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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

BEFORE THE HONORABLE JUDGE COLEMAN F. FANNIN, DEPARTMENT 11

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BOB ALAN SPEAKE,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, et al.,

Defendants,

COPY

NO. 160993

VOLUME II Dr. Gerritt Schepers

REPORTERS' TRANSCRIPT OF PROCEEDINGS

MONDAY, DECEMBER 14, 1981 - 1:35 P.M.

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control devices, the disease could have been eliminated.

Q. Are you saying, Doctor, then that utilizing then available techniques and technology factories such as the one shown here could have been controlled in the 1940's so that someone who went to work for the first time in the 1940's in an asbestos-using facility could have been kept from developing asbestos disease?

A. Absolutely.

Q. Let me move from the question of dust levels to some of your own experiences when you were in this country in the 1949 to 1950 period.

You said that you spent about three months all together at Saranac. Can you tell us what, if anything, you learned during that period about the existence of asbestos-related diseases in the Johns-Manville Corporation?

A. There were two, really three, parameters of inquiry that I pursued that incidentally involved the Johns-Manville Corporation. I didn't single them out purposely. They were just there to study.

The first was the availability in the laboratory of a large accumulation of lung tissues from diseased employees. The company had been sending specimens to Dr. Gardner, the former director, subsequently Dr. Vorwald, V-O-R-W-A-L-D, the next director, and later when I came to be the director, then to me.

Those specimens had been arriving at the laboratory from at least 1942, because a continuous index of cases was on file and all the specimens were promptly cataloged and

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identified by names and numbers and source of origin.

It was that material which I particularly had an opportunity to study. It was made available to me through the courtesy of Dr. Vorwald who was then the director.

Q. Let me interrupt you for a moment, Doctor, and I would like to show you a document, a photocopy, and ask you if you recognize that document?

A. Oh, yes, sir.

Q. Can you tell us, please, what it is?

MR. LUNDQUIST: Could we have a copy of it?

MR. KAZAN: You can even see it.

MR. BROWN: Is that a marked exhibit?

MR. KAZAN: Not yet.

THE COURT: It should be. We will take time out and mark it in front of the jury so they can watch our fascinating experience. Any others that you want to use with this witness, because they will be marked, too.

MR. KAZAN: Not at this time, your Honor.

THE COURT: Any others that are not marked that you wish to use with this witness?

MR. MOORE: This will be a while, your Honor, before we --

THE COURT: I would imagine. Any others that you want marked to use with this witness?

MR. KAZAN: Yes. We can do it at a recess.

THE COURT: We will indeed do it at a recess.

MR. KAZAN: Thank you, your Honor.

THE COURT: You are entirely welcome. You may

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question.

MR. KAZAN: Q. Okay. Let's go back, Doctor, to the period that you were at Saranac in 1949 to 1950. You indicated that there were accumulated cases available for review?

A. Yes.

Q. And did you have any occasion to review any of those old cases?

A. Yes, sir.

Q. Could you tell us what kinds of materials you looked at and what you found?

A. These were examples of lung disease, asbestosis with its complications, and there was a particular group of cases of lung cancer, 11 of them with 2 mesothelioma cases that was among that group that had come from the Canadian asbestos mines and mills.

Those are the materials I reviewed during the time I was there. I also reviewed many of the specimens I obtained from animals that had gone through asbestos dust exposure studies of which there were many thousands that were on the files of the laboratory.

Next I went to visit the Canadian asbestos mines and mills to see there how dust was created, what steps they had taken to control the dust, and what efforts were being made by the medical staff to identify disease in the workers in those mines and mills.

Q. Did you have occasion to meet with any physicians employed by the Johns-Manville Company during your trips to Canada?

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A. Yes.

Q. With whom did you meet?

A. Well, I met with Dr. Kenneth Smith. That's where I met him first. He was at that time the Medical Director for the Johns-Manville Canadian operation. I also met with other management personnel. I have by now forgotten their names, but I met with a whole series of persons, personages in the management field at those mines and mills.

Q. Did you have occasion to discuss these 11 cancer cases that you mentioned with Dr. Smith?

A. Yes, sir. I discussed that with him for the particular reason that one of the problems we had encountered in South Africa was that we had received advices from the American asbestos industry officials that cancer of the lung did not occur here in this country, and it was therefore probably a European or African invention.

We were of course astonished by that information, and indeed held back our own legislation and recommendations about making cancer a compensable disease in South Africa by virtue of our respect for the American scientific judgments on the subject.

