

NO. 95-04-1728-D

MANUEL P. GONZALES,) IN THE DISTRICT COURT OF
ET AL)
VS.) CAMERON COUNTY, TEXAS
OWENS-CORNING FIBERGLAS)
CORPORATION, ET AL) 103RD JUDICIAL DISTRICT

PLAINTIFF'S
EXHIBIT
B&R-85

ORAL/VIDEO DEPOSITION
OF
EMIL MARTIN ZERR, JR.

COPY

ANSWERS AND ORAL/VIDEO DEPOSITION OF EMIL MARTIN
ZERR, JR., a witness produced at the instance of the
Plaintiffs, taken in the above styled and numbered
cause on the 26th day of September, 1997, at
1:44 p.m., before LISA A. BERRY, a Certified Shorthand
Reporter in and for the State of Texas, at the offices
of Meredith, Donnell & Abernethy, located at 6850
Texas Commerce Tower, 600 Travis Street, in the City
of Houston, County of Harris, State of Texas, in
accordance with the Texas Rules of Civil Procedure,
the stipulations hereinafter set forth and pursuant to
Notice.

deposed. B & R

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MR. DANIEL PARIS, VIDEOGRAPHER

I N D E X

WITNESS: EMIL MARTIN ZERR, JR.

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A G R E E M E N T S

AS PER RULE 11, the following agreements were agreed to by and between the parties thereto, through their respective attorneys appearing herein:

IT IS HEREBY agreed by and between the parties hereto, through their attorneys appearing herein, that any and all objections to any question, except as to form, or answer, except as to responsiveness, contained herein may be made upon the offering of this deposition in evidence upon the trial of this cause with the same force and effect as though the witness were present in person and testifying from the witness stand.

IT IS FURTHER agreed by and between the parties hereto, that an objection made by one counsel for the respective parties shall be considered good for all other counsel present.

IT IS FURTHER agreed by and between the parties hereto, through their attorneys appearing herein, that this deposition may be signed before any Notary Public and thereafter returned into Court and used upon the trial of this cause with the same force and effect as though all requirements of the Rules and Statutes with reference to signature and return had been fully

1 complied with.

2 IT IS FURTHER agreed by and between the parties
3 hereto, through their attorneys appearing herein, that
4 if the deposition is not signed and filed prior to any
5 hearing in this cause, that said deposition or a
6 certified copy thereof may be used on the trial of
7 this cause with the same force and effect as though
8 the same had been read and signed by the said witness.

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PROCEEDINGS

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MR. HEWITT: Again, I want to again note that these witnesses, including Mr. Steve Sellers, who we presented for deposition yesterday, he was produced pursuant to the court's instructions relative to a response to the plaintiffs' corporate deposition notice to Brown & Root with respect to some of the subject matter areas contained within that deposition notice, as was Mr. Pete Johnson this morning.

Mr. Johnson, of course, is not a current Brown & Root employee and not subject to our control; but he did agree to voluntarily appear and had some relative knowledge, relative to some of those subject matter areas. And the same is true with respect to Mr. Emil Zerr, who is being produced for deposition today.

MR. WATERS: Okay.

THE VIDEOGRAPHER: We are on record at 1:44 p.m. This is the videotaped deposition of Emil Martin Zerr, Jr., in

1 the matter of Manuel P. Gonzales versus
2 Owens-Corning Fiberglas. Today's date is
3 September 26th, 1997. This deposition is
4 being taken at Meredith, Donnell &
5 Abernethy, 600 Travis, Suite 6850,
6 Houston, Texas. The videographer is
7 Daniel Paris from Diana Henjum Reporting
8 Service. Would counsel please announce
9 their appearances for the record.

10 MR. WATERS: Andy Waters for the
11 plaintiffs.

12 MR. ERWIN: Harding Erwin for
13 Armco.

14 MR. HEWITT: Jim Hewitt and Alan
15 Marks for Brown & Root.

16 MS. KELLY: Trish Kelly for
17 Pittsburgh Corning and W.R. Grace.

18 EMIL MARTIN ZERR, JR.,
19 called as a witness, having been first duly sworn, was
20 examined and testified upon his oath as follows:

21 * * *

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

23 * * *

24 BY MR. WATERS:

25 Q. Would you state your full name for the

1 record, sir?

2 A. Emil Martin Zerr, Jr.

3 Q. Mr. Zerr, how old a man are you, sir?

4 A. How old?

5 Q. Yes.

6 A. I'm 66.

7 Q. Have you ever given a deposition before?

8 A. A long time ago.

9 Q. Okay. Was it a case that involved

10 asbestos in any way?

11 A. No, no.

12 Q. Do you understand the purpose of the

13 deposition is for us to ask questions in this instance

14 about Brown & Root and your work with Brown & Root?

15 A. Yes.

16 Q. Okay. If for any reason I ask a question

17 that you don't understand or that -- that you want to

18 be rephrased, would you ask me to do that?

19 A. Yes.

20 Q. How are you presently employed?

21 A. I'm not. I'm retired.

22 Q. Retired. What was your most recent

23 employment?

24 A. I retired in December of '95.

25 Q. And what was your position at the time you

1 retired?

2 A. At the time I retired, I was chief
3 operating officer.

4 Q. For?

5 A. Brown & Root.

6 Q. Can you describe for me the nature of your
7 duties and re -- nature of your duties and
8 responsibilities as a chief operating officer?

9 A. I was chief operating officer, as I said,
10 at the time I retired; and that started in '92 to '95,
11 was the period of time. As chief operating officer,
12 basically all operations of the company were under my
13 responsibility. Keep in mind, I had a number of
14 people reporting to me.

15 Q. Okay. And as chief operations officer, to
16 whom would you report?

17 A. Reported to the president of the company.

18 Q. And who was that?

19 A. At that time, it was Tommy Knight.

20 Q. Did you report to anyone else directly,
21 besides Mr. Knight?

22 A. Not at the time I was chief operating
23 officer.

24 Q. Does that make you the number two officer
25 for the company in that time frame?

1 A. In that time frame, yes.

2 Q. And let -- we'll come back to that, but
3 what were you doing before 1992?

4 A. Well, going back how far?

5 Q. Let's take it one step at a time. What
6 was your immediate prior position?

7 A. Prior the that, I was president of one of
8 the operating units.

9 Q. Which one was that?

10 A. That was called the Forest Products at
11 MAPI Business Unit.

12 Q. And for how long a period did you have
13 that position?

14 A. From 1986 up until '92.

15 Q. Okay. Let's go back a little further.
16 Before 1986, what position did you have?

17 A. We had a reorganization in '86. Prior to
18 that, I was the president of -- not the president, but
19 I was the senior vice president over one of the
20 business units. We did not have presidents and so
21 forth before that time. So, I was -- basically had a
22 similar position, but did not have that same title.

23 Q. What was the business unit that you
24 were --

25 A. It was same, Forest Products and MAPI.

1 Q. And mapping?

2 A. MAPI, M-A-P-P-I (sic), which stood for
3 Manufacturing and Process Industries.

4 Q. For how long a period were you senior vice
5 president for that business unit?

6 A. I'm trying to remember. 19 -- about '83.

7 Q. So, from 'about '83 to about '86 before
8 you became president?

9 A. Of -- yes, of that unit.

10 Q. All right. What about immediately prior
11 to your work as senior VP of the business unit?

12 A. I was senior VP of one of the operating
13 divisions.

14 Q. Which one?

15 A. The same one. We just changed titles,
16 MAPI and Forest Products.

17 Q. Okay. All right. And for how long a
18 period of time were you in that position?

19 A. From 1979 to '83.

20 Q. Just so I'm trying to be clear on this,
21 what's the difference from what you were doing from
22 '79 to '83 and from '83 to '86?

23 A. The scope of -- of responsibility was a
24 little bit larger with the presidents, because prior
25 to that we had an engineering division; and with that

1 reorganization that took place, engineering was --
2 became part of the operating group. So, it no longer
3 was just a construction division. It became a total
4 engineering and construction operation.

5 Q. And were you responsible for all aspects
6 of that operation?

7 A. All aspects of that operation during that
8 period of time.

9 Q. And were you accountable to the senior
10 executive officers -- officer of Brown & Root with
11 respect to those activities and those particular
12 businesses?

13 A. Yes. I reported to the -- to the then
14 chief operating officer, which would be the senior
15 executive officer.

16 Q. The position that you ultimately filled?

17 A. The position I ultimately filled in '92.

18 Q. Prior to 1979, what was your position?

19 A. I was a senior vice president over what we
20 called at that time industrial civil division; and I
21 was in that position from '70 -- '74 to '79.

22 Q. Did that work include construction and
23 maintenance contracts at various industrial
24 facilities?

25 A. It include -- included construction work.

1 Q. What about -- did it include capital
2 improvement work?

3 A. Capital improvement work, as well as new
4 projects, yes.

5 Q. What about maintenance contracts?

6 A. Maintenance contracts were done with what
7 we called our industrial maintenance division,
8 industrial services. That -- that particular group
9 handled all the maintenance for the various plants.
10 Now --

11 Q. Go ahead. I'm sorry.

12 A. -- prior to -- we got all these dates
13 going in here, and keep in mind, we went through a
14 number of different reorganizations within the
15 company. And the industrial services group, which was
16 our maintenance operation, was established as a
17 separate maintenance group in '70 -- I think it was
18 '79, if I'm not mistaken; but don't -- I'm not
19 positive about that year, but it was about that time.
20 Prior to that, the various divisions we did have
21 served some maintenance within their own operations.

22 Q. Including the industrial civil division?

23 A. Including the industrial civil division.

24 Q. So from the time frame '74 to '79 that you
25 were involved in the industrial civil division, its

1 work would have included some degree of maintenance
2 work at various facilities?

3 A. It would have included certain maintenance
4 work in certain facilities.

5 Q. Okay. In the '74 to '79 time frame, do
6 you recall one way or another whether it included
7 maintenance work at the Armco Steel facility?

8 A. To my knowledge, we did no maintenance
9 work at Armco Steel.

10 Q. All of the work that -- that was ongoing
11 at Armco Steel in that time frame would have been in
12 the nature of capital improvement?

13 A. It would be in the nature of capital
14 improvements, some small, some large; but it was all
15 construction work.

16 Q. And how is it that you recall that with
17 such specificity?

18 A. Because we had separate maintenance
19 contracts and separate con -- construction contracts.

20 Q. All right. And were the maintenance
21 contracts maintained by the industrial civil division
22 as well?

23 A. During the period of -- of that time, yes,
24 we had certain maintenance contracts, up until we
25 established the -- the maintenance division.

1 Q. Okay. Were there also other maintenance
2 contracts that were handled by another division?

3 A. Yes. Each division at that time, if they
4 had maintenance contracts within the -- the type of
5 work they performed, then they would be doing the
6 maintenance work, but under a maintenance contract.

7 Q. All right. What other divisions would
8 have had occasion to have maintenance -- do
9 maintenance work or have a maintenance contract?

10 A. Well, the division I mentioned, which was
11 industrial civil, that I was involved in.

12 Q. Right.

13 A. The petrochemical division, the power
14 division.

15 Q. All right. Others?

16 A. Those would be the only three that I can
17 recall.

18 Q. And the industrial civil division, would
19 that have included Forest Products Manufacturing?

20 A. It would include Forest Products
21 Manufacturing; and at that time Forest Products was
22 probably our largest industrial maintenance operation,
23 was in Forest Products Industry.

24 Q. Okay. So, there was -- was there a
25 significant amount of maintenance -- maintenance

1 contract work ongoing at various paper mills, paper
2 plants, that sort of thing?

