

Flint, Michigan

Wednesday, June 16, 2010

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TIMOTHY URCH

CALLED BY THE PLAINTIFF AND SWORN, TESTIFIED:

EXAMINATION

BY MR. MASTROMARCO:

Q. Mr. Urch, what is your full name.

A. Timothy Steven Urch.

Q. And, Mr. Urch, where do you reside?

A. In Flint. 3385 Southgate Drive.

Q. And have you been from Flint all your life?

A. Yes.

Q. And how old are you?

A. I am 48.

Q. Where are you working at this time?

A. I own my own company.

Q. And what do you do?

A. I manufacture underbody coatings.

Q. And those go on the bottom of the car to do what, to prevent --

A. Sound deadening and rust preventative.

Q. All right. And how long have you had your own company?

A. It will be -- actually, it is two years -- a little

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Appearing on behalf of the Plaintiff.

CLARK HILL, PLC

BY: JOHN B. ALFS, ESQ. (P39094)

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Appearing on behalf of the Defendant.

PLAINTIFF'S
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PETROLEUM ENHANCER, LLC,
a Michigan limited liability company,

Plaintiff,

vs.

File No. 07-12425-BC

HONORABLE THOMAS L. LUDINGTON

LESTER R. WOODWARD,

Defendant.

POLAR MOLECULAR
HOLDING CORPORATION and
POLAR MOLECULAR CORPORATION,
Delaware Corporations,

Intervening Plaintiffs,

vs.

PETROLEUM ENHANCER, LLC,
AFFILIATED INVESTMENTS, LLC,
RICHARD SOCIA, CARL HILL,
BRUCE BECKER, A. RICHARD NELSON,
DOLORES COY-DEJONGH,
jointly and severally liable,

Intervening Defendants.

Deposition of TIMOTHY URCH, taken in the
above-entitled matter before Stenograph Reporter,
Jeanette L. Roberts, CSR-5275, at the Offices of
Ripka, Boroski & Associates, 717 South Grand
Traverse, Flint, Michigan, 48502, on Wednesday, June
16, 2010, commencing at about 9:10 a.m.

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that we did for Polar.

Q. Were you involved in a fuel economy testing on Duralt in approximately April of '06 to June 21st of '06 for Phil Saunders, who is the founder of Truck Stops Of America?

A. I wasn't involved with that process. We just manufactured the product for Polar and sent samples to, I believe, Truck Stop.

Q. So you knew that that contractor, whatever they were doing for Truck Stops, was -- you were doing -- you were performing the production of the product which was being sent to them?

A. Right.

Q. And what was your understanding, if anything, as to why you were preparing the product for Phil Saunders' group?

A. I guess my understanding is that it was for a large contract for a fuel additive.

Q. And what was Lockhart doing to facilitate that?

A. Manufacturing the material.

Q. And do you recall that Mr. Saunders came to Lockhart at any point?

A. I don't recall.

Q. Do you remember that -- all right.

Do you remember in approximately September

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Q. All right. Who did you work with from Polar Molecular?

A. Dick Nelson, and I can't remember the other gentleman's name. He was Dick's brother.

Q. Otis?

A. Otis. I have met Mark, but very little work with Mark.

Q. And what kind of things did you do generally with Otis or Dick Nelson?

A. The project that we had with Polar Molecular, with Dick and Otis at the time, was to oxidize a fuel additive. -- Basically a napa type solvent oxidized for fuel enhancement.

Q. All right. Now, in layman's terms, can you break that down?

A. Well, oxidation is a partial burning. It is adding oxygen to a -- in this case, a hydrocarbon. Or the hydrocarbon is actually a cracked or -- a piece of crude oil that gets -- you know, crude oil gets broken down into different components, be it oil, gasoline, other solvents, other hydrocarbons. They are all called hydrocarbons. It is just one little portion of that.

Q. All right. The process that you engaged in with the Nelsons to oxidize the fuel additive, was there -- is

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there a specific procedure that is supposed to be followed for that?

