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Technology Specialist in Today's Litigation

Date: August 30, 2016

A&B File No.: 44057

To: Counsel of Record _____

To: Deponent Nathan Lowe _____

In Re: Lonnie Boyd, et al. vs. Mars Petcare US, Inc., et al. _____

Counsel of Record - Signature of the Deposition is Required.

Please have the deponent make corrections/changes if any, on the Errata Sheet ONLY. Sign name on the form where indicated and sign the Certificate before a Notary. Please return ONLY the original executed, notarized Certificate and completed, signed Errata to our offices within 30 days from the date this is received. If you have any questions please call our office.

X

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The Attached executed and notarized copies of Certificate(s) and Errata Sheet(s) were returned to our office on _____ and are sent to you for your files.
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Synchronized Voice/Video to text CD/DVD to be inserted in the transcript of the above referenced deponent.

Please file the attached Original(s) in the appropriate Court file.

Enclosed please find: _____

cc: Mr. Mark Schloegel, Mr. Mathew L. Larsen, Mr. Richard Ahrens, Mr. Ryan Van Fleet,
Mr. S. Jacob Sappington

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AFFIDAVIT

STATE OF _____:

COUNTY/CITY OF _____:

Before me, this day, personally appeared, NATHAN LOWE, who, being duly sworn, states that the foregoing transcript of his/her Deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition, along with the attached Errata Sheet, if changes or corrections were made.

NATHAN LOWE

SUBSCRIBED and SWORN to before me this _____ day of _____, 2016 in the jurisdiction aforesaid.

My Commission Expires

Notary Public



Page 1

1 .
 2 IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI
 3 AT JOPLIN
 4 .
 5 .
 6 LONNIE BOYD, et al.,
 7 Plaintiffs,
 8 .
 9 vs. Case No. 12AO-CC00301-01
 10 .
 11 MARS PETCARE US, INC., et al.
 12 Defendants.
 13 .
 14 .
 15 DEPOSITION OF MR. NATHAN LOWE,
 16 produced, sworn, and examined on Wednesday,
 17 August 17, 2016, at 1:36 p.m. of that day,
 18 at the offices of The Glades Law Firm, 1120
 19 Southeast Murphy Boulevard, Joplin,
 20 Missouri, before me, VICKIE L. SALMONS, CCR,
 21 in the above-captioned cause; taken on
 22 behalf of Defendants Elnicki, Inc., KAMO
 23 Grain Trucking, LLC, and KAMO Grain, Inc.
 24 .
 25 .

Page 2

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 22 Mr. Rick Elnicki
 23 .
 24 .
 25 .



1 INDEX

2 .

3 TESTIMONY OF

4 MR. NATHAN LOWE: EXAMINATION

5 By Mr. Ahrens: 6,107,109,110

6 By Mr. Sappington: 83

7 By Mr. Larsen: 96

8 By Mr. Schloegel: 98, 108, 110

9 .

10 REPORTER'S CERTIFICATE: 116

11 .

12 Not continuously present: (*).

13 Phonetic spellings are signified by: (ph.)

14 Exactly as stated: (sic)

15 .

16 EXHIBITS

17 NO. DESCRIPTION IDENTIFIED

18 No 1 Personnel file 6

19 No 2 Affidavit of Mr. Lowe 6

20 No 3 Bin Entry & Fumigation 68

21 Training 2010 Sign-in sheet

22 (Exhibit 1 through 3 attached to the

23 original transcript with scans sent to Mr.

24 Ahrens, Mr. Schloegel, Mr. Larsen, Mr.

25 Sappington, and Mr. VanFleet.)

1 a question, let me finish my question before

2 you start to answer. Otherwise, the court

3 reporter has a tough time making a record.

4 Will you do that for me?

5 A. Yes.

6 Q. And if for any reason you don't

7 understand the question I'm asking, will you

8 ask me to clarify it?

9 A. Yes.

10 Q. Thank you. Are you using any

11 medications or anything else today that

12 would interfere with your ability to

13 understand my questions and answer them

14 truthfully?

15 A. No.

16 Q. Let's start with some background

17 first. What's the highest level of

18 education that you've achieved?

19 A. GED.

20 Q. And when did you achieve that?

21 A. A few years out of high school.

22 Q. Okay. How long were you out of high

23 school is my question to you.

24 A. A couple years.

25 Q. Okay. What sorts of employment did

1 (Exhibit No 1 and Exhibit No 2

2 marked for identification prior to the

3 commencement of the proceedings.)

4 Whereupon,

5 MR. NATHAN LOWE,

6 being produced, sworn, and examined,

7 testified as follows:

8 EXAMINATION

9 BY MR. AHRENS:

10 Q. Would you tell us your name for the

11 record, sir?

12 A. Nathan Lowe.

13 Q. Where do you live, Mr. Lowe?

14 (redacted)

15 Q. What's your address there?

16 (redacted)

17 Q. Mr. Lowe, my name is Richard Ahrens.

18 I'm a lawyer for Elnicki, Inc., and KAMO

19 Grain, Inc., and KAMO Grain Trucking. I and

20 these other lawyers are going to be asking

21 you some questions today. Have you ever had

22 your deposition taken before?

23 A. No.

24 Q. What I'd like you to do for me, if

25 you could, is, first of all, when I ask you

1 you have from when you left high school to

2 when you started to work for KAMO Grain?

3 A. Factory work, laborer, and welder.

4 Q. Did you do any work that involved

5 pesticides or herbicides in any of your

6 earlier work before you went to work for

7 KAMO Grain?

8 A. No.

9 Q. And am I right that you worked at

10 KAMO Grain from July of 2009 through March

11 of 2012?

12 A. That sounds about right.

13 Q. Less than three years?

14 A. I thought it was a little over.

15 Q. A little over three years? Okay.

16 What was your job there?

17 A. I was hired on as a welder.

18 Q. Did you ever have any other job

19 there other than welder?

20 A. Yeah. It escalated into

21 maintenance. I worked the dump pit, load

22 trucks, unload trucks.

23 Q. Did you have any experience at all

24 with pesticides before you started to work

25 for KAMO Grain?



Investigative Specialties and Computer Litigation

1 A. No.
 2 Q. How did you come to work at KAMO
 3 Grain?
 4 A. I was looking for work. And he
 5 needed a welder.
 6 Q. How did you find him?
 7 A. I believe I just walked in -- I
 8 called him on the telephone.
 9 Q. You were just calling businesses to
 10 see if they needed a welder?
 11 A. I lived in Arizona at the time. And
 12 yeah, I called him, and he said he did.
 13 Q. Did you grow up here in the
 14 (redacted)area?
 15 A. Yes.
 16 Q. How long had you been out in
 17 Arizona?
 18 A. Seven years.
 19 Q. Okay. So you were coming back from
 20 Arizona, and you were looking for jobs here.
 21 And did you know KAMO Grain before you
 22 called them?
 23 A. No.
 24 Q. Did you know -- did you know the
 25 Elnickis before you called them?

1 these are documents from your -- some
 2 documents from your personnel file at KAMO.
 3 There is a -- what looks like a sign-in
 4 sheet for Bin Entry and Fumigation Training
 5 in 2010. Do you see that, sir?
 6 A. Yes.
 7 Q. Did you have some bin entry and
 8 fumigation training in 2010?
 9 A. I don't remember it.
 10 Q. Do you remember what it consisted
 11 of?
 12 A. I don't remember it.
 13 Q. You have no recollection of that
 14 training at all?
 15 A. No, I don't.
 16 Q. Do you know how long it took?
 17 A. I don't.
 18 Q. Do you remember if they showed you
 19 any slides or anything like that?
 20 A. They -- they just showed us flash
 21 cards and a movie.
 22 Q. Okay.
 23 A. But I don't remember it.
 24 Q. Did you go through training more
 25 than once when you were employed at KAMO

1 A. I went to school with one of their
 2 sons.
 3 Q. Oh, okay. Who did you go to school
 4 with?
 5 A. Cody.
 6 Q. Okay. So you knew Cody's family had
 7 a business?
 8 A. I was aware of it after I moved
 9 back.
 10 Q. Okay. What kind of training did you
 11 have as a welder before you came to work for
 12 KAMO Grain?
 13 A. I went to Nevada Welding Institute.
 14 Q. Did they give you some sort of a
 15 certificate?
 16 A. Yeah.
 17 Q. So you were a certified welder or
 18 whatever --
 19 A. Yes.
 20 Q. -- the credential is?
 21 A. Yes.
 22 Q. Okay. Good. I'm going to hand you
 23 what's been marked as Lowe Exhibit 1. Let
 24 me make sure I've got the right one here, if
 25 I could, for copy purposes. Yeah. And

1 Grain?
 2 A. Not that I can recall, no.
 3 Q. Okay. So do you think this bin
 4 entry and fumigation training was the only
 5 training of that kind that you might have
 6 received while you were there?
 7 A. I don't -- I don't remember getting
 8 any training.
 9 Q. Okay. So you don't remember this at
 10 all?
 11 A. No. I just remember sitting in a --
 12 sitting in a room and they had showed us a
 13 movie. They said it was a safety -- safety
 14 meeting. And that's about it.
 15 Q. Do you remember who conducted the
 16 training?
 17 A. No, I don't. Sometimes Zach would.
 18 Q. Do you remember any -- who is Zach?
 19 A. He worked in the office.
 20 Q. What's his last name?
 21 A. Parish.
 22 Q. Do you remember anybody other than
 23 Zach Parish who might have given you
 24 training?
 25 A. No. I can't think of the guy's



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1 name.

2 Q. Okay. So you don't now remember
3 whether any of that training related to
4 fumigant use?

5 A. Can you repeat that again?

6 Q. Do you now remember whether any of
7 the training you got in 2010 when you signed
8 this sheet related to fumigant use?

9 A. Well, like I said, I don't believe I
10 got any training. It was just something
11 that I was -- that was pushed on me. There
12 was quizzes at the end -- it wasn't quizzed.
13 It was -- everybody worked in a group. If
14 you didn't know the answer, you looked at
15 the guy beside you. It was just something
16 that you had to do to continue to work there
17 and, you know, feed my family. So I just
18 did what I had to do. As far as reading any
19 of it, I didn't -- I can't recall reading
20 any of it or reviewing anything. So --

21 Q. By this time in August of 2010 had
22 you done any work with PhosFume?

23 A. Yeah. I worked with it from the day
24 I started.

25 Q. All right. Let's do a little bit of

Page 15

1 your time was spent on welding?

2 A. I'd say 50 percent.

3 Q. Was there a backlog of projects that
4 you had to work on?

5 A. I'd just kind of hit it as they

6 came.

7 Q. Had there been a welder there before
8 you?

9 A. I assume so.

10 Q. Okay. So you spent about half your
11 time doing the welding. What did you spend
12 the other half of your time doing?

13 A. Dumping trucks, loading trucks,
14 unloading trucks.

15 Q. When you say "dumping trucks," what
16 does that mean?

17 A. Unloading them, dump them into --
18 dumping them into the bins.

19 Q. Okay. Explain for us how that
20 worked at KAMO Grain, Inc. Would the truck
21 drivers bring in loads of grain from off
22 site?

23 A. Yes.

24 Q. And did -- was it the KAMO Grain
25 drivers who were bringing those in, or were

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1 that history, then. We'll talk more about
2 this personnel file later. When you first
3 started to work at KAMO Grain, who was your
4 boss?

5 A. Rick.

6 Q. Rick Elnicki?

7 A. Yes.

8 Q. And he's here today?

9 A. Yes.

10 Q. And what did you understand your job
11 duties to be when you first went on the job?

12 A. I was hired on as a welder, working
13 at the grain elevator.

14 Q. What kind of welding do they need
15 done at a grain elevator?

16 A. Structural welding, repairing bins.

17 Q. So it's basically repairing the bins
18 and the other structures at the elevator?

19 A. Sure.

20 Q. And did they have enough welding
21 work to keep you busy in a full-time basis?

22 A. At the beginning with the welding
23 and the other chores, dumping trucks, yeah,
24 that did keep me busy.

25 Q. Okay. At the beginning how much of

Page 16

1 there other drivers as well?

2 A. Other drivers as well.

3 Q. Okay. And where did KAMO Grain get
4 its grain from in those days?

5 A. A number of places, I'd assume.
6 Farmers.

7 Q. They would draw from farmers all
8 around the Joplin-Pittsburg area?

9 A. Yeah.

10 Q. From both Missouri and Kansas?

11 A. I guess so.

12 Q. Okay. And sometimes the KAMO Grain
13 employees would go out to a farm and pick
14 the grain up. Sometimes some other driver
15 would bring it in from a farm; is that
16 right?

