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NEW YORK STATE SUPREME COURT
COUNTY OF QUEENS

INDEX NO.: 16014/13

-----X

NICOLA DAVIS a/k/a NICOLE WILKINS,
Plaintiff(s),

-vs-

THE ROOTO CORPORATION, 144-17
HARDWARE, INC., DEBBIE MILLER
and DAVID MILLER,
Defendant(s).

-----X

Faust Goetz Schenker & Blee, LLP
Two Rector Street
New York, New York 10006
June 10, 2015
10:09 a.m.

EXAMINATION of the Defendant, JOON MOON,
Pursuant to a Court Order, held at the above-mentioned
time and place taken by and before Theresa L. Morriale,
a Shorthand Reporter and a Notary Public of the State of
New York.

PRIORITY-ONE
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EXAMINATION BY	PAGE
HOWARD S. EDINBURGH, ESQ.	5

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the respective parties
hereto, that: All rights provided by the C.P.L.R.
and Part 221 of the Uniform Rules for the conduct of
Depositions, including the right to object to any
questions, except as to form, or to move to strike any
testimony at this examination is reserved; and in
addition, the failure to object to any question or to
move to strike any testimony at this examination shall
not be a bar or waiver to make such motion at, and is
reserved to the trial of this action.

This deposition may be sworn to by the
witness being examined before a Notary Public other than
the Notary Public before whom this examination was
begun, but the failure to do so or to return the
original of this deposition to counsel, shall not be
deemed a waiver of the rights provided by Rule 3116 of
the C.P.L.R., and shall be controlled thereby.

The filing of the original of this
deposition is waived.

IT IS FURTHER STIPULATED, that a copy of
this examination shall be furnished to the attorney for
the witness being examined without charge.

1 J O O N M O O N,

2 Residing at 2312 Santa Paula Avenue, Las Vegas,
3 Nevada 89004, having been duly sworn testifies as
4 follows:

5

6 DIRECT EXAMINATION BY MR. EDINBURGH:

7

8 Q. Tell us your name and home address,
9 please.

10 A. I told you I have a little hearing --
11 you speak really soft. So, would you speak
12 louder.

13 Q. Tell us your name and where you
14 live.

15 A. Joon Moon. 2312 Santa Paula Avenue, Las
16 Vegas, Nevada.

17 Q. Mr. Moon, good morning.

18 A. Good morning.

19 Q. As you requested, I will try to
20 keep my voice up for all the questions because
21 you indicated you have a hearing problem. My
22 name is Howard Edinburgh. My firm is Herzfeld
23 and Rubin. We represent the plaintiff, Ms.
24 Nicola Davis, who has sued your company, Rotoo
25 -- am I pronouncing it correctly?

1 A. Rooto.

2 Q. Rooto?

3 A. That's okay though.

4 Q. So, it's like R-U-U-T-O but it's
5 R-O-O-T-O. Rooto Corporation --

6 A. Yes.

7 Q. -- in a personal injury action.
8 I'll be asking you certain questions this
9 morning and this afternoon. And just some basic
10 rules for the questions, please wait until I
11 finish my question before you answer. If you
12 don't understand my question or it makes no
13 sense to you, just let me know and I'll rephrase
14 it in a manner which I trust you'll be able to
15 answer. Please, wait until I finish my question
16 before you answer, so we're both not speaking at
17 the same time. And please, give a verbal
18 response to each and every question. Having
19 said that, I'll begin.

20 A. I understand it.

21 Q. Sir, are you taking any medications
22 which prevent you from responding to any
23 questions today?

24 A. No.

25 Q. Okay. Can you tell us your date of

1 birth?

2 A. December 27th, 1937.

3 Q. And where were you born?

4 A. Seoul, Korea.

5 Q. Did there come a time when you came
6 to the United States?

7 A. February 1959.

8 Q. Are you a United States citizen?

9 A. Yes.

10 Q. I want to just do some background
11 information on you. Are you a college graduate?

12 A. Yes.

13 Q. Where did you graduate?

14 A. I did.

15 Q. What school did you graduate?

16 A. I did a undergraduate at Michigan State
17 University. And I did graduate work, PhD from
18 University of California, Berkeley.

19 Q. And at Michigan State University,
20 when did you graduate?

21 A. 1960.

22 Q. And was that a Bachelor's of
23 Science Degree?

24 A. Yes.

25 Q. And you indicated you got from

1 Berkeley a PhD?

2 A. Yes.

3 Q. In what field?

4 A. Chemical engineering.

5 Q. When?

6 A. 1964.

7 Q. And what was your PhD thesis in?

8 What subject?

9 A. That is how many years ago? Forty years
10 ago. I think it's material transfer area.

11 Q. And are you currently employed?

12 A. Yes.

13 Q. In what capacity?

14 A. I'm the president of Roto Corporation.

15 Q. Where is Roto Corporation
16 incorporated?

17 A. State of Nevada.

18 Q. And where is its principal place
19 of business?

20 A. We have a office in Las Vegas, Nevada
21 and we have a factory in Howell, H-O-W-E-L-L,
22 Michigan.

23 Q. Is Roto Corporation a privately
24 held company?

25 A. Yes.

1 Q. Do you have an ownership interest
2 in the company?

3 A. Yes.

4 Q. How much of the company do you own?

5 A. A hundred percent.

6 Q. Are there any other officers of
7 Roto Corporation besides yourself?

8 A. Officers?

9 Q. Officers, yes. Like vice
10 president, secretary.

11 A. Yes.

12 Q. Who?

13 A. Secretary is Keith, K-E-I-T-H;
14 Kopf, K-O-P-F. And Vice President is Rick
15 Rapanowski (phonetic).

16 Q. Does the company have a chief
17 executive officer? A CEO?

18 A. We don't have that designation. I'm
19 just a president.

20 Q. Just the president?

21 A. Yes.

22 Q. All right. And what are your
23 duties and responsibilities as president of
24 Roto Corporation?

25 A. I supervise the way the company's

1 running.

2 Q. When was Rooto Corporation formed?

3 A. I believe, 1946.

4 Q. Well, that's not before when you
5 were born, but you were too young to have run it
6 then, maybe not. Did you purchase the company?

7 A. Yes.

8 Q. When?

9 A. I think, 1970. I could be wrong a year
10 or two.

11 Q. And have you been the sole owner of
12 Rooto Corporation from then until now?

13 A. We used to have a small minority
14 interest. But I bought them out probably 19 --
15 late 1970.

16 Q. So, since that time since you
17 bought out the minority shareholders, have you
18 been the sole owner of the company?

19 A. Yes.

20 Q. And have you been the president of
21 the company since the late 1970s?

22 A. Actually, early '70s is when I bought
23 the company.

24 Q. Okay. So, you've been the
25 president since the early 1970s until now?

1 A. Yes.

2 Q. Have the headquarters of Roto
3 Corporation always been in the State of Nevada?

4 A. No.

5 Q. Were they originally in Michigan?

6 A. Yes.

7 Q. When did you move to Nevada?

8 A. I don't know exact time, but probably
9 between five to ten years.

10 Q. From now and going back?

11 A. Yes, going back.

12 Q. Five to ten years. This accident,
13 the one involving this lawsuit we'll be
14 discussing today, was in December 2011. At that
15 time, was the headquarters of Roto in Nevada or
16 in Michigan?

17 A. Best of my knowledge, it's Nevada.

18 Q. And what is the business of Roto
19 Corporation?

20 A. We basically manufacture and sell
21 consumer product chemicals.

22 Q. Is it a range of consumer products
23 that Roto manufactures and sells? Or is it
24 limited to one or two?

25 A. I think we make about 10 or more

1 different products.

2 Q. Does your company make drain
3 cleaners or drain openers?

4 A. Yes.

5 Q. And how many different drain
6 openers or drain cleaners does your company
7 manufacture and sell?

8 MR. FAUST: Today?

9 MR. EDINBURGH: We'll do it now,
10 and then we'll go back.

11 Q. Today, now, 2015.

12 A. Basically, in chemical bases we make
13 three different kinds of drain cleaners. One
14 is acid base. The other, alkaline base. And
15 the other, enzyme base. However, we consider
16 different size of package as a different
17 product, then we might make, I don't know, ten
18 different products.

19 Q. So, each of these drain openers or
20 drain cleaners you sell today would come in
21 different sizes; am I correct? Such as a
22 gallon, half gallon?

23 A. In terms of liquid acid product, gallon,
24 half gallon, quarts, pints, and 20 ounce.

25 Q. Are the alkaline the same?

1 A. Alkaline, we make a liquid and a dry. I
2 think we make a gallon and a quart liquid
3 alkaline. And we make one-pound, two-pound and
4 the six-and-a-half-pound alkaline drain cleaner.

5 Q. And the enzyme is liquid?

6 A. Yes. Only one size, quarts.

7 Q. And are all of them sold under the
8 Rooto brand?

9 A. We sell Rooto brand, as well as, we do
10 private label.

11 Q. The acid drain openers that you
12 mentioned, which acids are the main ingredient
13 of your product?

14 A. Sulfuric acid.

15 Q. Do you use any other type?

16 A. No.

17 Q. And the alkaline you tell me, is it
18 sodium hydroxide? Potassium hydroxide? Which?

19 A. We make both potassium and sodium
20 hydroxide.

21 Q. Back in 2011, did you have acid
22 base -- did your company make acid-based drain
23 openers?

24 A. Yes.

25 Q. And was that acid, sulfuric acid?

1 A. Yes.

2 Q. And what size containers did you
3 sell it back in 2011?

4 A. One gallon, half gallon, quarts, and
5 pints.

6 Q. Did the concentration of the
7 sulfuric acid vary depending on the size of the
8 container?

9 A. No.

10 Q. Each sulfuric acid-based container
11 of liquid drain opener that you sold in 2011
12 that contains sulfuric acid had the same
13 concentration from product to product?

14 A. Do it again, please.

15 Q. It was a poorly phrased. I'll redo
16 it. What was the concentration of sulfuric acid
17 in the sulfuric-acid-based drain cleaners that
18 your company sold in 2011?

19 A. About 93 percent.

20 Q. Over 93? Or under 93?

21 A. Around 93.

22 Q. Is there any way you could be more
23 specific? Can you go to a 10th of a percentage
24 point, whether it was a 93.1, 92.9; what was it?

25 A. It depended on suppliers. What they

1 supply to us. It varies between 92 and maybe 9
2 -- to 93.1.

3 Q. Did you provide your suppliers with
4 specifications for the concentration? In other
5 words, a range in which they had to provide you?

6 A. We'll take the range.

7 Q. And what was the range?

8 A. Like 92 to 94.

9 Q. When you indicated that you had
10 suppliers, did your company manufacture the
11 sulfuric acid itself?

12 A. No.

13 Q. You bought it from outside vendors?

14 A. Yes.

15 Q. Did you have one or more suppliers
16 back in 2011? In other words, did you have an
17 exclusive supplier? Did it vary? Did you buy
18 your sulfuric acid in bulk from a number of
19 companies?

20 A. Basically, two different companies.

21 Q. Who were they?

22 A. One is called Web, W-E-B, Chemical
23 Company. The other one at this moment, I cannot
24 recall. I'll be happy to give you the name.

25

1 INSERT: _____

2 MR. FAUST: We can leave a blank
3 space.

4 Q. How long was Web Chemical a
5 supplier to Rooto of sulfuric acid?

6 A. Again, I don't know exactly. But
7 probably ten years or more.

8 Q. Do you own any portion of Web?

9 A. No.

10 Q. Where is Web based?

11 A. Michigan, I think.

12 Q. All right.

13 A. I mean, they have a distribution center
14 in Michigan. I don't know exactly where they
15 are incorporated. They have some other place, I
16 have no idea.

17 Q. Do you back in 2011 when -- so, you
18 said the sulfuric acid that was used as the main
19 ingredient of your sulfuric-acid-based drain
20 openers in 2011 was purchased either by Web
21 chemical in Michigan, or another company whose
22 name you don't recall?

23 A. Yes.

24 Q. Can you tell us in terms of
25 percentages, how much Web supplied? In other

1 words, did they supply over 50 percent of the
2 sulfuric acid? Less?

3 A. Depends on price. Two companies
4 sometimes have a different price. And low
5 percentage price -- low price, will get higher
6 percentage than other.

7 Q. Were documents created or prepared
8 with respect to your purchase by Web of sulfuric
9 acid? Bills of lading? Bills of sale?
10 Contracts? Agreements?

11 A. I don't think we have a contract. I
12 think we make an order by telephone.

13 Q. Okay. And were your orders in
14 2011, were they through -- you said through
15 telephone, were they confirmed in writing?
16 Either emails? Or through the Internet? Or
17 faxes? Anything?

18 A. No.

19 Q. How were you billed?

20 A. They send an invoice after they
21 delivered.

22 Q. And did they deliver it to your
23 plant in Michigan?

24 A. Yes.

25 Q. Who ran the plant in Michigan in

1 2011?

2 A. Rick Rapanowski.

3 Q. Is he still there?

4 A. Yes.

5 Q. He was the plant manager?

6 A. He's a general manager.

7 Q. Of the company as a whole?

8 A. Yes.

9 Q. And he was the general manager of
10 the plant, correct?

11 A. Yes.

12 Q. And he was the highest level
13 on-site official at that plant?

14 A. Yes.

15 Q. He was in charge of the plant?

16 A. Yes.

17 Q. Was he also in charge of purchasing
18 the sulfuric acid?

19 A. Yes.

20 Q. The bills of lading -- I'm sorry.
21 Any bills generated from the purchase of
22 sulfuric acid by your company back in 2011 and
23 delivered to the plant in Michigan, do those
24 documents still exist today?

25 A. I don't know.

1 Q. Who would know?

2 A. Rick Rapanowski would know.

3 Q. Do you know whether in this
4 lawsuit, anyone in your company searched for
5 records concerning the purchase of sulfuric acid
6 back in 2011?

7 A. We searched our office in Las Vegas and
8 we couldn't find any.

9 Q. Are these records concerning the
10 purchase of sulfuric acid kept in Las Vegas? Or
11 in Michigan?

12 A. Sometimes they send us an invoice to
13 Vegas. Sometimes they keep it there.

14 Q. So, as you're sitting here today,
15 you don't know whether on the premises of your
16 factory in Michigan documents exist, documenting
17 and recording the purchase by your company of
18 sulfuric acid from Web or from other companies
19 back in 2011?

20 A. I don't know.

21 Q. Does your company have a record
22 retention program policy?

23 A. No. We have no such policy. We're a
24 very small company.

25 Q. Okay. Even small companies may

1 have a record-retention program.

2 A. Well --

3 MR. FAUST: You don't have to
4 answer. That's just a statement made.

5 Q. Does your company have a written
6 record retention policy?

7 A. No.

8 Q. Do they have an unwritten record
9 retention policy?

10 A. I don't think we have a policy.

11 Q. Have you given any instructions to
12 your company, people, as to their retention of
13 documents, electronic correspondence, such as
14 emails? Do you have any policy of that? Do you
15 know if you store it for one year? Three years?
16 Seven years? Six months? What?

17 A. I own this company a long time. It's
18 our practice to just dispose records probably in
19 two years. Except, whatever required by
20 government.

21 Q. And how long have you instituted
22 that policy?

23 A. It's not a policy. It's a practice, but
24 anyway --

25 Q. Fair enough.

1 A. -- it's about 23 years.

2 Q. And is that practice one that
3 you've communicated to the other employees at
4 your company?

5 A. Yes.

6 Q. Does that include emails?

7 A. I don't think so. I mean, it was way
8 before email existed.

9 Q. How about when email came into
10 existence?

11 A. It was in practice at that time. So, we
12 don't need to communicate.

13 Q. In Nevada, how many employees are
14 there of Rotoo?

15 A. One. And me -- I mean, two, I guess.

16 Q. Who's the other person?

17 A. Keith Kopf. K-E-I-T-H, K-O-P-F.

18 Q. And what is his role in the
19 company?

20 A. He's CFO.

21 Q. Okay. Have you ever been deposed
22 before today?

23 A. Yes.

24 Q. Have you ever been deposed as a
25 representative of Rotoo Corporation?

1 A. Yes.

2 Q. How many times?

3 A. I really don't know exactly. More than
4 ten, probably less than 20.

5 Q. Are any of them personal injury
6 lawsuits?

7 A. Do it again, please.

8 Q. Did any of the times that you've
9 been deposed involve personal injury lawsuits?

10 A. Yes.

11 Q. How many?

12 A. Again, I don't know. It could be ten.

13 Q. Did any of them involve lawsuits
14 involving your sulfuric-acid-based drain
15 openers?

16 A. Yes.

17 Q. How many of those?

18 A. Again, I don't know exactly. But
19 probably around ten.

20 Q. Okay. Now, I'm going to go through
21 these ten to the best of your knowledge and
22 memory.

23 A. Yes.

24 Q. You know what a deposition is,
25 right? You've been through it before?

1 A. I have been through it before. I don't
2 know what deposition is, but...

3 Q. That's all right. None of us
4 really do. How about a trial? Have you ever
5 testified at trial?

6 A. Yes.

7 Q. How many times?

8 A. I think about two times.

9 Q. Did either of those two cases
10 involve a sulfuric-acid-based drain cleaner made
11 by Roto?

12 A. One, I remember. It's one, but it could
13 be more.

14 Q. Well, you've said you testified
15 twice at trial?

16 A. Yes.

17 Q. So, that means either one or both
18 cases involved the sulfuric-acid-based drain
19 cleaner.

20 MR. FAUST: He said approximately
21 two times.

22 Q. It could have been more than two?

23 A. No more than three for sure. But, yeah.

24 Q. Let's go through your trial
25 testimony first if we could. Do you recall when

1 was the last time you testified at trial with
2 respect to a sulfuric-acid-based drain cleaner
3 or drain opener?

