

NO. 31506

SHIRLEY HODGE, Individually and as *IN THE DISTRICT COURT
Personal Representative of and Estate of *
A.J. HODGE, JR., Deceased; GREGG A. *
HODGE and ANGELA R. McCLAIN, *
Plaintiffs, *
vs. *
TEXAS UTILITIES ELECTRIC COMPANY *
(d/b/a VALLEY POWER PLANT); CSR, *
LTD.; BROWN & ROOT USA, INC.; *
BROWN & ROOT, INC. (A DELAWARE *
CORPORATION) and as successor to *
BROWN & ROOT, INC. (A TEXAS *FANNIN COUNTY, TEXAS
CORPORATION), individually and as *
successor to BROWN & ROOT, INC.; *
THORPE PRODUCTS COMPANY; *
THORPE CORPORATION; J.T. THORPE *
COMPANY (Individually and as *
successor-in-interest to THORPE *
INSULATION COMPANY) and THORPE *
INSULATION SERVICES COMPANY, *
Defendants. *6TH JUDICIAL DISTRICT

COPY

VIDEOTAPED DEPOSITION OF DELBERT RAY GAINES
SEPTEMBER 25, 1996
HOUSTON, TEXAS

Taxable Costs \$ _____
Paid by: Plaintiff
J. Todd Kale, Esq.
SBN 11079960

clerked. b.e.p.

I N D E X

Page

Direct Examination

By Mr. Kale. 5

1 A P P E A R A N C E S:

2
3 FOR THE PLAINTIFF:

4 J. Todd Kale, Esq.
5 Silber Pearlman, P.C.
6 3110 Webb
 Dallas, Texas 75205

7
8 FOR THE DEFENDANT, BROWN & ROOT:

9 Phillip S. Brown, Esq.
10 Fanning, Harper & Martinson, P.C.
11 Third Floor Preston Commons West
 8117 Preston Road
 Dallas, Texas 75225

12 ALSO PRESENT:

13 Ms. Lynette Adams
14 Mr. Warren Mullins, Videographer
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1 On the 25th day of September, 1996, in the
2 offices of Brown & Root, 4100 Clinton Drive, Houston,
3 Harris County, Texas, beginning at 9:16 a.m., DELBERT
4 RAY GAINES, appeared before me, Connie Slaughter, a
5 notary public in and for the State of Texas, and being
6 by me first duly sworn, testified by his oral
7 deposition as hereinafter set out, pursuant to Notice
8 and the Texas Rules of Civil Procedure.

1 THE VIDEOGRAPHER: We'll swear in
2 the witness at 9:16.

3 THE REPORTER: Same stipulations?

4 MR. KALE: Yeah, by the Rules.

5 THE REPORTER: And signature?

6 MR. BROWN: Yes.

7 DELBERT RAY GAINES,
8 having been first duly sworn upon his oath to tell the
9 truth, the whole truth, and nothing but the truth,
10 testified as follows, to wit:

11 * * *

12 E X A M I N A T I O N

13 * * *

14 BY MR. KALE:

15 Q. Mr. Gaines, will you state your full name for the
16 record?

17 A. Delbert Ray Gaines.

18 Q. Mr. Gaines, my name is Todd Kale. I represent
19 the plaintiffs in this case. Before we start -- start
20 into this thing, let me tell you a few ground rules.

21 If I ask you a question that you don't
22 understand, please just stop me. Don't try to answer
23 it. We're not here for you to guess or speculate or
24 anything like that. We just want to know what you
25 know.

1 A. All right.

2 Q. All right? If you need to take a break or
3 anything, go to the restroom or anything, just tell
4 us. Tell Mr. Brown. We'll certainly stop this
5 thing. Don't want you to sit there and be
6 uncomfortable.

7 A. All right.

8 Q. What's your age right now, Mr. Gaines?

9 A. I'm 39.

10 Q. What's your date of birth?

11 A. 12/15/57.

12 Q. How are you presently employed?

13 A. Corporate safety and health.

14 Q. Do you have a title?

15 A. My title is corporate industrial hygienist

16 Q. And that's with Brown & Root?

17 A. Right.

18 Q. How many years have you worked with Brown & Root?

19 A. About five years.

20 Q. So, you started in 1991 or '90?

21 A. '91, I think.

22 Q. Okay. As a corporate industrial hygienist, have
23 you always been employed by Brown & Root in that
24 capacity?

25 A. As a corporate industrial hygienist?

1 Q. Yes.

2 A. Yes.

3 Q. Is that your first job with Brown & Root?

4 A. Yes.

5 Q. You remain in that position?

6 A. Yes.

7 Q. As a corporate industrial hygienist for Brown &
8 Root, what are your duties and responsibilities in a
9 nutshell?

10 A. Comprehensive industrial hygiene.

11 Q. Where did you go to college?

12 A. North Texas State.

13 Q. Up in Denton?

14 A. Yes.

15 Q. What degrees did you obtain from North Texas
16 State?

17 A. Bachelor's of Arts in biology and chemistry.

18 Q. When did you graduate?

19 A. 1985.

20 Q. Did you do any master's work?

21 A. No.

22 Q. Any of your classroom work at North Texas State
23 in pursuant -- while you were pursuing your Bachelor's
24 in biology and chemistry, any of your studies ever
25 cover the topic of asbestos?

1 A. No.

2 Q. Are you a certified industrial hygienist?

3 A. No.

4 Q. Do you have any aspirations to be?

5 A. Yes.

6 Q. Are you in the process of trying to become

7 certified?

8 A. Yes.

9 Q. How does that work? What do you have to do?

10 A. There are certain requirements that you have to
11 meet.

12 Q. What are some of those requirements?

13 A. Depends on -- depends on what you want to pursue,
14 whether it's a certification or just an initial-level
15 certification.

16 Q. Are there varying levels of certified industrial
17 hygienist?

18 A. No. There are certain stages in becoming a
19 certified industrial hygienist.

20 Q. What stage are you at right now?

21 A. I'm at it's called an industrial hygienist in
22 training.

23 Q. During your course work at North Texas State, did
24 you take any classes in industrial hygiene?

25 A. No.

1 Q. Did you take any classes in industrial safety?

2 A. No.

3 Q. After you graduated, where did you immediately go
4 to work or did you immediately go to work?

5 A. I did not immediately go to work.

6 Q. Okay. What was your first job?

7 A. My first job was with an environmental consulting
8 company.

9 Q. What was the name of company?

10 A. The name of that company was Maxim Engineers.

11 Q. Where were they located?

12 A. Out of Dallas, Texas.

13 Q. What sort of work did you do for Maxim?

14 A. I was an industrial hygiene technician.

15 Q. How many years did you work for Maxim?

16 A. Approximately about three years.

17 Q. So, about 1985 to '88 or would it have gone into
18 '89?

19 A. 1987, '88 to 1991.

20 Q. '87 to '90?

21 A. Between I think it was like '87 to '91.

22 Q. Okay. What were your duties as an industrial
23 hygiene technician for Maxim Engineers?

24 A. My duties were -- well, it's kind of a difficult
25 question. Mostly my duties were to manage -- manage

1 projects.

2 Q. What kind of projects did Maxim Engineers
3 undertake?

4 A. They did all types of projects, industrial
5 hygiene-related such as they did some CMT work, and
6 they also did some asbestos work.

7 Q. When you say asbestos work, do you mean -- what
8 do you mean?

9 A. I mean asbestos consulting work.

10 Q. Okay. Did you work on the asbestos consulting
11 work?

12 A. Yes.

13 Q. The time you started with Maxim Engineers in
14 about 1987, were you familiar with the hazards of
15 asbestos?

16 A. No.

17 Q. During your stay at Maxim for those three years,
18 did you become familiar with the hazards of asbestos?

19 A. What do you mean by hazards?

20 MR. BROWN: Do you mind saying
21 potential hazards because I think, Counsel, you know
22 asbestos can be used under certain circumstances.
23 It's not a banned product. There are products that
24 are manufactured and sold today.

25 MR. KALE: Okay.

1 MR. BROWN: So, can we talk in
2 terms of potentialities, I guess is my objection to
3 your question.

4 MR. KALE: As?

5 MR. BROWN: The term has hazards.
6 Asks him to assume a fact that's not in evidence at
7 this point.

8 Q. (By Mr. Kale) Do you consider asbestos to be a
9 hazardous substance?

10 MR. BROWN: If you have a personal
11 opinion, you may express it.

12 A. My personal opinion is it's not a hazardous
13 substance.

14 Q. (By Mr. Kale) Okay. Do you have a professional
15 opinion as to whether asbestos is a hazardous
16 substance based upon your knowledge and training in
17 working as a --

18 MR. BROWN: Again, I need to
19 object to your question.

20 MR. KALE: Can you wait?

21 MR. BROWN: No. Have you finished
22 it?

23 MR. KALE: No.

24 MR. BROWN: I'm sorry.

25 Q. (By Mr. Kale) Do you have a professional opinion

1 based upon your work and knowledge as a corporate
2 industrial hygienist for Brown & Root?

3 MR. BROWN: Opinion as to what
4 counsel? That's an incomplete question.

5 Q. (By Mr. Kale) An opinion as to the potential
6 hazard of asbestos?

7 A. When you say has "hazards," you -- you haven't
8 explained what you -- what hazards.

9 Q. Okay. Do you have an opinion as to whether --
10 professional opinion in your capacity as a corporate
11 industrial hygienist for Brown & Root as to potential
12 hazards of asbestos, hazard being can cause disease?

13 A. Could you explain that question again?

14 Q. Okay. Do you, Delbert Gaines, as a corporate
15 industrial hygienist for Brown & Root since about
16 1991 --

17 A. Right.

18 Q. -- have a professional opinion as to the
19 potential hazards of asbestos relating to its
20 potential to cause disease?

21 A. No, I don't have a professional opinion, no.

22 Q. The jobs -- the industrial hygiene and asbestos
23 consulting work that went on at Maxim, where were
24 those jobs at? Were they a specific facility?

25 A. Those jobs were all over the United States.

1 Q. Any in the State of Texas?

2 A. Some in the State of Texas.

3 Q. Where?

4 A. I would have to go back and look at my records to
5 see exactly where.

6 Q. Do you remember any particular places where you
7 may have gone to a site?

8 A. Some school districts in Texas, some -- some
9 buildings. I mean, I would have to consult my record
10 to give you specific -- specific places.

11 Q. That's okay. School buildings in Texas?

12 A. Yes.

13 Q. What kind of asbestos consulting work was
14 asbestos -- was Maxim Engineers doing regarding
15 asbestos at those places?

16 A. Work that involved compliance with regulatory
17 statutes.

18 Q. Were they doing abatement work?

19 A. No.

20 Q. Was Maxim Engineers a -- were they qualified to
21 do abatement work?

22 A. No.

23 Q. Did they consult with abatement companies,
24 asbestos abatement companies?

25 A. What do you mean by consult?

1 Q. Well, I was using your term. You said they did
2 consulting work. Did they work with and provide
3 guidance to asbestos abatement companies?

4 A. They mostly worked with the owners.

5 Q. The property owners?

6 A. Right.

7 Q. If they worked with the property owners, what
8 was -- what was Maxim Engineers being paid for?

9 A. They were paid for giving them regulatory
10 guidance on how to address asbestos.

11 Q. And I may have asked you this, Mr. Gaines. If I
12 have, I apologize. Your time at Maxim Engineers,
13 during that period, did you become familiar with the
14 potential hazards of asbestos and being exposed to it?

15 A. Basically what I became involved with was the
16 regulatory guidelines and procedures you have to deal
17 with when addressing issues involving asbestos.

18 Q. Let me just ask it like this. Did you learn
19 between the years 1987 and 1990 that asbestos could
20 cause -- that exposure to asbestos could cause a
21 disease asbestosis?

22 A. I'm not a medical doctor or anything like that.
23 So, basically what is asbestosis?

24 Q. Pardon me?

25 A. What is asbestosis?

1 Q. Have you ever heard the term "asbestosis"?

2 A. Yes, I've heard of the term.

3 Q. Do you have an understanding as to what that --
4 what that term means?

5 A. I know it has to do with asbestos and potential
6 exposure. Just basically from what I've learned in
7 different regulatory classes.

8 Q. Have you ever heard that -- the term "asbestosis"
9 being defined as the disease of the lung caused by
10 exposure to asbestos?

