

1 IN THE DISTRICT COURT OF GALVESTON COUNTY, TEXAS
2 56TH JUDICIAL DISTRICT
3 -----X
4 JOHN RINGSTAFF and KAREN :
5 RINGSTAFF :
6 Plaintiffs :
7 v. : No.: 03CV-0551
8 AMOCO CHEMICAL COMPANY, :
9 et al. :
10 Defendants :
11 -----X
12 Deposition of JOHN W. SPENCER
13 Baltimore, Maryland
14 Tuesday, March 14, 2006
15 10:15 a.m.
16 Job No.: 1-74437
17 Pages 1 - 130
18 Reported by: Beatriz D. Fefel, RPR
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20
21
22

1 Deposition of JOHN W. SPENCER held at the:
2
3 BWI AIRPORT MARRIOTT
4 1743 West Nursery Road
5 Room 1026
6 Baltimore, Maryland 21240
7 (410) 859-8300
8
9
10
11 Pursuant to agreement, before Beatriz D.
12 Fefel, Registered Professional Reporter and Notary
13 Public of the State of Maryland.
14
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17
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19
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21
22

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5
1 PROCEEDINGS
2 JOHN W. SPENCER
3 having been duly sworn, testified as follows:
4 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
5 BY MR. BARNWELL:
6 Q Good morning, Mr. Spencer. Would you please
7 state your name?
8 A John Spencer.
9 Q And could I get your address, please?
10 A 813 Frederick Road, Baltimore, Maryland.
11 Q And the zip there?
12 A 21228.
13 Q And can I get your phone?
14 A 410-744-0700.
15 Q Mr. Spencer, you've given multiple
16 depositions in the past and you understand the basic
17 ground rules, correct?
18 A Yes.
19 Q I just want to go ahead and make sure I have
20 an agreement that if I ask a question that you don't
21 understand for whatever reason, let me know. So I can
22 clarify it. Okay?

6
1 A Terrific.
2 Q Otherwise I'm going to assume you've
3 understood my question.
4 A Great.
5 Q Since 2000, have you attended any college
6 classes in an attempt to get a degree?
7 A Since 2000. No.
8 Q Have you attended any college level classes
9 at all to further your training?
10 A Not university level classes, no, hunh-unh.
11 Q What sort of training have you obtained
12 since 2000?
13 A Oh, I take professional development courses.
14 Q Continuing your -- well, things to make sure
15 you've maintained your certifications?
16 A Well, that's part of it, sure. But also
17 just as part of an ongoing professional education
18 program.
19 Q Without going through every single class
20 that you've taken since 2000, have you taken any
21 classes that you believe expand upon your
22 qualifications to opine in areas that you couldn't

7
1 give opinions in in 2000?
2 A No, I don't think it expands that area,
3 except for perhaps in some -- since that time I've
4 taken courses in modeling, sophisticated modeling
5 techniques, so it probably advances that area.
6 Q Still kind of in the area of industrial
7 hygiene?
8 A Yes.
9 Q All right. Let's get some of the basic
10 background information from you. What's your hourly
11 charges?
12 A Two forty-five.
13 Q And is that for research, is that for
14 writing reports, depositions, or everything?
15 A Everything.
16 (Deposition Exhibit No. 1 was marked for
17 identification and was attached to the transcript.)
18 BY MR. BARNWELL:
19 Q I've marked as Exhibit No. 1 to your
20 deposition today the Subpoena Duces Tecum and Notice
21 requesting that you bring certain documents with you.
22 What have you brought with you today, Mr. Spencer?

8
1 A Basically my entire file from this matter.
2 Q All right. Do you have it organized in a
3 way that we could go through it or --
4 A Well, they're in folders, and, yes, you can
5 start at the beginning and go through to the end,
6 sure.
7 Q Let's start off with, do you have a folder
8 for your correspondence with the lawyers in this case?
9 A I think there were two; we lost one. And I
10 did bring the one that I had, or have. Is that what
11 you want to see?
12 Q Yes, sir.
13 (Witness handing.)
14 Q Well, do you just have a folder for general
15 correspondence?
16 A Well, I had a folder which basically
17 contained what I call legal documents.
18 Q Can I take a look at that?
19 A Sure (handing).
20 (Telephone interruption.)
21 Q Who originally retained you in this lawsuit?
22 A You know, I can't say that I recall

9 1 originally. There were others that were involved, but 2 I honestly do not remember who they were or who the 3 first one was. I guess for the purpose of today it's 4 Werner-Kerrigan; they were the ones who contacted me. 5 Q Could it have been Haynes & Boone that 6 originally contacted you? 7 A It could have been, yes. It seems I do 8 recall that, but. . . 9 Q Do you have any documents that you brought 10 with you that indicate your initial retention in this 11 case? 12 A Well, no, not for -- if I had anything at 13 all from Haynes & Boone, no. I brought what was 14 relevant, I guess, to this case for the Ringstaff, 15 Crown Central and Marathon issue. 16 Q Okay. Are there other documents that you 17 didn't bring that were provided to you at one time 18 relevant to this case? 19 A Honestly, I'd have to go back and look and 20 see if there's anything. I haven't reviewed anything 21 else other than these materials that I brought with me 22 today for this case.	11 1 but I don't -- I can't tell you a specific date. 2 Q Was that something that was sent to you by 3 Werner & Kerrigan, or was it by the previous law firm? 4 A Well, I believe that I was contacted by 5 other groups prior to Werner & Kerrigan. The 6 materials I received from Werner & Kerrigan, again, I 7 think I've had for at least a few months, not all of 8 the materials, but the first materials I received. 9 Q Well, what I'm trying to get a feel for here 10 is when you first began actually reviewing documents 11 or working on this litigation. 12 A Well, gosh, our earliest bill is from 13 November of 2005, so that would be a good indicator. 14 Q You have here in your documents, it looks 15 like four pages of bills. Is that the extent of the 16 billing that you've issued for the Ringstaff 17 litigation? 18 A Yes. 19 Q I notice that they're all billed to Werner & 20 Kerrigan. 21 A Correct. 22 Q You didn't send any bills to the previous
10 1 Q Okay. So the first folder you've given me 2 is legal documents, and it's got a cover letter, March 3 7th, 2006 from Jennifer Doud at Werner-Kerrigan. It 4 has your deposition Notice for today's deposition, 5 Amended Complaint, Petition, actually, is what we call 6 it in Texas, Plaintiffs' Designation of Experts, and 7 another disclosure. 8 All right. What else do you have here for 9 correspondence? 10 A Nothing else for correspondence. 11 Q All right. Let's see what you got there. 12 A You're free to move about the documents 13 (handing). 14 Q Okay. You've handed me a document that 15 you've got marked as inventory? 16 A Correct. 17 Q This looks to me like a list of documents 18 that you have relevant for this case? 19 A Correct. 20 Q When did you first receive the documents in 21 this litigation? 22 A I mean, it was a few months ago at least,	12 1 law firm? 2 A I'm not absolutely certain. I didn't even 3 check. Again, I really didn't do much for anybody 4 else and I wasn't focused on anybody else in this 5 case. As I read the Notice of Deposition, it was 6 relevant to this case, and this case to me involves 7 Crown Central and Marathon. 8 Q So issues related to any of the other 9 previous Defendants, that's just not something you're 10 researching or considering right now? 11 A Correct. 12 (Deposition Exhibit No. 2 was marked for 13 identification and was attached to the transcript.) 14 BY MR. BARNWELL: 15 Q I'm marking your invoices, Mr. Spencer, as 16 Exhibit No. 2. It looks like to date you have billed 17 Werner & Kerrigan around ten thousand dollars? 18 A I didn't even add them up. Let me. . . 19 (Mr. Barnwell handing.) 20 A Close to that, yes. You already got your 21 bill? 22 Q Actually, I am closing on a house tomorrow

13 1 that I've been trying to sell for a year. 2 A Oh, okay. 3 Q So I'm not going to be in town tomorrow, so 4 I had to get a power of attorney back to them and fax 5 copies of driver's license and that kind of crap. 6 Anyway, obviously that's very important, that that 7 transaction get taken care of tomorrow. 8 A I know the feeling well. 9 Q And, Mr. Spencer, again, you've billed 10 Werner & Kerrigan ten thousand dollars. Whether or 11 not you billed Haynes & Boone prior to Werner & 12 Kerrigan taking over, you don't have those records in 13 front of you, you don't recall? 14 A Correct. 15 Q Now, you've also brought with you today your 16 CV. Is there anything that you need to add, update, 17 or amend on your CV? 18 A Nothing in particular, no. 19 Q I see the last publication that you've got 20 listed on your CV is a 1999, June of '99 publication. 21 Is that the most recent publication that you've 22 produced?	15 1 vice versa, to see how close the results would be? 2 A Correct. 3 Q Is that at all relevant to your opinions in 4 this Ringstaff matter? 5 A No. 6 Q You recognize benzene as a carcinogen, 7 correct? 8 A Yes. In a proper dose, sure. 9 Q What illnesses do you relate to benzene? 10 A Well, adverse effect on the blood forming 11 systems. As far as cancer, leukemia specifically, 12 acute myelogenous leukemia. And, again, in a 13 sufficient dose, dermatitis. Basic upper respiratory 14 tract and eye irritation. 15 Q Do you recognize myelodysplastic syndrome as 16 being caused by benzene exposure? 17 A Well, no, I do not. But, again, I'm not -- 18 don't hold myself out to be a medical expert. I just 19 kind of review the literature for what the, the known, 20 you know, statistically significant associated adverse 21 health effects are, and do not believe that one 22 qualifies. But I'm not the medical expert, either.
14 1 A Actually, no. There's another, it's been 2 accepted for publication, but it's not been published 3 yet. 4 Q Okay. So sitting here today, there is no 5 additional publication, but it's in the process? 6 A Yes. I believe it's supposed to be 7 published in May, is what they told me. 8 Q Okay: What's the subject of that article? 9 A It has to do with using a complex model to 10 evaluate exposures to solvents. 11 Q What journal is that going to be in? 12 A It's the AIHA journal. 13 Q And is this an article talking about uses of 14 modeling or particular aspects of modeling? Could you 15 kind of describe that for me? 16 A It basically was -- we developed this 17 publication to validate and calibrate a near-field/ 18 far-field model for purposes -- we looked at air 19 monitoring data and then ran the model and determined 20 how close the numbers were to one another. 21 Q This is an actual set of points that you've 22 measured, and then you turned around and modeled, or	16 1 MR. RAYNES: And we don't intend to ask him 2 general causation questions at trial. 3 Q Right. You don't intend to offer any 4 opinions about causation relevant to Mr. Ringstaff's 5 case, do you? 6 A Correct. 7 Q And, quite honestly, that's not an area in 8 which you're qualified to offer that sort of testimony 9 in anyway, is it? 10 A Correct. 11 Q Did you bring with you a list of depositions 12 that you've given in the last four years? 13 A No. Is that on the list? I did not. 14 Q Okay. Let's keep going through the 15 documents that you brought with you, and then we'll go 16 on to a few other things. 17 A Okay. These collectively are my notes in 18 reviewing depositions and other data relevant to this 19 case. 20 Q Okay. What else do you have? Anything 21 else? 22 A Well, everything else in the boxes down here

17

1 are deposition testimonies of Plaintiff and defense
2 personnel. I do have some information, some
3 literature on benzene and the physical properties of
4 benzene, so on and so forth, you know, some of the
5 regulatory issues surrounding benzene. There are
6 some -- where there were attachments to depositions of
7 personnel, both Plaintiff and Defendant, those
8 attachments are in there as well.
9 Q Okay. You're talking about deposition
10 exhibits?
11 A Yes.
12 Q Okay. Go ahead.
13 A That's basically it.
14 Q So the box includes depositions and their
15 exhibits, and then some basic references that you've
16 brought with you?
17 A Correct. Yes.
18 Q As far as case-specific information, other
19 than what's been attached to depositions, is that all
20 included in these folders that I'm looking at on top
21 of the table?
22 A Yeah. These are my own notes from the

18

1 summary of reviewing these materials.
2 Q Okay. It appears from your summary -- and
3 let me see if I've got this system down, let me take a
4 stab at it. Where you've got R-56, you're referring
5 to Ringstaff Page 56?
6 A Correct.
7 Q Where you've got N-72, you're referring to
8 Mr. Nowlin's deposition, Page 72?
9 A Yes.
10 Q Is there a key that you have that you've put
11 together for these?
12 A No.
13 Q Okay.
14 A But it looks like you've got it pretty well
15 worked out.
16 Q I haven't ran through every deposition that
17 we've taken in this case, but I'm concerned what would
18 happen if you've got the same initial.
19 A I have not had that problem.
20 Q Amazingly, hunh?
21 A Yes.
22 MR. RAYNES: Well, now we have both the

19

1 Spain and the Spencer, but I don't know if there's an
2 outline of that deposition.
3 Q Did you personally do these summaries?
4 A I didn't type them up. I reviewed the
5 documents and someone else had typed those.
6 Q Who else at your office works on your case?
7 A Well, who worked on this one, or -- I mean,
8 I have fourteen other people in my office, and
9 different people are called upon to do different
10 things in terms of research and so forth.
11 Q Before we get to this case specifically,
12 tell me about your structure of the company that
13 you -- who is your employer today?
14 A Environmental Profiles.
15 Q And you go by EPI?
16 A We can, sure.
17 Q And do I understand that you're the owner of
18 that company?
19 A Correct.
20 Q And your wife is a co-owner also?
21 A No.
22 Q She works for your company?

