

STEVE LEE - VOLUME 1 - November 09, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

3	SAN ANTONIO BAY ESTUARINE)	
	WATERKEEPER, et al,)	
4)	
	Plaintiffs,)	
5)	CIVIL ACTION
	VS.)	
6)	NO. 6:17-cv-00047
	FORMOSA PLASTICS CORP.,)	
7	TEXAS, et al,)	
)	
8	Defendants.)	

ORAL DEPOSITION OF
STEVE LEE,
INDIVIDUALLY, AND AS
CORPORATE REPRESENTATIVE OF
FORMOSA PLASTICS CORP., TEXAS
November 9, 2018
Volume 1

THE ORAL DEPOSITION OF STEVE LEE, INDIVIDUALLY, AND AS CORPORATE REPRESENTATIVE OF FORMOSA PLASTICS CORP., TEXAS, Volume 1, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 9th of November, 2018, from 3:17 p.m. to 4:37 p.m., before Julie A. Jordan, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the Formosa Plastics Training and Development Center, 87 Wood Street, Point Comfort, Texas 77978, pursuant to

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1 the Federal Rules of Civil Procedure and any provisions
2 stated on the record or attached hereto.

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ALSO PRESENT:

Ms. Diane Wilson

Mr. Bob Lindsey

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1 STEVE LEE,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. JOHNSON:

5 Q. Would you please state your name.

6 A. Steve Lee.

7 Q. Mr. Lee, have you ever been deposed before?

8 A. No.

9 Q. Okay. So I'm sure you've had an opportunity
10 to be briefed on this, but I'm going to ask you some
11 questions, and they're just like -- it's just like if
12 you were in front of the Court and you're going to
13 listen to my questions and answer. Okay?

14 A. Sure.

15 Q. And if there's anything you don't understand
16 that I ask, I'd ask you to ask me to rephrase it. Okay?

17 A. Sure.

18 Q. And you are doing a great job of giving verbal
19 responses, but sometimes people nod their heads, and so
20 it's important to give a verbal response. Okay?

21 A. Sure.

22 Q. And the other thing you're really doing a good
23 job at is we're not stepping on each other, as we say.
24 You know, like you're not talking when I'm talking. So
25 we'll both try to pause and let each other finish their

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1 answers. Okay? 03:18PM

2 A. Sure. That's okay. 03:18PM

3 Q. Okay. Mr. Lee -- 03:18PM

4 A. Yeah. 03:18PM

5 Q. -- where are you from? 03:18PM

6 A. I've been in Texas for 30 years. Well, almost 03:18PM

7 30 years. 03:18PM

8 Q. Almost 30 years. 03:18PM

9 You've been here at Formosa Texas? 03:18PM

10 A. 26 years. 03:18PM

11 Q. Where were you before that? 03:18PM

12 A. I was in South Carolina attending graduate 03:18PM

13 school. 03:18PM

14 Q. Where was that? 03:18PM

15 A. University of South Carolina. 03:18PM

16 Q. And what did you get your graduate degree in? 03:18PM

17 A. Chemical engineering. 03:18PM

18 Q. Okay. So you have been at Formosa Texas for 03:18PM

19 26 years? 03:18PM

20 A. Correct. 03:18PM

21 Q. So when was that that you came here? 03:18PM

22 A. 1992. 03:18PM

23 Q. And what was your first job at Formosa? 03:18PM

24 A. It was chemical engineer. 03:18PM

25 Q. Is it in the engineering department or is 03:19PM

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1 there an engineering department or in a lab?

03:19PM

2 A. In -- well, I'm still under the same division
3 we call business technology division, and it's in a
4 technical service group --

03:19PM

03:19PM

03:19PM

5 Q. Okay.

03:19PM

6 A. -- at -- yeah.

03:19PM

7 Q. What is your title now?

03:19PM

8 A. I'm Polyolefin lab manager.

03:19PM

9 Q. Okay. And how many people are in your lab?

03:19PM

10 A. 33.

03:19PM

11 Q. And what department is your lab in?

03:19PM

12 A. We call Laboratory Service and Quality
13 Assurance Department.

03:19PM

03:19PM

14 Q. And that's bigger than just the lab?

03:19PM

15 A. Yes. Under -- we call it LSQA. Okay?

03:19PM

16 Laboratory Service and Quality Assurance, there are four
17 labs under that department.

03:20PM

03:20PM

18 Q. Okay. And so do you -- does your lab
19 participate in quality control for the facility?

03:20PM

03:20PM

20 A. Yes.

03:20PM

21 Q. And when we say "quality control," that means
22 you're looking at the quality of the pellets and the
23 powder that are produced?

03:20PM

03:20PM

03:20PM

24 A. That's correct.

03:20PM

25 Q. Okay. And do you do research and development

03:20PM

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1 for future products?

03:20PM

2 A. Not in my department.

03:20PM

3 Q. Okay. What besides quality control do you do
4 in your department?

03:20PM

03:20PM

5 A. Well, like this case, there's a special case
6 that's assigned to me, so we do our best based on
7 available equipment, facilities, and power we have.

03:20PM

03:20PM

03:20PM

8 Q. And do you do -- do you -- like do you help
9 with the sampling of wastewater? Do any -- does your
10 lab have any other role besides testing the pellets and
11 powder?

03:20PM

03:20PM

03:21PM

12 A. No, they don't do sampling.

03:21PM

03:21PM

13 Q. Okay. Is there anything else that I'm missing
14 that your lab does besides that quality control?

03:21PM

03:21PM

15 A. Right now many quality control and the product
16 grading. That's probably part of the quality control.

03:21PM

03:21PM

17 Q. Okay.

03:21PM

18 A. Yeah.

03:21PM

19 Q. And so when you grade products, you're trying
20 to determine if they meet certain kind of standards, and
21 if they don't, you might not grade it at the top grade.

03:21PM

03:21PM

03:21PM

22 Is that fair to say?

03:21PM

23 A. Correct.

03:21PM

24 Q. Okay. Do you physically do the testing
25 anymore or do you supervise the testing?

03:21PM

03:21PM

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1 A. I supervise.

03:21PM

2 Q. Okay. How long have you been a supervisor?

03:21PM

3 A. As a supervisor, probably 23 years.

03:21PM

4 Q. Okay. So you became a supervisor fairly soon
5 after you got here?

03:21PM

03:22PM

6 A. Yes.

03:22PM

7 Q. Okay.

03:22PM

8 A. Correct.

03:22PM

9 Q. Do you know what I mean by the
10 Pellet Identification Project?

03:22PM

03:22PM

11 A. Kind of.

03:22PM

12 Q. Is that a project that you've undertaken in
13 this lawsuit to identify pellets?

03:22PM

03:22PM

14 MR. RAVEL: Objection, form.

03:22PM

15 You can answer unless I --

03:22PM

16 Q. (BY MS. JOHNSON) You can answer.

03:22PM

17 MR. RAVEL: -- instruct you not to.

03:22PM

18 Q. (BY MS. JOHNSON) You can answer it.

03:22PM

19 MR. RAVEL: You may answer.

03:22PM

20 A. Okay. This is the project that our
21 environmental department request us to do, but this is
22 not part of our routine job.

03:22PM

03:22PM

03:22PM

23 Q. (BY MS. JOHNSON) I understand that. Okay.

03:22PM

24 And so who has been the person in the
25 environmental department that requested you to do the

03:22PM

03:22PM

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1 Pellet Identification Project?

03:22PM

2 A. The manager.

03:22PM

3 Q. Who is that?

03:22PM

4 A. Matt Brogger.

03:22PM

5 Q. Okay. And when -- do you remember when he
6 asked you to do it?

03:22PM

03:22PM

7 A. Probably sometime last year.

03:22PM

8 Q. Okay.

03:22PM

9 A. Sometime last year.

03:22PM

10 Q. Did he come to meet with you about it or did
11 he send you an e-mail how did he ask you to do it?

03:23PM

03:23PM

12 A. He actually brought the samples into my lab
13 and talked to me. And I later, you know, brought the
14 sample to talk with our colleagues in the lab and talk
15 about, you know, what's the best way to do this.

03:23PM

03:23PM

03:23PM

03:23PM

16 Q. Okay. Did you -- when you were thinking about
17 the best way to identify the pellets, did you
18 communicate with anybody with Formosa USA in New Jersey?

03:23PM

03:23PM

03:23PM

19 A. No.

03:23PM

20 Q. Okay. And on a different note, have you been
21 consulted regarding the screen size that is necessary to
22 entrap Formosa's pellets at any of the outfalls?

03:23PM

03:23PM

03:23PM

23 A. I know the wastewater unit or the civil
24 department -- civil maintenance department from
25 different occasions, they have request information from

03:23PM

03:24PM

03:24PM

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1 the lab about what's the typical particle size
2 distribution for pellets or powder. They have requested
3 that kind of information. As far as the sizing, that's
4 not -- not my job.

5 Q. So when -- but when they requested the
6 information about the typical particle size, was that to
7 your lab?

8 A. Correct.

9 Q. Okay. And were you the person that gave them
10 that information or was it somebody else in your lab?

11 A. I assigned a chemist to do a little study, and
12 then they -- the chemist sent me the information. I
13 review it and I send it to -- I believe I sent it to
14 maybe John Hyak.