3 A. Yes, yes.

4 Q. Do you recall, for example, that there was
5 work ongoing at the Champion Paper Mill in Lufkin,
6 Texas?

7 A. No, I don't recall maintenance work going
8 on at Lufkin at that time.

9 Q. Okay. Do you recall maintenance work
10 going on in the Champion plant in Pasadena?

11 A. No, not at the Pasadena plant.

12 Q. I'll put it to you this way: What -- what
13 paper mills do you recall --

14 A. Okay.

15 Q. -- where you had maintenance contracts
16 going on?

17 A. The -- what is Champion Papers now, but at
18 that time was called Southland Paper Mill.

19 Q. In which place?

20 A. It's just outside Houston, on Sheldon
21 Road.

22 Q. Uh-huh.

23 A. At the -- I'm trying to think during that
24 same period of time -- at the Weyerhaeuser mill in
25 Oklahoma.

1 Q. Okay.

2 A. At that time the International Paper mill
3 in Mansfield, Louisiana. Those are the only three
4 I can remember right now.

5 Q. Okay.

6 A. I'd have to, you know, get back and
7 refresh --

8 Q. Right.

9 A. -- my mind.

10 Q. Well, it would be helpful to you in this
11 regard, I take it, to review documents to determine
12 what contracts may have been out there?

13 A. Well, it would certainly help my
14 remembering, yes.

15 Q. As -- as a part of this case or as part of
16 coming here to testify, have you reviewed any
17 documents?

18 A. Reviewed any documents?

19 Q. Yes, sir.

20 A. Not really, no.

21 Q. Okay. Has -- has the attorney for
22 Brown & Root asked you to look at any documents in
23 order to prepare for your deposition?

24 A. Not -- not really. I looked at a couple
25 of -- of -- of papers, but nothing of any specific

1 nature.

2 Q. Okay.

3 A. Mainly to understand what this deposition
4 was about.

5 Q. What kind of papers did you look at?

6 A. Oh, there was a couple of contract files;
7 but I -- I just glanced through them just to refresh
8 my mind.

9 Q. Okay. Is it fair to say that the last
10 time you would have had any systematic reason to
11 review contract documents pertaining to the 1970s
12 would have been back in the '70s?

13 A. Pertaining to the 1970s?

14 Q. Yes, sir.

15 A. I'm not sure if I understand exactly what
16 you're asking.

17 Q. I'm just curious if, since -- since '79,
18 when you left that particular position, if you would
19 have had any reason or occasion to go back and review
20 contract documents from that time frame?

21 A. I can't think of any.

22 Q. Okay. Let's talk some more about the '74
23 to '79 time frame. Can you just generally describe
24 for me what your duties and job responsibilities
25 entailed on a continuing or day-to-day basis?

1 A. All right. Basically, I was in charge of
2 all the construction for that particular division,
3 which was the industrial civil division, from '74
4 through '79.

5 Q. And I take it from that response that you
6 did not have any responsibilities related to whatever
7 maintenance work that division may have been doing?

8 A. What little maintenance work we were
9 doing, I did have responsibility for, yes.

10 Q. Oh, you did. Okay. So, in addition to
11 construction responsibility, new construction, you had
12 responsibility for whatever maintenance work was going
13 on?

14 A. With that division.

15 Q. Yes, sir. And when you say that you had
16 responsibility for all the construction and
17 maintenance work, what does that mean? What does that
18 entail? How are you spending your time?

19 A. Well, a number of ways.

20 Q. I imagine.

21 A. Generally, all of the projects that we had
22 ongoing were reporting in to me -- not directly, but
23 through other people in to me. I had construction
24 managers that these various job sites reported to, and
25 those managers then directly reported to me. But I

1 was responsible for making sure that the work was
2 being performed according to the contracts through
3 these people, reviewing -- reviewing their -- their
4 contracts, and also reviewing their -- their reports
5 on the jobs, relative to -- to the cost and the
6 schedule of the work.

7 Q. Did you have --

8 A. And also the responsibility to make sure
9 the jobs were manned.

10 Q. Okay. So, as a result of those duties,
11 did -- would you have maintained a continuing
12 relationship with Brown & Root project supervisors and
13 other supervisory personnel at the job sites?

14 A. Not directly. There were just too many
15 projects going on.

16 Q. Give me a sense of that, if you can, back
17 in the '74 to '79 time frame -- well, maybe we can
18 take it '74 all the way to '83, that's a little --
19 little broader. How many projects were you
20 responsible for at a given time? Are we talking about
21 hundreds of projects?

22 A. Yes.

23 Q. • At any given time?

24 A. At any given time. Keep in mind some of
25 them were quite small, and the -- the major projects

1 were, you know, were -- were of a nature that they
2 took up the biggest volume of work as far as dollars
3 are concerned; but there was a number of small
4 projects.

5 Q. Were you responsible for the projects
6 being completed in a satisfactory fashion and turning
7 a profit for Brown & Root?

8 A. Ultimately.

9 Q. And of the hundreds of projects you would
10 have had at any given time over that period, were many
11 of those out of state or -- or around the world?

12 A. They were mostly -- none of them were
13 outside of the country at that time.

14 Q. Okay.

15 A. They were all within the country.

16 Q. Okay.

17 A. But they were scattered throughout the
18 various states.

19 Q. And as I understand it, there would have
20 been some -- were you at the Clinton Drive facility --

21 A. Yes.

22 Q. -- headquarters? Okay. And at the
23 corporate headquarters, would there have been someone
24 else there who reported to you that was sort of in
25 between you and the actual project in the chain of

1 command?

2 A. Yes.

3 Q. Okay. And of the persons that reported to
4 you, were they divided, did they divide the projects
5 in a geographical sense or in some other way?

6 A. Not necessarily. Generally, we were
7 divided such that who best fits those particular jobs,
8 has the, you know, the background associated with that
9 kind of work.

10 Q. I mean, did you have someone there, for
11 example, who was involved with the projects having to
12 do with steel mills, as opposed to the projects that
13 had to do with paper mills?

14 A. We really didn't have that many steel --
15 steel mill operations going on. There was only two
16 steel mills.

17 Q. And where were those?

18 A. One was in Houston, which was the Armco
19 facility. The other one was in Lone Star, Texas; and
20 those two facilities did not report in to the same
21 manager.

22 Q. Okay. Who was the manager to whom the
23 Armco Steel project reported?

24 A. Ollie Bokken.

25 Q. B-o-k-k-e-n?

1 A. Yes.

2 Q. And so Mr. Bokken, he would then report to
3 you?

4 A. Yes.

5 Q. And for how long a period of time do you
6 recall Mr. Bokken was -- well, what would his position
7 have been? What would you have called him?

8 A. He was vice president. He became vice
9 president about the '74, '75 period of time.

10 Q. Did you recommend him for that position?

11 A. Yes.

12 Q. Prior to 1974, did he have any -- any
13 involvement or responsibility for the Armco projects?

14 A. Only with regard to the contracts. He was
15 contract manager.

16 Q. Okay. And what does the contract manager
17 do?

18 A. The contract manager is responsible for
19 reviewing and also acquiring contracts.

20 Q. How long had Mr. Bokken been contract
21 manager with responsibility for the Armco site?

22 A. Quite some time. I can't recall exactly
23 how long. Keep in mind, I did not come into the
24 office until '71, and so my knowledge of his
25 involvement with Armco -- Armco would not have been

1 prior to '71.

2 Q. All right. And where was it -- tell -- we
3 didn't get there quite yet; but in '71, how was it
4 that you became -- became involved with that work?

5 A. Well, the -- I was promoted to -- to an
6 officer of the company in '71, and became responsible
7 for most of the industrial projects that were going on
8 within the division. At that time, Armco was not
9 reporting to me.

10 Q. That is to say, '71?

11 A. '71.

12 Q. Okay. Was it not until '74 that Armco
13 began to report to you?

14 A. That's correct.

15 Q. Did you have --

16 A. But again, through Mr. Bokken.

17 Q. Right. Did you have any involvement or
18 knowledge about the Armco projects in the '71 through
19 '74 time frame?

20 A. Not directly, but I would certainly hear
21 reports about the work, about how it was going; but
22 I had no direct communication with the project.

23 Q. Did you understand, or did you come to
24 understand that Brown & Root had been doing work at
25 the Armco facility since the 1950s?

1 A. Yes, I was aware of that.

2 Q. Did you understand that Armco had built,
3 constructed the majority of the plant and the plant
4 operations?

5 A. Yes.

6 Q. Well, in the '71 to '74 time frame, to
7 whom would the Armco project folks report?

8 A. To Mr. Lawrence Derrick, who -- he was in
9 charge of that industrial civil division.

10 Q. Okay. Is he still alive?

11 A. No. He passed away a couple of years ago.

12 Q. When was the last time you spoke to
13 Mr. Bokken?

14 A. Probably five or six months ago.

15 Q. Have you had any discussions with him
16 about this case?

17 A. No.

18 Q. Can you tell me what capital improvement
19 projects may have been ongoing at the Armco facility
20 from '74 to '83, if any?

21 A. Oh, there were several going on. I just
22 really can't remember the exact dates on some of them.
23 We had a -- we had a continuing contract that we did a
24 -- a lot of work from as work orders were given to us
25 from Armco; and I really don't recall any of the

1 specifics associated with those.

2 We did do some major capital projects; and
3 I can't recall the exact dates. I'd have to review,
4 you know, the -- the contract papers on it, but we did
5 a reduction -- a direct reduction mill that I think
6 was in that period of time, in the early '70s. We --
7 we constructed a wide flange mill, but it might have
8 been prior to that period of time.

9 Q. In the late '60s perhaps?

10 A. Yeah, probably the late '60s. Most of
11 the -- I think we also did some electric furnaces
12 during that period of time, as far as major capital
13 projects concerned. We did a multitude of smaller,
14 you know, projects.

15 Q. Okay.

16 A. And I don't recall any of the specifics on
17 those.

18 Q. And there was, as I understood your
19 earlier testimony, there was a continuing contractual
20 arrangement, had been for some time, for many years
21 with Brown & Root, and these projects were done as the
22 work orders were received from Armco?

23 A. That's correct.

24 Q. Okay. So you didn't necessarily have a
25 distinct and separate contract for each and every

1 project?

2 A. Not -- not on the small projects like
3 that. On the major projects, yes.

4 Q. Okay. But the small projects would tend
5 to just come under the general agreement between the
6 companies for smaller projects, routine-type work?

7 A. That's correct.

8 Q. And you're not in a position, as you sit
9 here today, to, I guess, really begin to try to
10 catalogue what those smaller projects may have been?

11 A. No, I'm not.

12 Q. Those would vary from day to day and week
13 to week?

14 A. They would vary, yes. They -- some of
15 them would be quite small, and some would get, you
16 know, fairly last and would last a, you know, a few
17 months' period of time.

18 Q. Am I correct that in the '50s, '60s, and
19 through the '70s into the '80s, Brown & Root routinely
20 maintained a significant work force at the facility?

21 A. It would fluctuate up and down, depending
22 on the workload that Armco had issued to us.

23 Q. Okay. Can you give me a sense of the --
24 the degree of fluctuation, the highs and lows that you
25 might recall?

1 A. Oh, gosh. When we had major projects
2 going on, we had hundreds of people out there.

3 Q. Right.

4 A. And while there were no major projects
5 going on, we might have been down to 20 or 30 people
6 at a time.

7 Q. Okay.

8 A. So, I -- that's about as close as I
9 could --

10 Q. That's fine.

11 A. -- as I could come.

12 Q. What were you doing prior to '71?

13 A. What was I doing?

14 Q. Yes, sir.

15 A. Prior to that, I spent time out in the
16 field as a project manager on various projects. And
17 in 1971, specifically, I was project manager out at
18 Rohm & Haas, Deer Park.

19 Q. As a project manager, did you understand
20 that it was necessary for Brown & Root to accept and
21 follow whatever safety requirements the premises owner
22 had?

23 A. Yes, we did; and we had our own safety
24 requirements.

25 Q. Okay. Did you ever do any work at the

1 Exxon Baytown facility?

2 A. Personally, no; but Brown & Root did a lot
3 of work out there.

4 Q. And Brown & Root similarly had a long-term
5 relationship with Exxon and had folks out there over
6 the years?

7 A. Yes.

8 Q. Based on your experience at Rohm & Haas
9 and some of these other facilities, do you believe
10 that Brown & Root would have been aware of Exxon's
11 safety requirements with respect to the Baytown
12 facility?