20

1 A No.
2 Q Not anymore?
3 A Never did.
4 Q Never did?
5 A Correct.
6 Q And she was never an owner in the company?
7 A Correct. I think that's Mr. Parker's
8 company.
9 Q Who all -- what types of professionals do
10 you have employed at your company?
11 A Industrial hygienists and environmental
12 scientists.
13 Q How many industrial hygienists?
14 A Six certified, and three who are not
15 certified.
16 Q So that gets us to ten people working,
17 counting -- are you counting you as one of the six?
18 A Yes.
19 Q All right. So we're at nine. What are the
20 other five employees?
21 A Well, I have two environmental types, more
22 with an environmental background, and the rest are

21

1 administrative people.

2 Q So three support staff?

3 A Yes.

4 Q Okay. As it concerns the Ringstaff case,

5 who went through and did the deposition summaries?

6 A Well, I went through and reviewed all the

7 depositions. Now, I had others looking at them as

8 well.

9 Q Right. But you didn't do the summaries?

10 A No, I did the summaries, that's what I'm

11 saying. I didn't type them up, is what I said. An

12 administrative person typed them up.

13 Q So did you make handwritten notes and give

14 them to someone?

15 A Generally, yes. Sometimes I do it on the

16 computer, sometimes it was handwritten.

17 Q And is the actual typing something that's

18 done by just the administrative staff --

19 A Right.

20 Q -- the support staff?

21 Was there any other industrial hygienist

22 that performed work on the Ringstaff matter?

22

1 A Yes.

2 Q Who else?

3 A Cindy Richard.

4 Q And what did Miss Richard do on the

5 Ringstaff case?

6 A Just research and review of documents.

7 Q Have you prepared any reports, calculations,

8 formal opinions that you've written in this case?

9 A No.

10 Q Did Miss Richard prepared any opinions,

11 calculations, or formal written conclusions about the

12 case?

13 A No.

14 Q It looks like you have in your deposition

15 summary file a complete summary of Mr. Ringstaff's

16 deposition and then another eight-page document that

17 is a collection of various observations from, it

18 appears to be most of the other depositions in the

19 case.

20 A Correct, in that particular folder. I have

21 more complete depositions of the other individuals in

22 these other files (indicating). Which I know you're

23

1 very anxious to read.

2 Q Absolutely.

3 Okay. Who else have you spoken with from

4 Crown and Marathon? I've seen you've got some

5 notations in here from conversations you've had with

6 some of the former Crown and Marathon employees.

7 A Yes. The only other person that I've spoken

8 with and was at Marathon was a Dan Buchanan.

9 Q Okay. When did you speak with Mr. Buchanan?

10 A I believe that was sometime in late January.

11 I was actually -- I did a site visit to the Marathon

12 plant and he took me through the facility.

13 Q Before you were retained by Marathon, had

14 you ever been to Marathon's Texas City refinery?

15 A Not that I can recall.

16 Q Did you go to the Crown Central refinery

17 also?

18 A No.

19 Q Before you were retained by Marathon in this

20 case, Ringstaff, had you ever been retained by

21 Marathon before?

22 A I believe that I have. I couldn't tell you

24

1 a case, but I believe that I have, you know, over the

2 years.

3 Q I think you were retained by Marathon in the

4 Warren case, weren't you, in Louisiana?

5 A Yes. Were they in that case?

6 Q I think so.

7 A I didn't remember that they were in that

8 case.

9 Q In Lake Charles?

10 A Yes, I certainly remember being in Lake

11 Charles. But I don't -- I just don't remember

12 Marathon being in that case. I know there were

13 several entities in that.

14 Q Other than in the course of litigation, have

15 you ever performed any work for Marathon?

16 A I mean, again, I believe that I have, but I

17 just can't tell you a specific case that I've been

18 involved in.

19 Q I was asking about other than litigation.

20 A Oh, other than -- I'm sorry.

21 Q Let me reask the question so I'm clear.

22 Other than litigation, have you ever

25

1 performed any work for Marathon?

2 A Not that I -- I do not recall any specific

3 work. And I'll add that, you know, I've done a lot of

4 work for organizations and groups that I've, frankly,

5 over almost thirty years' time have forgotten about.

6 But I can't recall doing any work for Marathon.

7 Q Okay. Sitting here today, do you recall

8 performing any work for Crown outside of the area of

9 litigation?

10 A I had done some environmental work, yes.

11 The answer to that is yes, here in the Maryland area.

12 Wasn't their headquarters here in Maryland?

13 Q I think so.

14 MR. RAYNES: Yes.

15 A I had done, years ago had done some

16 environmental work for Crown.

17 Q Do you recall what you did for them?

18 A There was an issue of leaking underground

19 storage tanks, and I was doing some assessments,

20 groundwater contamination, soil vapor assessments.

21 Q Well, I know that at a certain period,

22 fifteen, twenty years ago a lot of those cases were

26

1 hot in litigation. Do you know whether or not the

2 work you did with Crown was associated with

3 litigation?

4 A It was not.

5 Q Are you sure?

6 A My role in it was not associated with

7 litigation.

8 Q So you didn't testify?

9 A Correct.

10 Q How they used whatever information you

11 provided them, you just don't know?

12 A Well, I -- yeah. I mean, they were using it

13 with their regulatory community to, you know, address

14 their concerns.

15 Q Okay. I got a little sidetracked with you.

16 You've told me you talked to Dan Buchanan. It looks

17 like you also spoke with Mr. Bradley?

18 A Correct.

19 Q Who else have you spoke with?

20 A At Marathon?

21 Q Either Crown or Marathon.

22 A Well, the only other person at Crown was

27

1 Mr. Taylor.

2 MR. RAYNES: Actually, I think you may have

3 them backwards.

4 A I'm sorry. Mr. Bradley at Crown.

5 Q You can look at these folders, too. I'm not

6 trying to --

7 A That's fine, yes. Mr. Bradley at Crown.

8 Mr. Taylor at Marathon.

9 Q Okay.

10 A And Mr. Buchanan at Marathon.

11 Q So you have spoke -- you've actually spoken

12 with Mr. Buchanan and Mr. Taylor from Marathon?

13 A Correct.

14 Q And Mr. Bradley for Crown?

15 A Correct.

16 Q As it concerns Mr. Buchanan, you spoke with

17 him on a site inspection in January?

18 A I believe it was towards the end of January

19 I did that.

20 Q Any other times that you spoke with

21 Mr. Buchanan?

22 A No.

28

1 Q Do you have any notes in your folders that

2 represent your conversation with Mr. Buchanan?

3 A I do not, and it's probably something I left

4 out. I should provide those to you from my site

5 visit.

6 Q Did you take other notes related to your

7 site visit?

8 A Well, just in my discussion with

9 Mr. Buchanan. It was actually relative to another

10 case, so that's why I didn't think about including

11 them.

12 Q Yeah, that's something I would definitely

13 like to get.

14 A Sure.

15 MR. RAYNES: So you can forward those to me

16 and then I'll forward them to Rodney.

17 THE WITNESS: Okay. If someone will remind

18 me to do that, I will happily do so.

19 BY MR. BARNWELL:

20 Q You got two other folders here that have

21 deposition summaries of Mr. Taylor's deposition,

22 Mr. Bradley's deposition, and then you have notes?

29

1 **A** **There's other depositions in there as well.**
2 **Q** Mr. Buchanan. You've got them broken down
3 by the refinery?
4 **A** **Correct.**
5 **Q** Okay. So let me get this straight on the
6 record. You've got the folder that has deposition
7 summaries of Crown employees, Ronnie Spain, Howard
8 Bradley, and Jim Nowlin, and you have a note here from
9 your conversation with Mr. Bradley?
10 **A** **Correct.**
11 **MR. BARNWELL:** Okay. I'm going to go ahead
12 and attach your notes and your conversation with
13 Mr. Bradley as Exhibit No. 3.
14 (Deposition Exhibit No. 3 was marked for
15 identification and was attached to the transcript.)
16 **BY MR. BARNWELL:**
17 **Q** Then in the next folder you have deposition
18 summaries from Marathon employees Richard Gies, Dan
19 Buchanan, and Stephen Taylor?
20 **A** **(Nodding.)**
21 **Q** And then you have notes from a conversation
22 you had with Mr. Taylor --

30

1 **A** **Correct.**
2 **Q** -- right?
3 **MR. BARNWELL:** I'm going to mark as Exhibit
4 No. 4 the notes from your conversation with
5 Mr. Taylor.
6 (Deposition Exhibit No. 4 was marked for
7 identification and was attached to the transcript.)
8 **BY MR. BARNWELL:**
9 **Q** Okay. Could you identify what I'm handing
10 you right now?
11 **A** **It is a, basically a summary of, again, of**
12 **the summary materials that I previously prepared. In**
13 **addition, it identifies various memos and data as**
14 **produced from, in particular, Marathon, air monitoring**
15 **data, and then summarizes that air monitoring data.**
16 **Q** You've got a document in your folder, it
17 says Exhibit Gies No. 31. Could you identify that
18 what that document is?
19 **A** **This was an attachment from Mr. Gies's**
20 **deposition, and it was used to help decode the**
21 **database of air monitoring data.**
22 **Q** Then there's the Marathon industrial hygiene

31

1 monitoring data that's been produced in this case?
2 **A** **In this case and in another case that I had**
3 **data.**
4 **Q** Are you talking about Hatten?
5 **A** **No.**
6 **Q** Scott?
7 **A** **Scott, umh-humh. Were you all involved in**
8 **Scott?**
9 **Q** No. Have you given a deposition in that
10 case?
11 **A** **Yes.**
12 **Q** Who was the plaintiff attorney that took
13 your deposition?
14 **A** **You're going to put me on the record trying**
15 **to remember this person's name. Oh, how could I**
16 **forget. Mike Kaeske.**
17 **Q** Kaeske, okay.
18 **A** **How could I forget that. He was so**
19 **pleasant.**
20 **Q** Have you seen any industrial hygiene
21 monitoring from Marathon other than -- I'm just going
22 to have to mark these, just to make sure we're clear.

32

1 I'll tell you what, before I mark it, let me
2 ask you this. Have you seen any Marathon industrial
3 hygiene monitoring data other than these two
4 documents?
5 **A** **No.**
6 **MR. BARNWELL:** I'm going to mark the
7 documents we're talking about as Exhibits Nos. 6 and
8 7. Okay?
9 **THE WITNESS:** Right.
10 **THE COURT REPORTER:** I'm sorry. Did we mark
11 a 5?
12 (Discussion off the record.)
13 **MR. BARNWELL:** I'm sorry to bust us up, but
14 I'm going to have to go and make this phone call,
15 okay?
16 (A recess was taken: 10:52 - 11:35 p.m.)
17 (Deposition Exhibit Nos. 5&6 were marked for
18 identification and was attached to the transcript.)
19 **MR. BARNWELL:** Okay. We're back from the
20 break.
21 -----
22 **BY MR. BARNWELL:**

33

1 Q Mr. Spencer, let's go over a couple of these
2 documents that we've had marked. Exhibit No. 3 are
3 your notes from, your phone call or your conversation
4 with Mr. Bradley. Tell me what's significant about
5 those notes.

6 A This had to do with the practices at the
7 facility where Mr. Ringstaff worked and activities in
8 which he said that he believed he was exposed to
9 benzene. And based on what Mr. Bradley described,
10 having been there since 1943, that it is improbable
11 that he was exposed to benzene or certainly to any
12 significant levels of benzene as a result of the
13 activities that Mr. Ringstaff himself described.

14 Q That was Mr. Bradley's opinion?

15 A Well, no. That -- based on what Mr. Bradley
16 described to me as the practices and the procedures at
17 the facility, that's my opinion, that Mr. Ringstaff
18 would have had limited to no exposure to benzene based
19 on Mr. Ringstaff's description of his activities at
20 the facility.

21 Q Okay. Have you seen any industrial hygiene
22 monitoring data for the work that Mr. Ringstaff did at

34

1 the Crown facility?

2 A No, I have not seen that data.

3 Q Have you seen any industrial hygiene
4 monitoring from Crown?

5 A No -- I may have seen some. I know Dupont
6 came into the Crown facility in Texas City and did
7 some monitoring, but it really just wasn't relevant to
8 Mr. Ringstaff.

9 Q Do you have those industrial hygiene
10 monitoring data with you today?

11 A If they were a part of the exhibits, I had
12 it.

13 Q Well, let's find it, if you can.

14 A I'm trying to think. It just may have
15 been -- I'm trying to think whether I've actually seen
16 the data. I know there were discussions of it from
17 several people that were there. I don't believe I
18 have any actual data.

19 Q Okay. Well, I mean, that's a question I
20 need to get answered, so if there's something you
21 think you need to look at, let's look at it.

22 A Let me look quickly. Let me think.

35

1 MR. RAYNES: Would it help to go through
2 your inventory?

3 THE WITNESS: Yeah. And can I see. . .
4 (Witness reviewing documents.)

5 A Yes, there were some memos discussing air
6 monitoring done in 1977. But, again, from my view it
7 wasn't relevant because of the time period.
8 Mr. Ringstaff was there in the '69 to '71 time frame.