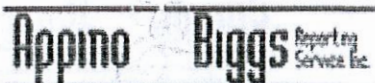
17 A. Yes.

18 Q. Okay. And then your job sometimes
19 was to unload the trucks?

20 A. Yes.

21 Q. How did you do that?

22 A. The truck would come in to the
23 facility, pull up at the dump pit. We'd be
24 informed of where to put it. Then we'd dump
25 it into the dump pit. It went up the



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1 elevator and dump it in the bin.

2 **Q. The dump pit, is a dump pit, like,**
3 **an open pit that the grain goes into?**

4 A. Yeah. It had a grate over the top.

5 **Q. It had a grate. Okay. And is there**
6 **then a conveyor system of some sort to take**
7 **the grain out of the pit and up into the**
8 **bins or the elevators?**

9 A. Yes.

10 **Q. And the grain -- how many bins were**
11 **there, overhead bins, when you started?**

12 A. I'm not sure.

13 **Q. Okay. So that -- what would happen**
14 **to the grain after it went into the overhead**
15 **bins? Would it just -- what's the next**
16 **thing that would happen to the grain?**

17 A. It was just sitting there. And if
18 it needed to be fumigated, then they'd tell
19 us. And we'd put fumigant in the dump pit
20 or we'd unload out of the overhead.

21 **Q. So sometimes you'd put fumigant into**
22 **the dump pit?**

23 A. Oh, yeah.

24 **Q. And sometimes you'd put it into the**
25 **overhead?**

Page 19

1 **Q. Were there spouts at the bottom of**
2 **the bin that would just drop the grain into**
3 **the truck? Is that how it worked?**

4 A. Yes.

5 **Q. And were there spouts on the sides**
6 **of Bins 1, 2, and 3 that you could use to**
7 **pump the grain into the trucks?**

8 A. You could auger it up. And -- you
9 could auger it up, run it up the leg. You
10 could put it wherever you wanted it.

11 **Q. Okay. Did you ever work as a truck**
12 **driver for KAMO Grain, Inc.?**

13 A. Not leaving the premises.

14 **Q. Did you ever go to the Mars Petcare**
15 **facility in Joplin?**

16 A. No.

17 **Q. Was Brice Elnicki employed there in**
18 **the whole time that you were there?**

19 A. Where?

20 **Q. At KAMO Grain.**

21 A. Yes.

22 **Q. Okay. So Brice was already working**
23 **there when you started?**

24 A. Yes.

25 **Q. Do you remember when you first**

Page 18

1 A. Well, essentially putting it in the
2 dump pit, it goes up to the overhead.

3 **Q. Did you ever climb up on a ladder or**
4 **something to actually throw the --**

5 A. Yes.

6 **Q. -- fumigant into the overhead bins**
7 **too?**

8 A. Yes.

9 **Q. In addition to the overhead bins,**
10 **were there large -- larger silo-type**
11 **structures on the elevator there?**

12 A. Yes.

13 **Q. What would you call those?**

14 A. The one, two, three bin.

15 **Q. Okay. They were also called Bins 1,**
16 **2, and 3. And did you ever put fumigant**
17 **into the one, two, and three bin?**

18 A. Yes, I have.

19 **Q. Okay. Then when it would come time**
20 **to ship some of the grain away from the**
21 **elevator and to a customer, how would that**
22 **work?**

23 A. They would take it out of the bin,
24 put it in a truck, and take it to the
25 customer.

Page 20

1 **started to use fumigants, you yourself?**

2 A. Using them? I was around them from
3 Day 1. Using them, I can't recall.

4 **Q. When you say you were around them**
5 **from Day 1, what does that mean?**

6 A. I was -- I seen what they were.
7 Aluminum cans that would be on the dock.
8 They'd be out by the dump pit everywhere,
9 empty cans.

10 **Q. Did the aluminum cans have labels on**
11 **them?**

12 A. Some did; some didn't.

13 **Q. Did you ever read the labels?**

14 A. I seen the labels.

15 **Q. Did you see the danger warnings on**
16 **the label?**

17 A. Yeah.

18 **Q. Okay. Who's the first person at**
19 **KAMO Grain who told you to apply fumigant to**
20 **grain?**

21 A. I can't remember.

22 **Q. Was it Brice?**

23 A. I can't remember.

24 **Q. What were you told to do?**

25 A. Are you talking about the first



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1 time?
 2 Q. The first time, if you remember.
 3 A. I can't remember the first time.
 4 Q. All right. Do you now remember any
 5 particular time applying fumigants to the
 6 grain at the KAMO Grain facility?
 7 A. Yeah. I remember, yeah.
 8 Q. How often did you do it? How often
 9 did you apply fumigant to grain?
 10 A. Often.
 11 Q. Once a week, once a year?
 12 A. Two to three, four times a week.
 13 Q. Okay. Who was your boss?
 14 A. Rick and Brice.
 15 Q. Did either Rick or Brice ever tell
 16 you how to use the fumigant?
 17 A. Not necessarily how, no.
 18 Q. Did they tell you what to do with
 19 the fumigant?
 20 A. Yes.
 21 Q. I'm just trying to get a little
 22 understanding, because you never used
 23 fumigant before, right?
 24 A. No.
 25 Q. Let's say the first -- let's say

1 A. Yes.
 2 Q. Did you ever wear a mask when you
 3 were applying fumigant?
 4 A. No.
 5 Q. Okay. So when you would -- let's
 6 say when you first started work there in --
 7 what did we say it was, 2009? When you
 8 would first start to go out to put fumigant
 9 in the pit, how much fumigant would you use?
 10 A. It wasn't a set amount. Just a
 11 couple caps here or half a can. It didn't
 12 -- I wasn't ever directed on how much.
 13 Q. How did you know how much to use?
 14 A. I didn't.
 15 Q. Let's say it's 2009 and it's -- and
 16 were you the one who decided it was time to
 17 put some fumigant in the pit?
 18 A. I wasn't the one that decided.
 19 Q. Okay. So either Rick or Brice would
 20 have given you the instruction to do that?
 21 A. Yes.
 22 Q. What would they tell you to do?
 23 A. To go dump these pellets and load or
 24 unload whoever's truck and hand it to him.
 25 Q. Would they -- would he just hand you

1 when you first started to go out to put
 2 fumigant in the pit. Did you wear any
 3 protective gear of any kind?
 4 A. Not that I can remember, no.
 5 Q. Did you wear any gloves?
 6 A. I can't remember. I always wore
 7 gloves.
 8 Q. Did you ever wear a respirator or a
 9 face mask at any time at KAMO Grain?
 10 A. Yes.
 11 Q. Did you wear that throughout the
 12 time you were employed there?
 13 MR. SCHLOEGEL: Are you
 14 talking about a face mask or a respirator?
 15 MR. AHRENS: Well, that's a
 16 good question.
 17 Q. (By Mr. Ahrens) Let's figure it out.
 18 Which did you wear? Did you wear a mask, a
 19 respirator, or both?
 20 A. Just a dust mask for painting.
 21 Q. Made of paper?
 22 A. Painting. Just for when I was
 23 painting.
 24 Q. Oh, I see. You wore a mask for
 25 painting.

1 -- Rick or Brice, would he just hand you the
 2 canister?
 3 A. Yes.
 4 Q. And leave it to you to figure out
 5 how much to use?
 6 A. Yes. They just told me to go dump
 7 it on there.
 8 Q. And would you dump it into the pit
 9 then?
 10 A. I would dump it in the pit, yes.
 11 Q. You wouldn't dump it on the load
 12 before it got unloaded into the pit, right?
 13 A. No. I wouldn't do that.
 14 Q. Okay. So in 2009 who else was doing
 15 this kind of work at KAMO Grain besides
 16 yourself? Who else was using the fumigant
 17 on site?
 18 MR. SCHLOEGEL: Are you
 19 talking about just 2009?
 20 MR. AHRENS: For starters,
 21 yeah.
 22 A. I was the only one that was out
 23 there. There's some college kids.
 24 Q. (By Mr. Ahrens) Okay. Was there
 25 anybody else who came along later who also



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1 did this kind of work, using the fumigant on
2 site?

3 A. I believe so, yeah.

4 Q. Who else did that?

5 MR. SCHLOEGEL: Are you
6 talking about now later on?

7 Q. (By Mr. Ahrens) Now I'm going from
8 2009 forward. The full three years you were
9 there. Who else did that kind of work while
10 you were there?

11 A. I don't know their names off the top
12 of my head. I don't understand your
13 question.

14 Q. Oh, okay. Sorry. Thank you for
15 telling me that. What I'm trying to do is
16 find out the names of everybody who worked
17 at KAMO Grain and who applied fumigant to
18 grain. And you've told us you did.

19 A. I did.

20 Q. Who else did it?

21 A. There was -- I've seen Brice do it.
22 I've seen Rick do it. There's -- I don't
23 know the college kids' names. Troy Wetzell,
24 I've seen him do it. David Thorns, I've
25 seen him do it. And that's about all I can

1 ever see him put pellets or tablets of
2 fumigant into truckloads of grain?

3 A. I couldn't say that I have or
4 haven't. I don't remember.

5 Q. Did you ever see any of the other
6 KAMO Grain truck drivers put pellets or
7 tablets of fumigant into truckloads of
8 grain?

9 A. I can't remember if they -- if I
10 seen them or not. I mean, they was tarping
11 them. Them was loading them. They was
12 unloading them and shuttled around the
13 facility. They could have.

14 Q. But you don't remember seeing it?

15 A. I don't remember seeing a particular
16 truck driver do it.

17 Q. Did you yourself ever put fumigant
18 into truckloads of grain before they were
19 shipped off site?

20 A. Yes.

21 Q. How often did you do that?

22 A. Often enough. Several times.

23 Q. And I know it's hard for you. But
24 we're trying to get your best recollection
25 of the facts. And if you don't remember,

1 remember.

2 Q. Was Brice Elnicki there most of the
3 time when that was done?

4 A. Sometimes he was.

5 Q. How often was fumigant used there
6 when Brice was not there?

7 A. I don't know a number. I don't -- I
8 can't remember an exact number.

9 Q. Did you ever see Steve Faucett put
10 fumigant into the pit?

11 A. Yes, yes.

12 Q. How often did you see Steve do it?

13 A. I've seen him at least once.

14 Q. Why does that stick in your mind
15 that there was an occasion when you saw it?

16 A. Because you brought it up.

17 Q. Okay. But there was nothing
18 noteworthy about that time. You just
19 remember having seeing him do it?

20 A. Now that you brought it up, yeah, I
21 remember.

22 Q. Okay. Did you ever see Steve put
23 fumigant into trailers of grain?

24 A. I don't think I have.

25 Q. How about Scott McAdams? Did you

1 you don't remember. And that's fine too.
2 But your best recollection of the facts.

3 How many times do you think
4 it was that you actually saw somebody put
5 fumigant into a trailer full of grain before
6 it got shipped off site at KAMO?

7 A. More than once.

8 Q. Okay. Fewer than ten times?

9 A. I wouldn't say that. I'd say --

10 Q. Fewer than 20?

11 A. I don't remember.

12 Q. Okay. So you just -- other than to
13 say it's more than once --

14 A. Several.

15 Q. You say "several." But you can't
16 tell us how many times?

17 A. I can't give you a number, 'cause I
18 don't remember.

19 Q. Okay. How many times did you
20 yourself put fumigant into trailers that
21 were going to be shipped off site from KAMO?