A. Absolutely. The oxidation procedure is -- takes a very stringent set of procedures, it is done under pressure and temperature -- high pressure and temperature. And that oxidation takes place by actually physically blowing air into a pressurized vessel, and during -- with a catalyst. And during that reaction, the oxygen from the air bonds to the hydrocarbon, and that is what is called oxidation.

Q. At the time that -- just prior to you leaving Lockhart, were you working as the -- what was your title at that time?

A. Materials manager.

Q. Is materials manager involved in quality control?

A. No, but that's -- that was another piece of my duties is to oversee quality control in certain processes at the plant. I was involved with the oxidation unit because I helped develop that process, the oxidation process.

Q. You actually helped develop that?

A. Yes. But it was for other processes and -- it is the same -- the process that I developed was for a wax type product at Lockhart, and it's the same process that is incorporated for the oxidation of the solvent

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over two years now.

Q. Prior to that, where did you work?

A. Lockhart Chemical.

Q. And how long did you work for Lockhart?

A. Twenty-four plus years.

Q. Did you retire from Lockhart?

A. Actually, I took kind of a buyout. The company was sold to Lubrizol Corporation.

Q. Can you spell Lubrizol for the court reporter?

A. L-U-B-R-I-Z-O-L.

Q. Now, the 28 -- did you say -- years that you spent --

A. Twenty-four plus at Lockhart.

Q. Twenty-four plus at Lockhart. The last, you know, couple years you were there -- because I'm sure you did different things when you were there -- can you give us an idea of what you were doing at that time?

A. Well, it's a little more difficult than that. I actually did production supervision. I managed -- I was the materials manager the last few years, but I also was their technical manager as well.

Q. Okay. So you have, like, a whole gambit of different areas that you've been involved in?

A. Yes.

Q. Have you worked with Mark Nelson in the past?

A. Very -- with Mark, very little.

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1 mixed in also?

2 A. Yes. I'm actually amazed I remember most of this.

3 It's been a long time.

4 Q. Did you at all -- when you received a call from Mark

5 Nelson, do you remember him telling you that he had

6 been informed that these 16-ounce bottles that were

7 attempting to be packaged by ASI for Polar had a

8 swirl of dark sediment floating in them?

9 A. I do recall that.

10 Q. Did -- were you familiar with PMC's quality control

11 procedures?

12 A. Fairly well.

13 Q. And were you also aware of the quality control

14 procedures for Lockhart?

15 A. Yes.

16 Q. Did those quality control procedures call for the

17 separation of the heavy bottom from the clear amber

18 liquid of the oxidate for Duralt?

19 A. Well, that is actually part of the manufacturing

20 process. The process does call for the decant of

21 that aqueous phase.

22 Q. Mark says -- okay, and this is his recollection, that

23 you informed him during this conversation that you

24 had actually argued with Dick Nelson about Nelson's

25 instructions to mix the waste material into the

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1 top layer of the solvents. And that bottom layer,

2 again, keeps holding more of the acids, and Dick

3 Nelson wanted that to try to be incorporated into the

4 other phase with cosolvents, which are part of that

5 process as well. During that conversation we also --

6 after the manufacturing, we also noticed in the

7 bottom of that carbon -- which is a black material --

8 just particulate matter, and we weren't able to

9 filter that out, so it stayed in that aqueous layer.

10 And then we incorporated that into the solvents in

11 the lab, it brought some of those particles back into

12 the solution, which again, could not be filtered

13 out. And, again, typically we would decant or get

14 rid of that aqueous layer, which would also get rid

15 of those black particles. But Dick had informed me

16 or wanted -- like I said, wanted to keep them in

17 there and said we need that acid number, we need to

18 build the acid number up into the product.

19 Q. This is something different than what you would

20 normally do?

21 A. Typically, yes. For that type of product you want --

22 process, any particulate matter going into any

23 engines is something for the burning process to seed

24 on which causes, you know, carbon material to be

25 attached to engine parts.

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1 Q. What happens when that occurs?

2 A. I'm not very good at that part of it, but I do know

3 that process gets -- what that means, I don't know in

4 an engine, I'm not a mechanical guru. All I do is

5 the chemical parts.

6 Q. You know that it's not good for the engine?

7 A. I can't say that I don't know that, but it stands to

8 reason that it wouldn't be very good for it.