9 Q Do you have those memos?

10 A Yes. They're all in here (indicating).

11 Q Okay. Let's go ahead and get them out.

12 A Okay. I'll have to dig through and find
13 them. It's going to take me a little while to find
14 those.

15 Q That's fine.

16 (Witness complying.)

17 A Okay. I don't know -- if I take these out
18 of order, I can't promise to find these things again.

19 Q Let's do them in whatever order we need to
20 be in to stay organized.

21 A On our list here, these are the, I guess the
22 Bates numbers here, C17 to 18. There's a memo that

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1 dealt with air monitoring, and then there's air
2 monitoring data, report of benzene air monitoring
3 data, C81 through 87. So it is interspersed in all
4 this data. There's some here, there's data
5 (exhibiting). So I could just give you this whole
6 file, it is in here, and based on these Bates numbers
7 you can identify it (handing).

8 Q Okay. Well, let's go through and identify
9 what industrial hygiene monitoring samples we have for
10 Crown. Okay?

11 A Okay.

12 Q You have said that there's a memo discussing
13 it that is Bate-stamped --

14 A C17 through 18. There's also C1 through C2
15 that talks about monitoring by Mr. Nowlin.

16 Q All right.

17 A Some of this are discussing monitoring, and
18 then some of this is actual data.

19 Q Well, let's get to the data first.

20 A Okay. That's it (indicating).

21 Q All right. What we've got here is
22 Bate-stamped C97 through C106?

37

1 **A** Yes.

2 **Q** Okay. And the documents that have been

3 identified are titled Crown Central Petroleum, Report

4 of Occupational Exposure To Benzene, it's a gas

5 chromatograph analysis. And this is a summary, it

6 looks like, where someone came through and entered in

7 some test results on the page, correct?

8 **A** Okay.

9 **Q** Is that what it looks like to you?

10 **A** Someone did some air sampling, yes, in that

11 time period.

12 **Q** I mean, this is not a collection of filled

13 data sheets where we can go back and look at what

14 conditions were present during the time that these

15 samples were taken, correct?

16 **A** Correct.

17 **Q** These are just results that were put on a

18 spreadsheet and they are what they are?

19 **A** Correct.

20 **Q** And there's no way for you to go back and

21 confirm or examine whether or not these were all

22 accurately prepared, is there?

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1 **A** Again, it was -- there were no relevant

2 activities to Mr. Ringstaff and it wasn't within the

3 relevant time period, so I really didn't even focus on

4 them.

5 **Q** The results in the Documents C-97 through

6 C-106 really have no bearing on you on your opinion

7 concerning Mr. Ringstaff?

8 **A** Correct.

9 **MR. BARNWELL:** Let's mark these industrial

10 hygiene monitoring summaries as Exhibit No. 7.

11 (Deposition Exhibit No. 7 was marked for

12 identification and was attached to the transcript.)

13 **BY MR. BARNWELL:**

14 **Q** Now, based upon your review of the documents

15 provided to you by Mr. Raynes' office, are there any

16 other Crown Petroleum industrial hygiene monitoring

17 results that we can look at today?

18 **A** Again, none that I'm aware of from the

19 relevant time period.

20 **Q** Well --

21 **A** Or activity.

22 **Q** -- what about any time period that you've

39

1 been provided in this case?

2 **A** I honestly have -- you know, I looked for

3 anything that was relevant, and didn't find it.

4 (Discussion off the record.)

5 **BY MR. BARNWELL:**

6 **Q** All right. Mr. Spencer, why don't you go

7 through and tell me what your folders are that you've

8 got here. We've talked generally about them, but

9 we've got one on the table right now and you've

10 labeled it Crown Central Documents?

11 **A** Okay.

12 **Q** That's correct?

13 **A** Yes, umh-humh.

14 **Q** Are these all the documents that you've been

15 provided concerning Crown Central?

16 **A** Well, other than those that may have been

17 attached as exhibits to the depositions.

18 **Q** Okay. So the documents that you've been

19 provided concerning Crown Central are Documents C-0001

20 through C-00183, and then any additional documents

21 attached to the depositions?

22 **A** Correct.

40

1 **MR. RAYNES:** Rodney, you mean -- you also

2 include in that the depositions themselves?

3 **MR. BARNWELL:** Sure. I mean, obviously, the

4 depositions, too.

5 **MR. RAYNES:** All right.

6 **MR. BARNWELL:** This doesn't need to be on

7 the record.

8 (Discussion off the record.)

9 **BY MR. BARNWELL:**

10 **Q** Mr. Spencer, do you have a file for Marathon

11 documents?

12 **A** I'm trying to think. I don't believe I have

13 a separate file. These were attachments to

14 depositions such as exhibits, Mr. Taylor's deposition,

15 Mr. Gies's deposition, Dan Buchanan's deposition. I

16 think those three, that's what constitutes the

17 documents for Marathon.

18 **Q** So the information you've been provided

19 concerning Marathon are the three depositions and

20 exhibits that you've just identified?

21 **A** Yes.

22 **Q** Have you attempted to calculate exposure

41 1 levels for Mr. Ringstaff? 2 A No. 3 Q Have you attempted to establish a range of 4 exposures for Mr. Ringstaff? 5 A No. 6 Q As an industrial hygienist, do you have an 7 opinion of what level of exposure you would have to 8 benzene if you used benzene to wash your hands or 9 tools? 10 A Qualitatively, yes. I mean, if you're 11 washing with pure benzene, that you would likely have 12 a high level of exposure, certainly exceeding 13 occupational health standards. 14 Q You're familiar with the reference in 15 Patty's Industrial Hygiene Manual about washing hands 16 and tools, I believe it's in the 1950s sometime, one 17 of those editions? 18 A Well, I'm not certain what you're 19 specifically referring to, what they said. 20 Q There's an air monitoring sample taken 21 approximately two feet above an open bucket where 22 someone was using their hands -- washing in benzene	43 1 responsible for those particular hazards. I mean, 2 they certainly have that obligation, yes. 3 Q Well, don't you think a refinery owner has a 4 responsibility to understand the hazards of the 5 chemicals that are present on their facility? 6 MR. RAYNES: Objection; form. 7 A If they are chemicals that result from their 8 facility, absolutely. 9 Q Well, if it's chemicals present on their 10 facility, shouldn't they know the hazard? 11 A Well, I think in a best scenario, certainly 12 if it has a potential to affect their employee or 13 employees, that they have some sort of management 14 control over then, yes. There are scenarios where 15 contract personnel bring in chemicals to do a 16 particular job at which they are allegedly expert at, 17 and they are responsible for understanding and 18 managing those exposures. 19 Q Have you seen any evidence that 20 Mr. Ringstaff's employers brought on chemicals to the 21 facility? 22 MR. RAYNES: Objection; form.
42 1 and they received a sample I believe in excess of a 2 thousand parts per million? 3 A Well, I wouldn't be surprised by that, you 4 know, an area sample directly, basically in the head 5 space of a liquid like benzene. Sure, I wouldn't be 6 surprised by that. 7 Q A sample such as that could be comparable to 8 the breathing space of someone that was using benzene 9 to wash their hands and tools? 10 A No, I don't believe that would be comparable 11 to their breathing zone. But I still think that they 12 would, in that scenario they would have a potentially 13 significant source of exposure. But you need to look 14 at frequency and duration and so forth to determine 15 overall dose. 16 Q But as far as you know, those sorts of 17 calculations, you haven't done that for Mr. Ringstaff? 18 A I have not. 19 Q You'd agree with me that a refinery owner 20 has a responsibility to investigate the hazards on 21 their premises? 22 A Sure, if -- as long as they are the ones	44 1 A No, there's no specific evidence. I think 2 that, I mean, in my view remains somewhat unclear. 3 Q All right. But I'm not -- I need to get a 4 specific answer here. Okay? As it concerns a 5 chemical that is present in a refinery day in and day 6 out as part of the process of the refinery, that owner 7 has a responsibility to understand the hazards of that 8 chemical, correct? 9 MR. RAYNES: Objection; form. 10 A To an extent, yes. If it's on the refinery, 11 from the refinery, and used in normal course of 12 refinery work, then, yes, that's their obligation. 13 Q Benzene is present in most refineries, isn't 14 it, in some level or another? 15 A Certainly in -- yes, in a petroleum 16 refinery, yes. 17 Q You would agree with me that a petroleum 18 refinery has a responsibility to understand the 19 hazards of benzene, wouldn't you? 20 A Yes. 21 Q And that would have been true in the 1950s, 22 1960s, 1970s, wouldn't it?

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1 A Sure. Again, as it was used in the normal
2 course in the operation of a refinery, yes.
3 Q Well, wouldn't you agree that refineries in
4 the 1950s, Sixties and Seventies, had a responsibility
5 to understand the scientific and medical information
6 out there about the hazards of benzene?
7 A Sure. I believe that any employer using or
8 handling that product would have that responsibility,
9 yes.
10 Q Sure. An employer handling a chemical in
11 the 1950s, Sixties or Seventies would have had a
12 responsibility to go out there and understand the
13 hazards of those chemicals, correct?
14 A Yes.
15 Q And an employer in the 1950s, Sixties or
16 Seventies would have had an responsibility to warn its
17 employees about the hazards related to those chemicals
18 at that time period?
19 A Well, I'm not absolutely certain what you
20 mean by warning. The warning procedures and processes
21 changed over time, in particular in the mid-1980s.
22 But warning from the standpoint of ensuring that their

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1 employees are not exposed to hazardous levels in
2 working with the benzene or that they are not working
3 in a fashion that would cause them to catch on fire or
4 cause an explosion as a result of working with
5 benzene, so I certainly think employers had an
6 obligation to manage the hazards associated with
7 benzene in that fashion.
8 Q I was asking you a question about warnings,
9 and I think you got of kind into work practices there
10 a little bit. But I want to stay specific to a
11 warning.
12 You agree that workers have the right to
13 know the hazards of the chemicals that they're working
14 on?
15 A I do. But I would -- I must tell you that
16 warnings have to be associated with the work task,
17 otherwise they are of no value.
18 Q Well, a warning like benzene can cause
19 cancer, that's not specific to a work task, is it?
20 A Well, it is, because benzene is present in
21 many products and in many forms and it doesn't always
22 cause cancer. So if you're going to have a warning,

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1 you want to make sure the warning has value. So if
2 someone sees a warning, if they know there's a true
3 potential threat to them, and not just put a warning
4 up everywhere that benzene exists, we'd be -- our
5 world would be placarded with benzene warnings if that
6 were the case.
7 Q Do you agree that a worker has the right to
8 know the hazards of the chemicals that they're working
9 around?
10 A Yes.
11 Q And that's a fundamental principle of
12 industrial hygiene, isn't it?
13 A Yes.
14 Q And that concept was true in the 1960s and
15 Seventies, wasn't it?
16 A I think that -- yes, I think that was true.
17 But I think the process was different in the Sixties
18 and Seventies as it is from the, you know, from the
19 mid-Eighties to today, with the advent of various
20 regulatory requirements.
21 Q But whether or not it's regulated, the point
22 is a worker in the 1960s and Seventies had a right to

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1 know the hazards that they were working around, true?
2 A Yes, I agree that they should understand
3 both the physical and the health hazards associated
4 with the products they're working with.
5 Q Okay. Fair enough.
6 It was well-known by the 1960s that benzene
7 could harm the blood and blood-forming organs, wasn't
8 it?
9 A Yes.
10 Q And that was something that people in the
11 refine -- the refinery owners in that industry could
12 have easily obtained that information?
13 A I think anybody could have, sure.
14 Q Do you know who the employers were for
15 Mr. Ringstaff?
16 A Well, there were multiple employers. I've
17 seen a list of employers that he worked for.
18 Q Have you attempted to evaluate their
19 knowledge of chemical hazards in the 1960s or
20 Seventies?
21 A I have not, no.
22 Q Now, you never saw Mr. Ringstaff work,

49 1 correct? 2 A Correct. 3 Q Have you seen any documents from either 4 Crown or Marathon indicating warnings provided to 5 Mr. Ringstaff's employers? 6 A Not documents, no, other than deposition 7 testimony. 8 Q All right. We'll get to that in a minute. 9 But as far as specific documents that had 10 warnings that were supposedly given to Mr. Ringstaff's 11 employers, you haven't seen those documents, have you? 12 A That's correct. 13 Q And as far as documents indicating warnings 14 given to Mr. Ringstaff specifically, you haven't seen 15 any of those, have you? 16 A I have not. But I'm not sure what those 17 documents would have been in the time frame given, if 18 such documents ever really existed. 19 Q Was there a specific document that you've 20 seen that either Marathon or Crown used to provide 21 warnings for benzene prior to 1977? 22 A No, none that I can think of. You mean just	51 1 organs? 2 A Yes, not cancer, but effect on the 3 blood-forming organs. 4 Q And you haven't seen any such document from 5 Marathon or Crown prior to 1977 warning of the ability 6 of benzene to harm the blood or blood-forming organs? 7 A I have not, no. 8 Q Have you seen any documents from Crown or 9 Marathon where they've attempted to evaluate 10 contractor safety programs prior to 1977? 11 A No, I cannot point you to a specific 12 program. Again, in that period of time there may have 13 been assessments done, and I think that was some of 14 the testimony from some of the personnel who were 15 present there, that they would routinely assess 16 contractors' work so that they were meeting their 17 facility requirements. But it was not typical to have 18 a written document, nor am I aware of any such written 19 document. 20 Q Okay. I promise you, we'll talk about 21 testimony here in a few minutes, but I want to go 22 through documents first. Okay?
50 1 generally within their facilities? 2 Q Exactly. 3 A Yeah, again, I'm not aware that there were 4 any kind of warning signs or anything that were posted 5 other than flammable, you know, the NFPA type warnings 6 that would be associated with that type of product. 7 Q For example, you're aware that Exxon, Shell, 8 some other refiners had documents that discussed the 9 health hazards associated with benzene prior to 1977? 10 You've seen those documents, haven't you? 11 A Oh, sure. I mean, there's a lot of 12 literature talking about -- I mean, benzene was known 13 to be a poison for, for many decades. 14 Q Well, there's also reference from some 15 refineries about benzene's ability to harm the blood 16 or blood-forming organs from chronic exposure prior to 17 1977? 18 A Well, I think that's in conjunction with the 19 same document as it being a poison, that's why it was 20 considered a poison. 21 Q Right. But it specifically talks about that 22 hazard, the chronic effect on the blood-forming	52 1 A Okay. 2 Q As far as documents indicating a policy for 3 either Crown or Marathon to evaluate the safety or 4 health programs of their contractors, you've seen no 5 such documents prior to 1977, have you? 6 A It's true, but -- yes, that's true. But my 7 role has not been to evaluate the health and safety 8 programs of Crown and Marathon in this case, nor have 9 I asked for those sorts of documents. 10 Q All right. As an industrial hygienist, you 11 recognize the three fundamental tenets of industrial 12 hygiene, recognition, evaluation and control, correct? 13 A We use a fourth, too. 14 Q Okay. What would -- 15 A Anticipation. 16 Q All right. As a refiner in the 1960s or 17 1970s, part of the evaluation of a potential hazard on 18 your facility would be understanding the safety 19 programs of your contractors, wouldn't it? 20 A Well, I don't know -- as it relates to the 21 activities that they're going to perform, to an 22 extent, yes.