So, prior to that the German government had already determined it a compensable disease in 1943 and the Czechoslovakian government in 1947 and the British government in around 1949, but we held back because we felt the advice from America was important from a scientific point of view.

(CONTINUED WITHOUT INTERRUPTION)

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Q. Are you talking now about --

MR. LUNDQUIST: Excuse me. If that was the conversation, I have no objection. If it wasn't the conversation, I'd ask that the answer go out as nonresponsive.

He was asked what the conversation was, and then we had a long description of something.

THE COURT: You can cross examine in the area and find out whether or it was or wasn't.

MR. KAZAN: Q. In your answer, Doctor, you referred to cancer as a compensable disease.

Were you speaking with reference to asbestos exposure?

A. Yes, sir.

Q. All right. And so one of the things you were interested in finding out when you came to the United States for that year was to look into the American experience with asbestos-related cancer.

A. Yes, sir.

Q. Did you, during your trips to Canada, discuss these 11 cases and the question of asbestos and cancer with Dr. Smith?

A. Yes, I did, sir.

Q. What discussion did you have, please?

A. I told him of the existence of these cases. He was unaware of the existence.

And then we discovered the one possible explanation was that the manner in which those cases arrived at the Saranac Laboratory.

Q. Let me interrupt you for a moment, Doctor, and ask whether

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the usual method that cases and tissue came to a laboratory came for investigation was on referral from other physicians.

A. That was the normal way in which they came. "Normally" in the sense of the majority way. There's no normality about it in a judgmental way.

Q. That was the common practice, though.

A. That was the more common practice.

Q. All right. Was that the practice that you found had been followed with respect to these cancer cases from Johns-Manville in Canada?

A. No. They had not been referred to the laboratory by Dr. Smith. He was not aware of them.

They had been brought physically into the country from Canada by automobile by a Mr. Ivan Sabourin -- S-a-b-o-u-r-i-n -- the chief attorney for the Quebec Asbestos Mining Association.

Q. All right. And from your review of the Saranac files, did you determine whether these cases had been examined and reported upon?

A. Oh, yes. They had been reported on back to Mr. Sabourin, because we always reported back to the individual who presented the material to the laboratory.

Q. Okay. Have we now covered your discussion with Dr. Smith on the question of cancer and asbestos in the 1949-1950 period?

A. Yes.

Q. All right. Did you have occasion during that same period to talk with him about the incidence of asbestos or other kinds of diseases related to asbestos exposure?

A. Yes, sir.
Q. Can you tell us, please, what the substance of those discussions was?
A. Yes. Dr. Smith presented examples to me in the form of X-rays of the types of asbestosis that he had seen in the employees of Johns-Manville Corporation.

At that point there were other cases also demonstrated to me by another physician who was the medical director of a clinic called the Thetford Clinic -- T-h-e-t-f-o-r-d -- Dr. Paul Carter, C-a-r-t-i-e-r.

THE COURT: Excuse me, sir, for just a moment. You used the term "Johns-Manville Corporation." As you used that term in your answer a moment ago, would you tell us what you meant?

THE WITNESS: Yes, sir. The -- there was the Johns-Manville Canada Corporation. And the mines and mills were known and stationary, and people called themselves the Johns-Manville Corporation.

THE COURT: All right. As you used the term, did you mean Johns-Manville of Canada?

THE WITNESS: At that time, sir.

THE COURT: All right, sir. Thank you.

THE WITNESS: Uh-huh.

MR. KAZAN: Q. Had you finished the answer to the question, Doctor?
A. I don't know where I stopped.

THE COURT: Well, that's my fault for interrupting you, but I did want to clear that point.

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So I'll have the court reporter read back the question and the portion of your answer up until my interruption, sir. And if you wish to add anything further, you may continue on.

If you would, Ginger.

(Last question and answer read by the reporter.)

MR. KAZAN: Q. Had you completed your answer?

A. Well, sufficiently so that one can start anew.

Q. Okay. From your review of the X-rays with Dr. Smith, were you able to determine whether the kind of asbestosis being seen in Canada was similar, on X-ray, to the kind you were experienced with from South Africa?

A. It was a somewhat different type of asbestosis characterized by what one would call fine fibrosis of the lung versus coarse fibrosis, as shown in the African-induced disease.

And it had a lesser component of pleural reaction. It was there, but it was not as coarse and there was not as much calcification in the pleura as I had been accustomed to see in Africa.