9 Q. Did you wonder why Dick Nelson was telling you to do

10 that?

11 A. No, I understood what he wanted. I understood that

12 he wanted it to -- wanted to bring the acid number

13 up. Again, I'm not sure what that process is and why

14 the acid number for him was important for that

15 process, because I don't know exactly how the Duralt,

16 which is that product, works in -- as a fuel

17 additive.

18 Q. All right. But what you're telling me is that what

19 he was instructing you to do was different than what

20 you would do normally with this process that you were

21 engaged in?

22 A. Yes.

23 Q. And here he is telling you to not only keep the

24 aqueous layer, but also, in doing so, the darker

25 carbon materials on the bottom of the drum were being

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1 of '06, or thereabouts, speaking to Mark Nelson

2 concerning a shipment of 16-ounce bottles which were

3 sent to ASI on behalf of -- for later shipment to

4 Mr. Saunders' Truck Stops of America?

5 A. Yes, I do recall.

6 Q. And what is it that you remember about that?

7 A. The conversation with Mark?

8 Q. Yeah, what do you remember about that, and what the

9 situation was?

10 A. The situation -- well, the conversation is kind of

11 vague, because it was four years ago.

12 Q. I understand.

13 A. But what I do remember is that during the process of

14 manufacturing that product, part of -- there is some

15 components during that partial burning, there is some

16 carbon material that gets basically broken off that

17 molecule and it forms a little carbon -- I mean, it

18 is actually just carbon. But there is also an

19 aqueous phase during that process. Usually the

20 aqueous phase gets decanted or taken off. But during

21 that process Dick Nelson wanted to keep that aqueous

22 phase. There are acid groups that are attach to the

23 oxygen molecule, and the aqueous phase tends to

24 incorporate more of those which are more hydrophilic,

25 the hydrophilic stuff being the fuel additive, the

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1 A. I would have to calculate it, but it is a lot.
 2 Q. Let's see here, if 55 gallons -- this is your math
 3 lesson for the day -- is one drum --
 4 A. Right.
 5 Q. -- how would we figure that? Divide 55 by 10
 6 million; right?
 7 A. The other way around.
 8 Q. Ten million by fifty-five?
 9 A. Right.
 10 Q. Luckily I have my handy calculator?
 11 A. 181,000, almost 182,000.
 12 Q. Multiply that figure by \$6,600.
 13 A. 6,600?
 14 Q. Yes.
 15 A. 1,194,600,000.
 16 Q. So if these drums -- if one drum was being sold for
 17 \$6,600, that would mean if we multiplied it out,
 18 1,194,600,000 in sales?
 19 A. Essentially, if that is what that was.
 20 Q. Did you ever speak to anyone at ASI concerning this
 21 promise with the Duralt?
 22 A. Not that I recall.
 23 Q. Do you remember whether or not the quality control or
 24 the protocol was in writing as it related to the
 25 manufacturing of this process for the Duralt, the

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1 probably should wait a minute if he starts objecting,
 2 and then answer.
 3 And how are you aware of that?
 4 A. That was part of our conversations with Dick Nelson
 5 on the quantities of material to be produced were for
 6 a large volume, 10 million gallons, I believe, of the
 7 product that we were supposed to be making for them.
 8 Again, that 10 million was -- I guess in my
 9 experience, it sounded like it was a sales pitch, but
 10 the -- you know, in my experience anybody -- all of
 11 the salespeople give you a number to get you excited
 12 to work on processes. Whether that was true numbers,
 13 again, I don't have any recollection of seeing any
 14 contracts between Polar or Truck Stops.
 15 Q. The 10 million gallons, was that the gallons of
 16 diesel or gas that Duralt would be added to, or was
 17 that the quantity of Duralt that was going to be
 18 produced?
 19 A. From my understanding, it was the quantity of Duralt.
 20 Q. Do you know, if you do, how many drums could be --
 21 A. Ten thousand gallons.
 22 Q. Did you say 10 thousand or 10 million?
 23 A. Ten million, sorry.
 24 Q. Do you know how many drum of Duralt 10 million
 25 gallons would yield?