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1 Q I mean, you need to understand what sort of
2 safety programs the people working on your facility
3 have in place; wouldn't you agree?
4 A Well, I'm not sure what you mean by safety
5 programs. You mean written programs?
6 Q Programs, practices, how they go about
7 conducting their business safely.
8 A Well, to an extent, yes. However, the
9 facilities, the refineries, it's as my understanding,
10 took measures to eliminate many of the exposure
11 hazards, the petroleum product vapor exposure hazards
12 prior to the contractors doing their work. So they
13 may have been evaluating safety and health related
14 issues, but, again, there's no written document that I
15 can point to that I'm aware of.
16 MR. BARNWELL: All right. I'll object to
17 the nonresponsive portion.
18 Q Have you seen any air sampling of any sort,
19 personnel sampling, any industrial hygiene monitoring
20 of any type taken prior to allowing contractors work,
21 turnaround work at either Crown or Marathon prior to
22 1977?

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1 A No.
2 Q There's no document that you can point me to
3 in your file that demonstrates a safe exposure level
4 to benzene prior to a contractor performing turnaround
5 work at either Crown or Marathon prior to 1977,
6 correct?
7 A Oh, prior to a contractor and prior to 1977?
8 Q Correct.
9 A Correct. I do not have that data. That
10 doesn't -- I'm sorry. That doesn't mean it didn't
11 exist.
12 Q Well --
13 A They were doing monitoring with Draeger
14 tubes to clear with Explosimeters to make it safe for
15 hot work and then Draeger tubes to clear for
16 occupational exposures.
17 MR. BARNWELL: Okay. I object to the
18 nonresponsive portion.
19 Q Do you consider an Explosimeter a reliable
20 indication as to whether or not a benzene health
21 hazard is present?
22 A No. It is -- no, I do not.

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1 Q And you recognize that benzene can be
2 present at an unsafe level and not show up on an
3 Explosimeter, can't it?
4 A Yes.
5 Q What units do you consider benzene to be
6 present at a potentially dangerous level?
7 A I'm sorry.
8 MR. RAYNES: Objection.
9 A What do you mean by units?
10 Q Okay. Let me break it down.
11 Have you had a chance to review, either
12 through the depositions or other documents, what units
13 are present at Marathon refinery?
14 A Well, generally, yes. Like the UDEX Unit,
15 Crude Unit. I mean, there may be others, but I didn't
16 memorize those, all the particular units that were
17 there.
18 Q What about at the Crown refinery, have you
19 had an opportunity to understand what units were
20 present at the Crown refinery?
21 A I looked at that in less detail because
22 Mr. Ringstaff's testimony was very specific that he

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1 was in one location there, as I recall, in a furnace.
2 But, no, I can't list all the units at the Crown
3 facility.
4 Q Are you assuming that Mr. Ringstaff was only
5 present at one unit at Crown?
6 A Well, let me just review something here real
7 quick.
8 (Witness reviewing documents.)
9 A I should refine my answer and say he alleges
10 a single source of -- or type of exposure working at
11 the Crown facility, that is, cleaning tools and
12 washing hands with benzene, working primarily I guess
13 as a laborer with others who were installing brick.
14 Q Are you making any assumptions about what
15 units Mr. Ringstaff worked on at the Marathon
16 refinery?
17 A No. That, in my view, has been unclear in
18 the testimony as to exactly which units he worked at,
19 other than some of them did contain petroleum products
20 that required cleaning prior to opening it up.
21 Q At the Marathon refinery you understand
22 there's - I've kind of gone over this - there's a

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1 Crude Unit, a CAT Plant, Platformer UDEX, all those
2 units present there, correct?
3 A Yes.
4 Q There's also a potential for benzene
5 exposure to each of those units, isn't there?
6 A There is a potential, sure.
7 Q For a contractor working turnaround work
8 entering a vessel in the Crude Unit, would it be
9 reasonable to rely upon the Explosimeter to determine
10 the presence of a benzene health hazard?
11 A It is -- not in and of itself, no.
12 Q That's really not the proper way to evaluate
13 a benzene health hazard, is it --
14 A That, no.
15 Q -- at the Crude Unit?
16 A In and of itself, it is not, no.
17 Q As it concerns the CAT, the CAT Plant, FCCU,
18 using an Explosimeter, again, to evaluate a benzene
19 health hazard is not a reasonable way to go about
20 testing for that hazard, is it?
21 A Not alone, that's correct.
22 Q You mentioned a minute ago that you hadn't

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1 been asked to do a couple things, I think actually;
2 that we've talked about today. What have you been
3 asked to do in this case?
4 A To evaluate, to the best I could,
5 Mr. Ringstaff's exposure given the activities that
6 were described in the environments described, and to
7 also evaluate any exposure assessment done by
8 Plaintiffs' industrial hygiene expert.
9 Q Anything else?
10 A No.
11 Q Have you been asked to talk about the
12 efficiency/effectiveness of any warnings provided to
13 Mr. Ringstaff?
14 A No.
15 Q Are you prepared to talk about that?
16 A No. I mean, it's just not been a focus.
17 Q What criticisms do you have of Mr. Parker's
18 work in this case?
19 A He, in his exposure assessment process,
20 basically indicated he could not quantify an exposure,
21 yet went on to state that he believed the exposures
22 were in excess of certain values based on odor, based

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1 on symptomatology, and somehow -- and based on some
2 data that he statistically analyzed from two units at
3 the Marathon facility.
4 Q Okay. So what's the criticism concerning
5 the evaluations he's made based on odor?
6 A He relies on odor as a means of quantifying
7 exposure, and one cannot quantify an exposure to
8 benzene under the conditions such as Mr. Ringstaff
9 worked. He didn't even know if he was exposed to
10 benzene, he doesn't know what other chemicals -- or
11 didn't even consider other chemicals that were
12 potentially present at the refinery.
13 Q Do you have an opinion on the odor threshold
14 of benzene?
15 A Yes.
16 Q What do you consider to be the odor
17 threshold of benzene?
18 A It is highly dependant on what other
19 chemicals are present in conjunction with benzene, the
20 intervariability among different people smelling it,
21 the intravariability of the individual and their
22 ability to smell and detect and discern odors.

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1 Q I understand it can vary. But as it
2 concerns pure benzene, do you have an opinion on the
3 odor thresholds of pure benzene?
4 A It varies on all those things that I've told
5 you. There is no specific number. If you look at the
6 literature it's less than a part per million to over a
7 hundred parts per million. It varies significantly,
8 and that is a representation of all this variability
9 that I was just discussing.
10 Q You wouldn't be comfortable assuming an odor
11 threshold of five parts per million, would you?
12 A Some of the studies that I -- I mean, if I
13 end up having to give a number, I think it's something
14 less than five parts per million. One of the better
15 studies that's out there was done by A.D. Little where
16 a hundred percent of the people who were tested
17 reported it at about four-point-six parts per million.
18 Q Did you bring that -- is that one of the
19 studies you brought with you today?
20 A I believe that data is in the literature,
21 yes.
22 (Recess was taken: 12:19 - 12:36 p.m.)

61 1 BY MR. BARNWELL: 2 Q Mr. Spencer, we're back from our break. And 3 we've pulled out some of your materials we're going to 4 go back through for a second. I just want to make 5 sure we do a little housekeeping. 6 We have identified all the depositions that 7 you've reviewed in anticipation of your deposition 8 today, correct? 9 A Correct. 10 Q And those are the depositions that you 11 brought with you in your file? 12 A Correct. 13 Q Now, we were talking about Mr. Parker's 14 report, and one comment that you have -- or his report 15 and deposition, and one comment that you have is his 16 odor threshold assumptions. 17 A Did he have a report? 18 Q He actually did, yes, in response to a 19 summary judgment to get an Affidavit. 20 A Oh. I saw an Affidavit. 21 MR. RAYNES: Yes. 22 A I guess I didn't see a report. I'm sorry.	63 1 (Deposition Exhibit No. 8 was marked for 2 identification and was attached to the transcript.) 3 MR. RAYNES: John, are you going to need to 4 get these documents back? 5 THE WITNESS: Yes. 6 MR. RAYNES: So could we have a copy made 7 and then mark the copies and then return the originals 8 to him? 9 MR. BARNWELL: Sure, that's fine with me. 10 We'll worry about the logistics once we get off, and 11 if we need to make any statements on the record, we 12 can do that. 13 MR. RAYNES: Sounds good. 14 BY MR. BARNWELL: 15 Q Can you identify what studies you've brought 16 with you that I've marked as Exhibit No. 8? 17 A Yes. They are -- this is summary materials 18 from the U. S. Environmental Protection Agency. The 19 next is a study, the primary author is Leonardos. 20 It's Leo, L-E-O, N-A-R-D-O-S. 21 Q And if you could give me the years on these 22 also.
62 1 I was confused when you had said "report" because I 2 didn't see a report. 3 Q I can confuse easily. 4 A What was the question again? 5 Q Sure. The one comment that you made was his 6 odor threshold assumptions, correct? 7 A Yes. 8 Q And that's one of the areas you dispute him 9 on his Affidavit and report? 10 A Certainly. 11 Q You were identifying for me a report that 12 you rely upon that you think identifies the odor 13 threshold more accurately; is that correct? 14 A Yes. 15 Q Okay. Go ahead and let's look at that 16 report. 17 A Well, there are a number of assessments that 18 I have included in this folder that would provide odor 19 threshold values for benzene. So I can provide you 20 this entire folder. 21 MR. BARNWELL: We'll mark that folder as 22 Exhibit 8.	64 1 A This is -- Leonardos was 1969. The EPA, 2 this is something that's on their website and it was 3 printed out this week. 4 This document is, it's a report, Benzene 5 Environmental Health Criteria, and this has 6 information from the World Health Organization, 1993. 7 The next is a document published by the 8 National Safety Council in 1950 on benzene. 9 Q Okay. 10 A The next is Occupational Safety and Health 11 Guideline from the Department of Health and Human 12 Services, the National Institute for Occupational 13 Safety and Health, and this was printed in 1988. 14 The next is a benzene from ACGIH, and this 15 was 2001. 16 And then there's the odor thresholds for 17 chemicals, 1989 18 Q That's AIHA? 19 A Yes, it is. 20 And the next is an article by Ruth, R-U-T-H, 21 1986. 22 Q Could you identify which, if any, of the

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1 reports that we've included in the exhibit marked No.
2 8 are peer-reviewed?
3 A Okay. Well, I know that -- I mean -- well,
4 as a journal article --
5 Q Yes, sir, that's what I want.
6 A -- the Leonardos's article, and I'm quite
7 certain the data from the World Health Organization,
8 is peer-reviewed by committee. I know, again, by
9 committee, the National Safety Council material is
10 peer-reviewed. The ACGIH data is based on
11 peer-reviewed literature. And the Ruth article is
12 peer-reviewed.
13 Q But as far as articles that you're looking
14 at in Exhibit 8 that came out of a peer-reviewed
15 journal specifically, it is Leonardos and Ruth?
16 A Correct.
17 Q The others are some compilation work of
18 another organization or reviewed by a committee?
19 A Or incorporates other literature.
20 Q Okay. Other than odor threshold issues,
21 what other criticisms do you have of Mr. Parker?
22 A I believe he fails to follow an accepted

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1 exposure assessment process in his attempt to evaluate
2 Mr. Ringstaff. He presumes everything and does not
3 incorporate other testimony to bring clarity to his
4 assessment.
5 Q Okay. You're saying he relies -- he
6 presumes what testimony?
7 A Well, Mr. Ringstaff, I think, operating a
8 cherry picker testifies to removing some pipes, and on
9 three occasions the liquid flowed from those pipes and
10 fell down onto his piece of equipment that he was
11 operating.
12 He -- Mr. Parker presumed that was benzene,
13 pure benzene. Mr. Ringstaff didn't know what it was.
14 He presumed that when he smelled something,
15 that it was benzene, when there were other chemicals
16 in the plant that may have a similar smell as that of
17 benzene.
18 He presumed when he was washing his hands,
19 because his hands turned white, or that he had some
20 symptomatology, that Mr. Ringstaff felt nauseous, he
21 presumed or assumed that that was benzene. And there
22 may be many other causes for those types of symptoms.

