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*****VOLUME I - TESTIMONY OF DAVID KIRSTEIN*****

In the matter of JUDY BLACKBURN, Individually
and as Administratrix of the Estate of GERALD
LESLIE BLACKBURN, Deceased, ET AL,
Plaintiffs,
-against-
A.C. & S., INC., ET AL,
Defendants.

PROCEEDINGS: Held in the above entitled matter
at the Trudeau Institute in the
Village of Saranac Lake, New York,
on the 28th day of August, 1998.

SARA J. PERKETT, COURT REPORTER
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S T I P U L A T I O N S

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TAKEN PURSUANT TO THE TEXAS RULES OF
CIVIL PROCEDURE AND THOSE RULES APPLY THROUGHOUT

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V O L U M E I C O N T E N T S

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5 Testimony of DAVID KIRSTEIN

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Examination by Mr. Kennedy

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Examination by Mr. O'Hara

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1 MR. SUDDLESON: Todd Suddelson.

2 Just want to state on the record before we get
3 started that this deposition is being taken
4 pursuant to the Texas rules of Civil Procedure,
5 those rules will apply to this deposition.

6 This deposition was noticed in a number of
7 different cases that the appearance by
8 defendants in these cases should not be
9 considered as waiver of service of process in
10 any other case or an appearance in any other
11 case they have not already been sued in, and I
12 think it's agreed that an objection voiced by
13 one defendant is good for all.

14 MR. KENNEDY: Okay.

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1 DAVID KIRSTEIN,
2 having been first duly sworn, testified on his
3 oath as follows:
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6 EXAMINATION BY MR. KENNEDY:

7 BY MR. KENNEDY:

8 Q At the outset this is Kevin Kennedy
9 for the Plaintiffs. I just have three initial
10 exhibits I would like to go ahead and enter.
11 They are Plaintiff's Kirstein A which is the
12 Plaintiff's Notice of Deposition of Mr.
13 Kirstein. Plaintiff's Exhibit Kirstein B which
14 is the cross notice by other defendants for Mr.
15 Kirstein's deposition, and Plaintiff's Exhibit
16 Kirstein C which was the notice sent to counsel
17 changing the time to noon.

18 Could you state your name?

19 A David Kirstein.

20 Q And could you state your home address,
21 please?

22 A PO Box 31, Rainbow Lake, New York.

23 Q And could you state your business
24 address?

25 A Trudeau Institute, PO Box 59, Saranac

1 Lake, New York.

2 Q And your date of birth?

3 A 9-28-48.

4 Q And could you state your social
5 security number, please?

6 A 151-44-6353.

7 Q Could you just give me an overview of
8 your educational background starting from high
9 school graduation working forward.

10 A With dates?

11 Q There is no need.

12 A Graduated from Morristown, New Jersey,
13 high school, attended Bates College. Received a
14 Bachelor of Science Degree in biology and went
15 into Villanueva University and received a Master
16 of Science Degree in biology.

17 Q And by whom are you currently
18 employed?

19 A Trudeau Institute, Incorporated.

20 Q And that is located here in Saranac
21 Lake?

22 A Yes, it is.

23 Q And for how long have you been
24 employed by the Trudeau Institute?

25 A Twenty-five years.

1 Q Could you, from your initial
2 employment with the Trudeau Institute could you
3 give me a review of the different jobs you have
4 held within the Trudeau Institute, just a brief
5 description.

6 A I was hired and, hired in 1973 as a
7 research assistant, was promoted to senior
8 research assistant sometime a couple of years
9 later. In 1980 I assumed administrative duties
10 as administrative assistant to the director, and
11 as those duties expanded over the years there
12 were a couple job title changes but it was
13 basically the same job and I am now chief
14 administrator officer.

15 Q Okay. Mr. Kirstein, could you just
16 provide me with a brief summary of the Trudeau
17 Institute and of the Saranac laboratories of the
18 Trudeau Institute?

19 MR. O'HARA: Objection,
20 foundation, lack of personal knowledge. Joseph
21 O'Hara.

22 A The Trudeau Institute is a not for
23 profit basic biomedical research institute
24 pursuing basic research in immunology and
25 immunity to infectious diseases. It was opened

1 in 1964. I was employed in 1973, and previous
2 organizations I don't have any direct knowledge
3 of.

4 Q As part of your duty and
5 responsibilities as an employee of the Trudeau
6 institute do you serve as the custodian of
7 historical records and files for the Trudeau
8 institute?

9 A Can I speak with counsel?

10 MR. KENNEDY: Certainly.

11 MR. DWYER: Let me speak on the
12 record. Just the phraseology custodian.
13 Identify myself on the record, I'm Matthew Dwyer
14 of Smith, Dwyer and Bliss, local counsel to
15 Trudeau Institute, Incorporated, and to the
16 extent that counsel has used the word custodian
17 we object. We don't accept any duty with
18 respect to anything that might be shown as
19 documentary exhibits today but we understand
20 that Mr. Kirstein is chief administrative
21 officer here, does keep the institute's business
22 records and historical records.

23 Q Okay. Let me ask this question,
24 then. To the extent of your knowledge, does the
25 Trudeau Institute maintain documents which were

1 made or kept and received in the regular and
2 ordinary course of business?

3 A Yes.

4 Q Mr. Kirstein, have I asked you to
5 determine whether certain documents which I have
6 previously obtained copies of through a search
7 of the historical documents of the Saranac
8 Laboratory which are found in the historic
9 records of the Trudeau Institute, have you had
10 an opportunity to review those documents?

11 MR. O'HARA: Wait, Mr. Kirstein,
12 I'm going to have to ask you to wait until I
13 can --.

14 A I understand.

15 MR. O'HARA: I would like to have
16 the question re-read, please.

17 Q Have I asked you, Mr. Kirstein, to
18 review documents which I have copied from the
19 historical records which are maintained at the
20 Trudeau Institute?