22 A. The same answer. Several times.

23 Q. Okay. Now, when you would put
24 fumigants into trailers that were going to
25 be shipped off site, were the trailers then



1 covered with tarps?
 2 A. No. You have to uncover them to put
 3 the fumigant in it.
 4 Q. Okay. So again, explain to me how
 5 this works. You -- there's a load of grain
 6 that's going to be going out. Somebody
 7 fills the trailer, either from one of the
 8 overhead bins or one of the larger bins,
 9 right?
 10 A. Usually.
 11 Q. Did you yourself ever decide that it
 12 was time to put fumigant in a trailer in
 13 that situation?
 14 A. No. Not just on my own, no.
 15 Q. Somebody would have given you the
 16 instruction to do that, right?
 17 A. Right.
 18 Q. And that would have been who?
 19 A. Rick or Brice.
 20 Q. So you would then take the tablets
 21 or pellets of fumigant and you would put it
 22 into the trailer?
 23 A. We'd put grain in the bottom, good
 24 grain. We'd put some nasty grain. And then
 25 we could put pellets in it and then fill it

1 Q. Okay. So they've given you some
 2 direction about how much to use?
 3 A. Not on every -- not every time I
 4 used it; no.
 5 Q. Did you use about the same amount
 6 for every trailer of grain?
 7 A. No.
 8 Q. How would you know how much to use?
 9 A. I just used it freely. I wasn't
 10 ever -- there's only been a few times I was
 11 directed on how much to use. There was just
 12 a capful or four capfuls or --
 13 Q. All right. So then after you'd put
 14 the fumigant into the trailer, would it then
 15 be necessary to tarp the trailer in order to
 16 keep the gases in to kill the bugs?
 17 A. I think we may have tarped it.
 18 Q. Did you tarp it most of the time?
 19 A. Yes. I believe they was all -- it
 20 would have been tarped if they was
 21 fumigated.
 22 Q. Then how long typically would you
 23 hold the trailer to allow the fumigant to do
 24 its job and kill the bugs?
 25 A. It just depended on what they was

1 up with good grain on top of that. I put it
 2 in there and stomped it down with my feet.
 3 There's just several different ways.
 4 Threw it in there, left it in there. I
 5 didn't -- I wasn't ever told how to do --
 6 exactly how to do it.
 7 Q. So you would put some -- how large
 8 were the pellets or tablets of fumigant that
 9 were used -- that you were using? How big
 10 are they?
 11 A. Well (indicating), they're thicker
 12 than a nickel, but about as big around as a
 13 nickel.
 14 Q. All right. And do you pour them
 15 into the cap of the container and then from
 16 the cap of the container into the trailer?
 17 A. I have.
 18 Q. Do you sometimes dump it just right
 19 out of the can into the trailer?
 20 A. Yes.
 21 Q. And has Brice or Rick ever told you
 22 how many capfuls to use on a particular
 23 load?
 24 A. They've -- they've mentioned three
 25 or maybe four caps.

1 doing with it, I guess, where the load was
 2 going and when it was going. Sometimes it
 3 went right out. Sometimes it sat there on
 4 the lot.
 5 Q. Do you know how long it took the
 6 fumigant to kill the bugs in a load of
 7 grain?
 8 A. I don't know.
 9 Q. Did you ever read the applicator
 10 manual for any fumigant?
 11 A. I've seen one. But I've never
 12 looked through it.
 13 Q. What was the name of the particular
 14 fumigant that you were using at KAMO Grain?
 15 A. On the front of the can I believe it
 16 said PhosFume.
 17 Q. Did you ever apply an insecticide
 18 called Insecto?
 19 A. Yes.
 20 Q. What's the difference between Insecto
 21 and PhosFume?
 22 A. I believe that Insecto is either a
 23 spray or a powder.
 24 Q. So you used -- which one did you use
 25 more frequently? Did you use Insecto more



1 frequently or PhosFume more frequently?

2 A. We used them both.

3 Q. If you were fumigating a truckload
4 of grain that was going to go to a customer,
5 which one would you use?

6 A. Whatever one I was told to use.

7 Q. And sometimes that was Insecto?

8 A. I don't -- I only remember having to
9 use it a few times. But I do know that we
10 used it.

11 Q. And typically when you would put the
12 PhosFume into a trailer and tarp the
13 trailer, would you then let the trailer sit
14 there for a couple days so that the bugs
15 could get killed?

16 A. No. That's not what I said.
17 Sometimes they'd take it right out the road.
18 Sometimes they let it sit. Sometimes they
19 didn't.

20 Q. How often did it happen that the
21 PhosFume would be placed in the trailer and
22 the trailer would go immediately out on to
23 the road?

24 A. It's happened on several occasions.

25 Q. Define "several" for me as best you

1 know what it was from.

2 Q. Did you ever detect any odor to the
3 fumigant?

4 A. Yeah. It smells like garlic.

5 Q. Did it ever make you sick?

6 A. Yeah.

7 Q. Tell me about that.

8 A. It makes me -- it would make me
9 nauseous, give me a headache.

10 Q. Did you ever throw up from it?

11 A. No.

12 Q. Did anybody at KAMO Grain ever tell
13 you that it was illegal to transfer or to
14 transport grain under fumigation over the
15 public highway?

16 A. I didn't know nothing about it.

17 Q. Do you know that now?

18 A. I know that now.

19 Q. How did you learn that?

20 A. Paperwork that I've had that I found
21 online, researching it.

22 Q. When did you start researching that
23 subject?

24 A. A while ago.

25 Q. Why did you do that?

1 can.

2 A. Two, three, four.

3 Q. Okay.

4 A. Five different times.

5 Q. Okay.

6 A. I don't know.

7 Q. So you were there about three years.

8 A. Uh-huh.

9 Q. And during those three years there
10 were two through five times when the
11 PhosFume went on the trailer and the trailer
12 went right out on the road?

13 A. Not over those three years, no. I'm
14 talking a month is several times.

15 Q. Several times a month that would
16 happen?

17 A. Yes. Just consistent.

18 Q. Okay. Did you ever look inside one
19 of these trailers after it had been sitting
20 there under fumigant for a couple days?

21 A. I don't remember if I have or not.

22 Q. Do you know whether there was any
23 residue from the fumigant after that period
24 of time?

25 A. There was always residue. I didn't

1 A. Because I was concerned of my -- for
2 my safety, my health.

3 Q. Do you still have concerns for your
4 safety and health --

5 A. Yes.

6 Q. -- from exposure to that?

7 A. Yes.

8 Q. Have you seen an attorney about
9 prosecuting a claim?

10 A. Not yet.

11 Q. Has any doctor ever tell you -- told
12 you that you have any health problems as a
13 result of being exposed to the fumigant?

14 A. No.

15 Q. Since you left KAMO Grain in 2009
16 have you had any continued nausea or upset
17 as a result of your exposure to the fumes?

18 A. Well, there's -- there's different
19 things that's going on. But I don't know if
20 that's what it was from. It could be.

21 Q. Did you ever tell either Brice or
22 Rick Elnicki that you thought you might be
23 suffering adverse health effects from the
24 use of they PhosFume?

25 A. No, 'cause I didn't know really the



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1 dangers of it then.

2 Q. When did you first learn about the
3 dangers of it?

4 A. When I started drawing concern about
5 my own health.

6 Q. Which was what year?

7 A. '15.

8 Q. What happened in 2015 to bring this
9 to your attention?

10 A. A friend through a friend got a hold
11 of me and was wanting to -- trying to figure
12 out why he had been sick. And it went on
13 from there.

14 Q. Who was the friend?

15 A. Lonnie. My friend?

16 Q. Yeah.

17 A. Steve.

18 Q. Steve Faucett?

19 A. (Nods head.)

20 Q. Okay. So the way this worked is
21 that Lonnie and Steve had been talking,
22 right?

23 MR. SCHLOEGEL: I object to
24 the extent that he lacks foundation to know
25 what other people were up to. But if you

1 He asked me if I've had any
2 symptoms. And he went on to explain to me
3 that -- what went on with Mars.

4 Q. What did he tell you had gone on
5 with Mars?

6 A. That he believed he was poisoned.

7 Q. And this was in 2015?

8 A. Yes.

9 Q. Did Lonnie Boyd record your phone
10 conversation with him in any way?

11 A. I don't know.

12 Q. Did you then talk to Steve Faucett
13 about Lonnie?

14 A. Yeah.

15 Q. By this time neither you nor Steve
16 still worked at KAMO Grain, right?

17 A. Right.

18 Q. Do you still see Steve from time to
19 time?

20 A. Some. You know, in passing.

21 Q. Is he a friend of yours?

22 A. Yeah, he's a friend of mine.

23 Q. All right. So after Lonnie called
24 you, what did -- what did you say to Steve
25 Faucett about Lonnie and his claim?

1 know, you can --

2 Q. (By Mr. Ahrens) Mr. Lowe, I'm trying
3 to find out how you got involved in all this
4 leading up to the -- this lawsuit. You
5 understand this is a lawsuit in which Lonnie
6 Boyd and others are plaintiffs, right?

7 A. I'm aware of that, yeah.

8 Q. Okay. And that you're here -- and
9 we appreciate you doing it -- to come in and
10 give your testimony about what you know
11 about conditions at KAMO Grain as it might
12 relate to those claims that Lonnie Boyd and
13 a number of other people have made. Do you
14 understand that?

15 A. Yeah.

16 Q. All right. So what did -- what did
17 Steve tell you about Lonnie that was the
18 first step in your involvement as a witness
19 in this lawsuit?

20 A. Well, as a friend -- through a
21 friend of his. It's Lonnie that called me.
22 He got my number from Steve, I assume. And
23 he just called me up and explained who he
24 was and asked if I did work at KAMO Grain,
25 and I said yes.

1 A. Well, I mean, I was concerned for my
2 health and I was kind of concerned for his
3 health. And I felt a responsibility.

4 Q. What did you tell -- did you tell
5 Steve that?

6 A. No. We discussed that he was sick.
7 And I wanted to -- that I was concerned
8 about my health then.

9 Q. What did you do next then to
10 investigate your concerns about your health?

11 A. I'm still trying to get it done.

12 Q. What symptoms are you having today
13 that you think might be attributable to the
14 PhosFume you were exposed to?

15 A. Well, memory loss, headaches. I
16 don't know. The list goes on.

17 Q. Has any doctor ever tell you -- told
18 you that you have a medical condition
19 resulting from your exposure there to the
20 PhosFume?

21 A. I already answered that. No.

22 Q. Sorry if I asked the same question
23 twice. Were you ever on site at KAMO Grain,
24 Inc., when a contractor came in to do a
25 general fumigation of the bins?



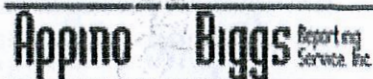
Technology Specialties in Today's Complex Litigation

1 A. No.
 2 Q. Did you ever go inside the bins
 3 yourself in order to fumigate them?
 4 A. No.
 5 Q. Did you ever go inside the bins?
 6 A. Yes.
 7 Q. Why would you go in?
 8 A. To clean -- say, to clean the corn
 9 out so we could get bins in there.
 10 Q. Had you been given some safety
 11 training on the proper way to enter a bin
 12 and safety in connection with that?
 13 A. I don't -- I don't recall getting --
 14 I just -- they'd show me when I worked with
 15 them.
 16 Q. Do you not remember getting any
 17 safety training at all at KAMO Grain other
 18 than the movies that you talked about at the
 19 beginning of this deposition?
 20 A. No.
 21 Q. Had you known Lonnie Boyd before he
 22 called you?
 23 A. No.
 24 Q. Do you know Buddy Zimmerman?
 25 A. No.

1 Q. And did they sometimes ask you to
 2 pull grain from bins that had been fumigated
 3 within the last several days before you were
 4 pulling the grain?
 5 A. Not that I -- I can't remember.
 6 Q. Did they have a system at the
 7 facility where there was a white board to
 8 track which bin had been fumigated?
 9 A. No. I remember a white board that
 10 had the bins -- circles for each bin. And
 11 -- but it was just to tell you what was in
 12 it and the level of it.
 13 Q. Did that white board tell you
 14 anything about whether the bins had been
 15 fumigated or not?
 16 A. I don't think so.
 17 Q. I'm going to hand you what's been
 18 marked as Exhibit 2. And do you recognize
 19 this as an affidavit that you signed?
 20 A. Yes. It looks like it.
 21 Q. Where did you sign it? I mean --
 22 A. On the back.
 23 Q. I understood that. But it was a bad
 24 question. Whose office did you sign it in,
 25 if anybody's office?

1 Q. Scott Gordon?
 2 A. No.
 3 Q. Tracy Milton?
 4 A. No.
 5 Q. Terri Alberts?
 6 A. No.
 7 Q. Do you know anybody who is or was
 8 employed at the Mars Petcare facility?
 9 A. No. Not that I'm aware of. Can you
 10 ask me that again?
 11 Q. I said, did you know -- do you know
 12 anybody who worked at the Mars --
 13 A. Yes.
 14 Q. -- Petcare other than Lonnie?
 15 A. No.
 16 Q. Let's go back to the operations.
 17 Was one thing that you did at KAMO Grain to
 18 help load trucks with the grain before they
 19 left the facility to go out to customers?
 20 A. Yes.
 21 Q. And who would instruct you as to
 22 which bin to pull from for a particular
 23 load?
 24 A. Either the driver that come to the
 25 office or Rick or Brice or Zach.