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1 MR. ALFS: Same objection, and also
 2 object as to hearsay.
 3 THE WITNESS: Well, I wasn't familiar with
 4 Saunders, I was under the impression that it was for
 5 Truck Stops.
 6 Q. (BY MR. MASTROMARCO:) That's who it was for?
 7 A. As well as others, but Truck Stop was the primary
 8 customer.
 9 Q. Was it your understanding that they cancelled, then,
 10 what they were doing?
 11 MR. ALFS: Same objection, hearsay.
 12 THE WITNESS: I don't recall. I actually
 13 don't remember anybody telling me they cancelled any
 14 of the testing.
 15 Q. (BY MR. MASTROMARCO:) Was it your understanding that
 16 if this contract would have gone through, that it was
 17 going to be beneficial to not only Lockhart, but also
 18 to Polar Molecular?
 19 A. Yes.
 20 MR. ALFS: Objection.
 21 MR. MASTROMARCO: And by the way, your
 22 objections, even though they are late, I have no
 23 problem with them being considered to have preceded
 24 the answer.
 25 Q. (BY MR. MASTROMARCO:) He may make objections, so you

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1 product, but Nelson insisted?
 2 A. I don't remember arguing with him about it. I
 3 remember discussing that and whether or not I told
 4 him -- but he did insist that that product be brought
 5 into the end product, the finished product.
 6 Q. Were you made aware that when this was discovered,
 7 because there was gonna be -- that this was
 8 happening, that they cancelled the orders for the
 9 Saunders' test fleet?
 10 MR. ALFS: I'm going to make an objection.
 11 There has been no foundation made that the 16-ounce
 12 bottle of product that Mr. Urch just described were
 13 manufactured for testing or use by anyone, Truck Stop
 14 included. Could have been for a variety of other
 15 customers.
 16 Q. (BY MR. MASTROMARCO:) This is one of those
 17 objections that aren't even legal, so go ahead.
 18 A. Actually --
 19 Q. Do you remember my question?
 20 A. No.
 21 Q. Then don't guess, because he's inserted at lot of
 22 things.
 23 Were you made aware at any point, that as
 24 a result of that, that the Saunders' test fleet
 25 testing was cancelled?

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the increased acid level product; correct?

MR. MASTROMARCO: Objection, argumentative.

THE WITNESS: No, I couldn't tell you.

Q. (BY MR. ALFS:) Your awareness of the 16-ounce bottles that became an issue in the Fall of 2007 was based on what? Who brought that to your attention?

A. Meaning?

Q. How did you become aware of the fact that someone was having an issues with these 16-ounce bottles?

A. The only thing I do remember is after the bottles were returned, looking at the 16-ounce bottles and seeing a particulate matter in the bottom, which we expected because we couldn't eliminate that material after processing, other than the decanting of that product.

Q. Lockhart does not bottle product in the 16-ounce bottles; correct?

A. Correct.

Q. In what vessel does Lockhart delivered the Duralt product; is it a 55-gallon drum?

A. Yes.

Q. Do you have a way of knowing, as you sit here today, the manufacture date of the Duralt product that was in those 16-ounce bottles?

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A. What do --

Q. Was he being not truthful with you or not a full explanation?

A. Not a full explanation. Sorry.

Q. Did he give you a partial explanation?

A. Just to increase the acid level of the product.

Q. And as we sit here today, are you certain of the date when you had this conversation with Dick Nelson in regard to his interest in increasing the acid level?

A. I don't remember the exact date, but I just remember the process. I couldn't tell you what year it was, because it was that long ago.

Q. Do you remember manufacturing a product for Ever Best?

A. Yes.

Q. Is it possible that the process that Mr. Nelson asked you to perform in respect to increasing the acid level related to the product manufactured for Ever Best?

MR. MASTROMARCO: Object as to speculation.

THE WITNESS: I don't recall.

Q. (BY MR. ALFS:) You don't know, as we sit here today, the product delivered or used by Truck Stop was the same product you described today in terms of

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explain what happened during that process.

