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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK
3 INDEX NO.: 107190/95
4 -----)
5 IN RE: NEW YORK CITY)
6 ASBESTOS LITIGATION)
7 -----) DEPOSITION UPON
8 SALVATORE AND GAETANA MINARDI,) ORAL EXAMINATION
9) OF
10) DR. ARTHUR M. LANGER
11)
12) Plaintiffs.)
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TRANSCRIPT of the deposition of DR.
ARTHUR M. LANGER, called for Oral Examination in the above-
entitled action, said deposition being taken pursuant to
Rules governing Civil Practice in the Courts of New Jersey,
by and before KERRY D. HALPERN, a Notary Public and Shorthand
Reporter of the State of New York, at MAX E. GREENBERG,
TRAGER, TOPLITZ & HERBST, ESQS., 100 Church Street, New York,
New York 10007, on Tuesday, February 4, 1997, at 5:18 p.m.

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1 MR. MacLACHLAN: This is Mr. MacLachlan
2 on behalf of Bethlehem Steel Corporation.
3 MR. COHEN: Mr. Cohen on behalf of the
4 plaintiffs.
5 MR. MacLACHLAN: Mr. Strauss indicated

6 that he is not going to participate in this
7 deposition, and he is actually going to
8 quietly observe. Is that correct, Mr. Cohen?
9 MR. COHEN: That is correct.
10 Mr. Cohen on behalf of plaintiffs.
11 MR. MacLACHLAN: We are making Dr.
12 Langer available for his deposition ordered by
13 Judge Litsman, and it is my understanding that
14 you are in the room to observe. Is that
15 correct?
16 MR. COHEN: That is correct. I will
17 tell you that the attorney who will actively
18 examine Dr. Langer will be myself. If it is
19 necessary, I will certainly converse in
20 private as anyone would, but no other
21 attorney, except myself, will examine Dr.
22 Langer.
23 MR. MacLACHLAN: And I understand that
24 Mr. Long, also from your New York office,
25 wants to join the deposition by telephone.

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(1) MR. COHEN: That is correct.
 (2) MR. MacLACHLAN: Why don't we go off (3) the record for a second and see if we can (4) facilitate that.

(5) MR. COHEN: Okay.

(6) (Pause in proceedings.)

(7) MR. TOPLITZ: Can we all agree to the (8) time? I have 5:13, 5:14.

(9) MR. COHEN: Okay.

(10) Has Dr. Langer been sworn in?

(12) ARTHUR M. LANGER, (13) having first been duly sworn, (14) was examined and testified as follows:

(16) EXAMINATION (17) BY MR. COHEN:

(18) Q. Dr. Langer, my name is Mitchell Cohen, and I am (19) one of the attorneys representing plaintiffs in the matter of (20) Salvatore Minardi versus various defendants. I will, first (21) of all, apologize. There are some initial questions that I (22) want to ask you, and I do not have here a copy of your (23) curriculum vitae provided to me by defense counsel, so if I (24) ask one or two questions that may seem obviously repetitive (25) of things that you have testified to, please forgive me.

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(1) A. Yes.

(2) Q. Doctor, my understanding is that your doctorate (3) is in the area of mineralogy. Is that correct?

(4) A. Yes.

(5) Q. And you also hold a master's degree in (6) petrology?

(7) A. Yes.

(8) Q. Is any part of your training formal medical (9) education?

(10) A. No.

(11) Q. Would I be correct that you have not taken any (12) formal medical courses in connection with potential asbestos (13) diseases that may be caused by direct or indirect exposure?

(14) A. That is a complex question. Let me see if I (15) can answer at least part of it. I had been involved, when I (16) was at Mount Sinai, in courses which were given in the Page & (17) Black Postgraduate School of Medicine. I was given course (18) credits for instructing in those courses. That is a formal (19) kind of medical education, but if you mean in a course sense (20) did I study pathology, or did I study toxicology, or did I (21) study pulmonology, the answer is, no.

(22) Q. Okay. With regard to your

testimony, am I (23) correct that you have, in the past, asked various asbestos (24) manufacturers for funds in order that you could perform (25) duties within your profession as a mineralogist specifically

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(1) relating to studying asbestos bodies?

(2) A. Not really.

(3) Q. Have you ever testified in a case called The (4) Mayor and City Council of Baltimore County in or around (5) August of 1991?

(6) A. That is possible, yes.

(7) Q. Do you ever recall being asked any questions, (8) and giving answers, specifically on pages 49 and 50, of that (9) testimony where you indicated that you had asked asbestos (10) manufacturers for funds in order to study asbestos bodies?

(11) MR. MacLACHLAN: At this point, I have (12) no problem with you asking the question, but (13) just so that we can try to observe some normal (14) procedural requirements because we are on the (15) telephone, do your lawyers present in the New (16) York office, Mr. Cohen, have a copy of that (17) transcript with them so they can show it to (18) the witness?

(19) MR. COHEN: No. I do not believe they (20) do.

(21) MR. MacLACHLAN: Can you arrange to fax (22) a copy?

(23) MR. COHEN: I don't have a copy of it (24) at this juncture.

(25) MR. MacLACHLAN: Is there someone in

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(1) your organization with access to a fax machine (2) who can simply fax the copies over so that the (3) doctor can look at it because I think he is (4) entitled to seeing any prior testimony that (5) you are asking him about.

(6) MR. COHEN: My only question is whether (7) he has a recollection. He does not (8) necessarily have to see the testimony. He can (9) tell me whether he has a recollection of being (10) asked any questions or giving that type of (11) testimony. I'm not trying to be obstructive. (12) I just don't have the actual deposition in (13) hand.

(14) MR. MacLACHLAN: Well, what I would (15) just ask the doctor is to think for a moment (16) and indicate whether this is something that he (17) can readily recall.

(18) MR. COHEN: Counsel, with all due (19) respect, the doctor has the

question before (20) him. I don't think he needs to be coached or (21) spoken to unless he doesn't understand the (22) question.

(23) MR. MacLACHLAN: I think that it is (24) proper for me to indicate that if he needs the (25) document to look at it, he is entitled to see

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(1) it.

(2) Q. BY MR. COHEN: Doctor, have you ever asked an (3) asbestos manufacturer for funds, either verbally or in (4) written form, for the purpose of performing any sort of (5) studies dealing with asbestos bodies?

(6) A. I don't recall.

(7) Q. Have you ever received any funds from any (8) asbestos manufacturer or distributor for the purpose of (9) studying asbestos?

(10) A. Yes, of course.

(11) Q. Can you tell me specifically from whom you have (12) received funds for the purpose of studying asbestos that is (13) either a manufacturer or distributor of asbestos products, or (14) was in the past?

(15) A. The first major support was given to our group (16) at Mount Sinai, of which Irving Selikoff was the principal (17) investigator, a project jointly funded by the Johns-Manville (18) Corporation, the Insulation Workers Union, and the Public (19) Health Service. So Johns-Manville stands as the first (20) corporate entity which underwrote some of our research.

(21) Q. Okay. Subsequently, when did you leave Mount (22) Sinai?

(23) A. 1988.

(24) Q. Okay. And can you tell us what the (25) circumstances were for your departure from Mount Sinai?

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(1) A. At that time, I had an appointment in the (2) Center for Polypeptide and Membrane Research. The center's (3) leader, the director of the center, was Dr. Irving Schwartz.

(4) Dr. Schwartz was in the process of retiring. The center was (5) to be incorporated into the department of biophysics and (6) physiology. There was no space for my laboratory, and I left (7) the Mount Sinai School of Medicine, and I went into one of (8) the senior colleges of the City University.

(9) Q. Can you tell me, subsequent to leaving Mount (10) Sinai, have you received any funds from any company that (11) presently or in

the past has manufactured or distributed (12) asbestos-containing materials?

(13) MR. MacLACHLAN: Counsel, at this (14) point, I am not raising an objection, but I am (15) seeking clarification, and I am also -- I (16) guess I am objecting that the question could (17) conceivably call for speculation, the way that (18) you've asked it.

(19) MR. COHEN: Mr. MacLachlan, your (20) objection is noted.

(21) Q. BY MR. COHEN: Dr. Langer, have you received (22) any proceeds, any funds, from any company that either (23) presently or in the past has manufactured or distributed (24) asbestos products subsequent to leaving Mount Sinai?

(25) A. I don't recall, but I need a copy of my updated

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(1) version of my curriculum vitae. Let me just check over a (2) copy of the vitae that is there.