11 A. Yes.

12 Q. Okay. Have you ever heard that exposure to
13 asbestos could potentially cause lung cancer?

14 A. I've heard that in training classes.

15 Q. Do you have an idea about when you first heard
16 that?

17 A. It was probably closer to 1990.

18 Q. Would it have been before or after you came to
19 work for Brown & Root?

20 A. Before I came to work for Brown & Root.

21 Q. Would it have been while you were employed by
22 Maxim Engineers?

23 A. Yes.

24 Q. At Maxim Engineers did you work under certified
25 industrial hygienists?

1 A. I worked under the direction of a supervisor. He
2 was not a certified industrial engineer.

3 Q. Was he an industrial hygienist?

4 A. No.

5 Q. Were they primarily engineers?

6 A. Engineers, some of them were.

7 Q. As the name -- as the name showed -- as the name
8 says, Maxim Engineers. Have you also -- strike that.

9 Have you heard of the disease known as
10 mesothelioma which is a cancer of the lining of the
11 lung and that it can be caused by exposure to
12 asbestos?

13 A. I've heard that it -- yes, with potential
14 exposure.

15 Q. Okay. Potential exposure. Do you have any
16 knowledge regarding the -- the fact that low dosages
17 of -- strike that.

18 Do you have any knowledge that low level
19 exposures have been shown to cause mesothelioma?

20 A. No medical knowledge.

21 Q. Have you ever read anything to that effect?

22 A. Yes.

23 Q. When did you read something to that effect?

24 A. In the training courses.

25 Q. You spoke about these training courses. When did

1 you take these training courses?

2 A. Probably sometime in '88, '90, something like
3 that. I can't -- can't remember.

4 Q. Okay. Who put on the training courses?

5 A. Different approved training providers.

6 Q. Do you remember any of them by chance?

7 A. Not from 1988.

8 Q. Okay. Were there course materials?

9 A. Yes, there were course materials.

10 Q. Do you still have those?

11 A. No, I don't.

12 Q. Were these training classes specifically related
13 to asbestos issues?

14 A. Yes.

15 Q. Were they held in Dallas?

16 A. Yes.

17 Q. Now, let me just get -- make sure I'm clear. You
18 said you do not remember any of the training classes
19 that you may have attended from 1988. Does that also
20 include '89 and '90 assuming you were -- you had some
21 during that period?

22 A. I can't remember who put on those training
23 courses, if that's what you're asking me.

24 Q. Yes.

25 A. No, I cannot remember who put on those training

1 courses.

2 Q. Did Maxim Engineers ask you to attend those?

3 A. Yes.

4 Q. Did Maxim Engineers have any participation in the
5 preparation of the course materials or putting -- or
6 doing lectures there?

7 A. Yes.

8 Q. What was their function in the training courses?

9 A. They provided regulatory information as a
10 consultant.

11 Q. Do you remember -- who was your boss at Maxim?

12 A. My boss, his name was Mike Abshire.

13 Q. Can you spell Abshire for us?

14 A. No, I can't.

15 Q. Do you know if he's still employed with Maxim
16 Engineers?

17 A. No, I do not know.

18 Q. What was his job title at Maxim?

19 A. I don't even know if he had a job title. He was
20 just supervisor, I guess.

21 Q. You at least know he was your supervisor, right?

22 A. That's basically -- that's the guy that I
23 reported to.

24 Q. Have you ever given a deposition before?

25 A. No.

1 Q. Have you ever testified at trial for Brown & Root
2 or for anyone else?

3 A. No.

4 Q. After Maxim, where did you go to work?

5 A. Brown & Root.

6 Q. Came straight here?

7 A. Right.

8 Q. Okay. How did you end up getting a job at Brown
9 & Root?

10 A. By default.

11 Q. Explain what you mean by that.

12 A. I guess the way anybody is chosen for a job, you
13 know.

14 Q. Did you have a head hunter, did you answer an ad
15 that was placed in some periodical?

16 A. I answered an ad that was placed in a periodical.

17 Q. Came down, went through the interview process?

18 A. Right.

19 Q. Did you interview with anyone else?

20 A. Yes.

21 Q. Do you -- can you tell us who those corporations
22 were?

23 A. No. I have to say no, I didn't interview with
24 anybody between Brown & Root and Maxim.

25 Q. Okay. You graduated in about 1985 from North

1 Texas?

2 A. Right.

3 Q. You went to work for Maxim Engineers in '87.

4 What did you do from the '85 to '87 time frame?

5 A. I was a special A contractor.

6 Q. Say again?

7 A. I was a special A contractor.

8 Q. Special A?

9 A. I was painting contractor.

10 Q. Got you. Got you. Commercial, residential?

11 A. Residential.

12 Q. During your course work at North Texas State, did
13 you ever come to understand that exposure to asbestos
14 could potentially cause the disease asbestosis?

15 A. No.

16 Q. Same question for lung cancer?

17 A. No.

18 Q. Did you ever hear or see in any of your texts
19 the -- a reference to the disease mesothelioma?

20 A. No.

21 Q. So, when you -- when you graduated from North
22 Texas State, you had no knowledge of asbestos?

23 A. No.

24 Q. That is correct? The way I asked the question
25 and the way you answered it might be confusing.

1 A. I did not have any knowledge of asbestos when I
2 graduated.

3 Q. Thank you, Mr. Gaines. Your knowledge of
4 asbestos came from the training classes sometime
5 between '87 and '90 -- sometime between '88 and '90?

6 A. Somewhere in there.

7 Q. Not before then?

8 A. I can't remember the exact date when I first took
9 my training class on asbestos. That's approximate
10 dates.

11 Q. Okay. Just your best recollection. That's all
12 we want to know.

13 Based upon what you know now about
14 asbestos, the training courses that you've taken, any
15 medical literature that you may have reviewed in the
16 course of your job, any regulatory statutes you may
17 have reviewed during the course of your job, any
18 industrial hygiene survey text such as Mr. Patty's
19 series on industrial hygiene, based upon all of that,
20 is it your understanding that exposure to asbestos
21 increases the risk of contracting asbestos-related
22 diseases.

23 MR. BROWN: I want to object to
24 the question without saying what you mean by
25 "exposure to asbestos." You haven't put it into any

1 terms. It's just a general statement. And I think
2 you're asking him to speculate without knowing under
3 what circumstances.

4 Q. (By Mr. Kale) You can go ahead and answer.

5 MR. BROWN: If you can without
6 speculating.

7 A. I can't without speculating because you have to
8 define what you mean by "exposure."

9 Q. (By Mr. Kale) Being around it. Being around
10 asbestos. Being around asbestos-containing
11 materials.

12 MR. BROWN: I need to object to
13 that "being around" is also a vague term. There may
14 be asbestos in place in this building right now. So,
15 unless you can tell us what you mean by "being
16 around," I think you're asking him to speculate.

17 Q. (By Mr. Kale) Can you answer based upon the
18 definition of "exposed" I gave you?

19 MR. BROWN: Without knowing more
20 and without speculating, can you?

21 A. No, I can't answer that.

22 Q. (By Mr. Kale) What do you -- how would you
23 define "exposed"?

24 A. "Exposed" is a very, very broad term. When I
25 think about being exposed, I mean, it has to be really

1 related to what your specific work activity may be.

2 Q. All right. Let's change it to exposed -- let's
3 say would exposure -- and with exposure meaning being
4 in close proximity to friable asbestos dust. Would
5 that increase the risk, in your opinion, of
6 contracting an asbestos-related illness?

7 A. What do you mean by "dust"?

8 Q. Dust.

9 MR. BROWN: He's told you he's not
10 a medical person, and you're asking him for a medical
11 opinion. He's told you he's not a certified
12 industrial hygienist, but he certainly had some
13 experience. So, if he had a personal opinion, I
14 certainly do not object to him stating it. I don't
15 want you to think he's giving a medical opinion.

16 MR. KALE: I'm not thinking
17 anything of the sort. I just want his opinion.

18 MR. BROWN: Can you read the
19 question back, or do you remember what it was?

20 THE WITNESS: Why don't you read
21 it back.

22 MR. BROWN: Okay.

23 Q. (By Mr. Kale) Let me just -- let me just -- let
24 me think about it, maybe I can restate it for you.

25 In your opinion, does exposure to friable

1 asbestos dust increase the risk of contracting an
2 asbestos-related disease?

3 A. My personal opinion is no.

4 Q. Is it your personal opinion as a corporate
5 industrial hygienist for Brown & Root that there are
6 safe levels of asbestos exposure?

7 MR. BROWN: All he is here to give
8 is his deposition as an individual. He has not been
9 designated by this company and not noticed as any kind
10 of corporate representative deposition.

11 MR. KALE: Okay.

12 MR. BROWN: So, I just want to
13 tell you the context in which you're asking this
14 question.

15 Q. (By Mr. Kale) Can you answer the question?

16 A. Could you repeat the question again?

17 MR. KALE: I'm going to have to
18 get you to read that one back.

19 (The requested material was read back by the
20 reporter.)

21 MR. BROWN: You can answer if you
22 know or if you've undertaken a study, but do not
23 speculate.

24 A. I have to say I don't know.

25 Q. (By Mr. Kale) Okay. That's perfectly okay. If

1 you don't know something, Mr. Gaines, you just tell us
2 and we'll move right along as quickly as we can.

3 Since you've been employed by Brown & Root,
4 has there been asbestos abatement work done on the
5 premises here?

6 A. Yes.

7 Q. Why would -- to your knowledge, if you know, why
8 would Brown & Root undertake abatement of asbestos on
9 their own premises?

10 MR. BROWN: If you know, you may
11 answer.

12 A. Basically as a result of renovation.

13 Q. (By Mr. Kale) Is it your understanding that --
14 that building code regulations in the county or in the
15 state require the abatement of asbestos if you're
16 renovating a building and asbestos is present?

17 A. I am not aware of any building codes that say
18 that you have to abate asbestos.

19 Q. Do you have an opinion as to -- as to why Brown &
20 Root would have taken it upon themselves to abate the
21 asbestos that may have been contained in any of the
22 buildings on the premises?

23 MR. BROWN: You're asking him to
24 speculate. There's no foundation that he was involved
25 in that decision.

1 Q. (By Mr. Kale) Do you have an opinion?

2 A. No, I don't have an opinion.

3 MR. BROWN: We need to take a
4 recess.

5 MR. KALE: Do you?

6 MR. BROWN: Yes, sir.

7 MR. KALE: All right.

8 MR. BROWN: It will be about ten
9 minutes.

10 VIDEOGRAPHER: We are now off the
11 record at 9:58.

12 (A recess was taken.

13 THE VIDEOGRAPHER: We are back on
14 the record at 10:08.

15 Q. (By Mr. Kale) Okay. Mr. Gaines, before we --
16 just before we took a break you were -- we were
17 talking about asbestos abatement work about -- around
18 the Brown & Root complex where we are at right now.

19 A. Uh-huh.

20 Q. I'm not sure whether we answered the question or
21 not, but do you have an opinion as to why they would
22 have abated the asbestos on the premises?

23 MR. BROWN: If you know.

24 A. They abated it as a result of some renovation.

25 Q. (By Mr. Kale) Okay. Is it -- do you have an

1 understanding of the cost of asbestos abatement work?

2 A. No, I don't.

3 Q. Have you ever had any discussion with any of the
4 other industrial hygienists in Brown & Root's
5 corporate safety department -- or is there a corporate
6 safety department?

7 A. Yes, there is a corporate safety department.

8 Q. Okay. Is that where the industrial hygienists
9 work?

10 A. For Brown & Root?

11 Q. Yes.

12 A. That's where they work for Brown & Root, Inc.

13 Q. Okay. Is there another entity where -- where --
14 where industrial hygienists work under the Brown &
15 Root moniker?

16 A. Well, that's -- that's throughout all of Brown &
17 Root.

18 Q. Okay.

19 A. I mean, you have to understand just like we have
20 safety professionals there's -- there's industrial
21 hygienists throughout Brown & Root.

22 Q. How many industrial hygienists are there within
23 Brown & Root total?

24 A. I couldn't even tell you that. I don't have any
25 numbers or anything like that.

1 Q. More than ten?

2 A. I don't know. Maybe more -- I don't -- I
3 can't -- you know, I'm speculating, so I really can't
4 say.

5 Q. Less than a hundred?

6 A. Less than a hundred for sure.

7 Q. Okay. Have you ever had any conversations with
8 any of the industrial hygienists who work for Brown &
9 Root relating to the cost of abatement?