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1 Q If Mr. Parker's presumptions were in fact
2 correct and these products were benzene that
3 Mr. Ringstaff was dealing with, then there would be no
4 criticism in that regard, correct?
5 A If they were truly benzene, sure. I don't
6 believe that for many other reasons.
7 Q Okay. I understand. I just want to make
8 sure that you're not saying that Mr. Parker's
9 evaluations of numbers, if it were pure benzene, are
10 necessarily wrong?
11 A Well, but he just throws out numbers without
12 any context. He doesn't really say what
13 Mr. Ringstaff's, you know, dose was or his exposure
14 was. He may have had some intermittent -- even if it
15 were benzene, which I don't believe it was, he could
16 have had some intermittent high levels of exposure, I
17 would agree with that. But that doesn't speak to what
18 his overall dose would have been. You still need to
19 look at frequency and duration along with intensity of
20 exposure to determine that.
21 Q If you presume that Mr. Ringstaff was
22 performing shutdown and turnaround work in units where

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1 benzene was present in the late 1960s and early 1970s,
2 certainly you recognize there was a potential for
3 benzene exposure there?
4 A Sure. And I think the facilities recognize
5 that as well, that's why they instituted procedures to
6 manage that.
7 Q Are you planning on providing testimony
8 concerning the efficiency of Crown or Marathon's
9 procedures in place for making units safe for
10 turnarounds?
11 A If I understand the question correctly, I
12 believe I would from the standpoint that what they
13 did, the methodologies that the facilities instituted
14 to remove, reduce, eliminate benzene from equipment
15 and process lines was sufficient to reduce any
16 potential benzene exposure and other solvent exposures
17 to below occupational health limits.
18 Q What documents are you relying upon to form
19 your opinion about the procedures in place at Marathon
20 and Crown for making the units ready for turnaround?
21 A I am relying on the testimony of individuals
22 from those facilities.

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1 Q Specifically the testimonies of the
2 individuals that would have been there at the time?
3 A Correct.
4 Q You recognize that safety procedures have
5 changed since the 1960s and Seventies?
6 A In some aspects, certainly I believe they
7 would have changed. But generally cleaning the lines
8 is still a similar process, as it was then and as it
9 is now, and preparing a line for a line break.
10 Q Is it your opinion that in the 1960s and
11 1970s refineries were as concerned about chemical
12 exposures, or the level of chemical exposures as they
13 are today?
14 A Well, from a flammability, flashpoint,
15 explosivity standpoint, yes. From a health
16 standpoint, obviously, no. Health standards have been
17 reduced over time.
18 Q And we've established that you can't rely
19 upon explosive levels to determine whether a health
20 hazard's present?
21 A Well, from one standpoint you can't. If
22 you're picking something up, an Explosimeter is

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1 one-tenth of the lower explosive limit, then you know
2 you have a problem.
3 Q On the other hand, you can't say it's safe
4 because the numbers haven't showed up on an
5 Explosimeter concerning benzene?
6 A Purely using an Explosimeter, that's
7 correct.
8 Q All right. As it concerns the symptomology
9 that you were alluding to earlier in Mr. Parker's
10 report, your criticism there is that he has taken
11 symptoms and assumed an exposure level based upon
12 those symptoms?
13 A Correct.
14 Q Do you have any studies or reports in that
15 regard?
16 A Let me look.
17 (Witness reviewing documents.)
18 Q And let me reask the question just so I'm
19 clear, Mr. Spencer.
20 Do you have any studies or reports that you
21 will use to contradict what Mr. Parker has stated
22 concerning exposure levels and symptoms?

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1 A There is data that's in here, for example,
2 in the NIOSH criteria document for benzene, which
3 would contradict that. But I really -- I wasn't
4 looking to contradict the data he was using. I am --
5 my issue is that he's using symptomatology as a means
6 of quantifying exposure to Mr. Ringstaff.
7 Q Okay.
8 A So it's a methodological problem and not the
9 input criteria that he's using. It's the whole
10 methodology.
11 Q Don't you agree that symptomology to some
12 extent can be utilized to evaluate potential exposure?
13 A It can be in some limited circumstances,
14 with limited chemical products, yes.
15 Q Do you have any studies that you intend to
16 rely upon to indicate that the manner in which
17 Mr. Parker utilized symptomatology in this case, that
18 that manner was inappropriate?
19 A No, I don't have a specific article or
20 document that I can think of. It's just -- for the
21 same reason I just don't -- well, no, there is nothing
22 specific that I'm relying on. It's just something as

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1 an industrial hygienist we don't use to evaluate,
2 quantitatively evaluate exposures, in particular,
3 trying to do a retrospective assessment.
4 Q Well, you agree, don't you, that when you're
5 in a situation and you're trying to look at -- do some
6 evaluation of exposure and you don't have industrial
7 hygiene monitoring samples, you have to look at other
8 potential, other potential gauges of exposure?
9 A Yes. And you also need to look at other
10 potential sources of exposure, too. There were many
11 other hydrocarbons used in this facility, and to put
12 blinders on and narrow your field of focus to benzene
13 alone, I think, is an error.
14 Q If you were attempting to evaluate potential
15 exposures to a worker in the 1960s and Seventies
16 without industrial hygiene monitoring data, what would
17 you look at?
18 A Well, I would look at the -- basically what
19 I did here -- well, in particular, for what
20 Mr. Ringstaff did?
21 Q Yes, sir.
22 A Or was alleged to have done?

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1 Q As a contractor working in a refinery.

2 A I mean, I look at the processes and

3 procedures leading up to any potential exposure he

4 would have had, that is, the steam cleaning, washing

5 out of lines of product. I look to the testimony of

6 individuals who were there monitoring those

7 activities, at the end of those cleanup activities

8 prior to contractors coming on site to do line breaks.

9 Q Okay. Anything else?

10 A No.

11 Q Now, in this case for your opinion you've

12 looked at the testimony of Mr. Bradley, Mr. Nowlin to

13 some extent?

14 A Yes.

15 Q Those were the two gentlemen that were there

16 at Crown in the relevant time periods?

17 A Yes.

18 Q As it concerns Marathon, you've looked

19 towards Mr. Taylor's testimony, correct?

20 A Mr. Taylor, Mr. Buchanan.

21 Q Well, Mr. Buchanan didn't start until what,

22 1981?

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1 A Is that right?

2 Q It's '79 at the earliest.

3 A Okay.

4 Q I mean, you can look at it. Don't take my

5 word for it if you don't recall.

6 A I'm sorry. But there was one other.

7 Mr. Spain also.

8 Q Okay. Do you recall what Mr. Spain's years

9 of employment were?

10 A Can I look at that?

11 Q Certainly (handing).

12 (Witness reviewing documents.)

13 A He started in 1970.

14 Q Okay. So as it concerns Crown, you relied

15 upon the testimony of Mr. Bradley and Mr. Nowlin; as

16 it concerns Marathon, it's Mr. Taylor and Mr. Spain?

17 A Mr. Spain was with Crown.

18 MR. RAYNES: Spain was with Crown.

19 Q Excuse me. Then let me start that over.

20 As it concerns Crown, you're relying upon

21 the testimony of Mr. Spain, Mr. Bradley and

22 Mr. Nowlin; as it concerns Marathon, you're relying

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1 upon the testimony of Mr. Taylor, correct?

2 A Mr. Taylor and also Mr. Buchanan. He may

3 have been there at a later time, but he still worked

4 with people for many years who had been there in prior

5 years. So he was certainly familiar with the site

6 historically.

7 Q Well, but Mr. Buchanan, to be clear, had no

8 personal knowledge of the work practices prior to him

9 joining the company in 1979 at the earliest? He had

10 no personal knowledge, did he?

11 A Well, other than his discussions with people

12 who worked there.

13 Q Okay.

14 A Yes, he came there -- I think he was there

15 in 1982, is when he first came to Marathon.

16 Q All right. And based upon the testimony of

17 those individuals, you're presuming for your opinion

18 that the lines were cleaned out and steamed out and

19 drained, correct?

20 A Yes, that's the testimony. And it's also

21 consistent with other facilities and how they operate.

22 It's also consistent with what was necessarily done to

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1 prevent fires and explosions because of the extreme

2 flammability of petroleum products, including benzene.

3 Q Have you had an opportunity to review any

4 industrial hygiene data for contractors performing

5 turnaround work in general?

6 A I mean, I'm sure I've seen that, you know,

7 over the years in some form. I have, but I don't have

8 any of that specific data.

9 Q And you've had an opportunity to review

10 industrial hygiene monitoring work for maintenance

11 personnel who are breaking into equipment and entering

12 vessels, also, even in non-turnaround situations,

13 haven't you?

14 A Sure, yes.

15 Q And even in situations where companies have

16 drained vessels, steamed vessels, tried to make them

17 safe from injury, there's still a potential for

18 overexposure when you're entering these pieces of

19 equipment, isn't there?

20 A Yes, there is.

21 Q And there's been industrial hygiene

22 monitoring done in the industry that indicates that

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1 there can be overexposures even in those situations,
2 correct?
3 A In some situations, I would agree with that,
4 yes.
5 Q Isn't turnaround work considered to be one
6 of the higher potential sources for exposure when
7 you're working on units where benzene is present?
8 A Well, to the extent -- I mean, breaking
9 lines and that sort of thing when you're working
10 outdoors, I would say no. I think when you're doing
11 vessel maintenance or vessel entry, that those are the
12 points that present a more significant potential for
13 exposure.
14 Q And that's even in situations where
15 companies have done some of these procedures that
16 you're talking about, cleaning, draining, steaming?
17 A True. They -- in a vessel they clean and
18 drain and steam them out, purge with nitrogen, but
19 still you can have levels that exceed health standards
20 when you're entering a confined space such as a
21 vessel.
22 Q Well, when you drain and clean lines, you

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1 can also have low levels in lines where pockets of
2 hydrocarbons develop?
3 A Sure, there may be, but fortunately these
4 personnel aren't going in these lines, and so even if
5 there is residual product in there -- and I'm not
6 saying that there is, and there certainly could be --
7 that this material drains out and we do have the
8 benefit of dilution and evaporation and that's why you
9 don't see real high levels, especially for extended
10 periods of time. You may get some peak levels, but
11 the eight-hour time-weighted average values are
12 generally low after they've been properly cleaned.
13 Q Well, for individuals who are experience --
14 who are performing shutdown/turnaround work, even if
15 they're not entering in a vessel, where you've got
16 hydrocarbon pockets, you can have excess exposures
17 above the STEL, certainly?
18 A Again, I wouldn't rule those sorts of things
19 out, that you can't have that, but I just don't think
20 you see it on a day-to-day basis.
21 Q As it concerns this case, you have not gone
22 out and looked at any industrial hygiene studies

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1 evaluating contractors performing turnaround work in
2 refineries in the 1960s or Seventies, have you?
3 A I have not, simply because even if I looked
4 at that data, I cannot relate it to what Mr. Ringstaff
5 did. He claims to have cleaned tools with benzene,
6 cleaned his clothing with benzene. That's not related
7 to those turnaround activities.
8 Q But as it concerns the turnaround
9 activities, though.
10 A Well, where he's lifting pipes using a
11 cherry picker and material drains out, I don't know
12 what lines those were; I don't know what pipes they
13 were; I don't know if it was benzene; I don't know if
14 it was some aliphatic hydrocarbon that was draining
15 out of those lines. He didn't know, either. And this
16 gets back to the original issue with Mr. Parker, is
17 just simply assuming that all this is benzene falling
18 down on this man and his equipment.
19 Q Let me ask you to make this assumption. If
20 Mr. Ringstaff was performing turnaround and shutdown
21 work on the CAT/FCCU, the Crude Unit, let's start with
22 those two units, to the extent that there was

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1 hydrocarbons left in the line, there was a potential
2 for benzene exposure, correct?
3 A It depends on what part of the line you're
4 drawing from, whether it was trace levels or higher
5 levels of benzene in that portion. So it depends on
6 where you are in the CAT Cracker, you know, are you at
7 the top or are you at the bottom, are you at the
8 heavies or are you at the lights. So it just depends.
9 And that's what I don't see -- I didn't have the
10 information necessary to do an exposure assessment,
11 and I believe that Mr. Parker was stretching and
12 making these assumptions that it was benzene of
13 substantial concentration.
14 Q I understand that there is a variety of
15 potential. But as it concerns turnaround work at the
16 FCCU or the Crude Unit, where there is hydrocarbons
17 present even after cleaning of lines, there is a
18 potential for benzene exposure?
19 A Sure, there's some potential, but based on
20 the procedures and practices based on the monitoring
21 that was done following that using Draeger tubes, that
22 those levels were below occupational health standards.

