NOTES FROM INFORMAL HEARING
UCC-TEXAS CITY WITH OSHA
2320 LA BRANCH, HOUSTON, TEXAS
JULY 10, 1983 - approximately 9:30 a.m.

RECEIVED
AUG 17

PLAINTIFF'S EXHIBIT
UC-1160

Re: OSHA CITATION P4765, Issued 07/03/84
Region 6, Area 3280

UCC Participants: F. S. Provenzano, Plant Manager
F. C. Phinney, Plant Safety Director
D. R. Hutchinson, Vinyl Acetate Department Head

OSHA Participants: J. Fontaine, Industrial Hygienist Supervisor
E. E. Petit, Safety Specialist
P. J. Nessler, Safety Supervisor*

*Previous UCC employee

Mr. Fontaine opened the meeting stating the Houston OSHA Office Area Director, Mr. G. A. Batey, was unable to attend and he, Mr. Fontaine, was representing him. Mr. Fontaine stated the purpose of the informal hearing.

Mr. Provenzano stated that UCC did not understand the citation and that he would like clarification on the basis of the fact that the cause was the failure of a component in a hired contractor's system.

Mr. Fontaine stated that an OSHA citation is not a judgment of cause and that the citation was not judging UCC as the cause of the accident - that it was the technicality of a general responsibility for the employer to provide a safe work place free from . . . Mr. Nessler said that in preparing a citation, they look for violation of various sub-standards.

Mr. Provenzano then said that philosophically, the citation makes UCC the insurer of all contractor equipment and expertise over which we have no control. In fact, their expertise and equipment is the purpose for which they are contracted. Mr. Provenzano stressed the following points for OSHA response:

1. System was set up by the contractor. The coupline, indeed the entire system, was the contractor's equipment. No way that we could know the coupling was defective except by a micrometer measurement of the groove.

2. We relied on the expertise of the contractor to do the job they stated they were capable of doing.

3. We did not have control over the selection or use of the coupling.

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ACL Doc 16335 · Page 1 of 6
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4. There is no way we can insure that a contractor will not err or his equipment is not defective and the basis of the citation makes us the total insurer of contractor performance and equipment which is unreasonable in any industrial setting.

5. A new Seal-Fast fitting, purchased at random, was exhibited to show a significant off-center flaw and difficulty in detection of the flaw without disassembly of the contractor equipment and use of a micrometer which was not reasonable. Mr. Fontaine and Mr. Nessler expressed concern over the appearance of the fitting quality. Mr. Fontaine stated, "That is poor quality control." There was a short discussion comparing better quality of brass, bronze and stainless steel fittings. Mr. Petit stated that Seal-Fast contract out the fabrication of their fittings. During the discussion, Mr. Nessler and Mr. Fontaine stated that the apparent quality control was so low that it warranted an OSHA alert issued from Washington to alert industrial users. They discussed proceeding with the alert among themselves which left the impression they would initiate action.

6. We would not have detected the flawed coupling with a reasonable prestart-up safety review and there were 17 other fittings in the contractor's system which did not fail.

7. Used Company car failure and/or OSHA building air conditioning failure involving serious injury to an employee as examples of the unreasonability of an OSHA citation which makes the employer total insurer of contractor deficiencies over which he has no direct control.

8. Revealed findings of UCC's system analysis that there would have been no incident had the fitting been concentric.

Mr. Fontaine stated the citation is philosophically based on the overall responsibility of the employer to provide a safe work place.

Based on our concern about being cited as insurers for all contractor performance and equipment, Mr. Nessler related what were supposed to be two examples of employer citations where the incident may have been caused by contractor or equipment supplier deficiencies.

1. Explosion where a small steel plug in a stainless system corroded (instrument system, I believe) and allowed a false instrument reading which led to the explosion. Company "what if" logic diagrams would not have discovered the flaw.

2. Employers are cited for employees using sub-standard tools where employees have to provide their own tools. Employer is still responsible.