Q. And that's the process that you've just described today?

A. Yes.

Q. Did he tell you why he wanted your testimony on that issue?

A. Not that I recall.

Q. Did he tell you that he thought that Dick Nelson was trying to sabotage the Duralt product?

A. No.

Q. Do you believe, based on what you described earlier today, Dick Nelson's interest in increasing the acid level of the product was an act of sabotage?

MR. MASTROMARCO: I'm going to object as to speculation at this time.

Q. (BY MR. ALFS:) You can answer.

A. I don't believe he thought it was sabotage, no.

Q. Did he tell you or give you an explanation as to why he wanted the acid level increased?

MR. MASTROMARCO: Hearsay.

THE WITNESS: Not truly.

Q. (BY MR. ALFS:) I'm sorry?

A. Not truly of why he wanted it increased.

Q. What do you mean by not truly? That is a term I really don't understand.

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manufacturing process for the Duralt?

A. I don't recall.

Q. Before today, you never talked to me?

A. No.

Q. And, in fact, we didn't talk out in the hall either, did we?

A. No.

Q. We might have just said hi, how ya doing?

A. Right.

MR. MASTROMARCO: No further questions.

EXAMINATION

BY MR. ALFS:

Q. Mr. Urch, my name is John Alfs, I'm an attorney and I represent several parties to this case, including Dick Nelson and other individuals and companies, and I just have a few questions for you. First of all, have you spoken with Mark Nelson in the recent past?

A. A few months back.

Q. And did he call you, did you call him?

A. He called me.

Q. What was the purpose of his call?

A. To ask me if I would give a deposition on this.

Q. And what did he say, why did he want your deposition taken?

A. Based on the information that he had, he wanted me to

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1 MR. MASTROMARCO: Same objection,
2 leading and hearsay.
3 THE WITNESS: I don't recall that. I
4 recall some conversations, but what those
5 conversations were, again, I don't recall them.
6 Q. (BY MR. ALFS:) When the particulate issue was
7 recognized in the 16-ounce bottles, were you asked to
8 do anything in terms of analyzing it or do anything
9 with the product?
10 A. Yeah, we were looking at trying to eliminate that
11 black particulate matter, and all our efforts failed.
12 Q. And in particular, were you being asked to do
13 something to that product that was already bottled in
14 these 16-ounce bottles?
15 MR. MASTROMARCO: What does that mean?
16 Q. (BY MR. ALFS:) Were you asked to do something to
17 change these bottled products that were presented in
18 the Fall of '06?
19 MR. MASTROMARCO: Same objection as to
20 what that means.
21 THE WITNESS: Not that I recall, other
22 than to see if we could eliminate that black
23 particulate matter.
24 Q. (BY MR. ALFS:) And were you presented with a volume
25 of bottles? I don't know what they came in. Were

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1 MR. MASTROMARCO: Same objection, and
2 leading on that issue. Also the form of the
3 question, and speculation. But go ahead.
4 THE WITNESS: Again, when we manufacture
5 them, we manufactured more than just the one batch of
6 material. And back to that date, I wouldn't recall.
7 Again, that is four years ago, I wouldn't recall
8 where it went.
9 Q. (BY MR. ALFS:) So it is possible that the product
10 delivered to Truck Stop was product that was
11 manufactured in the normal course of manufacturing
12 without the deviation suggested by Mr. Nelson?
13 MR. MASTROMARCO: Objection as to
14 speculation and form of the question, and
15 argumentative.
16 Q. (BY MR. ALFS:) You can answer.
17 A. I wouldn't know.
18 Q. Were you aware of any tests performed by the Truck
19 Stop people of the Duralt product?
20 A. You mean testing data?
21 Q. Or just general results, whether it was a positive or
22 negative result?
23 A. No.
24 Q. That wasn't part of your duties in any aspect of this
25 work?