1 A. I signed it in front of I believe
 2 Mark, right here (indicating).
 3 Q. There's a notary whose name is Ambyr
 4 Hyman. Does that ring a bell?
 5 A. No. But we done it at an attorney's
 6 office.
 7 Q. Okay. What attorney?
 8 MR. SCHLOEGEL: We signed it
 9 down in actually Joplin. I think we used
 10 some attorney's office. I can't remember
 11 the name, if you want to know the truth.
 12 MR. AHRENS: Thank you, Mr.
 13 Witness.
 14 Q. (By Mr. Ahrens) Is that right, Mr.
 15 Lowe? Did you sign the affidavit in a
 16 lawyer's office here in Joplin?
 17 A. Yes.
 18 Q. Was Steve Faucett here at the same
 19 time?
 20 A. Yes.
 21 Q. All right. So tell me how the
 22 preparation of this affidavit went. Had you
 23 met with Mr. Schloegel at some time before
 24 you finalized the affidavit?
 25 A. Before?



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1 Q. Yes.

2 A. I talked to him on -- over the
3 phone. And he had -- he asked me some
4 questions. And I told him the answers. And
5 then we did the affidavit.

6 Q. All right. What questions did he
7 ask?

8 A. These questions that are on this
9 affidavit.

10 Q. Did you meet with Mr. Schloegel,
11 Steve Faucett, and Rick McGuire at a
12 McDonald's in Pittsburg or Joplin?

13 A. I believe so, yes.

14 Q. All right. What went on at that
15 meeting?

16 A. We talked about the questions and
17 stuff that are on this affidavit.

18 Q. And did the three of you talk among
19 yourselves, as well as with Mark, about what
20 would go into the affidavit?

21 A. No. He just -- he asked me
22 questions, and I gave him answers. And
23 that's what -- that's what these were
24 (indicating).

25 Q. Were Rick McGuire and Steve Faucett

1 A. Yeah. We just went over the
2 questions, and then come here to the
3 lawyer's office.

4 Q. All right. Did he mail you an
5 affidavit?

6 A. Yes. Yes, he did.

7 Q. Did he e-mail the affidavit to you?

8 A. Yes.

9 Q. So you communicated with Mr.
10 Schloegel by e-mail?

11 A. No. Just one time.

12 Q. Okay. The only communication you
13 had was the affidavit that he sent to you?

14 A. As far as e-mails, yeah.

15 Q. All right. Was there anything else
16 in his affidavit -- in his e-mail other than
17 here's the affidavit?

18 A. No.

19 Q. Do you still have that e-mail?

20 A. No, I don't.

21 Q. So did you first see the affidavit
22 itself when it came to you in an e-mail?

23 A. No.

24 Q. Okay. You had seen it before then?

25 A. I seen it in person --

1 answering the same questions at the same
2 time?

3 A. No.

4 Q. How did it work? Did he go around
5 and talk to one of you at a time?

6 A. He just talked to me. He asked me
7 these questions. I don't know what he asked
8 the other guys.

9 Q. Okay. So you had a separate one-on-
10 one session with Mr. Schloegel in which he
11 asked you questions?

12 A. Yeah. We talked.

13 Q. Okay. Was anybody there at that
14 meeting other than Mr. Schloegel, yourself,
15 Mr. Faucett, and Mr. McGuire?

16 A. No. I don't think so.

17 Q. How long did that meeting last?

18 A. I don't know.

19 Q. A couple of hours?

20 A. I don't remember.

21 Q. And after that meeting how did you
22 receive the affidavit?

23 A. After the meeting at McDonald's?

24 Q. Yeah. Am I right that the affidavit
25 was prepared after the McDonald's meeting?

1 Q. Okay.

2 A. -- when it was notarized.

3 Q. The e-mail that we're talking about,
4 was that before or after you signed the
5 affidavit?

6 A. It was after.

7 Q. Oh, okay. I'm sorry. I
8 misunderstood, then. So at some point he
9 sent you a copy of the affidavit with your
10 signature on it?

11 A. I asked him for a copy.

12 Q. Ah. Okay. I got it now. I'm with
13 you. Okay. Sorry. When did you make that
14 request?

15 A. I don't remember exactly when.

16 Q. I mean, within the last couple
17 weeks, or back in 2015?

18 A. It was within the last couple weeks.

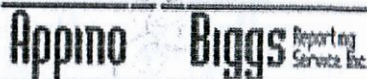
19 Q. Okay. All right. Had Mr. Schloegel
20 contacted you about giving this deposition?

21 A. Yes.

22 Q. And did you ask to see the
23 affidavit?

24 A. Right.

25 Q. Okay. Is there anything else that



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1 went back and forth between you and Mr.
 2 Schloegel in the last couple weeks?
 3 A. No.
 4 Q. All right. So let's go back to
 5 2015. And you had the meeting, and
 6 following that meeting you met in a lawyer's
 7 office. Did Mr. Schloegel then have this
 8 affidavit with him when you met at the
 9 lawyer's office?
 10 A. I don't remember how it come about.
 11 Q. Okay. Did you read the affidavit
 12 before you signed it?
 13 A. Yeah. We went over the affidavit.
 14 He asked me questions, and I answered them.
 15 Q. Okay.
 16 A. Yeah, we went over it. I mean --
 17 Q. Were there any changes that had to
 18 be made in the affidavit based on that
 19 discussion you had with Mr. Schloegel?
 20 A. I read through it and made sure
 21 everything was correct and true.
 22 Q. Were there any drafts of the
 23 affidavit around that would be different
 24 from the final one, Exhibit 2?
 25 A. No. Just the affidavit.

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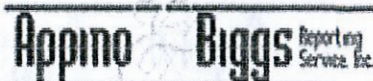
1 Q. Do you remember any particular
 2 things that were in the affidavit as you
 3 originally saw it, but had to be changed?
 4 A. No. I don't remember.
 5 Q. Paragraph 5 of the affidavit says,
 6 During my employment Brice, Rick, and KAMO
 7 specialized in buying cheap, damaged, and
 8 trash grain that is poor-quality grain.
 9 What do you mean when you say they
 10 specialized in it?
 11 A. Look it up in Names and Numbers.
 12 And their ad says We specialize in damaged
 13 grain.
 14 Q. They ran ads that said they
 15 specialized in damaged grain?
 16 A. They sure did. Names and Numbers.
 17 Q. I'm sorry. What were the last
 18 words?
 19 A. Names and Numbers, a phone book.
 20 Q. Okay. Now, tell me about -- in
 21 Paragraph 6 of your affidavit you describe a
 22 process where KAMO, under the direction of
 23 Rick and Brice, would mix trash grain with
 24 high-quality grain. Tell me about that
 25 process. How did it work?

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1 A. They'd tell me what bin to pull it
 2 out of, what truck to put it on, from what
 3 railcar to put it on. And we just put good
 4 grain in the bottom. And we had slopes --
 5 or sorry -- slopes in the middle
 6 (indicating). And we put the good grain in
 7 the middle and bad grain on the slopes. It
 8 was just, like, layers. Mix it in, hide it.
 9 Q. Now, did either Rick or Brice tell
 10 you that you were doing this in order to
 11 disguise the use of the trash grain?
 12 A. Yeah.
 13 Q. Who told you that?
 14 A. Both of them.
 15 Q. What did they say?
 16 A. Exactly what you just said, that we
 17 tried to get rid of it, hide it.
 18 Q. So it's your testimony that either
 19 -- that both Rick and Brice at one time or
 20 another would tell you that you're going to
 21 load the trash grain this way and the reason
 22 for that was to hide from the customer the
 23 fact that trash grain was being used?
 24 A. Yes.
 25 Q. What response did you make when they

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1 told you that?
 2 A. Okay.
 3 Q. Did you say, Mr. Elnicki, that's not
 4 right; we shouldn't be trying to fool our
 5 customers that way?
 6 A. He was the one writing my check.
 7 No. It wasn't my call.
 8 Q. You never actually delivered the
 9 grain to the customer, right?
 10 A. No.
 11 Q. So you don't know what tests the
 12 customer might have made on the grain,
 13 correct?
 14 A. I'm aware of the tests that they did
 15 run, yeah. But I was not there, no.
 16 Q. How do you know what tests they did?
 17 A. From what Rick, Brice, and the
 18 drivers told me. There's -- we'd send them
 19 with buckets of good grain or samples. But
 20 it was a sample of different grain than what
 21 was in the truck. And that's how I knew how
 22 they were testing and what their tests
 23 consisted of.
 24 Q. Did you prepare the samples of the
 25 good grain that wasn't what was in the



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1 truck?

2 A. I have before.

3 Q. How often?

4 A. Three, four, five times a week.

5 Often. Whenever I was told to do it.

6 Q. Do you know whether any of the
7 drivers ever actually used those clean
8 samples when dealing with customers?

9 A. I'm pretty sure they did.

10 Q. Which drivers?

11 A. All of them.

12 Q. Did any of -- do you know -- you
13 know that because the drivers told you?

14 A. Yeah. They'd come back to get
15 another load or they'd need another sample
16 'cause their other one was gone. And I just
17 assumed they used it.

18 Q. Which drivers would ask you for
19 another sample?

20 A. All of them.

21 Q. Do you know if any of the drivers
22 ever used those clean samples at Mars
23 Petcare?

24 A. All of them that went out there.

25 Q. Steve Faucett included?

1 type of pesticide license. So it's your
2 testimony still today that you never had any
3 training whatever in the use of pesticides?

4 A. I was never taught, no.

5 Q. You never had any training at all in
6 the use of fumigants?

7 A. Well, I mean, from your Exhibit 1, I
8 mean, obviously there's some documents that
9 say that. But, I mean, I was never taught,
10 no.

11 Q. Did anybody tell you that the
12 pesticide label is the law?

13 A. No. Not that I can remember.

14 Q. Anybody ever tell you that it's
15 unlawful to transport grain under fumigation
16 on public roads?

17 A. I've already answered that question.
18 No.

19 Q. In Paragraph 9 you say you were the
20 person primarily responsible for applying
21 pesticides. Is that correct?

22 A. Yeah. I have been.

23 Q. Were you the person primarily
24 responsible for applying pesticides to grain
25 on site in railcars and truckloads

1 A. All of them, yes.

2 Q. Okay. Steve did that too?

3 A. Yes.

4 Q. And you know that how?

5 A. Because I would get the samples for
6 him sometimes.

7 Q. Who besides yourself ever prepared
8 these clean samples for the drivers to take?

9 A. I'm -- I guess everybody that worked
10 there. I know I did.

11 Q. Who else did?

12 A. I don't know.

13 Q. Did you ever see anybody else do it
14 other than yourself?

15 A. Yes.

16 Q. Who did you see do it?

17 A. I don't -- I can't remember. But I
18 do know that I've seen other people getting
19 grain and taking it up there. And that's
20 what they was doing. But I don't remember
21 exactly who it was. But there was other
22 people besides me.

23 Q. In Paragraph 8 of your affidavit you
24 say, I was never trained in the use or
25 application of pesticides, nor do I hold any

1 throughout your time at KAMO Grain?

2 A. Yeah. I have been.

3 Q. Did you ever instruct anybody else
4 at KAMO Grain about how to use --

5 A. Just how I was showed.

6 Q. I'm sorry?

7 A. Just how I was -- just how I did it.

8 Q. Okay. Who else did you show how to
9 do it?

10 A. I don't remember. College kids.

11 Q. Do you remember the names of any of
12 the college kids?

13 A. No. Not right off the top of my
14 head.

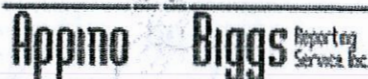
15 Q. Did you ever use any of the paper
16 masks while you were using the fumigant?

17 A. No.

18 Q. Was there ever a respirator? As
19 opposed to a paper mask, ever a respirator
20 there?

21 A. There was some blue mask. But I
22 don't know what it was for. I think it was
23 for Brice when he sprayed Insecto, 'cause it
24 broke him out or something.