10 A. Relating to the cost of abatement, yes.

11 Q. Is it your understanding it's an expensive
12 process?

13 A. Yes.

14 MR. BROWN: You took the easy way
15 out just saying yes. If you know, answer the
16 question.

17 A. I mean --

18 MR. BROWN: You don't have to have
19 an answer for every question.

20 Q. (By Mr. Kale) Do you know why -- do you -- do
21 you -- do you have any knowledge as to why Brown &
22 Root would undertake such an expensive process to
23 abate asbestos on its premises?

24 A. That's part of any type of renovation, I guess.

25 Q. If they didn't have to do it, do you think they

1 would have?

2 MR. BROWN: If you know. If you
3 know. Do you know?

4 A. No.

5 Q. (By Mr. Kale) She can't take down shakes of the
6 head. I know the camera can.

7 A. I would say no.

8 Q. Do you have any knowledge as to whether Brown &
9 Root considered the asbestos in the complex where we
10 are today as a potential health hazard to its
11 employees?

12 MR. BROWN: If you know.

13 A. Could you repeat the question?

14 Q. (By Mr. Kale) Do you have any knowledge as to
15 whether Brown & Root considered the asbestos which was
16 on the premises in the buildings in place considered
17 it to be a health hazard to its employees and that
18 being the reason for the removal of it?

19 A. So, you're saying it's a health hazard and
20 therefore, that's why they want to remove it?

21 Q. Yes. If you know that that -- do you know
22 whether that was a consideration that Brown & Root had
23 in mind?

24 A. I don't know.

25 Q. Okay. Now, tell me again what is the name of the

1 department you work in?

2 A. The name of the department I work in is corporate
3 safety and health.

4 Q. Thank you. Who's your boss?

5 A. Dale Drysdale.

6 Q. Mr. Drysdale, do you understand that he gave his
7 testimony in this case yesterday?

8 A. Yes.

9 Q. Do you understand Mr. Drysdale to be a certified
10 industrial hygienist?

11 A. Yes, I do.

12 Q. Have you spoken with Mr. Drysdale about your
13 testimony here today?

14 A. No, I haven't.

15 Q. Did you speak with Mr. Drysdale about his
16 deposition that went to about 7:00 o'clock last night?

17 A. Yes.

18 Q. What did y'all discuss?

19 A. I asked him how long his deposition was.

20 Q. Did you talk about any of the particulars that
21 went on in his deposition?

22 A. No, just how long it was and how you browbeat
23 him.

24 MR. KALE: I'll have to say I did
25 not browbeat him. That was my co-counsel.

1 MR. BROWN: It may have been his
2 lawyer.

3 MR. KALE: It very well may have
4 been. We, of course, are not privy to Mr. Brown's
5 browbeating of employees.

6 Q. (By Mr. Kale) Now, in your work -- going back
7 just briefly to your work at Maxim, you said you were
8 -- that one of your duties was to supply information
9 to customers, if you will, about regulations?

10 A. Right.

11 Q. Would those have been regulations governing
12 asbestos?

13 A. Yes.

14 Q. Would you also at that time advise the customers
15 of Maxim as to the hazards of asbestos?

16 A. I would say no because we just gave them
17 information as far as regulatory compliance was
18 concerned, what they need to accomplish for regulatory
19 compliance.

20 Q. Do you -- excuse me. Do you have an
21 understanding as to what the purpose of the
22 regulations concerning asbestos were?

23 A. Yes.

24 Q. Can you tell us that?

25 A. The purpose of the regulations in accordance with

1 OSHA is based on occupational safety and health.

2 Q. Is it your understanding that OSHA considers
3 asbestos to be an extremely hazardous substance?

4 MR. BROWN: You know what OSHA
5 knows?

6 A. I can't -- I can't speculate. Basically when you
7 say "extremely hazardous," you know, what do you mean
8 by extremely hazardous?

9 Q. (By Mr. Kale) Okay. Can cause disease, can
10 cause --

11 MR. BROWN: Potentially.

12 Q. (By Mr. Kale) Potentially can cause disease.

13 MR. KALE: Thank you.

14 MR. BROWN: Under some
15 circumstances.

16 A. I think that's OSHA's -- OSHA's standards.

17 Q. (By Mr. Kale) And one of your jobs at Maxim was
18 to know OSHA regulations?

19 A. Yes.

20 Q. Your job here at Brown & Root is -- do your
21 duties require you to have a good working knowledge of
22 the OSHA regs?

23 A. Yes.

24 Q. Does it require you to have a good working
25 knowledge of the OSHA regs governing asbestos and its

1 use in the workplace?

2 A. Yes.

3 Q. In the corporate and safety health department of
4 Brown & Root, is there one particular guy or employee
5 or industrial hygienist or person that people turn to
6 whenever a question about asbestos comes up?

7 A. Yes.

8 Q. Who's that?

9 A. Me.

10 Q. What makes you that guy?

11 A. Because I'm able to interpret the regulations.

12 Q. In the -- since you've been here have there been
13 occasions when people have come to you and said tell
14 me -- tell me what -- what regulations apply regarding
15 this particular scenario with asbestos?

16 A. Yes, yes, that's happened.

17 Q. Do you keep a copy of OSHA regs close at hand?

18 A. Yes, I do.

19 Q. Do you consider the OSHA -- strike that.

20 Do you consider OSHA to be an authoritative
21 source for information concerning the potential
22 hazards of asbestos and asbestos exposure?

23 A. When you say "authoritative," what do you mean,
24 you know?

25 Q. Is -- is -- are the OSHA regs or OSHA

1 publications a -- sources that you refer to whenever
2 there's a question about asbestos?

3 A. Yes, because they're the regulatory compliance.

4 Q. Okay. Are you aware that -- that the -- the
5 Occupational Safety and Health Act of 1970 outlined
6 regulations governing the use of asbestos?

7 A. I'm not familiar with 1970 regulations because,
8 you know, it was before my -- my time, before working
9 with them.

10 Q. Okay. Knowing what you know now, are you aware
11 that in 1970 the -- that OSHA outlined guidelines for
12 the use of -- use of asbestos?

13 A. In 1978 they set up, you know, all kind of
14 regulations on different types of contaminants. I
15 mean, you know, that's when OSHA came into effect
16 basically.

17 Q. Are you aware there were regulations set up
18 regarding the use of asbestos in 1970?

19 A. I'm not sure. I don't know. I mean, I'd have to
20 go back to 1970. I'm not sure exactly when the first
21 regs on asbestos were written up. I'm mostly familiar
22 with -- you know, from the time that I was employed,
23 you know, dealing with those present regulations up to
24 now.

25 Q. Okay. Fair enough. Was Brown & Root in

1 existence in 1970?

2 A. I don't know.

3 Q. Based upon what you know about the corporation's
4 history?

5 A. Well, I don't know that much about the history.
6 I just know they've been around for some time.

7 Q. Do you know how long?

8 A. I can't tell you how long they've been around,
9 you know. I'm not familiar with their history.

10 Q. Okay. If I -- if I remember right from
11 yesterday, I think Mr. Drysdale testified he thinks
12 they've been in existence for about 77 years. Does
13 that sound right?

14 A. That's something pretty close to that, I think.

15 Q. Should that be -- should that come -- come to be
16 proven, that'd put it well before 1970?

17 A. Yes.

18 Q. Based upon your knowledge and training, do you
19 feel that it's good corporate policy for a corporation
20 to know all the regulations that apply to -- to it and
21 its employees?

22 A. My personal opinion is I think, yeah.

23 Q. Okay. Do you know of any reason why Brown & Root
24 may or may not have known of the OSHA 1970 regulation?

25 MR. BROWN: Well, let me stop

1 here. There's -- there's no foundation for this
2 question and you're assuming facts not in evidence. I
3 don't know what you're referring to when you say Brown
4 & Root didn't know about some regulations. I don't
5 even know that the 1970 regulations say what you want
6 him to believe they say. So, I'm going to object and
7 say that he's asking to speculate as to what somebody
8 else knew and that you shouldn't do that unless you
9 know.

10 A. Basically, I don't know.

11 Q. (By Mr. Kale) As an -- as a person who works in
12 the corporate safety and health department for Brown &
13 Root, would you be critical of a company that did not
14 adhere to regulations for any reason?

15 MR. BROWN: Well, again, this is
16 just such a broad question taken out of context. It
17 doesn't tie to any particular company or times or
18 what's known or knowable. How can one criticize
19 something that he doesn't know anything about? I
20 think that calls for speculation, and if you can
21 answer that as it's put to you, please do so.
22 Otherwise, tell him you cannot.

23 A. I cannot.

24 Q. (By Mr. Kale) Thank you. Thank you. I think
25 Mr. Brown answered that question good.

1 MR. BROWN: Well, I don't know any
2 other way to answer that question.

3 MR. KALE: Well --

4 MR. BROWN: But I want the witness
5 to certainly have an opportunity to.

6 MR. KALE: I understand.

7 Q. (By Mr. Kale) Well, you said that you would
8 agree that it would be good corporate policy for a
9 corporation to follow and adhere to regulations
10 governing hazards that may affect its employees. You
11 remember that testimony?

12 MR. BROWN: He said that was his
13 personal opinion.

14 A. Yeah, that was my personal opinion.

15 Q. (By Mr. Kale) You said that was your opinion.
16 Personal or -- personal or professional, that is your
17 opinion. If a company did not do that, if they did
18 not have such a policy, would you be critical of a
19 company?

20 MR. BROWN: Calls for speculation
21 without having any specific information.

22 Q. (By Mr. Kale) You can answer.

23 MR. BROWN: If you can. You don't
24 have to answer a question if you cannot answer it or
25 don't understand it.

1 A. I would have to say I don't know. I mean, you're
2 giving me a scenario and you're just giving me a
3 scenario. You're not giving me any information to --
4 to come to any judgment on. You're just giving me a
5 plain old scenario.

6 Q. (By Mr. Kale) If a -- if a company had knowledge
7 of the 1970 OSHA regulations governing the use of
8 asbestos and they did not adhere to those regulations,
9 would you be critical of a company -- of that company?

10 MR. BROWN: You ask him to
11 speculate.

12 Q. (By Mr. Kale) You can answer the question, if
13 you can.

14 A. You're asking me if I would be critical of a
15 company that didn't follow the 1970 regulations?

16 Q. Yes.

17 A. What, during 1970 or during this time or what?

18 Q. During 1970.

19 MR. BROWN: The witness has
20 already told you he didn't have familiarity with the
21 regs in 1970 because they were before his time.
22 You're asking him to speculate about what somebody
23 would have done at that period of time.

24 MR. KALE: I am -- I don't think
25 so.

1 MR. BROWN: Okay.

2 Q. (By Mr. Kale) What I'm asking is: Do you have
3 an opinion as to whether that would be -- would it be
4 good corporate policy to ignore a regulation that was
5 in effect that governed a company's employees?

6 A. It's hard for me to answer because you're just --
7 you're giving me -- you're not -- you're just saying
8 well, is it -- is it -- is it wrong to -- to speak or
9 is it wrong to do this. What's -- what's -- there's
10 no basis. You're saying, well, should a company
11 follow this. Well, you know, if they're employees, it
12 doesn't affect the employees. Well, what if -- you
13 know, there's -- there's too many what if's for me to
14 give you an answer.

15 Q. Let's try it this way. Do you know of any reason
16 why Brown & Root would feel that it should -- that it
17 would not be governed by the 1970 regs when they were
18 in existence at that time?

19 MR. BROWN: Well, that clearly
20 asks for an opinion that he doesn't know because he's
21 not Brown & Root, and I object to it.

22 Q. (By Mr. Kale) You can answer it.

23 MR. BROWN: Calls for
24 speculation.

25 A. I have -- I have no idea what was going on in

1 1970. That was before my time.

2 Q. (By Mr. Kale) I realize that. I realize that.
3 So, you have no opinion as to whether that would be
4 bad corporate -- bad corporate policy?

5 MR. BROWN: Calls for speculation.

6 Q. (By Mr. Kale) You have no opinion?

7 A. My personal opinion is that you have to know the
8 circumstances surrounding all that judgment.
9 mean...

10 Q. So, do you feel that there are certain
11 circumstances that could in some way mitigate a
12 company from -- from having to follow regulations that
13 are passed by the federal government?

14 MR. BROWN: That also calls for
15 speculation.

16 A. Basically companies feel that, you know, if you
17 look at the -- I don't -- I don't know. I mean...

18 Q. (By Mr. Kale) Okay. Let's go at it like this.
19 Since you've come to work at Brown & Root and that was
20 in 1991?