(3) Q. Please. Whatever you need to answer the (4) question. Again, I apologize. We were not furnished with (5) it. I am dealing in the dark here.

(6) MR. MacLACHLAN: So the record is (7) clear, I believe we were asked for a (8) curriculum vitae today.

(9) MR. COHEN: No. The record should be (10) clear that you were asked for it at Dr.

(11) Moline's deposition yesterday, and it should (12) have been provided long before then when you (13) designated Dr. Langer as a witness. I would (14) invite you, Mr. MacLachlan, to look at the (15) transcript, towards the end of Dr. Moline's (16) deposition, where I asked specifically for (17) these materials.

(18) MR. MacLACHLAN: That was last evening, (19) the materials that we had been supplied.

(20) MR. COHEN: They were not supplied to (21) my office.

(22) MR. MacLACHLAN: Well, they were (23) supplied to the location of the trial in New (24) York.

(25) MR. HUGHES: Gentlemen, I think the

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(1) doctor is ready to provide his answer.

(2) MR. COHEN: Okay.

(3) Q. BY MR. COHEN: Doctor?

(4) A. Yes. Before leaving Mount Sinai, I received (5) support from the Ford Motor Company to study asbestos in (6) brake drum dust.

Before leaving Mount Sinai, I received (7) support from the Mobil Foundation to study the surface (8) properties of chrysotile asbestos, and its role in imparting (9) biological potential. Before leaving Mount Sinai, I received (10) support from a Crown Corporation in Canada called the Societe (11) National Du Ambiance (phonetic) to study the biological (12) activity of modified chrysotile fiber. This curriculum vitae (13) that I have read is until 1986. There may have been one or (14) two others before I left Mount Sinai.

(15) Q. Can you give us an approximate total of the (16) dollars that you received in funding while at Mount Sinai (17) from any entity which is a defendant in the asbestos (18) litigation?

(19) A. I don't know who the defendants are. I never (20) received any funds from the Bethlehem Steel Corporation.

(21) Q. My question is, if we take the companies that (22) you have just mentioned, --

(23) A. Yes.

(24) Q. -- can you give me a combined, approximate total (25) of the dollars that you received in funding?

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(1) MR. MacLACHLAN: Note my objection. As (2) I understand, Mr. Toplitz, the objections are (3) reserved except as to form.

(4) MR. TOPLITZ: Yes.

(5) MR. COHEN: That is correct.

(6) MR. MacLACHLAN: I object to that (7) question on various grounds.

(8) Q. BY MR. COHEN: Are we getting an answer?

(9) A. Are you all waiting for me?

(10) Q. Yes. We were, Doctor. That is okay.

(11) A. The total amount from the various entities, (12) which I have cited previously, is approximately \$700,000 to (13) \$800,000, but the bulk of this support came from the (14) Johns-Manville Corporation.

(15) Q. Okay. Now, I think I had asked you, subsequent (16) to leaving Mount Sinai -- let me ask first, by whom were you (17) employed?

(18) A. While at Mount Sinai?

(19) Q. No, subsequent. When you left Mount Sinai.

(20) A. I don't think that I understand the question.

(21) Q. Who was your employer after you left Mount (22) Sinai?

(23) A. I supported myself on funds from grants, (24) contracts, and

consultant services.

(25) Q. Okay. Were any of those grants from companies

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(1) who presently or in the past manufactured or distributed (2) asbestos-containing products?

(3) A. Yes, some.

(4) Q. Can you tell me what companies provided you (5) with grants for you to study and do research work once you (6) left Mount Sinai?

(7) A. I don't have my updated curriculum vitae in (8) front of me, but there were several. W.R. Grace comes to (9) mind, but there could have been others, and rather than (10) speculating which companies did provide support, I would (11) rather hold off until I get a copy of my updated curriculum (12) vitae.

(13) Q. Were you provided by defense counsel with a (14) copy of your updated curriculum vitae since I was told that (15) it was brought to the place of the deposition?

(16) A. There's only one problem. The curriculum vitae (17) which is here represents one that I used at Mount Sinai. The (18) more updated version is down in Mr. MacLachlan's office, and (19) I am in the process of updating my curriculum vitae now as we (20) speak, as a matter of fact.

(21) MR. COHEN: Mr. MacLachlan, apparently (22) you have something that no one else has. If (23) you would be kind enough to fax that to your (24) New York office, I would be very appreciative, (25) so Dr. Langer, and I, and the rest of us are

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(1) not put in a position of dealing with (2) something, which Dr. Langer, himself, says is (3) not up-to-date, and you are sitting there with (4) a document that is much more up-to-date.

(5) MR. MacLACHLAN: First of all, I am at (6) home because I am ill.

(7) Secondly, I gave direction to my office (8) to transmit Dr. Langer's CV, the one that we (9) have, and it was my understanding that is the (10) one that is there.

(11) MR. COHEN: Apparently, Mr. MacLachlan, (12) and I didn't mean this in a disparaging way, (13) all I am saying is, we obviously, because Dr.

(14) Langer says he doesn't have it, we don't have (15) the document that is necessary for Dr. Langer, (16) with some degree of certainty to

provide us (17) with an answer to the questions that I have (18) asked, so I would very much appreciate it if (19) you can do whatever possible. If you have a (20) second line, or whatever, to contact your (21) office, or if I have your permission, if there (22) is someone at your firm in New York there that (23) is on the line, if they can call your Jersey (24) office, and get that document so that I can (25) ask Dr. Langer the appropriate questions. I

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(1) can't imagine that that would be a problem.

(2) A. It is a problem, if I can interrupt, Mr. Cohen.

(3) The document of which you speak is fifty-some-odd pages in (4) length, and I think it would be a difficult document to fax (5) to anyone. Now, if this can wait until tomorrow morning, (6) then I will get you a copy of it.

(7) Q. Doctor, I do appreciate it. The problem is (8) that this should have been provided to you and to me at least (9) as of now. The purpose of taking the discovery deposition, (10) as you know, is to avoid the delay at the time of trial. (11) Can you cite Mr. MacLachlan or counsel in the (12) New York office to a particular portion of your curriculum (13) vitae where that information would be contained so that they (14) would only have to fax some smaller number of pages? (15) If you cannot, then I will continue with the (16) deposition, but I am going to respectfully insist that (17) document be produced since it should have been in everyone's (18) hands long before now.

(19) MR. MacLACHLAN: I'm going to say the (20) following: One, I don't know for a fact that (21) I have that updated CV. It is my (22) understanding that what you have in the office (23) was what was brought to my office, and that's (24) what I have been operating with. (25) MR. COHEN: Well, Dr. Langer and you

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(1) perhaps should get together when you are not (2) on the line because Dr. Langer says that you (3) have a more updated version.

(4) MR. MacLACHLAN: It may be. I'm just (5) telling you that it is quite a thick document, (6) but that's the first thing that I'm telling (7) you.

(8) MR. COHEN: Okay.

(9) MR. MacLACHLAN: The second thing is (10) you have known about Dr. Langer since January (11) the 22nd, and last night, well after close of (12) business hours, you made a request for a (13) document. Today in court you were very (14) insistent that the deposition go forward (15) tonight, and so part of the problem here is (16) that this has been extremely compressed, and (17) if we had his CV, we would be happy to supply (18) it to you. This situation is not of our (19) making.

(20) MR. LONG: Let me correct something (21) here since Mr. MacLachlan was ill and not in (22) court today. The court ordered this (23) deposition tonight.

(24) MR. COHEN: If you want to turn this (25) around to be my problem when I made a demand

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(1) at the close of business, you are telling me (2) that neither your New Jersey nor your New York (3) office is competent to take a 50-page (4) document.

(5) MR. TOPLITZ: I am going to interject (6) here, and I am going to say, cut this off. Go (7) forward with your deposition. You've got an (8) hour and we are going to give you a few (9) minutes more.

(10) MR. COHEN: That is very big of you.

(11) MR. TOPLITZ: If you have got a (12) problem, take it up with the judge tomorrow.

(13) MR. COHEN: You have a document that we (14) haven't gotten, and I can't examine the (15) witness. All right? Let's not play this (16) game. You managed to get a document that's (17) not an appropriate one to everybody, and you (18) are sitting there with one that is more (19) complete. I am going to ask and make the (20) motion.

(21) Jim, you can handle this more (22) appropriately tomorrow.

