to provide acceptable levels of exposure for employees over theft entire occupational working life. He may testify regarding the evaluation and application of industrial hygiene studies of benzene and germane industrial hygiene issues, such as the nature, extent, and duration of Mr. Khieu's alleged exposure to benzene. He may testify regarding conditions, practices, policies, and procedures at various premises at which Mr. Khieu claims to have worked. He may testify regarding the quantity, if any, of any alleged exposure at such premises of Mr. Khieu to benzene and/or any other chemical alleged by the Plaintiffs to have caused Mr. Khieu's illness, and whether such alleged exposures were at a level and for a duration sufficient to be a substantial factor in the causation of Mr. Khieu's illness. Mr. Spencer may testify regarding the purpose of threshold limit values and permissible exposure limits and the general understanding in the scientific community that those limits provided acceptable levels of exposure. He may address issues regarding assessment of exposure, characteristics and properties of benzene and other chemicals which may alleged to be relevant in this case and any opinions offered by Plaintiffs' experts. A copy of Mr. Spencer's curriculum vitae is attached as Exhibit A.

David H. Garabrant, M.D., M.P.H.
Professor of Occupational Medicine and Epidemiology
The University of Michigan, School of Public Health
1420 Washington Heights, Room 2629
Ann Arbor, Michigan 48109-2029
(734) 936-0753

Dr. Garabrant is a medical doctor who specializes in epidemiology and occupational medicine.

Defendants have provided the medical records relating to the evaluation, testing, diagnosis, care and treatment of Kelvin Khieu; relevant pleadings and discovery materials; and the deposition of Plaintiff Kelvin Khieu to Dr. Garabrant.

Dr. Garabrant will base his opinions in this case on epidemiology studies in the scientific literature, current and historical knowledge about the chemical constituents in various products; his review of Mr. Khieu's diagnoses, medical records, work histories and other relevant health risk factors; and his review of the testimony of Mr. Khieu, Mr. Khieu's co-workers and employers, Mr. Khieu's family members, and any testimony from Mr. Khieu's treating physicians. Defendants will also provide Plaintiffs' expert disclosures or reports and the deposition, hearing or trial testimony of Plaintiffs' experts to Dr. Garabrant.

Defendants anticipate Dr. Garabrant's testimony will include the following subjects: (i) the strengths and weaknesses of epidemiology studies and how conclusions are drawn from them; (ii) the difference between hazard and risk and issues related to extrapolation from high to low exposures and how they apply in this case; (iii) what is known and what is unknown about causes of Mr. Khieu's disease, or the causes of acute myelogenous leukemia (AML) from epidemiological studies; (iv) existing evidence from published epidemiological studies; (v) the hazards and risks of benzene exposure and organic solvents, in general and with respect to Mr. Khieu's disease, or with respect to AML; (vi) the relationship, or lack thereof, between Mr. Khieu's occupations and the occurrence of his disease, and how his disease is not related to his work; (vii) the causal relationship, or lack thereof, between Mr. Khieu's disease, and resulting medical and psychological condition, and his occupational exposures to Defendants' product(s) or other solvents and chemicals which Mr. Khieu contends he encountered in the workplace; (viii) the causal relationship, or lack thereof, between AML and alleged occupational exposures to Defendants' product(s) or other solvents and chemicals which Mr. Khieu contends he encountered in the workplace; (ix) the evidence and scientific literature as it relates to the dose at which science has discerned that humans may be at an increased risk, if any, of contracting AML, or Mr. Khieu's disease, from exposure to Defendants' product(s); (x) the question of medical causation in this case; and (xi) the precepts of the medical specialty of occupational medicine generally and how they apply to this case.

Dr. Garabrant will also testify as to subjects identified in his deposition testimony, all exhibits available at the time of his deposition, and subjects addressed in his deposition.

Dr. Garabrant will also address the opinions offered by Plaintiffs' experts, Plaintiffs' treating physicians and experts designated by any co-defendant on areas of science and medicine within his expertise.

Since discovery is ongoing in this matter, Defendants reserve the right to further supplement this designation should further development of facts necessitate such an amendment and/or Plaintiffs' proof or opinions being offered by their experts necessitates an amendment or modification of this designation.

A copy of Dr. Garabrant's curriculum vitae is attached as Exhibit B.

David W. Pyatt, Ph.D.
Summit Toxicology, L.L.P.
509 N. Bermont Ave.
Lafayette, CO 80026
(720) 890-3798

Dr. Pyatt is a toxicologist with specialized expertise in the toxicology of benzene and other chemicals and how they metabolize in humans and animals.

Defendants have provided the medical records relating to the evaluation, testing, diagnosis, care and treatment of Kelvin Khieu; relevant pleadings and discovery materials; and the deposition of Plaintiff Kelvin Khieu to Dr. Pyatt.

Dr. Pyatt base his opinions in this case on the scientific literature, current and historical knowledge about the chemical constituents in various products; his review of Mr. Khieu's diagnoses, medical records, work histories and other relevant health risk factors; and his review of the testimony of Mr. Khieu, Mr. Khieu's co-workers and employers, Mr. Khieu's family members, and any testimony from Mr. Khieu's treating physicians. Defendants will also provide Plaintiffs' expert disclosures or reports and the deposition, hearing or trial testimony of Plaintiffs' experts to Dr. Pyatt.