21 A. Right.

22 Q. Has Brown & Root always followed the OSHA
23 regulations to your knowledge?

24 A. I'd have to say to my knowledge, yes.

25 Q. Okay. Have they always followed the OSHA

1 regulations governing the use of asbestos to your
2 knowledge?

3 A. To my knowledge.

4 Q. Can you think of any scenario wherein OSHA
5 regulations passed prior to you coming to work for
6 Brown & Root would not have been followed by Brown &
7 Root?

8 MR. BROWN: Here you've gone
9 beyond his personal knowledge and you're asking him to
10 speculate. He wasn't here.

11 A. I don't -- I don't know what happened. The only
12 thing I can tell you is once I got here and the things
13 that were put in place would be in regulatory
14 compliance with the regulation.

15 Q. (By Mr. Kale) I realize -- I realize that you
16 did not -- that I'm asking you something -- I realize
17 that I'm asking you a question about regs that were
18 not in existence at the time you started working at
19 Brown & Root.

20 MR. BROWN: That -- that's not the
21 problem. The problem is the asking about what
22 happened at a time before he got to Brown & Root.

23 MR. KALE: I'm asking him if he
24 has an opinion. If he has an opinion. If he doesn't,
25 he can just tell me he does not have an opinion.

1 MR. BROWN: If you know enough
2 facts to have an opinion, state your opinion. If you
3 don't, you have every right to tell him you that
4 weren't here et cetera.

5 A. I don't have an opinion.

6 Q. (By Mr. Kale) Okay. There we go. Like I said,
7 if you don't have an opinion, if you don't know
8 something, you can tell me that. All right.

9 Since you came to Brown & Root in 1991 has
10 anyone at Brown & Root in your department, in the
11 corporate safety and health department at Brown &
12 Root, told you that in 1958 the State of Texas adopted
13 a law limiting exposure to asbestos to certain
14 concentration levels?

15 A. No, no one has told me that.

16 Q. Have you ever been made aware of that in your
17 review of any industrial hygiene manuals or medical
18 literature or anything?

19 A. No, I haven't.

20 Q. Do you know whether Brown & Root was engaged in
21 construction activities in 1958?

22 A. Not that I know of. I mean, because, let me see,
23 how old was I, one year old.

24 Q. Okay. And I think you've already stated you
25 don't know that much about the corporate history,

1 right?

2 A. No, I don't.

3 Q. Well, assume, if you will, that Brown & Root was
4 in existence in 1958 performing construction
5 activities. Can you think of any reason why Brown &
6 Root would not be aware of this 1958 law governing the
7 limiting of exposure to asbestos?

8 MR. BROWN: Here he's already told
9 you that he wasn't here in 1958. He has no knowledge.
10 He certainly doesn't know what some other company
11 knows, therefore, asking him to speculate and I object
12 to the question.

13 Q. (By Mr. Kale) Can you answer the question?

14 A. I don't have an opinion.

15 Q. Can you think of any reason why they wouldn't
16 know?

17 MR. BROWN: Well, again, same
18 question, calls for speculation.

19 A. I don't know. I don't know what they did in
20 1958. I don't know, you know, who was here. You're
21 asking me to comment on something that I basically
22 don't have any information about, you know.

23 Q. (By Mr. Kale) Do you think that a corporation
24 should abide by all the laws that govern it?

25 MR. BROWN: Again, this is a very

1 vague question taken out of context, not related to
2 time or circumstances.

3 Q. (By Mr. Kale) At any time?

4 A. Well, my personal opinion is that a corporation
5 should try to address regulations, you know, to be
6 compliant and to work with the powers that administer
7 these regulations to, you know -- you know, to try to,
8 you know, make them work within that industry.

9 I mean, it's kind of hard if they pass a
10 regulation -- you know, usually the way it happens
11 they go out and they get comments from all the
12 different groups on that regulation and in getting
13 those comments they get the groups buy in they get the
14 groups' understanding and from that they administer a
15 law that is going to work within that industry.

16 MR. KALE: Okay. I appreciate
17 that, and I object to the nonresponsive portion of
18 that answer.

19 Q. (By Mr. Kale) And I may object from time to
20 time. We haven't done it -- Mr. Brown has objected
21 some today, but I may object and say "nonresponsive."
22 Don't be offended by that.

23 A. Just because you say "nonresponsive" doesn't mean
24 you don't like me any more?

25 Q. Not at all. Not at all. It's nothing personal.

1 So, I think to clarify what you've said, if
2 there is a law on the books, you would expect a
3 company such as Brown & Root to know about that law if
4 the law affected its employees and work that it did?

5 A. I would have to say if it affected their
6 employees.

7 Q. Is that a "yes, if it affected their employees"?

8 A. Yes, if it affected their employees.

9 Q. Brown & Root do air monitoring tests these
10 days -- well, since you've been here since 1991 -- air
11 monitoring tests to determine asbestos exposure levels
12 on certain jobs?

13 A. What do you mean by "air monitoring"? What type
14 of air monitoring are you talking about?

15 Q. Well, you may -- you may have to explain the
16 different types and then we'll go from there. I'm
17 just trying to lump it into all one group.

18 A. When you say "air monitoring," there's all kind
19 of different air monitoring.

20 Q. Okay. What's the different types of air
21 monitoring that Brown & Root has done since you've
22 been an employee to determine whether its employees
23 are being exposed to asbestos?

24 A. There's what they call personnel sampling, and
25 there's area sampling or what they call prevalent

1 level sampling.

2 Q. Okay. Do you know whether those types of air --
3 any of those types of air monitoring was done back in
4 the '50's?

5 A. No, I don't know.

6 Q. Okay. Do you know whether they were done in the
7 '60's?

8 A. No, I don't.

9 Q. In the '70's?

10 A. No, I don't.

11 Q. In the '80's?

12 A. I don't -- I'd have to speculate. I'm not -- I'm
13 not -- I don't know fully. I can't tell you, hey, you
14 know, they did sampling here or there. You know, I
15 don't have any of that information in my possession.

16 Q. Okay. In your -- in your work in the corporate
17 safety and health department you've never reviewed any
18 air sampling test documents that -- from those
19 decades?

20 A. No air sampling tests. No, not from those
21 decades.

22 Q. Okay.

23 A. Based on asbestos.

24 Q. Okay. For asbestos?

25 A. For asbestos. You did say in the what, the '40's

1 '50's, '60's, and 70's, right?

2 Q. And '80's. Do you need to change your answer?

3 A. Well, I did look at some sampling data from the
4 '80's that we did.

5 Q. Okay. Was it in reference to asbestos exposure?

6 A. Yes, it was in reference to asbestos exposure.

7 Q. Did you review those documents in preparation for
8 your deposition today?

9 A. No. No. No.

10 Q. Do you know what facility or where the air sample
11 monitorings were done?

12 A. I think the air sampling was probably done here
13 in this building.

14 Q. Okay. Would it have been during some of the
15 renovation work when they were doing abatement?

16 A. No, this is just prevalent levels.

17 Q. Okay. Fair enough. Do you know why Brown & Root
18 would do air sample monitoring within their own
19 building for asbestos when there were no renovation
20 work going on?

21 A. Possibly in preparation for renovation or for
22 indoor air quality reasons.

23 Q. Okay. Have they done any air sample monitoring
24 in the Brown & Root premises, the buildings on the
25 premises where we are today, since you've been an

1 employee for Brown & Root?

2 A. Yes.

3 Q. When did they do those?

4 A. Oh, I can't give you exact dates. You know, it's
5 been since I've been here.

6 Q. Several times?

7 A. I'd say a couple different times when, you know,
8 there have been some projects going on.

9 Q. Is it in preparation for renovation to use your
10 term or during renovation?

11 A. Preparation during as a result of -- in response
12 to regulatory compliance.

13 Q. Okay. So, there are regulations that you know of
14 that require air sample monitoring when there is
15 asbestos within a building and there's renovation
16 being done?

17 A. The requirements is that basically as a result of
18 regulatory compliance that you have to take personal
19 samples on employees.

20 Q. Okay. Do you have an opinion as to why that
21 regulation is such?

22 A. My personal opinion is that the regulation is
23 such is to document exposure to workers.

24 Q. Not for health reasons?

25 MR. BROWN: Let me interrupt here.

1 The term "exposure" is pretty broad. It could
2 encompass other reasons. I assume your follow-up
3 question is just to refine his answer.

4 MR. KALE: Yes.

5 A. I mean, the exposure monitoring is not done for
6 health reasons. It's done for compliance reasons.

7 Q. (By Mr. Kale) Okay. Has there ever been a time
8 since you've been employed here during these air
9 monitoring -- this air monitoring wherein an employee
10 was exposed above the PEL?

11 A. You have to define the PEL.

12 Q. Exposed greater than the PEL, the Permissible
13 Exposure Limit, that is in place today in the
14 regulations.

15 A. That's -- that's a difficult question to answer
16 because the PEL has changed.

17 Q. Okay. What is the PEL today to your knowledge?

18 A. The PEL today is .1 fiber per cubic centimeter.

19 Q. Okay. And that's a time-weighted average,
20 correct?

21 A. That is an eight-hour time-weighted average.

22 Q. Have you ever in your -- in your tenure here with
23 Brown & Root had an employee exposed at greater levels
24 than .1 fiber per cubic centimeter during one of the
25 renovation projects?

1 A. During the renovation projects here?

2 Q. Yes. To your knowledge?

3 A. Not to my knowledge. I would have to go back and
4 review the reports again. I think most of the
5 documentation that -- that I have shows that there are
6 acceptable levels. You have to understand that what
7 you're talking -- the renovation you're talking about
8 was when there was a higher PEL, and you're asking me
9 to compare today's PEL to a time when the higher PEL
10 was in place.

11 MR. BROWN: No, I don't think he
12 asked you to do that. I think he assumed that
13 whatever the applicable PEL was at the time.

14 Q. (By Mr. Kale) Yeah.

15 MR. BROWN: He's not asking you to
16 go back and if it was higher two years ago to use
17 today's standards to go back.

18 Q. Not at all, Mr. Gaines.

19 MR. BROWN: He just wants to know
20 if you're aware of --

21 A. And I have to say that right now I'm not aware.
22 I mean, that happened several years ago, and I'd have
23 to go back and -- and look at some documentation or
24 something like that.

25 Q. (By Mr. Kale) All right. I appreciate that.

1 MR. BROWN: Are you finding out
2 that a deposition is a test you can't study for.

3 THE WITNESS: Well, it's -- it's a
4 lot of -- you know, he asks me to answer --

5 MR. BROWN: That's all right. I'm
6 just -- I'm just asking you.

7 Q. (By Mr. Kale) He's just picking at you.

8 MR. BROWN: I'm just sharing your
9 frustration.

10 Q. (By Mr. Kale) All right. Well, let's move on a
11 little bit and see if we can't get through some of
12 this.

13 A. I want to help you, but he keeps --

14 Q. I appreciate that. Well, like I said, if you
15 don't know stuff, just tell me that, Mr. Gaines, and
16 we'll move on.

17 Is it your understanding that when Brown &
18 Root is a -- is a contractor on a particular facility
19 that the safety rules of the premises owner are to be
20 adopted by Brown & Root as their own?

21 A. I'd have to say that that is no, because in some
22 cases Brown & Root state the regulation may be more
23 stringent than what the client's regulations may be.

24 Q. Okay. I appreciate that. And if the flip side
25 were true wherein the premises owner's rule was more

1 stringent, the Brown & Root employees would then
2 follow the premises owner, correct?

3 MR. BROWN: Well, again, you're
4 asking him to speculate.

5 Q. (By Mr. Kale) If you know.

6 A. I would have to say that it's really based on
7 what the regulatory compliance is. You know, if a
8 building owner says, "Hey, we're not going to follow
9 something," then if it's going to -- not regulatory
10 compliant then, you know, it would be up to, you
11 know --

12 Q. If the premises owner's rules were in compliance
13 with the federal regulations and yet they were more
14 stringent than the federal regulations, would Brown &
15 Root adhere to what the premises owner required or
16 would they just -- or would Brown & Root employees
17 just try to adhere to the federal regulations?

18 MR. BROWN: Okay. Again, you're
19 asking him to speculate. You don't have this tied
20 down to any particular time or circumstances and I
21 don't see how he can answer that without knowing more
22 about it.

23 A. I mean -- I mean you ask me, well, if a -- if a
24 client has regulations that are in compliance but are
25 more stringent than the -- you know, if they're in

1 compliance, then how could they be more stringent than
2 the regulatory statute than you have?