25 Q. But you never used it?



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1 A. Or Storcide. I'm sorry. No, I
 2 never used it.
 3 Q. Were you ever trained in its use?
 4 A. No.
 5 Q. In Paragraph 12 you say, On a
 6 regular basis Rick or Brice would tell me to
 7 apply pesticide to grain loads, three to
 8 five loads a day on average. Do you see
 9 that?
 10 A. Yeah.
 11 Q. When you say "loads," do you mean
 12 loads in trailers ready to go out, loads
 13 coming in? What kind of loads are you
 14 talking about?
 15 A. I'm sure it's loads going out.
 16 Q. So is it your testimony that --
 17 A. Loads coming in, both.
 18 Q. Is it your testimony, sir, that
 19 during the three or so years that you worked
 20 at KAMO Grain on average you were applying
 21 pesticide to outgoing grain loads three to
 22 five times a day?
 23 MR. SCHLOEGEL: He just said
 24 "both," outgoing and incoming.
 25 Q. (By Mr. Ahrens) Outcoming and

1 A. Just on what I was told. I was --
 2 you know, the smell of it's strong. It
 3 stinks. You dump a bunch in there.
 4 Q. So if the grain load smelled of
 5 something, you would put the fumigant in?
 6 A. If they said it smelled like bugs, I
 7 mean, or smelled like mold, I was just
 8 dumping it in there -- whatever I was told
 9 to.
 10 Q. The fumigant --
 11 A. Like, one cap at a time if it's
 12 sitting at the dump pit. Or you'd sprinkle
 13 it in.
 14 Q. Did the fumigant do any good on the
 15 mold?
 16 A. I don't think so. I don't know.
 17 Q. Did you have a meter for the gas?
 18 A. I didn't.
 19 Q. Did any of the people at KAMO Grain
 20 have meters?
 21 A. There -- I think there was an oxygen
 22 meter. I don't know. I never used it for
 23 the gas, no.
 24 Q. Did you ever see a small hand-held
 25 meter that was supposed to measure the level

1 incoming, three to five times a day?
 2 A. It could have been. I mean, it was
 3 often. Three, four, five, six times a week.
 4 Some times would go by in a week that we
 5 didn't put any on.
 6 Q. Were there some times of year when
 7 you needed the fumigant more than other
 8 times of the year?
 9 A. Yeah, there was. I don't remember
 10 what time of year it was. But yeah.
 11 Q. What time of year were the bugs
 12 particularly bad?
 13 A. They got -- they got grain in all
 14 throughout the year full of bugs. It had
 15 rats. Some of it had rats. And it just --
 16 it's just depending on where they got it.
 17 Q. So what time of year did you
 18 particularly use the fumigant most heavily?
 19 A. I don't remember.
 20 Q. Your affidavit says, Typically I
 21 would apply one capful of PhosFume to a
 22 load, sometimes more, depending on the smell
 23 of the load or if I could see a lot of bugs.
 24 How did you decide to use one capful most of
 25 the time?

1 of phosphine gas?
 2 A. No. I thought it was to measure the
 3 oxygen level for a confined space or
 4 something like that. I don't know.
 5 Q. All right. You mean you never saw
 6 one that was supposed to measure for the
 7 gas; is that right?
 8 A. I can't remember.
 9 Q. Did the drivers have meters like
 10 that?
 11 A. I don't know.
 12 Q. In Paragraph 14 you say that After
 13 applying the pesticide or PhosFume I would
 14 discard the canister on the ground or in a
 15 pile of trash in the night trailer to be
 16 collected later. Near the end of my
 17 employment in 2012 with KAMO I was
 18 instructed to clean up and remove all the
 19 spent PhosFume canisters, 100 percent of
 20 them, and related trash because of insurance
 21 inspection.
 22 Before that time in 2012 if
 23 somebody came on to the KAMO Grain property,
 24 would they have seen it littered with
 25 PhosFume cans?



1 A. Yes, at times.
 2 Q. All the time, or just sometimes?
 3 A. At times.
 4 Q. Okay. How often?
 5 A. I don't know.
 6 Q. Let's say I wandered on to the KAMO
 7 Grain property in the summer of 2010. How
 8 many PhosFume cans would I be likely to see
 9 lying around?
 10 A. I couldn't possibly know how many
 11 you'd see.
 12 Q. I mean, was it, like, two or three
 13 or 20?
 14 A. Thirty, 40. I mean, it would just
 15 depend.
 16 Q. Well, that's my question. Were
 17 there times when one could go on to the KAMO
 18 Grain property and see as many as 30 or 40
 19 empty PhosFume cans lying around?
 20 A. Yes. I'm sure you could.
 21 Q. Do you know what prompted the
 22 insurance inspection in 2012 that led to the
 23 cans being cleaned up?
 24 A. I don't even know if that's exactly
 25 what it was was an insurance inspection.

1 But that's what I was told.
 2 Q. Who told you it was an insurance
 3 inspection?
 4 A. I don't remember.
 5 Q. All right. Now, page 15 is the
 6 subject we've talked about before. But I
 7 want to make sure we've got it right. You
 8 say, On a regular basis, at the direction of
 9 Rick and Brice, I would treat truckloads of
 10 grain with PhosFume, immediately cover it
 11 with a tarp, and immediately send the truck
 12 driver off on the highway. Give us your
 13 best recollection as to how often that
 14 happened.
 15 A. Several times a week.
 16 Q. Okay. So that happened all the
 17 time?
 18 A. It happened frequently, yes.
 19 Q. So that KAMO Grain was regularly
 20 right before they would ship grain off on
 21 the highway putting fumigant into the truck,
 22 putting a tarp over it, and sending it off;
 23 is that right?
 24 A. Sometimes they did. And sometimes
 25 they'd sit there on the lot.

1 Q. All right.
 2 A. Sometimes they went right out on the
 3 road.
 4 Q. Okay. And it went right out on the
 5 road a lot?
 6 A. Sir, what?
 7 Q. It went right out on the road
 8 several times a week?
 9 A. Sometimes it went right on the road.
 10 Others just sat on the lot.
 11 Q. How do you aerate a fumigated
 12 truckload?
 13 A. I don't know.
 14 Q. Do you ever hear that word when you
 15 were there, "aerate" a fumigated truckload?
 16 A. I don't remember.
 17 Q. In Paragraph 19 you say you were
 18 Well aware that we trucked grain loads to
 19 the Mars plant in Joplin, Missouri. How
 20 were you aware of that?
 21 A. The drivers would tell me where
 22 they're coming from, where they're going to.
 23 We talked.
 24 Q. How many loads shipped to Mars were
 25 rejected?

1 A. I don't know.
 2 Q. How often did it happen?
 3 A. I couldn't give you a number. It
 4 happened.
 5 Q. How many times a year?
 6 A. I couldn't give you a number. But
 7 it did happen often.
 8 Q. Once a month?
 9 MR. SCHLOEGEL: I don't think
 10 he can remember.
 11 THE WITNESS: I can't.
 12 MR. SCHLOEGEL: If you want
 13 to try to pull an answer out of him, you can
 14 keep asking him. But I think it's --
 15 MR. AHRENS: I'm trying to
 16 test your memory.
 17 MR. SCHLOEGEL: Well, at some
 18 point if you ask a guy a question three or
 19 four times, it seems like you're being a
 20 lawyer and trying to get a certain answer.
 21 So if you don't -- if you're unhappy with
 22 his answer, I don't think it's fair that you
 23 keep asking it.
 24 MR. AHRENS: Well, I'll
 25 change the question.



1 Q. (By Mr. Ahrens) It's fair to say,
2 isn't it, Mr. Lowe, today that you just
3 don't remember how many times loads got
4 rejected at Mars Petcare?
5 A. I don't know.
6 Q. You remember it happening, but you
7 don't remember how many times it happened;
8 isn't that right?
9 A. Right.
10 Q. All right. Similarly with respect
11 to the loads going out over the road
12 immediately after being PhosFumed, you
13 remember it happened, but you just don't
14 remember how many times it happened?
15 MR. SCHLOEGEL: That's not
16 true. He just talked about it. He just
17 said several times a week. And he had
18 stressed the fact that it was regular. So I
19 think that's a very mischaracterization --
20 it's a big mischaracterization. I think
21 you're trying to get the answers you're
22 hoping to get on some of this stuff.
23 MR. AHRENS: I'm just asking
24 questions.
25 MR. SCHLOEGEL: Well, I'm

1 just making objections here. I'm trying to
2 help make sure the record's --
3 MR. AHRENS: I'm making sure
4 the witness --
5 MR. SCHLOEGEL: -- clear --
6 MR. AHRENS: -- answers the
7 question.
8 MR. SCHLOEGEL: -- and that,
9 you know, it's reflected in the record that
10 you're repeatedly asking questions,
11 mischaracterizing what he said, in hopes
12 that he would agree to it.
13 THE WITNESS: You keep
14 repeating the questions to me and making me
15 feel like you're trying to trick me into
16 lying.
17 MR. AHRENS: I'm just trying
18 to get your recollection, sir, and a proper
19 understanding of it.
20 Q. (By Mr. Ahrens) In Paragraph 20 you
21 say that Rick and Brice would attempt to get
22 the same truckload resubmitted during the
23 next shift or next day without taking any
24 precautions or properly treating the
25 truckloads. How often did that happen?

1 A. Every time it was rejected.
2 Q. So every -- it's your testimony that
3 every time Mars rejected a truckload, that
4 Rick or Brice would try and send it back in
5 without doing anything to fix it; is that
6 right?
7 A. That I knew of, yeah. I mean, I'm
8 sure there was other ones that got rejected.
9 Q. Okay. Did loads get rejected at
10 Mars Petcare for reasons other than gas?
11 A. I don't know why they got rejected.
12 Q. Okay. You weren't involved enough
13 to know the various reasons that were given
14 for rejection of truckloads?
15 A. No. It wasn't any of my business,
16 really.
17 Q. Were they ever rejected for having
18 vomitoxin?
19 A. I don't know.
20 Q. Ever rejected for having aflatoxin?
21 A. I don't know.
22 Q. Ever rejected for both?
23 A. I don't know why they was rejected.
24 Q. In Paragraph 22 you say you Suffered
25 a variety of respiratory health issues

1 during my employment at KAMO. What
2 respiratory health issues did you face?
3 A. Just shortness of breath, a hard
4 time breathing. Sometimes my chest would
5 feel real heavy. I chalked it up to being
6 in the dust. I didn't know.
7 Q. I'm sorry. I didn't hear the
8 last --
9 A. I chalked it up as maybe the dust at
10 the time. I didn't know.
11 Q. Once you left your employment at
12 KAMO, did those symptoms stop?
13 A. No.
14 Q. You continued to still have
15 shortness of breath?
16 A. From time to time, yeah.
17 MR. AHRENS: Mark that,
18 please.
19 (Exhibit No 3 marked for
20 identification.)
21 Q. (By Mr. Ahrens) Mr. Lowe, I hand you
22 what's been marked as Exhibit 3. And that
23 one also has the sign-in sheet. And it's
24 got some what look like slides attached to
25 it.

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1 MR. SCHLOEGEL: What did you
2 mark this as?

3 MR. AHRENS: Exhibit 3, Lowe
4 Exhibit 3.

5 Q. (By Mr. Ahrens) I'd like you --
6 first of all, that is your name written by
7 you on the front page?

8 A. Yeah. My name's on there.

9 Q. Then there are what look to be some
10 slides that come after that. Do you
11 recognize those slides at all?

12 A. That's what was on the front of the
13 cans.

14 Q. Okay.

15 MR. SCHLOEGEL: What was the
16 label?

17 THE WITNESS: The label.
18 This is labels.

19 Q. (By Mr. Ahrens) All right. So
20 you've seen the labels before?

21 A. Uh-huh.

22 Q. Did you see those labels in training
23 sessions at KAMO Grain too?

24 A. I seen them on the cans.

25 Q. Did you see them in training

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1 sessions?

2 A. I don't even remember the training
3 sessions. But I do remember seeing them on
4 cans.

5 Q. Okay. Do you recognize any of these
6 slides that show up in this exhibit as ones
7 that you saw at KAMO Grain, Inc.?

8 A. The labels?

9 Q. Okay. For example, there's a -- on
10 the page -- you see the page that ends in
11 493?

12 A. Yes.

13 Q. And it's hard to read these, 'cause
14 they're so small. But on the bottom left
15 there's what looks like a slide called
16 Labels. It says, Brand name PhosFume,
17 active ingredient, aluminum phosphide. Did
18 you see that at any time during your
19 training at KAMO Grain?

20 A. I don't remember.

21 Q. Do you think you might have?

22 A. I don't remember.

23 Q. On the next page, the one that ends
24 493, there's a slide that says, What is the
25 dosage rate per thousand bushels? Do you

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1 remember seeing that at any of the training
2 you had?

3 A. Which page are you on?

4 MR. SCHLOEGEL: Four nine
5 four.

6 Q. (By Mr. Ahrens) The page that ends
7 494.

8 A. Okay. What was your question?

9 Q. What is the dosage rate per 1,000
10 bushels, did you see that?

11 A. No. I'm looking for it. No. I see
12 it now.

13 Q. On 502 there's a reference to Bin
14 entry rescues, page 502.

15 A. I see a PhosFume can on top of that
16 bin. Okay.

17 Q. Page 502, bin entry rescue, do you
18 remember being trained about bin entry
19 rescue when you were at KAMO Grain?

20 A. No, I don't.

21 Q. Okay. And I'm not just talking
22 about this session on August 4th, 2010,
23 'cause I know the slides say October 11,

24 2010. Did you see them at any session that
25 you had while you were at KAMO Grain, these

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1 slides?