Q. Now, during that year that you spent on this commonwealth fellowship, did you have occasion to visit any of the other Johns-Manville facilities outside of Canada?

A. Yes.

Q. Which ones were they?

A. I went to see another manufacturing plant, of the now United States Johns-Manville Corporation, in a place called Waukegan, in Illinois. It's the bottom of Wisconsin. It could be Wisconsin or Illinois. It's over there north of Chicago.

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And I saw there how they manufactured cement asbestos products, and reviewed with the medical director of that company the health problems that he had seen, and reviewed with the engineers their methods of identifying the dust problem in their factory.

Q. Did you visit other Johns-Manville facilities as well?

A. The third one that I visited was here in this state, at a place called Lompoc, California. That was not an asbestos industry, it was a diatomaceous-earth industry at that time.

Q. And were you accompanied by anybody from either Saranac or New York University on any of these visits to Johns-Manville facilities?

A. My visits to Canadian Johns-Manville were alone. My visit to Waukegan was by myself. My visit to Lompoc was in the company of Dr. Lanza of the New York Institute, and also a Dr. Reginald Smart, of Los Angeles, and who was an internist physician who had done research on the Lompoc type of lung disease caused by flux calcined diatomaceous earth.

Q. Now, I gather that your course of study was somewhat informal during that year period.

A. Oh, yes, sir.

Q. Were there any written requirements, papers, examinations, anything of that sort?

A. Well, that was sprung on me in May or June of the year, and I was told that I had to write an examination and write a thesis, both of which I didn't want to do because I hadn't come for any degree purposes. I'd merely come to study and learn things.

But Dr. Lanza insisted on it, that I had to do

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these two chores.

Q. What did you do when he insisted?

A. Well, reluctantly complied.

Q. Okay. And did you find a relatively painless way to comply with his directive?

A. Well, the main reward of doing so was not having him angry with me or perhaps pleased with me that I did what he asked me to do.

But they also awarded me a diploma to say that I'm the first graduate of the institute, etcetera.

Q. All right. Can you tell us, Doctor, how did you comply with this writing requirement that you discovered at the end of your year?

A. Well, I -- economically, I'd say. I'd been required by the South African government to write a technical appraisal for them of my visit in the United States, because although the fellowship paid me my additional expenses for studying here, I had a family back in South Africa that had to be supported.

And so the government continued my salary back there. And in exchange for that form of kindness to me, the government required that I should report back to them what I had learned during the year of study.

So as I went along during my months of study here, I made notes and observations and organized these into the form of a technical report.

And that is why I say I did it economically, and I offered that same report to Dr. Lanza for the thesis that he'd asked me to write.

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Q. Kind of like using the same term paper in three courses.
A. Carbon copy, yes, sir.
Q. Did you turn in this written document to Dr. Lanza?
A. Yes, I did, sir.
Q. Did you ever hear anything about that written document again?
A. Oh, yes, definitely.
Q. Would you tell us, please, what happened next?
A. Well, the next I heard of it, a little while later, was that Dr. Lanza told me that there were officials --

MR. LUNDQUIST: I'm going to object to the hearsay conversation. Also, unless he can produce this report, which I don't believe he has any record of, I think all of this conversation about the report itself violates the best-evidence rule, and I think he's made no endeavors to obtain the report from wherever he left it, your Honor.

But the first question right now is hearsay, and I object to what he's talking about as hearsay.

THE COURT: I can't tell. It's clearly hearsay; I mean, that goes without saying.

MR. LUNDQUIST: But the conversation with Dr. Lanza is hearsay.

THE COURT: Obviously. I mean, certainly it is.

MR. LUNDQUIST: And it's objectionable. I object to it.

THE COURT: Well, I don't know whether it is or it isn't objectionable. I mean, there are hearsay -- there's hearsay and then there's hearsay, and I'm not looking for an exception right now.

I don't know whether or not this goes to this gentleman's qualifications; I don't know whether it goes to his expertise. I have no way of knowing the direction of import of the question at this juncture.

MR. LUNDQUIST: If it's to the latter, then I don't have an objection.

THE COURT: Well, I don't know.

MR. KAZAN: My turn?

THE COURT: Uh-huh.

MR. KAZAN: We don't need to talk about what Dr. Lanza told Dr. Schepers at that time at all.

THE COURT: That took care of the problem.

MR. KAZAN: Q. Let me ask you this, Doctor. After you turned the report in to Dr. Lanza, did you receive any communication from the Johns-Manville Corporation or any of its officers?