13 MR. HEWITT: Object to the
14 overbroad, vague, speculative form of that
15 question. Assumes facts not in evidence.

16 Q. (BY MR. WATERS) You can answer.

17 A. Let me answer that in a -- in a general
18 fashion. We, as Brown & Root, had our own specific
19 safety requirements. And we would -- we would use our
20 own safety requirements with respect to protecting our
21 own people; and we had that responsibility.

22 Q. Well, what about --

23 A. We would also obey any regulations that
24 pertained to us within an existing facility, whether
25 it be Exxon or -- or Champion Paper.

1 Q. All right. So, with respect to Exxon or
2 Champion Paper, the Brown & Root folks, in addition to
3 their own safety rules and regulations, they would be
4 aware of and follow safety rules and regulations for
5 the premises owner?

6 MR. HEWITT: Objection; overbroad
7 and speculative.

8 Q. (BY MR. WATERS) You can answer.

9 A. I'm -- I'm not sure I fully understand
10 your question.

11 MR. WATERS: Okay. Can you read
12 that one back to him?

13 (The requested material was read by
14 the reporter.)

15 A. We would only obey the safety regulations
16 and only had knowledge of those associated with the
17 work that we were performing. What other safety
18 regulations a plant might have relative to their own
19 employees or their own operations, we were not
20 involved in.

21 Q. (BY MR. WATERS) And was that your
22 recollection of company policy with respect to the
23 safety regulations of the premises owners?

24 A. Yes.

25 Q. Okay. It was necessary for you-all to

1 follow the Brown & Root safety requirements, but you
2 were less concerned about whatever requirements the
3 premises owner may have had?

4 MR. HEWITT: Objection;
5 mischaracterization of his testimony.
6 It's a misleading question.

7 Q. (BY MR. WATERS) You can answer.

8 A. I'm not sure I fully understand what you
9 are asking.

10 MR. WATERS: Okay. Can you read it
11 back to him, please?

12 (The requested material was read by
13 the reporter.)

14 A. As I said earlier, we obeyed the safety
15 regulations as it pertained to our work, but not --
16 not that we weren't concerned, but we didn't have
17 knowledge of the rest of the safety regulations within
18 an operating plant.

19 Q. (BY MR. WATERS) You did not have
20 knowledge of those?

21 A. No. We have no -- we are doing a specific
22 job in a specific piece of a plant. What safety
23 regulations may apply to some other facility within
24 that plant, we are not aware of, as it relates to the
25 operations of that facility.

1 Q. What if the premises owner has regulations
2 or requirements that pertain to the specific job that
3 you may be performing?

4 A. Those would be provided to us, and we
5 would -- we would obey those regulations as they
6 applied to our work and the protection of our people.

7 Q. Okay. So to the extent that Brown & Root
8 employees may have had to do work that related to
9 asbestos, if the premises owner had regulations or
10 requirements that pertained to asbestos, you would
11 expect that the Brown & Root supervisors would be
12 aware of that?

13 MR. HEWITT: Objection; overbroad
14 and vague.

15 Q. (BY MR. WATERS) Do you need that one read
16 back to you?

17 A. I -- I think do. I'm not sure exactly
18 what you are asking.

19 Q. That's fine.

20 MR. WATERS: You can read it back.

21 (The requested material was read by
22 the reporter.)

23 A. Dealing with -- with working with
24 asbestos, I presume you're talking about insulation?

25 Q. Uh-huh.

1 A. Yes. OSHA regulations were established in
2 the -- in the early '70s. We -- we certainly obliged
3 to the OSHA regulations, and we performed no asbestos
4 installation after that period.

5 MR. WATERS: Okay. Let me object
6 as nonresponsive.

7 Q. (BY MR. WATERS) Did you understand my
8 question had to do with work at premises -- nothing to
9 do with the regulations, but if the premises owner had
10 a specific policy about asbestos. I didn't say
11 anything about after 1972. Okay? I'm asking you if
12 you were doing those type of operations in a premises
13 where the premises owner had some requirements or
14 regulations about work around asbestos, do you believe
15 that you would have known of those?

16 MR. HEWITT: Objection;
17 argumentative and overbroad and vague.
18 You can -- you can answer the question.

19 A. I'm not sure whether we would -- we would
20 know what they provided us, yes.

21 Q. (BY MR. WATERS) Okay. So, if for
22 example, Exxon provided you with information in 1965
23 that asbestos was a hazardous substance and needed to
24 be worked around with some degree of care, then you
25 would have attempted to follow that?

1 A. Oh, yes.

2 MR. HEWITT: Object to the form of
3 that question on the grounds that it
4 assumes facts not in evidence. It's
5 speculative and overbroad.

6 Q. (BY MR. WATERS) Can you reanswer in light
7 of the objection?

8 THE WITNESS: Read that again.

9 THE REPORTER: The answer or the
10 question?

11 THE WITNESS: The question.

12 (The requested material was read by
13 the reporter.)

14 Q. (BY MR. WATERS) Is that your answer, yes?

15 A. If they would provide something to us of
16 that nature, because at that time, we weren't really
17 aware of any problems with asbestos.

18 MR. WATERS: Object to the
19 nonresponsive portion.

20 Q. (BY MR. WATERS) How long were you project
21 manager at Rohm & Haas?

22 A. From early '68 through May of '71.

23 Q. Do you have a recollection one way or
24 another as to whether or not Rohm & Haas had a safety
25 program related to asbestos hazards at that time?

1 A. They had a safety program, but I can't be
2 specific on whether it specifically related to that.

3 Q. Okay. What did you do before the
4 Rohm & Haas work?

5 A. Prior to that, I was building a paper
6 mill.

7 Q. Where was that?

8 A. Up in Evadale, Texas.

9 Q. Evadale?

10 A. Evadale.

11 Q. Where is Evadale, Texas?

12 A. It's in Jasper County, just about 30 miles
13 from Beaumont.

14 Q. Do you recall the premises owner?

15 A. Eastex, Incorporated, currently owned by
16 Temple, Eastex.

17 Q. And how long did that project last?

18 A. I was there from late '66 through the end
19 of '67. I went directly from there to Rohm & Haas.

20 Q. Were you project manager for that job?

21 A. Yes.

22 Q. And before that?

23 A. Before that, I was at Armco Steel from
24 around mid-'65 to the fall of '66.

25 Q. And were you the project manager there?

1 A. I was the project manager of one capital
2 project, which was the mechanical installation of two
3 electric furnaces.

4 Q. Big project?

5 A. Sizable.

6 Q. Took a couple of years to complete?

7 A. Yes. I -- in fact, I left before the
8 project was complete because I had to go to the paper
9 mill job.

10 Q. In addition to your particular project,
11 were there other projects going on at that same time
12 at Armco?

13 A. At Armco, yes.

14 Q. And how many employees approximately were
15 involved with your particular project?

16 A. Well, at the time I was there, we probably
17 had about 150 people. It -- it probably grew a little
18 bit more than that after I left. Keep in mind, I -- I
19 left at the -- at the middle of the project.

20 Q. Now, again, and that's -- and that's the
21 number of employees just on that --

22 A. Just on that one job, uh-huh.

23 Q. And there would have been other
24 Brown & Root employees on other jobs?

25 A. On other jobs, yes.

1 Q. Do you have any recollection, as you sit
2 here today, of the nature of the other Brown & Root
3 projects that were ongoing at that time?

4 A. One of the specific projects we were doing
5 separately under a separate contract, the foundations
6 in the building for that electric furnace.

7 Q. Okay. But that was -- that was a separate
8 project?

9 A. It was a separate -- separate project.

10 Q. And in building the two electric furnaces,
11 do you recall that Brown & Root was involved with the
12 insulation of steam piping?

13 A. I don't recall the exact insulation
14 requirements on that job. We were not the engineer,
15 and the engineer specifies the -- the specifications
16 for insulation and of construction materials; but
17 insulation had not started at the time I left.

18 Q. Oh, okay. That process would have been
19 completed in '67 or '68?

20 A. Probably in '67. I'm not sure exactly
21 when it was completed, but after I left.

22 Q. Have you observed previously, workers,
23 insulation workers in the field?

24 A. Repeat that question please.

25 Q. Have you observed insulation workers in

1 the field?

2 MR. HEWITT: Objection; overbroad
3 and vague, no specification as to
4 geographic location or time period.

5 A. On that particular job?

6 Q. (BY MR. WATERS) Just generally.

7 A. Normally, we subcontracted our insulation.
8 Naturally, I saw insulators doing insulation work,
9 especially when I was in the field because I was
10 responsible to make sure it got done.

11 Q. Right.

12 A. So, I had to observe it.

13 Q. Okay. And maybe what we should do is,
14 let's see. When did you first start working for
15 Brown & Root?

16 A. When did I first start working?

17 Q. Yes, sir.

18 A. In 1957.

19 Q. Okay. Prior to starting with Brown & Root
20 in '57, had you ever observed insulation workers in
21 the field?

22 A. No.

23 Q. Okay. So, when you first observed that
24 process, that was part of your work for Brown & Root?

25 A. Yes.

1 Q. Did you start as a craftsman of some sort?

2 A. No. I started off as an engineer.

3 Q. Okay. Do you recall where it was that you
4 first observed an insulation worker working in the
5 field?

6 A. Yes. It was in -- when I was on a project
7 in -- outside of Waco, Texas, on a power plant.

8 Q. For Texas Power & Light?

9 A. Yes.

10 Q. Which plant was that?

11 A. Lake Creek.

12 Q. Lake Creek. And what type of insulation
13 were the insulation workers working with? Was it pipe
14 covering or --

15 A. It was pipe covering. I can't recall
16 what -- what type of insulation. It was pipe
17 covering, though.

18 Q. In fairness, are you familiar with any of
19 the brand names of the pipe covering insulation?

20 A. Not the brand names. I -- I know there's
21 certain manufacturers of -- of various insulation; but
22 I'm not familiar with all the brand names.

23 Q. Can you tell me any of the manufacturer
24 names that you are familiar with from the past?

25 A. Well, there's -- there's Owens-Corning,

1 Johns-Manville. Those are the two that stick in my
2 mind.

3 Q. Let me ask you if you are familiar with
4 one called Pittsburgh Corning?

5 A. Yes, I've heard the name.

6 Q. Are you familiar with insulation materials
7 from a company called W.R. Grace?

8 A. I know the company, but I'm not familiar
9 specifically with the insulation.

10 Q. Fair enough. Are you familiar with what
11 refractory products are?

12 A. Generally.

13 Q. Okay. And do Brown & -- Brown & Root
14 workers from time to time, in the context of building
15 steel mills, anyway, utilize refractory product?

16 A. We only use it when it's a requirement of
17 the job; but it's specifically subcontracted.

18 Q. Okay.

19 A. It's not a -- it's not a -- a part of the
20 construction that we perform with our own people.

21 Q. You subcontract that out to somebody more
22 specialized?

23 A. Yes, uh-huh.

24 Q. In that capacity, are you familiar with a
25 company called North American Refractories Company or

1 Narco?

2 A. I'm familiar with the name.

3 Q. Okay. And in your experience, are
4 refractory products used extensively at steel mills
5 and hot metal facilities?

6 MR. ERWIN: Objection; vague,
7 ambiguous, overbroad.

8 A. Any -- any facility that has extreme
9 heats, you're going to have some sort of refractory.
10 Paper mills have it in their -- in their -- not the
11 furnaces, but their kilns.

12 Q. (BY MR. WATERS) Uh-huh.

13 A. Steel mills have it in some of their
14 furnaces, yes.

15 Q. Who is the, if you can recall, a
16 contractor that you would have contracted that type of
17 work out to?

18 A. Normally, we subcontracted that out to
19 J.T. Thorpe. There's others, too, but Thorpe is one
20 that sticks in my mind.

21 Q. Do you recall, would Thorpe have been a
22 contractor that you would have used out at Armco?

23 A. Could have been.

24 Q. Not sure one way or the other?

25 A. Not positive, but Thorpe is one we used.

1 Q. Did Brown & Root have a class or a craft
2 of employees called insulators?

3 A. We used to do some insulation, but because
4 of the -- the lack of continuity of work, we mostly
5 subbed it out.

6 Q. Okay.

7 A. And we subbed out most of the work that we
8 did not have a continuity of work, because it's such a
9 problem hiring and -- and firing people all the time,
10 much easier when we had the -- the common types of
11 crafts such as carpentry and pipefitting and
12 electrical work where we could move them from job to
13 job. Those are the work -- the jobs that we -- or the
14 crafts that we did ourselves.