3 You're asking me if a client has some
4 regulations in place, and he's in compliance with
5 those regulations and his regulations are more
6 stringent, I mean, if he's in compliance with the
7 regulations, it's in compliance. It doesn't matter if
8 it -- he wouldn't be more stringent, he would just be
9 in compliance. So, that's why I don't really
10 understand your question.

11 Q. (By Mr. Kale) Okay. Well, I will represent to
12 you, Mr. Gaines, that there's already been testimony
13 in this case that Brown & Root when they go onto the
14 premises of a customer, that the premises owner's
15 rules and regulations concerning safety that include
16 safety in regards to asbestos are to be adopted by
17 Brown & Root.

18 MR. BROWN: Let me first object
19 saying that's not a correct statement of the prior
20 testimony. And it's assuming facts not now in
21 evidence.

22 MR. KALE: Well, that will bear
23 itself out.

24 Q. (By Mr. Kale) Do you -- do you agree -- do
25 you -- do you disagree with -- with the evidence as I

1 posed it?

2 MR. BROWN: You're asking him to
3 speculate. He doesn't have knowledge about the facts
4 or circumstances. It's not related to any activity or
5 time.

6 Q. (By Mr. Kale) Go ahead.

7 MR. BROWN: So, I object. If you
8 can answer that, give an opinion, personal opinion,
9 you may do so.

10 A. I could say I don't know. You're -- you're
11 telling me prior testimony. I -- I don't know about
12 any prior testimony.

13 Q. (By Mr. Kale) I'm aware of that. I'm aware of
14 that.

15 A. The only thing I can say is I don't -- I don't
16 know.

17 Q. Okay. You do not know. Is it your understanding
18 from your work here at Brown & Root that Exxon,
19 specifically the Baytown facility, is a long-standing
20 customer of Brown & Root?

21 A. From what I understand. I know we've worked out
22 there. I don't -- I don't know how long. I just know
23 that that's one of our jobs. How long we've been
24 there, I don't know.

25 Q. Okay. From your -- from your -- from discussions

1 you may have had with other people who have been here
2 longer than you, do you understand that Brown & Root
3 performed work out at the Baytown facility in the
4 '80's?

5 A. Not from anyone that I've talked with. You know,
6 basically I just know what's going on since the time
7 that I've came here.

8 Q. So, you have no knowledge as to whether Brown &
9 Root was in the Exxon Baytown facility prior to 1991?

10 A. Yes.

11 Q. That is true?

12 A. Yeah. There may be -- it's kind of hard to --
13 it's really hard to answer that because I don't have
14 any possession -- I don't have any knowledge or
15 anything in my possession. There may be files and
16 documentations or something like that that may bear
17 that out, but within my personal possession I don't
18 have any documentation showing that back in 1980 that
19 Brown & Root worked at an Exxon plant.

20 Q. Okay. Have you ever been out to the Exxon
21 facility?

22 A. Yes, I've been out there.

23 Q. How many times?

24 A. Oh, I can't tell you. I don't know. Let's say
25 less than -- less than a hundred.

1 Q. Okay. So, you've been out to the Exxon facility
2 in Baytown quite often?

3 A. I wouldn't say quite often. I've been out there
4 on several different occasions maybe, but, you know,
5 my -- my regular duties is that I don't go out there
6 on a, you know, regular basis.

7 Q. Let's just take 1996 so far. We're about seven,
8 eight months into the year, nine months into the
9 year. How many times have you been to the facility
10 this year?

11 A. I think about one time.

12 Q. Okay.

13 THE WITNESS: I need to take a
14 break, Phil.

15 THE VIDEOGRAPHER: Off the record
16 at 10:50.

17 (A recess was taken.)

18 THE VIDEOGRAPHER: We are going
19 back on record now at 10:54.

20 Q. (By Mr. Kale) Okay. Mr. Gaines, I just want to
21 clarify a couple of matters. To your knowledge you do
22 not -- you do not know whether it is Brown & Root's
23 policy to adopt a premises owner's safety and health
24 program as their own?

25 A. Not to my knowledge.

1 Q. Okay. So, if Exxon, the Baytown facility, had
2 such a health and safety program regarding asbestos in
3 place in the '40's, '50's, '60's, '70's and '80's, you
4 do not know whether Brown & Root employees working in
5 that facility would have adopted it as their own?

6 MR. BROWN: Assumes facts not in
7 evidence and calls for speculation. The man didn't
8 work here until 1991.

9 MR. KALE: I realize that.

10 Q. (By Mr. Kale) So, you do not know?

11 A. I don't know about anything prior to 1991 when I
12 came to work here.

13 Q. Okay. How many industrial hygienists were on
14 staff in your department here at Brown & Root when you
15 hired on?

16 A. There were two.

17 Q. And those would have been Mr. Drysdale?

18 A. Right.

19 Q. And?

20 A. Mike Schaeffer.

21 Q. Is he still employed with the firm?

22 A. No, he isn't.

23 Q. Okay. Do you know where he works?

24 A. I'm not sure. He worked for -- for some -- some
25 consultant -- or I think it was -- what do they call

1 it, not a consultant, a disposal firm.

2 Q. Okay.

3 A. And I don't know if he still works there or not.

4 Q. All right. Fair enough. Do you remember the
5 line of questioning earlier about that 1958 Texas
6 law? Do you remember some of that?

7 A. Yes, some of it.

8 Q. Okay. There's going to be evidence in this case
9 that Brown & Root had knowledge of that 1958 law when
10 this case goes to trial. And that they didn't -- that
11 they did not follow that law throughout the '60's. As
12 an industrial hygienist working or a person working in
13 the corporate safety and health department, do you
14 feel that a company such as Brown & Root would have
15 any reason for not following that law?

16 MR. BROWN: Let me object; assumes
17 facts not in evidence, calls for speculation. It's
18 also -- he's here as an individual, not here on behalf
19 of a company, and he's -- shouldn't offer opinions on
20 behalf of the company.

21 MR. KALE: Well --

22 MR. BROWN: He can offer his
23 individual opinion if, in fact, he can formulate one
24 without speculating.

25 MR. KALE: Well, he is an employee

1 of the company and that's why we're here. That is
2 true. And he can speak from his knowledge since 1991
3 as a person working in the corporate safety and health
4 department.

5 MR. BROWN: If he has a personal
6 opinion, he can express it, but he needs to know that
7 you don't need to speculate.

8 Q. (By Mr. Kale) When I ask for an opinion, if it's
9 your personal opinion, that's fine.

10 Do you have an opinion whether a company
11 such as Brown & Root would have any reason for not
12 following such a law that they had knowledge of?

13 MR. BROWN: Objection; calls for
14 speculation, no foundation.

15 Q. (By Mr. Kale) You can answer the question.

16 MR. BROWN: Assumes facts not in
17 evidence.

18 A. I don't know.

19 Q. (By Mr. Kale) Okay. Do you know of a man named
20 Dr. Cagle? Have you ever heard that name before?

21 A. Dr. Cagle.

22 Q. Cagle, C-a-g-l-e?

23 A. No, I haven't.

24 MR. KALE: Isn't it Phillip
25 Cagle?

1 MR. BROWN: I believe so.

2 A. No. No, I never heard of him.

3 Q. (By Mr. Kale) Well, in this case Dr. Cagle is
4 going to testify on behalf of Brown & Root as their
5 medical expert. And I represent to you that in
6 Dr. Cagle's deposition yesterday he spoke of hundreds
7 if not thousands of medical articles published as
8 early as 1930's regarding the hazard of asbestos and
9 the carcinogenic effects of asbestos. Has anyone ever
10 told you about any articles such as that?

11 MR. BROWN: Let me object; assumes
12 facts not in evidence. It's a mischaracterization of
13 the doctor's testimony.

14 Q. (By Mr. Kale) Have you ever heard those words
15 spoken to you before?

16 A. No, I have not.

17 Q. Has anyone at Brown & Root ever advised you of
18 any of -- articles of such lineage?

19 A. From the 1930's?

20 Q. Yes.

21 A. Not that I know of.

22 Q. How long has Brown & Root had a safety
23 department?

24 A. I don't know. I didn't come here until 1991, so
25 I really can't comment on how long the safety

1 department's been in effect.

2 Q. To your knowledge has Brown & Root always made an
3 effort to -- to know and comply with all safety
4 regulations and federal regulations and laws that
5 affect aspects of its work?

6 MR. BROWN: If you know.

7 A. From the time that I came here from 1991 on, I
8 can say that they've tried to comply.

9 Q. (By Mr. Kale) Do you know -- did you -- did you
10 ever meet a man named Carl Richardson?

11 A. I've met Carl before, yes.

12 Q. Is it your understanding that he was a certified
13 industrial hygienist for Brown & Root?

14 A. Yes.

15 Q. Did you work in the same department with
16 Mr. Richardson while you were here?

17 A. No. No. I don't know him in that capacity.

18 Q. How do you know Mr. Richardson?

19 A. I've seen him at different conferences or
20 something like that. You know, when he was working
21 for somebody else.

22 Q. Okay. So, you have -- you don't have any
23 personal knowledge about his work here at Brown &
24 Root?

25 A. No, I do not.

1 Q. Do you know where Mr. Richardson lives?

2 A. I sure don't.

3 Q. Have you talked to him this year?

4 A. No.

5 Q. Do you know when was the last time you spoke with
6 him?

7 A. I can't give you exact dates or times or anything
8 like that, you know.

9 Q. Was it within the last 12 months?

10 A. No, it was not within the last 12 months.

11 Q. Within the last couple years?

12 A. Probably in the last couple years, two, three
13 years. I'm not sure. I guess that's Carl
14 Richardson. I'm not sure. I mean...

15 Q. You're aware that there was a Carl Richardson who
16 worked at -- for Brown & Root as an industrial
17 hygienist?

18 A. Yeah.

19 Q. He was not still on staff while you were here?

20 A. No. No.

21 Q. Based upon your education, work experience here,
22 medical literature that you may have reviewed in your
23 job, these training courses that you attended when
24 working with Maxim, is it your understanding that
25 asbestos exposure is the primary cause of the disease

1 mesothelioma?

2 A. My personal opinion, I don't have any -- you
3 know, only thing I could comment on is what's been
4 taught to me in a training course. I don't have any
5 hands-on -- you know, that's basically, you know, I
6 don't have -- that's what the literature, the training
7 courses, that's what they say.

8 Q. Okay. Do you have any reason to doubt that
9 literature?

10 A. I wouldn't -- I wouldn't say doubt the
11 literature. I mean, it's -- I mean, you got to take
12 it like with anything else. I mean...

13 MR. BROWN: I think you haven't
14 undertaken any kind of investigation or study to
15 validate any of that.

16 THE WITNESS: No. No, I haven't.

17 MR. BROWN: I think that's what
18 you're trying to say.

19 THE WITNESS: Yeah.

20 Q. (By Mr. Kale) Do you feel that asbestos
21 exposure -- do you personally feel that asbestos
22 exposure causes the disease mesothelioma?

23 A. Once again, when you say "exposure," you're going
24 to have to define "exposure. "

25 Q. The inhalation of asbestos fibers.

1 MR. BROWN: Here you haven't said
2 what kind of fibers. He hasn't given the
3 circumstances about -- you know, I think -- I think we
4 can all agree there has to be a certain dose --

5 MR. KALE: I withdraw the
6 question.

7 MR. BROWN: It's a dose-response
8 relationship.

9 MR. KALE: I object to -- I'll
10 object to Mr. Brown's testimony.

11 MR. BROWN: I'm just trying to
12 articulate an objection.

13 Q. (By Mr. Kale) Do you know anything about the
14 relative carcinogenic effect of the different asbestos
15 fiber types?

16 A. I've not gone out and researched that or done --
17 done any research on it.

18 Q. Do you -- do you have an opinion as to whether --
19 strike that.

20 Do you agree that all fiber types can cause
21 mesothelioma?

22 A. No.

23 MR. BROWN: Assumes facts not in
24 evidence --

25 A. Excuse me. I'm sorry, Phil.

1 MR. BROWN: Also calls for an
2 opinion that this witness is not thus far been shown
3 qualified to give.

4 Q. (By Mr. Kale) Okay. Based upon your training?

5 A. You have to define -- you say all fibers. I
6 mean --

7 Q. Okay. Let's -- let's run through them a little
8 bit then, okay? Do you -- do you have an opinion as
9 to whether the inhalation of chrysotile asbestos
10 fibers can cause the disease mesothelioma?