4 A. Really, I don't recall when is the last
5 time.

6 Q. How about where the trial was?

7 A. It was in Chicago, I think.

8 Q. Was it state or federal court?

9 A. Again, I don't really pay a lot of
10 attention. But probably it's a state court.

11 MR. FAUST: Just don't guess.

12 THE WITNESS: Sulfuric acid --

13 MR. FAUST: No. I'm just telling
14 you don't guess. If you don't know, you
15 don't know.

16 Q. Do you remember the name of the
17 case? The name of the plaintiff?

18 A. No.

19 Q. Do you have any idea of
20 approximately when that trial took place -- let
21 me rephrase the question. Was it in the last
22 five years?

23 A. No.

24 Q. Last ten years?

25 A. Again, I cannot exactly put the date.

1 Q. Okay. Just one more time now, and
2 I'll go onto a different question. Has it be
3 since 2000, going back now 15 years?

4 A. It could be before 2000.

5 Q. Do you have any records that your
6 company, with respect to this lawsuit, that you
7 gave trial testimony in Chicago? In other
8 words, the name of the company -- I'm sorry.
9 The name of the case? Who your lawyers were?
10 Any documents at all? The complaint?

11 A. No.

12 Q. Anything at all?

13 A. No.

14 Q. Your company has been sued before;
15 am I right?

16 A. Yes.

17 Q. It has been sued before in a
18 personal injury action?

19 A. Yes. I said before.

20 Q. Well, I asked what you testified
21 to, but that's fine. In the normal course of
22 your business, do you keep files of litigation
23 involving your company?

24 A. When it's active, yes.

25 Q. And at some point after the case is

1 resolved either by one way or another, verdict,
2 settlement, judgment --

3 MR. FAUST: Dismissal?

4 MR. EDINBURGH: Dismissal,
5 perhaps. Although, that won't be this
6 one.

7 Q. Could you tell us how long you keep
8 the records of that case before you dispose of
9 them?

10 A. We probably dispose of them within a
11 year.

12 Q. You dispose of them in terms of
13 physically destroying them? Or do you send them
14 to some warehouse?

15 A. We put them in the garbage.

16 Q. Do you keep any records at all
17 either electronically, or otherwise, of cases
18 that have been terminated for one reason or
19 another or ended, at all? Any record at all
20 anywhere after a year?

21 A. Electronically, does that include email?

22 Q. Yes, absolutely.

23 A. I really don't know. Email exists
24 forever.

25 Q. Before coming here today, did your

1 company search their electronic records for
2 prior complaints, legal complaints, involving
3 allegations of personal injury involving your
4 sulfuric acid drain opener?

5 A. We don't know how.

6 Q. You don't know how to search your
7 own computers?

8 A. I mean, we have to know some title or
9 something to look for it, or our lawyers' name.
10 And since we cannot remember, I don't know.

11 Q. Were you asked to make a search?

12 A. My law firm asked me to look for it.
13 Not exactly records, I search more like a paper
14 record.

15 Q. Did your law firm tell you not to
16 look through --

17 MR. FAUST: Objection. Don't
18 answer it.

19 Q. Sorry, my fault. Was it your
20 understanding that your search did not have to
21 include an electronic search?

22 A. Never occurred to our mind.

23 Q. As we sit here today, do you know
24 whether in the computer system -- withdrawn.

25 Does your company have computers?

1 A. We have a computer.

2 Q. Does it have servers?

3 A. We do not have computer for --
4 designated to the company. We have a personal
5 computer doing the invoicing.

6 Q. Okay.

7 A. Personal computer doing the paying.
8 Otherwise, we do not have any server keeping a
9 file.

10 Q. Does your company personnel
11 communicate through email?

12 A. Yes.

13 Q. And is that through a personal
14 computer in the company?

15 A. Or my personal -- you know, I use a AOL
16 account.

17 MR. EDINBURGH: Off the record.

18 [Discussion held off the record.]

19 Q. Have you had the same personal
20 account -- for how long?

21 A. I don't know, 20 years. Whenever AOL
22 started.

23 Q. And that's how you email with other
24 people?

25 A. Yes.

1 Q. And that's the method? You emailed
2 with your attorneys and these other cases in
3 which you've testified in?

4 A. Yes.

5 Q. Did you check or make any effort to
6 check your AOL-based emails for any
7 communications, with respect, to any other
8 lawsuits that your company was a defendant, in
9 which there was a claim made involving one of
10 your sulfuric acid drain openers?

11 A. I told you, I don't know how, because
12 for me to search, I need some subject matters or
13 the email address. Especially, email address.
14 And since I don't recall lawyers involved, I
15 don't do that. And for the record, I have a
16 Gmail address but it's more like dormant. I
17 don't use it.

18 Q. I have the same thing. I don't use
19 it either. Did your company have a general
20 liability insurance?

21 A. Yes.

22 Q. Same carrier over the years?

23 A. I think it changed a couple times.

24 Q. Who was your carrier in 2011?

25 A. I think AIG, but I could be wrong.

1 Q. Who's your carrier today?

2 A. Best of my knowledge, AIG.

3 Q. Did AIG provide your company with a
4 defense to one or more of these other lawsuits
5 where sulfuric acid -- that involved one of your
6 sulfuric-acid-based drain opener products?

7 MR. FAUST: Just note my
8 objection.

9 MR. EDINBURGH: I'm not doing it
10 for insurance. I just want to see where
11 I can get records from.

12 MR. FAUST: Well, the problem is
13 he's even not sure he has AIG. And
14 you're assuming in your question that he
15 had AIG insurance, and he's not even
16 sure of that.

17 Q. Please, tell me the names of the
18 insurance companies that provided you with a
19 defense to those cases in which you were sued,
20 meaning Roto Corporation, involving sulfuric
21 acid drain openers. Identify the carriers. If
22 there's more than one over the years, tell me
23 who they are.

24 A. I don't remember.

25 Q. None of them? Not even one?

1 A. No.

2 Q. Who was your carrier before AIG?

3 A. I don't recall. We buy the insurance,
4 let them have it. I don't pay a lot of
5 attention.

6 Q. I understand. Were you involved in
7 purchasing general liability insurance or
8 product liability insurance, or was it someone
9 else in your company?

10 MR. FAUST: At any time?

11 MR. EDINBURGH: Back in 2011.

12 A. I'm involved in a sense that I agreed to
13 whatever insurance company, but I have an
14 insurance agent who works with me over 40 years,
15 so...

16 Q. All right. Who is that agent?

17 A. Brownrigg.

18 Q. Can you say it again, please.

19 A. Brownrigg, R-I-G-G.

20 Q. Is that the name of the company or
21 a person?

22 A. A company.

23 Q. And there is a particular broker
24 you deal with over the years on a long term
25 relationship?

1 A. Nancy Brownrigg.

2 Q. That's one word? Or one hyphenated
3 word?

4 A. One word.

5 Q. Nancy Brownrigg is her name?

6 A. Nancy is the first name.

7 Q. Oh, Nancy at Brownrigg? Or Nancy
8 Brownrigg?

9 A. Nancy Brownrigg at Brownrigg Company.

10 Q. It's her company?

11 A. Her company? I'm not so sure who owns
12 it.

13 Q. Where is this brokerage located?

14 A. I think Michigan.

15 Q. Do you have the address in some of
16 your documents?

17 A. I have an address. I don't recall.

18 Q. Do you at your company keep records
19 concerning your insurance policies over the
20 years? In other words, who the carrier was?
21 Any declarations sheets for insurance? Anything
22 of that sort?

23 A. Again, I think we destroy -- or
24 whatever, or disposal in two years.

25 Q. And I asked you this before, do you

1 know the names of any of the law firms that
2 represented you in any of the cases in which
3 your company was sued in a personal injury
4 action involving one of your sulfuric-acid-based
5 drain opener products?

6 MR. FAUST: It was asked and
7 answered. He said no, he doesn't recall
8 any of them.

9 MR. EDINBURGH: I didn't ask that
10 question. I asked it differently and
11 then he said he didn't know the lawyers.
12 Now, I'm asking specifically if he knows
13 any of the lawyers -- the law firms.

14 A. I know Faust. That's all I can recall.

15 Q. In addition to yourself, did any
16 other employees of your company testify at
17 either deposition or trial in any of these cases
18 involving sulfuric acid drain openers?

19 A. No.

20 Q. Do you know the names of any of the
21 plaintiffs' law firms involved in any of the
22 cases involving sulfuric acid drain openers?
23 The plaintiffs' lawyers that sued your company.

24 A. If I don't recall my own lawyer, I don't
25 think I would try to remember plaintiffs'

1 lawyer. After this case, I don't think I'll
2 ever remember your name, too.

3 Q. That's fine. I would probably
4 forget it as well. So, the answer is you don't
5 remember?

6 A. No.

7 Q. All right. Can you tell me in
8 2011, approximately, how many individual
9 containers of sulfuric-acid-based drain openers
10 your company sold to the general public?

11 MR. FAUST: You're saying
12 regardless of size?

13 MR. EDINBURGH: Yeah, I don't
14 care.

15 A. I think about a million units.

16 Q. And am I correct that regardless of
17 size, these units were sold for use by the
18 general public?

19 A. Yes.

20 Q. Did you place any restrictions on
21 the sale of your sulfuric acid drain openers
22 back in 2011 in terms of only being sold to
23 plumbing professionals?

24 A. No.

25 Q. Do you place any restrictions on

1 sale in terms of only being sold in hardware
2 stores?

3 A. No.

4 Q. To whom did your company sell it's
5 sulfuric acid drain cleaners in 2011?

6 A. Ace Hardware Corporation, TruServ
7 Corporation, and Do it Best.

8 Q. Do it Best?

9 A. Yes. And ACO Company. I'm pretty sure
10 there are others, but I cannot recall.

11 Q. Were these all under the Rooto
12 brand?

13 A. Yes.

14 Q. None of these were private label
15 brands?

16 A. No -- you're talking about 2011?

17 Q. Correct.

18 A. Yeah, you're right.

19 Q. Now, Ace is a hardware store chain,
20 correct?

21 A. Yes.

22 Q. TruServ is also a hardware chain?

23 A. Yes.

24 Q. Do it Best?

25 A. Yes.

1 Q. Where is Do it Best located?

2 Where, geographically, in the United States?

3 A. I think there in Fort Wayne, Indiana,
4 the head office.

5 Q. You said ACO?

6 A. Yes.

7 Q. Is that a hardware chain?

8 A. Yes.

9 Q. Did you also market or sell your
10 sulfuric-acid-based drain opener in 2011 under
11 private labels?

12 A. I don't think so.

13 Q. Did you sell your
14 sulfuric-acid-based drain opener in 2011 to
15 national retailers like Walmart or Sears?

16 A. 2011?

17 Q. Right.

18 A. Exactly, we don't know the dates. You
19 know, we sold some to Home Depot, some to
20 Lowe's. But I don't know exactly 2011. It's an
21 on and off type of relationships.

22 Q. With these other entities, with Ace
23 and -- let's deal with Ace. Did you have a
24 written agreement with Ace for the sale of drain
25 openers back in 2011?

1 A. I don't know exactly. We've been doing
2 business with them since 1950 and I don't think
3 we signed any new agreement recently.

4 Q. Did you have an older agreement
5 that remained in effect throughout the years?

6 A. I don't think so. With us, no.

7 Q. Were containers of
8 sulfuric-acid-based drain openers transported
9 from your Michigan facility to an Ace warehouse
10 or distribution center?

11 MR. FAUST: The question is how
12 were they?

13 MR. EDINBURGH: How were they --
14 were they.

15 Q. In other words, did you hire trucks
16 or railroad containers to take these products to
17 an Ace facility? Or did Ace come to you and
18 pick them up? How did it work?

19 A. Okay. To Ace, sometimes Ace would pick
20 up. Sometimes we hire a common carrier. Now,
21 just for simplistic, when you say, "drain
22 cleaner," we assume it's sulfuric acid unless
23 otherwise?

24 Q. Yes.

25 A. It would make it easier for you and me.

1 Q. Yes. Anything to make it easier
2 would be good. Sulfuric acid, correct.

3 A. As a drain cleaner means at this moment,
4 sulfuric acid.

5 Q. Right. Unless I say otherwise.
6 Unless I say, "hydroxide," "lye based,"
7 "alkaline based," it will be sulfuric acid.

8 A. It will be easier for us.

9 Q. Correct.

10 A. Yes.

11 Q. With respect to sulfuric acid
12 based, you just gave me the answer, right?
13 About the trucks?

14 A. Yes.

15 Q. Okay. Were invoices generated
16 either by Ace or by you, for Ace's purchase of
17 the sulfuric-acid-based drain cleaners?

18 A. We generate invoice.

19 Q. And how, generally, was payment
20 made by Ace?

21 A. How they make payments?

22 Q. Yes. Was it electronic-transfer
23 funds? Was it some other way?

24 A. Right now, it's electronics. At that
25 time in 2011, I don't know.

1 Q. Do you know how many containers of
2 acid-based drain openers of whatever size, was
3 sold to Ace in 2011? You can give me an
4 approximation.

5 A. Approximation, could be about a quarter
6 million.

7 Q. And was that generally the number
8 throughout the 2000 period?

9 A. Yes.

10 Q. Did you have private-label
11 companies that were purchasing your
12 sulfuric-acid-based drain opener in 2011?

13 A. I don't believe so.

14 Q. How about 2009 and '10?

15 A. No.

16 Q. Did there come a point in time when
17 your company stopped selling the
18 sulfuric-acid-based drain openers to
19 private-label entities?

20 A. No.

21 Q. So, do you do it today?

22 A. We do quite a bit today.

23 Q. Can you identify certain brand
24 names under which your sulfuric-acid-based drain
25 cleaner is currently sold? Other than Rotoo.

1 A. I could tell you, but that's a trade
2 secret. So...

3 Q. I'll enter into an agreement. I'll
4 agree not to tell anybody.

5 A. What if this is available to public?

6 Q. I'll white out these lines. If we
7 use it in a motion I'll --

8 MR. FAUST: We'll redact it.

9 Q. We'll redact it from the record and
10 we'll make other arrangements to keep the
11 confidentiality of that information, so no one
12 sees it on the record.

13 A. The reason I'm saying is, I will explain
14 to you so --

15 MR. FAUST: No explanation.

16 Q. I appreciate it's a trade secret.
17 I'm not disputing that.

18 A. Yes, we do.

19 Q. Now, please, answer the question.

20 A. We do make private label.

21 Q. And I'm asking you, under what
22 brands?

23 A. It's Liquid Lightning.

24 Q. Any other names?

25 A. And that's it.

1 Q. Who sells it?

2 A. Who sells it?

3 Q. Yes.

4 A. I think Jones Stephens Corporation.

5 Q. And for how long have you been
6 providing this sulfuric acid drain opener sold
7 under the Liquid Lightning brand?

8 A. Since April 19 -- 2014.

9 Q. Did your company back in 2011, have
10 any 800 number for consumer, or user, to call if
11 they wanted to ask you any information about the
12 sulfuric acid drain opener? Or if they had any
13 complaints with respect to it?

14 A. Yes.

15 Q. And how long have you had such an
16 800 number? Or a similar toll free number.

17 A. I don't know how long. But probably
18 over ten years.

19 Q. And did your company keep records
20 or logs of the calls made?

21 A. No.

22 Q. Do you have the 800 number now?

23 A. Yes.

24 Q. Were the calls recorded?

25 MR. FAUST: In 2011?

1 MR. EDINBURGH: In 2011.

2 A. I think we have a simply the --

3 MR. FAUST: Are they recorded?

4 It's a yes or no.

5 THE WITNESS: I don't know. That's
6 what I'm saying. I'm trying to explain,
7 sorry.

8 Q. Well, explain to me what happens
9 when an incoming call back in 2011, when a
10 consumer calls the number does that consumer get
11 an operator?