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1 A. No.
2 Q. Do you recall what quantities of Duralt product were
3 manufactured using the process described, where the
4 increased acid level was requested by Dick Nelson?
5 MR. MASTROMARCO: Object as to form.
6 THE WITNESS: I don't recall more than a
7 few times.
8 Q. (BY MR. MASTROMARCO:) I'm a little unclear on that
9 answer.
10 A. There were a couple, more than just once, that that
11 was asked for. But I don't recall exactly how many.
12 Q. Was it -- do you know -- strike that.
13 When Mr. -- when Dick Nelson had
14 conversations with you directing you to increase the
15 acid level of the Duralt product, did you have a
16 conversation with him as to who the end user was?
17 A. No.
18 Q. Did you have a conversation --
19 MR. MASTROMARCO: Objection as to the
20 speculation as to what other times.
21 Q. (BY MR. ALFS:) Do you have -- did you have any
22 conversations with him along the lines that he was
23 experimenting to see whether this increased acid
24 level would improve something or make a product
25 better for a certain application?

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1 A. As to date, no. That would have to -- you would
2 probably have to get that information through
3 Lockhart. Whether or not they would have the quality
4 control data today, I'm not sure. But personally, I
5 don't keep that data, that was Lockhart's data.
6 Q. Do you know where the 16-ounce bottles that evidenced
7 the settling particulate came from?
8 A. I don't recall. I'm pretty sure it was ASI
9 Packaging.
10 Q. But do you know who ASI packaged those bottles for?
11 A. No.
12 Q. Is it possible those products in those bottles were
13 manufactured in '04, '05?
14 MR. MASTROMARCO: Objection to
15 speculation.
16 THE WITNESS: I'm not sure. Again, if
17 you wanted that information, you would have to see if
18 Lockhart Chemical would still have that testing
19 data. And there would be dates and notes in those
20 files, if they still have them.
21 Q. (BY MR. MASTROMARCO:) As we sit here today, you
22 don't know whether the product manufactured for use
23 or testing by the Truck Stop people was the product
24 that Mr. Nelson had you manufacture with the
25 increased acid level?

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particular -- Polar and Truck Stop, although I do remember them discussing Truck Stop testing it. What -- oh, other than that, I don't know.

Q. (BY MR. ALFS:) But you don't know whatever was being tested by Truck Stop -- strike that.

You don't know what product was being tested by Truck Stop?

MR. MASTROMARCO: I'm going to object to the attempt to argue now with the witness as to what he was told is all he can testify to.

Q. (BY MR. ALFS:) You can answer the question.

MR. MASTROMARCO: Unless he was there. The point is what he was told is evidence.

Q. (BY MR. ALFS:) Let me try it again, were you told by anyone that the 16-ounce bottles that had the sediment in it were presented at any time to Truck Stop?

A. Not that I recall.

Q. Were you told by anyone that Truck Stop, the Truck Stop people, had a problem with the quality of the Duralt product?

MR. MASTROMARCO: Same objection as to hearsay on all these questions.

THE WITNESS: I don't believe I was involved with those conversations.

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respect to what could be done or what the problem was?

A. I'm sure I did. What that conversation was, I don't recall.

Q. Did you have a conversation with Mark Nelson in that regard?

A. I'm not sure.

Q. Did you have any conversations with anyone at Polar in respect to looking at these bottles in determining what, if anything, to do?

A. Again, I'm sure we did, but what those conversations were, I don't recall.

Q. Do you remember how many cases were returned?

A. They weren't returned to Lockhart. Just the one to evaluate the -- as far as I know, any waste, just the one case to evaluate the sediment.

Q. How many bottles are in a case, 16-ounce bottles?

A. I believe there are six.

Q. As we sit here today, do you have any knowledge, one way or the other, whether the issues with the 16-ounce bottles had anything to do with Polar's relationship with the Truck Stop people?

MR. MASTROMARCO: Objection as to the form of the question.

THE WITNESS: I have no knowledge of that

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want to work with Mark Nelson?

MR. MASTROMARCO: Objection as to the source of the information undisclosed, hearsay.

THE WITNESS: Not that I recall.

Q. (BY MR. MASTROMARCO:) Have you ever heard of a gentleman by the name of Carl Hill?

A. I don't recall the name.

Q. Have you ever heard of a gentleman by the name of Dick Socia?

A. I don't recall the name.

Q. When you were in the process of manufacturing Duralt product, were you using a patent to direct you in that manufacturing process?