11 MR. BROWN: I object. It's just a
12 general statement without any relationship to time,
13 place, exposure, duration, all the facts that I think
14 are critical. You're asking him to speculate.

15 Q. (By Mr. Kale) Can you answer the question?

16 MR. BROWN: As stated to you, can
17 you answer that question?

18 A. No, I can't. Because there's -- there's too many
19 other factors that are involved.

20 Q. (By Mr. Kale) So, you have no opinion as to
21 whether chrysotile can cause mesothelioma?

22 A. Based on the situation that you've given me.
23 Because we could -- we could be sitting in this room
24 inhaling chrysotile fibers right now.

25 Q. Okay.

1 MR. BROWN: Probably are.

2 A. You know, so, I mean you're asking me to
3 speculate. I mean you're asking me --

4 Q. (By Mr. Kale) Well, I -- I -- if you think that
5 I am, I apologize. I'm not asking you to speculate.

6 A. I know.

7 Q. I'm wanting to know your opinion as to whether
8 you feel the inhalation of chrysotile asbestos fibers
9 is a -- can cause mesothelioma?

10 MR. BROWN: At this time do you
11 have an opinion to that general statement?

12 A. My personal opinion is that I'd have to say you
13 have to -- it has to be based on what you're doing. I
14 mean, my personal opinion is that, you know, just
15 because you walk down the street and inhale chrysotile
16 fibers doesn't mean you're going to get, you know,
17 mesothelioma. That's my personal opinion.

18 Q. (By Mr. Kale) Are you aware that -- that persons
19 have -- have contracted mesothelioma as it was being
20 mined and taken down the streets?

21 MR. BROWN: Assumes facts not in
22 evidence.

23 A. Not -- I have not researched or done anything on
24 that. I mean, the only information that I have as far
25 as what asbestos exposures were or what they are is

1 based on the training courses that I've attended.

2 Q. (By Mr. Kale) In any of the training courses
3 that you have attended was the subject of the
4 carcinogenic effect of the various asbestos fiber
5 types discussed?

6 A. I would have to say yes.

7 Q. Okay. If you can recall, what did the -- what
8 did you learn in the training courses about the
9 carcinogenic effect of chrysotile asbestos fibers?

10 A. Basically what I learned was that based on the --
11 based on the information they've given me is that it
12 doesn't matter what type of fiber it is. It's
13 basically asbestos.

14 Q. Okay. So, to be clear, is it your understanding
15 from those training courses that chrysotile, ammicite,
16 percidilite, tremolite are all fibers of asbestos that
17 have been linked to -- to mesothelioma?

18 A. In the courses they teach us they don't
19 distinctly say well, this type of fiber is related to
20 this type of disease. This type of fibers -- they
21 basically say and put it all in the context saying
22 asbestos.

23 Q. Okay. And when you learned -- when you heard
24 that, when you learned that in -- in the courses, did
25 you take that to mean that all asbestos fibers

1 could -- could cause mesothelioma?

2 A. That's what I understood that basically asbestos
3 can cause from the literature, from what they told me
4 that, you know.

5 Q. All right. And from your training courses and
6 based upon your experience here at Brown & Root, your
7 experience at Maxim, is it your understanding that
8 asbestos exposure causes mesothelioma?

9 MR. BROWN: I'm going to object to
10 that when you now couple what he may have learned at
11 training courses and suggest that that's been his
12 personal experience, at a job site, that there, in
13 fact, has been some exposure and it's caused
14 mesothelioma. You've now junked up your question, and
15 I object to it.

16 Q. (By Mr. Kale) Go ahead.

17 MR. BROWN: Let me just say
18 assumes facts not in evidence. There's no foundation
19 that any -- he's aware of any situation where
20 something happened at one of his prior employments
21 somehow resulted in an asbestos-related disease.

22 MR. KALE: I'm not asking that.
23 And if I did, if you took that from that question, I
24 apologize.

25 Q. (By Mr. Kale) What I want to know, Mr. Gaines,

1 is based upon what you learned at the training courses
2 and your work experience --

3 A. Right.

4 Q. -- and your work here at Brown & Root and any of
5 the medical literature that you reviewed, now, that
6 you've told us that it's your understanding that
7 asbestos causes mesothelioma?

8 MR. BROWN: He said that's what
9 the literature told him.

10 MR. KALE: That's exactly right.

11 MR. BROWN: He hasn't said that
12 that's the result of his independent study.

13 MR. KALE: I didn't ask him if he
14 had made an independent study, Phil.

15 MR. BROWN: I understand.

16 MR. KALE: When we use the word
17 "understanding" and he gets understanding from the
18 stuff that he has either heard or read or been exposed
19 to in his work.

20 MR. BROWN: I understand.

21 MR. KALE: All right?

22 MR. BROWN: And so far all we're
23 doing is limiting it to what he was told at the
24 training course.

25 MR. KALE: Well, no, I expanded

1 that from the training course to knowledge that he's
2 gained subsequent to, which I don't believe is a far
3 stretch.

4 Q. (By Mr. Kale) Is it your understanding that
5 asbestos exposure based upon the training course --
6 literature that you've had, the training here at Brown
7 & Root, medical literature that you may have reviewed
8 in your job working in the corporate safety health
9 department at Brown & Root, that asbestos exposure is
10 the primary cause of mesothelioma?

11 MR. BROWN: It calls for
12 speculation and opinion which this witness is not
13 qualified to give.

14 Q. (By Mr. Kale) Can you give an opinion?

15 A. I cannot give an opinion because you haven't
16 defined what you call by "exposure."

17 Q. Okay. What do you think the word "exposure"
18 means?

19 MR. BROWN: This has been asked
20 and answered. He earlier told you what exposure
21 meant.

22 Q. (By Mr. Kale) Are you being exposed to me right
23 now?

24 A. Am I being exposed to you?

25 Q. Uh-huh.

1 A. That's hard to say. I mean, just because -- just
2 because I'm standing next to you doesn't necessarily
3 mean that you're being exposed to me.

4 MR. BROWN: What do you mean by
5 exposure? Does exposure mean something you can see.

6 THE WITNESS: Something you can
7 feel?

8 MR. BROWN: Something you can
9 hear? What do you mean by exposure?

10 MR. KALE: I was asking him.

11 MR. BROWN: I think -- I think
12 that pretty much proves the point that the term is so
13 vague.

14 MR. KALE: We'll let the jury
15 decide whether it's vague, okay, because it's not.

16 MR. BROWN: All right. I've got
17 ten after; is that right?

18 MR. KALE: You've got ten after,
19 and I've got questions.

20 MR. BROWN: Okay. We need to
21 finish up.

22 MR. KALE: Well, Phil, the
23 deposition was not limited to any particular time.
24 I -- you know, I realize that you say you got to catch
25 a plane.

1 MR. BROWN: I do. And you also
2 understand that we're not using this witness.

3 MR. KALE: Well, but there's been
4 no agreement to limit this deposition to a particular
5 time.

6 MR. BROWN: Well, Andy made some
7 representations.

8 MR. KALE: You show me something
9 where Andy signed it, and I'll stop at 11:30 on the
10 dot. Okay?

11 MR. BROWN: Well, just please
12 understand that this deposition is going to conclude
13 soon.

14 MR. KALE: Well, we might be
15 finished if there weren't so much interjection from
16 you.

17 MR. BROWN: You can blame that on
18 your questions, Counselor.

19 MR. KALE: I firmly disagree.

20 Q. (By Mr. Kale) Are you familiar with NIOSH?

21 A. Yes.

22 Q. What is NIOSH, the acronym, for?

23 A. National Institute of Occupational Safety and
24 Health.

25 Q. Do you agree with NIOSH when they -- when they

1 say that asbestos is an occupational carcinogen?

2 MR. BROWN: Object; assumes facts
3 not in evidence.

4 Q. (By Mr. Kale) Go ahead.

5 A. I don't have an opinion. I mean --

6 Q. Okay. Do you consider NIOSH to be an
7 authoritative source of information on such items as
8 the hazards of asbestos?

9 A. If you're asking -- if you're asking me in the
10 literature that I received in my training courses if
11 there is information given by NIOSH on occupational
12 health hazard with asbestos, I'd have to say no.

13 Q. Okay. You do not find the National Institute of
14 Occupational Safety and Health to be an authoritative
15 source of information on hazards in the workplace or
16 hazards concerning asbestos?

17 A. It's my personal opinion that they -- they tend
18 to be -- I don't know if they're -- I can't -- it's
19 hard for me to say -- their credibility. I don't know
20 if it's a credibility issue.

21 My personal opinion is that whenever you
22 read any type of thing that NIOSH puts out is that you
23 have to do the research and look at the study in order
24 to draw some of your own conclusions to that. That
25 you always -- you can't always rely on NIOSH to --

1 when they do a study to draw certain conclusions. I
2 think you have to do some investigation on your own
3 and look at the study and look at the information to
4 draw your own conclusions and then compare that to
5 NIOSH conclusions, you know, to see if, you know, you
6 agree.

7 Q. Okay. I appreciate that.

8 MR. KALE: I need to object to the
9 nonresponsive portion of the answer.

10 Q. (By Mr. Kale) Do you -- to clarify, do you feel
11 that NIOSH is sometimes an incredible source of
12 information?

13 A. My personal opinion is that sometimes they do
14 go -- you know, they base their information on studies
15 that I feel -- or come to the conclusion I feel or
16 what's the term, "overzealous. "

17 Q. Okay. Okay. Have you ever resorted to NIOSH for
18 information concerning the hazards of asbestos?

19 A. No, I've never resorted to NIOSH.

20 Q. Okay. Have you ever read a NIOSH publication or
21 study about the hazards of asbestos and taken it upon
22 yourself to do independent research to either prove or
23 disprove their conclusions?

24 A. I would have to say no, because in my position
25 everything is based on OSHA which is a regulatory

1 compliance whereas NIOSH is not.

2 Q. Okay. So, you -- and you may have -- you may
3 have answered this. So, you cannot agree with NIOSH
4 when they state that asbestos is an occupational
5 carcinogen?

6 MR. BROWN: That's been asked and
7 answered.

8 A. I base my knowledge on the training courses that
9 I went to and in those training courses, you know,
10 they didn't talk about NIOSH. They talked about the
11 Occupation Safety and Health Administration.

12 Q. (By Mr. Kale) Does the Occupational Safety and
13 Health Administration consider asbestos to be an
14 occupational carcinogen?

15 A. I don't think they --

16 Q. They may not use those particular terms.

17 A. I don't think they use those particular terms.
18 Basically the way OSHA looks at it is that if you're
19 involved in certain types of tasks that involve
20 construction, then you need to follow these
21 guidelines, these regulations that they set down for
22 handling that type of contaminant.

23 Q. Based upon your knowledge and training, and trust
24 me when say that that includes training courses and
25 work here at Brown & Root, based upon all of that, is

1 it your opinion -- your opinion that any exposure to
2 asbestos is dangerous?

3 A. It is my personal opinion that I would have to
4 say no.

5 Q. Okay. You feel that there are safe levels of
6 asbestos exposure?

7 A. I feel that there are levels of -- per se. There
8 are levels that are insignificant as far as health
9 concerns are involved.

10 Q. Okay. Are you familiar with any of the medical
11 literature that states that mesothelioma can result
12 from low dosage exposure?

13 A. Not from medical information. Just from the
14 training courses that I've attended and the
15 information they give me in the training courses.

16 Q. Is that a "yes"?

17 A. Not -- you're asking if I -- you're asking about
18 medical literature.

19 Q. Okay. I see where you're getting tied up. From
20 any -- from any source that you have reviewed or
21 training -- training manuals or anything like that, is
22 it your understanding that mesothelioma can result
23 from low dosage exposures to asbestos?

24 A. From what -- from what they teach me, what I've
25 learned in training courses that's -- that's what the

1 training literature states.

2 Q. Okay. Thank you. Do you feel that you're the
3 person within Brown & Root's corporate structure today
4 that has the most information regarding the hazards of
5 asbestos?

6 A. I would say I have -- I have the most
7 information. My -- my position is -- is really based
8 on regulatory compliance, and as far as regulatory
9 compliance is concerned, I am -- I probably have the
10 most knowledge as far as complying, you know, with the
11 regulatory requirements of asbestos.

12 Q. Can you think of anyone within the company or
13 your department, if you want to start with your
14 department, that has more knowledge regarding the
15 hazards of asbestos than you?