(23) MR. LONG: Fine.

(24) Q. BY MR. COHEN: Dr. Langer, how much would you (25) approximate W.R. Grace has given you since your leaving Mount

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(1) Sinai for purposes of studying asbestos or any other (2) minerals?

(3) A. Let me see if I can phrase this properly. W.R.

(4) Grace was interested in some of the work of my colleagues and (5) I, and our work with scientists of the Russian Federation, (6) and

we were interested in the health experience of chrysotile (7) miners and millers in the Russian Federation. We are (8) interested in the past years' contents of their tissues, and (9) we were interested in the asbestos fiber content in the air (10) in the town in which their major asbestos mill is located.

(11) Q. When you say "asbestos studies," these are (12) kinds of asbestos studies, I suppose?

(13) A. W. R. Grace Corporation has given us over the (14) past four years, perhaps, approximately, \$90,000 in support.

(15) Q. Okay. Now, is there any other company that (16) comes to mind, without your having the document before you, (17) in terms of any other company who either presently or in the (18) past manufactured or distributed asbestos who has given you (19) grant money subsequent to your leaving Mount Sinai?

(20) A. I don't think so.

(21) Q. You also said that you acted as a consultant (22) for companies. Could you tell me the names of any company (23) for whom you have acted as a consultant since leaving Mount (24) Sinai where you have served remediation where that company is (25) or has in the past been a manufacturer or distributor of

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(1) asbestos products?

(2) A. That is more difficult to provide because (3) people call me all the time for advice, or opinions, or (4) something. I would say, I have offered expertise and expert (5) advice to a number of representatives of companies. These (6) companies included Owens-Corning, Owens-Corning Fiberglas, (7) GAF Corporation and others. I mean, I am blocking on the (8) names of these companies, but many companies, and their (9) representatives call me.

(10) Q. Would your curriculum vitae help you tomorrow (11) to answer this question?

(12) A. No.

(13) Q. Can you tell me how long you have performed (14) consulting duties for Owens-Corning Fiberglas?

(15) A. I don't remember. The past dozen years, maybe.

(16) Q. In the past dozen years, can you give me an (17) approximation as to how much you have received as a (18) consultant on behalf of Owens-Corning Fiberglas?

(19) A. Maybe \$10,000.

(20) Q. Same question with regard to GAF Corporation, (21) can you tell me how long you have acted as a consultant for (22) that company?

(23) A. It is just on a problem-by-problem basis over, (24) again, the last dozen years or so.

(25) Q. And can you give me an estimate of

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(1) approximately how much you have received from GAF Corporation (2) in acting in that capacity?

(3) A. Probably less than 10,000.

(4) MR. MacLACHLAN: This might be a good (5) time to take a quick break and not take away (6) from Mr. Cohen's total allotted time. I am (7) equally interested in why the CV that we have (8) appears to be one that is outdated. Frankly, (9) I'd like to get to the bottom of it. I have (10) got another member from my firm, Pat Hughes, (11) present.

(12) MR. HUGHES: I will go and make some (13) calls and try to take care of it.

(14) MR. MacLACHLAN: Yes. I would like you (15) to know that we have got some file material (16) outside. If you could make an inquiry and (17) find out what the deal is because in all (18) seriousness this may be the CV that we have. (19) MR. HUGHES: Okay, fair enough. I will (20) check into that, and I will report back to (21) everyone in the deposition room, and you can (22) continue while I am gone.

(23) MR. MacLACHLAN: Thank you. (24) (Mr. Hughes left the room.)

(25) Q. BY MR. COHEN: Dr. Langer, do you ever recall

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(1) giving testimony in or around 1991 where you said that at (2) that time you made approximately \$40,000 to \$50,000 per year (3) by testifying in asbestos litigation?

(4) A. You mean for both plaintiffs and defendants?

(5) Q. Yes, total.

(6) A. It could be about that, yes.

(7) Q. Can you tell me how much money you have made in (8) each of the years since 1991, and the source of the income (9) with regard to plaintiff or defendant?

(10) A. Well, these are just guesses.

(11) Q. Again, I'm asking for general orders of (12) magnitude. In other words, if you are a thousand dollars (13) off, no one is going to --

(14) A. That is not an order of magnitude. That is a (15) rounding

error.

(16) Q. I'm sorry, we're looking for approximations (17) based upon your personal knowledge.

(18) A. Yes. I would say it is about the same. I have (19) been doing less asbestos work and more work in other areas (20) now.

(21) Q. Can you tell me in 1991 for what plaintiff's (22) firms you gave testimony?

(23) A. Let me give you the names of some of the (24) plaintiff's firms that I have worked with in the last few (25) years. How is that?

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(1) Q. Let me --

(2) A. Don't use 1991.

(3) Q. I'm sorry, Doctor. Let me ask you specifically (4) with regard to testimony. My question is, can you tell me --

(5) A. You mean by deposition and trial?

(6) Q. Testimony either by deposition as we are taking (7) now or trial testimony.

(8) A. Okay, fair enough. I have appeared as an (9) expert for the firm of Gallagher, DeRobertus, Nakamura & Ono (10) (phonetic) in Hawaii --

(11) Q. Right.

(12) A. -- by both deposition and at trial. I have (13) appeared as a plaintiff's expert in a case in New Jersey (14) involving exposure to another mineral substance called (15) vermiculite.

(16) Q. And for what firm?

(17) A. I don't remember.

(18) Q. Was it a plaintiff's firm?

(19) A. Yes.

(20) Q. Can you tell me how many times you have (21) testified by deposition or in court for a defense firm in the (22) asbestos litigations since 1991?

(23) A. Since 1991, most of my expert appearances have (24) been for defense work.

(25) Q. Okay. If we approximate, and let me know if I

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(1) am wrong, that you are continuing to make \$40,000 to \$50,000 (2) per year since 1991, can you tell me how much of that money (3) has come from defense firms as opposed to a plaintiff's firm?

(4) A. Probably 80 percent comes from defense.

(5) Q. Okay. Now, let me ask --

(6) A. Hold it, hold it.

(7) Q. I'm sorry.

(8) A. I don't want to mislead you.

At first, you (9) began to speak of testimony. I have just given you figures (10) for total work.

(11) Q. Okay.

(12) A. Meaning that I have read documents for both (13) sides, and provided advice, and strategy, and reports to both (14) sides, and that total, which includes testimony, would amount (15) to those figures that I have just cited.

(16) Q. Okay. Doctor, let me ask you, are you the (17) author of an article in Collier's Encyclopedia, Volume III, (18) 1987, which states that "Asbestos is a Serious Health (19) Hazard"?

(20) A. That could be, yes.

(21) Q. I'm quoting this verbatim, and let me know (22) whether this seems familiar to you, or if you have any (23) problems?

(24) A. If you wish to read it into the testimony, do (25) so. I don't have the text with me.

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(1) Q. Okay. I don't have it either. Did you write (2) an article or write a portion of Collier's Encyclopedia, (3) Volume III?

(4) A. I think so, yes.

(5) Q. In 1987?

(6) A. I think so.

(7) Q. Do you recall writing, and I quote, "Asbestos (8) is a serious health hazard. Inhalation of the tiny invisible (9) particles can cause scarring of the lungs, a progressive and (10) potentially fatal condition known as asbestosis. Exposure to (11) asbestos can also lead to cancer in various parts of the (12) body, including the lungs, liver, and intestines," end quote.

(13) Do you recall writing that, doctor?

(14) A. I recall writing it. And I recall correcting (15) it.

(16) Q. Can you tell me when the correction appeared (17) and where?

(18) A. The word "liver" is incorrect, and it should be (19) a pleura.

(20) Q. Okay. Other than that correction, if I were to (21) read, quote, "including the lungs, pleura, and intestines,"

(22) end quote, would I have correctly quoted you?

(23) A. It sounds correct.

(24) Q. Did you also write an article entitled "The (25) Organic Particles in Human Tissues and Their Association with

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(1) Neoplastic Disease" in "Environmental Health Perspectives,"

(2) Volume IX, page 233, in 1974?

(3) A. It sounds good, but you have misquoted the (4) title.

(5) Q. Please correct me.

(6) A. It is not "organic." It is "inorganic (7) particles."

(8) Q. Okay, I apologize. Did you author such an (9) article with the correction that you have just made?

(10) A. What correction?

(11) Q. The correction of "inorganic"? You have (12) corrected me on the title of the article.