12 A. We don't have an operator. We have
13 people answering the phone.

14 Q. And the people that answer the
15 phone, where are they located?

16 A. Howell, Michigan.

17 Q. In the plant?

18 A. It's a plant office.

19 Q. And I take it there is someone who
20 was in charge of that specific unit, the unit
21 that answered the phone for the 800 numbers?

22 A. We don't have that kind of unit. Rick
23 Rapanowski handled the case.

24 Q. Handled the 800 number calls?

25 A. Yes.

1 Q. Do you have an understanding of
2 whether there was any written record generated
3 at all or computer-generated record from those
4 calls?

5 A. No.

6 Q. No, you don't have an
7 understanding? Or, no, there was no record
8 made?

9 A. No record made.

10 Q. Prior to 2011, let's say --
11 withdrawn. During your relationship with Ace
12 Hardware? Did Ace ever communicate with you
13 complaints they received from consumers
14 concerning the sulfuric acid-based drain opener
15 that was sold in the Ace stores?

16 MR. FAUST: Just note my
17 objection. You can answer but it
18 assumes that there were complaints made.
19 But you can answer it.

20 A. Do it again, please.

21 Q. I'd love to do that for you but
22 this one...

23 MR. EDINBURGH: Could you read
24 that back?

25 [The requested portion of the record

1 was read.]

2 A. Yes.

3 Q. Okay. And how did such
4 communications take place?

5 A. They called us.

6 Q. Called Michigan? Called you?

7 A. Michigan.

8 Q. Okay. And were records kept of
9 those calls?

10 A. No.

11 Q. Did those calls lead to any
12 investigations by your people of the complaints
13 of individual consumers?

14 A. Depends what complaint it was.

15 Q. Well, can you tell me the nature of
16 the complaints that were received by Ace with
17 respect to the sulfuric-acid-based drain
18 openers?

19 A. Nature in general, sometimes they drop
20 our product on the floor -- on the stone floor.
21 Then, somebody gets splashed and they call us.

22 Q. That's it? Any other type of
23 complaint? Or is it only that?

24 A. Sometimes we get sued and Ace get sued
25 for some reason. And then, Ace just tell us

1 that they got sued.

2 Q. And then, what do you do in
3 response?

4 A. Oh, we have a vendors endorsement. So,
5 we are responsible for covering defense for Ace.

6 Q. Vendors endorsement is a term with
7 respect to a policy of insurance?

8 A. Yes.

9 Q. Policy of insurance issued to your
10 company? Or is issued to Ace?

11 A. Our insurance company issue to Ace that
12 they are covering any kind of product liability
13 lawsuit due to our product.

14 Q. Are you aware of the identity or
15 name of any lawsuits involving your
16 sulfuric-acid-based drain opener, in which your
17 company and Ace were sued as defendants?

18 A. I don't recall.

19 Q. Do you remember any lawsuits in
20 which -- withdrawn. Did you have any written
21 agreement with Ace Hardware or any of these
22 other hardware entities, in which your company
23 agreed to indemnify them if they were sued, with
24 respect, to one of your drain opener products?

25 A. We send -- I think it's industry

1 practice, we send the vendors endorsement and
2 they are happy with that.

3 Q. Do you have any copies of these
4 endorsements back in your company's files?

5 A. Oh, yes. Last year, one.

6 Q. That's it?

7 A. Yes.

8 Q. And that's from AIG?

9 A. I believe so. I told you, we buy
10 insurance and I don't pay attention.

11 Q. Right. In some of these lawsuits
12 that you had mentioned earlier whose names you
13 don't recall, but do you recall there were
14 several involving sulfuric acid-based drain
15 openers, in which you testified at. Did any of
16 those lawsuits involve Ace as well?

17 A. Yes.

18 Q. Can you identify any of them?

19 A. I don't recall.

20 Q. Did the Chicago one involve Ace?

21 A. I don't know.

22 Q. Did Ace ever report to you in
23 instances, where an individual for whatever
24 reason had physical contact with the sulfuric
25 acid itself and sustained some type of chemical

1 burn?

2 A. Can you say once more?

3 MR. EDINBURGH: Can you read that
4 back?

5 [The requested portion of the
6 record was read.]

7 MR. FAUST: Other than what he's
8 told us about, when it gets dropped on
9 the floor and splashes somebody?

10 MR. EDINBURGH: He didn't say
11 resulting in a burn. I'm including that
12 as well.

13 MR. FAUST: Okay.

14 A. Yes.

15 Q. Do you keep a record of how many
16 times -- in other words, not maybe information,
17 but the frequency or the number of instances you
18 received on an annual basis from Ace or any of
19 these other companies?

20 A. It's not very frequent, but I don't have
21 a record.

22 Q. When you received notice from
23 Ace -- have you received notice from TruServ and
24 Do it Best from time to time of individuals
25 receiving or suffering chemical burns from

1 contact with your sulfuric-acid-based drain
2 opener?

3 A. Do it again, please.

4 Q. I'm sorry. If you don't understand
5 the question, tell me, but I'm going to let her
6 read it back.

7 MR. EDINBURGH: Can you read that
8 back?

9 [The requested portion of the record was
10 read]

11 A. What I don't understand is you preambled
12 saying when you receive notice from Ace--

13 Q. Forget it. I'll rephrase it.
14 Forget Ace for now. From TruServ, Do it Best,
15 Home Depot, Lowe's, did any of those companies
16 ever notify you that they received complaints
17 from individuals, that these individuals
18 sustained a chemical burn from the sulfuric acid
19 in your sulfuric acid drain opener?

20 A. It could be, but I don't recall.

21 Q. And you have no record?

22 A. No record.

23 Q. Did you understand that if your
24 company, or when your company received a
25 complaint either through the 800 number, through

1 a letter, through a notification by Ace, or
2 other companies of a sulfuric acid drain opener
3 incident that you were to report that incident
4 to any governmental agency?

5 A. No.

6 Q. Have you heard of Consumer Product
7 Safety Commission?

8 A. Yes.

9 Q. CPSC?

10 A. I guess so.

11 Q. Did you have any understanding of
12 any reporting obligation to that federal agency
13 of incidents with which you became aware of,
14 your company became aware of, of chemical
15 burns -- sulfuric acid chemical burns involving
16 your drain openers?

17 A. Not that I know.

18 Q. Back in 2011, did you belong to any
19 industry associations? Or did Rooto belong to
20 any industry associations in the field of drain
21 cleaners and drain openers?

22 A. No.

23 Q. How about prior to 2011?

24 A. No.

25 Q. Ever?

1 A. No. It's over now?

2 Q. I'm just getting started.

3 Mr. Moon, does Roto own any patents with
4 respect to your sulfuric-acid-based drain
5 opener?

6 A. No.

7 Q. Are you the one that made a
8 determination that this sulfuric acid
9 concentration in your drain opener would be
10 between 92 and 94 percent? Was that your call?

11 A. I mean, everything like that would be my
12 call. But when I bought the company, they
13 already had this product.

14 Q. I see. And what was the
15 concentration of sulfuric acid in the product
16 that was sold when you bought the company?

17 A. Same as now.

18 Q. You never changed it?

19 A. No.

20 Q. What were the ingredients of the
21 other six to eight percent of this product that
22 was not sulfuric acid?

23 A. It's mostly water. We put half percent
24 of corrosion in either.

25 Q. Has your company ever conducted any

1 studies with respect to the interaction of
2 sulfuric acid and water?

3 A. It's well known chemistry, sulfuric acid
4 with water. We don't need to study. You could
5 go Wikipedia or Google and find out those
6 things.

7 Q. How about studies with respect to
8 the concentration of the sulfuric acid in your
9 product at 93 -- between 92 and 94 percent at
10 that concentration. Did you have any studies of
11 that interaction of pouring sulfuric acid onto
12 water or into water at that concentration?

13 MR. FAUST: The question is, did
14 you or your company do any studies?

15 A. Could you do it again?

16 Q. I'll rephrase it. With respect to
17 the sulfuric acid concentration found in the
18 Rooto sulfuric acid drain openers, which you
19 indicated was between 92 and 94 percent, did you
20 do any studies using sulfuric acid at that
21 concentration level with respect to if you pour
22 it into water what will happen?

23 A. We did some experiment.

24 Q. Experiment?

25 A. Yes. Would you call it a study or no?

1 Q. Well, it's depends. You use the
2 word experiment, I will do that. Was this a
3 series of -- you tell me what you did and when
4 you did it.

5 A. Okay. We have glass p-trap for the use
6 of drain cleaners and we put the water in it.
7 And then, we pour sulfuric acid and we have a
8 cutout -- cutout drain in the sink and we pour
9 our drain cleaner in it.

10 Q. And is this something you've done
11 periodically? Or is this a one-time thing?

12 A. Couple times, but properties doesn't
13 change, so it would be all the same.

14 Q. When did you do this?

15 A. Probably 10, 15 years ago.

16 Q. Did you record the test or the
17 experiment?

18 A. No.

19 Q. Did you video it?

20 A. What?

21 Q. Did you videotape it?

22 A. No.

23 Q. Did you film it?

24 A. No.

25 Q. Did you have any documents of that

1 test at all?

2 A. No.

3 Q. What were the results of that test?

4 A. As predicted, it gets hot. And
5 sometimes we have a spitting, I call spitting.

6 Q. Spitting?

7 A. Yeah. Some kind of sink come back like
8 one or two inches from the surface.

9 Q. And this glass cutout contraption
10 that you have, is it still there?

11 A. Yes.

12 Q. And you haven't tested it with
13 sulfuric acid, is it your testimony, in the last
14 ten years?

15 A. Exactly sulfuric acid or water?

16 Q. Right?

17 A. No.

18 Q. Okay. Have you given your product,
19 your sulfuric acid drain opener product, to any
20 independent laboratory or test facility for
21 testing of any type?

22 A. Not by us, no.

23 Q. Have you ever submitted any letters
24 or other documents to the CPSC with respect to
25 sulfuric acid drain openers?

1 A. I don't recall.

2 Q. All right. We'll go into that.

3 Did you ever hear of SADO, S-A-D-O?

4 A. No.

5 Q. With respect to your product?

6 A. No.

7 Q. So, you don't know whether SADO was
8 used as initials for a sulfuric acid drainer
9 openers?

10 A. No.

11 Q. No. You don't know, all right. If
12 you don't know, you don't know. Do you know the
13 formula for sulfuric acid, being a chemistry
14 PhD?

15 A. You talking about what formula?
16 Molecular formula?

17 Q. Yes.

18 A. H2SO4.

19 Q. What is the pH of sulfuric acid?

20 A. That could generate quite a bit of PhD
21 thesis. Because 93 percent of acid is not
22 exactly really acid like hydrogen ion floating
23 out, but it's a very strong acid.

24 Q. PH one or less?

25 A. PH one or less.

1 Q. Is it fair to say that the pH of
2 sulfuric acid that's recorded in each and every
3 one of your containers of Rotoo sulfuric acid
4 drain opener has a pH of one or less?

5 A. I was looking at you playing. Could you
6 repeat?

7 MR. ERINBURGH: Please, read that
8 back.

9 [The requested portion of the
10 record was read.]

11 Q. Let me do it again. Is it accurate
12 to say that each and every one of your sulfuric
13 acid drain opener containers that your company
14 sells to the public, that the sulfuric acid pH
15 in those containers is one or less?

16 A. Yes.

17 MR. EDINBURGH: I'm going to take
18 a little short break.

19 MR. FAUST: Sure.

20 [A short break was taken.]

21 MR. EDINBURGH: Let me mark these.
22 This will be Plaintiff's 1.

23 [Whereupon, exhibit was marked
24 Plaintiff's 1.]

25 Q. Mr. Moon, I'd like to show you

1 what's been marked as Plaintiff's 1 and I'd like
2 you to look at that letter. And after you're
3 finished looking at it, please tell me.

4 A. Yes.

5 Q. Is that a letter you wrote?

6 A. Yes.

7 Q. Is that your signature?

8 A. Yes.

9 Q. You see the first line that says,
10 SADOS, S-A-D-O-S?

11 A. Yes.

12 Q. Does that refresh your recollection
13 of what a SADO is?

14 A. You told me, but letters 9/2004, I don't
15 use that kind of acronym at all.

16 Q. Okay. In this letter, you say you
17 supplied over a hundred million applications of
18 these products for public usage. How did you
19 arrive at that number?

20 A. At that time in 2004, we been in acid
21 business probably about 40 years. And we sell
22 say even half million of the products per year.
23 At that time, we don't sell as much as now. We
24 have sold about 20 million units. And each
25 unit, normally, generates about five

1 applications. So, that's how we arrived at a
2 hundred million.

3 Q. You've said in the first paragraph,
4 you used a phrase, "We have less than 50
5 complaints concerning the product." How did you
6 come to that number?

7 A. That's my best estimates.

8 Q. Going back how many years back
9 then?

10 A. Back to 1968.

11 Q. And I take it that -- was the
12 estimate based on reviewing records? Documents?

13 A. No.

14 Q. It's just your recollection in your
15 head how many there were?

16 A. Yes.

17 Q. All right. Between 2004 and today,
18 ten, 11 years later, is it still less than 50?
19 Or is it more than 50?

20 A. What kind of complaints?

21 Q. Well, what kind of complaints were
22 you referring to in this letter?

23 A. We were talking about dropping the
24 bottles, opening the childproof cap, and
25 breaking the bottles. Somebody came in a truck

1 and the truck slush around and hit really hard
2 and end up breaking it. That's all included for
3 50.

4 Q. Did those 50 complaints you
5 referred to in your letter include any instances
6 of pouring the sulfuric acid drain opener into a
7 clogged drain, and then, the drain erupting and
8 the sulfuric acid erupting back up onto the
9 individual pouring the liquid?

10 A. Yes.

11 Q. How many of those incidences?

12 A. I think I testified before. I cannot
13 recall. Probably around ten.

14 Q. In other words, ten of these 50
15 involved what I just described?

16 A. No. Up to now. So, ten might be like
17 maybe eight, nine.

18 Q. Okay. With respect to the 50
19 mentioned in your letter, let's just limit it to
20 that for now.

21 A. What?

22 Q. With respect to these 50 complaints
23 that you wrote to the United States Consumer
24 Product Safety Commission in July 2004, how many
25 of those complaints involved a claim that a

1 consumer poured the sulfuric acid into a drain
2 and the sulfuric acid erupted back onto them?

3 A. As I testified to that, around ten --
4 eight to ten.

5 Q. Since that time, from July 2nd,
6 2004, until now, in the last ten, 11 years, how
7 many additional complaints have you received in
8 which there's been a claim that a consumer
9 poured the sulfuric acid drain opener into a
10 clogged drain and sulfuric acid erupted back
11 onto them?

12 A. Since we don't keep our record, I don't
13 know exactly. Maybe two or three.

14 Q. Two or three in the last ten, 11
15 years?

16 A. I think so.

17 Q. And did those two or three become
18 lawsuits?

19 A. This is for sure, this one. This case.

20 Q. This is among the two or three, our
21 case?

22 A. Yes. Yes.

23 Q. How about the one or two that
24 aren't our cases? Did they become lawsuits?

25 A. I don't know.

1 Q. Have you ever testified in the
2 State of New York other than this case?

3 A. There's one case. I don't know if I
4 testified or not, but they took a deposition.
5 It's something to do with our alkaline drain
6 cleaner.

7 Q. And your alkaline drain cleaner was
8 sodium or potassium hydroxide?

9 A. Sodium.

10 Q. Lye?

11 A. Lye, yeah.

12 Q. And you testified at a deposition
13 in New York?

14 A. New York State, I believe so. But
15 that's like 15 years ago. I don't recall
16 detail.

17 Q. Was it New York City?

18 A. I think Buffalo.

19 Q. Okay. And again, you don't know
20 any details of that case at all?

21 A. No. First time in New York City.

22 Q. All right. And you don't know the
23 name of the plaintiff? You don't know the name
24 of your lawyer? You don't know anything about
25 that case other than that you were here and you

1 testified about a lye-base drain opener?

2 A. That's correct.

3 Q. You referred to this letter to the
4 Battelle Memorial Institute?

5 A. Battelle.

6 Q. Battelle, my mistake. Do you have
7 a copy of any report that Battelle issued back
8 in 2004?

9 A. No.

10 Q. Have you or your company ever
11 considered reducing the concentration of the
12 sulfuric acid in the sulfuric acid drain opener?

13 A. Considered, yes.

14 Q. And your consideration, did you
15 ever have -- any consideration you did, did you
16 generate any documents concerning that
17 consideration? Any memos? Any letters?