15 THE REPORTER: I'm sorry?

16 MS. JOHNSON: John Hyak.

17 THE WITNESS: John Hyak.

18 THE REPORTER: Thank you.

19 THE WITNESS: Yeah.

20 Q. (BY MS. JOHNSON) And that project just had to
21 do with the size of screens to catch pellets, right, not
22 powder?

23 A. I'm not sure what -- what they use it for, but
24 we do provide both powder and -- and the pellet size.

25 Q. Okay. And during this lawsuit we've had these

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1 different discussions of powder, pellets, and the word
2 "flakes" has also been used or "shavings."

3 Do you think -- do you distinguish -- do
4 the words "flakes" and "shavings" mean anything to you?
5 Do they describe anything different than powder and
6 pellets?

7 A. A little different.

8 Q. Okay. How are they different? Did you say
9 they're not different?

10 A. A little different.

11 Q. Okay. Okay. Thank you.

12 A. They're -- they're a little different.

13 Q. Can you describe how they're different to me?

14 A. Flakes is kind of maybe a piece of plastic or
15 something. It could be any material that's kind of flat
16 in nature.

17 Q. Uh-huh.

18 A. And maybe a powder stick together or a -- some
19 plastic sample, they're being heated and then -- then
20 compressed become a flat flake.

21 Q. Okay. And how about a shaving?

22 A. Shaving, to me, that's a -- during the
23 processing period of time, you know, they generate it
24 during the process. I don't know how it's generated,
25 but technically, I don't know exact distinguish between

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1 shaving and the flake.

03:27PM

2 Q. And -- okay. I understand that.

03:27PM

3 Have you -- on the project that you did on
4 the pellet identification, have you consulted with
5 anybody outside of Formosa Texas?

03:27PM

03:27PM

03:27PM

6 A. No.

03:27PM

7 Q. Okay. I want to just understand a little bit
8 about the chemistry and the --

03:27PM

9 A. Yeah.

03:27PM

10 Q. -- physical structure of the pellets.

03:27PM

11 A. Okay.

03:27PM

12 Q. Okay? So I'm just going to ask you some
13 questions about that.

03:27PM

03:27PM

14 A. Okay.

03:27PM

15 Q. Do you know generally what the density is of
16 the pellets? Do the -- well, let me ask one question.

03:27PM

03:27PM

17 There are different pellet units, right?

03:27PM

18 A. Correct.

03:27PM

19 Q. Okay. Do you know if the density of the
20 pellets from the pellet-producing units is generally the
21 same?

03:27PM

03:27PM

03:27PM

22 A. It varies.

03:27PM

23 Q. It varies?

03:27PM

24 A. Yes.

03:27PM

25 Q. Okay. And does the density affect the ability

03:27PM

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1 to float on water?

03:28PM

2 A. Of course.

03:28PM

3 Q. Do any of the pellets produced not float on
4 water?

03:28PM

03:28PM

5 A. Not -- all Formosa pellets would float.

03:28PM

6 Q. Okay. Do you know what the density is of the
7 pellets on average or give me a range?

03:28PM

03:28PM

8 A. We have a very wide range starting from maybe
9 .89 gram per centimeter cubed or per cc to .96, .97.

03:28PM

03:28PM

10 Q. And which would be the least dense and the
11 most dense?

03:28PM

03:28PM

12 A. .89, .9.

03:28PM

13 Q. Do you know what unit that came from?

03:28PM

14 A. That will be like polypropylene unit.

03:28PM

15 Q. And what was the most dense from?

03:29PM

16 A. The HDPE.

03:29PM

17 Q. Okay. Just generally, not in a real chemical
18 way, can you explain to me why there's such a difference
19 in density?

03:29PM

03:29PM

03:29PM

20 A. Because polymer is -- they polymerize by small
21 molecule.

03:29PM

03:29PM

22 Q. Uh-huh.

03:29PM

23 A. The larger the molecule weight, the larger the
24 size, the higher the density. Of course it relates to
25 the chemical structure also.

03:29PM

03:29PM

03:29PM

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1 Q. Okay.

2 A. You know, the inner molecule distance will
3 affect the density also.

4 Q. Okay. And what is the -- does the surface of
5 a pellet vary depending on which unit produces it?

6 A. Yes.

7 Q. Okay. Are the surfaces -- can you describe
8 generally is it smooth, abrasive, rough, porous? What
9 are the surfaces like of the pellets?

10 MR. RAVEL: Objection, form.

11 Q. (BY MS. JOHNSON) You can answer.

12 MR. RAVEL: You can answer.

13 A. See, our lab, we don't actually use
14 microscope -- microscope -- or microscope to look at the
15 surface.

16 Q. Okay.

17 A. By my naked eyes, it looks smooth to me.

18 Q. Okay. So you don't really know what the
19 surface is like?

20 A. Our R&D department, they may know, but --
21 research and development department, they may know, but
22 we -- we as a quality assurance, we don't use microscope
23 to look at the surface.

24 Q. So what the surface is isn't relevant to
25 quality assurance?

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1 A. Not -- not a -- not part of the quality
2 control.

3 Q. Okay. Is the -- the shape of the pellets is
4 different depending on the different units that produce
5 them, right?

6 A. Yes.

7 Q. Okay. And did you bring me any pellets today?

8 A. No. I didn't bring any.

9 Q. Did we ask to bring some pellets?

10 A. I sent in some --

11 MR. RAVEL: Bags.

12 A. I sent in some pictures.

13 MS. JOHNSON: Huh?

14 MR. RAVEL: In bags for weight, and I
15 told you he's a pellet identification guy.

16 MS. JOHNSON: I have some pellets. Just
17 a minute. We'll just mark this as --

18 THE REPORTER: 70.

19 MS. JOHNSON: I don't have a copy of it.

20 MR. RAVEL: I'll look at it along with
21 him.

22 MS. JOHNSON: All righty.

23 MR. RAVEL: He can teach me how to --

24 MS. JOHNSON: How to identify pellets.

25 (Exhibit 70 marked)

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1 Q. (BY MS. JOHNSON) Okay. I am showing you what
2 has been marked as Exhibit 70.

3 Would you identify that as a bag of
4 pellets?

5 A. Can I touch it?

6 Q. Oh, you can touch it. You can do whatever --
7 there's nothing -- it's just a bag of pellets.

8 A. Yeah.

9 Q. Okay. Can you -- by looking at those pellets,
10 can you tell -- I mean, there are different shapes of
11 pellets in that bag, is that right?

12 A. Yes.

13 Q. Okay. That the naked eye can see the
14 different shapes, right?

15 A. Correct.

16 Q. Okay. Can you tell me which unit they're from
17 by what shape they're in?

18 MR. RAVEL: Objection, form.

19 A. Possible.

20 Q. (BY MS. JOHNSON) Okay. So there are these
21 pellets, I call them M&M shapes.

22 A. Yeah.

23 Q. I don't -- do you have a different description
24 of what you would call that shape?

25 A. Well, again, shape is not part of the quality

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1 control.

2 Q. Okay. But in your Pellet Identification
3 Project you were looking at the shapes --

4 A. Correct.

5 Q. -- right?

6 A. That is correct.

7 Q. So are you familiar with the shapes?

8 A. Kind of, yes.

9 Q. Okay. So do you --

10 A. I'm not the -- the actual person to do the
11 identification by shape because we are assigned a very
12 experienced technician who does the job all the time.
13 They -- they look at the powder inspection all the time
14 pellet. We assign them to do it.

15 Q. So you didn't do the -- you didn't do the
16 visual look at the pellets in the pellet
17 identification --

18 A. I kind of have some idea from what units. By
19 comparison, I can tell. But when you mix all them
20 together, then it's -- it's very subjective to tell.
21 Yeah.

22 Q. Well, some of the pellets have kind of a
23 cylindrical shape?

24 A. Correct.

25 Q. Do you know what unit the cylindrical pellets

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1 are from?

03:34PM

2 MR. RAVEL: Objection, form.

03:34PM

3 THE WITNESS: I can answer?

03:34PM

4 MR. RAVEL: You can answer.

03:34PM

5 A. Yeah. That could be from our polyethylene
6 plant. They have similar shape.

03:34PM

7 Q. (BY MS. JOHNSON) Okay. And do you know what
8 the rounder pellets -- what unit they might be from?

03:34PM

03:34PM

9 A. That will be hard to identify. It could be
10 PE or PPE. They have similar.

03:34PM

03:34PM

11 Q. Okay. So are you familiar with the general
12 color of the pellets or how the color changes from unit
13 to unit or from -- over time?

03:34PM

03:34PM

14 MR. RAVEL: Objection, form.

03:34PM

03:34PM

15 A. Color is a quality assurance item --

03:34PM

03:34PM

16 Q. (BY MS. JOHNSON) Uh-huh.

03:34PM

17 A. -- that we use a meter to -- a color meter to
18 measure because human eyes can only tell, you know, very
19 little range of color difference.

03:34PM

03:34PM

20 The product -- I don't know if you have
21 seen the fresh product we produced. Those are very
22 white, just -- yeah, they're -- the whiteness is high.