15 Q. Have you ever had any personal involvement
16 with maintenance contract work as opposed to capital
17 improvement work or new construction work?

18 A. I was never on any maintenance work. I am
19 familiar with some of the maintenance contracts.

20 Q. Any -- any maintenance contracts in
21 particular with which you have familiarity?

22 A. Well, as -- as mentioned earlier, the --
23 the maintenance contract we had for for the Southland
24 mill.

25 Q. Uh-huh.

1 A. The Weyerhaeuser facility. We had several
2 maintenance contracts along the Ship Channel at some
3 of the petrochemical complexes.

4 Q. Any others, as you sit here today that you
5 can think of, that you would have had familiarity with
6 at one time?

7 A. Not any -- any greater familiarity than --
8 than I had at those particular ones I mentioned.

9 Q. Okay. The projects '65 to '66 -- well,
10 strike that. What were you doing before that,
11 before --

12 A. Before '65?

13 Q. Yes, sir.

14 A. I was at -- at the Pasadena mill at
15 Champion, putting in a paper machine there.

16 Q. Okay. For how long?

17 A. '64 up until probably the early part of
18 '65.

19 Q. In the course of your observations of
20 insulators doing their work, have you seen or have you
21 observed the cutting or sawing of -- of pipe covering
22 in order to fit?

23 MR. HEWITT: Object to the form of
24 that question to the extent it's overbroad
25 and vague.

1 A. I personally really never watched the
2 insulators that close as to how they, you know, fit
3 their -- their material on the pipe.

4 Q. (BY MR. WATERS) Okay. Did you have --
5 you didn't ever stop to observe and determine whether
6 or not, for example, the process of cutting that --
7 those products could produce dust?

8 A. I never really noticed that. I mean,
9 I didn't look for that.

10 Q. Right. When did you first come to
11 understand that asbestos was hazardous?

12 A. When the OSHA regulations came out.

13 Q. Okay. And did you learn that from within
14 the organization?

15 A. Yes.

16 Q. Had you known in the '60s that most of the
17 thermal insulation materials were asbestos?

18 MR. ERWIN: Objection; calls for
19 speculation, misstates the evidence,
20 mischaracterizes the evidence.

21 MR. HEWITT: Overbroad and vague.

22 A. I really didn't pay that much attention to
23 what the specifications were at that time.

24 Q. (BY MR. WATERS) Okay. Well --

25 A. We didn't do much of our own insulation.

1 It just wasn't one of the things that I was that close
2 to.

3 MR. WATERS: Okay. Objection;
4 nonresponsive.

5 Q. (BY MR. WATERS) Are you telling me, then,
6 that you were not aware, before OSHA, that insulation
7 contained asbestos?

8 A. No, I'm -- I'm just saying that I was not
9 aware of what insulation was being used and in which
10 locations. I was aware, yes, there was some asbestos
11 insulation, yes.

12 Q. Okay. But you did not know anything about
13 asbestos being a hazard at that time?

14 A. No.

15 Q. Or causing cancer or any of that?

16 A. No.

17 Q. Did you receive some training from the
18 safety folks after OSHA came out?

19 A. There was -- there was training supplied
20 by our safety department after that came out.

21 Q. Did you participate in that?

22 A. I didn't particularly -- personally
23 participate in it. My job did not require for me to
24 be trained in it, because I wasn't personally handling
25 any of it.

1 Q. Okay. And you were, at that point in
2 time, I guess, infrequently at the job sites?

3 A. At that time I was on certain job sites,
4 but we weren't doing any asbestos insulation.

5 Q. Did you understand that there was -- there
6 were available nonasbestos substitutes that could be
7 used for insulation purposes after 1971?

8 A. Yes, because that's all that was being
9 used after that period of time.

10 Q. Okay. In terms of your own personal
11 knowledge, what you learned at -- at work or as part
12 of the -- part of your experience with Brown & Root,
13 concerning the hazards of asbestos, would that have
14 come to you in the form of memoranda or circulars from
15 corporate safety folks or something like that?

16 A. Yes. Our -- our safety departments put
17 out memorandums as a part -- concerning the
18 requirements of OSHA.

19 Q. Okay. So there's -- there's no doubt in
20 your mind that -- that you as well as the folks that
21 worked under you would have been fully aware of OSHA
22 and what the requirements were?

23 A. Once OSHA put them out, yes.

24 Q. Okay. And from your standpoint, after
25 OSHA put out those requirements, you understood that

1 they had the force of law?

2 A. Yes.

3 Q. And would it have been your policy, as
4 well as Brown & Root policy, to follow those
5 regulations at a minimum?

6 A. Yes, we would follow those regulations.

7 Q. And after those regulations were in place,
8 is there any reason you can think of that Brown & Root
9 would not have fully complied with those regulations
10 thereafter?

11 MR. HEWITT: Object to the
12 overbroad, vague form of the question,
13 speculative.

14 A. There is no reason that I know of that we
15 would not follow the regulations.

16 Q. (BY MR. WATERS) And if you became aware
17 of a particular employee or a particular supervisor
18 who ignored those regulations, you personally, and as
19 a significant person in management, would have been
20 concerned about that?

21 A. Would have been concerned about that
22 and -- and probably would have terminated the
23 individual.

24 Q. Okay.

25 A. Or the supervisor.

1 Q. Have you told me all the projects that you
2 can recall that were ongoing in the '65-'66 time frame
3 at Armco?

4 A. Well, there was a number of other smaller
5 projects that were being handled under that continuous
6 contract that I'm just not familiar with. My
7 responsibility was totally associated with the
8 mechanical and electric furnace project.

9 Q. I guess similarly in the '74 to '79 time
10 frame, there would have been a number of projects
11 ongoing at the facility of which you won't have any
12 present recollection?

13 A. Only in a very vague manner. Like you
14 said, I had another individual that reported to me on
15 that work. I -- you know, the only thing I remember
16 is some of the larger projects, like the direct
17 reduction mill and the wide flange mill; and I'm not
18 sure about the exact period of time. But all the
19 smaller jobs, there's just too much --

20 Q. Detail?

21 A. -- detail for me.

22 Q. Okay. Did -- did you visit the Armco
23 facility after 1972?

24 A. Occasionally.

25 Q. Do you recall any of those particular

1 instances?

2 A. Gosh, I went out there, I think when they
3 had the dedication on the direct reduction mill.

4 Q. When would -- when would that have been?

5 A. Oh, it would have been in the -- I think
6 that was in the mid-'70s. There were other occasions
7 I went out there. I -- I would occasionally go out
8 when somebody on the project had a service award, if
9 you'd been there like 20 years or something, I would
10 personally go out there and present the award to them,
11 or if there was some specific milestone on a job; and
12 I just can't recall any specifics associated with
13 Armco itself.

14 Q. Did you personally have any interaction
15 with the Armco officials?

16 A. Only during certain contract negotiations.

17 Q. Do you recall any specifics about any of
18 those?

19 A. Well, I was totally involved in the
20 negotiations of the electric furnace job that I was
21 on; and the others, I was involved to a degree where
22 Mr. Bokken would come to me with those contracts, and
23 I would review them with him. But as far as any
24 direct communications with -- with the Armco people
25 associated with those, I -- I was only there, not

1 directly involved.

2 Q. And are you -- were you generally, at that
3 time, familiar with the contractual terms, many of
4 them which I assume were repeated in contract after
5 contract?

6 A. Yes. On the continuing contract, they
7 were basically the same terms and conditions. On the
8 separate contracts, they were -- they were different,
9 relative to the responsibilities of that particular
10 contract.

11 Q. Do you recall generally that the contracts
12 made -- whether or not the contracts made any
13 reference to the duties and obligations of the owner
14 as opposed to the duties and obligations of Brown &
15 Root concerning safety at the work site?

16 A. I would have to review the contract
17 to -- to be sure on that.

18 Q. Well, what do you recall without -- if
19 anything, without reviewing the contract?

20 A. I just don't recall anything on those
21 specific contracts.

22 Q. Okay. Similarly, do you not recall
23 anything specific with respect to the requirement of
24 the purchase of liability insurance?

25 A. Generally, the purchase or the

1 responsibility and -- was on the contractor to provide
2 it. But certain other contracts, the owner may have
3 provided it. I just can't recall on this
4 specifically.

5 Q. Okay. Do you recall whether or not Armco,
6 for example, was named as an additional insured on
7 Brown & Root's policies?

8 A. I would have to review the contract.

9 Q. Have you -- in fact, I think you told me
10 you have not reviewed any contracts in preparation for
11 your testimony?

12 A. Not in any detail.

13 Q. Well, when you say "not in any detail,"
14 what -- what have you looked at?

15 A. The only thing I did was just go through
16 them to try to refresh my memory.

17 Q. Okay. Was that the -- the box or stack of
18 contract documents behind Mr. Hewitt?

19 A. I would have to look at those to see if
20 it's the same thing.

21 MR. MARKS: It is.

22 A. It is? Okay.

23 MR. MARKS: Do you want him to look
24 through these?

25 MR. WATERS: Well, not to -- just

1 to satisfy yourself that that's what you
2 looked at.

3 A. Yeah, that's -- I just flipped through
4 them just to -- but I didn't look at any of them in
5 any detail.

6 MR. WATERS: All right. Put them
7 on the floor, is fine.

8 MR. MARKS: All right.

9 Q. (BY MR. WATERS) Were you able to
10 ascertain, from looking at those documents, whether or
11 not they were complete, whether or not that is all the
12 contract documents?

13 A. I never looked through them in that
14 detail.

15 Q. Okay.

16 A. And I wouldn't know whether they would be
17 complete or not.

18 Q. That's what I suspected. Okay.

19 I want to talk a little bit about the
20 profitability of the -- of the projects. Did you
21 essentially have a budget for a given project which
22 you wanted to bring the work in under that amount so
23 that you would have an adequate profit -- profit
24 margin?

25 A. Well, generally, you'd -- every project

1 would have a budget, you know. There would be an
2 amount set up for the job. And you would always want
3 to try to bring it in below the cost, whether it was
4 on a lump sum job or it was on a cost reimbursement.

5 Q. Okay.

6 A. It was naturally the intent to have the
7 most economical as well as safe job you could.

8 Q. Okay. And the budget would include all
9 anticipated expenditures that would be necessary with
10 the job?

11 A. It would be those things that would be
12 under our control as far as our budget is concerned.
13 And you -- you've got to be specific on the type of
14 contract that you have.

15 Q. Well, what about safety and health
16 expenditures, would those be included under the
17 specific contracts or not?

18 A. Yes.

19 Q. All right. So, there would be a budget
20 item for safety and health expenditures on the job?

21 A. Generally, yes.

22 Q. Okay. And what type of expenditures were
23 typically included in that budget -- budget line?

24 A. Typically, it would be the -- the cost of
25 the -- of the safety services, the medical costs, the

1 costs of any particular equipment that might be
2 necessary for the particular job, any medical costs
3 associated with physicals for the employees or any
4 first aid treatment and so forth.

5 Q. Would that also include the cost of
6 maintaining a safety supervisor or other safety
7 personnel?

8 A. That salary cost would be in there.

9 Q. Okay.

10 A. Keep in mind, though, that's typical.
11 That's not any specific job.

12 Q. No, I understand. Well, and do you have
13 any specific recollection, as you sit here today, of
14 budget items for safety expenditures that related to
15 dust monitoring, for example, measuring the
16 expenditures associated with measuring the --

17 A. I wouldn't have --

18 MR. HEWITT: Object to the
19 overbroad form of that question, and it's
20 also vague.

21 Q. (BY MR. WATERS) You can answer.

22 A. I have no specific information on that.

23 Q. In addition to safety, I guess the budget
24 would address various other issues where expenditures
25 were anticipated?