21 MR. O'HARA: I object to the
22 counsel's characterization of the documents. If
23 you want to just ask him if you have asked him
24 to review documents, I will let you ask that,
25 but I'm not going to let you characterize what

1 the documents are.

2 MR. KENNEDY: You have your
3 objection. You can answer.

4 MR. O'HARA: Let me hear the
5 question again.

6 MR. KENNEDY: Do you want to read
7 it back to counsel?

8 (Pending question was re-read.)

9 Q And your answer was, Mr. Kirstein?

10 A Yes.

11 Q At this point I'm going to go ahead
12 and identify those documents for the record.

13 MR. O'HARA: You're going to
14 identify the documents that you asked Mr.
15 Kirstein to look at?

16 MR. KENNEDY: Correct.

17 MR. O'HARA: Okay. How are you
18 going to identify the document?

19 Q I'm about to say that, Counsel, if you
20 will just relax.

21 I will start by stating the exhibit number
22 followed by a date and just a general
23 description of the document, be it
24 correspondence, the from and to, memorandum,
25 what have you.

1 Kirstein 1, February 12, 1943,
2 correspondence from Bowes, B-O-W-E-S, to
3 Gardner.

4 Kirstein 2, February 23, 1943,
5 correspondence, Gardner to Bowes.

6 Kirstein 3, March 1, 1943, correspondence,
7 Bowes to Gardner.

8 Kirstein 4, March 3, 1943, correspondence,
9 secretary to Dr. Gardner to Bowes.

10 Kirstein 5, March 12, 1943, correspondence,
11 Gardner to Bowes.

12 Kirstein 6, excuse me, June 25, 1943,
13 correspondence, Bowes to Gardner.

14 Kirstein 7, June 29, 1943, correspondence,
15 Gardner to Bowes.

16 Kirstein 8, June 29, 1943, correspondence,
17 Gardner to Bowes.

18 MR. O'HARA: Is that the same
19 one? I thought you identified two with the same
20 date.

21 MR. KENNEDY: Correct.

22 MR. O'HARA: And from the same
23 person to the same person?

24 Q They appear to be the same document.

25 Kirstein 9, July 6, 1943, correspondence,

1 Bowes to Gardner.

2 Kirstein 10, July 8, 1943, correspondence,
3 Gardner to Bowes.

4 Kirstein 11, correspondence, May 24, 1944,
5 Bowes to Gardner.

6 Kirstein 12, May 31, 1944, correspondence,
7 Gardner to Bowes.

8 Kirstein 13, May 31, 1944, excuse me, it's
9 signed by Gardner to Owens Illinois Glass
10 Company.

11 Kirstein 14, November 21, 1944,
12 correspondence, Bowes --.

13 MR. O'HARA: What number did you
14 say that was?

15 Q Kirstein 14, correspondence, November
16 21, 1944, Bowes to Gardner.

17 Kirstein 15, correspondence, November 27,
18 1944, Gardner to Bowes.

19 Kirstein 16, December 8, 1944,
20 correspondence, Bowes to Gardner.

21 Kirstein 17, December 12, 1944,
22 correspondence, Gardner to Bowes.

23 Kirstein 18, December 28, 1944,
24 correspondence, Gardner to Innes, I-N-N-E-S.

25 Kirstein 19, correspondence, March 29,

1 1945, Gardner to Innes.

2 Kirstein 20, correspondence, April 18,
3 1946, Bowes to Gardner.

4 Kirstein 21, memorandum, May 5, 1946, from
5 Blinn, B-L-I-N-N, to Bowditch, B-O-W-D-I-T-C-H.

6 Kirstein 22, correspondence, May 13, 1946,
7 Gardner to Bowes.

8 Kirstein 23, May 13, 1946, titled summary
9 of animal inhalation experiments on K - Lo.

10 Kirstein 24, correspondence, December 24,
11 1946, Bowditch to Hazard, H-A-Z-A-R-D.

12 Kirstein 25, it's a handwritten message to
13 a Dr. Packard, P-A-C-K-A-R-D.

14 Kirstein 26, telegram, January 3, 1947,
15 from Hazard to Bowditch.

16 Kirstein 27, correspondence, January 4,
17 1947, Bowditch to Hazard.

18 Kirstein 28, correspondence, January 8,
19 1947, from Hazard to Bowditch.

20 Kirstein 29, correspondence, January 10,
21 1947, Bowditch to Hazard.

22 Kirstein 30, correspondence, January 27,
23 1947, Hazard to Bowditch.

24 Kirstein 30, January 27th, 1947,
25 correspondence, Hazard to Bowditch.

1 MR. O'HARA: Which number was
2 that?

3 Q I may have repeated that, I'm sorry.
4 Kirstein 31, January 30, 1947,
5 correspondence, Bowditch to Hazard.

6 Kirstein 32, correspondence, February 6th,
7 1947, Hazard to Bowditch.

8 Kirstein 33, memorandum, February 8, 1947,
9 Bowditch to Packard.

10 Kirstein 34, correspondence, February 10,
11 1947, Bowditch to Hazard.

12 Kirstein 35, correspondence, May 5, 1947,
13 LB to Vorwald, V-O-R-W-A-L-D.

14 MR. O'HARA: Who is that by? You
15 said LB.

16 Q Yes. And just so the document is
17 clear, it says RE: Owens Illinois Glass Company
18 experiment 1012 -- K - L O.

19 Kirstein 36, memorandum, May 5, 1947, from
20 Blinn to Bowditch.

21 Kirstein 37, memorandum, August 26, 1947,
22 from Dayton to Bowditch.

23 Kirstein 38, memorandum, August 27th, 1947,
24 from Bowditch to Dayton.

25 Kirstein 39, memorandum, October 10, 1947,

1 memorandum from Delahant, D-E-L-A-H-A-N-T, to
2 Vorwald.

3 Kirstein 40, October 30, 1947, institute
4 interim report on animal inhalation experiment
5 with Kaylo, K-A-Y-L-O.

6 Kirstein 41, October 31, 1947,
7 correspondence, Vorwald to Hazard with an
8 attachment dated October 30, 1947, titled
9 interim report on animal inhalation experiments
10 with Kaylo.