03:35PM

03:35PM

23 Q. A bright white?

03:35PM

03:35PM

24 A. Very bright white. Yeah. It's not like this.

03:35PM

03:35PM

25 Q. Okay. So for instance, when we were talking

03:35PM

03:35PM

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1 bright white versus not as white, a bright white has --
2 is kind of -- it has little opaqueness to it maybe or
3 less brownness? There are examples in this bag of
4 things that are more white than others, right?

5 A. All these look aged.

6 Q. Okay.

7 A. Not fresh pellets. Even this one, our white
8 is not like that. That look like there's a lot of
9 chemicals in there. Like by our term is additive --
10 additive pellet. "Additive" means it may have some
11 higher concentration of additive.

12 Q. So when you say "additive," are you saying
13 that the chemical composition is different or that it's
14 been out in the environment and it has changed?

15 A. It means that the chemical we add to the
16 plastic to -- to give certain design quality of the
17 plastic, that's the stuff -- that's the chemical we add
18 to the plastic during the manufacturing process.

19 Q. Okay. So I'm not understanding.

20 So you add a chemical to give it a white
21 color, is that what you're talking about as the
22 additive?

23 A. Not to give the white color. It's to say
24 antiaging. We call antioxidant.

25 Q. Okay.

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1 A. Or anti-UV, the UV light, or anticorrosion. 03:37PM
2 If you use the plastic, it touch with metal, it won't 03:37PM
3 give corrosion, that kind of purpose. 03:37PM

4 Q. Okay. And so if the pellet's color have 03:37PM
5 changed over time, is that because something has worked 03:37PM
6 on the antioxidation -- oxidant, for instance, or the 03:37PM
7 something has -- the antioxidant has been diminished in 03:37PM
8 some way, for instance? 03:37PM

9 A. Possible. 03:37PM

10 Q. Okay. You mentioned anti- -- what was it that 03:37PM
11 was antisunlight? What was -- 03:37PM

12 A. UV. UV light. 03:37PM

13 Q. Yeah. What is used for -- to protect the 03:37PM
14 pellets from UV light? 03:37PM

15 A. It has a sort of number -- technical number, 03:38PM
16 you know. It's a special term, you know. 03:38PM

17 Q. What's it called? 03:38PM

18 A. We have UV with a number. I don't remember 03:38PM
19 exact number. It's a number, like UV123 or -- 03:38PM

20 Q. Okay. 03:38PM

21 A. -- UV -- yeah, that kind of thing. 03:38PM

22 Q. Okay. If the pellets are left in -- out in 03:38PM
23 the environment, does the chemical quality of the pellet 03:38PM
24 change over time? 03:38PM

25 A. Chemical quality. 03:38PM

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1 Q. Does the composition -- do these -- does
2 anything happen chemically to the pellets for instance
3 in rain and water, in sediment?

4 MR. RAVEL: Objection, form.

5 A. I think it's possible.

6 Q. (BY MS. JOHNSON) Could you tell me what you
7 would imagine possibly could happen to them?

8 A. Well, you know, if it's in the sea water, you
9 know, you're under erosion, you know, sunlight, you
10 know, that kind of thing. You know what nature can do
11 to these pellets.

12 I haven't done my -- any study myself.
13 That's not part of my job to do that. But I know with
14 time, you know, anything in the sea will be degraded.

15 Q. Do you know if microorganisms can attach to
16 the surface of the pellets?

17 A. I have no idea.

18 Q. Okay. Do you know whether algae can grow on
19 the pellets?

20 A. I have no idea.

21 Q. Okay. Do you know -- can you describe for me
22 the durability of the pellets, like how long they are
23 designed to last?

24 A. I don't have -- I don't have any idea.

25 Q. You don't have any idea?

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1 A. No.

2 Q. Do you know how the pellet's durability is
3 affected by the natural environment?

4 A. No.

5 Q. And so you don't have any opinion about how
6 exposure to air, sunlight, water, or sediment affects
7 the pellets?

8 A. No.

9 Q. And you don't -- you haven't looked at any
10 studies about those issues either?

11 A. (Nods negatively.)

12 MR. RAVEL: You have answer out loud.

13 Q. (BY MS. JOHNSON) Yeah. Sorry.

14 MR. RAVEL: Say no.

15 A. Oh. Oh, say no. Okay. Sorry. I -- yeah,
16 no.

17 Q. (BY MS. JOHNSON) Okay. And do you have any
18 studies or any evidence about how the color of the
19 pellets might change over time?

20 A. No.

21 Q. And Formosa makes specialty pellets too, is
22 that right?

23 A. Well, we have product called specialty PVC,
24 but that's not tested by our lab.

25 Q. But there -- so there are no pellets that are

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1 specially designed for special customers?

03:40PM

2 A. Yeah, but the production process is also
3 different.

03:41PM

4 Q. Okay.

03:41PM

5 A. Yeah.

03:41PM

6 Q. And the descriptions we've had about the
7 pellets and the color, do you know whether specialty
8 pellets differ in any of those qualities?

03:41PM

03:41PM

03:41PM

03:41PM

9 A. No. These are not SPVC. SPVC, it -- there is
10 like a very fine plastic. These are not. These are
11 poly- -- what we call polyolefins. Polyethylene or
12 polypropylene, these look like that.

03:41PM

03:41PM

03:41PM

03:41PM

13 Q. Okay.

03:41PM

14 A. Yeah.

03:41PM

15 Q. Yeah. I think I'm not being clear because I
16 think you're talking about powder when you're saying
17 SPVC.

03:41PM

03:41PM

03:41PM

18 A. Well, SPVC, their look -- appearance more look
19 like powder form because they're -- they're very fine,
20 fine plastic.

03:41PM

03:41PM

03:41PM

21 Q. Okay. Do -- are all of the pellets that are
22 tested in your lab white or are there any colors?

03:41PM

03:41PM

23 A. We don't test color -- color pellets. We --
24 we -- Formosa don't add color to the pellets.

03:42PM

03:42PM

25 Q. So all the pellets are white?

03:42PM

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1 A. Yes.

03:42PM

2 Q. Okay.

03:42PM

3 A. Whenever there is color, it means abnormal.

03:42PM

4 Q. Okay.

03:42PM

5 A. Yeah.

03:42PM

6 Q. It means it's abnormal?

03:42PM

7 A. Abnormal, yes.

03:42PM

8 Q. And do they -- are pellets ever colored in
9 their abnormal -- in the production process?

03:42PM

03:42PM

10 A. Yes. Say if it turn blue, means there's
11 something wrong in the production process.

03:42PM

03:42PM

12 Q. Have you ever seen blue pellets out here
13 sometimes?

03:42PM

03:42PM

14 MR. RAVEL: Objection, form.

03:42PM

15 A. Very few, but I did see it before.

03:42PM

16 Q. (BY MS. JOHNSON) Have you ever seen a pink
17 pellet produced here at Formosa?

03:42PM

03:42PM

18 A. No.

03:42PM

19 Q. Okay. Any other colors?

03:42PM

20 A. We have black pellet -- we call black, you
21 know, that that's contaminated by something.

03:42PM

03:42PM

22 Q. And are you familiar with the term "sorb"?
23 Like it's -- are you familiar with the term "sorb"?

03:43PM

03:43PM

24 A. Yes.

03:43PM

25 Q. Okay. What does that mean to you?

03:43PM

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1 A. Sorb -- sorb means a -- a temporary absorption
2 of the surface.

3 Q. Okay. Can it also mean to absorb, to go
4 beneath the surface? I mean, there are two words.
5 There's "adsorb" and "absorb."

6 Are you familiar with those two terms?

7 A. Adsorption, absorption. I used to know very
8 clear on the definition. I'm confused now.

9 Q. So are you aware of any studies about any
10 chemicals that might bond or attach to Formosa's
11 pellets?

12 A. I didn't do any study. I never did any study
13 on that.

14 Q. And you haven't read any studies about that?

15 A. No, I haven't.

16 Q. Okay. So -- or any chemicals that might
17 absorb, go beneath the surface? Do you -- are you aware
18 of any studies or --

19 A. No. No.

20 Q. Okay. Thank you.

21 I want to talk a minute about powder.

22 A. Sure.

23 Q. Okay. So powder -- plastic powder is used in
24 the production of pellets, right?

25 A. Correct.

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1 Q. But there -- and there also are some units
2 that just produce powder as an end product.

3 Like the PVC unit makes powder, right?

4 A. Yeah. PVC, their final product, they call --
5 well, it's in the powder form, yes.

6 Q. Okay. And do you know the general density of
7 PVC powder?

8 A. I don't test -- those are under different
9 labs. I think it's less than one also.

10 Q. So do you know whether PVC powder floats on
11 water?

12 A. If it's less than one, yes.

13 Q. Okay. Do you know the general density of
14 polypropylene powder?

15 A. 5.9.

16 Q. Okay. So that will float on water?

17 A. Yes.

18 Q. Okay. Do you know the size of a particle of
19 powder?

20 A. Powder, by our -- our lab's definition for
21 polyolefin, polypropylene, or polypropylene means size
22 ranging from maybe 500 to 2,000 micron -- micrometer.

23 Q. Okay.

24 A. 2,000 micrometer means 2 millimeter, if you
25 use a ruler. 2 millimeter.

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1 Q. Okay. And the -- you just gave me a whole
2 bunch of different powder. PP -- it sounded like --

3 A. PE, PP and PE.

4 Q. Okay.

5 A. That's the many product I -- my lab testing.

6 Q. Okay. Can you tell the -- if you look at
7 those powders, can you tell the difference between what
8 unit they're produced from by looking at them?