1 A. What are you talking about, the general
2 budget for the project now?

3 Q. Yes, sir.

4 A. Yes. You would have -- a budget would
5 include all of the costs associated with the work that
6 you are performing under that contract.

7 Q. Okay.

8 A. Safety-related items would be one aspect
9 of the budget.

10 Q. Right.

11 A. Labor, materials, equipment, and various
12 other factors to finish or complete the job would be
13 the other line items.

14 Q. Now, if for some reason the budget is
15 exceeded, am I correct that that would result or could
16 result in a reduction of profits to the company?

17 A. Could be, yes.

18 Q. And, of course, that's one reason for
19 having a budget, isn't it?

20 A. Well, certainly.

21 Q. Okay. Did the safety department have
22 someone who was responsible, had responsibilities for
23 the industrial civil division as opposed to the other
24 divisions?

25 A. Yes. Each division had a safety manager

1 who was responsible to the corporate safety manager,
2 as well as the division that he was in. And then the
3 safety people that were on the jobs reported to that
4 safety manager within the division.

5 Q. Do you recall who was the safety manager
6 for the industrial civil division in 1974 to '79?

7 A. Not off-hand, I don't. I can't remember
8 during that particular period of time.

9 Q. Was the work that you were aware of or
10 familiar with from -- that was done at Armco Steel,
11 was that profitable for Brown & Root?

12 A. Well, some of the work we did out there
13 was profitable; and some was not so profitable.

14 Q. Okay.

15 A. Depending on how well we did to the -- you
16 know, to the estimated price.

17 Q. How well you-all kept to the budget?

18 A. Yeah. There's a little bit of luck, too,
19 in all that.

20 Q. Did Brown & Root work out at the facility
21 up -- up until the time it closed in '83 or '84?

22 A. Yes.

23 Q. When was the last occasion you had to
24 visit the facility?

25 A. Oh, gosh, it's been -- I can't remember.

1 It was prior to them closing.

2 Q. Did you have any involvement with
3 Brown & Root's abatement service, where they did
4 removal or abatement of asbestos materials?

5 A. I don't know of any.

6 Q. You're not aware of that?

7 A. No.

8 Q. Okay. And I guess that makes sense
9 because that's not new construction work, the kind of
10 work you are involved with?

11 A. Yes.

12 Q. So, to go back to your position, as the
13 chief operating officer, the position you were in at
14 the time you retired, you had climbed the ladder all
15 the way up to basically number two with the company?

16 A. Yes.

17 Q. And this is a company in 1995 of how many
18 employees, approximately?

19 A. 35,000.

20 Q. Worldwide?

21 A. Worldwide.

22 Q. It's a large and sophisticated company?

23 A. Yes.

24 Q. It's a company that has the wherewithal
25 and the ability to keep up with changes in the

1 scientific and technological literature about building
2 trades and construction work?

3 MR. HEWITT: Objection; overbroad
4 and vague.

5 A. Yeah, I -- I'd like to hear something a
6 little more specific.

7 Q. (BY MR. WATERS) Okay. As a large and
8 sophisticated company, will you agree with me that
9 Brown & Root has the ability, and has had the ability
10 to be knowledgeable about developments in
11 technological and construction fields?

12 MR. HEWITT: Objection;
13 multifarious, overbroad, vague.

14 Q. (BY MR. WATERS) This is not some
15 mom-and-pop organization, is it?

16 A. No. But your -- your question is so
17 broad, I'm not too sure I understand what you're
18 asking.

19 Q. Okay. Well, has it been your experience
20 that this is a company that's able to maintain a
21 current level of knowledge about areas of interest in
22 the field?

23 A. Yes.

24 Q. Okay. And that would include scientific
25 literature about the construction trades, for example?

1 A. Yes.

2 Q. Engineering journals, things of that
3 nature?

4 A. Yes.

5 Q. Okay. I take it from our earlier
6 discussion that the -- the knowledge that you would
7 have about asbestos, you would have developed from the
8 early '1970s to the present?

9 A. Well, that's my first knowledge of it, was
10 when it came out through the OSHA regulations.

11 Q. Okay. And whatever knowledge you have
12 gained would have been in large part the result of
13 your employment at Brown & Root and would have been
14 the result of things you were told or read while at
15 Brown & Root?

16 A. As well as what would come from our safety
17 department, which is who was responsible for that --
18 for that literature.

19 Q. Okay. And in that -- again, since the
20 OSHA regulations came out, you learned, for example,
21 that asbestos was a hazardous substance?

22 A. That was the information, yes.

23 Q. That it was considered toxic?

24 A. Yes.

25 Q. That it could potentially lead to serious

1 diseases and death?

2 A. Yes, the potential, yes.

3 Q. Understanding you are not going to have
4 any specific regular -- specific recollection of what
5 the regulations require, I don't think you do, do you?

6 A. No, I don't.

7 Q. Okay. But you do generally understand
8 that since the early 1970s, there was a series of
9 significant regulations designed to try to reduce or
10 eliminate the hazards that could be caused from
11 breathing asbestos?

12 A. Yes.

13 Q. Again, if we get too specific, you stop
14 me; but did you learn, as part of the learning process
15 from the early '70s on, that asbestos can cause a
16 disease -- excuse me, asbestos exposure can cause a
17 disease called asbestosis?

18 A. I've heard of that, yes.

19 Q. Okay. Did you learn that asbestos
20 exposure can lead to lung cancer?

21 A. I've heard that.

22 Q. And again, when you say you've heard these
23 things, that would have been in the context of
24 training manual, -- training materials or other
25 information from within Brown & Root?

1 A. That's correct.

2 MR. HEWITT: Would now be a good
3 time for a break?

4 MR. WATERS: Sure.

5 THE VIDEOGRAPHER: It's 2:54 p.m.
6 We are off record.

7 (Short recess.)

8 THE VIDEOGRAPHER: It is 3:13 p.m.
9 We are back on record.

10 Q. (BY MR. WATERS) Mr. Zerr --

11 MR. WATERS: Actually, could you
12 read me back the last question?

13 (The requested material was read by
14 the reporter.)

15 Q. (BY MR. WATERS) Do you agree with me,
16 sir, that an employer has a responsibility to ensure
17 that its -- that employees have a safe workplace?

18 A. Yes.

19 Q. And that a construction company has a
20 responsibility to make sure that there aren't any
21 hazardous exposures in the workplace it controls?

22 MR. HEWITT: Object to the
23 overbroad and vague form of the question.

24 A. We are responsible for the safety of our
25 people, and -- and naturally, associated with that, if

1 there's any hazardous things around, we try to -- to
2 identify them and remove them.

3 Q. (BY MR. WATERS) Okay. And that
4 responsibility with respect to workplace safety, would
5 you agree, sir, that that would extend to
6 subcontractors' employees who might be in the vicinity
7 or other persons who might be working in the area?

8 MR. HEWITT: Objection; overbroad,
9 vague.

10 A. Our responsibility is the safety of our
11 people.

12 Q. (BY MR. WATERS) Okay. Are you telling us
13 you don't have a responsibility with the --
14 responsibility with respect to others in the work
15 area?

16 A. No.

17 MR. HEWITT: Objection; overbroad
18 and vague.

19 A. Only to our people within the area that
20 we've got the responsibility of doing the work. What
21 other people do that we have no responsibility for, we
22 can't control.

23 Q. (BY MR. WATERS) Okay. What about a -- a
24 situation where you have a potential exposure within
25 your area that may extend outside of your area where

1 other folks are located?

2 MR. HEWITT: Objection; overbroad
3 and vague.

4 A. I don't know of -- of a case like that.
5 You're speaking of an explosion or something of that
6 nature?

7 Q. (BY MR. WATERS) Or some kind of an
8 exposure situation, where you've got something that's
9 not necessarily stationary, a condition that may move
10 with the wind.

11 A. Well, we try to take whatever precautions
12 we have on the material we are handling.

13 Q. Yes, sir. And with respect to the
14 possibility that nonemployees may be exposed, does
15 Brown & Root feel some degree of responsibility?

16 A. We --

17 MR. HEWITT: Objection; overbroad,
18 vague, assumes facts not in evidence, it's
19 an incomplete hypothetical.

20 MR. WATERS: Well, I didn't get to
21 finish my question.

22 MR. HEWITT: Excuse me, I'm sorry.

23 Q. (BY MR. WATERS) Did you understand the
24 question?

25 A. I think it needs to be repeated. You

1 didn't finish it, I understand.

2 MR. WATERS: Okay. Can you read
3 the portion that did I finish?

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

6 Q. (BY MR. WATERS) For nonemployees who
7 might be exposed as a result of Brown & Root
8 operations?

9 MR. HEWITT: Same objections.

10 A. We -- we can't be responsible for
11 employees of others that would get in the area that we
12 are working.

13 Q. (BY MR. WATERS) All right. Is that --
14 has that essentially been Brown & Root's position
15 historically, as far as you can recall?

16 A. No, we --

17 MR. HEWITT: Objection; overbroad,
18 vague.

19 A. We can put out notices about certain
20 things. But if -- if outsiders, outside of our
21 employees, get within an area that we're working, we
22 can't be responsible for their having gotten in there.

23 Q. (BY MR. WATERS) Okay. Is Brown & Root
24 responsible for putting out warnings or signs if
25 that's a possibility?

1 A. If that's a known possibility.

2 Q. Okay. And you'd agree that that
3 responsibility, the purpose of that is to potentially
4 give some protection to the nonemployees who may be in
5 the vicinity so that --

6 MR. HEWITT: Objection. Go ahead,
7 excuse me.

8 Q. (BY MR. WATERS) -- so that at a minimum,
9 they can have some understanding of the potential
10 hazard?

11 MR. HEWITT: Objection; overbroad
12 and vague.

13 A. It's also to make our own employees aware
14 of things within that specific area.

15 MR. WATERS: Okay. Let me object
16 as nonresponsive.

17 Q. (BY MR. WATERS) My specific question is,
18 if one of the purposes of putting up warning signs is
19 to alert persons who may be in the vicinity but are
20 not Brown & Root employees of a potential hazard?

21 A. Not just nonemployees of Brown & Root.
22 Anybody. You know, it could be our own employees.
23 Keep in mind, a project could cover a broad area; and
24 there may be a specific problem within a given area,
25 and we have employees working over here.

1 Q. Okay.

2 A. That would have to be occasioned to go
3 over the area that may be -- that may have a problem.

4 Q. Where there may be a hazard?

5 A. Yes. And that is where we would have the
6 notices applied. So it's not just for nonemployees.

7 Q. No, I understand. I mean, obviously, you
8 have told us about the responsibilities Brown & Root
9 has towards its own employees; and I don't think
10 there's any dispute about that. But I've been asking
11 you specifically about what sense of responsibility,
12 if any, Brown & Root has for other folks' employees
13 that may be exposed to something hazardous from
14 Brown & Root operations?

15 MR. HEWITT: Objection;
16 repetitious, overbroad, and vague.

17 A. I've answered the question the best I can.

18 Q. (BY MR. WATERS) How would you
19 characterize that level of responsibility?

20 MR. HEWITT: Same objections.

21 A. I characterize the level of responsibility
22 on notifying anybody of a given area of problems.

23 Q. (BY MR. WATERS) Okay. Regardless of
24 whether they are employees or employees of somebody
25 else?

1 A. Yes.

2 Q. Okay. To the best of your knowledge, is
3 that a responsibility that is stated in the
4 regulations?

5 A. I really don't know.

6 Q. Okay.

7 MR. HEWITT: Object to the form of
8 that last question. It's overbroad and
9 vague.

10 Q. (BY MR. WATERS) In the time frame from
11 '74 to '83, let's see. All of that time frame, even
12 though there was a change in the nomenclature, you
13 were essentially involved with the projects for the
14 industrial civil division; is that right?