18 A. No.

19 Q. Any emails?

20 A. I don't know.

21 Q. That consideration, was that done
22 by you alone?

23 A. Me, alone, yes.

24 Q. Did you include any other
25 individuals in your consideration?

1 A. No. You know, I'm the only chemical
2 engineer in the company.

3 Q. I understand. So, did you discuss
4 it with any of the other company officers?

5 A. I mean, we talk about whether to reduce
6 the concentration.

7 Q. When did you last consider reducing
8 the concentration of sulfuric acid?

9 A. Something around more than ten years
10 ago.

11 Q. And what precipitated your
12 consideration at that time of reducing the
13 concentration of sulfuric acid?

14 A. One of my competitors came up lower
15 concentration.

16 Q. And who was your competitor?

17 A. I can't remember.

18 Q. Who generally are your competitors
19 in this field of drain openers?

20 A. Beg your pardon?

21 Q. Who are generally your competitors
22 -- who are your chief competitors, your
23 principal competitors?

24 A. You need a name?

25 Q. I like a name.

1 A. Liquid Fire and I think it's HiTech
2 Company.

3 Q. That's the name of the company,
4 Hitech?

5 A. I think so.

6 Q. They make Liquid Fire?

7 A. No. Liquid Fire is one company. HiTech
8 is another company.

9 Q. Is Liquid Fire the name of the
10 company, or just the name of the brand? Or
11 marketing name?

12 A. That's all I know of.

13 Q. Now, when you say, "your
14 competitors," are you saying your competitors in
15 the sulfuric-acid-based drain openers?

16 A. Yes.

17 Q. Any others?

18 A. There are some, but I don't recall.

19 Q. Now, ten years ago which of these
20 entities was manufacturing a reduced
21 concentration sulfuric acid drain opener?

22 A. I think none of ours.

23 Q. None of them. Do you have an
24 understanding of what the -- withdrawn. Your
25 consideration of reduced concentration, what

1 were you considering reducing the sulfuric acid
2 concentration to? What level?

3 A. I think 70 percent or 30 percent.

4 Q. And I take it you decided not to
5 reduce the concentration?

6 A. Correct.

7 Q. And do you have anything in writing
8 indicating why you decided not to reduce the
9 concentration?

10 A. No.

11 Q. Do you know now why you decided?
12 Can you tell us now, why you decided not to
13 reduce the concentration?

14 A. To me, it wasn't as effective. And not
15 any reduction of burns, you know, damage.

16 Q. Anything else?

17 A. No.

18 Q. Let's take it one at a time. You
19 said it was not as effective. Not as effective
20 at eliminating drain clogs?

21 A. Yes.

22 Q. How do you know that?

23 A. We tested that half cut, and a theory,
24 too.

25 Q. And what?

1 A. Theory. Theory behind the drain
2 cleaner.

3 Q. All right. Let's do the physical
4 testing. You said that took place about ten or
5 more years ago?

6 A. Right.

7 Q. But you don't know specifically
8 when?

9 A. No.

10 Q. And did you create a prototype
11 drain cleaner with 70 percent concentration?

12 A. Yes.

13 Q. That was done internally?

14 A. Yes.

15 Q. In Michigan?

16 A. Yes.

17 Q. And was it tested in Michigan?

18 A. Yes.

19 Q. And you were present at the
20 testing?

21 A. Yes.

22 Q. Tell me what the testing consisted
23 of.

24 A. We clogged, on purpose, the glass drain
25 cleaner -- glass drain with hair and lard.

1 Q. Hair and lard combination?

2 A. Yes. And then, pour on one inch top of
3 water.

4 Q. All right. What was the diameter
5 of the drain?

6 A. I think it's normal size under your sink
7 I would guess is about an inch and a half.

8 Q. All right. Go ahead, what did you
9 do next?

10 A. And then, we poured the 93 percent
11 sulfuric acid, and how long it take to clear the
12 drain.

13 Q. How long did it take?

14 A. I don't recall, but reasonably fast.

15 Q. Did it undergo any eruption?

16 A. No.

17 Q. Or splash back?

18 A. No.

19 Q. Bubbling?

20 A. I don't think so.

21 Q. Did you measure the heat created by
22 that interaction?

23 A. We touched it and it's hot. We expected
24 it to be hot.

25 Q. You touched it when?

1 A. When we poured it within like 30
2 seconds, 40 seconds.

3 Q. You actually put your hand in it?

4 A. Outside. I'm not that stupid.

5 Q. I never said you were.

6 A. You wouldn't do that, right?

7 Q. I would not do that.

8 A. Our label shows burns on the contact and
9 all that. I'm not going to stick my hand in it.

10 Q. Did you have any thermometer or any
11 measurement of the heat generated by pouring the
12 93 percent? In other words, was it 200 degrees
13 Farenheit? Higher? Lower?

14 A. 200 degrees about right.

15 Q. Farenheit?

16 A. Farenheit.

17 Q. Not Celsius? That would be really
18 hot.

19 A. Yes. Even boiling or lower.

20 Q. Okay. Go ahead, then what did you
21 do?

22 A. Then, you know, we can calculate
23 ultimate temperature of acid and alkaline mix.
24 It's all documented in the chemistry. So, then,
25 now, we pour the 70 percent, and we pour the 30

1 percent.

2 Q. Okay. And what were the results?

3 A. 70 percent didn't generate as high
4 temperature as 93 percent. And drain cleaner
5 works because it gets hot, then it melts fat,
6 you know, the lard or butter or whatever is
7 blocking it. So, it wasn't as hot. And also,
8 it is not dehydrate. It needed hydrolysis of
9 the blockage of like hair or whatever blocking
10 it. So, it didn't work as well.

11 Q. And it didn't work as well but did
12 it, in fact, open the clog?

13 A. 70 percent did eventually. 30 percent,
14 I don't think did very much.

15 Q. Did 70 percent that eventually --
16 compare the two times between the 93 and 70. In
17 other words, how long did the 70 take to open
18 and how long did the 93?

19 A. I can't recall exactly. But 70 probably
20 took several minutes.

21 Q. But it did, in fact, open the clog?

22 A. Yes. It wasn't a severe drain clog, no.

23 Q. And the 30, how long did the 30
24 take?

25 A. I don't think they opened it.

1 Q. During your consideration of
2 changing the formula, the concentration of
3 sulfuric acid, did you test any concentration
4 below 93 but above 70?

5 A. No.

6 Q. Did you test anything in the mid
7 80s?

8 A. No.

9 Q. Why not?

10 A. Just -- we thought 70, 30 -- because my
11 competitor came out 70. So, we thought we shot
12 the other range -- lower range than 70. So,
13 that's why we did only three.

14 Q. Do you know why your competitor --
15 when you say, "came out," actually sold to the
16 public?

17 A. Yes.

18 Q. That's what you're saying?

19 A. Yes.

20 Q. And again, as we sit here today,
21 you have no records at all concerning that
22 testing?

23 A. No.

24 Q. Was that the only time you
25 considered reducing the concentration of

1 sulfuric acid in your sulfuric-acid-based drain
2 opener?

3 A. I don't know if it's the only time. But
4 up to that, we didn't consider.

5 MR. EDINBURGH: Let me do mark
6 let's do Plaintiff's 2.

7 [Whereupon, exhibit was marked
8 Plaintiff's 2.]

9 Q. If you could take a look at this.
10 Just take a look at it and let me know when
11 you're finished and I'll ask you my questions.

12 A. Yes.

13 Q. Okay. Have you seen this document
14 before?

15 A. No.

16 Q. Did you see this document back in
17 2004?

18 A. No.

19 Q. Were you aware that this document
20 was being presented to the Consumer Product
21 Safety Commission?

22 A. Somebody petitioned that to ban the
23 acid-based drain cleaner. That I'm aware of.

24 Q. Okay. Are you aware of an entity
25 or association called the Sulfuric Acid Drain

1 Line Opener Industry?

2 A. I don't know if that's the exact name,
3 but there's one organization like that. It's
4 organized by the Liquid Fire Company. Now, I
5 look at here, I can see the Liquid Fire Company
6 is the Amazing Products.

7 Q. Okay. Let's go to industry members
8 which is on the next to last page --

9 A. Yes.

10 Q. -- of this document.

11 A. Um-hm.

12 Q. Let's go through them.

13 A. Yes.

14 Q. Amazing Products is listed as
15 industry where they're based Louisville,
16 Kentucky?

17 A. Yes.

18 Q. Are they the company that puts out
19 -- the company called Liquid Fire that you
20 previously mentioned?

21 A. Yes.

22 Q. They still do it today?

23 A. Yes. That I know of.

24 Q. And you see HiTech Labs, it says
25 they're in Freeport, Florida?

1 A. I guess so.

2 Q. Now, is that the same HiTech you
3 referred to as another competitor?

4 A. Yes.

5 Q. Makes sulfuric-acid-based drain
6 openers?

7 A. Yes.

8 Q. Did you ever hear of a company
9 called CornStar International?

10 A. I don't know the company.

11 Q. How about Venus Labs?

12 A. I don't know the company.

13 Q. Turn the page, please. How about
14 Black Swan Manufacture, Co.?

15 A. I don't know the exact --

16 Q. Roebic Laboratories?

17 A. I know the company.

18 Q. You do?

19 A. Yes.

20 Q. Are they a competitor of yours?

21 A. Yes.

22 Q. Are they still in business?

23 A. I didn't check it.

24 Q. Your company is identified as one
25 of the companies presenting this letter to the

1 CPSC; am I correct?

2 A. It's shown here.

3 Q. Okay. And it gives an address of
4 Vancouver, Washington?

5 A. Yes.

6 Q. 2004?

7 A. Yes.

8 Q. Did you have a company office in
9 Vancouver, Washington in 2004?

10 A. Yes.

11 Q. Is that where you lived?

12 A. I live in Las Vegas now.

13 Q. Back then?

14 A. Yes.

15 Q. Back then you lived in Vancouver,
16 Washington?

17 A. Yes.

18 Q. And I take it, wherever you lived,
19 that's where the company headquarters was?

20 A. Not necessarily. But it happened to be
21 that way.

22 Q. Did you have any input whatsoever
23 in the document that's been marked as
24 Plaintiff's 2?

25 A. No. We never were a member.

1 Q. Do you get permission for whoever
2 authorized this document to put your company
3 name on it?

4 A. I don't recall.

5 Q. Did you have any meetings with any
6 of your competitors concerning the application
7 or position in 2004 for the government to issue
8 a direct banning of the use of
9 sulfuric-acid-based drain openers with
10 concentrations of 92 percent or higher?

11 A. No.

12 THE WITNESS: I like to have a copy
13 of that.

14 MR. FAUST: Don't worry. I'll
15 give you copies of everything.

16 Q. Copies will be provided to your
17 lawyer.

18 A. Thank you.

19 Q. Everything we mark you'll get
20 copies.

21 A. I like the names you collected.

22 Q. It's online. Have you ever heard
23 of a trade association called SAP, S-A-P?

24 A. No.

25 Q. Sulfuric -- I'm sorry. Have you

1 ever heard of an organization of Sulfuric Acid
2 Industry Manufacturers?

3 A. I told you, I might have heard because
4 that could be the same as Amazing Product trying
5 to organize the company, but I don't know. I
6 might have heard about it or not.

7 Q. Did you ever buy sulfuric acid from
8 Hercules Chemical Corporation?

9 A. No.

10 MR. EDINBURGH: I want to mark as
11 Plaintiff's 3, the discovery response of
12 Roto Corporation dated April 7th, 2015.

13 [Whereupon, exhibit was marked
14 Plaintiff's 3.]

15 MR. EDINBURGH: I'll show it to
16 the witness.

17 Q. Now, I'd like you, sir, to look at
18 this document, specifically, your affidavit
19 dated March 11th, 2015, which was fixed towards
20 the back of the document.

21 A. Yes.

22 Q. Did you prepare that affidavit?
23 Did you write that affidavit?

24 A. I think my law firm did.

25 Q. Meaning Faust Goetz firm?

1 A. I think so.

2 Q. And they gave you the affidavit and
3 you signed it and had it notarized?

4 A. Yes, I read it.

5 Q. You read it?

6 A. Yeah.

7 Q. Is it true and accurate?

8 A. Yes.

9 Q. Can you go to paragraph number
10 three?

11 A. Yes.

12 Q. In that response, you say, and I
13 quote, "I designed the drain opener product at
14 issue over forty (40) years ago and all related
15 documents have since been destroyed." That's
16 accurate?

17 A. Yes. I'm not sure "destroyed" is the
18 right word, but it's not our position. Destroy,
19 in the sense that we throw away in the garbage.

20 Q. You bought the company which was
21 already selling a sulfuric-acid-based drain
22 cleaner which had a concentration to 92 to 94
23 percent; is that accurate?

24 A. Accurate.

25 Q. So, what part of the product did

1 you design?

2 A. We changed the label.

3 Q. You didn't design the chemical
4 formulation?

5 A. No.

6 Q. That you bought?

7 A. I bought the whole company and the
8 product come with it.

9 Q. So, the formula for the product was
10 not something that you designed?

11 A. No.

12 Q. What about the design of the
13 container in which it was sold?

14 A. We changed the container.

15 Q. How?

16 A. There was a straight cylinder type of --
17 cylinder type of container. We changed to
18 handled container.

19 Q. And you designed the labeling?

20 A. Yes.

21 Q. That included any wording or
22 language on the container itself?

23 A. Yes.

24 Q. You indicated in the second
25 paragraph that you reviewed plaintiff's notice

1 to produce dated June 5, 2014; is that correct?

2 A. Yes.

3 Q. That notice was sent to you?

4 A. What?

5 Q. That notice to produce was sent to
6 you in some format?

7 A. Yes.

8 Q. And you went over each of those
9 items in that notice to produce?

10 A. Yes.

11 Q. And did you search for records to
12 respond to them? Or did you know without
13 searching whether or not you had any?

14 A. We ask people, Rick and Keith, that any
15 documents related to this.

16 Q. And what did they tell you?

17 A. They said nothing there. Whatever I
18 answer, yeah.

19 Q. Other than the documents that are
20 contained in the notice to produce, they told
21 you, "We have nothing else"?

22 A. Yes.

23 Q. Do you have an office of general
24 counsel in your company? Or a legal department?

25 A. No legal department. Ms. Moon sitting

1 over there is our general counsel.

2 Q. Outside counsel?

3 A. Outside.

4 Q. Not an employee of your company?

5 A. No.

6 Q. Other than what you've testified
7 just now about your own awareness of the record
8 keeping of your company, and discussions with
9 the other two individuals -- the other two
10 officers of the company, right?

11 A. Yes.

12 Q. Did you ask anyone else about
13 documents responsive to plaintiff's discovery
14 notice? Anyone else?

15 A. I look at my file, too.

16 Q. You have a file?

17 A. I mean, a file cabinet I have.

18 Q. What file cabinet -- a physical
19 file cabinet in your office in Las Vegas?

20 A. Yes.

21 Q. And what generally is contained in
22 your file cabinet?

23 A. Lots of mementos. Whatever I think I
24 should save, I save it.

25 Q. Okay. And again, you wouldn't know

1 how and made no effort to search your either
2 archived or current emails?

3 A. No.

4 Q. Do you archive your emails?

5 A. What?

6 Q. Do you archive your emails?

7 A. No.

8 Q. What happens to your old emails; do
9 you know?

10 A. I delete it. Like AOL, you know, I look
11 at all and come out, they say I have 5,000
12 email --

13 Q. Right.

14 A. -- so, I delete half, like this.

15 Q. With a broad stroke, you just --
16 regardless of the contents, you just hit the
17 delete button, and get rid of thousands emails
18 at a time?

19 A. No. I'm following Hillary Clinton's
20 example. I'm joking, but I'm saying, if I have
21 too many, I cut. Delete it. Delete it.

22 Q. Okay. And you do that based on the
23 age of the email?

24 A. Just old ones first, yeah.

25 Q. Define old?

1 A. Huh?

2 Q. How do you define old?

3 A. I said I have a email chronicled with
4 the youngest age to oldest age --

5 Q. Right.

6 A. -- and I have too many, and I go so
7 many, you know, like thousands, delete them.

8 Q. So, you never attempted, instead of
9 deleting them, just create a method of archiving
10 them?

11 A. No.

12 Q. Do you know when this lawsuit was
13 started?

14 A. No.

15 Q. When were you first told that there
16 was a lawsuit against Roto Corporation
17 involving Nicola Davis?

18 A. I just got notified by somebody
19 someplace, and I sent it to my insurance company.

20 Q. Were you ever advised by your
21 insurance company or your attorneys not to
22 destroy any documents?

23 MR. FAUST: Objection as to what
24 your conversations with your attorneys.

25 Were you ever told by the insurance

1 company not to destroy documents?