A. I ended up in the office of the chief counsel of the Johns-Manville Corporation in New York City.

Q. What was that gentleman's name?

A. Mr. Vandiver Brown.

Q. Did anyone accompany you to his office?

A. Dr. Lanza.

Q. Whose idea was this visit?

A. Mr. Vandiver Brown's idea.

Q. And do you recall your conversation with Mr. Brown on that date?

A. He had a copy of my thesis on his desk.

Q. Do you know where he got that copy?

A. Well, the only source could have been Dr. Lanza/

Q. Was the only copy that you distributed to anyone the copy you gave Dr. Lanza?

A. Yes, sir.

Q. And was that the copy that was on Mr. Brown's desk?

A. Yes, sir.

Q. All right. And what, if anything, did Mr. Brown tell you with respect to that report?

A. He asked me to suppress it and not publish the information in it.

(CONTINUED WITHOUT INTERRUPTION)

Q. Did he explain to you why?
A. He said it would be harmful to the economic interests of his company.
Q. Can you be more specific with respect to what portions of the report he found objectionable?
A. He did not wish to have the fact revealed that cancer had been reported in the Canadian asbestos miners and millers.
MR. LUNDQUIST: Could we have that date of that conversation, Doctor?
THE WITNESS: That was in August of 1950.
MR. LUNDQUIST: August of 1950?
THE WITNESS: Yes, sir.
MR. LUNDQUIST: Thank you.
MR. KAZAN: Q. What did Mr. Brown tell you with respect to that report?
A. Well, I can -- I think I would be told that I am telling hearsay if I told you what he said, but I can tell you what I said.
Q. That's the Judge's job to tell you if you can't answer. So, would you tell us please as best as you can recall what Mr. Brown told you that he found objectionable or inappropriate with respect to your publishing this information?
A. Well, the one was the cancer issue which he did not want to have revealed. The other was the fact that I had mentioned the extreme severity of the asbestotic disease which I had seen in the cases from Saranac, and also the extreme dustiness of the working environment of the men at the Waukegan Plant and at the Lompoc Plant.

Q. Did Mr. Brown in any way tell you that this was confidential or privileged information?

A. He suggested that I had been their guest, their privileged guest, and therefore should respect the confidence of the company and not mention what I had seen.

Q. And what, Doctor, was your response?

A. I told him that I would release the information to the South African Government, because that was my duty.

Q. Did you in fact do so?

A. Yes.

Q. Do you know what happened to your report once it was delivered by you to the South African officials?

MR. LUNDQUIST: I am going to object if he's going to give us any hearsay in response to this unless he knows of his own knowledge, your Honor.

THE COURT: Well, I think that's what it calls for. Do you know of your own knowledge what occurred?

THE WITNESS: Yes. My'-- there had been communication between our --

MR. LUNDQUIST: Excuse me, Doctor. Was this told to you or did you observe it and determine it by yourself?

THE WITNESS: I was told by the Director of the Pneumoconiosis Bureau.

MR. LUNDQUIST: Okay. That's as far as it goes. It's hearsay, and I object to it.

THE COURT: It sounds like it.

MR. KAZAN: Q. Doctor, did your report ever see the light of day once it got into the South African

Government?

A. No, it was suppressed.

MR. LUNDQUIST: May the last go out?

THE COURT: Yes. The "no" may stay in. The "it was suppressed" will go out, and the jury will be admonished to disregard it.

MR. KAZAN: Q. Now, when you came to Saranac in '54, did you become acquainted with a radiologist in Saranac by the name of Leonard Bristol?

A. Yes, sir.

Q. And what was his connection, if any, with the laboratory or the hospital?

A. He was a radiologist, practicing radiologist in the City of Saranac Lake, and Dr. Vorwald had signed him on for the purpose of interpreting some of the X-rays that were being referred to Saranac Laboratory during Dr. Vorwald's time.

So, I inherited Dr. Bristol in that capacity.

Q. Was one of your responsibilities as Director of the laboratory to exercise some sort of quality control or supervision over the work of staff members?