(13) A. Yes. I think that is one of the articles that (14) I have written, yes.

(15) Q. Do you recall writing in that document, and I (16) quote, "The observation that asbestos fiber may be present in (17) organs which have limited direct contact with the outside (18) environment by direct ingestion, and blood, or lymph routes (19) emphatically demonstrates the ability of asbestos to infect (20) the entire human body," end quote.

(21) MR. TOPLITZ: I am the New York (22) counsel, and I am going to object to this (23) procedure. You keep asking him whether this (24) is an exact quote.

(25) I want to go on the record that the

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(1) Doctor is trying the best he can to answer the (2) question and if your quote is not wrong, (3) right, or if he should have the opportunity to (4) look at the paragraph before, and the (5) paragraph you said after, and had the whole (6) article. This is your doing by making this (7) question.

(8) Q. BY MR. COHEN: Doctor, my question is, do you (9) have a recollection?

(10) MR. TOPLITZ: Mr. MacLachlan, although (11) I am the New York counsel, I am just telling (12) you that I am objecting. You keep asking him (13) whether this is an exact quote. I am just (14) telling you that I am objecting.

(15) MR. BELL: We are asking for his (16) recollection.

(17) Q. BY MR. COHEN: Doctor, do you recall making (18) statements to that effect?

(19) A. It seems reasonable that I would make such a (20) comment.

(21) Q. Did you ever make any corrections to the types (22) of statements that I have just read and attributed to you (23) from that article in 1974?

(24) A. No.

(25) Q. Again, do you recall writing

in 1974 an article

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(1) entitled "Environmental Health Perspectives." The title of (2) the article was "The Subject of Continuous Vigilance." Do (3) you recall that?

(4) A. Yes.

(5) Q. Do you recall either stating this verbatim or (6) the substance of what I am stating to you now to be what you (7) said, quote, "To add to these worrisome observations that (8) individuals need not be occupationally exposed to high (9) concentrations of dust to contract asbestos disease, an (10) epidemiological study demonstrated that asbestos fiber may (11) interact with other substances to produce an elevated disease (12) risk," end quote.

(13) MR. MacLACHLAN: Note our objection to (14) the question.

(15) Q. BY MR. COHEN: Doctor, do you recall making (16) that statement, either verbatim or substantively, at page 54 (17) of that document?

(18) A. It sounds like something that I had written.

(19) Q. Have you ever made any corrections to that (20) perspective, as I have read it to you, that you had at that (21) time?

(22) A. Well, I don't want to ask your questions for (23) you, but I think that you are using the term "correction" --

(24) Q. Doctor --

(25) A. Let me finish, counselor. Please allow me to

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(1) finish.

(2) Q. Go ahead, Doctor. I did not mean to cut you (3) off.

(4) A. You see, here we are talking about a time (5) period 1974. Much was known about asbestos in 1974, and much (6) was not known about asbestos in 1974, and I think that those (7) phrases and those observations correctly identified the (8) status of the field. Now, since that time, more data have (9) entered into the scientific sphere, and some of those (10) statements might be modified today, not corrected, they might (11) be modified to reflect dose, they might be modified to (12) reflect fiber type, they might reflect risk models, and risk (13) of disease, differences in the superimposition of other (14) diseases, and cigarette smoking, and so on, and so forth. I (15) think that these were good statements and

solid statements (16) for 1974 plus or minus a year or two. I think they correctly (17) and circumspectly describe the field. But since that time, (18) these statements might have been modified by me in subsequent (19) writings to the literature.

(20) Q. Okay. That is fair enough. Doctor, let me ask (21) you this. Do you still believe that asbestos in all forms is (22) capable of producing the non-malignant disease asbestosis?

(23) A. All forms of fiber?

(24) Q. Yes.

(25) A. Yes.

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(1) Q. Do you still believe today that all forms of (2) asbestos fiber are capable of producing pleural thickening, (3) pleural scarring, pleural calcification?

(4) A. Here, like with asbestosis, the fibers have (5) different biological potentials, and I would have said today, (6) in 1997, that amphibole fibers are probably more efficacious (7) of producing pleural disease than chrysotile.

(8) Q. Okay. Taking that into account, though, and (9) you may believe that there are gradations, my statement, (10) though, is correct that, do you believe today that, although (11) there are different gradations, that all types of asbestos (12) fiber have the propensity, or have the possibility, I should (13) say, of causing the non-malignant pleural diseases that I (14) just mentioned?

(15) A. Probably, yes, with less certainty than the (16) answer to the first statement.

(17) Q. With regard to malignant diseases, do you (18) believe that there is a gradation in the propensity of (19) different fiber types to cause the disease malignant pleural (20) mesothelioma?

(21) A. Yes.

(22) Q. Do you believe that crocidolite is the most (23) culpable fiber type to cause that disease process?

(24) MR. MacLACHLAN: Objection.

(25) Q. BY MR. COHEN: Which of the fiber types,

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(1) Doctor, do you believe is most capable of producing malignant (2) pleural or malignant peritoneal mesothelioma?

(3) MR. MacLACHLAN: Objection to the (4) question.

(5) Q. BY MR. COHEN: You may

answer, Doctor.

(6) A. Well, you have changed the question. Let me (7) see if I can break it down and answer two parts to this.

(8) I believe the literature will show that (9) crocidolite, at least the fibers which are mined and milled (10) in South Africa, have produced the bulk of the pleural (11) mesotheliomas in many settings industrially, occupationally.

(12) I believe that amosite asbestos has produced, where there is (13) a very good chance of this, has produced the bulk of the (14) peritoneal mesotheliomas, and chrysotile asbestos is the (15) least of the mesothelioma generic fibers. It may produce (16) with very high concentrations of fiber. It may produce (17) pleural mesothelioma, but there are no documented cases of (18) peritoneal mesothelioma following exposure to chrysotile (19) only. So the different fibers produced chrysotile (20) mesothelioma proportional mortality at different rates and (21) perhaps at even different sites.

(22) Q. If an individual at a work site, such as (23) Bethlehem Shipyard, were exposed to each of the fiber types (24) that you have just mentioned, do you believe that that (25) individual is at risk to develop either pleural or peritoneal

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(1) mesothelioma because of that exposure?

(2) MR. MacLACHLAN: Objection to the (3) question on various grounds.

(4) Q. BY MR. COHEN: You may answer, Doctor.

(5) MR. MacLACHLAN: And it is beyond the (6) scope that this witness is being offered for.

(7) Q. BY MR. COHEN: You may answer, Doctor.

(8) A. If we follow the mathematical formalisms for (9) calculating risk following exposure to asbestos fiber, there (10) are three factors involved. One factor is cumulative dose, (11) another factor is the relative potency or carcinogenicity of (12) the fiber itself, and the third factor is time raised to some (13) exponential power. So given someone's exposure, and let's (14) use your illustration, a shipyard owned by the "XYZ"

(15) corporation.

(16) Q. No. Let's make it specifically Bethlehem (17) Shipyard because that is what the jury has

before it?

(18) MR. MacLACHLAN: I have to object, Mr.

(19) Cohen. The jury does not have any liability (20) before it at this trial. This is utterly (21) irrelevant.

(22) MR. COHEN: Are you going to permit the (23) re-examination of Dr. Langer for purposes of (24) phase two? If you are, then I will withdraw (25) the question, and we can proceed on the basis

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(1) of "XYZ."

(2) MR. MacLACHLAN: Correct.

(3) Mr. COHEN: Okay. If I am being granted (4) that opportunity, I will withdraw the question (5) specifically.

(6) Q. BY MR. COHEN: Doctor, let me ask you, taking (7) all of those factors into account, would an individual who (8) worked at a work site, and had exposures to potentially those (9) types of fibers for the appropriate periods of time, have a (10) reasonable basis to be concerned about the possibility of (11) developing the malignant disease, pleural or peritoneal (12) mesothelioma, yes or no? And then please state whatever you (13) wish after that.

(14) MR. MacLACHLAN: Objection on various (15) grounds. I will be happy to illustrate the (16) various grounds.

(17) MR. COHEN: Your objection is preserved (18) until the time of trial, Mr. MacLachlan.

(19) Q. Go ahead, Doctor.

(20) MR. MacLACHLAN: Just let me finish, (21) Mr. Cohen. I will be happy, out of the (22) presence of the witness, to set forth the (23) basis of the problems but the questions are (24) effective as asked.