2 Q. All right. Let me ask you this,
3 you know what a litigation hold is? Have you
4 ever heard that expression?

5 A. Litigation holder?

6 Q. No, not holder. That's a good one
7 though. Litigation hold, H-O-L-D?

8 A. No.

9 Q. Did anyone ever tell you -- Let me
10 leave it at that. At any point in time,
11 "Mr. Moon, don't delete any emails. Don't throw
12 out any documents, with respect, to sulfuric
13 acid drain openers"?

14 A. No.

15 Q. Do you keep any separate folders
16 for submissions you've made or communications
17 you had with governmental agencies?

18 A. I don't think so.

19 Q. You indicated earlier that there
20 may be different time frames for storing
21 documents or keeping documents with respect to
22 governmental regulations?

23 A. I think the only document we keep is
24 employee record and tax returns.

25 Q. Okay. But you're unaware of any

1 document retention requirements from the
2 Consumer Product Safety Commission?

3 A. Not -- not that I'm aware of.

4 Q. Do you keep any folder -- you
5 mentioned earlier that some of the chemical
6 properties of sulfuric acid and including its
7 interaction with other substances are well
8 documented?

9 A. Yes.

10 Q. Some of that literature,
11 professional literature, do you keep any of that
12 in your company files?

13 A. I look at the Google.

14 Q. Did you look at Google back in
15 2004?

16 A. I look at Google all the time. Every
17 day.

18 Q. So, in other words, is your
19 response that you indicated that -- withdrawn.
20 Have you downloaded or created a physical file
21 that is stored in the ordinary course of
22 business at Roto Corporation, of articles,
23 scientific articles, with respect to the
24 properties and interactions of sulfuric acid?

25 A. No.

1 Q. How about any textbooks? Same
2 thing --

3 MR. FAUST: Textbooks?

4 Q. Any textbooks you keep in your
5 office for reference in the course of business
6 for the properties or reaction, with respect, to
7 sulfuric acid?

8 A. I don't think I know any textbook
9 talking all about sulfuric acid.

10 Q. Chapter in a book?

11 MR. FAUST: Stop. The question is
12 whether you have any textbook at your
13 office that deal with this issue?
14 Either yes or no. Either you have
15 textbooks there or you don't have
16 textbooks.

17 A. No. I have textbooks of chemistry.

18 Q. In your office?

19 A. Yes.

20 Q. Okay. Which one?

21 A. I don't know.

22 Q. How old?

23 A. I graduated -- undergraduate 1960. You
24 know, that's all textbook, but sulfuric acid
25 hasn't changed at all.

1 Q. That's all right. I have law books
2 dated back that long. But the law has changed.
3 I'm going to show you a number of photos of a
4 container of Roto Corporation for
5 sulfuric-acid-based drain openers. These photos
6 were previously marked at Ms. Davis's
7 deposition, which your lawyers were present at
8 and took. And I have the black and white
9 copies. I'm going to show you the color copies
10 and mark these as Plaintiff's Exhibits to be
11 numbers 4.

12 MR. EDINBURGH: So, please, number
13 these consecutively. I think there are
14 a dozen or so. So, it will be four,
15 five, six, et cetera.

16 [Whereupon, exhibits were marked
17 Plaintiff's 4 through 19.]

18 Q. Before I show you these, in your
19 earlier testimony when you said your company
20 purchased the sulfuric acid from chemical
21 companies, was sulfuric acid delivered to your
22 Michigan plant in any uniform-size container or
23 barrel?

24 A. Tank trunk.

25 Q. Tank truck.

1 A. Yes.

2 Q. Like a fuel tank truck that's
3 filled with gasoline?

4 A. Yes. It's a little bit smaller than
5 fuel tank truck.

6 Q. And once the tank truck got to your
7 plant, how were the contents of the sulfuric
8 acid in the tank truck removed from the tank
9 truck and put in any kind of storage unit in
10 your plant?

11 A. Pump into our storage tank.

12 Q. And who would do the pumping?

13 A. The driver.

14 Q. And what happens to sulfuric acid
15 in the ordinary course of your business after --
16 withdrawn. You had a storage tank for the
17 sulfuric acid in the plant?

18 A. Yes.

19 Q. How many tanks?

20 A. Two.

21 Q. And what was the size of each tank?

22 A. I think one is 4,000 gallons. And the
23 other, 6,000 gallons.

24 Q. And can you just generally describe
25 the process through which the sulfuric acid,

1 once it gets into the tanks on the premise of
2 your factory, how does it end up in the actual
3 containers that's sold to the public? Just
4 generally.

5 A. I understand that. Tank -- storage tank
6 is connected by two-inch pipe toward the smaller
7 tank at the higher elevation. And that is
8 attached to a filler. We have like 11-head
9 filler, you know, spout coming down. So,
10 conveyor going -- we put the bottles on the
11 conveyor and they go there. 11 or ten line up.
12 Then, filler tube comes out filling it. And
13 when it got the level they have designated,
14 filler tube lifted it up, and then all fillers
15 go to next station. Then, we go to capper. The
16 capper caps, it's all of them, and go to
17 conveyor next station. Then, there's one guy
18 standing to make sure that cap is done. Even
19 though, you know, capper never fail or we check
20 it and, you know, make sure the cap is
21 corrected. Then, you go to next station. Then,
22 they put in the bag, plastic bag, and the
23 sealer. And then, we put in the -- in the box.
24 And then, boxes are sealed, and go through a
25 palletizer. And the palletizer -- and then, the

1 fork truck people take that out to the storage
2 area. When we get order, we load it on the
3 truck.

4 Q. Thank you for describing the
5 process.

6 A. You're welcome.

7 Q. Is there a quality control manager
8 at the plant?

9 A. No.

10 Q. Is your plant periodically
11 inspected by OSHA?

12 A. Yes.

13 Q. How frequently?

14 A. I think about once a year, and the
15 insurance company.

16 Q. Also, once a year?

17 A. I think so.

18 Q. Do you have any complaints of
19 workers being burned by interaction with
20 sulfuric acid within the last five years?

21 A. No.

22 Q. Within the last ten years?

23 A. I don't recall.

24 Q. You've heard of the organization
25 ISO?

1 A. No -- the certification business?

2 Q. Yes.

3 A. Yes.

4 Q. Is your plant ISO certified?

5 A. No.

6 Q. Has OSHA issued any violations to
7 your plant in the last ten years relating to the
8 safety with respect to the transportation or the
9 movement of the sulfuric acid through the
10 process?

11 A. No.

12 Q. Let me show you, sir, the
13 photographs that were previously marked and
14 marked today for your benefit.

15 A. Okay.

16 Q. Just take a look at them and I'm
17 going to to go through them with you.

18 A. Okay. I've seen it.

19 Q. Thank you. Do these photographs
20 depict a container of 64 fluid ounce or one half
21 gallon Roto professional quality sulfuric acid
22 drain opener?

23 A. Yes.

24 Q. And was this the type of container
25 with the language contained on the container

1 that was sold by your company back in 2011?

2 A. Yes.

3 Q. You see the phone number on the
4 bottom of Plaintiff's 4, it says,
5 "1-800-379-3111"?

6 A. I see the number, yes.

7 Q. Is that your company's 800 number
8 at the time?

9 A. Yes.

10 Q. Is it still the same number?

11 A. Yes.

12 Q. Was that the number to be called
13 for your whole range of products? In other
14 words, it wasn't limited to sulfuric drain
15 openers? Everything you made?

16 A. Everything.

17 Q. Do you keep any tally, not
18 necessarily the contents of the call, but any
19 tally as to how many calls came in concerning
20 sulfuric acid cleaner, the alkaline cleaners,
21 the enzyme cleaners?

22 A. No.

23 Q. What is the color, just so I get it
24 right, what would you call the color of the
25 Rooto?

1 A. Red.

2 Q. Red. Is that the same color as in
3 the danger poison section somewhere below there?

4 A. Yes.

5 Q. Same color red?

6 A. Yes.

7 Q. And any offshoot of red? Or just
8 red?

9 A. I think it's the same color.

10 Q. Red?

11 A. Yes.

12 Q. Okay. And you see in the circular
13 around Rotoo it says, "professional quality"?

14 A. Yes.

15 Q. And under the Rotoo name, it says,
16 "PROFESSIONAL" in capital letters, and it's
17 boxed off?

18 A. Yes.

19 Q. Was it your idea to put in the term
20 "professional quality"?

21 A. It was there before.

22 Q. And you kept it on, correct?

23 A. Yes.

24 Q. You never removed it?

25 A. No.

1 Q. What was your understanding of what
2 that meant, "professional quality"?

3 A. It's just a brand name like, "Janitor in
4 the Drum."

5 Q. Did it have anything to do with the
6 concentration of sulfuric acid made available to
7 licensed plumbers?

8 A. No.

9 Q. It was just a marketing tool?

10 A. Yes.

11 Q. Nothing else?

12 A. No.

13 Q. Nothing else, meaning yes?

14 A. Nothing else, yes.

15 Q. Okay. And then, under drain opener
16 where it says, "Open," it says what it says,
17 right?

18 A. Yes. It says what it says.

19 Q. And then, it says, what it
20 dissolves. And it says, "bullet point," and
21 it says where it dissolves, right?

22 A. Yes.

23 Q. And that's all accurate?

24 A. Yes.

25 Q. And under that there's a box that

1 says, "DANGER" in capital letters. And then,
2 the word, "POISON" in capital letters, correct?

3 A. Yes. That's correct.

4 Q. And then, the skull and crossbones
5 to the right --

6 A. Yes.

7 Q. -- as we're looking at the photo.
8 Okay. The term danger and poison, was that
9 something you added?

10 A. No. It was there. And I think it's a
11 government requirement.

12 Q. Of any particular agency of our
13 government?

14 A. Consumer Product Safety Commission.

15 Q. Underneath danger/poison in smaller
16 capital letters, "CAUSES SEVERE BURNS," you see
17 that?

18 A. Yes.

19 Q. Is that accurate?

20 A. Yes.

21 Q. Now, underneath that in capital
22 letters it says, "CONTAINS CONCENTRATED SULFURIC
23 ACID," right?

24 A. Right.

25 Q. Is there anywhere on this labeling,

1 and you can look at the other pictures, where
2 you tell the consumer the percentage, or degree,
3 or amount of concentration of sulfuric acid?

4 A. I didn't look at all the labels.

5 Q. Go look.

6 A. I don't recall.

7 Q. Well, you can look now. We have
8 time.

9 A. At this time I don't see it.

10 Q. You have a recollection from your
11 own knowledge, as to whether the concentration,
12 percentage, or amount of sulfuric acid was
13 written down and placed on the labeling of your
14 containers?

15 A. No.

16 Q. No, you have no recollection? Or
17 no, it was not?

18 A. It was not. If it's not here, it wasn't
19 there.

20 Q. Okay. Was that a decision you
21 made, not to put a percentage on the label?

22 A. No. It was there like this before I
23 bought the company. And the concentration of
24 sulfuric acid have its own designation that
25 it's like 9-0-0-1 percent.

1 Q. On the labeling that is sold to the
2 consumer?

3 A. Yes.

4 Q. Or sold to the hardware chains or
5 other distributors, then ultimately bought by
6 the general public --

7 A. Yes.

8 Q. Is there anything on the products
9 you sold at any time since you bought the
10 company till now, indicating the percentage of
11 the concentration of sulfuric acid in the
12 sulfuric acid drain opener?

13 A. Percentage, no.

14 Q. Amount?

15 A. Amount?

16 Q. Yes.

17 A. We have 64 fluid ounce.

18 Q. Concentration degree, which to me
19 is the same as percentage.

20 A. We don't have a percentage.

21 Q. Okay. It's accurate. I just want
22 -- withdrawn. That the concentration of
23 sulfuric acid range in your sulfuric acid drain
24 opener product, the Roto brand, is between, in
25 your respects, between 92 and 94 percent? It

1 can range within that parameter; is that
2 accurate?

3 A. Accurate.

4 Q. Is that number 92 to 94 percent, is
5 that placed anywhere on the containers you sold
6 over the last 30 years?

7 A. No.

8 Q. All right. The labeling that says,
9 "danger poison," in red with the skull and
10 crossbones that says, "causes severe burns,"
11 that bracketed box part, was any of the language
12 there, language you added after you purchased
13 the company?

14 A. I don't know.

15 Q. You don't have any records
16 indicating any evolution of the labeling over
17 time? In other words, any records indicating
18 what it was when you first bought it? Changes
19 you made periodically, if any, over the years?
20 Do you have any file that says that?

21 A. Like in the brackets? Or all over the
22 label?

23 Q. All over 360 degrees. Total
24 around.

25 A. Yeah. We added about 15 years ago, "do

1 not drop," and "do not squeeze."

2 Q. Okay. We'll get to that as we
3 go --

4 A. You ask me if it's here, it's here on
5 the label.

6 MR. FAUST: The question is, "Do
7 you have any files that would show the
8 progression of any changes that you
9 made?"

10 THE WITNESS: No files.

11 Q. You just said that there's vertical
12 words, instead of horizontal words. There's
13 vertical words, you can see on the right side.
14 It says, "do not drop." "Do not squeeze"?

15 A. Yes.

16 Q. How many years ago?

17 A. About ten, 15 years ago.

18 Q. You decided to add that language in
19 that configuration to the labeling?

20 A. Yes.

21 Q. Nobody told you to do it? Nobody
22 made you do it?

23 A. No.

24 Q. You did it yourself? You decided
25 to add it, correct?

1 A. That's correct.

2 Q. Okay. As far as you're aware,
3 that's the only change that was made?

4 A. As far I recall.

5 Q. Everything else was on the product
6 at the time you bought it, and you just kept?
7 It was a legacy warning, so you just kept it
8 over the years?

9 A. It could be possible we change the front
10 circular things. We might have had a different
11 type of logo, Rotoo, you know. Yeah.

12 Q. Okay. Now, this is the half gallon
13 size, correct?

14 A. Correct.

15 Q. And it's came in a smaller
16 packaging, or a smaller container and larger
17 container as well back in 2011? In other words,
18 was there a gallon size and a quarter size?

19 A. I think I testified twice to you, that
20 they have a gallon, quarts, and pints.

21 Q. Okay. For the gallon, quarter, and
22 pint, is it the same labeling?

23 A. Similar labeling, yeah. Different
24 size, different quantity.

25 Q. Okay. Let me go to Plaintiff's 5

1 if you could turn the page, please. On the top
2 of Plaintiff's 5, it begins by saying in red, am
3 I correct? In capital letters "BEFORE USING,
4 READ DIRECTIONS, CAUTIONS AND WARNINGS
5 CAREFULLY." Is that accurate, what I just said?

6 A. Yes.

7 Q. And is that capital letters in red?

8 A. Yes.

9 Q. Do you differentiate on your
10 labeling as shown in this photograph, which are
11 directions, which are cautions, and which are
12 warnings?

13 A. Generally, yes.

14 Q. How did you differentiate that?

15 A. When we say it's a warning, be careful,
16 and read carefully, and we have here general
17 directions in the black letter.

18 Q. You have general directions in the
19 black letters, right?

20 A. Yes.

21 Q. And they're numbers one through
22 nine?

23 A. Yes.

24 Q. Okay. What did you consider the
25 one through nine of the red that's on top of the

1 general directions, that line. What is that, a
2 direction? A caution? A warning?

3 A. Direction and a caution.

4 Q. None of them were warnings?

5 A. It's a warning, too. "Use strictly in
6 accordance with direction, caution, and
7 warnings." It's what it said.

8 Q. Do you have any indication in the
9 top nine sentences that are itemized in red to
10 the reader, to the consumer, that one or more of
11 these are warnings, as opposed to something
12 else?

13 MR. FAUST: Just note my
14 objection. I think he answered. He
15 said they're all directions, cautions,
16 and warnings.

17 MR. EDINBURGH: Respectfully, I
18 don't think that's what he said, that's
19 why I'm asking him. Could you read back
20 the question, please?

21 [The requested portion of the record was
22 read.]

23 MR. FAUST: Just note my
24 objection. I don't understand the
25 question, but if you understand.

1 A. My answer is warning, and direction, and
2 caution is all together.

3 Q. Okay. In the number two on the
4 red, you indicate, "Protect eyes with safety
5 goggles and hands with rubber or plastic
6 gloves." Is that accurate?

7 A. Yes.

8 Q. Did you consider that direction to
9 be a direction, caution, or warning?

10 A. Both.

11 Q. All three?

12 A. Yes.

13 Q. Did you supply safety goggles with
14 your product?

15 A. No.

16 Q. Did you supply rubber or plastic
17 gloves with your product?

18 A. No.

19 Q. Why did you tell the consumer, or
20 user of this product, to wear safety goggles?

21 A. If any reason you drop it, or whatever
22 reason, this drain cleaner go in your eye, it
23 could give you a severe damage.

24 Q. If you drop it on the floor, it
25 will splash back up to your eyes?

1 A. I'm not sure to floor, but any other
2 place. You know, like a kitchen sink, I don't
3 know. But it's just better. Or you can splash
4 it without even dropping it, shaking it.