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1 Q Have you seen testimony that Draeger tubes
2 were utilized at either Crown or Marathon prior to
3 1977 before turnaround work was performed?
4 A I'm trying to think of the exact dates. It
5 was my understanding -- I'll have to go back and look
6 at the testimony as to where Draeger tubes, when
7 specifically they were first used. I think they go
8 pretty far back, and I believe back prior to 1977.
9 (Witness reviewing documents.)
10 A Mr. Bradley talks about putting pumps on
11 people, monitoring tubes in his deposition, and he
12 talks about the early 1970s. That's one.
13 Q And let me stop you right there. We haven't
14 seen any documentation that supports Mr. Bradley's
15 testimony, have we?
16 A I wouldn't expect you to see any, not with
17 Draeger tubes. It just wasn't typical to maintain a
18 record.
19 Q What you were just talking about was
20 Mr. Bradley's pump?
21 A You're right, you're right. I'm referring
22 back again to the Draeger.

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1 Q Okay.
2 A And simply because I haven't seen those
3 records, I didn't have them, doesn't mean they didn't
4 exist. They said they did them in that time frame.
5 Q But let me get a clear question and answer.
6 Okay?
7 Mr. Spencer, you were just identifying
8 testimony from Mr. Bradley about putting pumps on
9 workers in the early 1970s, correct?
10 A Yes.
11 Q But you have not seen any documents to
12 indicate any results or that activity actually
13 occurring, have you?
14 A That's correct. It doesn't mean that they
15 didn't do it, but that is correct, I have not seen
16 those documents. Taylor talks about the use of
17 Draeger tubes. I don't see a specific date here.
18 Q Do you see him talk --
19 A He said they always -- he said this is what
20 they always used to clear for hydrocarbons.
21 Q Did Mr. Taylor identify specific units where
22 they would have used a Draeger tube, or specific

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1 chemicals they looked for with Draeger tubes?
2 A He says where there was benzene, toluene or
3 xylene, and he mentions the UDEX Unit. Draeger tube
4 readings were required wherever there were aromatics
5 present. That's all I see in my notes in terms of the
6 use of Draeger tubes.
7 Q So prior to 1977, it's your understanding
8 there would have been some Draeger tube usage?
9 A Yes.
10 Q But as far as specific units, Mr. Taylor
11 only identified the UDEX by name?
12 A Well, by name. He did mention wherever
13 there were aromatics this was a required procedure.
14 Q You would certainly agree with me, wouldn't
15 you, Mr. Spencer, that it should have been a required
16 procedure at units like the FCCU or the Crude Unit as
17 well, correct, to use Draeger tubes before the entry
18 into the vessels?
19 A Yes. Or some means to accurately measure at
20 lower levels, yes.
21 Q Well, other than Draeger tubes, what methods
22 would have been utilized in the late 1960s or early

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1 1970s?
2 A Well, there's other, you know, direct
3 reading instruments.
4 Q What would some examples of those be?
5 A Well, I can't tell you when the organic
6 vapor analyzers came into place. There were others;
7 Sensidyne, the different type of colorimetric tube
8 that was being utilized. And I didn't study the
9 history of that, I don't know how far back they go,
10 but they go back very late -- far as well.
11 Q Well, have you seen any indication that
12 either Crown or Marathon utilized these other methods
13 you've identified in the 1960s or Seventies?
14 A No. They speak of Draeger tubes, and I
15 really -- while that's a commercial term, I think
16 they, they, as many things are, used generically.
17 Q And I don't think we're really going to
18 quibble about who manufactured the tube. I mean, the
19 point is they were using the tubes, you break off and
20 pump a couple times and get the results looking at the
21 stick, right?
22 A Yes. You've done that before?

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1 Q (Nodding.) Other than Explosimeters or
2 colorimetric tubes, Draeger tubes, are you aware of
3 any other methods that were being used at Crown or
4 Marathon to evaluate potential exposure or potential
5 hazards associated with chemicals during turnarounds
6 or shutdowns?
7 A Well, using charcoal tubes in air sampling.
8 I think we just pointed out some of the testimony
9 talked about using Bendix pumps, which was a type of
10 personal sampling pump.
11 Q Other than Mr. Bradley's testimony, have you
12 seen any evidence to indicate these pumps were being
13 utilized prior to 1977? And I'm using 1977 because
14 that's the first year I've seen any industrial hygiene
15 monitoring.
16 A Right. No, I don't -- I haven't seen any
17 other specific data or testimony other than what we've
18 described.
19 Q We've kind of gotten down the list of
20 criticisms that you have of Mr. Parker's report. You
21 also identified data, that was the notation I made
22 here. What was that criticism?

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1 A He had chosen some air monitoring data that
2 I believe was from 1977-'78 from the Marathon facility
3 in the Crude Unit, and I think a Reformer Unit, and
4 did an analysis of that data for the purposes -- I'm
5 not sure what the purposes were. He didn't even have
6 any understanding that Mr. Ringstaff was around those
7 operations, involved in activities from which that
8 data was even collected. So I didn't quite understand
9 what he was trying to do with that data.
10 Q Is it your position that the data is
11 irrelevant because of the time that's elapsed between
12 1977 and the early 1970s, or is it because of the
13 tasks that were performed?
14 A Well, no. The latter, the tasks and the
15 specific environmental -- or the location within the
16 workplace.
17 Q You mean the unit that it was on?
18 A Correct.
19 Q Are you assuming that Mr. Ringstaff was not
20 on the Reformer or the Crude Unit?
21 A I have no knowledge one way or the other,
22 and I don't believe Mr. Parker did, either. And to

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1 represent this data as something relevant for
2 Mr. Ringstaff I believe was a flaw.
3 Q Well, if Mr. Ringstaff were on those two
4 units performing work five years earlier, could the
5 industrial hygiene monitoring data from those units
6 have some relevance to his opinion of exposure?
7 A Well, it could have some relevance. I mean,
8 those you would anticipate to be the higher levels of
9 exposure, so you would presume because they have the
10 units as being cleared prior to Mr. Ringstaff getting
11 there, that the levels would be lower than what were
12 found based on that monitoring data.
13 Q Well, as an industrial hygienist, can you
14 really assume that a data point that you have received
15 is the highest exposure level?
16 A Well, generally as an industrial hygienist
17 you try to collect data that represents the worst
18 case, because you can't sample every day, all the
19 time. So you're collecting samples which you believe
20 represent the worst case. That is typically how
21 that's done.
22 Q Did you attempt to review the protocol that

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1 Marathon had in place, or Crown, when they began doing
2 their initial industrial hygiene monitoring samples
3 that we've seen here as Exhibits 5, 6 and 7?
4 A No, I did not see any documents describing
5 their protocol. But what I described previously is
6 the standard industrial hygiene practice.
7 Q So whether or not they actually said, look,
8 let's pick the highest task and jobs and go out and
9 monitor those first, you can't testify that that's
10 actually what their practice was at that time?
11 A That's true. We're beginning to see why you
12 can't rely on this data as being representative of
13 Mr. Ringstaff's.
14 Q Well, anyway, any other data criticisms that
15 you had concerning what Mr. Parker relied upon?
16 A I think we've covered, you know, the issues
17 as I saw them.
18 Q Now, as you evaluated Mr. Ringstaff's
19 exposure, you've already told us what you did in this
20 case of going through and looking at the process and
21 procedure in place before turnarounds, and the idea
22 about steam cleaning and monitoring activities, that

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1 was essentially the way you evaluated -- that was the
2 framework you used to evaluate Mr. Ringstaff's
3 exposure?
4 A Yes.
5 Q There's no data that you've been presented
6 that you relied upon to evaluate Mr. Ringstaff's
7 exposure, correct?
8 A Correct.
9 Q And there's no outside data that you felt
10 was relevant such as an industrial hygiene study that
11 could potentially reflect Mr. Ringstaff's exposure,
12 correct?
13 A Correct.
14 Q Have you conducted any tests, laboratory
15 work, anything such as that to evaluate the types of
16 exposure Mr. Ringstaff could have experienced?
17 A I have not done any sort of other tests in
18 that regard. Again, there would be so many
19 assumptions I'd have to make, that's the limitation.
20 Q Well, one assumption would be that it's pure
21 benzene, correct?
22 A Yes.

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1 Q Another assumption would be that there was
2 no benzene, correct?
3 A Correct.
4 (Deposition Exhibit No 9 was marked for
5 identification and was attached to the transcript.)
6 BY MR. BARNWELL:
7 Q Mr. Spencer, I'm marking as Exhibit No. 9 a
8 document that we talked about real briefly earlier in
9 your deposition. Could you identify that document
10 again for me, just so we're clear?
11 A It is a summary of Mr. Ringstaff's claimed
12 exposure and a summary of Richard Gies's testimony
13 regarding the coding for the air monitoring data for
14 the Marathon facility.
15 Q What relevance does Exhibit No. 9 have in
16 your opinions today?
17 A Again, this is an indication of -- it's some
18 data representing monitoring that was conducted of
19 Marathon employees preparing equipment for contractors
20 who would come on site to do work.
21 Q Okay. Now --
22 A And this is, in particular, a summary of the

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1 yard data.
2 Q Okay. You said there was data in there
3 concerning Marathon employees preparing equipment
4 before turnaround?
5 A Yeah, monitoring, I guess, according to
6 Richard Gies's testimony, during turnarounds as well.
7 Q All right. Is it actually data, or is it
8 testimony that you're referring to?
9 A Well, both. It's Gies's testimony, and then
10 the data that -- actually, I had data that came from a
11 different case, I think we talked about that earlier,
12 and he was talking about that same data and the codes.
13 He identified the codes on those data tables to
14 determine where it came from.
15 Q Let's talk about the information from the
16 other case, the Scott case. Explain for me what you
17 have done on the chart on the back of Exhibit No. 9
18 concerning the Scott data.
19 A I looked at -- the data that I had available
20 was five hundred and fifty-eight full shift samples
21 looking at benzene exposures to personnel, these are
22 all personal exposures, in a period from 1977 to 1985,

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1 and I looked at the arithmetic and geometric means of
2 that data to get an understanding of generally what
3 exposures were in the facility.
4 Q Can you identify the source exhibit for the
5 chart on the back of Exhibit 9?
6 A Yes. It was the exhibits that we've marked,
7 5 and 6.
8 Q Any other data other than Exhibits 5 and 6?
9 A No.
10 Q And what types of jobs were being performed
11 by the individuals monitored in Exhibits 5 and 6?
12 A These were for, you know, all job tasks. I
13 mean, there were almost six hundred samples, so there
14 were many.
15 Q Were there any contractors monitored in
16 either Exhibit 5 or 6?
17 A No. I believe these were all Marathon
18 employees.
19 Q Was there any turnaround work that was
20 occurring during any of the monitoring in Exhibits 5
21 or 6?
22 A This was in the preparation for turnaround,

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1 so it's at the early -- some of this is at the early
2 stages of that work.
3 Q Okay. How can you tell that based upon
4 Exhibits 5 or 6?
5 A It had to do with the API code in the
6 database.
7 Q All right. What API code indicated that it
8 was in preparation of turnarounds?
9 A Let's see. Code IX, or as a yard code, IB.
10 Q Can you identify that for me on these
11 tickets (handing)?
12 (Witness reviewing documents.)
13 A There are -- there is data here from the
14 Aromatics Recovery Unit that were included in that.
15 Q Okay. What jobs were being performed?
16 A This says all tasks. This is categorized as
17 all tasks.
18 Q Which exhibit are you looking at?
19 A This is 5.
20 Q So that's an operator working on the
21 Aromatics Unit?
22 A Well, some of the -- no. Some of these -- I

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1 don't know that these were all of operators.
2 Q Maybe I can save us a little bit of time
3 here.
4 A Umh-humh.
5 Q Do you consider any of the data in Exhibits
6 5 or 6 to be relevant to your opinions in this case?
7 A No.
8 Q What was the purpose of the calculation that
9 you did on the back of Exhibit 9?
10 A It was just a means of me looking at the
11 data and trying to make sense of the data, and as it
12 was relevant to Mr. Ringstaff.
13 Q And is it relevant to Mr. Ringstaff?
14 A No, I can't draw those associations.
15 Q So as it concerns the chart on the back of
16 Exhibit No. 9, you don't have any intentions or plans
17 on testimony based upon that chart, correct?
18 A Correct.
19 Q And otherwise, what we're looking at on
20 Exhibit No. 9 is what?
21 A Well, it was a work product that I had
22 prepared in analyzing this data, and I was trying to

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1 make some sense of this data, trying to relate it to
2 Mr. Ringstaff. I couldn't do that.
3 Q Okay. I noticed there is some summary of
4 Mr. Gies's testimony on there.
5 A Yes.
6 Q And then you've also summarized this API job
7 code listing.
8 A Yes -- well, no, this was one of the Gies
9 exhibits. I didn't sum -- I didn't summarize this.
10 Q Okay. But you got information --
11 A Oh, you mean --
12 Q -- from there --
13 A I'm sorry, I'm sorry. You mean this
14 information here (indicating)?
15 Q Correct.
16 A Excuse me. Yes, that's correct.
17 Q And other than the chart on the back, what
18 else have you done in Exhibit No. 9?
19 A That's it.
20 (Discussion off the record.)
21 BY MR. BARNWELL:
22 Q All right. Mr. Spencer, you've got another

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1 folder here that's entitled Benzene Safety Summary --
2 A Summary Materials.
3 Q -- Materials?
4 A Umh-humh.
5 Q What do you have in that folder?
6 A These basically are excerpts from this
7 literature, this folder marked Literature, or LIT, and
8 it's simply a summary of that information.
9 Q When you say it's a summary, I mean, I see
10 one document on top here, it looks like it was
11 prepared by your office.
12 A Yes. It is a summary of this literature,
13 and these are the pages, the excerpts from which this
14 information comes.
15 Q I understand now.
16 A Primarily dealing with the physical
17 properties of benzene.
18 MR. BARNWELL: All right. Let's go
19 through -- I'm going to mark, I'll mark the folder as
20 Exhibit 10.
21 -----
22 (Deposition Exhibit No. 10 was marked for

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1 identification and was attached to the transcript.)
2 BY MR. BARNWELL:
3 Q And what I'd like you to do for me,
4 Mr. Spencer, is let's go through each one and just
5 tell me what its purpose is in your file, okay, why
6 you consider it relevant.
7 A Well, this talks about -- do you want me to
8 identify each one?
9 Q Just identify it, including the year.
10 A The NIOSH criteria document, benzene, 1974.
11 It talks about NIOSH prohibiting the use of benzene as
12 a cleaning solvent, is the first one.
13 The next one was the Safe Maintenance
14 Practices of Refineries. This is from the American
15 Petroleum Institute, 1962, which, again, discusses the
16 prohibition of use of highly flammable solvents as
17 cleaning solvents, and what measures to take if
18 someone gets such material spilled on their clothes,
19 their clothing.
20 Q Okay.
21 A The next is from 1950, National Safety
22 Council on benzene.