9 If I saw a handful of powder from the PP
10 unit and a handful of powder from the PE unit, could you
11 look at them and go, Well, that's some PE powder over
12 there and that's some PP powder over there?

13 A. Yes, but -- but again, like these -- some of
14 them are similar.

15 Our lab, when we test it, they always give
16 you a bag and then label. They tell you what it is. We
17 don't identify what that is. It tells us what that is.
18 And so we assume everything in the bag is what they
19 label as labeled.

20 And then we -- we perform at least more
21 than ten different type of tests to confirm the quality
22 meets the specification. That's our routine job to do.
23 But we don't actually identify whether this is from what
24 pellet -- from what -- what grade from what unit, no.
25 That's not our routine job to do.

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1 Q. Okay. And so when you did this Pellet
2 Identification Project, you were not looking at powder,
3 were you?

4 A. No. Yeah, because I remember all the samples
5 we received were in pellet form.

6 Q. Do you know the characteristics of powder and
7 water? Would the powder adhere to each other or do
8 the -- do the particles spread out?

9 A. I think it depends. It -- you know, I know
10 powder, if they have some additives added -- added in
11 there, they may spread it out. But if they don't, then
12 they may stick together.

13 Q. Do you know what kind of additives might make
14 them spread out?

15 A. I don't know.

16 Q. Okay. And do you know whether anything
17 adheres or grows on powder when it's out in the
18 environment?

19 A. No.

20 Q. Okay. Do you know anything about the density
21 of flakes or shavings?

22 A. No.

23 Q. Okay. Do you know if they float?

24 A. Well, if it's plastic, it will float.

25 Q. Okay. I'm going to talk to you now -- I know

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1 the thing we're here for is the Pellet Identification
2 Project.

3 A. Okay. Sure.

4 Q. So I'm going to hand you what we're going to
5 mark as 71.

6 (Exhibit 71 marked)

7 Q. (BY MS. JOHNSON) Okay. So Document 71 is
8 entitled "Analysis of pellets from outside the plant."

9 Did you prepare this document?

10 A. Actually, my chemist prepare it. I review it.
11 I kind of edited a little bit and then I sent it out.

12 Q. Okay. Who's the chemist that prepared it?

13 A. Sunny. Sunny Chen.

14 Q. Sunny Chen. Okay.

15 So I just want to just walk through the
16 study.

17 A. Sure.

18 Q. Okay?

19 A. Sure.

20 Q. So when was this prepared? When was this
21 document prepared?

22 A. Sometime last year. Should look at -- look at
23 these dates. May 16. I think it was around that time.

24 Q. Okay. On the first page there are 17 sample
25 sites.

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1 A. Correct.

2 Q. How did you choose the physical location for
3 gathering samples?

4 A. That's -- that's not our decision. That's
5 probably environmental. I don't know who made that
6 decision. We just receive the samples.

7 Q. Okay. So you don't know where the samples
8 were gathered?

9 A. No, we don't.

10 Q. Okay. And do you know how the -- let's say I
11 went to the Big Jetties, for instance, okay, the first
12 one on there.

13 Do you know how the samples were gathered?

14 A. We don't know.

15 Q. So do you know -- so you don't know whether
16 they went to one place or three places to gather
17 samples?

18 A. No.

19 Q. How do you know that the samples were
20 representative of what was on that -- at that location?

21 A. That's not our job. I mean, that -- for the
22 project, that's -- they just give us a sample and they
23 want us to identify it. So I don't know -- like our
24 routine QA/QC job is the same thing. We're not
25 responsible for how you sample it, whether this is

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1 representative or not.

2 The production, they're responsible to
3 tell us, This is this grade. This sam -- this sampling
4 representing your quality. That's because our job is to
5 do testing.

6 Q. So you -- so what happened is somebody brought
7 you a sample and your job was to say, I'm looking at
8 these pellets and I'm going to tell you where they're
9 from, right?

10 A. Well, I'm going to tell you, but I routine --
11 tell you whether they're meeting the Formosa
12 specification or not.

13 Q. Okay. But you don't -- you can't testify that
14 those samples represent what was at any of these
15 locations?

16 A. No, I can't.

17 Q. Okay. And you -- do you know who took the
18 samples?

19 A. I don't.

20 Q. And do you know whether they took photos of
21 the -- where they took the samples?

22 A. I don't.

23 Q. You don't know how they were gathered, by
24 rake, by hand, or anything like that?

25 A. I have no idea.

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1 Q. Do you know how many times samples were taken
2 at these locations?

3 A. No.

4 Q. You don't know whether there was powder when
5 they took these samples either, do you?

6 A. No.

7 Q. Okay. Do you know how the samples were stored
8 before they came to you?

9 A. No.

10 Q. What were they -- what were the samples given
11 to you in? A jar?

12 A. In a plastic bag.

13 Q. Okay. Was there any debris in the plastic bag
14 besides the pellets?

15 A. Well, there are some like this.

16 Q. Little bits of --

17 A. Yeah.

18 Q. -- of grass or --

19 A. Oh, yeah.

20 Q. Okay. Did you -- after you were given the
21 bags of pellets, did you wash them?

22 A. In order to -- to do testing and do
23 identification, we have to soak in water.

24 Q. In water, just plain --

25 A. Just potable water.

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1 Q. Okay.

2 A. Just to -- to wash out the mud so we can see
3 the original shape and color.

4 Q. And did you photograph all of the samples?

5 A. I'm not sure exactly. I think they took some
6 pictures, but I don't know we photograph all of them.
7 I'm not sure.

8 Q. Okay. Let's go to the next page. This
9 says "Methods Used." And the first bullet says
10 "Visual Inspection and Categorization."

11 A. Yeah.

12 Q. It says, "Pellets from each location are
13 separated into PP," and the rest of them, and
14 "Unknowns" -- "or Unknowns based on pellet shape."

15 A. Yes.

16 Q. Can you explain to me what that means?

17 A. Okay. So like this bag, you have different
18 shape. So our -- our lab technician who does the lab --
19 the pellet inspection every day, you know, they can
20 look, okay, well, this -- this group may be -- they pick
21 it out maybe very closer to the -- this particular unit,
22 the LLDPE. This group may be closer to PE1. So they
23 group them together by shape.

24 Q. Okay. So somebody physically separated
25 whatever was in a little baggy --

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1 A. Correct.

2 Q. -- by shape?

3 A. Correct.

4 Q. Okay. And then a rough percentage based on
5 pellet count is given of how much of each was found in
6 each location.

7 What does that mean?

8 A. So like this group, if I have a hundred
9 pellets --

10 Q. Uh-huh.

11 A. -- if I find five pellets belongs to LLDPE,
12 then it's 5 percent. If 15 pellets for -- belong to
13 PE1, I say 15 percent.

14 Q. Okay.

15 A. That's by count.

16 Q. But when you say "found in each location,"
17 what you really mean is found in the bag because you
18 don't know how many pellets were out there at the sample
19 site, do you?

20 A. It's location means one of these locations
21 (indicating).

22 Q. Okay. But remember you didn't manage the
23 sampling. So you don't know if there were -- if the
24 baggy was given to you as a representative sample of
25 where the pellets came from, do you?

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1 A. No, I have no idea. 03:57PM

2 Q. Right. So basically it's a representage of 03:57PM
3 how much of each was found in each baggy, is that right? 03:57PM

4 A. That's correct. 03:57PM

5 Q. Okay. Now, you're going to have to explain to 03:57PM
6 me what FTIR full spectrum comparisons means. 03:57PM

7 Can you explain that just generally? 03:57PM

8 A. Okay. First of all, FTIR we call Fourier 03:57PM
9 transform infrared spectroscopy. 03:57PM

10 Q. What was that first word? 03:57PM

11 A. Fourier, F-O-U-R-I-E-R. Fourier transform. 03:57PM
12 It's a mathematic transnotation method -- 03:57PM

13 Q. Okay. 03:57PM

14 A. -- to convert this light spectrum to -- to 03:57PM
15 eliminate out some noise in order to be able to analyze 03:57PM
16 it. It's -- it's a math -- math treatment to... 03:57PM

17 Q. I think I have an example of it that we're 03:57PM
18 going to go ahead and label. 03:58PM

19 Is this what -- 03:58PM

20 A. That's fine. 03:58PM

21 Q. Okay. Is that what this is? 03:58PM

22 A. Yeah. 03:58PM

23 Q. Okay. 03:58PM

24 A. That's FTIR spectrum. 03:58PM

25 Q. Let's go ahead and label that so we can talk 03:58PM

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1 about that document.

2 Okay. So this is going to be Exhibit 72.

3 (Exhibit 72 marked)

4 Q. (BY MS. JOHNSON) Okay. So I'm giving you
5 Exhibit 72.

6 Can you -- is this the FTIR -- is this a
7 result of an FTIR -- I don't know what you would call
8 it. A test? An FTIR test on pellets?