5 Q. If the container's closed, if you
6 shake it, contents will spew out of it in a
7 closed container? Is that your testimony?

8 MR. FAUST: No. That's not his
9 testimony.

10 Q. Then, what is your testimony?

11 A. No. If you open the cap. And then,
12 sometimes they shake it, trip it over, whatever
13 could happen. And I thought it's better that
14 they use protective goggles for the eye.

15 Q. Second part of number two says,
16 "Protect hands with rubber or plastic gloves."
17 Why is that direction, or caution, or warning
18 given?

19 A. When you pour the drain cleaner or, you
20 know, you can just juggle it and splash on your
21 hand. Our warning said, "It burns severely." I
22 don't want our customers to get burned by
23 accident.

24 Q. Do you give any direction, or
25 warning, or caution anywhere on your labeling to

1 protect any other body parts from the risk of
2 being burned other than the eyes and the hands?

3 A. I don't recall a hundred percent. But I
4 think we have some warning about wearing
5 protective clothes.

6 Q. Can you look on your warnings here
7 and see where that is? If it's there. You can
8 look at the others too if it will give you a
9 full look. If it would help, I have the actual
10 container here if you need to look at it.

11 A. I see here, protect face and other
12 portion of body when you are using it.

13 Q. Let's go to which exhibit you're
14 referring to so we can look at the same thing.

15 MR. FAUST: Number nine.

16 A. Here. Whatever number eight, I guess.

17 MR. FAUST: You have an eight?

18 THE WITNESS: Eight.

19 MR. FAUST: It's also on nine.

20 THE WITNESS: Nine, too, maybe
21 here.

22 MR. FAUST: Also, for the record,
23 it's shown on ten, as well.

24 MR. EDINBURGH: Right. It's the
25 same.

1 MR. FAUST: And number six, as
2 well.

3 MR. EDINBURGH: It's not four
4 different things? It's all the same.

5 MR. FAUST: Correct.

6 Q. All right. Let's move then to
7 eight, and nine, and ten. Let's do those three
8 and --

9 A. Number eight said --

10 Q. Well, before we do it, would you
11 agree with me that eight, nine, and ten show the
12 same red-colored language beginning on top with
13 the term, "Danger, poison. Causes severe
14 burns." And then, there's certain paragraphs
15 beginning with, "contains concentrated sulfuric
16 acid." And then, it just goes forward. But the
17 language on all three exhibits is the same?
18 Because it shows the same portion?

19 MR. FAUST: We'll stipulate that
20 the language to the extent it's shown on
21 all three, is the same eight, nine, and
22 ten.

23 MR. EDINBURGH: All right.

24 Q. Now, I'm going to nine now. But
25 again, you could look at it or eight --

1 actually, eight is a little but closer up. The
2 sentence reads, "Protect face (especially eyes)
3 and other portions of body when using." Did I
4 read that accurately?

5 A. Yes.

6 Q. And that was an instruction,
7 caution, warning, that was on the product when
8 you first bought it?

9 A. I don't know.

10 Q. Do you recall whether that's the
11 sentence that you either added or modified over
12 the years?

13 A. Not this language, no.

14 Q. Do you anywhere on the labeling
15 indicate what portions of the body the user is
16 to protect when using your product?

17 A. No.

18 Q. Do you indicate how the user is to
19 protect the, quote, "other portions of body when
20 using"?

21 A. No.

22 Q. Do you offer any recommendations of
23 protective clothing, of any type, which would be
24 acid resistant?

25 A. No.

1 Q. Do you indicate how the user is to
2 protect the face, beyond prior or other
3 directions, to use safety goggles?

4 A. I didn't get what you said.

5 Q. There is an instruction to use
6 safety goggles, right?

7 A. Yes.

8 Q. You also say, "protect face,
9 especially eyes," right?

10 A. Yes.

11 Q. Do you tell the user how he or she
12 is to protect his face, especially the eyes,
13 beyond using safety goggles?

14 A. I think some place there said, "Keep
15 your face away."

16 Q. Keep your face away from what?

17 A. From where you apply it, because
18 eruption might occur. I'm not reading verbatim
19 basis, but someplace here, showing that you
20 should put your face away. And other ways you
21 can cover up the drain opening with the inverted
22 cone.

23 Q. All right.

24 A. Yeah.

25 Q. Do you indicate where the user is

1 supposed to put his or her face when pouring the
2 liquid?

3 A. Face away.

4 Q. I'm asking you, where is the user
5 supposed to put his or her face if the user is
6 facing the sink to pour the liquid into the
7 drain, where are they supposed to put their
8 face?

9 A. You can put the drain in, but
10 immediately after applying it you should take
11 your face away.

12 Q. All right. Let's go back, if we
13 could, to number -- the one that has the big
14 ones, number five. Let me go to item number six
15 in red --

16 A. Okay.

17 Q. -- and you say you have a sentence
18 and it's not in capital letters, other than the
19 first letter of the first word, it says, number
20 six -- item six, it says, "May cause eruption of
21 hot acid when poured into drain." Did I read
22 that accurately?

23 A. Yes.

24 Q. Is that a direction, caution, or
25 warning that was on the product when you first

1 purchased the company?

2 A. I don't recall.

3 Q. So, I take it you don't recall
4 whether any of that language is language you
5 added later on?

6 A. I don't recall. It's like 15 years ago.

7 Q. All right. I'm simply adding
8 whether item six is a direction or caution, that
9 the wording was modified by you all the time?

10 A. I don't recall.

11 Q. What is your understanding of the
12 term, "may cause"? What were you trying to
13 convey to the consumer of this product, or user,
14 of this product?

15 A. If wrongly used, it will cause eruption.

16 Q. So, is it your testimony that an
17 eruption can only occur only if a consumer
18 wrongly uses it?

19 A. Yes.

20 Q. It can never occur if the consumer
21 correctly uses it?

22 A. That's correct.

23 Q. Why is that?

24 A. Because it couldn't happen. It's a
25 science.

1 Q. And what is the -- all right.
2 We'll go into that. Have you been aware prior
3 to December 2011, not including this case, of
4 instances, or complaints, or lawsuits where
5 there are allegations that the sulfuric
6 acid-based Roto product was poured into a sink
7 and drain and it caused the eruption of the hot
8 acid?

9 A. We had a case, the person bought the
10 Drano, use it first, and it didn't work. So,
11 they bought ours. And not reading our
12 instructions, they poured it on top of the Drano
13 and it erupted.

14 Q. Is that in your entire experience
15 with this company, the one and only time -- I'm
16 not talking about my case here, the case that
17 you just described, is that the only other time
18 that you're aware, or it was made known to you,
19 of a claim that the Sulfuric Acid Roto Drain
20 Cleaner was poured into a drain and it erupted?

21 A. Not only case. I told you previously we
22 had about eight cases of this kind of case.

23 Q. And all those cases is it your
24 understanding that the product was misused by
25 the consumer?

1 A. Yes.

2 Q. You remember that, but you don't
3 remember any names about the cases?

4 MR. FAUST: Don't answer that.
5 Forget it. It's argumentative.

6 Q. How did you come to form the
7 conclusion that in other occasions the consumer,
8 or user, had somehow misused or failed to follow
9 your instructions concerning the product? How
10 did you come to form this belief?

11 A. Some cases they wrote to us, that they
12 used this and that. So, they admitted it. Some
13 cases come out in deposition.

14 Q. I see. And again, this is in each
15 and every one of the cases that you recollect?

16 A. Yes.

17 Q. Okay, that's fine. But as to these
18 cases -- in those cases where they wrote to you,
19 these would be letters that would just be sent
20 to you? Known legal complaints or complaints by
21 a lawyer, or somebody would write your company a
22 letter saying, this and this happened to me?

23 A. Originally, it came in letter or
24 sometimes by lawsuits.

25 Q. No matter how it came, your

1 testimony is that none of those records exist
2 anymore?

3 A. No.

4 Q. Let me phrase it differently
5 because on the record it's going to look a
6 little confusing. Do you have any records from
7 any of those cases that you just described?

8 A. You sound like a nice lawyer. But
9 you're asking same question over and over again
10 trying to trick me. It's kind of late, you
11 know. I don't think you're intended like that,
12 but the answer is no.

13 Q. That's fine but I want --

14 A. The answer is no. But you asked me ten
15 times so far.

16 Q. I apologize if I'm repetitive --

17 A. You know, judge would say you're
18 badgering witness.

19 Q. Maybe. I doubt it. What is your
20 understanding of what the term, "eruption" means
21 in item number six?

22 A. My understanding, particularly this
23 case, eruption means sulfuric acid react with
24 alkaline, generally, large amount of the heat.
25 And then, the heat evaporate the water. So,

1 then, vapor -- the vapor pressure, push up
2 whatever, the top of the boiling hot water.

3 Q. Now, are you talking about the case
4 that you previously described? Or are you just
5 talking about, generally, what the term means?

6 A. Generally.

7 Q. So, if I'm reading it correctly,
8 you're saying eruption only occurs if there's
9 some kind of alkaline chemical in the drain, and
10 it can't otherwise happen?

11 A. Yes.

12 Q. Are you telling us that, as you sit
13 here today, that there can never be eruption
14 simply with water in the drain?

15 A. Never.

16 Q. Okay. Are you also saying there
17 can't be an eruption with organic material in
18 the drain, such as hair or food?

19 A. No.

20 Q. What type of alkaline material do
21 you have an understanding would, if come in
22 contact with the sulfuric acid, cause the
23 eruption?

24 A. Didn't you answer yourself last time?
25 It's sodium hydroxide, potassium hydroxide, or

1 any other alkaline product which have a OH
2 radical.

3 Q. And your understanding is, and
4 correct me if I'm wrong, that the eruption can
5 only occur if there's an alkaline in or about
6 the drain when the sulfuric acid is there?

7 A. Generally, if you would put dynamite in
8 it, it could erupt, too. I'm talking generally.

9 Q. How long would that alkaline have
10 to be standing for? In other words, for
11 instance, if Liquid Plumber or Drano was used a
12 month earlier. 30 days go by, and then, there's
13 another clog and an acid-based cleaner is used
14 would --

15 A. If drain is clogged Liquid Plumber
16 doesn't go anywhere, it stays there, then, it
17 reacts to our acid. If drain opens and flushes,
18 then, it would not happen.

19 Q. All right. Are you aware has
20 anybody -- withdrawn. Ms. Davis, or Mrs. Davis,
21 has been deposed in this case. She went through
22 questioning as you're going through now --

23 A. Yes.

24 Q. -- by your counsel --

25 A. Yes.

1 Q. -- and by other counsel. And there
2 was a book generated from that call a
3 transcript. You're familiar with the term,
4 "deposition transcript"?

5 A. Yes.

6 Q. Have you read the deposition
7 transcript of Ms. Davis?

8 A. Yes.

9 Q. Based upon reading that, do you
10 have a view or understanding as to whether she
11 misused your product?

12 MR. FAUST: Objection. It's an
13 opinion on testimony. You're not here
14 to get his opinion.

15 MR. EDINBURGH: He's got a PhD in
16 chemistry. He's the president of the
17 company --

18 MR. FAUST: Are you opting him as
19 an expert?

20 MR. EDINBURGH: I'm not. If he has
21 an understanding, if he formulated an
22 opinion, he can give it as a lay witness
23 who is knowledgeable and experienced on
24 the subject. I am not asking for an
25 expert opinion. It's the last thing in

1 the world I want. He's a witness,
2 witnesses have opinions. I can ask his
3 opinion.

4 MR. FAUST: Note my objection. If
5 you have an opinion as to what happened
6 here, give it to him.

7 A. She's lying. That's my opinion.

8 Q. Okay. Thank you. What was she
9 lying about?

10 A. She said drain cleaner was poured in,
11 drain was clear and empty, dry. And she poured
12 it in. Suddenly, it erupted -- and not
13 suddenly, a few seconds later. I can't remember
14 exactly five, ten seconds later. First place,
15 if drain is dry -- if I recollect that
16 transcript, you know, deposition correctly. My
17 mind is not that good to remember on a verbatim
18 basis.

19 It's like a transfer of drain cleaner
20 from one container to the other, there's no way
21 it could erupt. And then, she said -- she said
22 it erupted five times. There's no way it can
23 erupt five times. It's a four-ounce drain
24 cleaner and it erupt once. Even if she had
25 alkaline in it, it erupt once then finish. She

1 said five times. I recall that she's lying.
2 And that she said that she read all the
3 instructions. And when she got on her clothes,
4 why didn't she take off and take a shower?
5 She'd be okay, perfectly okay. It take about 30
6 seconds to 40 seconds to go through a bathrobe,
7 the acid, it actually -- the size or quantity of
8 acid.

9 And she had 30, 40 seconds she did
10 nothing. And the instructions shows that she
11 should take off -- like wash it with water. She
12 didn't do that. So, she didn't read the
13 instructions, she lying that five times it
14 erupted. If you can show me five times eruption
15 for four ounce, I'll give you a million dollars.
16 You, personally. So, I'm saying that among
17 other things, in my opinion, you're saying my
18 opinion --

19 Q. Right.

20 A. -- I don't have any. Fact, of what she
21 said is not possible.

22 Q. Do you have an opinion of whether
23 an alkaline-based cleaner was used in any period
24 of time before your acid-based cleaner was used?

25 A. Can you talk later.

1 Q. I'm apologize.

2 MR. EDINBURGH: Can you read that
3 back?

4 [The requested portion of the
5 record was read.]

6 MR. FAUST: Note my objection.

7 Q. That's not what I said. Is there
8 anything that you read indicating that Mrs.
9 Davis, before using the acid-based Rotoo, used
10 any alkaline-based cleaner? Either she or
11 anyone else, on that drain?

12 A. No.

13 Q. As to the burn scenario or
14 characteristics of human skin and contact with
15 sulfuric acid --

16 A. Yes.

17 Q. -- you gave some testimony of your
18 view of how that intersection works and timing
19 involved, and precautionary measures to take if
20 you're exposed. Is that based on any study
21 you've conducted yourself? Any testing you
22 conducted? Or Rotoo has conducted?

23 A. I think you are misphrasing my answer --

24 Q. I apologize.

25 A. -- I said, if she said she got hit by

1 the acid on her bathroom, I said, she take more
2 than 30 seconds. That acid goes through the
3 bathrobe, and she even have another
4 undergarment. So, we know it's 30 seconds or 40
5 seconds, you're correct. So, if she take her
6 clothes off and take a shower according to our
7 first aid instructions, nothing would happen.

8 Q. Okay. Have you seen pictures of
9 her burns?

10 A. Yes.

11 Q. Color photos?

12 A. Yes.

13 Q. Do you have any view as to whether
14 these are sulfuric-acid-based burns?

15 MR. FAUST: Objection. There's no
16 foundation for his knowledge in this
17 regard.

18 MR. EDINBURGH: He's testified at
19 length about the reaction of clothing
20 with sulfuric acid, about the permeation
21 of clothing to get to the skin. And
22 now, you're saying he doesn't know
23 enough to testify whether these are
24 sulfuric acid burns?

25 MR. FAUST: I see no foundation at

1 all that he's established that he's got
2 any medical training to establish what
3 causes a burn, or what doesn't cause a
4 burn, or how a sulfuric acid burn is
5 different from a regular burn.

6 Q. Have you seen burns of people who
7 have been burned by sulfuric acid?

8 A. Yes.

9 Q. Have you seen photographs of people
10 burned by sulfuric acids in any of the cases in
11 which you testified in?

12 A. Say it again?

13 Q. I'm sorry. My fault.

14 MR. EDINBURGH: Can you read that
15 back?

16 [The requested portion of the record was
17 read.]

18 A. Yes.

19 Q. Do you have the ability to discern
20 or determine whether a burn was caused by
21 sulfuric acid versus some other cause?

22 A. No.

23 Q. So, if you saw a photograph of --
24 well, you did, in fact, see a photograph of the
25 burns to Mrs. Davis, right? You've seen the

1 photograph?

2 A. I've seen the photograph.

3 Q. And you've seen the burns on her
4 chest and breast area?

5 A. Yes.

6 Q. But you cannot testify as to
7 whether those are sulfuric acid burns or not?

8 A. No.

9 Q. You simply don't know?

10 A. No.

11 Q. Let's go back to the itemization,
12 please. Let's go back to number five. Let me
13 read that, number seven, into the record. And
14 then, I'll ask you certain questions about
15 number seven.

16 A. Okay.

17 Q. And it's a pretty long sentence.
18 So, just bear with me. I want to make sure I
19 have the total -- worded correctly.

20 "After pouring drain opener into drain,
21 immediately place inverted dishpan bucket, or
22 other deep container over drain opening to
23 protect against possible eruption of drain
24 contents" -- I'm sorry. There's a couple of
25 more words after that. My eyes aren't so good.