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1 Q You had that also in your odor threshold
2 section, right?
3 A Yes. And this, again, talks about the
4 flammability and the fire hazard associated with the
5 use of benzene.
6 Q As it concerns the documents that you've
7 gone through so far, the NIOSH document, API document,
8 National Safety Council document, would you expect a
9 company like Crown or Marathon to have access to these
10 documents?
11 A I'd expect any company that's working with,
12 you know, a solvent to have access to these documents
13 and understand the hazards associated with it, sure,
14 including the refineries, and including
15 Mr. Ringstaff's employers.
16 Q Well, again, you haven't looked into
17 anything -- you've seen a list of Mr. Ringstaff's
18 employers, correct?
19 A Yes.
20 Q Have you taken any steps to evaluate their
21 sophistication or their ability to go out and research
22 information?

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1 A No. I can't tell from the documents I have
2 which employer Mr. Ringstaff was working for when he
3 was at the Crown or Marathon facility.
4 Q Okay.
5 A I can't tell.
6 Q Fair enough.
7 A Next, I believe this is an AIHA publication
8 on benzene, 1961. And, again, it speaks to the
9 flammability, the physical properties of benzene.
10 This is a document from the Department of
11 Labor and the National Institute for Occupational
12 Safety and Health, 1976, and prohibiting the use of
13 benzene as a solvent in open containers, or as any
14 kind of diluent.
15 The next is an API document, 1960,
16 discussing the same thing.
17 Q And that's all that's in Exhibit No. 10?
18 A Yes.
19 Q You might want to keep your summary there,
20 also.
21 As I understood, this folder was just those
22 documents?

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1 A Yes, you're right. I forgot about the
2 MONASH study.
3 Q What is the significance of the -- are you
4 relying upon the MONASH 2001 study?
5 A No.
6 Q Does that have any significance or any point
7 being in the file?
8 A I'm sure I had something in my head at one
9 time that it did, but I can't think of what that is
10 right now.
11 Q Let me again -- we've established that
12 you're not testifying about causation in this case?
13 A Correct.
14 Q And, again, as an industrial hygienist and
15 certified safety professional, causation is really not
16 in your area of expertise, correct?
17 A Well, let me say that's true, but as an
18 industrial hygienist I certainly have an understanding
19 and need to have an understanding of what are the
20 known health effects associated with a particular
21 exposure.
22 Q I agree with that. And you base that

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1 information upon review of the documents that are out
2 there as opposed to independent research and
3 assessment of information?
4 A Correct.
5 Q From an industrial hygienist standpoint, can
6 you tell me the difference between AML and CLL?
7 A I can't tell you a specific difference other
8 than it is based on some activity at a cellular level.
9 Q Right.
10 A I can't describe what that activity is or
11 where the particular breaks are in a chromosome that
12 cause that particular disorder.
13 Q I mean, in your profession, you couldn't
14 look at pathology and identify one cell as -- or one
15 slot as AML and one slot as CLL, right?
16 A Not today.
17 Q Do you have any understanding about the
18 difference in treatment between either AML or CLL?
19 A Not the subtle differences. I have a friend
20 being treated for CLL right now.
21 Q I'm sorry to hear that. How is he doing?
22 A She.

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1 Q How is she doing?
2 A Well, she just started last week, so I
3 haven't heard much since then.
4 Q I don't want to get off into personal
5 issues, but you recognize CLL as a very serious
6 life-threatening illness, correct?
7 A Oh, of course.
8 Q Do you recall who provided these documents
9 to you that are Bate-stamped Ringstaff, it looks like
10 around 300 through 1400?
11 A No, I do not know if it did come from Mr. --
12 from Werner & Kerrigan. I don't know -- I mean, I
13 have all these documents in my file. I didn't realize
14 they had a Bates stamp number on them.
15 Q You've also got in here the Canadian study
16 from 2001: Benzene and Total Hydrocarbons: Exposures
17 in the Downstream Petroleum Industries. Does that
18 have any bearing upon your opinions in Mr. Ringstaff's
19 case.
20 A No, it does not. Again, I looked at that
21 data trying to make some association, but the details
22 on Mr. Ringstaff were so -- were missing in order to

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1 do that kind of assessment.
2 MR. BARNWELL: Let's take another quick
3 break.
4 (A recess was taken: 1:42 - 2:10 p.m.)
5 BY MR. BARNWELL:
6 Q Mr. Spencer, you've got a folder entitled
7 Plaintiff Records, and I don't think we're going to
8 need to attach this to your deposition, but let me
9 just go through the list of what you've got in here,
10 and I want to ask you if it has any bearing upon your
11 opinions in this case. Okay?
12 His Social Security records?
13 A No. I had used those trying to match up his
14 employer and where he worked and when he worked, but
15 unsuccessful.
16 Q Okay. And Mr. Ringstaff's Internal Revenue
17 records?
18 A The same answer.
19 Q Mr. Ringstaff's Brown & Root records?
20 A The same answer.
21 Q Then Mr. Ringstaff's medical records from
22 Patricia Corke, does that have any relevance to you?

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1 A No.
2 Q Are you relying upon them for anything?
3 A No.
4 Q I had asked you earlier in the deposition
5 about illnesses related to benzene, and you made the
6 comment "at sufficient dose." Do you have an opinion
7 what a sufficient level of benzene exposure is to
8 cause a benzene-related illness?
9 A Well, what illness are you talking about?
10 Q Let's go with AML.
11 A Well, I believe as an industrial hygienist
12 the health standards are based on prevention of
13 disease, and one part per million for forty-five years
14 is forty-five PPM years.
15 Q As an industrial hygienist, is that the
16 source you'd look to to evaluate a potential threshold
17 exposure level for the development of AML?
18 A Well, yes. I mean, that's the criteria I
19 use as an industrial hygienist, and it may be a number
20 higher than that, but that's the number I use.
21 Q As it concerns potential exposures to
22 Mr. Ringstaff, whether it be -- well, let me break it

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1 down.

2 You haven't attempted to calculate a PPM

3 year exposure that Mr. Ringstaff would have

4 experienced, correct?

5 A Yes.

6 Q That's a correct statement?

7 A Yes.

8 Q Have you attempted to evaluate a range of

9 exposures Mr. Ringstaff would have experienced for

10 short-term exposure levels?

11 A Again, not with it all being hypothetical,

12 no. No, I'm just unable to do that given the

13 information.

14 Q There's no range of short-term exposure

15 limits you'd be comfortable in putting upon

16 Mr. Ringstaff's work history?

17 A No.

18 Q Is there a range of workday exposure levels

19 that you'd be comfortable placing upon Mr. Ringstaff's

20 work history?

21 A No.

22 Q We talked about this also briefly, but I

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1 want to follow up on pure benzene. If a worker is

2 washing their hands and tools in fact in pure benzene,

3 outdoors, assume no wind, what type of exposure level

4 would that worker experience?

5 A I don't know. I don't know the answer to

6 that. It certainly would be above today's

7 occupational health standard, I believe, based on my

8 experience. But I've never seen that measured because

9 I don't think anyone -- I think it's, while reported,

10 it's not a usual activity. I've just never seen that

11 actually measured.

12 Q You're aware of reports in refineries in the

13 Sixties and Seventies of workers using benzene as a

14 cleaning solvent, aren't you?

15 A Sure. It was a common term for an aliphatic

16 hydrocarbon used for cleaning purposes.

17 Q Do you believe that no benzene was used in

18 any refineries in the 1960s and Seventies for cleaning

19 hands and tools?

20 A You mean an aromatic benzene?

21 Q Yes, sir.

22 A I can't say that it was never used. I've

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1 seen people do silly things frequently and out of

2 context with the procedures and policies, you know, of

3 their employers. So I can't say that was never done.

4 But, again, from a flammability standpoint it would be

5 highly risky --

6 Q Had you --

7 A -- use.

8 Q I'm sorry. Were you finished?

9 A Yes.

10 Q I didn't mean to cut you off.

11 A Yes.

12 Q Have you seen any policies for Marathon or

13 Crown prior to 1977 concerning the use of benzene as a

14 solvent or a cleanser -- cleaner?

15 A No.

16 Q One way or the other?

17 A I have not.

18 Q No specific written policy in place at

19 either Crown or Marathon that excluded benzene as a

20 cleaner or solvent, correct?

21 MR. RAYNES: Objection to form.

22 A Prior to 1977?

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1 Q Yes, sir.

2 A No, I have not.

3 Q Haven't seen that?

4 A No.

5 Q What sort of work does your company do?

6 A Industrial hygiene, environmental -- I mean,

7 human health hazard assessment.

8 Q Obviously you do litigation related work, is

9 part of what you do, correct?

10 A Yes.

11 Q Do you do consulting work for businesses?

12 A Sure.

13 Q What percentage of your personal time is

14 spent between litigation and other non-litigation

15 work?

16 A It varies substantially. Some weeks I may

17 do nothing but litigation, and other times I may do no

18 litigation work. It depends on the projects that I'm

19 involved in, and it varies.

20 Q Okay. Let's talk about 2005. Can you tell

21 me in 2005 what percentage of your time was spent on

22 litigation versus non-litigation?

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1 A No. Somewhere between fifteen and forty
2 percent. I mean, I don't know. I don't keep any
3 accounting or a track of the differences in the work
4 that I do.
5 Q The fifteen to forty percent represents
6 what?
7 A An estimate.
8 Q Of litigation, or non-litigation?
9 A Of litigation.
10 Q As far as income generated by your business,
11 what percentage is litigation versus non-litigation?
12 A Again, I don't know the answer to that. I
13 don't keep any records in that fashion. But it would
14 be less than that percentage I gave you because I'm
15 the only one focused on -- that does testifying and so
16 forth.
17 Q Well, obviously other folks in your firm
18 work on litigation-related matters.
19 A They do. But they work on -- we have a lot
20 of other non-litigation projects going on, so they're
21 embroiled in those.
22 Q But no one else at your firms testifies at

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1 all?
2 A No, correct.
3 Q Has the amount of time you spent on
4 litigation changed in the last five years, let's say
5 since 2000?
6 A It may be a little -- gosh, you know, I just
7 don't know. I've not even done that analysis. I
8 can't give you an accurate answer.
9 Q You don't have a feel for that?
10 A If it's changed, you know, have there been
11 substantial changes? I can't -- no, there hasn't been
12 substantial changes.
13 Q And as far as income that your firm derives
14 from litigation, has that changed since 2000?
15 A Again, of no significance, no.
16 Q Have you ever done any benzene monitoring
17 for contractors in a refinery of a chemical plant?
18 A No.
19 Q Have you done any benzene monitoring of
20 refinery or chemical plant workers?
21 A Yes.
22 Q How many times have you done that?

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1 A Actual refinery workers, I mean, a few
2 times.
3 Q A few different projects, or a few different
4 monitoring results?
5 A No, a few different projects.
6 Q Did you evaluate workers performing
7 maintenance work?
8 A Yes.
9 Q What type of maintenance work?
10 A Taking equipment in and out of service,
11 clearing lines. Those are the ones I can think of
12 right now.
13 Q Do you recall where you did that?
14 A Yes.
15 Q Can you tell me?
16 A No.
17 Q Okay. It wasn't for either of the
18 Defendants in this case?
19 A Correct.
20 Q I'm assuming you don't intend to use any
21 information in those projects as part of this
22 litigation?