11 Kirstein 42, a handwritten document with
12 the heading Kaylo, K-A-Y-L-O.

13 MR. O'HARA: Does it have a date?

14 Q I see a 10 slash 2 at the top. And
15 just so we are clear we will identify the
16 document, the first line numbered 1 states
17 progress report due.

18 MR. O'HARA: Is there a Bates
19 stamp number on it?

20 Q There is a number at the bottom right,
21 a Bates stamp 000266. B-A-T-E-S.

22 Kirstein 43, correspondence, November 4,
23 1947, correspondence, Hazard to Vorwald.

24 Kirstein 44, correspondence, November 4,
25 1947, Bowes to Vorwald.

1 Kirstein 45, correspondence, November 11,
2 1947, from Blinn to Hazard.

3 Kirstein 46, correspondence, November 11,
4 1947, Blinn to Bowes.

5 Kirstein 47, correspondence, November 28,
6 1947, Vorwald to Bowes.

7 Kirstein 48, correspondence, December 1,
8 1947, Bowes to Vorwald.

9 Kirstein 49, a handwritten document dated
10 or referencing letters of December 1, 1947,
11 titled RE: Reply to Mr. Bowes.

12 MR. O'HARA: Can we have the Bates
13 stamp numbers for those, if there are?

14 Q The bates stamp for those is a three
15 page document, 000232, 233 234.

16 Kirstein 50, correspondence, December 12,
17 1947, Vorwald to Bowes.

18 Kirstein 51, memorandum, December 24, 1947,
19 from Dayton to Vorwald.

20 Kirstein 52, correspondence, December 25,
21 1947, Shook, S-H-O-O-K, to Bowditch.

22 MR. O'HARA: Actually on
23 Christmas.

24 Q Kirstein 53, correspondence, January
25 9, 1948, Hazard to Vorwald.

1 Kirstein 54, correspondence, January 19,
2 1948, Vorwald to Hazard.

3 Kirstein 55, January 19, 1948, Vorwald to
4 Bowes.

5 Kirstein 56, correspondence, January 28,
6 1948, Hazard to Vorwald.

7 Kirstein 57, it is, it appears to be an
8 invoice purchase order number AS170, Bates stamp
9 000219.

10 Kirstein 58, correspondence, February 9,
11 1948, Blinn to Hazard.

12 I want to back up to Kirstein 57 and state
13 the date of 2-3-48, February 3rd, 1948.

14 And we just entered 58. Thank you.

15 Kirstein 59, correspondence, February 20,
16 1948, Robert to Hazard.

17 I ask counsel for more.

18 Kirstein 60, correspondence, March 3, 1948,
19 Vorwald to Bowes.

20 Kirstein 61, correspondence, March 31,
21 1948, Bowes to Vorwald.

22 Kirstein 62, correspondence, April 26,
23 1948, Vorwald to Bowes.

24 Kirstein 63, correspondence, September 21,
25 1948, Hazard to Vorwald.

1 Kirstein 64, September 24th, 1948, Blinn to
2 Hazard.

3 Kirstein 65, correspondence, October 6th,
4 1948, LRB, initials, to Vorwald.

5 Kirstein 66, memorandum, October 22, 1948,
6 from Vorwald to Dayton.

7 Kirstein 67, report dated October 30, 1948,
8 titled interim report regarding the biological
9 activity of Kaylo dust.

10 Kirstein 68, memorandum, November 16, 1948,
11 from Blinn to Dayton.

12 Kirstein 69, correspondence, November 16,
13 1948, Vorwald to Bowes.

14 Kirstein 70, correspondence, December 11,
15 1948, Blinn to Innes.

16 Kirstein 71, correspondence, December 13,
17 1948, Shuman, S-H-U-M-A-N, to Blinn.

18 Kirstein 72, correspondence, December 28,
19 1948, Vorwald to Shuman.

20 Kirstein 73, correspondence, December 30,
21 1948, Shuman to Vorwald.

22 Kirstein 74, memorandum, January 20, 1949,
23 from Dayton to Vorwald.

24 Kirstein 75, memorandum, March 11, 1949,
25 from administrative office to Vorwald.

1 Kirstein 76, April 30, 1949, interim report
2 regarding the biological activity of Kaylo
3 dust.

4 Kirstein 77, May 2, 1949, it's an invoice,
5 attention to Bowes.

6 Kirstein 78, correspondence, May 3, 1949,
7 Vorwald to Bowes.

8 Kirstein 79, May 9, 1949 correspondence,
9 Grice, G-R-I-C-E, secretary to Bowes to
10 Vorwald.

11 Kirstein 80, June 18, 1949, correspondence
12 from Dayton to Vorwald.

13 Kirstein 81, correspondence, June 29, 1949,
14 Vorwald to Bowes.

15 Kirstein 82, memorandum, June 29, 1949,
16 from Vorwald to Dayton.

17 Kirstein 83, correspondence, July 6th,
18 1949, Hazard to Vorwald.

19 Kirstein 84, memorandum, July 8, 1949, from
20 Wagner to Blinn and Smith.

21 Kirstein 85, July 9, 1949, invoice,
22 attention to Howard.

23 Kirstein 86, correspondence, July 14, 1949,
24 Vorwald to Howard.

25 Kirstein 87, correspondence, July 21, 1949,

1 Howard to Vorwald.

2 Kirstein 88, January 1, 1950, interim
3 report regarding the biological activity of
4 Kaylo dust. Counsel.

5 QUESTION: What was the last
6 number again.

7 Q That was Kirstein 88.

8 Kirstein 89, correspondence, January 5,
9 1950, Hazard to Vorwald.

10 Kirstein -- if I didn't say the date for
11 Kirstein 89 it's January 5, 1950.

12 Kirstein 90, correspondence, January 12,
13 1950, Vorwald to Hazard.

14 Kirstein 91, memorandum, January 21, 1950,
15 from Bailey, B-A-I-L-E-Y, to Vorwald.