16 A. You're asking me to speculate on somebody else's
17 knowledge. I don't -- I don't know. I mean --

18 Q. Fair enough. Let's go at it like this,
19 Mr. Gaines. I don't mean to cut you off.

20 If you don't know something about asbestos,
21 if you have a question about asbestos that you can't
22 answer yourself from your -- from your knowledge and
23 training, who do you go to?

24 A. Who would I go to?

25 Q. Uh-huh.

1 A. If I can't answer the question, I may go to -- I
2 probably have to go to some type of OSHA directive or
3 something like that. If someone asks me a question
4 about asbestos concerning regulatory compliance and
5 I'm not able to answer that question, then I will have
6 to do research on regulatory compliance to help answer
7 that question.

8 Q. To your knowledge has Brown & Root ever been
9 cited for noncompliance with an OSHA regulation?

10 A. I'd have to say I don't really have any knowledge
11 of that because in my position I don't deal with
12 citations that are given to -- to Brown & Root.

13 Q. Okay. Who does?

14 A. I couldn't tell you.

15 Q. If you know.

16 A. That's within -- that's within a specific
17 business unit or something like that.

18 Q. Okay. So, in your -- in your capacity as one of
19 the -- as the guy in the department who people come to
20 about asbestos compliance matters with OSHA, you've
21 never had anyone come to you and say, "Why weren't we
22 complying with that"?

23 A. I'd have to say no.

24 Q. Okay.

25 A. Because in my position I'm -- I deal with

1 regulatory compliance so those are matters that are
2 handled, you know, from within different groups, not
3 within -- within my group.

4 Q. Okay. Does Brown & Root today have a medical
5 monitoring program for employees who are likely to
6 have been exposed to asbestos?

7 A. The way -- I would have to say no.

8 Q. Okay. Brown & Root does not provide chest
9 x-rays, pulmonary function exams to employees who may
10 come in contact with asbestos?

11 MR. BROWN: If you know.

12 Q. (By Mr. Kale) Yeah. If you know.

13 A. I would have to say no, because you're saying
14 likely. You know, likely being exposed. I mean,
15 you're not -- you're not defining it again. I mean,
16 you know, I'm unlikely to be exposed to asbestos.
17 Does that mean I'm in a medical program?

18 Q. Does Brown & Root have a medical monitoring
19 program in place today, period?

20 MR. BROWN: If you know.

21 A. Yes.

22 Q. (By Mr. Kale) What is that monitoring program
23 for?

24 A. That monitoring program is for asbestos workers.

25 Q. Okay. Does Brown & Root employ asbestos workers

1 today?

2 A. I would have to say yes.

3 Q. Okay. In what capacity do these people work?

4 A. In what capacity? As asbestos workers.

5 Q. Okay. Do you have -- you have any knowledge of
6 what their job entails?

7 A. The job basically entails removing asbestos.

8 Q. They do abatement work?

9 A. You have to define what abatement is.

10 Q. They do -- for certain customers of Brown & Root
11 they go in and tear out asbestos insulation that may
12 be in place from some time ago?

13 A. Yes.

14 Q. Is Brown & Root a licensed abatement contractor?

15 A. You have to understand that when you say Brown &
16 Root, I mean --

17 Q. Is Brown & Root or any of its subsidiaries,
18 either wholly owned or not, a licensed abatement
19 contractor to your knowledge?

20 A. Yes.

21 Q. Do you know what that company's name is?

22 A. That company's name is Brown & Root Industrial
23 Services.

24 Q. Brown & Root Industrial Services. How long -- do
25 you know how long they've been in existence?

1 A. I don't have any prior knowledge to 1991.

2 Q. Were they around when you got here?

3 A. Yes, they were.

4 Q. Okay. Who licenses -- if you know, who licenses
5 companies for abatement work?

6 A. The licenses are -- are produced by the state.

7 Q. Okay. Do they do most of their work in the ship
8 channel vicinity?

9 A. You have to -- you have to understand -- you have
10 to understand my position is that I'm a corporate
11 entity so I don't know what goes on in the specific
12 business units, the way they handle their business.

13 Q. If you know.

14 A. I don't know.

15 Q. There you go. There you go. Do you have any
16 personal knowledge of documented cases of Brown & Root
17 employees being exposed to asbestos?

18 A. Once again, you have to define exposure.

19 Q. Being exposed above the PEL of today?

20 A. I would have to say yes, but only when they were
21 properly protected.

22 Q. Right.

23 A. You're asking me to comment on what this guy was
24 exposed --

25 Q. Okay. But Mr. Gaines, I'm going to try to speed

1 through this for Mr. Brown. So, I'm going to just cut
2 you off.

3 MR. BROWN: I don't know what time
4 you have.

5 MR. KALE: I'm going to cut you
6 off and object to the nonresponsive portion.

7 MR. BROWN: I think your watch is
8 fast.

9 THE VIDEOGRAPHER: It is fast.

10 Q. (By Mr. Kale) Who maintains the records of the
11 monitoring program, if you know? Would it be Brown &
12 Root Industrial Services?

13 A. That would -- that would have to be on a business
14 unit level.

15 Q. Okay. When you say "business unit level" --
16 there are certain corporations that have this business
17 unit, this business unit and this business unit. Do
18 you know which unit might do it?

19 A. I would have to say no. I mean --

20 Q. That's fine. That's fine. That's fine. Do you
21 know -- is Brown & Root a member of the National
22 Safety Council?

23 A. I don't know.

24 Q. Okay. Does your department -- is it your
25 department that maintains Brown & Root's membership in

1 certain -- in certain industrial groups such as the
2 National Safety Council?

3 A. I have to say yes and no.

4 Q. There are other departments also that do it as
5 far as you know?

6 A. As far as I know.

7 Q. Okay. Did you review any documents before you
8 came to the deposition today?

9 A. No.

10 Q. Did you review any for-- did you review any for
11 your deposition prior to today? I'm sorry, that may
12 be the same question.

13 A. No.

14 Q. Did you ever talk to Mr. Heit about his
15 deposition, Raymond Heit?

16 A. I don't even know who Mr. Heit is.

17 Q. Got you. Got you. What percentage of your work
18 here for Brown & Root is in regards to asbestos or
19 asbestos hazards?

20 A. I really can't give you a percentage. You know,
21 I do comprehensive industrial hygiene.

22 Q. Okay. But you are the person in the corporate
23 safety and health department responsible for
24 compliance with the OSHA regs regarding asbestos?

25 A. Each business unit is responsible for complying

1 with the OSHA regulations.

2 Q. Okay. Does your business unit encompass more
3 than the corporate safety and health department?

4 A. My business unit?

5 Q. Yes.

6 A. My business unit is corporate safety and health.

7 Q. Okay. That is the business unit that you've
8 spoken of. Okay. Are you a member of the AIHA?

9 A. Yes, I am.

10 Q. How long have you been a member?

11 A. Oh, for about four years, something like that.

12 Q. Do you receive their journal?

13 A. Yes.

14 Q. Does that journal include articles that you
15 sometimes rely on in your work?

16 A. Sometimes.

17 Q. Have you relied on any articles in the journal
18 of -- the journal from the AIHA that reflect -- in
19 regards to asbestos?

20 A. No.

21 Q. You receive or rely on any -- and rely on any
22 other journals or periodicals from any other
23 industrial hygiene associations?

24 A. Not from any industrial hygiene associations.

25 Q. So, you pretty much just rely on OSHA -- the OSHA

1 regs and maybe comments in the federal register?

2 A. Comments in the federal register, comments in
3 the -- in the B&A from the federal register. You
4 know, my job is strictly based on regulatory
5 compliance.

6 Q. Got you. Do you know anything about the work
7 done out at the Valley power plant in Savoy, Texas?

8 A. No, I don't.

9 Q. Do you have a -- do you know who the plaintiff is
10 in this case?

11 A. I'm not sure. I've heard some speculation, but
12 I'm not sure.

13 Q. Have you been shown any documents concerning the
14 Valley Power Plant?

15 A. No, I haven't.

16 Q. Have you been personally involved in
17 investigation of claims made by Brown & Root employees
18 for asbestos-related diseases?

19 A. I don't -- I don't get -- that's a different
20 department. I would have to say no.

21 Q. Okay. So, no one's ever come to you and said,
22 "This guy's claiming he has an asbestos disease,
23 needs you to look into it"?

24 A. No, that's not my duties.

25 Q. Are you familiar with the name Thorpes -- Thorpe

1 Products Company?

2 MR. BROWN: He doesn't --

3 MR. KALE: That's all. That's
4 all. I'm not going into -- I'm not going into --

5 THE REPORTER: One at a time,
6 please.

7 MR. KALE: That's all I was going
8 to ask about. I didn't figure he was going to know
9 what it was anyway.

10 MR. BROWN: Well, I wasn't even
11 anticipating the question.

12 Q. (By Mr. Kale) Are you familiar with the
13 Walsh-Healey Act?

14 A. The Walsh-Healey Act?

15 Q. Yes.

16 A. Somewhat.

17 Q. What is your understanding of the Walsh-Healey
18 Act?

19 A. The Walsh-Healey Act was the result -- was the
20 act that was passed in order to establish OSHA and
21 from --

22 Q. Okay. Well, I don't know if that's exactly true.
23 But my grasp --

24 MR. BROWN: Now -- now you're
25 being argumentative with him. You asked him what his

1 understanding was. He's told you what it is.

2 MR. KALE: I was just about to
3 clarify, Phil.

4 MR. BROWN: There's nothing to
5 clarify. You asked him what his understanding is.
6 He's told you what it was.

7 MR. KALE: Phil, I realize you're
8 getting antsy.

9 MR. BROWN: I'm not getting antsy.

10 MR. KALE: We got just a few
11 more -- few more questions. All right?

12 MR. BROWN: All right.

13 Q. (By Mr. Kale) Have you had any dealings with the
14 Walsh-Healey Act?

15 A. Not that I know of.

16 Q. Not in your capacity as the -- as -- as
17 industrial hygienist in the -- in the corporate safety
18 and health department at Brown & Root you've never
19 come across it?

20 A. No.

21 Q. Is it your understanding that asbestos was used
22 in thermal insulation products in the '30's and all
23 the way up through the '70's?

24 MR. BROWN: If you know.

25 A. I don't have any -- I don't have any knowledge of

1 what was used in the '30's, in the '70's. The only
2 thing I have knowledge of is from -- from the time,
3 you know --

4 Q. (By Mr. Kale) In your training courses and in
5 your work here at Brown & Root, have -- have you ever
6 been told that thermal insulation products from those
7 decades, the '30's through the '70's contained
8 asbestos?

9 A. In the training literature that's some of the
10 things they stated.

11 Q. Okay. Knowing what you know today about
12 asbestos, would you agree that the use of
13 asbestos-containing insulation products was dangerous?

14 MR. BROWN: Well, there's another
15 one of these questions that is -- it's vague, it
16 assumes facts not in evidence and asks him to
17 speculate, and it's not tied to any particular usage
18 or time. And if you can answer that question as
19 presented to you, please do so.

20 A. Repeat the question again.

21 Q. (By Mr. Kale) Okay. Knowing what you know
22 today, that's based upon all the training manuals, all
23 the training classes, any literature that you've
24 reviewed in your job as an industrial hygienist, in
25 the corporate safety and health department of Brown &

1 Root --

2 A. Right.

3 Q. -- do you feel that the use of
4 asbestos-containing thermal insulation products was
5 dangerous?

6 MR. BROWN: Again -- don't answer
7 that question as posed to you. It doesn't say what
8 uses, it doesn't say when, it doesn't take into
9 consideration the circumstances, and there's no way
10 you can answer that question. I object to it. It
11 calls for speculation.

12 Q. (By Mr. Kale) You can go ahead.

13 MR. BROWN: If you can answer the
14 question as presented to you.

15 A. My personal opinion is that the use of those
16 products -- just my personal opinion, no.

17 MR. BROWN: Do you have an
18 opinion? If so, state it.

19 Q. (By Mr. Kale) Personal opinion is?

20 MR. BROWN: How can you have an
21 opinion about something that's not related to time or
22 circumstance, but if you do, please state your opinion
23 at this time.

24 MR. KALE: I'll object -- I'll
25 object to the coaching of the witness.

1 MR. BROWN: I'm not coaching the
2 witness. I just don't want this witness to think he
3 has to answer questions that are unrelated to time,
4 circumstance, et cetera.

5 MR. KALE: He was -- he was
6 formulating an opinion in his mind. He was cogitating
7 over there. He was about to say one.