9 A. This is what we call spectrum.

10 Q. Okay.

11 A. Yeah.

12 Q. And the -- can you tell me, what does "ABS"
13 mean on this side? What's that stand for?

14 A. Absorbance. Light -- light absorbance.

15 Q. How -- like how much light is absorbed by the
16 pellet?

17 A. Actually, we use -- we -- we take around like
18 ten pellets of this. We make it like a circle. We --
19 we melt it and compress it, make a thin -- thin film.

20 Q. Uh-huh.

21 A. And then use that film, we put into the
22 instrument like a plate and let light go bombarded on
23 the film. And then this absorbance means percentage of
24 light absolved by this plastic film.

25 Q. Okay. You're saying "film"? It's a -- you

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1 make kind of a film?

03:59PM

2 A. Yeah, make a film out of these pellets.

03:59PM

3 Q. How thin is it?

03:59PM

4 A. 500 microns.

03:59PM

5 Q. Okay. And the -- so when you made the film --
6 so, for instance, on Exhibit 72 it says "LLDPE" and it's
7 got some number, right? Do you see that?

03:59PM

03:59PM

03:59PM

8 A. 72?

04:00PM

9 Q. Yes. So it says LL -- oh, goodness gracious.

04:00PM

10 MR. RAVEL: There is several of them.

04:00PM

11 MS. JOHNSON: I've not got the same
12 document that you do. Okay. Well, it doesn't matter.
13 I can use this one.

04:00PM

04:00PM

04:00PM

14 Q. (BY MS. JOHNSON) Okay. So it says PP1 --

04:00PM

15 MR. RAVEL: The ones that are attached to
16 the graph will be all consistent, yours and mine.

04:00PM

04:00PM

17 MS. JOHNSON: Okay.

04:00PM

18 MR. RAVEL: I wouldn't want to help if --

04:00PM

19 MS. JOHNSON: But it would make things go
20 smoother.

04:00PM

04:00PM

21 MR. RAVEL: Much smoother.

04:00PM

22 Q. (BY MS. JOHNSON) Let's do that, Mr. Lee.

04:00PM

23 Hold on. Let's --

04:00PM

24 MR. RAVEL: Here, I'll give -- you find
25 yours.

04:00PM

04:00PM

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1 MS. JOHNSON: Okay. 04:00PM

2 MR. RAVEL: We'll take care of ours. 04:00PM

3 MS. JOHNSON: Okay. I don't know where 04:00PM

4 ours is. 04:00PM

5 MR. RAVEL: I brought it to you. 04:00PM

6 MS. JOHNSON: I know you did. I know you 04:00PM

7 did. I'm just -- 04:00PM

8 MR. RAVEL: There you go. 04:00PM

9 MS. JOHNSON: There we go. Okay. Let's 04:00PM

10 mark this as 73. I'm going to mark yours as 73. Excuse 04:00PM

11 me. 04:00PM

12 MR. RAVEL: And the spectroscopy is 04:00PM

13 attached. 04:00PM

14 (Exhibit 73 marked) 04:00PM

15 Q. (BY MS. JOHNSON) So let's use Document 73 to 04:00PM

16 talk about this process. Okay? 04:01PM

17 A. Sure. 04:01PM

18 Q. Okay. So when was Document 73 made? 04:01PM

19 A. It was yesterday. 04:01PM

20 Q. Okay. So this is a recent document? 04:01PM

21 A. Correct. 04:01PM

22 Q. Okay. Let's look at Page 2 of that. 04:01PM

23 A. Yes. Yesterday just the summary page. 04:01PM

24 Q. Yesterday made the summary and then -- 04:01PM

25 A. But these was maybe -- 04:01PM

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1 MR. RAVEL: Week ago. 04:01PM

2 A. -- one week ago. Yeah. 04:01PM

3 Q. (BY MS. JOHNSON) It says, "Monday,
4 October 29th." So I take it that was 2018. 04:01PM

5 A. Yeah. 04:01PM

6 Q. On the next page, on Page 2. Can you look at
7 Page 2? 04:01PM

8 Okay. So let me ask -- so the first --
9 the first -- it says, "Run 1," and then under that it
10 says "LLDPE," is that right? 04:01PM

11 A. Yes. 04:01PM

12 Q. Okay. 04:01PM

13 A. LLDPE, correct. 04:01PM

14 Q. So when you melt the pellets together, did you
15 melt the pellets that looked like LLDPE pellets
16 together? 04:02PM

17 A. No. 04:02PM

18 Q. Okay. Tell me how that works. 04:02PM

19 A. Okay. The -- on this graph, you can see there
20 are four spectrums. 04:02PM

21 Q. Uh-huh. 04:02PM

22 A. The first spectrum representing a nonFormosa
23 polyethylene sample. It means it is not Formosa
24 product. 04:02PM

25 Q. How do you know it wasn't a Formosa product? 04:02PM

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1 A. I got it from our R&D group. They -- they try
2 to analyze the competitor's sample for product
3 development purpose. I just randomly asked them to give
4 me one and then, you know, they -- of course, they have
5 a label. For sure that's not Formosa's.

6 Q. Okay. So you knew that wasn't a Formosa
7 product?

8 A. Not Formosa.

9 Q. This wasn't anything gathered in the baggy?

10 A. No, no, no.

11 Q. This was for comparison?

12 A. This is nonFormosa's --

13 Q. Got it. Okay.

14 A. -- polyethylene.

15 Q. Okay.

16 A. And then we -- of course, all of those
17 pellets, we have plenty of sample. And we made a film
18 and we test it with FTIR. We do a scanning. And this
19 is a spectrum we got.

20 And then we compare with the Formosa
21 polyethylene FTIR spectrum library. We have a lot of
22 different spectrums saved in the library. And we try to
23 match how close the spectrum matched one of these
24 Formosa spectrum. And the top match is this LLDPE,
25 which means it matched Formosa spectrum. For this

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1 particular LLDPE grade, it matched 67 percent.

04:03PM

2 Q. So the nonFormosa pellet matched the Formosa
3 LLDPE 67 percent of the time?

04:04PM

04:04PM

4 A. The spectrum. Comparing the spectrum.

04:04PM

5 Q. The spectrum matched 67 --

04:04PM

6 A. Matched 67 percent.

04:04PM

7 Q. So what does that mean?

04:04PM

8 A. That means the nonFormosa polyethylene
9 product, the majority of the base polymer is very
10 similar to Formosa's.

04:04PM

04:04PM

04:04PM

11 Q. Okay. So when -- let's go to the first
12 page of Document 73. So, for instance, when I look at
13 Cox Creek -- let's just go across.

04:04PM

04:04PM

04:04PM

14 Did you make this chart?

04:05PM

15 A. Yes, I did.

04:05PM

16 Q. Okay.

04:05PM

17 A. Well, I just summarized all the results here
18 to make it in this chart.

04:05PM

19 Q. So "PP Pellet % Visual" it says "20."

04:05PM

20 What does that mean?

04:05PM

21 A. 20 percent means -- like say this is Cox Creek
22 sample.

04:05PM

04:05PM

23 Q. Uh-huh.

04:05PM

24 A. -- they gave us.

04:05PM

25 Q. Uh-huh.

04:05PM

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1 A. 20 percent of the pellets in -- in this bag by
2 count were identified as possibly Formosa polypropylene
3 pellets.

4 Q. Okay. As possible or as polypropylene
5 pellets?

6 A. Possible.

7 Q. Okay. Why --

8 A. By -- by cut, by -- by shape.

9 Q. Okay. And then when you say, "PP FTIR
10 Matching, NA," you didn't have enough samples to test?

11 A. Correct.

12 Q. And how many do you need to -- because you
13 have to make the film, right?

14 A. Yeah.

15 Q. How many do you need?

16 A. Typically it's 10 to 15 pellets, but in some
17 cases at least we needed 6, but -- so when they say "NA"
18 means more than likely it's probably less than 6.
19 Probably 3 or so. I don't know.

20 Q. Okay. Just not enough to --

21 A. Not enough to -- to do the test.

22 Q. Okay. And then let's go to "LLDPE Visual."
23 The so 5 percent -- when you looked in the baggy, 5
24 percent were -- looked like they came from LLDPE, right?

25 A. Correct.

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1 Q. But that was enough to do an FTIR for LLDPE? 04:06PM

2 A. 5 percent -- that's a good question. That's a 04:06PM
3 good question. I know some of these if -- if you have 04:07PM
4 enough, they may have some other reason they can't do 04:07PM
5 it. 04:07PM

6 Q. Okay. 04:07PM

7 A. I have to check with our chemist. It may have 04:07PM
8 other reason -- 04:07PM

9 Q. Okay. 04:07PM

10 A. -- they can't do it. 04:07PM

11 Q. Okay. 04:07PM

12 A. Yeah. 04:07PM

13 Q. And so -- but it's the same kind of test for 04:07PM
14 PP versus LLDPE, right? 04:07PM

15 A. Same test, correct. 04:07PM

16 Q. Right. Okay. 04:07PM

17 And so then it says the percentage for 04:07PM
18 LLDPE matching in that Cox Creek was 43. 04:07PM

19 So what does that mean? 04:07PM

20 A. 43 means say if I have a spectrum for that 04:07PM
21 sample, I -- I scan it. I match same thing. I match 04:08PM
22 Formosa library. I only -- the best match I could get 04:08PM
23 was 43 percent to the Formosa library. 04:08PM

24 Q. Does that tell you that they were or were not 04:08PM
25 Formosa's pellets? 04:08PM

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1 A. Well, it's -- I can't make a conclusive --

04:08PM

2 Q. Yeah.

04:08PM

3 A. -- conclusion, but on this, if you want me to
4 give you educated estimate, say if I randomly pick one
5 of the nonFormosa polyethylene sample and I scan it, I
6 tested it and I compare with Formosa, I could get 67.