2 A. I don't remember them.

3 Q. So it's your testimony that you
4 don't remember seeing any slides at all of
5 any kind at any of this training you had?

6 A. No. I told you that they showed us
7 slides. They'd sometimes show us a movie.
8 We worked in a group, filled in the blanks.

9 Q. Okay. So -- and you just don't even
10 remember what the subject of that training
11 was?

12 A. No. I never read it.

13 Q. You've never read it. Okay.

14 MR. AHRENS: Okay. Let's
15 take a break for a minute. We've been going
16 for a while.

17 (Break in proceedings.)

18 Q. (By Mr. Ahrens) I have a few more
19 questions for you, Mr. Lowe. If you could
20 go back to Exhibit 1, please, the -- what
21 you have in front of you. Am I right that
22 the second page there is a receipt of
23 handbook, employer's copy, that you signed?

24 A. It looks like it's a copy of a
25 handbook.



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- 1 Q. Do you remember what was in that
2 handbook?
- 3 A. No.
- 4 Q. Was there any safety training or
5 fumigation instruction in that book?
- 6 A. I don't remember anything that's in
7 the book.
- 8 Q. Did you read it?
- 9 A. No. I don't remember it.
- 10 Q. Okay. So your employer provided you
11 with a handbook that was going to be the
12 handbook that you worked under, and you
13 didn't read it, correct?
- 14 A. Okay. I don't know if I got one or
15 not. I mean, it looks like I did. But no,
16 I didn't read it.
- 17 Q. Okay.
- 18 A. I don't remember it if I did.
- 19 Q. And that was in 2010. And in August
20 of 2009 you also signed a receipt for a
21 handbook, right?
- 22 A. I don't know.
- 23 Q. Is that your signature on the next
24 page?
- 25 A. It looks like my signature.

- 1 Q. Okay. And it's a receipt of
2 handbook?
- 3 A. It kind of looks like my signature.
4 But --
- 5 Q. Okay. It does look like your
6 signature?
- 7 A. Kind of.
- 8 Q. Did you read the handbook that time
9 either?
- 10 A. I don't remember. I don't remember
11 any of this.
- 12 Q. You might have read it, but you
13 don't remember?
- 14 A. Right.
- 15 Q. Okay. Then 461, 462, and 463 all
16 look like times when you got written up for
17 being late for work. Is that right?
- 18 A. It looks like I was write up -- a
19 write-up, yeah.
- 20 Q. And you signed each one?
- 21 A. I don't know. It looks like it was
22 all whited out.
- 23 Q. Okay. Then Exhibit 464 is another
24 time you were late for work?
- 25 A. I don't know. My name ain't even on

- 1 it.
- 2 Q. It says Nathan Lowe in the lower
3 right-hand corner -- lower left-hand corner?
- 4 A. It's typed on there, yeah.
- 5 Q. Okay. Does that look like your
6 signature that you can see faintly above it?
- 7 A. I can't see nothing.
- 8 Q. You can't see that. Okay. Were you
9 repeatedly written up for being late for
10 work?
- 11 A. I don't believe I was repeatedly
12 written up, no.
- 13 Q. Were you ever written up for being
14 late for work?
- 15 A. I think I was, yeah.
- 16 Q. Were you ever late for work?
- 17 A. Oh, yeah.
- 18 Q. Did you deserve to be written up?
- 19 A. Okay. Yeah, sure.
- 20 Q. Did you have any hard feelings
21 against Rick or Brice for writing up for
22 these?
- 23 A. No. I don't even remember it.
- 24 Q. Okay. How about the write-up that's
25 on the page that ends with 465 in the bottom

- 1 right-hand corner? It starts -- it says,
2 There have been several times that Nathan
3 has had to redo the jobs he's worked on,
4 signed by Rick. Do you remember that
5 incident?
- 6 A. No, I don't.
- 7 Q. Do you remember being written up for
8 having to redo things that you'd worked on?
- 9 A. I remember having to do some rework.
10 But I don't recall being written up, no.
- 11 Q. Do you remember Rick talking to you
12 about his frustration over having to redo
13 jobs and the extra cost?
- 14 A. One time.
- 15 Q. Do you remember warned that if it
16 continued, it would result in termination?
- 17 A. I don't recall that. But --
- 18 Q. Is that your signature that appears
19 on the bottom left of the page that ends in
20 465?
- 21 A. There's not a signature on there.
22 Just Rick's.
- 23 Q. Okay. What's on the left side
24 there, above Nathan Lowe? Is that Nathan
25 Lowe?

1 A. I can't see it. There's nothing on
 2 mine.
 3 Q. Okay. So you can't read that?
 4 A. No, I can't.
 5 Q. Okay. Okay. Did you quit or were
 6 you -- was your employment terminated by
 7 your employer?
 8 A. I was laid off.
 9 Q. Who laid you off?
 10 A. KAMO, Rick.
 11 Q. And what did Rick tell you when he
 12 laid you off?
 13 A. He told me that they didn't -- that
 14 they were running out of work and just
 15 didn't have enough work to keep me busy.
 16 Q. Had you been as busy around the yard
 17 as you had been in prior years?
 18 A. I felt like we were.
 19 Q. Did you have some resentment against
 20 Rick for laying you off?
 21 A. I mean, I was upset. But I didn't
 22 have resentment, no.
 23 Q. Okay. So you were upset about being
 24 laid off?
 25 A. About not having a job, right.

1 A. Seasonal work.
 2 Q. Did you take that offer?
 3 A. I told him I'd have to think about
 4 it.
 5 Q. Did you take it?
 6 A. The next day -- it was either the
 7 next day or the day after that. He had
 8 called and -- or somebody had called and
 9 turned me in for refusing a job.
 10 Q. Did Rick offer you -- or did he make
 11 an offer for you to have a chance to apply
 12 for a welding job at a different location?
 13 A. No. I could have went in there and
 14 applied on my own. But I didn't. I already
 15 worked there.
 16 Q. Did he give you a good
 17 recommendation?
 18 A. He gave me a -- Brice gave me a
 19 letter of recommendation.
 20 Q. Okay. Brice gave you the letter,
 21 right?
 22 A. Yes, he did.
 23 Q. And it was a good letter of
 24 recommendation?
 25 A. Yeah. I thought it was.

1 Q. Okay. And then you applied for
 2 unemployment; is that right?
 3 A. Yes, I did.
 4 Q. How did that work out?
 5 A. I got -- I was getting unemployment.
 6 Q. And what happened in the end?
 7 A. I wasn't getting unemployment.
 8 Q. Why?
 9 A. Because I missed a phone call over
 10 the phone, 'cause I was in school. And I
 11 missed it, and they terminated me.
 12 Q. Did Rick Elnicki offer you a job
 13 back at \$11 an hour?
 14 A. No. I don't believe it was \$11 an
 15 hour, no.
 16 Q. Okay. Did he offer you a job back
 17 at the -- at the KAMO Grain facility?
 18 A. Yes.
 19 Q. This was after you filed your
 20 unemployment claim?
 21 A. Yes.
 22 Q. All right. So he offered you a job
 23 to come back to work; is that right?
 24 A. For a lot less wage.
 25 Q. Did you --

1 Q. Did you go away with some bad
 2 feelings because of the way that your
 3 unemployment had been cut off?
 4 A. I was already gone when my
 5 unemployment got cut off.
 6 Q. Okay. But did you have bad feelings
 7 against the company as a result of that?
 8 A. I mean, I was upset that he --
 9 somebody had called and offered me a job, a
 10 seasonal job, for less money than I'm
 11 making. And then the next day I got turned
 12 in for refusing a job. That upset me. But
 13 as far as being mad at him, no. I don't
 14 know exactly who done it.
 15 Q. Has Lonnie Boyd offered you anything
 16 in return for your help with his lawsuit?
 17 A. No.
 18 Q. Has anybody offered you anything by
 19 way of compensation for your time or
 20 anything for your help with this lawsuit?
 21 A. No.
 22 Q. Have you ever (redacted)
 23
 24 (redacted)
 25 Q. (redacted)



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1 A. (redacted)
 2
 3 (redacted)
 4
 5 Q. (redacted)
 6
 7 A. (redacted)
 8 Q. What co
 9
 10 Q. Crawford County?
 11 A. Uh-huh.
 12 Q. Missouri?
 13 A. Kansas.
 14 Q. Kansas.
 15
 16 A. Yeah. I believe that's what it was.
 17 Q. Have you ever been convicted of a
 18 crime involving truth or honesty?
 19 A. No.
 20 Q. (redacted)
 21
 22
 23 A. Yes.
 24 Q. Have you had any conversations with
 25 Rick or Brice Elnicki since the time you

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1 left your employment there until today?
 2 A. No.
 3 Q. Have you had any conversations with
 4 Scott McAdams since you left your employment
 5 until today?
 6 A. I passed him in a store and said
 7 Hey.
 8 Q. Have you had any discussion with him
 9 about this lawsuit?
 10 A. No.
 11 Q. How about Rick McGuire? Have you
 12 had any discussion with him about this
 13 lawsuit other than the meeting with Counsel
 14 over the affidavit?
 15 A. No.
 16 Q. Since your termination at KAMO have
 17 you had any conversation with anybody at
 18 KAMO about this lawsuit?
 19 A. Well, yes.
 20 Q. I mean other than today.
 21 A. No. Just the affidavit and all
 22 that, no.
 23 Q. Okay. Have you spoken with Mr.
 24 Schloegel about being over here in Joplin
 25 for the trial that's going to take place in

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1 January?
 2 A. No.
 3 MR. AHRENS: Thank you, Mr.
 4 Lowe. I might have some questions after the
 5 other lawyers ask. But I don't have any
 6 more for you at this time.
 7 MR. VanFLEET: I have no
 8 questions right now.
 9 EXAMINATION
 10 BY MR. SAPPINGTON:
 11 Q. Regarding your affidavit that you
 12 signed here, there's portions in here where
 13 you spoke with Mr. Ahrens about knowingly
 14 loading up trailers with bad grain or
 15 garbage grain or trash grain, whatever you
 16 called it, to be sent off to customers. Do
 17 you recall that topic?
 18 A. Topic?
 19 Q. Yeah. You discussed that with Mr.
 20 Ahrens?
 21 A. Yeah.
 22 Q. And you said you did that because it
 23 wasn't your call whether to do that or not.
 24 Did I understand that right?
 25 A. Yeah. I did it -- yeah. It wasn't

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1 -- it wasn't my say-so whether it was wrong
 2 or right. I was --
 3 Q. Sure.
 4 A. -- told to do it.
 5 Q. You knew that that grain was going
 6 to be going to customers?
 7 A. Yes.
 8 Q. And you knew it was substandard or
 9 inappropriate grain?
 10 A. Yes.
 11 Q. And you did what you were told
 12 anyway?
 13 A. Yes.
 14 Q. And did you say something in talking
 15 with Mr. Ahrens that you were doing that
 16 because you didn't want to lose your
 17 paycheck?
 18 A. Yeah. I didn't want to lose my job
 19 as a result of not doing what I was told to
 20 do.
 21 Q. So you knew customers were getting
 22 cheated, right?
 23 A. Yeah. I knew that.
 24 Q. But you wanted to protect your
 25 paycheck?



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1 A. Right.

2 Q. Did you -- I understood you to say
3 it wasn't your call on whether to do that or
4 not. But did you tell anyone, Hey, I don't
5 think that's right; we shouldn't be doing
6 that?

7 A. No.

8 Q. In Paragraph 16 in your affidavit it
9 says that I never aerated a fumigated
10 truckload. What does "aerated" mean?

11 A. I don't know. I'm assuming it means
12 to air it out. I don't know.

13 Q. This is your affidavit, right?

14 A. Right. I'm just -- yeah. It means
15 to air it out.

16 Q. Well, did you use the word "aerated"
17 there?

18 A. Sixteen, yeah. That would be me.

19 Q. You talk about in Paragraph 20 on
20 that same topic that a truck would be
21 rejected and then resubmitted during the
22 next shift or the next day without taking
23 any precautions or properly treating the
24 truckloads. What precautions should have
25 been taken in that situation that you're

1 A. If it's -- depending on what it was
2 rejected for. I mean, if they said it was
3 rejected for bugs, we'd put PhosFume in it
4 or whatever we was told to put in it.