16 Kirstein 92, correspondence, February 1,
17 1950, Vorwald to Hazard.

18 Kirstein 93, February 1, 1950, invoice,
19 attention to Howard.

20 Kirstein 94, correspondence, February 14,
21 1950, Hazard to Vorwald.

22 Kirstein 95, memorandum, February 17, 1950,
23 Blinn to Wagner.

24 Kirstein 96, correspondence, February 24,
25 1950, Blinn to Hazard.

1 Kirstein 97, correspondence, March 7, 1950,
2 Hazard, Blinn.

3 Kirstein 98, correspondence, March 10,
4 1950, Blinn to Hazard.

5 Kirstein 99, April 3, 1950, correspondence,
6 Hazard to Vorwald.

7 Kirstein 100, correspondence, May 18, 1950,
8 Hazard to Vorwald.

9 Kirstein 101, correspondence, May 29, 1950,
10 Vorwald to Hazard.

11 Kirstein 102, correspondence, June 1, 1950,
12 Vorwald to Hazard.

13 Kirstein 103, telegram, June 6th, 1950,
14 Hazard to Vorwald.

15 Kirstein 104, correspondence, June 6th,
16 1950, Blinn to Hazard.

17 Kirstein 105, memorandum, June 7, 1950,
18 from Wagner to Vorwald.

19 Kirstein 106, correspondence, August 2,
20 1950, Hazard to Vorwald.

21 Off the record for a moment, I'm going to
22 rest my voice.

23 (Off the record.)

24 Q Okay. The last exhibit we just
25 entered.

1 Kirstein 107, correspondence, October 14,
2 1950, Vorwald to Hazard.

3 Kirstein 108, correspondence, October 30,
4 1950, Hazard to Vorwald.

5 Kirstein 109, LRB, handwritten note, Bates
6 stamp 000108.

7 Kirstein 110, correspondence, December 12,
8 1950, Hazard to Vorwald.

9 Kirstein 111, December 18, 1950,
10 correspondence, Vorwald to Hazard.

11 Kirstein 112, correspondence, December 19,
12 1950, Vorwald to Hazard.

13 Kirstein 113, correspondence, December
14 26th, 1950, Hazard to Vorwald.

15 Kirstein 114, correspondence, January 15,
16 1951, Hazard to Vorwald.

17 Kirstein 115, telegram, January 19, 1951,
18 Hazard to Vorwald and there is an attached
19 handwritten page signed Hazard.

20 Kirstein 116, January 22, 1951,
21 correspondence, Vorwald to Hazard.

22 Kirstein 117, correspondence, January 22,
23 1951, Maude Ley, L-E-Y, to Vorwald.

24 Kirstein 118, memorandum, January 23, 1951,
25 from Vorwald to Durkan, D-U-R-K-A-N, and Urban,

1 U-R-B-A-N.

2 Kirstein 119, correspondence, January 25,
3 1951, Blinn to Hazard.

4 Kirstein 120, memorandum, January 31, 1951,
5 Urban to Vorwald which has an attached
6 illustration by Urban.

7 Kirstein 121, January 31, 1951, memorandum
8 from Urban to fiscal department.

9 Kirstein 122, memorandum, February 6, 1951,
10 from Urban to Vorwald.

11 Kirstein 123, correspondence, February
12 26th, 1951, Urban to Hazard.

13 Kirstein 124, handwritten letter, March 28,
14 1951, initials LRB to Vorwald.

15 Kirstein 125, correspondence, May 2, 1951,
16 Blinn to Hazard.

17 Kirstein 126, correspondence, April 30,
18 1951, Hazard to Vorwald.

19 Kirstein 127, correspondence, May 2, 1951,
20 Blinn to Hazard.

21 Kirstein 128 --.

22 MR. O'HARA: Can we go back for a
23 second?

24 MR. KENNEDY: To the previous
25 document?

1 MR. O'HARA: What was that, 127;
2 is that right?

3 MR. KENNEDY: Yes.

4 MR. O'HARA: Can you go back to
5 125 again? You gave the same date and the same
6 author and recipient.

7 MR. KENNEDY: The distinction is,
8 is that 125 has a handwritten note at the bottom
9 that starts with the words called Bill Hazard on
10 phone Saturday, May 4, told him dust count at
11 finishing line was eight million.

12 MR. O'HARA: I don't need you to
13 read the contents.

14 Q Well, I need to make a distinction.
15 They are the same letter but this one has the
16 distinction of having that handwritten note at
17 the bottom regarding the phone call to Bill
18 Hazard and 127 does not have that handwritten
19 note at the bottom.

20 Was the last one I entered 127?

21 Kirstein 128, May 29, 1951, report, Kaylo
22 division plant, Owens Illinois Glass Company,
23 Sayreville, New Jersey. It's also entitled
24 industrial hygiene survey by the Saranac
25 Laboratory, Saranac Lake, New York.

1 Kirstein 129, correspondence, June 6th,
2 1951, Durkan to Hazard.

3 Counsel.

4 Kirstein 130, correspondence, June 8, 1951,
5 Hazard to Vorwald.

6 Kirstein 131, correspondence, July 11,
7 1951, Hazard to Durkan.

8 Kirstein 132, correspondence, July 13,
9 1951, Hazard to Vorwald.

10 Kirstein 133, correspondence, August 7,
11 1951, Hazard to Durkan.

12 Kirstein 134, correspondence, August 7,
13 1951, Durkan to Hazard.

14 Kirstein 135, correspondence, August 17,
15 1951, Vorwald to Hazard.

16 Kirstein 136, correspondence, October 26th,
17 1951, Blinn to Hazard. This has an attached
18 handwritten two pages. The title of the first
19 handwritten page is industrial hygiene survey,
20 Kaylo division plant, January 1951.