1 MR. FAUST: I believe it says
2 again, "the acid."

3 Q. The last words -- because it rounds
4 off, I can't see what the word is. "Protect
5 against possible eruption of drain contents" --

6 A. I saw you have a label in your file
7 someplace.

8 Q. Yes. But I want to get it from
9 here. I just want to get the last two words,
10 and I'll ask you the question.

11 MS. KOHANE: "And acid."

12 MR. EDINBURGH: "And acid." Okay.

13 Q. "And acid" are the last two words?

14 A. You know, I don't remember all your
15 words. We should read whole thing again.

16 Q. All right. You read it with me.
17 "After pouring drain opener into drain" -- this
18 is number seven. "After pouring drain opener
19 into drain immediately place inverted dishpan
20 bucket or" -- now I'm lost.

21 MR. FAUST: "Or other."

22 Q. "Or other deep container over drain
23 opening to protect against possible eruption of
24 drain or acid."

25 MR. FAUST: "Contents."

1 Q. "Drain contents or acid." Sorry.

2 A. Yes. No, it's okay. No problem.

3 Q. And I'll ask you, is this a
4 direction, caution, or warning which was with
5 the product when you bought the company?

6 A. I don't know.

7 Q. Is there any part of item number
8 seven which you changed or modified over the
9 years when you owned the company?

10 A. Possible.

11 Q. And do you have -- I won't repeat.
12 What type of eruption was this warning designed
13 to deal with, the one direction, number seven?
14 Because the term, "possible eruption," is again
15 used.

16 A. More drain eruption or occurs, I told
17 you before. Somebody else used the alkaline
18 drain cleaner which didn't work. So, they go to
19 other store and ask the other store owner, "What
20 is a good drain cleaner?" They recommend Rotoo.
21 They buy it. And without reading label, they
22 just pour it in. And that would cause an
23 eruption.

24 Q. All right.

25 A. If she followed this warning, that would

1 never happen.

2 Q. The eruption would not happen? Or
3 the eruption of the contents would then be
4 blocked by the --

5 A. Even if she had an eruption, if she put
6 that in it, it would not happen.

7 Q. All right. You indicate that the
8 first phrase of number seven is, "after pouring
9 drain opener into drain"?

10 A. Yes.

11 Q. Do you give any instruction as to
12 whether the contents are to be poured directly
13 from the can into the sink? Or poured first
14 into some kind of measuring cup, and then into
15 the sink? Or something else?

16 A. There's no can involved here.

17 Q. Plastic container?

18 A. Yes.

19 Q. Sorry.

20 A. No. We don't give any instructions.

21 Q. So, as far as your company was
22 concerned, the liquid-based sulfuric acid drain
23 opener could be poured directly from the
24 container into the sink?

25 A. Yes.

1 Q. At the amount indicated on the
2 label?

3 A. Yes.

4 Q. Is that a two-hand operation or
5 one-hand operation?

6 A. Depending on the person.

7 Q. Do you have any indication in your
8 labeling of whether you recommend the person use
9 one hand or two hands?

10 A. No.

11 Q. Would you agree with me that if the
12 person is using two hands to pour, before that
13 individual could get the dishpan or the
14 container or any other object, they first have
15 to put the container down?

16 A. According to your testimony of your
17 client, said they took about five, ten seconds.
18 Five, ten seconds I said it's plenty of time if
19 you have to put the top. Even two hands or
20 three hands.

21 MR. EDINBURGH: I'm going to move
22 to strike as being nonresponsive.

23 Q. I simply want to know is if you're
24 using two hands --

25 A. Yes.

1 Q. -- to pour the contents from the
2 drain -- the sulfuric acid using the container,
3 do you anticipate that a user of the product has
4 to put the container down before they grab
5 something else?

6 A. Oh, plenty of time.

7 Q. I didn't ask you the time. I said,
8 do they first have to put the container down?

9 A. Yes. Put it on the sink and, whatever,
10 the inverted cone, push it in.

11 Q. With respect to this item number
12 seven, did your company, or you, give any
13 consideration to the fact that the spout where
14 the water comes out in the sink may be directly
15 over the drain thereby blocking the ability of a
16 converted dishpan or container to fit over the
17 drain?

18 A. Depends on the inverted drain size,
19 isn't it?

20 Q. Is it your testimony that every
21 sink in America is readily available to use one
22 of these items in number seven, and no matter
23 what the configuration, or size, or makeup of
24 the sink, and the faucet, and the spout,
25 everything can fit over the drain?

1 A. I didn't examine every single sink of
2 all the United States. But sinks in my
3 experience, sink and faucet have enough height
4 that you have a reasonably small size cover, you
5 could cover it no problem. But that's not the
6 case. She used one hand anyhow.

7 Q. You indicate that you should put a
8 deep container over the drain, right? That's
9 what you said?

10 A. Right.

11 Q. What constitutes deep?

12 A. About six inches or more.

13 Q. And you believe that in most drains
14 in most sinks, there's a six-inch opening
15 between the drain and the faucet or the spout
16 that it could fit within that?

17 A. I didn't examine most of sinks, or every
18 sink. But yes, you go home and check yourself,
19 even more than six.

20 Q. How about the configuration of the
21 sinks? Sinks are generally concaved to allow
22 the water to get into the sink? They're not
23 flat are they? The surface of the sink?

24 A. Right.

25 Q. Did you take into account whether

1 these containers can actually fit within the
2 sink and cover the drain?

3 A. It will fit. And if she read the
4 instructions correctly, she would have made sure
5 she had an inverted cone next to her. And even,
6 she would know if it would fit or not, or move
7 the faucet away.

8 Q. Move the faucet away?

9 A. I mean, push it away -- I mean, I would
10 do that.

11 Q. You're talking about a faucet which
12 is movable?

13 A. Most faucets are movable.

14 Q. I see. Suppose you have a sink
15 where it is not?

16 A. Then, she should have a container fit
17 underneath her faucet. But again, you must be
18 desperate going this direction.

19 MR. EDINBURGH: Respectfully, I
20 move to strike that comment as being
21 nonresponsive to any questions.

22 MR. FAUST: Let's take a break
23 now.

24 MR. EDINBURGH: That's fine.

25 [A lunch break was taken from 1:21

1 p.m. to 2:10 p.m.]

2 Q. We're going back on the record.

3 I'm going to continue my questioning.

4 A. Yes.

5 Q. And I want to go back to the
6 photographs of the warnings and directions on
7 your container. If you look at Plaintiff's 5,
8 please.

9 A. Number what?

10 Q. Five.

11 MR. FAUST: Five.

12 Q. The pretty decent one.

13 A. This one here, yes.

14 Q. We'll go to the red top item eight.

15 A. Yes.

16 Q. It says, and I'll quote the
17 sentence, "Do not stand over or look into the
18 drain while using this product." Is that
19 correct, what I just said?

20 A. That's correct.

21 Q. Okay. Was item eight a direction,
22 or caution, or warning that was already on the
23 product when you purchased the company?

24 A. I don't know.

25 Q. And I'll ask you the same question

1 I asked about the other items, did you modify or
2 change over the years item eight, the contents
3 of that sentence?

4 A. Best of my recollection, probably not,
5 but I cannot be certain. It's 15 years ago.

6 Q. Okay. I understand. Why should a
7 consumer, or user, not stand over or look into
8 the drain while using this product?

9 A. It's -- we cautioned that it's
10 hazardous, burns in the eye. And even if
11 consumer misuse it, I don't want them to get
12 hurt. So, looking in the drain don't do
13 anything, other than possible eruption like your
14 client's, we don't want to get hurt.

15 Q. When using the product, do you
16 include pouring the product into the drain?

17 A. Yes.

18 Q. Is there a way to pour the product
19 into the drain by not standing over the drain or
20 looking at the drain?

21 A. No. I don't think so. But you can pour
22 it and get -- get out of there.

23 Q. Now, I want to go where it says,
24 "general directions," the black sentences.

25 A. Yes.

1 Q. Right under the red ones.

2 A. Yes.

3 Q. Number four says, "Keep face away
4 from drain opening and slowly pour recommended
5 amount"?

6 A. Yes.

7 Q. Again, tell me why the consumer is
8 to slowly pour the recommended amount, whatever
9 it happens to be, four ounce, more or less, why
10 slowly?

11 A. If you just dump it, it might hit the
12 area, you know, and splash -- not splash like
13 splash back but, you know, hands get hurt.

14 Q. And if you're pouring it while
15 standing up --

16 A. Yes.

17 Q. -- instead of leaning over or
18 bending down --

19 A. Yes.

20 Q. -- is that sufficient to constitute
21 keeping your face away from the drain opening?

22 A. Face away means away, like if this is a
23 drain opener, you should pour like this, away.

24 Q. All right. Meaning, you're
25 actually turning your neck to turn your face

1 away?

2 A. Away, yeah.

3 Q. Okay. But as you're doing that
4 you're still supposed to eyeball what you're
5 doing? Looking at what you're doing, right?

6 A. Yes.

7 Q. And once you're aiming, you don't
8 have to look at it? Just pour it, right? But
9 you still have to somehow understand how much
10 you've --

11 A. If you didn't premeasure it.

12 Q. Is there any way to -- well, you
13 indicated that there's no prohibition or warning
14 in your labeling telling the consumer not to
15 pour directly from the container; am I right in
16 that?

17 A. I don't think it's there.

18 Q. So, if the consumer was pouring
19 directly from the container into the drain, then
20 they wouldn't be premeasuring it, correct?

21 A. Yes, correct.

22 Q. Okay. And there's nothing in your
23 labeling which tells the consumer not to do
24 that?

25 A. That's correct.

1 Q. So, in those incidences, the
2 consumer would have to have a sense of
3 estimating what they're pouring out as they're
4 pouring it? In other words, making an internal
5 calculation in their head of what's four ounces,
6 approximately?

7 A. That's correct.

8 Q. So, to do that wouldn't they have
9 to actually look at what they were doing?

10 A. You can look at it, yes.

11 Q. So, under no circumstances they
12 couldn't keep their face away?

13 A. Away means away. Not necessarily don't
14 look at it.

15 Q. You keep turning your head, turning
16 your head, but don't look at it?

17 A. Yes. You can look at it as I show you,
18 but you cannot say that. But I mean, you can
19 look at it if you keep your face away.

20 Q. All right. I understand. We're
21 not videotaping this, so nobody's going to --

22 A. I'm sorry.

23 Q. Don't be sorry. Nobody's going to
24 know unless we say it in words.

25 A. Yes, I agree. I'm sorry.

1 Q. Nothing to be sorry about. And
2 number five on the black --

3 A. Yes.

4 Q. -- you say, again, "Be aware of
5 possible eruption of drain contents and product
6 after product is added to drain." I think it
7 says that.

8 A. Yes.

9 Q. Now, what is the intent of the
10 phrase, "Be aware of possible eruption of drain
11 contents." What were you trying to convey with
12 that direction to the user or the consumer?

13 A. It says what it says.

14 Q. I don't think I asked you in this
15 phrase, and I know you -- the word eruption is
16 used in the red, as well in item six where it
17 says, "may cause eruption." Here you do it
18 slightly differently it says, "Be aware of
19 possible eruption" --

20 A. Yes.

21 Q. -- in your mind, is there a
22 difference between the term, "possible
23 eruption," and "may cause eruption"?

24 A. For me, it's the same.

25 Q. It's the same?

1 A. Yeah.

2 Q. No difference in likelihood? Or
3 probability? Or odds? Or risk? You didn't
4 want to convey any different message?

5 A. It's more like our emphasis. Two ways
6 of saying the same thing.

7 Q. Okay. Now, whether it's phrased
8 as, "may cause eruption," or "be aware of
9 possible eruption," I want to focus for a moment
10 on the word "eruption" --

11 A. Yes.

12 Q. -- as used in the directions and
13 warnings. What was Roto's meaning of the word
14 "eruption" as used in the red item six and in
15 the black item five?

16 MR. FAUST: Stop. It was
17 specifically addressed the exact same
18 question and he answered and defined
19 what the word meant.

20 MR. EDINBURGH: I don't think he
21 did.

22 MR. FAUST: He did. I wrote it
23 down.

24 MR. EDINBURGH: You may have wrote
25 it down, but I don't think he did.

1 Q. Well, what do you mean by in number
2 five, the word "eruption" in the black that says
3 "be aware of possible eruption." I understand
4 what possible means and aware means, but what
5 did you mean by the term eruption?

6 MR. FAUST: Again, I'm going to
7 let him answer it. But he answered your
8 question before. He defined the word
9 eruption before --

10 MR. EDINBURGH: It's not going to
11 to take much more.

12 Q. What did eruption mean in number
13 four?

14 A. Eruption in black letter is same as in
15 red letter.

16 Q. Red letter, okay.

17 A. As I said, in the red letter that acid
18 can act with alkaline. Some of the chemicals
19 aren't alkalined, which would generate a lot
20 more heat. Heat would generate -- boil the
21 water, and the water would splash back. You
22 know, if heat -- if the heat suddenly -- large
23 amount of heat going into the water solution,
24 the water will boil and it will come back
25 someplace because of pressure.

1 Q. Correct me if I'm wrong, but when
2 you were using the term eruption whether the red
3 or the black, you did not use it with respect to
4 the sulfuric acid reacting to water only?

5 A. No. It was not -- it would react. It
6 would have a heat of the solution, but that heat
7 amount generated is not big enough to have an
8 eruption. It has a chemical reaction. Heat of
9 reaction is a lot more than heat of dilution,
10 that would make an eruption. I'm talking loud
11 not because of anything just --

12 Q. No, I understand. Are you aware of
13 any reports issued by the Consumer Product
14 Safety Commission with respect to sulfuric acid
15 drain openers, where the commission staff
16 indicated that the interaction of sulfuric acid
17 in the percentages, concentration, similar to
18 what your company has and water, results in a
19 violent reaction causing eruption?

20 A. No.

21 Q. Would it surprise you if they made
22 such a find?

23 A. Company says a lot of things, so... But
24 that's not true.

25 Q. All right. Have you ever measured

1 the time it takes when the conditions are ripe
2 for eruption to take place, how long it takes
3 from the reaction of the sulfuric acid to the
4 drain contents, would alkaline, as you said, for
5 the eruption to occur? In other words, have you
6 ever measured or have a range of seconds until
7 it occurs? Were there any tests studies? Any
8 personal knowledge of that?

9 A. It depend on how the configuration and
10 the concentration of what each content make a
11 difference.

12 Q. Are you aware of any published
13 analysis of the range and the factors that go
14 into the causation of eruption with sulfuric
15 acid, and other organic matter, or other
16 chemicals?

17 A. No.

18 Q. When you used the term, "eruption,"
19 are you using that differently than the term
20 "boiling" or "splash"? Do you mean something
21 distinct by the term, "eruption"?

22 A. I mean, I'm not a linguist. So, my
23 feeling is that splash could be just, you know,
24 dropping it. If you drop water, it splashes.
25 So, splash could be a much more wider used. And

1 boiling, specifically boiling, in a sense that
2 vapor pressure of liquid face is higher than
3 atmospheric pressure, then it boils. But
4 eruption is a little more than that.

5 Q. The word "eruption" in common
6 language, would you agree is sometimes
7 associated with a volcano or geyser? Something
8 going up some height under pressure?

9 A. I would say similar, but...

10 Q. Did you have any understanding of
11 when eruption does occur with respect to
12 sulfuric acid in the situation as poured in a
13 clogged drain, the height upon which the erupted
14 acid will rise?

15 A. It depends again. What is reacting with
16 what? How much? So, I cannot make a
17 generalized statement.

18 Q. Fair enough. Again, let's go to
19 black number six.

20 A. Yes.

21 Q. And is this black number six, where
22 it says, "Immediately place inverted dishpan
23 bucket or other deep container over the drain."
24 Is that essentially the same direction as in red
25 number seven?

1 A. Yes.

2 Q. Anything different to convey?

3 A. No.

4 Q. Same meaning or intent?

5 A. Same meaning.

6 Q. Let's go to Plaintiff's 9.

7 A. Six. Seven. Eight. Nine, yes.

8 Q. You have a chart on the bottom of

9 that in black --

10 A. Yes.

11 Q. -- indicating the amount to be

12 poured --

13 A. Yes.

14 Q. -- under different circumstances --

15 A. Yes.

16 Q. The first one, if I'm reading it
17 correctly, and you can look at other ones here,
18 is for a small drain?

19 A. Yes.

20 Q. And it says, "Application is four
21 ounce"?

22 A. Yes.

23 Q. Is that generally your
24 understanding of most sinks in households, would
25 be four ounces?

1 A. Yes.

2 Q. And your instructions are to allow
3 to stand for four minutes?

4 A. Yes.

5 Q. What do you mean by, "allow to
6 stand," what does that mean?

7 A. If you're pouring it, before you flush
8 it out, let the acid kind of destroy the bond
9 over whatever is clogging, so it becomes like a
10 slush.