15 A. No. The industrial civil division lost
16 its name in 1979.

17 Q. Okay.

18 A. And we -- we made a major reorganization
19 of the company into distinct divisions of
20 industrial-type work.

21 Q. All right. And was it in '79 or in '83
22 that you became senior vice president of the business
23 unit?

24 A. The business unit was established in '86.

25 Q. '86?

1 A. Yes, sir. And that was when I became the
2 president of the business unit.

3 Q. Okay. In the time frame '74 to '79, when
4 you were the head of the industrial civil division,
5 can you give me a sense of the number of projects that
6 were ongoing at that time for which you had overall
7 responsibility, understanding that various people
8 reported to you on those projects?

9 A. Well, to begin with, I wasn't in charge of
10 the industrial civil division. I was the senior vice
11 president associated with construction. The -- the
12 head of that division was Lawrence Derrick.

13 Q. Okay.

14 A. The number of projects that were going on
15 was -- was quite large. We had a bunch of small
16 projects as well as large projects. We had several,
17 let's say, regional offices that handled a lot of the
18 small projects. As an example, the Pasadena office
19 had a bunch of small projects handled out of it. That
20 manager reported to me for all those projects.

21 Q. Okay.

22 A. And we had a regional office in Longview
23 that was of similar nature, handled a bunch of the
24 smaller projects, in East Texas. Then we had a bunch
25 of -- of, let's say medium to large-sized projects

1 that reported to managers who then reported to me.

2 Q. And those --

3 A. So --

4 Q. -- would have been all over the country?

5 A. Oh, yes. We could have had 50 jobs going
6 on in one year just out of one of those regional
7 offices; and they -- they were small to -- to
8 medium-sized jobs.

9 Q. So, at any -- in any given year, you,
10 overall, taking all those into consideration, you may
11 have had hundreds of projects?

12 A. Yes, may have.

13 Q. All right.

14 A. Some years were larger than others.

15 Q. Okay. In terms of your personal
16 knowledge, am I correct that you would not have
17 specific knowledge about any one of those specific
18 projects as you sit here today?

19 A. That's correct.

20 MR. HEWITT: Object to the
21 overbroad, vague form of that last
22 question.

23 Q. (BY MR. WATERS) Would the same be true in
24 the '79 to '83 time frame, that you, as you sit here
25 today, would not have specific recall about any one of

1 these hundreds of projects that would have taken place
2 in that time frame?

3 MR. HEWITT: Same objection.

4 A. I would not have specific detail about any
5 one of those projects.

6 Q. (BY MR. WATERS) And you would probably
7 not be able to actually name them all, would you?

8 A. I would be able to name some of them, but
9 not all of them.

10 Q. Fair enough. Because some of them would
11 have been small enough or, relatively speaking,
12 insignificant enough so that if you knew about them,
13 you probably didn't recall them for very long?

14 A. That's correct.

15 MR. WATERS: I'll pass the witness.

16 * * *

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

18 * * *

19 BY MR. ERWIN:

20 Q. Mr. Zerr, in 1965 and 1966, when you were
21 the project manager for Brown & Root out at Armco, did
22 you, as part of your job, were you involved in the
23 negotiation of the contract for the work performed at
24 that time frame?

25 A. For that particular project, yes.

1 Q. Okay.

2 A. The electric furnace -- the mechanical and
3 the electric furnace job.

4 Q. All right, sir. Do you recall whether
5 part of the contract provisions with Armco, between
6 Armco and Brown & Root pertained to the safety program
7 to be observed by Brown & Root while at Armco
8 premises?

9 A. I can't specifically say on that, on
10 that -- on that contract; but generally, the -- the
11 safety requirements are an attachment to the contract
12 under "Conditions."

13 Q. Okay.

14 A. And I have to assume in that case they
15 would have been on that job.

16 Q. Well, and as -- pardon me. Back to your
17 experience at that point in time, and then even later
18 when you had occasion to review the contracts while
19 the operations were up and running at the Armco plant,
20 do I understand that it was your experience ordinarily
21 that there would be an appendix attached to the
22 contract that pertained to the safety programs that
23 would be followed; is that correct?

24 A. Ordinarily, that's correct.

25 MR. ERWIN: Okay. Could I have

1 this marked Exhibit 1?

2 MR. WATERS: Do you have an extra
3 copy?

4 MR. ERWIN: I had one copy for
5 Andy.

6 Let's go off for a second.

7 THE VIDEOGRAPHER: It is 3:26 p.m.
8 We are off record.

9 (discussion off the record; and
10 Exhibit No. 1 was marked for
11 identification.)

12 THE VIDEOGRAPHER: It is 3:29 p.m.
13 We are back on record.

14 Q. (BY MR. ERWIN) Mr. Zerr, have you had
15 occasion to review, while we were off the record for a
16 moment, what's been marked as Exhibit 1 to your
17 deposition?

18 A. I've generally reviewed it, yes.

19 Q. And do you recognize this as a standard
20 form-type of agreement that was attached to
21 Brown & Root and Armco contracts pertaining to safety
22 instructions for contractors on the Armco premises?

23 A. Typical of what I've seen, yes.

24 Q. All right, sir. And, in fact, this one
25 particular document is dated what date, sir?

1 A. It shows issued on February of '96.

2 Q. Okay.

3 MR. MARKS: '66. *

4 A. '66, pardon me.

5 Q. (BY MR. ERWIN) Let's try that again. On
6 what date does Exhibit 1 show -- reflect that it was
7 issued?

8 A. February of a 1966.

9 Q. Okay. And that was by Armco Steel
10 Corporation?

11 A. Yes.

12 Q. All right, sir.

13 MR. WATERS: And just -- can we let
14 the record reflect that you believe this
15 document to be attached to one of the
16 contracts?

17 MR. ERWIN: Well, it's been
18 represented to me by counsel for
19 Brown & Root that it was attached to one
20 of the contracts.

21 MR. WATERS: In that general time
22 frame.

23 MR. ERWIN: In that general time
24 frame, right.

25 Q. (BY MR. ERWIN) Mr. Zerr, if I could

1 direct your attention to the first -- the opening
2 paragraph of this document on Page 1, I believe it
3 recites that the stated purpose is to establish
4 minimum safety standards for the contractor; is that
5 correct?

6 A. Correct.

7 Q. All right, sir. In -- and then there are
8 various provisions -- and I'm not going to ask you to
9 recite all of them by any means -- but concerning
10 safety, general safety rules to be observed while on
11 the Armco premises, correct, sir?

12 A. Right.

13 Q. And one of those is on Page 2, which is
14 Paragraph D at the top, pertaining to personal
15 protective equipment and clothing, correct, sir?

16 A. Yes.

17 Q. And it mentions hard hats and safety
18 goggles and glasses, things that were very typical in
19 the construction industry at -- in the mid-'60s,
20 correct, sir?

21 A. Correct.

22 Q. And then under that, there's a little
23 paragraph, little d, that pertains to, "Respirators or
24 breathing apparatus shall be worn on any job with
25 respiratory hazards, including brick sawing,

1 spray-painting, and excessive areas of dust, toxic
2 materials or oxygen deficiencies such as manholes,
3 sewers, et cetera." Did I read that correctly, sir?

4 A. You read it correctly.

5 Q. And is that a typical type of provision
6 you remember being in this type of a contract?

7 A. Typical, yes, yes.

8 Q. And as project manager, you would have
9 endeavored to have your employees comply with this
10 type of provision, correct?

11 A. That's correct.

12 Q. One of the other provisions, if I may, at
13 the top of Page 3 pertains to good housekeeping,
14 correct, sir?

15 A. Correct.

16 Q. And it states -- well, let me strike that.
17 One of the general rules of safety and --
18 and if not -- and at premises such as Armco would be
19 that Brown & Root would be responsible for cleaning up
20 the area in which it was working, correct, sir?

21 A. That would be one of their
22 responsibilities, yes.

23 Q. And just to make sure the record is clear,
24 you've never been employed by Armco, have you, sir?

25 A. No, I haven't.

1 MR. ERWIN: All right, sir. I have
2 no further questions at this time.
3 Reserve the rest of mine until the time of
4 trial. I thank you for your time, sir.

5 * * *

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

7 * * *

8 BY MS. KELLY:

9 Q. Mr. Zerr, I just have a few questions for
10 you. My name is Trish Kelly, and I represent
11 W.R. Grace and Pittsburgh Corning Corporation. Mr.
12 Waters asked you some questions. You indicated that
13 you were familiar with the name Pittsburgh Corning; is
14 that correct?

15 A. Yes.

16 Q. Is that --

17 A. That's correct.

18 Q. Okay. Are you familiar with any of the
19 products they manufactured?

20 A. Not really.

21 Q. Are you -- do you have any evidence, as
22 you sit here today, that there was any Pittsburgh
23 Corning material, insulating material, that was at the
24 Armco site while you were there?

25 A. I have no --

1 MR. WATERS: Objection; calls for
2 speculation or a guess.

3 A. I have no knowledge of any.

4 Q. (BY MS. KELLY) In other words, I'm asking
5 from your personal observation --

6 A. Yes.

7 Q. -- something that you would know, if you
8 -- if you have any evidence from your own personal
9 knowledge that there was any product manufactured by
10 Pittsburgh Corning at the Armco site.

11 A. I have no personal knowledge of that.

12 Q. Okay. And I would ask you the same about
13 W.R. Grace. Do you have any personal knowledge of any
14 product that was manufactured by W.R. Grace that
15 was --

16 A. I did --

17 Q. -- that was at the Armco premises?

18 A. There again, I have no personal knowledge
19 of that.

20 Q. Fine. As I understand your testimony, you
21 were at the Armco plant from mid-'65 to fall of '66?

22 A. Correct.

23 Q. All right. And you testified that pipe
24 insulation had not begun until after you left?

25 A. That's correct.

1 Q. That's correct. Okay.

2 MS. KELLY: That's all the
3 questions I have. Thank you, sir. I'll
4 reserve any other questions until the time
5 of trial.

6 MR. WATERS: Any? Okay. I just
7 have a couple of questions about, I guess,
8 what's been marked as Exhibit No. 1.

9 * * *

10 R E - E X A M I N A T I O N

11 * * *

12 BY MR. WATERS:

13 Q. If you'll look at the -- the first page
14 under "General Instructions," under Roman numeral I,
15 item C, would you read that to the jury, sir?

16 A. "The Contractor shall comply with all
17 applicable city, county, state, and federal safety
18 codes in the area where he's performing his work."

19 Q. Okay. Did you understand, as of the
20 mid-1960s, that Brown & Root, pursuant to these terms,
21 would have had a contractual duty to follow whatever
22 safety codes or regulations there may have been that
23 pertained to the workplace?

24 A. Yes.

25 Q. Okay. Were you aware, as of 1966, that

1 the state of Texas had adopted in 1958 specific safety
2 regulations pertaining to the use of asbestos?

3 MR. HEWITT: Object to the
4 overbroad form of the question. It also
5 calls for a legal conclusion of this
6 witness. Assumes facts not in evidence
7 and is potentially misleading.
8 Furthermore, this particular attachment is
9 just that, it's an attachment. If it has
10 a date 1966 on it, February 1966, we don't
11 know at this point what specific contract
12 this may relate to. Therefore, the
13 question is ambiguous and misleading --
14 this series of questions, excuse me.

15 Q. (BY MR. WATERS) You can answer.

16 A. I think I need the question reread.

17 MR. WATERS: Okay. I'm not
18 surprised.

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

21 A. I'm not -- I can't remember anything of
22 that nature.

23 Q. (BY MR. WATERS) All right, sir. If you'd
24 look at Roman numeral I, Paragraph F, would you read
25 that to the jury, sir.

1 A. "The Contractor shall make prior
2 arrangements with the Project Engineer or designated
3 Plant Engineer before starting work in any operating
4 department."

5 Q. All right, sir. Did many of these
6 contracts contemplate work on the part of Brown & Root
7 that would take place in the operating departments or
8 some of the operating departments? Is that the
9 purpose of this clause?

10 MR. HEWITT: Object to the
11 overbroad, misleading form of the
12 question.

13 A. I'm not sure if that's the -- the specific
14 purpose of this question; but -- or this statement,
15 but there are certain jobs, yes, that we have had to
16 perform work in operating units.

17 Q. (BY MR. WATERS) Okay.

18 A. And naturally, you would take the
19 precautions associated with the -- with the operations
20 when that takes place.