21 Kirstein 137, correspondence, October 29,
22 1951, Hazard to the Trudeau Foundation,
23 attention Blinn.

24 Kirstein 138, correspondence, October 31,
25 1951, Blinn to Hazard.

1 Kirstein 139, correspondence, January 4,
2 1952, Hazard to Vorwald. This document has an
3 attachment titled samples of dust from
4 Sayreville, New Jersey, plant for analysis,
5 Owens Illinois Glass Company.

6 Kirstein 140, January 30, 1952, final
7 report titled investigation concerning the
8 capacity of inhaled Kaylo dust to injure the
9 lung.

10 Kirstein 141, correspondence, February 7,
11 1952, Vorwald to Hazard.

12 Kirstein 142, correspondence, March 11,
13 1952, Durkan to Hazard.

14 Kirstein 143, correspondence, April 8,
15 1952, Hazard to Durkan.

16 Kirstein 144, May 9, 1952, titled report of
17 analysis of Amosite from Sayreville, New Jersey,
18 plant of Owens Illinois Glass Company.

19 Kirstein 145, correspondence, May 10, 1952,
20 Durkan to Hazard with an attached May 9, 1952,
21 report of analysis of Amosite from Sayreville,
22 New Jersey, plant of Owens Illinois Glass
23 Company.

24 Kirstein 146, correspondence, May 12, 1952,
25 Hazard to Durkan.

1 Kirstein 147, correspondence, July 17,
2 1956, Howard to Schepers, S-C-H-E-P-E-R-S. This
3 has an attachment, the first line reading
4 Bryston Lee, age fifty-seven, sex M.

5 Kirstein 148, handwritten, dated Wednesday,
6 it appears to be July or January 18, 1956, 2:30
7 p.m., titled telephone call from Dr. Shook of
8 Owens Illinois, Toledo, and Bill Hazard.

9 Kirstein 149, telegram, July 30, 1956,
10 Shook to Saranac Laboratory.

11 Kirstein 150, correspondence, August 2,
12 1956, Schepers to Shook with an attachment
13 titled OCD68 medico-legal opinion in respect of
14 occupational chest disease by Schepers and that
15 is dated August 1, 1956.

16 Kirstein 151, it has a handwritten number
17 55903, titled pathological specimen, lungs, name
18 Bryston, Lee.

19 Kirstein 152, September 4, 1956,
20 correspondence, Schepers to Shook with an
21 attachment titled chemical petrographic,
22 P-E-T-R-O-G-R-A-P-H-I-C, and x-ray diffraction
23 analysis of lungs.

24 Kirstein 153, correspondence, September 11,
25 1956, Hazard to Schepers.

1 Kirstein 154, correspondence, October 25,
2 1956, Shook to Schepers.

3 Kirstein 155, correspondence, November 5,
4 1956, Schepers to Shook, with the attachment
5 titled OCD68, medico-legal opinion in respect of
6 occupational chest disease by Schepers, dated
7 November 5, 1956.

8 And that concludes the exhibits and, Mr.
9 Kirstein, I just have some questions for you.
10 Have you been provided with the documents that
11 have been marked as Kirstein 1 through Kirstein
12 154?

13 A Yes.

14 MR. O'HARA: Are you talking about
15 today?

16 Q Excuse me. Kirstein 155. Were you
17 provided with these documents?

18 A Yes, I was.

19 Q To the best of your knowledge, Mr.
20 Kirstein, are these true and accurate copies of
21 the documents which are maintained in the normal
22 and ordinary course of business by the Trudeau
23 Institute?

24 MR. O'HARA: Objection,
25 foundation.

1 Q You may answer.

2 MR. O'HARA: Objection, leading.

3 Q You can answer.

4 A Yes, to the best of my knowledge.

5 Q And, Mr. Kirstein, are these documents
6 which I have particularly read into the record,
7 are any of those less than forty years old?

8 MR. O'HARA: Objection,
9 foundation. Objection, leading.

10 A No, they are not.

11 MR. KENNEDY: Mr. Kirstein, that's
12 all I have for you. Thank you.

13 Counsel, if counsel has any questions of
14 Mr. Kirstein, otherwise we are done.

15 MR. O'HARA: I have some
16 questions.

17

18

19 EXAMINATION BY MR. O'HARA:

20 BY MR. O'HARA:

21 Q Mr. Kirstein, the documents which Mr.
22 Kennedy asked you to review are dated from the
23 1940s and 1950s, correct?

24 A Correct.

25 Q And how old are you?

1 A I will be fifty this year.

2 Q And some of the documents appear to
3 have been authored at a time when you were not
4 even born, correct?

5 A That's correct.

6 Q And the last of the documents was
7 authored or apparently authored at a time when
8 you were approximately eight years old, correct?

9 A That's correct.

10 Q You have no personal knowledge
11 regarding the authors of these documents?

12 A That's correct.

13 Q You have no personal knowledge
14 regarding the contents of these documents?

15 A That's correct.

16 Q I think you testified earlier today
17 that you are now chief administrative officer of
18 the Trudeau Institute; is that right?

19 A Correct.

20 Q When did you assume that position?

21 A That was earlier this year.

22 Q So in 1998?

23 A Correct.

24 Q As of today is there a position at the
25 Trudeau Institute called custodian of records?

1 A There is not.

2 Q Has there ever been a position like
3 that, or named that?

4 A During my tenure as administrator,
5 no. Other than that, I can't answer.

6 Q Your title is not custodian of
7 records, is it?

8 A It is not.

9 Q To the best of your knowledge the
10 documents which Mr. Kennedy has showed you today
11 were not received by the Trudeau Institute in
12 the normal course of it's business?

13 A Well, I guess I have to speak with my
14 counsel.

15 Q Let me withdraw that question and ask
16 something different. I think you testified that
17 you started working at the Trudeau Institute in
18 1973; is that right?