11 Q. Did your company -- withdrawn.
12 Have you had any tests -- withdrawn. In the
13 same paragraph nine -- I'm sorry. Exhibit 9,
14 under the -- on the red portion on top --

15 A. Yes.

16 Q. -- in the second full paragraph,
17 the third paragraph, it says, "Never add water
18 to acid while in container because of violent
19 reaction"?

20 A. Yes.

21 Q. Right?

22 A. Yes, correct.

23 Q. What did you intend to convey by
24 the term, "violent reaction"? What is the
25 violent reaction if you add water to the

1 container?

2 A. It spits.

3 Q. Spits?

4 A. Yeah.

5 Q. Can you --

6 A. Because the heat of the solution is so
7 hot it pip -- pops up. Like it boils.

8 Q. Now, is that the same reaction that
9 would occur if the acid is added to water but
10 not in the container, but on the sink?

11 A. Acid to water is the way to go because
12 the other way you have a heat sink. While you
13 put the water in the acid, then acid don't ever
14 heat sink, so that it reacts and evaporates
15 faster. So, it's a standard procedure involving
16 any of the sulfuric acid is adding the acid into
17 water, rather than the other way around.

18 Q. Okay, I get that. You're saying
19 that if water is added to acid, you'll get the
20 violent reaction, but it's the reverse, you will
21 not?

22 A. Yeah. It's much safer.

23 Q. Given the same amounts of each?

24 A. Yes.

25 Q. Can you look at Plaintiff's 8,

1 please.

2 A. Eight?

3 Q. Yes. You have in black near the
4 bar code --

5 A. Yes.

6 Q. -- a statement in capital letters
7 that says, "THIS PRODUCT IS SOLD WITH EXCLUSION
8 OF ALL WARRANTIES EXPRESSED OR IMPLIED, STATUTORY
9 OR OTHERWISE." Right?

10 A. Yes.

11 Q. Was that something that was on the
12 product when you first sold it, after you bought
13 the company?

14 A. I don't know.

15 Q. Was that something your lawyers
16 told you to add to it?

17 A. I don't know. It was there for a while.

18 Q. This language?

19 A. Yes.

20 Q. On the same Plaintiff's 8 you
21 indicate that the sulfuric acid should never be
22 allowed to stand on porcelain, stainless steel,
23 ceramic, or concrete to avoid discoloration. Is
24 that the sole reason why it should not be
25 poured?

1 A. Yes.

2 Q. You further indicate that the
3 sulfuric acid is not recommended for porcelain
4 sinks. Why is that?

5 A. Discoloring.

6 Q. That's all?

7 A. Yes.

8 Q. And you say it's not recommended
9 for bathtub drains?

10 A. Same thing. Bathtub also made in the
11 porcelain.

12 Q. It's only because of the
13 discoloration effect?

14 A. Yes.

15 Q. I have to go through the MSDSs with
16 you.

17 A. Sure, no problem.

18 MR. EDINBURGH: Off the record.

19 [Discussion held off the record.]

20 Q. I want to go to -- in this --

21 A. Exhibit A.

22 Q. Well, before we do that, let me go
23 to Exhibit B.

24 A. Okay.

25 Q. Now, generally speaking on Exhibit

1 B, are these the same warnings that were
2 flattened out so to speak --

3 A. Yes.

4 Q. -- found in the photographs we just
5 looked at?

6 A. Yes.

7 Q. Same directions? Same cautions?
8 Same warnings?

9 A. Yes. I didn't have time to compare
10 everything, but it seems to be same.

11 Q. Okay. Essentially the same
12 labeling?

13 A. Yeah. You just gave it to me three
14 seconds ago. So, I need to see if it's the
15 same, essentially the same.

16 Q. Take your time. Let's go to
17 Exhibit A.

18 A. Yes.

19 Q. Can you tell me what Exhibit A is?

20 A. It's material data sheet for my drain
21 opener.

22 Q. All right. It's call a material
23 safety data sheet, right?

24 A. Yes.

25 Q. Commonly known as an MSDS?

1 A. Yes.

2 Q. Before I go into the language of
3 the contents, you notice that on the bottom
4 right --

5 A. Yes.

6 Q. -- it says on page one, "September
7 2003"?

8 A. Yes.

9 Q. And on page two it says, "September
10 2000"?

11 A. Yes.

12 Q. Before I finishing my questioning,
13 do you have the second page of 2003 or the first
14 page of 2000? I mean, why are we combining two
15 different years?

16 A. I don't know. But maybe we changed the
17 first page in 2003. We must have the same in
18 2000. Then, at 2003, we maybe modified some
19 numbers or how we might add other products,
20 where it says, "Item 10, 69. 10, 71. 10, 79.
21 10, 84." So, we might add one, like a different
22 kind of products. You know, like size. That's
23 why we might change it to 2003 on the first
24 page.

25 Q. Okay. Is this a document that your

1 company prepared?

2 A. Yes.

3 Q. Did it rely on information
4 furnished by others?

5 A. Our supplier.

6 Q. Can we go to the bottom of page two
7 of two.

8 A. Yes.

9 Q. You see in the bracket on the very
10 bottom --

11 A. Yes.

12 Q. -- on the very bottom, right above
13 the date, "September 2000" --

14 A. Yes.

15 Q. It seems to say that the
16 information furnished in this MSDS was supplied
17 in part by GAC Chemical Corporation?

18 A. Yes.

19 Q. Is that right?

20 A. Yes.

21 Q. Was GAC Chemical Corporation one of
22 your suppliers in 2003?

23 A. You got my answer. Remember, I said two
24 suppliers?

25 Q. Right.

1 A. Now, I remember GAC was the second one.

2 Q. GAC was the other one?

3 A. Yes.

4 Q. Are they still your supplier?

5 A. Yes.

6 Q. Where are they located?

7 A. We are doing business with the one
8 located south of Detroit. But we don't know
9 exactly the corporate office.

10 Q. All right. I'll ask you for GAC
11 the same question I asked you for the other
12 company. Did you have back in 2000 written
13 agreements with GAC with respect to the purchase
14 and sale of bulk quantities of sulfuric acid?

15 A. Not that I know.

16 Q. Was delivery of sulfuric acid to
17 your Michigan plant by GAC, similarly done in
18 ten cars? Or ten trucks, rather?

19 A. Yes.

20 Q. And the same procedure was used to
21 remove it from the tank and put it into your
22 storage tanks?

23 A. Yes.

24 Q. Is it your understanding as to
25 whether Roto had an obligation on an annual

1 basis to supply an MSDS safety sheets to any
2 branch, or department, or any federal agency of
3 the federal government?

4 A. Not my understanding. MSDS doesn't
5 change.

6 Q. So, was 2003 the last year your
7 company had an MSDS?

8 A. Yes. Now, I think they are like 2005,
9 they call it different names. SDS or something
10 like that.

11 Q. Okay. And where do you file this
12 document -- where did you?

13 A. We have it on our file. Whoever,
14 consumer buys it, they need it, we are supplying
15 it.

16 Q. Is it also on your website --
17 withdrawn --

18 A. We don't have a website.

19 Q. I was just going to say that.
20 You beat me to it. Does Roto Corporation
21 have a website?

22 A. No.

23 Q. Do you know where the MSDS for your
24 products are found online? Have you ever made a
25 search yourself?

1 A. Not the Roto. We used to have a
2 website, but we discontinued it like ten, 15
3 years ago.

4 Q. Okay.

5 A. So, you might be able to find the
6 remnant in the Internet, because you're never
7 able to get rid of everything.

8 Q. That's true. I want to go through
9 this MSDS with you.

10 A. Yes.

11 Q. You see items here on the line
12 where it says, "Roto Professional Drain
13 Openers," it says, "items," and gives you a
14 series of numbers?

15 A. Yes.

16 Q. What do those item numbers
17 represent?

18 A. The size of the package.

19 Q. And which is the size that
20 represents the half gallon?

21 A. I don't know.

22 Q. And now, the product name is given
23 a sulfuric acid, and gives the chemical formula
24 that you correctly gave us earlier, correct?

25 A. Yes.

1 Q. Now, you see Roman numeral two, it
2 has, "Hazards Identification/Health Hazard
3 Data," right?

4 A. Yes.

5 Q. Was this information furnished to
6 you by GAC Chemical?

7 A. Yes.

8 Q. And the sulfuric acid contents, or
9 concentration, is listed here as being 93.2
10 percent. Within a small range of tolerances, is
11 that the concentration of the product you sold
12 in 2011?

13 A. Yes.

14 Q. And when it says, "hazard
15 information," there's the initials, "SARA," do
16 you have any understanding of what that means?
17 What those are initials for?

18 A. No.

19 Q. And then, there's Roman numeral
20 three is, "first aid"?

21 A. Yes.

22 Q. And is, "first aid for eye or skin
23 contact," right?

24 A. Yes. Yes.

25 Q. In Roman numeral four is, "fire and

1 explosion data"?

2 A. Yes.

3 Q. Correct?

4 A. That's correct.

5 Q. You see where it says, "special
6 firefighting procedures"?

7 A. In?

8 Q. In Roman numeral four?

9 A. Numeral number four?

10 Q. We're remaining on page one on the
11 bottom.

12 A. Yes.

13 Q. It says, "generates heat upon
14 addition of water" --

15 A. Yes.

16 Q. -- "with possible splattering"?

17 A. Yes.

18 Q. And we're talking about "generates
19 heat," meaning with sulfuric acid when you add
20 water to it? That's what that means?

21 A. Yes.

22 Q. Let me turn the page. Let's go to
23 Roman numeral seven. It says, "applicable
24 control measures"?

25 A. Yes.

1 Q. Then, it has, "personal protective
2 equipment"?

3 A. Yes.

4 Q. Then, it says, "skin protection"?

5 A. Yes.

6 Q. And it says, "wear full-length face
7 shield/chemical splash goggles combination,
8 acid-proof gauntlet gloves, apron, and boots,
9 long-sleeved wool, acrylic, or polyester
10 clothing, acid-proof suit and hood"?

11 A. Yes.

12 Q. So, is this supposed to be the
13 protective equipment to be worn by any worker
14 who handles or works with sulfuric acid?

15 A. It is probably designed for people
16 working in the sulfuric acid factory or handling
17 large quantities of sulfuric acid under
18 pressure.

19 Q. Is this the type of equipment that
20 your plant workers used in Michigan?

21 A. Yes. When they go to an area where
22 sulfuric acid is under pressure, under pump, or
23 -- yes. We are using them.

24 Q. It's your understanding that this
25 equipment is only applicable when there's a use

1 of sulfuric acid to use as you termed, "under
2 pressure"?

3 A. Under pressure is more dangerous, yes.
4 And small quantities, our people don't use it at
5 the factory. You know, like a packaging line,
6 they don't use it.

7 Q. Is there any indication in the MSDS
8 limiting the use of the skin-protective
9 equipment to an environment where sulfuric acid
10 is under pressure?

11 A. No.

12 Q. Is there any reason why in your
13 labeling on your container --

14 A. Yes.

15 Q. -- that you sell to -- that's sold
16 in hardware store and other locations to the
17 public, when you are advising the user to have
18 gloves and goggles, you do not also advise them
19 to use any apron-like garment or other garments
20 or suits which are acid proof or acid resistant?

21 A. This is a consumer product, small
22 quantity, not under pressure. We think our
23 warnings are sufficient.

24 Q. Okay. So, you never considered
25 using language similar to that found in the MSDS

1 for skin protection?

2 A. We considered it, but we don't think
3 it's necessary.

4 Q. When did you make that
5 consideration?

6 A. 1970 when I bought the company.

7 Q. Okay. Now I know it's 40 --

8 A. Almost 50.

9 Q. So, it's a long time --

10 A. 45 years.

11 Q. Okay. Do you have any documents
12 that would memorialize or reflect that
13 consideration?

14 A. No.

15 Q. You see where it says under Roman
16 numeral nine, "activity data"?

17 A. Yes.

18 Q. And it says, "incompatibility"?

19 A. Yes.

20 Q. The first one contained in the MSDS
21 says, "vigorous reactions with water"?

22 A. Yes.

23 Q. All right. Do you know of any
24 documents that further detail that vigorous
25 reaction with water?

1 A. No.

2 MR. EDINBURGH: I just want to
3 take a quick break.

4 [A short break was taken.]

5 MR. EDINBURGH: I'm going to mark
6 this MSDS sheet as Plaintiff's 20.

7 [Whereupon, exhibit was marked
8 Plaintiff's 20.]

9 MR. EDINBURGH: I'm going to show
10 the witness what's been marked as
11 Plaintiff's Exhibit 20.

12 A. Yes.

13 Q. And I will just tell you that this
14 is not a document that we got in discovery.
15 It's a document we found in our Internet
16 research.

17 A. Yes.

18 Q. And this is a MSDS document from
19 September 2003 and it's three pages. And each
20 of them is dated September 2003?

21 A. Yes.

22 Q. And, Mr. Moon -- or Dr. Moon, my
23 question to you is, does this appear to be your
24 company's MSDS for the sulfuric acid drain
25 opener --

1 A. Yes.

2 Q. -- for September 2003?

3 A. Yes.

4 Q. Consisting of three pages?

5 A. Yes.

6 Q. All right. I'm not going to ask
7 you anything else. I just wanted to identify
8 it.

9 MR. EDINBURGH: Please, mark this.

10 [Whereupon, exhibit was marked
11 Plaintiff's 21.]

12 Q. And I'll tell you, Dr. Moon, we
13 found this online --

14 A. Yes.

15 Q. -- in a website that contains the
16 MSDS of a number of companies --

17 A. Yes.

18 Q. -- and we printed out the one
19 related to Rooto --

20 A. Yes.

21 Q. -- sulfuric acid --

22 A. Yes.

23 Q. -- and I ask you to just look at
24 this and tell me whether this is revised -- I'm
25 sorry. It does give you the year. It says,

1 "January 1994"?

2 A. Yes.

3 Q. And I know that goes back 20 years.

4 A. Yes.

5 Q. I understand that. But my question
6 to you is, to the best of your understanding, is
7 this an MSDS that Roto Corporation provided
8 back at that time?

9 A. Best of my understanding, yes.

10 Q. I'd like you to go into the 1994
11 version of the MSDS --

12 A. Yes.

13 Q. -- to Roman numeral six, which is
14 in bold dark it says, "preventive measures,"
15 that's --

16 A. Preventive measures, yes.

17 Q. -- on the third page?

18 A. Yes.

19 Q. Now, there is a paragraph beginning
20 with the term, "skin protection"?

21 A. Yes.

22 Q. Then it says to have, "impervious
23 gloves, coveralls, boots, and other
24 acid-resistant protective clothing." Right?

25 A. Yes.

1 Q. Further down it says, "other
2 personal protective equipment," and it says,
3 "when there is a danger of spilling or splashing
4 acid-resistant aprons or suits should be worn."
5 Do you see that?

6 A. Yes.

7 Q. Now, my question to you is, is this
8 paragraph about skin protection and personal
9 protective equipment, is this designed to be
10 equipment that a consumer is to wear while
11 pouring the sulfuric acid drain cleaner?

12 A. No.

13 Q. Who, in your understanding, is this
14 paragraph designed to protect?

15 A. Factory workers who handle sulfuric
16 acid. Like a driver loading and unloading the
17 tank trucks.

18 Q. Is there anything in the MSDS
19 itself, which would lead to the conclusion that
20 this is not addressed to directions or warnings
21 which should be given to a consumer, versus a
22 factory worker?

23 A. No.

24 MR. EDINBURGH: I actually want to
25 take one second, but I'm essentially

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done.

MR. FAUST: That's fine.

Q. I'm sure I forgot to ask you something but I'm not going to keep you any longer. So, I have no more questions.

MR. FAUST: Do you have any questions?

MR. McCALL: I don't have any questions.

Q. Thank you, sir.

[TIME NOTED: 3:01 p.m.]

COURT REPORTER: Would you like a copy of the transcript, Mr. McCall?

MR. McCALL: Yes.

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I have read the foregoing
transcript of my deposition, and find it
to be true and accurate to the best of
my knowledge and belief.

JOON MOON

Sworn and subscribed to before me,
on this _____ day
of _____ 2015.

Notary_____

My Commission Expires_____

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C E R T I F I C A T I O N

I, Theresa L. Morriale, a Notary Public for
and within the State of New York, do hereby certify:

That the witness whose testimony as herein
set forth, was duly sworn by me; and that the within
transcript is a true record of the testimony given by
said witness.

I further certify that I am not related to
any of the parties to this action by blood or marriage,
and that I am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 10th day of June 2015.

Theresa L. Morriale

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