(25) MR. COHEN: That's why we preserve

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(1) until the time of trial.

(2) Q. BY MR. COHEN: Doctor, you can answer the (3) question.

(4) A. Well, counselor, I have to admit this to you.

(5) It is like saying, have you stopped beating your wife, yes or (6) no? This risk of mesothelioma depends on these multiple (7) factors. I think it would be easier if you were to place a (8) hypothetical before me. You are saying given a reasonable (9) time period. Do you mean an exposure of 30 or 40 years ago?

(10) Q. Do you know when Mr. Minardi worked at any (11) particular

work site? Have you been provided that (12) information by counsel?

(13) A. Do I know where he worked, no. Have I been (14) provided that information? Some of it, but not in detail.

(15) Q. Do you know at any time whether he ever worked (16) at any shipyards?

(17) A. I believe that he did but I am not certain of (18) it.

(19) Q. Were you provided with any information that (20) would suggest that Mr. Minardi worked at Bethlehem Shipyard (21) during the end of the 1940's? Were you ever given any such (22) information by counsel?

(23) A. Some.

(24) Q. If an individual worked at a work site, such as (25) a shipyard, in the late 1940's, and was exposed to asbestos

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(1) for a period as long as eight months and was exposed to the (2) types of fibers that we have talked about, and taking all of (3) the contentions and considerations that you have discussed, (4) is that individual possibly at risk to develop the diseases (5) malignant pleural or malignant peritoneal (6) mesothelioma?

(7) MR. MacLACHLAN: Objection. Multiple, (8) multiple grounds, both form and substance of (9) the question.

(10) Q. BY MR. COHEN: Doctor, you can answer the (11) question or not.

(12) A. Well, I'm being deposed. I have to answer it.

(13) Q. Okay.

(14) A. The hypothetical is based on exposure, let's (15) say 1950, that would make it 47 years ago. That is (16) sufficient time. You are alleging exposure to all of these (17) fiber types in a certain setting.

Each of these fiber types (18) are implicated in a disease, and you haven't indicated the (19) level of exposure which would also be part of this risk, so (20) just generically someone exposed a long time ago to these (21) fibers regardless of the level, let's say, whatever the level (22) is, you are using a linear level of dose response. There is (23) risk associated with such exposures, yes.

(24) Q. Doctor, let me ask you, do you have a belief (25) today as we sit here, that an individual who has parenchymal

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(1) asbestosis is also at an increased

risk to develop lung (2) cancer by virtue of the fact that they have been (3) occupationally exposed to asbestosis?

(4) MR. MacLACHLAN: I object to the (5) question unless, Mr. Cohen, you stipulate that (6) Dr. Langer may testify tomorrow with regard to (7) the impact, the presence, or absence of (8) parenchymal asbestosis of Mr. Minardi. If you (9) are going to agree to that, I will agree to (10) let him answer the question.

(11) MR. COHEN: Well, you have no control (12) as to whether to tell him to answer or not to, (13) counsel. I'd invite you to instruct the (14) witness not to answer the question. I won't (15) stipulate to anything, Mr. MacLachlan.

(16) MR. MacLACHLAN: Mr. Cohen, you can (17) waste your time asking him questions about (18) areas that he is not going to be asked to (19) testify in.

(20) MR. COHEN: He may not testify for you (21) in certain ways, but I am asking the (22) questions, thank you.

(23) Q. BY MR. COHEN: Doctor, do you have an opinion (24) as to whether an individual can contract lung cancer if they (25) have parenchymal asbestosis and attribute that lung cancer to

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(1) prior occupational exposure to asbestos?

(2) MR. MacLACHLAN: Note my objection.

(3) Q. BY MR. COHEN: Doctor?

(4) A. The way the question is phrased is really (5) unanswerable.

(6) Q. Let me rephrase it, then --

(7) A. No, no. Don't rephrase it. Don't do that.

(8) Let me --

(9) Q. Doctor, if you cannot answer it, then I am (10) obligated to rephrase it.

(11) A. Okay, go ahead.

(12) Q. My question is, if an individual has (13) parenchymal asbestosis --

(14) A. I understand that.

(15) Q. -- and has had occupational exposure to (16) asbestos --

(17) A. That would follow, yes.

(18) Q. -- such as we have discussed just earlier in my (19) hypothetical --

(20) A. Yes.

(21) Q. -- do you believe that individual is subject to (22) an increased risk of developing cancer of the lung because of (23) the occupational exposure to asbestos?

(24) A. He may or may not be.

(25) Q. Okay.

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(1) A. Did you get that answer, he may or may not be (2) at risk?

(3) Q. Yes. And part of that answer is, "he may be."

(4) Correct?

(5) MR. TOPLITZ: No. He answered, may or (6) may not be, and that is his answer.

(7) MR. COHEN: No. Part of his answer is, (8) "he may be."

(9) Q. BY MR. COHEN: Is that correct, Doctor? "He (10) may" is one-half of "He may" not. Correct?

(11) A. Yes. There are predicate factors here, yes.

(12) We haven't talked about cigarette smoking, and we haven't (13) talked about dose, and we haven't talked about where a (14) pulmonary lesion might occur.

(15) Q. Doctor, we will talk about all those things at (16) another time. I am asking certain specific questions at this (17) juncture.

(18) A. Okay. May or may not be. Let's leave it at (19) that.

(20) Q. Doctor, do you believe asbestos has been (21) implicated in causing any other malignancies in the human (22) body other than pleural or peritoneal mesothelioma and cancer (23) of the lung?

(24) MR. MacLACHLAN: Objection, multiple (25) grounds.

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(1) A. The amphibole fibers have been implicated in (2) the appearance of gastrointestinal cancers.

(3) Q. BY MR. COHEN: Do you believe that laryngeal (4) cancer has been implicated by virtue of occupational exposure (5) to asbestos?

(6) MR. MacLACHLAN: Objection, multiple (7) grounds.

(8) Q. You may answer, Doctor.

(9) MR. MacLACHLAN: Do you believe that (10) you have a good-faith basis for asking this (11) question?

(12) MR. COHEN: Oh, I sure do.

(13) MR. MacLACHLAN: Okay, good. That is (14) fine, continue.

(15) A. Hello.

(16) Q. Doctor --

(17) A. There is a question pending.

(18) Q. Yes. Do you believe that laryngeal cancer may (19) be casually related to prior occupational exposure to (20) asbestos?

(21) A. Asbestos has been implicated as a factor in a (22) constellation of factors which include cigarette smoking and (23) alcohol

consumption.

(24) Q. Would you agree with Roggli and other (25) pathologists, including Dahl and Pieto? Do those names mean

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(1) anything to you?

(2) A. Roggli is a pathologist; Dahl is a physician (3) and epidemiologist; and Julian Pieto-- I am assuming it is (4) Julian Pieto.

(5) Q. That is correct.

(6) A. He is a mathematician.

(7) Q. If those individuals in the writings ascribed (8) asbestos exposure as being a causal factor --

(9) A. A factor, correct.

(10) Q. -- you would not disagree with that. Correct?

(11) A. It is one of the factors, yes.

(12) Q. Now, are all fibers, in your opinion, although (13) they may differ with potential, capable of causing laryngeal (14) cancer?

(15) MR. MacLACHLAN: Objection.

(16) Q. You may answer, Doctor.

(17) A. I don't think so.

(18) Q. BY MR. COHEN: Which fibers do you believe are (19) capable of causing laryngeal cancer?

(20) A. I believe you need amphibole fibers for that.

(21) Q. To cause lung cancer, can you tell me which (22) fibers are inculpated in causing that disease (23) process?

(24) MR. MacLACHLAN: Objection, multi (25) grounds.

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(1) Q. BY MR. COHEN: You may answer that, Doctor.

(2) MR. HUGHES: Mr. Cohen, this is Mr.

(3) Hughes. If I may, could we take about a (4) 3-minute break?

(5) MR. COHEN: I'd like to, if I may, (6) counsel, just finish this one area, and I'll (7) be done with this section, and then I will go (8) into another.

(9) MR. HUGHES: Fair enough. I want to (10) break because I have to see if I can --

(11) MR. COHEN: You are asking a very (12) reasonable request, and I just want to ask if (13) I may be given one minute or so to finish this (14) one area, and we can take whatever break that (15) you may need.

(16) MR. HUGHES: Fair enough.

(17) Q. BY MR. COHEN: Doctor, do you recall the last (18) question?