19 A Correct.

20 Q Your first position was as a research
21 assistant?

22 A Correct.

23 Q From the years 1973 through 1980 you
24 were a research assistant?

25 A That is correct.

1 Q While you were a research assistant at
2 Trudeau you did not have any responsibility for
3 the Saranac Lake documents?

4 A That's correct.

5 Q During that period of time you had no
6 personal knowledge regarding whether they were
7 stored at the Trudeau Institute; is that
8 correct?

9 A That's correct.

10 Q During that period of time you had no
11 personal knowledge regarding the conditions
12 under which they were stored, if they were at
13 the Trudeau Institute, correct?

14 A Correct.

15 Q During that period of time you had no
16 personal knowledge regarding whether those
17 documents had been reviewed by anyone?

18 A I observed that they were reviewed
19 when I walked down the hallway in the institute
20 but I did not have any personal involvement in
21 it.

22 Q The first time that you knew of the
23 existence of the Saranac Lake documents was
24 approximately late 1979 or early 1980; is that
25 right?

1 A That's right.

2 Q And your first knowledge about these
3 documents was a result of what you just
4 described, correct?

5 A Correct.

6 Q You saw that these documents had been
7 collected in a room at the Trudeau Institute?

8 A That's correct.

9 Q Before that time you had no knowledge
10 that the documents were even at the Trudeau
11 Institute?

12 A That's correct.

13 Q You presently have no personal
14 knowledge regarding how the documents were
15 received by the Trudeau Institute?

16 A That's correct.

17 Q You do not have any personal knowledge
18 whether the documents that you observed in late
19 1979 or early 1980 had been kept in the ordinary
20 course of the Trudeau Institute's business,
21 correct?

22 A That's correct.

23 Q In fact, to the best of your knowledge
24 those documents were not received or kept in the
25 ordinary course of the Trudeau Institute's

1 business?

2 A I believe that's correct.

3 Q At the time that you first saw the
4 Saranac documents at the Trudeau Institute you
5 had no personal knowledge regarding the history
6 of the custody or control of those documents?

7 A That's correct.

8 Q You became an administrative assistant
9 to the director in 1980; is that true?

10 A That's true.

11 Q And at that time the Saranac Lake
12 documents were not physically located at the
13 Trudeau Institute?

14 A That's correct.

15 Q As of 1980 the Saranac Lake documents
16 were in the custody of the lawyers for the
17 Trudeau Institute, Millbank Tweed, correct?

18 A Correct.

19 Q And at that time the documents were
20 physically located in New York City?

21 A Correct.

22 Q And that is the best of your
23 knowledge?

24 A To the best of my knowledge, that's
25 correct.

1 Q And when the documents were located in
2 New York City you were working here in Saranac
3 Lake?

4 A That's correct.

5 Q From 1980 until 1986 you were the
6 administrator, administrative assistant to the
7 director of the Trudeau Institute?

8 A Correct.

9 Q During that period of time you had no
10 knowledge regarding the way in which the
11 Millbank Tweed lawfirm stored these documents,
12 did you?

13 A I believe I knew that they were stored
14 in a warehouse facility that was arranged by
15 Millbank Tweed.

16 Q And that's all you knew about the
17 manner in which they were stored, correct?

18 A That's correct.

19 Q You had no personal knowledge
20 regarding the custodial practices used by
21 Millbank Tweed in connection with the documents,
22 did you?

23 A That's correct, I did not.

24 Q You had no personal knowledge
25 regarding whether these documents were always

1 located at that warehouse, do you?

2 A I do not.

3 Q You don't know all of the people who
4 actually looked at the documents during the
5 period of time they were stored at Millbank
6 Tweed?

7 A I do not.

8 Q You don't know whether documents may
9 have been added or removed from the Saranac
10 documents during the time they were stored at
11 Millbank Tweed, correct?

12 A That's correct.

13 Q In 1986 Millbank Tweed actually
14 transferred some of the Saranac Lake documents
15 back to the Trudeau Institute?

16 A That's correct.

17 Q You did not prepare the documents for
18 transfer back to the Trudeau Institute from
19 Millbank Tweed, did you?

20 A I did not.

21 Q You did not physically transport the
22 documents back from New York City to Saranac
23 Lake?

24 A I did not.

25 Q Millbank Tweed decided what documents

1 to send back to the Trudeau Institute, isn't
2 that correct?

3 A That's correct.

4 Q Millbank Tweed made the transportation
5 arrangements for the documents back from New
6 York City to the Trudeau Institute, correct?

7 A That's correct.

8 Q Originally, how many documents were
9 transferred from the Trudeau Institute to
10 Millbank Tweed in 1980?

11 A I do not know.

12 Q In 1986 when the documents were
13 transferred back from Millbank Tweed to the
14 Trudeau Institute how many boxes were there?

15 A I believe there were thirty-nine.

16 Q Do you know whether the Millbank Tweed
17 lawyers re-cartoned or re-packaged the documents
18 while they were in the possession and custody of
19 Millbank Tweed?

20 A I do not know.

21 Q When the documents were received from
22 Millbank Tweed at the Trudeau Institute in 1986,
23 you did not consider those documents to be
24 Trudeau Institute business records, did you?

25 A I did not.

1 Q When you received the documents back
2 from Millbank Tweed in 1986 they were not
3 maintained by the Trudeau Institute in the
4 normal course of the Trudeau Institute's
5 business, isn't that correct?

6 A That is correct.

7 Q Trudeau did not consider itself in
8 1986 to have a legal responsibility to preserve
9 these documents, did it?

10 A No.

11 Q In 1998 the Trudeau Institute does not
12 consider itself to have a legal responsibility
13 to preserve these documents, does it?

14 A No.

15 Q When you received the documents from
16 Millbank Tweed you did not prepare an index for
17 the documents, correct?

18 A That's correct.

19 Q When the documents were returned to
20 the Trudeau Institute from Millbank Tweed in
21 1986 there was no index that was included,
22 correct?

23 A Correct.

24 Q And to your knowledge even at the
25 present time there is no index for these

1 documents?