04:08PM

04:08PM

04:08PM

04:08PM

7 So 43 means to me is that sample is less
8 likely to be Formosa's because to be Formosa's, anything
9 needs -- based on this reference, needs to be greater
10 than 67 percent match. Formosa's -- because it's a
11 Formosa product, your matching percent should be higher
12 than nonFormosa product.

04:09PM

04:09PM

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04:09PM

04:09PM

13 Q. Have you tested how exposure to any of the
14 elements affects the FTIR process?

04:09PM

04:09PM

15 A. No, I haven't.

04:09PM

16 Q. So is it possible that exposure to water could
17 affect the FTIR process?

04:09PM

04:09PM

18 A. It could.

04:09PM

19 Q. And could exposure to sediment affect the FTIR
20 process?

04:09PM

04:10PM

21 A. To what? Sediment?

04:10PM

22 Q. Sediment. Could -- if they were -- if the
23 pellet were embedded in sediment, could that affect the
24 FTIR process?

04:10PM

04:10PM

04:10PM

25 A. It could, but like I said, we -- we soak it in

04:10PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 water to wash away the mud before we do the testing. 04:10PM

2 Q. Does exposure to sunlight affect the FTIR 04:10PM
3 process? 04:10PM

4 A. It could. 04:10PM

5 Q. Okay. 04:10PM

6 A. Yes. 04:10PM

7 Q. I want to compare Chart 73 to Page -- these 04:10PM
8 pages aren't numbered. If you look at this document, it 04:10PM
9 says "Visual Inspection and Categorization Cox Creek." 04:10PM
10 Just keep looking until you find Cox Creek. 04:10PM

11 MR. RAVEL: It's like this. There you 04:11PM
12 go. 04:11PM

13 Q. (BY MS. JOHNSON) Okay. Are you there with 04:11PM
14 me? 04:11PM

15 A. Yes. 04:11PM

16 Q. Okay. So let's just -- in this visual 04:11PM
17 inspection in Document 72 where we're looking at the 04:11PM
18 Cox Creek "Retain Sample" it says on the left and 04:11PM
19 "Unknown" it says on the right, right? 04:11PM

20 MS. GAINES: (Indicating.) 04:11PM

21 MS. JOHNSON: I'm sorry. 71. Okay. 04:11PM
22 Sorry. We're on the same page, aren't we? Oh, hold on. 04:11PM

23 (Recess from 4:11 p.m. to 4:12 p.m.) 04:11PM

24 Q. (BY MS. JOHNSON) So we're going to just kind 04:12PM
25 of go back and forth between these two -- 04:12PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 A. Okay.

2 Q. -- documents to kind of compare. We're just
3 going to look at Cox Creek.

4 So on Document 73, the colorful one --
5 this colorful chart, it says "PP by Visual" is
6 20 percent.

7 And is that the same number as on the
8 bottom visual PP?

9 A. Yeah.

10 Q. Okay. So these numbers on the chart you gave
11 me today --

12 A. It's from here.

13 Q. -- it's from here. Okay.

14 A. Correct.

15 Q. And then the spectrum matching percentages are
16 the yellow numbers here?

17 A. Should match.

18 Q. And they should match, and I see that
19 they do.

20 Okay. So on the right you say
21 "FPC Pellets, Inconclusive," and you can't say that any
22 of these are FPC pellets?

23 A. Yes. I put a reason under No. 3 there.

24 Q. Okay. "'Inconclusive' means the Visual shape
25 and the spectra matching analysis could not definitely

STEVE LEE - VOLUME 1 - November 09, 2018

1 conclude these pellets are Formosa's."

04:13PM

2 Now are these reasons? Are these your
3 reasons why they're not Formosa's pellets or are they --

04:13PM

04:13PM

4 A. Yeah, the 1, 2, 3 reason underneath.

04:14PM

5 Q. "It may not be uncommon for other plants to
6 also have plastic pellets with similar shapes and cuts."

04:14PM

04:14PM

7 What's the basis for that statement?

04:14PM

8 A. Well, we have seen other units -- well, other
9 plants in the area, their pellets, they look similar to
10 Formosa's.

04:14PM

04:14PM

04:14PM

11 Q. Can you tell me what plants those are?

04:14PM

12 A. I can't -- I mean, these -- these particular
13 sample I got from R&D group. I don't want to point a
14 finger. That's why I blacked it out.

04:14PM

04:14PM

04:14PM

15 Q. I'm sorry, but I need you to tell me.

04:14PM

16 A. I have to find out which one.

04:14PM

17 MR. RAVEL: And it's kept confidential.

04:14PM

18 Let's mark this -- let's at least mark this one

04:14PM

19 confidential.

04:14PM

20 MS. JOHNSON: Okay.

04:14PM

21 A. Yeah. I -- I didn't -- I try not to point a
22 finger to whose is that. But I can tell you when I find
23 out.

04:14PM

04:15PM

04:15PM

24 Q. (BY MS. JOHNSON) Okay. So do you know that
25 there are -- do you know whether there are any plants

04:15PM

04:15PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 that are within 50 miles of Formosa that make pellets
2 that are shaped like the PP pellets made at Formosa?

3 A. I haven't done any study or comparison myself,
4 but just based only a general idea, because Formosa's
5 li- -- our process is we are licensed from a know how
6 company. Our -- our process -- manufacturing process is
7 not proprietary. So there are many different plants
8 that are using similar process we're using --

9 Q. Uh-huh.

10 A. -- to produce plastic.

11 Q. Okay. But you're a scientist and you
12 understand the scientific method, and I'm trying to
13 understand if there is any basis for this conclusion
14 that there are other plants you say in the area.

15 So what do you define as "in the area"?

16 A. "In the area" means, you know, in this -- in
17 this bay area, in this Formosa Calhoun County
18 neighborhood.

19 Q. Okay.

20 THE REPORTER: Formosa --

21 MR. RAVEL: Calhoun County,
22 C-a-l-h-o-u-n.

23 THE WITNESS: Calhoun County
24 neighborhood, you know --

25 THE REPORTER: Okay.

STEVE LEE - VOLUME 1 - November 09, 2018

1 THE WITNESS: -- in this area. 04:16PM

2 THE REPORTER: Thank you. 04:16PM

3 Q. (BY MS. JOHNSON) The only other plant that 04:16PM
4 has pellets in Calhoun County is Nan-Ya Plastics, isn't 04:16PM
5 it? 04:16PM

6 A. Well, as I know, Dow Chemical and. Of course, 04:16PM
7 Victoria there are some -- some plants they have plastic 04:16PM
8 product too. 04:16PM

9 Q. In Calhoun County? 04:16PM

10 A. Not Calhoun County. 04:16PM

11 Q. Okay. 04:16PM

12 A. In Victoria. I don't know if Victoria County 04:16PM
13 or in Victoria area. 04:16PM

14 MS. WILSON: In the barge canal. 04:16PM

15 Q. (BY MS. JOHNSON) Okay. So when you're saying 04:16PM
16 "in the area," your area goes all the way to Victoria? 04:17PM

17 A. Well, it is in this neighborhood of -- in this 04:17PM
18 neighborhood of Formosa. I didn't -- I didn't scope 04:17PM
19 it -- you know, the mileage, you know, I didn't scope 04:17PM
20 that. 04:17PM

21 Q. Okay. Did -- so -- so when you say it's not 04:17PM
22 uncommon for other plants in the area, "the area" is not 04:17PM
23 a defined term in your study? 04:17PM

24 A. No. No. Well, this is not a study. This is 04:17PM
25 just by -- by my -- like I just said, Formosa is not 04:17PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 using a proprietary process --

04:17PM

2 Q. Uh-huh.

04:17PM

3 A. -- to make plastic.

04:17PM

4 Q. Right.

04:17PM

5 A. So the equipment we're using like extruder,
6 the cutter, we're using is just an industry standard
7 equipment.

04:17PM

04:17PM

04:17PM

8 Q. Uh-huh.

04:17PM

9 A. So if we can buy, other people can use it --
10 can buy it. If they use the equipment, they can get
11 similar shape and cut we have. That's the base I have.
12 I didn't do any study myself by comparison, okay, this
13 neighborhood, their -- their pellets, yeah, they look
14 the same, no.

04:17PM

04:18PM

04:18PM

04:18PM

04:18PM

04:18PM

15 Q. So you can't tell the Court -- it's not your
16 opinion that you know you have identified these as
17 pellets from other companies, have you?

04:18PM

04:18PM

04:18PM

18 A. I have seen -- I have seen other competitors
19 in the past that their -- if you go to a show -- plastic
20 show, they'll give you all kinds of pellets, you know.
21 They all look similar to me, you know. It's not just
22 Formosa look like that. It all looks similar.