8 MR. BROWN: He's here to tell you
9 what facts he has. And if he has personal opinions,
10 he may state them.

11 MR. KALE: He was about to say --
12 give his personal opinion until you butted in.

13 MR. BROWN: I apologize for
14 butting in.

15 A. My personal opinion is just what I've been
16 trained on in the training courses. That's all I --
17 that's all -- basically all I know and all I
18 understand when it comes to asbestos.

19 Q. (By Mr. Kale) In the training courses that they
20 discuss that -- that asbestos used in thermal
21 insulation products was -- was dangerous?

22 A. I would have to say no.

23 Q. Okay. Based upon your continuing education from
24 that point on when you found out asbestos was
25 dangerous in the training courses, do you feel that

1 the use of asbestos thermal insulation was dangerous?

2 MR. BROWN: Again, question not
3 related to any particular point in time.

4 THE WITNESS: I have to use the
5 bathroom again.

6 Q. (By Mr. Kale) This is -- this is -- I appreciate
7 you need to go -- if I can get an answer to this
8 question, we'll probably be done.

9 MR. BROWN: If you have an
10 opinion, state it.

11 A. I don't have an opinion.

12 Q. (By Mr. Kale) Just so I'm clear, you have no
13 opinion as to -- you have -- today you have no opinion
14 that asbestos used in thermal insulation products was
15 dangerous?

16 MR. BROWN: As a general statement
17 that's what he said.

18 MR. KALE: Okay.

19 MR. BROWN: We've not tied it down
20 to any specifics. You out of tape because I'm out of
21 time.

22 MR. KALE: He is out of tape.
23 We'll go off the record right now.

24 MR. BROWN: Are you through?

25 MR. KALE: Let me look through

1 here.

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: Back on the record.

4 MR. KALE: I pass the witness.

5 MR. BROWN: We reserve our
6 questions.

7 (Signature required.)

1 THE STATE OF TEXAS:

2 I, Connie Slaughter, a Certified Shorthand
3 Reporter in and for the State of Texas, do hereby
4 certify that the facts as stated by me in the caption
5 hereto are true; that the above and foregoing answers
6 of the witness, DELBERT RAY GAINES, to the
7 interrogatories as indicated were made before me by
8 the said witness after being first duly sworn to
9 testify to the truth, and the same were reduced to
10 printing under my direction; that the above and
11 foregoing deposition as set forth in printing is a
12 full, true and correct transcript of the proceedings
13 had at the time of taking said deposition.

14 I further certify that the charge for preparation
15 of the foregoing completed transcript is \$_____,
16 charged to J. Todd Kale, Esq., Texas Bar No. 11079960.

17 Given under my hand and seal on this the 26th
18 day of September, 1996.

19
20
21 
22 CONNIE SLAUGHTER, /CSR
In and for the State of Texas

23 Certification No.: 6577
24 Expiration Date: 12-31-98
25 2700 Post Oak Boulevard, Suite 1540
Houston, Texas 77056

CHANGE/CORRECTION AND WITNESS SIGNATURE PAGE

Please indicate changes on this sheet of paper, giving the page and line number, the change, and the reason for the change. Please sign each page of the changes.

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I, DELBERT RAY GAINES, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

DELBERT RAY GAINES

THE STATE OF TEXAS:

SUBSCRIBED AND SWORN to before me this the
day of _____, 1996.

Notary Public in and for
The State of Texas

My Commission Expires:

NO. 31506

1		
2	SHIRLEY HODGE, Individually and as	*IN THE DISTRICT COURT
3	Personal Representative of and Estate of*	
4	A.J. HODGE, JR., Deceased; GREGG A.	*
5	HODGE and ANGELA R. McCLAIN,	*
6		*
7	Plaintiffs,	*
8		*
9	vs.	*
10		*
11	TEXAS UTILITIES ELECTRIC COMPANY	*
12	(d/b/a VALLEY POWER PLANT); CSR,	*
13	LTD.; BROWN & ROOT USA, INC.;	*
14	BROWN & ROOT, INC. (A DELAWARE	*
15	CORPORATION) and as successor to	*
16	BROWN & ROOT, INC. (A TEXAS	*FANNIN COUNTY, TEXAS
17	CORPORATION), individually and as	*
18	successor to BROWN & ROOT, INC.;	*
19	THORPE PRODUCTS COMPANY;	*
20	THORPE CORPORATION; J.T. THORPE	*
21	COMPANY (Individually and as	*
22	successor-in-interest to THORPE	*
23	INSULATION COMPANY) and THORPE	*
24	INSULATION SERVICES COMPANY,	*
25		*
	Defendants.	*6TH JUDICIAL DISTRICT

CERTIFICATE FOR THE VIDEOTAPED DEPOSITION OF
 DELBERT RAY GAINES
 SEPTEMBER 25, 1996

Taxable Costs \$ _____
 Charged to: J. Todd Kale, Esq.
 Bar Number: 11079960
 For: Plaintiff

I, Connie Slaughter, a Certified Shorthand
 Reporter for the State of Texas, hereby certify,
 pursuant to the Rules and/or agreement of the parties
 present, to the following:

That this deposition transcript is a true record
 of the testimony given by the witness named herein,
 after said witness was duly sworn by me;

1 _____ That signature was waived by the witness.

2 _____ That signature is in process of being obtained,
3 but filing was requested before time allowable for
signature.

4 _____ That the deposition transcript by way of
5 _____ was submitted on _____ to
6 _____ for examination, signature
and return to Q & A Reporting, Inc.

7 _____ That attached is the signature page and
Change/Correction Sheet containing changes, if any,
8 and the reasons therefor, made by the witness.

9 _____ That the deposition transcript and/or signature
10 page was not returned to the deposition officer by the
11 witness.

12 _____ That the witness failed to appear to read and
13 sign the deposition.

14 _____ That the original deposition transcript, or a
15 copy thereof, together with copies of all exhibits
16 provided to the reporter, was delivered on
17 _____ to the attorney or party who asked the
18 first question appearing in the transcript.

19 _____ That a copy of this certificate is being sent
20 to the following, which includes all parties of
21 record:

22 FOR THE PLAINTIFF:

23 J. Todd Kale, Esq.
24 Silber Pearlman, P.C.
25 3110 Webb
Dallas, Texas 75205

FOR THE DEFENDANT, BROWN & ROOT:

Phillip S. Brown, Esq.
Fanning, Harper & Martinson, P.C.
Third Floor Preston Commons West
8117 Preston Road
Dallas, Texas 75225

1 Subscribed and sworn to on this, the _____ day
2 of _____, 19____.

13 

14 CONNIE SLAUGHTER, CSR

15 Certification No.: 6577

16 Expiration Date: 12/31/98

24 Q & A Reporting, Inc.
25 2700 Post Oak Boulevard, Suite 1540
Houston, Texas 77056

NO. 31506

SHIRLEY HODGE, Individually and as *IN THE DISTRICT COURT
Personal Representative of and Estate of*
A.J. HODGE, JR., Deceased; GREGG A. *
HODGE and ANGELA R. McCLAIN, *

Plaintiffs, *

vs. *

TEXAS UTILITIES ELECTRIC COMPANY *
(d/b/a VALLEY POWER PLANT); CS., *
LTD.; BROWN & ROOT USA, INC.; *
BROWN & ROOT, INC. (A DELAWARE *
CORPORATION) and as successor to *
BROWN & ROOT, INC. (A TEXAS *FANNIN COUNTY, TEXAS
CORPORATION), individually and as *
successor to BROWN & ROOT, INC.; *
THORPE PRODUCTS COMPANY; *
THORPE CORPORATION; J.T. THORPE *
COMPANY (Individually and as *
successor-in-interest to THORPE *
INSULATION COMPANY) and THORPE *
INSULATION SERVICES COMPANY, *

Defendants.

*6TH JUDICIAL DISTRICT

CERTIFICATE FOR THE VIDEOTAPED DEPOSITION OF
DELBERT RAY GAINES
SEPTEMBER 25, 1996

Taxable Costs \$ 943.90
Charged to: J. Todd Kale, Esq.
Bar Number: 11079960
For: Plaintiff

I, Connie Slaughter, a Certified Shorthand
Reporter for the State of Texas, hereby certify,
pursuant to the Rules and/or agreement of the parties
present, to the following:

That this deposition transcript is a true record
of the testimony given by the witness named herein,
after said witness was duly sworn by me;

1 _____ That signature was waived by the witness.

2 _____ That signature is in process of being obtained,
3 but filing was requested before time allowable for
4 signature.

5 ✓ _____ That the deposition transcript by way of
6 courier was submitted on 9-27-96 to
7 Phillip S. Brown, Esq. for examination, signature
8 and return to Q & A Reporting, Inc.

9 ✓ _____ That attached is the signature page and
10 Change/Correction Sheet containing changes, if any,
11 and the reasons therefor, made by the witness.

12 _____ That the deposition transcript and/or signature
13 page was not returned to the deposition officer by the
14 witness.

15 _____ That the witness failed to appear to read and
16 sign the deposition.

17 ✓ _____ That the original deposition transcript, or a
18 copy thereof, together with copies of all exhibits
19 provided to the reporter, was delivered on
20 10-22-96 to the attorney or party who asked the
21 first question appearing in the transcript.

22 ✓ _____ That a copy of this certificate is being sent
23 to the following, which includes all parties of
24 record:

25 FOR THE PLAINTIFF:

 J. Todd Kale, Esq.
 Silber Pearlman, P.C.
 3110 Webb
 Dallas, Texas 75205

 FOR THE DEFENDANT, BROWN & ROOT:

 Phillip S. Brown, Esq.
 Fanning, Harper & Martinson, P.C.
 Third Floor Preston Commons West
 8117 Preston Road
 Dallas, Texas 75225

1 Subscribed and sworn to on this, the 22nd day
2 of October, 19 96.
3
4
5
6
7
8
9
10
11
12

13 Connie Slaughter

14 CONNIE SLAUGHTER, CSR
15 Certification No.: 6577
16 Expiration Date: 12/31/98
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PAGE LINE CHANGE FROM/CHANGE TO REASON FOR CHANGE

6 9 ~~Am 38~~ (2)

12 21 ~~It is my professional opinion~~
that ~~there are~~ levels of airborne asbestos
that do not pose a significant health
hazard when work practices and pro-
cedures are followed for a specific
task (1)

16 21 I worked under the direction
of a supervisor. He was not a certified
industrial hygienist (1)

20 5,7 I was a specialty contractor (1)

I, DELBERT RAY GAINES, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

Delbert Ray Gaines
DELBERT RAY GAINES

THE STATE OF TEXAS:

SUBSCRIBED AND SWORN to before me this the
18 day of October, 1996.

Seraldine A. Hogue
Notary Public in and for
The State of Texas

My Commission Expires:

6-13-98

CHANGE/CORRECTION AND WITNESS SIGNATURE PAGE

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PAGE LINE CHANGE FROM/CHANGE TO REASON FOR CHANGE

39 6-14 In the context that the question was asked, without specific facts - I do not have an opinion (1)

49 5-6 Exposure monitoring is done to assure that workers wear proper personal protective equipment, that engineering controls are functioning properly and levels of asbestos are in compliance with legal limits set by OSHA (1)

76 24 From what I have learned in training courses mesothelioma can be caused by

I, DELBERT RAY GAINES, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

Delbert Ray Gaines
DELBERT RAY GAINES

THE STATE OF TEXAS:

SUBSCRIBED AND SWORN to before me this the 18 day of October, 1996.

Sherdine A. Hogue
Notary Public in and for
The State of Texas

My Commission Expires:

6/13/98

CHANGE/CORRECTION AND WITNESS SIGNATURE PAGE

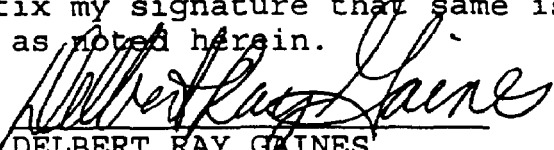
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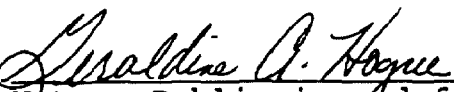
76 24 low dose exposure, but
the amount or level of the low
dose exposure was not quantified (1)
85 3 in the BNA for the federal
register (3)

I, DELBERT RAY GAINES, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.


DELBERT RAY GAINES

THE STATE OF TEXAS:

SUBSCRIBED AND SWORN to before me this the
18 day of October, 1996.


Notary Public in and for
The State of Texas

My Commission Expires:

6-13-98