2 A Correct.

3 Q After the Trudeau Institute received
4 the Saranac Lake documents from Millbank Tweed
5 in 1986, you casually thumbed through the
6 contents of the documents, right?

7 A That's correct.

8 Q At that time you determined that there
9 were hundreds of different file folders in those
10 boxes, right?

11 A Yes.

12 Q When the Trudeau Institute took
13 custody of the documents in 1986, these were not
14 the kinds of documents that were used by the
15 people who were doing research at the Trudeau
16 Institute, were they?

17 A No.

18 Q To your knowledge none of the
19 scientists who have ever worked at the Trudeau
20 Institute have ever used any of the Saranac Lake
21 documents in connection with their research,
22 isn't that right?

23 A That's correct.

24 Q The Trudeau Institute merely has
25 custody of the documents and makes them

1 available to attorneys and parties who are in
2 litigation, correct?

3 A Correct.

4 Q Since the Saranac Lake documents have
5 been in the custody of the Trudeau Institute
6 since 1986 they have been reviewed by attorneys
7 and parties in litigation, correct?

8 A Correct.

9 Q That has happened on many occasions,
10 right?

11 A Yes.

12 Q Over fifty times, approximately?

13 A That's a reasonable approximation.

14 Q Hundreds of people have personally
15 reviewed those documents, isn't that correct?

16 A That's correct.

17 Q When people come to review the Saranac
18 Lake documents at the Trudeau Institute no one
19 from the Trudeau Institute personally supervises
20 the people who look at the documents, isn't that
21 right?

22 A That's right.

23 Q The Trudeau Institute makes the
24 documents available to people who want to review
25 them and assumes they will not take any of the

1 original documents, correct?

2 A Yes.

3 Q You don't know since 1986 until the
4 present time whether anybody who has reviewed
5 the documents here at the Trudeau Institute has
6 taken any of the original documents, correct?

7 A Yes.

8 Q You don't know that, correct?

9 A I do not know that.

10 Q The copying is done, the copying of
11 the Saranac Lake documents is done by the people
12 who review the documents here at the Trudeau
13 Institute, right?

14 A Yes.

15 Q The Trudeau Institute makes a copying
16 machine available to the people who want to
17 review the documents; is that right?

18 A Yes.

19 Q The originals are returned to the file
20 by the people who copy them; is that correct?

21 A Yes.

22 Q The people from the Trudeau Institute
23 don't personally return the original documents
24 to the file?

25 A They do not.

1 Q The Trudeau Institute does not keep a
2 record of what copies are made by the people who
3 come to review the Saranac Lake documents, do
4 they?

5 A No.

6 Q The Trudeau Institute has no way of
7 knowing which documents are removed from the
8 files when they are reviewed for copying, isn't
9 that correct?

10 A That's correct.

11 Q The Trudeau Institute has no way of
12 knowing whether documents have been permanently
13 removed from the Saranac Lake files, correct?

14 A Correct.

15 Q You know from your casual review of
16 these files that there are gaps in the Bate
17 numbers in the documents that are in the files,
18 correct?

19 A I don't know that.

20 Q You do know, however, that some
21 lawyers who have come to look at the documents
22 have complained on occasion that there are,
23 appear to be documents missing, correct?

24 A Correct.

25 Q You, yourself, have never read the

1 individual documents that comprise the Saranac
2 Lake documents, have you?

3 A No, I have not.

4 Q You have no more than a very general
5 knowledge relating to the contents of those
6 documents, correct?

7 A Correct.

8 Q The first time you looked at any
9 specific Saranac Lake documents was when Mr.
10 Kennedy asked you to look at them in connection
11 with this deposition; is that right?

12 A The first time with respect to these
13 documents?

14 Q The first time that you looked at any
15 specific Saranac Lake documents was in
16 connection with Mr. Kennedy's request that you
17 look at them in connection with this deposition;
18 is that correct?

19 A Yes.

20 Q So in the eighteen years that you were
21 an administrative assistant you did not look at
22 any specific individual Saranac Lake documents,
23 did you, other than the casual review of the
24 documents that you did in 1986?

25 A That's not strictly accurate.

1 Q Okay. In what way isn't it accurate?

2 A At other depositions similar to this
3 one I have been asked to authenticate documents
4 and in doing that I have looked at a particular
5 document.

6 Q Other than in connection with requests
7 by lawyers at depositions to have you look at
8 specific documents, you have not personally
9 reviewed specific documents from the Saranac
10 Lake boxes, have you?

11 A I have, I have sent a couple of
12 documents to the institute's own attorneys.

13 Q In those occasions have the attorneys
14 requested that you obtain particular documents
15 and forward those documents to them?

16 A No.

17 Q In those circumstances have you
18 personally gone through the documents and picked
19 out selected documents to send to your attorney?

20 A That's correct.

21 Q You're talking about the Trudeau
22 Institute attorneys?

23 A Yes.

24 Q And those requests have been in
25 connection with discovery requests filed in

1 connection with litigation?

2 A Correct.

3 Q Other than in a litigation context,
4 you have never personally reviewed any specific
5 Saranac Lake documents?

6 A I have not.

7 Q You did not look at the documents that
8 Mr. Kennedy gave you as part of any research
9 work that's going on at the Trudeau Institute?

10 A That's true.

11 Q The review of the documents that you
12 conducted of the documents that Mr. Kennedy gave
13 you was at his request, correct?

14 A Correct.

15 Q You did not spend much time reviewing
16 the documents that Mr. Kennedy asked you to
17 review, did you?

18 MR. KENNEDY: Objection.

19 Q You can answer.

20 A I did not.

21 Q Approximately how much time did you
22 spend looking at the one hundred and fifty-five
23 documents that Mr. Kennedy asked you to review?

24 A Thirty minutes.

25 Q You did not read the documents page by

1 page, did you?

2 A I did not.

3 Q There are hundreds of pages in the
4 hundred and fifty-five documents which Mr.
5 Kennedy asked you to review, are there not?

