

1 Let's bring the jury in, please.
 2 (Whereupon, jury present -- 2:26 p.m.)
 3 THE COURT: Please be seated, ladies and
 4 gentlemen.
 5 Good afternoon.
 6 THE JURY: Good afternoon.
 7 THE COURT: Did you all have a nice,
 8 relaxing, cool lunchtime out there?
 9 THE JURY: Yes.
 10 THE COURT: Okay.
 11 We are ready to proceed.
 12 Ms. Tostanoski will now address you for her
 13 opening.
 14 MS. TOSTANOSKI: Thank you, Your Honor.
 15 Good afternoon.
 16 THE JURY: Good afternoon.
 17 OPENING STATEMENT
 18 MS. TOSTANOSKI: My name is Gerry
 19 Tostanoski. And along with Scott Burns, who is kind
 20 of hidden back there, we represent Owens-Illinois.
 21 First of all, I would like to thank you for

1 your service. I am sure when you all came here
 2 yesterday, none of you thought that you would go home
 3 and tell your families, see you June 19th. It is a
 4 big sacrifice. And I appreciate it, and my client
 5 appreciates it.
 6 There are three very difficult things you
 7 are going to encounter in this trial. The first thing
 8 I already mentioned, the great personal sacrifice you
 9 will all be making to sit here and serve every day,
 10 day after day, for the next month or so.
 11 The second one was talked about this
 12 morning, too. Some of the testimony that you are
 13 going to hear in this case is going to be difficult to
 14 listen to.
 15 No one here is going to dispute that cancer
 16 is a human tragedy or that these were good men and
 17 that these men suffered and that their families love
 18 them very much and miss them.
 19 There are some things that are going to be
 20 disputed in this case, but that is not one of them.
 21 Now, the third thing that you are going to

1 have to do is, when you listen to this evidence and
 2 when you evaluate it, you are going to have to put
 3 yourself back in time, because you have to look at
 4 this evidence the way people who are doing industrial
 5 hygiene and industrial medicine looked at this
 6 evidence decades ago.
 7 This is what is known as the state of the
 8 art in the case. And as Mr. McGowan mentioned to you
 9 this morning, I am going to spend a little time this
 10 afternoon talking to you about this part of the case.
 11 The evidence that you are going to hear is
 12 really the history of industrial medicine and
 13 industrial hygiene.
 14 And it is real easy for all of us to sit
 15 here today and say, in May of 1996, this is what we
 16 know about asbestos, and this is what we know about
 17 exposures and diseases that can result, but that is
 18 not what we are here to do.
 19 I am going to talk about the state of the
 20 art, which more simply, an easy way to say it is, what
 21 was known and when it was known.

1 Now, the plaintiffs' lawyers have told you
 2 that the defendants, including my client, Owens-
 3 Illinois, are at fault because the products that they
 4 distributed and manufactured were defective back in
 5 the '40s and the 1950s.
 6 The plaintiffs told you that we should have
 7 known in the 1930s that asbestos-containing products
 8 and exposure to asbestos could cause disease.
 9 Now, one of the things that life teaches you
 10 is that the answers that you get depend on the
 11 questions that you ask. And that was true then and
 12 and that is true now.
 13 Now, back in the 1930s, doctors and
 14 scientists did ask a question about asbestos and its
 15 ability to hurt humans.
 16 Man figured out asbestos, which you learned
 17 this morning, is a naturally occurring mineral that is
 18 mined from the earth that had unique properties.
 19 For example, the fibers could be removed
 20 from the rock, and it could be woven into a cloth.
 21 And it was a good binder, held things together, so it