5 Q. And then aerate it, right?

6 A. No. I mean, I don't know if -- it
7 didn't get aerated every time.

8 Q. Well, if it was treated with
9 phosphine, should it have been aerated?

10 A. I don't know.

11 Q. Okay. When you said you never
12 aerated a fumigated truckload, if you don't
13 know whether it was supposed to be fumigated
14 -- aerated or not, why did you say -- why
15 did you mention that you never aerated a
16 fumigated truckload?

17 MR. SCHLOEGEL: You mean,
18 like, when he was asked why and then he gave
19 an answer? I guess I object. Is that even
20 a question?

21 MR. SAPPINGTON: Okay. You
22 can object.

23 Q. (By Mr. Sappington) You can still
24 answer the question I asked you.

25 MR. SCHLOEGEL: What's --

1 discussing in Paragraph 20 of your
2 affidavit?

3 A. What I'm talking about here is when
4 a truck got rejected, they'd bring it back
5 to the lot and they'd take it back on a
6 different shift or something.

7 Q. I understand what you're talking
8 about. I'm asking you, when you say Without
9 taking any precautions, what precautions
10 should have been taken?

11 A. Unload the truck and put a different
12 load in it.

13 Q. And do what with the grain that was
14 in there?

15 A. Dump it back in the pit, put it back
16 up in the bin.

17 Q. And reuse it?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes.

21 Q. Give it to other customers?

22 A. Yes.

23 Q. And it says properly treating. What
24 would have been -- when you say -- what is
25 properly treating that load then?

1 what's the question?

2 MR. SAPPINGTON: Can you read
3 back my question, please.

4 (The requested portion was
5 read by the reporter.)

6 A. I don't understand the question.

7 Q. (By Mr. Sappington) Okay. I just
8 asked you if you knew whether or not a truck
9 that was fumigated had to be aerated. And I
10 understood you to say you didn't know.

11 A. No. I didn't know unless I was
12 told.

13 Q. Okay. Then if you didn't know
14 whether a truck was supposed to be aerated
15 or not, how did you know to say in your
16 affidavit that you never aerated a fumigated
17 truckload?

18 A. I was asked that question.

19 Q. By?

20 MR. SCHLOEGEL: Where are you
21 at here?

22 MR. SAPPINGTON: I'm on his
23 affidavit.

24 MR. SCHLOEGEL: Yeah. Which
25 number?



Technology Specialists in Today's Computer Application

1 MR. SAPPINGTON: Sixteen.
 2 MR. SCHLOEGEL: Oh. I
 3 thought we were down at 20.
 4 MR. SAPPINGTON: You're
 5 wrong. I'm on 16.
 6 MR. SCHLOEGEL: Okay. Now
 7 he's on 16.
 8 Q. (By Mr. Sappington) You were asked a
 9 question by Mr. Schloegel. Is that what
 10 you're trying to say?
 11 A. If I -- if I was ever -- if I never
 12 aerated a fumigated truckload.
 13 Q. Right.
 14 A. Yeah.
 15 Q. You don't know whether you're
 16 supposed to aerate a fumigated truckload or
 17 not. Is that what I'm understanding you to
 18 say?
 19 A. Yeah. I don't know whether I was
 20 supposed to or not.
 21 Q. Okay. So on that topic you said,
 22 though, that you've seen these warning
 23 labels, right, on the cans?
 24 A. I -- yeah. I've seen the label on
 25 the can, right.

1 chemicals, chemicals that I know to be
 2 dangerous, 'cause it's on the can?
 3 A. It never came up.
 4 Q. You had masks available, if I
 5 understood, right?
 6 A. The only mask I had that I used to
 7 paint with the few times that I painted.
 8 There was a mask in the break room. It was
 9 blue. But I don't know exactly what it was
 10 for. I thought it was for Brice.
 11 Q. Well, you used it when you were
 12 painting, right?
 13 A. No. I used a paper mask when I was
 14 painting.
 15 Q. Okay. So you had a paper mask
 16 available is my question. Right?
 17 A. When I was painting, yes.
 18 Q. Okay. Did you use it any other time
 19 besides when you were painting?
 20 A. No.
 21 Q. Even though you were around these
 22 canisters, right?
 23 A. Yeah. I had no reason to. I didn't
 24 know I was supposed to.
 25 Q. Well, you knew that you were working

1 Q. And you knew that that warning label
 2 had a skull and crossbones, right?
 3 A. I seen the skull and crossbones.
 4 Q. You knew it was dangerous?
 5 A. I knew it was poison. But I didn't
 6 know how dangerous it was.
 7 Q. Well, you knew it was poison and you
 8 knew it was dangerous, right?
 9 A. Okay. Yeah.
 10 Q. Okay. And you didn't have to have
 11 any training to tell you that?
 12 A. I just seen on the label that it was
 13 poison.
 14 Q. Right. And so you didn't have to
 15 have training to tell you it was dangerous,
 16 right?
 17 A. Right.
 18 Q. Okay. And you're working around
 19 this stuff all the time. According to your
 20 testimony, there's canisters laying all over
 21 the yard, right?
 22 A. Yes.
 23 Q. Did you ever once raise a concern
 24 with anybody at Elnicki or KAMO saying, Hey,
 25 I'm working around these dangerous

1 with dangerous chemicals, right?
 2 A. Yeah. I knew it was poison. I
 3 didn't know how dangerous it was, though.
 4 Q. Okay. You knew it was dangerous,
 5 though, because it had the skull and
 6 crossbones on it?
 7 A. Okay. Yeah.
 8 Q. And according to your testimony, you
 9 didn't know how dangerous it was. So it
 10 never crossed your mind that you wanted to
 11 -- might want to use a mask while working on
 12 this?
 13 A. Right. It's just like grabbing a
 14 jug of bleach and scrubbing your toilet with
 15 it. I don't wear a mask.
 16 Q. It never crossed your mind that it
 17 might be dangerous enough to affect your
 18 health?
 19 A. No. Not till after --
 20 Q. Now, you said, though, that you had
 21 severe respiratory -- no. Excuse me. A
 22 variety of respiratory health issues. And I
 23 know you talked a little bit about that with
 24 Mr. Ahrens. But did any of those variety of
 25 respiratory health issues cause you to ever



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1 go see a doctor?
 2 A. Not yet. I'm working on that.
 3 Q. So how many respiratory -- variety
 4 of respiratory health issues did you have
 5 during your employment at KAMO?
 6 A. A few different incidences, the --
 7 my chest would be heavy, shortness of
 8 breath. I didn't know if maybe if it was
 9 'cause I smoked. I didn't know.
 10 Q. Would you characterize those as
 11 severe?
 12 A. They could be, yeah.
 13 Q. Okay. And despite having a variety
 14 of severe respiratory health issues during
 15 your employment at KAMO, you never went to
 16 see a doctor about it, right?
 17 A. Right.
 18 Q. Did you ever mention these severe
 19 respiratory health issues to any of your
 20 employers?
 21 A. I don't remember.
 22 Q. Did you ever ask Mr. Elnicki, Hey,
 23 I'm having severe respiratory health issues;
 24 what's going on here?
 25 A. No.

1 evidence is what he was actually convicted
 2 of. And I'm going to ask that the record
 3 reflect that and that his answer be stricken
 4 from the record.
 5 Q. (By Mr. Sappington) Do you know --
 6 you said you had a conversation with Lonnie
 7 Boyd; is that right?
 8 A. Yeah. He called me on the
 9 telephone.
 10 Q. Have you ever seen him in person
 11 that you know of?
 12 A. Yes.
 13 Q. How about Scott Gordon? Have you
 14 ever met him in person; do you know?
 15 A. Who?
 16 Q. I take that as a no. How about
 17 Tracy Milton?
 18 A. No.
 19 Q. On the topic of your severe
 20 respiratory health issues that you didn't
 21 report to a doctor or your employer, did
 22 they ever become a concern to you until you
 23 talked with Lonnie Boyd about this case?
 24 A. No.
 25 Q. And I understand you to say you

1 Q. So they weren't severe enough to
 2 cause you to either go see a doctor or
 3 report it to your employer. Fair enough?
 4 MR. SCHLOEGEL: I object. I
 5 think that misstates his testimony. I don't
 6 think he said that.
 7 Q. (By Mr. Sappington) Okay. Go ahead
 8 and answer it anyway.
 9 MR. SCHLOEGEL: Did you not
 10 think they were severe enough?
 11 THE WITNESS: I didn't know.
 12 Q. (By Mr. Sappington) So even though
 13 you were having severe respiratory health
 14 issues, you didn't know if they were severe
 15 enough to warrant going and seeing a doctor.
 16 Is that what you just said?
 17 A. That's what I just said.
 18 Q. (redacted)
 20 A: (redacted)
 21 Q. Okay.
 22 MS. OAKES: I'm going to
 23 object to that question. That question is
 24 not appropriate. He was not convicted of
 (redacted). The only admissible

1 intend to go see doctors now. Right?
 2 A. Yeah.
 3 Q. And that's -- you determined to do
 4 that after your conversation with Lonnie,
 5 who's a plaintiff in this lawsuit, right?
 6 A. Yes.
 7 Q. And after you were let go by the
 8 Elnickis; is that right?
 9 A. Yeah. It was afterwards.
 10 MR. SAPPINGTON: Okay. All
 11 right. That's all the questions I have.
 12 EXAMINATION
 13 BY MR. LARSEN:
 14 Q. Mr. Lowe, my name's Mat Larsen. I
 15 represent Mars Petcare in this case. I just
 16 want to ask you a few follow-up questions.
 17 On your affidavit, in
 18 Paragraph 15 you also testified about times
 19 in which you used PhosFume in truckloads,
 20 you immediately covered them with a tarp and
 21 you immediately sent them, you say, and the
 22 truck to drive off on to the highway. Do
 23 you know specifically if any of the loads
 24 that you're referring to in Paragraph 15
 25 were actually delivered to and accepted by

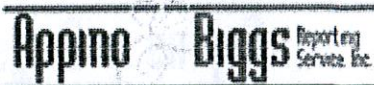


1 Mars Petcare?
 2 A. No. I don't know if they were
 3 delivered and accepted, no.
 4 Q. Okay. In Paragraph 20 you're
 5 talking about times in which loads could
 6 have been rejected for any number of
 7 reasons. But then Rick and Brice would
 8 attempt to get them resubmitted during the
 9 next shift or the next day. Can you tell me
 10 whether any load was rejected specifically
 11 for phosphine gas and then resubmitted and
 12 accepted by Mars Petcare the next day or the
 13 next shift?
 14 A. No. I don't know exactly what they
 15 was rejected for.
 16 Q. And so you're not actually aware of
 17 any load that went to Mars Petcare under gas
 18 that was actually accepted, right?
 19 A. There was trucks that went out and
 20 was going to Mars that they'd come back
 21 empty. So I don't know. Either they got
 22 rid of it at Mars or a flour plant or Tyson
 23 or -- 'cause if they got rejected there,
 24 they'd take it somewhere else. They tried
 25 to.

1 Q. Can you say whether or not you
 2 actually experienced -- you were actually
 3 shown and reviewed slides related to
 4 fumigation training or if this is the type
 5 of situation where maybe you just signed it
 6 without even experiencing the training? Do
 7 you know one way or the other?
 8 A. No, I don't.
 9 Q. Were there times when you would
 10 simply sign off on a training sheet like
 11 Exhibit 3?
 12 A. Yes.
 13 Q. And that happened at KAMO, correct?
 14 A. Yes.
 15 Q. Let's look at Exhibit 3, which has
 16 some of the slides that Richard asked you
 17 about. For example, the first slide in the
 18 upper left-hand corner -- and I'm looking at
 19 a similar document. It's page 302. My
 20 document's different than yours.
 21 A. Okay.
 22 Q. I'm just doing it for the record.
 23 Page 302's titled Fumigation Training. It
 24 has a picture of the first page of the
 25 applicator's license for PhosFume. Do you

1 Q. But when -- you know, truckloads
 2 that left under gas and -- would they always
 3 leave and then come back empty on the same
 4 time in which you were working, on your
 5 shift?
 6 A. Not all the time.
 7 Q. Okay. And so you can't tell me how
 8 many loads went under gas to Mars that were
 9 actually accepted, right?
 10 A. I couldn't tell you a number, no.
 11 MR. LARSEN: I think that's
 12 all I've got, unless I need to follow up
 13 later.
 14 MR. SCHLOEGEL: I -- I've got
 15 some questions.
 16 EXAMINATION
 17 BY MR. SCHLOEGEL:
 18 Q. I'd like to try to clear up some
 19 confusion related to whether or not you
 20 received fumigation training as suggested in
 21 some of the exhibits here. There's an
 22 exhibit where you signed off in 2010 that's
 23 titled Bin Entry & Fumigation Training 2010.
 24 Do you see that?
 25 A. Yes.