21 Q. Roman numeral II, Paragraph B, if you'll
22 take a look at that. Do you recall anything about
23 regular safety meetings between Armco folks and
24 Brown & Root people?

25 A. Yes. There -- there were, but I'm not

1 familiar with how frequently they were held. It's
2 customary for Brown & Root to have safety meetings
3 every Monday morning with all of the employees on the
4 job; but how often that took place with the -- with
5 the owner, I -- I can't -- can't say. I'm not too
6 sure.

7 Q. All right. You don't recall that being on
8 a regular or a frequent basis?

9 A. I don't think it was on a frequent basis
10 other than -- other than in certain areas of
11 operations, as opposed to a green field facility.

12 Q. On Page 2, the first -- two -- excuse me,
13 Paragraph D, small I, "The contractor shall require
14 his employees to wear adequate protective equipment
15 and clothing commensurate with the hazards of the work
16 being done." First of all, did I read that correctly?

17 A. You read it as written, yes.

18 Q. Yes, sir. And did the contractor, or did
19 Armco essentially anticipate that Brown & Root was in
20 a position to determine what was appropriate
21 protective equipment as they say here, "commensurate
22 with the hazards of the job being done"?

23 A. Would you repeat that?

24 MR. WATERS: Can you read that one
25 back, please?

1 (The requested material was read by
2 the reporter.)

3 A. That's a very broad question because
4 the -- the jobs varied. If it's a green field site
5 and you're building a new plant, there's no operations
6 around, there is no specific extraordinary hazardous
7 elements around. Within an existing operating plant,
8 there could be; and then it would be customary for the
9 owner to identify those things to the contractor
10 within operations.

11 Q. (BY MR. WATERS) Did Brown & Root expect
12 and anticipate that the owner, or in this instance,
13 Armco, would identify potential hazards in the
14 operations area which Brown & Root might come across?

15 A. That would be typical.

16 Q. Okay. Is it your feeling that that was a
17 responsibility that rested on the shoulders of Armco?

18 A. It was a responsibility of Armco, or
19 whoever the owner may be, to identify those because
20 they -- they have the -- the knowledge of the
21 operations; but at the same time, if we saw something
22 ourselves, then we would identify it.

23 Q. Okay.

24 If you'll look at, under Subparagraph 1
25 small d, do you see that portion that Mr. Erwin read

1 to you before?

2 A. Yes.

3 Q. Okay. What would you consider, sir, to be
4 areas of excessive dust or, more particularly, what do
5 you consider to be excessive dust as that term is used
6 here?

7 MR. HEWITT: Object to the
8 overbroad form of the question.

9 A. Here again, you would have to look at the
10 specific job that's being done.

11 Q. (BY MR. WATERS) Okay.

12 A. There are certain jobs that there probably
13 would be no hazardous dust whatsoever.

14 Q. All right, sir.

15 A. And there would be others that there could
16 be. And -- and it could -- it could be applied to
17 anything from cutting concrete in a paving slab -- and
18 I'm not saying anything specific to Armco, I'm just
19 trying to describe what this general statement is --
20 is for. It could be cutting any kind of -- of hard
21 surface, brick or anything of that nature. It can
22 apply to dust on roads; but I don't think there's
23 anything specific here. It has to -- it has to relate
24 to the specific job that's being performed; and that
25 is my understanding of the intent.

1 Q. All right, sir. There was testimony from
2 another ex Brown & Root gentleman earlier this
3 morning, that in his recollection it was -- he
4 frequently observed extremely dusty conditions at the
5 Armco facility. Let me ask if that comports with your
6 recollection, as you sit here today?

7 A. Was he specific about where within the
8 facility? It's a big facility.

9 Q. I think he was speaking in general terms,
10 that he observed extremely dusty conditions in a
11 variety of facilities over the course of some years
12 there.

13 A. In the operation or during the
14 construction or what --

15 Q. I think both.

16 MR. HEWITT: Object to the form of
17 the question. It's a mischaracterization
18 of Mr. Johnson's testimony. It's
19 therefore misleading and assumes facts not
20 in evidence.

21 Q. (BY MR. WATERS) Do you have an opinion,
22 sir, one way or the other, as to whether or not --

23 A. Well, not having the privilege of hearing
24 what you were talking about this morning --

25 Q. Yes, sir.

1 A. -- I would have to say that -- that, yes,
2 there's dust occasionally. What kind of dust depends
3 on what's being done.

4 Q. Sure.

5 A. And what -- what the facility is
6 manufacturing or --

7 Q. Well, do you recall, sir, at any time
8 observing what this other Brown & Root witness
9 described as extremely dusty conditions at Armco?

10 A. There were occasions where I saw dust, but
11 for a steel mill, I can't say that it was any
12 different than any other steel mill.

13 Q. Okay. Seeing visible dust in the air in a
14 steel mill is not something that surprises you?

15 A. No.

16 Q. It's something you anticipate, something
17 that is normal?

18 A. I'd say that it's something that you can
19 anticipate, yes.

20 Q. Okay. As to whether or not that dust may
21 be considered to be excessive, as that term is used in
22 this contract language, would you agree with me that
23 that would require some degree of measurement in order
24 to determine whether or not extremely dusty conditions
25 are excessive?

1 MR. HEWITT: Object to the
2 overbroad, vague form of the question.
3 It's overbroad and not related to
4 geographic locations or circumstances in
5 issue in this lawsuit.

6 A. I really can't answer that question. You
7 know, I need to know specifically what kind of --
8 where the dust is coming from as to whether, you know,
9 we can do anything about it.

10 Q. (BY MR. WATERS) You'd need to know what
11 was in the dust?

12 A. Well, I would need to know what the dust
13 was.

14 Q. That -- that's what I mean.

15 A. And also, what's it doing. Is it going up
16 in the air? Is it blowing through the area? You
17 know, just how is it being dispersed.

18 Q. Okay. Well, you personally were involved
19 with the preparation of these contracts, correct, some
20 of them?

21 A. I was not necessarily involved in the
22 preparation of them; but I was involved, to a degree,
23 in the reviewing of the final contract for approval.

24 Q. Okay. Were the Brown & Root employees
25 made to understand what Brown & Root's obligations

1 were under these contractual terms that we're looking
2 at, Exhibit 1?

3 MR. HEWITT: Objection; overbroad
4 and vague.

5 A. The Brown & Root employees on the job site
6 were made aware of the safety precautions and what was
7 required under the safety regulations to be applied to
8 that specific job.

9 Q. (BY MR. WATERS) Did the Brown & Root
10 employees, as of 1966, understand that they were to
11 use respirators in areas of excessive dust?

12 MR. HEWITT: Objection; assumes
13 facts not in evidence and it's overbroad
14 and vague with respect to this particular
15 document, Exhibit No. 1, because a time
16 frame has not yet been established
17 relative to this document.

18 A. The people on the job site were made aware
19 of what was known, as far as any areas that would
20 require respiratory gear to be worn by them in -- in
21 the specific job that they were doing.

22 Q. (BY MR. WATERS) And according to this,
23 would they have been told to use respiratory
24 protection if they were working in areas of excessive
25 dust?

1 A. Depending on what the dust was and what
2 was happening with the dust.

3 Q. Okay.

4 A. If it was going straight up in the air and
5 they were working on the ground, they probably would
6 not have.

7 Q. Okay. How were the workers supposed to
8 determine whether or not the dust was excessive or
9 not?

10 A. This -- this was the responsibility of the
11 safety manager in his communications with the
12 operations of the plant.

13 Q. Okay. So, the safety manager for
14 Brown & Root would have -- would have had a continuing
15 obligation to assess whatever dust may have been in
16 the air to determine whether or not it was a potential
17 hazard?

18 MR. HEWITT: Objection; overbroad
19 and vague, not related to the specific
20 circumstances or facts of this lawsuit.

21 A. To -- to the best of his knowledge and
22 understanding of what was there, he would be
23 responsible and would advise the people of what was
24 required, based on the requirements of the contract at
25 the time.

1 Q. (BY MR. WATERS) Okay. The document also
2 discusses, in the context of respiratory protection,
3 possible exposures to toxic materials. Do you see
4 that?

5 A. Yes.

6 Q. Now, do you recall your earlier testimony
7 that asbestos is considered to be a toxic material?

8 A. Yes, and I was relating to that after it
9 was made known with the OSHA regulations.

10 MR. WATERS: Okay. Let me object
11 to the nonresponsive portion.

12 Q. (BY MR. WATERS) To the -- if you'll look
13 at Page 3, at the very top under H, the housekeeping,
14 Mr. Erwin asked you some questions about that. To the
15 extent that Brown & Root operations created dust that
16 left any kind of a film or material on the floor or on
17 equipment or wherever, am I correct that Brown & Root,
18 under this, would have had the responsibility to
19 remove that accumulation as part of the housekeeping
20 requirements?

21 MR. HEWITT: Object to the form of
22 the question, assumes facts not in
23 evidence.

24 A. Generally, we would clean up whatever
25 trash or mess that was left from construction.

1 Q. (BY MR. WATERS) Well, and would that
2 responsibility extend to whatever residue might be
3 left from dust-producing operations?

4 MR. HEWITT: Object to the form of
5 the question. It's overbroad and vague
6 and not related to specific circumstances
7 relative to this lawsuit. Assumes facts
8 not in evidence.

9 A. Generally, that would be the case.

10 Q. (BY MR. WATERS) What is the salamander's
11 use for providing heat?

12 A. What is it?

13 Q. Yes, sir.

14 A. It -- it's like a -- a small stove, and
15 it's got a -- a blower on it that blows the heat out
16 that's being generated by the -- by the stove.

17 MR. WATERS: Okay. I pass the
18 witness.

19 MR. HEWITT: No questions at this
20 time.

21 THE VIDEOGRAPHER: It is 3:52 p.m.
22 We are off record.

23 (Deposition concluded at 3:52 p.m.)
24
25

1 STATE OF TEXAS *

2 COUNTY OF HARRIS *

3

4 I, LISA A. BERRY, a Certified Shorthand Reporter
5 in and for the State of Texas, do hereby certify that
6 the foregoing answers in response to the questions
7 propounded were made before me by EMIL MARTIN ZERR,
8 JR., the witness hereinbefore named, after said
9 witness had been first duly cautioned and sworn to
10 testify to the truth, the whole truth and nothing but
11 the truth.

12 Further certification requirements pursuant to
13 Rules 205 and 206 will be certified to after they have
14 occurred.

15 I further certify the above and foregoing
16 deposition is a full, true, correct and complete
17 transcript of the proceedings had at the time of
18 taking of this deposition.

19 GIVEN UNDER MY HAND AND SEAL OF OFFICE on this
20 the 30th day of September, 1997.

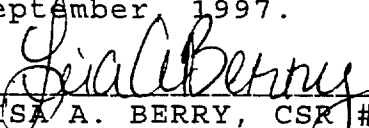
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LISA A. BERRY, CSR #3104
DIANA HENJUM REPORTING SERVICES, P.C.
5850 San Felipe, Suite 405
Houston, Texas 77057
(713) 952-6625 FAX (713) 952-6776

My Commission Expires: 12/31/98

NO. 95-04-1728-D

MANUEL P. GONZALES,) IN THE DISTRICT COURT OF
ET AL)
VS.) CAMERON COUNTY, TEXAS
OWENS-CORNING FIBERGLAS)
CORPORATION, ET AL) 103RD JUDICIAL DISTRICT

ORAL/VIDEO DEPOSITION OF EMIL MARTIN ZERR, JR.
TAKEN ON SEPTEMBER 26, 1997

I, LISA A. BERRY, Certified Shorthand Reporter,
CSR #3104, hereby certify that:

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

2. \$ 648.07 is the charge for the
preparation of the completed deposition transcript and
any copies of exhibits attached thereto, charged to
Defendants Pro Rata as noted;

3. The deposition transcript was submitted on
10-1-97 to MR. C. ANDREW WATERS for the
witness to examine, sign and return to DIANA HENJUM
REPORTING SERVICES, P.C., by OCTOBER 24, 1997.