Defendants anticipate Dr. Pyatt's testimony will include the following subjects: (i) toxicology, hematology, and the scientific literature regarding benzene and other chemicals which may be alleged to be relevant to this case; (ii) the diseases which have been associated with exposure to the chemicals alleged to be relevant to this case; (iii) the levels and duration of exposure which have been associated with Mr. Khieu's alleged disease and AML; (iv) the causal relationship, or lack thereof, between Mr. Khieu's disease, and resulting medical and psychological condition, and his occupational exposures to Defendants' product(s) or other solvents and chemicals which Mr. Khieu contends he encountered in the workplace; and (v) the causal relationship, or lack thereof, between AML and alleged occupational exposures to Defendants' product(s) or other solvents and chemicals which Mr. Khieu contends he encountered in the workplace.

Dr. Pyatt will testify as to subjects identified in his deposition testimony, all exhibits available at the time of his deposition, and subjects addressed in his deposition.

Dr. Pyatt will also address the opinions offered by Plaintiffs' experts, Plaintiffs' treating physicians and experts designated by any co-defendant on areas of science and medicine within his expertise.

Since discovery is ongoing in this matter, Defendants reserve the right to further supplement this designation should further development of facts necessitate such an amendment and/or Plaintiffs'

proof or opinions being offered by their experts necessitates an amendment or modification of this designation.

A copy of Dr. Pyatt's curriculum vitae is attached as Exhibit C.

Dr. Ethan A. Natelson, M.D., FACP
Oncologist/Hematologist
6550 Fannin Street
Smith Tower 1001
Houston, Texas 77030
(713) 441-0006 (clinic)
(713) 441-5154 (direct line)

Dr. Ethan Natelson is a Board-certified oncologist/hematologist engaged in the private practice of medicine at The Methodist Hospital where he also serves as Director of the Transitional Residency Program for The Methodist Hospital and Chairman of two Internal Review Boards (IRBs). He has clinical faculty appointments to Baylor College of Medicine, University of Texas Health Science Center at Houston, and Weill Cornell Medical College. He is a member of the Board of Directors of the Christus/Stehlin Foundation for Cancer Research, and of the Gulf Coast Regional Blood Center where he chairs the Education and Research Committee. He is a past President of the Gulf Coast Hematology Society and of the Houston Society of Internal Medicine. He has more than 40 years experience in clinical hematology and is familiar with the hematological disorders classified as leukemias, including the various de novo and secondary forms of acute myeloid leukemia (AML) and the myelodysplastic syndromes (MDS) and chronic myeloproliferative disorders (MPD), and what is known concerning their etiology, diagnosis, clinical course and therapy. His qualifications are more fully described in his attached curriculum vitae, which includes his writings and testimony list.

Dr. Natelson's opinions will be based on the records relating to the evaluation, testing, diagnosis, care and treatment of Plaintiff Kelvin Khieu; relevant pleadings and discovery materials; the deposition of Mr. Khieu; the depositions, if any, of Mr. Khieu's co-workers and other fact witnesses; the depositions, if any, of Mr. Khieu's treating physicians; the depositions and reports of Plaintiffs' expert witnesses; and the medical and scientific literature relating to the etiology, diagnosis, clinical course, therapy and treatment of acute myelogenous leukemia and hematopoietic diseases.

Dr. Natelson may testify concerning both specific and general causation with respect to the exposures and disease at issue. Dr. Natelson will testify, in summary, that in his opinion the claim that Mr. Khieu's disease is a consequence of alleged occupational exposures to benzene or other chemicals seems unreasonable, based upon the body of knowledge that we have about this specific disease, as well as detailed long-term observations of vast numbers of workers exposed to benzene or other chemicals.

Dr. Natelson will testify that Mr. Khieu's disease and resulting medical and psychological condition was not caused by his occupational exposures to benzene, automotive products, or other products, solvents, paints, and chemicals which Mr. Khieu encountered in the workplace.

Dr. Natelson will also testify as to subjects identified in his report, deposition testimony, all exhibits available at the time of his deposition, and subjects addressed in his deposition.

Dr. Natelson will also address the opinions offered by Plaintiffs' experts.

A copy of Dr. Natelson's curriculum vitae is attached as Exhibit D.

III.

CROSS DESIGNATION OF EXPERT WITNESSES

Defendant reserves the right to designate any Expert Witnesses designated by Plaintiffs if the Court allows such designation.

Defendant may supplement this expert designation as necessary.

Defendant reserves the right to call rebuttal expert witnesses to refute the testimony of any and all expert witnesses called by Plaintiffs.

Respectfully submitted,

JEFFREY R. ALLEN 24006751
LARRY L. FOWLER, JR. 07321900

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ATTORNEYS FOR DEFENDANT
BERRYMAN PRODUCTS, INC.

CERTIFICATE OF SERVICE

A copy of the above and foregoing was served upon Plaintiff's counsel via certified mail, return receipt requested on the 14th day of August, 2009, and upon all Defendants' counsel of record herein via e-mail of same date.

Jeffrey R. Allen