Mr. Fontaine stated explicitly we were not being cited for failure to micrometer the fitting for thickness concentricity, but for system pressure rating deficiency. Mr. Nessler stated that even without exceeding coupling system pressure, there was no pressure relief provided to protect against it. Mr. Provenzano restated that our computer analysis indicated a normal fitting would not have failed even at our pressure.

UCTC 20861

Mr. F. S. Provenzano introduced our plant safety ethic supported by the attached safety record sheet, the numerous National Petroleum Refiners Association (NPRA) safety awards received by the Texas City Plant, and our record of 27 OSHA inspections with only 2 non-serious and 1 serious violation citation in the last 10 years.

Mr. Fontaine stated he was aware of the fact that we have one of the best safety records and possibly one of the Nation's best Industrial Hygiene groups.

Mr. Fontaine stated that, "We (indicating the three present) have met before you came in and decided that we have a good citation."

Mr. Provenzano advised them that due to legal implications and the unreasonableness of the citation which makes industry the insurer of contractor expertise and equipment, that we would formally contest the citation.

Mr. Fontaine said, in effect, that to have an administrative law judge, review and decide on the citation validity, was their desire also and possibly the best course of action for them too.

Submitted by: D. R. Hutchinson

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ACL Doc 16335 · Page 4 of 6

1984
TEXAS CITY PLANT
WEEKLY STATUS REPORT

Date: July 09, 1984

1984 Limits

RIIR: 0.89 (18 Max.) LWCIR: 0.11 (2 Max.) O-T-J. 50 (Max.)

'81	'82	'83		ON-THE-JOB	'84
0.18	0.09	0.10	(1)	Rate for Lost Workday Cases (LWCIR)	0.10
4	2	2	(2)	Number of Lost Workday Cases (LWC)	1
11.7	4.7	310.6	(3)	Severity Rate - Number of Workdays	575
260	100	6,208	(4)	Number of Lost Workdays	6,000
1.22	0.75	1.10	(5)	Rate for Recordable Injuries (RIIR)	0.57
27	16	22	(6)	Number of Recordable Injuries (RI)	6
*	*	*	(7)	Number of Serious Injuries	17
156	24	176	(8)	Number of Restricted Workdays	5
4,434,006	4,293,653	3,996,604	(9)	Total Exposure Hours	2,088,444
2,129,032	1,947,082	1,906,830	(10)	Hours Since Last Lost Workday Case	879,657
172	168	169	(11)	Days Since Last Lost Workday Case	86
			(12)	Hours Since Last Recordable Injury	741,907
1,463	1,326	1,325	(13)	Accident/Incident Reports(Includes Injuries)	553
832	728	734	(14)	Dispensary Visits	258
1	3	1	(15)	Fire Loss Greater Than $5M	1
38	32	28	(16)	Fire Loss Less Than $5M	14
				OFF-THE-JOB	
2.68	2.54	2.09	(17)	Rate for Off-the-Job Disabling Injuries	1.33
107	98	75	(18)	Number of Off-the-Job Disabling Injuries	25
--	--	1,379	(19)	Number of Days Lost	460

REMARKS: No RI's

NOTE: Some of the above figures have been changed to reflect actual current statistics.

that counted during this period. New statistic for 1984

UCTC 20863

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Drawing IV

Cross sectional view of the broken Seal
Fast coupling still threaded into the valve.

UCTC 20864

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OSHA VISIT - 7/10/84

FS Provenzano, FC Phinney, DR Hutchinson

1. Do not understand the citation; need clarification.

2. Detailed discussion of incident

   A. System set up by contractor; his equipment; no way we could know the coupling was defective (could tell by inspection).

   B. We relied on expertise of contractor.

   C. We did not have control over the use of that coupling.

   D. There is no way we can insure a contractor won't screw up. (Ex: A/C blow-up; Company cars)

   E. This citation makes us the insurer of our contractors.

      ∴ We must contest; potential lawsuit; you can't expect any company to do this.

      ∴ OSHA is being unreasonable! If we do as this citation says, we'd be insuring everyone and their equipment.

3. Description of Plant, number of employees, safety record, OSHA record.

UCTC 20865