04:18PM

04:18PM

04:18PM

04:18PM

04:18PM

23 Q. Uh-huh.

04:18PM

24 A. That's what I mean.

04:18PM

25 Q. Okay. So -- okay. Inconclusive No. ii says,

04:18PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 "FTIR testing of a Non-FPC PE sample shows a spectrum
2 pattern match up to 67%."

3 What does that mean?

4 A. Okay. In this study we -- we do two tests.
5 One is the individual. The other is the FTIR scan.
6 Okay? And the attachment for this Document 73 to show
7 us -- I just randomly picked one, nonFormosa
8 polyethylene. Their -- the FTIR scan spectrum just
9 match one of the Formosa spectrum by 67 percent.

10 Q. Uh-huh.

11 A. So that tells me if you want to use FTIR to
12 identify Formosa's, in my opinion, by educated guess, in
13 order to be Formosa, the -- the matching percent has to
14 be better than 67 percent because our own product
15 compare with own library, it should match better.

16 Q. Have you com- -- have you run a base analysis
17 to test random samples, for instance, of PP pellets to
18 see if they match a hundred percent a hundred percent of
19 the time?

20 A. For Formosa, we have done our own sample we
21 can match a hundred percent. But not nonFormosa. I
22 haven't done any study. This is just a random sample
23 we -- we got it from our R&D group.

24 Q. Okay.

25 A. Just picked one.

STEVE LEE - VOLUME 1 - November 09, 2018

1 Q. I'm just asking like a baseline for
2 comparison.

3 When you did this test, did you do -- take
4 any other samples, like from PP, and run two or three
5 times doing this film to see if each time you ran the
6 PP, you got a hundred percent match?

7 A. Okay. Theoretically, you will never get a
8 hundred percent match, just like you make a cake.

9 Q. Right.

10 A. You'll never make exactly the same each time.
11 You can get a high percentage match, but you'll never
12 get hundred percent match. But the higher percent match
13 means they're -- you know.

14 Q. I understand that.

15 A. Yeah.

16 Q. So I guess what I'm asking is, did you run any
17 baselines on all these different types of pellets to see
18 what the variability and the match is on pellets that
19 you know are Formosa's?

20 A. Baseline?

21 Q. Yes.

22 A. No. I -- the only reference sample I ran was
23 these two. Randomly pick one just to see, you know, in
24 general how is Formosa's product compared to any other
25 vendor's product on the market, what kind of matching.

STEVE LEE - VOLUME 1 - November 09, 2018

1 Q. I understand. And I'm asking you and I just
2 want to be clear that there's never been -- you've never
3 run this --

4 A. Baseline.

5 Q. -- baseline to make sure that's pellets match
6 more than 67 percent of the time?

7 A. No.

8 Q. Okay.

9 A. I have not.

10 Q. You didn't do that for PP, PE1, or any of the
11 different pellets?

12 A. Yes.

13 Q. Okay. Yes, you did or --

14 A. No, no.

15 Q. You didn't do it?

16 A. Yeah.

17 Q. Okay.

18 A. No, I didn't do it.

19 Q. Yeah. Sorry. Sometimes when we're doing yes
20 and nos, it's confusing. Okay.

21 Did you do any additional testing to the
22 pellets you determined not to be Formosa's or is all you
23 did was this FTIR?

24 A. All we did was FTIR because again, the samples
25 we received were very limited.

STEVE LEE - VOLUME 1 - November 09, 2018

1 Q. I understand.

2 A. Very limited amount. You know, for our
3 quality control, typically we get 10-pound bag to do all
4 the tests.

5 Q. I understand.

6 What's the margin of error of this test?

7 A. This (indicating)?

8 Q. Yes.

9 A. Like I said, inconclusive means I couldn't --
10 what did I say? Inconclusive means I could not -- I
11 could not definitely conclude these pellets are
12 Formosa's. By the same token, I cannot conclude they
13 are not Formosa's.

14 Q. Right. Because it's not a big enough sample?

15 A. Not big enough sample and the testing we
16 perform. This is only very vague. But this is probably
17 the best conclusion I can give you. But if you want me
18 to give you educated guess, this is a guess I can give
19 you based on the variable data I have.

20 Q. I understand.

21 Is FTIR also a spectrum microscope or no?

22 A. It's a spectrum test. It's not a microscope.

23 Q. Does it like shoot lasers or what does it do?

24 A. It shoots infrared light.

25 Q. Okay. Okay. And how long does it take to run

STEVE LEE - VOLUME 1 - November 09, 2018

1 that test?

04:24PM

2 A. Very quick. Like three minutes.

04:24PM

3 Q. Oh.

04:24PM

4 A. But you have to -- altogether probably less
5 than ten minutes.

04:24PM

04:24PM

6 Q. Is it an expensive test to run?

04:24PM

7 A. Not really.

04:24PM

8 Q. Okay. Do you test your pellets -- do you know
9 whether you test your pellets differently than pellets
10 from other facilities?

04:24PM

04:24PM

04:24PM

11 MR. RAVEL: Objection, form.

04:25PM

12 Q. (BY MS. JOHNSON) Yeah. That's not a
13 well-written question. Sorry. That was bad example of
14 lawyering.

04:25PM

04:25PM

04:25PM

15 Do you have more than one -- I guess I
16 would call it signature of pellets from other plants?
17 You had this -- you started with the pellets from
18 another plant that you compared it to. Do you have more
19 than one of those?

04:25PM

04:25PM

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04:25PM

20 A. Not that I know of. I haven't done studies
21 like that.

04:25PM

04:25PM

22 Q. Okay. And have you run this FTIR test on any
23 older pellets of Formosa's?

04:25PM

04:25PM

24 A. For this study?

04:25PM

25 Q. Yes.

04:25PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 A. No.

2 Q. Okay.

3 A. All we did was compare by -- to the existing
4 library.

5 Q. I understand.

6 A. These are older scans.

7 Q. Okay. Do you know something called a Fourier,
8 F-O-U-R-I-E-R, transform infrared microspectroscopy?
9 I'll show it to you.

10 A. Yeah. That's an FTIR.

11 Q. Oh, that's what --

12 A. But -- but the micro- -- well, maybe somebody
13 called microspec- -- I just call it Fourier transform
14 infrared spectroscopy. I -- we don't use "micro." But
15 if you want to add "micro," well, you can say, I guess.

16 Q. Is that different? Would that be the same
17 thing?

18 A. I'm not sure exactly the same or not, but we
19 don't use microspectroscopy.

20 Q. Okay.

21 A. I just use spectroscopy.

22 Q. Okay. And I talked to you a little bit about
23 absorption, but are you aware that plaintiffs have
24 shared preliminary information about mercury potentially
25 being on pellets found in Lavaca Bay?

STEVE LEE - VOLUME 1 - November 09, 2018

1 A. I read a document.

04:26PM

2 Q. Okay.

04:27PM

3 A. Yeah.

04:27PM

4 Q. And you read the document that had
5 concentrations? Is that what it was?

04:27PM

04:27PM

6 A. No. It was just Steve show me. There's a --
7 the plaintiff documentation showing suspect it could
8 have mercury in the bay.

04:27PM

04:27PM

04:27PM

9 Q. Okay. And has -- does that -- have you done
10 anything about that?

04:27PM

04:27PM

11 A. No.

04:27PM

12 Q. Have you been asked to do anything about that?

04:27PM

13 A. No.

04:27PM

14 Q. Do you have any opinion about the potential
15 for mercury to attach to the pellets?

04:27PM

04:27PM

16 THE WITNESS: Should I answer this?

04:27PM

17 MR. RAVEL: Yeah. If you have an
18 opinion, you can tell her.

04:27PM

04:27PM

19 Q. (BY MS. JOHNSON) Yeah. Yeah.

04:27PM

20 A. Well, in order for mercury to attach to
21 plastic, somehow you have -- need to have a mechanism to
22 have a plastic to -- to touch mercury because mercury is
23 heavy.

04:27PM

04:27PM

04:28PM

04:28PM

24 Q. Right.

04:28PM

25 A. So more than likely, it will stay at the

04:28PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 bottom unless somehow your plastic is trapped for some
2 reason at the bottom. I don't know.

3 Q. There is mercury in Formosa's discharge in
4 Lavaca Bay, isn't there?

5 A. Not that I know of. Formosa doesn't use
6 mercury. We don't use mercury like Alcoa does.

7 Q. Okay. Well, let's assume that the pellets
8 tested with some mercury.

9 Would -- what would you want to know about
10 that?

11 A. Pellets tested with --

12 Q. Let's assume that the pellets were run through
13 a process and came back with mercury.

14 A. Okay.

15 Q. What would you -- what questions would you ask
16 about that?

17 A. In terms of?

18 Q. What would you be curious about?

19 A. As -- as a scientist, I would -- if you're
20 give me a sample, I will test it.

21 Q. How would you test it?

22 A. In one of our labs we have a mercury analyzer.

23 Q. A direct mercury analyzer? Is that what it's
24 called?

25 A. Well, it -- it can use acid to -- to digest

STEVE LEE - VOLUME 1 - November 09, 2018

1 out -- to dissolve mercury in acid and then test the
2 mercury concentration in acid.

3 Q. Why do you have a mercury analyzer?

4 A. That's part of the permit requirement to test
5 the mercury concentration in the wastewater.

6 Q. Okay.

7 A. Part of permit for wastewater discharge.

8 Q. Okay. So that's what I was asking you about
9 when I was saying about the permit has allowed some
10 mercury to be discharged, is that right?