1 see that?
 2 A. Yes. I see it.
 3 Q. Okay. You testified you were not
 4 trained in pesticide usage and application,
 5 correct?
 6 A. Correct. Yes.
 7 Q. Do you have a license to apply
 8 pesticides?
 9 A. No.
 10 Q. Did you receive any testing to get a
 11 license to apply pesticides?
 12 A. No.
 13 Q. When you applied the pesticides, did
 14 you receive any personal supervision of any
 15 sort from anybody at KAMO when you did it
 16 every time?
 17 A. No.
 18 Q. Did anybody at KAMO ever actually
 19 review the PhosFume label or any other
 20 pesticide label with you?
 21 A. No.
 22 Q. Did you ever read the label?
 23 A. No. I seen it. I mean --
 24 Q. Do you know what an FMP is?
 25 A. No.



Technology Specialists in Today's Computer Litigation

1 Q. Do you know that a fumigation
 2 management plan is required before you
 3 actually apply fumigation?
 4 A. No.
 5 Q. Do you know if anybody at KAMO ever
 6 completed a fumigation management plan
 7 associated with any of the fumigations?
 8 A. Not that I know of.
 9 Q. Did you do it?
 10 A. No.
 11 Q. Did you see anybody do it?
 12 A. No.
 13 Q. The second slide there is page 303.
 14 It's records. It says, Need to record the
 15 following and make available each pesticide
 16 application, the application and
 17 characterization. Did you ever do anything
 18 like that associated with any fumigations?
 19 A. No.
 20 Q. Did you ever see anybody make any
 21 such records?
 22 A. I haven't.
 23 Q. Did you ever -- did you even know
 24 that that was a requirement?
 25 A. No.

1 or the number of pellets to be used?
 2 A. No.
 3 Q. How many pellets do you use in a
 4 truckload of grain?
 5 A. However many I was told. I don't
 6 know.
 7 Q. Did you ever record anything like
 8 that?
 9 A. No.
 10 Q. How about the date or location of
 11 each application? Did you ever do that?
 12 A. Record it, no.
 13 Q. Ever see it being recorded?
 14 A. No.
 15 Q. What amount of phosphine gas is
 16 dangerous?
 17 A. I don't know.
 18 Q. Do you know if there's an OSHA limit
 19 to the amount of phosphine gas that humans
 20 are -- that they've determined humans can be
 21 exposed to?
 22 A. I don't know what it is.
 23 Q. Do you know what OSHA has determined
 24 to be an acceptable or the acceptable eight-
 25 hour weighted average?

1 Q. Do you know if it's required by law?
 2 A. It is?
 3 Q. Do you know?
 4 A. No.
 5 Q. Do you know where they maintain the
 6 records for the applications of fumigations?
 7 A. No.
 8 Q. It says you're supposed to record
 9 the name and address of the certified
 10 applicator. Did that ever happen?
 11 A. Huh-uh. No.
 12 Q. The name of the pest to be
 13 controlled. What pest were you trying to
 14 control when you were applying the
 15 fumigants?
 16 A. Bugs. I don't know.
 17 Q. Do you know -- anything besides
 18 that, do you know?
 19 A. No.
 20 Q. The name and EPA regulation of the
 21 pesticide. Do you know that?
 22 A. No.
 23 Q. Ever record it?
 24 A. No.
 25 Q. Ever record the rate of application

1 A. No.
 2 Q. The next little slide there is an
 3 example of a record apparently that says
 4 KAMO Grain fumigation record and checklist.
 5 Do you see that?
 6 A. Yes.
 7 Q. Have you ever seen a document like
 8 that?
 9 A. No.
 10 Q. Did you know that's -- those types
 11 of documents are required to be maintained
 12 by law by KAMO Grain?
 13 A. No.
 14 Q. Did you ever see anybody fill out
 15 this type of documentation?
 16 A. No.
 17 Q. The next one there talks about --
 18 this is page 306 -- pesticide labels. Did
 19 you know that you're required -- when you do
 20 the fumigation, you're required to follow
 21 the label's directions?
 22 A. No. I didn't know there was
 23 direction on there.
 24 Q. Did you know the label was the law?
 25 A. No.



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1 Q. Did you know that if you violate the
 2 label, you also violate federal and state
 3 law?
 4 A. I didn't know that.
 5 Q. Nobody at KAMO ever explained that
 6 to you?
 7 A. No.
 8 Q. Did anybody -- I think I already
 9 asked it. But did anybody at KAMO ever
 10 review the label or such laws with you?
 11 A. No.
 12 Q. Look at -- well, actually, let me
 13 just -- this is -- on page 300 of the
 14 documents produced by Richard and the KAMO
 15 guys they ask -- there's a fumigation quiz.
 16 Do you remember taking a fumigation quiz
 17 ever?
 18 A. No, I don't.
 19 Q. How many tablets should you use to
 20 fumigate a 10,000-bushel bin?
 21 A. I don't know.
 22 Q. Ten?
 23 A. I don't know.
 24 Q. You couldn't even give me a guess,
 25 could you?

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1 A. No.
 2 Q. At what point is your respirator no
 3 good for -- well, let me ask you this: What
 4 is PH3?
 5 A. I don't know.
 6 Q. Okay. At what point is your
 7 respirator no good for PH3 gas?
 8 A. I don't know that either.
 9 Q. What levels of PH3 gas may be
 10 exposed to for an eight-hour period?
 11 A. I don't know.
 12 Q. Did you ever use -- have you ever
 13 labeled any bin or truck when you're
 14 fumigating or after fumigation?
 15 A. Label it with what?
 16 Q. Any warning signs or anything.
 17 A. No.
 18 Q. And just to summarize here, the
 19 slides we've looked at, is it your testimony
 20 that you didn't receive this type of
 21 training?
 22 A. Right.
 23 MR. SCHLOEGEL: That's all
 24 I've got.
 25 MR. AHRENS: I have a

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1 question, then.
 2 THE WITNESS: Yes.
 3 EXAMINATION
 4 BY MR. AHRENS:
 5 Q. Is it your testimony that you didn't
 6 receive it or you don't remember receiving
 7 it?
 8 A. I don't remember receiving it.
 9 Q. Okay. So you might have received it
 10 and just not remember it now, correct?
 11 A. I don't -- no, I didn't receive it.
 12 I don't remember receiving it.
 13 Q. So when you put your signature,
 14 Nathan Lowe, as having had bin entry and
 15 fumigation training, that was just a false
 16 signature?
 17 A. If it's my signature. I didn't --
 18 Q. Is that your name? Is that your
 19 Nathan Lowe?
 20 A. That's my name, yeah.
 21 Q. All right. So did you write it on
 22 the piece of paper that said Bin Entry &
 23 Fumigation Training?
 24 A. I could have signed it, yeah.
 25 Q. Did you receive bin entry and

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1 fumigation training?
 2 A. Not that I remember, no.
 3 Q. Do you remember what the fumigation
 4 training consisted of?
 5 A. No.
 6 Q. But you did sign your name?
 7 A. Yeah.
 8 Q. And you wouldn't sign your name on
 9 something that was false, would you?
 10 A. I've signed my name on similar
 11 papers like this.
 12 Q. Whatever -- what else have you
 13 signed that was false?
 14 A. Just these. I mean, that I know of.
 15 Just in passing. Go to the break room.
 16 It's sitting there, waiting for my name on
 17 it. And I had to sign it so I could leave.
 18 Q. Is that the only thing that's false
 19 that you ever signed your name to in your
 20 life?
 21 A. Yes.
 22 MR. AHRENS: That's all I
 23 have.
 24 EXAMINATION
 25 BY MR. SCHLOEGEL:



1 Q. A couple questions on that, 'cause I
 2 don't think it's very fair. I want you to
 3 have the opportunity to kind of clear the
 4 record. What I asked you and what Richard
 5 asked you is whether or not you can remember
 6 whether or not you actually received this
 7 training. Do you understand that?

8 A. Yeah.

9 Q. Okay. I asked you then whether or
 10 not this was the type of training maybe you
 11 just signed off on and didn't actually
 12 receive. Is that possible?

13 A. Yeah. It's possible.

14 MR. SCHLOEGEL: Okay.

15 EXAMINATION

16 BY MR. AHRENS:

17 Q. Do you know one way or the other
 18 whether you actually received the training
 19 or not?

20 A. No, I do not.

21 Q. It's possible you received the
 22 training, isn't it?

23 A. It's possible that I sat there and
 24 took a quiz over a training course. But no,
 25 I didn't receive no training.

1 MR. AHRENS: All right.
 2 That's all I have.

3 EXAMINATION

4 BY MR. SCHLOEGEL:

5 Q. Would you agree with me that whether
 6 or not you sat there or not, paid attention
 7 or not, the reality is, you don't know
 8 anything about how to apply or use this type
 9 of pesticide, true?

10 A. That is correct.

11 EXAMINATION

12 BY MR. AHRENS:

13 Q. But you did for all those years, did
 14 you not, sir?

15 A. Yeah.

16 MR. AHRENS: Anybody else?
 17 That's all I've got. Anybody else?

18 MR. SCHLOEGEL: Do you want
 19 to read and sign, or do you want to waive
 20 your ability to review and potentially make
 21 corrections for clerical errors?

22 THE WITNESS: I'll read and
 23 sign.

24 MR. SCHLOEGEL: He will read
 25 and sign.

1 (The deposition was concluded
 2 at 3:36 p.m.)
 3 (Witness excused.)
 4
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SIGNATURE

3 The deposition of NATHAN LOWE was taken
 4 in the matter, on the date, and at the time and
 5 place set out on the title page hereof.

7 It was requested that the deposition be
 8 taken by the reporter and that same be reduced to
 9 typewritten form.

11 It was agreed by and between counsel and
 12 the parties that the deponent will read and sign
 13 the transcript of said deposition.



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1 AFFIDAVIT
 2 .
 3 STATE OF _____:
 4 COUNTY/CITY OF _____:
 5 .
 6 Before me, this day, personally appeared,
 7 NATHAN LOWE, who, being duly sworn, states that the
 8 foregoing transcript of his/her Deposition, taken in
 9 the matter, on the date, and at the time and place set
 10 out on the title page hereof, constitutes a true and
 11 accurate transcript of said deposition, along with the
 12 attached Errata Sheet, if changes or corrections were
 13 made.
 14 .
 15 _____
 16 NATHAN LOWE
 17 .
 18 SUBSCRIBED and SWORN to before me this _____
 19 day of _____, 2016 in the
 20 jurisdiction aforesaid.
 21 .
 22 _____
 23 My Commission Expires _____ Notary Public
 24 .
 25 .

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1 DEPOSITION ERRATA SHEET
 2 RE: APPINO & BIGGS
 3 REPORTING SERVICE, INC.
 4 FILE NO.: 44057
 5 CASE: LONNIE BOYD, ET AL. vs.
 6 MARS PETCARE US, INC., ET AL.
 7 DEPONENT: NATHAN LOWE
 8 DEPOSITION DATE: 8/17/16
 9 To the Reporter:
 10 I have read the entire transcript of my Deposition taken in the
 11 captioned matter or the same has been read to me. I request that
 12 the following changes be entered upon the record for the reasons
 13 indicated. I have signed my name to the Errata Sheet and the
 14 appropriate Certificate and authorize you to attach both to the
 15 original transcript.
 16 PAGE LINE FROM TO REASON
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Page 115

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 24 SIGNATURE: _____ DATE: _____
 25 NATHAN LOWE

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1 REPORTER'S CERTIFICATE
 2 STATE OF MISSOURI)
 3) ss
 4 COUNTY OF JASPER)
 5 I, VICKIE L. SALMONS, Certified Court Reporter, do
 6 hereby certify that the witness was duly sworn by me; that
 7 the facts stated by me in the caption hereof are true; that
 8 the said witness did make the above and foregoing answers
 9 in response to questions propounded as shown; that I did,
 10 in stenotype, report said proceedings; and that the above
 11 and foregoing typewritten pages contain a full, true, and
 12 correct transcription of my shorthand notes taken on such
 13 occasion. That presentment by me to the witness for
 14 signature was waived; that the deposition will be
 15 thereafter by the witness read over, signed, and sworn to
 16 on or before the date of trial; that said deposition is now
 17 herewith returned.
 18 I further certify that I am neither attorney for, nor
 19 counsel for, nor related to, nor employed by any of the
 20 parties to the action in which this deposition was taken;
 21 and, further, that I am not a relative or employee of any
 22 attorney or counsel employed by the parties hereto, or
 23 financially interested in the action.
 24 _____
 25 VICKIE L. SALMONS, CCR