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1 A Correct.
2 Q How many benzene cases have you testified in
3 over the last four years?
4 A I'd say less than ten, but I'm not
5 absolutely certain.
6 Q In the last four years, have you testified
7 for any plaintiffs who were allegedly overexposed as a
8 result of benzene, work around benzene?
9 A Boy, I cannot think of one.
10 Q In your career, have you ever testified for
11 any plaintiffs allegedly overexposed to benzene?
12 A Yes, among other solvents. Yes.
13 Q How many times have you given that
14 testimony?
15 A One time that I can recall.
16 Q How long ago was that?
17 A It was in the -- gosh, late Nineties.
18 Q Do you recall what the illness was?
19 A There were a variety. There were several
20 plaintiffs in the case.
21 Q What was the allegation -- was it a
22 neighborhood contamination case, or what was the

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1 allegation?

2 A No, it was contract painters.

3 Q Do you recall what their illnesses were?

4 A I do not.

5 Q What sort of painters, automobile painters,

6 refinery painters?

7 A Oh. Commercial structures.

8 Q And they were alleging exposure to solvents

9 in the paints --

10 A Yes.

11 Q -- and thinners?

12 A Yes.

13 Q Were they spray painting?

14 A Yes.

15 Q Where was this work being done?

16 A At a power plant.

17 Q In what state?

18 A West Virginia.

19 Q Who was the plaintiff attorney?

20 A Frank Duff.

21 Q And did you do any modeling? Or what sort

22 of role did you play in that?

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1 A I looked at the activities and what the

2 employer had done or did not do and commented on the

3 lack of controls that were being utilized to protect

4 the employees.

5 Q So the employees had brought a claim against

6 the employer?

7 A Against the employer and against the site in

8 which they were doing the work.

9 Q And you were testifying about the failure to

10 provide workplace engineering controls and other

11 safety controls on the part of the employer?

12 A Yes.

13 Q Did you attempt to evaluate exposure levels?

14 A No.

15 Q When you took the trip to Marathon, you've

16 told me you spoke with Dan Buchanan. What else did

17 you do?

18 A We drove and walked through the site.

19 Q How long were you there?

20 A A couple of hours.

21 Q Do you remember what day of the week it was?

22 A You're asking the hard questions now.

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1 Q Right.

2 A I do not. It will be on the notes that I'll

3 provide for you as to what day I was there. It was a

4 weekday.

5 Q You were there about two hours?

6 A I believe so, as best I recall.

7 Q Did you perform any tests while you were

8 there?

9 A No.

10 Q Did you specifically look at any equipment

11 while you were there?

12 A Well, yes, a lot of different equipment.

13 Q Did you drive around in a vehicle throughout

14 the plant?

15 A Yes.

16 Q Did you get out at any units and walk

17 through any units?

18 A Yes. We walked through -- or around most of

19 the maintenance units.

20 Q Do you recall which ones?

21 A CATs, CAT units, I can't remember if it was

22 1, 2 and 3, I can't remember if that was the same

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1 site. There was also a UDEX Unit. There was another

2 area where waste streams were being separated and

3 treated, and I cannot remember the name. Again, some

4 of these may be in my notes. I just can't recall

5 every place we went to there.

6 Q Were there any specific sites within these

7 units that they were taking you through to make sure

8 you saw, or do you recall?

9 A No, it was just a, kind of a general

10 overview of the main processes there.

11 Q How long did your tour of the unit -- of the

12 refinery last?

13 A Like I said, it was a couple of hours.

14 Q Well, at some point you talked to

15 Mr. Buchanan. Was that at the same time?

16 A Pretty much, yes. Most of the time was

17 spent out in the facility.

18 Q I'm assuming when you got there, did they

19 have some initial protocol or procedures you had to go

20 through before you went into the plant?

21 A Yes.

22 Q What did you have to do?

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1 A I say yes, but I've been to so many of these
2 facilities, some have a video -- I don't recall
3 specifically if I had to go through or watch a video
4 there. There may have been a general discussion at a
5 minimum, and an outfitting with personal protective
6 equipment, NOMEX and hardhats.
7 Q Was Dan Buchanan the only person that was
8 with you during your visit to Marathon?
9 A No.
10 Q Who all was there?
11 A Phil Werner was there.
12 Q Okay. Anyone else?
13 A A fellow in my office was there, another
14 industrial hygienist.
15 Q And what was his name?
16 A Bruise Lippy.
17 Q Did Mr. Lippy take any notes?
18 A If he did, we would have discussed them
19 there and incorporated them into mine. I don't know
20 that he specifically took any notes.
21 Q Well, when you look, if he's got them --
22 A Sure.

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1 Q -- I'd like to see those as well?
2 A Sure.
3 Q Yourself, Mr. Lippy, Mr. Werner,
4 Mr. Buchanan, anyone else?
5 A Not that I can recall.
6 Q When you all were touring the units, did you
7 notice or observe any specific maintenance work,
8 anything like that going on?
9 A Yes. I mean, there was maintenance work
10 going on, yes.
11 Q Do you recall whether or not you guys went
12 over there to directly observe it?
13 A Well, I -- yes. I mean, I did observe those
14 activities, people putting equipment in place. I
15 can't -- I don't know or remember what the unit was.
16 It was being lifted up by a crane. So, sure, there
17 was work that was occurring at the time.
18 Q Were there any projects going on that
19 Mr. Buchanan or Mr. Werner wanted you and Mr. Lippy to
20 see specifically?
21 A No.
22 Q Is there anything about your tour through

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1 Marathon, the tour itself, that you're relying upon
2 for your opinions in this case?
3 A Well, I think just in general, having been
4 to the site and understanding the, kind of the layout
5 of the facility and understanding the environment in
6 which Mr. Ringstaff would have worked generally within
7 that facility.
8 Q Do you have any understanding whether or not
9 units have been added since Mr. Ringstaff was there?
10 A Well, he was there in the mid-1970s. I
11 believe there was some, some changes, units made in
12 the 1980s. But, again, I would need to refer to my
13 notes to be certain of that.
14 Q Is that something you all discussed during
15 your tour?
16 A Yes.
17 Q What about expansions of any of the units,
18 the UDEX Crude Unit?
19 A I don't recall offhand.
20 Q Have you reviewed any documents concerning
21 the product profiles and contents out at Marathon,
22 compositions, breakdowns of products?

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1 A No.
2 Q What job task are you assuming that
3 Mr. Ringstaff performed out at Crown and Marathon?
4 A Well, based on his testimony, at Crown he
5 was washing parts, washing clothing, washing hands,
6 the end of the workday. At Marathon he was, I believe
7 he said he was operating a cherry picker and handling
8 equipment, the use of the cherry picker, and cleaning
9 the straps from that equipment used for hoisting
10 materials.
11 Q Have you looked into whether or not
12 Mr. Ringstaff performed boilermaker/laborer work?
13 A At those facilities?
14 Q Yes, sir.
15 A Laborer work. I believe at the Crown
16 facility, where they were working on furnaces at the
17 time, he was there in that '69 to '71 period.
18 Q What about at Marathon?
19 A As I understood there, he was a heavy
20 equipment operator.
21 Q Do you recognize boilermaker work as
22 performing the sort of task where there's potential

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1 for benzene exposure during turnarounds in units where
2 benzene is present?
3 A Depends on what part of the unit you're
4 working on.
5 Q Well, a UDEX Unit.
6 A But on some, you know -- I can't say in
7 every particular part or segment of a UDEX Unit that
8 you would have, you know, some potential for exposure.
9 Q But at the same time you can't say there
10 would be no potential for exposure, right?
11 A I think there's, there's always a potential,
12 it's just which is more likely than not. And there
13 wasn't sufficient information in his testimony to
14 differentiate those potential exposures.
15 Q Do you think it's appropriate to assume that
16 a boilermaker performing turnaround work in a Crude
17 Unit would not be exposed to benzene?
18 A No. I wouldn't start out by making that
19 assumption, no.
20 Q What about on an FCCU unit?
21 A The same answer.
22 Q What about a laborer performing turnaround

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1 work on a Crude Unit, would you assume that they were
2 not going to have any benzene exposure?
3 A Again, I have to look at all of the things
4 leading up to those activities, how lines were
5 cleared, what his specific activities were, and what
6 sort of products that were in those lines that he was
7 working on.
8 Q That's the sort of information you'd need to
9 see before you could make any -- before you could
10 assume no benzene exposure, correct?
11 A Well, before you could assume no benzene
12 exposure or any benzene exposure from that standpoint.
13 (Discussion off the record.)
14 (Deposition Exhibit No. 11 was marked for
15 identification and was attached to the transcript.)
16 BY MR. BARNWELL:
17 Q Mr. Spencer, we've talked about a list of
18 documents that you've reviewed a few times. I'm going
19 to go ahead and mark that as Exhibit No. 11. And just
20 so we're clear on on the record, would you go ahead
21 and identify that also?
22 A This is an inventory list that I produced

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1 identifying the documents that I have reviewed in this
2 case.
3 MR. BARNWELL: That's all the questions I
4 have for you, sir. Thank you.
5 MR. RAYNES: I was just going to make a
6 note. We talked about this at break, but one of the
7 earlier questions you asked about what he's been asked
8 to do in this, and we've already discussed and I think
9 he's had testimony on it, but we may also ask him
10 state of the art questions at trial, just so that
11 you're aware of that.
12 BY MR. BARNWELL:
13 Q And, Mr. Spencer, to the extent you're going
14 to discuss state of the art, you're going to be
15 relying upon the documents that we've talked about
16 here today, correct?
17 A Yes.
18 Q And we've talked about several documents
19 going back to the Forties, Fifties, Sixties, I
20 believe --
21 A Yes.
22 Q -- in these various files?

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1 A Yes.
2 Q And those are the documents you're talking
3 about concerning state of the art?
4 A Yes.
5 MR. RAYNES: One last thing is the exhibits,
6 certain of the exhibits, and I guess we can go through
7 them, I think Mr. Spencer wants to have back. So --
8 MR. BARNWELL: We'll, let's go off the
9 record.
10 MR. RAYNES: Yeah, let's go off the record
11 and let's talk about that.
12 (Discussion off the record.)
13 MR. RAYNES: I don't think we'll need to
14 read.
15 THE WITNESS: Yes.
16 MR. BARNWELL: You want to read and sign?
17 MR. RAYNES: It's your choice.
18 THE WITNESS: Yeah.
19 MR. BARNWELL: With the agreement that we
20 can use an unsigned copy.
21 MR. RAYNES: An unsigned copy we can use at
22 trial.

125 1 (Signature having not been waived, the 2 deposition of John W. Spencer was concluded at 2:40 3 p.m.) 4 ACKNOWLEDGMENT OF DEPONENT 5 I, John W. Spencer, do hereby acknowledge 6 that I have read and examined the foregoing testimony, 7 and the same is a true, correct and complete 8 transcription of the testimony given by me and any 9 corrections appear on the attached Errata sheet signed 10 by me. 11 12 _____ 13 (DATE) (SIGNATURE) 14 ----- 15 16 17 18 19 20 21 22	127 1 on March 20, 2006, to the witness or to the attorney 2 for the witness for examination, signature and return 3 to me by April 10, 2006. 4 That the amount of time used by each party 5 at the deposition is as follows: 6 Mr. Barnwell: 2 hrs. and 55 min. 7 Mr. Raynes: Zero 8 That pursuant to information given to the 9 deposition officer at the time said testimony was 10 taken, the following includes counsel for all parties 11 of record: 12 Mr. Rodney Barnwell, Attorney for Plaintiffs 13 John and Karen Ringstaff. 14 Mr. Scott E. Raynes, Attorney for 15 Defendants. 16 I further certify that I am neither counsel 17 for, related to, nor employed by any of the parties or 18 attorneys in the action in which this proceeding was 19 taken, and further that I am not financially or 20 otherwise interested in the outcome of the action. 21 Further certification requirements pursuant 22 to Rule 203 of TRCP will be certified to after they
126 1 IN THE DISTRICT COURT OF GALVESTON COUNTY, TEXAS 2 56TH JUDICIAL DISTRICT 3 -----X 4 JOHN RINGSTAFF and KAREN : 5 RINGSTAFF : 6 Plaintiffs : 7 v. : No.: 03CV-0551 8 AMOCO CHEMICAL COMPANY, : 9 et al. : 10 Defendants : 11 -----X 12 REPORTER'S CERTIFICATION 13 DEPOSITION OF JOHN W. SPENCER 14 March 14, 2006 15 I, Beatriz D. Fefel, Certified Shorthand 16 Reporter in and for the State of Maryland, hereby 17 certify the following: 18 That the witness, JOHN W. SPENCER, was duly 19 sworn by the officer and that the transcript of the 20 oral deposition is a true record of the testimony 21 given by the witness; 22 That the deposition transcript was submitted	128 1 have occurred. 2 Certified to by me this March 17, 2006. 3 _____ 4 BEATRIZ D. FEFEL, 5 STATE OF MARYLAND 6 Expiration Date: August 1, 2008 7 7654 Standish Place 8 Rockville, Maryland 20855 9 10 ----- 11 12 13 14 15 16 17 18 19 20 21 22

1	ERRATA SHEET			129
2	IN RE: Ringstaff V. Amoco, et al.			
3	RETURN BY:			
4	PAGE	LINE	CORRECTION AND REASON	
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22	(DATE)	(SIGNATURE)		

1	ERRATA SHEET (CONTINUED)			130
2	IN RE: Ringstaff V. Amoco, et al.			
3	RETURN BY:			
4	PAGE	LINE	CORRECTION AND REASON	
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21	_____	_____	_____	
22	(DATE)	(SIGNATURE)		

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