A. I never saw the patent myself, no.

Q. When the issue of the 16-ounce bottles was being discussed, did you have any conversations with Dick Nelson in respect to that?

A. Can you say that again?

Q. Well, when the -- at some point these 16-ounce bottles were presented to you to take a look at and see if something could be done about it; correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Did you have a conversation with Dick Nelson in

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they cases?

A. I believe there was a case of bottles sent back to Lockhart to see if -- to compare them to what we normally would make versus what --

Q. Those bottles were sent by ASI to Lockhart?

A. I believe so. I don't recall, but I believe.

Q. Do you know whether those bottles had been held by ASI in inventory, or they had been held by another source?

A. They would have -- they had our batch codes on them, so they were from Lockhart.

Q. Originally manufactured by Lockhart, but do you know where ASI --

A. No.

Q. -- received those bottles from, if from anyone?

A. No, I wouldn't know that.

Q. Okay. This 10 million gallon order that was described -- maybe I wasn't listening. Did the information regarding this order come from Dick Nelson or Mark Nelson to you?

A. I don't really recall. I think -- I know I discussed that with Dick Nelson. Whether I discussed it with Mark or not, I'm not sure.

Q. Did anyone ever tell you that the Truck Stop people did not want to work with Polar because they did not

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1 have packaging.

2 Q. Okay. Just so that we're clear, when we started off
3 this conversation, it was your understanding, based
4 on what Dick Nelson was telling you when they were
5 doing the mixing and he was telling you to do
6 something that was not the normal process, that these
7 batches were going to Truck Stops of America?

8 MR. ALFS: Objection, that is not his
9 testimony.

10 MR. MASTROMARCO: It is.

11 THE WITNESS: Whether it was Truck Stops
12 of America, I don't know the final -- I know from
13 Lockhart's prospective, that it was going to ASI for
14 packaging.

15 Q. (BY MR. MASTROMARCO:) You learned about the big
16 project with Truck Stops of America, you think, from
17 Dick Nelson?

18 A. I believe so.

19 MR. MASTROMARCO: Thank you so much.

20 MR. ALFS: I have a couple more
21 questions.

22 FURTHER-EXAMINATION

23 BY MR. ALFS:

24 Q. It sounds like from your testimony that you are aware
25 of who the bottler is going to be for the Duralt

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1 Q. I have a couple. Just so we're clear, when Lockhart
2 produces the chemical, they would normally do so in a
3 55-gallon drum?

4 A. No, not in a 55-gallon drum.

5 Q. What would they normally produce it in?

6 A. In tanks.

7 Q. So a larger -- even a larger type container?

8 A. Yeah, typically the oxidation process yields between
9 900 and 1,000 gallons, and after that there are some
10 additives that go into -- some cosolvents and other
11 additives, and it is during that process -- or before
12 that process that the oxidation part of that gets
13 decanted. The cosolvents are added after that. Once
14 you add those cosolvents, you can't eliminate that
15 aqueous phase.

16 Q. So then from your company at the time, Lockhart, that
17 material -- or those batches would be sent to ASI,
18 which would then break them down into different types
19 of containers?

20 A. Yeah, we would actually -- after we add all the
21 cosolvents and all the other additives, we would fill
22 drums, 55-gallon drums.

23 Q. So you would fill the drums?

24 A. We would fill the drums, and the drums would be sent
25 to other packagers, ASI or whoever else Polar would

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1 what any unknown source told him.

2 THE WITNESS: No.

3 Q. (BY MR. ALFS:) Other than your conversation with
4 Dick Nelson a couple -- I'm sorry, strike that.

5 Other than your conversation with Mark
6 Nelson a couple of months ago, have you discussed
7 your testimony or this issue of the sediment at any
8 time in the last six months?