(19) A. No. What is the question that is pending?

(20) Q. My question was, what fiber types do you (21) believe are

inculcated in causing cancer of the lung?

(22) MR. MacLACHLAN: Objection.

(23) Q. BY MR. COHEN: You may answer.

(24) A. All three of the commercial varieties. That (25) would be crocidolite, amosite and chrysotile as factors.

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(1) Q. I agree. Would you consider tremolite as one (2) of those amphiboles capable of producing lung cancer?

(3) MR. MacLACHLAN: Objection.

(4) Q. BY MR. COHEN: You may answer, Doctor.

(5) A. You mean tremolite asbestos?

(6) Q. Correct.

(7) A. I don't think anyone has done a cohort study (8) following exposure to tremolite asbestos, but it is (9) implicated in the appearance of pleural mesotheliomas in (10) certain parts of the world.

(11) Q. Again, Doctor, can you tell me what fiber types (12) do you believe are inculcated in causing gastrointestinal (13) cancers in persons occupationally exposed to (14) asbestos?

(15) MR. MacLACHLAN: Objection, multiple (16) grounds.

(17) Q. BY MR. COHEN: You may answer, Doctor.

(18) A. I believe that both fibers, both crocidolite (19) and amosite, have been implicated in gastrointestinal tumors.

(20) Q. Again, Doctor, if an individual were (21) occupationally exposed to these fiber types, and if that (22) exposure occurred in the late 1940's for a period of up to (23) eight months, are those factors that an individual should (24) consider in terms of the possibility that they may develop (25) those malignant diseases because of that exposure?

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(1) MR. MacLACHLAN: Objection.

(2) Q. BY MR. COHEN: You may answer, Doctor.

(3) A. Not necessarily. You see, you have the (4) latency, you have the time factor. That is okay. But, now (5) you are asking about these other tumors where dose and other (6) factors are important, so an 8-month exposure to a fiber (7) level of .001 is not terribly important in the outcome of (8) these diseases. Whereas, an insulation worker who was (9) exposed to 20 fibers per cc, which would be about 5,000 times (10) higher in

concentration, that would be a fact.

(11) Q. How about an individual who cut and mounted (12) asbestos in staterooms inside of ships, are you familiar with (13) the levels of dust created in doing that sort of (14) work?

(15) MR. MacLACHLAN: Objection.

(16) Q. BY MR. COHEN: Doctor?

(17) A. Marinite, you mean? Are you talking about --

(18) Q. Marinite as one product. Are you familiar with (19) the occupational levels of dust created by performing work, (20) such as cutting and installing asbestos in staterooms of (21) ships by using marinite sheeting?

(22) MR. MacLACHLAN: Objection, multiple (23) grounds.

(24) A. Counselor, there are many factors here. It is (25) not only the product. It is the tools used, power tools

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(1) used, the nature of a saw tooth, the nature of cutting, and (2) where this operation was carried out, or the presence or (3) absence of various devices for ventilation, and so on, and so (4) forth. We're dealing with just a tremendous number of (5) factors that may be operative here so just --

(6) Q. BY MR. COHEN: Let me ask you. Do you have any (7) reason to believe that the levels of exposure to marinite, (8) which was cut by hand or by machine and installed in a (9) stateroom inside of a ship, would be levels of .01 or would (10) they more closely approach levels that are faced by (11) insulation workers?

(12) MR. MacLACHLAN: Objection, multiple (13) grounds.

(14) Q. BY MR. COHEN: Doctor?

(15) A. Let me ask you this. Is this marinite (16) encapsulated in micarta or any other plastic?

(17) Q. Doctor, if you don't know, I will represent to (18) you that the product is not, and we will provide it is not, (19) by the manufacturer of the product.

(20) A. So you are saying it is just marinite?

(21) Q. It is marinite sheeting.

(22) MR. MacLACHLAN: Mr. Cohen, at this (23) point, you are entitled to ask any questions (24) that you want but I am going to object on a (25) factual basis.

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(1) MR. COHEN: Okay. I am representing, (2) saying, we will present information by the (3)

manufacturer of the marinite that it was (4) neither encapsulated or anything else, even (5) assuming encapsulation does or does not do (6) anything.

(7) MR. MacLachlan: I don't want to fight (8) with you but you ought to listen carefully to (9) what Dr. Langer is saying.

(10) MR. COHEN: Good, thank you.

(11) Q. BY MR. COHEN: Doctor, can you answer my (12) question now that I have told you that bit of information?

(13) A. I don't have data available which would lead me (14) to speculate one way or the other.

(15) MR. COHEN: Counsel had asked for a (16) break. If you want to take a break, counsel, (17) let me know what time you want to come back.

(18) My watch says roughly 6:10. Do you want to (19) take five minutes?

(20) MR. HUGHES: Okay. Five minutes will (21) be fine.

(22) (Recess taken.)

(23) Q. BY MR. COHEN: Doctor, you wrote a report?

(24) MR. MacLACHLAN: Excuse me one second.

(25) I thought Pat Hughes was going to say

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(1) something.

(2) MR. STRAUSS: Pat is not in the room (3) right now. I will get him.

(4) MR. MacLACHLAN: Well, get him. He is (5) supposed to make a statement on the record.

(6) MR. HUGHES: For those who were not (7) present in the room, this is Patrick Hughes.

(8) I have come back in.

(9) MR. MacLACHLAN: Pat, I think you have (10) a statement to put on the record.

(11) MR. HUGHES: Well, I am going to (12) double-check, but we had asked that Dr.

(13) Langer's CV be faxed over here this morning to (14) George Toplitz' office, so that we can give it (15) to counsel. In fact, that was done, and all I (16) can say is, I think we had a clerical error.

(17) We must have had a copy of the 29-page CV, (18) which is here, which we gave to counsel, and I (19) had other people check while this deposition (20) was going on, and I was just advised that they (21) found an approximately 50-page CV, which I am (22) having faxed here. As soon as I have it, I (23) will bring it in to counsel.

(24) MR. MacLACHLAN: That solves the (25) mystery.

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(1) MR. HUGHES: Other than the fact that (2) we specifically requested his updated CV, and (3) apparently someone didn't pay attention, and I (4) apologize for that.

(5) MR. BELL: Whether or not the 29-page (6) CV was the one that the doctor was referring (7) to, I believe that it was. Would you (8) represent that that is true, Mr. Hughes?

(9) MR. HUGHES: The 29-page CV that is (10) here in the room is the one that the doctor (11) referred to earlier in the deposition. That (12) is correct.

(13) Q. BY MR. COHEN: Doctor, do you have your January (14) 22 report in front of you?

(15) A. I will get it.

(16) Q. Thank you, Doctor. Doctor, do you have your (17) January 22 report before you?

(18) A. Yes.

(19) Q. Can you tell me if you have a file on this (20) case?

(21) A. Yes.

(22) Q. Can you -- do you have that file with you?

(23) A. Yes.

(24) Q. Can you identify -- I will ask after we're done (25) with the deposition, if we don't take too much time, in the

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(1) presence of my associate counsel there, each and every (2) document that you have in your file, and I'd ask to have (3) copies of each of the documents made available to them so (4) that they can take it back to our office.

(5) MR. COHEN: Do you have any problem (6) with that, counsel?

(7) MR. HUGHES: From this end, I don't see (8) any problem.

(9) Q. BY MR. COHEN: Doctor, were you provided with (10) any medical records or reports relating to Mr. Minardi prior (11) to the time that you wrote your report?

(12) A. I looked at several documents prior to writing (13) that report.

(14) Q. My question is, did you look at any medical (15) documents or medical records regarding Mr. Minardi prior to (16) the time that you rendered your report?

(17) A. I think so, yes.

(18) Q. Can you tell me specifically what you looked at (19) prior to writing your report?

(20) A. A general outline of the medical findings, the (21) pathology findings.

(22) Q. And who prepared the general outline of the (23) medical findings and the pathology findings?

(24) A. It could have been Mr. MacLachlan's paralegal.

(25) Q. This was a document that was prepared by

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(1) defense counsel which gave you certain information regarding (2) the medical records. Am I correct?

(3) A. No.

(4) Q. What did the outline give you with regard to (5) Mr. Minardi's medical condition?

(6) MR. STRAUSS: I am holding onto it.

(7) Maybe you want him to refer to it. I'm (8) holding onto the four pages of yellow notepad (9) paper.