11 A. Well, preferably it's zero.

12 Q. I agree.

13 A. Yeah.

14 Q. I agree.

15 A. Yeah. But, you know, whether we have that
16 source or not, it still need to be monitored.

17 Q. Right. Okay. So you have a lab -- is the lab
18 that tests for mercury one that you run?

19 A. There's a different lab from -- from mine.

20 Q. Okay. Is -- what I've been told is there's
21 something that uses combustion gold amalgamation and
22 atomic absorption to test for mercury.

23 Does that sound like how you do it here?

24 A. No.

25 Q. Okay. And are you familiar with a method to

STEVE LEE - VOLUME 1 - November 09, 2018

1 speciate mercury using alkaline extraction? Do you know
2 what I would mean by speciating mercury?

3 A. To identify it's mercury.

4 Q. Well, to identify what kind of mercury it
5 would be.

6 A. What kind of mercury.

7 Q. Right.

8 A. The test that I know that Formosa would test,
9 we just test mercury itself.

10 Q. Okay.

11 A. When -- when you guy digest it in the acid,
12 it's -- it's dissolved as mercury form.

13 Q. Okay. And methyl- -- does Formosa -- does
14 your lab, sorry, have the capacity to distinguish
15 between methyl and ethyl mercury?

16 A. No, not that I know of.

17 Q. Okay. Do you have any other questions that
18 you would ask about the mercury?

19 A. Do I have other questions --

20 Q. Yes.

21 A. -- I would ask?

22 Q. Yes.

23 A. I mean, this is a very wide question. I mean,
24 it -- is it related to the testing on my -- my job or
25 just general as a citizen?

STEVE LEE - VOLUME 1 - November 09, 2018

1 Q. However you want to answer it.

04:32PM

2 MR. RAVEL: If the answer is none, you
3 can say "none."

04:32PM

04:32PM

4 A. Yeah, I don't have any.

04:32PM

5 Q. (BY MS. JOHNSON) You don't have any
6 questions?

04:32PM

04:32PM

7 A. No.

04:32PM

8 Q. No scientific questions about the test -- the
9 mercury testing or anything?

04:32PM

04:32PM

10 A. Well, if you can be more specific, I can
11 answer my opinion. But if this question is -- I don't
12 know what area you're trying to get answer for.

04:32PM

04:32PM

13 Q. No. I'm really just trying to understand if
14 there is any question that if you were sitting across
15 from the scientist who did the test, you would say,
16 Tell me about X, if there's anything you would want to
17 know about that testing.

04:32PM

04:32PM

04:32PM

04:32PM

04:32PM

18 A. You're talking about ethyl mercury and methyl
19 mercury to --

04:33PM

04:33PM

20 Q. Or any kind of mercury. Yeah.

04:33PM

21 A. Well, as a scientist, I would first Google it
22 out to find out where those ethyl or methyl mercury are
23 coming from. And then I can find out, you know, what
24 kind of instrument would be able to do the test like you
25 said.

04:33PM

04:33PM

04:33PM

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04:33PM

STEVE LEE - VOLUME 1 - November 09, 2018

1 Q. Okay. And do you have any opinion whether
2 polyethylene could attach to Formosa's pellets?

3 A. On Formosa pellet -- polyethylene is a Formosa
4 pellet.

5 Q. Okay. They're made of polyethylene.

6 A. Yeah.

7 Q. So it wouldn't be on the outside of them?

8 A. Yeah. Like PE means polyethylene, so...

9 Q. Okay. I forgot to ask you this when we were
10 talking about the pellets.

11 Do they have any kind of powder on the
12 outside of them or are they solid?

13 A. Solid.

14 Q. Okay. Do you have an opinion about whether
15 vinyl chloride can attach to Formosa's plastic?

16 A. I have no idea.

17 Q. Okay. Have you looked at the testimony of
18 Jeremy Conkle, who's been hired by plaintiffs as an
19 expert in this case?

20 A. No.

21 Q. Okay. Have you been consulted by Robert Hale
22 who's been --

23 A. No.

24 Q. Okay.

25 MS. JOHNSON: You know what, I want to

STEVE LEE - VOLUME 1 - November 09, 2018

1 take like a five-minute break and we may almost be
2 finished.

3 THE WITNESS: Okay. That sounds good.

4 MS. JOHNSON: I'd rather -- I'll be more
5 efficient if I just break and --

6 THE WITNESS: That's fine.

7 MS. JOHNSON: -- let you take a rest.

8 Okay?

9 THE WITNESS: Sure. I appreciate that.

10 MS. JOHNSON: Okay. Sure.

11 (Recess from 4:34 p.m. to 4:37 p.m.)

12 Q. (BY MS. JOHNSON) Okay. Mr. Lee, you're going
13 to get a chance to look at your deposition, but as we're
14 sitting here, are there any of the questions that I've
15 asked you or any that you want me to ask in a different
16 way or do you have any answers you've given you'd like
17 to clarify for me?

18 A. No, unless you're -- you're not clear about
19 what I said. I can re-explain it to you.

20 MS. JOHNSON: I very much appreciate your
21 time and thank you for coming and I know that we delayed
22 your coming out, but I appreciate your time and I hope
23 you have a good weekend. We're finished. Okay.

24 THE WITNESS: Oh, okay.

25 MR. RAVEL: We'll reserve our questions

STEVE LEE - VOLUME 1 - November 09, 2018

1 until time of trial. Let's go off the record for a
2 second.

04:37PM

04:37PM

3 (Deposition concluded 4:37 p.m.)

04:37PM

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STEVE LEE - VOLUME 1 - November 09, 2018

1 I, STEVE LEE, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5 _____
6 STEVE LEE

7
8 THE STATE OF _____)
9 COUNTY OF _____)

10
11 Before me, _____, on this day
12 personally appeared STEVE LEE, known to me (or proved to
13 me under oath or through _____)
14 (description of identity card or other document)) to be
15 the person whose name is subscribed to the foregoing
16 instrument and acknowledged to me that they executed the
17 same for the purposes and consideration therein
18 expressed.

19 Given under my hand and seal of office this
20 _____ day of _____, _____.

21
22 _____
23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF _____
25 COMMISSION EXPIRES: _____

STEVE LEE - VOLUME 1 - November 09, 2018

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

SAN ANTONIO BAY ESTUARINE)
WATERKEEPER, et al,)
)
Plaintiffs,)
) CIVIL ACTION
VS.)
) NO. 6:17-cv-00047
FORMOSA PLASTICS CORP.,)
TEXAS, et al,)
)
Defendants.)

REPORTER'S CERTIFICATION
THE CONFIDENTIAL AND ATTORNEYS' EYES ONLY
ORAL DEPOSITION OF
STEVE LEE
November 9, 2018
Volume 1

I, Julie A. Jordan, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, STEVE LEE, was duly sworn by the
officer and that the transcript of the oral deposition
is a true record of the testimony given by the witness;

That the original deposition was delivered to
Ms. Erin L. Gaines, attorney for the Plaintiffs;

That a copy of this certificate was served on all
parties and/or the witness shown herein on _____.

That the amount of time used by each party at the
deposition is as follows:

Ms. Amy R. Johnson - 01 HOUR(S):17 MINUTE(S)

STEVE LEE - VOLUME 1 - November 09, 2018

1 Ms. Erin L. Gaines - NONE

2 Mr. J. Stephen Ravel - NONE

3
4 I further certify that pursuant to FRCP Rule 30 (f)
5 (1) that the signature of the deponent:

6 XXXXX was requested by the deponent or a party
7 before the completion of the deposition and that the
8 signature is to be before any notary public and returned
9 within 30 days from date of receipt of the transcript.
10 If returned, the attached Changes and Signature Pages
11 contain any changes and reasons therefore:

12 _____ was not requested by the deponent or a party
13 before the completion of the deposition.

14 I further certify that I am neither counsel for,
15 related to, nor employed by any of the parties or
16 attorneys in the action in which this proceeding was
17 taken, and further that I am not financially or
18 otherwise interested in the outcome of the action.

19 Certified to by me this 27th of December, 2018.

20 *Julie A. Jordan*

21 Julie A. Jordan, Texas CSR 3203
22 Expiration Date: 12/31/19
23 Firm Registration No. 280
24 JULIE A. JORDAN & COMPANY
25 7800 North MoPac Expressway
Suite 120
Austin, Texas 78759
(512) 451-8243
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E-MAIL: info@jordanreporting.com

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1 COUNTY OF TRAVIS)

2 STATE OF TEXAS)

3
 4 I hereby certify that the witness was notified on
 5 _____ that the witness has 30 days
 6 (or _____ days per agreement of counsel) after being
 7 notified by the officer that the transcript is available
 8 for review by the witness and if there are changes in
 9 the form or substance to be made, then the witness shall
 10 sign a statement reciting such changes and the reasons
 11 given by the witness for making them;

12 That the witness' signature was/was not returned as
 13 of _____.

14 Subscribed and sworn to on this _____ day of

15 _____, _____.

16
 17
 18 _____
 19 Julie A. Jordan, Texas CSR 3203
 20 Expiration Date: 12/31/19
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