6 A There are.

7 Q You did not check to see whether the
8 documents that Mr. Kennedy gave you to review
9 actually had a corresponding original in the
10 boxes that are in the custody of the Trudeau
11 Institute, did you?

12 A I did not.

13 Q Nobody at the Trudeau Institute
14 checked to see whether there were corresponding
15 originals to the copies that Mr. Kennedy showed
16 you and asked you to review?

17 A That is correct.

18 Q You have no personal knowledge if the
19 documents that Mr. Kennedy showed you for review
20 are copies of documents that are actually in the
21 boxes which are labeled as Saranac Lake
22 documents?

23 A That's correct.

24 Q If the documents that Mr. Kennedy
25 showed you for review are from those boxes, you

1 don't know what boxes they are from, correct?

2 A Correct.

3 Q You don't know whether the documents
4 that Mr. Kennedy showed you, showed you for
5 review were part of the documents which were
6 collected in 1979 at the Trudeau Institute
7 before they were sent to Millbank Tweed, do you?

8 A I do not.

9 Q You don't know whether the documents
10 Mr. Kennedy showed you for review were documents
11 which were located at Millbank Tweed during the
12 period 1980 to 1986?

13 A I do not.

14 Q You don't know whether the documents
15 Mr. Kennedy showed you for review were documents
16 that were returned by Millbank Tweed in 1986?

17 A I do not.

18 Q You have no personal knowledge where
19 the documents that Mr. Kennedy showed you for
20 review originally came from, do you?

21 A I do not.

22 Q You have no personal knowledge
23 regarding the contents of the documents Mr.
24 Kennedy asked you to review?

25 A I do not.

1 Q You have no personal knowledge
2 regarding the history of the custody and control
3 of the documents Mr. Kennedy asked you to
4 review?

5 A I do not.

6 Q You have no personal knowledge
7 regarding the authenticity of the documents Mr.
8 Kennedy asked you to review?

9 A I do not.

10 Q You don't know anything about the
11 original source of the Saranac Lake documents,
12 do you?

13 A I do not.

14 Q After the documents were returned by
15 Millbank Tweed to the Trudeau Institute in 1986,
16 Trudeau made an effort to pare down the number
17 of boxes that they received, did they not?

18 A They did.

19 Q You participated in that paring down
20 process, did you not?

21 A I did.

22 Q You participated in the removal of
23 documents from those files at that time?

24 A I did.

25 Q And I think that paring down occurred

1 in approximately 1987?

2 A I believe that's right.

3 Q At that time documents were removed
4 from the Saranac Lake files that had been
5 received back from Millbank Tweed, correct?

6 A Correct.

7 Q And at that time documents which were
8 removed from the Saranac Lake files were
9 destroyed; is that correct?

10 A Correct.

11 Q You did not keep track of the
12 documents removed from the files, did you?

13 A No.

14 Q No index was made of the documents
15 that were removed from the files, were there?

16 A No.

17 Q Or was there. To the best of your
18 recollection thousands of pages of documents
19 from the Saranac Lake files were destroyed by
20 the Trudeau Institute at the time of the paring
21 down process, correct?

22 A Correct.

23 Q The number of boxes was reduced from
24 approximately thirty-nine boxes to fifteen
25 boxes, correct?

1 A Correct.

2 Q At that time the labels on the boxes
3 were changed by a purchasing agent at the
4 Trudeau Institute; is that correct?

5 A Correct.

6 Q Can you refresh my memory regarding
7 the name of the purchasing agent who did that?

8 A It was Shirley Preston.

9 Q She did not have personal knowledge
10 regarding the contents of the boxes, did she?

11 A She did not.

12 MR. O'HARA: May I have a second
13 to review my notes? I'm not sure I have
14 anything else.

15 MR. KENNEDY: While counsel is
16 reviewing his notes, does any other counsel have
17 any questions? No.

18 MR. O'HARA: I don't think I have
19 anything further.

20 MR. KENNEDY: Mr. Kirstein, it
21 appears that we are completed. Your counsel has
22 some questions.

23

24

25

1 EXAMINATION BY MR. DWYER:

2 BY MR. DWYER:

3 Q Mr. Kirstein, can you clarify what the
4 process was of paring down and eliminating some
5 documents in 1987 when they came back from
6 Millbank Tweed?

7 A Under advice of the institute's
8 counsel for these matters who is Raymond Wisk,
9 Mr. Wisk came to the institute, we reviewed the
10 approximately thirty-nine cartons and together
11 agreed that those cartons that were filled with
12 reprints or offprints, as you may call them, of
13 the medical literature were not unique documents
14 in that the information in those could be found
15 in any medical library and we agreed that for
16 matters of economy and storage, that those
17 things that could be replaced elsewhere could be
18 destroyed.

19 Q Has there been since that time any
20 other paring down process that you have personal
21 knowledge of?

22 A There has been none.

23 MR. DWYER: Okay.

24 MR. KENNEDY: Counsel.

25 MR. O'HARA: Hold on one second.

1 EXAMINATION BY MR. O'HARA:

2 BY MR. O'HARA:

3 Q Mr. Kirstein, did you personally make
4 this decision regarding what materials to
5 discard and what materials to keep amongst the
6 documents that were returned from Millbank Tweed
7 to the Trudeau Institute?

8 A Yes, I did.

9 Q And did you make those selections on
10 the advice of the lawyers for the Trudeau
11 Institute?

12 A Yes, I did.

13 MR. O'HARA: Thank you.

14 MR. KENNEDY: I have no questions.

15 MR. DWYER: I just request that
16 Mr. Kirstein be provided with a copy, an extra
17 copy of the deposition.

18 MR. KENNEDY: I'm sorry. Do you
19 want Mr. Kirstein to sign or do you waive?

20 MR. DWYER: I'll waive that but I
21 would like a copy of the deposition for the
22 institute's records.

23 MR. KENNEDY: I'll do that. Thank
24 you.

25