(10) Q. BY MR. COHEN: Doctor, can you take that note-

(11) pad paper?

(12) MR. STRAUSS: There is a fifth page (13) that is still on the legal pad of the doctor.

(14) A. Yes. It has a telephone number that I need.

(15) Q. BY MR. COHEN: Doctor, in your review of that (16) pad, is that pad in your handwriting or someone else's?

(17) A. Mine.

(18) Q. How is it that you made those notes?

(19) A. These notes are actually notes made after and (20) during the review of 13 slides which were provided to me.

(21) Q. Now, let me ask you, did you receive any (22) documents from any of Mr. Minardi's treating physicians with (23) regard to what they were treating him for?

(24) A. No. I don't think so.

(25) Q. Those were not given to you by defense counsel?

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(1) A. No. I have two pathology reports. The first (2) one is a preliminary report of Mr. Minardi's biopsies, and (3) the other is a final -- well, an operative report.

(4) Q. Other than those documents, were you given any (5) medical records by any of the numerous physicians in Mr.

(6) Minardi's treatment?

(7) A. I did see some -- what's the right word? I saw (8) some abstracted documents which provided the nature of the (9) case.

(10) Q. Do you have the abstracted

document providing (11) the nature of the case in your file?

(12) A. No.

(13) Q. Who prepared the abstract from which you read?

(14) A. I don't know that.

(15) Q. Do you know whether that abstract is an (16) abstraction of all of the documents and records or a selected (17) group of the records from the treating physician?

(18) A. I don't have the foggiest notion.

(19) Q. Where were you when you saw that abstract?

(20) A. I was with Mr. MacLachlan in this office.

(21) MR. COHEN: I'd ask if counsel would (22) produce that abstract that was shown to Dr.

(23) Langer?

(24) MR. MacLACHLAN: Let's see if he is (25) going to be relying on it.

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(1) MR. COHEN: Counsel, whether he relies (2) on it or not is irrelevant. I have the right (3) to see it, and examine it, and I am asking (4) that it be produced.

(5) MR. MacLACHLAN: I don't have a (6) problem producing anything that he saw. I (7) just have to look --

(8) MR. COHEN: That's all I asked for, Mr.

(9) MacLachlan.

(10) MR. MacLACHLAN: Well, Mr. Cohen, many (11) attorneys understand that if it is something (12) that the expert hasn't relied on, it is not (13) relevant.

(14) MR. COHEN: In New York, Mr. (15) MacLachlan, if a witness sees a document and (16) reviews it, then I have a right to look at it, (17) and then question the witness on it. Whether (18) the witness relies upon it is irrelevant. I (19) am asking that it be produced.

(20) MR. MacLACHLAN: We will have to locate (21) it.

(22) MR. COHEN: You have to produce it.

(23) MR. MacLACHLAN: I have to locate it (24) before I can produce it. I'm not sure what (25) documents he is referring to so we will have

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(1) to follow that up.

(2) MR. COHEN: Mr. MacLachlan, it is an (3) issue, and I either want it produced or it (4) will become an issue tomorrow or later today. (5) I frankly don't care. If counsel in your New (6) York office can find it, that would be (7) helpful.

(8) MR. BELL: Mr. Hughes? Mr. Toplitz?

(9) MR. TOPLITZ: I don't know what (10) abstract he is talking about.

(11) Q. BY MR. COHEN: Dr. Langer, did you review any (12) medical records of Dr. Jerome Weiner?

(13) A. I may have. Should we make this more (14) understandable to everyone concerned?

(15) Q. No. I am asking specific questions.

(16) A. You are asking specific questions. I do not (17) recall the names of the treating physicians, or the (18) pathologists, or the individuals involved. What I did read (19) and what I took notes of were their findings. I am not (20) interested in their names, or their institutions, or their (21) credentials. That is of no consequence, no interest to me.

(22) Therefore, when I looked at my report, it was obvious that I (23) was interested in someone's report involving asbestos bodies (24) or ferruginous bodies or asbestos fiber or the use of these (25) terms, which are interchangeable. So my report reflects what

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(1) I read and the importance that I attributed and attached to (2) those particular reports. Rather than read off a litany, a (3) list of treating physicians, and specialists, and so on and (4) so forth, this absolutely has no relevance to what I have (5) read, none.

(6) Q. I'm asking if you know what you read, or want (7) to find out, what you were provided with by counsel to review (8) prior to writing your report, and that is all I am seeking?

(9) A. Right.

(10) Q. I just want an identification of what it was?

(11) A. Okay.

(12) MR. COHEN: Now, I am asking that that (13) be produced.

(14) Q. BY MR. COHEN: Now, in the first paragraph, you (15) say, and I quote, "The issue in the present case involves the (16) presence of, principally, pleural disease?"

(17) A. Correct.

(18) Q. From what source did you ascertain that the (19) issue in this case involves the presence of, principally, (20) pleural disease?

(21) A. I believe that was the first pathology report, (22) that is the presence of an inflammatory response, an acute (23) inflammatory

response involving the pleura, and pleura (24) thickening, and the plaques.

(25) Q. Did you review the parenchymal findings,

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(1) Doctor?

(2) A. I think the parenchymal findings were noted in (3) a later report.

(4) Q. Did you mention any parenchymal findings (5) pathologically in your report?

(6) A. No. I don't think so.

(7) Q. Do you understand?

(8) A. Hold it a second, I misspoke. Oh, okay. All (9) right.

(10) MR. TOPLITZ: Mr. Cohen, it is now (11) coming to the close of the time you were (12) allotted, so if you have one or two more (13) questions, please ask them.

(14) MR. COHEN: I'm not going to be (15) burdened by time when part of the time we (16) spent was looking for documents.

(17) MR. TOPLITZ: Let's not play games like (18) that, Mr. Cohen. You are an experienced (19) attorney, and you were given an hour. And I (20) am being generous for going overtime. Now, I (21) am going to give you a few more questions.

(22) Ask them. Okay?

(23) MR. COHEN: Your generosity is (24) overwhelming.

(25) Q. BY MR. COHEN: Doctor, can you tell me if there

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(1) is any mention of parenchymal disease pathologically in your (2) report?

(3) A. In my report?

(4) Q. Yes.

(5) A. Just in terms of attribution to the importance (6) of a fiber burden study.

(7) Q. Doctor, with regard to your description of the (8) medical doctors being "careless -- "

(9) A. Yes.

(10) Q. -- with regard to their medical opinion, do you (11) believe that you are competent to accuse treating physicians (12) of being "careless" and using words in terms of their medical (13) treatment of a patient?

(14) MR. MacLACHLAN: Objection as to form (15) and multiple grounds.

(16) Q. BY MR. COHEN: Doctor?

(17) A. What about it?

(18) Q. Do you believe that you are competent to state (19) that a physician, with regard to describing

a disease of the (20) human body, is "careless" from a medical standpoint in using (21) the words and phrases that are used by the treating (22) physicians?

(23) A. Are you finished? Is that the question that is (24) pending?

(25) Q. That is the question that is pending, Doctor.

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(1) A. Then I will answer the question that is (2) pending. I used the word careless to describe the use of (3) terms such as asbestos exposure, ferruginous bodies, and (4) their use as synonyms. They are not the same. Asbestos (5) exposure is to asbestos fiber, ferruginous bodies is a non- (6) specific term which may or may not reflect the asbestos (7) exposure. The use of these two words in the descriptive (8) provided by your treating physicians and your pathologists (9) was interchanged. That is being careless. That is being non (10) specific.

(11) Q. You are not saying, Doctor

-- (12) A. I am not commenting on their medical expertise (13) nor their competence to treat an individual. I am merely --

(14) let me be kind and generous of spirit. I am using my (15) prerogative as an editor of a journal in which phrases are (16) used which do not properly describe that which is presented (17) in the body of the text or that data which is provided in (18) some manuscript. It is careless. It is sloppy, but I didn't (19) use sloppy.

(20) Q. Doctor, if the treating physicians, because of (21) medical conditions and criteria, have ascribed Mr. Minardi as (22) having parenchymal asbestosis, do you believe that your (23) competence could challenge that medical diagnosis?

(24) A. Of course not.

(25) MR. TOPLITZ: Your time is running out.

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(1) You have two more because we are concluding (2) the deposition.

(3) Q. BY MR. COHEN: Doctor, did you have tissue or (4) blocks available from which you could have done lung content (5) analysis?