A. Yes, sir.

Q. Did you have occasion to exercise that function with respect to Dr. Bristol?

A. Yes, sir.

Q. Would you tell us, please, what conclusions you reached with respect to the quality of Dr. Bristol's work?

A. I made the determination that it would be better for the industry if I reviewed all the X-rays myself and released

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them over my signature.
Q. Did you review X-rays that Dr. Bristol had interpreted before you saw them?
A. Yes, sir.
Q. And were you able to form any appraisal as to the adequacy or appropriateness of his interpretation of those films?
A. The reason why I made the change and gave myself the extra work was because I was not satisfied that he knew sufficient about this subject to be able to give appropriate reports.
Q. All right. Did you find that his reports were inaccurate or erroneous in any particular direction?
A. They were consistently under-reporting the existence of disease.
Q. Will you explain to us, please, what you mean by under-reporting the existence of disease?
A. Well, simply that if disease is visible and evident on an X-ray, it is the duty of the radiologist to say so. And if the radiologist says he does not see it, and this occurs in a regularly occurring pattern, then you would have to come to the conclusion that that is not the best way of reporting the X-rays.
Q. Did you find such pattern to be the case with Dr. Bristol?
A. Yes, sir.
Q. Did Dr. Bristol continue to interpret X-rays at the request of the industry during the years that you were the Director of Saranac?
A. What he did privately, I don't know, sir. He was a

privately practicing doctor, so I don't know what he did privately. I could only control what he did for the laboratory.

Q. And once you intervened in these reports, did Dr. Bristol continue to send out written X-ray interpretations on stationery or report forms of the laboratory?

A. No, the reports during that period were on stationery with my counter-signature.

Q. Going back to, staying in the period of '54 to '57, did you have occasion during that time period to discuss with anyone from Johns-Manville the question of labeling any kind of dust-producing substances or products with respect to their potential health hazards?

A. Yes, sir.

Q. With whom did you discuss these questions?

A. I discussed it with Dr. Kenneth Smith in his capacity as Corporate Medical Director, and with Mr. Hugh Jackson, the Chief Industrial Hygienist of the Johns-Manville Corporation.

Q. And what dust-producing substances did you discuss with them?

A. The first discussion pertained to the labeling of the product produced at Lompoc, California, and that was a substance known as Ceelite, C-E-E-L-I-T-E.

MR. LUNDQUIST: I'm going to object to the Lompoc conversations as irrelevant to this case.

THE COURT: Do you wish to be heard? They appear to be. I don't know.

MR. KAZAN: Yes. It is relevant by way of

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foundation and comparison, your Honor. It's a foundational question. Let me go on a little further, if I may, from another direction.

THE COURT: All right. Fine.

MR. KAZAN: Q. All right. Did you discuss any substances other than Ceelite?

A. Yes, sir. The Johns-Manville chrysotile product, the material produced in Canada.

Q. All right. And were these separate discussions where you would discuss one product at one time and the other product at another time?

A. No, they were comparisons.

Q. All right. Can you tell us in a general sense what relevance the comparison between the two substances would have?

A. They both could cause lung disease. If brought together in the same lung, they could produce a far worse type of disease, a more difficult disease to diagnose and treat, and it therefore -- and thirdly, the Ceelite was not clearly differentiated in external appearance from asbestos.

And what I did with Dr. Smith and Mr. Jackson was to place two jars of the material which we had sampled in our museum alongside of one another and said, "now here are two products that can equally cause disease in human beings. Your company make them both. Why do you bother to put labels on the Ceelite as their harmfulness and not on the chrysotile and the asbestos which is used in a much more diversified manner and less easily identified microscopically?"

Q. Now, you said that they were both capable of-

producing disease. Based on what was known to you at that time and to medical science in general, can you compare the relative health hazards in the 1950's of Ceelite and asbestos?
A. They were separate types of effects. They were both harmful. The purpose of comparing them is that Ceelite and asbestos are often used together in certain industries. There was also a question of contaminating the Ceelite by shipping it in bags which had previously been used for shipping asbestos so that when the Ceelite was delivered to a point of use, it might be Ceelite plus asbestos, because some of the old asbestos from the inside of the empty bag could be mixed with it.

Those were the issues we discussed. Now, from the point of view of their relative harmfulness, the Ceelite could cause harm in the lungs in certain ways, and it had a propensity for scarring, causing massive fibrosis in the lungs which was different from the manner in which the asbestos did its harm. Both did harm. Both were about equally harmful.
Q. All right. And what if anything was the resolution of your discussions with Dr. Smith and Mr. Jackson with respect to the labeling of asbestos?
A. Well, just simply that we discussed the need for it. They seemed to agree with me that it was necessary, but of course they were not doing the labeling and they weren't making those decisions. Other people in the company would be making those decisions.

They were only the technically qualified people to make the recommendations. They said they would recommend