4. RETURN OF DEPOSITION TRANSCRIPT:

a: The deposition transcript was
returned, properly executed by the witness, to the
deposition officer ().

b: The deposition transcript was returned
unsigned because of ___ illness; ___ refusal to
sign; ___ absence of witness; ___ no reason given.

c: The deposition was not returned ____.

d: The deposition was retained by

_____ by agreement of the Parties _____.

5. I further certify that the attached
change/correction sheet contains any changes, and the
reasons therefore, made by the witness.

6. The original executed transcript, or a
certified copy thereof, if applicable, together with
all exhibits, was () was not () delivered to the
Custodial Attorney, MR. C. ANDREW WATERS, LAW OFFICES
OF C. ANDREW WATERS, 400 South Zang, Suite 1420,
Dallas, Texas 75208 on _____, 1997.

7. Pursuant to information made a part of the
record at the time said testimony was taken, the
following includes all parties of record.

1 MR. C. ANDREW WATERS
 2 LAW OFFICES OF C. ANDREW WATERS
 3 400 South Zang, Suite 1420
 4 Dallas, Texas 75208

5 APPEARING FOR THE PLAINTIFFS

6 Taxable Cost: _____

7 MS. PATRICIA KELLY
 8 ADAMS & GRAHAM, L.L.P.
 9 222 E. Van Buren, West Tower
 10 P.O. Drawer 1429
 11 Harlingen, Texas 78551

12 APPEARING FOR DEFENDANTS

13 W.R. GRACE COMPANY AND
 14 PITTSBURGH CORNING CORPORATION

15 Taxable Cost: _____

16 MR. JAMES V. HEWITT
 17 MEREDITH, DONNELL & ABERNETHY
 18 6850 Texas Commerce Tower
 19 600 Travis
 20 Houston, Texas 77002

21 APPEARING FOR DEFENDANT

22 BROWN & ROOT USA, INC.

23 Taxable Cost: 648.07

24 MR. R. HARDING ERWIN, JR.
 25 MATTHIESEN & CHASE, L.L.P.
 3003 Eleven Greenway Plaza
 Houston, Texas 77046

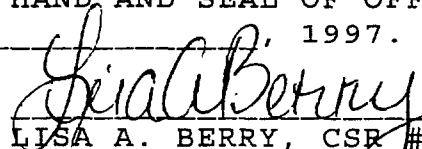
APPEARING FOR DEFENDANT

ARMCO

Taxable Cost: _____

8. A copy of this certificate was served on
 all parties shown herein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this
 the _____ day of _____, 1997.


 LISA A. BERRY, CSR #3104
 CSR EXPIRATION DATE: 12/31/98

Attachment - 3

SAFETY INSTRUCTIONS FOR CONSTRUCTION
CONTRACTORS AND THEIR AGENTS WORKING
ON THE PREMISES OF ARMCO STEEL CORPORATION

The purpose of these safety instructions is to establish minimum safety standards to guide the Contractor and his employees in carrying out their safety responsibilities. Unless the context otherwise requires, reference to employees of the contractor shall include employees of sub-contractors.

I. GENERAL INSTRUCTIONS

- ~~A. The General Contractor shall be responsible for the safety activities of all employees and agents he employs.~~
- B. All safe practices on construction work outlined in the latest edition of the "Manual of Accident Prevention in Construction", as published by The Associated General Contractors, shall be used as a guide.
- C. The Contractor shall comply with all applicable city, county, state, and federal safety codes in the area where he is performing his work.
- D. The Contractor shall comply with all applicable safety rules and regulations of the plant or works of Armco Steel Corporation where he is performing work. Questions of application will be resolved solely by Armco.
- E. Before starting work, the Contractor shall secure copies of all Armco General Safety Orders issued by the local plant where he is working and he shall comply with applicable provisions to safeguard personnel and property of Armco.
- F. The Contractor shall make prior arrangements with the Project Engineer or designated Plant Engineer before starting work in any operating department.
- G. Control valves or service lines which are located in various departments must not be opened or closed without first securing permission from the maintenance foreman in the department.
- H. The Contractor must make prior arrangements with the Project Engineer or his designated representative to check on the existence of underground conduits and service lines before an excavation of any kind is made with the plant area.

II. ACCIDENT PREVENTION PROGRAM - The Contractor shall have an accident prevention program commensurate with the extent of work under his contract.

- A. Safety Personnel - If it is determined by Armco that the contract warrants a full-time qualified safety supervisor, he shall be employed by the Contractor to implement the accident prevention program. He shall work closely with the plant safety department. The determination for the need of a safety supervisor shall be resolved before the contract is finalized.
- B. Safety Meetings shall be held regularly between Armco plant safety personnel and the Contractor's safety and/or supervisory personnel and Contractor's personnel for establishing a Safety Meeting Schedule.
- C. Adequate Safety indoctrination and instruction shall be given to all personnel employed by the Contractor.

D. Personal Protective Equipment and Clothing

1. The Contractor shall require his employees to wear adequate protective equipment and clothing commensurate with the hazards of the job being done. It is recommended that, wherever possible, these requirements be in accord with the personal protective program of the Armco plant or works where the work is performed. The following shall be used as a guide in establishing rules to provide employees with adequate protective equipment.
 - a. Hard hats shall be worn in all construction areas.
 - b. Appropriate type safety glasses, goggles, face shields or helmets shall be worn on all jobs where there is a known eye hazard.
 - c. Appropriate foot wear, such as safety shoes, protective covers, rubber boots, etc. shall be worn by employees who are engaged in work requiring such protection.
 - d. Respirators or breathing apparatus shall be worn on any job with respiratory hazards, including brick sawing, spray painting, and areas of excessive dust, toxic materials, or oxygen deficiency such as manholes, sewers, etc.
 - e. Safety belts shall be worn by employees where needed.

III. ACCIDENT REPORTS - The contractor shall maintain accurate safety records.

- A. All work injuries shall be classified in accordance with the latest revision of the Z16.1 Code, "Recording and Measuring Work Injury Experience", as issued by The American Standards Association.
- B. Any accident which apparently will lead to a disabling injury must be reported to the Armco project engineer or works engineer immediately.
- C. Copies of all disabling injury reports shall be sent to the Armco project engineer or works engineer.

IV. FIRST AID AND MEDICAL TREATMENT

- A. The Contractor shall make adequate local arrangements for giving first aid and medical treatment to injured employees.
- B. All injuries, regardless of how minor, shall be reported to the individual's supervisor.

V. CONTRACTOR'S EMPLOYEES - Qualifications and Conduct

- A. The Contractor shall make every effort to employ physical and mentally capable employees to carry out the work they are expected to perform.
- B. Employees should be discouraged from riding crane hooks or loads carried by cranes.
- C. Employees must not visit departments or sections of the plant not connected with their place of work.
- D. Employees entering or leaving their place of work must follow the designated routes.
- E. Employees must be alert for train movements when crossing railroad tracks.
- F. Employees shall not cross over, between, or under railroad cars unless properly authorized.
- G. Horseplay is considered an unsafe act and will not be tolerated on the job. Employees engaging in same are subject to discharge.

- H. Good Housekeeping is one of the first rules of safety and all Contractors are expected to keep their places of work clean and orderly. Materials and equipment will be left in a neat and orderly manner at the end of each working day. Trash shall be disposed of daily or more often if necessary. Employees must be cautioned against blocking or obstructing fire-fighting equipment, electric switch boxes, crane access stairs, ladders, safety walkways, or other areas necessary for the movement of men or safe operation of equipment.

VI. FIRE PREVENTION AND PROTECTION - Every possible effort shall be made to prevent fires and all approved protective means shall be taken in accordance with the National Fire Protective Association Code. Special protective measures shall be taken as follows:

- A. When burning or welding outfits are used, fire extinguishers shall be close at hand.
- B. Compressed Gas Cylinders shall be handled with care at all times. They shall be properly secured in racks in upright position at all times. They shall not be stored near gas, oil, or other flammable liquids, and separators are recommended between oxygen and acetylene when in storage or in use. If cylinders must be handled by hoisting equipment, they shall be carried in a cradle or similar device, and extreme care shall be taken so they are not dropped. Slings shall not be used.
- C. Flammable Liquids - All volatile and flammable liquids must be stored in and dispensed from approved containers which are clearly identified as to contents.
- D. Explosives - No explosives may be used on the premises without the permission of the plant engineering department. If such permission is granted, explosives shall be handled by properly licensed and experienced personnel. Explosives shall be stored in accordance with all local regulations to prevent fire or explosion.

VII. MACHINERY MECHANIZED EQUIPMENT, AND MOTOR VEHICLES

- A. All tools, machinery, and equipment used by the Contractor shall be adequate for its intended use and shall be in safe operating condition.
- B. All operators shall be experienced in the operation and use of the equipment they operate.
- C. All motor vehicles which are permitted to use roadways inside the plant must be driven by properly licensed operators at a safe rate of speed, not exceeding the maximum speed allowed in the plant. Parking restrictions and all regulations must be observed. When backing any vehicle, the operator must be sure the areas are clear.
- D. Whenever it is necessary to transport men in the body of a truck, the truck must be equipped with seats. If dump trucks are used to transport men, the bed of the truck must be properly secured so it cannot accidentally dump.

VIII. ELECTRICALLY POWERED TOOLS AND EQUIPMENT - All stationary and portable electrically powered tools and equipment used by the Contractor must be grounded before operation is permitted. Three-pronged plugs and receptacles are required by Company standards.

IX. SANITARY CONDITIONS. Unless provided by Armco, the Contractor shall be required to furnish adequate toilet facilities as required by the city, county, state, or federal codes and by the plant where the work is being performed.

- X. EXCAVATIONS** must be barricaded day and night, and marked by warning lights at night. Openings in the ground or in floors, such as manholes, valve pits, and sewers, shall be railed off or covered. Where shoring is required, it shall be in accordance with the state safety code applicable, and the standards contained in "Manual of Accident Prevention in Construction" as issued by The Associated General Contractors of America.

XI. GENERAL SAFETY PRECAUTIONS

- A.** Ladders and scaffolds and other equipment used on the job must meet the safety code of the state where the work is performed.
-
- B.** Nails - - All protruding nails in boards must be removed or turned down.
- C.** Material Piling and Storage - - All materials used for construction shall be safely piled. Materials that have a tendency to roll or move shall be properly secured.
- D.** Salamanders used for providing heat for the comfort of employees must be guarded in accordance with the standard established by the plant. All gas-fired salamanders shall be equipped with automatic shut-off regulators and, if located in confined areas, shall be vented to the atmosphere.
- E.** Overhead Work - When it is necessary to perform work above the heads of men or where there is a possibility of men passing under overhead work, the danger zone must be roped off and "MEN WORKING OVERHEAD" signs displayed.
- F.** Toxic Gases - Whenever it is necessary to perform work in a department, tunnel, basement, sewer or in any place where gas may be present, a carbon monoxide gas test must be taken before starting the job. The test shall be made with a CO detector and explosimeter.
- G.** Electric Lines - Crews working on or near live electrical lines must take all safety precautions possible to ensure their personal protection.



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OCTOBER 1, 1997

Mr. James V. Hewitt
MEREDITH K. DONNELL & ABERNETHY
6850 Texas Commerce Tower
600 Travis Street
Houston, TX 77002

Re: MANUEL P. GONZALES, ET AL.
Plaintiffs,
vs.

OWENS-CORNING FIBERGLASS
CORP., ET AL,
Defendants
no. 95-04-1728-D

Dear EMIL MARTIN ZERRR, JR.

Please read and sign before a Notary Public the attached Oral Deposition, taken on the 26TH day of September, 1997, making any necessary changes on the Corrigendum page that is provided.

Please return the deposition to this office within twenty (20) days or before October 24, 1997, for filing, as agreed by the parties.

If you have any questions, please do not hesitate to contact this office.

Sincerely,

Roger Duester
Houston Office Manager
DIANA HENJUM REPORTING SERVICE, P.C.

Enclosure

cc: Mr. Andrew Waters
Ms. Patricia Kelly
Mr. R. Harding Erwin, Jr.

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