(6) A. That was my first request of Mr. MacLachlan.

(7) Q. After you made that request of Mr. MacLachlan, (8) what response did you get?

(9) A. He said that all of the tissue

blocks were in (10) the hands of others.

(11) Q. The answer is that Mr. MacLachlan never (12) provided you with the ability to perform what you perceived (13) would be the controlling issue, that is, lung content (14) analysis. Is that correct?

(15) MR. MacLACHLAN: Objection. Mr. Cohen, (16) if you check the court's records, you will see (17) there is a court order on file that this is a (18) pretrial motion in limine. This has all been (19) subject to court action prior to this, so (20) there is no basis for that question at all.

(21) MR. LONG: There absolutely is, (22) Mitchell. Just persist in that examination.

(23) MR. COHEN: Excuse me, Mr. MacLachlan, (24) I didn't hear an answer to my question.

(25) Q. BY MR. COHEN: Doctor, as a result of the

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(1) request that you made of Mr. MacLachlan, which would have (2) permitted you to perform what you believed to be the key (3) decisive tie-breaker in this trial, did you receive any lung (4) tissue of Mr. Minardi that would enable you to perform a lung (5) content analysis, yes or no, and then you may answer or say (6) anything else that you may desire?

(7) MR. MacLACHLAN: Just note my (8) objection.

(9) MR. COHEN: Your objection is noted.

(10) A. The answer is, no. And it is my understanding (11) from Mr. MacLachlan that he was unable to obtain those (12) materials. There were other defendants that had those (13) materials.

(14) MR. TOPLITZ: The deposition is now (15) concluded.

(16) MR. COHEN: Excuse me.

(17) MR. TOPLITZ: No. The deposition is (18) now concluded. I gave you warning. The (19) deposition is now over and being concluded.

(20) MR. BELL: No, don't.

(21) (The parties on the telephone were (22) disconnected.)

(23) MR. BELL: Excuse me. I would like to (24) put on the record that Mr. Toplit (25) disconnected the connection without letting us

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(1) have any chance of putting anything else on (2) the record. We have not been provided with (3)

any abstract, which we have demanded to be (4) provided and which the doctor testified that (5) he was shown.

(6) MR. STRAUSS: Nor have some of the (7) opinions expressed today been contained in his (8) report, and this judge has made a rule in this (9) case that opinions expressed in the trial have (10) to be limited to what is actually in the (11) report that's been furnished by counsel.

(12) MR. BELL: And we reserve our right, (13) because we think this deposition was ended (14) abruptly, to bring Dr. Langer back for this (15) phase and for the next phase of the trial, for (16) a liability deposition.

(17) MR. TOPLITZ: Let us note that the time (18) is 6:30. The deposition was for an hour. We (19) had a 5-minute break, and it is beyond the (20) time.

(21) MR. BELL: While we are still on the (22) record, you have agreed on the record to give (23) us a copy of the papers that are in the (24) doctor's hands. Can we have them before we (25) leave tonight?

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(1) MR. HUGHES: Yes, certainly. If you (2) stay here, we are going to make the copies.

(3) MR. BELL: Off the record.

(4) (Pause in proceedings.)

(5) (Plaintiffs Exhibit P-1 was marked for (6) identification.)

(7) MR. BELL: I have Mr. Cohen on the (8) telephone, and I am going to repeat verbatim (9) everything Mr. Cohen says so the reporter can (10) take it down since we cannot get the (11) conference call to work at this time.

(12) (Mr. Bell is repeating Mr. Cohen (13) verbatim via telephone.)

(14) MR. BELL: Since we were cut off (15) intentionally by Mr. Toplit, because he did (16) not like the way the examination was going, (17) Mr. Toplit unilaterally severed a conference (18) call connection in violation of plaintiffs (19) rights and in direct defiance of our ability (20) to take a full and complete discovery (21) deposition.

(22) I strenuously object to both the (23) tactics and obstructive nature of Mr. Toplit (24) and Bethlehem Steel, and we move at this (25) juncture for sanctions to be imposed for this

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(1) unwarranted conduct.

(2) I also make a motion to preclude Dr.

(3) Langer from giving testimony

since we do not (4) believe he is competent to render any opinion (5) whatsoever in connection with Mr. Minardi's (6) condition.

(7) Furthermore, we move to preclude the (8) testimony since the defendant had the ability (9) to have the lung content analysis performed, (10) or at least specifically requested and have (11) provided to Dr. Langer the tissue that was (12) taken from Mr. Minardi.

(13) They, therefore, were under the (14) complete control of the ability to perform the (15) test to which their own doctor says would be (16) critical to his opinion.

(17) Dr. Langer has rendered what is, in (18) essence, a medical opinion that, quote, "no (19) definitive conclusion can be reached," end (20) quote, with regard to the medical diagnosis of (21) Mr. Minardi.

(22) We believe, by his own admission, that (23) he cannot make that opinion because he is (24) incompetent to do so. We believe that under (25) the Supreme Court decision of Daubert vs.

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(1) Merrell, Dow Pharmaceutical, Inc., 113 Supreme (2) Court, that this testimony should be (3) precluded.

(4) We further object to Dr. Langer's (5) testimony since we were not provided with the (6) updated curriculum vitae from which we could (7) have asked questions and were not provided (8) with any abstract which he apparently was (9) shown by defense counsel but which does not (10) appear in his records.

(11) (Pause in proceedings.)

(12) MR. TOPLITZ: Let me make my statement.

(13) Mr. Cohen has made a lot of statements on the (14) record which I disagree with, but the most (15) important one to start off with is that Mr.

(16) Cohen was notified several times that his (17) allotted time of one hour, which was (18) established by court order, the direction of (19) the court, had expired. I was courteous (20) enough to keep telling him that he had a few (21) more questions, and he kept continuing the (22) deposition. When I looked at my watch, it was (23) 6:30 p.m. and even giving the 5 minutes (24) allotted for the break, which was then really (25) five minutes, we had expended more than 10

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(1) minutes beyond the hour, and if Mr. Cohen said (2) to me that he had one or two more questions, I (3) would have continued, but he did not and, (4) therefore, I concluded the deposition.

(5) Now, as to the various motions that he (6) claims that he is going to make, those will be (7) responded to in court, and this is not the (8) place to make a motion but the most proper (9) place to make the motion is before the judge.

(10) Now I am going to ask the court (11) reporter to read what the objections of Mr.

(12) Cohen are to Mr. MacLachlan over the (13) telephone, and then have Mr. MacLachlan tell (14) the reporter over the telephone whatever (15) additional comments and statements he would (16) like to make. But I think Mr. Cohen, by his (17) objections to the cut-off, is bordering on the (18) ridiculous, and I just will leave the rest to (19) the record.

(20) I request that the reporter please read (21) back the objections and the statements made by (22) Mr. Cohen to Mr. MacLachlan when he is on the (23) phone.

(24) (Pause in proceedings.)

(25) (The requested portion was read back to

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(1) Mr. MacLachlan over the telephone in the (2) presence of Mr. Bell and Mr. Toplitz.)

(3) (The deposition was concluded at 6:30 (4) p.m.)

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REPORTER'S CERTIFICATE

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I, Kerry D. Halpern, Shorthand Reporter, certify;

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which time the
witness was put under oath by me;

That the testimony of the witness and all of the
objections made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney or of any of the parties, nor
financially interested in the action.

I declare under penalty of perjury under the laws
of the State of New York that the foregoing is true and
correct.

Dated this 4th day of February, 1997.

KERRY D. HALPERN, Shorthand Reporter

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STATE OF)
COUNTY OF) SS.

I, the undersigned, declare under penalty of
perjury that I have read the foregoing transcript, and I have
made any corrections, additions, or deletions that I was
desirous of making; that the foregoing is a true and correct
transcript of my testimony contained therein.

EXECUTED this day of ,
19 at ,
(city) (state)

WITNESS

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REPORTER'S CERTIFICATION OF CERTIFIED COPY

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I, KERRY D. HALPERN, Shorthand Reporter in the
State of New York, certify that the foregoing pages 1 through
66, constitute a true and correct copy of the original
deposition of DR. ARTHUR M. LANGER, taken on Tuesday,
February 4, 1997.

I declare under the penalty of perjury under
the laws of the State of New York that the foregoing is true
and correct.

Dated this 4th day of February, 1997.

KERRY D. HALPERN, Shorthand Reporter

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