9 A. No.

10 Q. Have you spoken with anyone from Mr. Mastromarco's
11 office other than Mr. Mastromarco?

12 A. I spoke with, I believe it was, Cindy, for the date
13 of the deposition. It was delayed once.

14 Q. Other than that, no one?

15 A. No.

16 Q. Have you and I had any conversations other than me
17 saying hello to you this morning?

18 A. No.

19 Q. Has anyone from a company called Petroleum Enhancer
20 ever contacted you?

21 A. No.

22 MR. ALFS: I have no further questions.

23 Thank you.

24 FURTHER-EXAMINATION

25 BY MR. MASTROMARCO:

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1 Q. (BY MR. MASTROMARCO:) Did Mark Nelson in his
2 conversation with you a couple months ago, tell you
3 that the Truck Stop people cancelled their contract
4 because the problem with sediment in the 16-ounce
5 bottles that you described?

6 MR. MASTROMARCO: Same objection as to
7 asked and answered earlier as to what Mark Nelson
8 discussed with him.

9 THE WITNESS: Yeah, I don't recall Mark
10 telling me anything about Truck Stop.

11 Q. (BY MR. ALFS:) Did he tell you why he was concerned
12 about the 16-ounce bottles and why he wanted your
13 testimony?

14 A. Other than the sedimentation, no.

15 Q. Did he tell you that he received any customer
16 complaints regarding the sediment?

17 A. Not during this last conversation, but that was kind
18 of common knowledge back then that there were some
19 customer -- when you get material back to look at
20 whatever an objection or customer complaint might be
21 during the manufacturing process, you're always
22 aware.

23 Q. Did anyone tell you that the 16-ounce bottles had
24 been returned from China?

25 MR. MASTROMARCO: Same objection as to

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CERTIFICATE OF NOTARY PUBLIC

DEPONENT: TIMOTHY URCH (STATE OF MICHIGAN)
 RECORDED: JUNE 16, 2010 (SS)
 LOCATION: FLINT, MICHIGAN (COUNTY OF GENESEE)

Being a Notary Public duly commissioned and qualified in and for the State of Michigan at Large, I do hereby certify that pursuant to Notice there came before me the deponent herein, who was by me first duly sworn to testify to the truth and nothing but the truth touching and concerning the matters in controversy in this cause.

Being thereupon carefully examined under oath, said examination was recorded stenographically, and was later reduced to transcription under my supervision; said transcription being a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto subscribed my signature this 25th day of June 2010.

MY COMMISSION
 November 14, 2008



Jeanette L. Roberts, CSR-5725

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well.

MR. ALFS: Thank you. I have no further questions.

MR. MASTROMARCO: Nothing further. Thank you very much, Mr. Urch.

(Deposition concluded at approximately 10:07 a.m.)

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it would reference to a QC file, which would have dates and notes.

Q. And Lockhart would maintain those files?

A. Yes.

Q. Do you know how far back in time they maintained them?

A. I wouldn't be sure -- I know that all the QC records were maintained while I was there, from the first date of manufacture. However, I wouldn't be able to tell you whether or not those documents were passed to Lubrizol or kept at Lockhart. I wouldn't be able to tell you that.

Q. Okay.

A. Or whether they were kept.

Q. But in any event, you matched the batch date on the 16-ounce bottles that you looked at and from that you looked at the QC files and determined the manufacture date?

A. Oh, yeah.

Q. And as we sit here today, do you remember the manufacture date you saw?

A. No, we have manufactured many more than one batch, so I wouldn't recall what specific date they were.

Q. Do you remember what year it was?

A. Again, I would have to look at the QC files myself as

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product depending on an order; correct?

A. Correct. We have a shipping location. We would have had a shipping location.

Q. And part of your duties, you would know the shipping location of the product being manufactured?

A. Yes.

Q. Do you know for how many years ASI had served as a bottler for Polar?

A. No.

Q. Was it more than a couple? Do you have an estimate?

A. I wouldn't know. I wouldn't be able to recall whether or not that was the only place it went to. I don't remember.

Q. Do you know whether ASI had bottled Duralt product prior to the Spring of 2006?

A. I couldn't recall.

Q. Do you know for a fact whether the 16-ounce bottles that you observed in the Fall of 2007 contained the product with the increased acid levels that you described earlier?

A. Based on the batch number, yes.

Q. So you matched the batch number to --

A. The manufacturing dates and whatever.

Q. So that batch number would include a date?

A. The batch number itself wouldn't include a date, but

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